

Ordinary Council Meeting

10 August 2016

Minutes



Members of the public who attend Council meetings should not act immediately on anything they hear at the meetings, without first seeking clarification of Council's position. Persons are advised to wait for written advice from the Council prior to taking action on any matter that they may have before Council.

Agendas and Minutes are available on the City's website www.kwinana.wa.gov.au

Vision Statement

Kwinana 2030

***Rich in spirit, alive with opportunities,
surrounded by nature – it's all here!***

Mission

**Strengthen community spirit, lead
exciting growth, respect the environment
- create great places to live.**



We will do this by –

- providing strong leadership in the community;
- promoting an innovative and integrated approach;
- being accountable and transparent in our actions;
- being efficient and effective with our resources;
- using industry leading methods and technology wherever possible;
- making informed decisions, after considering all available information; and
- providing the best possible customer service.

Values

We will demonstrate and be defined by our core values, which are:

- Lead from where you stand – Leadership is within us all.
- Act with compassion – Show that you care.
- Make it fun – Seize the opportunity to have fun.
- Stand Strong, stand true – Have the courage to do what is right.
- Trust and be trusted – Value the message, value the messenger.
- Why not yes? – Ideas can grow with a yes.

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Present:

HER WORSHIP MAYOR C ADAMS (arrived 7:22pm)
DEPUTY MAYOR P FEASEY
CR R ALEXANDER
CR W COOPER
CR S LEE
CR S MILLS
CR B THOMPSON

MS J ABBISS	-	Chief Executive Officer
MS C MIHOVILOVICH	-	Acting Director City Strategy
MR P NIELSON	-	Acting Director City Development
MRS B POWELL	-	Director City Living
MS M BELL	-	Corporate Lawyer
MR E LAWRENCE	-	Director Corporate and Engineering Services
MS A MCKENZIE	-	Council Administration Officer

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1 Declaration of Opening:

Presiding Member declared the meeting open at 7:00pm and welcomed Councillors, City Officers and gallery in attendance and read the Welcome.

“IT GIVES ME GREAT PLEASURE TO WELCOME YOU ALL HERE AND BEFORE COMMENCING THE PROCEEDINGS, I WOULD LIKE TO ACKNOWLEDGE THAT WE COME TOGETHER TONIGHT ON THE TRADITIONAL LAND OF THE NOONGAR PEOPLE”

2 Prayer:

Councillor Wendy Cooper read the Prayer

“OH LORD WE PRAY FOR GUIDANCE IN OUR MEETING. PLEASE GRANT US WISDOM AND TOLERANCE IN DEBATE THAT WE MAY WORK TO THE BEST INTERESTS OF OUR PEOPLE AND TO THY WILL. AMEN”

3 Apologies/Leave(s) of Absence (previously approved)

Apologies

Nil

Leave(s) of Absence (previously approved):

Councillor Dennis Wood from 28 July 2016 to 20 August 2016 inclusive.

4 Public Question Time:

Public Question Time commenced at 7:03pm

4.1 Mrs Victoria Starkey, Parmelia

Question 1

Where do the rights of the residents and ratepayers lie? We have had construction going on across from us for two years which has affected my health due to the constant stress of the noise. Now two more drive thru takeaways will be built across from my home bringing more noise, more traffic and more hoons.

Response

The Deputy Mayor referred the question to the Chief Executive Officer.

The Chief Executive Officer said that she understands that Mrs Starkey lives adjacent to the City Centre development that is occurring. In relation to the proposals, the Chief Executive Officer understands that they have not been before Council at this time.

The Acting Director City Development confirmed that the proposals have not been before Council at this time but that the City has received an application for some amendments to the original approval for the area in question that is immediately across from Meares Avenue and from Mrs Starkey's property, which is for additional bulky goods and drive thru fast food businesses. The City Officers are currently considering the application, it is an application that could potentially be a Joint Development Assessment Panel (JDAP) application, in any event it will come to Council prior to that and City Officers will be making a recommendation for consideration by Council and the JDAP.

The Chief Executive Officer queried whether in terms of the planning process there will be an opportunity for community input and asked the Acting Director City Development to advise Mrs Starkey if the proposed development is a permitted use or if the applications will require referral to neighbours.

The Acting Director City Development confirmed that the uses are permitted as it is part of the City Centre area. There are already some bulky good businesses in that area and they are permitted use. The drive thru fast food businesses, whilst they are not part of the predominant uses under the scheme, they are permitted uses. The City has written to residents along Meares Avenue and has sought community feedback, which will be provided to the Council and the JDAP panel (if required), including officer comments in respect to those issues. Issues of lighting and noise were also raised and conditioned as part of the original development application. With respect to noise, there was a noise impact assessment report originally prepared and is something that is likely to be reviewed as part of this process. There was also careful consideration given to the impact of lighting and there was a condition that lighting must not adversely impact adjacent residential properties and that the lighting is required to meet the Australian Standards for outdoor lighting. The Acting Director City Development stated that those issues were considered as part of the original development application and the City will certainly be looking at them very carefully again with the application.

The Deputy Mayor asked the Acting Director City Development if the City is aware that all those conditions are compliant?

The Acting Director City Development advised that he has not been made aware that the City's compliance team are monitoring this development in relation to those matters raised and further advised that the City would if matters were received in that regard.

4 PUBLIC QUESTION TIME CONTINUED

Mrs Starkey advised that she was not informed that a 24 hour gym would be across the road from her home and that she was not aware that a car servicing centre would be either and had believed it was to be a car part shop. Mrs Starkey stated that she has constantly complained about the lights from Muzz Buzz as the trees were removed and she now has constant headlights coming into her bedroom window as well as 24 hours a day traffic, car doors, boots closing at all hours, socialising in the carpark across the road and everything echo's and sounds like it is directly under her bedroom windows. Mrs Starkey advised that she has complained several times and that living with these conditions has caused her severe medical conditions.

4.2 Mr Robert White, Mandogalup

Question 1

Considering that the Rockingham and Cockburn Councils have vigorously opposed the intrusion of the Western Trade Coast Buffer into their areas, why are Kwinana Councillors supporting its introduction when the Parliamentary Inquiry of 2012 showed that Alcoa could not prove that the buffer was required and that the Council stood to lose millions of dollars in future rateable residential housing?

Question 2

Did the Councillors consider the impact on the assets and lives of ratepayers when they offered support to this legislation?

Question 3

What do the residents of Kwinana get to off-set this massive loss of rateable lands?

Response

The Deputy Mayor took these questions on notice and advised that the City would be very willing to provide a written detailed response regarding the matters raised.

4.3 Mrs Margaret de Haer, Mandogalup

Question 1

Why have my rates increased this year by 81.97%? In 2015 the rates were \$1,975.23 in 2016 they are \$3,594.47 making this an increase of \$1,619.24.

Question 2

What has changed in the last year in Local Government and State Government planning to account for the zoning change of our property from rural to improved special residential? We are still not connected to the metro water scheme, sewerage system, we are unable to subdivide our property and we live inside of an Air Quality Buffer Zone (which has been forced on us) that prevents our land from being developed as residential.

Response

The Deputy Mayor took these questions on notice and advised that due to the answer being quite complex a full detailed explanation will be provided.

4 PUBLIC QUESTION TIME CONTINUED

4.4 Mrs Jenny Swift, Casuarina

Question 1

Why has Alcoa been able to destroy the township and community of Mandogalup and turn it into a one road racing track?

Question 2

Why was Postan Road closed? Even residents of Kwinana are in a line of thirty cars trying to turn right in the evening or afternoon at Mandogalup Road turning onto Anketell Road.

Question 3

Why isn't the speed limit not 60km/hr when there are 19 driveways active within 700 meters on Mandogalup Road turning onto Anketell Road?

Question 4

Why does the White family have to pay \$8,359.76 to the City of Kwinana in rates? This is excluding their home blocks on bush and paddocks that do not even house a rubbish bin.

Question 5

How can land be deferred urban and change to a buffer zone overnight without consulting the land owners?

Question 6

Why are residents living in the area when it is so unhealthy?

Question 7

Why don't all the mining companies in the City of Kwinana pay rates?

Question 8

Why are my brothers 50-60 years of age still living in the area all their lives are still alive and my mother is 88 years old and has been in the area for 65 years before Alcoa, drinking the rain water and bore water?

Question 9

Why was Alcoa allowed to build their banks over the forty feet which was the plan 50 years ago to a height of 1,270.5ft higher on F Lake?

Question 10

Why was Alcoa allowed to destroy Postans house?

Question 11

Why do the market gardeners grow so many above ground vegetables when the air and water are polluted? The vegetables are exported and sold all over Australia.

Question 12

Why in December 2015 the City of Cockburn objected to the buffer zone and Western Trade Coast Protection Area (WTCPA) and City of Kwinana is backing Alcoa?

Response

The Deputy Mayor took these questions on notice.

4 PUBLIC QUESTION TIME CONTINUED

4.5 Mr Barry Sweeney, Kwinana

Question 1

Was there noise restrictions put on Aldi's semi trailers coming in after midnight?

Response

The Deputy Mayor referred the question to the Acting Director City Development.

The Acting Director City Development advised that he would need to take the question on notice to be able to have a look at the development approval, he did note that there were discussions about noise issues and recognising the immediacy of the residential lots.

Question 2

Is there any protection when commercial and residential when they are on either side of the street as to what type of business can operate?

Response

The Deputy Mayor referred the question to the Chief Executive Officer.

The Chief Executive Officer advised that the laws that govern the powers that Council have to place conditions are set by planning legislation and there is a number of planning laws that would apply. The difficulty with a fast food type operation in a city centre is that the planning laws recognise that is where that type of development should go which makes it very difficult to place overly restricted conditions on a use that is considered under the planning framework to be appropriate in that location. Even other laws such as the Environmental Protection Noise Regulations, provide for noise limits to be higher for a residence that abuts a commercial area because those laws recognise that people living right next to a city centre should expect a higher level of noise than a property in a rural area, which is how those laws have been written and they were written to try and strike a balance with different types of land use. There are some mechanisms to protect residents, but again depending on the exact circumstances and exact use and how those planning laws and environmental protection noise regulations operate, it may not generate the type of protection you are seeking but they are the laws that Council are bound by and the City can't make decisions outside of those.

Question 3

What conditions can be placed on that approval that the Council has power to do?

Response

The Deputy Mayor referred the question to the Chief Executive Officer.

The Chief Executive Officer explained that in relation to your Aldi example, the Acting Director City Development is going to look into what conditions were placed on that approval that the City had power to put on, that can be looked at to see if they are complying to them.

4 PUBLIC QUESTION TIME CONTINUED

4.6 Mr Steven De Haer, Mandogalup

Question 1

What will the City of Kwinana do to allay the concerns of residents of Mandogalup in relation to the implementation of the Western Trade Coast Protection Area Legislation, and specifically regarding:

- Limits placed on how land can be used;
- Loss of value of assets taken in by the Kwinana Air Quality Buffer;
- The requirement for a buffer and the science behind its institution.

Question 2

Will the City of Kwinana make representations to the Minister for Planning and the Department of State Development outlining these concerns? And report the results of these representations back to the residents?

Response

The Deputy Mayor took these questions on notice.

4.7 Mrs Margaret Donald, Mandogalup

Question 1

Why haven't the Kwinana Council kept their ratepayers in Mandogalup informed about the Alcoa buffer? We are still being treated like mushrooms.

Response

The Deputy Mayor took the question on notice.

Public Question Time ceased at 7:33pm

Mayor Carol Adams resumed her position as the Presiding Member at 7:33pm

5 Applications for Leave of Absence:

Nil

6 Declarations of Interest by Members and City Officers:

Mayor Carol Adams declared an impartiality interest in item 16.2, Proposed Disposition by way of Lease – Suites 9-17 within 'Kwinana Technology Business Centre', 11 Stidworthy Way, Kwinana Town Centre – Business Foundations Inc due to a close family member having a sub lease arrangement with Business Foundations.

7 Community Submissions:

Nil

8 Minutes to be Confirmed:

8.1 Ordinary Meeting of Council held on 27 July 2016:

COUNCIL DECISION

282

MOVED CR S LEE

SECONDED CR B THOMPSON

That the Minutes of the Ordinary Meeting of Council held on 27 July 2016 be confirmed as a true and correct record of the meeting.

**CARRIED
7/0**

9 Referred Standing / Occasional / Management /Committee Meeting:

Nil

10 Petitions:

10.1 Councillor Wendy Cooper tabled a Petition on behalf of Megan Pressman regarding the permanent closure of Johnson Road.

COUNCIL DECISION

283

MOVED CR W COOPER

SECONDED CR R ALEXANDER

That the petition be received and a report prepared.

**CARRIED
7/0**

11 Notices of Motion:

Nil

12 Reports – Community

Nil

13 Reports – Economic

Nil

14 Reports – Natural Environment

Nil

15 Reports – Built Infrastructure

15.1 Proposed Road Names for Lot 64 Woolcoot Road, Wellard Subdivision

SUMMARY:

McMullen Nolan Group, surveyors for the developer of Lot 64 Woolcoot Road, Wellard, have forwarded details of proposed road names as indicated in Attachment A. The surveyors are now seeking Council approval of these names. An agenda item was included in the 27 April 2016 Ordinary Council Meeting in which the names Falls and Derwent were approved. However, Geographic Names Committee rejected the suggested name Derwent due to the length as it applied to a short laneway, therefore is unacceptable as per Geographic Names Committee Guidelines.

The Minutes of the Ordinary Meeting of Council held on 27 April 2016 were confirmed as true and correct, however the resolution for item 16.6 *Proposed Road Names for Lot 64 Woolcoot Road, Wellard Subdivision* was recorded incorrectly in the minutes and stated the Officer's recommendation:

COUNCIL DECISION

176

MOVED CR S MILLS

SECONDED CR R ALEXANDER

That Council approve the following road names for use within the Lot 64 Woolcoot Road, Wellard development, as shown in Attachment A

- *Tweed Lane*
- *Echo Lane*
- *Bromley Road (Previously Bromley Crescent)*

CARRIED 8/0

NOTE – That the Officers Recommendation has been amended to allow the alternate names to be substituted and approved as the road names.

It is recommended that Council correct the Minutes of the Ordinary Meeting of Council held on 27 April 2016 to reflect the change from the Officer Recommendation of the Road Names Tweed Lane and Echo Lane to Falls Lane and Derwent Lane.

The Officer's recommendation is in three parts:

1. Correction of the resolution and amending the Minutes of the Ordinary Meeting of Council held on 27 April 2016 (Part A).
2. Rescind motion as a result of Derwent Lane being unacceptable as per Geographic Names Committee Guidelines (Part B).
3. Approve the proposed road names that have passed preliminary validation (Part C).

The proposed road names have been entered into Landgate's "request road name" web page and have all passed preliminary validation. The listed alternative road names will be used as a substitute for any proposed road name that is not approved by the Geographic Names Committee. The naming theme for the roads throughout this subdivision is "Australian Valleys". The origin information for the proposed roads is contained in Attachment B.

15.1 PROPOSED ROAD NAMES FOR LOT 64 WOOLCOOT ROAD, WELLARD SUBDIVISION

OFFICER RECOMMENDATION:

PART A

That Council amend the Minutes of the Ordinary Meeting of Council held on 27 April 2016 for item 16.6 Proposed Road Names for Lot 64 Woolcoot Road, Wellard Subdivision resolution to:

That Council approve the following road names for use within the Lot 64 Woolcoot Road, Wellard development, as shown in Attachment A:

- Falls Lane
- Derwent Lane
- Bromley Road (Previously Bromley Crescent)

NOTE – That the Officers Recommendation has been amended to allow the alternate names to be substituted and approved as the road names.

PART B

That Council rescind resolution 176, item 16.6 Proposed Road Names for Lot 64 Woolcoot Road, Wellard Subdivision at the Ordinary Council Meeting held on 27 April 2016 as detailed:

That Council approve the following road names for use within the Lot 64 Woolcoot Road, Wellard development, as shown in Attachment A:

- Falls Lane
- Derwent Lane
- Bromley Road (Previously Bromley Crescent)

NOTE – REQUIRE 1 MOVER AND 2 SECONDEES
NOTE – AN ABSOLUTE MAJORITY OF COUNCIL IS REQUIRED

PART C

1. That Council approve the following road names for use within the Lot 64 Woolcoot Road, Wellard development, as shown in Attachment A

- Falls Lane
- Bowson Lane
- Bromley Road (Previously Bromley Crescent)

2. If the Council preferred road names are not approved by the Geographic Names Committee that the following listed alternative names are used where required.

- Howes
- Horton
- Wolgan

15.1 PROPOSED ROAD NAMES FOR LOT 64 WOOLCOOT ROAD, WELLARD SUBDIVISION**DISCUSSION:**

Before the developer of a subdivision can lodge survey diagrams for clearance, all road names need to be approved and indicated on the survey diagram. The process for naming roads must adhere to Landgate's Geographic Names Committee Guidelines to ensure no duplication of road names occurs within the surrounding areas.

At the Ordinary Council Meeting on 27 April 2016, the names Tweed and Echo were removed as the preferred road names and replaced with the alternative names Derwent and Falls.

The Minutes of the Ordinary Meeting of Council held on 27 April 2016 were confirmed as true and correct, however the resolution for item 16.6 *Proposed Road Names for Lot 64 Woolcot Road, Wellard Subdivision* was recorded incorrectly in the minutes and stated the Officer's recommendation:

COUNCIL DECISION

176

MOVED CR S MILLS

SECONDED CR R ALEXANDER

That Council approve the following road names for use within the Lot 64 Woolcot Road, Wellard development, as shown in Attachment A

- *Tweed Lane*
- *Echo Lane*
- *Bromley Road (Previously Bromley Crescent)*

CARRIED 8/0

NOTE – That the Officers Recommendation has been amended to allow the alternate names to be substituted and approved as the road names.

It is recommended that Council amend the Minutes of the Ordinary Meeting of Council held on 27 April 2016 and this is reflected in Part A of the Officer Recommendation.

The location at which Derwent was applied was on a short laneway which is against Geographic Naming Committee Guidelines due to mapping issues and could not be approved in this location. As the Council Resolution on this agenda item did not include the use of the original proposed names Tweed and Echo as alternative names, there were no road names to use in the place of Derwent and the approval could not be processed. This has resulted in this new agenda item being prepared for Council approval.

The Geographic Names Committee has granted in principle approval for the use of these road names via passing preliminary validation on Landgate's "request road name" web page. The naming theme for these roads is "Australian Valleys". Three road names are proposed as alternative road names for use in the event that the proposed names are not approved by the Geographic Names Committee. Origin information for these road names is contained in Attachment B. A suffix change to the existing Bromley Crescent to Bromley Road to suit the changed road layout is also proposed.

15.1 PROPOSED ROAD NAMES FOR LOT 64 WOOLCOOT ROAD, WELLARD SUBDIVISION

Part C of the Officer Recommendation propose road names for the Lot 64 Woolcot Road, Wellard development to be;

- Falls Lane
- Bowson Lane
- Bromley Road

Alternative Names:

- Howes
- Horton
- Wolgan

LEGAL/POLICY IMPLICATIONS:**Local Government (Administration) Regulations 1996****10. Revoking or changing decisions (Act s. 5.25(1)(e))**

- (1) *If a decision has been made at a council or a committee meeting then any motion to revoke or change the decision must be supported —*
- (a) *in the case where an attempt to revoke or change the decision had been made within the previous 3 months but had failed, by an absolute majority; or*
- (b) *in any other case, by at least 1/3 of the number of offices (whether vacant or not) of members of the council or committee, inclusive of the mover.*
- (1a) *Notice of a motion to revoke or change a decision referred to in subregulation (1) is to be signed by members of the council or committee numbering at least 1/3 of the number of offices (whether vacant or not) of members of the council or committee, inclusive of the mover.*
- (2) *If a decision has been made at a council or a committee meeting then any decision to revoke or change the first-mentioned decision must be made —*
- (a) *in the case where the decision to be revoked or changed was required to be made by an absolute majority or by a special majority, by that kind of majority; or*
- (b) *in any other case, by an absolute majority.*
- (3) *This regulation does not apply to the change of a decision unless the effect of the change would be that the decision would be revoked or would become substantially different.*
- [Regulation 10 amended in Gazette 31 Mar 2005 p. 1030.]*

Geographic Names Committee Guidelines.
Council Policy – Street Naming

FINANCIAL/BUDGET IMPLICATIONS:

No financial/budget implications have been identified as a result of this report or recommendation.

15.1 PROPOSED ROAD NAMES FOR LOT 64 WOOLCOOT ROAD, WELLARD SUBDIVISION

ASSET MANAGEMENT IMPLICATIONS:

No asset management implications have been identified as a result of this report or recommendation.

ENVIRONMENTAL IMPLICATIONS:

No environmental implications have been identified as a result of this report or recommendation.

STRATEGIC/SOCIAL IMPLICATIONS:

No strategic/social implications have been identified as a result of this report or recommendation.

RISK IMPLICATIONS:

The approval of the road names is required for titles to be issued for the lots within the subdivision. Should Council not approve these road names, clearances will be delayed which will have implications for the developer and the future owners of these lots.

COUNCIL DECISION

284

MOVED CR W COOPER

**SECONDED CR R ALEXANDER
SECONDED CR S LEE**

PART A

That Council amend the Minutes of the Ordinary Meeting of Council held on 27 April 2016 for item 16.6 Proposed Road Names for Lot 64 Woolcoot Road, Wellard Subdivision resolution to:

That Council approve the following road names for use within the Lot 64 Woolcoot Road, Wellard development, as shown in Attachment A:

- **Falls Lane**
- **Derwent Lane**
- **Bromley Road (Previously Bromley Crescent)**

NOTE – That the Officers Recommendation has been amended to allow the alternate names to be substituted and approved as the road names.

**CARRIED AN ABSOLUTE MAJORITY OF COUNCIL
7/0**

15.1 PROPOSED ROAD NAMES FOR LOT 64 WOOLCOOT ROAD, WELLARD SUBDIVISION

COUNCIL DECISION

285

MOVED CR S LEE

SECONDED CR B THOMPSON

SECONDED CR W COOPER

PART B

That Council rescind resolution 176, item 16.6 Proposed Road Names for Lot 64 Woolcot Road, Wellard Subdivision at the Ordinary Council Meeting held on 27 April 2016 as detailed:

That Council approve the following road names for use within the Lot 64 Woolcot Road, Wellard development, as shown in Attachment A:

- **Falls Lane**
- **Derwent Lane**
- **Bromley Road (Previously Bromley Crescent)**

CARRIED AN ABSOLUTE MAJORITY OF COUNCIL
7/0

COUNCIL DECISION

286

MOVED CR B THOMPSON

SECONDED CR W COOPER

PART C

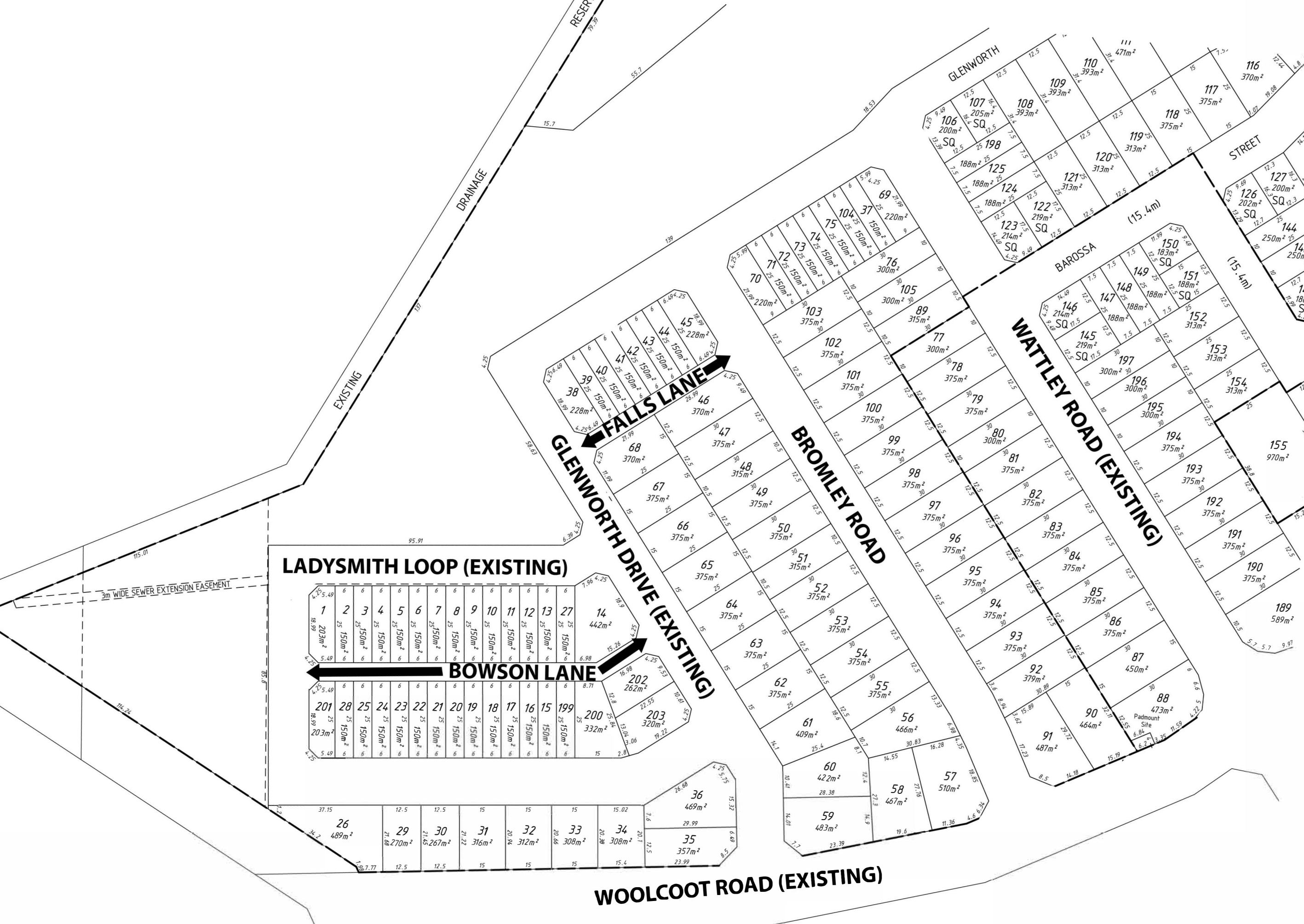
- 1. That Council approve the following road names for use within the Lot 64 Woolcot Road, Wellard development, as shown in Attachment A**

- **Falls Lane**
- **Bowson Lane**
- **Bromley Road (Previously Bromley Crescent)**

- 2. If the Council preferred road names are not approved by the Geographic Names Committee that the following listed alternative names are used where required.**

- **Howes**
- **Horton**
- **Wolgan**

CARRIED
7/0



Proposed Name	Proposed Suffix	Source of info	Background/origin/meaning/justification
Falls	Lane	Suggested by Therese Hadland. Taken from the Geonoma database.	Falls Pound is a valley situated about 8.1km SW of Strelley Gorge in the Shire of East Pilbara.
Bowson	Lane	http://www.bonzle.com/c/a?a=p&cmd=sp&p=4393&st=&s=valley&pg=2&m=	Bowson Valley in the Northern Territory is a locality about 1310km south of Darwin

Proposed Backup Name	Source of info	Background/origin/meaning/justification
Howes	http://www.bonzle.com/c/a?a=p&cmd=sp&zix=r&p=14674&st=&s=howes%20valley&pg=1&m=0&c=1&x=147%2E68117&y=%2D32%2E90264&w=40000&mpsec=0	Howes Valley is a locality on the Putty Road in east New South Wales, Australia situated about 120km north-northwest of Sydney
Horton	http://www.bonzle.com/c/a?a=p&cmd=sp&p=283850&st=NSW&s=valley&pg=4	Horton Valley is located in northeast New South Wales
Wolgan	http://www.bonzle.com/c/a?a=p&cmd=sp&zix=r&p=13425&st=&s=wolgan%20valley&pg=1&m=0&c=1&x=151%2E0603807&y=%2D33%2E788036065&w=2809&mpsec=0	Wolgan Valley is a locality on the banks of the Wolgan River in east New South Wales, Australia situated about 120km northwest of Sydney

16 Reports – Civic Leadership

16.1 Budget Variations

SUMMARY:

To amend the 2016/2017 budget to reflect various adjustments to the General Ledger with nil effect to the overall budget as detailed below. Due to the nature of these variations, they fall outside the annual budget review.

OFFICER RECOMMENDATION:

That the required budget variations to the Adopted Budget for 2016/2017 as outlined in the report be approved.

NOTE: AN ABSOLUTE MAJORITY OF COUNCIL IS REQUIRED

DISCUSSION:

ITEM #	LEDGER ACCOUNT	DESCRIPTION	OPERATING BUDGET	INCREASE/ DECREASE	REVISED BUDGET
1	600067.1002	Capital Expense	(70,000)	(22,085)	(92,085)
	700072.1014	Transfer from Reserve	70,000	22,085	92,085
	Reason:	<i>Callistemon Court - being transfer from Aged Persons Units Reserve to fund oven and hot water system replacement.</i>			
2	400567.1600	Project Expense	(346,636)	(1,250)	(347,886)
	300130.1600	Project Revenue	76,000	1,250	77,250
	Reason:	<i>Natural Environment – revenue in excess of adopted budget. State NRM funding for Bird Friendly Garden Workshop.</i>			
3	600005.1001	Capital Expense	Nil	(570)	(570)
	700023.1009	Transfer from Reserve	Nil	570	570
	Reason:	<i>Family Day Care General - being transfer from Family Day Care Reserve to fund new fridge for Family Day Care playgroup building.</i>			

LEGAL/POLICY IMPLICATIONS:

The Local Government Act 1995 Part 6 Division 4 s 6.8 (1) requires the local government not to incur expenditure from its municipal fund for an additional purpose except where the expenditure-

(b) is authorised in advance by resolution*

“additional purpose” means a purpose for which no expenditure estimate is included in the local government’s annual budget.

*requires an absolute majority of Council.

FINANCIAL/BUDGET IMPLICATIONS:

Budget Item Name:	Various items as listed above.
Budgeted Amount:	
Expenditure to Date:	
Proposed Cost:	Nil effect.
Balance:	

*NOTE: All figures are exclusive of GST

16.1 BUDGET VARIATIONS

ASSET MANAGEMENT IMPLICATIONS:

No asset management implications have been identified as a result of this report or recommendation.

ENVIRONMENTAL IMPLICATIONS:

No environmental implications have been identified as a result of this report or recommendation.

STRATEGIC/SOCIAL IMPLICATIONS:

Council's Strategic Community Plan for the period 2015 to 2025 provides that Council will ensure the future sustainability of the City of Kwinana through the implementation of sound revenue and expenditure policies, and seeking additional revenue sources.

RISK IMPLICATIONS:

Refer to Legal/Policy comments for risk implications.

COUNCIL DECISION

287

MOVED CR S LEE

SECONDED CR W COOPER

That the required budget variations to the Adopted Budget for 2016/2017 as outlined in the report be approved.

CARRIED BY AN ABSOLUTE MAJORITY OF COUNCIL

7/0

16.2 Proposed Disposition by way of Lease – Suites 9-17 within ‘Kwinana Technology Business Centre’, 11 Stidworthy Way, Kwinana Town Centre – Business Foundations Inc

Mayor Carol Adams left the Council Chambers at 7:42pm, Deputy Mayor Peter Feasey took the position as the Chair

SUMMARY:

Business Foundations Inc assumed management of Suites 9—17 within the Kwinana Technology Business Centre in late 2011, following the winding up of the Rockingham Business Development Organisation Inc, who had prior management responsibility and a lease that expired on 28 March 2011. Since this time there has not been a formal agreement in place between the City of Kwinana and Business Foundations Inc, however there have been previous intentions of entering into a lease since 2011. At the 28 September 2011 Ordinary Council Meeting it was resolved that:

That Council:

- 1. Confirm its support for business incubation to continue occurring in Kwinana.*
- 2. Confirm that the Kwinana Technology Business Incubator can be made available to the new Small Business Centre – South West Metro and that the Chief Executive Officer be authorised to negotiate a suitable lease, and lease area.*
- 3. Authorise the Chief Executive Officer to negotiate a Service Level Agreement and Memorandum of Understanding with the Small Business Centre – South West Metro.*
- 4. Note that a local delegate for the position of ‘Kwinana Board representative’ on the Small Business Centre – South West Metro Board will be invited in due course.*

CARRIED
7/0

Current City Officers are unsure as to why the 28 September 2011 Council Resolution for the City of Kwinana was not completed and have not been able to source any records by previous officers in relation to this matter. The City's proposed rent in 2011 was going to be 50% of \$19,000. Since 2015, the current City Officers have been discussing the rent to be paid with Business Foundations Inc. Due to their limited funds and the services they provide to businesses in the City of Kwinana, it is recommended that 30% of total rental due by the tenants will be the rent the City of Kwinana will charge Business Foundations Inc. Business Foundations Inc has been invoiced for the amount of \$4,484.00 (excluding GST), for the period of 1 January 2016 to 30 April 2016. Business Foundations Inc will also be invoiced for the period of 1 May 2016 to 31 July 2016.

At the Ordinary Council Meeting held on 10 February 2016, Council resolved to give local public notice of the proposed disposition in accordance with Section 3.58(3)(a) and (4) of the Local Government Act 1995.

Section 3.58(4)(c) of the Local Government Act 1995 requires the market value of the disposition to be ascertained by a valuation carried out not more than 6 months before the proposed disposition. The valuation of the subject property was undertaken on 18 December 2015, which will be more than 6 months before the disposition; however, the market in relation to commercial office space has not improved and if revalued, it is believed the valuation amount will not have changed.

16.2 PROPOSED DISPOSITION BY WAY OF LEASE – SUITES 9-17 WITHIN 'KWINANA TECHNOLOGY BUSINESS CENTRE', 11 STIDWORTHY WAY, KWINANA TOWN CENTRE – BUSINESS FOUNDATIONS INC

OFFICER RECOMMENDATION:

PART A

That Council rescind resolution 404 point two, three and four at the Ordinary Council Meeting held on 28 September 2011 as detailed:

2. *Confirm that the Kwinana Technology Business Incubator can be made available to the new Small Business Centre – South West Metro and that the Chief Executive Officer be authorised to negotiate a suitable lease, and lease area.*
3. *Authorise the Chief Executive Officer to negotiate a Service Level Agreement and Memorandum of Understanding with the Small Business Centre – South West Metro.*
4. *Note that a local delegate for the position of 'Kwinana Board representative' on the Small Business Centre – South West Metro Board will be invited in due course.*

NOTE: REQUIRE 1 MOVER AND 2 SECONDEES.

NOTE: AN ABSOLUTE MAJORITY OF COUNCIL IS REQUIRED

PART B

That Council:

1. Note that there have been no submissions received during the submission period.
2. Acknowledge the valuation undertaken on 18 December 2015 carried out more than 6 months before the proposed disposition is a true indication of the value at the time of the proposed disposition.
3. Authorise the Chief Executive Officer and Mayor to sign the lease agreement between the City of Kwinana and Business Foundations Inc, in relation to 11 Stidworthy Way, Kwinana Town Centre, as detailed in Attachment A.

DISCUSSION:

Business Foundations Inc is contracted by the State Government to deliver the "Business Local" program (formerly known as the Small Business Centre program). This program provides advisory services to any operating, existing business located in the Kwinana/Rockingham region. During the 2014/15 and 2015/16 financial years, over fifty Kwinana residents made use of this service. A Business Foundations advisor mentors licensees on a needs basis, generally on business planning and growth strategies, and day to day business issues as they arise.

The market rent valuation was carried out on the premises by Pember Wilson & Eftos (PWE), and received on 18 December 2015. The market rental value, as detailed in confidential Attachments A and B, has been determined to be \$32,000 per annum excluding GST for Suites 9-17.

16.2 PROPOSED DISPOSITION BY WAY OF LEASE – SUITES 9-17 WITHIN 'KWINANA TECHNOLOGY BUSINESS CENTRE', 11 STIDWORTHY WAY, KWINANA TOWN CENTRE – BUSINESS FOUNDATIONS INC

Currently there is not a formal agreement in place between the City and Business Foundations Inc, in relation to the contribution in the form of rent or outgoings and it is recommended that the lease be for a period of one (1) year. The short lease term is as a result of the potential requirement for the City of Kwinana needing this area for office accommodation. City Officers will present to Council shortly the possible relocation options for Business Foundations Inc and its tenants. Between 29 March 2001 and 28 March 2011 there was a formal lease in place with Rockingham Business Development Organisation Inc, which was wound up in 2011. Business Foundations Inc has occupied Suites 9-17 since this time. There have been previous intentions of entering into a lease since 2011. At the 28 September 2011 Ordinary Council Meeting it was resolved that:

Council Decision

404

MOVED CR D WOOD

SECONDED CR ALEXANDER

That Council:

1. *Confirm its support for business incubation to continue occurring in Kwinana.*
2. *Confirm that the Kwinana Technology Business Incubator can be made available to the new Small Business Centre – South West Metro and that the Chief Executive Officer be authorised to negotiate a suitable lease, and lease area.*
3. *Authorise the Chief Executive Officer to negotiate a Service Level Agreement and Memorandum of Understanding with the Small Business Centre – South West Metro.*
4. *Note that a local delegate for the position of 'Kwinana Board representative' on the Small Business Centre – South West Metro Board will be invited in due course.*

CARRIED
7/0

Resolution 404 on 28 September 2011 included point two which required negotiation of a lease with Small Business Centre- South West Metro who are now Business Foundations Inc. Point three and four above have not been implemented and therefore as they are no longer relevant it is recommended that Council revoke these parts of the resolution. Since 2011 the City of Kwinana does not have any records of City Officers negotiating a Service Level Agreement and Memorandum of Understanding with the Small Business Centre and there has been no request for a local delegate to be a board representative. Due to the proposed 12 month lease term and the possible relocation of the tenants as a result of the City requiring the area for office accommodation, a service level agreement, memorandum of understanding and a board position for an elected member, will delay a formal lease agreement. If Business Foundations Inc is interested in entering into a lease agreement after the 12 months, it would be recommended that a Service Level Agreement be entered into.

Council's Leasing of Community Facilities Policy allows for discounted market rent in some circumstances. The Discounted Market Rent is the market rent with a reduction from this rate to be negotiated based on community benefit criteria, level of maintenance responsibility and capital contributions made by the lessee, on a sliding scale basis providing discounts of between 30% and 70%. Business Foundations Inc is eligible to receive a discounted market rent, as it meets the criteria outlined in the Leasing of Community Facilities Council Policy:

16.2 PROPOSED DISPOSITION BY WAY OF LEASE – SUITES 9-17 WITHIN 'KWINANA TECHNOLOGY BUSINESS CENTRE', 11 STIDWORTHY WAY, KWINANA TOWN CENTRE – BUSINESS FOUNDATIONS INC

Category	Annual Rent	Eligibility
B: Discounted Market Rent	Full market rent with a reduction from this rate to be negotiated based on community benefit criteria, level of maintenance responsibility and capital contributions made by lessee, on a sliding scale basis providing discounts of between 30% and 70%	Use approved by Council; Has revenue raising capacity or receives external funding assistance (e.g. receives some State Government funding or from its members); and Meets all relevant eligibility criteria.

Business Foundations Inc is a not for profit community organisation and in accordance with Council's Leasing of Community Facilities Policy, Business Foundations Inc must meet the compulsory organisational criteria:

Organisation Criteria	Lessee Category	
	Business Foundations	Discounted Market Rent
1. The organisation must be an organisation, which applies any surpluses towards its purposes, prohibits any dividends or profits from being paid to its members and is exempt from paying income tax;	Yes	E
2. The organisation is a legal entity incorporated under appropriate legislation (such as the Associations Incorporation Act 1987);	Yes	E
3. The organisation is financially viable and able to demonstrate good financial management and record-keeping practices to the satisfaction of the City;	Yes	E
4. The organisation complies with relevant legislation governing its activities and holds any licences or registration certificates required for it to operate;	Yes	E
5. The organisation has a committee of management and appropriate governance arrangements, with established accountability and reporting methods to members of the organisation and / or to the community, including the capacity to maintain appropriate financial records for audit purposes;	Yes	E
6. The organisation adheres to all relevant Council local laws including the Local Government Property Local Law, Council policies and has complied with the terms of any previous lease or licence and/or grant from the City;	Yes	E
7. Demand exists for the service or activity to be provided through the facility;	Yes	E
8. Facility use is consistent with City objectives and current Business Plan;	Yes	E

16.2 PROPOSED DISPOSITION BY WAY OF LEASE – SUITES 9-17 WITHIN ‘KWINANA TECHNOLOGY BUSINESS CENTRE’, 11 STIDWORTHY WAY, KWINANA TOWN CENTRE – BUSINESS FOUNDATIONS INC

9. Use of the facility will increase social engagement and promote health and wellbeing of the Kwinana community;	Yes	E
10. The service or activity is non-discriminatory. It will be open to all residents who meet the criteria for participation that are directly related to the nature of the service or activity or geographic catchment area; and	Yes	D
11. Disadvantaged groups can access the service or activity and strategies are in place to review and remove any barriers to participation.	Yes	E

Facility Management and Development Criteria	Lessee Category	
	Business Foundations	Discounted Market Rent
1. Proposed use of the facility is suitable for the nature of the site and the neighbourhood.	Yes	E
2. The organisation is prepared to maximise utilisation of the facility as requested by the City.	Yes	E
3. The organisation agrees to provide the City with requested information including current and projected opening hours and participant and/or membership numbers.	Yes	E

“D” under the lessee category indicates that it is a desirable criterion for that category of lessee to meet.

“E” in the column under the lessee category indicates that this is an essential criterion for that category of lessee to meet.

It is recommended that Business Foundations Inc receive 58% discount of the market rental valuation and therefore the annual rent is proposed to be \$13,453.00 excluding GST and outgoings.

LEGAL / POLICY IMPLICATIONS:

Local Government Act 1995

Section 3.58(3) and (4). Disposing of property

- (3) *A local government can dispose of property other than under subsection (2) if, before agreeing to dispose of the property —*
- (a) *it gives local public notice of the proposed disposition —*
- (i) *describing the property concerned; and*
 - (ii) *giving details of the proposed disposition; and*
 - (iii) *inviting submissions to be made to the local government before a date to be specified in the notice, being a date not less than 2 weeks after the notice is first given; and*
- (b) *it considers any submissions made to it before the date specified in the notice and, if its decision is made by the council or a committee, the decision and the reasons for it are recorded in the minutes of the meeting at which the decision was made.*

16.2 PROPOSED DISPOSITION BY WAY OF LEASE – SUITES 9-17 WITHIN 'KWINANA TECHNOLOGY BUSINESS CENTRE', 11 STIDWORTHY WAY, KWINANA TOWN CENTRE – BUSINESS FOUNDATIONS INC

- (4) *The details of a proposed disposition that are required by subsection (3)(a)(ii) include —*
- (a) *the names of all other parties concerned; and*
 - (b) *the consideration to be received by the local government for the disposition; and*
 - (c) *the market value of the disposition —*
 - (i) *as ascertained by a valuation carried out not more than 6 months before the proposed disposition; or*
 - (ii) *as declared by a resolution of the local government on the basis of a valuation carried out more than 6 months before the proposed disposition that the local government believes to be a true indication of the value at the time of the proposed disposition.*

Legal Advice in relation to disposition of property

Section 3.58(4)(c)(ii)

The City's Officers received advice from the Department of Local Government in relation to the definition of proposed disposition, as stated in the Local Government Act 1995. The Principal Advisory Officer, Department of Local Government and Communities states:

"Another suggested option is that council may wish to pass a resolution in accordance with section 3.58(4)(c)(ii), which states: as declared by a resolution of the local government on the basis of a valuation carried out more than 6 months before the proposed disposition that the local government believes to be a true indication of the value at the time of the proposed disposition."

"As you may be aware the intent of the provision is to ensure that the valuation is current at the time of the disposal. Should that intent be met and be able to be demonstrated then it appears the City would have adequately fulfilled its obligations in relation to the proposed disposition."

Local Government (Administration) Regulations 1996

10. Revoking or changing decisions (Act s. 5.25(1)(e))

- (1) *If a decision has been made at a council or a committee meeting then any motion to revoke or change the decision must be supported —*
- (a) *in the case where an attempt to revoke or change the decision had been made within the previous 3 months but had failed, by an absolute majority; or*
 - (b) *in any other case, by at least 1/3 of the number of offices (whether vacant or not) of members of the council or committee, inclusive of the mover.*
- (1a) *Notice of a motion to revoke or change a decision referred to in subregulation (1) is to be signed by members of the council or committee numbering at least 1/3 of the number of offices (whether vacant or not) of members of the council or committee, inclusive of the mover.*
- (2) *If a decision has been made at a council or a committee meeting then any decision to revoke or change the first-mentioned decision must be made —*
- (a) *in the case where the decision to be revoked or changed was required to be made by an absolute majority or by a special majority, by that kind of majority; or*

16.2 PROPOSED DISPOSITION BY WAY OF LEASE – SUITES 9-17 WITHIN 'KWINANA TECHNOLOGY BUSINESS CENTRE', 11 STIDWORTHY WAY, KWINANA TOWN CENTRE – BUSINESS FOUNDATIONS INC

- (b) *in any other case, by an absolute majority.*
- (3) *This regulation does not apply to the change of a decision unless the effect of the change would be that the decision would be revoked or would become substantially different.*
- [Regulation 10 amended in Gazette 31 Mar 2005 p. 1030.]*

FINANCIAL/BUDGET IMPLICATIONS:

The City will lose \$18,547 per annum of potential lease revenue, if entering into a discounted market rent lease agreement.

ASSET MANAGEMENT IMPLICATIONS:

There are no asset management implications identified as a result of this report.

ENVIRONMENTAL IMPLICATIONS:

There are no environmental implications identified as a result of this report.

STRATEGIC/SOCIAL IMPLICATIONS:

There are no strategic/social implications identified as a result of this report.

RISK IMPLICATIONS:

There are no risk implications identified as a result of this report.

16.2 PROPOSED DISPOSITION BY WAY OF LEASE – SUITES 9-17 WITHIN 'KWINANA TECHNOLOGY BUSINESS CENTRE', 11 STIDWORTHY WAY, KWINANA TOWN CENTRE – BUSINESS FOUNDATIONS INC

COUNCIL DECISION

288

MOVED CR W COOPER

**SECONDED CR B THOMPSON
SECONDED CR S LEE**

PART A

That Council rescind resolution 404 point two, three and four at the Ordinary Council Meeting held on 28 September 2011 as detailed:

- 1. Confirm that the Kwinana Technology Business Incubator can be made available to the new Small Business Centre – South West Metro and that the Chief Executive Officer be authorised to negotiate a suitable lease, and lease area.**
- 2. Authorise the Chief Executive Officer to negotiate a Service Level Agreement and Memorandum of Understanding with the Small Business Centre – South West Metro.**
- 3. Note that a local delegate for the position of 'Kwinana Board representative' on the Small Business Centre – South West Metro Board will be invited in due course.**

**CARRIED BY AN ABSOLUTE MAJORITY OF COUNCIL
7/0**

COUNCIL DECISION

289

MOVED CR S LEE

SECONDED CR B THOMPSON

PART B

That Council:

- 2. Note that there have been no submissions received during the submission period.**
- 2. Acknowledge the valuation undertaken on 18 December 2015 carried out more than 6 months before the proposed disposition is a true indication of the value at the time of the proposed disposition.**
- 3. Authorise the Chief Executive Officer and Mayor to sign the lease agreement between the City of Kwinana and Business Foundations Inc, in relation to 11 Stidworthy Way, Kwinana Town Centre, as detailed in Attachment A.**

**CARRIED
7/0**

Mayor Carol Adams returned to the Council Chambers at 7:43pm and resumed her position as Chair.

LEASE AGREEMENT

Unit 9 – 17 Kwinana Technology Business Centre, 11 Stidworthy Way, Kwinana
in the State of Western Australia

THE CITY OF KWINANA
('the Landlord')

and

BUSINESS FOUNDATIONS INC
('the Tenant')

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LEASE AGREEMENT

DATE:

2016

PARTIES

CITY OF KWINANA of Corner of Gilmore Avenue and Sulphur Road, Kwinana in the State of Western Australia ('**the Landlord**').

BUSINESS FOUNDATIONS INC (ABN 56 450 593 470) of 3433 Crompton Road, Rockingham in the State of Western Australia ('**the Tenant**').

BACKGROUND

- A The Landlord is the registered proprietor of the Land on which the Premises is situated and retains, at all times, all legal and equitable interests in the Premises.
- B The Landlord and Tenant are parties to this Lease Agreement.
- C The Landlord has agreed to grant, and the Tenant has agreed to take, a non-exclusive Lease to access and use the Premises on the terms and conditions contained in this Lease Agreement.

SECTION 1 – THE LEASE DETAILS

Item 1 Land	Lot 8 on Deposited Plan 34151 being the whole of the land comprised in Certificate of Title Volume 2615 Folio 989	
Item 2 Premises	Unit 9 – 17, Kwinana Technology Business Centre located at 11 Stidworthy Court, Kwinana being all of the Land as outlined in blue on the Premises Plan in Annexure A	
Item 3 Term	Term:	One (1) year
	Start Date:	28 July 2016
	End Date:	27 July 2017
Item 4 Rent Fee	\$4.00 per day per office For the avoidance of any doubt the maximum annual Rent Fee payable if all office areas are occupied is \$13,453.00	
Item 5 Payment Date	The Rent Fee is payable monthly in arrears on the 28 th day of each and every calendar month	
Item 6 Tenant Public Risk Insurance Amount	Ten Million Dollars (\$10,000,000)	

Item 7 Rent Fee Account	Account Name: City of Kwinana Municipal Account Bank: Bankwest BSB: 306-069 Account: 5468346	
Item 8 Permitted Use	Office – provision of business advisory services, support, training, networking	
Item 9 Addresses	Landlord	
	Postal Address:	Corner of Gilmore Avenue and Sulphur Road
	Attention:	KWINANA WA 6167 Chief Executive Officer
	Tenant	
	Postal Address:	3433 Crompton Road ROCKINGHAM WA 6168
	Attention:	Mr Phillip Vitaly Kemp
Item 10 Special Conditions	The Tenant has access to the Common Area outlined in red on the Premises Plan in Annexure A	

SECTION 2 – THE LEASE TERMS

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

Unless the context requires otherwise, capitalised terms have the meaning given to them in the dictionary of terms in Schedule 1 of this Lease.

1.2 Interpretation

Unless the context requires otherwise, the rules for interpretation of this Lease are as set out in Schedule 1 of this Lease.

2 LEASE AND RESERVATIONS

2.1 Grant of Lease

- (a) The Landlord grants to the Tenant a non-exclusive Lease to enter, use and occupy the Premises and the Common Areas for the term.
- (b) The Tenant accepts the grant under clause 2.1(a) and undertakes to perform and observe its obligations under this Lease.

2.2 Term of Lease

The Lease is granted for the Term and commences on the Start Date and finishes on the End Date.

2.3 Registered Proprietor

If the Landlord ceases to be the registered proprietor of the Land, then the Landlord is released from its obligations under this Lease on that date and the new registered proprietor of the Land will become the landlord under this Lease without any formal assignment documentation being required.

2.4 Reservations in favour of Landlord

The Landlord and all persons claiming through or authorised by the Landlord have the right to enter upon the Premises:

- (a) as provided for elsewhere in this Lease;
- (b) to repair and replace any pipes, conduits, ducts, cables and wires leading through the Premises and to pass and run water, gas, electricity, air, sewerage, drainage and other services through the pipes, conduits, ducts, cables and wires; and

provided that the Landlord will not interfere with the Tenant in its use of the Premises more than is reasonably necessary.

2.5 Exclusion of implied covenants and powers

- (a) To the extent permitted by law the application to this Lease of any moratorium or other law having the effect of extending the Term, reducing or postponing the payment of the Rent Fee, or otherwise

affecting the operation of the terms of this Lease, is excluded and negated.

3 RENT FEE AND OTHER PAYMENTS

3.1 Rent Fee

- (a) During the Term, at least five (5) days prior to the Payment Date the Tenant must notify the Landlord in writing as to the number of days each office was used by the Tenant for the previous month and what offices will be used for the five (5) days prior to the Payment Date.
- (b) During the Term, on the receipt of the written notice from the Tenant under clause 3.1 (a) the Landlord must notify the Tenant in writing the Rent Fee payable on the Payment Date for the previous month.
- (c) On the Payment Date the Tenant must pay to the Landlord the Rent Fee, as determined by the Landlord under clause 3.1 (b).
- (d) The Rent Fee must be paid by electronic transfer into the Rent Fee Account or as the Landlord otherwise directs in writing from time to time.
- (e) Unless there is an express contrary indication in this Lease Agreement, the Rent Fee is inclusive of all outgoings, costs and fees related to licensing the Premises.

3.2 Services

The Landlord agrees to pay all charges and meter rentals for all Services consumed on or in the Premises.

3.3 Cleaning Service Costs

If the Tenant elects to use the cleaning service supplied by the Landlord, the Tenant must:

- (a) pay on demand to the Landlord the costs of providing this cleaning service to the Tenant for the Premises; and
- (b) allow the Landlord's cleaner's reasonable access to the Premises for the purpose of cleaning.

3.4 Default Expenses

The Tenant must pay to the Landlord on demand all legal and other costs, charges and expenses for which the Landlord is liable on a solicitor and own client or indemnity basis (whichever is greater) in connection with:

- (a) any event of default by the Tenant under the Lease, including all costs, charges and expenses and solicitors costs and surveyors fees incurred by the Landlord;
- (b) the Landlord's costs of remedying any default by the Tenant under this Lease;
- (c) the exercise or attempted exercise of any power, right or remedy of the Landlord under this Lease arising from any event of default by the Tenant;

- (d) obtaining or attempting to obtain payment of the Rent Fee or any other money to be paid under this Lease; and
- (e) any action or proceeding concerned with any of the matters referred to in this clause which the Landlord has paid or pays to any other person, provided that this paragraph does not apply if the Tenant is awarded costs as against the Landlord in any action or proceeding.

3.5 Interest

- (a) Without prejudice to the rights and remedies of the Landlord contained in this Lease, the Tenant must pay to the Landlord on demand interest at the Rate on all Rent Fees or other moneys payable by the Tenant under this Lease which remains unpaid in breach of this Lease.
- (b) Interest will be computed daily from the date on which the moneys are due and payable to the date on which they are fully paid to the Landlord.

3.6 Goods and Services Tax

- (a) Any reference to an amount payable under this Lease unless otherwise stated (including but not limited to Rent Fees, compensation, outgoings, costs, expenses and indemnity payments) is a reference to that amount exclusive of GST.
- (b) Each amount payable under this Lease must be increased by the GST applying to the amount or imposed on the taxable supply in respect of which the amount is paid. The Tenant must pay the GST payable in respect of an amount payable under this Lease, at the time the amount in respect of which the GST applies is due under this Lease.
- (c) For the purpose of determining the amount payable in respect of reimbursement of or indemnification for outgoings, expenses, charges and disbursements required to be paid under this Lease, the amount to be reimbursed or indemnity will be the actual amount incurred by the relevant party.
- (d) On request from the Tenant, the Landlord must give the Tenant a tax invoice in respect of each instalment of Rent Fees payable by the Tenant under this Lease.
- (e) Either party must, at the request of the other party, provide the other party with a tax invoice in respect of any taxable supply made by that party to the other under this Lease.
- (f) If either party becomes subject to any penalties or interest for late payment of GST and that late payment arises from the failure of either party to comply with the terms covenants and conditions of this Lease the defaulting party must pay to the other party on demand the amount of those penalties and interest.
- (g) For the purposes of this clause, input tax credit, tax invoice have the meanings given in the GST Act.

4 PREMISES

4.1 Permitted Use

- (a) The Tenant must use the Premises for the Permitted Use, and must not use the Premises or allow the Premises to be used for any other purpose other than with the prior written consent of the Landlord.
- (b) The Tenant must ensure that nothing is done at the Premises which in the Landlord's opinion:
 - (i) detracts from the appearance or value of the Premises;
 - (ii) is dangerous to people or property;
 - (iii) overloads any part of the Premises or any of the services at the Premises;
 - (iv) interferes with anyone's use or enjoyment of any other property; or
 - (v) is unlawful.

4.2 Adequacy of Premises

- (a) The Landlord does not expressly or impliedly, agree, represent or warrant:
 - (i) that the design, shape, size or finish of the Premises are or will be suitable or adequate for the Tenant's purposes; or
 - (ii) whether or not there is any Contamination in, on or under the Premises or any Premises adjacent to the Premises,

and the Tenant acknowledges that it has made its own enquiries and must satisfy itself in this regard.

- (b) The Tenant acknowledges and declares that in entering this Lease, the Tenant has not relied on any promise, representation, undertaking or warranty given by or on behalf of the Landlord as to the suitability of the Premises or its facilities, finishes, amenities or Services for the business or undertakings to be carried on or conducted at the Premises.

4.3 Landlord's Property

The Tenant has the rights to use the Landlord's Property subject to the terms of this Lease.

4.4 Storage of Hazardous Goods

The Tenant must not use the Premises for the disposal or storage of any Contamination, hazardous chemical (including any asbestos) or any other substance that is potentially harmful to human health and/or the Environment.

4.5 Illegal Use

The Tenant must ensure that the Premises is not used for any illegal or unlawful or immoral use or for any residential purposes whether temporary or permanent.

4.6 Compliance with Law

- (a) The Tenant must comply at all times with all Laws affecting or relating to the use of the Premises.

- (b) If the Tenant receives a notice or order from any Governmental Agency in relation to the Premises, the Tenant must immediately inform the Landlord of its receipt and send a copy to the Landlord.

4.7 Indemnity

The Tenant will indemnify and keep indemnified the Landlord against any claims or liabilities arising out of the Tenant's business activities conducted within the Premises or the Tenant's use of the Premises.

5 TENANT OBLIGATIONS

5.1 Maintenance and Repair

During the Term, the Tenant must maintain, repair and keep the interior and exterior of the Premises in a good, tidy and clean condition and must undertake at the Tenant's expense all maintenance and repairs to the Premises, including any structural repairs that may be necessary to be undertaken in relation to the Premises that are not attributable to the Landlord or the Landlord's Associates. In particular, the Tenant must:

- (a) keep and maintain the internal and external doors, locks, windows and window fitting of the Premises in good and efficient working order and condition;
- (b) promptly repair and replace all broken, cracked or damaged glass in the Premises;
- (c) promptly remove all graffiti that is performed on the Premises during the Term;
- (d) promptly replace all broken or faulty light bulbs, globes, tubes and associated fittings in the Premises; and
- (e) store all waste and garbage in proper containers and arrange for regular removal from the Premises;
- (f) maintain the Landlord's Property in the Premises in good repair, order and condition including (but not limited to) all air conditioning equipment, alarm systems, heating equipment, wiring, alarm systems and pipes.

5.2 Nuisance

The Tenant must not use, exercise or carry on or permit to be used, exercised or carried on in or upon the Premises any noxious or offensive act trade business or occupation.

5.3 Prohibitions

- (a) The Tenant must not use, exercise or carry on or permit to be used, exercised or carried on, in or upon the Premises any noxious dangerous, or offensive act, trade, business or occupation.
- (b) The Tenant must not use, exercise or carry on or permit to be used, the Premises as Residential.
- (c) The Tenant or the Tenant's Associates must not allow any circumstance to arise in the Premises which might be a nuisance to other occupiers

or visitors to the Premises or to the occupiers of other properties in the vicinity of the Premises.

- (d) The Tenant is prohibited from keeping any birds or animals on the Premises.

5.4 Signs

- (a) The Tenant must not at any time during the continuance of this Lease erect, display, affix or exhibit on or to the exterior of the Premises any signs or lettering, except signs or lettering which have been given written approval by the Landlord, not to be unreasonably withheld, and which comply with all Laws and after obtaining all necessary Approvals.
- (b) On the expiration or sooner determination of the Term, the Tenant or the Landlord on the Tenant's behalf, must remove, at the expense of the Tenant, all lettering distinctive notices or signs erected on the Premises by the Tenant or on the Tenant's behalf and make good any damage or disfigurement caused to the Premises by removal to the satisfaction of the Landlord.

5.5 Drains and Pipes

- (a) The Tenant must:
 - (i) keep and maintain the waste pipes, drains and conduits originating in or connected to the Premises in a clean, clear and free flowing condition;
 - (ii) employ licensed tradesmen approved by the Landlord to clear any blockages which may occur within these waste pipes, drains and conduits within the boundaries of the Premises; and
 - (iii) regularly clean any grease traps (whether within the Premises or not) servicing the Premises.
- (b) If any blockages occur in the waste pipes, drains and conduits between the external boundaries of the Premises and the point of entry of those waste pipes, drains and conduits into any trunk drain, to pay the cost of the clearing works unless the blockage has been caused by some defect or breakage in the waste pipes, drains or conduits and without neglect or default on the part of the Tenant.

5.6 Damage and Repairs

- (a) The Tenant must make good, or at the discretion of the Landlord, reimburse the Landlord for the repair of, any damage to the Premises except where it is attributable to the Landlord or the Landlord's Associates.
- (b) The Tenant must make good any damage to any adjoining premises caused by:
 - (i) an act of default under the Lease by the Tenant or the Tenant's Associates; or
 - (ii) any other negligent or reckless conduct of the Tenant or the Tenant's Associates.

5.7 Air Conditioning Costs

- (a) The Tenant must take out and maintain an air-conditioning service contract for the Term of this Lease.
- (b) The Tenant must provide the Landlord with regular air conditioning service reports, but is not required to do so more often than twice a year.

5.8 Alterations to Premises

- (a) The Tenant must obtain the Landlord's consent in writing, which cannot be unreasonably withheld or delayed, before the Tenant carries out any works in or to the Premises, including:
 - (i) altering the Premises or its layout, including installing partitions;
 - (ii) installing or removing any item fixed in or to the Premises, including any water, gas, or electrical fixtures, equipment or appliances or any apparatus for air condition, heating, cooling, ventilating or illuminating the Premises;
 - (iii) marking, drilling, defacing, damaging or making any penetration in any surface of the Premises;
- (b) When carrying out any proposed works under this document, the Tenant must:
 - (i) submit detailed drawings and specifications and a schedule of finishes for the proposed works to the Landlord for its consent (who may not unreasonably withhold its consent to works that are not structural work). The proposed work must comply with all relevant laws and official requirements. The Landlord must review and approve, refuse or require amendment within seven (7) days;
 - (ii) amend the drawings, specifications and schedule of finishes in accordance with the Landlord's reasonable requirements;
 - (iii) obtain all necessary approvals from Authorities to the proposed works and produce copies to the Landlord promptly when requested;
 - (iv) obtain the consent of the Landlord's architect to the proposed works;
 - (v) ensure that the works are carried out:
 - (A) promptly and in accordance with good building practice;
 - (B) in accordance with any reasonable directions by the Landlord;
 - (C) in accordance with the approved drawings, specifications and schedule of finishes and the approvals from the relevant Authorities;
 - (D) using new and good quality materials;

- (E) to the satisfaction of the Landlord's architect and, if the Landlord reasonably requires, under the supervision of the Landlord's architect;
 - (F) by contractors who have been approved by the Landlord, acting reasonably, have and maintain public liability insurance, have and maintain any other insurance cover that would usually be taken out for the works, comply with all occupational health and safety requirements, and comply with any relevant industrial agreements;
 - (G) by a contractor nominated by the Landlord for works affecting any Services;
 - (H) by a contractor nominated by the Landlord for works nominated by the Landlord if any warranty or other similar benefit enjoyed by the Landlord may be detrimentally affected if those works are not carried out by the nominated contractor; and
 - (I) without unreasonable disturbance or disruption to adjoining land owners or occupiers.
- (vi) protect the Premises from damage and promptly repair and make good to the Landlord's satisfaction any damage caused;
 - (vii) accept full responsibility for the conduct and safety of the Tenant's Associates;
 - (viii) pay for the works undertaken, unless otherwise agreed with the Landlord in writing;
 - (ix) comply on time with the Law and with the requirements of all Authorities and obtain at the completion of the works any necessary certification;
 - (x) on completion of the works remove all debris and clean the areas affected by the works; and
 - (xi) pay or reimburse the Landlord on demand for any costs or expenses incurred by the Landlord relating to the Premises because of the works being carried out; and otherwise comply with the Landlord's reasonable requirements and directions from time to time.
- (c) Any partitions constructed pursuant to the Landlord's authority will form part of the premises and become the Landlord's property.

5.9 Restrictions on Tenant

The Tenant must not, without the prior written consent of the Landlord, which cannot be unreasonably withheld or delayed:

- (a) conduct any auction including but not limited to a bankrupt sale or fire sales on the Premises;
- (b) the Tenant must not modify or interfere with the drainage or water supply facilities supplying the premises or any equipment connected to such facilities;

- (c) obstruct the entrances, exits driveways, and access ways or such other areas forming part of the Common Area;
- (d) obstruct any part of the building which reflects or lets in light or air;
- (e) store or use inflammable or explosive substances in the premises unless they are stored in proper containers and are used in accordance with all relevant laws;
- (f) interfere with or obstruct the operation of or access to the services or overload any service;
- (g) use any facilities in or near the Premises or in the building, including the toilets and drains, for any improper purpose;
- (h) affix blinds or awnings to the outside of the premises;
- (i) affix to the outside of the premises a television or radio mast, antenna, satellite dish or any other similar device;
- (j) install any equipment in the Premises that may overload any services; and
- (k) do anything in the Premises which involves the use of asbestos, fibreglass, wool or any other hazardous material.

5.10 Landlord's Inspection and Repairs

- (a) The Tenant will permit the Landlord, and the Landlord's Associates, subject to prior notice to the Tenant, to enter on the Premises and view the state of repair of the Premises.
- (b) The Landlord may serve on the Tenant a notice in writing requiring the Tenant to repair or rectify within a reasonable time any defects for which the Tenant may be responsible under this Lease.
- (c) If the Tenant fails:
 - (i) to commence the works required by notice given under this clause within a reasonable time after receipt of the notice from the Landlord, or
 - (ii) in the reasonable opinion of the Landlord to proceed diligently with the execution of the repairs,

the Tenant acknowledges and agrees that if the Landlord gives a further notice to the Tenant and the Tenant fails to commence the works within seven (7) days (or such shorter period reasonably determined by the Landlord in the case of an emergency) of that further notice, it will be lawful for the Landlord and the Landlord's Associates to enter the Premises at all reasonable times (but subject to prior notice to the Tenant) to undertake the required repairs
- (d) Any expenses and costs of carrying out this work under this clause will be due and payable by the Tenant to the Landlord within seven (7) days of demand by the Landlord.

5.11 Landlord's Works

- (a) Subject to compliance with the reasonable security requirements of the Tenant, the Landlord and the Landlord's Associates at all times and subject to prior notice to the Tenant are permitted to enter the Premises to carry out any works on the Premises for which the Landlord maybe bound (either by Law or by any authority having jurisdiction) or which the Landlord elects to do.
- (b) The Landlord must, not later than five (5) days (or such shorter period reasonably determined by the Landlord in the case of an emergency) prior to entry onto the Premises in exercise of its rights under this clause, give to the Tenant:
 - (i) written notice of its intention to do so; and
 - (ii) a full scope of the work and repairs which the Landlord will undertake on such entry.
- (c) In the exercise of the Landlord's power under this clause, the Landlord will cause as little inconvenience to the Tenant as is reasonable in the circumstances.

5.12 Tenant to inform Landlord of defects

The Tenant must give to the Landlord prompt notice in writing of all accidents in or defects or wants of repair in any Services to or fittings in the Premises and of all circumstances likely to be or to cause any danger, risk or hazard to the Premises or any person on the Premises and to remedy such occurrences, at the Tenant's cost within a reasonable period of time as directed by the Landlord.

5.13 Control of weeds and rodents

The Landlord will take all reasonable precautions to keep the Premises free of weeds, rodents, vermin, insects, pests, termites, and animals other than animals used in the maintenance or protection of the Premises.

5.14 Maintaining Gardens and Lawns

The Landlord will ensure that all gardens and lawns on the Premises (if any) are regularly maintained in a reasonably clean, neat and attractive state and condition.

5.15 Security

- (a) The Tenant must use its best efforts to protect the Premises and the Landlord's Property from theft and vandalism. This includes keeping all doors, windows and openings closed and securely fastened when the Premises are not in use and paying for and complying with any additional security measures which the Landlord reasonably considers are necessary due to the Permitted Use.
- (b) The Tenant must not install any locks or security devices in the Premises which cannot be opened by the keys or security devices provided by the Landlord.

- (c) The Landlord must provide the Tenant with a key to the premises at the Start Date. The Tenant must immediately inform the Landlord if the lock is changed and must issue the new key to the Landlord within seven (7) days.

5.16 Environmental Laws

- (a) The Tenant must, during the Term in relation to the Premises, comply with all Environmental Laws, do all things necessary to prevent a breach of any Environmental Law and immediately notify the Landlord of any breach of any Environmental Law.
- (b) The Tenant must immediately take all steps to discontinue any breach of an Environmental Law.
- (c) The Tenant must maintain all environmental records, Leases and permits as required by the Environmental Laws or any Authority.
- (d) The Tenant must promptly remediate, make good, rectify and make safe the Premises in anyway relating to or from the presence or removal or neutralisation of any contaminants or hazardous materials in, on, under or emanating from the Premises, and if the Landlord will as a matter of law be required to undertake such remediation works or to pay the costs thereof then (to the maximum extent permitted by law) the Tenant will reimburse and compensate the Landlord for the costs of so doing.
- (e) The Tenant must indemnify and keep indemnified (notwithstanding the expiration or termination of this Lease) the Landlord against all Claims which the Landlord may suffer or incur arising directly or indirectly from:
 - (i) any breach by the Tenant of any Environmental Laws in respect of the Premises as a consequence of the occupation and use of the Premises by the Tenant during the Term; or
 - (ii) the presence of any contaminant in, on, under or emanating from the Premises or any adjoining kind arising (during or after the expiration of the Term) out of the Tenant's use and occupation of the Premises during the Term except that the indemnity under this clause will not extend to any such contaminant which existed before the Start Date.

5.17 Further Obligations

The Tenant must:

- (a) generate and provide to the Landlord by 30 November of each year annual reports, including audited financial statements for the Premises, for each financial year;
- (b) arrange and pay for bi-annual servicing of two automatic doors located on the Premises by professional contractors that have been approved by the Landlord in writing.
- (c) not install any electrical equipment on the Premises that would or might overload the cables, switchboards, sub-boards through which electricity is conveyed to the Premises without first obtaining the Landlord's written consent;

- (d) provide and maintain any additional drains or drainage equipment which in the opinion of any Governmental Agency are necessary for the Premises having regard to its use by the Tenant.
- (e) use its best endeavours to ensure that the Tenant, the Tenant's Associates, customers and clients only park their vehicles in the area or areas set aside by the Landlord and reserved for the Tenant's vehicles;
- (f) at all times comply with and observe the reasonable requirements of the Landlord and the manufacturer with regard to any of the Landlord's Property and not do, or permit to be done, anything which might negate, reduce or modify any warranty given by the manufacturer or any insurance policy relating to it;
- (g) comply with all fire drills and emergency procedures (including evacuations) when reasonably requested by the Landlord; and
- (h) make reasonable efforts to enforce any prohibition against smoking in the Premises as imposed by the law or the Landlord.

5.18 Tenant's Risk

The Tenant occupies and uses the Premises at its own risk. The Landlord is not liable for any damage or loss to any property, or injury to any person, no matter how it happens, except to the extent that the Landlord or someone the Landlord is responsible for intentionally or negligently causes that damage, loss or injury.

5.19 Inspections by prospective Tenants

- (a) At all reasonable times prior to the expiration of the Term, the Tenant must permit the Landlord or other persons duly authorised in writing by the Landlord, at any reasonable time and on reasonable notice to:
 - (i) enter onto the Premises to conduct inspections of the Premises with prospective Tenants; and
 - (ii) allow the Landlord to exhibit where the Landlord reasonably thinks fit a notice indicating that the Premises are for Lease, which notice must not be obscured nor removed by the Tenant.

5.20 Repainting

- (a) The Tenant must paint or oil the walls, ceilings and other parts of the interior of the Premises including internal wood and/or metal work, when necessary to ensure that the paint work and Premises look neat and tidy, at such intervals agreed to by the Landlord and not less than three (3) months prior to the expiration or prior determination of the Lease:
 - (i) with not less than two (2) coats of first quality paint;
 - (ii) in a proper and workmanlike manner; and
- (b) After every internal painting the Tenant agrees to grain, varnish, distemper, wash stop, whiten in colours all parts using quality materials to be approved in writing by the Landlord (which approval the Landlord will not unreasonably withhold).

- (c) The Landlord may, in writing, waive or lessen the Tenant's obligations under this clause as it deems fit.

5.21 Surrender

- (a) The Tenant must surrender the Premises to the Landlord at the expiration or earlier determination of this Lease in a state or repair and condition which is consistent with the covenants to be observed by the Tenant under this Lease.
- (b) The Tenant must ensure that upon the expiration of the Lease when vacating the Premises, the Landlord's Property and in particular the plumbing and electrical cabling be left in safe condition and good working order.

6 LANDLORD COVENANTS

6.1 Quiet enjoyment

- (a) The Tenant (subject to performance of the Tenant's obligations under this Lease) may peaceably possess and enjoy the Premises for the Term without any interruption or disturbance from the Landlord, the Landlord's Associates or another person or persons lawfully claiming by from or under the Landlord.
- (b) The Landlord may enter the Premises at any reasonable time in order to exercise its rights under this Lease. Prior to entry onto the Premises, except in the case of emergency (when the Landlord must use its reasonable endeavours to advise the Tenant of such intended entry), the Landlord must give to the Tenant notice of such intended entry not less than 24 hours.
- (c) If, despite reasonable notice being given, the Tenant fails to provide the Landlord with access to the Premises, the Landlord may engage a locksmith (at the Tenant's cost) to gain entry to the Premises without prejudice to the Landlord's other rights under this Lease.

6.2 Access

- (a) The Tenant may have access to the Premises at any time from the Start Date. However, the Tenant must comply with any security arrangements put in place by the Landlord.
- (b) The Landlord may enter the Premises at any reasonable time in order to exercise its rights under this Lease. Prior to entry onto the Premises, except in the case of emergency (when the Landlord must use its reasonable endeavours to advise the Tenant of such intended entry), the Landlord must give to the Tenant notice of such intended entry not less than twenty-four (24) hours.
- (c) If, despite reasonable notice being given, the Tenant fails to provide the Landlord with access to the Premises, the Landlord may engage a locksmith (at the Tenant's cost) to gain entry to the Premises without prejudice to the Landlord's other rights under this Lease.

6.3 Common Areas

- (a) The Tenant has a non-exclusive right to use the Common Areas on the Land for the purpose for which they were designed, subject to the use and enjoyment of the Common Areas by other parties.
- (b) The Tenant must make sure that any use of those areas by the Tenant and the Tenant's Associates is lawful.
- (c) The Tenant must also comply, and use its best endeavours to ensure that the Tenant's Associates comply, with any rules that the Landlord makes in relation to the use of the Common Areas.

6.4 Services

- (a) The Tenant is entitled to use the Services that are supplied to the Premises and must not interfere with the Services except to effect routine maintenance with the prior written consent of the Landlord.
- (b) The Landlord is not responsible for non-performance of any Services except to the extent such non-performance is as a direct result of an act of the Landlord.

7 INSURANCE

7.1 Landlord Insurance

The Landlord must during the Term:

- (a) effect and keep a building policy for the Premises for its full reinstatement and replacement value on usual terms;
- (b) keep all improvements which form part of the Premises including the Landlord's Property insured against damage by fire, storm and all other risks which a prudent owner would insure against in their full reinstatement and/or replacement value; and
- (c) at the reasonable request of the Tenant, give to the Tenant a copy of the policy for insurance and a certificate of currency.

7.2 Tenant Insurance

The Tenant must effect and keep current the Lease during the occupation of the Premises, noting the interest of the Landlord as an additional insured:

- (a) a public liability policy and a product liability policy covering death or injury to a person, or loss or damage to property, in connection with or arising out of the Tenant's occupation and use of the Premises for an amount of not less than the Tenant Public Risk Insurance Amount in respect of any single event;
- (b) a plate glass policy, if there is plate glass in the Premises;
- (c) a policy covering fittings, plant and equipment and stock in the Premises or associated with the Business carried on by the Tenant in the Premises for the full insurable value of the fittings, plant and equipment and stock and in relation to all loss or damage because of fire and other risks including water, storm and rainwater damage;

- (d) a policy of insurance to cover loss from burglary (and damage to the Premises arising from an actual or attempted entry for that purpose) of the Tenant's Fixtures and Fittings; and
- (e) a policy of employer's indemnity insurance including workers' compensation insurance for all of the Tenant's employees at the Premises.

7.3 Certificate of Currency

The Tenant must provide, when reasonably requested by the Landlord, a certificate of currency in respect of all policies referred to in clause 7.2 noting the interest of the Landlord in the policy as an additional insured, which will be deemed to be compliance by the Tenant with the provisions of this clause.

7.4 No Avoidance

The Tenant must not do or permit to be done any act, manner or thing on the Premises which may result in any insurance policy being vitiated or rendered void or voidable and to be liable for all loss and damage which the Landlord may suffer as a result of the same.

7.5 Excess

- (a) The Tenant must pay any and all excess payments required to be paid to any insurer in respect of any claim made on any insurance policies pursuant to clause 7.2 relating to the Premises or the Lease.
- (b) The Landlord will pay any and all excess payments required to be paid to any insurer in respect of any claim made on the building policy pursuant to clause 7.1.

7.6 Policies

The Tenant must produce to the Landlord a certificate of currency on the Landlord's demand made not more than once in each successive 12 month period in respect of all policies referred to in this clause.

7.7 Occupational Safety and Health

The Tenant agrees that:

- (a) for the purposes of the *Occupational Safety and Health Act 1984* (WA) the Tenant has sole control of the Premises and will comply with all the provisions thereof which are required to be complied with by a person in control of premises to which such Act is applicable; and
- (b) all property in the Premises will be at the Tenant's sole risk and the Tenant will occupy the Premises at the risk of the Tenant and the Tenant releases the Landlord, its employees agents consultants and contractors, to the full extent permitted by Law, from all Claims in respect of or arising from any property in the Premises, damage or injury to any person in the Premises, or any of the circumstances set out in this clause,

and indemnifies and agrees to keep indemnified the Landlord (in the absence of negligence on the part of the Landlord) from and against all actions Claims demands losses damages costs and expenses for which the Landlord is or maybe or become liable in respect thereof or arising therein.

8 RELEASE AND INDEMNITY

8.1 Interruption Of Service

The Landlord is not liable to the Tenant for and the Tenant releases the Landlord from any loss paid, suffered or incurred by or available to the Tenant or the Tenant's associates relating to any failure in the supply, malfunction, failure to function or interruption of the Services from any cause. The Tenant may not terminate this document, make a claim or withhold payments due under this document in connection with any failure in the supply, malfunction, failure to function or interruption of the Services from any cause.

8.2 Indemnity

Subject to clause 8.4, the Tenant is liable for and must indemnify the Landlord at all times for all loss paid, suffered or incurred by the Landlord or for any loss that the Landlord may be or becomes or would except for this indemnity have been liable and that is wholly or partly due to or arising out of:

- (a) a Tenant's Act;
- (b) the entry into or escape from the Premises of water, gas, electricity or other substance or thing;
- (c) the failure of the Tenant to notify any damage to or defect in the Premises to the Landlord as soon as reasonably practicable after the Tenant becomes aware of it;
- (d) a faulty Tenant's Item;
- (e) the Tenant being in default under this document; or
- (f) any breach by the Tenant of a Law or the requirement of any Authority.

It is not necessary for the Landlord to incur any expense or make any payment before enforcing this right of indemnity.

8.3 Extent of Loss

Subject to clause 8.2, the release and indemnity under this clause 8 does not apply to the extent that any loss is wholly or partly due to or arises out of any act or omission of the Landlord.

8.4 Maximum Liability For Consequential Loss

Notwithstanding anything to the contrary in this document, the cumulative aggregate liability of the Tenant to the Landlord under this document for consequential loss (excluding personal injury or death) must not exceed the amount of Rent Fees payable by the Tenant to the Landlord over the term.

8.5 Continuing Indemnity

Each indemnity in this Lease is a continuing obligation, separate and independent from the other obligations of the Tenant under this Lease and the liability of the Tenant in respect of any act, matter or thing which arises from a breach by the Tenant of the conditions and covenants contained in this Lease and on the part of the Tenant to be performed and observed will continue despite the expiration of the Term or the termination of this Lease.

9 ASSIGNMENT AND SUB-LETTING

9.1 Assignment or Sub-let

The Tenant may not assign, transfer, demise, sub-let or part with sole possession of the premises without the prior consent in writing of the Landlord and on such terms and conditions as the Landlord requires.

9.2 Conditions for Sub-letting

The Tenant may only complete an assignment or sublease with the Landlords consent (which cannot be unreasonably withheld) and if the following conditions have been complied with to the Landlord's reasonable satisfaction:

- (a) the Tenant gives at least thirty (30) Business Days' prior notice to the Landlord of its intention to sub-let;
- (b) the Tenant must not sub-let the Premises for a period of more than 12 months;
- (c) at all times the Tenant is not in default under this document;
- (d) the Tenant give the following information to the Landlord:
 - (i) name and address of the proposed assignee or sub-Tenant;
 - (ii) at least two (2) references as to the proposed sub-Tenant's business experience;
- (e) The proposed sub-Tenant must prove to the Landlord's reasonable satisfaction that the proposed sub-Tenant:
 - (i) is respectable, solvent and experienced;
 - (ii) has a good reputation in conducting the type of business allowed by the Permitted use; and
 - (iii) has at least equal trading potential to the Tenant; and
- (f) the Tenant and the proposed sub-Tenant give any further information, material or documents reasonably required by the Landlord relating to the proposed sub-let to the Landlord promptly when requested;
- (g) the Tenant and the Proposed sub-Tenant enter into a deed with the Landlord under which:
 - (i) The proposed Tenant covenants:
 - (A) To comply with the relevant Tenant obligation under this document;
 - (B) To pay to the Landlord on demand any amounts payable to the Tenant if the Tenant is in default under this document; and
 - (C) To the extent permitted by Law, that sub-let terminates immediately on the termination of this document (unless the Landlord otherwise determines); and

- (ii) The Tenant confirms that it is not released from its obligations under this document;
 - (iii) In the case of a sub-let, the area dealt with is the whole of the Premises unless the Landlord agrees to a sub-let of part only of the Premises;
 - (iv) The proposed sub-Tenant takes out the insurances required under this document and gives evidence of those insurance to the Landlord;
 - (v) The Tenant and the proposed sub-Tenant otherwise comply with the Landlord's reasonable requirements relating this proposed assignment or sub-let.
- (h) The Landlord must promptly notify the Tenant when clause 9.1 has been complied with.

9.3 Change of Control

In this clause a reference to assign, transfer, demise or sub-let or part with possession of the Premises will:

- (a) where the Tenant is a corporation, be taken to include a transfer of shares so as to effectively change the "control" within the meaning of the *Corporations Act 2001* (Cth) of the Tenant or the effective control of the business conducted by the Tenant on the Premises; and
- (b) where the Tenant or a holding company is trustee of a unit trust, be taken to include a transfer of the units in that trust so as to effectively change the beneficial ownership or control of the trust or the business conducted by the trust on the Premises.

9.4 Tenant remains Liable

Notwithstanding any assignment, sub-let or parting with possession of the whole or any part of the Premises, the Tenant will remain liable under this Lease up to the expiration of the Term.

9.5 Property Law Act Exclusions

The provisions of sections 80 and 82 of the *Property Law Act 1969* (WA) do not apply to this Lease.

10 RENEWAL AND HOLDING OVER

10.1 Holding over

If the Tenant continues in possession of the Premises after the End Date or earlier determination of the Term, then:

- (a) the Tenant will be deemed to be a monthly Tenant of the Premises on the same terms and conditions as contained in this Lease so far as they are applicable to a monthly tenancy;
- (b) the tenancy will be determinable by either party on one (1) month's prior notice in writing;

- (c) the Rent Fee must be apportioned and paid monthly in advance by the Tenant to the Landlord on the same terms and conditions set out in this Lease; and
- (d) the Landlord may require at any time that the Rent Fee be adjusted.

11 DEFAULT

11.1 Essential terms

Each of the following obligations of the Tenant are essential terms of this Lease:

- (a) the payment of Rent Fees (if any);
- (b) the provision of a Bank Guarantee (if any);
- (c) the use of the Premises for the Permitted Use;
- (d) the assigning of sub-letting of the Premises;
- (e) the maintenance and repair of the Premises; and
- (f) insurance in relation to the Premises.

11.2 Repudiation

A breach by the Tenant of an essential term will be a repudiation of this Lease and will entitle the Landlord to re-enter the Premises.

11.3 Default by the Tenant

The Tenant will be in default of this Lease:

- (a) if the Rent Fee or any part or any other moneys payable by the Tenant to the Landlord under this Lease are unpaid for a period of seven (7) days (whether legal or formal demand for payment has been made or not);
- (b) if the Tenant vacates the Premises permanently without assigning the Lease or subletting the Premises in accordance with the terms of the Lease;
- (c) if the Tenant commits or permits any breach or default to occur in the due and punctual observance and performance of its obligations under this Lease (other than the obligation to pay Rent Fees) which is not remedied within fourteen (14) days of the date of written notice by the Landlord;
- (d) the Tenant is Insolvent; or
- (e) any judgment or order is enforced or becomes enforceable against any of the Tenant's assets for an amount exceeding \$50,000 and is not satisfied within twenty-eight (28) days.

11.4 Notice of default

If a breach of the covenants or conditions of this Lease by the Tenant requires a notice to be given under section 81 of the *Property Law Act 1969* (WA), the notice will provide that the Tenant must remedy that breach or default within fourteen (14) days, if that breach or default is capable of remedy.

11.5 Termination and Re-Entry Rights

If an event of default occurs under this clause, then the Landlord may without prejudice to its other rights under this Lease:

- (a) terminate the Lease by entering and taking possession of the Premises to the exclusion of the Tenant with no prior notice to the Tenant being necessary; or
- (b) terminate this Lease by written notice to the Tenant, with or without re-entering the Premises.

11.6 Rights on Re-Entry

- (a) Upon re-entry pursuant to this Lease, the Landlord may enter the Premises by any means reasonable and may expel and remove all persons, furniture and other property from the Premises without being liable for any action for trespass, assault or other proceedings for doing so.
- (b) If the Landlord re-enters the Premises pursuant to this Lease, the Landlord may remove the Tenant's chattels, plant and equipment and stock and place them in storage.
- (c) After thirty (30) days of storage, the Landlord may dispose of all chattels, plant and equipment and stock and apply any proceeds towards unpaid Rent Fees and other amounts due under the Lease, any loss or damage suffered by the Landlord and the payment of storage and other expenses of the Landlord without being liable to the Tenant for trespass, detinue, conversion or negligence.

11.7 Damages

In addition to any right of the Landlord to re-enter the Premises upon repudiation or default by the Tenant, the Landlord will be entitled to:

- (a) recover the Landlord's damages from the Tenant; and
- (b) where the Landlord has accepted, the Tenant's repudiation of the Lease, to recover from the Tenant:
 - (i) the Rent Fee for the remaining balance of the Term up to the End Date, and any loss, damage or expense incurred by the Landlord in connection with the acceptance of the repudiation of the Lease (including costs of a Managing Agent and a leasing agent in reletting or attempting to relet the Premises); LESS
 - (ii) the Rent Fee payable by a new Tenant that the Landlord obtains during the period that ends on the End Date provided that the Landlord will do all reasonable things to mitigate loss and will endeavour to relet the Premises at a reasonable Rent Fee and on reasonable term.

11.8 Damages not Limited

The Landlord's entitlement to recover damages is not affected or limited by any of the following:

- (a) the abandonment or vacation of the Premises by the Tenant;

- (b) a decision by the Landlord to re-enter or terminate this Lease; or
- (c) the acceptance by the Landlord of the Tenant's repudiation of the Lease.

11.9 Certificate Conclusive

A certificate issued to the Tenant by the Landlord of the Rent Fee owing pursuant to clause 11.7(b) is conclusive between the Parties in the absence of manifest error.

11.10 Payment by Tenant

If the Landlord accepts payment from the Tenant after the termination of this Lease, the Landlord will apply it first to outstanding Rent Fees and any other money owing by the Tenant and then to the Landlord's damages.

11.11 Interest

Interest is payable on all outstanding amounts under this Lease at the Rate, calculated from the day on which the amount was payable until the date that it is paid. The interest accrues daily and is payable on written demand by the Landlord.

12 DESTRUCTION OR DAMAGE OF PREMISES

12.1 Reinstatement of Premises

If the Premises, or any other material part of the Premises, are substantially destroyed or damaged, the Landlord must, within three (3) months from the date of such damage or destruction, give notice to the Tenant either:

- (a) terminating this Lease at the expiration of thirty (30) days of giving their notice, where the Landlord reasonably determines that the damage or destruction is such that repairing is impractical or undesirable; or
- (b) confirming that the Landlord will repair and reinstate the Premises to a condition where the Tenant can have full use and access to the Premises in the terms of this Lease,

provided that if such damage or destruction is directly or indirectly attributable to the Tenant or the Tenant's Associates or if any policy of insurance pursuant to this Lease is vitiated or payment of policy monies refused due to some act or default of the Tenant or the Tenant's Associates then the Tenant will not be entitled to any right or remedy (including but not limited to abatement of Rent Fees) in respect of said destruction or damage whether provided for by this Lease or otherwise.

12.2 Tenant's Right of Termination

Provided that the destruction is not caused by any act or omission of the Tenant, the Tenant may give written notice to the Landlord terminating this Lease immediately where:

- (a) the Landlord does not give notice to the Tenant pursuant to clause 12.1; or

- (b) the Landlord does not commence and promptly undertake works towards reinstatement within six (6) months of the date of damage or destruction, or where reinstatement has not been completed, or will not be able to be completed (for any reason whatsoever) within a reasonable time thereafter, and in any event within nine (9) months of the damage or destruction.

12.3 Abatement of Rent Fee

Until the earlier to occur of:

- (a) termination of this Lease pursuant to clause 12.1(a) or clause 12.2; and
- (b) the date on which the Tenant can again use or have access to the Premises,

a fair proportion of both the Rent Fee payable (in either case or according to the nature and extent of the damage sustained) will be suspended.

12.4 Dispute Resolution

If a dispute arises under clause 12.3, either party may ask the President of the Australian Property Institute (Western Australian Division) to nominate a valuer to determine the dispute as an expert. The parties will be bound by the determination of the valuer and the Tenant will pay all of the fees and disbursements of the valuer as an Outgoing under this Lease.

13 COMMON PROPERTY

13.1 Use of Common Property by Tenant

The Tenant has the right to use the Common Property and the carpark in common with the Landlord and the other Tenants subject to the terms and conditions of this Lease.

14 END OF LEASE

14.1 End of Lease

The Lease ends where:

- (a) the Term has expired on the End Date and the Tenant has not obtained the Landlord's permission to continue to occupy the Premises; or
- (b) where the Lease has been terminated earlier for any reason.

14.2 Delivery up of Premises

When the Lease ends, the Tenant must deliver up the Premises to the Landlord clean and free from rubbish in good, clean, substantial and reasonable repair and condition and must hand over all keys, combinations and codes for the Premises and must allow the Landlord to take over possession of the Premises and the Landlord's Property in the Premises.

14.3 Make Good Requirements

When the Lease ends, the Tenant must make good the Premises, which includes (but is not limited to) the following:

- (a) reinstatement of the Premises to the condition it was in at the Start Date, fair wear and tear excepted;
- (b) repainting of all painted interior surfaces, revarnishing of all varnished surfaces, replastering of all plastered surfaces, replacement of all floor coverings to a reasonable commercial standard;
- (c) servicing of the air conditioning plant, including any necessary repairs, replacement of filters and other consumables;
- (d) replacement of all lamps and tubes, and servicing of all electrical appliances to ensure proper operation;
- (e) removal of all external computer, telephone and data cabling and make good of damaged surfaces;
- (f) cleaning of the Premises including windows, floor surfaces, light diffusers, gutters and downpipes;
- (g) servicing all fire equipment within the Premises including any necessary repairs or maintenance;
- (h) servicing all reticulation, including any necessary maintenance and repairs;
- (i) repair and replacement of worn parts of plumbing systems (including taps, washers and cisterns) in the Premises;
- (j) replacement of damaged ceiling tiles;
- (k) repairing and servicing all of the Landlord's Property at the Premises;
- (l) removing all signage from the Premises and making good the damage and marks; and
- (m) reinstatement of the structure of any part of the Premises which has been altered by on or behalf of the Tenant and making good any damage and marks.

14.4 Removal of Tenant's Property

- (a) When the Lease ends, the Tenant must remove from the Premises the all of the Tenant's stock, plant and equipment and other property (including Tenant's Fixtures and Fittings other than any fixtures and fittings which in the opinion of the Landlord form an integral part of the Premises) and must make good any damage caused by such removal;
- (b) If the Tenant has not removed all the Tenant's property by the date that the Lease ends, that property will, at the Landlord's sole option and upon giving notice to the Tenant:
 - (i) become the absolute property of the Landlord to be disposed of as the Landlord thinks fit, with the reasonable cost of such disposal (if any) being recoverable from the Tenant; or
 - (ii) be deposited in storage at the cost of the Tenant and the Landlord will not be liable for any loss or damage to that property and will not be liable to the Tenant in any cause or action including (but not

limited to) conversion, detainee or trespass to goods by reason thereof.

14.5 Performance by Landlord

If the Tenant does not comply with any of its obligations under this clause 14, the Landlord may do all things necessary to carry out such obligations. The costs incurred by the Landlord in carrying out the obligations is payable by the Tenant to the Landlord on demand.

15 NOTICES

15.1 General

A notice, demand, certification, process or other communication relating to this document must be in writing in English and may be given by an agent of the sender.

15.2 Giving Notice

In addition to any other lawful means, a communication may be given by being:

- (a) personally delivered;
- (b) left at the party's current delivery address for notices;
- (c) sent to the party's current postal address for notices by pre-paid ordinary mail or, if the address is outside Australia, by pre-paid airmail; or
- (d) sent by fax to the party's current fax number for notices.

15.3 Particulars for delivery of notices

- (a) The particulars for delivery of notice is set out in Item 9 above.
- (b) Each party may change its particulars for delivery of notices by notice to each other party.

15.4 Communications by post

Subject to clause 15.6, a communication is given if posted:

- (a) within Australia to an Australian postal address, two Business Days after posting; or
- (b) outside of Australia to an Australian postal address or within Australia to an address outside of Australia, ten Business Days after posting.

15.5 After hours communications

If communication is given:

- (a) after 5.00 pm in the place of receipt; or
- (b) on a day which is a Saturday, Sunday or bank or public holiday in the place of receipt,

it is taken as having been given at 9.00 am on the next day which is not a Saturday, Sunday or bank or public holiday in that place.

15.6 Process service

Any process or other document relating to litigation, administrative or arbitral proceedings relating to this document may be served by any method contemplated by this clause 15 or in accordance with any applicable law.

15.7 Form of Notice

Any Notice required to be made or given under this Lease must be signed:

- (a) by a party giving or making the Notice;
- (b) in the case of the Landlord, by the Managing Agent (if a Managing Agent has been appointed);
- (c) in the case of a body corporate, by an officer of the party giving or making the Notice;
- (d) in either case, by their lawyers; or
- (e) in the case of a Notice given by facsimile must state the name of the party, officer or the lawyers making or giving the Notice.

16 GENERAL PROVISIONS

16.1 Amendment

This Lease may only be varied or replaced by a document executed by the parties.

16.2 Payment of Money

- (a) All amounts payable by the Tenant to the Landlord under this Lease shall be paid without set off (whether arising at law or in equity) and free and clear of any deduction whatsoever, to the Landlord or as directed in writing to the Landlord.
- (b) A certificate signed by or on behalf of the Landlord specifying an amount payable by the Tenant to the Landlord pursuant to this Lease shall be prima facie evidence of the matters stated in that certificate.
- (c) Unless a date or time for payment of any amount payable by the Tenant under this Lease is specified, the due date for payment of Money shall be 7 days after the Landlord issues an invoice to or otherwise requests payment from the Tenant.
- (d) If the Term does not commence or end on the due date for any instalment payment that is payable by the Tenant pursuant to this Lease, the first and last instalments of any amount will be a proportionate amount (calculated on a daily basis) of the instalments otherwise payable.

16.3 Western Australian Planning Commission

If for any reason this Lease requires the consent of the Western Australian Planning Commission, then it is subject to that consent being given.

16.4 Power of Attorney

- (a) The Tenant irrevocably appoints the Landlord and/or its nominee(s) jointly and severally to be the true and lawful attorney(s) of the Tenant to act at any time after the power to re-enter the Premises contained in this Lease has become exercisable or has been exercised (sufficient proof of which is a statutory declaration of any duly authorised officer or agent of the Landlord):
 - (i) To execute and register (if necessary) a transfer and/or a surrender of this Lease and/or a withdrawal of any caveat registered by the Tenant over the Land;
 - (ii) To do, execute and perform any act, deed, matter or thing relating to the Premises as fully and effectually as the Tenant could do; and
 - (iii) For any of these purposes, to use the Tenant's name.
- (b) The Tenant must ratify and confirm all things lawfully done or caused to be done by the attorney(s) in exercise of the powers given under this clause.

16.5 Waiver and exercise of rights

No failure to exercise or any delay in exercising any right, power or remedy by a party operates as a waiver. A single or partial exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy. A waiver is not valid or binding on the party granting that waiver unless made in writing.

16.6 Entire Agreement

- (a) The Tenant acknowledges and declares that:
 - (i) prior to entering negotiations with the Landlord in respect of this Lease a copy of the proposed Lease was provided to the Tenant;
 - (ii) in entering into this Lease, the Tenant has not relied on any promise, representation, warranty or undertaking given by or on behalf of the Landlord;
- (b) The Landlord does not expressly or impliedly warrant that the design, shape, size or finishes of the Premises or the facilities provided within the Premises by the Landlord are or will remain fit, suitable or adequate for the Permitted Use or all or any of the purposes of the Tenant. All warranties (if any) implied by Law (including any structural warranty) and any warranty as to the suitability, fitness and adequacy of the Premises are expressly excluded to the extent to which they are capable of being excluded.
- (c) The contents of this Lease cover and comprise the whole of the agreement between the parties to this Lease.

- (d) Except as expressly included by statute, no warranties, covenants or provisions, in respect of the Premises or otherwise, will be deemed to be implied in this Lease or to arise between the parties.

16.7 Legal Costs

Except as expressly stated otherwise in this document, each party must pay its own legal and other costs and expenses of negotiating, preparing, executing and performing its obligations under this document.

16.8 Duty

The Tenant as between the parties is liable for, must pay all stamp duty, duty, or like duties or imposts (Duty) (including any fine, interest or penalty except where it arises from default by another party) payable or assessed on or in connection with:

- (a) this document;
- (b) any document executed under this document; and
- (c) Any transaction evidenced or effected by a document referred to in clause 16.8(a) or clause 16.8(b).

16.9 Severability

- (a) The several covenants, obligations and provisions and each and every part contained in this Lease must be construed so as not to infringe the provisions of any Laws.
- (b) If any covenant, obligation or provision on its true interpretation does infringe any provision that covenant, obligation or provision must be read down to the extent necessary to ensure it does not infringe and as may be reasonable in all circumstances so as to give it a valid operation of a partial character.
- (c) If the infringing covenant obligation or provision cannot be read down it will be deemed to be void and severable.

16.10 Governing law

- (a) This document is governed by and is to be construed in accordance with the laws applicable in Western Australia.
- (b) Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts exercising jurisdiction in Western Australia and any courts which have jurisdiction to hear appeals from any of those courts and waives any right to object to any proceedings being brought in those Courts.

16.11 No waiver

No failure to exercise or any delay in exercising any right, power or remedy by a party operates as a waiver. A single or partial exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy. A waiver is not valid or binding on the party granting that waiver unless made in writing.

16.12 Landlord's consents

If the doing or execution of any act matter or thing by the Tenant under this Lease is dependent on the consent or approval of the Landlord that consent or approval must not be unreasonably withheld and will be taken to have been given if delayed more than twenty-one (21) days from the date on which written application has been made to the Landlord.

16.13 No Caveat

- (a) The Tenant will not lodge any caveat over the Land or any part of the Land or the Landlord's interest in the Land to protect the interest of the Tenant under this Lease, without the Landlord's prior written consent.
- (b) The Tenant hereby irrevocably grants to the Landlord and each of its directors and company secretary, jointly and severally, a power of attorney to execute and lodge at the Lands Title Office a withdrawal of any such caveat.
- (c) The Tenant will pay the Landlord's costs and expenses of and incidental to the withdrawal of any such caveat.

16.14 Special Conditions

The Special Conditions will be deemed to be incorporated into this Lease as if fully set out in the body of this Lease and, in the event of there being any inconsistency with the terms, covenants and conditions contained in the body of this Lease, then the Special Conditions will prevail.

16.15 Subordination

The Tenant agrees to subordinate this Lease to any mortgage of the Landlord's interest in the Premises to give that mortgage priority over this Lease whether under the *Transfer of Land Act 1893* (WA) or otherwise if requested to do so by the Landlord provided that the mortgagee has first agreed in writing that:

- (a) The Landlord's rights and interest under the Lease will not be terminated or modified (except as otherwise provided in this Lease); and
- (b) The Tenant's possession of the Premises will not be interfered with any sale, action or proceeding under the mortgage.

16.16 Limitation of liability

Notwithstanding any term expressly or impliedly contained in this Lease or rule of common law or equity, the Landlord will not be liable for any damage or loss suffered by the Tenant as a result of the Landlord's failure to do or fail to do any act that the Landlord is legally liable to do in respect of the Premises or Land unless the Tenant has first given notice to the Landlord of such act or omission and the Landlord has failed to rectify this act or omission within a reasonable period.

16.17 Compensation Excluded

The Tenant covenants and agrees (without limiting any other clause of this Lease), the Tenant will not be entitled to any compensation for disturbance (however caused) as a result of the Landlord exercising its rights under this Lease.

SCHEDULE 1 – DICTIONARY OF TERMS USED IN LEASE

DEFINITIONS AND INTERPRETATION

1 Defined Terms

The following definitions apply to the interpretation of terms in this Lease unless the context requires otherwise:

Approval means any authorisation, permit, Lease, consent, grant, certificate, sealing or other approval obtained or required to be obtained by the Tenant from a Governmental Agency or other person in relation to the Premises or the use and occupation of the Premises or the improvements on the Premises.

Authority means any government, administration, judicial, statutory or other body or tribunal, department, commission or authority whether public or private which has authority, jurisdiction or rights over or relating to the Land, the Building or this Lease.

Buildings means the building and the improvements erected on the Land from time to time excluding the Tenant's Fixtures and Fittings.

Business Day means a day which is not a Saturday, Sunday or bank or public holiday in Perth.

Claim means, in relation to a party, a demand, claim, action, proceeding, judgment, damage, loss, cost, expense or liability incurred by or recovered by or against the party, however arising and whether present, unascertained, immediate, future or contingent and whether or not arising in relation to matters which occurred in the past.

Common Areas means those parts of the Land or the Premises which is outlined in red on the Premises Plan in Annexure A that the Landlord designates as being for the shared use of the Tenants and occupiers of the Land and Buildings, which may include toilets, tearooms, access ways and parking areas.

Contamination means any:

- (i) air pollution;
- (ii) water pollution;
- (iii) waste;
- (iv) substance which harms or is likely to harm (whether directly or indirectly) the Environment or the health or safety of any person;
- (v) anything which causes or gives rise to an Environmental Hazard; or
- (vi) petrol contamination and the presence of residential hydrocarbons under any soil whether a solid, liquid or gas.

and **Contaminated** or **Contamination** means the existence in, or under any land, building or waters of any Contaminant.

Corporations Act means the *Corporations Act 2001* (Cth) and the Corporations regulations made under it, as amended from time to time.

End Date means the End Date specified in Item 3.

Environment includes all aspects of the surroundings of human beings including:

- (i) the physical characteristics of those surrounding such as the land, the waters and the atmosphere;
- (ii) the biological characteristics of those surrounds such as animals, plants and other forms of life; and
- (iii) the aesthetic characterises of those surroundings such as their appearance, sounds, smells, tastes and textures.

Environmental Hazard means a state of danger or harm to human beings or the Environment, whether imminent or otherwise, resulting from the storage or handling or of exposure of any substance at the Premises having toxic, corrosive, flammable, explosive, infectious or otherwise dangerous or harmful characteristics.

Environmental Law means a Law relating to the Environment, including a law relating to land use, planning, environmental assessment, the environmental heritage, coastal protection, water catchments, pollution of air or water, noise, soil or ground water contamination, chemicals, pesticides, hazardous substances, the ozone layer, waste, dangerous goods, building regulation, occupation of buildings, fire safety, public health, occupational health and safety, noxious trades any Environmental Hazard, any aspect of protection of the Environmental or the enforcement or administration of any of those laws.

Governmental Agency means a government or a governmental, semi-government, judicial, municipal, statutory or public entity or authority. It also includes a self-regulatory organisation established under statute or a stock exchange.

GST has the meaning given in the GST Act.

GST Act means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

A person is **Insolvent** if:

- (i) a person is or states that the person is unable to pay for the person's own money all the person's debts as and when they become due and payable;
- (ii) a person is taken or must be presumed to be insolvent or unable to pay its debts under any applicable legislation;
- (iii) an application or order is made for the winding up or dissolution or a resolution is passed or any steps are taken to pass a resolution for the winding up or dissolution of a person;
- (iv) an administrator, provisional liquidator, liquidator or person having a similar or analogous function under the Laws of any relevant jurisdiction is appointed in respect of a corporation or any action is taken to appoint any such person and the action is not stayed, withdrawn or dismissed within seven (7) days;

- (v) a receiver or receiver and manager is appointed in respect of any property of a corporation;
- (vi) a corporation is deregistered under the Corporations Act or notice of its proposed deregistration is given the corporation;
- (vii) a distress, attachment or execution is levied and becomes enforceable against any property of a person;
- (viii) a person enters into or takes action to enter into an arrangement (including scheme of arrangement or deed of company arrangement) composition or compromise with, or assignment for the benefit of, all or any class of person's creditors or members of a moratorium involving any of them;
- (ix) a petition for the make a sequestration order against the estate of a person is presented and the petition is not stayed, withdrawn or dismissed within seven days or a person presents a petition against himself or herself;
- (x) a person presents a declaration of intention under section 54A of the *Bankruptcy Act 1966* (Cth); or
- (xi) anything analogous to or of similar effect to anything described above under the Law of any relevant jurisdiction occurs in respect of a person.

Item means an item set out in the table at the beginning of the Lease that is titled "*Lease Details*".

Land means the land described in Item 1 and includes any additional land that is developed or used from time to time as part of or in conjunction with the Premises.

Law means any statute, regulation, order, subordinate legislation or other document enforceable under a statute, regulation, order, rule or subordinate legislation.

Landlord includes the Landlord and the assigns and executors and administrators of the Landlord.

Landlord's Associates includes an employee, agent, consultant or contractor of the Landlord.

Landlord's Property means all structures and improvements, plant machinery and equipment, mechanical or otherwise, and facilities now or in the future owned or installed by the Landlord in or on the Premises including any air conditioning, plant, carpets, floor coverings, blinds and other fittings.

Payment Date means the date for payment of Rent Fee specified in Item 5.

Permitted Use means the use of the Premises proposed by the Tenant specified in Item 8.

Premises means the leased area described in Item 2.

Rate means 20% per annum.

Rent Fee means the annual Rent Fee specified in Item 4.

Rent Fee Account means the account specified in Item 7.

Services means in relation to the Land all services supplied to or in the Premises such as gas, water, drainage, fire service, electricity, telephone, sewerage volume charges, hydraulic services (including the air conditioning system) and mechanical services (including the air conditioning system), rubbish and waste disposal and any other utilities (if any).

Start Date means the Start Date specified in Item 3 for the Term.

Special Conditions means the special conditions set out in Item 10.

Tax includes:

- (i) all taxes levied, imposed or assessed under the Tax Act or any other Law in Australia or elsewhere;
- (ii) taxes in the nature GST, sales tax, consumption tax, value added tax, payroll tax, group take PAYE, PAYG, undistributed profits tax, fringe benefits tax, recoupment tax, withholding tax, land tax, water rates, municipal rates, stamp duties, gift duties or tother government or statutory charges or impositions levied, imposed or collected by any Authority; and
- (iii) any additional tax interest, penalty, charge, fee, or other amount of any kind assessed, charges or imposed in relation to the non, late or short payment of those amounts or the failure to file any return.

Tax Act means the Income Tax Assessment Act 1936 (Cth) and the Income Tax Assessment Act 1997 (Cth).

Tenant includes the Tenant and the executors, administrators and permitted assigns of the Tenant or being a body corporate, its successors and permitted assigns.

Tenant's Associates means the Tenant's employees, agents, contractors, contractors, customers, clients, visitors (with or without invitation), sub-Tenants, Tenants, and invitees who may at any time be on the Premises or the Land and any trespasser who may at any time be on the Premises.

Tenant's Fixtures and Fittings includes all fixtures, fittings, plant, equipment, partitions or other articles and chattels of all kinds (other than stock-in-trade) which are not owned by the Landlord and at any time are in or on the Premises.

Tenant's Items means all plant, equipment, fixtures, fittings, furnishings, furniture and other items located in the Premises and provided by the Tenant, and includes other items left with the Tenant by third parties.

Tenant Public Risk Insurance Amount is the amount specified in Item 6;

Term means the term of this Lease specified in Item 3 subject to earlier termination under clause 11.5.

Other expressions appearing in the Schedule have the meaning set out next to them.

1 Interpretation

Headings are for convenience only, and do not affect interpretation. The following rules also apply in interpreting this Lease, except where the context makes it clear that a rule is not intended to apply.

- (a) A reference to:
 - (i) A legislative provision or legislation (including subordinate legislation) is to that provision or legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
 - (ii) a document (including this Lease) or agreement, or a provision of a document (including this Lease) or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated;
 - (iii) a party to this Lease or to any other document or agreement includes a successor in title, permitted substitute or permitted assign of that party;
 - (iv) a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person; and
 - (v) anything (including a right, obligation or concept) includes each part of it.
- (b) A singular word includes the plural, and vice versa.
- (c) A word which suggests one gender includes the other genders.
- (d) If a word or phrase is defined, any other grammatical form of that word or phrase has a corresponding meaning.
- (e) If an example is given of anything (including a right, obligation or concept), such as by saying it includes something else, the example does not limit the scope of that thing.
- (f) The word **agreement** includes an undertaking or other binding arrangement or understanding, whether or not in writing.
- (g) The words **subsidiary**, **holding company** and **related body corporate** have the same meaning as in the Corporations Act.
- (h) A reference to a month is to a calendar month.
- (i) A reference to a professional body includes a succeeding body or where there is no succeeding body, a body serving similar objects as nominated by the Landlord.
- (j) A reference to **dollars** or **\$** is to an amount in Australian currency.
- (k) Words defined in the GST Law have the same meaning in clauses about GST.

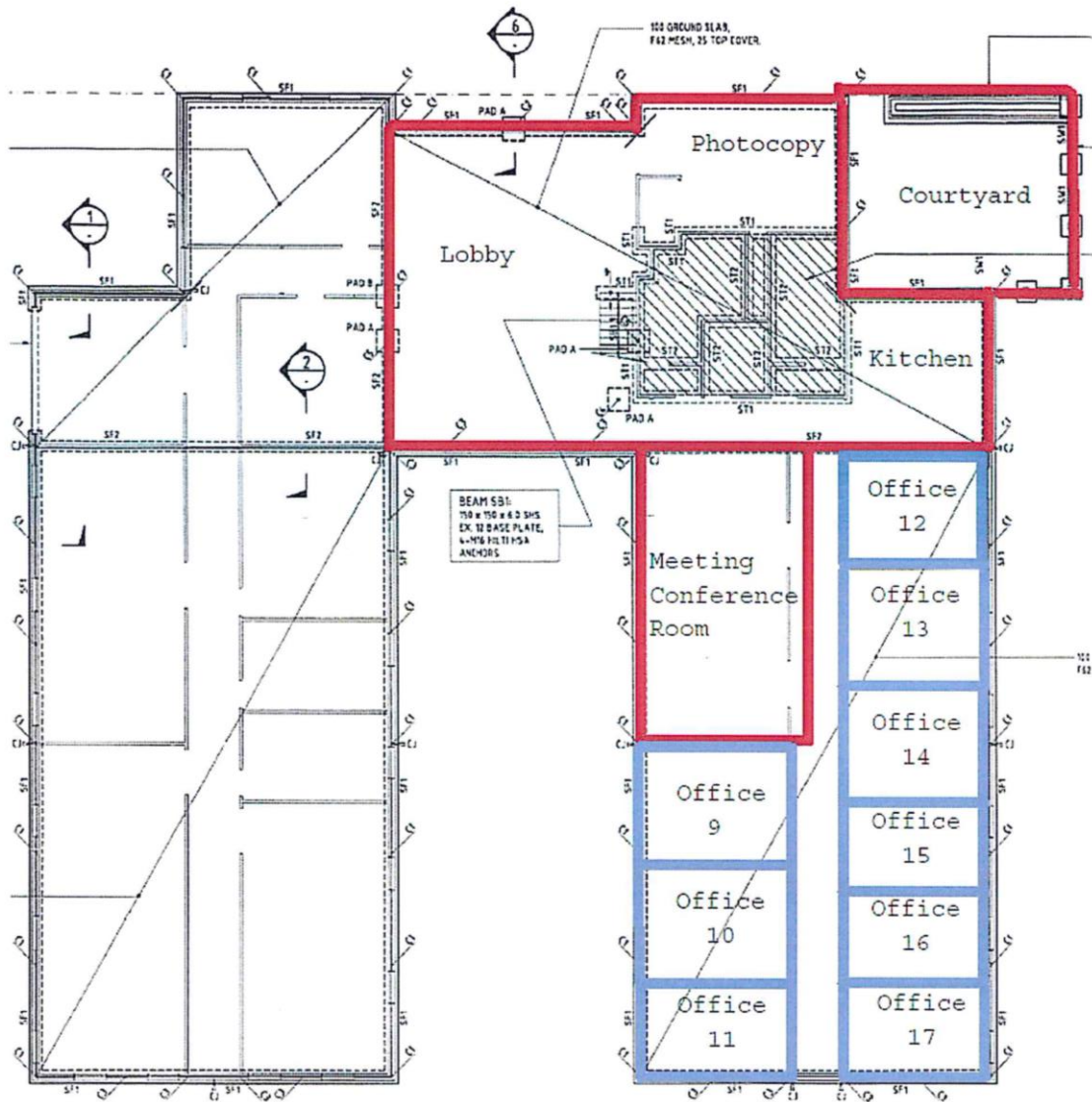
- (l) If a person is a member of a GST group, references to GST for which the person is liable and to input tax credits to which the person is entitled include GST for which the representative member of the GST group is liable and input tax credits to which the representative member is entitled.
- (m) References to GST extend to any notional liability of any person for GST and to any amount which is treated as GST under the GST Law, and references to an input tax credit extend to any notional input tax credit to which any person is entitled.

Executed as a Deed on the date set out on page 1 of this Lease.

<p>THE COMMON SEAL OF THE CITY OF KWINANA WAS AFFIXED HERETO</p>	<p>THE COMMON SEAL OF BUSINESS FOUNDATIONS INC (ABN 56 450 593 470) WAS AFFIXED HERETO</p>
<p>Common Seal</p>	<p>Common Seal</p>
<p>Signature of Chief Executive Officer</p>	<p>Signature of Chairperson</p>
<p>Name (please print)</p>	<p>Name (please print)</p>
<p>Signature of Mayor</p>	<p>In the presence of:</p>
<p>Name (please print)</p>	<p>Signature of witness</p>
	<p>Witness Name: _____</p>
	<p>Witness Address: _____</p>
	<p>Witness Occupation: _____</p>

ANNEXURE A

Premises Plan



16.3 Amendments to the Register of Delegated Authority – Local Government to Chief Executive Officer, Officers and Committees 2016

SUMMARY:

At its 10 February 2016 meeting, Council resolved to delegate certain functions to the Chief Executive Officer (CEO), Officers and Committees, to have the discretion to exercise delegated authority under the relevant legislation.

As part of the ongoing review to ensure that all delegations and appointments have been captured, an additional delegation that is at Attachment A, has been identified and is recommended for adoption in relation to granting the Chief Executive Officer the function of providing consent to a lessee to assign or sublease for a purpose consistent with the use of the premises permitted and all other terms by the head lease that has been approved by Council.

OFFICER RECOMMENDATION:

That Council:

1. Grant the following Delegation to the Chief Executive Officer, as detailed in Attachment A:
 - 1.17 Administration of Leases – providing consent and authority to execute documents in relation to any assignment or sublease where there is a request by a lessee operating under a lease agreement that Council has approved.

NOTE – AN ABSOLUTE MAJORITY OF COUNCIL IS REQUIRED

DISCUSSION:

The delegation is required to ensure the services the local government provides, in relation to powers and duties of the local government under the *Local Government Act 1995* and other legislation for which a local government has responsibility, can be delivered in a timely and efficient manner.

This report is specifically recommending a delegation to the Chief Executive Officer to allow her to sign on behalf of the local government a subleasing or subletting of an existing lease held between the City of Kwinana and a lessee.

Most City of Kwinana leases that are in place have clauses in them in respect to sub-leasing or subletting, for example:

20.1 No assignment or sub-letting without consent

The Lessee must not assign the leasehold estate in the Premises nor Sub-let, part with possession, or dispose of the Premises or any part of the Premises without the prior written consent of the Lessor and any other persons whose consent is required under the terms of this lease or at law.

16.3 AMENDMENTS TO THE REGISTER OF DELEGATED AUTHORITY – LOCAL GOVERNMENT TO CHIEF EXECUTIVE OFFICER, OFFICERS AND COMMITTEES 2016

20.2 Lessor's Consent to Assignment and Sub-letting

Provided all parties whose consent is required, under this Lease or at law, to an assignment or sublease is for a purpose consistent with the use of the Premises permitted by this Lease then the Lessor may not unreasonably withhold its consent to the assignment or Sub-letting of the leasehold estate created by this Lease if –

- (a) the proposed assignee or sublessee is a respectable and responsible person of good financial standing capable of continuing the permitted use for non-profit making community purposes;*
- (b) all Amounts Payable due and payable have been paid and there is no existing unremedied breach, whether notified to the Lessee or not, of any of the Lessee's Covenants;*
- (c) the Lessee procures the execution by –*
 - (i) the proposed assignee of a deed of assignment; or*
 - (ii) the proposed sublessee of a deed of sublease,**to which the Lessor is a party and which deed is prepared and completed by the Lessor's solicitors; and*
- (d) the assignment contains a covenant by the assignee or sublessee with the Lessor to pay all Amounts Payable and to perform and observe all the Lessee's Covenants.*

Where Council have approved the original lease with these clauses in anticipation of such requests and in order to expedite the process, it is recommended to create a delegation from Council to the Chief Executive Officer to give consent to any assignment or sublease where there is a request by a lessee operating under a lease agreement that Council has approved.

This delegation would be moderated by including the following Conditions:

- 1. The sublease must be consistent with the use of the premise permitted by the lease as well as other conditions relating to assignment and sub-letting approved between the City of Kwinana and the lessee.*
- 2. Obtain consent from other parties required under the terms of the Lease or at law.*
- 3. Terms of the sub lease must be consistent with the lease approved by Council.*

LEGAL/POLICY IMPLICATIONS:

Local Government Act 1995

5.41. Functions of CEO

The CEO's functions are to —

- (i) perform any other function specified or delegated by the local government or imposed under this Act or any other written law as a function to be performed by the CEO.*

16.3 AMENDMENTS TO THE REGISTER OF DELEGATED AUTHORITY – LOCAL GOVERNMENT TO CHIEF EXECUTIVE OFFICER, OFFICERS AND COMMITTEES 2016

5.42. Delegation of some powers and duties to CEO

- (1) A local government may delegate* to the CEO the exercise of any of its powers or the discharge of any of its duties under —
 - (a) this Act other than those referred to in section 5.43; or
 - (b) the Planning and Development Act 2005 section 214(2), (3) or (5).

* Absolute majority required.
- (2) A delegation under this section is to be in writing and may be general or as otherwise provided in the instrument of delegation.

9.49A. Execution of documents

- (4) A local government may, by resolution, authorise the chief executive officer, another employee or an agent of the local government to sign documents on behalf of the local government, either generally or subject to conditions or restrictions specified in the authorisation.

FINANCIAL/BUDGET IMPLICATIONS:

There are no direct financial implications related to this report.

ASSET MANAGEMENT IMPLICATIONS:

There are no direct asset management implications related to this report.

ENVIRONMENTAL IMPLICATIONS:

There are no direct environmental implications related to this report.

STRATEGIC/SOCIAL IMPLICATIONS:

The role of Council is to ensure that the Council's delegations are aligned with the key goals and aspirations as set out in our Plan for the Future.

Community Strategic Plan

Objective 1.5: Actively work with the community to build local capacity
Strategy 1.5.1 Develop community capacity, encourage self management of shared use facilities and enable access to funding opportunities in order to assist the sustainability of community and sporting groups, activities and events as well as support community networks and partnerships deliver projects and services.

RISK IMPLICATIONS:

There are no risk implications related to this report.

16.3 AMENDMENTS TO THE REGISTER OF DELEGATED AUTHORITY – LOCAL GOVERNMENT TO CHIEF EXECUTIVE OFFICER, OFFICERS AND COMMITTEES 2016

COUNCIL DECISION

290

MOVED CR B THOMPSON

SECONDED CR S LEE

That Council:

1. **Grant the following Delegation to the Chief Executive Officer, as detailed in Attachment A:**

- 1.17 **Administration of Leases – providing consent and authority to execute documents in relation to any assignment or sublease where there is a request by a lessee operating under a lease agreement that Council has approved.**

CARRIED BY AN ABSOLUTE MAJORITY OF COUNCIL
7/0

ATTACHMENT A

Delegation 1.17

1.17 Administration of Leases – providing consent and authority to execute documents in relation to any assignment or sublease where there is request by a lessee operating under a lease agreement that Council has approved.	
Function to be performed:	Authorised to provide consent and execute documents in relation to any assignment or sublease where there is a request by a lessee operating under a lease agreement that Council has approved.
Legislative power or duty delegated:	Local Government Act 1995 - Part 9, Division 3 s9.49A(4) Execution of documents
Legislative Power to Delegate:	Local Government Act 1995 s5.42 Delegation of some powers to the CEO
Date Delegation made or reviewed:	July 2016
Delegation to:	Chief Executive Officer
Conditions and Exceptions:	<ol style="list-style-type: none">1. The sublease must be consistent with the use of the premise permitted by the lease as well as other conditions relating to assignment and sub-letting approved between the City of Kwinana and the lessee.2. Obtain consent from other parties required under the terms of the lease or at law.3. Terms of the sub lease must be consistent with the lease approved by Council.
Statutory Power to sub-delegate:	This Authority is not to be sub-delegated.
Reporting Requirements:	<ol style="list-style-type: none">1. Any exercise of this delegation is to be recorded in the Delegated Authority Register; and2. Where the common seal is affixed the details are to be recorded in the common seal register in accordance with the City's policies and work procedures.

16.4 Amendment to Council Policy – Elected Members Allowances, Expenses and Gifts

SUMMARY:

The purpose of this amendment is to make a minor change to wording in respect to the use of private vehicles, following the finding of the *Determination of the Salaries and Allowances Tribunal on Local Government Chief Executive Officers and Elected Members* dated 17 June 2015.

OFFICER RECOMMENDATION:

That Council adopt the amended Policy – Elected Members Allowances, Expenses and Gifts contained within Attachment A.

NOTE – AN ABSOLUTE MAJORITY OF COUNCIL IS REQUIRED

DISCUSSION:

A copy of the Policy as recommended for amendment is detailed in Attachment A with the new text highlighted in blue and deleted text in red. A summary of changes recommended to the Policy are included below.

The reimbursement of travel expenses have been in accordance with the Salaries and Allowances Tribunal determination since the changes came into operation however a review of the Policy identified the discrepancy and needs to be rectified.

Policy recommended for amendment **Elected Members Allowances, Expenses and Gifts**

The recommended changes include:

- Clause 3.1 – Travelling expenses – amended to reflect correct wording in respect to the nature of the vehicle used and contained within the *Determination of the Salaries and Allowances Tribunal on Local Government Chief Executive Officers and Elected Members*, dated 17 June 2015.
- Clause 3.1.4 – amended reference to the Award applicable to the reimbursement of travel costs that is also contained within the *Determination of the Salaries and Allowances Tribunal on Local Government Chief Executive Officers and Elected Members*, dated 17 June 2015.

An extract of the wording in respect to the recommended amendments contained within the *Determination of the Salaries and Allowances Tribunal on Local Government Chief Executive Officers and Elected Members*, dated 17 June 2015, is as follows:

4.2 EXTENT OF EXPENSES TO BE REIMBURSED

- (5) *For the purposes of subsections (3) and (4), travel costs incurred while driving a privately owned or leased vehicle (rather than a commercially hired vehicle) are to be calculated at the same rate contained in Section 30.6 of the Local Government Officers' (Western Australia) Interim Award 2011 as at the date of this determination.*

16.4 AMENDMENT TO COUNCIL POLICY – ELECTED MEMBERS ALLOWANCES, EXPENSES AND GIFTS

LEGAL/POLICY IMPLICATIONS:

Local Government Act 1995

2.7. Role of council

- (1) The council —
 - (a) governs the local government's affairs; and
 - (b) is responsible for the performance of the local government's functions.
- (2) Without limiting subsection (1), the council is to —
 - (a) oversee the allocation of the local government's finances and resources; and
 - (b) determine the local government's policies.

5.98. Fees etc. for council members

- (1A) In this section —
determined means determined by the Salaries and Allowances Tribunal under the Salaries and Allowances Act 1975 section 7B.
- (2) A council member who incurs an expense of a kind prescribed as being an expense —
 - (a) to be reimbursed by all local governments; or
 - (b) which may be approved by any local government for reimbursement by the local government and which has been approved by the local government for reimbursement, is entitled to be reimbursed for the expense in accordance with subsection (3).
- (3) A council member to whom subsection (2) applies is to be reimbursed for the expense —
 - (a) where the extent of reimbursement for the expense has been determined, to that extent; or
 - (b) where the local government has set the extent to which the expense can be reimbursed and that extent is within the range determined for reimbursement, to that extent.

Salaries and Allowances Act 1975

7B. Determinations as to fees and allowances of local government councillors

- (1) In this section —
elected council member means a person elected under the Local Government Act 1995 as a member of the council of a local government.
- (2) The Tribunal is to, from time to time as provided by this Act, inquire into and determine —
 - (a) the amount of fees, or the minimum and maximum amounts of fees, to be paid under the Local Government Act 1995 to elected council members for attendance at meetings; and
 - (b) the amount of expenses, or the minimum and maximum amounts of expenses, to be reimbursed under the Local Government Act 1995 to elected council members; and

16.4 AMENDMENT TO COUNCIL POLICY – ELECTED MEMBERS ALLOWANCES, EXPENSES AND GIFTS

- (c) *the amount of allowances, or the minimum and maximum amounts of allowances, to be paid under the Local Government Act 1995 to elected council members.*

FINANCIAL/BUDGET IMPLICATIONS:

There are no direct financial implications for this report. Individual Policies may have financial implications and if so, budgetary considerations are included on an annual basis.

ASSET MANAGEMENT IMPLICATIONS:

There are no direct asset management implications related to this report.

ENVIRONMENTAL IMPLICATIONS:

There are no direct environmental implications related to this report.

STRATEGIC/SOCIAL IMPLICATIONS:

The role of Council is to ensure that the Council's Policies are aligned with the key goals and aspirations as set out in our Plan for the Future.

RISK IMPLICATIONS:

Setting Policy positions that guide the operations of the City will play a valuable role in reducing risk to levels acceptable to Council.

COUNCIL DECISION

291

MOVED CR W COOPER

SECONDED CR R ALEXANDER

That Council adopt the amended Policy – Elected Members Allowances, Expenses and Gifts contained within Attachment A.

CARRIED BY AN ABSOLUTE MAJORITY OF COUNCIL

7/0



POLICY

ELECTED MEMBERS ALLOWANCES, EXPENSES AND GIFTS



ELECTED MEMBERS ALLOWANCES, EXPENSES AND GIFTS

To outline the support that is to be provided to elected members through the payment of allowances, reimbursement of expenses incurred, insurance cover and supplies provided in accordance with the *Local Government Act 1995* while performing the official duties of office.

Adopted:	11/07/2012 #163
Last reviewed:	11/12/2013 #055 12/11/2014 #304 24/02/2016 #122
Legal Authority	Local Government Act 1995 Sections 2.7, 2.8, 2.10, 5.98, 5.98A, 5.99, 5.99A, and 5.100 Local Government (Administration) Regulations 1996 Part 8 Salaries and Allowances Act 1975 Part 7B

POLICY:

Elected members should take care to differentiate between expenditure incurred in their private capacity and expenditure necessary to fulfil their role as an elected member. Reimbursement is to be made for expenses outlined in the Policy.

1. ALLOWANCES:

1.1 Mayoral allowance

The Mayor is to receive the maximum annual local government allowance allowed under the *Salaries and Allowances Act 1975*.

1.2 Deputy Mayoral allowance

The Deputy Mayor is to receive the maximum annual local government allowance allowed under the *Salaries and Allowances Act 1975*.

1.3 Annual meeting attendance fees

The Mayor and councillors (elected members) are to receive the maximum annual local government meeting attendance fee allowed under the *Salaries and Allowances Act 1975*. This annual fee is provided on the principle that each councillor regularly attends meetings of Council and committees to which they are appointed and carry out other responsibilities of the office.

1.4 ICT allowance

The elected members are to receive the maximum annual local government information and communications technology allowance. As a minimum, elected members are to provide:

- at least one telephone access point for City and community access, and a mobile phone, inclusive of voice message recording capacity.
- a fully functioning internet connection which allows them to access emails, perform any necessary research and keep abreast of current and contentious issues in regard to their role as an elected member.
- consumables for computer equipment and internet, fax, phone, and mobile usage (such as printing cartridges, paper).

This allowance is designed to meet all Council related call costs and all other relevant telecommunication costs, including relevant hardware to use a telephone, mobile phone, and the internet.

1.5 Payments

The amount of an elected members entitlement to an annual attendance fee or annual allowance specified in this policy shall be apportioned on a pro rata basis according to the portion of a year that the person holds office as an elected member and is eligible for the relevant annual attendance fee or annual allowance. All payments will be in arrears and paid monthly.

2. INFORMATION AND COMMUNICATION EQUIPMENT

2.1 ICT equipment and office supplies

- a) The City is to make available to all elected members, for use during their term of office, a suitably equipped laptop for the conduct of Council related business, which is in line with the standard IT product the City uses within the organisation at the date of request.
- b) As well as a laptop, the City is to make available to all elected members, for use during their term of office, an Ipad and/or printer. The equipment must be in line with the standard product that the City uses within the organisation at the date of request and the elected member can choose for the Ipad to have 3G capabilities. The elected member can request a printer up to the value of \$300. This type of hardware does not relate to hardware required to meet their communication needs, such as modems, internet sticks, and handsets, as outlined in section 1.4 of this policy. A request to purchase hardware will be submitted to the Chief Executive Officer, and the purchase must be made by the City. No reimbursement to elected members will be made for this hardware. All equipment must be for Council business only.
- c) If the standard equipment provided by the City does not suit the elected member requirements, the elected member must, at their own expense, purchase the preferred equipment, and maintain the equipment that will best suit their requirements. No reimbursement can be claimed.

Notes:

Electronic equipment that is provided by the City remains the property of the local government and is to be returned by the elected member if no longer required, their term has expired and they are not re-elected, or it requires replacement.

It is expected that elected members are to make every effort to utilise their electronic equipment, in lieu of paper documents for attendance at meetings etc.

Personal computers and associated equipment that is provided by the City is to be offered to the elected member for purchase at the depreciated value of the equipment at the expiry of their term of office, or at other times as approved by the Chief Executive Officer. No Council property is to be disposed of without prior approval of the Chief Executive Officer.

2.2 Maintenance of equipment

- a) At all times during an elected member's term, the City is to provide and make provision for the ongoing maintenance of the supplied equipment referred to in clause 2.1 of this policy with all maintenance costs being met by the City. The City will not provide ongoing maintenance to equipment that has been purchased by the elected member.

- b) In the event of a malfunction of the equipment the elected member is to contact, during business hours, a Governance staff member or designated service provider, who is to coordinate the attendance of maintenance personnel.
- c) Under no circumstances should elected members undertake repairs or maintenance to City equipment without the express permission of the Chief Executive Officer.

3. REIMBURSABLE EXPENSES

3.1 Travelling expenses

Elected members are to be reimbursed for travelling expenses incurred while **driving a privately owned or leased vehicle (rather than a commercially hired vehicle) ~~their own private motor vehicle~~** in the performance of the official duties of their office, subject to:

3.1.1 Claims being related to travel to a destination from their normal place of residence or work and return in respect to the following:

- (a) Council meetings, civic functions, citizenship ceremonies or briefings called by either Council, the Mayor and/or the Chief Executive Officer;
- (b) Committees to which the elected member is appointed a delegate or in the circumstance an elected member deputising for the delegate who is unable to attend, by Council.
- (c) Meetings, training and functions scheduled by the Chief Executive Officer or Directors.
- (d) Conferences, community organisations, industry groups and local government associations to which the elected member has been appointed by Council as its delegate or a deputy to the delegate.
- (e) Functions and presentations attended in the role as an elected member or whilst deputising for the Mayor, that are supported by a copy of the relevant invitation or request for attendance.
- (f) Gatherings or events (i.e. funerals, local business or community events), approved by the Chief Executive Officer for attendance by the Mayor or the Mayor's nominated deputy as a representative of the City.
- (g) Any other occasion in the performance of an act under the express authority of Council.
- (h) Site inspections in connection with matters listed on any Council agenda (members to state the item number listed on any Council agenda along with the date and time of the visit on the claim form).
- (i) In response to a request to meet with a ratepayer/elector, but excluding contact with any relevant to the biennial elections (members to state the time and purpose of the visit and the name and address of the ratepayer/elector on the claim form).

3.1.2 Elected members are to be reimbursed travelling expenses incurred while using their own private motor vehicle in the performance of the official duties of Council. The extent to which an elected member of a local government can be reimbursed for travel costs referred to in regulation 31(1)(b) of the *Local Government (Administration) Regulations 1996* is –

- (a) if the person lives or works in the local government district or an adjoining local government district, the actual cost for the person to travel from the

person's place of residence or work to the meeting and back; or

(b) if the person does not live or work in the local government district or an adjoining local government district, the actual cost, in relation to a journey from the person's place of residence or work and back —

(i) for the person to travel from the person's place of residence or work to the meeting and back; or

(ii) if the distance travelled referred to in subparagraph (i) is more than 100 kilometres, for the person to travel from the outer boundary of an adjoining local government district to the meeting and back to that boundary.

3.1.3 All claims for reimbursement being lodged with the Governance Team on the appropriate claim form, on a monthly basis. In submitting claims for reimbursement, elected members are to detail the date of the claim, particulars of travel and nature of business, distance travelled, vehicle displacement and the total travelled in kilometres and certify the accuracy of information. This should be accompanied by supporting documentation where applicable.

3.1.4 Travel costs incurred while driving a privately owned or leased vehicle (rather than a commercially hired vehicle) are to be calculated at the same rate contained within Section 30.6 of the *Local Government Officers' (Western Australia) Interim Award 2011* ~~applicable to the reimbursement of travel costs in the same or similar circumstances under the Public Service Award 1992 issued by the Western Australian Industrial Relations Commission as at the date of this determination~~ 17 June 2015.

3.1.5 Public transport

In the event that an elected member does not have access to a private vehicle, for travel referred to above, or has a preference for public transport, the elected member may use the services of the bus and rail public transport system, expenditure for which is to be reimbursed upon completion of a travel claim form and lodgement of receipts. A taxi service is also acceptable where this is considered necessary.

3.1.6 Parking fees

Parking fees incurred as a result of travel to any occasion referred to in clause 3.1.1 of this policy are to be reimbursed upon lodgement of receipts accompanying the associated travel claim form.

- The cost of 'valet' parking is not to be reimbursed (unless authorised by the Chief Executive Officer).

3.2 Child care costs

Elected members are to receive reimbursement of the lesser of the actual cost incurred or the maximum amount allowed under the *Salaries and Allowances Act 1975* for care of children, of which they are a parent or legal guardian, whilst attending a Council meeting or a meeting of a committee of which they are a member.

4. OTHER SUPPORT/SUPPLIES/GIFTS

4.1 The City is to supply the following items to be used only in fulfilling the role of the

office of elected member :

(a) Briefcase or similar

A briefcase or similar (i.e. laptop carrying bag) is to be supplied to each elected member following their inaugural election to office.

(b) Corporate jacket

A corporate jacket is to be supplied to each elected member following their inaugural election to office.

Note: Corporate jackets and brief cases or similar are to be replaced where they are damaged to an extent to be unserviceable through reasonable wear and usage, approved by the Chief Executive Officer. The briefcase or similar and corporate jacket, may be retained by the Councillor at the expiry of the elected member's term of office.

(c) Annual diary (upon request)

A diary can be supplied to each elected member following their inaugural election to office and a new annual calendar diary can be supplied at the commencement of each calendar year.

Note: Elected members should note that any diary used by an elected member to record the scheduling or occurrence of activities related to the fulfilment of the office of -elected members is subject to the requirements of the *State Records Act 2000*.

(d) Letterhead

Reasonable quantities of personalised elected member letterhead is to be supplied and replaced on request.

Elected members are not permitted to use City of Kwinana letterhead due to legal implications associated with the use of official City stationery.

(e) Business cards

The City is to provide each elected member with a quantity of 500 colour printed business cards for relevant City business use within each term of office.

The elected member business card format is to include; photograph, name, bestowed titles and contact information.

Note: Letterheads and business cards and are to be used strictly for official Council business and are not to be used for election purposes under any circumstances.

(f) Name badges

- i. Formal (gold tone) elected member name badge.
- ii. Formal (gold tone) elected member partner name badge.
- iii. Plastic informal elected member name badge.

Note: The City is to within reason, replace on request any name badge which is lost or irreparably damaged.

(g) Filing cabinet

Upon request, a four drawer filing cabinet may be supplied to each elected member following their inaugural election to office.

(h) Other Council business related expenses

Other reimbursements for Council related expenses include: reimbursement of clothing, footwear, apparel, dry cleaning, and personal presentation, to a maximum cost to the City of \$1000 per elected member and \$2000 for the Mayor per financial year, to fulfil their role as an elected

member for attending official functions where they are formally representing the City. Where an elected member is due for election the maximum amount will be based on a pro rata amount.

4.2 Insurance

The City is to insure or provide insurance cover for elected members for:

- 4.2.1 Personal accident whilst engaged in the performance of the official duties of their office, however, the cover does not include ordinary medical expenses.
Spouses/partners of elected members are to receive the same level of cover when attending meetings, conferences or functions with the express approval of Council.
- 4.2.2 Professional indemnity for matters arising out of the performance of the official duties of their office provided the performance or exercise of the official duty is in the opinion of Council, not illegal, dishonest, against the interests of the City or otherwise in bad faith.
- 4.2.3 Public liability for matters arising out of the performance of the official duties of their office but subject to any limitations set out in the policy of insurance.
- 4.2.4 Motor vehicle at the particular time owned or driven by the elected member or driven by another person on behalf of the elected member whilst the elected member is proceeding as a member to and from any occasion while performing the functions of an elected member or as a result of an act under the express authority of Council.

4.3 Medical expenses

Elected members are to receive reimbursement of medical expenses not covered by their medical insurance fund, incurred while in the performance of the official duties of their office, upon submission of relevant receipts and medical documentation to the Chief Executive Officer and subject to such reimbursement being limited to the sum of \$500 without the prior approval of Council. This can include damage to or loss of spectacles, flu vaccine, and other aids.

4.4 Gifts from the local government

In accordance with Clause 5.100A of the *Local Government Act 1995* and *Local Government (Administration) Regulations 1996* clause 34AC gifts may only be given to elected members upon the occasion of their retirement, following the completion of at least one full four year term of office.

On the retirement of an elected member and in recognition of their years of service the following will be presented;

- i. Framed photograph;
- ii. Plaque
- iii. a gift up to the value of \$100 per year of service to a maximum of \$1000 (provided that at least one full 4 year term of office has been served).

4.5 Accompanying person on official City business

Where an elected member attends an event, for example receiving an award on behalf of the City, attending stakeholder annual dinners, in an official capacity representing the City, the payment of one accompanying person will be made, and must be approved by the Chief Executive Officer. The City will pay for up to four events per financial year for an accompanying person to attend with an elected member.

17 Urgent Business

Nil

18 Councillor Reports

18.1 Deputy Mayor Peter Feasey

Deputy Mayor Peter Feasey reported that he had attended the City of Kwinana Citizenship Ceremony.

18.2 Councillor Ruth Alexander

Councillor Ruth Alexander reported that she had attended City of Kwinana Citizenship Ceremony.

Councillor Ruth Alexander mentioned that she had attended the Kings College 30th Anniversary Celebrations which was a lovely evening and fun was had for all.

Councillor Ruth Alexander advised that she had attended the Western Australian Local Government Association (WALGA) Annual General Meeting (AGM).

Councillor Ruth Alexander advised that she had attended the WALGA Conference and that it had been very nice to see Tanya Dupagne as a presenter.

Councillor Ruth Alexander advised that she had attended the Koorliny Arts Centre 2017 Season Launch and advised that productions will include Chicago, The Witches, The City of Angels and Stepping Out.

18.3 Councillor Wendy Cooper

Councillor Wendy Cooper reported that she had attended the WALGA Conference and that the highlight presentation she had seen was from Rachel Robinson whom spent 12 months in Antarctica as a Team Leader.

Councillor Wendy Cooper reported that she had attended the Southern Metropolitan Regional Council (SMRC) Briefing.

Councillor Wendy Cooper reported that she had attended the Kwinana Industries Council (KIC) iScience Project Presentation.

18.4 Councillor Sandra Lee

Councillor Sandra Lee reported that she had attended the City of Kwinana Citizenship Ceremony.

18 COUNCILLOR REPORTS CONTINUED

18.5 Councillor Bob Thompson

Councillor Bob Thompson reported that he had attended the Citizens Advice Bureau Meeting and that it is great to work to increase services to the community.

Councillor Bob Thompson reported that he had attended the Koorliny Arts Centre 2017 Season Launch and that he is looking forward to seeing all of the productions.

19 Response to Previous Questions

Nil

20 Mayoral Announcements (without discussion)

Mayor Carol Adams reported that she had attended the South Metropolitan Tafe for the National Aborigines and Islanders Day Observance Committee (NAIDOC) Week Celebrations.

The Mayor advised that she had attended the Kings College 30th Anniversary event and that they are currently holding a water fountain fundraiser.

The Mayor mentioned that she had attended the WALGA AGM and that the two development assessment panels items were debated and contested and announced that all of the City of Kwinana amendments had been adopted.

The Mayor passed on her congratulations to Lauren Ricket in receiving the City of Kwinana Murdoch University Scholarship Award.

The Mayor reported that she had attended the We Are One Sleepout and Concert held in the City Square and advised that We Are One are raising the awareness of homelessness and that she had been very pleased to see many people with their swags taking part in the event.

The Mayor advised that she had attended the Koorliny Art Centre 2017 Season Preview.

The Mayor mentioned that she had met with three Federal Labor Members of Parliament (MP's) Josh Wilson, Madeleine King and Matt Keogh and that they discussed the Perth Freight Link and Outer Harbour and they advised that they will assist in any way they can at a Federal level.

The Mayor reported that Moorditj Koort (MJK) had a transfer of titles from Medina Aboriginal Cultural Community Inc (MACC) and MJK premises were attended by Minister Collier and Dr Robert Isaacs, Chairperson of Aboriginal Lands Trust. The Mayor added that it had been three years since discussions began for the transfer and that there is now a Memorandum of Understanding (MOU) now between MACC and MJK and commented that it is great self determination for the Kwinana Aboriginal Community.

20 MAYORAL ANNOUNCEMENTS (WITHOUT DISCUSSION)CONTINUED

The Mayor advised that she had attended a meeting with Minister Planning Donna Faragher whom was asking their opinion regarding Development Assessment Panels (DAPs) and seeking any feedback on any issues the City are having. Long term strategic issues were raised: Outer Harbour, land assembly, Western Trade Coast Protection Zone and asking for certainty and a decision for all parties. Public Open Space and recreational space review and small lot issues were also raised.

The Mayor mentioned that she went for a drive around the City with Hon Phil Edman MLC to discuss land matters pertaining to the City Revitalisation project.

21 Matters Behind Closed Doors

Nil

22 Meeting Closure

The Mayor declared the meeting closed 8:04pm.