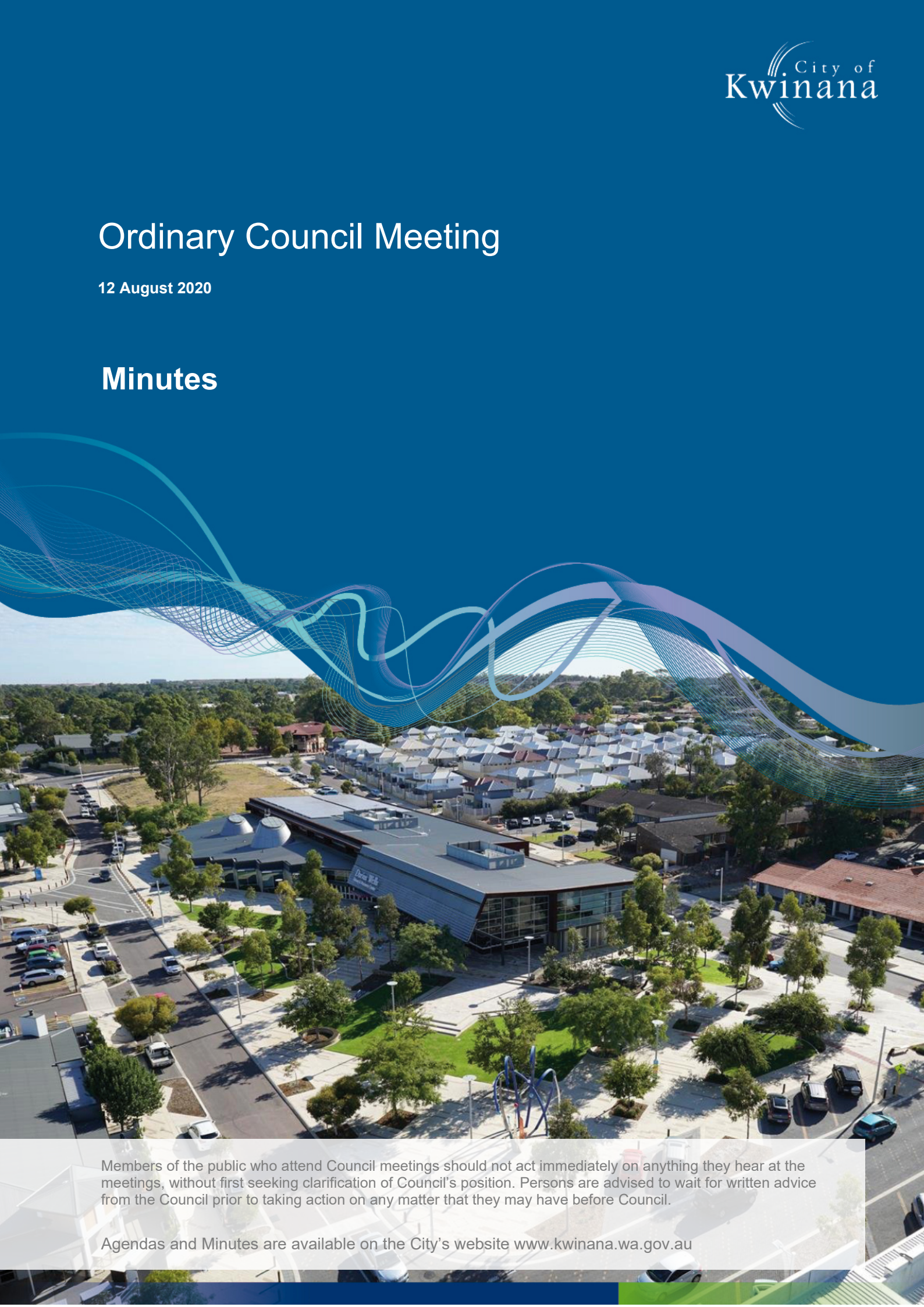


Ordinary Council Meeting

12 August 2020

Minutes

An aerial photograph of the Kwinana City Centre, showing a large modern building with a glass facade and a flat roof, surrounded by green spaces, trees, and parking areas. The background shows a residential area with houses and trees. A decorative graphic of blue and white wavy lines is overlaid on the top half of the image.

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

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Present:

MAYOR CAROL ADAMS, OAM
DEPUTY MAYOR PETER FEASEY
CR W COOPER
CR M KEARNEY
CR S LEE
CR M ROWSE
CR D WOOD
CR S WOOD

MR W JACK - Chief Executive Officer
MR D ELKINS - Director City Infrastructure / Acting Director City Business
MRS B POWELL - Director City Engagement
MRS M BELL - Director City Legal
MR T HOSSEN - Lawyer
MS A MCKENZIE - Council Administration Officer

Members of the Press 1
Members of the Public 0

1 Opening and announcement of visitors

Presiding Member declared the meeting open at 5:32pm and welcomed all in attendance.

2 Acknowledgement of country

Presiding Member read the Acknowledgement of country

"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 and we pay our respects to their Elders past and present."

3 Dedication

Councillor Merv Kearney read the dedication

"May we, the Elected Members of the City of Kwinana, have the wisdom to consider all matters before us with due consideration, integrity and respect for the Council Chamber.

May the decisions made be in good faith and always in the best interest of the greater Kwinana community that we serve."

4 Attendance, apologies, Leave(s) of absence (previously approved)

Apologies

Nil

Leave(s) of Absence (previously approved):

Nil

5 Public Question Time

Nil

6 Receiving of petitions, presentations and deputations:

6.1 Petitions:

Nil

6.2 Presentations:

Nil

6.3 Deputations:

Nil

7 Confirmation of minutes

7.1 Ordinary Meeting of Council held on 22 July 2020:

COUNCIL DECISION

218

MOVED CR P FEASEY

SECONDED CR S LEE

That the Minutes of the Ordinary Meeting of Council held on 22 July 2020 be confirmed as a true and correct record of the meeting.

CARRIED
8/0

8 Declarations of Interest (financial, proximity, impartiality – both real and perceived) by Members and City Officers

Councillor Sherilyn Wood declared an impartiality interest in item 9, Requests for leave of absence due to her brother, Councillor Dennis Wood making a request.

9 Requests for leave of absence

COUNCIL DECISION

219

MOVED CR M ROWSE

SECONDED CR P FEASEY

That Councillor Wendy Cooper be granted a leave of absence 16 January 2021 to 25 January 2021.

That Councillor Merv Kearney be granted a leave of absence from 24 August 2020 to 6 September 2020 inclusive.

That Councillor Sandra Lee be granted a leave of absence 25 September 2020 to 2 October 2020.

That Councillor Dennis Wood be granted a leave of absence from 5 September 2020 to 17 October 2020 inclusive.

**CARRIED
8/0**

10 Items brought forward for the convenience of those in the public gallery

Nil

11 Any business left over from previous meeting

Nil

12 Recommendations of committees

Nil

13 Enbloc reports:

Nil

14 Reports - Community

Nil

15 Reports – Economic

Nil

16 Reports – Natural Environment

Nil

17 Reports – Built Infrastructure

17.1 Legal Agreement – Relocation of Bertram Drainage Basin

DECLARATION OF INTEREST:

There were no declarations of interest declared.

SUMMARY:

The drainage basin in Bertram Road was constructed in 2011, as part of the Bertram Road upgrade from a single carriageway road to a dual carriageway. The Bertram Road upgrade was a Development Contribution Area 1 (DCA1) infrastructure project, jointly funded by Main Roads WA (MRWA) and developers within DCA1. At the time of construction, the capacity of the basin was compromised, due to the low soakage rates of the local soil, and the size of the available land.

In order to prevent inundation of land adjacent to the drainage basin, a temporary direct outflow into the Peel Main Drain was installed in 2014. The outflow was agreed with the Water Corporation on the basis that it would be a temporary arrangement until a permanent solution could be developed. With the need for sump capacity being related to development (originally and continuing), the upgrade of the drainage basin is included in the City of Kwinana's Local Planning Scheme 2 (LPS2) Development Contribution Plan 1 (DCP1). Accordingly, the City has been collecting funds for this project, on behalf of land developers.

In 2014, the City received the Local Structure Plans (LSP) for the development of Lot 670 Bertram Road, otherwise known as The Wedge Estate. The receipt of this structure plan was around the same time that negotiations were in progress with the owners of Lot 670 to acquire land to enlarge the drainage basin. During the review of the LSP, it was determined that, instead of enlarging the sump in its current location, a superior design outcome could be achieved through the relocation of the sump further south, to a location adjacent to the proposed Public Open Space (see Attachment A).

While the relocation of the sump does address the capacity constraint, it is primarily for the convenience of the developer of The Wedge Estate (noting that it is considered to be a superior design outcome by Officers). Accordingly, there is a need to enter into an agreement to detail the cost contributions being made by the DCP and the developer, and to commit to the provision of land, and the subsequent relinquishing of land. A formal agreement has now been negotiated by the City, with the developer, and formalised by a City engaged solicitor (at the developer's cost).

This agreement is now presented to Council for approval. Once approved and executed, the required land exchange with the developer will commence, followed by construction of the new basin and subsequent decommissioning of the existing basin.

OFFICER RECOMMENDATION:

That Council authorise the Chief Executive Officer to execute the legal agreement document for the relocation of Bertram Rd Drainage Basin, as detailed at Attachment B.

17.1 LEGAL AGREEMENT – RELOCATION OF BERTRAM DRAINAGE BASIN

DISCUSSION:

The upgrade of Bertram Road, between Kwinana Freeway and Challenger Avenue, from a rural standard single carriageway road to an urban standard dual carriageway road, was undertaken in 2012. As part of the road upgrade works, a new piped drainage system was installed along the section of Bertram Road, between McKenzie Corner and Greenham Way. The piped drainage system discharged storm water to a new drainage basin, constructed on Reserve 1421. Due to the size of available land at the time, the constructed basin did not have the required capacity.

In 2013, City Officers commenced negotiations with the then owners of Lot 670 Bertram Rd to purchase additional land from Lot 670, to enlarge the drainage sump. While the negotiations were in progress, the owners sold the property to the current owners, who intended to develop the site as a residential development. During the local structure planning phase of this development, it was proposed to relocate the drainage basin further south in Lot 670, to an area near the public open space of the new development, The Wedge Estate. This proposal was instead of enlarging the drainage basin in its current location, providing a more efficient road layout within the development. The proposal also results in improved aesthetics of Bertram Road, and an overall more efficient drainage system, through co-locating the drainage basin for Wellard Road, with the basin for the development. The developer of Lot 670 finalised the Local Structure Plan and subdivision plans with the intention that the drainage basin would be relocated further south in Lot 670, as shown at Attachment A.

Due to the constrained capacity of the drainage basin, in 2013, approval was obtained from Water Corporation to install a 150mm diameter direct outflow pipe discharging water directly into the Peel Main Drain. Approval for the installation of this pipe was on the basis that it would be a temporary measure, to be removed once the capacity issue was addressed (in this case through drainage basin relocation works).

In order to determine the cost and land requirements for the new drainage basin, the City of Kwinana engaged a Consulting Engineer to develop a concept plan for the new drainage basin. The concept design indicated that an additional 1,600 m² of land would be required to increase the capacity of the basin, with the cost to purchase the land approximately \$73,600, based on the latest land valuation of \$460,000 per hectare. The estimated cost of design and construction for relocating the basin is \$572,472. The cost of land acquisition is a DCA1 cost, being the obligation that pre-exists this agreement. The cost of construction of the new basin is a shared cost between the City, DCA1 and the developer, recognising the pre-existing need to enlarge the basin, and the convenience to the developer of relocating the basin. The details of the project funding are set out in the legal agreement included at Attachment B.

Other key terms of the agreement include that the City is required to take steps to convert Lot 1421 (i.e. the land that contains the existing basin) from a drainage reserve into a road reserve, and that the Developer is required to cede the land where the drainage pipe extension, between the existing and new drainage basin will be constructed, to the State for the purpose of a drainage reserve. These requirements will proceed following execution of the legal agreement by the City and the Developer.

17.1 LEGAL AGREEMENT – RELOCATION OF BERTRAM DRAINAGE BASIN**LEGAL/POLICY IMPLICATIONS:**

The legal implications associated with the requirements of the drainage relocation are contained in the attached legal agreement.

FINANCIAL/BUDGET IMPLICATIONS:

The estimated cost of purchasing an additional 1,600m² of land is \$ 73,600, which is a DCA1 cost. The estimated design and construction cost, to relocate the basin, is \$572,472, which will be jointly funded by the City of Kwinana, DCA1 and the Developer.

ASSET MANAGEMENT IMPLICATIONS:

Relocating the drainage basin to the south western corner of Lot 670, and integrating it with The Wedge Estate development POS, will be operationally more efficient.

ENVIRONMENTAL IMPLICATIONS:

The existing direct outflow pipe, continuously discharges nutrient rich groundwater into the Peel Main Drain. This will be removed as part of the drainage basin relocation work.

The proposed drainage basin will be designed such that it will have the capacity and the capability to remove the nutrients from the ground water and also the storm water that enters the basin prior to discharging into Peel Main Drain. This will improve the quality of the water entering Peel Harvey catchment area and therefore reduce the risk of potential water borne public health hazards.

STRATEGIC/SOCIAL IMPLICATIONS:

This proposal will support the achievement of the following outcomes and objectives detailed in the Strategic Community Plan.

| Plan | Outcome | Objective |
|--------------------------|------------------------|--|
| Strategic Community Plan | A well maintained City | 4.5 Actively improve the appearance of public areas and streetscapes throughout the City |
| Strategic Community Plan | A water-wise City | 3.5 Encourage and exercise best practice water management |

COMMUNITY ENGAGEMENT:

There are no community engagement implications as a result of this report.

17.1 LEGAL AGREEMENT – RELOCATION OF BERTRAM DRAINAGE BASIN**PUBLIC HEALTH IMPLICATIONS**

There are no direct public health implications related to this report.

RISK IMPLICATIONS:

The risk implications in relation to this proposal are as follows:









| | |
|--|--|
| Risk Event | Drainage basin is not relocated |
| Risk Theme | Inadequate environmental management |
| Risk Effect/Impact | Environment |
| Risk Assessment Context | Project |
| Consequence | Major |
| Likelihood | Almost certain |
| Rating (before treatment) | High |
| Risk Treatment in place | Avoid - remove cause of risk |
| Response to risk treatment required/in place | Endorse legal agreement to relocate drainage basin |
| Rating (after treatment) | Low |

COUNCIL DECISION**220****MOVED CR P FEASEY****SECONDED CR S WOOD**

That Council authorise the Chief Executive Officer to execute the legal agreement document for the relocation of Bertram Rd Drainage Basin, as detailed at Attachment B.

**CARRIED
8/0**



| | |
|---|----------------------------------|
|  | Study Area |
| Proposed Development Landuse | |
|  | Residential R25 |
|  | Residential R30 |
|  | Residential R40 |
|  | Road |
|  | POS |
|  | City of Kwinana - Drainage Basin |
|  | Wetland Buffer |

Data Source: Rowe Group (2015); Nearmap (2015)



Job No. J6040
 Scale: 1:4,000 @A4

0 100 200 300 400 Metres

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Byblos Holdings Pty Ltd and Springzone Nominees Pty Ltd
 Lots 670 & 1338 Bertram Rd, Wellard and Reserve No. 50672 Wellard: LWMS
Figure 8: Proposed Structure Plan

Agreement in respect of the relocation of drainage infrastructure

City of Kwinana

Wellard Management Pty Ltd



McLEODS

Barristers & Solicitors

Stirling Law Chambers | 220-222 Stirling Highway

CLAREMONT WA 6010

Tel: (08) 9383 3133 | Fax: (08) 9383 4935

Email: mcleods@mcleods.com.au

Ref: TF:KWIN 44114

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Details

Parties

City of Kwinana

of PO Box 21, Kwinana, Western Australia
(City)

Wellard Management Pty Ltd (ACN 625 645 221) atf Wellard Management Trust

of 234 Railway Parade, West Leederville Western Australia
(Developer)

Background

- A DCP1 prescribes the cost contributions payable by each landowner within DCA1 and the items of Infrastructure to be funded by DCP1.
- B The City has care, control and management of Lot 1421. Located on Lot 1421 is the Existing Drainage Basin.
- C The Developer is the registered proprietor of Lot 670 and Lot 1338 (being the **Development Site**).
- D Lot 670 is located adjacent to Lot 1421.
- E The Developer has obtained the Approval to subdivide the Development Site. The Developer proposes to give effect to the Approval in stages.
- F Condition 2 of the Approval provides as follows:
- “Arrangements being made with the City of Kwinana to the satisfaction of the Western Australian Planning Commission, for the landowner / applicant to contribute towards the costs of providing community and/or common infrastructure as established through amendment 132 and 145 (when gazetted) to the City of Kwinana Town Planning Scheme No. 2”*
- (Condition 2)**
- G The Existing Drainage Basin is undersize, and the City had sought to acquire a portion of Lot 670 to extend the Existing Drainage Basin.
- H Lot 1421 and Lot 670 are both located within DCA1, and the extension of the Existing Drainage Basin is identified as an item of Infrastructure to be funded by DCP1.
- I Rather than extending the Existing Drainage Basin, and for the purposes of giving effect to and satisfying Condition 2 in respect of the extension of the Existing Drainage Basin, the parties have agreed as follows:

- (i) the Developer will vest a portion of Lot 670 (being more particularly the New Reserve Land) in the Crown free of cost for drainage purposes;
- (ii) the City will take all necessary action to convert Lot 1421 to road reserve;
- (iii) DCP1 will purchase the Excess Land from the Developer and the Developer will be entitled to the Land Credit; and
- (iv) the Relocation Works will be completed by the City and the costs will be shared between the City, the Developer and DCP1,

on the terms and conditions of this Deed.

Agreed terms

1. Definitions

Unless otherwise required by the context or subject matter the following words have these meanings in this Deed:

Access Land means that part of Lot 670 identified with the letters (33a) easement (drainage) on Deposited Plan 419068 annexed hereto as **Annexure 1**;

Approval means the WAPC's conditional approval for the subdivision of the Development Site reference number 157027;

Business Day means a day other than a Saturday, Sunday or public holiday in Perth, Western Australia;

City's Costs is defined in **clause 4.1(1)(c)**;

City's Works means the Relocation Works the City is wholly responsible for paying for as more particularly set out in **clause 4.1(1)(c)**;

Concept Plan means the concept plan for the Relocation Works annexed hereto as **Annexure 3**;

Condition 2 is defined in Background Paragraph F;

DCP1 means the Development Contribution Plan for DCA1;

DCA1 means development contribution area 1 (Bertram, Wellard West and part of Orelia and Parmelia) as more particularly identified in LPS2;

DCP1 Costs is defined in **clause 4.1(1)(b)**;

DCP1 Works means the Relocation Works DCP1 is wholly responsible for paying for, as more particularly set out in **clause 4.1(1)(b)**;

Deed means this deed as supplemented, amended or varied from time to time;

Design Works means the design and testing portion of the Relocation Works;

Developer's Cost is defined in **clause 4.1(1)(a)**;

Developer's Works means the Relocation Works the Developer is wholly responsible for paying for as more particularly set out in **clause 4.1(1)(a)**

Development Site means Lot 1338 and Lot 670;

Excess Land means the difference in area between the New Reserve Land and Lot 1421. As at the date of this Deed, the difference in area between the New Reserve Land and Lot 1421 is 1,600 m². The exact area of the Excess Land will be determined once the Deposited Plan vesting the New Reserve Land in the Crown has been prepared and lodged at Landgate;

Existing Drainage Basin means the drainage basin located on Lot 1421;

Final Stage Land means that part of Lot 670 identified as proposed Lot 9002 on Deposited Plan 419068 annexed hereto as **Annexure 1**;

GST has the meaning given to that term in the GST Act and, for the avoidance of doubt, includes any notional GST payable under the GST Act (including under Division 177 of the GST Act).

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

Infrastructure is defined in LPS 2;

Land Credit is defined in **clause 2.4**;

Lot 1338 means Lot 1338 on Deposited Plan 184473 being the whole of the land comprised in Certificate of Title Volume 1636 Folio 857;

Lot 1421 means Reserve 50672, Lot 1421 on Deposited Plan 156437 being the whole of the land comprised in Crown Land Title LR3000 Folio 657;

Lot 670 means Lot 670 on Deposited Plan 66358 being the whole of the land comprised in Certificate of Title Volume 2802 Folio 877;

LPS 2 means the City of Kwinana's Local Planning Scheme No. 2;

New Reserve Land means the location of the new drainage basin land, located on a portion of Lot 670, as more particularly identified as "Reserve for Recreation and Drainage" and being proposed Lot 8001 on Deposited Plan 419068 annexed hereto as **Annexure 1** and comprising 2,191m². ;

Pipework Extension has the meaning given to that term in **clause 4.1(1)(c)(iii)**;

Preliminaries means the Relocation Works costs which are not directly referable to the City Works, the DCP1 Works or the Developer Works, and include (without limitation) the following:

- (a) consultant and professional fees;
- (b) approvals from the Water Corporation and the Department of Water and Environmental Regulation;
- (c) design and drafting;
- (d) survey;
- (e) project management;
- (f) testing;
- (g) mobilisation/demobilisation;
- (h) as constructed survey;
- (i) insurances;
- (j) construction Industry Training Fund Levy (0.2% of Contract Sum);
- (k) liaison and coordination of service bodies for service installation;
- (l) building licences for walls and structures;

- (m) occupation health and safety;
- (n) safety management plan; and
- (o) land valuation;

Preliminary Costings means the preliminary costings for the Relocation Works, annexed hereto as **Annexure 4**;

Relocation Costs means the actual costs of carrying out the Relocation Works, an indicative amount of which is set out in the Preliminary Costings;

Relocation Works means any works (including design, survey, construction and project management) necessary to:

- (a) remove the existing drainage infrastructure from Lot 1421 (including without limitation removal of the headwall);
- (b) environmentally remediate Lot 1421;
- (c) construct new drainage infrastructure at the New Reserve Land, including the Pipework Extension; and
- (d) fill the Existing Drainage Basin and compact in layers to subgrade level for future road purposes,

and as also more particularly described in **clause 4.1**;

Urban Water Management Plan means the document entitled ‘Lot 670 & 1388 Bertram Road, Wellard Urban Water Management Plan’ revision March 2019, prepared by hyd2o Hydrology as amended or supplemented from time to time;

WAPC means the Western Australian Planning Commission.

2. Ceding of New Reserve Land & Existing Drainage Basin Conversion

2.1 Ceding of New Reserve Land

- (1) In consideration of the City complying with **clause 2.2**, the Developer covenants and agrees with the City that it will at its cost and expense, and to the reasonable satisfaction of the City cede, pursuant to section 152 of the *Planning and Development Act 2005*, the New Reserve Land for drainage purposes.
- (2) The parties acknowledge and agree that:
 - (a) the Developer has obtained the Approval;
 - (b) the Developer may amalgamate the titles to Lot 670 and Lot 1338 to create the Development Site and may further subdivide the Development Site as part of its staged delivery of the subdivision prior to the creation and ceding of the New Reserve Land;
 - (c) the City must promptly do all things necessary to facilitate the amalgamation and or further subdivision of the titles comprising the Development Site, including, if required, and subject to the Developer not being in default of its obligations under this Deed, withdrawing, at the Developer’s cost, any caveat lodged pursuant to this Deed

(provided that the City may re-lodge a caveat over part of the Development Site comprising the New Reserve Land following amalgamation and / or subdivision).

- (3) In order to effect the ceding of the New Reserve Land, the Developer acknowledges and agrees that it must do all things reasonably necessary to cede the New Reserve Land, which will include without limitation the following:
- (a) compliance at its expense with, and clearance of, all WAPC conditions of the Approval relevant to the New Reserve Land;
 - (b) lodgement with Landgate of a deposited plan for the subdivision (or stage in the subdivision) depicting the New Reserve Land as a reserve for drainage purposes; and
 - (c) preparation and lodgement at Landgate of an Application for New Title and all other documents (if any) reasonably necessary to excise the New Reserve Land from Lot 670 (or if amalgamated with Lot 1338, then from the Development Site on any part thereof) and to vest the New Reserve Land in the Crown for drainage purposes.

2.2 Conversion of Existing Drainage Basin to Road Reserve

Subject to and conditional upon the Developer complying with **clause 2.1**, the City covenants and agrees with the Developer that the City will, at its cost (except to the extent the Developer is liable for those costs in accordance with clause 4.1(1)(a)) use its best endeavours and undertake all necessary action for Lot 1421 to be converted into a road reserve (**Reserve Conversion**).

2.3 Timing

- (1) Subject to paragraph (2) below, the City and the Developer acknowledge and agree that compliance with **clause 2.1** and **clause 2.2** is intended to occur as soon as possible after execution of this Deed, and in any event within 18 months of the date of this Deed.
- (2) Notwithstanding paragraph (1) above, the Developer acknowledges and agrees that the Reserve Conversion is conditional upon the ceding of the New Reserve Land and the City will not be required to complete the Reserve Conversion until such time as the New Reserve Land has been ceded.

2.4 Developer's entitlement to credit for Excess Land

The parties acknowledge and agree that upon ceding of the New Reserve Land, the Developer will be entitled to a credit for the Excess Land calculated at the time of ceding in accordance with the provisions of the Council adopted cost apportionment schedule for DCP1 (**Land Credit**). For information purposes only, if the Excess Land was ceded at the time of execution of this Deed, the Developer would be entitled to a credit of \$86,400 (\$1,600m² based on \$540,000 per hectare).

2.5 City may acquire New Reserve Land in the event of default

- (1) In the event that the Developer defaults in ceding the New Reserve Land within the time specified in **clause 2.3**, the City may upon written notice acquire the New Reserve Land from the Developer, pursuant to the provisions of section 168 of the *Land Administration Act 1997* and/or the provisions of LPS 2, and the Developer must sign any document, and take all such reasonable action, for the New Drainage Land to be acquired and excised from Lot 670 (or the relevant balance lot created on subdivision of the Development Site).
- (2) If the City acquires the New Reserve Land pursuant to **clause 2.5(1)**, the New Reserve Land will be acquired free of cost from the Developer and no compensation is payable. However, the Developer will be entitled to a credit for the Excess Reserve Land in accordance with the provisions of **clause 2.4**.

- (3) In the event the City exercises its rights pursuant to this clause, the Developer acknowledges and agrees that it has by execution of this Deed, consented to the Minister for Lands taking the New Reserve Land pursuant to the provisions of section 168 of the *Land Administration Act 1997*.

3. Relocation Works

3.1 City to undertake Relocation Works

- (1) The parties acknowledge and agree that the City will manage and supervise the Relocation Works (including the Design Works) in accordance with its normal procurement processes.
- (2) The parties acknowledge that in respect of the Relocation Works, the City anticipates that the Design Works will be completed in the 2020/2021 financial year, and the construction portion of the works will be completed in the 2021.

3.2 Developer to provide assistance

The Developer must support, assist and do everything reasonably necessary or which the City reasonably asks it to do to help the City:

- (a) obtain all necessary approvals and consents for the Relocation Works; and
- (b) complete the Relocations Works,

as quickly and cost effectively as possible.

3.3 Designs

- (1) The parties acknowledge and agree that the detailed designs for the Relocation Works will be based on the existing Concept Plan prepared by Calibre Consulting Engineers and the sump levels will be based on those set out in the Urban Water Management Plan.
- (2) The City agrees to provide the Developer with copies of the final designs for the Relocation Works promptly once these have been prepared, and any other information reasonably required by the Developer in respect of the Relocation Works upon request.

3.4 Access Rights

From the date of this Deed, the Developer must provide to the City and its contractors unfettered access (on a non-exclusive basis) at all reasonable times (subject to the City providing the Developer with prior written notice) to:

- (a) the New Reserve Land for the purpose of the Relocation Works (which includes the Design Works and similar such preliminary works) and maintenance of the New Reserve Land following completion of the Relocation Works; and
- (b) the Access Land for the purpose of installation and maintenance of drainage pipe and accessing the New Reserve Land.

3.5 City may acquire Access Land or Easement

- (1) The parties acknowledge and agree that it is intended that the Access Land will be vested in the Crown as a road reserve as part of the Developer's subdivision of the Development Site.
- (2) If the City requires its rights to the Access Land to be formalised prior to the Developer vesting of the Access Land, the City may upon written notice to the Developer:

- (a) acquire the Access Land from the Developer for the purpose of a road reserve, pursuant to the provisions of section 168 of the *Land Administration Act 1997* and/or the provisions of LPS 2, and the Developer must sign any document, and take all such reasonable action, for the Access Land to be vested as a road reserve; or
 - (b) require the Developer to grant it an easement for access purposes pursuant to section 195 of the *Land Administration Act 1997* on terms reasonably acceptable to the City (acting reasonably) (**Access Easement**), unless an easement for access purposes has previously been granted under section 167 of the *Planning and Development Act 2005*. The Developer must sign any document, and take all such reasonable action, for the Access Easement to be granted and registered on the certificate of title to the part of the Development Site comprising the Access Land from time to time).
- (3) If the City acquires the Access Land pursuant to **clause 2.5(1)** or is granted the Access Easement, the acquisition or the grant will be free of cost and no compensation is payable to the Developer for such acquisition or grant.
- (4) In the event the City exercises its rights pursuant to this clause, the Developer acknowledges and agrees that it has by execution of this Deed, consented to the Minister for Lands taking the New Reserve Land pursuant to the provisions of section 168 of the *Land Administration Act 1997*.

4. Cost of the Relocation Works

4.1 Cost arrangements

- (1) The parties covenant and agree that:
- (a) the Developer is responsible for costs associated with:
 - (i) filling of the existing sump and compacting in layers to subgrade level of Lot 1421 for future road purposes, which will include without limitation clearing, grubbing and disposal off-site, proof rolling of fill areas, import and compact fill sand and trimming, shaping and compacting and finishing to subgrade level,
 - (ii) any other costs arising due to environmental contamination affecting the New Reserve Land and/or Access Land that affect the scope of the Relocation Works (if required) except to the extent that those costs are DCA1 Costs or City Costs pursuant to **clauses 4.1(1)(b)(ii)(M)** and **4.1(1)(c)(iv)** respectively.

(Developer Costs)
 - (b) the DCA1 is responsible for costs associated:
 - (i) in removing the existing drainage infrastructure from Lot 1421, which will include without limitation the removal and disposal of the headwall, PVC pipe connection and chainmesh fencing and gate;
 - (ii) with the new drainage infrastructure on the New Reserve Land, excluding the drainage pipe extension between the existing sump to the new sump, which will include without limitation:
 - (A) demolition, removal of trees, stripping and removing all associated materials from the New Reserve Land site. For the avoidance of doubt, if the new drainage sump is constructed prior to the adjoining public open space site the Developer agrees that the City may stockpile materials on the adjoining public open space site in areas approved by the Developer acting reasonably having regard to the Developer's proposed staged delivery of

the public open space and provided that the City reinstates the public open space site to the condition that existed prior to the stockpiling of materials

- (B) all New Reserve Land earthworks, including removing any excess materials from the New Reserve Land;
- (C) importing and compacting clay liner;
- (D) importing and compacting fill sand for extra required in existing basin;
- (E) final trimming and shaping;
- (F) supplying and installing 1,800 chainmesh fence with barb wire and gate;
- (G) supplying and installing 150 PVC Subsoil Drain, flushing point and 150 PVC SWP;
- (H) supplying and installing 150 junction pits, grated pits and outlet pits
- (I) supplying and planting shrubs and sedges;
- (J) constructing spillway with type B outlet to Peel Main Drain;
- (K) constructing rock pitching and permeable Rock Inlet Dissipator;
- (L) supplying and placing filter sand, pea gravel and NUA;
- (M) any required geotechnical and acid sulphate soil investigations management and remediation comprising excavation and removal of rock and other unsuitable natural material and remediation of acid sulphate soils of the New Reserve Land; and
- (N) landscaping of the New Reserve Land.

(DCP1 Costs);

- (c) the City is responsible for the costs associated with:
 - (i) the title conversion costs associated with converting Lot 1421 to a road reserve;
 - (ii) the environmental remediation of Lot 1421; and
 - (iii) the drainage pipe extension between the existing sump on Lot 1421 to the new sump on the New Reserve Land, which will include without limitation the supply and installation of 525 diameter concrete pipe between existing and new sumps, and connection of new 525 diameter pipe to the existing junction pit and all associated excavation, earthworks and reinstatement (**Pipework Extension**),
 - (iv) any required geotechnical, dewatering and acid sulphate soil investigations, management and remediation comprising excavation and removal of rock and other unsuitable natural material and remediation of acid sulphate soils on Lot 1421;

(City Costs);

- (d) Preliminaries will be proportionally split between the City, the DCA1 and the Developer based on each entity's proportionate responsibility of the final cost of the Relocation Works. For illustration purposes only, if the total cost of the Relocation

Works is \$500,000, the cost of the Preliminaries is \$80,000 and the cost of the City's Works is \$50,000, the City's proportionate responsibility for the Preliminaries will be \$8,000 (namely 10% of \$80,000).

- (2) The parties acknowledge that the Preliminary Costings have been annexed for information purposes only, and each entity's final share of the Relocation Costs may be more or less than the amounts shown in the Preliminary Costings.
- (3) To the extent that any aspect of the Preliminary Costings for which the Developer is liable is likely to be exceeded, the City must consult with the Developer, including providing details of the reasons for the additional costs and must obtain the Developer's written approval prior to incurring costs in excess of the Preliminary Costings (which approval is not to be unreasonably withheld).

4.2 Crediting of Land Credit

- (1) The parties acknowledge that, upon ceding of the New Reserve Land, the Land Credit will be credited to the Developer's DCP1 account.
- (2) The parties agree that any credit in the Developer's DCP1 account will be used by the Developer to off-set any future or current cost contributions payable by the Developer in DCA1.
- (3) Any balance owed to the Developer on completion of the Developer's subdivision of the Development Site will be paid when there is sufficient funds available within the relevant DCA1 reserve account.

4.3 Payment of Developer's share

- (1) The Developer will be liable for the Developer's Costs and the Developer's share of the Preliminaries and such costs will be payable to the City within 28 days of receipt of a tax invoice from the City for such costs. The City agrees to issue tax invoices to the Developer:
 - (a) upon completion of the Design Works; and
 - (b) upon completion of the remainder of the Relocation Works.

5. Security for Performance

5.1 Charge & Caveat

The Developer charges its interest in the New Reserve Land, the Access Land and the Final Stage Land in favour of the City with the performance of its obligations undertaken hereunder and with the payment of all or any monies payable or which may become payable by the Developer to the City, and for the purpose of securing the same, authorises the City to lodge an absolute caveat at Landgate against the certificate of titles to the New Reserve Land, the Access Land, the Final Stage Land or any part thereof in order to protect the rights and interests of the City under this Deed.

5.2 Disposal Restrictions

- (1) The Developer must not transfer, mortgage, lease, charge, assign or otherwise dispose of or encumber the New Reserve Land, the Access Land or the Final Stage Land or any part or interest therein to any person without the prior written consent of the City, which consent shall not be withheld or delayed if:
 - (a) the Developer is not in default of any of their obligations pursuant to this Deed; and

- (b) the person to whom any such right or interest in the New Reserve Land and/or Access Land and/or Final Stage Land is to be granted has first executed a Deed of Covenant (or in the case of a mortgagee an undertaking satisfactory to the City in terms of the undertaking annexed hereto as **Annexure 2**) to be prepared by the City's solicitors at the cost of the Developer whereby that person covenants to observe and perform such of the covenants conditions and stipulations herein contained (including this covenant) as the City shall require, as if that person had been a party to this Deed.
- (2) Notwithstanding paragraph (1), the parties acknowledge and agree that the City's prior written consent is not required to the pre-sale by the Developer of any residential lot to be created from the subdivision of the Development Site.

5.3 Withdrawal of Caveat

Provided that the Developer is not in default of any of its obligations pursuant to this Deed, the City covenants and agrees with the Developer that the City will at the written request of the Developer and at the Developer's cost provide it with a duly executed withdrawal of any caveat lodged pursuant to the terms of this Deed within a reasonable period of time:

- (a) to enable the registration of a transfer, mortgage, lease, charge or other dealing of New Reserve Land and/or the Access Land and/or Final Stage Land provided that:
 - (i) the provisions of **clause 5.2** have been satisfied; and
 - (ii) the City is entitled to re-lodge the caveat following the registration of such mortgage, transfer, charge or other encumbrance; and
- (b) to the extent the caveat is lodged against the New Reserve Land and the Access Land, upon vesting of the New Reserve Land and the Access Land (or alternatively the grant of an easement); and
- (c) to the extent the caveat is lodged against the Final Stage Land, upon the payment of the tax invoices referred to in clause 4.3(1) unless otherwise agreed between the parties.

6. Disputes

6.1 Disputes

- (1) If a dispute arises between the parties (**Dispute**):
- (a) they must:
 - (i) in good faith, try to resolve the Dispute in the way set out in this clause; and
 - (ii) not start legal proceedings until they have exhausted the dispute resolution process in this clause.
 - (b) any party may, by giving a Dispute Notice, to the other party require them to meet (**Dispute Meeting**) to try to resolve the Dispute.
- (2) A Dispute Notice must include full particulars of the Dispute and the reasons for it.

6.2 Parties must negotiate

During the period of 20 Business Days after delivery of the Dispute Notice, or any longer period agreed in writing by the parties (**Initial Period**), each of the parties must use its reasonable endeavours and act in good faith to resolve the Dispute by discussion and negotiation.

6.3 Appointment of Expert

- (1) If the Dispute is not resolved at the Dispute Meeting, the parties must, at that Dispute Meeting, try to agree on the appointment of an expert (**Expert**) to resolve the Dispute.
- (2) The Expert must be, if the Dispute is:
 - (a) primarily an accounting matter, an independent practising accountant of not less than 10 years standing;
 - (b) primarily a legal matter, a practising lawyer of not less than 10 years standing;
 - (c) primarily a valuation matter, a valuer with not less than 10 years' experience in valuation of similar assets; or
 - (d) any other matter:
 - (i) an independent person, agreed on between the parties; and
 - (ii) failing agreement nominated by the:
 - (A) President for the time being of the Branch of the Institute of Chartered Accountants of Western Australia in the case of any matter contemplated by **clause 6.3(2)(a)**;
 - (B) President for the time being of the Law Society of Western Australia in the case of any matter contemplated by **clause 6.3(2)(b)**;
 - (C) President for the time being of the Division of the Australian Property Institute of Western Australia in the case of any matter contemplated by **clause 6.3(2)(c)**; and
 - (iii) if the parties cannot agree whether the question in issue falls under **clause 6.3(2)(a)**, **6.3(2)(b)** or **6.3(2)(c)**, the Expert must be nominated by the President for the time being of the Law Society of Western Australia.
- (3) An Expert appointed under this clause must act as an expert and not as an arbitrator.

6.4 Expert's procedure

In relation to the resolution of a Dispute by an Expert appointed under this clause:

- (a) the Expert must determine the procedure for resolving the Dispute, having regard to the nature of the Dispute;
- (b) a party may make written submissions to the Expert in relation to the Dispute; and
- (c) the parties must use their best efforts to make available to the Expert all information that is relevant to the Dispute and which the Expert reasonably requires in order to resolve the Dispute.

6.5 Costs of Dispute resolution

- (1) Costs associated with the provision of services by the Expert under this clause will be borne equally by the parties.
- (2) Each party must pay its own costs and disbursements in relation to the resolution of the Dispute.

6.6 Obligation to continue performance

The parties must continue performing their obligations under this document while the Dispute is being resolved.

6.7 No court proceedings or arbitration

Unless a party has first complied with this clause the party must not commence court proceedings or arbitration relating to a Dispute arising out of this document except where that party seeks urgent interlocutory relief.

6.8 Legal Proceedings

Nothing in **clause 6.7** prejudices the right of a party to bring legal proceedings to seek urgent injunctive or declaratory relief in respect of any Dispute.

6.9 Dispute provisions of LPS 2 prevails

The parties agree that in the event the dispute provisions set out in this clause, are inconsistent with the dispute provisions set out in the LPS 2 for a Dispute the dispute provisions set out in LPS 2 will prevail and the Disputed Matter will be determined in accordance with the LPS 2 provisions.

7. GST

7.1 Interpretation

In this clause 7.1, a word or expression defined in the GST Act which is not otherwise defined in this Deed has the meaning given to it in that Act.

7.2 GST generally

The parties acknowledge that GST is not applicable on cash or in-kind contributions paid by the Developer to the City.

7.3 GST gross up

Except to the extent that clause 7.2 applies, any other consideration provided under this Deed is exclusive of GST unless it is specifically expressed to be GST inclusive. If a party (**Supplier**) makes a taxable supply to another party (**Recipient**) under or in connection with this Deed, the Recipient must pay the Supplier an additional amount equal to the GST payable on the supply (unless the consideration for the taxable supply was specified to include GST). The additional amount must be paid by the Recipient by the later of:

- (a) the date when any consideration for the taxable supply is first paid or provided; and
- (b) the date when the Supplier issues a tax invoice to the Recipient.

7.4 Adjustment events

If an adjustment event varies the amount of GST payable by a Supplier under this deed, the Supplier must adjust the amount payable by the Recipient to take account of the adjustment event. Any resulting payment must be paid by the Supplier to the Recipient, or the Recipient to the Supplier (as appropriate) within 10 business days of the Supplier becoming aware of the adjustment event. Any payment under this clause is to be treated as an increase or decrease of the additional amount payable under clause 7.3.

7.5 Reimbursements

Subject to an express provision in this Deed to the contrary, any payment, reimbursement or indemnity required to be made to a party (the **Payee**) under this Deed which is calculated by reference to an amount paid or payable by the Payee to a third party (**Outgoing**) will be calculated by reference to that Outgoing inclusive of GST, less the amount of any input tax credit which the Payee (or the representative member of a GST group of which the Payee is a member) is entitled to claim on that Outgoing.

7.6 Separate supply

If part of a supply is a separate supply under GST law, that part is a separate supply for the purpose of this clause.

7.7 Clause survives termination

This clause 7 will survive the termination of this Deed by any party.

8. General Provisions

8.1 Outstanding amounts

The City and the Developer covenant and agree that if any amount payable by:

- (a) the Developer to the City; or
- (b) the City to the Developer,

pursuant to the terms of the document is unpaid for 28 days after becoming due, such amount will be a liquidated debt recoverable by the party owed the amount in a court of competent jurisdiction.

8.2 Supplemental to LPS 2

The parties agree that this Deed is supplemental to the provisions of LPS 2 (or any replacement local planning scheme in force) and further agree that notwithstanding any term of this Deed the parties' rights and powers pursuant to LPS 2 are preserved.

8.3 No fetter

Notwithstanding any other provision of this Deed, the Developer acknowledges that the City is a local government established by the *Local Government Act 1995*, and in that capacity, the City will be obliged to comply with statutory obligations imposed by law and the City will not be taken to be in default under this Deed by performing its statutory obligations or exercising its statutory discretions, nor shall any provision of this Deed fetter the City in performing its statutory obligations or exercising any discretion under any law.

8.4 Costs

The Developer shall pay the costs of and incidental to:

- (a) the preparation, execution and stamping of this Deed and all duties hereon; and
- (b) the preparation and lodgement of the caveat referred to in this Deed and any withdrawal or withdrawals thereof and all fees thereon respectively.

8.5 Notices

Any communication under or in connection with this Deed:

- (a) must be in writing;
- (b) must be addressed in the manner specified in **Item 1** of the Schedule;
- (c) must be signed by the party making the communication or on its behalf by the solicitor for, or by any attorney, director, secretary, or authorised agent or officer of, any party;
- (d) must be delivered or posted by prepaid post to the address, or sent by email to the email address of the addressee, in accordance with **clause 8.5(b)** of this Deed;
- (e) will be deemed to be given or made:
 - (i) if by personal delivery, when delivered;
 - (ii) if by leaving the Notice at an address specified in **clause 8.5(b)** of this Deed, when left at that address unless the time of leaving the Notice is not on a Business Day or after 5pm on a Business Day, in which case it will be deemed to be given or made on the next following Business Day;
 - (iii) if by post, on the second Business Day following the date of posting of the Notice to an address specified in **clause 8.5(b)** of this Deed; and
 - (iv) if by email, when sent to a in the address specified in **Item 1** of this Deed unless the time of sending is not on a Business Day or after 5 pm on a Business Day, in which case it will be deemed to be given or made on the next following Business Day.

8.6 Variation

A variation to this Deed must be in writing and signed by the parties.

8.7 Further assurances

Each party must execute and deliver all such documents, instruments and writings and must do and must procure to be done all such acts and things as may be necessary or desirable to implement and give full effect to the provisions and purposes of this Deed.

8.8 Severance

If any part of this Deed is, or becomes, void or unenforceable that part is or will be, severed from this Deed to the intent that all parts that are not, or do not become, void or unenforceable remain in full force and effect and are unaffected by that severance.

8.9 Waiver

The parties mutually covenant and agree that:

- (a) no right under this Deed is waived or deemed to be waived except by notice in writing signed by the party waiving the right;
- (b) a waiver by one party under **clause 8.9(a)** of this Deed does not prejudice its rights in respect of any subsequent breach of this Deed by the other party; and
- (c) a party does not waive its rights under this Deed because it grants an extension or forbearance to the other party.

8.10 Applicable law

This Deed shall be governed by the laws of the State of Western Australia, and where applicable the Commonwealth of Australia.

8.11 Interpretation

In this Deed, unless the context otherwise requires:

- (a) headings, underlines and numbering do not affect the interpretation or construction of this Deed;
- (b) words importing the singular include the plural and vice versa;
- (c) words importing a gender include any gender;
- (d) an expression importing a natural person includes any company, partnership, joint venture, association, corporation or other body corporate;
- (e) references to parts, clauses, parties, annexures, exhibits and schedules are references to parts and clauses of, and parties, annexures, exhibits and schedules to, this Deed;
- (f) a reference to any statute, regulation, proclamation, ordinance or local law includes all statutes, regulations, proclamations, ordinances or local law varying, consolidating or replacing them, and a reference to a statute includes all regulations, proclamations, ordinances and local laws issued under that statute;
- (g) no rule of construction shall apply to the disadvantage of a party on the basis that that party was responsible for the preparation of this Deed or any part of it;
- (h) a reference to any thing (including any real property) or any amount is a reference to the whole and each part of it;
- (i) reference to the parties includes their personal representatives, successors and lawful assigns;
- (j) where a reference to a party includes more than one person the rights and obligations of those persons shall be joint and several; and
- (k) the Schedule and Annexures (if any) form part of this deed.

Schedule

Item 1 Notices

Developer

Address - 234 Railway Parade, West Leederville, WA, 6007

Attention - John Wroth

Email - john.wroth@mgroup.com.au

City:

Address - City of Kwinana
PO Box 21
KWINANA WA 6966

Attention - Chief Executive Officer

Email - admin@kwinana.wa.gov.au

Signing page

EXECUTED by the parties as a Deed

2020

EXECUTED BY WELLARD MANAGEMENT)
PTY LTD ACN 625 645 221 atf Wellard)
Development Trust pursuant to section 127 of the)
Corporations Act:

Name of Director

Signature of Director

Name of Director/Secretary

Signature of Director/Secretary

(Delete whichever designation is incorrect)

THE COMMON SEAL of the CITY OF)
KWINANA was hereunto affixed in the)
presence of:)

CHIEF EXECUTIVE OFFICER

(PRINT FULL NAME)

MAYOR

(PRINT FULL NAME)

Annexure 1 – Deposited Plan 419068

UNLOGGED VERSION

UNLOGGED VERSION

UNLOGGED VERSION

DRAFT
ALL AREAS AND DIMENSIONS
ARE SUBJECT TO FINAL SURVEY
AND WAPC APPROVAL

| NO. | DESCRIPTION | DATE |
|-----|---------------------------|------------|
| A | APPROVED FOR FINAL SURVEY | 11/07/2018 |
| B | APPROVED FOR DEPOSIT | 11/07/2018 |
| C | APPROVED FOR DEPOSIT | 11/07/2018 |
| D | APPROVED FOR DEPOSIT | 11/07/2018 |
| E | APPROVED FOR DEPOSIT | 11/07/2018 |

INTERESTS AND NOTIFICATIONS

| DATE | PROVIDER | PROVIDER'S INTEREST | DATE | INTEREST | NOTIFICATIONS |
|------------|--|---------------------|------------|----------|---------------|
| 11/07/2018 | WESTERN AUSTRALIAN PLANNING COMMISSION | PLANNING | 11/07/2018 | PLANNING | PLANNING |
| 11/07/2018 | WESTERN AUSTRALIAN PLANNING COMMISSION | PLANNING | 11/07/2018 | PLANNING | PLANNING |
| 11/07/2018 | WESTERN AUSTRALIAN PLANNING COMMISSION | PLANNING | 11/07/2018 | PLANNING | PLANNING |
| 11/07/2018 | WESTERN AUSTRALIAN PLANNING COMMISSION | PLANNING | 11/07/2018 | PLANNING | PLANNING |
| 11/07/2018 | WESTERN AUSTRALIAN PLANNING COMMISSION | PLANNING | 11/07/2018 | PLANNING | PLANNING |

FIELD RECORD

DATE: 11/07/2018

TIME: 10:00 AM

LOCATION: 419068

PROJECT: 419068

SCALE: 1:1000

ALL DIMENSIONS ARE IN METRES

UNLOGGED VERSION

DEPOSITED PLAN

419068

SHEET 1 OF 1 SHEETS

THIS SHEET SHEETS 419068.1

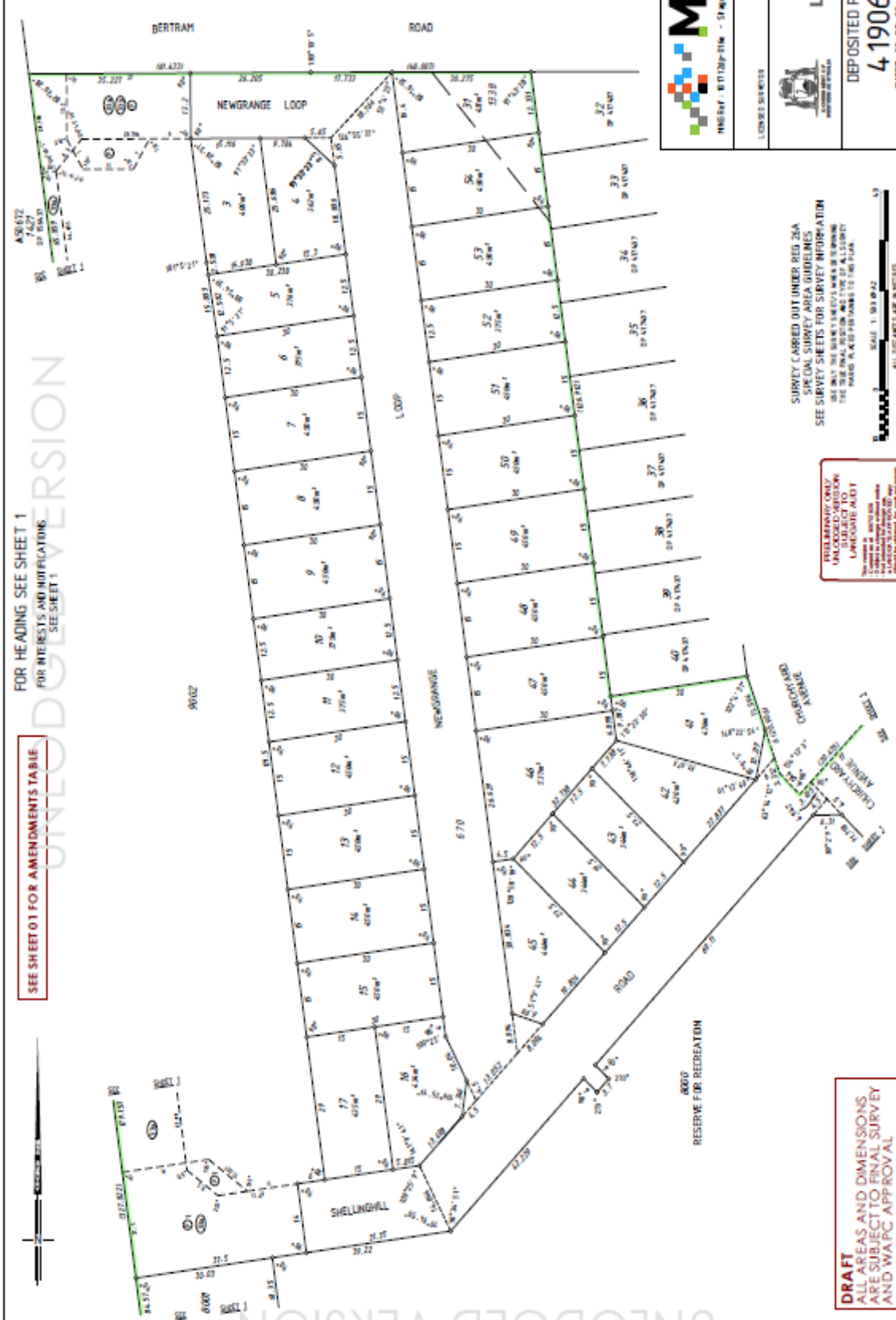
Landgate

UNLODGED VERSION

UNLODGED VERSION

FOR HEADING SEE SHEET 1
FOR INTERESTS AND NOTIFICATIONS
SEE SHEET 1

SEE SHEET 01 FOR AMENDMENTS TABLE



CONTRACT NUMBER: DATE:



DEPOSITED PLAN
4 19068
SHEET 02 OF 02 SHEETS
VERSION 1

SURVEY CARRIED OUT UNDER REG 24A
OF LOCAL SURVEY AREA GUIDELINES
SEE SURVEY SHEETS FOR SURVEY INFORMATION
THE TRUE FINAL POSITION WILL NOT BE FINAL UNTIL
MADE PLANNED FOR THE PLAN.

PROLEGATORY ONLY
UNLODGED VERSION
LANDGATE ADULT
This plan is subject to:
1. The Survey Act 1988
2. The Survey Regulations 1988
3. The Survey Act 1988 (as amended)
4. The Survey Regulations 1988 (as amended)
5. The Survey Act 1988 (as amended)
6. The Survey Regulations 1988 (as amended)

DRAFT
ALL AREAS AND DIMENSIONS
ARE SUBJECT TO FINAL SURVEY
AND WA/PC APPROVAL

HELD BY LANDGATE IN DIGITAL FORMAT ONLY

FOR HEADING SEE SHEET 1

UNLOGGED VERSION

PRELIMINARY ONLY
UNLOGGED VERSION
NOT FOR CONSTRUCTION
LANDGATE.MDOT
This drawing is unreviewed
and subject to change without notice.
It is provided for information only.
Landgate is not responsible for such performance.

UNLOGGED VERSION

THIS SURVEY SHEET WILL BE
REPLACED BY THE SURVEY DATA

UNLOGGED VERSION



DEPOSITED PLAN
4 19068
SURVEY SHEET

UNLOGGED VERSION
HELD BY LANDGATE IN DIGITAL FORMAT ONLY

Annexure 2 - Letter of Undertaking

[on Mortgagee's letterhead]

[date]

Chief Executive Officer
City of Kwinana
P.O. Box 21
KWINANA

Dear Madam

Letter to Undertaking

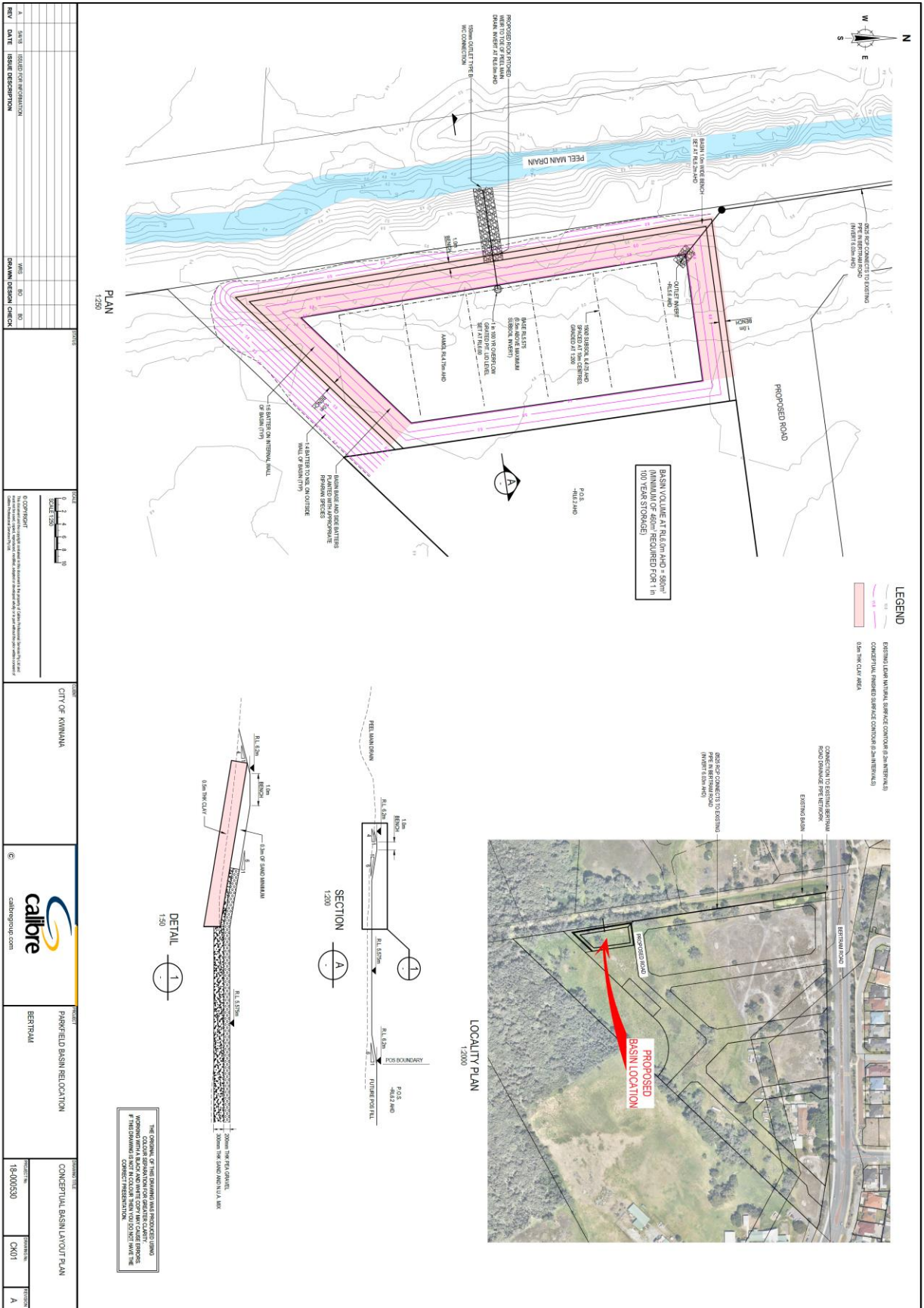
[**Mortgagee**] has perused a copy of the Deed between Wellard Management Pty Ltd and the City of Kwinana (**Deed**) and hereby undertakes that in the event that this institution is ever in a position to exercise its rights pursuant to its Mortgage to deal with [insert relevant land details] or any part thereof (**Land**) whether by way of entering into possession or in receipt of rent or profits thereof, the appointment of a receiver of the income thereof, the foreclosure of the Mortgage, the ejection of the Mortgagor, the carrying on of any business on the Land, or the managing or controlling of the Land, this institution shall, as soon as practicable thereafter, furnish to the City of Kwinana an agreement or covenant promising to perform and observe the covenants, conditions and stipulations contained in the Deed, as if it were the owner named in the Deed.

Further, the [**Mortgagee**] will not sell the Land or any part thereof in exercise of its power of sale without first obtaining the execution of an agreement or covenant between any proposed purchaser and the City of Kwinana whereby the proposed purchaser covenants to perform and observe the covenants contained in the Deed where the performance on the part of Wellard Management Pty Ltd remains to be or continues to be performed or observed.



Similarly, this institution will not assign the Mortgage or any rights thereunder without first procuring the execution by the proposed assignee of a similar undertaking to the one given in this letter.

Dated the _____ day of _____ 201
(Executed by person who has Power of Attorney to execute on behalf of the Mortgagee, if an institution.)

Annexure 3 – Concept Plan



Annexure 4 – Preliminary Costings

| | |   | | | |
|--|--|--|------|-------------------|--------------------|
| City of Kwinana DCP | | | | | |
| Section B - Open Drains Rate 2020 Cost Review | | | | | |
| Rate Comparison - \$/m for DCA1 Bertram Road Drainage Basin | | | | | |
| Code | Description | Qty | Unit | Unit Rate \$ 2020 | Total Cost \$ 2020 |
| 1 | PRELIMINARIES | | | | |
| 2 | Establishment | | | | |
| 3 | Mobilisation / Demobilisation | 1 | item | \$3,018.90 | \$3,019 |
| 4 | Project Board (Provisional) | 1 | item | \$3,018.90 | \$3,019 |
| 5 | Insurances | 1 | item | \$2,826.49 | \$2,826 |
| 6 | Authorities and Fees | | | | |
| 7 | Construction Industry Training Fund Levy (0.2% of Contract Sum) | 1 | item | \$745.84 | \$746 |
| 8 | Liason and Coordination of Service Bodies for Service Installation | 1 | item | \$1,811.34 | \$1,811 |
| 9 | Building License for Walls and Structures | 1 | item | \$1,509.45 | \$1,509 |
| 10 | Testing | | | | |
| 11 | Scheduled Testing | 1 | item | \$2,012.60 | \$2,013 |
| 12 | Survey/Supervision/Project management | | | | |
| 13 | As Constructed Details | 1 | item | \$2,515.75 | \$2,516 |
| 14 | Survey | 1 | item | \$10,000.00 | \$10,000 |
| 15 | Project Management (Design stage) | 1 | item | \$10,000.00 | \$10,000 |
| 16 | Project Management/Construction Supervision | 1 | item | \$30,000.00 | \$30,000 |
| 17 | Detailed design | 1 | item | \$30,000.00 | \$30,000 |
| 18 | Construction Water | | | | |
| 19 | Construction water from nearby hydrant/standpipe | 1 | item | \$1,509.45 | \$1,509 |
| 20 | OH&S | | | | |
| 21 | Occupational Health and Safety Management | 1 | item | \$1,006.30 | \$1,006 |
| 22 | Safety Management Plan | 1 | item | \$805.04 | \$805 |
| 23 | Other | | | | |
| 24 | Final Cleanup | 1 | item | \$2,012.60 | \$2,013 |
| 25 | Other Items Necessary for Completion of the Works | 1 | item | \$2,012.60 | \$2,013 |
| 26 | Subtotal Preliminaries | | | | \$104,805 |
| 27 | SITWORKS | | | | |
| 28 | Clearing | | | | |
| 29 | Clearing, Grubbing and Dispose Off Site | 1 | item | \$5,031.50 | \$5,032 |
| 30 | Demolition | | | | \$0 |
| 31 | Remove and dispose existing Pipe to Peel Main Drain | 1 | item | \$1,006.30 | \$1,006 |
| 32 | Topsoil | | | | |
| 33 | Strip and Stockpile Topsoil and respread in adjoining POS | 2200 | m2 | \$1.90 | \$4,180 |
| 34 | Earthworks | | | | |
| 35 | Proof rolling of fill areas | 2200 | m2 | \$1.01 | \$2,214 |
| 36 | Import and Compact Fill sand | 1200 | m3 | \$25.16 | \$30,189 |
| 37 | Import and compact clay liner | 300 | m3 | \$35.22 | \$10,566 |
| 38 | Import and Compact Fill sand for extra required in existing basin | 900 | m3 | \$25.16 | \$22,642 |
| 39 | Final Trim and Shaping | 2200 | m2 | \$1.39 | \$3,058 |
| 40 | Subtotal Preliminaries | | | | \$78,887 |
| 41 | | | | | |
| 42 | FENCING AND BUNDS | | | | |
| 43 | Removal and disposal of existing fences | | | | |
| 44 | Remove and Dispose Existing Chainmesh on exiting basin | 255 | m | \$15.00 | \$3,825 |
| 45 | Supply and install complete fences | | | | |
| 46 | 1800 chainmesh fence with barb wire | 210 | m | \$55.00 | \$11,550 |
| 47 | Double Gate in Chainmesh Fence | 1 | No. | \$1,160.00 | \$1,160 |
| 48 | Subtotal Fencing | | | | \$16,535 |
| 49 | | | | | |
| 50 | STORMWATER DRAINAGE | | | | |
| 51 | Pipework/Excavate/Supply/Lay/Backfill | | | | |
| 52 | 150 PVC SWP | 30 | m | \$150.00 | \$4,500 |
| 53 | 525 Dia Class 2 | 260 | m | \$350.00 | \$91,000 |
| 54 | Subsoil drainage | | | | |
| 55 | 150 PVC Subsoil Drain | 135 | m | \$140.00 | \$18,900 |
| 56 | Subsoil Flushing Point On Line | 2 | No. | \$1,200.00 | \$2,400 |



City of Kwinana DCP

Section B - Open Drains Rate 2020 Cost Review

Rate Comparison - \$/m for DCA1 Bertram Road Drainage Basin

| Code | Description | Qty | Unit | Unit Rate \$2020 | Total Cost \$2020 |
|------|--|------|------|------------------|-------------------|
| 57 | Drainage pits | | | | |
| 58 | Junction Pits - Standard installed on existing line | 1 | No. | \$3,018.90 | \$3,019 |
| 59 | Grated Pits outlet pits | 1 | No. | \$3,018.90 | \$3,019 |
| 60 | Revegetation | | | | |
| 61 | Supply of shrubs | 2200 | Item | \$2.00 | \$4,400 |
| 62 | Planting of shrubs | 2200 | Item | \$2.00 | \$4,400 |
| 63 | Supply of sedges | 8800 | Item | \$2.08 | \$18,304 |
| 64 | Planting of sedges | 8800 | Item | \$2.08 | \$18,304 |
| 65 | Outlets | | | | |
| 66 | Spillway complete | 1 | No. | \$8,050.40 | \$8,050 |
| 67 | Type B outlet to Peel Main Drain | 1 | No. | \$3,119.53 | \$3,120 |
| 68 | Rock Pitching | 40 | m2 | \$120.00 | \$4,800 |
| 69 | Permeable Rock Inlet Dissipator | 1 | Item | \$10,063.00 | \$10,063 |
| 70 | Sand filter | | | | \$0 |
| 71 | Placing 200 mm Pea Gravel bedding for Sand Filter Floor | 1300 | m2 | \$18.11 | \$23,547 |
| 72 | Supplying and placing filter sand | 390 | m3 | \$95.60 | \$37,283 |
| 73 | mix supplied NUA with filter sand | 1300 | m2 | \$30.19 | \$39,246 |
| 74 | NUA cartage costs from Capel | 1 | Item | \$3,220.16 | \$3,220 |
| 75 | Subtotal Stormwater drainage | | | | \$297,575 |
| 76 | | | | | |
| 77 | | | | | |
| 78 | Contingency | | % | 15.00 | \$74,670 |
| | Total cost for construction of DCA1 Bertram Road Drainage Basin | | | | \$572,472 |

18 Reports – Civic Leadership

18.1 Appointment of voting delegates and proxy voting delegates at the Annual General Meeting of the Western Australian Local Government Association on behalf of the City of Kwinana

DECLARATION OF INTEREST:

There were no declarations of interest declared.

SUMMARY:

A request has been received that two voting delegates and two proxy voting delegates be appointed to exercise voting entitlements on behalf of the City of Kwinana at the Annual General Meeting of the Western Australian Local Government Association, as at Attachment A.

OFFICER RECOMMENDATION:

That Council appoint Mayor Carol Adams and Councillor..... to act as voting delegates and Councillors and to act as proxy voting delegates, at the Annual General Meeting of the Western Australian Local Government Association.

DISCUSSION:

The Western Australian Local Government Association represents the interests of the Local Government sector, provides leadership on key Local Government issues, delivers products and services that provide significant benefits to its Members and promotes a positive profile for Local Government within the wider community. The Western Australian Local Government Association will be holding their Annual General Meeting on Friday 25 September 2020.

It has been requested that two voting delegates and two proxy voting delegates be appointed by Council, to vote on behalf of the City of Kwinana. It is recommended that Mayor Carol Adams is appointed as a voting delegate along with another Elected Member and two Elected Members to act as proxy voting delegates, to ensure appropriate representation at the Annual General Meeting.

LEGAL/POLICY IMPLICATIONS:

There are no legal/policy implications that have been identified as a result of this report or recommendation.

FINANCIAL/BUDGET IMPLICATIONS:

There are no financial/budget implications that have been identified as a result of this report or recommendation.

18.1 APPOINTMENT OF VOTING DELEGATES AND PROXY VOTING DELEGATES AT THE ANNUAL GENERAL MEETING OF THE WESTERN AUSTRALIAN LOCAL GOVERNMENT ASSOCIATION ON BEHALF OF THE CITY OF KWINANA

ASSET MANAGEMENT IMPLICATIONS:

There are no asset management implications that have been identified as a result of this report or recommendation.

ENVIRONMENTAL IMPLICATIONS:

There are no environmental implications that have been identified as a result of this report or recommendation.

STRATEGIC/SOCIAL IMPLICATIONS:

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

COMMUNITY ENGAGEMENT:

There are no community engagement implications as a result of this report.

PUBLIC HEALTH IMPLICATIONS

There are no implications on any determinants of health as a result of this report.

RISK IMPLICATIONS:

The risk implications in relation to this proposal are as follows:

| | |
|--|---|
| Risk Event | Not being represented at the Annual General Meeting and a particular matter is raised that contradicts current City of Kwinana Council Policy |
| Risk Theme | Inadequate engagement practices |
| Risk Effect/Impact | Service Delivery Reputation |
| Risk Assessment Context | Strategic |
| Consequence | Moderate |
| Likelihood | Unlikely |
| Rating (before treatment) | Low |
| Risk Treatment in place | Reduce (mitigate the risk) |
| Response to risk treatment required/in place | Ensure Delegates are available to attend to vote |
| Rating (after treatment) | Low |

18.1 APPOINTMENT OF VOTING DELEGATES AND PROXY VOTING DELEGATES AT THE ANNUAL GENERAL MEETING OF THE WESTERN AUSTRALIAN LOCAL GOVERNMENT ASSOCIATION ON BEHALF OF THE CITY OF KWINANA

COUNCIL DECISION

221

MOVED CR W COOPER

SECONDED CR M KEARNEY

That Council appoint Mayor Carol Adams and Deputy Mayor Peter Feasey to act as voting delegates and Councillors Sandra Lee and Dennis Wood to act as proxy voting delegates, at the Annual General Meeting of the Western Australian Local Government Association.

**CARRIED
8/0**

NOTE – That the Officer Recommendation has been amended to include the appointed Elected Member names.



Notice
of
Annual General Meeting
and
Procedural Information
for Submission of Motions

Crown Perth
Friday, 25 September 2020

Deadline for Agenda Items

(Close of Business)

Friday, 31 July 2020

2020 Local Government Convention

General Information

WALGA Annual General Meeting

The Annual General Meeting for the Western Australian Local Government Association will be held from 1:30pm on Friday 25 September 2020. This event should be attended by delegates from all Member Local Governments.

Cost for attending the Annual General Meeting

Attendance at the Annual General Meeting is **free of charge** to all Member Local Governments; lunch is not provided. Delegates must register their attendance in advance.

Submission of Motions

Member Local Governments are invited to submit motions for inclusion on the Agenda for consideration at the 2020 Annual General Meeting. Motions should be submitted in writing to the Chief Executive Officer of WALGA.

The closing date for submission of motions is 5:00pm **Friday, 31 July**.

Please note that any motions proposing alterations or amendments to the Constitution of the WALGA must be received by 5:00pm Friday, 17 July 2020 in order to satisfy the 60 day constitutional notification requirements.

The following guidelines should be followed by Members in the formulation of motions:

- Motions should focus on policy matters rather than issues which could be dealt with by the WALGA State Council with minimal delay.
- Due regard should be given to the relevance of the motion to the total membership and to Local Government in general. Some motions are of a localised or regional interest and might be better handled through other forums.
- Due regard should be given to the timeliness of the motion – will it still be relevant come the Local Government Convention or would it be better handled immediately by the Association?
- The likely political impact of the motion should be carefully considered.
- Due regard should be given to the educational value to Members – i.e. does awareness need to be raised on the particular matter?
- The potential media interest of the subject matter should be considered.
- Annual General Meeting motions submitted by Member Local Governments must be accompanied by fully researched and documented supporting comment.

Criteria for Motions

As per the Corporate Governance Charter, prior to the finalisation of the agenda, the WALGA President and Chief Executive Officer will determine whether motions abide by the following criteria:

Motions will be included in the Business Paper agenda where they:

1. Are consistent with the objects of the Association (refer to clause 3 of the constitution);
2. Demonstrate that the issue/s raised will concern or are likely to concern a substantial number of Local Governments in WA.;
3. Seek to advance the Local Government policy agenda of the Association and/or improve governance of the Association;
4. Have a lawful purpose (a motion does not have a lawful purpose if its implementation would require or encourage non-compliance with prevailing laws);
5. Are clearly worded and unambiguous in nature;

Motions will not be included where they are:

6. Consistent with current Association advocacy/policy positions. (As the matter has previously considered and endorsed by the Association).

Motions of similar objective:

7. Will be consolidated as a single item.

Submitters of motions will be advised of the determinations.

Enquiries relating to the preparation or submission of motions should be directed to Margaret Degebrod, Executive Officer Governance on (08) 9213 2036 or via email mdegebrod@walga.asn.au.

Emergency Motions

No motion shall be accepted for debate at the Annual General Meeting after the closing date unless the Association President determines that it is of an urgent nature, sufficient to warrant immediate debate, and delegates resolve accordingly at the meeting. Please refer to the AGM Standing Orders for details.



Mayor Tracey Roberts JP
President



Nick Sloan
Chief Executive Officer

EMAIL BACK

Voting Delegate Information 2020 Annual General Meeting



TO: Chief Executive Officer

Registered:

All Member Councils are entitled to be represented by two (2) voting delegates at the Annual General Meeting of the WA Local Government Association to be held on Friday 25 September 2020 at Crown Towers Perth.

Please complete and return this form to the Association by **Friday 28, August 2020** to register the attendance and voting entitlements of your Council's delegates to the Annual General Meeting.

In the event that a Voting Delegate is unable to attend, provision is made for proxy delegates to be registered.

Only registered delegates or proxy registered delegates will be permitted to exercise voting entitlements on behalf of Member Councils. Delegates may be Elected Members or serving officers.

Please Note: All Voting Delegates will need to present at the WALGA Delegate Service Desk prior to the AGM to collect their electronic voting device (keypad) for voting and identification tag to gain entry into the Annual General Meeting.

| VOTING DELEGATES | PROXY Voting Delegates |
|---|---|
| Name of Voting Delegates (2): | Name of Proxy Voting Delegates (2): |
| For (Local Government Name): Shire/Town/City of | |
| Signature Chief Executive Officer _____ (An electronic signature is <u>required</u> if submitting via email) | |
| Date _____ | |

ON COMPLETION PLEASE EMAIL TO: mdegebrot@walga.asn.au

Margaret Degebrot, Executive Officer Governance

18.2 Approval of Purchasing Policy

DECLARATION OF INTEREST:

There were no declarations of interest declared.

SUMMARY:

A review of 'Policy – Procurement – 2016' and 'Policy – Tender Management' has been undertaken, providing for the need to delete the current Policies and create a single policy, 'Policy – Purchasing'. The deletion of the current Policies and creation of the new Policy are recommended for Council endorsement.

OFFICER RECOMMENDATION:

That Council:

1. Delete Policy – Procurement – 2016;
2. Delete Policy – Tender Management; and
3. Adopt Policy – Purchasing, as detailed at Attachment A.

DISCUSSION:

The regular review of council policies gives Council the opportunity to ensure that policies remain current with legislation and operational practices and provide clear direction to the City and its stakeholders. This report relates to the review of two policies, being the Policy – Procurement – 2016 and Policy – Tender Management.

During the review, it became apparent that clearer direction to both City Officers and other stakeholders was required. Additionally, it was identified that recent changes to the *Local Government (Functions and General Regulations) 1996* with respect to local government purchasing practices, needed to be adopted. More particularly, the Regulations were recently amended as part of a suite of COVID-19 related legislative changes. These changes, as they pertain to purchasing relate to:

- an increased tender threshold from \$150,000 to \$250,000; and
- an additional tender exemption, which applies when a local government has an existing contract for a good or service and that contract is within 3 months of expiring and a state of emergency exists.

Lastly, in a recent audit of West Australian Councils by the Auditor General, of which the City was one of eight Councils selected, it was recommended that the City's purchasing policy be updated to include a requirement that the City maintain a contract register for formal procurements (i.e. those conducted via a formal request for quote or tender process). Although the City does maintain a contract register, the requirement to do so is not currently stated in the City's policies. Despite this, the Auditor General found that the City of Kwinana was the only audited Council with sound policies and procedures for managing extensions and variation of contracts and were industry leaders with respect to contract governance.

18.2 APPROVAL OF PURCHASING POLICY

Accordingly, the above changes and recommendations have been included in the proposed new Purchasing Policy. These robust inclusions and amendments assist in the establishment of a policy that is layered to create improved synergies between the various City Departments as well as ensure that the City continues to lead the way in local government procurement and contract governance.

Other notable substantial changes to the City's purchasing practices that will result from the deletion of the current policies and the adoption of the new policy include:

- clarity around procurement considerations including local economic benefit considerations and sustainable procurement considerations;
- clarity around purchasing from organisations that are registered as an Australian Disability Enterprise or registered under the Aboriginal Business Directory WA;
- the inclusion of an Order of Priority Considerations Table;
- clarity around the applicable terms and conditions for the City engaging an external supplier;
- a revised Purchasing Method Table, which gives City Officers more flexibility with their approach to purchasing, yet maintains legal compliance with the Local Government Act and the Regulations; and
- shifts the responsibility for procurement process compliance and decision making to the technical officers rather than the Contract Services Team for non-tender procurements.

LEGAL/POLICY IMPLICATIONS

Regulations 11A to 24 of the Local Government (Functions and General) Regulations 1996:

11A. Purchasing policies for local governments

- (1) *A local government is to prepare or adopt, and is to implement, a purchasing policy in relation to contracts for other persons to supply goods or services where the consideration under the contract is, or is expected to be, \$250 000 or less or worth \$250 000 or less.*
- (2) *A purchasing policy is to make provision for and in respect of the policy to be followed by the local government for, and in respect of, entering into contracts referred to in subregulation (1).*
- (3) *A purchasing policy must make provision in respect of —*
 - (a) *the form of quotations acceptable; and*
 - (ba) *the minimum number of oral quotations and written quotations that must be obtained; and*
 - (b) *the recording and retention of written information, or documents, in respect of —*
 - (i) *all quotations received; and*
 - (ii) *all purchases made.*

11. When tenders have to be publicly invited

- (1A) *In this regulation —*

state of emergency declaration has the meaning given in the Emergency Management Act 2005 section 3.
- (1) *Tenders are to be publicly invited according to the requirements of this Division before a local government enters into a contract for another person to supply goods or services if the consideration under the contract is, or is expected to be, more, or worth more, than \$250 000 unless subregulation (2) states otherwise.*

18.2 APPROVAL OF PURCHASING POLICY

- (2) *Tenders do not have to be publicly invited according to the requirements of this Division if —*
- (a) *the supply of the goods or services is to be obtained from expenditure authorised in an emergency under section 6.8(1)(c) of the Act; or*
 - (aa) *the supply of the goods or services is associated with a state of emergency; or*
 - (b) *the supply of the goods or services is to be obtained through the WALGA Preferred Supplier Program; or*
 - [(ba) deleted]*
 - (c) *within the last 6 months —*
 - (i) *the local government has, according to the requirements of this Division, publicly invited tenders for the supply of the goods or services but no tender was submitted that met the tender specifications or satisfied the value for money assessment; or*
 - (ii) *the local government has, under regulation 21(1), sought expressions of interest with respect to the supply of the goods or services but no person was, as a result, listed as an acceptable tenderer;*
or
 - (d) *the contract is to be entered into by auction after being expressly authorised by a resolution of the council of the local government; or*
 - (e) *the goods or services are to be supplied by or obtained through the government of the State or the Commonwealth or any of its agencies, or by a local government or a regional local government; or*
 - (ea) *the goods or services are to be supplied —*
 - (i) *in respect of an area of land that has been incorporated in a district as a result of an order made under section 2.1 of the Act changing the boundaries of the district; and*
 - (ii) *by a person who, on the commencement of the order referred to in subparagraph (i), has a contract to supply the same kind of goods or services to the local government of the district referred to in that subparagraph;*
or
 - (f) *the local government has good reason to believe that, because of the unique nature of the goods or services required or for any other reason, it is unlikely that there is more than one potential supplier; or*
 - (g) *the goods to be supplied under the contract are —*
 - (i) *petrol or oil; or*
 - (ii) *any other liquid, or any gas, used for internal combustion engines;*
or
 - (h) *the following apply —*
 - (i) *the goods or services are to be supplied by —*
 - (I) *a person registered on the Aboriginal Business Directory WA published by the Chamber of Commerce and Industry of Western Australia Limited ABN 96 929 977 985; or*

18.2 APPROVAL OF PURCHASING POLICY

- (II) a person registered with the Australian Indigenous Minority Supplier Office Limited (trading as Supply Nation) ABN 50 134 720 362;
and
 - (ii) the consideration under the contract is \$250 000 or less, or worth \$250 000 or less; and
 - (iii) the local government is satisfied that the contract represents value for money;
 - or
 - (i) the goods or services are to be supplied by an Australian Disability Enterprise; or
 - (j) the contract is a renewal or extension of the term of a contract (the **original contract**) where —
 - (i) the original contract was entered into after the local government, according to the requirements of this Division, publicly invited tenders for the supply of goods or services; and
 - (ii) the invitation for tenders contained provision for the renewal or extension of a contract entered into with a successful tenderer; and
 - (iii) the original contract contains an option to renew or extend its term; and
 - (iv) the supplier's tender included a requirement for such an option and specified the consideration payable, or the method by which the consideration is to be calculated, if the option were exercised;
 - or
 - (ja) the contract is a renewal or extension of the term of a contract (the **original contract**) where —
 - (i) the original contract is to expire within 3 months; and
 - (ii) the renewal or extension is for a term of not more than 12 months from the expiry of the original contract; and
 - (iii) the contract for renewal or extension is entered into at a time when there is in force a state of emergency declaration applying to the district, or part of the district, of the local government;
 - or
 - (k) the goods or services are to be supplied by a pre-qualified supplier under Division 3.
- (3) For the purposes of subregulation (2)(aa) a supply of goods or services is associated with a state of emergency if —
- (a) the contract for the supply is entered into while there is in force a state of emergency declaration applying to the district, or part of the district, of the local government; and
 - (b) the local government considers that the goods or services are required for the purposes of addressing a need arising from the hazard, or from the impact or consequences of the hazard, to which the state of emergency declaration relates.

18.2 APPROVAL OF PURCHASING POLICY**FINANCIAL/BUDGET IMPLICATIONS**

There are likely to be positive financial and budget implications as a result of this report and the adoption of the revised purchasing policy. This is because, under the new policy, Officers are directed to always consider value for money and sustainability principles and considerations when making purchasing decisions.

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

This proposal will support the achievement of the following outcome and objective detailed in the Corporate Business Plan.

| Plan | Outcome | Objective |
|-------------------------|----------------------|-------------------------------------|
| Corporate Business Plan | Business performance | 5.4.9 Review the Procurement Policy |

COMMUNITY ENGAGEMENT

There are likely to be positive community engagement implications as a result of this report and the adoption of the new purchasing policy. This is because under the new policy, City Officers are asked to, where possible, prioritise the engagement of local suppliers by way of ensuring that quotations are first obtained from local suppliers permanently located within the Kwinana district and then those located within surrounding districts.

PUBLIC HEALTH IMPLICATIONS

There are no direct public health implications related to this report.

RISK IMPLICATIONS

The risk implications in relation to this proposal are as follows:

| | |
|------------|---|
| Risk Event | Policy is not adopted and the City's purchasing practice and process is unclear to Officers and stakeholders and not in accordance with legislative changes and the Auditor General's recommendation. |
| Risk Theme | Failure to fulfil statutory regulations or compliance requirements |

18.2 APPROVAL OF PURCHASING POLICY

| | |
|--|--|
| Risk Effect/Impact | Service Delivery |
| Risk Assessment Context | Operational |
| Consequence | Major |
| Likelihood | Possible |
| Rating (before treatment) | Moderate |
| Risk Treatment in place | Reduce - mitigate risk |
| Response to risk treatment required/in place | Providing an adequate policy for the purchasing of goods and or services |
| Rating (after treatment) | Moderate |

COUNCIL DECISION**222****MOVED CR M KEARNEY****SECONDED CR D WOOD****That Council:**

- 1. Delete Policy – Procurement – 2016;**
- 2. Delete Policy – Tender Management; and**
- 3. Adopt Policy – Purchasing, as detailed at Attachment A.**

**CARRIED
8/0**

Council Policy

Purchasing



Council Policy

Purchasing

D20/38184

1. **Title**
Council Policy - Policy
2. **Purpose**
The purpose of this Policy is to guide the City's purchasing activities to ensure:
 - compliance with legislative and common law obligations;
 - reduce the risk of corruption and fraud;
 - a balance between best value for money and administrative burden; and
 - progression of the City's sustainability and social visions.
3. **Scope**
This Policy applies to all purchasing activities undertaken by and on behalf of the City.
4. **Non-compliance**
Failure to comply with this Policy, the *Local Government Act 1995 (the Act)* and Part 4 of the *Local Government (Functions and General) Regulations 1996 (the Regulations)* may be considered misconduct under the City's Code of Conduct and could result in disciplinary action.
5. **Principles**
The purchasing of goods and services by or on behalf of the City shall be conducted in accordance with the following principles:
 - Principle 1 – Value Socially Sustainable Procurement - Aboriginal Business and Australian Disability Enterprises;
 - Principle 2 – Sustainability;
 - Principle 3 – Act fairly;
 - Principle 4 – Value for money; and
 - Principle 5 – Local economic and social benefit.

5.1.1. Value Aboriginal business

The City recognises that Kwinana's aspirations and Aboriginal aspirations are aligned and that there will be times when procurement requires close consideration of Aboriginal cultural competencies, such as language, Aboriginal understanding knowledge and skills, and procedures, customs, practices and protocols.

The City's Conciliation Action Plan will seek to deliver agreed priorities and ensure that the City's purchasing activities consider, where possible:

- the potential to engage and enable Aboriginal community and business; and
- the delivery of Aboriginal customer friendly services.

Regulation 11(2)(h) provides a tender exemption if the goods or services are supplied by a person on the Aboriginal Business Directory WA published by the Chamber of Commerce and Industry of Western Australia, or Australian Indigenous Minority Supplier Office Limited (trading as Supply Nation), where the consideration under the contract is \$250,000 or less.

The City will first consider undertaking a quotation process with other suppliers (which may include other registered Aboriginal Businesses as noted in *Regulation 11(2)(h)*) to determine overall value for money for the City.

Where the City makes a determination to contract directly with an Aboriginal Business it must be satisfied that the engagement truly represents value for money.

5.1.2. Australian Disability Enterprises

Regulation 11(2)(i) provides a tender exemption if the goods or services are supplied by an Australian Disability Enterprise.

The City will first consider undertaking a quotation process with other suppliers (which may include other Australian Disability Enterprises) to determine overall value for money for the City.

Where the City makes a determination to contract directly with an Australian Disability Enterprise it must be satisfied that the engagement truly represents value for money.

5.2 Sustainable Procurement

Sustainable procurement is the procurement of goods and services that have better social, environmental, community and economic impacts than competing goods and services.

The City is committed to implementing sustainable procurement and will, where possible, consider the extent to which a prospective supplier's business practices will result in positive social, environmental, community and economic outcomes. More particular considerations may include:

- a) value for money over the life cycle of the engagement, rather than just the initial cost;
- b) the supplier's strategies to minimise environmental impacts;
- c) suppliers practices and/or employment opportunities e.g. disability training opportunities
- d) the supplier's strategies to avoid unnecessary consumption and manage demand and minimise waste;
- e) the supplier's general social responsibility practices, including compliance with its legislative obligations to its employees; and
- f) other sustainability outcomes identified in the City's Strategic Community Plan and Corporate Business Plan.

5.3 Act Fairly

The City's procurement of goods, works and services will be conducted with the utmost integrity.

All City's members, employees and suppliers are expected to conduct themselves with the highest standards of honesty, fairness, and personal integrity. It is critical that both employees and suppliers adhere to these standards, all applicable laws, and avoid all perceptions of conflict of interest and impropriety.

Fundamental aspects of this principle are:

- **Transparency** – following procurement guidelines and be open in administration, ensure spend and appropriate contract award information is available to the public, promote a shared understanding of respective roles and obligations between council and any external parties participating in purchasing activities;
- **Accountability** – be accountable for performance and be able to give complete and accurate accounts of public funds, including funds passed on to others for particular purposes. It will also have suitable governance in place to oversee procurement arrangements; and
- **Ethical consideration** – behave ethically, adhering to the standards set in this Policy and associated procurement guidelines and any other relevant internal policies, i.e. Code of Conduct, Gifts and Hospitality Policy etc.

All open contestable purchasing activities will be publicly notified so all potential suppliers have equal access. The procurement documentation that the City provides the market will contain information which makes it clear what the City is looking for by way of response, and evaluations will be undertaken in a manner that avoids bias.

5.4 Value for Money

Value for money is the overarching principle governing the procurement of goods and services and underpins the City's purchasing activities. Value for Money is the achievement of the best possible outcomes for the total cost of ownership (or whole of life cost), it does not necessarily mean selecting the lowest price response. Other related considerations include:

- a) the technical merits of the goods or services being offered in terms of compliance with specifications, contractual terms and conditions and any relevant methods of assuring quality. This includes but is not limited to an assessment of compliances, the supplier's resource availability, capacity and capability, value-adds offered, warranties, guarantees, repair and replacement policies and response times, ease of inspection and maintenance, ease of after sales service, ease of communications, etc;
- b) the supplier's financial viability and capacity to supply without the risk of default, including the competency of the prospective suppliers in terms of managerial and technical capabilities and compliance history;
- c) a strong element of competition by obtaining a sufficient number of competitive quotations consistent with this Policy, where practicable;
- d) the safety requirements and standards associated with both the product design and the specification offered by suppliers and the evaluation of risk arising from the supply, operation and maintenance; and
- e) the environmental, economic and social benefits arising from the goods, services or works required, including consideration of these benefits in regard to the supplier's operations, in accordance with this Policy and any other relevant City Policy including Local Economic Benefit.

The City will utilise a consistent benefit framework, tracking and reporting delivery of value for ratepayers. The procurement process will encourage the delivery of multiple outcomes for every dollar spent and will actively seek innovative delivery approaches from the supply market.

5.5 Local Economic Benefit

The City is committed to the development of local businesses within the City's boundary and surrounding region. Where appropriate, the City will consider practices, procedures and specifications that do not without due cause, disadvantage local businesses or will provide direct or indirect benefits for a local business or area. To this extent, officers may consider local economic benefit when evaluating submission by asking suppliers to demonstrate where and how they can benefit or contribute to the local economy. For example, tender evaluation considerations may include demonstrating economic benefits to the Kwinana or South West Metropolitan Regional economy through:

- use of businesses located within the region (including the tenderer) that are committed to utilising regionally manufactured or produced goods, materials, and/or services;
- commitment to utilising regionally based subcontractors; and
- potential for employment creation and skills development within the region.

6. Purchasing Requirements

6.1 Purchasing Value

Purchasing values for a category of goods or services are to be determined in accordance with the following considerations:

- a) the value is exclusive of Goods and Services Tax;
- b) the value will be the estimated total expenditure for a category of goods or services over a minimum 3 year period;
- c) the estimated total expenditure for the proposed supply including the value of all contract extension options and where applicable, the total cost of ownership considerations; and
- d) the appropriate length of a contract is to be determined based on market volatility, ongoing nature of supply, historical purchasing evidence and estimated future purchasing requirements; and
- e) purchasing activities for the same category of supply should, where possible, be aggregated into single contract arrangements to achieve best value and efficiency in future purchasing activities; and
- f) officers must not conduct multiple purchasing activities with the intent of 'splitting' the contract and its value, in order to avoid a more onerous purchasing practice requirement (*Reg 12*).

A category of supply is defined as groupings of similar goods or services with common supply and demand drivers, market characteristics or suppliers.

6.2 Supplier Order of Priority

The City will apply the following Supplier Order of Priority considerations when purchasing.

| | |
|--------------------|--|
| Priority 1: | Existing Prequalified Supplier Panel or other Contract Current contracts, including a panel of prequalified suppliers or contracted supplier, must be used where the City's supply requirements can be met through the existing scope of a contract. The City's Contract Register can be found at D09/112147 and will be maintained by City on a regular basis. |
| Priority 2: | Local Suppliers Only when the Purchasing Value does not exceed the tender threshold and a relevant local supplier is capable of providing the required supply, the City will ensure that wherever possible, quotations are obtained from local suppliers permanently located within the Kwinana District as a first priority, and those permanently located within surrounding districts as the second priority. |
| Priority 3: | Tender Exempt - WALGA Preferred Supplier Arrangement (WALGA) The City will investigate and seek quotations from WALGA suppliers regardless of the purchase value (See WALGA Directory) |
| Priority 4: | Tender Exempt - WA State Government Common Use Arrangement (CUA) The City will investigate and seek quotations from CUA suppliers regardless of the purchase value (See CUA Directory) |
| Priority 5: | Other Tender Exempt arrangement Regardless of whether or not the purchase value will exceed the tender threshold, the City will investigate and seek quotations from tender exempt suppliers, and will specifically ensure that wherever possible quotations are obtained from a WA Disability Enterprise (See Disability Enterprises Directory) and/or an Aboriginal Owned Businesses (See Aboriginal Business Directory and Indigenous Nation Directory) |
| Priority 6: | Other Suppliers Where there is no relevant existing contract or tender exempt arrangement, the purchasing activity is to be in accordance with general purchasing practice requirements specified in the table below. |

6.3 Table of Purchasing Value Thresholds and Requirements

The table below outlines the practice requirements that apply to the City's purchasing activities. All purchasing must be conducted in accordance with the Supplier Order of Priority considerations as well as the appropriate financial authorisation/delegation limits.

| Purchasing Practice Requirements | |
|-----------------------------------|---|
| Purchasing Value (ex GST) | Purchasing Method |
| Up to \$5,000 | Seek at least 1 verbal or written quote |
| \$5,001 to \$20,000 | Seek at least 2 verbal or written quotes OR Seek at least 1 written quote, if purchasing from a tender exempt supplier e.g. a WALGA supplier |
| \$20,001 to \$75,000 | Seek at least 3 written quotes OR Seek at least 2 written quotes, if purchasing from a tender exempt supplier e.g. a WALGA supplier |
| \$75,001 to \$250,000 | Seek at least 3 written responses from suppliers via a formal Request for Quotation OR Seek at least 3 written quotes, if: <ul style="list-style-type: none"> - purchasing from a tender exempt supplier e.g. a WALGA supplier; and - approval to engage the preferred supplier is obtained from the CEO or an officer authorised by the CEO (whom is not in the Department making the purchase) (<i>See Item 6.6 of this Policy</i>) |
| Over \$250,000 (Tender Threshold) | Conduct a formal Request for Tender in accordance with the Act OR Seek at least 3 written responses via a formal Request for Quotation, if purchasing from a tender exempt supplier e.g. a WALGA supplier |
| Any Purchase | Seek at least 1 written quote, if: <ul style="list-style-type: none"> - purchasing from a tender exempt supplier e.g. a WALGA supplier, sole supplier etc.; and - approval to engage the tender exempt supplier is obtained from the CEO |

6.4 Contract Requirements for Terms and Conditions

- **Under \$75,001** – City's Purchase Order Terms (**D10/56307**)
- **\$75,001 or above** – City's General Contract Conditions or relevant Australian Standards Contract Conditions.
- **WALGA Supplier** – WALGA Member Contract.
- **Any contract outside the above** (including a lease agreement or a supplier's terms and conditions) must be reviewed by the CEO, or an officer authorised by the CEO.

6.5 Purchasing Assessment

- **\$75,000 or under** – The purchasing decision is to be based upon assessment of the suppliers response to:
 - a brief outline of the good, service or work required; and
 - Value for Money criteria, not necessarily the lowest price.
- **\$75,001 or above** – The purchasing decision is to be based upon assessment of the suppliers response to pre-determined:
 - detailed specifications of the good, service or work required; and
 - selection criteria that assesses all best and sustainable value considerations, amongst other things.

6.6 Recording of Purchasing Decisions

All purchases are to be recorded as follows:

- **Up to \$20,001** – Using the information required to be entered when raising an requisition including providing brief comments to justify the purchase;
- **\$20,001 to \$75,000** – Using the Brief Evaluation Report Template (**D14/32988**);
- **\$75,000 to \$250,000** – Using the appropriate memorandum to CEO or Director (**TBA**); and
- **Request for Quotations / Tenders** – Using the appropriate memorandum and report to CEO or Director (**TBA**).

7. Other Exemptions

7.1 Emergency Purchases

Emergency purchases are exempt from the above purchasing practices. Emergency purchases are defined as the supply of goods or services associated with:

- a) a local emergency and the expenditure is required (**within existing budget allocations**) to respond to an imminent risk to public safety, or to protect or make property or infrastructure assets safe;
- b) a local emergency and the expenditure is required (**with no relevant available budget allocation**) to respond to an imminent risk to public safety, or to protect or make safe property or infrastructure assets in accordance with s.6.8 and *Reg 11(2)(a)* (i.e. prior written Mayor authorisation required); or
- c) a state of emergency declared under the *Emergency Management Act 2005* and therefore, *Regs 11(2)(aa), (ja) and (3)* apply to vary the application of this policy.

Time constraints, administrative omissions and errors do not justify a purchase to be an emergency purchase. Instead, every effort must be made to research and anticipate purchasing requirements in advance and to allow sufficient time for planning and scoping proposed purchases and to then obtain quotes or tenders, as applicable.

7.2 Emergency Contract Extension

The City may extend an existing contract for a term of 12 months or less, and therefore not comply with the above purchasing requirements if:

- a) the City has an existing contract for the required goods or services;
- b) the existing contract expires within 3 months;
- c) the extension is for a term of not more than 12 months from the expiry of the existing contract; and
- d) the extension is entered into at a time when there is a state of emergency declaration applying to the City's district (*Reg 11(2)(ja)*).

7.3 Specific Categories of Goods and Services

If a good or service falls within one of the below categories and the purchase value is under the tender threshold, the procurement is not subject to the above purchasing requirements and officers may approach a single supplier:

- advertising of employment opportunities at the City;

- the recruitment of Temporary personnel;
- any mandated state-wide public notices;
- purchasing of training services or training courses undertaken by the City's Human Resources department;
- obtaining legal representation or advice by the City's Legal Team;
- annual Subscriptions. For example, WALGA, LGIS, and SAI Global; and
- any other procurement activity approved by the Chief Executive Officer as being exempt from the thresholds, that is not a tender.

7.4 Unique Nature of Supply (Sole Supplier)

Sole source supplier purchases are exempt from the above purchasing requirements. An arrangement with a supplier based on the unique nature of the goods or services required or for any other reason, where it is unlikely that there is more than one potential supplier may only be approved where the:

- a) purchasing value is estimated to be over \$5,000; and
- b) purchasing requirement has been documented in a detailed specification; and
- c) specification has been extensively market tested and only 1 potential supplier has been identified as being capable of meeting the specified purchase requirement; and
- d) market testing process and outcomes of supplier assessments have been evidenced in records, inclusive of a rationale for why the supply is determined as unique and why quotations / tenders cannot be sourced through more than 1 potential supplier.

An arrangement of this nature will only be approved for a period not exceeding 1 year. For any continuing purchasing requirement, the approval must be re-assessed before expiry, to evidence that only 1 potential supplier still genuinely exists.

8. Inviting Tenders Though not Required to do so

The City may determine to invite public tenders, despite the estimated purchase value being less than the \$250,000 prescribed tender threshold, but only where an assessment determines that the purchasing requirement cannot be met through a tender exempt arrangement and the use of a public tender process will enhance value for money, efficiency, risk mitigation and sustainable procurement benefits.

9. Expressions of Interest

Expressions of Interest (EOI) will be considered as a prerequisite to a tender process where the required supply evidences one or more of the following criteria:

- a) unable to sufficiently scope or specify the requirement;
- b) there is significant variability for how the requirement may be met;
- c) there is potential for suppliers to offer unique solutions and / or multiple options for how the purchasing requirement may be obtained, specified, created or delivered;
- d) subject to a creative element; or
- e) provides a procurement methodology that allows for the assessment of a significant number of potential tenderers leading to a shortlisting process based on non-price assessment.

All EOI processes will be based upon qualitative and other non-price information only.

10. Contract Variations

Circumstances may require the City to vary the specifications and or contractual terms of a Contract. The City may only vary a contract that has not yet been awarded, if the variation is considered to be a 'minor variation' (*Reg 20*). The City may only vary an existing contract, if the variation is considered by the local government to be necessary in order for the goods or services to be supplied and does not change the scope of the contract (*Reg 21*).

11. Contract Management

The Chief Executive Officer will ensure processes and controls are developed and implemented for the following:

- Contract management;
- Variation management;
- Contract performance review; and
- Contract extensions.

12. References

| | |
|------------------------------------|---|
| Name of Policy | Purchasing Policy |
| Date of Adoption and resolution No | |
| Review dates and resolution No # | |
| New review date | |
| Legal Authority | <i>Local Government Act 1995</i> Section 2.7 – Role of Council <i>Local Government (Functions and General) Regulations</i> Part 4 Division 1 – Purchasing Policies for Local Governments |
| Directorate | City Legal |
| Department | Contract Services |
| Related documents | Acts/Regulations <i>Local Government Act 1995 (WA)</i> ; and <i>Local Government (Functions and General) Regulations 1996 (WA)</i> . Plans/Strategies Strategic Community Plan 2019 - 2029 Corporate Business Plan 2019 - 2024 Work Instructions CMS 77 - Purchasing Procedures for the Procurement of Goods and/or Services CMS 01 - Formal Procurement Process |

Note: Changes to References may be made without the need to take the Policy to Council for review.

18.3 Approval of Leasing Policy

DECLARATION OF INTEREST:

There were no declarations of interest declared.

SUMMARY:

A review of Policy – Leasing of Community Facilities has been undertaken. This review has resulted in several amendments and the renaming of the policy, which are recommended for Council endorsement.

OFFICER RECOMMENDATION:

That Council approve the amendments and renaming of the Leasing Policy, as detailed in Attachment A.

DISCUSSION:

The regular review of council policies gives Council the opportunity to ensure that policies remain current with legislation and operational practices and provide clear direction to the City and its stakeholders. This report relates to the review of the City's Leasing of Community Facilities Policy.

During the review of the current Leasing of Community Facilities Policy (which included various workshops with the City's Executive), it became apparent that clearer direction to both City Officers and other stakeholders in regards to the City's leasing policy requirements, was required. In particular, it was identified that the policy should be simplified and clarification should be added around the requirements about how a lease could be entered into by the City, what type of rent subsidies could be given and under what applicable conditions / considerations. Additionally, it was identified that the Leasing of Community Facilities Policy could be amended to remove some unnecessary administrative burdens as well as enhance the transparency and equitability regarding leasing decisions.

Substantial changes to the City's Leasing of Community Facilities Policy are recommended and include:

- clarification around pre-leasing/licencing requirements (See Item 5);
- clarification around standard lease/licence conditions (See Item 7). For example, the Policy clarifies that where a tenant has fully or substantially funded a City owned building, the City will grant that tenant a peppercorn rent but the tenant will be fully responsible for the operating costs associated with the building (See Item 7.3); and
- simplification around the criteria for assessing whether an organisation is entitled to a discounted or peppercorn rent (See Tables 1 and 2).

18.3 APPROVAL OF LEASING POLICY

A copy of the current Leasing of Community Facilities Policy can be referred to at Attachment B.

It has been identified that the current policy name, being Leasing of Community Facilities requires renaming so that it reflects the full scope of the policy. The policy name has been updated to Leasing and now appropriately covers leasing and licencing of all City property.

LEGAL/POLICY IMPLICATIONS

Section 3.58 of the Local Government Act 1995

Section 30 of the Local Government (Functions and General) Regulations 1996

FINANCIAL/BUDGET IMPLICATIONS

There are no direct financial / budget 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

This proposal will support the achievement of the following outcome and objective detailed in the Corporate Business Plan.

| Plan | Outcome | Objective |
|-------------------------|----------------------|--|
| Corporate Business Plan | Business performance | 5.6 Maximise the value of the City's property assets |

COMMUNITY ENGAGEMENT

There are no direct community engagement implications as a result of this report

PUBLIC HEALTH IMPLICATIONS

There are no direct public health implications related to this report.

18.3 APPROVAL OF LEASING POLICY**RISK IMPLICATIONS**

The risk implications in relation to this proposal are as follows:

| | |
|--|--|
| Risk Event | Policy is not adopted and the City's policy requirements are resulting processes are not improved. |
| Risk Theme | Failure to fulfil statutory regulations or compliance requirements |
| Risk Effect/Impact | Service Delivery |
| Risk Assessment Context | Operational |
| Consequence | Major |
| Likelihood | Possible |
| Rating (before treatment) | Moderate |
| Risk Treatment in place | Reduce - mitigate risk |
| Response to risk treatment required/in place | Providing an adequate policy for the leasing of council owner or managed property |
| Rating (after treatment) | Moderate |

COUNCIL DECISION

223

MOVED CR S LEE**SECONDED CR M ROWSE**

That Council approve the amendments and renaming of the Leasing Policy, as detailed in Attachment A.

**CARRIED
8/0**

Council Policy

Leasing



Council Policy

Leasing

D14/69943[v4]

1. Title

Council Policy - Leasing

2. Purpose

The purpose of this Policy is to:

- ensure decisions about the granting of leases, licences and subsidies are made transparently and in accordance with established criteria; and
- ensure the City's property is appropriately optimised and maintained in accordance with the City's Strategic Community Plan and Corporate Business Plan.

3. Scope

This policy applies to the leasing and licencing of City property and does not apply to the hiring of the City's property.

4. Definitions

Any word that is not defined below is taken to have its dictionary definition.

Act means the *Local Government Act 1995 (WA)*.

City means the City of Kwinana.

Commercial Organisation means an entity that is not a Not-for-Profit Organisation.

Not-For-Profit Organisation means an entity that does not operate for the profit, personal gain or other benefit of its members or third parties and which applies all profits to the organisation's purposes.

Property means any property, building, facility (or part thereof) owned or managed by the City and capable of being leased or licenced by the City.

Lease means a disposition of Property, according to the criteria established in this Policy.

Licence means a disposition of Property, according to the criteria established in this Policy and otherwise an agreement where an Organisation is given a right to use Property under particular conditions, such as use only during certain times and days.

Organisation means a Commercial Organisation or Not-For-Profit Organisation.

Regulations means the *Local Government (Functions and General) Regulations 1996 (WA)*.

5. Pre-Leasing/Licencing Requirements

Prior to the granting of a lease/licence, a prospective tenant / licensee must:

- submit an Expression of Interest Form (<https://www.kwinana.wa.gov.au/our-council/Pages/Properties-For-Lease.aspx>);

- pay a non-refundable Lease Administrative Fee; and
- agree that the rent or licence fee will be based on the City's undertaking of a market valuation as well as the City's assessment of the subsidy criteria contained at **Tables 1** and **2** of this Policy and any other relevant considerations.

6. Eligibility and Calculation of Rent Subsidy

The City may subsidise rent for eligible Organisations. The eligibility criteria is set out in **Table 1** and the features of each category are summarised in **Table 2**.

Organisations who do not meet the eligibility criteria for either a peppercorn rent or a discounted market rent will pay the full market value of the Property, unless the City determines otherwise.

7. Standard Lease / Licence Conditions

The following outlines the standard lease/licence conditions (unless otherwise agreed).

7.1 The tenant / licensee must make the following payments:

- Rent** or Licence Fee; and
- Outgoings** including building insurance, electricity, water, telephone costs other utility costs and rates (if applicable).

7.2 The tenant / licensee must:

- take out and maintain public liability insurance (\$20 million) (**Public Liability Insurance**);
- be liable for all actions or omissions of subtenant/licensee's employees, contractors, invitees and agents (**Liability**);
- indemnify the City against all actions, claims and costs made or suffered by the City unless caused by the negligent or wrongful act of the City (**Indemnity**);
- keep the Property in good tenantable condition including cleaning, repairing and maintaining. Unless agreed otherwise, the City will be responsible structural / capital repairs including repairs to air-conditioning, roofs, lifts, building systems etc. Where the Property is shared with the City or other tenants and the City arranges cleaning of the whole of the Property, a cleaning contribution will be required (**Cleaning, Repairs and Maintenance**);
- obtain **written consent** from the City before altering, hiring or subleasing the Property. Note: Any alteration will remain the City's property unless otherwise specified in the Agreement or specified as a condition of consent (**Alterations**); and

- f) provide the City, on request, with annual statement of accounts, hirer details and details about the activities occurring on the Property including participation rates, budgets allocated to maintenance and repairs and any other information reasonably required by the City (**Provision of Information**).

7.3 In circumstances where the proposed tenant has fully or substantially funded and or constructed a building on the City's Property to be leased, the following conditions will apply:

- a) the tenant will pay a peppercorn rent;
- b) the tenant will pay all outgoings including building insurance (taken out by the City);
- c) the tenant will be responsible for all repairs and maintenance of the building (including of a structural nature); and
- d) when the tenant vacates the Property, the tenant must remove the building or leave the building and or structures in a tenantable condition.

Table 1 – Eligibility Criteria for subsidised rent

| Elements | Criteria |
|---------------------------------------|--|
| 1. Not-for-profit Organisation | <ul style="list-style-type: none"> • Is a legal entity incorporated under the <i>Associations Incorporation Act 2015</i> or the <i>Australian Charities and Not-for-Profits Commission Act 2012</i>; • Applies all or any surpluses towards its purposes; • Prohibits dividends/profits from being paid to its members; • Is exempt from paying income tax; and • Is financially viable, demonstrates good financial management, record-keeping practices and maintains records for audit purposes. |
| 2. Use/Activity | <ul style="list-style-type: none"> • Community demand exists for the service or activity offered by the Organisation; • The service or activity will increase social engagement and promote health and wellbeing of the community; • The intended use of the Property is consistent with City objectives and current business plans; and • The service or activity is non-discriminatory and is open to all residents who meet the participation criteria. |

Table 2 – Peppercorn and Discounted Market Rent

| Category | Annual Rent | Eligibility |
|------------------------|--|--|
| Discounted market rent | A reduction off the market rental valuation of up to 30% | •Meets all relevant eligibility criteria in Table 1 . |

| Category | Annual Rent | Eligibility |
|-----------------|---|--|
| Peppercorn rent | As determined annually in the City's Schedule of Fees and Charges | <p><u>Standard Peppercorn</u></p> <ul style="list-style-type: none"> • Meets all relevant eligibility criteria in Table 1; • Provides significant and extensive community benefit; • Has limited revenue-raising ability (net of cost of service); and • Is run predominantly by volunteers. <p><u>Non-Standard Peppercorn</u></p> <ul style="list-style-type: none"> • Building fully or substantially funded or constructed by the proposed Tenant. |

8. References

| | |
|------------------------------------|--|
| Name of Policy | Leasing Policy |
| Date of Adoption and resolution No | 09/09/2015 #562 |
| Review dates and resolution No # | 13/04/2016 #162 |
| New review date | |
| Legal Authority | <i>Local Government Act 1995</i> <i>Local Government (Functions and General) Regulations 1996</i> |
| Directorate | City Legal |
| Department | Property Management |
| Related documents | <p>Acts/Regulations <i>Local Government Act 1995</i> <i>Local Government (Functions and General) Regulations 1996</i></p> <p>Plans/Strategies City of Kwinana Strategic Community Plan and Corporate Business Plan</p> <p>Policies Nil</p> <p>Work Instructions CLT – WI11 – New Lease</p> |

Note: Changes to References may be made without the need to take the Policy to Council for review.



POLICY
LEASING OF COMMUNITY FACILITIES



LEASING OF COMMUNITY FACILITIES

This Policy provides a framework for the City to lease and licence its properties. It establishes the minimum community benefits that need to be demonstrated by prospective lessees and sets out the reporting requirements to ensure accountability to Council and recognition of the City's contribution.

| | |
|---------------------------|---|
| Adopted: | 09/09/2015 #562 |
| Last reviewed: | 13/04/2016 #162 |
| Legal Authority: | Local Government Act 1995 Section 2.7 – Role of Council |
| Strategic Community 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. |

Policy:

1 Introduction

Community facilities owned and leased or licenced by the City make an important contribution to the City's ability to achieve the objectives of the Strategic Community Plan and Corporate Business Plan. The facilities referred to in this Policy include both land and buildings, but do not include sports facilities, hall hire or facilities that are offered to the public for casual or short term hire. It applies to those premises that are occupied exclusively by commercial entities, community groups, organisations and those lessees providing a service sought after by the community.

For the purpose of this Policy a 'community group' is defined as a not for profit organisation that does not operate for the profit, personal gain or other benefit of particular people. The profits must be applied for the organisations purpose only.

This Policy provides a framework for leasing and licensing of City of Kwinana properties to third parties at peppercorn, discounted and commercial rates of rental. It establishes the requirement for all prospective lessees to demonstrate the community benefits arising from their use of City property and sets out reporting requirements (clause 7) to ensure accountability to Council and recognition of the City's contribution. The Policy establishes the terms and conditions the City will use as the basis for negotiating leases and licences.

This policy will apply to all new leases and licences, including the renewal of leases and licences on expiration of the current leases and licences.

2 Aim of Policy

Through implementation of this Policy, the City aims to maximise the benefit to the community whilst ensuring responsible management of community assets, with an equitable methodology for calculating lease and licence charges according to their classification.

3 Background

3.1 Leasing and Licensing in Kwinana

The City of Kwinana leases or licences a number of facilities to community groups and incorporated organisations at subsidised rates, including use as childcare centres, kindergartens, community centres and scout halls.

3.2 Legislative Framework

A number of laws and regulations affect City leases and licences. Of particular relevance are the following Western Australian Acts and Regulations.

- *Local Government Act 1995*: Includes details on the disposition requirements and exemptions and the circumstances requiring leases to be advertised.
- *Local Government (Functions and General) Regulations 1996*: Details the exemptions from section 3.58 of the Local Government Act 1995 for the disposition of land entered into by the City.
- *Occupier's Liability Act 1985*: Details the relationship between lessees and landlords in respect to liability and duty of care.

3.3 Community Profile

As the Kwinana population changes, so do demands for services. Projected changes to the community profile will affect the type of facilities that the community requires. This Policy will ensure that access to the City's facilities and assets are not unnecessarily restricted and properties can be redeployed over time to meet changing community needs.

4 Policy Objectives

The objectives of this policy are to:

- Ensure City owned facilities are used to meet demonstrated community needs consistent with Council's policies and the Strategic Community Plan;
- Provide accountability for City expenditure on rent subsidies, as they constitute indirect grants;
- Ensure a transparent and equitable process of granting new leases or licences and renewals by having clear assessment criteria;
- Ensure lessees pay fair and reasonable rent based on clear eligibility criteria and calculation methodologies;
- Optimise use of the City's community facilities and equitable access by the Kwinana community;
- Increase community access to activities and services, particularly access by disadvantaged and socially isolated groups;
- Enable the City's contribution to be reported to the community;
- Assist not-for-profit and volunteer-based organisations that offer activities and services in the City of Kwinana;

- Assist community groups to understand and support the achievement of Council's policies and plans;
- Facilitate a shared approach between Council and the lessee as to the cost of management and maintenance of City-owned facilities;
- Ensure that City-owned facilities are appropriately maintained as City assets;
- Ensure that City assets are maintained, developed and occupied responsibly, having regard to the interests of local communities; and
- Ensure sound financial management and effective administration of community facility leasing and licensing.

5 Eligibility for Leasing and Licensing Community Facilities

5.1 Eligibility Criteria

Schedule 1 to this Policy sets out eligibility criteria for leasing and licensing community facilities. Prospective lessees as well as those seeking renewal of leases or licences will be required to provide details of how they meet these criteria including financial information. Rent subsidies will have regard to the extent to which organisations meet the essential and desirable criteria (see Section 6.2). There are three categories of criteria:

- **Organisation criteria:** Includes appropriate organisational structure, financial viability and compliance with relevant legislation and Council policies. Community benefit criteria includes use of the facility to meet community needs, number of participants, access for disadvantaged groups, contribution to community wellbeing, and programs and services that are consistent with Council's objectives and goals as articulated in the City's Strategic Community Plan.
- **Facility management and development criteria:** Includes suitability for use on the site and a preparedness to maximise utilisation.
- **Lease/Licence category criteria:** Involves categorising community groups and organisations as eligible for peppercorn, discounted or full market rental.

5.2 Reporting against Criteria

All lessees will be required to report against the eligibility criteria on request, and on lease or licence renewal, and advise the City if their organisational status has changed. Lessees will be required to provide the City with a copy of a certificate of currency with respect to its insurance each year or as otherwise requested by the City and a copy of any permit or approval.

New leases and licences will require lessees and licensees to provide a copy of their annual report and financial statements. A lessee that breaches a lease or a licence condition may be required to relinquish the lease or licence. Where the lessee breaches the lease or licence by subletting without Council consent or receives funding or third party rental, Council may require the lessee to pay up to full market rent.

City Officers will assist lessees to comply with the reporting requirements by providing simple reporting formats and checklists, timely information and if necessary briefing or training on how to demonstrate their claims against the criteria.

City Officers may also seek additional information where necessary to better understand activities, the extent of community use and opportunities for facility and service development. Reporting requirements will be based on existing documents, such as annual reports, where possible.

5.3 Expression of Interest in Use of Council Property

Community groups who wish to utilise City property will be required to contact the relevant City department and lodge a written expression of interest outlining the proposed use and addressing the eligibility criteria. The City will consider expressions of interest on their merits when a property becomes available for use.

Existing lessees will be required to define the proposed use and demonstrate their compliance with the eligibility criteria when seeking renewal of their existing lease or licence arrangements. Lessees with a further term under the lease or licence who seek to exercise an option to extend the lease are generally entitled to require that the lease be extended on the same terms and conditions as the existing agreement (subject to any covenants to the contrary in the lease or licence documentation).

6 Terms and Conditions of Leases and Licences

6.1 Standard Lease and Licences

The City's standard lease and licence agreements for various types of properties will be applied to all new tenancies including the renewal of existing tenancies and may be varied if essential to the special needs of the property or lessee, as resolved by Council. Lessees with a further term under the agreement who seek to exercise an option to extend the lease or licence are entitled to require that the lease or licence be extended on the same terms and conditions as the existing agreement (subject to any covenants to the contrary in the documentation).

6.2 Breaches of Lease and Licences

For the purposes of this Policy, a 'breach' is defined as an act by the lessee, whether intended or not, where the conditions or requirements of a lease or licence have not been met, either by neglect, dereliction, non-observance, violation or in any other manner.

6.3 Rent and Review

6.3.1 Market Rent Value

The market rental value of each property is determined by a licensed valuer.

6.3.2 Rent Subsidy

Council may subsidise rent for eligible lessees. There are three categories of rent subsidy based on the extent to which organisations meet the essential and desirable eligibility criteria outlined in Schedule 1. Council will review performance against these criteria and eligibility for rent subsidy annually. The categories are:

- A: Peppercorn rent
- B: Discounted market rent
- C: Market rent

The eligibility criteria for each category are included in Schedule 1 and summarised in Table 1 below:

Table 1 Rent Subsidy Categories

| Category | Annual Rent | Eligibility |
|------------------------------|--|--|
| A: Peppercorn rent | As determined annually in the City's Schedule of Fees and Charges | <ul style="list-style-type: none"> ▪ Use approved by Council; ▪ Meets all relevant eligibility criteria; ▪ Provides significant community benefit; <u>and</u> ▪ Has limited revenue-raising ability (net of cost of service) e.g. community play groups, neighbourhood house |
| 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% | <ul style="list-style-type: none"> ▪ 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. |
| C: Market rent | Full market rent | <ul style="list-style-type: none"> ▪ Use approved by Council; ▪ Meets all relevant eligibility criteria; and ▪ Provides services that are not targeted to the Kwinana community; <u>or</u> ▪ Is substantially funded by other agencies or governments; <u>or</u> ▪ Operations substantially include commercial activities for profit. |

Council will negotiate discounted market rents with eligible community organisations after consideration of various factors, including but not limited to the following factors:

- Consistency with Council's Strategic Community Plan and Corporate Business Plan
- Community benefit
- Use of volunteers
- Service and program fees
- Access by Kwinana residents
- Extent of external funding
- Track record as a City lessee

6.3.3 Annual Indexation of Rents

Rents (other than peppercorn rents) will be indexed annually and the amount payable will be increased by the Perth 'All Groups Consumer Price Index (CPI) (using the percentage change from corresponding quarter of previous year), and using the preceding quarter data of the annual review date, as determined by the Australian Bureau of Statistics.

6.4 Maintenance

Facility maintenance includes minor day-to-day maintenance able to be performed by a non-tradesperson and more significant programmed and non-programmed asset renewal maintenance requiring the services of a qualified tradesperson or experienced maintenance person.

While the City will generally assume some responsibility for facility maintenance costs and reflect this in rental values, the City reserves the right to negotiate structural and other maintenance responsibilities and costs where it is demonstrated to be in the interests of both parties. All maintenance obligations and maintenance standards will be clearly articulated in specific schedules to lease and licence documents.

Each lessee is required to maintain the facility in accordance with the maintenance schedule attached to their lease or licence using the services of registered and qualified tradespeople. The maintenance schedule will specify the City's and the lessee's responsibilities.

6.4.1 Maintenance Inspection

The City reserves the right to inspect the premises each year or more frequently as required. The City will give appropriate notice to the lessee in accordance with the lease or licence conditions.

6.4.2 Utilities

Payment of utilities is the responsibility of the lessee except where the lessee occupies an area that is part of a larger City facility and separate metering is impractical. The requirements and method of payments for utilities will be captured within individual lease agreements.

6.5 Term of Lease or Licence

The term of each lease or licence will be negotiated taking into account the particular circumstances of the facility and the lessee, including capital investment and long-term planning, sustainability of the service and the connection between facility use and the City's Strategic Community Plan.

6.6 Use of Licences Rather Than Leases

Council aims to maximise access and use of community facilities and encourages shared use. Where Council wishes to make a facility available to multiple users, a licence rather than a lease will be the preferred form of agreement. A lease agreement will be used where Council considers that providing exclusive rights to a single lessee is in the best interests of the community or is necessary to recognise financial investment by the lessee or secure the desired use and long-term development of the property.

6.7 Use of Premises and Occasional Hire

Leases and licences will only be available to community groups for approved purposes. All leases and licences will include a statement recognising Council's policy of maximising community use and a commitment by the lessee to support shared and multiple use of the facility by community-based organisations. Any such shared use and multiple use will be subject to Council approval.

It is recommended that lessees should make facilities available for casual hire where appropriate and where this does not interfere with the primary purpose of the facility or adversely affect the amenity of nearby neighbours. Hiring agreements, including fees and any restrictions on the property, shall be referred to Council for approval. Fees from casual hire are payable to the lessee, not to the City, as an incentive to maximise utilisation. Where the lessee receives fees for hiring out facilities, Council will be entitled to review the rent to take into account the income received.

6.8 Hours of Use

Council will prescribe the hours of use for all premises, dependent on the nature and proposed conduct of activities or programs and any planning permit conditions.

6.9 Sub-leasing

Lessees may only sub-lease or sub licence with Council permission to approved organisations for approved purposes and may be subject to terms and conditions. Generally, Council may use the same criteria to assess the sub-lease or licence as the head lease or licence.

6.10 Rates, Taxes and Outgoings

Where the lessee has a lease on an entire property, the lessee shall pay for rates (if charged), and any applicable taxes (including GST) or any stamp duty or other taxes payable. Where there is shared use the lessee can be charged outgoings on a proportional basis. This could be applied to a lease or a licence.

6.11 Insurance

Lessees must maintain their own public liability insurance to a value determined by the City, as detailed in the lease or licence document. Generally, the City will fully insure all City-owned improvements on leased or licensed premises. Lessees will be required to insure their own contents. The lessor will also be responsible for public risk insurance with the City's interests indemnified as far as possible.

6.12 Gaming and Liquor Licences

Council in most circumstances prohibits gaming licences in leased or licenced community facilities. Council strongly discourages gaming venues in the City, as it has a commitment to limiting the negative impacts of gambling on the community. The requirements of the *Gaming and Wagering Commission Act 1987* apply.

Council will support community groups carrying out bingo in leased or licenced community facilities where they are the permit holder of the gaming licence. Commercial gaming organisations are prohibited from leasing or having a licence of any community facility.

A permit for a liquor licence requires approval by the City and must be sought through the normal processes required by the City and the *Liquor Control Act 1988*.

6.13 Legal Fees

The payment of any fees and charges including legal costs associated with the establishment of lease or licence agreements will be in accordance with the schedule of fees and charges within the City's annual budget.

6.14 Keys and Locks and Security Arrangements

Lessees must provide keys to the City to enable the City to carry out essential maintenance and emergency services. Lessees must provide the City with information on any other security arrangements undertaken by the lessee in respect of the City's facility, such as security patrols, keypads and alarms. The City would retain a set of keys and would be required to be notified and provided with new keys if locks were changed.

6.15 Planning Requirements and Other Permits

All lessees must adhere to the conditions of any planning, building approvals or other approvals issued by the City or other authorities. Lessees must also obtain any permits or licences in order for the lessee to be able to use the premises for its permitted use.

6.16 Removal of Assets

The lessee may remove any assets that have been constructed or installed by them during the term of the lease or licences (unless otherwise part of the agreement), subject to the premises being returned to the City in its original condition. Any improvement not removed at the end of the lease or licence shall remain in the City's ownership.

6.17 Capital Improvements

Any capital improvements proposed by the lessee if approved by Council, would generally remain the property of the City unless otherwise specified in the lease or licence. Council will consider the capital contribution by lessees in assessing rent levels and length of lease or licence.

6.18 Acknowledgment of Council Contribution

Lessees must acknowledge any contribution by the City in their annual report, brochures and on any signage on the premises and is subject to the approval of the City. Acknowledgement requirements will be specifically detailed in all leases and licences.

6.19 Nuisance

Council requires that lessees undertake their permitted activities without adversely affecting the amenity of nearby neighbours. Breaches in this regard may lead to forfeiture of tenancy rights.

6.20 City Access

The lessee shall grant access to the City for facility inspection at any time after the City has given the lessee adequate notice (as defined in the lease or licence agreement).

6.21 Asbestos Hazards

The City will advise lessees if a facility is listed on the City's asbestos register and, where required, ensure that an associated lease or licence clearly states any lessee or licencees obligations in relation to potential asbestos hazards.

6.22 Cleaning

Cleaning will be the responsibility of the lessee. Where facilities are shared and/or the City arranges cleaning, a contribution towards cleaning will be negotiated with the lessee.

6.23 Additional Requirements

The lessee must comply with all legislation governing the activities of the lessee, e.g. Occupational Health and Safety, Child Care, Council policies etc. Council reserves the right to require category C (market rent) lessees to pay a security deposit.

7 Implementation of Policy

This Policy will apply to all leases and licences developed or renewed following its adoption by Council.

SCHEDULE 1: Eligibility Criteria for Community Facility Leases/Licences

Any group wishing to lease or obtain a licence for a City of Kwinana community facility must meet the following criteria

| Organisation Criteria | | Leasee Category | | | |
|-----------------------|--|-----------------|---|---|---|
| | | ✓ or X | A | B | C |
| 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. | | E | E | D |
| 2 | The organisation is a legal entity incorporated under appropriate legislation (such as the Associations Incorporation Act 1987). | | E | E | E |
| 3 | The organisation is financially viable and able to demonstrate good financial management and record-keeping practices to the satisfaction of the City. | | E | E | E |
| 4 | The organisation complies with relevant legislation governing its activities and holds any licences or registration certificates required for it to operate. | | E | E | 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. | | E | E | 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. | | E | E | E |
| 7 | Demand exists for the service or activity to be provided through the facility. | | E | E | D |
| 8 | Facility use is consistent with City objectives and current Business Plan. | | E | E | E |
| 9 | Use of the facility will increase social engagement and promote health and wellbeing of the Kwinana community. | | E | E | D |
| 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. | | E | D | D |
| 11 | Disadvantaged groups can access the service or activity and strategies are in place to review and remove any barriers to participation. | | E | E | D |

| Facility Management and Development Criteria | | Lessee Category | | | |
|--|---|-----------------|---|---|---|
| | | ✓ or X | A | B | C |
| 1 | Proposed use of the facility is suitable for the nature of the site and the neighbourhood. | | E | E | E |
| 2 | The organisation is prepared to maximise utilisation of the facility as requested by the City. | | E | E | E |
| 3 | The organisation agrees to provide the City with requested information including current and projected opening hours and participant and/or membership numbers. | | E | E | E |

Lessee/Licencee Category Criteria

Council will use the following criteria to determine whether the group is categorised as either:

- A. Peppercorn: Rent determined annually in the Schedule of Fees and Charges.
- B. Discounted market rent: A reduction of 30-70% of the market rental valuation is to be calculated based on a scale of community benefit and other criteria, level of maintenance responsibility and financial contributions made by the lessee.
- C. Full market rent: As determined by market valuation.

When addressing the criteria above, the organisation’s ability to meet the criteria will either be assessed as a tick (✓) in the box, if the requirement for an individual criterion has been met, or a cross (x), if it has not been met.

The final three (Lessee Category) columns show which criterion is Essential (E) and which is Desirable (D) for the three categories of the 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.

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

18.4 Budget Variations

DECLARATION OF INTEREST:

There were no declarations of interest declared.

SUMMARY:

To amend the 2020/2021 budget to reflect various adjustments to the General Ledger with nil effect to the budgeted surplus position. The proposed budget amendment will introduce additional infrastructure projects to the budget, funded through the Federal economic stimulus grant: Local Roads and Community Infrastructure Program.

OFFICER RECOMMENDATION:

That Council approves the required budget variations to the Current Budget for 2020/2021 as follows.

| ITEM # | DESCRIPTION | CURRENT BUDGET | INCREASE/ DECREASE | REVISED BUDGET |
|--------|--|----------------|--------------------|----------------|
| 1 | Capital Expense – Buildings – Various capital projects | Nil | (234,000) | (234,000) |
| | Capital Expense – Footpaths – Various capital projects | Nil | (145,720) | (145,720) |
| | Capital Expense – Roads – Various capital projects | Nil | (155,000) | (155,000) |
| | Capital Revenue – Grant - Local Roads and Community Infrastructure Program | Nil | 534,720 | 534,720 |

NOTE: AN ABSOLUTE MAJORITY OF COUNCIL IS REQUIRED

DISCUSSION:

The City of Kwinana has entered into an agreement to receive funding from the Australian Government for the Local Roads and Community Infrastructure (LRCI) Program. This program aims to assist a community-led recovery from COVID-19 by supporting local jobs, firms, and procurement. It is expected Councils, where possible, will use local businesses and workforces to deliver projects to ensure stimulus funding flows into local communities.

The proposed projects are weighted towards small building projects, to provide as much opportunity as possible, to employ local businesses in delivering the program. The number of building projects has been capped at the capacity of Officers to deliver the program prior to the 30 June 2021 deadline. The remaining funding has been allocated to new footpaths and some road renewal projects. The detailed list of projects is as follows:

18.4 BUDGET VARIATIONS

| Buildings | | |
|--|--|-----------|
| William Bertram Community Centre – External wall paint in playground area | | \$7,000 |
| Recquatic – Internal paint public areas | | \$8,000 |
| John Wellard Community Centre – Paving stain cleaning/repaint | | \$10,000 |
| Goldney Velodrome BMX track kiosk – External wall repaint and paving restoration | | \$12,000 |
| Thomas Oval electrical compound – External wall clean and repaint | | \$4,500 |
| Recquatic – Entrance area external wall repaint | | \$25,000 |
| John Wellard Community Centre – Wall finishes – meeting room repaint | | \$7,000 |
| Wells Park public toilets – External brickwork and paving clean and paint | | \$10,000 |
| Wellard Pavilion – External wall finishes | | \$10,000 |
| Medina Hall – Isabela Corker Wing – replace carpet | | \$4,000 |
| John Wellard Community Centre - Wisteria room carpet replacement | | \$15,000 |
| Sloan's Cottage – Access upgrades and repairs | | \$20,000 |
| Mandogalup VB Fire Station – Repair storage room cracked wall | | \$5,000 |
| William Bertram Community Centre – Rusted gutters restoration | | \$7,000 |
| William Bertram Community Centre – External cracked walls repair/metal fence repaint | | \$7,000 |
| Recquatic – Grout renewal change rooms | | \$25,000 |
| Medina Oval Changerooms – Concrete verandah and minor terracing | | \$30,000 |
| Darius Wells – Roof leak repair | | \$3,500 |
| Zone Youth Centre – Roof leak repair | | \$10,000 |
| | | |
| Footpaths | | |
| Barwell Road – Construction of 1.5m concrete footpath | | \$30,720 |
| Bilya Gardens – Construction of 2m wide concrete footpath | | \$115,000 |
| | | |
| Roads | | |
| Stefanelli Close – Road resurfacing | | \$70,000 |
| Wandi Drive – Road resurfacing | | \$85,000 |

In addition to these works, Officers had previously indicated to Council that there would be works at the Magenup Equestrian Centre, to the value of \$7,000, and works at 18 Maydwell Way, also at a value of \$7,000. Advice from the responsible Federal department is that these two projects are outside the funding rules. To address this, officers will increase funding to the Sloan's Cottage project in the grant, and do another budget variation to reduce the Municipal funding of Sloan's Cottage by \$14,000 to substitute the two otherwise 'disallowed' projects.

The proposed budget variation, to effect these projects, is as follows:

| ITEM # | DESCRIPTION | CURRENT BUDGET | INCREASE/ DECREASE | REVISED BUDGET |
|--------|--|----------------|--------------------|----------------|
| 1 | Capital Expense – Buildings – Various capital projects | Nil | (234,000) | (234,000) |
| | Capital Expense – Footpaths – Various capital projects | Nil | (145,720) | (145,720) |
| | Capital Expense – Roads – Various capital projects | Nil | (155,000) | (155,000) |
| | Capital Revenue – Grant - Local Roads and Community Infrastructure Program | Nil | 534,720 | 534,720 |

18.4 BUDGET VARIATIONS

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:

The financial implications are detailed in this report.

ASSET MANAGEMENT IMPLICATIONS:

The allocation of funds towards the upgrading and purchase of City assets will be included in the City’s Asset Management Strategy.

ENVIRONMENTAL IMPLICATIONS:

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

STRATEGIC/SOCIAL IMPLICATIONS:

This proposal will support the achievement of the following outcome and objective detailed in the Corporate Business Plan.

| Plan | Outcome | Objective |
|-------------------------|----------------------|--|
| Corporate Business Plan | Business Performance | 5.4 Ensure the financial sustainability of the City of Kwinana into the future |

COMMUNITY ENGAGEMENT:

The proposed projects were informally discussed with Councillors during an Elected Member Briefing Session, with Councillors indicating support for the project selection philosophy employed.

PUBLIC HEALTH IMPLICATIONS

Various. The projects will result in building improvements and additional footpaths, as well as some employment opportunities, all of which should improve public health outcomes..

18.4 BUDGET VARIATIONS

RISK IMPLICATIONS:

The risk implications in relation to this proposal are as follows:

| | |
|--|---|
| Risk Event | The City does not manage its finances adequately and allows budget expenditure to exceed allocation and the City then finds itself unable to fund its services that have been approved through the budget process |
| Risk Theme | Failure to fulfil statutory regulations or compliance Providing inaccurate advice/information |
| Risk Effect/Impact | Financial Reputation Compliance |
| Risk Assessment Context | Operational |
| Consequence | Major |
| Likelihood | Rare |
| Rating (before treatment) | Low |
| Risk Treatment in place | Reduce (mitigate risk) |
| Response to risk treatment required/in place | Submit budget variation requests to Council as they arise, identifying financial implications and ensuring there is nil effect on the budget adopted |
| Rating (after treatment) | Low |

COUNCIL DECISION

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MOVED CR W COOPER**SECONDED CR S WOOD**

That Council approves the required budget variations to the Current Budget for 2020/2021 as follows.

| ITEM # | DESCRIPTION | CURRENT BUDGET | INCREASE/ DECREASE | REVISED BUDGET |
|--------|--|----------------|--------------------|----------------|
| 1 | Capital Expense – Buildings – Various capital projects | Nil | (234,000) | (234,000) |
| | Capital Expense – Footpaths – Various capital projects | Nil | (145,720) | (145,720) |
| | Capital Expense – Roads – Various capital projects | Nil | (160,000) | (160,000) |
| | Capital Revenue – Grant - Local Roads and Community Infrastructure Program | Nil | 534,720 | 534,720 |

CARRIED BY AN ABSOLUTE MAJORITY OF COUNCIL

8/0

18.4 BUDGET VARIATIONS

NOTE – That the Officer Recommendation has been amended to adjust funds allocated to roads under the grant, to ensure the expenditure balances against the income.

An additional budget variation will be put to Council in the near future, to address the projects removed from the funding, as they fall outside the grant rules (Mangenup Equestrian Centre and Maydwell Way). The intent is to fund these projects through Municipal funding, by reducing the existing capital allocation to one of the Sloans' Cottage projects. The funding removed from the Sloans' Cottage project will be replaced with funds from the grant. Officers are confirming the Sloans' project will be approved under the grant, before suggesting Council make this change.

18.5 Disposition of Lease – Thomas Hall Pavilion – ARLC WA Limited operating as NRL WA

DECLARATION OF INTEREST:

There were no declarations of interest declared.

SUMMARY:

The City of Kwinana (**the City**) has management of Reserve 24302, with power to lease for 21 years subject to the Minister for Lands' consent. The Department of Planning Lands and Heritage is the owner of 28 Tucker Street, Medina, Western Australia being more particularly described as Reserve 24302, Lot M1084 on Deposited Plan 216209 being the whole of the land comprised in Certificate of Crown Land Title Volume 2615 Folio 984 (**the Land**).

In early 2020, NRL WA approached the City about using the City's facilities as a base for NRL activities, development and promotion. After various meetings with City Officers, it was determined that the Thomas Hall Pavilion¹, which is located on the Land, was the best fit for NRL WA and that existing users of the Pavilion could be relocated to other City facilities. Further discussions between NRL WA and the City have occurred about the responsibilities associated with NRL WA using the Pavilion exclusively under a lease.

This report seeks Council to authorise the Chief Executive Officer to lease the Pavilion to ARLC WA Limited ACN 602 143 199 operating as NRL WA (**NRL WA**).

The NRL WA is a not-for-profit organisation, the objects of which are of an educational, recreational and sporting nature. Accordingly, pursuant to section 30 (2)(b)(i) of the *Local Government (Functions and General) Regulations 1996*, the City is able to dispose of the lease without advertising the proposed disposition.

Additionally, because the Pavilion is located on Land that is a reserve under a management order (i.e. the Land is owned by the State of Western Australia but managed by the City), the City is required to obtain Ministerial consent to lease the Land, before it can formally lease the Pavilion to the NRL WA. Notably, the City has requested the in-principle consent of the Minister for Lands and is awaiting a response.

OFFICER RECOMMENDATION:

That Council:

1. Authorise the Chief Executive Officer to execute a lease agreement at Attachment C, between the City of Kwinana and ARLC WA Limited ACN 602 143 199 operating as NRL WA subject to the consent of the Minister for Lands, for Thomas Hall Pavilion, being located part of 28 Tucker Street, Medina, Western Australia being more particularly described as Reserve 24302, Lot M1084 on Deposited Plan 216209 being the whole of the land comprised in Certificate of Crown Land Title Volume 2615 Folio 984 and make any modifications where the intent of the lease does not change.
2. In accordance with the City of Kwinana's Leasing of Community Facilities Policy and 2019/2020 Fees and Charges, approve the proposed peppercorn rent as \$111 per annum.

¹ The agenda incorrectly referenced Thomas Kelly Pavilion originally, for accuracy of the official minutes this has been updated to reflect the correct building title of Thomas Hall Pavilion.

18.5 DISPOSITION OF LEASE – THOMAS HALL PAVILION – ARLC WA LIMITED OPERATING AS NRL WA

DISCUSSION:

NRL WA is the state governing body for Rugby League in Western Australia. Headed by a board of three directors, NRL WA has a General Manager and seven staff working full time to ensure the strong development of Rugby League in Western Australia. NRL WA is endeavouring to lift the profile of Rugby League with ongoing incentives that have seen numbers increase in recent times.

The NRL WA intends to host State, Regional and National representative pathway programs and initiatives and activate a local grassroots Rugby League and Touch Football Club. The NRL WA also intends to make modifications to the Thomas Hall Pavilion (with the City's prior consent) and contribute to the surrounding ovals by for example, providing additional goal posts and grounds works. The mutual benefits for the City and NRL WA proposed programs, modifications and additional works are shown at **Attachment A**.

Ministerial Consent

In order to lease the Pavilion, the City is required to obtain Ministerial consent in accordance with section 18 of the *Land Administration Act 1997*. The City does not expect that consent will not be given. This is because the NRL WA's business is that of promoting and facilitating sporting activities and this clearly falls within the purpose of the management order, being that of recreational purposes. A copy of the Certificate of Title is shown at **Attachment B** and notes the management order and the need for the City to obtain the Minister's consent prior to leasing.

Proposed Rent and Other Leasing Conditions

The City's Leasing of Community Facilities Policy (**the Policy**) provides for the circumstances in which an organisation is entitled to peppercorn rent. The question of entitlement to peppercorn rent, in light of the Policy, was determined by the City's Executive by evaluating the services provided by the NRL WA in Kwinana.

On 16 April 2020, the NRL WA paid the City the 'Lease Administration' fee of \$479 per the City's Schedule of Fees and Charges.

It is proposed that the new lease agreement be a peppercorn lease, with a term of 3 years, with a further option of 2 years. Notably, the NRL WA will be responsible for electricity costs, cleaning, maintenance, repair and replacement costs (not of a structural nature). The City will however, continue to maintain building insurance and make repairs and replacement to the building for things that are of a structural nature. Also, as the water system is shared between the Thomas Hall Pavilion and the adjacent public toilets, the City has agreed to pay for water costs. Additionally, the lease will be conditional on the granting of Ministerial consent. Notably, NRL have also requested, through the planning approval process, permission for NRL to place 2 storage containers nearby the Leased Premises, primarily as a storage for training equipment and resources. This approval will need to be sought through the Western Australian Planning Commission as the site is subject to the Metropolitan Regional Scheme. A copy of a sketch which details the Leased Premises, proposed Shipping Container locations and Ovals to be hired is shown at Annexure 1 of the **Attachment C**.

18.5 DISPOSITION OF LEASE – THOMAS HALL PAVILION – ARLC WA LIMITED OPERATING AS NRL WA

The NRL WA is a not for profit organisation that will provide the local community with sport and recreation and in accordance with the Policy, must meet the compulsory peppercorn essential criteria.

On the basis of information presented to the City, the NRL WA appears to meet the following eligibility criteria as outlined in the Policy:

- They are an organisation that applies any surplus funds towards its purposes, prohibits any dividends or profits from being paid to its members and is exempt from paying income tax;
- They are a legal entity incorporated under the *Associations Incorporation Act 2015*;
- They are financially viable and able to demonstrate good financial management and record-keeping practices to the satisfaction of the City;
- They comply with relevant legislation governing their activities and hold registration certificates required for operation;
- They have a committee of management and appropriate governance arrangements, with established accountability and reporting methods to members of the organisation and to the community, including the capacity to maintain appropriate financial records for audit purposes;
- They adhere to all relevant Council local laws including the *Local Government Property Local Law*, and Council policies;
- Demand exists for the service to be provided through the facility;
- Facility use is consistent with City objectives and current Business Plan;
- Use of the facility increases the member's social engagement and promotes the health and wellbeing of the Kwinana community;
- They are open to all residents who meet the criteria for participation;
- Disadvantaged groups can access the service;
- Proposed use of the facility is suitable for the nature of the site;
- They are prepared to maximise utilisation of the facility if requested by the City; and
- They agree to provide the City with requested information including current and projected opening hours and participant and/or membership numbers.

18.5 DISPOSITION OF LEASE – THOMAS HALL PAVILION – ARLC WA LIMITED OPERATING AS NRL WA

The NRL WA is eligible for a peppercorn lease, as it meets the criteria outlined in the Leasing of Community Facilities Policy as follows:

| Category | Annual Rent | Eligibility |
|--------------------|---|---|
| A: Peppercorn rent | As determined annually in the City's Schedule of Fees and Charges | Use approved by Council; Meets all relevant eligibility criteria; Provides significant community benefit; <u>and</u> Has limited revenue-raising ability (net of cost of service) e.g. community play groups, neighbourhood house |

It is recommended that the NRL WA pay peppercorn rent annually.

LEGAL/POLICY IMPLICATIONS:

For the purpose of Councillors considering a financial or impartiality interest only, the proponent/owner is ARLC WA Limited ACN 602 143 199 operating as NRL WA.

Section 3.58 (3) and (4) of the Local Government Act 1995 states:

- (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.*
- (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.*

18.5 DISPOSITION OF LEASE – THOMAS HALL PAVILION – ARLC WA LIMITED OPERATING AS NRL WA

Section 30 of the Local Government (Functions and General) Regulations 1996 states:

- (1) *A disposition that is described in this regulation as an exempt disposition is excluded from the application of section 3.58 of the Act.*
- (2) *A disposition of land is an exempt disposition if —*
 - (a) *the land is disposed of to an owner of adjoining land (in this paragraph called the transferee) and —*
 - (i) *its market value is less than \$5 000; and*
 - (ii) *the local government does not consider that ownership of the land would be of significant benefit to anyone other than the transferee; or*
 - (b) *the land is disposed of to a body, whether incorporated or not —*
 - (i) *the objects of which are of a charitable, benevolent, religious, cultural, educational, recreational, sporting or other like nature; and (ii) the members of which are not entitled or permitted to receive any pecuniary profit from the body's transactions; or*
 - (c) *the land is disposed of to —*
 - (i) *the Crown in right of the State or the Commonwealth; or*
 - (ii) *a department, agency, or instrumentality of the Crown in right of the State or the Commonwealth; or*
 - (iii) *another local government or a regional local government; or*
 - (d) *it is the leasing of land to an employee of the local government for use as the employee's residence; or*
 - (e) *it is the leasing of land for a period of less than 2 years during all or any of which time the lease does not give the lessee the exclusive use of the land; or*
 - (f) *it is the leasing of land to a person registered under the Health Practitioner Regulation National Law (Western Australia) in the medical profession to be used for carrying on his or her medical practice; or*
 - (g) *it is the leasing of residential property to a person.*
- (2a) *A disposition of property is an exempt disposition if the property is disposed of within 6 months after it has been —*
 - (a) *put out to the highest bidder at public auction, in accordance with section 3.58(2)(a) of the Act, but either no bid is made or any bid made does not reach a reserve price fixed by the local government; or*
 - (b) *the subject of a public tender process called by the local government, in accordance with section 3.58(2)(b) of the Act, but either no tender is received or any tender received is unacceptable; or*
 - (c) *the subject of Statewide public notice under section 3.59(4) of the Act, and if the business plan referred to in that notice described the property concerned and gave details of the proposed disposition including —*
 - (i) *the names of all other parties concerned; and*
 - (ii) *the consideration to be received by the local government for the disposition; and*
 - (iii) *the market value of the disposition as ascertained by a valuation carried out not more than 12 months before the proposed disposition.*
- (2b) *Details (see section 3.58(4) of the Act) of a disposition of property under subregulation (2a) must be made available for public inspection for at least 12 months from the initial auction or tender, as the case requires.*

18.5 DISPOSITION OF LEASE – THOMAS HALL PAVILION – ARLC WA LIMITED OPERATING AS NRL WA

- (3) *A disposition of property other than land is an exempt disposition if —*
- (a) *its market value is less than \$20 000; or*
 - (b) *the entire consideration received by the local government for the disposition is used to purchase other property, and where the total consideration for the other property is not more, or worth more, than \$75 000.*

Land Administration Act 1997 (LAA)

18. *Crown land transactions that need Minister's approval*

- (1) *A person must not without authorisation under subsection (7) assign, sell, transfer or other deal with interests in Crown land or create or grant an interest in Crown land.*
- (2) *A person must not without authorisation under subsection (7) —*
- (a) *grant a lease or licence under this Act, or a licence under the Local Government Act 1995, in respect of Crown land in a managed reserve; or*
 - (b) *being the holder of such a lease or licence, grant a sublease or sublicense in respect of the whole or any part of that Crown land.*
- (3) *A person must not without authorisation under subsection (7) mortgage a lease of Crown land.*
- (4) *A lessee of Crown land must not without authorisation under subsection (7) sell, transfer or otherwise dispose of the lease in whole or in part.*
- (5) *The Minister may, before giving approval under this section, in writing require —*
- (a) *an applicant for that approval to furnish the Minister with such information concerning the transaction for which that approval is sought as the Minister specifies in that requirement; and*
 - (b) *information furnished in compliance with a requirement under paragraph (a) to be verified by statutory declaration.*
- (6) *An act done in contravention of subsection (1), (2), (3) or (4) is void.*
- (7) *A person or lessee may make a transaction under subsection (1), (2), (3) or (4) —*
- (a) *with the prior approval in writing of the Minister; or*
 - (b) *if the transaction is made in circumstances, and in accordance with any condition, prescribed for the purposes of this paragraph.*
- (8) *This section does not apply to a transaction relating to an interest in Crown land if —*
- (a) *that land is set aside under, dedicated or vested for the purposes of an Act other than this Act, and the transaction is authorised under that Act; or*
 - (b) *that interest may be created, granted, transferred or otherwise dealt with under an Act other than —*
 - (i) *this Act; or*
 - (ii) *a prescribed Act; or*
 - (c) *an agreement, ratified or approved by another Act, has the effect that consent to the transaction was not required under section 143 of the repealed Act; or*

18.5 DISPOSITION OF LEASE – THOMAS HALL PAVILION – ARLC WA LIMITED OPERATING AS NRL WA

- (d) *the transaction is a lease, sublease or licence and the approval of the Minister is not required under section 46(3b).*

[Section 18 amended by No. 59 of 2000 s. 8(1)-(5).]

FINANCIAL/BUDGET IMPLICATIONS:

The proposed peppercorn lease requires the Tenant to be responsible for facility cleaning, building maintenance and utilities. The City will retain responsibility for major repairs, the building structure and insurance. This approach is considered a win-win, as it provides an opportunity for lower cost to the Tenant, through a lower cost to lease the building, and the ability to utilise the Tenant's available resources to undertake cleaning. This approach also increases the care for the facility taken by the Tenant, as they assume responsibility for breakages and cleaning. The Tenant also has the flexibility to determine their own cleaning regime, to suit their needs.

The savings of these costs is likely to be at least equivalent to the lease income forgone.

ASSET MANAGEMENT IMPLICATIONS:

The City will not be responsible for operating costs associated with the NRL WAs use of the Premises. The City will however be responsible for costs associated with major repairs and replacements of a structure nature, water costs associated with the facility given it is connected to the adjacent public toilet and will maintain building insurance over the Premises.

ENVIRONMENTAL IMPLICATIONS:

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

STRATEGIC/SOCIAL IMPLICATIONS:

This proposal will support the achievement of the following outcome and objective as detailed in the Corporate Business Plan.

| Plan | Outcome | Objective |
|-------------------------|----------------------|--|
| Corporate Business Plan | Business performance | 5.6 Maximise the value of the City's property assets |

COMMUNITY ENGAGEMENT:

As a result of leasing the Land to the NRL WA there will be various positive community engagement implications.

18.5 DISPOSITION OF LEASE – THOMAS HALL PAVILION – ARLC WA LIMITED OPERATING AS NRL WA**PUBLIC HEALTH IMPLICATIONS**

As a result of leasing the Land to the NRL WA, the City will be promoting an active community (Objective 1.4 of the City's Public Health Plan 2019-2023) and supporting an inclusive community (Objective 3.1 of the City's Public Health Plan 2019-2023).

RISK IMPLICATIONS:

The risk implications in relation to this proposal are as follows:

| | |
|--|--|
| Risk Event | That Council does not authorise the Chief Executive Officer to sign the lease agreement the subject of this report |
| Risk Theme | Ineffective management of facilities/venues/events. |
| Risk Effect/Impact | Financial |
| Risk Assessment Context | Operational |
| Consequence | Minor |
| Likelihood | Unlikely |
| Rating (before treatment) | Low |
| Risk Treatment in place | Avoid |
| Response to risk treatment required/in place | This report is in relation to the Chief Executive Officer executing the lease agreement between the City of Kwinana and ARLC WA Limited operating as NRL WA. |
| Rating (after treatment) | Low |

COUNCIL DECISION

225

MOVED CR M ROWSE**SECONDED CR W COOPER**

That Council:

- 1. Authorise the Chief Executive Officer to execute a lease agreement at Attachment C, between the City of Kwinana and ARLC WA Limited ACN 602 143 199 operating as NRL WA subject to the consent of the Minister for Lands, for Thomas Hall Pavilion, being located part of 28 Tucker Street, Medina, Western Australia being more particularly described as Reserve 24302, Lot M1084 on Deposited Plan 216209 being the whole of the land comprised in Certificate of Crown Land Title Volume 2615 Folio 984 and make any modifications where the intent of the lease does not change.**
- 2. In accordance with the City of Kwinana's Leasing of Community Facilities Policy and 2019/2020 Fees and Charges, approve the proposed peppercorn rent as \$111 per annum.**

CARRIED
8/0

City of Kwinana Thomas Oval Proposal

Stage One 2020

Updated 20th March 2020



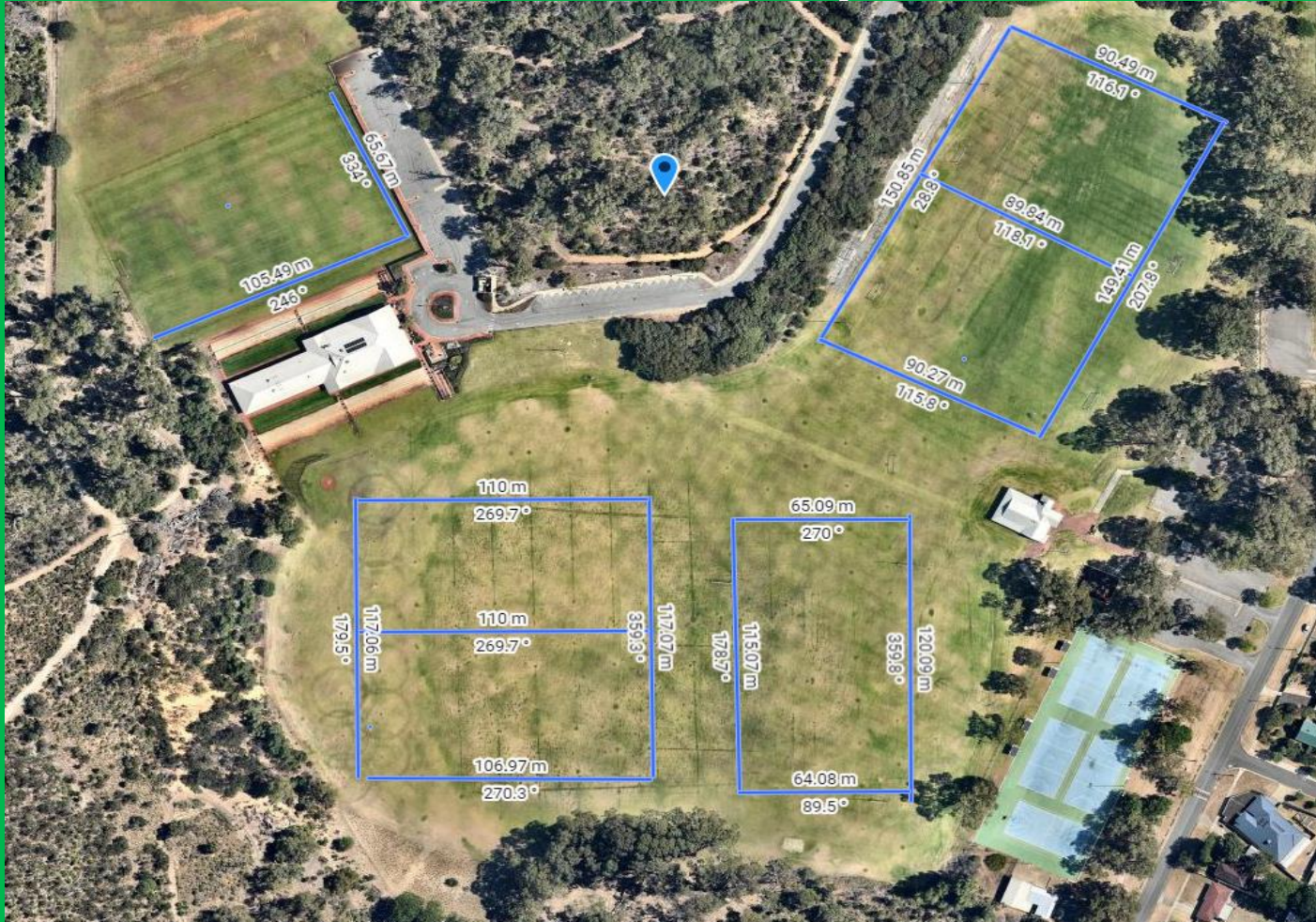
Objective

Establish a Partnership aimed at delivering a NRL WA / NRL Touch Football WA Game Development & Education Hub to host State, Regional, National Representative Pathway Programs and Initiatives and a local Grassroots Rugby League & Touch Football Club



THOMAS OVAL

Thomas Oval, Medina



Greenspace

- Minimum Two Fields
- Floodlighting
- Rugby League Posts
- Rugby League Marking

Predominately rugby league specific with a view to support collaborative planning behaviours with other facility users

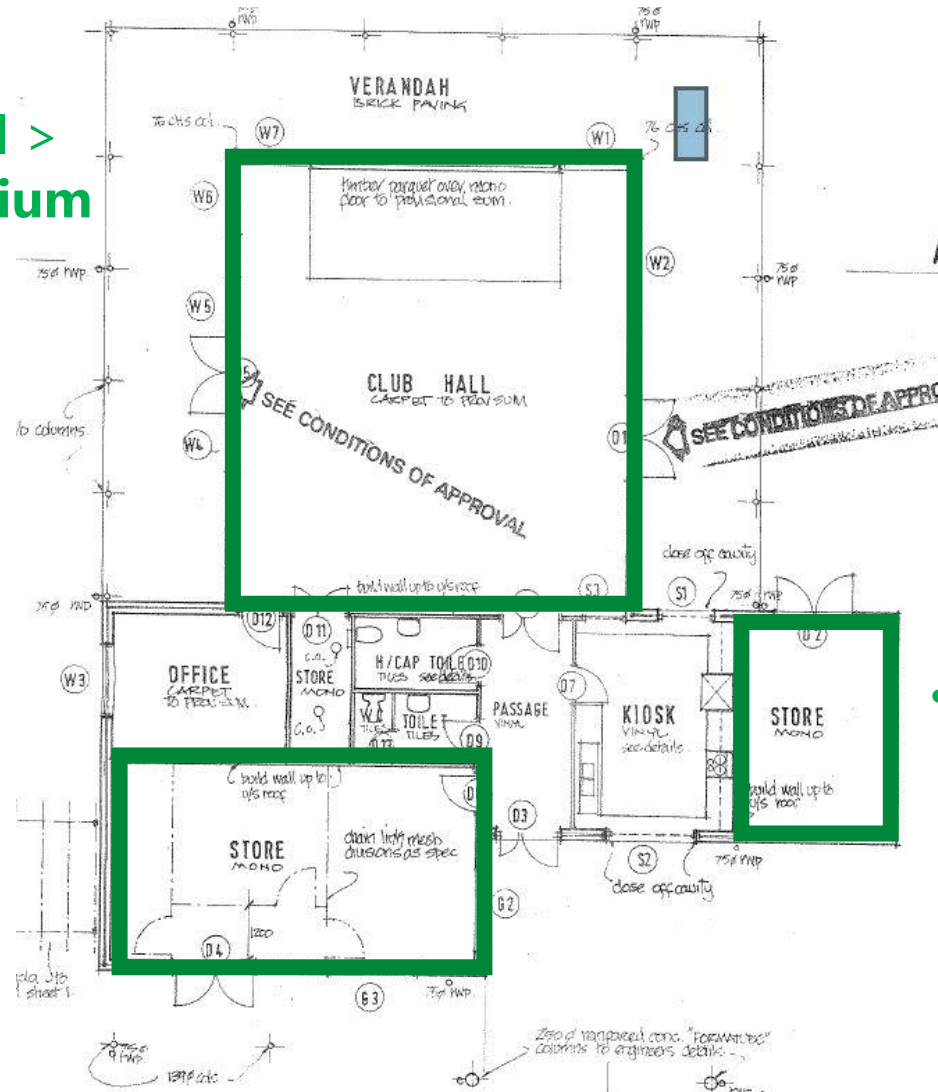
- Peak Period – October > April, minimum 4 days a week
- Down Time – May > September, maximum 3 days a week



Facility Conversion

- Club Hall > **Gymnasium**

- Store > **Player Welfare Room**



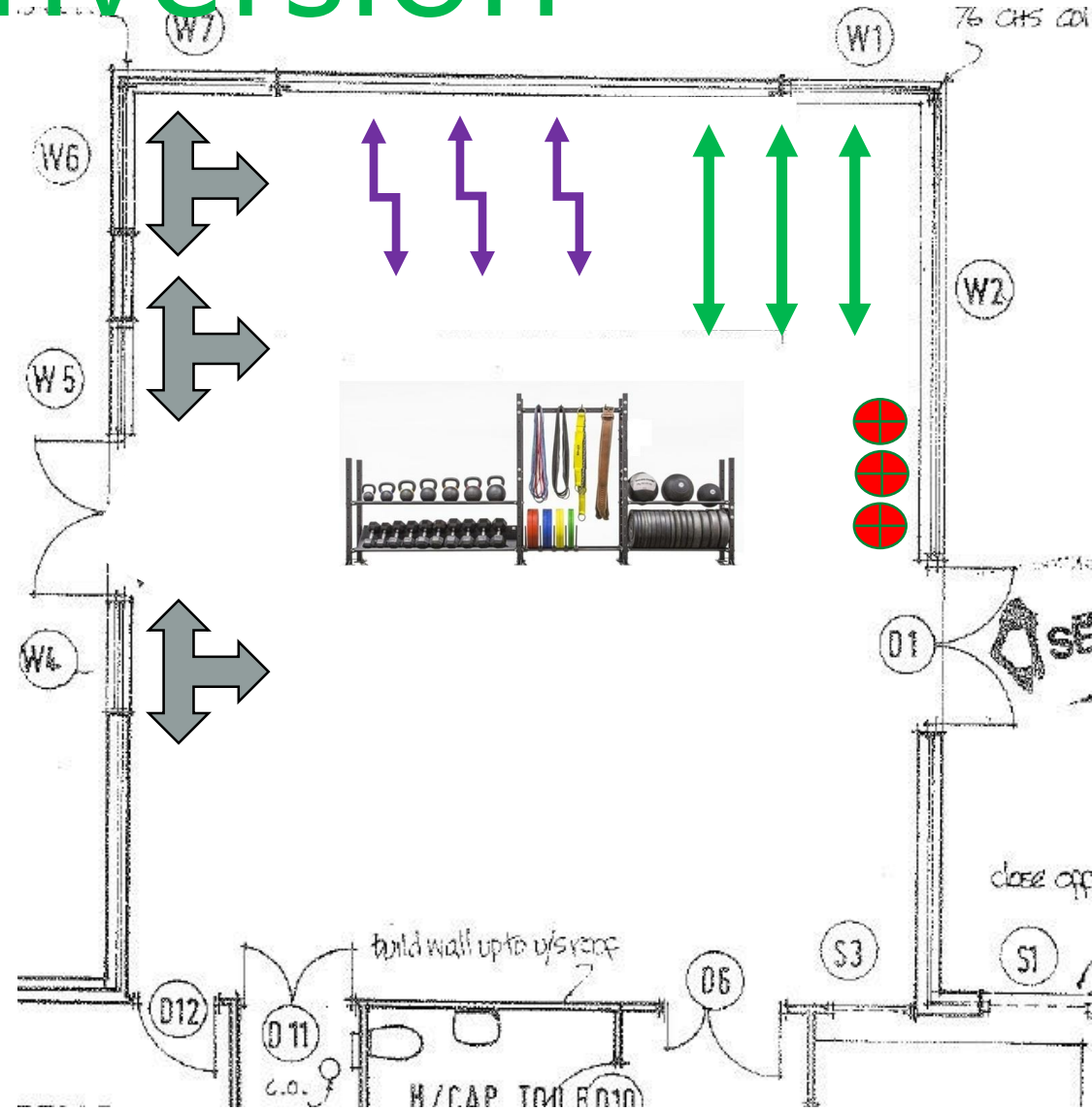
- Store > **Player Breakout Space**



Facility Conversion

- Club Hall > **Gymnasium**

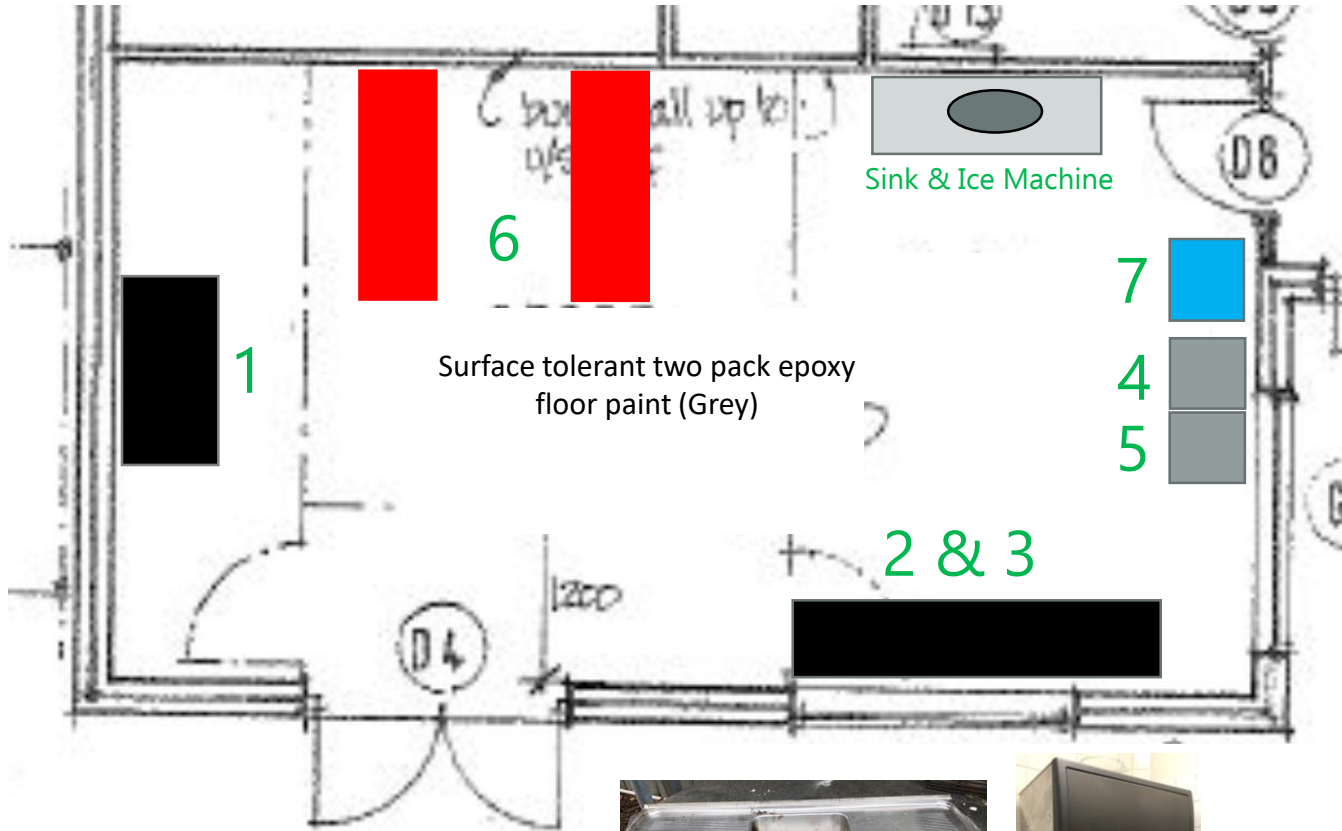
- 15mm Rubber Matting floor cover
- No additional works required to secure equipment to the floor or walls



 Dumbbells Area

Facility Conversion

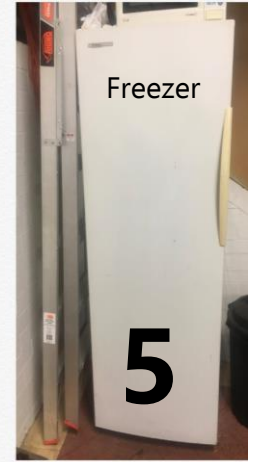
- Store > **Player Welfare Room**



1650mmL x 900mmW x 940mmH



700mmL x 700mmW x 1700mmH



700mmL x 700mmW x 1700mmH



2000mmL x 500mmW x 920mmH



1000mmL x 500mmW x 920mmH



Archery Storage Cabinet



1380mmL x 460mmW

Sink & Ice Machine

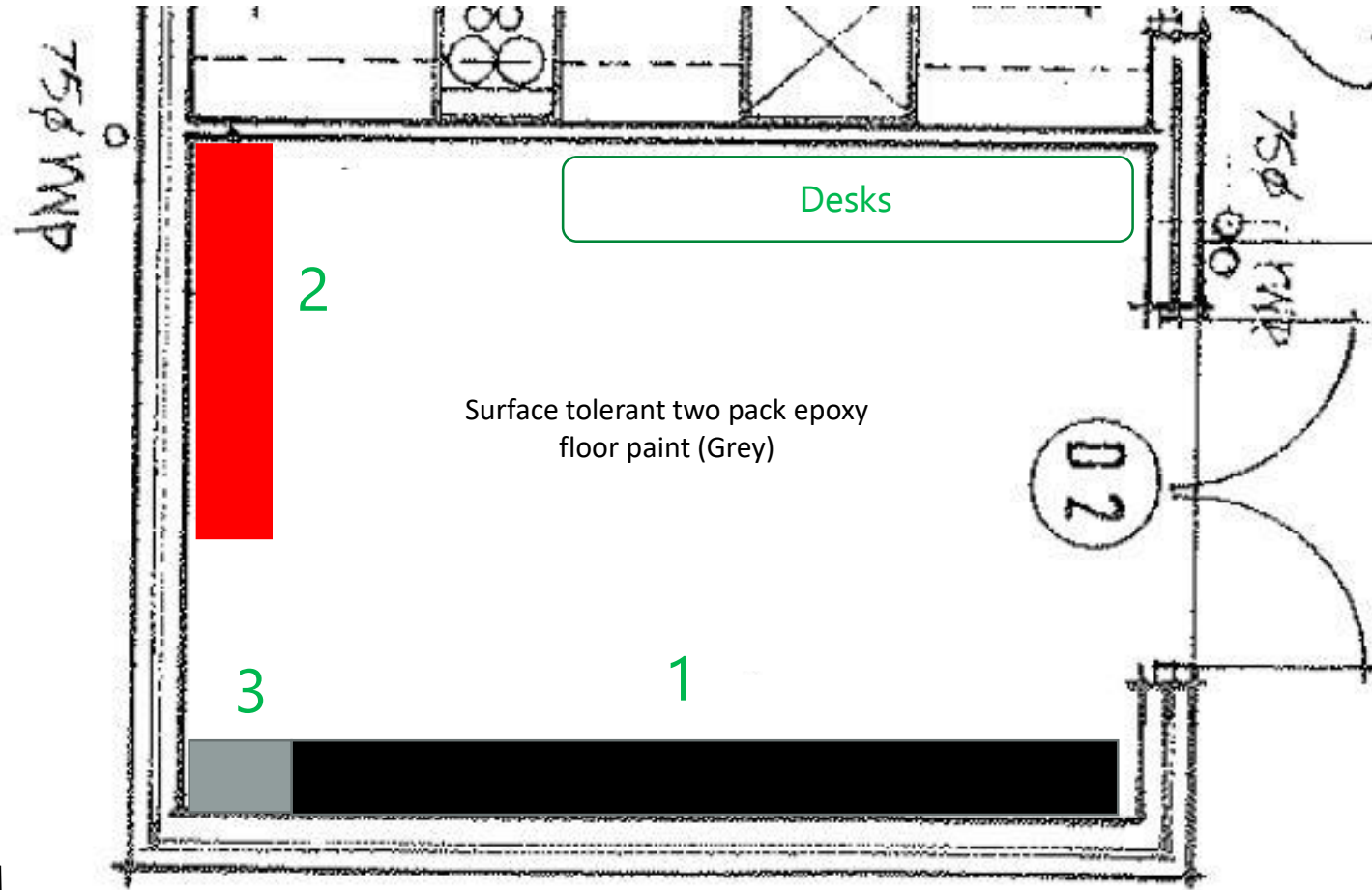


700mmL x 700mmW x 920mmH

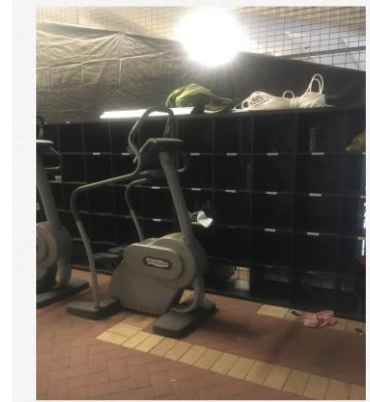


Facility Conversion

- Store > **Player Breakout Room**

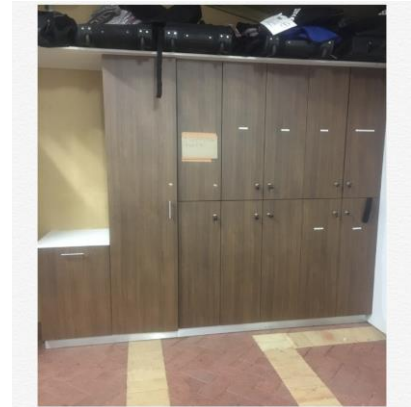


1



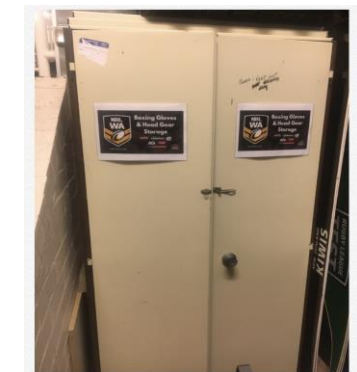
3600mmL x 400mmW x 1800mmH

2



2400mmL x 500mmW x 2200mmH

3



900mmL x 450mmW x 1800mmH



Facility Conversion Action Plan



| Gymnasium | Player Welfare Room | Player Breakout Space | Office |
|--|---|--|--|
| <p>NRL WA responsibility</p> <ul style="list-style-type: none"> › 15mm Rubber flooring to cover entire surface (Black) › All required equipment & resources › Fitted out to meet all industry & safety standards <p>City of Kwinana responsibility</p> <ul style="list-style-type: none"> › Removal of all current non NRL WA material and furniture › Appropriate actions prior to new lease agreement | <p>NRL WA responsibility</p> <ul style="list-style-type: none"> › Completely fit out room to meet required standards › Cabinets, desks, strapping benches, shelving, fridge/freezer & whiteboards › Sink & Ice machine installation › Surface tolerant two pack epoxy floor paint (Grey) <p>City of Kwinana responsibility</p> <ul style="list-style-type: none"> › Removal of all current non NRL WA material and furniture › Appropriate actions prior to new lease agreement | <p>NRL WA responsibility</p> <ul style="list-style-type: none"> › Completely fit out room to meet required expectations › Includes, Desks, chairs and lockers › Surface tolerant two pack epoxy floor paint (Grey) <p>City of Kwinana responsibility</p> <ul style="list-style-type: none"> › Removal of all current non NRL WA material and furniture › Appropriate actions prior to new lease agreement | <p>NRL WA responsibility</p> <ul style="list-style-type: none"> › Completely fit out room to meet required standards › Includes, Desks, chairs, cabinets, whiteboards › Carpet squares (Blue) › Internet solution <p>City of Kwinana responsibility</p> <ul style="list-style-type: none"> › Removal of all current non NRL WA material and furniture › Appropriate actions prior to new lease agreement |





Additional Transitional Workings

- 
- Kiosk , potential multiuse area with other tenants
 - NRL WA to support Archery Club storage
 - NRL WA request the placement of 2 x 20ft containers at northern end of fields to act primarily as storage for training equipment and resources
 - **Container placement costs, NRL WA responsibility
 - NRL WA to provide additional set of goal posts
 - CoK re position current rugby league goal posts
 - CoK complete required grounds works regards in goal corners
 - NRL WA take full responsibility of all rugby league field line markings
 - NRL WA education and meeting bookings facilitated at Thomas Kelly pavilion based on availability.



NRL WA Pathway System

Under 12 State Program April - August

- › Boys & Girls
- › Selection process via the NRL WA Junior State League Championships with the State team competing in the School Sports Australia National Championship
- › 25 players & 5 Staff

Under 15 Schoolboys April - July

- › Selection process via the NRL WA Junior State League Championships with the State team competing in the Australian Secondary Schools Rugby League Championship
- › 25 players & 5 Staff

Under 18 Schoolgirls April - June

- › Selection process via the NRL WA Junior Representative Season with the State team competing in the CAS – Combined Affiliated State Championships
- › 25 players & 5 Staff

Under 18 Schoolboys April - June

- › Selection process via the NRL WA Junior Representative Season with the State team competing in the CAS – Combined Affiliated State Championships
- › 25 players & 5 Staff

All Program Staff member have completed the required NRL Coaching Accreditations, Sports Trainers Qualification or are Qualified Professional Physiotherapist & Strength & Conditioning Coaches



NRL WA Pathway System continued

Senior Women's State Program January - June

- › Selection process via the Perth Senior Women's All Flags Signs & Banners Premiership Competition with the State team competing in NRL Women's National Championship
- › Train on Squad of 30 players reduced to 26 players with 6 Staff attending the National Championships

Senior Men's State Program May - June

- › Selection process via the WA Smarter than Smoking Premiership Competition with the State team competing in the CAS – Combined Affiliated States Championship
- › Train on Squad 25 players reduced to 20 players with 5 Staff attending

West Coast Pirates Academy July – November

- › Boys & Girls Aged 16 & 17 years old
- › Selection process via the NRL WA Junior Representative Season and Perth Junior Competitions
- › This program focusses on Education such as Personal Growth, Nutrition, Strength & Conditioning and core Skill Development

West Coast Pirates SG Ball Squad October - April

- › This team competes in the New South Wales Rugby League under 18 Boys SG Ball Competition and rated the best under 18 boys competition in the world with teams from NSW, New Zealand, Victoria and our local Pirates.
- › Most teams in this competition have a direct pathway relationship with an NRL – National Rugby League franchise
- › 30 player supported by 8 Staff members

All Program Staff member have completed the required NRL Coaching Accreditations, Sports Trainers Qualification or are Qualified Professional Physiotherapist & Strength & Conditioning Coaches



NRL WA Player Welfare & Education

RISE Program

May - June

- › Provides aspirational Junior Rugby League players (Boys & Girls aged Under 13 - Under 15 years) and coaches with an avenue to obtain specialised training and education through a holistic Rugby League development experience.
- › The RISE Program focuses on three key areas of development: Technical and Tactical Skill Development, Physical Development, Socio-Emotional Development all aimed to develop tools to help them deal with life's challenges. (40 Players supported by 10 Staff members)

In League In Harmony Youth Advocates Program

October - November

- › This program's delivery method is a non-formal educational approach, using Rugby League skills sessions tailored for both those new to the game and the experienced, to not only teach participants the fundamental skills of Rugby League but also promote key messages such as: **Inclusion and Positive Communication, Teamwork and Leadership, Courage and Respect**
- › The program consist of various Social Cohesion Workshops and Rugby League Skills Training Sessions that aim to tackle issues such as racism, gender inequality, bullying and more.

Referees

July - November

- › Regular Season training, 1 night per week - 15 Match Officials (April - September)
- › Women In League Officiating Program - 20 Match Officials (February)
- › High Performance Academy - 20 Match Officials (October - April)

NRL Game Development School Football Activities

- › Clontarf Foundation Girls Gala Day - Year 7,8,9 & 10 = 100 indigenous girls from 8 schools
- › Schoolboys Finals - Year 8,9 & 10 played in November
- › Macquarie Bank Clinic - Year 3,4,5 & 6 = 250 students from 10 schools
- › Primary School Development Day - Year 3,4,5 & 6 = 350 students from 20 schools
- › Southern High School Carnivals - Year 7,8,9 & 10 = 150 students from 8 schools. 1 Carnival per school term

All Program Staff member have completed the required NRL Coaching Accreditations, Sports Trainers Qualification or are Qualified Professional Physiotherapist & Strength & Conditioning Coaches





Opportunity NRL WA Partnership

- City of Kwinana branding on NRL WA website, social media platforms, signage and apparel
- NRL WA supporting and promoting City of Kwinana Community engagement activities
- City of Kwinana branding on Cash Converters West Coast Pirates website, social media platforms, signage and apparel





Opportunity National Footy Facilities Funding

- The National **Footy Facilities Fund** is an initiative of the National **Rugby League (NRL)** and assists existing and new clubs to improve the quality, availability and standard of their **facilities**.
- The Program aims to improve facilities for a variety of benefits including increasing participation, safety and security, social inclusion and building strong communities.
- Project partnerships are encouraged and the identification of all project partners is required (the funding partner could be a local Council, State or Territory department, school, other landowner, local business or community partnership).



Opportunity Kwinana Recquatic

- NRL WA Wheelchair Rugby League activity
- NRL WA Strength & Conditioning, Player rehab/recovery centre solution





Opportunity Community Engagement

- NRL WA / NRL TFWA build stronger relationships linking with local schools, Inclusive & Diverse Organisations

Example

- Gilmore College – Clontarf Foundation & Carey Training
- Multicultural Teams to train at Thomas Oval in preparations for the annual NRL WA Harmony Cup in October



Opportunity Host Regional, State & National Events

- South West Dolphins regional squads based at Thomas Oval
- NRL WA & NRL TFWA Championships and Selection programs
- Visiting NRL Teams training sessions and community engagement initiatives
- Visiting International teams training sessions and community engagement initiatives



- South West Dolphins are the regional pathway structure representing the Albany Sea Dragons, Dalyellup Rhinos, Mandurah Storm, Rockingham Sharks and Serpentine Jarrahdale Serpents junior rugby league clubs
- Fielding teams in under 12, under 15 Girls, under 15 Boys, under 17 Boys & under 18 Girls that compete in NRL WA junior representative programs.



Opportunity Host Junior Representative Games

- The NRL WA junior representative season is played through February, March & April and includes the NSW RL under 18's SG Ball Competition that is considered the best competition in the world for this important development age group that includes NRL pathway teams from New South Wales, New Zealand and Victoria



**Stage 2 option, 2021/2022

Thank You



WESTERN



AUSTRALIA

| | |
|---|-------------------------------------|
| REGISTER NUMBER M 1084/DP216209 | |
| DUPLICATE EDITION N/A | DATE DUPLICATE ISSUED N/A |

**RECORD OF QUALIFIED CERTIFICATE
OF
CROWN LAND TITLE
UNDER THE TRANSFER OF LAND ACT 1893
AND THE LAND ADMINISTRATION ACT 1997
NO DUPLICATE CREATED**

VOLUME **LR3015** FOLIO **613**

The undermentioned land is Crown land in the name of the STATE OF WESTERN AUSTRALIA, subject to the interests and Status Orders shown in the first schedule which are in turn subject to the limitations, interests, encumbrances and notifications shown in the second schedule.



REGISTRAR OF TITLES

LAND DESCRIPTION:

LOT M 1084 ON DEPOSITED PLAN 216209

**STATUS ORDER AND PRIMARY INTEREST HOLDER:
(FIRST SCHEDULE)**

STATUS ORDER/INTEREST: RESERVE UNDER MANAGEMENT ORDER

PRIMARY INTEREST HOLDER: TOWN OF KWINANA OF POST OFFICE BOX 21, KWINANA

**LIMITATIONS, INTERESTS, ENCUMBRANCES AND NOTIFICATIONS:
(SECOND SCHEDULE)**

- RESERVE 24302 FOR THE PURPOSE OF RECREATION MANAGEMENT ORDER. CONTAINS CONDITIONS TO BE OBSERVED. WITH POWER TO LEASE FOR ANY TERM NOT EXCEEDING 21 YEARS, SUBJECT TO THE CONSENT OF THE MINISTER FOR LANDS.
- J648495 TAKING ORDER. THE DESIGNATED PURPOSE OF THE INTEREST TAKEN IS STATE CORRIDOR RIGHTS TO THE DBNGP LAND ACCESS MINISTER UNDER THE PROVISIONS OF THE DAMPIER TO BUNBURY PIPELINE ACT 1997. AS TO THE PORTION OF THE WITHIN LAND SHOWN ON DEPOSITED PLAN 38887 ONLY. REGISTERED 7/3/2006.
- J648513 SUNDRY. PORTION OF THE LAND HEREIN IS WITHIN THE DBNGP CORRIDOR PURSUANT TO THE DAMPIER TO BUNBURY PIPELINE ACT 1997. SEE DEPOSITED PLAN 38887. REGISTERED 7/3/2006.
- L122173 NOTIFICATION CONTAINS FACTORS AFFECTING THE WITHIN LAND. LODGED 30/10/2009.

- Warning:
- (1) A current search of the sketch of the land should be obtained where detail of position, dimensions or area of the lot is required. Lot as described in the land description may be a lot or location.
 - (2) The land and interests etc. shown hereon may be affected by interests etc. that can be, but are not, shown on the register.
 - (3) The interests etc. shown hereon may have a different priority than shown.

-----END OF CERTIFICATE OF CROWN LAND TITLE-----

STATEMENTS:

The statements set out below are not intended to be nor should they be relied on as substitutes for inspection of the land and the relevant documents or for local government, legal, surveying or other professional advice.

END OF PAGE 1 - CONTINUED OVER

ORIGINAL CERTIFICATE OF CROWN LAND TITLE
QUALIFIED

REGISTER NUMBER: M 1084/DP216209 VOLUME/FOLIO: LR3015-613

PAGE 2

SKETCH OF LAND: LR3015-613 (M 1084/DP216209)
PREVIOUS TITLE: LR3015-613
PROPERTY STREET ADDRESS: 28 TUCKER ST, MEDINA.
LOCAL GOVERNMENT AUTHORITY: CITY OF KWINANA
RESPONSIBLE AGENCY: DEPARTMENT OF PLANNING, LANDS AND HERITAGE (SLSD)

NOTE 1: A000001A CORRESPONDENCE FILE 01742-1954-02RO.

NOTE 2: LAND PARCEL IDENTIFIER OF KWINANA TOWN LOT/LOT M1084 ON SUPERSEDED
PAPER CERTIFICATE OF CROWN LAND TITLE CHANGED TO LOT M001084 ON
DEPOSITED PLAN 216209 ON 04-MAY-04 TO ENABLE ISSUE OF A DIGITAL
CERTIFICATE OF TITLE.

NOTE 3: THE ABOVE NOTE MAY NOT BE SHOWN ON THE SUPERSEDED PAPER CERTIFICATE
OF TITLE.

2020

BETWEEN

CITY OF KWINANA

AND

ARLC WA LIMITED OPERATING AS NRL WA

**LEASE OF THOMAS HALL PAVILION,
PART OF 28 TUCKER STREET, MEDINA**

Details

Parties

City of Kwinana ABN 13 790 277 321

of PO Box 21, Kwinana, WA 6966
(Landlord)

ARLC WA LIMITED operating as NRL WA ACN 602 143 199

of HBF Park, 310 Pier Street, Perth WA 6000
(Tenant)

Background

- A The Landlord has the care, control and management of the Land pursuant to the Management Order.
- B Subject to the prior written approval of the Minister for Lands, the Landlord has agreed to lease and the Tenant has agreed to take a lease of the Premises upon the terms and conditions contained in this Lease.

1. Definitions

Amounts Payable means the Rent, outgoings and any other money payable by the Tenant under this Lease;

Authorised Person means an agent, employee, licensee or invitee of the Landlord; and any person visiting the Premises with the express or implied consent of any aforementioned person;

Business Day means a day other than a Saturday, Sunday or public holiday in Perth;

CEO means the Chief Executive Officer for the time being of the Landlord or any person appointed, authorised or delegated by the CEO to perform any of her or his functions under this Lease;

Commencement Date means the date of commencement of the Term specified in **Item 4** of the Schedule;

Further Term means each further term specified in **Item 3** of the Schedule;

Land means the land described at **Item 1(a)** of the Schedule;

Licensed Trades Persons means a person conducting works in trades which are required to be licensed in accordance with the requirements of relevant building and trade regulatory bodies;

Management Order means the management order under which the Land was vested in the Landlord to be held for the purpose of recreation;

Premises means the premises described at **Item 1(b)** of the Schedule and edged in red and hachured on a sketch annexed (**Annexure**) to this lease for the purpose of identification only;

Rent means the rent specified in **Item 5** of the Schedule;

Term means as specified in **Item 2** of the Schedule and any Further Term; and

Termination means expiry by effluxion of time or sooner determination of the Term or any period of holding over;

Tenant's Agents includes the subtenants, employees, agents, contractors, invitees, licensees, hirer of the Tenant; and any person on the Leased Premises by the authority of a person specified in paragraph; and

Tenant's Covenants means the covenants, agreements and obligations set out or implied in this Lease or imposed by law to be performed by any person other than the Landlord.

2. Approval of the Minister for Lands

This Lease is subject to and conditional on the prior approval of the Minister for Lands under section 18 of the *Land Administration Act 1997*.

3. Quiet enjoyment

Except as provided in the Lease, for so long as the Landlord is the management body of the Premises under the Management Order, and subject to the Tenant performing the conditions of this Lease, the Tenant may quietly hold and enjoy the Premises during the Term without any interruption or disturbance.

4. Rent and other payments

4.1 Rent

The Tenant must pay the Landlord the Rent set out at **Item 5** of the Schedule.

4.2 Outgoings

- (1) The Tenant must pay the Landlord (unless the Tenant pays directly) the following outgoings in respect of the Premises:
 - (a) local government rates and specified area rates and taxes (if applicable);
 - (b) service and other charges and including charges for rubbish and garbage removal charges (if applicable);
 - (c) telephone, electricity, gas and meter rents; and
 - (d) insurance pursuant to **clause 5**.
- (2) If the Premises are not separately charged or assessed the Tenant will pay the Landlord a proportionate part of any outgoings, being the proportion that the Premises bears to the total area of the land or premises.
- (3) The Landlord agrees to:

- (a) within 30 days from the date of this Lease, endeavour to install at its cost, an electrical sub-metre on the Premises; and
- (b) pay for the costs associated with water usage and septic tank maintenance, provided the maintenance is not required because of a negligent act or omission of the Tenant.

4.3 Other Costs

The Tenant must pay the Landlord all costs incurred by or for which the Landlord is liable in connection with:

- (a) all registration fees in connection with this Lease (if applicable);
- (b) any breach of covenant by the Tenant or the Tenant's Agents; and
- (c) any action or proceedings arising out of or incidental to any matters arising out of this Lease.

5. Insurance

5.1 Insurance required

The Tenant must effect and maintain the following insurance with an insurer registered with the relevant Australian authorities:

- (a) public liability insurance for a sum not less than that set out at **Item 8** of the Schedule;
- (b) insurance to cover the Tenant's fixtures, fittings, equipment and stock against loss or damage by fire, fusion, smoke, lightning, flood, storm, tempest, earthquake, sprinkler leakage, water damage and other usual risks against which a Tenant can and does ordinarily insure in their full replacement value, and loss from theft or burglary;
- (c) employers' indemnity insurance including workers' compensation insurance where required by law; and
- (d) any other insurance that the Landlord requires because of legislative changes or policy directions.

The Tenant must pay any premiums, excess and other costs associated with the insurance set out in this clause.

5.2 Building Insurance to be effected by Landlord

The Landlord will take out and maintain building insurance for the Premises but the Tenant will if requested by the Landlord, reimburse the Landlord for costs associated with:

- (a) making a claim; or
- (b) an increased premium caused by an act or omission of the Tenant.

5.3 Details and receipts

In respect of the insurances required by **clause 5.1** the Tenant must:

- (a) upon request of the Landlord, provide relevant copies of Certificates of Currency;
- (b) notify the Landlord, within 24 hours:
 - (i) when an event occurs which gives rise or might give rise to a claim under or which could prejudice an insurance policy; or
 - (ii) when a policy of insurance is cancelled.

5.4 Not to invalidate

The Tenant must not do or omit to do any act or thing or bring or keep anything on the Premises which might:

- (a) render any insurance **5.2** on the Premises, or any adjoining premises, void or voidable; or
- (b) cause the rate of a premium to be increased for the Premises or any adjoining premises (except insofar as an approved development may lead to an increased premium).

6. Indemnity

6.1 Tenant's responsibilities

The Tenant is responsible for all acts or omissions of the Tenant's Agents on the Premises and for any breach by them of any terms in this Lease required to be performed by the Tenant.

6.2 Tenant's Indemnity and Release

- (1) The Tenant indemnifies and shall continue to indemnify, the Landlord and the Minister for Lands from and against all actions, claims, costs, proceedings, suits and demands whatsoever which may at any time be incurred or suffered by the Landlord and or the Minister for Lands, or brought, maintained or made against the Landlord, in respect of:
 - (a) any loss whatsoever (including loss of use);
 - (b) injury or damage of, or to, any kind of property or thing; and
 - (c) the death of, or injury suffered by, any person,
 caused by, contributed to, or arising out of, or in connection with, whether directly or indirectly:
 - (d) the use or occupation of the Premises by the Tenant or the Tenant's Agents;
 - (e) any work carried out by or on behalf of the Tenant on the Premises;
 - (f) the Tenant's activities, operations or business on, or other use of any kind of, the Premises;
 - (g) the presence of any contamination, pollution or environmental harm in on or under the Premises or adjoining land caused or contributed to by the act, neglect or omission of the Tenant or the Tenant's Agents;
 - (h) any default by the Tenant in the due and punctual performance, observance and compliance with any of the Tenant's Covenants or obligations under this Lease; or

- (i) an act or omission of the Tenant.
- (2) The Tenant:
- (a) agrees to occupy and use the Premises at its own risk; and
 - (b) releases to the full extent permitted by law, the Landlord and the Minister for Lands from:
 - (i) any liability arising from any accident or damage to property, the death, injury or illness of any person occurring on the Premises or arising from the Tenant's use or occupation of the Premises;
 - (ii) damage to the Premises or loss of the Tenant's personal property; and
 - (iii) all claims, actions, loss, damage, liability, costs and expenses arising from or connected with (directly or indirectly) the presence of any contamination, pollution or environmental harm in, on or under the Premises or surrounding area.
- (3) The Tenant's obligations and releases under this **clause 6.2** continue after the expiration or earlier determination of this Lease in respect of any act, deed, matter or thing occurring or arising as a result of an event which occurs before the expiration or earlier determination of this Lease.

6.3 No indemnity for Landlord's negligence

This **clause 6** does not require the Tenant to indemnify or release from liability the Landlord against any loss, damage, expense, action or claim arising out of a negligent or wrongful act or omission of the Landlord.

7. Maintenance, Repair and Cleaning

7.1 Generally

- (1) The Tenant agrees to maintain, replace, repair, clean and keep the Premises (including the Landlord's fixtures and fittings) in good tenable repair.

For the avoidance of doubt this includes maintenance, replacement etc. in respect of: RCD testing, emergency exit signage, internal and external light switches/GPO's; fridge, stove and other kitchen equipment; gutters; carpet and other flooring in the Premises; vandalism on the Premises (unless the City's building insurance covers); and internal and external doors and furniture and security / insect screens.

- (2) The Tenant in maintaining, replacing, repairing or cleaning:
- (a) electrical fittings and fixtures;
 - (b) plumbing;
 - (c) painting;
 - (d) pest control;
 - (e) air-conditioning fittings and fixtures; and

- (f) gas fittings and fixtures;

must only use Licenced Trades Persons.

- (3) This clause does not require the Tenant to undertake any maintenance, replacement or repair of a major structural nature, unless it is necessary because of an act or omission of the Tenant or Tenant's Agents.

7.2 Responsibility for Securing the Premises

The Tenant must ensure that the Premises, and the Landlord's and Tenant's fixtures and fittings, are appropriately secured.

7.3 Maintain surroundings

- (1) The Tenant must ensure that the land surrounding any buildings in the Premises is kept clean and tidy and replaced if damaged by the Tenant.
- (2) The Tenant must not remove any trees, shrubs or hedges without obtaining the Landlord's Approval, except if necessary for safety reasons. This clause does not prevent the Tenant from conducting pruning of shrubs and hedges.

7.4 Landlord's Fixtures and Fittings

The Tenant agrees that the Landlord's fixtures and fittings (as determined by the Landlord) will remain the Landlord's property and must not be removed from the Premises.

7.5 Pest control

The Tenant must make reasonable endeavours to keep the Premises free of any pests and vermin and the cost of extermination will be borne by the Tenant (excluding white ant inspection/treatment).

7.6 Painting

The Tenant must paint the internal parts of the Premises only, to the satisfaction of the Landlord, before the repainting date detailed at **Item 9** of the Schedule.

7.7 Drains

The Tenant must ensure that waste pipes, toilets, grease traps, drains and conduits in the Premises do not become blocked and if they do, the Tenant must pay the Landlord the cost of clearing any blockage unless that blockage has been caused without fault of the Tenant or the Tenant's Agents.

8. Use

8.1 Restrictions on use

(1) General

The Tenant must not and must not permit a person to use any part of the Premises for any purpose other than the Permitted Purpose.

(2) Specific

The Tenant must not and must not permit a person to:

- (a) carry out on the Premises any illegal act;
 - (b) carry out on the Premises anything causing a nuisance, damage or disturbance to the Landlord or to adjoining properties;
 - (c) store any dangerous substance on the Premises, without the prior written consent of the Landlord;
 - (d) display from or affix any signs, notices or advertisements on the Premises without the prior written consent of the Landlord;
 - (e) smoke inside any building on the Premises; or
 - (f) pollute or contaminate the Premises by garbage, waste matter, oil and other pollutants.
- (3) **Sale of Alcohol**

The Tenant will not sell or supply liquor from the Premises or allow liquor to be sold or supplied from the Premises unless permitted under the *Liquor Control Act 1988*, *Liquor Licensing Regulations 1989* and any other relevant written laws.

8.2 No warranty

The Landlord gives no warranty as to the suitability of the Premises for the Permitted Use ; or that the Landlord will issue any required consents, approvals, authorities, permits or licences.

9. Alterations

9.1 Restriction

The Tenant must not permit any alteration, addition or improvements to or demolish any part of the Premises, without:

- (a) prior written consent from the Landlord;
- (b) planning or building approval under a local planning scheme of the Tenant (if required); and
- (c) prior written consent from any other person or agency from whom consent is required.

10. Landlord's right of entry

10.1 Entry on Reasonable Notice

The Tenant must permit entry by the Landlord or any Authorised Person onto the Premises without notice in the case of an emergency, and otherwise upon reasonable notice in order to:

- (a) inspect the Premises; or
- (b) carry out work that the Landlord considers necessary (without compensation to the Tenant for inconvenience) noting that the Landlord will ensure that as little inconvenience is caused to the Tenant as is reasonable possible.

10.2 Costs of Rectifying Breach

All costs and expenses incurred by the Landlord as a result of the Landlord or Authorised Persons entering the premises to inspect or carry out works because of any breach of the Lease by the Tenant, will become a debt due to the Landlord and payable by the Tenant on demand.

11. Report to Landlord

The Tenant must promptly report to the Landlord any:

- (a) vandalism and damage (or situations that are likely to cause vandalism or damage) to the Premises; and
- (b) all correspondence, whether written or verbal, received by the Tenant which affects the Premises and which the Landlord as the owner of the Premises ought to be notified of.

12. Default

12.1 Events of Default

A default occurs if:

- (a) any Amounts Payable remain unpaid for 30 days after a Notice has been given to the Tenant that an amount is outstanding;
- (b) the Tenant does not rectify a breach of a Tenant Covenant after 30 days from receiving a Notice requesting the Tenant to rectify the breach;
- (c) the Tenant association is wound up whether voluntarily or otherwise;
- (d) the Tenant passes a special resolution under the *Associations Incorporation Act 2015* altering its rules of association in a way that makes its objects or purposes inconsistent with the use of the Premises permitted by this Lease;
- (e) a mortgagee takes possession of the property of the Tenant under this Lease;
- (f) any execution or similar process is made against the Premises or the Tenant's property;
or
- (g) the Premises are vacated, or otherwise not used, in the Landlord's reasonable opinion, for the Permitted Purpose for a 6 month period.

12.2 Forfeiture

- (1) On the occurrence of any of the events of default specified in **clause 12.112.1** the Landlord may:
 - (a) without Notice enter the Premises and on re-entry, the Term will immediately end; or
 - (b) issue a Notice to the Tenant, which provides that the Term has ended from the date the Notice is given; or
 - (c) issue a Notice to the Tenant, which provides that the Term has been converted to a holding period as described in **clause 14**.

- (2) The carrying out of the above actions does not affect the Landlord's rights in respect of any other breach by the Tenant or releases the Tenant from liability in respect of the breach.

12.3 Landlord may remedy breach

If the Tenant fails to:

- (a) pay an Amount Payable or breaches any of the Tenant's Covenants; and
- (b) the Landlord has given to the Tenant Notice of the breach; and
- (c) the Tenant has failed to rectify the breach within a reasonable time,

the Landlord may pay the money due as if it were the Tenant and the Tenant must pay to the Landlord on demand the Landlord's cost of remedying the breach.

13. Option to renew

If the Tenant (at least one month, but not earlier than 12 months prior to the date of the Further Term) requests in writing that the Lease be extended for the Further Term, the Landlord will grant the Further Term provided there is no existing default or breach by the Tenant.

14. Holding over

If the Tenant remains in the Premises after the Term (or Further Term) expires, the Tenant will be a monthly tenant on the same terms and conditions of this Lease provided there is no existing default or breach by the Tenant.

15. Termination

- (1) The Parties agree that either party may terminate this Lease:
- (a) for any reason, upon 6 months' notice to the other (or any other period agreed by the Parties in writing); or
 - (b) if the Premises becomes wholly unfit for occupation because of damage, upon 1 months written notice to other party (or any other period agreed by the Parties in writing).

16. Removal of property from Premises

16.1 Remove property prior to termination

Prior to Termination, the Tenant must, in consultation with the Landlord, remove the Tenant's fixtures and fittings from the Premises to the absolute satisfaction of the Landlord, and promptly make good, to the satisfaction of the Landlord, any damage caused by the removal.

16.2 Landlord can remove property on re-entry

On re-entry the Landlord may dispose of any property (including the Tenant's property that was not removed by the Tenant in accordance with **clause 16.116.1**). Tenant will reimburse the Landlord for any costs incurred in the removal and disposal of Tenant's property.

17. Assignment, Subletting, Charging and Hiring

17.1 Assignment or sub-letting without consent

- (1) The Tenant must not assign nor sub-let any part of the Premises without the prior written consent of the Landlord (which may be withheld in its absolute discretion).
- (2) If the Tenant wishes to assign or sub-let, and the Landlord consents, the Tenant must pay the Landlord all costs incurred by the Landlord as a result of the assignment or sub-let including costs associated with:
 - (a) enquiries made by the Landlord as to the respectability, responsibility and financial standing of the proposed assignee or subtenant;
 - (b) any consents required under this Lease or at law;
 - (c) preparation of any legal documents; and
 - (d) all other matters relating to the proposed assignment or sub-letting, whether or not the assignment or sub-letting proceeds.

17.2 Casual hire of Premises

- (1) The Tenant may hire out a part of the Premises on a casual basis provided that:
 - (a) such hireable use is consistent with the Permitted Purpose; and
 - (b) if the period of hire is greater than 48 hours per month, the Landlord has provided prior written consent to the hire (which may be withheld in the Landlord's absolute discretion).
- (2) At any time, the Landlord may request the Tenant provide:
 - (a) the names and addresses of all persons who hired any part of the Premises; and
 - (b) details of the hire fees charged by the Tenant.

17.3 *Property Law Act 1969*

Sections 80 and 82 of the *Property Law Act 1969* are excluded.

17.4 No mortgage or charge

The Tenant must not mortgage nor charge the Premises.

18. Disputes

- (1) If the Parties are in dispute and one party requires the dispute to be resolved, then that party must give the other party written notice of the details of the dispute (**Dispute Notice**).
- (2) Within 30 Business Days of a party receiving the Dispute notice, the Parties must meet and attempt to resolve the dispute and ensure each Parties' authorised officers or delegates attend.

- (3) If the Parties are unable to resolve the dispute within 30 Business Days from the date of the Dispute Notice, then the dispute shall be determined by an arbitrator appointed under the *Commercial Arbitration Act 1985* and the cost of the arbitrator will be shared equally between the Parties.
- (4) The Parties agree that the decision of the arbitrator is final and binding.
- (5) This clause 18 will continue after the expiration or earlier determination of this Lease in respect of any dispute occurring or arising in connection with this Lease, regardless of whether the dispute arose before the expiration or earlier determination or thereafter.

19. Notice

- (1) A notice, consent, approval or other communication (each a **Notice**) must be in writing, signed by or on behalf of a person authorised to give it, addressed to the Party to whom it is to be given and sent by postal or electronic mail to that Party's address.
- (2) A Notice given to a party is deemed to have been given and received:
 - (a) if posted, on the day of delivery if a Business Day, otherwise on the next Business Day;
 - (b) if emailed, (and the sender does not receive a message from its internet service provider or the recipient's mail server indicating that it has not been successfully transmitted), on the day of sending if a Business Day, otherwise on the next Business Day.

20. Miscellaneous

- (1) All things which the Landlord can do under this Lease may be done by the CEO, an officer or the agent, solicitor, contractor or employee of the Landlord.
- (2) This Lease is governed by and is to be interpreted in accordance with the laws of Western Australia and, where applicable, the laws of the Commonwealth of Australia.
- (3) If any part of this Lease is or becomes void or unenforceable, that part is or will be severed from this Lease to the intent that all parts that are not or do not become void or unenforceable remain in full force and effect and are unaffected by that severance.
- (4) This Lease may be varied only by deed executed by the parties subject to such consents as are required by this Lease or at law.
- (5) Failure to exercise or delay in exercising any right in this Lease by a Party does not operate as a waiver of that right.

21. Additional Terms

Each of the terms specified in **Item 11** of the Schedule are part of this Lease and are binding on the Landlord and the Tenant as if incorporated into the body of this Lease.

Schedule

Item 1 Land and Premises

(a) Land

Lot M 1084 on Deposited Plan 216209, being the whole of the land comprised in Certificate of Title Volume LR3015 Folio 613.

(b) Premises

The Thomas Hall Pavilion, being the part of the Land which for identification purposes is hachured in Annexure and includes all buildings, structures, alterations, additions and improvements on that part of the Land or erected on that part of the Land during the Term.

Item 2 Term

3 years commencing on [date to be agreed] and expiring on [date to be agreed].

Item 3 Further Term

2 years commencing on [date to be agreed] and expiring on [date to be agreed]

Item 4 Commencement Date

[Date to be agreed]

Item 5 Rent

\$111 per annum

Item 6 Rent Review

Not applicable

Item 7 Permitted purpose

Purposes that in the opinion of the Landlord benefit the Kwinana community generally and without prejudice and include the following uses available to the community:

[Tenant to insert specific uses/ activities]

and uses reasonably associated with an abovementioned use.

Item 8 Public liability insurance

Twenty Million Dollars (\$20,000,000.00) in respect of any one claim or such greater amount as the Landlord may require.

Item 9 Internal Painting Dates

At the expiry of the Term (or Further Term), unless otherwise provided by the Landlord to the Tenant in writing.

Item 10 Notice Details

Landlord

The City of Kwinana (ABN 13 890 277 321)
Address: PO Box 21 Kwinana WA 6966
Email: propertymanagement@kwinana.wa.gov.au

Tenant

Address: #
Email: [...]

Item 11 Additional terms and covenants

11.1. Liquor licence

The Tenant agrees that if a licence or permit is granted under the *Liquor Control Act 1988* it must:

- (a) comply with any licence or permit requirements at its cost and where any alteration is required to the Premises **clause 9** will apply;
- (b) comply with the requirements of the Harm Minimisation Policy (as amended from time to time) of the Department of Racing, Gaming & Liquor; and
- (c) indemnify and keep indemnified the Landlord from and against any breach of the *Liquor Control Act 1988*, *Liquor Control Regulations 1989* or the licence or permit or any conditions imposed thereupon for which it may be liable as the owner of the Premises.

11.2. Provision of information

The Tenant must on request, provide the Landlord with:

- (a) a copy of the Tenant's annual statement of accounts;
- (b) advice of any changes in its office holders;
- (c) hirer details per **clause 17.4(2)(c)**; and
- (d) an annual report outlining the activities occurring on the Premises, participation rates, budgets allocated to maintenance and repair of the Premises and any other information reasonably required by the Landlord.

11.3. Shipping Containers, Use of Ovals and Floodlighting Costs

For the avoidance of doubt, the:

- (a) The Tenant's right to construct and place a shipping container(s) on the Ovals surrounding the Premises (as shown in the annexed sketch) will be subject and pursuant to the planning approval process;
- (b) Tenant's right to use the Ovals (as shown in the annexed sketch) surrounding the Premises will be subject and pursuant to seasonal tenancy agreements;
- (c) Lighting costs associated with the Tenant's use of the Ovals surrounding the Premises, will be based on the Tenant's per hour usage and the usage rate contained in the City's Schedule of Fees and Charges (as varied from time to time).

11.4. Minimise nuisance to neighbours

- (a) The Tenant must take all reasonable action to minimise and prevent disruption, nuisance and disturbance to surrounding residential premises, particularly during and following social events held at the Premises.
- (b) The Tenant must comply with all reasonable conditions and directions that may be imposed by the Landlord from time to time in relation to the minimisation and prevention of disruption, nuisance and disturbance to surrounding residential premises.

11.5. Emergency Use by Landlord

Notwithstanding any other provision in this Lease, in the event of a circumstance that calls for immediate emergency response, including flooding or a bushfire event, the Landlord may require the use of the whole or part of the Premises for that purpose and the Tenant agrees to surrender use of the whole or part of the Premises for that purpose. If such an emergency occurs and the Landlord enters into possession of the whole or part of the Premises, the Landlord agrees to suspend payment of the Rent and relevant outgoing charges for the duration of the emergency.

Signing page

EXECUTED BY THE PARTIES AS A DEED on the

day of

2020

Pursuant to Council Resolution # THE COMMON SEAL of CITY OF KWINANA (ABN 13 890 277 321) was affixed in the presence of:

Signature of Mayor

Print Full Name

Signature of Chief Executive Officer

Print Full Name in BLOCK LETTERS

THE COMMON SEAL of ##. (ABN ##) was hereunto affixed pursuant to the constitution of the Tenant in the presence of each of the undersigned each of whom hereby declares by the execution of this document that he or she holds the office in the Tenant indicated under his or her name-

Signature of Office Holder

Signature of Office Holder

Name of Office Holder in BLOCK LETTERS:

Name of Office Holder in BLOCK LETTERS:

Address:

Address:

Office Held:

Office Held:

Annexure – Sketch of Premises



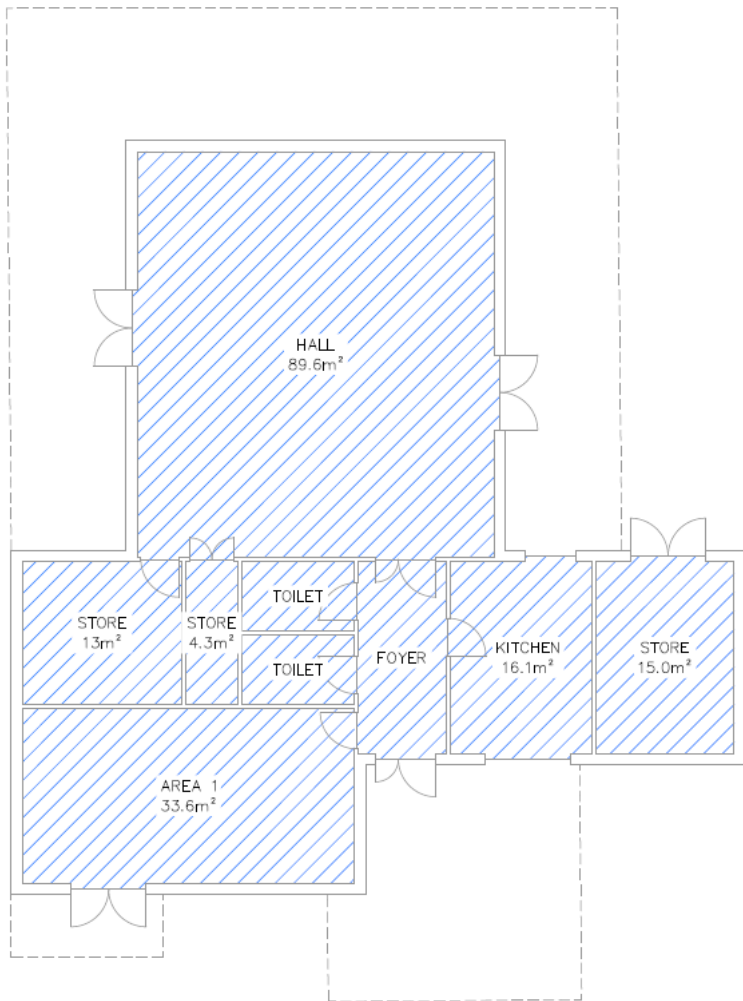
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ADDRESS LOT 1084 TUCKER STREET
 THOMAS OVAL PAVILION
 ADDRESS Car Glenny Avenue and Selphur Road, Kwinana WA 6167
 PHONE 1800 9439 0200
 FAX 1800 9439 0220
 EMAIL admin@kwinana.wa.gov.au
 WEB <http://www.kwinana.wa.gov.au>

SCALE NTS
 DATE 08/20
 AUTHORIZED MANAGER ENGINEERING SERVICES
 R. MAJAZADEH

CHECK -
 DRAWN C.R.
 TITLE OVERALL SITE PLAN
 FILE NO. -
 DRAWING NUMBER -
 REVISION A



| REV | DATE | DESCRIPTION | AUTH |
|-----|------|-------------|------|
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| | | | |



ADDRESS: LOT 1084 TUCKER STREET
 THOMAS OVAL PAVILION
 ADDRESS: Cr Gibson Avenue and Sutherland Highway (via oval)
 PHONE: 9439 3200
 FAX: 9439 3222
 EMAIL: info@kwinana.vic.gov.au
 WEB: <http://www.kwinana.vic.gov.au>

SCALE: 1:100(A3)
 DATE: 08/20
 CHECK: -
 DRAWN: C.R.
 APPROVED: [Signature]

TITLE: PAVILLION LAYOUT PLAN
 FILE NO: -
 DRAWING NO: -
 REVISION: A

19 Notices of motions of which previous notice has been given

Nil

20 Notices of motions for consideration at the following meeting if given during the meeting

Nil

21 Late and urgent Business

Nil

22 Reports of Elected Members

22.1 Councillor Wendy Cooper

Councillor Wendy Cooper reported that she had attended the City of Kwinana Citizenship Ceremony.

Councillor Cooper advised that she had attended the Mandatory Elected Member Training, Understanding Financial Reports and Budgets module held at WA Local Government Association (WALGA).

22.2 Councillor Sandra Lee

Councillor Sandra Lee reported that she had attended the City of Kwinana Citizenship Ceremony at Medina Hall, where it was wonderful to see people become Australian Citizens.

Councillor Lee advised that she had attended the Beeliar Regional Park Community Advisory Committee Meeting, Councillor Lee further advised that issues discussed included -

- Nutrient stripping basin, Russell Road Buffer Lake
- Midget flat-winged damselflies
- Policies in urban design to protect turtle habitat
- Invasive fig trees, Roe Swamp
- Roaming cats, local government cat laws
- Proposed BMX pump bike track, Little Rush Lake
- WALGA Forum on anti-social behaviour
- Quenda Wetlands
- Issues at the Spectacles

22 REPORTS OF ELECTED MEMBERS

Councillor Lee mentioned that she had attended the Cockburn Sound Management Council meeting, Councillor Lee provided the presenter and topics discussed -

- Tina Runnion, Department of Water and Regulation
 - New types of monitoring for the Cockburn Sound Water Quality update
 - Equipment has been purchased for year round monitoring.
 - There are eight sites which are hot-spots and sea grass sites.
 - The new equipment tests water at all levels from the bottom, middle and top for oxygen levels.

- John Keesing, Senior Research Scientist, from the CSIRO
 - Spatial variation in mean total Nitrogen and Chlorophyll in the water in Cockburn Sound where, it can remain for up to 35 days, whereas at Marmion Beach it lasts for one day.
 - Low oxygen is mainly in the south eastern area of Cockburn Sound and low oxygen occurs mainly in autumn. The south winds help with oxygen levels but the westerly and southerly winds not as much.

- Abbie Rogers, UWA
 - Presented an update on Thriving Coasts Cooperative Research Centre (CRC), the CRC is a ten year programme for:
 - The Economic Impact of COVID-19
 - Balancing the triple bottom line
 - Increasing impacts on sea levels in relation to extreme weather events
 - Increasing complex congested and contested coastal space as our population grows.

Councillor Lee provided further information regarding CRC, explaining:

- They prefer real tangible results rather than blue sky data.
- Cockburn Sound is one of the Coastal Demonstration Sites.
- The CRC are looking for more Sponsorship funding, possibly from Local Government as it would be good for Local Government to be involved.
- To date \$150 million is being invested and the project will last for 10 years.
- The Commonwealth Government will match \$ for \$ for funding.
- Partners will have the opportunity to contribute to the direction of the research.
- CRC is an independent Board.

23 Answers to questions which were taken on notice

Nil

24 Mayoral Announcements

The Mayor advised that media events she had participated in were:

- Filming of the 22 July 2020 Ordinary Council Meeting Wrap Up
- Filming for the Plastic Free July initiative
- Photograph with “Love my Neighbourhood” photograph competition winners
- Photo to thank Bendigo Bank, Kwinana for their participation in the Kwinana Community Funding Program for the past three years
- Media releases regarding the Westport announcement

The Mayor provided details regarding meetings and events she had attended:

- Boola Maara Many Hands Advisory Group Meeting
- KEYS (inc) Board Meeting
- Citizenship Ceremony
- Metro Outer Joint Development Assessment Panel Meeting
- Approval of the construction of a storage tank and associated pipeline and infrastructure for Coogee Chemicals
- Approval of the construction of a tank, transfer pipeline, truck load out gantry and associated process equipment for Coogee Chemicals
- Stakeholder meeting with Mr Brad Lemmon representing Cockburn Cement

The Mayor provided details regarding community groups and community meetings that she had participated in were:

- Connecting Community for Kids – Joint Advisory Committee Meeting
- Announcement that Kwinana Early Years Inc, has been accepted as the auspicing organization for the Woodside Funding initiative.
- Gilmore College Board Meeting, topics discussed included:
 - Succession Planning Discussion
 - Community members for 2021
- BNI Elite Kwinana – breakfast networking
“Kwinana Elite inspire and empower local businesses to grow and achieve success”
 BNI meet every Friday morning for business networking exposure. There were approximately 30 local businesses represented and I was invited to provide a general overview on what the City has been doing to assist local businesses in the Kwinana area.
- Webinar - COVID 19 Recovery - Community Resilience Scorecard Report launch by the Minister for Local Government, the Hon David Templeman. The Department of Local Government, Sport and Cultural Industries funded and partnered with Local Government Professionals WA and Catalyse to develop the MARKYT® Community Resilience Scorecard

The Mayor reported that the results of an online COVID-19 survey which mapped community wellbeing and resilience levels across WA and undertaken from 5 June 2020 and 8 July 2020 and completed by 7,666 residents aged 18 and over, across 128 WA local governments. Local communities across Western Australia have shown strength and resilience in response to the pandemic. The key findings from the WA survey and its report include:

- Community members are happy with local government responses to COVID-19 and have confidence and trust in local government to make good decisions

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- Main priorities for local government were economic recovery, community health and wellbeing, local infrastructure, recovery plan, support services and community safety.
- The top five concerns were family and friends getting sick, recovery of the local economy, personal finances, staying connected and work and employment opportunities.
- 69 per cent of community members feel hopeful and enthusiastic about the future

The Mayor added that all Local Government were provided with their individual scorecards which was now being examined by our Council.

The Mayor provided the following update regarding the WA Local Government Association:

- WALGA Webinar, Facilitation Council Business

The Mayor provided an update regarding the Westport Taskforce Report Stage 2 Announcement -

“As you are all aware by now, the State Government has endorsed the Westport Report which has confirmed the City’s long held position that Kwinana is the most logical location for a new port, which will best serve Perth’s long term freight needs.

On Monday the Premier announced the government’s commitment of \$97.2m into the preparatory work and business case for the port project. The City congratulates the Premier and the State Government on delivering on the election commitment to plan and build a new port and we stand ready to work with both State and Federal Governments to ensure that the project is delivered to Perth and the State of Western Australia.

I believe the case exists for the timeframe of 2032 to be shortened up and for the construction to commence as soon as the detailed business cases have been finalised.

What has been of immense satisfaction is that the plan endorsed by Westport is essentially the Indian Ocean Gateway Consultative Draft that the City released in August 2015 and strongly advocated for since that time. You may recall the Draft outlined an unimpeded transport route utilizing Tonkin Hwy, Thomas and Anketell Roads, leading into a land-backed port – which is the final option the Westport Taskforce has recommended to the Government.

For those on council in 2015 you will recall we really went out on a limb, and were roundly criticized by some sectors for daring to move beyond the usual Local Government territory of roads, rates and rubbish. Despite this criticism, the City never wavered from its advocacy position because we knew that this was the right time to press for the project. We knew that if we could achieve a commitment from the Government to deliver a large infrastructure project of this nature, it would be an enormous boost to our community in terms of flow-on economic, employment and societal benefits and opportunities.

For Kwinana, the decision to plan and build a new port provides much needed investor and business certainty and confidence, and it is from this commitment to Kwinana that we will see job creation and we will see new residents looking to relocate to this region to live in close proximity to such a large future employment hub.

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I would like to congratulate the Westport Taskforce for their thorough and methodical work undertaken over the past few years in arriving at this outcome. Whilst it continues to be a polarizing project, given the amount of public interest and debate, it was a very inclusive process where all stakeholders and community members had the opportunity to contribute to the discussion over the past three years.

Whilst the announcement was this week, I would like to publically acknowledge the hard work of many people who have assisted the City arrive at this position.

I would like to acknowledge and thank our former CEO Joanne Abbiss and City officers Casey Mihovilovich and Rhys Heron, who were instrumental in working on the Indian Ocean Gateway documents from April 2015 until their release. I would like to acknowledge the hard work of the industrial sector who championed the need for a future port in Kwinana so that their industries could grow and new industries would come to the region, having a renewed investor and business confidence.

I would like to acknowledge and thank the City's Executive and the council staff (whether they be in planning, marketing, environment, engineering or economic development) who have been an integral part of this journey, and will continue to be.

We ensured from the outset of the Westport process that we had a City officer at every one of the work stream groups or technical officers group meetings to ensure that Kwinana's position was considered at every opportunity.

In closing, the City of Kwinana thanks the WA government for the visionary announcement and stands ready to continue to work with both State and Federal Governments in preparing for the Perth's new port development."

25 Confidential items

Nil

26 Close of meeting

The Mayor declared the meeting closed at 5:59pm.