



City of Nedlands

Agenda

Council Meeting

23 August 2011

Dear Council member

The next ordinary meeting of the City of Nedlands will be held on Tuesday 23 August 2011 in the Council chambers at 71 Stirling Highway Nedlands commencing at 7 pm.

A handwritten signature in black ink, appearing to read 'Graham Foster', is positioned above the typed name.

Graham Foster
Chief Executive Officer
16 August 2011

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City of Nedlands

Notice of an ordinary meeting of Council to be held in the Council chambers, Nedlands on Tuesday 23 August 2011 at 7 pm.

Council Agenda

Declaration of Opening

The Presiding Member will declare the meeting open at 7 pm and will draw attention to the disclaimer below.

(NOTE: Council at its meeting on 24 August 2004 resolved that should the meeting time reach 11.00 p.m. the meeting is to consider an adjournment motion to reconvene the next day).

Declaration of Opening

The Presiding Member will declare the meeting open at 7 pm and will draw attention to the disclaimer below.

(NOTE: Council at its meeting on 24 August 2004 resolved that should the meeting time reach 11.00 p.m. the meeting is to consider an adjournment motion to reconvene the next day).

Present and Apologies and Leave Of Absence (Previously Approved)

Leave of Absence Councillor N B J Horley Coastal Districts Ward
(Previously Approved)

Apologies Councillor I S Argyle Dalkeith Ward

Disclaimer

No responsibility whatsoever is implied or accepted by the City of Nedlands for any act, omission or statement or intimation occurring during Council or Committee meetings. City of Nedlands disclaims any liability for any loss whatsoever and howsoever caused arising out of reliance by any person or legal entity on any such act, omission or statement or intimation occurring during Council or Committee meetings. Any person or legal entity who acts or fails to act in reliance upon any statement, act or omission made in a Council or Committee meeting does so at that person's or legal entity's own risk.

In particular and without derogating in any way from the broad disclaimer above, in any discussion regarding any planning application or application for a licence, any statement or intimation of approval made by a member or officer of the City of Nedlands during the course of any meeting is not intended to be and is not to be taken as notice of approval from the City of Nedlands. The City of Nedlands warns that anyone who has any application lodged with the City of Nedlands must obtain

and should only rely on written confirmation of the outcome of the application, and any conditions attaching to the decision made by the City of Nedlands in respect of the application.

The City of Nedlands wishes to advise that any plans or documents contained within this agenda may be subject to copyright law provisions (*Copyright Act 1968, as amended*) and that the express permission of the copyright owner(s) should be sought prior to their reproduction.

It should be noted that Copyright owners are entitled to take legal action against any persons who infringe their copyright. A reproduction of material that is protected by copyright may represent a copyright infringement.

1. Public Question Time

A member of the public wishing to ask a question should register that interest by notification in writing to the CEO in advance, setting out the text or substance of the question.

The order in which the CEO receives registrations of interest shall determine the order of questions unless the Mayor determines otherwise. Questions must relate to a matter affecting the City of Nedlands.

2. Addresses by Members of the Public

Addresses by members of the public who have completed Public Address Session Forms to be made at this point.

3. Requests for Leave of Absence

Any requests from Councillors for leave of absence to be made at this point.

4. Petitions

Petitions to be tabled at this point.

5. Disclosures of Financial Interest

The Presiding Member to remind Councillors and Staff of the requirements of Section 5.65 of the *Local Government Act* to disclose any interest during the meeting when the matter is discussed.

A declaration under this section requires that the nature of the interest must be disclosed. Consequently a member who has made a declaration must not

preside, participate in, or be present during any discussion or decision making procedure relating to the matter the subject of the declaration.

However, other members may allow participation of the declarant if the member further discloses the extent of the interest. Any such declarant who wishes to participate in the meeting on the matter, shall leave the meeting, after making their declaration and request to participate, while other members consider and decide upon whether the interest is trivial or insignificant or is common to a significant number of electors or ratepayers.

6. Disclosures of Interests Affecting Impartiality

The Presiding Member to remind Councillors and Staff of the requirements of Council's Code of Conduct in accordance with Section 5.103 of the *Local Government Act*.

Councillors and staff are required, in addition to declaring any financial interests to declare any interest that may affect their impartiality in considering a matter. This declaration does not restrict any right to participate in or be present during the decision-making procedure.

The following pro forma declaration is provided to assist in making the disclosure.

"With regard to the matter in item x..... I disclose that I have an association with the applicant (or person seeking a decision). As a consequence, there may be a perception that my impartiality on the matter may be affected. I declare that I will consider this matter on its merits and vote accordingly."

The member or employee is encouraged to disclose the nature of the association.

7. Declarations by Members That They Have Not Given Due Consideration to Papers

Members who have not read the business papers to make declarations at this point.

8. Confirmation of Minutes

8.1 Ordinary Council meeting 26 July 2011

The minutes of the ordinary Council meeting held 26 July 2011 are to be confirmed subject to: correction to item 10.7 Councillor Argyle – Broadway Parking, Dalkeith Primary School and Post Newspaper as follows: delete the sentence "He also said that the owners of 91 Circe Circle had applied for the city to provide sprinklers so the trees don't die." and replace with "Councillor Argyle requested could the City

provide sprinklers to the trees along the boundary facing Circe Circle so the trees die.”

9. Announcements of the Presiding Member without discussion

Any written or verbal announcements by the Presiding Member to be tabled at this point.

10. Members announcements without discussion

Written announcements by Councillors to be tabled at this point.

Councillors may wish to make verbal announcements at their discretion.

11. Matters for Which the Meeting May Be Closed

In accordance with Standing Orders and for the convenience of the public, the Presiding Member is to notify the members of the public that the meeting will be closed for item 17.1 No. 10 (Lot 51) Knutsford Street Swanbourne – Proposed Additions to an Existing Carport and item 17.2 38 (Lot 51) & 40 (Proposed Lot 61 & 62) Jutland Parade, Dalkeith – Outcome of State Administrative Tribunal (SAT) review and Appeal rights, in accordance with Section 5.23(2)(d) of the Local Government Act 1995.

12. Divisional reports and minutes of Council committees and administrative liaison working groups

12.1 Minutes of Council Committees

This is an information item only to receive the minutes of the various meetings held by the Council appointed Committees (N.B. This should not be confused with Council resolving to accept the recommendations of a particular Committee. Committee recommendations that require Council’s approval should be presented to Council for resolution via the relevant departmental reports).

The Minutes of the following Committee meetings (in date order) are to be received:

CEO Performance Review Committee	18 July 2011
Un-confirmed, to be circulated to Councillors on 9 August 2011	
Traffic Management Committee	2 August 2011
Circulated to Councillors on 9 August 2011	
Council Committee	9 August 2011
Circulated to Councillors on 16 August 2011	

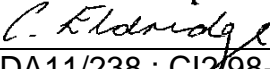
Note: As far as possible all the following reports under items 12.2, 12.3, 12.4 and 12.5 will be moved en-bloc and only the exceptions (items which Councillors wish to amend) will be discussed.

12.2 Development Services Report No's D44.11 to D52.11 (copy attached)

Note: Regulation 11(da) of the *Local Government (Administration) Regulations 1996* requires written reasons for each decision made at the meeting that is significantly different from the relevant written recommendation of a committee or an employee as defined in section 5.70, but not a decision to only note the matter or to return the recommendation for further consideration.

D44.11	No. 98 (Lot 604) Circe Circle, Dalkeith – Overheight Secondary Street Fence
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Committee	9 August 2011
Council	23 August 2011


Applicant	Lawrence Scanlan Architects
Owner	Mario & Natalie De Felice
Officer	Elle O'Connor – Planning Officer
Director	Carlie Eldridge – Director Development Services
Director Signature	
File ref	DA11/238 : C12/98-02 : M11/14184
Previous Item No's	Nil
Disclosure of Interest	No officer involved in the preparation of this report had any interest which required it to be declared in accordance with the provisions of the <i>Local Government Act (1995)</i> .

Committee Recommendation

Council approves the application for an over height secondary street fence at No. 98 (Lot 604) Circe Circle, Dalkeith in accordance with the application and plans dated 10 November 2010.

D45.11	No.15b (Lot 50) Erica Avenue, Mt Claremont - Proposed Two Storey Dwelling
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Committee	9 August 2011
Council	23 August 2011

Applicant	Residential Building WA
Owner	Arthur & Jeanette Marshall
Officer	Elle O'Connor – Planning Officer
Director	Carlie Eldridge – Director Development Services
Director Signature	
File ref	ER1/15B : DA/11/161 : M11/14177
Previous Item No's	Nil
Disclosure of Interest	No officer involved in the preparation of this report had any interest which required it to be declared in accordance with the provisions of the <i>Local Government Act (1995)</i> .

Committee Recommendation / Recommendation to Committee

Council approves an application for a two storey dwelling located at No.15b (Lot 50) Erica Avenue, Mt Claremont in accordance with the application and plans dated 5 May 2011 and the amended plans dated 27 May 2011 subject to the following conditions:

1. all storm water from building and paving areas (including driveways) shall be contained on site by draining to soakwells of adequate capacity to contain runoff from a 10 year recurrent storm event and the capacity of soakwells shall be a minimum of 1 cubic meter for every 80 m² of paved or roofed surface on the property;
2. all crossovers to street shall be constructed to the Council's Crossover Specifications and the applicant/owner to obtain levels for crossovers from the Council's Infrastructure Services under supervision on-site, prior to commencement of works;
3. the retaining walls and footings shall be constructed wholly inside the allotment;
4. the use of bare or painted metal building materials is permitted on the basis that, if during or following the erection of the development the Council forms the opinion that glare which is produced from the building has or will have a significant detrimental effect upon the amenity of neighbouring properties, the Council may require the owner

to treat the building/roof to reduce the reflectivity to a level acceptable to Council; and

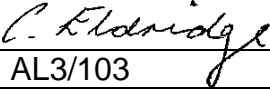
- 5. any additional development, which is not in accordance with the original application or conditions of approval, as outlined above, will require further approval by Council.**

Advice Notes specific to this approval

- a) All verge development must comply with the Council's Verge Development Policy where verge developments other than lawn require a landscaping plan submitted for approval before commencement and verge developments not complying with this policy shall be modified at the owner's cost.**
- b) All internal WC's and ensuites without window access to outside air must be serviced by mechanical ventilation, which is ducted to outside air and the minimum rate of air change must be equal or greater than 25 litres per second.**
- c) Ensure that airconditioner unit(s) comply with relevant Australian Standards and that noise emissions comply with the *Environmental Protection (Noise) Regulations 1997*. Additionally, ensure that any unit is positioned so as to not create unreasonable noise to neighbours or directly emit exhaust air into openings of neighbouring premises.**

D46.11	No.103 (Lot 23616) Alfred Road Mount Claremont - Retrospective Approval for Mt Claremont Primary School Farmers Market
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Committee	9 August 2011
Council	23 August 2011

Applicant	Mount Claremont Primary School P & C
Owner	Mount Claremont Primary School
Officer	Coralie Anderson - Senior Statutory Planning Officer
Director	Carlie Eldridge - Director Development Services
Director Signature	
File ref	AL3/103
Previous Item No's	D46.08
Disclosure of Interest	No officer involved in the preparation of this report had any interest which required it to be declared in accordance with the provisions of the <i>Local Government Act (1995)</i> .

Committee Recommendation / Recommendation to Committee

Council approves the permanent operation of the Farmers Market at the Mount Claremont Primary School in accordance with the application and plans dated 25 March 2011 subject to the following conditions:

- 1. The operating hours for the Market shall be:**
 - a) Saturday between the hours of 7:30 am to 1:00 pm; and**
 - b) one evening market held in the week prior to Christmas, between the hours of 5:30 pm and 9:00 pm;**
- 2. the stallholders shall be permitted to be on the site for the purposes of setting up and taking down of the stalls, up to a maximum of 1.5 hours before and after operating hours;**
- 3. the traffic and parking generated by the use shall be managed by the Mount Claremont P & C to the satisfaction of the City and shall include, but not be limited to, the following:**
 - a) providing onsite parking during markets hours in accordance with the approved plans;**
 - b) providing a minimum of four (4) parking attendants;**

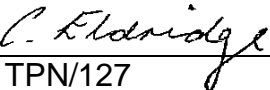
- c) **signage which directs traffic to designated parking;**
 - d) **parking attendants shall be directing traffic and signs shall be erected, for the full duration of the operating hours and all signs shall be removed by 1:00 pm; and**
 - e) **the control and prevention of parking on the verges of all streets surrounding the school.**
- 4. **a maximum of 55 stalls shall operate at any one time;**
 - 5. **any additional development, which is not in accordance with the original application or conditions of approval, as outlined above, will require further approval by Council; and**
 - 6. **sufficient waste disposal infrastructure in place to the satisfaction of the City.**

Advice Notes

- a) **The applicants will be required to comply with the City of Nedlands minimum criteria for the operation of temporary food stalls, and the Health Act 1911, and will be subject to applicable fees in this regard.**

D47.11	Hampden Broadway North Hollywood Precincts Study – Project Plan 2.0
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Committee	9 August 2011
Council	23 August 2011

Applicant	City of Nedlands
Owner	Various
Officer	Gabriela Poczyn – Manager Strategic Planning
Director	Carlie Eldridge – Director Development Services
Director Signature	
File ref	TPN/127
Previous Item No's	D45.10 - 27 July 2011
Disclosure of Interest	No officer involved in the preparation of this report had any interest which required it to be declared in accordance with the provisions of the <i>Local Government Act (1995)</i> .

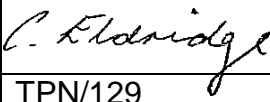
Recommendation to Committee

Council:

1. endorses that the Project Plan 1.0 for the Hampden Broadway North Hollywood Precincts Study is concluded; and
2. adopts Project Plan 2.0 for the Hampden Broadway North Hollywood Precincts Study.

D48.11	Draft Bedbrook Place Biodiversity Local Planning Policy
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Committee	9 August 2011
Council	23 August 2011

Applicant	Nil
Owner	Various property owners affected
Officer	Gabriela Poezyn – Manager Strategic Planning
Director	Carlie Eldridge – Director Development Services
Director Signature	
File ref	TPN/129
Previous Item No's	Nil
Disclosure of Interest	No officer involved in the preparation of this report had any interest which required it to be declared in accordance with the provisions of the <i>Local Government Act (1995)</i> .

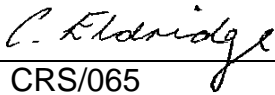
Committee Recommendation / Recommendation to Committee

Council:

1. approves for public consultation the proposed draft Local Planning Policy – Biodiversity Corridors in the Bedbrook Place locality (BCBP-LPP);and
2. instructs Administration to initiate discussions with:
 - a) the Para Quad Association of WA in regards to Reserve 37387, with the view to making a subsequent request to the State government to grant a management order over the land in favour of the City; and
 - b) the Department of Health to investigate methods to protect the existing area of remnant bushland located along the western boundary of Reserve 2290 (No 6) Selby Street.

D49.11	Draft Local Planning Policy – Setback and Buildings on the Boundary in Low Density Zoning (R10 and R12.5)
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Committee	9 August 2011
Council	23 August 2011

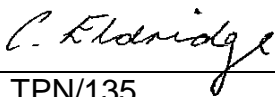
Applicant	City of Nedlands
Owner	City of Nedlands
Officer	Coralie Anderson – Senior Planning Officer
Director	Carlie Eldridge – Director Development Services
Director Signature	
File ref	CRS/065
Previous Item No's	Nil
Disclosure of Interest	No officer involved in the preparation of this report had any interest which required it to be declared in accordance with the provisions of the <i>Local Government Act (1995)</i> .

Committee Recommendation / Recommendation to Committee

Council approves for the purpose of public consultation the proposed Draft Local Planning Policy – Setback and Buildings on the Boundary in Low Density Zoning (R10 and R12.5).

D50.11	Draft Capital City Planning Framework - Public Comment
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Committee	9 August 2011
Council	23 August 2011

Applicant	N/A
Owner	N/A
Officer	Gabriela Poezyn – Manager Strategic Planning
Director	Carlie Eldridge – Director Development Services
Director Signature	
File ref.	TPN/135
Previous Item No's	Nil
Disclosure of Interest	No officer involved in the preparation of this report had any interest which required it to be declared in accordance with the provisions of the <i>Local Government Act (1995)</i> .

Committee Recommendation

Council:

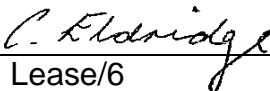
1. supports the draft Capital City Planning Framework in principle as a coordinated approach to Capital City Planning;
2. identifies the following issues and requests that these issues are addressed and/or corrected in the final document:
 - a) the final proposal needs to provide for commuter cyclists and take the local cycle network into account;
 - b) a connection needs to be created between the proposed ferry terminal at JoJo's and the high frequency/high capacity road public transport route which terminates at the intersection of Princess Road and Fairway;
 - c) the Subiaco Waste Water Treatment Plant Odour Buffer be shown in the framework as a non-residential area noting the proposed residential area on Lot 4 (corner Selby Street and Underwood Avenue) is required to be reduced to the boundary

of the odour buffer from the existing of the Subiaco Waste Water Treatment Plant;

- d) the proposed high density housing in Carrington Street is not acceptable as it will result in the City being deprived of one of only two service industrial areas which are considered vital to future sustainability;**
 - e) the proposed high density housing along the Esplanade is not acceptable to the City and should remain earmarked for lower intensity residential development;**
 - f) it is not appropriate that the Hollywood Aged Care site (Monash Street) is earmarked for medium intensity residential development because this could compromise its current purpose which is to provide for the aged persons accommodation which is vital for future sustainability;**
 - g) a green link is required through the QEII site to create a connection between the proposed greened Verdun Street road reserve and Kings Park; and**
 - h) the boundary of Capital Cites Planning Framework being considered for refinement to reflect planning considerations and geography.**
- 3. works closely with the City on finalising the framework to ensure integration if the City's Strategic Town Planning.**

D51.11	Cottesloe Golf Club Inc –Surrender of Lease and proposed new twenty-one year Lease with the option of a further twenty-one year term.
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Committee	09 August 2011
Council	23 August 2011

Applicant	Cottesloe Golf Club Inc
Owner	State of WA – Vested to City of Nedlands
Officer	Neil Scanes – Property Management Officer
Director	Carlie Eldridge – Director Development Services
Director Signature	
File ref	Lease/6
Previous Item No's	Item C04.03, 11 February 2003
Disclosure of Interest	No officer involved in the preparation of this report had any interest which required it to be declared in accordance with the provisions of the <i>Local Government Act (1995)</i> .

Committee Recommendation

1. approves the surrender of the existing lease between the City and Cottesloe Golf Club Inc; and
2. approves and endorses the attached exclusive use lease for a twenty-one year term with the option of a further twenty-one year term between the City and the Cottesloe Golf Club Inc. subject to the inclusion of a clause that does not preclude the creation of a safe recreational pathway in the vicinity of the eastern boundary at sometime in the future to the agreement of both parties.

D52.11	Construction of the refurbishment, additions and alterations to the John Leckie Pavilion
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Committee	9 August 2011
Council	23 August 2011

Applicant	City of Nedlands
Owner	City of Nedlands
Officer	Matthew Deal - Manager Property Services
Director	Carlie Eldridge - Director Development Services
Director Signature	
File ref	TEN/328
Previous Item No's	<i>C. Eldridge</i>
Disclosure of Interest	No officer involved in the preparation of this report had any interest which required it to be declared in accordance with the provisions of the <i>Local Government Act (1995)</i> .

Committee Recommendation / Recommendation to Committee

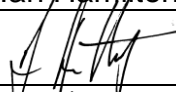
Council accepts the tender from Gavin Construction for the construction of the refurbishment, alterations and additions to the John Leckie Pavilion at a cost of \$2,551,041.90.

12.3 Technical Services Report No T05.11 (copy attached)

Note: Regulation 11(da) of the *Local Government (Administration) Regulations 1996* requires written reasons for each decision made at the meeting that is significantly different from the relevant written recommendation of a committee or an employee as defined in section 5.70, but not a decision to only note the matter or to return the recommendation for further consideration.

T05.11	Tender No. 2010/11.13 – Weed Control For Hard Landscape Areas
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Committee	9 August 2011
Council	23 August 2011

Applicant	City of Nedlands
Owner	City of Nedlands
Officer	Andrew Dickson – A/Manager Parks Services
Director	Ian Hamilton – Director Technical Services
Director Signature	
File ref.	TEN/312
Previous Item No's	Item T6.08 – Council Minutes – 9 September 2008
Disclosure of Interest	No officer involved in the preparation of this report had any interest which required it to be declared in accordance with the provisions of the <i>Local Government Act (1995)</i> .

Committee Recommendation / Recommendation to Committee**Council:**


1. accepts the tender submitted by Steamwand International trading as Weedtechnics for the supply of thermal and mechanical weed control services for the 2011/12 financial year at a cost of \$82,566.00 excluding GST; and
2. accepts the option to extend the contract for two (2), twelve month periods at the end of the initial period ending 30 June 2012, at the principal's discretion.

12.4 Community & Strategy Report No CM07.11 (copy attached)

Note: Regulation 11(da) of the *Local Government (Administration) Regulations 1996* requires written reasons for each decision made at the meeting that is significantly different from the relevant written recommendation of a committee or an employee as defined in section 5.70, but not a decision to only note the matter or to return the recommendation for further consideration.

CM07.11	Policy Review
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Committee	9 August 2011
Council	23 August 2011

Applicant	City of Nedlands
Owner	City of Nedlands
Director	Carlie Eldridge - Director Development Services Mike Cole – Director Corporate Services
Director	Darla Blake - Director Community and Strategy
Director Signature	
File ref.	CRS/065
Previous Item No's	Nil
Disclosure of Interest	No officer involved in the preparation of this report had any interest which required it to be declared in accordance with the provisions of the <i>Local Government Act (1995)</i> .

Committee Recommendation / Recommendation to Committee

Council approves the following policies:


1. **Home Business replacing policy 6.1; and**
2. **Records Management (revised)**

12.5 Corporate Services Report No's CP28.11 to CP30.11 (copy attached)

Note: Regulation 11(da) of the *Local Government (Administration) Regulations 1996* requires written reasons for each decision made at the meeting that is significantly different from the relevant written recommendation of a committee or an employee as defined in section 5.70, but not a decision to only note the matter or to return the recommendation for further consideration.

CP28.11	Monthly Financial Report – June 2011
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Committee	9 August 2011
Council	23 August 2011

Applicant	City of Nedlands
Owner	City of Nedlands
Officer	Rajah Senathirajah – Manager Finance
Director	Michael Cole – Director Corporate Service
Director Signature	
File ref.	Fin/072-16
Previous Item No's	Nil
Disclosure of Interest	No officer involved in the preparation of this report had any interest which required it to be declared in accordance with the provisions of the Local Government Act (1995).

Committee Recommendation / Recommendation to Committee

Council receives the preliminary Monthly Financial Report for June 2011.

CP29.11	Investment Report – June 2011
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Committee	9 August 2011
Council	23 August 2011

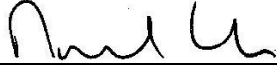
Applicant	City of Nedlands
Owner	City of Nedlands
Officer	Rajah Senathirajah – Manager Finance
Director	Michael Cole – Director Corporate Service
Director Signature	
File ref.	Fin/071-06
Previous Item No's	Nil
Disclosure of Interest	No officer involved in the preparation of this report had any interest which required it to be declared in accordance with the provisions of the Local Government Act (1995).

Committee Recommendation / Recommendation to Committee

Council receives the Investment Report for the period ended 30 June 2011

CP30.11	List of Accounts Paid – June 2011
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Committee	9 August 2011
Council	23 August 2011

Applicant	City of Nedlands
Owner	City of Nedlands
Officer	Rajah Senathirajah – Manager Finance
Director	Michael Cole – Director Corporate Service
Director Signature	
File ref:	Fin/072-16
Previous Item No's	Nil
Disclosure of Interest	No officer involved in the preparation of this report had any interest which required it to be declared in accordance with the provisions of the Local Government Act (1995).

Committee Recommendation / Recommendation to Committee

Council receives the List of Accounts Paid for the month of June 2011.

13. Reports by the Chief Executive Officer

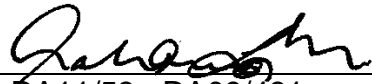
13.1 Common Seal Register Report – July 2011

The attached Common Seal Register Report for the month of July 2011 is to be received.

13.2 List of Delegated Authorities – July 2011

The attached List of Delegated Authorities for the month of July 2011 is to be received.

13.3 No. 9 (Lot 54) Iris Avenue, Dalkeith – Proposed Retrospective Amendments to previously Approved Two Storey Dwelling.

Applicant	David Reynolds
Owner	Lasair Property Trust
Officer	Nick Bakker – Planning Officer
Director	Carlie Eldridge – Director Development Services
CEO	Graham Foster – Chief Executive Officer
CEOs Signature	
File ref	DA11/53 : DA09/431
Previous Item No's	Nil
Disclosure of Interest	No officer involved in the preparation of this report had any interest which required it to be declared in accordance with the provisions of the <i>Local Government Act (1995)</i> .

Purpose

Council originally considered this application for proposed retrospective works and No. 9 Iris Avenue, Dalkeith at the meeting on 28 June 2011, where it was resolved that the application be referred back to administration for additional information.

Recommendation to Committee

Council approves an application for Retrospective Amendments to a previously approved Two Storey Dwelling at No. 9 (Lot 54) Iris Avenue, Dalkeith in accordance with the application dated 15 February 2011 and the amended plans dated 2 March 2011 and 3 August 2011 subject to the following conditions:

- 1. The applicant is to render the northern boundary wall on the side facing the neighbouring property, to the satisfaction of the City;**
- 2. Within 30 days of Councils decision the overheight solid portion of the northern boundary fence located in the 9 m primary setback area is to be reduced to:**
 - i. have a maximum pillar height of 2.1 m (including capping) above natural ground level (ngl);**
 - ii. have a maximum height of 1.8 m for the remainder of the fence'; and**

- iii. to be visually permeable above 1.2 m from ngl in accordance with the Residential Design Codes (RCodes).
3. All storm water from building and paving areas (including driveways) shall be contained on site by draining to soakwells of adequate capacity to contain runoff from a ten (10) year recurrent storm event and the capacity of soakwells shall be a minimum of one (1) cubic metre for every 80 m² of paved or roofed surface on the property.
4. The retaining walls and boundary fencing and footings shall be constructed wholly inside the allotment.
5. The use of bare or painted metal building materials is permitted on the basis that, if during or following the erection of the development the Council forms the opinion that glare which is produced from the building has or will have a significant detrimental effect upon the amenity of neighbouring properties, the Council may require the owner to treat the building/roof to reduce the reflectivity to a level acceptable to Council.
6. A grated channel strip-drain shall be constructed across the driveway, aligned with and wholly contained within the property boundary and the discharge from this drain to be run to a soakwell situated within the property.
7. Any additional development, which is not in accordance with the original application or conditions of approval, as outlined above, will require further approval by Council.

Advice Notes specific to this approval

1. All internal WC's and ensuites without window access to outside air must be serviced by mechanical ventilation, which is ducted to outside air and the minimum rate of air change must be equal or greater than 25 litres per second.
2. Property owners are required by law to ensure that mechanical devices located on their property such as air conditioners do not create unreasonable noise to neighbouring properties. It is strongly advised that consultation be undertaken with the air conditioner installer and adjoining neighbour(s) prior to installation of any airconditioner equipment.
3. In the event of a noise complaint being received by the City, remedial action (including potential relocation or

other attenuation measures) may be required or the air conditioner may be prohibited from being used. It is recommended that applicants refer to the City’s Visual and Acoustic Privacy Information document and also the online fairair noise calculator online at. Further advice can be sought from Acoustic Engineers who are listed in the Yellow Pages under “Acoustical Consultants”.

4. Prior to the commencement of works, any consents or approvals required under the *Strata Titles Act 1985* will need to be obtained.

Strategic Plan

KFA 3: Built Environment
 3.8 Facilitate appropriate development of existing residential housing to complement the surrounding residential amenity.

Background

Property Address: No. 9 (Lot 54) Iris Avenue, Dalkeith
 Zoning MRS: Urban
 Zoning TPS2: Residential – R10
 Lot Area: 810 m²

The City has previously issued two planning approvals and building licenses for this property, as detailed below:

Date	Action/Comments
January 2008	The City approved a development application (DA07/210) for a proposed two storey dwelling, with basement garage and swimming pool. The plans were approved with a family room and patio with a rear setback of 2.82 m.
March 2009	The above development did not proceed and a new application (DA09/83) for a completely new design was submitted in March 2009.
July 2009	The City approved the second development application (DA09/83) for a two storey dwelling and swimming pool. The application was approved with a condition that the rear setback be a minimum of 6 m.
September 2009	The applicant submitted another application (DA09/431), proposing the following amendments to the previous approval: <ul style="list-style-type: none"> • 1.8 m brick screen walls on the side and rear boundaries of the property; • Increasing the size of the rear alfresco area, this would reduce the rear setback from the required 6 m to 4.26 m;

	<ul style="list-style-type: none"> • Amendments to the front screen wall; • Retaining walls along the driveway; • Slight changes to the roof design and front elevations.
October 2009	The above application was assessed and additional information was requested.
August 2010	The City sent out a cancelation letter dated 6 August 2010 notifying of cancelation by 19 August 2010 after no information was received.
September 2010	A phone conversation with the applicant was recorded, where he applicant informed the planning officer that the dwelling had already been constructed with these unapproved amendments and requested the application be cancelled and they will resubmit for retrospective approval.
February 2011	This retrospective application for the unapproved amendments was submitted.
June 2011	The application was considered at Council where it was resolved that the application be referred back to Administration for additional information.

Following Councils request for the application to be referred back the applicant has submitted more accurate information which explains a number of details not originally clear when the application was considered at the June Council Meeting. The assessing officer has also inspected the site and noted that there were a number of inaccuracies with the original plans.

The following list outlines the key issues which have now been clarified with the additional information:

1. The original plans submitted with this application showed the front fence and pillars stepping down with the slope of the land resulting in a maximum height of 2.1 m above ngl in accordance with the City's requirements.

It has become apparent the front fence does not step down with the slope of the land and has been constructed with a maximum top of wall height (including capping) of 2.55 m above ngl. The applicant has now provided accurate plans showing the fence (as built) in comparison to what was originally approved (refer to attachment 1).

2. It is also apparent that a solid boundary wall has been built within the 9 m setback area along the northern boundary. As this fence is solid above the 1.2 m required under the RCodes it is recommended the applicant reduce the fence to comply, as per Condition 2.

3. Initially the City received two objections in relation to the reduced rear setback. Following a number of discussions with the concerned neighbours both of these objections were withdrawn.
4. In the original administration report to Council it was recommended that a number of ground floor north facing windows be screened to remove overlooking issues. It has become apparent that the finished ground floor level (ffl) of 10.00RL is a maximum of 260 mm above the natural ground level (not over 500 mm as originally thought) and therefore complies with the privacy/overlooking requirement of the RCodes.

Proposal Detail

This application is for the following retrospective amendments to DA09/413:

- 1.8 m brick screen walls on top of 500 mm of fill along the north side boundary of the property;
- Increasing the size of the rear alfresco area, resulting in a reduced the rear setback from the required 6 m to 4.26 m;
- Amendments to the front boundary wall;
- A gate house located on the front boundary;
- Retaining walls along the driveway;
- Changes to the roof design and minor changed to the front elevation.

All of the above changes are highlighted on the attached plans.

Consultation

Required by legislation: Yes No

Required by City of Nedlands policy: Yes No

Advertising Period 22 March 2011 – 5 April 2011

Comments received: Two letters of objections

Note: A full copy of all relevant consultation feedback received by the City has been given to the City's Councillors prior to the meeting.

Since the July Council Meeting separate meetings were held with the objecting neighbours, to gain a better understanding of their concerns.

Following discussions with the neighbours, a meeting was held at the City's office with the applicant to discuss the City's and the neighbours' concerns.

In this meeting the applicant agreed to:

1. Render the side of the northern boundary wall facing the neighbouring property at No. 7 Iris Avenue as per the neighbours request;
2. Reduce the solid wall on northern boundary located within the 9 m setback area, in order to comply with the RCode requirements (refer condition 2 and 3).

Summary of comments received	Officers technical comment
<p>Issue:</p> <p>The rear setback variation negatively affects neighbouring households.</p>	<p>Dismiss</p> <p>Following the last Council meeting the assessing officer met with the objecting neighbours, who stated they now have no objection to the reduced rear setback.</p> <p>Furthermore; the proposed rear setback is not considered to impact on the neighbouring properties. See discussion below for more detail.</p>
<p>Issue:</p> <p>The over height front fence negatively affects the streetscape and amenity.</p>	<p>Condition</p> <p>In the original administration report to Council it was recommended that the front fence be reduced to a maximum height of 2.1 m (including capping) above natural ground level.</p> <p>Since the application was referred back, the affected neighbour agreed that they will support the height of the overheight from wall, provided the applicant renders the new dividing fence on the side facing the neighbour's property. The applicant agreed to render the wall to the satisfaction of the affected owner.</p>

	It is therefore recommended condition 1 be included in the approval.
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Legislation

- City of Nedlands Town Planning Scheme No. 2 (TPS2)
- Residential Design Codes (RCodes)
- Council Policy Manual
- Fill and Fencing Policy

Discussion

The variations to the legislation are discussed as follows:

Issue: Rear Setback

RCodes Requirement Acceptable Development	The Alfresco requires a 6 m setback from the rear boundary. (Refer to the marked up plan in attachment 8 for details regarding the rear setback requirements).
Performance Criteria	Buildings setback from boundaries other than street boundaries so as to: <ul style="list-style-type: none"> • Provide adequate direct sun and ventilation to the building; • Ensure adequate direct sun and ventilation being available to adjoining properties; • Provide adequate direct sun to the building and appurtenant open spaces; • Assist with protection of access to direct sun for adjoining properties; • Assist in ameliorating the impacts of building bulk on adjoining properties; • Assist in protecting privacy between adjoining properties.
Applicants Proposal	The Alfresco is proposed to be setback 4.26 m from the rear boundary, which intrudes 1.74 m into the 6 m rear setback area.
Applicant justification summary	<i>Approval was initially granted with a 2.82 m setback to the rear boundary. This was granted due in part to the neighbour to the rear of us having a setback of 1.5 m.</i>

<p>Note: A full copy of the applicant justification received by the City has been given to the City's Councillors prior to the meeting.</p>	<p><i>In resubmitting the plans for approval the applicant amended the alfresco setback to 4.26 m as this would mean more rear yard and still allow for a useable alfresco. Approval was granted with the condition that the rear setback be increased to 6 m in accordance with the RCodes.</i></p> <p><i>Given approval was originally granted for a 2.82 m set back to the rear, which extended almost the full width of the site, the applicant assumed that seeking approval for a increased 4.26 m set back where only a portion of flat roof and two columns extended into this area would not be a problem.</i></p>
<p>Officer technical comment</p>	<p>The setback of the alfresco is further setback than that of the adjoining property to the rear, which has a rear setback of 1.5 m.</p> <p>Furthermore, no submissions from the neighbouring owners to the rear of the property were received.</p> <p>The rear setback in relation to the side neighbours' original submissions is considered below.</p> <ol style="list-style-type: none"> 1. Southern adjoining property The proposed portion of alfresco located in the 6 m rear setback area has a south side setback in accordance with the RCodes. As the length of the alfresco wall located in the rear setback area is only 1.74 m and is setback from the side boundary in accordance with the RCodes, the impact on this adjoining property is therefore considered minimal. 2. Northern adjoining property The alfresco is setback 8.5 m from the northern property boundary. The finished ground levels of the northern property at No. 7 Iris Avenue are approximately 500 mm below that of No. 9 Iris Avenue and the properties are separated by a 1.8 m high dividing fence. <p>Given the information above and that the length of the alfresco wall located in the rear setback area is only 1.74 m it is considered the rear setback complies with the relevant Performance Criteria of the RCodes, as discussed below:</p>

- *Provide adequate direct sun and ventilation to the building;*
- *Provide adequate direct sun to the building and appurtenant open spaces;*

The proposed reduced rear setback has minimal impact on the access to direct sun and ventilation of the building as the proposed portion of the alfresco with the reduced setback is located towards the southern side of the property leaving adequate open areas with access to northern sun.

- *Ensure adequate direct sun and ventilation being available to adjoining properties;*
- *Assist with protection of access to direct sun for adjoining properties;*

The proposed rear portion of the dwelling is not considered to have any impact on the provision of sun and ventilation to adjoining properties as it is single storey, is setback from the side properties in accordance with the RCodes and has a maximum wall height of 3 m with a flat roof.

Furthermore, the 1.74 m portion of dwelling located in the 6 m rear setback area is setback 8.5 m from the northern boundary and is not considered to have any impact on the property to the north.

- *Assist in ameliorating the impacts of building bulk on adjoining properties;*
- *Assist in protecting privacy between adjoining properties.*

Given the size, location and proposed floor levels for the dwelling at No. 9 Iris Avenue it is not considered to have an adverse impact in terms of bulk and privacy on any of the surrounding properties.

Following Council's request to refer this application back to a later meeting for more information, the assessing officer has met with both adjoining owners to discuss the application and proposed variations in detail. Both adjoining land owners to the north and south confirmed that they are no longer concerned with the rear

	setback variation.
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Issue: Front and Side Boundary Fencing

RCodes/ Town Planning Scheme Requirement	<p>Front and side walls and fences in the 9 m primary street setback area shall be a maximum height of 1.8 m above natural ground level at the base of the wall and visually permeable in accordance with the residential design codes.</p> <p>The City has a working practice relating to fences located within the front setback area, which allows for capping on top of a 1.8 m fence pillar to be a maximum height of 2.1 m.</p>
Performance Criteria	<i>Front walls and fences to enable surveillance and enhance streetscape.</i>

Applicants Proposal	<p><i>“The fence along the front boundary has a maximum height of 2.55 m (including pier capping) above natural ground level, in the north western corner of the site.</i></p> <p><i>The portion of fence located within the 9m front setback area on the northern boundary is solid to a height of 1.8 m above ngl.”</i></p>
<p>Applicant justification summary</p> <p>Note: A full copy of the applicant justification received by the City has been given to the City’s Councillors prior to the meeting.</p>	<p>When on site it was discovered that the undulation of the land meant that the front screen wall did not follow the lay of the land and as such would mean that on completion it would look as though an error had been made.</p> <p>Further it was apparent that the track for the open screen gate would be visible from the street and as such unsightly. Therefore we made the change to ensure it looked balanced.</p>
Officer technical comment	<p>As a result of the natural slope of land along the front of the property, the proposed front fence located in the 9 m front setback area is overheight in some portions.</p> <p>Although the front fence pillars (specifically in the north west corner) have a maximum height 450 mm above the maximum requirement, the slope of the land should be taken into consideration when assessing the impact of the overheight portion of fence. As the site slopes down approximately 1.75 m from south to north along the front boundary it is accepted</p>

	<p>that any resulting front fence will be over height at some points.</p> <p>Given the proposed front fence provides adequate visual permeability (in accordance with the RCodes) and still maintains a relatively open streetscape it is considered that the front boundary fence meets intent of the RCodes and City's Policy.</p> <p>The portion of fence located within the 9 m front setback area on the northern boundary is solid to a height of 1.8 m above ngl and does not comply with the acceptable development criteria of the RCodes.</p> <p>Although the fence along the front boundary provides adequate visual permeability (in accordance with the RCodes), it is considered the height of the northern portion of fence within the 9 m front setback area is not in keeping with open streetscape of Iris Avenue. In order to complement the design of the front fence and maintain the open streetscape along Iris Avenue, it is recommended this portion of fence be reduced to a maximum height of 2.1 m (to the pillar capping) and be visually permeable above 1.2 m from ngl (as per condition 2 and 3).</p>
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Conclusion

Given the information above, it is considered the proposed rear setback complies with the relevant performance criteria of the RCodes and is recommended for approval.

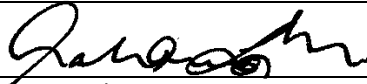
In relation to the front and side boundary fencing located within the 9 m setback area it is recommended the approval be conditioned to reduce the maximum height of the pillars along the northern boundary to 2.1 m above natural ground level with a maximum solid height of 1.2 m in accordance with Clause 6.2.5 of the RCodes. It is also suggested that this be carried out within 30 days of Council's approval.

Given the substantial slope of the land along the front boundary and that the portion of over height fence is relatively minor; it is recommended Council approve the front fence as shown in attachment 8, with the condition that the northern boundary wall is rendered to the satisfaction of the City.

Attachments

1. Locality Plan
2. Existing Site Survey Plan
3. Site and Setout Plan
4. Ground Floor Plan
5. Internal Dimensions and Front Fence Plan
6. Upper Floor Plan
7. Elevation Plans
8. Additional Plan showing the Front Fence as Constructed

13.4 Café Located at Mt Claremont Community Centre – Part Lot 6987 on Deposited Plan 16726, House Number 19, Haldane Street, Mt Claremont. Proposed three (3) year lease with the option of a further two, one (1) year lease term between the City and R2R Services.

Applicant	R2R Services
Owner	State of WA – Crown Grant to City of Nedlands
Officer	Neil Scanes – Property Management Officer
Director	Carlie Eldridge – Director Development Services
CEO	Graham Foster – Chief Executive Officer
CEOs Signature	
File ref	Lease/52
Previous Item No's	Item CM14.07, 12 June 2007; Item CM18.06, 9 May 2006; and Item C24.05, 26 April 2005
Disclosure of Interest	No officer involved in the preparation of this report had any interest which required it to be declared in accordance with the provisions of the <i>Local Government Act (1995)</i> .

Purpose

This report recommends that Council approves and endorses an exclusive three (3) year lease with the option of a further two, one (1) year terms between the City and R2R Services for the provision of Café services at the Café located at Mt Claremont Community Centre, Mt Claremont as per the tender evaluation undertaken by WALGA.

It is presented as a CEO's report with an aim to reduce the time this community facility is vacant.

Recommendation to Committee

Council:

- 1. accepts the tender from R2R Services for the provision of Café services at the Café located at Mt Claremont Community Centre as per attachment 1; and**
- 2. approves and endorses an exclusive three (3) year lease with the option of a further two, one (1) year terms between the City and R2R Services as per attachment 2.**

Strategic Plan

This application is in accordance with the City of Nedlands Strategic Plan 2008-2013. In particular, the following objectives are addressed:

- KFA 4: Community Wellbeing
 - 4.1 Provide and facilitate access to services and facilities required by the broader community, clubs and community groups.
 - 4.3 Provide services that meet community needs.
- KFA 5: Governance
 - 5.1 Manage the City's resources in a sustainable and responsible manner.
 - 5.6 Ensure compliance with statutory requirements and guidelines.

Background

Mt Claremont Café is located within the Mt Claremont Community Centre situated off of Montgomery Avenue, Mt Claremont. The building was constructed in 2004 and incorporates the Café, Mt Claremont Library and Mt Claremont Playgroup.

The land on which the facility resides is legally described as a portion of Lot 6987 on Deposited Plan 167276, House Number 19 Haldane Street, Mt Claremont being part of the land contained in Certificate of Title Volume 2115 Folio 135.

Lot 6987 was transferred to the City in fee simple by way of Crown Grant in Trust in 1992 for the specific use of Community Purposes. However, when this land is no longer required for its stated purpose it may be sold and the value of the land returned to the State Government. With the introduction of the Land Administration Act in 1997, Crown Grants are no longer created and registered at Landgate. For all intent and purposes, this land is vested to the City for "Community Purposes".

The non-staffed Community Centre opened in December 2004 and operates on a rooms-for-hire basis. Rooms are booked through the City's Administration Office located at 71 Stirling Highway, Nedlands. This led to separate groups using the facility with little interaction between the entities.

On 26 April 2005, Item C24.05, Council endorsed the Terms and Reference for the Mt Claremont Community Centre Administrative Liaison Working Group, the purpose of which was to, "*investigate and make recommendations on options for improving the usage and functioning of the Mt Claremont Community Centre, aimed at achieving a vital, vibrant and viable Centre*".

The Working Group identified that by attracting a Café operator to the Mt Claremont Community Centre, it would assist significantly with turning the facility into a vibrant community centre as opposed to a building that simply provided a number of rooms for hire. Essentially, a Café would provide a focal point, a meeting place, a place to sit and a

reason to attend the centre even if not enrolled or engaged in a specific activity or course.

Considering the findings of the Mt Claremont Community Centre Administrative Liaison Working Group, Council resolved on 9 May 2006, Item C18.06, to *“call for Expressions of Interest to provide a Café service at the Mt Claremont Community Centre”*.

On 12 June 2007, Item CM14.07, Council resolved to *“enter into a lease between the City and Minaret Investments Pty Ltd trading as Gallery Oasis for the purposes of providing Café services at Mt Claremont Community Centre, rent free, for a term of 5 years and all capital development and on-going costs to be met by the tenant”*

The Commercial Tenancy (Retail Shops) Agreement Act 1985 states that a minimum five 5 year lease has to be entered into to allow the lessee to establish and develop a business. This can be a combination of term and option to extend the lease to the required 5 year period.

The Lessee was granted a three (3) year lease term with two options to renew for one (1) year.

The lease commenced on 15 October 2007. This lease was then varied by way of a Deed of Variation of Lease due to initial fit out and operational delays. The executed Deed of Variation of Lease amended the commencement date of the original lease to 18 May 2008.

The tenant, Minaret Investments Pty Ltd failed to exercise their lease renewal option as required by the terms of the lease. The Lessee was required to issue the City a notice prior to 18 February 2011 if it wished to renew the lease for the first initial one (1) year term. The law provides that when an option must be exercised within a specified period, the time condition is an essential term and failure to exercise it within the required time will result in loss of the option entitlement. Therefore, as the Lessee did not serve the required notice of exercise, the Lease expired on 17 May 2011.

As a consequence, the City notified Minaret Investments Pty Ltd to cease operations on or prior to 17 May 2011. The Café has been vacant since that time. However, the previous lessee has been allowed to store their equipment and non perishable stock on-site until a new tenant is chosen. This would allow any new tenant the opportunity to negotiate the purchase of Minaret’s equipment should a price be agreed between both parties.

Key Relevant Previous Decisions:

- Item CM14.07, 12 June 2007: Council resolved to approve a five (5) year lease between the City and Minaret Investments Pty Ltd;

- Item CM18.06, 9 May 2006: Council resolved to call for Expressions of Interest to provide a Café service at Mt Claremont Community Centre; and
-
- Item C24.05, 26 April 2005: Council resolved to establish to Mt Claremont Community Centre Administrative Liaison Working Group to investigate and make recommendations on options for improving the usage and functioning of the Community Centre, aimed at achieving a vital, vibrant and viable Centre.

Consultation

Required by legislation: Yes No

Required by City of Nedlands policy: Yes No

Under Section 3.58 of the Local Government Act 1995, a disposition of land includes to sell, lease or otherwise dispose of local government property. If a local government does not dispose of property via a public auction or the public tender method, the proposal must be advertised for public comments by way of public notice.

Section 1.7 of the Local Government Act 1995 states that local public notices be published in a district newspaper, exhibited on a notice board at the local government's offices and exhibited on a notice board at every local government library.

In order to meet the required legislative criteria, the City prepared a Request for Tender document, RFT 2010/11.18 and advertised for submissions from interested parties looking to provide Café services from the Mt Claremont Community Centre.

Notices appeared in the following publications:

- Western Suburbs Weekly (17 May 2011).
- The Post (21 May 2011); and
- West Australian Newspaper (21-22 May 2011)

Public notices detailing the Request for Tender requirements were displayed at the City's administration buildings notice board along with the notice boards located within the Mt Claremont Library and Nedlands Library to correspond with the publication of the newspaper adverts.

Administration has received in-principal consent to the proposed draft lease from the Minister of Lands pursuant to Section 18 of the *Land Administration Act 1997*.

Legislation

- Local Government Act 1995;
- Local Government (Functions & General) Regulations 1996;
- The Commercial Tenancy (Retail Shops) Agreements Act 1985; and
- Section 18 of the Land Administration Act 1997.

Budget/financial implications

Budget:

Within current approved budget: Yes No

Requires further budget consideration: Yes No

Financial:

In relation to the proposed draft lease, it is not viable for the City to charge a commercial lease rental to the successful tenderer. The land on which the Café resides is a "Crown Grant in Trust". The trust specifies that the land is to be used for "Community Purposes". The Minister for Lands would more than likely request a portion of any annual lease fee charged by the City if a commercial lease fee was sought.

The City will instead charge a peppercorn annual rental to the successful tenderer as it is assumed that in the short term, profitability for a Café on site may be limited. Limited parking at the Centre, along with the fact that the facility is located in a residential area with limited visual impact and passing vehicle traffic, indicates that significant level of trade will not be attained in the short term until a reputation is built up by the proposed proprietor.

The City will be responsible for all costs in relation to the preparation of the lease by McLeod's Barristers and Solicitors. To date, fees of \$2,941.33 has been settled by the City, some of which pertained to communication with the previous tenant's default in relation to the previous lease.

The cost of publishing the Tender notification in the media was \$3,182.85.

It is intended that there will be a positive impact on the City's budget by increasing patronage and attracting more users to the Community Centre over the long term that will offset the stated newspaper and lease preparation costs.

The City has also recently installed a water meter and gas sub-meter onto the premises to delineate the services used by the Café. It was

thought that separate service accountability is prudent so that specific utilities can be directly apportioned to the Café as opposed to estimating a split between Café and non-Café utility usage at the Mt Claremont Community Centre as has previously been the case. Total cost of installation amounted to \$1,628.

The successful tenderer will be responsible to pay a \$6,000 tenancy bank guarantee bond on commencement of the lease. This is to be held to enable the City to draw on the guaranteed monies should any amounts payable remain unpaid for 7 days after becoming due and/or to recover the cost of rectifying any breach of the lessee's covenants 14 days after being notified of any breach.

The proposed lease specifies that the successful tenderer will be responsible for all maintenance, cleaning, utility fees and insurance of the leased area. In addition, the tenant will be responsible for all set up and any approved fit-out works prior to any new Café operation commencing.

Risk Management

The City has complied with all relevant legislation.

The Minister for Lands has granted in principle consent to the lease. The City has complied with Section 3.58 of the Local Government Act in regards leasing of local government property. The Request for Tender method has been undertaken and the proposal has been advertised accordingly. The Tenders received by the City have been evaluated by WALGA in accordance with the criteria documented in the tender invitation document.

The City has adhered to The Commercial Tenancy (Retail Shops) Agreements Act 1985 and set the lease term for a period of five (5) years. However, by installing a combination of term (three (3) years) and option (two, one (1) year options), this provides the City with an exit point after three (3) years should the lessee fail to exercise their option after the initial three (3) year term. In addition, the City is unable to set specific hours of operation under this act so has no input into the hours of operation. The successful tenderer has the discretion to open or close the business at times of their choice. However, City Administration is satisfied that the proposed lessee's opening hours will be of a regular and predictable nature as per their tender submission.

The proposed tenderer has been vetted by WALGA and reference checks conducted. As a result of these checks, a positive outcome was ascertained with verification of experience, competency, personnel and equipments clarified.

The proposed tenderer is aware that the premise is suitable for a Café with a Medium Food Classification. Catering would push up any

business to a High Food Classification which the premises is not suitable for and does not meet Councils intention for a Café - to provide a meeting place and central “hub” for Centre users. Provision has been made in the proposed draft lease, Clause 9.6 that prevents such an occurrence happening.

The following Risk Management currently applies to the vacant Café premises:

Risk	Likelihood	Consequence	Level of risk	Risk acceptance	Criteria for Management of Risk
Cost of reactive maintenance increases	Almost certain	Medium	15	High	Unacceptable
Loss of City reputation	Likely	Major	16		Unacceptable
Not complying with Strategic Plan	Almost certain	Medium	15	High	Unacceptable
Risk of vandalism to vacant Café	Possible	Medium	9	Moderate	Management Control Required
Risk of break-in	Possible	Medium	9	Moderate	Management Control Required
Negative media coverage	Likely	Major	16		Unacceptable
Community complaints relating to loss of Café amenity	Almost certain	Medium	15	High	Unacceptable

Discussion

The tender for the provision of Café Services at the Mt Claremont Community Centre was advertised in both the West Australian and local newspapers. Deadline for submissions was 22 June 2011 at 12:00 pm.

The City received two tenders at the conclusion of the tender advertising period from:

- 1) La Mousse, French Patisserie and Café
- 2) R2R Services

Both of the tenders were assessed, scored and complied with the relevant tender criteria by WALGA. WALGA were chosen to review the tender as one of the submission applicants is an associate of a City

councillor. As this could potentially be perceived as a conflict of interest, the City appointed WALGA to undertake the tender submission review on behalf of the City in order to achieve a transparent, independent review of the two submissions.

Page 10 of the Tender recommendation report compiled by WALGA (Attachment 1) details some information from the R2R Services submission that refers to certain information that was not detailed in the City's tender documentation, namely that the City will provide:

- the kitchen, fitted out to an acceptable standard;
- food storage, preparation and refrigeration and other equipment, fixtures, fittings, furniture and furnishings to the kitchen and dining room complex;
- Telecommunications equipment, installation and connection; and
- Provision of computers and IT connection.

R2R Services has since been notified by City Administration that as per the City's tender document, the successful tenderer is responsible to fit out the premises at its cost.

The only fixtures and fittings provided by the City is the exhaust fan, stove, pantry cupboards, work top surfaces and fire extinguishers and fire blanket as detailed in the draft lease annexure.

All equipment within the Café inclusive of office furniture is the property of the previous tenant who is willing to negotiate a price on those items.

All installation for telephone /internet connection would be the responsibility of the Café tenant.

The City will not provide computers or IT connection to the facility.

R2R Services were contacted to clarify the above points. R2R Services stated that they were aware of the stated facts in the tender documents and draft lease.

R2R Services stated that their submission intended to document what is and what isn't provided or what could and what could not be provided as part of an overall service offering and therefore a matter for discussion should they be appointed as the preferred supplier.

R2R Services re-confirmed that they are aware of the stated facts in the City's tender document and draft lease and based on these facts are interested in proceeding with their submission.

The premise is suitable for a Café or delicatessen style food business activity, which includes some food preparation, reheating of food and refrigerated food storage. There is no grease trap and so any food preparation must be suitable to not require the provision of a grease

trap. Patron seating capacity is limited to forty (40) persons total for both the inside and alfresco areas.

The aim of the Café is to provide a meeting place and central “hub” for Centre users, where users can meet and interact socially. This will assist with the centre’s intended role of bringing together local residents in order to foster local relationships and community connection, thereby creating a sense of local community.

Café operations are located in the kitchen area of the Centre, the Zamia room located directly off of the kitchen area as well as the alfresco area outside that room. The key idea is to attract people in order to contribute to a greater usage, viability and vibrancy of the centre as a whole.

The Café has the potential to increase usage of the Centre and also to generate additional income in terms of increased Centre usage. This would increase Centre viability without imposing any additional costs on the City.

Tender

The tenders were evaluated in accordance with the criteria documented in the tender invitation. The following tables set out the criteria used for the evaluation:

(A) Type of business and how it contributes to a vibrant Community Centre.	Weighting 25%	
<p>Describe the nature and scope of the business you intend to provide, including the main goods and services to be provided. At minimum, refer to the following:</p> <p>(a) The nature of the business that the respondent intends to provide. (Note the business must comply with the requirements of The Food Act 2008 (the Act), Food Regulations 2009, Food Safety Standards (Australia) and maintain current Food Business Registration as defined in section 1.7, Policies that May Affect Selection);</p> <p>(b) List the main types of goods and services that will be provided by the business;</p> <p>(c) Provide a sample daily Café menu and list of main goods for sale (with prices);</p>	<p>“Type of Business”</p>	<p>Tick if attached <input type="checkbox"/></p>

<p>(d) Any other incidental items to be sold from the Café;</p> <p>(e) State whether the business agrees to be available to cater for at least “most” of the community functions held at the Centre. If so, provide a sample catering menu (with prices). Note: there is no obligation on the part of the City or Centre users to provide catering business to the Café tenant. However, the Café tenant will be the only catering business on site.</p> <p>(f) State the intended opening hours of the business, including days and times;</p> <p>(g) Explain how the proposed goods and services will complement existing users of the Community Centre and provide an opportunity for interaction between these users.</p> <p>(h) Supply details and provide an outline of the type of business you propose to provide in an attachment titled “Type of Business”.</p>		
<p>B) Skills, Experience and Training of Key Personnel</p> <p>Tenders should provide information that demonstrates that the respondent and their key personnel possess the necessary experience, skills and training to provide the proposed business effectively. Provide as a minimum the following information:</p> <p>(a) Provide specific details of your previous experience in supplying similar goods and services;</p> <p>(b) Specify the results and outcomes achieved in your experience of providing similar goods and services;</p> <p>(c) Demonstrate competency and a proven track record of achieving these outcomes;</p> <p>(d) Curriculum vitae of respondent;</p> <p>(e) List of key personnel to be providing services, including the role, skills, experience and any relevant</p>	<p style="text-align: center;">Weighting 25%</p> <p style="text-align: center;">Skills, Experience and Training</p>	<p style="text-align: center;">Tick if attached</p> <p style="text-align: center;"><input type="checkbox"/></p>

<p>qualifications of each person;</p> <p>(f) Respondent’s membership to any relevant professional or business association; and</p> <p>(g) List any relevant training undertaken by the respondent and/or key personnel and provide any certificates held.</p> <p>Supply details and provide an outline of your own and your personnel’s skills, experience and training in an attachment titled “Skills, Experience & Training”</p>		
<p>C) Resources & Financial Capacity Tenderers should provide and submit information on the following:</p> <p>(a) A Business Plan;</p> <p>(b) Demonstrate Business competence;</p> <p>(c) Capacity to run a successful business;</p> <p>(d) Demonstrate financial capacity and sustainability;</p> <p>(e) Attach a financial profile inclusive of a profit and loss statement and latest financial return;</p> <p>(f) Provide two financial referees;</p> <p>(g) Demonstrate ability to supply and sustain the necessary Plant, equipment and materials; and</p> <p>(h) Full and complete details of any fit-out works proposed to be undertaken;</p> <p>Supply details as requested pertaining to financial and business acumen. In addition, provide a plant/equipment/fit-out schedule in an attachment. Label responses under “Resources & Financial Capacity”.</p>	<p>Weighting 50%</p>	
	<p>Resources & Financial Capacity</p>	<p>Tick if attached <input type="checkbox"/></p>

Conclusion

After considering WALGA’s assessment of the tenders submitted and R2R’s comments in relation to the stated points above, it is proposed that the submission received from R2R Services is accepted, as per WALGA’s recommendation. R2R Services submission attained the best score in the evaluation process undertaken by three WALGA officers. The total average score was 55.83%.

Attachments

1. Proposed lease between the City and R2R Services

- 14. Elected Members Notices of Motions of Which Previous Notice Has Been Given**

Disclaimer: Where administration has provided any assistance with the framing and/or wording of any motion/amendment to a Councillor who has advised their intention to move it, the assistance has been provided on an impartial basis. The principle and intention expressed in any motion/amendment is solely that of the intended mover and not that of the officer/officers providing the assistance. Under no circumstances is it to be expressed to any party that administration or any Council officer holds a view on this motion other than that expressed in an official written or verbal report by Administration to the Council meeting considering the motion.

14.1 Councillor Hipkins – Review of Residential Design Codes

Councillor Hipkins has given notice of his intention to move the following at this meeting.

That:

By the 31 August 2011, the City of Nedlands lodges an objection to the proposed change to the Residential Design Codes to increase the permitted size of ancillary accommodation (now called Supplementary Accommodation) and to remove the restriction that the said accommodation shall be occupied by a family member.

Administration Comment

Will be provided to Elected Members prior to the meeting.

14.2 Councillor Hipkins – Local Government Advisory Board assessment of the viability of the merger of the Cities of Nedlands and Subiaco

Councillor Hipkins has given notice of his intention to move the following at this meeting.

That:

The City of Nedlands advises the Local Government Advisory Board that it has requested the Board only to assess the viability of a merger of the Cities of Nedlands and Subiaco and not to initiate a process for a forced merger of the two cities.

Administration Comment

Will be provided to Elected Members prior to the meeting.

15. Elected members notices of motion given at the meeting for consideration at the following ordinary meeting on 23 August 2011

Disclaimer: Where administration has provided any assistance with the framing and/or wording of any motion/amendment to a Councillor who has advised their intention to move it, the assistance has been provided on an impartial basis. The principle and intention expressed in any motion/amendment is solely that of the intended mover and not that of the officer/officers providing the assistance. Under no circumstances is it to be expressed to any party that administration or any Council officer holds a view on this motion other than that expressed in an official written or verbal report by Administration to the Council meeting considering the motion.

Notices of motion for consideration at the Council Meeting to be held on 23 August 2011 to be tabled at this point in accordance with Clause 3.9(2) of Council's Local Law Relating to Standing Orders.

16. Urgent Business Approved By the Presiding Member or By Decision

Any urgent business to be considered at this point.

17. Confidential Items

17.1 No.10 (Lot 1) Knutsford Street Swanbourne - Proposed Additions to an Existing Carport

This report is presented as a confidential item in accordance with Section 5.23(2)(d) of the Local Government Act 1995.

A confidential report has been circulated to Councillors separately.

17.2 38 (Lot 51) & 40 (Proposed Lot 61 & 62) Jutland Parade, Dalkeith – Outcome of State Administrative Tribunal (SAT) review and Appeal rights.

This report is presented as a confidential item in accordance with Section 5.23(2)(d) of the Local Government Act 1995.

A confidential report has been circulated to Councillors separately.

Declaration of Closure

There being no further business, the Presiding Member will declare the meeting closed.

A handwritten signature in black ink, appearing to read 'Graham Foster', with a stylized flourish at the end.

Graham Foster
Chief Executive Officer

Attachment to Item 13.1

Council 23 August 2011

Common Seal Register Report – July 2011

Common Seal Register Report

July 2011

SEAL NUMBER	DATE SEALED	DEPARTMENT	MEETING DATE / ITEM NO.	REASON FOR USE
570	14 July 2011	Development Services	Delegated Authority	Notification under Section 70A – No 30 (Lot 380) Bedford Street Nedlands - the ancillary accommodation is only to be occupied by members of the same family as the occupiers of the main dwelling.
571	14 July 2011	Development Services	Delegated Authority	Notification under Section 70A – No 25 (Lot 628) Circe Circle Dalkeith – the use of the basement shall be restricted to the uses as depicted in the amended plans submitted dated 20 May 2011 ie. garage & cellar.
572	14 July 2011	Development Services	Delegated Authority	Grant agreement between City of Nedlands and Department of Training & Workforce Development \$5000 grant to conduct an Adult Learners Week activity. (2 copies)
573	20 July 2011	Development Services	Delegated Authority	Notification under Section 70A – No. 47 (Lot 424) Viking Road Dalkeith – the use of the cellar level shall be restricted to the uses as depicted in the plans submitted dated 12 May 2011 ie. cellar
574	20 July 2011	Development Services	Delegated Authority	Notification under Section 70A – No. 88 (Lot 22) Louise Street Nedlands – the ancillary accommodation unit shall only be occupied by a person/s related to the persons occupying the remainder of the dwelling.
575	28 July 2011	Development Services	Council Resolution 24 May 2011 Report D38-11	Lease of a portion of Reserve 7804 (Lot 403 Marine Parade Swanbourne) between the City of Nedlands and The Fellowship of Australian Writers (Western Australian Section) (Inc). (2 copies)

Attachment to Item 13.2

Council 23 August 2011

Delegated Authority Report – July 2011

DEL11/342**Infringement Withdrawal 501471**

Delegation Type 9C - Withdrawal of Infringement Notices
Date Registered 4/07/2011 at 4:24 PM
Position Exercising Delegated Authority Director Corporate Services
How Delegation Is Recorded Withdrawal Notice
Applicant Gary Armstrong (Addressee)

DEL11/343**15 (Lot 223) Alexander Road Dalkeith - Two Storey Dwelling, Swimming Pool and Front Fence**

Delegation Type 6A - TPS No 2 - Approval and Refusal of Planning Applications
Date Registered 5/07/2011 at 10:11 AM
Position Exercising Delegated Authority Senior Statutory Planning Officer
How Delegation Is Recorded Approval Letter (Planning D'A/s)
Applicant Zvonro & Marija Relota (Addressee)

DEL11/344**30 (Lot 380) Bedford Street Nedlands - Single Storey Dwelling and Ancillary Accommodation**

Delegation Type 6A - TPS No 2 - Approval and Refusal of Planning Applications
Date Registered 5/07/2011 at 10:13 AM
Position Exercising Delegated Authority Senior Statutory Planning Officer
How Delegation Is Recorded Approval Letter (Planning D'A/s)
Applicant Webb & Brown-Neaves (Addressee)

DEL11/345**33 (Lot 712) Cygnet Crescent Dalkeith - Singlen Storey Dwelling & Front Fence**

Delegation Type 6A - TPS No 2 - Approval and Refusal of Planning Applications
Date Registered 5/07/2011 at 10:14 AM
Position Exercising Delegated Authority Senior Statutory Planning Officer
How Delegation Is Recorded Approval Letter (Planning D'A/s)
Applicant Ecotect Architects (Addressee)

DEL11/346**81 (Lot 582) Archdeacon Street Nedlands - Single Storey Additions/Alterations**

Delegation Type 6A - TPS No 2 - Approval and Refusal of Planning Applications
Date Registered 5/07/2011 at 10:16 AM
Position Exercising Delegated Authority Senior Statutory Planning Officer
How Delegation Is Recorded Approval Letter (Planning D'A/s)
Applicant Hero Enterprices Pty Ltd (Addressee)

DEL11/347**1 (Lot 352) Gainsford Lane Mt Claremont - Swimming Pool**

Delegation Type 6A - TPS No 2 - Approval and Refusal of Planning Applications
Date Registered 5/07/2011 at 10:17 AM
Position Exercising Delegated Authority Senior Statutory Planning Officer
How Delegation Is Recorded Approval Letter (Planning D'A/s)
Applicant Designed Pools (Addressee)

DEL11/348**25 (Lot 628) Circe Circle Dalkeith - Two Storey Dwelling with Undercroft and Swimming Pool**

Delegation Type 6A - TPS No 2 - Approval and Refusal of Planning Applications
Date Registered 5/07/2011 at 10:19 AM
Position Exercising Delegated Authority Senior Statutory Planning Officer
How Delegation Is Recorded Approval Letter (Planning D'A/s)
Applicant M Rodic & Associates (Addressee)

DEL11/349**53 (Lot 524) Archdeacon Street Nedlands - Pergola, Patio and Retaining**

Delegation Type 6A - TPS No 2 - Approval and Refusal of Planning Applications
Date Registered 5/07/2011 at 10:24 AM
Position Exercising Delegated Authority Senior Statutory Planning Officer
How Delegation Is Recorded Approval Letter (Planning D'A/s)
Applicant Des Marsh (Addressee)

DEL11/350 **47 (Lot 424) Viking Road Dalkeith - Amendments to Previous Approval (DA09/603) - Cellar and Upper Terrace Doors Only**
Delegation Type 6A - TPS No 2 - Approval and Refusal of Planning Applications
Date Registered 5/07/2011 at 10:54 AM
Position Exercising Delegated Authority Senior Statutory Planning Officer
How Delegation Is Recorded Approval Letter (Planning D'A/s)
Applicant Josephene & Blane Brackenridge (

DEL11/351 **121 (Lot 46) Victoria Avenue Dalkeith - Two Storey Dwelling**
Delegation Type 6A - TPS No 2 - Approval and Refusal of Planning Applications
Date Registered 5/07/2011 at 11:33 AM
Position Exercising Delegated Authority Manager Statutory Planning
How Delegation Is Recorded Approval Letter (Planning D'A/s)
Applicant Manor Home Builders (Addressee)

DEL11/352 **14 (Lot 232) Whitfield Street Floreat - Gazebo**
Delegation Type 6A - TPS No 2 - Approval and Refusal of Planning Applications
Date Registered 5/07/2011 at 11:44 AM
Position Exercising Delegated Authority Senior Statutory Planning Officer
How Delegation Is Recorded Approval Letter (Planning D'A/s)
Applicant Cool Thatch (Addressee)

DEL11/353 **61 (Lot 649) Kingsway Nedlands - Two Storey Additions/Alterations**
Delegation Type 6A - TPS No 2 - Approval and Refusal of Planning Applications
Date Registered 5/07/2011 at 11:46 AM
Position Exercising Delegated Authority Manager Statutory Planning
How Delegation Is Recorded Approval Letter (Planning D'A/s)
Applicant Daniel Cassettai Designs (Address

DEL11/354 **12 (Lot 800) Hilway Nedlands - Two Storey Dwelling with Baswment Level**
Delegation Type 6A - TPS No 2 - Approval and Refusal of Planning Applications
Date Registered 5/07/2011 at 11:48 AM
Position Exercising Delegated Authority Manager Statutory Planning
How Delegation Is Recorded Approval Letter (Planning D'A/s)
Applicant Building Corporation WA Pty Ltd (/

DEL11/355 **95a (Lot 388) Waratah Avenue Dalkeith - Signs**
Delegation Type 6A - TPS No 2 - Approval and Refusal of Planning Applications
Date Registered 5/07/2011 at 11:50 AM
Position Exercising Delegated Authority Manager Statutory Planning
How Delegation Is Recorded Approval Letter (Planning D'A/s)
Applicant Darren Hultgren (Addressee)

DEL11/356 **119 Rochdale Road Mt Claremont - Two Storey Additions/Alterations**
Delegation Type 6A - TPS No 2 - Approval and Refusal of Planning Applications
Date Registered 5/07/2011 at 12:00 PM
Position Exercising Delegated Authority Manager Statutory Planning
How Delegation Is Recorded Approval Letter (Planning D'A/s)
Applicant BGC (Australia) Pty Ltd (Addressee)

DEL11/357 **41a (Lot 1) Alderbury Street Floreat - Re-Roof**
Delegation Type 6A - TPS No 2 - Approval and Refusal of Planning Applications
Date Registered 5/07/2011 at 12:04 PM
Position Exercising Delegated Authority Manager Statutory Planning
How Delegation Is Recorded Approval Letter (Planning D'A/s)
Applicant Ivan Eliopulos (Addressee)

DEL11/358

22 (Lot 14) Wattle Avenue Dalkeith - Deck and Stairs

Delegation Type

Date Registered

Position Exercising Delegated Authority

How Delegation Is Recorded

Applicant

6A - TPS No 2 - Approval and Refusal of Planning Applications

5/07/2011 at 12:07 PM

Manager Statutory Planning

Approval Letter (Planning D'A/s)

Allan & Helen Borushek (Addressee)

DEL11/359

10 (Lot 19) Nidjalla Loop Swanbourne - Two Storey Dwelling

Delegation Type

Date Registered

Position Exercising Delegated Authority

How Delegation Is Recorded

Applicant

6A - TPS No 2 - Approval and Refusal of Planning Applications

5/07/2011 at 12:10 PM

Manager Statutory Planning

Approval Letter (Planning D'A/s)

SIA Architects Pty Ltd (Addressee)

DEL11/360

15 (Lot 324) Dalkeith Raod Nedlands - Landscaping, Retaining and Overheight Fence

Delegation Type

Date Registered

Position Exercising Delegated Authority

How Delegation Is Recorded

Applicant

6A - TPS No 2 - Approval and Refusal of Planning Applications

5/07/2011 at 12:12 PM

Senior Statutory Planning Officer

Approval Letter (Planning D'A/s)

Natalie Hellewell (Addressee)

DEL11/361

Approval to write off of minor rate debts - June 2011 - \$10.14

Delegation Type

Date Registered

Position Exercising Delegated Authority

How Delegation Is Recorded

Applicant

3F - Write off of Minor Debts

7/07/2011 at 10:53 AM

Chief Executive Officer

Authorisation Form

City of Nedlands (Addressee)

DEL11/362

Infringement Withdrawn 501469 - Jenny Mills

Delegation Type

Date Registered

Position Exercising Delegated Authority

How Delegation Is Recorded

Applicant

9C - Withdrawal of Infringement Notices

7/07/2011 at 3:52 PM

Manager Corporate Services

Withdrawal Notice

Jenny Mills (Addressee)

DEL11/363

SYIF Grant - Alexandra Needoba - Australian Youth Rowing Cup

Delegation Type

Date Registered

Position Exercising Delegated Authority

How Delegation Is Recorded

Applicant

10F - Sponsorship of Youth Initiatives Fund

7/07/2011 at 4:35 PM

Manager Community Development

Authorisation Form

Alexandra Needoba (Addressee)

DEL11/364

SYIF Grants - Givney Rose How - ANAC International Aerobic Championships Competition in Las Vegas, Nevada, USA

Delegation Type

Date Registered

Position Exercising Delegated Authority

How Delegation Is Recorded

Applicant

10F - Sponsorship of Youth Initiatives Fund

7/07/2011 at 4:43 PM

Manager Community Development

Authorisation Form

Givney Rose How (Addressee)

DEL11/365

SYIF Grant - Marcus Toleman - Studying abroad in USA

Delegation Type

Date Registered

Position Exercising Delegated Authority

How Delegation Is Recorded

Applicant

10F - Sponsorship of Youth Initiatives Fund

7/07/2011 at 4:50 PM

Manager Community Development

Authorisation Form

Marcus Toleman (Addressee)

DEL11/366 **Approval for a vehicle on a reserve - DC Cruickshank - Collegians AFC - Alastair Duckett**
Delegation Type 1H - Authority to Grant Permission for Vehicle on Reserve
Date Registered 8/07/2011 at 8:41 AM
Position Exercising Delegated Authority Administrator Officer - Community and St
How Delegation Is Recorded Letter (general)
Applicant Collegians Amateur Football & Spc

DEL11/367 **99 (Lot 562) Bruce Street Nedlands - Front Fence**
Delegation Type 6A - TPS No 2 - Approval and Refusal of Planning Applications
Date Registered 11/07/2011 at 11:51 AM
Position Exercising Delegated Authority Senior Statutory Planning Officer
How Delegation Is Recorded Approval Letter (Planning D'A/s)
Applicant J C Michael (Addressee)

DEL11/368 **22 (Lot 164) Louise Street Nedlands - Single Storey Additions/Alterations**
Delegation Type 6A - TPS No 2 - Approval and Refusal of Planning Applications
Date Registered 11/07/2011 at 11:53 AM
Position Exercising Delegated Authority Senior Statutory Planning Officer
How Delegation Is Recorded Approval Letter (Planning D'A/s)
Applicant Alison Howe (Addressee)

DEL11/369 **59 (Lot 39) Wood Street Swanbourne - Overheight Diving Fence on Rear Boundary**
Delegation Type 6A - TPS No 2 - Approval and Refusal of Planning Applications
Date Registered 11/07/2011 at 11:58 AM
Position Exercising Delegated Authority Senior Statutory Planning Officer
How Delegation Is Recorded Approval Letter (Planning D'A/s)
Applicant Nick Allan (Addressee)

DEL11/370 **19 (Lot 402) Clifton Street Nedlands - Fencing**
Delegation Type 6A - TPS No 2 - Approval and Refusal of Planning Applications
Date Registered 11/07/2011 at 11:59 AM
Position Exercising Delegated Authority Senior Statutory Planning Officer
How Delegation Is Recorded Approval Letter (Planning D'A/s)
Applicant William, Cecily & Erin Dyer (Address)

DEL11/371 **97 (Lot 302) Dalkeith Road Nedlands - Front Fencing**
Delegation Type 6A - TPS No 2 - Approval and Refusal of Planning Applications
Date Registered 11/07/2011 at 12:01 PM
Position Exercising Delegated Authority Senior Statutory Planning Officer
How Delegation Is Recorded Approval Letter (Planning D'A/s)
Applicant Jayne & Rob Ehlers (Addressee)

DEL11/372 **6 (Lot 260) Lupin Hill Grove Nedlands - Re-Roof**
Delegation Type 6A - TPS No 2 - Approval and Refusal of Planning Applications
Date Registered 11/07/2011 at 12:02 PM
Position Exercising Delegated Authority Senior Statutory Planning Officer
How Delegation Is Recorded Approval Letter (Planning D'A/s)
Applicant Raine & Horne Victoria Park & Sub

DEL11/373 **SYIF Grant - Richard Stevenson - Student Exchange (UWA Program)**
Delegation Type 10F - Sponsorship of Youth Initiatives Fund
Date Registered 11/07/2011 at 3:39 PM
Position Exercising Delegated Authority Manager Community Development
How Delegation Is Recorded Authorisation Form
Applicant Richard Stevenson (Addressee)

DEL11/374 **SYIF Grant - Christopher John Webb - Student Exchange to the USA (UWA exchange program)**
Delegation Type **10F - Sponsorship of Youth Initiatives Fund**
Date Registered **11/07/2011 at 3:42 PM**
Position Exercising Delegated Authority **Manager Community Development**
How Delegation Is Recorded **Authorisation Form**
Applicant **Christopher Webb (Addressee)**

DEL11/375 **SYIF Grant - Neil Rose - Under 21 National Hockey Championships**
Delegation Type **10F - Sponsorship of Youth Initiatives Fund**
Date Registered **11/07/2011 at 3:47 PM**
Position Exercising Delegated Authority **Manager Community Development**
How Delegation Is Recorded **Authorisation Form**
Applicant **Neil Rose (Addressee)**

DEL11/376 **Seal Certification - Seal No. 570 - Notification under Section 70A – No 30 (Lot 380) Bedford Street Nedlands - the ancillary accommodation is only to be occupied by members of the same family as**
Delegation Type **1D - Use of Council's Common Seal and Authority to Sign Documents**
Date Registered **14/07/2011 at 4:53 PM**
Position Exercising Delegated Authority **Chief Executive Officer**
How Delegation Is Recorded **Seal Register**
Applicant **Webb & Brown-Neaves (Addressee)**

DEL11/377 **Seal Certification - Seal no. 571 Notification under Section 70A – No 25 (Lot 628) Circe Circle Dalkeith – the use of the basement shall be restricted to the uses as depicted in the amended**
Delegation Type **1D - Use of Council's Common Seal and Authority to Sign Documents**
Date Registered **14/07/2011 at 5:27 PM**
Position Exercising Delegated Authority **Chief Executive Officer**
How Delegation Is Recorded **Seal Register**
Applicant **M Rodic & Associates (Addressee)**

DEL11/378 **Seal Certification - Seal No. 572 - Grant agreement between City of Nedlands and Department of Training & Workforce Development \$5000 grant to conduct an Adult Learners Week activity.(2**
Delegation Type **1D - Use of Council's Common Seal and Authority to Sign Documents**
Date Registered **14/07/2011 at 5:53 PM**
Position Exercising Delegated Authority **Chief Executive Officer**
How Delegation Is Recorded **Seal Register**
Applicant **Department of Training and Workfc**

DEL11/379 **Infringement Withdrawn 501418**
Delegation Type **9C - Withdrawal of Infringement Notices**
Date Registered **15/07/2011 at 10:38 AM**
Position Exercising Delegated Authority **Manager Corporate Services**
How Delegation Is Recorded **withdrawal notice**
Applicant **Potter (Addressee)**

DEL11/380 **Community Grants Fund 2011/12 - Dalkeith Road Church of Christ - Carols on the Lawn (Christmas Carol event)**
Delegation Type **10E - Community and Cultural Development Fund**
Date Registered **15/07/2011 at 12:19 PM**
Position Exercising Delegated Authority **Manager Community Development**
How Delegation Is Recorded **Authorisation Form**
Applicant **Pastor - Jay Jay Meyer (Addressee)**

DEL11/381

34 (Lot 268) Webster Street Nedlands - Front Fencing, Carport and Deck Additions
Delegation Type 6A - TPS No 2 - Approval and Refusal of Planning Applications
Date Registered 18/07/2011 at 9:23 AM
Position Exercising Delegated Authority Senior Statutory Planning Officer
How Delegation Is Recorded Approval Letter (Planning D'A/s)
Applicant Sophie & Aaron Finlay (Addressee)

DEL11/382

10 (Lot 5) Wattle Avenue Dalkeith - Two Storey Dwelling and Swimming Pool
Delegation Type 6A - TPS No 2 - Approval and Refusal of Planning Applications
Date Registered 18/07/2011 at 9:28 AM
Position Exercising Delegated Authority Senior Statutory Planning Officer
How Delegation Is Recorded Approval Letter (Planning D'A/s)
Applicant Mathew Crawford (Addressee)

DEL11/383

11 (Lot 189) Rockton Road Nedlands - Swimming Pool and Retaining
Delegation Type 6A - TPS No 2 - Approval and Refusal of Planning Applications
Date Registered 18/07/2011 at 9:29 AM
Position Exercising Delegated Authority Senior Statutory Planning Officer
How Delegation Is Recorded Approval Letter (Planning D'A/s)
Applicant Poolscape Pools (Addressee)

DEL11/384

101 (Lot 259) Victoria Avenue Dalkeith - Two Storey Dwelling and Front Fence
Delegation Type 6A - TPS No 2 - Approval and Refusal of Planning Applications
Date Registered 18/07/2011 at 9:41 AM
Position Exercising Delegated Authority Senior Statutory Planning Officer
How Delegation Is Recorded Approval Letter (Planning D'A/s)
Applicant Space Agency Architects (Address)

DEL11/385

148b (Lot 507) Rochdale Road Mt Claremont - Single Storey Dwelling
Delegation Type 6A - TPS No 2 - Approval and Refusal of Planning Applications
Date Registered 18/07/2011 at 9:46 AM
Position Exercising Delegated Authority Senior Statutory Planning Officer
How Delegation Is Recorded Approval Letter (Planning D'A/s)
Applicant Dale Alcock Homes (Addressee)

DEL11/386

148a (Lot 508) Roachdale Raod Mt Claremont - Single Storey Dwelling
Delegation Type 6A - TPS No 2 - Approval and Refusal of Planning Applications
Date Registered 18/07/2011 at 9:49 AM
Position Exercising Delegated Authority Senior Statutory Planning Officer
How Delegation Is Recorded Approval Letter (Planning D'A/s)
Applicant Dale Alcock Homes (Addressee)

DEL11/387

Vehicle Crossing place contribution - 21 Carrington Street Nedlands
Delegation Type 4E - Vehicle Crossing Places
Date Registered 18/07/2011 at 9:47 AM
Position Exercising Delegated Authority Manager Engineering Services
How Delegation Is Recorded Authorisation Form
Applicant Anonymous (Addressee)

DEL11/388

183 (Lot 78) Stirling Highway Nedlands - Sign
Delegation Type 6A - TPS No 2 - Approval and Refusal of Planning Applications
Date Registered 18/07/2011 at 9:53 AM
Position Exercising Delegated Authority Senior Statutory Planning Officer
How Delegation Is Recorded Approval Letter (Planning D'A/s)
Applicant Cockleshell Nominees Pty Ltd (Adc)

DEL11/389

16 (Lot 66) Webster Street Nedlands - Front Fence
Delegation Type 6A - TPS No 2 - Approval and Refusal of Planning Applications
Date Registered 18/07/2011 at 9:59 AM
Position Exercising Delegated Authority Senior Statutory Planning Officer
How Delegation Is Recorded Approval Letter (Planning D'A/s)
Applicant Barry & Margaret Nunn (Addressee)

DEL11/390

85 (Lot 2) Smyth Road Nedlands - Carport and Patio
Delegation Type 6A - TPS No 2 - Approval and Refusal of Planning Applications
Date Registered 18/07/2011 at 10:01 AM
Position Exercising Delegated Authority Senior Statutory Planning Officer
How Delegation Is Recorded Approval Letter (Planning D'A/s)
Applicant Axis Building Approvals (Addressee)

DEL11/391

56 (Lot 3) Loch Street Nedlands - Single Storey Additions/Alterations
Delegation Type 6A - TPS No 2 - Approval and Refusal of Planning Applications
Date Registered 18/07/2011 at 10:02 AM
Position Exercising Delegated Authority Senior Statutory Planning Officer
How Delegation Is Recorded Approval Letter (Planning D'A/s)
Applicant Dale Alcock Homes (Addressee)

DEL11/392

38 (Lot 426) Meriwa Street Nedlands - Shed
Delegation Type 6A - TPS No 2 - Approval and Refusal of Planning Applications
Date Registered 18/07/2011 at 10:09 AM
Position Exercising Delegated Authority Senior Statutory Planning Officer
How Delegation Is Recorded Approval Letter (Planning D'A/s)
Applicant Michael Swift (Addressee)

DEL11/393

35 (Lot 253) Leon Road Dalkeith - Single Storey Dwelling
Delegation Type 6A - TPS No 2 - Approval and Refusal of Planning Applications
Date Registered 18/07/2011 at 10:22 AM
Position Exercising Delegated Authority Senior Statutory Planning Officer
How Delegation Is Recorded Approval Letter (Planning D'A/s)
Applicant Residential Attitudes (Addressee)

DEL11/394

Horticino Landscape Services - Bruce Brunton - Access to Council Reserve adjacent no 15 Iris Avenue to conduct stump grinding
Delegation Type 5A - Use of Reserves During Building Operations on Adjacent Property
Date Registered 19/07/2011 at 12:18 PM
Position Exercising Delegated Authority Manager Engineering Services
How Delegation Is Recorded Letter (general)
Applicant Anonymous (Addressee)

DEL11/395

Infringement Withdrawal 501264
Delegation Type 9C - Withdrawal of Infringement Notices
Date Registered 20/07/2011 at 12:03 PM
Position Exercising Delegated Authority Manager Corporate Services
How Delegation Is Recorded Withdrawal Notice
Applicant Jan Massey (Addressee)

DEL11/396

Seal Certification - Seal No. 573 - Notification under Section 70A – No. 47 (Lot 424) Viking Road Dalkeith – the use of the cellar level shall be restricted to the uses as depicted in the plans
Delegation Type 1D - Use of Council's Common Seal and Authority to Sign Documents
Date Registered 20/07/2011 at 2:43 PM
Position Exercising Delegated Authority Chief Executive Officer
How Delegation Is Recorded Seal Register
Applicant Josephene & Blane Brackenridge (



DELEGATED AUTHORITY REPORT

List of Delegated Authorities - July 2011

Continued...

DEL11/397

Seal Certification - Seal No. 574 - Notification under Section 70A – No. 88 (Lot 22) Louise Street Nedlands – the ancillary accommodation unit shall only be occupied by a person/s related to the

Delegation Type 1D - Use of Council's Common Seal and Authority to Sign Documents

Date Registered 20/07/2011 at 2:51 PM

Position Exercising Delegated Authority Chief Executive Officer

How Delegation Is Recorded Seal Register

Applicant Beacon Homes Pty Ltd (Addressee)

DEL11/398

Infringement Withdrawal 500995

Delegation Type 9C - Withdrawal of Infringement Notices

Date Registered 27/07/2011 at 10:16 AM

Position Exercising Delegated Authority Manager Corporate Services

How Delegation Is Recorded Withdrawal Notice

Applicant Anonymous (Addressee)

DEL11/399

Seal Certification - seal No. 575 - Lease of a portion of Reserve 7804 (Lot 403 Marine Parade Swanbourne) between the City of Nedlands and The Fellowship of Australian Writers (Western

Delegation Type 1D - Use of Council's Common Seal and Authority to Sign Documents

Date Registered 28/07/2011 at 7:51 AM

Position Exercising Delegated Authority Chief Executive Officer

How Delegation Is Recorded Seal Register

Applicant Fellowship of Australian Writers W.

DEL11/400

Infringement Withdrawal 101149 - Julian Zotti

Delegation Type 9C - Withdrawal of Infringement Notices

Date Registered 29/07/2011 at 2:46 PM

Position Exercising Delegated Authority Manager Corporate Services

How Delegation Is Recorded Withdrawal Notice

Applicant Julian Zotti (Addressee)

Attachment to Item 13.3

Council 23 August 2011

**No. 9 (Lot 54) Iris Avenue, Dalkeith – Proposed Retrospective Amendments to
previously Approved Two Storey Dwelling.**



Monday, 15 August 2011

1:546

Attachment 1. Locality Plan

The City of Nedlands accepts no responsibility for the accuracy of this image or the results of any actions taken when using this image

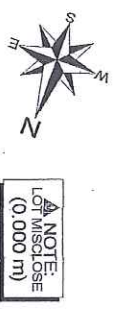


City of Nedlands

COBRN: Lasair Property Trust
 PC060056
 DATE: 4/01/19/33
 COASTAL
 SITE SURVEY: LOT 54
 (99) Iris Avenue
 Station: Dalkeith
 Loc Auth: NEDLANDS
 D. Plan: 4874 Volume 1024 Folio 721
 Location: Melville Sub Lot 47

SOIL DESCRIPTION
 Sandy
 Refer to Survey

Rec. U/ground Water Yes Sewer Yes
 Gas Check local call 131328 Phone Yes Footpath Nil
 Road Bitumen Kab See Survey Drainage Good



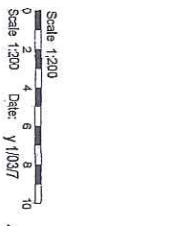
LOT 54

NOTE:
 LOT MISCLOSE
 (0.000 m)

NOTE: COTTAGE & ENGINEERING SURVEYS ACCEPT NO RESPONSIBILITY FOR ANY PHYSICAL ON SITE CHANGES TO THE PARCEL OR PORTION OF THE PARCEL OF LAND SHOWN ON THIS SURVEY INCLUDING ANY ADJOINING NEIGHBOURS LEVELS AND FEATURES THAT HAVE OCCURRED AFTER THE DATE OF THIS SURVEY.

NOTE: REFER TO ADVISE TRACES
 On-head power lines

NOTE / BEWARE:
 DUE TO LACK OF SURVEY MARKS/ PEGS ALL BUILDING OFFSET DIMENSIONS & FEATURES ARE APPROX ONLY AND POSITIONED FROM EXISTING PEGS/ FENCES AND WALLS WHICH MAY NOT BE ON THE CORRECT ALIGNMENT AND ARE TO BE VERIFIED WHEN REPEGGED. ANY DESIGN THAT INVOLVES ADDITIONS TO ANY STRUCTURES SHOWN OR PORTION OF STRUCTURES REMAINING AFTER ANY DEMOLITION HAS TAKEN PLACE, BOUNDARIES MUST BE REPEGGED AND EXACT OFF-SETS PROVIDED TO YOUR DESIGNER/ ARCHITECT BEFORE ANY PLANS ARE PRODUCED AND BEFORE ANY WORK IS STARTED ON SITE.



NOTE: All Sewer details plotted from information supplied by Water Corporation.

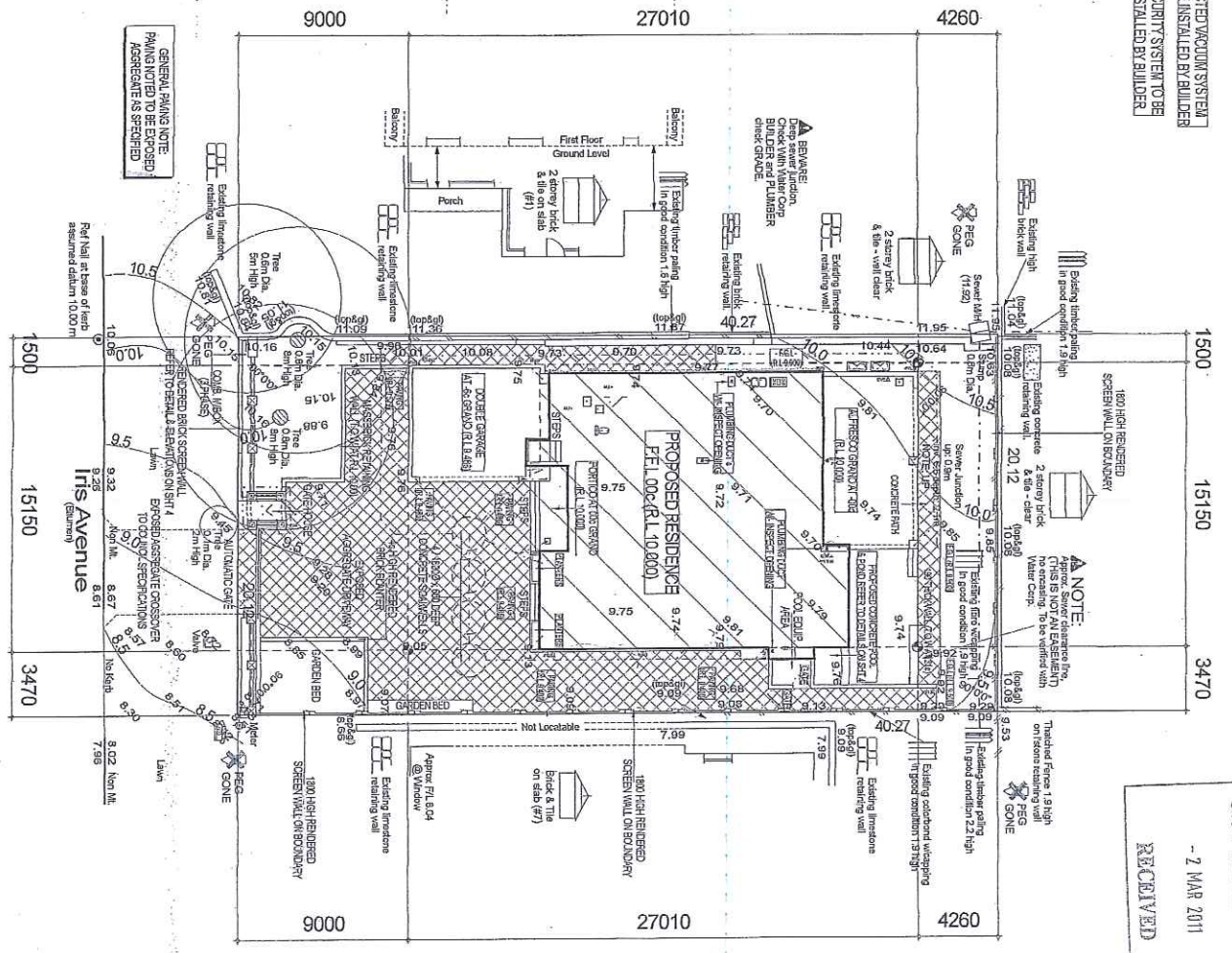
3. Site and Setout Plan

REVISION:	DATE:	DESCRIPTION:
A	01/04/2008	ISSUED FOR BUILDING APPROVAL
B	03/07/2008	ENGINEERING CLERK & PORTICO AMENDED
C	17/07/2008	GENERAL AMENDMENTS
D	26/08/2008	GENERAL AMENDMENTS
E	26/08/2008	ROOF FITCH AMENDMENTS & EXTRA EAVES DETAILS
F	01/09/2008	GENERAL AMENDMENTS
G	18/09/2008	GENERAL AMENDMENTS
H	28/09/2008	GENERAL AMENDMENTS

REVISION:	DATE:	DESCRIPTION:
-	03/02/2010	GENERAL AMENDMENTS

JOB:	DRAWN:	JOB NO.:
LASAIR PROPERTY TRUST 10	MSTAW	06066
LOT 54 (#9)	CHECKED:	
MSTAW	DATE:	
DALKEITH	MARCH 2009	

SCALE:	SHEET:
SCALE 1:200 (A)	OF 4



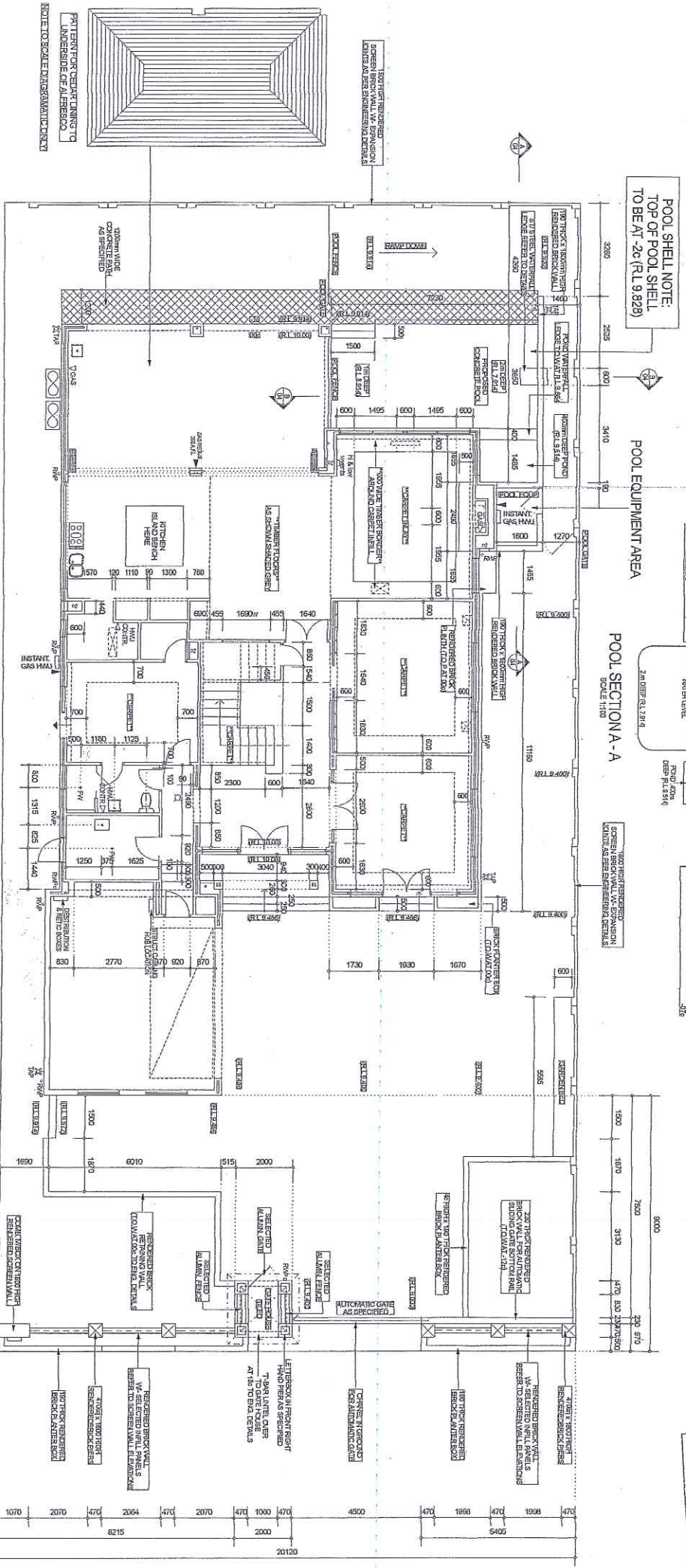
DUCTED VACUUM SYSTEM
 TO BE INSTALLED BY BUILDER
 SECURITY SYSTEM TO BE
 INSTALLED BY BUILDER

CITY OF NEDLANDS
 - 2 MAR 2011
 RECEIVED

5. Internal Dimensions and Front Fence Plan

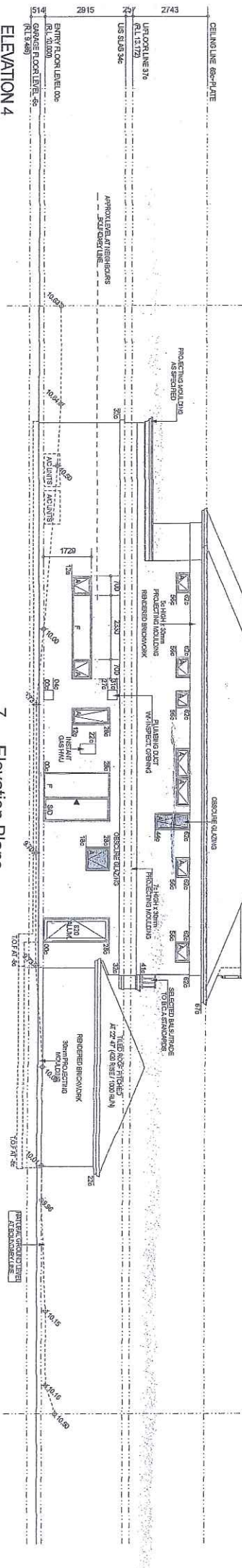
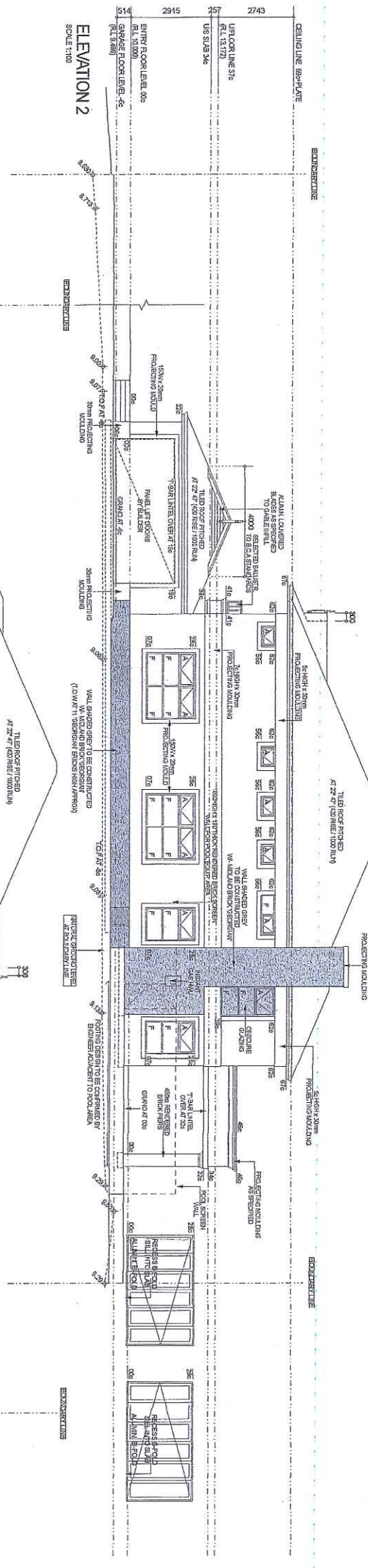
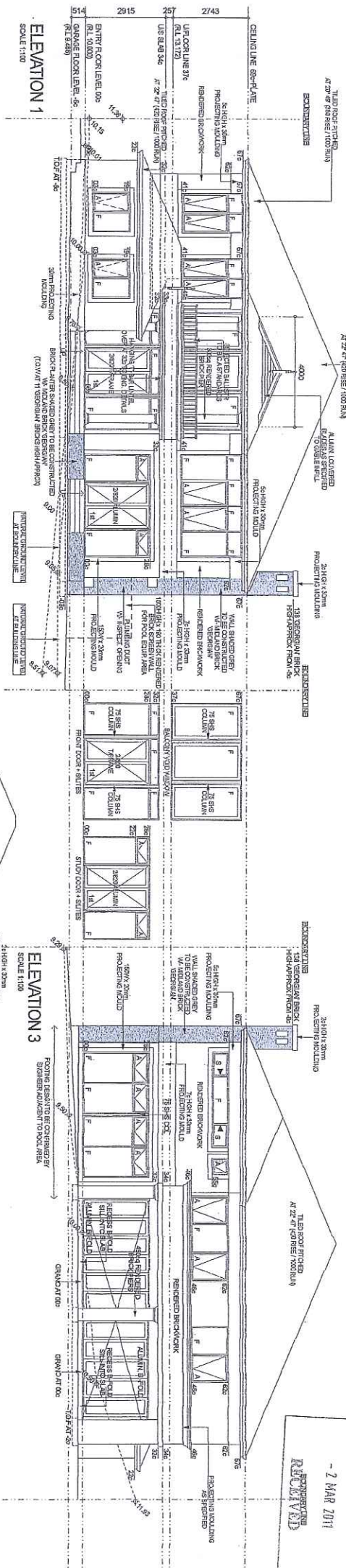
PLUMBING SETOUT NOTED BY INDICATED PLANS ARE TO BE USED AS A GUIDE ONLY MAR 2011 & SHOULD BE CHECKED ON SITE

RECEIVED



See attachment for Front Fence - Attachment 8

		EXCLUSIVE RESIDENCE	
387 Rockley Road, Sylvania Tel: 9287 4888 Fax: 9288 8988			
NOTE 1. THIS PLAN IS THE PROPERTY OF THE ENGINEERING FIRM AND IS NOT TO BE REPRODUCED OR COPIED IN ANY MANNER WITHOUT THE WRITTEN PERMISSION OF THE ENGINEERING FIRM. 2. THIS PLAN IS TO BE USED AS A GUIDE ONLY AND SHOULD BE CHECKED ON SITE. 3. THE ENGINEERING FIRM IS NOT RESPONSIBLE FOR ANY CONSTRUCTION DEFECTS OR OMISSIONS. 4. THE ENGINEERING FIRM IS NOT RESPONSIBLE FOR ANY DAMAGE TO PROPERTY OR PERSONS. 5. THE ENGINEERING FIRM IS NOT RESPONSIBLE FOR ANY DELAYS OR COSTS INCURRED BY THE CLIENT.	REVISION: -A- -B- -C- -D- -E- -F- -G- -H- -I-	DATE: -01.04.2009- -06.07.2009- -17.07.2009- -14.08.2009- -26.09.2009- -01.09.2009- -26.09.2009- -28.10.2009- -28.12.2009-	DESCRIPTION: ISSUED FOR BUILDING APPROVAL OUTDOOR LIVING AREA AMENDMENT ENGINEERING CHECK & PORTICO AMENDED GENERAL AMENDMENTS GENERAL AMENDMENTS ROOF PITCH AMENDMENTS & EXTRA EAVES DETAILS GENERAL AMENDMENTS GENERAL AMENDMENTS AMENDMENTS AS PER COUNCIL EMAIL
REVISION: -A- -B- -C- -D- -E- -F- -G- -H- -I-	DATE: -03.10.2010-	DESCRIPTION: GENERAL AMENDMENTS	JOB: LASAIR PROPERTY TRUST 10 LOT 54 (#9) IRIS AVENUE DAKENH
DRAWN: M.S.TAV	CHECKED: M.S.TAV	DATE: MARCH 2009	JOB No: 06066
SCALE: SCALE 1:10 (A2)	SHEET: 4 OF 15	SCALE: SCALE 1:10 (A2)	SHEET: 4 OF 15



7. Elevation Plans

ELEVATION 4

SCALE 1:100

- NOTE
1. THIS DRAWING IS THE PROPERTY OF THE ARCHITECT AND IS NOT TO BE REPRODUCED OR TRANSMITTED IN ANY FORM OR BY ANY MEANS, ELECTRONIC OR MECHANICAL, INCLUDING PHOTOCOPYING, RECORDING, OR BY ANY INFORMATION STORAGE AND RETRIEVAL SYSTEM.
 2. CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE LOCAL AUTHORITIES.
 3. CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE LOCAL AUTHORITIES.
 4. THE ARCHITECT'S DESIGN IS BASED ON THE INFORMATION PROVIDED BY THE CLIENT. THE ARCHITECT DOES NOT WARRANT THE ACCURACY OF THE INFORMATION PROVIDED BY THE CLIENT.
 5. THE ARCHITECT'S DESIGN IS BASED ON THE INFORMATION PROVIDED BY THE CLIENT. THE ARCHITECT DOES NOT WARRANT THE ACCURACY OF THE INFORMATION PROVIDED BY THE CLIENT.

REVISION	DATE	DESCRIPTION
-A-	01.04.2009	ISSUED FOR BUILDING APPROVAL
-B-	06.07.2009	OUTDOOR LIVING AREA AMENDMENT
-C-	17.07.2009	ENGINEERING CHECK & PORTICO AMENDED
-D-	14.08.2009	GENERAL AMENDMENTS
-E-	28.09.2009	GENERAL AMENDMENTS
-F-	01.09.2009	ROOF FITCH AMENDMENTS & EXTRA EAVES DETAILS
-G-	01.09.2009	GENERAL AMENDMENTS
-H-	28.09.2009	GENERAL AMENDMENTS
-I-	08.12.2009	AMENDMENTS AS PER COUNCIL EMAIL

REVISION	DATE	DESCRIPTION
-J-	03.10.2010	GENERAL AMENDMENTS

JOB: LASAR PROPERTY TRUST 10
 LOT 54 (49)
 IRIS AVENUE,
 DALKEITH

DRAWN: M.S.T/W
 CHECKED: M.S.T/W
 DATE: MARCH 2009

JOB NO: 06066

SCALE: SCALE 1:100 (A2)

SHEET 7 OF 15



367 Rockley Road, Stirling
 Tel: 0927 4989 Fax: 0928 8998

Attachment to Item 13.4

Council 23 August 2011

Café Located at Mt Claremont Community Centre – Part Lot 6987 on Deposited Plan 16726, House Number 19, Haldane Street, Mt Claremont. Proposed three (3) year lease with the option of a further two, one (1) year lease term between the City and R2R Services.

Draft: 2 August 2011

Lease of Café at Mt Claremont Community Centre

City of Nedlands

[insert successful tenderer]

[insert guarantor(if applicable)]



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:NED 21004

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DRAFT

Tenant Guide

FORM 6

Commercial Tenancy (Retail Shops) Agreements Act 1985

[section 6A]

TENANT GUIDE

FOR NEW RETAIL SHOP LEASES FROM 1 JULY 1999

TO THE NEW TENANT (“LESSEE”)

Entering into a lease of retail shop premises for your business means you are entering into a contract that creates binding legal obligations between yourself and the Landlord (“Lessor”).

Before you enter into a lease, you should fully understand your obligations, liabilities and rights under the lease.

The *Commercial Tenancy (Retail Shops) Agreements Act 1985* (and its amendments) contains provisions regulating retail shop leases, many of which will over-ride any contrary provision in a lease.

A lease provision that is contrary to the provisions of the Act has no effect (“void”).

To make sure you understand your obligations, liabilities and rights before entering into the lease you should:

- carefully read this **Tenant Guide**;
- carefully read any **Disclosure Statement** provided by the landlord or the landlord’s agent;
- carefully read any written lease document;
- obtain independent advice.

This Tenant Guide is merely a guide intended to help you to understand some of your legal obligations under a retail shop lease and, in particular, to understand your rights under the Act. You should not rely on this Guide as a substitute for reading the documents and obtaining independent advice before signing any Offer to Lease, Agreement to Lease, or any other related documents.

ADVICE BEFORE ENTERING THE LEASE

The Act provides that your retail lease will “commence” either:

When you take possession of the keys to the shop premises; or
When you commence paying rent; or

When both parties sign the lease.

You should get independent advice before doing any of those things.

Experts in the fields of legal, financial, business, taxation and property matters will be able to help you make the decision to enter into a lease or an agreement to lease and the terms of the contract that should be negotiated.

For legal advice, you should consult a solicitor with experience in commercial property and preferably in retail shop leasing matters.

Industry advice is also available from experts in accounting and valuation as well as retail representative groups and tenant advocates. The Western Australia Government's Small Business Development Corporation (SBDC) is also a source of guidance to prospective tenants.

You should understand the terms of the lease before signing it.

All elements in a lease agreement eg. rent, term, options, outgoings and related costs such as documenting the lease need to be understood by you. These matters are open to negotiation with the Lessor but the basis of your agreement is subject to the provisions of the Act.

DISCLOSURE STATEMENT (S.6)

The Lessor must provide you with a "*Disclosure Statement*" before you enter a new retail shop lease.

You can terminate the lease at any time up to 60 days after the lease was "entered into" –

- if the ***Disclosure Statement*** is not given to you at least seven days before the lease is "entered into"; or
- if the ***Disclosure Statement*** contains false or misleading information.

You can go to the State Administrative Tribunal and get an order for compensation for any pecuniary loss suffered as a result of :

- not being given a ***Disclosure Statement***; or
- false or misleading information contained in a ***Disclosure Statement***.

The ***Disclosure Statement*** is to be in a prescribed form (Regulation 4 Form 1) and is to contain all oral and written agreements and representations made by the Lessor or through his/her agent(s) in negotiations together with relevant information including but not limited to:

- details of the Lessor's property such as the total lettable area, tenancy mix and lettings, support services and management practices;
- details of the shop premises location, area and services together with the terms and conditions of the commercial tenancy such as asking rent, period of lease plus any options to extend the agreement and rent review periods and basis for the review;

- contributions to the landlord's expenses (operating expenses); the Lessor's interest in the shopping centre or building; and – any additional charges payable by the Lessee such as shop fitout or contributions to marketing and sinking funds.

In turn, the Lessor may ask for details of your retailing experience and of your financial capacity to establish and trade profitably and professionally. This may involve you presenting a satisfactory business plan to the Lessor.

If you require any special fitout or services for your tenancy, you will certainly need to formally disclose these to the Lessor along with any other evidence to support your case.

The Lessor doesn't have to lease the shop premises if it appears that a business will not add value to the property investment. Your disclosure, like the Lessor's, must be correct and contain no misleading information. Otherwise, the Lessor could institute legal proceedings against you outside the provisions of the Act.

You should understand the “*Disclosure Statement*” before signing it.

In signing the ***Disclosure Statement*** you are acknowledging you understand the basis for the retail lease with the Lessor. It is vital that you satisfy yourself, through prior enquiry, particularly taking appropriate legal and expert advice on all relevant information regarding the retail shop and (where applicable) the shopping centre building and property.

TENANT GUIDE (S.6A)

A new retail shop lease must include this “***Tenant Guide***” at the front of the lease.

You can terminate the lease at any time up to 60 days after the lease was “entered into” if there was no “***Tenant Guide***” provided with the lease.

You can go to the State Administrative Tribunal and get an order for compensation for any pecuniary loss suffered as a result of not being given a “***Tenant Guide***”.

PREMISES COVERED BY THE ACT (S.3)

Generally

- The Act covers a retail shop where the premises are being used wholly or predominantly for a business involving the sale of goods by retail. However other premises trading in a retail shopping centre (where there are 5 or more retail shops) are also covered by the Act.
- The Act and its requirements only apply to retail shop leases when the shops have a retail floor area that does not exceed 1,000m².

A prospective retail tenant should establish the area under the lease and have this surveyed (if none is available) as early as possible in the agreement – especially in preparation for a net rent lease.

Specifically

Certain types of specified business are also covered including drycleaning, hairdressing, beauty therapy, shoe repair and video stores and some petrol station agreements.

If you are not sure whether your business is covered by the Act, get advice.

TERM OF THE RETAIL SHOP LEASE (S.13)

Minimum of 5 years

If you are entering a new retail shop lease for the first time, the Act provides you with a right to a minimum of a 5 year lease to help you establish and develop your business. This can be a combination of term and options to extend your lease to the 5 year period (Regulation 6 Form 3).

Can be longer ... or shorter

The tenure you negotiate can be greater than five years. Under some circumstances, you can also agree with the Lessor to a term shorter than five years but this must be your decision. (The approval of the State Administrative Tribunal should be sought in these circumstances). It would be prudent to take expert advice on the implications for your business if you do not take up the Act's 5 years' tenancy right.

Fixed period

A lease is for a fixed period.

At the end of the lease

At the end of the current term and your use of any options, the Lessor does not have to renew the agreement and the Lessee has no further rights to occupy the premises. All outstanding obligations under the lease should have been satisfied at this time. After the expiry of the lease agreement your continued occupancy of the premises will be at the Lessor's sole discretion. This interim period may be on a month to month basis.

Options in the lease

It is in your commercial interests to ensure that any options you hold to extend your occupancy are recorded by you allowing a sufficient lead time to exercise the option by the date set out in the terms of the lease. That option will lapse unless you inform the Lessor that you wish to renew your lease (exercising your option) in the manner and timeframe as set out in the lease document.

STRUCTURING YOUR LEASE

Assume you won't be able to renew

You should not rely on a new lease being entered into at the end of the lease period.

Therefore you should:

- Base your cashflows on the assumption that the lease will probably not be renewed.

- Adopt a prudent business practice, which amortizes the costs of your business, and the cost of the goodwill, if you purchased the business, over the period of the lease.
- Recognise the worth or value of the goodwill of your retail business is directly related to the tenure you hold. The balance of the current lease term and any options are prime factors that the market will assess in determining the goodwill attached to your business.
- Decide on the level of profit that you expect to achieve over the period of the lease.

Does the lease include redevelopment or relocation clauses?

Commercial and retail property investments need to be constantly promoted. This can involve redevelopment of premises with works by the Lessor that can significantly impact on your retail business. To safeguard your interests you will need to carefully consider any redevelopment or relocation clause in the proposed lease. If you agree to such a clause you should negotiate to ensure that your retail business will not be in any worse situation as a result of the Lessor's capital works initiatives. This clause could provide you with a commitment from the Lessor for a new shop in the redevelopment. This could also provide for a new location and rental levels comparable with your current position.

Compensation issues also need to be specified in cases where your trade will be affected due to a less favourable shop location or higher rental structure or no new shop can be provided for your business.

Can the Act help?

The Act empowers the Registrar of the State Administrative Tribunal to consider special circumstances in approving redevelopment and relocation applications by the Lessor. The interests of both Lessee and Lessor are considered in these cases but may not meet all your requirements that you have negotiated earlier in establishing the lease terms and conditions.

RENT REVIEW (S.11)

Only use one method of review at a time

If you have agreed to a review of your shop rental, then at each review time a single basis of rent review is to apply. For example, this single basis to be specified in the **Disclosure Statement** (Regulation 4 Form 1) can include, but is not limited to:

- Market Rent.
- Consumer Price Index (CPI).
- Percentage increase.
- An agreed formula or combination, eg. CPI + 10%.

The lease, however, cannot give the Lessor the right to choose the greatest return from a range of rent types at any one review.

Can use a different method next time

The types of review may vary over the life of the lease, for example Year 1 CPI, Year 2 Market rent, Year 3 a fixed increase then a higher rate if turnover exceeds an agreed level, Year 4 Market rent, year 5 CPI + a percentage increase.

No “ratchet” clauses

In a rent review your rent can not be held above the current market level (via a ratchet clause) such that the rent can never fall or go below a fixed level. The lease must allow your rent to rise or fall to a level supported by market evidence.

The role of the Act and the State Administrative Tribunal

In a market rent review, the Act provides that both parties can:

- (i) initiate the market rent review process;
- (ii) appoint a single licensed valuer to determine the new rental; or
- (iii) each appoint a valuer to represent their interests.

In the case of disagreement the new rent may be referred to the State Administrative Tribunal for determination.

Until both parties agree to the new rent level or the Tribunal determines the new rent, the current rent will continue to apply. Once the higher or lower rent is agreed, adjustments will be backdated to the review date. The rate of repayment between the parties can be varied at the Tribunal’s discretion if the Tribunal has determined the rent.

RENT BASED ON TURNOVER (S.7 AND S.8)

Steps needed to base the rent on turnover

The Act provides that if you have agreed to a rent based on the turnover of your business then that agreement must be based on an agreed formula and must be formalised in writing on a prescribed form (Regulation 5 Form 2).

The Act also recognises the confidentiality of such figures to a retail business and limits the release and use of this information strictly in accordance with your agreement with the Lessor.

CONTRIBUTION TO LANDLORD EXPENSES (S.12)

Only “operating” expenses not “capital” expenses

The landlord’s expenses are described in the Act as operating expenses. Leases can also refer to them as “outgoings or variable outgoings”. They are costs in operating, repairing or maintaining the Lessor’s premises including any building common areas. Typically these costs are the rates and taxes, cleaning, airconditioning, security, insurances and other valid expenses of running the property. No capital expenditures (eg. asset replacement) are recoverable operating expenses.

Operating expenses and their payment are to be set out in the **Disclosure Statement** (Regulation 4 Form 1) and the budget attached to the lease provided by the Lessor.

You can not be asked to pay management fees – these are costs to the Lessor that are not recoverable from retail tenants.

Contributions are negotiable, but not to exceed your “relevant proportion”

Your contributions to landlord expenses are negotiable. Whilst you may agree to a different form of contribution, the Act provides that the upper limit of the operating expenses that you can be reasonably asked to contribute to is your relevant proportion.

This share at the start of the accounting year is represented by the area of your shop's retail floor area in relation to the total lettable area of the shopping centre or cluster of shops.

ie:
$$\frac{\text{retail floor area in shop}}{\text{total lettable area}} = \text{relevant proportion}$$

The State Administrative Tribunal can decide on any disagreements in these matters and in certain circumstances can vary the relevant proportion during the year.

Other expenses directly attributable to your business (called "referable" expenses) for example, specialised cleaning incurred by only a few tenants, are subject to the relevant proportion limit of the shops incurring those costs.

NOTE : Rental agreements are generally –

on a "net" basis (rent plus a contribution to operating expenses); or

on a "gross" basis (an all inclusive payment for all your shop occupancy costs); or

another similar version.

You should seek expert advice as to the basis that best suits your business operations.

Audit and accounting standards – Lessor's obligations

The Lessor is obliged to comply with audit and accounting standards and timetables for preparing budgets, providing end of financial year expenditure statements and distributing audit costs particularly on net rental agreements.

Lessor to provide estimates and statements

In "net" lease arrangements, the Act provides that you will not have to pay a contribution to the Lessor's operating expenses until one month after the Lessor provides you with an annual estimate of expenditure for each operating expense.

The Lessor is also required to supply you with an audited operating expenses statement within 3 months after the previous accounting period has ended. If this is not done you do not have to contribute to the Lessor's operating expenses until you have received the audited statement.

SINKING FUNDS (S.12A)

Act protects your contributions

If your retail shop is in a shopping centre and you have agreed to contribute to a fund for major repair and maintenance works, your contributions are protected under the Act. These moneys are subject to accounting and audit provisions with no funds being able to be expended on capital works. These are the rightful responsibility of the Lessor and would include the construction of new extensions and the replacement of major plant and equipment.

OTHER FUNDS AND RESERVES (S.12B)

Other contributions are also protected

The Act also extends protection to any other fund and reserves that you agree to contribute to for specific or marketing or promotion purposes. Again the Lessor is required to properly account for the collection, administration, expenditure and auditing of these funds.

HOURS OF OPERATING (S.12C)

Your opening hours are flexible

A provision in a retail shop lease which requires you to open your premises at specified hours or times is invalid (void) under the Act.

As you have the discretion to open (or close) your business at times of your choice the Lessor can not refuse to renew your lease because of your actions. If in the future you believe this to be the reason that your lease was not renewed you may apply in writing to the State Administrative Tribunal for compensation.

STANDARD TRADING HOURS AND THE COSTS OF OPERATION

Your retail business will be responsible for a share (limited to the “relevant proportion”) of agreed operating expenses arising from trading within standard trading house.

NOTE : “Standard Trading Hours” are prescribed as -

- (a) 8.00am to 6.00pm Monday, Tuesday, Wednesday and Friday;
- (b) 8.00am to 9.00pm Thursday; and
- (c) 8.00am to 5.00pm Saturday.

(see Regulation 5A).

If your retail shop is enclosed in a shopping centre then for practical reasons the opening and closing times (core hours) for the centre may be less than the standard trading hours. These matters will need to be clarified in disclosure by the Lessor.

If you do not open outside standard trading hours, you can not be required to make a contribution to the expenses related to the extended hours.

If you open outside the standard trading hours, you will be charged a contribution to the expenses related to the extended hours. These are referable expenses and are limited to the relevant proportion of those shops which open during the extended hours.

ASSIGNMENT AND SUB-LEASING (S.10)

Your responsibilities if you sell or sub-lease your business

If you choose to sell your business during the term of your lease, you (as the Assignor) and any guarantor to your lease can not be held liable for the performance of the ingoing tenant

(the Assignee) or for any moneys including any rent owed by the ingoing tenant from the assignment date.

The Lessor can not withhold consent to an assignment, except on reasonable grounds. The Lessor may however recoup reasonable expenses in investigating the proposed assignee for your lease.

You are entitled to assume the Lessor's approval to the assignment if you have not received a reply within 28 days after seeking that approval in writing.

If you choose to sub-lease part of your premises you will be required to seek the Lessor's approval and also provide a **tenant Guide** and **Disclosure Statement** to your Lessee. The sub-lease will not exclude you from your existing liabilities to the Lessor.

VOID CLAUSES (S.15)

Lease provisions and other oral and written agreements cannot include clauses that are contrary to any provision in the Act.

In addition, the lease or other side agreements or oral agreements can not –

- require you to pay key money (s.9), which is any moneys or other benefits in addition to rent paid to the Lessor or others for the right to lease retail shop premises;
- require you to disclose your turnover figures to the Lessor unless you agree on turnover as a basis for your rent assessment (s.7) and have completed Regulations 5 Form 2;
- prevent you from choosing to disclose the rent you have agreed to third parties (s.11) such as other retail tenants or their Valuers; or
- require you to contribute to any fund that applies those moneys to capital expenditure (s.12) such as new building works in shopping centres.

Some clauses may appear to create or limit aspects of the lease in an unfair or "unfriendly" way. If you are uncomfortable with the effect of any clauses in the lease, seek expert advice.

COMPENSATION BY LANDLORD (S.14)

The Act provides that, for shopping centre properties, the Lessor can not adversely affect your retail business trading in a retail shopping centre through action or inaction in:

- inhibiting your access and that of customers to your shop premises;
- disrupting trading conditions causing loss of profits to your business; or
- not properly repairing, maintaining or cleaning the shopping centre premises or common areas.

You should keep in mind the type and quality of services provided by the Lessor in relation to your contributions and those of all tenants in the centre. A Merchants Association can assist in coordinating the interests of all retail tenants to ensure the quality of management, cleaning and other property services support your retail business.

Only after your written request and a reasonable time has been given to the Lessor to correct the problems should you take your grievance to the State Administrative Tribunal. To support a claim, you need to demonstrate to the Tribunal that your business sales, gross profits, expenses and net profits have been adversely affected by the Lessor.

DISPUTES BETWEEN THE LESSEE (TENANT) AND LESSOR (LANDLORD)

The Act may be able to help

If you cannot resolve a dispute over any aspect of your retail shop lease with the Lessor or through the Lessor's property agents, the Act authorises the State Administrative Tribunal to deal with these disputes as "a question arising". Either the lessee or the lessor may initiate this action with the Tribunal by making an application to the Tribunal and paying the appropriate fee. A matter or question may be dealt with through a compulsory conference or mediation process under the *State Administrative Tribunal Act 2004*.

Advice in such matters can be obtained from solicitors with property experience, the SBDC, industry sources, tenant advocates and retail representative groups.

To avoid disputes, get everything in writing

To reduce the possibility of a dispute, before entering a lease you should obtain confirmation in writing of any oral representations made during the negotiations. These representations should be included in the ***Disclosure Statement*** and might include:

- customer traffic numbers;
- exclusive rights to sell product lines;
- other tenancies as competitors;
- the existence and continuance of major tenants in the centre; and
- marketing support by the Lessor and related costs.

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Details

Parties

City of Nedlands

of 71 Stirling Highway, Nedlands, Western Australia

(Lessor)

[insert details of successful tenderer]

of

(Lessee)

[if required by the City]

of

(Guarantor)

Background

- A The Lessor is registered as proprietor of the Land, subject to a crown grant in trust.
- B A building is constructed on a portion of the Land and is known as the Mt Claremont Community Centre (**Centre**).
- C Comprising part of the Centre is a café (**Café**).
- D The Lessee was the successful tenderer following a request for tender by the Lessor for the fit-out and operation of the Café.
- E The Lessor has agreed, subject to the prior approval of the Minister for Lands, to grant the Lessee a lease of the portion of the Land comprising the Cafe, more particularly described in **Item 1** of the Schedule (**Premises**), on the terms and conditions contained within this agreement.

Agreed terms

1. Grant of Lease

- (1) The Lessor, subject to paragraph (2) below, leases to the Lessee the Premises for the Term subject to -
 - (a) all Encumbrances and any Reservations;
 - (b) the payment of the Amounts Payable; and

- (c) the performance and observance of the Lessee's Covenants.
- (2) This Lease is subject to and conditional on the approval of the Minister for Lands under the *Land Administration Act 1997*.

Lessee's General Covenants

2. Rent and Other Payments

The Lessee AGREES with the Lessor:

(a) **Rent**

To pay to the Lessor the Rent in the manner set out at **Item 5** of the Schedule clear of any deductions whatsoever.

(b) **Outgoings**

- (i) To pay to the Lessor or to such person as the Lessor may from time to time direct punctually all the following outgoings or charges (if applicable), assessed or incurred in respect of the Premises:

- (A) local government rates, taxes and charges and including charges for rubbish or garbage removal;
- (B) water, drainage and sewerage rates, charges for disposal of stormwater, meter rent and excess water charges;
- (C) telephone, electricity, gas and other power and light charges including but not limited to meter rents and the cost of installation of any meter, wiring, internet connections or telephone connection AND the Lessee shall ensure where possible that any accounts for all charges and outgoings in respect of telephone, electricity, gas and other power and light charges are taken out and issued in the name of the Lessee;
- (D) Fire and Emergency Services Authority (F.E.S.A) levies;
- (E) land tax and metropolitan regional improvement tax (if any) on a single ownership basis;
- (F) premiums, excesses and other costs arising from the insurance obtained by the Lessor pursuant to **clause 26**. For the avoidance of doubt, the parties agree:
 - (I) that if such premium or cost does not include a separate assessment or identification of the Premises or the Land, the Lessee must pay a proportionate part of such premium or cost for the Premises determined by the Lessor acting reasonably; and
 - (II) such insurance will include insurance for the full replacement value of buildings; and
- (G) any other consumption charge or cost, statutory impost or other obligation incurred or payable by reason of the Lessee's use and occupation of the Premises.

- (ii) If the Premises are not separately charged or assessed the Lessee will pay to the Lessor a proportionate part of any charges or assessments referred to in **clause 2(b)(i)** being the proportion that the Premises bears to the total area of the land or premises included in the charge or assessment, or the amount the Lessor determines, acting reasonably, as the Lessee's proportion of such charges. The Lessor is intending to install separate gas and water meters prior to the Commencement Date, however until separate meters have been installed the Lessee acknowledges and agrees that the Lessor has determined, upon the basis of past consumption of the Café and the remaining portion of the Centre, that the Lessee will be required to pay 50% of water and gas consumption incurred for the Centre, until such time as a separate meters are installed.

(c) **Interest**

Without affecting the rights, powers and remedies of the Lessor under this Lease, to pay to the Lessor interest on demand on any Amounts Payable which are unpaid for 14 days computed from the due date for payment until payment is made and any interest payable under this paragraph will be charged at the Interest Rate.

(d) **Costs**

- (i) To pay to the Lessor on demand:
 - (A) all duty, fines and penalties payable under the *Duties Act* 2008 and other statutory duties or taxes payable on or in connection with this Lease;
 - (B) all registration fees in connection with this Lease; and
 - (C) legal costs of and incidental to the instructions for the preparation, execution and stamping of this Lease.
- (ii) To pay to the Lessor all costs, legal fees, disbursements and payments incurred by or for which the Lessor is liable in connection with or incidental to:
 - (A) the Amounts Payable or obtaining or attempting to obtain payment of the Amounts Payable under this Lease;
 - (B) any breach of an obligation or agreement by the Lessee or an Authorised Person;
 - (C) the preparation and service of a notice under Section 81 of the *Property Law Act* 1969 requiring the Lessee to remedy a breach even though forfeiture for the breach may be avoided in a manner other than by relief granted by a Court;
 - (D) any work done at the Lessee's request; and
 - (E) any action or proceedings arising out of or incidental to any matters referred to in this **clause 2(d)** or any matter arising out of this Lease.

3. Accrual of Amounts Payable & Payment of Money

3.1 Accrual of Amounts Payable

Amounts Payable accrue on a daily basis.

3.2 Payment of Money

Any Amounts Payable to the Lessor under this Lease must be paid to the Lessor at the address of the Lessor referred to in the Lease or as otherwise directed by the Lessor by Notice from time to time.

4. Keys and Access

4.1 No additional copies without approval

Unless otherwise approved by the Lessor in writing, the Lessee must not have additional sets of keys copied or cut.

4.2 Notify the Lessor of lost keys

- (a) The Lessee must notify the Lessor of any loss of keys immediately; and
- (b) To ensure all keys conform with the Lessor's master keys, the Lessor will arrange for replacement keys to be issued to the Lessee at the Lessee's cost.

4.3 No change of locks without approval

- (a) The Lessee must not change any of the Premises' locks, without the prior approval of the Lessor.
- (b) If the locks are changed the Lessee must provide the Lessor with keys to access all areas of the Premises.

4.4 Cost of re-entry

If the Lessor requires access to the Premises pursuant to its powers under this Lease, and is unable to access the Premises due to an unauthorised change in locks, the Lessor may take all such measures to enter the Premises and to re-secure the Premises, and the Lessee will bear all costs associated with such measures.

5. Goods and Services Tax

(a) Lessee must Pay

If GST is payable on the Basic Consideration or any part thereof or if the Lessor is liable to pay GST in connection with the Lease of the Premises or any goods, services or other Taxable Supply supplied under this Lease then, as from the date of any such introduction or application:

- (i) the Lessor may increase the Basic Consideration or the relevant part thereof by an amount which is equal to the GST Rate; and
- (ii) the Lessee shall pay the increased Basic Consideration on the due date for payment by the Lessee of the Basic Consideration.

(b) **Increase in GST**

If, at any time, the GST Rate is increased, the Lessor may, in addition to the GST Rate, increase the Basic Consideration by the GST Adjustment Rate and such amount shall be payable in accordance with this clause.

(c) **GST invoice**

Where the Basic Consideration is to be increased to account for GST pursuant to this clause the Lessor shall in the month in which the Basic Consideration is to be paid, issue a Tax Invoice which enables the Lessee to submit a claim for a credit or refund of GST.

6. Insurance

6.1 Insurance required

The Lessee must effect and maintain with insurers approved by the Lessor (noting the Lessor's and the Lessee's respective rights and interest in the Premises) for the time being:

- (a) adequate public liability insurance for a sum not less than the sum set out at **Item 6** of the Schedule in respect of any one claim or such greater amount as the Lessor may from time to time reasonably require; and
- (b) insurance to cover the Lessee'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 Lessee can and does ordinarily insure in their full replacement value, and loss from theft or burglary.

6.2 Details and Receipts

In respect of the insurances required by **clause 6.1** the Lessee must:

- (a) on demand supply to the Lessor details of the insurances and give to the Lessor copies of the certificates of currency in relation to those insurances;
- (b) promptly pay all premiums and produce to the Lessor each policy or certificate of currency and each receipt for premiums or certificate of currency issued by the insurers; and
- (c) notify the Lessor immediately:
 - (i) when a material event occurs which gives rise or might give rise to a claim under or which could prejudice a policy of insurance; or
 - (ii) when a policy of insurance is cancelled.

6.3 Not to Invalidate

The Lessee 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 effected under **clause 6.1** and/or **clause 26** on the Premises, or any adjoining premises, void or voidable;
- (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).

6.4 Reports

Each party must report to the other promptly in writing and in an emergency verbally:

- (a) any material damage to the Premises of which they are or might be aware; and
- (b) any circumstances of which they are aware and which are likely to be a danger or cause any damage or danger to the Premises or to any person on the Premises.

6.5 Settlement of Claim

The Lessor may, but the Lessee may not without prior written consent of the Lessor, settle or compromise any claims under any insurance required by **clause 6.1**.

6.6 Lessee May be Required to Pay Excess on Insurances

The Lessee AGREES with the Lessor that it shall be responsible to pay any excess payable in connection with the insurances referred to in **clause 6.1** and/or **clause 26** in the event that it is determined by the insurer or otherwise that a claim arises out of or in connection with the negligence of the Lessee.

6.7 Lessee's equipment and possessions

The Lessee ACKNOWLEDGES it is responsible to obtain all relevant insurances to cover any damage and/or theft to its property. The Lessor does not take any responsibility for the loss or damage of the Lessee's property.

6.8 Failure to Comply with Insurance Requirements

If the Lessee fails to comply with any of its obligations under this **clause 6**, the Lessor may, by serving written notice upon the Lessee, require that such default be remedied within 28 days and in the event that the Lessee fails to comply with such notice, then the Lessor may, in its absolute discretion, immediately terminate this Lease.

7. Indemnity

7.1 Lessee responsibilities

- (1) The Lessee is subject to the same responsibilities relating to persons and property to which the Lessee would be subject if during the Term the Lessee were the owner and occupier of the freehold of the Premises.
- (2) The Lessee is responsible and liable for all acts or omissions of the Lessee's Agents on the Premises and for any breach by them of any covenants or terms in this Lease required to be performed or complied with by the Lessee.

7.2 Indemnity

- (1) The Lessee indemnifies, and shall keep indemnified, the Lessor from and against all actions, claims, costs, proceedings, suits and demands whatsoever which may at any time be incurred or suffered by the Lessor, or brought, maintained or made against the Lessor, 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 Lessee or the Lessee's Agents;
- (e) any work carried out by or on behalf of the Lessee on the Premises;
- (f) the Lessee's activities, operations or business on, or other use of any kind of, the Premises;
- (g) any default by the Lessee in the due and punctual performance, observance and compliance with any of the Lessee's covenants or obligations under this Lease; or
- (h) an act or omission of the Lessee.

7.3 Obligations Continuing

The obligations of the Lessee under this clause:

- (a) are unaffected by the obligation of the Lessee to take out insurance, and the obligations of the Lessee to indemnify are paramount, however if insurance money is received by the Lessor for any of the obligations set out in this clause then the Lessee's obligations under **clause 7.2** will be reduced by the extent of such payment.
- (b) 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.

7.4 No indemnity for Lessor's negligence

The parties agree that nothing in this clause shall require the Lessee to indemnify the Lessor, its officers, servants, or agents against any loss, damage, expense, action or claim arising out of a negligent or wrongful act or omission of the Lessor, or its servants, agents, contractors or invitees.

7.5 Release

- (1) The Lessee:
 - (a) agrees to occupy and use the Premises at the risk of the Lessee; and
 - (b) releases to the full extent permitted by law, the Lessor from:
 - (i) any liability which may arise in respect of any accident or damage to property, the death of any person, injury to any person, or illness suffered by any person, occurring on the Premises or arising from the Lessee's use or occupation of the Premises by; and
 - (ii) loss of or damage to the Premises or personal property of the Lessee;
- except to the extent that such loss or damage arises out of a negligent or wrongful act or omission of the Lessor, or its servants, agents, contractors or invitees.
- (2) The release by the Lessee continues 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.

8. Maintenance, Repair and Cleaning

8.1 Generally

- (1) The Lessee AGREES during the Term and for so long as the Lessee remains in possession or occupation of the Premises to maintain, replace, repair, clean and keep the Premises (which for the avoidance of doubt includes the Lessor's fixtures) and Appurtenances in Good Repair having regard to the age of the Premises at the Commencement Date PROVIDED THAT this subclause shall not impose on the Lessee any obligation:
 - (a) to carry out repairs or replacement that are necessary as a result of fair and reasonable wear and tear, EXCEPT when such repair or replacement is necessary because of any act or omission of or on the part of the Lessee (or its servants, agents, contractors or invitees), or the Lessor's insurances are invalidated by any act, neglect or default by the Lessee (or its servants, agents, contractors or invitees); and
 - (b) in respect of any structural maintenance, replacement or repair EXCEPT when such maintenance, repair or replacement is necessary because of any act or omission of or on the part of the Lessee (or its servants, agents, contractors or invitees), or by the Lessee's particular use or occupancy of the Premises.
- (2) In discharging the obligations imposed on the Lessee under this subclause, the Lessee shall where maintaining, replacing, repairing or cleaning:
 - (a) any electrical fittings and fixtures;
 - (b) any plumbing;
 - (c) any air-conditioning fittings and fixtures;
 - (d) any gas fittings and fixtures,

in or on the Premises use only licensed trades persons, or such trades persons as may be approved by the Lessor and notified to the Lessee, which approval shall not be unreasonably withheld.

8.2 Cleaning of Premises

The Lessee must at all times keep the Premises clean, tidy, unobstructed and free from dirt and rubbish.

8.3 Repair Damage

Unless such damage is the Lessor's responsibility pursuant to the terms of the Lease, the Lessee must promptly repair at its own expense to the satisfaction of the Lessor, any damage to the Premises, regardless of how the damage is caused and replace any of the Lessor's Fixtures and Fittings which are or which become damaged.

8.4 Lessor's Fixtures and Fittings

- (a) The Lessor's Fixtures and Fittings will remain the property of the Lessor and must not be removed from the Premises at any time.
- (b) The Lessor's Fixtures and Fittings must be present and accounted for at the termination of each twelve month period of the Term.

8.5 Prevent Erosion

The Lessee must take such reasonable action as is necessary to prevent, if it has occurred as a result of the Lessee's use of the Premises; and rectify or otherwise restore the effects of erosion, drift or movement of sand, soil, dust or water on or from the Premises.

8.6 Maintain Surroundings

- (a) The Lessee must regularly inspect and maintain in good condition any part of the Premises which surrounds any buildings including but not limited to any flora, gardens lawns, shrubs, hedges and trees; and
- (b) The Lessee may not remove any trees, shrubs or hedges without first consulting with and obtaining the approval of the Lessor, except where necessary for urgent safety reasons.

8.7 Pest Control

- (a) The Lessee must keep the Premises free of any vermin and the cost of extermination will be borne by the Lessee.
- (b) The Lessee must engage a licensed pest controller to annually inspect the Premises for termite infestation:
 - (i) Any pest control treatment required as a result of the inspection must be completed by a licensed pest controller within two weeks of the inspection;
 - (ii) The Lessee must provide to the Lessor a copy of the certificate issued by the licensed pest controller by May 1 annually; and
 - (iii) All costs and expenses arising from the inspection and any work undertaken as a result of the inspection must be borne by the Lessee.

8.8 Comply with all reasonable conditions

The Lessee must comply with all reasonable conditions that may be imposed by the Lessor from time to time in relation to the Lessee's maintenance of the Premises.

8.9 Painting

- (a) The Lessee must on or before each repainting date as stated in **Item 10** of the Schedule paint with at least 2 coats of paint those parts of the Premises usually painted internally.
- (b) All painting carried out on the Premises must be carried out by a registered painting contractor; and the registered painting contractor or other person engaged by the Lessee to paint the Premises must:
 - (i) do so in a proper manner using good quality materials;
 - (ii) have the colour and quality of the materials approved in writing by the Lessor before the work commences;
 - (iii) comply with all reasonable directions given or requests made by the Lessor; and
 - (iv) be finished in a proper and workmanlike manner.

8.10 Drains

- (1) The Lessee must keep and maintain the waste pipes drains and conduits originating in the Premises or connected thereto in a clean clear and free flowing condition and must pay to the Lessor upon demand the cost to the Lessor of clearing any blockage which may occur in such waste pipes, drains and conduits between the external boundaries of the Premises and the point of entry thereof into any trunk drain unless such blockage has been caused without neglect or default on the part of the Lessee.
- (2) The Lessee must not permit the drains, toilets, grease traps (if any) and other sanitary appliances on the Premises to be used for any purpose other than that for which they were constructed and must not allow any foreign matter or substance to be thrown therein.

9. Operation of Cafe

9.1 Handling of Food on the Premises

Where food is sold or handled in any way on the Premises, the Lessee shall:

- (a) provide adequate facilities for the hygienic handling of such food, including facilities for the washing of hands and utensils;
- (b) notwithstanding any other provision of this Lease, not permit or allow food vendor or handler to breach the provisions of the *Food Act 2008* and *Health Act 1911* or any order, regulation or other by-law or local law or direction made relating to food or its preparation or handling;
- (c) without limiting the generality of the obligations in the foregoing paragraphs the Lessee will take adequate measures at all times to the satisfaction of the Lessor to safeguard any food being sold or distributed on the Premises from flies and dust; and
- (d) obtain all necessary permits and approvals under the provisions of the *Food Act 2008* and *Health Act 1911* and any associated legislation or any equivalent replacement or re-enactment thereof.

9.2 Operation of Business

The Lessee must:

- (a) conduct its business on the Premises at all times in a proper efficient and reputable manner and must not use the Premises nor permit the Premises to be used for any illegal, immoral or improper use or purpose;
- (b) not without the prior written consent of the Lessor use or permit to be used any other method in lighting the Premises other than by electricity and will not use or permit or suffer to be used any method of heating other than by electricity, gas or oil;
- (c) keep in force all licences and permits required for the carrying on of any business conducted by it in or upon the Premises; and
- (d) deliver to the Lessor any notices or orders served on or received by the Lessee in respect of the Premises or the conduct of the Lessee's business on the Premises; and
- (e) operate a Cafe from the Premises during the Term.

9.3 Maximum Trading Hours

The Lessee and the Lessor AGREE THAT the Lessee may not carry on business from the Premises outside the times of 7 am to midnight seven days per week.

9.4 Minimum Trading Hours

- (1) The Lessee acknowledges and agrees that the Lessor has determined that a peppercorn Rent is payable, upon the basis of the community benefits that an operating café will provide to patrons and visitors of the Centre.
- (2) A peppercorn rent will be payable PROVIDED the Lessee operates the Café during the Minimum Trading Hours. In the event the Lessee is unable or unwilling to operate the Café during the Minimum Trading Hours, the Lessee and the Lessor covenant and agree that Rent will be payable in accordance with the provisions of **Item 5(ii)** of the Schedule.

9.5 No alcohol or Liquor Licence without consent

- (1) The Lessee must not suffer or permit a person to use or allow the Premises to be used for the consumption of alcohol, without first obtaining the written consent of the Lessor.
- (2) The Lessee must not sell or supply liquor from the Premises or allow liquor to be sold or supplied from the Premises, without first obtaining the written consent of the Lessor.
- (3) The Lessee must not make an application for a licence or permit under the *Liquor Control Act 1988* for the Premises, without the prior written consent of the Lessor.

9.6 Cafe restrictions and requirements

- (1) The Lessee acknowledges and agrees that the Café is only suitable for a Medium Food Classification, and unless otherwise agreed by the Lessor in writing the Lessee must ensure that the number of patrons using at the café at any one time does not exceed forty (40).
- (2) The Lessee acknowledges and agrees that the Café must not be used for private functions or private catering purposes. However, the Café may be used to provide catering for the Centre.
- (3) In relation to functions held at the Centre, the Lessor and the Lessee covenant and agree the Lessee must cater for functions, when requested by the Lessor in writing, and such catering must be provided at a reasonable cost, and within any budget constraints specified by the Lessor when engaging the Lessee for that purpose.

10. Fit-out Requirements

10.1 Generally

The Lessee agrees with the Lessor to undertake and complete the Fit-out Works (if any) specified in **Annexure 3** of this Lease:

- (a) in accordance with approved plans;
- (b) at its full cost and expense;
- (c) using new materials, unless otherwise approved by the Lessor; and
- (d) in a proper and workman-like manner.

10.2 Complete Fit-out Works by Completion Date

The Lessee agrees with the Lessor to use its reasonable endeavours to complete the Fit-out Works on or before the Completion Date as specified in **Annexure 3**.

10.3 Delay in Completion

- (1) Subject to **clause 10.3(2)** the parties AGREE the Completion Date may be extended for a period determined by the Lessor acting reasonably and in consultation with the Lessee, in the event the Fit-out Works cannot be completed on or before the Completion Date for a reason or reasons beyond the reasonable control of the Lessee, including but not limited to:
 - (a) acts of God, including fire, bushfire, lightning, storm, tidal wave, cyclone, hurricane, earthquake, landslide, mudslide, washouts and flood;
 - (b) epidemics, public health scares or outbreaks of disease;
 - (c) war, revolution or other state of armed hostility of a like nature;
 - (d) insurrection, civil disturbances or riot (except where arising within the custodial areas);
 - (e) collisions or accidents which constitute a major catastrophe, an example being an aircraft crash or nuclear contamination;
 - (f) unavailability or lack of reasonable availability in the State of labour and or building and construction materials; and
 - (g) a strike, lockout, or other industrial disturbance or restraint of labour, involving employees,
- (2) To permit the Lessor to consider extending the Completion Date in accordance with **clause 10.3(1)**, the Lessee must provide to the Lessor reasonable evidence within a reasonable period of time, as to the reason for and the extent of the delay and the reasonable steps taken by the Lessee to overcome that delay.

10.4 Obtain All Necessary Approvals

The Lessee COVENANTS AND AGREES to obtain at its expense all necessary statutory approvals for the Fit-out Works, including without limitation planning and building approvals.

10.5 Insurance for Fit-out Works

The Lessee COVENANTS AND AGREES with the Lessor that prior to commencing the Fit-out Works:

- (a) to effect and maintain a public risk insurance policy covering the respective rights and interests of the Lessor and the Lessee for an amount of not less than \$10 million dollars for any one claim covering all usual and necessary insurable risks arising out of the Fit-out Works; and
- (b) to ensure that all consultants and contractors engaged to do any work in regard to the Fit-out Works have adequate and appropriate insurance cover for the work that they are engaged to perform.

10.6 Indemnity

The Lessee COVENANTS AND AGREES to indemnify and keep indemnified the Lessor from and against all claims, demands, writs, actions and suits which may be brought or made against it

by any person or persons in connection with loss of life or loss, injury or damage claimed to have been suffered to any property or by any person or persons arising out of or in connection with the Fit-out Works.

11. Use

11.1 Restrictions on Use

(a) **Generally**

The Lessee must not and must not suffer or permit a person to:

- (i) use the Premises or any part of it for any purpose other than for the purpose set out at **Item 7** of the Schedule; or
- (ii) use the Premises for any purpose which is not permitted under any Written Law.

(b) **No offensive or illegal acts**

The Lessee must not and must not suffer or permit a person to do or carry out on the Premises any harmful, offensive or illegal act, matter or thing.

(c) **No nuisance**

The Lessee must not and must not suffer or permit a person to do or carry out on the Premises any thing which causes a nuisance, damage or disturbance to the Lessor or to owners or occupiers of adjoining properties.

(d) **No dangerous substances**

The Lessee must not and must not suffer or permit a person to store any dangerous compound or substance on or in the Premises, otherwise than in accordance with the following provisions:

- (i) any such storage must comply with all relevant statutory provisions;
- (ii) all applications for the approval or renewal of any licence necessary for such storage must be first approved by the Lessor;
- (iii) the Lessor may within its absolute discretion refuse to allow the storage of any particular dangerous compound or substance on the Premises; and
- (iv) upon the request of the Lessor, the Lessee will provide a manifest of all dangerous compounds or substances stored on the Premises.

(e) **No harm or stress**

The Lessee must not and must not suffer or permit a person to do any act or thing which might result in excessive stress or harm to any part of the Premises.

(f) **No signs**

The Lessee must not and must not suffer or permit a person to display from or affix any signs, notices or advertisements on the Premises without the prior written consent of the Lessor.

(g) **Toilets**

The Lessee must not use or permit toilets or other sanitary appliances on the Premises to be used for any purpose other than that for which they were constructed and must not allow any act or thing to be done that might choke or otherwise affect or damage the same.

(h) **No smoking**

The Lessee must not suffer or permit a person to smoke inside any building or other enclosed area on the Premises

11.2 Lessee to Observe Copyright

In the event that the Lessee or any person sub-leasing, hiring, or in temporary occupation of the Premises provides, contracts for, or arranges for the performance, exhibition or display of any music or work of art the copyright of which is not vested in the Lessee or that person, the Lessee shall ensure that all obligations in regard to payment of copyright or licensing fees with the owner or licensor of the copyright are met before any such performance, exhibition or display is held.

11.3 No Warranty

The Lessor gives no warranty:

- (a) as to the use to which the Premises may be put; or
- (b) that the Lessor will issue any consents, approvals, authorities, permits or licences required by the Lessee under any Written Law for its use of the Premises.

11.4 Premises Subject to Restriction

The Lessee accepts the Premises for the Term subject to any existing prohibition or restriction on the use of the Premises.

11.5 Indemnity for Costs

The Lessee indemnifies the Lessor against any claims or demands for all costs, on a solicitor client basis, reasonably incurred by the Lessor by reason of any claim in relation to any matters set out in this **clause 11**.

12. Alterations

12.1 Restriction

The Lessee must not without prior written consent from the Lessor; from any other person from whom consent is required under this Lease and required under any Written law in force from time to time, including but not limited to the planning approval of the Lessor under a local planning scheme of the Lessor;

- (a) make or allow to be made any alteration, addition or improvements to or demolish any part of the Premises; or
- (b) subject to the performance of the Lessee's obligations in **clause 8.6**, remove any flora or fauna, alter or cut down any flora, or sell, remove or otherwise dispose of any flora, sand, gravel, timber or other materials from the Premises.

12.2 Consent

- (a) If the Lessor and any other person whose consent is required under this Lease or at law consents to any matter referred to in **clause 12.1** the Lessor may:
 - (i) consent subject to conditions; and
 - (ii) require that the works be carried out in accordance with plans and specifications approved by the Lessor or any other person giving consent; and
 - (iii) require that any works be carried out to the satisfaction of the Lessor under the supervision of an engineer or other consultant; and
- (b) if the Lessor consents to any matter referred to in **clause 12.1**:
 - (i) the Lessor gives no warranty that the Lessor will issue any consents, approvals, authorities, permits or policies under any Written Law for such matters; and
 - (ii) the Lessee must apply for and obtain all such consent approvals, authorities, permits or policies as are required at law before undertaking any alterations, additions, improvements or demolition.

12.3 Cost of Works

All works undertaken under this **clause 12** will be carried out at the Lessee's expense.

12.4 Conditions

If any of the consents given by the Lessor or other persons whose consent is required under this Lease or at law require other works to be done by the Lessee as a condition of giving consent, then the Lessee must carry out those other works at the Lessee's expense.

12.5 Compliance with Plans

The Lessee acknowledges that:

- (a) it shall not carry out any works on the Premises without first obtaining the consent of the Lessor to such works; and
- (b) any works approved by the Lessor on the Premises shall be carried out in accordance with plans or requirements or other restraints which relate to the Premises.

13. Statutory Obligations & Notices

13.1 Comply with Statutes

The Lessee must:

- (a) comply promptly with all statutes and local laws from time to time in force relating to the Premises;
- (b) apply for, obtain and maintain in force all consents, approvals, authorities, licences and permits required under any statute for the use of the Premises specified at **clause 11**;
- (c) ensure that all obligations in regard to payment for copyright or licensing fees are paid to the appropriate person for all performances, exhibitions or displays held on the Premises; and

- (d) comply promptly with all orders, notices, requisitions or directions of any competent authority relating to the Premises or to the business the Lessee carries on at the Premises.

13.2 Indemnity if Lessee Fails to Comply

The Lessee indemnifies the Lessor against:

- (a) failing to perform, discharge or execute any of the items referred to in **clause 13.1**; and
- (b) any claims, demands, costs or other payments of or incidental to any of the items referred to in **clause 13.1**.

13.3 No Fetter

Notwithstanding any other provision of this Lease, the Parties acknowledge that the Lessor is a local government established by the *Local Government Act 1995*, and in that capacity, the Lessor may be obliged to determine applications for consents, approvals, authorities, licences and permits having regard to any Written Law governing such applications including matters required to be taken into consideration and formal processes to be undertaken, and the Lessor shall not be taken to be in default under this Lease by performing its statutory obligations or exercising its statutory discretions, nor shall any provision of this Lease fetter the Lessor in performing its statutory obligations or exercising any discretion.

14. Report to Lessor

The Lessee must immediately report to the Lessor:

- (a) **Vandalism**

any act of vandalism or any incident which occurs on or near the Premises which involves or is likely to involve a breach of the peace or become the subject of a report or complaint to the police and of which the Lessee is aware or should be aware;

- (b) **Pollution**

any occurrence or circumstances in or near the Premises of which it becomes aware, which might reasonably be expected to cause, in or on the Premises, pollution of the environment;

- (c) **Notices, etc**

all notices, orders and summonses received by the Lessee and which affect the Premises and immediately deliver them to the Lessor;

- (d) **Defects**

any accident to or defect or want of repair in any services or fixtures, fittings, plant or equipment in the Premises and of any circumstances known to the Lessee that may be or may cause a risk or hazard to the Premises or to any person on the Premises.

15. Lessee to Comply with Offer

The Lessee shall at all times comply with the Offer submitted by it and with any acceptance by the Lessor of that Offer.

16. Minimise nuisance to neighbours

- (1) The Lessee acknowledges that the Premises are located in close proximity to residential premises.
- (2) The Lessee must take all reasonable action to minimise and prevent disruption, nuisance and disturbance to surrounding residential premises.
- (3) The Lessee must comply with all reasonable conditions and directions that may be imposed by the Lessor from time to time in relation to the minimisation and prevention of disruption, nuisance and disturbance to surrounding residential premises.

17. Obligations on Termination

17.1 Restore Premises

Prior to Termination, the Lessee at the Lessee's expense must restore the Premises to a condition consistent with the observance and performance by the Lessee of the Lessee's Covenants under this Lease.

17.2 Remove Lessee's Property prior to Termination

Prior to Termination, unless otherwise mutually agreed between the parties, the Lessee must remove from the Premises all property of the Lessee which is not a fixture (other than air-conditioning plant and fire equipment, security alarms and security systems and other fixtures and fittings which in the opinion of the Lessor form an integral part of the Premises) and promptly make good to the satisfaction of the Lessor any damage caused by the removal.

17.3 Lessor can Remove Lessee's Property on Re-Entry

On re-entry the Lessor will have the right to remove from the Premises any property of the Lessee and the Lessee indemnifies the Lessor against all damage caused by the removal of and the cost of storing such property.

17.4 No removal of Lessor's fixtures

The Lessee must not remove from the Premises destroy alter or otherwise dispose of (without the prior written consent of the Lessor), at any time during the Term or on the determination of the Term, any Appurtenances, Equipment or Lessor's Fixtures which will remain the property of the Lessor at all times.

17.5 Peacefully Surrender

On Termination the Lessee must:

- (a) peacefully surrender and yield up to the Lessor the Premises in a condition consistent with the observance and performance of the Lessee's Covenants under this Lease; and
- (b) surrender to the Lessor all keys and security access devices held by the Lessee.

17.6 Obligations to continue

The Lessee's obligations under this clause will survive termination.

18. No Absolute Caveat or Other Interest

18.1 No Absolute Caveat or other interest

The Lessee nor any person on behalf of the Lessee must not lodge at Landgate any absolute caveat or any other interest including any lease, mortgage, charge over the Land or Premises or part thereof, without the prior written consent of the Lessor.

18.2 Subject to Claim Caveat

Nothing in this **clause 18** prevents the Lessee from lodging a caveat expressed to be subject to claim to protect the Lessee's interest under this Lease. Any caveat lodged by the Lessee in accordance with this clause must be withdrawn by the Lessee upon the expiration or earlier determination of this Lease.

18.3 Removal of interest

If any caveat or other interest is lodged without the consent of the Lessor, the Lessee irrevocably appoints the Lessor (or any person authorised by the Lessor for that purpose) jointly and severally:

- (a) for the Term of this Lease;
- (b) for any holding over under this Lease; and
- (c) for a period of six (6) months after Termination of this Lease

to be the agent and attorney of the Lessee in its name and on its behalf to sign and lodge at Landgate;

- (d) a withdrawal of any absolute caveat lodged by or behalf of the Lessee;
- (e) a withdrawal of any caveat lodged by on or behalf of the Lessee and not withdrawn on Termination; and
- (f) a surrender of the estate granted by this Lease.

18.4 Costs of removal, Indemnity and Ratification

- (a) The Lessee undertakes to ratify all the acts performed by or caused to be performed by the Lessor, its agent or attorney under this clause; and
- (b) the Lessee indemnifies the Lessor against:
 - (i) any loss arising from any act done under this clause; and
 - (ii) all costs and expenses incurred in connection with the performance of any act by the attorney on behalf of the Lessee including the withdrawing of any caveat effecting the Land the registration of this Lease to exercise the power of attorney set out in **clause 18.3**.

Guarantees

19. Lease Conditional on Guarantees

This grant of Lease is conditional on:

- (a) if the Lessee is a corporation, a person acceptable to the Lessor providing a guarantee in the terms provided in **clause 20 (the Guarantor)**; and
- (b) a bank guarantee in the terms provided in **clause 21**.

20. Personal Guarantee

20.1 Personal Guarantee

In consideration of the Lessor entering into a Lease with the Lessee at the request of the Guarantor, the Guarantor hereby jointly and severally:-

- (a) GUARANTEES payment by the Lessee of the Amounts Payable by the Lessee to the Lessor pursuant to this Lease and the observance and performance by the Lessee of the Lessee's Covenants;
- (b) AGREES that if any money payable by the Lessee to the Lessor pursuant to the terms of this Lease shall not be recoverable from the Guarantor under this Guarantee by reason of any legal limitation disability or incapacity on or of the Lessee or by reason of any avoidance of the liability of the Lessee or of any other fact or circumstances then the Guarantor will hold the Lessor fully indemnified at all times against all loss or damage which the Lessor may suffer or incur by reason of any limitation disability incapacity failure fact or circumstances

(Personal Guarantee)

20.2 Guarantor's Covenants

The Guarantor COVENANTS AND AGREES with the Lessor as follows:

- (a) To pay all moneys due and payable to the Lessor by the Lessee under this Lease upon demand.
- (b) The liability of the Guarantor will not be affected by:
 - (i) the granting of any time or other indulgence by the Lessor to any person;
 - (ii) any compounding compromise release abandonment waiver variation or renewal of any term of this Lease or of the right of the Lessor or any omission;
 - (iii) the avoidance of any payment by the Lessee or the Guarantor to the Lessor;
 - (iv) any other dealing matter or thing which but for this provision operates to affect the liability of the Guarantor.
- (c) This Personal Guarantee is an irrevocable and continuing Personal Guarantee and will remain in effect for the benefit of the Lessor in respect of all liabilities of the Lessee arising from this Lease both before and after the determination of the Term.
- (d) All benefits or moneys received by the Lessor from or on account of the Lessee capable of being applied by the Lessor in reduction of any money owing to the Lessor will be taken and applied by the Lessor as payment in gross without any right of the Guarantor to claim any benefit from any moneys so received by the Lessor.
- (e) Upon liquidation or bankruptcy of the Guarantor the Lessor will be entitled to prove for the total indebtedness of the Lessee under this Lease for the Term notwithstanding that the

Rent or other moneys payable by the Lessee to the Lessor under this Lease are not due and payable at the date of the liquidation or bankruptcy of the Guarantor.

- (f) The indemnity given in this clause by the Guarantor will be a principal obligation and may be enforced against the Guarantor without any responsibility on the part of the Lessor to proceed against the Lessee or any other person.
- (g) Upon liquidation or bankruptcy of the Lessee the Guarantor will not prove in competition with the Lessor and the Guarantor authorises the Lessor to provide for all moneys which the Guarantor has paid under this Lease and retain or to appropriate at the discretion of the Lessor any amount received by the Lessor.
- (h) To give effect to this Lease the Guarantor waives in favour of the Lessor all rights of the Guarantor against the Lessee.
- (i) The liabilities of the Guarantor created by this clause shall not be affected by reason of any security taken by the Lessor being or becoming void or defective.
- (j) In the event of any part of this Lease being severed in accordance with the provisions in that behalf contained or implied in this Lease then the Guarantor will not be entitled to rely on or claim the benefit of any severance.
- (k) This Personal Guarantee will remain in force and continue notwithstanding any extension, renewal or assignment of this Lease, and will continue during any period of holding over by the Lessee (whether or not with the Lessor's consent).

20.3 Obligations Effective in All Circumstances

The obligations (expressed or implied) of the Guarantor in this Lease shall apply to and be fully effective in respect of the Lessee's Covenants whether or not:

- (a) the whole or any part of the Lessee's Covenants are enforceable at law or in equity or otherwise pursuant to any express or implied lease, tenancy or other right of occupancy of or interest in the Premises granted by or derived from the Lessor under this Lease or under or pursuant to any antecedent agreement or otherwise enjoyed by the Lessee at law or in equity;
- (b) the Lease is in a form such as to be capable of being registered in the manner referred to in the *Transfer of Land Act 1893*; or
- (c) it is the intention (expressed or implied) of either or both of the Lessor and the Lessee that the Lease be registered in the manner referred to in the *Transfer of Land Act 1893*.

21. Bank Guarantee

21.1 Bank Guarantee

The Lessee must give the Lessor an unconditional and irrevocable undertaking (**Bank Guarantee**) from a bank or financial institution authorised to carry on banking in Australia under the *Banking Act 1959* in the terms provided in **clauses 21.2 to 21.6**.

21.2 Purpose of the Guarantee

The Bank Guarantee will authorise the Lessor to draw on the money guaranteed:

- (a) if any Amounts Payable remain unpaid for 7 days after becoming due whether or not a demand or Notice has been given to the Lessee; or

- (b) to recover the cost to the Lessor of rectifying any breach of any of the Lessee's Covenants (other than the covenant to pay the Amounts Payable) which has not been rectified by the Lessee within 14 days of being notified of the breach.

21.3 Form of the Guarantee

The Bank Guarantee must be in favour of the Lessor and in a form that is reasonably satisfactory to the Lessor.

21.4 Term of Guarantee

The Bank Guarantee must be enforceable at all times for:

- (a) the Term of the Lease;
- (b) any further term, extension or holding over; and
- (c) a period of three months after termination of the Lease.

21.5 Amount of Bank Guarantee

The amount of the Bank Guarantee shall be at any point in time during the Term or any Further Term be equal to the sum specified in **Item 8** of the Schedule.

21.6 Cost of Bank Guarantee

Any costs associated with meeting this obligation will be paid by the Lessee.

Lessor's Rights & Obligations

22. Quiet Enjoyment

Except as provided in the Lease, subject to the performance of the Lessee's Covenants the Lessee may quietly hold and enjoy the Premises during the Term without any interruption or disturbance from the Lessor or persons lawfully claiming through or under the Lessor.

23. Lessor's Right of Entry

23.1 Entry on Reasonable Notice

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

- (a) at all reasonable times;
- (b) with or without workmen and others; and
- (c) with or without plant, equipment, machinery and materials;
- (d) for each of the following purposes:
 - (i) to undertake property inspections to inspect the state of repair of the Premises and to ensure compliance with the terms of this Lease;
 - (ii) to carry out any survey or works which the Lessor considers necessary, however the Lessor will not be liable to the Lessee for any compensation for such survey or

works provided they are carried out in a manner which causes as little inconvenience as is reasonably possible to the Lessee;

- (iii) to comply with the Lessor's Covenants or to comply with any notice or order of any authority in respect of the Premises for which the Lessor is liable; and
- (iv) to do all matters or things to rectify any breach by the Lessee of any term of this Lease but the Lessor is under no obligation to rectify any breach and any rectification under this clause is without prejudice to the Lessor's other rights, remedies or powers under this Lease.

23.2 Costs of Rectifying Breach

All costs and expenses incurred by the Lessor as a result of any breach referred to at **clause 23.1(d)(iv)** together with any interest payable on such sums will be a debt due to the Lessor and payable to the Lessor by the Lessee on demand.

23.3 Notice to Relet

During the last three (3) months prior to the expiry of the Lease the Lessee must:

- (a) permit the Lessor to affix upon any part of the Premises a notice for reletting the same;
- (b) not remove, conceal or deface such notice to relet; and
- (c) permit intending tenants at all reasonable times to view the Premises.

24. Limit of Lessor's Liability

24.1 No Liability for Loss on Premises

The Lessor will not be liable for loss, damage or injury to any person or property in or about the Premises except to the extent that such loss, damage or injury was caused or contributed to by negligent or wilful act or omission of the Lessor or the Lessor's Agents or invitees.

24.2 Limit on Liability for Breach of Lessor's Obligations

- (1) The Lessor is only liable for breaches of the Lessor's Covenants set out in this Lease which occur while the Lessor continues to have the freehold in the Land; and
- (2) the Lessor will not be liable for any failure to perform and observe any of the Lessor's Covenants due to any cause beyond the Lessor's control.

25. Lessor's rights to utilise Premises in emergency

- (1) In the event of an emergency or natural disaster which has an actual or possible impact on residents of the City of Nedlands, the Lessor may issue a notice requiring the Lessee to immediately permit the Lessor to have access to and utilise the Premises for public purposes.
- (2) In the event the Lessor exercises its rights pursuant to subclause (1) above, the Lessor agrees to pay the Lessee reasonable compensation for loss of profit during the period of time the Lessor requires the Premises.

26. Building Insurance

The Lessor shall effect and keep effected insurance to the full insurable value on a replacement or reinstatement value basis of the Premises against damage arising from fire, tempest, storm, earthquake, explosion, aircraft, or other aerial device including items dropped from any device, riot, commotion, flood, lightning, act of God, fusion, smoke, rainwater, leakage, impact by vehicle, machinery breakdown and malicious acts or omissions and other standard insurable risks.

Mutual Agreements

27. Damage or Destruction of Premises

27.1 Abatement of Lessee's financial obligations

If during the continuance of this Lease the Premises is wholly or partly damaged or destroyed or is rendered wholly or substantially inaccessible through an event described in **clause 27.2**, rendering the Premises or any part of it wholly or substantially unfit for the Lessee's use and occupation or inaccessible, then the Lessee's financial obligations abate in accordance with this clause.

27.2 Abating events

This clause applies in case of fire, lightning, storm, flood, earthquake, explosion, malicious damage, war damage, and any other event beyond the Lessee's control.

27.3 Lessee's financial obligations

Abatement extends to all the Lessee's financial obligations to the Lessor under this Lease, including Rent, and all the rates and taxes and utility charges (**Financial Obligations**).

27.4 Period of Abatement

The period of abatement of the Lessee's Financial Obligations will be from the date of the destruction, damage of the Premises or inaccessibility of the Premises until the date when the Premises are restored, accessible and rendered suitable for the Lessee's use and occupation. For the sake of clarity the abatement shall not apply to any amount that becomes due and payable by the Lessee prior to the date the Premises is wholly or partly damaged or destroyed or is rendered wholly or substantially inaccessible, save that if the Rent has been paid in advance the abatement shall apply to any Rent paid in advance which relates to any period from the date of the destruction, damage or inaccessibility of the Premises.

27.5 Effect of abatement

During and for the period of abatement of the Lessee's Financial Obligations the Lessee's liability to pay the whole or proportion of the Financial Obligations under this Lease, as agreed or determined under **clause 27.8**, calculated on a daily basis will cease and abate.

27.6 Exception to abatement

The Lessee is not entitled to an abatement of the Lessee's Financial Obligations under this clause if:

- (a) the event resulting in the damage, destruction to the Premises or inaccessibility of the Premises is caused or contributed to by the act or negligent omission of the Lessee or the Lessee's employees; or

- (b) the Lessor fails to recover the benefit of any insurance for loss or damage to the Building or the Premises because of any act or omission of the Lessee or the Lessee's Agents.

27.7 Lessee's use of premises

If the extent of damage to the Premises enables the Lessee to use and enjoy the whole or part of the Premises for the Lessee's business, THEN the Lessee may continue to use the Premises and conduct its business whilst the Premises are being repaired unless:

- (a) the Lessor reasonably requires such use to cease during the whole or part of the repairs; or
- (b) any public authority prohibits occupation of the Premises in its damaged condition,

and such use by the Lessee will be taken into account when determining the partial abatement of the Lessee's Financial Obligations.

27.8 Determination of abatement

- (1) The parties will endeavour to agree on the commencement and period of abatement of the Lessee's Financial Obligations, and if the Lessee is able to have partial use and enjoyment of the Premises, then the proportion of the abatement of the Lessee's Financial Obligations having regard to the nature and extent of the damage to and use of the Premises.
- (2) If the parties have any dispute regarding the Lessee's entitlement to an abatement of the Lessee's Financial Obligations, its period or amount, the dispute will be determined by a loss assessor:
 - (a) who is then a member of the Insurance Council of Australia Ltd (Council) and is experienced in assessing premises of the nature of the Premises and is nominated by the President for the time being or senior officer of that Council on the application of either party;
 - (b) acting as an expert;
 - (c) who is entitled to accept written submissions and expert reports from either party; and
 - (d) whose costs shall be borne equally by the parties;
 - (e) whose decision is final and binding on the parties.
- (3) If the loss assessor nominated under paragraph (2) above fails to proceed or to determine the dispute, either party may seek the nomination of another loss assessor in accordance with paragraph (2).

28. Option to Renew

If the Lessee at least 14 days, but not earlier than 6 months, prior to the date for commencement of the First Further Term or the Second Further Term (as the case may be) gives the Lessor a Notice to grant the First Further Term or Second Further Term (as the case may be) as specified in **Item 3** of the Schedule and:

- (a) all consents and approvals required by the terms of this Lease or at law have been obtained; and
- (b) there is no subsisting default by the Lessee at the date of service of the Notice in:
 - (i) the payment of Amounts Payable; or
 - (ii) the performance or observance of the Lessee's Covenants,

the Lessor shall grant to the Lessee a Lease for the First Further Term or Second Further Term (as the case may be) as specified in **Item 3** of the Schedule at the Rent and on the same terms as this Lease other than this **clause 28** in respect of the Further Terms previously taken.

29. Assignment, Subletting and Charging

29.1 No Assignment without Consent

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

29.2 Change in Ownership of Shares

If the Lessee is a corporation the shares in which are not quoted on any stock exchange in Australia, any change in the beneficial ownership, issue or cancellation of shares in that corporation or any holding company of that corporation within the meaning of the *Corporations Act 2001 (Cth)* will be deemed to be an assignment of the leasehold estate created by this Lease and the Lessee must give the Lessor written notification of the change in ownership of shares within 14 days of the change

29.3 Lessor's Consent to Assignment

Provided all parties whose consent is required under this Lease or at law to an assignment give their consent, then the Lessor may not unreasonably withhold its consent to the assignment of the leasehold estate created by this Lease if:

- (a) the proposed assignee is a respectable and responsible person of good financial standing;
- (b) all Amounts Payable due and payable have been paid and there is no existing unremedied breach, whether notified to the Lessee or not, of any of the Lessee's Covenants;
- (c) the Lessee procures the execution by the proposed assignee of a deed of assignment
- (d) to which the Lessor is a party and which deed is prepared and completed by the Lessor's solicitors; and
- (e) the deed of assignment contains a covenant by the assignee with the Lessor to pay all Amounts Payable and to perform and observe all the Lessee's Covenants; and
- (f) the Lessor's consent to assignment of the Lease, where provided, may be given subject to such reasonable conditions as the Lessor sees fit.

29.4 Release of Lessee upon Assignment

The covenants and agreements on the part of any assignee will be supplementary to the Lessee's Covenants and will not release the assigning Lessee from the Lessee's Covenants, other than to the extent expressly provided in the *Commercial Tenancy (Retail Shops) Agreement Act 1985*.

29.5 Property Law Act 1969

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

29.6 Costs for Assignment of Lease

If the Lessee wishes to assign or sublet the leasehold estate created by this Lease, the Lessee must pay all reasonable professional and other costs, charges and expenses, incurred by the Lessor or other person whose consent is required under this Lease, of and incidental to:

- (a) the enquiries made by or on behalf of the Lessor as to the respectability, responsibility and financial standing of each proposed assignee;
 - (b) any consents required under this Lease or at law; and
 - (c) all other matters relating to the proposed assignment of lease,
- whether or not the assignment of lease proceeds.

29.7 No Mortgage or Charge

The Lessee must not, without first obtaining the Lessor's consent, mortgage, charge or sub-let the Premises.

30. Default

30.1 Events of Default

- (a) Subject to **clause 30.1(b)**, a default occurs if:
 - (i) any Amounts Payable remain unpaid for one month after becoming due and written notice has been given to the Lessee to pay such Amounts Payable;
 - (ii) the Lessee is in breach of any of the Lessee's Covenants other than the covenant to pay the Amounts Payable for 14 days after written notice has been given to the Lessee to rectify the breach;
 - (iii) an order is made or a resolution effectively passed for the winding up of the Lessee unless the winding up is for the purpose of amalgamation or reconstruction;
 - (iv) a controller, as defined by the *Corporations Act 2001* is appointed in respect of the Lessee's interest in the Premises under this Lease;
 - (v) a mortgagee takes possession of the Lessee's interest in the Premises under this Lease;
 - (vi) the Premises are vacated;
 - (vii) the registration of the Lessee is cancelled or dissolved under the *Corporations Act*; or
 - (viii) a person other than the Lessee or a permitted Lessee or assignee is in occupation or possession of the Premises or in receipt of a rent and profits.
- (b) For the purposes of **clause 30.1(a)** the Lessor agrees that the Lessee will not be in default under the Lease if, at any time, an administrator, as defined by the *Corporations Act 2001*, is appointed in respect of the Lessee except where the administration comes to an end by reason of the Lessee's creditors resolving that the Lessee should be wound up.

30.2 Forfeiture

On the occurrence of any of the events of default specified in **clause 30.1** the Lessor may:

- (a) without notice or demand at any time enter the Premises and on re-entry the Term will immediately determine;
- (b) by notice to the Lessee determine this Lease and from the date of giving such notice this Lease will be absolutely determined; and
- (c) by notice to the Lessee elect to convert the unexpired portion of the Term into a tenancy from month to month when this Lease will be determined as from the giving of the notice and until the tenancy is determined the Lessee will hold the Premises from the Lessor as a tenant from month to month under **clause 32**,

but without affecting the right of action or other remedy which the Lessor has in respect of any other breach by the Lessee of the Lessee's Covenants or releasing the Lessee from liability in respect of the Lessee's Covenants.

30.3 Lessor May Remedy Lessee's default

If the Lessee:

- (a) fails or neglects to pay the Amounts Payable by the Lessee under this Lease; or
- (b) does or fails to do anything which constitutes a breach of the Lessee's Covenants,

then, after the Lessor has given to the Lessee notice of the breach and the Lessee has failed to rectify the breach within a reasonable time, the Lessor may without affecting any right, remedy or power arising from that default pay the money due or do or cease the doing of the breach as if it were the Lessee and the Lessee must pay to the Lessor on demand the Lessor's cost and expenses of remedying each breach or default.

30.4 Acceptance of Amount Payable By Lessor

Demand for or acceptance of the Amounts Payable by the Lessor after an event of default has occurred will not affect the exercise by the Lessor of the rights and powers of the Lessor by the terms of the Lease or at law and will not operate as an election by the Lessor to exercise or not to exercise any right or power.

30.5 Essential Terms

Each of the Lessee's Covenants in clauses **2** (Rent and Other Payments); **6** (Insurance), **7** (Indemnity), **8** (Maintenance, Repair and Cleaning), **9** (Operation of Cafe), **11** (Use); **15** (Lessee to Comply with Offer); and **29** (Assignment, Subletting and Charging) is an essential term of this Lease but this **clause 30** does not mean or imply that there are no other essential terms in this Lease.

30.6 Breach of Essential Terms

If the Lessee breaches an essential term of this Lease then, in addition to any other remedy or entitlement of the Lessor:

- (a) the Lessee must compensate the Lessor for the loss or damage suffered by reason of the breach of that essential term;

- (b) the Lessor will be entitled to recover damages against the Lessee in respect of the breach of an essential term; and
- (c) the Lessee AGREES with the Lessor that if the Term is determined:
 - (i) for breach of an essential term or the acceptance by the Lessor of a repudiation of this Lease by the Lessee; or
 - (ii) following the failure by the Lessee to comply with any notice given to the Lessee to remedy any default,

the Lessee must pay to the Lessor on demand the total of the Amounts Payable under this Lease which would have been payable by the Lessee for the unexpired balance of the Term as if the Term had expired by lapse of time together with the losses incurred or reasonably expected to be incurred by the Lessor as a result of the early determination including but not limited to the costs of re-letting or attempting to re-let the Premises;

- (d) the Lessee agrees that the obligation set out in this **clause 30.6(c)** will survive termination or any deemed surrender at law of the estate granted by this Lease;
- (e) the Lessee may deduct from the amounts referred to at **clause 30.6(c)** the Rent and other money which the Lessor reasonably expects to obtain by re-letting the Premises between the date of Termination and the date on which the Term would have expired by lapse of time; and
- (f) the Lessor must take reasonable steps to mitigate its losses and endeavour to re-let the Premises at a reasonable rent and on reasonable terms but the Lessor is not required to offer or accept rent or terms which are the same or similar to the rent or terms contained or implied in this Lease.

31. Repudiation by Lessee

31.1 Compensation

In the event that the Lessee's conduct (whether by acts or omissions) constitutes a repudiation of the Lease (or of the Lessee's obligations under the Lease) or constitutes a breach of any Lease covenants, it is agreed that:

- (a) the Lessee shall compensate the Lessor for the loss or damage suffered by reason of the repudiation or breach; and
- (b) the Lessor shall be entitled to recover damages against the Lessee in respect of the repudiation or breach of covenant for the damage suffered by the Lessor during the entire Term of this Lease.

31.2 Entitlement to Recover Damages

The Lessor's entitlement to recover damages shall not be affected or limited in the event that:

- (a) the Lessee abandons or vacates the Premises;
- (b) the Lessor elects to re-enter or to terminate the Lease;
- (c) the Lessor accepts the Lessee's repudiation; or
- (d) the Parties' conduct constitutes a surrender by operation of law.

31.3 Legal Proceedings

The Lessor shall be entitled to institute legal proceedings claiming damages against the Lessee in respect of the entire Term, including the periods before and after the Lessee has vacated the Premises, and before and after the abandonment, termination, repudiation, acceptance of repudiation or surrender by operation of law referred to in **clause 31.2**, whether the proceedings are instituted either before or after such conduct.

32. Holding Over

If the Lessee remains in possession of the Premises after the expiry of the Term with the consent of the Lessor, the Lessee will be a monthly tenant of the Lessor at a rent equivalent to one twelfth of the Rent for the period immediately preceding expiry of the Term and otherwise on the same terms and conditions of this Lease provided that all consents required under this Lease or at law have been obtained to the Lessee being in possession of the Premises as a monthly tenant.

33. Disputes

33.1 Referral of Dispute: Phase 1

Except as otherwise provided any dispute arising out of this Lease is to be referred in the first instance in writing to the Lessor's Representative as nominated in writing by the Lessor from time to time (**the Lessor's Representative**) who shall convene a meeting within 10 days of receipt of such notice from the Lessee or such other period of time as is agreed to by the parties between the Lessor's Representative and an officer of the Lessee for the purpose of resolving the dispute (**the Original Meeting**).

33.2 Referral of Dispute: Phase 2

In the event the dispute is not resolved in accordance with **clause 33.1** of this Lease then the dispute shall be referred in writing to the CEO of the Lessor who shall convene a meeting within 10 days of the Original Meeting or such other date as is agreed to by the parties between the CEO and the Lessee for the purpose of resolving the dispute.

33.3 Appointment of Arbitrator: Phase 3

In the event the dispute is not resolved in accordance with **clause 33.2** of this Lease then unless otherwise required pursuant to the provisions of the *Commercial Tenancy (Retail Shops) Agreements Act 1985* the dispute shall be determined by a single arbitrator under the provisions of the *Commercial Arbitration Act 1985* (as amended from time to time) and the Lessor and the Lessee may each be represented by a legal practitioner.

33.4 Payment of Amounts Payable to Date of Award

The Lessee must pay the Amounts Payable without deduction to the date of the award of the Arbitrator or the date of an agreement between the Parties whichever event is the earlier, and if any money paid by the Lessee is not required to be paid within the terms of the award of the Arbitrator or by agreement between the Lessor and the Lessee then the Lessor will refund to the Lessee the monies paid

General Provisions

34. Notice

34.1 Form of Delivery

A Notice to a person must be in writing and may be given or made:

- (a) by a delivery to the person personally; or
- (b) by addressing it to the person and leaving it at or posting it by registered post to the address of the Party appearing in this Lease or any other address nominated by a Party by notice to the other.

34.2 Service of Notice

A Notice to a person is deemed to be given or made:

- (a) if by personal delivery, when delivered;
- (b) if by leaving the Notice at an address specified in **clause 34.1**, at the time of leaving the Notice provided the Notice is left during normal business hours; and
- (c) if by post to an address specified in **clause 34.1**, on the second business day following the date of posting of the Notice.

34.3 Signing of Notice

A Notice to a person may be signed:

- (a) if given by an individual by the person giving the Notice;
- (b) if given by a corporation by a director, secretary or manager of that corporation; or
- (c) if given by a local government, by the CEO or a person authorised to sign on behalf of the local government; or
- (d) by a solicitor or other agent of the person, corporation or local government giving the Notice.

35. Amendments to Lease

Subject to such consents as are required by this Lease or at law, this Lease may be varied by the agreement of the parties in writing.

36. Waiver

36.1 No General Waiver

Failure to exercise or delay in exercising any right, power or privilege in this Lease by a Party does not operate as a waiver of that right, power or privilege.

36.2 Partial Exercise of Right Power or Privilege

A single or partial exercise of any right, power or privilege does not preclude any other or further exercise of that right, power or privilege or the exercise of any other right, power or privilege.

37. Acts by Agents

All acts and things which the Lessor is required to do under this Lease may be done by the Lessor, or the Lessor's Agents.

38. Statutory Powers

The powers conferred on the Lessor by or under any statutes for the time being in force are, except to the extent that they are inconsistent with the terms and provisions expressed in this Lease, in addition to the powers conferred on the Lessor in this Lease.

39. Further Assurance

The Parties must execute and do all acts and things necessary or desirable to implement and give full effect to the terms of this Lease.

40. Severance

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.

41. Moratorium

The provisions of a statute which would but for this clause extend or postpone the date of payment of money, reduce the rate of interest or abrogate, nullify, postpone or otherwise affect the terms of this Lease do not, to the fullest extent permitted by law, apply to limit the terms of this Lease.

42. Governing Law

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.

Definitions & Interpretation

43. Definitions

In this Lease, unless otherwise required by the context or subject matter:

Alterations means any of the acts referred to in **clauses 12.1(a) and 12.1(b)**;

Amounts Payable means the Rent and any other money payable by the Lessee under this Lease;

Appurtenances means all drains, toilets, grease traps, wash basins, bathrooms, water, gas and electrical fittings and other services contained in or about the Premises or other parts of the Centre;

Authorised Person means an agent, employee or licensee of the Lessor;

Basic Consideration means all consideration (whether in money or otherwise) to be paid or provided by the Lessee for any supply or use of the Premises and any goods, services or other things provided by the Lessor under this Lease (other than tax payable pursuant to this clause);

CEO means the Chief Executive Officer for the time being of the Lessor or any person appointed by the Chief Executive Officer 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;

Completion Date means the date for completing the Fit-out Works specified in **Annexure 3**;

Café means that part of the Centre, comprising the café/kiosk;

Encumbrance means a mortgage, charge, lien, pledge, easement, restrictive covenant, writ, warrant or caveat and the claim stated in the caveat or anything described as an encumbrance on the Certificate of Title for the Land;

First Further Term means the further term specified in **Item 3(a)** of the Schedule;

Fit-out Works means the alterations, extensions installations, fit-out to be carried by the Lessee on the Premises, as specified in **Annexure 3** of this Lease

Further Terms means the further terms specified in **Item 3** of the Schedule;

Good Repair means good and substantial tenantable repair and in clean, good working order and condition;

GST has the meaning that it bears in the GST Act;

GST Act means *A New Tax System (Goods and Services Tax) Act 1999 (Cth)* and any legislation substituted for, replacing or amending that Act;

GST Adjustment Rate means the amount of any increase in the rate of tax imposed by the GST Law;

GST Law has the meaning that it bears in section 195-1 of the GST Act;

GST Rate means 10%, or such other figure equal to the rate of tax imposed by the GST Law;

Input Tax Credit has the meaning that it bears in section 195-1 of the GST Act.

Interest Rate means the rate at the time the payment falls due being 2% greater than the Lessor's general overdraft rate on borrowings from its bankers on amounts not exceeding \$100,000.00;

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

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

Lessee's Agents includes:

- (a) the sublessees, employees, agents, contractors, invitees and licensees of the Lessee; and
- (b) any person on the Leased Premises by the authority of a person specified in paragraph (a).

Lessee's Covenants means the covenants, agreements and obligations set out or implied in this Lease or imposed by law to be performed and observed by the Lessee;

Lessor's Agents means the CEO, an officer or the agent, solicitor, contractor or employee of the Lessor;

Lessor's Covenants means the covenants, agreements and obligations set out or implied in this Lease, or imposed by law to be performed and observed by the Lessor;

Lessor's Fixtures and Fittings means all fixtures, fittings and equipment installed in or provided to the Premises by the Lessor at the Commencement Date or at any time during the Term. An initial list of the Lessor's Fixtures and Fittings installed at the Commencement Date is annexed hereto as **Annexure 2**.

Minimum Trading Hours means those hours specified in **Item 9** of the Schedule;

Minister for Lands means the Minister for Lands in her or his capacity as the body corporate continued under section 7 of the *Land Administration Act 1997*;

Notice means each notice, demand, consent or authority given or made to any person under this Lease;

Offer means the offer submitted by the Lessee copy annexed hereto as **Annexure 4**;

Party means the Lessor or the Lessee according to the context;

Permitted Purpose means the purpose set out in **Item 7** of the Schedule;

Premises means the premises described in **Item 1** of the Schedule;

Rent means the rent specified in **Item 5** of the Schedule as varied from time to time under this Lease;

Schedule means the Schedule to this Lease;

Second Further Term means the further term specified in **Item 3(b)** of the Schedule;

Tax Invoice has the meaning which it bears in section 195-1 of the GST Act;

Taxable Supply has the meaning which it bears in section 195-1 of the GST Act.

Term means the term of years specified in **Item 2** of the Schedule; and

Termination means the date of:

- (a) expiry of the Term or any Further Term by effluxion of time;
- (b) sooner determination of the Term or any Further Term; or
- (c) determination of any period of holding over.

Written Law includes all acts and statutes (State or Federal) for the time being enacted and all regulations, schemes, ordinances, local laws, by-laws, requisitions, orders or statutory instruments made under any Act from time to time by any statutory, public or other competent authority.

44. Interpretation

In this Lease, unless expressed to the contrary:

- (a) Words importing:

- (i) the singular include the plural;
 - (ii) the plural include the singular; and
 - (iii) any gender include each gender;
- (b) A reference to:
- (i) a natural person includes a body corporate or local government; and
 - (ii) a body corporate or local government includes a natural person;
- (c) A reference to a professional body includes a successor to or substitute for that body;
- (d) A reference to a Party includes its legal personal representatives, successors and assigns and if a Party comprises two or more persons, the legal personal representatives, successors and assigns of each of those persons;
- (e) A reference to a statute, ordinance, code, regulation, award, town planning scheme or other law includes a regulation, local law, by-law, requisition, order or other statutory instruments under it and any amendments to re-enactments of or replacements of any of them from time to time in force;
- (f) A reference to a right includes a benefit, remedy, discretion, authority or power;
- (g) A reference to an obligation includes a warranty or representation and a reference to a failure to observe or perform an obligation includes a breach of warranty or representation;
- (h) A reference to this Lease or provisions or terms of this Lease or any other deed, agreement, instrument or contract include a reference to:
- (i) both express and implied provisions and terms; and
 - (ii) that other deed, agreement, instrument or contract as varied, supplemented, replaced or amended;
- (i) A reference to writing includes any mode of representing or reproducing words in tangible and permanently visible form and includes facsimile transmissions;
- (j) Any thing (including, without limitation, any amount) is a reference to the whole or any part of it and a reference to a group of things or persons is a reference to any one or more of them;
- (k) If a Party comprises two or more persons the obligations and agreements on their part bind and must be observed and performed by them jointly and each of them severally and may be enforced against any one or more of them;
- (l) The agreements and obligations on the part of the Lessee not to do or omit to do any act or thing include:
- (i) an agreement not to permit that act or thing to be done or omitted to be done by an Authorised Person; and
 - (ii) an agreement to do everything necessary to ensure that that act or thing is not done or omitted to be done;

- (m) Except in the Schedule headings do not affect the interpretation of this Lease.

DRAFT

Schedule

Item 1 Land and Premises

Land

Lot 6987 on Deposited Plan 167276 being the whole of the land comprised in Certificate of Title Volume 2115 Folio 135.

Premises

That part of the Land known as Eco Centre Café/Kiosk situated at Canning River Eco Education Centre as shown in the plan annexed hereto as **Annexure 1** including fixtures and fittings belonging to the Lessor therein and all additions or modifications and replacements from time to time; and

Item 2 Term

3 years commencing on [insert date] 2011 and expiring on [insert date] 2014.

Item 3 Further Terms

First Further Term

(a) 1 year commencing on 2014 and expiring on 2015.

Second Further Term

(b) 1 year commencing on 2015 and expiring on 2016.

Item 4 Commencement Date

[to be inserted]

Item 5 Rent

- (i) Subject to paragraph (ii), one peppercorn per annum payable on the Lessor's demand.
- (ii) The Lessee acknowledges that in consideration of the Lessee operating a Café from the Premises for the Minimum Hours the Lessor has agreed to impose a peppercorn rent. However, in the event the Lessee does not operate a Café from the Premises for the Minimum Hours, the Lessee and Lessor covenant and agree that Rent will be payable on the Premises in the amount of \$5,000 (five thousand dollars) per annum (payable monthly in advance) with the first payment due within 14 days of the Lessor issuing a notice requiring the payment of rent at commercial rates.

Item 6 Public Liability

Ten million dollars (\$10,000,000.00).

Item 7 Permitted purpose

Cafe or delicatessen style food business activity, which includes some food preparation, reheating of food and refrigerated food storage. There is no grease trap and therefore, but excludes any preparation of food that requires the provision of a grease trap.

Item 8 Amount of Bank Guarantee

\$6000 (Six thousand dollars)

Item 9 Minimum Trading Hours

9 am to 5 pm, Monday to Sunday, unless otherwise agreed.

Item 10 Repainting Dates

At the end of the Term, unless otherwise advised by the Lessor in writing.

Signing page

EXECUTED by the parties as a Deed

2011

THE COMMON SEAL of the **City of Nedlands** was hereunto affixed by authority of a resolution of the Council in the presence of:

Signature of Mayor

Full name of Mayor

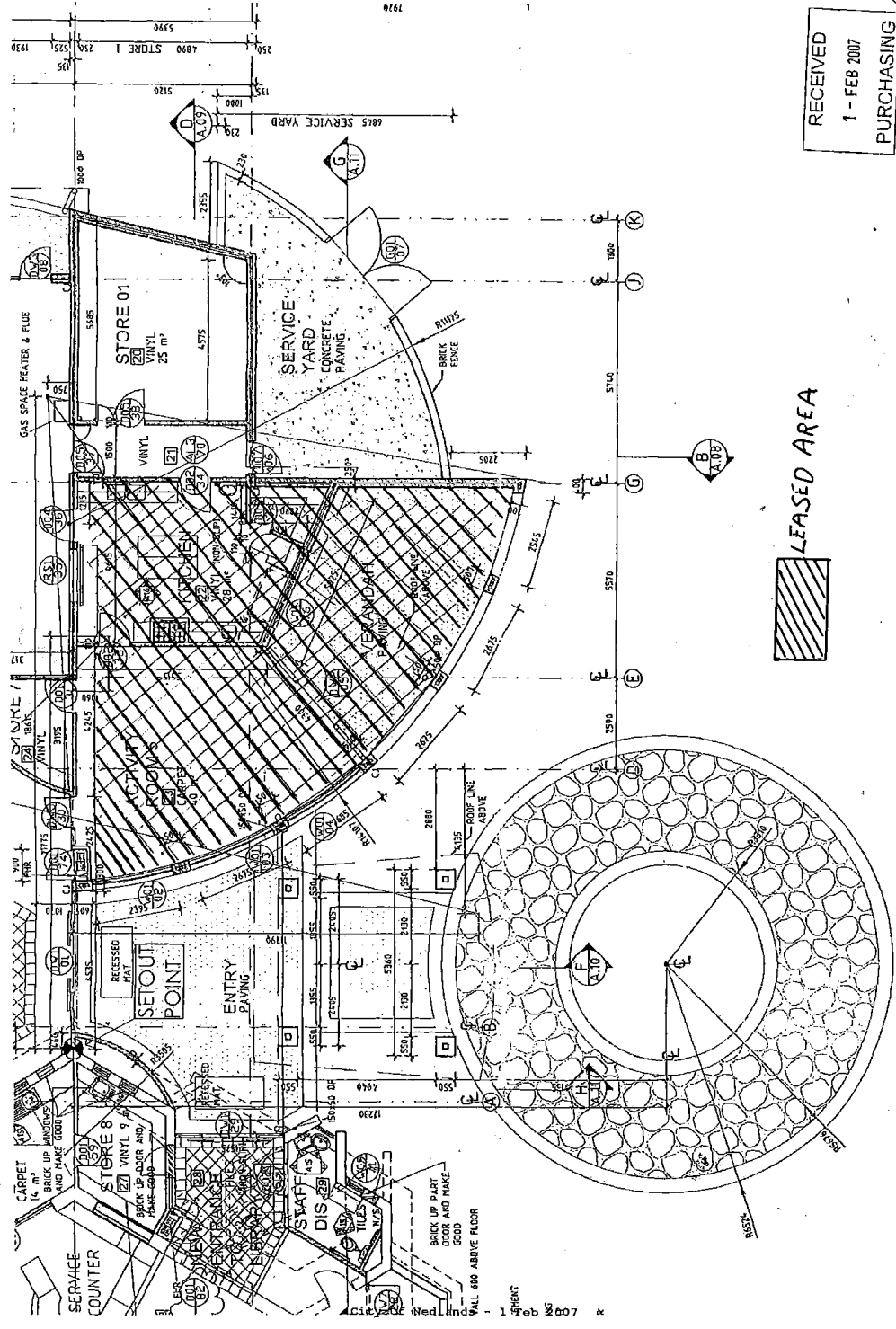
Signature of Chief Executive Officer

Full name of Chief Executive Officer

Insert signing clauses of lessee and guarantors

21004-11.05.11-TF-Leas

Annexure 1 - Sketch of Premises



RECEIVED
1 - FEB 2007
PURCHASING

LEASED AREA

Annexure 2 - Lessor's Fixtures & Fittings

- Exhaust Fan
- Stove
- Pantry cupboards
- Work top surfaces
- Fire extinguishers and fire blanket

Annexure 3 – Fit-out Requirements

Internal fit-out to be carried out by the Lessee at its cost, and such fit-out must be completed so that the Café is operational within two months of the Commencement Date.

Annexure 4 – Lessee's Offer
