




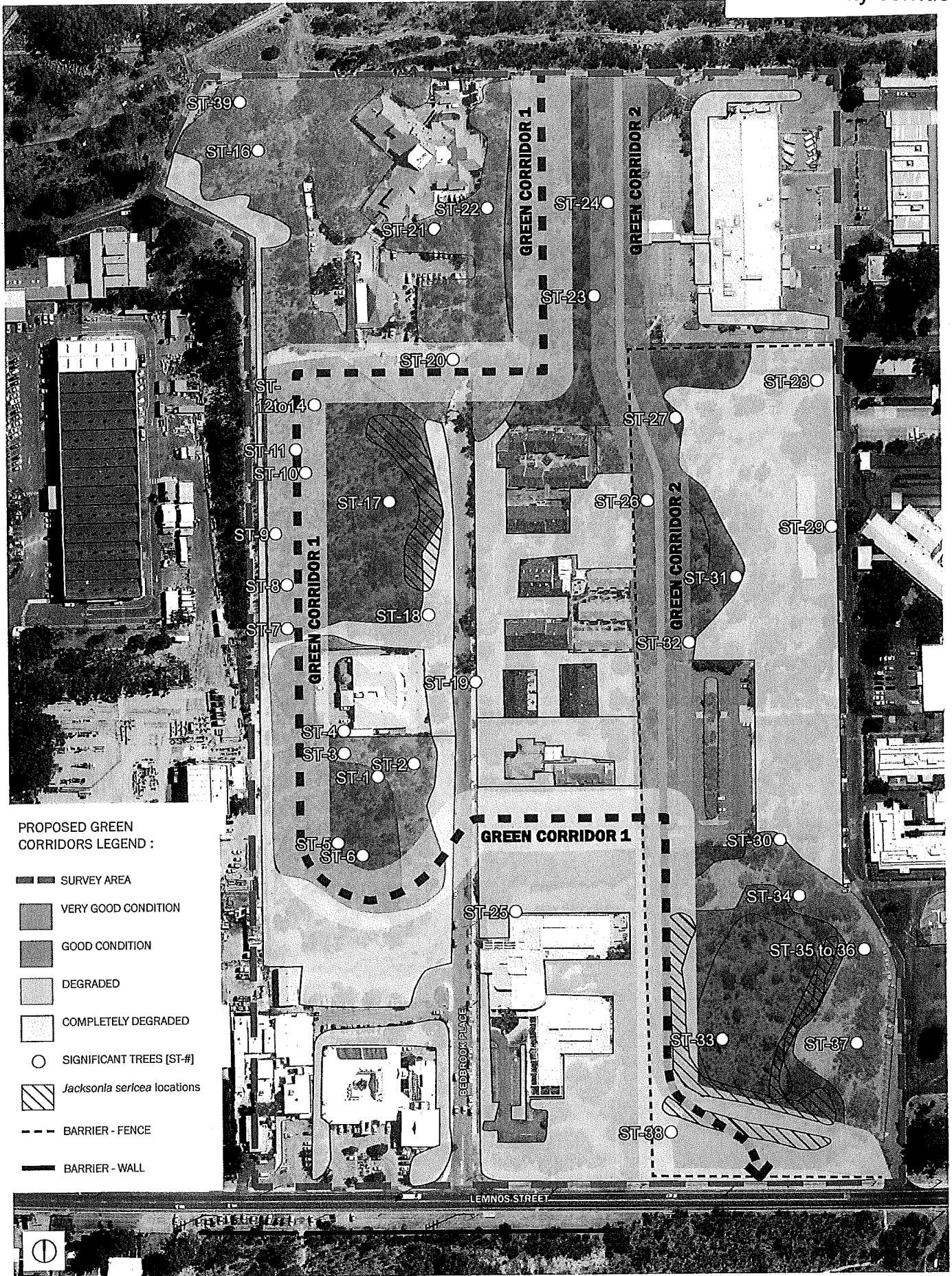


BUSHLAND CONDITION
LEGEND :

-  SURVEY AREA
-  VERY GOOD CONDITION
-  GOOD CONDITION
-  DEGRADED
-  COMPLETELY DEGRADED



Bedbrook Place Biodiversity Local Planning Policy

D48.11 – Attachment 3
Draft Bedbrook Place Biodiversity
Local Planning Policy

KFA KFA 2 – Natural Environment
KFA 3 – Built Environment

Status Council

**Responsible
division** Development Services

Objective The purpose of this policy is to create a biodiversity corridor between Lot 4 conservation area and Shenton Park bushland consistent with the City of Nedlands Greenway Corridors Policy and Western Suburbs Greening Plan.

Specifically, the objectives of this policy are:

- To protect, maintain and improve the viability of habitats, ecological communities, flora and fauna, and genetic diversity within each biodiversity corridor.
- To ensure that any use, development or management of land within and adjacent to any natural area within each corridor is compatible with the long-term maintenance and conservation of that area, and will not have detrimental impacts on biodiversity values.
- To ensure that natural areas within each corridor are revegetated using local native species.
- To partner with landowners to share the responsibility for natural area protection across zones having consideration of the costs and benefits of retaining and protecting natural areas.
- To encourage individual, corporate and institution landowners to improve the ecological quality of their land within the policy area.
- To ensure continuous corridors are maintained without barriers.

Context

Background

The portion of land linking the Lot 4 conservation areas and Shenton Park bushland is being challenged by the pressures of urban development, endangering the ecological integrity of the Bedbrook area. To prevent this potential loss and to secure

linkages between these regionally significant bushland areas the City of Nedlands requires a local planning policy. This policy will provide guidance for development.

Planning framework

This policy represents a local planning policy prepared and adopted according to the requirements as stipulated in the City of Nedlands Town Planning Scheme No.2. The policy seeks to implement and build upon various state, and local planning documents.

- a) State
 - i) State Planning Strategy
 - ii) State Sustainability Strategy
 - iii) Directions 2031

- b) Local
 - i) Western Suburbs Greening Plan
 - ii) Policy 4.14 Greenways Corridor
 - iii) Proposed Draft Town Planning Scheme No.3

Policy area

Figure 1 shows the policy area below.

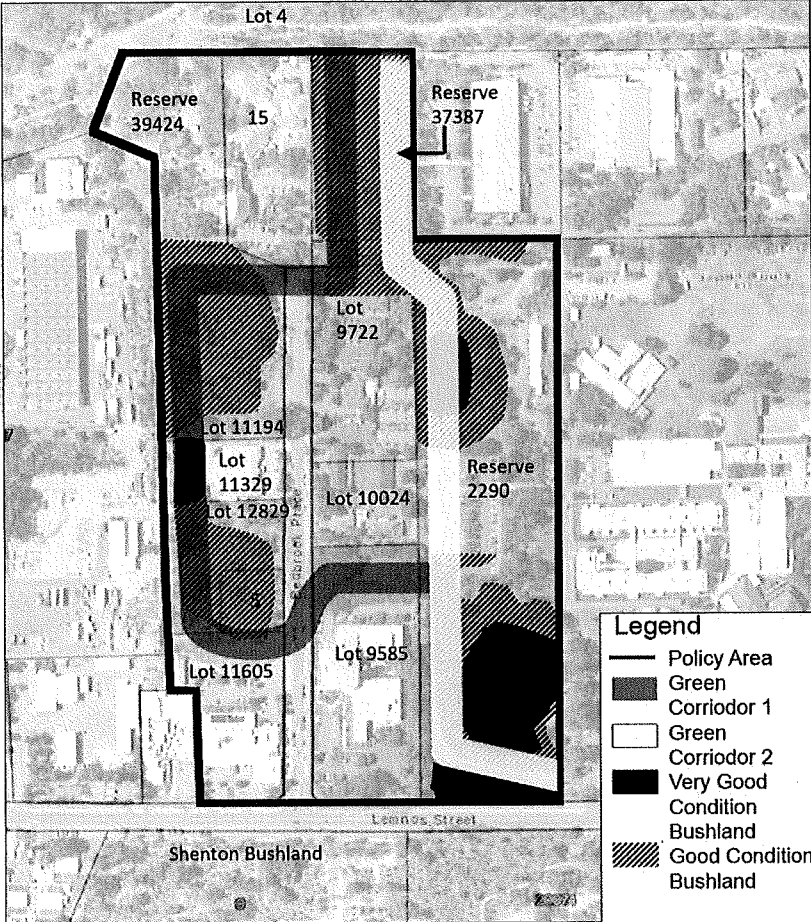


Figure 1

The lots comprising the policy area are as follows:

Lot No/Address	TPS Zoning	MRS Zoning	Lot Area (sq m)	owner
Reserve 37387	Development	Urban	9640	State of Western Australia used by Para Quad Association of W.A.
Reserve 39424 (15 Bedbrook Place)	Development Zone	Urban	9153.55	Cancer Council
Lot 11194 (13 Bedbrook Place)	Industrial	Urban	12032.755	Palmaya Pty Ltd
Lot 11329 & Lot 12829 (9 & 5 Bedbrook Place)	Reserve – Public purpose	Reserve-Public purpose	9769.375	Alzheimer's Association
Lot 11605 (17 Lemnos Street)	Reserve – Public Purpose	Reserve –Public Purpose	8272.336	Arthritis Foundation of W.A. (Inc)
Reserve 2290 (only western area between western property boundary and existing structure)	Public Purpose - Hospital	Public Purpose - Hospital	14085.207	Royal Perth Hosiptal Board
Lot.9722 & lot 1024 & Reserve 37388 (4 Bedbrook Place)	Reserve – Public Purpose	Reserve public purpose	10277.278	Westcare Accommodation Services
Lot 9585	Public Purpose	Public Purpose	13992	Workers Compensation

Figure 2

Policy Focus

The policy focuses on

- the creation of two corridors that are the tools for linking Lot 4 conservation areas and the Shenton Park bushland, with each corridor having been determined on the basis of existing vegetation, location of significant trees and barriers; and

- encouraging the protection of the pockets of areas that have been identified as having vegetation that is in 'very good condition' (refer to Figure 2) and significant trees not located within these pockets or corridors, as well as the encouraging revegetation of degraded land and the use of local native plant species in landscaping.

Refer Figure 1

Corridors

Two corridors are identified as the best options for securing and maintaining linkages between Lot 4 conservation areas and the Shenton Park bushland.

The corridors have the following common characteristics and this has triggered the need for a comprehensive management approach:

- Both corridors use Reserve 37387, which contains quality remnant bush land as a starting point.
- Each corridor comprises of a number of land parcels that are in separate ownership.
- Traversing property boundaries the danger exists that barriers could be erected that will obstruct movement of reptiles.
- The recommended width of each corridor has been identified to be no less than 25m excluding the width of existing fire breaks.

The additional features of the corridors are:

Corridor 1	Corridor 2
<ul style="list-style-type: none"> • Includes the highest number of significant trees on site. • Minimal existing barriers. • 'Very good condition' portion of vegetation. • Has a high diversity of native species. • Minimal revegetation requirements due to the resilience of the bush land. • Weed management will need to be a priority. • Affects 5 lots that are in private ownership. 	<ul style="list-style-type: none"> • Is less viable due to greater weed cover throughout the understorey. • Less available small dense shrubs and leaf litter for small birds and reptiles. • Has existing fences that act as barriers to reptile movement. • Has limited number of significant trees which are scattered. • Affects 3 land parcels. • Includes more areas where extensive rehabilitation will be required.

A summary of the opportunities and constraints for each corridor are included in the table below.

	Opportunity	Constraints
Corridor 1	<ul style="list-style-type: none"> • High numbers of significant trees. • Minimal barriers. • Very good condition of vegetation. • High diversity of native species. 	<ul style="list-style-type: none"> • Pressures for development from private landowners. • Portion of corridor that crosses over Bedbrook Place into a grassed area with exotic garden beds.
Corridor 2	<ul style="list-style-type: none"> • Potential for partnerships with landowners to implement revegetation plans. 	<ul style="list-style-type: none"> • Weed cover reducing the availability of small dense shrubs and leaf litter. • Several fences acting as barriers. • Significant trees are scattered.

Other natural areas/items within policy area

- the protection of the natural vegetation in the pockets of areas that have been identified as having vegetation that is in 'very good condition' and 'good condition' (refer to Figure 2) and significant trees not located within these pockets or corridors;
- revegetation of degraded land ; and
- the use of local native plant species in landscaping.

Statement

Policy principles

The following principles represent the priorities for implementing this policy.

- a) Securing the beginning of each corridor by having reserve 37387 earmarked for bushland use in perpetuity.
- b) Facilitating and/or partnering with landowners of land contained within the corridors and land identified to be of "very good condition" to prevent clearing of bushland, controlling weeds, removing barriers and revegetation of degraded land in the corridors.
- c) Facilitating and/or partnering with landowners of land with quality vegetation to promote retention of the bushland, controlling weeds, preventing barriers to facilitate movement of native fauna and revegetation if necessary.
- d) Increasing the environmental values of the overall area through the use incentives, encouraging quality planning and design, education and enforcing planning conditions that will maintain species diversity, condition and viability of the natural environment.

Implementation

- a) Protect existing bushland on Reserve 37387
- b) Ensure ongoing viability of corridors by:
 - i) Preventing clearing of natural vegetation in corridors.
 - ii) Requiring weed control and rehabilitation where necessary.
 - iii) Using local native species for rehabilitation.
 - iv) Using construction methods to minimise disruption to landform and natural drainage contours.
 - v) Designing the corridor area/development interface to minimise potential concerns arising from nearby weeds and diseases, uncontrolled access, surface water runoff, and rubbish dumping.
 - vi) Ensure that drainage from any development is directed away from the corridor in order to minimize interference with the drainage pattern in the corridor.
 - vii) Control boundary fencing and other structures within the corridors to ensure safe fauna movement.
 - viii) All development proposals will include a commitment to protect the identified natural areas as part of the development process.
- c) Support the natural value throughout the area by:
 - i) Encourage retention of the existing vegetation within areas identified with 'very good condition' and 'good condition' vegetation and significant trees outside the corridor through the use of innovation site planning.
 - ii)
 - iii) Using innovative design to ensure that the impacts on natural bushland areas by buildings are reduced.
 - iv)
 - v) Encouraging the use of local plant species for landscaping in all other landscaped areas on the lots.
 - vi)
 - vii) Promote design that as far as possible prevents disruption of existing landforms.
 - viii)
 - ix) Ongoing maintenance of all natural and landscaped areas.
 - x)
 - xi) Ensure ongoing monitoring and review of environmental value of policy area to provide continuing implementation measures.

Incentives/Partnerships

The City of Nedlands supports providing incentives and/or partnerships to acknowledge/work with landowners who are able to manage natural areas within each corridor and retain natural values of the area, because these landowners are providing a benefit to the local community.

Related documentation

- Syrinx Environmental (2010). Fauna and Flora Survey of Areas between Lot 4 and Shenton Bushland to assess the viability of green corridor.
- Western Suburbs Greening Plan.
- Policy 4.14 Greenways Corridor.

Related Local Law/legislation

- Planning and Development Act 2005
- Town Planning Scheme No.2
- Draft Town Planning Scheme No.3

Related delegation

- Nil

Issued

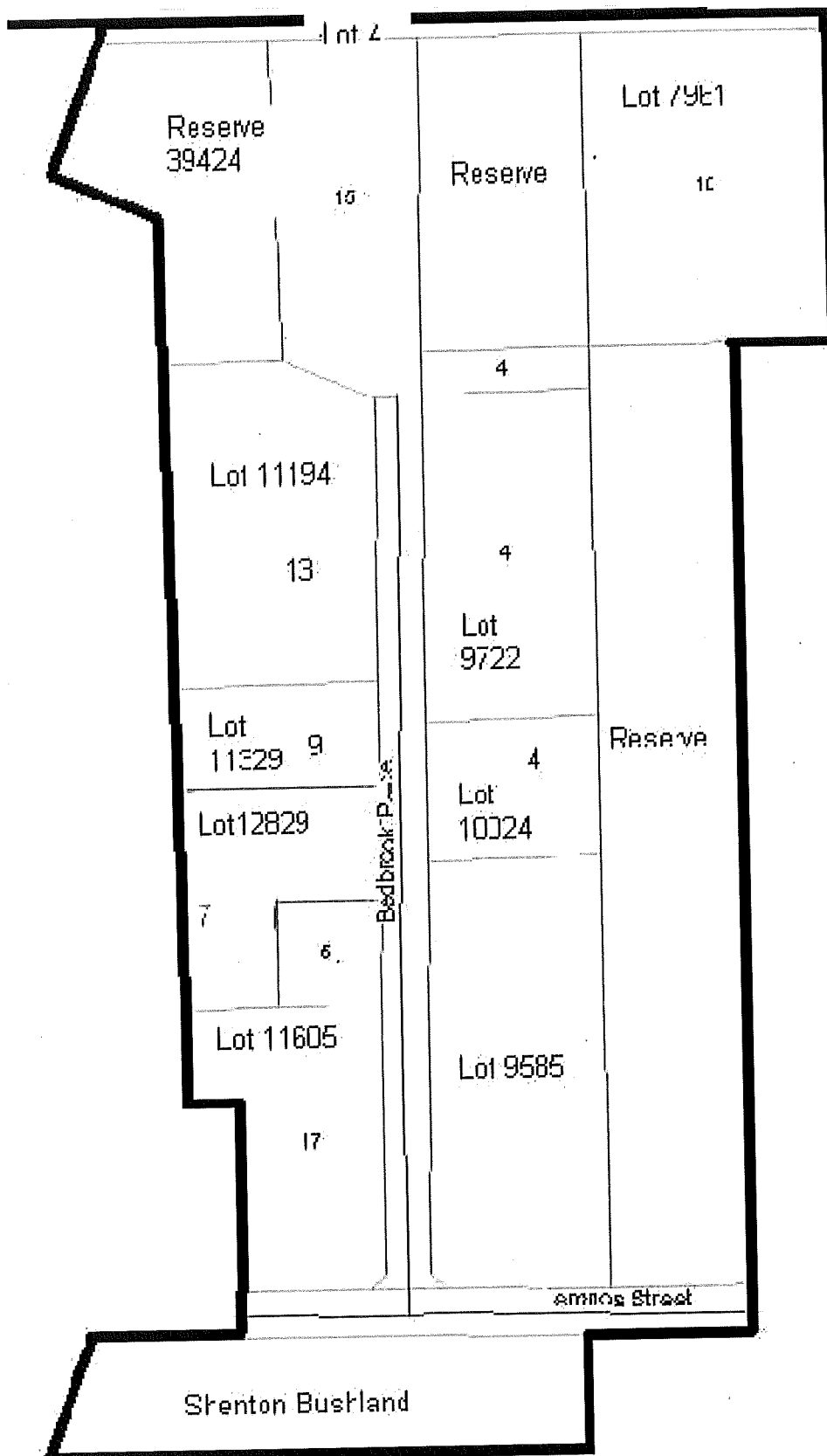
Date approved by Council

Amendments

Dates amendments approved by Council

D48.11 – Attachment 4

Map showing the lots that are affected by the proposed corridors



Lots affected by proposed biodiversity corridors

Local Planning Policy: Setback and Building on the Boundary in Low Density Zones (R10 & R12.5)

KFA	KFA 3: Built Environment
Status	Council
Responsible division	Development Services
Objective	To define additional performance criteria for applications where discretion is applied for in regards to rear and side setbacks in low density residential zones (R10 & R12.5), in order to preserve the open and spacious character of the City and protect the residential amenity of the surrounding neighbourhood.

Context

In regards to side and rear setbacks for residential development in low density zones application may be determined against Performance Criteria using the Council's discretion.

The Residential Design Codes

The acceptable development provisions of the Residential Design Codes (RCodes) outline the required rear and side setbacks for R10 and R12.5 properties in Clause 6.3.1 and Clause 6.3.2.

Walls built up to the boundary are only permitted as acceptable development in these zones if the wall on the boundary abuts another wall on the boundary of similar or greater dimensions.

Development that complies with the acceptable development criteria is deemed to comply with the Performance Criteria. Any development that does not comply with the Acceptable Development provisions is to be considered against the Performance Criteria.

Amenity of Low Density Areas

The setbacks between dwellings are characteristics of low density zonings and contribute to the amenity of these localities within the City.

The purpose of the side and rear setbacks in low density residential zones is to:

- provide for a separation between buildings;
- provide a setting for the dwelling;

- enable access to direct sunlight and ventilation;
- provide visual relief from the built form within streetscape;
- ameliorate building bulk; and
- provide for landscaping.

In order to preserve this amenity, this policy will add additional Clauses to the Performance Criteria of Clause 6.31 and Clause 6.3.2 of the RCodes. This will provide Council with further assistance when considering applications that do not comply with the acceptable development provisions to achieve the objectives of this policy and the Town Planning Scheme No. 2 (TPS2).

Definitions

RCodes

State Planning Policy 3.1 Residential Design Codes (Variation 1) 2010.

Setback

The horizontal distance between a wall at any point and an adjacent boundary, measured at right angles (90 degrees to the boundary).

Buildings on the Boundary

Means either on the boundary or between the boundary and the setback provided by table 1, tables 2a and 2b, figures 2a – 2e, and figure 3.

Statement

When assessing Development Applications under Clause 6.3.1 of the RCodes, the following additional Performance Criteria are to be used in the recommendation and determination.

6.3.1

Buildings setback from the Boundary

P1 Buildings setback from the boundaries other than street boundaries so as to:

- contribute to the desired streetscape.
- assist in contributing to the open and spacious character of the locality.
- Assist in providing a landscaped setting for the building.
- Assist in the protection of mature trees.

When assessing the Developments Applications under Clause 6.3.2 of the RCodes, the following additional Performance Criteria are to be used in the recommendation and determination.

6.3.2

Buildings setback from the Boundary

P2 Buildings up to the boundaries other than the street boundary where it is desirable to do so in order to:

- contributed to the desired streetscape.
- maintain a sense of open space between buildings.
- assist in contributing to the open and spacious character of the locality.
- assist in providing a landscaped setting for the building.
- assist in the protection of mature trees.

Related documentation

Nil

Related Local Law/legislation

- City of Nedlands Town Planning Scheme No. 2 (TPS2)
- Residential Design Codes 2010 (RCodes)

Related delegation

- 6A Town Planning Scheme No .2 (TPS2) - Approval and Refusal of Planning Applications

Issued

TBC



Capital city



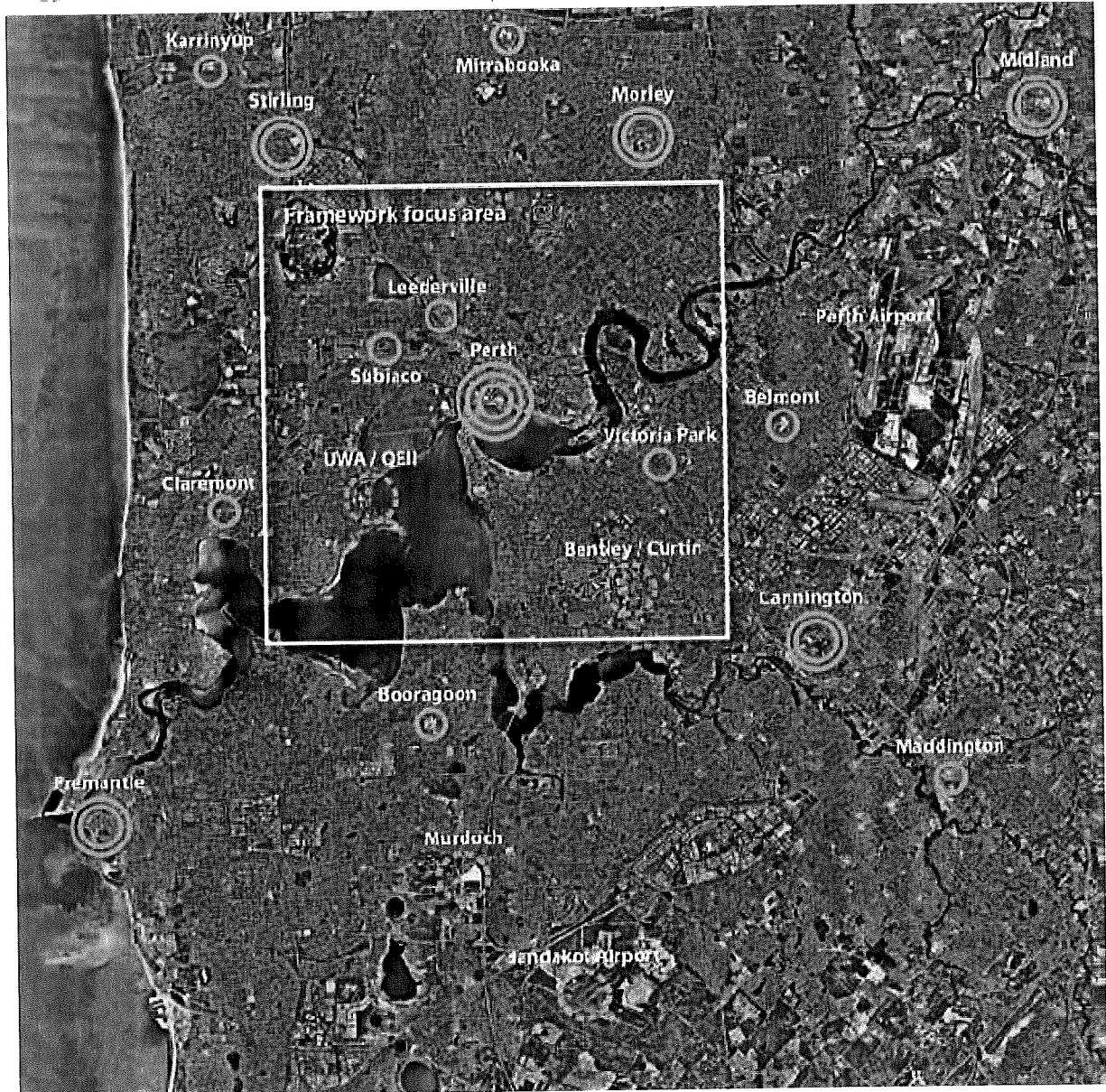
Strategic metropolitan centre



Secondary centre

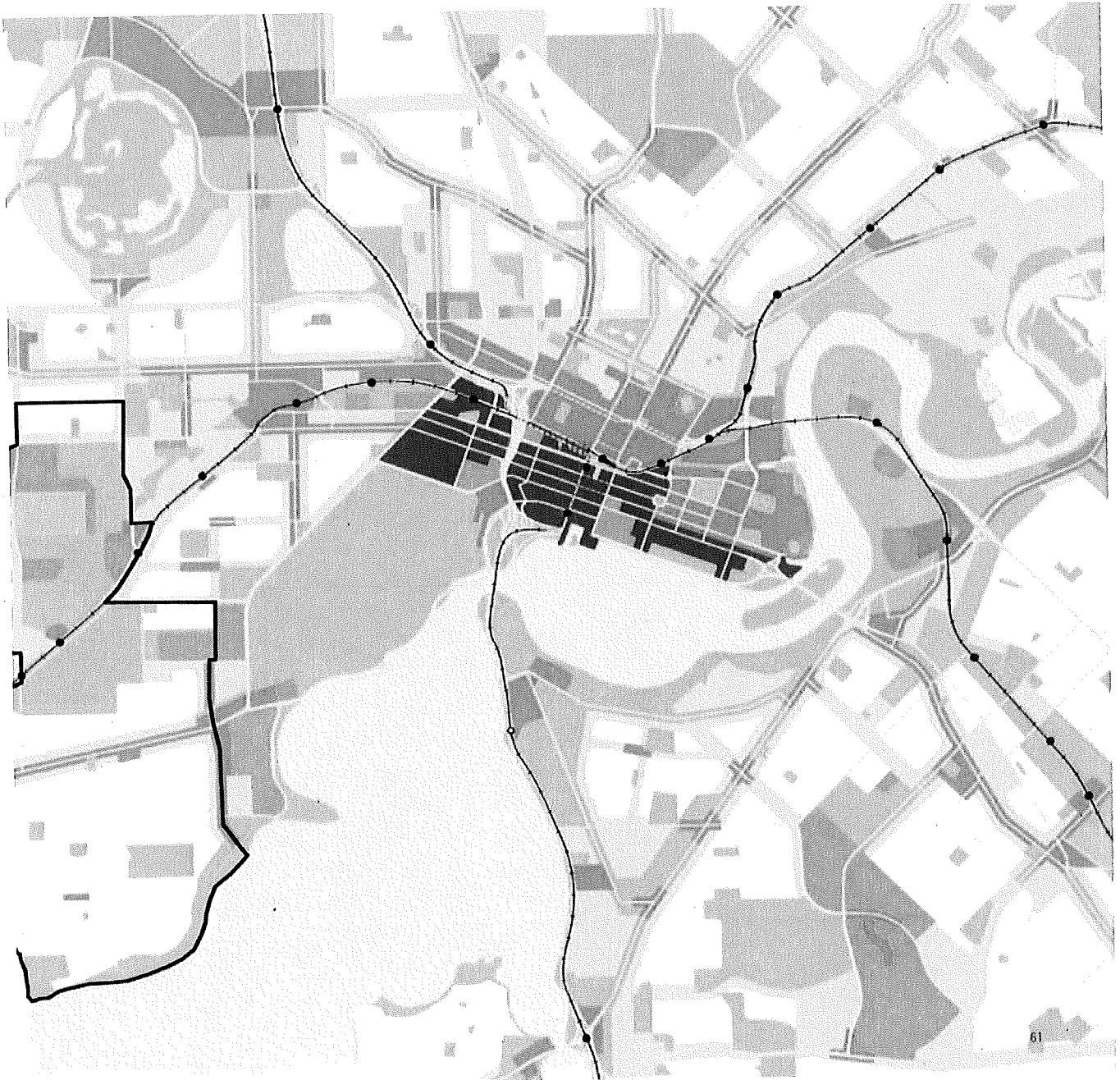


Specialised centre



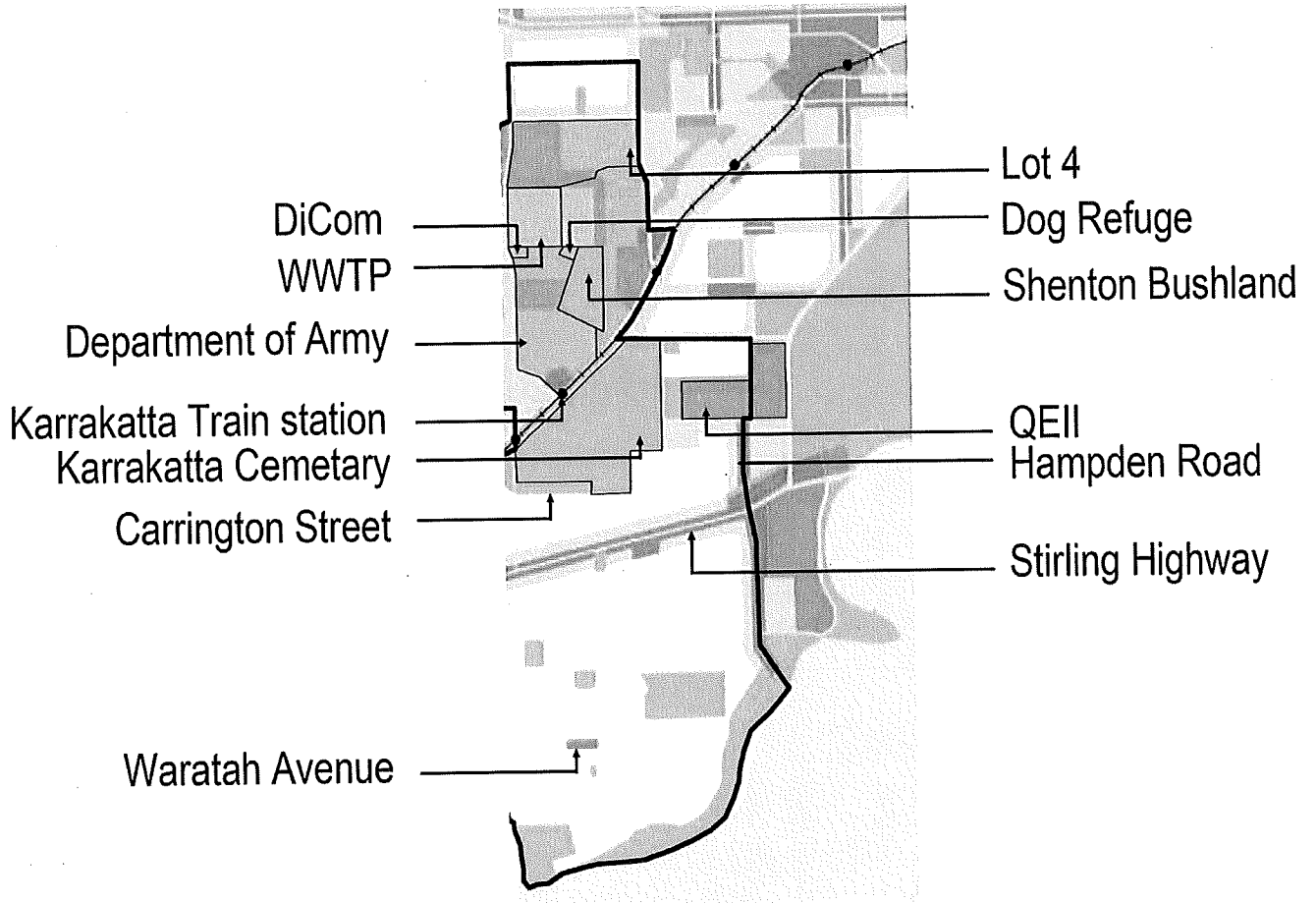
D50.11 – Attachment 1
 Proposed 12 km x km
 Central Perth Area

Proposed Spatial Framework



D50.11 – Attachment 2
Proposed Spatial Strategy

Nedlands area within Framework



D51.11 – Attachment 1
Proposed new lease between the
City and Cottesloe Golf Club

Lease of Cottesloe Golf
Course - Lot 502 (No. 173)
Alfred Road, Cottesloe

City of Nedlands

The Cottesloe Golf Club (Inc.)



McLEODS

Barristers & Solicitors

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Details

Parties

City of Nedlands

of 71 Stirling Highway, Nedlands, Western Australia, 6009
(Lessor)

The Cottesloe Golf Club

of Alfred Road, Swanbourne, Western Australia 6010
(A0090005U)
(Lessee)

Background

- A The Lessor is the management body of the Land under the Order.
- B Under the Order, the Lessor has the power to lease the Land for any term not exceeding 42 years, subject to the approval of the Minister for Lands being first obtained.
- C The Lessor has agreed to grant a lease of the Premises on the terms and conditions of this Lease.

Agreed terms

1. Definitions

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

Alterations means any of the acts referred to in **clauses 11.1(b), 11.1(c) and 11.1(d)**;

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

Authorised Person means –

- (a) an agent, employee, licensee or invitee of the Lessor; and
- (b) any person visiting the Premises with the express or implied consent of any person mentioned in paragraph (a);

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;

Contaminated Sites Act means the *Contaminated Sites Act 2003 (WA)*.

DEC means the Department of Environment and Conservation of Western Australia;

Environmental Contamination has the same meaning as the word “contaminated” in the Contaminated Sites Act;

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;

EPA means the Environment Protection Agency of Western Australia;

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

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 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;

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;

Order means the vesting order published in the *Government Gazette* under the former *Land Act 1933* (and which now has the status of a Management Order made by the Minister under section 46 of the *Land Administration Act 1997*), or the Management Order made under section 46 of the *Land Administration Act 1997*, under which the Land was vested in the Lessor to be held for the purpose of Recreation;

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

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

Remnant Indigenous Tree means a tree which is a remnant of a native species of tree which occurs naturally on the Premises

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;

Significant Tree means a tree or group of trees determined by the Lessor to be significant, based on consideration of aesthetic, historical, scientific and social value for past, present and future generations. In determining the significance of a tree or group of trees the following criteria is applied:

- (a) Aesthetic value is based on the prominence and importance of the tree or group of trees, and its or their position within the landscape;
- (b) Historic value may pertain to the age of the tree or to an association with past persons, events, processes or phases in history;
- (c) Scientific value relates to the tree's rarity or botanical interest.
- (d) Social value is essentially that attributed to the tree or group of trees by the community

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

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

1.2 Interpretation

In this Lease, unless expressed to the contrary -

- (a) words importing -
 - (i) the singular includes the plural and vice versa; and
 - (ii) a gender or genders include each other gender;
- (b) if a word or phrase is assigned a particular meaning, other grammatical forms of that word or phrase have a corresponding meaning;
- (c) a reference to -
 - (i) a natural person includes a body corporate or local government;
 - (ii) a body corporate or local government includes a natural person;
 - (iii) a professional body includes a successor to or substitute for that body;
 - (iv) 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;
 - (v) a statute, includes an ordinance, code, regulation, award, town planning scheme, regulation, local law, by-law, requisition, order or other statutory instruments made under any of them and a reference to any of them, whether or not by name, includes any amendments to, re-enactments of or replacements of any of them from time to time in force;
 - (vi) a right includes a benefit, remedy, discretion, authority or power;
 - (vii) 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;
 - (viii) this Lease or provisions of this Lease or any other deed, agreement, instrument or contract includes a reference to -
 - (A) both express and implied provisions; and

- (B) that other deed, agreement, instrument or contract as varied, supplemented, replaced or amended;
 - (ix) writing includes any mode of representing or reproducing words in tangible and permanently visible form and includes facsimile transmissions;
 - (x) 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; and
 - (xi) a subparagraph, paragraph, subclause, clause, Item, Schedule or Annexure is a reference to, respectively, a subparagraph, paragraph, subclause, clause, Item, Schedule or Annexure of this Lease;
- (d) the covenants and obligations on the part of the Lessee not to do or omit to do any act or thing include -
- (i) covenants not to permit that act or thing to be done or omitted to be done by an Authorised Person; and
 - (ii) a covenant to take all reasonable steps to ensure that that act or thing is not done or omitted to be done;
- (e) the meaning of general words or phrases is not limited by specific examples introduced by 'including', 'for example' or similar expressions; and
- (f) if a Party comprises two or more persons, the covenants and agreements on their part bind them 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.

1.3 Headings

Except in the Schedule, headings do not affect the interpretation of this Lease.

2. Conditions

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

3. Grant of lease

The Lessor, subject to **clause 2** of this Lease, leases to the Lessee the Premises for the Term subject to -

- (a) all Encumbrances;
- (b) the payment of the Amounts Payable; and
- (c) the performance and observance of the Lessee's Covenants.

4. Quiet enjoyment

Except as provided in the Lease, for so long as the Lessor is the management body of the Premises under the Order, and subject to the performance and observance 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.

5. Rent and other payments

The Lessee covenants with the Lessor –

5.1 Rent

To pay to the Lessor the Rent in the manner set out at **Item 5** of the Schedule on and from the Commencement Date clear of any deductions.

5.2 Outgoings

- (1) 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, assessed or incurred in respect of the Premises -
 - (a) local government rates, services and other charges, including but not limited to rubbish collection charges and the emergency services levy;
 - (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 or telephone connection;
 - (d) land tax and metropolitan regional improvement tax on a single ownership basis; and
 - (e) 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.
- (2) 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 5.2(1)** being the proportion that the Premises bears to the total area of the land or premises included in the charge or assessment.

5.3 Interest

Without affecting the rights, power and remedies of the Lessor under this Lease, to pay to the Lessor interest on demand on any Amounts Payable which are unpaid for 7 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.

5.4 Costs

- (1) 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) all legal costs of and incidental to the instructions for the preparation, execution and stamping of this Lease and all copies.
- (2) 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 covenant 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 5.4** or any matter arising out of this Lease.

5.5 Payment of Money

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

6. Accrual of amounts payable

Amounts Payable accrue on a daily basis.

7. Insurance

7.1 Insurance to be effected

The Lessee must effect and maintain with insurers approved by the Lessor in the joint names of the Lessor and the Lessee for their respective rights and interests in the Premises for the time being adequate public liability insurance for a sum not less than the sum set out at **Item 8** of the Schedule in respect of any one claim or such greater amount as the Lessor may from time to time reasonably require.

7.2 Building Insurance to be effected and paid by Lessee

The Lessee will effect and maintain insurance of the building on the Premises, with an insurance company acceptable to the Lessor, and to a value agreed by the parties.

7.3 Details and receipts

In respect of the insurance required by **clause 7.1** 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 an 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.

7.4 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 **clauses 7.1 or 7.2** 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).

7.5 Report

Each Party must report to the other promptly in writing, and in addition verbally in an emergency -

- (a) any 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 in or on the Premises.

7.6 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 policy of insurance required by **clause 7.1**.

7.7 Lessor as attorney

The Lessee irrevocably appoints the Lessor as the Lessee's attorney during the Term -

- (a) in respect to all matters and questions which may arise in relation to any insurances required by **clause 7.1**;
- (b) with full power to demand, sue for and recover and receive from any insurance company or society or person liable to pay the insurance money as are payable for the risks covered by the insurances required by **clause 7.1**;
- (c) to give good and effectual receipts and discharges for the insurance; and
- (d) to settle, adjust, arbitrate and compromise all claims and demands and generally to exercise all powers of absolute owner.

8. Indemnity

8.1 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.

8.2 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) the presence of any Contamination, Pollution or Environmental Harm in on or under the Premises or adjoining land caused or contributed to by the act, neglect or omission of the Lessee or the Lessee's Agents;
- (h) 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
- (i) an act or omission of the Lessee.

8.3 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 8.2** 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.

8.4 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.

8.5 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;
- (ii) loss of or damage to the Premises or personal property of the Lessee; and
- (iii) all claims, actions, loss, damage, liability, costs and expenses arising from or connected with (directly or indirectly) the presence of any Contamination, Pollution or Environmental Harm in, on or under the Premises or surrounding area

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.

9. Limit of Lessor's liability

9.1 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 however occurring.

9.2 Limit on liability for breach of Lessor's covenants

- (1) The Lessor is only liable for breaches of the Lessor's Covenants set out in this Lease which occur while the Lessor is the management body of the Premises under the Order.
- (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.

10. Maintenance, repair and cleaning

10.1 Maintenance

- (1) The Lessee will maintain at its own expense the Premises including but not limited to any structural parts, plate glass, electrical installations, gas and water pipes and fittings, toilets, sanitary appliances, drains, septic tanks, leach drains, paths, paving, park or garden furniture, retaining walls, fences and reticulation in good, safe order repair and condition.
- (2) 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.
- (3) The Lessee must take such reasonable action as is necessary to -
 - (a) prevent, if it has occurred as a result of the Lessee's use of the Premises; and
 - (b) rectify or otherwise ameliorate,
 the effects of erosion, drift or movement of sand, soil, dust or water on or from the Premises.

10.2 Repair

The Lessee must promptly repair at its own expense to the satisfaction of the Lessor any damage to the Premises including damage of a structural nature, regardless of how it is caused.

10.3 No obligation to Lessor to repair or maintain

- (1) The Lessee is wholly and solely responsible for the maintenance and repair of all buildings and improvements comprising the Premises, regardless of the cause of the need to repair or maintain, and regardless of the type of repair or maintenance required. The Lessor has no obligation whatsoever to repair or maintain any buildings or improvements comprising the Premises.
- (2) Any further development proposed on the Premises during the Term shall be the responsibility of and carried out by (and at the cost of) the Lessee, subject to the Lessee having obtained the prior consent of the Lessor, and all necessary statutory approvals.

10.4 Cleaning

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

10.5 Maintain surroundings

- (1) The Lessee must regularly inspect and maintain in good condition at its cost and in accordance with the Management Plan for the Remnant Bushland any part of the Premises which surrounds any buildings, including but not limited to any flora, gardens lawns, shrubs, hedges and trees.
- (2) The Lessee must not remove or do anything to damage any vegetation, including in particular any remnant natural bushland, without the prior written consent from the Lessor.
- (3) Any pruning of trees must be undertaken by a qualified tree surgeon.
- (4) If any flora, trees or lawn dies the Lessee must replace the flora, trees or lawn at its own expense.
- (5) The Lessee must plant and care for such trees on the Premises as the Lessor may from time to time reasonably require.
- (6) The Lessee may not remove any trees, shrubs or hedges without first consulting with and obtaining the approval of the Lessor in accordance with subclause (2) above, except where necessary for urgent safety reasons.

10.6 Management Plan for Remnant Bushland

- (1) The intention of the following provision is to retain remnant Bushland wherever possible, within the constraints of providing and maintaining a workable golf course.
- (2) The Lessee must comply with, and implement at all times, the Management Plan in respect of remnant Bushland vegetation approved by the Lessor.
- (3) The Management Plan shall be prepared and agreed by the parties within 6 months, unless the Lessor consents to extend that period.
- (4) It is a condition of this Lease that the remnant bush land within the Premises must be managed in accordance with the approved Management Plan.
- (5) If at any time in the future the Management Plan is terminated or no longer has effect, approval will be required from the Lessor for the removal or alteration of any remnant bushland within the Premises.

10.7 Pest control

- (1) The Lessee must keep the Premises free of any vermin and the cost of extermination will be borne by the Lessee.

- (2) (a) The Lessee must undertake, annually, an inspection by a licensed pest controller for termite infestation;
- (b) This inspection must be carried out and any pest control treatment required as a result of the inspection must be undertaken by a licensed pest controller within two weeks of the inspection;
- (c) The Lessee must provide to the Lessor a copy of the certificate issued by the licensed pest controller by May 1 annually; and
- (d) All costs and expenses arising from the inspection and any work undertaken as a result will be the responsibility of the Lessee.

10.8 Structural state of Premises

The Lessee acknowledges that it has inspected the structure of the Premises internally and externally prior to the execution of this Lease and enters into the Lease with full knowledge of the structural state and state of repair of the Premises.

11. Alterations

11.1 Restriction

- (1) The Lessee must not without prior written consent –
 - (a) (i) from the Lessor;
 - (ii) from any other person from whom consent is required under this Lease;
 - (iii) required under statute in force from time to time, including but not limited to the planning approval of the Lessee under a town planning scheme of the Lessee;
- (b) install any new signage;
- (c) make or allow to be made any alteration, addition or improvements to or demolish any part of the Premises;
- (d) remove alter or add to any fixtures, fittings or facilities in or on the Premises; or
- (e) subject to the performance of the Lessee's obligations in **clause 10**, 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.

11.2 Consent

- (1) 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 11.1** the Lessor may -
 - (a) consent subject to conditions; and
 - (i) require that work be carried out in accordance with plans and specifications approved by the Lessor or any other person giving consent; and
 - (ii) require that any alteration 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 11.1** -

- (i) the Lessor gives no warranty that the Lessor will issue any consents, approvals, authorities, permits or policies under any statute 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 demolitions.

11.3 Cost of Works

All works undertaken under this **clause 11** will be carried out at the Lessee's expense.

11.4 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 at the option of the Lessor either -

- (a) carry out those other works at the Lessee's expense; or
- (b) permit the Lessor to carry out those other works at the Lessee's expense,

in accordance with the Lessor's requirements.

12. Use

12.1 Restrictions on use

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

- (a)
 - (i) use the Premises or any part of it for any purpose other than for the purposes for which the Premises are held by the Lessor, as set out at **Item 6** of the Schedule; or
 - (ii) use the Premises for any purpose which is not permitted under any town planning scheme or any law relating to health;
- (b) do or carry out on the Premises any harmful, offensive or illegal act, matter or thing;
- (c) 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) 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 referred to 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) do any act or thing which might result in excessive stress or harm to any part of the Premises; or

- (f) display from or affix any signs, notices or advertisements on the Premises without the prior written consent of the Lessor.

12.2 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 statute for its use of the Premises.

12.3 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.

12.4 Indemnity for Costs

The Lessee indemnifies the Lessor against any claims or demands for all costs, on a solicitor client basis, incurred by the Lessor by reason of any claim in relation to any matters set out in this **clause 12**.

13. Lessor's right of entry

13.1 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)
 - (i) at all reasonable times;
 - (ii) with or without workmen and others; and
 - (iii) with or without plant, equipment, machinery and materials;
- (b) for each of the following purposes -
 - (i) 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 13.1(b)(iv)** is without prejudice to the Lessor's other rights, remedies or powers under this Lease.

13.2 Costs of Rectifying Breach

All costs and expenses incurred by the Lessor as a result of any breach referred to at **clause 13.1(b)(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.

14. Statutory obligations and notices

14.1 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 12**;
- (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.

14.2 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 14.1**; and
- (b) any claims, demands, costs or other payments of or incidental to any of the items referred to in **clause 14.1**.

15. Report to Lessor

The Lessee must immediately report to the Lessor -

- (a) 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) 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; and
- (c) all notices, orders and summonses received by the Lessee and which affect the Premises and immediately deliver them to the Lessor.

16. Default

16.1 Events of Default

A default occurs if -

- (a) the Lessee is in breach of any of the Lessee's Covenants for 28 days after a Notice has been given to the Lessee to rectify the breach or to pay compensation in money;

- (b) the association is wound up whether voluntarily or otherwise;
- (c) the Lessee passes a special resolution under the *Associations Incorporation Act 1997* altering its rules of association in a way that makes its objects or purposes inconsistent with the use permitted by this Lease;
- (d) a mortgagee takes possession of the property of the Lessee under this Lease;
- (e) any execution or similar process is made against the Premises on the Lessee's property;
- (f) the Premises are vacated, or otherwise not used, in the Lessor's reasonable opinion, for the permitted purpose for six month period; or
- (g) a person other than the Lessee or a permitted sublessee or assignee is in occupation or possession of the Premises or in receipt of a rent and profits.

16.2 Forfeiture

On the occurrence of any of the events of default specified in **clause 16.1** 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 19**,

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.

17. Default

17.1 Lessor may remedy 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.

17.2 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 conferred on 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.

17.3 Essential Terms

Each of the Lessee's Covenants in **clauses 5** (Rent and Other Payments), **7** (Insurance), **8** (Indemnity), **10** (Maintenance, Repair and Cleaning), **12** (Use), **24** (Assignment, Subletting and Charging), **36** (Goods and Services Tax), **42** (Alcohol) and **43** (Minimise Nuisance to Neighbours & Event Management Plan) is an essential term of this Lease but this **clause 17.3** does not mean or imply that there are no other essential terms in this Lease.

17.4 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 covenants 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 effluxion 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 covenant set out in this **clause 17.4(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 17.4(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 effluxion 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.

18. Damage or destruction

18.1 Damage or destruction

If the Premises or any part of the Premises are totally or partially destroyed so as to require major rebuilding the Lessee -

- (a) may within two (2) months of the destruction or the damage terminate the Term with immediate effect by giving Notice to the Lessor; or

- (b) must within 2 years from the date of destruction or damage rebuild the Premises to its original state and condition to the satisfaction of the Lessor and in accordance with the requirements of all relevant authorities.

18.2 Insurance proceeds

- (1) If the Lessee terminates the Term in accordance with **clause 18.1** all insurance proceeds in respect of the Premises will be paid to and retained by the Lessor; or
- (2) If the Lessee rebuilds the Premises, all insurance proceeds will be applied to the rebuilding with any shortfall paid by the Lessee.

19. Option to renew

If the Lessee at least one month, but not earlier than 12 months, prior to the date for commencement of the Further Term gives the Lessor a Notice to grant the Further Term 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 Further Term at the Rent and on terms and conditions similar to this Lease other than this **clause 19** in respect of any Further Term previously taken or the subject of the present exercise and on such other terms and conditions as the Lessor may consider appropriate.

20. 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.

21. 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 fair wear and tear excepted.

22. Yield up the premises

22.1 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;

- (b) surrender to the Lessor all keys and security access devices and combination for locks providing an access to or within the Premises held by the Lessee whether or not provided by the Lessor.

22.2 Clause 22.1 to survive termination

The Lessee's obligation under **clause 22.1** will survive termination.

23. Removal of property from Premises

23.1 Remove 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.

23.2 Lessor can remove 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 that property.

24. Assignment, sub-letting and charging

24.1 No assignment or sub-letting without consent

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

24.2 Lessor's Consent to Assignment and Sub-letting

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

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

24.3 Where sublessee is a community group

If the proposed sublessee is a community group, whether or not a body corporate or unincorporated, the Lessor may not require a deed of sublease under **clause 24.2(c)**.

24.4 Consents of Assignee Supplementary

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.

24.5 Property Law Act 1969

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

24.6 Costs for assignment and sub-letting

If the Lessee wishes to assign or sub-let 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 or sublessee;
- (b) any consents required under this Lease or at law; and
- (c) all other matters relating to the proposed assignment or sub-letting,

whether or not the assignment or Sub-letting proceeds.

24.7 No mortgage or charge

The Lessee must not mortgage nor charge the Premises without the prior written consent of the Lessor and any other persons whose consent is required under the terms of this Lease or at law, such consent being capable of being subject to conditions as required by the persons giving consent.

25. Acts by agents

All acts and things which the Lessor is required to do under this Lease may be done by the Lessor, the CEO, an officer or the agent, solicitor, contractor or employee of the Lessor.

26. 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.

27. 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.

28. Notice

28.1 Form of delivery

A Notice to a Party must be in writing and may be given or made -

- (a) by delivery to the Party personally; or
- (b) by addressing it to the Party 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.

28.2 Service of notice

A Notice to a Party 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 28.1(b)**, 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 28.1(b)**, on the second business day following the date of posting of the Notice.

28.3 Signing of notice

A Notice to a Party 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;
- (c) if given by a local government, by the CEO;
- (d) if given by an association incorporated under the *Associations Incorporation Act 1987*, by any person authorised to do so by the board or committee of management of the association; or
- (e) by a solicitor or other agent of the individual, corporation, local government or association giving the Notice.

29. 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.

30. Disputes

30.1 Appointment of arbitrator

Except as otherwise provided any dispute arising out of this Lease is to be determined by a single arbitrator under the provisions of the *Commercial Arbitration Act 1985* and the Lessor and the Lessee may each be represented by a legal practitioner.

30.2 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.

31. Variation

This Lease may be varied only by deed executed by the parties subject to such consents as are required by this Lease or at law.

32. 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.

33. 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.

34. 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.

35. Waiver

35.1 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.

35.2 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.

36. Goods and services tax

36.1 Definitions

The following definitions apply for the purpose of this clause -

- (a) **Act** means the Commonwealth's *A New Tax System (Goods and Services Tax) Act 1999* and associated Acts and subsidiary legislation;
- (b) **Consideration** means the Amounts Payable or any other money payable to the Lessor under this Lease, but does not include the amount of the GST which may apply to the Amounts Payable or other money payable under the Act;

- (c) **GST** means a tax under the Act levied on a Supply including but not limited to the Amounts Payable or other money payable to the Lessor for goods or services or property or any other thing under this Lease; and
- (d) **Supply** means a good or service or any other thing supplied by the Lessor under this Lease and includes but is not limited to a grant of a right to possession of the Premises.

36.2 Lessee to pay GST

- (1) The Consideration will be increased by the amount of the GST, if any, which the Lessor is required under the Act to pay on any Supply made under this Lease.
- (2) The Lessee must pay any increase referred to at **clause 36.2(1)** whether it is the Lessee or any other person who takes the benefit of any Supply.
- (3) The Lessee must pay the amount of the GST to the Lessor at the same time and in the same manner as the Lessee is required to pay the Consideration under this Lease.

36.3 Consideration in Kind

If consideration in kind is accepted by the Lessor for any Supply made under this Lease, the GST amount payable to the Lessor under **clause 36.2(2)** in respect of the consideration in kind will be calculated by using the prevailing market value of the consideration in kind as determined by the Lessor.

- (1) No Contribution from Lessor

If the Lessee is required under this Lease to make any payment of money or give other consideration to a third party for outgoings, goods, services and benefits of any kind, the Lessee is not entitled to any contribution from the Lessor for any GST payable by it to any person.

- (2) Statement of GST paid is Conclusive

A written statement given to the Lessee by the Lessor of the amount of the GST that the Lessor pays or is liable to pay or account for is conclusive as between the Parties except in the case of an obvious error.

- (3) Tax Invoices

For each payment by the Lessee under this clause the Lessor agrees to promptly deliver to the Lessee, as required under the Act, tax invoices and adjustment notes in a form which complies with the Act, so as to enable the Lessee to claim input tax credits or decreasing adjustments for Supplies.

- (4) Reciprocity

If the Lessee furnishes any Supplies to the Lessor under this Lease, then the requirements set out in this clause with respect to the Lessee will apply to the Lessor with the necessary changes.

37. Commercial Tenancy Act

If at any time and for so long as the *Commercial Tenancy (Retail Shops) Agreements Act 1985* applies to this Lease and a provision of that Act conflicts with a provision of this Lease, then each conflicting provision of this Lease is deemed to be amended to the extent necessary to comply with that Act.

38. Caveat

38.1 No absolute caveat

The Lessee nor any person on behalf of the Lessee will, without the prior written consent of the Lessor, lodge any absolute caveat at Landgate against the Certificate of Title for the Land, to protect the interests of the Lessee under this Lease.

38.2 CEO & Lessor as attorney

In consideration of the Lessor having granted this Lease to the Lessee, the Lessee irrevocably appoints the Lessor and the CEO of the Lessor jointly and severally -

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

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

- (a) a withdrawal of any absolute caveat lodged by or on behalf of the Lessee;
- (b) a withdrawal of any caveat lodged by or on behalf of the Lessee and not withdrawn on Termination; and
- (c) a surrender of the estate granted by this Lease,

and the costs of withdrawing any caveat or surrendering this Lease (including the Lessor's solicitor's costs and registration fees) will be borne by the Lessee.

39. Indemnity and ratification

39.1 Ratification

The Lessee undertakes to ratify all the acts performed by or caused to be performed by the Lessor, its agent or attorney under **clause 38**.

39.2 Indemnity

The Lessee indemnifies the Lessor against -

- (a) any loss arising directly from any act done under **clause 38** and
- (b) all costs and expenses incurred in connection with the performance of any act by the attorney on behalf of the Lessee under **clause 38**.

40. Prior notice of proposal to change rules

The Lessee agrees that it will not change its rules of association under the Associations Incorporations Act 1987 without notifying the Lessor of its intention to make such a change prior to consideration of the required special resolution.

41. Provision of information

The Lessee agrees to provide to the Lessor -

- (a) a copy of the Lessee's audited annual statement of accounts for each year;
- (b) advice of any changes in its office holders during the Term; and
- (c) any information on the Lessee's membership and other information on the Lessee reasonably required by the Lessor.

42. Alcohol

42.1 Acknowledgement

The Lessor and the Lessee acknowledge that the Lessee holds a Special Facility Licence for the Premises.

42.2 No variation or further licence without consent

The Lessee COVENANTS AND AGREES that it shall not make an application for a further licence or permit under the Liquor Control Act 1988 for the Premises, or apply for an amendment to a licence or permit it has been granted, without first obtaining the written consent of the Lessor.

42.3 Liquor licence

The Lessee COVENANTS AND AGREES that if a licence or permit is granted under the Liquor Control Act 1988 for the Premises it must -

- (a) comply with any requirements attaching to the licence or permit at its cost and where any alteration is required to the Premises **clause 11** shall apply;
- (b) comply with the requirements of the Harm Minimisation Policy (as amended from time to time) of the Department of Racing, Gaming & Liquor, which will require, without limitation the following -
 - (i) the development and implementation of a House Management Policy and Code of Conduct (as defined by the Harm Minimisation Policy) for the Premises, and such policies must be displayed in a prominent position on the Premises at all times; and
 - (ii) the development and implementation of a Management Plan (as defined by the Harm Minimisation Policy) for the Premises.
- (c) provide a copy of the licence or permit (as well as a copy of any document referred to in the licence or permit, including without limitation a copy of the House Management Policy, Code of Conduct and Management Plan (as defined by the Harm Minimisation Policy)) to the Lessor as soon as practicable after the date of grant; and
- (d) indemnify and keep indemnified the Lessor from and against any breach of the Liquor Control Act 1988, Health (Food Hygiene) Regulations 1993, Liquor Control Regulations 1989 or the licence or permit or any conditions imposed thereupon for which it may be liable as the owner of the Premises.

43. Minimise nuisance to Neighbours & Event Management Plan

43.1 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, damage, nuisance and disturbance to surrounding residential premises and any person or vehicle in the immediate vicinity of the Premise.
- (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, damage nuisance and disturbance to surrounding residential premises and any person or vehicle in the immediate vicinity of the Premises.

43.2 Event Management Plan

- (1) The Lessee must prepare an Event Management Plan for the Premises for the approval by the Lessor, within three months of the Commencement Date.
- (2) The Event Management Plan must outline the proposed management of events at the Premises, and must include without limitation:
 - (a) traffic and pedestrian management;
 - (b) alcohol management; and
 - (c) noise management and the steps that will be undertaken by the Lessee at such events to minimise and prevent disruption, nuisance and disturbance to surrounding residential premises.
- (3) The Lessee must comply with, and implement, the terms of the approved Event Management Plan, as amended from time to time, particularly in relation to the minimisation and prevent of disruption, nuisance and disturbance to surrounding residential premises

44. Agreement to work for community well being

The Lessee agrees to work co-operatively with the Lessor to identify and implement ways in which the Lessee can contribute to the wellbeing of the local community, in particular to the wellbeing of residents of the City of Nedlands. The Lessee's intention, through its policy, is to allocate a portion of all funds it raises, to local charitable causes and projects, in particular those that have a direct benefit for residents of the City of Nedlands.

45. Access Roads and Public Access

45.1 Access Road and Cross-over

- (1) It is the sole responsibility of the Lessee to maintain and improve the access road to the Premises, and the crossover to the Premises from Alfred Road.
- (2) Any works necessary to maintain or improve the access road or cross-over will require the Lessor's prior approval in accordance with the requirements of **clause 11**.

45.2 Pedestrian Access

Notwithstanding any other provision on this Lease, the Lessee shall allow all persons pedestrian access to such parts of the Premises as are not usually used for the playing of golf, and to such

other parts of the Premises at such times as such access does not interfere with the lawful pursuits of the Lessee, provided that the Lessee may at any time prevent any persons from walking in or about improvements erected on the Premises, and on or about fairways and putting greens on the Premises for the purposes of ensuring the orderly play of golf.

46. Additional terms, covenants and conditions

Each of the terms, covenants and conditions (if any) specified in **Item 7** of the Schedule are part of this Lease and are binding on the Lessor and the Lessee as if incorporated into the body of this Lease.

Schedule

Item 1 Land and Premises

Land

Reserve 9299 - Lot 502 on Deposited Plan 62731 being the whole of the land comprised in Crown Land Title Volume 3156 Folio 200.

Premises

The whole of the Land together with all buildings, structures, alterations, additions and improvements on the Land or erected on the Land during the term.

Item 2 Term

21 years commencing on 1 June 2011 and expiring on 31 May 2032

Item 3 Further Term

21 years commencing on 1 June 2032 and expiring on 31 May 2053

Item 4 Commencement Date

1 June 2011

Item 5 Rent

One peppercorn per annum payable on the Lessor's demand.

Item 6 Permitted purpose

Golf Course, Golf Club and uses reasonably ancillary thereto.

Item 7 Additional terms and covenants

Nil.

Item 8 Public liability insurance

Twenty million dollars (\$20,000,000.00).

Signing page

EXECUTED

2011

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

Mayor

Chief Executive Officer

THE COMMON SEAL of **THE COTTESLOE GOLF CLUB INC** was hereunto affixed pursuant to the constitution of the Lessee in the presence of each of the undersigned each of whom hereby declares by the execution of this document that he or she holds the office in the Lessee indicated under his or her name-

Office Holder Sign

Name:

Address:

Office Held:

Office Holder Sign

Name:

Address:

Office Held:

MINISTER FOR LANDS CONSENT

D51.11 – Attachment 2

Location of proposed recreational path (Option 2 in blue front is the more popular proposal)



There are two possible locations for the recreation path as shown on the Map below. The yellow line indicates a straight path along the Golf Club boundary. The blue line is a meandering path utilizing some existing paths already located within the Club's grounds.

Do you have a preference? Please select one response.

- Straight path (Option One)
- Meandering path (Option Two)
- Neither

Do you support the development of a recreation path along the eastern boundary of Central or Golf Club including areas of public open space in the Town of Cambridge and the Town of Clarendon? Please select one response.

- Strongly support
- Support
- Do not support
- Strongly do not support
- Unsure

What is your age? Please select one response.

- 18-31 years
- 35-54 years
- 55+ years

Do you live in the City of Richmond? Please select one response.

- Yes
- No
- Unsure

What is your gender? Please select one response.

- Male
- Female

How many people in your household are aged 0-5 years? Please write number in box.

How many people in your household are aged 6-12 years? Please write number in box.

How many people in your household are aged 13-18 years? Please write number in box.

Do you own or rent the home you are living in?

- Own
- Rent
- Other (please state):

