

AGENDA NUMBER: 10.5
SUBJECT: Water Playground
LOCATION/ADDRESS: Recreation Precinct, Warren Road, Nannup
NAME OF APPLICANT: Mr Brian Puckey
FILE REFERENCE: REC 2A
AUTHOR/REPORTING OFFICER: Geoffrey Benson, Manager Development Services
DISCLOSURE OF INTEREST: Nil
DATE OF REPORT: 15 July 2011

Attachment: Photographs – Water Features by Design

BACKGROUND:

A Petition was presented to the Council at the 23 June 2011 Ordinary Council Meeting. The petition requested the Shire of Nannup in the proposed upgrade to the Recreation Precinct give priority to the installation of a children's water playground.

The petition consisted of 28 Sheets with 401 signatures, 366 of which were of local residents and 35 of which were non locals. There were also 17 letters of support from local businesses and other community organisations. The petition and letters of support are available for Councillors to view at the Council meeting.

COMMENT:

Currently these Water Parks are not covered by the Aquatic Facilities Guidelines, produces and enforced by the Department of health (DoH). However they will be in the near future as the DoH is in the process of reviewing the Guidelines with a view to the inclusion of these sort of facilities.

In the future a Water Park will be a Class Four (4) Aquatic Facility and will be required to operate in accordance with the Aquatic Facility Guidelines.

The Water Park is a zero depth water body, constructed as a flat slab of concrete graded and drained to a number of water collection points. The water is recycled by gravity feed back to an underground tank where the water is stored until it is pumped to a second tank and treated by chlorination, prior to being pumped out to the water features and used again.

The plans for the construction of the water park must be approved by the DoH prior to construction. The facility must be fenced to keep animals out. Lighting would be required for use of the facility at night. A bypass system would be required so that contaminated or excess water can be dumped to waste. Some training in the running of the equipment and water testing would be required for some staff so that they can check the operations of the water park a couple of times a day.

Due to the Public Petition regarding the inclusion of a Water Park in the recreation precinct, it is proposed that Council agree to a water park being included in the review of the recreation precinct, when this is carried out, during the 2011/2012 financial year.

STATUTORY ENVIRONMENT: Nil.

POLICY IMPLICATIONS: Nil.

FINANCIAL IMPLICATIONS:

A Water Park of approximately 12 metres by 12 metres with various pieces of equipment as shown in the attached pictures would cost in the order of \$450,000 to \$550,000.

STRATEGIC IMPLICATIONS:

The inclusion of a water park in the recreation precinct is not in Council's Forward Plan, therefore when the Forward Plan is reviewed consideration of the Recreation Centre Precinct Review should be taken in to account.

VOTING REQUIREMENTS: Simple Majority.

RECOMMENDATION:

That Council accept the public petition and agree to include the installation of a children's water park as a part of the review of the Nannup Recreation Precinct.

8654 PINKERTON/DEAN

That Council accept the public petition and agree to include the installation of a children's water park as a part of the review of the Nannup Recreation Precinct.

CARRIED 5/0







AGENDA NUMBER: 10.6
SUBJECT: Vegetation Buffer, Brockman Highway
LOCATION/ADDRESS: Lot 23, Brockman Highway, Nannup
NAME OF APPLICANT: Askino Pty. Ltd.
FILE REFERENCE: A475
AUTHOR/REPORTING OFFICER: Geoffrey Benson, Manager Development Services
DISCLOSURE OF INTEREST: Nil
DATE OF REPORT: 15 July 2011

Attachments: 1. Letter – Trevor Hine
2. WAPC Approval #133180 - WAPC
3. Plan of Subdivision – Peter D Webb and Associates

BACKGROUND:

An application has been received from Mr Hine, on behalf of Askino Pty. Ltd., requesting a variation to the location of the vegetation buffer for the Subdivision on Lot 23, Brockman highway, Nannup.

Condition number six (6) of the attached WAPC Approval #133180, requires the subdivider to implement the approved Visual Impact Assessment and Management Plan, within those areas identified on the applicable Subdivision Guide Plan as being “revegetation buffer”

The Plan of Subdivision for stages 2 and 3, as attached and marked in orange, indicates that a 3 metre wide revegetation buffer is to be planted on the private lots to be created, along the Brockman Highway alignment of each lot.

COMMENT:

As the letter from the applicant explains, for various reasons the revegetation buffer has been planted in the Road Reserve of the Brockman Highway, along the alignment of the lots shown in the attached plan of subdivision.

Rather than requiring the applicant to replant this revegetation buffer, staff are proposing to approve the application for a variation to the location of the buffer plantings, provided that the buffer has been satisfactorily established and meets the other requirements of the WAPC approval.

STATUTORY ENVIRONMENT: Planning and Development Act 2005.

POLICY IMPLICATIONS: Nil.

FINANCIAL IMPLICATIONS:

Include maintenance costs in road maintenance budget.

STRATEGIC IMPLICATIONS: Nil.

VOTING REQUIREMENTS: Simple Majority.

RECOMMENDATION:

That Council agree that the location of the revegetation buffer, as required by the WAPC in condition six (6) of approval #133180, be varied, such that it is located along the same alignment but within the Brockman Highway Road Reserve.

8655 GILBERT/PINKERTON

That Council agree that the location of the revegetation buffer, as required by the WAPC in condition six (6) of approval #133180, be varied, such that it is located along the same alignment but within the Brockman Highway Road Reserve.

CARRIED 5/0

A475

Geoffrey Benson

10th June 2011Development Officer
Shire of Nannup

Dear Geoffrey,

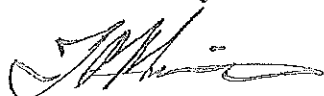
I respectfully request that the location of the existing vegetation buffer as already planted along Brockman Highway be accepted as fulfilling our obligation under the WAPC requirements for subdivision.

Whilst it is acknowledged that the buffer as planted is not on the privately owned land and instead is on the verge area, this was however the direction received and enacted upon after attending a Streetscape Committee meeting and adhering to the direction of that meeting. The said meeting was convened by Miss Elizabeth Denniss and attended by at least one other Council employee.

The reasoning put to me at that time was that should the potential purchasers of the lots be so inclined they could remove, destroy the plants or that they could be subjected to a variety of pruning methods, which would possibly detract from the overall aesthetics. At the time this seemed to be a very sound idea and as such was enacted. Advice received since that time, is that the Streetscape Committee had no such right or power to issue such a directive.

All that I can say we acted in the best long term interest of the Shire, and were totally unaware that the Streetscape Committee had no power to issue directions without the matter going through the full and correct channels. As a point of interest, at the same meeting the Committee was briefed and to my understanding, delegated the authority to select the type and spacing of street trees. From our point of view it appeared quite logical and natural that the Committee permitted to choose the type and spacing of the street trees would also have the authority to alter the position of the vegetation buffer.

Yours faithfully

Trevor Hine
Askino Pty Ltd
25 Carrington St
Nedlands 2009

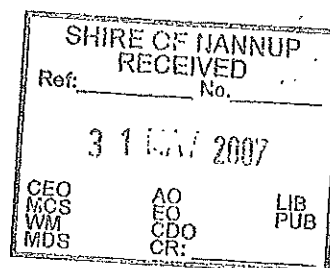


29 MAY 07

AA75 v.3.

Your Ref : 133180
Enquiries : Matthew Cuthbert

Chief Executive Officer
Shire of Nannup
P O Box 11
NANNUP WA 6275



Approval Subject To Condition(s) Freehold (Green Title) Subdivision

Application No : 133180

Planning and Development Act 2005

Applicant	: Peter D Webb & Associates P O Box 920 SUBIACO WA 6904
Owner	: Askino Pty Ltd 25 Carrington Street NEDLANDS WA 6009 and Askino Pty Ltd 25 Carrington Street NEDLANDS WA 6009
Application Receipt	: 16 November 2006

Lot number	: 23
Location	:
Diagram/Plan	: 20579
C/T Volume/Folio	: 2032/427
Street Address	: Lot 23 , Nannup
Local Government	: Shire of Nannup

The Western Australian Planning Commission has considered the application referred to and is prepared to endorse a deposited plan in accordance with the plan date-stamped 16 November 2006 once the condition(s) set out have been fulfilled.

This decision is valid for four years from the date of this advice, which includes the lodgement of the deposited plan within this period.

The deposited plan for this approval and all required written advice confirming that the requirement(s) outlined in the condition(s) have been fulfilled must be submitted by 29 May 2011 or this approval no longer will remain valid.

Reconsideration - 28 days

Under section 151(1) of the *Planning and Development Act 2005*, the applicant/owner may, within 28 days from the date of this decision, make a written request to the WAPC to reconsider any condition(s) imposed in its decision. One of the matters to which the WAPC will have regard in reconsideration of its decision is whether there is compelling evidence by way of additional information or justification from the applicant/owner to warrant a reconsideration of the decision. A request for reconsideration is to be submitted to the WAPC on a Form 3A with appropriate fees. An application for reconsideration may be submitted to the WAPC prior to submission of an application for review. Form 3A and a schedule of fees are available on the WAPC website: <http://www.wapc.wa.gov.au>

Right to apply for a review - 28 days

Should the applicant/owner be aggrieved by this decision, there is a right to apply for a review under Part 14 of the *Planning and Development Act 2005*. The application for review must be submitted in accordance with part 2 of the *State Administrative Tribunal Rules 2004* and should be lodged within 28 days of the date of this decision to: the State Administrative Tribunal, 12 St Georges Terrace, Perth, WA 6000. It is recommended that you contact the tribunal for further details: telephone 9219 3111 or go to its website: <http://www.sat.justice.wa.gov.au>

Deposited plan

The deposited plan is to be submitted to the Department of Land Information (DLI) for certification. Once certified, DLI will forward it to the WAPC. In addition, the applicant/owner is responsible for submission of a Form 1C with appropriate fees to the WAPC requesting endorsement of the deposited plan. A copy of the deposited plan with confirmation of submission to DLI is to be submitted with all required written advice confirming compliance with any condition(s) from the nominated agency/authority or Local Government. Form 1C and a schedule of fees are available on the WAPC website: <http://www.wapc.wa.gov.au>

Condition(s)

The WAPC is prepared to endorse a deposited plan in accordance with the plan submitted once the condition(s) set out have been fulfilled.

The condition(s) of this approval are to be fulfilled to the satisfaction of the WAPC.

The condition(s) must be fulfilled before submission of a copy of the deposited plan for endorsement.



The agency/authority or Local Government noted in brackets at the end of the condition(s) identify the body responsible for providing written advice confirming that the WAPC's requirement(s) outlined in the condition(s) have been fulfilled. The written advice of the agency/authority or Local Government is to be obtained by the applicant/owner. When the written advice of each identified agency/authority or Local Government has been obtained, it should be submitted to the WAPC with a Form 1C and appropriate fees and a copy of the deposited plan.

If there is no agency/authority or Local Government noted in brackets at the end of the condition(s), a written request for confirmation that the requirement(s) outlined in the condition(s) have been fulfilled should be submitted to the WAPC, prior to lodgement of the deposited plan for endorsement.

Prior to the commencement of any site works or the implementation of any condition(s) in any other way, the applicant/owner is to liaise with the nominated agency/authority or local government on the requirement(s) it considers necessary to fulfil the condition(s).

The applicant/owner is to make reasonable enquiry to the nominated agency/authority or Local Government to obtain confirmation that the requirement(s) of the condition(s) have been fulfilled. This may include the provision of supplementary information. In the event that the nominated agency/authority or Local Government will not provide its written confirmation following reasonable enquiry, the applicant/owner then may approach the WAPC for confirmation that the condition(s) have been fulfilled.

In approaching the WAPC, the applicant/owner is to provide all necessary information, including proof of reasonable enquiry to the nominated agency/authority or Local Government.

The condition(s) of this approval, with accompanying advice, are:

CONDITION(S):

1. Those lots not fronting an existing road being provided with frontage to a constructed road(s) connected by a constructed road(s) to the local road system and such road(s) being constructed and drained at the applicant/owner's cost. As an alternative the WAPC is prepared to accept the applicant/owner paying to the Local Government the cost of such road works as estimated by the Local Government subject to the Local Government providing formal assurance to the WAPC confirming that the works will be completed within a reasonable period as agreed by the WAPC. (Local Government)
2. Arrangements being made with the Local Government for the upgrading and/or construction of the southern portion of Dunnet Road, in accordance with the applicable Subdivision Guide Plan. (Local Government)
3. The cul-de-sac heads being designed and constructed to the satisfaction of the Local Government. (Local Government)

4. The subdivider designing and constructing dual use paths within the Stage 2 and 3 subdivision area, which link to the existing footpath network. (Local Government)
5. The subdivider making a contribution towards the provision of a dual use path to be located within the Dunnet Road, road reserve. (Local Government)
6. The subdivider to implement the approved Visual Impact Assessment and Management Plan, within those areas identified on the applicable Subdivision Guide Plan as being "revegetation buffer". (Local Government)
7. Verge planting as shown on the subdivision sketch being undertaken. (Local Government)
8. The land being graded and stabilised. (Local Government)
9. The land being filled and/or drained at the subdivider's cost to the satisfaction of the Western Australian Planning Commission and any easements and/or reserves necessary for the implementation thereof, being granted free of cost. (Local Government)
10. A detailed plan demonstrating the location and capacity of fire emergency infrastructure, including hydrants, is to be prepared and implemented to the specifications of the Water Corporation and the Fire and Emergency Services Authority. (FESA)
11. Suitable arrangements being made with the Water Corporation so that provision of a suitable water supply service will be available to lot(s) shown on the approved plan of subdivision. (Water Corporation)
12. Suitable arrangements being made with the Water Corporation so that provision of a sewerage service will be available to the lot/s shown on the approved plan of subdivision. (Water Corporation)
13. The provision of easements for existing or future water, sewerage and/or drainage infrastructure as may be required by the Water Corporation being granted free of cost to that body. (Water Corporation)
14. Suitable arrangements being made with Western Power for the provision of an underground electricity supply service to the lot(s) shown on the approved plan of subdivision. (Western Power)
15. The transfer of land as a Crown Reserve, free of cost to Western Power for the provision of electricity supply infrastructure. (Western Power)
16. The battleaxe accessway(s) being constructed and drained at the applicant/owner's cost to the specifications of the Local Government. (Local Government)

17. Lot 139 being redesigned such that access is available from the internal subdivisional road, with the battleaxe leg as shown on the plan submitted, remaining part of the 'balance of title' lot. (Local Government)
18. A PAW linking the stage 3 subdivisional road with Lot 1 Dunnett Road being shown on the Deposited Plan and constructed. (Local Government)
19. Retaining walls being constructed and located so as to minimise visual impact when viewed from Brockman Hwy. (Local Government)
20. A Detailed Area Plan being prepared and adopted, for lots abutting the POS, in order to guide the orientation and building design principles and requirements for fencing, to be imposed at building licence stage. (Local Government)
21. A cash in lieu contribution equivalent to 10% of the 'urban' zoned land which forms (has formed) part of Lot 23 (with a credit to be provided for the POS Reserve previously provided) being provided in accordance with Section 153 of the *Planning and Development Act 2005*. (Local Government)
22. Temporary cul-de-sac head being provided to the satisfaction of the Western Australian Planning Commission at the termination of the main entrance road from Brockman Highway. (Local Government)
23. The PAW linking the road reserve with the existing POS being widened to 6m. (Local Government)

ADVICE:

- i) Water Corporation policy and practice for the locality may involve the provision of land (for plant and works), easements and/or the payment of financial contributions towards infrastructure. You are advised to contact the Water Corporation.
- ii) Western Power provides only one point of electricity supply per freehold (green title) lot and requires that any existing overhead consumer service is required to be converted to underground from the lot boundary.
- iii) If an existing aerial electricity cable servicing the land the subject of this approval crosses over a proposed lot boundary as denoted on the approved plan of subdivision satisfactory arrangements will need to be made for the removal and relocation of that cable.
- iv) The Department of Indigenous Affairs advises that prior to any proposed development/activity, so that no site is damaged or altered (which would result in a breach of Section 17 of the Aboriginal Heritage Act of WA 1972) it is recommended that suitably qualified consultants be engaged to conduct ethnographic and archaeological surveys of the area.



50^{spatial planning}
years

The subdivider is advised to brief all subdivision contractors of their legal obligations with respect to the Aboriginal Heritage Act of WA (1972) prior to construction work. The subdivider is advised to contact the Department of Indigenous Affairs (Albany Office) for further information.

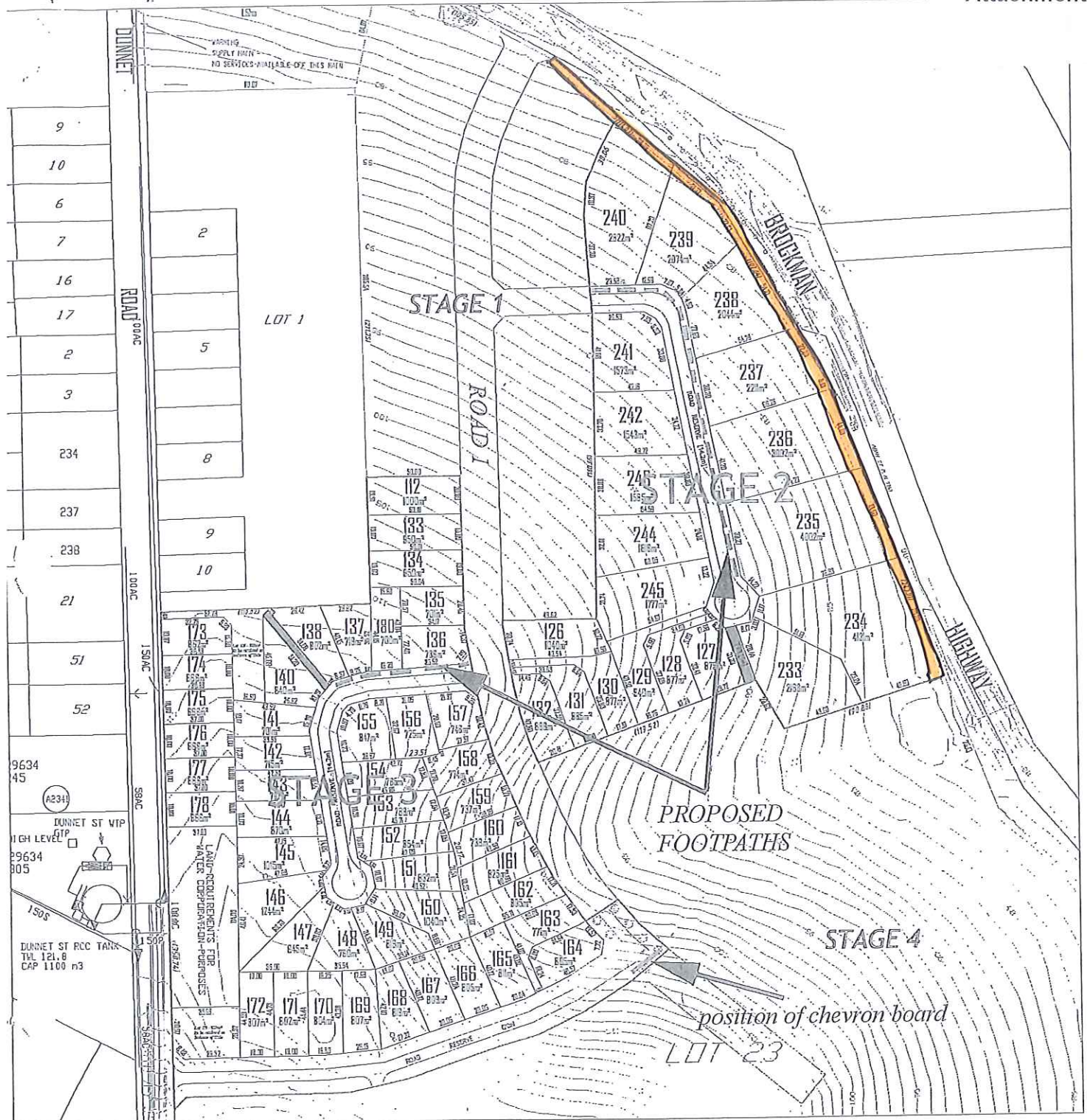
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Moshe Gilovitz

Secretary

Western Australian Planning Commission

29 May 2007



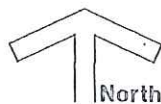
LEGEND

- subject property
- vegetation buffer 3m [consisting of shrubs and trees]
- revegetation - avenue of trees
- footpath

Note: All lot areas and dimensions are subject to survey.
 Source: Cadastre information plotted from Water Corporation data.
 Contour information prepared by Margaret River Survey Co.

PLAN OF SUBDIVISION STAGES 2 and 3 LOT 23 BROCKMAN HIGHWAY NANNUP

SCALE: 1: 2000
 DATE: June 2007
 PLAN NO: P0486-07 [S2&3]



PETER D WEBB AND ASSOCIATES

 CONSULTANTS IN TOWN PLANNING & URBAN DESIGN
 PO BOX 920 SUBIACO WA 6904 TEL: 9388 7111
 UNIT 2/19 YORK STREET, SUBIACO FAX: 9388 7240

ATTACHMENT

AGENDA NUMBER: 10.7
SUBJECT: Heritage Policy LPP 019
LOCATION/ADDRESS:
NAME OF APPLICANT:
FILE REFERENCE: LPP019
AUTHOR: Reharni Puckey, Planning Administration Officer
REPORTING OFFICER: Geoffrey Benson, Manager of Development Services
DISCLOSURE OF INTEREST:
DATE OF REPORT: 13 July 2011

Attachment: Proposed Heritage Conservation Policy

BACKGROUND:

The current Municipal Inventory in place was updated in February 1996.

Council currently do not have a Heritage Policy in place to conserve and protect places and areas of heritage significance within the Shire of Nannup.

COMMENT:

The purpose of this Policy is to:

1. Set out development control principles for places on the Heritage List established pursuant to the Scheme, and the Shire of Nannup Local Government Inventory;
2. Provide further direction on the development control principles contained within *State Planning Policy 3.5 Historic Heritage Conservation (2007)*;
3. Provide improved certainty to landowners and the community about the development control principles for heritage conservation and protection.

Once Heritage Policy LPP 019 is adopted a review of the Municipal Inventory will be carried out.

As part of the review of the Municipal Inventory the Heritage Council has recommended that a Heritage Conservation Policy be adopted. The policy is to inform owners of properties either on the current inventory or to be included in the reviewed inventory of their obligations should they wish to alter or renovate their buildings.

STATUTORY ENVIRONMENT: Heritage of Western Australia Act 1990

POLICY IMPLICATIONS: Nil.

FINANCIAL IMPLICATIONS:

The cost of advertising for public comment will be up to \$250.00 for two consecutive weeks.

STRATEGIC IMPLICATIONS:

A review of the Municipal Inventory is included in the Council's Forward Plan.

VOTING REQUIREMENTS: Simple Majority.

RECOMMENDATION:

That Council resolve to prepare a planning policy to conserve and protect heritage places and areas of significance within the Shire of Nannup.

8656 PINKERTON/CAMARRI

That Council resolve to prepare a planning policy to conserve and protect heritage places and areas of significance within the Shire of Nannup.

CARRIED 5/0

Policy Number:	LPP 019
Policy Type:	Local Planning Policy
Policy Name:	Heritage Conservation
Policy Owner:	Manager Development Services

Authority: Shire of Nannup Local Planning Scheme No.3 (LPS No3)
Heritage of Western Australia Act 1990

BACKGROUND

The Shire of Nannup Local Government Inventory ("LGI") identifies places within the Shire of Nannup that have cultural heritage significance. The compilation of a Local Government Inventory is a requirement of Clause 45 of the *Heritage of Western Australia Act 1990*.

Those places with the greatest heritage significance have also been identified for inclusion on the Heritage List pursuant to the Shire of Nannup Local Planning Scheme No.3 ("the Scheme").

OBJECTIVES

The purpose of this Policy is to:

1. Set out development control principles for places on the Heritage List established pursuant to the Scheme, and the Shire of Nannup Local Government Inventory;
2. Provide further direction on the development control principles contained within *State Planning Policy 3.5 Historic Heritage Conservation (2007)*;
3. Provide improved certainty to landowners and the community about the development control principles for heritage conservation and protection

The key objectives of this Policy are:

1. To ensure that works, including conservation, restoration, alterations, additions, changes of use and new development, respect the cultural heritage significance associated with places listed on the Heritage list.
2. To encourage opportunities for interpretation where it can enhance understanding and enjoyment of heritage places, and strengthen the relationships between the community and its heritage.
3. To conserve and protect places and areas of heritage significance within the Shire of Nannup.
4. To provide information that assists property owners and/or managers to understand and appreciate the cultural heritage significance of heritage properties and areas.

APPLICATION

This policy applies to places entered on the Heritage List pursuant to the Scheme, and places on the Shire of Nannup LGI where specified.

DEFINITIONS

Adaptation

Means the modification of a place to suit proposed compatible use or uses.

Archival Record means a document containing drawings, photographs and written information prepared in order to record the state of a place at a given time, usually prior to demolition or major change. The Heritage Council of Western Australia (HCWA) has prepared standards for archival recording.

Burra Charter means the Australian ICOMOS Charter for the conservation of places of cultural heritage significance. The charter has been generally accepted as the standard for heritage practitioners in Australia.

Conservation means all the processes of looking after a place so as to retain its cultural heritage significance. It includes maintenance and may, according to circumstances, include preservation, restoration, reconstruction and adaptation. Conservation will commonly involve a combination of more than one of these.

Conservation Plan means a document that details how to identify and look after the significant cultural values of a place. Its preparation involves a systematic way of considering, recording and monitoring actions and decisions relating to all aspects of managing a place. The Heritage Council of WA provides guidelines for the preparation of conservation plans to ensure that all important matters are considered.

Cultural Heritage Significance means the aesthetic, historic, social and scientific values of a place for past, present or future generations.

Heritage Area means an area of land that has identified cultural heritage significance and character which is desirable to conserve.

Heritage Agreement means a contract under section 29 of the *Heritage of Western Australia Act 1990* which is undertaken on a voluntary basis by the owners of a heritage place. The agreement binds current and successive owners to a set of conservation conditions and may provide compensating benefits in some circumstances. Essentially, the purpose of a Heritage Agreement is to secure the long-term conservation of a heritage place. A Heritage Agreement attaches to the land and is confirmed through a Memorial placed on the land title.

Heritage Assessment means a systematic assessment that describes a place and its setting and states its significant heritage values in terms of the criteria adopted by the Heritage Council of WA. These criteria are the aesthetic, historic, social and scientific values of the place.

Heritage Impact Statement means a report that evaluates the likely impact of proposed development on the significance of a heritage place and its setting, or on the heritage area within which it is situated. The report may also outline measures,

which any detrimental impact may be minimised. The Heritage Impact Statement should address:

- How will the proposed works affect the cultural heritage significance of the place?
- What alternatives have been considered to ameliorate any adverse impacts?
- Will the proposal result in any heritage conservation benefits that may offset any adverse impacts?

Note: The Heritage Council of WA has produced a guide and form for the preparation of Heritage Impact Statements. This information is available on the Heritage Council's website.

Heritage List means a list of places that has been adopted under the Local Planning Scheme.

Heritage Place means a building, structure, site, area of land or other physical element valued for its cultural (or historic) heritage significance, together with associated contents and surrounds.

Interpretation means all the ways of presenting the significance of a heritage place. Interpretation can include the use of colour, lighting, furnishings, historic material or signage or a combination of these to tell the story of the building or place.

Interpretation Plan is a document that explains the ways in which a place could be interpreted. Interpretation Plans should aim to increase both our understanding and our enjoyment of heritage places.

Local Heritage Contract means a contract between the owners of a heritage place and the local government undertaken on a voluntary basis by the owners in return for planning concessions or a rate rebate agreed to by the local government. The agreement binds the current owner to a set of conservation conditions in return for identified and agreed compensating benefits.

Significant Fabric means all the physical material of the place including components, fixtures, contents, and objects that contribute to the heritage significance of the place.

Significant Trees means trees that have been identified on the Shire of Nannup LGI for their heritage significance, which includes characteristics such as outstanding aesthetic significance, horticultural value, historic value, and/or unique location and context.

Structural Condition Assessment means a report prepared by a qualified structural engineer that assesses the structural state of a building or element.

The Heritage of Western Australia Act 1990 is the statutory framework for the identification and conservation of places which have significance to the cultural heritage of Western Australia. The Act also describes the composition and powers of the Heritage Council of Western Australia (HCWA) and requires Local Governments to prepare Municipal Heritage Inventories.

1.0 Development Control Principles for Places on the Heritage List (Management Category A and B).

Places on the Shire of Nannup Heritage List are those of highest heritage value, and the following policy provisions shall apply to these places:

1.1 External Alterations and Extensions

1.1.1 General Provisions

- a) Alterations and additions to a heritage place should not detract from the heritage significance and should be compatible with the siting, scale, architectural style and form, materials, colours and external finishes of the place.
- b) Alterations and additions to a heritage place should involve the least possible change to the significant fabric.
- c) Alterations and additions should sit well within the original fabric rather than simply copying it, and new work that mimics the original should be avoided.
- d) New work should be easily distinguishable from the original fabric, except where the proposal constitutes restoration work of original fabric.
- e) Alterations and additions should respect the original roof pitch and roof form.
- f) Alterations and additions should not obscure or alter elements that contribute to the heritage significance of the place.
- g) Walls and fences in the front setback should be complementary to the heritage place in terms of materials, finishes, textures and colours and appropriate to its architectural style.
- h) Where there is a Conservation Plan for a heritage place all proposed development should address the policies contained within the Conservation Plan.
- i) Substantial modifications to the place may require an archival record (as a condition of development approval), to be prepared in accordance with the Heritage Council of WA guidelines.

1.1.2 Upper Storey Additions and Modifications

- a) Upper storey additions should generally be sited and massed so they are visually recessive from the place's main frontage to ensure that the scale of the heritage place is the dominant element in the streetscape. On corner sites the visibility and impact of additions will be assessed from both streets.
- b) Upper storey additions or modifications should be designed to minimise the impact on the original roofline, and to retain an appreciation for the original form of the building.

1.1.3 Openings and Doors

- a) New openings in the principal elevation (addressing the primary street) that will be visible from the street should be avoided. If openings are proposed they should be proportional in size relative to original openings of the heritage place and consistent in terms of materials, finishes, textures and colours (appropriate to its architectural style).

1.1.4 Landscaping Elements

- a) Where landscape elements such as plantings or hard landscape treatments form part of the heritage significance of a place, or are important to its setting, all proposed extensions should be designed and sited to minimise the impact on these elements.
- b) All new landscaping should be well considered and respectful to the heritage significance of the place.

1.2 Internal Alterations

- a) Alterations to the interior of a heritage place to suit a current and compatible future use will be supported where the proposal does not compromise the heritage significance of the place, as follows:
 - i. Ideally the original internal layout should be retained, however where original internal walls or features are proposed to be removed or modified these changes should be managed to allow evidence of the original layout to be read (for example by retention of wall "nibs" as evidence of the location of a former wall), to retain a sense of the original use of the space(s).
 - ii. Where new internal finishes are proposed there should be careful consideration given to retaining evidence of original materials and finishes.
- b) Internal alterations that are reversible without compromising the heritage significance of the place will generally be acceptable, and the onus is on the applicant to demonstrate this.

1.3 Change of Use

- a) Adaptive reuse of heritage places may be supported provided:
 - the proposed use(s) will not impact negatively on the amenity of the surrounding area;
 - any required modifications do not substantially detract from the heritage significance of the place and are consistent with the provisions of this policy; and
 - the use is consistent with the Scheme and other relevant Council policies.

- b) Where there is a Conservation Plan for a heritage place any proposed new use(s) will be assessed on the basis of the recommendations contained within the Conservation Plan.
- c) Where possible, evidence of the original use of a building should be retained, and in some circumstances interpretation may be appropriate to help understand the former use where it is not readily apparent (refer to 7.0).

1.4 New Buildings/Structures

New buildings, structures and other features that are located within the curtilage of a heritage place have the potential to impact on the heritage significance. Accordingly the following provisions are applicable:

- a) Any proposed buildings, structures or hard standing (including car parking) should not detract from the setting of the heritage place.
- b) Where new buildings or structures are proposed and they are visible from the street and/or other public places, they should take into account the character of the existing streetscape by having regard to the rhythm, orientation, setbacks, height, and proportions of existing buildings.
- c) Where possible existing views of a heritage building(s) from the street should be preserved to acknowledge the contribution heritage places make to the streetscape.
- d) New buildings or structures should be designed and located in a way that does not overwhelm or dominate the heritage building(s) which should remain the dominant building(s) on the site, and they should be understated relative to the existing heritage building(s).
- e) Wherever possible, new buildings, structures or hard standing areas (including car parking) should be designed and sited to avoid having a negative impact on original mature landscaping, garden areas, driveways and other landscaping features where they are considered to form part of the setting of the heritage place, and/or contribute to the heritage significance.
- f) New buildings should not directly copy the style and design of the heritage buildings, and should not attempt to look like old buildings. Rather they should complement the original fabric and design characteristics of the heritage building(s) in terms of its bulk, style, materials, colour scheme and form, which could include contrasting, contemporary building(s).
- g) Where there is a Conservation Plan for a heritage place any proposals for new buildings, structures or hard standing areas (including car parking) should address the policies contained within the Conservation Plan.

1.5 Demolition

- a) Demolition of a whole building on the Heritage List will generally not be supported.
- b) Consideration of a demolition proposal for a place on the Heritage List will be based on the following:
 - The significance of the place;
 - The feasibility of restoring or adapting it, or incorporating it into new development; and
 - The extent to which the community would benefit from the proposed redevelopment.
- c) Where structural failure is cited as justification for demolition the onus rests with the applicant to provide a clear justification for demolition, and evidence should be provided from a registered structural engineer that the structural integrity of the building has failed to the point where it cannot be rectified without the removal of a majority of its significant fabric and/or prohibitive costs.
- d) Partial demolition of a building on the Heritage List may be supported provided that:
 - The part(s) to be demolished do not contribute to the cultural heritage significance of the place;
 - The proposed demolition will not have a negative impact on the significant fabric of the place; and
 - Sufficient fabric is retained to ensure structural integrity during and after development works.
- e) If demolition of a heritage place is considered appropriate an archival record will be required as a condition of development approval, to be prepared in accordance with the Heritage Council of WA guidelines.
- f) Demolition of ancillary buildings or structures that do not relate to the heritage significance of the place will generally be acceptable.
- g) Where full or partial demolition is supported this may be subject to appropriate interpretation to acknowledge the cultural heritage significance of the heritage place (refer to 7.0).

1.6 Relocation of Buildings / Structures

- a) In the majority of cases the physical location of a place is an important part of its cultural heritage significance, therefore the relocation of a building or other component of a place on the Heritage List is generally unacceptable except in the following circumstances:

- This is the sole practical means of ensuring its survival;
- It can be demonstrated that these components of the place already have a history of relocation, or were designed to be readily relocated;
- Its relocation forms part of a proposal for a new use or development on the site, and is fundamental to retention of the place on the same site.

1.7 Minor Works, Repairs and Restoration

Pursuant to the Scheme all development affecting a place on the Heritage List requires development approval, and this includes minor works such as replacement of roofing, gutters, downpipes. This is to ensure that these works do not have a negative impact on the heritage significance of the place, and accordingly the following policy provisions apply:

- a) Where there is a Conservation Plan for a heritage place all restoration works will be guided by the Conservation Plan.
- b) Where proposals include the replacement of materials it should be “like for like”, matching the original as closely as possible with regard to the materials, colours, and textures.
- c) External repainting should match the original paint colours wherever possible, or should reflect a complementary palette of colours from the same era.
- d) Replacement of materials should take into consideration the original method of fixing.
- e) Where restoration is being carried out, works should be based on historic photographs, plans or other material that shows the former state of the building or place.
- f) Routine maintenance does not require development approval. This includes the following:
 - Cleaning gutters and downpipes (as opposed to replacing deteriorated gutters and downpipes).
 - Repainting previously painted surfaces in the same colour scheme.
 - Refixing existing loose roof sheeting using a “like for like” method of fixing (as opposed to installing new or different roof sheeting), with the exception of emergency repairs that are temporary in nature.

If there are any questions regarding what constitutes routine maintenance, the Shire’s Planning services should be consulted.

2.0 Development Control Principles for Management Category C Places

The following policy provisions apply to places included on the LGI and identified as management category C (Significant).

2.1 Alterations, Extensions or Changes of Use

- a) Where alterations or extensions are proposed consideration should be given to making these modifications sympathetic to the heritage values of the place, and retention of original fabric is encouraged where feasible.
- b) Substantial modifications to the place may require an archival record (as a condition of development approval), and the archival record should be prepared in accordance with the Heritage Council of WA guidelines.

2.2 Demolition

- a) Retention of the building or place is encouraged, however demolition may be supported, subject to the consideration of cultural heritage significance together with other relevant planning issues.
- b) An archival record will be required as a condition of development approval for demolition, and the archival record should be prepared in accordance with the Heritage Council of WA guidelines.
- c) Consideration should be given to the inclusion of interpretation of the heritage place (refer to 7.0).

3.0 Development Control Principles for Management Category D Places

The following policy provisions apply to places included on the LGI and identified as management category D (Some significance).

3.1 Demolition

- a) Retention of the building or place is encouraged, however demolition may be supported subject to the preparation of an archival record which will be required as a condition of development approval for demolition. The archival record should be prepared in accordance with the Heritage Council of WA guidelines.

4.0 Significant Trees

Under the Scheme planning approval is required prior to the removal, destruction of and/or interference with any tree included on the Local Government Inventory Significant Tree list, and as such the following policy provisions apply:

- a) Trees identified on the LGI Significant Tree List may be pruned as part of routine maintenance in accordance with the International Society of Arboriculture standards, provided the pruning would not reduce the tree's height or crown or diameter, alter the trees general appearance, increase the tree's susceptibility to insects or disease, or otherwise increase its risk of mortality.

- b) The removal of significant trees will only be supported where it is necessary to protect public safety or private or public property from imminent danger, and the onus is on the applicant to demonstrate that this is the case. This may require the submission of a report prepared by a suitably qualified arborist.
- c) Proposals for substantial pruning to a significant tree may require the submission of an arborist report prepared by a suitably qualified consultant demonstrating that the proposal is acceptable.

5.0 Structure Plans and Subdivision Proposals

- a) Subdivision proposals for heritage places should be designed to retain an appropriate setting for heritage buildings. This includes the retention of original garden areas, landscaping features or other features that are considered essential to the setting of the heritage place or its heritage significance.
- b) Subdivision proposals that indicate the required demolition, partial demolition or modification to a place on the Heritage List or State Register of heritage places will not be supported without a Heritage Impact Statement accompanying the subdivision proposal. This is to be prepared in accordance with the Heritage Council of WA guidelines.
- c) Where a structure plan is proposed for land that includes a heritage place(s) the structure plan should demonstrate how matters of heritage significance will be addressed.
- d) Where a structure plan area includes more than one heritage place, or includes a heritage place that comprises a number of buildings or features the Shire may require the preparation of an overall heritage strategy to be included with the structure plan report, demonstrating how heritage issues will be addressed, outlining principles to be addressed in later planning stages, and including recommendations for interpretation (refer to 7.0).
- e) Consideration should also be given to how future development of the subdivided land is likely to affect the identified significance of the heritage place, particularly its setting.

6.0 Applications for Planning Approval for Places on the Heritage List

In addition to the information required by the Scheme, the following provides a guide for accompanying material and information that may be required to be submitted with planning applications for places on the Heritage List:

- a) For larger and more complex development proposals, a Heritage Impact Statement should be submitted that identifies how the cultural heritage significance of the place will be affected by the proposed works or future use. The statement should be prepared by a heritage professional, and should be consistent with the Heritage Council of WA's guidelines.

- b) If a proposal affects a place that is entered on the State Register of Heritage Places the Local Government may require the preparation of a Conservation Plan, which is to be prepared by a qualified heritage professional, and consistent with the Heritage Council of WA's guidelines.
- c) Where proposed extensions and alterations involve modifications to landscape elements of a place that form part of its heritage significance or are important to its setting a landscaping plan may be required, demonstrating how the impact will be managed, and this should be included in the heritage impact statement where relevant.
- d) Where a Conservation Plan exists for a Heritage place, the development application should include information regarding how the conservation policies and any urgent works identified in the Conservation Plan will be addressed.
- e) Where structural failure is cited as justification for demolition of a place on the Heritage List the onus rests with the applicant to provide a clear justification for demolition, and evidence should be provided from a registered structural engineer that the structural integrity of the building has failed to the point where it cannot be rectified without the removal of a majority of its significant fabric and/or prohibitive costs.

7.0 Interpretation and Interpretation Plans

Interpretation can enhance understanding and enjoyment of heritage places, and it can strengthen and sustain the relationships between the community and its heritage. Interpretation can be an integral part of the experience of a heritage place, particularly where the cultural significance of the place is not readily apparent. Accordingly the following policy provisions are applicable:

- a) Opportunities for the interpretation, commemoration and celebration of significant associations between people and a place should be investigated and implemented wherever possible. In particular, the Shire may require the preparation of interpretative material as a condition of development approval for the following proposals:
 - Major redevelopment that involves substantial modifications to a heritage place, or modifications that will negatively impact on the heritage significance of the place;
 - Changes of use for a heritage place, particularly where the original use will no longer be readily apparent;
 - Proposals that will result in the heritage significance of the place not being readily apparent, and which could be explained and enhanced by interpretation;
 - Proposals where there is the opportunity for the for re-use of hardware or artefacts that are associated with the former use in interpretive material;
 - Proposals that will substantially impact on the heritage significance of the place;
 - Demolition (full or partial) of a heritage place.

- b) An interpretation plan may be required where the proposal involves the substantial redevelopment of a major site, such as a commercial or industrial site, particularly where there may be more than one heritage place affected by the proposal.

Related Policies:	
Related Procedures/ Documents	
Delegation Level:	
Adopted:	
Resolution	
Reviewed:	

ITEM WITHDRAWN

AGENDA NUMBER: 10.8
SUBJECT: Sign Application, Bishop Street
LOCATION/ADDRESS: Lot 1 (on Deposited Plan 62375) Bishop St, Nannup
NAME OF APPLICANT: Greg Rowe and Associates
FILE REFERENCE: A 407
AUTHOR: Reharni Puckey, Planning Administration Officer
REPORTING OFFICER: Geoffrey Benson, Manager of Development Services
DISCLOSURE OF INTEREST:
DATE OF REPORT: 15 July 2011

Attachments: 1. Site Plan Lot 1 Bishop Street
2. Sign Diagram
3. Site Photographs

BACKGROUND:

Greg Rowe and Associates, who act on behalf of Paramount Outdoor and work in conjunction with A. King, the owner of Lot 1 Bishop Street, have lodged a Development Application for an advertising sign to be erected on Lot 1 Bishop Street. The Development Application was received on 4 July 2011.

The proposed advertising sign is double sided, 8.3 metres x 2.2 metres in size and fixed atop two poles, 2 metres above ground level. The Office of Road Safety has expressed their desire to expand their advertising presence throughout Regional Western Australia and would like to use the proposed signage to do so.

The proposed sign would run perpendicular to the road and would be set back no more than 5 metres from the property boundary along Warren Road.

COMMENT:

Lot 1 Bishop Street is zoned Residential R10/15, the proposed type of sign is not addressed in Local Planning Policy 18 (Advertising Sign Procedure) and there is not a use for advertising on a large scale within the Local Planning Scheme No.3's Zoning Table.

Therefore the Development Application must be assessed under Clause 4.4.2, which reads:

4.4.2 If a person proposes to carry out on land any use that is not specifically mentioned in the Zoning Table and cannot reasonably be determined as falling within the type, class or genus of activity of any other use category the local government may:

- (a) *determine that the use is consistent with the objectives of the particular zone and is therefore permitted; or*
- (b) *determine that the use may be consistent with the objectives of the particular zone and thereafter follow the advertising procedures of clause 9.4 in considering an application for planning approval; or*
- (c) *determine that the use is not consistent with the objectives of the particular zone and is therefore not permitted.*

The proposed signage is deemed inconsistent with the objectives of a Residential zoned area and therefore will not be permitted as it would be deemed an inconsistent planning precedent for amenity issues within the Shire of Nannup. The objectives of the zone are as follows:

4.13.8.1 Specific Objectives of the Zone

- (a) *To promote and safeguard the health, safety, convenience, general welfare and amenity of residential areas and residents;*
- (b) *To provide for a wide range of housing types, and therefore lifestyle opportunities;*
- (c) *To encourage residential development that will achieve efficient use of existing physical and social infrastructure and is economically serviced and affordable; and*
- (d) *To provide for home based employment where such a use does not cause injury to, or prejudicially affect the amenity of the locality within which it is situated.*

STATUTORY ENVIRONMENT:

Planning and Development Act 2005
Shire of Nannup Local Planning Scheme No.3

POLICY IMPLICATIONS: Nil.

FINANCIAL IMPLICATIONS: Nil.

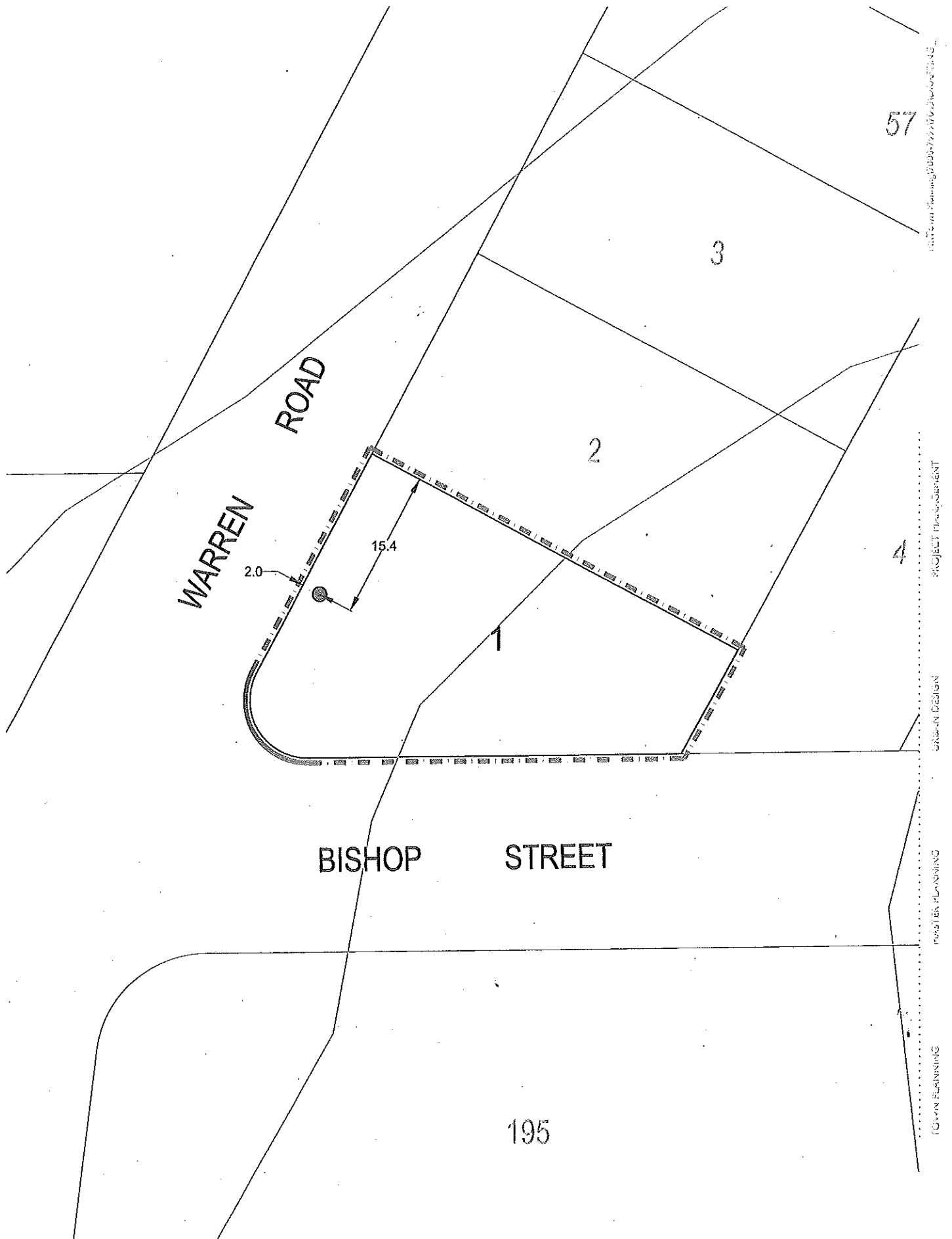
STRATEGIC IMPLICATIONS: Nil.

VOTING REQUIREMENTS: Simple Majority.

RECOMMENDATION:

1. That Council determine that the proposed Advertising Sign is not consistent with the objectives of the Residential Zone of the Shire of Nannup Local Planning Scheme No.3.
2. That Council refuse the application for Planning Approval, to construct an 8.3m x 2.2m Advertising Sign, on Lot 1 Bishop Street, Nannup as submitted by Greg Rowe & Associates, as the proposal is not consistent with the objectives of the Residential Zone of the Shire of Nannup Local Planning Scheme No.3.

ITEM WITHDRAWN



LEGEND

- subject site
- location of sign

date 29 June 2011 job no 7043
 scale 1:500 @ A4 erf 051101
 designer A Vanderplas prepared by D McCulloch
 client
 Level 3, 365 Newcastle Street, Northbridge, Western Australia, 6053
 email greg@greg-rowe.com web www.greg-rowe.com
 tel +618 9221 1791 fax +618 9221 1797

title sign location plan
 address lot 1 bishop street
 nannup
 PERTH • PERIL/SOUTH WEST • MID WEST • PUBALPA

GREG ROWE & ASSOCIATES
 FOCUSED ON ACHIEVEMENT



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Sign Diagram, example of proposed Advertising



Example 1



Example 2

Site Photographs



Opposite Lot 1 Bishop Street, View from Warren Road



View of Lot 1 Bishop Street from Nannup District High School Oval

AGENDA NUMBER: 10.9
SUBJECT: All West Australians Reducing Emergencies - AWARE
LOCATION/ADDRESS:
NAME OF APPLICANT: N/A
FILE REFERENCE: ASS 23
AUTHOR: Terese Levick-Godwin, Community Emergency Services Manager
REPORTING OFFICER: Geoffrey Benson, Manager Development Services
DISCLOSURE OF INTEREST: Nil.
DATE OF REPORT: 5 July 2011

BACKGROUND:

Funding acknowledgement has been received of \$9,180 from the Fire and Emergency Servicers as funding for the completion of portions of the Risk Management project for the Shire of Nannup. As this funding is over \$5,000, Council is required to accept the funding as per policy FNC6.

The aim of the project is to analyse the information already gathered in the Community Survey, collate a Risk Register, and prioritise risks. Following this, Risk Treatment Plans will be developed in conjunction with the Local Emergency Management Committee and Hazard Management Agencies.

COMMENT:

This initiative is the outcome of the Local Emergency Management Committee undertaking work on the Emergency Arrangements over the last year.

Wendy Trow, the consultant, will work with the Hazard Management Agencies, for example; WA Police and FESA, to discuss and identify the individual responsibilities for the Agencies.

This grant is fully externally funded with no Council contribution requested.

STATUTORY ENVIRONMENT: Nil.

POLICY IMPLICATIONS:

Policy FNC 6 Acceptance of Grant Funding applies.

FINANCIAL IMPLICATIONS:

Grant of \$9,180 with no matching funding required from Council.

STRATEGIC IMPLICATIONS:

Shire of Nannup Forward Plan 2011/12 – 2015/16 Sub Program 5.3, Actions B and C, page 32.

VOTING REQUIREMENTS: Simple Majority.

RECOMMENDATION:

That Council accept the funding of \$9180 from Fire and Emergency Services to finish Parts A and B of the Risk Management Arrangements.

8657 LORKIEWICZ/PINKERTON

That Council accept the funding of \$9180 from Fire and Emergency Services to finish Parts A and B of the Risk Management Arrangements.

CARRIED 5/0

AGENDA NUMBER: 10.10
SUBJECT: Lease of Council Land – Draft Standard Lease Document
LOCATION/ADDRESS: Nannup
NAME OF APPLICANT:
FILE REFERENCE: ADM 9
AUTHOR: Kevin Waddington, Acting Manager Corporate Services
REPORTING OFFICER- Robert Jennings, Chief Executive Officer
DISCLOSURE OF INTEREST:
DATE OF REPORT: 18 July 2011

Attachment: Draft Standard Lease Document (Separate Cover)

BACKGROUND:

Council first considered the Draft Standard Lease agreement at its January 2011 Ordinary Meeting and resolved the following:

"8539 PINKERTON/LORKIEWICZ

That the draft Standard Lease document attached be adopted for the purpose of community consultation for 28 days.

CARRIED 8/0"

Council advertised the proposed standard lease in the Nannup Telegraph in February 2011, on Council's public notice board and on Council's website. The notices called for submissions on the proposed draft standard lease agreement to be submitted to Council within a period of 28 days from the date of publication of the notice in accordance with Council's above resolution.

At the close of the submission period Council had not received any submissions/comments on the proposed standard lease.

At the June Ordinary Meeting of Council, the Draft Standard Lease was submitted for adoption however clarification on some of the clauses were requested prior to Council adopting the standard lease for all future lease agreements for Council assets.

COMMENT:

Areas that required clarification are:

3.2 Services

The Lessee shall punctually pay for all water, gas, electricity, telephone and other utility services which are either provided to or used on the Premises.

It is a normal commercial practice that the lessee is required to pay for the services used in the leased premises with the exception of the annual water & sewerage rates which the lessor is liable for. Council may wish to vary this clause for individual leases and if this is the case such a variation should be detailed under section 3.35 and Schedule 2.

3.16 Insurances

The Lessee shall, at the Lessee's expense, effect and keep current, with an insurance company approved by the Lessor the following insurances in relation to the Premises:

- a) Public risk
- b) Glass
- c) Fittings and chattels

Council insures the property for Industrial Risks (storm, water damage, fire etc) as well as Public Risk for any claim made against the Council, however the lessee also must carry insurance cover for any contents owned by the lessee and for public risk to cover claims made against the lessee.

The lessee must provide certificates of currency of the above insurances each year in accordance with clause 3.17 of the standard lease document.

3.24 Assignment and Subletting

This is a normal clause within lease documents that prohibits the assignment or subletting of a lease unless permission has been sought and given by Council. This ensures a lessee meets its legal obligations under the lease by not "passing" them onto a third party without Council permission.

Schedule 1

Schedule 1 details the lessee, term of the lease, lease fee to be paid, the method that the lease fee is to be adjusted (CPI) and the permitted purpose that the property is to be used for under the terms of the lease.

Summary

If Council considers it necessary or desirable to alter the standard lease to exempt or reduce the effect of individual clauses of the lease, such changes are done by the use of Schedule 2. The individual clauses remain as is in the body of the lease with Schedule 2 containing the list of modifications for each individual lease requirement.

It is recommended that Council now adopt the draft standard lease document for all future lease agreements for Council owned or managed land/infrastructure.

STATUTORY ENVIRONMENT: Local Government Act 1995 S2.7 (2) (b)

POLICY IMPLICATIONS: Nil.

FINANCIAL IMPLICATIONS: Nil.

STRATEGIC IMPLICATIONS:

Council's adopted Forward Plan contains targets which include the review of leases at 2 Brockman Street (Action Plan 9.2 (E)), Nannup Bowling Club (Action Plan 11.1 (C)), implementation of a lease for Recreation Centre premises (Action Plan 11.2 (E)) and the Visitor Centre (Action Plan 13.3 (C)).

VOTING REQUIREMENTS: Simple Majority.

RECOMMENDATION:

That the draft Standard Lease document attached be adopted.

8658 GILBERT/DEAN

That the draft Standard Lease document attached be adopted.

CARRIED 5/0

Dated 201

SHIRE OF NANNUP

and

(LESSEE'S NAME)

LEASE

(DESCRIPTION OF PREMISES)

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LEASE

This Lease dated

200

PARTIES SHIRE OF NANNUP of Adam Street, Nannup, Western Australia ("the Lessor")
and

The person or persons described in Item 1.1 of Schedule 1 ("the Lessee")

RECITALS

- A. The Lessor has the Lessor's Interest in the Land.
- B. The Lessor has agreed to lease the Premises to the Lessee on and subject to the terms and conditions of this Lease.

OPERATIVE PROVISIONS

1. INTERPRETATION

1.1 Definitions

In this Lease, unless the context requires otherwise:

"Building" means the building or buildings and all other fixed improvements forming part of the Premises and includes any additions or alterations;

"Commencement Date" means the commencement date of the Term specified in Item 1.3 of Schedule 1;

"CPI" means the Consumer Price Index All Groups Index Numbers for Perth provided by the Australian Bureau of Statistics or if the basis upon which it is determined is substantially altered then such basis as the Lessor may reasonably determine to be as near to the Consumer Price Index previously referred to as is reasonably possible;

"CPI Rent Review Date" means each of the dates specified as such in Item 1.6 of Schedule 1;

"GST" means a tax, impost or other duty raised on the supply of goods and services and imposed by the Commonwealth of Australia or a state or territory of the Commonwealth of Australia;

"Guarantor" means the person or persons described in Item 1.8 of Schedule 1;

"Land" means the land described in Item 1.2 of Schedule 1;

"Lessee" if only one Lessee is a party means the Lessee and the executors, administrators and permitted assignees of the Lessee and if there are two or more Lessees parties means the Lessees and each of them and their and each of their executors, administrators and permitted assigns and if the Lessee or any of the Lessees shall be a corporation includes the successors and permitted assigns of the Lessee;

“Lessor” if only one Lessor is a party means the Lessor and the executors, administrators and assigns of the Lessor and if there are two or more Lessors parties hereto means the Lessors and each of them and their and each of their executors, administrators and assigns and if the Lessor or any of the Lessors shall be a corporation includes the corporation and its successors and assigns;

“Lessor’s Interest” means the Lessor’s interest in the Land which interest is described in Item 1.2 of Schedule 1;

“Market Rent Review Date” means each of the dates referred to as such in Item 1.6 of Schedule 1;

“Premises” means the premises described in Item 1.2 of Schedule 1 including all the Lessor’s fixtures and appurtenances;

“Rate of Interest” means the general maximum rate of interest charged from time to time by the Lessor on overdue or unpaid rates;

“Rent” means the Rent payable by the Lessee pursuant to this Lease;

“Term” means the term of this Lease as specified in Item 1.3 of Schedule 1 commencing on the Commencement Date and any shorter period in the event of the early determination of the Term.

1.2 Interpretation

In this Lease, unless the context indicates a contrary intention:

- (a) words suggesting the singular include the plural and vice versa;
- (b) words suggesting any gender include any other gender;
- (c) a reference to a day means any day, which is not a Saturday, Sunday or a public holiday;
- (d) reference to a person include a company, corporation, and unincorporated or incorporated association or statutory authority;
- (e) references to clauses, paragraphs, subparagraphs and Schedules are to clauses, paragraphs, and subparagraphs of, and schedules to, this Lease as amended from time to time in accordance with the terms of this Lease;
- (f) a document will be incorporated into and form part of this Lease if the parties sign the document and it is referred to in this Lease and a reference to such a document is to that document as amended from time to time in accordance with the terms of this Lease;
- (g) headings used for clauses, paragraphs, subparagraphs, Schedules and the table of contents are for ease of reference only and will not affect the interpretation of this Lease;
- (h) references to any Lease or instrument are to that Lease or instrument as amended, novated, supplemented, varied or replaced from time to time;
- (i) references to laws include any modification or re-enactment of those laws, or any legislative provisions substituted for such laws, and all orders, local laws,

planning schemes, by-laws, regulations and other statutory instruments issued under those laws;

- (j) use of the words “includes” or “including” means without limitation, unless the contrary intention appears;
- (k) a reference to any body is:
 - (i) if that body is replaced by another organisation, deemed to refer to that organisation; and
 - (ii) if that body ceases to exist, deemed to refer to the organisation which most nearly or substantially serves the same purposes or objects as that body; and
- (l) all dollar amounts specified in this Lease are in Australian dollars.

2. LEASE

2.1 Lease

- (1) The Lessor grants a lease to the Lessee and the Lessee takes a lease of the Premises on and subject to the terms of this Lease.
- (2) Where the Land is Crown land and the approval of the Minister of Lands is required under the provisions of any relevant vesting or management order then the grant of a lease under subclause (1) is subject to that approval.

2.2 Term

The Premises will be held by the Lessee as tenant for the Term commencing on the Commencement Date and expiring on the expiry date specified in Item 1.3 of Schedule 1 the Lessee paying therefore the Rent payable in the manner provided in this Lease.

2.3 Rent

- (1) The Lessee shall pay to the Lessor:
 - (a) for the first year of the Term, the annual rent specified in Item 1.4 of Schedule 1;
 - (b) for the second and each subsequent year of the Term the annual rent varied pursuant to clauses 2.4 and 2.5.
- (2) The Rent shall be payable in the manner set out in Item 1.5 of Schedule 1.

2.4 Market Rent Review

- (1) In calculating the Rent payable from a Market Rent Review Date the following shall apply:
 - (a) not less than 3 months prior to each Market Rent Review Date the Lessor shall give to the Lessee notice in writing of the annual rental proposed by the Lessor to become payable from that Market Rent Review Date (“the Lessor’s Proposed Rent”);

- (b) within 14 days after service of that notice on the Lessee (time being of the essence) the Lessee shall be entitled to give to the Lessor notice in writing disputing the amount of the Lessor's Proposed Rent and stating the amount which the Lessee considers to be the correct current market rent that should be payable from that review date ("the Lessee's Proposed Rent");
 - (c) if the Lessee does not give the notice referred to in paragraph (b) within the time specified in that paragraph (time being of the essence) then the Lessee shall be deemed to have accepted that the Lessor's Proposed Rent shall be the Rent payable by the Lessee to the Lessor on and from that Market Rent Review Date;
 - (d) if the Lessee gives the notice referred to in paragraph (b) within the time specified in that paragraph then the Lessor may accept the Lessee's Proposed Rent as the Rent payable by the Lessee to the Lessor on and from that Market Rent Review Date but unless notice in writing of such acceptance is given by the Lessor to the Lessee within 14 days after receipt by the Lessor of written notice of the Lessee's Proposed Rent then the Rent payable from that Market Rent Review Date shall be as determined by a Valuer nominated by the President for the time being of the Australian Institute of Valuers and Land Economists (Inc.) Western Australian Division at the request of the Lessor as the then Current Market Rent of the Premises;
 - (e) the Valuer appointed pursuant to paragraph (d) shall be deemed to be acting as an expert whose decision shall be final and binding on both the Lessor and the Lessee. Prior to determining the Current Market Rent of the Premises the Valuer shall afford each of the Lessor and the Lessee a reasonable opportunity to make a written submission. Any failure by either party to make such a submission shall not delay the Valuer's determination or otherwise affect any determination made. Upon completion of his determination the Valuer shall provide to the Lessor and the Lessee written reasons for his determination in which (without limitation) the Valuer shall specify the matters taken into account by the Valuer in reaching his determination and the weight given by the Valuer to each such matter. The cost of the Valuer's determination shall be borne by the Lessee unless the Current Market Rent so determined is less than the Lessor's Proposed Rent in which case those costs are to be borne equally by the Lessor and the Lessee.
- (2) Until the Rent from a Market Rent Review Date is agreed or determined the Lessee shall pay to the Lessor a rent equivalent to the Lessor's Proposed Rent. If the Rent agreed or determined from a Market Rent Review Date is less than the Lessor's Proposed Rent, then the difference between the Rent paid in respect of the period from the Market Rent Review Date to the date of such agreement or determination and the Rent which should have been paid for such period shall be applied by the Lessor against the moneys which next become due and payable by the Lessee to the Lessor pursuant to this Lease. If the annual rent agreed or determined from a Market Rent Review Date is more than the Lessor's Proposed Rent, then the difference between the rent paid in respect of the period from the Market Rent Review Date to the date of such agreement or determination and the Rent which should have been paid for such period, shall be paid by the Lessee to the Lessor on demand together with interest at the Rate of Interest calculated on a daily basis from the date on which each portion of such difference would have been payable if the Rent had been agreed or determined on the Market Rent Review Date until the date on which the same is paid.

- (3) Notwithstanding the failure by the Lessor for any reason to give the notice referred to in paragraph (c) of subclause (1) within the time specified in that paragraph, the right to give the notice and the effect of the notice shall remain in full force and effect as if it had been given within the specified time.
- (4) The Rent following the Market Rent Review Date shall never be less than the Rent immediately preceding the Market Rent Review Date.

2.5 CPI Rent Review

On each CPI Rent Review Date the Rent shall be increased by a factor equal to the percentage increase in the Consumer Price Index between the Consumer Price Index published for the quarter immediately preceding the relevant CPI Rent Review Date and the Consumer Price Index published for the quarter ending immediately prior to the preceding CPI Rent Review Date and in the case of the first CPI Rent Review Date the quarter ending immediately prior to the Commencement Date and in no case will the Rent be less than that payable prior to the relevant CPI Rent Review Date.

3. LESSEE'S OBLIGATIONS

3.1 Rates and Taxes

- (1) The Lessee shall punctually pay all rates, assessments, levies or taxes levied or assessed or to be levied or assessed by the Commonwealth, the State, the local government, any water supply authority, any sewerage authority or by any other authority whether statutory, governmental, or otherwise which:
 - (a) are at any time during the Term or any holding over to any extent charged on the Premises or on the Lessor in respect of the Premises or both; or
 - (b) arise out of or by reason of the method or kind of business carried on by the Lessee.
- (2) If any rates, assessments, levies or taxes referred to in subclause (1) are not levied or assessed in respect of the Premises, then the Lessee shall pay to the Lessor on demand a proportion of them, being the proportion that the area of the Premises bears to the area of the property the subject of the assessment or levy, as specified by the Lessor.

3.2 Services

The Lessee shall punctually pay for all water, gas, electricity, telephone and other utility services which are either provided to or used on the Premises.

3.3 Maintenance

- (1) The Lessee shall keep and maintain every part of the Premises and all lighting and electrical installations and all drainage, sewerage and septic systems and all other fixtures and fittings in good and substantial repair, order and condition.
- (2) The Lessee need not carry out repairs of a structural nature.
- (3) (a) Without derogating from the Lessee's obligation under subclause (1), the Lessee agrees, within 7 days after receipt of a property condition report from the Lessor, to sign and return the report noting any variations.

- (b) The property condition report when signed by the parties shall be taken to be a true and correct description of the Premises as at the date of the report.
- (c) If the Lessee fails to sign the property inspection report, noting any variations, and to return it to the Lessor within 7 days after receipt, then the property inspection report provided by the Lessor shall be taken to be a true and correct description of the Premises as at the date of the report.

3.4 Cleaning

The Lessee shall keep and maintain the Premises well cleansed and drained in good sanitary condition and properly disinfected, free from rubbish, refuse and disused material of any kind and the Lessee shall observe, perform, discharge, execute and take such sanitary measures and precautions and subject to clause 3.21, construct such works and make such amendments, alterations and additions to the Premises at any time as shall during the term be required by or under any written law.

3.5 Make good damage

At the Lessee's own expense from time to time the Lessee shall make good any breakage, defect or damage to the Premises or any adjoining premises or facilities or any other property caused by want of care misuse or abuse on the part of the Lessee or the Lessee's employees agents contractors invitees licensees sub-tenants or other persons claiming through or under the Lessee or otherwise occasioned by any breach or default of the Lessee under this Lease.

3.6 Repainting

Without limiting the generality of clause 3.3, as often as is necessary in the reasonable opinion of the Lessor at the Lessee's own expense the Lessee shall paint, colour, varnish and paper to the reasonable satisfaction of the Lessor all such parts of the Premises as have been previously painted coloured varnished or papered.

3.7 Entry by Lessor to view and to repair

- (1) The Lessee shall permit the Lessor, the Lessor's architects, agents and contractors at all reasonable times to enter into and upon the Premises in order to view and examine the state of repair, order and condition and to leave upon the Premises notice of any lack of repair, order, condition, neglect or defect for which the Lessee is liable and requiring the Lessee to make good the same within the time specified in the notice and the Lessee shall make good the same in accordance with the notice to the satisfaction of the Lessor.
- (2) The Lessee shall permit the Lessor, the Lessor's agents and contractors at all reasonable times and, in the case of emergency, at any time to enter into and remain upon the Premises with all necessary plant, equipment and materials to carry out any works or make any repairs or alterations or additions to the Premises.

3.8 Abatement of nuisances

- (1) The Lessee shall not do or omit to do any act matter or thing which may be or be deemed to be a nuisance within the meaning of the Health Act or any other Act or under any planning scheme, local law or regulation applicable to the Premises or the use or occupation of the Premises by the Lessee and the Lessee will immediately abate any such nuisance or alleged nuisance.
- (2) The Lessee shall ensure that the Premises are not used in any manner which may be or become a nuisance, disturbance or annoyance to the quiet and comfort of any occupier of any premises in the vicinity of the Premises and on being required to do so by the Lessor or any employee or agent of the Lessor the Lessee shall immediately abate the nuisance, disturbance or annoyance.

3.9 Pests

The Lessee shall keep the Premises free of ants, termites, rodents, pests and vermin.

3.10 No living in premises

The Lessee shall not use or permit the use of any part of the Premises for living or sleeping or for any unlawful purpose.

3.11 Defacing

The Lessee shall not mark, paint, drill, write on or in any way deface any wall, ceiling, floor, wood, stone or ironwork of the Premises unless permitted by this Lease.

3.12 Rubbish

The Lessee shall not permit any rubbish or garbage to accumulate on the Premises unless confined in suitable containers which are located so as not to be visible to members of the public.

3.13 Disorderly behaviour

The Lessee shall prevent disorderly behaviour and indecent language at the Premises.

3.14 Compliance with written laws

The Lessee shall comply with, carry out and perform the requirements of the Local Government Act, the Health Act and any other Act, ordinance, town planning scheme, local law, regulation or written law or of any notice, requisition or order under a written law applicable to the Premises or the use or occupation of the Premises.

3.15 Permitted purpose and operation of lessee's affairs

- (1) The Lessee shall use the Premises only for the purpose specified in Item 1.7 of Schedule 1 or for any other purpose first approved in writing by the Lessor.
- (2) The Lessee shall at all times conduct its affairs for the purpose specified in Item 1.7 of Schedule 1 in a first class businesslike and reputable manner and with due diligence and efficiency.

3.16 Insurances

The Lessee shall, at the Lessee's expense, effect and keep current, with an insurance company approved by the Lessor the following insurances in relation to the Premises:

(a) Public risk

A policy covering public risk which will:

- (i) be in the name of the Lessee, the Lessor, the Lessor's agent, managers, employees, representatives and contractors and provide for a minimum cover of ten million dollars (\$10,000,000.00) for each accident, claim or event or such higher amount as the Lessor specifies; and
- (ii) extend to cover any liability for the death of, or injury to, any person or damage to any person's property sustained when such person is using or entering or near any entrance, passage, stairway, display or display window to into or of the Premises, or sustains the injury or damage as a result of an act or omission of the Lessee, its agent, licensee, employee or representative operating a business on or from the Premises, or sustains the injury or damage as a result of consuming food or drink supplied on or from the Premises or as a result of goods sold on or from the Premises; and
- (iii) require the insurance company and the Lessee to give the Lessor at least 30 days written notice before either cancellation of the policy or a reduction in its level or extent of cover; and
- (iv) contain a clause which provides that any claims made by any of the insured parties against any other will be treated as though the claimant were not an insured party and in such instances provide that the insurance company waives its right of subrogation; and
- (v) provide cover which is primary and not contributory with any policies effected by the Lessor or the Lessor's managers, agents, employees, representatives or contractors;

(b) Glass

a policy in the name of the Lessee and the Lessor covering the breakage of any glass on the Premises including any plate glass. The Lessee agrees that all money received under the insurance policy will be expended in reinstating the damaged glass. If such money is insufficient to meet the cost of the reinstatement the Lessee shall reinstate the damaged glass at its own expense to the Lessor's satisfaction;

(c) Fittings and chattels

a policy covering the Lessee's fittings, fixtures and chattels contained in or about the Premises for its full insurable value against loss or damage resulting from fire and extraneous risks including but not limited to water, storm and rainwater damage.

3.17 Evidence of insurance cover

- (1) Before taking possession of the Premises, the Lessee shall deliver the insurance policies required under this Lease to the Lessor.

- (2) The Lessee shall give satisfactory evidence to the Lessor that the policies have been renewed within 7 days after the expiration of each policy term.

3.18 Not to void insurances

The Lessee shall not at any time do or allow anything which may either render the insurances on the Premises or any part of it void or voidable.

3.19 Compliance with insurance regulations

- (1) The Lessee shall comply with insurance, sprinkler and fire alarm regulations as they relate to the use of the Premises.
- (2) The Lessee shall pay to the Lessor the cost of any alterations to any sprinkler or fire alarm installation which may become necessary by reason of the non-compliance by the Lessee with the regulations of the Insurance Council of Australia or the requirements of the Lessor's insurer or both of them.
- (3) The Lessee shall pay to the Lessor on demand the Lessor's costs of carrying out:
 - (a) any testing and servicing of fire equipment and systems and of electrical equipment which may be required by law or recommended by any relevant authority; and
 - (b) any alteration to any fire equipment and systems which may become necessary by reason of non-compliance by the Lessee with the requirements of any insurer, relevant authority or local government.

3.20 Indemnity

The Lessee shall indemnify the Lessor and keep the Lessor indemnified from and against all claims, demands, writs, summonses, actions, suits, proceedings, judgments, orders, decrees, damages, costs, losses and expenses of any nature whatsoever which the Lessor may suffer or incur in connection with loss of life, personal injury or damage to property arising from or out of any occurrence in upon or at the Premises or the use by the Lessee of the Premises or to any person or the property of any person using or entering or near any entrance to the Premises or occasioned (wheresoever it may occur) wholly or in part by any act, neglect, default or omission by the Lessee its agents, contractors, servants, workmen, customers, members or any other person or persons using or upon the Premises with its consent or approval expressed or implied.

3.21 Alterations and improvements

The Lessee shall not, without the prior written consent of the Lessor, make or permit to be made any alteration in or additions to the Premises or remove from the Premises any improvement and the Lessee shall not cut maim or injure or suffer to be cut maimed or injured any of the walls, floors, ceilings, plumbing, gas or electrical fixture or fittings or timbers.

3.22 Notice of defects

The Lessee shall give to the Lessor immediate notice in writing of any damage to or defect in the Premises or the water or sewerage pipes, gas pipes, electrical light fixtures or any plant fittings or equipment in the Premises.

3.23 Sale of alcohol

The Lessee shall not sell or permit the sale of any alcohol or alcoholic beverage on the Premises except with the prior consent of the Lessor and in accordance with a licence under the Liquor Licensing Act 1988.

3.24 Assignment or subletting

- (1) The Lessee shall not assign, sublet or part with the possession of the Premises and the Lease without the prior written consent of the Lessor.
- (2) Sections 80 and 82 of the Property Law Act 1969 (*Attachments 1 & 2*) are hereby expressly excluded.
- (3) Where the Land is Crown land, the prior written consent of the Minister for Lands is required under subclause (1) in addition to the consent of the Lessor.
- (4) The Lessee shall not mortgage, encumber or charge the Premises or the Lease.

3.25 Signs

The Lessee shall not, without the prior written consent of the Lessor, affix or exhibit or permit to be affixed to or exhibited upon any part of the exterior of the Premises or in any place visible from outside the Premises any placard, sign, notice, poster, hoarding or advertisement.

3.26 Legal costs

- (1) The Lessee shall pay to the Lessor on demand the costs (on a full indemnity basis) of and incidental to the negotiations and instructions for and the preparation, completion and stamping of this Lease (including stamp duty) and all copies of this Lease.
- (2) The Lessee shall pay to the Lessor on demand all costs, charges and expenses (including solicitors' costs and surveyors' fees) incurred by the Lessor for the purpose of or incidental to the preparation and service of any notice under section 81 (*Attachment 3*) or any other section of the Property Law Act 1969 requiring the Lessee to remedy a breach of a provision of this Lease.

3.27 Lessee to make good

- (1) At the expiration or sooner determination of this Lease:
 - (a) the Lessee shall yield up the Premises to the Lessor in the condition required by this Lease; and
 - (b) the Lessee shall remove from the Premises all fixtures, fittings and chattels brought onto the Premises by or for the use of the Lessee except for any structural improvements and any fixtures, fittings and chattels provided for the use of the Lessee and which the Lessor determines should remain in the Premises. The Lessee shall not do or allow any damage to the Premises in such removal. If however any damage occurs the Lessee will immediately make it good; and
 - (c) the Lessee shall remove any lettering, signs, names, advertisements and notices erected, painted, displayed or affixed onto or within the Premises

and make good any damage caused by reason of such erection, painting, displaying, affixing or removal. If the Lessee defaults under this clause the Lessor may remove and make good at the Lessee's expense.

- (2) If the Lessee fails to remove its fixtures, fittings and chattels the Lessor may at its option do either or both of the following:
 - (a) remove and store any of them in such a manner as the Lessor determines at the cost of the Lessee; and
 - (b) treat them as if the Lessee had abandoned its interest in them and they had become the property of the Lessor may then deal with them in such manner as the Lessor determines. If the Lessor sells them it need not account to the Lessee for the proceeds of sale but may apply the proceeds of sale as it see fit.

3.28 No registration or caveat

- (1) Neither the Lessee nor any agent or other person on behalf of the Lessee shall without the prior consent in writing of the Lessor register this Lease nor lodge any absolute caveat in respect of the Premises to protect the interests of the Lessee under this Lease.
- (2) In the event of this Lease or any such caveat being registered or lodged the Lessee, in consideration of the Lessor having granted this Lease to the Lessee, hereby irrevocably appoints the Lessor and each and every one of the officers or agents of the Lessor jointly and severally for the Term and for a period of 6 months after the Term the agent and attorney of the Lessee to surrender or withdraw any such lease or caveat the cost of which shall be borne and paid by the Lessee.

3.29 Interest on arrears

The Lessee shall pay to the Lessor on demand interest at the Rate of Interest plus 2% on all moneys owing by the Lessee but unpaid in breach of the provisions of this Lease for more than 14 days from and including the due date for payment such interest to be calculated on a daily basis on the total of the moneys owing from time to time and computed from and including the due date for payment until the date of actual payment.

3.30 GST

Each payment made by the Lessee under this Lease must be made with an additional payment in respect of any GST or similar tax applying to that payment where the Lessee is registered for GST.

3.31 Lessee's office holders

Where the Lessee is an incorporated association or a body corporate, the Lessee shall deliver to the Lessor, as often as is required, a current list of the names and addresses of the office holders of the Lessee.

3.32 Vandalism

The Lessee shall immediately report to the Lessor any acts of vandalism or any incident which occurs on or adjacent to the Premises which is, or is likely to involve, a breach of the peace or become the subject of a report to the police.

3.33 Storage of dangerous materials

The Lessee shall not store or keep on the Premises any inflammable liquids, acetylene gas, dangerous chemicals or volatile or explosive oils, compounds or substances.

3.34 Ownership of improvements

The Lessee acknowledges and agrees that any building or improvement constructed or erected on the Premises by the Lessee is or shall become the property of the Lessor upon completion of the building or improvement and shall form part of the Premises for the purposes of this Lease and the Lessee shall have no claim for compensation in respect thereof.

3.35 Special conditions

The Lessee shall observe and perform the special conditions set out in Schedule 2.

4. QUIET POSSESSION

If the Lessee pays the rent and performs its covenants contained in this Lease it will peaceably possess and enjoy the Premises for the Term without any interruption from the Lessor or any person lawfully claiming through, from or under it, subject always to the rights, powers, remedies and reservations of the Lessor contained in this Lease.

5. MUTUAL AGREEMENTS

5.1 Default

If:

- (a) the Rent or any part of it is in arrears for 14 days even if it has not been formally demanded;
- (b) the Lessee breaches or does not comply with any provision whether expressed or implied in this Lease;
- (c) repairs required by any notice given by the Lessor under this Lease are not completed within the time specified in the notice;
- (d) the Lessee defaults in the payment of any moneys owing to the Lessor other than rent whether under this Lease or any other account after 14 days written demand for payment has been made by the Lessor on the Lessee;
- (e) the Lessee is a corporation and an order is made or a resolution is passed for the winding up of the Lessee except for the purpose of reconstruction or amalgamation with the written consent of the Lessor which consent will not unreasonably be withheld;
- (f) the Lessee is a corporation and ceases or threatens to cease to carry on business or goes into liquidation whether voluntary or otherwise or is wound up or if a liquidator or receiver (in both cases whether provisional or otherwise) is appointed;
- (g) the Lessee is a corporation and is placed under official management or an administrator is appointed under or pursuant to the provisions of the

relevant Corporations Law or enters into a composition or scheme of arrangement;

- (h) the interest of the Lessee under this Lease is taken in execution;
- (i) the Lessee or any person claiming through the Lessee conducts any business from the Premises after the Lessee has committed an act of bankruptcy;
- (j) the Lessee abandons or vacates the Premises; or
- (k) the Lessee being an incorporated association:
 - (i) is wound up or resolves to be dissolved or wound up voluntarily;
 - (ii) without the prior written consent of the Lessor, changes its name, objects or constitution;
 - (iii) is convicted of an offence under the Associations Incorporations Act 1987,

then the Lessor may in addition to its other powers either:

- (i) re enter on the Premises or any part of them with force if necessary and eject the Lessee and all other persons from and repossess the Premises; or
- (ii) by notice in writing to the Lessee determine this Lease,

or both.

5.2 Lessor's powers

If the Lessor exercises its powers under clause 5.1, this Lease will terminate but the Lessee will not be released from liability for any breach of or non-compliance with any provision of this Lease and the remedies available to the Lessor for recovery of arrears of rent or for prior breach or non-compliance will not be affected. On such determination if the Lessee fails to remove its fixtures, fittings and chattels the Lessor may at its option take action in accordance with section 3.27 (2) of this lease agreement.

5.3 Destruction of the Premises

- (1) Where the Premises or any part of the Premises are at any time damaged or destroyed by fire, flood, lightning, storm or tempest so as to make them unfit for the occupation and use of the Lessee, then the Rent or a proportionate part of the Rent, according to the nature and extent of the damage sustained will abate and all remedies for recovery of the Rent or such proportionate part of the Rent will be suspended until the Premises are rebuilt or made fit for the occupation and use of the Lessee.
- (2) If the Lessor does not rebuild the Premises or make them fit for the use and occupation of the Lessee within a reasonable time then either party may terminate this Lease by one month's notice in writing to the other without right or claim for damage by reason of such termination of the Lease but without prejudice to the rights of either party for any prior breach of or failure to comply with a provision of this Lease.

- (3) Nothing in this Lease will impose on the Lessor any obligation to rebuild the Premises or to make the Premises fit for the use and occupation of the Lessee.

5.4 Entry by Lessor

If the Lessee fails to duly and punctually observe or perform any provision of this Lease the Lessor shall be entitled to carry out the observance or performance of the provision and for that purpose the Lessor or the Lessor's architects, servants agent or workmen may if necessary enter the Premises and the cost and expense incurred in the observance or performance together with interest thereon at a rate of 2% per annum greater than the Rate of Interest shall be a debt due by the Lessee to the Lessor and shall be payable on demand and may be recovered by the Lessor in the same manner as if such debt were for rent due under this Lease in arrears by action in law and such cost expense and interest shall be a charge on the term.

5.5 Works by Lessor

- (1) The Lessor may by itself or its agents at all reasonable times enter the Premises or any part of the Premises for any one or more of the following purposes:
- (a) complying with the terms of any legislation affecting the Premises and any notices served on the Lessor or Lessee by any statutory, licensing, municipal or other competent authority;
 - (b) carrying out any repairs, alterations or works of a structural nature;
 - (c) installing any services such as air-conditioning apparatus, automatic fire sprinklers, gas pipes, water pipes, drainage pipes, cables or electrical wiring;
 - (d) making any repairs which the Lessor may think necessary to the Premises;
 - (e) making any improvements or alterations to the adjoining Premises which the Lessor may consider necessary;
 - (f) taking inventories of fixtures;
 - (g) exercising the powers and authorities of the Lessor under this Lease.
- (2) In carrying out the works referred to in this clause the Lessor will not cause unnecessary interference with the use of the Premises by the Lessee.

5.6 Holding over

If the Lessee shall hold over the Premises upon the expiry of the Term then a tenancy from year to year shall not be presumed but the tenancy shall in that event be and continue to be a tenancy from week to week at the rental then payable but otherwise upon the terms and conditions contained in this Lease insofar as they are applicable and shall be determinable at the expiration of one week's notice by either party to the other at any time.

5.7 No waiver

- (1) No waiver (whether express or implied) by the Lessor of any breach of any

covenant, obligation or provision contained or implied in this Lease will operate as a waiver of any other breach of the same or any other covenant, obligation or provision contained or implied in this Lease nor shall it operate as a waiver of the essentiality of any obligation which by virtue of this Lease is an essential term of this Lease.

- (2) In particular, any demand by the Lessor for, or any acceptance by the Lessor of, rent or other moneys payable under this Lease will not constitute a waiver by the Lessor of any breach of any provision in this Lease and will not create any new tenancy between the parties.
- (3) No custom or practice which has grown up between the parties in the course of administering this Lease will be construed so as to waive or lessen the right of the Lessor to insist on the performance by the Lessee of all or any of the Lessee's obligations under this Lease.

5.8 No warranty

- (1) This document embodies the whole transaction of leasing made by this Lease and all warranties, conditions and representations collateral or otherwise concerning the leasing whether written, oral, express or implied and whether consistent with this document or not are cancelled.
- (2) This Lease may be amended only by instruments in writing executed by the Lessor and the Lessee.
- (3) The Lessee acknowledges that it has entered into this Lease without relying on any representation or warranty by the Lessor except as stated in this clause and after satisfying itself as to the suitability of the Premises for the purpose of which the Premises are leased.

5.9 Lessor's right to install services

The Lessor reserves to itself and to its employees agents and contractors the right to enter upon the Premises at all reasonable times with all necessary materials and appliances to erect make excavate lay or install in on over or under the Premises any posts drains pipes conduits cables wires or other things requisite for any existing or future service to the Premises together with the like right to enter upon the Premises for the purpose of inspecting removing maintaining altering or adding to any such things relation to an existing service to the Premises and, in each such case the Lessor shall cause as little inconvenience and damage to the Lessee as is practicable in the circumstances.

5.10 Execution of works by Lessor

If the Lessor desires or is required to:

- (a) execute any works which by law the Lessor is bound and has been required to execute on the Premises or the Building; or
- (b) build any further storeys upon the Building; or
- (c) alter repair add to or re-build any part of the Premises or the Building; or
- (d) construct erect lay down alter repair cleanse or maintain any drain ventilator shaft water pipe electric wires or gas pipes in connection with or for the accommodation of the Building or any adjoining property; or

- (e) underpin; or
- (f) reinstate or re-build in case of fire,

then and in any such case the Lessor may with or without employees agents workmen and contractors and appliances enter upon the Premises and carry out such works doing as little damage to the Premises as is reasonably possible and restoring them without unreasonable delay but without making compensation for any damage or inconvenience to the Lessee provided that in each case the Lessor shall cause as little inconvenience and damage to the Lessee as is practicable in the circumstances.

5.11 Notices

- (1) Any notice or demand from the Lessor to the Lessee is to be taken to be duly served if left for the Lessee on the Premises, if mailed by prepaid letter addressed to the Lessee at the address set in this Lease or if sent by facsimile machine to the Lessee's facsimile machine.
- (2) Any notice or demand from the Lessee to the Lessor is to be taken to be duly served if mailed by prepaid letter addressed to the Lessor at its office.
- (3) A notice or demand posted mailed is to be taken to be duly served at the expiration of 48 hours after the time of posting mailing and any notice given by one party to the other may be signed on behalf of the party giving it by a director, secretary, chief executive officer or solicitor.

5.12 Approvals and consents

Except as expressly stated to the contrary in this Lease, the Lessor may, whenever its approval or consent is required under this Lease, give it conditionally or unconditionally or withhold it.

6. ESSENTIAL TERMS

The Lessee and the Lessor agree that each of clauses 2.3, 3.1, 3.2, 3.3, 3.15, 3.16 and 3.24 are essential terms of this Lease, and any breach or failure by the Lessee to comply with any of those clauses will entitle the Lessor to all rights and remedies available to it in respect of breach of or failure to comply with an essential term.

7. GUARANTEE

- (1) This Lease is granted to the Lessee at the request of the Guarantor and for such consideration the Guarantor hereby covenants and agrees with the Lessor as follows:
 - (a) the Guarantor hereby guarantees to the Lessor the due observance and performance by the Lessee of each and all of the covenants contained in this Lease;
 - (b) the Guarantor hereby indemnifies the Lessor and covenants and agrees at all times hereafter to keep the Lessor indemnified from and against all damages and all costs, losses and expenses which the Lessor may suffer or incur as a result either directly or indirectly of any breach or non-observance by the Lessee of any covenant or provision in this Lease expressed or implied and on the part of the Lessee to be observed and performed and the Guarantor agrees that this indemnity shall continue and the Guarantor shall remain liable to the Lessor under this indemnity notwithstanding that as a

consequence of such breach or non-observance the Lessor has exercised any of its rights hereunder and notwithstanding that the Lessee (being a corporation) may be wound up or (being a natural person) may be declared bankrupt and notwithstanding that the guarantee hereby given may for any reason whatsoever be unenforceable either in whole or in part.

- (2) The Guarantor shall be responsible for the payment to the Lessor on demand of all costs, charges and expenses which the Lessor may be entitled to recover by reason of any default of the Lessee.
- (3) The liability of the Guarantor shall not be released, prejudiced or abrogated by the granting of time or other indulgence or concession to the Lessee or by any variation of the provisions of this Lease or by any release, abandonment, waiver or modification of any rights or obligations as between the Lessor and the Lessee or by any act or omission of the Lessor whereby but for this provision the Guarantor would or may have been so released it being intended that the obligation and liability of the Guarantor shall be a continuing liability absolute and unconditional in all circumstances.
- (4) If for any reason and whether by statute or otherwise any payment made by the Guarantor to the Lessor under the provisions of this Lease is avoided then irrespective of whether such avoidance operates from the date of such payment or from any later date the liability of the Guarantor shall remain as if no such payment had been made.
- (5) The guarantee and indemnity hereby given are to continue and are to remain in full force and effect until the due performance, observance and fulfillment by the Lessee of all the covenants and provisions in the Lease expressed or implied and on the part of the Lessee to be observed and performed.
- (6) Where 2 or more parties are named as Guarantor those parties are bound jointly and severally.

8. GST

- (1) If GST is imposed or levied in respect of any supply by a party under or in accordance with this Lease (including the supply of the Premises or the supply of any goods, services, rights, benefits or other things) then the party making the supply may recover the GST Amount from the party receiving the supply in addition to the Consideration. The party making the supply shall provide such invoices to the party receiving the supply as are required pursuant to the GST Legislation.

- (2) In sub-clause (1):

“Consideration” means any amount or consideration payable or to be provided pursuant to any provision of this Lease other than this clause;

“GST” means any form of goods and services tax or similar value added tax;

“GST Amount” means the Consideration (after deducting the GST Exempt Component) multiplied by the Rate;

“GST Exempt Component” means any part of the Consideration which solely relates to a supply that is free or exempt from the imposition of GST;

“GST Legislation” means A New Tax System (Goods and Services Tax) Act 1999 and any other legislation or regulation which imposes, levies, implements or varies a GST or any applicable rulings issued by the Commissioner of Taxation;

“Rate” means the rate at which GST Legislation from time to time imposes or levies GST on the relevant supply under this Lease;

“supply” includes supply as defined under GST Legislation.

SCHEDULE 1

Item 1.1 Lessee's Name and Address:

Item 1.2 Land:

Premises:

Lessor's Interest:

Item 1.3 Term:

Commencement Date:

Expiry Date:

**Item 1.4 Annual rent payable on the
Commencement Date:**

Item 1.5 Manner of payment of rent:

Item 1.6 CPI Rent Review Dates:

Market Rent Review Dates:

Item 1.7 Permitted Purpose:

**Item 1.8 Guarantor's Names and
Addresses:**

**SCHEDULE 2
SPECIAL CONDITIONS**

EXECUTED by the parties

THE COMMON SEAL of **SHIRE OF NANNUP** was)
hereunto affixed pursuant to a resolution of the Council)
in the presence of:)

Shire President

Chief Executive Officer

THE COMMON SEAL of)
hereunto affixed by authority of the)
presence of:)
in the)
)
)

Signature of authorised person

Signature of authorised person

Office held

Office held

Name of authorised person
(block letters)

Name of authorised person
(block letters)

SIGNED by)
in the presence of:)
)

Witness:

Address:

Occupation:

PROPERTY LAW ACT 1969 – SECT 80

80 . Consent to assign or sublet not to be unreasonably withheld

(1) In every lease containing a covenant, condition or agreement against assigning, underletting or parting with the possession, or disposing of the land or property leased without licence or consent, that covenant, condition or agreement shall, unless the lease contains an express provision to the contrary, be deemed to be subject to a condition to the effect that the consent shall not be unreasonably withheld and that no fine or sum of money in the nature of a fine shall be payable for or in respect of the licence or consent, but the last mentioned condition does not preclude the right to require the payment of a reasonable sum in respect of any legal or other expense incurred in relation to the licence or consent.

(2) In any instrument executed before or after the coming into operation of this Act a reference to section 4 of the *Landlord and Tenant Act 1912*⁵ shall be read and construed as a reference to this section.

PROPERTY LAW ACT 1969 – SECT 80

82 . Certain assignments not to be deemed a breach

No assignment or underletting —

- (a) by the official assignee of a bankrupt;
- (b) by the liquidator of a company (except in the case of a member's voluntary winding up);
- (c) by the sheriff or bailiff under an execution; or
- (d) by a personal representative pursuant to a bequest in a will,

shall be deemed a breach of a covenant, condition or agreement against assigning, underletting, parting with possession or disposing of the land leased unless the contrary is expressly declared in the lease.

PROPERTY LAW ACT 1969 – SECT 81

81 . Restrictions and relief against forfeiture of leases and under-leases

(1) A right of re-entry or forfeiture under any provision or stipulation in a lease for a breach of any covenant or condition in the lease is not enforceable, by action or otherwise, unless and until the lessor serves on the lessee a notice —

- (a) specifying the particular breach complained of;
- (b) where the breach is capable of remedy, requiring the lessee to remedy the breach; and
- (c) in any case, requiring the lessee to make compensation in money for the breach,

and the lessee fails, within a reasonable time after the service of the notice on him, to remedy the breach, if it is capable of remedy, and to make reasonable compensation in money, to the satisfaction of the lessor, for the breach.

(2) Where a lessor is proceeding, by action or otherwise, to enforce or has enforced without the aid of the Court such a right of re-entry or forfeiture, the lessee may, in the lessor's action (if any) or in any action brought by himself apply to the Court for relief, and the Court —

- (a) may grant or refuse relief, as the Court having regard to the proceedings and conduct of the parties under the foregoing provisions of this section, and to all the other circumstances thinks fit; and
- (b) in case of relief may grant it on such terms (if any) as to costs, expenses, damages, compensation, penalty or otherwise, including the granting of an injunction to restrain any like breach in the future, as the Court in the circumstances of each case, thinks fit.

(3A) A lessor is entitled to recover as a debt due to him from a lessee and in addition to damages (if any), all reasonable costs and expenses properly incurred by the lessor in the employment of a solicitor and surveyor or valuer, or otherwise, in reference to any breach giving rise to a right of re-entry or forfeiture that, at the request of the lessee, is waived by the lessor, or from which the lessee is relieved, under the provisions of this Part either by the Court or by the operation of subsection (1).

(3B) The lessor is so entitled to recover whether the lessee has or has not rendered forfeiture unenforceable against him under that subsection.

(4) Where a lessor is proceeding by action or otherwise to enforce or has enforced a right of re-entry or forfeiture —

- (a) under any covenant, provision or stipulation in a lease; or
- (b) for non-payment of rent,

the Court may, on application by any person claiming as under-lessee any estate or interest in the property comprised in the lease or any part thereof, either in the lessor's action, if any, or in any action brought by that person for that purpose, make an order vesting for the whole term of the lease or any less term, the property comprised in the lease or any part thereof in any person entitled as under-lessee to any estate or interest in the property, upon such conditions,

- (c) as to execution of any deed or other document;
- (d) payment of rent, costs, expenses, damages, compensation or giving security or otherwise,

as the Court in the circumstances of each case thinks fit, but in no case is the under-lessee entitled to require a lease to be granted to him for any longer term than he had under his original sub-lease.

- (5) For the purposes of this section except so far as is otherwise provided —

lease includes an original or derivative under-lease; an agreement for a lease where the lessee has become entitled to have his lease granted, and a grant securing a rent by condition;

lessee includes an original or derivative under-lessee, and the persons deriving title under a lessee, and a grantee under any grant securing a rent by condition and the persons deriving title under him;

lessor includes an original or derivative under-lessor, and the persons deriving title under a lessor, a person making a grant securing a rent by condition and the persons deriving title under him;

under-lease includes an agreement for an under-lease where the under-lessee has become entitled to have his under-lease granted;

under-lessee includes any person deriving title under an under-lessee.

- (6) This section applies although the condition or stipulation under which the right of re-entry or forfeiture accrues is inserted in the lease in pursuance of the directions of any Act.

- (7) For the purposes of this section a lease limited to continue as long only as the lessee abstains from committing a breach of covenant is and takes effect as a lease to continue for any longer term for which it could subsist, but determinable by a condition for re-entry on the breach.

- (8) This section does not extend —

- (a) to a covenant or condition against assigning, underletting, parting with the possession or disposing of the land leased;

- (b) to a condition for forfeiture on the bankruptcy of the lessee or on taking in execution of the lessee's interest; or

- (c) in the case of a lease of any licensed premises as defined in the Liquor Control Act 1988, to a covenant not to do or omit any act or thing by which the licence granted in respect thereof, may be forfeited.

- (9) This section does not except as otherwise mentioned, affect the law relating to re-entry or forfeiture or relief in case of non-payment of rent.

- (10) This section has effect notwithstanding any stipulation to the contrary.