

<b>NEW LEASE TO KIDZ GALORE PTY LTD - 15 HAYNES STREET, NORTH PERTH</b>
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- Attachments:
1. Maintenance obligations schedule
  2. Market rent valuation report - Confidential

**RECOMMENDATION**

That Council:

1. **APPROVES** providing local public notice pursuant to section 3.58 of the *Local Government Act 1995* of the proposed lease to Kidz Galore Pty Ltd (ACN 069 285 472) (Tenant) for the childcare premises located at 15 Haynes Street, North Perth (Premises) on the following key terms:

- 1.1. **Term:** Five (5) years, commencing 1 January 2021 and expiring 31 December 2025.
- 1.2. **Option Term:** Nil.  
The Tenant acknowledges that following the lease expiry, the City will not permit any holding over or monthly tenancy.
- 1.3. **Rent:** \$35,000 per annum plus GST.
- 1.4. **Rent Review:** fixed increase of 5% annually on 1 July each year of the lease commencing from 1 July 2021.
- 1.5. **Outgoings:** the Tenant will pay:
  - (a) ESL charges applicable to the premises;
  - (b) rubbish and recycling bin charges for the premises;
  - (c) utilities (including scheme water, electricity and gas); and
  - (d) minimum level of service statutory compliance testing (including RCD, DFES and pest inspection fees and charges).
- 1.6. **Insurance:** Tenant to hold and maintain a public liability insurance policy for not less than \$20million per one claim, in respect of the Tenant's use and occupation of the Premises and car park.
- 1.7. **Repair/maintenance:** in accordance with the maintenance obligation schedule at Attachment 1.
- 1.8. **Responsibilities of the City:** the City is responsible for:
  - (a) maintenance of roofing, mechanical services and main structure of the Premises (unless the damage is caused by the Tenant);
  - (b) capital renewal and upgrade of existing assets, at the City's discretion;
- 1.9. **Special conditions**
  - 1.9.1. **Car park licence**
    - (a) The City grants to the Tenant the right to use the seven (7) car parking bays at 25-29 Sydney Street, North Perth, subject to the Tenant paying an annual licence fee of \$2,600 including GST per annum the Licence Fee at the times and in the manner provided under the Lease (*Licence*),
    - (b) The licence Term is three (3) years, expiring on 31 December 2023, or earlier upon the termination of the Lease.

## 1.9.2. Transition plan

- (a) The Tenant acknowledges that the City is required to transition the use of the Premises away from childcare services in order to comply with the Deed of Trust dated 2 October 1941;
- (b) In accordance with paragraph (a) above, the Tenant acknowledges and agrees that:
- (i) by the second anniversary of the Commencement Date, the Tenant will submit to the City a relocation or business plan (*Business Plan*) outlining:
- the Tenant's planned transition from the Premises; or
  - how the Tenant will scale down its business operations at the Premises by the end of the Lease term; and
- (ii) by the fourth anniversary of the Commencement Date, the Tenant will submit to the City a closure plan (*Closure Plan*) which will demonstrate:
- the proposed timeline for the closure of the Tenant's business at the Premises; and
  - the removal of the Tenant's buildings (including the demountable building) and property from the Premises; and
- (iii) the Tenant must completely vacate the Premises by no later than midnight on 31 December 2025.
- (c) If the City is not satisfied with the information contained in either or both the Business Plan or the Closure Plan, the City may provide the Tenant with notice:
- (i) specifying what additional information is required by the City; and
- (ii) the timeframe within which the Tenant must provide that information to the City.
- (d) If the Tenant fails to provide the City with:
- (c) the Business Plan or Closure Plan within the time specified in paragraph (b)(i) or (b)(ii) (respectively); or
- (iii) any additional information requested by the City in accordance with paragraph (c),

the City may terminate the Lease and the Tenant must vacate the Premises within one month of being notified of that termination

## 1.9.3. Termination for convenience

The Tenant may terminate the Lease by providing no less than three (3) months' written notice of termination to the City.

## 1.9.4. Removal of demountable building and play equipment

The Tenant acknowledges and agrees that prior to the lease expiry it is required to remove the demountable building and play equipment from the Premises and make good any damage caused by that removal.

2. If no submissions are received as a result of the public notice period in recommendation 1. above, DELEGATES BY ABSOLUTE MAJORITY to the Chief Executive Officer the power to

enter into the lease in Recommendation 1. above, and AUTHORISES the Mayor and Chief Executive Officer to affix the common seal and execute the lease.

3. **NOTES** that if any submissions are received as a result of the public notice period in Recommendation 1. above, the Chief Executive Officer will provide the submissions to Council for consideration and Council will determine whether to proceed with the proposed lease to the Tenant.

#### **PURPOSE OF REPORT:**

To consider providing local public notice of the proposed new lease to Kidz Galore Pty Ltd (ACN 069 285 472) (Kidz Galore) at 15 Haynes Street, North Perth.

#### **BACKGROUND:**

Kidz Galore has leased the child care centre at 15 Haynes Street, North Perth (Premises) since 1 April 2005. The original lease was for a term of 5 years with a further term of 5 years. Pursuant to a Deed of Variation and Extension of Lease dated 1 March 2012, the original lease was extended until 31 December 2020.

The City owns the Premises in freehold, however, the Premises is subject to a Deed of Trust dated 2 October 1941 which provides that the land is to be used for public recreation purposes (Trust). In addition, the City's Public Open Space Strategy, adopted by Council in December 2018, identifies a lack of local public open space in the North Perth area. It was identified that the use of the Premises by Kidz Galore as a commercial childcare centre was inconsistent with the Trust purpose.

At its Special Meeting of 28 January 2020, Council authorised the Mayor to apply for approval from the Attorney General for the draft Haynes Street Reserve Development Plan and provide the Attorney General with certain additional information, including:

- (a) an acknowledgement that the City has been in breach of the Trust by leasing the Premises to Kidz Galore;
- (b) confirmation that the City intends to transition the use of Premises to comply with the Trust in accordance with the draft Haynes Street Reserve Development Plan;
- (c) the following proposed conditions for a future lease of the Premises to Kidz Galore:
  - (i) the lease will expire on 31 December 2025;
  - (ii) from the commencement of the new lease, no enrolments should be taken for the site after 31 December 2025;
  - (iii) at the end of the second year of the lease, Kidz Galore is required to submit a satisfactory relocation plan or business plan, which shows a transition from the Premises or how it will scale down its current operations by the end of the fifth year of the lease;
  - (iv) at the end of the fourth year of the lease, Kidz Galore is required to submit a closure plan, which demonstrates the timeline of closure and removal of buildings and property from the Premises;
  - (v) the failure of Kidz Galore to provide the required information to a satisfactory standard by the timeframe specified will result in the termination of the lease; and
- (d) the City's commitment that past revenue obtained from the use of the Premises (since the 2015/16 financial year) and any future/additional revenue from the Premises will be used to return the Premises to public open space in accordance with the timeframe of the draft Haynes Street Reserve Development Plan.

By letter dated 3 March 2020, the Attorney General acknowledged the information provided and consented to the continued breach of the Trust by providing Kidz Galore with a further five year lease (to allow Kidz Galore to transition off the Premises).

**DETAILS:**

The proposed commercial lease terms are in accordance with Council's decision of 28 January 2020. In addition, the lease will be subject to the following special conditions:

- (a) Kidz Galore may choose to terminate the lease upon three months written notice being provided to the City;
- (b) the car park licence (that originally sat separately to the lease) has been included in the lease terms and is for a term of three years (expiring 31 December 2023) for a fee of \$2,600 per annum including GST subject to 5% fixed increase annually; and
- (c) prior to the expiry date of the lease, Kidz Galore must remove its property, including the demountable building and play equipment, from the Premises and make good any damage caused by that removal.

Administration engaged a commercial property valuer to complete a market rent appraisal of the Premises, as at **Confidential Attachment 2**. In line with the market rent valuation, rent is proposed at \$35,000 per annum plus GST and is subject to a fixed 5% annual increase. Outgoings (including ESL, rubbish and recycling bin charges and utilities) are in addition to rent.

Kidz Galore has confirmed it agrees to the proposed commercial lease terms.

**CONSULTATION/ADVERTISING:**

In accordance with section 3.58 of the *Local Government Act 1995* (Act) local public notice of the proposed lease would be provided for a period of at least two weeks, commencing in mid-September and closing in early October. Local public notice would be provided in the following ways:

- notice in the City's local newspapers;
- public notice on the City Administration and Civic Centre, Library and Local History Centre notice boards; and
- notices on the City's website, social media platforms and in the e-newsletter.

**LEGAL/POLICY:**

Section 3.58(3) of the *Local Government Act 1995* sets out the public notice requirements for disposal of property to a commercial entity.

The proposed lease terms are generally consistent with the terms for Category 3 of the City's draft Property Management Framework, noting that the lease term is restricted to 5 years.

**RISK MANAGEMENT IMPLICATIONS**

Low: It is low risk for Council to provide public notice of the proposed new lease with Kidz Galore.

**STRATEGIC IMPLICATIONS:**

This is in keeping with the City's *Strategic Community Plan 2018-2028*:

Connected Community

*Our community facilities and spaces are well known and well used.*

Innovative and Accountable

*We are open and accountable to an engaged community.*

**SUSTAINABILITY IMPLICATIONS:**

Nil.

**FINANCIAL/BUDGET IMPLICATIONS:**

The current rent for the Premises is approximately \$30,210.38 per annum plus GST and outgoings. Following a market rent review of the Premises, rent for the new lease has been proposed at \$35,000 per annum plus GST and outgoings. The rent will be increased by 5% annually on 1 July of each year of the lease term.

The car park licence fee is proposed at \$2,600 per annum including GST and is also subject to a fixed 5% increase per annum.

Maintenance Item	Lessor's obligations	Lessee's obligations
<b>Statutory/Minimum Level of Service obligations</b>		
Emergency exit lighting systems & emergency doors	Undertake annual inspections of the Premises to ensure maintenance and compliance with requirements of the Building Code of Australia and Australian Standards.	Ensure that any faults or operational issues with the emergency/exit lighting systems in the Premises are promptly reported to the Lessor. Reimburse the Lessor for the cost of annual compliance inspections.
Fire protection equipment (e.g. fire extinguishers, hoses, smoke alarms)	Undertake annual inspections of the Premises to ensure compliance with FESA and DFES requirements.	Ensure that any use or operational issues with the fire protection equipment in the Premises are promptly reported to the Lessor. Reimburse the Lessor for the cost of annual compliance inspections.
RCD Protections, Tagging Electrical Equipment	Ensure that all RCDs are repaired and maintained in accordance with the relevant legislation.	Ensure that all portable plug-in electrical equipment are regularly inspected (a minimum of once every 12 calendar months) in accordance with relevant legislation. Reimburse the Lessor for the cost of annual RCD compliance testing.
Pest Control, vermin control & termites	Undertake annual pest inspections and extermination treatments (if required).	Endeavour to keep the Premises free and clear of all rodents, rats, vermin, insects, birds, animals and other pests and report to the Lessor any pest activity or required treatment. Reimburse the Lessor for the cost of annual pest inspection and treatments.
<b>Premises and security</b>		
Cleaning & cobweb removal	Not any.	Ensure Premises is kept tidy and free of litter, dirt, rubbish, cobwebs and broken glass at all times.
Malicious damage & break-ins	At request of Lessee, will submit Building Insurance claim on behalf of Lessee.	Responsible for repairs and cleaning of broken glass, windows and doors after an act/incident of malicious damage. Responsible for repairing and replacing any stolen goods or broken fixtures and fittings. Report any incidents of malicious damage or break-ins to the Lessor. Must pay any excess for a Building Insurance claim commenced by the Lessor at the Lessee's request.

Vandalism & graffiti	At request of Lessee, will submit Building Insurance claim on behalf of Lessee.	Remove all vandalism & graffiti and repair any damage caused. Must pay any excess for a Building Insurance claim commenced by the Lessor at the Lessee's request.
Security monitoring, equipment and security lights.	Not any.	The Lessee must ensure the Premises is maintained in a secure condition at all times. If any security monitoring, equipment or lighting is in use by the Lessee at the Premises (including any installed by the Lessee), the Lessee must ensure all equipment and lighting is maintained in Good Repair and undertake regular servicing of any security equipment at the Premises. If the Lessor is called upon to attend the Premises or the Lessor incurs expense for a call out on a Lessor installed security system, the Lessee must pay to the Lessor on demand all costs incurred by the Lessor due to that call out.
Ceiling	Repair any structural damage to ceiling. If damage is caused or contributed to by the Lessee or Lessee's Employees and Visitors, the Lessor may require the Lessee to reimburse it for cost of repairing the damage.	Clean ceilings, as required, and report any structural damage to the Lessor.
Walls	Repair structural damage to load bearing walls. If damage is caused or contributed to by the Lessee or Lessee's Employees and Visitors, the Lessor may require the Lessee to reimburse it for cost of repairing the damage.	Keep clean at all times, dust any cobwebs and report any structural repairs or faults to Lessor.
Window, glass panes, flyscreens, security screens, doors, door handles.	Not any.	Keep items clean, operable, lockable, and firmly fixed. Repair, replace and lubricate hinges of items, repair/replace any items that are broken or damaged where caused by misuse/internal vandalism.
Skylights, lighting, globes	Not any.	Keep clean at all times and repair and/or replace as required. Replace all globes as required.

Painting	Not any.	At least once every 5 years of the Term and three months before the expiry of the Lease, repaint the Premises (interior and exterior) with a minimum of two coats of good quality paint (in a colour approved by the Lessor) to a tradesmanlike finish. Touch up any paint damage on internal walls, as required.
Cupboards, blinds, curtains, mirrors	Not any.	Keep clean at all times. Maintain, repair and replace items as required.
Carpet	Not any	Keep clean at all times, repair and/or replace when at end of economic life. Professionally clean at least once annually.
Vinyl Floors	Not any.	Keep clean at all times, repair and/or replace when at end of economic life.
Wooden Floors	Not any.	Keep clean at all times, repair and/or replace when at end of economic life.
Tiled Floors	Not any.	Keep clean at all times, repair and/or replace when at end of economic life.
Bathrooms and changerooms (including: drains, hot water systems, sewerage, showers, sinks, taps, toilets etc.)	Replace items that require replacement due to old age/end of economic life. Undertake capital renewal as an when determined by the Lessor. Where the Lessor undertakes works or repairs to clear blockages which have occurred as a result of the neglect, misuse or default of the Lessee, the Lessee must pay (on demand) the Lessor's costs of undertaking those works.	Must keep clean at all times. Ensure all are operable and free from any blockages. Repair leaks, service and maintain as required. Replace damaged items as required. Lessee shall not permit foreign objects or matter to be placed into drains, toilets or grease traps.
<b>Fixtures, fittings, appliances and electrical</b>		
Air-conditioning	Replace Lessor installed air-conditioning unit/system where replacement is required due to old age/end of economic life. If replacement is required due to Lessee failing to maintain the unit/system in Good Repair, the Lessor may require the Lessee to pay for the replacement unit/system.	Repair and undertake annual servicing of air-conditioning units/systems. Replace air-conditioning unit where Lessee installed air-conditioning unit or replacement is required to damage/lack of maintenance by the Lessee

Oven Vents	Not any.	Keep clean at all times, repair and/or replace when necessary.
Exhaust Fans	Not any.	Keep clean at all times, repair and/or replace when necessary.
Electrical Fittings (i.e. plugs, switches, sockets, leads, lights, power points)	Replace any irreparable items. If replacement is caused by misuse/negligence of Lessee, Lessor may require the Lessee to reimburse it for the cost of replacement.	Maintain and repair as required. The Lessee must ensure that electrical fittings are not overloaded when in use.
Wiring	Replace any irreparable items.	Repair, maintain and advise the Lessor prior to any wiring or electrical work taking place.
Appliances (i.e. fridges, toasters, freezer, stove, microwaves, washing machine)	Not any.	Keep clean at all times. Keep items operable, regularly maintain and repair as required. Replace irreparable appliances.
<b>Premises exterior and surrounds</b>		
Roof (including leaks, broken tiles etc.)	Repair any structural damage to roof and clean roofs as required. If damage is caused or contributed to by the Lessee or Lessee's Employees and Visitors, the Lessor may require the Lessee to reimburse it for cost of repairing the damage.	Report any structural damage to the Lessor. Repair any damage to the roof (structural or otherwise) caused by the Lessee or its failure to maintain the eaves, gutters and downpipes in a clean and clear condition.
Eaves, gutters & downpipes	Repair any damage to eaves, gutters and downpipes. If damage is caused by Lessee failing to maintain the eaves, gutters or downpipes in a clean and clear condition, the Lessor may require the Lessee to reimburse the Lessor for the cost of undertaking the repairs.	Maintain eaves, gutters and downpipes in a clean and clear condition and report any damage to same to the Lessor. Repair any damage to the eaves, gutters or downpipes where caused or contributed to by the Lessee or its failure to maintain the eaves, gutters and downpipes in a clean and clear condition.
Garden and surrounds (including fencing and gates)	Responsible for any major tree pruning and tree removal. Replacing fences and/or gates as required and determined by the Lessor.	Maintain the surroundings, fertilising, minor pruning and conduct regular mowing of the lawn. Responsible for ensuring all fences and gates are cleaned, repaired, re-enforced and maintained. Not to remove any trees or hedges without first obtaining approval from the Lessor, except for urgent safety reasons.

Walkways, footpaths, access, steps, ramps	Responsible for City verge footpaths.	Keep clean and clear at all times. Repair damage or trip hazards to access/walk ways other than the City verge footpath.
Car Park	Responsible for bitumen repairs and pot-hole maintenance.	Responsible for ensuring the car park is clean and clear of rubbish, trip hazards or obstructions. Undertake car park line marking as required.
Shed, roller doors and garage (if applicable)	Replace as and when determined by the Lessor.	Responsible for cleaning, repairs, replacement and maintenance of such structures.
Abandoned rubbish	Arrange for removal of abandoned furniture, car parts, larger rubbish that has been dumped on the verge, carpark or grassed area by third parties.	Arrange for removal of abandoned items that have been dumped on the property and will fit in the bins provided.
Pollution	Not any.	Do all things necessary to prevent pollution or contamination of the Land by garbage, refuse, waste matter, oil or other pollutants. Report any pollution, contamination or suspected pollution/contamination to the Land to the Lessor promptly.

