

9.5 VARIATION OF LICENCE TO BONNIE BREW PTY LTD - PART OF ROAD RESERVE ADJACENT TO NO. 639 (LOT 1) BEAUFORT STREET, MOUNT LAWLEY (CORNER GROSVENOR ROAD)

Attachments: Nil

RECOMMENDATION:**That Council:**

1. **AUTHORISES the variation of the existing licence over part of road reserve adjacent to No. 639 (Lot 1) Beaufort Street, Mount Lawley (corner Grosvenor Road) between the City and Bonnie Brew Pty Ltd (ACN 642 782 081) to allow Outdoor Furniture (Tables and Planter Boxes) to remain in situ on the Licence Area provided that the Licensee:**
 - 1.1 **ensures the Outdoor Furniture (Tables and Planter Boxes) that do not obstruct or prevent public access to the road reserve or the Licence Area; and**
 - 1.2 **affixes the Outdoor Furniture (Tables and Planter Boxes) (that do not obstruct or prevent public access) to the alfresco deck structure, to the City's satisfaction; and**
2. **AUTHORISES the affixing of the common seal of the City of Vincent to the variation of licence in accordance with the City's Execution of Documents Policy.**

PURPOSE OF REPORT:

To consider varying the terms of the Licence to Bonnie Brew Pty Ltd (ACN 642 782 081) (Licensee) to allow the Licensee to leave the business' seven (7) large tables and planter boxes (Outdoor Furniture) in situ on the portion of road reserve adjacent to No. 639 (Lot 1) Beaufort Street, Mount Lawley (Licence Area) at the close of business.

BACKGROUND:

At the Ordinary Council Meeting on 20 October 2020, Council approved the grant of a licence to the Licensee for a term of 5 years commencing 9 November 2020 and expiring on 8 November 2025 and included an option to extend for another 5 years. Council also approved the construction and installation of an alfresco deck structure on the Licence Area. The Licence was executed by the City on 10 November 2020 (**Licence**).

The Licensee owns and operates the business known as The Elford from No. 639 (Lot 1) Beaufort Street, Mount Lawley.

Licence

- Clause 4 of the Licence provides that "*the Licensee may use the Licence Area for the Permitted Use subject to the following conditions:*
 - (b) *excluding the Improvement, all furniture, equipment and accessories used by the Licensee within the Licence Area must be removed from the Licence Area and stored securely by the Licensee at the close of business each day*".
- Improvement is identified in item 5 of the Licence to include "*the alfresco structure with balustrade and decking to be constructed on the Licence Area and all fixtures and fittings associated with the structure and required to affix it to the Licence Area*".

Licensee's Request

The Licensee has requested for the Outdoor Furniture to remain in situ on the Licence Area at the close of each business day for the following reasons:

- a) practical convenience. The late closure and early opening hours of The Elford make it inconvenient for the business to pack and unpack the Outdoor Furniture each day; and

- b) additional resources are required to carry out the 'pack and unpack' task.

DETAILS:

Administration is supportive of the Licensee's request as follows:

- a) the Licensee ensures the Outdoor Furniture to remain in situ does not obstruct or prevent public access to the road reserve or the Licence Area; and
- b) the Licensee affixes the Outdoor Furniture (that do not obstruct or prevent public access) to the alfresco deck structure, to the City's satisfaction to prevent theft or vandalism.

It is to be noted that:

- a) the Licensee has been punctual with their payment of the Licence Fee; and
- b) pursuant to clause 6 of the Licence, the Licensee has indemnified the City, the Minister for Lands and the State for any loss, damage, costs and/or expenses arising out of the Licensee's use of the Licence Area or the Licensee's (including their employees and patrons) default or omission including releasing the City, the Minister for Lands and the State from any actions or demands due to damage or injury to any person or property occurring in the Licence Area.

Except for amendment to clause 4(b) of the Licence, all other terms and conditions of the existing Licence remain unchanged and will continue to apply until expiry of the Licence. The proposed new clause 4(b), subject to negotiations, will be as follows:

"4. *The Licensee may use the Licence Area for the Permitted Use subject to the following conditions:*

- (b) *all tables and planter boxes used by the Licensee and left on the Licence Area at the close of business each day must not obstruct and/or prevent access to the public. Tables and planter boxes which do not obstruct and/or prevent public access must be affixed to the improvement to the satisfaction of the Licensor. Excluding the Improvement, tables and planter boxes, all other furniture, equipment and accessories used by the Licensee within the Licence Area must be removed from the Licence Area and stored securely by the Licensee at the close of business each day"*

CONSULTATION/ADVERTISING:

Administration and the representative of the Licensee have discussed the proposed variation to the Licence and have reached a consensus subject to Council's approval.

LEGAL/POLICY:

In accordance with section 55(2) of the *Land Administration Act 1997*, the City has the care, control and management of the road reserve and has authority to negotiate a variation of the Licence.

Section 3.58 of the *Local Government Act 1995 (WA)* does not apply as there is no disposition of property.

RISK MANAGEMENT IMPLICATIONS

Low: It is low risk for Council to allow the Outdoor Furniture to remain in situ. The Licensee has demonstrated their ability to satisfy their obligations under the Licence and has continued to meet its obligations.

STRATEGIC IMPLICATIONS:

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

Connected Community

We have enhanced opportunities for our community to build relationships and connections with each other and the City.

Thriving Places

We are recognised as a City that supports local and small business.

Innovative and Accountable

Our community is aware of what we are doing and how we are meeting our goals.

SUSTAINABILITY IMPLICATIONS:

This does not contribute to any environmental sustainability outcomes. This action/activity is environmentally neutral.

PUBLIC HEALTH IMPLICATIONS:

This does not contribute to any public health outcomes in the *City's Public Health Plan 2020-2025*.

FINANCIAL/BUDGET IMPLICATIONS:

Nil.