

5.3.6 LATE ITEM: Short-term Lease of Litis Stadium – Floreat Athena Soccer Club Inc

Ward:	North	Date:	02 December 2016
Precinct:	Leederville (3)	File Ref:	SC614
Attachments:	1 – Map of proposed lease area 2 – Lease Extension Request – Planning Solutions 24 November 2016		
Tabled Items:	Nil		
Reporting Officer:	M Bancroft, Property Leasing Officer		
Responsible Officer:	J Paton, Director Corporate Services		

RECOMMENDATION:

That Council:

1. **NOTES** Floreat Athena Soccer Club’s intention to prepare at its cost a Master Plan for Litis Stadium for presentation to Council as the basis for future lease consideration;
2. **APPROVES** a short-term lease from 1 January 2017 to Floreat Athena Soccer Club Inc over the soccer stadium located at Britannia Reserve, 41 Britannia Road, Leederville, on the following key terms:
 - 2.1 **Term:** 10 months;
 - 2.2 **Rent:** \$3,000 plus GST for the Term;
 - 2.3 **Rates & Taxes:** Lessee to pay, defined to expressly include rubbish bin charges and ESL;
 - 2.4 **Outgoings:** Lessee to pay;
 - 2.5 **Repairs & Maintenance:** Lessee responsible for all repairs and maintenance and to keep premises clean and in good condition, this includes repair of damage due to fair wear and tear (components at end of life) and structural maintenance (repair and replacement of roof, load bearing walls).
Lessor not responsible for any structural repair.
 - 2.6 **Minimum Level of Service:** Lessee to pay for cost of statutory compliance (RCD, smoke alarm, emergency exit and fire hydrant testing) and pest inspections and treatment;
 - 2.7 **Insurance:** Lessee to effect a public liability policy, with cover not less than \$20 million, and pay premium for building insurance policy;
 - 2.8 **Indemnification:** Lessee to indemnify the City against all costs and claims;
 - 2.9 **Permitted Purpose:** As detailed in previous Lease;
 - 2.10 **Shared Use (hire):** Lessee permitted to hire out clubrooms, function rooms and soccer pitch at its discretion, provided that the use is consistent with the Permitted Purpose
 - 2.11 **Alterations:** Not without the prior approval in writing of the Lessor;

- 2.12 **Capital Works:** Not without the prior approval in writing of the Lessor and subject to the conditions stated; and
- 2.13 **Lessor's Covenant:** Lessor will provide Lessee with quiet enjoyment of the premises for the term of the lease.
3. **Subject to final satisfactory negotiations being carried out by the Chief Executive Officer, AUTHORISES the Mayor and Director Corporate Services to affix the common seal and execute the lease in 1 above;**
4. **ADVISES Floreat Athena Soccer Club that:**
- 4.1 **the granting of the short term lease in 1. above and preparation of a Master Plan should in no way be deemed a warranty or representation that the Council will grant a future lease or allow the Club to remain in occupation of the leased premises beyond 31 October 2017; and**
- 4.2 **Council will not consider any future lease until it has received and considered the Master Plan, which needs to be received no later than 30 June 2017.**

It is proposed that the short term Lease will be provided subject to Floreat Athena being required to provide a Master Plan for Litis Stadium, including the following information to the satisfaction of the Chief Executive Officer and by the end of June 2017:

- Proposed Facility Works and Improvements;
- Facility Management Plan;
- Life cycle cost analysis;
- Community benefit statement; and
- Financial Plan demonstrating that the Club has the capacity to fund the project.

It is to be noted that the granting of the short term lease and any requirement for Floreat Athena to prepare a Master Plan should in no way be deemed a warranty or representation that the City will grant a future lease or allow the Club to remain in occupation of the leased premises beyond 31 October 2017.

PURPOSE OF REPORT:

To consider a request for a short-term lease of the soccer stadium at 41 Britannia Road, Leederville (Litis Stadium) as shown in the plan attached (see **Attachment 1**), to Floreat Athena Soccer Club Inc (Floreat Athena).

BACKGROUND:

Background to Litis Stadium:

Litis Stadium is located at Britannia Reserve on lots 31 and 32 on Deposited Plan 687, and being the whole of the land comprised within Certificate of Title Volume 1769 Folio 75. These lots are owned in freehold by the City of Vincent.

The site was originally developed as the lake Monger Velodrome for the 1962 British Empire and Commonwealth Games. Floreat Athena completed construction of their clubrooms in 1986 and the velodrome was redeveloped in 1998, with joint funding from the Club, CSRFF and the City (then Town).

Litis Stadium comprises a soccer pitch, grandstand, Clubrooms (social / function rooms and office space), change rooms, toilets and sheds.

Background to Floreat Athena

The Athena Club was established in 1951 as a Greek community football club, with its home turf at Wellington Square. In the 1970s the Club relocated to Perry Lakes Stadium (and became known as Floreat Athena). In 1986 Floreat Athena relocated to Litis Stadium, following extensive negotiation with the City of Perth in respect to the construction of clubrooms and the lease.

Floreat Athena competes in the National Premier Leagues Western Australia and membership is currently 622, which comprises 400 players, 85 concession members, 71 family members, 36 general members, 11 honorary members and 19 life members. Floreat Athena has stated that approximately 30 per cent of its junior members reside within the City of Vincent. Floreat Athena has teams in all state age groups and levels, including juniors, amateurs, masters, women's and semi-professionals.

Floreat Athena's financial statements show that in 2014/15 it made a profit of \$16,475, while in 2015/16 the profit was \$22,863. 30% of Floreat Athena's income is derived from trading profit (bar sales), with a similar percentage from sponsorship. Floreat Athena's financials indicate that it is in a stable financial position, although the annual profit is relatively low given the scale of the operation. No information has been provided to date in respect to the financial 'reserves' of the Club.

Background to the lease:

Litis Stadium has been leased to Floreat Athena since 1982. The original agreement (licence for use to enable construction of clubrooms), dated 17 September 1982, was in respect to the portion of Litis Stadium on which the clubrooms were to be constructed. The agreement provided that the clubrooms were to be constructed within two years and that a ten year lease with a ten year option would commence upon the completion of the clubrooms. In 1993 the City and Floreat Athena entered into a lease dated 30 September 1993 in respect to the balance of Litis Stadium (soccer pitch and surrounds), for a term of 5 years with no further option.

In late March 1996 the City advised Floreat Athena that the lease of the clubrooms had expired and therefore Floreat Athena occupied the clubrooms as a monthly tenant pursuant to the holding over clause. Floreat Athena disputed the expiry of the lease, claiming that the clubrooms were not completed until October 1986 and therefore the lease did not expire until October 1996.

Following further correspondence with Floreat Athena, at the Ordinary Meeting of Council (OMC) held on 23 September 1996 (Item 12.3.3) Council resolved:

"That the Council advise Floreat Athena Soccer Club;

- (i) that it is prepared to offer the Club a Lease for a term of five years over the Lake Monger Velodrome premises commencing on 1st January 1997 and expiring on 31st December 2001 with a five year option to renew subject to:*
 - (a) a formal surrender of the 1993 Lease being entered into;*
 - (b) an annual lease rental of \$3,150 subject to annual CPI adjustments;*
 - (c) terms and conditions of the new Lease to be in accordance with standard Lease conditions adopted by the Council; and*
 - (d) costs involved in preparing the Lease to be met by Floreat Athena Soccer Club."*

At this meeting Council also approved (Item 12.3.4) the allocation of funding towards safety and remedial works to be undertaken at Litis Stadium by Floreat Athena.

Following lease drafting and negotiations, Council resolved at the OMC dated 11 August 1997 (Item 11.3.5):

"That the Council advise Floreat Athena Soccer Club;

- (i) it is prepared to amend the Draft Lease to provide for a Term of 10 years with 2 options each of 5 years;*
- (ii) it is prepared to amend the Draft Lease to provide for an annual rental of \$1,600 in year 1, adjusted by CPI in subsequent years during the Term with rental in year 1 of the first option (ie. 2007) to be based on \$3,150 at 1 January 1997 adjusted by movements in CPI to 31 December 2006;*
- (iii) night games are to conclude by 10.00pm with night games on Sundays only allowed during January, February and March each year;*
- (iv) other requested amendments are either agreed or not approved as detailed in Officer's comments in the Draft Lease;*
- (v) the Western Carpark is not included in the lease; and*
- (vi) the Council is anxious for this matter to be finalised and request that the Club give earnest consideration to finalising this matter.*

Floreat Athena accepted the terms as approved above and subsequently the 1993 lease of the soccer pitch and surrounds and 1982 agreement were surrendered by a Deed of Surrender dated 18 November 1997. The lease was finalised and signed by Floreat Athena and the City at a formal ceremony at Litis Stadium on 18 November 1997. The key terms of the lease dated 18 November 1997 (Lease) are set out below:

Term:	10 years commencing 1 January 1997;
Further Terms:	5 year option commencing 1 January 2007; 5 year option commencing 1 January 2012;
Rent:	\$1,600 per annum (indexed by CPI);
Rates, Taxes & Outgoings:	Lessee to pay; and
Maintenance:	Lessee responsible to keep in good order and condition, including structural repairs of the club rooms.

Floreat Athena has exercised both options for further terms and therefore the lease will expire on 31 December 2016.

Agreement in respect to change room alterations:

At the OMC dated 22 September 2015 two items were considered by Council:

Item 9.3.4 Litis Stadium – Status of changeroom facility

This report dealt with the closure of the Litis Stadium changerooms, due to subsidence, with Council resolving:

"That Council:

- 1. NOTES it has been necessary for the City to close the existing changeroom facilities at Litis Stadium to ensure the safety of members of the Floreat Athena Soccer Club and visiting teams;*
- 2. Subject to 3. Below AUTHORISES the Chief Executive Officer to make the necessary arrangements to provide suitable replacement changeroom facilities at Litis Stadium for the remaining term of the Lease with Floreat Athena Soccer Club, in accordance with 4. below;*

3. APPROVES BY ABSOLUTE MAJORITY, in accordance with Section 6.8(1) of the Local Government Act 1995 the unbudgeted expenditure associated with the costs in 2 above; and
4. NOTES the 2015/16 Budget includes \$150,000 for remedial works on the Grandstand at Litis Stadium, however it is proposed that the works will be restricted to those required to secure, sure-up or make safe the portions of the grandstand that are determined to be in need of such work, with the balance of the funds being freed up to facilitate the following budget reallocation;

PROJECT/ACCOUNT	CURRENT BUDGET	REALLOCATION
Litis Stadium – Grandstand Remediation Works	\$150,000	(\$60,000)
Litis Stadium - Temporary Changerooms	\$0	\$60,000

The agreement dated 2 March 2016 in respect to the alteration to the toilet/changeroom, provided the following:

“Recital B: The Club has expressed an intention to extend the Lease and is working on a masterplan addressing ground and support facilities, at its cost. As part of its proposal for the extension of the Lease.”

“Clause 10

- (a) *The term of the Lease ends on 31 December 2016.*
- (b) *There is no express or implied agreement:*
 - I. Between the Parties to renew the Lease or extend the term of the Lease beyond 31 December 2016; or*
 - II. By the City to grant a new lease of the leased premises beyond 31 December 2016.*
- (c) *The City gives no warranty or representation that it will allow the Club to remain in occupation of the leased premises beyond 31 December 2016.*
- (d) *Nothing in this deed is an admission by either Party that it has failed to comply with the terms of the Lease.*
- (e) *Notwithstanding any payments made by the Club in connection with the Changeroom Works, title to the Changeroom Works all the improvements therein, shall be vested in the City.”*

Item 9.4.2 Community Sporting and Recreation Facility Fund – Floreat Athena

This report sought Council consideration of a CSRFF Forward Planning Grant application from the Floreat Athena Soccer Club and included the following recommendation:

“That Council:

1. *SUBMITS the application by Floreat Athena Soccer Club (FASC) included as Confidential Attachment 1 to the Department of Sport and Recreation (DSR) to benefit from the Community Sport and Recreation Facility Fund (CSRFF), with the following classification;*

Ranking	Facility	Project	Assessment	Project Rating	Amount
1 of 1	Floreat Athena Soccer Club	Replacement of south east change rooms and player's race	Unsatisfactory	Category: C Needed by the municipality, more planning required	\$2,175,000 (exclusive of GST)

2. *ADVISES FASC that insufficient detail has been included in its CSRFF grant application to enable Council to seriously consider any funding commitment to the project at this stage and INVITES the Club to provide the following information to the satisfaction of the Chief Executive Officer by the end of October 2015, for a further report to Council in November 2015 to consider Council's future funding commitment:*
 - 2.1 *Sustainable Master Plan for Litis Stadium;*
 - 2.2 *Facility Management Plan;*
 - 2.3 *Life cycle cost analysis; and*
 - 2.4 *Financial Plan demonstrating that the Club has the capacity to fund the project.*

Council resolved to defer the Item for further consideration. The report was considered again at the OMC dated 17 November 2015 (Item 9.4.1) and Council resolved as follows:

"That Council:

1. *SUBMITS the application by Floreat Athena Soccer Club included as Confidential Attachment 1 to the Department of Sport and Recreation (DSR) to benefit from the Community Sport and Recreation Facility Fund (CSRFF), with the following classification:*

<i>Ranking</i>	<i>Facility</i>	<i>Project</i>	<i>Assessment</i>	<i>Project Rating</i>	<i>Amount</i>
<i>1 of 1</i>	<i>Floreat Athena Soccer Club</i>	<i>Replacement of south east change rooms and player's race</i>	<i>Unsatisfactory</i>	<i>Category: E Idea has merit, more planning work needed</i>	<i>\$962,725 (exclusive of GST)</i>

2. *DOES NOT SUPPORT a funding allocation to the Club's requested CSRFF application on the basis that the application is premature and prejudicial to the City's future negotiations as a landowner; and*
3. *ADVISES the DSR that the City does not support Floreat Athena Soccer Club's CSRFF application for the following reasons:*
 - 3.1 *The proposal for change rooms would exceed the term of the existing lease, being until 31 December 2016 and there is no agreed tenure beyond this time;*
 - 3.2 *A master plan has not been developed for the subject site to the satisfaction of the City;*
 - 3.3 *There has been no demonstrated benefit to the Vincent community; and*
 - 3.4 *The financial records provided as part of the application do not demonstrate the financial viability of the Club to support their allocation of funding and ability to fund on-going maintenance and up-keep of the facility to the City's satisfaction."*

DETAILS:

Administration has met with representatives of Floreat Athena and/or its consultants, Planning Solutions, on a number of occasions to discuss the development of a Master Plan for Litis Stadium and the status of the Lease. Planning Solutions, on behalf of Floreat Athena, made a presentation at the Council Workshop held on 22 November 2016 and followed up on 24 November 2016 with a letter (**Attachment 2**) to request Council to “grant a short term extension to the Club’s lease and provide an overview of the background to the Club’s endeavours to progress a Precinct Masterplan for the Stadium”. The letter included the following statements:

The Club has made substantial and ongoing investments towards the betterment of the Stadium, including the installation of four training lights on Britannia Reserve (still being used today), construction of club rooms, walkways, walls and grandstand seating, installation of an electronic scoreboard and the upgrade of the changerooms with personalised seating.”

The Club continuously seeks to engage with the local and wider community. The Stadium is frequently used by many community groups, a number of which are local, such as Mt Hawthorn primary School, Aranmore Catholic College, aged/seniors groups and multicultural groups. The Club also hosts the annual Community World Cup, organised by the Latin American Association of WA.”

“We understand the City has committed to review and prepare a revised Britannia Reserve Master Plan, as part of its business improvement objectives. In accordance with the City’s Corporate Business Plan 2016/17 – 2019/20, the Britannia Reserve Master Plan review and preparation is expected to be commenced in 2018/19, and completed in 2019/20.

*Given the co-location [of] the Stadium within the wider Britannia Reserve, it will be essential to ensure there is a level of consistency between the Litis Stadium Precinct Masterplan and the Britannia Reserve Master Plan. As such, we request a short-term lease extension for the Floreat Athena Football Club to utilise the Litis Stadium until **30 June 2019**. It is at this point that we expect the Britannia Reserve Master Plan to be sufficiently progressed, providing a level of certainty on the consistency with the Litis Stadium Precinct Masterplan.”*

The current Lease expires on 31 December 2016 and has no further extension terms, however it does include a month to month ‘holding over’ provision. Given the current expiry, Floreat Athena are requesting a two and a half year extension, although technically it will need to be a new short-term lease.

In order to consider the requirements for a new lease, it is important to understand the provisions of the existing lease.

The Current Lease

As noted previously, the current lease commenced on 1 January 1997 and the final option period expires on 31 December 2016. The key terms of the Lease include:

Permitted Use:

“Not to use the Premises for any other purpose than for soccer matches, training and the Lessees associated activities without the consent in writing of the Lessor first had and obtained which consent may be granted or withheld at the Lessor’s absolute discretion without assigning any reason therefore PROVIDED THAT:

- (i) *If the Lessee wishes to use the Premises for a use other than its Permitted Use the Lessor shall not unreasonably withhold its consent to such use if:*

- (A) *A Community consultation (“the Community Consultation”) is undertaken by an organiser proposing to conduct a function or event on the Premises which is likely to adversely impact on residents and ratepayers in the immediate vicinity of the Premises (“the Residents”) at no cost to Council to the satisfaction of the Chief Executive officer of the Lessor; and*
- (B) *The Council shall after having duly considered the outcome of the Community Consultation forms the view that the approval of variation of use of the Premises is not likely to adversely impact on the Residents.”*

Prohibited Use:

“Not to use the Premises for:

- (i) Any auctions, business or commercial use excluding social or fundraising functions without the prior consent of the Lessor; or*
- (ii) Any illegal or immoral purpose; or*
- (iii) Any person to sleep or reside in the Premises; or*
- (iv) Any international or national sporting events with the exception of junior level games without prior written consent of the Lessor; or*
- (v) Night soccer games without the approval of the Chief Executive Officer which approval shall include a condition that night games are to be concluded by 9.30pm except where there is a specific need for extra time to be played; or*
- (vi) Night soccer games played on a Sunday except during the months of January, February and March; or*
- (vii) Rock bands or any event including entertainment with amplified music.”*

Lessee's Covenants:

- To pay the rent in the manner prescribed. Rent in the first year of the term was \$1,600, with annual increases on the anniversary of the commencement date based on the Consumer Price Index. Rent in the further term was to be increased to \$3,150 (based on the value of the amount with CPI increased since 1997). Therefore the rent in 2007 would have been \$4,143. This was to increase by CPI each subsequent year.
- To pay all rates and taxes and all outgoings, including telephone, electricity, gas, water/sewerage etc.
- To *“well and sufficiently and substantially repair, clean, maintain, mend and keep the premises, the appurtenances therein and all additions made thereto in good and substantial repair, order and condition, damage by explosion, earthquake, aircraft, riot, civil commotion, fire, flood, lightning, storm, tempest and reasonable wear and tear and war damage only excepted unless any insurance moneys are irrecoverable through neglect or default of the lessee and in respect of the club room forming part of the premises, attend to the major structural repairs thereto provided that the lessee shall not be required to paint more than once every five years during the term of the lease or any extension thereof.”*
- To pay all costs associated with pest treatment undertaken by the lessor.
- To ensure that the premises is not used in a manner which becomes a nuisance, disturbance or annoyance to the quiet and comfort of any reasonable occupier or person within the vicinity of the premises and *“use its reasonable endeavours to prevent members and spectators from sounding car horns leaving the area... prevent the playing of bugles and other musical instruments by persons during soccer matches”.*

- Not to use the premises for any purpose other than soccer matches, training and the lessees associated activities, including *“any international or national sporting events with the exception of junior level games without prior written consent of the lessor; night soccer games without the approval of the Chief Executive Officer which approval shall include a condition that night games are to be concluded by 9.30pm except where there is a specific need for extra time to be played; night soccer games on Sunday except during the months of January, February and March; or rock bands or any event including entertainment with amplified music.”*
- To submit to the lessor a management plan for the use of the premises and conduct of soccer matches.
- To hold and keep current a public liability insurance policy for an amount not less than \$10,000,000 for any one event, and to pay the building insurance premiums and the excess for each claim made.
- To indemnify the City from all claims of any nature which the Lessor may suffer or incur arising from any occurrence at the premises.
- To keep proper books of accounts and *“within three months of the 30th of June each year provide the lessor with the audited profit and loss accounts and trading statements.”*
- Not to make or permit any alteration to the premises or install any partitions without the prior approval of the City.
- Notify the lessor immediately of any damage to or defect in the premises or the water, sewerage, pipes, plant, equipment or electrics.
- Not to assign, sublet or part with the possession of the premises or any part of the premises thereof without the consent in writing of the City.
- Not to place any signs or advertising on any part of the premises without the prior written approval of the lessor.

CONSULTATION/ADVERTISING:

As Floreat Athena have recreational and sporting objectives and the members would not receive any pecuniary profit from the lease, a lease would meet the requirements of an exempt disposition, in accordance with Section 3.58(5) of the *Local Government Act 1995*. Therefore there would be no requirement for the City to advertise an intention to enter into a new lease with Floreat Athena.

LEGAL/POLICY:

Local Government Act 1995 section 3.58 - Disposing of Property, provides that a local government can only dispose of property (which includes to lease) in accordance with section 3.58(3) unless the disposition falls within the scope of section 3.58(5), which includes:

- “(d) *Any other disposition that is excluded by regulations from the application of this section.”*

In accordance with Section 3.58(5), Regulation 30 of the *Local Government (Functions and General) Regulations 1996* provides a range of dispositions that are exempt from the application of Section 3.58 of the Act, including dispositions to:

- *A body, whether incorporated or not the objects of which are of a charitable, benevolent, religious, cultural, educational, recreational, sporting or other like nature; and the members of which are not entitled or permitted to receive any pecuniary profit from the body's transactions;*

City of Vincent Policy 1.2.1 Terms of Lease – Policy Statement:

1. Any new lease granted by the Council shall usually be limited to a five (5) year period, and any option to renew shall usually be limited to no more than a ten (10) year period.
2. Council may consider longer periods where the Council is of the opinion that there is benefit or merit for providing a longer lease term.

RISK MANAGEMENT IMPLICATIONS:

High Floreat Athena has occupied Litis Stadium for over 30 years and while they have demonstrated a high level of use of the facility, the building structures are aging and will require significant renewal or upgrade in the near future. It is unclear to what extent Floreat Athena are in a position to fund this liability. It is necessary for the City to develop a long term strategy, that addresses the financial implications, beyond the proposed short term lease.

STRATEGIC IMPLICATIONS:

In accordance with the objective of Strategic Plan 2013-2023:

- 1.1.4 *Enhance and maintain the City's infrastructure, assets and community facilities to provide a safe, sustainable and functional environment.*
- 2.1.3 *Develop business strategies that reduce reliance on rates revenue*
 - (c) *Continue to review leases and commercial contracts to ensure the best return for the City, whilst being cognisant of its community service obligations.*

SUSTAINABILITY IMPLICATIONS:

Not applicable.

FINANCIAL/BUDGET IMPLICATIONS:

The 1996 Lease provided for a negotiated 'discount' rental of \$1,600 with annual CPI increases for the first 10 years. The rent for the further terms, commencing 1 January 2007 was to increase to \$3,150 plus CPI movements from 1997 to 2006. This would equate to a commencing rent in 2007 of \$4,143. Unfortunately, it appears Administration did not initiate this change and continued to charge annual rent based on the original rent fee of \$1,600 plus CPI throughout the two further terms. The effect of this undercharge is detailed in the following table:

Year	Rent Paid	Actual Rent
2007	2,325.83	4,143.00
2008	2,395.62	4,267.29
2009	2,484.24	4,425.18
2010	2,536.41	4,518.11
2011	2,602.36	4,635.58
2012	2,677.83	4,770.01
2013	2,734.06	4,870.18
2014	2,813.35	5,011.42
2015	2,869.62	5,111.64
2016	2,912.66	5,188.32
TOTAL	26,351.98	46,940.73

Therefore, the City should have received a further \$20,588 in rent over the course of the current lease.

In addition, the City incurred a range of costs on the facility, which (subject to lease interpretation) may have been the Lessee's responsibility. Whilst individual costs have not been reviewed, the fact that they are operating costs and not capital would suggest they would have been within the scope of the Lessee's responsibility. Indicatively, the potential under-recovery for past years was:

2012/13	\$20,850	
2013/14	\$52,404	(may have included some renewal/replacement expenditure)
2014/15	\$8,459	

Lease responsibilities were reviewed in 2015/16 and costs have been incurred or recovered correctly from that point on.

Floreat Athena currently pay a lease fee of \$2,913 (although this is not consistent with the terms of the Lease as discussed above).

COMMENTS:

Floreat Athena's current lease will expire on 31 December 2016 and the Club is looking to continue its use of Litis Stadium.

The current lease imposes responsibility for the Lessee to pay rent and outgoings and in respect to maintenance responsibilities, the Lessee is expressly responsible for:

- Clubrooms - substantially repair and maintain, including structural repairs; and
- Other – substantially repair, clean, maintain and keep the Premises in good and substantial repair.

The nature of the Lessee's obligation to "substantially repair" can be interpreted as requiring to undertake a higher standard of maintenance but it does not extend to structural repairs. It is noted that the Lease does not impose an express (or implied) responsibility on the City to undertake structural repairs.

This is supported by the 'No Warranty' provision which states:

"The Lessee hereby acknowledges that the Lessor has not made or given directly or otherwise any express or implied warranty that the premises are or will remain suitable or adequate for any of the Lessee's purposes and all (if any) warranties as to suitability or adequacy of the premises implied by law or equity are hereby expressly negated."

Over the duration of the Lease, apart from the redevelopment of the velodrome, there appears to have been very little capital (renewal) expenditure on the various buildings. In view of this, there is a potential backlog and substantial upgrade expenditure likely to be required at some point in the near future.

At the OMC of 17 November 2015 (Item 9.4.1), Council resolved in part as follows:

"That Council:

2. *DOES NOT SUPPORT a funding allocation to the Club's requested CSRFF application on the basis that the application is premature and prejudicial to the City's future negotiations as a landowner; and*
3. *ADVISES the DSR that the City does not support Floreat Athena Soccer Club's CSRFF application for the following reasons:*
 - 3.1 *The proposal for change rooms would exceed the term of the existing lease, being until 31 December 2016 and there is no agreed tenure beyond this time;*

- 3.2 *A master plan has not been developed for the subject site to the satisfaction of the City;*
- 3.3 *There has been no demonstrated benefit to the Vincent community; and*
- 3.4 *The financial records provided as part of the application do not demonstrate the financial viability of the Club to support their allocation of funding and ability to fund on-going maintenance and up-keep of the facility to the City's satisfaction."*

Planning Solutions, by correspondence dated 24 November 2016 advised that based on the above resolution and the advice of the City's Administration, Floreat Athena commenced the preparation of a Precinct Masterplan for the Stadium, however "*the need to conduct detailed funding and consultation programmes has resulted in the matter extending into 2017*".

Whilst Planning Solutions, on behalf of Floreat Athena has requested a short term lease of Litis Stadium until 30 June 2019, in order "*to prepare and implement a well-considered Precinct Masterplan which is consistent with the Britannia Reserve Master Plan*", Administration recommends only granting a 10 month lease on the following grounds:

- The 'implementation' of the Precinct Masterplan will be subject to a subsequent decision of Council;
- The Precinct Masterplan, if endorsed by Council will be considered as part of the review of the Britannia Reserve Master Plan, which is proposed to be commenced by the City in 2018/19;
- Council's decision of 17 November 2015 highlighted the need for a masterplan and the first meeting with consultants was held on 28 April 2016. Therefore it is considered reasonable for the masterplan to be finalised within the next six months; and
- 10 months will provide certainty for the Club's 2017 NPL season.

The City recognises that Floreat Athena has a large membership and has leased Litis Stadium from the City since 1982. However, a substantial component of the infrastructure on site dates back to the early 1960's and there are major asset management issues needing to be considered going forward. In determining a long term strategy for the land, it is necessary to balance the needs of the Club together with the interests of the broader community.

Administration has advised Floreat Athena and its consultants that in preparing the Masterplan, it needs to prepare a capital funding model that does not rely on financial contributions or subsidies from the City and recognises potentially limited funding availability from the Department of Sport and recreation.

In view of the circumstances, Administration proposes that a 10 month lease is appropriate on the terms as set out below.

Negotiation of the New Lease

Administration recommends that a new lease is granted on the expiry of the current lease. Generally the terms will be consistent with the existing Lease, with the following exceptions:

Premises

It is proposed to exclude the old changerooms so that the City can actively manage risks as a result of the subsidence issue.

Term

10 months commencing 1 January 2017 and expiring 31 October 2017, with no extension or holding over provision.

Rent

The current rent is \$2913 however it is recognised that has been incorrectly calculated and should actually have been \$5,188. Given the short term nature of the proposed lease it is considered appropriate under the circumstances that the rent for the 10 month Term be \$3,000.

All repairs, maintenance and upgrades to be responsibility of Floreat Athena

Pursuant to the current Lease Floreat Athena is responsible to substantially repair and maintain the facility, including structural repairs to the Clubrooms. It is proposed that this obligation continues in the new lease and to expressly clarify it includes repairs arising from fair wear and tear.

It is also proposed to expressly state that the City is not responsible for any structural repairs during the Term.

Shared Use (hire):

Lessee permitted to hire out clubrooms, function rooms and soccer pitch at its discretion, provided that the use is consistent with the Permitted Purpose

To summarise, the proposed lease will provide the parties with the following obligations:

The City:

- will ensure the Lessee has quiet enjoyment of the leased premises;
- does not warrant the premises to be suitable or remain suitable for the purpose used by Floreat Athena and will not undertake any structural repairs during the term;

Floreat Athena is responsible for:

- all repair, maintenance and upgrade of Litis Stadium, including those of a capital and structural nature (if undertaken);
- the payment of all services and consumables;
- rates and taxes, including local government rates and Emergency Services Levy (unless exempt);
- compliance with all Statute, regulations or requirements of all authorities;
- the health, wellbeing and safety of persons at/on the leased premises;
- insurance of the premises.

Floreat Athena will be entitled to:

- use the leased facility as a sporting facility and ancillary community and recreation purposes.

Floreat Athena will need to obtain approval from the City to:

- undertake any upgrade or improvements to the premises;
- use the premises for a purpose outside of the agreed use.

It is proposed that the short term Lease will be provided subject to Floreat Athena being required to provide a sustainable Master Plan for Litis Stadium, including the following information to the satisfaction of the Chief Executive Officer and by the end of June 2017:

- Proposed Facility Works and Improvements;
- Facility Management Plan;
- Life cycle cost analysis;
- Community benefit statement; and

- Financial Plan demonstrating that the Club has the capacity to fund the project.

This time frame will enable the City to adequately assess the information, validate where required and determine a long term position in respect to Litis Stadium and any future lease that may be granted to Floreat Athena, prior to the expiry of the proposed short term lease.

It is to be noted that the granting of the short term lease and any requirement for Floreat Athena to prepare a master plan should in no way be deemed a warranty or representation that the City will grant a future lease or allow the Club to remain in occupation of the leased premises beyond 31 October 2017.