



Mr Peter McBride
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Shire of Broome

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Matter 82658081

By email:
Peter.McBride@broome.wa.gov.au

Dear Peter

Broome Golf Club Redevelopment – Contract Structuring

Further to your email of 30 November 2017 and our subsequent phone conversations, this letter seeks to set out our recommended contract structure and risk allocation in respect of the proposal by Broome Golf Club Incorporated (**BGC**) to redevelop its clubhouse.

Background

- BGC are the current lessee of the Broome Golf Club (**Premises**) by way of a lease (**Existing Lease**) that expires in 2028.
- The Existing Lease contemplates BGC preparing a business case for the development of a new clubhouse, although contains no provisions in relation to its construction, financing and associated risk positions.
- BGC will require ongoing possession of the site to continue its operation as a golf club whilst construction is proceeding.
- In consideration for the capital investment being made by BGC into the new clubhouse, it is seeking a further lease term of 21 years, presumably commencing from completion of construction.

Suggested Structure

In my view, the cleanest documentation structure to facilitate construction of the new clubhouse, while adequately protecting the Shire and allowing the golf club to continue its operation, would involve the following steps:

- (a) Leave the Existing Lease on foot for the time being.
- (b) The Shire and BGC would enter into a separate '**Agreement for Further Lease**' or similar with BGC, which document would:
 - (1) Conditions Precedent
include conditions precedent around (among other things):
 - the Shire's satisfaction as to BGC's financial capacity to undertake the works;
 - commitments from BGC's funders;
 - BGC obtaining requisite development approvals;
 - BGC procuring relevant works insurances.

(2) Shire Security

require the provision of appropriate security (bank guarantee, performance bond, security deposit or other) from BGC to the Shire to cover off any potential liability that the Shire might suffer as a result of entering into the new arrangements (including costs associated with rectification works, loss of current rental, re-tendering of the concession should BGC go insolvent as a result of the works).

This security could either be 'handed back', or tailed off post-construction should there be any residual concerns around BGC's capacity to perform its ongoing obligations.

(3) Performance of Works

contemplate and permit the new clubhouse works to occur, including:

- a process for the Shire to be involved in and approve design development;
- Shire approval of BGC's works contractor;
- performance of the works to required standards; and
- certification of works completion.

(4) Extension of Lease Term

stipulate that, upon completion of the works, the Existing Lease would:

- have its term extended for the full further 21 year period, commencing on the date of works completion certification; and
- be varied to include additional provisions the parties may require relating to the new clubhouse, including any rental adjustments and capital adjustments in the case of early termination.

Alternatively, the Existing Lease could be surrendered at this point, with an entirely new lease document being granted in its place (the form of which would be annexed to the Agreement) to take effect at that point.

(5) Cross Default

include cross-default provisions with the Existing Lease itself, such that any major default or insolvency of BGC would constitute a termination event under the Existing Lease, for which the Shire could terminate and elect to either demolish or complete existing works at BGC's cost (with an associated capital adjustment).

(6) Builder Side Deed

contemplate provision of a builder side deed from BGC's builder to the Shire to enable the Shire to directly enforce that building contract in the event of its step-in or termination of the lease.

(7) Bank Tripartite Agreement

contemplate the potential for BGC's bank to enter into a tripartite arrangement with BGC and the Shire to (among other things) allow the bank to step in to rectify BGC construction default prior to the Shire's termination right taking effect.

Please let me know if you would like to discuss any aspect of the above, and/or like us to provide more detail in relation to any of the points raised.

Yours sincerely



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