

30 January 2018

Partner Reference
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Given the current situation and the fact that the proposal for redevelopment of part of the Fitzroy Golf Club land has been removed from the LTP, and given the interest the matter generated, we have decided to make an exception and release the legal advice obtained in relation to the Fitzroy Golf Club's lease. This does not act as a waiver of any legal professional privilege that may apply to any future advice that the Council might obtain with respect to the Golf Club lease or the Peringa Park land.

Fitzroy Golf Club Lease Issues

1. You have asked us to review a Deed of Lease between the Council and the Fitzroy Golf Club Incorporated (**Club**) dated 14 June 1983 (**Lease**) and a related Deed of Variation of Lease between the same parties dated 23 October 2002 (**Variation**) and advise:
 - (a) does the Club have a right of renewal under the Variation; and
 - (b) if yes, is the right perpetual?
2. We confirm that we have reviewed the above documents and conclude (for the reasons set out below) that the Club does not have any further right of renewal under the Variation (perpetual or otherwise).

Right of renewal under Lease

3. Clause 24 of the Lease provided for a single renewal for a term of 21 years from 1 July 2002. The clause specifically states that any renewal lease will be "...subject to the same terms and conditions as are herein contained **excepting this present right of renewal.**" Therefore, the Lease essentially provides that all original terms apply to the renewal *apart from* the right of renewal itself. On this basis, the intention of the parties was that there should not be any additional right of renewal (perpetual or otherwise) and the Lease finally expires at the end of the current term, on 30 June 2023.

Variation

4. The Variation renewed the Lease for a further term of 21 years, from 1 July 2002, set the initial rental for the renewal term, and incorporated some new provisions to address the (now repealed) Health and Safety in Employment Act 1992. It made no reference to any further right of renewal, but rather stated in clause 2 that, in all other respects, the terms of the original lease are *confirmed*.
5. In our view, when read together, the Lease and the Variation were only ever intended to grant a single right of renewal (from 1 July 2002 to 20 June 2023), and there is nothing in the Lease or Variation to suggest that the single right of renewal that was set out in the Lease has been varied so that it repeats for a second 21-year period or has become a perpetual right of renewal.

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Reserves Act

6. As a further point, in our opinion section 54 and Schedule 1 of the Reserves Act 1977 do not provide an ability to grant a perpetually renewable lease of recreation reserve, and the only power that contemplates a perpetual lease of recreation reserve is that set out in section 73 and Schedule 1, which is not relevant to the Lease or Variation. On that basis, we consider that a perpetual lease in the present circumstances would be unlawful.

2012 Report

7. We understand that it has been stated that a 2012 Council report confirms that the Club has a further right of renewal when the Lease expires in 2023. We have been provided with a copy of the report and note that it does state:

The lease provides for the option for the Club to seek a right of renewal for a further term of 21 years from the expiry of the current lease on 30 June 2023...

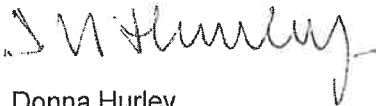
and

The Fitzroy Golf Club, has...a right to exercise renewal of its lease on expiry of the current term on the same terms and conditions subject to a new rental for the new term.

8. As noted above, we do not consider that there is any basis to conclude that the Club has a further right of renewal. Further, an incorrect statement in a Council report written ten years after the Variation cannot in any event override the agreed contractual arrangements, which in our view do not provide for further renewal.

Please let us know if you would like us to assist further.

Yours faithfully
SIMPSON GRIERSON



Donna Hurley
Senior Associate