

9.6	NEW LEASE TO KIDZ GALORE PTY LTD - NO. 15 HAYNES STREET, NORTH PERTH
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Attachments: 1. Attorney General Approval - 6 June 2024

RECOMMENDATION

That Council

1. **APPROVES** giving public notice and inviting submissions under the provisions of section 3.58(3) of the *Local Government Act 1995* for the proposed lease to Kidz Galore Pty Ltd (ACN 069 285 472) for the childcare premises located at No. 15 (Lot 9) Haynes Street, North Perth (Premises) on the following key terms:

1.1. **Term:** Two (2) years, commencing 1 January 2026 and expiring 31 December 2027.

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:** Current rent for FY24/25: \$42,542.72 per annum plus GST

1 Jan 2026 – 30 June 2026	\$44,669.86 per annum exc. GST
1 July 2026 – 30 June 2027	\$46,903.35 per annum exc. GST
1 July 2027 – 31 Dec 2027	\$49,248.52 per annum exc. GST

1.4. **Rent Review:** Fixed increase of 5% annually on 1 July each year of the lease commencing from 1 July 2026.

1.5. **Outgoings:** 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 \$20 million per one claim, in respect of the Tenant's use and occupation of the Premises.

1.7. **Repair/maintenance:** As per the maintenance obligations prescribed by the Property Management Framework.

1.8. **Permitted Use:** The business of providing childcare services.

1.9. **Special conditions**

1.9.1. **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 30 June 2026, 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 1 January 2027, 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 2027.
- (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:
- (i) the Business Plan or Closure Plan within the time specified in paragraph (b)(i) or (b)(ii) (respectively); or
 - (ii) 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

1.9.2. Termination for convenience

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

1.9.3. 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 public notice period in Recommendation 1. above, **AUTHORISES** the:
 - 2.1 Chief Executive Officer to negotiate and enter into the lease in Recommendation 1. above, and
 - 2.2 Mayor and Chief Executive Officer to affix the common seal and execute the lease in accordance with the Execution of Documents Policy.
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 a proposal from Kidz Galore Pty Ltd (ACN 069 285 472) (Kidz Galore) to continue to lease No. 15 (Lot 9) Haynes Street, North Perth (Premises) until 31 December 2027.

DELEGATION:

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

Delegation 2.2.18 - Disposing of Property by Leases and Licences of Council's adopted Register of Delegations, Authorisations and Appointments does not extend to new leases to a commercial entity.

BACKGROUND:Land

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, identified 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.

3 March 2020 - Attorney General approval

On 3 March 2020, the Attorney General 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) which would expire on 31 December 2025.

Existing and current lease

Kidz Galore has leased the childcare centre at the 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.

Kidz Galore entered into a new lease commencing 1 January 2021 and expiring on 31 December 2025 subject to:

- (i) a business plan being submitted by 1 January 2023, which shows a transition from the Premises and how they will scale down current operations by the end of the fifth year; and
- (ii) a closure plan being submitted by 1 January 2025 to demonstrate the timeline closure and removal of buildings and property from the Premises; and
- (iii) Kidz Galore vacating the Premises no later than 31 December 2025.

DETAILS:Request for extension of lease

In late 2023, Kidz Galore approached the City expressing their concerns with transitioning from the Premises by 31 December 2025.

Kidz Galore purchased No.6 London Street, North Perth and obtained development approval for a new childcare premises to be developed on the site. Through its planning consultant Element, Kidz Galore advised the City that its proposed development on the new site has been placed on hold due to the uncertainty regarding:

- (i) the provision of an adequate power supply to the property relating to the Western Power underground power roll out; and

- (ii) costs of construction.

Kidz Galore is not in a position to commit to the commencement of the development project without having absolute certainty that a power supply will be ready upon completion of the development so that Kidz Galore could start covering the building costs and outlays.

A draft design and completed planning application for a single level childcare centre was prepared and submitted to the City on 11 August 2023, but had to be placed on hold due to reasons highlighted above. Kidz Galore has expressed their commitment to develop on the site and exploring all options to ensure that a viable transitional facility from the Premises as soon as possible.

Western Power Underground project

Construction commencement for this project which was due to start around Sept 2024 has been delayed, pushing out the commencement to the first half of 2025. Administration anticipates construction to commence around June 2025 with priority to be given to the area around 6 London Street. North Perth.

6 June 2024 - Attorney General approval

On 11 April 2024, Administration through the State Solicitor's Office sought approval from the Attorney General for Kidz Galore to extend vacating the Premises to 31 December 2027. On 6 June 2024, the Attorney General approved the following:

- (a) extension of the lease to 31 December 2027 on the basis that parties are attempting, in good faith, to restore the Premises to its recreational purposes as required under the Deed of Trust; and
- (b) extension of time for the Haynes Street Development Plan.

The Attorney General's latest approval is **Attachment 1**.

Lease

The proposed key terms are consistent with the key terms of the current lease and negotiated in accordance with the Property Management Framework.

Current rent for the Premises is \$42,542.72 per annum plus GST and outgoings. Market rent appraisal of the Premises obtained in 2020 informed the commencing rent of \$35,000 per annum which was an average rent over five years. The valuer advised the lower rent for the Premises was due to the set date lease expiry (with no possibility of extension or holding over) which the City could otherwise attract for the Premises and which decreased the value of the lease. Reasons cited were the:

- lack of business certainty for the tenant; and
- likelihood of decrease in enrolment at the childcare centre as parents would not want to start their child at the centre and relocate them elsewhere when the centre closes or moves.

Based on the above reasoning which remains unchanged and given the term of this proposed lease is for two (2) years only, Administration proposes the rent commencing 1 January 2026 to continue from the expiry of the current lease on 31 December 2025 subject to 5 percent annual increase each year on 1 July.

Therefore, the proposed rent for the Term is:

1 Jan 2026 – 30 June 2026	\$44,669.86 per annum exc. GST + outgoings
1 July 2026 – 30 June 2027	\$46,903.35 per annum exc. GST + outgoings
1 July 2027 – 31 Dec 2027	\$49,248.52 per annum exc. GST + outgoings

Kidz Galore has confirmed its agreement to the proposed key lease terms.

Haynes Street Development Plan

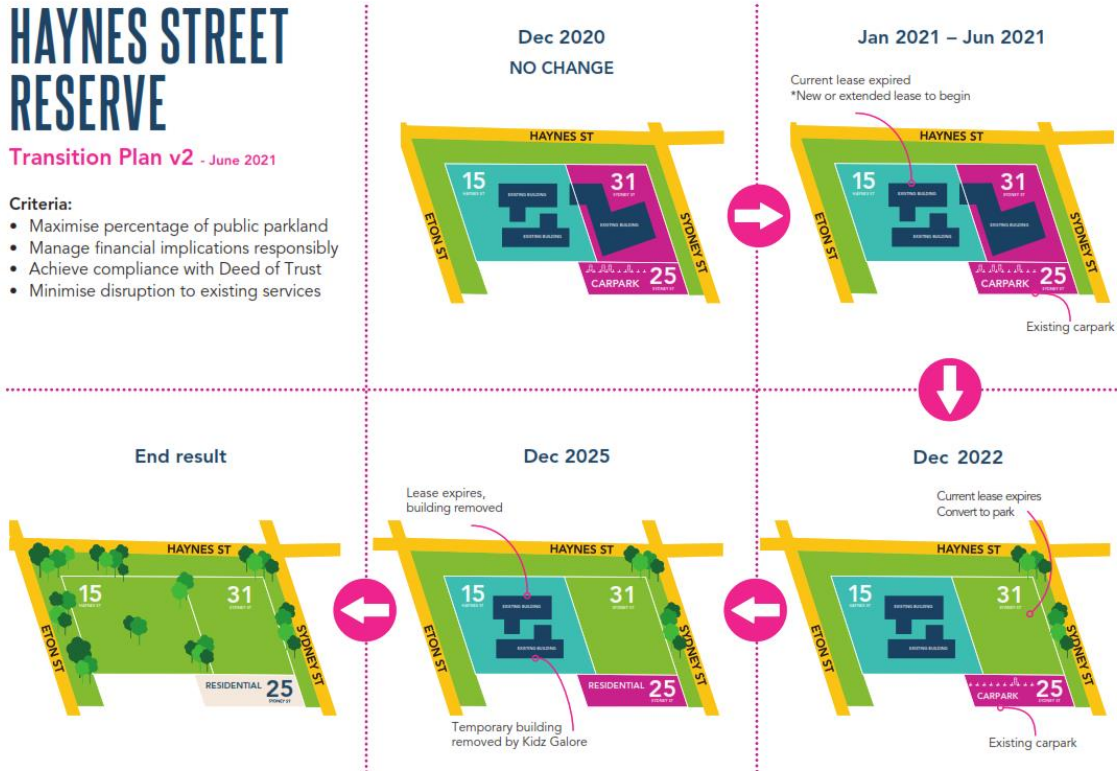
As per the Haynes St Reserve Transition plan below, Stage 2 of the Development Plan is currently planned for implementation in 2026/2027. If the proposed lease is approved, the implementation of Stage 2 will be deferred to 2028/2029.

HAYNES STREET RESERVE

Transition Plan v2 - June 2021

Criteria:

- Maximise percentage of public parkland
- Manage financial implications responsibly
- Achieve compliance with Deed of Trust
- Minimise disruption to existing services



CONSULTATION/ADVERTISING:



Organisation Implementation

Organisations lead engagement and seek input, shape the policies, projects and services for which they are responsible. This is a familiar and traditional approach to policy development, project management and service delivery.

Tension: People feel forced leading to an unresponsive process.

Mitigation: Increasing the level of influence, and implementing a transparent, robust process.

Required under regulations/legislation

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. 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 and social media platforms.

LEGAL/POLICY:

Local Government Act 1995 – S 3.58(3) Disposing of Property:

- (3) *A local government can dispose of property other than under subsection (2) if, before agreeing to dispose of the property —*
- (a) *it gives local public notice of the proposed*
 - (b) *disposition —*
 - 1. *describing the property concerned; and*
 - ii. *giving details of the proposed disposition; and*
 - iii. *inviting submissions to be made to the local government before a date to be specified in the notice, being a date not less than 2 weeks after the notice is first given;*
- and*

it considers any submissions made to it before the date specified in the notice and, if its decision is made by the council or a committee, the decision and the reasons for it are recorded in the minutes of the meeting at which the decision was made.

The proposed lease terms are generally consistent with the terms for Category 3 of the Property Management Framework, noting that the lease term is restricted to 2 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 2022-2032*:

Connected and Healthy Community

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

Innovative and Accountable

Our decision-making process is consistent and transparent, and decisions are aligned to our strategic direction.

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:

The current rent for the Premises is approximately \$42,542.72 per annum plus GST and outgoings. Consistent with the valuer's rationale for the market rent valuation of the Premises, Administration proposes the rent commencing 1 January 2026 to continue from the expiry of the current lease on 31 December 2025. Rent for the new lease has been proposed at:

1 Jan 2026 – 30 June 2026	\$44,669.86 per annum exc. GST + outgoings
1 July 2026 – 30 June 2027	\$46,903.35 per annum exc. GST + outgoings
1 July 2027 – 31 Dec 2027	\$49,248.52 per annum exc. GST + outgoings

The rent will be increased by 5 percent annually on 1 July of each year of the lease term.

COMMENTS:

Administration is supportive of granting a two (2) year lease term to Kidz Galore to assist them in transitioning to their new site as it would be beneficial to the community need for childcare services.

In addition, the rent generated from this lease will be applied towards redevelopment of the Premises into public open space in accordance with the Haynes Street Reserve Development Plan.



Attorney General; Minister for Electoral Affairs

Our ref: 67-24563
Your ref: SC3339 D20/4832

City of Vincent
244 Vincent Street
LEEDERVILLE WA 6007

Attention: Senior Land and Legal Advisor

By email:

Dear

15 (LOT 9) HAYNES STREET, NORTH PERTH – KIDZ GALORE REQUEST FOR EXTENSION

Thank you for your emails to the State Solicitor's Office dated 11 April and 10 May 2024 seeking my views on a proposal to extend the consent I have previously given for a childcare centre to remain at 15 (Lot 9) Haynes Street, North Perth. The land is subject to a charitable trust for the purposes of recreation and the City, as trustee, seeks my consent to the ongoing breach, in my role as protector of charitable trusts.

Thank you for the information provided and for responding to the additional queries from the State Solicitor's Office, including confirmation that additional rent will be applied towards redevelopment of the trust land. I note that the parties do appear to be attempting, in good faith, to restore the trust land to its recreational purposes as required.

I consent to the City's proposal – that is, I consent to the breach of trust constituted by the use as a childcare centre continuing beyond the end of 2025, to 31 December 2027 as requested by Kidz Galore.

I also consent to an extension of time for the Haynes Street Reserve Development Plan, as previously approved by the Council, to take into account the extension of the lease.

Thank you for raising this matter.

Yours sincerely

A handwritten signature in blue ink that reads "John Quigley".

Hon. John Quigley MLA
ATTORNEY GENERAL; MINISTER FOR ELECTORAL AFFAIRS

06 JUN 2024