

1 June 2022

Scott Sharry and Paula Noble  
Clayton Utz

**By email**

pnable@claytonutz.com

Dear Scott and Paula

### **Logan City Council lease to Australian Golf Management Corporation Pty Limited Meadowbrook Golf Course - Consents**

We confirm receipt of your correspondence dated 25 March 2022 in response to our email and letter dated 14 January 2022.

Our apologies for the delay in coming back to you, Annabelle Efstathis of our office who has carriage of this matter has been in and out of the office for some time unwell which was the cause for delay in responding to you.

Our client is disappointed with Council's delay in respect of this matter to date, with the initial request for consent being made by our office on 2 December 2021 some 4 months ago. Council's response to this request was not received until 23 December 2021, the final day of the working year, requiring a response by 15 January 2022.

Together with our client, we prepared a response over the holiday closure period to meet this unrealistic deadline. We had assumed that in line with your correspondence dated 23 December that the deadline was to ensure that the matter could be presented at the next Council Meeting, if not the one immediately.

Since this date, we understand that Council has held the following meetings:

- Full Council Meeting: 4 Ordinary Council Meetings on 28 January, 23 February, 23 March and 27 April
- City Lifestyle Committee: 4 Meetings on 19 January, 16 February, 16 March and 20 April

From our review of the Agenda and Minutes for each of these meetings it appears that the matter has not yet been presented to Council, 4 months later. If this is incorrect, please let us know and provide copies of the minutes of such meeting where the matter was presented.

In light of this, our client is surprised to receive a further request for information, which could have been asked in the first instance.

We note you have indicated that Council is continuing to consider the request for consent and this further request for information is to assist in the assessment of whether Meadowbrook Country Golf Club Inc is financial, respectable, responsible and competent to continue to use the premises for the purposes for which they are let.

Clause 12.2 and 12.3 of the Head Lease provides that our client only has to prove this threshold in respect of proposed assignees, not sublessees. To this end, we submit that the information requested by Council for considering the consent to the Sublease is not necessary, reasonable or appropriate.

The Club has expressed, in discussions with our client, that it feels that Council is taking an adversarial approach and that other unrelated matters in relation to the Site with Council may be having a bearing on this process. We have been asked to pass this onto you.

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Without prejudice to this position, our client has provided the below response for your consideration.

We note your comment that *"Council is acting in its capacity as landlord in assessing these requests and any action taken or consent provided by Council is in its capacity as landlord and is not to be construed to as consent by Council in its capacity as local government"*. Our client is confused with this statement, and considers that the sensible way forward is for Council in whatever capacity it must do so, to assess the request made wholly – irrespective of what capacity that is in. Our client does not want to be in a position where a decision made by Council as landlord in respect of this matter is later changed due to Council acting in another capacity.

On this basis, our client asks Council to fully and promptly consider the matter and requests made in such capacities and arrange for the matters to be presented to Council without delay at the next Council meeting which we understand is on 15 June 2022.

### **Financial Information**

By reference to the numbering in your email, our client confirms as follows:

- 1 We refer to our comments above regarding clause 12.2 and 12.3 of the Head Lease and submit that the financial information requested for Meadowbrook Golf Club, Australian Golf Management Corporation Limited and Meadowbrook Golf Club Pty Ltd is unnecessary and unreasonable. These entities are the existing head tenant and sublessee of the Golf Course and have no relevance to the consideration of consent to the Proposed Sublease to Meadowbrook Country Golf Club Inc.

Our client queries why the financial viability of AGMC and Meadowbrook Golf Club Pty Ltd are being assessed now as part of our client's request, when our client has never been asked for such information when previously making requests to Council under the Head Lease including for multimillion dollar extensions. We do not consider that the circumstances of the current request for consent are so significantly different from the past requests to warrant the level of information requested.

Additionally, where there is no requirement in the Sublease for our client to satisfy the Landlord as to the financial viability of a proposed Sublessee, our client does not consider the level of financial information requested necessary or appropriate in the circumstances.

In fact our client notes that to its knowledge Council has not in the past even appointed a firm of lawyers to consider the request for consent under the Lease. Our client wonders why the current request is being treated so differently from numerous requests made in the past.

As above, the Club has expressed in discussions with our client, that it feels that Council is taking an adversarial approach, in contrast to the way these kinds of requests have been dealt with in the past for this site.

Australian Golf Management Corporation Limited as Tenant under the Head Lease will continue to stand behind the Sublease and will continue to comply with its obligations with Council in respect of the Head Lease. This has been the case since the Head Lease commenced on 1 February 1999, irrespective of the Subleases that Australian Golf Management Corporation Limited have granted since this time. Accordingly, the financial standing of the proposed Sub Tenant should be irrelevant for Council, as the Rent under the Head Lease will be paid by the Tenant under that Lease, irrespective of any Sublease.

- 2 We are instructed that the 5 year projection figures were based on no COVID-19 restrictions to hospitality venues, noting that there are no longer such restrictions in place for hospitality venues so no changes need to be made in this regard.
- 3 We confirm that the financial forecasts were prepared by Prosperity Advisers who are an industry expert in this area. We do not see any reason why Council would need to verify the findings of an industry expert, and accordingly our client does not consider it necessary for this information to be provided.
- 4 It is anticipated that all 50 Gaming Machines will be purchased and be operational at the Premises on and from the Commencement of the Lease. This of course will be subject to



availability of Gaming Machine Entitlements at the time, however pending any change in the market we do not foresee any issues in securing 50 Gaming Machine Entitlements.

### **Gaming Machine Policy**

We confirm that our client is not requesting Council's consent to the Gaming Machine Licence Application. While we appreciate that this may expedite the referral process with the OLGR once this occurs, our client proposes to deal with this at such time to avoid delay in Council's consideration of the request for consent to the Sublease. Our client also submits that this is not grounds for Council to refuse their consent to the proposed Sublease pursuant to the terms of the Head Lease.

### **Additional Information**

Pursuant to our client's obligations under Clause 12.2 and 12.3, we submit that this information is not necessary or reasonably required for your client's consideration of the request for consent to the Sublease.

However, in the interests of moving this matter forward, our client confirms that:

- 1 The Development Fund Agreement is contained at Clause 35 of the Sublease previously provided.
- 2 We are instructed that the reference to the 'annex' is a reference to the 'lounge' which was approved under the Stage 1 Works.
- 3 We are instructed that there are no further works proposed to be carried out to carry out the proposed use other than those already approved by Council.
- 4 We are instructed that the Club is still considering whether or not it will operate TAB / Keno from the premises. However, it is noted that this is only a small part of the forecast revenue provided in the Prosperity Advisers report.

### **Council's capacity**

We note your comments regarding Council acting in its capacity as landlord only, in assessing these requests, and we reiterate our client's strong request that all matters associated with the liquor and gaming licences are dealt with distinctly separate from the litigation claim with Council in its capacity as local government. We also note that while the litigation matter is ongoing, we hope that Council's conduct in considering the request for consent and delays to date are not as a result of the litigation.

As above, the Club has expressed in discussions with our client, that it feels that Council is taking an adversarial approach, in contrast to the way these kinds of requests have been dealt with in the past for this site.

In light of this, and irrespective of the capacity that Council is acting in, we request that the matter and our client's request made on 2 December 2021 are fully and promptly considered by Council and Council presented to Council without delay at the next meeting.

If you would like to discuss any matters relating to the information outlined above, please let us know.

Yours faithfully



**Curt Schatz**  
Managing Partner