

SPECIAL GENERAL MEETING 13 SEPTEMBER 2018

NOTICE OF MOTION

Notice is hereby given of three motions to be put by the Commodore, David Bovell, on behalf of the General Committee to the Special General Meeting called for Thursday 13 September 2018. The meeting requires a quorum of 25 Members entitled to vote and the motions will be carried by a simple majority of the votes cast.

MOTION 1 – That The Claremont Yacht Club (Inc.) (**Club**) enter into a Heads of Agreement (**HOA**) with a third party developer (**Developer**) to investigate the feasibility of redeveloping the Club's freehold property at 4 Victoria Avenue, Claremont (**Club's Property**), to result in a mixed use development, comprising new clubhouse facilities for the Club and residential apartments.

MOVED – David Bovell

MOTION 2 – That the General Committee of the Club be authorised to take such steps and actions as the Committee deems appropriate to give effect to the matters set out in the HOA, including the appointment of any consultants (whether external or Members of the Club) to provide advice to the General Committee as the General Committee thinks fit.

MOVED – David Bovell

MOTION 3 – That the Club spend up to \$10,000 to obtain a market valuation of the Club's Property, being the whole of the land in Certificate of Title Volume 1937 Folio 322.

MOVED – David Bovell

BACKGROUND AND EXPLANATION

Background

In December 2017, the Club was contacted by a property development company to assess the Club's interest in redeveloping the Club's Property, which would result in the construction of a mixed use development, comprising new clubhouse facilities for the Club and residential apartments.

In subsequent discussions the Club advised the Developer that a previous development proposal had been rejected by the Members, and that if they wished to investigate the possibility further then they would need to accommodate three major conditions, being:

1. the development would deliver the Club improved clubhouse and parking facilities;
2. the Club would not suffer or incur any financial costs for the investigation of the feasibility of the project, nor for the necessary planning process; and
3. Club Members would have continued access to car parking and the marina throughout the development process.

In March 2018 the Developer advised the Club that they believed they had a project proposal that would meet the Club's requirements and be financially attractive for both parties. On 4 April 2018 this proposal was presented to the Commodore, Vice Commodore and General Manager.

Subsequently, on 12 April 2018, the Developer provided a confidential briefing to all members of the General Committee after which the Committee decided to invite the Developer to progress towards a HOA. The purpose of the HOA is to provide a framework by which the Developer can progress investigating the possibility of the redevelopment.

A draft HOA was provided to the General Committee in June 2018 and assessed by the Club's lawyer. On the lawyer's advice, the General Committee voted on a round robin motion to seek the support of Members at a Special General Meeting prior to entering into a HOA. Notice of this Special General Meeting was then issued on 19 July.

At the invitation of the General Committee, the Developer has agreed to attend the Meeting and make a brief presentation to Members in relation to exploring the possibility of redeveloping the Club's Property.

Purpose of this Special General Meeting, effect of passing of Motion 1

This Special General Meeting of Members has been called to seek the direction of the Members as to whether the Club should enter into a HOA in terms as summarised below.

If Motion 1 is passed (by at least a 50% majority) then the General Committee will proceed with entering into the HOA accordingly.

Effect of entering into the proposed Heads of Agreement

Members should note that whilst the HOA will be binding on the Club and the Developer to progress investigating the potential redevelopment of the clubhouse and the Club's Property, it will not bind the Club or the Developer to actually proceed with the redevelopment - for this to occur, a future vote by Members will be required as per the Club's Constitution.

Key steps following entering into the HOA

1. The Developer will have a "Discovery Period" of up to two years from the date of the HOA to satisfy itself as to the viability of the proposed redevelopment - assuming the HOA is signed the day after the Special General Meeting (i.e. on 14 September 2018) then this would expire on 13 September 2020;
2. During the Discovery Period:
 - (a) (1) the Developer will determine whether it is satisfied as to the likelihood of obtaining all necessary Council and other necessary approvals to viably undertake the redevelopment. If the Developer is not so satisfied, the Developer can terminate the HOA by notice at any time during the Discovery Period; and
(2) the Club will be able to assess the proposed redevelopment as and to the extent determined as viable by the Developer;
 - (b) formal joint venture documents will be negotiated - the parties will use their respective reasonable endeavours to conclude those documents as soon as is reasonably practical after the signing of the HOA, but the obligation is to negotiate only and neither the Club nor the Developer is obliged to execute any document.
3. If formal joint venture documents are not signed by both parties on or before 5.00pm on the last day of the Discovery Period, or any later date that the parties may agree, then either party can terminate the HOA with immediate effect;
4. If joint venture documents are agreed and signed then they are to be subject to conditions precedent, that is, they will only be legally binding and effective if:
 - (a) the Club's Members approve the Club entering into the joint venture documents; and
 - (b) the Board of the Developer approves the Developer entering into the joint venture documents,within 6 months after the date a Joint Venture Agreement is executed;
5. As the Club would retain ownership of the clubhouse, parking, etc but will be selling the residential apartments in the development, approval by Members to enter into the joint venture documents would amount to a partial sale of the Club's Property. In accordance with cl. 18 of the Club's Constitution, this would require the resolution of Members in a General Meeting. The quorum

required for such a General Meeting is 50% of voting Members and the resolution can only be passed by a 75% majority of those Members.

New Facilities for the Club

The size and appointment of the new clubhouse, parking and other facilities available to Members, to be developed under the proposed project, will be determined by Members, and will be of an area that is substantially the same as the existing clubhouse facilities. This scope will be presented and agreed through a Project Control Group comprising representatives of the Club and the Developer.

In parallel with the Discovery Period, the Club will separately conduct an internal consultative process to determine the requirements (size, purpose, appointment, aspect etc) of the new clubhouse facilities. The plans for the new facilities will be put for consideration by Members prior to and separately from the General Meeting required to approve the joint venture and commit the Club to proceed with the project

In addition to the new clubhouse facilities, on completion of the project, scope may exist for the Club's proceeds from the redevelopment to be reinvested into the complex to secure future revenue streams for the Club.

HEADS OF AGREEMENT SUMMARY

Summary only

Below is a shorthand summary of the key points of the HOA.

Voting Members who wish to view a draft of the proposed HOA may do so on or after Friday 24 August, during Club office hours by making prior arrangement direct with the General Manager, noting that the document is commercial in confidence in the custody of the Club and is not to be removed from the Club's office or copied.

Discovery Period

Within two (2) years of the HOA being signed (the "Discovery Period"):

- the Club and the Developer are to seek to agree on the terms of formal and complete legally binding joint venture documents. The joint venture documents will likely consist of:
 - Joint Venture Agreement;
 - Project Management Agreement; and
 - Selling Agency Agreement; and
- the Developer is to determine, to its satisfaction, that the project will receive all relevant approvals and will be viable for the Developer.

If:

- the Developer is not satisfied as to the likelihood of obtaining the approvals and the viability of the project; or
- joint venture documents are not agreed or signed by all parties by the expiry of the Discovery Period or any later date that the parties may agree,

either the Club or the Developer may terminate the HOA and the project will not proceed.

Establishment Costs

The Club will pay only its own legal costs and the cost of a sworn valuation of the Club's Property.

Proposed Project

Establish the “Claremont Yacht Club Redevelopment Joint Venture” as an unincorporated joint venture.

Contributions to the project will be:

- the Club will provide the land for the development (the value of the land will be taken as the average of separate valuations obtained by the Club and the Developer); and
- the Developer will provide cash to obtain sufficient equity in the joint venture for the project to secure debt finance.

The Club's interest in the joint venture will be determined by the value of the Club's Property as a proportion of the total value contributed by both parties (i.e. the Club's Property value as a percentage of the land value PLUS the Developer's cash contribution).

Conditions Precedent

For the project to proceed, within 6 months of the Joint Venture Agreement being signed, both parties will require the following approval to proceed with the joint venture in accordance with the joint venture documents:

- In the case of the Club: 75% majority resolution at an appropriately convened General Meeting with a quorum of 50% of voting Members.
- In the case of the Developer: the Developer's Board approval.

The Joint Venture will formally commence upon satisfaction of the later of these approvals being given.

Conditions Subsequent:

The Claremont Yacht Club Redevelopment Joint Venture will have two years after the date of execution of the Joint Venture Agreement to:

- rezone the Club's Property to allow the proposed development;
- obtain Western Australian Planning Commission approval for the development; and
- obtain Development approval from the Town of Claremont.

Pre-sale of planned apartments will commence upon satisfaction of these conditions.

Project Control Group

A Project Control Group of six people is to be established to direct the project on and from the formal commencement date of the joint venture, on the following basis:

- There will be three representatives of the Club and three representatives of the Developer.
- The Project Control Group will direct the project and make all major decisions in relation to the project.
- The members are to meet monthly with an agreed meeting agenda and will record minutes.
- A quorum will be at least one representative from each party and each party will have one vote irrespective of the number of their representatives present.
- Decisions will be made by a unanimous vote.

Project Manager

A Project Manager is to be jointly appointed by the Club and the Developer. The project management fee will be determined prior to appointment and will be payable:

- in the case of residential lots, on settlement of sale of each lot; and
- in the case of the lot to be retained by the Club, on the date of issue of a separate certificate of title for the lot.