



14.1 NOTICE OF INTENTION TO LEASE (FINALISE) - LEASE WITH SOUTH MELBOURNE LIFE SAVING CLUB

EXECUTIVE MEMBER: CHRIS CARROLL, GENERAL MANAGER, CUSTOMER, OPERATIONS AND INFRASTRUCTURE

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1. PURPOSE

- 1.1 To seek Council's approval to complete the statutory procedures for the proposed lease (**proposed tenancy agreement**) to South Melbourne Life Saving Club Inc (**Tenant**) at 72B Beaconsfield Parade, Albert Park.

2. EXECUTIVE SUMMARY

- 2.1 The premises subject to the proposed tenancy agreement at 72B Beaconsfield Parade, Albert Park are situated on Crown Land for which Council is the Committee of Management.
- 2.2 The current Tenant, South Melbourne Life Saving Club Inc, is a long-term tenant of Council and has occupied the premises since 1957 providing a service to the community through assisting in preventing aquatic related death and injury, providing a safe foreshore for beach users and supporting local communities learn about water safety, swimming and first aid skills.
- 2.3 In June 2016, a State Funding commitment was confirmed for the redevelopment of the original 1950s building to deliver the minimum standards of the "Clubhouse of the Future – Development Guidelines". The new premises officially opened on 2 November 2019.
- 2.4 A market rental assessment was completed on the newly built facility in March 2018 by an independent valuer and was estimated to be \$145,000 per annum plus GST.
- 2.5 In the past, the Tenant had exclusive use of the building (excluding the kiosk) for \$381.92 per annum plus GST with Council liable for repairs and maintenance of the building.
- 2.6 During the redevelopment, a range of options were explored to determine what model best supported the new building and the lifesaving services which included consideration of a centralised management model.
- 2.7 Given the concerns regarding the centralised management model, and that such model remains untested, Councillors authorised Officers in August 2019 to negotiate an exclusive use occupancy agreement over the new facility to help support the continuous provision of lifesaving services and water safety programs to the community.
- 2.8 At that time, a short-term tenancy agreement was entered into to allow the Tenant to commence operations from the new facility while a new agreement was negotiated. The short-term agreement is due to expire on 31 July 2020.
- 2.9 As the proposed tenancy agreement has a term greater than one year and the market rent estimate exceeds \$50,000 per annum, the statutory process applies. This process requires public notification before making a final decision on the proposed tenancy agreement pursuant to sections 190 and 223 of the *Local Government Act 1989 (Vic) (Act)*.



- 2.10 Council resolved to commence the statutory process on 18 March 2020 which invited submissions on the proposed tenancy agreement. Council must hear and consider any submissions received before making a decision to enter into such tenancy agreement.
- 2.11 No submissions were received in response to the public notice that was published in the Port Phillip Leader newspaper on 7 April 2020.
- 2.12 Council is now in a position to complete the statutory procedures and make a final decision on the proposed tenancy agreement.
- 2.13 After an extensive period of negotiation, agreement on key terms and consultation with the community, the Tenant has changed their mind on key terms as we move to finalise the leasing process.
- 2.14 Officers recommend that Council notes the Tenants concerns but continues to proceed with the previously agreed and publicised terms, finalising the tenancy agreement with the Tenant accordingly.
- 2.15 Grant and purpose consent was sought and obtained from the Department of Environment, Land, Water and Planning (**DELWP**) for the proposed tenancy agreement.

3. RECOMMENDATION

That Council:

- 3.1 Not having received any submissions in response to a Notice of Intention to Lease the Premises identified below, resolves to conclude the statutory procedures under sections 190 and 223 of the *Local Government Act 1989* (Vic) (Act) and approves the following proposed tenancy agreement with key terms summarised as follows:

Tenant	South Melbourne Life Saving Club Inc
Premises	72B Beaconsfield Parade, Albert Park
Permitted Use	Lifesaving and ancillary activities
Commencement Date	1 August 2020
Term	Five (5) years
Rent	\$145,000 per annum plus GST discounted to \$104 per annum plus GST to help support the continuous provision of lifesaving services and water safety programs to the community

- 3.2 Notes that the Tenant has raised concerns regarding the lease terms, but given these terms were previously agreed and consulted on, Council authorises the Chief Executive or delegate to execute the tenancy agreement on the proposed terms above;
- 3.3 Notes that the tenancy agreement will be subject to defined club and facility specific community benefits, including an agreed level of non-club related activities and maximum use by Albert Park College of up to 5 days per week;



- 3.4 Notes that the Tenant will be responsible for the payment of all outgoings including reimbursement of the building insurance premium and any on-going general maintenance costs.

4. KEY POINTS/ISSUES

Building Information

- 4.1 The premises subject to the proposed tenancy agreement at 72B Beaconsfield Parade, Albert Park are identified and outlined in red in Attachment 1.
- 4.2 This property known as the South Melbourne Life Saving Club, is situated on Crown Land for which Council is the Committee of Management.
- 4.3 The site is zoned as Public Park & Recreation (PPRZ) under the Port Phillip Planning Scheme. For the purposes of the Port Phillip Planning Scheme, Council is the public land manager.
- 4.4 In June 2016, a State Funding commitment was confirmed for the redevelopment of the original 1950s building to deliver the minimum standards of the “Clubhouse of the Future – Development Guidelines”.
- 4.5 The redevelopment had a total cost of \$7.84M with Council providing \$5.64M and the Victorian Government through Life Saving Victoria (**LSV**) and DELWP, contributing a total of \$2.2M.
- 4.6 The purpose-built facility is a single storey linear building providing modern lifesaving amenities and includes a multi-purpose room, accessible public toilets, new decking, improved bike path and an all-abilities access ramp to the sand.
- 4.7 Completed in 2019, Council resolved to name the building the Aileen Kennedy Pavilion in memory of Aileen ‘Mac’ Kennedy and the new premises officially opened its doors on 2 November 2019.
- 4.8 A planning permit is not required for the Tenant to use the facilities for core lifesaving activities or direct club associated uses that would be considered ancillary to the permitted use. It will however be required if the Tenant delivers services outside its permitted use such as weddings or other commercial activities.
- 4.9 The proposed tenancy agreement for the lifesaving facilities must go through statutory procedures set out in sections 190 and 223 of the Act given that the term is greater than one year and the market rent estimate exceeds the threshold of \$50,000 per annum.

Tenant

- 4.10 The Tenant South Melbourne Life Saving Club Inc is a long-term tenant of Council, and has occupied the premises at 72B Beaconsfield Parade, Albert Park since 1957.
- 4.11 The Tenant is a community run organisation whose operations are funded through government grants, memberships and facility hires.
- 4.12 With a membership of approximately 312, the Tenant provides a service to the community through assisting in preventing aquatic related death and injury, providing a safe foreshore for beach users and supporting local communities learn about water safety, swimming and first aid skills.



- 4.13 The Tenant has a strong alliance with LSV and registers all students as members with a 10-week first term training program.
- 4.14 To support its service delivery, the Tenant hires out the facility to LSV, Sports Education and Development Australia, Croxton Special School, Surf Ski groups and various beach programs with local schools and the general public.
- 4.15 In the past, the Tenant had exclusive use of the building (excluding the kiosk) for \$381.92 per annum plus GST with Council liable for repairs and maintenance of the building.
- 4.16 During the redevelopment, a range of options were explored to determine what model best supported the new building and the lifesaving services which included consideration of a centralised management model.
- 4.17 The centralised management model was considered to allow the Tenant to focus its efforts on lifesaving activities and distribute maintenance and other building costs based on utilisation.
- 4.18 As this model was untested and the Tenant was reconsidering its service plan, Council authorised Officers to commence negotiations with the Tenant for an exclusive use occupancy agreement over the new facility excluding the kiosk and public amenities.
- 4.19 At that time, a short-term tenancy agreement was entered into to allow the Tenant to commence operations from the new facility while an alternative agreement is negotiated. Such agreement is due to expire on 31 July 2020.

5. PROPOSED LEASE

- 5.1 There are a number of key planning documents, legislation and policy that need to be considered for the proposed tenancy agreement. These include:
 - *Crown Land Reserves Act 1978*;
 - Crown Land Leasing Policy;
 - Council Plan; and
 - Council Property Policy.
- 5.2 The premises are on Crown land and are managed by Council as Committee of Management. The State Government Leasing Policy lists three key leasing principles that must be assessed for the proposed tenancy agreement. These are:
 - Principle 1 – To provide benefits to the public through leasing;
 - Principle 2 – To ensure consistency and transparency in leasing; and
 - Principle 3 – To manage leased Crown land in an ecologically sustainable manner.
- 5.3 The Council Plan sets out what Council wants to achieve for the city of Port Phillip by 2027 and how it supports the future health and wellbeing of the city.
- 5.4 Council's Property Policy provides guidance on entering tenancy arrangements and is aligned with the State Government Leasing Policy.
- 5.5 On 18 March 2020, Council resolved to commence statutory procedures under section 190 of the Act on the proposed terms outlined below:



- 5.5.1 The proposed tenancy agreement be made to commence on 1 August 2020 for a term of five (5) years which will allow the agreement to be reviewed and modified to match any changes in club operations and needs of the Tenant.
- 5.5.2 An exclusive use of the premises be granted to the Tenant with Council being allowed access to use the facility (outside of bookings) for up to 20 days for community use at cost.
- 5.5.3 That the proposed tenancy agreement be subject to defined club and facility specific community benefits including an agreed level of non-club related activities and maximum use by Albert Park College of up to 5 days per week.
- 5.5.4 A rental of \$145,000 per annum plus GST be discounted to \$104 per annum plus GST to help support the continuous provision of lifesaving services and water safety programs to the community.
- 5.5.5 All outgoings, including insurance, applicable to the tenancy be paid by the Tenant with Council remaining responsible for the payment of utilities for the public amenities.
- 5.5.6 The Tenant be subject to the standard maintenance requirements including the responsibility for all non-structural maintenance on the building to be clearly defined within the Asset Management Plan. In addition, any reactive maintenance when requested by the Tenant be undertaken by Council with full cost recovery from the Tenant. All structural renewals as well as the proactive maintenance of the essential services and public amenities, including the deck, be made to remain the responsibility of Council.
- 5.5.7 The Tenant be supported through:
- a discounted rent of \$104 per annum plus GST to help support the continuous provision of lifesaving services and water safety programs to the community;
 - an exclusive use over the facility allowing it to manage the multi-purpose space to generate income;
 - sub-letting opportunities subject to prior consent from Council to ensure the building's primary use remains focused on lifesaving and associated activities; and
 - ongoing Officer support to provide facility management and statutory planning advice to help the Tenant meet the requirements under the proposed tenancy agreement.
- 5.5.8 In recognition of this in-kind contribution, it has been recommended that Council be provided by the Tenant with ongoing reporting to demonstrate how it is meeting its requirements under the proposed tenancy agreement (with the recommended minimum reporting requirements outlined in Attachment 2).
- 5.5.9 In addition, the Tenant be made responsible for securing any planning permits it may require and paying all costs associated with coordination of all bookings.



6. CONSULTATION AND STAKEHOLDERS

- 6.1 Council has notified the community through a Notice of Intention to Lease published in Port Phillip Leader newspaper on 7 April 2020 inviting submissions in accordance with statutory procedures.
- 6.2 The deadline date of submissions was 8 May 2020.
- 6.3 No submissions were received by the deadline date.
- 6.4 Grant and purpose consent was obtained from DELWP for the proposed tenancy agreement.

7. LEGAL AND RISK IMPLICATIONS

- 7.1 The statutory process under the Act requires Council to notify the public before committing to the proposed tenancy agreement.
- 7.2 Crown's standard form lease will be used as the basis of the proposed tenancy agreement, unless otherwise agreed or required by legislation. Such template documents the landlord and tenant responsibilities, conforms to legislative requirements and mitigates risk.
- 7.3 The proposed tenancy agreement is subject to approval by the Minister for Energy, Environment and Climate Change on behalf of DELWP.

8. FINANCIAL IMPACT

- 8.1 The estimated market rent of \$145,000 per annum excluding GST is recommended to be discounted to \$104 per annum plus GST under the proposed tenancy agreement to support the continuous provision of surf lifesaving and water safety programs to the community.
- 8.2 The proposed tenancy agreement will be dependent on the Tenant demonstrating how it is meeting its requirements under the agreement on an annual basis.

9. ENVIRONMENTAL IMPACT

- 9.1 The proposed tenancy agreement will require the Tenant to implement environmentally sustainable practices and programs that support reduction in energy, waste and water.
- 9.2 Council will work with the Tenant over the term of the proposed tenancy agreement to improve the efficiency of water and energy usage, in particular to:
 - reduce or minimise greenhouse gas emissions;
 - maximise the use of renewable or recyclable materials;
 - reduce waste from operations;
 - implement best-practice storm water management; and
 - reduction in single plastics including plastic straws and the use of balloons.
- 9.3 Council will set agreed targets for reduction in these areas within the proposed tenancy agreement.

10. COMMUNITY IMPACT

- 10.1 Council has two primary objectives when entering leases for the use of Council property:



- to support service delivery and promote health and wellbeing, social, environmental, cultural, recreational or economic opportunities and benefits in the City of Port Phillip by leasing or licensing Council Property to Community Organisations; and
- to generate net income to support service delivery across the portfolio by leasing or licensing Council property to Commercial Organisations.

10.2 The Tenant supports the community through the provision of surf lifesaving and water safety programs to the community.

10.3 The proposed tenancy agreement will be subject to defined club and facility specific community benefits, including an agreed level of non-club related activities, to ensure wider community benefit.

11. ALIGNMENT TO COUNCIL PLAN AND COUNCIL POLICY

11.1 The proposed tenancy agreement aligns to:

11.1.2 Direction 6 – “A financially sustainable, high performing, well-governed organisation that puts the community first”.

12. IMPLEMENTATION STRATEGY

12.1 TIMELINE

12.1.1 If Council resolves to complete the statutory process and approves the proposed tenancy agreement, such tenancy agreement will be finalised and executed immediately.

12.2 COMMUNICATION

12.2.1 Officers will advise the Tenant’s representatives of the outcome of the 19 August 2020 Council meeting.

13. OFFICER DIRECT OR INDIRECT INTEREST

13.1 No officers involved in the preparation of this report have any direct or indirect interest in the matter.

TRIM FILE NO: 20/13/35

ATTACHMENTS

- 1. SMLSC Site Plan**
- 2. Reporting to Council**