



14.3 REVIEW SUBMISSIONS FOR PROPOSED TENANCY AGREEMENT - PORT MELBOURNE SOCCER CLUB

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1. PURPOSE

- 1.1 To report and hear submissions received from interested parties regarding Councils intention to enter a new short-term tenancy agreement (**Proposed Tenancy Agreement**) with Port Melbourne (Nea Ellas) Soccer Club Inc. trading as Port Melbourne Soccer Club (**PMSC**) at 430 Plummer Street, Port Melbourne (part of JL Murphy Reserve) as required under Section 223 of the Local Government Act 1989.

2. EXECUTIVE SUMMARY

- 2.1 The land subject to the Proposed Tenancy Agreement is located at 430 Plummer Street, Port Melbourne (Premises) and forms part of JL Murphy Reserve, bounded in red in the plan attached (Attachment 1).
- 2.2 The land comprising JL Murphy Reserve is permanently reserved for public park and recreation by Order in Council dated 6 November 1963 (vide Government Gazette dated 13 November 1963) and has been identified under 17C of the Crown Land (Reserves) Act 1978 as habitually used for soccer, cricket, baseball and public recreation.
- 2.3 Over the next few years, significant change is forecast for the immediate area with the introduction of the Wirraway vertical school at 477 Graham Street, Port Melbourne and other changes likely around the Fishermans Bend precinct.
- 2.4 PMSC has occupied JL Murphy Reserve since 1968 and currently has a seasonal permit for the three soccer pitches and a lease over the pavilion which expired on 30 June 2020 and remains in overholding on the same terms while a new agreement is considered.
- 2.5 PMSC currently pays a total of \$7,271.27 plus GST per annum as per the Sports Ground and Facilities Bookings Fees. This rental subsidy has previously been granted as an in-kind contribution in recognition of the club providing community programs endeavouring to give direct benefit to Port Phillip residents.
- 2.6 A market rental value assessment was conducted in August 2018 which estimated the pavilion market rental value at \$16,000 per annum plus GST and the three pitches at \$122,500 per annum plus GST. These values are based on exclusive access to these spaces.
- 2.7 In 2018, council officers started working with the PMSC to improve community access to these grounds outside of their tenancy times with new gates being installed on existing fencing to allow community access outside of game days.
- 2.8 Officers have since identified additional fencing improvements that will further open up the site at the Williamstown Road frontage whilst still supporting the Clubs NPL



requirements and community safety. All gates on the grounds will remain locked in the open position outside of game and training days to ensure the community have free access to the grounds.

- 2.9 The proposed tenancy agreement is a 3-year lease starting rental of \$3,200 per annum plus GST for the pavilion and additional \$4,300 per annum plus GST for the pitches under a seasonal permit in recognition of past arrangements, the short-term nature of the proposed agreement and review of the community benefits currently being undertaken.
- 2.10 Under the Proposed Tenancy Agreement, any maintenance over and above minimum service level standards set by Council will be undertaken at the PMSC's cost, in accordance with the terms in the current lease, and the toilets are to be made reasonably available to the public as per Councillor direction.
- 2.11 Although the duration of the tenure is less than 10 years and the market rental estimate for the pavilion does not exceed the threshold of \$50,000 per annum, it is considered that the Proposed Tenancy Agreements are significant in terms of the predominant use of the Premises by PMSC and should go through statutory procedures set out in sections 190 and 223 of the Act.
- 2.12 At the Council Meeting on the 15 July 2020, Council heard from four community members and two PMSC members around the Proposed Tenancy Agreement during public question time. The community members objected to the Proposed Tenancy Agreement highlighting community access and community benefits as their biggest concern.
- 2.13 In response to the feedback on the night, Councillors amended the key terms within the proposed tenancy agreement to include additional requirements on the Club, including the requirement for the club to provide Council with an operational report covering the operations of the club including financial performance and participation data and to make the toilets reasonably available to the public. These are the terms that were outlined within the Public Notice.
- 2.14 Council resolved to commence the statutory process on 15 July 2020 which invited submissions on the proposed tenancy agreement. Council must hear and consider any submissions received, before deciding to enter into such an agreement.
- 2.15 One written submission has been received. Key themes in the submission include concern over accessibility to the grounds and the wider community benefit associated with the agreement.

3. RECOMMENDATION

That Council:

- 3.1 Notes that notice has been given under Section 190 of the Local Government Act 1989 (Act) inviting submissions from interested parties regarding the proposed lease with the existing tenant, Port Melbourne (Nea Ellas) Soccer Club Inc. trading as Port Melbourne Soccer Club for 430 Plummer Street, Port Melbourne (part of JL Murphy Reserve).
- 3.2 Notes the submissions received by the closing date of 21 August 2020, as required under Section 223 of the Local Government Act 1989.
- 3.3 Notes that Officers will bring back to Council a report at the next Council meeting that proposes a response to the submissions received from interested parties regarding Council's intention to provide a short term agreement to the Port Melbourne (Nea Ellas) Soccer Club Inc. trading as Port Melbourne Soccer Club for 430 Plummer Street, Port Melbourne (part of JL Murphy Reserve).



4. KEY POINTS/ISSUES

Background

- 4.1 The Premises at 430 Plummer Street, Port Melbourne forms part of J L Murphy Reserve and consists of three soccer pitches, club pavilion, car park and a media box named after journalist Laurie Schwab.
- 4.2 The site has recently been selected to host one of the competing countries for the 2023 Women's World Cup as a training facility and home base for players and staff.
- 4.3 The land is permanently reserved for public park and recreation by Order in Council dated 6 November 1963 (vide Government Gazette dated 13 November 1963) and has been identified under 17C of the Crown Land (Reserves) Act 1978 as habitually used for soccer, cricket, baseball and public recreation.
- 4.4 Over the next few years, significant change is forecast for the immediate area with the introduction of the Wirraway vertical school at 477 Graham Street, Port Melbourne and other changes likely around the Fishermans Bend precinct.
- 4.5 PMSC has occupied JL Murphy Reserve since 1968 with the pavilion, the main soccer pitch (pitch 1) and the secondary pitch (pitch 2) exclusively occupied by PMSC under a lease agreement with Council.
- 4.6 In 2018, council officers started working with the PMSC to improve community access to these grounds outside of their tenancy times with new gates being installed on existing fencing to allow community access outside of game days.
- 4.7 Officers have since identified additional fencing improvements that will further open up the site at the Williamstown Road frontage whilst still supporting the Clubs NPL requirements and community safety. All gates on the grounds will remain locked in the open position outside of game and training days to ensure the community have free access to the grounds.
- 4.8 In 2018, PMSC moved onto a seasonal licence for the use of the three soccer pitches aligning with other seasonal sports clubs in the municipality. The community now has full access to the soccer pitches outside of the club's permitted hours of training and games.
- 4.9 The current seasonal licences allow for a further term of 2 years at the discretion of Council pending the outcomes of urban planning requirements for the area.
- 4.10 PMSC have a lease over the pavilion which expired on 30 June 2020 and remains in overholding on the same terms while a new agreement is considered.
- 4.11 Under this tenancy agreement with Council, PMSC is required to report quarterly detailing the community benefit programs undertaken by the club for the community. Required community benefit programs included:
 - development and support for female participation
 - school and community programs (4 per year)
 - juniors/miniroos soccer program
- 4.12 PMSC currently pays a total of \$7,271.27 plus GST per annum as per the Sports Ground and Facilities Bookings Fees. This rental subsidy has previously been granted as an in-kind contribution in recognition for providing a community-based service endeavouring to give direct benefit to Port Phillip residents.



- 4.13 A market rental value assessment was conducted in August 2018 which estimated exclusive use market rental value of the pavilion at \$16,000 per annum plus GST and the three soccer pitches at \$122,500 per annum plus GST.

Previous Community Feedback

- 4.14 At the Council Meeting on the 15 July 2020, Council heard from six community members around the Proposed Tenancy Agreement during public question time.

- 4.15 Four of these community members objected to the Proposed Tenancy Agreement stating that:

- Access to the grounds is problematic as they are fully fenced and often locked and inaccessible to local residents.
- The fencing includes unwelcoming signage suggesting that the area is not accessible by the general public.
- Abutting community groups are not permitted to use the car park or the toilets within the pavilion, with members being required to walk 250 meters to the JL Murphy Pavilion to use a toilet.
- That the community benefit programs undertaken by the PMSC for the community have been misrepresented and there is a need for better verification of these statements.
- Exclusive tenancy over the pavilion should not be continued and instead be open to community use outside of the PMSC season.
- There are difficulties faced in finding opportunities for junior players and local residents with the PMSC.
- There is an inequality when it comes to council support and it is unfair that such a privileged club gets access to such large council subsidises and grants.

- 4.16 Suggestions from these community members include:

- Ensuring that there is a provision in any new agreement for managing public access to both the grounds and the pavilion.
- Requiring the PMSC to provide postcode information for its players to determine the percentage of local members.
- Making available the details of the total cost CoPP contributes to the maintenance of both the pavilion and playing fields.
- Removing the fence along the eastern border to allow residents free access to these grounds.
- Allow abutting community groups such as Dig In Community Garden access to the carpark.

- 4.17 In addition to this feedback, two members of the PMSC spoke on the night, stating that:

- They are a community club which has been run by volunteers for the past 52 years.
- The exclusive use of these facilities as well as the subsidised rent helps generate fundraising income which is their main source of revenue. This pays for



programmes offered to the community as well as keeping membership costs competitive.

- Their women's programme has grown in size and they want to continue to build a truly inclusive home for women's soccer and are committed to establishing development pathways for local girls.
- Space overall is an issue with change room facilities currently being shared between men and woman's groups.
- They are struggling to place children, especially junior girls, wanting to participate in soccer due to a lack of pitch space required to grow these opportunities.
- They have left the gates open for public use outside of training and game days and are open to further asset improvements with the aim of also sharing these upgrades with the broader community.
- Council should renew PMSC's tenancy and work with them to bring the facilities up to a level that can cope with current and future demand.

Councillor response to the feedback

4.18 In response to the feedback on the night, Councillors amended the key terms within the proposed tenancy agreement to include the requirement for the PMSC to:

- provide Council with an operational report covering the operations of the club including financial performance, participation data, public liability insurance, liquor licenses and any other matters as may be stipulated in Council's "Sports Facilities, Grounds and Clubs Conditions of Use" handbook.
- use reasonable endeavours to develop and implement environmentally sustainable practices, including reducing landfill and litter within and around the tenancy area. These should be developed in consultation with the committee of Dig In Community Garden.
- develop a partnership with the Sporting Club Governance Body at JL Murphy Reserve and report to Council on the community activities provided for the exclusive use of the pavilion. This should include PMSC being considered for Associate Membership or a similar membership level of the Body.
- Make the toilets reasonably available to the public at the cost of the PMSC.

4.19 In addition, Council authorised works to be undertaken to improve access for the public to all the grounds and develop a long-term usage plan for the use of the site with a formal public consultation process both of which are required to be reported back to Council within 12 months.

Proposed Key Terms

4.20 Officers have recommended direct negotiation with the PMSC for a short-term agreement of three (3) years as there may be limited benefit in conducting a competitive process at this time given the work underway to understand the future needs of the Fisherman's Bend area.

4.21 As PMSC has been increasing community access to the facilities over the past few years with the soccer pitches no longer under exclusive use from the club, Officers propose providing PMSC with continued exclusive use over the pavilion and seasonal licences over the three pitches to assist in improving community access.



- 4.22 A starting rental of \$3,200 per annum plus GST for the pavilion and additional \$4,300 per annum plus GST for the pitches under a seasonal permit has been proposed in recognition of past arrangements, the short-term nature of the proposed agreement and review of the community benefits currently being undertaken.
- 4.23 All outgoings applicable to the pavilion, including building insurance, are proposed to be paid by PMSC while Council will continue to remain responsible for the payment of outgoings associated with the grounds for any use attributable to council activities.
- 4.24 In addition, maintenance over and above minimum service level standards set by council are to be undertaken at PMSC's cost, as per the requirements of the current lease. This will include the requirement for toilets to be made reasonably available to the public.
- 4.25 As this will be a significant change to the current arrangements, a transition plan will be agreed with the PMSC to help achieve this outcome.
- 4.26 The PMSC will be further supported by allowing them continued use of the informal car parking area to generate income from game days.
- 4.27 In recognition of the in-kind contribution from Council, the PMSC is to provide Council with ongoing reporting to demonstrate how it is meeting its requirements under the agreement and how it is providing for the broader community. The PMSC is to recognise this ongoing support from Council
- 4.28 Grant and Purpose approval has been provided from the Department of Environment, Land, Water and Planning (DELWP) for the proposed tenancy agreement at the Crown land premises.

Public Notice as Required by Section 190 and 223 of the Local Government Act 1989

- 4.29 While the tenancy agreements are not required to go through the public notification process under Section 190 and 223 of the Local Government Act 1989, it is considered that the the proposed tenancy agreements are significant in terms of the predominant use of the Premises in peak times by PMSC and should go through these statutory procedures set out in the Act.
- 4.30 On 15 July 2020 Council resolved to commence the statutory procedures under Section 190 of the Local Government Act 1989 (Act) for the Proposed Tenancy Agreement.
- 4.31 Council also resolved to hear and consider any submissions received pursuant to Section 223 of the Local Government Act 1989 at a future Council Meeting.
- 4.32 A Notice of Intention to Lease was published in the Port Phillip Leader on the 21 July 2020 seeking submissions by the 21 August 2020.

Summary of Submissions Received

- 4.33 One written submission has been received. A summary of the key terms from the submission has been provided below.
- 4.34 The full submission can be found in Attachment 2.

Access to the grounds

- 4.35 The submission highlights issues with access to the grounds citing anti-social behaviour, locked gates and signage which suggests that the area may not be accessible by the general public.



- 4.36 The submission suggests that the high fencing be reconsidered and that the fence on the eastern boundary be removed to allow residents free access.

Benefits to wider community

- 4.37 The submission questions whether Council should be subsidising a professional soccer club with community rates, particularly if ratepayers are subsidising a group of people primarily from outside the council area.

- 4.38 The submission suggests as part of the new agreement, the PMSC report player postcodes and provide copies of Financial Reports to the Council.

Requests to be heard at the Council Meeting

- 4.39 The submitter did not request to be heard at the Council meeting.

5. CONSULTATION AND STAKEHOLDERS

- 5.1 This report is to consider submissions received as part of the public notification process under Section 190 of the Local Government Act 1989.

- 5.2 The process enables consultation with key stakeholders and other interested parties to inform the lease renewal.

- 5.3 Grant and Purpose consent has been sought and obtained from DELWP for the Proposed Tenancy Agreement.

6. LEGAL AND RISK IMPLICATIONS

- 6.1 The 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.

- 6.2 The Proposed Tenancy Agreement is subject to approval by the Minister for Energy, Environment and Climate Change on behalf of DELWP.

7. FINANCIAL IMPACT

- 7.1 A market value assessment was conducted in August 2018 which estimated the pavilion rental value at \$16,000 per annum plus GST and the three pitches at \$122,500 per annum plus GST. These values are based on exclusive access to these spaces.

- 7.2 Officers propose a discounted rental as per the Sports Ground and Facilities Bookings fees in recognition for PMSC's continuing support of the wider community.

- 7.3 The Proposed Tenancy Agreement will be dependent on PMSC demonstrating how it is meeting its requirements under the agreement on an annual basis.

- 7.4 Officers recommend that maintenance over and above minimum service level standards set by council be undertaken at the PMSC cost.

8. ENVIRONMENTAL IMPACT

- 8.1 There is no impact or change from current arrangements.

9. COMMUNITY IMPACT

- 9.1 PMSC supports the community through the provision of sports programs promoting health and wellbeing to the community.



9.2 Under the Proposed Tenancy Agreement PMSC will be required to continue to provide for community use including support of female participation, ongoing school and community programs. In addition, it is proposed that there be a further requirement for the toilets to be made reasonably available to the public

9.3 While the grounds are proposed to continue to be provided on a Seasonal Permit allowing public access outside of game times, the impacts highlighted in the submission regarding the fencing and accessibility to the reserve will need to be considered to ensure any new agreement minimises any negative impact on the surrounding community.

10. ALIGNMENT TO COUNCIL PLAN AND COUNCIL POLICY

10.1 The Proposed Tenancy Agreement aligns to the Council Plan as follows:

Direction 1 – “We embrace difference, and people belong’

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

11. IMPLEMENTATION STRATEGY

11.1 TIMELINE

- Council hears and considers the written submission received under Section 223 of the Local Government Act 1989 on 18 November 2020.
- At the next available Council Meeting, Council to make a final decision regarding the Proposed Tenancy Agreement taking into account the submission received.
- Should Council decide to enter into a lease, execute the lease.

11.2 COMMUNICATION

- Officers will advise the Tenant’s representatives of the Councils position following this meeting.

12. OFFICER DIRECT OR INDIRECT INTEREST

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

TRIM FILE NO: PF17/306356

ATTACHMENTS

- 1. Lease Plan 2020**
- 2. PMSC Formal Submission Aug 20**