



13.2 PROPOSED TENANCY AGREEMENT WITH LADY FORSTER
KINDERGARTEN INCORPORATED AT 63B ORMOND
ESPLANADE, ELWOOD (TO FINALISE)

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

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1. PURPOSE

- 1.1 To seek Council's approval to finalise the statutory procedures under the *Local Government Act 1989* (Vic) (**Act**) for the granting of a new tenancy agreement (**Proposed Tenancy Agreement**) with Lady Forster Kindergarten Incorporated (**Tenant**) at 63B Ormond Esplanade, Elwood (**Premises**).

2. EXECUTIVE SUMMARY

- 2.1 The Tenant has been operating out of the Premises for kindergarten and associated activities since 2012.
- 2.2 The Premises subject to the Proposed Tenancy Agreement, as contained in Attachment 1, are on Crown land.
- 2.3 On 18 September 2019, Council formalised its support for the continued use of the kindergarten premises leased by the Tenant and requested Council officers to develop and implement an advocacy strategy for an extension of the Tenant's existing tenancy agreement beyond 2022 on the basis that:
- 2.3.1 demand modelling indicates that there is a need for kindergarten services in the area;
- 2.3.2 at this time, there are no viable facilities that would adequately meet demand for kindergarten services in the area (particularly with the increase of three-year old kindergarten); and
- 2.3.3 the Tenant provides a high-quality kindergarten service to over 100 children and has embraced its beachside location in the development of its curriculum which is dependent on its coastal location.

Officers recommend that the community garden/kitchen garden area that is currently on a separate licence issued to the Tenant is now added in to form part of the leased Premises, removing the requirement for separate documentation. The garden was developed by the Tenant with a grant it received, to be used for education of the children attending the kindergarten, but at the same time, making it available for some limited community use.

- 2.4 The current annual market rental estimate for the Premises is \$225,000 (exclusive of GST). However, Officers recommend a discounted rent of \$104 per annum plus GST to support continuous provision of a kindergarten facility and a community garden/kitchen garden which aligns with Council's Property Policy (**Property Policy**).
- 2.5 Officers recommend that the Proposed Tenancy Agreement starts on 1 July 2021 for a period of eight years and six months with an expiry date of 31 December 2029. The proposed term takes into account the state of the building, the Elwood Foreshore



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Redevelopment Plan and the abutting tenant (that would require an extended term of five years from 1 January 2025 to meet the requirements of the Retail Leases Act 2003 (**RLA**)). This proposed lease term is deemed appropriate for both the Tenant and ongoing Council requirements.

- 2.6 The Premises are on Crown land and grant and purpose approval was obtained from the Department of Environment, Land, Water and Planning (**DELWP**) on 23 April 2021.
- 2.7 As the current market rental estimate for the Premises exceeds \$50,000 per annum and the proposed term is greater than one year, the statutory process under the Act applies. This process requires public notification pursuant to sections 190 and 223 of the Act before making a final decision on the Proposed Tenancy Agreement.
- 2.8 Council resolved to commence the statutory process on 2 June 2021 which invited submissions on the Proposed Tenancy Agreement. Council must hear and consider any submissions received before deciding to enter into such tenancy agreement.
- 2.9 No submissions were received in response to the public notice that was published in The Age newspaper on 16 June 2021.
- 2.10 Officers recommend that Council completes the statutory procedures and makes a final decision on 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	Lady Forster Kindergarten Incorporated
Premises	All that land shown outlined in yellow and red on the attached plan at 63B Ormond Esplanade, Elwood
Permitted Use	Area outlined in yellow – kindergarten and associated activities Area outlined in red – community garden/kitchen garden and associated activities
Term	From 1 July 2021 to 31 December 2029
Rent	\$104 per annum plus GST

- 3.2 Notes that Council at its meeting on 18 September 2019 endorsed support for the Tenant's continued use of the kindergarten premises in line with the Elwood Foreshore Redevelopment Plan and requested that Officers develop and implement an advocacy strategy for an extension of the Tenant's existing tenancy agreement beyond 2022 on the basis that:

- 3.2.1 Demand modelling indicates that there is a need for kindergarten services in the area;



- 3.2.2 At this time, there are no viable facilities that would adequately meet demand for kindergarten services in the area (particularly with the increase of three-year old kindergarten); and
- 3.2.3 The Tenant provides a high-quality kindergarten service to over 100 children and has embraced its beachside location in the development of its curriculum which is dependent on its coastal location;
- 3.3 Notes that the community garden/kitchen garden area that is currently on a separate licence issued to the Tenant is now added in to form part of the leased Premises;
- 3.4 Notes that the proposed rent of \$104 per annum plus GST helps support the continuous provision of a kindergarten facility and a community garden/kitchen garden which aligns with Council's Property Policy;
- 3.5 Notes that the Proposed Tenancy Agreement will be on terms and conditions similar to the current lease and generally in accordance with Council's Property Policy;
- 3.6 Authorises the Chief Executive or delegate to execute such tenancy agreement.

4. KEY POINTS/ISSUES

Background

- 4.1 The Tenant established in 1924 was situated at the former Elwood Beach Community Centre.
- 4.2 The Elwood Beach Community Centre was constructed in 1925 as the Elwood Bowling Club which was then used as a community centre for many years. It was extensively renovated to convert it to a restaurant and kindergarten facility. The overall condition and function of the facility was rated as 'Good'.
- 4.3 The Tenant relocated to the Premises from Port Melbourne in 2012 when Council developed Bubup Womindjeka.
- 4.4 The Premises are on Crown land designated for public recreation.
- 4.5 The relocation was initially intended as a temporary arrangement for a period of two years while Bubup Womindjeka was being developed.
- 4.6 In 2012, the Tenant requested to stay at the Premises and the Department of Environment and Primary Industries (now DELWP) consented to an interim lease (i.e. eight years with a further term of two years from 3 January 2014). The initial term will expire on 2 January 2022.
- 4.7 When the current lease was negotiated, the further two-year option was granted on the understanding that a plan to relocate the Tenant would be provided. All discussions with DELWP have indicated that this would be granted once the report detailing the transition plan has been provided i.e. new premises have been identified.
- 4.8 There are limited options for relocation in Elwood, and as such, Council resolved, at its meeting on 18 September 2019, to formalise its support for the continued use of the Premises by the Tenant.
- 4.9 The Proposed Tenancy Agreement is the implementation of Council's endorsement of the continued use of the Premises by the Tenant.
- 4.10 The Tenant has embraced its beach location and has developed a Coastal Curriculum that draws on the principles of 'bush kinder'. Recently it hosted delegates from South



Korea who were guests of the Department of Education and Training to see their curriculum in action.

- 4.11 The Tenant has advised that it has 115 children enrolled at the centre across the programs that it offers (three-year and four-year-old sessional kindergarten program, extended hours four-year-old kindergarten, Friday occasional care and holiday program – up to seven-year-old). It is licensed for 49 places at any time.
- 4.12 The Tenant and Poets Grove Family and Children’s Centre are the only centres offering sessional kindergarten programs in the southern end of the municipality. St Kilda/ Balaclava Kindergarten offers extended hours within a long day care setting (similar to the recently opened Barring Djinang Kindergarten). The nearest alternative sessional kindergarten program is outside the municipality in North Brighton.
- 4.13 Demand modelling developed for *Every Child, Our Future: Policy Issues and Options Paper* indicates that demand and supply for four-year-old kindergarten places in Elwood is currently evenly balanced (approximately 50 places) but that demand will increase in 2030 (with an additional 19 places required). This is based on the assumption that 60% of the four-year-olds will attend kindergarten in a long-day care setting and 40% in a kindergarten program.
- 4.14 This modelling does not account for increased demand that is likely to arise due to the introduction of universal access to three-year-old kindergarten (anticipated to commence in 2022).
- 4.15 There are three centres that provide early childhood/ kindergarten in the Elwood area: the Tenant, Poets Grove Family and Children’s Centre and Elwood Children’s Centre.
- 4.16 The Tenant has advised Council on numerous occasions that it is interested in extending the lease beyond the existing lease term and exploring options to introduce a mixed use of space to meet DELWP requirements.
- 4.17 In late 2018, DELWP advised that the “the use of the existing hall ...for kindergarten and associated activities would not be detrimental to the purpose of the reserve, however, the hall must be made available to the public or particular user groups wherever possible”. It also reiterated that the terms of the current lease outline that “Council is to provide a report on the relocation site of the Tenant before the further term of two years is granted” and that it would require this report to “assess the appropriateness of the Tenant remaining at the site in the long term”.
- 4.18 At this point in time, there are limited relocation options for the Tenant within the Elwood area. A facility strategy is currently under development that will consider all viable options to support community-managed children’s services in the municipality. This will consider options for relocating the Tenant.
- 4.19 Officers will also be developing a masterplan for the Elwood foreshore precinct that will consider community needs and appropriate use over the coming years.
- 4.20 There are some compliance works that would need to be undertaken in the short to medium timeframe that could trigger a complete upgrade. A high-level estimate of the cost to upgrade the building is estimated at \$2.54M. It would be possible to substantially increase spaces at the site.
- 4.21 The Tenant has been provided a funding agreement that will expire on 31 December 2022. Such funding agreement was fully executed on 24 June 2021.



- 4.22 Officers recommend that the community garden/kitchen garden area that is currently on a separate licence issued to the Tenant is now added in to form part of the leased Premises as the garden was developed by the Tenant with a grant it received, to be used for education of the children attending the kindergarten, but at the same time, making it available for some limited community use.
- 4.23 The community garden/kitchen garden is in an area of Council-managed land behind the kindergarten. Council encourages the use of natural spaces within early childhood settings in the municipality and the community garden/kitchen garden provides a great opportunity for children to learn from the 'garden to plate' journey.
- 4.24 Officers recommend that the Proposed Tenancy Agreement starts on 1 July 2021 for a period of eight years and six months with an expiry date to 31 December 2029. This takes into account the state of the building, the Elwood Foreshore Redevelopment Plan and the abutting tenant (that would require an extended term of five years from 1 January 2025 to meet the requirements of the RLA). This proposed lease term is deemed appropriate for both the Tenant and ongoing Council requirements.
- 4.25 The current annual market rental estimate for the Premises is \$225,000 (exclusive of GST).
- 4.26 As the Proposed Tenancy Agreement has a proposed term that is greater than one year and the market rent estimate exceeds \$50,000 per annum, the statutory process applies. This process requires public notification pursuant to sections 190 and 223 of the Act before making a final decision on the Proposed Tenancy Agreement.

5. PROPOSED TENANCY AGREEMENT

- 5.1 As the Proposed Tenancy Agreement has a proposed term greater than one year and the market rent estimate exceeds \$50,000 per annum, the statutory process applies. This process requires public notification pursuant to sections 190 and 223 of the Act before making a final decision on the Proposed Tenancy Agreement.
- 5.2 Council resolved to commence the statutory process on 2 June 2021 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.
- 5.3 No submissions were received in response to the public notice that was published in The Age newspaper on 16 June 2021.
- 5.4 There are a number of key planning documents, legislation and policy that need to be considered for the Proposed Tenancy Agreement. These include the following:
- Council Plan;
 - Crown Land (Reserves) Act;
 - Every Child, Our Future: Children's Services Policy (**Children's Services Policy**); and
 - Property Policy.
- 5.5 The Council Plan 2021-31 sets out what Council wants to achieve for the city of Port Phillip and how it supports the future health and wellbeing of the city.



- 5.6 The Crown Land (Reserves) Act enables Council as Committee of Management to issue leases and licences that are consistent with the law and principles for leasing and licensing Victorian Crown land.
- 5.7 The Children's Services Policy describes Council's role in children's services and what Council intends to do to support the well-being and development of children and families in the municipality.
- 5.8 The Property Policy provides guidance on entering tenancy agreements. Such principles under this policy align with those of the State Government Leasing Policy.
- 5.9 Further to these principles, Officers have put forward the following in the previous report to Council recommending commencement of the statutory procedures:
- A direct negotiation be undertaken with the incumbent Tenant Lady Forster Kindergarten Incorporated.
 - The Proposed Tenancy Agreement be made to commence from 1 July 2021 to 31 December 2029. This would allow the Tenant business continuity and enable Council to consider state of the building, the Elwood Foreshore Redevelopment Plan and the abutting tenant (that would require an extended term from 1 January 2025 to meet the RLA requirements).
 - The existing tenancy agreement for the kindergarten premises and the existing licence for the community garden/kitchen garden area be surrendered and replaced with this Proposed Tenancy Agreement.
 - The rent be unchanged at \$104 per annum plus GST, reflected as an in-kind contribution, i.e. discounted from market value, given that the Tenant continues to fill the need for a kindergarten facility in the area and provide a community garden/kitchen garden at the same time.
 - All outgoings applicable to the Premises be paid by the Tenant.
 - Insurance for public liability and tenant chattels/ improvements be obtained by the Tenant and that cost for building insurance be covered by Council as per previous.
 - Building maintenance and renewal be carried out by Council and ongoing maintenance costs be considered under the Tenant's funding agreement with Council.
 - The Tenant be supported through the following measures to assist the provision of a kindergarten facility in line with the implementation of the Children's Services Policy and a community garden/kitchen garden:
 - discounted rent of \$104 per annum plus GST;
 - discounted insurance cost with the cost of the building insurance covered by Council; and
 - building maintenance and renewal.

6. CONSULTATION AND STAKEHOLDERS

- 6.1 Council has notified the community through a Notice of Intention to Lease published in The Age newspaper on 16 June 2021 inviting submissions in accordance with statutory procedures.



6.2 The deadline date of submissions was 16 July 2021.

6.3 No submissions were received by the deadline date.

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 The Crown land lease template will be used as the basis of all Crown land tenancy agreements, to incorporate any further obligations agreed with the Tenant. This template documents landlord and tenant responsibilities, conforms to legislative requirements and mitigates risk.

8. FINANCIAL IMPACT

8.1 While the current annual market rental estimate for the Premises is \$225,000 (exclusive of GST), it is recommended to be discounted to \$104 per annum plus GST under the Proposed Tenancy Agreement to support the continuous provision of a kindergarten facility and a community garden/kitchen garden.

8.2 The Proposed Tenancy Agreement is contingent upon the Tenant being awarded a funding agreement. The Tenant has been provided a funding agreement that will expire on 31 December 2022. This funding agreement was fully executed on 24 June 2021. Such agreement will require the Tenant to fulfil its obligations under the Proposed Tenancy Agreement.

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
- reduce single use plastic including eliminating plastic straws and balloons.

10. COMMUNITY IMPACT

10.1 Council has the following primary objectives when entering tenancy agreements 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 funding agreement provided to the Tenant has agreed service objectives and key performance indicators to ensure delivery of children's services.

11. ALIGNMENT TO COUNCIL PLAN AND COUNCIL POLICY

11.1 The Proposed Tenancy Agreement aligns with the Strategic Direction **Well Governed Port Phillip** – a leading government authority, where our community and our organisation are in a better place as a result of our collective efforts.

11.2 The Proposed Tenancy Agreement also supports the Children's Services Policy that guides how Council supports, delivers and invests in children's services in the municipality.

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 representative of the outcome of the 4 August 2021 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.

ATTACHMENTS

- 1. Plan of Premises at 63B Ormond Esplanade Elwood**