



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

EXECUTIVE MEMBER: CHRIS CARROLL, GENERAL MANAGER, CUSTOMER AND CORPORATE SERVICES

PREPARED BY: LYANN SERRANO, PROPERTY ADVISOR

1. PURPOSE

- 1.1 To seek Council's approval to commence the statutory procedures for the proposed new 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 Lease at 72B Beaconsfield Parade, Albert Park are situated on Crown Land for which Council is the Committee of Management under the *Crown Land Reserves Act 1978*.
- 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.
- 2.3 With a membership of about 312, the Tenant provides a service to the community to assist in preventing aquatic related death and injury, provide a safe foreshore for beach users and support local communities learn about water safety, swimming and first aid skills.
- 2.4 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".
- 2.5 The redevelopment had a total cost of \$7.84M with Council providing \$5.64M and the Victorian Government through Life Saving Victoria (**LSV**) and the Department of Environment, Land, Water and Planning (**DELWP**), contributing a total of \$2.2M.
- 2.6 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.
- 2.7 The new premises officially opened on 2 November 2019.
- 2.8 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.
- 2.9 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.
- 2.10 During the redevelopment, a range of options was explored to determine what model best supported the new building and the lifesaving services which included consideration of a centralised management model.
- 2.11 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.

- 2.12 At this 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. This agreement is due to expire on 31 July 2020.
- 2.13 The Tenant is paying rent of \$104 per annum plus GST under its current tenancy agreement.
- 2.14 Officers recommend a maximum term of five (5) years to allow the new lease to be reviewed and modified to match any changes in legislation, Council priorities and the needs of the Tenant. This has been agreed in principle with the Tenant.
- 2.15 The proposed rental is recommended to be market rent which is to be discounted to \$104 per annum plus GST with the Tenant being responsible for all outgoings including reimbursement of the building insurance premium and any on-going general maintenance costs.
- 2.16 Grant and purpose consent was sought and obtained from DELWP for the proposed Lease.
- 2.17 As the proposed Lease 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 Lease pursuant to sections 190 and 223 of the *Local Government Act 1989* (Vic) (**Act**).

3. RECOMMENDATION

That Council:

- 3.1 Resolves that the statutory procedures be commenced under section 190 of the *Local Government Act 1989* (Vic) (**Act**) by publishing a notice in the local newspaper inviting interested persons to make a submission under section 223 of the Act, on the proposed lease terms outlined below:

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 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 3 days per week;
- 3.3 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;
- 3.4 Authorises the Chief Executive Officer or delegate to undertake the administrative procedures necessary to enable Council to carry out its functions under section 223 of the Act; and
- 3.5 Resolves to hear and consider any submissions received pursuant to section 223 of the Act at a future Council meeting.

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 under the *Crown Land Reserves Act 1978*.
- 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 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 Tenant. 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 Lease 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 about 312, the Tenant provides a service to the community to assist in preventing aquatic related death and injury, provide a safe foreshore for beach users and support 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 was explored to determine what model best supported the new building and the lifesaving services which included consideration of a centralised management model.
- 4.17 This 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. The proposed Lease is required to consider:
- Full cost recovery for the general life cycle maintenance of the facility and all outgoings attributable to the lease;
 - Defined club and facility specific community benefits, including maximum school use of up to 3 days per week;
 - Annual reporting regarding compliance with the agreement terms, including financial and utilisation data;
 - A defined Asset Management Plan;
 - An agreed level of non-club related activities; and
 - Agreed environmental sustainability targets and initiatives.
- 4.19 At this 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. This 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 Lease. These include:
- *Crown Land (Reserves) Act 1978*;



- *Crown Land Leasing Policy*;
 - *Council Plan*; and
 - *Council Property Policy*.
- 5.2 The leased premises on Crown land 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 Lease. 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 Council's Property Policy provides guidance on entering tenancy arrangements and is aligned with the State Government Leasing Policy.
- 5.4 An assessment of the proposed key terms along with a recommendation against each of the principles is provided below.

Direct Negotiation or Market Process to Secure a New Lease

Key Principle

- 5.5 Direct negotiation will be considered with an incumbent tenant unless there is evidence that conducting a competitive process would increase benefits to the community.

Assessment

- 5.6 The proposed Lease is not expected to be longer than the standard term.
- 5.7 The Tenant delivers a key service to the community.
- 5.8 The building has been purpose built for use by the South Melbourne Lifesaving Club.
- 5.9 There is no evidence that conducting a competitive process would increase benefits to the community or Council.
- 5.10 On 7 August 2019, Council authorised officers to commence negotiations with the Tenant for an exclusive use tenancy agreement/ lease over the new facility, excluding the kiosk and public amenities.

Recommendation

- 5.11 Officers recommend a direct negotiation be undertaken with the incumbent Tenant South Melbourne Life Saving Club Inc.

Term of the Proposed Lease

Key Principles

- 5.12 The term of the proposed lease needs to be appropriate to the tenant and the use of the premises and allows for consideration of alternative uses.
- 5.13 A longer-term lease may be warranted to support capital investment in the premises or when the use is linked to a specific tenant and the tenant has a history of delivering good outcomes for the community.
- 5.14 The term of the proposed lease should consider the effort required by Council and the future tenant to negotiate a new lease.



Assessment

- 5.15 The Tenant initially requested consideration for the maximum term but has since agreed a shorter term.
- 5.16 The maximum term for any agreement under the *Crown Land (Reserves) Act 1978* is twenty-one (21) years.
- 5.17 Council's Property Policy allows for a standard term of five (5) years for leases.
- 5.18 The Tenant is a long-term tenant of Council and the building under various agreements since 1957.
- 5.19 The proposed tenancy agreement terms are different from previous agreements which will require ongoing review to ensure needs of Council and the Tenant are being met.
- 5.20 The proposed Lease must go through statutory procedures set out in sections 190 and 223 of the Act if the term is greater than one year and the market rent estimate exceeds the threshold of \$50,000 per annum.

Recommendation

- 5.21 Officers recommend a lease term of five (5) years with the proposed Lease to commence on 1 August 2020. This term will allow the agreement to be reviewed and modified to match any changes in club operations and the needs of the Tenant.

Multi-Use of Facilities

Key Principles

- 5.22 Council is committed to maximising access to, and use of, Council facilities for the benefit of the community.
- 5.23 Accordingly, for all agreements with Community Organisations, as defined under the Property Policy, the need for exclusive use of the facilities will be reviewed at the commencement of the agreement, with preference being shared use licence agreements.

Assessment

- 5.24 The building has been purpose-built for lifesaving activities but does include a separate multipurpose space.
- 5.25 In the past, Albert Park College (**APC**) has utilised the community as a classroom facility for 2-3 times a week, with no set time limits. An expectation was expressed by APC that it would be granted ongoing access 5 days a week to the multipurpose facility following the redevelopment.
- 5.26 The Tenant has previously had exclusive use over the facility and hired out the multipurpose space to LSV, Sports Education and Development Australia, Croxton Special School, Surf Ski groups and various beach programs with local schools and the general public to support its service delivery.
- 5.27 During the redevelopment, a range of options was explored to determine what model best supported the new building and the lifesaving services. At this time, a centralised management model was proposed, which provided a lease for the exclusive use of the lifesaving facilities and a licence for the multipurpose space. The Tenant expressed concerns regarding this model at the time.

Recommendation



- 5.28 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.
- 5.29 Officers recommend providing the Tenant an exclusive use of the premises as identified and outlined in red in Attachment 1.
- 5.30 Due to the significant contribution to the development of the building, Officers recommend that the proposed Lease allows Council at-cost access to use the facility (outside of bookings) for up to 20 days for community use.
- 5.31 Further to this, Officers recommend that the 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 3 days per week.

Rent

Key Principles

- 5.32 Council's approach to rental amounts reflects the different purpose of Commercial and Community Organisation (as defined in the Property Policy) tenants and is guided by portfolio targets set by Council.
- 5.33 A market rent is desirable, but Council accepts lower than market rent to support community-based organisations that provide community benefits or services on behalf of Council.

Assessment

- 5.34 A market rental assessment was completed on the newly built facility in March 2018 by an independent valuer which was estimated to be \$145,000 per annum plus GST.
- 5.35 Under the terms of the existing tenancy agreement, the Tenant contributes a discounted rent of \$104 per annum plus GST to support the the continuous provision of lifesaving services and water safety programs to the community.
- 5.36 Consideration for ongoing building operating costs must be factored into the determination of an appropriate rental charge.

Recommendation

- 5.37 Officers propose a rental of \$145,000 per annum plus GST to be discounted to \$104 per annum plus GST to help support the continuous provision of lifesaving services and water safety programs to the community.

Outgoings

Key Principles

- 5.38 It is desirable that tenants pay the running costs (outgoings) of the premises that are associated with their tenancy.
- 5.39 These costs are to be paid either directly to the relevant service provider by the tenant, or to Council as a reimbursement for incurring these costs.
- 5.40 Community Organisations may be eligible for an exemption from the payment of all, or some, outgoing which will be considered in line with the Community Funding Framework.



Assessment

- 5.41 The Tenant currently pays the outgoings associated with operating its services out of the premises.
- 5.42 The Tenant is expected to have exclusive use of the identified premises at a discounted rental.
- 5.43 It is considered reasonable that the Tenant pays all outgoings as with any standard operator/ occupier.

Recommendation

- 5.44 Officers recommend that all outgoings applicable to the tenancy continue to be paid by the Tenant and Council remain responsible for the payment of utilities for the public amenities.

Insurance

Key Principles

- 5.45 Tenants are responsible for insuring any chattels, fixtures or contents within Council property as well as taking out public liability insurance.
- 5.46 It is desirable that Council maintains building insurance for buildings on Council owned or controlled land with the cost of such insurance premium being reimbursed by the tenant.
- 5.47 Community Organisations may be eligible for an exemption from the payment of all, or some, insurance which will be considered in line with the Community Funding Framework.

Assessment

- 5.48 The Tenant currently maintains its own Public Liability Insurance policy of \$20M and contents insurance as required.
- 5.49 Council currently covers the cost of building insurance for the premises at a premium of approximately \$2,300 per annum.
- 5.50 The Tenant is expected to have exclusive use of the identified premises at a discounted rental.
- 5.51 It is considered reasonable that the Tenant pays insurance as with any standard operator/ occupier.

Recommendation

- 5.52 Officers recommend that insurance for public liability and tenant improvements be obtained by the Tenant and that cost of building insurance premium be reimbursed by the Tenant to Council.

Maintenance

Key Principles

- 5.53 Council is committed to ensuring Council property remains suitable and safe for its intended use, and that the building lifecycle is extended as far as practicable for the benefit of future communities.



- 5.54 In general, tenants are responsible for keeping Council property clean and in good operating condition with full responsibility for the maintenance and renewal of tenant fittings and improvements.
- 5.55 The extent of landlord contribution to structural maintenance and renewal should consider asset ownership, community benefits, capacity of the tenant to pay and nature of the tenancy.

Assessment

- 5.56 The proposed Lease does not fall within the *Retail Leases Act (2003)*.
- 5.57 In the past, Council has been responsible for all costs associated with repairs, maintenance and renewal of the premises.
- 5.58 The predicted average annual cost of maintenance for the new facility is approximately \$60k per annum based on a building life of 25 years.
- 5.59 Council has taken on the responsibility of delivery of Essential Safety Measures inspections and monitoring for all buildings within its portfolio.
- 5.60 The Tenant is expected to have exclusive use of the identified premises at a discounted rental.
- 5.61 During the redevelopment, the Tenant requested a commercial kitchen to support functions for which the Tenant contributed to.

Recommendation

- 5.62 Officers recommend that 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.
- 5.63 Further to this, Officers recommend that Council undertakes reactive maintenance when requested by Tenant with full cost recovery from the Tenant.
- 5.64 All structural renewals as well as the proactive maintenance of the essential services and public amenities, including the deck, are to remain the responsibility of Council.

Method of Council Support

Key Principles

- 5.65 Council is committed to providing transparent and relevant support through a range of funding mechanisms to Community Organisations aligned with Council Plan priorities, as detailed in the Community Funding Policy.
- 5.66 Council will assess the level of discount/ support required by Community Organisations against the eligibility criteria set by the Community Funding Policy.

Assessment

- 5.67 The redevelopment has been made possible through the financial assistance of Council and the Victorian Government via LSV and DELWP. The \$7.84M project was funded by Council (\$5.64M), LSV (\$2M) and DELWP (\$.2M).
- 5.68 The Tenant has shown an interest in utilising the multipurpose space for commercial hire to generate revenue.
- 5.69 The Tenant is supported by LSV through its members.



5.70 It is recommended that the Tenant contributes to the general maintenance of the building and covers outgoings for area of the building under its management.

Recommendation

5.71 Officers recommend that the Tenant be supported through:

- discounted rent of \$104 per annum plus GST to help support the continuous provision of lifesaving services and water safety programs to the community;
- 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 lease.

5.72 In recognition of this in-kind contribution, the Tenant is to provide Council with ongoing reporting to demonstrate how it is meeting its requirements under the agreement. The recommended minimum reporting requirements can be found in Attachment 2.

5.73 In addition, it is recommended that the Tenant be 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 will notify the community through a Notice of Intention to Lease to be published in the local newspaper inviting submissions in accordance with statutory procedures.

6.2 Grant and purpose approval was sought and obtained from DELWP for the proposed Lease.

7. LEGAL AND RISK IMPLICATIONS

7.1 The statutory process under the Act requires Council to notify the public before committing to the proposed Lease.

7.2 Crown's standard form lease will be used as the basis of the proposed Lease, 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 Lease 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 Lease 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 Lease 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 Lease 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 new 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 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 Lease 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 commence the statutory process, a Notice of Intention to Lease as per section 190 of the Act will be published in Port Phillip Leader newspaper.
- 12.1.2 Under section 223 of the Act, the submission period will be at least 28 days.
- 12.1.3 Council is required to hear and consider submissions (if any) at a future Council meeting.

12.2 COMMUNICATION

- 12.2.1 Officers will advise the Tenants representatives of the outcome of the 18 March 2020 Council meeting.



ORDINARY MEETING OF COUNCIL 18 MARCH 2020

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