



# ORDINARY MEETING OF COUNCIL 5 FEBRUARY 2020

## **14.2** PROPOSED TENANCY AGREEMENT "SANDBAR" 175B BEACONSFIELD PARADE, ALBERT PARK - COMPLETION OF STATUTORY PROCEDURES

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

**PREPARED BY:** EMMA MURDOCH, HEAD OF PROPERTY OPERATIONS

### **1. PURPOSE**

- 1.1 To seek Council's approval to complete statutory procedures under Section 190 of the Local Government Act 1989 (Vic) ("Act") and finalise the proposed tenancy agreement with Sandbar on the Bay Pty Ltd (Tenant) for the premises at 175B Beaconsfield Parade, Albert Park

### **2. EXECUTIVE SUMMARY**

- 2.1 The café at 175B Beaconsfield Parade, Albert Park known as "Sandbar" is located on foreshore Crown land for which the City of Port Phillip ("CoPP") is the Committee of Management.
- 2.2 The current lease for the property commenced 1 April 2005 with a term of 15 years and is due to expire on 31 March 2020. The current tenant has occupied the site since October 2015 and owns the intellectual property for the "Sandbar" business.
- 2.3 The current rent is \$126,531.15 per annum plus GST with 4% annual increases with the tenant responsible for the cost of outgoing. As per the requirements of the Retail Leases Act (2003), structural maintenance, essential services and capital renewal of landlord assets are the responsibility of Council.
- 2.4 The commercial part of the building has been well-maintained but is lacking operational aspects such as a cool room and storage space. The public toilets located at either end of the building consist of toilets, showers and change room areas and are in need of refurbishment.
- 2.5 The tenant has agreed to complete up to \$450,000 in capital works to uplift the operational aspects of the building. The tenant's proposed works include an extension of the cool room, update of kitchen flooring, replacement/repair of rear high windows, replacement of the split system air conditioner with evaporative heating and cooling, refurbishment and refit of the refurbished internal toilets, installation of noise absorbing ceiling panels and refurbishment and refit of the cool room.
- 2.6 The market rental as assessed by an independent valuer has been estimated at \$127,200 per annum plus GST as at 2 August 2019.
- 2.7 The proposed tenancy agreement is a 10-year lease at full market rent adjusted annually by a fixed rate of 4% with a market rental evaluation in Year 6. All other terms will remain largely the same as the existing tenancy agreement. This has been agreed in principle by the tenant.
- 2.8 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.



- 2.9 In accordance with the statutory process, a Notice of Intention to Lease the property was published in the Port Phillip Leader newspaper on 1 October 2019. One submission was received by the submission deadline of 31 October 2019.
- 2.10 Key themes in the submission include concern over: the rental amount, noise, planning permit variations, enlargement of premises, rubbish collection times, delivery times and the general impact on the residential neighbours adjacent to the premises on Beaconsfield Parade.
- 2.11 These matters were heard at an ordinary meeting of Council on the 20 November 2019.
- 2.12 Officers have reviewed the submission and recommend that Sandbar on the Bay Pty Ltd be granted a 10-year Lease on the proposed terms on the basis that these terms respond to the matters contained within the submission.
- 2.13 Council is now able to complete the statutory procedures and make a final decision on the proposed tenancy agreement.

### 3. RECOMMENDATION

That Council:

- 3.1 After considering submissions in response to the Notice of Intention to Lease for the property at 175B Beaconsfield Parade, Albert Park to Sandbar on the Bay Pty Ltd (**Tenant**), resolves to conclude the statutory procedures under Sections 190 and 223 of the Local Government Act 1989 (**Act**) and approves the proposed tenancy agreement to the Tenant.
- 3.2 Authorises the Chief Executive Officer or delegate to execute such tenancy agreement on the key terms outlined below:
  - 3.1.1 Proposed Tenant: Sandbar on the Bay Pty Ltd
  - 3.1.2 Demised Premises: 175B Beaconsfield Parade, Albert Park
  - 3.1.3 Permitted Use: Café/Restaurant with Liquor Licence
  - 3.1.4 Commencement Date: 1 April 2020
  - 3.1.5 Term: 10 years
  - 3.1.6 Commencement Rent: \$127,200 per annum plus GST
  - 3.1.7 Outgoings: Paid by Tenant

### 4. KEY POINTS/ISSUES

#### Background

- 4.1 The café at 175B Beaconsfield Parade, Albert Park known as “Sandbar” is located on foreshore Crown land for which the City of Port Phillip (“CoPP”) is the Committee of Management.
- 4.2 The Sandbar and public toilets were originally constructed as a beachside kiosk/café/restaurant in the 1920s and has had relatively little change since.

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- 4.3 Under the provisions of the City of Port Phillip Planning Scheme, the subject property is contained within a Public Park and Recreation Zone (PPRZ) and a permit is required for use as a café. Sandbar on the Bay has the required permits to operate as a café.
- 4.4 The current lease for the property commenced 1 April 2005 with a term of 15 years and is due to expire on 31 March 2020.
- 4.5 In 2014, the former tenant, Three Fish by the Sea Pty Ltd, requested a lease extension that was considered by Councillors in a Councillor Briefing. At this time, the tenant had approximately 6 years left on the lease and feedback provided was that a new lease would be considered closer to the lease end date but any proposal for a direct negotiation and a long lease term would need to be supported by a significant capital contribution.
- 4.6 On 20 October 2015, the former tenant sold the business to the current tenant, Sandbar on the Bay Pty Ltd and as such the current tenant owns the intellectual property for the “Sandbar” business.
- 4.7 The current rent is \$126,531.15 per annum plus GST with 4% annual increases.
- 4.8 A term of 10 years is recommended in this case as the Tenant has occupied the premises for an initial term and has agreed to complete up to \$450,000 in capital works to uplift this iconic and significant asset.
- 4.9 The Tenants proposed works include works to update the operational aspects of the building including an extension of the cool room, update of kitchen flooring, replacement/repair of rear high windows, replacement of the split system air conditioner with evaporative heating and cooling, refurbishment and refit of the refurbished internal toilets, installation of noise absorbing ceiling panels and refurbishment and refit of the cool room.
- 4.10 The market rental as assessed by an independent valuer has been estimated at \$127,200 per annum plus GST as at 2 August 2019.
- 4.11 The proposed tenancy agreement is a 10-year lease at full market rent adjusted annually by a fixed rate of 4% with all other terms remaining largely the same as the existing tenancy agreement. This has been agreed in principle by the tenant.
- 4.12 Officers recommend that the Tenant pay outgoings associated with the proposed tenancy agreement including insurance as per standard commercial practice.
- 4.13 Maintenance and renewal will be the responsibility of the Landlord in line with the requirements of the Retail Leases Act (2003).
- 4.14 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.
- 4.15 To lease a property for any period greater than 10 years or when the market rental is greater than \$50,000 per annum, Council must first follow the procedures set out in Section 190 and 223 of the Local Government Act 1989. The procedures allow for any person to make a submission and for any submissions to be considered by Council before a lease can be granted.
- 4.16 In accordance with the statutory process, a Notice of Intention to Lease the property was published in the Port Phillip Leader newspaper on 1 October 2019.
- 4.17 One submission was received by the submission deadline of 31 October 2019.



4.18 These matters were heard at an ordinary meeting of Council on the 20 November 2019. A summary of the key terms from the submission is provided below.

## 5. SUMMARY OF THE SUBMISSION

5.1 Key themes in the submission include concern over: the rental amount, noise and planning permit variations which impact on the residential neighbours adjacent to the premises on Beaconsfield Parade.

### **Rental**

#### *Feedback*

5.2 The submission provided feedback that the rent should be indexed periodically.

5.3 The submission questioned whether the market valuation takes into account the fact that the property enjoys Council maintained and cleaned toilet facilities and has non-restricted metered parking that is rarely monitored and enforced by Council.

5.4 The submission requests that the rental is tied to the variations in the planning permit.

#### *Assessment*

5.5 Rental for the proposed agreement is to be based on a market rental valuation by an independent valuer which considers the current use of the premises and benefits available.

5.6 The market rental as assessed by an independent valuer has been estimated at \$127,200 per annum plus GST as at 2 August 2019.

5.7 Rent is to be indexed annually by 4% with a market rental valuation by an independent valuer in Year 6.

#### *Recommendation*

5.8 Officers recommend no changes to current terms regarding rental

### **Noise**

#### *Feedback*

5.9 The submission provided feedback that the tenant is required to restrict their noise particularly on the Beaconsfield Parade side of the building that faces residential properties.

5.10 The submission suggests that the premises has a long history of noise being heard above the permitted outside the building on the Beaconsfield Parade side which doesn't apply with Council's current policy of restricting commercial premises from being located in residential areas.

5.11 The submission highlights that the recent alterations to the business could make it difficult for Council to verify the number of people at the premises to ensure the tenant is compliant with the restricted capacity of the venue.

5.12 The submission highlights deliveries and rubbish collections in the early hours outside the prescribed hours for commercial premises in residential areas.

5.13 The submission requests that the operating hours should be restricted to between 8am and 5pm.



*Assessment*

- 5.14 The current operating hours of the venue are between 7am and midnight.
- 5.15 The tenant holds a 'on premises' liquor licence allowing them to operate between noon and midnight and is governed by the EPA guidelines.
- 5.16 The permitted use of the venue is as a Restaurant / Cafe
- 5.17 The current operating hours adhere to the requirements of the Planning Permit, Liquor Licence and noise regulations.

*Recommendation*

- 5.18 Officers recommend no changes to current terms regarding the operating hours and permitted use of the venue.
- 5.19 Officers will continue to work with the Tenant to ensure they are compliant with noise restrictions to ensure that their operations do not impact the surrounding residential area.

**Leased Area**

*Feedback*

- 5.20 The submission highlights issues with the expansion of the leased area over the years and questions the tents and structures that have been used outside the premises.
- 5.21 The submission requests that nothing is permitted (i.e. tents and portable structures) on the leased land except what is specified in the lease and the current planning permit.
- 5.22 The submission raises issues with access to the public toilets with rubbish bins being permanently located on the path to the female public toilets blocking access.
- 5.23 The submission highlights that the public footpath is obstructed by patrons congregating waiting for functions to begin and that private use of the beach reserve appears to be on the increase.

*Assessment*

- 5.24 The tenant is not able to make alterations or additions to the premises without seeking prior approval from Council.
- 5.25 The beach front area of the venue does not form part of the leased area. Functions on the beach must obtain a permit from Council.
- 5.26 The rubbish bins are recognised as an issue at this venue due to its limited space.

*Recommendation*

- 5.27 Officers will continue to work with the Tenant to ensure that they are not operating outside their Leased Area and to determine if there is a better solution for the bins at the venue.

**6. RECOMMENDATION**

- 6.1 Officers have reviewed the submission and recommend that Sandbar on the Bay Pty Ltd be granted a 10-year Lease on the proposed terms on the basis that these terms respond to the matters contained within the submission. In particular:



- Rental is to be based on a market rental valuation by an independent valuer which considers the current use of the premises.
- Rent is to be indexed annually by 4% with a market rental valuation by an independent valuer in Year 6.
- The tenant is to be compliant with the EPA, planning permit and permitted use.

6.2 As all submissions have now been considered, Council is now in a position to complete the statutory procedures and make a final decision on the proposed tenancy agreement.

## **7. CONSULTATION AND STAKEHOLDERS**

7.1 The Department of Environment, Land, Water and Planning (DELWP) has been consulted and provided Grant and Purpose.

7.2 Council has consulted with the community through a Notice of Intention to Lease that was published in the Port Phillip Leader newspaper on 1 October 2019 inviting submissions in accordance with statutory procedures.

7.3 The deadline for submissions was 31 October 2019.

7.4 One submission was received and considered at an ordinary meeting of Council on the 20 November 2019.

## **8. LEGAL AND RISK IMPLICATIONS**

8.1 A ten-year lease arrangement based on the proposed key lease terms was determined through an extensive risk assessment process.

8.2 This lease documentation was developed by Council's legal representatives. The new lease is based on the current lease with the addition of capital contribution by the tenant.

8.3 The proposed tenancy agreement is on Crown land and is subject to approval by the Minister for Energy, Environment and Climate Change on behalf of DELWP.

## **9. FINANCIAL IMPACT**

9.1 Council will receive \$127,200 per annum plus GST (increased annually by 4%) as rent. The proposed rent is based on a market rent as determined by valuation.

9.2 The Tenant is required to pay all outgoings associated with the premises.

9.3 The Tenant is required to make a capital contribution to the building

9.4 As this is a retail lease, the Retail Leases Act (2003) applies.

## **10. ENVIRONMENTAL IMPACT**

10.1 There is no impact or change from current arrangements.

## **11. COMMUNITY IMPACT**

11.1 Council tenancy agreements deliver the following direct or indirect benefits to the community:



11.1.1 Promotion of health and wellbeing, supporting service provision, cultural or recreational opportunities or economic benefits; or

11.1.2 Full market rent so that the funds can be used to support Council activities; or

11.1.3 A combination of 9.1.1 and 9.1.2.

11.2 The lease with Sandbar on the Bay supports Council's objective of maximising the benefit to the community from its facilities. This is achieved through charging market rent and outgoings being payable by the Lessee.

11.3 The impacts highlighted in the submission to the residential area adjacent to the premises have been considered to ensure any new agreement minimises any negative impact on the surrounding community.

## **12. ALIGNMENT TO COUNCIL PLAN AND COUNCIL POLICY**

12.1 The proposed tenancy agreements align to:

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

## **13. IMPLEMENTATION STRATEGY**

13.1 TIMELINE

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

13.2 COMMUNICATION

13.2.1 Officers will advise the tenant of Council's position following the meeting.

## **14. OFFICER DIRECT OR INDIRECT INTEREST**

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

**TRIM FILE NO:** PF16/71169

**ATTACHMENTS** 1. Plan of Land