



13.1 PROPOSED TENANCY AGREEMENTS - VARIOUS CHILDREN'S SERVICES/ CHILDCARE CENTRES AND KINDERGARTENS (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 new tenancy agreements (**Proposed Tenancy Agreements**) for:

- Ada Mary A' Beckett Children's Centre Inc at 2 Batman Road, Port Melbourne;
- Clarendon Children's Centre Co Op Ltd at 410 Clarendon Street, South Melbourne (aka 404-412 Clarendon Street, South Melbourne);
- Poets Grove Family and Children's Centre Inc. at 18 Poets Grove, Elwood;
- Lilian Cannam Kindergarten Inc at 97 Eastern Road, South Melbourne;
- Albert Park Pre-School Centre Inc. at 18 Dundas Place, Albert Park;
- South Melbourne Child Care Co-Operative Limited at 5-11 Carter Street, Albert Park; and
- Pre School Assn Middle Park Inc (Civic Kindergarten) at 254-256 Richardson Street, Middle Park,

(individually and collectively referred to in this report as "**Tenant**" and "**Tenants**", respectively).

2. EXECUTIVE SUMMARY

2.1 The premises subject to the Proposed Tenancy Agreements are:

- 2 Batman Road, Port Melbourne;
- 410 Clarendon Street, South Melbourne (aka 404-412 Clarendon Street, South Melbourne);
- 18 Poets Grove, Elwood;
- 97 Eastern Road, South Melbourne;
- 18 Dundas Place, Albert Park;
- 5-11 Carter Street, Albert Park; and
- 254-256 Richardson Street, Middle Park,

(collectively referred to in this report as "**Premises**"), as outlined individually in Attachment 1.

2.2 The Tenants have been operating out of the respective Premises under short-term leases which are due to expire on 30 June 2021.



- 2.3 On 4 September 2019, Council adopted the Every Child, Our Future: Children's Services Policy (**Children's Services Policy**) which commits to continue providing support for volunteer-led, community-managed services that provide childcare, toy libraries, playgroups and kindergarten through appropriate funding and provision of facilities.
- 2.4 At that time, Council endorsed a three-year transitional arrangement subject to aligning the dates of the leases to the same date on the acknowledgment that the lease may be terminated in the event that the premises, building fabric or other unexpected exigency is deemed to be a risk to any person.
- 2.5 The following centres are on Crown land:
- Ada Mary A' Beckett Children's Centre Inc at 2 Batman Road, Port Melbourne;
 - Clarendon Children's Centre Co Op Ltd at 410 Clarendon Street, South Melbourne (aka 404-412 Clarendon Street, South Melbourne); and
 - Poets Grove Family and Children's Centre Inc. at 18 Poets Grove, Elwood.
- 2.6 Grant and purpose approval was obtained from the Department of Environment, Land, Water and Planning (**DELWP**) for each of these centres on Crown land on 26 March 2021.
- 2.7 Officers recommend that the Proposed Tenancy Agreements commence on 1 July 2021 and expire on 31 December 2022, to align with the associated funding deeds which will expire on 31 December 2022. This will also provide for consistency across the portfolio.
- 2.8 The current market rental estimates (exclusive of GST) for the subject premises are as follows:
- \$350,000 for 2 Batman Road, Port Melbourne;
 - \$130,000 for 410 Clarendon Street, South Melbourne (aka 404 – 412 Clarendon Street, South Melbourne);
 - \$380,000 for 18 Poets Grove, Elwood;
 - \$205,000 for 97 Eastern Road, South Melbourne;
 - \$122,500 for 18 Dundas Place, Albert Park;
 - \$212,500 for 5-11 Carter Street, Albert Park; and
 - \$197,500 for 254-256 Richardson Street, Middle Park.
- 2.9 Officers however recommend that the Proposed Tenancy Agreements remain at a nominal rent of \$10 per annum plus GST (on-demand) each, reflected as an in-kind contribution by Council, i.e. discounted from market value.
- 2.10 As the current market rental estimate for each of 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 Agreements.
- 2.11 Council resolved to commence the statutory process on 2 June 2021 which invited submissions on the Proposed Tenancy Agreements. Council must hear and consider

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any submissions received before making a decision to enter into such tenancy agreements.

2.12 No submissions were received in response to the public notice that was published in The Age newspaper on 16 June 2021.

2.13 Officers recommend that Council completes the statutory procedures and makes a final decision on the Proposed Tenancy Agreements.

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 Agreements with key terms summarised as follows:

Tenant	Premises	Permitted Use	Commencement Date	Term	Rent
Ada Mary A' Beckett Children's Centre Inc	2 Batman Road, Port Melbourne	Children's services and associated activities	1 July 2021	To 31 December 2022	\$10 per annum plus GST, if demanded
Clarendon Children's Centre Co Op Ltd	410 Clarendon Street, South Melbourne (aka 404-412 Clarendon Street, South Melbourne)	Children's services and associated activities	1 July 2021	To 31 December 2022	\$10 per annum plus GST, if demanded
Poets Grove Family and Children's Centre Inc	18 Poets Grove, Elwood	Children's services and associated activities	1 July 2021	To 31 December 2022	\$10 per annum plus GST, if demanded
Lilian Cannam Kindergarten Inc	97 Eastern Road, South Melbourne	Kindergarten	1 July 2021	To 31 December 2022	\$10 per annum plus GST, if demanded
Albert Park Pre-School Centre Inc.	18 Dundas Place, Albert Park	Kindergarten	1 July 2021	To 31 December 2022	\$10 per annum plus GST, if demanded
South Melbourne Child Care Co-Operative Limited	5-11 Carter Street, Albert Park	Childcare centre	1 July 2021	To 31 December 2022	\$10 per annum plus GST, if demanded



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Pre School Assn Middle Park Inc (Civic Kindergarten)	254-256 Richardson Street, Middle Park	Kindergarten	1 July 2021	To 31 December 2022	\$10 per annum plus GST, if demanded
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- 3.2 Notes that the proposed term for each Tenant aligns with the three-year transitional arrangement endorsed by Council on 4 September 2019 in relation to the Every Child, Our Future: Children's Services Policy subject to aligning the dates of the leases to the same date on the acknowledgment that the lease may be terminated in the event that the premises, building fabric or other unexpected exigency is deemed to be a risk to any person;
- 3.3 Notes that the proposed rent of \$10 per annum plus GST (on-demand) for each, helps support the continuous provision of childcare services;
- 3.4 Notes that the Proposed Tenancy Agreements have funding deeds that will expire on 31 December 2022;
- 3.5 Authorises the Chief Executive or delegate to execute such tenancy agreements.

4. KEY POINTS/ISSUES

Background

- 4.1 Council provides children's services at a number of facilities throughout the municipality. These facilities enable the direct provision of children's services to the community or the indirect provision through a community based not-for-profit organisation.
- 4.2 Where there is indirect provision through a community based not-for-profit organisation, such organisation is required to enter into a tenancy agreement with Council as the landlord.
- 4.3 On 4 September 2019, Council adopted the Children's Services Policy (effective from 1 July 2020) which commits Council to continue providing support for volunteer-led, community-managed services that provide childcare, toy libraries, playgroups and kindergartens through appropriate funding and provision of facilities.
- 4.4 At that time, Council also endorsed a three-year transitional arrangement to all centres within the portfolio subject to the statutory procedures required under section 190 of the Act, subject to aligning the dates of the leases to the same date on the acknowledgment that the lease may be terminated in the event that the premises, building fabric or other unexpected exigency is deemed to be a risk to any person.
- 4.5 The Premises subject to the Proposed Tenancy Agreements are individually outlined in red as contained in Attachment 1.
- 4.6 Three of the Premises are on Crown land while the remaining four are on Council owned freehold land.
- 4.7 The following centres are on Crown land:
- Ada Mary A' Beckett Children's Centre Inc at 2 Batman Road, Port Melbourne;
 - Clarendon Children's Centre Co Op Ltd at 410 Clarendon Street, South Melbourne (aka 404-412 Clarendon Street, South Melbourne); and

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- Poets Grove Family and Children’s Centre Inc. at 18 Poets Grove, Elwood.
- 4.8 Grant and purpose approval was obtained from DELWP for each of these centres on Crown land on 26 March 2021.
- 4.9 The following centres, on the other hand, are on Council freehold land:
- Lilian Cannam Kindergarten Inc at 97 Eastern Road, South Melbourne;
 - Albert Park Pre-School Centre Inc. at 18 Dundas Place, Albert Park;
 - South Melbourne Child Care Co-Operative Limited at 5-11 Carter Street, Albert Park; and
 - Pre School Assn Middle Park Inc (Civic Kindergarten) at 254-256 Richardson Street, Middle Park.
- 4.10 The incumbent Tenants have been operating under short-term leases.

Tenant	Commencement Date	Term	Expiry Date	Permitted Use	Rent
Ada Mary A' Beckett Children's Centre Inc	24 October 2019	One (1) year, eight (8) months and six (6) days	30 June 2021	Children's services and associated activities	\$10 per annum plus GST, if demanded
Clarendon Children's Centre Co Op Ltd	1 January 2018	Three (3) years and six (6) months	30 June 2021	Children's services and associated activities	\$10 per annum plus GST, if demanded
Poets Grove Family and Children's Centre Inc.	1 January 2018	Three (3) years and six (6) months	30 June 2021	Children's services and associated activities	\$10 per annum plus GST, if demanded
Lilian Cannam Kindergarten Inc	1 January 2018	Three (3) years and six (6) months	30 June 2021	Kindergarten	\$10 per annum plus GST, if demanded
Albert Park Pre-School Centre Inc.	1 January 2018	Three (3) years and six (6) months	30 June 2021	Kindergarten	\$10 per annum plus GST, if demanded
South Melbourne Child Care	1 January 2018	Three (3) years and six (6) months	30 June 2021	Childcare centre	\$10 per annum plus GST



Co-Operative Limited					
Pre School Assn Middle Park Inc (Civic Kindergarten)	1 January 2018	Three (3) years and six (6) months	30 June 2021	Kindergarten	\$10 per annum plus GST, if demanded

- 4.11 Each Tenant pays rent of \$10 per annum plus GST (on-demand) and has a funding deed that will expire on 31 December 2022.
- 4.12 As each of the Proposed Tenancy Agreements has a proposed term that is greater than one year and the current market rent estimate for each 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 Agreements.
- 4.13 Council resolved to commence the statutory process on 2 June 2021 which invited submissions on the Proposed Tenancy Agreements. Council must hear and consider any submissions received before making a decision to enter into such tenancy agreements.
- 4.14 No submissions were received in response to the public notice that was published in The Age newspaper on 16 June 2021.

5. PROPOSED TENANCY AGREEMENTS

- 5.1 There are a number of key planning documents, pieces of legislation and policies that need to be considered for the Proposed Tenancy Agreements. These include the following:
- Council Plan;
 - Crown Land (Reserves) Act;
 - Children's Services Policy; and
 - Council's Property Policy (**Property Policy**).
- 5.2 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.
- 5.3 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.
- 5.4 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.
- 5.5 The Property Policy provides guidance on entering tenancy agreements. Such principles under this policy align with those of the State Government Leasing Policy.
- 5.6 Further to these principles, Officers have recommended the following in the previous report to Council recommending commencement of the statutory process:



- A direct negotiation be undertaken with each Tenant in line with the Council resolution of 4 September 2019 relating to the adoption of the Children's Services Policy endorsing a transitional arrangement.
- Each of the Proposed Tenancy Agreements be made to commence from 1 July 2021 and expire on 31 December 2022 subject to the relevant Premises remaining safe for use.
- Despite market rental estimates (exclusive of GST) being \$350,000 for 2 Batman Road, Port Melbourne, \$130,000 for 410 Clarendon Street, South Melbourne (aka 404 – 412 Clarendon Street, South Melbourne), \$380,000 for 18 Poets Grove, Elwood, \$205,000 for 97 Eastern Road, South Melbourne, \$122,500 for 18 Dundas Place, Albert Park, \$212,500 for 5-11 Carter Street, Albert Park; and \$197,500 for 254-256 Richardson Street, Middle Park, a nominal rent of \$10 per annum plus GST (on-demand) be applied for each, reflected as in-kind contribution by Council.
- All outgoings applicable to the relevant Premises be paid by each Tenant.
- Insurance for public liability and tenant chattels/ improvements be obtained by each Tenant and that cost for building insurance be covered by Council given that the Tenants are subject to a transitional arrangement.
- Building maintenance and renewal be carried out by Council and ongoing maintenance costs be considered under each Tenant's funding deed with Council.
- The Tenants be supported through the following measures to assist the provision of childcare services in line with the implementation of the Children's Services Policy:
 - on-demand rent of \$10 per annum plus GST for each;
 - discounted insurance cost with the cost of the building insurance covered by Council; and
 - building maintenance and renewal.

6. CONSULTATION AND STAKEHOLDERS

- 6.1 Grant and purpose approval was obtained from DELWP for each of those centres on Crown land on 26 March 2021.
- 6.2 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.
- 6.3 The deadline date of submissions was 16 July 2021.
- 6.4 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 Agreements.
- 7.2 Council's standard lease template will be used for all Council freehold tenancy agreements while Crown's standard lease template will be used for Crown tenancy agreements. Additional conditions will be as per the current leases. These templates



document landlord and tenant responsibilities, conform to legislative requirements and mitigate risk.

8. FINANCIAL IMPACT

- 8.1 While the current market rental estimates for each of the Premises is more than \$50,000 (exclusive of GST), they are recommended to be discounted to \$10 per annum plus GST each (on-demand) under the Proposed Tenancy Agreements to support the continuous provision of children's services to the community.
- 8.2 The Proposed Tenancy Agreements are contingent upon the Tenants being awarded a funding deed the term of which aligns with the lease term. Any current or future funding deed will require the Tenants to fulfil their obligations under this deed.

9. ENVIRONMENTAL IMPACT

- 9.1 The Proposed Tenancy Agreements will require the Tenants to implement environmentally sustainable practices and programs that support reduction in energy, waste and water.
- 9.2 Council will work with the Tenants over the term of the Proposed Tenancy Agreements 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 Each Tenant's existing funding deed 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 Agreements align 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 Agreements also support the Children's Services Policy that guides how Council supports, delivers and invests in children's services in the municipality.



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12. IMPLEMENTATION STRATEGY

12.1 TIMELINE

- 12.1.1 If Council resolves to complete the statutory process and approves the Proposed Tenancy Agreements, such tenancy agreements will be finalised and executed immediately.

12.2 COMMUNICATION

- 12.2.1 Officers will advise each Tenant 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 for Each Tenant