



MEETING OF THE PORT PHILLIP CITY COUNCIL 2 JUNE 2021

14.1 PROPOSED TENANCY AGREEMENTS - VARIOUS CHILDREN'S SERVICES/ CHILDCARE CENTRES AND KINDERGARTENS.

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

PREPARED BY: LYANN SERRANO, PROPERTY ADVISOR

1. PURPOSE

1.1 To seek Council's approval to commence 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 Officers also 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, being the discount from market rent value.
- 2.9 The current market rental estimate for each of the Premises exceeds \$50,000 per annum and the proposed term is greater than one year, therefore 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.

3. RECOMMENDATION

That Council:

- 3.1 Resolves that the statutory procedures be commenced under section 190 of the *Local Government Act 1989 (Vic)* (**Act**) for the new tenancy agreements (**Proposed Tenancy Agreements**) summarised below by publishing a notice in The Age newspaper inviting interested persons to make a submission under section 223 of the Act:

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



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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
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

- 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) 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 Officer or delegate to undertake the administrative procedures necessary to enable Council to carry out its functions under section 223 of the Act; and
- 3.6 Resolves to hear and consider any submissions received pursuant to section 223 of the Act at a future Council meeting.



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
 - 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.



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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 Co-Operative Limited	1 January 2018	Three (3) years and six (6) months	30 June 2021	Childcare centre	\$10 per annum plus GST
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.



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 sets out what Council wants to achieve for the city of Port Phillip by 2027 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 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 New Tenancy Agreements

Key Principle

- 5.7 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

- 5.8 On 4 September 2019, as part of the adoption of the Children's Services Policy, Council endorsed a transitional arrangement for all centres within the portfolio subject to the statutory procedures required under section 190 of the Act.
- 5.9 This three-year transitional arrangement offers all centres a tenancy agreement during this period and aligns the start and finish dates of the leases.
- 5.10 These Tenants are the first to be subject to this transitional arrangement.

Recommendation

- 5.11 Officers recommend 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.

Term of the Proposed Tenancy Agreements

Key Principles

- 5.12 The term of a proposed tenancy agreement needs to be appropriate to the tenant and the use of the premises.



5.13 A longer-term tenancy agreement 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 a proposed tenancy agreement should consider the effort required by Council and the future tenant to negotiate a new tenancy agreement.

Assessment

5.15 The Property Policy allows for a standard term of five (5) years for leases.

5.16 This three-year transitional arrangement for shorter term leases offers all centres a tenancy agreement during this period.

5.17 The three-year transitional period under the Children's Services Policy expires in September 2022.

5.18 To align the leases for all the Tenants, an expiry date of 31 December 2022 is deemed appropriate.

5.19 The current funding deeds for the Tenants commenced on 1 July 2020 and will expire on 31 December 2022.

Recommendation

5.20 The existing tenancy agreements with the Tenants will expire on 30 June 2021.

5.21 Officers recommend the Proposed Tenancy Agreements commence on 1 July 2021 and expire on 31 December 2022.

Rent

Key Principles

5.22 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.

5.23 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

5.24 Current market annual rental estimates for the Premises exclusive of GST are as follows:

- 2 Batman Road, Port Melbourne - \$350,000;
- 410 Clarendon Street, South Melbourne (aka 404 – 412 Clarendon Street, South Melbourne) - \$130,000;
- 18 Poets Grove, Elwood - \$380,000;
- 97 Eastern Road, South Melbourne - \$205,000;
- 18 Dundas Place, Albert Park - \$122,500;
- 5-11 Carter Street, Albert Park - \$212,500; and
- 254-256 Richardson Street, Middle Park - \$197,500.



- 5.25 Each Tenant currently contributes a nominal rent of \$10 per annum plus GST (on-demand) to support provision of children's services.
- 5.26 Under the Children's Services Policy, all childcare centres collect subsidies from Council and pay to Council maintenance and infrastructure levies.
- 5.27 On 4 September 2019, Council endorsed a transitional arrangement which considers all centres within the portfolio will be subject to their existing lease terms until decisions are made regarding the implementation of the Children's Services Policy.

Recommendation

- 5.28 Given that the Tenants are subject to a transitional arrangement, Officers propose a nominal rent of \$10 per annum plus GST (on-demand), reflected as in-kind contribution, i.e. discounted from market rent value.

Outgoings

Key Principles

- 5.29 It is desirable that tenants pay the running costs (outgoings) of the premises that are associated with their tenancy.
- 5.30 These costs are to be paid directly to the relevant service provider by the tenant, or to Council as a reimbursement for incurring these costs.
- 5.31 Community Organisations, as defined under the Property Policy, may be eligible for an exemption from the payment of all, or some, outgoings considered in line with the Community Funding Policy.

Assessment

- 5.32 Each Tenant currently pays the outgoings associated with operating its services out of the premises.
- 5.33 It is considered reasonable that each Tenant pays all outgoings as with any standard operator/ occupier.

Recommendation

- 5.34 Officers recommend that all outgoings applicable to the premises be paid by each Tenant.

Insurance

Key Principles

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

Assessment

- 5.38 Each Tenant currently maintains its own Public Liability Insurance policy of \$20M and contents insurance as required.
- 5.39 Council currently covers the cost of building insurance for the subject Premises.



- 5.40 It is considered reasonable that each Tenant pays insurance premiums as with any standard operator/ occupier.
- 5.41 On 4 September 2019, Council endorsed a transitional arrangement which considers all centres within the portfolio will be subject to the existing lease terms until decisions are made regarding the implementation of the Children's Services Policy.
- Recommendation*
- 5.42 Given the Tenants are subject to a transitional arrangement, Officers propose that insurance for public liability and tenant improvements be obtained by each Tenant and that cost for building insurance continues to be covered by Council.

Maintenance

Key Principles

- 5.43 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.
- 5.44 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.
- 5.45 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

- 5.46 The Proposed Tenancy Agreements do not fall within the Retail Leases Act (2003).
- 5.47 Council has taken on the responsibility of delivery of Essential Safety Measures inspections and monitoring of all buildings within its portfolio.
- 5.48 Under the Children's Services Policy, all childcare centres collect subsidies from Council and pay to Council maintenance and infrastructure levies.
- 5.49 Council is responsible for building maintenance and renewal and uses the levies paid by the relevant Tenants to fund works.
- 5.50 On 4 September 2019, Council endorsed a transitional arrangement which considers all centres within the portfolio will be subject to their existing lease terms until decisions are made regarding the implementation of the Children's Services Policy.

Recommendation

- 5.51 Given the Tenants are subject to a transitional arrangement, Officers recommend that Council continues to be responsible for building maintenance and renewal and that the ongoing maintenance costs are considered under each Tenant's future funding deed with Council as per the existing arrangements.

Method of Council Support

Key Principles

- 5.52 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.



- 5.53 Council will assess the level of discount/support required by Community Organisations against the eligibility criteria set by the Community Funding Policy.

Assessment

- 5.54 Under the Children's Services Policy, all childcare centres collect subsidies from Council and pay to Council maintenance and infrastructure levies.
- 5.55 The current funding deed for each Tenant will expire on 31 December 2022. Future funding deeds, interdependent with the Proposed Tenancy Agreements, would need to be developed in accordance with the Children's Services Policy.
- 5.56 On 4 September 2019, Council endorsed a transitional arrangement which considers all centres within the portfolio will be subject to the existing lease terms until decisions are made regarding the implementation of the Children's Services Policy.

Recommendation

- 5.57 Officers recommend that the Tenants be supported through the following measures to support the provision of childcare services and the implementation of the Children's Services Policy:
- discounted rent of \$10 per annum plus GST (on-demand);
 - discounted insurance cost with Council covering the cost of the building insurance; and
 - building maintenance service support.

6. CONSULTATION AND STAKEHOLDERS

- 6.1 Council will notify the community through a Notice of Intention to Lease to be published in The Age newspaper inviting submissions in accordance with statutory procedures.
- 6.2 Grant and purpose approval was obtained from DELWP for each of those centres on Crown land on 26 March 2021.

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 to:
- 11.1.1 Direction 1 – “We embrace difference, and people belong”; and
- 11.1.2 Direction 6 – “A financially sustainable, high performing, well-governed organisation that puts the community first.”
- 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.

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 The Age 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.



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12.2 COMMUNICATION

12.2.1 Officers will advise each Tenant representative of the outcome of the 2 June 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.

TRIM FILE NO: **20/13/35**

ATTACHMENTS **1. Plan of Premises for Each Tenant**