

St Kilda Marina Proposed Interim Lease FAQs – March 2019

Question	Answer
<p>What is the St Kilda Marina?</p>	<p>42 A - E Marine Parade, Elwood has accommodated the St Kilda Marina since 1969. The Marina occupies approximately 8Ha (80,000 sqm) of foreshore Crown Land for which Council is appointed as the Committee of Management. Existing uses include marine services (boat storage and launch infrastructure, repairs, fuel for boats and sales), restaurants/cafes, service station and carparking.</p>
<p>What are the terms of the current lease agreement?</p>	<p>A 50 year lease between Council and Australian Marinas Pty. Ltd. was executed in March 1968, in the same year that Australia Marinas Pty. Ltd. began construction.</p> <p>Through a supplemental agreement, the current 50 year lease period was recorded as 1 May 1969 to 30 April 2019. The lease was granted by Council as Committee of Management under Section 4 of the St Kilda Land Act 1965. Under the lease, Australian Marinas Pty. Ltd. is required to:</p> <ul style="list-style-type: none"> • construct the improvements • maintain all operations on the Marina site within the lease boundary • keep all improvements in good repair, having regard to their age • maintain the water depth in the harbour • take adequate precautions to prevent contaminants entering the water • at the end of the lease, return all tenants' improvements, which should be repaired and maintained in a safe, undefaced and fit-for-use condition. <p>This does not apply to the wet pens, Rollo's Kiosk and relocatable structures, which the tenant is entitled to remove.</p> <p>View the current 50 year lease and draft Interim lease document.</p>
<p>What are the leasing arrangements for the restaurants, service station and other businesses within the marina lease area?</p>	<p>Australian Marinas Pty. Ltd. has a number of subleases with tenants including BP petrol station, Riva St Kilda, The Great Provider, Rollo's Kiosk, St Kilda Boat Sales and Australian Volunteer Coast Guard.</p> <p>All subleases expire prior to the head lease expiry date, with the head lessee required to seek approval for any new sublease arrangements.</p>

<p>What is the revenue to Council from the current lease?</p>	<p>The total current revenue Council receives from St Kilda Marina lease is in the order of \$170,000 per annum. The base rent is \$10,000 per annum, and allows for the annual application of Consumer Price Index (CPI). With the annual CPI rent reviews as stipulated in the lease applied, the current rent revenue from the base rent is in the order of \$40,000 per annum. Additional revenue is received via turnover rent, being seven per cent of 'gross receipts' from the tenants' revenue derived from carparking, boat launching and boat storage fees. This amounts to approximately \$130,000 per annum.</p>
<p>What legislation governs the current and any future leases?</p>	<p>The St Kilda Marina is governed by its own piece of legislation, the St Kilda Land Act 1965. This Act enabled the development of a marina on the site, and the grant of the existing lease. Under the Act the Council is empowered to grant a lease for the purpose of a marina (as defined in the Act) for a term of up to 50 years with the approval of the Governor in Council given on the recommendation of the Minister responsible for the Act (currently the Minister for Energy, Environment and Climate Change).</p> <p>A number of other pieces of legislation also have implications for the site. These include, but are not limited to, the Crown Land Reserves Act 1978, the Marine and Coastal Act 2018 and the Retail Leases Act 2003 (RLA).</p> <p>While there is not a legislative requirement to do so, Council undertakes the public notice process under S 190 of the Local Government Act 1989 for all its leases on Crown land. This includes the proposed interim lease of the St Kilda Marina.</p> <p>View the Summary of Relevant Legislation.</p>
<p>Does the proposed interim lease have to comply with requirements under both the St Kilda Land Act and the Crown Land Reserves Act?</p>	<p>No. The St Kilda Land Act 1965 is a site-specific Act relating solely to the St Kilda Marina land. It authorises the leasing of the land subject to the Act and the proposed interim lease must comply with those requirements.</p> <p>Because these special leasing powers apply to the St Kilda Marina land, the generic leasing powers contained in the Crown Land (Reserves) Act 1978 are not applicable.</p> <p>However, other than the leasing power, the provisions of the Crown Land (Reserves) Act 1978 do apply to the St Kilda Marina land. For example, the role which council undertakes in managing the land is as a committee of management under the Crown Land (Reserves) Act 1978.</p>

<p>Does this require Governor in Council approval for Council to enter into direct negotiations for leasing the marina?</p>	<p>No, there are no provisions in the St Kilda Land Act 1965 which require the Governor in Council to approve Council entering into direct negotiations for the leasing of the marina.</p> <p>However, Council officers have worked closely with DELWP to develop the proposal to grant a short-term interim lease to the existing tenant in circumstances where it is planned to award a new long-term lease following a public competition process. The proposal has been developed in accordance with DELWP's policies relating to the leasing of Crown land.</p>
<p>What is the process for approving a lease for the St Kilda Marina?</p>	<p>Officers have been working closely with our State Government partners and legal advisors to ensure that the proposed short-term lease complies with all relevant legislation and Council is currently working through a process of steps, agreed with the Department of Environment, Land, Water, Planning (DELWP), with the objective of obtaining Governor in Council approval to the short-term lease.</p> <p>The following process is being followed for the approval of a short-term lease:</p> <ul style="list-style-type: none"> • Council works in partnership with DELWP to develop the leasing approach, including approach to key terms. • Council enters into direct negotiation with the current tenant (Australian Marinas) and agrees key terms. • Feedback is provided by DELWP on the key terms. • Council advertises its intention to enter into a three-year short-term lease with Australian Marinas and invites submissions from the community. • Submissions are received and considered at a council meeting. • Council makes a decision about the proposed short-term lease at a second council meeting. • Final unexecuted lease document approved by the Council is forwarded to DELWP to arrange for Ministerial consideration. • Subject to Minister being satisfied with the lease, the Minister recommends to the Governor in Council that the lease be approved including its terms and conditions. • Governor in Council consideration of the lease. • Subject to Governor in Council approving the lease, the lease is returned to Council for execution by the Council and the tenant.

<p>Why is Council considering a three-year short-term lease for the marina?</p>	<p>The work to procure a new long-term lease arrangement for the site is proceeding in line with the Project Approach and associated timeline approved in a Council Meeting on 7 February 2018. The timeline forecasts that the new lease arrangement will likely not be in place until 2021 at the earliest, and potentially 2022 to cover any potential planning or legislative issues that may arise.</p> <p>An interim short-term lease arrangement is required to cover the gap between the expiry of the existing lease on 30 April 2019 and the commencement of a new lease arrangement.</p> <p>Council would have preferred a shorter term (two years) and the tenant would have preferred a longer term (five years). The proposed three-year term is a negotiated outcome reflecting that Council does not own some essential marina infrastructure required to ensure business continuity – a key concern for Council and the many users of the facility.</p> <p>A one-year lease extension would not have been sufficient to complete the long-term lease process. A two-year lease extension was preferred although three years does provide some contingency for a complex procurement and lease process.</p>
<p>What are the terms of the proposed short-term lease?</p>	<p>The terms of the proposed lease are:</p> <ul style="list-style-type: none"> • Proposed Tenant: Australian Marinas (A/Asia) Proprietary Limited, the existing St Kilda Marina Lease Holder. • Demised Premises: St Kilda Marina • Permitted Use: Marina • Commencement Date: 1 May 2019 (to follow on from the current lease expiry) • Term: three years • Rental: \$134,000 per annum plus seven per cent of gross receipts associated with carparking, boat launching, rental of boat pens, parking of cars with trailers and dry storage rentals. <p>View the current 50 year lease and draft Interim lease document.</p>
<p>Why is Council considering a short-term lease with the current tenant, Australian Marinas, through direct negotiation (private treaty) rather than undertaking a competitive process that is open to all interested parties?</p>	<p>Maintaining the ongoing operations of the St Kilda Marina, a regionally significant boating facility and well utilised public asset (created by the current lease holder), while project work continues to seek competitive bids to secure a new long-term lease arrangement, is an objective of Council and desired by the State.</p> <p>Council undertook an assessment of the different options available when considering the approach to interim arrangements for the site. This included market sounding and</p>

	<p>an assessment of whether there were viable alternatives to the current operator.</p> <p>While there were possible alternative operators able to take on the operations of the marina as an interim measure, the key factor in deciding to enter into a short-term arrangement with the current operator was the ownership of key marina infrastructure by the Tenant, required for the continued operation of the marina.</p> <p>An assessment of the replacement costs and timeline for replacing the wet berths identified that any benefits gained from an increase in rent through a different management arrangement, would be lost through the need to close down the marina for a significant period of time and replace the existing wet berth and associated infrastructure with new.</p> <p>Another consideration was the level of disruption for current users of the marina and its facilities associated with a change in management of the site, with another possible change in management three years later.</p> <p>There is compelling reason to support a direct negotiation with the current leaseholder for a short-term lease given the asset ownership issues and the existing business arrangements that support the continued use of the site in the short term, with the understanding that a competitive process will be undertaken soon for a long-term lease, which gives all interested parties an opportunity to put in a bid for the site.</p>
<p>What is the estimated market rental value for the marina?</p>	<p>Market rent is estimated as \$800,000 per annum based on current conditions. Refer to extract from the Market Rent Assessment.</p>
<p>Why isn't a market rent being applied to the proposed short-term lease?</p>	<p>A commercial ground lease was negotiated at the start of the 50-year lease and that is what is in place now. The terms and conditions of the existing lease have determined the level of the rent and, due to the circumstances, rental conditions cannot be unilaterally applied to the lease by Council.</p> <p>What is proposed is in line with the existing arrangements, with the priority placed on keeping existing marina and tenancy operations going until such time a long-term arrangement is in place rather than significantly renegotiating terms with the current operator.</p> <p>A key principal was to manage the risk of site disruption and avoid markedly disadvantaging either or any party from the existing lease arrangement.</p>

<p>Can Council consider other bids for the short-term lease as part of the current process underway?</p>	<p>Council has not asked for bids for a short-term lease (such as issuing an Expression of Interest). Council has asked for feedback on the proposed lease, and this is all that can be considered as part of the process that was authorised by Council on 6 February.</p> <p>If anyone chooses to submit a bid as part of the submission process, it won't be considered as a bid, but as additional information for Council to consider in determining how to move forward with the proposed lease. Council will consider all information received when making their decision whether to proceed with the current proposed lease with Australian Marinas or direct Officers to take another course of action.</p>
<p>What are Council's options in considering the proposed short-term lease?</p>	<p>Council has three options through the current process:</p> <ul style="list-style-type: none"> • Approve the proposed short-term lease • Instruct officers to negotiate further with the current tenant • Abandon the process and instruct officers to undertake a different and most likely competitive process. <p>If Council receives information that leads them to decide not to endorse the current proposal, then Council is able to instruct Officers to further negotiate with the current tenant or abandon the process and seek other offers.</p> <p>A competitive process would most likely be required if Council decided not to award the current proposed lease, particularly in these circumstances where the details of the current proposal have been made public (through the current public notification process).</p> <p>There is compelling reason to support a direct negotiation with the current leaseholder for a short-term lease given the asset ownership issues and the existing business arrangements that support the continued use of the site in the short term.</p> <p>There would need to be compelling reason for Council to consider a direct negotiation with another party rather than either the current proposal or a competitive process.</p>
<p>Why is Council proposing to purchase marina infrastructure currently owned by Australian Marinas as part of the proposed short-term lease?</p>	<p>At the end of the current lease, the lease specifies that all permanent infrastructure will be owned by Council, apart from the wet berth infrastructure, dry dock wooden boat mounts and security fencing and gates.</p> <p>These items, particularly the wet berths (the floating infrastructure used for mooring and accessing boats in the water area of the marina), are essential infrastructure required for the operation of the marina.</p>

	<p>As Council is only part way through its process for procuring a new proponent for St Kilda Marina there is uncertainty as to when a redevelopment would occur on the site as this will depend on the proposed plans of the new proponent. This will not be known for some time – likely 2020.</p> <p>Whilst the interim lease will facilitate the ongoing use of the marina to 2022, purchasing the wet berths will enable Council to facilitate the ongoing use of the existing maritime components at the marina after the expiry of the short-term interim lease (April 2022).</p> <p>The removal of the wet berths by the existing tenant at the end of the current lease (or proposed interim arrangement of an additional three years) would introduce significant disruption cost –in the cost of replacing the infrastructure, loss of income from wet berth users and loss of patronage due to the marina disruption during replacement.</p>
<p>What was the cost of the marina infrastructure that Council has agreed to purchase as part of the proposed short-term lease agreement?</p>	<p>The price of the infrastructure was the subject of a commercial negotiation. The price agreed for the marina infrastructure was \$620,000.</p> <p>The price was assessed and deemed appropriate to secure essential infrastructure required for the continuity of marina operations on the site during any possible future transition to a new operator.</p> <p>The infrastructure will only be purchased if Australian Marinas exit the site at the end of the lease extension.</p> <p>The purchase price can either be paid by Council or passed on to a new tenant as part of a new lease.</p>
<p>What information was used to support Council’s decision to purchase the marina infrastructure from Australian Marinas?</p>	<p>A best value assessment was undertaken by a commercial advisor, taking into account the asset condition and useful life of the assets.</p> <p>The useful life of key items was assessed as being considerably in excess of the three years of the proposed interim lease (15 years for the wet berths from the expiry of the lease).</p> <p>The infrastructure has the potential to generate income for an operator that would assist in paying for the outlay to secure the assets.</p>
<p>Why has certain information been made available to the public with sections redacted (or removed), or only extracts of information provided?</p>	<p>Council is being cautious to ensure that any commercially sensitive or private information is protected. This has involved reviews with legal representatives, and the input of other parties involved. This has taken to time resolve.</p> <p>The information critical to the public notification and submissions process, as required by the Local Government Act, has been made publicly available from the 6 February</p>

Why have certain documents not been made available e.g. the Asset Condition Report?

Why has it taken time to resolve, and been issued following the close of the short-term lease submissions period?

2019 when Council authorised the commencement of the public notification process for the short-term lease.

Critical information about the site that will be beneficial to the competitive process for the long-term lease will be made available during the procurement period to ensure a “level playing field” for all proponents.