



10.1 ST KILDA MARINA - USE OF RENTAL FUNDS FOR APPROVAL BY THE MINISTER

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

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1. PURPOSE

- 1.1 To seek endorsement to formally request the Minister to approve a list of proposed uses of the rental funds derived from the St Kilda Marina new lease for the term of the lease.

2. EXECUTIVE SUMMARY

- 2.1 The State Government approved a new lease for the St Kilda Marina on 1 December 2020, and it was executed by the successful proponent from the procurement process, Australian Marina Development Corporation Pty Ltd (AMDC) and the City of Port Phillip on 16 December 2020. A summary of the key lease terms including the design proposal for the site and how it responds to the Site Brief is provided in this document: St Kilda Marina project update - new long-term lease, [St Kilda Marina project update - new long-term lease \(PDF 2 MB\)](#).
- 2.2 The new lease with a term of 35 years (plus a 15 year further term conditional upon the tenant meeting performance criteria) will commence on 1 May 2022.
- 2.3 The income to be derived from the new lease is a base rent of \$750,000pa, subject to yearly indexation at the rate of the Consumer Price Index (CPI) and market rent reviews every 5 years. The rent payable for the first four years will be \$134,000 due to a rental discount provided to facilitate accelerated development of the first stage.
- 2.4 St Kilda Marina is governed by site specific legislation, the St Kilda Land Act 1965. With the passing of the legislation, Council became empowered, as Committee of Management, to lease the land. Section 6(2) of the Act provides that Council, in the circumstances under the new lease where the entirety of the site is under a tenure arrangement, needs to seek the Minister's approval to use the lease rent.
- 2.5 Following consultation with DELWP, it was agreed that Council should seek Ministerial approval upfront for a list of proposed uses of the rental funds derived from the St Kilda Marina new lease for the entire term of the lease without requiring specific approvals for each proposal.
- 2.6 The detailed list determined in collaboration with DELWP is provided Attachment 1.

3. RECOMMENDATION

That Council:

- 3.1 Endorse the proposed use of rental funds derived from the St Kilda Marina new lease for the term of the lease.
- 3.2 Sends a letter from the Mayor to the Minister requesting approval of the list of proposed uses of the rental funds derived from the St Kilda Marina new lease for the entire term of the lease without requiring specific approvals for each proposal.



- 3.3 Notes that this request is made on the condition that Council will submit an annual report to DELWP to ensure Council's expenditure of rent remains aligned with the Minister's approval. The initial report would address plans for expenditure for the inaugural year of the lease (2022), for annual as well as multi-year projects, and that at the end of that year Council would report on the actual spend as well as planned expenditure for the following year. This would be repeated for each year of the lease.

4. KEY POINTS/ISSUES

- 4.1 Council began preparing for the procurement of a new lease for the St Kilda Marina in early 2017. An extensive community engagement program and urban planning exercise was undertaken in the early stages of the project to inform the site vision and objectives and design principles, that culminated in [The St Kilda Marina Site Brief](#), a key document setting out the design criteria for the redevelopment of the site that proponents were required to respond to through the procurement process for a new long term lease.
- 4.2 The State Government approved the lease on 1 December 2020, and it was executed by the successful proponent from the procurement process, Australian Marina Development Corporation Pty Ltd (AMDC) and the City of Port Phillip on 16 December 2020. A summary of the key lease terms including the design proposal for the site and how it responds to the Site Brief is provided in this document: [St Kilda Marina project update - new long-term lease \(PDF 2 MB\)](#).
- 4.3 The new lease with a term of 35 years (plus a 15 year further term conditional upon the tenant meeting performance criteria) will commence on 1 May 2022.
- 4.4 The income to be derived from the new lease is a base rent of \$750,000pa, subject to yearly indexation at the rate of the Consumer Price Index (CPI) and market rent reviews every 5 years (following the initial 10-year period). A rental discount applies to the first four years to facilitate accelerated development of stages 1a and 1b of the site (being the new dry store building, the new wet berths re-oriented to the peninsula side, refurbishment of the RIVA building, Marine Parade works, peninsula works, landscaping across the site, the Bay Trail and carparking upgrades). The rent payable for the first four years will be \$134,000 which equates to the base rent of the existing lease at the time of negotiation.
- 4.5 St Kilda Marina is on foreshore Crown Land governed by site specific legislation, the *St Kilda Land Act 1965*. With the passing of the legislation, Council became empowered, as Committee of Management, to lease the land to be used for the purposes of a marina.
- 4.6 In terms of the rental derived from a tenure arrangement for the St Kilda Marina, Section 6(2) of the Act provides that lease rental shall be applied by Council toward the maintenance and improvement of that part of the land subject to the *St Kilda Land Act* which is not leased. The exception to this requirement is that Council may apply the rental for other purposes as 'the Minister in any particular case approves.' The whole of the area subject to the *St Kilda Land Act* will be controlled under the new lease, meaning there is no other land subject to the Act to which Council can apply the lease rental. In these circumstances, Council needs to seek the Minister's approval under section 6(2) of the Act to use the lease rent.
- 4.7 From the inception of the project through to this day the project team continue to work closely with our partners in DELWP to ensure Council is aligning with the regulations



and expectations for a development on, and the leasing of, Coastal Crown Land. The requirement to ensure that rental funds were used in line with the provisions of the Act, and the conundrum arising from the requirement that it should be used on that part of the land that is NOT leased came to light as part of this process.

- 4.8 Following consultation with DELWP, it was agreed that Council should seek Ministerial approval upfront for a list of proposed uses of the rental funds derived from the St Kilda Marina new lease for the entire term of the lease without requiring specific approvals for each proposal.
- 4.9 However, given the long tenure of the lease and quantum of the rent, it was requested by DELWP that, to ensure Council's expenditure of rent remains aligned with the Minister's approval, Council report annually to DELWP on its use of the funds. It was agreed with DELWP that the initial report would address plans for expenditure for the inaugural year of the lease (2022), for annual as well as multi-year projects, and that at the end of that year Council would report on the actual spend as well as planned expenditure for the following year. This would be repeated for each year of the lease.
- 4.10 The detailed list determined in collaboration with DELWP is provided Attachment 1. A summary of the proposed uses is provided below:
- Public realm facilities/assets within those parts of the marina lease accessible to the public where improvements are instigated by Council above what is required to be delivered by the tenant under the new lease.
 - Decontamination works within the marina by landlord as required under the lease. (The lease provides that both landlord and tenant must fund the assessment of contamination within the marina and fund any subsequent remediation work).
 - Public open space facilities/assets for foreshore reserves in the immediate vicinity of the marina managed by the City of Port Phillip as committee of management, including the possible construction of a bridge or connection servicing pedestrians and cyclists between Marina Reserve and the St Kilda Marina peninsula.
 - Public open space facilities and assets in other foreshore reserves managed by the City of Port Phillip as a committee of management together with any decontamination works required
 - Coastal infrastructure managed by the City of Port Phillip e.g. piers, jetties, rock groynes etc.
 - Roads and associated traffic management infrastructure together with bike paths, to improve community access to and use of the marina.
 - Costs to support the City of Port Phillip's management of the marina lease.
- 4.11 It is recommended that Council endorse a formal request being made to the Minister to approve this list of proposed uses of the rental funds derived from the St Kilda Marina new lease for the term of the lease without requiring specific approvals for each proposal. This would be supported by an annual reporting process by Council to DELWP to ensure Council's expenditure of rent remains aligned with the Minister's approval.



5. CONSULTATION AND STAKEHOLDERS

- 5.1 The Victorian Government is a key stakeholder. Not only is the sit on foreshore crown land but it has regional significance. Council officers meet regularly with Victorian Government representatives from DELWP to discuss project progress and specific issues that arise. They have been involved in the development of the Site Brief, the procurement documentation and the lease; and facilitated the approval of the lease by Governor in Council. Representatives from Parks Vic have also reviewed and had input to the Site Brief and are now involved in discussions with the new tenant. The marine and costal area of DELWP have also provided their input and pre-planning meetings have occurred with the new tenant to understand the requirements for Marine and Coastal consent for the development.
- 5.2 It was through these conversations with DELWP that the need to apply to the Minister for approval for the use of the rent was determined and, through collaboration with DELWP, the list of uses was developed.
- 5.3 Extensive consultation with the community has informed the development of the Site Vision and Objectives and the design criteria in the St Kilda Marina Site Brief. The design criteria were determined through a community panel process involving a panel of 23 community members working collaboratively with technical consultants and council officers from August to December 2018 to determine the mandatory and desirable attributes for the site. The Site Brief is a critical document informing respondents to the procurement process about the current conditions and the desired future state of the St Kilda Marina.
- 5.4 At a Council Meeting on 1 September 2021, Council made available the *St Kilda Marina Project Stage Six Community Engagement Summary Report*, which detailed the findings of a community engagement program undertaken in June and July 2021 to present in detail the concept plans for the development of the Marina (as agreed in the new lease) and seek community feedback to inform the detailed design development.

6. LEGAL AND RISK IMPLICATIONS

- 6.1 St Kilda Marina is foreshore Crown Land governed by site specific legislation, the St Kilda Land Act 1965.
- 6.2 The project approach was designed to achieve value for money, promote competition, manage risk, achieve high standards of probity and maintain competitive tension while enabling as much transparency as possible.
- 6.3 The key lease terms and broader lease document seek to appropriately mitigate risks to Council.
- 6.4 As this is a long-term lease (in excess of 15 years) the Retail Leases Act (2003) does not apply.
- 6.5 A lease for this land is required to be approved by State Government. The St Kilda Land Act 1965 stipulates that approval is to be granted by Governor in Council. Approval of the lease occurred on 1 December 2020. The lease was subsequently executed on 16 December 2020.
- 6.6 The extensive community engagement program running from the early planning stages of the project to final stage intended to both inform the design for the site and subsequently invite feedback on the proposed design, is aimed at minimising risks in creating an underutilised facility that caters to distinct groups in the community.



7. FINANCIAL IMPACT

- 7.1 The cumulative effect of the financial contribution by the proponent for the term of the lease is in order of \$160M.
- 7.2 The proposal for the lease is a base rent of \$750,000pa, subject to yearly indexation at the rate of the Consumer Price Index (CPI) and market rent reviews every 5 years (following the initial 10-year period). A rental discount applies to the first four years to facilitate accelerated development of stages 1a and 1b of the site, being the new dry store building, the new wet berths re-oriented to the peninsula side, refurbishment of the RIVA building, Marine Parade works, peninsula works, landscaping across the site, the Bay Trail and carparking upgrades. The rent payable for the first four years will be \$134,000 which equates to the base rent of the existing lease at the time of negotiation.
- 7.3 In terms of the costs of development and the benefit provided by means other than the rent, the proposal includes capital expenditure totalling approximately \$30.7M which includes all construction and professional costs and contingencies related to the commercial operations, public realm works (estimated as approximately \$5.4M), the Australian Volunteer Coast Guard facility and the sea wall rectification.
- 7.4 The budget for this financial year is \$260k plus deferrals of approximately \$43k from last year.

8. ENVIRONMENTAL IMPACT

- 8.1 The marina rental income is proposed to be expended on a variety of options to develop, renew, expand and maintain land and infrastructure and assets along the length of the City of Port Phillip Crown land foreshore particularly the St Kilda Marina and the surrounding urban context. The works will need to align with the City of Port Phillip sustainability policies for the protection and enhancement of the foreshore. In addition it is proposed the rental money covers environmental site assessments and resultant works to remediate or manage contamination.
- 8.2 The new tenant is committed under the new lease to deliver the following environmental sustainability features:
 - Upgrades to the existing sea wall that protects from storm surge and is intended to provide natural habitats that encourage biodiversity.
 - A commitment to enhancing their Sustainability Plan submitted and evaluated as part of the procurement process for the development of the site to ensure Council's Sustainability targets are met as detailed in an AECOM report that informed the design criteria in the Site Brief and adapts the targets to the site conditions. The lease includes a requirement to meet Council's Act and Adapt Sustainable Environment Strategy 2018-2028. The features range from various coastal resilience measures (protection and enhancement) to environmental design initiatives that benchmark against the Design and As-Built Green Star tool (which focusses predominantly on how the built environment is constructed and operated). Initiatives include but are not limited to waste management systems, low carbon, energy and water efficient building design and operations, bicycle facilities to exceed 5 Star Green Star, and Site predominantly powered by 100% electricity with the provision of on-site renewable energy supply and solar power to a minimum of 50% roof area.



- A commitment to provide an Environment Management Plan that addresses coastal resilience measures and various environmental design elements prior to lease commencement that will be updated every five years.
- A commitment to achieve accreditation for ISO 14001 (Environmental Management System) within the first 12 months of the lease commencing.

9. COMMUNITY IMPACT

- 9.1 The marina rental income is proposed to be expended on a variety of options to develop, renew, expand and maintain land and infrastructure and assets along the length of the City of Port Phillip Crown land foreshore particularly the St Kilda Marina and the surrounding urban context. The expenditure will focus on improving the public realm on the Port Phillip foreshore for the benefit of the community.
- 9.2 St Kilda Marina is a key foreshore site valued by not only the Port Phillip community but also the wider community, particularly boat owners and marine and foreshore enthusiasts.
- 9.3 The new lease for St Kilda Marina is an opportunity to improve the contribution of the site to the municipality and region. These aspirations are reflected in the Site Vision and Objectives, which identify broad environmental, social, cultural and economic benefits that the project is seeking to achieve to provide improved benefits for the broader community.
- 9.4 The St Kilda Marina Site Brief endorsed at a Council Meeting on 15 May 2019 articulates the mandatory and discretionary criteria that have guided respondents in the request for proposal process to achieve the Site Vision and Objectives which aims to achieve considerably improved benefits for the community.
- 9.5 Key community benefits of the new lease include:
- Highly accessible open space and landscaping to approximately 50% of the site (well in excess of the current extent of open space being approximately 4% and in excess of the Site Brief requirement for minimum of 20%). This includes improved access to highly valued foreshore areas of the site (particularly along the peninsula which is currently accessible) for pedestrians and cyclists.
 - Access for Council or a nominee of Council to activate or use an area or areas of open space on site for a minimum of 10 events/days at cost; 10 events/days at cost for the use by Council or a nominee of Council of the community facility (dates for both to be agreed 12 months in advance); and access to the community facility for a community use (as defined by Council) for a minimum 20 days/events per annum
 - The development of a fit for purpose facility for the Australian Volunteer Coast Guard as part of the proposal, with a tenure based on peppercorn rent.
 - Provision and maintenance of a public boat ramp and trailer parking.
 - The possibility for the inclusion of a bridge from Marine Reserve to the Peninsula at a future date funded by others.
 - A commitment to adopt the Victorian Social Procurement Framework to influence the Proponent's commercial dealings and sourcing of suppliers in the areas of design, construction and operations on site.



- A commitment to engage at least one supplier that employs Victorian Aboriginal people during each of the design, construction and operational phases.
- A commitment to engage at least one supplier that employs Victorians with a disability.

10. ALIGNMENT TO COUNCIL PLAN AND COUNCIL POLICY

- 10.1 The delivery of the new lease for and associated redevelopment of the St Kilda Marina aligns with the *Vibrant Port Phillip* Strategic Direction. The opportunities created for enterprises (including the key Marina business and its role in the Victorian boating network) and activation of the site through all the seasons, together with the significant improvements to the asset and rental income, supports a flourishing local economy. The vision to create a special place and destination for everyone that encourages a diversity of uses through the provision of varied amenities across the site seeks to enhance Council's reputation as Melbourne's cultural and creative heart.
- 10.2 The income from the lease is also proposed to be expended improving the public realm on the Port Phillip foreshore, particularly as it relates to the Marina and its urban context for the benefit of the community.
- 10.3 It also aligns with other strategic directions including *Inclusive Port Phillip*, *Sustainable Port Phillip* and *Liveable Port Phillip* by supporting the delivery of the following outcomes:
- Creating a special place for everyone (a key component of the Site Vision) through the provision of well managed and high quality public spaces and amenities with efficient connections to the broader City that encourage a wide patronage and a safe diversity of uses.
 - Protecting and enhancing the natural foreshore environment through considerable sustainability initiatives while providing a greener and cooler place that is adapting and resilient to climate change.
- 10.4 St Kilda Marina is a key strategic site within Council's property portfolio and presents a significant opportunity in terms of social, environmental, economic and cultural possibilities for the St Kilda foreshore, the municipality and the State.

11. IMPLEMENTATION STRATEGY

11.1 TIMELINE

- 11.1.1 Formal request via letter to the Minister to approve the proposed uses of the rental refunds – 7 October 21.
- 11.1.2 Confirmation by the Minister – End of November 21.
- 11.1.3 Work with DELWP to agree a reporting template – December 21.

11.2 COMMUNICATION

- 11.2.1 The Marina rental income is proposed to be expended on a variety of options to develop, renew, expand and maintain land and infrastructure and assets along the length of the City of Port Phillip Crown land foreshore particularly the St Kilda Marina and the surrounding urban context. The expenditure will focus on improving the public realm on the Port Phillip foreshore for the benefit of the community.



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11.2.2 This list proposed uses of the rental funds will be made public as part of this report. The project's database of interested parties have been informed of this Council report and will be informed about the outcome of the approval process.

11.2.3 Council officers will continue to engage with DELWP as part of the approval process and work with them to agree a template for reporting its planned and actual use of funds to ensure the expenditure aligns with Ministerial approval.

12. OFFICER DIRECT OR INDIRECT INTEREST

12.1 No officers involved in the preparation of this report have any material or general interest in the matter.

ATTACHMENTS 1. **St Kilda Marina New Lease Options for Use of Rental Funds** 

