

Attachment 2

Review of lease terms offered by the incumbent.

1.1 *Term of lease*

Key principles:

- The term of the lease needs to be appropriate to the Lessee and use of the premises and allow for consideration of alternative uses.
- A longer term lease may be warranted to support capital investment in the premises and provide security for financing or future planning.
- Council should consider a shorter lease term for any future proposals due to the vulnerability of the foreshore.

Assessment:

- The Lessee seeks a lease term of 21 years, which is the maximum lease term permitted under Section 17D of the Crown Land (Reserves) Act 1978.
- The lease term would support an anticipated capital investment of \$2million - \$2.5 million excluding the Lessee fit-out.
- Long leases of 21 years have been granted to Donovan's (premium Lessee and supporting further capital investment) and the St Kilda Lifesaving Club (purpose built facility). However long leases can be problematic as future legislative, economic and climatic conditions are subject to change.

1.2 *Permitted uses*

Key principle:

- Permitted uses are those uses that support the primary purpose of the facility for the provision of a service to the local community and visitors.

Assessment:

- The existing building and use clearly falls into the category of café/restaurant and not kiosk which is permitted under the existing lease.
- While the existing lease approaches expiry there is an opportunity to consider what use and what services are appropriate for this location.

1.3 *Rent*

Key principles:

- A market rent is desirable but Council accepts lower than market rent to help support community based organisations that provide community benefits or services on behalf of Council.
- Council will also consider the Lessee's ability to pay rent and the effect rent would have on its programs and community benefit.

Assessment:

- The existing lease was based on a ground rent anticipating that Council would benefit from the asset provided by the Lessee through future leases. However the proposal is for new lease based on a ground rental as the building asset is proposed to be demolished.
- The proposed ground rent of \$200m2 is a market estimate, but a market valuation will be required and should form the basis of the rental.
- A rental greater than that proposed may be attained through a competitive process. (*Note: rental is not a sole factor to decide viability of a proposal*)

1.4 **Outgoings**

Key principle:

- It is desirable that Lessee is responsible for running costs (outgoings) of the premises that are associated with their tenancy.

Assessment:

- All outgoing would be paid by the Lessee except for 50% land tax if assessed.
- Outgoings includes such things as:
 - Utility costs
 - Insurance
 - Rates and taxes (if applicable).
- It is likely that land tax would be payable under a non-retail lease. A landlord may not pass on land tax to a Lessee under a Retail Leases Act lease. The approach to pay 50% appears to be a compromise offer.

1.5 **Community benefit**

Key principles:

- Council leases should deliver direct and indirect benefits to the community. This can be achieved either by:
 - Promotion of health and wellbeing, supporting service provision, cultural or recreational opportunities, or economic benefits; or
 - Full market rent so that the income can be used to support Council activities; or
 - A combination of the above.

Assessment:

- A market rent for the ground only is proposed.
- Council benefits from the provision of a re-developed and contemporary functional and statutory compliant asset at no cost with potential residual value at the end of the lease.
- The community benefits from a new cafe/restaurant with improved amenity for customers.
- The community benefits from new public toilets built at Lessee cost allowing the nearby Exeloo that is costly to maintain to be retired.

- An expanded footprint is a loss of open space.

1.6 **Environmental sustainability**

Key principle:

- A proposed re-development agreement and Lease should contain sustainability measures including adapting to climate change and using resources more efficiently to reduce everyday environmental impacts.

Assessment:

- A new building will be required to have a high standard of sustainability to be achieved through Council having early engagement in the design process and support policy development to implement initiatives and realise tangible results.

1.7 **Maintenance**

Key principle:

- Leases should clearly articulate Lessee and Lessor responsibilities for maintenance.

Assessment:

- All maintenance and renewal will be the responsibility of the Lessee including the proposed public toilet.
- For the avoidance of doubt all maintenance costs – minor, major and structural - should be borne by a proposed Lessee and can be detailed in an Asset Management Plan.