



ORDINARY MEETING OF COUNCIL 21 NOVEMBER 2018

14.4 **NEW LEASE - PORT MELBOURNE YACHT CLUB**

EXECUTIVE MEMBER: **CHRIS CARROLL, GENERAL MANAGER, CUSTOMER AND CORPORATE SERVICES**

PREPARED BY: **YASMEEN ALI, PROPERTY ADVISOR**

1. PURPOSE

- 1.1 To seek Council's approval to commence the statutory procedures to establish a new lease with the Port Melbourne Yacht Club (PMYC) for premises located at 38 Beach Street Port Melbourne.

2. EXECUTIVE SUMMARY

- 2.1 The PMYC is located on Crown land for which the City of Port Phillip (CoPP) is the Committee of Management. The PMYC is one of the oldest sailing clubs in Victoria and has been operating on the Port Melbourne foreshores since 1889, with the original clubhouse replaced in 1990 when it was destroyed by fire. It has around 200 members and storage available for 134 yachts.
- 2.2 The short-term lease between the City of Port Phillip and the PMYC expires on 31 January 2019.
- 2.3 The specified permitted use of the lease is for a yacht club, boat storage and club activities including the operation of a function room.
- 2.4 A new lease is proposed for the PMYC, to support their current tenure on this site and delivery of agreed community benefits.



3. RECOMMENDATION

That Council:

- 3.1 Resolves that the statutory procedures be commenced under Section 190 of the Local Government Act 1989 ('the Act') for a new lease with Port Melbourne Yacht Club by publishing a notice in the local newspaper inviting interested persons to make a submission under Section 223 of the Act for the proposed lease of the premises at 38 Beach St, Port Melbourne on the following key terms:
 - 3.1.1 Proposed Tenant: Port Melbourne Yacht Club (PMYC).
 - 3.1.2 Demised Premises: 38 Beach St, Port Melbourne.
 - 3.1.3 Permitted Use: Sail club and associated activities including the operation of a Function room.
 - 3.1.4 Commencement Date: 1 February 2019.
 - 3.1.5 Term: 10 Years.
 - 3.1.6 Rent \$8K per annum plus GST at commencement of the lease, representing a significant subsidy of the market rental valuation of \$90,000.
 - 3.1.7 Community benefits:
 - Delivering an annual active learn to sail program for adults and children.
 - Training of volunteers in power boat handling and rescue work – as required.
 - Running "Discover Sailing" days each year to introduce sailing to the public.
 - Provide access for community groups to the clubrooms.
 - 3.1.8 Maintenance: All maintenance, repairs and asset renewal to be undertaken by PMYC.
 - 3.1.9 PMYC Capital investment \$1.625M within the first 5 years, with this amount contingent on a funding contribution from Council and State Government.
 - 3.1.10 Council contribution to capital renewal works of up to \$300K, with \$150K to be released for capital works to be undertaken by the club in 2019 and another \$150K contingent on equivalent State Government funding being awarded.
- 3.2 Authorise 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.
- 3.3 Resolves to hear and consider any submissions received pursuant to Section 223 of Act at the Council meeting to be shortly after the closing date for submissions.



4. BACKGROUND

Context

- 4.1 The PMYC occupies part of the Port Melbourne, Albert and Middle Parks Foreshore Reserve at 38 Beach Street Port Melbourne. The land is Crown land temporarily reserved for public purposes. Please refer to Attachment 1 for a plan of the land.
- 4.2 The PMYC is one of the oldest sailing clubs in Victoria with a continuous history since 1889. It has always operated as a community based volunteer club.
- 4.3 The PMYC has a current membership of approximately 200, with current storage available for 130 yachts. There currently 4 empty bays.
- 4.4 The PMYC has a membership that includes: active sailors, volunteers that help run the sailing events, associate members that can use the club for relaxation, and a growing community of 'paddle boarders'.
- 4.5 The PMYC has constructed the existing clubrooms and other existing infrastructure over time with funds from club membership.
- 4.6 Apart from the members, the clubrooms are used by some community groups. As PMYC does not have a secure public access this requires a member to be present (usually the member will be a member of the group using the facility). Future plans for the site, include a separate visitor entrance to alleviate this problem.
- 4.7 A 21-year lease between PMYC and the Port of Melbourne Authority expired in December 2012. A short-term lease is in place while a new lease is finalised. The short-term lease expires 31 January 2019.
- 4.8 The City of Port Phillip is the Committee of Management in accordance with the Crown Land (Reserves) Act 1978 for the land. This enables Council to lease the land as landlord. The maximum term for a lease under the CRLA is 21 years.
- 4.9 To lease a property for any period greater 10 years or when the market rental is greater than \$50,000, Council must first follow the procedures set out in Sections 190 and 223 of the Local Government Act 1989. The procedures allow for any person to make a submission and for any submissions to be considered by Council before a lease can be granted. The market valuation for the site is \$90K per annum plus GST.

Current Function of the Land and Buildings

- 4.10 The site comprises 2 main buildings. The building close to Beach Street is the Boat storage shed. The main building houses a function room at ground level and a clubroom at level 1. The site also includes a catamaran parking deck.
- 4.11 The clubroom at level 1 is predominantly used by club members and occasionally used by community groups.
- 4.12 The function room at the ground level was previously used by Peter Rowland Catering but the space is now currently vacant with the PMYC currently securing a replacement



tenant. The function room can accommodate up to 250 people (at a stand-up cocktail event). Previously the cost to hire the venue for an evening non- peak weekend was \$950. Food, Drink and Wait staff are extra

Current Condition of the Building

- 4.13 The PMYC advise that some of their facilities are at the end of their life and have provided the following items and costs:
- 4.13.1 Function Deck – approximately \$450,000.
 - 4.13.2 Cat Storage Deck - approximately \$700,000 like a for like replacement. This requires replacement within the next 2 years. \$10,000 is required in the short term for temporary repairs.
 - 4.13.3 Boat Storage Shed - \$250,000 replacement cost, requiring replacement within the next 1-3 years.
 - 4.13.4 Increasing maintenance costs due to age of buildings.
- 4.14 PMYC has recently spent approximately \$20,000 on temporary supports for the Function Deck and approximately \$19,000 on remediation works.
- 4.15 Finally, they have identified the need to purchase a replacement Rescue Boat in FY18/19 which will cost approximately \$70,000. This is an optional expenditure rather than a property matter.

Asbestos and Roof issues

- 4.16 A recent high wind event had the effect of dislodging parts of the roof of the Boat storage shed. As the responsibility for repairs and maintenance rests with the PMYC, they addressed the matter and remediated the following areas:
- 4.16.1 Boats and boat covers on the eastern and western side of the storage shed.
 - 4.16.2 Flooring on the eastern and central areas of the shed.
 - 4.16.3 Suspended masts and buoys through the centre of the shed.
 - 4.16.4 Life jackets and flooring in the adjacent storage room.
- 4.17 The cost for these works was approximately \$19,000.
- 4.18 In June 2018, Council commissioned JTA Health, Safety & Noise Specialists (JTA) to undertake further asbestos testing for all the buildings on the site.
- 4.19 The exterior eastern side of the roof and the soffit were identified as having asbestos within the corrugated cement sheet.
- 4.20 No air borne asbestos dust was detected.



4.21 In their recommendations, JTA state that:

“Although the asbestos roofing has sustained minor damage to the edges, no increased airborne asbestos exposure risk is indicated by the presence of the damaged sheet under current conditions. As such, removal of the asbestos cement roof is not currently considered necessary.”

5. KEY POINTS/ISSUES

5.1 There are a number of key planning documents, legislation and policy that need to be considered for this site. These include:

5.1.1 Coastal Management Act 1995

5.1.2 Crown Land (Reserves) Act 1978 and Crown Land Leasing Policy

5.1.3 Council Plan

5.1.4 City of Port Phillip Foreshore Management Plan 2012

5.2 The leased area is located on Crown Land managed by Council as Committee of Management. The State Government Leasing Policy lists three key leasing principles that must be assessed for each proposed lease. These are:

5.2.1 Principle 1 – To provide benefits to the public through leasing

5.2.2 Principle 2 – To ensure consistency and transparency in leasing

5.2.3 Principle 3 – To manage leased Crown Land in an ecologically sustainable manner.

5.3 Council is in the process of reviewing its Property Policy including its approach to leasing and licencing. In the interim several key principles have been developed that apply to all leases being proposed to Council.

5.4 The principles align with the State Government Leasing policy and are summarised below. An assessment of the proposed key terms against each of the principles is also provided below.

5.5 Term of the Lease

Key Principle

5.5.1 The term of the lease needs to be appropriate to the tenant and use of the premises and allow for consideration of alternative uses.

5.5.2 A longer-term lease may be warranted to support capital investment in the premises and provide security for financing or future planning.



Assessment

- 5.5.3 The PMYC is seeking a long-term tenure for the capital investment proposed. PMYC requested 21 years, which is the term of the previous long-term lease, but have accepted a term of 10 years.

Recommendation

- 5.5.4 To offer a 10-year term, which is considered a better length of lease to ensure the agreement remains current and fit for purpose.

5.6 Rent

Key Principles

- 5.6.1 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.
- 5.6.2 Council will also consider the tenant's ability to pay rent and the effect rent would have on its programs and community benefit.

Assessment

- 5.6.3 It was estimated in 2015 that ground rental would be \$33k per annum and market rental around \$66k per annum. A market rental in May 2017 was closer to \$90k annum.
- 5.6.4 Where a Community based tenant has constructed the facilities, and agrees to take on maintenance and renewal responsibilities, a ground rental is considered appropriate. This was the approach taken with the recent Royal Melbourne Yacht Squadron lease.
- 5.6.5 It is considered appropriate for facility maintenance and renewal costs to remain with the PMYC, reflecting the fact that the club have constructed the building and have historically undertaken all maintenance and repairs.
- 5.6.6 In order for maintenance and renewal to remain with the club, the rent must be below \$10k per annum. Above this amount, the Retail Lease Act requires maintenance and renewal to remain with the Landlord. If Council were to take on the maintenance and renewal obligations, Council would need to charge significantly more rent than previously charged.

Recommendation

- 5.6.7 Under the proposed 10-year lease, officers propose a discounted rental of \$8K per annum plus GST.
- 5.6.8 This means the lease falls outside the Retail Leases Act and enables Council to assign facility maintenance and renewal costs to PMYC in line with historic arrangements.



5.7 Maintenance and renewal

Key principles

- 5.7.1 The lease should be clear about maintenance and renewal responsibilities of the tenant and landlord.
- 5.7.2 It is desirable for tenants to pay for maintenance and renewal of their fittings and improvements.
- 5.7.3 The extent of landlord contribution to structural maintenance and renewal should consider asset ownership, community benefits, capacity of the tenant to pay, and the nature of the tenancy.

Assessment

- 5.7.4 The PMYC built the facilities that are currently on site and has always been responsible for all costs associated with repairs, maintenance and renewal.
- 5.7.5 Council has taken on the responsibility of delivery of Essential Safety Measures inspections and monitoring for all buildings within its portfolio.
- 5.7.6 The ownership of the building will revert to the landlord at the end of the term and therefore processes are required to ensure major repairs are monitored by the lessor but delivered by the lessee.
- 5.7.7 The Club uses the facility to for some commercial purposes and generates significant income from this – although in the short-term this is under threat.
- 5.7.8 Officers believe given the financial position of the club and facility condition that capital funding will be required from Council if the Club is to remain operating.

Proposed approach

- 5.7.9 The PMYC to continue to be responsible for all Repairs, Maintenance and Renewal for the site.
- 5.7.10 The PMYC to ensure all Repairs, Maintenance and Renewal are undertaken in accordance with an Asset Management Plan to be jointly developed and which should be annexed to the lease and updated every five years.
- 5.7.11 Council agree to provide funding on a dollar for dollar basis with the Club up to \$300K for facility replacement and upgrade costs with the State also being requested to provide at least a similar amount.
- 5.7.12 \$150k to be provided in the 2019/20 financial year for urgent works. The additional funds up to \$150k to be contingent on State Government funding of at least the equivalent amount.



5.8 Outgoings

Key principles

- 5.8.1 It is desirable that tenants pay the running costs (outgoings) of the premises that are associated with their tenancy.

Assessment

- 5.8.2 The PMYC proposes to pay all outgoings associated with their tenancy, which is considered appropriate.

Recommendation

- 5.8.3 PMYC to be responsible for all outgoings for the site including all costs levied upon the site.

5.9 Community Benefits

Key Principles

- 5.9.1 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 funds can be used to support council activities
 - A combination of the above.

Assessment

- 5.9.2 The club is run by volunteers and its activities aligned with recreation and foreshore objectives of Council and the State. The club advises that it provides the following community benefits:
- A sustainable recreational outlet for the community.
 - An active learn to sail program for adults and children.
 - Training of volunteers in power boat handling and rescue work.
 - Running “Discovering Sailing” days where the public are given a “spin” on a yacht on 12 Saturdays throughout the year.
 - Their members help to keep the surrounding areas of the Club clean of litter.
 - Use of clubrooms for community groups (longer-term the Club is proposing works to enhance public access and hence use of the club rooms).



5.9.3 The benefits are largely captured by members (of which there are a relatively small number) rather than being freely available to public. Therefore, the community benefit overall is assessed as moderate.

5.9.4 The Club has indicated a willingness to look at options to increase community benefit. They have also noted membership growth is limited by boat storage capacity and improving public access requires investment.

Recommendation

5.9.5 Define agreed and reportable benefits to be achieved through club activities, including:

- Delivering an annual active learn to sail program for adults and children.
- Training of volunteers in power boat handling and rescue work – as required.
- Running “Discover Sailing” days each year to introduce sailing to the public.
- Provide access for community groups to the clubrooms.

5.9.6 Service Agreement with PMYC to define the agreed and reportable participation targets.

5.10 Environmental Sustainability

Key Principles

5.10.1 Leases should contain environmental sustainability measures including adapting to climate change and using resources more efficiently to reduce everyday environmental impacts.

Assessment

5.10.2 The Club has indicated a willingness to work with Council to implement environmental sustainability measures including minimising water usage through rainwater harvesting, minimising energy use through LED lighting, and investigating the potential to install solar panels (noting reroofing would be required to enable this).

5.10.3 Further discussion with the Club will be required to determine what is feasible and appropriate considering their current financial situation and investment priorities.

Proposed Approach

5.10.4 The Club to incorporate environmental sustainability measures into all future renewal and upgrade works.



5.11 Other issues

Use

- 5.11.1 The current Lease provides for a primary use of a yacht club, but the Function Room activities suggest that this is a significant use also. Clarity regarding this is important as this informs the financial position which in turn informs the built form obligations.
- 5.11.2 Whilst the PMYC is primarily a not for profit organisation the club does have current and potential income streams produced through the Function Room hire for events that are not related to club activities.
- 5.11.3 It is acknowledged that this is a long-standing activity, important to the viability of the club considering the requirement for the club to fund all maintenance, renewal and upgrade activities, including the significant boating and other infrastructure required to support club activities.
- 5.11.4 The permitted use for the land should reflect the primary use as a Yacht club with associated activities dedicated to promote the sport of Yachting, and a secondary use as a permanent commercial Function Venue.
- 5.11.5 PMYC will need to seek any relevant permits required to support the secondary commercial use of the site to generate revenue for the club's infrastructure costs.

Lease Footprint

- 5.11.6 The PMYC has previously advised that their ability to grow their membership base is hampered by a lack of land. This restriction in area, does not allow new members to store their watercraft on the site and an increased lease footprint was applied for
- 5.11.7 On behalf of the PMYC, Officers have contacted DELWP and sought advice about expansion of the leased area.
- 5.11.8 DELWP have advised that the rocky outcrop to the west of the leased area is native vegetation and will not be available for expansion of the PMYC leased area as has been proposed by the PMYC.
- 5.11.9 The new lease should contain the current leased area with no change from previous agreements.
- 5.11.10 Further work can be done over time with Officers, PMYC and DELWP to explore a possible future modification of the boundary of the site to improve functionality, with reference to the Foreshore Management Plan and the Coastal Management Act.

6. CONSULTATION AND STAKEHOLDERS

- 6.1 DELWP have been consulted on the short-term lease currently in place and on the proposed longer-term arrangements.
- 6.2 Community feedback on the proposed lease will be sought pending approval by Council of the recommendations of this report.



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7. LEGAL AND RISK IMPLICATIONS

- 7.1 Documenting the respective property responsibilities and obligations through a lease which conforms to legislative requirements aims to mitigate risk.
- 7.2 The proposed key terms aim to provide clarity of Permitted Use and of roles and responsibilities for building maintenance.
- 7.3 The proposed lease is subject to approval by the Minister for Environment, Climate Change and Water.

8. FINANCIAL IMPACT

- 8.1 Council will receive \$8K per annum as rent. This is reduced from \$18,312 per annum. Through reducing the rent, the maintenance, repair and renewal obligations remain with the Club, which is aligned with historic arrangements. Significantly increased rent would be required if Council were to take on the maintenance, repair and renewal obligations that have previously been the responsibility of the club.
- 8.2 Council to contribute up to \$300K to assist the Club to address building condition issues required to maintain the operation of the club rooms and associated facilities. This is to be funded via the asset renewal reserve.
- 8.3 Of Council's contribution, \$150K to be released for urgent capital works required in 2019, and another \$150K to be contingent on equivalent or greater State Government funding being awarded. This approach is proposed to enable the Club to undertake urgent works that cannot wait until the relevant State Government grant process is completed.

9. ENVIRONMENTAL IMPACT

- 9.1 There are no immediate Environmental Impacts associated with this Report.
- 9.2 Leases should contain environmental sustainability measures including adapting to climate change and using resources more efficiently to reduce everyday environmental impacts.
- 9.3 Council will work with the PMYC over the term of their lease 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; and
 - Implement best-practice storm water management.
- 9.4 Council will work with the PMYC to report annually on initiatives.



10. COMMUNITY IMPACT

10.1 The PMYC is mindful of Council's objective of maximising the benefit to the community from facilities, and advised that the current access arrangements into the clubhouse make it difficult to provide unsupervised entry.

10.2 Future to create a separate visitor entrance will alleviate this problem.

11. ALIGNMENT TO COUNCIL PLAN AND COUNCIL POLICY

11.1 The proposed lease terms align with:

11.2 Direction 1 - We embrace difference and people belong, 1.1 "A safe and active community with strong social connections"

11.3 Direction 6 – "A financially sustainable, high performing, well-governed organisation that puts the community first".

12. IMPLEMENTATION STRATEGY

12.1 TIMELINE

12.1.1 Advertise Council's intention to lease as per Section 190 of the Local Government Act 1989 on the 4 December 2018.

12.1.2 Council report to consider feedback received from the community during the notification period and make a decision in February (date to be confirmed)

12.1.3 Council finalises the statutory process and makes the decision to proceed with the new lease.

12.2 COMMUNICATION

12.2.1 Council acknowledges the length of time that the PMYC has been operating from the site and the important role that they play in providing recreation opportunities for the community.

12.2.2 Council seeks outcomes which are equitable to all parties and that focus on opportunities to enhance community wellbeing.

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: 20/15/71

ATTACHMENTS 1. Locality Plan