



ORDINARY MEETING OF COUNCIL 20 NOVEMBER 2019

14.3 PROPOSED TENANCY AGREEMENT - "SANDBAR" 175B BEACONSFIELD PARADE, ALBERT PARK - REVIEW OF SUBMISSIONS

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

PREPARED BY: EMMA MURDOCH, HEAD OF PROPERTY OPERATIONS

1. PURPOSE

- 1.1 To report and hear submissions received from interested parties regarding Council's intention to provide a ten-year lease to the current lease holder, Sandbar on the Bay Pty Ltd for the premises at 175B Beaconsfield Parade, Albert Park as required under Section 223 of the Local Government Act 1989.

2. EXECUTIVE SUMMARY

- 2.1 The café at 175B Beaconsfield Parade, Albert Park known as "Sandbar" is located on foreshore Crown land for which the City of Port Phillip ("CoPP") is the Committee of Management.
- 2.2 The current lease for the property commenced 1 April 2005 with a term of 15 years and is due to expire on 31 March 2020. The current tenant has occupied the site since October 2015 and owns the intellectual property for the "Sandbar" business.
- 2.3 The current rent is \$126,531.15 per annum plus GST with 4% annual increases and the tenant is responsible for the cost of outgoing. As required by the Retail Leases Act (2003), maintenance and renewal are the responsibility of Council.
- 2.4 The commercial part of the building has been well-maintained but is lacking operational aspects such as a cool room and storage space. The public toilets located at either end of the building consist of toilets, showers and change room areas and need refurbishment.
- 2.5 The tenant's proposed works to update the operational aspects of the building include an extension of the cool room, update of kitchen flooring, replacement/repair of rear high windows, replacement of the split system air conditioner with evaporative heating and cooling, refurbishment and refit of the refurbished internal toilets, installation of noise absorbing ceiling panels and refurbishment and refit of the cool room.
- 2.6 The market rental as assessed by an independent valuer has been estimated at \$127,200 per annum plus GST as at 2 August 2019.
- 2.7 The proposed tenancy agreement is a 10-year lease at market rent adjusted annually by a fixed rate of 4% with all other terms remaining largely the same as the existing tenancy agreement. This has been agreed in principle by the tenant.
- 2.8 Grant and purpose approval has been provided from the Department of Environment, Land, Water and Planning (DELWP) for the proposed tenancy agreement on Crown land premises.



- 2.9 Council resolved to commence the statutory process on 18 September 2019 which invited submissions on the proposed tenancy agreement. Council must hear and consider any submissions received, before deciding to enter into such an agreement.
- 2.10 One written submission has been received. Key themes in the submission include concern over: the rental amount, noise, planning permit variations, enlargement of premises, rubbish collection times, delivery times and the general impact on the residential neighbours adjacent to the premises on Beaconsfield Parade.
- 2.11 The submission contained key terms that could form the basis for the proposal.

3. RECOMMENDATION

That Council:

- 3.1 Notes that notice has been given under Section 190 of the Local Government Act 1989 (Act) inviting submissions from interested parties regarding the proposed lease with the existing tenant, Sandbar on the Bay Pty Ltd for 175B Beaconsfield Parade, Albert Park.
- 3.2 Notes the submissions received by the closing date of 31 October 2019, as required under Section 223 of the Local Government Act 2019.
- 3.3 Directs Officers to bring back to Council a report at a Council meeting in the coming year that proposes a response to the submissions received from interested parties regarding Council's intention to provide a ten-year lease to the current leaseholder of 175B Beaconsfield Parade, Albert Park

4. KEY POINTS/ISSUES

Background

- 4.1 The café at 175B Beaconsfield Parade, Albert Park known as "Sandbar" is located on foreshore Crown land for which the City of Port Phillip ("CoPP") is the Committee of Management.
- 4.2 The Sandbar and public toilets were originally constructed as a beachside kiosk/café/restaurant in the 1920s and has had relatively little change since.
- 4.3 Under the provisions of the City of Port Phillip Planning Scheme, the subject property is contained within a Public Park and Recreation Zone (PPRZ) and a permit is required for use as a café. Sandbar on the Bay has the required planning permits to operate as a café.
- 4.4 The current lease for the property commenced 1 April 2005 with a term of 15 years and is due to expire on 31 March 2020.
- 4.5 In 2014, the former tenant, Three Fish by the Sea Pty Ltd, requested a lease extension that was considered by Councillors at a Councillor Briefing. At this time, the tenant had approximately 6 years left on the lease and feedback provided was that a new lease would be considered closer to the lease end date but any proposal for a direct negotiation and a long lease term would need to be supported by a significant capital contribution.



- 4.6 On 20 October 2015, the former tenant sold the business to the current tenant, Sandbar on the Bay Pty Ltd and as such the current tenant owns the intellectual property for the “Sandbar” business.
- 4.7 The current rent is \$126,531.15 per annum plus GST with 4% annual increases.

Rationale for Proposed Key Terms

- 4.8 A term of 10 years was recommended as the Tenant has occupied the premises for an initial term and has agreed to complete up to \$450,000 in capital works to uplift this iconic and significant asset.
- 4.9 The Tenant’s proposed works include works to update the operational aspects of the building including an extension of the cool room, update of kitchen flooring, replacement/repair of rear high windows, replacement of the split system air conditioner with evaporative heating and cooling, refurbishment and refit of the refurbished internal toilets, installation of noise absorbing ceiling panels and refurbishment and refit of the cool room.
- 4.10 The market rental as estimated by an independent valuer is \$127,200 per annum plus GST as at 2 August 2019.
- 4.11 The proposed tenancy agreement is a 10-year lease at market rent adjusted annually by a fixed rate of 4% with all other terms remaining largely the same as the existing tenancy agreement. This has been agreed in principle by the tenant.
- 4.12 Officers recommend that the Tenant pay outgoings associated with the proposed tenancy agreement including insurance in accordance with standard commercial practice.
- 4.13 Maintenance and renewal will be the responsibility of the Landlord in line with the requirements of the Retail Leases Act 2003.
- 4.14 Grant and Purpose approval has been provided from the Department of Environment, Land, Water and Planning (DELWP) for the proposed tenancy agreement at the Crown land premises.
- 4.15 To lease a property for any period greater than 10 years or when the market rental is greater than \$50,000 per annum, Council must first follow the procedures set out in Section 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 heard and considered by Council before a lease can be granted.

Public Notice as Required by Section 190 and 223 of the Local Government Act 1989

- 4.16 In order to comply with the requirements of the Local Government Act 1989, a public notification process must be undertaken in line with Section 190 and 223 to notify and hear any submissions from the public regarding the Intention to Lease “Sandbar Café” at 175B Beaconsfield Parade, Albert Park to the current tenant for a ten-year term.
- 4.17 Section 190 of the Local Government Act 1989 requires that Council must, at least 4 weeks before the lease is made, publish a public notice of the propose lease.
- 4.18 A person has a right to make a submission under Section 223 of the Local Government Act on the proposed lease.



- 4.19 Council resolved on 18 September that statutory procedures be commenced under Section 190 of the Local Government Act 1989 (Act) for the proposed lease with the existing tenant, Sandbar on the Bay Pty Ltd for 175B Beaconsfield Parade, Albert Park.
- 4.20 Council also resolved to hear and consider any submissions received pursuant to Section 223 of the Local Government Act 1989 at a Council Meeting to be held in early in the new year.
- 4.21 A Notice of Intention to Lease was published in the Port Phillip Leader on the 1 October 2019 asking for submissions by the 31 October 2019.

Summary of Submissions Received

- 4.22 One written submission has been received. A summary of the key terms from the submission is provided below.
- 4.23 The full submission can be found in Attachment 1.

Rental amount

- 4.24 The submission provided feedback that the rent should be indexed periodically.
- 4.25 The submission questioned whether the market valuation takes into account the fact that the property enjoys Council maintained and cleaned toilet facilities and has non-restricted metered parking that is rarely monitored and enforced by Council.
- 4.26 The submission requests that the rental is tied to the variations in the planning permit.

Noise

- 4.27 The submission provided feedback that the tenant is required to restrict their noise particularly on the Beaconsfield Parade side of the building that faces residential properties.
- 4.28 The submission suggests that the premises has a long history of noise being heard above the permitted outside the building on the Beaconsfield Parade side which doesn't apply with Council's current policy of restricting commercial premises from being located in residential areas.
- 4.29 The submission highlights that the recent alterations to the business could make it difficult for Council to verify the number of people at the premises to ensure the tenant is compliant with the restricted capacity of the venue.
- 4.30 The submission highlights deliveries and rubbish collections in the early hours outside the prescribed hours for commercial premises in residential areas.
- 4.31 The submission requests that the operating hours should be restricted to between 8am and 5pm.

Leased area

- 4.32 The submission highlights issues with the expansion of the leased area over the years and questions the tents and structures that have been used outside the premises.
- 4.33 The submission requests that nothing is permitted (i.e. tents and portable structures) on the leased land except what is specified in the lease and the current planning permit.



- 4.34 The submission raises issues with access to the public toilets with rubbish bins being permanently located on the path to the female public toilets blocking access.
- 4.35 The submission highlights that the public footpath is obstructed by patrons congregating waiting for functions to begin and that private use of the beach reserve appears to be on the increase.

Requests to be heard at the Council Meeting

- 4.36 The submitter did not request to be heard at the Council meeting.

5. CONSULTATION AND STAKEHOLDERS

- 5.1 This report is to consider submissions received as part of the public notification process required by Section 190 of the Local Government Act 1989.
- 5.2 The process enables consultation with key stakeholders and other interested parties to inform the lease renewal.

6. LEGAL AND RISK IMPLICATIONS

- 6.1 A ten-year lease arrangement based on the proposed key lease terms was determined through an extensive risk assessment process.
- 6.2 This lease documentation was developed by Council's legal representatives. The new lease is based on the current lease with the addition of capital contribution by the tenant.

7. FINANCIAL IMPACT

- 7.1 Council will receive \$127,200 per annum plus GST (increased annually by 4%) as rent. The proposed rent is based on a market rent as determined by valuation.
- 7.2 The Tenant is required to pay all outgoings associated with the premises.
- 7.3 The Tenant is required to make a capital contribution to the building
- 7.4 As this is a retail lease, the Retail Leases Act (2003) applies.

8. ENVIRONMENTAL IMPACT

- 8.1 There is no impact or change from current arrangements.

9. COMMUNITY IMPACT

- 9.1 The impacts highlighted in the submission to the residential area adjacent to the premises needs to be considered to ensure any new agreement minimises any negative impact on the surrounding community.

10. ALIGNMENT TO COUNCIL PLAN AND COUNCIL POLICY

- 10.1 It also aligns to Strategic Direction 6 (Our commitment to you) by supporting and delivering of the following outcome:
- A financially sustainable, high performing, well-governed organisation that puts the community first



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11. IMPLEMENTATION STRATEGY

11.1 TIMELINE

- 11.1.1 Council hears and considers the written submission received under Section 223 of the Local Government Act 1989 on 20 November 2019
- 11.1.2 Early 2020 Council to make a final decision regarding the proposed tenancy agreement taking into account the submission received.
- 11.1.3 Should Council decide to enter into a lease, execute the lease.

11.2 COMMUNICATION

- 11.2.1 Officers will advise the tenant of Council's position following the meeting.

12. OFFICER DIRECT OR INDIRECT INTEREST

- 12.1 No officers involved in the preparation of this report have any direct or indirect interest in the matter.

TRIM FILE NO: PF16/71169

ATTACHMENTS 1. Submission for Intention to Lease - Sandbar