



**14.4** **PROPOSED TENANCY AGREEMENT - "SANDBAR" 175B  
BEACONSFIELD PARADE, ALBERT PARK**

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

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**1. PURPOSE**

- 1.1 To seek Council's approval to commence statutory procedures in relation to granting a new tenancy agreement to Sandbar on the Bay Pty Ltd (Tenant) for the premises at 175B Beaconsfield Parade, Albert Park.

**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 with the tenant responsible for the cost of outgoing. As per the requirements of the Retail Leases Act (2003), maintenance and renewal is 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 are in need of refurbishment.
- 2.5 The current Tenant requested a 15-year lease but has agreed to a 10-year lease at market rate and has offered to undertake refurbishment works at the premises of up to \$450,000.
- 2.6 The Tenants proposed works include works to update the operational aspects of the building including an extension of the cool room, update of kitchen flooring, and refurbishment of the café interior.
- 2.7 The market rental as assessed by an independent valuer, has been estimated at \$127,200 per annum plus GST as at 2 August 2019.
- 2.8 Officers recommend that Council offer a 10-year lease term at full 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.
- 2.9 As the proposed tenancy agreement has a proposed term of greater than one year and each market rent estimate exceeds \$50K per annum, the statutory process applies. This process requires public notification before making a final decision on the proposed tenancy agreement. Such is pursuant to sections 190 and 223 of the Local Government Act 1989 (Act).



- 2.10 Grant and purpose approval is being sought from the Department of Environment, Land, Water and Planning (DELWP) for the proposed tenancy agreement for the Crown land premises.

### 3. RECOMMENDATION

That Council:

- 3.1 Resolves that the statutory procedures be commenced under Section 190 of the Local Government Act 1989 (**Act**) for the proposed lease with Sandbar on the Bay Pty Ltd (**Tenant**) at 175B Beaconsfield Parade, Albert Park by publishing a notice in the local newspaper inviting persons to make a submission under Section 223 of the Act, with the proposed lease terms outlined below;
- 3.1.1 Proposed Tenant: Sandbar on the Bay Pty Ltd
- 3.1.2 Demised Premises: 175B Beaconsfield Parade, Albert Park
- 3.1.3 Permitted Use: Café/Restaurant with Liquor Licence
- 3.1.4 Commencement Date: 1 April 2020
- 3.1.5 Term: 10 years
- 3.1.6 Commencement Rent: \$127,200 per annum plus GST
- 3.2 Authorises 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 the Act at a future Council meeting.

### 4. KEY POINTS/ISSUES

#### Context

- 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 current lease for the property commenced 1 April 2005 with a term of 15 years and is due to expire on 31 March 2020.
- 4.3 In 2014, the former tenant, Three Fish by the Sea Pty Ltd, requested a lease extension that was considered by Councillors in 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.
- 4.4 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.



- 4.5 Upon entry into the business the current tenant approached Officers seeking a lease extension. As a lease extension had already been considered, this matter was deferred until closer to the end date of the lease.
- 4.6 The current rent is \$126,531.15 per annum plus GST with 4% annual increases.
- 4.7 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 considered by Council before a lease can be granted.

#### **Building Condition and Function**

- 4.8 The Sandbar Restaurant and public toilets were originally constructed as a beachside kiosk/café/restaurant in the 1920s and has had relatively little change since.
- 4.9 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 are in need of refurbishment.
- 4.10 The building does not currently meet the current Disability Discrimination Act (DDA) regulations due to the multi-level configuration of dining areas and beach access.
- 4.11 Council is currently considering options for the public toilet facilities and the feasibility of an upgrade in this area to achieve functional and compliance requirements.
- 4.12 Council has undertaken a number of minor capital works projects at the premises since 2017 including refurbishment of the roof, renewal of beachside timber decking and replacement of the dining area bi-fold doors valued at approximately \$215,000.
- 4.13 Due to current configuration of the building and poor access from street level to beach level, the building cannot achieve acceptable DDA compliance unless significant reconfiguration works occur. Otherwise, the building is in reasonable condition for the short term.
- 4.14 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 permits to operate as a café.

#### **4.15 Direct negotiation or market process to secure a new lease**

##### *Key Principle*

- Direct negotiation will be considered with the incumbent tenant unless there is evidence that conducting a competitive process would maximise benefits to the community.



#### *Assessment*

- The Tenant has proposed works of up to \$450,000 which includes minor capital works and works to update the operational aspects of the building including an extension of the cool room, update of kitchen flooring, and refurbishment of the café interior.
- The building is in reasonable condition and a redevelopment of the site is not required in the short term.
- The tenant has a history of being a good tenant.

#### *Recommendation*

- Officers recommend a direct negotiation be undertaken with the current tenant.

#### **4.16 Proposed Lease**

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

- Crown Land (Reserves) Act 1978;
- Crown Land Leasing Policy and
- Council Plan.

4.18 The leased premises for the Crown land portion is managed by Council as Committee of Management. The State Government Leasing Policy lists three key leasing principles that must be assessed for each proposed tenancy. These are:

- Principle 1 – To provide benefits to the public through leasing;
- Principle 2 – To ensure consistency and transparency in leasing and
- Principle 3 – To manage leased Crown land in an ecologically sustainable manner.

4.19 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 tenancy agreements being proposed to Council.

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

#### **4.21 Term of the Tenancy Agreement**

##### *Key Principles*

- The term of the tenancy agreement needs to be appropriate to the tenant and use of the premises and allows for consideration of alternative uses.



- A longer-term tenancy agreement may be warranted to support capital investment in the premises and provide security for financing or future planning.
- The term of the tenancy agreement should consider the effort required by Council and the future tenant to negotiate a new tenancy agreement.

*Assessment*

- The current Tenant initially requested a 15-year lease and has offered to make a capital contribution to the building of up to \$450,000.
- The Retail Leases Act (2003) requires a retail lease to have a term of at least 5 years.
- The maximum term under the Crown Land (Reserves) Act 1978 is 21 years.
- The current tenant has occupied the premises for 5 years out of the current 15-year term.

*Recommendation*

- A term of 10 years is recommended in this case 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. This has been agreed in principle by the tenant.

**4.22 Rent**

*Key Principles*

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

*Assessment*

- Market rental for the premises has been undertaken by an independent valuer and is estimated at \$127,200 per annum plus GST as at 2 August 2019.
- A rental greater than that proposed may be attained through a competitive process.
- The Tenant is commercial operator undertaking services for a profit.

*Recommendation*

- Officers propose charging the full market rent currently estimated at \$127,200 per annum plus GST. This amount is recommended to be adjusted annually by a fixed rate of 4% and market rental evaluation in Year 6. This has been agreed in principle by the tenant.



#### 4.23 Outgoings

##### *Key Principle*

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

##### *Assessment*

- It is considered reasonable that the Tenant pays all outgoings as with any standard operator/occupier.
- 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 tenant under a Retail Leases Act lease.

##### *Recommendation*

- Officers recommend that the Tenant pay outgoings associated with the proposed tenancy agreement including insurance as per standard commercial practice. This has been agreed in principle by the tenant.

#### 4.24 Maintenance

##### *Key Principles*

- The tenancy agreement should be clear about maintenance and renewal responsibilities of the tenant and Council as landlord.
- It is desirable for tenants to pay for maintenance and renewal of their fittings and improvements.
- 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*

- The proposed lease falls within the Retail Leases Act (2003).
- The Retail Leases Act (2003) requires that the Landlord maintain and repair the building structure and all Landlord plant and equipment, services and fixtures in a condition that is consistent with the condition of the premises at the time the retail premises lease was entered into.

##### *Recommendation*

- Maintenance and renewal will be the responsibility of the Landlord in line with the requirements of the Retail Leases Act (2003).



## 5. CONSULTATION AND STAKEHOLDERS

- 5.1 Officers have notified the Tenant that a standard 10-year retail lease with standard commercial terms (market rent) via a direct negotiation is proposed.
- 5.2 Council will consult with the community through a Notice of Intention to Lease to be published in the local newspaper inviting submissions in accordance with statutory procedures.
- 5.3 The Department of Environment, Land, Water and Planning (DELWP) has been consulted on the tenancy agreement seeking grant and purpose.

## 6. LEGAL AND RISK IMPLICATIONS

- 6.1 The statutory process under the Act requires Council to notify the public before committing to the proposed tenancy agreement.
- 6.2 Documenting the lessor and tenant responsibilities through a legally binding tenancy agreement conforms to legislative requirements which mitigates risk.
- 6.3 The proposed tenancy agreement is on Crown land and is subject to approval by the Minister for Energy, Environment and Climate Change on behalf of DELWP.

## 7. FINANCIAL IMPACT

- 7.1 The proposed rent is based on a market rent as determined by valuation and the Tenant is required to pay all outgoings associated with the premises.
- 7.2 As this is a retail lease, the Retail Leases Act (2003) applies.

## 8. ENVIRONMENTAL IMPACT

- 8.1 The proposed tenancy agreement will require the Tenant to implement environmentally sustainable practices and programs that support reduction in energy, waste and water.
- 8.2 Council will work with the Tenant over the term of the proposed tenancy agreements 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;
  - Implement best-practice storm water management; and
  - Reduce single use plastic.

## 9. COMMUNITY IMPACT

- 9.1 Council tenancy agreements deliver the following direct or indirect benefits to the community:

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- 9.1.1 Promotion of health and wellbeing, supporting service provision, cultural or recreational opportunities or economic benefits; or
  - 9.1.2 Full market rent so that the funds can be used to support Council activities; or
  - 9.1.3 A combination of 10.1.1 and 10.1.2.
- 9.2 The lease with Sandbar on the Bay supports Council's objective of maximising the benefit to the community from its facilities. This is achieved through charging market rent and outgoings being payable by the Lessee.

## 10. ALIGNMENT TO COUNCIL PLAN AND COUNCIL POLICY

10.1 The proposed tenancy agreements align to:

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

## 11. IMPLEMENTATION STRATEGY

### 11.1 TIMELINE

- 11.1.1 If Council resolves to commence the statutory process, a Notice of Intention to Lease as per section 190 of the Act will be published in the Port Phillip Leader newspaper.
- 11.1.2 Under section 223 of the Act, the submission period will be at least 28 days.
- 11.1.3 Council is required to hear and consider submissions (if any) at a future Council meeting.

### 11.2 COMMUNICATION

- 11.2.1 Officers will advise the Tenant's representatives of the outcome of the 18 September 2019 Council 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. Attachment 1 - Site Plan "Sandbar" 175B Beaconsfield Parade, Albert Park