



14.1 NOTICE OF INTENTION TO LEASE (TO FINALISE) - EILDON ROAD CHILDRENS CENTRE INC, THE AVENUE CHILDREN'S CENTRE INC AND THE ELWOOD CHILDRENS CENTRE INC

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

**PREPARED BY: STEPHEN MILLARD, TEAM LEADER PROPERTY OPERATIONS
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1. PURPOSE

- 1.1 To seek Council's approval to finalise the statutory procedures under the *Local Government Act 1989 (Vic) (Act)* for the granting of proposed new tenancy agreements (**Proposed Tenancy Agreements**) for:
- Eildon Road Childrens Centre Inc at 17 Eildon Road, St Kilda;
 - The Avenue Children's Centre Inc at 39 The Avenue, Balaclava; and
 - The Elwood Childrens Centre Inc at 46 Tennyson Street, Elwood.

2. EXECUTIVE SUMMARY

- 2.1 The premises subject to the Proposed Tenancy Agreements are 17 Eildon Road, St Kilda, 39 The Avenue, Balaclava and 46 Tennyson Street, Elwood, (collectively referred to in this report as "**Premises**"), outlined individually in red in Attachment 1.
- 2.2 Eildon Road Childrens Centre Inc, The Avenue Children's Centre Inc and The Elwood Childrens Centre Inc (individually and collectively referred to in this report as "**Tenant**" and "**Tenants**", respectively) have been operating out of these Premises under short-term leases which are due to expire on 31 May 2020. Their associated funding deeds are due to expire on 30 June 2020.
- 2.3 On 4 September 2019, Council adopted the Every Child, Our Future: Children's Services Policy (**Children's Services Policy**) which commits to continue providing support for volunteer-led, community-managed services that provide childcare, toy libraries, playgroups and kindergarten through appropriate funding and provision of facilities.
- 2.4 At that time, Council endorsed a three-year transitional arrangement subject to aligning the dates of the leases to the same date, acknowledging that the lease may be terminated in the event that the premises, building fabric or other unexpected disaster is deemed to be a risk to any person.
- 2.5 As part of this transitional arrangement, Officers recommend that the Proposed Tenancy Agreements remain on the same terms as per the existing leases with a nominal rent of \$10 per annum plus GST (on-demand) each, reflected as an in-kind contribution by Council, being the discount from market rent value.
- 2.6 Officers recommend that the Proposed Tenancy Agreements commence on 1 July 2020 to align with their new funding deed and expire on 31 December 2022 to bring alignment throughout the portfolio.
- 2.7 All three Premises are freehold Council owned properties with buildings that have issues related to building condition, functionality and compliance.



- 2.8 As the buildings are at their end of life, any or all of the Proposed Tenancy Agreements may be required to be terminated before the end of the lease term in the event that the premises, building fabric or other unexpected disaster is deemed to be a risk to any person.
- 2.9 The previously assessed market rent for each of the Premises exceeds \$50,000 per annum and the proposed term is greater than one year, therefore the statutory process under the Act applies. This process requires public notification pursuant to sections 190 and 223 of the Act before making a final decision on the Proposed Tenancy Agreements.
- 2.10 Council resolved to commence the statutory process on 18 March 2020 which invited submissions on the Proposed Tenancy Agreements. Council must hear and consider any submissions received before making a decision to enter into such tenancy agreements.
- 2.11 No submissions were received in response to the public notice that was published in the Port Phillip Leader newspaper on 7 April 2020.
- 2.12 Council is now in a position to complete the statutory procedures and make a final decision on the Proposed Tenancy Agreements.

3. RECOMMENDATION

That Council:

- 3.1 Not having received any submissions in response to a Notice of Intention to Lease the Premises identified below, resolves to conclude the statutory procedures under sections 190 and 223 of the *Local Government Act 1989 Vic (Act)* and approves the following Proposed Tenancy Agreements with key terms summarised as follows:

Tenant	1. Eildon Road Childrens Centre Inc
	2. The Avenue Children's Centre Inc
	3. The Elwood Childrens Centre Inc
Premises	1. 17 Eildon Road, St Kilda
	2. 39 The Avenue, Balaclava
	3. 46 Tennyson Street, Elwood
Permitted Use	Childcare centre
Commencement Date	1 July 2020
Term	To 31 December 2022
Rent	\$10 per annum plus GST (on-demand) each to help support the continuous provision of child care services
- 3.2 Authorises the Chief Executive or delegate to execute such tenancy agreements;
- 3.3 Notes that any or all of the Proposed Tenancy Agreements may be terminated before the end of the lease term in the event that the premises, building fabric or other unexpected disaster is deemed to be a risk to any person;
- 3.4 Notes that whilst the previous market rental estimates were \$84,000 (exclusive of GST) for 17 Eildon Road, St Kilda, \$110,000 (exclusive of GST) for 39 The Avenue, Balaclava and \$122,500 (exclusive of GST) for 46 Tennyson Street, Elwood, a discounted rent of \$10 per annum plus GST (on-demand) for each will apply, reflected as an in-kind contribution by Council.



4. KEY POINTS/ISSUES

Background

- 4.1 Council provides children's services at a number of facilities throughout the municipality. These facilities enable the direct provision of children's services to the community or the indirect provision through a community based not-for-profit organisation.
- 4.2 Where there is indirect provision through a community based not-for-profit organisation, the organisation is required to enter into a tenancy agreement with Council as the landlord.
- 4.3 On 4 September 2019, Council adopted the Children's Services Policy (in effect from 1 July 2020) which commits to continue providing support for volunteer-led, community-managed services that provide childcare, toy libraries, playgroups and kindergarten through appropriate funding and provision of facilities.
- 4.4 At that time, Council also endorsed a transitional arrangement to all centres within the portfolio subject to the statutory procedures required under section 190 of the Act.
- 4.5 This three-year transitional arrangement offers all centres a tenancy option during this period subject to aligning the dates of the leases to the same date acknowledging that the lease may be terminated in the event that the premises, building fabric or other unexpected disaster is deemed to be a risk to any person.
- 4.6 The leased Premises subject to the Proposed Tenancy Agreements are 17 Eildon Road, St Kilda, 39 The Avenue, Balaclava and 46 Tennyson Street, Elwood.
- 4.7 The leased Premises are freehold Council owned properties with buildings that have issues related to condition, functionality and compliance.
- 4.8 As the buildings are at their end of life, any or all of the Proposed Tenancy Agreements may be required to be terminated before the end of the lease term in the event that the premises, building fabric or other unexpected disaster is deemed to be a risk to any person.
- 4.9 The incumbent Tenants have been operating under short-term leases commencing on 1 July 2019 and expiring on 31 May 2020.
- 4.10 Each Tenant pays rent of \$10 per annum plus GST (on-demand) and has a funding deed that will expire on 30 June 2020.
- 4.11 As each of the Proposed Tenancy Agreements has a proposed term greater than one year and the market rent estimate exceeds \$50,000 per annum, the statutory process applies. This process requires public notification pursuant to sections 190 and 223 of the Act before making a final decision on the Proposed Tenancy Agreements.
- 4.12 Council resolved to commence the statutory process on 18 March 2020 which invited submissions on the Proposed Tenancy Agreements. Council must hear and consider any submissions received before making a decision to enter into such tenancy agreements.
- 4.13 No submissions were received in response to the public notice that was published in the Port Phillip Leader newspaper on 7 April 2020.



5. PROPOSED TENANCY AGREEMENTS

- 5.1 There are a number of key planning documents, legislation and policy that need to be considered for the Proposed Tenancy Agreements. These include the following:
- Council Plan;
 - Children's Services Policy; and
 - Council Property Policy.
- 5.2 The Council Plan sets out what Council wants to achieve for the city of Port Phillip by 2027 and how it supports the future health and wellbeing of the city.
- 5.3 The Children's Services Policy describes Council's role in children's services and what Council intends to do to support the well-being and development of children and families in the municipality.
- 5.4 On 4 September 2019, Council endorsed a transitional arrangement which considers all centres within the portfolio to be subject to the existing lease terms until decisions are made regarding the implementation of the Children's Services Policy.
- 5.5 Council Property Policy provides guidance on entering tenancy agreements. Such principles under Council's Property Policy align with the State Government Leasing Policy.
- 5.6 Further to these principles, Officers have recommended the following in the previous report to Council recommending commencement of the statutory process:
- 5.6.1 A direct negotiation be undertaken with each Tenant in line with the Council resolution of 4 September 2019 relating to the adoption of the Children's Services Policy endorsing a transitional arrangement;
- 5.6.2 The Proposed Tenancy Agreements be made to commence from 1 July 2020 and expire on 31 December 2022 subject to the Premises remaining safe for use;
- 5.6.3 The existing tenancy agreements be in overholding for one month as they will expire on 31 May 2020;
- 5.6.4 Despite market rental estimates as at March 2019 being \$84,000 (exclusive of GST) for 17 Eildon Road, St Kilda, \$110,000 (exclusive of GST) for 39 The Avenue, Balaclava and \$122,500 (exclusive of GST) for 46 Tennyson Street, Elwood, a nominal rent \$10 per annum plus GST (on-demand) be applied for each, reflected as in-kind contribution by Council;
- 5.6.5 All outgoings applicable to the Premises be paid by each Tenant;
- 5.6.6 Insurance for public liability and tenant improvements be obtained by each Tenant and that cost for building insurance continues be covered by Council given that the Tenants are subject to a transitional arrangement; and
- 5.6.7 Ongoing maintenance costs be considered under each Tenant's future funding deed with Council as per the existing arrangements as Council continues to be responsible for building maintenance and renewal.



6. CONSULTATION AND STAKEHOLDERS

- 6.1 Council has notified the community through a Notice of Intention to Lease published in Port Phillip Leader newspaper on 7 April 2020 inviting submissions in accordance with statutory procedures.
- 6.2 The deadline date of submissions was 8 May 2020.
- 6.3 No submissions were received by the deadline date.

7. LEGAL AND RISK IMPLICATIONS

- 7.1 The statutory process under the Act requires Council to notify the public before committing to the Proposed Tenancy Agreements.
- 7.2 Council's standard form lease will be used as the basis of all Council freehold tenancy agreements, unless otherwise agreed or required by legislation. This template documents the landlord and tenant responsibilities, conforms to legislative requirements and mitigates risk.

8. FINANCIAL IMPACT

- 8.1 Whilst the previous market rental estimates for the Premises are \$84,000, \$110,000 and \$122,500 respectively (each exclusive of GST), they are recommended to be discounted to \$10 per annum plus GST each (on-demand) under the Proposed Tenancy Agreements to support the continuous provision of children's services to the community.
- 8.2 The Proposed Tenancy Agreements are contingent upon the Tenants being awarded a funding deed from 1 July 2020. Any future funding deed will require the Tenants to fulfil their obligations under this deed.

9. ENVIRONMENTAL IMPACT

- 9.1 The Proposed Tenancy Agreements will require the Tenants to implement environmentally sustainable practices and programs that support reduction in energy, waste and water.
- 9.2 Council will work with the Tenants 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 including eliminating plastic straws and balloons.

10. COMMUNITY IMPACT

- 10.1 Council has the following primary objectives when entering tenancy agreements for the use of Council property:
 - to support service delivery and promote health and wellbeing, social, environmental, cultural, recreational or economic opportunities and benefits in the City of Port Phillip by leasing or licensing Council property to Community Organisations;



- to generate net income to support service delivery across the portfolio by leasing or licensing Council property to Commercial Organisations.

10.2 Each Tenant's existing funding deed has agreed service objectives and key performance indicators to ensure delivery of children's services.

11. ALIGNMENT TO COUNCIL PLAN AND COUNCIL POLICY

11.1 The Proposed Tenancy Agreements align to:

11.1.1 Direction 1 – “We embrace difference, and people belong”; and

11.1.2 Direction 6 – “A financially sustainable, high performing, well-governed organisation that puts the community first.”

11.2 The Proposed Tenancy Agreements also support the Children's Services Policy that guides how Council supports, delivers and invests in children's services in the municipality.

12. IMPLEMENTATION STRATEGY

12.1 TIMELINE

12.1.1 If Council resolves to complete the statutory process and approves the Proposed Tenancy Agreements, such tenancy agreements will be finalised and executed immediately.

12.2 COMMUNICATION

12.2.1 Officers will advise each of the Tenant's representatives of the outcome of the 15 July 2020 Council meeting.

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.

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ATTACHMENTS 1. Site Plan