



Confidential Matter

1.1 ST KILDA MARINA INTERIM LEASE APPROACH

The information contained in this Council report is considered to be Confidential Information in accordance with Section 77(2)(a) and Section 89(2) of the Local Government Act 1989 (as amended); as it relates to:

89(2)(d). Contractual matters.



1.1 **ST KILDA MARINA INTERIM LEASE APPROACH**

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1. PURPOSE

1.1 To provide an update on the progress with the interim short-term lease for the St Kilda Marina site and seek approval for key lease terms.

2. EXECUTIVE SUMMARY

- 2.1 The work for the project to procure a new long-term lease arrangement for the site is proceeding in line with the Project Approach and associated timeline approved in a Council Meeting on 7 February 2018. The timeline forecasts that the new lease arrangement will likely not be in place until at the earliest 2021, and potentially 2022 to cover any potential planning or legislative issues that may arise.
- 2.2 To cover the gap between the expiry of the existing lease and the commencement of a new lease arrangement it was determined that an interim short-term lease arrangement is required.
- 2.3 An assessment of a number of options for a short term interim arrangement has been undertaken by Council officers and our advisors. The assessment determined that the most suitable approach from a time, cost, operational and risk perspective was to pursue a new short-term interim lease with the current lessee.
- 2.4 Key issues identified that need to be addressed through the short-term interim lease to minimise risk, secure continuity of operations and best support the long-term leasing process include:
- Application of the *Retail Leases Act 2003* (RLA), and the effect being that that Council will have repair and maintenance obligations as Landlord that are currently the responsibility of the tenant under the existing lease.
 - Type of agreement – deed of extension (lease extension) or new lease.
 - Length of term to support the transition to new long-term lease arrangement
 - Rental amount



- Ownership of key marina assets and impacts on ability to operate the site at end of lease
 - Clarification of the required condition of assets at the end of the current lease and short term interim lease.
- 2.5 A set of principles was developed as a basis for discussion with the current lease holder. These include continuity for all businesses and effective transition to a new lease arrangement; minimal disruption to the site; a new short term interim lease based on the premise of the existing lease but updated to contemporary standards; a rental amount that does not disadvantage either party (particularly factoring the new factoring in the new financial obligations of Council for repair and maintenance); and a short term lease that facilitates the project requirements for procuring a new long term lease (site visits, transition and handover requirements, if applicable).
- 2.6 The principles were essentially agreed by the current lease holder with the exception of the initially proposed 2 year lease term.
- 2.7 Following agreement in principle by officers to the head tenant's request for a 3 year lease term, the current lease holder requested a 5 year lease term stating that a 2 or 3 year period provides insufficient time for an orderly or reasonable transition.
- 2.8 It was identified that it was in Council's best interest to maintain a 3 year term or initiate termination of the lease and purchase the wet berth infrastructure to avoid disruption to the operation of the marina and best support the long-term leasing process.
- 2.9 Further discussion with the head tenant identified the possibility of a 3 year term and purchase of the wet berth infrastructure, dry dock wooden boat mounts and security fencing and gates at the end of the interim lease for \$620,000 plus GST.
- 2.10 An analysis was undertaken of both the condition of the wet berths and related marine infrastructure, and the financial merits of the offer to Council. The assets were identified as being in good condition, with life left well beyond the term of the interim lease. Financially, it was deemed that purchasing the marine infrastructure presented good value to Council on the basis of an otherwise high replacement cost, the good condition of the assets, the flexibility afforded to Council by owning the wet berths, and the ability to keep the marina operating beyond the term of the lease with the current lease holder.
- 2.11 The recommended option is to enter into a new interim lease arrangement for a term of 3 years commencing immediately following the lease expiry in April 2019 with purchase of the wet berths, security gates and fencing and dry store boat mounts at the end of the interim lease (if the tenant exits the site) for up to \$620,000 (excluding GST). This option secures the continuity of the current operations at the end of the existing lease, as well as at end of the short-term interim lease if a new operator takes over the site.



3. RECOMMENDATION

That Council:

- 3.1 Approves the proposed approach to implementing interim lease arrangements for the St Kilda Marina, with the following key terms:
 - 3.1.1 Proposed Tenant: Australian Marinas (A'Asia) Pty Ltd (Australian Marinas)
 - 3.1.2 Demised Premises: St Kilda Marina
 - 3.1.3 Permitted Use: Marina and associated uses
 - 3.1.4 Commencement date: 1 April 2019
 - 3.1.5 Term: 3 years
 - 3.1.6 Rent: To reflect the current rental arrangements and any additional maintenance and repair obligations for Council under the Retail Leases Act.
 - 3.1.7 Purchase of essential infrastructure: Council to purchase the wet berths, security gates and fencing and dry store boat mounts from Australian Marinas for the sum of up to \$620,000 excluding GST at the end of the lease if Australian Marinas are required to exit the site at the end of the lease.
- 3.2 Authorises the CEO or delegate to enter into an in principle agreement with Australian Marinas (A'Asia) Pty Ltd (Australian Marinas) pending completion of the statutory procedures required to execute a lease.
- 3.3 Notes that the proposed key terms including quantification of the rent, for a new short term lease between Council and Australian Marinas (A'Asia) Pty Ltd (Australian Marinas) will be brought to Council as soon as possible to authorise statutory procedures to be commenced under Section 190 of the Local Government Act 1989 ('the Act).

4. KEY POINTS/ISSUES

- 4.1 The St Kilda Marina has been located at 42 A - E Marine Parade, Elwood since 1969. The Marina occupies approximately 8Ha (80,000 m²) of foreshore Crown Land for which Council is appointed as the Committee of Management. Existing



uses include marine services (boat storage and launch infrastructure, repairs, fuel for boats and sales), restaurants/cafes, service station and car parking.

- 4.2 The 50 year 'head lease' between Council and Australian Marinas (A'Asia) Pty Ltd (Australian Marinas), began on 18 March 1968 and, through a supplemental agreement to the original lease, expires on 30 April 2019.
- 4.3 In an Ordinary Council Meeting dated 13 September 2016 Council:
- Approved the selection of a tenant for a long-term lease of the St Kilda Marina to be undertaken through a competitive selection process.
 - Directed officers to develop a leasing process for the site for approval by Council that includes extensive community engagement in the development of the strategic objectives and leasing principles for the site.
 - Directed officers to develop principles for the selection of a tenant for the St Kilda Marina for approval by Council that include optimising community benefit and providing an appropriate commercial outcome for the site.
 - Approved in principle the development of a short-term lease, if required, to provide certainty to current operators at the site to cover any period between the expiry of the lease and the implementation of a new lease arrangement.
- 4.4 It should be noted that that a Council Meeting on 13 September 2016 "approved in principle the development of a short-term lease, if required, to provide certainty to current operators at the site while a new lease is secured, with the rent for the short term lease to be based on market value".
- 4.5 The work for the project to procure a new long-term lease arrangement for the site is proceeding in line with the Project Approach and associated timeline approved in a Council Meeting on 7 February 2018 (provided in Attachment 1 for reference). This timeline forecasts procurement of a new lease in 2020, with a yet to be determined transition period between existing and new lease/s, if required. The new lease arrangement will likely not be in place until 2021, and potentially 2022 to cover any additional time required for any planning or legislative issues that may arise.
- 4.6 To cover the gap between the expiry of the existing lease and the commencement of a new lease it was determined that an interim short-term lease arrangement is required.

Objectives for the Interim Lease and Options Assessment

- 4.7 A set of objectives for the interim lease arrangement were determined, and an options assessment was undertaken by Council Officers and advisors late 2017 covering:



- Option 1. A short-term interim lease with the current lessee and sub-lease holders.
- Option 2. A short-term interim lease with another party.
- Option 3. A short-term interim lease to the current head lease holder with sub-leases directly with Council.
- Option 4. A Council run marina with subleases directly with Council.

4.8 The assessment determined that the most suitable approach from a time, cost, operational and risk perspective was Option 1. Refer to Attachment 2 for the objectives for the interim lease and the options assessment.

Key Issues to Consider for the Interim Lease with the Existing Tenant

4.9 The key issues and differences that would apply to the short-term interim lease versus the current lease were explored by officers and the advisory team.

4.10 Key issues identified that need to be addressed through the short-term interim lease to minimise risk, secure continuity of operations and best support the long-term leasing process include:

- Application of the *Retail Leases Act 2003* (RLA)
- Type of agreement – deed of extension (lease extension) or new lease.
- Length of term to support the transition to new long-term lease arrangement
- Rental amount
- Ownership of key marina assets and impacts on ability to operate the site at end of lease
- Clarification of the required condition of assets at the end of the current lease and short term interim lease.

Application of the *Retail Leases Act 2003*

4.1 The *Retail Leases Act 2003* (RLA) came into effect during the term of the current lease. This act requires the Landlord to undertake certain repair and maintenance obligations, unless there is a significant capital investment by the tenant or the value of the lease is under \$10,000 per annum or in excess of \$1M per annum.

4.2 The effect of the RLA applying to the interim short-term lease is that Council will have repair and maintenance obligations as Landlord that are currently the responsibility of the tenant under the existing lease.



4.3 Council will, therefore, become responsible for maintaining the following in a condition consistent with the condition the assets were in when the retail premises lease was entered into:

- The structure of and fixtures in the retail premises
- Plant and equipment at the retail premises

Type of agreement

4.4 There are two options for an interim lease arrangement with the existing tenant:

- a) Document the arrangement as a new lease document
- b) Document the arrangement as a deed of extension (lease extension).

4.5 For both interim lease arrangements, the following applies:

- Approval of the Governor in Council under the St Kilda Land Act 1965 is required.
- Unless the annual occupancy costs (i.e. rent and outgoings) are greater than \$1M, the interim lease will be subject to the Retail Leases Act 2003 (RLA).
- Having regard to Council’s approach to granting leases under the Crown Land Reserves Act 1978, public notice under S 190 of the Local Government Act 1989 would be expected for the new interim lease.

4.6 An assessment of both options identified that, given the RLA applies in both cases, the option that provided the most clarity and certainty is a new interim lease.

Key Principles and Terms

4.7 The approach taken to address the key issues to minimise risk, secure continuity of operations in the interim and best support the long-term leasing process is outlined in the table below.

Key Principles for Interim lease	CoPP Objectives for (New) Interim Lease	Status
Continuity for all businesses and appropriate transition period for the new long term lease arrangement	Term – Initially proposed as minimum of 2 years to May 2021 to provide an adequate transition. 3 years was requested by Australian Marinas and accepted by officers in principle. Five years was then requested by Australian Marinas and rejected by Council.	3 years has now been agreed.



Key Principles for Interim lease	CoPP Objectives for (New) Interim Lease	Status
Minimal disruption	Maintain existing relationships on the site and ongoing smooth operations for the length of the interim lease	Agreed
Nature of Lease	New interim-term lease (not extension) updated to contemporary lease and current standards with respect to obligations to be defined (e.g. environmental) but based on the premise that parties are not advantaged or disadvantaged (from the premise of the existing lease)	Agreed
Asset Conditions, Maintenance and Management	<p>Define benchmark in the interim lease for the conditions of assets at St Kilda Marina through asset condition assessment dated July 2018</p> <p>Note: Retail Leases Act will apply– specifics to be assessed to be outlined in the interim lease</p>	Agreed
Ownership of assets	<p>As per current lease conditions, Tenant owns wet berth infrastructure and may remove it at end of current lease. All other improvements (permanent infrastructure) are to revert to landlord at end of lease.</p> <p>The wet berths, security gates and fencing and dry store boat mounts will be purchased by Council, or the new tenant (long term lease tenant), at the end of the 3 year lease, if Australian Marinas exits the site, for the sum of \$620k excluding GST, for the purposes of securing continuity of operations until such time as the site is redeveloped.</p>	Agreed
Rental revenue	<p>Rental to reflect the intention that no party is worse off than under the existing lease, but that the rent reflects any transfer of asset responsibility to Council under the application of the RLA.</p> <p>An Asset Condition Assessment has been completed and will inform the rental amount that is agreed.</p> <p>Note that work to finalise the rental amount is almost complete.</p> <p>It should also be noted that a Council Meeting on 13 September 2016 “approved in principle the development of a short term lease, if required, to provide certainty to current operators at the site while a new lease is secured, with the rent for the short term lease to be based on market value”.</p> <p>As a result of the effect of the RLA and for reasons outlined further in this document, this the recommended approach to the rental revenue</p>	Agreed
Implementation of interim lease	<p>By April 2019</p> <p>In line with State Government process currently being defined</p>	Agreed



Key Principles for Interim lease	CoPP Objectives for (New) Interim Lease	Status
Leasing Process	Access for site visits by those interested in tendering (effectively coordinated with all parties) Smooth transition if required (underpinned by an appropriate timeframe accounted for in the interim lease)	Agreed

Assessment of Length of Term

- 4.8 Following agreement in principle by officers to the head tenant’s request for a 3 year lease term (in lieu of the proposed 2 year term) on 16 August 2018, Australian Marinas requested a 5 year lease term stating that a 2 or 3 year period provides insufficient time for an orderly or reasonable transition and does not take into account sub-tenant requirements to operate their businesses.
- 4.9 A range of options were assessed including:
 - Option 1 – Agree a new 5 year interim lease
 - Option 2 – Agree a new 5 year interim lease with a break provision at 3 years
 - Option 3 – End current lease and enter into multiple direct lease arrangements, including a marina operator
- 4.10 It was identified that it was in Council’s best interest to maintain a 3 year term or initiate termination of the lease and purchase the wet berth infrastructure to avoid disruption to the operation of the marina and best support the long-term leasing process.
- 4.11 Termination of the existing arrangements with the long-term operator of the marina without the option to purchase the wet berth infrastructure was found to carry significant risk, particularly given that the tenant had previously suggested that they would remove the wet berths and sell them at end of lease. Replacement of the wet berths would be very costly and lead to significant business disruption.
- 4.12 This option still carries significant risk if the wet berths were purchased, given the requirement to install a new marina operator for the duration of the short-term interim lease and the direct management of the sub-leases. A procurement process would be required to appoint the operator with the possibility that the marina would shut for a period of time.
- 4.13 Further discussion with the head tenant identified the possibility of a 3 year term and purchase of the wet berth infrastructure, dry dock wooden boat mounts and security fencing and gates at the end of the interim lease for \$620,000 plus GST.



- 4.14 This option secures the continuity of the current operations at the end of the existing lease, as well as at end of the short-term interim lease if a new operator takes over the site.

Assessment of Value to Council

- 4.15 Analysis was undertaken to assess whether the proposed purchase of key infrastructure at the cost of \$620k plus GST provides best value.
- 4.16 The key drivers for the purchase of the key infrastructure are:
- As Council is only part way through its process for procuring a new proponent for St Kilda Marina there is uncertainty as to when a redevelopment would occur on the site as this will depend on the proposed plans of the new proponent. This will not be known for some time – likely 2020. Whilst the interim lease will facilitate the ongoing use of the marina to 2022, purchasing the wet berths will enable Council to facilitate the ongoing use of the existing maritime components at the marina after the expiry of the short-term interim lease (April 2022).
 - The removal of the wet berths by the existing tenant at the end of the current lease, or proposed interim arrangement of an additional 3 years, would introduce significant disruption cost –in the cost of replacing the infrastructure, loss of income from wet berth users and loss of patronage due to the marina disruption during replacement.
- 4.17 The analysis has found that a purchase price of \$620,000 (excluding GST) does represent good value to Council based on the following:
- the replacement cost provided by International Marina Consultants
 - the condition report provided by Macutex
 - the flexibility afforded to Council by owning the wet berths,
 - the ability to keep the marina operating through the interim period until a new proponent is selected and contracted.
- 4.18 A summary of the analysis is provided below. Refer to Attachment 3 for a copy of the assessment of value undertaken by M21.Advisory.
- 4.19 Analysis of the cost of the wet berths and associated marine infrastructure is as follows:
- The wet berths comprise two main components – the pylons (structure) and floating pontoons.



- While the existing tenant has the right to remove both components, for the purposes of this analysis we have assumed that if it were to exercise this right, it would only remove the floating pontoons. The rationale for this assumption is that there is value in the floating pontoons (due to their condition and the modular nature of the units) whereas the cost of removing pylons would be unrecoverable for the tenant as they would unlikely be able to sell used pylons.

- Council also commissioned Macutex to undertake an asset condition report for SKM that included the pylon and pontoon condition.
- The Macutex report classified the pylons condition as 'good'. It also recommended that non-destructive testing be carried out to confirm the structural integrity of the pylons. This has not been carried out to date.
- Macutex classified the pontoons condition as 'good' and estimated that the remaining useful life of the pontoons is 19 years (as at 2018). This would translate to a 15 year remaining useful life at the expiry of the short term lease in 2022.
- The proposed purchase price of \$620,000 (for the wet berths, fencing and dry stack boat mounts) represents approximately 18% of the replacement cost of the wet berths.

- The remaining items included in the purchase price of \$620,000 (fencing and dry store boat mounts) are currently being mapped (exact locations and quantities). A high level assessment deemed them to be of good condition, with a remaining life as follows. Consequently, based on the above assessment pertaining to the critical wet berths, the items are considered to be a bonus:
 - Fencing and gates – 20 years.
 - Dry Stack boat mounts – 5-10 years.

Options Summarised and Recommendation



- 4.20 Various options for the short-term interim lease arrangement were discussed above. These can be categorised as follows:
- Option 1 – Preferred Option: An interim lease with the current lessee
 - Option 2. An interim lease with another party.
 - Option 3. An interim lease to the current head lease holder with sub-leases directly with Council.
 - Option 4. A Council run marina with subleases directly with Council.
- 4.21 The preferred option, which has been in principle agreed with the tenant following lengthy negotiation, is Option 1: Enter into a new interim lease arrangement for a term of 3 years commencing immediately following the lease expiry in April 2019 with purchase of the wet berths, security gates and fencing and dry store boat mounts at the end of the interim lease if the tenant exits the site, for \$620,000 (excluding GST).
- The alternative is Option 2 - End current lease, purchase new wet berth infrastructure and enter into multiple direct lease arrangements, including a Marina operator.
- 4.22 Option 1, the recommended option, presents the least risk and cost to Council, and enables continuity of service on the St Kilda Marina site through any transition period to a new lease and redevelopment of the site.

5. CONSULTATION AND STAKEHOLDERS

- 5.1 Extensive negotiations have occurred with the current head tenant to determine the current position.
- 5.2 Discussions have been held with sub-tenants who contacted Council officers to request information on the progress of an interim lease arrangements. The conversations were restricted to 1) Council's desire to ensure continuity of operations, 2) a proposal of a 3 year interim lease was made, 3) Discussions are proceeding with the head tenant and 4) Further information should be sought from the head tenant.
- 5.3 The intention is to undertake a public notification process as required by S 190 of the Local Government Act 1989 once the details of the key lease terms have been agreed.

6. LEGAL AND RISK IMPLICATIONS

- 6.1 A risk assessment is provided in Attachment 2
- 6.2 The key lease terms and the interim lease documentation will be developed by the legal representatives of both parties.



7. FINANCIAL IMPACT

7.1 Council will need to agree to a cost of \$620,000 to purchase the wet berths, fencing and dry store boat mounts at the end of the interim lease.

7.2 The estimated cost of legal fees for developing a new interim lease is \$10,000 to \$20,000.

8. ENVIRONMENTAL IMPACT

8.1 The new interim lease will address contemporary requirements for compliance with environmental regulations and standards for Marina and retail operations.

9. COMMUNITY IMPACT

9.1 Nil – it is expected that existing operations will be maintained on the Marina site for the length of the interim lease.

10. ALIGNMENT TO COUNCIL PLAN AND COUNCIL POLICY

10.1 This report contains information that aligns with Strategic Direction 4, “We are growing and keeping our character”. It supports the delivery of the specifically identified Council Plan key outcome, “a city of diverse and distinctive neighbourhoods and places”. The St Kilda Marina Lease is a specific priority in the Council Plan.

10.2 It also aligns with Strategic Directions 3 (We have smart solutions for a sustainable future) and 6 (Our commitment to you) by supporting delivery of the following outcomes:

- A financially sustainable, high-performing and well-governed organisation that puts the community first.
- A city that is adapting and resilient to client change
- A water sensitive city

10.3 St Kilda Marina is a key strategic site within Council's property portfolio and presents a significant opportunity in terms of social, environmental, economic and cultural possibilities for the St Kilda foreshore, the municipality and the State.

11. IMPLEMENTATION STRATEGY

11.1 TIMELINE



- 11.1.1 22 November 2018 - Advise tenant of Council's position on the 3 year lease purchase price of \$620,000 for wet berths, fencing and dry store boat mounts
- 11.1.2 Early December 2018 – Heads of Agreement finalised with tenant (key lease terms)
- 11.1.3 Pre-Xmas 2018 – Grant and Purpose Approval
- 11.1.4 January 2019 – Draft lease with the tenant
- 11.1.5 Early February 2019 – Council Approval of Heads of Agreement and s190 public notification process
- 11.1.6 Early March 2019 – Close s190 submissions and review
- 11.1.7 Mid-March 2019 – Council approval of interim lease and finalise drafting
- 11.1.8 Mid-April 2019 – Governor in Council Approval
- 11.1.9 End April 2019 – Execute interim lease
- 11.1.10 Early May 2019 – Transition to interim lease
- 11.2 **COMMUNICATION**
 - 11.2.1 The tenant will be advised of Council's decision immediately following Council endorsement.
 - 11.2.2 Should a sub-tenant contact Council Officers for information about the status, the sub-tenant will be advised that an in principle agreement has been reached and the head tenant should be contacted for further information.
 - 11.2.3 The community will be advised through the statutory notification process scheduled to occur early next year.

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: 20/15/63

ATTACHMENTS

- 1. Project Approach and Timeline**
- 2. St Kilda Marina Interim Lease Assessment of Options**
- 3. Assessment of Value of Offer for Interim Lease**