



**14.3** PROPOSED TENANCY AGREEMENTS - 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

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**1. PURPOSE**

1.1 To seek Council's approval to commence 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, on the acknowledgment 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, 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.

### 3. RECOMMENDATION

That Council:

- 3.1 Resolves that the statutory procedures be commenced under section 190 of the *Local Government Act 1989 (Vic)* (Act) for the proposed new tenancy agreements (Proposed Tenancy Agreements) summarised below by publishing a notice in the local newspaper inviting interested persons to make a submission under section 223 of the Act:

Tenant	1. Eildon Road Childrens Centre Inc
	2. The Avenue Children's Centre Inc
Premises	3. The Elwood Childrens Centre Inc
	1. 17 Eildon Road, St Kilda
	2. 39 The Avenue, Balaclava
Permitted Use	3. 46 Tennyson Street, Elwood Childcare centre
Commencement Date	1 July 2020
Term	To 31 December 2022
Rent	\$10 per annum plus GST (on-demand) to help support the continuous provision of child care services

- 3.2 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;
- 3.3 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; and



- 3.4 Resolves to hear and consider any submissions received pursuant to section 223 of the Act at a future Council meeting.

#### 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 Every Child, Our Future: 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 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**"), as outlined individually in red in Attachment 1.
- 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 have 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 Leases.



## 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;
- Every Child, Our Future: 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 Council Property Policy provides guidance on entering tenancy agreements. Such principles under Council's Property Policy align with the State Government Leasing Policy.

5.5 An assessment of the proposed key terms along with a recommendation against each of the principles is provided below.

### **Direct Negotiation or Market Process to Secure a New Tenancy Agreement**

#### *Key Principle*

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

#### *Assessment*

5.7 On 4 September 2019, as part of the adoption of the Children's Services Policy, Council endorsed a transitional arrangement for all centres within the portfolio subject to the statutory procedures required under section 190 of the Act.

5.8 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.

5.9 The Tenants are the first to be subject to this transitional arrangement.

#### *Recommendation*

5.10 Officers recommend 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.

### **Term of the Proposed Tenancy Agreements**

#### *Key Principles*

5.11 The term of a proposed tenancy agreement needs to be appropriate to the tenant and the use of the premises.

5.12 A longer-term tenancy agreement may be warranted to support capital investment in the premises or when the use is linked to a specific tenant and the tenant has a history of delivering good outcomes for the community.

5.13 The term of a proposed tenancy agreement should consider the effort required by Council and the future tenant to negotiate a new tenancy agreement.



*Assessment*

- 5.14 The Property Policy allows for a standard term of five (5) years for leases.
- 5.15 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
- 5.16 The three-year transitional period expires in September 2022.
- 5.17 To align all childcare centre leases, an expiry date of 31 December 2022 is deemed appropriate.
- 5.18 Any new funding deed for the Tenants will commence on 1 July 2020.

*Recommendation*

- 5.19 Officers recommend the Proposed Tenancy Agreements to commence from 1 July 2020 and expire on 31 December 2022 subject to the Premises remaining safe for use.
- 5.20 The existing tenancy agreements will expire on 31 May 2020 thus will be in overholding for one month.

**Rent**

*Key Principles*

- 5.21 Council's approach to rental amounts reflects the different purpose of Commercial and Community Organisation (as defined in the Property Policy) tenants and is guided by portfolio targets set by Council.
- 5.22 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.

*Assessment*

- 5.23 Market rental estimates as at March 2019 were:
- \$84,000 (exclusive of GST) for 17 Eildon Road, St Kilda
  - \$110,000 (exclusive of GST) for 39 The Avenue, Balaclava
  - \$122,500 (exclusive of GST) for 46 Tennyson Street, Elwood
- 5.24 Each Tenant currently contributes a nominal rent of \$10 per annum plus GST (on-demand) to support provision of children's services.
- 5.25 Under Council's Interim Childcare Policy, all childcare centres collect subsidies and pay to Council maintenance and infrastructure levies.
- 5.26 On 4 September 2019, Council endorsed a transitional arrangement which considers all centres within the portfolio will be subject to the existing lease terms until decisions are made regarding the implementation of the Children's Services Policy.

*Recommendation*

- 5.27 Given that the Tenants are subject to a transitional arrangement, Officers propose a nominal rent of \$10 per annum plus GST (on-demand), reflected as in-kind contribution, being the discount from market rent value.



## **Outgoings**

### *Key Principles*

- 5.28 It is desirable that tenants pay the running costs (outgoings) of the premises that are associated with their tenancy.
- 5.29 These costs are to be paid directly to the relevant service provider by the tenant, or to Council as a reimbursement for incurring these costs.
- 5.30 Community Organisations, as defined under the Property Policy, may be eligible for an exemption from the payment of all, or some, outgoings considered in line with the Community Funding Policy.

### *Assessment*

- 5.31 Each Tenant currently pays the outgoings associated with operating its services out of the premises.
- 5.32 It is considered reasonable that each Tenant pays all outgoings as with any standard operator/ occupier.

### *Recommendation*

- 5.33 Officers recommend that all outgoings applicable to the premises be paid by each Tenant.

## **Insurance**

### *Key Principles*

- 5.34 Tenants are responsible for insuring any chattels, fixtures or contents within Council property as well as taking out public liability insurance.
- 5.35 It is desirable that Council maintains building insurance for buildings on Council owned or controlled land with the cost of such insurance being reimbursed by the tenant.
- 5.36 Community Organisations may be eligible for an exemption from the payment of all, or some, insurance premiums considered in line with the Community Funding Policy.

### *Assessment*

- 5.37 Each Tenant currently maintains its own Public Liability Insurance policy of \$20M and contents insurance as required.
- 5.38 Council currently covers the cost of building insurance for the subject Premises.
- 5.39 It is considered reasonable that each Tenant pays insurance premiums as with any standard operator/ occupier.
- 5.40 On 4 September 2019, Council endorsed a transitional arrangement which considers all centres within the portfolio will be subject to the existing lease terms until decisions are made regarding the implementation of the Children's Services Policy.

### *Recommendation*

- 5.41 Given the Tenants are subject to a transitional arrangement, Officers propose that insurance for public liability and tenant improvements be obtained by each Tenant and that cost for building insurance continues to be covered by Council.

## **Maintenance**



*Key Principles*

- 5.42 Council is committed to ensuring Council property remains suitable and safe for its intended use, and that the building lifecycle is extended as far as practicable for the benefit of future communities.
- 5.43 In general, tenants are responsible for keeping Council property clean and in good operating condition with full responsibility for the maintenance and renewal of tenant fittings and improvements.
- 5.44 The extent of landlord contribution to structural maintenance and renewal should consider asset ownership, community benefits, capacity of the tenant to pay and nature of the tenancy.

*Assessment*

- 5.45 The Proposed Tenancy Agreements do not fall within the Retail Leases Act (2003).
- 5.46 Council has taken on the responsibility of delivery of Essential Safety Measures inspections and monitoring of all buildings within its portfolio.
- 5.47 Under Council's Interim Childrens Services Policy, all childcare centres collect subsidy and pay to Council maintenance and infrastructure levies.
- 5.48 Council is responsible for building maintenance and renewal and uses the levies paid to fund works.
- 5.49 On 4 September 2019, Council endorsed a transitional arrangement which considers all centres within the portfolio will be subject to the existing lease terms until decisions are made regarding the implementation of the Children's Services Policy.

*Recommendation*

- 5.50 Given the Tenants are subject to a transitional arrangement, Officers recommend that Council continues to be responsible for building maintenance and renewal and that the ongoing maintenance costs are considered under each Tenant's future funding deed with Council as per the existing arrangements.

**Method of Council Support**

*Key Principles*

- 5.51 Council is committed to providing transparent and relevant support through a range of funding mechanisms to Community Organisations aligned with Council Plan priorities, as detailed in the Community Funding Policy.
- 5.52 Council will assess the level of discount/ support required by Community Organisations against the eligibility criteria set by the Community Funding Policy.

*Assessment*

- 5.53 Under Council's Interim Childcare Policy, all childcare centres collect subsidy and pay to Council maintenance and infrastructure levies.
- 5.54 The interim/ existing funding deed for each Tenant will expire on 30 June 2020. Future funding deeds, interdependent with the Proposed Tenancy Agreements, would need to be developed in accordance with the Children's Services Policy.



- 5.55 On 4 September 2019, Council endorsed a transitional arrangement which considers all centres within the portfolio will be subject to the existing lease terms until decisions are made regarding the implementation of the Children's Services Policy.

*Recommendation*

- 5.56 Officers recommend that the Tenants be supported through the following measures to support the provision of childcare services and the implementation of the Children's Services Policy:

- discounted rent of \$10 per annum plus GST (on-demand);
- discounted insurance cost with Council covering the cost of the building insurance; and
- building maintenance service support.

**6. CONSULTATION AND STAKEHOLDERS**

- 6.1 Council will notify the community through a Notice of Intention to Lease to be published in the local newspaper inviting submissions in accordance with statutory procedures.

**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; and
- 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 commence the statutory process, a Notice of Intention to Lease as per section 190 of the Act will be published in Port Phillip Leader newspaper.

12.1.2 Under section 223 of the Act, the submission period will be at least 28 days.

12.1.3 Council is required to hear and consider submissions (if any) at a future Council meeting.

### 12.2 COMMUNICATION

12.2.1 Officers will advise each of the Tenant's representatives of the outcome of the 1 April 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.

**TRIM FILE NO:** 20/13/35

**ATTACHMENTS** 1. Site Plan