





### 3. RECOMMENDATION

That Council:

- 3.1 Rescinds the following resolution made by Council at its meeting held on 6 December 2017 to enter into a Lease with Ice Cream Delights Pty Ltd for the property known as Kiosk 2, 6 Jacka Boulevard, St Kilda.

*That Council:*

*Not having received any submissions in response to the Notice of Intention to Lease Kiosk 2, 6 Jacka Boulevard, St Kilda to Ice Cream Delights Pty Ltd, resolves to conclude the statutory procedures under sections 190 and 223 of the Local Government Act 1989.*

*Authorises the Chief Executive Officer or delegate to execute a new lease agreement on the terms outlined below:*

- *Tenant:* Ice Cream Delights Pty Ltd
- *Premises:* Kiosk 2, 6 Jacka Boulevard, St Kilda
- *Permitted Use:* Operation of a kiosk and an outdoor area including the preparation, service and sale of food and non-alcoholic refreshments
- *Term:* Five (5) years
- *Commencement Rental:* \$70,000 per annum inclusive of GST.

- 3.2 Resolves that the statutory procedures be commenced under Sections 190 and 223 of the Local Government Act 1989 (the Act) for a lease to be granted to *Peter Spiropoulos as trustee for Spiropoulos Family Trust* for Kiosk 2, 6 Jacka Boulevard, St Kilda on the following terms:

*Lessee:* Peter Spiropoulos as trustee for Spiropoulos Family Trust  
*Permitted Use:* Operation of a kiosk and an outdoor area including the preparation, service and sale of food and non-alcoholic refreshments.  
*Term:* Five years  
*Commencing Rental:* \$46,750 inclusive of GST increasing annually by 3.5%.

- 3.3 Directs the public notice of the proposed lease be given under Section 223 of the Act.
- 3.4 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.
- 3.5 Resolves to hear and consider any submissions received pursuant to Section 223 of the Act at a Council meeting to be held on 21 March 2018.



#### 4. KEY POINTS/ISSUES

##### Background

- 4.1 Kiosk 2 at 6 Jacka Boulevard, St Kilda has been in operation for about 30 years and is currently vacant.
- 4.2 The property is located next to the overpass in close proximity to St Kilda Pier, Royal Melbourne Yacht Squadron and St Kilda Sea Baths.
- 4.3 The land at 6 Jacka Boulevard is Crown Land and Council is appointed as Committee of Management.
- 4.4 Like the previous lease an open competitive process was undertaken. An expression of interest (EOI) campaign was run in March 2017.
- 4.5 Submissions to the EOI (Tenderlink No. 14/02/17007), were received from Ice Cream Delights Pty Ltd and Peter Spiropoulos. The rental offered by Ice Cream Delights Pty Ltd was significantly higher than that offered by Peter Spiropoulos, resulting in higher scoring for Ice Cream Delights Pty Ltd. The rental amount was higher than anticipated for the EOI process.

##### Key Information

- 4.6 Consideration for entering into any lease needs to give regard to the Retail Leases Act 2003.
- 4.7 The Local Government Act 1989 requires the Committee of Management to undertake a public advertising process with the rent set to exceed \$50,000 per annum incl GST during the lease term.
- 4.8 A preferred tenderer Ice Cream Delights PTY LTD was nominated by Council officers through delegate report dated August 2017 following the EOI campaign.
- 4.9 Council moved to proceed to lease with Ice Cream Delights PTY LTD at Council meeting on 18 October 2017, with officers subsequently undertaking the statutory process with no submissions and Council resolving to proceed to contract at Council meeting on 6 December 2017.
- 4.10 Subsequent to the 6 December Council meeting Council officers provided lease documentation to Ice Cream Delights PTY LTD for signing.
- 4.11 Upon presentation of documents Ice Cream Delights PTY LTD was reluctant to enter into a lease and requested changes to the terms that had been agreed. Council officers did accommodate minor changes to the documentation where reasonable and aligned with the terms that were advertised and approved as part of the statutory process.
- 4.12 Ice Cream Delights PTY LTD has formally withdrawn their interest for the property ultimately withdrawing from the competitive process prior to signing a lease.



- 4.13 On procurement advice a deed of release and termination has been agreed with Ice Cream Delights PTY LTD dissolving any implied contractual relationships mitigating any risk of retrospective claim.

#### **New Lease Proposal**

- 4.14 Council is in a position to nominate the next best tenderer being Peter Spiropoulos who in the tender process scored superior in operational and managerial context.
- 4.15 Peter Spiropoulos has a long prior history of trading from the Kiosk and has a good track record as the tenant for the previous ten years.
- 4.16 Officers have verbally confirmed Peter Spiropoulos' interest to enter into a lease for the property in accordance with the tender submission received in April 2017.
- 4.17 The rent proposed within the tender is set to exceed \$50,000 per annum in years 3,4 & 5 activating the requirement to commence another statutory process.

### **5. CONSULTATION AND STAKEHOLDERS**

- 5.1 The EOI process has been conducted in accordance with Council Procurement Policy, Council Property Policy and the State Government Policy for the leasing of Crown land.
- 5.2 The Leasing process is being undertaken in accordance with S190 and S223 of Local Government Act 1989 inviting the public to comment on the proposal.

### **6. LEGAL AND RISK IMPLICATIONS**

- 6.1 The proposed tenant holds the required public liability insurance equal to that specific value in the lease terms and conditions.
- 6.2 Documenting the respective property responsibilities and obligations through a legally binding lease conforms to legislative requirements mitigates risk.
- 6.3 The proposed lease is subject to approval by the Minister for Energy, Environment & Climate Change. The Minister may decide to modify aspects of the proposal if considered appropriate.
- 6.4 Council officers have provided a deed of release and termination to Ice Cream Delights PTY LTD dissolving any implied contractual relationships mitigating any risk of retrospective claim at a later date.

### **7. FINANCIAL IMPACT**

- 7.1 This proposal has no impact to the capital budget.
- 7.2 Rental income from Kiosk 2 was anticipated within the 2017/2018 budget. Due to the delay in procuring a tenant to pay rental for the facility, the void period of approximately 6 months has reduced the forecasted rental income by approximately \$33,000.



- 7.3 The proposed commencement rental is \$46,750 per annum inclusive of GST (with fixed annual increments of 3.5%)
- 7.4 The amount of rent being proposed by the tenant is at the expected level and is expected to be sustainable by the tenant.
- 7.5 The rental tendered by Ice Cream Delights was \$70,000 per annum inclusive of GST.

## **8. ENVIRONMENTAL IMPACT**

- 8.1 There is no anticipated environmental impact. The proposed tenant will provide internal improvements to the facility.
- 8.2 The proposed tenant will be required to engage in activities to promote sustainable behaviours including minimising waste from operations.

## **9. COMMUNITY IMPACT**

- 9.1 The kiosk will continue to provide services to the visitors to the foreshore area.
- 9.2 There is no negative service impact to the community with the lease proposal.
- 9.3 The leasing of the kiosk to Peter Spiropoulos will continue to provide a local business opportunity and support the visitors offer along the foreshore.
- 9.4 The St Kilda Foreshore is an iconic destination and a continued provision of amenity will ensure patronage to the area will continue.
- 9.5 The Kiosk provides amenity to those patrons visiting The Esplanade Markets and the foreshore area in general. The proposed offering within Kiosk 2 is different to that of the neighbouring Kiosk 3.

## **10. ALIGNMENT TO COUNCIL PLAN AND COUNCIL POLICY**

- 10.1 The EOI process and recommendation of granting a new lease for Kiosk 2, 6 Jacka Boulevard, St Kilda align with the Strategic Direction 6 in the Council Plan 2017-2027 through supporting:
  - Transparent governance and an actively engaged community
  - A financially sustainable, high performing and community focused organisation.
- 10.2 The EOI campaign was undertaken in accordance with best practices and aligning with Council Policy. Officers have however identified there is a need to review process to try and create efficiencies to avoid protracted negotiations with prospective property tenderers, in turn resulting in positive economic outcomes for the community.



## 11. IMPLEMENTATION STRATEGY

### Timeline

- 11.1 A preliminary heads of agreement to lease has been signed by Peter Spiropoulos subject to completion of statutory provisions of Local Government Act 1989.
- 11.2 A Notice of Intention to Lease will be published in "The Age" newspaper as soon as reasonably possible following decision.
- 11.3 Lease documentation will be prepared by officers and signed by Peter Spiropoulos subject to completion of statutory provisions of Local Government Act 1989.
- 11.4 Any submissions will be considered by Council officers with submissions to be heard at Council meeting 21 March 2018.
- 11.5 Lease documentation to be executed by Council delegate following of submissions (if any).

### Communication

- 11.6 Council ran a comprehensive leasing process to procure a suitable tenant however the preferred tenderer withdrew from the negotiations at an advanced stage.
- 11.7 Officers have approached the second preferred tenderer and agreed to proceed to a lease (pending outcome of statutory process).
- 11.8 Council is required to undertake a second statutory process in accordance with Local Government Act 1989.
- 11.9 An "intention of notice to lease" will be published in The Age newspaper as soon as practically possible accompanied by a notice on the Council website.
- 11.10 Peter Spriopoulos will be notified of the outcome from the process and is being kept up to date.

## 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:** 20/09/19

**ATTACHMENTS** Nil