



**12.1** **ST KILDA MARINA INTERIM LEASE**

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

**PREPARED BY:** **JOANNE MCNEILL, MANAGER ASSET MANAGEMENT & PROPERTY**

**1. PURPOSE**

- 1.1 To seek Council approval to grant the proposed short term three-year lease for the St Kilda Marina with Australian Marinas (A'Asia) Pty Ltd to support continued operations of the site whilst work is undertaken to procure a new long-term lease and seek Governor in Council approval to the grant of the lease.

**2. EXECUTIVE SUMMARY**

- 2.1 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.
- 2.2 The work to procure a new long-term lease arrangement for the site is proceeding generally in line with the Project Approach and associated timeline approved in a Council Meeting on 7 February 2018.
- 2.3 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.
- 2.4 Council officers undertook an assessment of the different options available when considering the approach to interim arrangements for the site.
- 2.5 The assessment included consideration of such things as assessment of the type of lease required and impact of legislative changes since the original lease was agreed 50 years ago, who (current tenant, another operator, council) is best placed to achieve the objectives for the short-term lease (outlined in item 4.7), length of lease, rent, ownership of assets, risk, business continuity and transition requirements.
- 2.6 Based on the findings of the options assessment, Council approved Officers entering into direct negotiations with the current tenant, Australian Marinas, for a short-term lease.
- 2.7 While it was found that there were possible alternative operators able to take on the operations of the marina as an interim measure, the key factor in deciding to enter into a short-term arrangement with the current operator was the ownership of key marina infrastructure by the tenant, required for the continued operation of the marina.
- 2.8 The premise of the proposed short-term lease is essentially to keep existing marina and tenant operations going while a long-term lease is resolved.
- 2.9 While Council would have preferred an increased rent more closely aligned with the current estimated market rental for the site (circa \$800,000 per annum) and a shorter length of term, the proposed key terms are a negotiated, in principle agreed outcome with the current tenant, Australian Marinas, that is considered to minimise risk for all parties, secure continuity of operations in the interim and best support the long-term vision for the Marina.



- 2.10 Whilst a shorter term of two years would have been preferred, the negotiated three-year term is considered to not adversely affect the long-term leasing timeline or outcome. The timeline identifies a decision on the long-term lease in mid 2020 which will be over a year into the new lease, noting that this timeline is already under pressure due to the complexity of the planning and procurement process. The long-term tenant will then need to undertake detailed planning and a development plan approvals process that would take up most of the remaining term.
- 2.11 Given the asset ownership issues and the short term of lease, a competitive process would be unlikely to achieve a full market rent. This is supported by recent market intelligence. The procurement process for a new long-term lease would need to be put on hold whilst a competitive process was undertaken for a short-term lease, to ensure the best possible result for the long term.
- 2.12 If Australian Marinas did not participate in a competitive process for a new short-term lease, or was not successful, a new short-term tenant would either need to negotiate purchase of the marina assets from Australian Marinas, or purchase new infrastructure.
- 2.13 It is unclear how the existing or new marina assets would be dealt with at the end of a short-term lease if there was a change in management, whether the tenant, having purchased either new or the existing assets, would then remove them or sell them to the new long-term tenant, and if so, on what terms.
- 2.14 In addition, it is likely that a competitive process would potentially take up to six months to complete, with the wet berths and other infrastructure to be replaced after this date, also likely taking six months or more, taking up a significant portion of the proposed short-term lease period. This timeline brings into question the viability of a short-term lease to bridge the gap between the current lease and a long-term lease.
- 2.15 An assessment of the replacement costs and timeline for replacing the wet berths (owned by the current tenant) identified that any benefits gained from an increase in rent through a different management arrangement, would be lost through the need to close down the marina for a significant period of time and replace the existing wet berth and associated infrastructure with new.
- 2.16 Another consideration was the level of disruption for current users of the marina and associated facilities that would occur with a change in management of the site in the short term. At least one business (the Marina) and key pieces of infrastructure would need to be set up, with the potential for some or all other existing businesses also needing establishment. Foreseeably, there may be another change in management two years later, depending on the length of the short-term lease.
- 2.17 No significant changes to the site or management arrangements are proposed as part of the short-term lease. Significant changes are being considered for the site as part of the long-term future of the site. Officers believe such improvements are therefore best left to be resolved as part of that long-term lease process.
- 2.18 Council resolved on 6 February 2019 that statutory procedures be commenced under Section 190 of the Local Government Act 1989 (Act) for the proposed interim lease with the existing tenant, Australian Marinas (A/Asia) Proprietary Limited for the St Kilda Marina.
- 2.19 Council also resolved to hear and consider any submissions received pursuant to Section 223 of the Local Government Act 2019 at a Council meeting to be held in March 2019.



- 2.20 In total, eight submissions were received. The breakdown is as follows:
- Seven submissions were received by the end of the consultation period on 12 March 2019, the content of one was clarified on the night when submissions were heard.
  - Six people spoke in support of their written submission with two speaking on behalf of one of the submissions.
  - An additional two parties spoke to the St Kilda Marina interim lease agenda item on the night. One spoke through a representative and supported their presentation with an e-mail. For the sake of this report this is termed a submission.
- 2.21 Key themes raised in the submissions included concern over: the length of term, the sub-market rental amount, direct negotiation with current tenant, not following the legislative process, the current conditions of the buildings and infrastructure generally and particularly the wet berths that are proposed to be purchased, inadequate information being made available during the submission period and its impact on the validity of the process.
- 2.22 A sub-tenant to the current and proposed Head Tenant made a submission surrounding the nature of the proposed interim lease suggesting the inclusion of controls to restrict sub-tenancy rents to market rent; clauses to ensure maintenance and repair across the site; and limiting works associated with the new tender to avoid interference with ongoing marina activities during the interim lease period. The sub-tenant also suggested that Council work with the head tenant and stakeholders to maintain or improve activity on the site through the removal of fencing and opening the peninsula to facilitate community access.
- 2.23 One proposal contained key terms that could form the basis for a proposal if Council were to consider a different approach. Commercial in-confidence information within this submission has been redacted on request of the submitter from the report but will be made available to Councillors.
- 2.24 One proposal was made in support of the current interim lease by the proposed tenant, Australian Marinas.
- 2.25 Council has three options when considering the proposed short-term lease with the current tenant:
1. Approve the proposed short-term lease.
  2. Abandon the process and instruct officers to negotiate further with the current tenant.
  3. Abandon the process and instruct officers to undertake a different and most likely competitive process.
- 2.26 On review of the submissions received, the Officer recommendation is that there remains a compelling reason to support the proposed short term lease with the current tenant (Option One) through direct negotiation given the asset ownership issues and the existing business arrangements that support the continued use of the site in the short term, with the understanding that a competitive process will be undertaken soon for a long-term lease, which gives all interested parties an opportunity to put in a bid for the site.



### 3. RECOMMENDATION

That Council:

- 3.1 Authorises the Chief Executive Officer or his delegate to execute a new lease agreement on the terms outlined below:
  - 3.1.1 Proposed Tenant: Australian Marinas (A/Asia) Proprietary Limited, the existing St Kilda Marina Lease Holder.
  - 3.1.2 Demised Premises: St Kilda Marina
  - 3.1.3 Permitted Use: Marina
  - 3.1.4 Commencement Date: 1 May 2019 (to follow on from the current lease expiry)
  - 3.1.5 Term: 3 years
  - 3.1.6 Rental: \$134,000 per annum plus 7% of gross receipts associated with car parking, boat launching, rental of boat pens, parking of cars with trailers and dry storage rentals (subject to deductions).
- 3.2 Seeks approval from the Governor in Council to the grant of the lease, in accordance with the St Kilda Land Act 1965.

### 4. KEY POINTS/ISSUES

#### Background

- 4.1 The St Kilda Marina is located at 42 A - E Marine Parade, Elwood. It was established in 1969. The Marina occupies approximately 8Ha (80,000 m<sup>2</sup>) 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 The work to procure a new long-term lease arrangement for the site is proceeding generally in line with the Project Approach and associated timeline approved in a Council Meeting on 7 February 2018 (provided in Attachment 1 for reference).
- 4.4 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.



### **Legislative Context**

- 4.5 The St Kilda Marina is governed by its own piece of legislation, the St Kilda Land Act 1965. This Act enabled the development of a marina on the site, and the grant of the existing lease. Under the Act the Council is empowered to grant a lease for the purpose of a marina (as defined in the Act) for a term of up to 50 years with the approval of the Governor in Council given on the recommendation of the Minister responsible for the Act (currently the Minister for Energy, Environment and Climate Change).
- 4.6 A number of other pieces of legislation also have implications for the site. These include, but are not limited to, the Crown Land Reserves Act 1978, the Marine and Coastal Act 2018 and the Retail Leases Act 2003 (RLA).
- 4.7 The St Kilda Land Act 1965 is a site-specific Act relating solely to the St Kilda Marina land. It authorises the leasing of the land subject to the Act and a lease for this site must comply with those requirements.
- 4.8 Because these special leasing powers apply to the St Kilda Marina land, the generic leasing powers contained in the Crown Land (Reserves) Act 1978 are not applicable.
- 4.9 Other than the leasing power, all other provisions of the Crown Land (Reserves) Act 1978 do apply to the St Kilda Marina land. For example, the role which council undertakes in managing the land is as a committee of management under the Crown Land (Reserves) Act 1978.

### **Short Term Lease Approach**

- 4.10 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.
- 4.11 At a Council Meeting on 13 September 2016, Council 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.
- 4.12 Following the assessment of possibilities for the short-term lease arrangement it was determined that market value was not an opportunity that should reasonably be pursued. Rather, that the focus should be on minimising risk, ensuring continuity of the site and supporting full focus on the process to secure a new long-term lease, with recognition that the opportunity for significant change on this site is through the work underway to develop a new long-term lease that delivers Council's vision and objectives for the site.
- 4.13 A set of objectives were developed to frame the development of a short-term lease. These were:
  - Provide continuity for the function of the site whilst the leasing process is underway.
  - Minimise disruption to the site.
  - Minimise change in the short term with terms based on the existing lease.
  - A rental amount that does not disadvantage either party.



- Facilitates the project requirements for procuring a new long-term lease (site visits, transition and handover requirements, if applicable).
- 4.14 Council undertook an assessment of the different options available when considering the approach to interim arrangements for the site. This involved engagement with Council's State Government partners and advice from legal, probity and commercial advisors. This also included market sounding and an assessment of whether there were viable alternatives to the current operators.
- 4.15 The options assessment included consideration of such things as assessment of the type of lease required and impact of legislative changes since the original lease was agreed 50 years ago, who (current tenant, other operator, council) is best placed to achieve the objectives for the short-term lease (outlined in 4.7), length of lease, rent, ownership of assets, risk, business continuity and transition requirements.
- 4.16 Whilst it was found that there were possible alternative operators able to take on the operations of the marina as an interim measure, the key factor in proposing to enter into a short-term arrangement with the current operator was the ownership of key marina infrastructure by the tenant, required for the continued operation of the marina, that would be removed in the short term without the proposed lease.
- 4.17 Under the existing lease agreement, the tenant owns essential key marina infrastructure and is entitled to remove this infrastructure at the end of the current lease, which includes the wet berths, security gates and fencing and dry store boat mounts. The tenant had advised that they intended to remove the infrastructure at the end of the lease and that they had a buyer for the wet berths.
- 4.18 If Australian Marinas did not participate in a competitive process for a new short-term lease, or was not successful, a new short-term tenant would either need to negotiate purchase of the marina assets from Australian Marinas, or purchase new infrastructure.
- 4.19 Under this scenario, it is unclear how the existing or new marina assets would be dealt with at the end of a short-term lease if there was a change in management, whether the tenant, having purchased either new or the existing assets, would then remove them or sell them to the new long-term tenant, and if so, on what terms.
- 4.20 An assessment of the replacement costs and timeline for replacing the wet berths identified that any benefits gained from an increase in rent through a different management arrangement, would be lost through the need to close down the marina for a significant period of time to replace the existing wet berth and associated infrastructure with new.
- 4.21 Another consideration was the level of disruption for current users of the marina and associated facilities that would occur with a change in management of the site in the short term. At least one business (the Marina) and key pieces of infrastructure would need to be set up, with the potential for some or all other existing businesses also needing establishment. Foreseeably, there may be another change in management two or three years later, depending on the length of the short-term lease.
- 4.22 It was considered that there is a compelling reason to support a direct negotiation with the current leaseholder for a short-term lease given the asset ownership issues and the long standing existing business arrangements that support the continued use of the site in the short term, with the understanding that a competitive process will be undertaken soon for a long-term lease, which gives all interested parties an opportunity to put in a bid for the site.



**Short Term Lease Key Terms**

4.23 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. 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
- Appropriate 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.

4.24 The proposed key terms for a short-term lease with the current operator are outlined in the table below.

Key Term	Description
Proposed Tenant	Australian Marinas (A/Asia) Proprietary Limited
Demised Premises	St Kilda Marina
Permitted Use	Marina
Commencement Date	1 May 2019 To immediately follow expiry of existing lease
Term	3 years Agreed on the basis that this term supports both the tenant and sub-tenant short term requirements from the site, and the requirements of the project works being undertaken by Council for a new long-term lease arrangement.
Rental	\$134,000 per annum plus 7% of gross receipts associated with car parking, boat launching, rental of boat pens, parking of cars with trailers and dry storage rentals.
Maintenance and Renewal	The agreement has been revised to reflect the application of the Retail Leases Act where the landlord (Council) is responsible for the structure of and fixtures, and the plant and equipment at the Marina.



Key Term	Description
Essential infrastructure and ownership of assets	<p>As per current lease conditions, Tenant owns wet berth infrastructure and may remove it at the 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 for the sum of \$620,000, if Australian Marinas exits the site, for the purposes of securing continuity of operations until such time as the site is redeveloped.</p>
Access to site	<p>Access for site visits by those interested in tendering (effectively coordinated with all parties)</p> <p>Allowance for a smooth transition, if required</p>

**Rationale for proposed key terms**

- 4.25 The premise of the proposed short-term lease is essentially to keep existing marina and tenant operations going while a long-term lease is secured through a competitive process.
- 4.26 Whilst Council would have preferred an increased rent more closely aligned with the current estimated market rental for the site (circa \$800,000 per annum) and a shorter length of term, the proposed key terms are a negotiated, in principle agreed outcome with the current tenant, Australian Marinas, that is considered to minimise risk for all parties, secure continuity of operations in the interim and best support the long-term vision for the Marina.
- 4.27 Whilst a shorter term of two years would have been preferred, the negotiated three-year term is considered to not adversely affect the long-term leasing timeline or outcome. The timeline identifies a decision on the long-term lease in mid 2020 which will be over a year into the new lease, noting that this timeline is already under pressure due to the complexity of the planning and procurement process. The long-term tenant will then need to undertake detailed planning and a development plan approvals process that would take up most of the remaining term.
- 4.28 Given the asset ownership issues and the short term of lease, a competitive process would be unlikely to achieve a full market rent. This is supported by recent market intelligence. A competitive process for a short-term lease would potentially take six months, noting that the timeline is dependent on the number of submitters and the complexity of the new negotiated deal. The procurement process for a new long-term lease would need to be put on hold whilst a competitive process was undertaken for a short-term lease.
- 4.29 To resolve the asset ownership issues, an alternative operator sourced through a competitive process would either need to purchase the wet berth and other marina assets from Australian Marinas (which may not be an option) or source new wet berth and associated assets, which would require a lead time of 6 months or more and likely shut down of the site whilst the assets are removed and replaced.
- 4.30 With a competitive process likely taking up to six months to complete and with the wet berths and other infrastructure to be replaced after this date (if the existing



infrastructure cannot be purchased by the new operator) also likely taking six months or more, there would likely be significant business interruption over an extended period and significant additional cost to Council associated with the additional procurement process, as well as possible reduced market attractiveness for the long term lease. This timeline brings into question the viability of a short-term lease to bridge the gap between the current lease and a long-term lease.

- 4.31 An assessment of the replacement costs and timeline for replacing the wet berths (owned by the current tenant) identified that any benefits gained from an increase in rent through a different management arrangement, would be lost through the need to close down the marina for a significant period of time, undertake a competitive process and replace the existing wet berth and associated infrastructure with new.
- 4.32 Another consideration was the level of disruption for current users of the marina and associated facilities associated with a change in management of the site in the short term with all of the business set up that would be required, with another possible change in management three years later.
- 4.33 No significant changes to the management arrangements for the site are proposed as part of the short-term lease. Significant changes are being considered for the site as part of the long-term future of the site. Officers believe such improvements are therefore best left to be resolved as part of that long-term lease process.

#### **Leasing process**

- 4.34 Officers have been working closely with our State Government partners and legal advisors to ensure that the proposed short-term lease complies with all relevant legislation and Council is currently working through a process of steps, agreed with the Department of Environment, Land, Water, Planning (DELWP), with the objective of obtaining Governor in Council approval to the short-term lease.
- 4.35 The following process is being followed for the approval of a short-term lease:
  - Council works in partnership with DELWP to develop the leasing approach, including approach to key terms.
  - Council enters into direct negotiation with the current tenant (Australian Marinas) and agrees key terms.
  - Feedback is provided by DELWP on the key terms.
  - Council advertises its intention to enter into a three-year short-term lease with Australian Marinas and invites submissions from the community.
  - Submissions are received and considered at a council meeting.
  - Council makes a decision about the proposed short-term lease at a second council meeting.
  - Final unexecuted lease document approved by the Council is forwarded to DELWP to arrange for Ministerial consideration.
  - Subject to Minister being satisfied with the lease, the Minister recommends to the Governor in Council that the lease be approved including its terms and conditions.
  - Governor in Council consideration of the lease.



- Subject to Governor in Council approving the lease, the lease is returned to Council for execution by the Council and the tenant.

### **Public Notice and Hearing of Submissions**

- 4.36 While there is not a legislative requirement to do so, Council undertakes the public notice process under S 190 of the Local Government Act 1989 for all its leases on Crown land. This includes the proposed interim lease of the St Kilda Marina.
- 4.37 In order to comply with the requirements of the Local Government Act 1989, a public notification process must be undertaken in line with Section 190 and S223 to notify and hear any submissions from the public about the intention to lease the St Kilda Marina site on a short term (interim) basis to the current tenant.
- 4.38 Section 190 of the Local Government Act 1989 requires that Council must, at least 4 weeks before the lease is made, publish a public notice of the proposed lease.
- 4.39 A person has a right to make a submission under 223 on the proposed lease. Section 223 of the Local Government Act 1989 requires Council to publish a public notice that:
- Details the matter.
  - Provides a time by which submissions in response to the matter are to be submitted, being a date which is not less than 28 days after the date on which the public notice is published.
  - States that a person making a submission is entitled to request in the submission that the person wishes to appear in person, or to be represented by a person specified in the submission, at a meeting to be heard in support of the submission.
- 4.40 Council resolved on 6 February 2019 that statutory procedures be commenced under Section 190 of the Local Government Act 1989 (Act) for the proposed interim lease with the existing tenant, Australian Marinas (A/Asia) Proprietary Limited for the St Kilda Marina.
- 4.41 Council also resolved to hear and consider any submissions received pursuant to Section 223 of the Local Government Act 2019 at a Council meeting to be held in March 2019.

### **Summary of Submissions Received**

- 4.42 Seven submissions were received. A summary of the key themes from these submissions is provided in Attachment 2 with an Officer response for each.
- 4.43 The full submissions are provided Attachment 3. One submission has commercially sensitive material that, on request of the submitter, has been redacted.

### **Options**

- 4.44 Council has three options when considering the proposed short-term lease with the current tenant:
1. Approve the proposed short-term lease – Recommended.
  2. Abandon the process and instruct officers to negotiate further with the current tenant.



3. Abandon the process and instruct officers to undertake a different and most likely competitive process.
- 4.45 Option Two, abandon current process and undertake further negotiation of terms with the current tenant, would depend on the tenant's willingness to negotiate further the terms that have been in principle agreed to date. There is no guarantee that a better deal could be negotiated.
- 4.46 Officers think it is unlikely that a significant change in the terms could be achieved given the situation with the ownership of the assets, the short-term nature of the lease and prior negotiations. Another outcome of Option Two is that it could result in the current tenant withdrawing or changing their offer, including the withdrawal of the offer of sale of the wet berths and other infrastructure.
- 4.47 A new public notice process under S 190 of the Local Government Act 1989 would be required if new terms were negotiated, which would likely take at least three months, including a one-month public notification period, causing delays in finalising the short-term lease, as well as diverting resources from the long-term leasing process.
- 4.48 Option Three, would most likely require a competitive process to secure a short-term lease, particularly in these circumstances where the details of the current proposal have been made public (through the current public notification process). This process would most likely take six months to complete.
- 4.49 Work on the long-term lease would need to be placed on hold under Option Three and the current lease would go into overholding, causing significant uncertainty for the tenant, sub-tenants, boat owners, boat ramp and other users of the marina. If the current tenant was not successful, a transition from one operator to another would need to be effected, which would take additional time to implement once the competitive process was complete. Any short-term lease would need to resolve the issue of ownership of the wet berths and other marina infrastructure by the current tenant.
- 4.50 On review of the submissions received, the Officer recommendation is that there remains a compelling reason to support the proposed short term lease with the current tenant through direct negotiation given the asset ownership issues and the existing business arrangements that support the continued use of the site in the short term, with the understanding that a competitive process will be undertaken soon for a long-term lease, which gives all interested parties an opportunity to put in a bid for the site.

## **5. CONSULTATION AND STAKEHOLDERS**

- 5.1 This report is to consider submissions received as part of the public notification process required by S.190 of the Local Government Act 1989.
- 5.2 This process enables consultation with key stakeholders and other interested parties to inform the development of a new long-term lease.

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

- 6.1 A short term interim lease arrangement with the current tenant based on the proposed key lease terms was determined through an extensive risk assessment process as presenting least risk to the continuity of the site while the project works proceed.
- 6.2 The interim lease documentation was developed by the legal representatives of both parties. The new lease takes the form of the original lease with a variation page



attached to define the deviations from the original lease, plus covering pages providing definitions and an execution section page.

**7. FINANCIAL IMPACT**

- 7.1 The proposed rental income is \$134,000 per annum plus 7% of gross receipts associated with car parking, boat launching, rental of boat pens, parking of cars with trailers and dry storage rentals.
- 7.2 This is a sub-market rent; however, increased from the previous rent to support the principle that neither party should be disadvantaged by the provisions in the interim lease.
- 7.3 Council has agreed, subject to the short-term lease, to purchase the wet berths, fencing and dry store boat mounts at the end of the interim lease for \$620,000 should the current tenant be required to exit the site. This is to enable continuity of the site if and while it transitions to a new lease arrangement. Council may opt for the new long-term tenant to purchase the equipment as part of the long-term lease agreement.
- 7.4 The assets to be purchased have been assessed as being in good condition with significant useful life. An independent assessment of the value of the assets identified that the agreed sum provided best value for Council.
- 7.5 The estimated cost of legal fees for developing a new interim lease is \$10,000 to \$20,000.

**8. ENVIRONMENTAL IMPACT**

- 8.1 No impact or change from current arrangements

**9. COMMUNITY IMPACT**

- 9.1 It is expected that existing operations will be maintained on the Marina site for the length of the interim lease so the impact on the community is nil.

**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 (based on recommended approach)

- Mid April 2019 – formal briefing to Minister of the final lease arrangements to instigate Governor in Council process, as required by the St Kilda Land Act.
- Mid April to Mid May 2019 – Governor in Council process to approve interim lease arrangement.
- May 2019 – Execute lease.

### 11.2 COMMUNICATION

- The tenant will be advised of Council's position immediately following the Council Meeting.
- Should a sub-tenant contact Council Officers for information about the status, the sub-tenant will be advised of Council's position following the Council Meeting, with a suggestion to contact the head tenant for further information about the lease.
- Updates are being provided as necessary to a database of interested residents, marina users, community, State Government and other key stakeholders.

## 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
2. Response to Submissions
3. Full Submissions