



**14.5** **PROPOSED LEASE WITH PORT MELBOURNE YACHT CLUB  
- COMPLETION OF STATUTORY PROCEDURES**

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

**PREPARED BY:** **YASMEEN ALI, PROPERTY ADVISOR**

**1. PURPOSE**

- 1.1 To seek Council's approval to complete the statutory procedures under the *Local Government Act 1989 (Vic) (Act)* and to finalise the proposed lease with the Port Melbourne Yacht Club (PMYC) for the premises at 38 Beach Street, Port Melbourne.

**2. EXECUTIVE SUMMARY**

- 2.1 The PMYC is located on Crown land for which the City of Port Phillip (CoPP) is the Committee of Management. The PMYC is one of the oldest sailing clubs in Victoria and has been operating on the Port Melbourne foreshores since 1889.
- 2.2 The short-term lease between the City of Port Phillip and the PMYC expires on 31 January 2019. The lease will then go into overholding however the current terms and conditions of the existing lease will prevail during this period.
- 2.3 The specified permitted use of the lease is for a yacht club, boat storage and club activities including the operation of a function room.
- 2.4 A new lease is proposed for the PMYC, to support their current tenure on this site and delivery of agreed community benefits.
- 2.5 Under the proposed 10-year lease, officers propose a discounted rental of \$8K per annum plus GST representing a significant subsidy of the market rental valuation of \$90K (2018). This means the lease falls outside the Retail Leases Act and enables Council to assign facility maintenance and renewal costs to PMYC in line with historic arrangements.
- 2.6 It is considered appropriate for facility maintenance and renewal costs to remain with the PMYC, reflecting the fact that the club have constructed the building and have historically undertaken all maintenance and repairs.
- 2.7 Council resolved to commence statutory procedures under the *Local Government Act 1989* at its meeting on the 21 November 2018. A "Notice of Intention to Lease" was published on the 8 December 2018 inviting submissions from interested persons. Council has not received any submissions to the proposal and it is recommended that procedures be concluded and the proposed lease offered to PMYC.



### 3. RECOMMENDATION

That Council:

- 3.1 Not having received any submissions in response to the Notice of Intension to Lease 38 Beach Street, Port Melbourne to PMYC, resolves to conclude the statutory procedures under Section 190 and 223 of the *Local Government Act 1989*.
- 3.2 Resolves to authorise the Chief Executive Officer or delegate to execute a new lease agreement including but not limited to the following terms below:
  - 3.2.1 Proposed Tenant: Port Melbourne Yacht Club (PMYC).
  - 3.2.2 Demised Premises: 38 Beach Street, Port Melbourne.
  - 3.2.3 Permitted Use: Sail club and associated activities including the operation of a function room.
  - 3.2.4 Commencement Date: 1 February 2019.
  - 3.2.5 Term: 10 Years.
  - 3.2.6 Rent \$8K per annum plus GST at commencement of the lease, representing a significant subsidy of the market rental valuation of \$90K.
  - 3.2.7 Community benefits:
    - Delivering an annual active learn to sail program for adults and children.
    - Training of volunteers in power boat handling and rescue work – as required.
    - Running “Discover Sailing” days each year to introduce sailing to the public.
    - Provide access for community groups to the clubrooms.
  - 3.2.8 Maintenance: All maintenance, repairs and asset renewal to be undertaken by PMYC.
  - 3.2.9 PMYC Capital investment \$1.625M within the first 5 years, with this amount contingent on a funding contribution from Council and State Government.



#### 4. KEY POINTS/ISSUES

##### Background

- 4.1 The PMYC occupies part of the Port Melbourne, Albert and Middle Parks Foreshore Reserve at 38 Beach Street Port Melbourne. The land is Crown land temporarily reserved for public purposes. Please refer to Attachment 1 for a plan of the land.
- 4.2 The PMYC is one of the oldest sailing clubs in Victoria with a continuous history since 1889. It has always operated as a community based volunteer club.
- 4.3 The PMYC has a current membership of approximately 200, with current storage available for 134 yachts. There currently 4 empty bays.
- 4.4 The PMYC has a membership that includes: active sailors, volunteers that help run the sailing events, associate members that can use the club for relaxation, and a growing community of 'paddle boarders'.
- 4.5 Apart from the members, the clubrooms are used by some community groups. As PMYC does not have a secure public access this requires a member to be present (usually the member will be a member of the group using the facility).
- 4.6 The PMYC has constructed the existing clubrooms and other existing infrastructure over time with funds from club membership.
- 4.7 To lease a property for any period greater than 10 years or when the market rental is greater than \$50,000 per annum, Council must first follow the procedures set out in Section 190 and 223 of the *Local Government Act 1989*. The procedures allow for any person to make a submission and for any submission to be considered by Council before a lease can be granted. The market valuation for site is \$90K per annum plus GST.
- 4.8 Councillors resolved to commence statutory procedures at meeting of Council on the 21 November 2018.
- 4.9 A "Notice of Intention to Lease" was published in the Port Phillip Leader on the 8 December 2018 in accordance with Section 190 of the Act, and inviting public submission in accordance with Section 223 of the Act. Submissions under Section 190 of the Act closed on the 11 January 2019.
- 4.10 Future plans for the site, include a separate visitor entrance and repairs to the upper and lower deck. The club has committed to Capital investment \$1.625M within the first 5 years, with this amount contingent on a funding contribution from Council and State Government.
- 4.11 The City of Port Phillip is the Committee of Management in accordance with the Crown Land (Reserves) Act 1978 for the land. This enables Council to lease the land as landlord. The maximum term for a lease under the CRLA is 21 years.

##### Current Lease



- 4.12 A 21-year lease between PMYC and the Port of Melbourne Authority expired in December 2012. A short-term lease is in place while a new lease is finalised. The short-term lease expires on the 31 January 2019.
- 4.13 The lease will then go into overholding however the current terms and conditions of the existing lease will prevail during this period.
- 4.14 Under the terms of the current lease the all maintenance, repairs and asset renewal are undertaken by PMYC.

**Key Terms - Proposed Lease**

<b>Term</b>	10 years
<b>Rent</b>	\$8K per annum plus GST- This represents a significant discount of the market rental valuation of \$90K per annum plus GST. The discount represents a subsidy to PMYC for provided community benefits and capital contribution.
<b>Outgoings</b>	All Outgoings to be paid by the PMYC.
<b>Maintenance</b>	All maintenance, repairs and asset renewal to be undertaken by PMYC as per the current arrangement.
<b>Capital Investment</b>	The club has proposed a Capital investment of \$1.625M within the first 5 years of the new lease, contingent on a funding contribution from Council and State Government.
<b>Term and Conditions of the Lease</b>	The new lease will be based on the same terms and conditions as the previous short-term agreement.

**5. CONSULTATION AND STAKEHOLDERS**

- 5.1 DELWP have been consulted on the short-term lease currently in place and on the proposed longer-term arrangements.
- 5.2 On the 21 November 2018 Council resolved to commence the statutory procedures under Section 190 of the Act for the proposed lease by publishing a notice in the Port Phillip Leader inviting interested persons to make a submission under Section 223 of the Act.

**6. LEGAL AND RISK IMPLICATIONS**

- 6.1 The proposed tenant holds the required Public Liability Insurance equal to that specific value proposed in the lease.
- 6.2 Documenting the respective property responsibilities and obligations through a lease which conforms to legislative requirements aims to mitigate risk.

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- 6.3 The proposed key terms aim to provide clarity of Permitted Use and of roles and responsibilities for building maintenance.
- 6.4 The proposed lease is subject to approval by the Minister for Environment, Climate Change and Water.

### 7. FINANCIAL IMPACT

- 7.1 The market rental of \$90,000 per annum plus GST is based on the location conditions and type of property and the permitted use.
- 7.2 PMYC will be responsible for the outgoings and operation costs associated with the lease.
- 7.3 Council will receive \$8K per annum as rent. Through reducing the rent, the maintenance, repair and renewal obligations remain with the Club, which is aligned with historic arrangements. Significantly increased rent would be required if Council were to take on the maintenance, repair and renewal obligations that have previously been the responsibility of the club.
- 7.4 Council to contribute up to \$300K to assist the Club to address building condition issues required to maintain the operation of the club rooms and associated facilities. This is to be funded via the asset renewal reserve.
- 7.5 Of Council's contribution, \$150K to be released for urgent capital works required in 2019, and another \$150K to be contingent on equivalent or greater State Government funding being awarded. This approach is proposed to enable the Club to undertake urgent works that cannot wait until the relevant State Government grant process is completed.

### 8. ENVIRONMENTAL IMPACT

- 8.1 There are no immediate Environmental Impacts associated with this Report.
- 8.2 Leases should contain environmental sustainability measures including adapting to climate change and using resources more efficiently to reduce everyday environmental impacts.
- 8.3 Council will work with the PMYC to report annually on initiatives.
- 8.4 Council will work with the PMYC over the term of their lease to improve the efficiency, report annually on initiatives 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; and
  - Implement best-practice storm water management.



- Implementing sustainable purchasing policies to help reduce contamination/pollution.

**9. COMMUNITY IMPACT**

- 9.1 The PMYC is mindful of Council’s objective of maximising the benefit to the community from facilities, and advised that the current access arrangements into the clubhouse make it difficult to provide unsupervised entry.
- 9.2 Future to create a separate visitor entrance will alleviate this problem.

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

- 10.1 The proposed lease terms align with:
- 10.2 Direction 1 - We embrace difference and people belong, 1.1 “A safe and active community with strong social connections”.
- 10.3 Direction 6 – “A financially sustainable, high performing, well-governed organisation that puts the community first”.

**11. IMPLEMENTATION STRATEGY**

**11.1 TIMELINE**

- 11.1.1 Should the recommendation be adopted, indicative timeline is shown below to finalise the lease.

<b>Date</b>	<b>Event</b>
20 February 2019	Council resolves to finalise the statutory procedures
20 March 2019	Lease execution

**11.2 COMMUNICATION**

- 11.2.1 Council acknowledges the length of time that the PMYC has been operating from the site and the important role that they play in providing recreation opportunities for the community.
- 11.2.2 Council seeks outcomes which are equitable to all parties and that focus on opportunities to enhance community wellbeing.
- 11.2.3 Providing a lease to the incumbent tenant mitigates risk of any void period and loss of income for Council.
- 11.2.4 Rental payable by PMYC is subsidised by Council.
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11.2.5 PMYC is accountable for operating costs associated with Occupying the property.

11.2.6 PMYC will be advised of Council's decision following the meeting.

**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: 20/15/71**

**ATTACHMENTS 1. Locality Plan for PMYC - ATTACHMENT 1**