



age of the assets, and the clubs income earning potential through hire of the facilities for private functions and other fundraisers.

3. RECOMMENDATION

That Council:

- 3.1 Resolves that the statutory procedures be commenced under Section 190 of the *Local Government Act 1989* ("the Act") for a new lease with Elwood Croquet Club (ECC) by publishing a notice in the local newspaper inviting interested persons to make a submission under Section 223 of the Act for the proposed lease of the premises at 135A Ormond Esplanade, Elwood on the following key terms:
 - 3.1.1 Proposed Tenant: Elwood Croquet Club (ECC).
 - 3.1.2 Demised Premise: 135A Ormond Esplanade, Elwood.
 - 3.1.3 Permitted Use: Croquet and associated activities.
 - 3.1.4 Commencement Date: 1 January 2019.
 - 3.1.5 Term: 3 years.
 - 3.1.6 Rent: \$707.64 per annum plus GST at the commencement of the lease, representing a significant subsidy of the market rental valuation of \$58,000 completed in August 2018. Rent to be reviewed annually by CPI.
 - 3.1.7 Maintenance: All maintenance, repairs and asset renewal to be undertaken by Council other than the croquet greens which are managed by the tenant. All other Outgoings (except for water) are the responsibility of the ECC.
- 3.2 Authorises the Chief Executive Officer or delegate to undertake the administrative procedures necessary to enable Council to carry out its functions and advertise the lease as per under Section 223 of the Act.
- 3.3 Resolves to hear and consider any submissions received pursuant to Section 223 of the Act at the Council meeting to be held shortly after the closing date for submissions.
- 3.4 Although the market rental valuation is estimated to be \$58,000 per annum plus GST, a discounted rent of \$707.64 per annum plus GST is proposed to help support the club's delivery of agreed community benefits and to allow for the implementation of the Property Policy and a review to be undertaken on the future use of the assets and possibility of a redevelopment of the site.



4. KEY POINTS/ISSUES

Context

- 4.1 ECC occupies Crown land at 135A Ormond Esplanade, Elwood near the Elwood foreshore. Council is appointed Committee of Management under the *Crown Land (Reserves) Act 1978* (CLRA). This enables Council to lease the land as landlord.
- 4.2 The land is located on the foreshore in Elwood, adjacent to Head Street Reserve. Land surrounding to the east and west is predominantly used for public recreation purposes while residential land exists to the south. Please refer to Attachment 1 for a plan of the land.
- 4.3 The ECC was founded in 1927 and is now the only croquet club in the larger City of Port Phillip.
- 4.4 ECC currently has 47 members and generates income from membership subscriptions and hire fees for the greens. The ECC also regularly hold private parties, functions, and barefoot croquet sessions to assist with raising funds. All events are run by club volunteers. The club also have reciprocal arrangements with the Elwood Sailing Club to supporting each club's community initiatives such as the Anzac Day memorial held annually.
- 4.5 Under the terms of the current lease Council contribute a discounted rent of \$707.64 per annum plus GST to support the club's activities and community benefits. Council is also responsible for the maintenance, repair and renewal of the asset excluding the croquet greens which are maintained by ECC.
- 4.6 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 submissions to be considered by Council before a lease can be granted. The market valuation for this site is \$58,000 per annum plus GST (August 2018), therefore this lease is scheduled to be advertised on the 26 March 2019.

Building Condition and Function

- 4.7 The site comprises of one main brick clubhouse approximately 70 square meters (internal) 3,300 square meters (external including greens, clubrooms and gardens) built in the 1970's which is currently in a moderate condition.
- 4.8 Located at the Southern end of the Elwood Foreshore Reserve and having ample street parking within 50m of the clubhouse the location appears to be functional and safe for members. The Croquet Club and greens are secured via a 1.8m high chain link fence and locked gates.
- 4.9 Under the provisions of the City of Port Phillip Planning Scheme, the subject property is contained within a Public Park and Recreation Zone (PPRZ) and is affected by a Design and Development Overlay (DDO10).



- 4.10 The recent Open Space Irrigation works program at Elwood included the connection of recycled water to Head Street Reserve and the enhancement of the Elsternwick Storm water harvesting scheme also increased flow capacity to these sites.
- 4.11 The building is in relatively good condition and it is estimated the remaining life of the asset is 30 years. An audit was completed and confirmed that the asset contains Asbestos throughout the building. It has been estimated that removal of the Asbestos would cost Council approximately \$160,000, not including any significant additional upgrades to the building. The asbestos is secure and just requires monitoring, although removal would be the goal as part of any future work to the building.
- 4.12 The ECC is mindful of Council's objective of maximising the benefit to the community from facilities and have advised that the current access arrangements into the ECC has made it difficult to provide unsupervised entry. The club has suggested that creating a separate visitor entrance in future will alleviate this problem and support a higher utilisation of the asset.

Current Lease

- 4.13 A short-term lease with the ECC expired on the 31 August 2017 and is now in overholding with the current terms and conditions prevailing. Under the expired lease the club is currently contributing \$707.64 per annum plus GST for rent with the Council being responsible for repairs and maintenance to the building and the club responsible for the maintenance of the greens. Building maintenance costs for FY19 to date are \$2,156.15.
- 4.14 Currently the ECC is not contributing towards water, as the ECC uses recycled water for most water usage with any shortfall coming from the mains water which is paid for by Council.

Proposed Lease

- 4.15 Council would like to offer ECC a new lease for a term of 3 years with the current rental to be charge at the current rate of \$707.64 per annum plus GST increased by CPI annually. Council will continue to be responsible for the maintenance of the building and ECC continuing to be responsible for the maintenance of the greens and utilities costs except for water.
- 4.16 Council is in the process of reviewing its Property Policy including its approach to leasing and licencing. A short-term lease of 3 years is considered to be a suitable length of term to allow the finalisation of the Property Policy and allow for a better understanding of the assets future use and appropriate level of Council contribution to support the club.
- 4.17 ECC have advised they would like to upgrade the kitchen facilities of which they would like security of tenure prior to making a capital investment. Future maintenance and repairs for the new kitchen would be the responsibly of the club.
- 4.18 The proposed 3-year lease falls outside the *Retail Lease Act*.



Proposed Lease Terms

4.19 The proposed lease terms align with the following key strategic direction in the Council Plan 2017-2027:

- We have smart solutions for a sustainable future
- We are growing and keeping our character.

4.20 The leased area is located on Crown Land managed by Council as Committee of Management, The State Government Leasing Policy lists three key leasing principles that must be assessed for each proposed lease. These are:

- Principle 1 – To provide benefits to the public through leasing
- Principle 2 – To ensure consistency and transparency in leasing
- Principle 3 – To manage leased Crown Land in an ecologically sustainable manner.

4.21 Council is in the process of updating the Leasing and Licencing Policy with a new Property Policy. Whilst this work is underway, assessment of all Crown land proposals is undertaken using principles based on the Crown Land Leasing Policy. The proposed key terms are outlined below, with an assessment of each against the guiding principles.

4.22 Term of the Lease

Key Principle

- The term of the lease needs to be appropriate to the tenant and use of the premises and allow for consideration of alternative uses.
- A longer-term lease may be warranted to support capital investment in the premises and provide security for financing or future planning.

Assessment

- The ECC are seeking a long-term tenure in return for the capital investment proposed. Their preferred length of lease is 7-10 years.
- A longer-term lease may be warranted in future to support capital investment by the club in the premises and provide security for financing or future planning of the ECC's activities.
- Further work is needed to review the long-term arrangements for the site, including the utilisation of the asset, the clubs income earning potential through hiring of the facilities, future upgrades or redevelopment potential of the site, and the level of Councils total contribution to the club. A shorter-term lease would support this work being undertaken, with any changes being reflected in a future lease.



Recommendation

- To offer a 3-year term whilst a new Property Policy is finalised and further work is undertaken to review the current arrangements and propose any changes aligned with the new Property Policy.

4.23 **Rent**

Key Principles

- A market rent is desirable but Council accepts lower than market rent to help support community based organisations that provide community benefits or services on behalf of council.
- Council will also consider the tenant's ability to pay rent and the effect rent would have on its programs and community benefit.

Assessment

- It was estimated in 2018 that the market rental is valued at \$58,00 per annum.
- ECC is a not for profit club that generates income through memberships, functions and green fees to support the operational costs of the club.
- A significantly discounted rental fee has been in place for a long time, roughly in line with the current rent rental amount of \$707.64.
- Future consideration of the rental amount will need to be reassessed in line with the new Property Policy.

Recommendation

- Under the proposed 3-year lease, Officers propose a discounted rental of \$707.64 per annum plus GST increased annually by CPI as per the terms of the current lease, with the understanding that the level of rental discount will be assessed once the Property Policy has been finalised.

4.24 **Maintenance and renewal**

Key Principles

- The lease should be clear about maintenance and renewal responsibilities of the tenant and landlord.
- It is desirable for tenants to pay for maintenance and renewal of their fittings and improvements.
- The extent of landlord contribution to structural maintenance and renewal should consider asset ownership, community benefits, capacity of the tenant to pay, and the nature of the tenancy.



Assessment

- The Council have always been responsible for all costs associated with repairs, maintenance and renewal of the building while ECC have been responsible for the maintenance of the greens.
- Council has taken on the responsibility of delivery of Essential Safety Measures inspections and monitoring for all buildings within its portfolio.

Recommendation

- Officers recommend that Council continue to be responsible for all costs associated with repairs, maintenance and renewal of the building and ECC maintain maintenance responsibility over the greens, with the understanding that the club's contribution towards maintenance of the building will be assessed as part of a broader review of Council's total contribution to the club once the Property Policy has been finalised.

4.25 **Outgoings**

Key Principles

- It is desirable that tenants pay the running costs (outgoings) of the premises that are associated with their tenancy.

Assessment

- The ECC currently pay all outgoing associated with their tenancy apart from water.
- Currently the ECC is not contributing towards water, as the ECC uses recycled water for most water usage with any shortfall coming from the mains water which is paid for by Council.

Recommendation

- The ECC is to be responsible for all outgoing (excluding water) for the site including all costs levied upon the site.
- The water arrangements to be reviewed as part of a broader review of the lease terms once the Property Policy has been completed.

4.26 **Community Benefits**

Key Principles

- Council leases should deliver direct and indirect benefits to the community. This can be achieved either by:
 - Promotion of health and wellbeing, supporting service provisions, cultural or recreational opportunities, or economic benefits; or



- Full market rent so that the funds can be used to support Councils activities;
- A combination of the above

Assessment

- The ECC is run by volunteers and its activities aligned with recreation and foreshore objectives of Council and the State. The ECC advises that it provides the following community benefits:
 - A sustainable recreational outlet for the community.
 - Annual Seniors Days where seniors are introduced to Golf, Croquet and Ricochet and provided free lunch and afternoon tea
 - The ECC has a reciprocal arrangement with the Elwood Sailing ECC with volunteer working at the Elwood Anzac Day ceremony.
 - Each month the ECC host a dementia group which provides support and enjoyment to those in the community suffering from the disease.
 - The ECCs members help to keep the surrounding areas of the club clean of litter and visually appealing
- The ECC has indicated a willingness to look at options to increase community benefit but this will require investment from both the club and CoPP.

Recommendation

- Define agreed and reportable benefits to be achieved through ECC activities.
- Service agreement with ECC to detail the agreed and reportable participation targets.

4.27 **Environmental Sustainability**

Key Principles

- Lease should contain environmental sustainability measures including adapting to climate change and using resources more efficiently to reduce everyday environmental impacts.

Assessment

- The ECC has indicated a willingness to work with Council to implement environmental sustainability measures including minimising water usage through rainwater harvesting and minimising energy use.



- Further discussions with the ECC will be required to determine what is feasible and appropriate considering their current financial situation and investments priorities.

Recommendation

- The ECC to incorporate environmental sustainability measures into all future renewal and upgrade works such as prompting the reduction of use of single use plastic and water and energy saving initiatives.

4.28 **Other Issues**

Use

- The current lease provides for a primary use of activities relating to the sport of Croquet and associated activities. The permitted use for the land should reflect the primary use as a Croquet club with associated activities dedicated to promoting the sport of Croquet.
- The new lease should contain the current leased area with no change from previous agreements.

CONSULTATION AND STAKEHOLDERS

4.29 DELWP have been consulted on the proposed lease arrangements.

4.30 Community feedback will be invited on the proposed lease through the advertisement of the lease in the local newspaper pending approval by Council of the recommendations of this report.

5. LEGAL AND RISK IMPLICATIONS

5.1 The statutory process under the Act requires Council to notify the public before committee to the proposed lease.

5.2 Documenting the respective property responsibilities and obligations through a legally binding lease which conforms to legislative requirements aims to mitigate risk.

5.3 The proposed key terms aim to provide clarity of Permitted Use and of roles and responsibility for building maintenance.

5.4 The proposed lease is subject to approval by the Minister for Environment, Climate Change and Water.

6. FINANCIAL IMPACT

6.1 Council will receive \$707.64 per annum plus GST (increased annually by CPI) as rent. This is reduced from the market rental value of \$58,000 per annum plus GST (August 2018). This proposed nominal rent reflects the long-term



arrangements for the site and supports the community benefit generated by the ECC.

- 6.2 The main source of income for the ECC to date has been from membership fees and green hire. The ECC also regularly hold private parties, functions, and barefoot croquet sessions to assist with raising funds. All events are run by ECC volunteers.
- 6.3 Under the proposed lease terms Council is responsible for the maintenance, repair and renewal obligations of the building while the ECC is responsible for the ongoing maintenance of the greens, reflecting the long-term arrangements.
- 6.4 A review of Council's total contribution to the club is proposed during the term of the proposed three year lease.

7. ENVIRONMENTAL IMPACT

- 7.1 There are no immediate environmental Impacts associated with this Report.
- 7.2 The proposed lease will require the ECC to implement environmentally sustainability practices and programs that supports reduction in energy, waste and water.
- 7.3 Council will work with the ECC over the term of their lease 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; and
 - Implement best-practice storm water management.
 - Reduction on single use plastic.
- 7.4 Council will work with the ECC to report annually on initiatives.

8. COMMUNITY IMPACT

- 8.1 The ECC is mindful of Council's objective of maximising the benefit to the community from facilities, and advised that the current access arrangements into the ECC has made it difficult to provide unsupervised entry.
- 8.2 Further work will be undertaken with the club to identify opportunities to increase the utilisation of the building.

9. ALIGNMENT TO COUNCIL PLAN AND COUNCIL POLICY

- 9.1 The proposed lease terms align to the Council Plan 2017-2027 through supporting:



9.1.1 Direction 1 – “We embrace difference, and people belong with a safe and active community with strong social connections”.

9.1.2 Direction 6 – “A financially sustainable, high performing, well-governed organisation that put the community first”.

10. IMPLEMENTATION STRATEGY

10.1 TIMELINE

10.1.1 If Council resolves to commence the statutory process, a Notice of Intention to Lease as per Section 190 of the Local Government Act 1989 in the Port Phillip Leader newspaper on the 26 March 2019.

10.1.2 As per Section 223 of the Act, the submission period will be at least 28 days.

10.1.3 Council report to consider submissions received (if any) from the community during the notification at a future Council meeting.

10.1.4 Council finalises the statutory process and makes the decision to proceed with the new lease.

10.2 COMMUNICATION

10.2.1 Council acknowledges the length of time that the ECC has been operating from the site and the important role that they play in providing recreation opportunities for the community.

10.2.2 Officers will advise the ECC representatives of the outcome of the 20 March 2019 Council meeting.

11. OFFICER DIRECT OR INDIRECT INTEREST

11.1 No officers involved in the preparation of this report have any direct or indirect interest in the matter.

TRIM FILE NO: 20/03/38

ATTACHMENTS 1. Lease Area Plan - Elwood Croquet Club