

**14.6 INTENTION TO ADVERTISE PROPOSED LEASE: 63A  
ORMOND ESPLANADE, ELWOOD**

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

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**1. PURPOSE**

- 1.1 To seek approval to carry out the statutory process to consider the lease of a building at 63A Ormond Esplanade, Elwood, including to hear and consider public submissions.



*Image: Looking north west at the subject property from near its south-eastern corner.  
The property is currently undergoing maintenance and minor renewal.*

**2. EXECUTIVE SUMMARY**

- 2.1 On Elwood's foreshore is a vacant building managed by City of Port Phillip – 63A Ormond Esplanade, (the "Property").
- 2.2 It adjoins Lady Forster kindergarten and abuts the Elwood playspace.
- 2.3 By public expression of interest City of Port Phillip has sought and identified an operator to take up a new lease of the Property.
- 2.4 The proposed rental amount exceeds \$50,000 per year. Council is therefore required under the *Local Government Act 1989* (the "Act") to give public notice of its intention to enter into such lease, and to consider any submissions received. It must do so prior to entering into the transaction.

- 2.5 The proposed principal terms of the lease are:-
- Term of 5 years.
  - All lease terms and conditions shall accord with Section 17D of the *Crown Land (Reserves) Act 1978* and the *Retail Leases Act 2003*.
  - Permitted use as a café and wellness studio.
  - Rent averaging \$69,951 yearly over the five year term.
- 2.6 The Property has most recently been used as a café/restaurant. The proposed tenant will require a planning permit for the proposed new use, and is required to obtain one within the first year of the lease. That planning permit application is a separate, subsequent process under the *Planning and Environment Act 1987*.

### 3. RECOMMENDATION

That Council:

- 3.1 Resolves to commence the statutory procedures under section 190 of the *Local Government Act 1989* (the “Act”) advising of its intention to lease the Council managed property at 63A Ormond Esplanade, Elwood.
- 3.2 Authorises relevant members of Council staff to carry out the administrative procedures necessary to enable Council to carry out its functions under section 223 of the Act.
- 3.3 Authorises that if no submissions are received pursuant to the provisions of Section 223 of the Act, following publication of the Public Notice, Officers with the relevant delegation are to undertake the necessary procedural steps to lease the land, including the execution of all relevant documentation.
- 3.4 Note that in the event submissions are received, a further report will be presented to Council to enable consideration of the submissions.

### 4. KEY POINTS/ISSUES

#### Property profile

- 4.1 At 63A Ormond Esplanade is a middle aged building, of light-weight, coastal design.
- 4.2 It sits on Crown land, about 50m from Ormond Esplanade and about 100 metres from the Elwood beach.





- 4.3 It is a plain building, but neat and not without charm.
- 4.4 It is generously proportioned, with approximately 350m<sup>2</sup> of floorspace.
- 4.5 It is attached to the former Elwood Beach Community Centre, currently temporarily occupied by Lady Forster kindergarten.

#### **Use**

- 4.6 The Property has been operated as a café/restaurant.
- 4.7 It has had multiple operators over the past 10-year period and is currently vacant.
- 4.8 It requires a tenant whose operational model exploits the various strengths of the site and locality, and is adaptable/resilient to seasonal variations in popularity of the foreshore.

#### **Expression of interest**

- 4.9 Officers recently carried out an expression of interest campaign to obtain a tenant for the Property.
- 4.10 The public expression of interest was open for approximately four weeks and ended in August 2019.
- 4.11 A lease term of five years was proposed – to align it with the end of the temporary lease of the adjoining kindergarten, and thus to enhance optionality.
- 4.12 Multiple criteria were used to assess applications, namely: price; experience and track record; corporate social responsibility; vision; commercial terms, viability and operating plan.
- 4.13 From the expression of interest a potential tenant was identified, and their offer clarified and negotiated.

#### **Compatibility**

- 4.14 The potential tenant intends to use the Property for a café, incorporated within a wellness studio (yoga, pilates and meditation).
- 4.15 As the current permit is for a café/restaurant, the proposed use will likely require a new or modified use permit.
- 4.16 Accordingly, the proposed lease is intended to include a requirement on the tenant to obtain such a permit within a set timeframe.

#### **Concluding a lease contract**

- 4.17 Before deciding to lease the Property, Council is required to comply with the process specified under section 223 of the *Local Government Act 1989*.
- 4.18 This includes giving public notice of an intention to enter into a lease and consider any submission received prior to resolving whether or not to enter into the lease.
- 4.19 An execution of the potential lease by the tenant and landlord will also require attestation by the relevant Minister, specifically the Minister for Energy, Environment and Climate Change, (or their delegate).



## 5. CONSULTATION AND STAKEHOLDERS

- 5.1 The expression of interest process has been conducted in accordance with Council Procurement Policy and the State Government Policy for the leasing of Crown land. It was open on Tenderlink for approximately four weeks, and its advertising included notices in *The Age* and *Port Phillip Leader* newspapers.
- 5.2 It is proposed a public notice be published advising of Council's intention to lease the Property, advising any person can make a submission.

## 6. LEGAL AND RISK IMPLICATIONS

- 6.1 The proposed lease requires the tenant to provide a security guarantee and a minimum level of public liability insurance.
- 6.2 The *Retail Leases Act 2003* will apply to the potential lease of the Property.

## 7. FINANCIAL IMPACT

- 7.1 Under the proposed lease the rental (exclusive of GST, and including annual adjustment increments) is:

Year	\$
1	36,364
2	74,909
3	77,156
4	79,471
5	81,855

- 7.2 The rent averages \$69,951 per year over the five year lease term.

## 8. ENVIRONMENTAL IMPACT

- 8.1 A special condition of the lease encourages environmental sustainability, including reducing energy consumption, water usage and landfill waste, and encouraging low emission transport options.

## 9. COMMUNITY IMPACT

- 9.1 This initiative promotes transparent governance and an actively engaged community.
- 9.2 A lease of the Property is intended to support foreshore amenity and visitation.

## 10. ALIGNMENT TO COUNCIL PLAN AND COUNCIL POLICY

- 10.1 This report directly supports Council Plan Direction 6: *Our commitment to you*.
- 10.2 Use of the Property to provide foreshore amenity aligns with *City of Port Phillip's Foreshore Management Plan 2012*.

# ORDINARY MEETING OF COUNCIL 18 SEPTEMBER 2019



## 11. IMPLEMENTATION STRATEGY

### 11.1 TIMELINE

A Notice of Intention to Lease is scheduled to be published in September 2019, subject to Council's adoption of the recommendation.

Any submission received in response to the public notice will be reported to a future meeting of Council.

### 11.2 COMMUNICATION

11.2.1 Council actively manages its property portfolio, including leasing out property assets.

11.2.2 In doing so Council observes the relevant statutory obligations.

## 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:** 14/02/19010

**ATTACHMENTS** Nil