

3.2 Intention to Advertise Proposed Lease to Boroondara Aged Services Society

Abstract

This report is presented in the context of Council meeting its obligations under section 190 of the *Local Government Act 1989* (the Act) in relation to lease terms for an aged support services lease agreement. The aged support services facility is located at 9 Marwal Avenue, Balwyn North and is operated by Boroondara Aged Services Society. Boroondara Aged Services Society provides services and social connectedness, including meals on wheels and planned activities, to seniors.

Section 190 of the Act requires where new leases have a term of more than one year and the rent or market rent for any period of the lease term exceeds \$50,000 per annum, Council must give public notice of its intention to enter into such a lease and consider any submissions received in accordance with section 223 of the Act prior to entering into the lease. The estimated market value rental for this property exceeds this threshold and thus it is necessary for Council to follow the process outlined in this section of the legislation.

It is proposed a public notice be published in the Progress Leader advising of Council's intention to lease as described above, advising any person can make a submission. If any submissions are received a further report will be presented to a future Council meeting to enable consideration of any submissions received.

Officers' recommendation

That Services Special Committee of Council resolve to:

1. Commence the statutory procedures under section 190 of the Local Government Act 1989 (the Act), advising of its intention to lease the Council owned facility for aged support services for the period ending 30 June 2020.
2. If no submissions are received pursuant to the provisions of Section 223 of the Act, following the publication of the Public Notice, authorise the Chief Executive Officer or such other person as the Chief Executive Officer approves, to undertake the necessary procedural steps to complete the formal procedures to lease the land including the execution of all relevant documentation.
3. In the event submissions are received, note a further report will be presented to Council to enable consideration of the submissions.

Responsible director: Bruce Dobson
Customer Experience and Business Transformation

1. Purpose

The purpose of this report is to advise Council of its obligations under section 190 of the Act in relation to the lease renewal of an aged support services facility and seek a Council decision to commence the statutory procedures relevant to the proposed lease.

2. Policy implications and relevance to community plan and council plan

The process proposed for advertising Council's intention to lease these facilities is consistent with Council's *Council Assets - Leasing and Licensing Policy 2017*.

This report is consistent with the Council Plan 2017-21, in particular strategies 1, 2, 4 and 5 regarding communication and engagement, community inclusion, families and young people and health, ageing and disability. It also supports Strategic Objective 7 of the Boroondara Community Plan 2017-27, to "*Ensure that ethical, financial and socially responsible decision making reflect community needs and are based on principles of accountability, transparency, responsiveness and consultation*".

3. Background

The aged support services facility is located at 9 Marwal Avenue, Balwyn North and is operated by Boroondara Aged Services Society.

Boroondara Aged Services Society provides services and social connectedness including meals on wheels and planned activities to seniors.

It is proposed to offer a new lease to 30 June 2020 with a permitted use of 'The provision of programs, services and activities which promote healthy ageing, wellbeing and independence and associated purposes as agreed by Council'.

A one year lease is being offered to align with the Australian Government aged care reforms timeline. This affords Council the opportunity to review the terms of any future lease by taking into consideration the impact of any policy or regulatory changes made by the Australian Government.

The proposed rental is \$2,976 per annum plus GST consistent with Council's *Council Assets - Leasing and Licensing Policy*.

4. Outline of key issues/options

As the proposed new lease term is for one year or more and the current market rental value exceeds, or will exceed \$50,000 per annum during the term, Council is required to comply with section 190 of the Act. Under this section Council is required to give public notice of its intention to enter into a lease and to consider any submissions received in accordance with section 223 of the Act, prior to resolving whether or not to enter into the lease. Section 190 of the Act provides as follows:

190. Restriction on power to lease land

- (1) *A Council's power to lease any land to any person is limited to leases for a term of 50 years or less.*
- (2) *Subject to any other Act, if a Council leases any land to any person subject to any exceptions, reservations, covenants and conditions, it must comply with this section.*
- (3) *If the lease is to be*
 - (a) *for 1 year or more and*
 - (i) *the rent for any period of the lease is \$50,000 or more a year; or*
 - (ii) *the current market rental value of the land is \$50,000 or more a year; or*
 - (b) *for 10 years or more; or*
 - (c) *a building or improving lease*

the Council must at least 4 weeks before the lease is made publish a public notice of the proposed lease.
- (4) *A person has a right to make a submission under section 223 on the proposed lease.*

5. Consultation/communication

As the market value for Boroondara Aged Services Society has been assessed at more than \$50,000 per annum by Council's Senior Valuer, it is proposed public notice be given by Council of its intention to lease the facility in accordance with section 190 of the Act. The public notice will advise any person can make a submission under section 223 of the Act in relation to the proposed lease.

If submissions are received a further report will be presented to a future meeting of Council to consider the submissions.

6. Financial and resource implications

In accordance with Council's *Council Assets - Leasing and Licensing Policy 2017* the aged support services has been classified as a part Category A peppercorn and a part Category C discounted market rent tenant. The proposed annual rental of \$2,976.00 plus GST has been assessed accordingly.

Council's Senior Valuer has assessed current market rental of the facility at \$86,400 per annum plus GST.

7. Governance issues

Officers involved in the preparation of this report have no conflict of interest. The list of prescribed human rights contained in the Victorian Charter of Human Rights and Responsibilities has been reviewed in accordance with Council's Human Rights Compatibility Assessment Tool and it is considered the proposed actions contained in this report present no breaches of, or infringements upon, those prescribed rights.

8. Social and environmental issues

Provision of the building under an appropriate lease agreement enables Boroondara Aged Services Society to continue to provide services to the Boroondara community.

9. Conclusion

It is recommended by officers the statutory procedures be commenced in accordance with section 190 of the Act advising of Council's intention to lease the facility for the permitted use for a term of one year to Boroondara Aged Services Society for the period ending 30 June 2020.

Manager: Chris Hurley, Commercial and Property Services

Report officer: Rebecca Dewar, Senior Property Management Officer