

7.6 Intention to lease - Citipower substation

Abstract

This report is presented in the context of Council complying with section 190 of the *Local Government Act 1989* (the Act) in relation to a Citipower substation located on Council land at the Kew Recreation Centre, 383-407 High Street, Kew. Proposed location of proposed substation shown in **Attachment 1**.

Section 190 of the Act dictates that where new leases or renewals have a term of ten or more years, Council must give public notice of its intention to enter into such leases and consider any submissions received in accordance with section 223 of the Act prior to entering into the lease.

A public notice was published in *The Age* on Thursday 17 December 2020 advising of Council's intention to lease as described above, advising any person can make a submission and request to be heard in support of their submission. No submissions were received.

Officers' recommendation

That Council resolve to 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 process to lease the part of the land at the Kew Recreation Centre, 383-407 High Street, Kew shown in Attachment 1 and as annexed to the Minutes, including the execution of all relevant documentation with Citipower Pty Ltd.

Responsible director: Phillip Storer, Chief Executive Officer

1. Purpose

The purpose of this report is to advise Council that the obligations under section 190 of the Act in relation to a proposed Citipower substation to be located on Council land at the Kew Recreation Centre, 383-407 High Street, Kew, have been completed and seek a Council decision to complete the formal procedures to lease the land. Proposed location of proposed substation shown in **Attachment 1**.

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

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

This report is consistent with the Council Plan 2017-21 and the Boroondara Community Plan. In particular, the Council Plan themes of Civic Leadership & Governance and the strategy "Ensure sound financial management while allocating resources to deliver strategic infrastructure and services that meet community needs" and the Your Community, Services and Facilities theme - Community services and facilities are high quality, inclusive and meet a variety of needs now and into the future.

3. Background

To meet the power demands of the new Kew Recreation Centre, construction of a new substation is required to replace the smaller pole mounted substation located on Disraeli Street, Kew. The replacement of the pole mounted substation with the proposed ground substation will not impact the supply of any surrounding residents or businesses as both will supply only the Kew Recreation Centre.

The corner of High Street and Disraeli Street was explored as a possible location, however any substation located here would impact other authority requirements services, such as 10m proximity from fire hydrants and graded services (no alternative to reach required outfall) resulting in limited opportunity to locate a substation that will be owned and maintained by Citipower Pty Ltd.

The new substation is proposed to be located in the north-east corner of the site offset by a minimum of five metres from the boundary of the adjacent property at 21 Disraeli Street, Kew.

The resident at 21 Disraeli Street, Kew has been consulted and has requested a noise attenuation barrier. Council officers are working through options and will provide an appropriate noise barrier to north and west of the proposed substation.

The noise attenuation barrier will ensure compliance with the night time limit of 39 decibel unit in accordance with Control of Noise from Commerce, Industry and Trade *State Environment Protection Policy*.

In order for council to enter into a lease with Citipower Pty Ltd for the location of the substation, Council must comply with sections 190 and 223 of the Act.

As with previous leases signed by Council with Citipower Pty Ltd, the company requests that their lease document be utilised. A comprehensive review of the lease document by Council officers identified that clause 4.7 of the proposed lease was a concern.

Clause 4.7 Release and Indemnity states as follows;

- a) *The Landlords releases and indemnifies and agrees to keep indemnified the Tenant, its employees, contractors and agents from and against all claims, demands, proceedings, judgments, damages, costs and losses of any nature whatever arising out of damage to property or any business caused or contributed to by electromagnetic interference or other emanations (including without limitation, noise emanations or vibrations) from the Tenant's Property or any other Tenant's property in the Additional Rights areas.*
- b) *Subject to clause 4.7(c) the release and indemnity in clause 4.7(a) is absolute and applies despite any nuisance caused by the Tenant and any strict liability of the Tenant and, to the extent permitted by law, is intended to exclude and waive any statutory rights or remedies to which the Landlord may otherwise be entitled.*
- c) *The Landlord's release and indemnity in clause 4.7(a) does not apply to the extent that any damage to the property or any business is caused or contributed to by the negligence of the Tenant.*

It was considered by officers that it was unreasonable for Citipower to require Council to indemnify Citipower and its employees and agents. After lengthy negotiations Citipower agreed that clause 4.7 be deleted and accordingly Citipower has deleted this clause from the proposed lease.

The proposed term of the lease is 30 years with an option for a further 20 years for use as a site for electrical substation and for other purposes incidental to the receiving, distributing, transforming and supplying of electricity

4. Outline of key issues/options

As the proposed new lease term is more than ten years Council is required to comply with section 190 of the Act. Under the Act 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 lease term is for more than ten years a public notice was given by Council of its intention to lease the facilities in accordance with section 190 of the Act. The public notice advised any person can make a submission under section 223 of the Act in relation to the proposed lease and request to be heard in support of their written submission.

The public notice was advertised in The Age on Thursday 17 December 2020. No submissions were received.

6. Financial and resource implications

Citipower has advised that they do not negotiate rental levels where the required infrastructure is necessary to provide community access to electricity. The annual rental payable by Citipower will be \$0.10.

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 that the proposed actions contained in this report present no breaches of, or infringements upon, those prescribed rights.

8. Social and environmental issues

The proposed substation will provide the electricity needs for the Kew Recreation Centre.

9. Conclusion

It is recommended by officers the process to finalise the proposed lease to Citipower Pty Ltd for the proposed substation.

Manager: Callista Clarke, Acting Chief Financial Officer

Report officer: Rebecca Dewar, Senior Property Management Officer

