

## **7.6 Intention to lease - Davis Street Kindergarten Association Inc**

### **Abstract**

This report is presented in the context of Council complying with section 115 of the *Local Government Act 2020* (the Act) in relation to entering into a lease with Davis Street Kindergarten Association Inc.

As the proposed new lease term is for more than one year and the current market rental value exceeds, or will exceed, \$100,000 per annum during the term, Council is required to comply with section 115 of the Act. Under the Act Council is required to undertake a community engagement process in accordance with Council's Community Engagement Policy 2021-26 in respect of the proposal before entering into the lease.

To provide a mechanism for feedback from interested parties and in accordance with Council's Community Engagement Policy 2021-26, Public Notice was duly given inviting written submissions on the proposal and advising any submissions received would be considered prior to a recommendation being made to the Council or its Committee.

A public notice was advertised on Council's website and in The Age on 27 August 2021 advising of Council's intention to lease, advising any person can submit a submission and request to be heard in support of their submission.

No submissions were received and it is recommended by officers that the necessary procedural steps be undertaken to complete the formal process to lease the land including the execution of all relevant documentation with the Davis Street Kindergarten Association Inc.

### **Officers' recommendation**

That Council resolve to enter into a five (5) year lease of the land and buildings to Davis Street Kindergarten Association Inc for the sum of \$1.00 per annum and authorise the Chief Executive Office or such person as the Chief Executive Officer approves, to undertake all the necessary steps to lease the land.

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**Responsible director:**     **Phillip Storer, Chief Executive Officer**

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## **1. Purpose**

The purpose of this report is to advise Council that the obligations under section 115 of the Act in relation to a proposed lease to Davis Street Kindergarten Association Inc located at 40 Davis Street, Kew have been completed and to seek a Council decision to complete the formal procedures to lease the land.

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

The lease process is consistent with Council's *Council Assets - Leasing and Licensing Policy 2017* and in accordance with the Act.

This report is consistent with the *Council Plan 2017-21* and the *Boroondara Community Plan 2017-27*. Particular Themes are:

Theme 1: Your Community, Services and Facilities - Community services and facilities are high quality, inclusive and meet a variety of needs now and into the future.

Theme 7: Civic Leadership and Governance - Ensure that ethical, financial and socially responsible decision making reflects community needs and is based on principles of accountability, transparency, responsiveness and consultation.

## **3. Background**

The Davis Street Kindergarten Association Inc (Kindergarten) currently leases the property at 40 Davis Street, Kew. The current lease expires 10 November 2021.

The facility is a purpose built kindergarten and offers four year old and three year old sessional kindergarten programs for up to 76 children.

It is proposed the new lease will be for a term of five years with a permitted use of "Kindergarten and associated activities as agreed by Council".

## **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 \$100,000 per annum during the term, Council is required to comply with section 115 of the Act. Under the Act Council is required to undertake a community engagement process in accordance with Council's Community Engagement Policy 2021-26 in respect of the proposal before entering into the lease. Section 115 of the Act provides as follows:

### **115. Lease of 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, and except where section 116 applies, if a Council leases any land to any person subject to any exceptions, reservations, covenants and conditions, it must comply with this section.*
- (3) *A Council must include any proposal to lease land in a financial year in the budget, where the lease is—*
  - (a) for one year or more and—*
    - (i) the rent for any period of the lease is \$100,000 or more a year; or*
    - (ii) the current market rental value of the land is \$100,000 or more a year; or*
  - (b) for 10 years or more.*
- (4) *If a Council proposes to lease land that is subject to subsection (3) and that was not included as a proposal in the budget, the Council must undertake a community engagement process in accordance with the Council's Community Engagement Policy in respect of the proposal before entering into the lease.*

## **5. Consultation/communication**

In accordance with section 115 of the Act, Council is required to undertake a community engagement process in accordance with Council's Community Engagement Policy 2021-26 in respect of the proposal before entering into the lease.

To provide a mechanism for feedback from interested parties and in accordance with Council's Community Engagement Policy 2021-26, Public Notice was duly given inviting written submissions on the proposal and any submissions received would be considered prior to a recommendation being made to the Council or its Committee.

A public notice was advertised on Council's website and in The Age on 27 August 2021 advising of Council's intention to lease as described above. The advertisement also invited submissions. No submissions were received

## **6. Financial and resource implications**

In accordance with Council's *Council Assets - Leasing and Licensing Policy 2017* Davis Street Kindergarten Association Inc has been classified as Category A: Peppercorn tenant. The proposed annual rental is \$1.00 inclusive of GST for the proposed five year term.

Council's Senior Valuer has assessed the current market annual rental at \$97,000 plus GST and outgoings.

Should Council resolve to enter into a lease with Davis Street Kindergarten Association Inc the cost to prepare the lease will be met within the current departmental budget.

## **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**

Provision of the building under an appropriate lease agreement enables the Davis Street Kindergarten Inc to continue providing Kindergarten and associated activities to the community.

## **9. Conclusion**

It is recommended by officers that the necessary procedural steps be undertaken to complete the formal process to lease the land including the execution of all relevant documentation with the Davis Street Kindergarten Association Inc.

**Manager:** Callista Clarke, Acting Chief Financial Officer

**Report officer:** Rebecca Dewar, Senior Property Advisor

Nil