

1.6 OAKLEIGH RECREATION CENTRE - PROPOSED LEASE TO WAVERLEY GYMNASTICS CENTRE INC

Responsible Director: Peter Panagakos

RECOMMENDATION

That Council:

1. *Negotiate a lease with Waverley Gymnastics Centre Inc. (WGC) for part of the Oakleigh Recreation Centre incorporating the following terms and conditions:*
 - a. *Premises: Part of Oakleigh Recreational Centre, 2a Park Road, Oakleigh*
 - b. *Tenant: Waverley Gymnastics Centre Inc.*
 - c. *Term: 21 Years*
 - d. *Rent: \$15,000 per annum years 1 -3 and \$69,074 per annum from year 4*
 - e. *Rent Reviews: Rent will be adjusted annually by CPI on the anniversary of the commencement date from the commencement of the 5th Year of the term*
 - f. *Outgoings: WGC responsible for all services and outgoings including all utilities that relate to the premises*

("the Proposal")

2. *Give public notice of the Proposal in accordance with Section 190 of the Act, in a newspaper and on Council's website from Thursday 9 July 2020 and invite submissions on the Proposal.*
3. *Authorises Council's Chief Executive Officer or her delegate to undertake the administrative procedures necessary to enable Council to carry out its functions under Section 223 of the Act in respect of the Proposal ('Appointed Officer').*
4. *Appoint a Committee of Council comprising the Oakleigh Ward Councillors and the Mayor to hear any submitters requesting to be heard and consider any submissions received under Section 223 of the Act.*
5. *Consider and determine the outcome of the section 223 process on the Proposal at the Ordinary Meeting of Council on a date and time to be fixed.*

INTRODUCTION

This report discusses the proposed lease to the Waverley Gymnastics Centre Inc. (WGC) for part of the area within the redeveloped Oakleigh Recreation Centre (ORC) and the need for Council to commence the statutory

procedures pursuant to Sections 190 and 223 of the Local Government Act, 1989 for the proposed lease.

BACKGROUND

At the Ordinary Council Meeting on 27 March 2018, Council received a report on the status of the proposed redevelopment of the ORC. The redevelopment includes a five (5) court indoor stadium, a facility for the Waverley Gymnastics Club and additional car parking to deliver an integrated sporting precinct in Monash.

The report included recommendations regarding the lease to WGC for a new gymnastics facility. WGC are a major key stakeholder to the success of the redevelopment of ORC having a large area designed for its dedicated use.

The particular recommendations from the report regarding the lease to WGC (and for which Council resolved in agreement were as follows:

- “ 3. *Provide Waverley Gymnastics Club exclusive use of the proposed facility including but not limited to the following terms which will be reflected in any lease offered:*
- a) *A lease period of up to twenty (20) years with two further options for five years at Councils sole discretion (20 + 5 + 5). Within 12 months and no less than 6 months from expiry of the initial twenty (20) year term, Waverley Gymnastics Club must write to Council with their intent to exercise this option which will trigger a decision by Council as to a further extension and if this is granted, a rental review in accordance with point b) below.*
 - b) *A rental review as identified in point a) above will have regard to advice from an authorised independent valuer, the tenants audited financial statements and Councils Leasing and Licencing Policy. The reviewed rental will be based on these parameters and will be at Councils sole discretion.*
 - c) *An initial rental of \$50,000 per annum and increased by \$4,000 plus CPI annually for up to five (5) years or until the rental reaches \$70,000; then CPI increases apply annually for the remainder of the initial twenty (20) year lease period.*
 - d) *Repair, maintenance, replacement and any additions/improvements of any air conditioning systems, sound acoustic treatment, tenant fixtures and fittings and the like are the responsibility of the tenant. The tenant will be responsible for repair or replacement of any damage beyond general wear and tear to any building and/or fixture owned by Council.*

- e) *All cleaning associated with the facility is the responsibility of the tenant.*
- f) *f) All outgoing, utilities, rates and taxes and insurance provisions are to be paid for by the tenant. The tenant must provide to Council annually evidence that the appropriate insurances including but not limited to, public liability are current.*
- g) *Any further works or retrofitting to the building, must only be undertaken with the express permission of Council and will be fully paid for by the tenant.*
- h) *All works and tenant improvements and extensions to the building and any fixtures that are not removable will remain in the ownership of Council at the end of any rental period."*

Following the above resolutions, Council commenced detailed discussions with the WGC on the terms and conditions for the lease.

DISCUSSION

1. The Land

The ORC is located on Crown Land being Crown Allotment 23A, Township of Oakleigh, Parish of Mulgrave. It is crown land forming part of the Scotchmans Creek Linear Reserve (the Land). The Land has a temporary reservation status of "Public Park & Recreation" under the Crown Land (Reserves) Act 1978. The Land is shown with the red border in the aerial image below:



Council is the Committee of Management for the Land appointed by the Department of Environment, Land, Water and Planning (DELWP).

The area proposed to be leased to WGC is forms the new gymnastics facility comprised within the redeveloped ORC. The area is identified with the blue border on the plan in Appendix 1.

As the Committee of Management of the Land, Council is able to enter into lease agreements with approval of the Department of Environment, Land, Water and Planning (DELWP).

2. Proposed Terms

The proposed key terms and conditions of the lease to WGC are identified in appendix 2:

3. Process for a Lease on Crown Land

a. Ministerial Approval

On 19 June 2019, Council wrote to DELWP requesting a grant and purpose for the proposed lease to WGC, which was approved by DELWP on 28 June 2019.

The final terms and conditions of the lease will be reviewed and approved by the Minister’s delegate before being signed by the Council and WGC.

b. Compliance with Local Government Act 1989

Council is required to comply with the requirements of Section 190 of the Local Government Act 1989, which states that if a 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,

That council must, at least 4 weeks before the lease is made, publish a public notice of the proposed lease. A person has a right to make a submission under Section 223 of the Act on the proposed lease.

As the proposed lease is for a period of greater than 10 years, Council must publish a public notice of intention to enter into a lease and invite submissions.

It is proposed to publish a public notice of the proposed lease to WGC in the local newspapers and on Council's website on 9 July and the weekend of 11 July 2020. Following Council's decision, officers will follow a process that will broadly include the actions as shown in the Table below:

No.	Actions	2020 Estimated timeframe
1	Council resolves to commence the statutory process for a lease to WGC.	30 June 2020
2	Public notification pursuant to ss.190(4) and 223 of the Local Government Act 1989 of Council's proposal to enter into a Lease.	July 2020
3	Potential hearing of any submissions	August 2020
4	Report to Council to consider any submissions and determine resolution	August/September 2020
5	Final lease prepared and submitted to DELWP for approval	August/September 2020
6	Final lease executed by all parties.	September 2020 (subject to approval by DWELP)

4. Negotiations with WGC

In July 2018, the resolutions from the Ordinary Council Meeting on 27 March 2018 (referred to above) were captured in a conditional Heads of Agreement signed by both Council and the WGC.

Subsequently, at a Special Meeting of Council on 14 May 2019, Council awarded the tender from APM Group (Aust) Pty Ltd for the construction of the new ORC. At the same time, Council agreed to authorise the Chief Executive Officer to commence discussions with WGC to ensure that a signed lease arrangement (which is generally in accordance with the signed Heads of Agreement) is in place prior to occupancy of the facility.

A Deed of Variation was prepared to vary the terms of the Heads of Agreement to provide for the financial contribution from the WGC to be increased from \$1,000,000 to \$1,124,000. The additional project contribution of \$124,000 will be repaid by WGC to Council as additional rental payable for Years 3 to 10 of the lease.

A draft lease, consistent with the Heads of Agreement (as varied), has been prepared by Council's solicitors and forwarded to WGC for comment.

5. Latest Considerations

a. Covid-19

The COVID-19 pandemic has adversely and severely impacted upon the current service provision and financial position of WGC and they have advised Council that the previously agreed terms and conditions for the lease (as outlined in the Heads of Agreement and Deed of Variation) cannot be met.

b. Status of the Redevelopment

Construction activity at ORC is well underway and it is anticipated that the ORC facility will open in November 2020 and a return to normal operations for WGC will coincide with the start of the New Year 2021.

SOCIAL IMPLICATIONS

The new facility provides an opportunity for Council to not only recognise the needs and expansion of gymnasts at a local level but also provide a premier quality facility that will allow for competitions at a State and National level.

The location within the redeveloped ORC will also provide for greater exposure for the sport in general.

The outcome will be a stronger sporting community leading to less isolation and a greater sense of belonging. In turn, this should make the ORC precinct more popular as a place for other forms of engagement to support and strengthen community connectedness.

FINANCIAL IMPLICATIONS

Should the proposal proceed, Council will receive an annual rent payment from WGC for the occupation of the premises.

CONCLUSION

As the redevelopment of the ORC is nearing completion, it is now appropriate for Council to commence the statutory procedures under sections 190 and 223 of the Local Government Act 1989 in order for Council to understand any concerns of its community with the proposal.

Appendix 1

Proposed area to be leased to WGC



Appendix 2

Proposed Lease - Key terms and Conditions

Commencement Date	To accord with conclusion of the statutory process or the 1 st January 2021 – whichever is the earlier
Hours of Use	To align with the opening hours of the Oakleigh Recreation Centre.
Permitted Use	Gymnastics and associated activities
Term	21 years
Rental	\$15,000 pa Years 1 – 3 \$69,074 pa Year 4
Additional Rent	\$124,000 payable from Year 4 to 21
Rent Reviews	Rent will be adjusted annually by CPI on the anniversary of the commencement date from the commencement of the 5th Year of the term
Repairs and Maintenance	Club to be responsible for repairs and maintenance
Outgoings	Club responsible for all services and outgoings, including utilities that relate to the Premises
Additional Clauses	The club agrees to vacate their current facilities and surrender their existing lease.