

**Executive Summary****12.14 Proposed Lease of Council managed land - Waves Restaurant - 2/1N Long Island Drive Frankston**

*Enquiries: (Danielle Watts: Corporate and Commercial Services)*

**Council Plan**

Level 1:

6. Progressive and Engaged City

Level 2:

6.1 Ensure sustainable financial management and the strategic allocation of resources to deliver planned infrastructure and services

**Purpose**

To advise Council on the proposed leasing arrangements with the Waves Restaurant and to seek approval to commence the community engagement process.

**Recommendation (Director Corporate and Commercial Services)**

That Council:

1. Notes the requirements of section 115(4) of the Local Government Act 2020 and Council's Community Engagement Policy;
2. Authorises and directs the Chief Executive Officer (CEO) to give public notice of Council's intention to enter into a lease with Waves (Frankston) Pty Ltd of part of the Council managed land at 2/1N Long Island Drive Frankston, being part of the Frankston Foreshore Crown Reserve, Permanently Reserved for Public Purposes by Order in Council dated 26th May 1873, for:
  - a) the purposes of a restaurant and kiosk
  - b) a term of 16 years with one (1) further option of five (5) years
  - c) a commencing rent of \$112,000 plus GST
3. Directs that any submissions received in response to the public notice that are opposed to, or which suggest changes to the proposal, be presented to Council for its consideration at a future meeting; and
4. If no submissions are received or if the only submissions received in response to the public notice support the proposal without qualification, authorises the CEO to finalise the lease arrangements and execute the lease for and on behalf of Council.

**Key Points / Issues**

- The Frankston Foreshore (Foreshore) is Crown land. Management of Crown Land is delegated to the Department of Energy, Environment and Climate Action (DEECA) by the Victorian Governor in Council. Frankston City Council (Council) and its predecessor entities have been the appointed Committee of Management of the Foreshore since 1910 and are responsible for its day-to-day management.
- Waves (Frankston) Pty Ltd (Restaurant) is located on the Foreshore and occupies the same building as the Frankston Life Saving Club.

**12.14 Proposed Lease of Council managed land - Waves Restaurant - 2/1N Long Island Drive Frankston****Executive Summary**

- Council has the power pursuant to s.115 (1) of the *Local Government Act 2020 (LGA 2020)*, to lease land to any person for a term not exceeding 50 years. This includes Crown land.
- The new lease proposal is on behalf of the current restaurant owner. Councillors were advised of the lease proposal at a Council Briefing on 12 July 2024, and at that time indicated their support for a direct negotiation with the current tenant.
- A copy of the proposed Lease plan for the Premises, is contained in **Attachment A**.

**Financial Impact**

There are financial costs associated with putting a commercial lease agreement in place however these costs, which include valuation; legal, and surveying expenses, have been accommodated within existing budgets.

The Restaurant owner will carry 100% of the operational risk for the business.

Further details are provided in the Analysis; Policy and Risk sections of this report.

The rent proposed to be received under the lease in the first five (5) years of the term is shown in the table below. In addition, Market Reviews will occur at years five (5); 10 and 15 of the lease term, as well as on the commencement of a further term if the option is exercised.

| Lease Year   | Annual Increment    | Annual Rent           |
|--|---------------------|-----------------------|
| 1  | N/A Commencing rent | \$112,000 plus GST    |
| 2  | 2.5%                | \$114,800 plus GST    |
| 3  | 3%                  | \$118,244 plus GST    |
| 4<br>(and every subsequent year unless a Market view Year) | 3.5%                | \$122,382.54 plus GST |
| 5  | Market Review Year  | To be determined      |

Rental income from Council's commercial leases provides a vital income stream that is necessary to offset the ever increasing cost of maintaining the Crown land portfolio on behalf of DEECA.

The proposed rental income under the lease, is consistent with the Guiding Values of the Property Strategy and Plan 2021-2025 (Property Strategy).

**Consultation****1. External Stakeholders**

- Officers have been in ongoing discussions on a "without prejudice" basis with the restaurant owner and his legal representative, to negotiate appropriate terms and conditions for a new lease.

**12.14 Proposed Lease of Council managed land - Waves Restaurant - 2/1N Long Island Drive Frankston****Executive Summary**

- As the restaurant is located on Crown land, DEECA's approval has been obtained for:
  - first stage (Grant and Purpose) approval for a new lease, and;
  - a direct negotiation with the current tenant.
- GM Brien and Associates and Copperfin Advisory have both provided valuation advice to officers for:
  - market comparisons to ensure appropriate benchmarking and commencing rent for a new lease, and;
  - a review of the prospective tenant's valuation advice and proposal, which has assisted with the financial aspect of lease negotiations.
- Kelly Fitzgibbons Valuers and Property Consultants have provided valuation advice to the prospective tenant.

**2. Other Stakeholders**

- Property Management continues to provide advice as to appropriate leasing outcomes consistent with the Property Strategy.
- Facilities have provided advice as to appropriate maintenance schedule requirements that will form part of the lease agreement.
- Subject to Council approval, public notification will provide an opportunity for interested parties to make submissions in respect of the leasing proposal.

**Analysis (Environmental / Economic / Social Implications)**Hospitality Challenges

The current "cost of living crisis" is well documented, a combination of global supply pressures; an imbalance in the aggregate supply and demand position and monetary policy, all fuelling higher than the RBA's target band for inflation and contributing to a sustained period of high interest rates.

The "trickle down" effect on consumers relevant to hospitality is that discretionary spending is reduced, with many people dining out less, and/or choosing cheaper range options when they do. More than one of Council's current hospitality tenants has advised of significantly reduced patronage during the day, and an increase in patrons sharing food plates, both acting to decrease already reduced hospitality revenues.

At the same time similar to many industries, the hospitality sector is facing an increase in the costs of essential goods, associated services, and employee costs, with challenges in passing these on to patrons. Measures intended to assist, such as weekend and public holiday surcharges, are not typically well received by customers already constrained by higher mortgage payments, fuel and grocery costs.

Economists generally do not expect the current challenging business climate to alter until mid-2025. For small businesses up to a \$10M annual turnover, the risk of collapse is noted as being approximately 20% higher in 2024 than the same quarter last year (*Ilion Credit Risk Agency*).

Background

The current restaurant owner has been involved with the business since its inception in 2003, formally taking over the lease from the original tenant (a family member) in 2012.

**12.14 Proposed Lease of Council managed land - Waves Restaurant - 2/1N Long Island Drive Frankston****Executive Summary**

Living within the municipality and committed to the business and local area, the owner has maintained a solid, positive and consistent working relationship with Council over the current lease term, responding well to changes and trends in hospitality as well as patron expectations.

Of particular note is the resilience the restaurant owner has demonstrated when faced with unforeseen challenges outside his control, such as the COVID pandemic and the construction of the South East Water (SEW) building. Both had a significant impact on the operations of the business, yet both were seen as opportunities. COVID led to an attractive and well utilised outdoor dining experience within the Long Island Drive car park, the only one of Council's hospitality venues at the time to try something different to address the downturn in trade. The SEW construction which indirectly caused a prolonged loss of parking and patron access led to open discussions with the construction firm, and discounted deals on food/beverages for their workers.

Future Lease

The restaurant owner is desirous of a new lease term, and officers are keen to ensure the continuity of a high quality food and beverage venue servicing visitors to the Foreshore.

If granted a new lease, the restaurant owner intends to make ongoing capital investment and undertake other works to the premises, including but not limited to:

- A full external render of the building;
- Upgraded and modernised signage;
- An extensive internal refurbishment including commercial kitchen upgrade; revamp of the indoor dining space, and the installation of a fireplace;
- An extension and refurbishment of the beach kiosk incorporating outdoor dining;
- An enclosure of the balcony.

A number of these items will require a range of approvals to be obtained, such as statutory planning and consent under the *Marine and Coastal Act 2018*.

Any lease proposal needs to strike a balance between ensuring that a rigorous operational and legally enforceable framework is established, whilst providing sufficient flexibility to allow a tenant to operate and grow their businesses, unimpeded.

The restaurant owner has agreed to a range of measures to ensure a continued high standard of business operation and quality of menu/food from the venue. In addition, he has committed making the necessary applications for most of the above works approvals within specified time frames. The proposed balcony enclosure is a substantial capital investment and will be dependent on whether an appropriate rate of return can be achieved. As a Council-constructed and owned building, it is appropriate that these works be referred to the Long Term Infrastructure Plan, for consideration.

Council has the ability to enforce all provisions in the lease agreement. Terms and conditions addressing risk and liability factors, as well as operational and performance conditions such as nuisance, noise, waste as well as annual financial reporting, have been negotiated. These reflect the higher standards generally expected by Council as a landlord when compared to the private sector, recognising the unique nature and expectations aligned with a Foreshore location.

**12.14 Proposed Lease of Council managed land - Waves Restaurant - 2/1N Long Island Drive Frankston****Executive Summary**

There are minimal environmental, economic and social implications of the new lease proposal.

**Legal / Policy / Council Plan Impact**Charter of Human Rights and Responsibilities

All matters relevant to the Charter of Human Rights and Responsibilities have been considered in the preparation of this report and are consistent with the standards set by the Charter.

LegalLocal Government Act 2020 (LGA)

Pursuant to s.115 of the LGA 2020 (Vic), Council's power to lease land to any person is limited to a term not exceeding 50 years. Pursuant to s.115(3)(b) of the LGA 2020, if Council intends to enter into a lease exceeding ten (10) years (which includes any option terms), that has not been included as a proposal in the budget, Council must undertake community engagement in accordance with its Community Engagement Policy.

Council's Community Engagement Policy 2021, states that limited consultation will occur in respect of the leasing of Council land.

Crown Land (Reserves) Act 1978 (CLRA)

The CLRA sets out Councils obligations in respect of the management of Crown land over which it is the appointed Committee of Management, including leasing and licensing provisions.

The CLRA recognises that whilst some uses may not be wholly consistent with the underlying Crown Reservation purpose, they are not automatically detrimental either, and are often necessary to encourage the community's use of the land, as well the provision of services.

In this case as an existing facility with no change in use proposed, DEECA has supported the ongoing use for commercial purposes, recognising it is not detrimental to the Public Purpose Reservation.

Commercial Tenancy Relief Scheme (CRTS)

As a result of the CRTS legislation introduced during the COVID pandemic, the current Restaurant tenant has a right to a new short term lease with Council (approximately 2 years).

If statutory procedures are successfully concluded for the new long term proposal, the tenant will forgo the right to the short term lease.

Policy ImpactsProperty Strategy

The Restaurant has a principal category of Commercial Use under the Property Strategy, which states that:

- *The primary function of these [land] holdings is income generation and investment to support Council's operational and service delivery needs. These types of property commonly have a secondary function, though the provision of lifestyle/amenity services to the wider community.*

**12.14 Proposed Lease of Council managed land - Waves Restaurant - 2/1N Long Island Drive Frankston****Executive Summary**

The Property Strategy objectives for the leasing of land includes:

- *To ensure that an appropriate Financial Value is returned to Council, in cases where the use is primarily for the commercial benefit of a private operator.*

The lease proposal is consistent with the above objective.

**Council Plan 2021-2025**

The leasing proposal supports the following initiatives of the Council Plan:

- *Thriving Economy (Business and Industry Investment attraction)*

Subject to the successful completion of leasing procedures, a new lease will provide security of tenure and certainty for the current tenant of the Premises, allowing forward planning for future investment in the building and business operation as previously detailed.

**DEECA's Leasing Policy for Victorian Crown Land 2018 (DLP)**

The *Guidelines* for Committees of Management under the *DLP*, encourage a competitive process when entering into new lease agreements. The guidelines also support direct negotiation with the lease incumbent where *inter alia*, a direct negotiation would "achieve an outcome that better serves the community interest".

The current challenging hospitality environment, and higher risk of securing an experienced and financially stable tenant via a competitive process, makes it advantageous to lease to the incumbent.

The Restaurant owner has been a model tenant, with a proven track record of meeting all financial commitments, with no breach notices in respect of lease being issued in 21 years. The proposed building upgrades, once completed, will also ensure a more attractive and inviting venue for patrons.

It was considered appropriate therefore to proceed with a direct negotiation for a new lease with the current tenant, which was supported by DEECA.

**Gender Impact Assessments**

No gender impact assessment was required. This initiative has no impact on our community or the public.

**Officer's Declaration of Interests**

Council officers involved in the preparation of this report have no Conflict of Interest (COI) in this matter and completed COI and confidentiality forms prior to commencing lease negotiations.

**Risk Mitigation**

There is minimal risk in seeking community feedback on the leasing proposal.

In leasing scenarios, the substantive risk generally arises once the lease commences.

Operational risk lies with the restaurant owner, who has received independent legal advice throughout the negotiation process. Risks to Council primarily relate to fiscal and/or performance matters.

Financially, higher rent requirements automatically create a higher default risk. However, the proposed financial obligations for a new lease are similar to that under the

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current lease, with the fixed annual rental increment designed to provide targeted relief against the volatility of using a CPI measure that would otherwise apply. This method also provides more surety for the restaurant owner, which is of particular benefit for both parties given the upgrade works planned to the building.

A range of measures have also been agreed to ensure a high standard of business operation. A bank and directors guarantee will further provide an additional layer of security for Council against liabilities under any future lease agreement.

Property Management are the service managers for Council's Commercial Lease portfolio, and are experienced in managing hospitality agreements.

**Conclusion**

The Waves (Frankston) Pty Ltd owner has worked with officers on appropriate terms and conditions for a new lease agreement in respect of the hospitality business located on the Frankston Foreshore.

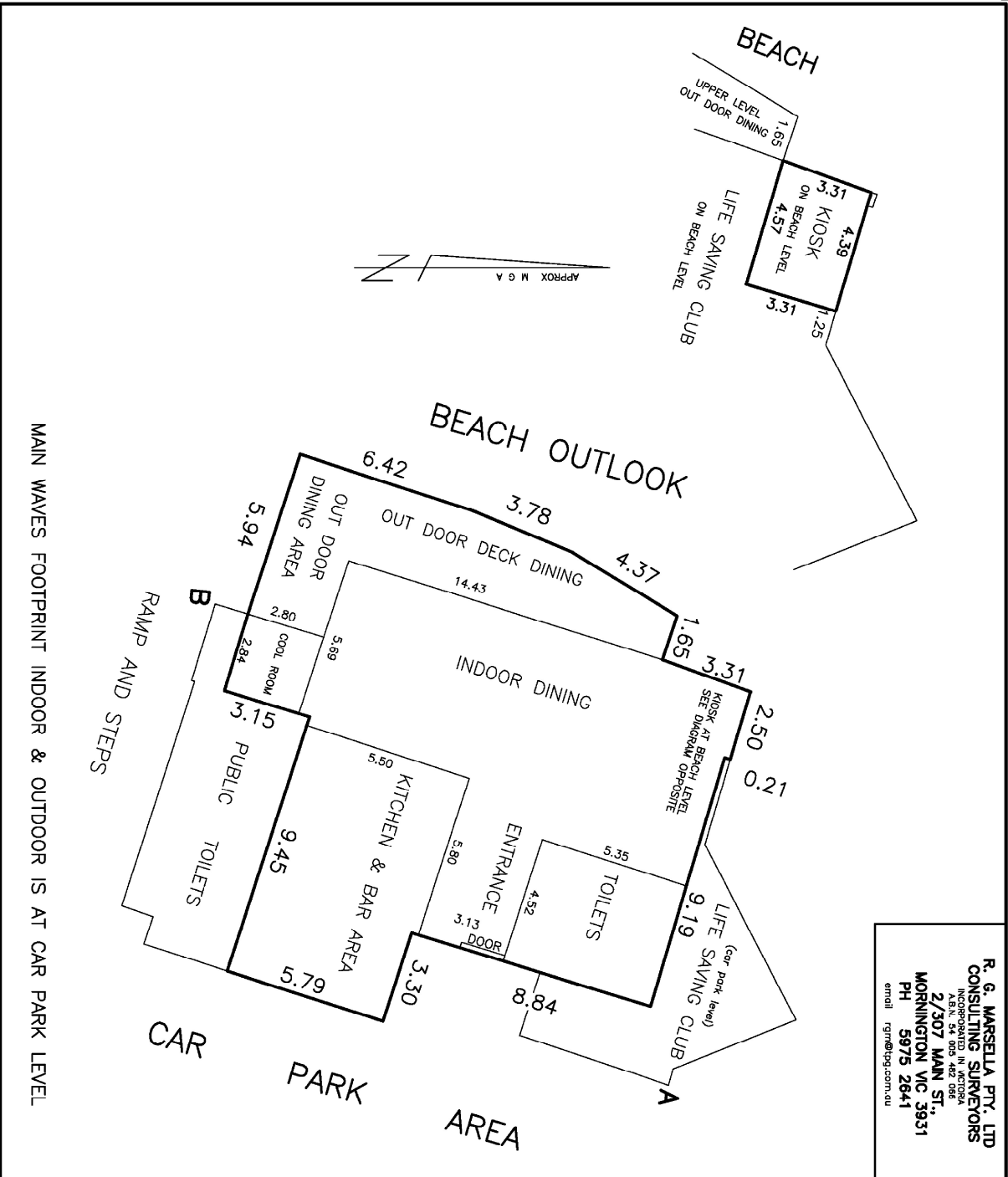
In accordance with the Property Strategy, the proposed lease provides an income stream for Council, contributing to the cost of maintaining services, including management of the Crown land portfolio on behalf of DEECA. Tenure of the facility requires the successful completion of a community engagement process pursuant to the *Local Government Act 2020*.

The commencement of the community engagement process for the leasing of Council land is recommended, to allow the lease proposal to progress to the next stage.

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**ATTACHMENTS**

Attachment A: [↓](#) Copy Lease Plan - Waves Restaurant - 2/1N Long Island Drive Frankston



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**PLAN OF SURVEY  
 FOR LEASE PURPOSES  
 WAVES ON THE BEACH RESTAURANT**

|                     |                   |
|---------------------|-------------------|
| AREA WAVES          | 252m <sup>2</sup> |
| AREA KIOSK          | 15m <sup>2</sup>  |
| AREA COOL ROOM      | 8m <sup>2</sup>   |
| AREA INDOOR DINING  | 115m <sup>2</sup> |
| AREA OUTDOOR DINING | 47m <sup>2</sup>  |

**MGA CO-ORDINATES**  
 A - E 335153 N 5776698  
 B - E 335135 N 5776682

THIS PLAN IS NOT BASED ON ANY TITLE DATUM  
 DIMENSIONS SHOWN ARE DERIVED BY  
 MEASUREMENTS AROUND BUILDING WALLS

CERTIFICATION BY SURVEYOR



LICENSED SURVEYOR  
 ORIGINAL SURVEY DATE 6/12/2023  
 VER 5 28/2/2024

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SURVEYORS REF  
 05271  
 WAVES REST

NUMBER OF SHEETS IN PLAN : 1  
 NUMBER OF THIS SHEET : 1

1:200  
 0 1 2 3 4 5  
 LENGTHS ARE IN METRES

ORIGINAL SHEET SIZE A4

MAIN WAVES FOOTPRINT INDOOR & OUTDOOR IS AT CAR PARK LEVEL