



ORDINARY COUNCIL MEETING

3 JULY 2017

ADDENDUM



BUSINESS

14. LATE REPORTS

14.1 Frankston District Basketball Association Inc. Expansion Project2

Dennis Hovenden

CHIEF EXECUTIVE OFFICER

3/07/2017



Executive Summary**14.1 Frankston District Basketball Association Inc. Expansion Project**

Enquiries: (Liz Daley: Community Development)

Council Plan

Community Outcome:	3. Sustainable City
Strategy:	3.1 Plan, build, maintain and retire infrastructure to meet the needs of the city and its residents
Priority Action	3.1.2 Deliver key infrastructure projects on schedule and within budget (Capital Works Program) adopted by Council for 2013-2017

Purpose

To brief Council on the outcomes of the positive meeting with the Frankston and District Basketball Association Inc. (FDBA) on 28 June 2017 and request approval on key necessary issues for project recommencement.

Recommendation (Director Community Development)

That Council:

1. Notwithstanding all previous adopted recommendations with respect to the Frankston District Basketball Association Project and as a result of reaching an in principle agreement with the FDBA at the meeting held on the 28 July 2017, now resolve the following:

Lease Arrangements

Term of Lease Initial Term of 20 years with one further option of 20 years.

Commencement Date The Date of practical completion of stage 1 of the development project.

Rent FDBA will pay rent pursuant to its current Lease (currently \$32,304.56 per annum until the practical completion of Stage 1 works.

At the completion of Stage 1 works the FDBA will pay rent of \$60,000 per annum CPI adjusted until the practical completion of Stage 1A works.

From the date of practical completion of Stage 1A works the FDBA will pay rent of \$80,000 per annum CPI adjusted.

Rent Reviews Every seven (7) years over the term of the initial lease term and the term of the option.

The rent will be reviewed by a valuer nominated by the Department of Sport and Recreation Victoria (or its successor) and agreed to by Council and the FDBA.

Method of Establishing Rent In recognition that this is not a commercial arrangement, it is agreed that a framework will be developed by an independent expert, acting as an Arbitrator, appointed by the Department of Sport and Recreation.

14.1 Frankston District Basketball Association Inc. Expansion Project

Executive Summary

The framework shall include, but not be limited to factors such as: community benefit derived from the facility, the capital contributions of each party, the capacity of the tenant to pay the rent, the rental paid by other like organisations under similar or like arrangements, and will be agreed to by both parties.

CPI increases will apply annually. In addition to CPI, any rent review resulting in a plus or minus variation of 10% will apply immediately. Where the change in variation is greater than 10% (in either a plus or minus direction) the variation will apply over a three (3) year period; i.e. 1/3rd variation adjustment Year 1; 2/3rd variation adjustment in Year 2; and full variation adjustment in Year 3.

Sport and Recreation Victoria will facilitate discussion regarding the future appointment of an independent valuer for rent review and the agreed criteria and weighting to calculate the community benefit to determine this. FDBA and FCC agree to accept this independent umpire's decision. Both parties agree there are existing models and will work collaboratively to determine the detail as part of the Lease.

At subsequent Rent Reviews each party is entitled to make a submission to the independent expert, and agrees to abide by the decisions.

FDBA Contribution

The FDBA will be required to contribute its one million dollars to the cost of the project in accordance with the terms of the lease and in accordance with Appendix A which will be incorporated into the lease.

Scope of WorksStage 1

FCC will provide copy of the construction budget and project documentation to FDBA (excluding commercial in confidence matters) and assign a Project Manager to the project. A Project Steering Group (PSG) comprising representatives FDBA, Councillors and Council Officers will be established and meet monthly during construction. Contract variations will apply for equipment and building changes (e.g. backboards and PD) outside of the builder's scope and these variations will be records by PSG and reported back to FCC.

For synchronicity of trades, roof repairs and light replacements will be undertaken with costs apportioned as specified in current lease.

FCC will continue to manage the carpark and will implement measures to ensure availability of car parking for FDBA participants during construction. Ongoing access to car parking for FDBA participants will be accommodated in the lease.

14.1 Frankston District Basketball Association Inc. Expansion Project

Executive Summary

FCC will allow up to an additional \$25,000 from the project contingency to establish a suitable temporary canteen facility, over and above what the builder has allowed for the temporary canteen.

Stage 1A

During Stage 1 construction, the planning and design for the Stage 1A works will commence as follows:

- Mezzanine Level,
- Retractable seating for 1000 seats including alteration to building and fire services and the provision of additional car parking as specified under the planning permit;
- Refurbishment of existing toilets.
- FCC commits to complete planning work, including permits, at mid-point of Stage 1 works to enable capacity for building for Stage 1A once funds are secured in the context of upcoming State and Federal elections.

Estimated cost of retractable seating is \$575,000 with funding provided by:

- \$250,000 from Member for Dunkley
- FDBA to source and secure balance

The retractable seating will trigger fire services building regulation compliance, the cost of which cannot be foreshadowed in advance but will be determined through the Stage 1A design process.

Stage 2

FCC to proceed with planning, design work and relevant planning permits for Stage 2 in 2019/2020 budget. FCC and FDBA agree to work together to lobby for funding. Stage 2 works (including High Performance Centre) will commence once funding is secured.

Financial Accounts

The FDBA will be required to provide to Council its financial information in accordance with the Terms of the Lease.

Car Park

Council will retain the management of the car parking at the Frankston Basketball Stadium (current and future car parking) but will provide a licence to the Frankston District Basketball Association that allows access to the designated areas of the car park.

The licence will be reflected in the lease agreement.

2. Confirms and adopts all other key lease and project components agreed to at the 28 June 2017 meeting with the FDBA as outlined in Attachment A.

14.1 Frankston District Basketball Association Inc. Expansion Project**Executive Summary**

3. Authorises the Chief Executive Officer to commence the statutory process to advise of its intent to enter into a lease with the Frankston District Basketball Association in accordance with Section 190 Local Government Act 1989.
4. In the event of receiving submissions under Section 223 Local Government Act 1989, agree to hear those submissions at a special meeting of Council on a date to be determined after the four week statutory advertising period being not before the 2nd August 2017.
5. In the event that no submissions are received in accordance with Section 223 Local Government Act 1989 the Council conduct a special meeting for the purpose of the adoption of the draft lease noting that the date will be set for after the four week statutory advertising period being not before the 2nd August 2017.
6. Authorises the Chief Executive Officer and one other officer together with Councils solicitors - Maddocks, to assist in the preparation of the draft lease in accordance with the criteria agreed to with the FDBA at the meeting on the 28 June 2017 and as outlined in Appendix A.
7. Request the Chief Executive Officer immediately advise the Council if there is a failure to have the draft lease prepared in accordance with Councils wishes and in readiness for execution by Council.
8. Requests the Chief Executive Officer to advise them of the outcome of discussion with the preferred tenderer Devco Project and Construction Management Pty Ltd with particular emphasis on:
 - a. If the tender and project can proceed at the adopted costs.
 - b. What variation to the accepted tender price if any.
 - c. If the variation (if any) will cause the project to be retendered and what the implications might be if this is required.
9. Authorise the Chief Executive Officer to have prepared contract documents relating to the construction of the Frankston District Basketball Association project Stage 1 for the preferred tenderer Devco Project Management Pty Ltd in the event there is no significant variation to the submitted tender price requiring the Chief Executive Officer to advise Council.
10. Agree to bring forward the planning and design works for Stage 1A works for Stage 1A to be completed by no later than March 2018 to enable Council and the FDBA to advocate for additional funding.
11. Stage 1A works will only be undertaken when appropriate funding is secured.
12. Agrees to bring forward the planning and design works for Stage 2 into its 2019/20 budget process.
13. Stage 2 works will only be undertaken when appropriate funding is secured.
14. Writes to the State and Federal Governments together with Local Members of Parliament to advise of the resolution if issues relating to the project and that the project will be recommenced as a matter of urgency.
15. Appoint three Councillors to be a part of the project steering group noting that all Councillors are able to attend meetings.
16. Invite the FDBA to nominate three representatives to be a part of the Project Steering Group.

14.1 Frankston District Basketball Association Inc. Expansion Project**Executive Summary****Key Points / Issues**

- Federal and State Government infrastructure funding for the expansion of the Frankston District Basketball Association Inc. (FDBA) has been at risk due to unresolved issues between FDBA and FCC.
- On 28 June 2017 The Hon Bruce Billson facilitated a discussion between the parties that has resulted in consensus on key issues (refer Attachment A). This agreement will enable Council to take the necessary steps to commence construction and notify funding bodies of the agreement, hence securing the grant commitments. A joint media release on 29 June 2017 provided comfort to the community and funding bodies of renewed commitment for the project (see Attachment B).
- These next steps to commence the build include:
 - Develop and execute a new lease agreement with FDBA. The key terms that were under dispute are now resolved and included in Attachment A. Legal counsel and representatives from each party will expedite development of the lease which is required to be executed before construction commences.
 - Commence statutory process for advertising the intention to enter into a lease with the FDBA at Kananook Reserve as required under s223 *Local Government Act 1989*. It is a requirement the lease be advertised for a period of 28 days and include key points including rental amount, review terms and land and so forth to enable public submissions to be made and considered at a Council meeting.
 - Write to officially notify Federal Member for Dunkley; Local Member for Frankston; Local Member for Carrum; State and Federal Government officers of the agreement and imminent construction to provide certainty of project delivery.
 - Notify Devco Project and Construction Management Pty Ltd, preferred tenderer, of project recommencement and request confirmation of whether the project price as specified in the tender process will be maintained, the timelines and continued interest in being engaged in the project in accordance with *Local Government Act 1989*.
 - *Note that given the passing of time there may be some minor adjustments in the preferred tenderer price. Confirmation of the tender price and of any additional costs that would apply outside of the tender validity period will be required prior to entering into a contract.*

Financial Impact

For the 2017-2018 financial year, the State Government Minister for Local Government has announced a limit on the amount Victorian councils may increase rates. The cap for the 2017-2018 financial year is 2%. The cap is based on the Consumer Price Index expected for the financial year.

This cap has a significant effect on Council's current Long Term Financial Planning, with rate revenue being \$9 million less than anticipated over the first four years, growing to \$17 million over five years. This reduction will have a severe impact on Council's financial capacity to maintain service levels and deliver key capital projects.

Resolution of the outstanding issues will result in securing the Federal and State government funding together with the financial contribution of the FDBA.

14.1 Frankston District Basketball Association Inc. Expansion Project**Executive Summary**

The rental amounts negotiated are lower than first discussed but reflect the discussions that have been conducted.

Council and the FDBA are aware of the need to secure additional funding for Stages 1A and 2 to proceed.

It should be noted that discussions will be held with the preferred tenderer to determine if there has been any movement in the tender accepted.

Consultation**1. External Stakeholders**

FDBA, Members of Parliament, Maddocks, Sport and Recreation Victoria.

2. Other Stakeholders

Not applicable.

Analysis (Environmental / Economic / Social Implications)

Participation in team sports builds social connection networks and healthier communities, all of which provide positive contribution to economic and social outcomes.

Legal / Policy / Council Plan ImpactCharter 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.

The Charter of Human Rights and Responsibilities has been considered in the preparation of this report but is not relevant to the content of the report.

Legal

In accordance with the Local Government Act 1989 Council will be required to advertise the proposed lease for a four week period and hear submissions if any.

The FDBA has indicated that access to the site relies upon the lease being signed so therefore a considerable effort will be required to ensure that the lease reflects the agreed position of both parties.

Depending on discussions with the preferred tenderer, legal advice may also be needed on issues such as variations and retendering.

Policy Impacts

Not applicable.

Officer's Declaration of Interests

Council officers involved in the preparation of this report have no Conflict of Interest in this matter.

Risk Mitigation

The successful outcome of negotiations will avoid the risk of returning grant funding which would result in reputational damage.

If funds were returned the project would not proceed and the community would not benefit from improved facilities.

14.1 Frankston District Basketball Association Inc. Expansion Project**Executive Summary****Conclusion**

There has been a significant amount of effort to reach the point achieved on the 28 June 2017 with respect to the Frankston District Basketball project.

With agreement now reached it is important that all of the required processes are completed to allow the project to proceed.

A number of these processes will run side by side to reduce the amount of time required.

Once the tasks are completed then the project which will be of enormous benefit for all within the municipality can commence.

ATTACHMENTS

Attachment A: FDBA Key Lease and Project Components

**14.1 Frankston District Basketball Association Inc. Expansion Project
Officers' Assessment****Background**

The Council and the FDBA have been working closely to secure funding to allow for a major upgrade of the Frankston Basketball Stadium.

With the funding secured, problems were encountered over the terms of a new lease arrangement which has required an extended period of time to resolve.

As a result of a meeting conducted on the 28 June 2017 there is now an in principle agreement between Council and the FDBA with respect to the terms of the lease.

Once the statutory processes are completed the project will be able to commence.

Discussions are also being held with the preferred tenderer to determine when the project may commence.

Issues and Discussion

The draft lease must be prepared and executed in accordance with the Local Government Act 1989.

The builder has to advise of his tender price being the same or varied before contract documentation can be issued.

Any significant contract variation to the adopted tender will need to be reported to Council.

Project Steering Group needs to be appointed.

Council will need to advise the State and Federal Government of the status of the project to determine new milestones.

**FRANKSTON AND DISTRICT BASKETBALL ASSOCIATION INC. KEY LEASE AND PROJECT COMPONENTS
 REFLECTING MEETING 28 JUNE 2017**

Issue	Position	Agreed
Term of lease	An initial term of 20 years with one further option of 20 years. FDDB and FCC commit to finalise the lease as a matter of urgency to ensure construction can commence as soon as possible on execution of the lease.	✓
Commencement Date	The date of practical completion of Stage 1 of the development.	✓
Rent	The FDDB will pay rent pursuant to its current lease (currently \$32,304.56 per annum inclusive of GST) until the completion of Stage 1 works.	✓
	At the completion Stage 1 works the FDDB will pay a rent of \$60,000 per annum (indexed at CPI and inclusive of GST) until the completion of Stage 1A works.	✓
	From the date of practical completion of Stage 1A works the rent will be \$80,000 per annum (indexed at CPI and inclusive of GST).	✓
Rent Review	Every 7 Years over the term of both the initial lease term and option period.	✓
	The rent will be reviewed by a Valuer nominated by the Department of Sport and Recreation Victoria (or its successor).	✓
Method of Establishing Rent	<p>CPI increases will apply annually. In addition to CPI, any rent review resulting in a plus or minus variation of 10% will apply immediately. Where the change in variation is greater than 10% (in either a plus or minus direction) the variation will apply over a 3 year period; ie. 1/3rd variation adjustment year 1; 2/3rd variation adjustment in year 2; and full variation adjustment in year 3.</p> <p>Sport and Recreation Victoria will facilitate discussion regarding the future appointment of an independent valuer for rent review and the agreed criteria and weighting to calculate the community benefit to determine this. FDDB and FCC agree to accept this independent umpires decision. Both parties agree there are existing models and will work collaboratively to determine the detail as part of the Lease.</p> <p>A subsequent Rent Reviews each party is entitled to make a submission to the independent expert, and agrees to abide by the decisions.</p>	✓
Failure to reach agreement	Should the parties fail to reach agreement, the FDDB will continue on its lease for the existing facility until its expiration on 30 June 2026.	✓
Access to new facilities	The new lease must be executed before the Stage 1 works commence.	✓
FDDB Contribution	<p>The FDDB remains committed to contributing its \$1million to the cost of the project in accordance with the terms set out in the agreement to lease, namely:</p> <p>a) 20% within 14 days after receiving written notice from the Landlord that the Landlord has appointed a builder for the project</p>	✓

	<p>b) 30% within 14 days after receiving written notice from the Landlord that the Landlord has paid the builder half of the total price the Landlord must pay the builder for construction of the project</p> <p>c) 25% within 14 days after receiving written notice from the Landlord that the Landlord has paid the builder three quarters of the total price; and</p> <p>d) 25% within 14 days after receiving written notice from the Landlord that the Landlord has received the certificate of practical completion.</p>	
Funding Agreement	<p>The lease agreement must provide for the requirements as contained in the State and Federal Government agreements. Both governments will be required to endorse that the lease reflects the intent of the funding application including:</p> <ul style="list-style-type: none"> • Disadvantaged youth programs • Disability programs • Major community events • Primary and secondary school programs and academy. 	✓
Scope of Works:		
Stage 1	<p>FCC will provide copy of the construction budget and project documentation to FDBA (excluding commercial in confidence matters) and assign a Project Manager to the project. A Project Steering Group (PSG) comprising representatives FDBA, Councillors and Council Officers will be established and meet monthly during construction. Contract variations will apply for equipment and building changes (eg. backboards and POD) outside of the builder's scope and these variations will be recorded by PSG and reported back to FCC.</p> <p>For synchronicity of trades, roof repairs and light replacements will be undertaken with costs apportioned as specified in current lease.</p> <p>FCC will continue to manage the carpark and will implement measures to ensure availability of car parking for FDBA participants during construction. Ongoing access to car parking for FDBA participants will be accommodated in the lease.</p> <p>FCC will allow up to \$25,000 from the project contingency to establish a suitable temporary canteen facility.</p>	✓
Stage 1A	<p>During Stage 1 construction, the planning and design for the Stage 1A works will commence as follows:</p> <ul style="list-style-type: none"> - Mezzanine Level, - Retractable seating for 1000 seats including alteration to building and fire services and the provision of additional car parking as specified under the planning permit; - Refurbishment of existing toilets. <p>FCC commits to complete planning work, including permits, at mid-point of Stage 1 works to enable capacity for building of Stage 1A once funds are secured in the context of upcoming State and Federal elections.</p> <p>Estimated cost of retractable seating is \$575,000 with funded provided by:</p> <ul style="list-style-type: none"> - \$250,000 from Member for Dunkley; 	✓

	<p>- FDDB to source and secure balance.</p> <p>The retractable seating will trigger fire services building regulation compliance; the cost of which can not be foreshadowed in advance but will be determined through the Stage 1A design process.</p>	
Stage 2	FCC to proceed with planning, design work and relevant planning permits for Stage 2 in 2019/2020 budget. FCC and FDDB agree to work together to lobby for funding. Stage 2 works (including High Performance Centre) will commence once funding is secured.	✓
Financial Accounts	The FDDB to continue to comply its existing obligations under the current lease including the obligation to furnish financial information.	✓
Insurance	FCC requires public risk cover of \$20 million or such other amount as the FCC reasonably specifies.	✓