

TO BE ACTIONED BY Director Shared Services

12. CORPORATE SERVICES

12.1 Variation of Lease between Council and Manningham Community Health Services Limited

Responsible Director: Director Shared Services

File No. T15/109

The ultimate destination for this report is: COUNCIL AGENDA

Neither the responsible Director, Manager nor the Officer authoring this report has a conflict of interest in this matter.

SUMMARY

Manningham Community Health Services Limited ('Tenant') leases from Council part of the land and improvements at 40-44 Balmoral Avenue, Templestowe Lower, ('Premises') from which the Tenant offers the Stride Early Childhood Intervention Services.

The Tenant has changed its model of service to its clients by increasing the focus on one to one consultations and wishes to increase the functionality of the Premises by undertaking certain alterations. The alterations required by the Tenant will be approximately \$80,000 (GST exclusive). The Tenant has advised that it will fund the entire cost of the alterations which would be carried out under Council's supervision. In return for funding the cost of the alterations remaining in the Premises at the end of the lease, the Tenant is requesting Council to vary the existing lease to provide one additional further term of 4 years.

A variation of lease to increase the further term in the 2012 lease by one additional further term of 4 years is supported on the proviso that the applicable rent for the second further term (Year 9 of the lease) will be the subsidised rent under Council's Pricing Policy, applicable at that time, to organisations solely operating under 'Not for Profit' status and which provide the maximum level of community benefit to the Manningham community. In the meantime, the applicable rent would continue to be adjusted annually for the remainder of the initial term, the first further term and years 2-4 of the second further term in accordance with adjustment method set out in Council's Pricing Policy for leased community facilities.

It is recommended that Council gives public notice of its intention to vary the existing lease.

1. BACKGROUND

1.1. By a lease dated 28 November 2012 Council granted the Tenant a lease of the Premises for an initial term of 4 years from 1 October 2012 with an option for one further term of 4 years. Under the current lease, taking into account the combined initial and further term, the Tenant can occupy the Premises until 30 September 2020.

- 1.2. More one on one appointments are now offered as part of the Tenant's services to children and families requiring early intervention and health services which has given rise to additional treatment/consultant space at the Premises.

2. PROPOSAL/ISSUE

- 2.1. The change in the Tenant's service model has given rise to additional space requirements in the Premises and to increase the functionality of the Premises, the Tenant has sought consent to undertake certain alterations. The Tenant has agreed that the alterations would be funded at its entire expense. Essentially, the proposed alterations would involve the conversion of existing office space into three additional treatment rooms; the conversion of the existing store rooms into office space and the construction of replacement and additional storage space.
- 2.2. If Council is agreeable to the Tenant's request for an extension of the lease by another 4 years (to 30 September 2024) and the improvement to be funded by the Tenant are to remain at the Premises at the end of the lease, Council must, before granting a variation of the lease, publish a notice and invite submissions on the proposal in accordance with sections 190 and 223 of the *Local Government Act 1989* ('the Act').
- 2.3. A draft variation of lease prepared by Council's Property Services unit taking into account the following matters has been agreed to by the Tenant:
 - 2.3.1 the rent for the remainder of the current initial term and the first further term is to be reviewed in accordance with the method contained in Council's pricing policy. The Leased Community Facilities Pricing Policy currently provides for annual rent increments of 4%. The rent for Year 9 being the first year of the second further term will be the subsidised rent which is applicable at that time, to organisations solely operating under 'Not for Profit' status and which provide the maximum level of community benefit to the Manningham community. The rent for the remaining 3 years (Years 2-4) of the further term is to be reviewed in accordance with Council's pricing policy;
 - 2.3.2 the alterations to be funded by the Tenant are to accord with the preliminary plans prepared in consultation with the Tenant. These plans are to form part of the variation of lease and would be replaced in the event of there being variations to the alterations as noted in part 2.3.4 below;
 - 2.3.3 Council's Project Manager will invite tenders or quotations and the Tenant on accepting the estimated costs, will pay to the Council 100% of the estimated costs with such payment being held in trust and expended as the alterations progress;
 - 2.3.4 in the event of the Tenant desiring a variation to the alterations, Council's Project Manager will cost the variations and such variations will proceed subject to the Tenant's agreement to meet such costs and making such payment on request;
 - 2.3.5 the maintenance schedule in the 2012 lease is extended to include the alterations. In relation to air conditioning, the Tenant is obliged to maintain and service the units and in relation to the new units (forms part of the Tenant's property) to be installed as part of the alterations, to replace such units, if required;

2.3.6 with the exception of the new air conditioning units installed (which form part of the Tenant's property) which the Tenant can remove at the end of the lease subject to first complying with its make good obligations in the lease, the alterations will remain without the Tenant being entitled to any compensation for such improvements; and

2.3.7 two additional special conditions are inserted into the lease. The first prohibits the Tenant from creating any interest (including registering any security interest under the *Personal Properties Securities Act 2009* (Cth)) over the lease and the second, includes the Tenant's agreement for the Council or its contractor to enter the Premises without prior notice for the purpose of complying with the requirements of the *Building Act 1993* (Vic) and *Building Regulations 2006* (Vic) in relation to essential safety measures.

2.4. It is proposed that Council authorises the commencement of the statutory provisions pursuant to sections 190 and 223 of the Act and at the completion of the public notice period and the consideration of submissions, if any, Council resolves whether or not to grant the variation of lease.

3. PRIORITY/TIMING

3.1. The Tenant has advised that it has the funds to undertake the works and ideally wishes to carry out the works as soon as practicable, subject to Council's approval.

4. POLICY/PRECEDENT IMPLICATIONS

4.1. The term and the further term contained in the current lease between the parties accords with Council's Leased Community Facilities Pricing Policy.

4.2. The Tenant wishes to secure longer tenure of the Premises in return for its financial contribution towards the alterations required to meet the Tenant's service requirements.

5. CUSTOMER/COMMUNITY IMPACT

5.1. The Tenant's services are provided to families of children from birth to school age with a developmental delay or disability. The Tenant has revised its service model to better meet the needs of the children and families with increased one on one appointments/consultations.

6. FINANCIAL RESOURCE IMPLICATIONS

6.1. The Tenant will meet the cost of the proposed alterations required to the Premises which are estimated at approximately \$80,000 (GST exclusive). This cost covers Council's project management/supervision fees.

6.2. With the exception of additional air conditioning units proposed to be installed which would form part of the Tenant's property and which the Tenant can remove at the end of the lease subject to meeting its make good obligations, the alterations made to the Premises will remain at the end of the lease without the Tenant being entitled to any compensation for their retention.

6.3. The current year's rent in respect of the leased Premises is \$233.97 plus GST. The rent will continue to be reviewed in accordance with Council's Leased Community Facilities Pricing Policy. Currently, the rent is reviewed annually on the commencement date during the term and the further term by 4%.

Section 2.3.1 of this report sets out further information in relation to the applicable rent throughout the term and the further terms.

7. CONSULTATION

- 7.1. Officers from Council's Community Programs have been liaising with the Tenant in relation to the proposal and costing with the assistance of the Strategic Projects Unit.

8. CONCLUSION

- 8.1. It is recommended that the Council agrees to the proposal and resolves to authorise the commencement of statutory procedures in accordance with sections 190 and 223 of the Act.

OFFICER'S RECOMMENDATION

That Council:

1. **Consents to the Manningham Community Health Services Limited's request to undertake at its cost, alterations at the Premises known as 40-44 Balmoral Avenue, Templestowe Lower to better meet its service delivery needs;**
2. **Resolves to give public notice pursuant to sections 190 and 223 of the *Local Government Act* 1989 to vary the existing lease with Manningham Community Health Services Limited in respect of the Premises known as part 40-44 Balmoral Avenue, Templestowe Lower to provide for one additional further term of 4 years and noting that the alterations (excluding the new air conditioning which can be removed subject to the make good provisions of the lease) are to remain at the end of the lease without Manningham Community Services Limited being entitled to any compensation for such improvements;**
3. **Establishes a Committee of Council comprising the Mayor and the Heide Ward Councillors, to hear and consider any submissions received in accordance with section 223 of the *Local Government Act* 1989; and**
4. **Resolves that the Committee be disbanded upon considering and hearing any submissions and making a recommendation to Council or, in the event of no submissions being received, on the proposed lease being determined by Council.**

**MOVED: DOWNIE
SECONDED: GALBALLY**

That the Recommendation be adopted.

CARRIED

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