Special Meeting of Council

Council Chambers
Civic Centre
Boxshall Street Brighton

Wednesday 23 October 2019 at 6:30pm

Agenda
Members of the Gallery

Your attention is drawn to Section 92 of Council's Governance Local Law No 1.

Section 92 The Chair's Duties and Discretions

In addition to other duties and discretions provided in this Local Law, the Chair –

(a) must not accept any motion, question or statement which is derogatory, or defamatory of any Councillor, member of Council staff, or member of the community;

(b) may demand retraction of any inappropriate statement or unsubstantiated allegation;

(c) must ensure silence is preserved in the public gallery during any meeting;

(d) must call to order any member of the public who approaches the Council or Committee table during the meeting, unless invited by the Chair to do so; and

(e) must call to order any person who is disruptive or unruly during any meeting.

An Authorised Officer must, if directed to do so by the Chairman, remove from a meeting any Councillor or other person who has committed such an offence.

Your cooperation is appreciated

Chairperson of Council
To: Mayor and Councillors

In accordance with Section 84 of the Local Government Act 1989, a Special Meeting of Bayside City Council will be held at the Council Chambers, Civic Centre, Boxshall Street, Brighton, on Wednesday, 23 October 2019 at 6:30pm for the purpose of transacting the following business:

Order of Business

1. Apologies

2. Disclosure of any Conflict of Interest of any Councillor

3. Reports by the Organisation
   3.1 Proposal to enter into a Lease of Billilla Homestead (26 Halifax Street, Brighton) .......................................................... 5

4. Urgent Business
1. **Apologies**

2. **Disclosure of any Conflict of Interest of any Councillor**
3. **Reports by the Organisation**

3.1 **PROPOSAL TO ENTER INTO A LEASE OF BILLILLA HOMESTEAD (26 HALIFAX STREET, BRIGHTON)**

Corporate Services - Commercial Services  
File No: PSF/19/965 – Doc No: DOC/19/261481

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**Executive summary**

**Purpose**

Council, at its 23 July 2019 Ordinary Council Meeting, considered a report in relation to the future leasing of Billilla Homestead located at 26 Halifax Street, Brighton, and resolved:

*That Council authorise officers to negotiate further with Yesodei HaTorah in relation to a future lease of the Billilla Homestead and gardens and a report be provided to the September 2019 Ordinary Council meeting.*

**Background**

The Homestead was originally leased to the Society of Jesus in Victoria (Xavier College) commencing 9 March 2005. The Planning Permit allows for use as an education and exhibition centre to operate Monday to Friday 8am-6pm, Saturday 9am-5pm, and Sunday 10am-5pm. Additionally, the planning permit allows for up to 10 staff and up to 75 students on site at any one time.

In 2011, Xavier sought to assign the remaining balance of its lease term after an Expression of Interest campaign to find a suitable tenant. Three formal submissions were received for an education health centre and restaurant, photographic studio and a school. In October 2012, Xavier College, with Council’s consent, assigned the lease to the current tenant, Yesodei HaTorah College (YHT). YHT is an independent religious school for boys. The assigned lease expires on 5 February 2021.

YHT sought to extend its lease initially in early 2018, and again after the Lease and Licence Policy was updated to allow direct negotiation with tenants. A formal proposal was provided in October 2018, with subsequent discussions leading to the current proposal before Council.

The school has consistently met rental payments and undertaken maintenance of the building as required. There has however been a number of community complaints about security guards and impact on lawns over a portion of the licenced area of Billilla Gardens. It should be noted that as Council officers report complaints received to YHT, YHT has sought to address the matters raised.

**Key issues**

**Area to be leased**

Negotiations have been continuing with YHT and a variety of options canvassed. A number of items required agreement on approach along with negotiation of the normal terms of a lease.

The report considered by Council at the July Ordinary Meeting identified two key issues of community concern namely: the interaction of Security Guards with the general public; and the degradation of a portion of grass by over-use. These matters are addressed separately below.

**Security Guards** – It is proposed to not permit any proactive patrols outside the leased area. This will be an essential term of the lease and any deviation will constitute a breach. Council
will only tolerate in extreme circumstances where security guards leave the leased areas. Any scenario where a security guard leaves the leased area will need to be reported to Council with an incident report justifying the deviation from an essential term of the lease. Each breach of the lease will be formally documented in writing by Council to YHT. In the event the school breaches the lease a third time, Council may, at its absolute discretion, through a resolution, terminate the lease giving 6 months notice to vacate.

**Grassed Areas** – In order to minimise the impact on the gardens through recess activities, YHT have requested to install synthetic turf. The installation of synthetic turf in the heritage garden is not supported by officers. Damage to grassed areas in the licence area is currently remediated by YHT during school holiday periods and it is proposed that in the event a lease is granted, this practice continues.

**Security Cameras** – To minimise the visible presence of security guards, YHT have requested the installation of security cameras. This would allow the exterior of the leased area and licenced area to be monitored without the need for more visible security guard presence. YHT would be required to gain appropriate permits related to their installation on a heritage building. The installation of security cameras to the exterior of the building including the monitoring of public gardens may be contentious in the community.

**Offer for Lease by YHT**

YHT made an initial offer to Council to lease additional space best described as the Artist in Residence rooms at the rear of the building as well as a lease over the open space land at the rear of the building. The intention was to fence the leased area and exclude the public from general use. Council commissioned a valuation on the space outlined in the offer of which was assessed at $105,000 per annum plus GST. This offer sought a 30 year term with a starting rental of $135,000 plus GST.

Officers conducted internal consultation which led to both the Open Space and Arts teams declining support for the restriction of open space proposed, impact on the heritage garden and usage of Artist-in-Residence spaces. It is on this basis that YHT was advised that officers do not support this offer and recommended YHT make an offer on the land they currently occupy (with the inclusion of a room for security).

The revised offer (Attachment 1) subsequently obtained by YHT is for a total term of 15 years made up initially of a 3 year term with further terms of 5 and 7 years. Starting rental is proposed at $125,000 per annum plus GST. This would increase annually by CPI. The currently occupied area would increase with the inclusion of the old laundry room.

The valuation over the current lease and licenced area is $105,000 per annum plus GST.

In relation to security, the offer is subject to YHT taking all reasonable measures to ensure its guards do not undertake proactive patrols or provide a visible presence outside the Leased Area. However, it is acknowledged that guards will need to be able to react to a situation in which a reasonable threat of harm outside the leased area becomes apparent. Any installation of security cameras is subject to statutory approval.

YHT also proposed to install synthetic turf in the key area of outside activity to mitigate the impact of use on the gardens.

**National Trust**

Recently, the Mayor and CEO met with the CEO and Chair of the National Trust Board. The National Trust considers that Billilla has great potential to be incorporated into the cultural life of Bayside and Melbourne through exhibition programming and many other cultural events. The National Trust has over 60 years’ experience doing this for properties such as Rippon Lea,
Como and the Old Melbourne Gaol. The National Trust would like to explore the possibilities of assisting Council in the future management of the property potentially as a Committee of Management and has advised there is merit in exploring how a partnership could be developed. The National Trust manages 10 properties on behalf of the State Government under such arrangements.

The National Trust has also advised that it is willing to acquire the property at a peppercorn rate from Council in order to create a use for public purpose for the site if a management model was not preferred. As the Council resolution is to negotiate with YHT, no further detailed discussions have been undertaken.

Should Council be interested in considering the National Trust approach or any other potential use of the site, it could resolve to undertake an Expression of Interest process.

**Recommendation**

That Council:

1. Commence the statutory procedures under Sections 190 and 223 of the *Local Government Act 1989* to lease the Billilla Homestead to the current tenant on the below terms:
   - Term: 15 years
   - Rent: $125,000
   - Rent Escalation: C.P.I.

2. In the event a submission is received, convene a Section 223 Special Committee of Council meeting on Monday 2 December 2019 commencing at 6:30pm at the Council Chambers, Boxshall Street, Brighton to hear any submitters that wish to be heard.

**Support Attachments**

1. Attachment 1 YHT revised offer for currently leased areas ↓
Considerations and implications of recommendation

Liveable community

The homestead is currently used as a school and utilised 6 days per week. As part of the agreement with YHT.

Social

The school is well utilised for 6 days per week during school terms and provides diverse alternative schooling options to the community.

Natural Environment

Replacing the grass with a synthetic harder wearing product would reduce the Natural Environment in the gardens. Resowing the grass annually is considered a better option.

Built Environment

Billilla was built circa 1878 and used as a family residence until 1973, when the former City of Brighton acquired the property subsequently reserving it for public purpose. The property is currently occupied by a high school that has adapted the mansion into a series of class rooms. There is currently no public access to the building.

Over the years, the property has been used for a variety of other purposes including catering and wedding events.

Customer Service and Community Engagement

Concerned community members met with Council officers on 11 June 2019 to raise issues with the tenancy. These relate to the need for and presence of security guards and feelings on how this impacts on use and enjoyment of the grounds by the community, intensity of use 6 days per week and impact on the building and grounds, noise especially on Sunday mornings, sense that the use is not in-keeping with Billilla and that there are better and more harmonious uses for the site.

The existing tenant is responsive to Council when issues are raised and has also sought feedback from residents in terms of its use of the site.

Human Rights

The implications of this report have been assessed and are not considered likely to breach or infringe upon the human rights contained in the Victorian Charter of Human Rights and Responsibilities Act 2006.

Legal

Any lease process will trigger a requirement to comply with section 190 and 223 of the Local Government Act 1989.

Finance

Council currently receives $85,165 + GST per annum from YHT. YHT’s offer is $125,000 + GST. The revised valuation undertaken is $105,000 + GST.
Links to Council policy and strategy
The following policies are also associated with the delivery of the strategy:

- Lease and Licence Policy 2018
- Property Strategy 2018-2021

Options considered

Option 1

<table>
<thead>
<tr>
<th>Summary</th>
<th>Lease and Licence currently occupied land to YHT.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Benefits</td>
<td>Increased revenue including long term future revenue streams.</td>
</tr>
<tr>
<td></td>
<td>No change from the current arrangement over space use; however, controlled presence of security guards.</td>
</tr>
<tr>
<td>Issues</td>
<td>Community concern relating to the existence of security guards, installation of synthetic grass and security cameras monitoring public grounds.</td>
</tr>
</tbody>
</table>

Option 2

<table>
<thead>
<tr>
<th>Summary</th>
<th>Lease the building and an exclusive parcel of land to the rear of the building.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Benefits</td>
<td>Exclusive use of rear land may reduce public interaction between the tenant and users of the public gardens.</td>
</tr>
<tr>
<td>Issues</td>
<td>Community concern relating to the existence of security guards, installation of synthetic grass and security cameras monitoring public grounds.</td>
</tr>
<tr>
<td></td>
<td>Concern over restricting access to heritage gardens and fencing off a portion of it.</td>
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<td></td>
<td>Intensification of use of portion of historic gardens.</td>
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<tr>
<td></td>
<td>Not supported by Council officers due to restriction on heritage gardens and loss of access to areas used by Artists in Residence.</td>
</tr>
</tbody>
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Option 3

<table>
<thead>
<tr>
<th>Summary</th>
<th>Conduct an EOI.</th>
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</thead>
<tbody>
<tr>
<td>Benefits</td>
<td>Transparent decision making including the ability to let the market determine what the land is worth.</td>
</tr>
<tr>
<td>Issues</td>
<td>Potential for a reduced rental amount and/or lack of respondents leading to a lower quality outcome than the current proposal. The current tenancy runs until March 2021</td>
</tr>
<tr>
<td></td>
<td>This option was previously not supported by Council in favour of direct negotiation with YHT.</td>
</tr>
</tbody>
</table>
# Option 4

<table>
<thead>
<tr>
<th><strong>Summary</strong></th>
<th>Undertake further discussion with the National Trust in relation to managing the site.</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Benefits</strong></td>
<td>Opportunity to explore the management of the site with the National Trust. May lead to community based use on site that allows the wider community access to the historic buildings on the site.</td>
</tr>
<tr>
<td><strong>Issues</strong></td>
<td>Unlikely to receive any future income from the site.</td>
</tr>
<tr>
<td></td>
<td>Will leave the existing tenant YHT with limited time to consider future options if a decision is deferred for an extended time.</td>
</tr>
<tr>
<td><strong>Lessor</strong></td>
<td>Brighton City Council (&quot;BCC&quot;)</td>
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</tr>
<tr>
<td><strong>Lessee</strong></td>
<td>Yesodei HaTorah College Inc. (&quot;YHT&quot;)</td>
</tr>
<tr>
<td><strong>Site</strong></td>
<td>Billilla Historic Homestead, 26 Halifax Street Brighton</td>
</tr>
<tr>
<td><strong>Premises</strong></td>
<td>Leased Area: As depicted on Annexure C hereto plus the area depicted in yellow on Schedule A hereto. Licenced Area: As depicted on Appendix B hereto</td>
</tr>
<tr>
<td><strong>Commencement Date</strong></td>
<td>9 March 2021</td>
</tr>
<tr>
<td><strong>Term</strong></td>
<td>3 Years</td>
</tr>
<tr>
<td><strong>Further Terms</strong></td>
<td>Further Term 1: 5 Years, Further Term 2: 7 Years</td>
</tr>
<tr>
<td><strong>Rent</strong></td>
<td>$125,000.00 + GST p.a.</td>
</tr>
<tr>
<td><strong>Annual Increases</strong></td>
<td>The Rent shall be increased annually on the anniversary of the Commencement Date by CPI</td>
</tr>
<tr>
<td><strong>Outgoings</strong></td>
<td>The Lessee shall pay outgoings as it currently pays under the existing lease</td>
</tr>
<tr>
<td>Synthetic Turf</td>
<td>YHT (subject to it's procurment of a Planning Permit, if required) may at its cost install synthetic turf or the like on the Licenced Area of the Premises</td>
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| Security       | 1. YHT shall take all reasonable measures to ensure that its guards do not undertake proactive patrols outside of the Leased Area of the Premises.  
2. Notwithstanding Item 1 above, the said guards may proactively patrol outside of the said areas in order to react to a situation giving rise to a reasonable apprehension of harm  
3. YHT (subject to it’s procurement of a Planning Permit, if required), may at its cost, install on Site, security cameras and attendant control room. |
| Other Terms & Conditions | Unless otherwise agreed between the parties, as per the current Lease. |
Annexure C

Plan of Premises
Appendix B

Site Plan
4. Urgent Business