

VARIATION TO LEASE - LYREBIRD COLLEGE, COLDSTREAM

Report Author: Coordinator Property
Responsible Officer: Director Built Environment & Infrastructure
Ward(s) affected: Ryrie;

The author(s) of this report and the Responsible Officer consider that the report complies with the overarching governance principles and supporting principles set out in the Local Government Act 2020.

CONFIDENTIALITY

This item is to be considered at a Council meeting that is open to the public.

The item has been included in the public agenda to facilitate openness and transparency in Council's decision making. Confidential attachments have been included with the report which contain commercially sensitive information that is not to be disclosed whilst the meeting is open to the public.

SUMMARY

In July 2019 Lyrebird College commenced a land-only lease on Council land at 12 Kelso Street, Coldstream following an extensive community consultative process culminating in a Council resolution to grant a 9-year lease, later extended to a 19-year lease in April 2021. The lease fee at that time was set based on a commercial valuation of the site.

Lyrebird College has approached Council seeking a review of the lease fee, with the aim of reducing overheads to ensure the ongoing financial viability of the service, and on the basis that the lease is for land only, meaning that full responsibility for the construction and ongoing maintenance of all improvements on the site sits with the tenant.

Officers propose an adjustment in the yearly rental fee on the basis that the amended figure remains consistent with the provisions of Council's Leasing and Licensing Policy for tenancies which meet the criteria for 'Discounted Community Rent Facilities', and that Council holds no maintenance responsibility for the premises.

RECOMMENDATION

That

- 1. Council enter into a Deed of Variation to Lyrebird College Incorporated's land-only lease at 5/12 Kelso Street Coldstream to amend the rental fee in line with Council's Leasing and Licensing Policy.**
- 2. The Executive Officer Property & Facilities Management be authorised to sign all paperwork relating to the Deed of Variation to the lease.**
- 3. The confidential attachment to this report remains confidential indefinitely as it relates to matters specified under section 3(1)(g)(i),(g)(ii) of the Local Government Act 2020.**

RELATED COUNCIL DECISIONS

18 December 2018 – Council resolved to commence a community consultation process seeking community views on its proposal to offer a land-only lease to Lyrebird College for a term of 9 years.

26 February 2019 – Council resolved to grant a land-only lease to Lyrebird College for a term of 5 years plus and further optional term of 4 years, at a discounted community rate in line with the Leasing and Licensing Policy for use as an education facility for children with an Autism. The lease was commenced in July 2019.

27 April 2021 – Council resolved to extend the current land-only lease to Lyrebird College Limited over Part 12 Kelso Street, by an additional two (2) terms of five (5) years, for continued use as an education facility for children on the autism spectrum.

DISCUSSION

Purpose and Background

Lyrebird College is an independent school established to meet the specific needs of children with an Autism Spectrum Disorder. Established in 2019, it offers placement to a maximum of 14 students with a high staff to student ratio, maximising learning potential in a highly specialised setting.

The school was granted a land-only lease over a greenfield Council owned site at 5/12 Kelso Street, Coldstream upon which the campus was constructed. The use of the site was viewed as complementary to the existing facilities, which include a primary school, kindergarten, Maternal and Child Health facility and community hall, thus adding to the precinct's education focus. All building and other improvements on the site were constructed by the school, who remain entirely responsible for full ongoing maintenance of those assets.

The fee negotiated at the commencement of the lease was based on a commercial valuation of the land. Commercial details are outlined in the confidential attachment to this report.

In recent months, the school has approached Council seeking a review of the lease fee with the aim of reducing overheads and ensuring the financial viability of the school ongoing. The proposed reduced rental fee would remain consistent with the provisions of the Leasing and Licensing Policy, which allows for tenancies classified as 'Discounted Community Rent Facilities' to be negotiated at a fee between 0.1% of the market value, to the full market value of the site.

Officers propose that an amendment to the fee would be justified due to:

- The school being a not-for-profit organisation and registered as a charity by the Australian Charities and Not-for-profits Commission.
- The school meeting the criteria as a Discounted Community Rent Facility under Council's Leasing and Licensing Policy.
- The lease being for land only, where responsibility for the construction and ongoing maintenance of all buildings and other improvements on site are entirely the responsibility of the tenant.

This proposal to seek Council endorsement to this amendment is based on the initial approval for the lease having been a decision of Council.

Options considered

- Continuation of current fee schedule, as per the terms of the lease agreement

The current rental fee was negotiated with the Lyrebird College prior to the commencement of their land-only lease in 2019 based on a commercial valuation of the land. Council has no obligation to make any amendment to the rental fee.

- Reduce the lease fee within the parameters of the Leasing and Licensing Policy.

Under the Leasing and Licensing Policy (the Policy), Lyrebird College meets the criteria as a 'Discounted community rent facility', meaning the applicable fee is able to be negotiated between 0.1% of the full commercial rate, up to the full commercial rate. The Policy therefore supports the proposed amendment to the lease fee.

Lyrebird College is a 'Land-only' lease, meaning that all improvements on site are owned by Lyrebird College and are entirely the responsibility of the College to maintain. As a lease for the land only, Council's maintenance responsibility for the premises is limited to preparing the Annual Essential Safety Measures Report (AESMR), which simply involves receiving inspection records required by the schedule of Essential Safety Measures, verifying that the inspections or services have been undertaken.

Recommended option and justification

It is recommended that Council implement an amended rental fee due to:

- The proposed level of the revised fee being consistent with the provisions of the Leasing and Licensing Policy for 'Discounted Community Rent Facilities'
- The lease being for land only, with Council holding no maintenance responsibilities for the premises.
- Lyrebird College holding not-for-profit and charity status.

FINANCIAL ANALYSIS

The rental fee agreed in 2019 was negotiated at a 'Discounted Community Rate' in line with the Leasing and Licensing Policy, which applies to tenancies meeting set criteria.

The Leasing and Licensing Policy provides that Discounted Community Rate fees may be negotiated within a range from 0.1% of the full commercial rental value of the premises, up to the full commercial value of the premises. The proposed reduction of the lease fee remains consistent with the provisions of the Policy.

It is proposed that the lease be amended by way of a variation to the lease in order to apply the community rate for the remainder of the lease term. The fee negotiated at the commencement of Lyrebird College's lease was based on a commercial valuation undertaken for the land. Commercial details regarding the current and proposed rental fees are in the confidential attachment to this report.

APPLICABLE PLANS AND POLICIES

All Council leases and licences are undertaken in line with its Leasing and Licensing Policy, and with its obligations under section 115 of the Local Government Act 2020.

RELEVANT LAW

Section 115 of the Local Government Act 2020 requires that Council must include any proposal to lease land in a financial year in the budget, or undertake a community consultation process in line with its Community Engagement Policy, where the lease is for one year or more and:

- the rent, or market rental value, for any period of the lease is \$100,000 or more a year; or
- the lease is for 10 years or more.

Upon proposing an extension to the term of the lease to a total of 19 years in 2021, Council undertook an engagement process in accordance with the provisions of the Act.

As the current proposal is only to amend the rental fee to an amount which remains within the parameters set out in the Leasing and Licensing Policy, there is no intention to undertake further community engagement process regarding this proposal.

SUSTAINABILITY IMPLICATIONS

Economic Implications

The amendment to the lease fee is proposed to assist in ensuring the ongoing financial viability of the school, which provides a valuable service for children with complex needs who require high levels of support.

Social Implications

Lyrebird College was established to meet the educational needs of children with Autism Spectrum Disorder in the Yarra Valley region. The proposal to amend the lease fee is proposed to assist in keeping the school financially viable by reducing overheads, and thus allowing continuation of the service into the future.

Environmental Implications

The proposal to amend the lease fee does not carry any particular environmental implication.

COMMUNITY ENGAGEMENT

Before implementing the original lease in 2019, Council undertook a community engagement process similar to that which was outlined in former s223 provisions of the 1989 version of the Local Government Act. Though not strictly meeting the threshold for an engagement process under the Act, the engagement was undertaken due to the changing use of the land, the potential of the project having some amenity impact on adjacent residents, and the new construction planned by the school potentially making it a long-term fixture at the site.

In 2021, Council undertook a community engagement process in line with the provisions of s115 of the updated Local Government Act 2020, regarding a proposal to extend to exceed the 10-year threshold set out in the Act.

As the current proposal doesn't affect the term of the lease but is to amend the rental fee to an amount which remains consistent with the Leasing and Licensing Policy only, there is no proposal to undertake a community engagement process on this occasion.

COLLABORATION, INNOVATION AND CONTINUOUS IMPROVEMENT

Not relevant.

RISK ASSESSMENT

No risk assessment has been undertaken in relation to this item.

CONFLICTS OF INTEREST

No officers and/or delegates acting on behalf of the Council through the Instrument of Delegation and involved in the preparation and/or authorisation of this report have any general or material conflict of interest as defined within the Local Government Act 2020.

ATTACHMENTS TO THE REPORT

1. Variation to Lease Commercial Detail