

## **EXTENSION OF LEASE TO CLEANAWAY - 840 WELLINGTON RD, LYSTERFIELD**

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Report Author: Co Ordinator Property  
Responsible Officer: Director Environment and Infrastructure  
Ward(s) affected: Lyster

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*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.

### **SUMMARY**

On 29 March 2022, and again on 24 May 2022, Council gave notice of its intention to extend the lease of 840 Wellington Road, Lysterfield (Lysterfield Transfer Station), to Baxter Business Pty Ltd (trading as Cleanaway) by a period of two (2) years for continued use as a waste transfer station.

At the submission closing date on 22 June 2022, one community comment had been received seeking clarification regarding future land rehabilitation, though this did not constitute an objection to the proposal at hand.

The proposed lease extension, which would be in the form of an additional further term of two (2) years, would commence at the expiry of the current term on 1 June 2025 thus extending Cleanaway's current 20-year lease until 31 May 2027, and aligning its expiry date to that of two other transfer station leases within the municipality. If granted, the additional term would be added by Deed of Variation to the current lease, which would also include a reduction in the lease area and various other provisions designed to facilitate a Biochar production facility on part of the site, proposed to be leased and operated by an alternative tenant.

### **RECOMMENDATION**

***That Council, having undertaken a community engagement process pursuant to Section 115(4) of the Local Government Act 2020, and having received no objections in relation to the matter, resolves to:***

- 1. Extend the current lease of 840 Wellington Road, Lysterfield (Lysterfield Transfer Station) to Baxter Business Pty Ltd by one (1) further term of two (2) years from 1 June 2025, extending the current 20-year lease until 31 May 2027, for continued use as a recycling and recovery centre,**

**including sales, solid and putrescible waste transfer station, depot for waste bin hire and storage of waste bins.**

- 2. Authorise the Executive Officer, Property & Facilities Management to sign all documents associated with the lease extension.**

## **RELATED COUNCIL DECISIONS**

Council at its meeting of 10 May 2005 approved the signing and sealing of a lease with HLR Enterprise Pty Ltd (trading as Ausbin) to enter into a new lease for a period of 10 years with the option of two further terms of 5 years for a recycling and recovery centre including sales, solid and putrescible waste transfer station, depot of waste bin hire and storage of waste bins at 840 Wellington Road, Lysterfield. This lease was subsequently transferred to Baxter Business on 31 March, 2006 and renewed for a term of 5 years commencing 1 June 2015, and for 5 years commencing 1 June 2015.

Council at its meeting of 29 June 2021 resolved to support Lysterfield Waste Transfer Station as the preferred site to host the Biomass Carbon Capture Facility for a minimum of 5 years.

Council at its meeting of 27 July 2021 resolved to award the tender to Earth Systems Pty Ltd for CT6195 Supply and Install contract for the Biochar Facility, which is to occur at Lysterfield Waste Transfer Station.

## **DISCUSSION**

### ***Purpose and Background***

The current lease of Council's former landfill site at 840 Wellington Road, Lysterfield was entered into back in May 2005 with HLR Enterprise Pty Ltd (trading as Ausbin) for a period of 10 years with the option of two further terms of 5 years for a recycling and recovery centre including sales, solid and putrescible waste transfer station, depot of waste bin hire and storage of waste bins.

Baxter Business took over the lease on 31 March 2006 by Deed of Transfer.

The first additional term of the lease was taken up and signed under delegation in February 2015 (to take effect 1 June 2015). The second additional term of the lease was taken up and signed under delegation in November 2020 (to take effect as of 1 June 2020). The 20 year lease is due to expire 31 May 2025

Baxter Business Pty Ltd (Cleanaway) have sought a two-year extension to their current lease, as part of negotiations between Cleanaway and Council which would see Cleanaway relinquish approximately 4000m<sup>2</sup> of their leased area back to Council so that Council can accommodate a new Biochar production facility on the land. The area required for the Biochar area would be leased and operated by an alternative tenant.

As a two-year extension, this would bring the end date of the lease into line with the other transfer station leases in the municipality. Officers have been supportive of the proposal in-principle, subject to statutory process. This alignment would provide

Council an advantage when next tendering for waste services, with all sites becoming available concurrently.

If endorsed by Council, the additional two-year term would be included in a Deed of Variation to the lease, which would also include a number of other lease terms which are to be amended following Biochar facility negotiations. These include:

- 4000m<sup>2</sup> reduction of Cleanaway's current lease area;
- shared use of Cleanaway's main security entrance and roadway for access to the Biochar site;
- shared use of a Cleanaway owned amenities block by Biochar employees;
- shared use of fire services infrastructure currently servicing the Cleanaway site; and
- 20% reduction in the current lease fee as compensation for the above.

The negotiated terms have been captured in a Heads of Agreement document signed by both parties in January 2022, with the amended terms to be backdated to 1 January 2022. Only the addition of the proposed further two-year term remains subject to statutory process and Council approval.

### ***Lease area***

The amended lease area will have an area of approximately 76,000m<sup>2</sup> and is known as the Lysterfield Recovery and Waste Transfer Station, situated at 840 Wellington Road, Lysterfield, and comprises part of the land contained in certificates of title volume 4733 folio 553 and volume 8600 folio 946.

The land contains a capped former land-fill site, several buildings and infrastructure (including weighbridges) to support waste recovery and transfer operations, and a large operations shed situated on the north-western corner of the site.

The approximately 4000m<sup>2</sup> being relinquished back to Council to accommodate the Biochar production facility lies inside the Cleanaway leased area and is only accessible by passing through the Cleanaway leased area. Its location is shown on Attachment 1 to this report.

### ***Key terms***

The key terms of the proposed new two-year term are:

- A continuation of the current fee schedule (as amended by the Heads of Agreement and to be formalised in a Deed of Variation to the lease) at \$43,613 plus GST per annum, increasing annually by CPI; and
- A single additional term of two (2) years, commencing 1 June 2025 (at the conclusion of the current term) and concluding 31 May 2027

Under the lease, Baxter Business will be permitted to continue to use the land for a recycling and recovery centre, including sales, solid and putrescible waste transfer station, depot for waste bin hire and storage of waste bins.

### ***Options considered***

#### **1. *Extend the lease with Cleanaway by two additional years***

This proposed position was reached in principle (pending statutory process) between Cleanaway and Council as part of negotiation which will see a section of the current lease area relinquished by Cleanaway for use as a site for a Biochar plant, to be operated under lease by a separate provider.

This proposal is beneficial to both parties in that it provides Cleanaway an additional security of tenancy over the site and provides Council the ability to align the lease expiry date with that of two other transfer station leases within the municipality (2027). At that point Council would be able to tender a transfer station service contract for all sites concurrently.

#### **2. *Not extend the lease, letting the remainder of the current lease term draw to an end in 2025***

Cleanaway's current lease is set to expire on 31 May 2025. Council is under no obligation to extend the lease with Cleanaway for the additional term specified, however doing so would mean that the expiry date would not align with expiry dates of Council's other two Transfer Stations.

### ***Recommended option and justification***

It is recommended that Council extend Cleanaway's lease for a further two year term due to the proposal:

- Providing partial compensation for Cleanaway's agreement to relinquish a section of their lease area for Biochar use, and allowing a future tenant of the Biochar area shared use of accessway, fire services equipment and amenities block. Note: Negotiations with Cleanaway with regard to this lease extension have remained subject to statutory process and Council decision.
- Align the expiry date of the lease to that of Council's two other transfer station leases, allowing it to tender for the management of all three sites concurrently.

The proposed two year extension can therefore be seen as is mutually beneficial to both Council and lessee.

### **FINANCIAL ANALYSIS**

The Deed of Variation to Cleanaway's lease in which this lease extension would be included (subject to Council's decision), would include a 20% reduction to the current lease fee, equating to a reduction of approximately \$10,900 plus GST per annum, as compensation for a series of amendments to the terms of the current lease which have been negotiated with Cleanaway and agreed in the form of a Heads of Agreement.

This reduces the current lease payment from \$54,513 plus GST per annum down to an amount of \$43,613 plus GST per annum.

The amendments, which include Cleanaway relinquishing approximately 4000m2 of its former leased area, shared use of Cleanaway owned amenity buildings, and shared use of onsite Fire Services infrastructure, were necessary to accommodate of a new Biochar production facility being constructed and operated from part of the site the site by an alternative lessee.

A further lease arrangement is yet to be established for the Biochar Facility.

## **APPLICABLE PLANS AND POLICIES**

Council leases are undertaken in accordance with Section 115 of the Local Government Act 2020, and in line with Council's Leasing and Licencing Policy.

## **RELEVANT LAW**

Section 115 of the Local Government Act 2020 includes provisions that Council must undertake a community engagement process in accordance with its Community Engagement Policy in respect of the proposal before entering into the lease, where the lease is:

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

As the cumulative duration of Baxter Business (Cleanaway's) tenancy exceeds 10 years, the community engagement process was undertaken accordingly.

## **SUSTAINABILITY IMPLICATIONS**

### ***Environmental Impacts***

There are no environmental impacts to consider in relation to the provision of an additional term to the lease. The proposed lease extension is a continuation of an existing arrangement and does not change the way in which Cleanaway operates at the site.

Waster transfer station operations are subject to Environmental Protection Authority regulations.

### ***Social Impacts***

The proposed lease extension will allow Cleanaway to continue to provide waste transfer services to Yarra Ranges Council.

## ***Economic Impacts***

There are no economic impacts associated with this proposal

## **COMMUNITY ENGAGEMENT**

On 29 March 2022, Council advertised its notice of Intention to extend the lease in local newspapers, inviting public for any interested party to make a written submission in relation to the proposal. Due to an administrative oversight, the Notice of Intention was later posted on the Shaping Yarra Ranges section of Council's website for a period of 28 days from 24 May. In doing so, Council met its statutory obligations under s115 of the Local Government Act.

The Shaping Yarra Ranges webpage received 56 visits from 53 unique visitors. 1 contribution was made. An email campaign reached 1028 recipients, with 32 (3.1%) clicking through to view the webpage.

At the public submission closing date on 22 June 2022, one comment/query was posted to the website (see below), though this did not constitute an objection to the proposal. No other submissions were received.

<b>Summary of Submitter Query</b>	<b>Officer Response</b>
Unclear whether this is an extension of land use or just an extension of time for another two years on the same plot of land.	The proposal to extend the lease does not increase the land area to be occupied by Cleanaway. It is an extension of the term of their lease by two years only.
Concerned about the impact on the surrounding areas, especially for the endangered frog very nearby. Would be objecting to this extension if it was using more land for waste.	Associated negotiations with Cleanaway regarding Council's proposal to use part of the site for a Biochar operation will actually see their land area reduced by approximately 4000m <sup>2</sup> .
Queries what the end of lease environmental plan will be to have the least impact on our precious natural places.	The contractor is responsible for ensuring the site is cleaned up when their lease expires. However, this facility is seen as a strategically located resource recovery facility to support the community in recycling and disposing of waste. It is therefore anticipated that the site would be re-leased to continue operations beyond the period of this existing lease.

## **COLLABORATION, INNOVATION AND CONTINUOUS IMPROVEMENT**

Not relevant.

## **RISK ASSESSMENT**

No risk assessment has been undertaken in relation to the consideration of the new lease. The proposed lease is a continuation of an existing arrangement

## **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. Lease Plan