

## 5.16 PROPOSED LEASE OF HYDE PARK KIOSK TO VEGGIE MAMA PTY LTD

- Attachments:**
1. Proposed Lease Terms, Maintenance Schedule and Premises Plan
  2. Consistency with Property Management Framework
  3. Hyde Park Kiosk Concept Sketch
  4. Kiosk Location Map
  5. Evaluation Worksheet - Confidential

**RECOMMENDATION****That Council:**

1. **NOTES** the City received four submissions in response to the Request for Tender for an operator to lease a portion of No. 505 William Street, Perth, Hyde Park, being a current 34.64 square metre storage shed to be used as a commercial kiosk;
2. **ACCEPTS** the tender submitted by Veggie Mama Pty Ltd for Tender No. CEO126/2021 for the operator of Hyde Park kiosk;
3. **APPROVES** the City entering into a lease of a portion of No. 505 William Street, Perth with Veggie Mama Pty Ltd on the following terms:
  - 3.1 **Initial term:** Two (2) years.
  - 3.2 **Option:** Two (2) x five (5) years.
  - 3.3 **Commencement date:** Tenant to occupy Premises at completion of the City's Premises works, at which time the Lease and Rent Free Period would commence.
  - 3.4 **Premises area:** Portion of the building known as the western storage shed at Hyde Park, measuring approximately 34.64 square metres as shown in the Premises Plan in **Attachment 1**.
  - 3.5 **Rent:** Proposed rent is \$30,000 per annum including GST.
  - 3.6 **Rent review:** Annual CPI rent review to occur on 1 July each year of the Lease commencing from 1 July 2023.
  - 3.7 **Outgoings:** The Tenant to pay:
    - (a) ESL charges applicable to the Premises;
    - (b) rubbish and recycling bin charges for the Premises. (The Tenant would need to make arrangements with a commercial service);
    - (c) rates and taxes; and
    - (d) minimum level of service statutory compliance testing (including RCD, DFES and pest inspection fees and charges).

Utilities (water and electricity) are included in the Rent.
  - 3.8 **Insurance:** Tenant to hold and maintain a public liability insurance policy for not less than \$20million per one claim, in respect of the Tenant's use and occupation of the Premises.  
  
Tenant to reimburse the City for the building insurance premium payable in regard to the Premises area (currently at \$89.74 + GST per annum). If the Tenant requests the City make a claim

- on the Tenant's behalf (under the building insurance policy) the City may require the Tenant to pay any excess payable in respect to that claim.
- 3.9 Repair/maintenance:** The Tenant is responsible for maintenance items as specified in right hand column of the Maintenance Schedule seen in **Attachment 1**.
- 3.10 Capital upgrades:** After completion of the City's initial Premises fit-out, the Tenant is responsible for further capital upgrade and capital expansion of all assets within the leased or licenced area and the maintenance of the Premises fit-out. Any capital upgrades are subject to the written consent of the City.
- 3.11 Inspections:** The City to inspect the Premises annually (or as required) and to give the Tenant appropriate notice of the inspection, in accordance with the lease terms.
- 3.12 Responsibilities of the City:** The City is responsible for:
- (a) maintenance of roofing and main structure of the Premises (unless the damage is caused by the Tenant); and
  - (b) capital renewal of existing assets at the City's discretion.
- 3.13 Obligations of Tenant and default provisions:** The Tenant is responsible for ensuring Premises and surrounds (being any external area allocated for the Lessee's use) are clean and free from litter. The Lessee is not responsible for maintaining cleanliness of the whole of Hyde Park.
- The Tenant is responsible for paying all Rent and any other monies owing under the Lease within 14 days of the due date:
- (a) If the Tenant fails to pay an invoice within the 14-day grace period, interest at a prescribed rate (as set by the Lease) would accrue on the outstanding amount until it is paid for in full.
  - (b) Continued failure to pay monies due and owing under the lease may result in the City terminating the Lease due to the Tenant's default.
  - (c) If the Tenant disputes any amount due and owing under the Lease, the Tenant must notify the City accordingly. In the absence of manifest error, the Tenant must pay the outstanding amount on the due date and any dispute about the amount would be resolved with the City following payment.
- 3.14 Special conditions:**
- Minister for Lands consent:**  
This Lease is subject to and conditional upon the prior written approval of the Minister for Lands pursuant to section 75(6) of the *Land Administration Act 1997*.
- Exclusivity:**  
The City agrees not to permit the use of any space within Hyde Park to any tenant or other occupant which sells food or beverage items during the term on the Lease. This does not apply to functions or events held within the Park.
- Rent free period:**
- (a) The Tenant shall be entitled to occupy the Premises rent-free for a period of nine (9) months commencing upon completion of the City's construction of initial fit-out of the Premises.

- (b) Except to the extent inconsistent with the Rent Free Period being rent-free, all of the terms of the Lease shall apply during the Rent Free Period, and for the avoidance of doubt, the Lessee shall pay all amounts due under this Lease other than Rent during the Rent Free Period.

**COVID-19 provision:**

If the Tenant requests rent relief due to loss in turnover as a result of COVID-19 restrictions, good faith negotiation between both parties would occur.

**Serving alcohol:**

The Tenant can apply for liquor licencing for events by obtaining an Occasional Liquor Licence from the Department of Racing, Gaming and Liquor, before submitting the City's One-Off Liquor Licence Permit and Gaming Application.

**4. NOTES:**

- 4.1 mobile food vendors would only be able to operate as part of approved events, but would not be issued Vending Vincent permits to operate permanently in Hyde Park for the duration of the lease, to ensure kiosk revenue is not adversely impacted;**
- 4.2 existing Vending Vincent permit holders have been provided the opportunity to trade at other locations including trialling a new powered site in Banks Reserve on the former pavilion; and**
- 4.3 Administration will review and update the Vending Vincent policy at the end of the two-year initial lease term, dependent on the Tenant exercising the proposed five-year lease extension option;**
- 5. Subject to relevant Department of Planning, Land and Heritage approvals and final satisfactory negotiations being carried out by the Chief Executive Officer, AUTHORISES the Mayor and Chief Executive Officer to affix the common seal and execute the Lease as set out in Recommendation 3; and**
- 6. ALLOCATES by ABSOLUTE MAJORITY a budget of \$55,000 excl GST for the required works to the storage shed to convert to a commercial kiosk, subject to relevant Department of Planning, Land and Heritage approvals.**

**PURPOSE OF REPORT:**

To consider entering into a new lease with Veggie Mama Pty Ltd (Tenant), in regard to the portion of Hyde Park (No. 505 William Street, Perth), being the current 34.64 square metres western storage shed (Premises) to be used as a commercial kiosk.

**BACKGROUND:**

The City has considered fixed food and beverage opportunities within Hyde Park (Park) for a number of years as either an alternative or in addition to the mobile food vendors (Food Vans) that operate at the Park.

At its Ordinary Meeting of 20 October 2020 (Item 9.5), Council adopted amendments to Policy No. 3.8.12 – Mobile Food Vendors (Mobile Food Vendor Policy). Council also considered a proposal to install a commercial kiosk at Hyde Park and approved consulting with the community about the potential commercial kiosk.

The City ran community consultation between 8 March 2021 and 2 April 2021. The consultation asked whether the community wished to see a permanent kiosk in the park and, if so, whether this would be in addition to or as an alternative to the food vans that operate from the park under the City's Mobile Food Vendor Policy.

The consultation received 314 survey responses and a further 64 email submissions. When asked of their preferred food and beverage option, the respondent's answers were as follows:

Support permanent kiosk and food vans	211 (56%)
Support permanent kiosk without food vans	61 (16%)
Do not support a permanent kiosk, support food vans only	81 (21%)
Do not support any option	23 (6%)
Unsure	2 (1%)

At its Ordinary Meeting of 18 May 2021 (Item 12.3), Council was presented with the consultation submissions and approved inviting public tender submissions for the operation of a commercial kiosk in the unused storage shed in Hyde Park. At the same Meeting, Council requested advice on the future operation of food vans within Hyde Park to consider whether the recommended potential commercial kiosk should have exclusive use of Hyde Park or not.

## DETAILS:

### Tender Advertising

The Request for Tender (RFT) sought proposals from potential operators to Lease a portion of No. 505 William Street, Perth, Hyde Park. The portion consisting of a current storage shed of approximately 34.64 square metres of internal space. The RFT was open between 12 June 2021 and 19 July 2021.

The City provided public notice of the RFT by:

- Public notice in the Perth Voice – 12 June 2021;
- City of Vincent Facebook page post – 9 June 2021;
- Public notice posted on notice boards (Admin and Library) – 9 June 2021;
- Email or letter to all food businesses within 500 metres of the site, and all residents within 200 metres of the site – 10 June 2021; and
- Two signs erected at the site – 14 June 2021.

The RFT included the following Evaluation Criteria:

EVALUATION CRITERIA (Regulation Part 4 S14(2a))		
Criteria	Weighting	How it will be evaluated
1. Business Concept	60%	<p>The Respondent is to provide a Business concept that details the intended use of the site. When answering this criterion, the Respondent is to include the following at a minimum:</p> <p>a) Provide a business concept and illustrate how the Kiosk will be managed and marketed. Demonstrate how the Kiosk will be managed to minimise the environmental impact on the Park. This concept must include (but is not limited to) the following information:</p> <p>(i) Kiosk name. Note that naming of the Kiosk including associated logos and signage are subject to Council approval;</p> <p>(ii) Proposed hours of operation for Kiosk;</p> <p>(iii) Estimated cost of the applicant installing a warm kitchen in the shed, if required, and proposed internal fit out and layout of the Kiosk;</p> <p>(iv) Plans of the proposed aesthetic elements/design of the Kiosk to ensure that it fits within the Park's current aesthetic;</p> <p>(v) How customer traffic/queuing will be managed by the Kiosk operator to avoid impacting surrounding plants and trees;</p> <p>(vi) How rubbish and rubbish disposal will be managed by the Kiosk (e.g. location of additional public bins, who will be responsible for emptying the bins and how the Kiosk will arrange for its waste and rubbish to be collected);</p> <p>(vii) Identify How the proposal will comply with the <i>City's Public Health Plan 2020-2025</i> deliverable to 'increase healthy food and drink</p>

<b>EVALUATION CRITERIA</b> (Regulation Part 4 S14(2a))		
Criteria	Weighting	How it will be evaluated
		<p>options at City venues, public open spaces, events, festivals and community activities’;</p> <p>(viii) Sample menu of food and drink options, products or services proposed to be available from the kiosk (including healthy food and drinks options that align to the <i>Australian Dietary Guidelines</i> and the <i>Australian Guide to Healthy Eating</i>;</p> <p>(ix) Marketing strategic plan overview (including the availability, display and promotion of a variety of healthy food and drink options);</p> <p>(x) Environmental and sustainable operation options (e.g. no plastics, bio-degradable utensils and cups, emphasis on re-usable coffee cups etc.);</p> <p>(xi) A plan for managing the environmental impact of the Kiosk on the Park in compliance with the Hyde Park Conservation Plan; and</p> <p>(xii) A forecast budget for the business, including customer numbers.</p> <p>b) Demonstrated excellence in customer service and customer feedback mechanisms</p> <p>c) Details of Workplace Health and Safety systems, policies and management</p> <p>d) Details of Quality Assurance programs, accreditations, procedures and/or processes</p>
2.	Company Profile 30%	<p>The Respondent is to provide details of their Company’s credentials. When answering this criterion, the Respondent is to include in their response at a minimum the following:</p> <p>a) An Organisational Chart that indicates the location and role of Company principal employees and stakeholders;</p> <p>b) CV including a minimum of three years’ experience owning or managing cafes, kiosks and/or restaurants. Respondents must include specific details on previous experiences in bringing café, kiosk and/or restaurant businesses to fruition including adapting business models, product offerings and marketing initiatives to meet changing customer demands;</p> <p>c) Attach details of two referees who can specifically attest to the Respondent’s experience in the operation of a similar or comparable business;</p> <p>d) Demonstrated experience in dealing with suppliers, wages in line with Fair Work Act 2009 award and conditions and commercial rental situations, and demonstrated knowledge and training in food handling health standards;</p> <p>e) A declaration detailing any small business presently being operated by the Respondent or any business operation previously operated by the Respondent for a period of not less than 12 months, the declaration is to include the following:</p> <p>(i) The contact details of each owner including addresses and telephone numbers;</p> <p>(ii) The location of each business;</p> <p>(iii) The number of years each business was or has been operated by the Respondent.</p> <p>f) Demonstrated financial capacity to fund fit out and upgrade works (as required an agreed) and attach two (2) referees attesting to the financial capacity of the Respondent’s.</p>
3.	Indicative Pricing 10%	<p>To assist the Evaluation Panel to determine the potential revenue that could be raised by the proposed Kiosk usage the Respondent is to propose price points for various products sold at the Kiosk. The quoted figures are only an indicative amount and if the Respondent is shortlisted there remains the opportunity to modify pricing during lease negotiation and operation of the Kiosk.</p>

EVALUATION CRITERIA (Regulation Part 4 S14(2a))		
Criteria	Weighting	How it will be evaluated
4. Lease Term and Rent	Non-weighted	The Respondent is to provide details regarding the desired term of the lease that includes any options to extend the term/s exercisable by the Lessor, the rent for the Premises, and any rent reviews.
<b>TOTAL</b>	<b>100%</b>	

### Tender Assessment

The RFT resulted in four compliant submissions. The tender Evaluation Panel included staff members from Corporate Strategy and Governance, Lands, and Health Services. Each Tender response was assessed using the above Evaluation Criteria, with a scoring system being used in the assessment process.

A summary table for each compliant Tenderer is provided below. A full outline of the Evaluation Criteria for each tenderer is contained within **Confidential Attachment 5**.

Tenderer	Total Score
The Ly Family Trust	62.00
Petrisija (Pat) Benic & Sam Fathollahi T/A Shiraz Soft Serve	33.00
Some-Day Coffee Co Pty Ltd	53.00
Veggie Mama Pty Ltd	83.00

### The Recommended Proposal

The Evaluation Panel's recommended tender proposal was submitted by Veggie Mama Pty Ltd. This proposal answered the criteria listed in the RFT and provided a clear picture of the potential of the unused storage shed. Veggie Mama Pty Ltd is a family run business which has serviced the local community with its businesses Tempting Thymes and Veggie Mama on Beaufort Street for 16 years. The Tenant would include healthy food and drink options that align with the Australian Dietary Guidelines and the Australian Guide to Healthy Eating. The Tenant would ensure that these foods are available, promoted and displayed more prominently than other foods.

The proposed kiosk would be named The Meeting Place, representing the role Hyde Park plays in bringing the community together. The name pays tribute to Hyde Park's Noongar name, Boodjamooling, and its history as a meeting ground. The proposed Tenant envisages the logo to be a script font of its name. The kiosk would provide a variety of seasonal healthy food and drink options in line with the City's Public Health Plan. The proposed opening hours are 7:00am to 4:00pm, seven days a week. A sample menu with indicative pricing can be seen below:

Savoury Food	Desserts	Beverages
Granola (9.95) Bircher muesli (8.95) Wellness bowl (14.95) Hot meals (e.g., pasta of the day, soup of the day, curry of the day) (12.95) Filo Parcels (7.95) Sandwiches (7.95-12.95) Baked goods (7.95) Assorted bagels (e.g. smoked salmon with cream cheese, roasted veggie) (9.95-14.95) Salads (11.95)	Raw desserts (4.95) Muffins (4.95)	Smoothies (8) Juices (8) Organic soft drinks (4.95) Protein shakes (10) Teas, coffees (small 4, large 5)

The applicant would implement digital engagement via their own Facebook and Instagram accounts, and all marketing would highlight the variety of healthy food and drink options. They propose incorporating directional signage within the park, using existing poles for signage attachments, rooftop signage displaying the kiosk's logo, and portable signs. Menus and signage within the Park would highlight the healthy food and drink options.

The proposed kiosk would use biodegradable containers, straws and cutlery, and there would be no single use plastic items available. The applicant would engage a contractor to dispose of rubbish and intend to facilitate a Container Deposit Scheme drop off bin with proceeds contributing to People Who Care, RUAH, and Derbarl Yerrigan Health Services.

Quoting the Hyde Park Conservation Plan, the proposal outlined how the new business can be sympathetic to the significant landscape. They aim to complement the surrounding landscape through a mural or artwork by a local Aboriginal artist. The proposal suggests an artwork depicting the history of Hyde Park, being a place of gathering for the Whadjuk people. This artwork would be subject to the City of Vincent Public Mural Guidelines and in consultation with the City's Reconciliation Action Plan Working Group.

The applicant notes their commercial kitchen is located in Dianella and has a Certificate of Registration for a food business under the City of Stirling. They note their commercial kitchen and existing café follow requirements of the Australia New Zealand Food Standards Code. The applicant states that all current staff have completed the COVID-19 Hygiene Training (as would be a requirement for all future staff), and an approved COVID-19 manager to be onsite at all times.

The applicant anticipates serving an average of 1800 customers per month, with an annual business turnover of approximately \$250,000.

Veggie Mama, the established café at 5/567 Beaufort St, Mount Lawley, has received customer feedback through various online means. The table below outlines the average rating given by reviewers on each platform:

Platform	Rating	No. Reviews
Facebook	5 Star Rating	112
Google	4.6 Star Rating	487
Happy Cow	5 Star Rating	30
Zomato	4.4 Star Rating	524
Trip Advisor	4.5 Star Rating	87
Restaurant Guru	4.5 Star Rating	1,219
Uber Eats	4.9 Star Rating	147

### Premises Works

The City would be undertaking works on the Premises to ensure that the space is compliant with the Australia New Zealand Food Standards Code. The City would provide a double tub sink and hand wash basin, inset in a stainless bench, and floor and wall tiling that is suitable and fit-for-purpose in wet areas. The walls would be dry lined and painted and ceiling and lights fitted. Three phase power up to 60A, a connection to instant hot water, and a connection to sewer would be provided, however, a grease trap would not be installed. Further floor and wall treatments, additional benches and any other non-fixed assets would be the responsibility of the Tenant.

The proposed Hyde Park kiosk is within the boundary of an Aboriginal site. As the fit-out would be within the existing footprint, with no ground disturbance occurring, no approvals under the *Aboriginal Heritage Act 1972* would be required for the City's premises work.

The Tenant would install warm kitchen facilities. No work is intended to be undertaken that would break ground, which would require consideration of *Aboriginal Heritage Act 1972* requirements, consultation with the Traditional Owners and approval from the Department of Planning, Lands and Heritage (DPLH).

The Tenant's fit-out would include internal and external signage, ceiling and lights, additional power points, cold bar, hot bar, internal benches, an oven, coffee machine, juicer, and mural of Aboriginal artwork. They intend to apply for approval from DPLH to open the north-east facing wall (for a service window) and install an awning above the opening, similar to the concept sketch of the proposed kiosk by Madeleine Di Prinzio, which can be seen at **Attachment 3**.

The City's and Tenant's maintenance obligations are set out in the Maintenance Schedule at **Attachment 1**.

## Rent and Outgoings

Based on surrounding commercial tenancy values, it was estimated that the rent per annum would be between \$30,000 and \$60,000. The RFT asked the applicant to propose the rent fee and lease terms. A rent fee of \$30,000 per annum was suggested by Veggie Mama Pty Ltd and has been noted as the Rent fee.

The rent would be increased by CPI annually on 1 July of each year of the lease, commencing 1 July 2023.

Utility charges (including water and electricity) would be included in the rent, as installation of a sub-meter and upgrades to plumbing infrastructure are required to accommodate billing the Tenant for their individual water and electricity usage. There is no gas facility on the Premises.

The Tenant would be required to pay Council rates. The current minimum Commercial rate is \$1,197.70 per annum. The Premises does not have an official Gross Rental Valuation (GRV) from Landgate which would determine the precise amount of the Council rates. Given the size of the Premises, it is unlikely that the Council rates would be higher than the minimum rate payable.

The Tenant would pay \$89.74 + GST per annum towards the building insurance of the Hyde Park West storage shed and toilets block, which has been calculated based on the Premises area being 33.13 percent of the total building. The Tenant's fee is 33.13 percent of the building insurance fee currently being paid by the City being \$270.88 + GST per annum.

The Tenant is required to arrange for a commercial waste company to collect waste and recycling, the fee for this service is payable by the business operator.

## City Expenditure

The City spending on maintenance and cleaning of the whole Hyde Park West building is not expected to change if the Premises is leased. Maintenance and cleaning of the Premises area (kiosk only) would be the responsibility of the Tenant.

The City currently pays building insurance on the whole Hyde Park West building (104.56 square metres, comprising the storage shed and toilet block) at \$270.88 + GST per annum. Upon executing the proposed lease, the Tenant would reimburse the City for the building insurance premium payable in regard to the Premises area (34.64 square metres). The City's expenditure for building insurance would be reduced to \$181.14 + GST per annum.

Administration is recommending works to the value of \$55,000 to the storage shed to ensure that the space would be compliant with health regulations to serve food. This expenditure would be covered by Year 4 of the lease.

## Special Conditions

This Lease is subject to and conditional upon the prior written approval of the Minister for Lands pursuant to section 75(6) of the *Land Administration Act 1997*. Approval was provided by the Department of Planning, Lands and Heritage by letter on 15 November 2021.

The Exclusivity clause of the Lease would be included to provide the Tenant with exclusive use for trading within the Park. This clause would require the City to cease permitting Vending Vincent Permits to food vans for operation within Hyde Park, however One-Off Food Van/Stallholder Permits issued for events would remain.

The Exclusivity Clause is proposed to align with the existing provision within the Vending Vincent policy, which does not allow food vans to be placed within 100 metres of a permanent food business. Within the same policy, food vans are only allowed to trade in Hyde Park in the designated area along the lake, only a few meters away from the proposed kiosk. Administration does not recommend amending the policy at this stage.

Administration recommends providing the kiosk exclusivity for all of Hyde Park within the lease, to provide sustainability and certainty for the proposed Tenant. Administration intends to review and update the Vending Vincent policy at the end of the two-year initial lease term, dependent on the Tenant exercising the proposed five-year lease extension option.

The Rent Free Period of nine months would be offered to the Tenant to accommodate the approvals process of their fit-out through DPLH, the construction period, and their business opening during the winter months. During the Tenant's construction period, the kiosk would not be in operation. It is anticipated that the Rent Free Period would come into effect at completion of the City's initial fit-out, being the commencement date of the Lease.

The COVID-19 Provision would be included in the Lease terms to accommodate any unforeseen financial impacts attained by the Tenant as a result of COVID-19 restrictions, such as a mandatory closure. The provision is intentionally vague as restrictions and lockdowns are situational and specific limitations that affect businesses vary. The condition allows for the Tenant to request rent relief and requires the City to enter good faith negotiations upon request.

Through reading the Proposed Hyde Park Kiosk consultation submissions, the Tenant has identified community interest in the kiosk serving alcohol. Administration does not recommend the Tenant serve alcohol from the kiosk. However, the Tenant could apply for liquor licencing for events by obtaining an Occasional Liquor Licence from the Department of Racing, Gaming and Liquor, before submitting the City's One-Off Liquor Licence Permit and Gaming Application.

### Heritage Council

Under the provisions of Section 73 of the *Heritage Act 2018*, the City's refurbishment proposal was referred to the Heritage Council for its advice.

The proposal is supported subject to the following being submitted to the satisfaction of the Director, Heritage Development, prior to the application for a Building Permit:

- (a) A Tree Protection and Management Plan prepared by a suitably qualified arboriculturist that identifies significant landscape elements and provides measures to ensure that they are protected during development activities and the operation of the new facilities. The Plan shall establish tree protection zones to avoid paving, underground services, excavation, and soil compaction around tree roots.
- (b) Details of any proposed excavation associated with service installation or upgrades.
- (c) Details of any proposed signage, seats, bins or shade installations associated with the new facilities. Any new installations shall not visually dominate the area or detract from the visual presentation of the place and shall maintain existing views and vistas within the park.

### Property Management Framework

This lease falls within the scope of Category 3 of the City's Property Management Framework (PMF). The terms proposed are consistent with the PMF, with the exception of the special conditions and that the Rent fee is not negotiated by reference to GRV. The Premises does not have an official GRV. The Rent was instead based on both the surrounding commercial tenancy values and the fee proposed by the Tenant.

In accordance with the PMF, the Tenant would be responsible for paying ESL, rubbish and recycling bin charges, minimum level of service statutory compliance testing and building insurance premiums for the Premises.

A detailed comparison between the proposed lease and the Property Management Framework is included at **Attachment 2**.

### Food Vans

Administration recommends Vending Vincent permits not be granted for food vans to trade within Hyde Park for the 2022-2023 financial year and thereafter, based on the lease terms for the kiosk.

The food van operation area at the Park (set out in the Mobile Food Vendor Policy) is located directly adjacent to the kiosk location, and it is anticipated that the operation of food vans would negatively affect the expected revenue of the proposed commercial kiosk.

Our community consultation found that 18% of respondents thought that food vans had a negative impact on the Park. The comments made note of the generators used to power the vans being noisy, smelly, and bad for the environment, and concerns over the rubbish generated and Park aesthetic.

Administration has scoped potential alternative locations; however, these are limited due to the following reasons:

- The food vans require flat ground to operate;
- A new location should have accessible power for the food vans to use, to allow them to operate without generators;
- A new location should be near the footpath, so the food vans are visible to passers-by, while at the same time far enough away to limit footpath obstruction;
- A new location on a grassed area would have a negative effect on the Park's infrastructure, and parking and driving on the grassed area will result in more maintenance and upkeep; and
- The Mobile Food Vendor Policy states food vans cannot be placed within 100 metres of a permanent food business. Moving the permitted location for trading within Hyde Park (further from the commercial kiosk) would result in the area being closer (likely less than 200 metres) to Chu Bakery, on the corner of William Street and Lincoln Street.

Existing food van operators have also been encouraged to move to a new space such as at Banks Reserve following demolition of the pavilion. Current food van operators in Hyde Park would be given first right of refusal for this area at Banks Reserve.

The City's Administration has consulted with the three food vendors who currently operate in Hyde Park. These food vendors were invited to a meeting at Banks Reserve with Administration in mid-November 2021, which was attended by two vendors. The third vendor was contacted by telephone to discuss after the meeting. Two out of three food van operators expressed interest in pursuing the site at Banks Reserve as an alternative trading location should they be required to cease trading within Hyde Park. All vendors have been advised that all other trading zones, including Banks Reserve, are available for them to trial.

One-Off Food Van/Stallholder Permits are issued for events such as Hyde Park Fair and Pride Fair Day. It is recommended that these permits still allow food vans to trade within the Park during events.

Administration intends to review and update the Vending Vincent policy at the end of the two-year initial lease term, dependent on the Tenant exercising the proposed five-year lease extension option.

#### **CONSULTATION/ADVERTISING:**

As Veggie Mama Pty Ltd made the most acceptable tender submission through a public Request for Tender process, providing public notice of the disposal of property is not a statutory requirement.

All respondents to the City's consultation about a potential kiosk in Hyde Park have been notified that this Lease is being presented to Council at its 9 November 2021 Briefing.

#### **LEGAL/POLICY:**

Local Government Act 1995 – s 3.58(2)(b) Disposal of Property:

- (2) *Except as stated in this section, a local government can only dispose of property to —*
- (a) the highest bidder at public auction; or*
  - (b) the person who at public tender called by the local government makes what is, in the opinion of the local government, the most acceptable tender, whether or not it is the highest tender.*

#### **RISK MANAGEMENT IMPLICATIONS**

Low: It is low risk for Council to consider the lease of the storage shed within Hyde Park to Veggie Mama Pty Ltd for the use of a commercial kiosk. The commercial risks associated with running a kiosk would be managed entirely by the operator. The City would not assume any responsibility for the commercial viability of the operation.

#### **STRATEGIC IMPLICATIONS:**

This is in keeping with the City's *Strategic Community Plan 2018-2028*:

##### *Enhanced Environment*

*Our parks and reserves are maintained, enhanced and well utilised.*

Connected Community

*Our community facilities and spaces are well known and well used.*

Thriving Places

*Our physical assets are efficiently and effectively managed and maintained.*

Innovative and Accountable

*Our resources and assets are planned and managed in an efficient and sustainable manner.*

**SUSTAINABILITY IMPLICATIONS:**

This does not contribute to any environmental sustainability outcomes. This action is environmentally neutral. The recommended Tenderer makes note of using compostable and biodegradable packaging and not providing any single use plastic items.

**PUBLIC HEALTH IMPLICATIONS:**

This is in keeping with the following priority health outcomes of the City's *Public Health Plan 2020-2025*:

*Increased healthy eating*

**FINANCIAL/BUDGET IMPLICATIONS:**

The Premises is not currently leased. The proposed Rent is \$30,000 per annum including GST in line with both the surrounding commercial tenancy values and the fee suggested by the Tenant. The Rent is proposed to be increased by CPI annually during each year of the lease commencing from 1 July 2023.

Administration is recommending works to the value of \$55,000 excluding GST to the storage shed to ensure that the space would be compliant with health regulations to serve food.

With the exception of Year 1 (in which the City would undertake the works), the Net Present Value received by leasing the Premises will be around \$20,000 from Year 2 to Year 10 of the Lease.

At Year 10 of the Lease the total Net Present Value would be approximately \$117,785. This figure has taken into account annual building maintenance spending of \$6,000, the profit lost from Food Van permits, City's premises works at \$50,000 depreciated at 1.5 percent per annum, CPI increases on Rent of 1.5 percent per annum, and the Net Present Value discount rate of 2 percent.

**COMMENTS:**

The tender submission from Veggie Mama Pty Ltd complies with all the Tender requirements, including demonstrating relevant experience, and understanding of the City's requirements. The Evaluation Panel deemed the response to be convincing and credible, and demonstrated the capability, capacity and experience relevant to the Evaluation Criteria.

The Evaluation Panel recommends that Veggie Mama Pty Ltd be accepted for Tender No. CEO126/2021 as it presented the best overall proposal.

Administration recommends that Council approve the proposed Lease of the Hyde Park Kiosk to Veggie Mama Pty Ltd.

Proposed new lease terms  
December 2021

<b>Initial Term:</b>	two (2) years
<b>Option:</b>	two (2) x five (5) years
<b>Premises area:</b>	Portion of the building known as the western storage shed at Hyde Park, measuring approximately 34m <sup>2</sup> (building).
<b>Permitted use:</b>	Café to service Hyde Park
<b>Rent:</b>	Proposed rent is \$30,000 per annum including GST
<b>Rent Review:</b>	Annual CPI rent review to occur on 1 July each year of the Lease commencing from 1 July 2023.
<b>Outgoings:</b>	<p>The tenant will pay:</p> <ul style="list-style-type: none"> <li>(a) ESL charges applicable to the premises;</li> <li>(b) rubbish and recycling bin charges for the premises. (The tenant will need to make arrangements with a commercial service);</li> <li>(c) rates and taxes; and</li> <li>(d) minimum level of service statutory compliance testing (including RCD, DFES and pest inspection fees and charges).</li> </ul> <p>Utilities (including water and electricity) are included in the Rent.</p>
<b>Insurance:</b>	<p>Tenant to hold and maintain a public liability insurance policy for not less than \$20million per one claim, in respect of the tenant's use and occupation of the Premises.</p> <p>Tenant to reimburse the City for the building insurance premium payable in regard to all buildings, structures and improvements within the Premises area (currently at \$89.74 + GST per annum). If the tenant requests the City make a claim on the tenant's behalf (under the building insurance policy) the City may require the tenant to pay any excess payable in respect to that claim.</p>
<b>Repair/maintenance:</b>	The tenant is responsible for maintenance items as specified in right hand column of <b>attached</b> maintenance schedule.
<b>Capital upgrades:</b>	After completion of the City's initial Premises fit-out, the tenant is responsible for capital upgrade and capital expansion of all assets within the leased or licenced area and the maintenance of the Premises fit-out. Any capital upgrades are subject to the written consent of the City.
<b>Inspections:</b>	The City will inspect the premises annually (or as required) and will give the tenant appropriate notice of the inspection, in accordance with the lease terms.
<b>Responsibilities of the City:</b>	<p>The City is responsible for:</p> <ul style="list-style-type: none"> <li>(a) maintenance of roofing and main structure of the Premises (unless the damage is caused by the tenant); and</li> <li>(b) capital renewal of existing assets at the City's discretion.</li> </ul>

**Proposed new lease terms  
December 2021**

<p><b>Obligations of Tenant and default provisions:</b></p>	<p>The Tenant is responsible for ensuring Premises and surrounds (being the café's alfresco dining area) are clean and free from litter. The Tenant is not responsible for maintaining cleanliness of the whole of Hyde Park.</p> <p>The tenant is responsible for paying all Rent and any other monies owing under the Lease within 14 days of the due date:</p> <ul style="list-style-type: none"> <li>(a) If the tenant fails to pay an invoice within the 14-day grace period, interest at a prescribed rate (as set by the Lease) will accrue on the outstanding amount until it is paid for in full.</li> <li>(b) Continued failure to pay monies due and owing under the lease may result in the City terminating the Lease due to the tenant's default.</li> <li>(c) If the tenant disputes any amount due and owing under the Lease, the tenant must notify the City accordingly. In the absence of manifest error, the tenant must pay the outstanding amount on the due date and any dispute about the amount will be resolved with the City following payment.</li> </ul>
<p><b>Minister for Lands consent:</b></p>	<p>This Lease is subject to and conditional upon the prior written approval of the Minister for Lands pursuant to section 75(6) of the <i>Land Administration Act 1997</i>.</p>
<p><b>Exclusivity:</b></p>	<p>The City agrees not to permit the use of any space within Hyde Park to any tenant or other occupant which sells food or beverage items during the term on the Lease. This does not apply to functions or events held within the Park.</p>
<p><b>Rent Free Period:</b></p>	<ul style="list-style-type: none"> <li>(a) The Tenant shall be entitled to occupy the Premises rent-free for a period of nine (9) months commencing upon completion of the City's construction of initial fit-out of the Premises.</li> <li>(b) Except to the extent inconsistent with the Rent Free Period being rent-free, all of the terms of the Lease shall apply during the Rent Free Period, and for the avoidance of doubt, the Lessee shall pay all amounts due under this Lease other than Rent during the Rent Free Period.</li> </ul>
<p><b>COVID-19 Provision:</b></p>	<p>If the Tenant requests rent relief due to loss in turnover as a result of COVID-19 restrictions, good faith negotiation between both parties will occur.</p>
<p><b>Serving Alcohol:</b></p>	<p>The Tenant can apply for liquor licencing for events by obtaining an Occasional Liquor Licence from the Department of Racing, Gaming and Liquor, before submitting the City's One-Off Liquor Licence Permit and Gaming Application.</p>

## Maintenance obligation schedule

Maintenance Item	Lessor's obligations	Lessee's obligations
<b>Statutory/Minimum Level of Service obligations</b>		
Emergency exit lighting systems & emergency doors	Undertake annual inspections of the Premises to ensure maintenance and compliance with requirements of the Building Code of Australia and Australian Standards.	Ensure that any faults or operational issues with the emergency/exit lighting systems in the Premises are promptly reported to the Lessor. Reimburse the Lessor for the cost of annual compliance inspections.
Fire protection equipment (e.g. fire extinguishers, hoses, smoke alarms)	Undertake annual inspections of the Premises to ensure compliance with FESA and DFES requirements.	Ensure that any use or operational issues with the fire protection equipment in the Premises are promptly reported to the Lessor. Reimburse the Lessor for the cost of annual compliance inspections.
RCD Protections, Tagging Electrical Equipment	Ensure that all RCDs are repaired and maintained in accordance with the relevant legislation.	Ensure that all portable plug-in electrical equipment are regularly inspected (a minimum of once every 12 calendar months) in accordance with relevant legislation. Reimburse the Lessor for the cost of annual RCD compliance testing.
Pest Control, vermin control & termites	Undertake annual pest inspections and extermination treatments (if required).	Endeavour to keep the Premises free and clear of all rodents, rats, vermin, insects, birds, animals and other pests and report to the Lessor any pest activity or required treatment. Reimburse the Lessor for the cost of annual pest inspection and treatments.
<b>Premises and security</b>		
Cleaning & cobweb removal	Not any.	Ensure Premises is kept tidy and free of litter, dirt, rubbish, cobwebs and broken glass at all times.

Maintenance obligation schedule

Maintenance Item	Lessor's obligations	Lessee's obligations
Malicious damage & break-ins	At request of Lessee, will submit Building Insurance claim on behalf of Lessee.	Responsible for repairs and cleaning of broken glass, windows and doors after an act/incident of malicious damage on the Premises. Responsible for repairing and replacing any stolen goods or broken fixtures and fittings that make part of the Premises. Report any incidents of malicious damage or break-ins to the Lessor. Must pay any excess for a Building Insurance claim commenced by the Lessor at the Lessee's request.
Vandalism & graffiti	Upon notification by the Lessee, will remove vandalism & graffiti to the exterior of the Premises. At request of Lessee, will submit Building Insurance claim on behalf of Lessee.	Must remove vandalism & graffiti to the interior of the Premises and repair any damage caused. Must pay any excess for a Building Insurance claim commenced by the Lessor at the Lessee's request.
Security monitoring, equipment and security lights.	Not any.	The Lessee must ensure the Premises is maintained in a secure condition. If any security monitoring, equipment or lighting is in use by the Lessee at the Premises (including any installed by the Lessee), the Lessee must ensure all equipment and lighting is maintained in Good Repair.
Ceiling	Repair any structural damage to ceiling. If damage is caused or contributed to by the Lessee or Lessee's Employees and Visitors, the Lessor may require the Lessee to reimburse it for cost of repairing the damage.	Report any structural damage to the Lessor.

## Maintenance obligation schedule

Maintenance Item	Lessor's obligations	Lessee's obligations
Walls	Repair structural damage to load bearing walls. If damage is caused or contributed to by the Lessee or Lessee's Employees and Visitors, the Lessor may require the Lessee to reimburse it for cost of repairing the damage.	Keep Premises clean, dust any cobwebs and report any structural repairs or faults to Lessor.
Window, glass panes, flyscreens, security screens, doors, door handles.	Undertake repairs or replace items as require. If the damage or disrepair is caused by the Lessee's use of the Premises, the Lessor may recover its costs, for the repair or replacement, from the Lessee.	Keep items clean, operable, lockable, and firmly fixed. Repair, replace and lubricate hinges of items, repair/replace any items that are broken or damaged where caused by Lessee or Lessee's Employees and Visitors misuse.
Skylights, lighting, globes	Not any.	Keep clean at all times and repair and/or replace as required. Replace all globes as required.
Painting	Not any.	At least once every 5 years of the Term, repaint the Premises (interior) with a minimum of two coats of good quality paint (in a colour approved by the Lessor) to a tradesmanlike finish.
Cupboards, blinds, curtains, mirrors	Not any.	Keep clean and repair items as required.
Vinyl Floors	Not any.	Keep clean and repair as necessary.
Wooden Floors	Not any.	Keep clean and repair as necessary.
Tiled Floors	Not any.	Keep clean and repair as necessary.
<b>Fixtures, fittings, appliances and electrical</b>		
Air-conditioning	The Lessor may, at its discretion, replace air-conditioning units that have come to the end of their economic life.	Repair and undertake annual servicing of air-conditioning units/systems.
Oven Vents (if applicable)	Not any.	Keep clean and repair when necessary.

**Maintenance obligation schedule**

Exhaust Fans (if applicable)	Not any.	Keep clean and repair when necessary.
Electrical Fittings (i.e. plugs, switches, sockets, leads, lights, power points)	Maintain, repair and replace any irreparable items. If replacement is caused by misuse/negligence of Lessee, Lessor may require the Lessee to reimburse it for the cost of replacement.	Notify the Lessor when any electrical fittings require repair or replacement. The Lessee must ensure that electrical fittings are not overloaded when in use.
Wiring	Repair, maintain and replace any irreparable items.	Notify the Lessor when any wiring or electrical work is required.
Appliances (i.e. fridges, toasters, freezer, stove, microwaves, washing machine)	Not any.	Keep clean, operable, regularly maintain and repair as required.
<b>Maintenance Item</b>	<b>Lessor's obligations</b>	<b>Lessee's obligations</b>
<b>Premises exterior and surrounds</b>		
Roof (including leaks, broken tiles etc.)	Repair any structural damage to roof and clean roofs as required.	Report any structural damage to the Lessor.
Eaves, gutters & downpipes	Maintain and repair eaves, gutters and downpipes.	Report any damage or build up to the Lessor.
Garden and surrounds (including fencing and gates)	Responsible for any major tree pruning and tree removal. Replacing fences and/or gates as required and determined by the Lessor.	Not to remove any trees or hedges without first obtaining approval from the Lessor, except for urgent safety reasons.
Shed, roller doors and garage (if applicable)	Replace or repair as and when determined by the Lessor (at its discretion).	Responsible for keeping clean.
Pollution	Not any.	Do all things necessary to prevent pollution or contamination of the Land by garbage, refuse, waste matter, oil or other pollutants. Report any pollution, contamination or suspected pollution/contamination to the Land to the Lessor promptly.



## Proposed Lease to Veggie Mama Pty Ltd – Comparison with Property Management Framework

Term/Condition	Property Management Framework (Cat. 3 requirements unless negotiated)	Included in Proposed Lease?
Initial Term	Maximum of 10 years.	Yes (2 years)
Option	Up to 2 x 5 years options (at the City's discretion)	Yes (2 x 5 years)
	<b>PAYMENTS</b>	
	All outgoing, rates and taxes, including rubbish and recycling bin charges.	Yes (utilities included in Rent)
	Cost of statutory compliance (RCD, smoke alarm, emergency exit and fire hydrant testing).	Yes
	Pest inspections (including termite inspections) and treatment.	Yes
	Emergency Services Levy (ESL).	Yes
	Building insurance, premium and excess.	Yes
	\$20 million public liability insurance.	Yes
	<b>REPAIR/MAINTENANCE</b>	
Responsibilities of Tenant	General minor maintenance of premises which includes replacement of fittings and fixtures including light globes and taps.	Yes
	Re-painting of premises to ensure it remains in good condition.	Yes
	Cleaning (internal and external).	Yes
	Line-marking of parking bays in car parks (if applicable).	Yes
	<b>CAPITAL UPGRADES</b>	
	Capital upgrade and capital expansion of all assets within the leased or licensed area.	Yes
	Maintenance of fit-out.	Yes
	<b>INSPECTIONS</b>	
	The City will inspect the premises annually (or as required) and will give the tenant appropriate notice in accordance with the lease terms.	Yes
	<b>REPAIR/MAINTENANCE</b>	
Responsibilities of the City	Maintenance of roofing, mechanical services and main structure (unless damage caused by tenant).	Yes
	<b>CAPITAL RENEWAL</b>	
	Capital renewal of existing assets at the City's discretion.	Yes

<p><b>Obligations of Tenant and Default Provisions</b></p>	<ul style="list-style-type: none"> <li>• The tenant is responsible for paying any license fees/rent and any other monies owed under the agreements within 14 days of the due date;</li> <li>• If the tenant fails to pay an invoice within the 14 day grace period, interest at a prescribed rate (as set by the agreement) will accrue on the outstanding amount until it is paid in full;</li> <li>• Continued failure to pay monies due and owing under the agreement may result in the City terminating the agreement;</li> <li>• If the tenant disputes any amount due and owing under the agreement, the tenant must notify the City. In the absence of manifest error, the tenant must pay the outstanding amount on the due date and any dispute about the amount will be resolved with the City following payment.</li> </ul>	<p>Yes, included in full lease terms, which are not presented to Council.</p>
<p><b>Tenancy Fee</b></p>	<p>Subject to negotiation based on GRV. The tenant may undertake a market rent valuation of the premises, at the tenant's cost.</p>	<p>No, the Rent fee was not negotiated by reference to GRV as the Premises does not have an official GRV. The Rent was instead based on both the surrounding commercial tenancy values and the fee suggested by the Tenant.</p>



