

13.3 Aqualife - Proposed lease terms for office

Location	East Victoria Park
Reporting officer	Property Development and Leasing Officer
Responsible officer	Property Development and Leasing Manager
Voting requirement	Simple majority
Attachments	<ol style="list-style-type: none"> 1. Aqualife Office Key Terms [13.3.1 - 3 pages] 2. Floor- Plan- Sketch- Aqualife- Office- Suite-42- Somerset- Street- East- Victoria- Park (4) [13.3.2 - 1 page] 3. Location Plan Aqualife Centre [13.3.3 - 1 page] 4. Practitioner agreement [13.3.4 - 6 pages]

Recommendation

That Council:

1. That Council approves the lease to Jessica Kennedy of the Aqualife office located at 42 Somerset Street, East Victoria Park, on terms set by the Town's lawyers, including: -
 - (a) Agreement Type: Lease
 - (b) Term: 5 years, with a tenant break clause after 1 year.
 - (c) Further Term: None.
 - (d) Land: 25m² portion of 42 Somerset Street, East Victoria Park Lot 331 on Plan 63589 Certificate of Title Volume 2798 Folio 118
 - (e) Rent: \$3,000 per annum + GST
 - (f) Rent Review: CPI increases on each anniversary date of commencement.
 - (g) Outgoings: The Tenant is responsible for all outgoings which (in accordance with Policy 310 Leasing) shall be all operating/running costs, including but not limited to: (i) Refuse collection; (ii) Emergency services levy; (iii) Water rates; (iv) Council rates; and (v) All utilities related to their use (e.g. electricity, gas, water, telecommunications.) (vi) building and landlord insurances.
 - (h) Maintenance: The Tenant is responsible for non-structural and preventative maintenance. The Landlord may in its absolute discretion undertake repair and maintenance (subject to availability of funds) in accordance with Asset Management Plans, and such other factors as may be considered by the Landlord to be reasonable and/or necessary.
 - (i) Assignment – only on conditions set by the Town's Chief Executive Officer including prior written consent of the Town.
 - (j) Subletting – the Tenant may sublet or grant access to the premises without the Town's prior written consent on conditions set by the Town's Chief Executive Officer to practitioners for the purposes of the Permitted Use. Practitioners utilising the room will be required to provide relevant certifications and complete the online contractor induction for the Leisurelife facilities. The Tenant has supplied a draft practitioner agreement template that appears as Attachment 13.3.4, which the Lessor approves in advance as part of the lease. The Tenant will pay reasonable costs for the Lessor's lawyers to review and if applicable amend this template to the satisfaction of the Chief Executive Officer.
 - (k) Permitted Use: Allied Health services, including acupuncture, massage, and other complementary health services and/or therapies.

- (l) Operating Hours: Proposed hours are in line with the Centre and lease requirements.
 - (m) Insurance: The Tenant is responsible for \$20M Public Liability Insurance (and workers compensation cover should this be a legal requirement for the Tenant's business or use of the property), with ability for Lessor to review as reasonably required from time to time.
 - (n) Signage: The Lessor consents to proposed fit out included in submission received. Any further works or fit out will require the prior written consent from the Lessor, and the Tenant will provide a design concept and location map for consideration.
 - (o) Alterations, Works and Fit Out: Prior written consent from the Lessor required. Tenant has provided concept and design plans. Any agreed fit out and alterations made to the space within this lease, including installation of a hand wash basin and curtain rails, to remain in place at the end of the lease.
 - (p) Special Conditions:
 - (i) The Lease will include a redevelopment clause, whereby if the Town wishes to significantly redevelop the site the lease can be terminated by the Town giving six (6) months written notice to the Lessee to vacate the premises and the same written notice to the Lessee will indicate that the lease will be terminated six (6) months from the date of notice;
 - (ii) No guarantee is provided as to the availability of any operating subsidy or of continued availability of the premises after the end of the Term.
 - (iii) Town of Victoria Park to install hand washing basin inside the premises at the Lessor's expense in compliance with Tenants confirmation of AHPRA requirements for acupuncture clinics.
 - (iv) The design and specification to be agreed with the tenant in advance. The Town's responsibility for specifying the hand washing basin shall be limited to implementing the design and specification provided by the tenant.
 - (v) Leisurelife Management to provide access cards for other therapists ensuring it is within proposed Leisurelife centre hours, and reasonable access, in common with other staff and users of the facility, for practitioners and clients to parking, toilets and the reception seating area.
 - (vi) Tenant to pay legal costs associated with the lease.
2. That the Chief Executive Officer be authorised to advertise the proposed lease disposal of the office at Aqualife by way public notice pursuant to section 3.58 of the Local Government Act 1995 and to enter into the lease, subject to no submissions being received.
3. That the Chief Executive Officer be authorised to negotiate and execute the lease documentation on the advices of the Town's lawyers, including any amendments to the terms that are considered reasonable and necessary in the opinion of the Chief Executive Officer.

Purpose

The purpose of this report is for Council to consider revised lease terms for Jessica Kennedy to lease the 25m² office space at Aqualife located at 42 Somerset Street, East Victoria Park.

In brief

- Council authorised at the 13 December 2022 Ordinary Council Meeting to the lease of a 25m² office space within Aqualife to Jessica Kennedy.
- During the negotiations, it was established that Jessica Kennedy requires to sublet the office space to other practitioners for the purposes of the permitted use and that the ability to sublet is required to be without the Town's prior written consent for each instance of subletting to an individual practitioner

(Subletting Requirement). Officers considered this to be a departure from Policy 310 Leasing. Officers have sought to negotiate an increase in the rental on the basis that this detailed point is considered to have potential commercial value. Jessica Kennedy has declined this request.

- Jessica Kennedy has offered a rent of \$3,000 per annum plus GST. A valuation review of the office space was completed in June 2023, and reported the market rental value at \$5,200 per annum plus GST plus outgoings.
- This report recommends that Council accept the Subletting Requirement, subject to the conditions set by the Chief Executive Officer and to the Town's lawyers reviewing the practitioner agreement provided by Jessica Kennedy.

Background

1. The Town is the freehold owner of the Premises located at 42 Somerset Street, East Victoria Park (Aqualife), which provides community recreational services
2. The legal description of the land at Aqualife is Lot 331 on Plan 63589 Certificate of Title Volume 2798 Folio 118. The land is reserved for Parks and Recreation under the local Town Planning Scheme No. 1.
3. At the Ordinary Council Meeting held 13 December 2022, Council authorised the Chief Executive to begin negotiations with Jessica Kennedy by a way of lease for the 25m² office space within Aqualife, and the following terms were approved: -
 - (a) '1. Authorises the Chief Executive to negotiate with Jessica Kennedy to lease the office at Aqualife located at 42 Somerset Street East Victoria, on terms set by the Town's lawyers, including the following key terms:-
 - a) Land: An approximately 25m² portion of 42 Somerset Street, East Victoria Park being Lot 331 on Plan 63589 Certificate of Title Volume 2798 Folio 118.
 - b) Term: 1 year.
 - c) Further Term: 4 years.
 - d) Rent: \$3,000.00 per annum plus GST.
 - e) Rent Review: CPI increase on each anniversary date of commencement.
 - f) Commencement Date: Upon execution of the agreement by both parties.
 - g) Outgoings: The Tenant is responsible for all outgoings which (in accordance with Policy 310 Leasing shall be all operating/running costs, including but not limited to: (i) Refuse collection; (ii) Emergency services levy; (iii) Water rates; (iv) Council rates; and (v) All utilities related to their use (e.g. electricity, gas, water, telecommunications.) (vi) building and landlord insurances.
 - h) Maintenance: The Tenant is responsible for non-structural and preventative maintenance. The Landlord may in its absolute discretion undertake repair and maintenance (subject to availability of funds) in accordance with Asset Management Plans, and such other factors as may be considered by the Landlord to be reasonable and/or necessary.
 - i) Assignment or Subletting: Prior written consent, in accordance with Lease Agreement and subject to the Town being satisfied with the terms and conditions of any sub agreement. Any practitioner subletting the premises will be required to provide relevant certifications.
 - j) Permitted Use: Allied Health services, including acupuncture, massage and other complementary health services and/or therapies.
 - k) Proposed hours are in line with the Centre and lease requirements.
 - l) Insurance: The Tenant is responsible for \$20M Public Liability Insurance and workers compensation cover, with ability for Lessor to review as reasonably required from time to time.
 - m) Signage: The Lessor consents to proposed fit out included in submission received (and indicated in this report). Any further works or fit out will require the prior written consent from the Lessor and the Tenant will be required to provide a design concept and location map for consideration.

n) Alterations and Fit-out works: Prior written consent from the Lessor required. Tenant to provide concept and design plans. Any agreed fit out and alterations made to the space within this lease, including installation of a hand wash basin and curtain rails, to remain in place at the end of the lease. o) Special Conditions: Subject to the Town of Victoria Park Council approval. Town of Victoria Park Redevelopment Clause. No guarantee is provided as to the availability of any operating subsidy or of continued availability of the premises after the end of the Further Term. Town of Victoria Park to install hand washing basin inside the premises in compliance with AHPRA requirements for acupuncture clinics (Infection prevention and control guidelines for acupuncture practice, AHPRA). The design and specification to be agreed with the tenant in advance. The tenant to pay landlord legal costs.

p) Lease terms to be set by the Towns lawyers and to incorporate such minor variations or amendments to key terms (a) – (o) as may be agreed by the CEO.

2. Authorises the Chief Executive Officer to negotiate minor variations or amendments to the key terms.

3. Authorises the Chief Executive Officer to advertise the proposed disposal of the office at Aqualife by way of lease by public notice pursuant to section 3.58 of the Local Government Act 1995 and subject to negotiating a lease agreement acceptable to the Town.

4. Authorises the Chief Executive Officer and the Mayor to execute all documents necessary to give effect to a lease between the Town of Victoria Park and Jessica Kennedy for the office at Aqualife Café and apply the Town's Common Seal, provided that no submissions are received pursuant to 3 above'

4. Negotiations with Jessica Kennedy established the Subletting Requirement, which differs from the terms to Council Resolution (259/2022). Council approval is required to authorise revised terms to address the Subletting Requirement.

Strategic alignment

Civic Leadership	
Community Priority	Intended public value outcome or impact
CL3 - Accountability and good governance.	A lease in line with Town policies will deliver a sustainable financial outcome for the Town.

Economic	
Community Priority	Intended public value outcome or impact
EC2 - Connecting businesses and people to our local activity centres through place planning and activation.	A lease within Aqualife will provide further activation of the Centre, additionally support the community, and connect people and places to the new service.

Environment	
Community Priority	Intended public value outcome or impact
EN5 - Providing facilities that are well-built and well-maintained.	Occupying the vacant office will provide the community with an additional service provider that can be of activate the Aqualife

	facility.
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Social

Community Priority	Intended public value outcome or impact
S3 - Facilitating an inclusive community that celebrates diversity.	A lease for this space will support the activation of the Centre and provide the community with an opportunity to use this service provider.

Engagement

Internal engagement

Stakeholder	Comments
Manager Property Development and Leasing	Comments are provided within this report.
Manager Community	Proposed use is conducive to enhancing community wellbeing.
Manager Place Planning	The Social Infrastructure Strategy (adopted April 2022) encourages multi-functional facilities that facilitate a diverse level of services, including co-location of community support services
Manager Business Services	The Town's Leisure Facilities are supportive of this report to lease the space and have been involved during the evaluation process.

Legal compliance

[Section 3.58 of the Local Government Act 1995](#)

Risk management consideration

Risk impact category	Risk event description	Consequence rating	Likelihood rating	Overall risk level score	Council's risk appetite	Risk treatment option and rationale for actions
Financial	Failure of Lessee to meet rent and lease obligations	Minor	Unlikely	Low	Low	TREAT risk by ensuring lease covers the Town with the possibility of debt recovery action.
Environmental	Not applicable.					
Health and safety	Not applicable.					
Infrastructure/	Not applicable.					

ICT systems/ utilities						
Legislative compliance	Failure to comply with s3.58 of the <i>Local Government Act 1995</i>	Minor	Unlikely	Low	Low	TREAT risk by following the disposal of property process in accordance with s3.58 of the <i>Local Government Act 1995</i> .
Reputation	Leaving the office space empty can impact the appeal and image of the Aqualife facility.	Moderate	Likely	High	Low	TREAT risk by ensuring a tenant is occupying the office space
Service delivery	Failure to secure a suitable Lessee to meet community expectations.	Moderate	Possible	Medium	Medium	TREAT risk by securing a suitable Lessee to ensure service provision for the community.

Financial implications

Current budget impact	While the Aqualife office has remained vacant, The Town currently does not receive any revenue from this space.
Future budget impact	If the Aqualife office is leased, it will have little to no impact on budget requirements. It will provide the Town with a small amount of leasing revenue through rent and outgoings. It is possible that adding a tenant to this vacant space could attract more customers and increase revenue growth for the Aqualife facility.

Analysis

5. The proposal by Jessica Kennedy involves leasing office space at Aqualife and subletting it to other practitioners, which presents slightly different terms compared to the previous Council Resolution (259/2022) that was approved on 13 December 2022.
6. The office space is vacant, measures 25m² and is ideally suited for proposed allied health services.
7. The proposed rent for this office space is \$3,000 per annum, plus GST plus outgoings, which is lower than the value determined in the Valuation Review completed in June 2023. The office space was valued at \$5,200 per annum, plus GST and outgoings.
8. The proposed lease is expected to contribute to the activation of the Aqualife facility. The office space has been vacant for a number of years, and it has proven difficult to find a Tenant to occupy the space.
9. The proposed lease agreement has a 5-year term with a tenant break clause allowing termination after the first year.

10. Jessica Kennedy's business model includes subletting to other practitioners without employing staff directly. It will be required for the Town's lawyers to review the practitioner agreement and make necessary amendments to ensure that the proposed Subletting Requirement is operated to the Town's satisfaction.
11. Officers have sought to negotiate an increase in the rental on the basis that the Subletting Requirement is a detailed point that is considered to have potential commercial value. As noted above, Jessica Kennedy has rejected this. Having regard to the following, it is considered that it may be appropriate to proceed with the proposed rent for this office space is \$3,000 per annum, plus GST plus outgoings:-
 - a. The space is currently empty and makes no monetary or other service/social contribution to the Aqualife facility;
 - b. The proposed lease will generate some income to the Town by way of rent plus a contribution (proportionate to the size of the space);
 - c. The permitted use proposed has social value in that it is complimentary to the Aqualife facility and conducive to enhancing community wellbeing;
 - d. The proposed lease for the permitted use could attract more customers and increase revenue growth for the Aqualife facility;
 - e. Commercial value realised by the tenant through subletting and increased use of the space may feed into the benefits listed above for the Aqualife facility and customers;
 - f. Fairly intensive marketing was required in order to attract a compatible tenant for the facility, with limited interest shown.
12. Jessica Kennedy will be responsible for obtaining appropriate insurance, including public liability insurance and workers' compensation if deemed necessary from the Town's lawyers, after a review of the Practitioner Agreement has been completed.
13. The disposal by lease is subject to the requirements specified in section 3.58 of the Local Government Act 1995.
14. The recommendation makes provision for the terms of the Lease and Practitioner Agreement to be prepared by the Town's lawyers and for reasonable and necessary variations and amendments that may arise during the process to be authorised by the Chief Executive Officer.

Relevant documents

[Policy 310 - Leasing](#)

Further Consideration

At the Agenda Briefing Forum held on 1 August 2023, the following information was requested.

15. Provide further information on the market valuation at the time of the Council decision in December 2022?

The following extracts are provided from the market valuation obtained for the purposes of the Council decision in December 2022:-

"Taking into account the relevant factors and our knowledge that tenancies in community leisure centres as the subject generally command lower levels of rental than the open market we are of the opinion that subject suite would command a fair rental in the order of \$80 to 100 per week or \$4,160 to \$5,200 per annum including outgoings, plus GST and utility charges if able to be apportioned individually.

"In assessing the rental for the suite we have been mindful of the nature of the premises which is a community aquatic centre without the tenancies having any individual identity and generally not being able to attract normal commercial tenants who require a commercial image to appeal to their particular customer base."

16. Provide details on whether or not the Town will pay for the hand basin and if that was included in the original council resolution.

The original council resolution dated 13 December 2022 included a list of Special Conditions under 1(o). Within this list, the following is provided:-

"Town of Victoria Park to install hand washing basin inside the premises in compliance with AHPRA requirements for acupuncture clinics (Infection prevention and control guidelines for acupuncture practice, AHPRA). The design and specification to be agreed with the tenant in advance."