

## 4.2 HEADS OF AGREEMENT CHELSWORTH PARK PAVILION PROJECT

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### Previous Items

Council on 30 October 2023 (Item 7.1 - Chelsworth Park Sports Pavilion Redevelopment - Proposed Heads of Agreement - Ivanhoe Grammar School)

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### SUMMARY

1. The purpose of this report is to present the final negotiated Heads of Agreement (HOA) for the Chelsworth Park Pavilion Project with Ivanhoe Grammar School (IGS) for Council's consideration and endorsement.
2. This HOA details the statutory and other processes required for the granting of a new lease and obtaining planning approval for the proposed development of two pavilions. It also sets out the key terms of an IGS Agreement for Lease (AFL) which can be signed by both parties before detailed drafting of the AFL and a new lease commences (**Attachment 1**).
3. At the Council meeting on 30 October 2023, Council resolved subject to the statutory process, under the *Local Government Act 2020*, that the terms and conditions of the proposed lease in general remain the same as the existing lease with the following new key terms and modifications endorsed for inclusion: These key terms including the following are included in the attached HOA :
  - Tenure - 30 years plus 2 x 5-year options (total 40 years)
  - Rental – \$12,000 per year (plus annual increase of 4%)
  - Repairs and maintenance remain the responsibility of IGS, currently \$400,000 pa.
  - Removal of current obligation on IGS to install a fourth tennis court and multi court.
  - Review of role, purpose, and membership of Chelsworth Park Reference Group – remove from the lease and establish as an advisory committee to Council.
  - Removal of current obligation on IGS to contribute \$6,000 per year to a sinking fund, having regard to the proposed increase in rental.
  - Removal of Council receiving 50% of sporting club fees and charges for ground and pavilion use.
4. Following the 30 October 2023 Council meeting an additional draft term has been included as follows:
  - a. The Tenant acknowledges and agrees that public access to Chelsworth Park (other than the new pavilions to be constructed by IGS) must be maintained at all times during the Term and Further Terms and that IGS will not erect any fences or other obstructions on or around the Premises to prevent such public access.

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5. IGS is proposing to invest in the development of two new sports pavilions to replace the existing facilities at an estimated cost of between \$12 million and \$14 million.
6. Given the significant increase from the capital projects stipulated in the current lease with IGS, if agreed, the proposed works requires a new lease and, therefore, Council must conduct a community engagement process to comply with Section 115 of the *Local Government Act 2020*.
7. Prior to commencing any pavilion works, IGS will also need to obtain planning approval for the use and development. In these cases, it is customary for parties to enter into an Agreement for Lease (AFL) that includes the requirement to obtain planning approval as a precondition for granting the lease.
8. The HOA will serve as a mutually agreed roadmap for Council and IGS, highlighting the process that will be followed. Once endorsed, detailed drafting of the AFL and lease will commence with the associated community consultation.
9. Nine (9) Banyule sporting clubs currently use the sports fields and sports facilities, for training and competition purposes and this use accounts for over 80% of total programmed use of the site. IGS use the ovals for school sports and this use accounts for less than 10% of total hours available (**Attachment 2**).
10. This project presents a unique opportunity to deliver significant community sports infrastructure for generations to benefit from at no cost to Council. It aligns strongly with several of Council's key strategies and organisational priorities.
11. The endorsing of a HOA by both parties is the first critical step for this project that will lay the foundations for the extensive community consultation and engagement that will be undertaken for both the new lease and planning application stages.
12. This consultation is outlined in the attached consultation and engagement plan that describes the various stages of consultation and how community can have their say and share their feedback on the proposed pavilion project.

### RECOMMENDATION

That Council:

1. Endorses the Heads of Agreement – Chelsworth Park (**Attachment 1**) and authorises the Chief Executive Officer to sign this agreement on behalf of Council.
2. Endorses the attached community consultation plan (**Attachment 3**) for the Chelsworth Park Pavilion Project.
3. Receives a further report in February 2024 that will give notice of Council's intention to enter into an Agreement for Lease and provide details of the public notice, engagement and submission process.

## **COUNCIL PLAN**

- This report is in line with Banyule's Council Plan strategy to "Promote active and connected living through a range of accessible and inclusive opportunities for all people of all ages through sport and recreation".

## **BACKGROUND**

- Chelsworth Park, owned by Council includes seven (7) sports ovals, three (3) tennis courts and two (2) pavilions and is currently leased to Ivanhoe Grammar School (IGS).
- Nine (9) Banyule sporting clubs currently use the sports fields and sports facilities, for training and competition purposes and this use accounts for over 80% of total programmed use of the site. IGS use the ovals for school sports and this use accounts for less than 10% of total hours available.
- The current lease with Ivanhoe Grammar School (IGS) is for 30 years (initial 20-year term Nov 2014 – Nov 2034 and 2 x 5-year term options). IGS invested \$1 million upfront towards storm water harvest over 2 years at the start of the lease (2014). A \$50,000 rental return is provided to Council in the last 2 x 5-year options, equivalent to approximately \$600,000.
- IGS are responsible for ground and facility maintenance currently valued at \$400,000 p.a, along with capital improvements as defined in their lease.
- Specifically, the current lease in regard to capital improvements stipulates:

Pavilion - Capital Improvements	Cost Est \$
Renovation of the Sports Pavilion (brick pavilion) – additional 2 change rooms, improve toilet facilities including accessible toilet, social rooms and extend veranda	\$500,000
Renovation of the Football Pavilion (timber pavilion) – internal upgrade	\$150,000

- A simple renovation of these two pavilions is no longer a viable option given:
  - The existing condition of both buildings and considerable design and access challenges that would leave very little of either building remaining.
  - The needs of Banyule's sporting clubs located at Chelsworth has greatly expanded in recent years, largely due to club growth in junior and women's participation, requiring the pavilion development works to cater for this growth and deliver accessible and inclusive facilities for all.

### **Existing pavilions**

- The two pavilions – timber pavilion construction in 1975 and brick pavilion constructed in 1987 are ageing and no longer meet contemporary standards.
- The inadequacy of both pavilions to meet current and future need has been highlighted and confirmed over the last few years through:
  - The extensive consultation undertaken for the Ivanhoe Sports Precinct Plan. Upgrades to pavilions at (IGS cost) were identified as a high priority in the adopted Plan.
  - Investigation, and consultation into the functional requirements of clubs. Key deficiencies include:

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- Lack of access and compliance with Disability Discrimination Act (DDA) and building code
- Lack of female friendly and umpires change facilities
- Lack of Environmentally Sustainable Design (ESD) initiatives
- Non-compliance with current State sporting code facility guidelines
- Not meeting universal design principles
- Feedback from club and school users' groups in relation to the constraints and challenges of conducting their activities in sub-standard facilities.
- Much needed focus and investment from Banyule Council and State Government in upgrading sports pavilions to support female participation and equity of access. This has lifted club and community expectations and put a spotlight on the facilities that are no longer fit for purpose, particularly where there are strong participation numbers such as those at Chelsworth park, which supports nine sports clubs.

### **Draft Design**

- IGS presented a basic one pavilion sketch concept (for discussion purposes) to the Chelsworth Community Reference Group (CRG) in late 2020. This single storey long and linear building concept estimated would require demolition of both existing pavilions and removal of several significant trees.
- Council's work on this project commenced in earnest in January 2021, identifying functional requirements to inform scope and look at what might be possible in terms of the building footprint, as well as the possible layout.
- A condition report confirmed both facilities were inadequate in terms of access, design, and sports standards.
- A further report by *Ethos Urban* presented that the lowest risk options for building envelopes were two separate pavilions. This report also identified planning controls, site constraints and information on overlays that need to be considered as well as recommendations to investigate and progress good design outcomes.
- The report was provided to IGS to help inform the preparation of its proposed design for the two new pavilions that includes one double storey (timber pavilion site) and one single story (brick pavilion site).
- The draft design presents two functional fit for purpose community sports pavilions that deliver on facility and sports infrastructure guidelines, are accessible and inclusive with female friendly change rooms and umpires' amenities. Both have also been designed to support non-sporting club/school use for community groups in off peak times.
- The draft design proposes that the existing timber pavilion be demolished and replaced with a new double storey pavilion to accommodate cricket, football and athletics clubs and the existing brick pavilion be partly demolished and footprint extended to accommodate the soccer and cricket clubs.
- The draft design of the proposed pavilion forms part of the Terms Sheet for Agreement for Lease – (**Attachment 1 to Schedule 1 Heads of Agreement**).

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### **KEY ISSUES**

#### **Project Proposal and key terms – Tenure and Rent**

- This project represents an exceptional opportunity to provide substantial community sports infrastructure without imposing any financial burden on Council. Given the increasingly constrained fiscal landscape, a diminishing pool of State and Federal grants, and the existence of other major projects vying for Council resources, the community's growing expectation is for Council to exhibit resourcefulness in facility development and emphasise collaborative partnership approaches. Considering these practical challenges, this project not only addresses these pressing realities but also aligns seamlessly with the community's vision.
- The draft key terms have been developed considering costs and benefits as well as information gathered on use, need, allocations, maintenance, operations, and rental income, to understand project value and help determine fair and reasonable proposed lease terms. The 40 years that is proposed is essentially an additional 20 years from the expiration of the existing lease in 2044 (if the last 10-year option in the current lease is exercised).
- A new lease provides an opportunity to remove terms from the existing lease that are no longer relevant or align with community needs and park use. The construction of additional tennis courts and a multi-use court are two elements of infrastructure that are not a priority for the future and these have been removed from the proposed new terms.
- Conversely, in response to perceptions and concerns from some members of the community around maintaining community access to Chelsworth Park, a clause has been included to ensure that IGS will not erect any fences or other obstructions on or around the Premises to prevent public access.
- Despite the significant capital investment that IGS is proposing, a modest level of rental income of \$12,000 per year (plus an annual yearly increase of 4%) is considered important, as it provides opportunity for Council to fund minor works to the local amenity, as well as flexibility to accumulate income over a period of time and undertake more substantial improvement projects to Chelsworth Park when required.

#### **Understanding use and access of Chelsworth Park**

- The primary beneficiaries of the pavilion developments will be Banyule sports clubs who account for 80% of the total available hours used by IGS and accounts for less than 10% of total hours available (**Attachment 2**).
- Community use of the new pavilions would increase if the IGS redevelopment progresses. The pavilions can support multiple uses for community groups and organisations, particularly during the day in non-peak sports training times.
- Passive use of these ovals and any limitations to access is the same at Council's other sports fields and pavilions. Clubs have exclusive usage for game time and training, but outside of these times, full access is available to the public.
- The sports clubs would continue to need the same access regardless of the lease or pavilion redevelopment, the amount of time available for passive use would not change if this proposal proceeded.

#### **Understanding that the HOA is just the beginning and does not result in the project being endorsed guaranteed or delivered**

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- The HOA is not legally binding but serves as a framework for negotiations for the final AFL and lease agreements and the planning approval process. It is about the process that IGS and Council will follow, not the outcome.
- The HOA outlines the important terms and conditions that may be included in the AFL and the lease before they are finalised. It also includes the proposed draft design plans.
- The AFL will require IGS to obtain planning approval as a condition precedent to the grant of the lease. Therefore, a planning permit is not granted, there will be no lease.
- Council has two separate responsibilities in this project:
  - 1.- Landowner
  - 2. – Responsible authority under the *Planning and Environment Act 1987*.
- It is proposed that Council consider the grant of the AFL and lease in its capacity as landowner prior to considering an application by IGS for planning approval in Council's capacity as responsible authority.

## **SUPPORTING REPORT DETAILS**

### **Legal Consideration**

- Legal advice has been provided on the attached HOA.
- There are two separate statutory processes that will follow and require legal guidance and review and these are the proposed grant of the new lease and IGS's application for a planning permit.
- The AFL will require that the IGS obtain planning approval as a pre-condition to the grant of the new lease. Upon planning approval and all other conditions precedent being met, the lease will come into effect the following day.

### **Human Rights Charter**

- In developing this report to Council, the subject matter has been considered in accordance with the requirements of the *Charter of Human Rights and Responsibilities Act 2006*.
- It is considered that the subject matter does not raise any human rights issues.

**Gender Impact Assessment-** A Gender Impact Assessment was not required for this Report because the Report did not result in the creation or review of a project, strategy or plan that had a direct and significant impact on the public.

### **Financial Implications**

- There are significant costs savings, benefits, service standards and net gains if IGS is to fund, construct and continue to manage the considerable annual maintenance costs for Chelsworth Park the next 40 years noting that:
  - The IGS cost estimate of \$12million to \$14 million is considered fair and reasonable based on comparative industry analysis of similar projects.
  - There is no capital budget for this pavilion development in Council's current 10-year program. A cost estimate for Council to replace the Chelsworth pavilions is estimated at \$18 million and would unlikely be funded before 2034.

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- When managed by IGS, the yearly maintenance costs are approximately \$400,000, and the grounds are curated and managed at higher level of specification. If Council were to take over maintenance, the estimate is \$300,000 per year plus indexation with reduced service level.
- Considering these factors, if IGS builds the pavilion and maintains the grounds, Council could save around \$13.8 million over 40 years.

### **Income and Expenses**

- IGS currently collect grounds rental of approximately \$25,000 per year from seasonal clubs and these fee structures follow Council's fees and charges program. 50% of this rental is returned annually to Council in the current lease. It is proposed that this cease in the new lease.
- There is a \$6,000 per annum sinking fund that supports small scale maintenance and park improvements – overseen. It is proposed that this cease in the new lease and is replaced by annual rental.
- Council pays the Fire Service Levy - currently \$254 per annum.
- IGS invested \$1 million upfront towards storm water harvest over 2 years at the start of the lease (2014) and this forms part of the current lease.
- The current lease extension option (2 x 5-year extensions) November 2034 to November 2044 stipulates a \$50,000 income rental per year plus annual 4% indexation.
- The proposed rental for the AFL will generate an income of \$1,140,306 over the 40 years (\$12,000 in year 1 increased by 4% p.a.).
- The table below summarises the two leases and their components:

	<b>Current Lease</b>	<b>Proposed Lease</b>
Term	30 years (20 + 5 + 5)	40 years (30 + 5 + 5)
Capital Investment	\$1,000,000	\$14,000,000
Ground Maintenance	\$400,000 p.a.*	\$400,000 p.a.*
Tenant Club fees	\$12,500 (50% of \$25,000)	\$0
Rental	Yr. 1 – 20: \$1 p.a. Yr. 21 – 30: \$50,000 p.a. indexed @ 4%	\$12,000 p.a. indexed @ 4%
Sinking Fund (Minor Maint.)	\$6,000 p.a.	\$0 p.a.
Total Value	\$18,481,366	\$31,140,306

*\*\$400,000 not indexed for the purpose of this table*

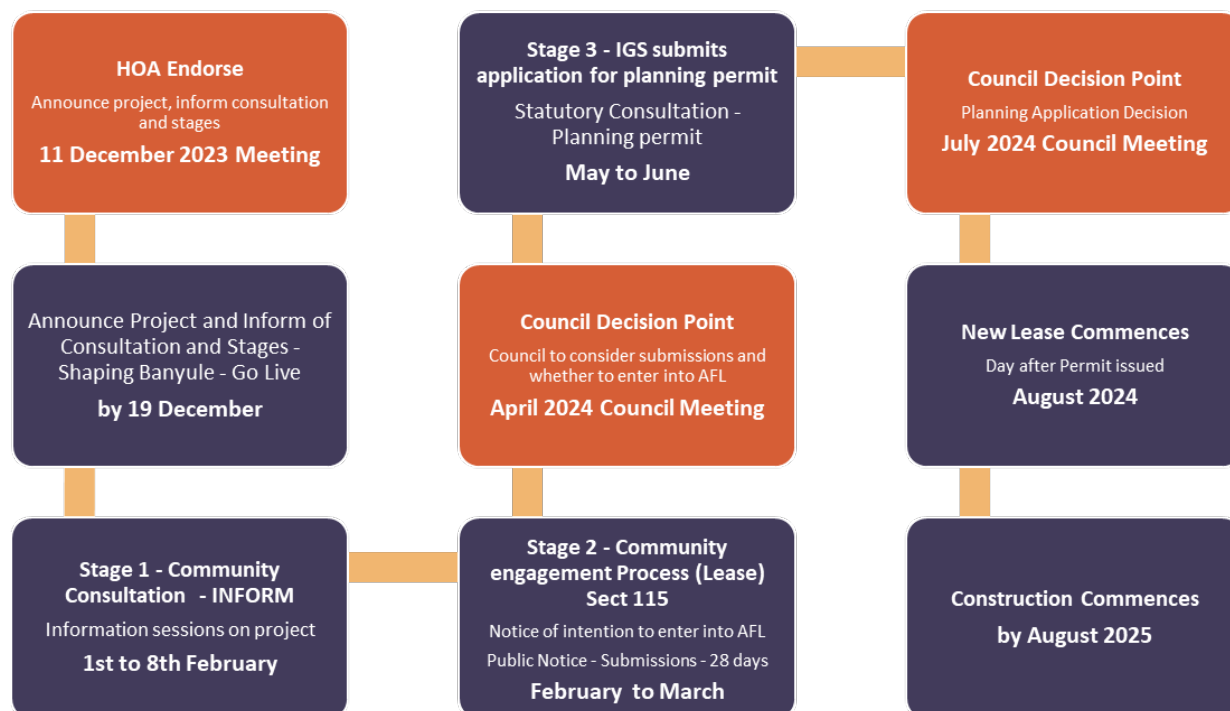
### **Community Engagement**

- To date consultation has largely been with the sports clubs and internal departments to understand the functional requirements and site considerations to scope the pavilion designs that can then be presented and tested with broader community and feedback and input gathered. This process is consistent with how Council approaches all of its pavilion projects. Engagement always commences with the clubs to determine the functional components, to inform the design that then launches the community engagement.
- Community consultation and engagement will be extensive and involve both formal statutory processes (Lease and Planning) as well as community information sessions, FAQ's, drop-in sessions, etc.

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- The diagram below illustrates the overall process with key stages for community engagement and decision points:

### KEY DRAFT TIME-LINES – Overview



- These processes are further outlined in the Chelsworth Park Pavilion Project Consultation Engagement Plan that is provided (**Attachment 3**) for Council's consideration and endorsement. Noting that the consultation process will not commence until the HOA has been resolved and the planning process will not begin until the Agreement for Lease is resolved.
- Given Christmas and the January school holidays, consultation activities will not commence until early February 2024, however the project will go live on Council's consultation platform from 19 December 2023. This is to enable the community to learn more about the project, sign up for update, submit questions and be informed about when and how the consultation will occur in 2024.
- This information stage (Stage 1) will culminate with two in person and one online information session in early February, prior to the community engagement process commencing for the Agreement for Lease (Stage 2). The planning process consultation will not begin until the Agreement for Lease is resolved.

### Officer Declaration of Conflict of Interest

- The *Local Government Act 2020* requires members of Council staff, and persons engaged under contract who provide advice to Council, to disclose any direct or indirect interest in a matter to which the advice relates.
- Council officers involved in the preparation of this report have no conflict of interest in this matter.



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**ATTACHMENTS**

<b>No.</b>	<b>Title</b>	<b>Page</b>
1	Attachment 1 Heads of Agreement	
2	Attachment 2 Table of Use	
3	Attachment 3 Consultation and Engagement Plan	