

8.10. Demolition of existing Primrose Park Tennis Courts and relocation of operator to Green Park

AUTHOR: Risha Joseph, Property Officer

ENDORSED BY: Duncan Mitchell, Director Engineering and Property Services

ATTACHMENTS: Nil

PURPOSE:

The purpose of this report is to inform Council that tenders have been called for the Primrose Park Tennis Court Refurbishment project and the intention for Council to issue notices of demolition, and relocation to the current tennis court operator (Dalbech Pty Ltd) in Primrose Park. It is proposed to re-locate the operator to Green Park Tennis Courts for the duration of the proposed reconstruction works on a temporary lease arrangement.

EXECUTIVE SUMMARY:

This report provides an update to Council on the proposed refurbishment of the Primrose Park Tennis courts and the Property and Leasing implications for the current lease holder and operator of the tennis courts.

This report also outlines a proposal to have the current lease holder of the Primrose Park tennis Courts re-located to the “Green Park” tennis courts for the duration of the upgrade works.

Tenders for this project were called on 2 February 2021 and close on 11 March 2021.

On the basis that Council is in a position to award a tender for the project, it is proposed to issue the current Tennis Court operator with a Notice of Demolition and Relocation. It should be noted that a formal Notice of Demolition and Relocation will only be issued once Council is in a position to commence works on the project. A letter advising the tennis Court Operator of Council’s intention to demolish the existing Courts and upgrade them has been issued on Monday 15 February 2021.

The report outlines Councils position and course of action it can take in relation to Clauses 10 and 11 of the current lease, which provides Council with certain rights to terminate the lease for redevelopment purposes.

FINANCIAL IMPLICATIONS:

The Project will be funded through a combination of Federal Government Grant Funding and Councils Property Capital Works Budget. Cost estimates for the project were reported to Council in a confidential report at its 30 November 2020 Council meeting.

RECOMMENDATION:

1.THAT Council approves the proposal to re-locate of the current Primrose Park Tennis Court operator to Green Park Tennis Courts for the duration of the works at Primrose Park.

2.THAT a temporary lease for the relocation of the Primrose Park Tennis Court Operator be drafted and that in accordance with Section 47A of the Local Government Act 1993, place the proposal for the exclusive, temporary lease on Public Exhibition for 28 Days during which time submissions can be received

3.THAT Council at the conclusion of the 28-day exhibition period, and if no submissions are received, resolve to formalise the temporary lease agreement.

4.THAT the General Manager under the delegations of Section 377 of the Local Government Act 1993, negotiate the terms and conditions of the temporary lease.

5.THAT Council notes that the proposed relocation of the Primrose Park Tennis Court Operator to Green Park Tennis Courts and the execution of a temporary lease will only be undertaken on the basis that Council is in a position to award the tender to commence works on the project in April – May 2021.

LINK TO COMMUNITY STRATEGIC PLAN

The relationship with the Community Strategic Plan is as follows:

1. Our Living Environment
 - 1.4 Public open space and recreation facilities and services meet community needs
2. Our Built Infrastructure
 - 2.1 Infrastructure and assets meet community needs

BACKGROUND

Council Officers have met with the operator of the Primrose Park Tennis Courts, David Chapman (Dalbech Pty Ltd) on 13 November 2020 to discuss the redevelopment plans of the Tennis Courts which were also the subject of a Council Report on the options for redevelopment which was reported up to Council at the 30 November 2020 Council Meeting.

At the meeting of Council held on 30 November 2020, it was resolved:

- “1. THAT Council resolves to go to tender on the concrete slab treatments for Options 2 and 3 as outlined in Table 1 of this report and also go to tender on the three (3) different tennis court surface treatments as outlined in Table 2 of this report.*
- 2. THAT a Councillor Briefing be held before a tender report on the project is brought back to Council to award a contract.*
- 3. THAT the Confidential Report relating to matters specified in Sections 10A(2)(d) be treated as confidential and remain confidential until Council determines otherwise.”*

Tender No. 17/2021

In actioning the Council resolution of 30 November 2020, Council called tenders for this project on 2 February 2021. Tenders close 11 March 2021.

If Council is in a position to award a tender, the works would commence in May 2021 and continue until December 2021 on the basis that the project does not get delayed during construction due to any unforeseen circumstances.

Grant Funding for the Project.

Council has been successful in receiving Grant funding for the Project through the Federal Governments Local Road and Community Infrastructure Program - Round 2. The quantum of the Federal Government Funding and the total project cost estimate was reported up to Council in a Confidential Attachment on 30 November 2020.

The Grant money that Council has received from the Federal Government must be expended by 31 December 2021.

CONSULTATION REQUIREMENTS

Consent to carry out the works for the refurbishment of the Tennis Courts and Club House was granted by Council's Planning Department on 22 November 2019 under the provisions of Clause 5.10 (a) (i) & (ii) of NSLEP 2013.

DETAIL

The Current lease with the Operator at Primrose Park

The Primrose Park Tennis Court operator, Dalbech Pty Ltd currently has a 10-year lease with Council that expires on 31 March 2022. The lease commenced 1 April 2012 and does not include any options to renew or extend the tenure of the lease.

Terms within the current lease in relation to demolition or reconstruction of the Tennis Courts.

Clause 10: Demolition

10.1 Notice

Clause 10.1 provides that:

“if the Lessor wants to demolish, substantially repair, renovate or reconstruct the Building or the part of it containing the Premises, the Lessor may terminate this Lease by giving to the Tenant:

(a) sufficient details of the proposed works to indicate a genuine proposal to carry

them out within a reasonably practicable time after this Lease is terminated; and

(b) at least six months' notice of termination, unless the Term is 12 months or less

in which case the notice of termination must be at least three months.”

Response to Clause 10.1

The term outstanding for the lease is approaching 12 months, therefore it is essential to commence making arrangements to issue the Notice of Demolition. Meanwhile, Council's lawyers have prepared a letter drawing the tenant's attention to Clauses 10 and 11 of the current lease (outlined in the report), which gives Council certain rights to terminate the lease for redevelopment purposes. The letter has been issued to the Tennis Court operator on Monday 15 February 2021.

Council should note that the tenant will be offered an extension to the current lease which expires on 31 March 2022 by the same period that the courts are out of operation for refurbishment. It is anticipated that the Primrose Park Tennis courts will be out of operation for refurbishment from May 2021 to December 2021, a period of 7-8 months.

Clause 11(b) provides:

“If the Lessor wants to refurbish, redevelop or extend the Building and requires the Premises, the Lessor may give the Tenant a relocation notice:

(b) requiring the Tenant to surrender this Lease and vacate the Premises on a specified surrender date which is at least three months after the Lessor gives the Tenant the relocation notice.”

Response to Item 11.1(b):

Council is required to issue the Relocation Notice as soon as practicable, however, this can only occur if Council is in a position to award a tender which will be subject to the tenders received and the budget that has been established for the Project.

Relocation to Green Park

It is essential that the tenant vacate all premises currently occupied at the Primrose Park Tennis Court facility to allow the proposed works to be carried out practicably and effectively. There cannot be any staged reconstruction of the courts to allow for partial operation by the operator.

The relocation to the Green Park Tennis courts was proposed by the operator of Primrose Park Tennis Courts – David Chapman (Dalbech Pty Ltd) in an email to Council on 8 February 2021.

Facilities at Green Park

Green Park comprises the following:

- Two (2) tennis courts
- Public Amenities
- Provision of nets

It **does not** comprise any lighting for evening use, so the courts can only operate during the day.

The Green Park Tennis courts are managed by Council's Open Space & Environment Division, and the courts are open to the public for use throughout the day. No bookings or fees are applicable.

Temporary lease arrangements with Primrose Park Tennis Club

Council is proposing that a temporary lease be entered into between Council and the operator of Primrose Park Tennis (Dalbech Pty Ltd) for the duration of the refurbishment works.

Green Park is Crown Land, the status of which is currently managed by North Sydney Council, however, the Crown Land Management Act 2016 when passed, brought about substantial changes to the manner in which Crown Land was held and managed. The Trust Regime was abolished and from 1 July 2019 the assets, rights and liabilities of the reserve trust that were managed by Council was transferred to Council, and Council became the Crown Lands Manager.

As such, Council is now required to manage the land in accordance with the Local Government Act 1993 as Community land. Community Land is governed by controls outlined in Division 2, and Sections 46 and 47A of the Act, which apply to the leasing and licencing of Community Land for a period of less than 5 years.

Section 46(1)(b)(i) provides that a lease or licence may be granted in accordance with an express authorisation in the Plan of Management (POM) and such provisions of the (POM) as apply to the granting of the lease, licence or other estate for the purposes prescribed by Section 4 (in part).

Subsection 4(a)(i) provides that:

“the following purposes are prescribed for the purposes of subsection (1)(b)(i):

(a) the provision of goods, services and facilities, and the carrying out of activities, appropriate to the current and future needs within the local community and of the wider public in relation to any of the following-

(i) Recreation”

Management of Leases and Licences at Green Park are comprised in the Neighbourhood Plan of Management and are consistent with the leasing of the premises in accordance with subsection 4(a)(i) of the Local Government Act 1993. However, Section 47A of the Act which applies to leases and licences granted for a period of less than 5 years requires Council to give public notice of the proposal and exhibit it for 28 days.

Details of the Temporary Lease

It is proposed that a temporary lease for the relocation of the Primrose Park Tennis Court Operator be drafted and that in accordance with Section 47A of the Local Government Act 1993, place the proposal for the exclusive, temporary lease on Public Exhibition for 28 Days during which time submissions can be received.

The commencement and termination dates of the temporary lease with Dalbech Pty Ltd at Green Park will depend upon Council being in a position to award a tender for the reconstruction of the Primrose Park Tennis Courts.

It is recommended that the General Manager under the delegations of Section 377 of the Local Government Act 1993, negotiate the terms and conditions of the temporary lease.

It is anticipated that the proposed works for the reconstruction of the Primrose Park Tennis Courts will commence in May 2021 and be completed in December 2021 which aligns with the dates that Council has to expend the Federal Governments grant money allocated to the project (31 December 2021).

Conclusion

This report outlines the process required to re-locate the current Tennis court operator at Primrose Park to the Green Park tennis courts on a temporary lease arrangement that can only be undertaken if Council is in a position to award a tender and commence works for the reconstruction of the Primrose Park Tennis courts in May 2021.



Figure 1: Photo – Green Park Tennis Courts – Feb 2021



Figure 2: Photo – Green Park Tennis Courts – Feb 2021

Program (Draft)

Activity	Date
<i>Tender for Project</i>	<i>Tenders called 2 February 2021 and close on 11 March 2021.</i>
<i>Councillor Briefing</i>	<i>21 March</i>
<i>Tender Report to Council</i>	<i>26 April</i>
<i>Public Exhibition of the temporary lease for Dalbech Pty Ltd to operate at the Green Park Tennis Courts</i>	<i>March - April</i>
<i>Report to Council on the outcome of the Public Exhibition of the Temporary Lease</i>	<i>26 April</i>
<i>Notice of Demolition issued Dalbech Pty Ltd . Vacate Primrose Park and commence operation Green Park Tennis Courts</i>	<i>29 April</i>

Commence construction Primrose Park Tennis Courts	<i>May</i>
Construction complete	<i>December 2021</i>