

## 1.6 TELSTRA CORPORATION LIMITED LEASE RENEWAL – PART OF 75-77 HAVERBRACK DRIVE MULGRAVE

Responsible Director: Peter Panagakos

### **RECOMMENDATION**

*That Council resolves to:*

1. *Commence the statutory procedure under section 190 of the Local Government Act 1989 (“the Act”) by advertising Council’s Notice of Intention to renew the Lease for a low impact telecommunications facility located on Council’s land 75-77 Haverbrack Drive Mulgrave to Telstra Corporation Limited (“Telstra”) on the following terms and conditions:*

|                      |  |
|----------------------|--|
| <i>Rent:</i>         | <i>\$12,500 per annum + GST</i>                |
| <i>Rent Reviews:</i> | <i>Increased by 3.5% annually</i>              |
| <i>Term:</i>         | <i>10 years</i>                                |
| <i>Further Term:</i> | <i>Two (2) further terms of five (5) years</i> |
2. *Appoints a Committee of Council, comprising of the Mulgrave Ward Councillors to consider submissions received under Section 223 of the Act on Tuesday 10 April 2018.*
3. *In the event of there being no submission received, to enter into a new lease with Telstra and Council authorises the Chief Executive Officer or her delegate, on behalf of Council, to sign and seal all documentation required to effect the lease.*

### **INTRODUCTION**

This report proposes that Council enter into a lease renewal with Telstra to continue their occupation of a low impact telecommunications facility located on Council’s land at 75-77 Haverbrack Drive, Mulgrave, for existing telecommunications equipment and an equipment shed (refer Attachment 1).

### **BACKGROUND**

In accordance with the Telecommunications Act 1997 and Telecommunications (Low-Impact Facilities) Determination 1997, telecommunications carriers (“telco carriers”) have a right to exercise their power to enter land and install low impact equipment without the owner’s consent and without entering into a formal agreement with the land owner and paying rental.

However, should the telco carrier seek to exercise its powers under this legislation to enter the land without formalising an agreement or paying rental, they would be required to serve the landowner (Council) with a notice on every occasion before entering the land to undertake necessary repairs and maintenance.

As this is a cumbersome process, it is preferable for the telco carrier to negotiate a lease with the land owner (Council) allowing both parties to come to an agreement as to rental, location of the facility and unrestricted access to the land.

On 10 November 2004, Council entered into a long term Lease agreement with Telstra, which expired on 9 November 2015. The low impact telecommunications facility included the installation of an antenna system onto a high voltage transmission tower owned by SP Ausnet, and an equipment shelter at ground level and associated cabling, located on the Council land at 75-77 Haverbrack Drive, Mulgrave. Telstra is in occupation of the land under the holding over provisions of the Lease and are permitted to continue to remain on site under the same terms and conditions of the expired Lease, until a new Lease is entered into. Telstra have continued to pay monthly rental under the holding over provisions of the Lease.

Since the expiry of the lease, Council Officers have been in discussions and negotiations with Telstra regarding a new lease. Telstra were initially under the impression their Lease was for 20 years, rather than 9 years and 6 months, and therefore did not require renewal. These protracted negotiations have impacted on the timing of the new lease agreement.

### **DISCUSSION**

Negotiations for the terms and conditions of a new lease have taken place. Prior to negotiating the rental, Council's valuers had undertaken a market rental appraisal for the site which formed the basis of negotiations with Telstra. The rental offer is at the upper valuation range for a low impact telecommunications facility.

Both parties have agreed, subject to Council approval, to a new lease commencing on 1 April 2018, a commencement rental of \$12,500pa + GST, a term of 10 years with two (2) further terms of five (5) years and annual rent increases of 3.5%. Telstra have also agreed to pay Council's legal and advertising fees to a maximum of \$1,550.

In accordance with Sections 190 and 223 of the *Local Government Act 1989*, Council must publish a public notice of the proposed lease if the term is for a period of 10 years or more.

### **FINANCIAL IMPLICATIONS**

The rental currently paid by Telstra is \$16,701.57 pa + GST and the proposed new rental is \$12,500pa + GST. The reduction in rental is a result of a change in the market with telecommunications facilities across the industry (both low impact and high impact) now having multiple telecommunications providers co-locating. This has resulted in a reduction in market rental across all municipalities. The 2018/2019 annual budget will be amended accordingly.

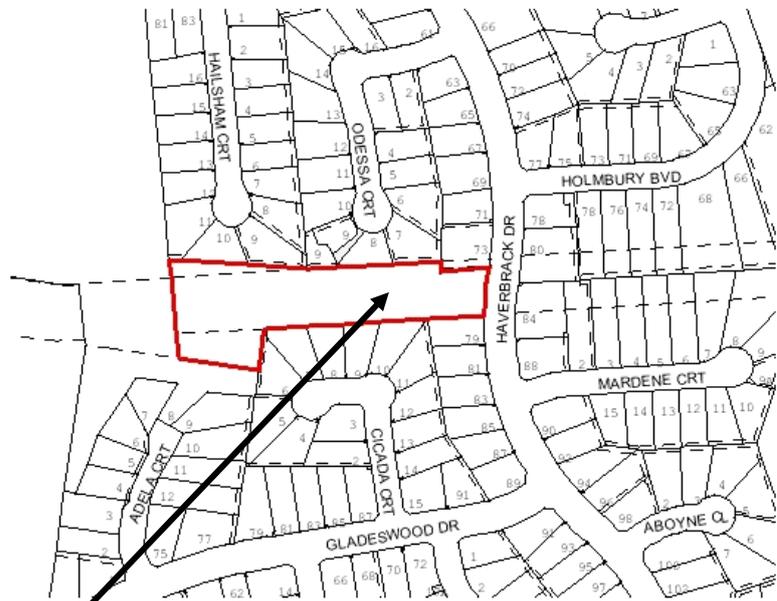
Telstra have agreed to pay Council's legal and advertising costs capped at \$1,550.00. It is envisaged that this figure will cover both mentioned costs.

### **CONCLUSION**

Telstra is seeking to enter into a new lease for the existing low impact telecommunications facility located at 75-77 Haverbrack Drive, Mulgrave. Originally, the telecommunications facility was approved and installed in 2004. We propose that Council agrees to enter into a new 20 years lease with Telstra for part of the Council land at 75-77 Haverbrack Drive, Mulgrave as per the terms and conditions outlined in this report.

**ATTACHMENT 1**

**LOCALITY PLAN**



**SUBJECT SITE**

**NEIGHBOURHOOD PLAN**

