

FREMANTLE SAILING CLUB
DOT LEASE
FREQUENTLY ASKED QUESTIONS

No	Question	Answer
Special General Meeting (SGM)		
1	Why has FSC called a special general meeting?	FSC has called a special general meeting to give members the opportunity to consider, and vote on, a significant matter for the club's future, namely the proposed new lease.
2	Why was the matter adjourned at the previous meeting?	The matter was adjourned at the previous meeting to give members more time to consider the matter and an opportunity to submit questions. The questions and answers are available to view on FSC's website: Click Here
3	Where and when will the special general meeting be held?	Town hall Prior to the special general meeting, FSC will be hosting a town hall meeting at 7.30 pm on Tuesday, 6 June 2023 at the club premises. The town hall meeting is an opportunity for members to seek any further clarification as to questions they have submitted. No voting will occur at the town hall. Special General Meeting (SGM) The SGM will be held at 7.30 pm on Tuesday, 13 June 2023 at the club premises. At the SGM, members who are present and eligible to vote will have the opportunity to vote on the proposed new lease.
4	Can I vote by proxy at the special general meeting?	Unfortunately, FSC's constitution does not permit proxy voting. Members eligible to vote will need to be present at the special general meeting.
5	What am I being asked to vote on at the special general meeting?	As you will be aware, FSC's land and seabed is leased from the State acting through the Department of Transport (DOT). You are being asked to vote on whether FSC should resolve its current dispute with DOT, as to the amount of rent that it must pay as a consequence of a rent review undertaken by DOT, by surrendering its current leases, in exchange for the grant of a combined new lease of the land and seabed (ie the same area as the current leases, but for a longer period).
6	Is there a recommendation of how I should vote?	FSC's board has recommended that members vote in favour of the resolution. In other words, FSC's board recommends that members vote in favour of the lease surrender and replacement, which includes the settlement of the rent review dispute and settlement of the arbitration.

No	Question	Answer
7	What happens if the resolution is passed?	<p>FSC will proceed to execute a suite of legal documents to give effect to the lease surrender and replacement and the settlement of the rent review dispute and arbitration.</p> <p>Going forward, the combined new lease will govern FSC's use and enjoyment of the land and seabed, the rent payable, and other terms and conditions.</p>
8	What happens if the resolution is <i>not</i> passed?	<p>The lease surrender and replacement and the settlement of the rent review dispute and arbitration will not proceed.</p> <p>The rent review dispute between FSC and DOT will continue through an arbitration process that has already commenced.</p>
9	<p>What are the advantages/disadvantages of the different options?</p> <p>What are the risks?</p>	<p>Refer to the separate document on FSC's website titled "<i>Comparison of new lease and arbitration</i>" Click Here</p>
Rent review dispute		
10	What is the rent review dispute?	<p>In April 2019, FSC received a notice from McGees (DOT's property manager and agent) purporting to exercise rent review clauses in FSC's current leases.</p> <p>The rent review notice asserted that FSC's rent, effective 1 January 2019, increased to a total of \$760,000 per annum.</p> <p>Before then, the rent payable by FSC was a total of \$34,700 per annum.</p>
11	What was the rent review notice based on?	<p>The rent review notice was based on a market rental valuation obtained by DOT from McGees.</p>
12	What are the rent review clauses?	<p>FSC's current leases were entered into 1982 and 1998.</p> <p>The current leases contain rent review clauses, which give DOT the right to re-appraise the rent payable by FSC every three years, subject to certain terms and conditions.</p> <p>The terms and conditions provide for the re-appraisal/valuation to exclude the value of improvements and the costs and expenses of reclamation, and take into account the rents payable by other sailing clubs in the metropolitan region. However, the rent review clauses do not specify <i>how</i> these matters should be quantified or taken into account, which leads to real ambiguity and uncertainty.</p> <p>Historically, DOT did not exercise the right to re-appraise the rent to a market rate, and appeared content to allow FSC to pay rent at a nominal rate. However, under the terms of the current leases, DOT was entitled to re-appraise the rent in January 2019 and DOT exercised that right.</p>

No	Question	Answer
13	Does FSC consider that the rent review notice and/or the McGees valuation are valid?	<p>There are many aspects of the McGees valuation that FSC considers open to criticism (once FSC obtained a copy of the valuation in August 2021, through the arbitration).</p> <p>However, the valuation is not clearly inconsistent with the rent review clauses and not clearly without foundation.</p> <p>There are arguments that can be made to challenge the valuation, but they involve varying degrees of certainty, both in terms of prospects of success and effect on value.</p>
14	What is the status of the rent review dispute?	<p>Since 2019, FSC’s lease committee (which reports to FSC’s board) has been attempting to address the rent review dispute through various means, and currently an arbitration commenced to resolve the rent review dispute has been ‘paused’ whilst the parties attempt to reach a settlement.</p> <p>DOT agreed not to seek the increased rent pending the arbitrator making a determination.</p>
15	What is the problem with the rent review clauses?	<p>Because of ambiguous drafting in the rent review clauses in FSC’s current leases, different valuation methodologies can be used, and different assumptions can be made, which lead to a wide range of values.</p>
16	What will happen to the rent review dispute if FSC proceeds with the lease surrender and replacement?	<p>The lease surrender and replacement with a new lease resolves the rent review dispute.</p> <p>The new lease specifies the rent payable by FSC as a series of fixed annual increases until 2031, which provides certainty that allows FSC to plan and budget accordingly, followed by a period of capped market rent reviews every 3 years (increases of no more than 15%), followed by ordinary market rent reviews every 3 years.</p>
17	What are FSC’s reasons for not just paying the higher rent and retaining the current leases?	<p>FSC would have to “back pay” the higher rent from 1 January 2019 to either 1 January 2022 (the date of the next rent review) or present, which would require FSC to make an immediate “lump sum” payment of at least \$3 million (subject to any allowance for rental remission during the COVID period).</p> <p>FSC would have to pay the full amount of the higher rent immediately, instead of having progressive increases to 2030, which limits FSC’s ability to manage the impact of the increased rent (including on pen owners and members), and investigate other sources of funds.</p> <p>The new lease gives FSC a more conventional, and more certain, market rent review mechanism, while the current leases further expose FSC to the rent review mechanism which has given rise to the present dispute, and may do so upon future rent reviews, for the remainder of the term of the current leases.</p> <p>The new lease gives FSC an extended period of tenure.</p> <p>For more information, refer to the separate document on FSC’s website titled “<i>Comparison of new lease and arbitration</i>” Click Here</p>

No	Question	Answer
Arbitration		
18	What is the arbitration?	<p>FSC disputed the 2019 rent review notice and referred the dispute to arbitration.</p> <p>The arbitration was initially put on hold to allow FSC and DOT to attempt to resolve the rent review dispute.</p> <p>However, after those attempts were unsuccessful, the arbitration commenced in June 2021.</p>
19	What is the status of the arbitration?	<p>In late 2021, the arbitration was put on hold again while FSC and DOT discussed options for resolving the rent review dispute.</p>
20	What is the arbitrator empowered to decide?	<p>The arbitrator is only empowered to, by reference to the terms of FSC's current leases:</p> <ul style="list-style-type: none">• review the re-appraisal of FSC's rent and/or the valuation of the land and seabed as at 1 January 2019; and• determine the rent payable. <p>The arbitrator is <i>not</i> empowered to review the terms of FSC's current leases or any other matters.</p> <p>The arbitrator does not have discretion to review the re-appraisal and/or valuation as he sees fit. The arbitrator must consider a determination as to the proper interpretation of the rent re-appraisal mechanism, and on the assumption that he determines that that mechanism requires a re-assessment by reference to market rent, he must determine what rent, on the evidence (including expert valuation evidence), most accurately reflects what a hypothetical, willing but not anxious landlord and tenant would agree.</p>

No	Question	Answer
21	What will the arbitration involve?	<p>In broad terms, FSC and DOT will need to obtain competing valuations from valuation experts. The arbitrator will then consider those valuations in the light of his view as to the proper interpretation of the rent re-appraisal mechanism in the current leases and determine the rent payable.</p> <p>Although some progress has been made in the arbitration, there are a number of procedural steps still to be completed before a determination will be obtained through the arbitration. These steps will include:</p> <ul style="list-style-type: none"> • DOT serving a statement of contentions in reply; • FSC serving a statement of contentions in rejoinder; • DOT and FSC providing a statement of agreed facts and list of documents tendered by consent; • DOT and FSC providing lists of disputed facts, and witness statements/documents to establish those facts; • DOT and FSC providing lists of agreed and disputed questions for the expert valuers; • the arbitrator settling the list of questions for the expert valuers; • DOT and FSC preparing and serving their expert valuer’s reports; • a further procedural conference before the arbitrator to arrange for any other steps before a final hearing and for the final hearing itself; and • the final hearing before the arbitrator (which will include the expert valuers giving evidence and being cross-examined).
22	What methodology will be used for the valuations?	<p>It is not clear as to the proper construction of the rent review clauses, and a consequence, there is real uncertainty as to the appropriate valuation methodology to be applied.</p> <p>Additionally, the arbitrator declined to provide an interim award dealing with questions of valuation methodology. Accordingly, the valuers will be given significant discretion as to the appropriate valuation methodology to be applied. In such a context, there is significant uncertainty as to the result in arbitration.</p>
23	What does FSC anticipate as the outcome in arbitration?	<p>As was advised at the previous general meeting, FSC considers that the most likely outcome is a re-appraisal in the range of \$350,000 to \$500,000 per annum (ie which will take effect from 1 January 2019).</p> <p>There is a risk, which it is difficult for FSC to quantify, that the re-appraisal will be less than \$350,000 per annum or more than \$500,000 per annum.</p> <p>There is a risk that the re-appraisal will be more than \$760,000 per annum, though FSC considers this unlikely.</p> <p>This uncertainty makes it exceedingly difficult for FSC to plan and budget into the future.</p>

No	Question	Answer
24	<p>How does the outcome in arbitration compare with the new lease?</p> <p>What are FSC's reasons for not proceeding with the arbitration?</p>	<p>FSC's board has weighed the advantages and disadvantages of the new lease with the advantages and disadvantages (including risks) of continuing the arbitration.</p> <p>Having weighed those matters, FSC's board has recommended that members vote in favour of the new lease (which includes the settlement of the rent review dispute and arbitration).</p> <p>Refer to the separate document on FSC's website titled "<i>Comparison of new lease and arbitration</i>" Click Here</p>
25	<p>What happens to the arbitration if FSC proceeds with the lease surrender and replacement?</p>	<p>The lease surrender and replacement resolves the rent review dispute.</p> <p>In such a context, the arbitration will be discontinued.</p> <p>Each party will bear their own costs and share the costs of the arbitrator equally.</p>
<p>New lease</p>		
26	<p>What is the new lease?</p>	<p>The new lease is a document, on DOT's standard terms and conditions for sailing clubs (subject to certain modifications FSC was able to negotiate with DOT), for a lease of the land and seabed, being for the same area as FSC's current leases.</p> <p>FSC understands that many other sailing clubs have agreed to DOT's standard terms and conditions.</p> <p>Members have been provided with the draft new lease: Click Here</p>
27	<p>What is the term of the new lease?</p>	<p>The new lease commences on 1 January 2022. The principal term is 24 years (to 31 December 2045) with option terms of 34 years (to 31 December 2079) and 21 years (to 31 December 2100).</p>

No	Question	Answer
28	What is the rent payable under the new lease?	<ul style="list-style-type: none"> • From 1 January 2022 until 31 December 2022, \$325,000 plus GST per annum. • From 1 January 2023 until 31 December 2022, \$350,000 plus GST per annum. • From 1 January 2024 until 31 December 2024, \$375,000 plus GST per annum. • From 1 January 2025 until 31 December 2025, \$400,000 plus GST per annum. • From 1 January 2026 until 31 December 2026, \$425,000 plus GST per annum. • From 1 January 2027 until 31 December 2027, \$450,000 plus GST per annum. • From 1 January 2028 until 31 December 2028, \$500,000 plus GST per annum. • From 1 January 2029 until 31 December 2029, \$600,000 plus GST per annum. • From 1 January 2030 until the first rent review (on or after 1 January 2031), \$760,000.00 plus GST per annum.
29	What is the rent review clause under the new lease?	<ul style="list-style-type: none"> • Rent review (on or after 1 January 2031, and every third anniversary thereafter, up to but not including 1 January 2043), the greater of: <ul style="list-style-type: none"> ○ current market rent (as defined in the new lease); ○ the CPI-adjusted previous rent; and ○ the previous rent, capped at 115% of the previous rent (ie increase capped at 15%). • Rent review (on or after 1 January 2043), as above but without the cap.
30	What are the other terms and conditions of the new lease?	The new lease contains repair and maintenance, insurance, restrictions on certain activities and other standard DOT terms and conditions, which FSC considers consistent with the current leases.
31	Are the terms of the new lease open to further negotiation?	From the very first discussions between FSC and DOT about a potential settlement of the rent review dispute and arbitration, it has been DOT's position that it would be necessary for FSC to enter into a new lease on DOT's standard terms and conditions. DOT has not shown any willingness to negotiate in this regard. Although FSC is in the course of attempting to agree certain 'tidy up' amendments, to clarify the existing drafting, if FSC were to insist on some other lease terms (eg variations to the current leases, or significant variations to the New Lease), then DOT has indicated that it would refuse to settle, and FSC would be obliged to 'take its chances' in the arbitration.

No	Question	Answer
32	What are the benefits of the new lease over arbitration?	Refer to the separate document on FSC's website titled " <i>Comparison of new lease and arbitration</i> " Click Here
33	Will the new lease result in higher membership fees/pen rents?	Whether and to what extent the rent increases and any other costs under the new lease will be passed on to members and/or pen owners will need to be determined by the Board from time to time, based on the FSC's financial position and the prevailing circumstances. FSC is also investigating other possible sources of funding.
Other frequently asked questions		
34	What is the anticipated impact on members?	FSC does not anticipate any direct impact on members. However, the rent increases and any other costs under the new lease <i>may</i> be wholly or partially passed on to members in the future, depending upon FSC's financial position, the prevailing circumstances, and other available sources of funding (noting that the alternative of arbitration is likely to lead to the same financial impact on members, if not a greater financial impact).
35	What is the anticipated impact on pen owners?	FSC does not anticipate any direct impact on the legal relationship between FSC and pen owners. In the course of FSC negotiating the New Lease with DOT, FSC obtained DOT's consent to the pen leases. Some members who are pen owners have raised questions about arrangements for living on board and keeping pets on vessels. Our understanding is that DOT does not intend the New Lease to require FSC to significantly change its existing operations/activities. Accordingly, FSC is clarifying these matters with DOT, and anticipates being able to update members as to these matters prior to the Town Hall and/or the Special General Meeting. FSC expects to be able to confirm to members that the existing policies and rules governing these matters will continue to apply following the entry into the New Lease. However, the rent increases and any other costs under the new lease <i>may</i> be wholly or partially passed on to members, including pen owners in the future, depending upon FSC's financial position, the prevailing circumstances, and other available sources of funding (noting that the alternative of arbitration is likely to lead to the same outcome).