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**I hereby give notice that a Confidential Council Meeting will be held on:**

**Date:** Tuesday, 19 November 2019  
**Time:** 6.00 p.m.  
**Location:** Council Chamber  
Civic Centre  
10 Watson Terrace  
Mount Gambier

# **AGENDA**

## **Confidential Council Meeting 19 November 2019**

**Andrew Meddle  
Chief Executive Officer**

**15 November 2019**

**26.3 BOOKMARK CAFE - EXPRESSIONS OF INTEREST AND REQUEST – REPORT  
NO. AR19/58946**

**CONSIDERATION FOR EXCLUSION OF THE PUBLIC**

Pursuant to section 90(2) of the *Local Government Act 1999* the Council orders that all members of the public, except OAM L Martin, Councillors S Mezinac, K Amoroso, M Bruins, C Greco, B Hood, P Jenner, F Morello and S Perryman and Council Officers <Enter Names> be excluded from attendance at the meeting for the receipt, discussion and consideration in confidence of Agenda Item 26.3 AR19/58946 Bookmark Cafe - Expressions of Interest and Request.

The Council is satisfied that, pursuant to section 90(3) (b) and (d) of the Act, the information to be received, discussed or considered in relation to the Agenda Item is:

- information the disclosure of which could reasonably be expected to confer a commercial advantage on a person with whom the Council is
  - conducting business; or
  - proposing to conduct business; or
  - to prejudice the commercial position of the Council
- commercial information of a confidential nature (not being a trade secret) the disclosure of which could reasonably be expected:
  - to prejudice the commercial position of the person who supplied the information, or
  - to confer a commercial advantage on a third party

The Council is satisfied that the principle that the meeting be conducted in a place open to the public has been outweighed in the circumstances because the report relates to the consideration of business operations and negotiations for the operation of the Library Cafe including a potential business model that has been presented confidentially to Council as well as a financial request from the current operator, all of which if considered in open could prejudice the position of Council and could benefit and/or detrimental to 3rd parties with whom Council is proposing to do business and potential market competitors..

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| <b>26.3</b> | <b>BOOKMARK CAFE - EXPRESSIONS OF INTEREST AND REQUEST – REPORT NO. AR19/58946</b> |
|-------------|--|

|                                  |   |
|----------------------------------|---|
| <b>Committee:</b>                | <b>Council</b>  |
| <b>Meeting Date:</b>             | <b>19 November 2019</b>   |
| <b>Report No.:</b>               | <b>AR19/58946</b>   |
| <b>CM9 Reference:</b>            | <b>AF13/64</b>  |
| <b>Author:</b>                   | <b>Michael McCarthy, Manager Executive Administration</b>   |
| <b>Authoriser:</b>               | <b>Andrew Meddle, Chief Executive Officer</b>   |
| <b>Summary:</b>                  | <b>This report presents the outcome of a call for Expressions of Interest for a new operator for the Bookmark Café and a request from the current operator for consideration.</b> |
| <b>Community Plan Reference:</b> | <b>Goal 1: Our People<br/>Goal 3: Our Diverse Economy</b>   |

The Council is satisfied that, pursuant to Section 90(2) & (3) of the *Local Government Act 1999*, the information to be received, discussed or considered in relation to this agenda item is:

- (b) information the disclosure of which could reasonably be expected to confer a commercial advantage on a person with whom the Council is conducting business; or proposing to conduct business; or to prejudice the commercial position of the Council
- (d) commercial information of a confidential nature (not being a trade secret) the disclosure of which could reasonably be expected: to prejudice the commercial position of the person who supplied the information, or to confer a commercial advantage on a third party.

#### **REPORT RECOMMENDATION**

1. That Council Report No. AR19/58946 titled 'Bookmark Cafe - Expressions of Interest and Request' as presented on 19 November 2019 be noted.
2. Council invite the operator of a local not for profit group to make a submission and presentation to a confidential elected member briefing on a use of the Library Café to provide opportunity to prepare meals for underprivileged youth and to explore the opportunity for provision of a social enterprise based on youth development.
3. That Council reconsider their current position and advise the current Bookmark Café operators that they **will / will not** be prepared to compensate them for plant, equipment and stock that is unsold following the granting of a new occupation and operator arrangement, in exchange for continued operations for up to 6 months until new operating arrangements commence.
4. That arrangements in accordance with resolution (3) be for a purchase of plant and stock up to a maximum value of \$\_\_\_\_\_ and a rental waiver to apply from 18 December 2019 until a new operator commences, not to exceed six months.
5. That the Chief Executive Officer advise the respective proponents of the Council decisions in regard to the matters in resolution (2), (3) and (4) in writing.



## BACKGROUND

At the Council meeting held on 18 June 2019 Council received Report No. AR19/26427 titled 'Property Management – Licence Expiry Review relating to the Bookmark (Library) Café.

This report presented that the current café operators, having completed their second 5 year term were not seeking to renew their licence arrangement, with Council resolving:

- That Council seek expressions of interest to deliver a café facility for the library with a 5 year term and the option to a further 5 years;
- Council thank the current Licensee for their service to the community over the past 10 years;
- That the Chief Executive Officer or Delegate and the Mayor be authorised to conduct negotiations with any respondent to the expression of interest set out in resolution 2 and to execute and affix the common seal to any documentation to give effect to a resulting arrangement for the Bookmark Café.

A public call for Expressions of Interest for the operation of the Bookmark (Library) Café closed on 1 November 2019.

The current operator has also previously indicated verbally a request for Council to compensate for plant, equipment and stock if not purchased by a new operator. Council is now in receipt of a written request with regard to this matter.

These matters are addressed under separate headings in the Discussion section of this report.

## DISCUSSION

### Expression of Interest

At the close of the Expression of Interest period on 1 November 2019, no submissions had been received from prospective operators of the Library Café.

This leaves Council in the position of potentially being without an operating café at the Library on and from 18 December 2019 when the current licence has expired.

Council has several options it may wish to pursue:

- allow the café area to become vacant, for an indeterminate period; and/or
- seek continued operation by the existing operator on a monthly tenancy; and/or
- target one or more existing local business operators to operate the Library Café; and/or
- to explore other business operation models, noting potential opportunities associated with other Council owned sites with café/kiosk/food services and/or fitout\*

*[\*n.b. other Council owned sites with café/kiosk/food services and fitout include City Hall Kitchen, Blue Lake Welcome Centre/Kiosk, Umpherston Sinkhole Kiosk, Engelbrecht Cave/Kiosk, as well as the upcoming Community and Recreation Hub Café].*

It should be noted that the lack of response to the Council's Expression of Interest invitation is consistent with other EOI processes conducted in recent years, including for Umpherston Kiosk, Centenary Tower, and even the Bookmark (Library) Café when originally let in 2009. On each of these occasions Council has had to undertake repeated attempts to secure an operator, and in the case of the Bookmark (Library) Café had to target the current operator.

Accordingly, Council may not readily secure an alternate operator on ordinary commercial terms.

The Café as a licence area within the Library lends itself to some operating constraints, which whilst potentially resolved, may be a turn-off to some commercial operators who might readily secure other exclusive premises within the city centre.



In relation to the last dot point above, '*to explore other business operation models*', Council's General Manager Community Wellbeing has had preliminary discussions with a potential operator who is keen to expand an existing not for profit activity creating meals for underprivileged children.

This opportunity could also be expanded in collaboration with Council to utilise a commercial kitchen and shopfront to establish a not-for-profit social enterprise offering hospitality and food business experience and training for school aged youth and providing a community service.

If pursued, this would have the opportunity to utilise the Library Café space as well as re-activate the City Hall Commercial Kitchen, and if successfully tested as a model could potentially provide an extended opportunity operation of the Community and Recreation Hub kitchen and café.

Such an activity would align with several objectives in Council's Community Plan relating to youth, training, use of Council facilities, and could be operated in partnership with Council, local businesses, schools, and other likeminded community participants.

Should Council support this as a potential option for the future use and operation of the Bookmark (Library) Café then the proponent would be invited to submit a formal proposal for consideration.

In the meantime, Council Officers will liaise with the current operators to seek their agreement to continued operation of the Library Café in the interim on a monthly tenancy.

#### Request for Compensation for Plant, Equipment and Stock

Members will recall from the earlier report on the expiration of the Library Café Licence that Council entered into a long term (5+5 years) licence arrangement with Benara Road Horticulture Pty Ltd (John and Julie Richardson) in 2009 as part of the Library development.

They have continued to run the Library Cafe for almost ten years including exercising a right of renewal in 2014. The current licence for the Library Café is due to expire on 17 December 2019, with no right of renewal. This will bring the current 5+5 year arrangement to an end.

The current operators approached Council earlier this year indicating that they do not seek to enter into a further licence term, but rather to sell their business and seeking a commitment that Council will negotiate in good faith with a prospective purchaser for a further licence term beyond December 2019.

Council considered the various licence issues at the Council meeting held on 18 June 2019. At that time the owners had sought financial support from the Council should their equipment not be sold to a future operator. However, Council did not support this at that time.

The Council has since received an email from the current owners (**Attachment 1**) seeking reconsideration as to whether the Council would reimburse them for any plant equipment or stock that is not sold to the new operator.

Noting the lack of Expressions of Interest received for the operation of the Library Café and the potential for an alternative not-for-profit social enterprise operation of the Library Café, Council may wish to reconsider its position. Council will note that the current operators may be responsive to an incentive to continue operating the Café whilst Council negotiates and puts in place a new operating model.

In this regard, it may be beneficial to Council to purchase surplus plant and equipment (albeit at written down values) and/or to grant a rental waiver for any remaining term that the current operators keep the Library Café open. Such arrangements might be for a fixed/maximum value or duration as determined by Council, say up to \$5,000 for plant and equipment depending upon assessed condition and value and for a rent free operating period until a new operation can be commenced, but not exceeding 6 months.

It is not proposed that Council purchase or compensate for stock at hand, which may however be deemed of some value to a new operator.



## CONCLUSION

Having considered the non-receipt of submissions in response to an invitation for Expressions of Interest for the operation of the Bookmark (Library) Café, this report recommends that Council give consideration to a proposal for an innovative use of the Library Café space by inviting a targeted submission from the operator of a local not-for-profit group.

Further, that Council reconsider compensating or purchasing plant and equipment from the current operators in exchange for continued operation for a period of up to 6 months (rent free) or such lesser period in which a new operating model can resume business from the Library Café.

## ATTACHMENTS

Nil

### CONSIDERATION FOR KEEPING ITEMS CONFIDENTIAL

1. In accordance with Sections 91(7) and 91(9) of the *Local Government Act 1999* the Council orders that the report 26.3 AR19/58946 Bookmark Cafe - Expressions of Interest and Request and its attachments, the discussion and the resolution/s and minutes arising from the report, having been considered by the Council in confidence under Section 90(2) & (3) (b) and (d) be kept confidential and not available for public inspection until Council has entered into a formal arrangements with regard to the subject matter and the Chief Executive has determined to publicly release details of such arrangements in anticipation of a proposed commencement date. All other details to be retained in-confidence until a period of 12 months has elapsed from the date of this report or any subsequent agreements arising from the subject matter, whichever is the later..
2. Further that Council delegates the power to review, revoke, but not extension of the confidential order to the Chief Executive Officer in accordance with the provisions of Section 91(9)(c) of the *Local Government Act 1999*.



**MINUTES OF CONFIDENTIAL COUNCIL MEETING  
HELD AT THE COUNCIL CHAMBER, CIVIC CENTRE, 10 WATSON TERRACE, MOUNT  
GAMBIER  
ON TUESDAY, 19 NOVEMBER 2019 AT 6.00 P.M.**

**PRESENT:** Mayor Lynette Martin (OAM), Cr Kate Amoroso, Cr Max Bruins, Cr Christian Greco, Cr Paul Jenner, Cr Ben Hood, Cr Frank Morello, Cr Steven Perryman

|                                |  |                          |
|--------------------------------|--|--------------------------|
| <b>OFFICERS IN ATTENDANCE:</b> | Chief Executive Officer                          | - Mr A Meddle            |
|                                | General Manager Community Wellbeing              | - Ms B Cernovskis        |
|                                | General Manager City Infrastructure              | - Mr N Serle             |
|                                | General Manager City Growth                      | - Dr J Nagy              |
|                                | Acting General Manager Council Business Services | - Mr J Zwijnenburg       |
|                                | Manager Development Services                     | - Mrs T Tzioutziouklaris |
|                                | Media and Communications                         | - Mrs A Watson           |
|                                | Executive Administration Officer                 | - Mrs F McGregor         |

**26.3 BOOKMARK CAFE - EXPRESSIONS OF INTEREST AND REQUEST – REPORT NO. AR19/58946**

**RESOLUTION 2019/346**

Moved: Cr Kate Amoroso

Seconded: Cr Max Bruins

**CONSIDERATION FOR EXCLUSION OF THE PUBLIC**

Pursuant to section 90(2) of the *Local Government Act 1999* the Council orders that all members of the public, except Mayor L Martin, Councillors S Mezinac, K Amoroso, M Bruins, C Greco, B Hood, P Jenner, F Morello and S Perryman and Council Officers A Meddle, B Cernovskis, J Nagy, N Serle, J Zwijnenburg, A Watson, T Tzioutziouklaris and F McGregor be excluded from attendance at the meeting for the receipt, discussion and consideration in confidence of Agenda Item 26.3 AR19/58946 Bookmark Cafe - Expressions of Interest and Request.

The Council is satisfied that, pursuant to section 90(3) (b) and (d) of the Act, the information to be received, discussed or considered in relation to the Agenda Item is:

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  - 2 conducting business; or
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- 5 commercial information of a confidential nature (not being a trade secret) the disclosure of which could reasonably be expected:
  - 6 to prejudice the commercial position of the person who supplied the information, or
  - 7 to confer a commercial advantage on a third party

The Council is satisfied that the principle that the meeting be conducted in a place open to the public has been outweighed in the circumstances because the report relates to the consideration of business operations and negotiations for the operation of the Library Cafe including a potential business model that has been presented confidentially to Council as well as a financial request

from the current operator, all of which if considered in open could prejudice the position of Council and could benefit and/or detrimental to 3rd parties with whom Council is proposing to do business and potential market competitors.

**CARRIED**

### **RESOLUTION 2019/347**

Moved: Cr Paul Jenner

Seconded: Cr Max Bruins

1. That Council Report No. AR19/58946 titled 'Bookmark Cafe - Expressions of Interest and Request' as presented on 19 November 2019 be noted.
2. Council invite the operator of a local not for profit group to make a submission and presentation to a confidential elected member briefing on a use of the Library Café to provide opportunity to prepare meals for underprivileged youth and to explore the opportunity for provision of a social enterprise based on youth development.
3. That Council reconsider their current position and advise the current Bookmark Café operators that they will be prepared to compensate them for plant, equipment and stock that is unsold following the granting of a new occupation and operator arrangement, in exchange for continued operations for up to 6 months until new operating arrangements commence.
4. That arrangements in accordance with resolution (3) be for a purchase of plant and stock up to a maximum value of \$10,000 and a rental waiver to apply from 18 December 2019 until a new operator commences, not to exceed six months.
5. That the Chief Executive Officer advise the respective proponents of the Council decisions in regard to the matters in resolution (2), (3) and (4) in writing.

**CARRIED**

### **RESOLUTION 2019/348**

Moved: Cr Christian Greco

Seconded: Cr Paul Jenner

#### **CONSIDERATION FOR KEEPING ITEMS CONFIDENTIAL**

1. In accordance with Sections 91(7) and 91(9) of the *Local Government Act 1999* the Council orders that the report 26.3 AR19/58946 Bookmark Cafe - Expressions of Interest and Request and its attachments, the discussion and the resolution/s and minutes arising from the report, having been considered by the Council in confidence under Section 90(2) & (3) (b) and (d) be kept confidential and not available for public inspection until Council has entered into a formal arrangements with regard to the subject matter and the Chief Executive has determined to publicly release details of such arrangements in anticipation of a proposed commencement date. All other details to be retained in-confidence until a period of 12 months has elapsed from the date of this report or any subsequent agreements arising from the subject matter, whichever is the later.
2. Further that Council delegates the power to review, revoke, but not extension of the confidential order to the Chief Executive Officer in accordance with the provisions of Section 91(9)(c) of the *Local Government Act 1999*.

**CARRIED**

