



City of
Mount Gambier

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

Date: Tuesday, 20 August 2024
Time: 6.00 p.m.
Location: Council Chamber
Civic Centre
10 Watson Terrace
Mount Gambier

CONFIDENTIAL AGENDA

**Council Meeting
20 August 2024**

**Sarah Philpott
Chief Executive Officer
16 August 2024**

23.1 UPDATE ON UNSOLICITED PROPOSAL - PROPERTY THIRD PARTY – REPORT NO. AR24/17886

Committee:	Council
Meeting Date:	20 August 2024
Report No.:	AR24/17886
CM9 Reference:	AF13/64
Author:	Jane Fetherstonhaugh, General Manager Corporate and Regulatory Services
Authoriser:	Sarah Philpott, Chief Executive Officer
Summary:	This report provides an update on the unsolicited proposal received to purchase Council land.
Strategic Plan Reference:	Goal 1: Our People Goal 2: Our Location Goal 3: Our Diverse Economy Goal 4: Our Climate, Natural Resources, Arts, Culture and Heritage Goal 5: Our Commitment

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:

- (a) information the disclosure of which would involve the unreasonable disclosure of information concerning the personal affairs of any person (living or dead)
- (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. AR24/17886 titled 'Update on Unsolicited Proposal - Property Third Party' as presented on 20 August 2024 be noted.
2. That Council notes that the unsolicited proposal previously received has been withdrawn.
3. That further discussions be held with Basketball Mount Gambier regarding their interest in extending the lease or potentially purchasing the facility, contingent upon their submission of a comprehensive financial plan or business case.
4. That Council notes that the Administration will review the existing confidentiality orders given that the unsolicited proposal has been withdrawn, with appropriate third party consultation, and will release information deemed appropriate.



TYPE OF REPORT

Corporate

BACKGROUND

In October of last year, Council received an application under its Unsolicited Proposals Policy from Ray White Mount expressing interest on behalf of John Borg / Space Urban (a Borg company) to acquire Council owned property at 451 Commercial Street West, Mount Gambier (the 'Icehouse').

At its meeting on 17th October 2023, Council resolved the following:

- That, notwithstanding its exclusion from community land classification, a due diligence exercise be conducted to ensure that Council is not bound by any unregistered conditions associated with the subject property at 451 Commercial Street West, Mount Gambier.
- That market valuations be obtained for the subject property at 451 Commercial Street West, Mount Gambier for potential sale purposes, based on the following alternate assumptions:
 - (a) with the current 'holding over' (i.e. monthly) 'peppercorn' community tenancy
 - (b) with a 5 year 'peppercorn' community tenancy
 - (c) with vacant possession (i.e. with no tenancy)
- That the proponent be requested to clarify the 'innovation' of their proposal that warrants Council engaging exclusively with them, and their proposed offer and conditions.

Following the request from Borg, a market valuation was obtained noting the following:

- Market Rental assessed as = \$103,250 pa plus GST plus Outgoings (i.e. nett rent)
- Vacant Possession Market Value (as is) = \$1,050,000 ex gst
- Market Value with 5 year (peppercorn) Lease = \$500,000 ex gst

Noting:

- The passing rent is considered to be a 'peppercorn' rent
- The/a peppercorn lease has a significant impact on the market value, and should therefore be considered in any deliberations on lease renewal/sale.
- The current (peppercorn) lease is 'holding over' and can accordingly be terminated with 30 days notice by either party
- The report notes the improvements to be '*at end of useful life*' with '*refurbishment/upgrade considered beneficial for the ongoing existing use and alternate uses*' – noting this is the Valuers opinion and not based on a building condition report.
- Highest and best use is considered to be alternate to existing use, being as light industrial.

Borg has since withdrawn their application, citing their sponsorship relationship with Basketball Mount Gambier. Should the property become available for sale on the open market, they may be an interested party. However, given ongoing discussions with Basketball Mount Gambier as outlined below, open sale is not recommended.

In November 2023, Council was informed that Basketball Mount Gambier expressed interest in extending their lease for a term of 10 years or more, potentially with an option to buy the facility. In response, Council asked for a financial plan or business case detailing how Basketball Mount



Gambier plans to acquire and sustain the facility, as well as clarification on the desired lease term. Despite numerous emails and phone calls, the information was not received by Council.

On 21 March 2024, BMG emailed the Mayor requesting a deputation before Council to consider the future of basketball at the Icehouse. BMG were asked to provide the information previously requested, in order for the Mayor to consider the deputation request, with the request deferred to enable the provision of that information and a discussion with the Mayor and Council officers.

PROPOSAL

Council officers, along with the Mayor, met with members of Basketball Mount Gambier (BMG) on 1st May, where a proposal for a strategic and long term partnership with the City of Mount Gambier was presented. This involved securing a minimum ten-year lease with an option to explore purchasing the facility after five years. BMG outlined their plan to extensively renovate the site, including upgrading office facilities and changerooms with a future vision for the Icehouse to operate as a multipurpose venue, expanding its use beyond basketball to include other community activities and act as an overflow for Wulanda.

They also advised that fully relocating to Wulanda would necessitate raising fees significantly which would likely deter participation. At the meeting, a two year Profit and Loss forecast was provided which detailed a strategy to generate a profit on \$100k annually. BMG were requested to provide further information including a Balance Sheet (to show overall financial position including information on assets and liabilities).

Between May 1st and present, there have been numerous emails and phone calls to BMG to request the further information and confirm the details of the deputation to Council.

On 15th May the President advised that they were unable to go ahead with the deputation in May as their treasurer had resigned and he wasn't able to get the further information that was requested in time. Further attempts were made to contact the President during May, June and July without success.

On 18th July officers received a call from the President who advised that they have a new committee and Treasurer, would forward the requested information as soon as possible, and would still like to go ahead with a deputation to Council. He was again advised that he would need to provide the requested information as soon as possible if they wish to present to the August Council Meeting.

Contact was made with the President again on 8th August 2024 and he has advised that they will not have the information ready for Council to request a deputation to the August meeting. They hope to have the documents provided to Council with time to discuss prior to requesting a deputation to the September meeting.

Note:

An audit of the Icehouse was undertaken in September 2023 confirming that:

- all courts are not complaint in terms of their run off.
- The ceiling height of the stadium is not compliant for Basketball, Netball or Badminton.
- It is recommended that the stadium is primarily used for training purposes for basketball and/or netball.
- If used for games, it is recommended that its only for junior games.

At the meeting BMG representatives indicated they were unaware of any issues with the building and believed that the courts were compliant for official games. Council officers are not aware of any work being done to alleviate any of these issues.

LEGAL IMPLICATIONS

Considering the manner in which Council came into possession of the subject property, acquired from the tenant in their former capacity as owner/vendor, a due diligence exercise should be conducted before any commitment is made to ensure Council is not bound by any terms of the sale/purchase contract or any other trust or undertaking during the period of ownership. Such due



diligence would necessitate a search of historical hard files, and potentially a search of original transfer and registration documents with the Lands Titles Office to ensure a level of certainty.

In the absence of free title, Council may need to give further consideration to legal or statutory options available to relieve itself of any outstanding obligations before binding itself contractually to a sale.

STRATEGIC PLAN

N/A

COUNCIL POLICY

Before proceeding with any proposal, Council should also consider the requirements of its Procurement and Disposal of Land Policy requiring a current independent market valuation, which might be obtained taking into account alternative assumptions to ensure any subsequent decision by Council to proceed with a sale of the subject property is fully informed.

[P420 Procurement and Disposal of Land and Assets](#)

[U900 Unsolicited Proposals](#)

ECONOMIC IMPLICATIONS

N/A

ENVIRONMENTAL IMPLICATIONS

N/A

SOCIAL IMPLICATIONS

N/A

CULTURAL IMPLICATIONS

N/A

RESOURCE IMPLICATIONS

- Market Rental assessed as = \$103,250 pa plus GST plus Outgoings (i.e. nett rent)
- Vacant Possession Market Value (as is) = \$1,050,000 ex gst
- Market Value with 5 year (peppercorn) Lease = \$500,000 ex gst

VALUE FOR MONEY

Unknown at this stage.

RISK IMPLICATIONS

Risks include:

- Reputational – public interest in Council's intentions to enter into arrangements for such proposals
- Financial – ensuring that any future arrangements with the site do not create any additional burden for Council

EQUALITIES AND DIVERSITY IMPLICATIONS

N/A

ENGAGEMENT AND COMMUNICATION STRATEGY

N/A

IMPLEMENTATION STRATEGY

Given that the unsolicited proposal is no longer pursued, the Administration will now review all confidentiality orders relating to this matter, with the intention of releasing such material as deemed



appropriate, exercising the CEOs delegation from Council. Consultation with the third party will occur as part of that process. Officers will continue to liaise with BMG and seek adequate information to inform future Council decisions and the timing of their deputation.

CONCLUSION AND RECOMMENDATION

That further discussions be held with Basketball Mount Gambier regarding their interest in extending the lease or potentially purchasing the facility, contingent upon their submission of a comprehensive financial plan or business case.

ATTACHMENTS

Nil

CONFIDENTIAL



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 23.1 AR24/17886 Update on Unsolicited Proposal - Property Third Party and its attachments, resolution/s and minutes arising from the report, having been considered by the Council in confidence under Section 90(2) & (3) (a), (b) and (d) be kept confidential and not available for public inspection until further order of Council after the proposal contained in the report has been settled or abandoned, with the exception of any information that is prohibited from being withheld under s91(8) being disclosed being released upon the matter being settled, or any part of the information determined by the Chief Executive Officer to be released under delegation.
2. Further that Council delegates the power to review, revoke, but not extend the confidential order to the Chief Executive Officer in accordance with the provisions of Section 91(9)(c) of the *Local Government Act 1999*.

CONFIDENTIAL

**MINUTES OF CITY OF MOUNT GAMBIER COUNCIL MEETING
HELD AT THE COUNCIL CHAMBER, CIVIC CENTRE, 10 WATSON TERRACE, MOUNT
GAMBIER
ON TUESDAY, 20 AUGUST 2024 AT 6.00 P.M.**

PRESENT: Mayor Lynette Martin (OAM), Cr Frank Morello (entered the meeting at 6:01pm), Cr Josh Lynagh, Cr Kate Amoroso, Cr Max Bruins, Cr Sonya Mezinec, Cr Jason Virgo

OFFICERS IN	Chief Executive Officer	- Mrs S Philpott
ATTENDANCE:	General Manager City Infrastructure	- Ms B Cernovskis
	General Manager Corporate and Regulatory Services	- Mrs J Fetherstonhaugh
	Acting Manager Governance and Property	- Mrs A Pasquazzi
	Manager Financial Services	- Mrs K Rolton
	Media and Communications Coordinator	- Ms S McLean
	Executive Administrator	- Miss T Chant

RESOLUTION 2024/178

Moved: Cr Jason Virgo

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 the Mayor, Councillors and S Philpott, B Cernovskis, J Fetherstonhaugh, A Pasquazzi, K Rolton, S McLean and T Chant be excluded from attendance at the meeting for the receipt and consideration in confidence of Agenda Item 23.1 AR24/17886 Update on Unsolicited Proposal - Property Third Party.

The Council is satisfied that, pursuant to section 90(3) (a), (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 would involve the unreasonable disclosure of information concerning the personal affairs of any person (living or dead)
- 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 information to be received and discussed includes the client details of the unsolicited proposal applicant, and the disclosure of Council's deliberations on the proposal would confer an advantage on the applicant and their client and prejudice the Council's commercial position in obtaining best value for the community from Council assets.

CARRIED

The Mayor sought the approval of at least two-thirds of the members present at the meeting to suspend meeting procedures:

Purpose of the Suspension: To further discuss Item 23.1

Carried by more than two-thirds of the members present at the meeting.

Meeting Procedures were suspended at 06:53 PM

The Mayor determined that the period of suspension should be brought to an end;



Carried by more than two-thirds of the members present at the meeting.

The Period of Suspension came to an end and Meeting Procedures resumed at 07:11 PM

RESOLUTION 2024/179

Moved: Cr Max Bruins

Seconded: Cr Kate Amoroso

1. That Council Report No. AR24/17886 titled 'Update on Unsolicited Proposal - Property Third Party' as presented on 20 August 2024 be noted.
2. That Council notes that the unsolicited proposal previously received has been withdrawn.
3. That further discussions be held with Basketball Mount Gambier by way of an Elected Member Briefing prior to January 2025 regarding their interest in extending the lease or potentially purchasing the facility, contingent upon their submission of a comprehensive financial plan or business case including a statement of financial position, prior to the conduct of the Elected Member Briefing.
4. That Council notes that the Administration will review the existing confidentiality orders after the Elected Member Briefing given that the unsolicited proposal has been withdrawn, with appropriate third party consultation, and will release information deemed appropriate.

CARRIED

RESOLUTION 2024/180

Moved: Cr Max Bruins

Seconded: Cr Josh Lynagh

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 23.1 AR24/17886 Update on Unsolicited Proposal - Property Third Party and its attachments, resolution/s and minutes arising from the report, having been considered by the Council in confidence under Section 90(2) & (3) (a), (b) and (d) be kept confidential and not available for public inspection until further order of Council after the proposal contained in the report has been settled or abandoned, with the exception of any information that is prohibited from being withheld under s91(8) being disclosed being released upon the matter being settled, or any part of the information determined by the Chief Executive Officer to be released under delegation.
2. Further that Council delegates the power to review, revoke, but not extend 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

