



City of
Mount Gambier

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Mount Gambier SA 5290

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

Date: Tuesday, 17 October 2023
Time: 6.00 p.m.
Location: Council Chamber
Civic Centre
10 Watson Terrace
Mount Gambier

CONFIDENTIAL AGENDA

**Council Meeting
17 October 2023**

Sarah Philpott
Chief Executive Officer
12 October 2023

23.2 UNSOLICITED PROPOSAL - PROPERTY THIRD PARTY PROPOSAL – REPORT NO. AR23/68865

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 (Council Officers) be excluded from attendance at the meeting for the receipt and consideration in confidence of Agenda Item 23.2 AR23/68865 Unsolicited Proposal - Property Third Party Proposal.

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.

23.2 UNSOLICITED PROPOSAL - PROPERTY THIRD PARTY PROPOSAL – REPORT NO. AR23/68865

Committee:	Council
Meeting Date:	17 October 2023
Report No.:	AR23/68865
CM9 Reference:	AF13/64
Author:	Michael McCarthy, Manager Governance and Property
Authoriser:	Jane Fetherstonhaugh, General Manager Corporate and Regulatory Services
Summary:	An 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. AR23/68865 titled 'Unsolicited Proposal - Property Third Party Proposal' as presented on 17 October 2023 be noted.
2. 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.
3. 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)
4. 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.



TYPE OF REPORT

Corporate

BACKGROUND

Council has 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').

This report presents the initial proposal for consideration.

PROPOSAL

The application received 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') is intended to be incorporated into Borg's larger land holdings proximate to the Council property, to future proof their investment in the region.

No consideration offer has been made at this initial stage.

Unsolicited Proposals Policy

Council's Unsolicited Proposals Policy outlines an approach to manage new and innovative ideas presented to Council.

The policy defines an unsolicited proposal to mean:

- a new and innovative proposal from the private and non-government sectors; and which
- could assist the Council to achieve its strategic objectives or satisfy a community need; and which
- has not been requested by the Council through its regular procurement.

In considering whether an unsolicited proposal should progress to stage 2 (Detailed Proposal) or stage 3 (Contract Negotiation) under the policy, Council should turn its mind to a range of considerations, not limited to:

- Does the proposal meets the definition of an unsolicited proposal?
i.e.
 - Is it a new or innovative proposal?
 - Could it assist Council achieve a strategic objective or satisfy a community need?
- Has sufficient information been provided?
- Does the proposal warrant being considered on an exclusive basis or being subject to a competitive bidding process?

In regard to the proposal as received, no consideration offer has been made to enable it to be weighed against independent market valuation to determine whether, as a proximate owner, Borg are prepared to incentivise a purchase above what an open market sale might achieve.

This should be considered in the context of:

- the land being marketable with multiple road frontages
- a sitting community tenant on a 'peppercorn' lease potentially impacting 'market' value
- the community tenant 'holding over' on an expired lease, with limited security of tenure.
- potential community interest, despite the sites 'exclusion' from community land classification.

It is recommended that further detailed information be sought from the proponent on their proposal.

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. Sample assumptions are contained in the recommendation to this report.

Also, 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.

LEGAL IMPLICATIONS

N/A

STRATEGIC PLAN

N/A

COUNCIL POLICY

[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

A valuation is estimated to be up to \$5,000.00.

VALUE FOR MONEY

Unknown at this stage.

RISK IMPLICATIONS

N/A

EQUALITIES AND DIVERSITY IMPLICATIONS

N/A

ENGAGEMENT AND COMMUNICATION STRATEGY

N/A

IMPLEMENTATION STRATEGY

N/A



CONCLUSION AND RECOMMENDATION

This report recommends that further information be sought from the proponent, including on their value proposal, their future intentions for the site whether speculative or planned, and their commitment to bearing the Council's (community) costs in progressing their proposal on an exclusive basis, noting that there is no guarantee that Council would proceed to Stage 3 Contract negotiations if as a result of Stage 1 or Stage 2 it is determined that the proposal not progress, or progress as an approach to market.

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 23.2 AR23/68865 Unsolicited Proposal - Property Third Party Proposal 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, 17 OCTOBER 2023 AT 6.00 P.M.**

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

OFFICERS IN ATTENDANCE:

Chief Executive Officer	- Mrs S Philpott
General Manager Corporate and Regulatory Services	- Mrs J Fetherstonhaugh
Acting General Manager City Infrastructure	- Mr K Manarangi
Manager Financial Services	- Mrs J Scoggins
Communications Officer	- Ms M Brookes
Executive Administrator	- Mrs A Pasquazzi

23.2 UNSOLICITED PROPOSAL - PROPERTY THIRD PARTY PROPOSAL – REPORT NO. AR23/68865

RESOLUTION 2023/222

Moved: Cr Frank Morello

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 Council Officers, S Philpott, J Fetherstonhaugh, K Manarangi, J Scoggins, M Brookes and A Pasquazzi be excluded from attendance at the meeting for the receipt and consideration in confidence of Agenda Item 23.2 AR23/68865 Unsolicited Proposal - Property Third Party Proposal.

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:

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CARRIED

The Mayor sought the approval of at least two-thirds of the members present at the meeting to suspend meeting procedures until 7:45 pm:

Purpose of the Suspension: To discuss item 23.2

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

Meeting Procedures were suspended at 7:34 pm



Cr Jason Virgo left the meeting at 7:36 pm

Cr Jason Virgo returned to the meeting at 7:36 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 7:45 pm

RESOLUTION 2023/223

Moved: Cr Max Bruins

Seconded: Cr Frank Morello

1. That Council Report No. AR23/68865 titled 'Unsolicited Proposal - Property Third Party Proposal' as presented on 17 October 2023 be noted.
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3. 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:
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 - (b) with a 5 year 'peppercorn' community tenancy
 - (c) with vacant possession (i.e. with no tenancy)
4. 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.

CARRIED

RESOLUTION 2023/224

Moved: Cr Max Bruins

Seconded: Cr Jason Virgo

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 23.2 AR23/68865 Unsolicited Proposal - Property Third Party Proposal 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

