



City of
Mount Gambier

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Mount Gambier SA 5290

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I hereby give notice that a Confidential Strategic Standing Committee Meeting will be held on:

Date: Tuesday, 11 June 2019

Time: 5.30 p.m.

**Location: Committee Room, Level 4
Civic Centre
10 Watson Terrace
Mount Gambier**

AGENDA

Confidential Strategic Standing Committee Meeting 11 June 2019

**Andrew Meddle
Chief Executive Officer**

6 June 2019

7 CONFIDENTIAL ITEMS

7.1 PROPERTY MANAGEMENT - LICENCE EXPIRY REVIEW – REPORT NO. AR19/26427

CONSIDERATION FOR EXCLUSION OF THE PUBLIC

Pursuant to section 90(2) of the *Local Government Act 1999* the Strategic Standing Committee orders that all members of the public, except Councillors F Morello, S Meziniec, L Martin, M Bruins and B Hood and Council Officers A Meddle, B Cernovskis, J Nagy, N Serle, P Lee, M McCarthy and M Telford be excluded from attendance at the meeting for the receipt, discussion and consideration in confidence of Agenda Item 7.1 AR19/26427 Property Management - Licence Expiry Review.

The Strategic Standing Committee 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 Strategic Standing Committee 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 considered relates to the Council and the current tenants future interests in the letting of the subject property, the disclosure of which may reasonably be considered could prejudice the Councils commercial position and be beneficial or detrimental to 3rd parties associated with any expression of interest or tender for the occupation of the subject property.



7.1 PROPERTY MANAGEMENT - LICENCE EXPIRY REVIEW – REPORT NO. AR19/26427

Committee:	Strategic Standing Committee
Meeting Date:	11 June 2019
Report No.:	AR19/26427
CM9 Reference:	AF17/229
Author:	Michael McCarthy, Manager Executive Administration
Authoriser:	Barbara Cernovskis, General Manager Community Wellbeing
Summary:	This report presents information on an upcoming lease expiry for strategic consideration of objectives for the subject site.
Community 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

The Committee 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 Strategic Standing Committee Report No. AR19/26427 titled 'Property Management - Licence Expiry Review' as presented on 11 June 2019 be noted.
2. That Council accept the request from the licensee of the Bookmark Café to negotiate in good faith with a prospective purchaser for a further licence term from 18 December 2019, provided such negotiations commence by no later than 18 September 2019.
3. That a licence under resolution (2) be for a market based rental and for an aggregate term not exceeding 10 years.
4. That the Chief Executive Officer (or delegate) and Mayor be authorised to conduct negotiations as set out in resolution (2) and to execute and affix the Council Seal to any documentation to give effect to a resulting licence arrangement for the Bookmark Cafe.



BACKGROUND

In 2009 Council entered into a long term (5+5 years) licence arrangement with Benara Road Horticulture Pty Ltd (John and Julie Richardson) for the Library ("Bookmark") Café as part of the Library development.

The Licensees have continued to run the Bookmark for 9 and a half years, including exercising their right of renewal in 2014.

The current licence for the Library ("Bookmark") Café is due to expire on 17 December 2019, with no right of renewal. This will bring the current 5+5year licence arrangement to an end.

The Licensees have approached Council Administration indicating that they do not seek to enter into a further licence term, but rather to sell their business interest and associated assets over the coming months with a view to handing over operations before the 17 December 2019 expiry date.

Accordingly, they are seeking a commitment that Council will negotiate in good faith with any prospective purchaser in relation to a further licence term beyond the current December expiry.

In the absence of such a commitment a business sale would be unlikely and the Licensees have indicated that in those circumstances they would cease operations on or by 17 December 2019.

DISCUSSION

In the absence of a sitting tenant seeking to renew for a further term, Council is in a position to consider its objectives and options for the Library space currently comprising the Bookmark Café.

The inclusion of a café within the Library has contributed toward the activation and success of the Library and the Cave Garden/Civic Precinct as a whole in its current developed form.

Council may seek to consider alternative options for this space which the current licence expiry may provide a catalyst for. In this case a further report would be necessary to present and explore any such options.

This report is addressing the immediate matter of the expiring licence and the request from the current tenant seeking a commitment from Council to negotiate in good faith with a prospective purchaser of their business, which purchase would undoubtedly be conditional upon Council granting a further medium-long term licence.

In considering this request, Council should note:

- The current Licensees did not purchase the Bookmark business, but developed it with the new facility and incentives provided by Council in conjunction with the Library development.
- Council is under no obligation to negotiate with a prospective purchaser.
- A prospective purchaser, whilst meeting minimum tenant requirements, may not share Council's broader vision and objectives for the Library and Cave Garden/Civic precincts.
- Council may prefer to seek Expressions of Interest / Tenders from the open market for the operation of the Bookmark Café space, including specifying new requirements and outcomes for the operations in association with the Library and Cave Garden/Civic precinct.

Further, if Council does commit to negotiating in good faith with a prospective purchaser, it may:

- reserve the right to formally consider the granting of a new licence.
- impose such valid licence conditions as it considers reasonable or necessary.
- invoke the statutory right to a minimum 5 year term for a new tenant.
- miss the opportunity to consider alternative market proposals or uses for the space.



Should Council agree to commit to negotiating in good faith, it is recommended that such agreement specify a period within which the current licensees must secure a conditional sale, providing time for the prospective purchaser to negotiate a further tenancy with Council, or for the Council to approach the market for a new operator, prior to the 17 December 2019 expiry date.

If seeking its own new occupier and/or exploring alternative usage of the space is a preferable situation, this will provide Council with 6 months in which to consider and pursue such options.

Council may also consider committing to the request, whilst giving consideration to other usage opportunities in the intervening period, noting the commitment that has been made in the event that a prospective purchaser is secured by the licensee.

Council should also note that the current licensees have enquired as to Council's position in relation to the purchase (or handover) of the licensee's equipment for consideration upon their cessation of operations, and also compensation for loss in business value as a result of a licence renewal not being considered in 2018. This request was denied on the basis that the Licence still had 18 months remaining and that it was considered appropriate that any renewal (or otherwise) be a consideration of the incoming Council following the 2018 election. As noted above, the current licensees did not purchase the business for value at their commencement in 2009.

CONCLUSION

It is recommended that clarity be provided to the current licensee and any prospective purchaser of Council's position on this matter.

This report recommends that Council commit to negotiating in good faith with a prospective purchaser, conditional upon such negotiations commencing no later than 18 September 2019 with a view to documentation being executed and a business transfer occurring to enable the Bookmark operations to continue uninterrupted beyond the current expiry date of 17 December 2019.

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 7.1 AR19/26427 Property Management - Licence Expiry Review 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 or the execution of an agreement with a new tenant, with resolution (b) to be released immediately upon advertisement of the matter by the licensee.
2. Further that Council delegates the power of review revoke, but not the extension, of the confidential order to the Chief Executive Officer on a monthly basis in accordance with the provisions of Section 91(9)(c) of the *Local Government Act 1999*.

CONFIDENTIAL

**MINUTES OF CONFIDENTIAL STRATEGIC STANDING COMMITTEE MEETING
HELD AT THE COMMITTEE ROOM, LEVEL 4, CIVIC CENTRE, 10 WATSON TERRACE,
MOUNT GAMBIER ON TUESDAY, 11 JUNE 2019 AT 5.30 P.M.**

PRESENT: Mayor Lynette Martin (OAM), Cr Frank Morello (Presiding Member), Cr Ben Hood, Cr Sonya Meziniec

IN ATTENDANCE: Cr Christian Greco (left the meeting at 5.43 p.m.)
Cr Steven Perryman (left the meeting at 5.44 p.m.)
Cr Kate Amoroso (left the meeting at 5.44 p.m.)
Cr Paul Jenner (left the meeting at 5.44 p.m.)

OFFICERS IN ATTENDANCE	Chief Executive Officer	- Mr A Meddle
	General Manager Community Wellbeing	- Ms B Cernovskis
	General Manager Council Business Services	- Mrs P Lee
	General Manager City Infrastructure	- Mr N Serle
	General Manager City Growth	- Dr J Nagy
	Executive Administration Officer	- Mrs M Telford

7 CONFIDENTIAL ITEMS

7.1 PROPERTY MANAGEMENT - LICENCE EXPIRY REVIEW – REPORT NO. AR19/26427

COMMITTEE RESOLUTION

Moved: Cr Frank Morello
Seconded: Cr Ben Hood

CONSIDERATION FOR EXCLUSION OF THE PUBLIC

Pursuant to section 90(2) of the *Local Government Act 1999* the Strategic Standing Committee orders that all members of the public, except F Morello, Councillors L Martin, M Bruins, B Hood and S Meziniec and Council Officers A Meddle, B Cernovskis, P Lee, N Serle and M Telford be excluded from attendance at the meeting for the receipt, discussion and consideration in confidence of Agenda Item 7.1 AR19/26427 Property Management - Licence Expiry Review.

The Strategic Standing Committee 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
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- to confer a commercial advantage on a third party

The Strategic Standing Committee 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 considered relates to the Council and the current tenants future interests in the letting of the subject property, the disclosure of which may reasonably be considered could prejudice the Councils commercial position and be beneficial or detrimental to 3rd parties associated with any expression of interest or tender for the occupation of the subject property.

CARRIED

COMMITTEE RESOLUTION

Moved: Cr Frank Morello
Seconded: Cr Sonya Meziniec

1. That Strategic Standing Committee Report No. AR19/26427 titled 'Property Management - Licence Expiry Review' as presented on 11 June 2019 be noted.
2. That Council seek expressions of interest to deliver a café facility for the library with a 5 year licence and the option to a further 5 years.
3. Council thank the current Licensee for their service to the community over the past 10 years.

CARRIED

COMMITTEE RESOLUTION

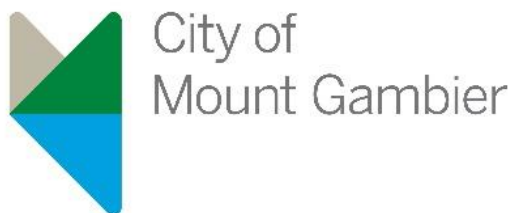
Moved: Cr Ben Hood
Seconded: Cr Sonya Meziniec

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 7.1 AR19/26427 Property Management - Licence Expiry Review 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 or the execution of an agreement with a new tenant, with resolution (b) to be released immediately upon advertisement of the matter by the licensee.
2. Further that Council delegates the power of review revoke, but not the extension, of the confidential order to the Chief Executive Officer on a monthly basis in accordance with the provisions of Section 91(9)(c) of the *Local Government Act 1999*.

CARRIED





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

Date: Tuesday, 18 June 2019

Time: 6.00 p.m.

**Location: Council Chamber
Civic Centre
10 Watson Terrace
Mount Gambier**

AGENDA

Confidential Council Meeting 18 June 2019

**Andrew Meddle
Chief Executive Officer**

14 June 2019

26.2 PROPERTY MANAGEMENT - LICENCE EXPIRY REVIEW – REPORT NO. AR19/26427

Committee:	Strategic Standing Committee
Meeting Date:	11 June 2019
Report No.:	AR19/26427
CM9 Reference:	AF17/229
Author:	Michael McCarthy, Manager Executive Administration
Authoriser:	Barbara Cernovskis, General Manager Community Wellbeing
Summary:	This report presents information on an upcoming lease expiry for strategic consideration of objectives for the subject site.
Community 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

The Committee 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 Strategic Standing Committee Report No. AR19/26427 titled 'Property Management - Licence Expiry Review' as presented on 11 June 2019 be noted.
2. That Council seek expressions of interest to deliver a café facility for the library with a 5 year licence and the option to a further 5 years.
3. Council thank the current Licensee for their service to the community over the past 10 years.



BACKGROUND

In 2009 Council entered into a long term (5+5 years) licence arrangement with Benara Road Horticulture Pty Ltd (John and Julie Richardson) for the Library ("Bookmark") Café as part of the Library development.

The Licensees have continued to run the Bookmark for 9 and a half years, including exercising their right of renewal in 2014.

The current licence for the Library ("Bookmark") Café is due to expire on 17 December 2019, with no right of renewal. This will bring the current 5+5year licence arrangement to an end.

The Licensees have approached Council Administration indicating that they do not seek to enter into a further licence term, but rather to sell their business interest and associated assets over the coming months with a view to handing over operations before the 17 December 2019 expiry date.

Accordingly, they are seeking a commitment that Council will negotiate in good faith with any prospective purchaser in relation to a further licence term beyond the current December expiry.

In the absence of such a commitment a business sale would be unlikely and the Licensees have indicated that in those circumstances they would cease operations on or by 17 December 2019.

DISCUSSION

In the absence of a sitting tenant seeking to renew for a further term, Council is in a position to consider its objectives and options for the Library space currently comprising the Bookmark Café.

The inclusion of a café within the Library has contributed toward the activation and success of the Library and the Cave Garden/Civic Precinct as a whole in its current developed form.

Council may seek to consider alternative options for this space which the current licence expiry may provide a catalyst for. In this case a further report would be necessary to present and explore any such options.

This report is addressing the immediate matter of the expiring licence and the request from the current tenant seeking a commitment from Council to negotiate in good faith with a prospective purchaser of their business, which purchase would undoubtedly be conditional upon Council granting a further medium-long term licence.

In considering this request, Council should note:

- The current Licensees did not purchase the Bookmark business, but developed it with the new facility and incentives provided by Council in conjunction with the Library development.
- Council is under no obligation to negotiate with a prospective purchaser.
- A prospective purchaser, whilst meeting minimum tenant requirements, may not share Council's broader vision and objectives for the Library and Cave Garden/Civic precincts.
- Council may prefer to seek Expressions of Interest / Tenders from the open market for the operation of the Bookmark Café space, including specifying new requirements and outcomes for the operations in association with the Library and Cave Garden/Civic precinct.

Further, if Council does commit to negotiating in good faith with a prospective purchaser, it may:

- reserve the right to formally consider the granting of a new licence.
- impose such valid licence conditions as it considers reasonable or necessary.
- invoke the statutory right to a minimum 5 year term for a new tenant.
- miss the opportunity to consider alternative market proposals or uses for the space.

Should Council agree to commit to negotiating in good faith, it is recommended that such agreement specify a period within which the current licensees must secure a conditional sale,



providing time for the prospective purchaser to negotiate a further tenancy with Council, or for the Council to approach the market for a new operator, prior to the 17 December 2019 expiry date.

If seeking its own new occupier and/or exploring alternative usage of the space is a preferable situation, this will provide Council with 6 months in which to consider and pursue such options.

Council may also consider committing to the request, whilst giving consideration to other usage opportunities in the intervening period, noting the commitment that has been made in the event that a prospective purchaser is secured by the licensee.

Council should also note that the current licensees have enquired as to Council's position in relation to the purchase (or handover) of the licensee's equipment for consideration upon their cessation of operations, and also compensation for loss in business value as a result of a licence renewal not being considered in 2018. This request was denied on the basis that the Licence still had 18 months remaining and that it was considered appropriate that any renewal (or otherwise) be a consideration of the incoming Council following the 2018 election. As noted above, the current licensees did not purchase the business for value at their commencement in 2009.

CONCLUSION

In the circumstances it is recommended that clarity be provided to the current licensee and any prospective purchaser of Council's position on this matter.

This report recommends that Council commit to negotiating in good faith with a prospective purchaser, conditional upon such negotiations commencing no later than 18 September 2019 with a view to documentation being executed and a business transfer occurring to enable the Bookmark operations to continue uninterrupted beyond the current expiry date of 17 December 2019.

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 7.1 AR19/26427 Property Management - Licence Expiry Review 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 an agreement has been executed with a new operator, with the resolutions numbered 1-3 to be released immediately.
2. Further that Council delegates the power of review revoke, but not the extension, of the confidential order to the Chief Executive Officer on a monthly basis in accordance with the provisions of Section 91(9)(c) of the *Local Government Act 1999*.

CONFIDENTIAL



**MINUTES OF CONFIDENTIAL COUNCIL MEETING
HELD AT THE COUNCIL CHAMBER, CIVIC CENTRE, 10 WATSON TERRACE, MOUNT
GAMBIER
ON TUESDAY, 18 JUNE 2019 AT 6.00 P.M.**

PRESENT: Mayor Lynette Martin (OAM), Cr Sonya Meziniec, Cr Kate Amoroso, Cr Max Bruins, Cr Christian Greco, Cr Ben Hood, Cr Paul Jenner

OFFICERS IN ATTENDANCE:	Chief Executive Officer General Manager Community Wellbeing General Manager City Infrastructure General Manager City Growth Acting General Manager Council Business Services Manager Development Services Manager Executive Administration Executive Administration Officer	<ul style="list-style-type: none">- Mr A Meddle- Ms B Cernovskis- Mr N Serle- Dr J Nagy- Mr J Zwijnenburg- Mrs T Tzioutziouklaris- Mr M McCarthy- Ms A Lavia
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26 CONFIDENTIAL ITEMS OF COMMITTEES

26.1 CONFIDENTIAL ITEMS OF THE STRATEGIC STANDING COMMITTEE HELD ON 11 JUNE 2019

26.2 PROPERTY MANAGEMENT - LICENCE EXPIRY REVIEW – REPORT NO. AR19/26427

RESOLUTION 2019/168

Moved: Cr Christian Greco
Seconded: Cr Sonya Meziniec

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 Cr S Meziniec, Cr K Amoroso, Cr M Bruins, Cr C Greco, Cr B Hood, Cr P Jenner and Council Officers A Meddle, B Cernovskis, J Nagy, N Serle, J Zwijnenburg, T Tzioutziouklaris, M McCarthy and A Lavia be excluded from attendance at the meeting for the receipt, discussion and consideration in confidence of Agenda Item 26.2 AR19/26427 Property Management - Licence Expiry Review.

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

In addition, the disclosure of this information would, on balance, be contrary to the public interest. The public interest in public access to the meeting has been balanced against the public interest in the continued non-disclosure of the information. The benefit to the public at large resulting from withholding the information outweighs the benefit to it of disclosure of the information.



- 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

In addition, the disclosure of this information would, on balance, be contrary to the public interest. The public interest in public access to the meeting has been balanced against the public interest in the continued non-disclosure of the information. The benefit to the public at large resulting from withholding the information outweighs the benefit to it of disclosure of the information.

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 considered relates to the Council and the current tenants future interests in the letting of the subject property, the disclosure of which may reasonably be considered could prejudice the Councils commercial position and be beneficial or detrimental to 3rd parties associated with any expression of interest or tender for the occupation of the subject property.

CARRIED

Cr Kate Amoroso resumed the meeting at 7:15 p.m.

RESOLUTION 2019/169

Moved: Cr Max Bruins

Seconded: Cr Christian Greco

1. That Strategic Standing Committee Report No. AR19/26427 titled 'Property Management - Licence Expiry Review' as presented on 11 June 2019 be noted.
2. 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.
3. Council thank the current Licensee for their service to the community over the past 10 years.
4. 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.

CARRIED



RESOLUTION 2019/170

Moved: Cr Christian Greco

Seconded: Cr Max Bruins

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 7.1 AR19/26427 Property Management - Licence Expiry Review 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 an agreement has been executed with a new operator, with the resolutions numbered 1-4 to be released immediately upon notification of Council's decision to the existing operator.
2. Further that Council delegates the power of review revoke, but not the extension, of the confidential order to the Chief Executive Officer on a monthly basis in accordance with the provisions of Section 91(9)(c) of the *Local Government Act 1999*.

CARRIED

