



**SPECIAL
MEETING OF
COUNCIL**

AGENDA

6 APRIL 2009

PORT PHILLIP CITY COUNCIL
SPECIAL MEETING OF COUNCIL

To Councillors

Notice is hereby given that a Special Meeting of the Port Phillip City Council will be held in the **Council Chamber, St Kilda Town Hall** on **Monday 6 April, 2009, immediately following the Strategy and Policy Review Committee Meeting.**

AGENDA

- 1. APOLOGIES**

- 2. PRESENTATION OF REPORT**
ITEM 1 WEST BEACH PAVILION LEASE

Darrell Treloar
Chief Executive Officer (Interim)
1 April 2009

**SPECIAL MEETING OF COUNCIL
30 MARCH 2009**

ORDER OF THE DAY

ITEM 1	WEST BEACH PAVILION LEASE
LOCATION/ADDRESS:	330A BEACONSFIELD PARADE, ST KILDA WEST
EXECUTIVE DIRECTOR:	GEOFF OULTON, EXECUTIVE DIRECTOR, COMMUNITY DEVELOPMENT AND PLANNING
PREPARED BY:	IAN HICKS, MANAGER CULTURE AND RECREATION
FILE NO.:	
ATTACHMENTS:	PLANNING REPORT AND RESOLUTION OF COUNCIL – 13 JUNE 2006. (ATTACHMENT 1) REPORT TO STRATEGY AND POLICY COMMITTEE - 2 AUGUST 2004 -. (ATTACHMENT 2); REPORT TO COUNCIL - 23 AUGUST 2004 (ATTACHMENT 3); AND COUNCIL RESOLUTION - 23 AUGUST 2004. (ATTACHMENT 4).

1. PURPOSE

To assist Council in making a decision on the advertising of the West Beach Pavilion lease. This report provides additional information on whether the proposed lease differs from the intent of the Council resolution of August 2004 and/or the draft terms and conditions of the Development Agreement 2005.

Council has 3 key agreements or legislative mechanisms that govern the use and development of the West Beach Pavilion. These are:

- Development Agreement
- Planning Permit (Attachment 1)
- Lease.

It should be noted that the general terms and conditions to be applied to any final lease where imbedded within the Development Agreement when signed in 2005.

As part of the additional information Council has also been provided with a copy of the following:

- 2 August 2004 report to Strategy and Policy Committee (Attachment 2);
- 23 August 2004 report to Council (Attachment 3); and
- the resolution of 23 August 2009 (Attachment 4).

(It should be noted that the attached reports from 2nd and 23rd August 2004 have previously been dealt with as confidential and are thus dealt with as confidential attachments to this report).

The report provided here also incorporates the contents of the Order of the Day to Council on 23 March 2009.

2. RECOMMENDATIONS

That Council resolve:

2.1 To commence the statutory procedures under Section 190 and 223 of the Local Government Act 1989 (the Act) and publish a notice in The Age and local newspapers advising of Council's intention to grant a lease and inviting interested persons to make a submission under Section 223 of the Act for the proposed lease of West Beach Pavilion (330A Beaconsfield Parade St Kilda West) to West Beach Development Consortium on the following terms:

- Area: approx 1000m²
- Permitted use: Mixed – ie: food and beverage use; retail use; public facilities etc.
- Term: 15 years.
- Options: 2 further terms of 3 years each.

Rental: \$1.00 per annum if demanded. Turnover rent at a rate at 5% applies from the 5th anniversary commencement date. Gross sales from food and beverage and retail elements need to exceed \$2.3M and \$1.4M, respectively.

2.2 To appoint its Strategy and Policy Review Committee to hear and consider any submissions made under Section 223 of the Act at its meeting to be held on 1 June 2009.

3. BACKGROUND AND CONTEXT

West Beach Pavilion was built in 1927 /28 and was one of three similarly constructed sea baths at the time, being in Elwood (since demolished), St Kilda Beach (now Donovans Restaurant) and St Kilda West (the West Beach Pavilion).

In 2002 Council determined that a public private partnership be entered into to restore (save) the West Beach Pavilion, which was listed as a locally significant heritage building. An independent valuation of the building at that time valued it at \$25,000 due to the level of dilapidation.

Following an expression of interest process in 2003/4 in response to Council's brief, there were 3 consortiums shortlisted and invited to tender.

Following an assessment process West Beach Development Consortium (WBDC) were selected by Council as the successful tenderer in August 2004.

In August 2004 Council (in part) resolved the following process:

- Subject to Council being appointed the Committee of Management as contemplated in parts 1.1 and 1.2 and subject also to the terms in part 1.4, Council authorises the Chief Executive or the person from time to time acting in that position to:
- Permit the redevelopment of the Site on the terms specified above;
- Negotiate and finalise a development agreement and lease between the Council and the Developer in relation to the proposed redevelopment of the Site incorporating the terms specified above and such other terms as the CEO may consider appropriate (including negotiating and settling the rent to be paid under the lease and a method to determine the turnover of the business);
- Execute and affix the seal of the Council to any document to give effect to this resolution.
- In accordance with sections 190(3) and 223 of the Act, give public notice in The Age and carry out the administrative procedures necessary to implement Council's proposal to permit the leasing of the Site;

A copy of the August 2004 resolution of Council is attached to this report.

On 12 November 2004 CoPP was appointed Committee of Management over the subject land.

In 2005 a Development Agreement was signed between City of Port Phillip and West Beach Development Consortium Pty Ltd.

During 2005/06 the proposal underwent a statutory planning process and obtained a Planning Permit following an appeal to VCAT in 2006.

On 1 June 2006 DSE provided Coastal Management Act consent for the proposed development.

On 20 May 2008 DSE approved the grant and purpose of a licence over the area for "construction and development works".

On 25 June 2008 CoPP provided consent for construction to begin on the pavilion.

The building is now under construction and due for practical completion in August 2009.

At the Council meeting of 23 March 2009, Council deferred a decision to publicly advertise Council's intention to enter into a lease with West Beach Development Consortium Pty Ltd ('WBDC') for use and management of the property known as West Beach Pavilion at 330A, Beaconsfield Pde, St Kilda West.

4. CONSULTATION AND STAKEHOLDERS

Department of Sustainability and Environment (DSE) – have provided grant and purpose consent on the basis of the signed development agreement containing the general terms and conditions of the proposed lease which were embedded in the original Development Agreement for West Beach Pavilion agreed to and signed by the DSE delegate in 2005.

Council officers met with DSE on 26 March 2009 to discuss the process for West Beach Pavilion lease. DSE confirmed that the Grant and Purpose consent forms 'in-principle' agreement by DSE to the terms of the proposed lease. The terms of the lease consented to by DSE are the same as the terms of the lease to be advertised by Council, with the exception of the items already identified in 5.3 of this report.

DSE have a copy of the 23 March 2009 Order of the Day report and are aware of the changes and raised no objection.

5. DISCUSSION

5.1 OPTIONS

That Council publicly advertise its intention to enter into a lease with West Beach Development Corporation for lease of the property known as West Beach Pavilion at 330A, Beaconsfield Pde, St Kilda West and receive submissions on the matter, as required under sections 190 and 223 of the Act.

This is considered the only viable option. It is consistent with the tender process and outcomes. The proposal is consistent with the intent of Councils resolution dated 23 August 2004 and the Development Agreement, upon which DSE has also provided grant and purpose consent.

5.2 POLICY IMPLICATIONS

The intention to enter into the lease is consistent with the resolution of Council in August 2004.

The operations proposed in the lease are generally consistent with the Development Agreement endorsed by Council and signed by CoPP and DSE in 2005.

5.3 FINANCE / RESOURCE IMPLICATIONS

The financial implications of the proposed lease are generally consistent with the resolution of Council in August 2004 and the Development Agreement, save for the following:

- Exhibition Space - Prior to signing of the Development Agreement the use of the space by the public was clarified. The report to Council (23 August 2004) indicated use of the exhibition space for community use on Monday to Friday. However the proposal was silent on hours of use, with WBDC assuming 8am till 5pm. Prior to signing of the Development Agreement a position of providing the space for community use Monday to Thursday, but from 9am till 9pm was agreed and included into the lease.
- An increase in turnover threshold - to take account of CPI over the last 5 years;
- Restoration of the heritage significant balustrade; - the development agreement was silent in relation to financing of the construction of the balustrade. CoPP will provide \$150,000 for WBDC to complete 50 metres of the heritage significant balustrade most immediately adjacent to the facility, with Council to consider the balance of the balustrade as part of the implementation of the landscape plan for the site. There is a commitment of

Council for \$250,000 in 2008/09 and another \$150,000 proposed in the 2009/10 budget.

- Building insurance - Council is retaining financial responsibility for building insurance, which ensure that Councils asset is protected.

5.4 LEGAL & RISK IMPLICATIONS

The Council resolution of August 2004 and the subsequent signing of the Development Agreement clearly detail Council's intention to enter into a lease with West Beach Development Consortium.

Although Council made publicly clear its intent to enter into a lease with WBDC through the Request for Proposals process in 2002 and again in the Council meeting and public resolution of August 2004, Council should continue to follow through on the resolution of August 2004 and consistent with the Local Government Act, advertise Councils intention to enter into a lease with WBDC.

Council is an entity in perpetuity, and the obligations and commitments of Council from previous resolutions of Council are retained and applicable.

5.5 SUSTAINABILITY ASSESSMENT

SOCIAL EQUITY

The redevelopment and lease allow for new public toilets and a Community / Exhibition Space as part of the operations. The lease includes a Community Exhibition Space protocol that in summary will allow free public use of part of the facility (approx 100m²) from 9am – 9pm Monday to Thursday inclusive. The only time this will not be available will be for approx 6 weeks over the Xmas-New Year period.

The facility is to be accessible, with disability access compliant toilet facilities and spaces. The development of these new toilet facilities is intended to trigger the demolition of those facilities currently in use opposite the Beaconsfield Pde median, thus returning this area to green space.

In terms of cost as a barrier to use, the lease proposes that visitors are not be compelled to buy food or beverages in order to use the facility and the lease compels the operators to meet the criteria applicable to the 'Cheap Eats' guide (as published by 'The Age' every year).

ECONOMIC VIABILITY

The building will be fully maintained by the West Beach Development Consortium for the life of the lease to standards set out in the terms of the lease and development agreement. A re-developed asset and site of much greater value will revert to the Crown / CoPP (as Committee of Management) at the end of the lease.

In 2005 the building was valued at \$25,000. In 2009 (assuming completion of the proposed development) the building is valued at \$2.1M. Noting that the cost of the project to the developer is far greater than this given the costs of risk and restorations inherent in this project.

ENVIRONMENTAL RESPONSIBILITY

The proposal has satisfied the environmental sustainability requirements, notwithstanding that for a building of such age and given the intent to retain the significant heritage elements, the environmental requirements met are not as high as would be expected from a new or unconstrained development.

CULTURAL VITALITY

The development and proposal retains the local heritage significance of the 1927 sea baths building in accordance with the requirements of Council's Heritage Advisor.

This facility will provide a local outlet and destination for that community to enjoy the foreshore and also the opportunity to meet and host local events / exhibitions in the proposed community exhibition space.

The development and its proposed uses respond to its context and environment by providing services and activities that are consistent with its beach side location, and specifically the popularity of the site as a kite boarding destination.

6. IMPLEMENTATION STRATEGY

6.1 TIMELINE

- April 2009 – 28 Day advertising of Council's intention to enter into a lease for West Beach Pavilion.
- May 2009 – CoPP to collate and analyse submissions
- June 2009 – Council to consider any public submissions in regard to West Beach Pavilion proposed lease.

6.2 COMMUNICATION

The decision is to be communicated via advertising in the Age and local newspapers.