

17<sup>th</sup> April, 2009

[REDACTED]  
Port Phillip City Council  
Town Hall, Carlisle Street  
St Kilda.

Dear [REDACTED]

#### WEST BEACH PAVILION

The Council has a responsibility to the ratepayers to run the Council bureaucracy as efficiently as possible, so that desirable Council activities can be maximized and rates can be as low as possible consonant with Council's service obligations. The conditions proposed in the lease of the West Beach Pavilion are considered detrimental to this aim.

The flaws in the proposed lease are obvious. Percentage of turnover leases only work in big shopping centres where all cash registers are connected to the main centre computer. Otherwise the turnover numbers will always be suspect and are routinely understated for tax reasons. Fifteen years with options for another six years is also far too long a period in a commercially volatile world. It is understood that the developer will pay no rent for the first five years until the cost of the renovations has been amortised. Does Council have any idea what the real cost of the work has been? What does this work out at per week? Is this equivalent to a reasonable rent? What interest will we be paying on the outstanding amount?

It is a quite possible scenario that the developer could pay no rent for a very long time as Gross Sales have to exceed \$2.3 M for Food and Beverages, and \$1.4 M for retail respectively before a rent of 5% of turnover applies. In the quite likely case that these figures are never achieved (how will we ever know?) the developer could conceivably operate this property rent free for a long time subsidized by the ratepayers

The Development Agreement for this building was signed in 2005 and the details of the agreement have never been made public. It was written four years ago (why has it taken so long?) and it's not unreasonable that deals like this should be re-examined in the light of the changed financial situation. The Agreement should be made public and not withstanding the generous terms negotiated four years ago, the Council must act to change them in the interests of the ratepayers.

The best and most logical action would be to engage a Quantity Surveyor to determine the real cost of the works executed, pay out the developer for the work that has been done, perhaps with some bonus negotiated in view of the lease situation. This may mean some re-arrangement of Council's Capital Works program but it will be worth it in the long run. Competitive tenders should then be called from operators to lease and run the place for five years. The West Beach Development Consortium would of course, be able to tender and should have an advantage because of their background in the project.

This is the only way the Council will ever get a fair and transparent return on our asset. A less good alternative would be to amend the proposed lease conditions to be more equitable.

Cautious lawyers might advise that nothing can be done about changing the lease conditions. We reject this view. If negotiation to amend the lease conditions fails, Council should terminate the Agreement and fight whatever actions might follow, and accept it as an unfortunate legacy that has to be corrected. The public will support this course of action. Council should not accept such a disadvantageous and poorly defined situation that could persist for over twenty years.

We trust Council will learn from this fiasco and make it part of Council's governance principles as follows:

- (1) Future commercial Agreements not to be confidential,
- (2) Good commercial advice to be taken so lease terms are in the best commercial interests of the ratepayers.
- (3) Negotiations should not be carried out by Council officers, but by someone with real commercial experience.

Would you please circulate this letter to all councillors .

Yours sincerely,

  
Don Gazzard  


John Bennetts

[REDACTED]

[REDACTED]  
City of Port Phillip  
By Fax [REDACTED]

20 May 2009

Dear [REDACTED]

**Re Proposed Lease of West Beach Pavilion.**

I refer to the proposed lease for West Beach Pavilion which has recently been the subject of a public notice from the City of Port Phillip.

I am bewildered as to how the City of Port Phillip could propose to enter into a lease on the commercial terms and conditions proposed.

The long term of the lease, the peppercorn base rental and the extremely high turnover rent thresholds make the lease agreement a nonsense – regardless of how much the tenant has expended in fitting out and renovating the premises.

I strongly urge the Council not to enter into this lease. I further recommend that Council considers:

1. Publically disclosing any related Development Agreement;
2. Carrying out an independent expert analysis to assess whether the proposed arrangement is commercially and legally reasonable ;
3. Publishing the results of the independent report and invite further comments from the public; and
4. Reconsidering the matter after the completion of steps (1)-(3) above.

This is a valuable and prominent piece of public land which should not be alienated for such a long period without independent expert analysis of all commercial and legal terms.

Yours faithfully,

[REDACTED]  
John Bennetts

[REDACTED]

15 May 2009

[REDACTED]  
City of Port Phillip  
Private Bag No3,  
P.O. St Kilda 3182

Dear [REDACTED] **West Beach Pavilion**

I am writing in response to the City of Port Phillip's request for submissions regarding the proposed lease of crown land, The West Beach Pavilion, to the group the "West Beach Development Consortium." I strongly urge the Council to review the proposed lease conditions to ensure that the City and its community have a fair, transparent and uncomplicated commercial arrangement.

But I also ask the review to include consideration of community need and whether, for example, another restaurant and drinking venue will serve us well in terms of our overall progress and development. While it potentially can deliver income, does it meet our social, cultural and environmental aspirations and policies?

In narrow economic terms, does it sacrifice too much? I believe the Council is well aware of the issues in a deal that undervalues public benefit by placing commercial risk with the community rather than the entrepreneurs, the model used in the case of the Triangle proposal and so deeply manipulative and unpopular.

The Council should consider the costs and benefits of the use of the current fashion for public/private partnership arrangements and advocate to State government for better planning structures and processes that put vision and community ahead of developers' interests.

I believe that such models and the ascendancy of developers are at the heart of less-than-successful implementation of state planning policies.

Yours faithfully,

Susan Humphries

[REDACTED]  
City of Port Phillip

Fax [REDACTED]

20 May 2009

Re West Beach pavilion.

To the Mayor, Councillors and Officers,

I urge the Council and officers to reject the proposed lease for the West Beach pavilion. The terms are extremely generous at \$1 PA and a turnover threshold of \$2.3M for food and beverage and \$1.4M for retail. The lease doesn't appear to be a current practice arrangement. All food operators have to fit out a property so there are always some costs in establishing a food outlet/function centre.

Notwithstanding the renovation costs, this is an extremely generous deal and a gross underestimate of the rental value of the premises over the term of the lease.

Given the extension to the original plan to accommodate nearly 400 seats and given that the council is also paying for railings and landscaping, this is by no means a commercial deal.

Does the tenant have to pay all outgoings like rates, utilities, maintenance etc?

Is the kite retailer related or linked with the proposed developer/retailer?

How does this rental deal compare with that paid by the Stokehouse or Donavans?

Can the developer sell the business at any stage during the lease period. If so what are the arrangements.

The council should buy back the building/infrastructure renovation expenditure from the developer and get professional real estate valuation for a realistic lease arrangement.

Please pass on my submission to all councillors before a decision is made.

Thank you  
Trevor White

[REDACTED]

[REDACTED]

[REDACTED]  
City of Port Phillip

By fax: [REDACTED]

20 May 2009

Dear [REDACTED]

**West Beach Pavilion Lease**

I am very concerned about the proposed lease of this piece of Crown property to a consortium for a peppercorn rent of \$1 / year (if demar ded).

This arrangement, inherited from the previous Council, severely undervalues this public asset and effectively passes it into private hands for private profit without proper compensation.

I urge the Council to reject the currently proposed lease conditions and to come up with an alternative which properly values this piece of land.

I also urge the Council to ensure that any new arrangements arrived at are fully transparent and in the best interests of ratepayers and residents.

Yours sincerely

[REDACTED]  
[REDACTED]  
Paul Hutchison  
[REDACTED]  
[REDACTED]

15 May 2009

City of Port Phillip  
Private Bag No3, P.O  
St Kilda 3182

|                      |            |
|----------------------|------------|
| CITY OF PORT PHILLIP |            |
| DATE RECEIVED        |            |
| 19 MAY 2009          |            |
| REFERRED TO:         | [REDACTED] |
| FILE No:             | [REDACTED] |
| RECORD No:           | [REDACTED] |

Dear Sir/ Madam, **West Beach Pavilion**

I am writing in response to the City of Port Phillip's request for submissions regarding the **proposed** lease of crown land to the group which calls itself the "West Beach Development Consortium." I strongly urge the Council not to accept the proposed lease conditions inherited from the previous Council.

**"Rental: \$1 per annum if demanded. Turnover rent of 5% applies from Year 5 if gross sales from food and beverage and retail elements exceed \$2.3 million and \$1.4 million respectively."**

I understand the figures presented to be a gross undervaluation of prime real estate and the advantage to the "Consortium" to be disproportionate to that of the benefit to the local community and the general public.

Given that the West Beach Pavilion is to become a commercial venture with the projected retail, food and beverage capacity to exceed \$2.3 million then the proposed lease must be considered as a commercial lease.

I believe that 1,000 square meters of beach side land on Beaconsfield Parade is of priceless value in terms of it's public benefit BUT most certainly has a monetary value far greater to that which is being offered in this one sided proposed lease.

With a new and refreshed Council I hope that the rights of all stakeholders are taken into equal consideration. The proposed lease, as it stands, appears to be both illogical and unusual in the extreme. Please renegotiate this agreement with the "Consortium" and come to an agreement which is transparent and substantiates claims that the West Beach Pavilion, on crown land, is for the benefit of all.

Thanking you for your consideration.

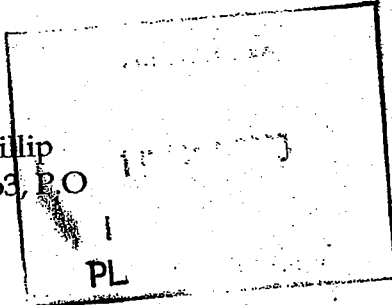
Kind Regards,

[REDACTED]  
[REDACTED]  
Kerri Griffin-Karasawa  
[REDACTED]

Irving Saulwick & Associates

14 May 2009

City of Port Phillip  
Private Bag No 3, P.O.  
St Kilda 3182



|                      |            |
|----------------------|------------|
| CITY OF PORT PHILLIP |            |
| 15 MAY 2009          |            |
| REFERENCED BY:       | [REDACTED] |
| FILE No:             | [REDACTED] |
| RECORD No:           | [REDACTED] |

Dear Sir

West Beach Pavilion

I note in information published in the City of Port Phillip website that a decision about a lease of land to West Beach Development Consortium Pty Ltd is imminent.

I also note that the proposed lease conditions include the following:

"Rental: \$1 per annum if demanded. Turnover rent of 5% applies from Year 5 if gross sales from food and beverage and retail elements exceed \$2.3 million and \$1.4 million respectively."

Assuming even sales throughout the year, these figures imply that an average retail turnover of \$26,923 per week would need to be exceeded before any rent in excess of \$1 was paid. The comparable figure for food and beverage is \$44,230 per week.

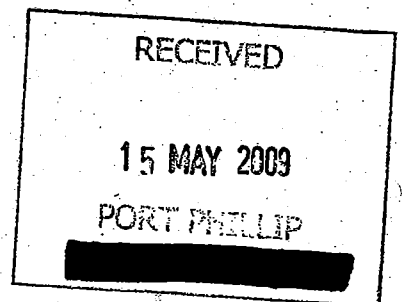
These figures suggest to me that the potential lessee is being unreasonable favoured at the expense of Port Phillip ratepayers or others who have a beneficial interest in the Crown Land known as West Beach Pavilion.

I would urge Council not to accept these lease conditions, and to negotiate conditions that more evenly represent the interests of both parties to the proposed agreement.

Yours truly,

[REDACTED SIGNATURE]

IRVING SAULWICK AM



[REDACTED]

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**From:** [REDACTED]  
**Sent:** Tuesday, 19 May 2009 10:40 PM  
**To:** [REDACTED]  
**Cc:** Judith Klepner; Thomann, Serge - Councillor  
**Subject:** Notice of Intention to Lease Land - West Beach Pavillion - Submission by Terry CLAVEN to committee on 1st June, 2009

[REDACTED]  
Senior Property Advisor  
City of Port Phillip

19<sup>th</sup> May, 2009

I wish to make a submission to the committee meeting on the 1<sup>st</sup> June, 2009 to discuss the lease of land to the West Beach Development Consortium Pty Ltd.

The proposed lease conditions include -

"Rental at \$1 per annum if demanded with turnover rent of 5% applies from Year 5 if gross sales from food and beverage and retail elements exceed \$2.3 million and \$1.3 respectively"

My submission and concerns are the following -

- The lessee is being unreasonable favoured at the expense of Port Phillip ratepayers or other stakeholders who have an interest in the Crown Land commonly known as West Beach Pavilion. Request that the terms and conditions in relation to the lease be reviewed.
- Request that the CPP provide an example or precedent to the above lease arrangement in other locations within CPP.
- The design element regarding the inclusion of shower facilities to be reviewed and reevaluated.
- Request that the Council Officers provide documentation that relates to parking in the precinct and a copy of the "Traffic Impact Study" that was taken into account before the lease was proposed. Is the West Beach Development Consortium Pty Ltd responsible for the parking issues with expected visitation?
- The areas and process relating to the removal of refuse and rubbish to be re-viewed. Request that council officers be on hand to explain how the lessee is to remove or access the site to remove bins by contractors or trucks. Reference and photos re other coastal developments to be submitted.
- Request that Heritage Officer with the City of Port Phillip inspect the current building works on the site and evaluate and document the extended decking, and if that complies with the integrity with a building of this era.

Forwarded for transmission to the Committee members reviewing the lease agreement.

Terry Claven, [REDACTED]

-----Original Message-----

From: Carolyn Burns [REDACTED]  
Sent: Friday, 15 May 2009 4:25 PM  
To: Mayor  
Cc: Thomann, Serge - Councillor  
Subject: West Beach Pavilion Lease

Dear Mayor, Judith Klepner, Serge Thomann and fellow Councillors

We are writing to you as interested persons wishing to make a submission in regard to the proposed lease the Port Phillip Council intends to grant to the West Beach Development Consortium.

According to a recent newspaper article (Emerald Hill Weekly April 14th) terms and conditions of this proposed lease were supposedly locked in during the tender process by former CEO David Spokes in 2005.

But the proposed lease conditions as stated 'Rental \$1.00 per annum if demanded. Turnover rent 5% applies from year 5 if gross sales from food and beverage and retail elements exceed \$2.3 million and \$1.4 million respectively' seem very unusual.

Reading the short paragraph defining these terms and conditions raises a number of important issues. But as there is no actual draft version of the lease available, we can only make submissions based on very little information.

If the council intends to lease the land to the Consortium a number of questions come to mind. Here are just a few -

Do other traders in the area have similar commercial advantages?

Surely these conditions will give unfair advantage to the Consortium, and why would it be in the interest of the Consortium to actually make a large profit, because then they would then have to start paying rent?

Who will be auditing this company? Does the money collected from kite rentals and tuition come under the hat of the retail division of the consortium, or is that yet another accounting issue?

And what happens if the retail shop fails and the consortium decides to close it? How would that decision affect the proposed lease.

When was the lease supposed to start from? 2005?

What conditions apply if the Consortium decides to sell on one part of its activities and keep another?

We feel the entire process and all the dealings agreed to with the Consortium need careful and concerted re-examination. (If this is not happening already)

This beautiful piece of crown land, was originally a family beach. The council initially informed its local citizens the old dilapidated yacht pavilion was to be refurbished with a 200 seat tea room/ kiosk, community and ecology centre, and some public toilets and showers.

The concept has changed enormously. It has now become a large retail and function centre, seating 390 patrons, with restaurant bar and grill, open to midnight most nights of the year, and the same company will also be operating the beaches relevant sports activities such as kite boarding and tuition.

We ask that the council urgently review the proposed lease and in fact we would welcome a delay of the entire process until all relevant details regarding the 'deal' between the former CEO David Spokes and the West Beach Consortium are examined in full. Preferably by an independent person or the Ombudsman.

Thank you

Regards

Carolyn Burns and Simon Phillips

# WEST ST KILDA RESIDENTS ASSOCIATION Inc

[REDACTED]

President: Robert Macfarlane  
Secretary: Colin Fryer

[REDACTED]

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20 May 2009

## West Beach Pavilion – intention to lease land

This Association has followed and contributed to the re-development of the West Beach Pavilion for over nine years. We are keen to see successful operation of the facility. At this stage we wish to make the following points regarding the proposed lease:

1. The terms of the lease should include a requirement that the whole facility, including dining and deck areas, is to be available to the public without any obligation to purchase goods or services. This idea has been discussed over a long period. It is reflected in the *Philosophy and Information Document* prepared by the developers when they first tendered – “People may walk off the street and enjoy the Pavilion without any obligation to buy”. It should now be confirmed as an obligation within the lease.
2. The development is to include toilets, showers and change-rooms which are to be available to the public and clearly sign-posted to indicate this. A requirement for allowing and advertising this public access should be enshrined in the lease.

We would appreciate the opportunity for a representative of WSKRA to speak briefly to these points at the Council committee on 1 June 2009.

[REDACTED]

*Robert Macfarlane*  
*President*

[REDACTED]

*Colin Fryer*  
*Secretary*

-----Original Message-----

From: Geoff Gowers [REDACTED]

Sent: Tuesday, 12 May 2009 10:09 PM

To: Mayor

Cc: Thomann, Serge - Councillor; Klepner, Judith - Deputy Mayor

Subject: West Beach Pavilion - Objection to Proposed Lease.

Frank,

I write to express my strongest objection to the proposed lease agreement for the West Beach Pavilion. \$1 for the initial 5 years and .....

Over a period of about two years I have unsuccessfully tried to get the council officers to give me the expected benefits of the proposed (and now almost completed) pavilion project. See my trail of emails below.

I have not been able to see the approved plans or the constructed plans for the development . What was initially approved and is the finished work consistent with the approved plans?

I was told by council that that I couldn't see the contract or plans because the project was "commercial in confidence" and that the tenants would deliver an "acceptable rental". I understand that Council has already spent \$300,000 on preliminary drainage works associated with the pavilion development.

I have also been told that \$50,000 is soon to be spent on landscape plans (consultancy) and \$250,000 is to be spent on landscaping works to areas adjacent to the pavilion including paths and outdoor seating areas that enhance the pavilion development and thus should be funded by the developer or tenant rather than council.

Council MUST have a cost-benefit analysis for the West Beach Pavilion development including all costs (including \$600,000 of council funds) to show the value of the project to rate payers.

I request an independent review including a cost/benefit analysis of the project prior to the consideration of any lease agreement.

I also request an independent review of the proposed West Beach landscape project



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>  
> From: G and A Gowers [REDACTED]  
>  
> Sent: Monday, 19 March 2007 4:16 PM  
>  
> To: [REDACTED]  
> Subject: Re: West Beach Pavilion  
>  
> [REDACTED]

>  
>  
> I have been referred from  
> [REDACTED] to yourself, back to [REDACTED] then to  
> yourself and now to [REDACTED]. Is there any reason why the  
> information I have asked for is not available and if it is  
> not available then please advise on what basis did council  
> make the development decision.

>  
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>  
> Regards

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>  
> Geoff  
> Gowers

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>  
> ----- Original Message

> -----  
>  
> From: [REDACTED]

>  
>  
>  
>  
> To: G and A Gowers

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>  
>  
> Sent: Monday, March 19, 2007 11:22  
> AM

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>  
>  
>  
> Subject: RE: West Beach  
> Pavilion

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>  
> Dear Mr  
> Gowers

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>  
>  
>  
> I am unable to  
> provide any further information on this matter, any further

> requests should be directed to Mr [REDACTED], Manager  
> Recreation and Culture. [REDACTED]

> Regards

> [REDACTED]  
> Governance &  
> Community Relations

> City of Port  
> Phillip  
> Private Bag 3, St  
> Kilda 3182  
> Tel: [REDACTED]  
> Fax: [REDACTED]  
> E-mail: [REDACTED]

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> From: G and A Gowers [REDACTED]  
> Sent: Wednesday, 7 March 2007 2:29 PM  
> To: [REDACTED]  
> Subject: Re: West Beach Pavilion  
> [REDACTED]

> Thanks for your reply.  
> As a rate payer I am still none the wiser as to "Best  
> Value". If council has invested \$250,000 on the  
> development to date then what is the corresponding return to  
> council. How much is budgetted for additional landscaping?  
> How were the economic benefits and disbenefits of this  
> project evaluated.

> I am asking council to  
> demonstrate to me that the project is "Best  
> Value", environmentally, socially and financially.  
> Surely there is a document available to rate payers that

> demonstrates this and if not why not?  
>  
>  
>  
> Regards  
>  
>  
> Geoff  
> Gowers  
>  
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>  
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>  
>  
> ----- Original Message  
> -----  
>  
> From: [REDACTED]  
> [REDACTED]  
>  
> To: G and A Gowers  
>  
>  
> Sent: Monday, March 05, 2007 3:49  
> PM  
>  
> Subject: RE: West Beach  
> Pavilion  
>  
>  
> Dear Mr  
> Gowers  
>  
> I have been in  
> contact with Mr [REDACTED] and he has provided the following  
> response.  
>  
> In answer to  
> your further request on this matter, I can advise that  
> whilst the tender information is confidential, that the  
> tender approach enabled the winning bid to be selected from  
> evaluation of the criteria listed below:  
>  
>  
> Achievement of  
> the Development Objectives (articulated in Council's St  
> Kilda Foreshore Urban Design Framework, and an incorporated  
> document into the Port Phillip Planning Scheme)  
>  
> Restoration  
> and Maintenance of the Pavilion  
> Coastal  
> Landscape and Management of the surrounding  
> environs  
> Value for  
> money  
> Proposed Uses  
> for the Pavilion and Environs  
> Ability to  
> Deliver  
> Respondent  
> Proposed Changes to the Development Agreement and  
> Lease  
> West Beach  
> Development Consortium won the tender process by delivering  
> to a higher extent than the other tender bids on the above



>  
>  
> ----- Original Message

> From: [REDACTED]  
> [REDACTED]

> To: G and A Gowers

> Sent: Wednesday, February 21, 2007 1:18 PM

> Subject: RE: West Beach Pavilion

> Geoff

> While I am not privy to the details of the West Beach Pavilion contract, I assume that the awarding of the contract for the development was conducted at a Council meeting closed to the public because the tenderers provided confidential information in their tender documentation. Because the information is provided on this basis, Council is unable to make the documentation public.

> With respect to the Best Value requirements of section 208 of the Local Government Act, Council has found that conducting a tender process is the best way of ensuring best value and quality for money.

> I note that in Council's Budget documentation for 2005/2006 the West Beach Pavilion development was to be a two staged project with \$50,000 being spent in 2005/2006 for preliminary works and \$250,000 in 2006/2007 for the major part of the project.

> I trust that this information is of assistance.

> Regards  
> [REDACTED]

> From: G and A Gowers [REDACTED]

> Sent: Wednesday, 21 February 2007 11:06 AM

> To: [REDACTED]  
> Subject: Re: West Beach Pavilion  
> [REDACTED]

> I do not understand why the West Beach Pavilion development information is confidential and in fact the information should be available to rate payers given that council is obliged to comply with

> section 208.

> Council should be able to  
> show that the rate payers have "Best Value" from  
> the development.

> Can you please advise why  
> the project development information including all costs and  
> revenue is confidential and why the council is not prepared  
> to demonstrate "Best Value" to the rate  
> payers.

> Regards

> Geoff  
> Gowers

> ----- Original Message

> From: [REDACTED]

> To: [REDACTED]

> Cc: [REDACTED]

> Sent: Tuesday, February 13, 2007 5:08  
> PM

> Subject: West Beach  
> Pavilion

> Dear Mr Gowers  
> I have been requested by  
> [REDACTED] to provide advice regarding the release of the  
> financial information relating to the redevelopment of the  
> West Beach Pavilion.  
> The report assessing the  
> tender bids for the redevelopment of the West Beach Pavilion  
> was discussed by Council as a "confidential item"  
> in accordance with section 89(2)(d) of the Local Government  
> Act 1989 (the Act). That is, the Act allows councils to  
> resolve contractual matters in meetings that are closed to  
> the public. Meetings are closed to the public because  
> tender bids contain information that the tenderers request  
> to be kept in confidence by the council.

> Because of the  
> confidential status of the report no Councillor or officer  
> is allowed to divulge the contents of the report to the  
> public. Section 77 of the Act provides a penalty for a  
> person who releases information that is confidential  
> information under section 89.

> Please do not hesitate to  
> contact this office if you require further explanation of  
> this advice.

> Yours faithfully,

> [Redacted]  
> [Redacted]  
> [Redacted]

> Governance &  
> Community Relations

> City of Port  
> Phillip  
> Private Bag 3, St  
> Kilda 3182

> Tel:

> [Redacted]  
> Fax:

> [Redacted]  
> E-mail: [Redacted]

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