

**ORDINARY MEETING OF COUNCIL
27 JULY 2009**

6.	PROPOSED LEASE TO WEST BEACH DEVELOPMENT CONSORTIUM PTY LTD – WEST BEACH PAVILION
LOCATION/ADDRESS:	330A BEACONSFIELD PARADE, ST KILDA WEST
EXECUTIVE DIRECTOR:	GREG WOOD, ACTING EXECUTIVE DIRECTOR COMMUNITY DEVELOPMENT AND PLANNING
PREPARED BY:	GREG WOOD, ACTING EXECUTIVE DIRECTOR COMMUNITY DEVELOPMENT AND PLANNING
FILE NO.:	20/01/96
ATTACHMENTS:	1 – COMMUNITY WRITTEN SUBMISSIONS TO COUNCIL.

1. EXECUTIVE SUMMARY

- 1.1 Since November 2004 the Council has been the Committee of Management for the West Beach Pavilion, under the authority of the Crown Land (Reserves) Act 1978.
- 1.2 In 2005 a Development Agreement was signed between the Council and the West Beach Development Consortium Pty Ltd for the redevelopment of the building known as West Beach Pavilion, located at 330A Beaconsfield Parade, St Kilda West
- 1.3 Between 2006 and 2008 the West Beach Development Consortium Pty Ltd was granted a planning permit from the Victorian Civil and Administrative Tribunal (VCAT) and subsequently was granted Coastal Management Act consent from the Department of Sustainability and Environment (DSE) in accordance with the Coastal Management Act 1993.
- 1.4 Construction and redevelopment of the facility began in August 2008.
- 1.5 In April 2009 the City of Port Phillip advertised for submissions from the community in response to Council's intent to enter into a lease with the West Beach Development Consortium Pty Ltd.
- 1.6 The Minister for Environment and Climate Change is the authority responsible for approval of the proposed lease, in accordance with the Crown Land (Reserves) Act 1978.
- 1.7 This report proposes that the community submissions received to date by Council on this matter, and the proposed lease with West Beach

Development Consortium Pty Ltd and any other necessary supporting documentation be forwarded to the Minister for Environment and Climate Change for approval in accordance with section 17(D) of the Crown Land (Reserves) Act 1978.

2. RECOMMENDATION

That Council:

- 2.1 Submits the proposed lease with West Beach Development Consortium Pty Ltd in respect of the West Beach Pavilion, 330A Beaconsfield Parade, St Kilda West to the Minister for Environment and Climate Change for approval in accordance with section 17D of the Crown Land (Reserves) Act 1978; and
- 2.2 Upon Council being informed by the Minister for Environment and Climate Change of his approval of the lease in accordance with section 17D of the said Act, executes the lease.
- 2.3 Includes the community submissions received to date by Council on this matter with the letter to the Minister.

3. BACKGROUND AND CONTEXT

- 3.1 In 2002 Council determined that a public private partnership be pursued for restoration of the West Beach Pavilion, which was listed as a locally significant heritage building.
- 3.2 In 2004, following an expression of interest and tender process, the West Beach Development Consortium were selected by Council as the successful tenderer.
- 3.3 On 12 November 2004 Council was appointed Committee of Management over the subject land.
- 3.4 In 2005 a Development Agreement was signed between City of Port Phillip and West Beach Development Consortium.
- 3.5 During 2005/06 the West Beach Development Consortium Pty Ltd obtained a planning permit following an appeal to the Victorian Civil and Administrative Tribunal (VCAT).
- 3.6 On 1 June 2006 Department of Sustainability and Environment (DSE) provided Coastal Management Act consent for the proposed redevelopment of the West Beach Pavilion.
- 3.7 On 20 May 2008 DSE approved the Grant and Purpose of a licence over the subject area for 'construction and development works' to proceed.
- 3.8 On 25 June 2008 CoPP provided consent for construction to begin on West Beach Pavilion.

- 3.9 Although Council is the Committee of Management for the land, the Minister for Environment and Climate Change is the authority responsible for approval of the said lease in accordance with the Crown Land (Reserves) Act 1978.

4. CONSULTATION AND STAKEHOLDERS

- 4.1 On April 6 2009 Council resolved to seek submissions in response to Council's intention to grant a lease and inviting interested persons to make submission.
- 4.2 Council received 10 written submissions by the closing date of 20 May 2009. A summary of the issues raised by submitters is provided in Attachment 1 to this report. Additional correspondence dated 17 April 2009 was received by Council Officers on 16 June 2009. Although this correspondence was received outside the advertising period, it is included in Attachment 1 for information.
- 4.3 The Strategy and Policy Review Committee heard submissions on 1 June 2009 from the following people with respect to the proposed lease:
- 4.3.1 Mr Irving Saulwick.
 - 4.3.2 Mr Rob Macfarlane – West St Kilda Residents Association.
 - 4.3.3 Mr Terry Claven.
 - 4.3.4 Ms Carolyn Burns; and
 - 4.3.5 Mr Simon Phillips

A summary of the issues raised by the submitters is provided in the following table.

Table 1: Issues Raised by Submitters – Strategy and Policy Review Committee Meeting 1 June 2009.

Speaker Name	Issues Raised / Questions Posed to Strategy and Policy Review Committee
Mr Irving Saulwick	<ul style="list-style-type: none"> • How can Council consider submissions in an unbiased manner in light of the previously executed Development Agreement? (Case Law examples cited). • The terms of the lease seem unreasonable (ie low rent and high turnover targets). • The turnover percentage of 5% is too low. Independent industry advice suggests that 10-15% would be a more appropriate figure.

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Speaker Name	Issues Raised / Questions Posed to Strategy and Policy Review Committee
Mr Rob Macfarlane	<ul style="list-style-type: none"> • Extra information is required with respect to the rationale for the proposed peppercorn rental. • Items that should be enshrined in the lease: 1) the facility is a community resource. 2) There should be no obligation to purchase goods and services. 3) Public amenities should be well signposted. • The number of proposed showers and change rooms is insufficient. • The lack of car parking spaces for the development will impact on residents.
Mr Terry Claven	<ul style="list-style-type: none"> • The proposed lease should be re-negotiated. It currently favours the developer over the rate payer. • How will waste collection and storage be managed? • Other foreshore developments have extended their lease boundaries and changed their focus over time (e.g. Riva, Great Provider, Brighton Baths and Donovan's Restaurant). What controls are in place to stop this occurring at West Beach? • Kite boarding operators are advising their clients to park in adjacent streets, adding to local traffic congestion. • The Heritage Officer should review the designs / final structure to ensure that it is compliant.
Ms Carolyn Burns and Mr Simon Phillips	<ul style="list-style-type: none"> • How much money has Council spent on this site to date (including the buy out fee for Royal Melbourne Yacht Squadron, legal fees etc)? • The proposal appears to be slanted towards the developer. • Retail shop – the turnover targets appear too high. How were they calculated? • Does the proposal comply with the 5 leasing principles for Crown Land? (e.g. economic benefit, in principle approval, consistent documentation etc). • Kite boarding – who is liable if a kite collides with a pedestrian or car? • What is stopping the developer from closing the retail shop if it proves to be unviable or on-selling the lease? • Can Council wind up the lease if it decides at Year 15 that it no longer wants that particular tenant at the site?

Speaker Name	Issues Raised / Questions Posed to Strategy and Policy Review Committee
Ms Carolyn Burns and Mr Simon Phillips (cont'd)	<ul style="list-style-type: none">• Does the building revert to Council at the end of the lease?• A court will test the matter to see if Council's process was impartial and fair. How can Council go against the deal detailed in the Development Agreement?• It is appreciated that there is some pressure for Council to stick to the deal, but the deal is biased.• Transparency should be ensured in future.

5. DISCUSSION

5.1 OPTIONS

5.1.2 The recommendation in this report is in accordance with the Development Agreement between Council and the West Beach Development Consortium, specifically section 3 and 22.1 of the Development Agreement. Any option which did not seek ministerial approval for the lease would not be consistent with the development agreement.

5.2 ALIGNMENT TO COUNCIL PLAN

5.2.1 The decision to commit to the development agreement was made under a previous council plan. The decision to consult with the community by the current council is consistent with the current council plan key direction Engaging and Governing the City.

5.3 POLICY IMPLICATIONS PLAN

5.3.1 The development agreement clearly states that (for the purpose of that development agreement) Council is acting in its capacity as committee of management.

5.3.2 In accordance with the Crown Land (Reserves) Act 1978 the approval of any lease made under this Act is the responsibility of the Minister.

5.3.3 The proposed approach also ensures that the submissions of the community are properly considered by the appropriate approval authority, in this case the Minister for Environment and Climate Change.

5.4 FINANCE / RESOURCE IMPLICATIONS

5.4.1 There are no direct short term budget implications by executing the lease

5.5 LEGAL & RISK IMPLICATIONS

- 5.5.1 The prudent course of action for Council (acting as committee of management for the said land) is to write to the approval authority, in this instance the Minister for Environment and Climate Change, seeking consideration of the terms and conditions of the proposed lease with West Beach Development Consortium Pty Ltd.

6. IMPLEMENTATION STRATEGY

6.1 TIMELINE

- 6.1.1 The letter to the Minister for Environment and Climate Change will be submitted as soon as practicable.

6.2 COMMUNICATION

- 6.1.2 Council's decision will be communicated via the minutes, a press release and direct notification to all submitters on this matter

7. OFFICER DIRECT OR INDIRECT INTEREST

- 7.1 No officers involved in the preparation of this report have any direct or indirect interest in the matter.