

**STRATEGY AND POLICY REVIEW COMMITTEE**  
**2 FEBRUARY 2009** **GOVERNANCE AND COMPLIANCE**

<b>A6</b>	<b>PROPOSED LEASE EXTENSION - TEIFAL PTY LTD (TRADING AS DECANTERS BY THE BAY), 174 NOTT STREET, PORT MELBOURNE</b>
<b>LOCATION/ADDRESS:</b>	<b>174 NOTT STREET, PORT MELBOURNE</b>
<b>EXECUTIVE DIRECTOR:</b>	<b>SALLY CALDER, EXECUTIVE DIRECTOR ORGANISATION SYSTEMS AND SUPPORT</b>
<b>PREPARED BY:</b>	<b>JEANENE SIMMONS, SENIOR PROPERTY ADVISOR</b>
<b>FILE NO.:</b>	<b>4320/174-02</b>
<b>ATTACHMENTS:</b>	<b>1 – LOCATION PLAN, 174 NOTT STREET</b> <b>2 – CONFIDENTIAL ATTACHMENT, LEASE EXTENSION REQUEST</b>

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**1. PURPOSE**

- 1.1 To provide information to Council on Teifal Pty Ltd's request for an extension to its current lease at 174 Nott Street, Port Melbourne and to commence the necessary statutory procedures for the lease extension under Sections 190 and 223 of the Local Government Act 1989. The property is currently used as a retail and wholesale liquor store.
- 1.2 This matter was considered by the City of Port Phillip's Property Advisory Board on 17 November 2008. The Property Advisory Board is supportive of a 5 year lease extension for Teifal Pty Ltd through to 9 September 2018.

**2. RECOMMENDATIONS**

That the Strategy and Policy Review Committee recommend that Council resolve:

- 2.1 To commence the statutory procedures under Section 190 of the Local Government Act 1989 ("the Act") for a new lease agreement with Teifal Pty Ltd by publishing a notice in local newspapers inviting interested persons to make a submission under Section 223 of the Act for the proposed lease of 174 Nott Street, Port Melbourne on the following terms:

Proposed Tenant: Teifal Pty Ltd (trading as Decanters by the Bay).

Demised Premises: 174 Nott Street, Port Melbourne.

Area: Approximately 367 square metres.

Permitted Use: Retail and wholesale of liquor and associated services.

Term: through to 9 September 2018 (approximately 9 years).

Rental: \$73,500 per annum plus GST.

Rental reviews: Market rent review every two years.

- 2.2 To appoint its Strategy and Policy Review Committee to hear and consider any submissions made under Section 223 of the Act and to authorise Council officers to fix the day, time and place of the meeting.

### **3. BACKGROUND AND CONTEXT**

- 3.1 On 10 September 2001, Council granted a 3 year lease to Teifal Pty Ltd for use of 174 Nott Street, Port Melbourne as a retail and wholesale liquor store. The agreement contained 3 further options of 3 years each.

- 3.2 Summary information regarding the property is provided in the following table:

Item	Details
Property Description	The subject property comprises a single storey warehouse. It is bounded by three streets – Nott Street, Pool Street and Lalor Street and is located one block west of the main Bay Street retail strip.(Refer to Attachment 1 – Location Plan, 174 Nott Street).
Land status	Council owned.
Current Permitted Use	Retail and wholesale of liquor and associated services.
Lease Area	Approximately 367 square metres.
Zoning	Residential 1 Zone, Within a Special Building Overlay Area, Heritage Overlay 1.
Value of Land and Buildings	\$945,000.
Lease details (ie commencement, expiry and further options)	Lease term – 3 years starting on 10 September 2001. Lease options – 3 further terms of 3 years each. Lease expiry once all options have been exercised – 9 September 2013.
Current rental	\$73,500 per annum plus GST
Market rent reviews	Every two years. The next market rent review is due on 10 September 2009
Yield	7.8%

Tenant Performance	The Tenant's rent account is up to date.
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- 3.3 On 4 November 2008, Mr John Tei of Teifal Pty Ltd formally requested a lease extension of 9 years through to 9 September 2022, broken up into 3 further options of 3 years each. The extension is required for the implementation of a new financial strategy for the business which includes a share buy out between the current business partners (refer to Attachment 2 – Confidential, Lease Extension Request).
- 3.4 This request was considered by the City of Port Phillip's Property Advisory Board on 17 November 2008. To allow future site flexibility, the Property Advisory Board resolved to put forward an alternative 5 year lease extension proposal to Council in early 2009.
- 3.5 The Board's recommendation was discussed with Mr Tei on 19 November 2008. Mr Tei confirmed that a 5 year lease extension through to 9 September 2018 would still meet his business and financial needs.
- 3.6 Any change to the lease term for Teifal Pty Ltd is best documented through a Deed of Surrender of Lease (to wind up the current arrangements) and the execution of a new lease agreement through to 9 September 2018.

#### **4. CONSULTATION AND STAKEHOLDERS**

- 4.1 The external people and organisations who have been engaged with in relation to this issue are:

John Tei and Glenn Pentland – Teifal Pty Ltd.

Peter Shanley – business associate of John Tei.

- 4.2 Council Officers have also liaised with the following internal staff members with respect to the lease extension proposal:

Kathy Dillon - Manager, Building and Green Spaces

George Borg – Manager, City Development.

Sam Hewett – Manager, Asset Services.

#### **5. DISCUSSION**

##### **5.1 RECOMMENDED OPTION**

- 5.1.1 The recommended option is to grant a lease extension to Teifal Pty Ltd on the terms outlined in Section 2.1 above. By doing so Council will assist Teifal Pty Ltd and add value to its current investment at the site. It is considered that the commercial value of the site will not be adversely affected by the lease extension. As the extension period is relatively short, Council is not completely foregoing the ability to sell

the site to a developer or an investor in future, if this course of action is deemed appropriate.

- 5.1.2 As there is a current lease on foot, Council is under no legal obligation to accede to the extension request by Teifal Pty Ltd. If it is regarded on balance, that the need to preserve an alternative future use for the property outweighs the anticipated rental return (from the current arrangements with Teifal Pty Ltd), Council may elect to deny the request.

## **5.2 POLICY IMPLICATIONS**

- 5.2.1 As Teifal Pty Ltd's current lease rental exceeds \$50,000 per annum, Council is required to comply with Sections 190 and 223 of the Local Government Act 1989 regarding the proposed lease extension. These Sections include the requirement to publish a notice regarding the intention to enter into a lease agreement and receive submissions on the matter.

## **5.3 FINANCE / RESOURCE IMPLICATIONS**

- 5.3.1 By approving the proposed lease extension, Council will secure a proven tenant for the site for the next 9 years with a rental of at least \$80,000 per annum inclusive of GST. There are no special resourcing issues associated with the preferred option.

## **5.4 LEGAL & RISK IMPLICATIONS**

- 5.4.1 As the property is owned by Council, the maximum lease term available is 50 years. The proposed lease extension fits within this framework.
- 5.4.2 As Teifal Pty Ltd operates a liquor store at the property, there is the possibility that the lease extension proposal may elicit some negative community feedback. It is anticipated that the statutory advertising process will provide all interested parties with an appropriate opportunity to make written submissions on the matter.

## 5.8 SUSTAINABILITY ASSESSMENT

### SOCIAL EQUITY

By approving the proposed lease extension, Council will be supporting a local business in Port Melbourne which has contributed to the community through its unique product range and employment of approximately 30 local residents over the past 7 years.

### ECONOMIC VIABILITY

The proposal will ensure a rental income of least \$80,000 per annum inclusive of GST going forward plus the benefit of market rent reviews in 2009, 2011, 2013, 2015 and 2017.

### ENVIRONMENTAL RESPONSIBILITY

The lease extension proposal has limited environmental responsibility elements. It represents the continuation of an existing business enterprise on an existing site with no major proposed changes to service delivery or building design.

### CULTURAL VITALITY

The lease extension for Teifal Pty Ltd will ensure that liquor product variety and purchasing options are maintained for Port Melbourne residents and visitors.

## 6. IMPLEMENTATION STRATEGY

### 6.1 TIMELINE

An indicative timeline (which does not provide for any major process delays) is shown below:

Item	Date
Commence advertising and submission process under Sections 190 and 223 of the Local Government Act 1989 for proposed lease to Teifal Pty Ltd.	2 March 2009
Advertisement closes.	30 March 2009
Report for Strategy and Policy Review Committee and hearing of submissions (if any).	May 2009
Council Decision.	May 2009
Finalisation of new lease agreement (including Disclosure Statement and Deed of Surrender of Lease to wind up previous agreement).	June 2009

**6.2 COMMUNICATION**

- 6.2.1 Council's decision will be communicated to Teifal Pty Ltd in writing and to the community via the notice of intention to lease in local newspapers.