

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

A7	PROPOSED LEASE AGREEMENT TO BREWSTERS & CO PTY LTD – 147 LIARDET STREET, PORT MELBOURNE
LOCATION/ADDRESS:	147 LIARDET STREET, PORT MELBOURNE (PART OF THE LAND COMPRISED IN CERTIFICATE OF TITLE VOLUME 09830 FOLIO 297)
EXECUTIVE DIRECTOR:	CATHY HENDERSON, ACTING EXECUTIVE DIRECTOR ORGANISATION SYSTEMS AND SUPPORT
PREPARED BY:	JEANENE SIMMONS, SENIOR PROPERTY ADVISOR
FILE NO.:	3270/147-04
ATTACHMENTS:	1 – LOCATION PLAN, 147 LIARDET STREET 2 - CONFIDENTIAL SUBMISSION

1. PURPOSE

- 1.1 To advise Council of the outcome of the advertising and submission process for the lease of 147 Liardet Street, Port Melbourne to Brewsters & Co Pty Ltd and to complete the statutory procedures under Sections 190 and 223 of the Local Government Act 1989.

2. RECOMMENDATIONS

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

- 2.1 To finalise the statutory procedures under Section 190 and 223 of the Local Government Act 1989 (“the Act”) and enter into a commercial lease agreement with Brewsters & Co Pty Ltd for use of 147 Liardet Street, Port Melbourne on the following terms:

Area: Ground Floor, approximately 560 square metres.

Permitted use: Gourmet supermarket – fresh and dry food retail.

Term: 10 years.

Options: Three further terms of 10 years each.

Rental: \$175,000 per annum plus GST.

Rental Reviews: Annual percentage increases ranging from 2% to 4% and market rent reviews every 5 years.

- 2.2 To authorise the Chief Executive Officer to execute the lease on behalf of Council.

3. BACKGROUND AND CONTEXT

- 3.1 Council is the owner of the property known as 147 Liardet Street, Port Melbourne (Refer to Attachment 1 – Location Plan, 147 Liardet Street). The property was used as Council offices up until March 2008 and is currently vacant.
- 3.2 The property had been previously identified by the Council's internal Landlord Committee in 2003 as a commercial property which should be leased as part of the commercial property portfolio. The Council's Executive Team confirmed the property was suitable for commercial leasing on 18 December 2007.
- 3.3 The property was advertised for lease through Lemon Baxter Pty Ltd in early 2008 via standard real estate methods including an advertising board and internet advertisements.
- 3.4 Brewsters & Co Pty Ltd formally offered to lease the site in late April 2008. Following a Council resolution on 28 July 2008, a notice of intention to lease the property to Brewsters & Co Pty Ltd was advertised in the Port Phillip Leader on 5 August 2008. Two other parties, Conile Nominees Pty Ltd (on behalf of Coles Supermarkets) and Messrs Balla and El Samad lodged submissions in response to the advertisement by the closing date of 20 August 2008.
- 3.5 Due to the unexpected level of commercial interest in the site, Council resolved on 22 September 2008 to commence a tender process to determine the best possible leasing outcome and tenant for the property. The invitation to tender was advertised in the Public Notices Section of the Port Phillip Leader on 30 September 2008.
- 3.6 Only two submissions were received by the tender closing date of 17 October 2008.
- 3.7 At an Ordinary Meeting of Council on 27 October 2008, Council resolved:
- 3.7.1 To award preferred tenderer status to Brewsters & Co Pty Ltd for the lease of 147 Liardet Street, Port Melbourne;
- 3.7.2 To commence the statutory procedures under Section 190 and 223 of the Act and publish a notice in 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 147 Liardet Street, Port Melbourne to Brewsters & Co Pty Ltd; and
- 3.7.3 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 in February 2009.

- 3.8 A notice regarding the intention to lease to Brewsters & Co Pty Ltd and the proposed lease terms was subsequently published in the Port Phillip Leader on 4 November 2008. No submissions were received by the closing date of 2 December 2008.
- 3.9 A late submission was received on 8 December 2008 (refer to Attachment 2 – Confidential Submission). This submission falls outside both the tender and statutory advertising processes and is therefore not eligible for consideration. It is included as a confidential attachment for Councillor information only.

4. CONSULTATION AND STAKEHOLDERS

- 4.1 Copies of the invitation to tender were sent directly to representatives of Brewsters & Co Pty Ltd, Conile Nominees Pty Ltd, Messrs Balla and El Samad and Council's real estate agent, Lemon Baxter Pty Ltd on 30 September 2008. Advice regarding the appointment of the preferred tenderer was also provided to the above parties on 29 October 2008.

5. DISCUSSION

5.1 RECOMMENDED OPTION

- 5.1.1 The recommended option is to finalise the statutory procedures and grant a lease to Brewsters & Co Pty Ltd based on the terms outlined in Section 2.1 above.
- 5.1.2 The consideration of any further submissions on the matter outside the tender and statutory advertising process is not appropriate from a governance perspective. Due process has been followed and the integrity of Council's September 2008 tender process for the leasing of the property should be protected.

5.2 POLICY IMPLICATIONS

- 5.2.1 The lease proposal aligns with Council's Corporate Property Strategy which aims to maximise property performance and match property use with community needs and general community development.
- 5.2.2 The procedural requirements associated with Sections 190 and 223 of the Act have been met as the intention to enter into a lease agreement with Brewsters & Co Pty Ltd was advertised and no submissions were received by the closing date of 2 December 2008.

5.3 FINANCE / RESOURCE IMPLICATIONS

- 5.3.1 The proposed rental of \$175,000 per annum plus GST constitutes a new income stream for Council as the property is currently vacant. There are no special resourcing issues associated with the preferred option.

5.4 LEGAL & RISK IMPLICATIONS

- 5.4.1 Council has adopted a thorough and transparent approach to the leasing of this site over the past 12 months. By advertising the site through Lemon Baxter Pty Ltd and then running a separate tender process for the lease of the site in September 2008, ample opportunity has been provided for all interested parties to come forward.
- 5.4.2 The proposed lease addresses risk implications by formalising the relationship between Council and Brewsters & Co Pty Ltd and providing certainty about each party's respective rights and obligations.

5.9 SUSTAINABILITY ASSESSMENT

SOCIAL EQUITY

The proposed lease agreement to Brewsters & Co Pty Ltd will ensure that the subject property is no longer vacant.

ECONOMIC VIABILITY

The proposed rental of \$175,000 per annum plus GST exceeds the estimated commercial rental of the site.

ENVIRONMENTAL RESPONSIBILITY

The proposed lease to Brewsters & Co Pty Ltd is consistent with Council's Activity Centres Strategy Implementation Plan (July 2006). This plan states that further supermarket retail activities should be investigated for the Bay Street area.

CULTURAL VITALITY

A new fresh food retail business in the area will translate into greater variety and purchasing options for residents and visitors.

6. IMPLEMENTATION STRATEGY

6.1 TIMELINE

The recommendation of this report can be implemented by the finalisation and execution of a lease based on the terms outlined in Section 2.1 above.

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

Item	Date
Preparation and execution of lease agreement (including disclosure statement)	March 2009
Brewsters and Co Pty Ltd takes up occupation of the property	End March 2009 / April 2009.

6.2 COMMUNICATION

6.2.1 Council's decision will be communicated to all interested parties (ie Brewsters & Co Pty Ltd, Lemon Baxter Pty Ltd, Conile Nominees Pty Ltd and Messrs Balla and El Samad) in writing.

Key Messages

6.2.2 Council has concluded its tender process for the leasing of 147 Liardet Street, Port Melbourne.