

**ORDINARY MEETING OF COUNCIL
24 AUGUST 2009**

8.	PROPOSED TENDER PROCESS – LEASE OF 71A ACLAND STREET, ST KILDA
LOCATION/ADDRESS:	71A ACLAND STREET, ST KILDA
EXECUTIVE DIRECTOR:	CATHY HENDERSON, ACTING EXECUTIVE DIRECTOR, ORGANISATION SYSTEMS AND SUPPORT
PREPARED BY:	JEANENE SIMMONS, SENIOR PROPERTY ADVISOR
FILE NO:	0010/071A-07
ATTACHMENTS:	1 - LOCATION PLAN, 71A ACLAND STREET, ST KILDA 2 – CURRENT LEASE AREA 3 – CURRENT PLANNING PERMIT AREA

1. EXECUTIVE SUMMARY

- 1.1 To inform Council of the upcoming expiry of the commercial lease agreement for 71A Acland Street, St Kilda. This agreement is due to expire on 31 January 2010.
- 1.2 As the site is Crown Land managed by Council on behalf of the Department of Sustainability and Environment (“DSE”), Council is required to comply with DSE’s “Commercial Leasing Principles for Crown Land” and run a competitive expression of interest and or tender process to select a future tenant.
- 1.3 This report seeks Council’s endorsement to the proposed approach to select a preferred tenderer and then to offer a 5 year lease agreement for use of the site as a restaurant / café with restricted hours. The future lease is subject to DSE / Ministerial approval.

2. RECOMMENDATION

That Council:

- 2.1 Undertakes a tender process for the future lease of 71A Acland Street, St Kilda on the following terms:
 - Lease area: approximately 330 square metres.
 - Term: 5 years.
 - Permitted use: restaurant / café.

- 2.2 Approves modified business parameters for the site including lease conditions drafted to have the following effect:
 - 2.2.1 Maximum number of patrons permitted in the outdoor area at any time – 80.
 - 2.2.2 All patrons within the outdoor area are to be seated.
 - 2.2.3 Maximum number of patrons permitted within the restaurant premises (indoor) – 145.
 - 2.2.4 A reduction in the hours of operation to Monday - Sunday, 7 am to 1 am the following day.
 - 2.2.5 The Tenant is required to carry out regular maintenance of the premises including the following items - clearing gutters of debris, clearing grease traps, air conditioning servicing, inspection and maintenance related to Essential Safety Measures.
 - 2.2.6 The Tenant will provide the Landlord with unimpeded access to the premises for a period of 3 months to affect any necessary building compliance and occupational health and safety related works. Access for any additional structural works will be negotiated with the Tenant.
- 2.3 Advertises this leasing opportunity in The Age, The Port Phillip Leader and the Emerald Hill Weekly newspapers.

3. BACKGROUND AND CONTEXT

- 3.1 Land Status
 - 3.1.1 Council is the appointed Committee of Management under the provisions of the Crown Land (Reserves) Act 1978 (“CLRA”) for the subject property. The lease agreement for this site is due to expire on 31 January 2010.
 - 3.1.2 In line with DSE’s “Commercial Leasing Principles for Crown Land”, Council is required to run a competitive, open process such as an expression of interest or tender to allocate any future lease agreement.
 - 3.1.3 Until recently the maximum lease term available under the provisions of the CLRA was 21 years. Legislative changes in August 2009 provide for a maximum lease term of 65 years in limited circumstances, where the Minister is satisfied that the project is of state significance and the granting of a longer lease term is in the public interest. However in this instance, it is proposed to offer a 5 year lease term only. This will enable Council to assess the property in the context of the broader property portfolio to ensure that the use of the property is aligned with the longer term community needs.

Current Property Details

3.1.4 Further information regarding the property is shown in the following table:

Table 1: Summary Details – 71A Acland Street, St Kilda

Item	Details
Tenant	Vineyard Restaurant Pty Ltd
Property Address	71A Acland Street, St Kilda (Refer to Attachment 1 – Location Plan).
Land Status	Crown Land – Council is the appointed Committee of Management.
Land Reservation	Part of the land temporarily reserved for public gardens by Order in Council of 27 March 1956 and part of the land temporarily reserved for plantation, gardens, recreational purposes for elderly people and for underground drainage purpose by Order in Council of 27 July 1954.
Current Permitted Use	Restaurant.
Lease Area	Current lease area is approximately 380 square metres. The updated survey plan currently being prepared will see a likely area for the new lease of approximately 330 square metres.
Value of Land and Buildings	\$844,000.
Capital Investment Required	\$222,050.
Lease Details (ie commencement, expiry etc)	Lease commencement date – 1 February 2005. Lease expiry date – 31 January 2010. No further options are provided under the lease.
Current Rental	\$175,478.76 per annum plus GST.
Market Rent Reviews	4% per annum fixed increase.
Additional Information	<ul style="list-style-type: none">• The restaurant is an extremely popular St Kilda icon.• Complaints have been received over the past two years with respect to amplified music, patron numbers and operating times.• The tenant is currently working with Council Officers to resolve issues pertaining to the grease trap and the electrical supply to the site.• Strong interest is anticipated in the future lease of this property.

4. CONSULTATION AND STAKEHOLDERS

4.1 Internal

4.1.1 The following areas have been consulted on this matter:

- Property and Valuations;
- Building Services;
- Statutory Planning; and
- City Development.

5. DISCUSSION

5.1 OPTIONS

5.1.2 As the subject property is Crown Land, the recommended option is to run a tender process for the future lease of the site. Alternative approaches such as issuing a fresh lease to the current tenant with no public process, or allowing the current tenant to remain in over-holding on a month by month basis for an unspecified period of time, are inconsistent with DSE policy.

Potential Lease Conditions

5.1.3 To some extent, the problems associated with the site are a product of its popularity. It is often difficult to manage a large number of patrons. Optimum use of the facility causes excessive wear and tear on the building, maximizes the need for ancillary storage space / waste disposal areas and can cause stress to building infrastructure including air conditioning and grease traps.

5.1.4 Council Officers have noted that minor differences exist between the current lease area boundary and the site plans attached to the liquor licence and planning permits. (Refer to Attachment 2 – Current Lease Area and Attachment 3 – Current Planning Permit Area). An updated survey plan is currently being prepared to clarify these minor inconsistencies.

5.1.5 As a responsible landlord, Council may seek to pare back the business operation through revised lease conditions, although this may come at a cost reflected in the value of the lease. Given the concern over planning and building issues, and to align the business more closely with current building regulations and footpath trading laws, it is suggested that lease conditions are drafted to have the following effect:

5.1.5.1 Maximum number of patrons permitted in the outdoor area at any time – 80. This item is unchanged and consistent with condition 9 of the relevant planning permit – 134/2002.

5.1.5.2 All patrons within the outdoor area are to be seated. This will bring the site into line with current footpath trading laws – Footpath Activities Local Law No 7 (2009), general condition 7 for outdoor dining.

5.1.5.3 Maximum number of patrons permitted within the restaurant premises (indoor) – 145. This represents 1 person per square metre of indoor dining space, consistent with building regulations. This constitutes a new requirement / condition for the site. A previous liquor licence for the site specified a maximum number

of 156 patrons. At present, the current liquor licence does not provide a maximum patron number.

- 5.1.5.4 A reduction in the hours of operation to Monday - Sunday, 7 am to 1 am the following day.

Planning permit number 656/1999 for an on premises liquor licence refers to trading hours of Monday to Saturday 7am to 7am the following day and Sunday 10am to 7am the following day. This permit was issued prior to the outside area coming on line. The current liquor licence for the site further restricts the trading hours stated above to:

Inside area: Monday to Saturday 7am to 3am the following morning, Sunday between 10am to 3am the following morning.

External area: Monday to Saturday 7am to 1am the following morning, Sunday between 10am and 1am the following morning.

It is anticipated that this amendment, which will bring the indoor and outdoor trading hours into alignment, will modify current alcohol related and streetscape interface issues.

- 5.1.5.5 The Tenant is required to carry out regular maintenance of the premises including the following items - clearing gutters of debris, clearing grease traps, air conditioning servicing, inspection and maintenance related to Essential Safety Measures.
- 5.1.5.6 The Tenant will provide the Landlord with unimpeded access to the premises for a period of 3 months to affect any necessary building compliance and occupational health and safety related works. Access for any additional structural works will be negotiated with the Tenant.

Tender assessment

- 5.1.5.7 If Council proceeds to conduct a tender for the lease of 71A Acland St, then the tender assessment process will take into account price, operational restaurant / café experience, business plan viability, and the capacity to make a cultural contribution to the area. Sensitivity to users of O'Donnell Gardens will be required. Tenderers will also be asked to demonstrate in their proposal how they will comply with planning permits, regulations, local laws and the lease boundary.

5.2 ALIGNMENT TO COUNCIL PLAN

5.2.1 The Council Plan requires that the property portfolio be managed in an efficient and effective manner with adherence to good governance principles.

5.3 POLICY IMPLICATIONS PLAN

5.3.1 Policy context for this site includes:

5.3.1.1 Council's Property Policy and Strategy which suggests that the following key objectives should apply to this site:

5.3.1.2 Maximise value for money;

5.3.1.3 Contribute to economic growth; and

5.3.1.4 Use Council property to influence cultural vitality.

5.3.2 The St Kilda Foreshore Urban Design Framework, which comments generally on the foreshore area and supports an extension of footpath space on the north side of O'Donnell Gardens near 71A Acland St.

5.4 FINANCE / RESOURCE IMPLICATIONS

Building Condition

5.4.1 A comprehensive condition assessment has provided a clear understanding of the current condition of the building and the necessary remedial work required to bring it to the desired service level, ie a restaurant.

5.4.2 The report indicates that whilst still in a functioning state and having been renovated approximately 5 – 6 years ago, the building and the site infrastructure are generally in poor condition with a number of maintenance related defects, occupational health and safety hazards and non compliance requiring immediate rectification by Council. Scheduled maintenance over the next five years will also be required to prevent the site degrading any further.

These items are summarised as follows:

Table 2: Building Repairs Cost Estimate

Condition Defects	Cost Estimate
Items to be addressed immediately	\$91,050
Items to be addressed within 12 months	\$83,250
Items to be addressed within 1 – 3 years	\$37,300
Items to be addressed within 3 – 5 years	\$10,450
Total	\$222,050

5.4.3 Undertaking the immediate repairs will necessitate unimpeded access to the premises for a period of 3 months. This could occur prior to the lease commencement date in the event of a tenant changeover, or during the term of the new lease.

5.5 LEGAL & RISK IMPLICATIONS

Process and Legislative Requirements

5.5.1 Council is required to comply with the provisions of the Retail Tenancies Reform Act 1998 and serve a “Notice of Landlord’s Intention Not to Offer a Renewal of Lease” on the current tenant. This Notice was duly served on 10 July 2009.

5.5.2 The Minister for Environment and Climate Change (“Minister”) must approve the grant and purpose of any new lease for the site. As the land was set aside as both a plantation and gardens under Section 4(1)(w) of the CLRA, an Order regarding the proposed use and the agreement length must be published in the Government Gazette and tabled in both Houses of Parliament for 5 sitting days. If no motions to disallow are received, the Minister may then proceed to issue in principle approval for the proposed lease. It is anticipated that the matter will proceed through Parliament in the October / November 2009 sitting cycle.

5.5.3 In issuing any new lease agreement for the property, Council Officers suggest that the statutory advertising process outlined in Sections 190 and 223 of the Local Government Act 1989 (“LGA”) is also appropriate. These Sections include the requirement to publish a notice regarding the intention to enter into a lease agreement and receive submissions on the matter.

6. IMPLEMENTATION STRATEGY

6.1 TIMELINE

6.1.1 An indicative project timeline is shown below:

Table 3: Project Timeline

Council resolution to commence proposed tender process	24 August 2009
Advertise tender	September 2009
Apply to DSE for Ministerial grant and purpose to the proposed lease. DSE to prepare Order for tabling in Parliament	September 2009
Close Tender	October 2009
Order is considered by Parliament (October / November sitting period).	October /November 2009
Evaluate tender submissions	November 2009
Council decision on preferred tenderer, commencement of LGA Section 190 and 223 processes.	December 2009
Consideration of submissions received and finalisation of Section 190 and 223 processes.	February 2010
Lease preparation and execution.	February / March 2010

6.2 COMMUNICATION

6.2.1 Council's decision with respect to the site will be noted in the tender advertisement and the tender documentation.

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.