

11.1 Confidential Witton Centre Port Noarlunga - commercial opportunity

This report provides an update on the process, outcomes and recommended preferred respondent for the operation of the commercial area within the Witton Centre, Port Noarlunga.

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Attachments: 1 EOI Evaluation Summary (5 pages)
2 RFP Evaluation Summary (3 pages)

1 Executive summary

1.1 Topic

This report provides an update on the process, outcomes and recommended preferred respondent for the operation of the commercial area within the Witton Centre, Port Noarlunga.

1.2 Context

On 1 September 2009 Council approved the process of going to the open market to attract a commercial operator to develop a flagship food and beverage operation within the refurbished Witton Centre and foreshore, Port Noarlunga.

This report details the completed process and seeks Council approval of the preferred respondent. It also seeks delegated authority to the Chief Executive Officer (CEO) to negotiate final lease arrangements with the preferred respondent.

This item is presented as a confidential item under Section 90(3)d of the Local Government Act, 1999 as it provides information supplied as commercial in confidence for Council's consideration in approving a preferred respondent for the operation of a restaurant/café within the Witton Centre.

In order for respondents to disclose the necessary financial and commercial information during this process confidentiality needs to be assured. Public release of this information provided in commercial confidence could reasonably be expected to prejudice the commercial position of the person who supplied the information, or to confer a commercial advantage on a third party. In addition, it is in the public interest to ensure a competitive process so we are successful in achieving the most appropriate operator available within the market for this facility. A lack of confidentiality would not only discourage potential respondents but would erode the competitive nature of the process. Therefore it is believed that on balance, it would be contrary to the public interest to compromise the information provided as commercial in confidence to Council.

1.3 Suggested outcome

That Council approve the preferred respondent and delegate authority to the CEO to negotiate the final details of a lease agreement for the commercial area within the Witton Centre.

2 Recommendation(s)

1. That

- a. **under the provisions of Section 90(2) of the Local Government Act 1999 an order be made that the public be excluded from attendance at the meeting in order to consider in confidence this item.**
- b. **Council is satisfied that it is necessary that the public be excluded to enable the Council to consider the report at the meeting on the following grounds:**

Section 90 (3)(d) commercial information of a confidential nature (not being a trade secret) the disclosure of which-
 - (i) **could reasonably be expected to prejudice the commercial position of the person who supplied the information, or to confer a commercial advantage on a third party**
 - (ii) **would, on balance, be contrary to the public interest.**
- c. **accordingly, on this basis the principle that meetings of the Council should be conducted in a place open to the public has been outweighed by the need to keep the information or discussion confidential.**

2. **That Council approve Para Praia Pty Ltd as the preferred respondent for negotiating a final lease agreement to occupy the commercial area within the Witton Centre, Port Noarlunga.**
3. **That Council delegate authority to the Chief Executive Officer to finalise and execute a lease agreement with Para Praia Pty Ltd to occupy the commercial area within the Witton Centre, Port Noarlunga, based on advice from our legal and commercial advisors.**
4. **That an order be made under the provisions of Section 91(7) and (9) of the Local Government Act 1999 that the abovementioned document (or part of such document) including the minutes and the report of the Council relating to discussion of the subject matter of that document, having been dealt with on a confidential basis under Section 90 of the Act, should be kept confidential on the grounds of information contained in 90(3)(d) until such time as the lease is executed.**

Key Factors

3 Discussion

3.1 Overall procurement process

The overall procurement process involves 3 stages as follows:

Stage 1 – Expression of Interest (EOI) to open market. CEO approval of EOI respondent shortlist.

Stage 2 – Request for proposal (RFP) - a detailed submission sought from respondents shortlisted. Council approval of preferred respondent from RFP process.

Stage 3 – lease negotiations and execution with the preferred respondent post Council approval.

3.2 EOI process

In accordance with the procedure approved by Council and our Contracts, Tenders and Purchasing Policy and Procedures, an open expression of interest (EOI) invitation was issued through SA Tenders and Contracts web site.

The EOI was released on 30 September 2009 and closed on 20 November 2009. The process included an extensive advertising campaign. In addition to the required legal and probity advice, a commercial property advisor was appointed to assist in developing the marketing campaign, respond to all EOI enquiries and ensure information was disseminated throughout the industry.

Four EOI responses were received as outlined in Table 1 below.

Table 1

EOI respondent	Associated business/current role
Tony Baily and George Alexopoulos	Owners/managers Rigonis (City) and Esca (Holdfast Shores)
Carmen Kirk	Current manager of Regatta's (City)
Vandam Pty Ltd	Cheong Lieu Previous chef at the Grange (City)
Para Praia Pty Ltd	Filipe and Paula Horta Owners/managers of Jetty Road Café (Brighton)

EOI submissions were assessed against a series of mandatory and weighted criteria. Table 4 in attachment 1 demonstrates all respondents with the exception of Vandam Pty Ltd met the required mandatory criteria.

The Vandam Pty Ltd submission was a letter advising they were interested but did not have time to respond to the EOI. As this did not meet the mandatory criteria or address any weighted criteria, they were considered nonconforming by the assessment panel and excluded from further evaluation.

The remaining 3 applications were rated against 5 criteria, each with a series of questions/requests for information. The criteria categories included:

- flagship food and beverage operation
- community benefit

- financial and operational capacity
- commercial proposition
- sustainable environmental initiatives.

During late November/December 2009 scores were allocated for each of the submissions and further clarification sought on a number of points from the top 2 scoring respondents. Advice was received from the expert panel of advisors and interviews conducted with both respondents. The final scoring at the conclusion of this process is outlined in table 2 below. Individual scores against sub-criteria are outlined in attachment 1.

Table 2

EOI respondent	Weighted score
Tony Baily & George Alexopoulos	58%
Carmen Kirk	32.7%
Para Praia Pty Ltd	69.6%

Based on industry feedback and advice from advisors, it was acknowledged and noted in the EOI evaluation plan, *'that hospitality industry professionals have limited experience with local government selection processes. As a result, proposals which achieve a total weighted score of less than 50% may be acceptable and still represent a quality proposal'*.

Given this information and the EOI submissions, the assessment panel and the advisors were confident that the top two scoring respondents had the experience, knowledge and ability to run a successful food and beverage operation in the Witton Centre.

The top two respondents were recommended to the Chief Executive Officer for short listing (together with confirmation from our probity advisor that the process was sound) and approval granted on 19 January 2010. The respondents were subsequently advised they were one of two parties short listed and the unsuccessful respondents were advised.

3.3 Request for Proposal (RFP) process

The two shortlisted respondents were invited to participate in the RFP process on 24 February 2010. A site inspection and discussion time was undertaken with each respondent. The purpose of the allocated discussion time was for the respondent to ask questions of the project architect and council staff during the development of their detailed submission. Submissions closed on 24 March 2010, however prior to this Tony Baily advised that due to an event changing his circumstances he would not be providing a submission.

Post the close of submissions the assessment panel and advisors reviewed the application from Para Praia Pty Ltd. The following assessment criteria were applied:

- business plan
- fit-out and design
- rental proposal
- financial risk
- contractual risk - lease terms and conditions.

Further details regarding criteria and scoring are outlined in attachment 2. Para Praia achieved a total weighted score of 64% and responded well to all questions/ requests for information.

The owners of Para Praia (Filipe and Paula Horta) have been successful in building two restaurants from set up to operating profitably with established clientele, the latest of which is the Jetty Road Café. They have a focus on providing quality service, building relationships with local residents and community groups and have undertaken a thorough feasibility of this potential business. They also have experience assisting and working with Surf Life Saving which is evidenced by their established business arrangement with the Brighton Surf Life Saving Club located near their existing premises.

Para Praia understand the benefits but also the challenges with the Witton Centre site and have developed a sound business plan. The main components of their submission are outlined below.

3.3.1 Para Praia proposal

Business Plan

The proposal provided by the preferred respondents contained a business plan which addressed all required aspects. Key points of note within the plan include:

- the business will be open 6 days per week for breakfast, lunch and dinner
- Filipe and Paula will manage this new venture personally (the Jetty Road Café is now operating independently with a manager in place)
- they will employ 12 (low season) – 17 (high season) staff
- they have established suppliers, many of whom are in the southern area.

Investment and financial capacity

Para Praia will invest approximately \$375,000 in fitting out the restaurant/café and kiosk. Their submission included a statement from their accountant and a profit and loss statement for the last year of operation from their current business. The information provided has given sufficient assurance that they have the capital available to undertake this venture.

Rental proposal

Para Praia originally requested a 7 year lease with rights of renewal to a maximum of 21 years and the first 3 years rent free. At the discussion meeting staff advised they did not feel this was appropriate and provided one week for them to reconsider their rental proposal and confirm an addendum to their submission in writing.

Para Praia provided a written addendum with 3 rental options, of which the most financially attractive to us is as follows:

- initial lease term of 6 years with 3 rights of renewal every 5 years
- first year at \$0 rent
- second year at \$35,000 rent
- third year at \$50,000 rent with CPI increases for the remaining 3 years
- market rent at commencement of the first renewal with a maximum 100% increase in rent.
- rental is gross (outgoings to be paid in addition).

During negotiations we will seek to bring forward the commencement of market rent to within the initial lease term. However, we do not believe that this is fundamental to the agreement.

We undertook an independent evaluation of rent however this came heavily qualified and was detailed as 'not straight forward' due to the following:

- evidence was disparate in nature
- hospitality rental is usually determined by a percentage of established turnover
- turnover can not be estimated as it depends on the nature of the business and skills of the selected operator plus other factors – it would require one to two years of established trading to determine turnover
- there was no defined trend in the area or reliable benchmarks
- the location is specific, unproven and other facilities have vastly varying characteristics (therefore there are no worthwhile café or restaurant comparisons to use in the analysis)
- if rent is estimated too high the business will fail
- lack of proven track record with occupation increases risk.

The report suggested 'a careful strategy be put in place that spreads the risk and ensures a long term win for the Council, tenant and community'. Post all the qualifications the rental was estimated at \$86,000 per annum, with discount suggested in the initial establishment of the business.

All advisors involved in the industry believed the valuation was too high. Their view was around \$50,000 was a reasonable market rate and agreed that significant discount was still required to allow the new business to establish in this location for a 2–3 year period. A stepped rental to allow a business to establish is common practice in our previous commercial leases.

This is also common practice in the current commercial property market, with high profile areas eg. Holdfast Shores and the city offering one year rent free to secure a new lease. Advice regarding the commercial market rates, the industry, the location and the proposal has been provided by Geoff Hayter, Managing Director Colliers International and is supported by views expressed by Michael Corrigliano, Chartered

Accountant and Pip Forrester, experienced local restaurant manager/ owner and Chair of the Fleurieu Peninsula Food Group.

Contractual risk - lease terms and conditions

Para Praia did not have significant concerns with the general lease terms and conditions provided for comment as part of the request for proposal process. Subject to Council approval, the minor issues raised will be negotiated as part of finalising their agreement with us.

3.3.2 Knowledge gained through the process

Industry factors

Feedback from advisors and industry participants throughout the process demonstrated that not only was the current economic climate impacting on profitability but it has also made it very difficult to raise capital for any new venture. Financiers are very risk averse at present and hospitality is considered a high risk industry for investment.

While the location on the foreshore at Port Noarlunga was highly regarded, the site history of two failed businesses was seen as adding an additional challenge and increased risk to a new venture. We believe these reasons are reflected in the low number of EOI responses received and also the withdrawal of the other shortlisted respondent during the RFP process.

However, both the assessment panel and the advisors believe the recommended preferred respondent to be very capable, experienced and determined to provide a flagship food and beverage operation and create a well known destination for quality food and service on the foreshore at Port Noarlunga.

Capital investment/fit out

It became evident through discussion with advisors and potential respondents/ respondents that capital investment in the building eg. to extend the balcony, was very unlikely. While some respondents would have liked a larger balcony or different building features they expected us to fund all building works.

The required responsibilities between building fixtures and fitting was also defined. In summary we will fund air conditioning, toilets and electrical wiring. The tenant will fund the fit out, plant and equipment and flooring. As flooring is estimated at \$50,000 and a fixture there is some trade off in rental for their upfront investment in this capital component.

Market expertise

The EOI, RFP and associated evaluation plans for each are complex documents to develop and benefited significantly from input by legal, probity, property and hospitality advisors. A copy of any of the above documentation can be made available upon request.

We believe the marketing campaign alone would not have generated the same responses without the commercial property advisor ensuring that the word was out in the market regarding this unique opportunity.

The assessment of submissions was also substantially assisted by the advice provided from advisors.

3.4 Timing of agreement

Subject to Council approval it is proposed to negotiate the final lease agreement with the preferred respondent over the next 4-6 weeks. They will require approximately 4 months to fit out the premises. A date for possession of the site will be negotiated when the final building works schedule is complete.

Council will be updated on the project and lease milestones via Weekly News