

**CITY OF MARION
GENERAL COUNCIL MEETING
24 July 2012**

**REPORT RELATING TO:
A leader in the delivery of the Community Vision**

Originating Officer: Abby Dickson, Manager Libraries and Cultural Development

Director: Heather Montgomerie, Director Corporate & Community Services

Subject: Commercial Arrangements

Ref No: GC240712R0

File No: 16.21.3.52

If the Council so determines, this matter may be considered in confidence under Section 90(2) and (3)(d) of the Local Government Act 1999 on the grounds that it relates to commercial information of a confidential nature the disclosure of which could reasonably be expected to prejudice the commercial position of the person who supplied the information, or to confer a commercial advantage to a third party.

Mark Searle
Chief Executive Officer

1. Pursuant to Section 90(2) and (3)(d) of the Local Government Act 1999 the Council orders that all persons present, with the exception of the following Mark Searle, Chief Executive Officer, Adrian Skull, Director City Development, Heather Montgomerie, Director Corporate and Community Development, Jeff Rittberger, Director Governance, Abby Dickson, Manager Library and Cultural Development, Kate McKenzie, Manager Governance, Peter Bice Acting Unit Manager Council Support, Craig Clarke, Unit Manager Communications, Marg Edgecombe, Unit Manager Arts & Cultural Development, David Barrett, Marion Cultural Centre Coordinator be excluded from the meeting as the Council receives and considers a report in relation to proposed Commercial Arrangements upon the basis that the Council is satisfied that the requirement for the meeting to be conducted in a place open to the public has been outweighed by the need to keep the receipt / discussion / consideration of the matter confidential as disclosure of which could reasonably be expected to prejudice the commercial position of the person who supplied the information, or to confer a commercial advantage to a third party.

STRATEGIC OBJECTIVES:

CV3.1 Develop unique and vibrant public places that express local identity and meet local needs

CV3.2 Provide and support opportunities to celebrate and express community identity

DE1 A supportive business environment

DE2 A strong adaptable and diversified economy

CWSP1 further develop the Marion Regional centre as a Focal Point of Southern Adelaide

REPORT OBJECTIVE AND EXECUTIVE SUMMARY:

This report provides Council with a summary of tender process undertaken to source a private operator to manage the operations of Signatures Cafe and the assessment undertaken to identify a preferred operator for Council's consideration. The process resulted in three operators submitting written proposals. All three operators were interviewed by Savills and City of Marion Staff. Jeff Anderson is the operator recommended to Council and a five year lease is proposed with the right to renew for another five years.

RECOMMENDATIONS:

That:

- 1. Council enter into a new lease with Jeff Anderson for a term of five years over portion of the land contained in Certificate of Title Volume 5880 Folio 722, known as the 'Cafe', located at 287 Diagonal Road, Oaklands Park.**
- 2. Council, pursuant to Section 37(b) of the *Local Government Act 1999* authorises the Chief Executive Office to enter into and execute all documentation necessary to prepare and implement the above lease.**
- 3. In accordance with Section 91(7) and (9) of the *Local Government Act 1999* the Committee orders that this report, the minutes arising from this report and any other information distributed at the meeting having been considered in confidence under Section 90(2) and (3)(d) and (k) of the Act be kept confidential and not available for public inspection for a period of 12 months from the date of this meeting. This confidentiality order will be reviewed at the General Council meeting in December 2012.**

DUE DATES

Recommendation 1	24 July 2012
Recommendation 2	24 July 2012
Recommendation 2	24 July 2012

DISCUSSION:

Background

Signatures Café is an integral component of the Marion Cultural Centre (MCC) acting as a vibrant café and meeting place and providing catering services which complement the theatre, function rooms, library and gallery.

At the 23 August 2011 General Council Meeting, Council resolved to undertake an EOI to tender the operations of Signatures Café to a private operator and requested that Administration present a report to Council at the conclusion of the tender with a recommended operator and the final terms and conditions of the lease.

An EOI was first undertaken for a period of 4 weeks commencing on 29 September 2011 and closing on the 15 November 2011. Council considered a report and resolved to enter into a lease with the recommended operator at the General Council Meeting on 24 January 2012. On 28 February 2012 the incoming operator terminated lease negotiations. Council undertook a second EOI which closed 10 May 2012.

The second tender process has been completed and this report provides an overview of the process and presents a recommended operator for Council's consideration.

Discussion:

The EOI process was managed by Savills Property Management. The lease was advertised for a period of 4 weeks and closed on the 10 May 2012. During the EOI period Savills received 11 enquiries, 6 requests for a confidentiality deed to obtain further information on the business and 6 expressions of interest.

As part of the EOI process operators were required to supply the following information as part of their proposal:

- Rental Offer
- Consideration of purchase of plant and equipment
- Lease term proposal
- Rental increases
- Deposit
- Settlement
- Relevant experience
- Achievement in customer service
- Marketing and business management strategies
- Service brand and the type of menu they would bring to the café

Out of the 6 expressions of interest 4 completed the required written information addressing the above, and 3 applicants were interviewed.

Applicants were assessed using the following criteria and weighting.

Criteria	Weighting
Alignment with Council's Objectives <ul style="list-style-type: none">▪ Healthy Cities▪ Service Quality▪ Community and Cultural outcomes	30%
Capacity <ul style="list-style-type: none">▪ Staffing structure▪ Liquor Licence Experience▪ Experience in café/restaurant industry	30%

Criteria	Weighting
Approach <ul style="list-style-type: none"> Opening hours Menu options Menu pricing Approach to catering Marketing strategies Partnership Planned changes to décor Evidence of investment into P&E Appeal to cross section of the community Communication Flexibility in meeting events 	30%
Financial and Lease <ul style="list-style-type: none"> Terms of lease Rental Offer to purchase Plant and Equipment 	10%

An assessment of the operators was based on their written application and information provided at interviews conducted by City of Marion Staff and Savills.

A summary of the results are provided below:

	Applicant 1		Applicant 2		Applicant 3	
Criteria	Raw score /10	Weighted score	Raw score /10	Weighted score	Raw score /10	Weighted score
Alignment with Council Objectives	6	18	8.0	24	5.3	15.9
Capacity	6.8	20.4	8.7	26.1	3.7	11.1
Approach	5.9	17.7	8	24	5.1	15.3
Financial and Lease	5.8	5.8	6	6.0	6	6
Total Score		61.9		80.1		48.3

Alignment with Council Objectives

Applicant 2 was the stronger candidate under this criterion demonstrating a strong alignment to Council's objectives. They provided extensive details on the proposed menu for both the café and catering arm of the business and demonstrated a good selection of healthy options which included gluten free, lactose free and vegetarian options. (See appendix 1 for full menu details) Applicant 2 demonstrated a comprehensive understanding of the community and cultural aspects of the MCC and has extensive experience in developing successful, vibrant café/restaurants in Adelaide which add to the cultural and social vibrancy of the communities in which they operate.

All three operators had sound experience in customer service and indicated a good understanding of customer service principles. Applicant 1 and 2 however had a higher level of customer service experience in the café/restaurant industry than Applicant 3.

Capacity

Applicant 2 scored the highest in regards to capacity and was a stand-out applicant under this criterion. This Applicant has over 30 years' experience in the hospitality industry including: manager/ proprietor of hotels, taverns, entertainment venues, function centres, major events and cafés. This includes being the founder of Café Buongiorno chain of cafés and the Bravo & Espresso group; and being co-establisher of Tutto Pasta food production centre, Klemzig. The proposed staffing model put forward by Applicant 2 includes highly experienced personnel. See Appendix 1 for full details of the staffing structure.

Applicant 2 has a proven record of establishing successful and sustainable businesses. The restaurants they have established in Adelaide continue to operate as successful cafés. To realise the full potential of Signatures Café an experienced operator is required who can transform the business into a quality and profitable café which will continue to attract successful operators in future years. Applicant 2 presents an opportunity for Council to appoint a highly experienced operator.

Applicant 1 has sound experience having over 23 years experience in the food and beverage industry, including operating a licensed premise. This experience however is predominantly in operating noodle bars across Adelaide with a period managing a restaurant at Port Noarlunga and a wine bar within the CBD. Applicant 1's proposed staffing structure was sustainable and appropriate for the size of operations.

Applicant 3 scored relatively low under the capacity criteria with very limited experience in the café/hospitality industry and did not have previous experience as an owner/operator.

Approach

Applicant 2 scored the highest under the approach criterion. They provided an extensive and high quality menu which will have diverse appeal. The menu demonstrated accessible pricing and in the interview the applicant emphasised delivering quality food which represents good value for money. This Applicant indicated they would expand hours beyond minimum hours to include regular breakfast trade and evening trade where appropriate. Applicant 2 has extensive catering experience and their application included an extensive catering menu which would meet the requirements of the types of functions held within the MCC and would deliver high quality catering options. This Applicant demonstrated an excellent understanding of the facility and its cultural and social objectives which gave the panel confidence in developing a successful partnership with them.

Applicant 1, though experienced in noodle bar operations within a food court environment, does not have extensive experience in the management of cafés/restaurants and therefore their approach was of a lower standard to Applicant 2.

Applicant 3 scored lower under the approach criteria and failed to demonstrate that they had a well-developed business plan or that they fully understood what would be required to run the café as a successful business.

Financial and Terms and Conditions of Lease

All Applicants scored evenly under this category presenting sound offers to Council which are summarised below. All Applicants were scored within a 0.2 variance this criterion.

	Applicant 1	Applicant 2	Applicant 3
Rental Offered	\$ [REDACTED] + GST	\$ [REDACTED] + GST	\$ [REDACTED] + GST
Consideration of Plant & Equipment	\$ [REDACTED]	5,000 per annum	\$ [REDACTED]
Lease Term Proposal	10+5+5	5+5	Not specified
Rental Increases	CPI pa + Market on anniversary	Not specified	
Deposit	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]
Settlement	Available	Available	3-4 months

The rental and plant and equipment offer supplied by all Applicants is in line with current market value as advised by Savills Property Management.

Applicant 2 has offered to purchase plant and equipment over the term of the lease at \$ [REDACTED] per annum. Under this type of arrangement maintenance and replacement of plant and equipment rests solely with the operator and full ownership of plant and equipment is not transferred until after the last payment.

Referee and company history checks:

In considering this report Council needs to be made aware that Applicant 2 was convicted in 2001 of taxation fraud in relation to lodging incomplete taxation returns and payment of staff in cash. This Applicant has been up front in regards to their past conviction.

Referee checks have been conducted and a company search has been undertaken to meet due diligence in regards to considering Applicant 2.

Referee checks were conducted with recent employees (ie. within the last 3 years) and covered the following areas:

- Business acumen
 - Capacity to grow the business – marketing, forward planning
 - Financial management
 - Customer service
- Their capacity as employer – staff wellbeing and retention, service standards
- Relationship management – how would you rate the person's ability to establish professional and effective relationships
- Professional integrity

The referees consulted all occupied senior positions within successful, well founded businesses in Adelaide.

Referee checks were all positive and indicated they would continue to utilise Applicant 2 for consultancy work and they valued their experience and knowledge of the food and hospitality industry.

In considering Applicant 2 Council needs to consider what risks this presents to Council.

Options available to Council and associated risks

There are two options available to Council and this report recommends Option 1 to Council for consideration.

Option 1

That Council enter into a lease with Applicant 2 which this report identifies as Jeff Anderson. This recommendation has been formed on the basis that Applicant 2 is strongly aligned to Council's objectives, is highly experienced and has outlined a sound business management approach. The level of experience Applicant 2 brings provides an opportunity to lease Signatures Café to an operator who has the capacity to transform the business into a highly successful café.

There are risks associated with any operator Council enters into a lease with to manage the café. The hospitality industry is subject to the changing economic environment and the individual circumstances of the operator. The terms and conditions of the lease mitigate against such risks and clearly state Council's expectations in regards to service standards and use of the premises.

There is an element of reputational risk to Council leasing the premise to an applicant who has a past conviction in relation to business management. In considering this risk Council should take into account:

- all risks in relation to managing the business are owned by the operator
- principles of natural justice
- the nature of the conviction

To mitigate the reputational risk to Council in engaging an operator with a past conviction a requirement will be built into the lease which requires full financial disclosure on an annual basis and this will be assessed by an independent, suitable qualified assessor.

Leasing Signatures Café to a private operator will deliver the following benefits to Council and the community:

- Improved financial returns
- Eliminate the need for Council staff to manage food and beverage operations
- Improve customer service and menu standards through the engagement of a quality operator
- Free up City of Marion staff to focus on the management of cultural and community services within the MCC

Option 2

Council may decide, given the past conviction of Applicant 2 and the associated risks, that it does not wish to enter into a lease arrangement. If Council chooses this option administration will continue to source a private operator and will review existing staffing arrangements to further reduce the financial cost to Council.

Time frames

A period of up to ten weeks will be required to finalise the transfer of the Liquor Licence.

Given this requirement it is anticipated that the new operator will be in place commencing Tuesday 2 October 2012.

The available time leading up to the handover date will be utilised to ensure a smooth transition to the new operator.

Legal / Legislative and Risk Management:

Legal advice was sought in devising the terms of the lease agreement. The attached agreement meets all legal requirements, and mitigates and or transfers any risks to ensure business continuity.

Savills Property Management will develop a sale of business contract and legal advice will be sought in formulating this final document.

Financial Implications:

The costs associated with outsourcing Signatures Café to a private operator are covered by the current operational budget of the MCC.

The transfer to an operator will deliver the following income to Council:

- Annual rental: \$ [REDACTED]
- Annual services and property maintenance charges: approximately \$ [REDACTED] + CPI (figure based on 2011-12 budgeted expenditure)
- Plant and Equipment Purchase: \$ [REDACTED] per annum

Annual operating deficit associated with the café (approximately \$ [REDACTED]) will no longer be incurred by Council as of handover to the new operator.

Finalisation of Terms and Conditions of the Lease

There are minor final amendments required to finalise the terms and conditions of the lease which cannot occur until Council endorses the recommended operator. Such final amendments will not detract from the overall intent of the attached lease and include such things as start and end dates; and operational procedures which will be attached as addendums to the final lease.

This report seeks Council authorisation for the Chief Executive Officer to enter into and execute all documentation necessary to prepare and implement the lease.

CONCLUSION:

The outsourcing of Signatures Café to a commercial operator will ensure that the Café is well placed to meet the expanding commercial opportunities within the newly developed Domain Precinct. It is a financially sustainable model for the delivery of café services from a Council owned facility. The appointment will achieve a higher standard of customer service, contributing the overall vibrancy of the MCC and Domain Precinct.

Appendix 1 Business plan and sample menu provided by Applicant 2

Appendix 2 Terms and Conditions of the lease