

17.1

CONFIDENTIAL REPORT

LICENCE AGREEMENT – GLENELG TOURISM PTY LTD AND TEMPTATION SAILING PTY LTD

Pursuant to Section 83(5) of the Local Government Act 1999 the Report attached to this agenda and the accompanying documentation is delivered to the Council Members upon the basis that the Council consider the Report and the documents in confidence under Part 3 of the Act, specifically on the basis that Council will receive, discuss or consider:

- b. Information the disclosure of which could reasonably be expected to confer a commercial advantage on a person with whom the council is conducting, or proposing to conduct, business, or to prejudice the commercial position of the council; and would, on balance, be contrary to the public interest.**

- d. Commercial information of a confidential nature (not being a trade secret) 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 on a third party; and would, on balance, be contrary to the public interest.**

Recommendation – Exclusion of the Public – Section 90(3)(b & d) Order

- 1** That pursuant to Section 90(2) of the *Local Government Act 1999* Council hereby orders that the public be excluded from attendance at this meeting with the exception of the Chief Executive Officer and Staff in attendance at the meeting in order to consider Report No: 403/18 Licence Agreement - Glenelg Tourism Pty Ltd & Temptation Sailing Pty Ltd in confidence.

 - 2.** That in accordance with Section 90(3) of the *Local Government Act 1999* Council is satisfied that it is necessary that the public be excluded to consider the information contained in Report No: 403/18 Licence Agreement - Glenelg Tourism Pty Ltd & Temptation Sailing Pty Ltd on the following grounds:
 - b.** pursuant to section 90(3)(b) of the Act, the information to be received, discussed or considered in relation to this Agenda Item is information the disclosure of which could reasonably be expected to confer a commercial advantage on a person with whom the Council is

conducting business; or
would prejudice the commercial position of the Council.

 - d.** pursuant to section 90(3)(d) of the Act, the information to be received, discussed or considered in relation to this Agenda Item is commercial information of a confidential nature (not being a trade secret) 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 on a third party.

In addition, the disclosure of this information would, on balance, be contrary to the public interest. The public interest in public access to the meeting has been balanced against the public interest in the continued non-disclosure of the information. The benefit to the public at large resulting from withholding the information outweighs the benefit to it of disclosure of the information.

 - 3.** The Council is satisfied, the principle that the meeting be conducted in a place open to the public, has been outweighed by the need to keep the information or discussion confidential.
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Item No: **17.1**

Subject: **LICENCE AGREEMENT – GLENELG TOURISM PTY LTD & TEMPTATION SAILING PTY LTD**

Date: 11 December 2018

Written By: Acting Team Leader, Leasing & Commercial Operations

General Manager: City Assets and Services, Mr H Lacy

SUMMARY

For a number of years, Glenelg Tourism Pty Ltd (*“Licensee”*) and Temptation Sailing Pty Ltd (*“Licensee”*) has held a commercial non-exclusive Licence Agreement (*“Agreement”*) with Council for the purpose of operating the Glenelg Visitor Information Centre (*“VIC”*) within the Glenelg Town Hall. The most recent Agreement commenced 17 November 2017 for a term of three (3) years.

On 28 September 2018 the Licensee approached Administration seeking to terminate the Agreement on the basis that their business could no longer sustainably operate from this commercial location.

Further discussions have since ensued and should the proposed termination be supported, the Licensee has consented to transferring the ownership of certain assets to Council in lieu of any/all remaining rental payments. These assets will be beneficial to Council in the operation of any future Visitor Information Centre.

Council endorsement is now required in order to terminate the licence and to execute a Deed of Termination.

RECOMMENDATION

1. **That Council approves the termination of the Licence Agreement subject to:**
 - a) **all costs associated with the termination being borne by the Licensee;**
 - b) **the termination date of the Agreement be no sooner than 31 December 2018;**
 - c) **the ownership of the following be transferred to Council at no cost to Council:**
 - i. **the Glenelg Visitor Information Centre Trading Business Name;**
 - ii. **the Glenelg Visitor Information Centre phone number**
 - iii. **the Glenelg Visitor Information Centre email address;**
 - iv. **all relevant Brochure stock and Accreditation Operations Manual(s);**

2. That the Mayor and Chief Executive Officer be authorised to execute and seal any documents required to give effect to this termination.

RETAIN IN CONFIDENCE - Section 91(7) Order

3. That having considered Agenda Item: 17.1 Report No: 403/18 Licence Agreement - Glenelg Tourism Pty Ltd & Temptation Sailing Pty Ltd in confidence under section 90(2) and (3)(b, d & h) of the *Local Government Act 1999*, the Council, pursuant to section 91(7) of that Act, orders that any details outlined in Report No: 403/18 Glenelg Tourism Pty Ltd & Temptation Sailing Pty Ltd Licence Agreement and associated minutes that pertain to the Licensee, Licence Agreement, Commercial Operations, and/or the specific terms of the termination be retained in confidence for a period of 12 months;
 4. However, that the Mayor, Chief Executive Officer and Elected Members be authorised to advise the community that the existing Licence Agreement held between Council, Glenelg Tourism Pty Ltd & Temptation Sailing Pty Ltd has been mutually terminated.
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COMMUNITY PLAN

Community: Providing welcoming and accessible facilities

Economy: Supporting and growing local business

Economy: Making it easier to do business

Economy: Boosting our visitor economy

COUNCIL POLICY

Commercial Leasing Policy.

STATUTORY PROVISIONS

Local Government Act 1999.

Retail and Commercial Leases Act 1995.

BACKGROUND

Previous Reports, Applications and Decisions

- Council Report (No.: 281/17; Item No.: 14.5) 22 August 2017, *'New Licence Agreement - Visitor Information Centre – Glenelg Town Hall* (Resolution No.: C220817/885);
- Council Report (No.: 295/15; Item No.: 17.10) 13 October 2015, *'Glenelg Town Hall – Visitor Information Centre - Licence* (Resolution No.: C131015/225);

- Council Report (No.: 452/14; Item No.: 14.6) 28 October 2014, 'Glenelg Town Hall – Visitor Information Centre Licence (Resolution No.: C281014/1278);

REPORT

Licence Agreement

The non-exclusive Licence Agreement held between Council, the Glenelg Tourism Pty Ltd ("*Licensee*") and Temptation Sailing Pty Ltd ("*Licensee*") commenced 17 November 2017 for a period of three (3) years (expiring 16 November 2020), for the purpose of allowing the Licensees to occupy a portion of Council owned land located on the Ground Floor of the Glenelg Town Hall (approximately 13m²), to which the Licensee were required to pay a commencing annual Licence Fee of \$4,515 (plus GST and subject to annual CPI Increases).

Request to Terminate

On 28 September 2018 the Licensees approached Administration seeking to terminate the Agreement. The Licensees have stated that due to the significant impost of having to employ staff across seven (7) days (pursuant to the terms of Agreement), and the ongoing downturn in sales, the business can no longer sustainably operate from this location.

Impact of Termination to Council

In accordance with the terms and conditions of the Agreement, over the total three (3) year period the Licensees are obligated to pay Council commercial rental fees totalling \$13,545 (plus GST and annual CPI Increases). Noting that as at the date of this report, the Agreement has only been operational for a period of 13 months into the full term of the Licence, Council's forecast lost rent would amount to \$8,653.75 (plus GST and annual CPI increases) over the remaining term should this Agreement be terminated forthwith.

Initial Proposed Terms of Termination

Following discussions with the Licensees, they have indicated that as part of the termination, they are willing to transfer the ownership of the following to Council at no cost to Council in lieu of any/all remaining licence fees:

- the Glenelg Visitor Information Centre Trading Business Name;
- the Glenelg Visitor Information Centre phone number
- the Glenelg Visitor Information Centre email address;
- all relevant Brochure stock and Accreditation Operations Manual(s).

It is estimated that the worth of these assets exceeds the deficit position Council will be placed in.

BUDGET

Should Council resolve to support the termination, the budget will be negatively impacted by \$8,653.75 (plus GST and annual CPI increases) over the remaining term of the Licence Agreement. An annual budget allocation is provided to City Assets & Services for the review and implementation of property leases. This budget includes the engagement of legal advice and services when and where necessary.

LIFE CYCLE COSTS

Council's Marketing and Tourism Department is currently exploring alternative options for the site, with the expectation that subsequent rental revenue can be re-established.

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