

## ITEM NUMBER: 18.1

### CONFIDENTIAL REPORT

#### TRAMSIDE KIOSK LEASE

*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: 302/22 Tramside Kiosk Lease 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: 302/22 Tramside Kiosk Lease 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 would prejudice the commercial position of the Council; and
    - 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.

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: 18.1

Subject: **TRAMSIDE KIOSK LEASE**

Date: 26 July 2022

Written By: Property Officer

General Manager: Strategy and Corporate, Ms P Jackson

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### **SUMMARY**

Following an Expression of Interest process for the provision of a café service in the historic tram at Wigley Reserve, Council granted to Unique Hospitality Group Pty Ltd (as the preferred tenderer) a lease over the tram and its immediate surrounds for a term of one (1) year commencing on 3 November 2020 with an option to renew for a further term of one (1) year.

Unique Hospitality Group Pty Ltd exercised its right of renewal for the one (1) year term commencing on 3 November 2021 and Council granted the said extension of lease by way of resolution dated 24 May 2022 (C240522/2615).

Administration has been in negotiations with Unique Hospitality Group Pty Ltd regarding future leasing arrangements and it is proposed that Council grant to Unique Hospitality Group Pty Ltd a new lease for a term of one (1) year commencing on 3 November 2022 with two (2) options to renew each for a further term of one (1) year as discussed herein.

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### **RECOMMENDATION**

#### **That Council:**

1. **enters into a further Memorandum of Lease with Unique Hospitality Group Pty Ltd in respect of that portion of land comprised in Certificate of Title Volume 5935 Folio 965 as delineated in yellow on the plan annexed hereto as Attachment 1 and more particularly comprising the Kiosk and the Tram situated at Wigley Reserve for a term of one (1) year commencing on 3 November 2022 and expiring on 2 November 2023 and otherwise on the terms and conditions outlined herein; and**
2. **authorise the Mayor and the Chief Executive Officer to execute and seal any documents required to give effect to the Memorandum of Lease commencing on 3 November 2022 and any further extensions of the said lease thereafter.**

#### **RETAIN IN CONFIDENCE - Section 91(7) Order**

4. **That having considered Agenda Item 18.1 Tramside Kiosk Lease (Report No: 302/22) in confidence under section 90(2) and (3)(b & d) of the *Local Government Act 1999*,**

**the Council, pursuant to section 91(7) of that Act orders that the Report and Minutes be retained for the duration of the approved lease period (provided always that the release of the Report and Minutes is subject to the redaction of any financial information contained therein).**

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## **STRATEGIC PLAN**

The recommendation supports the Vision in that it extends the economic use of the heritage tram, while activating the space as a welcoming place for all.

## **COUNCIL POLICY**

Commercial Leasing Policy

## **STATUTORY PROVISIONS**

*Local Government Act 1999 (SA)*

*Retail and Commercial Leases Act 1995 (SA)*

## **BACKGROUND**

### **Previous Relevant Reports**

- Confidential Council Report No. 293/20; Item No. 18.5, *“Unsolicited Proposal – Proposed Activation”*, 22 September 2020 (Resolution No. C220920/2067).
- Confidential Council Report No. 105/22; Item No. 18.1, *“Tramside Kiosk Extension of Lease”*, 24 May 2022 (Resolution No. C240522/2615).

Pursuant to an undated Memorandum of Lease, Council (as lessor) granted to Unique Hospitality Group Pty Ltd (**UHG**) (as lessee) a lease in respect of that portion of the land comprised in Certificate of Title Volume 5935 Folio 965 delineated in yellow on the plan annexed hereto as Attachment 1 and situate at Wigley Reserve, Adelphi Terrace, Glenelg SA 5045 (**Premises**) for a term of one (1) year commencing on 3 November 2020 and expiring on 2 November 2021 with one (1) right of renewal for a further term of one (1) year and otherwise on the terms and conditions contained therein (**Lease**).

*Refer Attachment 1*

Pursuant to a Deed of Extension and Variation of Lease dated 31 May 2022, UHG extended the term of the Lease for a further period of one (1) year commencing on 3 November 2021 and expiring on 2 November 2022.

As noted in Council Report No. 105/22, UHG expressed interest in extending the Lease following the expiry of the renewed term on 2 November 2022 and Administration has been in negotiations with Unique Hospitality Group Pty Ltd regarding future leasing arrangements.

## REPORT

As the current Lease does not confer on UHG any further rights of renewal, it is recommended that Council and UGH enter into a new lease on the same terms and conditions as contained in the current Lease with the exception of the following:

<b>Term:</b>	One (1) year commencing on 3 November 2022
<b>Renewal Options:</b>	Two (2) rights of renewal each for a further term of one (1) year commencing on 3 November 2023 and 3 November 2024 respectively
<b>Commencing Rent:</b>	\$30,000.00 plus GST
<b>Rent Review:</b>	Annual CPI increases
<b>Redevelopment:</b>	Redevelopment provision to be included in the lease allowing Council to terminate the Lease upon giving written notice to UHG

The proposed lease will provide the time required for Council to reinvigorate the old Buffalo site whilst ensuring the provision of café services at Wigley Reserve in the meantime. The inclusion of a redevelopment provision in the new lease will also enable Council to obtain vacant possession as and when required.

### Rent

As discussed in Council Report No. 105/22, the annual rent payable during the first year of the Lease was \$28,000.00 plus GST but dropped to \$16,539.11 plus GST during the second year of the Lease due to a combination of factors including but not limited to:

- the percentage turnover rent review mechanism;
- the kiosk being a new venture (ventures of this type usually need to trade for two (2) full years to build up their customer base and a solid revenue);
- the weather (the location of the kiosk is such that it bears the brunt of the wind and rain with many of its customers being visitors to the playground);
- COVID; and
- the redevelopment of the playground.

However, UHG's business is steadily growing and it is expected that their turnover will have increased to the amount initially forecast by UHG by 2 November 2022. As such, the parties have negotiated a commencing annual rent of \$30,000.00 plus GST which will return Council to the financial position that it would have been in had the rent been reviewed to CPI rather than in accordance with a percentage turnover.

## **BUDGET**

There will be a positive budget impact due to the increase in rent as discussed above.

## **LIFE CYCLE COSTS**

Under the terms of the new lease, Council will be responsible for the structural maintenance of the tram, the costs of which is included in both the long term financial and asset management plans.

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# Annexure A – Plan of Leased and Licensed Premises

