

REF: CM168/09

**TENDER FOR PROPOSED LEASE TO OPERATE/OCCUPY THE BULLI BEACH CAFE/KIOSK AND ANCILLARY ACCOMMODATION - PART LOT 68 DP 1102884 TRINITY ROW, BULLI - TENDER T09-20**  
Report of Director Infrastructure & Works (WD) 2/09/09 04.17.02.352

**PRECIS**

The current lease to operate/occupy the Bulli Beach Café/Kiosk and ancillary accommodation expires on 30 September 2009. A tender process has been undertaken for the proposed lease.

The importance of this facility for the northern suburbs, being located in a prime tourist position, was considered in the assessment. The existing lessee has operated the business (Ruby's) since July 2001.

**RECOMMENDATION**

- 1 In accordance with the Local Government (General) Regulations 2005, Clause 178 (1) (a), Council accept the tender by Sea Salt at Bulli Beach for the lease to operate/occupy the Bulli Beach Café/Kiosk and ancillary accommodation for the tendered sum of \$138,476.
- 2 Authority be granted to enter into a lease as follows:

<b>Lessee:</b>	<b>Sea Salt on Bulli Beach</b>
<b>Area to be Leased:</b>	<b>Kiosk and residence located on Part Lot 68 DP 1102884 Trinity Row, Bulli</b>
<b>Permitted Use:</b>	<b>Predominant Use – Kiosk for sale of food, non-alcoholic drinks (subject to Clause 24) and bathing accessories; and Secondary Use – Accommodation for the lessee only to the extent that it is ancillary to the predominant use.</b>
<b>Term:</b>	<b>5-year plus 5-year option</b>
<b>Date of Commencement:</b>	<b>1 November 2009 (tentative)</b>
<b>Commencing Rent:</b>	<b>\$138,476 + GST payable monthly in advance</b>
<b>Review of Rent:</b>	<b>Annual reviews at 4% during the term of the lease with an additional rent of 2% of gross annual turnover in excess of \$2 million.</b>
<b>Security Amount:</b>	<b>The equivalent of three (3) months rent (+GST).</b>
<b>Outgoings:</b>	<b>The Lessee is to be responsible for the payment of all outgoings whatsoever related to the leased area.</b>
- 3 Council delegate to the General Manager the authority to finalise and execute the lease and any other documentation required to give effect to this resolution.
- 4 Council grant authority for the use of the Common Seal of Council on the lease and any other documentation, should it be required, to give effect to this resolution.

**ITEM 3**

## BACKGROUND

The lease to operate/occupy the Bulli Beach Café/Kiosk and ancillary accommodation expires on 30 September 2009. As it was proposed to offer a lease in excess of 5 years, tenders were invited by the open tender method with a close of tenders of 3.00 pm on Friday, 21 August 2009.

The current lessees acquired the business in July 2001. The lease terminated on 30 September 2004, however, following representations from the lessee, Council granted a further five year extension to that lease which is due to terminate on 30 September 2009.

Fourteen (14) tenders were received by the close of tenders and all tenders have been scrutinised and assessed by a Tender Assessment Panel comprising representatives of the Governance and Information, Finance and Property and Recreation Divisions.

The Tender Assessment Panel assessed all tenders in accordance with the following assessment criteria as set out in the formal tender documents:

Criteria	Weight
Tendered price per annum to be paid in Year 1 (exclusive of GST)	45%
Demonstrated experience in operating a café/kiosk	30%
Range of foods proposed to be sold	10%
Demonstrated Occupational Health & Safety (OH&S) and Risk Management Policies and Procedures	10%
Ability to commence operations within 28 days notice. Yes/No	5%

The Tender Assessment Panel utilised a numerical scoring method for the assessment of tenders which allocates a numerical score out of 5 in relation to the level of compliance offered by the tenders to each of the assessment criteria as specified in the tender documentation. The method then takes into account pre-determined weightings for each of the assessment criteria which provides for a total score out of 5 to be calculated for each tender. The tender with the highest total score is considered to be the tender that best meets the requirements of the tender documentation in providing best value to Council. Table 1 below summarises the results of the tender assessment and the ranking of tenders.

**Table 1 – Summary of Tender Assessment**

Tenderer	Price (GST exclusive)	Assessment Score	Ranking
Sea Salt on Bulli Beach	\$138,476	4.80	1
R & R Lisk	\$136,300	4.72	2
John Christensen	\$136,360	4.52	3
A Marlos	\$122,850	4.23	4
L & M Gripton	\$120,000	4.13	5
J Weatherup, Black Duck Diner Pty Ltd	\$116,100	3.88	6
D Vidal, V Rizzo & A Scioscia	\$110,000	3.36	7
A Bridger	\$92,200	2.61	8
T D'Amico, G McLeod & F Poole	\$87,501.06	2.54	9
D Povovski & G Nedanovski	\$80,080	2.17	Equal 10
G Patouklias	\$80,000	2.17	Equal 10

Tenderer	Price (GST exclusive)	Assessment Score	Ranking
S Crinis	\$83,000	2.07	12
Platinum Catering Management Pty Ltd	\$76,836.50	1.75	13
S & G Elchaar	\$79,000	1.53	14

The tender submitted by Sea Salt at Bulli Beach offered the highest rent to Council (represents an increase of \$63,475 pa (GST exclusive) or 54.2% on the current rent payable to Council) which was the highest weighted criteria in assessment.

The importance of this facility for the northern suburbs, being located in a prime tourist position, was considered in the assessment. This was reflected in the criteria of “Demonstrated experience” and “Range of foods proposed to be sold”.

The tender panel interviewed the top six applicants. Sea Salt on Bulli Beach confirmed to the panel their ability to operate the business and to comply with the conditions of the draft lease agreement most successfully. Sea Salt on Bulli Beach representatives have had substantial experience in the operation of café businesses in the Wollongong and Queensland areas and are proposing to introduce a broad range of foods to be sold at the Bulli Beach premises.

During the tender period, the proposed lease was also advertised in accordance with the requirements of Sec 47 of the Local Government Act 1993. No objections or submissions were received and Council is able to grant the lease without referral to the Minister for Local Government.

### PROPOSAL

Council accept the tender of Sea Salt on Bulli Beach to operate/occupy the Bulli Beach Café/Kiosk and Residence and enter into a lease with the successful tenderer in accordance with the terms and conditions outlined below:

<b>Lessee:</b>	Sea Salt on Bulli Beach
<b>Area to be Leased:</b>	Kiosk and residence located on Part Lot 68 DP 1102884 Trinity Row, Bulli
<b>Permitted Use:</b>	Predominant Use – Kiosk for sale of food, non-alcoholic drinks (subject to Clause 24) and bathing accessories; and Secondary Use – Accommodation for the lessee only to the extent that it is ancillary to the predominant use.
<b>Term:</b>	5 Year plus 5 Year Option.
<b>Date of Commencement:</b>	1 November 2009 (tentative)
<b>Commencing rent</b>	\$138,476 + GST payable monthly in advance.
<b>Review of Rent:</b>	Annual reviews at 4% during the term of the lease with an additional rent of 2% of gross annual turnover in excess of \$2 million.
<b>Security Amount :</b>	The equivalent of three (3) months rent (+GST).

**Outgoings:** The Lessee is to be responsible for the payment of all outgoings whatsoever related to the leased area.

**Special Conditions:** Alcohol must not be sold on the leased property without prior consent.

No advertisement or advertising matter shall be erected or placed or permitted to remain on the area leased without prior written consent from Council.

Lessee must not carry out any structural work or improvements to the area under lease without prior approval from Council.

Lessee shall ensure that the public toilets that form part of the leased premises are locked each evening no earlier than 5pm and no later than 8pm.

**Insurance:** The Lessee is to effect Public and Products Liability insurance for a minimum of \$10 million and Property Insurance (including Plate Glass) for the full replacement value currently \$1.644M in Council's 2009 Building Valuations listing.

On the anniversary of the lease term, or on request, the Lessee must produce evidence to Council of the current insurance policy.

If the Lessee fails to maintain the required insurance policy, Council may effect the policy and recover the insurance premium from the Lessee as a charge under the lease.

**Maintenance:** Lessor must maintain essential services, repair the roof, ceiling, external walls and the floors of the property and fix structural defects.

Lessee shall be responsible for all minor maintenance, maintain the property in its condition at commencement of the lease and be responsible for repair of fair wear and tear, broken plate glass, locks and hinges and hot water system.

**Legal Costs:** Lessee to pay their own costs associated with the lease agreement (excluding Council's costs).

#### **CONSULTATION AND COMMUNICATION**

- Nominated Referees have been contacted and the Tender Assessment Panel is satisfied that the preferred tenderer has the necessary experience and qualifications to fulfil the requirements of the tender and lease;
- During the period of calling for tenders, a petition supporting the current lessee was delivered to Council by a local resident.
- The proposed lease was advertised for 28 days in accordance with Sec 47 of the Local Government Act 1993 and no objections or submissions were received.

## PLANNING AND POLICY IMPACT

Council's Generic Plan of Management allows for the premises to be leased in accordance with the tender.

The calling for tenders is consistent with the provisions of the Local Government Act 1993 and Councils Commercial Lease Policy.

## FINANCIAL IMPLICATIONS

The recommended tender provides for rent to be paid to Council in Year 1 to be \$138,476 pa (GST Exclusive) with annual reviews at 4% during the term of the lease. In addition, the lease provides that rent from Year 2 also include an amount being 2% of gross turnover in excess of \$2 million.

The tendered amount for the first year provides for an increase of \$63,475 pa (or 54.2%) on the current rental received (currently \$75,001 pa).

## CONCLUSION

The Tender Panel is unanimous in the view that Sea Salt at Bulli Beach provided the best value tender and have recommended that they be awarded the tender in accordance with the terms and conditions of Tender T09-20.

Name	Position Title
<b>Author:</b>	
Wayne Douglass	Property Services Manager
<b>Authorised by:</b>	
Peter Kofod	Director Infrastructure & Works

## ATTACHMENTS

There are no attachments for this report.