POWLETT RESERVE TENNIS FACILITY – PROPOSAL TO ENTER INTO LEASE

Division
Design and Urban Environment

Presenter
Graham Porteous, Manager Recreation and Waterways

Purpose
1. To seek Council approval to enter into a lease agreement with Chris Ackermann Tennis Pty Ltd for the Powlett Reserve Tennis Centre for a period of five years, with a five year option to renew, subject to the receipt and consideration of submissions pursuant to Section 190 and 223 of the Local Government Act 1989, and the approval in writing of the Minister responsible for Crown Land (“the Minister”).

Recommendation from Management
2. That the Finance and Governance Committee recommend that Council:

   2.1. pursuant to Section 17D of the Crown Land (Reserves) Act 1978, and Sections 190 and 223 of the Local Government Act 1989 (“the Act”), propose to enter into a lease with Chris Ackermann Tennis Pty Ltd (“lessee”) for the Powlett Reserve Tennis Centre for a period of five years, with a five year option to renew, subject to the approval of the Minister and to paragraphs 2.2 - 2.4 of the recommendation below on the following terms and conditions:

      2.1.1. a lease term of five years, commencing on a date to be fixed;

      2.1.2. a rental of $50,000 per annum (excluding GST) by equal monthly instalments of $4,167, with annual CPI increase;

      2.1.3. the lessee will be responsible for the payment of all statutory outgoings, charges and levies imposed during the lease and will include Municipal Rates and State Land Tax on a single holding;

      2.1.4. the lessee will be required to completely resurface the five tennis courts at the Reserve by 30 June 2009 or earlier if required, at a cost to be borne by the lessee; and

      2.1.5. such other terms and conditions as may be required by the Manager Legal Services or the Minister.

   2.2. authorise the Administration to prepare and give public notice of the proposed lease in accordance with sections 190 and 223 of the Act;
2.3. in accordance with section 223 of the Act appoint its Submissions (Section 223) Committee, to:

2.3.1. consider any written submissions received in relation to the proposed lease;

2.3.2. hear any person wishing to be heard in support of a written submission, at a meeting of the Submissions (Section 223) Committee;

2.3.3. if written submissions are received, report back with recommendations to the Council through the Finance and Governance Committee; and

2.4. note that if no submissions are received, the proposed lease will be executed under delegation in accordance with the terms and conditions specified in paragraph 2.1 above.

Background

3. The Council, as Committee of Management for Powlett Reserve, Corner Albert and Simpson Street, East Melbourne has the power to enter into a lease agreement pursuant to Section 17D of the Crown Land (Reserves) Act 1978, subject to the approval in writing of the Minister.

4. In May 1997, pursuant to a competitive bid process, Council entered into a six year lease with Victorian Tennis Academy to operate Powlett Reserve Tennis Centre. An option to extend was taken up for a further three years. The lease expired on 30 September 2006, and the tenant has continued to manage the facility on an overholding basis.

5. The facility is currently returning an annual rental of $70,000 to Council.

6. Powlett Reserve comprises five sand filled artificial grass courts, sports lighting and a small pavilion. The courts are available for public hire at commercial rates during weekdays and weekends. Extensive use is made of the facilities including coaching clinics, mid week tournaments and use by local schools.

Key Issues

7. In accordance with Council’s competitive bid process, invitations to tender for the lease of Powlett Reserve Tennis Facility were advertised in “The Age” newspaper on 10, 14, 17 and 21 May 2008. Three tender submissions were received.

8. Tenderers were required to clearly address the following criteria in their submission:

- Demonstrated financial capacity, annual net rental offered and proposed schedule of fees and charges;
- Full details of their experience in the operation, management and marketing of tennis playing facilities for commercial profit;
- Details of staff qualifications;
- Demonstrated awareness of the importance of professionalism, customer service and presentation of premises;
- Proposed hours of operation, including the provision for at least one court to be made available for casual community hire;
- Proposed marketing plan; and
- Proposed facility maintenance plan.
9. In addition, the tender stipulated a requirement for the successful tenderer to completely resurface the five tennis courts at Powlett Reserve by 30 June 2009 or earlier if required, at their own cost. It was estimated by Tennis Victoria in June 2007 that this work would cost in the vicinity of $100,000 for removal and replacement of the carpet and minor repairs to the existing court bases.

10. The Lease Tender Evaluation Panel (TEP) consisted of Graham Porteous (Chair), Manager Recreation and Waterways, Rachel Golonka, Recreation Projects Officer, Robert Skilton, Property Management Officer and Ron Leong, Financial Analyst.

11. The “Evaluation Criteria” utilised by the Lease Tender Evaluation Panel is shown in order of importance:

<table>
<thead>
<tr>
<th>Evaluation Criteria</th>
<th>Weighting</th>
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<tbody>
<tr>
<td><strong>Financial</strong></td>
<td>40%</td>
</tr>
<tr>
<td>• Annual net rental offered</td>
<td></td>
</tr>
<tr>
<td>• Financial capacity</td>
<td></td>
</tr>
<tr>
<td><strong>Plans for Proposed Services</strong></td>
<td>30%</td>
</tr>
<tr>
<td>• Resource capacity</td>
<td></td>
</tr>
<tr>
<td>• Methodology, innovations</td>
<td></td>
</tr>
<tr>
<td>• Community programming</td>
<td></td>
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<tr>
<td><strong>Relevant Experience/Past Performance</strong></td>
<td>25%</td>
</tr>
<tr>
<td>• Related or specific experience</td>
<td></td>
</tr>
<tr>
<td>• Company organisational structure</td>
<td></td>
</tr>
<tr>
<td><strong>Quality Systems</strong></td>
<td>5%</td>
</tr>
<tr>
<td>• OH&amp;S programs</td>
<td></td>
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</tbody>
</table>

12. The following bidders responded to the Invitation to Tender:

<table>
<thead>
<tr>
<th>Name of Bidder</th>
<th>Rental Offered</th>
</tr>
</thead>
<tbody>
<tr>
<td>Chris Ackermann Tennis Pty Ltd</td>
<td>$50,000 pa</td>
</tr>
<tr>
<td>Victorian Tennis Academy Pty Ltd</td>
<td>$40,000 pa</td>
</tr>
<tr>
<td>Tennis Australia</td>
<td>$7,544 pa (average over 5 years)</td>
</tr>
</tbody>
</table>
13. Submissions were individually scored by assessing their strengths and weaknesses against the evaluation criteria. The strengths and weaknesses of each submission follows:

13.1. **Chris Ackermann Tennis Pty Ltd – Strengths**

13.1.1. Offered highest rental to Council;

13.1.2. Financial information requested indicates the company has access to adequate financial resources to perform the contract;

13.1.3. Nine years experience managing a community tennis facility for City of Melbourne at Fawkner Park. During this time has resurfaced six courts and renovated tea rooms; and

13.1.4. Staff have extensive qualifications and experience.

13.2. **Chris Ackermann Tennis Pty Ltd – Weaknesses**

13.2.1. No OH&S manual submitted, though committed to a full audit and formal policy within first three months of the lease.

13.3. **Victorian Tennis Academy Pty Ltd – Strengths**

13.3.1. Has been managing the Powlett Reserve facility for over ten years;

13.3.2. Has all available equipment and resources to undertake lease; and

13.3.3. Has a good relationship with the local East Melbourne community.

13.4. **Victorian Tennis Academy - Weaknesses**

13.4.1. Financials provided are unclear and not systematically presented;

13.4.2. Poor quality submission; and

13.4.3. Lower ranking on management and administrative practices.

13.5. **Tennis Australia – Strengths**

13.5.1. Significant capital investment proposed on courts; and

13.5.2. Fully supported by Tennis Australia’s corporate and organisation structure.

13.6. **Tennis Australia – Weaknesses**

13.6.1. Low rental offered over the five years, with zero return proposed in years 1 and 2;

13.6.2. Proposed court upgrade is to clay. This is not considered suitable for the East Melbourne community (based on local surveys conducted by incumbent at request of Council in 2007); and

13.6.3. No specific experience cited managing a local community facility.
Time Frame

14. The existing lease at Powlett Reserve Tennis Centre expired on 30 September 2006 and has been operating on an over holding basis since then.

15. The time frame for renegotiation of the lease was delayed considerably due to a proposal and ongoing discussions with Victorian Tennis Academy and Tennis Australia about the possibility of installing European style clay courts at Powlett Reserve. These discussions were eventually discontinued as a result of Tennis Australia no longer wanting to pursue that option. It was then determined to pursue an open tender process for the lease.

Relation to Council Policy

16. The City Plan 2010 has a number of Strategic Directions relating to the granting of this lease:

16.1. Strategic Direction 1.7 commits Council to: “Manage all City Parkland to provide a mix of active and passive recreation facilities”;

16.2. Strategic Direction 3.2 commits Council to: “Meet the diverse needs of city residents, workers and visitors by providing a range of affordable and equitable services and facilities”; and

16.3. Strategic Direction 3.5 commits Council to: “Provide and maintain a variety of quality parklands and informal public spaces to meet the passive and active recreational needs of the community”.

Consultation

17. In accordance with the Act, an advertisement will be placed in the Age newspaper and corporate advertisement in the local papers in September 2008 inviting members of the community to make submissions. Council will respond to any feedback received and incorporate feedback into the new lease as appropriate.

Government Relations

18. Council officers have corresponded with the Department of Sustainability and Environment and received approval for the grant and purpose of the lease. The lease requires approval by the Manager Public Land Management, as delegate of the Minister.

Finance

19. The rental income is included in the 08/09 budget.

20. The new lease will result in a reduction of $20,000 rental to Council annually from the previous lease; however, capital improvements in the vicinity of $100,000 for resurfacing of the courts will be undertaken by 30 June 2009 at no cost to Council. The loss of operational revenue will be offset by savings within the Recreation and Waterways budget.
Legal

21. The statutory framework for entering into the lease has been accurately described in the report.
FINANCE ATTACHMENT

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The financial implications arising from the recommendation are fully detailed in the body of the report.

Joe Groher
Manager Financial Services
LEGAL ATTACHMENT

POWLETT RESERVE TENNIS FACILITY – PROPOSAL TO ENTER INTO LEASE

Pursuant to section 190(3) of the Local Government Act 1989 ("the Act"), where a Council proposes to enter into a lease for:

- one year or more where rental for any period of the lease is $50,000 or more per annum;
- one year or more where the current rental value of the land is $50,000 or more per annum;
- 10 years or more (including options); or
- a lease which is a building or improving lease,

the Council must give at least four weeks public notice of the proposal and invite submissions in respect to the proposal in accordance with section 223 of the Act.

Section 223 of the Act provides the Council, or where the Council so determines, a committee of the Council must consider any written submission received by the Council within 14 days after the public notice.

If submissions are received, the Council must take into consideration the submissions prior to making a final decision and must notify submitters in writing of the Council decision and the reason for its decision.

In addition, as the proposed lease would be entered into by Council as Committee of Management under the Crown Land (Reserves) Act 1978 the consent of the responsible Minister would be a precondition to its granting.

Kim Wood
Manager Legal Services