

Whitmore Square Commercial Tenancy

ITEM 12.1.2 13/07/2021
Council

Strategic Alignment - Enabling Priorities

Program Contact:

Shaun Coulls, Associate Director,
Strategic Property and
Commercial 8203 7537

Approving Officer:

Tom McCready, Acting Director
City Shaping

2021/01240

Confidential - s 90(3) (b) & (d) commercial advantage/prejudice commercial position of council/commercial information of a confidential nature

EXECUTIVE SUMMARY

In April 2020 Council considered a report in relation to the Strategic Property Review. The comprehensive review led to the preparation of the Strategic Property Action Plan (supported by an independent review undertaken by JLL) providing a future roadmap of opportunities associated with Council's assets including City shaping projects.

In part, the resolution of Council from the 14 April 2020 approved "*in principle the sale of under-performing assets estimated in the order of \$25 million to \$30 million with net sale proceeds to mitigate Council's Long Term Financial Plan by way of a reinvestment of funds into City shaping and income generating opportunities.*"

In this regard, Council approved a range of asset and city shaping opportunities noting that such opportunities would be the subject of further investigation and market engagement. This included the existing Whitmore Square commercial tenancy which was identified as a divestment opportunity.

Council has been approached by the existing tenant of the Whitmore Square commercial tenancy, Café Troppo, with an offer to purchase the existing tenancy. This report is to seek Council approval to proceed to finalise the sale of this property to the existing Lessee.

Consideration in confidence is sought because it contains commercial information of confidential nature provided by a third party.

RECOMMENDATION

THAT COUNCIL

1. Notes the offer to purchase from Phil Harris and Annie Hastwell for the Whitmore Square Commercial Tenancy and one associated car park at 42 Whitmore Square as contained within Attachment A to Item 12.1.2 on the Agenda for the meeting of the Council held on 13 July 2021.
2. Authorises the Chief Executive Officer to negotiate and execute an agreement with Phil Harris and Annie Hastwell or their nominated entity for the sale of the Whitmore Square Commercial Tenancy and associated car park.
3. Authorises the Chief Executive Officer to sign and affix as necessary the common seal with the signature of the Lord Mayor for all legal documentation to give affect to the sale of the Whitmore Square Commercial Tenancy and associated car park including the Contract for Sale and all documentation contemplated to be executed under the Contract for Sale.
4. In accordance with Section 91(7) and (9) of the *Local Government Act 1999 (SA)* and because Item 12.1.2 [Whitmore Square Tenancy] listed on the Agenda for the meeting of the Council held on 13 July 2021 was received, discussed and considered in confidence pursuant to Section 90(3) (b) & (d) of the *Local Government Act 1999 (SA)*, this meeting of the Council do order that
 - 4.1 The resolution, the report, the discussion and any other associated information submitted to this meeting and the Minutes of this meeting in relation to the matter remain confidential and not available for public inspection until 31 December 2028.
 - 4.2 The confidentiality of the matter be reviewed in December 2022.

- 4.3 The Chief Executive Officer be delegated the authority to review and revoke all or part of the order herein and directed to present a report containing the Item for which the confidentiality order has been revoked.
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Confidential

IMPLICATIONS AND FINANCIALS

City of Adelaide 2020-2024 Strategic Plan	Strategic Alignment – Enabling Priorities Implementation of the actions proposed within the Strategic Property Review.
Policy	The Strategic Property Review supports the Acquisition and Disposal of Land and Infrastructure Assets Policy which requires Council to regularly review its assets ensuring value for money and growth in community wealth.
Consultation	Not as a result of this report
Resource	The actions contained within this report will be undertaken by Property & Commercial Program.
Risk / Legal / Legislative	Legal and Conveyancing to assist with preparation of sales documentation.
Opportunities	The capital proceeds from the Whitmore Square commercial tenancy sale will be invested into Council's Future Fund (as per the Treasury Policy).
21/22 Budget Allocation	The Property & Commercial Program's 2021/22 budget incorporates \$100,000 to undertake further investigations for opportunities identified by the Strategic Property Action Plan. The Whitmore Square property currently generates a net favourable position of \$24,000. Sale of the property will result in a net loss of revenue of \$24,000, pro-rated for 21/22 based on settlement date. The capital proceeds of \$427,500 net of sale costs, will be allocated to the future fund and reduce the debt borrowings balance. This debt reduction will generate interest savings on loans of approximately \$5,000 p.a.
Proposed 22/23 Budget Allocation	The net loss of revenue, reduction in borrowings and resulting interest savings will have an ongoing impact for future budgets and the Long Term Financial Plan (LTFP).
Life of Project, Service, Initiative or (Expectancy of) Asset	Not as a result of this report
21/22 Budget Reconsideration (if applicable)	The operating impact is a net loss of revenue of \$24,000 (pro-rata subject to settlement which is likely to be in August 2021) and this will be accounted for at budget review.
Ongoing Costs (eg maintenance cost)	The current cost to Council (as landlord) of its contribution to the Body Corporate's sinking fund of \$464 per annum will no longer be required. Other maintenance costs have been minor in nature over the years but note the short term concern about the concrete floor.
Other Funding Sources	Council's Long Term Financial Plan incorporates revenue of \$25 million in 2023/24 as a result of asset sales.

GROUNDS AND BASIS FOR CONSIDERATION IN CONFIDENCE

Grounds

Section 90(3) (b) of the *Local Government Act 1999 (SA)*

- (b) information the disclosure of which—
 - (i) 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
 - (ii) would, on balance, be contrary to the public interest

Section 90(3) (d) of the *Local Government Act 1999 (SA)*

- (d) commercial information of a confidential nature (not being a trade secret) the disclosure of which—
 - (i) 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
 - (ii) would, on balance, be contrary to the public interest

Basis

This Item is confidential because it contains commercial information of a confidential nature of a third party, the disclosure of which could prejudice the commercial position of the person who supplied the information and prejudice the commercial position of the Council with regard to its commercial dealing on the asset.

Public Interest

The Council is satisfied that the principle that the meeting be conducted in a place open to the public has been outweighed in the circumstances because the disclosure of this information prior to a determination of the Council as it may prejudice Council's further commercial dealing with regard to the asset. On this basis, the disclosure of such information may severely prejudice Council's ability to influence the proposal for the benefit of the Council and the community.

DISCUSSION

1. The Whitmore Square eco-affordable housing development was completed in 2010 and comprises 26 apartments and one commercial tenancy.
2. In 2010, shortly after the construction was completed, Phil Harris and Annie Hastwell (The Lessee) entered into a lease with the City of Adelaide to operate a café (known as Café Troppo) within the commercial tenancy located on the corner of Sturt Street and Whitmore Square. The lease has a term of 5 + 5 years and will expire in February 2022.
3. In April 2020, Council was presented with the initial findings of the Strategic Property Review. The findings in relation to Whitmore Square included:
 - 3.1. Whitmore Square tenancy (74 m2 with one car space) subject to a five-year lease to Café Troppo ending in 2022 with a net rental of \$24,000 per annum.
 - 3.2. Whitmore Square tenancy valued at \$410,000.
 - 3.3. No City shaping or civic value to Council.
 - 3.4. Value has been maximised.
 - 3.5. Explore asset sale including discussions with the existing tenant.
4. In part, the resolution of Council from the 14 April 2020 approved "*in principle the sale of under-performing assets estimated in the order of \$25 million to \$30 million with net sale proceeds to mitigate Council's Long Term Financial Plan by way of a reinvestment of funds into City shaping and income generating opportunities.*"
5. Council also approved a range of asset and city shaping opportunities noting that such opportunities would be the subject of further investigation and market engagement. This included the existing Whitmore Square commercial tenancy which was identified as a divestment opportunity.
6. The tenancy is contained within a ground floor community titled lot with a lettable area of approximately 74 square metres. The Whitmore Square apartments incorporate an undercroft car park, and one space is allocated to the commercial tenancy.
7. An updated independent valuation has been prepared. The report indicates a value in the range of \$420,000 to \$440,000. The valuation analysed recent sales of similar community titled commercial tenancies, capitalisation rates and considered the remaining lease term.
8. The Lessee presented their first offer to Council of \$275,000 + GST in early 2021. The Lessee was advised that this offer would not be presented to Council.
9. An increased offer of \$415,000 + GST with supporting valuation advice was presented to Council in May 2021.
10. The most recent offer of \$427,500 + GST was presented to Council on 4 June 2021 and can be viewed in **Attachment A**. The offer to purchase would enable the Lessee to have a freehold interest securing their future within the city.
11. The revised offer is within the valuation range and is considered acceptable for the following reasons:
 - 11.1. The Acquisition and Disposal of Land and Infrastructure Assets Policy allows Council to direct deal with an existing tenant on the basis that the purchase price is consistent with an independent valuation representing a value and outcome proposition.
 - 11.2. The Lessee is a long-term reliable tenant.
 - 11.3. Café Troppo has established itself as a destination, which supports local musicians, artists and hosts and participates in community events.
 - 11.4. The business has evolved and sensitively works to manage the social problems in and around Whitmore Square.
 - 11.5. The sale of the tenancy to the existing Lessee, will further reinforce their commitment to the building and locality more generally.
 - 11.6. The sale terms proposed include a 10% deposit and short settlement which will ensure Council receives payment quickly.

12. Alternatively, if an agreement with the Lessee cannot be reached, Council would then need to consider placing the property on the open market through an Expression of Interest process. This would require engagement of a Real Estate Agent to market the property.
13. Given the short lease term, it is unknown how then market might consider this property. If a third party was successful in purchasing the property it may result in Café Troppo vacating the premises at the end of their lease.
14. In relation to Council's accounting requirements, the purchase price at \$427,500 + GST is greater than the total value of the asset to be written off upon being an amount of \$405K.
15. The divestment of the commercial tenancy will result in a loss of approximately \$24,000 net rental per annum (increased in line with CPI) which will impact the FY21/22 budget
16. However, given the ageing nature of the asset, the sale will remove Council's future cost implications (as landlord) to maintain the commercial tenancy noting the potential rectification works to the existing floor (which has minor cracking).
17. The next steps include:
 - 17.1. Finalise negotiation and agree on a date for settlement.
 - 17.2. Preparation of all sale contract documentation including the Form 1.
18. The capital proceeds from the Whitmore Square commercial tenancy sale will be invested into Council's Future Fund (as per the Treasury Policy).

ATTACHMENTS

Attachment A – Letter of Offer

- END OF REPORT -



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Ms. Rachel Tassone
Project Manager, Development
Strategic Property and Commercial – City Shaping
Colonel Light Centre,
25 Pirie Street,
Adelaide SA 5000

4.6.21

Dear Rachel,

Re: 42 Whitmore Square, Adelaide: Revised Offer to Purchase

Thankyou for your update yesterday.

We have considered your advice and referred it to our Valuer. We advise our offer is now increased to \$427,500, which is between our Valuer advice and Council's obtained valuation.

As per previous communications, we iterate that our offer is considerate in particular of:

- The remaining short lease (less than 1 year);
- The poor and uncertain state of the Café floor, and refreshment required to some parts of the tenancy shell (after 10 years);
- The context of continuing social friction in Whitmore square (and the consequent threat to property);
- Ongoing pandemic, (global) economic uncertainty and political friction;
- The current Lessee's ability to operate with compassion in the Whitmore Square milieu, to the benefit of the community (and Council); and that this lessee will be retained through this purchase.

We respectfully seek your acceptance of this offer, and in the meantime remain.

Yours sincerely,

Phil Harris per
HASTWELL HARRIS SUPER FUND
ABN 31816681908
33 Gilbert Street,
Gilberton SA 5081

