

City of Fremantle

MINUTES

Special Meeting of Council

Thursday, 6 March 2008
7.00 pm

COUNCIL MEMBERS

Mayor, Peter Tagliaferri
Cr John Alberti
Cr Donna Haney
Cr John Dowson (Deputy Mayor)
Cr Alice King
Cr Doug Thompson
Cr Georgie Adeane

Cr Shirley Mackay
Cr Les Lauder
Cr Brad Pettitt
Cr Bill Massie
Cr Robert Fittock
Cr Jon Strachan

Beaconsfield Ward
City Ward
East Ward
Hilton Ward
North Ward
South Ward

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SPECIAL MEETING OF COUNCIL

MINUTES

DECLARATION OF OPENING / ANNOUNCEMENT OF VISITORS

The Mayor, Mr Peter Tagliaferri declared the meeting open at 7:00pm and welcomed members of the public to the meeting.

NYOONGAR ACKNOWLEDGEMENT STATEMENT

"We acknowledge this land that we meet on today is part of the traditional lands of the Nyoongar people and that we respect their spiritual relationship with their country. We also acknowledge the Nyoongar people as the custodians of the greater Fremantle/Walyalup area and that their cultural and heritage beliefs are still important to the living Nyoongar people today."

ATTENDANCE / APOLOGIES / LEAVE OF ABSENCE

Peter Tagliaferri	Mayor
Cr Shirley Mackay	Beaconsfield Ward
Cr John Alberti	Beaconsfield Ward
Cr Les Lauder	City Ward
Cr Donna Haney	City Ward
Cr Brad Pettitt	East Ward
Cr John Dowson	Deputy Mayor / East Ward
Cr Alice King	Hilton Ward
Cr Bill Massie	Hilton Ward
Cr Robert Fittock	North Ward
Cr Doug Thompson	North Ward
Cr Georgie Adeane	South Ward
Cr Jon Strachan	South Ward
Mr Graeme Mackenzie	Chief Executive Officer
Mr Glen Dougall	Director Corporate Services
Mr Ken Posney	Director Cultural and Community Services
Mr John Amor	Property Co-ordinator
Mr Julius Skinner	Jackson McDonald Lawyers
Mrs Natalie Cameron	Elected Members Support Officer

There were approximately 78 members of the public and 1 member of the media in attendance.

RESPONSE TO PREVIOUS PUBLIC QUESTIONS TAKEN ON NOTICE

Nil

PUBLIC QUESTION TIME

Summary of Comment by Peter Savelsberg

He spoke in relation to item SC0803-1 and expressed his support for the Murdoch's managing the Fremantle Markets.

Summary of Question by Annie Benjamin

She spoke in relation to item SC0803-1. There is a need for major renovations at the Fremantle Markets and she understands that the National Trust have indicated that they are able to provide funds now for this work, which costs a substantial amount of money. If the present lessees are granted the new lease, what guarantee is there that they will have access to these kind of funds immediately, rather than spread the work over several years?

Summary of Response from Mr Glen Dougall, Director Corporate Services

Under the proposed lease provision, in the operating statement, there is a requirement for the Working Group to get together with the lessee to ensure that a plan is developed in how the Conservation Plan is implemented for the Fremantle Markets.

Summary of Comment by Richard Barton

He spoke in relation to item SC0803-1. He has been a stallholder for the past 20 years and he explained that the current lessees have a vast amount of knowledge and experience. Their management style is very good and it is the best deal for Fremantle. He urged Councillors to support the Murdoch's.

Summary of Comment by John Luzny

He spoke in relation to item SC0803-1. He has been a stallholder for the past 4 years and the management have conducted themselves in a very professional manner. They have worked hard for the Fremantle Markets and their stallholders. He urged Councillors to support the Murdoch's.

Summary of Question by Dr Ian Alexander

He spoke in relation to item SC0803-1. He asked why is it that the tender process has not been opened up? The Business Plan is really an evaluation of just one proposal, which is the current lessees. He expressed his concern that there is no choice. Is this because of legal process, legal questions and he would like to get to the truth.

Summary of Response by Mayor, Peter Tagliaferri

Mr CEO.

Summary of Response from Mr Graeme Mackenzie, Chief Executive Officer

This question has been asked and answered before. In short, your last comments are the right answer. It has been a legal process. What has to be remembered here, is that the Business Plan process, is of legitimate process under the Local Government Act. The Council entered into that process as early as 2005, with good intention. As a result

of the November 2006, resolution of Council, that the process has since been under the direction of legal advice. So there has been no opportunity under legal advice to open that up any further.

Summary of Comment by Michelle Abbott

She spoke in relation to item SC0803-1. She has been told that the National Trust can still work with the City of Fremantle, as it is a Council building and it can still gain funds for the Fremantle Markets. No matter what management runs it.

Summary of Response from Mr Graeme Mackenzie, Chief Executive Officer

Thanks Mr Mayor. He is sure that the National Trust can work with the City of Fremantle with any of the Trust related buildings. He has not had specific discussions with the National Trust about any grant funding at all. He is sure that if the City were to approach the National Trust, that there would be some sort of assistance from them. Whether that be financial or just assistance with the City's own grant applications.

Summary of Question by Michelle Abbott

This has been going on for 2 years and Council officers have been working frantically on this matter. The City has also had the Lawyers opinions and what she has gathered, is that both the Lawyers and the Council officers saying that this is not a bad deal for the Council. She would like to know why it has gone this far, when you have received professional opinions from the Lawyers and Council officers saying that this, is the best deal at the time?

Summary of Response from Mayor, Peter Tagliaferri

This question is rhetorical and will be answered in the debate.

Summary of Comment by Fred Adeane

He spoke in relation to item SC0803-1. He urged Council to reject this lease that the Market lessees propose and put the Markets out to tender. If the Murdoch family win this tender on their own merit, then they deserve it. Please do not burden the rate payers with this long lease.

Summary of Question by Marion Treasure

She spoke in relation to item SC0803-1. She asked has either Council or it's Market Committee paid each Stall Holder the due respect of a truly democratic secret ballot to accurately gauge their collective view of this proposed 21 year lease and any alternative proposals? And if not, why not?

Summary of Response from Mr Glen Dougall, Director Corporate Services

The stallholders obviously had input into the process if they wanted to submit a submission, in fact the Association did this on their behalf. One of the considerations that the Markets Committee undertook in the meeting in January was to do an independent survey with the stallholders. That was undertaken by approximately 121 stallholders, asking them their opinion. The Committee deliberated on this matter in the February/March meeting.

Summary of Comment by Anna O'Sullivan

Spoke in relation to item SC0803-1. She urged Councillors to please go the democratic route and let us go to tender.

DISCLOSURES OF INTEREST BY MEMBERS

Nil

APPLICATIONS FOR LEAVE OF ABSENCE

Nil

PETITIONS / DEPUTATIONS / PRESENTATIONS

Nil

ANNOUNCEMENTS BY THE MAYOR

Nil

QUESTIONS OR PERSONAL EXPLANATIONS BY MEMBERS

Nil

TABLED DOCUMENTS

1. Additional Documents for Special Meeting of Council 6 March 2008
(An alternate resolution and a Motion to deal with option 2 first)

SPECIAL COUNCIL ITEMS**SC0803-1 FREMANTLE MARKETS BUSINESS PLAN (2) CONSIDERATION**

DataWorks Reference:	049/008, L074, 096/076
Disclosure of Interest:	Nil
Previous Item:	C0707-5, SGS 0712-14
Responsible Officer:	Glen Dougall, Director Corporate Services
Actioning Officer:	John Amor, Property Co-ordinator
Decision Making Authority:	Council
Agenda Attachments:	Attachment 1 - Review of Public Submissions Attachment 2 – Markets Committee meetings minutes (29 January, 2008 and 26 February, 2008) Attachment 3 – Presentation by National Trust (WA) Attachment 4 – Presentation of Stallholder Survey by Catalyse Pty Ltd. Attachment 5 – Presentation by Fremantle Markets Pty Ltd. Attachment 6 – Legal Opinion on Committee Options (Confidential) Attachment 7 – Information from Jackson McDonald in relation to interim discussions with Fremantle Markets Pty Ltd (Confidential) Attachment 8 - Legislative and legal considerations (Confidential) Attachment 9 – Proposed Business Plan and Lease

PURPOSE

To consider the public submissions received in response to the second Business Plan for the lease of the Fremantle Markets premises to Fremantle Markets Pty Ltd and to consider the two recommendations from the Markets Management Committee meetings of 29 January, 2008 and 26 February, 2008 on whether or not to enter into the proposed lease, in accordance with the Local Government Act 1995.

EXECUTIVE SUMMARY

The second Business Plan for the lease of Fremantle Markets premises to Fremantle Markets Pty Ltd was advertised in accordance with the Local Government Act 1995 and Council resolution C0707-5 made in July 2007.

The advertised Business Plan included details of the proposed lease and its impact on the operations of the City, as required by the Local Government Act and also attached copies of the proposed lease documents, including the proposed Fremantle Markets Operating Strategy Agreement and the proposed Fremantle Markets Operating Strategy.

At the ordinary meeting of 19 December, 2007 Council resolved the process for considering the Business Plan, which required the Markets Management Committee to review the submissions provided and forward a recommendation to council for consideration. The committee has met on two occasions as detailed above and have forwarded to recommendations for council consideration.

A total of 574 submissions were received in response to the second Business Plan during the six-week public submissions period, which closed on 21 December 2007. Simply, these numbers can be divided into 267 submissions supporting the proposed lease, and 308 submissions opposing the proposed lease. A report detailing the themes within the submissions is included for consideration by the Council, and is attached to this agenda. The main themes are –

For –

- good management of current operators;
- good Business Plan;
- City has an obligation to honour previous lease commitments.

Against –

- lack of due process or lack of consideration of other options (ie. tender, National Trust or public operation);
- poor management of current operators;
- operational or management deficiencies in the proposed documentation;
- lease term too long.

There are two options which are presented for consideration council in making its decision. These are either to approve the second Business Plan and enter into the proposed lease with Fremantle Markets Pty Ltd (with some minor amendments to the lease in accordance with the committee recommendations) or to reject this Business Plan and not enter into the proposed lease. Mr Julius Skinner from Jackson McDonald Lawyers will be in attendance between 6pm and 7pm prior to the meeting for a briefing on the legal implications of these options and to answer any questions from elected members. The meeting is then scheduled to commence at 7pm.

BACKGROUND

A timeline of events to date was included in the report to the meeting of Council on 19 December 2007 which resolved on the process for considering the submissions received in response to the Business Plan.

COMMENT

Business Plan and proposed lease

The proposal being considered (as a major land transaction under the Local Government Act) is the disposal of the land including the properties located at 74 South Terrace in Fremantle known as the 'The Fremantle Markets' by way of a 21 year lease to Fremantle Markets Pty Ltd. The land has been leased previously to John Murdoch and Damman Pty Ltd and the new agreement is with Fremantle Markets Pty Ltd, administered by John Kenneth Murdoch and James Watts Murdoch.

The terms of the proposed lease are contained in several documents, all of which were attached to the Business Plan for public comment –

- Lease
- Fremantle Markets Operating Strategy Agreement
- Fremantle Markets Operating Strategy
- Proposed Sub-Lease and Licence (by Fremantle Markets Pty Ltd) for stallholders within the Fremantle Markets

The Lease contains the principal terms relating to the proposed disposition.

As to the consideration to be received by the City of Fremantle, this comprises a Base Rent at the commencement of the lease of \$550,000 plus GST per annum, which increases at intervals of 18 months throughout the terms of the lease, together with an Annual Performance Adjustment as from the sixth anniversary of the commencement of the lease.

Fremantle Markets Pty Ltd will also provide consideration under the lease by undertaking or reimbursing the City for various improvement works to the building including painting of the roof to assist with cooling the premises during the hotter periods, an upgrade of the power transformer to provide a satisfactory power supply required by stallholders and a contribution to improving the facade of the premises in accordance with a Conservation Plan to be adopted by Council.

The lease also provides for a building maintenance programme, determined by a qualified third party and updated on a regular basis through the term of the lease.

Under the lease, Fremantle Markets Pty Ltd is also required to operate the Fremantle Markets in accordance with Fremantle Markets Operating Strategy and must comply with the Fremantle Markets Operating Strategy Agreement.

The Fremantle Markets Operating Strategy makes provision for key performance indicators and goals to be established and reported on each year. It details an annual report to be provided to Council each year detailing the past year's operations, plans and any proposed amendments to the Strategy and/or performance indicators. The Strategy also includes a component to consider the history and heritage of the building and makes reference to the Conservation Plan. It specifies that the Strategy must give consideration for maintaining and developing the connection between the current operation of the Fremantle Markets and its historical origins. It also makes provision for the atmosphere of the Fremantle Markets, which defines the number and mix of stalls, dialogue with stallholders, a marketing plan and a provision for how stalls may be sold.

The Fremantle Markets Operating Strategy Agreement provides for a Working Group, comprised of representatives of both Fremantle Markets Pty Ltd and the City of Fremantle, to oversee the operation of the Fremantle Markets Operating Strategy and to consider and agree upon any changes to the Fremantle Markets Operating Strategy over time. The Fremantle Markets Operating Strategy Agreement also makes provision for the resolution of any disputes by an independent expert.

Finally, the lease documents include a proposed sub-lease and licence agreement for stallholders. Under the Operating Strategy, the terms and conditions of the sub-lease

and licence are, in effect, mandated as minimum terms and conditions and can only be changed either by agreement with a stallholder or via the Working Group process.

A marketing plan and other documents, including a plan for identifying and attracting desired stallholdings, are also required to be prepared and submitted to the Working Group as part of the Operating Strategy.

Public submissions

Public submissions were sought for a six-week period ending on 21 December 2007.

A total of 574 submissions were received during this period. 267 submissions have been identified as supporting the proposed lease. 308 submissions have been identified as opposing the proposed lease. The remaining 9 submissions were classified as invalid.

The main themes of the submissions are;

For –

- good management of current operators;
- good Business Plan;
- City has an obligation to honour previous lease commitments.

Against –

- lack of due process or lack of consideration of other options (ie. tender, National Trust or public operation);
- poor management of current operators;
- operational or management deficiencies in the proposed documentation;
- lease term too long.

A report on the submissions, including comments on the major themes referred to above, is attached to this agenda for consideration by elected members.

Committee Review

The committee sought to request presentations from the National Trust (WA) and Fremantle Markets Pty Ltd to assist in its deliberations. Copies of these presentations are attached to this agenda.

The committee also sought to undertake a survey of stallholders opinion in relation to the city entering into the Plan with Fremantle Markets Pty Ltd. Catalyse Pty Ltd were engaged to undertake the survey with the assistance of the Edith Cowan University Survey Research Centre. A total of 111 stallholders were able to complete the survey from a database of 146. Catalyse presented the results of this survey to the committee on 26 February, 2008 and a copy of these results are also attached with this agenda.

The committee also sought advice on any details of audits of the operations of the markets. The City has information in relation to gross licence fees which it has provided to the committee. The committee recommends minor amendments to the proposed lease to allow for the market manager to meet at least quarterly in each year with the

stallholders to discuss issues relating to the operating strategy, added a clause to the operating strategy requiring a representative of the market manager to be on site during trading hours, and recommends a change to ensure that the difference in rent between the current lease and proposed lease is set aside for implementation of the conservation plan.

Minutes of the two committee meetings are attached with this agenda. Areas relating to legal opinion are confidential and provided separately.

CONCLUSION

The Committee have referred two options for council to consider and determine.

Option One

Council enter into the lease agreement for the Fremantle Markets premises at 74 South Terrace, Fremantle Markets to Fremantle Markets Pty Ltd, as proposed in the Business Plan. This option is subject to amendments to the proposed lease as follows;

1. *That 2.3 of the Operating Strategy be amended to read as follows;*
 - 2.3 *The City will set aside the increase of rent derived from the Premises for the first ten years of the Lease as a minimum to assist in obtaining external funding for implementing the plan.*
2. *That 2.1 of the Operating Strategy be amended to read as follows;*
 - 2.1 *On adoption of the City's Conservation Plan ('the Plan') for the markets the Working Group must reach agreement on a viable plan for implementing any recommendations within the time frames of the Conservation Plan subject to budget considerations of Council.*
3. *That the Operating Strategy be amended to include 4.1 and 4.21 and that 4.21 be amended to read as follows;*
 - 4.1 *A representative of the Market Manager must be present on-site at the markets during all trading hours of the markets.*
 - 4.21 *The Market Manager is to meet with the stallholders as directed by the Working Group, at least once every quarter, on issues within the scope of this Operating Strategy.*

Option Two

Council not enter with the lease agreement for the Fremantle Markets premises at 74 South Terrace, Fremantle Markets to Fremantle Markets Pty Ltd, as proposed in the Business Plan.

Council will need to provide reasons for its recommendation resulting from its consideration of the submissions received in response to the Business Plan.

STRATEGIC AND POLICY IMPLICATIONS

As previously detailed.

TRIPLE BOTTOM LINE IMPLICATIONS

Economic

The Fremantle Markets is an iconic Market, known throughout Australia. Its future is uncertain at this point in time and remains so until Council resolves the future direction for the ongoing management of the Markets.

Environmental

Nil.

Social

The Fremantle Markets is equally a social gathering place and an important aspect of Fremantle life.

BUDGET IMPLICATIONS

The cost of advertising and legal expenses in developing the proposed lease agreement and business plan as well as valuation costs.

LEGISLATIVE AND LEGAL CONSIDERATIONS

A confidential attachment is provided outlining the legal issues associated with this decision. These issues were presented to the Committee on 29 January 2008.

PRECINCTS AND OTHER COMMITTEES RECOMMENDATIONS PLUS OTHER CONSULTATION

The second Business Plan has been advertised for a period of six weeks in accordance with the Local Government Act 1995. 574 submissions were received in response to the Business Plan. A report on these submissions is attached to this agenda.

VOTING AND OTHER SPECIAL REQUIREMENTS

The Council decision whether or not to enter into the proposed lease to Fremantle Markets Pty Ltd will require an absolute majority decision. The recommendation to Council by the Committee requires only an absolute majority for the first option and only a simple majority for the second option.

COMMITTEE RECOMMENDATION (TWO OPTIONS)Option One

Council enter into the lease agreement for the Fremantle Markets premises at 74 South Terrace, Fremantle Markets to Fremantle Markets Pty Ltd, as proposed in the Business Plan. This option is subject to amendments to the proposed lease as follows;

1. That 2.3 of the Operating Strategy be amended to read as follows;
 - 2.3 The City will set aside the increase of rent derived from the Premises for the first ten years of the Lease as a minimum to assist in obtaining external funding for implementing the plan.
2. That 2.1 of the Operating Strategy be amended to read as follows;
 - 2.1 On adoption of the City's Conservation Plan ('the Plan') for the markets the Working Group must reach agreement on a viable plan for implementing any recommendations within the time frames of the Conservation Plan subject to budget considerations of Council.
3. That the Operating Strategy be amended to include 4.1 and 4.21 and that 4.21 be amended to read as follows;
 - 4.1 A representative of the Market Manager must be present on-site at the markets during all trading hours of the markets.
 - 4.21 The Market Manager is to meet with the stallholders as directed by the Working Group, at least once every quarter, on issues within the scope of this Operating Strategy.

Option Two

Council not enter with the lease agreement for the Fremantle Markets premises at 74 South Terrace, Fremantle Markets to Fremantle Markets Pty Ltd, as proposed in the Business Plan.

Cr L Lauder MOVED the following alternative recommendation as followed:

That as the FMMC has not made a recommendation on either option I move that we deal with Option 2 first. If this motion is successful the reasons for not approving the Business Plan are as follows.

- 1) The Council has a duty to its ratepayers and residents to consider what is in the best commercial interests of the City of Fremantle. This necessitates taking into account the fact that the Fremantle Markets:
 - 1.1) Will require a likely \$10,000,000 of renovations through the Conservation Plan. This substantial cost has not been factored into the grant of the further

- lease. The City should not bear the bulk of the cost of this enormous expenditure;
- 1.2) Has the potential to generate substantial income for the City if the Markets are operated, for example, through a Trust in partnership with the National Trust of W.A.;
 - 1.3) The availability of heritage restoration grants if the Markets are operated through a partnership with the National Trust;
 - 1.4) Have never been put to open public tender for decades. The only proper way to test the market as to the income earning potential of the Markets is to proceed to tender.
- 2) Council's legal advice from its solicitors and an eminent Queens Counsel is of the view that Council will succeed in a legal battle against FMPL. Accordingly it is likely that a Court will find that there is no enforceable lease between the City and FMPL. Council should not ignore its legal advice. Council should not be swayed by the threat of litigation, or base its decision on whether an applicant threatens litigation;
 - 3) Council must consider the overwhelming opposition to the grant of the lease to FMPL. The opposition to the lease was evidenced by the Special Elector's Meeting in July 2007 and the 308 public submissions against the proposed lease;
 - 4) The process has been flawed.
 - 4.1) Council's officers originally suggested that the lease should be put to public tender. This was never done;
 - 4.2) The deliberations of the Fremantle Markets Management Committee were cut short without alternative options being considered;
 - 4.3) Council's lawyers have found that the process is flawed in that Council did not comply with Section 3.58 of the Local Government Act (refer to opinion from Jackson McDonald dated 17 July 2007);
 - 4.4) Without a public tender the process will always appear tainted. Only a public tender creates a perception of a level playing field and a fair opportunity for all, including the current lessees;
 - 4.5) Council does not audit FMPL. FMPL appoints its own auditors under the current lease. To date FMPL have declined the City's invitation for an independent audit to take place
 - 5) Council has never properly considered all options in relation to how best to operate the markets. This will never occur unless the operations of the markets are put to public tender. How can the City ever ascertain what are the best possible options for the Markets unless the operation of the Markets is put to public tender or for expressions of interest?
 - 6) There has been an unusually high level of dissatisfaction with the way in which FMPL have operated the Markets, particularly from various stallholders;
 - 7) The Fremantle Markets is a major asset of the City of Fremantle and yet its condition has deteriorated over many years under the existing lease. Its restoration is estimated to cost many \$millions and the proposed lease does not provide for the level of funds needed for restoration in a reasonable time frame.

In effect under the proposed lease this deteriorating asset becomes a substantial liability for the City.

SECONDED: Cr Georgie Adeane

Cr Les Lauder MOVED to withdraw part 4 of his alternative recommendation as follows:

- 4) The process has been flawed.
 - 4.1) Council’s officers originally suggested that the lease should be put to public tender. This was never done;
 - 4.2) The deliberations of the Fremantle Markets Management Committee were cut short without alternative options being considered;
 - 4.3) Council’s lawyers have found that the process is flawed in that Council did not comply with Section 3.58 of the Local Government Act (refer to opinion from Jackson McDonald dated 17 July 2007);
 - 4.4) Without a public tender the process will always appear tainted. Only a public tender creates a perception of a level playing field and a fair opportunity for all, including the current lessees;
 - 4.5) Council does not audit FMPL. FMPL appoints its own auditors under the current lease. To date FMPL have declined the City’s invitation for an independent audit to take place

SECONDED: Cr Georgie Adeane

CARRIED: 13/0

For	Against
Mayor, Peter Tagliaferri Cr Georgie Adeane Cr John Alberti Cr John Dowson Cr Robert Fittock Cr Alice King Cr Les Lauder Cr Shirley Mackay Cr Bill Massie Cr Brad Pettitt Cr Jon Strachan Cr Doug Thompson Cr Donna Haney	

Cr Les Lauder MOVED to withdraw part 2 of his alternative recommendation as follows:

- 2) Council’s legal advice from its solicitors and an eminent Queens Counsel is of the view that Council will succeed in a legal battle against FMPL. Accordingly it is likely that a Court will find that there is no enforceable lease between the City and

FMPL. Council should not ignore its legal advice. Council should not be swayed by the threat of litigation, or base its decision on whether an applicant threatens litigation;

SECONDED: Cr Georgie Adeane

CARRIED: 11/2

For	Against
Mayor, Peter Tagliaferri Cr Georgie Adeane Cr John Alberti Cr John Dowson Cr Robert Fittock Cr Alice King Cr Les Lauder Cr Bill Massie Cr Brad Pettitt Cr Jon Strachan Cr Donna Haney	Cr Doug Thompson Cr Shirley Mackay

Cr Les Lauder MOVED to withdraw part 5 of his alternative recommendation as follows:

- 5) Council has never properly considered all options in relation to how best to operate the markets. This will never occur unless the operations of the markets are put to public tender. How can the City ever ascertain what are the best possible options for the Markets unless the operation of the Markets is put to public tender or for expressions of interest?

SECONDED: Cr Georgie Adeane

CARRIED: 12/1

For	Against
Mayor, Peter Tagliaferri Cr Georgie Adeane Cr John Alberti Cr John Dowson Cr Robert Fittock Cr Alice King Cr Shirley Mackay Cr Les Lauder Cr Bill Massie Cr Brad Pettitt Cr Jon Strachan Cr Donna Haney	Cr Doug Thompson

Cr Les Lauder MOVED his alternative recommendation as amended:

That as the FMMC has not made a recommendation on either option I move that we deal with Option 2 first. If this motion is successful the reasons for not approving the Business Plan are as follows.

- 1) The Council has a duty to its ratepayers and residents to consider what is in the best commercial interests of the City of Fremantle. This necessitates taking into account the fact that the Fremantle Markets:
 - 1.1) Will require a likely \$10,000,000 of renovations through the Conservation Plan. This substantial cost has not been factored into the grant of the further lease. The City should not bear the bulk of the cost of this enormous expenditure;
 - 1.2) Has the potential to generate substantial income for the City if the Markets are operated, for example, through a Trust in partnership with the National Trust of W.A.;
 - 1.3) The availability of heritage restoration grants if the Markets are operated through a partnership with the National Trust;
 - 1.4) Have never been put to open public tender for decades. The only proper way to test the market as to the income earning potential of the Markets is to proceed to tender.
- 2) Council must consider the overwhelming opposition to the grant of the lease to FMPL. The opposition to the lease was evidenced by the Special Elector’s Meeting in July 2007 and the 308 public submissions against the proposed lease;
- 3) There has been an unusually high level of dissatisfaction with the way in which FMPL have operated the Markets, particularly from various stallholders;
- 4) The Fremantle Markets is a major asset of the City of Fremantle and yet its condition has deteriorated over many years under the existing lease. Its restoration is estimated to cost many \$millions and the proposed lease does not provide for the level of funds needed for restoration in a reasonable time frame.

In effect under the proposed lease this deteriorating asset becomes a substantial liability for the City.

SECONDED: Cr Georgie Adeane

LOST: 6/7

For	Against
Cr Georgie Adeane Cr John Dowson Cr Alice King Cr Les Lauder Cr Shirley Mackay Cr Donna Haney	Mayor, Peter Tagliaferri Cr Jon Strachan Cr Doug Thompson Cr Robert Fittock Cr Bill Massie Cr John Alberti Cr Brad Pettitt

COUNCIL DECISION

Cr Doug Thompson **MOVED** his alternative recommendation as follows:

Council enter into the lease agreement for the Fremantle Markets premises at 74 South Terrace, Fremantle Markets to Fremantle Markets Pty Ltd, in accordance with the advertised Business Plan of November 2007, except for the term which is to be reduced to 16 years plus the remaining term of the current lease that would apply from the date of this recommendation by Council, and the following amendments;

1. That 2.3 of the Operating Strategy be amended to read as follows;

2.3 The City will set aside the increase of rent derived from the Premises for the first ten years of the Lease as a minimum to assist in obtaining external funding for implementing the plan.

2. That 2.1 of the Operating Strategy be amended to read as follows;

2.1 On adoption of the City's Conservation Plan ('the Plan') for the markets the Working Group must reach agreement on a viable plan for implementing any recommendations within the time frames of the Conservation Plan subject to budget considerations of Council.

3. That the Operating Strategy be amended to include 4.1 and 4.21 and that 4.21 be amended to read as follows;

4.1 A representative of the Market Manager must be present on-site at the markets during all trading hours of the markets.

4.21 The Market Manager is to meet with the stallholders as directed by the Working Group, at least once every quarter, on issues within the scope of this Operating Strategy.

SECONDED: Cr Robert Fittock

CARRIED: 7/6

For	Against
Mayor, Peter Tagliaferri Cr Jon Strachan Cr Doug Thompson Cr Robert Fittock Cr Bill Massie Cr John Alberti Cr Brad Pettitt	Cr Georgie Adeane Cr Les Lauder Cr Alice King Cr Shirley Mackay Cr Donna Haney Cr John Dowson

CONFIDENTIAL MATTERS

Nil.

CLOSURE OF MEETING

THE MAYOR, P TAGLIAFERRI DECLARED THE MEETING CLOSED AT 9:20PM.

CITY OF FREMANTLE

SUMMARY GUIDE TO CITIZEN PARTICIPATION & CONSULTATION

The Council adopted a Participation Policy in August 2001 to give effect to its commitment to involving citizens in its decision-making processes.

The City values citizen participation and recognises the benefits that can flow to the quality of decision-making and the level of community satisfaction.

Effective participation requires total clarity so that Elected Members, Council officers and citizens fully understand their respective rights and responsibilities as well as the limits of their involvement in relation to any decision to be made by the City.

How consultative processes work at the City of Fremantle	
The City's decision makers	1. The Council, comprised of Elected Members, makes policy, budgetary and key strategic decisions while the CEO, sometimes via on-delegation to other City officers, makes operational decisions.
Various participation opportunities	2. The City provides opportunities for participation in the decision-making process by citizens via its Advisory Committees and Task Forces, its Community Precinct System, and targeted consultation processes in relation to specific issues or decisions.
Objective processes also used	3. The City also seeks to understand the needs and views of the community via scientific and objective processes such as its annual Community Survey.
All decisions are made by Council or the CEO	4. These opportunities afforded to citizens to participate in the decision-making process do not include the capacity to make the decision. Decisions are ultimately always made by Council or the CEO (or his/her delegated nominee).
Precinct focus is primarily local, but also city-wide	5. The Community Precinct System establishes units of geographic community of interest, but provides for input in relation to individual geographic areas as well as on city-wide issues.
All input is of equal value	6. No source of advice or input is more valuable or given more weight by the decision-makers than any other. The relevance and rationality of the advice counts in influencing the views of decision-makers.
Decisions will not necessarily reflect the majority view received	7. Local Government in WA is a representative democracy. Elected Members and the CEO are charged under the Local Government Act with the responsibility to make decisions based on fact and the merits of the issue without fear or favour and are accountable for their actions and decisions under law. Elected Members are accountable to the people via periodic elections. As it is a representative democracy, decisions may not be made in favour of the majority view expressed via consultative processes. Decisions must also be made in accordance with

How consultative processes work at the City of Fremantle	
	any statute that applies or within the parameters of budgetary considerations. All consultations will clearly outline from the outset any constraints or limitations associated with the issue.
Decisions made for the overall good of Fremantle	8. The Local Government Act requires decision-makers to make decisions in the interests of “the good Government of the district”. This means that decision-makers must exercise their judgment about the best interests of Fremantle as a whole as well as about the interests of the immediately affected neighbourhood. This responsibility from time to time puts decision-makers at odds with the expressed views of citizens from the local neighbourhood who may understandably take a narrower view of considerations at hand.
Diversity of view on most issues	9. The City is wary of claiming to speak for the ‘community’ and wary of those who claim to do so. The City recognises how difficult it is to understand what such a diverse community with such a variety of stakeholders thinks about an issue. The City recognises that, on most significant issues, diverse views exist that need to be respected and taken into account by the decision-makers.
City officers must be impartial	10. City officers are charged with the responsibility of being objective, non-political and unbiased. It is the responsibility of the management of the City to ensure that this is the case. It is also recognised that City Officers can find themselves unfairly accused of bias or incompetence by protagonists on certain issues and in these cases it is the responsibility of the City’s management to defend those City officers.
City officers must follow procedures	11. The City’s consultative processes must be clear, transparent, efficient and timely. City officers must ensure that policies and procedures are fully complied with so that citizens are not deprived of their rights to be heard.
Consultation processes have cut-off dates that will be adhered to.	12. As City officers have the responsibility to provide objective, professional advice to decision-makers, they are entitled to an appropriate period of time and resource base to undertake the analysis required and to prepare reports. As a consequence, consultative processes need to have defined and rigorously observed cut-off dates, after which date officers will not include ‘late’ input in their analysis. In such circumstances, the existence of ‘late’ input will be made known to decision-makers. In most cases where citizen input is involved, the Council is the decision-maker and this affords citizens the opportunity to make input after the cut-off date via

How consultative processes work at the City of Fremantle	
	personal representations to individual Elected Members and via presentations to Committee and Council Meetings.
Citizens need to check for any changes to decision making arrangements made	13. The City will take initial responsibility, via 'Consultation Process notifications', for making citizens aware of expected time-frames and decision making processes, including dates of Standing Committee and Council Meetings if relevant. However, as these details can change, it is the citizens responsibility to check for any changes by visiting www.freofocus.com/projects/html/default.cfm , checking the Port City Column in the Fremantle Herald or inquiring at the Service and Information Desk by phone or in-person.
Citizens are entitled to know how their input has been assessed	14. In reporting to decision-makers, City officers will in all cases produce a Schedule of Input received that summarises comment and recommends whether it should be taken on board, with reasons.
Reasons for decisions must be transparent	15. Decision-makers must provide the reasons for their decisions.
Decisions posted on www.freofocus.com/projects/html/default.cfm	16. Decisions of the City need to be transparent and easily accessed. For reasons of cost, citizens making input on an issue will not be individually notified of the outcome, but can access the decision at www.freofocus.com/projects/html/default.cfm or at the City Library or Service and Information counter.

Issues that Council May Treat as Confidential

Section 5.23 of the new Local Government Act 1995, Meetings generally open to the public, states:

1. Subject to subsection (2), the following are to be open to members of the public -
 - a) all council meetings; and
 - b) all meetings of any committee to which a local government power or duty has been delegated.

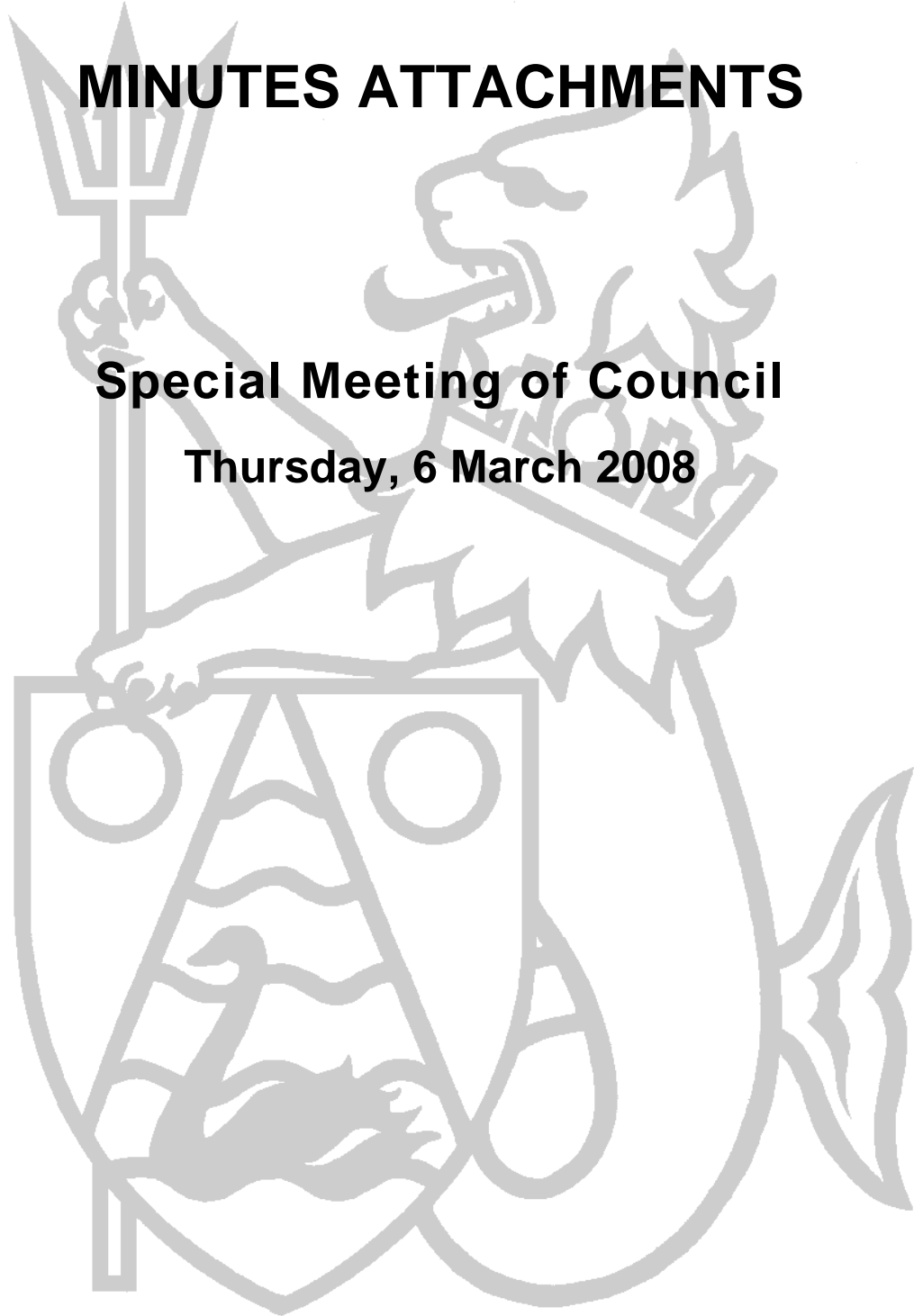
2. If a meeting is being held by a council or by a committee referred to in subsection (1) (b), the council or committee may close to members of the public the meeting, or part of the meeting, if the meeting or the part of the meeting deals with any of the following:
 - a) a matter affecting an employee or employees;
 - b) the personal affairs of any person;
 - c) a contract entered into, or which may be entered into, by the local government and which relates to a matter to be discussed at the meeting;
 - d) legal advice obtained, or which may be obtained, by the local government and which relates to a matter to be discussed at the meeting;
 - e) a matter that if disclosed, would reveal –
 - i) a trade secret;
 - ii) information that has a commercial value to a person; or
 - iii) information about the business, professional, commercial or financial affairs of a person.
Where the trade secret or information is held by, or is about, a person other than the local government.
 - f) a matter that if disclosed, could be reasonably expected to -
 - i) impair the effectiveness of any lawful method or procedure for preventing, detecting, investigating or dealing with any contravention or possible contravention of the law;
 - ii) endanger the security of the local government's property; or
 - iii) prejudice the maintenance or enforcement of a lawful measure for protecting public safety.
 - g) information which is the subject of a direction given under section 23 (1a) of the Parliamentary Commissioner Act 1971; and
 - h) such other matters as may be prescribed.

3. A decision to close a meeting or part of a meeting and the reason for the decision are to be recorded in the minutes of the meeting.

City of Fremantle

MINUTES ATTACHMENTS

**Special Meeting of Council
Thursday, 6 March 2008**



1.

**ADDITIONAL DOCUMENTS FOR SPECIAL MEETING OF
COUNCIL 6 MARCH 2008**

CITY OF FREMANTLE

ADDITIONAL DOCUMENTS

SPECIAL MEETING OF COUNCIL

**Thursday, 6 March 2008
7.00 pm**

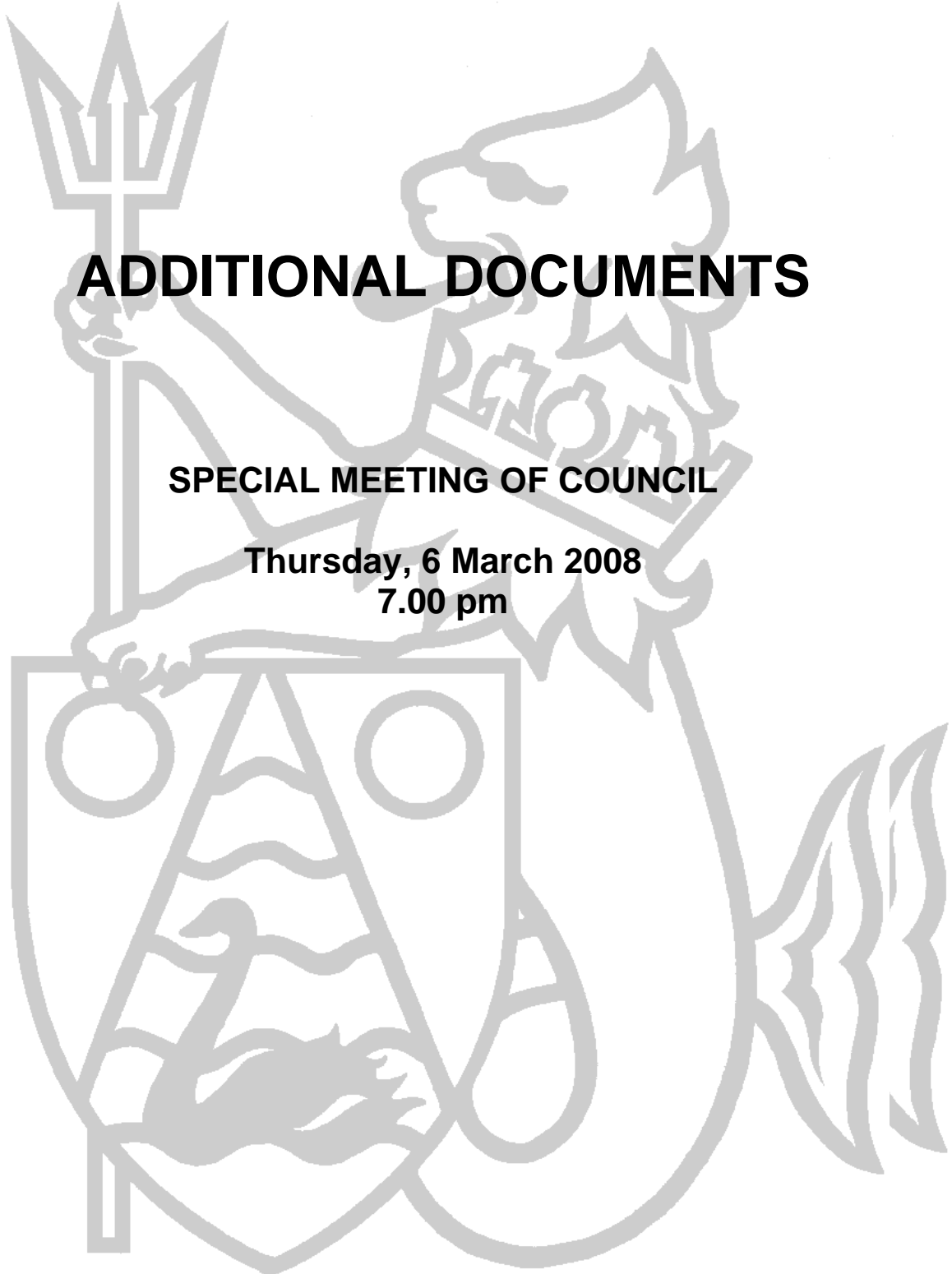


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**Alternative Motion for SC0803-1 Fremantle Markets Business Plan (2)
Consideration - Cr Les Lauder****From Cr Les Lauder****Received: Tuesday, 4 March 2008 1:17 PM**

Please accept the following alternative recommendation.

That as the FMMC has not made a recommendation on either option I move that we deal with Option 2 first. If this motion is successful the reasons for not approving the Business Plan are as follows.

- 1) The Council has a duty to its ratepayers and residents to consider what is in the best commercial interests of the City of Fremantle. This necessitates taking into account the fact that the Fremantle Markets:
 - 1.1) Will require a likely \$10,000,000 of renovations through the Conservation Plan. This substantial cost has not been factored into the grant of the further lease. The City should not bear the bulk of the cost of this enormous expenditure;
 - 1.2) Has the potential to generate substantial income for the City if the Markets are operated, for example, through a Trust in partnership with the National Trust of W.A.;
 - 1.3) The availability of heritage restoration grants if the Markets are operated through a partnership with the National Trust;
 - 1.4) Have never been put to open public tender for decades. The only proper way to test the market as to the income earning potential of the Markets is to proceed to tender.
- 2) Council's legal advice from its solicitors and an eminent Queens Counsel is of the view that Council will succeed in a legal battle against FMPL. Accordingly it is likely that a Court will find that there is no enforceable lease between the City and FMPL. Council should not ignore its legal advice. Council should not be swayed by the threat of litigation, or base its decision on whether an applicant threatens litigation;
- 3) Council must consider the overwhelming opposition to the grant of the lease to FMPL. The opposition to the lease was evidenced by the Special Elector's Meeting in July 2007 and the 308 public submissions against the proposed lease;
- 4) The process has been flawed.
 - 4.1) Council's officers originally suggested that the lease should be put to public tender. This was never done;
 - 4.2) The deliberations of the Fremantle Markets Management Committee were cut short without alternative options being considered;
 - 4.3) Council's lawyers have found that the process is flawed in that Council did not comply with Section 3.58 of the Local Government Act (refer to opinion from Jackson McDonald dated 17 July 2007);

- 4.4) Without a public tender the process will always appear tainted. Only a public tender creates a perception of a level playing field and a fair opportunity for all, including the current lessees;
- 4.5) Council does not audit FMPL. FMPL appoints its own auditors under the current lease. To date FMPL have declined the City's invitation for an independent audit to take place
- 5) Council has never properly considered all options in relation to how best to operate the markets. This will never occur unless the operations of the markets are put to public tender. How can the City ever ascertain what are the best possible options for the Markets unless the operation of the Markets is put to public tender or for expressions of interest?
- 6) There has been an unusually high level of dissatisfaction with the way in which FMPL have operated the Markets, particularly from various stallholders;
- 7) The Fremantle Markets is a major asset of the City of Fremantle and yet its condition has deteriorated over many years under the existing lease. Its restoration is estimated to cost many \$millions and the proposed lease does not provide for the level of funds needed for restoration in a reasonable time frame.

In effect under the proposed lease this deteriorating asset becomes a substantial liability for the City.

**Alternative Motion for SC0803-1 Fremantle Markets Business Plan (2)
Consideration - Cr Doug Thompson**

**From Councillor Doug Thompson
Received: Tuesday, 4 March 2008 1:54 PM**

It can be argued that Council's original intent through the process of lease negotiations in its original manifestation when it first entered this process was for an extension to the existing lease of 16 years. At the time of the original decision the current lease had 5 years remaining and the surrender of that lease was part of the proposal. The 21 years lease would therefore have encompassed a 5 years period already committed plus an additional 16. Adjusting the term to the original intent plus the balance of the current lease term can be seen as a compromise for Council and Fremantle Markets Pty Ltd. It reflects the original intent while recognising the length of time it has taken to finalise this issue. It can also be argued that Council have agreed twice to advertise a business plan for this lease and once agreed to enter into a transaction. The lease that has been prepared covers all of the issues raised by stakeholders and Council should now follow through with its intent.

Additionally, the length of the lease was one of the substantive issues raised in the public submissions and has been an issue for deliberation over some time by Councillors . By reducing the length of the lease Council is legitimately responding to this concern in the public submissions.

It is considered that this is a minor amendment to the Business Plan as the concept of the lease remains basically unchanged and the change to the length of term is in accord with Council's intent.

Recommendation

Council enter into the lease agreement for the Fremantle Markets premises at 74 South Terrace, Fremantle Markets to Fremantle Markets Pty Ltd, in accordance with the advertised Business Plan of November 2007, except for the term which is to be reduced to 16 years plus the remaining term of the current lease that would apply from the date of this recommendation by Council, and the following amendments;

1. That 2.3 of the Operating Strategy be amended to read as follows;
 - 2.4 The City will set aside the increase of rent derived from the Premises for the first ten years of the Lease as a minimum to assist in obtaining external funding for implementing the plan.
2. That 2.1 of the Operating Strategy be amended to read as follows;
 - 2.2 On adoption of the City's Conservation Plan ('the Plan') for the markets the Working Group must reach agreement on a viable plan for implementing any recommendations within the time frames of the Conservation Plan subject to budget considerations of Council.

3. That the Operating Strategy be amended to include 4.1 and 4.21 and that 4.21 be amended to read as follows;
 - 4.1 A representative of the Market Manager must be present on-site at the markets during all trading hours of the markets.
 - 4.22 The Market Manager is to meet with the stallholders as directed by the Working Group, at least once every quarter, on issues within the scope of this Operating Strategy.