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**With reference to the proposed grant of a 4-year Concesssion to Lolly & Cooks Limited to operate a tearoom in Herbert Park, Dublin 4.**

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Report No. 377/2015, at the 7<sup>th</sup> December 2015 City Council meeting, approved the granting of a 4-year Concession to Noshington Park Ltd. to operate a tearoom in Herbert Park, Dublin 4.

Noshington Park Ltd, however, has withdrawn from the Concession as they are no longer in a position to proceed. The Parks and Landscape Services Division have returned to the original tender and have offered the Concession to Lolly & Cooks Ltd., who were number two on the tender award. It is now proposed to proceed with the concession in accordance with their tender submission.

The tearoom provides seating inside for approximately 38 people and outdoor seating in a designated area outside the tearoom for approximately 40 people. (as shown on attached draft map for identification purposes only)

The Concession will be granted subject to the following terms and conditions:

1. The Concession shall be for a period of four years and shall commence on a date to be agreed. The City Council reserves the right to renew the Concession for a further two periods of one year each with the agreement of both parties and subject to the total period of the Concession not exceeding six years. The Concession, if extended, will be subject to terms and conditions.
2. The concessionaire shall sign a Deed of Renunciation.
3. The Concession fee shall be €34,000 per annum plus VAT to be paid quarterly in advance. After first year this will be subject to review.

The following will be the responsibility of the concessionaire:

- Maintenance of all kitchen equipment
- Arranging for the replacement and repair of equipment
- The purchase, storage and insurance of all food and non-food stock
- Recruitment, employment and training of sufficient staff suitable for the effective operation of the catering facilities
- Providing a high-quality catering service in line with the catering objectives of DCC which is for quality, fresh, homemade/baked and natural goods.
- Provision of kitchen signage and development of catering area, preparation, service and support areas, daily cleaning, deep cleaning of equipment, catering plant. This shall include cleaning of tables and chairs, catering staff areas; as well as internal and external waste storage areas and fittings.
- The disposal and payment of all waste removal. The disposal of waste is to comply with DCC requirements regarding the segregation of waste for recycling.

- Insurance of all concessionaires equipment
  - Payment of commercial rates
  - Payment of all utilities and services (e.g. ESB, Gas, Water, telephone, Wi-Fi)
  - Payment of all necessary brand licence, franchise or other ongoing fees
  - Complying with all DCC's security and other policies applying to contractors/suppliers
  - Physical security of their own stock and cash
  - Complying with all health, safety and food safety legislation
  - Suitable pest control arrangements
  - Leasing and maintenance of coffee machine
  - Provision and maintenance of necessary equipment in line with site specific safety statements and Risk assessment
  - Provision and erection of signage for the tearoom subject to approval by DCC
4. The Concessionaire will also be responsible for the management of the six tennis courts in Herbert Park which are available for use by both tennis coaches and the general public. The concessionaire shall:
- Retain 5% of takings as part of a management fee in relation to casual bookings.
  - Make available the use of 6 tennis courts in summer (5 weeks in July & 2 weeks in August) and 4 courts during certain dates within the three school terms (8 weeks per term) and Easter (1 week) by Dublin Parks Tennis League Ltd for the provision of their annual children's tennis coaching programme. The exact dates to be provided to and agreed by Dublin City Council in January each year and notified to the Concessionaire.
  - Make courts available for summer projects, community games and approved coaching lessons when requested to do so by Dublin City Council.
5. The Concessioner will be responsible for the following:
- Ensuring the fire certificate for the building is in place and providing documentation to the concessionaire
  - Ensuring the building is compliant with HSE requirements and operational at the time the concession is granted
  - Provision and maintenance of the structure and fabric of the tearoom. This shall exclude the costs of wilful damage or neglect.
  - Provision of tables and chairs (indoor and outdoor)
  - Opening and closing of all the park gates
  - Provision of bin storage area
  - Provision and maintenance of fire alarm and intruder alarm
  - Addition of tearoom on to Parks security monitoring list
  - Provision of telephone line and Wi-Fi. All calls & Wi-Fi to be paid for by the concessionaire
  - All signage to be approved by DCC
6. The Concessionaire must ensure that the toilet facilities are maintained to a good standard and are available to all park users. However, in some circumstances access may be denied to individuals at the discretion of the concessionaire.
7. The Concessionaire shall keep the tearoom in good condition and repair, including all fixtures and fittings, including furniture supplied by Dublin City

Council during the term of the Concession and shall not remove or permit the removal of any of the above.

8. The Concessioner will provide the concessionaire with a key for the gate and early opening for tearoom is permitted subject to an agreed procedure.
9. After the initial warranty has expired for DCC equipment, the concessionaire will put in place an equipment maintenance contract and will pay for the cost of maintenance and repair to all equipment, ensuring it is returned to DCC in good condition on termination of the Concession.
10. The Concessionaire shall not at any time:
  - i. make any structural change or material alteration or addition of any kind to the tearoom space save with the prior written agreement of the Council, and upon such terms as the Council shall specify
  - ii. hang or affix any material on walls save with the written consent of Dublin City Council
  - iii. assign or sublet the premises or any part thereof including fittings and fixtures. It shall not allow any other person to occupy or share occupancy of the tearoom save with the prior written consent of the Council and upon such terms as the Council shall specify. Dublin City Council shall have absolute discretion in granting or refusing such permission.
11. On termination of the Concession, the Concessionaire shall at his own expense remove all items not belonging to the City Council and shall leave the property in a clean and good working condition to the satisfaction of the Council.
12. The Concessionaire will comply with all food safety legislation and other legislation codes as appropriate and regulations made there under.
13. The Concessionaire undertakes to use the premises only for the purpose stipulated. They will operate the tearoom during agreed opening hours and ensure there is sufficient trained staff on duty to provide a quality service at all times. The Concessionaire will ensure that the highest standards of customer service are provided to the clientele of the tearoom.
14. The Concessionaire shall be responsible for appropriate insurances as determined by Dublin City Council, including Public Liability €6.5 million, Product Liability €6.5 million and Employers Liability €13 million and shall indemnify Dublin City Council against all actions, proceedings, costs, claims demands and liabilities whatsoever arising from all and every activity carried out or promoted by the Concessionaire and its agents in connection with the facilities on the premises. It shall not do or suffer to be done any activity in any part of the premises which would render void or voidable the insurances of the premises. Copies of Insurances to be presented to City Council before commencement of the concession. The fixture and fittings in the tearoom will be insured by the Council. Contents belonging to the Concessionaire will not be insured by the Council.

15. The Concessionaire shall permit Dublin City Council, its servants and agents, accompanied by all necessary equipment, to enter the premises giving at least two week's notice in writing of its intention, (except in emergency situations) such works, without liability to compensate the Concessionaire for any loss, damage or inconvenience, and do all acts necessary for the purpose of carrying out such works to the premises which the Council may think fit and on demand forthwith to remove all such articles out of the premises as may be indicated by the Council as requiring removal (vacating the space completely if necessary) in order to enable such works to be more conveniently carried out.
16. The Council shall not be liable to compensate the Concessionaire for any loss, damage or inconvenience as a consequence of the performance of any works by its servants or agents within any part of the premises.
17. The Concessionaire shall not infringe or permit the infringement of the terms of any Act of the Oireachtas, any regulation made pursuant to the same or any bye-law or regulation of a local or public authority, in or about the use of the café.
18. The Concessionaire shall ensure compliance with all Health & Safety Legislation and regulations made there under. The Concessionaire must submit a copy of an up to date Safety Statement (SS) and Risk Assessment (RA) and must be **Site Specific** to the café.
19. The Concession agreement may be terminated by either party on giving the other two months notice in writing of its intention.
20. The Council shall have no responsibility whatever for the goods and works of the Concessionaire on the premises.
21. If alcohol is to be sold by the Concessionaire, a copy of the licence granted by Customs & Excise must be supplied to Dublin City Council.
22. Nothing herein contained is intended to create or shall be taken as creating a relationship of Landlord and Tenant between the Concessioner and the Concessionaire.
23. Each party shall be responsible for their own legal fees.
24. The Parties hereto accept that this Agreement is a Concession Agreement for the use of the premises only and that it does not constitute nor is it intended to constitute a tenancy of any sort in the premises.
25. These terms and conditions any other terms as deemed necessary by the Law Agent, will be incorporated into a legal agreement which will be prepared by the Council's Law Agent and completed by both parties prior to the Concessionaire entering onto the property.

The premises to be disposed of was acquired from the Pembroke Estate.  
No agreement enforceable at law is created or intended to be created until exchange of contracts has taken place.

This proposal was approved by the South East Area Committee at its meeting on 11<sup>th</sup> July 2016.

This report is submitted in accordance with the requirements of Section 183 of the Local Government Act, 2001.

Dated 17<sup>th</sup> day of August 2016.

**Jim Keogan**  
**Assistant Chief Executive**