



14.3 PROPOSED LEASE "DECANTERS BY THE BAY" 174 NOTT STREET PORT MELBOURNE - COMPLETION OF STATUTORY PROCEDURES

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1. PURPOSE

- 1.1 To seek Council's approval to complete the statutory procedures under Section 190 of the Local Government Act 1989 (Vic) ("Act") and finalise the tenancy agreement with Teifal Pty Ltd (Tenant) for the premises known as "Decanters on the Bay" at 174 Nott Street, Port Melbourne.

2. EXECUTIVE SUMMARY

- 2.1 The premises subject to the proposed tenancy agreement is located on Council freehold land at 174 Nott Street, Port Melbourne (refer to Attachment A) and is currently leased to Teifal Pty Ltd for use as a retail and wholesale liquor store known as "Decanters by the Bay".
- 2.2 The building was originally constructed circa 1940 and modified to be used as a retail outlet in 1987 with relatively little change since. It is in a suitable condition for its current use under a short-term agreement but is nearing its end of life.
- 2.3 The Tenant is a long-term tenant of Council and has occupied the site since September 2001. The current lease for the property commenced 1 March 2011 and is due to expire on 28 February 2021.
- 2.4 The current rental for the site is \$103,808 per annum plus GST with 3% annual increases and the Tenant is responsible for the cost of outgoings.
- 2.5 The proposed tenancy agreement is for a 5-year lease term at a commencing rental of \$103,808 per annum plus GST.
- 2.6 Given the negative impacts upon business incomes due to the Covid-19 pandemic since March 2020 and the resultant effects upon retail rentals, a market rental review is proposed for year 2 of the lease with adjustments in years 3, 4 and 5 by a fixed rate of 3% with all other terms remaining largely the same as the existing tenancy agreement. This has been agreed in principle by the Tenant.
- 2.7 As per the requirements of the Retail Leases Act (2003), Council will be responsible for the maintenance and renewal of the building and all Council owned plant, equipment, services and fixtures.
- 2.8 As the proposed tenancy agreement has a proposed term of greater than one year and the annual market rent estimate exceeds \$50,000 per annum, the statutory process applies. This process requires public notification before making a final decision on the proposed tenancy agreement, pursuant to sections 190 and 223 of the Local Government Act 1989 (Act).



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- 2.9 Council resolved to commence the statutory process on 18 March 2020 and invited submissions on the proposed tenancy agreement. Council must hear and consider any submissions received before making a decision to enter into such tenancy agreement.
- 2.10 No submissions were received in response to the public notice that was published in the Port Phillip Leader newspaper on 7 April 2020.
- 2.11 Council is now in a position to complete the statutory process and make a final decision on the proposed tenancy agreement.

3. RECOMMENDATION

That Council:

- 3.1 Not having received any submissions in response to a Notice of Intention to Lease the property at 174 Nott Street, Port Melbourne, resolves to conclude the statutory procedures under sections 190 and 223 of the *Local Government Act 1989 Vic (Act)* and approves the proposed tenancy agreement to the Tenant.
- 3.2 Authorises the Chief Executive Officer or delegate to execute such tenancy agreement on the key terms outlined below:
 - 3.2.1 *Proposed Tenant:* Teifal Pty Ltd
 - 3.2.2 *Demised Premises:* 174 Nott Street, Port Melbourne
 - 3.2.3 *Permitted Use:* Retail and wholesale sale of liquor and associated products and services
 - 3.2.4 *Commencement Date:* 1 March 2021
 - 3.2.5 *Term:* 5 years
 - 3.2.6 *Commencement Rent:* \$103,808 per annum plus GST
 - 3.2.7 *Outgoings:* Paid by Tenant
- 3.3 Notes that, given the negative impacts upon business incomes and the resultant effects upon retail rentals caused by the Covid-19 pandemic since March 2020, a market rental review will occur in year 2 of the lease with adjustments in years 3, 4 and 5 by a fixed rate of 3%.

4. KEY POINTS/ISSUES

Building Condition and Function

- 4.1 The premises subject to the proposed tenancy agreement is 174 Nott Street, Port Melbourne as outlined in red in Attachment 1.
- 4.2 This property is situated on Council freehold land and is currently leased to Teifal Pty Ltd for use as a retail and wholesale liquor store known as “Decanters by the Bay”.
- 4.3 The building was originally constructed circa 1940 and modified to be used as a retail outlet in 1987. It has undergone relatively little change since.
- 4.4 The property comprises a single storey, solid brick construction, commercial building built to the boundary of the land with no setbacks. It is zoned Residential 1, and subject to Heritage and Special Buildings overlays.



- 4.5 The building does not meet the current National Construction Code requirements for disabled access and cannot achieve acceptable compliance standards without the commitment of significant expenditure for reconfiguration works.
- 4.6 The building is considered to be in a suitable condition for its current use under a short-term agreement but is nearing its end of life.
- 4.7 A lease extension would enhance the value of the property as it currently has a greater value as an investment site compared to a development site due to the property having little Council strategic purpose.
- 4.8 To lease a property for any period greater than 1 year and where the market rental is greater than \$50,000 per annum, Council must first follow the procedures set out in Section 190 and 223 of the Local Government Act 1989. The procedures allow for any person to make a submission and for submissions to be considered by Council before a lease can be granted

Tenant

- 4.9 The current tenant Decanters by the Bay is a family-owned business established by its current owners in 2001 and prides itself with its intimate connection to the local community.
- 4.10 The Tenant has occupied the site since September 2001 and has a history of being a reasonable tenant, having generally complied with lease terms and conditions.
- 4.11 The current lease for the property commenced 1 March 2011 with a term of 5 years and a further term of 5 years. The current lease is due to expire on 28 February 2021.
- 4.12 The current rent is \$103,808 per annum plus GST with 3% annual increases.

5. PROPOSED TENANCY AGREEMENT

- 5.1 There are a number of key planning documents, legislation and policy that need to be considered for this site. These include:
 - 5.1.1 *Retail Leases Act (2003)*;
 - 5.1.2 *Council Plan* and
 - 5.1.3 *Council Property Policy*.
- 5.2 Council Property Policy provides guidance on entering tenancy agreements. Such principles under Council's Property Policy align with the State Government Leasing Policy.
- 5.3 Further to these principles, Officers have recommended the following terms as detailed in the previous report to Council that recommended commencement of the statutory process:
 - 5.3.1 A *direct* negotiation be undertaken with the Tenant;
 - 5.3.2 The proposed tenancy agreement be made to commence on 1 March 2021 and expire on 28 February 2026;
 - 5.3.3 The commencing rental to be \$103,808 per annum plus GST. Given the negative impacts upon business incomes due to the Covid-19 pandemic since March 2020 and *the* resultant effects upon retail rentals, a market rental review is proposed for year 2 of the lease with increases in years 3, 4 and 5 by



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a fixed rate of 3%. All other lease terms remain the same as the existing tenancy agreement;

- 5.3.4 All *outgoings* applicable to the Premises to be paid by the Tenant;
- 5.3.5 Insurance for public liability and tenant improvements be obtained by the Tenant and that the cost for building insurance will be reimbursed by the Tenant to Council; and
- 5.3.6 *Maintenance* and renewal of the building and all Council owned plant, equipment, services and fixtures will be the responsibility of the Landlord in line with the requirements of the *Retail Leases Act (2003)*.

6. CONSULTATION AND STAKEHOLDERS

- 6.1 Council has consulted with the community through a Notice of Intention to Lease that was published in the Port Phillip Leader newspaper on 7 April 2020 inviting submissions in accordance with statutory procedures.
- 6.2 The deadline for submissions was 8 May 2020.
- 6.3 No submissions were received.

7. LEGAL AND RISK IMPLICATIONS

- 7.1 The statutory process under the Act requires Council to notify the public before committing to the proposed tenancy agreement.
- 7.2 Council's standard form lease will be used as the basis of all Council freehold tenancy agreements, unless otherwise agreed or required by legislation. This template documents the landlord and tenant responsibilities, conforms to legislative requirements and mitigates risk.

8. FINANCIAL IMPACT

- 8.1 Council will receive a commencing rent of \$103,808 per annum plus GST, reviewed to a market rental in year 2, then increased annually by 3% in years 3, 4 and 5.
- 8.2 The Tenant is required to pay all outgoings associated with the premises.
- 8.3 As this is a retail lease, the *Retail Leases Act (2003)* applies.

9. ENVIRONMENTAL IMPACT

- 9.1 The proposed tenancy agreement will require the Tenant to implement environmentally sustainable practices and programs that support reduction in energy, waste and water.
- 9.2 Council will work with the Tenant over the term of the proposed tenancy agreement to improve the efficiency of water and energy usage. In particular to:
 - Reduce or minimise greenhouse gas emissions
 - Maximise the use of renewable or recyclable materials;
 - Reduce waste from operations;
 - Implement best-practice storm water management; and
 - Eliminate single use plastic including plastic straws, cups and use of balloons.



10. COMMUNITY IMPACT

10.1 Council tenancy agreements deliver the following direct or indirect benefits to the community:

10.1.1 Promotion of health and wellbeing, supporting service provision, cultural or recreational opportunities or economic benefits; or

10.1.2 Full market rent so that the funds can be used to support Council activities; or

10.1.3 A combination of 10.1.1 and 10.1.2.

10.2 The lease with Teifal Pty Ltd supports Council's objective of maximising the benefit to the community from its facilities through charging market rent and outgoings being payable by the Lessee.

11. ALIGNMENT TO COUNCIL PLAN AND COUNCIL POLICY

11.1 The proposed tenancy agreement aligns with:

11.1.1 Direction 6 – "A financially sustainable, high performing, well-governed organisation that puts the community first".

12. IMPLEMENTATION STRATEGY

12.1 TIMELINE

12.1.1 If Council resolves to complete the statutory process, and approves the proposed tenancy agreement, such agreement will be finalised immediately.

12.2 COMMUNICATION

1.1.1 Officers will advise the tenant of Council's decision following the meeting.

13. OFFICER DIRECT OR INDIRECT INTEREST

13.1 No officers involved in the preparation of this report have any direct or indirect interest in the matter.

TRIM FILE NO: PF16/70703

ATTACHMENTS 1. Lease Plan - 174 Nott Street, Port Melbourne