



14.2 NOTICE OF INTENTION TO LEASE - "DECANTERS BY THE BAY" 174 NOTT STREET PORT MELBOURNE

EXECUTIVE MEMBER: CHRIS CARROLL, GENERAL MANAGER, CUSTOMER AND CORPORATE SERVICES

PREPARED BY: STEPHEN MILLARD, TEAM LEADER PROPERTY OPERATIONS

1. PURPOSE

- 1.1 To seek Council's approval to commence statutory procedures in relation to granting a new tenancy agreement to 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, was modified to be used as a retail outlet in 1987 and has undergone relatively little change since. It is considered to be 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. Their current lease for the property commenced 1 March 2011 and is due to expire on 28 February 2021.
- 2.4 The current rent is \$103,808 per annum plus GST with 3% annual increases and the tenant is responsible for the cost of outgoing. 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.
- 2.5 Officers recommend that Council offer a 5-year lease term at a commencing rental of \$103,808 per annum plus GST adjusted annually 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.
- 2.6 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).



3. RECOMMENDATION

That Council:

- 3.1 Resolves that the statutory procedures be commenced under Section 190 of the Local Government Act 1989 (**Act**) for the proposed lease with Teifal Pty Ltd (**Tenant**) at 174 Nott Street, Port Melbourne by publishing a notice in the local newspaper inviting persons to make a submission under Section 223 of the Act, with the proposed lease terms outlined below;
 - 3.1.1 Proposed Tenant: Teifal Pty Ltd
 - 3.1.2 Demised Premises: 174 Nott Street, Port Melbourne
 - 3.1.3 Permitted Use: Retail and wholesale sale of liquor and associated products and services
 - 3.1.4 Commencement Date: 1 March 2021
 - 3.1.5 Term: 5 years
 - 3.1.6 Commencement Rent: \$103,808 per annum plus GST
- 3.2 Authorises the Chief Executive Officer or delegate to undertake the administrative procedures necessary to enable Council to carry out its functions under Section 223 of the Act.
- 3.3 Resolves to hear and consider any submissions received pursuant to Section 223 of the Act at a future Council meeting.

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 yellow in Attachment 1.
- 4.2 This property is situated on Council freehold land (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".
- 4.3 The building was originally constructed circa 1940, was modified to be used as a retail outlet in 1987 and 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 has occupied the site since September 2001 and has a history of being a reasonable tenant, having generally complied with lease terms and conditions but has been known to fall into rental arrears on occasion necessitating the requirement for Council to recover rental arrears through agreed payment plans.
- 4.10 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.
- 4.11 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's Property Policy provides guidance on entering tenancy agreements. Such principles under Council's Property Policy align with the State Government Leasing Policy and are summarised below.
- 5.3 An assessment of the proposed key terms along with a recommendation against each of the principles is provided below.

Direct negotiation or market process to secure a new lease

Key Principle

- 5.4 Direct negotiation will be considered with the incumbent tenant unless there is evidence that conducting a competitive process would maximise benefits to the community.

Assessment

- 5.5 The proposed tenancy agreement is not expected to be longer than the standard term.
- 5.6 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.
- 5.7 There is a risk that Council will suffer a loss in the value of the property through both increased costs and unpaid rent, if a competitive process is undertaken for a short-term agreement.



- 5.8 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.
- 5.9 The proposed tenancy agreement does not include obligations on the Tenant to carry out a redevelopment or major capital works.
- 5.10 There is no evidence that conducting a competitive process in the short term would increase benefits to the community or Council.

Recommendation

- 5.11 Officers recommend a direct negotiation be undertaken with the current tenant.

Term of the Proposed Tenancy Agreement

Key Principles

- 5.12 The term of the tenancy agreement needs to be appropriate to the tenant and use of the premises and allows for consideration of alternative uses.
- 5.13 A longer-term tenancy agreement may be warranted to support capital investment in the premises and provide security for financing or future planning.
- 5.14 The term of the tenancy agreement should consider the effort required by Council and the future tenant to negotiate a new tenancy agreement.

Assessment

- 5.15 The Tenant has requested a lease term longer than five (5) years.
- 5.16 Council's Property Policy allows for a standard term of five (5) years for leases.
- 5.17 The Retail Leases Act (2003) requires a retail lease to have a term of at least 5 years.
- 5.18 The current Tenant has occupied the premises for 19 years.

Recommendation

- 5.19 Officers recommend a standard term of 5 years from the expiry of their current lease as the building condition is considered adequate for the recommended lease term. This has been agreed in principle by the Tenant.

Rent

Key Principles

- 5.20 Council's approach to rental amounts reflects the different purpose of Commercial and Community Organisations (as defined in the Property Policy) and is guided by portfolio targets set by Council.
- 5.21 A market rent is desirable, but Council accepts lower than market rent to support community-based organisations that provide community benefits or services on behalf of Council.

Assessment

- 5.22 A rental greater than the proposed rental valuation may be attained through a competitive process.
- 5.23 The Tenant is commercial operator undertaking services for a profit.

Recommendation



- 5.24 Officers propose that the commencing rental be \$103,808 per annum plus GST. This amount is recommended to be adjusted annually by a fixed rate of 3%. This has been agreed in principle by the Tenant.

Outgoings

Key Principles

- 5.25 It is desirable that tenants pay the running costs (outgoings) of the premises that are associated with their tenancy.
- 5.26 These costs are to be paid either directly to the relevant service provider by the tenant, or to Council as a reimbursement for incurring these costs.
- 5.27 Community Organisations may be eligible for an exemption from the payment of all, or some, outgoing which will be considered in line with the Community Funding Framework.

Assessment

- 5.28 The Tenant currently pays the outgoing associated with operating its services out of the premises.
- 5.29 It is considered reasonable that the Tenant pays all outgoing as with any standard operator/ occupier.
- 5.30 A landlord may not pass on Land Tax to a tenant if the Retail Leases Act (2003) is applicable.

Recommendation

- 5.31 Officers recommend that the Tenant pay outgoing associated with the proposed tenancy agreement as per standard commercial practice, excluding Land Tax. This has been agreed in principle by the Tenant.

Insurance

Key Principles

- 5.32 Tenants are responsible for insuring any chattels, fixtures or contents within Council property as well as taking out public liability insurance.
- 5.33 It is desirable that Council maintains building insurance for buildings on Council owned or controlled land with the cost of such insurance being reimbursed by the tenant.
- 5.34 Community Organisations may be eligible for an exemption from the payment of all, or some, insurance which will be considered in line with the Community Funding Framework.

Assessment

- 5.35 The Tenant currently maintains its own Public Liability insurance policy of \$20M as required under the lease, as well as contents, plate glass and Business Income Protection insurance policies.
- 5.36 Council currently pays building insurance for the premises at a premium of approximately \$560 per annum which is reimbursed by the tenant
- 5.37 It is considered reasonable that the Tenant pays insurance as with any standard operator/ occupier.



Recommendation

- 5.38 Officers recommend that insurance for public liability and tenant improvements be obtained by the Tenant and that cost for building insurance be reimbursed by the Tenant to Council.

Maintenance

Key Principles

- 5.39 Council is committed to ensuring Council property remains suitable and safe for its intended use, and that the building lifecycle is extended as far as practicable for the benefit of future communities.
- 5.40 In general, tenants are responsible for keeping Council property clean and in good operating condition with full responsibility for the maintenance and renewal of tenant fittings and improvements.
- 5.41 The extent of landlord contribution to structural maintenance and renewal should consider asset ownership, community benefits, capacity of the tenant to pay and nature of the tenancy.

Assessment

- 5.42 The proposed lease falls within the Retail Leases Act (2003).
- 5.43 The Retail Leases Act (2003) requires the Landlord to maintain and repair the building and all Landlord plant and equipment, services and fixtures in a condition that is consistent with the condition of the premises at the time the retail premises lease was entered into.
- 5.44 Council has taken on the responsibility of delivery of Essential Safety Measures inspections and monitoring of all buildings within its portfolio.

Recommendation

- 5.45 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

6. CONSULTATION AND STAKEHOLDERS

- 6.1 Officers have notified the Tenant that a standard 5-year retail lease with standard commercial terms via a direct negotiation is proposed.
- 6.2 Council will consult with the community through a Notice of Intention to Lease to be published in the local newspaper inviting submissions in accordance with statutory procedures.

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 Documenting the lessor and tenant responsibilities through a legally binding tenancy agreement conforms to legislative requirements which mitigates risk.

8. FINANCIAL IMPACT

- 8.1 The proposed rent is based on a market rent as determined by valuation and the Tenant is required to pay all outgoings associated with the premises.



8.2 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 agreements 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 and use of balloons.

10. COMMUNITY IMPACT

10.1 Council has the following primary objectives when entering tenancy agreements for the use of Council property:

10.1.1 to support service delivery and promote health and wellbeing, social, environmental, cultural, recreational or economic opportunities and benefits in the City of Port Phillip by leasing or licensing Council property to Community Organisations; and

10.1.2 to generate net income to support service delivery across the portfolio by leasing or licensing Council property to Commercial Organisations.

10.2 The lease with Teifal Pty Ltd supports Council's objective of maximising the benefit to the community from its facilities. This is achieved through charging a commercial rental and the recovery of outgoings from the Tenant.

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 commence the statutory process, a Notice of Intention to Lease as per section 190 of the Act will be published in the Port Phillip Leader newspaper.

12.1.2 Under section 223 of the Act, the submission period will be at least 28 days.

12.1.3 Council is required to hear and consider submissions (if any) at a future Council meeting.

12.2 COMMUNICATION

12.2.1 Officers will advise the tenant's representatives of the outcome of the 18 March 2020 Council meeting.



ORDINARY MEETING OF COUNCIL 18 MARCH 2020

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.

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ATTACHMENTS 1. Attachment A - Decanters by the Bay - 174 Nott Street Port Melbourne