



14.2 NOTICE OF INTENTION TO LEASE (FINALISE) - THINK OTS - RESOLUTION INDEPENDENT PTY LTD

EXECUTIVE MEMBER: CHRIS CARROLL, GENERAL MANAGER, CUSTOMER, OPERATIONS AND INFRASTRUCTURE

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1. PURPOSE

- 1.1 To seek Council's approval to complete the statutory procedures for the proposed tenancy agreement with Think OTS – Resolution Independent Pty Ltd ("**Tenant**") at Level 1, 200-202 Bank Street, South Melbourne along with ground floor storage and one car park.

2. EXECUTIVE SUMMARY

- 2.1 The premises subject to the proposed tenancy agreement is level 1 of 200-202 Bank Street, South Melbourne along with ground floor storage and one car park to the rear of the property, owned by Council.
- 2.2 The Tenant uses the premises at level 1 as an office for administration and design services. It provides a range of pavilion services and solutions from design to delivery. Design services are considered to align with the Art and Soul Creative and Prosperous City Strategy in particular its application to the Emerald Hill precinct.
- 2.3 The premises are currently leased on a commercial basis and this is proposed to continue under the proposed tenancy agreement.
- 2.4 The existing tenancy agreement will expire on 21 November 2020.
- 2.5 The commencing annual rent under the existing tenancy agreement was \$48,500 plus GST with fixed 3% increases on the anniversary of the commencement date and on the exercise of the further term. The Tenant is responsible for the cost of outgoings.
- 2.6 The Tenant is currently paying an annual rent of \$51,453.80 plus GST.
- 2.7 Given the Tenant's use of the premises, the proposed tenancy agreement is subject to the *Retail Leases Act 2003 (RLA)*.
- 2.8 Under the RLA, Council will be responsible for the maintenance and renewal of the building and all Council owned plant, equipment, services and fixtures.
- 2.9 Officers recommend the proposed tenancy agreement to commence from 22 November 2020 for a period of three (3) years to allow extension of the existing arrangement with the Tenant during the current difficult business conditions and also to enable Council to consider the future use of the premises.
- 2.10 Officers recommend a 3-year lease term at a commencement annual rental of \$52,997 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.
- 2.11 The Tenant will waive its right to a minimum 5-year aggregate term under the RLA.
- 2.12 As the proposed tenancy agreement has a term of more than one year and the market rent estimate exceeds \$50,000 per annum, the statutory process under the *Local Government Act 1989 (Vic) (Act)* applies.



- 2.13 Council resolved to commence the statutory process on 3 June 2020 which invited submissions on the proposed tenancy agreement. Council must hear and consider any submissions received before deciding to enter into such tenancy agreement.
- 2.14 No submissions were received in response to the public notice that was published in The Age on 24 June 2020.
- 2.15 Council is now able to complete the statutory procedures 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 premises identified below, resolves to conclude the statutory procedures under sections 190 and 223 of the *Local Government Act 1989 (Vic)* (Act) and approves the following proposed tenancy agreement with key terms summarised as follows:

Tenant	Think OTS – Resolution Independent Pty Ltd
Guarantor	All company directors to guarantee the proposed tenancy agreement
Premises	Approximately 205 square metres at level 1, 200-202 Bank Street, South Melbourne with approximately 26 square metres of ground floor storage and one car space to the rear parking area
Permitted Use	Office for administration and design services
Commencement Date	22 November 2020
Expiry Date	21 November 2023
Rent	Commencement annual rent of \$52,997 plus GST with a 3% fixed increase on each anniversary of the Commencement Date
Bank Guarantee/ Security Deposit	Three months' rental inclusive of GST

- 3.2 Authorises the Chief Executive or delegate to execute such tenancy agreement.

4. KEY POINTS/ISSUES

Building Information

- 4.1 Council is the owner in freehold of 200-202 Bank Street, South Melbourne, as per the Attachment.
- 4.2 According to the Heritage Council of Victoria, John Boyd, former Mayor of South Melbourne City Council collaborated with his brother David, a well-known estate agent, in the erection of this two-storey building. It was completed in 1895 with the building being in harmony and scale with the adjacent 204-206 Bank Street.



- 4.3 The property is a single fronted, two-storey period building with an exclusive entrance at the ground floor.
- 4.4 The premises subject to the proposed tenancy agreement are level 1 of 200-202 Bank Street, South Melbourne, ground floor storage and one car park.
- 4.5 There is currently no immediate strategic plan for the premises following the Emerald Hill Precinct project.

Tenant

- 4.6 The Tenant is a creative design company.
- 4.7 It specialises in providing a full range of pavilion services and solutions from design to delivery.
- 4.8 On 1 December 2014, Council leased the subject premises to Think OTS Pty Ltd on full commercial terms, via a competitive process, for a term of three years with two further terms of one year each.
- 4.9 The lease was terminated in March 2017 due to Think OTS Pty Ltd going into liquidation.
- 4.10 When Think OTS Pty Ltd was deregistered by the Australian Securities & Investments Commission, it ceased to be a legal entity capable of holding a lease.
- 4.11 The principal of the liquidated company continued in occupation of the premises under a tenancy agreement to the principal's new company (i.e. Think OTS – Resolution Independent Pty Ltd) and has rectified the rent arrears of Think OTS Pty Ltd.
- 4.12 The existing tenancy agreement with the Tenant commenced on 22 March 2018 for an initial term of one year and eight months and a further term of one year. This tenancy agreement will expire on 21 November 2020.

Proposed Tenancy Agreement

- 4.13 As the proposed tenancy agreement has a proposed term greater than one year and the market rent estimate exceeds \$50,000 per annum, the statutory process applies. This process requires public notification pursuant to sections 190 and 223 of the Act before making a final decision on the proposed tenancy agreement.
- 4.14 Council resolved to commence the statutory process on 3 June 2020 which 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.
- 4.15 No submissions were received in response to the public notice that was published in The Age newspaper on 24 June 2020.
- 4.16 There are a number of key planning documents, legislation and policy that need to be considered for the proposed tenancy agreement. These include:
 - 4.16.1 Council Plan and
 - 4.16.2 Council Property Policy (**Property Policy**).
- 4.17 The Council Plan sets out what Council wants to achieve for the city of Port Phillip by 2027 and how it supports the future health and wellbeing of the city.
- 4.18 The Property Policy provides guidance on entering tenancy agreements. Such principles under the Property Policy align with the State Government Leasing Policy.



4.19 Further to these principles, officers have put forward the following in the previous report to Council recommending commencement of the statutory procedures:

- A direct negotiation be undertaken with the incumbent Tenant Think OTS – Resolution Independent Pty Ltd.
- The proposed tenancy agreement be made to commence from 22 November 2020 for a period of three years. This would allow the Tenant a period of business continuity and enable Council to consider the future plans for the premises and precinct. In addition, such extension during this time of COVID-19 is considered prudent due to difficult rental market conditions.
- The Tenant be provided with exclusive use of the subject premises to continue delivery of its services.
- The Tenant as a Commercial Organisation be made to pay market rent i.e. a commencement annual rent of \$52,997 plus GST (current rent increased by 3%), with a 3% fixed increase on each anniversary of the commencement date.
- All outgoings applicable to the premises be paid by the Tenant.
- Insurance for public liability and tenant chattels be obtained by the Tenant and that cost for building insurance be reimbursed by the Tenant to Council.
- Council be made responsible for the maintenance and renewal of the building and all Council owned plant, equipment, services and fixtures, under the RLA.

5. CONSULTATION AND STAKEHOLDERS

- 5.1 Council has notified the community through a Notice of Intention to Lease published in The Age newspaper on 24 June 2020 inviting submissions in accordance with statutory procedures.
- 5.2 The deadline date of submissions was 24 July 2020.
- 5.3 No submissions were received by the deadline date.

6. LEGAL AND RISK IMPLICATIONS

- 6.1 The statutory process under the Act requires Council to notify the public before committing to the proposed tenancy agreement.
- 6.2 Documenting the landlord and tenant responsibilities through a legally binding tenancy agreement conforms to legislative requirements which mitigates risk.

7. FINANCIAL IMPACT

- 7.1 The proposed rent will give Council a revenue of \$52,997 plus GST for the first year of the proposed tenancy agreement, subject to a fixed annual increase of 3%.
- 7.2 The proposed rent is based on the rent currently being paid by the Tenant (increased by 3%).
- 7.3 As this is a retail lease, the RLA applies.

8. ENVIRONMENTAL IMPACT

- 8.1 The proposed tenancy agreement will require the Tenant to implement environmentally sustainable practices and programs that support reduction in energy, waste and water.



- 8.2 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
 - reduce single use plastic.

9. COMMUNITY IMPACT

- 9.1 Council has the following primary objectives when entering tenancy agreements for the use of Council property:
- 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
 - to generate net income to support service delivery across the portfolio by leasing or licensing Council property to Commercial Organisations.
- 9.2 The proposed tenancy agreement supports Council's objective of maximising the benefit to the community from its facilities. This is achieved through charging commercial rental and recovery of outgoings from the Tenant.

10. ALIGNMENT TO COUNCIL PLAN AND COUNCIL POLICY

- 10.1 The proposed tenancy agreement aligns to:
- 11.1.1 Direction 5 – “A city where arts, culture and creative expression is part of everyday life.”
 - 11.1.2 Direction 6 – “A financially sustainable, high performing, well-governed organisation that puts the community first.”

11. IMPLEMENTATION STRATEGY

11.1 TIMELINE

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

11.2 COMMUNICATION

- 11.2.1 Officers will advise the Tenant's representative of the outcome of the 16 September 2020 Council meeting.

12. OFFICER DIRECT OR INDIRECT INTEREST

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

TRIM FILE NO: 20/13/35
ATTACHMENTS 1. Site Plan