



14.2 NOTICE OF INTENTION TO LEASE (COMMENCE) - SOUTH MELBOURNE COMMUNITY CHEST INC OPPORTUNITY SHOP

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

PREPARED BY: LYANN SERRANO, PROPERTY ADVISOR

1. PURPOSE

- 1.1 To seek Council's approval to commence the statutory procedures for the proposed tenancy agreement to South Melbourne Community Chest Inc ("Tenant") at the Ground Floor, 200-202 Bank Street, South Melbourne along with two car parks.

2. EXECUTIVE SUMMARY

- 2.1 The premises subject to the proposed tenancy agreement are the ground floor of 200-202 Bank Street, South Melbourne and two car parks, owned by Council.
- 2.2 The Tenant uses the ground floor premises as an office and opportunity shop for charitable purposes.
- 2.3 Since 1946 the Tenant has played an important role in the local community when the former City of South Melbourne and local businesses joined forces to provide funds for the less privileged.
- 2.4 Over the last five years, the Tenant has awarded \$260,000 in grants to 29 organisations from the proceeds generated from its opportunity shop.
- 2.5 The existing tenancy agreement was renewed in September 2015 for five years, at a rental of \$104 per annum plus GST with the Tenant having no liability to pay rates, taxes and levies, as defined in the lease. This lease will expire on 31 August 2020.
- 2.6 The current Net Annual Value for the premises is estimated at \$69,300 per annum plus GST.
- 2.7 Officers recommend that the Tenant be provided with peppercorn rent of \$104 per annum plus GST, waived insurance, rates and structural maintenance in recognition of it providing accessible and inclusive support to the local community.
- 2.8 The proposed tenancy agreement is recommended to commence from 1 September 2020 for a period of five (5) years to allow sufficient time for the Tenant to carry out its services and to enable Council to consider the future plan for the premises.
- 2.9 As the proposed tenancy agreement has a term of more than one year and the market rent exceeds \$50,000 per annum, the statutory process under the *Local Government Act 1989 (Vic)* (**Act**) applies.

3. RECOMMENDATION

That Council:

- 3.1 Resolves that the statutory procedures be commenced under section 190 of the *Local Government Act 1989 (Vic)* (**Act**) by publishing a notice in The Age inviting interested persons to make a submission under Section 223 of the Act, on the proposed tenancy agreement with key terms outlined below:



Tenant	South Melbourne Community Chest Inc
Premises	Ground floor of 200-202 Bank Street, South Melbourne and two car parks
Permitted Use	Office and shop for charitable purposes
Commencement Date	1 September 2020
Expiry Date	31 August 2025
Rent	\$69,300 per annum plus GST discounted to \$104 per annum plus GST to support the Tenant in its pursuit to provide community-based services endeavouring to give direct benefits to Port Phillip residents

- 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; and
- 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 Information

- 4.1 Council is the owner in freehold of 200-202 Bank Street, South Melbourne, as per Attachment 1.
- 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 the ground floor of 200-202 Bank Street, South Melbourne and two car parks.
- 4.5 There is currently no immediate strategic plan for the premises following the Emerald Hill Precinct project.
- 4.6 The current Net Annual Value for the premises is estimated at \$69,300 per annum plus GST.



- 4.7 The proposed tenancy agreement must go through statutory procedures set out in sections 190 and 223 of the Act given the proposed term is greater than one year and the market rent estimate exceeds the threshold of \$50,000 per annum.

Tenant

- 4.8 The Tenant currently operates an opportunity shop from the ground floor of 200-202 Bank Street, South Melbourne and utilises two car parks at the rear of the property.
- 4.9 The Tenant was formed in 1946 following the closure of the South Melbourne Patriotic Fund which at that time was the principal charitable organisation in the municipality.
- 4.10 Unlike many other charity shops, all funds raised through the Tenant's operations go straight back into the local community by providing annual community grants to local organisations and assisting the less privileged, the youth at risk, the elderly and those with mobility issues through charitable donations.
- 4.11 From 2015-2019, the Tenant has awarded \$260,000 in grants to 29 organisations from the proceeds generated from its opportunity shop, as contained in Attachment 2.
- 4.12 In 1971 the Tenant gifted 421 Coventry Street, South Melbourne to the former City of South Melbourne (**Former Council**) for community use.
- 4.13 In recognition of this donation, the Former Council waived the rent and rates from 1980 until the Tenant moved to the subject premises in 1983.
- 4.14 For a period of 26 years, 7 months and 1 day from 31 October 1983 to 31 May 2010, the Former Council honoured the terms of its 1980 undertaking and the Tenant occupied 200-202 Bank Street, South Melbourne at a rent of \$1 per annum without paying rates.
- 4.15 A five-year lease at a concessional rent was entered into from 1 April 2010 with no liability for the Tenant to pay rates.
- 4.16 The lease was renewed in September 2015 for a further period of five years, at a rental of \$104 per annum plus GST and with the Tenant having no liability to pay rates, taxes and levies, as defined in the lease. This lease will expire on 31 August 2020.

5. PROPOSED TENANCY AGREEMENT

- 5.1 The proposed tenancy agreement must go through statutory procedures set out in sections 190 and 223 of the Act given the proposed term is greater than one year and the market rent estimate exceeds the threshold of \$50,000 per annum.
- 5.2 There are a number of key planning documents, legislation and policy that need to be considered for the proposed tenancy agreement. These include:
- Council Plan and
 - Council Property Policy (**Property Policy**).
- 5.3 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.
- 5.4 The Property Policy provides guidance on entering tenancy agreements. Such principles under the Property Policy align with the State Government Leasing Policy and are summarised below.
- 5.5 An assessment of the proposed key terms along with a recommendation against each of the principles is also provided below.



Direct Negotiation or Market Process to Secure a New Lease

Key Principle

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

Assessment

- 5.7 The proposed tenancy agreement is not expected to be longer than the standard term.
- 5.8 The proposed tenancy agreement does not include obligations on the Tenant to carry out a redevelopment or major capital works.
- 5.9 The Tenant provides annual community grants to local organisations and assists the less privileged, the youth at risk, the elderly and those with mobility issues through charitable donations.
- 5.10 An adjacent retail shop closed some months ago and remains vacant. There is a risk that by conducting a competitive process Council may be left with premises that remain vacant for a period of time.
- 5.11 At this point there is no evidence that conducting a competitive process would increase benefits to the community or Council.

Recommendation

- 5.12 Officers recommend a direct negotiation be undertaken with the incumbent Tenant.

Term of the Proposed Tenancy Agreement

Key Principles

- 5.13 The term of the proposed tenancy agreement needs to be appropriate to the tenant and the use of the premises and allows for consideration of alternative uses.
- 5.14 A longer-term tenancy agreement may be warranted to support capital investment in the premises or when the use is linked to a specific tenant and the tenant has a history of delivering good outcomes for the community.
- 5.15 The term of the proposed tenancy agreement should consider the effort required by Council and the future tenant to negotiate a new tenancy agreement.

Assessment

- 5.16 The Tenant has requested a term of five (5) years.
- 5.17 Council's Property Policy allows for a standard term of five (5) years for leases.
- 5.18 The long-term strategy for the building is still yet to be considered in line with change in the wider precinct.

Recommendation

- 5.19 Officers recommend the proposed tenancy agreement to commence from 1 September 2020 for a period of five (5) years.
- 5.20 This would allow sufficient time for the Tenant to carry out its services and to enable Council to consider the future plan for the premises.

Multi-Use of Facilities

Key Principles



5.21 Council is committed to maximising access to, and use of, Council facilities for the benefit of the community.

5.22 Accordingly, for all agreements with Community Organisations, as defined under the Property Policy, the need for exclusive use of the facilities will be reviewed at the commencement of the agreement, with preference being shared use licence agreements.

Assessment

5.23 The Tenant's service offering does not include sensitive work but does require the full space to obtain the defined benefit to be achieved from the tenancy.

5.24 The premises have not been custom built for the Tenant.

Recommendation

5.25 Officers recommend that the Tenant be provided with exclusive use of the subject premises to continue delivery of its services to the community.

Rent

Key Principles

5.26 Council's approach to rental amounts reflects the different purpose of Commercial and Community Organisation (as defined in the Property Policy) tenant and is guided by portfolio targets set by Council.

5.27 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

5.28 The Tenant is a community-based organisation.

5.29 Under the terms of the existing tenancy agreement, the Tenant pays a discounted rental of \$104 per annum plus GST in recognition for the Tenant providing community-based service endeavouring to give direct benefit Port Phillip residents.

5.30 The current Net Annual Value for the premises is estimated at \$69,300 per annum plus GST.

5.31 The Tenant does not receive funding from Council to deliver its services.

Recommendation

5.32 Officers propose a rental of \$104 per annum plus GST to operate an opportunity shop providing accessible and inclusive support to the local community.

Outgoings

Key Principles

5.33 It is desirable that tenants pay the running costs (outgoings) of the premises that are associated with their tenancy.

5.34 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.



- 5.35 Community Organisations may be eligible for an exemption from the payment of all, or some, outgoings which will be considered in line with the Community Funding Framework.

Assessment

- 5.36 There is a special condition in the existing tenancy agreement that for the term of the existing tenancy agreement and any subsequent renewal, the Tenant is not liable to pay any rates, taxes or levies, as defined in the tenancy agreement.
- 5.37 The Tenant currently pays the utility costs associated with operating its services out of the premises.
- 5.38 It is considered reasonable that the Tenant pays all outgoings as with any standard operator/ occupier.

Recommendation

- 5.39 Officers recommend that the above special condition in the existing tenancy agreement is honoured and continued, given the long history with the Tenant.
- 5.40 The Tenant will continue to be liable for utilities and other services at the premises.

Insurance

Key Principles

- 5.41 Tenants are responsible for insuring any chattels, fixtures or contents within Council property as well as taking out public liability insurance.
- 5.42 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.
- 5.43 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

- 5.44 The Tenant currently maintains its own Public Liability Insurance policy of \$10M and contents insurance as required.
- 5.45 It is a standard requirement that all tenants maintain their own Public Liability Insurance policy of at least \$20M.
- 5.46 Council currently covers the cost of building insurance for the premises at a premium of \$1,662 per annum due to the duplex nature of the building.

Recommendation

- 5.47 Officers recommend that the Tenant's insurance for public liability be increased to \$20M in line with the Property Policy.
- 5.48 The cost of building insurance is recommended to be waived and considered as an in-kind contribution to the Tenant's operations in line with the Community Funding Framework.



Maintenance

Key Principles

- 5.49 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.
- 5.50 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.
- 5.51 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

- 5.52 The proposed tenancy agreement does not fall within the *Retail Leases Act (2003)*.
- 5.53 Council has always been responsible for all costs associated with repairs, maintenance and renewal of the premises.
- 5.54 Council has taken on the responsibility of delivery of Essential Safety Measures inspections and monitoring of all buildings within its portfolio.

Recommendation

- 5.55 Officers recommend that the Tenant be subject to the standard maintenance requirements of the proposed tenancy agreement.

Method of Council Support

Key Principles

- 5.56 Council is committed to providing transparent and relevant support through a range of funding mechanisms to Community Organisations aligned with Council Plan priorities, as detailed in the Community Funding Policy.
- 5.57 Council will assess the level of discount/ support required by Community Organisations against the eligibility criteria set by the Community Funding Policy.

Assessment

- 5.58 The rental subsidy has previously been granted as an in-kind contribution in recognition for the providing community-based service endeavouring to give direct benefits to Port Phillip residents.
- 5.59 It is recommended that the Tenant contributes to the general maintenance of the building and covers outgoings for area of the building under its management.

Recommendation

- 5.60 Officers recommend that the Tenant be provided with peppercorn rent of \$104 per annum plus GST, waived insurance, rates and structural maintenance in recognition of it providing accessible and inclusive support to the local community.
- 5.61 In recognition of this in-kind contribution, the Tenant is to provide Council with ongoing reporting to demonstrate how it is meeting its requirements under the proposed tenancy agreement and how it is providing benefits to the broader community.



6. CONSULTATION AND STAKEHOLDERS

- 6.1 Council will notify the community through a Notice of Intention to Lease to be published in The Age 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 Council's standard form lease will be used as the basis of the proposed tenancy agreement, unless otherwise agreed or required by legislation. Such template documents the landlord and tenant responsibilities, conforms to legislative requirements and mitigates risk.

8. FINANCIAL IMPACT

- 8.1 The Net Annual Value for the premises has been estimated at \$69,300 per annum plus GST.
- 8.2 Officers propose a discounted rent of \$104 per annum plus GST to support the Tenant in its continuous provision of services and grants to the local community.
- 8.3 The proposed tenancy agreement will be dependent on the Tenant demonstrating how it is meeting its requirements under the agreement on an annual basis.

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
 - reduce single use plastic.
- 9.3 The nature of the Tenant's business as an opportunity shop involves the recycling of second-hand clothing, shoes, bric-a-brac, books and toys etc. thus already contributing to community sustainability.
- 9.4 The Tenant employs basic sustainability practices in the premises and is willing to sign up to Council's Smart Solutions for Community Services.

10. COMMUNITY IMPACT

- 10.1 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.

10.2 The Tenant advances the welfare of the community by making funds available to those less fortunate through annual grants to the community organisations within the city.

11. ALIGNMENT TO COUNCIL PLAN AND COUNCIL POLICY

11.1 The proposed tenancy agreement aligns to:

11.1.1 Direction 1– “We embrace difference and people belong” and

11.1.2 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 Age 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 1 July 2020 Council 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: 20/13/35

ATTACHMENTS

- 1. Site Plan**
- 2. Community Grants Provided by the Tenant**