



**14.1 NOTICE OF INTENTION TO LEASE (COMMENCE) - THINK
OTS - RESOLUTION INDEPENDENT PTY LTD**

**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 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 are 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 is likely to exceed \$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	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 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 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 is level 1 of 200-202 Bank Street, South Melbourne along with 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.

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 is likely to exceed 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 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 Tenant has not occupied the subject premises for a period that exceeds the maximum allowable term.
- 5.9 The proposed tenancy agreement does not include obligations on the Tenant to carry out a redevelopment or major capital works.
- 5.10 The Tenant delivers commercial services to the community that align with the Art and Soul Creative Prosperous City Strategy of which the Emerald Hill precinct forms part.
- 5.11 Given the current difficult business conditions it is highly unlikely that conducting a competitive process would result in an increased rental outcome greater than the current rental being paid (but increased by 3% in line with the current rent review provisions under the existing lease).
- 5.12 There is a risk that by conducting a competitive process that Council may be left with a building that remains vacant for a period of time or results in a reduced rental than that currently being received.

Recommendation

- 5.13 Officers recommend a direct negotiation be undertaken with the incumbent Tenant Think OTS – Resolution Independent Pty Ltd.

Term of the Proposed Tenancy Agreement

Key Principles

- 5.14 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.
- 5.15 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.
- 5.16 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

- 5.17 The Property Policy allows for a term of up to five years for leases.
- 5.18 The Tenant has been offered a lease term of three (3) years which it has accepted.
- 5.19 The proposed tenancy agreement is subject to the RLA, but the Tenant will waive its right to a minimum 5-year aggregate term.

Recommendation

- 5.20 Officers recommend the proposed tenancy agreement to commence from 22 November 2020 for a period of three years.



- 5.21 This would allow the Tenant a period of business continuity and enable Council to consider the future plans for the premises and precinct.
- 5.22 Such an extension during this time of COVID-19 is considered prudent due to difficult rental market conditions.

Multi-Use of Facilities

Key Principles

- 5.23 Under the Property Policy, Council properties suited to commercial use are to be solely used by Commercial Organisations for the purpose of generating commercial revenue.
- 5.24 Council will act as a commercial agent and will operate agreements on commercial terms under applicable legislation.
- 5.25 Accordingly, for all agreements with Commercial Organisations, commercial tenant responsibilities, including reporting requirements demonstrating compliance with the agreement, will be clearly set out in the agreement with Council.

Assessment

- 5.26 The Tenant is a commercial organisation.
- 5.27 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.
- 5.28 The premises have not been custom built for the Tenant.

Recommendation

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

Rent

Key Principles

- 5.30 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.
- 5.31 Commercial Organisations will pay a rental that is market driven and may be determined:
- through a rental assessment carried out by an independent valuer; or
 - as a result of an expression of interest process or similar program as required by the terms of agreement.

Assessment

- 5.32 Under the terms of the existing tenancy agreement the Tenant pays market rent. The Tenant paid a commencing rental of \$48,500 plus GST with fixed 3% increases on the anniversary of the commencement date and on the exercise of the further term.
- 5.33 The Tenant currently pays an annual rent of \$51,453.80 plus GST.

Recommendation

- 5.34 Given the Tenant is a Commercial Organisation, it is required to pay market rent.



- 5.35 Officers propose a commencement annual rent of \$52,997 plus GST (i.e. current rent increased by 3%), with a 3% fixed increase on each anniversary date.

Outgoings

Key Principles

- 5.36 It is desirable that tenants pay the running costs (outgoings) of the premises that are associated with their tenancy.
- 5.37 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.
- 5.38 Commercial Organisations are not eligible for an exemption from the payment of all, or some, outgoings.

Assessment

- 5.39 The Tenant currently pays the outgoings associated with operating its services out of the premises.
- 5.40 It is considered reasonable that the Tenant pays all outgoings as with any standard operator/ occupier.

Recommendation

- 5.41 Officers recommend that all outgoings applicable to the premises be paid by the Tenant.

Insurance

Key Principles

- 5.42 Tenants are responsible for insuring any chattels, fixtures or contents within Council property as well as taking out public liability insurance.
- 5.43 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.
- 5.44 Commercial Organisations are not eligible for an exemption from the payment of all, or some, insurance.

Assessment

- 5.45 The Tenant currently maintains its own Public Liability Insurance policy of \$20M and contents insurance as required.
- 5.46 Council currently covers the cost of building insurance at a premium of \$1,662 per annum.
- 5.47 It is considered reasonable that the Tenant pays insurance as with any standard operator/ occupier.

Recommendation

- 5.48 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.



ORDINARY MEETING OF COUNCIL 3 JUNE 2020

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 falls within the RLA.
- 5.53 The RLA requires a 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.
- 5.54 Council has taken on the responsibility of delivery of Essential Safety Measures inspections and monitoring of all buildings within its portfolio.

Recommendation

- 5.55 As per the RLA, 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 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 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 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%.
- 8.2 The proposed rent is based on the rent currently being paid by the Tenant (increased by 3%).
- 8.3 As this is a retail lease, the RLA 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
- reduce single use plastic.

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 proposed tenancy agreement supports Council's objective of maximising the benefit to the community from its facilities. This is achieved through charging a commercial rental and recovery of outgoings from the Tenant.

11. ALIGNMENT TO COUNCIL PLAN AND COUNCIL POLICY

11.1 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."

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 3 June 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