



**8.2** **PROPOSAL FOR COMMERCIAL LEASE -  
LEVEL 1, 202 BANK STREET SOUTH  
MELBOURNE**

**WARD:** **GATEWAY**

**GENERAL MANAGER:** **CHRIS CARROLL, ORGANISATIONAL  
PERFORMANCE**

**PREPARED BY:** **MATTHEW LANGHORN, SENIOR PROPERTY  
ADVISOR**

**TRIM FILE NO:** **0380/200-04**

**ATTACHMENTS:** **Nil**

**PURPOSE**

To seek Council approval to commence the statutory process to lease Level 1, 202 Bank Street, South Melbourne.

**I. RECOMMENDATION**

That Council:

- 1.1 Resolves that the statutory procedures under Section 190 of the Local Government Act 1989 (the Act) be commenced for a new lease of Level 1, 202 Bank Street, South Melbourne to Resolution Independent Pty Ltd subject to the following terms:
- |                |  |
|----------------|--|
| Premises       | Level 1, 202 Bank Street, South Melbourne<br>Approximately 232 m <sup>2</sup> with 26m <sup>2</sup> ground floor storage space and 1 car space to rear parking area. |
| Permitted Use  | Office   |
| Commencement   | 1 March 2018   |
| Length of term | One year and eight months, with one further term of one year (aggregate two years and eight months)  |
| Rent           | \$48,500 plus GST with an increase of 3% on the anniversary of the commencement date   |
- 1.2 Directs the public notice of the proposed lease be given under Section 223 of the Act.
- 1.3 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.
- 1.4 Resolves to hear and consider any submissions received pursuant to Section 223 of the Local Government Act 1989 at a Council to meeting to be held in early 2018.



## **2. BACKGROUND**

- 2.1 Council is the freehold owner of the two storey property at 200-202 Bank Street South Melbourne. The subject property is the level 1 premises which sits above the South Melbourne Community Chest.
- 2.2 On 1 December 2014, Council leased the subject property to Think OTS Pty Ltd on full commercial terms, determined by a competitive process, for a term of three years with two further terms of one year each.
- 2.3 The lease dissolved on approximately March 2017 due to OTS Pty Ltd going into liquidation. When the company tenant was deregistered by ASIC it ceased to be a legal entity capable of holding a lease.
- 2.4 Officers discovered the breach of lease through conversations with the principal about rent arrears and confirmation through company searches.
- 2.5 The principal of the liquidated company has continued in occupation of the premises, rectified rent arrears and now continues to pay rent and outgoings. It is proposed to enter into a new lease with the same person under a different company name on terms that align with the previous lease. This supports an established local business.
- 2.6 As the proposed lease is for a term of more than one year and the proposed rent inclusive of GST is more than \$50,000 per annum, the lease is subject to the statutory procedures under Sections 190 and 223 of the Act.

## **3. KEY INFORMATION**

- 3.1 It is proposed to lease the premises to the principal of the dissolved company and owner of a new company who is the operator of an established creative film business.
- 3.2 The lease is to run for three years assuming the tenant options are taken up.
- 3.3 The benefit of this approach is that a short term lease will enable the business to continue while the Council considers the strategic value of the property and has time to implement a competitive process for a new lease if this is the future outcome.
- 3.4 Rental income of Council property is used to support operations including property acquisition and development, to help meet Councils financial strategy.
- 3.5 The property is a single fronted, double storey period building with an exclusive entrance at the ground floor. There is a narrow staircase to the upper level which does not meet the modern standards for accessibility.
- 3.6 A market rental valuation has been undertaken by MSV on 19 October 2017 as best practice. The proposed rental is in accordance with the market rental valuation.
- 3.7 A new Property Policy is scheduled for development in 2018. This will involve strong Councillor engagement and feedback from the community. Whilst this is being developed, leasing principles, based on the Crown Land Leasing Policy, are used to support appropriate, consistent and transparent leasing and licencing.
- 3.8 The tenant's proposal is assessed below in regard to the proposed key terms and associated key principles.



**3.9 Term of lease**

Key principles:

- The term of the lease needs to be appropriate to the tenant and use of the premises and allow for consideration of alternative uses.
- A longer term lease may be warranted to support capital investment in the premises and provide security for financing or future planning.

Assessment:

- The lease is to run for three years assuming the tenant options are taken up.
- A short term lease will enable the business to continue while the Council considers the strategic value of the property and has time to implement a competitive process for a new lease if this is the future outcome.

**3.10 Permitted uses**

Key principle:

- Permitted uses are those uses that support the primary purpose of the facility for the provision of a service to the local community and visitors.

Assessment:

- The existing use as an office is suitable and potentially the highest and best use.

**3.11 Rent**

Key principles:

- A market rent is desirable but Council accepts lower than market rent to help support community based organisations that provide community benefits or services on behalf of Council.
- Council will also consider the tenant's ability to pay rent and the effect rent would have on its programs and community benefit.

Assessment:

- The proposed rent is a market rent as confirmed by a market rental valuation provided by Council's contract valuer.

**3.12 Outgoings**

Key principles:

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

Assessment:

- All outgoings would be paid by the tenant.

**3.13 Community benefit**

Key principles:

- Council leases should deliver direct and indirect benefits to the community. This can



be achieved either by:

- Promotion of health and wellbeing, supporting service provision, cultural or recreational opportunities, or economic benefits; or
- Full market rent so that the funds can be used to support Council activities; or
- A combination of the above.

Assessment:

- A market rent is proposed.

**3.14 Environmental sustainability**

Key principles:

- Leases should contain sustainability measures including adapting to climate change and using resources more efficiently to reduce everyday environmental impacts.

Assessment:

- The tenant will be encouraged to adopt sustainable practices.

**3.15 Maintenance**

Key principles:

- Leases should clearly articulate tenant and landlord responsibilities for maintenance.

Assessment:

- Council will be responsible for the maintenance of the structure, plant and fixtures.



## FURTHER SUPPORTING INFORMATION

### 4. ALIGNMENT TO COUNCIL PLAN AND COUNCIL POLICY

- 4.1 Direction 6 “*Our commitment to you*” – financial sustainability through effective asset management.

### 5. CONSULTATION AND STAKEHOLDERS

- 5.1 Council officers have consulted with the proposed tenant.
- 5.2 The tenant is aware that the proposal is subject to statutory process and consultation with the community before making a final decision.

### 6. LEGAL AND RISK IMPLICATIONS

- 6.1 The leasing process is subject to the provisions of the following legislation:
- Local Government Act 1989 Section 190 and 223 regarding the requirement for a Notice of Intention to lease inviting submissions from interested persons and the consideration of any submissions received.
  - Retail Leases Act 2003 Section 21 - the tenant will waive its right to a minimum 5 year aggregate term.
- 6.2 A short term lease allows time for a competitive procurement process to the open market for future leasing.

### 7. SUSTAINABILITY – Triple Bottom Line

#### 7.1 ENVIRONMENTAL IMPLICATIONS

- 7.1.1 The tenant will be advised to comply with sustainability requirements pertaining to operations (such as reducing waste, reducing carbon).

#### 7.2 SOCIAL & CULTURAL IMPLICATIONS

- 7.2.1 The property is not used for a Council operation and is considered suitable for staff operational use due to accessibility and size limitations.

#### 7.3 ECONOMIC IMPLICATIONS

- 7.3.1 Current market conditions provide for a reasonable rental benefiting both tenant and Council.

#### 7.4 FINANCIAL IMPLICATIONS

- 7.4.1 Allowing the current business to operate at the site helps avoid a period of the property being vacant not generating income.
- 7.4.2 The market rental of \$49,183.47 plus GST per annum is based on the location, condition and type of the property and the permitted use.



**8. IMPLEMENTATION STRATEGY**

**8.1 TIMELINE**

- 8.1.1 A Public Notice will invite submissions from interested persons within 28 days of the publication date. The notice will be published in local newspapers as soon as practical (proposed to be January/February 2018).
- 8.1.2 Any submissions received may be heard and will be considered at a Council meeting early in 2018.
- 8.1.3 The tenant and any interested person will be given the opportunity to make a submission and to be heard in person and have their views considered.
- 8.1.4 Any person making a submission will be informed of Council's decision and the reason for the decision.

**8.2 COMMUNICATION**

- 8.2.1 The proposal to lease the property at L1, 202 Bank Street, South Melbourne is an ongoing opportunity providing income stream to help support Council services.
- 8.2.2 Council will consider any submissions received before making a final decision.
- 8.2.3 Current property market conditions are favourable for Council and the tenant to mutually benefit.

**9. OFFICER DIRECT OR INDIRECT INTEREST**

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