

Item 7.

Surrender and New Lease - Part Levels 3 and 4, Customs House

File No: S099079.010

Summary

This report seeks Council's approval for the Chief Executive Officer to be granted authority to negotiate an early surrender of the sublease to CHAMP Group Services Pty Limited (CHAMP) on Level 4, and a new lease with a third party to be negotiated over part of Level 3 and the whole of Level 4, Customs House, 31 Alfred Street, Sydney.

In February 1998, the City entered into a 60-year lease over Customs House, 31 Alfred Street, Sydney, with the Attorney General's Department, Commonwealth of Australia (Lease). This lease was granted to enable the City (as lessee) to provide a substantial cultural facility for the City of Sydney.

In addition to establishing cultural and community services in Customs House, the City entered into a number of commercial and retail subleases which included Level 4, currently subleased to CHAMP. CHAMP has requested an early surrender of its sublease as the premises are no longer required due to operational changes within the company. The Sydney Opera House Trust vacated its tenancy on Level 3, in early 2017.

Under the provisions of the Lease, the City is required to maintain a public purpose ratio where 70 per cent of the building must be dedicated (i.e. leased) to restaurants and cafes (maximum of 1,000 square metre area), and purposes which are freely accessible by building visitors, including exhibition areas, galleries, musical and theatrical performance facilities, libraries, tourist information facilities, curatorial and administrative areas associated with galleries or museums.

City staff have been working to find a suitable tenant for the property, having regard to the 'public purpose' requirements of the Lease, and a new tenant for part of Level 3 and the whole of Level 4 has now been found. The negotiations with the new tenant (refer to Confidential Attachment A) for the sublease have now been concluded, which will involve CHAMP agreeing to surrender its sublease, and the new tenant entering into a sublease for part Level 3 and the whole of Level 4 of Customs House.

As the annual rental under the new sublease is greater than \$500,000 per annum and the term and option are more than five years, formal Council approval is required.

Recommendation

It is resolved that:

- (A) Council approve the surrender of the sublease to CHAMP Group Services Pty Limited of Level 4 subject to the lease referred to in Clause (C) being executed;
- (B) authority be delegated to the Chief Executive Officer to negotiate the surrender and enter into all documentation relating to the surrender of the sublease to CHAMP Group Services Pty Limited;
- (C) Council approve the grant of a lease to the tenant named in Confidential Attachment A to the subject report, on the terms set out therein; and
- (D) authority be delegated to the Chief Executive Officer to finalise the terms of the new lease to the tenant named in Confidential Attachment A to the subject report, and enter into all documentation relating to the lease, provided that the terms reflect the terms set out at Confidential Attachment A to the subject report.

Attachments

Attachment A. Essential Lease Terms and Conditions (Confidential)

Background

1. In February 1998, the City entered into a 60-year lease over Customs House, 31 Alfred Street, Sydney with the Attorney General's Department, Commonwealth of Australia, and this lease was granted to enable the City (the lessee) to provide a substantial cultural facility for the City of Sydney. In addition to establishing cultural and community services in Customs House, the City entered into a number of commercial and retail subleases, which included leasing Level 4 of this property to CHAMP Group Services Pty Limited (CHAMP).
2. CHAMP, which currently occupies Level 4, has requested an early surrender of its lease as the premises are no longer required due to operational changes within the company.
3. The Sydney Opera House Trust vacated Part Level 3 in early 2017.
4. The City went to the open market to lease the current vacancy on Part Level 3 via Leasing Agent Colliers International. A new tenant has been identified and will require two floors for their business.
5. The City has reached an agreement to release the existing tenant CHAMP from its lease early, subject to the new tenant taking a lease of Levels 3 and 4.
6. Under the provisions of the head lease, the City is required to maintain a public purpose ratio where 70 per cent of the building must be dedicated (i.e. leased) to restaurants and cafes (maximum 1,000 square metre area), and purposes which are freely accessible by building visitors. These public purpose uses shall include exhibition areas, galleries, musical and theatrical performance facilities, libraries, tourist information facilities, and curatorial and administrative areas associated with galleries or museums.
7. The operations of the new tenant will comply with the public purpose requirements under the Customs House head lease.
8. The rent and commercial terms put by the City and agreed by the new tenant were based upon rental advice prepared by the City's appointed valuer, Colliers International.
9. The City received the executed Heads of Agreement from the new tenant on 13 April 2018 as per Confidential Attachment A. The agreed terms are subject to approval by Resolution of Council.

Key Implications

Strategic Alignment - Sustainable Sydney 2030 Vision

10. Sustainable Sydney 2030 is a vision for the sustainable development of the City to 2030 and beyond. It includes 10 strategic directions to guide the future of the City, as well as 10 targets against which to measure progress. This report is aligned with the following strategic directions and objectives:
 - (a) Direction 10.5.1 - Expand revenues from commercial operations, property portfolio and other income generating assets.

Budget Implications

11. The proposed lease commencing 1 December 2018 will result in income surplus to the budgeted amount for the 2018/19 financial year.

Relevant Legislation

12. The Local Government Act 1993.
13. Attachment A contains confidential commercial information and details of Council's valuation and contingencies which, if disclosed, would:
 - (a) confer a commercial advantage on a person with whom Council is conducting (or proposes to conduct) business; and
 - (b) prejudice the commercial position of the person who supplied it.
14. Discussion of the matter in an open meeting would, on balance, be contrary to the public interest because it would compromise Council's ability to negotiate fairly and commercially to achieve the best outcome for its ratepayers.

Options

15. The City has the option of only leasing Level 3 and not accepting the early surrender of the CHAMP tenancy on Level 4. This option was considered and not deemed preferred because the new tenant leasing both Level 3 and Level 4 results in better rental return for the Council.

AMIT CHANAN

Director City Projects and Property

Con Vafeas, Commercial Property Manager