

## Item 11.

### New Lease - Customs House Café

File No: S099079.006

#### Summary

This report seeks Council's approval to grant authority to the Chief Executive Officer to offer a further sublease to Customs House Café Pty Limited (trading as Café Sydney) for Suite 3.01 – Level 3 and Level 5 Customs House.

In February 1998, the City entered into a 60-year lease over Customs House, 31 Alfred Street, Sydney, with the Commonwealth of Australia, to enable the City (as the Lessee) to provide a substantial cultural facility for Sydney.

In addition to establishing cultural and community services in Customs House, the City entered into a number of retail and commercial subleases for the Ground Floor, Level 3, Level 4 and Level 5 of Customs House.

The initial sublease that was issued to Café Sydney in December 1998 and a series of subleases have followed, with the current sublease expiring on 23 November 2019.

Essential lease terms and conditions of the proposed sublease term of 10 years are shown in Attachment A to the subject report.

#### Recommendation

It is resolved that:

- (A) Council approve a new sublease to Customs House Café Pty Ltd for Suite 1 - Level 3 and the whole of Level 5, 31 Alfred Street, Sydney. The proposed new sublease for a term of 10 years would extend Café Sydney's tenure to 23 November 2029; and
- (B) authority be delegated to the Chief Executive Officer to finalise the terms and enter into the sublease substantially in accordance with Attachment A to the subject report.

#### Attachments

**Attachment A.** Sub Lease Terms, Customs House Café Pty Limited (Confidential)

## Background

1. Customs House is one of the oldest surviving 'customs' buildings in Australia. Australia Customs continuously occupied the building for 145 years until 1990. In February 1998, the City entered into a 60-year lease over Customs House, 31 Alfred Street, Sydney, with the Commonwealth of Australia, making the City (as the lessee) custodian of this important heritage asset.
2. In addition to establishing the City's own services in Customs House, the City entered into a number of retail and commercial subleases which included the Ground Floor, Level 3, Level 4 and Level 5.
3. A sublease was issued to Café Sydney in December 1998. Café Sydney is one of the longest standing tenants within the building and is considered to be one of Sydney's most iconic dining destinations for both overseas visitors, Sydney-siders and Australians alike.
4. 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 other purposes which are freely accessible by building visitors.
5. The operations of the existing tenant comply with the public purpose requirements of the head lease agreement.
6. Café Sydney currently has a retail sublease for Level 5, Customs House, for the operation of Café Sydney restaurant which expires on 23 November 2019 and a commercial sublease of Suite 1 on Level 3, Customs House, for office use which also expires on 23 November 2019.
7. The original sublease with the expiration date of 23 May 2009 was varied to contain an additional term of six months extending the expiry date to 23 November 2009. An option to renew for a further two terms of five years each was added at the time of this deed variation. Both extensions have now been exercised, and as such, the current sublease will expire on 23 November 2019.
8. There are no further options to extend the term.
9. The City's independent valuer, Colliers International, has confirmed that the essential terms and conditions, including the rental provisions, represent a fair and reasonable market rental return for the subject premises.

## Lease Term

10. Café Sydney has approached the City requesting a further sublease term of 10 years. Should this sublease be exercised by Café Sydney, this would extend the tenure of Suite 3.01 – Level 3 and Level 5 to 23 November 2029.
11. Customs House Café Pty Ltd has executed a Heads of Agreement and the key terms are summarised in Attachment A. The agreed terms are subject to approval by a resolution of Council.

## Key Implications

### Strategic Alignment - Sustainable Sydney 2030 Vision

12. 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 direction and objective:
  - (a) Direction 10 - Implementation through Effective Governance and Partnerships – specifically, Action 10.5.1, Expand revenues from commercial operations, property portfolio and other income generating assets.

## Budget Implications

13. The proposed lease commencement date is 24 November 2019, therefore commencing in the next financial year. The 2019/2020 budget is yet to be confirmed. By entering into this lease agreement the City will be able to meet our long term revenue targets and future budgetary requirements.

## Relevant Legislation

14. Local Government Act 1993.
15. Retail Leases Act 1994.
16. 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.
17. 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**

18. Café Sydney's sublease expires on 23 November 2019. At this time, the City has the choice to go to the market to source a new tenant.
19. This action would incur costs, including leasing agent fees, marketing costs, refurbishment costs and a possible vacancy and loss of income. There is no commercial advantage for the City to go to the market to source an alternative sublessee in these circumstances.

**AMIT CHANAN**

Director, City Projects and Property

Con Vafeas, Portfolio Manager Commercial