

Item 3.

Partial Assignment of Leases - Queen Victoria Building - QVB Tunnel Sublease and the Galleries Tunnel

File No: S098590

Summary

The Queen Victoria Building (“QVB”), an iconic state heritage listed shopping centre with a 750 car parking station, is currently leased by The Council to Ipoh Pty Limited (Ipoh) as trustee of the QVB Retail Trust for a term of 99 years. This lease commenced in 1984 (lease registered dealing no. V688504 and Book 3621 No 984) (QVB Head Lease).

The QVB is linked to Town Hall Station, The Galleries and Westfield Sydney Central Plaza by way of subterranean stratum, including:

1. the QVB Tunnel - the Council subleases this stratum to Ipoh Pty Limited as trustee of the QVB Retail Trust (registered dealing no. 5955842) (QVB Tunnel Sublease); and
2. The Galleries Tunnel – the Council leases this stratum to Ipoh Pty Limited as trustee of the Galleries Property Trust (registered dealing no. 3347128) (Galleries Tunnel Lease).

The QVB Head Lease, the QVB Tunnel Sublease and the Galleries Tunnel Sublease are collectively referred to as the ‘Leases’.

On 15 November 2017, Ipoh’s lawyers wrote to the City:

1. confirming that, on 4 November 2017, Ipoh entered into conditional contracts for the transfer of 50 per cent of Ipoh’s rights and obligations under, and interest in, the Leases to Vicinity Custodian Pty Limited (ACN 077 870 243) (**Vicinity**); and
2. requesting consent to the transfer of 50 per cent of Ipoh’s interests in Leases to Vicinity as follows:
 - a. in respect of the QVB Head Lease and the QVB Tunnel Sublease – to Vicinity as trustee of the Vicinity QVB Trust; and
 - b. in respect of the Galleries Tunnel Lease – to Vicinity as trustee of the Vicinity Galleries Trust.

Under the provisions of the Leases, Council cannot unreasonably withhold consent to the proposed assignments, if the assignees are respectable, responsible and solvent persons with the experience and resources necessary for the performance of the obligations of the lessee or sublessee.

Ipoh and Vicinity have supplied documentation on Vicinity, including annual reports, establishing that Vicinity, the second largest retail owner and manager in Australia, is a respectable and responsible corporation with the experience and resources necessary for the performance of the tenant’s obligations under the Leases.

Ipoh and Vicinity have proposed to appoint Vicinity Centre PM Pty Limited (VCX Manager) as the Managing Agent under the QVB Head Lease, replacing Ipoh Management Services, and warranted that VCX Manager has the necessary skill and capacity to undertake the tasks required.

To further improve Council's monitoring of the managing agent's performance, Vicinity and Ipoh have agreed to enhance the annual asset performance reporting to the City through inclusion of turnover schedules for the whole building by retail category and per floor by retail category. Historical moving annual turnover for the last five years will also be supplied. This will complement the lease variations the City negotiated in 2016, which provided more detail on the performance of the QVB with improved reporting and greater access to information.

Recommendation

It is resolved that:

- (A) subject to the conditions specified in clause (B), Council consent to the assignment of 50 per cent of Ipoh's interests in respect of:
 - (i) lease registered dealing no. V688504 and Book 3621 No 984 (QVB Head Lease) to Vicinity Custodian Pty Limited ACN 077 870 243 as trustee of the Vicinity QVB Trust;
 - (ii) sublease registered dealing no. 5955842 (QVB Tunnel Sublease) to Vicinity Custodian Pty Limited ACN 077 870 243 as trustee of the Vicinity QVB Trust; and
 - (iii) lease registered dealing no. 3347128 (Galleries Tunnel Lease) to Vicinity Custodian Pty Limited ACN 077 870 243 as trustee of the Vicinity Galleries Trust;
- (B) the consent provided in clause (A) is conditional on each Deed of Assignment of lease and variation of lease for each of the QVB Head Lease, the QVB Tunnel Sublease and the Galleries Tunnel Lease, including the following provisions:
 - (i) assignment is conditional upon completion of the contract between Ipoh and Vicinity;
 - (ii) the provision of appropriate guarantees; and
 - (iii) obtaining all necessary consents; and
- (C) authority be delegated to the Chief Executive Officer to finalise negotiations of the Deed of Assignment of lease and variation of lease for each of the QVB Head Lease, the QVB Tunnel Sublease and the Galleries Tunnel Lease, and execute and administer these deeds.

Background

1. The Queen Victoria Building (QVB) is leased to Ipoh Pty Ltd (formerly known as Ipoh Garden Berhad (Aust) Pty Limited) for a term of 99 years, which commenced in 1984 (QVB Building Lease).
2. The property is linked to Town Hall Station, The Galleries and Westfield Sydney Central Plaza by way of subterranean stratum, which are the subject of individual leases. The property also includes a 750 car parking station under York Street.
3. The leases for these property interests are described below:
 - (a) lease registered dealing no. V688504 and Book 3621 No 984 between Council (as landlord) and Ipoh as trustee of the QVB Retail Trust (as tenant) in respect of the QVB (QVB Head Lease);
 - (b) sublease registered dealing no. 5955842 between Council (as sublandlord) and Ipoh as trustee of the QVB Retail Trust (as subtenant) in respect of the QVB Tunnel (QVB Tunnel Sublease); and
 - (c) lease registered dealing no. 3347128 between Council (as landlord) and Ipoh as trustee of the Galleries Property Trust (as tenant) in respect of the Galleries Tunnel (Galleries Tunnel Lease).
4. In 2015, Council endorsed the assignment of all interests held by Ipoh Pty Ltd to Ipoh Strand as the trustee for individual trusts established for each of the leases. The assignment and lease variation became effective in March 2016.
5. These lease variations gave the City more detail on the performance of the QVB with improved reporting and access to documentation supporting capital projects and strategy. Some of those improvements included:
 - (a) greater clarity and transparency around the Lessee's obligations under the Conservation Management Plan (CMP);
 - (b) recognition of the Lessee's strategic planning role in meeting its obligations by introducing quarterly meetings to informally discuss concepts, programs or initiatives that are under consideration/in development and may translate into future capital works; and
 - (c) obligating the Lessee to disclose any reports, investigations and/or studies relating to structural elements, major plant and equipment and significant heritage elements, including external and internal fabric.
6. These variations substantially improved the City's effective management of its most valuable income producing asset whilst preserving all the City's rights.
7. On 4 November 2017, Ipoh entered into conditional contracts for the transfer of 50 per cent of Ipoh's rights and obligations under, and interest in, each of the Leases to Vicinity Custodian Pty Limited (ACN 077 870 243) (Vicinity).

8. Under the provisions of the existing leases and sublease, Council cannot unreasonably withhold consent to the proposed assignments of leases or sublease, if the assignees are respectable, responsible and solvent persons with the experience and resources necessary for the performance of the obligations of the lessee or sublessee.
9. Ipoh has supplied documentation establishing that Vicinity, the second largest owner and manager of retail centres in Australia, is a respectable and responsible corporation with the experience and resources necessary for the performance of the tenant's obligations under the Leases.
10. Vicinity and Ipoh have agreed to build on the 2016 QVB Head Lease variations by including moving annual turnover within the annual report for the whole building by retail category and per floor by retail category. Historical moving annual turnover for the last five years will also be supplied.
11. Ipoh and Vicinity are proposing to appoint Vicinity Centre PM Pty Limited (VCX Manager) as the Managing Agent under the QVB Head Lease and warranted that VCX Manager has the necessary skill and capacity to undertake the tasks required.
12. Vicinity has supplied documentation establishing that it is a respectable and responsible corporation with the experience and resources necessary for the performance of the tenant's obligations under the QVB Head Lease.
13. With both Ipoh and Vicinity having an equal ownership share, the City raised concerns over disputes that may arise between owners and the management company in respect of strategy and capital works.
14. Ipoh and Vicinity responded with a co-ownership agreement and governance framework that will establish a committee of representatives from each owner for decisions relating to ownership and management. The owners will have equal voting rights in relation to any decisions made by the committee.
15. If the owners' committee is not able to make a resolution or a dispute arises at the initial committee level, the matter will be escalated to a special committee comprising the CEO of each owner (or their nominee). Any resolutions made by the special committee must be unanimous and are binding on the owners.

Key Implications

Organisational Impact

16. The proposed assignments will not have any detrimental effects on the service levels, staffing, facilities, processes or other internal impacts on the organisation.

Budget Implications

17. There are no forecast financial implications to the 2017/18 or draft 2018/19 operating budget.

Relevant Legislation

18. Conveyancing Act 1919 and Local Government Act 1993 and Regulations.

Options

19. The City is satisfied that, subject to the comments contained herein, the new owner satisfies the requirements under Clause 30 of the lease and, as such, there are no options for consideration.

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