



### 11.3 Culinary Escapades - Debt Consideration

**Report Reference** GC240723F11.3

<b>Originating Officer</b>	Unit Manager Property & Facilities – Michael Collins
<b>Corporate Manager</b>	Manager City Property - Mark Hubbard
<b>General Manager</b>	General Manager City Development - Tony Lines

#### CONFIDENTIAL MOTION

1. Pursuant to Section 90(2) and (3)(b) of the *Local Government Act 1999*, the Council orders that the public be excluded from attendance at that part of this meeting relating to Agenda Item GC240723F11.3 - Culinary Escapades Debt Consideration except the following persons: Chief Executive Officer, General Manager City Development, General Manager Corporate Services, General Manager City Services, Manager Office of the Chief Executive, Manager City Property, Unit Manager Property & Facilities, Team Leader Property, Property Officer, Unit Manager Governance and Council Support, Governance Officer and Media and Engagement Adviser, to enable the Council to consider the item in confidence on the basis the Council considers it necessary and appropriate to act in a meeting closed to the public (excepting those persons listed above) in order to receive, discuss or consider in confidence the following information or matter relating to the Item:- information the disclosure of which could reasonably be expected to prejudice the commercial interest of Council.
2. Notes the disclosure of this information would, on balance, be contrary to the public interest because it may prejudice the commercial interests of Council.
3. Determines, on this basis, the principle that meetings of the Council should be conducted in a place open to the public has been outweighed by the need to keep consideration of the information or matter confidential.

#### REPORT HISTORY

<b>Report Reference</b>	<b>Report Title</b>
GC211026F	Culinary Escapades Pty Ltd Lease at the Marion Cultural Centre

#### REPORT OBJECTIVE

The objective of this report is for Council to consider writing off the outstanding debt of \$43,000.62 incl. GST owed to Council by Culinary Escapades Pty Ltd, former lessees of the café at the Marion Cultural Centre.

#### EXECUTIVE SUMMARY

At the General Council Meeting held on 26 October 2021, Council confidentially resolved:

*That Council:*

1. *Shall accept the sum of \$40,000 in full satisfaction of the amount owed by Culinary Escapades Proprietary Limited to Council (rental and outgoings arrears and amounts*

*due up to 16 November 2021) if such amount is paid by 16 November 2021 (a compromise taking into account the lower market rental indicated by a valuation 12 months ago, and the costs associated with debt collection).*

- 2. Engage a commercial real estate agent to run an Expression of Interest (EOI) process for a café operator at the Marion Cultural Centre, so that Council can make a decision about future operations of the cafe after receiving a further report following the EOI process.*
- 3. Shall allow Culinary Escapades Proprietary Limited - if and only if they have paid the debt in accordance with the above resolution – to continue to operate the cafe at the Marion Cultural Centre on a monthly holding over lease arrangement (based on 2017-2020 lease) pending the outcome of the EOI process.*
- 4. (If the debt is not paid in accordance with the above resolution) shall serve Culinary Escapades Pty Ltd (the Lessee) with one month's notice to vacate the premises in accordance with clause 9.1 of the Lease; in which case Culinary Escapades Pty Ltd shall not be considered in the EOI process and Council shall seek to recover the rental arrears debt (and applicable interest and any associated losses or costs to Council) through a debt collection agency;*
- 5. (If Culinary Escapades Proprietary Limited ceases to operate the cafe for any reason) shall operate the café in line with the current operating hours to enable continuity of service for the visitors to the MCC and allocate up to \$75,000 to the Cultural Facilities Unit 21/22 Operational budget for the costs associated with Council operating the café. (refer to Attachment 1).*
- 6. In accordance with Section 91(7) and (9) of the Local Government Act 1999 the Council orders that this report, Culinary Escapades Pty Ltd Lease Update at the Marion Cultural Centre, any appendices and the minutes arising from this report having been considered in confidence under Section 90(2), (3)(b)(i)(ii) and (d)(i)(ii) of the Act, except when required to effect or comply with Council's resolution(s) regarding this matter, be kept confidential and not available for public inspection for a period of 12 months from the date of this meeting. This confidentiality order will be reviewed at the General Council Meeting in December 2021.*

The debt was not repaid by Culinary Escapades Pty Ltd. Council undertook an EOI process resulting in the current lease to the Pancake Kitchen, and the Culinary Escapades Pty Ltd debt was referred to debt collection.

The debt collection process was carried out from July 2022 to May 2023 and has not resulted in the outstanding amount (\$43,000.62) being recovered, due in part to the structuring of the entity via a Trust.

It is considered to no longer be economically viable for Council to continue to pursue payment of the debt and it is recommended that the debt be written off. It is to be noted that writing this debt off will have no further impact on Council's financial position as the debt has been provided for in Council's financial statements.

## **RECOMMENDATION**

**That Council:**

1. **Authorises the Chief Executive Officer to write off the amount of \$43,000.62 for amounts owed by the Trustee for the Joshua's Family Trust (Culinary Escapades Pty Ltd) for Rent and Outgoings.**
2. **Pursuant to section 91(7) of the Local Government Act 1999, orders that the following document(s) relating to Agenda Item GC240723F11.3 shall be kept confidential, being document(s) relating to a matter dealt with by the Council on a confidential basis under sections 90(2) and 90(3)(b) of the Act:**
  - **Report GC240723F11.3 – Culinary Escapades – Debt Consideration**
  - **Minutes referring to GC240723F11.3 – Culinary Escapades – Debt Consideration**

**on the grounds that the document(s) relates to information the disclosure of which could reasonably be expected to prejudice the commercial interests of Council.**
3. **Determines this order shall operate until it is revoked and will be reviewed every 12 months.**
4. **Pursuant to section 91(9)(c) of the Local Government Act 1999, delegates to the Chief Executive Officer the power to revoke this order in whole or part.**

## **DISCUSSION**

### **1. Background**

The Lessee was selected by Council in 2017, after a commercial EOI process was undertaken and they were the preferred Lessee presenting the most comprehensive business plan, financial modelling, and a sound management structure.

Following occupation of the café, the Lessee fell into rental arrears in January 2018 with numerous meetings and letters sent to the Lessee during the course of 2018 and 2019 advising of the rental arrears breach. By July 2019, the Lessee paid their outstanding debt in full but fell back into arrears the following month.

As an unrelated contract to the lease, the Lessee was successful in an open tender process to provide the Council with catering for Council meetings and events for 12 months. This contract was not renewed at the expiry date.

In 2019, Council Administration reviewed the Lessee's performance in relation to service quality and ongoing rental breaches.

By the end of February 2020, the Lessee was in arrears of approximately \$15,000 including GST.

COVID further impacted their business, which was financially struggling, and the Lessee was not able to recover from its arrears leading into COVID and post COVID conditions.

COVID relief (Rent and Outgoings) was provided to the Lessee totaling approximately \$21,500 including GST, for the period from March 2020 to September 2020.

On 31 July 2020, the Lessee advised Council they wanted to take up their two-year lease renewal option commencing 17 November 2020 with the rent to be reviewed to Market value.

A market rental valuation was obtained from an independent valuer which determined a market value of \$27,500 net, plus outgoings including GST. A letter was issued to the Lessee on 5 November 2020, advising the Lessee of the reduced rental determination than they were paying at the time.

The two-year lease renewal documents (with market rental determined) were issued to the Lessee on 2 December 2020. The Lessee disputed the market rental and requested rent relief from Council. For Council Administration to consider rent relief, audited financial statements for the past three financial years and supporting documentation were required from the Lessee.

The Lessee first requested rent relief from Council Administration on 20 August 2020 and provided Council Administration with Business Activity Statement (BAS) documents on 9 December 2020, which did not meet the audited financial statements' requirements.

On 28 April 2021, the Lessee provided financial statements for the 2018/19 and 2019/20 financial years. These documents included a statement from the Lessee's accountant advising they had been engaged to create financial statements with the information that was provided by the Lessee in accordance with the Australian Accounting standards. The accountant had not, nor had they been engaged to provide an opinion on the accuracy, completeness, validity, or reliability on any of the information provided by the Lessee and in turn the statements themselves. On this basis, it was determined that the statements provided were not audited and therefore rent relief could not be considered.

The financial statements provided were for 'The Joshua's Family Trust', without enquiring further, or receiving audited statements, this could mean that these statements also include the activities of their city store and or/any other activities that are carried out by the trust.

Between 13 January 2021 and 17 August 2021, the Lessee did not make any rent or outgoings payments, despite requests from Council staff to continue to make payments. From 18 August 2021 to 10 November 2021, the Lessee made regular payments of approximately \$500 per week.

The Lessee advised they were not in a financial position to repay the arrears, nor exercise their two-year option to renew their lease (Nov 2020 to Nov 2022) in accordance with the determined market rent of \$27,500 p.a. plus Outgoings including GST.

The Lessee did not pay their arrears (to remedy their breach of lease) or sign the two-year renewal lease at the reduced rental amount of \$27,500 including GST, plus outgoings.

## **2. Follow-up on Outstanding Debt**

Following the resolution of Council on 26 October 2021:

- A letter was sent to The Trustee for Joshua's Family Trading Trust trading as Culinary Escapades advising that council would accept a reduced sum of \$40,000 including GST (from \$47,774.61 including GST), to be paid in full by close of business Tuesday 16 November 2021.
- An email response was received from Joshua's Family Trading Trust on 4 November 2021 advising that he would be vacating the premises on 16 November 2021 and offering to pay \$9,149 to council which represented 10% of his gross turnover for the period 1/11/2020 – 1/11/2021 less \$5,500 already paid.
- 11 November 2021 - Staff emailed a letter confirming termination of the lease together with advising the rent and outgoings still owed including statements.

- 12 November 2021 - Joshua's Family Trading Trust emailed asking again in relation to his payment offer.
- 15 November 2021 - Staff responded advising that in accordance with a telephone conversation and the rent statement (attached to the email) that the outstanding balance was \$51,969.69.
- 17 November 2021 - Joshua's Family Trading Trust emailed to confirm that he had vacated the premises and made a payment to council of \$9,149 including GST in full as final settlement towards the outstanding balance.
- 16 May 2022 - A final demand letter was sent to Joshua's Family Trading Trust requesting payment within 30 days or debt collection proceedings would commence.
- 8 July 2022 - The debt was provided to Council's debt collector – ARMA Group.

### **3. Debt Collection Process**

- 8 July 2022 - A payment demand letter was issued to Joshua's Family Trading Trust.
- 3 August 2022 - A P1 notice was issued (final notice) by Oakbridge Lawyers (Oakbridge), notifying the operator of the intention to commence legal proceedings.
- 19 September 2022 - Contact was made by Australian Lease Management on Joshua's Family Trading Trust's behalf, advising ARMA Group that "Joshua's Family Trading Trust" is not responsible for the debt as the lease document is in a company name".
- 27 October 2022 - Oakbridge provided advice on the business structure used by Joshua's Family Trading Trust. The advice provided was that the way documents have been signed is consistent with Culinary Escapades Pty Ltd being the Trustee of the Joshua's Family Trading trust, of which the operator is appointed as the Director. Council was not able to substantiate this as a trust deed was not provided to Council. Oakbridge advised Council could make an application for pre-action discovery to seek an order seeking the trust deed, although advised this would be costly.
- 25 November 2022 - A P1 notice was re-issued to Culinary Escapades Pty Ltd.
- 28 March 2023 - A Civil Action claim for Culinary Escapades Pty Ltd was served and filed with the court.
- 10 May 2023 - An application for a default judgement was lodged and approved by the court.
- 22 May 2023 – Advice received from Oakbridge on next steps which include issuing a Statutory Demand and then proceeding with issuing Wind Up Proceedings. It was determined not to proceed with these steps due to additional costs to Council with limited likelihood of recovering any of the debt.

### **4. Summary**

Council made numerous attempts to encourage payment of the outstanding debt, including internally from 13 January 2021 to 26 May 2022 and through debt collectors from 8 July 2022 to 10 May 2023. None of these attempts have been successful in recovering the outstanding amount in full.

Council sought advice from Oakbridge on recommended next steps, these were to issue a Statutory Demand and then proceed with issuing Wind Up Proceedings. These two actions would come at an additional cost of \$7,603.30 and would not guarantee that Council would recoup any of the outstanding debt or debt collection fees incurred.

As such, it is recommended that Council write-off the debt of \$43,000.62 owed by Culinary Escapades, noting that writing this debt off will not have any further impact on Council's financial position as the debt has been provided for in Council's financial statements.

Council will need to make a determination at the meeting whether it wants to retain this report and minutes, together with the previous reports and minutes in confidence.

## **ATTACHMENTS**

1. Nil