



14.5 PROPOSED TENANCY AGREEMENT (TO FINALISE) -
LINDEN ART GALLERY

EXECUTIVE MEMBER: CHRIS CARROLL, GENERAL MANAGER, CUSTOMER,
OPERATIONS AND INFRASTRUCTURE

PREPARED BY: EMMA MURDOCH, HEAD OF PROPERTY AND WORKPLACE
OPERATIONS

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INDUSTRIES

1. PURPOSE

- 1.1 To seek Council's approval to complete the statutory procedures for the proposed tenancy agreement to Linden New Art Inc. ("**Tenant**") at 26 Acland Street, St Kilda.

2. EXECUTIVE SUMMARY

- 2.1 The premises subject to the proposed tenancy agreement is 26 Acland Street, St Kilda, a historical building which was originally an 18-room mansion known as "Linden."
- 2.2 Originally set up as a department of Council, the Tenant has a history of enriching the cultural life of the local and broader Melbourne community.
- 2.3 In 2018, Council supported a significant upgrade to the facility and as a result a new entry foyer and additional exhibition spaces were built. Such building upgrade amounting to \$2.16M reflects Council's commitment to supporting and revitalising arts precincts across the municipality.
- 2.4 In addition to this, the Tenant has recently completed a \$30K upgrade to the Linden Workshop Space to encourage venue hire.
- 2.5 The Tenant has been a long-term tenant of Council since Council amalgamations devolved operations to the incorporated association in April 2000 with its own Board of Management.
- 2.6 The Tenant has a Funding Deed in place until 30 June 2020 to help support its service delivery. The base funding given by Council amounted to \$341,336 plus GST in 2018/19 and was adjusted in line with the Consumer Price Index in 2019/20.
- 2.7 A future funding deed aligned with the proposed tenancy agreement is being finalised in line with the Community Funding Policy (endorsed in April 2018).
- 2.8 The existing tenancy agreements for both Council owned land and Crown land expired on 30 June 2020. The current terms and conditions of the existing agreements prevail whilst in overholding.
- 2.9 The Tenant has requested a 10-year lease and officers recommend the proposed tenancy agreement to operate from 1 July 2020 to 30 June 2030 to allow sufficient time for artistic planning for the Tenant and enable long-term precinct planning to further enliven the local area.
- 2.10 The market rent estimate for the premises as at July 2018 is \$340,000 per annum plus GST.



- 2.11 The proposed rental is recommended to be market rent which is to be discounted to \$104 per annum plus GST to support the continuous provision of art services to the community.
- 2.12 The rental discount is to be recognised as an in-kind contribution under the future funding deed in line with the Property Policy. As such, the proposed tenancy agreement is dependent on the successful negotiation of a Funding Deed between the Tenant and Council.
- 2.13 As the proposed tenancy agreement has a term of more than one year and the market rent exceeds \$50,000 per annum, the statutory process under the *Local Government Act 1989 (Vic) (Act)* applies.
- 2.14 Council resolved to commence the statutory process on 19 February 2020 which invited submissions on the proposed tenancy agreement. Council must hear and consider any submissions received before making a decision to enter into such tenancy agreement.
- 2.15 No submissions were received in response to the public notice that was published in the Port Phillip Leader newspaper on 3 March 2020.
- 2.16 During this period, there were unforeseeable delays in the funding deed negotiations however items affecting the in-kind contributions within the lease have now been resolved and Council is now in a position to complete the statutory procedures and make a final decision on the proposed tenancy agreements

3. RECOMMENDATION

That Council:

- 3.1 Not having received any submissions in response to a Notice of Intention to Lease the premises identified below, resolves to conclude the statutory procedures under sections 190 and 223 of the *Local Government Act 1989 (Vic) (Act)* and approves the following proposed tenancy agreement with key terms summarised as follows:

Tenant	Linden New Art Inc.
Premises	26 Acland Street, St Kilda
Permitted Use	Arts related purposes
Commencement Date	1 July 2020
Expiry Date	30 June 2030
Rent	\$340,000 per annum plus GST discounted to \$104 per annum plus GST to help support the continuous provision of art services to the community.

- 3.2 Authorises the Chief Executive or delegate to execute such tenancy agreement;
- 3.3 Notes that the proposed tenancy agreement is dependent on the successful negotiation of a Funding Deed between the Tenant and Council;



- 3.4 Notes that whilst the previous market rental estimate was \$340,000 per annum plus GST, a discounted rent of \$104 per annum plus GST for the tenancy agreement will apply, reflected as in-kind contribution by Council.

4. KEY POINTS/ISSUES

Building Information

- 4.1 The premises subject to the proposed tenancy agreement is 26 Acland Street, St Kilda as outlined in yellow in Attachment 1.
- 4.2 This property known as “Linden” comprises a historical building which was originally an 18-room mansion with surrounding gardens.
- 4.3 “Linden” was purchased by the former City of St Kilda in 1983 and extensive works were undertaken to develop what was known as the Linden Arts Centre and Gallery in 1986.
- 4.4 Initially set up as a department of Council, the Tenant has a history of enriching the cultural life of the local and broader Melbourne community.
- 4.5 In 2018, Council supported a significant upgrade to the facility and as a result a new entry foyer and additional exhibition spaces were built.
- 4.6 Designed by Michael Taylor Architecture & Heritage, the large two-storey glass structure that links the old and new parts of the building was inspired by glass panels found in the Linden Project Space.
- 4.7 Such building upgrade amounting to \$2.16M reflects Council’s commitment to supporting and revitalising arts precincts across the municipality.
- 4.8 Today, the heritage-listed building is a free entry public art gallery and a significant cultural destination in St Kilda.
- 4.9 The incumbent Tenant has also recently completed a \$30k upgrade to the Linden Workshops Space to encourage venue hire.
- 4.10 The proposed tenancy agreement must go through statutory procedures set out in sections 190 and 223 of the Act given the proposed term is greater than one year and the market rent estimate exceeds the threshold of \$50,000 per annum.

Tenant

- 4.11 The Tenant has been a long-term tenant of Council since Council amalgamations devolved operations to the incorporated association in April 2000 with its own Board of Management.
- 4.12 The Tenant specialises in displaying new and contemporary art in a public gallery situated in the heart of St Kilda.
- 4.13 The Tenant’s programming and vision are aligned with Council’s vision and Art and Soul Creative and Prosperous Strategy.
- 4.14 The existing short-term tenancy agreement with the Tenant will expire on 30 June 2020.
- 4.15 On 6 June 2018, Council resolved to approve the Funding Deed with the Tenant for two years from 1 July 2018 to 30 June 2020. Council has provided the Tenant with funding of \$341,336 plus GST in 2018/19, adjusted in line with the Consumer Price



Index in 2019/20. This Funding Deed covers the Tenant's operational and program costs.

- 4.16 The Tenant's existing Funding Deed has agreed service objectives and key performance indicators to ensure delivery of art, cultural programs and services. These include meeting the following: number of visitors and local residents, number of artists involved in exhibitions, number of media mentions increasing the Tenant's profile, amongst others. It is anticipated that the Tenant's future funding deed would require delivery of similar service objectives and key performance indicators.
- 4.17 The Tenant currently measures the impact of the visitor experience through exit surveys, asking visitors to consider the importance of the gallery forming a backdrop for social connection and interaction. In its January - June 2019 report, the Tenant found that 71% of visitors feel more socially connected following a visit to Linden, and 46% found the experience enriching, enjoyable and thought-provoking.
- 4.18 A future funding deed is in development that aligns with the proposed tenancy agreement in line with the Community Funding Policy (endorsed in April 2018).

5. PROPOSED TENANCY AGREEMENT

- 5.1 As the proposed tenancy agreement has a proposed term greater than one year and the market rent estimate exceeds \$50,000 per annum, the statutory process applies. This process requires public notification pursuant to sections 190 and 223 of the Act before making a final decision on the proposed tenancy agreement.
- 5.2 Council resolved to commence the statutory process on 19 February 2020 which invited submissions on the proposed tenancy agreement. Council must hear and consider any submissions received before making a decision to enter into such tenancy agreement.
- 5.3 No submissions were received in response to the public notice that was published in the Port Phillip Leader newspaper on 3 March 2020.
- 5.4 There are a number of key planning documents, legislation and policy that need to be considered for the Linden site. These include:
 - Council Plan and
 - Council Property Policy.
- 5.5 The Council Plan sets out what Council wants to achieve for the city of Port Phillip by 2027 and how it supports the future health and wellbeing of the city.
- 5.6 Council's Property Policy provides guidance on entering tenancy agreements. Such principles under Council's Property Policy align with the State Government Leasing Policy.
- 5.7 Further to these principles, officers have put forward the following in the previous report to Council recommending commencement of the statutory procedures:
 - The proposed tenancy agreement be made to commence from 1 July 2020 to 30 June 2030 to allow sufficient time for artistic planning for the Tenant, provide certainty to resident artists and staff and enable long-term precinct planning;
 - The Tenant be provided with exclusive use of the subject premises to provide its arts services, cultural and creative programs;



- The market rental estimate of \$340,000 per annum plus GST be discounted to \$104 per annum plus GST for the proposed tenancy agreement to help support the provision of art, cultural and creative programs and services to the community. The rental discount is to be recognised as an in-kind contribution under the future funding deed in line with the Property Policy;
- All outgoings applicable to the tenancy be paid by the Tenant with the cost of outgoings being considered as part of the Tenant's funding arrangements with Council;
- Insurance for public liability and tenant improvements be obtained by the Tenant and that that cost for building insurance be reimbursed by the Tenant to Council. Any cost for building insurance is to be considered as part of the Tenant's funding arrangements with Council.
- The Tenant be subject to the standard maintenance requirements of the proposed tenancy agreement and that any ongoing general maintenance costs provided as an in-kind contribution are considered as part of the Tenant's funding arrangements with Council.
- Given the Tenant is a Council funded organisation, rent and other in-kind property contributions need to be considered in conjunction with the terms of the future funding deed in line with the Property Policy and Community Funding Framework. As such, the proposed tenancy agreement is contingent on the Tenant receiving and maintaining a funding agreement with Council.

6. CONSULTATION AND STAKEHOLDERS

- 6.1 Council has notified the community through a Notice of Intention to Lease published in Port Phillip Leader newspaper on 3 March 2020 inviting submissions in accordance with statutory procedures.
- 6.2 The deadline date of submissions was 3 April 2020.
- 6.3 No submissions were received by the deadline date.

7. LEGAL AND RISK IMPLICATIONS

- 7.1 The statutory process under the Act requires Council to notify the public before committing to the proposed tenancy agreement.
- 7.2 Council's standard form lease will be used as the basis of all Council freehold tenancy agreements, unless otherwise agreed or required by legislation. This template documents the landlord and tenant responsibilities, conforms to legislative requirements and mitigates risk.

8. FINANCIAL IMPACT

- 8.1 The estimated market rent of \$340,000 per annum plus GST is recommended to be discounted under the future funding deed to support the continuous provision of arts services to the community.
- 8.2 The proposed tenancy agreement is dependent on the Tenant being awarded a funding deed. Any future funding deed will require the Tenant to fulfil its obligations under this deed.



9. ENVIRONMENTAL IMPACT

- 9.1 The proposed tenancy agreement will require the Tenant to implement environmentally sustainable practices and programs that support reduction in energy, waste and water.
- 9.2 Council will work with the Tenant over the term of the proposed tenancy agreement to improve the efficiency of water and energy usage, in particular, to:
- reduce or minimise greenhouse gas emissions;
 - maximise the use of renewable or recyclable materials;
 - reduce waste from operations;
 - implement best-practice storm water management; and
 - reduce single use plastic.
- 9.3 In addition, the Tenant must cooperate with Council in relation to joining Council's Smart Solutions for Community Services program within the first 12 months of signing the proposed tenancy agreements.

10. COMMUNITY IMPACT

- 10.1 Council has the following primary objectives when entering tenancy agreements for the use of Council property:
- to support service delivery and promote health and wellbeing, social, environmental, cultural, recreational or economic opportunities and benefits in the City of Port Phillip by leasing or licensing Council property to Community Organisations and
 - to generate net income to support service delivery across the portfolio by leasing or licensing Council property to Commercial Organisations.
- 10.2 In addition, the Tenant's existing Funding Deed has agreed service objectives and key performance indicators to ensure delivery of art, cultural and creative programs and services.

11. ALIGNMENT TO COUNCIL PLAN AND COUNCIL POLICY

- 11.1 The proposed tenancy agreement aligns to:
- 11.1.1 Direction 5 – "A city where arts, culture and creative expression is part of everyday life."
- 11.1.2 Direction 6 – "A financially sustainable, high performing, well-governed organisation that puts the community first."
- 11.2 The proposed tenancy agreement also supports Art and Soul Creative and Prosperous City Strategy 2018-2022 as it relates to provision of arts services at the Linden Art Gallery.

12. IMPLEMENTATION STRATEGY

12.1 TIMELINE

- 12.1.1 If Council resolves to complete the statutory process and approves the proposed tenancy agreement, such tenancy agreement will be finalised and executed immediately.

MEETING OF THE PORT PHILLIP CITY COUNCIL 16 SEPTEMBER 2020



12.2 COMMUNICATION

12.2.1 Officers will advise the Tenant's representatives of the outcome of the 16 September 2020 Council meeting.

13. OFFICER DIRECT OR INDIRECT INTEREST

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

TRIM FILE NO: 20/13/35
ATTACHMENTS 1. Site Plan