



14.6 **PROPOSED TENANCY AGREEMENTS - GASWORKS ARTS PARK**

EXECUTIVE MEMBER: **CHRIS CARROLL, GENERAL MANAGER, CUSTOMER AND CORPORATE SERVICES**

PREPARED BY: **LYANN SERRANO, PROPERTY ADVISOR**

1. PURPOSE

- 1.1 To seek Council's approval to commence the statutory procedures for proposed tenancy agreements to Gasworks Arts Inc ("**Tenant**") for the following premises known as Gasworks Arts Park:
- portion of Council owned land at 21 Graham Street, Albert Park and
 - portion of Crown land at 1-35 Graham Street, Albert Park.

2. EXECUTIVE SUMMARY

- 2.1 Situated at the former South Melbourne Gasworks site, Gasworks Arts Park is comprised of Crown land and Council freehold land and has been redeveloped into a community arts precinct comprising a number of heritage buildings that include a gate house, café, jewellery shop, theatre, gallery, artists' studios and outdoor park.
- 2.2 Gasworks Arts Park has been a focal point for arts activity in the City of Port Phillip since the City of South Melbourne began operating it as a cultural facility in the mid-1980s.
- 2.3 The incumbent tenant Gasworks Arts Inc provides high-quality arts and cultural programming via its visual and performing arts programs and community events. This quality service includes performances, exhibitions, workshops, school holiday programs and a highly popular monthly Farmers' Market attended by more than 100,000 people per year.
- 2.4 The Tenant has a Funding Deed in place until 30 June 2020 to help support its service delivery. The base funding given by Council amounts to \$586,500 plus GST in 2018/19, adjusted in line with the Consumer Price Index in 2019/20. Council's contribution towards the seating renewal project is deducted from the amount paid in 2019/20.
- 2.5 A future funding deed aligned with the proposed tenancy agreements is in the negotiation phase. It is to be developed in conjunction with the Community Funding Policy (endorsed in April 2018).
- 2.6 The existing tenancy agreements for both Council owned land and Crown land will expire on 30 June 2020.
- 2.7 Grant and purpose approval is being sought from the Department of Environment, Land, Water and Planning (**DELWP**) for the proposed tenancy agreement for the Crown land portion. It must also go through a parliamentary scrutiny process given the nature of the Crown land reservation being a public park.
- 3.8 The Tenant has requested a 10-year lease and Officers propose the tenancy agreements commence on 1 July 2020 or the grant and purpose approval date from DELWP, whichever is later, to 30 June 2030 to allow sufficient time for artistic planning for the Tenant and long-term precinct planning to further enliven the local area.



- 3.9 The market rent estimate for the Council freehold land as at March 2019 is \$530,000 per annum excluding GST and \$123,000 per annum excluding GST for the Crown land.
- 3.10 The proposed rental for each proposed tenancy agreement is recommended to be market rent which is to be discounted to \$104 per annum plus GST to help support the provision of art, cultural and creative programs and services to the community.
- 3.11 The rental discount is to be recognised as an in-kind contribution under any future funding deed in line with the Community Funding Policy.
- 3.12 The proposed tenancy agreements are dependent on the successful negotiation of a Funding Deed between the Tenant and Council.
- 3.13 As each of the proposed tenancy agreements has a proposed term of more than one year and each market rent estimate exceeds \$50,000 per annum, the statutory process applies. This process requires public notification before making a final decision on the proposed tenancy agreements pursuant to sections 190 and 223 of the *Local Government Act 1989 (Vic) (Act)*.

3. RECOMMENDATION

That Council:

- 3.1 Resolves that the statutory procedures be commenced under section 190 of the *Local Government Act 1989 (Vic) (Act)* by publishing a notice in the local newspaper inviting interested persons to make a submission under Section 223 of the Act, on the proposed lease terms outlined below:

Tenant	Gasworks Arts Inc
Premises	1. Part of 21 Graham Street, Albert Park (Council land) 2. Part of 1-35 Graham Street, Albert Park (Crown land)
Permitted Use	Arts related purposes
Commencement Date	1 July 2020 or grant and purpose approval date, whichever is later
Expiry Date	30 June 2030
Rent	\$653,000 per annum plus GST discounted to \$104 per annum plus GST for each agreement to help support the provision of art, cultural and creative programs and services to the community.

- 3.2 Notes that the proposed tenancy agreements are dependent on the successful negotiation of a Funding Deed between the Tenant and Council;
- 3.3 Authorises the Chief Executive Officer or delegate to undertake the administrative procedures necessary to enable Council to carry out its functions under section 223 of the Act; and
- 3.4 Resolves to hear and consider any submissions received pursuant to section 223 of the Act at a future Council meeting.



4 KEY POINTS/ISSUES

Building Information

- 4.1 Situated at the former South Melbourne Gasworks site, Gasworks Arts Park has been redeveloped into a community arts precinct comprising a number of heritage buildings that include a gate house, café, jewellery shop, theatre, gallery, artists' studios and outdoor park.
- 4.2 Gasworks Arts Park has been a focal point for arts activity in the City of Port Phillip since the City of Melbourne began operating it as a cultural facility in the mid-1980s.
- 4.3 Gasworks Arts Park is comprised of Crown land and Council freehold land. The Council freehold land referred to in this report is the land upon which the old Gasworks buildings are constructed at 21 Graham Street, Albert Park, as highlighted in yellow in Attachment 1.
- 4.4 The Crown land referred to in this report is the land at 1-35 Graham Street, Albert Park, as highlighted in orange and marked as areas A, B, C, D and E in Attachment 1.
- 4.5 In 2017, Council committed \$2.6M to upgrade the theatre building. This project formed part of Council's commitment to support and revitalise arts precincts across the municipality. Such upgrade included improvements to the building's acoustic and technical equipment, upgrade of the back-of-house facilities and public toilet facilities and replacement of the existing Graham Street portico and non-compliant ramp with an accessible public entrance.
- 4.6 Council is currently undertaking a seating renewal project valued at \$330,000 in partnership with the incumbent Tenant. The Tenant is contributing to the seating renewal project with payments of \$30,000 per annum for ten (10) years.
- 4.7 In addition, the State Government is undertaking soil remediation works at the site. Special conditions in the proposed tenancy agreements will facilitate the works and address the impact on the ability of the Tenant to continue to provide services.
- 4.8 The proposed tenancy agreements for Council freehold land and Crown land must go through statutory procedures set out in sections 190 and 223 of the Act given the proposed tenancy agreement term for each is greater than one year and the market rent estimate for each exceeds the threshold of \$50,000 per annum.
- 4.9 Grant and purpose approval from DELWP is being sought for the proposed tenancy agreement on Crown land. It must also go through a parliamentary scrutiny process given the permitted use and nature of the Crown land reservation being a public park.
- 4.10 Council has granted additional licences to the Tenant for a monthly Farmers' Market held on Crown land and Council freehold land. These licences do not invoke the statutory process. However, the Farmers' Market on Crown land also necessitates grant and purpose approval and must go through a parliamentary scrutiny process given the permitted use and nature of the Crown land reservation being a public park.



Tenant

- 4.11 The Gasworks Arts Inc (“Tenant”) is a long-term tenant of Council, advising on the use of Gasworks Arts Park since 1986 and has received direct funding from the time the service was devolved in 1999.
- 4.12 The Tenant provides high-quality arts and cultural programming throughout the year via its visual and performing arts programs and community events. This quality service includes performances, exhibitions, workshops, school holiday programs and a highly popular monthly Farmers’ Market attended by more than 100,000 people per year.
- 4.13 The merit of the Tenant’s artistic programming has been publicly recognised through various awards from Melbourne Fringe Festival. It continues to strive to be a leader in the Victorian Arts sector by creating a vibrant arts and culture hub in the City of Port Phillip which contributes to a dynamic, creative and thriving local community.
- 4.14 The Tenant’s programming and vision are directly aligned with Council’s vision and Art and Soul Creative and Prosperous Strategy 2018-2022.
- 4.15 The existing tenancy agreements with the Tenant for Council owned land and Crown land will expire on 30 June 2020.
- 4.16 On 6 June 2018, Council endorsed an interim Funding Deed with the Tenant for a period of two years from 1 July 2018 to 30 June 2020 with a base funding of \$586,500 plus GST in 2018/19. Such is adjusted in line with the Consumer Price Index in 2019/20, less Council’s contribution towards the seating renewal project. This Funding Deed covers the Tenant’s operational and program costs.
- 4.17 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. These include meeting the following: target attendance at ticketed and non-ticketed events, target partnerships and collaborations with local arts and community organisations, target number of artist tenants and local community groups using the buildings, amongst others. It is anticipated that the Tenant’s future funding deed would require delivery of similar service objectives and key performance indicators.
- 4.18 A future funding deed, aligned with the proposed tenancy agreements, is in the negotiation phase. It is to be developed in conjunction with the Community Funding Policy (endorsed in April 2018).

5 PROPOSED TENANCY AGREEMENTS

- 5.1 There are a number of key planning documents, legislation and policy that need to be considered for the Gasworks Arts Park site. These include:
- *Crown Land (Reserves) Act 1978*;
 - Crown Land Leasing Policy;
 - Council Plan; and
 - Council Property Policy.



- 5.2 The leased premises for the Crown land portion is managed by Council as Committee of Management. The State Government Leasing Policy lists three key leasing principles that must be assessed for each proposed tenancy. These are:
- Principle 1 – To provide benefits to the public through leasing;
 - Principle 2 – To ensure consistency and transparency in leasing; and
 - Principle 3 – To manage leased Crown land in an ecologically sustainable manner.
- 5.3 Council's Property Policy provides guidance on entering tenancy arrangements and is aligned with the State Government Leasing Policy.
- 5.4 An assessment of the proposed key terms along with a recommendation against each of the principles is provided below.

Direct Negotiation or Market Process to Secure a New Lease

Key Principle

- 5.5 Direct negotiation will be considered with an incumbent tenant unless there is evidence that conducting a competitive process would increase benefits to the community.

Assessment

- 5.6 The Tenant has not occupied the subject premises for a period that exceeds the maximum allowable term.
- 5.7 The Tenant is contributing to the seating renewal project with payments of \$30,000 per annum for 10 years.
- 5.8 The Tenant delivers a key Council service to the community.
- 5.9 There is no evidence that conducting a competitive process would increase benefits to the community or Council.

Recommendation

- 5.10 Officers recommend a direct negotiation be undertaken with the incumbent Tenant Gasworks Arts Inc.

Term of the Proposed Tenancy Agreements

Key Principles

- 5.11 The term of the proposed tenancy agreement needs to be appropriate to the tenant and the use of the premises and allows for consideration of alternative uses.
- 5.12 A longer-term tenancy agreement may be warranted to support capital investment in the premises or when the use is linked to a specific tenant and the tenant has a history of delivering good outcomes for the community.



- 5.13 The term of the proposed tenancy agreement should consider the effort required by Council and the future tenant to negotiate a new tenancy agreement.

Assessment

- 5.14 The Tenant has requested a lease term of ten (10) years.
- 5.15 Council's Property Policy allows for a standard term of five (5) years for leases.
- 5.16 The Tenant is contributing to the seating renewal project with payments of \$30,000 per annum for 10 years.
- 5.17 The Tenant has been a long-term tenant of Council, advising on the use of Gasworks Arts Park since 1986 and has received direct funding from the time the service was devolved in 1999.
- 5.18 The maximum term for any agreement under the *Crown Land (Reserves) Act 1978* is twenty-one (21) years.
- 5.19 It must be noted that the commencement date for the proposed tenancy agreement for Crown land cannot pre-date the grant and purpose approval date from DELWP.

Recommendation

- 5.20 Officers recommend the proposed tenancy agreements commence on 1 July 2020 or the grant and purpose approval date from DELWP, whichever is later, to 30 June 2030.
- 5.21 This would allow sufficient time for artistic planning for the Tenant, provide certainty to resident artists and staff and enable long-term precinct planning to further enliven the local area around Gasworks Arts Park.

Multi-use of Facilities

Key Principles

- 5.22 Council is committed to maximising access to, and use of, Council facilities for the benefit of the community.
- 5.23 Accordingly, for all agreements with Community Organisations, as defined under the Property Policy, the need for exclusive use of the facilities will be reviewed at the commencement of the agreement, with preference being shared use licence agreements.

Assessment

- 5.24 The Tenant's service offering does not include sensitive work but does require the full space to obtain the defined benefit to be achieved from the tenancy.
- 5.25 The Tenant is contributing to the seating renewal project with payments of \$30,000 per annum for 10 years.



- 5.26 The premises have not been custom built for the Tenant but have been refurbished to improve the facilities for the Tenant' use.

Recommendation

- 5.27 Officers recommend that the Tenant be provided with exclusive use of the subject premises to provide its arts services, cultural and creative programs.

Rent

Key Principles

- 5.28 Council's approach to rental amounts reflects the different purpose of Commercial and Community Organisation (as defined in the Property Policy) tenant and is guided by portfolio targets set by Council.
- 5.29 A market rent is desirable, but Council accepts lower than market rent to support community-based organisations that provide community benefits or services on behalf of Council.

Assessment

- 5.30 Market rental as at March 2019 has been estimated at \$530,000 per annum excluding GST for Council freehold land and \$123,000 per annum excluding GST for Crown land by Council's approved valuer.
- 5.31 Under the terms of the existing tenancy agreements for Council freehold land and Crown land, the Tenant contributes a discounted rent of \$104 per annum plus GST for each to support provision of art, cultural and creative programs and services.
- 5.32 The Tenant is provided with funding to deliver the above services on Council's behalf.

Recommendation

- 5.33 Given the Tenant is a Council funded organisation, rent needs to be considered in conjunction with the terms of the future funding deed.
- 5.34 Officers propose a rental of \$653,000 per annum plus GST (being the combined market value of the Crown land and Council freehold land) to be discounted to \$104 per annum plus GST for each agreement to help support the provision of art, cultural and creative programs and services to the community.
- 5.35 The rental discount is to be recognised as an in-kind contribution under any future funding deed in line with the Community Funding Policy.

Outgoings

Key Principles

- 5.36 It is desirable that tenants pay the running costs (outgoings) of the premises that are associated with their tenancy.



- 5.37 These costs are to be paid either directly to the relevant service provider by the tenant, or to Council as a reimbursement for incurring these costs.
- 5.38 Community Organisations may be eligible for an exemption from the payment of all, or some, outgoings which will be considered in line with the Community Funding Framework.

Assessment

- 5.39 The Tenant currently pays the outgoings associated with operating its services out of the premises.
- 5.40 It is considered reasonable that the Tenant pays all outgoings as with any standard operator/ occupier.

Recommendation

- 5.41 Officers recommend that all outgoings applicable to the tenancy be paid by the Tenant.
- 5.42 The cost of outgoings considered as part of the Tenant's Council funding in line with the Community Funding Framework.

Insurance

Key Principles

- 5.43 Tenants are responsible for insuring any chattels, fixtures or contents within Council property as well as taking out public liability insurance.
- 5.44 It is desirable that Council maintains building insurance for buildings on Council owned or controlled land with the cost of such insurance being reimbursed by the tenant.
- 5.45 Community Organisations may be eligible for an exemption from the payment of all, or some, insurance which will be considered in line with the Community Funding Framework.

Assessment

- 5.46 The Tenant currently maintains its own Public Liability Insurance policy of \$20M and contents insurance as required.
- 5.47 Council currently covers the cost of building insurance for the premises at a premium of approximately \$10,000 per annum.
- 5.48 It is considered reasonable that the Tenant pays insurance as with any standard operator/ occupier.



Recommendation

- 5.49 Officers recommend that insurance for public liability and tenant improvements be obtained by the Tenant and that cost for building insurance be reimbursed by the Tenant to Council.
- 5.50 The cost of building insurance is considered as part of the Tenant's Council funding in line with the Community Funding Framework.

Maintenance

Key Principles

- 5.51 Council is committed to ensuring Council property remains suitable and safe for its intended use, and that the building lifecycle is extended as far as practicable for the benefit of future communities.
- 5.52 In general, tenants are responsible for keeping Council property clean and in good operating condition with full responsibility for the maintenance and renewal of tenant fittings and improvements.
- 5.53 The extent of landlord contribution to structural maintenance and renewal should consider asset ownership, community benefits, capacity of the tenant to pay and nature of the tenancy.

Assessment

- 5.54 The proposed tenancy agreements do not fall within the *Retail Leases Act (2003)*.
- 5.55 Council has always been responsible for all costs associated with repairs, maintenance and renewal of the premises. Ongoing costs for general maintenance of the premises were around \$80,000 for the 2019 financial year.
- 5.56 Council has taken on the responsibility of delivery of Essential Safety Measures inspections and monitoring for all buildings within its portfolio.

Recommendation

- 5.57 Officers recommend that the Tenant be subject to the standard maintenance requirements of the proposed tenancy agreements and that any ongoing general maintenance costs that are to be covered are considered as part of the Tenant's Council funding in line with the Community Funding Framework.

Method of Council Support

Key Principles

- 5.58 Council is committed to providing transparent and relevant support through a range of funding mechanisms to Community Organisations aligned with Council Plan priorities, as detailed in the Community Funding Policy.



- 5.59 Council will assess the level of discount/ support required by Community Organisations against the eligibility criteria set by the Community Funding Policy.

Assessment

- 5.60 Art and Soul Creative and Prosperous City Strategy 2018-2022 provides direction to examine Council's investment in cultural facilities.
- 5.61 An interim/ existing Funding Deed for the Tenant has been in place for the period 2018-2020 in anticipation of this Strategy.
- 5.62 The interim/ existing Funding Deed with the Tenant will expire in June 2020. A future funding deed, aligned with the proposed tenancy agreements, would need to be developed in conjunction with the Community Funding Policy (endorsed in April 2018).

Recommendation

- 5.63 Officers recommend that the Tenant be granted discounted rent of \$104 per annum plus GST for each proposed tenancy agreement, which includes consideration for insurance and maintenance.
- 5.64 Further to this, the rental discount is to be recognised as an in-kind contribution under any future funding deed in line with the Community Funding Policy and the proposed tenancy agreements are to be contingent on the Tenant receiving a funding deed from Council.

6 CONSULTATION AND STAKEHOLDERS

- 6.1 Council will notify the community through a Notice of Intention to Lease to be published in the local newspaper inviting submissions in accordance with statutory procedures.
- 6.2 Grant and purpose consent has been sought from DELWP for the proposed tenancy agreement and licence on Crown land.

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 agreements.
- 7.2 Council's and the Crown's standard form lease and licence will be used as the basis of all tenancy agreements, unless otherwise agreed or required by legislation. Such templates document the landlord/ licensor and tenant/ licensee responsibilities, conform to legislative requirements and mitigate risk.
- 7.3 The proposed tenancy agreement and licence on Crown land are subject to a parliamentary scrutiny process and approval by the Minister for Energy, Environment and Climate Change on behalf of DELWP.



8 FINANCIAL IMPACT

- 8.1 The estimated market rent of \$530,000 and \$123,000 excluding GST for Council freehold land and Crown land respectively is recommended to be discounted under the future funding deed to support the provision of art, cultural and creative programs and services to the community.
- 8.2 The proposed tenancy agreements are 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 agreements 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 agreements 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.

10 COMMUNITY IMPACT

- 10.1 Council has two 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 agreements align 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 agreements also support Art and Soul Creative and Prosperous City Strategy 2018-2022 as they relate to provision of arts services at the Gasworks Arts Park.

12 IMPLEMENTATION STRATEGY

12.1 TIMELINE

12.1.1 If Council resolves to commence the statutory process, a Notice of Intention to Lease as per section 190 of the Act will be published in Port Phillip Leader newspaper.

12.1.2 Under section 223 of the Act, the submission period will be at least 28 days.

12.1.3 Council is required to hear and consider submissions (if any) at a future Council meeting.

12.2 COMMUNICATION

12.2.1 Officers will advise the Tenant’s representatives of the outcome of the 19 February 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. Gasworks Site Plan