



14.7 **PROPOSED TENANCY AGREEMENT - LINDEN ART GALLERY**

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 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 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.
- 2.5 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 \$341,336 plus GST in 2018/19, adjusted in line with the Consumer Price Index in 2019/20.
- 2.6 A future funding deed aligned with the proposed tenancy agreement is in the negotiation phase. It is to be developed in conjunction with the Community Funding Policy (endorsed in April 2018).
- 2.7 The Tenant has recently completed a \$30K upgrade to the Linden Workshop Space to encourage venue hire.
- 2.8 The existing short-term tenancy agreement with the Tenant will expire on 30 June 2020.
- 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, enable long-term precinct planning to further enliven the local area and recoup the amortisation of \$30K spent on the upgrade.
- 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 any future funding deed in line with the Community Funding Policy.
- 2.13 The proposed tenancy agreement is dependent on the successful negotiation of a Funding Deed between the Tenant and Council.
- 2.14 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.

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	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 Notes that the proposed tenancy is 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 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, aligned with the proposed tenancy agreement, would need to be developed in conjunction with the Community Funding Policy (endorsed in April 2018).

5. PROPOSED TENANCY AGREEMENT

5.1 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.

5.2 Council's Property Policy provides guidance on entering tenancy agreements. Such principles under Council's Property Policy align with the State Government Leasing Policy and are summarised below.

5.3 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

5.4 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

5.5 The proposed tenancy agreement is expected to be longer than the standard term.

5.6 The Tenant has not occupied the subject premises for a period that exceeds the maximum allowable term.

5.7 The proposed tenancy agreement does not include obligations on the Tenant to carry out a redevelopment or major capital works.

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 Linden New Art Inc.

Term of the Proposed Tenancy Agreement

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 has recently completed a \$30k upgrade to the Linden Workshop Space to encourage venue hire.
- 5.17 The Tenant has been a long-term tenant of Council after Council amalgamations devolved operations to the incorporated association in April 2000 with its own Board of Management.

Recommendation

- 5.18 Officers recommend the proposed tenancy agreement to commence from 1 July 2020 to 30 June 2030.
- 5.19 This would allow sufficient time for artistic planning for the Tenant, provide certainty to resident artists and staff, enable long-term precinct planning and recoup the amortisation of \$30K spent on the upgrade.

Multi-Use of Facilities

Key Principles

- 5.20 Council is committed to maximising access to, and use of, Council facilities for the benefit of the community.
- 5.21 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

- 5.22 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.
- 5.23 The Tenant has recently completed a \$30k upgrade to the Linden Workshop Space to encourage venue hire.
- 5.24 The premises have not been custom built for the Tenant but have been refurbished to improve the facilities for the Tenant's use.



Recommendation

- 5.25 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

- 5.26 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.
- 5.27 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

- 5.28 Market rental for the premises as at July 2018 has been estimated at \$340,000 per annum excluding GST by Council's approved valuer.
- 5.29 Under the terms of the existing tenancy agreement, the Tenant contributes a discounted rent of \$104 per annum plus GST to support provision of art, cultural and creative programs and services.
- 5.30 The Tenant is provided funding by Council to deliver the above services on Council's behalf.

Recommendation

- 5.31 Given the Tenant is a Council funded organisation, rent needs to be considered in conjunction with the terms of the future funding deed.
- 5.32 Officers propose a rental of \$340,000 per annum plus GST to be discounted to \$104 per annum plus GST to help support the continuous provision of art services to the community.
- 5.33 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

- 5.34 It is desirable that tenants pay the running costs (outgoings) of the premises that are associated with their tenancy.
- 5.35 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.
- 5.36 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

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

Recommendation

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

Insurance

Key Principles

- 5.41 Tenants are responsible for insuring any chattels, fixtures or contents within Council property as well as taking out public liability insurance.
- 5.42 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.
- 5.43 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

- 5.44 The Tenant currently maintains its own Public Liability Insurance policy of \$20M and contents insurance as required.
- 5.45 Council currently covers the cost of building insurance for the premises at a premium of approximately \$4,000 per annum.
- 5.46 It is considered reasonable that the Tenant pays insurance as with any standard operator/ occupier.

Recommendation

- 5.47 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.
- 5.48 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

- 5.49 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.



- 5.50 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.
- 5.51 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

- 5.52 The proposed tenancy agreement does not fall within the *Retail Leases Act (2003)*.
- 5.53 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 \$28,000 for the 2019 financial year.
- 5.54 Council has taken on the responsibility of delivery of Essential Safety Measures inspections and monitoring of all buildings within its portfolio.

Recommendation

- 5.55 Officers recommend that the Tenant be subject to the standard maintenance requirements of the proposed tenancy agreement 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

- 5.56 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.
- 5.57 Council will assess the level of discount/ support required by Community Organisations against the eligibility criteria set by the Community Funding Policy.

Assessment

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

Recommendation

- 5.61 Officers recommend that the Tenant be granted discounted rent of \$104 per annum plus GST which includes consideration for insurance and maintenance.
- 5.62 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 that the



proposed tenancy agreement is 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.

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.

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 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 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: 20/13/25
ATTACHMENTS 1. Site Plan