



14.4 **PROPOSED TENANCY AGREEMENTS (TO FINALISE) - GASWORKS ARTS PARK**

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1. PURPOSE

1.1 To seek Council's approval to complete 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 amounted to \$586,500 plus GST in 2018/19 and was 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 agreement is being finalised in line with the Community Funding Policy (endorsed in April 2018).
- 2.6 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.
- 2.7 Grant and purpose approval must be obtained from the Department of Environment, Land, Water and Planning (**DELWP**) for the proposed tenancy agreement for the Crown land portion. This has been delayed through the parliamentary scrutiny process given the nature of the Crown land reservation being a public park. The new agreements will not be entered until this process has been finalised.



- 2.8 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.
- 2.9 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.
- 2.10 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.
- 2.11 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.
- 2.12 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)*.
- 2.13 Council resolved to commence the statutory process on 19 February 2020 which invited submissions on the proposed tenancy agreements. Council must hear and consider any submissions received before deciding to enter into such tenancy agreements.
- 2.14 No submissions were received in response to the public notice that was published in the Port Phillip Leader newspaper on 3 March 2020.
- 2.15 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 agreements with key terms summarised as follows:

Tenant	Gasworks Arts Inc
Premises	1. Part of 21 Graham Street, Albert Park (Council freehold 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	\$530,000 and \$123,000 excluding GST for Council freehold land and Crown land respectively, 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 Authorises the Chief Executive or delegate to execute such tenancy agreements;
- 3.3 Notes that the proposed tenancy agreements are dependent on the successful negotiation of a Funding Deed between the Tenant and Council;
- 3.4 Notes that whilst the previous market rental estimates were \$530,000 and \$123,000 excluding GST for Council freehold land and Crown land respectively, a discounted rent of \$104 per annum plus GST for each tenancy agreement will apply, reflected as in-kind contribution by Council.
- 3.5 Notes that the tenancy agreements will not be entered into until grant and purpose has been obtained from the Department of Environment, Land, Water and Planning (DELWP) for the proposed tenancy agreement on Crown Land

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 South 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 must be obtained from the Department of Environment, Land, Water and Planning (**DELWP**) for the proposed tenancy agreement for the Crown land portion. This has been delayed through the parliamentary scrutiny process given the nature of the Crown land reservation being a public park. The new agreements will not be entered into until this process has been finalised.
- 4.10 Council has granted additional permits to the Tenant for a monthly Farmers' Market held on Crown land and Council freehold land. These permits do not invoke the statutory process.

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 is in development that aligns with the proposed tenancy agreement in line with the Community Funding Policy (endorsed in April 2018).

PROPOSED TENANCY AGREEMENTS

- 4.19 As each of the proposed tenancy agreements 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 agreements.
- 4.20 Council resolved to commence the statutory process on 19 February 2020 which invited submissions on the proposed tenancy agreements. Council must hear and consider any submissions received before deciding to enter into such tenancy agreements.
- 4.21 No submissions were received in response to the public notice that was published in the Port Phillip Leader newspaper on 3 March 2020.
- 4.22 There are several 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.
- 4.23 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 Crown land in an ecologically sustainable manner.
- 4.24 Council's Property Policy provides guidance on entering tenancy arrangements and is aligned with the State Government Leasing Policy.
- 4.25 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 agreements be made to commence from 1 July 2020 or 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, provide certainty to resident artists and staff and enable long-term precinct planning to further enliven the local area around Gasworks Arts Park;
 - 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 \$653,000 per annum plus GST (being the combined market value of the Crown land and Council freehold land) be discounted to \$104 per annum plus GST for each 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 any 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 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 cost for building insurance be reimbursed by the Tenant to Council with the cost of building insurance 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.

5. CONSULTATION AND STAKEHOLDERS

- 5.1 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.
- 5.2 The deadline date of submissions was 3 April 2020.
- 5.3 No submissions were received by the deadline date.
- 5.4 Grant and purpose consent is sought from DELWP for the proposed tenancy agreement on Crown land with is required to go through parliamentary scrutiny.

6. LEGAL AND RISK IMPLICATIONS

- 6.1 The statutory process under the Act requires Council to notify the public before committing to the proposed tenancy agreements.
- 6.2 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.
- 6.3 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.

7. FINANCIAL IMPACT

- 7.1 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.



- 7.2 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.

8. ENVIRONMENTAL IMPACT

- 8.1 The proposed tenancy agreements will require the Tenant to implement environmentally sustainable practices and programs that support reduction in energy, waste and water.
- 8.2 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;
 - implement best-practice storm water management; and
 - reduce single use plastic.
- 8.3 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.

9. COMMUNITY IMPACT

- 9.1 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.
- 9.2 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.

10. ALIGNMENT TO COUNCIL PLAN AND COUNCIL POLICY

- 10.1 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."
- 10.2 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.

MEETING OF THE PORT PHILLIP CITY COUNCIL 16 SEPTEMBER 2020



11. IMPLEMENTATION STRATEGY

11.1 TIMELINE

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

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. Gasworks Site Plan