



**14.2** **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 complete the statutory procedures and finalise a new tenancy agreement for 26 Acland Street, St Kilda with Linden New Art Incorporated ("Tenant").

**2. EXECUTIVE SUMMARY**

- 2.1 The premises subject to the proposed tenancy agreement is 26 Acland Street, St Kilda. This property known as Linden comprises a historical building which was originally an 18-room mansion. Linden was purchased by the former City of St Kilda in 1983 which then became what was originally known as the Linden Arts Centre and Gallery in 1986.
- 2.2 The Tenant was granted a Funding Deed on 6 June 2018 for the period 1 July 2018 to 30 June 2020. Under this Funding Deed, the Tenant is provided with funding of \$341,336 in 2018/19 and \$341,336 adjusted to Consumer Price Index (CPI) in 2019/20 plus GST. This follows an investment of \$2.16M in the building by Council.
- 2.3 A new tenancy agreement is proposed to be granted to the Tenant backdated to the expiry of its existing tenancy agreement and the start of the Funding Deed.
- 2.4 The proposed tenancy agreement term is from 1 July 2018 to 30 June 2020. This is to align with the Tenant's Funding Deed and to enable the results of the Property Policy (which is currently being reviewed) to be integrated with the agreement.
- 2.5 The Tenant is seeking permission to sub-let parts of the premises for revenue generation to subsidise its operations. The Tenant's Funding Deed contemplates sub-letting to facilitate the Tenant's activation of its arts programs. In light of the significant support being provided by Council to the Tenant, Officers propose that such sub-letting approval be considered subject to certain conditions. These conditions include Council's right to amend the rent and any other terms of the proposed tenancy agreement allowing any rent obtained from sub-letting opportunities to be shared with Council (where appropriate).
- 2.6 As the proposed tenancy agreement has a term of more than one year but less than ten years and the market rent exceeds \$50,000 per annum, the statutory process under the Local Government Act 1989 (Act) applies.
- 2.7 Council resolved to commence the statutory process on 5 December 2018 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.
- 2.8 No submissions were received in response to the public notice that was published in the Port Phillip Leader newspaper on 18 December 2018.



- 2.9 Council is now in a position to complete the statutory procedures and make a final decision on the proposed tenancy agreement.

### 3. RECOMMENDATION

That Council:

- 3.1 Not having received any submissions in response to a Notice of Intention to Lease the property at 26 Acland Street, St Kilda to Linden New Art Incorporated ("Tenant"), resolves to conclude the statutory procedures under sections 190 and 223 of the *Local Government Act 1989* (Act) and approves the proposed tenancy agreement to the Tenant.
- 3.2 Authorises the Chief Executive Officer or delegate to execute such tenancy agreement on the key terms outlined below:

Tenant: Linden New Art Incorporated

Demised Premises: 26 Acland Street, St Kilda

Permitted Use Arts related purposes

Commencement date: 1 July 2018

Term: 2 years

Rental: \$104 per annum plus GST

- 3.3 Notes that whilst the assessed market rent is \$340,000 per annum plus GST, a discounted rent of \$104 per annum plus GST is proposed to support provision of art, cultural and creative programs and services to the community.
- 3.4 Notes that the proposed tenancy agreement will include Council's right to amend the rent and any other terms of the proposed tenancy agreement allowing any rent obtained from sub-letting opportunities to be shared with Council (as appropriate).

### 4. KEY POINTS/ISSUES

- 4.1 The Tenant has been a long sitting tenant of Council. It operates an art gallery that specialises in displaying new and contemporary art.
- 4.2 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 in 2018/19 and \$341,336 CPI adjusted in 2019/20 plus GST.
- 4.3 The building has undergone extensive refurbishment funded by Council that includes making the building compliant with the Australian building code. Such building upgrade amounting to \$2.16M reflects Council's commitment to supporting and revitalising arts precincts across the municipality.



- 4.4 The proposed tenancy agreement has a term of more than one year but less than ten years and the market rent exceeds \$50,000 per annum hence it invokes statutory process.
- 4.5 In accordance with the statutory process, a Notice of Intention to Lease the property was published in Port Phillip Leader newspaper on 18 December 2018. No submissions were received by the submission deadline date of 22 January 2019.
- 4.6 Council is now in a position to complete the statutory procedures and make a final decision on the proposed tenancy agreement.
- 4.7 Council is in the process of developing a Property Policy to provide for consistent and transparent leasing and licensing principles for all Council owned and managed properties. In the interim, several key principles have been developed that apply to all tenancy agreements being proposed to Council. An assessment of the proposed key terms along with a recommendation against each of the principles are summarised below.

#### 4.8 **Term of the Tenancy Agreement**

##### *Key Principles*

- The term of the tenancy agreement needs to be appropriate to the tenant and use of the premises and allows for consideration of alternative uses.
- A longer-term tenancy agreement may be justified to support capital investment in the premises and provide security for financing or future planning.
- The term of the tenancy agreement should consider the effort required by Council and the future tenant to negotiate a new tenancy agreement.

##### *Assessment*

- Council on 6 June 2018 endorsed the Funding Deed for the Tenant for a period of two years from 1 July 2018 to 30 June 2020.
- Further work is needed to review the long-term arrangement for the premises, including the utilisation of the asset, the Tenant's income earning potential and the level of Council's total contribution to the Tenant. A shorter-term tenancy agreement would support this work being undertaken, with any changes being reflected in a future tenancy agreement.

##### *Recommendation*

- Officers propose a two-year tenancy agreement to align with the Tenant's Funding Deed and to allow for a review of the current arrangement in line with the new Property Policy.
- Whilst the proposed term is short, the approach of keeping the terms the same minimises the effort required by the Tenant and Council.

#### 4.9 **Rent**

##### *Key Principles*

- 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.



- Council will also consider the tenant's ability to pay rent and the effect rent would have on its programs and community benefit.

*Assessment*

- The Tenant is provided funding by Council to deliver services on behalf of Council through the provision of art, cultural and creative programs and services.
- Given the Tenant is a Council funded organisation, rent needs to be considered in conjunction with the terms of the Funding Deed.
- Market rental for the premises has been assessed at \$340K per annum plus GST by Council's approved valuer. This translates to a discount of \$339,896.
- Given the Tenant is a Council funded organisation, rent needs to be considered in conjunction with the terms of the Funding Deed.

*Recommendation*

- Officers propose a nominal rent of \$104 per annum plus GST as per the terms of the existing tenancy agreement, with the understanding that the level of rental discount will be re-assessed once the Property Policy has been finalised.

**4.10 Outgoings**

*Key Principle*

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

*Assessment*

- It is considered reasonable that the Tenant pays all outgoings as with any standard operator/occupier.

*Recommendation*

- Officers recommend that the Tenant will pay outgoings associated with the proposed tenancy agreement excluding building insurance as the Tenant is not responsible for maintenance and repairs of the premises.

**4.11 Maintenance**

*Key Principles*

- The tenancy agreement should be clear about maintenance and renewal responsibilities of the tenant and Council as landlord.
- It is desirable for tenants to pay for maintenance and renewal of their fittings and improvements.
- The extent of landlord contribution to structural maintenance and renewal should consider asset ownership, community benefits, capacity of the tenant to pay and the nature of the tenancy.

*Assessment*

- Council has always been responsible for all costs associated with repairs, maintenance and renewal of the premises.



- Council has taken on the responsibility of delivery of Essential Safety Measures inspections and monitoring for all buildings within its portfolio.
- Council should ensure all repairs, maintenance and renewal are undertaken in accordance with the Asset Management Plan which should be updated every five years.

*Recommendation*

- Officers recommend that Council continues to be responsible for all costs associated with repairs, maintenance and renewal of the premises and the Tenant continues to be responsible for its own chattels and other operational items. This is recommended with the understanding that the Tenant's contribution towards maintenance of the premises will be assessed as part of a broader review of Council's total contribution to the Tenant once the Property Policy has been finalised.

**4.12 Sub-Letting**

*Key Principle*

- The Tenant's Funding Deed contemplates generation of rental revenue by the Tenant through sub-letting to facilitate activation of its arts programs.

*Assessment*

- The proposed tenancy agreement is aimed at reflecting the intention of the Funding Deed whereby affordable space and collaborative opportunities for local artists and organisations are provided.

*Recommendation*

- Officers recommend that the proposed tenancy agreement allows for sub-letting opportunities aligned with the Funding Deed. Revenue generated from subletting has been considered in the Funding Deed to enable a gradual reduction in percentage of Council core funding. Where a tenancy attracts rent through sub-letting, it is considered appropriate for Council to share the revenue generated (where appropriate) to support the maintenance and renewal of the building.

**5. CONSULTATION AND STAKEHOLDERS**

- 5.1 Council had consulted with the community through a Notice of Intention to Lease which was published in Port Phillip Leader newspaper on 18 December 2018 inviting submissions in accordance with statutory procedures.
- 5.2 The deadline date of submissions was on 22 January 2019.
- 5.3 No submissions were received by the deadline date.

**6. LEGAL AND RISK IMPLICATIONS**

- 6.1 The statutory process under the Act requiring Council to notify the public before committing to the proposed tenancy agreement was undertaken.
- 6.2 Documenting the tenant and landlord responsibilities through a legally binding tenancy agreement conforms to legislative requirements which mitigates risk.



## 7. FINANCIAL IMPACT

- 7.1 The assessed market rent of \$340K per annum plus GST will not be paid by the Tenant to Council. However, the proposed nominal rent supports the provision of arts services to the community. This maintains status quo.
- 7.2 The proposed tenancy agreement will require the Tenant to fulfil its obligations under the Funding Deed.
- 7.3 A review of Council's contribution to the Tenant is proposed during the term of the proposed tenancy agreement.

## 8. ENVIRONMENTAL IMPACT

- 8.1 The proposed tenancy agreement 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 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. COMMUNITY IMPACT

- 9.1 Council tenancy agreements deliver the following direct or indirect benefits to the community:
  - a) Promotion of health and wellbeing, supporting service provision, cultural or recreational opportunities or economic benefits; or
  - b) Full market rent so that the funds can be used to support Council activities; or
  - c) A combination of 9.1.1 and 9.1.2.
- 9.2 Council has a strong commitment in arts services to support a creative and vibrant community that aligns with its Art and Soul: Creative and Prosperous City Strategy as it relates to arts services at the Linden Art Gallery.
- 9.3 The Tenant's 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, among others.

# ORDINARY MEETING OF COUNCIL 17 APRIL 2019



## 10. ALIGNMENT TO COUNCIL PLAN AND COUNCIL POLICY

10.1 The proposed tenancy agreement aligns to:

Direction 5 – “A city where arts, culture and creative expression is part of everyday life.”

Direction 6 – “A financially sustainable, high performing, well-governed organisation that puts the community first.”

## 11. IMPLEMENTATION STRATEGY

11.1 TIMELINE

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

11.2 COMMUNICATION

Officers will liaise with the Tenant’s representatives to advise them of the outcome of the 17 April 2019 Council meeting.

## 12. OFFICER DIRECT OR INDIRECT INTEREST

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

**TRIM FILE NO:** 20/13/24

**ATTACHMENTS** Nil