

ORDINARY MEETING OF COUNCIL

3 APRIL 2019



14.1 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 at the Gasworks Arts Park:

1.1.1 premises owned by Council at part of 21 Graham Street, Albert Park and

1.1.2 premises owned by the Crown at part of 1-35 Graham Street, Albert Park.

2. EXECUTIVE SUMMARY

- 2.1 Gasworks Arts Park is comprised of Crown land and Council freehold land. There are several buildings on site that are leased to the Tenant under separate Crown land and freehold tenancy agreements where Council is landlord as either the Committee of Management for Crown land or the freehold owner.
- 2.2 The Council freehold land referred to in this report is the land upon which the old Gasworks buildings sit within the freehold land owned by Council at 21 Graham Street, Albert Park. The buildings include a gate house, a theatre, a café, a jewellery shop, art studios, gallery spaces and offices.
- 2.3 The Crown land referred to in this report is the land upon which the artists' studios and paving sit at 1-35 Graham Street, Albert Park.
- 2.4 The existing tenancy agreement with the Tenant for the Council freehold premises expired on 30 June 2018 while the existing tenancy agreement with the Tenant for the Crown land premises expired on 30 June 2016. The current terms and conditions of the existing agreements prevail whilst in overholding.
- 2.5 The market rent estimate for the Council freehold premises is \$530,000 per annum excluding GST and \$123,000 per annum excluding GST for the Crown land premises.
- 2.6 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 premises. It must also go through parliamentary scrutiny given the nature of the Crown land reservation being a public park.
- 2.7 The Tenant has a Funding Deed in place for the period 1 July 2018 to 30 June 2020. It is proposed that the term of the proposed tenancy agreements align with the Tenant's Funding Deed ending on 30 June 2020.
- 2.8 The proposed rental for each proposed tenancy agreement is \$104 per annum plus GST to align with the existing tenancy agreements. This represents a discount of \$652,792 excluding GST. This is in addition to the base funding given by Council to the Tenant under the Funding Deed amounting to \$586,500 in 2018/19 and \$586,500 adjusted to Consumer Price Index (CPI) in 2019/20 plus GST. A contribution towards



the Gasworks Theatre Seats replacement will be deducted from the amounts paid from the 2019/20 financial year.

- 2.9 As each of the proposed tenancy agreement has a proposed term of greater than one year and each market rent estimate exceeds \$50K per annum, the statutory process applies. This process requires public notification before making a final decision on the proposed tenancy agreement. Such is pursuant to sections 190 and 223 of the Local Government Act 1989 (Act).
- 2.10 Officers recommend that the terms remain largely the same as the existing tenancy agreements whilst a new Property Policy is finalised and further work is undertaken to review Council's total contribution to the Tenant. This will include a review of the discounted rent, the on-going maintenance and the renewal of the buildings, in the context of such things as the benefits generated for the wider community, age of the assets and the Tenant's income earning potential through hire of the facilities and sub-letting.

3. RECOMMENDATION

That Council:

- 3.1 Resolves that the statutory procedures be commenced under section 190 of the *Local Government Act 1989 (Act)* for the proposed tenancy agreements with Gasworks Arts Inc ("**Tenant**") by publishing a notice in the local newspaper inviting interested persons to make a submission under section 223 of the Act, on the following terms:
- 3.1.1 Proposed Tenant: Gasworks Arts Inc
 - 3.1.2 Demised Premises: 1. Part of 21 Graham Street, Albert Park
(Council freehold premises)
2. Part of 1-35 Graham Street, Albert Park
(Crown land premises)
 - 3.1.3 Permitted Use: Arts related purposes
 - 3.1.4 Commencement date: From the grant and purpose approval date
 - 3.1.5 Expiry date: 30 June 2020
 - 3.1.6 Rent: \$104 per annum plus GST
- 3.2 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;
- 3.3 Resolves to hear and consider any submissions received pursuant to section 223 of the Act at a future Council meeting;
- 3.4 Notes that whilst the market rental estimate for the Council freehold premises is \$530,000 excluding GST for the Council freehold premises and \$123,000 excluding GST for the Crown land premises, a discounted rent of \$104 per annum plus GST for each is proposed to support the provision of art, cultural and creative programs and services to the community and to allow for the implementation of the Property Policy and a review to be undertaken on the future use of the assets.



4. BACKGROUND

- 4.1 Situated at the former South Melbourne Gasworks site, Gasworks Arts Park has been redeveloped into a community arts precinct comprising of heritage buildings that include a gate house, a theatre, a café, a jewellery shop, theatres, gallery spaces, artists' studios, an outdoor paving and offices.
- 4.2 The Tenant is a long-term tenant of Council and has since been a focal point for arts activity in the City of Port Phillip. The Tenant has been providing a range of art programs, workshops and activities.
- 4.3 The existing tenancy agreement with the Tenant for the premises on the Council freehold portion at 21 Graham Street, Albert Park expired on 30 June 2018. Whilst the tenancy agreement is in overholding, the current terms and conditions of the existing tenancy agreement prevail.
- 4.4 The existing tenancy agreement with the Tenant for the premises on the Crown land portion at 1-35 Graham Street, Albert Park expired on 30 June 2016. Whilst the tenancy agreement is in overholding, the current terms and conditions of the existing tenancy agreement prevail.
- 4.5 Grant and purpose approval from DELWP is being sought for the proposed tenancy agreement for the Crown land premises. It must also go through parliamentary scrutiny given the nature of the Crown land reservation being a public park.
- 4.6 The commencement date for the proposed tenancy agreement for the Crown land premises cannot pre-date the grant and purpose approval date from DELWP. It is thus proposed that the same date be the commencement date for the proposed tenancy agreement for the Council freehold premises.
- 4.7 On 6 June 2018, Council endorsed the Funding Deed for the Tenant for a period of two years from 1 July 2018 to 30 June 2020 with the base funding of \$586,500 and \$586,500 adjusted to Consumer Price Index (CPI) in 2019/20 plus GST. A contribution towards the Gasworks Theatre Seats replacement will be deducted from the amounts paid from the 2019/20 financial year. This Funding Deed covers the Tenant's operational and program costs.
- 4.8 Under the terms of the existing tenancy agreements for the Council freehold premises and Crown land premises, the Tenant contributes a discounted rent of \$104 per annum plus GST to support the delivery of services on Council's behalf through provision of art, cultural and creative programs and services.
- 4.9 Council has granted additional licences to the Tenant for a monthly Farmers' Market held on Crown land and Council freehold land. These agreements have market assessed licence fees of less than \$50K per annum which do not invoke the statutory process. However, the Farmers' Market licence on Crown land also necessitates grant and purpose approval and must go through parliamentary scrutiny given the nature of the Crown land reservation being a public park.
- 4.10 The proposed tenancy agreements for the Council freehold premises and Crown land premises must go through statutory procedures set out in Section 190 and 223 of the Act given the proposed tenancy agreement term for each is greater than one year and each market rent estimate exceeds the threshold of \$50K per annum.



5. KEY POINTS/ISSUES

- 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 and
 - Council Plan.
- 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 is in the process of reviewing its Property Policy including its approach to leasing and licencing. In the interim, several key principles have been developed that apply to all tenancy agreements being proposed to Council.
- 5.4 The principles align with the State Government Leasing policy and are summarised below. An assessment of the proposed key terms along with a recommendation against each of the principles are also provided.
- 5.5 **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 warranted 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.
- The commencement date for the proposed tenancy agreement for the Crown land premises cannot pre-date the grant and purpose approval date from DELWP.
- Further work is needed to review the long-term arrangements for the premises, including the utilisation of the assets, 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 the tenancy agreements to commence from the grant and purpose approval date from DELWP to 30 June 2020. This to align with the



Tenant's Funding Deed and to allow for a review of the current arrangements 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.

5.6 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

- Market rental for the premises has been estimated at \$530,000 per annum excluding GST for the Council freehold premises and \$123,000 per annum excluding GST for the Crown land premises by Council's approved valuer.
- A significantly discounted rental fee of \$104 has been in place for a long time. Future consideration of the rental amount will need to be re-assessed in line with the new Property Policy.
- The Tenant is provided funding by Council to deliver services on Council's behalf through 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.

Recommendation

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

5.7 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 agreements excluding building insurance as the Tenant is not responsible for maintenance and repairs of the premises.



5.8 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.

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.

5.9 Sub-Letting

- The Tenant's Funding Deed contemplates generation of rental revenue by the Tenant to facilitate activation of its arts programs.
- The proposed tenancy agreement is aimed at reflecting the intention of the Funding Deed whereby low-cost space are provided to creative practitioners to create opportunities for industry experience, collaboration and innovation. Under the Funding Deed, active programming includes anything resulting from the Tenant's programs including studios and spaces for hire.
- Officers recommend that the proposed tenancy agreements allow for sub-letting opportunities aligned with the Funding Deed. Revenue generated from sub-letting has been considered in the Funding Deed to enable a reduction in the percentage of Council's core funding.

5.10 Other Considerations

- During the term of the proposed tenancy agreements, Council is carrying out upgrades to the facilities including the Gasworks Theatre seating project. Council's contribution towards the Gasworks Theatre seating replacement will be deducted from the amounts paid from the 2019/20 Funding Deed.



- In addition, the State Government is undertaking soil remediation works at the site. Special conditions in the proposed tenancy agreements will enable the works and address the impact on the ability of the Tenant to continue to provide services.

6. CONSULTATION AND STAKEHOLDERS

- 6.1 Council will consult with 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 The Department of Environment, Land, Water and Planning (DELWP) has been consulted on the tenancy agreement for the artists' studios and paving and the licence for the Farmers' Market 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 Documenting the lessor and tenant responsibilities through a legally binding tenancy agreement conforms to legislative requirements which mitigates risk.
- 7.3 The proposed tenancy agreement for the artists' studios and paving and the licence for the Farmers' Market on Crown land are subject to parliamentary scrutiny 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 the Council freehold premises and Crown land premises respectively, will not be paid by the Tenant to Council. However, the proposed nominal rent reflects the existing long-term arrangements for the premises and supports the provision of arts services to the community.
- 8.2 The proposed tenancy agreements will require the Tenant to fulfil its obligations under the Funding Deed.
- 8.3 A review of Council's total contribution to the Tenant is proposed during the term of the proposed tenancy agreements.

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 tenancy agreements deliver the following direct or indirect benefits to the community:
 - 10.1.1 Promotion of health and wellbeing, supporting service provision, cultural or recreational opportunities or economic benefits, or
 - 10.1.2 Full market rent so that the funds can be used to support Council activities; or
 - 10.1.3 A combination of 10.1.1 and 10.1.2.
- 10.2 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 provision of arts services at Gasworks Arts Park.
- 10.3 The Tenant's 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, among others.

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 expressions is part of everyday life”.
 - 11.1.2 Direction 6 – “A financially sustainable, high performing, well-governed organisation that puts the community first”.

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 on 16 April 2019.
- 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 3 April 2019 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: 20/13/24

ATTACHMENTS Nil