



14.3 **PROPOSED LEASE LINDEN GALLERY**

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

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1. PURPOSE

1.1 To seek the Council's approval to commence the statutory procedures in relation to granting a new lease for 26 Acland Street, St Kilda, with Linden New Art Inc.

2. EXECUTIVE SUMMARY

- 2.1 It is proposed to grant a new lease to Linden New Art Inc. backdated to the expiry of its current lease on 30 June 2018. The lease is currently in overholding and operating on a month to month basis.
- 2.2 The land subject to the proposed lease in this report is 26 Acland Street, St Kilda. The 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 1987 and it is used as an art gallery.
- 2.3 As the proposed lease has a term of more than one year and less than ten years and the market rent exceeds \$50K per annum, the statutory process under the *Local Government Act 1989* (Act) applies.
- 2.4 The statutory process requires Council to invite submissions on the proposed lease and to hear and consider any submissions received before making a decision to enter into a lease.
- 2.5 Council is currently reviewing its Property Policy. The lease is proposed for two years to align with the funding agreement and enable the results of the Property Policy review to be integrated with any future lease.
- 2.6 The proposed rental of \$104 per annum plus GST aligns with the previous lease and represents a discount of \$339,896. This is in addition to the funding of \$341,336 per annum and follows a \$2.16M investment in the building. Council is responsible for building maintenance.
- 2.7 Linden New Arts has approached Council seeking permission to sub-let to generate revenue to subsidise their operations. The funding deed approved by Council contemplates sub-letting to activate the site. In light of the significant support provided to Linden already and that the building maintenance responsibilities rest with Council, Officers propose that any rent obtained from sub-letting is shared with Council.



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 lease with Linden New Art Incorporated at 26 Acland Street, St Kilda by publishing a notice in the local newspaper inviting persons to make a submission under Section 223 of the Act, with the proposed lease terms outlined below;
- 3.1.1 Proposed Tenant: Linden New Art Incorporated
- 3.1.2 Demised Premises: 26 Acland Street, St Kilda
- 3.1.3 Permitted Use Arts related purposes
- 3.1.4 Commencement date: 1 July 2018
- 3.1.5 Term: 2 years
- 3.1.6 Rental: \$104 per annum plus GST discounted from \$340k per annum ex GST.
- 3.2 Authorises the Chief Executive Officer to delegate to undertake the administrative procedures necessary to enable Council to carry out its functions under Section 223 of the Act and;
- 3.3 Resolves to hear and consider any submissions received pursuant to Section 223 of the Act at a future Council meeting.

4. KEY POINTS/ISSUES

- 4.1 Linden New Art Inc. has been a long-term tenant. It exists to provide programming for artistic pursuits at one of Council's major cultural facilities.
- 4.2 Linden Gallery has undergone extensive renovations and become DDA (Disability Discrimination Act) compliant. Works were funded by Council with the Gallery reopened and reoccupied by Linden New Art in August 2018. Building renewal works amounted to \$2.16M.
- 4.3 On 6 June 2018, Council resolved to approve an interim funding deed from July 2018 – July 2020. Council will provide Linden New Art with funding of \$341,336 in 2018/19 and \$341,336 + CPI in 2019/20 plus GST funds Linden New Art Inc.
- 4.4 The funding relies on a lease being in place. The proposed lease will be contingent upon funding.
- 4.5 In accordance with the statutory process a notice of intention to lease required to be published inviting interested persons to make a submission.



Leasing

- 4.6 Council is in the process of developing a Property Policy to provide for consistent and transparent leasing and licensing for all Council owned and managed properties.
- 4.7 Whilst in development, there are a number of key leasing principles that are applied to all leases being proposed to Council. The principles align with the State Government Leasing policy and are summarised below. An assessment of the proposed key terms against each of the principles is also provided below.

Terms of the Lease

4.8 Key Principles:

The term of the lease needs to be appropriate to the tenant and the use of the premises and allow for the consideration of alternative uses.

A longer term lease may be warranted to support capital investment in the premises and provide security for financing and future planning.

4.9 Assessment:

A two-year lease is proposed to align with the agreed interim funding deed. The lease and funding deed are to be interdependent.

Rent

4.10 Key Principles:

A market rent is desirable but Council accepts lower than market rent to help 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 benefits.

4.11 Assessment:

It is proposed that the rent be \$104 per annum plus GST.

Linden New Art Inc. provides services on behalf of Council through arts programming and exhibitions. As a Council funded organisation rent paid to Council would impact on its ability to deliver services.

A market rental has been assessed at \$340K per annum plus GST by Council's contract valuer.



Outgoings

4.12 Key Principles:

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

4.13 Assessment:

Linden New Art Inc. will pay outgoings associated with the premises apart from building insurance.

Maintenance

4.14 Key Principles:

Leases should clearly articulate tenant and landlord responsibilities for maintenance.

4.15 Assessment:

Council will undertake building maintenance. Linden New Art Inc. will be responsible for its chattels and operational items.

Other Considerations

4.16 Key Principles:

The interim funding deed allows for Linden New Art Inc. to sub-let for activation of its programs and exhibitions.

It is proposed that the lease reflects the intention of the interim funding deed and allow for sub-letting opportunities aligned to the interim funding agreement for provision of spaces for arts and cultural organisations and service providers.

Income generated from the sub-letting will enable a gradual reduction in percentage of Council core funding aligned to the interim funding agreement.

4.17 Assessment:

It is proposed that where the tenancy attracts rent through sub-letting then it would be appropriate for Council to share the income generated to support the maintenance and renewal of the building.

5. CONSULTATION AND STAKEHOLDERS

5.1 Officers have worked closely with the Linden New Art Inc. management who are in full agreement with what is proposed.

5.2 Councils Coordinator Arts has been consulted and agrees with the leasing approach.



6. LEGAL AND RISK IMPLICATIONS

- 6.1 By complying with the legislation and statutory procedures there are no legal or risk implications relating to the proposed lease.
- 6.2 Documenting the respective property responsibilities and obligations through a legally binding lease which takes into account the present day circumstances, mitigates risk.

7. FINANCIAL IMPACT

- 7.1 The lease will require Linden New Art Inc. to fulfil its obligations under the agreed funding deed terms.
- 7.2 The market rent will not be received. However, the proposed rent is at a nominal rate to support the provisions of arts services to the community. This maintains the status quo.

8. ENVIRONMENTAL IMPACT

- 8.1 It is proposed that any new lease arrangements will encourage the implementation of sustainable practices and programs to reduce the environmental impact of the buildings operations.
- 8.2 Leases should contain sustainability measures including adapting to climate change and using resources more efficiently to reduce everyday environmental impacts.
- 8.3 The lease will encourage energy saving and waste reduction and to implement initiatives to be more environmentally sustainable.

9. COMMUNITY IMPACT

- 9.1 Council leases should deliver direct or indirect benefits to the community. This can be achieved either by:
 - 9.1.1 Promotion of health and wellbeing, supporting service provision, cultural or recreational opportunities or economic benefits, or
 - 9.1.2 Full market rent so that the funds can be used to support Council activities; or
 - 9.1.3 A combination of 9.1.1 and 9.1.2
- 9.2 Linden New Art Inc. delivers an arts program at one of Council's major cultural facilities Linden Gallery. Council has a strong commitment to investing in arts services to support a creative and vibrant community which aligns to the Creative and Prosperous City Strategy.
- 9.3 The interim funding deed has agreed service levels and key performance indicators to ensure cultural community benefits. Key performance indicators maximise benefits and outcomes including; increased access to the facility by local arts organisations; increased community access including opportunities for visitation and participation; and increasing funding from other sources.



10. ALIGNMENT TO COUNCIL PLAN AND COUNCIL POLICY

10.1 The proposal aligns to Strategic Direction 6 – Our Commitment to You in the Council Plan 2017 – 2027 through supporting;

10.1.1 Transparent Governance and an actively engaged community.

10.1.2 A financially sustainable, high performing, well-governed organisation that puts the community first.

11. IMPLEMENTATION STRATEGY

11.1 TIMELINE

11.1.1 If the statutory process has been resolved to commence, the notice of intention to lease will be published in Port Phillip Leader Newspaper on 18 December 2018.

11.1.2 As per Section 223 of the Act the submission period will be at least 28 days.

11.1.3 Council will be required to hear and consider submissions (if any) at a future Council meeting.

11.2 COMMUNICATION

11.2.1 Officers will liaise with Linden New Art Inc. representatives after the outcome of the 5 December 2018 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.

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ATTACHMENTS Nil