



W A V E R L E Y
COUNCIL

CONFIDENTIAL ITEMS FOR CONSIDERATION

COUNCIL MEETING

7.00PM, TUESDAY 19 FEBRUARY 2019

Waverley Council
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AGENDA
CONFIDENTIAL COUNCIL ITEM

CM/10.1/19.02 CONFIDENTIAL REPORT - Waverley Woollahra Art School - Lease2

This matter is considered to be confidential in accordance with Section 10A(2)(di) of the Local Government Act, and the Council is satisfied that discussion of the matter in an open meeting would, on balance, be contrary to the public interest as it deals with commercial information of a confidential nature that would, if disclosed prejudice the commercial position of the person who supplied it.

**CONFIDENTIAL REPORT
CM/10.1/19.02**

Subject: Waverley Woollahra Art School - Lease

TRIM No: A03/0173

Author: John Andrews, Property Co-ordinator

Director: Rachel Hensman, Acting Director, Waverley Life

RECOMMENDATION:

That Council:

1. Treats this report as confidential in accordance with section 11(3) of the *Local Government Act 1993*, as it relates to a matter specified in section 10A(2)(d)(i) of the *Local Government Act 1993*. The report contains commercial information of a confidential nature that would, if disclosed prejudice the commercial position of the person who supplied it.
2. Approves a new five-year lease plus five-year option to the Waverley Woollahra Arts Centre Co-Operative Ltd on the terms and conditions contained in this report.
3. Authorises the General Manager to conclude negotiations and do all things necessary to finalise the matter and execute the lease on behalf of Council.

1. Executive Summary

The Waverley Woollahra Arts Centre Co-operative Limited (WWAC) has been operating out of the School of Arts building located at 138 Bondi Road, Bondi since 1981.

In 2014, Council awarded WWAC a new five-year lease as a result of the introduction of Council's Community Tenancy Policy. The introduction of the new rental calculation formula within the policy led to a rental increase for WWAC.

Since 2015, Council officers have been trying to complete negotiations on the lease and to move WWAC onto the new rental amount.

Despite numerous meetings and a significant amount of correspondence between the parties the WWAC lease remained unsigned and the new rental amounts unpaid.

As the lease remained unsigned and rent unpaid Council Officers sought direction through a report to Council in December 2018. Council resolved at the meeting that the General Manager and Mayor meet with representatives of WWAC to negotiate on the matters of contention with a view to finalising the lease terms.

That meeting occurred in January 2019 and final lease terms were mutually agreed and are outlined in this report.

2. Introduction/Background

The Bondi School of Arts building is located at 138 Bondi Road, Bondi. An art school has operated from the building since 1980, the organisation has undergone several name changes in the ensuing period. The current tenant is Waverley Woollahra Arts Centre Co-Operative Ltd (WWAC) trading as Waverley Woollahra Arts School.

The current building was bought in 1913 by the School of Arts Trustees for the purposes of establishing a School of Arts. After a number of alterations and renovations were completed, the building opened in 1914.

The School of Arts had experienced a number of financial issues and in 1981 the School of Arts Trustees resolved to transfer the building and property to Waverley Council.

Plans of Management for the School of Arts Building have provided Council with the authority to enter into leases or licences for any and all parts of the property.

At the time the transfer of ownership of the building to Council was being settled, WWAC were operating out of premises located on Grafton Street, Bondi Junction. The timing of the transfer of the care and custody of the School of Arts building from the Trustees to Council assisted the Waverley Woollahra Arts Centre in finding a new location.

WWAC commenced operating from the building in 1981 with the arrangement being formalised through a occupancy deed agreement in 1991. WWAC continue to operate on month to month holdover on this original agreement.

Council awarded a new five year lease to WWAC in April 2014 as part of the introduction of Council's Community Tenancy Policy. The policy provides the mechanism by which Council is able to provide subsidised rental arrangements for a range of Community Tenants operating from Council buildings. Through this process WWAC was awarded the maximum level of subsidy with an 80% reduction on the assessed value. The application of the new rental calculation formula within the Policy saw the annual rental amount increase from \$7,272 to \$13,490. To reduce the impact from the application of the new Policy, Council approved transitioning to the new rental amount over the first three years of the proposed new lease.

WWAC disagreed with the terms of the lease on offer and the lease remained unsigned. Council officers provided a report to Council in December 2018 seeking direction on how to proceed. Council resolved for the General Manager and Mayor to meet with club representatives with a view to finalising negotiations.

A meeting was held on 9 January 2019 and all areas of dispute were resolved and final lease terms agreed between the two parties.

3. Relevant Council Resolutions

Meeting and date	Minute No.	Decision
Council 11 December 2018	CM/10.1/18.12	That Council: <ol style="list-style-type: none"> Council treats this report as confidential in accordance with section 11(3) of the Local Government Act 1993, as it relates to a matter specified in section 10A(2)(c) of the Local Government Act 1993. The report contains information that would, if disclosed, confer a commercial advantage on a person with whom the Council is conducting (or proposes to conduct) business.

		<ol style="list-style-type: none"> 2. Council acknowledges the long-standing relationship between the Waverley Woollahra Arts Centre Co-operative Ltd and Council and the significant long-term contribution that the WWAC has made to the creative Arts in the Waverley LGA. 3. Council delegates to the General Manager and the Mayor the authority to finalise negotiations with the Waverley Woollahra Arts Centre Co-operative Ltd prior to 31 January 2019. 4. A status report come back to Council in February 2019, including a recommendation for Council consideration.
Council 22 April 2014	CON.10/14	<p>That Council:</p> <ol style="list-style-type: none"> 1. Treats the report as confidential in accordance with section 11(3) of the Local Government Act 1993, as it relates to a matter specified in section 10A(2) of the Local Government Act 1993. 2. Endorse proposed arrangements in relation to Grace Child Care, WAYS, Junction House and Waverley Woollahra Arts School contained in Table 1, subject to the WAYS Oxford Street lease offer, changing from a 5+3 year lease to a 5+5 year lease.
FESP 4 March 2003	F-0303.5	<p>That Council:</p> <ol style="list-style-type: none"> 1. Amend the Plan of Management for the Bondi Waverley School of Arts (1996) 2. Declare its intention to classify the Bondi Waverley School of Arts, 138 Bondi Rd Bondi, as a culturally significant community land, following the preparation of a draft Plan of Management and community consultation.

4. Discussion

WWAC had disputed a number of clauses in the proposed lease which included the term of the lease, the lack of an option period and the lease commencement date.

At the meeting between WWAC representatives, the General Manager and the Mayor on 9 January 2019 all lease terms including the following key terms contained in Table 1 below were agreed.

Term	Five years
Commencement date	1 April 2019
Expiry date	31 March 2024
Option	Five years
Rent	\$13,490 pa. plus GST
Annual Rent Reviews	Consumer Price Index, with the percentage increase to be not less than 1% and not greater than 3.5% (with a market rent review if option is exercised)

Special conditions	<ol style="list-style-type: none"> 1. WWAC must inform Council of any Board changes 2. Council may address a Board meeting if it provides written notice 3. WWAC to provide annual financial reports 4. Council officers are to carry out a condition report on the permitted areas to be attached to the final lease prior to the commencement date 5. Reference to the Bondi Waverley Arts School Plan of Management (2004) to be made in the lease
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Table 1. WWAC key lease terms.

Council officers are currently reviewing the Community Tenancy Policy and it is anticipated that the annual Consumer Price Index banding as detailed in Table 1 of between 1% and 3.5% will be recommended to be incorporated in all community lease conditions as part of the review.

At the time of the December report to Council the rental debt that had accumulated stood at \$16,120. WWAC had been paying rent at the previous level of \$7,272 per annum, and Council had been receipting these payments. At the meeting it was agreed that as the lease and the rental level had never been agreed, Council would accept a final settlement figure of \$5,000 plus GST.

Following the 9 January meeting, the General Manager wrote to WWAC outlining the agreed key terms and a draft lease including the amended terms was issued to WWAC for them to review and to present to their board for approval.

The WWAC confirmed in writing to Council on 20 January 2019 that the Board had agreed to the terms and of their intent to sign a lease including these terms. Staff, including the General Manager, are strongly supportive of Council approving the negotiated agreement and lease.

5. Financial impact statement/Timeframe/Consultation

The execution of the proposed new lease will provide a starting rent of \$13,490 plus GST, with annual CPI increases over the term of the lease.

The rental debt that had accumulated under the prior unsigned lease at the time of the December report to Council was \$16,120. This was negotiated down to \$5,000 plus GST which WWAC are required to pay prior to the commencement of the new lease.

It is proposed that the new lease will commence on 1 April 2019. If approved Council Officers will issue the lease to WWAC who will be provided 14 days to sign and return to Council.

6. Conclusion

It is recommended that Council approve entering into a new five-year lease with a five-year option with Waverley Woollahra Arts Centre Co Operative Ltd on the terms and conditions as contained in this report.

7. Attachments

Nil.