

**Lease Variation - Former Haymarket Library - Museum of Chinese in Australia****File No: S098960****Summary**

On 27 February 2020, the Museum of Chinese in Australia (the Museum) and the City of Sydney signed Heads of Agreement for the lease of the former Haymarket Library under the Accommodation Grants Program.

The Heads of Agreement itemised Conditions Precedent (preconditions of the lease the Museum needs to satisfy before the lease commences). These included the achievement of the First Target for fundraising by 1 August 2020, the receipt of Development Consent for the Permitted Use, and undertaking fit-out works.

In August 2020, the Chief Executive Officer approved the deferment of the above Conditions Precedent to 1 February 2021 following a request from the Museum due to the impacts of Covid-19.

On 7 January 2021, the Museum wrote to the City formally requesting further changes to the Conditions Precedent. This report seeks Council approval to endorse the revised Conditions Precedent in the Heads of Agreement, as outlined in confidential Attachment A.

## **Recommendation**

It is resolved that:

- (A) Council approve the revised Conditions Precedent as outlined in Confidential Attachment A to the subject report; and
- (B) authority be delegated to the Chief Executive Officer to negotiate, execute and administer relevant agreements to give effect to the revised Conditions Precedent with the Museum of Chinese in Australia, in accordance with the Grants and Sponsorship Policy, including an agreement for lease and accommodation grants lease conditional on the criteria outlined in Confidential Attachment A to the subject report.

## **Attachments**

**Attachment A.** Revised Conditions Precedent (Confidential)

## Background

1. On 27 February 2020, the Museum of Chinese in Australia (the Museum) and the City of Sydney signed Heads of Agreement after the Museum was awarded the lease of the former Haymarket Library under the Accommodation Grants Program following an Expression of Interest process run by the City.
2. The Heads of Agreement included conditions that were to be met by 1 August 2020 including:
  - (a) the Tenant obtaining development consent to:
    - (i) use the premises for the Permitted Use; and
    - (ii) undertake approved fit-out works in accordance with the site Conservation Management Plan, any conditions imposed by the statutory authority under the terms of the development consent and in accordance with the City's requirements as Landlord; and
  - (b) the Tenant providing the City with evidence demonstrating the Tenant has achieved the agreed funding target (First Target).
3. The City had the option to terminate the Agreement for Lease if these preconditions were not met before 1 August 2020.
4. In July 2020, the Museum wrote to the City seeking deferment of the conditions to 1 February 2021, citing the impact of Covid-19 on fundraising efforts. This was approved by the Chief Executive Officer in August 2020.
5. In January 2021, the Museum provided an update on progress to satisfy these conditions and requested a further review of the conditions noting:
  - (a) the Development Application for the permitted use and fit-out works was lodged in December 2020 and approved 3 March 2021; and
  - (b) despite the current Covid-19 related economic downturn, 85 per cent of the First Target funds had been raised, along with commitment for in-kind contributions from consultants and architectural services. While in-kind contributions currently do not form part of amounts to be considered towards the First Target, their value if considered, does bring the total commitments to the First Target.
6. The Museum is now requesting the City approve in-kind commitments secured as a valid contribution to achieve the First Funding Target and amend the Conditions Precedent as outlined in the confidential attachment.
7. The proposed amendments to the Conditions Precedent due date will result in a delay to the opening of the Premises by the Museum. However, interim activation of the site will commence once approved, along with an online activation campaign via the Museum of Chinese in Australia website.

## Key Implications

### Strategic Alignment - Sustainable Sydney 2030

8. Sustainable Sydney 2030 is a vision for the sustainable development of the City to 2030 and beyond. It includes 10 strategic directions to guide the future of the City, as well as 10 targets against which to measure progress. This sponsorship is aligned with the following strategic directions and objectives:
  - (a) Direction 6 - Vibrant Local Communities and Economies - the provision of accommodation to a varied group of community and cultural organisations contributes to the diverse range of services and support that the City provides for our community. The diversity of these groups contributes to the vibrancy of the city's villages and the communities within them.
  - (b) Direction 7 - A Cultural and Creative City - approximately one third of the Accommodation Grant tenants are cultural / arts organisations. These organisations support cultural development through the support of artists, and the delivery of culturally stimulating activities that engage our communities.

### Risks

9. The Museum of Chinese in Australia failing to meet fund raising targets. This risk has been mitigated by the Museum with the appointment of a Fundraising Committee who are currently developing a Fundraising Plan targeted at the corporate market.

### Social / Cultural / Community

10. The contribution of the community and cultural organisations that are part of the Accommodation Grants Program to support the development, coordination and management of the many services and activities available to our community is invaluable. In this way, the City and the community act collaboratively to bring to life the City of Villages.

### Financial Implications

11. There are sufficient funds allocated for this grant as part of the Accommodation Grant Program included in the City's operational plan for 2020/21 financial year. Subsidy rates relating to future financial years will be incorporated into future budgets.

### Relevant Legislation

12. The original Expression of Interest has been conducted in accordance with the Local Government Act 1993, the Local Government (General) Regulation 2005 and the City's Contracts Policy and an independent probity advisor has been involved for oversight of the Expression of Interest process.
13. Local Government Act 1993 - Section 10A provides that a council may close to the public so much of its meeting as comprises the discussion of information that would, if disclosed, confer a commercial advantage on a person with whom the council is conducting (or proposes to conduct) business.

14. Attachment A contains confidential commercial information of lease terms that have been negotiated with the Museum, which, if disclosed, would:
  - (a) confer a commercial advantage on a person with whom Council is conducting (or proposes to conduct) business; and
  - (b) prejudice the commercial position of the person who supplied it.
15. Discussion of the matter in an open meeting would, on balance, be contrary to the public interest because it would compromise Council's ability to negotiate fairly and commercially to achieve the best outcome for its ratepayers.
16. The terms and conditions of the lease agreement between the Museum and the City set out specific Key Performance Indicators (KPIs) and performance measures that the Head Tenant's activity will be measured against.
17. All grants are recommended on the condition that any required approvals, permits and development consents are obtained by the applicant.

### **Critical Dates / Time Frames**

18. The Museum has confirmed that the Development Consent for the fit-out works and permitted use was approved on 3 March 2021.
19. The Museum of Chinese in Australia is planned to be open in early 2022.

### **AMIT CHANAN**

Director City Projects and Property

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