

ITEM D

ITEM LAID ON TABLE - ORDINARY MEETING OF COUNCIL - 8 MAY 2017 - ILLAWARRA PERFORMING ARTS CENTRE LIMITED 2018-21 FUNDING AND SERVICE LEVEL AGREEMENT

On Monday, 8 May 2017, Council laid this Item on the table. Prior to laying the matter on the table, the following Motion, Amendment and Foreshadowed Motion had been moved -

Motion: Moved by Councillor Blicavs seconded Councillor Brown that -

- 1 In accordance with section 55(3) of the Local Government Act 1993, Council resolves that due to the extenuating circumstances as outlined in the report, a satisfactory result would not be achieved by:
 - a inviting tenders for the services provided by the Illawarra Performing Arts Centre Limited (IPAC); and
 - b IPAC or Council inviting tenders [as may be required by section 55 of the Local Government Act 1993 as outlined in this report] for contracts for the purpose of programming productions and performances at the Centre or the Town Hall during the term of the new Funding and Service Level Agreement.
- 2 Council enter into a single new Funding and Service Level Agreement with IPAC for management of both the Illawarra Performing Arts Centre and the Wollongong Town Hall for the period of 1 January 2018 to 31 December 2021.
- 3 Council include the licence for the Café outdoor dining area in a Schedule to the new Funding and Service Level Agreement with IPAC for the period of 1 January 2018 to 31 December 2021.
- 4 Council delegate the finalisation of the new Funding and Service Level Agreement with IPAC for the period of 1 January 2018 to 31 December 2021 to the General Manager, subject to the funding arrangements not exceeding the current adopted budget.

Amendment: Moved by Councillor Connor seconded Councillor Martin that -

- 1 In accordance with section 55(3) of the Local Government Act 1993, Council resolves that due to the extenuating circumstances as outlined in the report, a satisfactory result would not be achieved by:
 - a inviting tenders for the services provided by the Illawarra Performing Arts Centre Limited (IPAC); and
 - b IPAC or Council inviting tenders [as may be required by section 55 of the Local Government Act 1993 as outlined in this report] for contracts for the purpose of programming productions and performances at the Centre or the Town Hall during the term of the new Funding and Service Level Agreement.
- 2 Council enter into a single new Funding and Service Level Agreement with IPAC for management of both the Illawarra Performing Arts Centre and the Wollongong Town Hall for the period of 1 January 2018 to 31 December 2021.
- 3 Council include the licence for the Café outdoor dining area in a Schedule to the new Funding and Service Level Agreement with IPAC for the period of 1 January 2018 to 31 December 2021.
- 4 Council delegate the finalisation of the new Funding and Service Level Agreement with IPAC for the period of 1 January 2018 to 31 December 2021 to the General Manager, subject to the funding arrangements not exceeding the current adopted budget and the community subsidy being adjusted to \$40,000.

Foreshadowed Motion: Moved by Councillor Curran that the matter be deferred pending –

- 1 Further discussions with users who have raised their experiences as to why they cannot perform at the Town Hall or use the Town Hall.
- 2 The review of the lease agreement so that Council is aware of the concerns from the operators, not just local, but national, state and international performers.

Council currently has two separate agreements with the Illawarra Performing Arts Centre Limited (IPAC):

- 1 Funding and Service Level Agreement for the Performing Arts Centre (Centre) for the period 1 January 2013 to 31 December 2017 [current];
- 2 Venue Management and Licence Agreement for the Wollongong Town Hall for the period 1 June 2014 to 31 December 2017 [current].

Council also has a separate licence with IPAC for the café outdoor dining area adjacent to the Performing Arts Centre.

Both agreements, and licence, set out the level of funding and other support provided by Council to IPAC and the services to be provided by IPAC together with performance levels and reporting requirements.

Council has reviewed the current agreements and licence and has identified a range of opportunities for renewal, proposing to replace the two current agreements with a new single Funding and Service Level Agreement for both the Centre, and the Wollongong Town Hall, for the period 1 January 2018 to 31 December 2021 and to include the café outdoor dining licence in a Schedule to the Agreement.

This report outlines the proposed amendments and seeks endorsement of the next steps toward finalisation and implementation of the new Funding and Service Level Agreement.

RECOMMENDATION

- 1 In accordance with section 55(3) of the Local Government Act 1993, Council resolves that due to the extenuating circumstances as outlined in this report, a satisfactory result would not be achieved by:
 - a inviting tenders for the services provided by the Illawarra Performing Arts Centre Limited (IPAC); and
 - b IPAC or Council inviting tenders [as may be required by section 55 of the Local Government Act 1993 as outlined in this report] for contracts for the purpose of programming productions and performances at the Centre or the Town Hall during the term of the new Funding and Service Level Agreement.
- 2 Council enter into a single new Funding and Service Level Agreement with IPAC for management of both the Illawarra Performing Arts Centre and the Wollongong Town Hall for the period of 1 January 2018 to 31 December 2021.
- 3 Council include the licence for the Café outdoor dining area in a Schedule to the new Funding and Service Level Agreement with IPAC for the period of 1 January 2018 to 31 December 2021.
- 4 Council delegate the finalisation of the new Funding and Service Level Agreement with IPAC for the period of 1 January 2018 to 31 December 2021 to the General Manager, subject to the funding arrangements not exceeding the current adopted budget.

REPORT AUTHORISATIONS

Report of: Sue Savage, Manager Community Cultural and Economic Development (Acting)
Authorised by: Kerry Hunt, Director Corporate and Community Services - Creative, Engaged and Innovative City (Acting)

ATTACHMENTS

There are no attachments for this report.

BACKGROUND

Council continues to focus on establishing and developing the Arts Precinct [Precinct] as an identifiable destination for arts, culture and community events in the city. The integration of the Art Gallery, Town Hall, IPAC, Library and public space [including laneways] is an important element in the activation of the Precinct and maximisation of Council's investment.

Since IPAC's inception in 1987, Council has provided funding and support for the provision of services that contribute to the development of the cultural economy and cultural life of the city. As part of a review of the arrangements between IPAC and Council, IPAC Constitution was amended in 2012 to reflect the strong relationship Council has with IPAC, and to enhance IPAC's governance arrangements. At this time, the Funding and Service Level Agreement with IPAC for the Centre operation was renewed for a five year period to 31 December 2017.

In June 2014, Council entered into a Venue Management and Licence Agreement with IPAC for the Wollongong Town Hall to 31 December 2017. This followed Council's decision to not renew the previous Town Hall management agreement with Pegasus Venue Management. The centralising of the management functions, for both the Town Hall and the Centre, allowed for an integrated approach to the development of the strategic direction for two of the key Precinct venues. Economies of scale have been achieved through centralised administrative functions such as ticketing, financial administration and staffing, as well as greater operational flexibility between venues.

Further, the Town Hall agreement with IPAC provides a number of free [to Council] events and uses, as well as ensuring ongoing affordable access for community users and alignment with the delivery of Council's key cultural policy initiatives with a particular emphasis on the Cultural Plan and associated Evening Economy and Live Music Action Plans.

PROPOSAL

The current Funding and Service Level Agreements between Council and IPAC have been reviewed. Council has identified a range of opportunities associated with the Agreement renewals that will continue to ensure alignment with IPAC's Constitution and Strategic Plan, and Council's Community Strategic Plan Wollongong 2022. IPAC is a key contributor toward delivering and supporting a number of our Community Goals in Wollongong 2022, which include:

- Community Goal 2 – We have an innovative and sustainable economy
- Community Goal 3 – Wollongong is a creative and vibrant city
- Community Goal 4 – We are a connected and engaged community
- Community Goal 5 – We are a healthy community in a liveable city.

As the proposed Funding and Service Level Agreement between Council and IPAC constitutes a 'contract', it is therefore necessary to consider section 55 (Tendering) of the Local Government Act 1993. Generally, section 55 requires Council to invite tenders for any contract involving an estimated expenditure or receipt of an amount of more than \$150,000. However, Section 55(3)(i) provides that the requirement does not apply to contracts where:

'because of extenuating circumstance, remoteness of locality or the unavailability of competitive or reliable tenderers, a council decides by resolution (which states the reasons for the decision) that a satisfactory result would not be achieved by inviting tenders'.

Due to the extenuating circumstances relating to the current arrangements Council has in place with IPAC, including the ongoing annual funding and in-kind support provided by Council to IPAC to provide the Centre and Town Hall programs, it is considered a satisfactory result would not be achieved by inviting tenders for the services conducted by IPAC.

It is noted the decision to integrate the management of the Town Hall facilities/program with those of the Centre, both integral to the wider Arts Precinct, was made in December 2013. As Council had already entered into a Funding and Service Level Agreement with IPAC in relation to the Centre, it resolved to enter into a separate Venue Management and Licence Agreement with IPAC for the Wollongong Town Hall (Min No 17 of 17 February 2014).

Section 55 (Tendering) of the Local Government Act 1993 also applies to Council related entities. This provision would require IPAC to refer proposed contracts for expenditure over \$150,000 to Council (or such other amount as prescribed by the regulations from time to time). It is acknowledged it would be impractical for IPAC in preparing its schedule and programming performances to refer individual productions or programs to Council. To maintain IPAC's flexibility and independence in programming, it is recommended that due to the "extenuating circumstances" exemption of section 55, IPAC be allowed to enter into agreements for performances and productions during the period of the new funding.

The new Agreement contains few substantive changes to the terms and conditions of the previously separate documents. The main changes are as follows:

- 1 One Funding and Service Level Agreement, for both the Centre and Wollongong Town Hall, with two Licences as Schedules to the main Agreement:
 - Centre Licence incorporating Café (Outdoor Dining);
 - Wollongong Town Hall Licence.
- 2 The inclusion of performance indicators for the Wollongong Town Hall and a revised set of performance indicators for the Centre, both of which align with Council's Community Goals and IPAC's Strategic Goals.
- 3 Clearly identified criteria for the disbursement of the community subsidy for Wollongong Town Hall hire, to be administered by IPAC.
- 4 The potential sub-licensing (net revenue) fee previously applicable to the Centre Café has been removed as IPAC does not sub-license this operation.
- 5 The annual licence fee, previously applicable under the outdoor dining area licence of approximately \$11,000 has been replaced with a nominal figure for the purpose of reinvestment into IPAC's ongoing program of activities. The renewed Agreement provides for the fee to be reinstated in the event that a third party sub-licences the Café outdoor dining area.
- 6 Inclusion of obligations on IPAC to ensure compliance with Council's obligations under the Government Information (Public Access) Act [GIPA Act].
- 7 Inclusion of corporate governance provisions including an obligation for IPAC to establish a Risk and Audit Committee.
- 8 The inclusion of standard provisions for GST, termination, interpretation and governing law.
- 9 Due to terms of IPAC's Constitution, Council has improved governance oversight and clear KPIs aligned to IPAC and Council strategic objectives with the creation of one Funding and Service Level Agreement.
- 10 The new Funding and Service Level Agreement will be for a period of four years [1 January 2018 to 31 December 2021] to align with IPAC's current Strategic Plan. It is envisaged the following agreement to be negotiated will be for a period of up to five years.

While the Centre's financial and in-kind support components will remain essentially the same, other than to bring dollar amounts in line with the Consumer Price Index, the Town Hall base funding rate will be increased by \$10,000 per annum and is identified in the Agreement. This additional funding is to be utilised for the Town Hall in light of its operational requirements as both community and commercial venue, and comes from an alternate Council managed Town Hall budget that IPAC will now administer. This will result in financial support of \$691,672 for the Centre and \$380,000 for the Town Hall (both GST exclusive) per annum as the baseline for 2018. Base funding amounts will be adjusted each July in

accordance with the movement of the Consumer Price Index for Sydney (All Groups) during the immediately preceding year and paid in two equal instalments in January and July of each year for the duration of the Agreement.

A subsidy of \$20,000 per annum (GST exclusive) to support the community use of the Town Hall will continue under this model. This will now be administered by IPAC in the streamlining of a process previously managed by Council. In-kind services in the areas of graphic design, print service and signage will be provided as per the current agreement. The current provision of a standard motor vehicle for the use of the IPAC Director as per Council's Vehicle Management - Management Policy will remain.

CONSULTATION AND COMMUNICATION

Over the past several months consultation has taken place with representatives of IPAC and Council. Council's Legal Team has drafted the new Funding and Service Level Agreement. Property and Recreation Division has been consulted regarding the Café outdoor dining licence and provided input into the drafting of the Agreement Schedules.

PLANNING AND POLICY IMPACT

This report contributes to the delivery of Wollongong 2022 Goals 2 *We have an innovative and sustainable economy* and 3 *Wollongong is a creative and vibrant city*. It specifically delivers on the following:

Community Strategic Plan	Delivery Program 2012-2017	Annual Plan 2016-17
Strategy	5 Year Action	Annual Deliverables
2.1.2 Wollongong's Central business District continues to expand as the regional centre for commercial services, health services and other high order services, retail, entertainment and dining to stimulate and retain local employment	2.1.2.1 Ensure that Wollongong is attractive to diverse companies for business expansion, establishment and relocation	Manage the operations of Wollongong City Centre
3.1.2 Artists and innovators are employed, mentored and supported	3.1.2.2 Provide opportunities for local artists and performers to exhibit, promote and perform at Council venues and events	Manage the Merrigong funding agreement for IPAC and the Town Hall
3.3.2 The arts precinct in the heart of the city is consolidated and further enhanced	3.3.2.1 Coordinate an integrated approach to infrastructure improvement and service delivery in the Civic Plaza and through the re-establishment of an Arts Precinct in the city	Coordinate activation and accessibility of the Arts Precinct in collaboration with the Arts Precinct Management Committee

RISK ASSESSMENT

The new Funding and Service Level Agreement will continue to mitigate against the financial and business risk posed to Council through its relationship with IPAC by stipulating funding amounts and operating and reporting requirements.

FINANCIAL IMPLICATIONS

The financial impact of the new Funding and Service Level Agreement will not exceed the current adopted budget. Council currently manages budgets allocated for the Town Hall via the Community Cultural and Economic Development Division. The revised agreement proposes to transfer management of these funds to IPAC to assist in supporting community use of the Town Hall. This includes \$10,000 [operational] and \$20,000 [subsidy]. The provision of the additional funds, to be administered under the terms of the new Funding and Service Level Agreement, will streamline existing processes and operations.

CONCLUSION

The new Funding and Service Level Agreement will facilitate Council's strategic, financial and operational planning and accountability. It will establish clear parameters for Council's ongoing support for the IPAC and ensure it is fully informed of the level of support to be provided over the coming four years for both the Centre and Town Hall venues. In addition, the new Funding and Service Level Agreement will allow IPAC to undertake pre-planning and make a commitment as part of its operational requirements to secure and deliver an annual program of events that contribute to the development of the cultural economy and cultural life of the city.