

MELBOURNE INTERNATIONAL FLOWER AND GARDEN SHOW – PROPOSED FUTURE ARRANGEMENTS

12 April 2011

Presenter: Martin Cutter, Director City Business

Purpose and background

1. Council's agreement is sought on matters relating the Melbourne International Flower and Garden Show ('MIFGS') including future licence agreement, funding arrangements and changes to the event structure specified under the *Melbourne Parks and Gardens (Joint Trustee Reserves) Regulations 1994* ('Regulations').
2. The previous licence agreement between Council and Flower and Garden Show Limited ('Company') expired after the March 2011 event. The Company has requested a new five year licence agreement. A summary of the terms and conditions of the previous licence is set out in Attachment 2.
3. State Government legislation (*Crown Land (Reserves) Act 1978*) was amended in February 2008 to allow the Governor in Council, on recommendation from the Minister, to make a special event management declaration. If enacted upon, this effectively gives the right to the State Government and its affiliates to assume the role of management and to suspend Council's local laws and the Regulations.
4. The Council provides an annual grant to the Company of around \$56,000 plus further funding to offset the event operating costs (approximately \$63,000). In addition, fees are not charged for the hire of the park, however revenue is paid by the Company to Council in the form of a licence fee of \$104,000. Further, the event organiser pays a refundable bond of \$30,000 and an annual Public Projects Contribution to Parks Services of \$30,450 ('Sinking Fund'). All park reinstatement costs are the responsibility of the Company and are undertaken by Citywide.

Key issues

5. Currently funding to the Company for MIFGS is on an annual basis and is not part of any wider Council grant program. In order for the grant funding of this event to be consistent with other Council funded events, it is proposed that the event organiser apply for funding through Councils' Event Triennial grant funding program. This will allow Council to implement alignment of grant funding of MIFGS with Council's goals and objectives.
6. It is proposed that a new three year licence agreement (with a three year option) be established with set incremental rises as follows; Year 1 \$110,000, Year 2 \$114,000 and Year 3 \$118,000. Should Council and the organisers exercise the option for a three year licence extension, negotiation of an appropriate licence fee would be required. This agreement period is consistent with the triennial grant funding noted in paragraph 5 above.
7. The Company has requested two amendments to the Regulations being:
 - 7.1. increase the lock down period of Carlton Gardens South from 14 to 18 days in order to comply with recommendations from WorkSafe; and
 - 7.2. increase the entry fee from the existing \$20 to \$30 per person.
8. Both requests are considered reasonable however Council and State Government must agree and ratify a change to the Regulations.
9. An Event Advisory Group ('EAG') was established comprising Council representatives, the event organiser, Melbourne Museum, and relevant community groups. In recent times, the event organiser has not attended the EAG. It is anticipated that the role and purpose of the EAG, including its terms of reference, will be reviewed as part of any new licence agreement.

Recommendation from management

10. That the Future Melbourne Committee recommend Council:
 - 10.1. subject to all necessary approvals from the Minister responsible for the *Crown Land (Reserves) Act 1978* first being obtained and the incremental rises referred to in the following sub-paragraph, grant to Flower and Garden Show Limited ('Company') a licence to use the Carlton Gardens for the running of the Melbourne International Flower and Garden Show for a period of three years with an option to extend for a further three years, otherwise on terms and conditions generally consistent with the previous licence.
 - 10.2. support set incremental rises in the licence fee of Year 1 \$110,000, Year 2 \$114,000 and Year 3 \$118,000;
 - 10.3. agree to having the Company apply for funding through the Event Triennial grant program;
 - 10.4. consider the Company's request to:
 - 10.4.1. increase the lock down period of Carlton Gardens South from 14 to 18 days in order to comply with recommendations from WorkSafe; and
 - 10.4.2. increase the entry fee from the existing \$20 to \$30 per person; and
 - 10.5. if in agreement with the Company's request, instruct the Chief Executive Officer to seek the approval from the State Government for the necessary changes to the *Melbourne Parks and Gardens (Joint Trustee Reserves) Regulations 1994*.

Attachments:

1. Supporting Attachment
2. Melbourne International Flower and Garden Show Licence – Summary

SUPPORTING ATTACHMENT

Legal

1. The purposes for which the Carlton Gardens may be used include public recreation (pursuant to the Order in Council of 1 February 1864) and horticultural exhibitions (pursuant to regulation 19 of the Regulations.) The Carlton Gardens are managed by Council as the Committee of Management. As the Committee of Management, Council is able to license the Carlton Gardens in accordance with the provisions of the *Crown Land (Reserves) Act 1978* and the Regulations. The Regulations prescribe the period the gardens can be closed off to the public for the Melbourne International Flower and Garden Show (MIFGS) and the entry fee payable by the public.
2. The Crown Land (Reserves) Amendment (Carlton Gardens) Act 2008 amended the Crown Land (Reserves) Act 1978, allowing the Governor in Council on the recommendation of the responsible Minister, to declare an event in the Carlton Gardens to be a 'special event'. If a special event is declared, in respect to the area occupied by the event and for the period of the event:
 - 2.1. the Secretary of the Department of Sustainability and Environment or the Melbourne Convention and Exhibition Trust assume the role of management; and
 - 2.2. Council's Local Laws and the Regulations are suspended.
3. Due to the World Heritage status of the Carlton Gardens, the *Environment Protection and Biodiversity Conservation Act 1999 (Cth)* has application ('EPBC Act'). Section 12 of the EPBC Act provides:
 - (1) A person must not take an action that:
 - (a) has or will have a significant impact on the world heritage values of a declared World Heritage property; or
 - (b) is likely to have a significant impact on the world heritage values of a declared World Heritage property.
4. The EPBC Act defines "action" to include
 - (a) a project; and
 - (b) a development; and
 - (c) an undertaking; and
 - (d) an activity or series of activities; and
 - (e) an alteration of any of the things mentioned in paragraph (a), (b), (c) or (d).
5. The proposed licence is for the purpose of continuing permission for an activity that had been carried out prior to the application of the EPBC Act.

Finance

6. The total budget funding expenditure for the 2010-11 financial year was \$119,150 treated as a separate budget item through Council's operating budget and not as part of any overall grant program. This funding includes:
 - 6.1. cash sponsorship (\$56,300);

- 6.2. soil compaction testing (\$6,180); and
- 6.3. contribution to traffic management, resident notification, advertising and promotion, awards and trophies (totalling \$56,670).
7. In addition fees are not charged for the hire of the park however revenue is paid by the Company to Council in the form of a licence fee of \$104,000. A refundable bond of \$30,000 and an annual Public Projects Contribution to Parks Services of \$30,450 is also paid by the event organiser.
8. It is proposed to remove the separate budget line item for MIFGS from 2011-12 and have approximately \$120,000 added to the Triennial grant funding budget.

Conflict of interest

9. No member of Council staff, or other person engaged under a contract, involved in advising on or preparing this report has declared a direct or indirect interest in relation to the matter of the report.

Stakeholder consultation

10. It is anticipated that a review of the Event Advisory Group, its role and purpose including terms of reference will be reviewed.

Relation to Council policy

11. MIFGS is regarded as one of the top flower and garden shows nationally and internationally and assists to enhance Melbourne's reputation as a vibrant city by supporting and promoting local events.

Environmental sustainability

12. Post 2010 event compaction reports commissioned by City of Melbourne have indicated the following:

2010 Soil Compaction report by Dr Robert Van de Graaff and Associates

"It is concluded that MIFGS has not caused damage by compaction to the soil in 2010, despite the need to relay large areas of turf as a result of damage caused by superficial scuffing by human foot traffic. There has been no overall detectable change in the bulk density of the soils in Carlton Gardens as a result of MIFGS."

2003 – 2010 Soil compaction comparison report by Dr Robert Van de Graaff and Associates

"The long term soil compaction data show that the holding of MIFGS in the autumn of each year has not damaged the soil through compaction. While the turf is often worn down by foot traffic and often in need of replacement, the event is having minimal impact on the bulk density of the soil underlying the root mat."

SUMMARY**MELBOURNE INTERNATIONAL FLOWER AND GARDEN SHOW LICENCE**

Parties: **MELBOURNE CITY COUNCIL (Council)** and **FLOWER AND GARDEN SHOW LIMITED ("Licensee")**

Operative Provisions:**1. Definitions and interpretation**

Licence Period – 3 years thru to 10 April 2011

Licence Fee - \$100,000 year 1 plus CPI for years 2 and 3

2. License

The Council grants to the Licensee for the Licence Period to occupy the Venue. The Council will use reasonable endeavours to not interfere with the Licensee's use of the Venue under the Agreement.

3. License Fee and Bond

The Licensee must pay the Licence Fee and the Bond to the Council in accordance with the Payment Schedule.

4. Not used**5. Sinking Fund**

Council agrees to establish a Sinking Fund, managed by the Council and expended in accordance with the recommendation of the Event Advisory Group ("EAG") and the priorities contained in the Carlton Gardens Master Plan or any other policy document relating to the Venue.

6. Penalty for Late Payments**7. Event Advisory Group**

The Licensee agrees to be a member of the EAG during the period of the license, to provide advice to allow the EAG to make informed recommendations in respect to the event, and to note that the EAG has no decision-making powers or delegated authority but is intended to assist in providing information and advice to the City of Melbourne and Flower and Garden Show Limited.

8. Observance of laws, rules and plans

The Licensee must obtain all necessary permits, approvals, licenses and authorisations, and provide these to Council before the commencement of the License Period. The Licensee must comply with all relevant Acts, Regulations and policies applicable to the Venue, the Event Plan approved by Council, all safety standards determined by Worksafe Victoria and the Council's Guidelines for the Use of Parks and Gardens during Major Events.

9. Assignment and sub-licensing

The Licensee may not assign its rights under this agreement, or grant a sub-licence without the Council's prior written consent.

10. Insurance

The Licensee must effect and keep current public risk insurance for the License period with a company reasonably approved by Council, and provide Council with verification of this no later than 21 days prior to the commencement of the License period.

11. Licensee's conduct

The Licensee must use the venue only for the purpose of the Event. The Licensee must disclose full and complete details of the nature of the Event and the proposed use of the Venue, and when requested by Council, provide a report/s setting out such details of the Event as requested by the Council. Engagement of any contractor or sub-contractor to undertake work at the Venue relating to the event must be notified to Council.

12. Release and indemnity

The Licensee indemnifies and releases the Council against several clauses, except where the damage arises from the negligence or breach of agreement by the Council.

13. Repairs to Venue

A condition survey of the Venue will be made seven days prior to the commencement of the License Period by the Council and Licensee, and will be agreed and signed and become evidence in any proceedings. The Licensee will, as and when required by the Council, do all things necessary to allow the Council to carry out any work in the Venue which the Council reasonably considers necessary or desirable where such work arises out of the use of the Venue by the Licensee.

14. Cleaning and Maintenance

The Licensee must comply with the reasonable requirements and directions of the Council relating to the cleaning and maintenance of the Venue.

15. Expiry and Reinstatement

At or prior to the expiry or termination of the License Period, the Licensee must remove all of the Licensee's property and use best endeavours to avoid damage to the venue, and at its own expense, reinstate the Venue to the same standard style and condition as detailed in the condition survey. This must be undertaken in accordance with conditions specified in Schedule 4, taking into consideration any advice/recommendations of the EAG and completed generally to the satisfaction of Council.

16. Event Plan

An Event Plan must be prepared by the Licensee, submitted to Council and approved. The Council may amend the requirements with reasonable notice.

17. Termination

Either party acting reasonably and in consultation with the other, may terminate this Agreement by giving written notice to the other at any time up to 12 months prior to the License period. If the Licensee gives written notice cancelling the Event to Council 60 days or less prior to commencement of the License Period, the License fee is promptly payable to Council.

18. Waiver and variation

A provision of, or right created under this Agreement may not be waived except in writing signed by the party granting the waiver, or varied except in writing signed by the parties.

19. Matters beyond the Council's control and force majeure

20. Good and Services Tax

21. Costs

The parties agree to pay their own legal costs and disbursements in connection with the preparation, negotiation, approval, execution and stamping of this Agreement. The Licensee must pay any stamp duty on this agreement.

22. No warranties as to use

The Council gives no warranties and has made no representations in relation to the suitability of the Venue for the Licensee's proposed use of the Venue and that, unless the Licensee obtains all necessary permits, approvals, licenses and authorities, it may not be possible for the Licensee to use the Venue.

23. Extension of Licence

Not applicable.

24. Miscellaneous

25. Dispute Resolution

26. Notices

Notices must be in writing.

Schedule 1

Deals with licence period, licence fee, bond and sinking fund

Schedule 2

Deals with Site plan, Traffic Management Plan, Waste Management Plan, Risk Management Plan, Security and Safety Plan, Sound & performance Plan, Food and Alcohol Plan, Merchandising Plan Signage Plan, Power Plan

The site plan has many clauses including one that states "a minimum of 40% of the events commercial activities are positioned on hard stand areas around the REB from the commencement of year 2 of this licence".

Schedule 3

Deals with terms of reference of the Event Advisory Group and states that the EAG has no decision making powers or delegated authority, but is intended to assist in providing information and advice to City of Melbourne and the MIFGS.

Schedule 4

Deals with Turf reinstatement works.