

Exemption From Tender - Management and Operations of the City of Sydney Creative Studios - Brand X Productions

File No: X111156

Summary

The City of Sydney Creative Studios (Creative Studios) is a 2,000sqm creative facility at 115-119 Bathurst Street, Sydney, encompassing 30 distinct creative studios providing affordable rehearsal and production studios for creative practitioners and enterprises.

The Creative Studios is managed by Brand X Productions Incorporated (Brand X) under a 3-year management agreement contract. Brand X is a Sydney-based, not-for-profit arts organisation and registered charity that has supported Sydney's creative sector for 20 years.

The contract term commenced just months after the final Covid lockdown restrictions were lifted on 9 May 2022, and currently concludes on 8 May 2025.

While the pandemic had a profound impact across a range of sectors, its impact on the creative community was unique and devastating. The long tail effects of the Covid-19 pandemic continue to destabilise the foundations of the cultural sector. The cost-of-living crisis has further strained an already fragile sector as it tries to recover. In the last 12 months, the City has received numerous requests for support from the creative sector and seen long-standing cultural organisations become insolvent and cease trading.

As demonstrated in the Cultural Strategy 2025 – 2035, Sydney has lost 12% of its artist population in the past 10 years. Brand X is strategically important, as the only mid-scale, non-profit creative space provider operating in our area. Brand X has worked in close partnership with the City to nurture and support local artists and small creative organisations and rebuild the sector while trying to establish the Creative Studios as a business.

The Cultural Strategy 2025 – 2035 identifies a need to support, retain and grow our small to mid-size cultural organisations to address the shortfall in mid-scale sector operators in our area and stabilise the cultural eco-system.

The Cultural Strategy 2025 – 2035 calls on the City to direct investments towards supporting employment of our creative workforce. Apart from supporting local artists and small creative organisations, Brand X employ approximately 14 specialist staff from multi-arts backgrounds to manage and deliver the Creative Studios.

Given the ongoing pressures on the sector, it is considered that tendering for the operation and management of the Creative Studios will not deliver a satisfactory result at this time. The available operational data for the studios is insufficient to provide a true reflection of the potential of the facility, and instead reflects the 'start-up phase' of this new business.

As stated in the Cultural Strategy 2025-2035, the cultural sector is suffering from burn out and recovery will take time; the City needs to work with existing operators to retain both cultural organisations and infrastructure. Compounding these issues, recovery from the Covid-19 pandemic and managing cost of living pressures is further impacting the performance of the facility and an assessment of the optimal operating model.

This report seeks an Exemption from Tender to extend the current contract with Brand X for a further 3 years and 2 months, aligning the contract term and financial year to improve administration, resulting in a revised expiry date of 30 June 2028. This will allow Brand X more time to establish the business, trial new operating systems and build the commercial history needed to assess the long-term operating model for the future. It will allow the City to evolve the performance of the contract through the introduction of appropriate financial incentivisation and then assess the long-term operating model for the future. The creative sector will benefit from access to affordable creative space in a facility with growing reputation and partnerships.

Recommendation

It is resolved that:

- (A) Council approve an exemption from tender in accordance with section 55(3)(i) of the Local Government Act 1993 to extend the existing contract for the management of the City of Sydney Creative Studios for a period of 3 years and 2 months, noting that a satisfactory result would not be achieved by inviting tenders at this time;
- (B) Council note that a satisfactory result would not be achieved by inviting tenders because:
 - (i) the available operational data for the Creative Studios is insufficient to provide a true reflection of the potential of the facility, or sufficient history to inform the best long-term operating model for the facility;
 - (ii) the market for facility operators is currently very limited, with market conditions for operators remaining challenging; and
 - (iii) the continuing impact of the Covid-19 pandemic and cost-of-living crisis are having a significant impact on the creative sector, impacting the ability of the sector to respond to a tender at this time;
- (C) Council approve a variation to the Management Agreement with Brand X Productions Incorporated to extend the term for 3 years and 2 months, aligning contract term and financial year to improve administration, resulting in a revised expiry date of 30 June 2028;
- (D) Council approve the additional funds for the contract extension as outlined in Confidential Attachment A to the subject report;
- (E) Council note the change in the contract operating model outlined in Confidential Attachment A to the subject report;
- (F) Council note the revised total contract value for the management of the City of Sydney Creative Studios is outlined in Confidential Attachment A to the subject report; and
- (G) authority be delegated to the Chief Executive Officer to finalise negotiations and enter into any necessary documentation to give effect to the clauses above.

Attachments

Attachment A. Financial and Contractual Implications (Confidential)

Background

1. The City of Sydney Creative Studios (Creative Studios) is located at 115-119 Bathurst Street, Sydney and is a 2,000sqm facility encompassing 30 distinct studio spaces for creative practitioners and enterprises.
2. The facility was delivered under a Voluntary Planning Agreement with Greenland (Sydney) Bathurst Street Development Pty Ltd, and was a direct outcome of actions outlined in the City's 2014-2024 Cultural Policy and Action Plan:

Sector sustainability surviving and thriving: Engage business and commercial developers to incorporate temporary and long-term creative workspace into new developments, for example through the use of voluntary planning agreements.

3. The Creative Studios includes:
 - (a) two double-height rehearsal studios for performing artists
 - (b) soundproof recording studio room for musicians
 - (c) production and editing suites for filmmakers and digital artists
 - (d) wet-dry creative studios for visual artists
 - (e) an artist-in-residence apartment with an attached creative studio
 - (f) creative offices, administration and meeting spaces, dressing rooms and storerooms
 - (g) a cafe in the lobby of the facility.
4. The City initially tendered the contract for the management of the Creative Studios in late 2019. This open tender was significantly impacted by the Covid-19 pandemic.
5. Two tender responses were received, with the unsuccessful tenderer no longer trading.
6. Given that the Creative Studios was a newly developed site and opening during a period of significant risk and instability across the creative sector, the decision was made to:
 - (a) limit the term of the contract for the management of the Creative Studios to 3 years and then reassess the status of the creative sector at that time; and
 - (b) assume the commercial risk under the 3-year contract by the City covering operational expenses and paying the operator a management fee, with any surplus income returned to the City.
7. Following the completion of the procurement process, Brand X Productions Incorporated (Brand X) were appointed under a 3-year contract as operator of the Creative Studios on 9 May 2022.
8. Brand X is a not-for-profit arts organisation and registered charity that has supported Sydney's creative sector for 20 years by providing affordable space for artists, creative practitioners and creative enterprises.

9. Since commencing the contract, Brand X has worked in partnership with the City to deliver the following key outcomes:
 - (a) operationalised the facility - management and staffing structure development with 13 specialist staff employed from multi-arts backgrounds and range of operational processes delivered
 - (b) undertaken significant sector consultation, and run peer reviewed expression of interest processes for long-term creative tenancies
 - (c) facilitated 12,100 hires from artists and arts organisations
 - (d) provided 73 creative practitioners with long-term creative workspace across 47 separate tenancies
 - (e) provided long-term workspace for creative peak bodies Music NSW and National Association for Visual Arts under three-year licences
 - (f) established a First Nations Advisory Panel and continued to deliver long-standing Disability and Inclusion Advisory Panel and Plan
 - (g) delivered a sector informed program from the facility which included providing 32 artists/projects with access to free space and stipends to investigate new work and delivering 20 artist-to-artist professional development programs.

Performance of Brand X to date

10. Brand X is providing a service that is meeting the City's strategic goals and key objectives of the contract.
11. Community and sector feedback about the facility and how it is run is very strong, tracking a 96% positive experience rate and a 100% recommendation rate.
12. Against a backdrop of decline in artist space and even artists themselves, Creative Studios utilisation and activation is increasing, with strong growth seen despite the current economic impacts on the creative sector with:
 - (a) short term hire increasing by 81% over the last 12 months, with 6,100 casual bookings facilitated during this period
 - (b) long-term tenanted spaces reaching 97% occupancy on average
 - (c) 92% of users are artists, arts organisations and creative sector members who are provided with subsidised rates through Brand X's Artist Pass Program, and remaining 8% of use is by non-arts industry hirers paying general access or full market rates.
13. Work produced at the facility is local, world class and diverse.

Extension of contract

14. The extension of the contract is recommended for several reasons:
 - (a) To allow sufficient time to obtain operational, utilisation and pricing data that is reflective of a 'business as usual' period, takes into account the results of newly developed business initiatives, and thereby demonstrates the true capacity of the facility to inform future operating model options.
 - (b) While lockdowns ended 3 years ago, the legacy impacts of Covid-19 and the subsequent cost-of-living crisis continue to ripple through the creative sector with many of the small to medium-sized theatre, dance, live music and creative production companies continuing to experience challenges due to low audience numbers, rising costs and changes to funding.
 - (c) As stated in the Cultural Strategy 2025-2035, the cultural sector is suffering from burn out and recovery will take time. The City needs to work with existing operators to retain both cultural organisations and infrastructure. In the last 12 months, the City has received numerous requests for support from the creative sector and seen long-standing cultural organisations become insolvent and cease trading.
 - (d) The operational data that is available has been heavily affected by these legacy impacts thereby making it insufficient to be a true reflection of the potential of the facility.
15. Given these factors, it is recommended that tendering the operation of the Creative Studios would not deliver a satisfactory result for the Council at this time.
16. An extension of the existing contract will:
 - (a) provide sufficient time to assess the future operating model;
 - (b) provide an opportunity to evolve performance of the contract through introducing a range of business initiatives intended to increase utilisation of and access to the Creative Studios; and
 - (c) allow the City to deliver on its objectives in the Cultural Strategy 2025-2035 to:
 - (i) provide artists, musicians, writers and performers with access to dedicated spaces in suitable City of Sydney properties; and
 - (ii) provide a key creative industry service provider with an opportunity to continue to grow, assisting to develop the capacity of and stability of the industry more generally.
17. The recommended model will vary the terms of the existing contract with the City continuing to cover operational expenses, paying the operator a management fee, with any surplus income returned to the City.
18. No further extensions to the contract will be offered and the long-term operating model will be determined and communicated to Council with sufficient time to deliver against the recommended future service pathway. Trends in utilisation will continue to be closely monitored.

Performance Measurement

19. Operational and financial performance targets are monitored on a monthly, quarterly and annual basis through a combination of meetings, audits, inspections and reporting.

Financial Implications

20. Brand X submitted a proposal to continue delivering the service during the extension. This proposal demonstrated strategic service improvements that would lift occupancy and drive income growth through increased venue hire, data-driven discount offers, additional value-add services and an expanded marketing and programming offering.
21. In summary, the contract extension with Brand X balances the financial sustainability of the Creative Studios against community accessibility by:
 - (a) incentivising Brand X to drive increased occupancy through a staged reduction of the management fee paid by the City to Brand X over the contract period
 - (b) linking a portion of the management fee paid to occupancy level achievement
 - (c) revising Brand X operating model and costs
 - (d) reducing the total cost to the City over the term of the contract.
22. Details are in Confidential Attachment A.
23. There are sufficient funds allocated for this project within the current year's operating budget and future years' forward estimates.

Risks

24. The recommendations in this report have been made following a due diligence process and the reasons for the recommended exemptions include:
 - (a) service is in start-up phase and there is insufficient data available now to inform future tender documents
 - (b) upgrades or efficiencies to operating model are planned to be implemented within the next three years
 - (c) the creative sector requires security and consistency of services whilst experiencing the ongoing impacts of Covid and economic pressures.
25. This approach is within the City's risk appetite, which states:
 - (a) The City has a responsibility to ensure that it has sufficient resources in the short, medium and long term to provide the levels of service that are both affordable and considered appropriate by the community.

- (b) The City's risk philosophy is centred around achieving a balance between innovation, community and user satisfaction and risk management, ensuring that the City meets its strategic objectives while maintaining a robust control environment.
- (c) The City aim's to strike a balance between achieving its strategic objectives, implementing change and embracing innovation, and protecting its reputation.

Relevant Legislation

- 26. The exemption from tender process has been conducted in accordance with the Local Government Act 1993 and the Local Government (General) Regulation 2021.
- 27. 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.
- 28. Attachment A contains confidential commercial information 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.
- 29. 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.

Critical Dates / Time Frames

- 30. The current contract term commenced on 9 May 2022 and expires on 8 May 2025.
- 31. The term of the amended contract would commence on 9 May 2025, for a period of 3 years and 2 months, extending the term and aligning the contract term with the financial year to improve administration, resulting in a revised expiry date of 30 June 2028.

Options

32. The City considered several options in this process:

- (a) Extend and vary the current contract with Brand X for an additional three years and 2 months. This is the preferred option.
- (b) Not extend the contract term. This option is not recommended as it would result in the facility closing at end of the current term, severely impacting the creative sector.
- (c) Tender the management of the facility and make an appointment. This option is not recommended given the ongoing pressures and instability in the creative sector at this time and would result in the facility being closed for a period of time while a tender process is undertaken and hand over period is determined.
- (d) Bring the service in-house. This option is not recommended as this approach is not in line with the City's Cultural Strategy 2025-2035, which highlights the need to support, retain and grow our small to mid-size cultural organisations. In addition, initial consultation with the creative sector on the options for the operating model and criteria for success, recommended that an independent operator be engaged to manage the facility. Contracting with an appropriate organisation to run the service aligns with the goals of the facility; to ensure industry best practice management and service delivery while upskilling the sector to manage and maintain creative space. This option would result in the facility being closed for a period of time while the City undertook required processes, including significant level of recruitment to take on management of the service.

Public Consultation

33. No public consultation has been undertaken.

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