

## **1. ATTACHMENTS**

### **6.2 PETITION - 'GREEN LIFE' SCULPTURE BATLOW**

Attachment Titles:

1. Executed Licence Agreement - SVC and Sculptures by the Sea Inc

**Attachment 1 - Executed Licence Agreement - SVC and Sculpture by the Sea Inc**

This is a Licence agreement dated this day 12 January, 2022 for the establishment and management of the Snowy Valleys Sculpture Trail on the following terms between:

Snowy Valleys Council  
of Snowy Valleys, New South Wales ('Licensor')

And

Sculpture by the Sea Incorporated (ABN 84 103 984 756)  
of Suite 302, 61 Marlborough Street, Surry Hills, New South Wales 2010 ('Licensee')

1. The Licensor owns or is vested with the control and management of the public land within the Snowy Valleys Council Local Government Area ('the Public Land').
2. The Licensor wishes to grant the Licensee a Licence to use some of the Public Land for the purposes of creating the Snowy Valleys Sculpture Trail as a permanent free to the public cultural tourism project in the Snowy Valleys in the towns of Adelong, Batlow, Tumbarumba and the hamlet of Tooma ('the Sculpture Trail') at the specific locations identified in the aerial photographs in Appendix A to this Agreement ('the Licensed Area').
3. The Licensor acknowledges the Licensee has had its grant application to the Bushfire Local Economic Recovery Fund approved for the purposes of establishing the Sculpture Trail on the Licensed Area ('the BLER Grant'), a grant application which the Licensor supported and endorsed.
4. The Licensor grants the Licensee the Licence to use the Licensed Area for the Permitted Use for the duration of this Licence Agreement on the terms and conditions in this Agreement.
5. The Licensee shall ensure that its use of the Licensed Area is only for the purposes of establishing and managing the Sculpture Trail, which includes the installation of approximately 30 artworks, including those to be installed by the Licensee in the wineries of the Tumbarumba region, for permanent public enjoyment for an initial period of 10 years ('the Permitted Use') commencing from the date of this agreement.
6. This Licensee acknowledges the Licence is for access to public land and is non-exclusive.
7. There is no Licence Fee payable by either party for the Licence granted and benefits provided to the other party under this Agreement.
8. The artworks will be selected for the Sculpture Trail for purchase by the Licensee with funds from the BLER Grant, or other funds the Licensee may obtain from other government, corporate or philanthropic sources, in the following manner:
  - (i) A Curatorial Panel of three leading Australian artists, curators or academics selected by the Licensee ('the Curatorial Group') will prepare a short list of artworks

- to be considered for purchase and inclusion in the Sculpture Trail ('the Short List of Artworks');
- (ii) A Local Community Advisory Group comprised of, a representative of the Licensor, appointed in consultation with and with the approval of the Licensee ('the Licensor's Representative'), and four well known and active members of the Snowy Valleys community, with one person from each of Adelong, Batlow, Tumbarumba and Tooma, selected by the Licensee following consultation with the Licensor ('the Local Advisory Group'), will meet regularly to review the Short List of Artworks as it evolves during development of the Sculpture Trail;
  - (iii) The Local Advisory Group, in close consultation with the CEO of the Licensee, will make the decisions on which Artworks to purchase or commission for specific locations on the Sculpture Trail from the Short List of Artworks in line with the budget set and managed by the Licensee ('the Artworks');
  - (iv) The Licensor will appoint an employee to review each of the Artworks selected by the above process to approve or otherwise the Artwork and its proposed location on public land in the Sculpture Trail prior to its purchase by the Licensee. The Licensor has appointed for this purpose the Executive Director Infrastructure ('the Licensor's Approval Appointee'); and
  - (v) In the event the Licensor's Approval Appointee does not approve the purchase or proposed location for one or more of the Artworks, s/he will do so with clear reasons given in writing to the Local Community Advisory Group and the CEO of the Licensee.
9. At the request of the Licensor, the Artworks purchased with the BLER Grant will be owned by and will be the property of the Licensee. Any costs associated with repair and maintenance of the artworks will be borne by the Licensee for the duration of the licence period.
10. The Licensee will not make any alterations to existing structures on the Licensed Area other than the Artworks unless the Licensee has first obtained the prior written approval of the Licensor, which may be withheld at the absolute discretion of the Licensor, and all necessary approvals have been obtained.
11. The Licensor will permit the Licensee, and its employees, sub-contractors and volunteers, to enter the Licensed Area to install, inspect, clean and maintain the Artworks at any reasonable time. Should vehicles of any description be required for these purposes prior approval will be obtained in writing from the Licensor's Approval Appointee or the Licensor's Representative. At this stage it is envisaged the installation of the Artworks will take place primarily in April 2022, August 2022 and April 2023 with the final Artworks funded by the BLER Grant to be installed on or before 30 June 2023 in compliance with the terms of the BLER Grant.
12. The Licensor may from time to time decide to provide in-kind support to the Licensee to assist with the establishment, maintenance and ongoing development of the Sculpture Trail to augment the BLER Grant, including as determined at the discretion of the Licensor, staff time, indoor or outdoor equipment or machinery and the use of available office space.

13. The Licensor agrees that should the Licensee raise funds in addition to the BLER Grant for the purposes of the Sculpture Trail, the Licensee may approach the Licensor for approval to add additional artworks to the Sculpture Trail both before and after 30 June 2023.
14. The Licensee expressly acknowledges the Licensor may undertake temporary works or permanent capital works in and around the Licensed Area.
15. In recognition of what may appear minor but could have significant impacts on the Sculpture Trail, the Licensor agrees to consult the Licensee in relation to any proposed temporary works or permanent capital works or the removal or introduction of vegetation on or near the Licensed Area. In order that the best interests of maintaining the national and international standing of the Sculpture Trail are taken into account by the Licensor in its decision making for the Licensed Area, the Licensee will be provided with the opportunity to provide input to the Licensor and its contractors with regard to any proposed changes to the Licensed Area. (Clause 15 does not apply with respect to emergency works that may be required to be undertaken by the licensor for the purposes of managing or maintaining public safety).
16. It is acknowledged there will be some signage for the Sculpture Trail, including plaques for each Artwork that list the title of the Artwork, the Artist, the title of the Sculpture Trail and the source of the BLER Grant or other sources, including corporate sponsors or major philanthropic donors of the Sculpture Trail. With the nature and modest scale of this signage to be agreed between the parties, the Licensee agrees not to affix on any part of the Licensed Area any signage except as approved in writing by the Licensor's Approval Appointee or the Licensor's Representative.
17. For the purposes of the School Education Program and the public launch events for the Sculpture Trail the Licensee may install temporary marquees, stalls, structures and equipment for education, information, speeches and entertainment, subject to application(s) (where required) by the Licensee and approved by the Licensor.
18. For the purposes of the School Education Program and the public launch events for the Sculpture Trail the Licensee may install temporary advertising signage pre-approved by the Licensor for the purpose of acknowledging the BLER Grant, the Licensor, the Licensee and corporate sponsors or major philanthropic donors of the Sculpture Trail.
19. In respect of the Permitted Use in the Licensed Area, the Licensee shall:
  - (i) comply at all times with all relevant laws;
  - (ii) obtain any licences or approvals required under written law for the Permitted Use;
  - (iii) comply in a timely manner with all notices or directions of any competent authority;
  - (iv) ensure all intellectual property rights of the artists of the Artworks are respected;
  - (v) repair any damage to the Licensed Area, including damage to the land and any fixtures or fittings of the Licensor, caused by the installation of the Artworks, excluding fair wear and tear and any minor damage due to increased pedestrian traffic throughout the year or vehicle traffic during the installation of the Artworks;and

- (vi) not permit a person to do anything in the Licensed Area which causes a nuisance or damage to the Licensor or to owners or occupiers of adjoining properties.
20. The Licensor does not have any risk in the installation of the Artworks, which is undertaken at the risk of the Licensee.
  21. The Licensee will maintain public liability insurance for not less than twenty million dollars in respect of any one claim in respect of the Artworks in the Sculpture Trail and will note the Licensor's interest in the Licensed Area.
  22. The Licensee shall produce copies of the certificates of currency for the public liability insurance or the receipt confirming the insurance policy within seven days of being provided with a written request by the Licensor.
  23. The Licensee shall not assign or sub-licence this Licence without first obtaining the prior written consent of the Licensor.
  24. The Licensor and Licensee must immediately report in writing to the other any act of vandalism which occurs on or near the Licensed Area, whether or not to the Artworks or to the Licensed Area.
  25. For the duration of this Agreement the Licensor will not permit, without the approval of the Licensee:
    - (i) any third party to film or photograph, for commercial purposes, the Artworks or any sculptures installed for the purpose of filming or photographing for commercial purposes. Commercial purposes includes but is not limited to any advertising, digital media or social media campaign; or
    - (ii) any third party to stage a temporary outdoor sculpture exhibition in the towns containing the Licensed Area.
  26. For the duration of this Agreement the Licensor agrees, in acknowledgement of the importance of the standing and reputation of the Sculpture Trail, that any new sculptures it is considering installing permanently on public land within Adelong, Batlow, Tumbarumba or Tooma, whether within the Licensed Area or otherwise, will be reviewed for approval by the Snowy Valleys Sculpture Trail Curatorial Panel and the Local Community Advisory Group, to ensure the proposed sculpture is of a suitable standard, prior to any decision made to install the sculpture on public land. This clause does not apply to War Memorials or memorials to prominent individuals to be located in the Snowy Valleys.
  27. The Licensor acknowledges and agrees that the Licensee has the exclusive right during the term of this Agreement to hold any corporate or commercial event in association with the Sculpture Trail, with such events limited to private tours for corporate sponsors of the Sculpture Trail, unless otherwise agreed in writing. Should any events require approvals from the licensor, the Licensee shall make application and be granted such approval from the licensor prior to those events being held.

28. The rights conferred by this Licence Agreement rest in contract only and do not grant the Licensee any interest in the Licensed Area or any right of exclusive possession.
29. At the end of this initial 10 year Licence Agreement, in recognition of the longevity and durability proposed for the Artworks, the Licence Agreement will automatically roll over for the additional period of five years, and will continue to do so every five years, unless the Licensor or Licensee provides written notice to the other party of its intention to terminate this Agreement two years before the end date of this Agreement or the end date of any subsequent roll-over period.
30. The Licensor is a local government established by the Local Government Act (NSW) and may be obliged to determine applications for approvals having regard to statutes governing such applications, including matters required to be taken into consideration and formal processes to be undertaken, and the Licensor shall not be taken to be in default under this Licence by performing its statutory obligations or exercising its statutory discretions, nor shall any provision of this Licence fetter the Licensor in performing its statutory obligations or exercising any discretion.
31. The parties acknowledge the value that their mutual association in relation to the Sculpture Trail brings in terms of enhancing the reputation and standing of the Snowy Valleys, its Council and its community, and the Sculpture Trail. Each party agrees to conduct itself in a manner which builds positively on this association and to refrain from actions which would cause harm to the reputation and good standing of the other party or the Sculpture Trail.
32. Any dispute in connection with this Agreement that cannot be resolved by negotiation between the parties or mediation shall be submitted to arbitration in accordance with, and subject to, The Institute of Arbitrators & Mediators Australia Rules for the Conduct of Commercial Arbitrations.

Signed in agreement by



Paul Holton  
Executive Director Community & Corporate  
Snowy Valleys Council



David Handley  
Founding CEO & Artistic Director  
Sculpture by the Sea Incorporated

### Annexure to the Agreement

The Licensed Area described in this Licence Agreement is identified in the following aerial images of Adelong, Batlow, Tumbarumba and Tooma as the land within the shaded area.

#### Adelong





Batlow

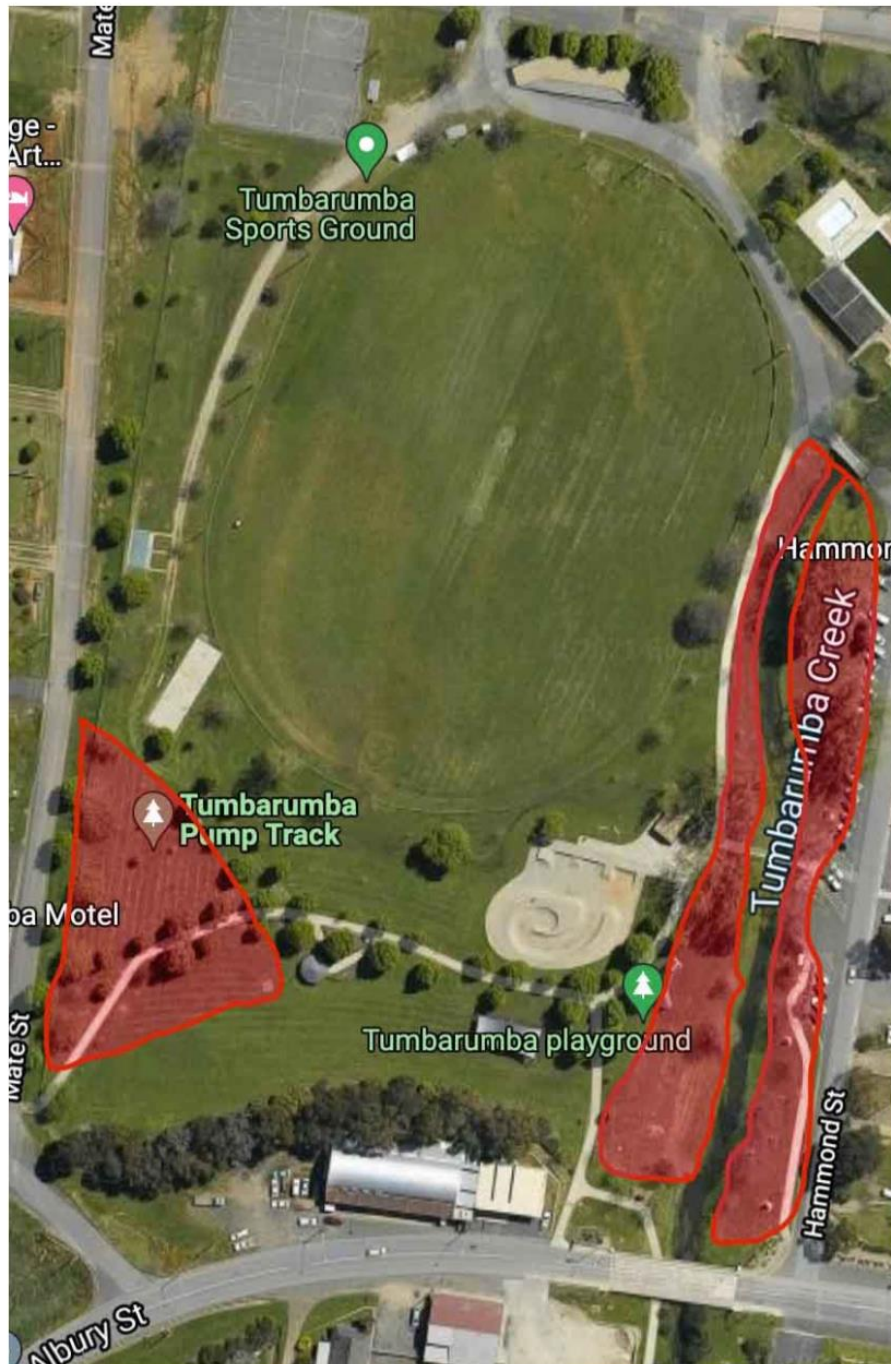




Batlow



Tumbarumba



Tooma

