



**ORDINARY  
MEETING OF  
COUNCIL**

**AGENDA**

**24 AUGUST 2009**

# Ordinary Meeting of Council

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## Welcome

Welcome to this Meeting of the Port Phillip City Council.

Council Meetings are an important way to ensure that your democratically elected representatives are working for you in a fair and transparent way. They also allow the public to be involved in the decision making process of Council.

## About this meeting

There are a few things to know about tonight's meeting. The first page of tonight's Agenda itemises all the different parts to the meeting. Some of the items are administrative and are required by law. In the agenda you will also find a list of all the items to be discussed this evening.

Each Report will be written by a Council officer outlining the purpose of the report, all relevant information and a recommendation. Council will consider the report and either accept the recommendation or make amendments to it. All decisions of Council are adopted if they receive a majority vote from the Councillors present at the meeting.

## Public Question Time

Provision is made at the beginning of the meeting for question time from members of the public. Question time is limited to 20 minutes unless the meeting resolves to extend this time.

If you would like to ask a question tonight, please fill in the blue 'Do You Wish to ask a Question or make a Public Comment' form located outside the chamber and give it to the Administrative Officer.

## Public Comment

Any person who has made a written submission on an item and requested that she or he be heard in support of that written submission pursuant to section 223 of the Local Government Act will be entitled to address Council.

Any other public comment at this meeting is at the discretion of the Chairperson.

If you would like to address the Council on any of the items being discussed tonight, please fill in the blue 'Do You Wish to ask a Question or make a Public Comment' form located outside the chamber and give it to the Administrative Officer.

When your item is being discussed the Chairperson will call your name and ask you to address the Council. The length of time available to each speaker will be at the Chairpersons discretion, noting that time available may be limited



CITY OF PORT PHILLIP

# PORT PHILLIP CITY COUNCIL BUSINESS PAPER

## To Councillors

Notice is hereby given that an **Ordinary Meeting** of the **Port Phillip City Council** will be held in the **Council Chamber, St Kilda Town Hall** on **Monday, 24 August, 2009** at **6.00pm**.

## AGENDA

1. **APOLOGIES**
2. **CONFIRMATION OF MINUTES OF PREVIOUS MEETINGS**
  - Minutes of the Ordinary Meeting of the Port Phillip City Council held on 10 August 2009.
3. **DECLARATIONS OF CONFLICTS OF INTEREST**
4. **PETITIONS AND JOINT LETTERS**
5. **SEALING SCHEDULE**
6. **PUBLIC QUESTION TIME**
7. **COUNCILLOR QUESTION TIME**
8. **PRESENTATION OF REPORTS**
  1. Tree Policy – Terms of Reference for Community Reference Committee
  2. St Kilda Botanical Gardens Future Direction Plan
  3. Quarterly Management/Financial Report
  4. 2008/09 Capital Program End Of Year Position
  5. Eildon Road Children's Centre
  6. St Kilda Festival Review – Community Reference Group Membership
  7. South Melbourne Market Cleaning Contract Extension
  8. 71A Acland Street
  9. Ombudsman's Report
9. **REPORTS BY COUNCILLOR DELEGATES APPOINTED TO OTHER BODIES**
10. **URGENT BUSINESS**

19 August 2009

**3. DECLARATIONS OF CONFLICTS OF INTEREST**

#### **4. PETITIONS AND JOINT LETTERS**

A Petition was received from 194 people regarding the extension of footpath trading hours for Lamaro's Café/Bar/Dining Room during daylight saving hours.

The Petition states the following:

*Pam Lamaro asks that you support her attempt to extend the footpath trading hours with Port Phillip Council to 11pm. This will ensure that on balmy summer evenings you will be able to drink and dine outside at your leisure instead of being forced to move back inside at 9pm. Thank you for committing your name and details to this petition.*

Officer's Comment:

An application to extend Lamaro's footpath trading hours is being considered by the Footpath Trading Panel. The actual application is to extend the existing arrangement by one hour (to 8pm in non-daylight savings, and to 10pm in daylight savings).

The support demonstrated in the petition will be factored into the Panel's development of a recommendation to Council.

The panel will reach a decision by the end of August. In the event that the panel supports the application to extend the hours of footpath trading, Council will consider this recommendation at its meeting on 14 September 2009.

## **5. SEALING SCHEDULE**

The following document is submitted for signature and sealing:

FORM OF AGREEMENT between the Port Phillip City Council, of Cnr Carlisle Street and Brighton Road, St Kilda Vic 3182 and IA Design and Construction Management Pty Ltd of 188 Pickles Street, South Melbourne Vic 3205 regarding Contract number 1250 – Construction of a Café at the South Melbourne Market (Stalls 101-103).

### **RECOMMENDATION**

That the Common Seal of the Port Phillip City Council be affixed to the above document.

**6. PUBLIC QUESTION TIME**

**7. COUNCILLOR QUESTION TIME**

## **8. PRESENTATION OF REPORTS**

1. Tree Policy – Terms of Reference for Community Reference Committee
2. St Kilda Botanical Gardens Future Direction Plan
3. Quarterly Management/Financial Report
4. 2008/09 Capital Program End Of Year Position
5. Eildon Road Children's Centre
6. St Kilda Festival Review – Community Reference Group Membership
7. South Melbourne Market Cleaning Contract Extension
8. 71A Acland Street
9. Ombudsman's Report

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<b>1.</b>	<b>TREE POLICY - TERMS OF REFERENCE COMMUNITY REFERENCE COMMITTEE</b>
<b>LOCATION/ADDRESS:</b>	<b>CITY WIDE</b>
<b>EXECUTIVE DIRECTOR:</b>	<b>SAM HEWETT, ACTIING EXECUTIVE DIRECTOR COMMUNITY ASSETS AND SERVICES</b>
<b>PREPARED BY:</b>	<b>FIONA BLAIR, MANAGER PARKS AND OPEN SPACES SERVICES</b>
<b>FILE NO.:</b>	<b>TRIM FILE NO. 62/02/86</b>
<b>ATTACHMENTS:</b>	<b>TERMS OF REFERENCE – TREE POLICY COMMUNITY REFERENCE COMMITTEE</b>

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**1. EXECUTIVE SUMMARY**

- 1.1 This report presents the terms of reference for the Tree Policy Community Reference Committee for council to adopt.

**2. RECOMMENDATION**

That Council:

- 2.1 Adopts the Tree Policy Community Reference Committee Terms of Reference.
- 2.2 Seeks expressions of interest from the community to nominate for the Tree Policy Community Reference Committee.
- 2.3 Notes that advertising for the Reference Committee will be undertaken via local newspapers, council web site and on site flyers at venues across the municipality.
- 2.4 Appoints members to the Tree Policy Community Reference Committee in September 2009.
- 2.5 Convenes the first meeting of the Tree Policy Community Reference Committee in late September 2009.

**3. BACKGROUND AND CONTEXT**

- 3.1 Council's current Street Tree Policy 2001-2006 needs to be reviewed and a new comprehensive framework for tree management needs to be developed.

- 3.2 Street and park trees play a vital role in determining the unique character and amenity of the city and they contribute to the maintenance of a healthy urban environment and provide wildlife habitat.
- 3.3 The development of a new tree management framework, including a new tree policy will facilitate Council's commitment to nurturing, preserving and developing trees as an important community asset and will ensure a consistent approach to the management of trees.
- 3.4 The development of a community reference committee provides an opportunity for the community to be involved in the development of tree policy providing council with topic relevance, broad representation, additional connections into the community and additional skills and expertise.
- 3.5 The Council Plan 2009/2010 identifies the development of a comprehensive tree policy with intent to add more trees as an action.

#### **4. DISCUSSION**

##### **4.1 OPTION**

- 4.1.1 Establish a community reference committee for the development of the tree policy.
- 4.1.2 This option will provide an opportunity for community members with a passion and/or expertise in trees to provide input into the development of the tree policy.

##### **4.2 ALIGNMENT TO COUNCIL PLAN**

The establishment of a community reference committee for the development of the Tree Policy aligns with the Council Plan.

###### **4.2.1 Engaging and Governing the City**

Strategy 1.1.1 - Enhance council's engagement with the community by maximising community feedback to ensure open and inclusive decision making.

###### **4.2.2 Enhancing Liveability**

Strategy 4.1.1 - Maintain and enhance streetscapes for improved amenity, character and sustainability.

5.1 POLICY IMPLICATIONS PLAN

5.1.1 There are no adverse policy implications for the establishment of a Tree Policy Community Reference Committee.

5.1.2 The establishment of the Tree Policy Community Reference Committee will assist Council in the delivery of its strategic direction – Enhancing Liveability.

5.2 FINANCE / RESOURCE IMPLICATIONS

5.2.1 The establishment of the Tree Policy Community Reference Committee will be funded through the 2009/10 operational budget.

5.3 LEGAL & RISK IMPLICATIONS

5.3.1 The predominant risk for Council is not delivering on its Council Plan. The establishment of the Tree Policy Community Reference Committee will reduce this risk by providing topic relevance, broad representation, additional connections into the community and additional skills and expertise.

**6. IMPLEMENTATION STRATEGY**

6.1 TIMELINE

6.1.1 August 24<sup>th</sup> – Council adopts the Terms of Reference for the Tree Policy Community Reference Committee.

6.1.2 August 25<sup>th</sup> – September 4<sup>th</sup> – Seek expressions of interest from the community to nominate for the Tree Policy Community Reference Committee. This will be achieved through advertisements in local papers, together with the inclusion of details on Council's web site and flyers at venues across the city.

6.1.3 September 14<sup>th</sup> – Council to appoint members to the Tree Policy Community Reference Committee.

6.1.4 Late September 2009 – First meeting of the Tree Policy Community Reference Committee.

**7. OFFICER DIRECT OR INDIRECT INTEREST**

7.1 No officers involved in the preparation of this report have any direct or indirect interest in the matter.

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<b>2.</b>	<b>ST KILDA BOTANICAL GARDENS FUTURE DIRECTION PLAN</b>
<b>LOCATION/ADDRESS:</b>	<b>ST KILDA BOTANICAL GARDENS, BLESSINGTON STREET ST KILDA</b>
<b>EXECUTIVE DIRECTOR:</b>	<b>SAM HEWETT ACTING, EXECUTIVE DIRECTOR COMMUNITY ASSETS AND SERVICES</b>
<b>PREPARED BY:</b>	<b>CHRIS WHITE, COORDINATOR - OPEN SPACE</b>
<b>FILE NO.:</b>	<b>62/01/114</b>
<b>ATTACHMENTS:</b>	<b>ATTACHMENT ONE – ST KILDA BOTANICAL GARDENS FUTURE DIRECTIONS PLAN</b> <b>ATTACHMENT TWO - FEEDBACK FROM COMMUNITY CONSULTATION</b>

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**1. EXECUTIVE SUMMARY**

- 1.1 The purpose of this report is to seek Council endorsement to adopt the St Kilda Botanical Gardens Future Directions Plan and Arboriculture Report.
- 1.2 The report provides information to the Council on the process undertaken to develop the St Kilda Botanical Gardens Future Directions Plan and Arboriculture Report.
- 1.3 The St Kilda Botanical Gardens Future Directions Plan details the key functions of the botanical garden and outlines the values and principles to guide the management and development of the gardens into the future. The Arboriculture Report provides an implementation plan for the maintenance, removal and replacement of trees in the St Kilda Botanical Gardens.

**2. RECOMMENDATION**

That Council:

- 2.1 Endorses the St Kilda Botanical Gardens Future Directions Plan and St Kilda Botanical Gardens Arboriculture Report.

**3. BACKGROUND AND CONTEXT**

- 3.1 The St Kilda Botanical Gardens were established in November 1861 making it one of Victoria's oldest botanic gardens and will celebrate its 150<sup>th</sup> year in 2010.

- 3.2 The St Kilda Botanical Gardens is distinguished from other gardens in the municipality by its botanic function. A botanic garden has four key roles:
- Scientific
  - Conservation
  - Education
  - Recreation
- 3.3 In 2007 Council engaged Stephen Fitzgerald, an independent tree specialist to assess tree health and provide an implementation plan for the maintenance, removal and replacement of trees - The St Kilda Botanical Gardens Arboriculture Report.
- 3.4 In 2008 Council engaged Jill Orr-Young to undertake The St Kilda Botanical Gardens Future Direction Plan.
- 3.5 In 2009 a report into the use of Non-Potable water to Irrigate Public Open Space in Inner Melbourne was undertaken by Sinclair Knight Merz. This study included the St Kilda Botanical Gardens and undertook a preliminary assessment into Storm Water, Ground water, Sewer Mining and Industrial Waste Water. The preferred option was sewer mining as it is the only option for a significant amount of potable water substitution (24,138 kL annually).
- 3.6 The Future Directions Plan is not a master plan. It examines botanic function and cultural heritage and is a bridge between planning and design. It provides direction for strategic planning for capital and maintenance works.
- 3.7 The Future Directions Plan examines botanic function and cultural heritage and looks for answers to questions such as:
- What is the condition of the existing tree collection?
  - How is planting structured as living botanical collections?
  - What is missing from the complexity?
  - Who was the original designer?
  - What was the original design intent?
  - How does original design intent survive in the Gardens?
  - How can interpretation enrich the visitor's experience?
  - What contemporary values can be reflected in the physical setting?
- 3.8 The Future Directions Plan provides principles and values to guide future direction and maintenance. These are:

**Principles:**

- Aim for a healthy tree collection that is suited to climate and resources
- Aim to respond 'beyond the visual', eg. consider the other senses, particularly smell and touch, the feeling underfoot, and intangible experiences

- Provide free drinking water
- In recognition that this is a much-loved garden that offers respite for residents and visitors who don't have private spaces, appreciate and enrich what is already there by small design interventions which integrate the whole (e.g. spectacular effects can be created by strategic placement of one special tree)
- Retain stormwater on site for reuse/recharge
- Ensure areas of dry rainforest have representation in the gardens that ensure diverse plant collection and visitor experience

**Values:**

- The botanical role (plant collections, conservation of species, interpretation)
  - Age/history/heritage (conservation of the extant tree collection, conservation of original design intent, interpretation)
  - Diversity (a place for everyone, equitable access)
  - Cultural vitality/life (movement/change, seasonal colour, changing light, events, ephemeral art)
  - A welcoming setting (sun and shade, seating, lawns, drinking water, information, facilities)
  - Visible care (quality maintenance, attention to detail)
  - Future heritage (new design – new ideas, renewal, layers)
- 3.9 The Future Directions Plan and Arboriculture Report will ensure a healthy tree and plant collection that is suitable to a low rainfall climate.
- 3.10 The Future Directions Plan provides opportunities for future themes to ensure the garden continues to provide a unique space for residents and visitors whilst retaining its cultural heritage significance as one Victoria's earliest botanic gardens.

#### **4. CONSULTATION AND STAKEHOLDERS**

##### 4.1 Expert consultation

- Dr Sara Maroske and Richard Barley (Royal Melbourne Botanical Garden) John Arnott (Cranbourne Botanical Gardens) were consulted during the development of the Future Directions Plan in 2008

##### 4.2 Key community groups

- The Friends of St Kilda Botanical Gardens were consulted during the development of the Future Directions Plan in 2008

4.3 Community Consultation

- Council sought to engage local residents and park users by holding public information sessions on 8 June (Queen's Birthday) and 13 June, 2009.
- Council distributed 800 postcards to local households, posted signs on site and the Council Internet to promote the community consultation days.
- Approximately 35 people attended the on site consultation

During community consultation the following material was available:

- Plans of trees to be removed and replaced;
- Proposed signage and;
- Future directions plan principles and values.

4.4 Results of community feedback are summarised in Attachment Three. A summary of this feedback is provided below:

- The community overall were supportive of the plan with reoccurring comments focused on security and need for additional gardeners.

Additional principles and values were added including:

- Maintain as open space for perpetuity.
- Maintain character and cultural heritage significance, while accepting the inevitability of continuing changes in detail.
- Maintain botanical diversity.
- Maintain a healthy tree collection, with a spread of ages, recognizing visual values, climatic constraints and the sequence of tree growth and maturation.
- Recognise and accommodate climatic constraints (particularly water availability) and adapt to them through plant content management, and appropriate engineering interventions.
- Provide for passive recreation through appropriate but discreet facilities (lawn areas, discreetly placed rubbish bins etc)
- Foster community and cultural activities, including educational activities
- Provide attention to detail in garden, lawn and facility maintenance.
- Maintain an appropriate level of security, particularly through night time Garden closures.
- Create heritage, harmony and mystery through placement of plants and retention of heritage layout.

4.5 The values and principles have been updated in the Future Directions Plan to reflect community feedback

**5. DISCUSSION**

5.1 PREFERRED OPTION

5.1.1 That Council endorses the Future Directions Plan and Arboriculture Report.

5.1.2 No other option has been provided, as the plan provides

- Direction for a healthy tree collection;
- Strategic direction for maintenance and capital development of the gardens and;
- Ensures the garden will retain the four roles of a botanic garden (scientific, conservation, education and recreation)

5.2 ALIGNMENT TO COUNCIL PLAN

5.2.1 The recommendation in this report aligns with the Council Plan as Outlined below:

5.2.2 Enhancing Liveability

- Strategy 4.1.7 Preserve our heritage, valuing the past and planning for the future
- Strategy 4.3.2 Protect, preserve and reinstate local natural environments and open spaces within the city

5.2.3 Engaging and Governing the City

- Strategy 1.1.1 Enhance council's engagement with the community by maximising community feedback to ensure open and inclusive decision making.

5.2.4 Taking Action on Climate Change

- Strategy 2.1.2 Reduce council's potable water use

5.3 POLICY IMPLICATIONS PLAN

The Future Directions Plan is consistent with existing council policy.

5.3.1 The Open Space Strategy 2006 states:

- Continue to develop and maintain the St Kilda Botanical Gardens in accordance with the Conservation Study and Management Plan. The Future Direction Plan supersedes the Conservation Plan

5.3.1 The Playground Strategy 2007 states:

- That some of the high profile sites do not have high quality play spaces, such as St Kilda Botanical Gardens.

**5.4 FINANCE / RESOURCE IMPLICATIONS**

5.4.1 In the 2009/10 budget there is a budget allocation to undertake Stage one works, which is \$75K to design the pond renewal and \$200K to design and install new gates.

5.4.2 To implement the Future Directions Plan a number of key projects have been identified and include:

<b>Stage</b>	<b>Cost</b>	<b>Project</b>
Stage One	\$ 275K	Pond design and design and installation of new gates
Stage Two	\$ 350K	Pond construction and design fence detail
Stage Three	\$ 508K	Playground design, signage/plant labels, detailed garden bed design and install fencing.
Stage Four	\$ 500K	Construct playground stage 1 Construct new garden bed on Herbert street and Tennyson Street
Stage Five	\$ 350k	Construct playground stage 2

5.4.3 The estimated cost for these works is \$1.98M. Council has currently budgeted \$275 K for Stage one in 2009/10.

5.4.4 Stages two to stage five would need to be considered as part of Council's annual budget process.

5.4.5 The Inner Melbourne Action Plan Water reuse in public open space 2008 project identified sewer mining as the most effective non potable water supply. The estimated cost for sewer mining is \$5.6 million. There is no budget allocation for this. Implementing this project would need to be considered in the context of Council's Water Management Plan and budget process.

5.4.6 A number of projects shall be delivered within existing operational budgets, including tree works, removal and replacement planting.

**5.5 LEGAL & RISK IMPLICATIONS**

5.5.1 The risk of not endorsing the Future Directions Plan and Arboriculture Report is that a strategic approach to future works and maintenance would not exist. This may impact on Council's potential to achieve outcomes in the council plan.

5.5.2 The Future Directions Plan was developed to ensure the garden retains the four roles of a botanic garden - scientific, conservation, education and recreation. Not endorsing the document may result in the importance of these roles being undervalued.

**6. IMPLEMENTATION STRATEGY**

**6.1 TIMELINE**

6.1.1 The Future Directions Plan and Arboriculture Report will be used to inform maintenance programs at the gardens such as tree pruning, removal and replacement and strategic planting of feature plants.

6.1.2 The maintenance program shall be developed by Council's parks staff and the works undertaken by Citywide as part of the parks contract.

6.1.3 The Future Directions Plan will be used to develop capital works proposals for Council to consider as part of the annual Capital works program. The table in clause 5.4.2 provides an implementation plan over the next five years.

**6.2 COMMUNICATION**

**6.2.1 KEY MESSAGES**

- The St Kilda Botanical Gardens Future Directions Plan will ensure the garden retains the four roles of a botanic garden - scientific, conservation, education and recreation.
- The Future Directions Plan and Arboriculture Report will ensure a healthy tree and plant collection that is suitable to a low rainfall climate.
- The Future Directions provides opportunities for future themes to ensure the garden continues to provide a unique space for residents and visitors whilst retaining its cultural heritage significance as one Victoria's earliest botanic gardens.

**7. OFFICER DIRECT OR INDIRECT INTEREST**

7.1 No officers involved in the preparation of this report have any direct or indirect interest in the matter.

**ORDINARY COUNCIL MEETING  
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<b>3.</b>	<b>QUARTERLY MANAGEMENT REPORT</b>
<b>LOCATION/ADDRESS:</b>	<b>N/A</b>
<b>EXECUTIVE DIRECTOR:</b>	<b>CATHY HENDERSON, ACTING EXECUTIVE DIRECTOR, ORGANISATION SYSTEMS AND SUPPORT</b>
<b>PREPARED BY</b>	<b>ROWENA MCLEAN, ACTING MANAGER CORPORATE PLANNING &amp; PERFORMANCE</b> <b>BOB BAKER, BUSINESS ANALYST</b> <b>DAVID FILMALTER, CHIEF FINANCIAL OFFICER</b>
<b>FILE NO.:</b>	<b>TRIM FILE NO. 18/01/25</b>
<b>ATTACHMENTS:</b>	<b>ATTACHMENT 1: 4TH QUARTER FINANCIAL REPORT</b> <b>ATTACHMENT 2: 4TH QUARTER KPI REPORT</b> <b>ATTACHMENT 3: 4TH QUARTER SERVICE PROMISE REPORT</b>

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**1. EXECUTIVE SUMMARY**

- 1.1 To provide Council with information on the financial, capital works, service and internal performance of the organisation.

**2. RECOMMENDATION**

That Council:

- 2.1 Receives and notes the 4th Quarter 2008/09 Quarterly Management Report

**3. BACKGROUND AND CONTEXT**

- 3.1 The Local Government Act requires that at least every 3 months, the Chief Executive Officer must ensure that a statement comparing the budgeted revenue and expenditure for the financial year with the actual revenue and expenditure to date is presented to the Council at a Council meeting which is open to the public.

**4. CONSULTATION AND STAKEHOLDERS**

- 4.1 Officers from across the organisation have collected and reviewed the data contained within the attachments. Variance analysis has been provided accordingly.

**5. DISCUSSION**

**5.1 OPTIONS**

Council is asked to receive and note the report. It contains four attachments for the 4th Quarter (Apr - June 2009) period:

- 5.1.1 Quarterly Financial Report including summary of progress on the Capital Works Program
- 5.1.2 Key Performance Indicator (KPI) Report detailing results against the 9 most important measures of operational success
- 5.1.3 Service Promise Report. The Service Promises were established in August 2008 for Council's top 10 most important services (as deemed by the residents and ratepayers of the City of Port Phillip).

**5.2 ALIGNMENT TO COUNCIL PLAN**

- 5.2.1 This is the final year report of the Council Plan 2005-2009.  
The new Council Plan 2009-2013 will be the subject of future quarterly management reports to council.

**5.3 POLICY IMPLICATIONS PLAN**

- 5.3.1 No policy adjustments are recommended at this time

**5.4 FINANCE / RESOURCE IMPLICATIONS**

- 5.4.1 Council's net cash surplus (excluding non cash items) of \$31.011M for the year ending 30 June 2009 is \$4.485M favourable compared to the year to date forecast of \$26.526M. This result is unaudited and could be impacted by any audit adjustments required.
- 5.4.2 Income (excluding loss on asset sales and contributed asset gains) has a favourable variance of \$5.233M which is primarily due to the following offsetting factors:
  - Capital grants \$2.095M favourable due to the receipt of a large number of unbudgeted grants. The capital projects most impacted are as follows:
    - Cleve plaza / Jacka crossing \$1.040M
    - Clarendon street pedestrian safety - \$227K
    - Garden city reserve - \$182K
    - Catani gardens play space & picnic area - \$110K
    - Carlisle streetscape improvement - \$110K
  - Government grants \$1.537M favourable predominately due to greater than anticipated grant income within Culture & Recreation, Community Development, Community Services and Finance.

- Parking revenue \$658K favourable due to the continued improvement in the collection of paid parking. This can be attributed to improved contract management, lower petrol prices and favourable weather conditions.
- Rate revenue \$463K favourable largely due to the impact of additional supplementary rates and interest raised on overdue rates
- Interest income \$389K favourable due to additional funds available for investment
- Fees and charges \$1.096M unfavourable due largely due to reduced utilisation of the North St Kilda and Clark street child care centres, the reduced numbers of home based carers and reduced footpath trading income.

5.4.3 Expenditure (excluding depreciation) has an unfavourable variance of \$748K and is primarily due to the following offsetting factors:

- An unrealised impairment loss of \$1.737M on one of Council's investments. Current expectations are that this loss will be written back in subsequent years as the global financial crisis recedes.
- Contract payments \$1.203M favourable due to favourable variances across the whole organisation, predominately within Community Services, Infrastructure Services and Building Services
- Materials and other costs \$677K favourable primarily due to reduced insurance premiums and delays in the commencement of the operations at the St Kilda child care centres.
- Employee Costs \$891K unfavourable due to unfavourable variances within Building Services and Community Services, and unbudgeted redundancy payments.

## **6. LEGAL & RISK IMPLICATIONS**

- 6.1.1 The Local Government Act requires that at least every 3 months, the Chief Executive Officer must provide a financial report to the Council.
- 6.1.2 Risk management actions are one of the key performance indicators reported on in this report.

## **7. IMPLEMENTATION STRATEGY**

### **7.1 TIMELINE**

N/A

### **7.2 COMMUNICATION**

7.1.1 Following the adoption of this report by Council, the KPI results will be posted on the Council's website

7.1.2 Key messages are:

- The Council is in a sound financial position.
- The Council has delivered on the majority of commitments outlined in the 2008/09 Council Plan.

- The Financial, KPI and Service Promise Reports provide accountability and transparency in the Council's operations.

**8. OFFICER DIRECT OR INDIRECT INTEREST**

- 8.1 No officers involved in the preparation of this report have any direct or indirect interest in the matter.

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<b>4.</b>	<b>CAPITAL WORKS 2008/2009 – YEAR END POSITION</b>
<b>LOCATION/ADDRESS:</b>	<b>N/A</b>
<b>EXECUTIVE DIRECTOR:</b>	<b>SAM HEWETT, ACTING EXECUTIVE DIRECTOR COMMUNITY ASSETS AND SERVICES</b>
<b>PREPARED BY:</b>	<b>SAM HEWETT, ACTING EXECUTIVE DIRECTOR COMMUNITY ASSETS AND SERVICES</b>
<b>FILE NO.:</b>	
<b>ATTACHMENTS:</b>	<b>ATTACHMENT #1 – CAPITAL WORKS PROGRAM 2008/2009 FINANCIAL SUMMARY</b> <b>ATTACHMENT #2 – CAPITAL WORKS ROLLOVER PROJECTS</b> <b>ATTACHMENT #3 – PROJECTS WITH SIGNIFICANT VARIATIONS</b>

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**1. EXECUTIVE SUMMARY**

- 1.1 In 2008/2009 Council had a total forecast capital works program budget of \$32,957,600 which included \$7,149,000 in carryover funding from previous capital works budgets. This program was made up by 29 rollover projects and 188 new projects.
- 1.2 The purpose of this report is to;
- advise Council on the 2008/2009 capital works end of financial year position,
  - to advise Council on projects that have been completed within the year, and;
  - to make recommendations on projects and project funding to be carried forward for completion in 2009/2010.

**2. RECOMMENDATION**

That Council:

- 2.1 Carries over \$3,385,367 of capital works program funding from 2008/2009 into 2009/2010.
- 2.2 Carries over \$2,423,309 of unspent Gasworks Park Remediation funding from 2008/2009 into 2009/2010.
- 2.3 Carries over \$1,231,273 of government grant income (and savings) received during the year for projects with a 2008/2009 delivery date into 2009/2010 to complete those projects.
- 2.4 Acknowledges the progress of the delivery of the 2008/2009 capital works program noting that the carry over project funding percentage (against forecast) of 11.1% is the lowest percentage figure since 1995/1996.

**3. BACKGROUND AND CONTEXT**

- 3.1 In June 2008, Council approved a Capital Works program budget of \$32,857,600 for 2008/2009 which included a total of \$7.150 million in project funding carried over from 2007/2008.
- 3.2 Council made some adjustments to the capital works program during the year which resulted in an annual forecast budget of \$32,957,600.
- 3.3 A total of 217 individual projects were scheduled for delivery in 2008/2009 with the responsibility for delivering those projects spread across 6 Port Phillip departments. The responsibility rested as follows

• Infrastructure Services	129 Projects
• Asset Services	38 Projects
• Parks and Open Spaces	41 Projects
• Building Services	2 Projects
• Culture and Recreation	1 Project
• Environment and Renewal	<u>6 Projects</u>

**TOTAL** **217 Projects**

- 3.4 A total of 198 individual capital projects (or stages of projects) were completed during the 2008/2009 financial year which represents 90% of all projects.

## AGENDA - ORDINARY MEETING OF COUNCIL - 24 AUGUST 2009

3.5 As at June 30, 2009, the capital works financial position is as follows;

	YTD Actual Expenditure	Carryover	Project Scope Carryover due to government grant income and some savings	Tied Grants to Reserves	Gasworks Park Remediation carryover	Variation - Savings on completed projects
<b>Financial</b>	\$26,902,476	\$3,385,367	\$1,231,273	\$265,191	\$2,423,309	\$263,003

3.6 The above table shows;

- 88.33% of the forecast program budget (less the Gasworks Park Remediation) was expended in 2008/2009,
- 11.1% of the forecast program budget is the recommended carry over with a further 4.04% (against forecast budget) carryover due to government grant income (and some savings) received late in 2008/2009.
- 0.87% against the forecast program budget to be transferred into reserves representing tied government grants for new projects which will be added to the 2009/2010 Capital Works Program.

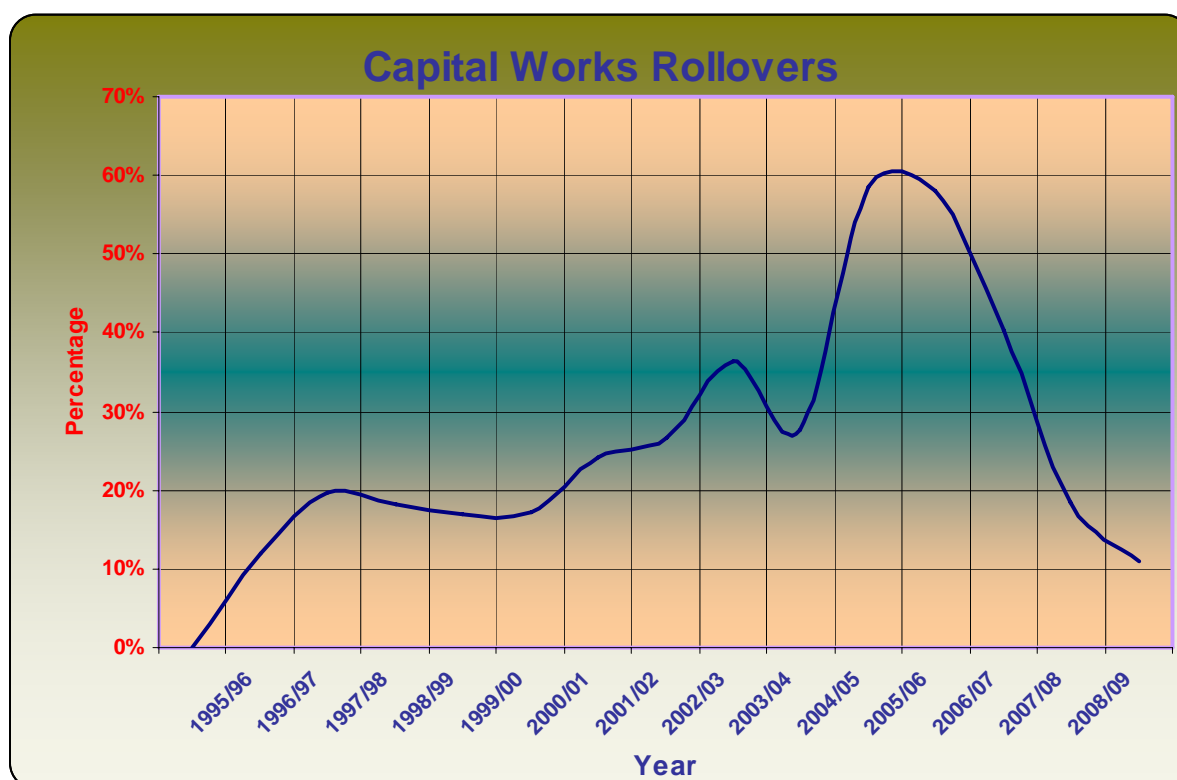
3.7 The above carryover position of 11.1% at June 30, 2009 represents an improved result over previous years as the table below demonstrates.

### **Capital Works Carryover Position – Annual View**

Year	Forecast Budget (Including carryovers) \$'000	Carryover \$'000	Percentage
<b>1995/96</b>	<b>11,028</b>	<b>1,330</b>	<b>12.0%</b>
<b>1996/97</b>	<b>10,309</b>	<b>2,033</b>	<b>19.7%</b>
<b>1997/98</b>	<b>8,009</b>	<b>1,473</b>	<b>18.3%</b>
<b>1998/99</b>	<b>9,680</b>	<b>1,644</b>	<b>16.9%</b>
<b>1999/00</b>	<b>11,877</b>	<b>2,047</b>	<b>17.2%</b>
<b>2000/01</b>	<b>13,917</b>	<b>3,359</b>	<b>24.1%</b>
<b>2001/02</b>	<b>18,417</b>	<b>4,930</b>	<b>26.7%</b>

2002/03	19,903	7,256	36.4%
2003/04	22,435	6,212	27.6%
2004/05	17,650	10,359	58.6%
2005/06	32,780	19,030	58.0%
2006/07	47,000	19,000	40.4%
2007/08	38,500	7,100	18.5%
2008/2009	32,957	3,385	11.1%

3.8 The above table is represented in the graph below.



3.9 The capital works year end rollover position of 11.1% is Council's best carryover position since 1995/1996 acknowledging that the program has experienced significant increases in size and complexity in that time.

3.10 The improved capital works rollover result is due to;

- Tighter capital works planning,
- Introduction of the Capital Works Project Board which monitors and reports against the progress of the program's delivery.

- A flexible capital works staffing model,
  - Greater commitment and accountability from client managers and project managers to delivering projects,
  - Improved tracking and reporting systems for capital projects
- 3.11 A total of 19 projects (or project stages) scheduled for delivery in 2008/2009 were unable to be completed by year's end. **Attachment #2 – Capital Works Rollover Projects** is a summary of projects that are to be carried over, the principal reasons for their carryover and a time line of when they are expected to be completed.
- 3.12 **Attachment #3 – Projects with significant variations** lists projects with a significant year end variance and an explanation for that variance.

#### **4. CONSULTATION AND STAKEHOLDERS**

##### **City of Port Phillip Organisation Departments**

- 4.1 The following Council departments assisted to deliver the 2008/2009 capital works program - Asset Services, Infrastructure Services, Parks and Open Space, Building Services, Culture and Recreation, Environment and Renewal
- 4.2 Other Council departments were consulted with as part of the delivery of the 2008/2009 capital works program - Economic Development, South Melbourne Market, Governance and Risk Management, City Development, Community Services, Community Development and Engagement, Finance, Corporate Planning and Enforcement, Information Technology, Communications and Stakeholder Relations.
- 4.3 There has been an improved collaborative approach from departments across the organisation towards capital works delivery. All departments and staff are aware of the importance of delivering of Council's capital works promises.

#### **5. DISCUSSION**

- 5.1 ALIGNMENT TO COUNCIL PLAN
- 5.1.2 This report is consistent with the Council Plan 2009 – 2013
- 5.1.3 Ensure robust financial management and accountability through the annual budget and public reporting
- 5.2 POLICY IMPLICATIONS PLAN

- 5.2.1 In November 2007, Council's auditors WHK Day Nielson requested Council receives an end of financial year report to consider the carryover figure and carryover projects. This report satisfies that requirement.
- 5.2.2 In the Capital Works Project Board report to Council in September 2008, a quarterly report was promised to keep Council fully apprised of the progress of the Capital works position. This report contains the fourth quarter information as well as the year end position on the 2008/2009 capital works program.

**5.3 FINANCE / RESOURCE IMPLICATIONS**

- 5.3.1 The year end capital works position has been determined in conjunction with Council's financial team. The decision to rollover funding, transfer tied grants to reserves, carryover the unspent gasworks funding to the Gasworks Reserve, and balancing the over and under expenditure has been done with the Manager of Finance

**6. IMPLEMENTATION STRATEGY**

**6.1 TIMELINE**

- 6.1.1 Project managers responsible for delivering capital works carryover projects will be instructed to deliver these projects according to the timeline set in their project plans.

**6.2 COMMUNICATION**

- 6.2.1 Council has delivered its best capital works carryover position since 1995/1996.
- 6.2.2 Council is committed to completing projects in the year they were funded.
- 6.2.3 By doing this, Council reduces the risk of large capital works rollover funding.
- 6.2.4 Council invests significantly in new assets, asset renewal and asset upgrades. Delivering the capital works program is a priority of the Council.

**ORDINARY MEETING OF COUNCIL  
24 AUGUST 2009**

<b>5.</b>	<b>EILDON ROAD CHILDREN'S CENTRE REQUEST FOR ASSISTANCE</b>
<b>LOCATION/ADDRESS:</b>	
<b>EXECUTIVE DIRECTOR:</b>	<b>SAM HEWETT, ACTING DIRECTOR COMMUNITY ASSETS AND SERVICES</b>
<b>PREPARED BY:</b>	<b>JO SMALE, ACTING MANAGER COMMUNITY SERVICES</b>
<b>FILE NO.:</b>	<b>36/02/08-01</b>
<b>ATTACHMENTS:</b>	<b>NIL</b>

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**1. EXECUTIVE SUMMARY**

- 1.1 The Committee of Management of Eildon Road Children's Centre has made an urgent request for immediate operational and financial emergency aid to ensure the centre can continue operating in the short term.

**2. RECOMMENDATION**

That Council:

- 2.1 Provides assistance to the Eildon Road Children's Centre in the following way:
- 2.1.1 Defers payment of outstanding levies in the amount of approximately \$44,000
  - 2.1.2 Defers payment of levies for a further six months to the amount of a further \$44,000
  - 2.1.3 Provides administrative support for enrolments for the next six months.
  - 2.1.4 Provides additional governance and leadership support to the Centre's Committee of Management and Coordinator
  - 2.1.5 Purchases the fixed playground equipment for use by council at a cost of \$10,000
  - 2.1.6 Reviews the outcomes of the above actions in six months to determine the centre's financial and operational position
  - 2.1.7 Receives an update on the viability of Eildon Road Children's Centre in six months time
-

- 2.2 Requests the Eildon Road Committee of Management work closely with Council to ensure all factors culminating in the current financial and operational position are identified and addressed in order to support the long term viability of the Centre.

### **3. BACKGROUND AND CONTEXT**

- 3.1 Eildon Road Children's Centre is a 40 place community managed children's centre operating from a council owned facility. The City of Port Phillip holds the service licence with the Department of Education and Early Childhood Development.
- 3.2 The centre has experienced significant staff turn over with 6 Coordinators over the past three years. The committee is currently recruiting a coordinator, four full time child care workers and a book keeper to fill vacant positions.
- 3.3 Eildon Road Children's Centre currently owes council approximately \$44,000 in maintenance and infrastructure levies.
- 3.4 Council has paid \$25,286.80 in Quality and Affordability Subsidies in the 2008/2009 financial year.
- 3.5 At a meeting on 24 July 2009 with the Acting Manager Community Services, Jo Smale, Acting Coordinator Family and Children's Services, Virginia Lloyd, Cr Thomann, the Eildon Road Committee of Management presented their financial and organisational position which indicates the centre has some financial problems.
- 3.6 Eildon Road Children's Centre reported that the centre's operating surplus has been fully expended over the last seven months.
- 3.7 From the meeting of 24 July 2009 Council has commenced supporting the service by assisting with the recruitment of Coordinator and staff and providing the committee with fee benchmarking information.
- 3.8 A new centre coordinator has been appointed and will commence at the end of August 2009.

### **4. CONSULTATION AND STAKEHOLDERS**

- 4.1 Council officers and Cr Thomann met with representatives of the Eildon Road Committee of Management on 24 July 2009.
- 4.2 Council officers have continued to correspond with these representatives since that time.

**5. DISCUSSION**

5.1 OPTIONS

5.1.1 Recommended Option

5.1.1.1 Provide assistance to the Eildon Road Children's Centre in the following way:

- Defer payment of outstanding levies to the amount of approximately \$44,000
- Defer payment of levies for a further six months to the amount of a further \$44,000
- Provide administrative support for enrolments for the next six months
- Provide additional governance and leadership support to the Centre's Committee of Management and Coordinator
- Purchase the fixed playground equipment for use by council at a cost of \$10,000
- Review the outcomes of the above actions in six months to determine the centre's financial and operational position
- Request the Centre's Committee of Management work closely with Council to ensure all factors culminating in the current financial and operational position are identified and addressed in order to support the long term viability of the Centre.

5.1.1.2 This option is in line with council's childcare policy commitment to support existing community managed centres and to increase access to childcare places through the provision of quality and affordability subsidies.

5.1.1.3 This option provides both financial and operational support to Eildon Road thereby assisting their capacity to continue to operate.

5.1.1.4 This option provides this support in an equitable way in that it does not provide funding in addition to what other community managed centres can access.

5.1.1.5 This option delays council's budgeted levy income for the 2008/09 and the 2009/10 financial periods.

5.1.1.6 This option requires funding that is unbudgeted in order to purchase the playground equipment.

5.1.1.7 This option provides immediate support to the centre which will assist them in the short term. It also offers support that will assist the centre to address their longer term viability.

5.2 ALIGNMENT TO COUNCIL PLAN

5.2.1 This report aligns with the key direction of - Strengthening our diverse and inclusive community.

- Provide for equitable access to a range of services
- Ensure the quality and accessibility of children's and family services

5.2.2 This is achieved by maintaining a community managed service and supports a mixed sector service provision for child care.

5.3 POLICY IMPLICATIONS PLAN

5.3.1 Council's childcare policy is committed to ensuring access to quality, affordable childcare

5.3.2 Council's childcare policy is committed to a mixed sector of council, community and private childcare.

5.4 FINANCE / RESOURCE IMPLICATIONS

5.4.1 The estimated cost of the recommended option is approximately \$105,000 comprising approximately \$7,000 additional administrative support for enrolments, \$10,000 for the purchase of playground equipment and a further \$88,000 in deferred levy income. There may be further in-kind and/or financial costs to Council incurred depending on the nature of the additional governance and leadership support provided.

5.5 LEGAL & RISK IMPLICATIONS

5.5.1 There is some risk that failing to support this centre will result in the loss of 40 places in the city. If that were to occur it would increase the unmet demand for childcare that already exists in the city. It may also impact on council's reputation as it runs contrary to council's policy position to increase childcare places in the city.

**6. IMPLEMENTATION STRATEGY**

6.1 TIMELINE

6.1.2 The recommended support could be provided immediately and will be reviewed in six months.

6.2 COMMUNICATION

- 6.2.1 The committee of management will be notified immediately of the outcome of council's decision.
- 6.2.2 Eildon Road Children's Centre is experiencing operational and financial hardship and is requesting financial and operational assistance.
- 6.2.3 Council is providing advice and support, both financial and operational, to Eildon Road to improve its situation.
- 6.2.4 Council is committed to community managed children's centres and will provide support where possible.
- 6.2.5 Council is committed to maintaining childcare places in Port Phillip.

**7. OFFICER DIRECT OR INDIRECT INTEREST**

- 7.1 No officers involved in the preparation of this report have any direct or indirect interest in the matter.

**ORDINARY MEETING OF COUNCIL  
24 AUGUST 2009**

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<b>6.</b>	<b>ST KILDA FESTIVAL REVIEW – COMMUNITY REFERENCE GROUP MEMBERSHIP</b>
<b>LOCATION/ADDRESS:</b>	
<b>EXECUTIVE DIRECTOR:</b>	<b>GREG WOOD, ACTING EXECUTIVE DIRECTOR, COMMUNITY DEVELOPMENT AND PLANNING</b>
<b>PREPARED BY:</b>	<b>IAN HICKS, MANAGER CULTURE AND RECREATION</b>
<b>FILE NO.:</b>	<b>32/04/605</b>
<b>ATTACHMENTS:</b>	<b>REFERENCE GROUP TERMS OF REFERENCE</b>

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**1. EXECUTIVE SUMMARY**

- 1.1 This report presents council with the list of applicants to the community reference group for the review of St Kilda Festival.

**2. RECOMMENDATION**

That Council:

- 2.1 Appoints Councillors ----- to the St Kilda Festival community reference group.
- 2.2 Appoints the following applicants to the St Kilda Festival community reference group:
- representing local residents with an interest in amenity / residential considerations;
- representing local residents with an interest as a festival audience member;
- representing local traders; and
- representing local artists/musicians.

**3. BACKGROUND AND CONTEXT**

- 3.1 The next St Kilda Festival in 2010 will be a milestone year for the Festival in that it will be the 30<sup>th</sup> Anniversary of this free public event and the last year of a four year partnership with both major sponsors.
- 3.2 The Festival can be seen as a highly successful event but has also some challenges in that it has an impact on the local area.

- 3.3 At its June 2009 meeting council endorsed a broad public review of the St Kilda Festival.
- 3.4 Council also noted the intention to call for expressions of interest for membership of a community reference group according to the attached terms of reference.
- 3.5 The review of the Festival will address among others, the following key questions:
- Does the St Kilda Festival deliver on this Council's strategic objectives and is it consistent with this Council's policies?
  - Does the community benefit of St Kilda Festival outweigh the impact?
  - Is the St Kilda Festival sustainable?
- 3.6 The community reference group terms of reference calls for the following community representation:
- Two councillors
  - Two community representatives (reflecting amenity issues / residential considerations)
  - Two community representatives (representing festival audience/participants)
  - Two community representatives (representing trader interests)
  - Two artists (representing the Musicians)
- 3.7 Expressions of interest for those wanting to participate in the Reference Group for the 2009 St Kilda Festival have now been received following an application process.

#### 4. CONSULTATION

- 4.1 The applicants have expressed interest through a publicly advertised process. The Expression of Interest was advertised using the following methods:
- Advertisement calling for expression of interest in the Emerald Hill Weekly and Port Phillip Leader appearing week starting 13 July 2009
  - Email to all 2009 St Kilda Festival participants (including bands, traders and events) on 16 July 2009
  - St Kilda Festival E-Bulletin to all (2,670) subscribers on 16 July 2009
  - Update to St Kilda Festival Facebook page and message to all (1,676) 'fans' – 16 July 2009

- Link on front page of City of Port Phillip website week starting 13 July 2009
- Link on St Kilda Festival website to review on City of Port Phillip website – week starting 13 July 2009

## **5. DISCUSSION**

### **5.1 ALIGNMENT TO COUNCIL PLAN**

The Draft Council Plan 2009 – 2013 identifies the following strategy and actions:-

- Strategy 3.2.1: Build an Active and Creative community;
- Action: Review the St Kilda Festival 2010 and beyond.

### **5.2 POLICY IMPLICATIONS**

The appointment of the reference group is consistent with Councils previous resolution on this matter.

### **5.3 FINANCE / RESOURCE IMPLICATIONS**

The review is funded in the 2009/10 budget.

There are no known significant financial or resource implications resulting from the recommendations contained in this report.

### **5.4 LEGAL & RISK IMPLICATIONS**

There are no known risks or legal implications arising from the recommendations in this report.

## **6. IMPLEMENTATION STRATEGY**

### **6.1 TIMELINE**

A consultant will be appointed consistent with the brief agreed by Council at its meeting in June 2009.

Once appointments to the Community reference Group are confirmed the members of the reference group will meet to begin the review process. The Community Reference Group will continue to meet and inform the review process in accordance with the Terms of Reference for the group.

The intended project completion is for early 2010.

### **6.2 COMMUNICATION**

Successful and unsuccessful applicants will be informed in writing.

All Community Reference Group meetings will be minuted and updates provided on the City of Port Phillip web site.

**7. OFFICER DIRECT OR INDIRECT INTEREST**

No officers involved in the preparation of this report have any direct or indirect interest in the matter.

**ORDINARY MEETING OF COUNCIL  
24 AUGUST 2009**

<b>7.</b>	<b>CLEANING CONTRACT EXTENSION AT THE SOUTH MELBOURNE MARKET</b>
<b>LOCATION/ADDRESS:</b>	<b>CECIL STREET, SOUTH MELBOURNE</b>
<b>EXECUTIVE DIRECTOR:</b>	<b>SAM HEWETT, EXECUTIVE DIRECTOR, COMMUNITY ASSETS &amp; SERVICES</b>
<b>PREPARED BY:</b>	<b>CLAUDE BAXTER, MANAGER, SOUTH MELBOURNE MARKET</b>
<b>FILE NO.:</b>	<b>TRIM 56/04/43 (CONTRACT 0847)</b>

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**1. EXECUTIVE SUMMARY**

- 1.1 In 2005, Council awarded contract number #847 to CleanEvent Pty Ltd for cleaning services at the South Melbourne Market.
- 1.2 The cleaning contract was awarded for three years plus two 12-month extensions.
- 1.3 In this report, Council is being asked to consider and approve the second and final 12-month extension to that cleaning contract.

**2. RECOMMENDATION**

That Council:

- 2.1 Approves the final 12-month contract extension for contract #847 for cleaning services at South Melbourne Market to CleanEvent Pty Ltd.

**3. BACKGROUND AND CONTEXT**

- 3.1 The cleaning contract for South Melbourne Market was awarded to CleanEvent Pty Ltd by Council in September 2005 following public advertising of the tender. The contract was awarded for three years from November 2005 and included two 12-month extensions.
- 3.2 Council awarded the tender to CleanEvent as their price was the cheapest, they offered a cleaning service equal to, or better than their competitors, and offered significantly more hours of service than the previous contract provided.
- 3.3 The current cleaning contract for the South Melbourne Market expires on October 31, 2009 with an option to extend until October 31, 2010. This is the final extension possible as part of this contract.

- 3.4 The following table shows expenditure on cleaning services at the South Melbourne Market as part of this contract.

	Year 1	Year 2	Year 3	Year 4	Year 5
<b>Cleaning Services</b>	\$520,736	\$536,161	\$552,068	\$568,542	\$629,324*

\*Includes variations (see Finance/Resource Implications section below)

- 3.5 Monthly contract management meetings are conducted between Clean Event and South Melbourne Market Management. This has resulted in an improved cleaning performance. There are few complaints made about the contractor's performance and the contractor has adapted well to the changing nature of the requirements at the market, in particular cleaning requirements for the upgraded outdoor areas and waterless bathroom facilities.
- 3.6 A review of the cleaning service requirements within the South Melbourne Market will be undertaken during the current financial year to identify and investigate service delivery options. These options may include the option to re-tender the service or combine this service with Council's other cleaning contracts.

#### **4. CONSULTATION AND STAKEHOLDERS**

- 4.1 Consultation occurred over the course of the contract with the markets 135 stall holders. The feedback has been largely positive and has resulted in a strong working relationship between market management, stall holders and the contractor.

#### **5. DISCUSSION**

##### **5.1 ALIGNMENT TO COUNCIL PLAN**

- 5.1.1 Strategy 1.4.4 of the 2009-2013 Council Plan provides that Council maintain council and community assets to a standard that matches industry best practice.
- 5.1.2 Strategy 1.4.2 - Ensure a strong commitment to ethical behavior and a culture of compliance with legislation.

##### **5.2 POLICY IMPLICATIONS PLAN**

- 5.2.1 Council's Tendering and Contracts Policy provides that in the case of a contract awarded by the council, the decision as to a contract extension is to be referred to the council. Council initially awarded this contract in September 2005.
- 5.2.2 The policy also provides that a decision not to extend a contract will generally be made because of poor performance by the contractor, in which case, the performance issues should have been discussed with the contractor over a substantial period and fully documented.

5.2.3 There has been no reason identified as to why this contract should not be extended.

**5.3 FINANCE / RESOURCE IMPLICATIONS**

5.3.1 The price tendered in 2005 for the final year of the work was \$585,324. Once the various contract variation items are included, such as cleaning the Cecil St glass screens and toilet blocks, the cost of cleaning for the final year will be \$629,324. Expenditure related to this contract has been budgeted within the Market's budget for the 2009/2010 financial year.

**5.4 LEGAL & RISK IMPLICATIONS**

5.4.1 The current contract – and any extension of it – are provided for in detailed contract documentation as part of contract #847

**6. IMPLEMENTATION STRATEGY**

**6.1 TIMELINE**

6.1.1 The contractor will be advised by letter of the outcome of Council's decision shortly after a decision is reached.

6.1.2 The period between October 2009 – March 2010 would be used to conduct a management review of the cleaning service for the South Melbourne Market.

6.1.3 In April 2010, options will be made available to Council to decide how best to acquire cleaning services for the South Melbourne Market.

**6.2 COMMUNICATION**

6.2.1 CleanEvent Pty Ltd will be advised of the contract extension by letter.

**7. OFFICER DIRECT OR INDIRECT INTEREST**

7.1 No officers involved in the preparation of this report have any direct or indirect interest in the matter.

**ORDINARY MEETING OF COUNCIL  
24 AUGUST 2009**

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<b>8.</b>	<b>PROPOSED TENDER PROCESS – LEASE OF 71A ACLAND STREET, ST KILDA</b>
<b>LOCATION/ADDRESS:</b>	<b>71A ACLAND STREET, ST KILDA</b>
<b>EXECUTIVE DIRECTOR:</b>	<b>CATHY HENDERSON, ACTING EXECUTIVE DIRECTOR, ORGANISATION SYSTEMS AND SUPPORT</b>
<b>PREPARED BY:</b>	<b>JEANENE SIMMONS, SENIOR PROPERTY ADVISOR</b>
<b>FILE NO:</b>	<b>0010/071A-07</b>
<b>ATTACHMENTS:</b>	<b>1 - LOCATION PLAN, 71A ACLAND STREET, ST KILDA 2 – CURRENT LEASE AREA 3 – CURRENT PLANNING PERMIT AREA</b>

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**1. EXECUTIVE SUMMARY**

- 1.1 To inform Council of the upcoming expiry of the commercial lease agreement for 71A Acland Street, St Kilda. This agreement is due to expire on 31 January 2010.
- 1.2 As the site is Crown Land managed by Council on behalf of the Department of Sustainability and Environment (“DSE”), Council is required to comply with DSE’s “Commercial Leasing Principles for Crown Land” and run a competitive expression of interest and or tender process to select a future tenant.
- 1.3 This report seeks Council’s endorsement to the proposed approach to select a preferred tenderer and then to offer a 5 year lease agreement for use of the site as a restaurant / café with restricted hours. The future lease is subject to DSE / Ministerial approval.

**2. RECOMMENDATION**

That Council:

- 2.1 Undertakes a tender process for the future lease of 71A Acland Street, St Kilda on the following terms:
  - Lease area: approximately 330 square metres.
  - Term: 5 years.
  - Permitted use: restaurant / café.

- 2.2 Approves modified business parameters for the site including lease conditions drafted to have the following effect:
  - 2.2.1 Maximum number of patrons permitted in the outdoor area at any time – 80.
  - 2.2.2 All patrons within the outdoor area are to be seated.
  - 2.2.3 Maximum number of patrons permitted within the restaurant premises (indoor) – 145.
  - 2.2.4 A reduction in the hours of operation to Monday - Sunday, 7 am to 1 am the following day.
  - 2.2.5 The Tenant is required to carry out regular maintenance of the premises including the following items - clearing gutters of debris, clearing grease traps, air conditioning servicing, inspection and maintenance related to Essential Safety Measures.
  - 2.2.6 The Tenant will provide the Landlord with unimpeded access to the premises for a period of 3 months to affect any necessary building compliance and occupational health and safety related works. Access for any additional structural works will be negotiated with the Tenant.
- 2.3 Advertises this leasing opportunity in The Age, The Port Phillip Leader and the Emerald Hill Weekly newspapers.

### **3. BACKGROUND AND CONTEXT**

- 3.1 Land Status
  - 3.1.1 Council is the appointed Committee of Management under the provisions of the Crown Land (Reserves) Act 1978 (“CLRA”) for the subject property. The lease agreement for this site is due to expire on 31 January 2010.
  - 3.1.2 In line with DSE’s “Commercial Leasing Principles for Crown Land”, Council is required to run a competitive, open process such as an expression of interest or tender to allocate any future lease agreement.
  - 3.1.3 Until recently the maximum lease term available under the provisions of the CLRA was 21 years. Legislative changes in August 2009 provide for a maximum lease term of 65 years in limited circumstances, where the Minister is satisfied that the project is of state significance and the granting of a longer lease term is in the public interest. However in this instance, it is proposed to offer a 5 year lease term only. This will enable Council to assess the property in the context of the broader property portfolio to ensure that the use of the property is aligned with the longer term community needs.

Current Property Details

3.1.4 Further information regarding the property is shown in the following table:

**Table 1: Summary Details – 71A Acland Street, St Kilda**

<b>Item</b>	<b>Details</b>
Tenant	Vineyard Restaurant Pty Ltd
Property Address	71A Acland Street, St Kilda (Refer to Attachment 1 – Location Plan).
Land Status	Crown Land – Council is the appointed Committee of Management.
Land Reservation	Part of the land temporarily reserved for public gardens by Order in Council of 27 March 1956 and part of the land temporarily reserved for plantation, gardens, recreational purposes for elderly people and for underground drainage purpose by Order in Council of 27 July 1954.
Current Permitted Use	Restaurant.
Lease Area	Current lease area is approximately 380 square metres. The updated survey plan currently being prepared will see a likely area for the new lease of approximately 330 square metres.
Value of Land and Buildings	\$844,000.
Capital Investment Required	\$222,050.
Lease Details (ie commencement, expiry etc)	Lease commencement date – 1 February 2005. Lease expiry date – 31 January 2010. No further options are provided under the lease.
Current Rental	\$175,478.76 per annum plus GST.
Market Rent Reviews	4% per annum fixed increase.
Additional Information	<ul style="list-style-type: none"><li>• The restaurant is an extremely popular St Kilda icon.</li><li>• Complaints have been received over the past two years with respect to amplified music, patron numbers and operating times.</li><li>• The tenant is currently working with Council Officers to resolve issues pertaining to the grease trap and the electrical supply to the site.</li><li>• Strong interest is anticipated in the future lease of this property.</li></ul>

**4. CONSULTATION AND STAKEHOLDERS**

4.1 Internal

4.1.1 The following areas have been consulted on this matter:

- Property and Valuations;
- Building Services;
- Statutory Planning; and
- City Development.

**5. DISCUSSION**

**5.1 OPTIONS**

5.1.2 As the subject property is Crown Land, the recommended option is to run a tender process for the future lease of the site. Alternative approaches such as issuing a fresh lease to the current tenant with no public process, or allowing the current tenant to remain in over-holding on a month by month basis for an unspecified period of time, are inconsistent with DSE policy.

Potential Lease Conditions

5.1.3 To some extent, the problems associated with the site are a product of its popularity. It is often difficult to manage a large number of patrons. Optimum use of the facility causes excessive wear and tear on the building, maximizes the need for ancillary storage space / waste disposal areas and can cause stress to building infrastructure including air conditioning and grease traps.

5.1.4 Council Officers have noted that minor differences exist between the current lease area boundary and the site plans attached to the liquor licence and planning permits. (Refer to Attachment 2 – Current Lease Area and Attachment 3 – Current Planning Permit Area). An updated survey plan is currently being prepared to clarify these minor inconsistencies.

5.1.5 As a responsible landlord, Council may seek to pare back the business operation through revised lease conditions, although this may come at a cost reflected in the value of the lease. Given the concern over planning and building issues, and to align the business more closely with current building regulations and footpath trading laws, it is suggested that lease conditions are drafted to have the following effect:

5.1.5.1 Maximum number of patrons permitted in the outdoor area at any time – 80. This item is unchanged and consistent with condition 9 of the relevant planning permit – 134/2002.

5.1.5.2 All patrons within the outdoor area are to be seated. This will bring the site into line with current footpath trading laws – Footpath Activities Local Law No 7 (2009), general condition 7 for outdoor dining.

5.1.5.3 Maximum number of patrons permitted within the restaurant premises (indoor) – 145. This represents 1 person per square metre of indoor dining space, consistent with building regulations. This constitutes a new requirement / condition for the site. A previous liquor licence for the site specified a maximum number

of 156 patrons. At present, the current liquor licence does not provide a maximum patron number.

- 5.1.5.4 A reduction in the hours of operation to Monday - Sunday, 7 am to 1 am the following day.

Planning permit number 656/1999 for an on premises liquor licence refers to trading hours of Monday to Saturday 7am to 7am the following day and Sunday 10am to 7am the following day. This permit was issued prior to the outside area coming on line. The current liquor licence for the site further restricts the trading hours stated above to:

Inside area: Monday to Saturday 7am to 3am the following morning, Sunday between 10am to 3am the following morning.

External area: Monday to Saturday 7am to 1am the following morning, Sunday between 10am and 1am the following morning.

It is anticipated that this amendment, which will bring the indoor and outdoor trading hours into alignment, will modify current alcohol related and streetscape interface issues.

- 5.1.5.5 The Tenant is required to carry out regular maintenance of the premises including the following items - clearing gutters of debris, clearing grease traps, air conditioning servicing, inspection and maintenance related to Essential Safety Measures.
- 5.1.5.6 The Tenant will provide the Landlord with unimpeded access to the premises for a period of 3 months to affect any necessary building compliance and occupational health and safety related works. Access for any additional structural works will be negotiated with the Tenant.

#### Tender assessment

- 5.1.5.7 If Council proceeds to conduct a tender for the lease of 71A Acland St, then the tender assessment process will take into account price, operational restaurant / café experience, business plan viability, and the capacity to make a cultural contribution to the area. Sensitivity to users of O'Donnell Gardens will be required. Tenderers will also be asked to demonstrate in their proposal how they will comply with planning permits, regulations, local laws and the lease boundary.

5.2 ALIGNMENT TO COUNCIL PLAN

5.2.1 The Council Plan requires that the property portfolio be managed in an efficient and effective manner with adherence to good governance principles.

5.3 POLICY IMPLICATIONS PLAN

5.3.1 Policy context for this site includes:

5.3.1.1 Council's Property Policy and Strategy which suggests that the following key objectives should apply to this site:

5.3.1.2 Maximise value for money;

5.3.1.3 Contribute to economic growth; and

5.3.1.4 Use Council property to influence cultural vitality.

5.3.2 The St Kilda Foreshore Urban Design Framework, which comments generally on the foreshore area and supports an extension of footpath space on the north side of O'Donnell Gardens near 71A Acland St.

5.4 FINANCE / RESOURCE IMPLICATIONS

Building Condition

5.4.1 A comprehensive condition assessment has provided a clear understanding of the current condition of the building and the necessary remedial work required to bring it to the desired service level, ie a restaurant.

5.4.2 The report indicates that whilst still in a functioning state and having been renovated approximately 5 – 6 years ago, the building and the site infrastructure are generally in poor condition with a number of maintenance related defects, occupational health and safety hazards and non compliance requiring immediate rectification by Council. Scheduled maintenance over the next five years will also be required to prevent the site degrading any further.

These items are summarised as follows:

**Table 2: Building Repairs Cost Estimate**

Condition Defects	Cost Estimate
Items to be addressed immediately	\$91,050
Items to be addressed within 12 months	\$83,250
Items to be addressed within 1 – 3 years	\$37,300
Items to be addressed within 3 – 5 years	\$10,450
Total	\$222,050

5.4.3 Undertaking the immediate repairs will necessitate unimpeded access to the premises for a period of 3 months. This could occur prior to the lease commencement date in the event of a tenant changeover, or during the term of the new lease.

## 5.5 LEGAL & RISK IMPLICATIONS

### Process and Legislative Requirements

- 5.5.1 Council is required to comply with the provisions of the Retail Tenancies Reform Act 1998 and serve a “Notice of Landlord’s Intention Not to Offer a Renewal of Lease” on the current tenant. This Notice was duly served on 10 July 2009.
- 5.5.2 The Minister for Environment and Climate Change (“Minister”) must approve the grant and purpose of any new lease for the site. As the land was set aside as both a plantation and gardens under Section 4(1)(w) of the CLRA, an Order regarding the proposed use and the agreement length must be published in the Government Gazette and tabled in both Houses of Parliament for 5 sitting days. If no motions to disallow are received, the Minister may then proceed to issue in principle approval for the proposed lease. It is anticipated that the matter will proceed through Parliament in the October / November 2009 sitting cycle.
- 5.5.3 In issuing any new lease agreement for the property, Council Officers suggest that the statutory advertising process outlined in Sections 190 and 223 of the Local Government Act 1989 (“LGA”) is also appropriate. These Sections include the requirement to publish a notice regarding the intention to enter into a lease agreement and receive submissions on the matter.

**6. IMPLEMENTATION STRATEGY**

6.1 TIMELINE

6.1.1 An indicative project timeline is shown below:

**Table 3: Project Timeline**

Council resolution to commence proposed tender process	24 August 2009
Advertise tender	September 2009
Apply to DSE for Ministerial grant and purpose to the proposed lease. DSE to prepare Order for tabling in Parliament	September 2009
Close Tender	October 2009
Order is considered by Parliament (October / November sitting period).	October /November 2009
Evaluate tender submissions	November 2009
Council decision on preferred tenderer, commencement of LGA Section 190 and 223 processes.	December 2009
Consideration of submissions received and finalisation of Section 190 and 223 processes.	February 2010
Lease preparation and execution.	February / March 2010

6.2 COMMUNICATION

6.2.1 Council's decision with respect to the site will be noted in the tender advertisement and the tender documentation.

**7. OFFICER DIRECT OR INDIRECT INTEREST**

7.1 No officers involved in the preparation of this report have any direct or indirect interest in the matter.

**ORDINARY COUNCIL MEETING  
24 AUGUST 2009**

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<b>9.</b>	<b>OMBUDSMAN VICTORIA REPORT</b>
<b>LOCATION/ADDRESS:</b>	<b>N/A</b>
<b>EXECUTIVE DIRECTOR:</b>	<b>CATHY HENDERSON, ACTING EXECUTIVE DIRECTOR ORGANISATION SYSTEMS &amp; SUPPORT</b>
<b>PREPARED BY:</b>	<b>CATHY HENDERSON</b>
<b>FILE NO.:</b>	
<b>ATTACHMENTS:</b>	<b>1. IMPLEMENTATION OF OMBUDSMAN VICTORIA RECOMMENDATIONS</b> <b>2. OMBUDSMAN VICTORIA – A REPORT OF INVESTIGATIONS INTO THE CITY OF PORT PHILLIP</b>

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**1. EXECUTIVE SUMMARY**

- 1.1 Ombudsman Victoria has released a report about a range of procurement, governance, conflict of interest and misconduct matters at the City of Port Phillip, and made a series of recommendations. The report was tabled in Parliament on 12 August 2009.
- 1.2 The Mayor has publicly indicated that all recommendations of the Ombudsman's report will be implemented.
- 1.3 This council report summarises how implementation of the Ombudsman's Recommendations will occur.

**2. RECOMMENDATION**

That Council:

- 2.1 Receives the Ombudsman Victoria report 'A report of investigations into the City of Port Phillip'.
- 2.2 Endorses the implementation of all recommendations set out in the Ombudsman Victoria report.
- 2.3 Requests that regular progress reports on implementation be provided to the Audit Committee and to the Council.

**3. BACKGROUND AND CONTEXT**

- 3.1 The Ombudsman conducted investigations into the City of Port Phillip as a result of whistleblower disclosures in 2007 and 2008 and also as part of an 'own motion' enquiry into procurement commenced in July 2008.
- 3.2 The Ombudsman's report is included here as Attachment 2.

- 3.3 Wider context for the report includes:
- 3.3.1 The council elected in November 2008 has a strong commitment to be transparent and accountable in its decision making. New governance principles have been adopted which sets out the council's commitment to good governance.
  - 3.3.2 In the time since the period which was investigated in the report, significant personnel and structural changes have taken place. The Council appointed a new Chief Executive Officer, who commenced on 18 May 2009. Four new General Managers are commencing in late August and September 2009.
  - 3.3.3. In 2009 the Council has strengthened Audit Committee's terms of reference with clearer process and accountability requirements.
  - 3.3.4 The CEO has appointed a Manager Internal Audit who will coordinate reviews and improvements to a range of council's processes, systems and overall control environment.
  - 3.3.5 The Council commissioned an external review of tendering processes, practices and documentation which was received in August 2008. Nineteen of the actions recommended in that report have been completed, with three actions well underway.
  - 3.3.6 Tendering has been centralised with a new Contracts Unit created within the Governance & Risk department in February 2009. A new tendering policy was adopted in April 2009 setting out a strong accountability framework and new tendering processes. This policy was subject to internal audit immediately after its development and was assessed as "strong" in policy, procedures and control environment.
  - 3.3.7 An array of staff training has taken place, as part of a comprehensive staff training approach. Training sessions in the past six months have included training in compliance, conflict of interest and tendering.
  - 3.3.8 Restrictions in the purchasing system have been strengthened, including a requirement that each purchase order raised must now be authorised by the initiating officer's supervisor.

## 4. DISCUSSION

The Ombudsman's report sets out 21 recommendations. Commentary on the implementation of each of these recommendations is set out at Attachment 1.

### 4.1 ALIGNMENT TO COUNCIL PLAN

- 4.1.1 The Council Plan 2009-2013 addressed the anticipated Ombudsman report as part of Council's key direction of "Engaging and governing the City" and Council's commitment to good governance and transparent decision-making.
- 4.1.2 The Council Plan, under strategy 1.4.2, commits to "ensuring a strong commitment to ethical behaviour and a culture of compliance with

legislation". One of the actions associated with this strategy is "Respond to any issues arising from the Ombudsman's report".

**4.2 POLICY IMPLICATIONS**

4.2.1 The Ombudsman's recommendations include recommendations to review and amend purchasing and tendering policies.

**4.3 FINANCE / RESOURCE IMPLICATIONS**

4.3.1 A range of organisational changes have taken place since the last Council election in November 2008 including the engagement of the Manager Internal Audit.

4.3.2 Additional resources have already been allocated to the centralised tendering unit (Contracts Unit).

4.3.3 Further resource reallocations may be required in order to support the implementation of the Ombudsman's recommendations.

**4.4 LEGAL & RISK IMPLICATIONS**

4.4.1 The Ombudsman Victoria report outlines a range of areas where the Council needs to take action. There are significant legal and reputation risks.

**5. OFFICER DIRECT OR INDIRECT INTEREST**

5.1 No officers involved in the preparation of this report have any direct or indirect interest in the matter.

**9. REPORTS BY COUNCILLOR DELEGATES APPOINTED TO  
OTHER BODIES**

**10. URGENT BUSINESS**