



9.1 VICTORIAN PRIDE CENTRE S173 LICENCE (BUILDING PROJECTIONS)

EXECUTIVE MEMBER: CHRIS CARROLL, GENERAL MANAGER, CUSTOMER AND CORPORATE SERVICES

PREPARED BY: EMMA MURDOCH, HEAD OF PROPERTY OPERATIONS

1. PURPOSE

- 1.1 To seek approval to enter into a licence agreement with the Victorian Pride Centre (VPC) under a Section 173 of the *Planning and Environment Act 1987* for the building projections over part of Fitzroy Street as per their development plans included within the approved Incorporated Document.

2. EXECUTIVE SUMMARY

- 2.1 On 20 April 2016, the State Government announced that \$15 million had been allocated from the 16/17 State Budget to the establishment of a Victorian Pride Centre.
- 2.2 On 16 December 2016 Council made a submission to the VPC for a value of up to \$13M which was supported by a Strategic Business Case that identified that Council's investment would deliver an additional \$46 million of socio-economic benefits to the precinct over the next 20 years and provide capacity for health care, advisory and support services for LGBTIQ members.
- 2.3 On 17 March 2017, the State Government announced that Fitzroy Street, St Kilda will become the home of the Victorian Pride Centre. On the same day CoPP also announced that following a competitive selection process, it was successful in its bid for St Kilda to be location for the New Pride Centre.
- 2.4 To facilitate the proposed use and development, the Victorian Pride Centre Board asked that Council request the Minister for Planning to prepare and approve an amendment to the Port Phillip Planning Scheme in relation to 3/77 and 79-81 Fitzroy Street, St Kilda.
- 2.5 The Amendment C149 introduces a site-specific control into the Port Phillip Planning Scheme to facilitate the use and development of the Victorian Pride Centre which includes an amendment to Clause 52.03 to include reference to the Incorporated Document '*Victorian Pride Centre - June 2018*'
- 2.6 The Incorporated Document comprises the development plans and associated conditions including projections and functions in a similar manner to those required for a planning permit. This document forms part of the planning scheme and replaces the planning permit approval process.
- 2.7 After considerable consultation, at the Ordinary Meeting of Council on 5 September 2018, Council decided to request that the Minister for Planning prepare and approve Amendment C149 to the Port Phillip Planning Scheme, pursuant to Section 20(4) of the *Planning and Environment Act 1987*.
- 2.8 On the 15 November 2018 the Minister for Planning approved the Amendment C149 and VPC are now in the process of implementing their development.



- 2.9 Under Condition 31 of this Incorporated Document, the VPC is required to enter into an agreement under Section 173 of the Planning and Environment Act 1987 prior to starting works for the building projections over Fitzroy Street.
- 2.10 On the 27 August 2019, the VPC wrote to Council requesting consideration for a nominal fee for the licence required under Condition 31 of the Incorporated Document for the street projections included in their design.
- 2.11 The estimated once-off licence fee for the projection over a 50-year occupancy is \$486,060.75.
- 2.12 As the overall project represents a significant part of the regeneration of Fitzroy Street and Council has provided previous support for the centre, it is recommended that the licence fee be recognised as an additional gift to the VPC to assist in the development.

3. RECOMMENDATION

That Council:

- 3.1 Authorises the Chief Executive Officer or delegate to enter into a licence agreement with the Victorian Pride Centre (VPC) under Section 173 of the Planning and Environment Act 1987 for the building projections over part of Fitzroy Street as per the development plans included within the approved Incorporated Document.
- 3.2 Charges a licence fee of \$1 for the projection estimated at a value of \$486,060.75, and recognises the amount forgone as an additional contribution to the VPC to assist in the development of the centre.

4. KEY POINTS/ISSUES

Background

- 4.1 On 20 April 2016, the State Government announced that \$15 million had been allocated from the 16/17 State Budget to the establishment of a Victorian Pride Centre.
- 4.2 On 11 November 2016 PWC, on behalf of the Victorian Pride Centre (VPC), issued an invitation to the City of Port Phillip to submit an expression of interest for the provision of a site/s to enable the establishment of Australia's first Pride Centre in Melbourne.
- 4.3 On 13 December 2016 Council, in a closed meeting to protect the integrity of the commercial expression of interest process being undertaken, authorised the CEO to submit an expression of interest to PWC on behalf of the Victorian Pride Centre, and a submission was made by the due date of 16 December 2016.
- 4.4 Council's decision to make a submission valued at up to \$13M was supported by a Strategic Business Case that identified that Council's investment would deliver an additional \$46 million of socio-economic benefits to the precinct over the next 20 years and provide capacity for health care, advisory and support services for LGBTIQ members.
- 4.5 On 17 March 2017, the State Government announced that Fitzroy Street, St Kilda will become the home of the Victorian Pride Centre. On the same day CoPP also announced that following a competitive selection process, it was successful in its bid for St Kilda to be location for the New Pride Centre.



- 4.6 To facilitate the proposed use and development, the Victorian Pride Centre Board asked that Council request the Minister for Planning to prepare and approve an amendment to the Port Phillip Planning Scheme in relation to 3/77 and 79-81 Fitzroy Street, St Kilda.
- 4.7 The Amendment C149 introduces a site-specific control into the Port Phillip Planning Scheme to facilitate the use and development of the Victorian Pride Centre which includes an amendment to Clause 52.03 to include reference to the Incorporated Document '*Victorian Pride Centre - June 2018*'. A copy of the explanatory notes to the Amendment can be found in Attachment 1.
- 4.8 The Incorporated Document comprises the development plans and associated conditions including projections and functions in a similar manner to those required for a planning permit. This document forms part of the planning scheme and replaces the planning permit approval process.
- 4.9 On the 20 June 2018, Council resolved to undertake community consultation and seek feedback before forming its views on the proposed development. An independent advisor was engaged to undertake a review of these submissions.
- 4.10 Responses received from the community were generally positive with some specific concerns raised requiring further consideration and some changes to the detail of the Amendment.
- 4.11 The Independent Advisor provided overall support for Amendment C149 to proceed subject to a range of specific considerations and changes.
- 4.12 At the Ordinary Meeting of Council on 5 September 2018, Council decided to request that the Minister for Planning prepare and approve Amendment C149 to the Port Phillip Planning Scheme, pursuant to Section 20(4) of the Planning and Environment Act 1987.
- 4.13 On the 15 November 2018 the Minister for Planning approved the Amendment C149 and VPC are now in the process of implementing their development.
- 4.14 Under Condition 31 of this Incorporated Document, the VPC is required to enter into an agreement under Section 173 of the Planning and Environment Act 1987 prior to starting works for the building projections over Fitzroy Street.

Section 173 Agreement

- 4.15 The Incorporated Document outlines the conditions regarding the projections over Fitzroy Street including matters to the satisfaction of Council, including arrangements to deal with (but not be limited to) the following matters:
 - Licence – term, no easements of support, licence fee and payment, no claim by adverse possession
 - Maintenance and compliance with laws – construction requirements, repair and maintenance, no alterations, cleaning, compliance with laws, make good arrangements
 - Nuisance
 - Indemnities in favour of Council
 - Insurances



- Rights for council to access

- 4.16 On the 27 August 2019, the VPC wrote to Council requesting consideration for a nominal fee for the licence required under Condition 31 of the Incorporated Document for the street projections included in their design.
- 4.17 Officers are in the process of finalising this document and are now seeking approval to enter this agreement.

Licence fee

Estimate

- 4.18 Using the valuation methodology used for similar airspace valuation at 211 Park Street South Melbourne, we have been able to determine an estimated licence fee for the subject airspace expressed as a percentage of return on the market value of the subject land.
- 4.19 Land values within the commercial precinct of St Kilda are considered to be within the range of \$7,000 - \$11,000 per square metre. In this instance a mid-rate of \$9,000 per square metre has been applied.
- 4.20 The area of encroachment by the projection over road has been calculated at 113.40 sqm resulting in an estimated land value of \$1,020,600.
- 4.21 Whilst Council is not the registered owner of the Land in question, we have an interest in the land (being recognised as a footpath/ road). Given that Council has dominant interest in the land, a 25% discount has been considered appropriate on this value given that the private, non-Council interest is largely servient to the road designation. The reduced estimated value of the portion of road on this basis has been reduced to \$765,450 representative of Council's estimated 75% interest in the land.
- 4.22 If this is the cost to purchase the subject land, we need to consider the present value of Council's interest after it returns to Council's ownership to determine an appropriate upfront licence fee.
- 4.23 Assuming the space is quarantined for 50 years, Council's interest in the subject land after the licence period is estimated to be 36.5% of its initial value (assuming a 5% discount rate). This means that the licence interest is estimated at 63.5% of the present value over an estimated 50-year occupancy.
- 4.24 Therefore, it is considered that the estimated once-off licence fee for a 50-year occupancy is $\$765,450 \times 63.5\% = \$486,060.75$

Analysis

- 4.25 This projection as was agreed in the development plans that form part of Incorporated Document which was endorsed by Council on 5 September 2018.
- 4.26 The project will involve investment of over \$50 million and will also represent a significant part of the regeneration of Fitzroy Street as well generating a high level of local spend and creating employment through both the construction stage and the ongoing operation of the centre.
- 4.27 Council has provided previous support for the centre and entered an original expression of interest process to bid for the centre and provided a submission valued at up to \$13M.



- 4.28 The expected use for the airspace does not appear to be a detriment to the current use of the road/footpath.
- 4.29 The projections for the portico attached to the main building is an essential component of what is generally regarded as an iconic design of the building approved by Council.

Recommendation

- 4.30 Based on the above analysis, it is recommended that the licence fee be recognised as an additional gift to the VPC to assist in their development.

5. CONSULTATION AND STAKEHOLDERS

- 5.1 Significant consultation has occurred for this project to date including consultation with key stakeholders and the general community on the initial contribution of the land as well as the Incorporated Document.

6. LEGAL AND RISK IMPLICATIONS

- 6.1 The delay in receiving this document can have significant adverse impacts on the VPC as if the development is delayed, they will be exposed to delay claims from their contractor.
- 6.2 The contractor intends on installing foundations towards the end of September 2019 which is the latest date the license could be executed.

7. FINANCIAL IMPACT

- 7.1 The original proposal offered a Council contribution up to a value of \$13M through provision of land and funding for land for the purposes of the development.
- 7.2 While a formal market valuation has not been sought, valuation methodology used for similar agreements has been used to determine a once off licence fee estimated at around \$486,060.75.
- 7.3 The project will involve investment of over \$50 million and will also represent a significant part of the regeneration of Fitzroy Street as well generating a high level of local spend and creating employment through both the construction stage and the ongoing operation of the centre.

8. ENVIRONMENTAL IMPACT

- 8.1 The subject site is urban in character however does have some existing landscaping present, particularly along the Jackson Street boundaries. The proposal responds to this by seeking to retain the two Peppercorn Trees along the eastern edge of the site, subject to arboricultural advice.
- 8.2 The project includes landscaping on all levels of terracing and outdoor amenity spaces, and along with the contemporary and iconic design of the building, is expected to produce positive impacts on the Fitzroy Street environment.
- 8.3 Environmental improvements will be further addressed through conditions of the incorporated document requiring the preparation of a sustainability management plan prior to the development of the site commencing.



9. COMMUNITY IMPACT

9.1 The case for Council's continued investment in the Pride Centre is built around the economic and social impact of additional demand from a socially contributory anchor institution, including that it would:

- Deliver on Council's Urban Renewal objectives by attracting \$15,000,000 – \$25,000,000 in investment to the section of Fitzroy Street most affected by commercial and social underperformance (between Grey and Acland Streets).
- Cement the City and community of Port Phillip's place as a recognised leader on the rights, well-being and inclusion of LGBTI community members.
- Provide a safe community and organising space to promote inclusion, health and wellbeing of LGBTI people, and build capacity within the LGBTI community.
- Act as a major visitor attractor, enhancing St Kilda's role as an iconic visitor destination and generating ongoing economic activity and employment.
- Catalyse a process of rejuvenating Fitzroy Street through increased passive surveillance, day-time demand and social diversity, fuelled by an iconic and socially contributory anchor institution.
- An increase in daytime trade for existing retailers due to the new local staff, and the additional volunteers housed at the Pride Centre.
- New volunteers, visitors, tourists and shoppers in Fitzroy Street each day drawn to a safe and vibrant destination.
- A more diverse mix of retail and other businesses for locals and visitors along Fitzroy Street, due to the interest and activities at the Pride Centre.
- Act as a social, cultural and political hub for LGBTI communities.
- New local jobs at the Pride Centre and during its construction phase.

10. ALIGNMENT TO COUNCIL PLAN AND COUNCIL POLICY

10.1 Establishing a Victorian Pride Centre represents a significant and potentially game changing opportunity for Fitzroy Street, St Kilda. Successfully securing the Victorian Pride Centre for Fitzroy Street would contribute to:

- Strategic Direction 1 - We embrace difference and people belong
- Strategic Direction 4 - We are growing and keeping our character
- Strategic Direction 5 - We thrive by harnessing creativity

10.2 The City of Port Phillip has a long standing commitment to social diversity and the inclusion and well-being of LGBTI community members.

11. IMPLEMENTATION STRATEGY

11.1 TIMELINE

- 11.1.1 Officers will organise to execute the section 173 agreement under delegation in line with the agreed recommendations from this report.



ORDINARY MEETING OF COUNCIL 18 SEPTEMBER 2019

11.2 COMMUNICATION

- 11.2.1 Officers will advise directly with the Victorian Pride Centre of the outcomes of this Ordinary Meeting.

12. OFFICER DIRECT OR INDIRECT INTEREST

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

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ATTACHMENTS 1. Attachment 1: Amendment c149 Explanatory Report