



14.3 SOUTH MELBOURNE MARKET CHARTER

EXECUTIVE MEMBER: KYLIE BENNETTS, DIRECTOR, OFFICE OF THE CEO

PREPARED BY: IAN SUMPTER, MANAGER SOUTH MELBOURNE MARKET

1. PURPOSE

- 1.1 To seek Council endorsement of a revised Charter and governance arrangements for the management of the South Melbourne Market (SMM).

2. EXECUTIVE SUMMARY

- 2.1 Since August 2012, there have been various reviews of the governance of the SMM. Each found the Section 86 Charter did not give the Committee sufficient powers to operate a commercial entity such as the SMM effectively. The reviews highlighted that the Committee was only advisory to Council except for having the delegation to approve leases and licences
- 2.2 These reviews pointed to corporatized arrangements used to manage other markets in Victoria and interstate, as being more appropriate management mechanisms.
- 2.3 There are three (3) governance options available to the Council to manage the SMM: - a proprietary company; Section 86 Committee or a department within the Council administration. Each governance structure has a range of benefits and disadvantages.
- 2.4 Throughout July and August 2018, officers have reviewed previous work and undertaken an assessment of the three (3) governance options against a range of criteria that have been identified as being important to the Council and the ongoing success of the SMM.
- 2.5 After undertaking this assessment and considering the governance structures used at other markets in Victoria and interstate, officers are of the view that on balance, at this point in time, it would be more efficient and effective to establish a greater level of independence by strengthening the current Section 86 Committee. This would require Council to undertake a significant restructure of the Charter, Committee membership and most importantly how the SMM Manager reports to the Committee and Officers at CoPP.
- 2.6 This report recommends a significant change to the Section 86 Committee Charter, Committee Membership and Instrument of Delegation. These documents, once endorsed, will replace the current documents as at 1 March 2019. This will provide an opportunity to put in place appropriate transition arrangements.
- 2.7 This would not preclude the Council from pursuing the establishment of a propriety company at some point in the future if it held the view that the restructure of the Section 86 Committee was not fulfilling the needs of Council, traders and the SMM in general.



3. RECOMMENDATION

That Council:

- 3.1 Revokes the previous Charter of the South Melbourne Market dated 18 October 2017 effective from midnight on 28 February 2019, following which this Charter will have no further effect.
- 3.2 Endorses the Charter of the South Melbourne Market as outlined in **Attachment B** to this report, which will take effect from 1 March 2019.
- 3.3 Revokes the previous Instrument of Delegation as dated 18 October 2017, effective from midnight on 28 February 2019, following which this Instrument will have no further effect.
- 3.4 Endorses and affixes the common seal to the Instrument of Delegation as outlined in **Attachment D** to this report, which will take effect from 1 March 2019.

4. KEY POINTS/ISSUES

- 4.1 Over the years there have been various reports commissioned by the Council into the governance of the SMM. These found the current Section 86 Charter and Instrument of Delegation did not give the Committee sufficient powers to operate a commercial entity effectively. The reviews highlighted the Committee was only advisory to Council except for having the delegation to approve leases and licences. The current Charter and Instrument of Delegation are included in Attachments A and B of this report.
- 4.2 These reviews pointed to corporatized arrangements used in Victoria and interstate, as being more appropriate mechanisms.
- 4.3 Since these reports were commissioned, a range of changes have been made by the Council and officers to respond to the findings, for example changes to the Charter, Committee membership and staffing arrangements at the Market. Some of these changes have been positive, however it is fair to say that the desired outcome of Council and expectations of Committee members around greater independence has not yet been fully realised. The challenges faced in moving towards greater independence have included the complexities of asset management requirements of the Market, employment arrangements for existing Market staff and the potential costs involved in setting up and maintaining a stand-alone proprietary company as corporate support service functions are currently provided by the CoPP to the SMM and the true cost of these services is not accounted for separately at this point in time
- 4.4 There are three (3) governance options available to the Council to manage the SMM:
 - 4.4.1 Proprietary company constituted under the Corporations Act – in this option the Council would establish a standalone company of which it would be the sole shareholder. This company would have a board of management, employ all staff required to manage the operations of the Market, would need to fulfil or source all corporate service functions including company secretary



responsibilities. Under this model the Council would appoint the Board and protect its rights through a Management Agreement.

- 4.4.2 Section 86 committee constituted under the Local Government Act – in this option the Council would significantly alter the current Charter of the SMM, membership of the Committee and reporting relationship between SMM staff, the Committee and the Council. It is worth noting that while this arrangement is not used by other Victorian Councils to manage produce and general goods markets, a number of Councils use these arrangements to manage a wide variety of activities often with commercial and community service objectives for example regional airports, cemeteries, community facilities and leisure centres.
- 4.4.3 Department within the Council administration – under this option the Council would establish a Department within the Council administration and disband the Section 86 Committee. Where direction was required outside of delegation or on contentious matters these would be reported to Council for decision.
- 4.5 Officers have undertaken an assessment of the three (3) available models, against a range of criteria identified as being important to Council and the ongoing success of the SMM. These criteria include: -
 - 4.5.1 Create an environment where the SMM is as independent as possible;
 - 4.5.2 Enable the SMM staff to have as simple a reporting line as possible;
 - 4.5.3 Enable the SMM Board and staff to focus on the strategic and operational management of the SMM rather than corporate support functions;
 - 4.5.4 Ensure the Council (i.e. the elected body, not the administration) retains sufficient control over the outcomes and financial sustainability of the SMM;
 - 4.5.5 Continue to build on the strong performance and community attachment with the SMM so this is maintained and grown;
 - 4.5.6 Sufficiently manage financial and asset management risk for the Council;
- 4.6 The assessment uses the following ratings which were informed by the experiences and outcomes being experienced by markets in Victoria and interstate: -
 - 4.6.1 High – 80% or more likelihood that the proposed model will contribute highly to the desired criteria;
 - 4.6.2 Moderate – 60% or more likelihood that the proposed model will contribute to the desired criteria;
 - 4.6.3 Low – less than 60% likelihood that the proposed model will contribute to the desired criteria.
- 4.7 The assessment itself is outlined below.

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Criteria	Proprietary Company	Restructured Section 86 Committee	Council Department
Create an environment where the SMM is as independent as possible	High	Moderate	Low
Enable the SMM staff to have as simple a reporting line as possible	High	Moderate	High
Enable the SMM Board and staff to focus on the strategic and operational management of the SMM rather than corporate support functions¹	Moderate	High	N/A
Ensure the Council (i.e. the elected body, not the administration) retains sufficient control over the outcomes and financial sustainability of the SMM	Moderate	High	Moderate
Continue to build on the strong performance and community attachment with the SMM so this is maintained and grown	May create opportunities but also creates risk	High	May create opportunities but also creates risk
Sufficiently manage financial and asset management risk for the Council.²	Low to moderate	High	High

4.8 After undertaking the assessment on the previous page, and considering the governance structures used at other markets in Victoria and interstate, as well as governance structures used by other Victorian Councils to manage significant operations e.g. regional airports, cemeteries and leisure centres, officers are of the view that on balance, and at this point in time, the best governance mechanism for establishing a greater level of independence is strengthening the current Section 86 Committee.

4.9 It is acknowledged that Council has previously made changes to the charter and committee membership and it is fair to say has not been satisfied with the level of independence achieved to date. However, officers are of the view that a significant restructure of the Charter, Committee membership and most importantly the way the SMM Manager reports to and interacts with the Committee and Officers at CoPP could provide this independence and potentially form the first step towards a corporatized entity at some point in the future if the Council still wished to pursue this arrangement. This would provide an opportunity to continue to undertake work to clarify the asset management compliance requirements as well as exploring the true cost of corporate support services currently provided by the City of Port Phillip.

¹ At present, corporate support services provided to the SMM by the City of Port Phillip do not form part of the SMM budget. Any move to a proprietary company would require the true costs of these services to be calculated and appropriate provisions made in the SMM budget.

² The primary reason for this assessment is the unquantified risk associated with the asset management requirements for the SMM. In any move to a proprietary company, asset management is a key consideration and is often a sticking point between the Council and the proprietary company in terms of roles and responsibilities. Officers are currently undertaking a project to establish a building compliance assessment for the SMM, however the findings of this work are not yet known.



- 4.10 In light of this assessment, officers have drafted a new Charter for the Section 86 Committee. The previous and proposed new Charter for the Section 86 Committee are attached as **Attachment A and B** respectively. The key changes in the proposed Charter include:-
- 4.10.1 A far more extensive and strategic focus for the Committee with clearer roles and responsibilities;
 - 4.10.2 A revised and smaller membership of the Committee;
 - 4.10.3 Changes to the way the SMM Manager interacts with the Committee and the City of Port Phillip;
 - 4.10.4 Clearer roles, responsibilities and expectations of the City of Port Phillip.
- 4.11 To complement the changed focus for the Committee the Instrument of Delegation has also been revised. The previous and proposed Instrument of Delegation are attached as **Attachment C and D** respectively.
- 4.12 To ensure appropriate transition to the new arrangements it is proposed that the new Charter and Instrument of Delegation take effect from 1 March 2019.

5. CONSULTATION AND STAKEHOLDERS

- 5.1 Consultation and engagement was undertaken with Councillor representatives on the current Section 86 Committee and Councillors more generally.
- 5.2 The current independent committee members of the Section 86 Committee were also advised of the proposed approach.

6. LEGAL AND RISK IMPLICATIONS

- 6.1 Council's legal advisors have provided advice to Council on this matter over a period of time. They have also specifically reviewed the proposed Charter and Instrument of Delegation contained as attachments to this report

7. FINANCIAL IMPACT

- 7.1 The approach proposed in this Council report has a low financial impact on the Council. There may be some changes required to the remuneration of independent members on the Committee but this will be subject to a further report to the Council, following adoption of the Charter and proposed Instrument of Delegation and prior to any recruitment process commencing.

8. ENVIRONMENTAL IMPACT

- 8.1 The approach proposed in this report provides the Council with an opportunity to ensure that environmental priorities and goals are pursued by the Committee.

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9. COMMUNITY IMPACT

- 9.1 The approach proposed in this report provides the Council with an opportunity to ensure that community impact is managed appropriately.

10. ALIGNMENT TO COUNCIL PLAN AND COUNCIL POLICY

- 10.1 The review of the governance of the SMM and in particular the Committee, has been a Council priority for some time. This report responds to that priority.

11. IMPLEMENTATION STRATEGY

11.1 TIMELINE

Officers will use best endeavours to meet the following timelines: -

- 11.1.1 20 October 2018 – Council report on recruitment approach for independent members, including remuneration;
- 11.1.2 21 October – November 2018 – recruitment of independent members;
- 11.1.3 5 December 2018 – report to Council seeking to appoint independent members;
- 11.1.4 December – February 2019 – onboarding of independent members and development of operating agreement;
- 11.1.5 March 2019 – new charter, instrument of delegation and Committee take effect.

11.2 COMMUNICATION

- 11.2.1 Current independent Committee members will be advised as soon as possible of Council's decision.
- 11.2.2 A broader communication and engagement plan is being developed to inform stallholders and community.

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 A – Revoked Charter of the South Melbourne Market
2. Attachment B – New Charter of the South Melbourne Market
3. Attachment C – Revoked Instrument of Delegation
4. Attachment D – Proposed Instrument of Delegation