

Management report to Council

Agenda item 6.5

Proposed Change to the Structure of the Sustainable Melbourne Fund

Council

Presenter: Geoff Lawler, Director City Operations

28 July 2015

Purpose and background

1. The purpose of this report is to seek approval of a proposal (Attachment 2) by the Trustees of the Sustainable Melbourne Fund (SMF) that its trust deed be varied to establish a Corporate Trustee and to extend Council's agreement with the SMF for it to administer environmental upgrade agreements (EUAs).
2. SMF is a unit trust for which the Council is the sole beneficiary. It was created in 2002 with the approval of the Minister for Local Government and the Treasurer. Its charter and trust deed have been modified since on several occasions with further Ministerial approvals.
3. The SMF was originally created to invest in sustainable projects and services through management of a revolving fund. The Trustees have not taken fees for their work. The Trustees now have two streams of work; the original financial investment role and the administration of EUA (for which it may also be a financier). The administration of EUAs is likely to be an expanding market for the SMF as a consequence of legislation in the Victorian Parliament to extend the EUA powers in the *City of Melbourne Act 2001* to all Victorian local governments by amendments to the *Local Government Act 1989*.

Key issues

4. Currently, the Trustees are individually liable for the administration of SMF. This requires the agreement of all Trustees for decision-making. The Trustees believe that the existing arrangements are too cumbersome for its expanding role and have recommended varying the trust deed to establish a corporate trustee. It is management's view that the proposed change is desirable to enable the SMF to more efficiently carry out its charter.
5. The proposed change to the trust deed (and any consequential changes to the charter) will require the approval of the Minister for Local Government and if Council agrees an appropriate submission will be developed by management.
6. Administration of EUAs by the SMF for Council has been subject to an agreement that was entered into in 2012 and expired on 30 June 2015. Management has arranged for the service to continue under a short-term agreement till 31 October 2015. The original agreement was exempt from a tender process by approval of the Minister for Local Government under section 186(5)(c) of the *Local Government Act 1989*. Management recommends that the services continue to be sourced from the SMF because of its unique experience and to support its ability to offer the same to other Victorian Councils. Reappointment without tender will require another approval from the Minister for Local Government.
7. Aside from an initial once-off payment of \$60,000 in 2012-13, the SMF has not received payment from the Council for the administration of EUAs but is entitled to charge fees to applicants. A future agreement would maintain this arrangement.

Recommendation from management

8. That Council:
 - 8.1. Approves the variation of the Sustainable Melbourne Fund trust deed and charter to establish a corporate trustee and authorises the Chief Executive Officer to seek the necessary approvals from the Victorian Government.
 - 8.2. Authorises the Chief Executive Officer to enter into a new agreement with the trustees of the Sustainable Melbourne Fund to administer environmental upgrade agreements for the Council for a period of up to five years, subject to the granting of an exemption by the Minister for Local Government under section 186(5)(c) of the *Local Government Act 1989*.

Attachments:

1. Supporting Attachment
2. Letter from the Sustainable Melbourne Fund

Supporting Attachment

Legal

1. Even though the EUA administration agreement is effectively at no cost to Council, it requires an exemption by the Minister for Local Government from the requirement to seek open tenders because the value of the services provided over a number of years will exceed the statutory threshold of \$150,000.

Finance

2. The preparation of the necessary documents to establish a corporate trustee is estimated to cost \$40,000. This can be met within the existing Council budget.

Conflict of interest

3. No member of Council staff, or other person engaged under a contract, involved in advising on or preparing this report has declared a direct or indirect interest in relation to the matter of the report.

Stakeholder consultation

4. The only external stakeholder consultation undertaken has been with the Trustees of the Sustainable Melbourne Fund. If Council agrees to the recommendation, consultation will be undertaken with relevant State Government Departments to support a submission to government.

Relation to Council policy

5. The recommendation will assist implementation of Council's *Zero Net Emissions by 2020* policy, particularly in relation to the encouragement of renewable energy and energy efficiency.

Environmental sustainability

6. Refer to paragraph 6.



15 May 2015

City of Melbourne,
Attn: Ben Rimmer, CEO.
City of Melbourne
GPO Box 1603
Melbourne VIC 3001

Dear Ben,

RE: SMF corporate Trustee

Over the past 2 years, SMF has been operating its business in accordance with its 2013-2016 Business Plan. The overall thrust of the plan adopted by trustees was to continue development of products and services and leverage these into new markets within the context of the City of Melbourne's Eco City objectives.

Within this plan, SMF has undertaken significant development works which has led to the development of "SMF Solar Finance" and subsequent internal approval of an asset origination strategy for this product, targeting \$20 million in investment within the Municipality of Melbourne over a 5 year period to be invested by SMF.

Within this development work the trustees sought legal advice with regard to the corporate structure and the relative risks and benefits of such. To enhance the commercial viability, commercial operations and manage Trustee's exposure to risks associated with such growth; replacing the individual trustees of SMF with a corporate trustee (whose board of directors could be the same as the current board of trustees) is the preferred position of the Trustees.

The benefits and consequences of making this change include:

- (a) the creation of a separate corporate entity to act as trustee and to hold legal title to SMF's assets (rather than such title being held by the individual trustees), which entity would be owned by the Council;
- (b) no material change to the scope of the underlying fiduciary duties and obligations owed by the board to the Council (as the duties they owed as trustees would be replaced with similar duties owed as directors of the trustee company);
- (c) the administrative, cost and governance benefits available to corporate entities, including as a result of third parties being able to:
 - (i) independently verify the existence of the entity via an ASIC search; and
 - (ii) rely on various statutory assumptions relating to corporate governance (such as a document signed by two directors being binding on the entity)

Accordingly, I write to you to seek Councils approval for such activities.

Ben, I welcome the opportunity for my Chairman, Robert Jamieson, and I to meet with you to discuss these matters in order to progress expeditiously so as to enable ambitious outcomes sought by SMF and the City of Melbourne.

Yours Sincerely,

A handwritten signature in black ink, appearing to read "SBocskay", is written over a large, faint watermark of the same signature.

Scott Bocskay
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