

Management report to Council

Agenda item 6.8

Queen Victoria Market Precinct Renewal (QVMPR) Program – Continuing Business Framework

Council

Presenter: Phu Nguyen, Chief Financial Officer
Rob Adams, Director City Design and Projects

29 August 2017

Purpose and background

1. The purpose of this report is to seek endorsement of the Queen Victoria Market Precinct Renewal (QVMPR) Continuing Business Framework in response to the Council resolution of August 2016.
2. At the meeting, Council endorsed in principle the establishment of a compensation fund for the purposes of providing licence fee relief for traders whose income is demonstrably affected by the Queen Victoria Market renewal and requested management work with the Queen Victoria Market to propose a suitable framework and mechanism.

Key issues

3. Whilst Council and Queen Victoria Market Pty Ltd (QVM Pty Ltd) will minimise the effect of the QVMPR Program on traders to the greatest extent possible, and compensation is not a legal obligation, Council is committed to establishing a Continuing Business Framework consisting of a Trader Support Fund (Fund) and a complementary Trader Support Program (Program) to support traders and mitigate impacts, realise opportunities and facilitate business development opportunities for traders throughout the QVMPR Program.
4. Council will set aside at least \$8 million over the renewal period for the purposes of the Continuing Business Framework.
5. The Trader Support Fund Advisory Committee (Committee) is the governing body through which individual trader requests for financial assistance from the Fund will be made and assessed.
6. A Terms of Reference for the Committee has been prepared which outlines its functions and powers, membership composition and meeting procedures. The Terms of Reference also includes the Establishment Rules, which set out the process for the administration of, and disbursement from, the Fund, including the criteria for making and assessing a financial claim. Refer Attachment 2.
7. The Committee does not have executive powers or authority to implement actions in areas over which Council management has responsibility. The Committee's role is to make determinations in accordance with the Terms of Reference and Establishment Rules and report to the Council quarterly.
8. A separate governance structure will be established for agreeing allocations against the Trader Support Program. It is proposed that Council will resolve on an annual basis, and advise the Committee accordingly, the money from the Fund which will be allocated towards the Continuing Business Framework to support traders more generally throughout the QVMPR Program.
9. QVM Pty Ltd has been consulted in the development of the Continuing Business Framework, and a sub committee of the QVM Trader Representative Committee (TRC) was established to work with the QVMPR Program team and QVM Pty Ltd to nominate ideas for the Trader Support Program. The QVM TRC will continue to be consulted and presented with options where initiatives proposed through the Trader Support Program are for a collective market outcome or non operational matter.

Recommendation from management

10. That Council:
 - 10.1. endorses the establishment of the Continuing Business Framework and authorise management to take the next steps to appoint the Trader Support Fund Advisory Committee and implement the Trader Support Program
 - 10.2. authorises the Chief Financial Officer, to make any editorial changes to the Continuing Business Framework including the establishment rules prior to implementation.

Attachments:

1. Supporting Attachment (page 2 of 13)
2. Terms of Reference (page 3 of 13)

Supporting Attachment

Legal

1. There are no direct legal implications associated with the recommendation in the report.

Finance

2. Through establishing the Continuing Business Framework the Council will be committing at least \$8 million over the life of the renewal period.

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. QVM Pty Ltd has been consulted in the development of the Continuing Business Framework, and a sub committee of the QVM (TRC) was established to work with the QVMPR Program team and QVM Pty Ltd to nominate ideas for the Trader Support Program. The QVM TRC will continue to be consulted and presented with options where initiatives proposed through the Trader Support Program are for a collective market outcome or non operational matter.

Relation to Council policy

5. The Continuing Business Framework is consistent with previously stated Council policy positions to support traders during the renewal period.

Environmental sustainability

6. There are no significant environmental impacts associated with the recommendation in the report.



Terms of Reference

Queen Victoria Market Precinct Renewal Program

Continuing Business Framework

Trader Support Fund Advisory Committee

Background

The City of Melbourne (**Council**) is delivering a five-year renewal program of the Queen Victoria Market (**QVM**) and the surrounding precinct. QVM is operated by Council's wholly owned subsidiary, Queen Victoria Market Pty Ltd (**QVM Pty Ltd**).

In 2014, the QVM Pty Ltd Board provided a commitment to QVM traders (**Traders**) for continuous business operations during the period of the QVM Precinct Renewal program.

In August 2016, the Council resolved to endorse in principle the establishment of a compensation fund for Traders whose income is demonstrably affected by the Queen Victoria Market Precinct Renewal (**QVMPR**) Program works.

These commitments have now been reflected in the QVMPR Continuing Business Framework, endorsed by Council in August 2017. Whilst Council and QVM Pty Ltd will minimise the effect of the QVMPR Program works on Traders to the greatest extent possible, and compensation is not a legal obligation, the Continuing Business Framework reflects Council's commitment to the establishment of two key elements:

- Queen Victoria Market Trader Support Fund (**Fund**) as the mechanism for making financial assistance available to Traders where the effect of the QVMPR Program works cannot be adequately mitigated and have resulted in a demonstrable negative impact on the Trader's profit during the period of the QVMPR Program works; and
- Queen Victoria Market Trader Support Program (**Trader Support Program**) to support traders and mitigate impacts, realise opportunities and facilitate business development opportunities for Traders.

The Trader Support Fund Advisory Committee (**Committee**) is the governing body through which individual trader requests for financial assistance from the Fund are made and assessed.

QVMPR Program

In October 2013, the Council announced its intention to renew the QVM and surrounding precinct, proposing to spend up to \$250 million to secure the market's future.

Following extensive community and trader engagement, the QVMPR Master Plan (2015) and Implementation Framework (2016) were created to guide the delivery of the five-year renewal program. The program commences in 2017, signalling the start of the single largest market renewal in the world right now.

The QVMPR Program seeks to preserve and celebrate the market's long history, while investing in safe, efficient and sustainable trader facilities to make day-to-day business operations more viable. Improved customer amenities and facilities, and the creation of new open spaces, will support the market and seek to better meet the needs of this growing part of the city.

The rationale for undertaking the QVMPR Program is first and foremost predicated on securing the market's place as a traditional open air market –retaining its heritage, traditions, unique offer and authenticity by making it more financially viable and equipped to support contemporary business requirements into the future.

For the purpose of these Terms of Reference, "QVMPR Program works" means works undertaken by Council at QVM to implement the Queen Victoria Market Precinct Renewal Master Plan and Implementation Framework.

Functions and powers of the Committee

The Committee is established to assess and make determinations in relation to the payment of claims made by Traders against the Fund in accordance with the Queen Victoria Market Trader Support Fund – Establishment Rules (**Establishment Rules**). Refer to Annexure 1.

A separate governance structure has been established for the purpose of agreeing allocations against the Trader Support Program.

The Committee is formally appointed by the Council, and is responsible to the Council. The Committee does not have executive powers or authority to implement actions in areas over which Council management has responsibility. The Committee does not have any management functions and is therefore independent of management. The Committee's role is to make determinations in accordance with the Establishment Rules and report distributions to the Council quarterly.

Membership

The Committee will consist of three members:

- one representative nominated by Council; and
- two independent members from a suitable list of accredited mediators as determined by the City of Melbourne.

One independent member will be elected as the Chair of the Committee.

New members will receive relevant information and briefings on their appointment to assist them to meet their responsibilities.

Terms of Membership

Members will be appointed for a period of up to two (2) years.

Members may seek re-appointment for a further three (3) year term.

The maximum term will be for a period of up to five years.

A member who is absent from two consecutive meetings, without forwarding an apology, will be assumed to have resigned.

Members wishing to resign their position on the Committee may do so at any time by providing written notice to the Chair of their intention to resign (or to the Chief Executive Officer of Council in the case of the Chair).

The office of a member becomes vacant if:

- a member resigns;
- a member no longer meets the requirements of membership according to their Instrument of Appointment;
- a member is removed from office;
- a member dies;
- in the opinion of Council a member becomes incapable of performing his/her duties;
- a member fails to attend 50% of meetings over any given 12 month period without the permission of the Chair (in the case of the Chair without the permission of the Chief Executive Officer of Council); or
- a member becomes a bankrupt or a person disqualified from acting as a director or acting in the management of a company.

Upon a vacancy occurring in the office of a member, the vacancy may be filled in accordance with these Terms of Reference. Vacancies will be filled as soon as possible.

Meetings of the Committee

Meetings will be held on a quarterly basis commencing in November 2017 and members are expected to attend all meetings. The Committee has the authority to convene additional meetings, as circumstances require, with such meetings to be called by the Chair.

The location and time for meetings of the Committee is to be determined by the Committee.

The Committee meetings shall be "Closed" and therefore not open to the public.

For a meeting quorum to be achieved, all members must be present or participate in the meeting by telephone, video links or any other system of telecommunication.

All decisions will be made as a team. Each member will participate actively in each decision. In the event of a deadlock, the Chair has a casting vote. Prior to making a recommendation, the Committee will give due consideration to all the relevant information, issues, options and implications.

Meeting Procedure

Meeting agendas will be prepared and provided by the Secretariat at least one week in advance to members, along with appropriate briefing materials.

Meetings may be conducted in a manner determined by the Chair subject to these Terms of Reference.

The Chair must be present at all meetings.

The Chair must ensure, as far as practicable, that every member has adequate opportunity to participate in discussions.

The Committee may conduct all or any part of a meeting by using telephones, video links or any other system of telecommunication.

Minutes must be kept of every meeting and circulated for comment before being formally endorsed at the next meeting. Minutes must be provided to the Council within 14 days of the Committee meeting.

Minutes will accurately reflect the Committee's recommendations and will be retained as an enduring record of the meeting, together with a complete set of committee papers, including copies of all documents tabled.

Remuneration and expenses

The independent members will be remunerated at a rate set by the Council. There is no additional remuneration paid for preparation time for meetings.

Roles and Responsibilities

Shared roles and responsibilities of all Committee members

- To be fully prepared for meetings, individual pre-reading of agendas and attachments.
- To agree to participate in a collaborative meeting format.
- To bring relevant knowledge and broad community experience to the table.
- To consider and raise issues, proposals and ideas.
- To provide informed advice and guidance.
- All members will be able to raise any issues and problems and have them dealt with in an honest, respectful and open manner.

- All members will be given equal opportunity to participate in the Committee discussions.

Code of Conduct and interest provisions

In performing the role of a member, a member must:

- act honestly;
- exercise reasonable care and diligence;
- not make improper use of their position;
- not make improper use of the information acquired because of their position; and
- adhere to the Council's, Code of Conduct ¹

Where the member of the Committee has an interest or conflict of interest in relation to a matter in which the Committee is concerned, or is likely to be considered or discussed, the member must disclose the interest to the Committee before the matter is considered or discussed at the meeting. Disclosure must include the nature of the relevant interest and be recorded in the minutes of the meeting. A member who has made a declaration of an interest may not take part in any discussion of the matter to which the declaration relates unless the chair or member presiding directs otherwise. A member who has made a declaration of an interest must not vote on the matter to which the declaration relates. Members are required by the *Local Government Act 1989 (Vic)* to complete Returns of Interest every 6 months.

Confidential and sensitive information

Members are expected to comply with the confidential information provisions contained in Sections 77 and 89 of the *Local Government Act 1989 (Vic)*.

Members must treat information they receive as confidential unless otherwise advised.

Members must not use confidential information other than for the purpose of performing their function as a member of the Committee.

Disclosure of personal details

For transparency, each member's name, qualifications and current position will be listed on the Council website.

Review

These Terms of Reference may be reviewed by Council annually or as required.

Contact/Secretariat Support

The Secretariat provides administrative support to the Committee with its responsibilities being to:

- receive completed and signed Trader claim forms and accompanying material;
- review claim materials submitted by Traders to ensure that all required information has been provided;
- if further information is required in order to assess a Trader claim, request that the relevant Trader provide that further information;

¹ <http://www.melbourne.vic.gov.au/SiteCollectionDocuments/employee-code-of-conduct-2016.pdf>

- provide Trader claim forms and accompanying information when complete to the Committee;
- coordinate and manage all Committee meetings;
- where applicable, prepare and distribute all meeting materials accordingly and within appropriate timeframes;
- prepare and distribute minutes; and
- ensure that the Committee is aware of relevant legislative and other requirements.

The Secretariat is provided by the Council.

Communication and Reporting

The Committee must provide a report to Council each quarter which details:

- Trader claims:
 - the number of Trader claims lodged;
 - the number of Trader claims refused, and the reasons why claims were recommended for refusal;
 - the number and quantum of Trader claims recommended for acceptance, either in part or in full, and the reasons why claims were recommended for acceptance;
 - the number and quantum of Trader claims paid out of the Fund; and
 - any complaints made by a Trader about the processing of its claim;
- the current balance of the Fund; and
- any other material issues or developments in respect of the administration of the Fund during the reporting period.

Dispute resolution

If two or more Committee members have difficulty working together (for example because of a conflict of personalities or ideological differences) and it is unduly affecting the functioning of the Committee, the matter will be resolved as soon as possible in the public interest.

Committee members will avoid disputes with other Committee members, where possible.

If a dispute arises, the members who are in dispute will make a reasonable, thorough, and conscientious attempt to resolve it on an informal basis. The Chair will actively guide this process.

During informal attempts to resolve a dispute, if the Chair is of the view that the Committee should be notified of the existence of the dispute, for example because it may pose a major risk to the effective operation of the Committee, the matter will be placed on the agenda of the next Committee meeting for noting and/or monitoring.

If a dispute cannot be resolved informally, the Chair will place the matter on the agenda of the next Committee meeting. If satisfied that a dispute is unresolved despite proper and sufficient efforts by the parties, the Committee will invoke the formal dispute resolution process. A mediator will be appointed.

The parties will co-operate with the mediator, provide all reasonable assistance, and otherwise actively work in good faith to resolve the dispute.

If a dispute poses a major risk to the effective operation of the Committee, Council will be notified.

Gifts, benefits and hospitality

In responding to gift offers, all members should comply with the following policy:

- Never solicit gifts.
- Refuse and report any attempt to bribe you.
- Never accept a gift that may cast doubt on your integrity or impartiality or that of the Committee (e.g. from a Trader who is likely to be affected by a decision that you make).
- Gift offers of nominal value (i.e. less than \$50 of gift offers from the same source within 12 months) are to be disclosed, verbally or by email to the Secretariat if they are accepted.
- Gift offers that exceed the nominal value (or regardless of their monetary value are of significant cultural, historic or other significance) are reportable. A declaration form is to be lodged with the Secretariat, whether or not the gift is accepted.
- Reportable gifts are accepted on behalf of the Committee (that is ownership vests with the Committee). If you accept a reportable gift on behalf of the Committee you may apply for ownership to be transferred to you. The application will be granted if it is in the public interest to do so.
- A Gifts Register will be maintained by the Secretariat and will be subject to regular scrutiny. A record of each reportable gift offer, and how it was dealt with, will be entered into the Gifts Register.
- If unclear about how to respond to a gift offer, seek help from the Secretariat.

When providing gifts and hospitality and incurring expenses, all members of the Committee will adhere to the following policy:

- Gifts and hospitality will only be provided on behalf of the Committee and travel and out of pocket expenses will only be incurred if it is in the public interest to do so, that is if it is a reasonable business expense.

A reasonable business expense is one that is incurred for a business purpose; proportionate to the benefit to the Council; consistent with community expectations, consistent with legal obligations and with Committee policy; and does not compromise the integrity of the giver or recipient.

If unclear about whether to provide a gift or hospitality (internal or external) or to incur a travel or out of pocket expense, seek help from the Secretariat.

ANNEXURE 1

Queen Victoria Market Continuing Business Framework

Trader Support Fund – Establishment Rules

[August] 2017

DRAFT

Background

The Queen Victoria Market Trader Support Fund has been established as the mechanism for making financial assistance available to Traders during the period of the QVMPR Program.

This document sets out the rules relating to the establishment and administration of, and disbursement from, the Fund.

This Fund is administered by the Committee.

Separately, a Trader Support Program is also available to support traders and mitigate impacts, realise opportunities and facilitate business development opportunities arising from the QVMPR Program. Council must resolve on an annual basis, and advise the Committee accordingly, the money from the Fund which will be allocated towards the Trader Support Program.

There is no legal requirement for Council to establish the Fund or the Trader Support Program, and the offer for Traders to make a claim against the Fund does not constitute an acknowledgement by Council of any legal obligation to award payment.

Purpose

The purpose of the Fund is to provide financial assistance to Traders where the effects of the QVMPR Program works cannot be adequately mitigated and have resulted in a demonstrable negative impact on the Trader's profit during the period of the works.

Fund Establishment

Council will set aside at least \$8 million over the duration of the QVMPR Program works for the purposes of the Fund and Trader Support Program.

The Fund must be accounted for separately. Contributions into the Fund each year will accumulate with previous contributions to the Fund.

Council may determine to cap the total amount in the Fund at any one time. Any such decision by Council to cap the Fund must take into account the extent and value of successful claims against, and disbursements from, the Fund to date, and the foreseeability of additional claims and disbursements being made against the Fund given the nature and scope of QVMPR Program works to be completed.

Council will review any cap applied to the Fund on an annual basis.

Review

Unless there is a manifest error, or the recommendations of the Committee have been reached illegally, there is no right to seek a review of decisions made by the Committee in respect of any claim made by Traders against the Fund.

Duration

Council must maintain the Fund during the period of the QVMPR Program works, which are anticipated to be completed in 2022.

At the completion of the QVMPR Program, Council may return any money remaining in the Fund to its general accounts.

Criteria for Fund allocation

For a Trader's financial assistance claim on the Fund to be successful, all of the following criteria must be satisfied:

- The Trader must:
 - have been a lawful:
 - tenant of QVM Pty Ltd; or
 - owner, lessee or licensee of the shops or stalls at QVM,
 - at the date the relevant QVMPR Program works commenced;
 - be registered for GST, have an ABN, and provide quarterly or monthly Business Activity Statements to the Australian Tax Office.
- QVMPR Program works must have taken place during the period of the Trader's claim.
- A claim must only be made on the basis of the retail trade of the business as operated at the market by the Trader.
- The Trader must have taken all reasonable steps to maintain its profits and minimise losses during the claim period.
- A claim must be made on a business group basis, rather than on a stall or shop basis.
- The change in business circumstances alleged by the Trader must be supported by analysis undertaken by QVM Pty Ltd, including traffic and car parking numbers, visitation rates, trader composition and turnover and any other information as required to assist in assessing the change in business continuity being alleged by the Trader.

The role of QVM Pty Ltd

All completed Trader claim forms, as determined by the Secretariat, and accompanying material will be provided to QVM Pty Ltd to allow QVM Pty Ltd to confirm/provide the following prior to each meeting:

- That the Trader was a lawful tenant of QVM Pty Ltd as at the date the relevant QVMPR Program works occurred
- That the Trader was a lawful tenant of QVM Pty Ltd during the period of the Trader's claim
- That the information in the Trader claim relates to all stalls or shops operated by the Trader
- That the information in the Trader claim relates only to the retail business of the Trader conducted at QVM (ie – does not relate to wholesale business or other business interests outside of QVM)
- An opinion on whether the Trader had taken reasonable steps to maintain its profits and minimise losses during the claim period
- Analysis of QVM Pty Ltd data during the period of the Trader's claim, including such things as car parking numbers, visitation rates, trader composition and turnover, and other information as required to assist in the assessment of the Trader claim

Minutes of each meeting will be provided to QVM Pty Ltd for the purpose of:

- Making any payment recommended by the Committee for approved claims to the Trader
- Assessing whether the Trader has amounts owing to QVM that are to be deducted from approved claims prior to making payment to the Trader
- Assessing whether the Trader has been provided rental abatement during the period of the claim that is to be deducted from approved claims prior to making payment to the Trader

QVM Pty Ltd will provide a report to the Committee of all payments made to Traders in relation to approved claims.

Process for making a claim

To make a claim, a Trader must submit a completed and signed claim form (refer to Annexure 2) to the Secretariat. The claim form must include a clear statement of the losses being alleged by the Trader, details of how those losses have been calculated, and the reasonable steps taken by the Trader to maintain its profits and minimise losses.

The following information must also be provided by the Trader to the Secretariat:

- accountant prepared and certified trading accounts for the financial year relevant to the claim period, as well as the two financial years prior to the claim period (or from the whole trading period where the business has been operating for less than 2 years), with evidence the accounts have been submitted to the Australian Tax Office;
- weekly sales figures for the two financial years prior to the claim period; and
- weekly sales figures for the period during the QVMPR Program works.

Audit

The Committee and Council reserve the right to audit the original records and accounts of Traders to determine whether the accounts and sales figures provided by the Trader as part of its claim are accurate.

Making of claim payments

Having regard to the "Criteria for Fund allocation" as well as a Trader's compliance with the process for making a claim, the Committee will determine whether to agree to accept a claim made by a Trader against the Fund.

If the Secretariat and/or the Committee are of the opinion that further information is required in order to assess a claim, either the Secretariat and/or the Committee may request that the relevant Trader provide that further information (and until that further information is provided, the Committee will not further assess the claim unless it determines otherwise).

If the Committee agrees a claim be accepted (either in part or in full), the recommended payment will be made to the Trader from the Fund.

No interest will be payable to Traders in relation to payments from the Fund. The costs and expenses incurred by a Trader in preparing, lodging and progressing a claim will also not be paid from the Fund.

Payments out of the Fund will only be made to a Trader on condition that the Trader releases and indemnifies Council and QVM Pty Ltd against, and pays Council and QVM Pty Ltd on demand the amount of all Losses, liabilities costs and expenses incurred by the Trader in connection with the QVMPR Program works for the period prior to, and for the duration of, the Trader's claim period. For the purposes of the indemnity and release, "Loss" includes any loss, damage, liability or obligation, compensation, fine, penalty, charge, payment, cost or expense (including any legal cost and expense on a full indemnity basis) however it arises and whether it is present or future, fixed or unascertained, actual or contingent and including loss of profits, loss of revenue or loss of opportunity.