

**M A N A G E M E N T R E P O R T**

**Agenda Item 6.1**

**24 April 2007**

**LONG STAY PARKING SPACE LEVY FUNDING  
MEMORANDUM OF UNDERSTANDING (CONGESTION LEVY)**

**Division** Sustainability

**Presenter** Geoff Lawler, Director Sustainability

**Purpose**

1. To seek Council approval to enter into the Long Stay Parking Space Levy Funding Memorandum of Understanding.

**Recommendation from Management**

2. That Council resolves to:
  - 2.1. enter into the Long Stay Parking Space Levy Funding Memorandum of Understanding as detailed in Attachment 1 to this report; and
  - 2.2. authorise the Chief Executive to execute the Long Stay Parking Space Levy Funding Memorandum of Understanding referred to in paragraph 2.1 above.

**Key Issues**

3. In October 2005, Council resolved to enter into an agreement with the Victorian Government to facilitate the Government's commitment to provide Council with \$5million per annum from the proceeds of the Long Stay Parking Space Levy (also known as the Congestion Levy).
4. An agreement that substantially complies with the Council resolution has been drafted and is appended as Attachment 1 to this report.
5. The draft agreement, while not providing automatic indexation as proposed by Council, in accordance with its resolution of 25 October 2005, provides for Council to ask the Minister for Public Transport to consider "top-up" funding where the Council identifies initiatives from Council's Transport Strategy that are in excess of \$5mil in any year. In other words, the State Government would consider a needs-based submission rather than automatic indexation.
6. This matter of indexation has delayed completion of the agreement and it is recommended that the alternative described in the draft is the best way to bring this negotiation to a conclusion.

**Time Frame**

7. The levy applied from 1 January 2006. Liability for the levy occurs annually on 1 January, based on use of parking spaces in the previous year. Council received a first payment of \$5million from the Victorian Government in the 2006/07 financial year. The second payment is pending resolution of this agreement.

**Relation to Council Policy**

- 8. As per the October 2005 resolution and reflected in the draft agreement, the funds that Council receives from the levy will be spent in accordance with Council’s adopted transport strategy, *Moving People and Freight*.

**Government Relations**

- 9. This matter has been the subject of protracted negotiations with the Department of Infrastructure (and, through it, with the Department of Treasury & Finance and with the Department of Premier & Cabinet) on the terms of the Memorandum of Understanding that will govern Council’s share of revenue from the Long Stay Parking Space Levy (also known as the Congestion Levy).

**Finance**

- 10. Financial matters are addressed in the body of this report.

**Legal**

- 11. Legal advice has been provided in respect to the MoU. The report accurately describes the relevant issues.

**Comments**

- 12. In response to the Council’s resolution of 25 October 2005 the following table details the actions taken:

<b>Resolution</b>	<b>Action taken</b>
1.1	Report submitted to Planning Committee 5/09/06.
1.2	As above.
1.3.1	Lord Mayor wrote to the Treasurer prior to the approval of the legislation. Recommendation not adopted in legislation.
1.3.2	See clause 2.4 in draft agreement.
1.3.3	As above.
1.3.4	See clauses 4.1 and 4.2 in draft agreement.
1.3.5	Lord Mayor wrote to the Treasurer prior to the approval of the legislation. Legislation applies to Crown Land.
1.4	CoM is paying the Levy based on usage.
1.5	Council allocated the first \$5mil on 28/02/06 and approved the Transport Strategy on 29/08/06.
1.6	Draft agreement with Minister for Public Transport attached.
1.7	As above.

## Background

13. The Council on 25 October 2005 resolved as follows:

1. *“That Council resolve:*
    - 1.1. *that the City of Melbourne monitor and report on the extent of compliance with the objectives of the Long-Stay Car Park Levy in the first two years of its operation;*
    - 1.2. *that the City of Melbourne monitor and report in twelve months on the impact the Car Park Levy has had on traffic congestion in Melbourne and the cost of parking in the city both short and long term including the impact on retail and business communities*
    - 1.3. *that the State Government be asked to:*
      - 1.3.1. *consider inclusion of medical practitioners within the list of exemptions provided for emergency services;*
      - 1.3.2. *commit all proceeds to sustainable transport initiatives relating to Melbourne only (eg public transport, walking and cycling) that are not otherwise scheduled to be funded by recurrent expenditure;*
      - 1.3.3. *consult with the City of Melbourne with regards to how the proceeds are allocated on an annual basis; and*
      - 1.3.4. *allocate to the City of Melbourne \$5M or 13 per cent of projected revenue, whichever is greater, on 1 January each year;*
      - 1.3.5. *consider to include provisions in the legislation to prevent car parking operators passing on the costs of the long stay parking levy to the short stay users; and*
      - 1.3.6. *clarify the impact of the Car Park Levy on car park spaces on Crown Land managed by the Council*
    - 1.4. *that, in accordance with options provided in the Long-Stay Car Park Levy Implementation Strategy, the number of long-stay spaces in public car parks owned by the City of Melbourne be established by actual usage records rather than the statutory ratio;*
    - 1.5. *that revenue received by the City of Melbourne from the Long-Stay Car Park Levy be preserved within the Council’s accounts for transport related purposes as set by Council’s Transport Strategy once it is implemented or other sustainable transport initiatives approved by the Council;*
    - 1.6. *by instrument of delegation sealed by the Council under section 98(1) Local Government Act 1989 (“the Act”) delegate to the Chief Executive Officer, or the persons from time to time acting in that position, the authority to enter into any necessary agreements with the appropriate agency of the Victorian Government to enable the transfer of the yearly proceeds of the Long-Stay Car Park Levy to the City of Melbourne; and*
    - 1.7. *under section 98(3) of the Act, authorise the instrument of delegation to the Chief Executive Officer, or the person from time to time acting in that position, to empower him or her to delegate any power, duty or function delegated to him or her under the paragraph above, to a member of Council staff.”*
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### Attachment:

1. Memorandum of Understanding

**Draft Agreement**

**LONG STAY PARKING SPACE LEVY FUNDING  
MEMORANDUM OF UNDERSTANDING**

**BETWEEN**

**THE STATE OF VICTORIA  
("the State")**

**AND**

**THE CITY OF MELBOURNE  
("the City")**

**REVISION February 2007 (no 4)**

**LONG STAY PARKING SPACE LEVY FUNDING  
MEMORANDUM OF UNDERSTANDING (MOU)**

This Agreement is made on                    between:

**THE MINISTER FOR PUBLIC TRANSPORT** of 80 Collins Street, Melbourne, Victoria on behalf of **THE CROWN IN RIGHT OF THE STATE OF VICTORIA** (“**the State**”);

and

**THE CITY OF MELBOURNE**, Town Hall, Swanston Street, Melbourne, Victoria (“**the City**”).

**BACKGROUND**

- A. The State and the City jointly acknowledge the importance of the liveability of the Central Business District and the surrounding areas of Southbank, St Kilda Road, Docklands and East Melbourne, and through a range of policy statements have expressed a clear policy direction to make transport more sustainable.
- B. The State and the City jointly acknowledge the need to address traffic congestion in the CBD, and note the recent introduction by the State of the Long Stay Parking Space Levy (“the Levy”) and its objective of addressing this issue.
- C. The State has determined that revenue generated from the Levy will be used to fund transport initiatives, including initiatives located in the City of Melbourne and the City of Port Phillip.
- D. The State has decided to provide part of the revenue from the Levy to the City for the purpose of funding transport initiatives adopted by the City as part of its Transport Strategy.

The parties intend this MOU to record their agreement regarding the arrangements that apply to the State providing funds from revenue generated from the Levy to the City for the purpose of funding transport initiatives.

**IT IS AGREED:**

**1 Interpretation**

In this MOU unless the context otherwise requires:

“**Activity**” means an activity undertaken by the City in the implementation of the Melbourne Transport Strategy.

“**Activity Funds**” means all funds provided by the State to the City for the purpose of undertaking and completing any Activity;

“**MOU**” means this Memorandum of Understanding and includes any documents incorporated by reference;

“**Annual Report**” means the report referred to in clause 3;

“**business day**” means a day that is not a Saturday, Sunday or a public holiday under the *Public Holidays Act 1993* (including any day appointed by the Minister under Section 7(1)(a) of that Act applicable to the Melbourne metropolitan area);

“**Commencement Date**” means 31 January 2007;

“**GST**” means any tax imposed under the GST Law and includes GST within the meaning of the GST Act;

“**GST Act**” means the *A New Tax System (Goods and Services Tax) Act 1999* (Commonwealth) as amended;

“**GST Law**” means the GST Law as defined in the GST Act and includes any Act of the Commonwealth, a State or Territory that imposes or deals with GST;

“**GST Related Tax Reform**” includes any amendment, reduction or abolition of any Commonwealth, State or Territory tax, excise, fee or impost including, but not limited to, financial transactions tax, wholesale sales tax, stamp duty or debits tax attributable to the introduction of the GST Law;

“**Input Tax Credit**” has the meaning given in Section 195-1 of the GST Act;

“**Long Stay Parking Space Levy**” or “**Levy**” means the levy imposed by the *Congestion Levy Act 2005*.

“**Material**” means all material created by the City in relation to the Activity including information or data collected or generated by the City in the course of the Activity;

“**Melbourne Transport Strategy**” means the City of Melbourne policy statement *Moving People and Freight - Transport Strategy 2006-2020* (2006) and/or any subsequent statements that supplement or replace that policy statement;

“**Minister**” means the Minister for Public Transport or the Minister responsible for the public transport portfolio;

“**Power**” means any power, right, authority, discretion or remedy, whether express or implied;

“**Tax Invoice**” means an invoice which complies in every respect with the requirements of the GST Law and which contains the contract identifier number assigned to this MOU; and

“**Term**” means the period during which the Levy is imposed, subject to clause 13.

## 2 Strategy Development and Consultation

- 2.1 The City has, after consultation with the State, adopted the Melbourne Transport Strategy, incorporating the City’s transport priorities and the initiatives that the City intends to fund in subsequent years from payments under this MOU.
- 2.2 The City will, by 31 March in each year, inform the State of the initiatives it intends to implement under this MOU.
- 2.3 The City must inform the State of any sustainable transport initiatives approved by the City and not contained within the Melbourne Transport Strategy.
- 2.4 The State intends to consult with the City on the allocation of the revenue generated from the Levy. Both parties acknowledge that the revenue generated from the levy will contribute in part towards the sustainable transport initiatives outlined in Meeting our Transport Challenges.

## 3 Reporting

- 3.1 The City must provide to the State an Annual Report in relation to all Activity under this MOU by 31 March each year, commencing in 2007.

- 3.2 The Annual Report must include an audited statement of income and expenditure with detailed notes explaining significant items including capital assets with a value in excess of \$20,000 purchased with the Activity Funds under this MOU, prepared in accordance with Australian Accounting Standards.
- 3.3 The Annual Report must be accompanied by a statement by the City's Representative that all funds received by the City have been properly expended for the purposes of the Activity.

#### **4 Funds paid to the City**

- 4.1 During the term of this MOU the State intends to pay to the City \$5,000,000 each calendar year (exclusive of GST), on the first business day after 1 January in each year.
- 4.2 Where the City identifies initiatives in accordance with Clause 2.2 that are in excess of \$5,000,000 in any one year, the Minister will consider the proposed initiatives against other transport initiatives in Victoria and may agree to provide funding in excess of the \$5,000,000 referred to in paragraph 4.1.
- 4.3 If the Goods and Services Tax (GST) applies to any supply (as defined in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) to the State under this MOU, the State shall 'gross-up' the relevant payments to allow for the GST payable by the Contractor, subject to:
- (a) the State being entitled to an input tax credit in respect of the GST payable; and
  - (b) the condition that the payment by the State of such additional amount shall not increase the net amount payable by the State in respect of the funding provided under this MOU.

#### **5 City's Representative**

The City will nominate a representative for the purposes of this MOU. The City's Representative will be responsible for supervision and administration of the Activity including proper application of the Activity Funds and for ensuring that the City undertakes and completes the Activity in accordance with the terms and conditions contained in this MOU. Where no nomination is in effect, the Chief Executive Officer of the City of Melbourne will be the City's Representative.

#### **7 Licence of Material**

The City agrees to grant to the State a perpetual, irrevocable, non-exclusive and royalty-free licence to use all intellectual property in the Material.

#### **8 Staff Appointment Conditions**

The City is solely responsible for employing or otherwise engaging any persons necessary for the Activity to be undertaken.

#### **9 No Partnership**

Nothing in this MOU shall be construed as in any way creating or evidencing any partnership, joint venture, agency, trust or other form of legal or equitable relationship or obligation between the parties other than as expressly provided in this MOU.

**10 Compliance with Applicable Laws and Standards**

The City will comply with any Act, regulation, code of practice or regulatory and mandatory standard imposed by law in relation to the undertaking and completion of the Activity including, without limiting the generality of the foregoing, the employment or engagement of persons pursuant to Clause 8 of this MOU.

**11 Indemnity, Risk and Release**

11.1 The City indemnifies and will keep the State indemnified to the maximum extent permitted by law from and against all losses, damages, liabilities, actions, suits, claims, demands, costs and expenses of every kind which may be incurred or sustained by any of them in connection with:

11.1.1 the Activity;

11.1.2 any breach by the City of its obligations under this MOU; and

11.1.3 any damage to person or property arising out of the undertaking of the Activity,

except to the extent that any such loss, damage, liability, action, suit, claim, demand, cost or expense is caused or contributed to by the fraud or negligent act or omission on the part of the State.

11.2 The City accepts all risks connected with the Activity and the City will not be entitled to make any claim or seek to be indemnified by the State for or against any liability, arising from any risk relating to the Activity.

11.3 The City releases to the full extent permitted by law the State from all losses, damages, liabilities, actions, suits, claims, demands, costs and expenses of every kind in connection with:

11.3.1 the Activity; and

11.3.2 any damage to person or property arising out of the undertaking of the Activity,

except to the extent that any such loss, damage, liability, action, suit, claim, demand, cost or expense is caused or contributed to by the fraud or negligent act or omission on the part of the State.

11.4 It is agreed and understood that for the purposes of section 24AI of the *Wrongs Act 1958* (Victoria), the City is entirely responsible for any failure to take reasonable care on the part of any of the contractors or subcontractors that the City uses to complete the Activity.

11.5 The parties agree that references to “loss” in this clause 11 include indirect and consequential loss.

11.6 The provisions of this clause 11 survive termination of this MOU.

**12 Variation**

The terms and conditions of this MOU may be varied as agreed in writing between the parties.

**13 Termination**

Either party may terminate this agreement by giving the other party 90 days notice in writing.



**Signed by Mr Howard Ronaldson**  
Secretary of the Department of Infrastructure  
for the State of Victoria

**Signed by Mr David Pitchford**  
Chief Executive Officer  
of the City of Melbourne

(Signature).....

(Signature) .....

In the presence of:

In the presence of

(Name).....

(Name) .....

(Signature).....

(Signature).....

(Date).....

(Date).....

**FINANCE ATTACHMENT**

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**LONG STAY PARKING SPACE LEVY FUNDING MEMORANDUM OF  
UNDERSTANDING**

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Financial matters are addressed in the body of this report.

Funding for year two is yet to be received.

**Joe Groher**  
Manager Financial Services

**LEGAL ATTACHMENT**

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**LONG STAY PARKING SPACE LEVY FUNDING MEMORANDUM OF  
UNDERSTANDING**

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Legal advice has been provided in respect to the MoU. The report accurately describes the relevant issues.

**Kim Wood**  
Manager Legal Services