



13.5 SOUTH MELBOURNE MARKET GOVERNANCE REVIEW

EXECUTIVE MEMBER: CLAIRE STEVENS, GENERAL MANAGER, GOVERNANCE AND ORGANISATIONAL CAPABILITY

PREPARED BY: JOANNE MCNEILL, EXECUTIVE MANAGER GOVERNANCE AND ORGANISATIONAL PERFORMANCE

1. PURPOSE

- 1.1 To seek Council endorsement of the recommended governance model for the South Melbourne Market, changes to delegations and approach to implementation.

2. EXECUTIVE SUMMARY

- 2.1 The South Melbourne Market Committee (the Committee) was initially established as a Special Delegated Committee under Section 86 of the Local Government Act 1989 on 26 February 2001.
- 2.2 On 1 May 2020, section 86 of the Local Government Act 1989 was repealed removing provision for Special Committees of the Council, and the Local Government Act 2020 (Act) came into effect.
- 2.3 The provisions of the new Act as they related to delegated committees were found to be inconsistent with the then structure of the South Melbourne Market Committee.
- 2.4 On the 2 September 2020 Council resolved to address this inconsistency by re-establishing the South Melbourne Market Committee as an Advisory Committee of Council.
- 2.5 At the time, it was acknowledged that further work was required on the governance model to ensure the best long-term arrangement to support the South Melbourne Market (SMM).
- 2.6 Further work has now been undertaken to review governance options and this report provides a summary of findings and recommendations to Council with proposed changes to the governance arrangements to support efficient and effective governance of strategic direction and market operations.

3. RECOMMENDATION

That Council:

- 3.1 Resolves to continue with a South Melbourne Market Advisory Committee (Option Two), incorporating the proposed changes to delegations as described in Attachment Two.
- 3.2 Notes that the South Melbourne Market Instrument of Delegation and Charter will be updated and brought to Council for adoption.
- 3.3 Notes that the South Melbourne Market Advisory Committee membership will be refreshed through a phased recruitment and appointment approach, commencing with the appointment to the position of Committee Chair, and that all proposed appointments will come to Council for approval.



4. KEY POINTS/ISSUES

Background

- 4.1 The South Melbourne Market Committee (the Committee) was initially established as a Special Delegated Committee under the Local Government Act 1989 on 26 February 2001.
- 4.2 There have been various reviews of the governance arrangements undertaken over time. These have included a review undertaken in 2018 on three models - Pty Ltd, restructured delegated committee and Council Department. The assessment and the operating context at the time resulted in the Council continuing with a Section 86 committee with a range of changes implemented.
- 4.3 On 1 May 2020, section 86 of the *Local Government Act 1989* was repealed removing provision for Special Committees of the Council, and the *Local Government Act 2020* came into effect providing councils the ability to establish four types of committees – Delegated Committee, Community Asset Committee, Joint Delegated Committee and Audit and Risk Committee. Councils are also able to establish any type of advisory committee to meet their needs, though this is not prescribed in the Act.
- 4.4 The provisions of the new Act as they relate to delegated committees were found to be inconsistent with the then structure of the South Melbourne Market Committee. The work undertaken in 2018 was revised in 2020 in the context of the options available to Council under the Local Government Act 2020 and three governance options were assessed: Special Advisory Committee, Delegated Committee and Community Asset Committee.
- 4.5 On the 2 September 2020 Council resolved to re-establish the South Melbourne Market Committee as an Advisory Committee of Council, with minor amendments to the Charter and Instrument of Delegation to reflect legislative requirements of independent members.
- 4.6 It was acknowledged at the time that further work was required on the governance model to ensure the best long-term arrangement to support the SMM.
- 4.7 Further work was completed in 2021, when an independent consultant was engaged to establish criteria that met the outcomes being sought by Council and identify governance structures that satisfied these criteria. Councillors were engaged in the development of the criteria that were used in the review.
- 4.8 The review identified several possible options for Council to consider. These were a Pty Ltd, a Community Asset Committee or to remain with the current structure as an Advisory Committee to Council.
- 4.9 Councillors provided feedback at the time that they wished to proceed with further assessment of the three options identified in this review, using the criteria established at that time. The options being:
 - **Option One:** A Proprietary Limited company (Pty Ltd)
 - **Option Two:** Council run with an Advisory Committee (AC)
 - **Option Three:** A Community Asset Committee (CAC).



Governance Options

4.10 Further work to review the three governance options that were identified in the 2021 review has now been completed using the criteria established with Councillors at that time.

4.11 A description of the three governance options assessed are described in the table below.

Option One: Proprietary Limited company (Pty Ltd)	Option Two: Council run with an Advisory Committee (AC)	Option Three: Community Asset Committee (CAC).
<ul style="list-style-type: none"> • Board and Management of Pty Ltd manages the market in accordance with Constitution and Management Services Agreement or Ground Lease, Strategic Plan and Annual Plan & Budget. • Pty Ltd provides regular and ad-hoc reporting to Council. • Council is consulted on and approves Annual Plan & Budget and, based on agreed timeframes, updates to Strategic Plan. • Council may remove, reappoint, or appoint new Directors to the Board of the Pty Ltd in a regular rotation or as / when required. • Council (as sole Shareholder) may resolve to wind up and / or deregister Pty Ltd at any time. • Under this model, the future of all staff currently employed by Council would need to be resolved given that this entity would employ staff directly. • All the functions currently supported by Council would need to move across to the new business (e.g., IT, HR, payroll, OHS, etc) or shared 	<ul style="list-style-type: none"> • The Market Advisory Committee is appointed by Council and operates according to its Charter and the Instrument of Delegation. • In line with LG Act 2020 the Committee is advisory only and the CEO, under delegation, gives effect to the Committee’s decisions. • The Advisory Committee provides strategic advice and guidance to Council and makes recommendations, develops the annual business plan and annual report for approval by Council, develops the leasing strategy and oversees delivery of capital works approved and delivered by Council. • The Executive Director South Melbourne Market is a Council employee who reports to the General Manager Governance and Organisational Capability. • The market staff who report to the Executive Director South Melbourne Market are all employees of Council. • A number of functions carried out in managing the market day to day are 	<ul style="list-style-type: none"> • The CAC manages the market subject to its Charter and the Instrument of Delegation. • Under the LG Act the CEO may delegate any power, duty or function of the Council that has been delegated to the CEO to the members of a CAC • The CAC provides regular and ad-hoc reporting to Council. • The CEO must submit an annual report to Council in relation to the activities and performance of the CAC. • Council is consulted on and approves Annual Plan & Budget, and any Strategic Plan. • Council may remove, reappoint, or appoint new members of the CAC as required. • Council may resolve to abolish the CAC at any time. • Under this option, staff remain Council employees who take direction from the CEO (or



Option One: Proprietary Limited company (Pty Ltd)	Option Two: Council run with an Advisory Committee (AC)	Option Three: Community Asset Committee (CAC).
service agreements established for provision of services to new entity.	performed under a Management Agreement between CoPP and the SMM as shared services.	relevant delegate), not the CAC.

4.12 At a briefing with Councillors in June 2022, Councillors provided feedback that the selected governance model must:

- 4.12.1 Be capable of supporting the delivery of Council’s objectives for the SMM.
- 4.12.2 Be able to align with all legal, policy and other operational requirements of Council.
- 4.12.3 Be appropriate to the expected financial position of the Market (i.e., if the SMM is financially dependent on Council arm’s length autonomy may not be appropriate).
- 4.12.4 Consider the current and future condition of the SMM assets and infrastructure and the expected costs of any upgrades.
- 4.12.5 Be best for the Market, best for Administration and best for the Community.
- 4.12.6 Any change to the current governance model must be an improvement.

Assessment Criteria

4.13 The three governance options were assessed against the 11 criteria agreed by Council as part of the independent review undertaken in 2021. These were reviewed and confirmed in briefing with Councillors at the beginning of the current assessment. The 11 criteria are, that the governance model must:

- 1. Allow council to set the broad parameters.
- 2. Attract and fully utilise the best available skills, experience, and expertise.
- 3. Give the Market freedom to act independently and autonomously within the parameters established by Council.
- 4. Include strong, simple, regular, and transparent reporting to Council.
- 5. Ensure the Market, as a minimum requirement, meets its own costs of operation.
- 6. Include a mechanism for sharing any operating surplus.
- 7. Ensure the physical asset is properly maintained and developed.
- 8. Maximise efficiency and effectiveness.
- 9. Manage risks to the satisfaction of Council.
- 10. Include a mechanism for Councillor, trader and community (user, local resident, and business) views to be heard by the Market.



11. Be relatively easy to implement and straightforward to run.
- 4.14 Early in the assessment, four of these criteria were found to have more impact than the others in relation to selection of a preferred governance model and were focused on more specifically in the assessment. These were:
- Criteria 3 - ... give the Market freedom to **act independently and autonomously** within the parameters established by Council
 - Criteria 8 - ... maximise **efficiency and effectiveness**
 - Criteria 9 - ... **manage risks** to the satisfaction of Council
 - Criteria 11 - ... be relatively **easy to implement and straightforward** to run.

Financial Assessment

- 4.15 An analysis of the financial position of the Market was undertaken to inform the assessment of governance options.
- 4.16 The analysis found that for at least the next 7 to 9 years the SMM will rely on financial support from Council. Key points from the analysis include:
- In FY22, SMM recorded a net operating deficit of circa \$244k and a net cash deficit of \$1.154m.
 - For FY23, the SMM is forecast to have a net operating surplus of circa \$196k. Notwithstanding, there is still a forecast net cash deficit forecast of \$2.146m.
 - Net operating surpluses are forecast for all year's post FY23.
 - The long-term forecast indicates that the SMM will not produce a net cash surplus until FY31.
 - The key contributor to the long-term cash deficit position is capital expenditure on an annual basis.
 - The metrics assume a notional rental paid by SMM to Council growing from \$1.0m in FY22 to \$1.3m in FY33.
 - If the forecast performance was assessed assuming zero rental, the SMM would return a net cash surplus in FY29 (2 years ahead of the current forecast position).

Preliminary Findings

- 4.17 There is now a much better understanding of the issues that inform the selection of the SMM governance model, including:
- The applicable delegations and powers of Council, Officers, and the Executive Director of South Melbourne Market in running the SMM.
 - The annual operational plan for the SMM.
 - The current and future financial position of the SMM and financial position of the SMM in the context of the Council more broadly.



- 4.18 A preliminary assessment of the governance options found that:
- 4.18.1 Each of the governance options can be calibrated to meet Council's preferred level of involvement and control over decision making. They all work but have different strengths and weaknesses.
 - 4.18.2 All the governance models would require Council to settle the level and extent of delegation of functions – setting the right levels of delegation is the key.
 - 4.18.3 Any of the models would require some changes to the current arrangements but the Pty Ltd option requires the most change, with the Advisory Committee requiring the least change to achieve the desired outcomes.
 - 4.18.4 The scale of SMM operations means that there is efficiency in sharing a range of services delivered by Council (IT, payroll, HR, OHS, risk management, asset planning, financial planning, etc). This runs against the independence of the Pty Ltd model to some extent.
 - 4.18.5 To the best of Council's knowledge, CACs have not been used for this type of asset to date. CACs are common in regional and rural Victoria and are generally established to manage recreation reserves and halls. While there is conceptually no reason why a CAC would not be suitable, the model is untested for an asset as substantial as the Market and would rely heavily on clear delegation, communication, and alignment between the CAC and the CEO, as under the Act SMM staff can only take direction from the CEO, and not directly from the CAC.
 - 4.18.6 There would be more cost and resources required to transition to either CAC or Pty Ltd than to modify and strengthen the current advisory committee model and there may be little advantage in doing so.
 - 4.18.7 A challenge for the AC is how to appeal to and attract a very high calibre committee given the role is advisory only. Strategies for overcoming this would need to be considered.
 - 4.18.8 Due to the financial position of the SMM, establishing a separate Pty Ltd company to manage the SMM would be separate in name only since the officers and directors of that company would require the continuing support and indemnification of Council.
 - 4.18.9 Primarily for this reason the Pty Ltd option is not considered viable at this stage. However, it could be reconsidered at a later date when the SMM is more financially independent. As such, through discussion with Councillors at a briefing on 27 July 2022, the Pty Ltd option was excluded from the full assessment of the governance criteria at this time.

Key Findings from the Options Assessment

- 4.19 The key findings for the two remaining options (Option Two: Council run with an Advisory Committee **(AC)** and Three: Community Asset Committee **(CAC)**) assessed against the 11 criteria is presented below. **Attachment One** contains a table with the full assessment.



- 4.20 The AC and CAC rate similarly across most of the criteria assessed.
- 4.21 Whilst both models can give the Committee some level of independence, given the financial performance of the SMM, Council will need to retain all key decision making (budget, capital works etc.) in the medium term.
- 4.22 The AC model scores slightly better than the CAC model against Council's 11 criteria, particularly Criterion 11- Be relatively easy to implement and straightforward to run.
- 4.23 Neither governance model will achieve Council's ultimate goal of financial independence due to the current financial performance of the SMM overall (including capital costs for the building asset)
- 4.24 Whilst the CAC model could be implemented, because staff cannot be directly managed by the CAC, it would rely on carefully constructing the membership of the CAC (potentially including the CEO as a CAC member) and ensuring that communication of CAC decisions taken at CAC meetings are expeditiously communicated and implemented by the CEO via delegation to Council staff.
- 4.25 A challenge for an AC is how to appeal to and attract a very high calibre committee given the role is advisory only. This could be addressed to some extent by:
- Leveraging the strong brand and opportunity of providing strategic direction and oversight for the SMM.
 - Reviewing the salary to be offered committee members giving consideration to relevant benchmarking data.
 - Strengthening the Terms of Reference and operating agreement to highlight the important role the AC plays – i.e., the CEO will generally implement the recommendations of the Committee aligned with SMM Strategic Direction, approved budget, legislation, and policy requirements.

Decision Control Framework - Proposed Changes to Delegations

- 4.26 As mentioned previously, appropriate delegations are the key to any governance model working well and achieving the desired outcomes.
- 4.27 A detailed review of existing delegations has been undertaken and recommendations for changes to delegations have been made to resolve existing issues and provide a Committee with an increased level of influence and independence in certain areas.
- 4.28 Proposed changes to key delegations are summarised in the table below. The full list of 35 delegations that have been reviewed are presented in **Attachment Two**.
- 4.29 It is important to note that under the Act an AC cannot be delegated to directly. Where delegations are allocated to the AC in the table below, it is to reflect their lead role for developing and setting the direction for that function. The AC would make recommendations to the CEO, who would generally implement those recommendations, as long as they are aligned with the Council approved budget,

MEETING OF THE PORT PHILLIP CITY COUNCIL

6 OCTOBER 2022



Annual Business Plan, Annual Financial Budget and Asset Management Plan for the market, and any other relevant policy or legislation.

Decision Area	Current Delegation	Proposed Delegation
(11) Entering Lease or Licenses as Tenant – with third party landlord (extra space for market)	Council approval on advice	CEO approval (or delegate) with Council approval for any significant increase in Market footprint.
(18) Leasing Strategy – principles for commercial mix, market vs direct negotiation, rental fee approach	CEO approval (or delegate)	Committee to provide recommendation, recommendation to be actioned by CEO (as per 4.18 above)
(22) Leasing Process – implement approved strategy (i.e., direct negotiation, termination, assignment)	CEO approval (or delegate)	Delegated to Executive Director South Melbourne Market (as per Committee approved leasing strategy)
(24) Community Consultation activities	CEO approval (or delegate)	Delegated to Executive Director South Melbourne Market (for activities approved by Council in Annual Business Plan)
(25) External Stakeholder Management - private sector, key government agencies, other	CEO approval (or delegate)	Delegated to Executive Director South Melbourne Market (Stakeholder engagement to be aligned to Business Plan approved by Council)
(26) Marketing and Public Relations*	CEO approval (or delegate)	Delegated to Executive Director South Melbourne Market (Council consulted as required)

Notes:

- *Note for 26, marketing strategy and public relations will generally sit with Executive Director South Melbourne Market to implement Council approved direction. There may be times where Council will need to be consulted on high profile or high impact items.

Considerations for Advisory Committee membership and implementation

4.30 The current SMM AC membership includes three Independent Members, one of which is appointed as the Chair of the Committee, and two Council Members, as well as one non-voting CoPP Officer, the General Manager Governance and



Organisational Capability. All voting members of the Committee (5 members) have been appointed to the SMM until March 2023.

- 4.31 As part of this governance review, it is timely to consider the structure and membership of the SMM AC and refresh as needed to ensure it is best placed to deliver its responsibilities and position the Market for success.
- 4.32 While there were some mixed views from stakeholders in relation to the appropriate number of members and type of members (i.e., Council member, Independent member, and Officer/Non-voting member), the review did not identify strong rationale for change.
- 4.33 It is recommended that the Membership structure of the AC remain the same, and that the following approach is taken to refresh appointment to Committee roles, to ensure diverse expertise, strong capability, and the introduction of new talent, while also retaining some current membership to ensure business continuity and smooth transition:
- Current members are eligible to reapply for a position on the AC.
 - Appointment to roles using a phased approach – Commencing with Committee Chair initially.
 - Council may seek to extend one or more existing members to maintain continuity and support a future staggered recruitment (i.e. appointments finishing at different times).
 - Effort will be made to ensure diverse representation and expertise among selected members.
 - All independent members appointed will be required to demonstrate specific skills and experience relevant to strategic oversight of the market, for example, – retail, property/asset management, place making, market operations, board/governance expertise, and other relevant commercial business experience.
 - All independent members appointed will be required to demonstrate and maintain a strong local connection / association, as well as a strong passion for markets.
 - Once implemented, the new AC may request Council consideration of changes and/or increases to membership on an adhoc basis where specific needs/expertise are identified.

Recommendations

- 4.34 On the basis of the analysis that has been undertaken of the governance model options, it is recommended that:
- Council selects Option Two, the AC model, as the most appropriate governance model for implementation for the SMM.
 - That existing delegations are modified to the proposed new settings in **Attachment Two** and the existing Instrument of Delegation and Charter for



the South Melbourne Market is updated to reflect those new settings and brought back to Council for adoption.

- Proceed with recruitment of the AC with implementation of a new Committee by the start of March 2023.

4.35 Whilst not a recommendation at this time, the Pty Ltd governance model may be revisited in 5 - 7 years' time to assess its potential application in the long term should the SMM look likely to achieve a more cost neutral financial operating position.

5. CONSULTATION AND STAKEHOLDERS

5.1 Councillors have been engaged throughout the options assessment process via a series of briefings.

5.2 The current members of the South Melbourne Market Advisory Committee have been engaged with as part of the review.

6. LEGAL AND RISK IMPLICATIONS

6.1 The proposed governance arrangements for the SMM comply with the relevant sections of the Local Government Act 2020.

7. FINANCIAL IMPACT

7.1 The cost of implementation of the proposed governance arrangements will be minor.

7.2 A review of remuneration of independent members of the committee will be undertaken as part of the recruitment process which may have budget impacts.

8. ENVIRONMENTAL IMPACT

8.1 There is no direct environmental impact resulting from this report.

9. COMMUNITY IMPACT

9.1 There is no direct impact to the community resulting from this report.

10. ALIGNMENT TO COUNCIL PLAN AND COUNCIL POLICY

10.1 This work supports Strategic Direction Five, Well Governed – A leading local government authority, where our community and our organisation are in a better place as a result of our collective efforts.

11. IMPLEMENTATION STRATEGY

11.1 TIMELINE

11.1.1 Confirm the Advisory Committee strategy and commence recruitment to advisory committee roles, utilising a staggered / phased approach. This will ideally include extension of terms for some members to ensure continuity – November 2022.

11.1.2 Update the Instrument of Delegation and Charter and bring back to Council for adoption – to be completed by February 2023.

11.1.3 Transition to new Advisory Committee – March 2023.

MEETING OF THE PORT PHILLIP CITY COUNCIL 6 OCTOBER 2022



11.2 COMMUNICATION

11.2.1 Council's decision will be communicated to the current Advisory Committee as well as to other relevant parties.

12. OFFICER DIRECT OR INDIRECT INTEREST

12.1 No officers involved in the preparation of this report have any material or general interest in the matter.

ATTACHMENTS

1. South Melbourne Market Governance Options Assessment 
2. South Melbourne Market Delegations Review 