

8.1 CIVIC PLACE TRUST STRATEGY (SUPPLEMENTARY REPORT)**ATTACHMENTS:****RESPONSIBLE OFFICER: DEBRA JUST – GENERAL MANAGER****AUTHOR: MARNIE HILLMAN – GOVERNANCE MANAGER****CITY STRATEGY LINK: 6.3.1 COUNCIL MAINTAINS A STRONG SUSTAINABLE FINANCIAL POSITION****MEETING DATE: 22 FEBRUARY 2016**

Purpose of Report

To provide additional background information to the report on the Civic Place Trust deferred to full Council from the Cultural and Civic Committee meeting on the 15 February 2016 and recommend deferral of this issue pending further legal advice and a Councillor Briefing.

Background

Report 9.3 *Civic Place Trust* was discussed at the Culture and Civic Committee meeting held on 15 February 2016 and forms the subject of a separate report to this Council meeting. The previous report discusses the expansion of the scope of the Public Fund (the Fund) from Civic Place to the broader City of Willoughby, to include, but not be limited to the Council-owned Haven Amphitheatre. It is envisaged that the revised scope of the Fund will allow access to the Fund for the purposes of fundraising for the promotion of Council-owned arts and cultural facilities across the City.

The committee report prompted several queries by Councillors and the community regarding the governance arrangements for the Fund, as well as the process and expected qualifications for the appointment of Trustees. Through researching these questions, it has become evident that the management of the Fund is complex and worthy of further advice and consideration by Council. In particular, areas for future discussion might include:

- The appropriateness of the construction of the Trust and Deed for the new purpose proposed;
- Due diligence in regard to the process of appointment and removal of trustees;
- Management of risk in the expansion from a narrowly scoped Fund, to a Fund that could receive high turnover;
- Past turnover of the Fund and other background information.

Discussion

The Deed of Trust (the Deed) for the Civic Place Trust (the Trust) was formed on the 1 January 2004 to receive, and hold in trust, donations and bequests to assist in the construction, maintenance and operation of various facilities within Civic Place. In recent years the Trust has been largely inactive. However, recent progress toward an outcome for The Haven Amphitheatre has highlighted the potential for the Civic Place Trust to provide a mechanism for fund collection for Council-owned arts and culture assets across Willoughby City. The death of former trustee and Mayor, Pat Reilly, has also prompted review of appointments to the Trust.

Governance of the Trust

The Trust comprises a "public fund" registered as a Cultural Organisation with the Register of Cultural Organisations (ROCO) and has been granted deductible gift recipient status by the Australian Tax Office. The Trust is underpinned by the Deed of Trust which is the primary document that stipulates how the Fund should be controlled.

This results in a mixed structure with multiple compliance obligations to a variety of different bodies and legislation. The Register of Cultural Organisations (ROCO) Guidelines stipulate governance requirements for registered cultural organisations. Where the Deed is silent, for example regarding the qualifications of Trustees, these guidelines should be considered as supplementary requirements. The Fund is approved as a Deductible Gift Recipient, so it must also comply with the requirements of the ATO. Obligations of trustees under other relevant legislation must be met when complying with the obligations of the Deed.

The Deed of Trust may not be the best mechanism for underpinning the Fund, given the proposal to broaden its scope. Other models may be more appropriate, such as a model oversighted by a management committee appointed under ROCO Guidelines. This would have much clearer lines of accountability and provide appointees with better clarity regarding their responsibilities.

This is a highly specialised area of the law and warrants special advice from a firm experienced in such matters.

Role, Removal and Appointment of Trustees

Under the Deed, the Trustees are ultimately responsible for the governance of the Fund. This includes directing the affairs of the Trust, ensuring compliance, and providing funds for the purposes in line with the Deed.

Removal of Current Trustees

Clause 11.1 of the Deed refers to s.6 of the *Trustee Act 1925* to provide for the appointment of a new trustee under a range of circumstances, including where a trustee is dead.

Appointment of New Trustees - Persons of Responsibility

ROCO stipulates that, "*the Fund must be controlled or administered by persons or institutions having a degree of responsibility to the community as a whole...*". ROCO maintains a list of criteria that "responsible persons" must meet in order to be eligible to control the Fund.

As the "responsible person" criteria relies on the qualifications of individuals, not positions, only natural persons can be appointed to the Trust. Should qualification against one of the criteria change (such as the holding of a public office), the other "natural person" attributes in relation to "responsible person" criteria are also taken in consideration.

Advice Provisions under the Deed

There are several mechanisms by which the Trustees may consult with other persons or organisations in the execution of their role. Access to legal and other professional advice is available under the Deed.

Plan to Expedite Arrangements

With the objective of advancing the collection of donations for The Haven in a short period of time, the Civic Place Trust was identified as a possible solution. Expanding the terms of the Deed would avoid the need to make separate governance arrangements for the Haven Amphitheatre Trust by bringing the Haven Amphitheatre within the objects of the Civic Place Trust. In order to expedite the receipt of deductible donations to the Fund for the purposes of the Haven Amphitheatre project, an amended deed with proposed expansion of the scope to the City of Willoughby was agreed in concept by ROCO in January 2016.

At the same time as amending the Civic Place Trust Deed, it was deemed necessary to appoint new trustees. The expeditious appointment of new trustees must be balanced with the need to ensure continuity throughout the amalgamation process and identifying appropriate trustees. The identification and appointment of trustees can be a lengthy process. The strategy proposed was to appoint known qualified persons as an interim measure who could also continue the administration of the Fund throughout the amalgamation, with a review to take place in June 2017. It was thought this would provide the desired mechanism to receive the Haven Amphitheatre fund-raising proceeds while ensuring that appropriately qualified individuals are charged with its administration.

Expansion Risk

To this point, the risk associated with expanding the breadth of the Fund has been perceived as low, partially due to low turnover of monies. However, broadening the scope of access for the use of the Fund as a donation collection-point for arts and cultural organisations across Willoughby City could result in greatly increased usage. Any significant rise in utilisation could also result in a commensurate rise in the monies being oversighted.

This service could greatly benefit arts and cultural organisations that may find managing their own donations overwhelming. It benefits the community and Council by removing a barrier to fundraising and potentially increasing the total expenditure on Council-owned arts and culture assets in Willoughby City, that otherwise might not be realised. It also ensures transparency and security in the management of arts and culture donations and assists to reduce the risk of small organisations losing funding through fraud, poor administration or increased expenditure on compliance.

The current scope of the Trust is narrow. Broadening the scope also broadens its risk profile. In view of the increased potential risk, it would be appropriate for Council to seek further guidance in this specialised area before making any further determinations on the matter.

In relation to The Haven Amphitheatre, while seeking legal advice on the Civic Place Trust, advice could also be sought regarding a short-term mechanism to collect donations for the new stage.

Conclusion

The Civic Place Trust may provide an opportunity to assist arts and cultural organisations in the management of their fundraising efforts for Council-owned assets. However, before committing to the Civic Place Trust as the preferred mechanism, further information should be provided to Council. This information should include alternate legal opinion on the appropriateness of the construction of the Trust and Deed for the new purpose proposed, comprehensive information regarding the process of appointment and removal of trustees, management of risk in the expansion from a narrowly scoped Fund to one that could receive high turnover and other background information.

OFFICER'S RECOMMENDATION**That Council:**

- 1) defers progressing the appointment of trustees to the Civic Place Trust until such time as further advice is received regarding the appropriateness of the entity and the Deed for its proposed functions;**
- 2) seeks specialised legal and other advice in relation to the appropriateness of the Civic Place Trust and the Deed for its proposed functions and other short-term options for donation collection for The Haven Amphitheatre stage;**
- 3) requests the General Manager convene a Councillor Briefing to inform Councillors of the various options available to achieve the objectives of the proposal; and**
- 4) also defers recommendations from report 12.1.7 Civic Place Trust (deferred Cultural and Civic Committee Report 9.3) on this agenda pending further advice.**