

# RETIRED TRAMS

EXPRESSION OF INTEREST

May 2018

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## 1. Introduction

Victoria's trams, including the iconic W-Class, are synonymous with Melbourne.

As Victoria's transport system has modernised and the needs of public transport users have evolved, Melbourne's older trams have been progressively retired from the network. Some of these trams have been re-purposed and provide tourist services such as the City Circle, however 237 retired trams have been stored away at the Newport Railway Workshops and are in varying states of repair.

These trams are not suitable for returning to the network as they do not meet modern safety and accessibility requirements.

Approximately 134 of the retired trams will be offered through an Expression of Interest (EOI) process for members of the public to acquire one of Victoria's retired trams.

Preference will be given to potential recipients who can demonstrate how community benefit can be maximised through the re-purposing of these trams.

### 1.1. Expression of Interest (EOI)

An EOI process will be conducted where private individuals, community organisations and commercial entities can apply to acquire a retired tram.

An independent panel will be appointed to oversee the EOI process. Each application will be considered on its merits and scored individually by the panel, based on the selection criteria.

All scoring will be performed in an anonymous manner to ensure that each member of the panel has no way of knowing the identity of the potential recipient of a tram.

EOI responses received will be assessed in accordance with the evaluation process described in this invitation (refer to Section 3).

The below timeline for the EOI process is indicative and subject to change at the sole discretion of VicTrack. Notifications will be made of any change to the closing time.

#### Timeline for the EOI

EOI invitation released	<b>9:00am Monday 28 May 2018</b>
Closing time and date for EOI responses	<b>4:00pm Friday 6 July 2018</b>
Outcome of EOI announced	<b>Friday 14 September 2018, unless extended by VicTrack in its sole discretion</b>

### **VicTrack contact for enquiries:**

Enquiries about the EOI can be made to VicTrack via email to [trams@victrack.com.au](mailto:trams@victrack.com.au).

VicTrack commits to maintaining high standards of probity during this process to ensure that:

- the process is fair, unbiased and impartial at each stage;
- EOI responses are assessed objectively and consistently in accordance with the evaluation process;
- the process is transparent;
- conflicts of interest, whether perceived, actual or potential, are avoided and, where they arise, are identified and appropriately managed; and
- confidentiality of information is maintained.

To this end, VicTrack has engaged a Probity Advisor to oversee the process. The contact details of the appointed Probity Advisor can be found in Addendum 1. Any concerns about the probity of this process should be directed to the Probity Advisor.

## **2. Commercial Principles**

All entities, be they Community, Not-for-Profit, Commercial or Private must apply via the EOI to have the opportunity be the recipient of a tram.

### **2.1. Tram availability periods**

Based on the housing of the trams within the facility at the Newport Railway Workshops, dispatch of the trams will need to be well planned and systematically undertaken. It is anticipated that the dispatch of the trams will take place in the following time periods, finishing by June 2020.

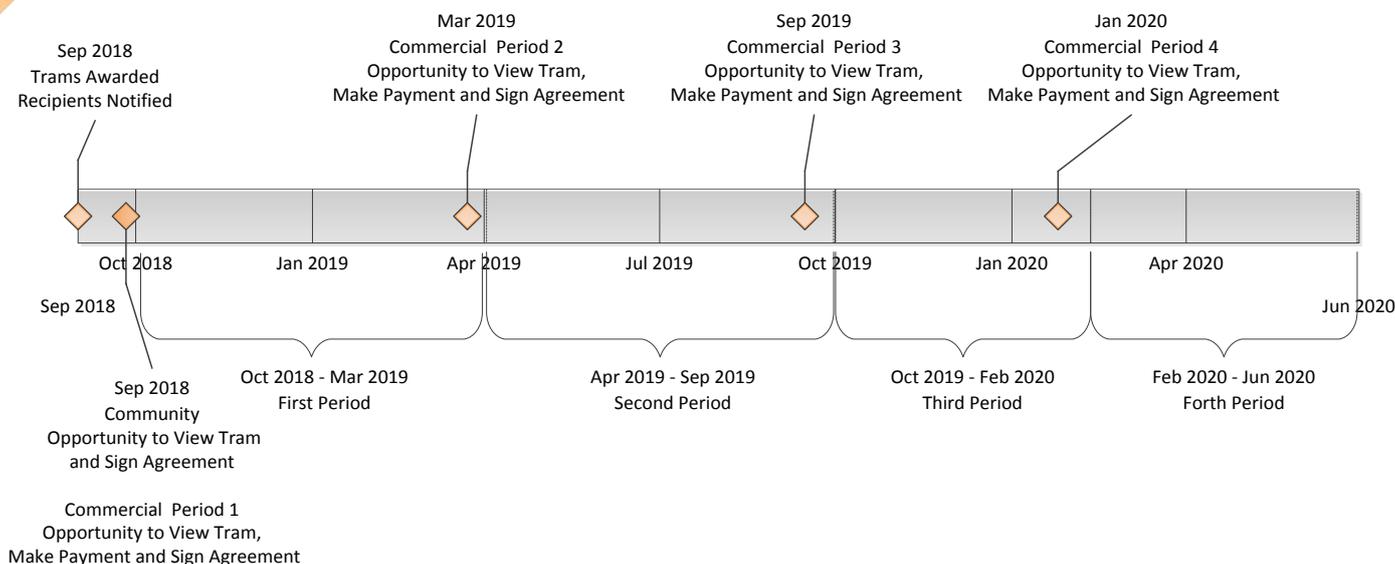
Period 1: 6 months

Period 2: 6 months

Period 3: 4.5 months

Period 4: 4.5 months

Viewing of the trams, execution of contracts and tram movements will be based around these time periods.



VicTrack reserves the right to modify the time periods noted above as may be required from time to time until the EOI and planning phases are complete.

## 2.2. Terms applicable to Community / Not-For-Profit Entities within the State of Victoria

The tram transfer arrangement between VicTrack and a Community or Not-For-Profit entity within the State of Victoria (including, as relevant, the contract entered into) will be based, in principle, on the following terms:

- VicTrack will a set time period when the tram will be available;
- the gift of the tram will be on a “where is, as is” basis and VicTrack's liability will be limited in this regard;
- the recipient will be given an opportunity to inspect the tram with the right to reject prior to signing the contract;
- VicTrack may, in its sole discretion, contribute an amount to assist in covering the costs for building a suitable foundation for the tram depending on the strength of the application;
- VicTrack will give no less than two weeks’ notice of the delivery window within the nominated time period to the nominated address;
- the recipient must provide a nominated delivery address at or prior to execution of the relevant tram transfer agreement; if no address is provided then the tram will be forfeited and the application deemed withdrawn;
- the recipient will be given another opportunity to inspect the tram again prior to transport to confirm that the tram has not substantially changed;
- the tram will be transported directly to the nominated address.
- VicTrack may contribute, in its sole discretion, an amount to assist in covering the costs for transporting the tram depending on the strength of the application;
- all risk associated with tram ownership will transfer to the recipient upon delivery of the tram to the nominated address; and
- payment of any VicTrack contribution will only be made once all costs have been properly substantiated (to VicTrack’s reasonable satisfaction).

### 2.3. Terms applicable to Commercial Entities / Private Individuals or Community / Not-For-Profit Entities outside the State of Victoria

The tram transfer arrangement between VicTrack and a Commercial entity, private individual or Community / Not-For-Profit entities outside of Victoria (including, as relevant, the contract entered into) will be based, in principle, on the following terms:

- VicTrack will a set time period when the tram will be available;
- the recipient will be given an opportunity to inspect the tram with the right to reject prior to signing the contract;
- transfer of the tram will be on a “*where is, as is*” basis and VicTrack's liability will be limited in this regard;
- the recipient must pay to VicTrack \$1,000 (ex GST) which will be held in trust by VicTrack until the transfer occurs;
- VicTrack will give no less than two weeks' notice of the dispatch window within the nominated time period;
- the recipient will be given another opportunity to inspect the tram again prior to transport to confirm that the tram has not substantially changed;
- the recipient must provide details of the transport company, ensuring such company meets VicTrack's accreditation and insurance requirements;
- VicTrack will either approve or reject the transport company; the transport company can only come onsite if the company is approved;
- the recipient must be present to sign for the delivery of the tram; all ownership and risk will transfer to the recipient upon signing for delivery of the tram; and
- the recipient will transport the tram off the site.

## 3. EOI Evaluation

### 3.1. Selection process

EOI responses, and any proposals included as part of these responses, will be evaluated by reference to the:

- selection criteria identified in Section 3.2 below; and
- overall proposition presented in the response.

Any EOI response which is clearly incomplete or inadequate in respect of the provision of information sought in the invitation, and has no reasonable prospect of meeting the selection criteria compared to other responses, may be excluded from further evaluation.

### 3.2. Selection Criteria

EOI responses and associated proposals will be evaluated against the following Selection Criteria (including the mandatory and scored criteria). The intent of this process is to offer the trams for use in the community. As such all applications will be weighted in the following order of preference:

- Community Use
- Commercial Use
- Private Use

#### 3.2.1. Mandatory Criteria

Where indicated in the table below, applicants must meet the mandatory criteria in order to progress to the second stage of the evaluation process and have the opportunity to acquire a tram. A failure to meet any one of these mandatory criteria (as applicable to the applicant entity type) will result in the application being deemed non-compliant. Such applications will not progress beyond this stage and applicants will be ineligible to receive a tram.

Mandatory Criteria			
Question		Commercial/Private Applicant	Community Applicant
1.	Will the tram be accessible to members of the public/community, be promoting Melbourne or be visible to a large audience? Yes/No	Mandatory	
2.	Trams require a solid foundation to sit on. Will you build a foundation or, alternatively, is there an existing foundation for the tram to be placed on? Yes/No	Mandatory	
3.	Will a roof be placed over the tram, or alternatively will you regularly maintain the tram to protect it from the weather? Yes/No	Mandatory	Mandatory
4.	Will the tram be regularly used and appropriately maintained? Yes/No	Mandatory	Mandatory

### 3.2.2. Scored Criteria

Responses to the following criteria will be scored. The higher the total score a response receives, the more likely an applicant will be invited to acquire a tram.

Scored Criteria			
		Commercial/Private Applicant	Community/Not For Profit Applicant
1.	The intended use for the tram.	Scored	Scored
2.	Whether the intended use of the tram will promote Melbourne.	Scored	
3.	Whether the access to the tram will provide a public/community benefit and support an organisation's purpose.	Scored	Scored
4.	Whether the applicant has checked with local government if a planning permit, or other permit is required.	Scored	Scored
5.	Any planned restorative works to support the tram's intended use.	Scored	Scored
6.	Whether the applicant has considered who will undertake the tram restoration and/or repurposing works.	Scored	Scored
7.	Whether the applicant has considered how they will pay for the restoration or repurposing of the tram.	Scored	Scored
8.	Whether the applicant has considered how they will pay for the ongoing management and maintenance of the tram.	Scored	Scored
9.	Whether the applicant has considered the logistics and costs of transporting the tram to their location.	Scored	
10.	Whether the applicant has considered the logistics and costs of building a suitable roof (if required) for the tram.	Scored	Scored
11.	Whether the applicant has considered the logistics and costs of building a suitable foundation or hard stand for the tram.	Scored	
12.	Whether the applicant has considered how they will pay for asbestos audits and any removal (if required).	Scored	Scored

## 4. Process for submitting an EOI Response

### 4.1. Applicant details

Applicant details must be entered via the website: [www.victrack.com.au/trams](http://www.victrack.com.au/trams).

### 4.2. Response to Selection Criteria

The EOI application response should:

- not include unnecessarily elaborate or excessive wording beyond that sufficient to present a complete and effective response to the Selection Criteria. Where requested, responses must be limited to 200 words or less.
- address the Selection Criteria and include the information required in order for an assessment to be made based on the Selection Criteria.

Only the information entered via the website referred to in Section 4.1 will be used in the evaluation. Any supplemental or additional information provided by any other channel, such as email, will not be used or considered as part of the evaluation process.

### 4.3. Response lodgement

The closing time and date for lodgement of EOI responses is 4.00p.m. Australian Eastern Standard Time (AEST) on 6 July 2018.

Responses can only be lodged via the website [www.victrack.com.au/trams](http://www.victrack.com.au/trams) and must meet the requirements described in this invitation (unless VicTrack has advised otherwise in writing prior to the closing time).

Applicants should ensure that responses are finalised online prior to the EOI closing time. Completion of the online application at least 2 hours early is recommended.

### 4.4. Late responses

Late lodgements will not be possible as the link to the online application will be disabled.

### 4.5. Other conditions of this EOI invitation and process

VicTrack employees and family members will not be eligible to apply for a tram in their personal capacity. Where a VicTrack employee or family member is associated with a community or commercial organisation that person must declare their potential conflict of interest and it will then be managed appropriately by VicTrack and the Probity Advisor.

VicTrack reserves the right to assign the trams available under the EOI to community and commercial organisations where there is a clear benefit to the community of doing so.

VicTrack reserves the right to vary the total number of trams available under this EOI at its discretion.

The number of trams that may be assigned to any one applicant will at all times remain at VicTrack's sole and absolute discretion.

#### **4.6. Invitation**

Legal entities, companies, consortiums, community groups, private individuals and like parties are invited to submit responses in accordance with this invitation.

Nothing in this invitation is to be construed, interpreted or relied upon, whether expressly or implied, as an offer capable of acceptance by any person, or as creating any form of contractual, promissory, restitutionary or other rights.

No binding contract or other understanding (including any form of contractual, promissory, restitutionary or other rights) for the supply of the goods or services will exist between VicTrack and any applicant unless and until VicTrack and the applicant have signed a formal written contract to that effect.

All entities (whether or not they submit a response) having obtained or received this invitation may only use it, and the information contained in it, as set out in this invitation.

#### **4.7. Accuracy of invitation**

VicTrack will not be liable for any discrepancy in or omission from the content of this invitation or any related information provided.

If an applicant finds any discrepancy, ambiguity, error or inconsistency in the invitation or any related information provided by VicTrack (other than minor clerical matters), the applicant must immediately notify VicTrack by email, so that there is fair opportunity to consider what corrective action is necessary (if any).

If there is any inconsistency between these EOI terms and conditions and any other documents or information provided by VicTrack, these EOI terms and conditions will prevail to the extent of any inconsistency.

#### **4.8. Additions and amendments**

VicTrack reserves the right to change any information and/or to issue addendums to the invitation before closing time. Where VicTrack exercises its right to change information in accordance with this clause, VicTrack may seek amended responses from applicants and may amend the closing time to allow applicants sufficient time to amend their response.

#### **4.9. Representation**

No representation made by or on behalf of VicTrack in relation to this invitation (or its subject matter) will be binding on VicTrack unless the representation is expressly incorporated into the contract(s) ultimately entered into between VicTrack and an applicant.

#### **4.10. Licence to use Intellectual Property Rights**

Persons obtaining or receiving this invitation and any other documents issued in relation to the invitation may use the documents only for the purpose of preparing a response.

Such intellectual property rights may exist in the invitation and any other documents provided to the applicants by or on behalf of VicTrack in connection with the invitation process are owned by (and will remain the property of) VicTrack except to the extent expressly provided otherwise.

Upon submission, all responses become the property of VicTrack. The applicant will retain all ownership rights in any intellectual property contained in their response however each applicant, by submission of their response, is deemed to have granted a licence to VicTrack to reproduce the whole, or any portion of their response for the purposes of enabling VicTrack to evaluate the response.

#### **4.11. Communication protocol**

Except for the lodgement of responses to VicTrack or probity queries, all communications relating to this invitation and the EOI process must be directed by email to [trams@victrack.com.au](mailto:trams@victrack.com.au).

Communications (including promotional or lobbying activities) with staff of VicTrack or consultants assisting VicTrack with the invitation process are not permitted during the invitation process except as provided in this clause, or otherwise with the prior written consent of VicTrack.

Nothing in this clause is intended to prevent communications with staff of, or consultants to, VicTrack to the extent that such communications do not relate to this invitation or the EOI process.

Applicants must not engage in any activities or obtain or provide improper assistance that may be perceived as, or that may have the effect of, influencing the outcome of the invitation process in any way. Such activities or assistance may, in the absolute discretion of VicTrack, lead to disqualification of an applicant.

#### **4.12. Requests for clarification**

Any questions or requests for clarification or further information regarding this invitation or the EOI process must be submitted to VicTrack by email to [trams@victrack.com.au](mailto:trams@victrack.com.au) at least five days prior to the closing time.

VicTrack is not obliged to respond to any question or request. Relevant questions and responses may be added to the online Frequently Asked Questions section of the website [www.victrack.com.au/trams](http://www.victrack.com.au/trams).

#### 4.13. Complaints about the Expression of Interest process

Any complaint about the EOI or the review process (other than any probity complaints or concerns) must be submitted to VicTrack by email to [trams@victrack.com.au](mailto:trams@victrack.com.au) immediately upon the cause of the complaint arising or becoming known to the applicant. The complaint must set out:

- (a) the basis for the complaint (specifying the issues involved);
- (b) how the subject of the complaint (and the specific issues) affect the person or organisation making the complaint;
- (c) any relevant background information; and
- (d) the outcome desired by the person or organisation making the complaint.

If the matter relates to the conduct of a VicTrack employee, the complaint should also be brought to the attention of the General Manager of VicTrack Property Business Unit.

#### 4.14. Conflict of interest

Applicants and their representatives must not place themselves in a position that may give rise to an actual, potential or perceived conflict of interest between the interest of VicTrack and the applicant's interests during the invitation process.

Applicants are required to disclose any conflicts of interest in their response and also notify VicTrack if any conflict of interest arises after lodgement of their response.

VicTrack may disqualify an applicant from the invitation process if the applicant fails to notify it of any conflict of interest.

#### 4.15. Errors in response

If an applicant identifies an error in their response (excluding clerical errors which would have no bearing on the evaluation), they must promptly notify VicTrack.

VicTrack may permit an applicant to correct an unintentional error in their response where that error becomes known or apparent after the closing time, but in no event will any correction be permitted if VicTrack reasonably considers that the correction would materially alter the response.

#### 4.16. Clarification of response

To enable thorough evaluation of EOI responses, it may be necessary for VicTrack to request clarification of information provided in a response. To the extent practicable, clarifications will be sought via email.

If in the opinion of VicTrack, a response is unclear in any respect, VicTrack may seek clarification from an applicant. Failure to supply clarification to the satisfaction of VicTrack may render the response liable to disqualification.

VicTrack is under no obligation to seek clarification, and reserves the right to disregard any clarification that it considers to be unsolicited or not in keeping with the requirements of the invitation.

#### 4.17. Discussion with Applicants

VicTrack may in its absolute discretion:

- interview, negotiate or hold discussions with any applicant or prospective applicant on any matter contained (or proposed to be contained) in a response to the exclusion of others; or
- request some or all applicants to conduct site visits, provide references and additional information, and/or make themselves available for panel interviews.

#### 4.18. Disclosure of response information

Responses will be treated as confidential by VicTrack, which will not disclose response contents and information except:

- as required by law (including, for the avoidance of doubt, as required under the *Freedom of Information Act 1982* (Vic));
- for the purpose of investigations by the Australian Competition and Consumer Commission or other government authorities having relevant jurisdiction;
- to external consultants and advisers of VicTrack engaged to assist with the EOI invitation or process; or
- general information from applicants required to be disclosed by government policy.

#### 4.19. Liability

VicTrack's decision in respect of the successful applicants will be final and (subject to statutory rights that cannot be excluded or modified) no applicant is entitled to any redress or claim against VicTrack as a result of VicTrack exercising any or all of its rights in respect of the EOI.

VicTrack's total aggregate liability to an applicant arising under, out of, or in connection with the EOI, including under these terms and conditions, under statute, in tort (for negligence or otherwise) or any other basis in law or equity, is limited to \$1.

#### 4.20. Invalidity and enforceability

If any provision of this EOI is invalid under the law of any jurisdiction, the provision is enforceable in that jurisdiction to the extent that it is not invalid, whether it is in severable terms or not.

#### 4.21. Governing law

The applicant must comply with all relevant laws in preparing and lodging its response and in taking part in the EOI.

This EOI will be governed by the laws of Victoria, Australia and by submitting a response, each applicant irrevocably submits to the non-exclusive jurisdiction of the courts of Victoria.

## Addendum 1. Probity Advisor

<b>Name:</b>	Anne Dalton
<b>Position:</b>	Probity Advisor
<b>Email:</b>	anne@daltoandassoc.com