



13.1 **DELEGATION TO THE CEO - REACTIVATION OF PUBLIC SPACE TO SUPPORT COMMUNITY & ECONOMIC RECOVERY**

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1. PURPOSE

1.1 That Council considers extending until 31 March 2021, the temporary process whereby Council delegates authority to the Chief Executive Officer to allow activities to be quickly considered and implemented within defined Public Space Activation areas (formally known as placemaking precincts). The short-term nature of activities that will be tested through this approach means that it can be easily executed and evaluated in a relatively low risk way. This has been occurring for 18 months through Council's placemaking program in three areas of the municipality, but this report seeks to extend these arrangements to other parts of the municipality. This arrangement is a way that Council could assist the community and was highlighted in the draft Council Plan and Budget as an initiative that could be progressed. The areas proposed to be covered by this Delegation are the eight public space activation areas as outlined in Attachment One.

2. EXECUTIVE SUMMARY

- 2.1 Through its Art and Soul Strategy, Council committed to the delivery of a concentrated placemaking effort and investment within three priority areas in Fitzroy Street, Waterfront Place and Clarendon Street. With the challenges posed by COVID-19, all areas of our municipality need focus and the philosophy and process of placemaking is one that can be applied to all neighbourhoods particularly with respect to the reactivation of public space.
- 2.2 Placemaking is an action learning process that enables all parts of the community and Council to work together to create great places.
- 2.3 The following principles were used to guide Council's placemaking approach and can be used in the future as part of the support Council can provide the community at this difficult time:
- 2.3.1 Understanding place: places are dynamic ecosystems, place users need to deeply understand cause and effect by developing a holistic evidence base, local knowledge and shared informed opinions are important drivers of change.
- 2.3.2 No silver bullets: there are no ultimate solutions, similarly, arguing for priority to be given to one aspect of place value to be given over another, can unbalance the place ecosystem and negatively impact other forms of place value.



- 2.3.3 Lighter quicker cheaper: action learning allows testing, learning and consideration of solutions before they are made permanent. This includes testing of policy changes and deregulation over time.
- 2.3.4 Dancing differently: if we work together in the same way we have always done then we will get the same result.
- 2.3.5 Co-creation: the views and interests of all place users and stakeholders are equally important. If we resolve conflict between competing self-interests by arbitration (deciding who is right?) we will create winners and losers and miss the opportunity to create additional place value.
- 2.3.6 Co-contribution: the responsibility, resources, time and energy required to positively change the place are held by many different stakeholders and place users. We can leverage each stakeholders' resources better by collaborating rather than competing.
- 2.4 Through the reactivation of public space, Council seeks to increase the place capital of the designated public space activation precincts. Place capital is multi-faceted and includes:
- Social elements for example community leadership, participation, volunteering, inclusion and wellbeing;
 - Cultural elements for example street life activation, innovation, creative and artistic expression as well as attachment to, and significance of the place;
 - Economic elements for example entrepreneurship, business growth and sustainability, accessibility and affordability;
 - Physical elements for example accessibility, connectivity, safety, comfort, attractiveness;
 - Environmental elements for example environmental sustainability, awareness and participation.
- 2.5 As placemaking is essentially an action learning process and the recovery of COVID-19 is an immediate need that is dynamic and constantly evolving, this approach supports quicker implementation of projects/activities to test ideas and see what interventions may be appropriate to adopt on a more permanent basis. Current legislative and policy requirements do not always provide the flexibility to take up opportunities as they arise and respond to ideas from the community.
- 2.6 This report recommends that Council considers extending current delegations to the CEO for a period of just over six months, to allow public space activation initiatives to be quickly considered and implemented within defined public space activation precincts. The short-term nature of activities that will be tested through this trial means that it can be easily executed in a relatively low risk way. The proposed defined public space activation areas include Acland Street, Bay Street, Carlisle Street, Elwood Village, Fishermans Bend, Fitzroy Street, South Melbourne and Waterfront Place. In forming this proposal officers considered the size of the area and the businesses that comprise it as well as the ability for officers to support the program.



- 2.7 One important area where Council can and have provided support is by enabling approvals to traders to extend the footpath trading area where requested. To enable this process, officers obtain the consent of the landlord of the adjacent business prior to issuing a permit to occupy the space in front of their premises which can be for a period of up to 12 months.
- 2.8 While Council can resolve extended outdoor dining opportunities under Local Law, the ability to serve and consume alcohol in any of these extended areas still require a Planning Permit and a Victorian Commission for Gambling and Liquor Regulation (VCGLR) liquor licence. The vast majority of new licensed areas, or extended existing licensed areas, require a planning permit (except where a Limited Licence applies), and a Liquor Licence from VCGLR. Traders may have an opportunity to apply to VCGLR for a Limited Licence for a one-off event or occasion. Whether a licence can be considered for a “Limited Licence” is determined by VCGLR. A Limited Licence does not require a planning permit.
- 2.9 Officers have contacted the VCGLR who have indicated that given the current circumstances they are currently offering free temporary limited licences which allows for businesses to supply liquor for take-away only. For alcohol to be consumed in any area outside of red lines a variation to the existing licence is required. The VCGLR has also waived the variation application fee of \$216.50 until 31 December 2020.
- 2.10 Under the current circumstances it is recommended that Council advocate to the VCGLR to see whether there is an ability to take a broader definition of “Limited Licence” given the current environment to support traders.

3. RECOMMENDATION

That Council:

- 3.1 Delegates to the Chief Executive Officer (CEO) the authority to make any decision or to do any act or thing, on behalf of the Council, to achieve the objectives of the reactivation of public space program within the designated precincts between 1 July 2020 until 31 March 2021.
- 3.2 Notes that the CEO has the power under an Instrument of Delegation granted by Council to give directive to a member of Council staff to carry out any of the powers delegated to the CEO.
- 3.3 Determines that participants of the program, where assessed as appropriate by the CEO, may be exempt from the requirements for a permit to be issued under the Local Law.
- 3.4 Delegates to the CEO the specific ability to waive, fix or reduce charges and exempt permits for Footpath Trading within the designated public space activation precincts between 1 July 2020 and 31 March 2021.
- 3.5 Designates for the purposes of this delegation, the public space activation precincts of Acland Street, Bay Street, Carlisle Street, Elwood Village, Fishermans Bend, Fitzroy



Street, South Melbourne and Waterfront Place, and determines that this authority may be executed within these precincts as outlined in Attachment 1.

- 3.6 Determines that this delegation expires on 31 March 2021, and notes that a report will be presented to Council in March 2021 detailing the progress of this trial.
- 3.7 Reserves the ability to withdraw this delegation, either in part or in full, at any time.
- 3.8 Requests that advocacy be undertaken with the Victorian Commission for Gambling and Liquor Regulation to request a broader definition of “Limited Licence” to enable traders the ability to serve and consume alcohol in extended footpath trading areas without the need to obtain a planning permit.
- 3.9 Notes that this delegated authority is subject to the following limitations and conditions:
 - 3.9.1 In enacting any delegated power, the CEO (and any officer carrying out a directive of the CEO) must:
 - Only make decisions that are legal and ethical;
 - Make decisions that are affordable and financially realistic;
 - Declare and effectively manage real, perceived and potential conflicts of interest;
 - Maintain confidentiality and security of information.
 - 3.9.2 Projects and activities implemented for testing by the program must:
 - Be safe and low-risk to Council;
 - Include no permanent capital works, unless these are part of the already scheduled Council asset renewal and maintenance approach;
 - Be able to be quickly and easily reversed if there is significant community feedback, i.e. reversed within 24 hours.
- 3.10 Regular updates will be provided to Councillors on the implementation of activities, and the use of this delegation, through the life of the trial program.

4. KEY POINTS/ISSUES

- 4.1 Through its Art and Soul Strategy, Council committed to the delivery of a concentrated placemaking effort and investment within three (3) priority areas in Fitzroy Street, Waterfront Place and South Melbourne. With COVID-19’s impacts it is pertinent that the learnings from the Program are now implemented across the municipality to assist all neighbourhoods.
- 4.2 Whilst placemaking seeks to make decisions quickly and without red tape barriers, it is recognised there are specific legislative requirements and standards to be met.
- 4.3 Projects or initiatives that have utilised the current placemaking delegations Council has provided to the CEO have included:
 - 4.3.1 Night Markets
 - Exempt from requirement for event permit and trade against the building line.



4.3.2 Musician Parking Permit

Variance from policy that requires individual premises to apply separately for the restriction change, and for permits.

Variance from policy to extend the permits to premises other than just those that have 'Music Victoria' membership, to enable issuing permits to restaurants and other premises that may accommodate live music.

4.3.3 Trader Custodian Seating

Incentive offered from footpath trading fees for business that wishes to provide publicly accessible seats and act as a custodian of these for the Council.

4.3.4 Footpath Renewal

Variance in Council procedure. Standard notification was replaced with consultation activities.

4.3.5 Suitcase Rummage

Exempt from requirement for event permit and trade against the building line.

4.3.6 Open Doors Emerald Hill

Exempt from requirement for event permit, signage permits.

Variance from Council's scheduled process for window cleaning for South Melbourne Town Hall and AAV building, to be ready for light projections.

4.3.7 Wayfinding signage

Enabled the unit to fast track a review of the Council's current signage strategy, using South Melbourne as a trial case, as well as fast track the delivery process internally.

4.3.8 Footpath Renewal

Variance in Council procedure. Standard notification was replaced with consultation activities.

4.4 Potential plans for further use of this delegation if granted by Council could include: -

4.4.1 Enabling Parklets, Shimmy Bike Routes and Play Streets

4.4.2 Potential to interpret Local Laws within reason and review Local Laws for specific placemaking delegated areas, subject to community support and the statutory process.

4.5 This report provides solid processes for making and implementing decisions within the boundaries of appropriate financial and project management. Having an articulated, accountable process will generally minimise the risks to Council, and lead to better outcomes for the community. The following sections of this report outlines the key elements of the delegation process.

4.6 Authority to make decisions and act on behalf of Council

4.6.1 To execute decisions quickly and positively, the CEO must act on Council's behalf. It is recommended that the Council temporarily delegates to the CEO the



authority to make any decision or to do any act or thing, to achieve the objectives of the reactivation of public space program within the designated precincts.

4.6.2 In administering the program, the CEO must only make decisions that are within the powers of Council and must apply the general principles underpinning local government decision making.

4.6.3 If approved, this authority is subject to conditions and limitations determined by the Council, included in this report.

4.7 Delegated powers of Council

4.7.1 Council is given the power to delegate any of its powers, duties and functions, other than for stipulated exceptions, under the Local Government Act 2020 (the Act). Delegation of powers is generally considered essential to enable day-to-day decisions to be made.

4.7.2 Council currently delegates many of its legislative powers to either the Chief Executive Officer (CEO) or to other Council staff through the Instrument of Delegation from Council to the CEO, and the Instrument of Delegation from Council to Members of Council Staff.

4.7.3 It is difficult to pre-determine exactly which Acts and Regulations will influence activities, as projects are undertaken as opportunities arise. However, the Food Act 1984, the Road Management Act 2004 and the Disability Act 2006 are examples of legislation which is likely to impact activities.

4.7.4 Recommended action: Whilst it is possible to create a new instrument which delegates lower-level and operational decisions to the CEO to execute, it is more efficient and less risky to instead streamline internal processes.

Officers will ensure that staff have the required authority, understanding and resources to act in accordance with directives from the CEO, meaning requests are responded to and delivered quickly, and not held up by internal approval processes.

4.8 Local Law No.1 (Community Amenity)

4.8.1 Under its Local Law, Council may exempt any person or class of persons from the requirement to have a permit, either generally or at specified times.

4.8.2 Recommended action: Participants who are engaged for the purpose of public space activation activities will be assessed on a case by case basis to determine, by the CEO, if those participants may be exempt from the requirement to have a permit under the local law for the purposes of activities for the period 15 July 2020 to 31 March 2021 in the defined precincts as designated by Council. The power to enact this process is determined by the Council resolution.

4.8.3 This exemption is granted subject to the following conditions, and may be amended, cancelled or corrected as if it were a permit.

The proposed use or activity:

- (a) must comply with any related policies of Council and contribute to Council strategies;



- (b) must not cause a danger or hazard to pedestrians or vehicles;
- (c) must not be detrimental to the amenity of the area;
- (d) must be done without destruction to native vegetation on roads or Council land;
- (e) must not have the potential to cause damage to Council assets;
- (f) must not require approval or compliance with requirements under any other legislation;
- (g) must not require the consent, or should be referred to obtain the opinion of any other public authority;
- (h) must not obstruct the pedestrian zone of a footpath.

4.8.4 Any participant granted exemption from the requirement to have a permit shall comply with every such condition. The Council, or such other person as the Council authorises for that purpose, may suspend or revoke such grant of permission at any time by notice in writing to the participant.

4.8.5 Under section 114 of the Act, Council has delegated to named officers listed in the Procedures and Protocols Manual all the powers, discretions, authorities and considerations of Council under its Local Law including powers, discretions and authority to issue or refuse permits, fix conditions and durations relevant to permits, cancel permits, require additional information, apply guidelines or policies of Council, waive the need for any permit, waive, fix or reduce fees or charges, designate areas or to do any act, matter or thing necessary or incidental to the exercise of any function or power by Council. Part 5 of the Procedures and Protocols Manual includes the CEO as a delegated officer under the Local Law, permitting the same abilities as listed above.

4.9 Financial Delegation of Authority

4.9.1 Within the Financial Delegations, the CEO has the financial authority, power to award, enter into and sign contracts to an amount of \$1,000,000.

4.9.2 Provisions in the Act around public tender thresholds of \$150k for goods and services and \$200k for works cannot be exempted through this process.

4.10 Procurement Policy

4.10.1 The Procurement Policy applies to all procurement activities at the City of Port Phillip. It is a legislatively required document, which is shaped by Council. The Policy gives Council latitude to deal with projects but retains vital provisions for purchasing.

4.10.2 Standard procurement methods require council to obtain several quotes and produce a specification in some circumstances. New vendors go through a several step approval process before being added to Council's procurement systems. All purchases and payments are predetermined and captured in Council's financial system and must be approved by officers of various levels.



4.10.3 These requirements, whilst being appropriately robust and controlled, are rigid and inflexible. For the purposes of trialling program activities, a higher priority is placed on speed and outcome over standard process. Quick, efficient idea installation and testing requires Council to temporarily work in a different way to meet its objectives of the placemaking program.

4.10.4 Additionally, Council's standard payment terms of 30 days are limiting in encouraging community and small business traders to participate in the activities due to the potential initial outlay, and delay in financial return. Council's vendor vetting and payment processes will be streamlined internally to ensure payments are made quickly, whilst still meeting policy requirements.

4.11 Policy Exemption

4.11.1 The Procurement Policy provides for exemption from Council's previously adopted methods of procurement. ELT may provide an exemption provided best value and legislative compliance can be achieved.

4.11.2 Ultimately, a council resolution to temporarily exempt the CEO from the requirements of the Policy would satisfy audit requirements and enable the CEO to make agile financial decisions as needed to enact temporary purchases, works or installations in the public space activation precincts.

4.12 Risk controls

4.12.1 Deviations from the policy as granted by the resolution will be reported to ELT, and in addition, the Coordinator Procurement is to sign off on deviations to say they meet best value principles and are legislatively compliant.

4.12.2 Expenditure outside of Council's adopted budget parameters will be reported to Council and the community through the CEO Report.

4.12.3 Through its resolution, Council will formally require the CEO to comply with these reporting requirements. This will provide a mechanism for managing risks that arise from the removal of typical internal probity under the policy.

4.12.4 The management of new Vendors is not removed, but rather streamlined, ensuring Council can work with small business traders and vendors who may not automatically meet the requirements of the policy.

4.12.5 The requirement to manage conflict of interest in purchasing sits with the Delegate (the CEO), as going outside of the procurement framework removes prompter mechanisms to capture and control interests.

5. CONSULTATION AND STAKEHOLDERS

5.1 Consultation and engagement with community and key stakeholders is a critical component of the trials.

5.2 Where necessary Council will notify residents and traders of proposed activities and will work with the local community to ensure the actions do not impede or create adverse impacts.

5.3 Whilst working with the local community and traders Council will utilise best practice community engagement. The need to follow standard formal consultation process



(unless legislatively required) will however be temporarily suspended as this is a community led program, and being informed by and working with the community is the ultimate element of the program.

- 5.4 Additionally, any projects or activities implemented will be temporary, and easy to remove, as per the controls set out, in the event there is overwhelming community feedback on a particular initiative that is not supportive.
- 5.5 A comprehensive media and communications strategy to promote and inform the community will be developed to support the program's activities.

6. LEGAL AND RISK IMPLICATIONS

Limitations of Authority

- 6.1 The Authority delegated through this report is limited to:
 - 6.1.1 The precincts of Acland Street, St Kilda; Bay St, Port Melbourne; Carlisle Street, Balaclava; Elwood Village; Fishermans Bend; Fitzroy Street, St Kilda; South Melbourne; Waterfront Place, Port Melbourne.
 - 6.1.2 The time specified in the resolution, expiring 31 March 2021.
- 6.2 In enacting, delegated power and authority, the CEO must:
 - 6.2.1 Only make decisions that are legal and ethical;
 - 6.2.2 Make decisions that are affordable and financially realistic;
 - 6.2.3 Declare and effectively manage real, perceived and potential conflicts of interest;
 - 6.2.4 Maintain confidentiality and security of information.
- 6.3 Projects and activities implemented for testing by the program must:
 - 6.3.1 Be safe and low-risk to Council;
 - 6.3.2 Include no permanent capital works, unless these are part of the already scheduled Council asset renewal and maintenance approach;
 - 6.3.3 Be able to be quickly and easily reversed if there is significant community feedback, i.e. reversed within 24 hours.

7. FINANCIAL IMPACT

- 7.1 The requirement to report to Council and the community on expenditure outside of Council's adopted budget parameters through the CEO Report is built into the delegation conditions of this report.
- 7.2 Much of the activity that is intended to be supported through these delegations is at minimal cost to the Council as it is enabling the community or businesses to trial ideas that are funded or initiated by these groups or is revenue that the Council wouldn't have ordinarily received.
- 7.3 The Council has notionally allocated \$450K over one year to support the reactivation of public space and is currently engaging with the community on this and other activities as part of the draft Council Plan and Budget. Prior to the Council adopting its final budget position, the CEO will engage with Councillors if ideas come through this



process that require a material commitment of Council funds prior to exercising this delegation.

8. ENVIRONMENTAL IMPACT

- 8.1 One of the key aspects of place capital that will be measured and enhanced through Council's activities will be the environment.
- 8.2 Council's public space activities provide an opportunity to trial and test a range of initiatives that directly align with the Council's Act and Adapt and Don't Waste It strategies.

9. COMMUNITY IMPACT

- 9.1 The program is a community driven approach to activating public spaces, improving the use, access, image and interaction of a place with its community. The activation and enhancement of public spaces contributes to the health, happiness, and wellbeing of the population.
- 9.2 The intention of this report is to make enable Council and the community to work together to make decisions on activities quicker, more easily and with less 'red tape'. Activities can be implemented more efficiently, allowing the community instant access to and participation in the program.

10. ALIGNMENT TO COUNCIL PLAN AND COUNCIL POLICY

- 10.1 Placemaking is directly referenced in Art and Soul - Creative & Prosperous City Strategy (the Strategy) outlines how we will achieve Strategic Direction 5 of our Council Plan, 'We have smart solutions for a sustainable future' and is focused on the associated outcomes:
 - 10.2.1 A city of dynamic and distinctive places and precincts;
 - 10.2.2 A prosperous city that connects and grows business;
 - 10.2.3 Arts, culture and creative expression are part of everyday life.
- 10.2 Placemaking did and this new program will provide an opportunity to directly influence and test and trial a range of new ways of working identified in other Council's Strategies. As an example, the Move, Connect, Live – Integrated Transport Strategy, seeks to trial initiatives to create priority space for walking, bike riding and play.

11. IMPLEMENTATION STRATEGY

11.1 TIMELINE

- 11.1.1 This approach will take effect from 15 July 2020 through to 31 March 2021.

11.2 COMMUNICATION

- 11.2.1 Members of the community participating in existing placemaking activities have been advised that this report will be presented to Council and will be advised of the outcome of Council's decision on this matter.
- 11.2.2 A broader communication and engagement plan and approach will also be developed for Council's reactivation of public space activities.

ORDINARY MEETING OF COUNCIL– 01 JULY 2020



12. OFFICER DIRECT OR INDIRECT INTEREST

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

TRIM FILE NO: F20/1

ATTACHMENTS 1. Public Space Activation Delegation 2020-21