



# ORDINARY MEETING OF COUNCIL

## 3 OCTOBER 2018

### 12.1 INTERIM BUILT FORM CONTROLS (DESIGN AND DEVELOPMENT OVERLAY 27) - ST KILDA ROAD SOUTH

**EXECUTIVE MEMBER:** LILI ROSIC, GENERAL MANAGER, PLACE STRATEGY AND DEVELOPMENT

**PREPARED BY:** JODIE DODD, SENIOR STRATEGIC PLANNER

#### 1. PURPOSE

- 1.1 To determine whether to request an extension of the interim controls for the St Kilda Road South Precinct (the Precinct).

#### 2. EXECUTIVE SUMMARY

- 2.1 Schedule 27 to Clause 43.02 - Design and Development Overlay (DDO27) of the Port Phillip Planning Scheme applies building height and footpath overshadowing controls to the Precinct on an interim basis whilst permanent built form controls (via Amendment C122) are pursued.
- 2.2 Council resolved to adopt and submit Amendment C122 for approval to the Minister for Planning at the Ordinary Meeting on 19 September 2017.
- 2.3 There is a risk that the permanent built form controls may not be authorised by the Minister for Planning before the interim controls expire (on 31 December 2018) and that the Precinct will therefore not have the controls in place to restrict building height and footpath overshadowing.
- 2.4 An extension of the interim controls will continue to provide certainty for the St Kilda community, applicants and Council while the Victorian Government finalises the permanent built form controls.

#### 3. RECOMMENDATION

That Council:

- 3.1 Requests the Minister for Planning to approve an amendment to the Port Phillip Planning Scheme, pursuant to section 20(a) of the *Planning and Environment Act 1987*, to extend the expiry date for the interim Schedule 27 to Clause 43.02 - Design and Development Overlay to 31 December 2019.
- 3.2 Authorises the Chief Executive Officer (or delegate) to finalise the amendment documentation to form the basis of the request to the Minister for Planning.
- 3.3 Writes to all submitters to Amendment C122 advising of Council's decision and thanking them for their ongoing interest in the St Kilda Road South Precinct.



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#### 4. KEY POINTS/ISSUES

- 4.1 DDO27 was introduced on 6 April 2017 (through Amendment C145 to the Port Phillip Planning Scheme) and applies to land generally fronting Alma Road, Barkly Street, St Kilda Road (south of the St Kilda Junction) and Wellington Street.
- 4.2 DDO27 applies both mandatory and discretionary maximum building heights and footpath overshadowing controls to the Precinct on an interim basis while permanent built form controls (via Amendment C122) are pursued.
- 4.3 Amendment C153 extended operation of the interim DDO27 until 31 December 2018 to enable more time for the permanent built form controls to be finalised.
- 4.4 The Victorian Government will enter caretaker period in the lead up to the 2018 Victorian State election on 30 October 2018, during which time it will not make any changes to the government's policies, including authorisation of Amendments.
- 4.5 If the Minister does not authorise Amendment C122 or the amendment to extend the interim controls prior to the election then it is likely that neither amendment will be authorised before the interim controls lapse on 31 December 2018.
- 4.6 Council is still actively pursuing permanent controls via Amendment C122 and while this is being finalised, it is essential that the interim building height and footpath overshadowing controls remain in place.
- 4.7 Extending the application of DDO27 on an interim basis will allow the Minister for Planning a longer time to assess Council's request for approval of permanent controls for the Precinct.
- 4.8 When Council resolved to adopt and submit Amendment C122 for approval to the Minister for Planning at the Ordinary Meeting on 19 September 2017, it also resolved to request the Minister disregard the requirements of the *Ministerial Direction – Form and Content of Planning Schemes* (Ministerial Direction), gazetted 24 May 2017, for DDO27, on the basis that Amendment C122 was prepared, authorised, exhibited and considered by a Planning Panel prior to the approval of the Ministerial Direction.
- 4.9 Subsequently, the Department of Environment, Land, Water and Planning (DELWP) advised that Amendment C122 would need to comply with the Ministerial Direction.
- 4.10 The Ministerial Direction seeks to streamline the content of planning scheme overlay schedules and includes a requirement that a maximum of 5 objectives may be included in a DDO. The adopted DDO27 contained over 40 Design Objectives.
- 4.11 Accordingly, Council officers have pro-actively restructured the adopted Amendment C122 Planning Scheme ordinances to comply with the Minister's Direction and to ensure that Council's adopted position was not compromised.



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### 5. CONSULTATION AND STAKEHOLDERS

- 5.1 A comprehensive public exhibition / consultation process was undertaken to ensure wide community awareness of Amendment C122 and enable feedback through submissions.
- 5.2 If the Minister determines to prepare an amendment to extend the interim controls pursuant to section 20(a) of the *Planning and Environment Act 1987* (the Act) then the exhibition, notice and availability for inspection requirements of sections 17, 18 and 19 of the Act do not apply in respect of that amendment.

### 6. LEGAL AND RISK IMPLICATIONS

- 6.1 Amendment C122 was submitted to the Minister for Planning for final approval, with the Minister having the discretion to make changes to Council's adopted amendment.
- 6.2 Council officers have proactively restructured the adopted Amendment C122 Planning Scheme ordinances upon advice from the Minister's department that it would need to comply with the requirements of the Ministerial Direction.
- 6.3 The intervention of Council officers in the amendment restructuring process has helped to mitigate the risk of Council's adopted position on Amendment C122 being compromised through DELWP officers not transferring elements of the DDO that are important to the community, while modifying controls to comply with the Ministerial Direction.
- 6.4 The Victorian Government will enter caretaker period on 30 October 2018 until the outcome of the Victorian Government election, during which time it will not make any changes to the government's policies, including the approval of any Amendments.
- 6.5 If the Minister does not authorise Amendment C122 or the amendment to extend the interim controls prior to the election then it is likely that neither amendment will be authorised before the interim built form controls for the Precinct lapse on 31 December 2018.
- 6.6 Extending the date of operation of the interim controls for DDO27 will mitigate the risk of the permanent controls not being finalised before the interim controls lapse, leaving the height of development in some parts of the Precinct unrestricted.

### 7. FINANCIAL IMPACT

- 7.1 A statutory fee is payable to the Department of Land, Water and Planning with any request for approval of an amendment.



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### 8. ENVIRONMENTAL IMPACT

- 8.1 Continuing to control building height and footpath overshadowing controls will prevent unintended outcomes that are detrimental to the amenity of the Precinct and the internal amenity for new dwellings constructed.
- 8.2 Such outcomes could compromise the walkability of the Precinct, the environmental sustainability of buildings and the health and well-being of its residents.

### 9. COMMUNITY IMPACT

- 9.1 An extension of the interim controls will continue to provide certainty for the St Kilda community, applicants and Council while the Victorian Government finalises the permanent built form controls.

### 10. ALIGNMENT TO COUNCIL PLAN AND COUNCIL POLICY

- 10.1 Continued operation of the interim built form controls for the Precinct will contribute to Council Plan Outcome 4.1 – ‘Liveability in a high-density City’ by managing intensification of land use in the context of the varying development opportunities and constraints across each part of the Precinct.

### 11. IMPLEMENTATION STRATEGY

#### 11.1 TIMELINE

- 11.1.1 If Council decides to request the Minister to extend the interim controls, an Amendment will be submitted the next day to the Minister for Planning for consideration.
- 11.1.2 The Minister may determine to approve or refuse the request for an amendment to extend the operation of DDO27.
- 11.1.3 The extension of interim controls will come into effect when notice of its approval is published in the *Victoria Government Gazette*.

#### 11.2 COMMUNICATION

- 11.2.1 All submitters to Amendment C122 will be advised of Council’s decision at this meeting and will continue to be informed of the progress of Amendment C122.
- 11.2.2 The City of Port Phillip website will be updated about the decision to request interim controls for the Precinct.

### 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:** 66/02/275

**ATTACHMENTS** Nil