

MEETING OF THE PORT PHILLIP CITY COUNCIL

15 MARCH 2023



13.2 MOTION OF MUNICIPAL ASSOCIATION OF VICTORIA STATE COUNCIL MEETING 2023

EXECUTIVE MEMBER: BRIAN TEE, GENERAL MANAGER, CITY GROWTH AND DEVELOPMENT

PREPARED BY: SAMUEL YEO, COORDINATOR ADVOCACY & PARTNERSHIP

1. PURPOSE

- 1.1 To seek Council's ratification of submission of motions for consideration at the Municipal Association of Victoria (MAV) State Council Meeting.

2. EXECUTIVE SUMMARY

- 2.1 The Municipal Association of Victoria (MAV) State Council Meeting will be held on Friday 19 May 2023.
- 2.2 Motions from member councils on issues of state-wide significance to local government are due by midnight on Monday 20 March 2023.
- 2.3 This report recommends a motion for the MAV to call on the State Government to enact legislative reform to clarify the power of Municipal Building Surveyors (MBS) to issue a building order, including a building order for minor work, to ensure that Councils and the MBS can require remediation in instances of illegal building work or dangerous buildings or land.

3. RECOMMENDATION

That Council:

- 3.1 Submits the following motion for consideration at the MAV State Council Meeting on 19 May 2023:
 - 3.1.1 that the MAV advocate to the State Government to enact legislative reform to confirm the power of Municipal Building Surveyors to issue a building order, including a building order for minor work, to ensure that Councils and the MBS can require remediation in instances of illegal building work or dangerous buildings or land.

4. KEY POINTS/ISSUES

About MAV/State Council Meeting:

- 4.1 The Municipal Association of Victoria (MAV) is a membership association and the legislated peak body for local government in Victoria.
- 4.2 The MAV offers diverse business services to council members including specialist policy and advocacy, governance and legislative advice, sector development, insurance, and procurement services.
- 4.3 The MAV Strategy 2021-25, adopted at the May 2021 State Council meeting, identifies six MAV Strategic Outcomes:
 - Economically sound councils
 - Healthy, diverse and thriving communities
 - Well-planned, connected and resilient built environment



- Changing climate and a circular economy
- Sector capability and good governance
- Effective and responsive MAV.

4.4 The City of Port Phillip is a member of the MAV and Council is represented by Cr Tim Baxter.

4.5 The MAV will be holding its Annual State Council Meeting on 19 May 2023.

4.6 Each council is allocated two seats on the floor of State Council. Motions are being sought from member Councils on issues of state-wide significance to local government.

Requirements for Submission:

4.7 Motions must be submitted online by 20 March 2023 using the State Council Motion Submission Form.

4.8 The form is in a 'survey' format and requires that councils identify whether the motion is supported by a council resolution and whether the subject matter of the motion:

4.8.1 has state-wide significance to the sector

4.8.2 relates to one of the sector's priority issues in the MAV Strategy 2021-25

4.8.3 is identical or substantially similar to a motion submitted to State Council in October 2022 and, if so, provide a rationale for the duplication.

4.9 Motions initially assessed as 'not of state-wide significance' will be referred to the submitting council's designated representative, then reviewed by the MAV CEO, and finally by the MAV Board, who determine whether the motion is submitted for State Council consideration.

4.10 Submitters may amend their motions up to three weeks before the State Council meeting.

Background:

4.11 The Supreme Court on 18 October 2022 reviewed decisions of the Building Appeals Board (Board) regarding a building order for minor work issued by the City of Port Phillip Municipal Building Surveyor (MBS). (*Shout Rock Cafes Pty Ltd v City of Port Phillip & Anor* [2022] VSC 615 (Judgment))

4.12 The Court held that the power to issue a Building Order for minor works is limited to requiring an owner to carry out work that is necessary under the Building Regulations 2018 (Regulations). This may include building work, protection work or other work, but in all instances, it must be required by the Regulations. Where no requirement exists under the Regulations, the building order cannot require work to be carried out. Therefore, if the work is not required by the regulations, it cannot be included in an order.

4.13 For the purpose of enforcement under the Building Act 1993 (Act), the scope of building work that can be required by the Regulations is generally limited to essential safety measures (ESM) and work relating to swimming pool safety barriers. The Act and the Regulations do not detail the building work required in instances of illegal building work or dangerous buildings or land.

4.14 The Supreme Court ruling has brought to light the ambiguity of the wording in the Act and may restrict the scope of building orders that Council's MBS can issue. Prior to the



Judgment, the widely accepted industry standard regarding the issuing of building orders has been that orders being issued also include work that is not specifically directed by the regulations. This provides the MBS discretion to order work necessary to remedy a danger or non-compliance. The Judgment does not support this interpretation and limits building orders to building works required by the Regulations. This means there may be no remedy for illegal building works or dangerous buildings or land in non-emergency settings.

- 4.15 Council is preparing an appeal before the Supreme Court however there is the potential that this appeal will not be successful. Regardless of the outcome, the ambiguity will remain. Without the Act being clarified or reformed, there will be the risk of more legal challenges against building orders and a continued inability for Council to keep the community safe.
- 4.16 Council has written to the Minister for Planning requesting a meeting to discuss this issue and is engaging in advocacy with Councils across Victoria (see section 5 below) as this Judgment will impact all Councils in the state.
- 4.17 The State Council Motion requests that the Victorian Government take immediate action via legislative reform to address this issue.
- 4.18 Submitting this motion to MAV State Council will increase the visibility of this advocacy issue and allow Council to work with other local government areas across Victoria to seek a remedy.

5. CONSULTATION AND STAKEHOLDERS

- 5.1 On 6 January 2023, the Acting Mayor wrote to the Minister for Planning, the Hon Sonya Kilkeny MP, requesting a meeting on this issue.
- 5.2 In January, Council – via the CEO and MBS – wrote to numerous other Councils around Victoria, to the Municipal Association of Victoria (MAV), the Victorian Building Authority, Victorian Municipal Building Surveyor Group, and the Australian Institute of Building Surveyors. We requested that each of these organisations write to the Minister to support our call for legislative reform and commit to working together to remedy the potential adverse impacts of the Judgment.
- 5.3 Councils and organisations have responded, and in many cases have written to the Minister, supporting Council's concerns.

6. LEGAL AND RISK IMPLICATIONS

- 6.1 The notices of motion proposed are consistent with Council's role and powers as set out in the Local Government Act 2020 (Part 2- Division 1).

7. FINANCIAL IMPACT

- 7.1 There are no direct financial impacts to Council arising from the recommendation in this report.

8. ENVIRONMENTAL IMPACT

- 8.1 There are no direct environmental impacts to Council arising from this report.

9. COMMUNITY IMPACT

- 9.1 There are no direct community impacts to Council arising from this report.



10. ALIGNMENT TO COUNCIL PLAN AND COUNCIL POLICY

10.1 The proposal aligns with Council's Well-Governed Port Phillip service direction: A city that is a leading local government authority, where our community and our organisation are in a better place as a result of our collective efforts.

10.1.1 We will facilitate and advocate for:

- Other levels of government to recognise and be mindful of the impact on local government when making policy and legislative changes.

11. IMPLEMENTATION STRATEGY

11.1 TIMELINE

11.1.1 Proposed motion to be submitted by midnight on Monday 20 March 2023.

11.1.2 Accepted motions will be circulated to member councils on Wednesday 19 April 2023 and discussed at the MAV State Council Meeting on Friday 19 May 2023.

11.2 COMMUNICATION

11.2.1 Should the proposed motion be endorsed by Council, Council officers will engage the councils of the M9 advocacy group to advise them of the proposal, as well as notifying other councils that have advised us that they support our advocacy on this issue.

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

Nil