



12.1 DELEGATION TO THE CEO - PLACEMAKING ACTIVITIES

EXECUTIVE MEMBER: KYLIE BENNETTS, DIRECTOR, OFFICE OF THE CEO

PREPARED BY: KIRSTY PEARCE, SENIOR GOVERNANCE ADVISOR

1. PURPOSE

To seek Council endorsement for a twelve-month trial of more flexible governance arrangements so that officers can quickly respond to new ideas that come from the community who are involved in Council's placemaking activities.

2. EXECUTIVE SUMMARY

2.1 Through its Art and Soul Strategy, Council has committed to the delivery of a concentrated placemaking effort and investment within three (3) priority areas in Fitzroy Street, Waterfront Place and Clarendon Street.

2.2 Placemaking is an action learning process that enables all parts of the community and Council to work together to create great places. The process seeks to answer three (3) questions:

2.2.1 What has been the identity, history and importance/value of the place in the past?

2.2.2 What is the current identity and value of the place to different place users?

2.2.3 What is the desired future identity of the place that meets the needs of most place users and how can place users work together to create or curate this desired identity?

2.3 The following principles will be used to guide Council's placemaking approach: -

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 placemaking, Council will be seeking to increase the place capital of the designated placemaking precincts. Place capital is multi-faceted and includes: -
 - 2.4.1 Social elements for example community leadership, participation, volunteering, inclusion and wellbeing;
 - 2.4.2 Cultural elements for example street life activation, innovation, creative and artistic expression as well as attachment to, and significance of the place;
 - 2.4.3 Economic elements for example entrepreneurship, business growth and sustainability, accessibility and affordability;
 - 2.4.4 Physical elements for example accessibility, connectivity, safety, comfort, attractiveness;
 - 2.4.5 Environmental elements for example environmental sustainability, awareness and participation.
- 2.5 Measurement of place capital will occur throughout the placemaking process.
- 2.6 As placemaking is essentially an action learning process, it requires the ability to quickly implement 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.
- 2.7 This report recommends that Council considers implementing a temporary process whereby Council delegates authority wholly to the Chief Executive Officer to allow activities to be quickly considered and implemented within its defined placemaking precincts. The short-term nature of activities that will be tested through this trial means that it can be easily executed and evaluated in a relatively low risk way. Key learnings will be reported back and importantly will be used to inform and reduce red-tape in Council's policies and procedures on an ongoing basis.



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 placemaking program within the designated precincts.
- 3.2 Notes that the CEO has the power under an Instrument of Delegation granted by Council on 6 September 2017, 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 placemaking 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 placemaking precincts of Fitzroy Street, Clarendon Street and Waterfront Place between 21 September 2018 and 21 September 2019.
- 3.5 Amends Part 5 of its Procedures and Protocols Manual to include the CEO as a delegated officer for all the powers delegated to officers under clause 73 of the Local Law, and causes notice to be published in the Government Gazette of that inclusion, and publishes the amended document on the Council website.
- 3.6 Designates for the purposes of this delegation, the placemaking precincts of Fitzroy Street, Clarendon Street and Waterfront Place, as per Attachment 2, and determines that this authority may be executed within these precincts.
- 3.7 Determines that this delegation expires on 21 September 2019, and notes that an interim report will be presented to Council in March 2019 detailing the progress of this trial.
- 3.8 Reserves the ability to withdraw this delegation, either in part or in full, at any time.
- 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.
 - 3.9.3 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 Placemaking is a process that enables all parts of the community and Council to come together and have input into the way places are planned, funding is allocated and services are provided. It is undertaken by looking at, listening to and asking questions of the people who live, work and play in a district or place to discover their needs and aspirations and developing and implementing solutions as well as resolving conflicts over the use of public space together. At its core, it involves the community and Council working together in a way that it hasn't ever worked together in the past. Importantly it focuses on all aspects of the place including the economy, the physical look and feel, environmental, cultural and social aspects.
- 4.2 Placemaking has been used very successfully by communities right across the world. The Council has committed to undertaking a placemaking approach in several priority place areas and taking the learnings from this work to improve outcomes in other parts of the municipality. The key steps within Council's placemaking approach are outlined in **Attachment 1**.
- 4.3 Through its Art and Soul Strategy, Council has committed to the delivery of a concentrated placemaking effort and investment within three (3) priority areas in Fitzroy Street, Waterfront Place and Clarendon Street. The priority areas for these activities are the defined placemaking precincts as outlined in **Attachment 2**.
- 4.4 As placemaking is essentially an action learning process, it requires the ability to quickly implement 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.
- 4.5 This report recommends that Council considers implementing a temporary process whereby Council delegates authority wholly to the Chief Executive Officer to allow activities to be quickly considered and implemented within the Fitzroy Street, Waterfront Place and 'Clarendon Street' defined placemaking precincts.
- 4.6 Following deep engagement with those who use the designated placemaking precincts, the types of activities that the Chief Executive Officer could undertake using this delegation includes temporary: -
- 4.6.1 Changes to parking controls including paid and timed controlled parking as well as parking permits;
 - 4.6.2 Changes to footpath trading restrictions;
 - 4.6.3 Widening of footpaths for example by removing parking spaces to create more space for social connections, trade as well as walking and bike riding links;
 - 4.6.4 Closing of roads for events or to create public places and spaces;
 - 4.6.5 Changes to road conditions to trial initiatives that increase priority for walking, bike riding and play;
 - 4.6.6 Street art;
 - 4.6.7 Activation of venues, street stalls, markets or other businesses on the street;
 - 4.6.8 Street parties;
 - 4.6.9 Projections or movies, sports screenings in the street;



- 4.6.10 Reduction or waiver of Council fees and charges;
- 4.6.11 Art installations.
- 4.7 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.
- 4.8 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. This report lays out the key elements of the placemaking delegation process:
 - 4.8.1 Decision Making - policy, procedure and legislative powers;
 - 4.8.2 Financials;
 - 4.8.3 Limitations of authority.

Decision Making

4.9 Authority to make decisions and act on behalf of Council

- 4.9.1 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 placemaking program within the designated precincts.
- 4.9.2 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.
- 4.9.3 If approved, this authority is subject to conditions and limitations determined by the Council, included in clause 6 of this report.

4.10 Delegated powers of Council

- 4.10.1 Council is given the power to delegate any of its powers, duties and functions, other than for stipulated exceptions, under the Local Government Act 1989 (the Act). Delegation of powers is generally considered essential to enable day-to-day decisions to be made.
- 4.10.2 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.
- 4.10.3 It is difficult to pre-determine exactly which Acts and Regulations will influence placemaking 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.



- 4.10.4 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.

4.11 Local Law No.1 (Community Amenity)

- 4.11.1 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.

- 4.11.2 Recommended action: Participants who are engaged for the purpose of placemaking 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 placemaking activities for the period 21 September 2018 to 21 September 2019 in the placemaking precinct as designated by Council. The power to enact this process is determined by the Council resolution.

- 4.11.3 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;
 - (d) must not be detrimental to the amenity of the area;
 - (e) must be done without destruction to native vegetation on roads or Council land;
 - (f) must not have the potential to cause damage to Council assets;
 - (g) must not require approval or compliance with requirements under any other legislation;
 - (h) must not require the consent, or should be referred to obtain the opinion of any other public authority;
 - (i) must not obstruct the pedestrian zone of a footpath.
- 4.11.4 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.
- 4.11.5 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.

- 4.11.6 Recommended action: Council may amend Part 5 of its Procedures and Protocols Manual to include the CEO as a delegated officer under the Local Law, permitting the same abilities as listed above.

4.12 Footpath Trading Guidelines

- 4.12.1 Council recognises that outdoor dining is a key element to the vibrancy of our streets. Footpath trading typically includes the placement of advertising signs, display of goods, tables, chairs and ancillary equipment such as umbrellas, heaters, planter boxes and screens. The Footpath Trading Guidelines provide a framework for the sustainable use and management of footpath trading areas, and should be read in conjunction with, the Local Law No.1.
- 4.12.2 Council is currently reviewing options for amending the current footpath trading fee structure for implementation in 2019/20, that includes engagement with traders, and provide additional outdoor dining incentives to support traders and increase the vibrancy of streets. It is anticipated that a Report will be presented to Council to commence consultation and engagement with outdoor dining permit holders.
- 4.12.3 This report proposes to provide additional incentives that support outdoor dining opportunities, including a fee structure that would increase equity for traders and the fees charged.
- 4.12.4 It is recommended that Council delegates to the CEO the ability to waive, fix or reduce charges and exempt permits for Footpath Trading within the designated placemaking precincts of Fitzroy Street, Clarendon Street and Waterfront Place between 21 September 2018 and 21 September 2019.
- 4.12.5 Applications will be assessed using the Council's Footpath Trading Priorities, the Footpath Management Standards and the Local Law No. 1 (Community Amenity). Each case will be decided on its merits, and traders must comply with all health and safety requirements of both the Guidelines and the Local Law.

Financial Authorities

4.13 Financial Delegation of Authority

- 4.13.1 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.
- 4.13.2 Provisions in the Act around public tender thresholds of \$150k for goods and services and \$200k for works cannot be exempted through this process.



4.14 Procurement Policy

- 4.14.1 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.
- 4.14.2 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.
- 4.14.3 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.
- 4.14.4 Additionally, Council's standard payment terms of 30 days are limiting in encouraging community and small business traders to participate in the placemaking 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.
- 4.14.5 **Policy Exemption**
- 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.
- 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 placemaking precincts.

4.15 Risk controls

- 4.15.1 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.
- 4.15.2 Expenditure outside of Council's adopted budget parameters will be reported to Council and the community through the CEO Report.
- 4.15.3 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.



- 4.15.4 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.
- 4.15.5 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 placemaking trial.
- 5.2 Where necessary Council will notify residents and traders of proposed works, and will work with the local community to ensure the actions of placemaking activities 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 placemaking is a community led program, and being informed by and working with the community is the ultimate element of the placemaking program.
- 5.4 Additionally, any projects or activities implemented will be temporary, and easy to remove, as per the controls set out in clause 6.
- 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

Limitations of Authority

- 6.1 The Authority delegated through this report is limited to:
 - 6.1.1 The placemaking precincts of Fitzroy Street, Clarendon Street and Waterfront Place, as per Attachment 2 of this report.
 - 6.1.2 The time specified in the resolution, expiring 21 September 2019.
- 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 The Council has also notionally allocated \$1.55M over four (4) years to support its placemaking efforts and activities.

8. ENVIRONMENTAL IMPACT

8.1 One of the key aspects of place capital that will be measured and enhanced through Council's placemaking activities will be the environment.

8.2 Council's placemaking 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 placemaking 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 placemaking activities quicker, more easily and with less 'red tape'. Placemaking 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 a process that can support the Council in delivering key aspects of the Council Plan and as such is deeply aligned to the Council's expectations around community involvement and engagement.

10.2 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.



10.3 Placemaking also provides 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 Live, Move, Connect – Integrated Transport Strategy, seeks to trial initiatives to create priority space for walking, bike riding and play, develop a new parking controls policy, introduce technology to find and make it easier to pay for parking, partner with others to deliver a pipeline of integrated movement and place tram projects.

11. IMPLEMENTATION STRATEGY

11.1 TIMELINE

11.1.1 This approach will take effect from 21 September 2018 through to 21 September 2019. A interim report will be presented to Council in March 2019 to provide an update on the progress of the approach.

11.2 COMMUNICATION

11.2.1 Members of the community participating in the Fitzroy Street 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 placemaking activities.

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.

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ATTACHMENTS

- 1. Placemaking Process**
- 2. Placemaking Precincts**