

7.7 AMENDMENT C219 - 42 ST PHILLIP STREET, BRUNSWICK - REMOVAL OF SPECIFIC CONTROL OVERLAY- DECISION GATEWAY 3

Director Place and Environment Joseph Tabacco
City Strategy and Economy

Officer Recommendation

That Council:

1. Notes the findings and recommendations of the C219more Planning Panel.
2. Using its powers as a planning authority under section 29 of the *Planning and Environment Act 1987*, adopts Planning Scheme Amendment C219more as shown in Attachment 1 of this report.
3. Submits the adopted Amendment to the Minister for Planning.

REPORT

Executive Summary

Amendment C219more (the Amendment) proposes to remove the Specific Controls Overlay – Schedule 4 from 42 St Phillip Street, Brunswick East. The overlay was placed on the land in 2003 to restrict development and use of the land to one dwelling.

The Amendment was exhibited to the public for a period of 5 weeks and 11 submissions were received (one was later withdrawn). Council resolved in December 2022 to request the Minister for Planning to appoint an independent Panel to consider the submissions received during the exhibition of the Amendment.

A Panel Hearing was held on 27 and 28 February 2023. The recommendations of the Planning Panel were supportive, noting that there is no strategic justification for the continued application of the Specific Controls Overlay to the land, and that there is no inherent reason why the subject land is not suitable for more than one dwelling.

The Planning Panel also determined that if the Specific Controls Overlay were removed, the existing planning framework would ensure that any proposal for a second dwelling properly addresses neighbourhood character and amenity impacts. The Planning Panel recommended that the Amendment be adopted as exhibited with no changes.

It is recommended that Council adopt Amendment C219more and submit the Amendment to the Minister for Planning for approval.

Previous Council Decisions

St Phillip Street 42, Brunswick – Planning Permit Application MPS 1999/0232 (P01506) – 16 August 1999

Council issue a Notice of Refusal for the construction of two attached houses (Dual Occupancy) at 42 St Phillip Street, Brunswick on the following grounds:

- 1. The proposed development is out of character with the area.*
- 2. The proposed development will lead to unacceptable off-site impacts.*

St Phillip Street 42, Brunswick – Determination of the Victorian Civil and Administrative Tribunal (P01506) – 20 December 1999

Receive and note the report.

Minutes of Council Meeting – 10 July 2000

Council received a question from a resident regarding development at 42 St Phillip Street, Brunswick.

Council resolved that:

- 1. Council engage heritage consultants to conduct an urgent survey of the heritage and character of St Phillips Street, East Brunswick, and the consultants to speak to the residents of St Phillips Street to ascertain history and heritage issues.*
- 2. Council urgently write to the Minister for Planning and to the Department of Infrastructure outlining the history of the site, citing the VCAT decision and the precedent set by the previous Minister in the City of Whitehorse.*

St Phillip Street 42, and Urban Character Issues (P01506) – 24 July 2000

- 1. Council advise petitioners from St Phillip Street that the heritage significance of the street does not justify a heritage precinct.*
- 2. The Director City Strategy carry out a case study on 42 St Phillip St with the Department of Infrastructure and prepare a further report on the outcome.*
- 3. The issues raised in this matter be communicated to the Minister for Planning and Council request the Minister's clarification regarding protection of urban character given the lack of powers available to Council to intervene where no planning permit is required.*

St Phillip Street 42, Brunswick – Status Report (P015062) – 27 November 2000

- 1. Council not proceed further with action to challenge the validity of the current building permit for the development at 42 St Phillip Street on the basis of the statutory and legal investigation undertaken to date.*
- 2. The affected residents of St Phillip Street be advised of Council's actions taken on this matter, the nature of this report and Council's resolution, and Council's continuing work in relation to urban character, including local area investigations.*
- 3. The Director City Strategy prepare a further report on the future character of the St Phillip St area as a pilot within the context of the overall Urban Character policy implementation.*
- 4. Council note the shortcomings of Rescode in addressing the issues raised by construction on the site and advise the Minister for Planning and the Rescode Advisory Panel.*
- 5. Council pay Kellehers Australia, Barristers & Solicitors for the advice provided to the residents of 40 St Phillip Street, Brunswick.*

St Phillip Street 42, Brunswick (P01506) – 14 October 2002

Council resolve to write to the Minister for Planning, the Hon Mary Delahunty, seeking Ministerial intervention in the matter in accordance with the draft letter provided at Attachment 4 of the report.

St Phillip Street 42, Brunswick Application MPS 2002/0377 (P01506) – 19 May 2003

Council resolve that if it were in a position to determine the application, that a Planning Permit should be refused for development of the land for an additional single storey dwelling at 42 St Phillip Street, Brunswick on the grounds that:

- 1. The landowner has circumvented the planning controls to achieve the first dwelling on the site, so as to avoid having regard to neighbourhood character (P01506, 18 October 2002).*
- 2. Council supports a restriction being placed on the land to the effect that only one building be allowed to be built on that site (CRFB6, 23 September 2002).*

Note: *Council wrote to the Minister for Planning, Mary Delahunty on 18 October 2002 requesting that she exercise her powers of intervention to restrict development of the site and determine the matter but have not received a response to date.*

Council asks VCAT to consider whether this application is materially different from the previous application for this site, which it considered and refused in 1999.

Amendment C219 – 42 St Phillip Street, Brunswick East – Removal Of Specific Control Overlay – Decision Gateway 1 – 13 July 2022

That Council:

- 1. Using its powers as a planning authority under ss8A and 8B of the Planning and Environment Act 1987, seek authorisation from the Minister for Planning to prepare Moreland Planning Scheme Amendment C219more as detailed in Section 3 of this report and in Attachment 1.*
- 2. Following receipt of the Minister's authorisation, exhibit the Amendment in accordance with Section 19 of the Planning and Environment Act 1987 as outlined in the Consultation section of this report.*
- 3. Authorises the Director Place and Environment to make changes to the Amendment based on conditions imposed in any authorisation granted by the Minister for Planning and to make minor changes.*

Amendment C219 – 42 St Phillip Street, Brunswick East – Removal Of Specific Control Overlay – Decision Gateway 2 – 7 December 2022

That Council:

- 1. Using its powers as a planning authority under section 23(1) of the Planning and Environment Act 1987, requests that the Minister for Planning appoint an Independent Planning Panel to consider submissions to Planning Scheme Amendment C219more.*
- 2. Endorses the responses to submissions set out in Attachment 1 of this report to form the basis of Council's submission to an Independent Planning Panel.*
- 3. Refers any late submissions to the Independent Planning Panel.*
- 4. Authorises the Director Place and Environment to make minor changes to Planning Scheme Amendment C219more and to give direction on issues which arise in the course of the Panel hearing in response to expert evidence and submissions if required.*
- 5. Notes that submission 3 has been formally withdrawn from Amendment C219more.*

1. Policy Context

Council Plan

The *Council Plan 2021-2025* (Council Plan) aims to create an environmentally proactive City, a City that allows people to move and live safely in vibrant spaces and places. Key strategies of the Council Plan include:

- 4.3 – Design neighbourhoods to be safe, pleasant, inviting places for all to visit and live.
- 4.7 – Increase local affordable housing outcomes.
- 4.8 – Influence the delivery of better-quality private development.

Planning Policy Framework

The Planning Scheme sets out that Council will manage increased housing by directing most of the growth to areas close to shops, services, and public transport. This includes directing infill development in residential areas outside of activity centres. To help direct growth, the Planning Scheme sets out different levels of housing change, including areas of 'Minimal Housing Growth'.

The Planning Scheme also sets out that improving the design quality of the built environment is a high priority in managing development associated with growth. This includes encouraging the design of development that responds to and contribute to its context. To help achieve this, the Planning Scheme includes policies on neighbourhood character.

Plan Melbourne 2017-2050

Plan Melbourne 2017-2050 (Plan Melbourne) is the overarching planning strategy for Victoria. Outcome 2 of Plan Melbourne seeks to provide housing choice in locations close to jobs and services. Policies to achieve this Outcome include delivering more housing close to jobs and public transport and providing greater choice and diversity of housing.

2. Background

In July 2022 Council resolved to seek the Minister's authorisation to prepare and exhibit Amendment C219more. On 1 August 2022 Council received a letter from the Department of Environment, Land, Water and Planning (now known as the Department of Transport and Planning) granting Council the authority to prepare the amendment.

The Amendment was publicly exhibited from 8 September to 14 October 2022 and 11 submissions were received (7 of these were received after the exhibition period and one was later withdrawn). Key themes raised in submissions included:

- The need to retain the restriction on the subject land
- Strategic justification
- Notification process
- Amendment costs
- Neighbourhood character
- Plan Melbourne and urban consolidation

On 7 December 2022 Council resolved to request the Minister for Planning to appoint an independent Panel to consider the submissions received during the exhibition of the Amendment. A Panel Hearing was held on 27 and 28 February 2023. The report of the Panel was received on 16 March 2023 and released to the public on 24 March 2023.

3. Issues

The Planning Panel considered all the matters raised in the submissions and heard from two submitters, one of which was supported by an expert witness planning consultant.

The Planning Panel found that there was no strategic justification for the continued application of the SCO4 to the subject land. That the continued application of the SCO4 is contrary to policies which support urban consolidation and infill development on suitable sites in areas that are close to jobs, services and transport. And that there is no inherent reason why the subject land is not suitable for more than one dwelling.

The Planning Panel determined that the original motives for constructing the existing dwelling were not relevant planning considerations for the removal of the SCO4. The construction of the existing dwelling was lawful and the Planning Panel found that there was no justification in keeping the SCO4 as a deterrent to others who may be perceived as intending to circumvent the planning controls. Further, the Planning Panel found that there is nothing in the SCO parent provision or 'A Practitioner's Guide to the Victorian Planning System' to support the use of the SCO in this way.

The Planning Panel did not consider that the continued application of the SCO4 constitutes fair and orderly planning. On this matter, the Planning Panel stated that it would not be *fair and orderly to continue to restrict the development of a second dwelling on the subject land in the absence of any strategic justification for doing so, and in circumstances where no other land in the municipality is subject to a similar restriction (at least in the form of a SCO)*.

In regard to the matter of neighbourhood character and amenity, the Planning Panel found that the SCO4 does little to protect neighbourhood character or amenity and cannot address the character and amenity impacts of the existing dwelling on the subject land. If the SCO4 were removed, the existing planning framework would ensure that any proposal for a second dwelling properly addresses neighbourhood character and amenity impacts.

Panel recommendations

The Planning Panel recommended that the Amendment be adopted as exhibited. A copy of the Panel report is provided at **Attachment 1**.

Human Rights Consideration

The implications of this report have been assessed in accordance with the requirements of the Charter of Human Rights and Responsibilities. Undertaking the planning scheme amendment process in accordance with the Planning and Environment Act 1987 ensures that the requirements of the Charter are met, in particular 'Section 13: The right to privacy and reputation', 'Section 18: The right to take part in public life', and 'Section 20: Property rights'.

The following is noted:

- Council utilises existing personal information held by Council to ensure owners of affected and adjoining properties are notified. This is required by the *Planning and Environment Act 1987*.
- Any person may elect to take part in the process by providing a submission to the Responsible Authority.
- The changes enable the land to be developed for more than one dwelling, which will align with other residential land across the municipality. The Amendment would restore the right of the owner to develop their property in line with current statutory controls.

It is considered that the proposed changes to the Planning Scheme as set out in this Report will not have a direct or significant impact on gender equality.

4. Community consultation and engagement

Amendment C219more to the Planning Scheme was publicly exhibited for 5 weeks from 8 September to 14 October 2022.

As a result of public exhibition, 11 submissions were received (7 of these were received after the exhibition period and one was later withdrawn). Council report 7.6 presented to the December 2022 Council meeting includes a detailed response to the results of the exhibition and the process that was undertaken.

All submitters have been notified of the timing of this report.

5. Officer Declaration of Conflict of Interest

Council officers involved in the preparation of this report have no conflict of interest in this matter.

6. Financial and Resources Implications

The proponent will meet the statutory fees and costs associated with the Amendment. This includes all costs to exhibit and administer the amendment and costs resulting in the matter being considered by a Planning Panel appointed by the Minister.

Administrative costs associated with facilitating the amendment and Council officer resourcing will be met by the Strategic Planning Unit operating budget.

7. Implementation

Amendment Process

The following timeline is broken down into key 'decision gateways' for Council. The timeline is approximate and subject to not only Council's continued approval at key decision gateways, but also Ministerial approval timelines and Planning Panels Victoria reporting.

Decision Gateway 1: Authorisation and Exhibition (Completed)

Decision Gateway 2: Submission review and referral to a Panel (Completed)

Decision Gateway 3: Review Panel report and final decision (current stage)

The following timeframes may change as it is subject to Ministerial approval times.

- April 2023: Submit the Amendment to the Minister of Planning for approval
- May 2023: Anticipated approval by the Minister of Planning.

Attachment/s

- 1 Merri-bek C219more Panel Report D23/138152