

Date: 15 November 2016

Amendment C141 to the Knox Planning Scheme

Implementation of the Upper Gully Strategic Plan

Part B Submission on behalf of Knox City Council

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INTRODUCTION

1. This submission is made on behalf of Knox City Council (**Council**). Council is the Planning Authority for Amendment C141 (**Amendment**) to the Knox Planning Scheme (**Scheme**).
2. On 7 November 2016, Council circulated its Part A Submission to the Amendment in accordance with the Panel's directions.¹
3. Council's Part A Submission contained:
 - the background to the Amendment;
 - a chronology of events;
 - identification of the issues raised in submissions and Council's response; and
 - the strategic context and assessment.
4. In addition to circulating its Part A Submission, Council also circulated 2 further pieces of work, namely:
 - 'Upper Ferntree Gully Capacity Assessment – Addendum to the Upper Gully Technical Report – Land Use Economics' dated 4 November 2016 (**Urban Enterprise Addendum Report**); and
 - 'Addendum to the Technical Report – Transport & Parking Upper Gully Strategic Plan' dated November 2016 (**Movendo Addendum Report**).
5. The Urban Enterprise Addendum Report and Movendo Addendum Report will be discussed in this submission.
6. Council's Part B Submission B will:
 - put Council's key arguments concerning the matters in issue in the Amendment;
 - address the key issues raised in submissions; and
 - state Council's final position on the Amendment.
7. The key issues addressed by this submission relate to:
 - 7.1 the general context of the Amendment and scope of relevant matters for this hearing;
 - 7.2 the specific policy context within which the Activity Centre sits;

¹ Council adopts the terms defined in its Part A Submission in this Part B Submission.

- 7.3 the strategic justification for the Amendment;
- 7.4 the rationale for 3 storey development within the Activity Centre;
- 7.5 the use of the word 'must' and 'should' in response to Mr Carny's evidence;
- 7.6 the 1812 Theatre Company;
- 7.7 applying to the HO to the Upper Ferntree Gully Railway Station and the Visitors Information Centre;
- 7.8 bushfire;
- 7.9 future car parking demands;
- 7.10 future traffic generation; and
- 7.11 building on land subject to flooding.

SUBMISSIONS

GENERAL CONTEXT AND SCOPE

8. Before coming to the strategic arguments in support of the Amendment, it is important to say something about the context in which this Amendment arises. It will be apparent to the Panel that the Amendment has attracted significant community input regarding the proposed building heights. Further, Council's position on the Amendment has evolved during the statutory process which has caused further community input.
9. At first glance, one could be excused for thinking that there is a considerable gulf between Council and the community.
10. Upon a closer examination of the concerns raised in the submissions and Council's adopted position, Council considers that there is far more in common between it and the community than what divides them. In particular, and notwithstanding the considerable number of submissions, there is no opposition to the proposed use of mandatory height controls. Further, Council's adopted position for this Panel hearing also resolves many of the concerns raised about having 3 storey development within the 'flanks' of the Activity Centre. There is absolute support for Council's position to impose a mandatory building controls within the Activity Centre. Indeed Council did not receive even one submission raising a concern with this aspect of the Amendment.
11. In Council's view, the only substantive difference between its adopted position and many of the submitters is whether the 'core' part of the Activity Centre should be subject to a mandatory maximum height of 3 storeys or 2 storeys.² It is submitted that a difference of one storey between

² Council notes that 10 submitters did support a 1 storey height limit.

Council and many of the submitters represents a relatively small difference of opinion when compared to the differences which often come before planning panels for built form controls in activity centres. This of course is not suggesting that one storey is insignificant. It is clearly material in the context of this Activity Centre.

12. Council considers that the above context is important when considering the various submissions that will be made during the course of this hearing.
13. The Panel will undoubtedly be familiar with the scope of its role for this Panel Hearing, namely to consider the issues raised in the submissions and make recommendations to Council with respect to those submissions. Within this context is important to recognise that not one of the submissions requests a change to, or challenges, the mandatory nature of the height control or its strategic basis. This aspect of the Amendment has not been challenged.
14. Accordingly, the scope of the Panel's role in this hearing does not extend to considering or making recommendations with respect to the mandatory nature of the height control. If the Panel takes a different view, Council would need to address the Panel on the mandatory question.
15. Council accepts that the question as to whether this control should be 2 or 3 storeys is subject to submissions and the Panel will need to make a recommendation as to this number and where, if any, should the mandatory 3 storey height control be located within the Activity Centre.

THE POLICY CONTEXT

16. The strategic context within which the Amendment arises requires careful consideration as it represents a strategic context that will only arise in rare occurrences across metropolitan Melbourne.
17. The Panel will be most comfortable with the concept that an activity centre is generally a place where considerable change may and should take place, subject to character and amenity considerations, in an effort to reduce the pressure for additional housing on the outskirts of Melbourne. The concept of urban consolidation is one which is almost endorsed without reservation within the planning scheme.
18. However, the eastern quarter of Knox, generally east of Dorset Road, sits within a very specific strategic context. Importantly, the MSS³ and clause 22.01 recognise that landscape and environmental qualities of the Foothills outweighs the need for urban consolidation in this area. This is the unequivocal and long standing policy that applies not only to the Activity Centre but to the surrounding residential area. Such a policy position is unique for metropolitan Melbourne, without a known comparable provision existing in any other Scheme.
19. The effect of this policy position on built form controls for an activity centre within the Foothills was recognised by the C129 Knox Panel. Members Margaret Pitt and Gordon Anderson concluded:

³ Clauses 21.01-3, 21.02-2 and 21.05-2.

The Panel recognises that the Village itself is excluded from the Foothills area as defined in the Planning Scheme. However, as a Neighbourhood Centre, it cannot be considered in isolation from the policies and planning controls applying to its catchment area. Where there is limited potential for population growth, there is also limited potential for growth in the retail and commercial activities servicing that catchment. The potential addition of up to 50 dwellings within the Village will make only a small difference to this equation.

Incremental change in Ferntree Gully Village, supported by streetscape, access and other improvements to be undertaken by Council and other authorities, will be an appropriate way to consolidate and enhance the Village. Low-key change will be consistent with both its low growth potential, and the primacy given to the landscape significance of the Dandenong Foothills over the need for urban consolidation.

20. This long standing and central policy position sets the broad policy levers for this Activity Centre and in turn consideration of the submissions received with respect to the Amendment.

STRATEGIC JUSTIFICATION

21. Council relies on the draft Upper Gully Strategic Plan, the background reports and the evidence of Mr Czarny.
22. A threshold issue for the Panel to consider is whether the Amendment, including the proposed changes to the Scheme (including the MSS, zones and overlays), are strategically justified.
23. The strategic planning for Upper Gully has been a comprehensive process and subject to extensive formal and informal consultation. The Upper Gully Plan – Engagement Plan – June 2015 outlines, in some detail, some of the consultation which took place.
24. It is quite evident that extensive research, analysis and consultation with the community, stakeholders and government agencies has been undertaken in accordance with *Practice Note 58: Structure planning for activity centres*. This is fundamental to the planning exercise. Planning must necessarily take on board a wide variety of views and condense them into a plan. It would be an unbalanced outcome if the plan were to place undue weight on any one segment of the community.
25. Council submits that the strategic justification for the Amendment is firmly grounded in the policy framework in the Scheme, including the State and local sections. For the purposes of this hearing, Council confirms that it adopts its response to the Strategic Assessment Guidelines as set out in the Explanatory Report and relies on the submissions set out in its Part A submission document.
26. What Council has sought to achieve through this Amendment is to put in place planning provisions which endeavour to achieve an appropriate balance between the need for the Activity Centre to accommodate some very modest growth while recognising its strategic context and attributes.
27. There is no suggestion that the Amendment at a broad level is not supported by the State and local policy frameworks in the Scheme. Accordingly, the Panel's consideration of this Amendment should proceed on this basis.

28. Finally, on matters of principle and the proper approach, the Panel will be aware of the guidance by the planning scheme at clause 10.02 which provides as follows:

Goal

The State Planning Policy Framework seeks to ensure that the objectives of planning in Victoria (as set out in Section 4 of the Planning and Environment Act 1987) are fostered through appropriate land use and development planning policies and practices which integrate relevant environmental, social and economic factors in the interests of net community benefit and sustainable development.

29. Planning is not predicated on a proposition that no person will be worse off. It is undertaken on the basis of the proposition that the community ought be better off after the taking of the decision. Ultimately, it is the interests of the community that must be upheld.

TWO OR THREE STOREYS AND WHERE?

30. Council acknowledges that its position with respect to the location of future 3 storey built form has evolved during its consideration of the Amendment.
31. As explained in its Part A submission, the Amendment was exhibited with 3 storey built form proposed on the 'flanks' of the Activity Centre. Following the consideration of submissions expressing strong concern about the location of 3 storey built form in this location⁴, Council considered that a 3 storey built form would be more appropriate within the 'core' of the Activity Centre.
32. While Council's position has evolved with respect to the location of 3 storey built form within the Activity Centre, Council's position has been entirely consistent with respect to the proposition that 3 storey built form is appropriate as a matter of principle within the Activity Centre. Providing for a mandatory maximum height of up to 3 storeys ensures that there is some flexibility (albeit not excessive flexibility) to allow a gradual renewal of sites within the Activity Centre.
33. Further, Council is not alone in supporting a maximum 3 storey building height with the 'core' of the Activity Centre. A large number of submissions⁵ actively support an increase in the mandatory maximum building height to 3 storeys for The 1812 Theatre Company and the properties that it owns. While the reasons of the submitters for the additional height differ to those held by Council and Mr Czarny, and relate to a smaller number of properties, it is clear that there is at least some support for the concept of having a maximum building height of 3 storeys within the Activity Centre.
34. Council considers the renewal of sites within the Activity Centre is important given the analysis undertaken by Urban Enterprise which identified that only 2 dwellings per annum had been approved for construction within the Activity Centre between the years of 2011 to 2014. If the Activity Centre is to undergo some change, Council considers that some scope for 3 storey buildings will create some attraction and impetus for renewal.

⁴ For example see submission 244. Noting there were other concerns raised in the submissions.

⁵ See for example submission 6, 11, 18 and 413. It is noted that submission 413 advocates for 3 story form from Talaskia Road to Willow Road on the south side of Burwood Highway.

35. While there needs to be some scope for greater building height, the very special and long standing policy position relating to the Activity Centre must also provide guidance as to the appropriate building heights. Further, Council considers that the building heights need to be tempered (when compared to a metropolitan Melbourne context), to ensure a continued appreciation of the geographic and topographic context. In Council's view, this does not mean nothing can change. Quite clearly, high quality and sensitive change is to be encouraged as a means of adding further variety, activity and investment into the Activity Centre.
36. The Amendment seeks to strike this balance.
37. Council accepts that striking a balance that satisfies everyone is almost an impossible task. Council considers that it has now struck the right balance between providing some opportunities for new development without unreasonable impact of the special landscape and topographical context within which the Activity Centre sits. To draw on the words of the policy which currently applies to the Activity Centre, the Amendment strikes the balance of ensuring that urban consolidation objectives are not outweighed by the landscape qualities of the Activity Centre.
38. Council relies on Mr Czarny's evidence. He supports the concept of having 3 storey development within the 'core' of the Activity Centre. In his opinion, there is a sound rationale for the proposed DDO to cater for development up to 3 storeys within the 'core' of the Activity Centre. He also concludes that the Amendment strikes the right balance given the policy settings.
39. Council acknowledges there is a difference between its position and Mr Czarny's suggestion to reduce the building heights in some areas from 3 storeys to 2 storeys. While Council has not had the opportunity to formally consider Mr Czarny's suggestion, Council officers understand the rationale behind Mr Czarny's view, namely to provide a more sensitive interface to adjoining properties away from Burwood Highway.
40. Once the Panel has had the benefit of hearing and then considering the evidence of Mr Czarny, Council would be assisted if the Panel could consider and make appropriate recommendations about Mr Czarny's suggestions with respect to building height. Council would then consider these matters when considering whether to adopt the Amendment or not.

WHAT IS MANDATORY AND WHAT IS NOT MANDATORY

41. Council notes the observation of Mr Czarny regarding the use of the word 'must' in the requirements, which can be varied with a permit, can sometimes cause confusion.
42. Council agrees with Mr Czarny that the DDO needs to be drafted in a manner that avoids confusion and ambiguity. However, the schedule also needs to be drafted so that it is legally sound.
43. The starting point is clause 43.02-2 which states:

Buildings and works must be constructed in accordance with any requirements in a schedule to this overlay. A schedule may include requirements relating to:

- Building setbacks.
- Building height.
- Plot ratio.
- Landscaping.
- Any other requirements relating to the design or built form of new development.

A permit may be granted to construct a building or construct or carry out works which is not in accordance with any design and development requirement in the schedule to this zone unless the schedule to this zone specifies otherwise.

[emphasis added]

44. Relevantly, clause 43.02-2 anticipates that a schedule may include 'requirements' relating to specific matters. The clause also specifies that a permit may be granted to construct a building or to carry out works which are not in accordance with any design and development requirement unless the schedule to this zone specifies otherwise. It is the use of these underlined words that creates a mandatory provision, not the creation of the requirement. The often used words that create the mandatory requirement are 'a permit cannot be granted to vary this requirement'. The use of the word 'must' of itself does not create mandatory provisions in a schedule. It only creates the requirement.
45. Council submits that this form of drafting, by using the word 'must', is necessary in order to create a requirement in the schedule. If alternative forms of drafting, such as replacing the word 'must' with the word 'should' (which is often suggested), would change the nature of the provision from a requirement to merely something that is a consideration not a requirement. A matter that 'should' be done is not a requirement – it is something else perhaps a consideration or a guideline. And that something else does not have an express power to be included in a schedule to a DDO. Further, as a permit is required to vary 'requirement', it is important that compliance with the 'requirement' is generally ascertainable.
46. The Victorian Civil and Administrative Tribunal has also specifically considered this type of drafting in relation to a so called 'requirement' arising under the Design and Development Overlay.
47. In *Stokes v Melbourne CC* [2009] VCAT 364 (**Stokes**), Senior Member Byard (an experienced legal member) observed:

34 The terms of clause 2.1 in relation to building height requirements read as follows:

Buildings or works should not exceed the maximum building height...specified in the table to this schedule.

An application to exceed the maximum building height...must be accompanied by a site analysis plan and a written urban context

report documenting how the development will achieve the specific design objectives and outcomes of this schedule.

The height of a building or works is the height of its highest point above the permanent footpath at the centre of the site frontage. If there is no footpath, the natural surface level at the centre of the site frontage is the base level.

35 There is something I find a little odd about the wording of the foregoing quotation. It purports to relate to requirements as to building height, but a "Requirement" is normally something which must be done or satisfied. In this case, the wording is not the language of a requirement as it admits of some option. The fourth word in the first line is "should", not "must". A requirement would say that something "must" be. "Should" admits of something other than a requirement.

48. If the provisions Council has set out as requirements in DDO12 are read in isolation from the head provision, one might be excused for concluding that they seem to be mandatory and incapable of variation. However, such a reading of DDO12 (or any schedule to DDO), misconceives the proper operation of the DDO, including DDO12.
49. When understood in the above context, the requirements specified in DDO12 will only be mandatory (and incapable of any variation) where words are used in DDO12 stating that a permit cannot be granted to vary the relevant requirement. An example of this can be found in mandatory maximum building heights. This leaves each and every remaining requirement, subject to be able to be varied by a permit.
50. Therefore, if the other requirements are to constitute a requirement within Schedule 12 (as required by the head provision), they must, as a matter of necessity, be expressed as a 'must'. To adopt any less certain form of drafting will fail to achieve a 'requirement' and the Tribunal's criticisms in *Stokes* will apply.
51. If there is misunderstanding about the operation of DDO schedules, then the answer is not to redraft a requirement by using the word 'should'. Such a response would be the target of the Tribunal's criticisms expressed in *Stokes*. Rather the answer lies in better training and education of those involved in the administering the planning scheme about the importance of reading the head provision together with the schedule and more specifically how to read and understand a DDO control.

PROPOSED DESIGN OBJECTIVE FOR THE 1812 THEATRE COMPANY AND THREE STOREY DEVELOPMENT

52. When Council resolved to refer the submissions to a Panel on 28 June 2016, it did so by adopting a new design objective to be included in DDO12. The objective states:

To strengthen the role of the 1812 Theatre Company in developing arts and culture in the municipality and enhance it as an attraction to the Activity Centre.

53. The Panel has asked Council how this objective is a design objective for a DDO.
54. Upon reflection, this objective could sit comfortably as a design objective in DDO12 or alternatively it could be redrafted and incorporated into the proposed local policy at clause 22.12 adopting similar words to those already included by Council. Council considers that this objective sits comfortably as a design objective because it provides specific guidance in terms of the type of development that DDO12 seeks for the land containing the 1812 Theatre Company, namely to develop it as an arts and cultural centre for the municipality and to visitors.
55. As a further alternative, the design objective could be redrafted to read:
- To facilitate a fly tower for ~~strengthen the role of~~ The 1812 Theatre Company and strengthen its role in developing arts and culture in the municipality and enhance it as an attraction for visitors to the Activity Centre.
56. Council understands that the Panel is not raising a concern with the outcomes sought to be achieved by this objective but rather is questioning whether it sits comfortably as a design objective within DDO12 or is a better fit in another location.
57. Council would appreciate the Panel's guidance on this question after considering the above submissions.
58. While on the subject of The 1812 Theatre Company, Council notes that the Theatre sought other changes to the Amendment to allow development up to 3 storeys to facilitate the redevelopment of the Theatre. While Council does not agree with the reasons why the Theatre seeks greater height for the land at 1-5 Rose Street (except for the fly tower), Council accepts that a 3 storey (12 metre) height limit for these sites (and other sites within the core of the Activity Centre) is appropriate.
59. Council notes that The 1812 Theatre Company otherwise fully supports the Amendment.⁶

PTV SUBMISSION – USE OF THE HERITAGE OVERLAY

60. PTV has lodged a submission⁷ raising concerns about applying the Heritage Overlay (**HO**) to Upper Ferntree Gully Railway Station and the Visitors Information Centre. PTV is concerned that the HO has the potential to hinder future alterations and re-configuration of the station and rail infrastructure.
61. Council notes that PTV has not requested to be heard by this Panel and has provided no technical reports or evidence in support of its concerns.
62. Further, PTV does not seek to challenge the strategic basis upon which the HO is proposed to be applied. Indeed, in its submission, PTV states:

It is accepted that an initial portion of the now larger collection of buildings located on the platform area are of heritage significance, as are the arched shelters.

⁶ Submission 6 – first paragraph . There were a further 207 pro-forma submissions supporting The 1812 Theatre Company's position. A further 4 submissions also supported 3 storeys across the Activity Centre.

⁷ Submission 338

63. Accordingly, having regard to the Context Report, the above concession of PTV and the absence of any contradictory evidence or submission, there is an overwhelming strategic basis for the HOs proposed by the Amendment.
64. The essential question arising from the PTV submission for the Panel to consider is whether the impact on redevelopment opportunities and the possible future needs of PTV ought to outweigh the identification of these places in the HO.
65. Council concedes that the HO introduces another layer of control for PTV and that a planning control which imports additional permit triggers and relevant considerations add to the planning controls for the railway land.
66. However, in Council's submission, the additional controls are necessary to ensure that those places with the requisite level of heritage value are recognised and appropriately managed.
67. When balancing the merits of heritage protection against the issues raised in PTV's submission, it is important to remember that heritage significance is an enduring and long term concern, whereas matters of development potential, building condition, economic matters or current or mooted planning approvals are by contrast short-term in nature.
68. As noted by the Panel with respect to Latrobe Amendment C14 under the heading 'Economic and Personal Factors'⁸:

Panels have repeatedly ruled that such issues are not material to this stage of the planning process – a position supported by Practice Notes and numerous VCAT decisions. This view maintains that although it is appropriate for the responsible authority to consider all the objectives of the Planning and Environment Act 1987 - including, inter alia, fair, orderly, economic and sustainable use, and development of the land (s.4(1)(a)) ... and ... to balance the present and future interests of all Victorians (s.4(1)(g)) – the question of personal economic impact or potential constraint on development are matters for the next stage of the planning process i.e. at the time a permit is applied for.

This approach has the merit of separating two distinct issues: assessment of the significance of the place, and the question of its conservation, adaptation, alteration or demolition. This conforms with proper heritage conservation practice and mirrors the processes of the Victorian Heritage Act 1985. It reflects the desirability of considering long term matters (if we accept that heritage significance is likely to be somewhat enduring, if not immutable) at one point in time; and, shorter term matters (personal desire, financial considerations and economic circumstances) when they are most relevant.

The Panel observed that in the long life of many heritage properties economic uses can rise and fall – sometimes with no impact on owners, sometimes with substantial impact. In many cases threats to continuing economic viability may be mitigated by permit allowances or use changes. In other cases, personal situations change. In some cases demolition may be an appropriate response. In all these situations it would seem highly desirable for all parties that consideration is: (a) based on clear understanding of significance; and (b) at a time when action is real and current, not conjectural.

The so-called two-stage process also underlines the proposition that heritage assets (unlike some other aspects of planning) are often irreplaceable and it is important that neither the Planning and Environment Act 1987 nor the Latrobe Planning Scheme

⁸ Latrobe C14 (PSA) [2010] PPV 53 (19 May 2010).

envisage their loss on the basis of personal preference or desire in a continually changing economic or financial environment.

69. While these observations were made in the context of the interests of an individual, they are equally relevant to development ambitions of a government entity such as PTV. Further, the importance of the rail infrastructure and the public transport services are matters that can be properly considered at the permit application stage. The Tribunal's decision in *The University of Melbourne v Minister for Planning (includes Summary) (Red Dot)* [2011] VCAT 469 illustrates how other matters of broader community benefit can be considered when determining an application under the HO. These matters are not relevant to consider at the planning scheme amendment stage.
70. The concerns raised by PTV are not relevant to the assessment of whether this land has sufficient heritage significance to justify applying the HO. The matters raised by PTV can be appropriately considered at the permit application stage and they should not be considered at the planning scheme amendment stage.
71. In Council's view, the same rationale and conclusion applies to PTV's concern about applying DDO12 to its land. That said, clause 2.0 of DDO12 provides some specific exemptions for certain buildings and works associated with the railway line to be undertaken without a planning permit.
72. The proposed planning controls for the PTV land are both strategically justified and appropriate.

BUSHFIRE

73. A number of submissions⁹ raise concerns regarding the issue of bushfire.
74. Council is keenly aware of the threat that bushfire plays within the Foothills and more broadly within the Dandenong Ranges. The Amendment has been prepared having consideration of the threat posed by bushfire.
75. Relevantly, the Bushfire Management Overlay is limited to only that part of the Activity Centre located on the north side of Burwood Highway. The area to the south of Burwood Highway is not subject to the overlay. Further, Council referred the Amendment to the CFA, the expert fire authority within Victoria, who provided no response. One can only conclude that the CFA does not have any concerns regarding the Amendment. The Panel will be aware that the CFA will often play an active role in Panel Hearings in circumstances where they hold material concerns relating to bushfire risk.
76. Another recurring theme in the submissions was the need, and time taken, to evacuate Upper Gully and the 'mountain' in the case of a bushfire. Quite clearly the need will arise to evacuate Upper Gully and the mountain from time to time. It has been suggested that it will take up to 13 hours to conduct such an evacuation.

⁹ See for example submissions 1, 40, 189, 222, 224, 248, 236, 352, 374, 397, 400, 402, 408, 409, 411, 412, 415, 426, 429, 438, 439, 443, 447, 448, 450, 451, 452 and 455

77. In this regard, Council again notes that the State's expert fire authority has raised no objections to the Amendment and notes that current State Government fire policy is that residents should leave early. In other words, residents should leave the night before, or the morning of, an extreme or code red day. While Council acknowledges that not everyone will heed the warnings and advice from Government and the CFA, it is still reasonable to develop and implement planning controls based on general compliance with current policies. If those living on the mountain and Upper Gully are to heed the clear advice of authorities about leaving early on extreme and code red days, there should be very few people needing to leave in an emergency situation.
78. The Panel is entitled to place considerable weight on the 'no objection' position of the CFA and drawn the inference that there are no bushfire related matters that should preclude the Amendment from proceeding.

CAR PARKING

79. The Panel in its directions asked Council to address it on the extent of any additional parking generated by anticipated future development and whether there would be the need for any parking upgrades.
80. In order to address the Panel on this question by reference to expert advice, Council engaged Urban Enterprise and Movendo to undertake further work with respect to car parking demand.
81. As part of preparing the Strategy Plan, Council engaged Movendo who prepared a report titled 'Technical Report – Transport & Parking Upper Gully Strategic Plan' dated January 2015 (**Movendo Report 2015**). This report concluded by making 42 recommendations. These recommendations were summarised in Appendix B to the report. The recommendations related to primarily improving the movement of pedestrians, cyclists and vehicles within the Activity Centre. A number of recommendations will require the input and consent of other government agencies such as PTV and VicRoads. Relevantly, Movendo did not make any recommendations regarding the need for additional car parking.
82. Council acknowledges that the Movendo Report 2015 was prepared on the basis that a mandatory maximum building height of 2 storeys would be imposed throughout the Activity Centre. Given Council's position is that a maximum building height 3 storeys is appropriate within a part of the Activity Centre, a question arises as to whether the notional additional capacity created by the additional storey would change the conclusions reached in the Movendo Report 2015.
83. So in direct response to the Panel's request, Council engaged Urban Enterprise to update their report titled "Technical Report – Land Use and Economics" dated November 2014 (**Urban Enterprise Report 2014**). The Urban Enterprise Report 2014 provided an assessment of the relevant economic and property considerations that would influence land use and development within the Activity Centre.

84. Like the Movendo 2015 Report, the Urban Enterprise 2014 Report was prepared on the basis that a mandatory maximum building height of 2 storeys would be applied across the Activity Centre.
85. Urban Enterprise subsequently prepared the Urban Enterprise Addendum Report. This Report considers the likely impact that an additional storey of development would have on commercial floor area and number of dwellings over a 20 year period.
86. On page 4 in Table 1 of the Urban Enterprise Addendum Report, the net additional dwelling capacity resulting from a 3 storey built form based on Council's adopted position was calculated at 432 dwellings.
87. Given the relatively slow growth rates expected within the Activity Centre, Urban Enterprise sets out 3 growth scenarios. These are set out in Table 5 of the Urban Enterprise Addendum Report. The outcome of this analysis indicates that under a low growth scenario an additional 60 dwellings could be expected to be delivered, in the mid growth scenario 100 dwellings could be expected to be delivered and in the upper growth scenario 376 dwellings could be expected to be delivered over the next 20 years throughout the whole of the Activity Centre.¹⁰
88. These growth scenarios were undertaken so Movendo could undertake a car parking and traffic analysis.
89. After considering the Urban Enterprise Addendum Report, Movendo prepared the Movendo Addendum Report. This Report considers the impact that an additional storey would have on parking availability and traffic movements.
90. The analysis undertaken by Movendo is summarised in Table 4 of their report. The total parking demand is 28, 57 or 172 for the low growth, mid growth and upper growth scenarios respectively. Movendo concluded that this demand will ordinarily be catered for through the provision of on-site car parking as part of each site's redevelopment. Movendo then concludes:
- Based on the future development scenarios and traffic and parking analysis which is presented in the Addendum Report, it has been concluded that there will be comparatively modest increases in traffic and parking demand under the likely development growth in the activity centre. As such, there is no need to pursue road network and parking capacity upgrades in response to the forecast additional traffic and parking demands.
91. Accordingly, Movendo did not consider that any additional parking demand would be experienced within the centre. Even if a conservative approach was taken and no car parking was provided with future development, there would be adequate capacity through the provision of on-street and off-street car parking to accommodate the additional demand.¹¹

¹⁰ Urban Enterprise also did a similar analysis for commercial floor space.

¹¹ Page 13 of the Movendo 2015 Report identifies the minimum number of vacant on-street spaces was surveyed at 415. This could theoretically accommodate the additional demand of 172 car spaces in the upper growth scenario. It is theoretical because Council would expect each development to provide a sufficient number of car spaces and Council would not support all future development without car parking.

92. Council relies on the Movendo 2015 Report, the Movendo Addendum Report and the Urban Enterprise Addendum Report and submits that the proposed Amendment will not have any material impact on demand for car parking within the Activity Centre.

93. Indeed, these reports are the only expert material the Panel has before it assessing car parking.

TRAFFIC GENERATION

94. The Panel also has requested that Council address it on the extent of additional traffic generated by the anticipated future development and the need for any upgrades. In order to address the Panel on this question by reference to expert advice, Council engaged Urban Enterprise and Movendo to undertake further work with respect to understanding the effect of increasing the mandatory maximum building height from 2 storeys to 3 storeys on traffic generation.

95. The Movendo Addendum Report specifically considers the impact of a potential 376 dwellings and an additional 4,500 square metres of commercial floor space being provided within the Activity Centre. These numbers derive from a very optimistic upper growth scenario in the Urban Enterprise Addendum Report. Movendo concludes that the additional traffic movement in the 'am peak' under the upper growth scenario would be 272 movements and 296 vehicle movements in the 'pm peak'.

96. Movendo then makes a very conservative assumption that each and every one of these movements will occur through the Dawson Street and Burwood Highway intersection. Even on this very much worse-case scenario, the percentage change in traffic volumes would be 9.5 percent. Given that traffic volumes can vary by 10 percent over each weekday, the percentage increase is within the 10 percent range identified by VicRoads as being 'insignificant'. This led to Movendo to conclude that the 'traffic impact will be inconsequential'.

97. While the overall percentage increase is towards the top of the 'insignificant' range, Council stresses that the analysis undertaken by Movendo is based on very conservative assumptions, namely:

97.1 Movendo relies on the upper growth scenario identified by Urban Enterprise which would only be realised if demand increases significantly;

97.2 all the additional traffic generated by new development would be channelled through the Burwood Highway and Dawson Street intersection which is highly unlikely; and

97.3 there has been no discounting of traffic movements for those traffic movements which would be already occurring in the Activity Centre as a result of passer-by and linked trips.

98. Therefore, the likely actual relative increase in vehicle movements will be less. Council submits that the Movendo Addendum Report should provide the Panel with considerable comfort that the

Amendment will not generate any significant traffic impacts and in turn the need for any substantial improvements to the road network.¹²

99. Again, these reports are the only expert material the Panel has before it assessing traffic generation.

BASEMENT ACCESS AND FLOODING

100. The Panel has asked Council 'how vehicle access to basements in areas subject to inundation in the 1 in 100 flood event is likely to align with Melbourne Water requirements Guidelines for Developments in Flood Prone Areas'.
101. Council acknowledges that the question raised by the Panel is one of some practical importance. That said, Council considers that the issue, whilst an important one, is one that is best placed to be resolved through the detailed design of individual buildings through consultation with Melbourne Water.
102. Putting this position to one side, Council is keenly aware that large parts of the Activity Centre will be inundated in the 1 in 100 year flood event. This mapping can be found at Map 24 (page 63 of the Upper Gully Strategic Plan). Map 24 not only indicates the depth of flood waters in the 1 in 100 year flood event but also shows the location of the likely flooding. Generally, it can be said that inundation will be concentrated along the 'flanks' of the Activity Centre and along Burwood Highway.
103. Although Council has not undertaken a detailed design for individual lots subject to flooding, it acknowledges that designing buildings within areas subject to flooding is a matter that requires a careful approach. In circumstances where a basement is proposed, it will be important that the design of the cross over and ramp into the basement is carefully managed to prevent floodwaters accessing the basement.
104. In Council's experience this type of response is something that can usually be managed through consultation between a land owner's architect, drainage engineer and traffic engineer by essentially raising the crossover and/or ramp above the flood level by designing a flood proof apex at the driveway entry.
105. This is also consistent with the advice Council has received from Melbourne Water. Melbourne Water also adds that all other openings such as windows and vents would need to be above the nominated flood level.
106. Council's drainage engineers have also been consulted. They have indicated that a number of these sites subject to flooding are larger sites along the 'flanks' of the Activity Centre with 2 road frontages. If the detailed designs for these lots were to be prepared, Council's engineers have

¹² Council notes that Movendo did recommend various intersection upgrades but these upgrades were necessary to address deficiencies in specific intersection designs. The works can be programmed into Council's capital works program.

indicated that they would be prepared to consider, as a general principle, a situation where the access ways and car parking are provided in a semi-undercroft/basement arrangement. Council's engineers consider this is likely and viable design response given the size of the lots and the slope which exists from Burwood Highway to the rear of these lots. In this scenario, the expectation would be that any flood waters could be controlled through a bund arrangement in the crossover design together with any remaining overland flows being concentrated along the access way through the undercroft of the building. Council considers that this arrangement would not be dissimilar to a situation where overland flows are concentrated along a driveway in a medium density development.

107. In addition to these practical design responses, Council has also been careful to ensure that there is sufficient capacity within the proposed building height limits to ensure that the design of buildings can accommodate the necessary freeboard requirements of Melbourne Water. This is illustrated by the proposed building heights of 8.5 metres and 12 metres including an exemption to exceed these heights to accommodate increases to the minimum finished floor levels required by the relevant flood manager.
108. Council considers that the existing inundation constraints should not prevent the Amendment proceeding.

OTHER MATTERS

109. There is currently one medium density development under construction within the Activity Centre at 1172 Burwood Highway and there is a second proposal at 1168 Burwood Highway. The application for 1168 Burwood Highway is opposed by Council and is listed to be heard by the Tribunal on 24 November 2016.
110. The Panel will be taken to the plans for each development.

CONCLUSION

111. This completes Council's Part B submission.

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Per Darren Wong
Maddocks
Lawyers for Knox City Council
15 November 2016