

Date: 17 November 2016

Amendment C141 to the Knox Planning Scheme

Implementation of the Upper Gully Strategic Plan

**Supplementary submission on behalf of Knox City
Council**

INTRODUCTION

1. This supplementary submission is made on behalf of Knox City Council (**Council**).¹ Council is the Planning Authority for the Amendment.
2. During Day 1 of the hearing, Council submitted that the question of mandatory heights was not a matter challenged in the submissions and therefore the question of the mandatory nature of the height control was not a matter before the Panel and nor was it a matter that the Panel needed to concern itself with.
3. The Panel advised that it wanted to hear from Council regarding the justification for mandatory height control because one option before it is to consider a discretionary height given some submissions are seeking 3 or more storeys.
4. This supplementary submission explains the rationale and justification for mandatory height controls with the Activity Centre.

SUBMISSIONS

5. In broad terms, Council submits that there has been a rigorous assessment and justification for the use of mandatory height controls. Further, such a tool has been consistently applied to those activity centres located (or previously located) within the Foothills Policy Area. The activity centre of Ferntree Gully and just recently, the activity centres of The Basin and Alchester, have all been approved with mandatory height controls across their respective centres.
6. Accordingly, a recommendation in this case for mandatory height controls will not be breaking new ground, but rather it would continue an established, consistent and accepted approach to height controls within the Foothills. The exceptional circumstances arising from the existing, long standing and very specific policy context will mean that any recommendation for mandatory height controls for the Activity Centre will have no relevance to similar controls that may be proposed for other centres across metropolitan Melbourne, including Knox.
7. Council makes the following submissions in support of the use of mandatory controls:
 - 7.1 The policy context within which the Activity Centre is not known to arise anywhere else in Melbourne.² The Panel is urged to read the MSS³ and clause 22.01 in their entirety to fully appreciate the unique policy context which arises. The importance and significance of the Foothills is captured in clause 22.01 where the Dandenong Foothills and the

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

² See Council's B Submission for more detail.

³ See specific clauses referenced in Council's B Submission.

Lysterfield Valley are recognised as being of ‘metropolitan landscape significance’⁴ and that:

Views of the Dandenong Ranges and their foothills are valued highly by the Knox community, also forming a backdrop to countless views across the eastern suburbs of Melbourne, including long range views from the Melbourne central business district. The important characteristic of the hills in these views is their heavily vegetated, apparently natural environment. Only occasional clearings or roofs interrupt the dominating tree canopy. Maintaining this balance of tree cover and development is a matter of metropolitan significance and an essential consideration in determining future land use and development within this sensitive area. The intent of the Dandenong Foothills local planning policy (Clause 22.01) is to ensure that development within the area is limited and managed so that it complements and respects the landscape features most valued by the wider community and protects the sensitive ecological balance.

7.2 Further, clause 21.06 reads:

... the environment and landscape significance of the Dandenong Foothills outweighs the need for urban consolidation in the Foothills.

7.3 Further, it should not be overlooked that the current policy position with respect to height under clause 22.01 is that ‘building height does not exceed 7.5 metres’.

7.4 Within this policy context it is not surprising that the Scheme takes a firm approach to development within the Foothills, including the Activity Centre and it provides a powerful basis for mandatory height controls.

7.5 Council acknowledges that Practice Note 59 – The role of mandatory provisions in planning schemes dated June 2015 (**Practice Note 59**) and Practice Note 60 – Height and setback controls for activity centres dated June 2015 (**Practice Note 60**) are relevant considerations for applying mandatory height controls. While these practice notes can inform a decision on mandatory heights, they should not, and cannot, dictate a decision on mandatory controls. Further, it is not necessary to meet all of the criteria and/or circumstances expressed in these practice notes before mandatory controls can be considered to be appropriate.

7.6 The mandatory controls in the Amendment sit comfortably with the criteria expressed in Practice Note 59. Council responds to those criteria as follows (noting these submissions should be read together with Practice Note 59):

7.6.1 The clear planning objective for the Activity Centre and the surrounding area is to limit development, give priority to the landscape and environmental values of the Foothills and to ensure the surrounding hills will continue to be experienced from the Activity Centre. Unlike Knox Central or Stud Park⁵, the Foothills, including the Activity Centre, is not an area identified for growth.

⁴ See the first objective in clause 22.01-2.

⁵ And other centres.

- 7.6.2 The proposed mandatory height control will clearly implement planning policy and objectives by ensuring that the hills and ranges that surround Upper Gully will continue to influence the sense of place which is experienced within the Centre. The proposed height controls are embedded in the existing and proposed policy outcomes.
- 7.6.3 Mr Czarny gave evidence that if 4 storey development was to be approved along Burwood Highway this would block out all views to the hill to the south and such an outcome was clearly undesirable planning outcome. Council considers that Mr Czarny's evidence in this regard strongly supports the need for a mandatory upper limit on the total building height.
- 7.6.4 The Panel can readily conclude from the evidence of Mr Czarny that the policy to be implemented by the prescribed height limit will be achieved in the vast number of cases.
- 7.6.5 The mandatory height control will resolve divergent views within the community as to what ought to be the maximum height of development within the Activity Centre. It will deliver the certainty that both Council and the community seek.
- 7.6.6 The Panel can readily conclude from Mr Czarny's evidence that 4 storey development (or higher) along Burwood Highway would, in the majority of cases, fail to meet the purpose of the control.
- 7.6.7 The Panel can readily conclude from Mr Czarny's evidence that 4 storey development (or higher) along Burwood Highway would, in the majority of cases, lead to unacceptable planning outcomes.
- 7.6.8 The mandatory height control will deliver certainty to all members of the community (including developers) and will avoid the time and costs for Council to consider applications which will materially project above ridgelines of the surrounding hills and the need to defend such applications at VCAT. This would also reduce costs for the community and developers.
- 7.7 Practice No 60 indicates that mandatory controls should only be considered in exceptional circumstances and provides an inclusive (but not an exhaustive) list of examples. Council responds to these examples as follows:
- 7.7.1 The whole of the Activity Centre sits within a significant landscape precinct (the Foothills) where dense tree canopies are the dominant feature. Relevantly, the Scheme recognises the Foothills as being of 'metropolitan significance' and an area where the landscape and environmental values outweigh the need for urban consolidation. Therefore, the significance of the landscape is one that is beyond regional significance which is the baseline level of significance

expressed in Practice Note 60. The circumstances readily meet the criteria of exceptional circumstances. This is not surprising given the same conclusion was reached with respect to Ferntree Gully, The Basin and Alchester.

- 7.7.2 Council has undertaken a recent housing study, namely the 'Knox Housing Strategy' dated January 2015 (**Housing Strategy**) which assesses the housing needs for Knox. The policy direction of the Housing Strategy has been implemented and supported by the C131 Panel. Importantly, the Housing Strategy was prepared and implemented without relying on Upper Gully or the Foothills playing a significant role in the delivery of future housing needs.
- 7.7.3 The Housing Strategy and LPPF have examined the roles of the activity centres within Knox. The LPPF adopts a scaled approach to residential development and places the activity centres within a hierarchy. Upper Gully sits at the bottom of this hierarchy. The Urban Enterprise Report 2014 also assesses the role of Upper Gully within the region.⁶
- 7.7.4 The Urban Enterprise Report 2014 carefully analysed the capacity and constraints of the Activity Centre. The conclusion of that report was that Upper Ferntree Gully had experienced minimal population growth⁷ in recent years and the projected growth of 33 dwellings between 2011 and 2036 (based on the status quo) is minimal. There was no suggestion in the Urban Enterprise Report 2014, which had been prepared when 2 storey mandatory controls across the centre were proposed, that a mandatory height control would lead to any shortfall in supply of new dwellings in Upper Ferntree Gully. Rather, Urban Enterprise was satisfied that there were more than adequate redevelopment opportunities. Council's adopted position provides even greater capacity.
- 7.7.5 The Strategic Plan and the Consolidated Background Report provide a comprehensive analysis of the built form impacts from 2 storey and 3 storey development. Mr Czarny considered that this analysis, coupled with his inspection of the Activity Centre, provided a sound strategic basis for the mandatory height control.
- 7.7.6 The Urban Enterprise Report 2014 identifies 'Primary' and 'Secondary Development Opportunities', and coupled with the scope of more height within the 'core' of the Activity Centre, the package of controls which provide for more intense development when compared with other sites within the Activity Centre.
- 7.8 By letter 11 November 2016 (received 15 November 2016), Council received notice that Amendment C137 has been approved by the Minister for Planning. This amendment approves a DDO with mandatory height controls (and other controls) over The Basin and

⁶ See page 33

⁷ Noting the Urban Enterprise Report 2014 was prepared and relied on historical data which preceded DDO10.

Alchester Neighbourhood Activity Centres. This decision means that there has been a consistent approach to height controls for activity centres within the Foothills, namely that in each and every case mandatory height controls have been adopted. If some other approach is adopted for this Activity Centre, particularly in the absence of any submission seeking discretion for height, an inconsistent approach would be adopted without any strategic justification.

7.9 Plan Melbourne sets out the broad planning principles for Melbourne and its surrounds. Initiative 4.2.2 seeks to 'protect Melbourne's neighbourhood centres, including provision for mandatory controls'. Plan Melbourne expressly recognises that 'local communities should lead the planning of their own centres'. The policy continues to explain that after preparing a 'local housing strategy' and 'consulting with the community', councils will be able to introduce mandatory height controls for neighbourhood centres.

7.10 In this instance, Council has prepared a housing strategy and consulted widely with the community. Neither of these two things gave rise to any concern, whatsoever, about using mandatory height controls in Upper Gully. The only issue about the height controls is the number of storeys which should be applied.

8. Council considers that these reasons represent a compelling case for mandatory height controls for the Activity Centre.
9. Council would strenuously oppose any proposal to make the height control 'discretionary'. Even a discretionary one storey height control would be a concern. This is because such a control would not be prevent applications being lodged and reviewed at VCAT for buildings at 3, 4 or 5 storeys (or greater) throughout the Activity Centre.
10. The strong and unambiguous policy context, the physical context, the strategic and technical support included in the Strategic Plan and the supporting material, the Housing Study and the unanimous community support individually and cumulatively support the use of mandatory controls for the Activity Centre.
11. A recommendation to support mandatory height controls as part of the Amendment will continue the consistent approach adopted by the C129 Panel and the Minister's decisions to approve that amendment and Amendment C137 with mandatory height controls without any risk of such a recommendation being used to support such controls elsewhere across metropolitan Melbourne.

CONCLUSION

12. This completes Council's Supplementary Submission.

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