

Management report to Council

Agenda item 6.5

Establishment of the Amendment C278 Sunlight to Parks Committee

Council

Presenter: Michael Tonta, Director Governance

31 August 2021

Purpose and background

1. The purpose of this report is to recommend Council establish the 'Amendment C278 Sunlight to Parks Committee', pursuant to section 63 of the *Local Government Act 2020* (the Act).
2. On 17 August 2021, the Future Melbourne Committee (FMC) was unable to attain a quorum when considering item 6.2 'Planning Scheme Amendment C278 Sunlight to Parks – Introducing new planning to protect winter sun in all parks', due to the number of Councillors declaring a conflict of interest.

Key issues

3. Section 188(2) of the *Planning and Environment Act 1987* provides that adoption of a Planning Scheme Amendment cannot be determined under delegation and therefore must be determined by Council as the relevant planning authority. Given the majority of Councillors remain conflicted, Council cannot form a quorum to deliberate on the matter.
4. The Act empowers Councils to establish delegated committees of the Council and delegate certain powers, duties and functions to the members of the delegated committee.
5. A delegated committee must include at least two non-conflicted Councillors and may include any other persons appointed to the delegated committee by the Council who are entitled to vote. These meetings must be chaired by a Councillor appointed by the Council or the Lord Mayor.
6. Through the establishment of a delegated committee, non-conflicted Councillors can consider any submission from members of the public and make decisions of an advisory nature, in the form of recommendations to the Minister for Planning.
7. As a consequence of the number of Councillors, including the Lord Mayor and Deputy Lord Mayor, who declared either a general or material conflict of interest at the 17 August 2021 Future Melbourne Committee meeting or advised subsequently, this has led to the need to establish a delegated committee, as outlined in this report, consisting of non-conflicted Councillors.

Recommendation from management

8. That Council:
 - 8.1. Establishes the Amendment C278 Sunlight to Parks Committee pursuant to section 63 of the *Local Government Act 2020* (the Act).
 - 8.2. Appoints Councillors Doidge, Hakim and Le Liu to be members of the Committee.
 - 8.3. Appoints Councillor () to be the Chair of the Committee.
 - 8.4. By Instrument of Delegation pursuant to section 11 of the Act, delegates to the members of the Committee the powers, duties and functions of Council to make decisions of an advisory nature in respect to Planning Scheme Amendment C278, subject to the restrictions contained in section 11(2) of the Act and section 188(2) of the *Planning and Environment Act 1987*.
 - 8.5. Notes that in accordance with Council's Governance Rules, the Lord Mayor or three Councillors can call a special meeting of a Delegated Committee.

Attachments:

1. Supporting Attachment (Page 2 of 3)
2. Instrument of Delegation for the Amendment C278 Sunlight to Parks Committee (Page 3 of 3)

Supporting Attachment

Legal

1. The Amendment cannot be adopted under delegation due to restrictions in section 188(2) of the *Planning and Environment Act 1987*.
2. The establishment of the Committee is good governance practice and accords with the requirements of the Act and the *Planning and Environment Act 1987*. By establishing the Committee, non-conflicted Councillors can consider any submissions from members of the public and make decisions of an advisory nature, in the form of recommendations to the Minister for Planning.

Finance

3. There are no direct financial implications arising from the recommendation in this report.

Conflict of interest

4. No member of Council staff, or other person engaged under a contract, involved in advising on or preparing this report has declared a material or general conflict of interest in relation to the matter of the report.

Health and Safety

5. No Occupational Health and Safety issues or opportunities have been identified.

Stakeholder consultation

6. No external consultation has been undertaken as this is a Delegated Committee formed by the Council.

Relation to Council policy

7. This is supported by Council's Governance Rules.

Environmental sustainability

8. This report has no significant impact on environmental sustainability.

Melbourne City Council (Council)

INSTRUMENT OF DELEGATION

AMENDMENT C278 SUNLIGHT TO PARKS DELEGATED COMMITTEE

1. By this instrument of delegation (Instrument) sealed by the Council under section 11(1) of the *Local Government Act 2020* (the Act) the Council delegates to **the members of the Amendment C278 Sunlight to Parks Committee** (Committee), the powers, duties and functions of the Council to make decisions of an advisory nature in respect to planning scheme amendment C278.
2. This Instrument:
 - 2.1. has been authorised by a resolution of the Council on **[insert date of resolution]**
 - 2.2. pursuant to section 11(2) of the Act, does not delegate any of the following:
 - 2.2.1. this power of delegation
 - 2.2.2. the power to grant a reasonable request for leave under section 35 of the Act
 - 2.2.3. the power to appoint the Chief Executive Officer, whether on a permanent or acting basis
 - 2.2.4. the power to make any decision in relation to the employment, dismissal or removal of the Chief Executive Officer
 - 2.2.5. the power to approve or amend the Council Plan
 - 2.2.6. the power to adopt or amend any policy that the Council is the required to adopt under the Act
 - 2.2.7. the power to adopt or amend the Governance Rules
 - 2.2.8. the power to appoint the chair or the members of a delegated committee
 - 2.2.9. the power to make, amend or revoke a local law
 - 2.2.10. the power to approve the budget or revised budget
 - 2.2.11. the power to borrow money
 - 2.2.12. the power to declare general rates, municipal charges, service rates and charges and special rates and charges
 - 2.2.13. any power, duty or function prescribed by the regulations for the purposes of section 11(2) of the Act
 - 2.3. comes into force immediately the common seal of the Council is affixed to it
 - 2.4. remains in force according to its terms until the Council resolves to revoke it
 - 2.5. must be exercised in accordance with any lawful guidelines or policies which the Council from time to time adopts.

Date of Affixing of Common Seal – day of September 2021.

The **COMMON SEAL** of the **MELBOURNE CITY COUNCIL** was affixed to this Instrument in accordance with the **GOVERNANCE RULES**

.....
Lord Mayor

.....
Chief Executive Officer

CERTIFIED FOR SEALING
Date / / .
Page x No x
Initial _____
SEAL AFFIXED / / .