

Executive Summary**11.3 Options for the implementation of the Frankston Metropolitan Activity Centre Structure Plan, May 2015 - City Centre - Precincts 1, 2, 3 and 11**

Enquiries: (Stuart Caldwell: Communities)

Council Plan

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|--------------------|---|
| Community Outcome: | 1. Planned City |
| Strategy: | 1.2 Development and Housing |
| Priority Action | 1.2.3 Ensure built form, displays architectural excellence and embodies creative urban design |

Purpose

For Council to consider the available options for the implementation of the Frankston Activity Centre Structure Plan, May 2015 – City Centre – Precincts 1, 2, 3 and 11 that endorse Option 4.

Recommendation (Director Communities)

That Council:

1. Authorises officers to undertake a review and refresh of the Frankston Metropolitan Activity Centre Structure Plan, May 2015 – Precincts 1, 2, 3 and 11 as outlined in Option 4.
2. Notes the indicative timeline of up to 1-2 years to refresh the structure plan, with subsequent Planning Scheme Amendment process of up to a further 12 months.
3. Commits a total an amount of \$120,000 funding for the project in the FY20-21 budget.

Key Points / Issues

- Planning Scheme Amendment C123 lapsed for the reasons outlined in the Tribunal order issued on 31 October 2019 (*Steller 250 Pty Ltd v Frankston City Council [P2368] VCAT 2018*).
- As Planning Scheme Amendment C123 has lapsed, Council will need to commence a new strategic planning process to enable planning controls to be implemented into the Frankston Planning Scheme.
- Council officers have met with Senior officers from the Department of Environment, Land, Water and Planning (DELWP) to discuss potential ways forward and to better understand the strategic work required to support a future amendment to introduce planning controls into the Frankston Planning Scheme.
- DELWP officers have advised that the Minister for Planning would not support a new planning scheme amendment without further strategic work being undertaken and would not exempt a new planning scheme amendment from the public notice requirements of the *Planning and Environment Act 1987*.
- A number of options have been prepared for Council consideration in relation to Frankston Metropolitan Activity Centre Structure Plan - Precincts 1, 2, 3 and 11 – City Centre Precinct.

11.3 Options for the implementation of the Frankston Metropolitan Activity Centre Structure Plan, May 2015 - City Centre - Precincts 1, 2, 3 and 11**Executive Summary**

- Based on advice from DELWP, the preferred option is Option 4 which involves a refresh of the Frankston MAC structure plan in respect of the City Centre which comprises of Precincts 1, 2, 3 and 11. It is anticipated that the findings of this review may assist in providing strategic justification for future building height controls and ultimately underpin a future planning scheme amendment to incorporate new planning controls into the Frankston Planning Scheme for this precinct.
- Whilst Council could also pursue interim planning controls simultaneously, this has not been recommended as the process may divert resources and attention from pursuit of other another option, and has a low prospect of success with the DELWP in respect of the specific height limit sought by Council for the Kananook Creek Precinct

Financial Impact

The Victorian Government introduced the “Fair Go Rates” system in 2016-2017, placing a cap on Council rates. Rate revenue constitutes 66 per cent of all Council revenue.

The rate cap over the past four financial years has ranged between 2.0 per cent to 2.5 per cent and has been set at 2.0 per cent for 2020-2021.

The rate cap is based on the consumer price index which relates to the average increase in the prices of a range of goods and services, very few of which apply to the cost drivers of providing local government services.

Over time, with the cost of providing services increasing at a greater rate than increases in Council’s major source of income, Council’s capacity to continue to deliver services and fund its capital programme will be severely restricted.

It is expected that a review of the Frankston MAC Structure Plan – City Centre Precinct 1 may require the allocation of total funds in the order of \$200,000+ (\$120,000 in FY20-21 and \$80,000 in FY21-22) to undertake the review and the preparation of a subsequent planning scheme amendment. This will also involve considerable officer time. It is anticipated the process could take over 2 years to complete, and may require rescheduling of some other projects in the Strategic Planning work programme.

An additional item (bid) amount of \$50,000 has been noted for Councillor consideration in the draft FY2020-21 budget. Further project planning has identified that the initial stages for the project would require a total of \$120,000 in FY20-21 (ie. an additional \$70,000 above the current additional item listed for Councillor consideration in the draft FY20-21 budget).

Consultation**1. External Stakeholders**

Consultation with key stakeholders will be required. This will include landowners, interested community groups/organisations, other interested parties. An engagement plan will be prepared.

2. Other Stakeholders

Council officers have met with senior officers of the DELWP to discuss potential ways forward to facilitate planning controls into the Frankston Planning Scheme.

**11.3 Options for the implementation of the Frankston Metropolitan Activity Centre
Structure Plan, May 2015 - City Centre - Precincts 1, 2, 3 and 11****Executive Summary****Analysis (Environmental / Economic / Social Implications)**

It is anticipated that there will be positive environmental, economic and social benefits coming out of the review process as it is anticipated that a revised structure plan will enable planning controls to be implemented into the planning scheme by way of a planning scheme amendment.

A review of the structure plan and implementation of planning controls should provide future certainty for the community, developers, investors and decision makers and should assist in the revitalisation of the City Centre in accordance with the findings of the revised structure plan.

Legal / Policy / Council Plan ImpactCharter of Human Rights and Responsibilities

All matters relevant to the Charter of Human Rights and Responsibilities have been considered in the preparation of this report and are consistent with the standards set by the Charter.

Legal

Procurement procedures and protocol are relevant to this matter.

Policy Impacts

A review of the structure plan will provide the basis for future planning policy and planning controls to be incorporated into the Frankston Planning Scheme by way of a Planning Scheme Amendment.

Officer's Declaration of Interests

Council officers involved in the preparation of this report have no Conflict of Interest in this matter.

Risk Mitigation

If no action is taken there is a risk that development proposals may be made and ultimately approved which do not reflect Council's desired outcomes, due to an absence of planning controls.

If Council seeks planning controls in a manner which is unlikely to be supported by DELWP, there is a risk of ultimate failure of these efforts with lost time and financial cost.

A review of the city centre parts of the structure plan will facilitate the strategic basis for future planning controls across the City Centre and assist in managing risks associated with the future approval of a planning scheme amendment.

Conclusion

In light of the VCAT decision on Amendment C123 and advice from DELWP on what the Minister for Planning would support, there is a need for Council to consider the best way forward to enable planning controls to be implemented over the Frankston City Centre Precinct.

Of the options presented, the preferred option is to undertake a review and refresh of the Frankston MAC structure plan for precincts 1, 2, 3 and 11. This option has the support of DEWLP officers and considered to be the option that could provide the necessary strategic justification for design and height controls being implemented into the planning scheme via a future planning scheme amendment.

**11.3 Options for the implementation of the Frankston Metropolitan Activity Centre
Structure Plan, May 2015 - City Centre - Precincts 1, 2, 3 and 11****Executive Summary**

ATTACHMENTS

Attachment A: [↓](#) Assessment of options

Attachment B: [↓](#) Indicative timelines for FMAC Structure Plan Refresh and
Amendment (Option 4)

**11.3 Options for the implementation of the Frankston Metropolitan Activity Centre
Structure Plan, May 2015 - City Centre - Precincts 1, 2, 3 and 11
Officers' Assessment****Background**

At the 3 April 2018 Ordinary Meeting, Council made a number of resolutions in relation to the Frankston Planning Scheme Amendment C123, the Panel Report for Amendment C123 and the *FMAC Illustrative Guidelines – Neighbourhood Character & Urban Design Outcomes for Precincts 1A and 1B (2017)*. As part of the resolution a number of modifications were proposed including a mandatory maximum building height of 20 metres to apply to that part of Precinct 1(b) between the Nepean Highway and Kananook Creek.

Although the amendment was lodged with the Minister for Planning for approval, the validity of the amendment was challenged at VCAT. The outcome of that challenge was that VCAT determined that Planning Scheme Amendment C123 had lapsed for the reasons outlined in the Tribunal order issued on 31 October 2019 (*Steller 250 Pty Ltd v Frankston City Council [P2368] VCAT 2018*).

As VCAT has determined that Amendment C123 has lapsed, Council needs to consider what options are available to ensure the successful implementation of planning controls for the Frankston City Centre.

It should be noted that planning controls have been introduced into the Frankston Planning Scheme for Precincts 2-10 and 12 of the Frankston MAC structure plan, being the peripheral areas of the Frankston City Centre. These controls were implemented by the approval of the Frankston Planning Scheme Amendment C124 on 20 September 2019. The planning controls introduced into the planning scheme by Amendment C124 were consistent with the heights and setbacks of the FMAC structure plan.

Issues and Discussion

The lapsing of Planning Scheme Amendment C123 affects the way in which Council must consider applications within Precinct 1 of the FMAC area as there are no longer any proposed statutory height controls. Accordingly, assessment will need to be made as to the suitability of any proposed developments having regard to their site context and the general guidance provided by the FMAC structure plan.

Council officers have met with Senior officers from the Department of Environment, Land, Water and Planning (DELWP) to discuss potential options to enable the implementation of the FMAC structure plan as it related to the City Centre (Precinct 1).

DELWP officers advised that the Minister for Planning would not support a new planning scheme amendment that proposed the introduction of height controls that were not consistent with the adopted FMAC structure plan. Council officers were also advised that the Minister would not support an exemption of the public notice requirements under Section 20(4) for a new amendment.

DELWP officers advised that a review or refresh of the FMAC structure plan would be required for the City Centre Precinct given the age of the structure plan.

It will be necessary for any review of the structure plan to include built form modelling and an analysis of the capacity to maintain housing growth and population targets for the MAC if a 20 metre mandatory height was proposed for the Kananook sub-precinct.

11.3 Options for the implementation of the Frankston Metropolitan Activity Centre Structure Plan, May 2015 - City Centre - Precincts 1, 2, 3 and 11**Officers' Assessment**

DELWP could potentially consider a future amendment that seeks to apply a 20 metre height control along the Kananook Creek area, if it can be demonstrated that there is sufficient strategic justification coming out of the review of the structure plan and it meets the requirements of Planning Practice Note 59 – The Role of Mandatory Provisions in Planning Scheme and Planning Practice Note 60 – Height and setback controls for activity centres.

Options Available including Financial Implications

A number of options have been prepared for Council consideration. A detailed analysis of each option is included as Attachment A.

Option 1

This option is to “do nothing”, meaning that no further action is taken. This option requires no financial funding however would mean that the Frankston MAC structure plan is only partially implemented, leaving the City Centre Precinct without design and height controls.

Option 2

Re-submit a new amendment with the same content as Amendment C123 (and request the Minister to exempt the amendment from public notice). This option requires minimal financial funding, however, DEWLP officers have advised that such an amendment would not be supported. Accordingly pursuing this option would be likely only to further delay implementation of controls.

Option 3

Prepare a new planning scheme amendment for the City Centre precinct consistent with the FMAC structure plan but excluding the Kananook Creek Precinct.

At the same time, commence a review of the Frankston MAC structure plan for the Kananook Creek Precinct only with a view towards demonstrating the need for height limits as sought by Council.

Funding would be required to review part of the structure plan and would take a minimum of 12 months. Public consultation would be required and a subsequent planning scheme amendment prepared.

However, given only a small portion of the structure plan would be reviewed it may not be sufficient to adequately substantiate and provide sufficient strategic justification for the height controls desired by Council. If the outcome involves an overall reduction in development potential in the structure plan area there is a material risk that this approach would not ultimately be supported by Minister for Planning.

Option 4

Undertake a refresh focussed on the City Centre Precinct of the Frankston MAC structure plan. This will require substantial funding and potentially take between 1-2 years to complete. It would require public consultation with a range of stakeholders and a subsequent planning scheme amendment would be required to introduce planning controls into the planning scheme.

DELWP have indicated that this approach is supported and has a better chance of being able to provide the necessary strategic justification to support height controls.

An indicative timeline for refresh of the structure plan and a subsequent planning scheme amendment is included as Attachment B.

11.3 Options for the implementation of the Frankston Metropolitan Activity Centre Structure Plan, May 2015 - City Centre - Precincts 1, 2, 3 and 11**Officers' Assessment***Potential for Interim Controls*

Council could seek the Minister's approval for an interim Design and Development Overlay that introduces height controls for the City Centre. Any request for interim controls would need to be accompanied by strategic justification. At the same time, a refresh of the City Centre Precinct of the Frankston MAC structure plan is undertaken.

While there would be advantages to having interim controls in place, it is unlikely that the Minister would support a 20 metre height interim control for the Kananook Creek precinct. It is likely that the only height controls which the minister might consider supporting would be those that are consistent with the current FMAC structure plan, and even this is uncertain. Officer time and resources would be required to prepare an amendment for the introduction of interim controls which may slow work on a refresh of the structure plan.

Preferred Option

Based on the above, Option 4 presents the best chance of providing the necessary strategic justification to support height controls. It is the only option that has the support of DELWP.

It is recommended that Councillors support Option 4 as the preferred option going forward

Financial Implications

It is expected that a review of the Frankston MAC Structure Plan – City Centre Precinct 1 may require the allocation of funds in the order of approximately \$200,000 to undertake the review and the preparation of a subsequent planning scheme amendment. This will also involve considerable officer time. It is anticipated the process could take over 2 years to complete, and may require rescheduling of some other projects in the Strategic Planning work programme.

Currently funding for this project has not been allowed for in the FY2019-20 budget. An additional item (bid) amount of \$50,000 has been noted for Councillor consideration in the draft FY2020-21 budget. Further project planning has identified that the initial stages for the project would require a total of \$120,000 in FY20-21 (ie. an additional \$70,000 above the current additional item listed for Councillor consideration in the draft FY20-21 budget).

Conclusion

There is a need for Council to consider the best option to enable planning controls to be implemented in the Frankston City Centre.

Of the options presented, the preferred option is to undertake a review and refresh of the Frankston MAC structure plan. This option has the support of DELWP officers and is considered to be the option that could provide the necessary strategic justification for design and height controls being implemented into the planning scheme via a future planning scheme amendment.

Recommendation

That Council:

1. Authorises officers to undertake a review and refresh of the Frankston Metropolitan Activity Centre Structure Plan, May 2015 – Precincts 1, 2, 3 and 11 as outlined in Option 4.

**11.3 Options for the implementation of the Frankston Metropolitan Activity Centre
Structure Plan, May 2015 - City Centre - Precincts 1, 2, 3 and 11****Officers' Assessment**

2. Notes the indicative timeline of up to 18 months to refresh the structure plan, with subsequent Planning Scheme Amendment process.
3. Commits a total amount of \$120,000 funding for the project in the FY20-21 budget.

ASSESSMENT OF OPTIONS

| OPTION | PROPOSAL | TASKS | RISKS | COSTS |
|--------|--|---|--|---|
| 1 | <ul style="list-style-type: none"> No further actions taken | <ul style="list-style-type: none"> No actions required | <ul style="list-style-type: none"> FMAC structure plan only partially implemented. No design and height controls over the City Centre Precinct. FMAC structure plan can provide general guidance only in the assessment of development proposals. | <ul style="list-style-type: none"> No costs |
| 2 | <ul style="list-style-type: none"> Re-submit a duplicate amendment with no changes. Request the Minister to consider a part 20(4) amendment exempting public notice | <ul style="list-style-type: none"> Council report seeking Council adoption of the amendment. Amendment documentation sent to DELWP for approval. | <ul style="list-style-type: none"> DELWP have advised that approval would not be supported | <ul style="list-style-type: none"> Costs involved in Amendment \$1,000-\$1500. |
| 3 | <ul style="list-style-type: none"> Prepare a new planning scheme amendment for the City Centre excluding the Kananook Creek sub-precinct, being the area to the east of Nepean Highway only. Request the Minister to consider a part 20(4) amendment exempting public notice. Propose a review of the Frankston MAC structure plan for the Kananook Creek Precinct, that part | <ul style="list-style-type: none"> Council report seeking Council adoption of the amendment and support of the review of the Kananook Creek precinct being part of precinct 1 of FMAC structure plan. Engage a consultant to undertake a review of the Kananook Creek precinct of FMAC structure plan and | <ul style="list-style-type: none"> DELWP have advised that approval would not be supported. DELWP have advised that support would not be given for public notice exemption. DELWP have advised that a comprehensive review of the City Centre precinct would be required. Such a review is more likely to be able to provide the necessary strategic justification for design and | <ul style="list-style-type: none"> Costs involved in Amendment \$1,000-\$1500. Costs involved in a part review of the FMAC structure plan \$150,000. Timeframe 1-2 years |

ASSESSMENT OF OPTIONS

| OPTION | PROPOSAL | TASKS | RISKS | COSTS |
|--------|---|---|--|-------|
| | of the precinct on the west side of Nepean Highway. | <p>prepare a draft report.</p> <ul style="list-style-type: none"> • Further research and studies required. May include: <ul style="list-style-type: none"> • Urban design and built form analysis • Economic and retail analysis • Demographic analysis including population projections • Transport, services and infrastructure analysis • The review will involve consultation with affected property owners, tenants and other interest groups. • Report the review and consultation outcomes to Council. Seek Council resolution to prepare a planning scheme amendment. | <p>height controls.</p> <ul style="list-style-type: none"> • DELWP are unlikely to be satisfied with a narrow review of the FMAC structure plan and unlikely to support a subsequent amendment. • It is likely that the process of review of the structure plan and preparation, exhibition, adoption of any amendment may take between 1-2 years. | |

ASSESSMENT OF OPTIONS

| OPTION | PROPOSAL | TASKS | RISKS | COSTS |
|--------|--|--|--|--|
| | | <ul style="list-style-type: none"> Preparation of a planning scheme amendment which will require public consultation the outcome of which reported back to Council. A Panel may be required to be appointed to hear any submissions. Report findings of any panel to Council and recommend adoption, with/without changes. If adopted, submit amendment to DEWLP. | | |
| 4 | <ul style="list-style-type: none"> A comprehensive review of the Frankston MAC structure plan – City Centre Precinct – Precincts 1, 2, 3 and 11. Subsequent planning scheme amendment. | <ul style="list-style-type: none"> Council report seeking a resolution from Council. Engage a Consultant to undertake a review and prepare a report. Further research and studies required including: <ul style="list-style-type: none"> Urban design and built | <ul style="list-style-type: none"> Less risk is associated with this approach as DELWP officers advised that a review of the City Centre could potentially provide the necessary strategic justification for design and height controls. In the interim the FMAC structure plan can provide only general guidance for development proposals. | <ul style="list-style-type: none"> A review of the FMAC is estimated to cost \$200,000. Timeframe is likely to be a minimum of 2 years. Further cost for amendment \$1,000-3,000 |

ASSESSMENT OF OPTIONS

| OPTION | PROPOSAL | TASKS | RISKS | COSTS |
|--------|----------|--|---|-------|
| | | <ul style="list-style-type: none"> form analysis <ul style="list-style-type: none"> Economic and retail analysis Demographic analysis including population projections Transport, services and infrastructure analysis Broad consultation would be required as part of the review process with affected property owners, interested parties, businesses, government agencies, servicing authorities, etc. Further research and analysis could be required that included economic and built form analysis. Draft report to Council seeking adoption and preparation of a planning scheme amendment. Request authorisation from | <ul style="list-style-type: none"> Development may continue to be supported by VCAT in the absence of planning controls in the scheme. The time and cost involved in reviewing the structure plan and uncertainty of the findings. DELWP may not support the structure plan if it includes mandatory height controls unless the review provides sound strategic justification. | |

ASSESSMENT OF OPTIONS

| OPTION | PROPOSAL | TASKS | RISKS | COSTS |
|--------|----------|---|-------|-------|
| | | <p>DEWLP to exhibit amendment.</p> <ul style="list-style-type: none"> • Undertake public notice, consider submissions, hold panel. • Report findings of panel and consultation to Council seek adoption of the amendment. • Submit amendment to DELWP for approval | | |

APPENDIX A

INDICATIVE TIMELINE FOR FRANKSTON MAC STRUCTURE PLAN REFRESH AND AMENDMENT PROCESS – MARCH 2020

[illegible]