DEVELOPMENT AND PLANNING COMMITTEE REPORT

MELBOURNE PLANNING SCHEME DESIGN & DEVELOPMENT OVERLAY 15 (DDO15) – SOUTH YARRA

Division Sustainable Development & Strategy

Presenter John Noonan, Group Manager Sustainable Regulatory Services

Purpose

1. To seek the Committee’s support for an amendment to the Melbourne Planning Scheme to make a number of changes to the Design & Development Overlay 15 (DDO15), which is a height control that applies to much of the South Yarra area.

Background

2. In 1975 the then Melbourne Metropolitan Planning Scheme Ordinance was amended to apply a 12 metre height control over a substantial portion of South Yarra. For the parts of South Yarra within the City of Melbourne this height control was mandatory. For the parts of South Yarra within what is now the City of Stonnington and within part of Cremorne, now within the City of Yarra, this height control was discretionary. It is understood that this amendment was introduced in response to the construction of the Domain Park Towers building at 193 Domain Road (cnr Park Street), South Yarra. This building is 19 storeys (in the order of 65 metres) in height. At this time there was concern that this building interrupted one of the long vistas designed by Guilfoyle in his original design of the Botanic Gardens. There was also concern that the wind effects of the Park Towers building were threatening the health of trees in the Botanic Gardens.

3. The 12 metre mandatory height control existed in various iterations from 1975 until 1999. On 4 March 1999 the new format planning scheme was introduced. The 12 metre height control over a substantial part of the City of Melbourne area of South Yarra is still in place however it is a discretionary, rather than a mandatory control. The reason for this change is that at the time of the preparation of the new format planning scheme there was a strong presumption by the then state government against prescriptive/mandatory controls in preference for a performance based approach.

Issues

4. In March 2003 Victorian Civil and Administrative Tribunal (VCAT) considered a planning permit application to construct a 5 storey (19-20 metre) building at 153-155 Domain Road, South Yarra. This site is located within the area covered by DDO15, which as explained above specifies a discretionary 12 metre height. The City of Melbourne had not determined the application within the 60 day prescribed period but was of the view that the proposed building would be visually intrusive from the Botanic Gardens. VCAT directed that a permit issue and it is understood that this decision has caused considerable concern with some members of the community.
5. As a result it is proposed to seek some changes to the existing height control with the intention of delivering additional certainty, efficiency and effectiveness to planning permit decision making in this area.

6. Design & Development Overlay 15 (DDO15) covers a substantial part of South Yarra. A copy of the DDO, including the ordinance which details the objectives and outcomes sought (Attachment 1) and a map indicating the area it affects (Attachment 2) are attached.

7. Specifically it is suggested that additional certainty would be delivered if, rather than being discretionary, this control was altered so that it was mandatory. That is to say, removing the ability of decision makers to approve planning permit applications that exceed the height limit.

8. As with the former mandatory control and as is the case with all other mandatory height controls within the Melbourne Planning Scheme, it is suggested that a very limited degree of discretion should be retained in respect to buildings which already exceed the maximum height specified.

9. The history of height controls within South Yarra is different from that of the other suburbs of the City of Melbourne in that an area based height control has been long established (and mandatory in nature for a period of 24 years). This height is also highly sensitive because of its proximity to the Botanic Gardens.

10. In addition, DDO15 currently contains a requirement that the responsible authority must consider the views of the Director of the Royal Botanic Gardens before deciding on any application. If the control becomes mandatory (that is, there is no ability to approve a development that exceeds the height control) the need to seek the views of the Director of the Royal Botanic Gardens becomes redundant. It is suggested that in consultation with the Director of the Royal Botanic Gardens that this requirement be deleted. Such a change would be true to the former controls which only required consultation with the Director of the Royal Botanic Gardens for those areas where discretion existed to approve a building in excess of 12 metres.

11. The draft planning scheme amendment is at Attachment 3.

**Time Frame**

12. There are no statutory time constraints though it is understood that there is a desire from this matter to be progressed as a matter of priority. It is understood that there may be a desire to try to resolve this matter within the term of the current Council and to seek to avoid the need to report back to the Committee at a time when the Council is in caretaker mode prior to the upcoming Council elections. For this reason a multi-phase recommendation is presented.

**Relation to Council Policy**

13. The Municipal Strategic Statement notes that the South Yarra area is well established and has a limited capacity for growth.

**Consultation**

14. No consultation has been undertaken to date and little or no consultation is proposed on the basis that the proposed change to the planning scheme is many regards simply a reinstatement of a former control, the removal of which could be viewed as an anomaly.
Finance

15. The costs associated with a planning scheme amendment will be funded through operational budget.

Legal

16. Division 1 of Part 3 of the *Planning & Environment Act 1987* (“the Act”) covers planning scheme amendments including the ability of the Minister to exempt the planning authority from the exhibition and notice provisions of the Act and also to exempt him or herself from such provisions in certain circumstances.

Sustainability

Connected and Accessible City

17. The proposed amendment is unlikely to have any significance impact upon this aspect of City Plan.

Inclusive and Engaging City

18. The proposed amendment is unlikely to have any significance impact upon this aspect of City Plan.

Innovative and Vital Business City

19. The proposed amendment is unlikely to have any significance impact upon this aspect of City Plan.

Environmentally Responsible City

20. The proposed amendment would have a positive impact on this aspect of City Plan by continuing to protect the Royal Botanic Gardens, an important environmental asset for the immediate area and the metropolitan area as a whole.

Recommendation

21. That the Planning and Development Committee:

   21.1. seek support from the Director of the Botanic Gardens to:

      21.1.1. delete the existing requirement within Design & Development Overlay 15 (DDO15)

      21.1.2. make the 12 metre height limit mandatory;

   21.2. given that a mandatory height limit of 12 metres existed over South Yarra for a period of 24 years until 1999, request that the Minister for Planning amend the Melbourne Planning Scheme under Section 20(4) of the *Planning and Environment Act 1987* to revert to the mandatory height limit together with an allowance for the repair and maintenance of buildings already exceeding the height limit (that is amending the scheme without any public consultation process);

   21.3. in the event that the Minister does not support a 20(4) amendment to make this permanent change to the Melbourne Planning Scheme then request that the Minister amend the Melbourne Planning Scheme to make the existing DDO15 mandatory for an interim period of 3 years while a planning scheme amendment that includes some level of public consultation is exhibited;
21.4. if an amendment requiring some level of public consultation is to be pursued then exemption be sought from the Minister for Planning from the requirement to give individual notice to affected owners and occupiers on the basis that it would be impractical; and

21.5. note that this decision is being made by the Committee under delegation from the Council and is subject to the referral notice process.

**Attachments:**
1. DDO 15 Schedule
2. DDO 15 Map
3. Draft Planning Scheme Amendment
4. Sustainability Assessment
SCHEDULE 15 TO THE DESIGN AND DEVELOPMENT OVERLAY

Shown on the planning scheme map as DDO15

ROYAL BOTANIC GARDENS

1.0 Design objectives

- To preserve the landscape qualities and amenity of the Royal Botanic Gardens and to foster vegetation growth in the Gardens.
- To ensure that the enjoyment of the Royal Botanic Gardens is not diminished by overshadowing or visual intrusion from any new buildings or works.
- To minimise detrimental wind impacts on the Royal Botanic Gardens.
- To ensure that any new development or redevelopment is compatible with the existing scale and character of buildings in the area.
- To protect the residential amenity of the area.

2.0 Requirements

2.1 Building heights

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 to 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.

3.0 Decision guidelines

Before deciding on an application, the responsible authority must consider the views of the Director of the Royal Botanic Gardens.

Table to Schedule 15

<table>
<thead>
<tr>
<th>AREA</th>
<th>MAXIMUM BUILDING HEIGHT</th>
<th>OUTCOMES</th>
</tr>
</thead>
<tbody>
<tr>
<td>15</td>
<td>12 metres</td>
<td>Buildings or works do not visually intrude upon vistas within the Royal Botanic Gardens or cast shadows on the Gardens between 11.00 am and 2.00 pm on 22 March and 22 September. Development is compatible with the scale and character of the South Yarra area.</td>
</tr>
</tbody>
</table>
4.0 Exemption from notice and appeal

An application to construct a building or construct or carry out works that is generally in accordance with a master plan incorporated in the planning scheme or approved by the responsible authority is exempt from the notice requirements of Section 52(1)(a), (b) and (d), the decision requirements of Section 64(1), (2) and (3) and the review rights of Section 82(1) of the Act.
SCHEDULE 15 TO THE DESIGN AND DEVELOPMENT OVERLAY

Shown on the planning scheme map as DDO15

ROYAL BOTANIC GARDENS

1.0 Design objectives

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- To ensure that the enjoyment of the Royal Botanic Gardens is not diminished by overshadowing or visual intrusion from any new buildings or works.
- To minimise detrimental wind impacts on the Royal Botanic Gardens.
- To ensure that any new development or redevelopment is compatible with the existing scale and character of buildings in the area.
- To protect the residential amenity of the area.

2.0 Buildings and works

An application must be accompanied by a site analysis and urban context report which demonstrates how the proposed building or works achieve each of the Design Objectives and Built Form Outcomes of this schedule, and any local planning policy requirements.

A permit cannot be granted to vary the Maximum Building Height.

A permit may be granted to replace or alter a building or works existing at the approval date but which do not comply with the Maximum Building Height specified in the table, only if the responsible authority is satisfied an increased height improves the amenity and enhances the urban character of the area.

Building height is the vertical distance between the footpath or natural surface level at the centre of the site frontage and the highest point of the building, with the exception or architectural features and building services.

3.0 Decision Guidelines

Before deciding on an application in the immediate surrounds of the Royal Botanic Gardens, the responsible authority must consider the views of the Director of the Royal Botanic Gardens. *immediate surrounds’ will be defined in consultation with the Director prior to exhibition of the amendment.

Table to Schedule 15

<table>
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<tr>
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<table>
<thead>
<tr>
<th>Amendment number</th>
<th>In operation from</th>
<th>Brief description</th>
</tr>
</thead>
<tbody>
<tr>
<td>C77</td>
<td>To be inserted by DSE</td>
<td>The amendment modifies Schedule 15 to the Design and Development Overlay by changing the existing 12m height limit from a discretionary to a mandatory control and by removing the requirement for the responsible authority to consider the views of the Director of the Royal Botanic Gardens before deciding on an application.</td>
</tr>
</tbody>
</table>
Who is the Planning Authority?

This amendment has been prepared by the City of Melbourne, which is the planning authority for this amendment.

Land affected by the Amendment.

The amendment affects all land covered by Schedule 15 to the Design and Development Overlay, shown on the Planning Scheme Maps as DDO15.

What the Amendment does.

The amendment modifies Schedule 15 to the Design and Development Overlay by changing the existing 12m height limit from a discretionary to a mandatory control, thereby removing the ability of decision makers to approve planning permit applications that exceed the height limit.

A very limited degree of discretion will be retained with respect to buildings which already exceed the maximum height specified.

The definition of building height stated within the Schedule is modified to exclude architectural features and building services from the overall measurement of building height.

The amendment removes the requirement for the responsible authority to consider the views of the Director of the Royal Botanic Gardens before deciding on an application.

Why the Amendment is required.

The amendment is required to address an anomaly within the Melbourne Planning Scheme, to deliver additional certainty, efficiency and effectiveness to planning permit decision making in this area.
In 1975 the then Melbourne Metropolitan Planning Scheme Ordinance was amended to apply a 12 metre height control over a substantial portion of South Yarra. For the parts of South Yarra within the City of Melbourne this height control was mandatory. For the parts of South Yarra within what is now the City of Stonington and within part of Cremorne, now within the City of Yarra, this height control was discretionary. It is understood that this amendment was introduced in response to the construction of the Domain Park Towers building at 193 Domain Road (cnr Park Street), South Yarra. This building is 19 storeys (in the order of 65 metres) in height. At this time there was concern that this building interrupted one of the long vistas designed by Guilfoyle in his original design of the Botanic Gardens. There was also concern that the wind effects of the Park Towers building were threatening the health of trees in the Botanic Gardens.

The 12 metre mandatory height control existed in various iterations from 1975 until 1999. On 4 March 1999 the new format planning scheme was introduced. The 12 metre height control over a substantial part of the City of Melbourne area of South Yarra is still in place however it is a discretionary, rather than a mandatory control. The reason for this change is that at the time of the preparation of the new format planning scheme there was a strong presumption by the then state government against prescriptive/mandatory controls in preference for a performance based approach.

The amendment will address an historic anomaly by reinstating a mandatory 12m height control which has existed over the area from 1975 to 1999, but was converted to a discretionary control with the introduction of new format planning schemes. By reintroducing a mandatory height control, the amendment seeks to deliver additional certainty, efficiency and effectiveness to planning permit decision making in this area.

In addition, DDO15 currently contains a requirement that the responsible authority must consider the views of the Director of the Royal Botanic Gardens before deciding on any application. With the introduction of a mandatory control (that is, there is no ability to approve a development that exceeds the height control) the need to seek the views of the Director of the Royal Botanic Gardens becomes redundant. This amendment therefore deletes the requirement to consult with the Director of the Royal Botanic Gardens. (This change is true to the former controls which only required consultation with the Director of the Royal Botanic Gardens for those areas where discretion existed to approve a building in excess of 12 metres.)

**Impact of the Amendment.**

*Minister's Directions*
The development envisaged by this amendment is not affected by any of the Minister’s Directions under Section 12 of the Planning and Environment Act.

The amendment is consistent with the *Ministerial Direction on the Form and Content of Planning Schemes* under section 7(5) of the Act.
Environmental Effects
The amendment will maintain protection of the Royal Botanic Gardens, an important environmental asset for the immediate area and the metropolitan area as a whole.

Social and Economic Effects
The Amendment is expected to have positive social benefit as it will continue to protect the Royal Botanic Gardens, an asset which is valued by the community for recreational enjoyment, aesthetic and residential amenity. The amendment may result in limited economic effects by limiting development within the area to the 12m height limit.

Strategic and Policy Justification of the Amendment
The history of height controls within South Yarra is different to that of the other suburbs of the City of Melbourne in that an area based height control has been long established (and mandatory in nature for a period of 24 years). This height is also highly sensitive because of its proximity to the Botanic Gardens.

The amendment reflects the Municipal Strategic Statement which notes that the South Yarra area is well established and has a limited capacity for growth.

Where you may inspect this Amendment.

The amendment is available for public inspection, free of charge, during office hours at the following places.

| Department of Sustainability and Environment Planning Information Centre Upper Plaza Nauru House 80 Collins Street Melbourne 3000 | City of Melbourne Development Planning Branch Level 6 Council House 200 Little Collins Street MELBOURNE VIC 3000 |
Sustainability Assessment
MELBOURNE PLANNING SCHEME DESIGN & DEVELOPMENT OVERLAY 15 (DDO15)
SOUTH YARRA

Theme: Corporate Themes

Question 1: Well managed, leading and financially responsible city
Does this report assist the committee to manage corporate responsibilities? If yes, insert your comments below. Note: if the following questions are not directly relevant please select ‘not applicable’ from the Impact list.

Theme: Inclusiveness and engagement

Question 2: Community Services
What effect will the proposal have on the quality, quantity and accessibility of education, leisure, cultural, health and other community services?

Impact: no impact

Question 3: Active and Engaged Community
What effect will this proposal have on the development of a culturally diverse, healthy, equitable, active and involved community in Melbourne?

Impact: no impact

Question 4: Cultural and Heritage Value of Built Form
What effect will this proposal have on the cultural heritage of Melbourne's neighbourhoods and buildings?

Impact: no impact

Question 5: Transport and Accessibility
What effect will the proposal have on the level of public transport and number of transport options/connections with the City of Melbourne?

Impact: no impact

Question 6: Welcoming and Safe Public Space
What effect will the proposal have on the safety and amenity of the public environment eg streets, laneways, parks and gardens?

Impact: no impact

Theme: Environmental responsibility

Question 7: Energy Use and Greenhouse Emissions
What effect will the proposal have on energy consumption and greenhouse gas emissions associated with Council and/or community activities?

Impact: no impact

Question 8: Resource Use and Waste Generation
What effect will the proposal have on the total quantity and type of waste, including prescribed waste, generated by Council and/or community activities?

Impact: no impact
Question 9: Pollution
What effects will the proposal have on the use of hazardous materials and levels of pollution (air, noise, soil, and water) in the region?

Impact: no impact

Question 10: Water Consumption
What effect will the proposal have on the quantity of water consumed and disposed of by the Council and/or in the municipality?

Impact: no impact

Question 11: Flora and Fauna
What effect will this proposal have on flora and fauna in the City of Melbourne on private and public land and in the aquatic environment?

Impact: positive  Likelihood: medium  Magnitude: moderate

Comments:
The proposed amendment would have a positive impact by continuing to protect the Royal Botanic Gardens, an important environmental asset for the immediate area and the metropolitan area as a whole.

Theme: Innovation and Business Vitality

Question 12: Development of Key Business Sectors
What effect will the proposal have on the number and type of businesses and level of business investment in the City of Melbourne?

Impact: no impact

Theme: Connection and accessibility

Question 13: Transport Infrastructure
What effect will the proposal have on Melbourne's transport infrastructure?

Impact: no impact

Question 14: Communications Infrastructure
What effect will the proposal have on Melbourne's information technology and telecommunications infrastructure?

Impact: no impact

Theme: Innovation and Business Vitality

Question 15: Business Innovation
What effect will the proposal have on research and development in Melbourne?

Impact: no impact

Question 16: Job Creation
What effect will the proposal have on the number and types of jobs available in the City of Melbourne?

Impact: no impact
FINANCE ATTACHMENT

MELBOURNE PLANNING SCHEME DESIGN & DEVELOPMENT OVERLAY 15 (DDO15) – SOUTH YARRA

The planning scheme amendments will be funded from the operational budget.

Kerrie Jordan
Acting Manager Financial Service
Division 1 of Part 3 of the Planning & Environment Act 1987 covers planning scheme amendments. If the Scheme is to be amended provisions set out in this Division must be complied with. The division provides for the exhibition and notification of proposed Planning Scheme amendments as well as the process for public submissions and the consideration of those submissions and the consideration of those submissions by the planning authority or an appointed panel.

Section 20(4) of the Act provides that the Minister may exempt himself or herself from any of the requirements of Division 1 of the Act and related regulations in respect of an amendment which the Minister prepared, if the Minister considers that compliance with any of those requirements is not warranted or that the interests of Victoria or any part of Victoria make such an exemption appropriate.

Section 20(2) gives the Minister the power to exempt a planning authority from all or part of the exhibition and notice requirements.

Kim Wood
Acting Manager Governance Services