



134-142 FERRARS STREET, SOUTH MELBOURNE

LOCATION/ADDRESS: 134-142 FERRARS STREET, SOUTH MELBOURNE
EXECUTIVE MEMBER: LILI ROSIC, GENERAL MANAGER, CITY STRATEGY AND SUSTAINABLE DEVELOPMENT
PREPARED BY: PATRICIA STEWART, FISHERMANS BEND URBAN RENEWAL SENIOR PLANNER

1. PURPOSE

1.1 To provide a position on whether Council as a recommending referral authority to Ministerial Application 3/2013/MIN/B at the abovementioned address, should apply to the Victorian Civil & Administrative Tribunal to review the decision of the responsible authority to grant a Notice of Decision to Amend a Permit relating to Condition 18 (Affordable Housing).

2. EXECUTIVE SUMMARY

WARD:	Gateway
TRIGGER FOR DETERMINATION BY COMMITTEE:	Development and use for accommodation in the Capital City Zone
APPLICATION NO:	DELWP: 2013/000088-2 Council Ref: 3/2013/MIN/B
APPLICANT:	Contour
EXISTING USE:	Construction site – works associated with Planning Permit 2013/000088-1
ABUTTING USES:	Offices, commercial and light industrial.
ZONING:	Capital City Zone (CCZ1)
OVERLAYS:	Incorporated Plan Overlay (ICO1) Environmental Audit Overlay (EAO) Parking Overlay (PO1) Design and Development Overlay (DDO30) Special Building Overlay (SBO2)
DEADLINE FOR SUBMITTING AN APPLICATION FOR REVIEW	21 July 2020



- 2.1 On 24 June 2020 Council considered its position on Ministerial Application 3/2013/MIN/B at 134-142 Ferrars Street, South Melbourne to amend the existing permit under Section 72 of the *Planning and Environment Act 1987* to amend Condition 18 (Affordable Housing). A copy of this report and associated Council Minutes are included at **Attachment 1**.
- 2.2 Council unanimously determined to adopt the following recommendation:

RECOMMENDATION – PART A

That the Planning Committee advises the Department of Environment, Land, Water and Planning, that Council does not support the proposed amendment to Condition 18.

RECOMMENDATION – PART B

*That the Planning Committee advises the Department of Environment, Land, Water and Planning that in the event the Minister determines to approve the amendment to condition 18, it includes the following additional (**bolded**) changes:*

Condition 18 amended to read:

Affordable Housing

18. Before the occupation of the development the owner must:

- (a) enter into an agreement under Section 173 of the Planning and Environment Act 1987 to the satisfaction of the Responsible Authority;*
- (b) register the agreement on the **title(s) for the land**, in accordance with Section 181 of the Planning and Environment Act 1987; and*
- (c) provide the Responsible Authority with the dealing number confirming the registration of the title.*

The agreement must be in a form to the satisfaction of the Responsible Authority, and the owner must be responsible for the expense of the preparation and registration of the agreement, including the Responsible Authority's reasonable costs and expense (including legal expenses) incidental to the preparation, registration, and ending of the agreement. The agreement must contain covenants to be registered on the Title of the property so as to run with the land, and must provide for the following:

- (i) The provision of 6% of the total number of dwellings (rounded down to the nearest whole number) as Affordable Housing one (1) bedroom dwellings within the building;*
- (ii) All the Affordable Housing dwellings are made available for rent at rates affordable for people on very low, low or moderate incomes in accordance with Section 3AA and 3AB the Planning and Environment Act (1987) (Vic.) definition of affordable housing.*



- (iii) *Unless otherwise agreed by the Responsible Authority, utilise one or more of the following mechanisms for the delivery of the affordable housing:*
- *Transfer of the dwellings to a registered housing agency or other housing provider or trust approved by the Responsible Authority.*
 - *Leasing of the dwellings as affordable housing under the management of a registered housing agency or housing provider or trust approved by the Responsible Authority for a period of not less than 30 years.*
- (iv) *The Affordable housing dwellings must be made available for rent within six (6) months of the issue of a Certificate of Occupation for the development;*
- (v) *The dwellings to be tenure blind.*
- (vi) *Captured under 30-year timeframe condition outlined above.*
- (vii) *One bicycle space must be allocated to each affordable housing dwelling.*
- (viii) *The owner of the Affordable Housing dwellings to be responsible for:*
- *All Owners Corporation costs.*
 - *The on-going management and maintenance of the building, including communal areas and facilities, resident amenity areas.*
 - *The on-going management and maintenance and individual apartments, including kitchens, other joinery, fixings, carpet and paint (except where damage is due to the occupants' negligent activity)*
- (ix) *In the event the permit holder is unable to achieve an arrangement in accordance with this condition, to Council's satisfaction, the City of Port Phillip will be responsible for locating a Housing Association or Housing Provider.*

RECOMMENDATION – PART C

Authorise the Manager City Development to negotiate an appropriate affordable housing outcome for the proposal and to instruct Council's Statutory Planners and/ or Council's Solicitors on any future VCAT application for review and/or any independent Advisory Committee appointed by the Minister for Planning to consider the application.



- 2.3 On 30 June 2020 the Department determined to issue a Notice of Decision to Amend a Permit under Section 75A of the Planning and Environment Act 1987 (Decision to amend permit if recommending referral authority objected to or recommended condition that was not included). A Copy of the Notice of Decision is included at **Attachment 2**.
- 2.4 The recommendations of Council, to A) not support the proposed amendment and B) recommended conditions if the Department were to support the application, were not adopted by DELWP.
- 2.5 The Notice of Decision to Amend a Permit allows for affordable housing to be provided by **one or more** [Author emphasis] of the following three options:
1. Transfer of the dwellings to a registered housing agency or other housing provider or trust approved by the Responsible Authority.
 2. Leasing of the dwellings as Affordable Housing under the management of a registered housing agency or housing provider or trust approved by the Responsible Authority for a period of not less than 30 years.
 3. Leasing of the dwellings as Affordable Housing to eligible persons by the owner to the satisfaction of the Responsible Authority for a period of not less than 20 years. In this event, the agreement must also detail a mechanism requiring the owner of the Affordable Housing dwellings to maintain documentation demonstrating the basis for:
 - i. calculating affordable rents;
 - ii. the amount of rent charged to tenants;
 - iii. the assessment of tenants and their income showing that they meet relevant tests to be eligible to rent the affordable housing dwellings as very low, low or moderate-income residents in accordance with the *Planning and Environment Act 1987 (Vic.)* definition of Affordable Housing; and
 - iv. how rent increases are to be calculated and applied.
- 2.6 Council officers consider the above variations unacceptable because:
- The Notice of Decision dilutes the intent of the current permit condition and does not demonstrate a comparable level of affordable housing delivered within this development or the Montague Precinct into perpetuity.
 - The original affordable housing condition was agreed to in good faith by all parties as part of the consented position and resulted in a best practice model for affordable housing. It is also considered that the s72 process is being used to obtain a more favourable outcome than the agreed condition, which was central to the consented position by Council. Council would have been unlikely to have consented to the amended condition.



- This is the only gifted affordable housing achieved to date in Fishermans Bend, and the proposed amendment would undermine this permit achieving a much-needed accommodation. It is critical that a diversity of affordable housing types is delivered in Fishermans Bend for those most disadvantaged and that this accommodation be provided for a minimum of 30 years.
 - The delivery of a 20 year affordability period, where the Owner is responsible for the management of the apartments is considered too short. It is the view of Council's Housing Officer that the affordability period should be for the building's economic life, which best practice benchmarks at 30 years. Short affordability terms only defer an affordability problem for the next generation of State and municipal staff to solve and will create a social problem through generating future housing stress or homelessness. This has never been more relevant considering the impacts of Covid-19 to those most vulnerable in society.
- 2.7 Other variations to the permit include general wording, formatting and the extension of time for the owner to register the S173 Agreement on title within 24 months in lieu of 12 months. This is considered acceptable and provides for sufficient time for the owner to engage with Housing Associations.
- 2.8 Other responsibilities of the original 2017 permit remain unchanged, including:
- The quantity of apartments being 6% of the total number of apartments / 6 dwellings.
 - The apartments to be one (1) bedroom;
 - Apartments to be tenure blind;
 - One bicycle space allocated to each affordable housing dwelling;
 - In the event the permit holder is unable to achieve an arrangement in accordance with this condition, to Council's satisfaction, the City of Port Phillip will be responsible for locating a Housing Association or Housing Provider.
- 2.9 A detailed assessment of all changes is included at **Attachment 3** of this report. A copy of relevant income ranges referenced in the Notice of Decision are outlined in the Victoria Government Gazette No. S 322 Tuesday 30 June 2020 at **Attachment 4**.
- 2.10 Council, as a recommending referral authority (pursuant to Clause 66.04 of the Port Phillip Scheme) may apply to the Tribunal (VCAT) for review of the decision of the responsible authority under Section 82AAA of the *Planning and Environment Act 1987*

(a) to grant the amended permit, if that recommending referral authority objected to the grant of the amended permit; or



(b) not to include a condition on the amended permit that the recommending referral authority recommended.

- 2.11 Any application for review must be lodged within 21 days after the responsibility authority gave notice of the decision to Council i.e. before 21 July 2020.
- 2.12 For reasons previously accepted by Council, the amendments outlined in Condition 18 of the Notice of Decision should not be supported and officers recommend Council authorise the Manager City Development to lodge an application for review with The Victorian Civil and Administrative Tribunal and instruct Council's Statutory Planners and/or solicitors on any future VCAT application for review and/or proceedings related to this application.

3. RECOMMENDATION

- 3.1 That Council authorise the Manager City Development to lodge an application for review with The Victorian Civil and Administrative Tribunal and instruct Council's Statutory Planners and/or solicitors on any future VCAT application for review and/or any proceedings related to this application.

TRIM FILE NO:

PF19/26183

ATTACHMENTS

- 1. Council Report and Minutes 24 June 2020**
- 2. Notice of Decision**
- 3. Notice of Decision Assessment Table**
- 4. Income Ranges for Affordable Housing**