



3.1 PLANNING SCHEME AMENDMENT C171PORT - ST KILDA MARINA

EXECUTIVE MEMBER: LILI ROSIC, GENERAL MANAGER, CITY STRATEGY AND SUSTAINABLE DEVELOPMENT

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1. PURPOSE

- 1.1 To consider written submissions received to Amendment C171port to the Port Phillip Planning Scheme during the public exhibition stage.
- 1.2 To determine whether to request the Minister for Planning to appoint an independent Planning Panel to consider submissions to the Amendment.
- 1.3 To consider endorsing a response to issues raised in submissions, including recommended changes to the Amendment, to form the basis of Council position at the Panel hearing.

2. EXECUTIVE SUMMARY

- 2.1 Amendment C171port to the Port Phillip Planning Scheme relates to St Kilda Marina. This Amendment is required to facilitate the redevelopment of the Marina generally in the manner envisaged in the St Kilda Marina Site Brief ("Site Brief") (endorsed by Council on 15 May 2019).
- 2.2 The revised planning provisions for the Marina are designed to facilitate the redevelopment of the St Kilda Marina and more specifically:
 - Allow nominated uses to occur on the land generally as articulated in the Site Brief. Manage the scale and form of development in a sensitive location on coastal crown land through a 'master planned' approach, generally as articulated in the Site Brief.
 - Ensure the master planned approach is given a statutory basis through an appropriate planning control to assist the responsible authority (Council) in the subsequent decision making process.
 - Balance the provision of appropriate planning controls with the provision of some flexibility to achieving outcomes that support the timely delivery of an acceptable redevelopment of the Marina.
- 2.3 The Site Brief and the recommendations contained within the Heritage Assessment, have informed the drafting of the planning controls and form the primary strategic basis of Amendment C171port.

SPECIAL MEETING OF COUNCIL 29 JANUARY 2020



- 2.4 On 5 June 2019, Council resolved at its Ordinary Meeting to endorse the recommended planning scheme amendment process and suite of planning controls to support the implementation of the Site Brief.
- 2.5 On 24 July 2019, Council's Planning Committee resolved to make a request to the Minister for Planning seeking authorisation of Amendment C171port to be prepared and exhibited.
- 2.6 On 25 September 2019, the Minister for Planning's delegate authorised Council to prepare and exhibit Amendment C171port (with conditions).
- 2.7 Amendment C171port was on formal Public Exhibition for one calendar month for 17 October to 18 November 2019. The formal Public Exhibition process included direct letters to approximately 9,000 surrounding owners and occupiers, and stakeholders, an email to the St Kilda Marina 'interested persons' list; and notices in the local paper and government gazette
- 2.8 131 submissions have been received (including 2 late submissions) (See Attachment 1 for summary of written submissions).
- 2.9 On 11 December 2019, Council's Planning Committee received and considered all submissions received to Amendment C171port. All submitters to the Amendment were also provided with an opportunity to be heard at this Meeting.
- 2.10 The key issues raised in submissions include the following:
 - Removal of third party appeal rights
 - Rezoning from Public Park and Recreation Zone (PPRZ) to Special Use Zone (SUZ)
 - Approach to heritage
 - Application of the Development Plan Overlay (DPO)
 - Planning Scheme Amendment C171port is not justified
 - Uncertainty over the future development outcome
 - An alleged lack of consultation
 - Procedural unfairness and Council's conflict of interest
 - Removal of Service Station
 - Increase in allowable commercial and retail floor space
 - Built form impacts
 - Impact on views
 - Uncertainty over Moran Reserve
 - Relocation of public boat ramp
 - Traffic and parking impacts
 - Public access and open space
 - Environmental impacts
 - Maintenance of the foreshore, Elwood Canal and Moran Reserve



The above issues are not listed in order of the number of submissions received. Please see the table in Part 2 of Attachment 1 for the number of submissions that raised each key issue.

- 2.11 It is recommended that the Council officers' response to the issues raised by the submissions and recommended changes to the Amendment provided at Attachment 1 form the basis of Council's submission to the Independent Planning Panel hearing.
- 2.12 In summary, in response to submissions received, it is recommended that Council's Submission to Panel support the following changes to Amendment C171port:

Building height (DPO2):

Reduce the maximum allowable building height in DPO2 for built form envelope 1 to no more than 11 meters (inclusive of roof structures). *Refer to Attachment 1, Part 2 response to Key Issue 11 for rationale.*

Tighter requirement for temporary building or use (DPO2):

Include 'single storey' in the requirement allowing the granting of a planning permit for temporary buildings prior to the preparation of a Development Plan (in DPO2) such that a permit may only be granted if the temporary building is a single storey building, no greater than 500 square metres. *Refer to Attachment 1, Part 3 response to Submissions 36 - 128 for rationale.*

Activation of the end of the peninsula promenade adjacent to the Beacon via a kiosk / stand up paddleboard facility (DPO2):

Allow the provision of a single storey kiosk of a maximum of 50sqm plus storage for stand up paddleboards / canoes at the end of the Peninsula Promenade adjacent to the Beacon, as long as views to the Beacon are protected. *Refer to Attachment 1, Part 3 response to Submissions 11 for rationale.*

- 2.13 Council needs to decide whether to:
- Refer Amendment C171port to an Independent Planning Panel to review submissions and make recommendations to the amendment, or
 - To abandon the amendment.
- 2.14 Should Council move to refer the submissions to an independent Planning panel, the following panel dates have been pre-set:
- Directions Hearing: the week of 24 February 2020
 - Panel hearing: commencing the week of 30 March 2020
- 2.15 Concurrently with the amendment, Council is in the process of procuring a new long-term lease for the St Kilda Marina through a competitive process.



3. RECOMMENDATION

That Council:

- 3.1 Having formally considered all written submissions made to Amendment C171port to the Port Phillip Planning Scheme including the two late submissions, Council endorses the officers' response to the issues raised by the submissions and also endorses the recommended changes to the Amendment, outlined in Attachment 1, as the basis for Council's submission to the Panel.
- 3.2 Request the Minister for Planning appoint an independent Planning Panel to consider the submissions received to Amendment C171port, in accordance with Part 8 of the *Planning and Environment Act 1987*.
- 3.3 Refers all submissions to the Panel to be appointed by the Minister for Planning, including the two late submissions.
- 3.4 Writes to all submitters to inform them of Council's decision to refer the amendment to the Independent Planning Panel.

4. KEY POINTS/ISSUES

- 4.1 The Site Brief provides guidance on the possible redevelopment of the St Kilda Marina by establishing parameters and providing guidance on the type (as in land use) and scale of future development. The key emphasis of the Site Brief is the retention of the St Kilda Marina as a working marina, increasing access to the site for use by the general public while enhancing the natural environment and supplementing this with a range of associated commercial and publicly accessible facilities (such as increased open space, restaurants, cafes and recreational enterprises). The Site Brief seeks to encourage a redevelopment of the St Kilda Marina through the economically sustainable operation of a modern marina, activation of the site as a destination for food and beverage and other aligned activities, and also to provide the opportunity for market innovation. Please see Attachment 2 for a copy of the Site Brief.
- 4.2 The Site Brief underpins the procurement process to facilitate the redevelopment and management of ongoing operations of the St Kilda Marina under a new long-term lease.
- 4.3 Council has undertaken extensive community engagement to inform the development of the Site Brief, such as pop-ups in St Kilda and Elwood, a Community Open Day at the Marina, Community 'drop-in' sessions, a mail out to over 7,000 properties and notices in the local papers. A community panel including 23 community members were selected from an Expression of Interest (EOI) process to develop the Site Brief with the Council's project team including specialist consultants. Two surveys on 'Have your say' sought feedback from the broad community on various elements of the site, one prior to developing the Site Brief to inform the Site Vision and Objectives and one as the design ideas were evolving.
- 4.4 Amendment C171port seeks to facilitate the redevelopment of the Marina generally in the manner envisaged in the Site Brief. As such, all consultation undertaken to date



forms part of the pre-consultation process for the proposed changes to the Planning Scheme.

- 4.5 The Site Brief informs the public and the market about the site's history, current state and desired future. The desired future for the Marina is articulated through the site vision and objectives and a set of design criteria for the site.
- 4.6 While the Site Brief does not explain how the Marina is to be specifically designed and developed, it does outline a series of design criteria to be provided in the framework for future redevelopment of the Marina. The Design Criteria include text and plan based guidance on the site's future form, function issues, such as height, scale, location and quality of publicly accessible open space and connections
- 4.7 Various elements are identified, such as views and movement, marina function, and complementary uses. Each of these elements are accompanied by a series mandatory ('must have') and discretionary ('desirable'), requirements that the redeveloped marina must achieve, should achieve or aspire to achieve if possible, practical and economical.
- 4.8 Importantly, a key intention of the Design Criteria is to allow the tenderers for the new lease to leverage market expertise and respond to the Site Brief with progressive and innovative solutions in what is a highly specialised sector.

Existing Planning Controls

- 4.9 A Planning Scheme Amendment is needed to apply a more suitable suite of zone and overlay controls to ensure the ongoing operation of the Marina and to efficiently facilitate its redevelopment in accordance with the Site Brief.
- 4.10 The current planning provisions for the Marina include:
 - Public Park and Recreation Zone (PPRZ) – the purpose of which includes 'to recognise areas for public recreation and open space, protect and conserve areas of significance and provide for commercial uses where appropriate' (to be removed from the site and replace with a more appropriate zone).
 - Design and Development Overlay 10 (DDO10 – Port Phillip Coastal Areas) – the purpose of which includes 'to preserve existing beaches and natural beauty of the foreshore and enable public enjoyment' (to be retained on the site).
 - Heritage Overlay (HO187) (Beacon only) – the purpose of which includes 'to conserve and enhance the historic beacon' (to be extended to cover the entire site).
 - Special Building Overlay (SBO1) – applies to a small portion of the site and ensures development is compatible with flood hazard and local drainage conditions (to be retained on site).

Amendment C171port

- 4.11 As exhibited, Planning Scheme Amendment C171port proposes to:



- Rezone the site from Public Park and Recreation Zone (PPRZ) to the Special Use Zone (SUZ) with a new Schedule 4, to provide for the use and development of the land for specific purposes consistent with the Site Brief, as set out in a customised schedule to the zone. Another benefit of this zone is that it is not necessarily predicated on the use and development of the land by a public land manager as is generally the case with the existing PPRZ;
- Apply the Development Plan Overlay (DPO) with a new schedule 2 to ensure a master planned approach to the site, consistent with the Site Brief;
- Amend the schedule to Clause 43.01 Heritage Overlay to extend the Heritage Overlay 187 (HO187), which currently applies to the Beacon only, to apply to the entire St Kilda Marina site, and provide reference to Permit Exemptions Incorporated Plan, St Kilda Marina, St Kilda (June 2019);
- Update the Port Phillip Heritage Review (Incorporated Document) to:
- Include reference to the St Kilda Marina Heritage Assessment prepared by Built Heritage (12 April 2018);
- Update Citation 2057, which currently applies to the Beacon only, to apply to the entire Marina site, to expand the Statement of Significance and include guidelines for demolition and redevelopment;
- Update the City of Port Phillip Heritage Map (Incorporated Document) to extend the 'Significant Heritage Place' grading, which currently applies to the Beacon only, to the entire Marina site;
- Update the version number and date of this incorporated document.
- Introduce a 'Permit Exemptions Incorporated Plan' (Incorporated Document) for the St Kilda Marina to exempt minor buildings and works triggered under the Heritage Overlay, and to exempt demolition or removal of a building, or to construct a building or construct and carry out works that are generally in accordance with an approved Development Plan;
- Make consequential changes to Clause 21.07 (Incorporated Documents), Clause 22.04 (Heritage Policy) and the schedule to Clause 72.04 (Documents Incorporated in this Planning Scheme) to update the version number and date of the Port Phillip Heritage Review and update the City of Port Phillip Heritage Policy Map;
- Make consequential changes to 'Schedule to Clause 72.04 'What does this Planning Scheme consist of?' to include reference to the new DPO map.

Authorisation

4.12 On 25 September 2019, the Minister for Planning's delegate authorised Council to prepare and exhibit Amendment C171port (with conditions). A Council can only prepare and exhibit an amendment if authorised to do so by the Minister for Planning. The purpose of authorisation is to identify whether the proposed amendment is consistent with State policy or interests and ensure that it makes proper use of the Victorian Planning Provisions.



- 4.13 Council officers lodged the revised amendment documentation addressing the Minister's conditions with DELWP (in accordance with the Conditions of Authorisation) on 26 September 2019. DELWP advised that the conditions of Authorisation were adequately resolved and agreed to commence public exhibition.

Public Exhibition

- 4.14 Amendment C171port was on formal Public Exhibition for one calendar month from 17 October to 18 November 2019. The formal Public Exhibition process included direct letters to 9,000 surrounding owners and occupiers, and stakeholders, an email to the St Kilda Marina 'interested persons' list' and notices in the local paper and government gazette (for further information see Section 4).
- 4.15 The amendment documentation was placed on Council's website, on the Amendment C171port – St Kilda Marina web page, see:
<http://www.portphillip.vic.gov.au/amendment-c171.htm>.
- 4.16 131 submissions have been received representing the views of 201 people/organisations. These include:
- 93 of the submissions are from one town planning consultant (the content of these submissions is the same)
 - Another submission is on behalf of 31 residents who live opposite the Marina on Marina Parade. A further 28 submissions are from local residents near the Marina in Elwood and St Kilda.
 - Submissions have also been received from Melbourne Water, Port Melbourne Historical & Preservation Society and other stakeholders.
 - Two late submissions received after the formal exhibition period had closed which were not included in the report to Council dated 11 December 2019.
- 4.17 The vast majority of submissions request changes to the Amendment

Overview of Submissions – Key Themes and Issues

- 4.18 Many of the submissions are very long and detailed and they generally cover all aspects of the amendment and raise concerns with the content of the Site Brief.
- 4.19 Please refer to Attachment 1 for a summary of the key themes and issues raised in submissions to Amendment C171port. This attachment also notes which submissions raised each issue / matter and outlines the Council officer recommended response and position on each submission.
- 4.20 The key issues raised in submissions include the following:
- Removal of third party appeal rights
 - Rezoning from Public Park and Recreation Zone (PPRZ) to Special Use Zone (SUZ)
 - Approach to heritage
 - Application of the Development Plan Overlay (DPO)



- Planning Scheme Amendment C171port is not justified
- Uncertainty over the future development outcome
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- Removal of Service Station
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Council's position in response to issues raised in Submissions

- 4.21 Please refer to Attachment 1 for a full summary of submissions and Council officers' response and recommendations.
- 4.22 It is recommended that the Council officers' responses provided at Attachment 1 form the basis of Council's position at an independent Planning Panel hearing.
- 4.23 In summary, in response to submissions received, it is recommended that Council's Submission to Panel support the following changes to Amendment C171port:

Building height (DPO2):

Reduce the maximum allowable building height in DPO2 for built form envelope 1 to no more than 11 meters (inclusive of roof structures). *Refer to Attachment 1, Part 2 response to Key Issue 11 for rationale.*

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Council consideration of submissions to Amendment C171port

4.24 Noting that the submissions each seek different and sometimes irreconcilable changes, after hearing submitters at this meeting, Council only has the following options available to it under section 23 of the Planning and Environment Act 1987:

- Option 1: Refer all written submissions to Amendment C171port to an independent Planning Panel for review (recommended);
- Option 2: Abandon Amendment C171port.

Council does not have the option to adopt the amendment at this stage as submissions objecting to the amendment were received and are not proposed to be resolved.

4.25 Option 1 is recommended, as it would enable the processing of Amendment C171port to continue. The Panel process provides for an independent review of submissions and supporting expert evidence. This offers a transparent process to enable stakeholder interests to be fully considered and reconciled, where possible. The Panel will provide its report and recommendations to Council, to enable a final decision on whether to adopt the amendment (with or without changes).

The officers' responses provided at Attachment 1 would form the basis of Council's position as an independent Planning Panel hearing.

It is recommended that the Council officers' responses provided at Attachment 1 would form the basis of Council's position at an independent Planning Panel hearing.

4.26 Option 2 would result in Amendment C171port not being progressed.

Council could decide to take this option if it considered the Amendment is not worth pursuing.

5. CONSULTATION AND STAKEHOLDERS

5.1 See Attachment 1 Part 1 for a summary of Consultation and Engagement Program for the St Kilda Marina Site Brief development and Amendment C171port.

5.2 Extensive consultation with the community and stakeholders has informed the development and context of the Site Brief.

5.3 Outside of the formal planning scheme amendment process, Council has committed to continue to engage with the community and stakeholders on the aesthetic of the proposal and the proposed development plan.

5.4 Amendment C171port was placed on public exhibition between 17 October 2019 to 18 November 2019, in accordance with the requirements of the Planning and Environment Act 2987.



5.5 Exhibition of the amendment involved:

- Direct notification (letters) to approximately 9,000 owners and occupiers within the surrounding neighbourhoods inviting interested stakeholders to make a submission.
- Direct notification (letters) to prescribed Ministers, local members of Parliament, community groups, relevant government agencies and infrastructure providers.
- Public Notices in the Port Phillip Leader and Government Gazette.
- Availability of amendment documentation and supporting information on Council's website. Amendment Documentation was also provided on the State Government's Planning Amendments Online website.
- Display of information folders at Council ASSIST centres and libraries in Port Melbourne and St Kilda.
- Two drop-in sessions were held providing the opportunity for interested persons to speak to a planner one on one.
- Stakeholders were also invited to call Council planners to discuss the amendment or meet one on one.

6. LEGAL AND RISK IMPLICATIONS

- 6.1 All affected owners and occupiers were notified of the exhibition of Amendment C171port and given the opportunity to make a written submission. The amendment is being processed in accordance with the requirements of the Act.
- 6.2 In considering a planning scheme amendment for the site, Council must consider only its role as Planning Authority to ensure transparency of its decision making.
- 6.3 The proposed planning controls may not be supported by the community or the Minister for Planning in which case the existing zone provisions remain. Importantly, the existing planning provisions do not prevent the redevelopment of the Marina but in their present form there would be no statutory mechanism for a master-planned approach to the redevelopment.
- 6.4 The Minister's authorisation to prepare Amendment C171port (received on 25 September 2019) is not necessarily an indication of whether or not the amendment will ultimately be supported.
- 6.5 Timeframes related to the panel hearing and the release of the panel report may be subject to change by Planning Panels.
- 6.6 The Planning Panel report may recommend changes to Amendment C171port. They will be considered by Council at the next stage in the statutory process.
- 6.7 The Planning Scheme Amendment is subject to Ministerial approval. The Minister may approve the amendment with or without changes to the planning controls.



7. FINANCIAL IMPACT

- 7.1 The financial costs associated with Amendment C171port relate to the panel hearing, expert evidence and legal representation. Provision for these costs is made within the annual budget allocated for the Planning Scheme Amendments Program.

8. ENVIRONMENTAL IMPACT

- 8.1 The Marina is a key foreshore asset and facility that plays an important role for access to Port Phillip Bay and is also a valued destination by not only the Port Phillip community but also the wider community including boat owners and marina and foreshore enthusiasts.
- 8.2 Consistent with the Site Brief, Amendment C171port will ensure development is responsive to the Marina's significant coastal landscape, biodiversity and environmental context.
- 8.3 The coastal criteria and environmental design criteria in the Site Brief have been translated, where appropriate, into the proposed planning controls.

9. COMMUNITY IMPACT

- 9.1 It is considered that Amendment C171port will have a positive social, community and economic benefits effect through the redevelopment of the Marina as a publicly available asset with increased public access and provision of public places for the benefit of current and future generations while maintaining or improving the marina functions currently on offer in a financially viable manner.

10. ALIGNMENT TO COUNCIL PLAN AND COUNCIL POLICY

- 10.1 AmendmentC171port aligns with Strategic Direction 4, "We are growing and keeping our character". It supports the delivery of the specifically identified Council Plan key outcome, "a city of diverse and distinctive neighbourhoods and places". The St Kilda Marina Lease is a specific priority in the Council Plan.
- 10.2 It aligns with Strategic Directions 3 (We have smart solutions for a sustainable future) and 6 (Our commitment to you) by supporting delivery of the following outcomes:
- A) a financially sustainable, high-performing, well-governed organisation that puts the community first.
 - B) a city that is adapting to climate change
 - C) a water sensitive city
- 10.3 The St Kilda Marina is a key strategic site within Council's property portfolio and presents a significant opportunity in terms of social, environmental, economic and cultural possibilities for the St Kilda foreshore, the municipality and the State.



11. IMPLEMENTATION STRATEGY

11.1 TIMELINE

11.2 Subject to the outcome of Council's formal consideration of submissions, an independent Planning Panel would be requested to consider all submissions to Amendment C171port. It is anticipated that a Directions Hearing would then be held on or around 24 February 2020 with the Panel Hearing to commence on or around 30 March 2020.

11.3 If these dates are maintained, it is anticipated that the Panel report would be due to Council around the end of May 2020.

11.4 At the next statutory stage in the process, Council would then be required to consider the Panel report and recommendations and determine whether to:

- Adopt Amendment C171port (with or without changes) and request Ministerial approval, or
- Abandon the Amendment.

12. COMMUNICATION

12.1 Council's website will be updated to reflect the next steps in the amendment process.

12.2 Should the Council request the Minister for Planning to appoint an independent planning panel, all submitters will be notified via letter and of the opportunity to present verbally at the Panel Hearing.

12.3 Once a Panel has been appointed, all submitters will be contacted by Planning Panels Victoria and invited to participate on the Planning Panel Process.

13. OFFICER DIRECT OR INDIRECT INTEREST

13.1 No officers involved in the preparation of this report have any direct or indirect interest in the matter.

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ATTACHMENTS 1. Amendment C171port St Kilda Marina Response to Submissions