



12.2 **PLANNING SCHEME AMENDMENT C171PORT (ST KILDA MARINA) - CONSIDERATION OF PANEL RECOMMENDATIONS AND ADOPTION OF AMENDMENT**

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1. PURPOSE

1.1 The purpose of this report is

- to consider the report and recommendations of the independent Planning Panel appointed by the Minister for Planning to review Amendment C171port – St Kilda Marina pursuant to section 27(1) of the Planning and Environment Act 1987 (Act).
- to determine whether to adopt Amendment C171port (with or without changes) pursuant to section 29(1) of the Act; and if so
- to resolve to submit Amendment C171port to the Ministerial for approval pursuant to section 31(1) of the Act.

2. EXECUTIVE SUMMARY

2.1 Amendment C171port (Amendment) relates to the 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 at the Marina 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 (which will be 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 Following the formal Exhibition of the Amendment and receipt of 131 written submissions, Council resolved at its Special Council meeting of 29 January to:

- Request the Minister for Planning to appoint an independent Planning Panel to consider the submissions received the Amendment, in accordance with Part 8 of the *Planning and Environment Act 1987*.



- Refers all submissions to the Panel to be appointed by the Minister for Planning, including two late submissions.
 - Writes to all submitters to inform them of Council's decision to refer the amendment to the independent Planning Panel.
- 2.4 The Panel Hearing was one of the first to be impacted by the State of Emergency declared on 16 March 2020 for the COVID-19 pandemic. Subsequently, the Planning Panel process included a combination of 'on the papers' and online video conferencing - with a 'virtual' Planning Panel Hearing taking place over three days on 6, 7 and 16 April 2020.
- 2.5 The Panel Report was received by Council on 14 May 2020 and the report was sent to submitters and made publicly available on 10 June.
- 2.6 The Panel has recommended that the Amendment be adopted as exhibited subject to the following changes:
- Adopt the panel recommended version of Schedule 2 to the Development Plan Overlay (DPO2), as included in Appendix D of the Panel Report.
 - Include a new requirement in DPO2 for a community consultation report as part of the preparation of the Development Plan. The purpose of this report is to outline the community consultation undertaken to inform the preparation of the Development Plan, with (but not limited to) the Officer of the Victorian Government Architect, Transport for Victoria and neighbouring owners and occupiers.
 - Delete the proposed heritage controls, including the amended and extended Heritage Overlay 187, and consequently the Permit Exemptions Incorporated Document, and instead manage heritage through the DPO2.
 - Include a new requirement for the heritage impact statement to include details on how the dry boat storage facility will be retained, repurposed, integrated or interpreted in DPO2.
 - Include further guidance on built form and public realm outcomes in Table 1 in the DPO2, for the 'elements' built form envelope 1 and 2, Civic Heart Public Space, Peninsula Promenade Path, Marina Promenade and waste management.
 - Delete some of the guidance related to the dry boat storage buildings from Table 1 in the DPO2.
 - Add additional views to the Figure 1 Concept Plan in the DPO2 for Point Ormond to Palais Theatre, Thackeray Street to the Marina and Dickens Street to the Bay.
 - Require the Integrated Transport and Access Plan (part of the 'Content of Development Plan') in DPO2 to be to the satisfaction of the Department of Transport in addition to the responsible authority.
 - Add requirements relating to provision of bicycle facilities, bike share facilities, short-stay bicycle facilities, secure bike storage and a bicycle repair station to Table 1 of the DPO2.
- 2.7 A copy of the Panel Report can be found at Attachment 1 to this report.
- 2.8 Officers are generally supportive of the Panel's recommendations and recommend modifying the Amendment documentation to reflect the changes proposed by the Panel, with the exception of the recommendation to include a requirement for a



Community Engagement Report as part of the Development Plan in DPO2. Further detail about officer recommendations and the proposed changes can be found in Attachment 2 to this report and section 4.36 of this report.

- 2.9 Should Council decide to adopt the Amendment, officers will submit the Amendment to the Minister for Planning with a request for approval.
- 2.10 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 Adopts Amendment C171port to the Port Philip Planning Scheme, pursuant to Section 29 of the Planning and Environment Act 1987 (the Act), with the changes reflected in the amendment documentation in Attachment 4 to the Council report.
- 3.2 Authorises the Chief Executive Officer (or delegate) to finalise the amendment documentation for Ministerial approval in a manner consistent with resolution 3.1.
- 3.3 Submits the adopted Amendment C171port documentation, together with prescribed information, to the Minister for Planning for approval, pursuant to Section 31 of the Act.
- 3.4 Advises the Minister for Planning that Council accepts the Panel's recommendations, with the exception of the recommendation to include a requirement for a Community Engagement Report as part of the Content of the Development Plan in DPO2 for the reasons outlined in Attachment 2 to the Council report.
- 3.5 Will undertake non-statutory consultation on the Development Plan, once an application is received, prior to Council making any planning decision on the Development Plan instead of the Community Engagement Report mechanism recommended by the Panel,.
- 3.6 Writes to all submitters to Amendment C171port to advise them of Council's decision.

4. KEY POINTS/ISSUES

Background

- 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.
- 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. This included 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 was 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 Marina, one prior to developing the Site Brief to inform the Site Vision and Objectives and one as the design ideas were evolving.
- 4.4 The Amendment 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 Marina'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 Marina. These were all set out in the Site Brief and translated into the documentation for the Amendment.
- 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 as a framework for future redevelopment of the Marina. The Design Criteria include text and plan based guidance on the Marina'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 Marina 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 over the Marina).
 - Heritage Overlay (HO187) (Beacon only) – the purpose of which includes 'to conserve and enhance the historic beacon' (to be extended to cover the entire Marina).



- Special Building Overlay (SBO1) – applies to a small portion of the Marina and ensures development is compatible with flood hazard and local drainage conditions (to be retained on the Marina).

Exhibited Amendment C171port – St Kilda Marina

4.11 The Amendment was prepared to apply new controls to the St Kilda Marina site to implement the Site Brief and the St Kilda Marina Heritage Assessment by making the following changes to the Port Phillip Planning Scheme:

- Rezone the Marina 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;
- Apply the Development Plan Overlay (DPO) with a new schedule 2 to ensure a master planned approach to the Marina, 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 Marina, 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, 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;
 - 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.



Overview of submissions received to Amendment C171port

- 4.12 The Amendment was put on formal Public Exhibition for one calendar month from 17 October to 18 November 2019. The formal Public Exhibition process is outlined in section 5 of this report.
- 4.13 131 submissions were received representing the views of 201 people/organisations. These included:
- 93 submissions from one town planning consultant (the content of these submissions is the same)
 - Another submission on behalf of 31 residents who live opposite the Marina on Marina Parade. A further 28 submissions from local residents near the Marina in Elwood and St Kilda.
 - Submissions were also received from Melbourne Water, Port Melbourne Historical & Preservation Society and other stakeholders.
 - Two late submissions were received after the formal exhibition period had closed which were not included in the report to Council dated 11 December 2019.
- 4.14 The vast majority of submissions requested changes to the Amendment.
- 4.15 Many of the submissions were very detailed and generally covered all aspects of the Amendment. They mostly and raised concerns with the content of the Site Brief in addition to concerns with the Amendment documentation.
- 4.16 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

Council's Submission to the Panel

- 4.17 After considering the submissions, the Council at its Special Ordinary Council meeting on 29 January 2020 resolved to recommend that various changes be made to the Amendment. These included:
- *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).
 - *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.
 - *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.

Panel hearing and recommendations

- 4.18 The Directions Hearing for the Panel was held on 28 February 2020.
- 4.19 The Panel Hearing was one of the first to be impacted by the State of Emergency declared on 16 March 2020 for the COVID-19 pandemic. Restrictions reached Stage 3 by the time of the originally scheduled Panel Hearing Day 1 on 30 March 2020.
- 4.20 The Panel sought to ensure procedural fairness, while following the Government's self-isolation restrictions that were underpinned by strong encouragement to continue to "work from home" where possible.
- 4.21 Subsequently, the public Planning Panel was conducted on a virtual platform in a modified format which included a combination of 'on the papers' submissions and online video conferencing. A 'virtual' Planning Panel Hearing which was available to anyone who wished to participate or attend took place over three days on 6, 7 and 16 April 2020.
- 4.22 Due to the impact of the COVID-19 pandemic, the Panel had to reschedule the hearing dates to ensure this matter could be heard without prejudice to any submitters who wished to be heard. With the support of Council and submitters, this was managed in a timely and inclusive manner. While Council's submissions were made in writing and distributed before the virtual panel hearing commenced, all evidence was lodged in writing, before the virtual panel hearing commenced, presented orally and then tested by cross examination by both the submitters and the panel over a video conference facility. The Panel was satisfied that all submitters seeking to be heard were able to fully present to the Panel.
- 4.23 After the virtual Panel Hearing concluded, the Panel Report was received by Council on 14 May 2020. In accordance with Section 26 of the Planning and Environment Act 1987, the Panel Report must be made available for inspection once 28 days have elapsed since the receipt of the report. The report was made publicly available on 10 June 2020.



- 4.24 A copy of the Panel Report can be found at Attachment 1 to this Council report.
- 4.25 The three-person Panel considered all written submissions received to the Amendment, including verbal submissions made during the Panel Hearing by six residents and two representatives of groups of submitters - a town planning consultant representing 93 submitters (the content of their submissions was the same), and a resident presenting on behalf of 31 residents (who submitted a single submission).
- 4.26 The Panel also read and heard Council's detailed submission in support of the Amendment (both Part A and Part B submissions) which included an outline of and rationale for the recommended changes outlined in paragraph 4.18 above. The Council's submission also included presenting expert evidence on:
- Urban design from Rob McGauran of MGS Architects
 - Planning from Mark Woodland of Echelon Planning
 - Traffic from Simon Davies of GTA Consultants
 - Heritage from David Helms David Helms Heritage Planning.
- 4.27 The main matters considered during the hearing were:
- whether the Amendment is strategically justified
 - built form, including views, heights, interfaces and overshadowing
 - heritage, including the form of the controls
 - traffic, access, pedestrian movement, parking and use of Moran Reserve
 - environmental issues
 - various other matters.

Panel response to common issues raised in submissions

- 4.28 In response to the common issues raised in submissions, the Panel's Report explains that the Panel found that:

Strategic Justification

- Rezoning the land to Schedule 4 to the Special Use Zone is appropriate and is supported as exhibited.
- Application of the site-specific Schedule 2 to the Development Plan Overlay (DPO2) is appropriate. The Panel found that the proposed DPO2 was well informed by the Site Brief and will suitably balance community certainty with developer flexibility to deliver the specialist use site in need of improved major public and private infrastructure.
- The DPO2 should be amended to include a requirement for a community consultation strategy to inform preparation of the Development Plan.
- The Amendment is strategically justified and should be adopted, subject to the further recommendations of the Panel.



Built Form

Views

- The importance of view lines is suitably described in the Amendment.
- Additional view lines are supported, specifically:
 - Point Ormond lookout to the Palais Theatre view line
 - Dickens Street to Marina view line (and beyond to the Bay interface) along the street axis
 - Thackeray Street view line extending to the marina activity
 - Reconfigured Built Form Envelope 2 to accommodate the Dickens Street view line
 - Added need for future site analysis to demonstrate realisation of identified views
 - Added requirement for a relocated Civic Heart to enjoy equivalent views and aspects
 - Added outcome of 'landmarks' to guide built form outcomes for Areas 1 and 2.

Building height

- The nominated mandatory height limits are appropriate, subject to refinement in design requirements to manage siting and presentation of the buildings within the building envelopes.
- The Marina's intended built form hierarchy is sufficiently guided by the built form envelopes, heights and view line management, subject to the recommendations in the Panel Report.

Interfaces and overshadowing

- Revised provisions to manage interfaces should be included.
- Additional provisions to specify outcomes sought by wind, shadow and landscaping assessments are supported and specifically:
 - Mandated shadow and wind management on the Civic Heart and Moran Reserve
 - Discretionary shadow and wind management (as applicable) for Moran Reserve, other publicly accessible open spaces and the Peninsula and Marina Promenades
 - Requirement for landscaping and places to sit along the Peninsula Promenade edge of Built Form Envelopes 2 and 3.

Heritage

- The Marina holds some local heritage significance, particularly the Beacon, dry boat storage buildings and the harbour and its infrastructure.
- Redevelopment of the Marina to enable ongoing marina operations will require support from a new dry boat storage facility. Priority for a new facility should be given over retention of the existing facility. Opportunities to appropriately integrate and interpret the existing demolished facility should be more explicitly expressed in the controls.



- Amending and extending Heritage Overlay Schedule 187 is not warranted, nor is it supported. The extended Heritage Overlay Schedule 187, the Permit Exemptions Incorporated Document and the Reference Document at Clause 22.04 should be deleted from the Amendment. Heritage Overlay Schedule 187 should only relate to the Beacon.
- The provisions of the DPO2 and the subsequent Development Plan will appropriately recognise the local heritage value of the Marina.

Traffic and Access

- The planning framework allows for an orderly planning process to be undertaken regarding access to the Marina and traffic impacts.
- The proposed changes to the DPO2 put forward by Council's traffic expert and by Council in its final (Part C) submission to the Panel relating to the following are supported:
 - Minimising vehicle entry points to the Marina to avoid conflict points with the Bay Trail, where possible
 - Preparing an integrated transport and access plan by a qualified person, to the satisfaction of DoT and the responsible authority
 - Amending the Concept Plan to show both options for vehicle entry to the Marina (retention of the Dickens Street signals as well as the 'preferred' location).
- The planning controls are appropriate to manage the future planning, design and layout of movement and access within the Marina.
- The planning controls are appropriate to manage the future planning, design and layout of vehicle and boat trailer parking within the Marina.
- The changes proposed by Council's urban design expert to encourage green travel are supported.

Moran Reserve

- The Amendment does not affect Moran Reserve and the proposed controls are appropriate in protecting and managing the interface with Moran Reserve.

Environmental Matters

- The range of environmental issues do not pose unreasonable impact on the Marina and they can be appropriately managed by the provisions of the Amendment.
- The Panel accepts that there will be no impacts on the penguin colony.
- The changes proposed in Council's final Part C version of the DPO2 are acceptable including the introduction in Table 1 – *Specific Requirements* for 'waste management' and under *Content of Development Plan* with landscaping provisions in the Urban Concept Report, Landscape and Public Realm Plan.

Other matters

- The increase in allowable commercial and retail floor space is reasonable.



- The potential for any conflict of interest by Council is minimised through application of the proposed controls under the Amendment.
 - The future of the service station is a matter that sits outside the scope of the Amendment and is a matter for Council and future leasing arrangements.
- 4.29 Some of the Panel findings outlined above refer to changes proposed by Council officers throughout the panel hearing consistent with Council's resolution of 29 January 2020 which referred the Amendment to the Minister for appointment of a Panel.
- 4.30 In the course of the processes of the Panel Hearing, Council officers tabled three versions of the exhibited version of the DPO2 . This is common in a planning panel process. The changes are outlined below.
- 4.31 The first version of DPO2 included the three changes to DPO2 which were resolved by Council at its meeting on 29 January 2020 (see paragraph 4.17 of this report).
- 4.32 The second version was tendered as part of Council's Part A submissions. This version of DPO2 included changes which Council's expert witnesses recommended. Changes included:
- The word "architecture" added after "high quality" in the objectives.
 - Additional development outcomes listed in Table 1 for Building Envelope Areas 1 and 2, Dry Boat Storage Buildings, Civic Heart Public Space, Publicly Accessible Open Space.
 - A new element in Table 1 for "Waste Management"
 - Additional matters listed under the "Contents of the Development Plan" to be demonstrated for each of the urban context report, landscape and public realm plan, integrated transport and access plan.
- 4.33 The third (and final) version of DPO2 was in response to expert evidence and other submissions made during the hearing. This third version was provided to the panel as part of Council's Part C (closing) submission. Changes in this version included:
- Additional principle and objective for the Marina under "Parking and Access" per the Traffic Expert's advice.
 - Additional words added to the development outcomes in Table 1 for Building Envelope Areas 1 and 2.
 - Additional words added to the specific requirement in Table 1 for Dry Boat Storage Building.
 - Additional words added to the development outcomes in Table 1 for "Civic Heart Public Space", "Publicly accessible open space" and "Waste Management".
 - Additional matters listed under the "Contents of the Development Plan" to be demonstrated for each of the urban concept report and landscape and public realm plan.
 - Amend the Figure 1 Concept Plan to show two options for vehicle access to the Marina (retention of the Dickins Street Signalised intersection and the "preferred" location).
- 4.34 Table 2 in Attachment 2 provides a more detailed description of the changes proposed by Council officers during the Panel Hearing and reflected in version 3 of the DPO2.



The changes proposed by Council officers to DPO2 during the Panel Hearing and supported by the Panel can be seen in Attachment 3 (marked up in blue) to this report.

- 4.35 Ultimately, there was a 4th version of DPO2 prepared this time by the Panel. It is included as Appendix D to the Panel Report. The Panel's recommendations are based on that version of DPO2.

Panel recommendations

- 4.36 The Panel considered that the Amendment has significant merit and recommends that the Amendment be adopted as exhibited, subject to changes, including:

Development Plan Overlay Schedule 2

- Adopt the Panel recommended version of DPO2 (as included in Appendix D of the Panel Report).

Heritage

- Delete the proposed heritage controls, including the amended and extended Heritage Overlay 187, the Permit Exemptions Incorporated Document, and instead manage heritage through the DPO2.
- Include a new requirement for the heritage impact statement to include details on how the dry boat storage facility will be retained, repurposed, integrated or interpreted in DPO2.

Community Engagement

- Include a new requirement in DPO2 for a community consultation report as part of the Development Plan. This is to outline the consultation undertaken to inform the preparation of the Development Plan, with (but not limited to) the Officer of the Victorian Government Architect, Transport for Victoria and neighbouring owners and occupiers.

Built form, public realm and views

- Include further guidance on built form and public realm outcomes in Table 1 in the DPO2, for the 'elements' built form envelope 1 and 2, Civic Heart Public Space, Peninsula Promenade Path, Marina Promenade and waste management.
- Delete some of the guidance related to the dry boat storage buildings from Table 1 in the DPO2.
- Add additional views to the Figure 1 Concept Plan in the DPO2 for Point Ormond to Palais Theatre, Thackeray Street to the Marina and Dickens Street to the Bay.

Traffic and access

- Require the Integrated Transport and Access Plan (part of the 'Content of Development Plan') in DPO2 to be to the satisfaction of the Department of Transport as well as the responsible authority.
- Add requirements relating to provision of bicycle facilities, bike share facilities, short-stay bicycle facilities, secure bike storage and a bicycle repair station to Table 1 of the DPO2.



Officer recommended response to Panel recommendations

- 4.37 Section 27 of the Act requires Council to consider the Panel's report and recommendations. Section 29 of the Act provides that Council as planning authority may adopt the Amendment with or without changes. Council may also abandon the Amendment but if it does so, it must tell the Minister (section 28 of the Act).
- 4.38 Regulation 9 of the Planning and Environment Regulations 2015 (Regulations) requires that if a planning authority adopts an amendment but does not adopt any recommendation of a panel, the planning authority must provide reasons why the recommendation of the panel is not adopted.
- 4.39 Regulation 9 of the Regulations also requires a planning authority to provide a description of and the reasons for any changes made to the amendment before adoption.
- 4.40 Table 1 in Attachment 2 of this Council report outlines the officer recommended position for Council in response to the Panel's recommended changes to the Amendment and provides the reason for each proposed change made to the Amendment and the reason for any proposed rejection of a panel recommendation.
- 4.41 In summary, officers recommend that Council support the following of the the Panel's recommendations namely #1, #3 - #9 (of 9), including:
- Changes to DPO2 relating to built form, public realm, views, traffic and access.
 - Deletion of the proposed heritage controls.
- 4.42 Officers recommend that Council does not support the Panel's recommendation #2 relating to the inclusion of a requirement for a community engagement report as part of the Development Plan. The reasons why this recommendation is not supported are set out in Attachment 2 to this Council report.
- 4.43 Outside of the formal planning process, Council has committed to continue to engage with the community by consulting on the Development Plan, prior to its consideration by Council. This consultation will allow the community to comment on whether the proposed development plan (master-plan) is in accordance with the DPO2 and provides for appropriate outcomes. This form of consultation is arguably better than consultation by the developer in the preparation of a development plan because that consultation does not require a developer to consult on the development plan which is proposed to be lodged for approval. Necessarily the consultation report is prepared as part of the documents lodged for approval.
- 4.44 As part of the non-statutory consultation which officers are proposing instead of what was recommended by the panel, the development plan will be made publicly available for a period of time, submissions from the community will be invited and a summary together with an officer response will be provided back to Council at a Council meeting for consideration, prior to any decision being made by Council on whether or not to approve a development plan.
- 4.45 Officers recommend that a resolution is made at this Council Meeting to formalise the commitment that Council will undertake non-statutory consultation on the Development Plan, once an application is received, prior to Council making any decision to approve a Development Plan.



Adoption of Amendment documentation

- 4.46 A final version of the planning scheme controls (SUZ4 and DPO2) and associated Amendment documentation which is recommended for adoption can be found at Attachment 4 of this Council Report. Attachment 4 contains a further tracked version of the SUZ4 and DPO2 using the exhibited versions of those documents as the base.
- 4.47 No changes are recommended to the SUZ4 from the exhibition version.
- 4.48 A version of the final DPO2 recommended for adoption, that shows the changes following exhibition can be found at Attachment 3 of this Council Report, marked-up as follows:
- Changes proposed by the Panel and supported by Council officers are shown in yellow.
 - Changes supported by Council officers during the Panel Hearing, and accepted by the Panel are marked in blue.
 - Changes proposed by Council on 29 January 2020 are shown in green.

Options for Council

- 4.49 At this stage of the Amendment process, the statutory options available to Council under the Act are:
- Option 1: Adopt the Amendment without changes.
 - Option 2: Adopt the Amendment with changes (accepting some or all of the Panel's recommendations).
 - Option 3: Abandon the Amendment.
- 4.50 Adoption of the Amendment without changes (Option 1) is not recommended for two reasons. First of all, Council itself has proposed numerous changes to the Amendment at its meeting of 29 January 2020. Those recommended changes have to be formalised. Secondly, the Panel has recommend numerous changes to the exhibited Amendment in addition to the changes proposed by Council.
- 4.51 Accordingly, adoption of the Amendment with changes (Option 2) is recommended, aligned to the position detailed in Attachment 2 to this Council Report.
- 4.52 Abandoning the Amendment (Option 3) is not recommended. The Amendment will ensure planning controls for the St Kilda Marina are aligned with the Site Brief and facilitate clear and consistent decision making on development applications.
- 4.53 Under the Act Council must consider the Panel's report. Council is not bound by the panel's recommendations but must set out reasons where it does not adopt any of the panel's recommendations. Attachment 2 to this Council Report contains the reasons for all changes and reason why one recommendation of the Panel was not adopted.

5. CONSULTATION AND STAKEHOLDERS

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



Exhibition of Amendment C171port

- 5.3 The Amendment was placed on public exhibition from 17 October 2019 to 18 November 2019, in accordance with the requirements of the Act.
- 5.4 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.
- 5.5 A letter was sent to submitters on 3 February 2020 notifying them of Council's decision to refer all submissions to an independent Planning Panel, and advising that they would have the opportunity to submit their case at the hearing to the panel.
- 5.6 Following appointment of a Panel, Planning Panels Victoria liaised with submitters to communicate the Panel process including any requests to speak, and the Directions and Panel hearing dates.

Future consultation

- 5.7 Outside of the formal planning process, Council has committed to continue to engage with the community by consulting on the Development Plan, prior to its consideration by Council. This consultation will allow the community to comment on whether the proposed development plan (master-plan) is in accordance with the DPO2 and provides for appropriate outcomes.
- 5.8 Submissions from the community will be received and a summary together with an officer response provided back to Council at a Council meeting for consideration, prior to any planning decision.

6. LEGAL AND RISK IMPLICATIONS

- 6.1 All affected owners and occupiers were notified of the exhibition of the Amendment and given the opportunity to make a written submission. The Amendment is being process in accordance with the requirements of the Act.
- 6.2 In considering a planning scheme amendment for the Marina, 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 Minister for Planning in which case the existing planning 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 mechanisms for a master-planned approach to the redevelopment.

- 6.4 The 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 the Amendment 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, the Amendment 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 the Amendment will have a positive social, community and economic benefits 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 The Amendment 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.

ORDINARY MEETING OF COUNCIL 17 JUNE 2020



11. IMPLEMENTATION STRATEGY

11.1 TIMELINE

- 11.1.1 Should Council decide to adopt the Amendment (with or without changes), Council officers will lodge a request for approval to the Minister for Planning within 10 business days of this Council meeting.

11.2 COMMUNICATION

- 11.2.1 All submitters will be notified of Council's decision by letter.
- 11.2.2 11.2.2 Council's website will be updated to reflect the decision at this meeting.

12. OFFICER DIRECT OR INDIRECT INTEREST

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

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ATTACHMENTS

1. Attachment 1 - Panel Report Amendment C171port St Kilda Marina
2. Attachment 2 - Officers recommended position for Council in response to the Panel's recommendations
3. Attachment 3 - DPO2 recommended for adoption showing changes following exhibition
4. Attachment 4- Amendment C171port documents for adoption