



10.4 AMENDMENT C203PORT TO THE PORT PHILLIP PLANNING SCHEME - CONSIDERATION OF ADOPTION

EXECUTIVE MEMBER: KYLIE BENNETTS, GENERAL MANAGER, CITY GROWTH AND DEVELOPMENT

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1. PURPOSE

- 1.1 To consider the report and recommendations of the independent Planning Panel appointed by the Minister for Planning to review Amendment C203port (Planning Scheme Review) to the Port Phillip Planning Scheme (**the Amendment**).
- 1.2 To determine whether to adopt the Amendment (with or without changes) and request Ministerial approval.

2. EXECUTIVE SUMMARY

- 2.1 The Amendment is the outcome of a targeted review of local content in the planning scheme to improve its usability and efficiency as well as enable better decision making. This work has been underway since 2018 through the preparation of the *Port Phillip Planning Scheme Review Audit* (23 May 2018).
- 2.2 The Amendment also responds to Victorian Government changes to the format and content of planning schemes introduced in 2018 through Amendment VC148.
- 2.3 A summary table that provides an overview of new and amended Planning Scheme provisions and documents is at **Attachment 1**.
- 2.4 The Amendment was exhibited for 5 weeks from 11 November 2021 to 17 December 2021. A total of 9 submissions were received, including 1 late submission, of which 8 sought changes to the Amendment and 1 raised no objection.
- 2.5 An independent Planning Panel Hearing was held on 6 June 2022 via video conference. The one-person Panel considered all written submissions received to the Amendment, including verbal submissions made during the Panel Hearing by Council (represented by counsel from Maddocks and relying on evidence from a heritage expert) and one submitter.
- 2.6 The Panel Report was received on 15 July 2022 (included as **Attachment 2**).
- 2.7 The Panel recommends that Council adopts Amendment C203, subject to specific changes to the:
 - 2.7.1 Draft local Heritage Policy (Clause 15.03-1).
 - 2.7.2 Draft City of Port Phillip Heritage Design Guidelines, 2021 (proposed as a Background Document).
 - 2.7.3 Schedule to the Heritage Overlay (Clause 43.01) - Application requirements.
 - 2.7.4 Draft Environmentally Sustainable Development policy (Clause 15.01-2L-02).
 - 2.7.5 Renumbering and reordering of some policies in the Planning Policy Framework because of State Government planning scheme amendments that have been gazetted while the Amendment has progressed.



- 2.8 Officers are generally supportive of the Panel's recommendations and recommend modifying the Amendment documentation to reflect most of the changes proposed by the Panel. Two of the Panel's recommendations are only partly supported. Detail about officer's recommendations and the rationale for supporting or not supporting the Panel's recommendations can be found in **Attachment 4** of this report.
- 2.9 Council now needs to make a formal decision about whether to adopt the Amendment (with or without changes) or abandon the Amendment.
- 2.10 Should Council decide to adopt the Amendment, officers will submit the Amendment to the Minister for Planning with a request for Ministerial approval within 10 business days of the meeting.
- 2.11 Meeting the timeframes above is critical to providing sufficient time for the Minister (or delegate) to make a final decision on this Amendment ahead of the Victorian Government election caretaker period. Alternatively, a decision is likely to be delayed until 2023.

3. RECOMMENDATION

That Council:

- 3.1 Adopts Amendment C203port to the Port Phillip Planning Scheme, pursuant to section 29 of the *Planning and Environment Act 1987* (the Act), with the changes reflected in the amendment documentation provided at **Attachments 3, 7 and 8**.
- 3.2 Authorises the Chief Executive Officer (or delegate) to finalise the amendment documentation for Ministerial approval.
- 3.3 Submits the adopted Amendment C203port 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 in part, for the reasons outlined in **Attachment 4** of this report.
- 3.5 Writes to all submitters to Amendment C203port to advise them of Council's decision and thank them for their participation in the amendment process.

4. KEY POINTS/ISSUES

Background

- 4.1 The Amendment is the outcome of a targeted review of local content in the planning scheme to improve its usability and efficiency as well as enable better decision making. In particular, the Amendment:
 - 4.1.1 Delivers Council's statutory obligation as Planning Authority under the Planning and Environment Act 1987 to undertake a regular review of its planning scheme. The last review commenced in 2006 and was completed in 2011. It does this by:
 - Implementing recommendations of the *Port Phillip Planning Scheme Review Audit Report* (City of Port Phillip, 2018) (Audit Report).
 - Making updates to local content to implement Council documents and strategies adopted or prepared since the last Planning Scheme Review, including the *Council Plan 2017-27, Act and Adapt – Sustainable Environment Strategy 2018-28, Art and Soul – Creative and Prosperous*



City Strategy 2018-22; Don't Waste It! – Waste Management Strategy 2018-28, In Our Backyard – Growing Affordable Housing in Port Phillip 2015-25, Move, Connect, Live – Integrated Transport Strategy 2018-28 and Places for People: Public Space Strategy 2022-32.

- Introducing 11 new VicSmart application types for minor application types, to facilitate a streamlined planning assessment.
 - Removing obsolete incorporated and reference documents.
- 4.1.2 Restructures, translates and redrafts all local policy content in the Municipal Strategic Statement and Local Planning Policy Framework to comply with Victorian Government changes to planning schemes introduced by Amendment VC148 in 2018. It does by this by:
- Including a new Municipal Planning Strategy (MPS) which includes Council's vision for the City, outlines key planning issues within the municipality and the strategic directions for land use planning and development in Port Phillip. The MPS will set the basis for local content in the planning scheme.
 - Combining State and Local policy into the Planning Policy Framework (PPF).
- 4.2 Most of the translation of content into the new PPF format is 'policy neutral' and does not alter the meaning of the policy. Where it is not policy neutral, it gives effect to adopted Council strategies, as described above. There are some exceptions including updates to Council's local heritage policy based on a review of the policy under Council's Heritage Program.
- 4.3 All local content currently contained in the Municipal Strategic Statement and Local Planning Policy Framework of the Port Phillip Planning Scheme has been reviewed and translated into the new format (MPS and PPF). Exceptions include two policies applying to the Fishermans Bend Urban Renewal Area, which will be addressed by the City of Port Phillip, City of Melbourne and Victorian Government in the future.
- 4.4 A summary table providing an overview of new and amended Planning Scheme provisions and documents is at **Attachment 1**. The Explanatory Report used for the exhibition of the Amendment contains the complete list of all changes to the Planning Scheme and can be found in **Attachment 3**.

Overview of submissions received to the Amendment

- 4.5 The amendment was exhibited for 5 weeks from 11 November 2021 to 17 December 2021. A summary of engagement activities is detailed in the Section 5 of this report.
- 4.6 9 submissions were received, including 1 late submission, of which 8 sought changes to the Amendment and 1 raised no objection.
- 4.7 The key issues raised in the submissions include:
- 4.7.1 Refinements to the proposed Heritage Policy and Heritage Design Guidelines, in response to concerns about Council's overall approach to heritage and assessing planning permit applications in the Heritage Overlay.



- 4.7.2 The proposed Environmentally Sustainable Design (ESD) policy has been weakened by the removal of references to best practice, with other recommended changes required to the ESD policy.
- 4.7.3 Requesting the removal of exemptions to mandatory height controls in the Design and Development Overlay Schedule 26 (DDO26) – St Kilda Road North Precinct.
- 4.7.4 Requesting the preparation of a standalone policy for rooming houses and social housing to manage amenity issues and regulate rents charged to tenants.

Council's Submission to the Panel

- 4.8 The following changes to the Amendment were recommended to the Panel in response to submissions, based on the position endorsed by Council at its 2 March 2022 Council Meeting:
 - 4.8.1 Minor refinements to the Heritage Policy at Clause 15.03-1L to improve the clarity of the policy, without changing the intent.
 - 4.8.2 Minor refinements to the Heritage Design Guidelines to update demolition guidelines to acknowledge that some places in the Heritage Overlay graded Significant do not have a Statement of Significance, refinements to provide greater direction around the proportion of a building to be conserved and other minor clarifications.
- 4.9 Council officers also identified and recommended the following administrative changes:
 - 4.9.1 Inserting a new map at Clause 11.03-6L-01 (St Kilda Foreshore) to more accurately convey the location of the St Kilda Triangle site.
 - 4.9.2 Renumbering Clause 18 (Transport) policies in response to the approval and gazettal of State Government Amendment VC204.
 - 4.9.3 In the Heritage Design Guidelines, correcting grammatical errors, spelling, typographical errors, making formatting changes and deleting duplicated content.

Panel Hearing and recommendations

- 4.10 The Panel Hearing was held on Monday 6 June 2022 via video conference. The one-person Panel considered all written submissions received to the Amendment, including verbal submissions made during the Panel Hearing by Council (represented by counsel from Maddocks and relying on evidence from a heritage expert) and one submitter.
- 4.11 The Panel Report was received on 15 July 2022 (included at **Attachment 2**).
- 4.12 Key issues discussed during the hearing included:
 - 4.12.1 The adequacy of the Heritage Design Guidelines and the local heritage policy proposed at Clause 15.03-1L (Heritage).
 - 4.12.2 The content of proposed Clause 15.03-1L (Heritage).
 - 4.12.3 The changes to Clause 15.02-1L (Environmentally Sustainable Development) (ESD) required by the Minister for Planning at authorisation, and concerns that this consequently weakened the proposed ESD policy, especially the removal of references to best practice.



- 4.12.4 The removal of exemptions to mandatory height controls in the Design and Development Overlay Schedule 26 (DDO26) relating to the St Kilda Road North Precinct.
- 4.12.5 The preparation of a standalone policy for rooming houses and social housing to manage amenity issues and regulate rents charges to tenants.
- 4.13 In its report, the Panel concludes that the Amendment is “*well founded and strategically justified*”. In particular, the Panel agrees that the “*Audit Report provides a sound strategic basis for the review of the Port Phillip Planning Scheme*”, acknowledging the breadth of work undertaken by Council to improve the efficiency and usability of the Port Phillip Planning Scheme over the last five or so years.
- 4.14 On this basis, the Panel recommends that the Amendment be adopted subject to the following specific changes:
- 4.14.1 Recommendation 1: Replacing the Heritage Policy at Clause 15.03-1 with the Panel preferred version included in Appendix B of the Panel report.
- 4.14.2 Recommendation 2: Replacing the City of Port Phillip Heritage Design Guidelines, 2021 with the Panel preferred version included in Appendix C of the Panel report.
- 4.14.3 Recommendation 3: Reviewing the following elements of the City of Port Phillip Heritage Design Guidelines, included in Appendix C of the Panel report:
- The timber cladding profiles shown in Figure 2.1.
 - The explanation attached to Photo 2 which should reference the location of the removed verandah.
 - The use of Photo 12 given that it is also an example of facadism which is not encouraged by the guidelines.
- 4.14.4 Recommendation 4: Making generally minor amendments to the application requirements in the schedule to the Heritage Overlay at Clause 43.01.
- 4.14.5 Recommendation 5: To reinforce their intent to apply to minor planning permit applications, making small amendments to the second, third, fifth and seventh class of application listed in the schedule to Local VicSmart Applications at Clause 59.15 to respectively read:
- *Minor external alteration of a building if the alterations are located to the rear or side of the building and are not visible from the street (other than a lane) or public park.*
 - *Minor external alteration of a roof, if the alterations are not visible from a street (other than a lane) or public park.*
 - *Construct or carry out minor works normal to a dwelling, including vehicle accessways, pedestrian paths or similar.*
 - *Demolition of removal of a non-original or non-heritage sign.*
- 4.14.6 Recommendation 6 and 7: Renumbering Environmentally Sustainable Development from Clause 15.02-1L to Clause 15.01-2L-02 and Urban Art from Clause 15.01-2L-02 to Clause 15.01-2L-03 in response to the gazettal of Amendment VC216 addressing State ESD policy on 10 June 2022.



4.14.7 Recommendation 8: Replacing the text under the heading ‘Strategies’ in Clause 15.01-2L-02 (Environmentally Sustainable Development) to better align with Council’s previously adopted position to ensure its local ESD policy is consistent with the approach taken by the Council Alliance for a Sustainable Built Environment (CASBE) and other councils.

4.15 A detailed analysis of the Panel’s recommendations and officers recommended response is provided at **Attachment 4**.

4.16 Most of the Panel’s recommended changes are consistent with the position presented by Council at the Panel hearing and are supported by Council officers, however there are some recommendations officers do not support in full.

4.17 A summary of the Panel recommendations officers support in part only, and the reasons why are outlined in the table below:

Panel recommendation	Officer response
<p>Recommendation 1:</p> <p>A number of changes are proposed to the Heritage Policy (Clause 15.03-1) including:</p> <ul style="list-style-type: none"> • changes to improve the alignment between the proposed Heritage Policy and Heritage Overlay. • clarifications to reinforce and strengthen the intent of the proposed Heritage Policy. • removing duplications in the proposed Heritage Policy and other parts of the planning scheme. • providing specific guidance on roof terraces and roof decks. • deleting policy guidelines and diagrams relating to sightlines for development and signs, and making consequential changes to the policy, to remove duplication with the Heritage Design Guidelines (proposed to be included as a Background Document). 	<p>Support in part</p> <p>The recommended changes are generally supported and do not alter the intent of Heritage Policy, while also responding to some of the matters raised by submitters. The changes improve the clarity and operation of the proposed planning provisions and background documents, ensuring they can facilitate appropriate and sustainable development outcomes for the City that recognise its rich architectural heritage.</p> <p>However, officers do not support removal of the sightline provisions because:</p> <ul style="list-style-type: none"> • They are a translation of the existing ‘performance measure’ provisions in the current Heritage Policy (Clause 22.04) and provide important policy guidance on the degree of concealment considered acceptable for upper storey additions; • VCAT has generally found the ‘performance measure’ or policy guideline a helpful guide as to the degree of visibility that will ordinarily be acceptable; • As described in the Victorian Government’s Practitioner’s Guide to Planning Schemes, policy guidelines can be helpfully included in planning policy; • The sightline policy guidelines are among the most commonly used and well understood provisions in the existing Planning Scheme; and • The sightline policy guidelines and images illustrate how the heritage policy might be achieved, also assisting users of the Planning Scheme understand the intent of the policy without having to refer to documents, external to the Planning Scheme.
<p>Recommendation 8:</p> <p>Environmentally Sustainable Development (Clause 15.01-2L-02)</p>	<p>Support in part</p> <p>The Panel supports the inclusion of strategies in this policy that better align with Council’s adopted position and that of CASBE’s. However, the Panel notes that the expiry provisions at Clause 22.13-08 refer to</p>



Panel recommendation	Officer response
	<p>a 'comparable provision', rather than the 'equivalent wording' sought by CASBE.</p> <p>Consistent with the approach of CASBE and other councils, officers recommend the word 'comparable provision' be replaced with 'equivalent provision'.</p>

4.18 The changes resulting from the Panel's recommendations required to the Environmentally Sustainable Development policy (Clause 15.01-2L-02), Heritage Policy (Clause 15.03-1), schedule to the Heritage Overlay (Clause 43.01), schedule to Local VicSmart Applications (Clause 59.15) and Heritage Design Guidelines are documented in **Attachment 5**.

Adoption of Amendment documentation

4.19 The package of Amendment documentation recommended for Council adoption includes:

4.19.1 Attachment 3 comprising the explanatory report, instruction sheet and ordinance.

4.19.2 Attachment 7 containing the Background Documents to be referenced in the Planning Scheme.

4.19.3 Attachment 8 containing supporting documents further setting out the Amendment's strategic justification, namely the Port Phillip Planning Scheme Audit Report May 2018, Update to Local Heritage Policy: Strategic assessment report, June 2021 and Introduction of Local VicSmart Provisions: Strategic assessment report, October 2021.

Options for Council

4.20 Under the Act, Council must consider all the Panel's recommendations but is not obligated to accept them. If in determining to adopt the amendment Council does not accept one or more of the Panel's recommendations, it must provide its reason(s) why.

4.21 The options available to Council under the Act are:

4.21.1 Option 1: Adopt the Amendment without changes (not accepting any of the Panel's recommendations).

4.21.2 Option 2: Adopt the Amendment with changes (accepting some or all the Panel's recommendations).

4.21.3 Option 3: Abandon the Amendment.

4.22 Adoption of the Amendment without changes (Option 1) is not recommended given the findings of the Panel and further refinements to the Amendment recommended by Council officers.

4.23 Adoption of the Amendment with changes (Option 2) is recommended, aligned to the position summarised in the table at **section 4.21** and documented in **Attachment 4**. The Amendment will ensure the Port Phillip Planning Scheme is current, complies with Victorian Government requirements for planning schemes, facilitates clear and consistent decision-making on development applications, and reflects the land use directions in Council's adopted strategies.



- 4.24 Abandoning the Amendment (Option 3) is not recommended. This is because Council will not be fulfilling its statutory obligation as Planning Authority under the Act to review and maintain its Planning Scheme, Council's adopted strategies will not be reflected in the planning scheme and Victorian Government requirements for planning schemes will not be met.

5. CONSULTATION AND STAKEHOLDERS

- 5.1 The Amendment was Exhibited over five weeks from 11 November 2021 to 17 December 2021, in accordance with the requirements of the Act and involved:
- 5.1.1 Direct notification (letters) to approximately 1,500 owners and occupiers of properties affected by the proposed removal of obsolete incorporated documents.
 - 5.1.2 Direct notification (letters) to Prescribed Ministers, statutory authorities and key stakeholder groups.
 - 5.1.3 Public Notices in The Age and Government Gazette.
 - 5.1.4 Posts on Council's social media channels.
 - 5.1.5 Articles in the October and November editions of Diversity.
 - 5.1.6 A dedicated project webpage on Council's Have Your Say website. Approximately 272 unique visits to the Have Your Say website were recorded over the exhibition period.
 - 5.1.7 Four online information sessions were held.
 - 5.1.8 Availability of the Amendment documentation and supporting information on the State Government's Planning Amendments Online website.
 - 5.1.9 Availability of amendment documentation at the Port Melbourne Library and Town Hall, St Kilda Town Hall and St Kilda Library.
- 5.2 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.

6. LEGAL AND RISK IMPLICATIONS

- 6.1 The Amendment is being processed in accordance with the requirements of the Act, including statutory notification to all affected owners and occupiers.
- 6.2 In considering a planning scheme amendment, Council must consider only its role as Planning Authority to ensure transparency of its decision making.
- 6.3 Planning scheme amendments are subject to Ministerial approval. The Minister may approve the Amendment with or without changes.

7. FINANCIAL IMPACT

- 7.1 Costs associated with progressing Amendment C203port include panel hearing fees, expert evidence and representation at the Panel and statutory fees at the approval stage. Provision for these costs is made in the annual Planning Scheme Amendments Program budget for the financial years 2021/22 and 2022/23.



8. ENVIRONMENTAL IMPACT

- 8.1 There will be a positive environmental impact from aligning the planning scheme with Council's existing vision and priorities including *Act and Adapt*, *Move, Connect, Live*; and *Don't Waste It*, as well as updating the local ESD policy.

9. COMMUNITY IMPACT

- 9.1 There will be a positive community impact from aligning the planning scheme with Council's existing vision and priorities, along with improving its usability.

10. ALIGNMENT TO COUNCIL PLAN AND COUNCIL POLICY

- 10.1 The Amendment makes updates to local content in the planning scheme to implement the land use and development directions in Council documents and strategies adopted or prepared since the last Planning Scheme Review, including the Council Plan 2017-27, *Act and Adapt – Sustainable Environment Strategy 2018-28*, *Art and Soul – Creative and Prosperous City Strategy 2018-22*; *Don't Waste It! – Waste Management Strategy 2018-28*, *In Our Backyard – Growing Affordable Housing in Port Phillip 2015-25*, *Move, Connect, Live – Integrated Transport Strategy 2018-28* and *Places for People: Public Space Strategy 2022-32*.
- 10.2 Therefore, the amendment broadly aligns with the five strategic directions in the adopted Council Plan 2021-31 of:
- 10.2.1 1 – Inclusive Port Phillip;
 - 10.2.2 2 – Liveable Port Phillip;
 - 10.2.3 3 – Sustainable Port Phillip;
 - 10.2.4 4 – Vibrant Port Phillip; and
 - 10.2.5 5 – Well Governed Port Phillip.
- 10.3 The Amendment will improve the usability and efficiency of the planning scheme, providing a clearer decision-making framework. In doing so, the amendment will enable better decision making, including with respect to Council's declared Climate Emergency and Economic Emergency.

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 on the Amendment.
- 11.2.2 Council's website will be updated to reflect the decision at this meeting.
- 11.2.3 Should the Minister for Planning approve the Amendment (with or without changes), notice of its approval will appear in the *Government Gazette* and the Amendment would come into effect.



12. OFFICER DIRECT OR INDIRECT INTEREST

12.1 No officers involved in the preparation of this report have any material or general interest in the matter.

ATTACHMENTS

1. Overview of new and amended planning scheme provisions to be introduced by Amendment C203port  [↓](#)
2. Amendment C203port Panel Report  [↓](#)
3. Amendment C203port explanatory report, instruction sheet and ordinance for adoption  [↓](#)
4. Analysis of Panel recommendations  [↓](#)
5. Planning scheme provisions updated in response to Panel recommendations  [↓](#)
6. Administrative changes in response to State Government Amendment VC204  [↓](#)
7. Amendment C203port Background Documents for adoption  [↓](#)
8. Amendment C203port supporting documents for adoption  [↓](#)

These attachments have been provided separately due to their size