

Amendment C171 to the Port Phillip Planning Scheme
St Kilda Marina – City of Port Phillip
42 A-E Marine Parade, Elwood
EXPERT WITNESS STATEMENT – MARK WOODLAND (2020)

Project number	2508
Prepared by	Mark Woodland
Reviewed by	Mark Woodland
Version	1

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1. Introduction

1. I have been instructed by Maddocks Lawyers who act for the City of Port Phillip, proponents of Amendment C171 to the Port Phillip Planning Scheme, which proposes to facilitate the redevelopment of the St Kilda Marina at 42 A-E Marine Parade, Elwood (**‘the Subject Site’**).
2. I have been asked to set out my opinion on the proposed provisions to implement the St Kilda Marina Project Site Brief including any planning issues raised in submissions to the Amendment.
3. I have been provided with an index of documents which includes the Site Brief, Amendment C171 Documentation (as exhibited), Incorporated Documents (proposed as part of Amendment C171), Council Reports, copies of Submissions, other project documents including the St Kilda Marina Project Site Brief, and other policy documents.
4. In preparing my assessment I have had regard to the following documents:
 - a. St Kilda Marina Site Brief
 - b. Marine and Coastal Policy 2020
 - c. Victorian Coastal Strategy 2014
 - d. Victorian Coastal Strategy Implementation Plan
 - e. Recreational Boating Facilities Framework 2014 (Central Coastal Board), February 2014
 - f. The Planning Policy Framework (PPF)
 - g. Amendment C171 Documentation (as exhibited)
 - h. Council officer reports to the Planning Committee (11 December 2019) and Special Meeting of Council (29 January 2020)
 - i. The following Planning Practice Notes:
 - Planning Practice Note 1: Applying the Heritage Overlay
 - Planning Practice Note 2 – Public Land Zones
 - Planning Practice Note 3: Applying Special Use Zones
 - Planning Practice Note 23: Applying the Incorporated Plan and Development Plan Overlays
 - Planning Practice Note 46: Strategic Assessment Guidelines
 - Planning Practice Note 53: Managing Coastal Hazards and the Coastal Impacts of Climate Change

2. Expert Witness Statement

The name and address of the expert.

Mark Woodland of 3 Prentice Street, Brunswick 3044.

The expert qualification and experience.

Mark Woodland holds a Bachelor of Planning and Design from the University of Melbourne. He is a member of the Victorian Planning and Environment Law Association and the Property Council of Australia.

A Curriculum Vitae is included Appendix 1

The expert's area of expertise to make this report.

Mark has a broad range of experience in planning and development matters with a sound understanding of statutory planning provisions and significant experience in strategic planning and policy development enabling him to comment on a wide range of planning and development issues.

Other significant contributors to the report.

Not applicable.

Instructions that define the scope of the report

Mark Woodland has been instructed by Maddocks Lawyers who acts for the City of Port Phillip in regard to this proceeding.

The identity of any person who carried out tests or experiments upon which the expert has relied on and the qualifications of that report.

Not applicable.

The facts and matters and all assumptions upon which the report proceeds.

Mark Woodland relies upon the reports and documents listed in section 1.0 of this report.

Documents and other materials the expert has been instructed to consider or take into account in preparing his report, and the literature of other material used in making the report.

Mark Woodland has reviewed and taken into account the reports and materials listed in section 1 of this report.

A summary of the opinion or opinions of the expert witness

A summary of Mr Woodland's opinions is provided for within section 3 of this report.

Any opinions that are not fully researched for any reason

Not applicable.

Questions falling out of the expert's expertise and completeness of the report.

Mark Woodland has not been asked to make comment on any matters outside of his area of expertise. This report is a complete statement of evidence.

Expert Declaration

I have made all the inquiries that I believe are necessary and desirable to prepare and present expert evidence in this matter and no matters of significance which I regard as relevant have to my knowledge been withheld from the Panel.



Mark Woodland
16 March 2020

3. Summary of Evidence

My opinions in relation to Amendment C171 and the planning issues raised in submissions are summarised as follows:

3.1. Removal of third party appeal rights.

5. It is important to provide up-front certainty to both the community and to the prospective leaseholder about how the subject site can be used and developed, and the associated planning approvals process.
6. I consider that the proposed planning controls have been drafted so as to give appropriate effect to the outcomes described in the Site Brief, and they are sufficiently detailed and precise to provide a high level of community confidence about the range of acceptable land use and development outcomes for the Subject Site.
7. The community has been involved in the preparation of the Site Brief and also the proposed planning provisions contained within Amendment C171. Council has also formally committed to also provide the community with an opportunity to comment on the Development Plan once that is drafted.
8. For these reasons, I consider that it is reasonable that Amendment C171 does not make provision for third party appeal rights in relation future planning permits that are generally in accordance with an approved Development Plan for the Subject Site.

3.2. Rezoning from Public Park and Recreation Zone to Special Use Zone.

9. I do not consider that the existing Public Park and Recreation Zone is an appropriate zone to facilitate the future use and development of the subject site as a marina.
10. I consider that the use of the Special Use Zone is an appropriate alternative zoning in these circumstances as there is no other appropriate combination of other available zones, overlays and local policies that could be used give comparable effect to the desired objectives for the St Kilda Marina redevelopment.
11. Applying the SUZ (together with the DPO) across the entire site will provide for orderly planning and redevelopment of the Marina, enabling the Responsible Authority to approve a detailed Development Plan and then assess planning permits against that Development Plan.

3.3. Approach to heritage.

12. The approach to extending the Heritage Overlay over the Subject Site, and using an Incorporated Document to provide certain permit exemptions is in accordance with the guidance provided in Planning Practice Note no. 1 - Applying the Heritage Overlay.
13. However, I consider that the application of the Heritage Overlay over the entire site serves only a limited purpose in ensuring that the heritage significance of the marina is protected. The permit triggers under the Heritage Overlay would only come into effect in circumstances where

demolition/development was proposed that was not exempt under this document, including where it was not generally in accordance with the Development Plan (which would itself present an issue under the DPO in any case).

14. The Guidelines contained in the incorporated document relating to the approach to demolition and new development on the Subject Site could just as easily be dealt with via the Requirements contained within DPO2.

3.4. **Application of the Development Plan Overlay to the Subject Site.**

15. I consider that the Development Plan Overlay is an appropriate planning tool to apply to the Subject Site for the following reasons:

- It will enable a master-planned approach to the future redevelopment of the Subject Site;
- The requirement to prepare a Development Plan prior to considering planning permit applications will ensure a more co-ordinated approach to the future redevelopment of the site than would be the case if this was done solely via planning permit applications;
- The DPO2 appropriately captures the design criteria set out in the Design Brief; and
- The DPO2 contains a sufficient level of guidance to provide confidence that a development which is in general accordance with the content of this Schedule will achieve the intended outcomes set out in the Design Brief.

16. The planning scheme amendment process (including Council consideration of submissions, and an arms-length review of the proposed planning provisions by an independent Panel) will also provide an appropriate level of scrutiny to ensure that any potential unintended consequences are considered and addressed as needed before the final provisions are incorporated into the Port Phillip Planning Scheme.

3.5. **Justification for Amendment C171.**

17. State Planning, Coast and Marine Policies all support maintaining and expanding boating and recreational infrastructure on the Subject Site.
18. The Marine and Coastal Policy (and its predecessor, the Victorian Coastal Strategy) encourage the use of tailored zoning and overlay provisions to ensure that the outcomes of State and regional coastal strategies and policies are realised along Victoria's coastline.
19. The use of zoning and overlay tools is identified in State coastal policy as an essential part of an integrated coastal planning framework that makes the strategic and orderly assessment of planning permit applications possible, and they are intended to sit alongside management tools such as leases and coastal and marine consents.
20. For the above reasons, it is my view that Planning Scheme Amendment C171 is strategically justified and that it will give proper effect to State Planning, Marine and Coastal Policy.

3.6. Uncertainty over future development outcomes.

21. I do not consider that it is practical or desirable for Amendment C171 to attempt to provide any greater level of detail over the potential future form of development than it currently does. Further detail can be developed and shared with the community once a lease-holder has been selected and a Development Plan can be prepared which has the benefit of the proponent's expertise in relation to marina design and operations.

3.7. Increase in allowable commercial and retail floorspace.

22. I consider that the potential increase in floor area from 3,600 sqm to 5,000 sqm is a modest but important feature to both draw people to the site and support its financial feasibility. I also consider that the range of commercial and retail uses permitted under the SUZ are complementary to the primary marina function and should be supported.

4. The Amendment

4.1. What the Amendment Does.

23. The City of Port Phillip has prepared Amendment C171 to the Port Phillip Planning Scheme, which proposes to facilitate redevelopment of the St Kilda Marina on the Subject Site in Elwood.
24. The Amendment seeks to amend the planning controls for the Subject Site to facilitate the integrated use and development of the subject site generally in the manner envisaged in the *St Kilda Marina Site Brief 2019 (Site Brief)*.
25. Amendment C171 proposes the following changes to the Port Phillip Planning Scheme (as exhibited):
 - a. Rezone the Site from Public Park and Recreation Zone (PPRZ) to the Special Use Zone - Schedule 4 (SUZ4).
 - b. Apply a Development Plan Overlay – Schedule 2 (DPO2) to the Subject Site.
 - c. Amend the Schedule to the Heritage Overlay to extend Heritage Overlay Schedule 187 (HO187) that currently applies to only the beacon on the Subject Site, to the entire site, and include a reference to *Permit Exemptions Incorporated Plan, St Kilda Marina, St Kilda (June 2019)*.
 - d. Update the Port Phillip Heritage Review (Incorporated Document) to:
 - Include a reference to the St Kilda Marina Heritage Assessment, prepared by Built Heritage (12 April 2018);
 - Update Citation 2057, which currently applies only to the Beacon, to apply to the entire site to expand the Statement of Significance so as to state the cultural heritage significance of the whole site and include guidelines for demolition and redevelopment;
 - Update the version number and date of the incorporated document.
 - Update the City of Port Phillip Heritage Policy Map (Incorporated Document) to extend the ‘Significant heritage place – with a heritage overlay’ grading, which currently applies to the Beacon only, to the entire site, and update the date;
 - e. Introduce the Permit Exemptions Incorporated Plan, St Kilda Marina, St Kilda (June 2019) (Incorporated Document) for the site 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 or carry out works, that are generally in accordance with an approved development plan.

- f. Amend Clause 21.07 (Incorporated Documents) and Clause 22.04 (Heritage Policy) to make reference to the new versions of the Port Phillip Heritage Review – Volumes 1-6 (Version 31, June 2019) and the City of Port Phillip Heritage Policy Map (Version 31, June 2019).
- g. Amend the Schedule to Clause 72.03 (What does this Planning Scheme consist of?) to include reference to map 8DPO.
- h. Amend the Schedule to Clause 72.04 (Documents Incorporated in this Planning Scheme) to:
 - Include a reference to the Permit Exemptions Incorporated Plan, St Kilda Marina, St Kilda (June 2019);
 - Update the version number and date of the incorporated Port Phillip Heritage Review – Volumes 1-6 to incorporate the latest version (Version 31, June 2019); and
 - Update the version number and date of the incorporated City of Port Phillip Heritage Policy Map (Version 31, June 2019).

4.2. Background to the Amendment.

26. I understand the background to the preparation of Amendment C171 to be as follows:

- The 50 year lease of the St Kilda Marina has ended, and Council has embarked on process to procure a new long-term lease arrangement for the site.
- Council has resolved to undertake a competitive selection process for a new long-term lease arrangement for the St Kilda Marina, and it has approved a six-stage approach to planning for and delivering a new lease for the Marina.
- A detailed Site Brief has been prepared as part of this process. The purpose of the Site Brief is to set out the key information required for everyone to have a shared understanding of current conditions and desired outcomes at the St Kilda Marina, including Council, the community, marina and wider precinct users, and potential leaseholders.
- The Site Brief envisages a future redevelopment of the site as a Marina facility, together with dry storage, public boat ramp and trailer parking, various complementary uses, as well as public open space and public realm improvements such as the protection/creation of key views, increased public access and improved walking and cycling connections.
- The Site Brief sets a Vision and Objectives for the Marina, together with an analysis of the site today, an overview of the legislative and governance framework, a summary of the community and stakeholder engagement that has informed the brief, and a set of detailed design criteria.

- The Site Brief specifies that proposals for redevelopment of the site will be assessed against the design criteria set out within the brief. The design criteria are categorised as being mandatory (must have) and discretionary (desirable) criteria, and they address the following design parameters:
 - views and movement
 - marina function
 - complementary uses
 - open space, public realm and carparking
 - environmental design and coastal resilience
 - The Vision and Objectives for the Marina, as well as the design criteria were developed in consultation with the community via an iterative process between March 2018 and April 2019. This included the establishment of a 23-member Community Panel, as well as a series of engagement activities with the wider community, stakeholders and government.
 - The Site Brief was endorsed by Council on 15 May 2019.
27. The purpose of Amendment C171 is to enable the St Kilda Marina to be redeveloped generally in accordance with the Site Brief that has been endorsed by Council.
28. Amendment C171 was exhibited between 17 October 2019 and 18 November 2019. Council received 131 submissions in response to the exhibition period.
29. Council considered Amendment C171 and all submissions to it at a Special Meeting of Council on 29th January. At that meeting, Council resolved to refer all submissions to an Independent Panel, and it also endorsed the Officers responses to the issues raised by the submissions, as well as various recommended changes to the Amendment.

5. Relevant Policy and Background Materials

30. The following policies, strategies, studies, practice notes and guidelines are relevant to the consideration to implementation of the St Kilda Marina Project Site Brief via Amendment C171 to the Port Phillip Planning Scheme:
- The Planning Policy Framework (PPF)
 - The Local Planning Policy Framework (LPPF)
 - The following State coastal and boating policy documents:
 - o Marine and Coastal Policy 2020
 - o Victorian Coastal Strategy 2014
 - o Victorian Coastal Strategy Implementation Plan
 - o Recreational Boating Facilities Framework 2014 (Central Coastal Board), February 2014
 - The following Ministerial Directions:
 - o Ministerial Direction – The Form and Content of Planning Schemes
 - o Ministerial Direction No. 1 – Potentially Contaminated Land
 - o Ministerial Direction No. 9 – Metropolitan Planning Strategy
 - o Ministerial Direction No. 11 – The Strategic Assessment of Amendments
 - o Ministerial Direction No. 13 – Managing Coastal Hazards and the Coastal Impacts of Climate Change
 - o Ministerial Direction No. 19 – Information Requirements for Amendments that May Result in Impacts on the Environment
 - The following practice/advisory notes:
 - o Planning Practice Note No. 1 – Applying the Heritage Overlay
 - o Planning Practice Note No. 2 – Public Land Zones
 - o Planning Practice Note No. 3 – Applying Special Use Zones
 - o Planning Practice Note No. 23 – Applying the Incorporated Plan and Development Plan Overlays
31. The scope and relevance of each of the above documents to Amendment C171 is summarises as follows.

5.1. The Planning Policy Framework (PPF)

32. Clause 11.03-4S (Coastal settlement) established strategies to plan for sustainable coastal development, including managing increased visitation and supporting diverse economic opportunities and services. Environmental protection of coastal and marine assets must be balanced with achieving regional economic and community benefits.
33. Clause 12.02-1S (Protection of coastal areas) recognises the value of coastal areas to the community. Land use and planning must clearly direct recreation, conservation, tourism and commercial uses to appropriate areas, recognising that protecting environmentally significant areas is the highest priority and identifying areas for improved facilities that ensures the sustainable use of natural coastal resources. Development should be sensitively sited and designed to minimise disturbance to the natural environment.
34. Clause 12.02-2S (Coastal Crown land) aims to achieve coastal Crown land development that provides an environmental, social and economic balance. The strategies ensure that use and development on or adjacent to coastal foreshore Crown land:
 - a. Maintains safe, equitable public access and improves public benefit.
 - b. Protects local environmental and social values.
 - c. Demonstrates need and coastal dependency.
 - d. Minimises impact on the coast by locating within a defined activity or recreation node.
35. Clause 12.02-3S (Bays) reiterates the objectives to protect coastal and foreshore environments and improve public access and recreational facilities around Port Phillip Bay by focussing development in areas already developed, requiring that coastal planning and management is consistent with the *Victorian Coastal Strategy 2014 (VCS)*, and managing privately owned foreshore consistently with the adjoining public land.
36. Clause 13.01-2S (Coastal inundation and erosion) plans for the management of potential coastal impacts of climate change, including a sea level rise of not less than 0.8 metres by 2100 and allow for the combined effects of tides, storm surges, coastal processes and local conditions such as topography and geology when assessing risks and coastal impacts. Land that is identified at risk to coastal hazards should be appropriately managed and development avoided where susceptible.
37. Clause 17.04-1R (Tourism in Metropolitan Melbourne) supports maintenance of Melbourne as a global, national and local tourism destination.
38. Clause 17.04-2S (Coastal and maritime tourism and recreation) encourages suitably located and designed coastal, marine and maritime tourism and recreational opportunities. St Kilda is recognised as having boating and recreational infrastructure that should be maintained and expanded. The policy seeks to ensure that tourism is of an appropriate scale, use and intensity relative to its location and minimises impacts on the surrounding natural, visual and environmental coastal character. Further the policy seeks to provide public access to recreational facilities and activities on land and water, and high quality urban design that is innovative, sustainable and integrated with surrounding

areas. Planning Authorities are required to have consideration to the Boating Coastal Action Plan and the Victorian Coastal Strategy in order to give effect to these policies.

5.2. The Local Planning Policy Framework

39. Clause 21.01-1 (Vision and approach), amongst other strategies, seeks to protect and reinforce the key elements of Port Phillip's urban structure including the foreshore, places and precincts of heritage significance and the network of parks and open spaces. It also seeks to protect and revitalise special places and precincts of cultural and tourism significance – as capital city functions.
40. Clause 21.02-1 (Port Phillip in Context) identifies that Port Phillip's foreshore is the major defining feature of the municipality and a regional attractor. The St Kilda foreshore is shown on the planning framework contained within this clause.
41. Clause 21.02-2 (municipal profile) identifies the St Kilda foreshore is a major tourist attractor, contributing to the estimated \$438 million contribution tourism makes to the local economy and local jobs. It notes that the beaches and foreshore are vital resources for the local community and valued for range of leisure activities, and providing habitat for flora and fauna.
42. Clause 21.04-5 (Public Open Space and Foreshore) identifies the City of Port Phillip's vision for public open space *"A city where public open spaces define the city's character and respond to its people's need for places to rest, recreate and be inspired."* Key issues identified include, but not limited to:
 - a. As the population increases, the public open space areas will experience greater demand by residents and visitors. Existing open spaces will need to be optimised, and new open spaces created where possible to address demand.
 - b. The public realm is more inclusive, useable, safe and enjoyable if accessible by everyone.
 - c. The foreshore is Port Phillip's most outstanding natural and cultural asset. It plays an important social and recreational role for the local and wider community. Sensitive environmental management is essential to ensuring that the foreshore remains an attractive destination and continues to support a range of local flora and fauna.
 - d. The foreshore reserve is a significant public open space asset and hosts a wide range of entertainment, sport and recreational activities. This influences the infrastructure needs of these areas and can impact on access to open space for local users.
43. Clause 21.04-5 further identifies objectives and strategies to achieve the vision, and includes of relevance to this matter:
 - a. To create a public open space network that caters for a diverse range of users and is accessible to all:
 - i. Provide all residents access to high quality open space within walking distance of home (400 to 500 metres);

- ii. Ensure that public open space offers a diversity of functions and experiences and continues to host a range of leisure, tourism, recreation, cultural, social and sporting activities to meet the needs of all users; and
 - iii. Identify and support the establishment of new open space linkages, and the improvement of existing linkages, to connect public open space areas.
 - b. To ensure the retention and optimum provision of high quality public open spaces:
 - i. Ensure there is no loss of land currently used for public open space, unless all the following can be demonstrated, including net community gain can be guaranteed by an alternative land use.
 - ii. Ensure that the buildings and private spaces within new developments adjacent to public open space areas are clearly delineated and do not degrade the values of the existing public open space.
 - c. To protect and engage and physical and cultural heritage values, and environmental attributes of public open space:
 - i. Support commercial facilities in public open space areas only where:
 - *The facility is located in an existing building or an existing building is replaces with one of a scale and character which is sympathetic to the surrounding landscape or built form.*
 - *The facility will enhance the range of facilities available and not disadvantage existing users.*
 - *Environmental issues such as waste management, traffic movement and parking can be satisfactorily addressed.*
 - ii. Protect identified significant heritage features in open space areas.
 - iii. Protect environmentally sensitive areas.
 - iv. Consider any relevant Management Plans when assessing applications for new use or development.
 - d. To achieve a sustainable balance between preserving public open space, including the foreshore, and meeting the needs of all users.
 - i. Ensure that new uses make a positive contribution to the public open space area and offer a net community benefit.
 - ii. Consider the competing demands and potential conflicts of foreshore users, visitors and residents, and implement appropriate management measures.

- e. To protect, manage and enhance the foreshore as an important natural, recreational and tourism asset:
- i. Facilitate widespread visitation along the foreshore, through reinforcing a series of activity destinations connected by pedestrian and cycle links.
 - ii. Ensure use and development on the foreshore:
 - *Maintains and contributes to the continuity of public access.*
 - *Supports active year round use.*
 - *Is located in an existing building or in a new building that replaces an existing building.*
 - *Is sympathetic to the surrounding coastal landscape and built environment and does not disrupt important views and vistas.*
 - *Does not reduce the net volume of public open space.*
 - *Compliments and enhances the prevailing land uses in the area and does not disadvantage existing foreshore users.*
 - *Does not increase traffic congestion, parking, pedestrian or cyclist circulation problems.*
 - *Is appropriate in the context of the impacts of climate change.*
 - iii. Enhance the physical environment to provide a range of services and facilities.
- f. To maintain an active waterfront of relevant coastal dependant uses.
- g. To recognise the economic value and contribution of the foreshore to both the local and regional economy.
- i. Manage and enhance the foreshore as an important tourism asset which appeals to local, national and international visitors.
 - ii. Support environmentally sustainable tourism services and facilities.

5.3. Marine and Coastal Policy 2020

44. Following introduction of the Marine and Coastal Act in 2018, the Marine and Coastal Policy was released in March 2020, providing for an integrated approach to planning and managing the marine and coastal environment. The Policy provides guidance to the planning and management of coastal areas, including public and private land.
45. Building on the Victorian Coastal Strategy 2014, the Policy recognises the competing demands placed on the coast, and that are sometimes conflicting including assets for recreation, industry and tourism. The Policy provides guidance on weighing up the competing interests, adverse impacts on values and benefits of the use and development using a Planning and Decision Pathway.
46. Guidance for use and development of the marine and coastal environment includes that the development:

- a. is ecologically sustainable
 - b. occurs in appropriate locations
 - c. minimises impacts on environmental values and other uses
 - d. improves the total quality of life of Victorians, across current and future generations.
47. The Policy also provides guidance for retention of cultural heritage including encouraging adaptive reuse of heritage places no longer required for their original purpose in a way that maintains their values and character and enhances their contribution to community activities, coastal tourism and sense of place.
48. Chapter 10 of the Policy is specific to recreation and tourism use and development on the coast. The Policy includes, but not limited to:
- a. *To enable a diversity of sustainable recreational uses and activities that strength peoples' connection with the marine and coastal environment*
 - b. *Use strategic and spatial planning to locate opportunities for safe and sustainable recreation and tourism developments that:*
 - i. *respond to identified demand*
 - ii. *minimise impacts on environmental and cultural values*
 - iii. *minimise impacts on other users*
 - iv. *maintain public safety*
 - v. *respond to the carrying capacity of the site*
 - vi. *minimise exposure to coastal hazard risks and risk posed by climate change.*
 - c. *Use strategic and spatial planning to identify recreation and activity nodes, to create efficient and compatible relationships between buildings and infrastructure and minimise impacts on the marine and coastal environment.*
 - d. *Support a sustainable network of facilities for recreational boating and water-based activities in line with strategic plans, and be responsive to:*
 - i. *identified demand*
 - ii. *use and safety considerations*
 - iii. *the carrying capacity of the location*
 - iv. *coastal processes*
 - v. *environmental values.*

- e. *The design and location of marine-based structures and access points (including boat ramps, ports and marinas) should:*
 - i. *consider and minimise safety risks*
 - ii. *consider sediment movement processes*
 - iii. *minimise the need for capital and maintenance dredging*
 - iv. *minimise sedimentation through catchment-based management activities (such as revegetation and erosion control).*
- f. *Preferably locate new tourism developments (for example resorts, golf courses) on private land.*

- 49. In relation to activity and recreation nodes, the Policy states “It should be noted that boating and fishing access points will be maintained and enhanced in line with relevant plans and strategies.”
- 50. Chapter 11, relates to building, structures and access and establishes clear guidance for use and development of Crown land including for Marinas and recreational boating facilities.
- 51. The Policy states that use and development on marine and coastal Crown land should balance the interests of individual users with the needs of the greater Victorian community. Many existing buildings and structures are managed under a lease or license agreement between the land manager and clubs or private individuals. The management and maintenance of the structures is in accordance with those agreements, this Policy and other applicable guidelines.

5.4. **Victorian Coastal Strategy 2014**

- 52. Prior to introduction of the Marine and Coastal Policy in 2020, the Victorian Coastal Strategy (VCS) 2014 was the State Government’s policy commitment for coastal, estuarine and marine environments in Victoria. It provided a long-term vision for the planning, management and sustainable use of the coast, and established a Hierarchy of Principles that give effect to the directions in the *Coastal Management Act 1995* and included in the State Planning Policy Framework and in the Port Phillip Planning Scheme.
- 53. The VCS identified five key issues that needed to be addressed, including: managing population growth; adapting to a changing climate; managing coastal land and infrastructure; valuing the natural environment; and integrating marine planning.
- 54. The VCS established that planning and decision making on the coast needed to be guided by and consistent with a Hierarchy of Principles, including:
 - a. Value and Protect: Ensure the protection of significant environmental and cultural values.
 - b. Plan and Act: undertake integrated planning and provide clear direction for the future.
 - c. Use and Enjoy: ensure the sustainable use of natural coastal resources; and ensure development on the coast is located within existing, modified and resilient environments

where the demand for development is evident and any impacts can be managed sustainably.

55. Of note, the VCS set the policy direction and framework for planning and management of the coastal environment, including planning for boating facilities (the 2002 VCS introduced the boating hierarchy). The Central Coastal Board applied this framework to the central region in preparing the Boating CAP in 2007 which identified the St Kilda Marina as a regional facility.

5.5. **Victorian Coastal Strategy Implementation Plan**

56. This Implementation Plan audited the projects actioned in the VCS 2014 and established a set of priority projects for two year delivery. The projects were State led initiatives including coastal hazard risk assessments, tourist facilities audit, implementing the Boating CAPs, incorporating the VCS into the Planning Scheme including coastal policy and sea level rise benchmark.

5.6. **Central Regional Coastal Action Plan (Central Coast Board)**

57. Action Plans were prepared by each Coastal Board as a direction of the VCS 2014, to provide a regional framework for planning and decision making on public and private land at the local level. It applies the VCS hierarchy of principles at the regional scale.
58. The framework recognises the tourist and recreational function of the St Kilda foreshore. It also identifies that critical to maintaining the economic, social and community value of coastal infrastructure is recurrent and ongoing maintenance and replacement of assets.
59. The Central Coastal Board identified eight priority areas as a focus for the action in the Region including of relevance, overseeing the implementation of the Recreational Boating Facilities Framework for the Central Coastal Region, and strategies for sustainable visitation and tourism infrastructure.

5.7. **Recreational Boating Facilities Framework 2014 (Central Coastal Board), February 2014**

60. The *Recreational Boating Facilities Framework* translates the hierarchy of boating facilities and services from the earlier 2007 *Boating Coastal Action Plan (CAPP)* to the central coastal region (including the City of Port Phillip). It provides guidance for the location and scale of each boating facility within the central coast region.
61. Part 1 of the Framework recognises that boating is an important recreational activity and delivers economic benefit to coastal communities through visitation and tourism. The Framework identifies five types of boating facilities, each providing different services and functions, including: boat ramp, marina, multipurpose / safe haven, jetty and yacht club / motor boat club.
62. The Framework identifies a projected demand for boating facilities is growing, the provision of infrastructure is already restrained in a number of places along the metropolitan coast especially during peak periods. In particular, the congestion on land and the need for more efficient use of boat ramps and parking areas is an issue. The Framework recognises the importance of the need for

shared use of coastal Crown land and water areas with other coastal recreational pursuits, residents, visitors and tourists.

63. Part 2 of the Framework establishes a Vision and Guiding Principles that reflect the VCS hierarchy of principles and facilities. It identifies that planning for recreational boating should seek to achieve a sustainable balance between providing for boating activities in a sustainable way and protecting environmental and cultural values.
64. The boating hierarchy identified in the Framework is based on the facilities, services and catchment of each facility in the VCS with five levels of facilities: State marine precinct, regional, district, local and informal facilities. Part 3 of The Framework identifies the St Kilda Marina as a 'Multipurpose Regional Facility with a Boat Ramp' (refer to 5S in map below). Its role in 2030 is 'Regional', and the land manager is City of Port Phillip.
65. A regional boating facility will *"either provide a range of services and facilities at one location (e.g. at a harbour or marina), or be one regional facility such as a regional boat ramp that, due to its size, provides for a large catchment."*
66. The criteria for a regional facility includes:
 - *A high level of significance that provides a boating destination*
 - *A high level of investment as a key boating activity centre*
 - *An exceptional level of service provision that caters for a wide range of boating activity and skill levels*
 - *Provision of a safe haven*
 - *Provision of maintenance and service facilities*
 - *Wide catchment area, with an even spatial distribution, at major population centres*
 - *All tide access*
 - *Public access to the facility and coastal environment*
 - *A key boating destination within the network*
67. Table 2 from within the Framework identifies the expected boating facility services for each category within the hierarchy including a Regional facility (refer Appendix 2 of this Statement for details).
68. The relevant planning principles for the North Port Phillip Region (including the St Kilda Marina) include investment focused on the upgrade of facilities at St Kilda, Williamstown and sites on the Yarra River within the State Marine Park.
69. The Framework establishes desired outcomes in planning for recreational boating, and while protecting the environment and ensuring safety are prioritised in decision making, the strategic priorities for boating (in order), are:
 - a. Improving the level of service and efficiency of existing facilities.
 - b. Upgrading facilities to meet proposed future roles in the boating hierarchy.
 - c. Adding value to the boating network through the provision of new facilities.

5.8. Relevant Ministerial Directions

70. The following Minister Directions apply:

- a. Ministerial Direction – The Form and Content of Planning Schemes
- b. Ministerial Direction No. 1 – Potentially Contaminated Land
- c. Ministerial Direction No. 9 – Metropolitan Planning Strategy
- d. Ministerial Direction No. 11 – The Strategic Assessment of Amendments
- e. Ministerial Direction No. 13 – Managing Coastal Hazards and the Coastal Impacts of Climate Change
- f. Ministerial Direction No. 19 – Information Requirements for Amendments that May Result in Impacts on the Environment

5.9. Relevant Planning Practice Notes.

71. The following Planning Practice Notes are relevant to the assessment of Amendment C171:

5.9.1. Planning Practice Note No. 1 – Applying the Heritage Overlay.

72. Planning Practice Note No. 1 (PPN1) provides guidance about the use of the Heritage Overlay. It specifies that places which are identified in a local heritage study should be included in the Heritage Overlay, provided that the significance of the place can be shown to justify the application of the overlay. The documentation for each place needs to include a statement of significance that clearly establishes the importance of the place and addresses the heritage criteria set out in the Practice Note.

73. PPN1 also provides guidance on drafting of the Heritage Overlay Schedule. It notes the following:

- Clause 43.01-3 of the Heritage Overlay allows an incorporated plan to be prepared to identify works to a heritage place that are exempt from the need for a planning permit. To do so, the plan must be specified in the schedule to the overlay and must also be listed in the schedule to Clause 72.04.
- Where detailed heritage design guidelines have been prepared for a heritage place, they may be incorporated into the planning scheme. The title of the incorporated document must be specified in the schedule to the overlay and must also be listed in the schedule to Clause 72.04.

5.9.2. Planning Practice Note No. 2 – Public Land Zones

74. Planning Practice Note No. 2 (PPN2) provides guidance about the use of public land zones. It notes that the purpose of public land zone is not to identify the legal status of the land, but to set out appropriate statutory requirements which apply to the use and development of the land (over and above those under the relevant land management legislation).

75. PPN2 notes that land should not be automatically included in a public land zone simply because it is public land, and that a useful test in considering if a public land zone is appropriate is to determine if

a public land manager needs some level of flexibility, protection or exemption different from the surrounding zone provisions because of the special nature of the public land or asset and its control (in a land use or management sense) under another Act.

76. PPN2 notes that a public land manager should be able to use and develop public land for any purpose under its relevant land management legislation without the need for a permit, and that this is achieved by allowing many uses to be Section 1 within a public land zone, subject to the use being conducted by or on behalf of the public land manager or a specified public authority.
77. PPN2 notes that the words 'by or on behalf of' should be interpreted with regard to the particular statutory charter of the public land manager under its governing legislation and indicate that the use or development must be undertaken by the public land manager itself or by some other person or entity having a direct representative interest or relationship with the public land manager.

5.9.3. Planning Practice Note No. 3 – Applying Special Use Zones.

78. Planning Practice Note No. 3 (PPN3) provides guidance about the use of the Special Use Zone. It specifies that a Special use Zone can be considered when either:
 - An appropriate combination of the other available zones, overlays and local policies cannot give effect to the desired objectives or requirements, or
 - The site adjoins more than one zone and the strategic intent of the site, if it was to be redeveloped, is not known and it is therefore not possible to determine which zone is appropriate.
79. PPN3 states that the application of the Special Use Zone is not appropriate when an alternative zone can achieve a similar outcome, with appropriate support from local policies and overlays.

5.9.4. Planning Practice Note No. 23 – Applying the Incorporated Plan and Development Plan Overlays.

80. Planning Practice Note No. 23 (PPN23) provides guidance about when and how to use the Incorporated Plan (IPO) and Development Plan (DPO) Overlays. It notes that these overlays have two purposes, as follows:
 - To identify areas that require the planning of future use or development to be shown on a plan before a permit can be granted, and;
 - To exempt a planning permit application from notice and review if it is generally in accordance with an approved plan.
81. PPN23 states that the IPO and DPO are used to:
 - Require a plan to be prepared to coordinate proposed use or development, before a permit under the zone can be granted
 - Guide the content of the plan by specifying that it should contain particular requirements
 - Provide certainty about the nature of the proposed use or development

- Remove notice requirements and third-party review rights from planning permit applications for proposals that conform to plan requirements
 - Ensure that permits granted are in general conformity with the plan
 - Apply permit conditions that help to implement the plan
 - Provide statutory force to plans.
82. PPN23 notes that the IPO and DPO can both enable a plan to make provision for use as well as development, but that neither overlay can change the scope of the discretion provided in the zone applying to the land. In other words they cannot be used to 'schedule in' or 'schedule out' a permit requirement.
83. PPN23 also notes that both overlays should be underpinned by a strategic framework that sets out the desired development outcomes and the overall layout of the land including, if relevant, the design principles for the development, major land uses, transport and open space networks. It notes that the strategic framework should be prepared before the overlay is applied to:
- Identify and address opportunities and constraints for the development of the land
 - Provide direction about development outcomes and the overall form of development
 - Provide certainty to landowners and third parties about the form of development
 - Assist in choosing the appropriate planning tools to achieve the desired development outcomes and form of development
 - Ensure the schedule to the overlay is drafted to achieve the desired development outcomes and facilitate the development.
84. PPN23 also provides guidance about how to decide which Overlay to use, as well as guidance on drafting of the Overlay schedules.

6. My Opinion

85. I have been asked to express my opinion on the Amendment and to also respond to urban planning issues raised in submissions.
86. I have structured my statement of evidence around the key issues raised in submissions, as set out in the Council Officer report to the Special Meeting of Council dated 29th January 2020.
87. My opinions are as follows:

6.1. Removal of third party appeal rights.

88. Amendment C171 is seeking to provide a high degree of up-front certainty in the Port Phillip Planning Scheme relation to what will be considered an acceptable range of land use and development outcomes on the subject site, for the benefit of both the wider community and the future leaseholder/s.
89. The proposed Development Plan Overlay Schedule (DPO2) is a very specific and detailed planning control, and it incorporates the land use and built form outcomes set out in the Site Brief adopted by Council in May 2019.
90. The proposed DPO2 specifies that the Development Plan must be generally in accordance with the Concept Plan included as Figure 1 within the Schedule, and that it must make provision for the realisation of the Vision, Principles, Objectives and Specific Requirements for the site set out within the Schedule.
91. Planning permits will still be required for various types of use and development under the proposed Special Use Zone, however once a Development Plan is approved for the Subject site, then third parties will not be notified of these permit applications, and third parties will not have any rights to have the decisions of Council reviewed by VCAT.
92. In my opinion this is a reasonable approach to take in the circumstances, because there has been considerable community engagement in relation to both the preparation of the Site Brief and also the drafting of the proposed planning controls, and the proposed planning controls are sufficiently detailed and precise to provide public confidence that the development outcomes will reflect the intend of the Site Brief.
93. I understand that the consultation undertaken by Council in the course of preparing the Site Brief has included a series of intercept surveys, direct mailouts, calls for submissions, community open days and drop in sessions at various points in the development of the Site Brief over the period 2018-19¹. The establishment of a Community Panel was a further step taken to ensure that representatives from the community could collaborate closely with Council in the development of the Site Brief.

¹ Refer to the summary contained in Chapter 8 of the Site Brief, and also the summary of the consultation and engagement program contained in Part 1 of the Council Response to Submissions appended to the Officer Report to the Special Council Meeting on 29th January 2020.

94. The exhibition of Amendment C171 has provided a further opportunity for the community to make submissions on the proposed planning controls for the site. The planning scheme amendment process provides a robust means for determining whether the outcomes described in the Site Brief that has been adopted by Council are adequately reflected in the proposed planning controls.
95. I also note that Council has made a formal public commitment to consult with the community on any development plan prepared under DPO2 in the future. Whilst there is no requirement for Council to do this under the DPO2, it is a common practice of many local governments to undertake such informal public consultation prior to making a final decision to approve development plans under a DPO control.
96. In my opinion the proposed planning controls have been drafted so as to give appropriate effect to the outcomes described in the Site Brief, and they are sufficiently detailed and precise to provide a high level of community confidence about the range of acceptable land use and development outcomes for the Subject Site.
97. One of the benefits of using the DPO is that it allows for an integrated approach to the future use and development of the entire site. Used in combination with the proposed Special Use Zone, DPO2 will provide much greater up-front certainty about the intended use and development of the Subject Site than would be the case if the land remained in a Public Park and Recreation Zone, with no requirement in place to prepare a Development Plan.
98. Whilst the level of detail provided for in these provisions is obviously not the same as would be contained within a planning permit application, in my opinion it provides sufficient direction in relation to the critical land use and development issues for the Subject Site, and it provides a robust mechanism for ensuring that the future Development Plan (and future planning permits) will contain the 'must haves' described in the Site Brief.
99. The DPO requires that any planning permits must be generally in accordance with any approved Development Plan. There must be a high degree of uniformity between the key aspects of a development plan and the intended development proposal for it the development proposal to be considered to be generally in accordance with the Development Plan.
100. It is also a well-established principle in planning law that the more detailed or precisely drafted the Development Plan is, the less flexibility can be afforded to vary from it in any subsequent development proposal.
101. The requirements for the Development Plan set out in DPO2 are very detailed, and satisfying these requirements will in turn mean that the Development Plan itself will be a very detailed and precise document. This will leave limited scope for future permit applications to vary from the outcomes described in DPO2 and the subsequent approved Development Plan document.
102. It must also be acknowledged that providing up front certainty in relation to the potential use and development of the Subject Site will also be of great importance to future lease-holder.
103. Council wishes to enter into a new long term lease over the Subject Site, and is expecting that the lease-holder will make extensive investments into the upgrade and renewal of its infrastructure. It is

highly desirable that the future lease holder have clarity about what they can do on the site (including what they must do, and where there might be some flexibility in relation to certain aspects of the future use and development of the site).

104. Amendment C171 not only clearly sets out how the Subject Site can be used and developed, but it also provides certainty about the approvals process that a lease-holder will have to go through in order to obtain planning permits for the upgrade and renewal of the Marina.
105. In my view providing a high degree of certainty about the use and development, and the related approvals processes is an important part of providing future investors with confidence to enter into a long-term lease with Council.
106. For the above reasons, I consider that it is reasonable in the circumstances for Amendment C171 to make no provision for third party appeal rights in relation future planning permits that are generally in accordance with an approved Development Plan for the Subject Site.

6.2. Rezoning from Public Park and Recreation Zone (PPRZ) to Special Use Zone (SUZ).

107. I have considered whether the Public Park and Recreation Zone (PPRZ) is an appropriate zoning tool to facilitate the redevelopment of the Marina on the subject site or not, as well as whether or not the use of the Special Use Zone is a better alternative.
108. I note that the approach taken to the zoning of other tourism and recreation facilities along the Victorian coastline varies depending on the type and circumstances of the facilities, for example:
- Many private boat clubs and public jetties or boat mooring facilities are located within the PPRZ.
 - Larger integrated marina redevelopments that include a mixture of public and private boating infrastructure and related commercial activities are located within the Special Use Zone, examples include:
 - Marth Cove Marina
 - Wyndham Harbour
 - Queenscliff Harbour
 - Apollo Bay Marina
 - Various other boating and marina activities operate under bespoke zones - examples include the Werribee Shipyards and boating facilities (SUZ) and the marina facilities in Docklands (Docklands Zone).
 - The SUZ (in combination with a DDO and/or DPO) has been applied to tourism and recreation facilities along the coast including the St Kilda Triangle Site, Luna Park and St Kilda Sea Baths.
109. I have had regard to PPN2 and PPN3 in forming my opinion on the question of the most appropriate zoning of the Subject Site.

110. One of the key considerations about whether to leave the Subject Site in the PPRZ is the degree to which flexibility might be needed or warranted in relation to the future use and development of the subject land as a marina.
111. PPN2 notes that a public land manager should be able to use and develop public land for any purpose under its relevant land management legislation without the need for a permit. The PPRZ achieves this aim in that it allows many uses to be ‘as of right’, subject to the use being conducted by or on behalf of the public land manager, or in accordance with an incorporated plan.
112. It would be possible to rely upon the above provisions of the PPRZ to facilitate the redevelopment of the Marina on the subject site. In that event it would be necessary for either the use and development to be undertaken by/on behalf of the public land manager, or for an incorporated plan to be prepared (and for the planning scheme to be amended to introduce it into the planning scheme).
113. There are a number of shortcomings with having to rely on the provisions of the PPRZ to facilitate the redevelopment of the marina on the Subject Site, as follows:

- If the redevelopment of the St Kilda Marina was to be undertaken by/on behalf of the public land manager under the Crown Land Reserves Act 1978, then it may be the case that no planning permit is required for the use, buildings or works².

This approach would provide far less public oversight or input than the approach that is being proposed via Amendment C171. Amending the zoning of the Subject Site to the SUZ is a recognition that it is more appropriate that planning permits be required for uses and developments relating to the Marina redevelopment.

- If a plan was to be incorporated into the planning scheme to allow for a marina development, then no planning permits would be required for the various future uses and developments that are provided for in that incorporated plan. For this reason, it would be desirable (at the very least) for the incorporated plan to contain a level of detail about the future use and development of the land that is more comparable to that which would be contained within a planning permit application.

However there is no current proponent for the redevelopment of the Marina and it would be premature and impractical to incorporate a plan under the planning scheme at this point.

- Whilst the option exists for Council to select a preferred lease-holder and then have them prepare the incorporated plan and associated PSA, this approach also has shortcomings from both the community and potential leaseholder perspective:

² I note from section 7.1 of the Site Brief document that the leasing powers over the subject site exist under the St Kilda Land Act 1965, which pre-date the Crown Land Reserve Act 1978, and that other than this leasing power, the provisions of the Crown Land Reserve Act 1978 apply to the land. I do not have expertise in relation to this legislation and would defer to others as to whether or not the redevelopment of the marina be a lease-holder could be said to be undertaken ‘for or on behalf of the public land manager’ under the Crown Land Reserves Act 1978. I simply observe that if that were the case, then planning permission may not be needed under the provisions of the PPRZ.

- The Community would not have the same level of assurance about the possible land use and development outcomes that might be negotiated under the leasing process as they would if the parameters of the Site Brief were embedded in to the Port Phillip Planning Scheme via the DPO at the outset of the leasing process.
 - The potential lease-holder would also be faced with entering into leasing negotiations without any certainty over either the scope or timing of approval of any incorporated plan. This would substantially elevate the level of commercial risk associated with the project from the potential lease-holder's perspective.
114. I have also considered whether it would be possible to retain the land in the PPRZ and to apply the DPO to it as well. The relevant range of uses/developments contemplated under the Site Brief are likely to be exempt from the need for a permit under the PPRZ (either because they are being undertaken by/on behalf of a public land manager or they are being undertaken in accordance with an incorporated plan). Therefore applying a DPO to land that is located within the PPRZ would not be a workable solution.
115. For the above reasons, I consider that it is necessary to consider the use of an alternative zone to facilitate the intended future use/development of the St Kilda Marina on the Subject Site.
116. There are relatively few practical alternative zone options available for development activity on public land under Victoria Planning Provisions.
117. I do not consider that the Public Use Zone is an appropriate zone for the Subject Site. The zone does not provide for commercial uses in its purpose, and it allows for any use to be 'as of right' so long as it is carried out by or on behalf of the public land manager (otherwise a permit is required).
118. I also do not consider that the Public Conservation and Resource Zone is an appropriate zone for the Subject Site. The statements of purpose under this zone do not reflect the existing and intended future use of the Subject Site as a marina, and it allows for a variety of uses to be 'as of right' so long as it is carried out by or on behalf of the public land manager (otherwise a permit is required).
119. PPN3 notes that a Special Use Zone can be considered when (inter-alia) an appropriate combination of other available zones, overlays and local policies cannot give effect to the desired objectives or requirements.
120. For the reasons outlined earlier, I do not consider that the various public use zones are appropriate to facilitate the redevelopment of the St Kilda Marina.
121. I have considered whether the Comprehensive Development Zone (CDZ) might be an alternative to the SUZ.
122. It would be possible to draft a CDZ schedule which includes a number of the features as the SUZ/DPO proposed under Amendment C171. Under the CDZ, a Comprehensive Development Plan (CDP) would be incorporated into the scheme at the time that the zone was introduced.
123. For the reasons set out elsewhere in this Statement, I consider that the level of detail in this Plan would most likely be comparable to the detail of the plan contained within the exhibited DPO2. I

would also expect that the zone would most likely require that permits be obtained for various use/developments (to ensure the proper assessment of the detailed proposals against the CDP), and it would also most likely contain exemptions from third party notice and appeal for proposals that were consistent with the CDP.

124. In my view the three staged approach proposed by Amendment C171 (i.e. introduce the SUZ & DPO2, then prepare a detailed Development Plan, then require permits to be sought), is a more orderly and comprehensive approach than the application of the CDZ (which would include a CDP at the time of rezoning and then require permits to be assessed against it).
125. In summary, I consider that the use of the Special Use Zone is warranted in the circumstances as there is no other appropriate combination of other available zones, overlays and local policies that could be used give comparable effect to the desired objectives for the St Kilda Marina redevelopment.
126. Applying the SUZ (together with the DPO) across the entire site will provide for orderly planning and redevelopment of the Marina, enabling the Responsible Authority to approve a detailed Development Plan and then assess planning permits against that Development Plan.

6.3. Approach to heritage.

127. I have considered whether the heritage controls proposed by Amendment C171 are appropriate having regard to Planning Practice Note No. 1 - Applying the Heritage Overlay (PPN1).
128. I am not qualified to comment on the heritage merits of the Subject Site. I have limited my opinions in this Statement to the question of whether or not the form of the controls is consistent or not with PPN1.
129. My opinions are outlined (in italics) as follows:
130. PPN1 specifies that places which are identified in a local heritage study should be included in the Heritage overlay, provided that the significance of the place can be shown to justify the application of the overlay:
- *A heritage assessment has been undertaken of the St Kilda Marina by Built Heritage (April 2018). This assessment includes an assessment against the eight criteria set out in PPN1, and it concludes that the Marina is significant at the local level for its associations with the post-war boom of recreation boating.*
131. The documentation for each place needs to include a Statement of Significance that clearly establishes the importance of the place and addresses the heritage criteria set out in the Practice Note.
- *The Statement of Significance contained within the Assessment addresses each of the key questions relating to the significance of the place as set out in PPN1.*
132. PPN1 notes that Clause 43.01-3 of the Heritage Overlay allows an incorporated plan to be prepared to identify works to a heritage place that are exempt from the need for a planning permit. To do so,

the plan must be specified in the schedule to the overlay and must also be listed in the schedule to Clause 72.04.

- *Amendment C171 includes a draft Permit Exemptions Incorporated Plan. This is references in the both the Schedule to Clause 43.01 and Clause 72.04*

133. PPN1 notes that where detailed heritage design guidelines have been prepared for a heritage place, they may be incorporated into the planning scheme.

- *Amendment C171 proposes to update the existing incorporated document “Port Phillip Heritage Review Vols 1-6 (V31)” to include a revised Citation for the St Kilda Marina. This Citation includes guidelines for the future management of the heritage place.*
- *The Guidelines contained in the Citation specify that demolition and alteration of buildings etc. on the site may be permitted if they support the continued viability of the marina use and reflect a master planned approach to the redevelopment of the marina. The Guidelines also provide direction in relation to the potential replacement of dry boat and wet berth storage facilities, and the prominence of the Beacon as a landmark.*

134. I consider that the form of the heritage controls proposed by Amendment C171 (described above) is satisfies the guidance contained PPN1.

135. I note that the Permit Exemptions Incorporated Plan contains a number of permit exemptions and it specifies that no planning permit is required under Clause 43.01-3 to demolish a building, or to construct building or carry out works where that action is generally in accordance with a Development Plan approved under Clause 43.04 of the Port Phillip Planning Scheme.

136. I have no fundamental concern with this approach, and I note that it is similar to the approach taken under the Heritage Overlay that applies to the Queenscliff Harbour.

137. However, I do consider that the application of the Heritage Overlay over the entire site serves only a limited purpose in ensuring that the heritage significance of the marina is protected. The permit triggers under the Heritage Overlay would only come into effect in circumstances where demolition/development was proposed that was not exempt under this document, including where it was not generally in accordance with the Development Plan (which would itself present an issue under the DPO in any case).

138. The Guidelines contained in the incorporated document provide for the removal or many of the marina structures, and the guidance relating to the approach to new development on the site could just as easily be dealt with via the Requirements contained within DPO2 (including the requirement for a Heritage Impact Assessment).

6.4. Application of the Development Plan Overlay (DPO).

139. Council has received some submission that argue that the DPO (as well as the rezoning to SUZ) is a 'blunt tool' that needs interrogation to limit the risk of unintended consequences.
140. I have set out my opinions in relation to the DPO and SUZ in sections 6.1 and 6.2 of this evidence statement. In summary it is my view that:
- The combination of the SUZ and DPO2 are appropriate planning tools to facilitate a master-planned approach to the future redevelopment of the Subject Site;
 - The requirement to prepare a Development Plan prior to considering planning permit applications will ensure a co-ordinated approach to the future redevelopment of the site.
 - DPO2 appropriately captures the design criteria set out in the Design Brief, and
 - DPO2 contains a sufficient level of guidance to provide confidence that a development which is in general accordance with the content of this Schedule will achieve the intended outcomes set out in the Design Brief.
141. In my opinion, the planning scheme amendment process (including Council consideration of submissions, and an arms-length review of the proposed planning provisions by an independent Panel) will provide an appropriate level of scrutiny to ensure that any potential unintended consequences are considered and addressed as needed before the final provisions are incorporated into the Port Phillip Planning Scheme.

6.5. Justification for Amendment C171.

142. Council has received submission that argue that there is sufficient certainty regarding the future redevelopment of the St Kilda Marina via the procurement process for the new lease, the St Kilda Land Act and the Marine and Coastal Act, and that a planning scheme amendment is not justified.
143. I understand that the St Kilda Land Act 1965 stipulates that the Subject Site is reserved for a marina, and that this Act contains special leasing powers over the subject site.³
144. The responsibility for leasing under the above Act is separate and distinct to the responsibilities that exist under other Acts for the management and planning of coastal Crown Land. For example:
- The Marine and Coastal Act 2018 requires that consents be obtained from the Minister for Environment for use and development on marine and coastal Crown land.
 - The Planning and Environment Act 1987 establishes planning schemes to regulate the use and development of land, including coastal crown land. The City of Port Phillip is the Responsible Authority for granting permits under the Port Phillip Planning Scheme.

³ As described in the Site Brief May 2019

145. The inter-relationship between these management and planning functions for coastal areas is explained in the Victorian Marine and Coastal Policy which was finalised in March 2020 (refer Appendix 3 to this Statement for details).⁴
146. The Marine and Coastal Policy supports the integration of management and planning activities at a range of scales, from the State and Regional down to local and site level.
147. At a regional level, State Planning Policy supports maintaining and expanding boating and recreational infrastructure around Port Phillip Bay, including in the St Kilda maritime precinct.⁵ State Planning Policy also requires Planning Authorities to consider the Boating Coastal Action Plan (2007). The Recreational Boating Facilities Framework (2014)⁶ identifies the St Kilda Marina as a ‘Multipurpose Regional Facility with a Boat Ramp’ and it seeks to focus investment on the upgrade of facilities at St Kilda, amongst other locations.⁷
148. The Marine and Coastal Policy describes the coastal management and planning tools at a local and site level as follows:
- At the local level, the Policy identifies the relevant tools as follows:
 - Coastal and Marine Management Plans are the designated management tools.
 - Local policies, zones, overlays and particular provisions within planning schemes are the designated planning tools
 - At the site level, the Policy identifies the relevant tools as follows:
 - Consents and regulation for use and development on marine and coastal crown land are the designated management tools.
 - Planning permits for uses and developments are the designated planning tools.
149. The Marine and Coastal Planning Act (and its predecessor the VCS) encourage the use of a tailored zoning and overlay provisions to ensure that the outcomes of State and regional coastal strategies and policies are realised along Victoria’s coastline.
150. These zoning and overlay tools identified as an essential parts of an integrated coastal planning framework that makes the strategic and orderly assessment of planning permit applications possible, and they are intended to sit alongside management tools such as leases and coastal and marine consents.
151. I have set out elsewhere in this Statement the reasons why I consider the SUZ and DPO2 as more appropriate tools for the planning of the future use and development of the Subject Site than the

⁴ Clauses 12 and 17 of the PPF refer to the previous Victorian Coastal Strategy (2014) but I expect that this will be updated to reflect the newly released Policy in the near future. In any event, the VCS (2014) identified the same approach to integrating management and planning in coastal areas, as summarised on page 7 of that document.

⁵ PPF, Clause 17.04-2S

⁶ The Recreational Boating Facilities Frameworks (2014) updates and translates the boating facility hierarchy from the 2007 Boating Coastal Action Plan.

⁷ The Recreational Boating Facilities Frameworks Part 3 (2014), page 31

current PCRZ. Together, the SUZ and DPO2 will provide certainty in relation to the intended future use and development of the Subject Site, and they will provide for a master planned approach to the Marina's redevelopment.

152. For all of the above reasons, it is my view that Planning Scheme Amendment C171 is strategically justified and that it will give proper effect to State Planning, Marine and Coastal Policy.

6.6. **Uncertainty over the future development outcome.**

153. Council has received submission that raise concerns about the degree of ambiguity and uncertainty regarding the future development of the Subject Site, the lack of specificity in the amendment documentation, as well as expressing concerns regarding the complexity of the amendment documentation.
154. I acknowledge the concerns regarding the level of uncertainty regarding the specific form of the future development of the Subject Site. The planning framework that is proposed for to the subject site provides for an orderly staged approach to settling the detail of the ultimate future development of the site, which can be summarised as follows:
- The Site Brief (which has involved extensive community input) sets a vision and design guidelines for the future development of the site
 - Amendment C171 (which has also been subject to community input) is seeking to translate the Site Brief into the Port Phillip Planning Scheme, in order to provide a statutory basis to the Site Brief in the future assessment of development proposals on the Subject Site. These planning provisions (and the DPO2 in particular) set out in a fair amount of detail regarding the use and development that is permissible on the Subject Site.
 - DPO2 will require that a Development Plan be prepared for the Subject Site. I understand that the Development Plan will be prepared by the Lease-holder once they are selected. DPO2 requires a comprehensive range of material to be prepared as part of the Development Plan. Council has given an undertaking that the community will be given an opportunity to make comment on the Development Plan once it is prepared.
 - Once the Development Plan is approved, planning permits will be required. These permit applications will not be subject to third party notification or appeal. However, they must be generally in accordance with the approved Development Plan, which I expect will need to be a very detailed and precise document, in order to satisfy the requirements of DPO2.
155. I do not consider that it is practical or desirable for Amendment C171 to attempt to provide any greater level of detail over the potential future form of development than it currently does. Further detail can be developed and shared with the community once a lease-holder has been selected and a Development Plan can be prepared which has the benefit of the proponent's expertise in relation to marina design and operations.
156. I also acknowledge that Amendment C171 is supported by extensive and in parts complex documentation that no doubt has been challenging for some members of the community to

understand. In my view the provision of such extensive documentation demonstrates a commitment on the part of Council to a rigorous and transparent planning process. I note that Council has made efforts throughout the Amendment process to explain the Amendment material, including making themselves available to the community to answer questions.

157. I note that some submitters have requested that the DPO schedule be amended to make provision for community notification and comment on the Development Plan. The DPO Schedule is a 'template' Schedule under the Victoria Planning provisions, and there is no scope under this template for such notice to be written into it. I do note however that Council has already formally committed to providing the community with the opportunity to review and make comment on the Development Plan once it is prepared.

6.7. Increase in allowable commercial and retail floor space.

158. Council has received submission that raise concerns about the increase in allowable commercial and floorspace on the Subject Site.
159. I understand that the marina currently accommodates circa 3,600 sqm of commercial and retail uses, and that it has included commercial activities within its operations since its inception.
160. The Site Brief contains a series of economic and financial objectives for the Marina, which include drawing people to the site from within and outside Port Phillip, creating a mix of businesses and experiences on the site, and achieving financial feasibility. Allowing a reasonable range of complementary commercial and retail uses not only will help draw people to the site but it will contribute towards achieving financial feasibility for the marina.
161. The Site Brief identifies that the site must have up to 3,600 sqm of leasable commercial and retail floorspace and would desirably have up to 5000 sqm of such space. It identifies a series of 'allowable' complementary uses, and uses that are not intended to be permitted.
162. DPO2 has been drafted to give effect to the above design criteria. It o specifies that the total leasable commercial and retail floor area must not exceed 5,000 sqm, and the range of uses that are permitted under the SUZ are consistent with those set out in the Site Brief (e.g. office where they are in conjunction with the marina, takeaway food, bar, restaurant, etc.).
163. I consider that the potential increase in floor area from 3,600 sqm to 5,000 sqm is a modest but important feature to both draw people to the site and support its financial feasibility. I also consider that the range of commercial and retail uses permitted under the SUZ are complementary to the primary marina function and should be supported.

Mark Woodland
Director, Echelon Planning
16th March 2020

Appendix 1 - Mark Woodland CV

CURRICULUM VITAE

Address:
3 Prentice Street, Brunswick

Phone:
Work: 03 9021 0432
(mob) 0437 467 024

Date of Birth:
25th June 1970

Nationality:
Australian

Mark Woodland

Expertise:

- Strategic planning
- Development facilitation
- Project management & feasibility
- Structure planning
- Urban policy
- Stakeholder & Government relations
- Community consultation
- Media & communications.

Employment Overview:

Director, Echelon Planning
(July 2012 – Present)

Strategic Planning Director – Growth Areas Authority
(July 2010 – June 2012)

New Business/Strategic Planning Manager – Delfin Lend Lease
(July 2007 – July 2010)

Senior Planning Adviser - Minister for Planning
(February 2005 - June 2007)

Manager, Strategic Planning - City of Melbourne
(September 2001 - January 2005)

Manager, Investment Development - Hume City Council
(Jan 2001 - Aug 2001)

Manager, Strategic Planning – City of Kingston
Sept 1997 - Dec 2000

Urban & Environmental Planning Consultant - Gutteridge Haskins & Davey Pty Ltd
(Sept 1995 - Aug 1997)

Urban Planner – Cities of Port Phillip, Boroondara and Camberwell
(1991 - 1995)

Qualifications:

- Bachelor Planning and Design 1990 - Melbourne University.
- Grad. Certificate, Business Administration. , 2000 - Monash School of Business.

Committee Memberships:

- Property Council of Australia – current member of the Residential Developers Committee
- Victorian Planning & Environmental Law Association

Curriculum Vitae for Mark Woodland

Appendix 2 – Facilities and Services across the Boating Hierarchy

(extract from the Recreation Boating Facilities Framework 2014)

Table 2 Facilities and services across the Boating Hierarchy (Revised from Boating CAP)

Facility/Service	Boating Facility				
	State	Regional	District	Local	Informal
✓ Required					
○ Optional					
✗ Not provided					
General and Access*					
Capacity for major public boating events	✓	○	○	✗	✗
Safe Haven	✓	✓	○	✗	✗
Public Access	✓	✓	✓	○	✓
Car Parking	✓	✓	✓	✓	○
Launch, Retrieval and temporary mooring					
Boat Ramps	✓	✓	○	○	✗
Pier/Jetty	✓	✓	○	○	✗
Berthing					
Public (Casual) Berths	✓	✓	○	✗	✗
Wet Berths	✓	✓	○	○	✗
Dry Berths	✓	✓	○	✗	✗
Moorings	✓	○	○	○	○
Services/Utilities					
Fuel	✓	○	○	○	○
Pumpout	✓	✓	✓	○	✗
Toilets	✓	✓	✓	○	✗
Washdown	✓	○	○	○	○
Fish cleaning	○	○	○	○	○
Security	✓	✓	○	✗	✗
Nav aids	✓	✓	○	○	○
Service utilities (power/water/lighting)	✓	✓	✓	○	✗
Maintenance Facilities					
Boat repair and servicing	✓	○	○	✗	✗
Chandlery/Boating retail	✓	○	○	✗	✗
Recreational /Tourist Facilities					
Commercial vessel berthing facilities (including ferries)	✓	✓	○	✗	✗
Boat hire/charter	✓	✓	○	✗	✗
Community Facilities (including club rooms)	✓	✓	○	○	✗
Recreational facilities (including picnic tables, walkways)	✓	✓	○	○	○
Retail or entertainment and land based uses/attractors	✓	○	○	✗	✗
Community use, access and enjoyment of the facility	✓	✓	✓	✓	✓

Note:* Principles related to disabled access apply

Appendix 3 – Coastal Management and Planning Framework

(extract from the Marine and Coastal Policy 2020)

Relationship between the Marine and Coastal Act 2018 planning hierarchy and the broader land use planning system

