



134-142 FERRARS STREET, SOUTH MELBOURNE

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

1. PURPOSE

1.1 To provide a Council position on Ministerial Application 3/2013/MIN/B at the abovementioned address, to amend the existing permit under Section 72 of the *Planning and Environment Act 1987* to amend Condition 18 (Affordable Housing).

2. EXECUTIVE SUMMARY

WARD:	Gateway
TRIGGER FOR DETERMINATION BY COMMITTEE:	Development and use for accommodation in the Capital City Zone
APPLICATION NO:	DELWP: 2013/000088-2 Council Ref: 3/2013/MIN/B
APPLICANT:	Contour
EXISTING USE:	Construction site – works associated with Planning Permit 2013/000088-1
ABUTTING USES:	Offices, commercial and light industrial.
ZONING:	Capital City Zone (CCZ1)
OVERLAYS:	Incorporated Plan Overlay (ICO1) Environmental Audit Overlay (EAO) Parking Overlay (PO1) Design and Development Overlay (DDO30) Special Building Overlay (SBO2)
STATUTORY TIME REMAINING FOR DECISION AS AT DAY OF COUNCIL	25 June 2020

- 2.1 The Minister for Planning (the Minister) is the Responsible Authority for the subject site.
- 2.2 On 10 April 2017 the Victorian Civil and Administrative Tribunal (VCAT) directed a permit issue to allow, *Demolition of the existing building, construction of a building of no more than 18 levels and construction and carrying out works, and use the land for*



Accommodation in the Capital City Zone. Construction of a building of no more than 18 levels and construction and carrying out works in the Design and Development Overlay after a consented position was reached by all parties at a Compulsory Conference.

- 2.3 Importantly, Condition 18 relating to affordable housing was negotiated as part of the consented position.
- 2.4 Condition 19 of the Planning Permit was amended on 29 June 2018 to facilitate demolition works prior to the submission of a Certificate of Environmental Audit.
- 2.5 The permit applicant is now seeking an amendment to Condition 18 which relates to the provision of affordable housing.
- 2.6 The Victorian planning system recognises that a permit holder's intentions may change over time. Rather than requiring a new permit application to be made every time a change is proposed; Section 72 of the *Planning and Environment Act 1987* allows applicants to apply to the responsible authority for an amendment to a permit and associated plans.
- 2.7 An application to amend a permit under Section 72, including any plans, drawings or other documents approved under a permit, follows the same process as an application for a permit. It has the same requirements for giving notice and referral. However, the assessment for an application to amend a permit focuses only on the amendment itself and avoids reopening all the issues associated with the approved use or development. It also avoids the proliferation over time of permits for different aspects of the use and development of a parcel of land.
- 2.8 Currently, Condition 18 requires the permit holder to provide 6 dwellings (6%) of the approved 107 dwellings as affordable housing, being 1-bedroom dwellings to be transferred to a Housing Trust approved by the Responsible Authority and the City of Port Phillip.

The dwellings must also:

- Be managed as social housing in perpetuity in accordance with the Trust Deed by a registered Housing Association or Housing Provider approved by the Responsible Authority and the City of Port Phillip.
 - Be set aside for occupation by low income residents to the satisfaction of the Responsible Authority and the City of Port Phillip; and
 - Be provided with one bicycle space.
- 2.9 Condition 18 also requires the owner to enter into an agreement under Section 173 of the Planning and Environment Act 1987 (PEA), register the agreement on title for the land in accordance with Section 181 of the PEA, and provide the responsible authority with the dealing number confirming registration of title within 12 months of the commencement of construction. As demolition works commenced in February 2019, the requirements to satisfy this lapsed in February 2020.
 - 2.10 Condition 18(vii) notes in the event the permit holder is unable to achieve an arrangement in accordance with this condition, the City of Port Phillip would be responsible for locating a Housing Association or Housing Provider.



2.11 The applicant now seeks an amendment to the condition to provide a different method of delivering affordable housing on the site. The applicant has nominated a built-to-rent housing model, rather than gifted to a Registered Housing Association housing as currently approved.

2.12 In summary, it is proposed that:

- Six (6) of the proposed dwellings (6%) would be offered as affordable housing units.
- The entire development, including the 6 affordable housing units, is to be held and managed as built-to-rent housing by a single entity.
- Tenants for the affordable housing units would be selected in accordance with established affordable housing eligibility criteria and / or in partnership with existing affordable housing providers.
- Affordable housing units would be rented at rates which meet the test of 'affordable' having regard to the income bands published by the State Government and specified in Section 3AB - Specification of Income Ranges of the Planning and Environment Act 1987 and agreed with the Responsible Authority.
- The affordable housing units would be offered as affordable housing for a period of 15-years.

2.13 Council officers do not support the proposed amendments because:

- The developer has not justified why they cannot meet the current permit conditions. It is considered that justification must be very compelling given the proposed affordable housing condition was agreed to in good faith by all parties as part of the consented position. It is also considered that the s 72 process is being used to obtain a more favourable outcome than the agreed condition, which was central to the consented position by Council. It is unlikely that Council would have consented to the affordable housing offer as proposed in this application. The proposed amendment dilutes the intent of the consented condition and fails to provide a comparable level of affordable housing delivered on-site or the Montague Precinct into perpetuity.
- In principle there is no objection to a build-to rent model, however as outlined, the proposed condition fails to provide a comparable level of affordable housing on the land or the Montague Precinct into perpetuity. The alternative of a 'build to rent' arrangement is not supported with affordability periods set at 15 years too short. It is the view of Council's Housing Officer that the affordability period should be for the building's economic life which best practice benchmarks at 30 years. Short affordability terms only defer an affordability problem for the next generation of State and municipal staff to solve and will create a social problem through generating future housing stress or homelessness. This has never been more relevant considering the impacts of Covid-19 to those most vulnerable in society.



- The amended Condition 18 no longer specifically refers to occupation for low income residents and instead refers generally to all three bands as defined at S3AA of the Act. The proposed rental target at 75% of the market rate would only target moderate incomes and would exclude very low and low-income households from living and working in FBURA.
- 2.14 For these reasons, the proposed amendments to Condition 18 are not supported. Should the Department determine to support the amendment to this condition, officers recommend further amendments to provide greater flexibility in response to emerging policy relating to affordable housing.
- 2.15 It is recommended that Council advise the Minister (C/- the Department of Environment, Land, Water and Planning) as follows:
- Council does not support the proposed amendments to Condition 18.
 - If the Department supports the proposed amendment to Condition 18, Council requests Condition 18 be amended as per the recommendations outlined in this report.

3. RECOMMENDATION

RECOMMENDATION – PART A

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

RECOMMENDATION – PART B

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

Condition 18 amended to read:

Affordable Housing

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

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

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



- (i) The provision of 6% of the total number of dwellings (rounded down to the nearest whole number) **as Affordable Housing one (1) bedroom dwellings within the building;**
- (ii) **All of the Affordable Housing dwellings are made available for rent at rates affordable for people on very low, low or moderate incomes in accordance with Section 3AA and 3AB the Planning and Environment Act (1987) (Vic.) definition of affordable housing.**
- (iii) Unless **otherwise agreed by the Responsible Authority**, utilise one or more of the following mechanisms for the delivery of the affordable housing:
 - **Transfer of the dwellings to a registered housing agency or other housing provider or trust approved by the Responsible Authority.**
 - **Leasing of the dwellings as affordable housing under the management of a registered housing agency or housing provider or trust approved by the Responsible Authority for a period of not less than 30 years.**
- (iv) **The Affordable housing dwellings must be made available for rent within six (6) months of the issue of a Certificate of Occupation for the development;**
- (v) The dwellings to be tenure blind.
- (vi) **Captured under 30-year timeframe condition outlined above.**
- (vii) One bicycle space must be allocated to each affordable housing dwelling.
- (viii) The owner **of the Affordable Housing dwellings to** be responsible for:
 - **All Owners Corporation costs.**
 - **The on-going management and maintenance of the building, including communal areas and facilities, resident amenity areas.**
 - **The on-going management and maintenance and individual apartments, including kitchens, other joinery, fixings, carpet and paint (except where damage is due to the occupants negligent activity)**
- (ix) In the event the permit holder is unable to achieve an arrangement in accordance with this condition, to Council's satisfaction, the City of Port Phillip will be responsible for locating a Housing Association or Housing Provider.

RECOMMENDATION – PART C

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



4. RELEVANT BACKGROUND

- 4.1 On 21 December 2012, an application was made to the Minister c/- the Department of Environment, Land, Water and Planning (the Department) to demolish the existing 2-storey offices on the subject site and construct a 49 Level (153.7m) tower with a six level (21.9m) podium comprising 2 shop tenancies (total 178.9m² floor area), 60-80 place child care centre and 381 dwellings (145 x 1BR, 226 x 2BR and 10 x 3BR) and 214 (210 resident, 2 retail, and 2 child care centre) car spaces (0.55 car spaces/dwelling).
- 4.2 Council officers recommended the original application not be supported because its height exceeded the recommended height in the Fishermans Bend Draft Vision (as relevant at the time of assessment). Council advised the then Minister for Planning on 30 April 2013 that it did not support the application.
- 4.3 The Minister did not make a decision on the application and the applicants requested the application be put on hold.
- 4.4 Amendment GC29 was introduced on 17 April 2015. Pursuant to transition provisions in the amendment, the application could have been determined under the earlier discretionary preferred height regimen because it was lodged prior to 17 April 2015. This amendment provided for a preferred 18-storey / 60m height controls for the site.
- 4.5 The applicant prepared a substantially amended proposal reduced the height of the building from 49 levels to 18 and 23 levels, and the number of dwellings from 381 to 281. This application was informally referred to Council for comment. Council considered the application at its Statutory Planning Committee Meeting on 16 February 2016 where it was determined that the 23 storey / 82.19m part of the tower would exceed the preferred and mandatory heights and would be inconsistent with the emerging built form character of the area. Council resolved to advise the Minister it did not support the proposal.
- 4.6 The Department of Environment, Land, Water and Planning (DELWP) determined to refuse to grant a planning permit.
- 4.7 The applicant lodged a Section 77 Application for Review against DELWP's Refusal to Grant a Planning Permit.
- 4.8 On 10 April 2017 the Victorian Civil and Administrative Tribunal (VCAT) directed a permit issue to allow, Demolition of the existing building, construction of a building of no more than 18 levels and construction and carrying out works, and use the land for Accommodation in the Capital City Zone. Construction of a building of no more than 18 levels and construction and carrying out works in the Design and Development Overlay. The permit was issued pursuant to VCAT Order P2305/2016 dated 6 April 2017 after a consented position was reached by all parties.
- 4.9 Condition 18 relating to affordable housing was negotiated as part of the consented position.
- 4.10 In June 2018, a draft Section 173 prepared by the owner was submitted to Council for review. The Section 173 Agreement did not nominate a Registered Housing Provider or Trust as per the requirements of Condition 18. There were no further amendments in response to this advice.



- 4.11 The requirements of Condition 18 (vii) requires, *“in the event the permit holder is unable to achieve an arrangement in accordance with this condition, to Council’s satisfaction, the City of Port Phillip would be responsible for locating a Housing Association or Housing Provider.”*
- 4.12 Council has not been provided with evidence that any Registered Housing Associations were approached or contacted to seek assistance pursuant to Condition 18 (vii).
- 4.13 On 13 August 2019 DELWP referred the current application to amend Condition 18 to Council. On 13 September 2019, the City of Port Phillip advised DELWP and the applicant on a request for additional information to facilitate assessment of the application. Concerns regarding the proposed amendment based on the available information were outlined in the same correspondence.
- 4.14 A partial response to the request for further information was provided on 2 December 2019.
- 4.15 On 13 February 2020 Council advised DELWP on omissions from the request for further information and reiterated concerns regarding the proposed amended wording of condition.
- 4.16 Council received a further response to concerns raised on 14 April 2020 but the response provided remains incomplete. In the absence of all requested information Council officers now proceed to present this report for consideration.

5. PROPOSAL

- 5.1 It is proposed to amend Condition 18 which requires the owner to enter into an agreement under Section 173 of the *Planning and Environment Act 1987*, as it relates to affordable housing.
- 5.2 The applicant advises the proposed amendment to the condition is intended to enable a model of affordable housing that can be practically be delivered as part of the approved development, which is now proposed to be held as built-to-rent housing, rather than sold as market housing to private purchasers as originally intended.
- 5.3 In summary, it is proposed that:
- Six (6) of the proposed dwellings (ie.6%) would be offered as affordable housing units.
 - The entire development, including the six affordable housing units, is to be held and managed as built-to-rent housing by a single entity.
 - Tenants for the affordable housing units would be selected in accordance with established affordable housing eligibility criteria and / or in partnership with existing affordable housing providers. The applicant also states:
 - Affordable housing units would be rented at rates which meet the test of 'affordable' having regard to the income bands published by the State Government and specified in Section 3AB - Specification of Income Ranges of the Planning and Environment Act 1987 and agreed with the Responsible Authority.
 - The dwellings would be made available for rent at 75% of market rate.



- The affordable housing units would be offered as affordable housing for a period of 15-years.
- The owner / operator would be responsible for all body corporate costs.
- The owner / operator would be responsible for the on-going management and maintenance of the building, including communal areas and facilities, resident amenity areas.
- The owner / operator would be responsible for the on-going management and maintenance and individual apartments, including kitchens, other joinery, fixings, carpet and paint (except where damage is due to the occupants negligent activity)

5.4 On this basis, the applicant has requested to amend the wording of the affordable housing condition 18, to provide for the alternative delivery of affordable housing as follows:

Existing Permit	Proposed Amended Permit
<p>Social Housing</p> <p>18. Within 12 months of the commencement of construction, including demolition, bulk excavation and site preparation works (but excluding any clean up works) the owner must:</p> <p>(a) enter into an agreement under Section 173 of the Planning and Environment Act 1987 to the satisfaction of the Responsible Authority;</p> <p>(b) register the agreement on the title(s) for the land in accordance with Section 181 of the Planning and Environment Act 1987; and</p> <p>(c) provide the Responsible Authority with the dealing number confirming the registration of the title.</p> <p>The agreement must be in a form to the satisfaction of the Responsible Authority, and the owner must be responsible for the expense of the preparation and registration of the agreement, including the Responsible Authority's reasonable costs and expense (including legal expenses)</p>	<p>Affordable Housing</p> <p>18. Before the occupation of the development the owner must:</p> <p>(a) enter into an agreement under Section 173 of the Planning and Environment Act 1987 to the satisfaction of the Responsible Authority;</p> <p>(b) register the agreement on the title(s) for any lot(s) that contain affordable housing dwellings in accordance with Section 181 of the Planning and Environment Act 1987; and</p> <p>(c) provide the Responsible Authority with the dealing number confirming the registration of the title.</p> <p>The agreement must be in a form to the satisfaction of the Responsible Authority, and the owner must be responsible for the expense of the preparation and registration of the agreement, including the Responsible Authority's reasonable costs and expense (including legal expenses)</p>



<p>incidental to the preparation, registration, and ending of the agreement. The agreement must contain covenants to be registered on the Title of the property so as to run with the land, and must provide for the following:</p>	<p>incidental to the preparation, registration, and ending of the agreement. The agreement must contain covenants to be registered on the Title of the property so as to run with the land, and must provide for the following:</p>
<p>(i) the provision of 6% of the total number of dwellings (rounded down to the nearest whole number) as affordable housing 1 bedroom dwellings within the building;</p>	<p>(i) the provision of 6% of the total number of dwellings (rounded down to the nearest whole number) as affordable housing 1 bedroom dwellings within the building;</p>
<p>(ii) the dwellings to be tenure blind;</p>	<p>(ii) All of the affordable housing dwellings are made available for rent at rates affordable for people on very low, low or moderate incomes in accordance with the Planning and Environment Act (1987) (Vic.) definition of affordable housing.</p>
<p>(iii) title to the dwellings to be transferred to a Housing Trust approved by the Responsible Authority and the City of Port Phillip</p>	<p>(iii) A mechanism requiring owners of affordable housing dwellings to maintain documentation demonstrating the basis for:</p> <ul style="list-style-type: none"> (a) calculating affordable rents; (b) the amount of rent charged to tenants; (c) the assessment of tenants and their income showing that the meet relevant tests to be eligible to rent the affordable housing dwellings as very low, low or moderate income residents in accordance with the Planning and Environment Act 1987 (Vic.) definition of affordable housing; and (d) how rent increases are to be calculated and applied.



(iv) dwellings must be managed as social housing in perpetuity in accordance with the Trust Deed by a registered Housing Association or Housing Provider approved by the Responsible Authority and the City of Port Phillip.	(iv) the affordable housing dwellings must be made available for rent within six months of the competition of the development;
(v) the dwellings be set aside for occupation by low income residents to the satisfaction of the Responsible Authority and the City of Port Phillip; and	(v) the dwellings to be tenure blind.
(vi) one bicycle space must be allocated to each affordable housing dwelling.	(vi) dwellings must be managed as affordable housing for the economic life of the development or 15 years, whichever is the earlier.
(vii) one bicycle space must be allocated to each affordable housing dwelling.	(vii) one bicycle space must be allocated to each affordable housing dwelling.
(viii) in the event the permit holder is unable to achieve an arrangement in accordance with this condition, to Council’s satisfaction, the City of Port Phillip would be responsible for locating a Housing Association or Housing Provider.	In the event the permit holder is unable to achieve an arrangement in accordance with this condition, the City of Port Phillip will be responsible for locating a Housing Association or Housing Provider to identify tenants that meet the criteria listed in Condition 18(iii)(c).

6. SUBJECT SITE AND SURROUNDS

- 6.1 The subject site is located on the north-west corner of Ferrars Street and Thistlethwaite Street, South Melbourne.
- 6.2 The land has a northerly side abuttal to Buckhurst Lane, which is fully constructed with bluestone swales and narrow footpaths along both sides. Buckhurst Lane. It runs between Ferrars Street and George Street to the west and provides rear access to a number of properties facing Buckhurst Street and Thistlethwaite Street, it currently allows travel in both directions.
- 6.3 The site is an irregular shape and features three street frontages, including a frontage to Ferrars Street of 31.00m, a frontage to Thistlethwaite Street of 40.6m, a frontage to Buckhurst Lane made up of two parts totalling 58.91m, and a southern boundary which abuts 2 Thistlethwaite Street of 44.89m. The total site area is 1,970m².



- 6.4 The land is generally flat, with a slight fall from east to west of approximately 700mm and from south to north of approximately 600mm.
- 6.5 The site was previously occupied by a two-storey commercial building which was generally built to its street frontages, but for the southern corner of the building which featured a hard stand car parking area.
- 6.6 The aforementioned buildings on site were demolished in February 2019 in accordance with the requirements of the Planning Permit. Construction works have since been progressing to the podium levels at the time of drafting this report.
- 6.7 Land surrounding the subject site comprises predominantly low scale factory/warehouse buildings which are occupied by light industrial, warehousing, office and motor vehicle retailing type land uses. However, the character of this area is changing as the realisation of high density, mixed use, commercial, office and residential uses start to emerge within the area as a result of urban renewal within this area.
- 6.8 Many sites within the immediate area have been demolished pending commencement of construction for high-density mixed-use development. These sites are interspersed with existing one to two storey light industrial built forms.
- 6.9 There are several approved medium to high rise development within proximity of the site, along with various sites currently under planning consideration, which represent an emerging built form character within this part of the Fishermans Bend Urban Renewal Area.

7. PERMIT TRIGGERS

- 7.1 The following zone and overlay controls apply to the site, with the original planning permissions required as outlined below:

Planning Scheme Provision	Planning Permit requirement
<p>Clause 37.04 Capital City Zone (CCZ1)</p>	<p>Pursuant to Section 2 of the Table of uses at Clause 37.04-1 of the CCZ1 and Clause 1 of the Schedule to the CCZ1, a planning permit is required to use land for a use not in Section 1 or 3 of the Schedule to the zone. This includes Accommodation (Dwellings) if it does not meet the following conditions:</p> <ul style="list-style-type: none"> • Must not be within an Amenity buffer shown on Map 4. • Must not be within 450m of the South Melbourne to Brooklyn or Dandenong to West Melbourne pipeline as shown on Map 5. • Must not be within 100m of the Port Melbourne to Symex Holdings pipeline as shown on Map 5. <p>The site is located within 450m of the South Melbourne to Brooklyn pipeline and thus requires a permit under this clause.</p> <p>Pursuant to Clause 37.04-4 of the CCZ1 and Clause 4.0 of the Schedule to the CCZ1, a permit is required to construct a building or construct or carry out works in the Capital City Zone, except for an</p>



	<p>addition of, or modification to a verandah, awning, sunblind or canopy of an existing dwelling.</p> <p>Pursuant to Clause 37.04-4, an apartment development must meet the requirements of Clause 58. This does not apply to:</p> <ul style="list-style-type: none"> • An application lodged before the approval of Amendment VC136 (02-Feb-2017). • An application for amendment of a permit under S72, if the original application was lodged before the approval of Amendment VC136. <p>Pursuant to the above exemptions, the application was received after the approval date of Amendment VC136 and this amendment is exempt from the requirements of Clause 58, noting there are no proposed changes to the apartment layouts.</p> <p>Pursuant to Clause 37.04-4 of the CCZ1 and Clause 4.1 of Schedule 1 to the CCZ1, a permit is required to demolish or remove a building or works, except for:</p> <ul style="list-style-type: none"> • The demolition or removal of temporary structures; • The demolition ordered or undertaken by the responsible authority in accordance with the relevant legislation or local law. <p>A planning permit is required to demolish the buildings on site.</p> <p>An application for the use of land, to demolish or remove a building and to construct a building or construct or carry out works) is exempt from the notice requirements of Section 52(1)(a), (b) and (d), the decision requirements of Section 64(1), (2) and (3) and the review rights of Section 82(1) of the Act. This does not apply to an application to use land for a nightclub, tavern, hotel or adult sex product shop.</p>
<p>Clause 43.02: Design and Development Overlay - Schedule 30 - Fishermans Bend - Montague Precinct (DDO30)</p>	<p>The land is in Precinct Area M5 of DDO30 which encourages a hybrid (predominantly mid-rise) building typology and a preferred maximum building height of 43 metres (12-storeys).</p> <p>Pursuant to Clause 43.02-2 of the DDO and Clause 2.0 of Schedule 30 to the DDO, a permit is required to construct a building or construct or carry out works in the Design and Development Overlay.</p> <p>Pursuant to Clause 43.02-2 of the DDO and Clause 2.0 of Schedule 30 to the DDO, a permit is required to construct a building or construct or carry out works in the Design and Development Overlay.</p> <p>An application to construct a building or construct or carry out works in DDO30 is exempt from the notice requirements of Section 52(1)(a), (b) and (d), the decision requirements of Section 64(1), (2) and (3) and the review rights of Section 82(1) of the Act.</p>
<p>Clause 45.03: Environmental Audit Overlay (EAO)</p>	<p>Pursuant to Clause 45.03-1 of the EAO, before a sensitive use (residential use, child care centre, pre-school centre, primary school, education centre or informal outdoor recreation) commences or before the construction or carrying out of buildings and works in</p>



	<p>association with a sensitive use commences, the developer must obtain either;</p> <ul style="list-style-type: none"> • A certificate of environmental audit issued for the land in accordance with Part IXD of the Environment Protection Act 1970, or • A statement in accordance with Part IXD of the Environment Protection Act 1970 by an accredited auditor approved under that Act that the environmental conditions of the land are suitable for the sensitive use. <p>A planning permit is not required under this clause.</p>
Clause 44.05 Special Building Overlay Schedule 2 (SBO2)	<p>Pursuant to Clause 44.05-2 of a permit is required to construct a building or construct and carry out works.</p> <p>Pursuant to Clause 44.05-4 an application under the overlay is exempt from the notice requirements of Section 52(1)(a), (b) and (d), the decision requirements of Section 64(1), (2) and (3) and the review rights of Section 82(1) of the Act.</p> <p>Pursuant to Clause 44.05-5 an application must be referred to the relevant floodplain management authority under Section 55 of the Act. The floodplain management authority for the SBO2 is CoPP.</p>
Clause 45.09 Parking Overlay (PO1)	<p>A planning permit is required to provide car parking spaces in excess of the rates specified in Table 1 of Schedule 1 to the Overlay.</p> <p>The proposed parking provision does not exceed the maximum rates set out in the Table, and therefore no permit is required under this clause.</p>
Clause 52.06 Car Parking	<p>Car parking should meet the design requirements of Clause 52.06-8. A permit may be granted to vary any dimension or requirement of Clause 52.06-8 (Design standards for car parking).</p> <p><i>The proposed uses are subject to the maximum car parking rates in the Parking Overlay.</i></p>
Clause 52.34 Bicycle Facilities	<p>A new use must not commence or the floor area of an existing use must not be increased until the required bicycle facilities have been provided on the land pursuant to Clause 52.34-1.</p> <p>A planning permit is required to vary, reduce or waive any bicycle facilities requirement of Clause 52.34-3 and Clause 52.34-4.</p> <p>The proposed amendments do not require assessment pursuant to this clause</p>

7.2 The following Clauses and considerations were introduced into the Port Phillip Planning Scheme after the permit was issued.

Planning Scheme Provision	Why is a planning permit required?	New Permit Trigger?
Clause 45.11: Infrastructure	Pursuant to Schedule 1 to the ICO, a permit may be granted to subdivide land, construct a building or	No



Contribution Overlay (IC01)	<p>construct or carry out works before an infrastructure contributions plan has been incorporated into the scheme for:</p> <ul style="list-style-type: none"> • An existing use of land provided the site coverage is not increased. • A sign. • Consolidation of land or a boundary realignment. <p>The proposed amendments to the conditions of the existing permit are exempt from the ICO.</p>	
-----------------------------	---	--

8. PLANNING SCHEME PROVISIONS

8.1 Planning Policy Frameworks (PPF)

The application needs to be assessed against the Planning Policy Framework (PPF), including:

Clause 11: Settlement, including:

Clause 11.01-1R1: Settlement - Metropolitan Melbourne

Clause 11.02: Managing Growth

Clause 13: Environmental Risks and Amenity, including:

Clause 13.01: Climate Change Impacts

Clause 13.03: Floodplains

Clause 13.07: Amenity

Clause 15: Built Environment and Heritage, including:

15.01-1: Built Environment

15.01-1R: Urban design - Metropolitan Melbourne

15.01-2S: Building Design

15.01-4R: Healthy neighbourhoods - Metropolitan Melbourne

15.01-5S: Neighbourhood character

15.02-1: Sustainable development

15.03: Heritage

15.03-1S: Heritage conservation

15.02-2S: Aboriginal cultural heritage

Clause 16: Housing, including:

Clause 16.01: Residential development

Clause 16.01-3R: Housing diversity - Metropolitan Melbourne

Clause 18: Transport, including:



- Clause 18.02-4S: Car parking
- Clause 19: Infrastructure, including:
 - Clause 19.01: Energy
 - Clause 19.01-1S: Energy supply
 - Clause 19.01-2R: Renewable energy - Metropolitan Melbourne
 - Clause 19.01-3S: Pipeline infrastructure
 - Clause 19.03-1S: Development and infrastructure contributions plans
 - Clause 19.03-4S: Stormwater

8.2 Local Planning Policy Framework (LPPF)

The Municipal Strategic Statement (MSS) contains a number of clauses, which are relevant to this application as follows:

- Clause 21: Municipal Strategic Statement
 - Clause 21.01: Vision and Approach
 - Clause 21.02: Municipal Context and Profile
 - Clause 21.03: Ecologically Sustainable Development
 - Clause 21.04: Land Use, including
 - 21.04-1: Housing and Accommodation
 - Clause 21.05: Built Form, including:
 - 21.05-2: Urban Structure and Character
 - Clause 21.06: Neighbourhoods, including
 - 21.06-8: Fishermans Bend Urban Renewal Area

8.3 Local Planning Policy Framework (LPPF)

The application also needs to be assessed against the following Local Planning Policies:

- Clause 22.12: Stormwater Management (Water Sensitive Urban Design)
- Clause 22.13: Environmentally Sustainable Development
- Clause 22.15: Fishermans Bend Urban Renewal Area Policy

8.4 Other relevant provisions

- Clause 58: Apartment Developments
- Clause 59.05: Buildings and Works in an Overlay
- Clause 59.10: Car Parking
- Clause 65: Decision Guidelines, including:
 - Clause 65.01: Approval of an Application or Plan



8.5 Relevant Planning Scheme Amendment/s:

Since the issue of the Planning Permit the Planning Scheme has been changed including by:

14 November 2016: Amendment GC50:

- Introduced new Local Planning Policy (Clause 22.15) Employment and Dwelling Diversity within the Fishermans Bend Urban Renewal Area, which specifies discretionary targets for dwelling diversity (a percentage of apartments with three or more bedrooms), affordable housing, and minimum floor areas for employment uses;
- Moved interim height controls from the CCZ1 to a new Design and Development Overlay (DDO30), which specifies mandatory maximum street wall and tower heights, and mandatory minimum tower street, side and rear boundary setbacks and tower separation distances. The height and setback controls apply on an interim basis until 31 March 2019, and updates the Fishermans Bend Strategic Framework Plan, July 2014 (Amended September 2016) and incorporated document provisions.

05 October 2018: Amendment GC81:

- Amends MSS at Clauses 21.01 (Vision and Approach), 21.02 (Municipal Context and Profile), 21.03 (Ecologically Sustainable Development), 21.04 (Land Use), 21.05 (Built Form), 21.06 (Neighbourhoods) to update references to FB and include a refined vision for Montague, Sandridge and Wirraway precincts.
- Introduces new local planning policy at Clause 22.15 (Fishermans Bend) to provide guidance and assist with the exercise of discretion in the assessment of planning permit applications in FB.
- Introduces a new Schedule 1 to Clause 37.04 (CCZ) to ensure land use and development outcomes implement the FB Vision, September 2016 and FB Framework, September 2018.
- Introduces new precinct specific Schedules 30, 32 and 33 to Clause 42.03 (Design and Development Overlay) to align built form controls with preferred character and vision for Montague, Sandridge and Wirraway precincts, respectively.
- Introduces new Schedule 1 to Clause 45.09 (Parking Overlay) to encourage sustainable transport patterns and the provision of alternative forms of parking.
- Deletes Schedule 2 to Clause 45.06 (Development Contributions Plan Overlay).
- Inserts Clause 45.11 (Infrastructure Contributions Overlay) and Schedule 1 (ICO1) and applies it to land to enable implementation of an Infrastructure Contributions Plan when prepared.
- Applies Environmental Audit Overlay (EAO) to Montague, Sandridge and Wirraway precincts.



- Applies Environmental Significance Overlay - Schedule 1 (ESO1) to Wirraway precinct near PoM.
- Amends Schedule to Clause 66.04 to include the Port Phillip City Council and Melbourne Water as a recommending referral authority for planning permit applications where the Minister for Planning is the responsible authority and makes minor corrections to existing provisions.
- Amends Schedule to Clause 66.06 to require notice of certain permit applications to be given to the relevant pipeline licensee and Transport for Victoria.
- Amends Schedule to Clause 72.03 to reflect the deletion of Planning Scheme Map 1DCPO and insertion of new Planning Scheme Maps 1EAO, 1ICO, 2ICO and 3ICO.
- Amends Schedule to Clause 72.04 to reflect the deletion of the Fishermans Bend Strategic Framework, July 2016 (amended September 2016) which is outdated.

20 June 2019: Amendment GC118:

- Corrects technical, formatting and grammatical errors identified in the Fishermans Bend planning controls.

9. REFERRALS

9.1 Internal referrals

The application was referred internally to Council's Housing Officer who advised that the amended wording to Condition 18 proposed by the applicant is not supported.

9.2 External referrals

As the Minister is the Responsible Authority, the Minister is required to refer the application to any referral authority required by the Planning Scheme. The City of Port Phillip is a recommending referral authority for this application. The resolution of the Planning Committee on this application to amend the permit will be forwarded to the Minister as Council's position on this application.

10. PUBLIC NOTIFICATION/OBJECTIONS

10.1 The Minister for Planning is the Responsible Authority for the application.

10.2 The Minister has not given notice of the application.

10.3 An application to demolish or remove a building, construct a building or construct or carry out works, or use land (other than a nightclub, tavern, brothel or adult sex product shop) in the Capital City Zone is exempt from the notice requirements of Section 52(1)(a), (b) and (d), the decision requirements of Section 64(1), (2) and (3) and review rights of Section 82(1) of the Act.

11. OFFICER'S ASSESSMENT

11.1 The proposed amendment to Condition 18 Affordable Housing is outlined at Section 5.2 of this report.



- 11.2 Condition 18 is included in direct response to the affordable housing goal of Clause 22.15 which seeks all new residential development over 12 storeys, to allocate at least 6% of dwellings as affordable housing to a registered housing association or provider. 6% of the approved 107 dwellings equates to 6 affordable housing apartments within this development.
- 11.3 Council's target is 20% affordable housing within Fishermans Bend with no less than 30% of these dwellings being provided as community housing owned and managed by registered housing associations or providers. At 6%, the condition of permit was a mediated outcome at a VCAT Compulsory Conference.
- 11.4 Council's affordable housing strategy estimates that by 2031, an additional 3,700 affordable housing dwellings including 1,100 social housing dwellings will be needed to avoid social homogeneity and exclusion of most low income and many moderate-income household types within the FBURA.
- 11.5 Before discussing the merits of the proposed amendment, it is important to understand the context of why an amendment is being sought.

Justification for the proposed amendment

- 11.6 The existing wording of the permit provides clear requirements that within 12 months of the commencement of development that a Section 173 agreement must be agreed and registered on title to 'gift' 6% of apartments (6 apartments) to a Registered Housing Association (or similar) in perpetuity at no cost.
- 11.7 As development commenced in February 2019, the time to fulfil the requirements of this condition has lapsed. Any amendment to this condition should address the timeframes for delivery of this requirement.
- 11.8 Council's request for further information sought an explanation / justification for the requested amendment.
- 11.9 It is considered that the applicant first needs to provide evidence that the requirements of the condition cannot be satisfied prior to consideration of an alternative model. Condition 18 (vii) requires Council to discharge their obligations which includes brokering an agreement if the applicant cannot. Council must ultimately contact the organisations to confirm if there have been approaches and what the issues were, but this should only be done once the applicant has provided evidence. Council has not been provided with evidence of same as part of the application material and the applicant has not requested by Council to fulfil this requirement.
- 11.10 The applicant has only advised the request is necessitated by a change in the development from a conventional 'build to sell' model, to a 'build to rent' model. This model is proposed to also form part of the amended affordable housing offer. The applicant advised that the transfer of the dwellings is counterproductive to this model.
- 11.11 It is noted there is no policy basis to reject a build to rent scheme that will deliver affordable housing as defined under the Act, however it is considered that first principles should ensure an equivalency with the existing requirements of Condition 18 being achieved.



11.12 It is also considered that justification must be very compelling given the proposed affordable housing condition was agreed to in good faith by all parties as part of the consented position. It is also considered that the s 72 process is being used to obtain a more favourable outcome than the agreed condition, which was central to the consented position by Council. Council would have been unlikely to have consented to the amended condition as proposed in this application, as it dilutes the intent of the condition and fails to provide a comparable level of affordable housing delivered on-site or the Montague Precinct into perpetuity.

Acceptability of proposed amendment

11.13 Notwithstanding the preliminary concerns outlined above, Council must consider whether the proposed amendments to Condition 18 are acceptable and continue to achieve the affordable housing goals outlined at Clause 22.15 of the Port Phillip Planning Scheme.

11.14 Council must consider:

- *Whether the proposed amendments will achieve an equivalency with the existing requirements provided by Condition 18?*
- *Will the dwellings be available for occupation by low income residents?*
- *Are the proposed timeframes for the provision of affordable housing reasonable?*

11.15 These matters are considered in the context of the proposed amendments to the wording of the condition below.

To assist with comparison, **red text denotes proposed amendments by applicant** and **bold text highlights the recommend changes**.

Condition 18 - preamble

Proposed condition	Proposed amended condition if the Department seeks to amend the permit
<p>18. Before the occupation of the development the owner must:</p> <p>(a) enter into an agreement under Section 173 of the Planning and Environment Act 1987 to the satisfaction of the Responsible Authority;</p> <p>(b) register the agreement on the titles 'register the agreement on the title(s) for any lot(s) that contain affordable housing dwellings in accordance with Section 181 of the Planning and Environment Act 1987'; and</p> <p>(c) provide the Responsible Authority with the dealing number confirming the registration of the title.</p> <p>The agreement must be in a form to the satisfaction of the Responsible Authority, and the owner must be responsible for the expense</p>	<p>18. Before the occupation of the development the owner must:</p> <p>(a) enter into an agreement under Section 173 of the Planning and Environment Act 1987 to the satisfaction of the Responsible Authority;</p> <p>(b) register the agreement on the titles title(s) for the land of all lots that are allocated as affordable housing dwellings or if the development is not strata titled by lot, register the agreement on the title for the land until such time that they are, in accordance with Section 181 of the Planning and Environment Act 1987; and</p> <p>(c) provide the Responsible Authority with the dealing number confirming the registration of the title.</p>



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

Comment:

11.16 The applicant advised that it is preferred that the condition specifically require that the agreement only be registered on any title(s) for lots which include dwellings allocated as affordable housing as the individual residential apartments (including the affordable dwellings) are not intended to be strata titled, the commercial tenancies are likely to have their own title, and it is not considered necessary or appropriate for a s173 agreement relating to affordable housing to be registered on these commercial titles.

11.17 It is considered that 18(b) is inconsistent with the applicant's proposition of holding the dwellings in one ownership.

Condition 18(i)

Proposed condition	Proposed amended condition if the Department seeks to amend the permit
<p>the provision of 6% of the total number of dwellings (rounded down to the nearest whole number) as affordable housing 1 bedroom dwellings within the building;</p>	<p>the provision of 6% of the total number of dwellings (rounded down to the nearest whole number) as Affordable Housing one (1) bedroom dwellings within the building;</p>

Comment:

11.18 Grammatical and typographical corrections only.

Condition 18(ii)

Proposed condition	Proposed amended condition if the Department seeks to amend the permit
<p>the dwellings to be tenure blind; All of the affordable housing dwellings are made available for rent at rates affordable for people on very low, low or moderate incomes in accordance with the Planning and Environment Act (1987) (Vic.) definition of affordable housing.</p>	<p>All of the Affordable Housing dwellings are made available for rent at rates affordable for people on very low, low or moderate incomes in accordance with Section 3AA and 3AB the Planning and Environment Act (1987) (Vic.) definition of affordable housing.</p>

Comment:

11.19 It is unclear whether the proposed amendments would achieve equivalency with the existing permit conditions.



- 11.20 There have been changes to the Act including new definitions for very low, low and moderate income households as well as changes to the Fishermans Bend Policy at Clause 22.15 and Affordable and Social Housing provisions in the CCZ1 since the permit was issued.
- 11.21 The application material notes that the affordable dwellings will be made available to rent to eligible tenants at 75% of market rate, which would meet the test of 'affordable' having regard to income bands published by the State Government and specified in 'Section 3AB – Specification of Income Ranges' of the Planning and Environment Act 1987 and the commonly used measure of housing costs not exceeding 30% of household income.
- 11.22 Officer assessment of a 75% market discount is that it would respond to moderate income households, but would not be affordable for 'low' and 'very low' income households, noting the current wording of the condition is targeted to low income residents.
- 11.23 Consequently, whether with regard to the common or legislative meaning of low income residents, the amendment application appears inferior to the current permit with regard to affordability.

Condition 18(iii)

Proposed condition	Proposed amended condition if the Department seeks to amend the permit
<p>A mechanism requiring owners of affordable housing dwellings to maintain documentation demonstrating the basis for:</p> <ul style="list-style-type: none"> (a) calculating affordable rents; (b) the amount of rent charged to tenants; (c) the assessment of tenants and their income showing that they meet relevant tests to be eligible to rent the affordable housing dwellings as very low, low or moderate income residents in accordance with the Planning and Environment Act 1987 (Vic.) definition of affordable housing; and (d) how rent increases are to be calculated and applied. 	<p>Unless otherwise agreed by the Responsible Authority, utilise one or more of the following mechanisms for the delivery of the affordable housing:</p> <ul style="list-style-type: none"> a) Transfer of the dwellings to a registered housing agency or other housing provider or trust approved by the Responsible Authority. b) Leasing of the dwellings as affordable housing under the management of a registered housing agency or housing provider or trust approved by the Responsible Authority for a period of not less than 30 years.

Comment:

- 11.24 The wording of the current condition would require that the affordable dwellings be 'managed' by an affordable housing provider in some form (either managed or transferred). The applicant wishes to provide an option of the owner / operator managing / leasing the dwellings as affordable housing to eligible persons by the owner / operator to the satisfaction of the responsible authority for a period of not less than 20 years. The applicant submits that this is reasonable given that the operator will be responsible for the on-going management, building maintenance and body corporate



costs as per the requirements of condition viii below, whereas this responsibility would ordinarily be passed to the housing provider.

11.25 It is noted that the requested changes to this condition are at odds with the applicant’s statement that the residential component of the development will be held in a single entity under a build to rent model. The applicant also appears to have made a concession in their written statement by increasing the timeframe from 15 years to 20 years, albeit not amended to the wording of the proposed conditions.

11.26 As per the commentary for Condition 18(ii), the proposed wording of the condition lacks transparency, as it is run as a business model that appears to consistently target the higher end of the moderate income bracket in lieu of the very low income bracket.

Condition 18(iv)

Proposed condition	Proposed amended condition if the Department seeks to amend the permit
the affordable housing dwellings must be made available for rent within six months of the competition of the development;	the <u>A</u> ffordable <u>h</u> ousing dwellings must be made available for rent within six (6) months of the <u>issue of a Certificate of Occupation</u> for the development;

Comment:

11.27 Grammatical and typographical corrections only.

Condition 18(v)

Proposed condition	Proposed amended condition if the Department seeks to amend the permit
The dwellings to be tenure blind.	The dwellings to be tenure blind.

Comment:

11.28 No change.

Condition 18(vi)

Proposed condition	Proposed amended condition if the Department seeks to amend the permit
dwellings must be managed as affordable housing for the economic life of the development or 15 years, whichever is the earlier.	Captured under 30-year timeframe condition outlined above.

Comment:

11.29 The consented planning permit condition required the provision of affordable housing in perpetuity.

11.30 It is the view of Council officers that the ‘in perpetuity’ part of the permit condition does not mean the developer has to forever provide the affordable housing in that location. The building at some future time may cease to be fit-for-purpose or will eventually reach the end of its economic life. At that time, the value of the affordable housing dwellings can then be reinvested in alternative affordable housing within the City of



Port Phillip. Housing Associations and Housing Providers may be concerned about being required to own and manage community housing in perpetuity, if that prevented them ever needing to sell and reinvest for these reasons and that is an unfounded concern if the term, ‘in perpetuity’ is defined as above but their value could be reinvested in the future into new community housing if the housing becomes no longer fit for purpose, or reaches the end of its economic life. It is the value of the units that is sought to preserve the on-going delivery of affordable housing within Fishermans Bend.

11.31 Council Officers requested advice for the nomination of 15 years as the maximum duration of provision for the affordable housing.

11.32 The applicant advised the economic life of an apartment can be broken down by its major inclusions such as:

- *Carpets typically have a life between 5 to 10 years*
- *Appliances, 3 to 5 years;*
- *Kitchens, 12 ½ years; and*
- *Bathrooms, 15 years.*

11.33 Officers disagree with the above examples of economic life and are considered cosmetic and not a true reflection of the durability or usability or typical retention of those elements, and inconsistent with private or investor ownership / maintenance practices.

11.34 The proposed amendment facilitates the delivery of 6% affordable dwellings used and managed for a minimum period of 15 years in accordance with relevant Housing legislation and regulations. This affordability mechanism is not supported as the method would not facilitate perpetually affordable housing. Council’s position is that the affordable housing must be perpetually affordable housing. It is noted Fishermans Bend Affordable Housing Guidelines are currently in draft form, these guidelines reference affordable housing being provided for a minimum period of 30 years.

11.35 Notwithstanding the above concerns, if the Department are supportive of amending the permit, Council would request the minimum use and management period be increased to a minimum of 30 years and further qualification that the units will be managed by a Housing Trust Housing Association or Housing Provided approved by Port Phillip City Council (see discussion regarding 18(iii)).

Condition 18(vii)

Proposed condition	Proposed amended condition if the Department seeks to amend the permit
one bicycle space must be allocated to each affordable housing dwelling.	one bicycle space must be allocated to each affordable housing dwelling.

Comment:

11.36 No change.



Condition 18(viii)

Proposed condition	Proposed amended condition if the Department seeks to amend the permit
None proposed	The owner <u>of the Affordable Housing dwellings to</u> be responsible for: <ul style="list-style-type: none"> • All <u>Owners Corporation</u> costs. • The on-going management and maintenance of the building, including communal areas and facilities, resident amenity areas. The on-going management and maintenance and individual apartments, including kitchens, other joinery, fixings, carpet and paint (except where damage is due to the occupants negligent activity)

Comment:

11.37 This proposed condition has been included to reflect written advice in the applicant's response to further information. This condition has been agreed by the permit applicant.

Condition 18(ix)

Proposed condition	Proposed amended condition if the Department seeks to amend the permit
In the event the permit holder is unable to achieve an arrangement in accordance with this condition, the City of Port Phillip will be responsible for locating a Housing Association or Housing Provider to identify tenants that meet the criteria listed in Condition 18(iii)(c).	In the event the permit holder is unable to achieve an arrangement in accordance with this condition, to Council's satisfaction, the City of Port Phillip will be responsible for locating a Housing Association or Housing Provider.

Comment:

11.38 The proposed amended wording removes repetition of income bracket criteria.

11.39 In conclusion the proposed alternative condition dilutes the intent to provide affordable, integrated and appropriate housing within this development. The proposed amendment does not provide a level of equivalency to the consented position reached at VCAT and whilst Council acknowledges there may be more options available to deliver affordable housing within this development, the proposal presented within this amendment application is not supported.

11.40 Should the Department be inclined to support the proposed amendments, Council requests the suggested amendments at Condition 18 be included.

12. OFFICER DIRECT OR INDIRECT INTEREST

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



13. OPTIONS

- 13.1 Approve as recommended
- 13.2 Approve with changed or additional conditions
- 13.3 Refuse - on key issues

14. CONCLUSION

- 14.1 The proposed amendments to condition 18 are rejected on the basis the alternative offer dilutes the intent of the current permit condition and does not demonstrate a comparable level of affordable housing delivered within this development.
- 14.2 The developer has not justified why they cannot meet the current permit conditions. It is considered that justification must be very compelling. Given the proposed affordable housing condition was agreed to in good faith by all parties as part of the consented position. It is also considered that the s 72 process is being used to obtain a more favourable outcome than the agreed condition, which was central to the consented position by Council. Council would have been unlikely to have consented to the amended condition as proposed in this application, as it dilutes the intent of the condition and fails to provide a comparable level of affordable housing delivered on-site or the Montague Precinct into perpetuity.
- 14.3 This is the only gifted affordable housing achieved to date in Fishermans Bend, and the proposed amendment would undermine this permit achieving a much-needed accommodation. It is critical that a diversity of affordable and social housing types is delivered in Fishermans Bend, including social housing, rather than the only affordable housing in Fishermans Bend being targeted at, say, moderate income households for limited periods of time, on the basis that developers prefer to not include social housing.
- 14.4 The alternative of a 'build to rent' arrangement is not supported in this instance, as affordability periods set at 15 years is considered too short. It is the view of Council's Housing Officer that the affordability period should be for the building's economic life, which best practice benchmarks at 30 years. Short affordability terms only defer an affordability problem for the next generation of State and municipal staff to solve and will create a social problem through generating future housing stress or homelessness. This has never been more relevant considering the impacts of Covid-19 to those most vulnerable in society.
- 14.5 Advice given by the applicant that providing affordability in perpetuity means that the affordable housing has to remain forever in that location, can be overcome by clarifying the intent of 'in perpetuity' - allowing these dwellings to be sold in the event that they are no longer fit for purpose or the building reaches the end of its economic life, with their market value being reinvested in alternative social housing. Council officers would welcome further discussions with the applicant and government stakeholders in this regard.
- 14.6 It is recommended that Council advises the Minister (C/- the Department of Environment, Land, Water and Planning) that Council does not support the amended Condition 18.

PLANNING COMMITTEE– 24 JUNE 2020



14.7 In the event the Minister (C/- the Department of Environment, Land, Water and Planning) determines to support the proposed amendment to Condition 18, it is recommended Council advise the Minister of the of the suggested amendments at Section 11 of this report.

TRIM FILE NO: PF19/15595

ATTACHMENTS Nil



PLANNING COMMITTEE

MINUTES

24 JUNE 2020



Please consider
the environment
before printing



Consider carefully how
the information in this
document is transmitted



**MINUTES OF THE PLANNING COMMITTEE OF THE PORT PHILLIP
CITY COUNCIL HELD VIRTUALLY ON 24 JUNE 2020**

The meeting opened at 6:30pm.

PRESENT

Cr Voss (Chairperson), Cr Baxter, Cr Bond, Cr Brand, Cr Copsey, Cr Crawford, Cr Gross, Cr Pearl, Cr Simic.

IN ATTENDANCE

Lili Rosic, General Manager City Strategy and Sustainable Development, George Borg Manager City Development, Damian Dewar, Manager Strategy and Design, Kelly White, Head of City Policy, Samindi Yapa, Strategic Planner, Richard Schuster, Coordinator Statutory Planning Lake Ward, Philip Beard, Senior Planner, Nick McLennan, Planning Coordinator Canal Ward, Angus Bevan, Principal Planner, Simon Gutteridge, Planning Team Leader Fishermans Bend, Patricia Stewart, Fishermans Bend Urban Renewal Senior Planner, Kirsty Pearce, Coordinator Governance, Rebecca Purvis, Governance Officer, Emily Williams, Council Meetings Officer.

The City of Port Phillip respectfully acknowledges the Yalukut Weelam Clan of the Boon Wurrung. We pay our respect to their Elders, both past and present. We acknowledge and uphold their continuing relationship to this land.

1. APOLOGIES

Nil.

2. CONFIRMATION OF MINUTES

MOVED Crs Crawford/Bond

That the minutes of the Planning Committee of the Port Phillip City Council held on 27 May 2020 be confirmed.

The vote was taken under DIVISION.

FOR: Crs Bond, Voss, Baxter, Brand, Copsey, Crawford, Gross, Pearl and Simic

AGAINST: Nil

A vote was taken and the MOTION was CARRIED.

3. DECLARATIONS OF CONFLICTS OF INTEREST

Councillor Marcus Pearl declared a direct interest in item 6.4 Statutory Planning Delegated Decisions - May 2020.



4. PUBLIC QUESTION TIME AND SUBMISSIONS

The following submissions were made verbally during the virtual council meeting and can be listened to in full on our website <http://webcast.portphillip.vic.gov.au/archive.php>.

A copy of written submissions has also been made available on the website.

Dominic Zheng, speaking to item 6.2 *54 - 60 St Kilda Road, St Kilda*

John Kauffman, speaking to item 6.3 *5 Prentice Street, St Kilda East*

Simon Kauffman, speaking to item 6.3 *5 Prentice Street, St Kilda East*

Joseph Indomenico, speaking to item 6.5 *11-41 Buckhurst Street, South Melbourne*

Patrick Brennan, speaking to item 6.6 *134 Ferrars St, South Melbourne*

Ben Cooke, speaking to item 6.2 *54 - 60 St Kilda Road, St Kilda*

The following submissions were submitted prior to the meeting and were read out in summary by the General Manager, City Strategy and Sustainable Development. The full submissions can be found on the website <http://www.portphillip.vic.gov.au/june-2020-meetingagendas.htm>

Norma Walker in relation to item 6.2 *54-60 St Kilda road, St Kilda*

Chris Connell in relation to item 6.3 *5 Prentice Street, St Kilda East*

Clare Szymczyk in relation to item 6.7 *101 Salmon Street, Port Melbourne.*

5. COUNCILLOR QUESTION TIME

Councillor Pearl stated that he had been contacted by a number of residents who have placed signs on their properties in relation to Councils budget position. Local Laws Officers have visited their properties to inform them that were liable for a \$800 fine if they did not remove the signs immediately as they did not have a planning permit under the heritage provisions of our planning regulations. Residents were unable to get confirmation from the local laws officer under which section of the act the offence would be charged. The signs are approximately 60cmx40cm and are of an educational nature. My reading of the Planning Scheme paragraph 52.5-10 indicates that the sign does not require a permit. Can officers please inform Council of the exact details of what permit is required for these signs to be temporarily installed at properties across the City under any one of the Councils planning schemes?

George Borg, Manager City Development, took the question on notice.



6. PRESENTATION OF REPORTS

Discussion took place in the following order:

- 1 Amendment C186port (Montague Commercial Precinct, Fishermans Bend)
Consideration Of Submissions And Request To Proceed To Independent Planning Panel
- 2 54 - 60 St Kilda Road, St Kilda
- 3 5 Prentice Street, St Kilda East
- 4 11-41 Buckhurst Street, South Melbourne
- 5 134-142 Ferrars Street, South Melbourne
- 6 101 Salmon Street, Port Melbourne
- 7 Statutory Planning Delegated Decisions - May 2020



6.1 Amendment C186Port (Montague Commercial Precinct, Fishermans Bend) Consideration of Submissions and Request to Proceed to Independent Planning Panel

Purpose

- 1.1 To consider written submissions received to Amendment C186port to the Port Phillip Planning Scheme during the public exhibition stage.
- 1.2 To determine whether to request the Minister for Planning to appoint an independent Planning Panel to consider submissions to the Amendment.
- 1.3 To consider endorsing a response to issues raised in submissions to form the basis of Council's position at the Panel hearing.

MOVED Crs Copsey/Baxter

That the Planning Committee:

- 3.1 Having formally considered all written submissions made to Amendment C186port to the Port Phillip Planning Scheme including the five late submissions, Council endorses the officers' response to the issues raised by the submissions and also endorses the recommended changes to the Amendment outlined in Attachment 1, as the basis for Council's submission to the Panel.
- 3.2 Requests the Minister for Planning to appoint an independent Planning Panel to consider the submissions received to Amendment C186port, in accordance with Part 8 of the *Planning and Environment Act 1987*.
- 3.3 Refers all submissions to the Panel to be appointed by the Minister for Planning, including the five late submissions.
- 3.4 Writes to all submitters to inform them of Planning Committee's decision to refer the Amendment and submissions to a Panel.
- 3.5 Requests the Minister for Planning to prepare and approve Amendment C192port to the Port Phillip Planning Scheme pursuant to Section 20A of the *Planning and Environment Act 1987* to extend the expiry date of interim Heritage Overlay 442 for six months.
- 3.6 Authorises the Chief Executive Officer (or delegate) to finalise the amendment documentation and Ministerial request for Amendment C192port.

The vote was taken under DIVISION.

FOR: Crs Bond, Voss, Baxter, Brand, Copsey, Crawford, Gross, Pearl and Simic

AGAINST: Nil

A vote was taken and the MOTION was CARRIED unanimously.



6.2 54 - 60 St Kilda Road, St Kilda

Purpose

- 1.1 This report assesses a proposal for the construction of a seven storey office building (with ground level retail) together with provision of 89 car parking spaces, including eight on-site share cars, 80 bicycle spaces and 11 motorcycle spaces.

ALTERNATE MOTION

MOVED Crs Bond/Pearl

- 3.1 That the Responsible Authority, having caused the application to be advertised and having received and noted the objections, issue a Notice of Decision to Grant a Permit.
- 3.2 That a Notice of Decision to Grant a Permit be issued for construction of a seven storey building to be used for the purposes of an office with ground level retail premises and a reduction of car parking requirements at 54-60 St. Kilda Road, St. Kilda.
- 3.3 That the decision be issued as follows:

Amended plans

1. Before the development starts, amended plans to the satisfaction of the responsible authority must be submitted to and approved by the responsible authority. When approved, the plans will be endorsed and will then form part of the permit. The plans must be generally in accordance with the submitted plans but modified to show the following:
 - (a) A loading bay measuring at least 4.2m x 7.6m .
 - (b) The vertical corners of the building as facing St. Kilda Road comprising a lighter coloured cladding/material.
 - (c) Additional occupant lockers and end of trip facilities specifically for bicycle and motorcycle riders.
 - (d) At least four additional bicycle rails along the St. Kilda Road frontage.
 - (e) The surface and level of the widened portion of Bank Place to match those of the existing/abutting surface.
 - (f) Allocated space for electronic waste, a charity bin and space for a food/organic bin.
 - (g) A weather protection awning over the ground level pedestrian entry to St. Kilda Road.
 - (h) An electric vehicle charge point.
 - (i) A separation of all parts of the ground and first levels of at least 9m to the neighbouring building at No. 4 Charnwood Road.
 - (j) The basement levels modified and incorporating an additional 33 car parking spaces to achieve a total of at least 122 car spaces.
 - (k) The maximum height of the building at any point being no greater than 26m above natural ground level.



All to the satisfaction of the Responsible Authority.

No layout alteration

2. The development and use as shown on the endorsed plans must not be altered without the written consent of the responsible authority.

No change to external finishes

3. All external materials finishes and paint colours are to be to the satisfaction of the responsible authority and must not be altered without the written consent of the responsible authority.

Plant and equipment

4. Any plant, equipment or domestic services visible from a street (other than a lane) or public park must be located and visually screened to the satisfaction of the responsible authority.

Outdoor lighting

5. Outdoor lighting must be designed, baffled and located to prevent any adverse effect on adjoining land, to the satisfaction of the responsible authority.

Sustainable Management Plan

6. Before the development starts a revised Sustainable Management Plan that modifies the submitted plan so as to accord with the comments received from Council's Sustainability Design Officer, most particularly including the following :
 - (a) Full music modelling including how the raingardens would be drained
 - (b) A maintenance manual for WSUD calculations
 - (c) Clarification of how the benchmarks would be met for daylight and views
 - (d) Clarification as to how the credits have been claimed for adhesives, paints, sealants, carpets, public transport and green start (including transport)
 - (e) Clarification of how the 33.33% reduction in greenhouse gas emissions will be achieved
 - (f) Outlining of the performance pathway and ecological calculations
 - (g) A green star review for all construction methods and documentation

When approved, the Sustainable Management Plan will be endorsed and will then form part of the permit and the development must incorporate the sustainable design initiatives listed.

Implementation of sustainable design Initiatives

7. Before the development is occupied, a report from the author of the approved Sustainable Management Plan, or similarly qualified person or company, must be submitted to the satisfaction of the responsible authority. The report must confirm that



all measures and recommendations specified in the approved Sustainable Management Plan have been implemented and/or incorporated to the satisfaction of the responsible authority.

Car park

8. The car parking areas and access ways as shown on the endorsed plans must be left open and unobstructed for those purposes at all times and must be formed to such levels so that they may be used in accordance with the plan, and shall be properly constructed, surfaced, drained and line-marked. The car park and driveways shall be maintained to the satisfaction of the responsible authority.

Roads/lanes to remain open

9. During the construction of the development, the roads, streets and lanes adjacent to the subject land must be kept free of parked or standing vehicles or any other obstruction, including building materials, equipment etc. so as to maintain free vehicular passage to abutting benefiting properties at all times, unless with the written consent of the responsible authority.

Urban Art

10. Before the development is completed, the permit holder must incorporate Urban Art in the development, in accordance with Council's Urban Art Strategy, viewable from the frontage/public realm, to a value of at least 0.5% of the total building cost of the development to the satisfaction of the responsible authority.

Applicant to pay for reinstatement

11. The Applicant/Owner must do the following before the development is completed to the satisfaction of the responsible authority:
 - (a) pay the costs of all alterations/reinstatement of Council and Public Authority assets necessary and required by such Authorities for the development, in particular the electricity pole at the front of the site and the removal/making good/reinstatement of the exiting crossover to St. Kilda Road with kerb, channel, footpath and nature strip as relevant reinstated to Council's standards and satisfaction;
 - (b) obtain the prior written approval of the Council or other relevant Authority for such alterations/reinstatement;
 - (c) comply with conditions (if any) required by the Council or other relevant Authorities in respect of alterations/reinstatement.

Car parking allocation:

12. Without the further written consent of the responsible authority the car parking must be allocated as follows:
 - (a) not less than two car spaces for each 100m² of office floor space
 - (b) not less than one car parking space to each 100m² of retail/shop floor space



Relocation of Light/Power Pole

13. The relocation of the power pole and associated street light in Bank Place must be carried out at the applicant's expense prior to occupation of the building and any other existing assets that need to be relocated or removed must also be carried out at the applicant's expense and comply with the relevant authority's requirements. The existing power line is either to be replaced or relocated into a trench leading from the permitted building's substation. The relocation of the light and pole must also be subject to all necessary Council and Citipower approvals/Citipower design and installation processes. The luminaire must remain at the intersection of Bank Place and Charnwood Road and the level of lighting must remain the same as the current situation. A Light Design for Bank Place is to be carried out ensuring compliance with Australian Standard AS 1158. Relevant standards AS 3000 (Electrical Installations) and Electrical Safety (General) Regulations 2019 must also be met.

Parking and loading areas must be available

14. Car and bicycle parking and loading areas and access lanes must be developed and kept available for those purposes at all times and must not be used for any other purpose such as storage to the satisfaction of the responsible authority.

Landscape plan

15. Before the development starts (other than demolition or works to remediate contaminated land), a detailed Landscape Plan must be submitted to, approved by and be to the satisfaction of the responsible authority. When the Landscape Plans are approved, they will become endorsed plans forming part of this Permit. The Landscape Plans must be generally in accordance with plans identified as TP01, TP02, TP03 and TP04, dated 13/02/2017 prepared by CDA Design Group Pty Ltd and must incorporate:
 - (a) A survey plan, including botanical names, of all existing vegetation/trees to be retained;
 - (b) Buildings and vegetation (including botanical names) on neighbouring properties within 3.0 metres of the boundary;
 - (c) Significant trees greater than 1.5 metres in circumference, 1.0 metre above ground;
 - (d) All street trees and/or other trees on Council land;
 - (e) A planting schedule of all proposed vegetation including botanical names; common names; pot sizes; sizes at maturity; quantities of each plant; and details of surface finishes of pathways and driveways with specific reference to any non-active ground level areas directly abutting St Kilda Road;
 - (f) Landscaping and planting within all open space areas of the site;
 - (g) Water sensitive urban design;
 - (h) Additional detail of tree planters to demonstrate the viability of proposed trees.



All species selected must be to the satisfaction of the responsible authority.

Completion of landscaping

16. The landscaping as shown on the endorsed Landscape Plans must be carried out and completed to the satisfaction of the responsible authority before the development is occupied and/or the commencement of the use or at such later date as is approved by the responsible authority in writing.

Landscaping maintenance

17. The landscaping as shown on the endorsed Landscape Plan must be maintained, and any dead, diseased or damaged plant replaced in accordance with the Landscaping Plan to the satisfaction of the responsible authority.

Waste Management Plan

18. Before occupation of the building a modified Waste Management Plan must be submitted for endorsement. The plan must be in accordance with the submitted plan but be modified to include reference to the matters noted in condition 1 (f) together with including clarification that the retail and office tenants will be separately responsible for the sorting and disposal of waste.

Tree Protection

19. Before the development starts, a tree protection fence must be erected around the street trees abutting the site along St Kilda Road and Charnwood Road to comply with *AS 4970 Protection of Trees on Development Sites* to the satisfaction of the responsible authority. Before the development starts, a Tree Management Plan, prepared by a suitably qualified arborist must be submitted to, and approved in writing by, the responsible authority to ensure the protection of the street trees adjacent to the site. The approved Tree Management Plan must be implemented to the satisfaction of the responsible authority before and during the construction of the development.

Time limit

- 20 This permit will expire if one of the following circumstances applies:
 - (a) The development is not started within three years of the issue date of this permit.
 - (b) The development is not completed, or the use does not start, within four years of the issue date of this permit.

In accordance with section 69 of the *Planning and Environment Act 1987*, an application may be submitted to the responsible authority for an extension of the periods referred to in this condition.



RECOMMENDATION “PART B”

- 3.4 Authorise the Manager City Development to instruct Council’s Statutory Planners and/or Council’s Solicitors on the VCAT application for review.

The vote was taken under DIVISION.

FOR: Crs Bond, Gross and Pearl

AGAINST: Crs Voss, Baxter, Brand, Copsey, Crawford and Simic

A vote was taken and the MOTION was LOST.

MOVED Crs Brand/Gross

- 3.1 That the Responsible Authority, having caused the application to be advertised and having received and noted the objections, issue a Notice of Decision to Grant a Permit.
- 3.2 That a Notice of Decision to Grant a Permit be issued for construction of a seven storey building to be used for the purposes of an office with ground level retail premises and a reduction of car parking requirements at 54-60 St. Kilda Road, St. Kilda.
- 3.3 That the decision be issued as follows:

Amended plans

1. Before the development starts, amended plans to the satisfaction of the responsible authority must be submitted to and approved by the responsible authority. When approved, the plans will be endorsed and will then form part of the permit. The plans must be generally in accordance with the submitted plans but modified to show the following:
- (a) A loading bay measuring at least 4.2m x 7.6m .
 - (b) The vertical corners of the building as facing St. Kilda Road comprising a lighter coloured cladding/material.
 - (c) Additional occupant lockers and end of trip facilities specifically for bicycle and motorcycle riders.
 - (d) At least four additional bicycle rails along the St. Kilda Road frontage.
 - (e) The surface and level of the widened portion of Bank Place to match those of the existing/abutting surface.
 - (f) Allocated space for electronic waste, a charity bin and space for a food/organic bin.
 - (g) A weather protection awning over the ground level pedestrian entry to St. Kilda Road.
 - (h) An electric vehicle charge point.
 - (i) A separation of all parts of the ground and first levels of at least 9m to the neighbouring building at No. 4 Charnwood Road.
 - (j) The basement levels modified and incorporating an additional 33 car parking spaces to achieve a total of at least 122 car spaces.



- (k) Revised Architectural treatment of the rear facades to provide an improved architectural presentation to Charnwood Road and Octavia Street residential areas.

All to the satisfaction of the Responsible Authority.

No layout alteration

2. The development and use as shown on the endorsed plans must not be altered without the written consent of the responsible authority.

No change to external finishes

3. All external materials finishes and paint colours are to be to the satisfaction of the responsible authority and must not be altered without the written consent of the responsible authority.

Plant and equipment

4. Any plant, equipment or domestic services visible from a street (other than a lane) or public park must be located and visually screened to the satisfaction of the responsible authority.

Outdoor lighting

5. Outdoor lighting must be designed, baffled and located to prevent any adverse effect on adjoining land, to the satisfaction of the responsible authority.

Sustainable Management Plan

6. Before the development starts a revised Sustainable Management Plan that modifies the submitted plan so as to accord with the comments received from Council's Sustainability Design Officer, most particularly including the following :
- (a) Full music modelling including how the raingardens would be drained
 - (b) A maintenance manual for WSUD calculations
 - (c) Clarification of how the benchmarks would be met for daylight and views
 - (d) Clarification as to how the credits have been claimed for adhesives, paints, sealants, carpets, public transport and green start (including transport)
 - (e) Clarification of how the 33.33% reduction in greenhouse gas emissions will be achieved
 - (f) Outlining of the performance pathway and ecological calculations
 - (g) A green star review for all construction methods and documentation

When approved, the Sustainable Management Plan will be endorsed and will then form part of the permit and the development must incorporate the sustainable design initiatives listed.

Implementation of sustainable design Initiatives

7. Before the development is occupied, a report from the author of the approved Sustainable Management Plan, or similarly qualified person or company, must be submitted to the satisfaction of the responsible authority. The report must confirm that all measures and recommendations specified in the approved Sustainable



Management Plan have been implemented and/or incorporated to the satisfaction of the responsible authority.

Car park

8. The car parking areas and access ways as shown on the endorsed plans must be left open and unobstructed for those purposes at all times and must be formed to such levels so that they may be used in accordance with the plan, and shall be properly constructed, surfaced, drained and line-marked. The car park and driveways shall be maintained to the satisfaction of the responsible authority.

Roads/lanes to remain open

9. During the construction of the development, the roads, streets and lanes adjacent to the subject land must be kept free of parked or standing vehicles or any other obstruction, including building materials, equipment etc. so as to maintain free vehicular passage to abutting benefiting properties at all times, unless with the written consent of the responsible authority.

Urban Art

10. Before the development is completed, the permit holder must incorporate Urban Art in the development, in accordance with Council's Urban Art Strategy, viewable from the frontage/public realm, to a value of at least 0.5% of the total building cost of the development to the satisfaction of the responsible authority.

Applicant to pay for reinstatement

11. The Applicant/Owner must do the following before the development is completed to the satisfaction of the responsible authority:
 - (a) pay the costs of all alterations/reinstatement of Council and Public Authority assets necessary and required by such Authorities for the development, in particular the electricity pole at the front of the site and the removal/making good/reinstatement of the exiting crossover to St. Kilda Road with kerb, channel, footpath and nature strip as relevant reinstated to Council's standards and satisfaction;
 - (b) obtain the prior written approval of the Council or other relevant Authority for such alterations/reinstatement;
 - (c) comply with conditions (if any) required by the Council or other relevant Authorities in respect of alterations/reinstatement.

Car parking allocation:

12. Without the further written consent of the responsible authority the car parking must be allocated as follows:
 - (a) not less than two car spaces for each 100m² of office floor space
 - (b) not less than one car parking space to each 100m² of retail/shop floor space

Relocation of Light/Power Pole

13. The relocation of the power pole and associated street light in Bank Place must be carried out at the applicant's expense prior to occupation of the building and any other



existing assets that need to be relocated or removed must also be carried out at the applicant's expense and comply with the relevant authority's requirements. The existing power line is either to be replaced or relocated into a trench leading from the permitted building's substation. The relocation of the light and pole must also be subject to all necessary Council and Citipower approvals/Citipower design and installation processes. The luminaire must remain at the intersection of Bank Place and Charnwood Road and the level of lighting must remain the same as the current situation. A Light Design for Bank Place is to be carried out ensuring compliance with Australian Standard AS 1158. Relevant standards AS 3000 (Electrical Installations) and Electrical Safety (General) Regulations 2019 must also be met.

Parking and loading areas must be available

14. Car and bicycle parking and loading areas and access lanes must be developed and kept available for those purposes at all times and must not be used for any other purpose such as storage to the satisfaction of the responsible authority.

Landscape plan

15. Before the development starts (other than demolition or works to remediate contaminated land), a detailed Landscape Plan must be submitted to, approved by and be to the satisfaction of the responsible authority. When the Landscape Plans are approved, they will become endorsed plans forming part of this Permit. The Landscape Plans must be generally in accordance with plans identified as TP01, TP02, TP03 and TP04, dated 13/02/2017 prepared by CDA Design Group Pty Ltd and must incorporate:
 - (a) A survey plan, including botanical names, of all existing vegetation/trees to be retained;
 - (b) Buildings and vegetation (including botanical names) on neighbouring properties within 3.0 metres of the boundary;
 - (c) Significant trees greater than 1.5 metres in circumference, 1.0 metre above ground;
 - (d) All street trees and/or other trees on Council land;
 - (e) A planting schedule of all proposed vegetation including botanical names; common names; pot sizes; sizes at maturity; quantities of each plant; and details of surface finishes of pathways and driveways with specific reference to any non-active ground level areas directly abutting St Kilda Road;
 - (f) Landscaping and planting within all open space areas of the site;
 - (g) Water sensitive urban design;
 - (h) Additional detail of tree planters to demonstrate the viability of proposed trees.

All species selected must be to the satisfaction of the responsible authority.

Completion of landscaping

16. The landscaping as shown on the endorsed Landscape Plans must be carried out and completed to the satisfaction of the responsible authority before the development is



occupied and/or the commencement of the use or at such later date as is approved by the responsible authority in writing.

Landscaping maintenance

17. The landscaping as shown on the endorsed Landscape Plan must be maintained, and any dead, diseased or damaged plant replaced in accordance with the Landscaping Plan to the satisfaction of the responsible authority.

Waste Management Plan

18. Before occupation of the building a modified Waste Management Plan must be submitted for endorsement. The plan must be in accordance with the submitted plan but be modified to include reference to the matters noted in condition 1 (f) together with including clarification that the retail and office tenants will be separately responsible for the sorting and disposal of waste.

Tree Protection

19. Before the development starts, a tree protection fence must be erected around the street trees abutting the site along St Kilda Road and Charnwood Road to comply with *AS 4970 Protection of Trees on Development Sites* to the satisfaction of the responsible authority. Before the development starts, a Tree Management Plan, prepared by a suitably qualified arborist must be submitted to, and approved in writing by, the responsible authority to ensure the protection of the street trees adjacent to the site. The approved Tree Management Plan must be implemented to the satisfaction of the responsible authority before and during the construction of the development.

Time limit

- 20 This permit will expire if one of the following circumstances applies:
- (a) The development is not started within three years of the issue date of this permit.
 - (b) The development is not completed, or the use does not start, within four years of the issue date of this permit.

In accordance with section 69 of the *Planning and Environment Act 1987*, an application may be submitted to the responsible authority for an extension of the periods referred to in this condition.

RECOMMENDATION “PART B”

- 3.4 Authorise the Manager City Development to instruct Council’s Statutory Planners and/or Council’s Solicitors on the VCAT application for review.

The vote was taken under DIVISION.

FOR: Crs Voss, Baxter, Brand, Copsey, Crawford, Gross and Simic

AGAINST: Cr Bond

ABSTAINED Cr Pearl

A vote was taken and the MOTION was CARRIED.



The Chair adjourned the meeting for a break at 7.40pm.

The meeting resumed at 7.45pm.

6.3 5 Prentice Street, St Kilda East

Purpose

- 1.1 To consider and determine Planning Permit Application P1164/2014/B to amend existing Planning permit P1164/2014/A under Section 72 of the *Planning and Environment Act 1987* to make amendments to the plans to allow for the addition of a third bedroom to Unit 1 and Unit 2 at 5 Prentice Street, St Kilda East with a reduction of one car parking space to each unit.

MOVED Crs Crawford/Copsey

- 3.1 That the Planning Committee adopt Recommendation “Part A” and “Part B”, that:
 - A. The Responsible Authority, having caused the application to be advertised and having received and noted the objections, issue a Notice of Decision to Grant an Amended Permit.
 - B. Authorise the Manager City Development to instruct Council’s Statutory Planners and/or Council’s Solicitors on the VCAT application for review.

RECOMMENDATION “PART A”

- 3.2 That the Responsible Authority, having caused the application to be advertised and having received and noted the objections, issue a Notice of Decision to Grant an Amended Permit to develop the land for the purpose of two double storey dwellings and front fencing and a reduction in parking requirements at 5 Prentice Street, St Kilda East with the following amendments:

Amended Preamble

Develop the land for the purpose of two double storey dwellings and front fencing and a reduction in parking requirements

New or Amended Conditions:

Nil

Amendment Plans

First Floor Plan (rev C) – reconfiguration of layout to provide for an additional bedroom.

RECOMMENDATION “PART B”

- 3.3 Authorise the Manager City Development to instruct Council’s Statutory Planners and/ or Council’s Solicitors on the VCAT application for review.

The vote was taken under DIVISION.

FOR: Crs Bond, Voss, Baxter, Brand, Copsey, Crawford, Gross, Pearl and Simic

AGAINST: Nil

A vote was taken and the MOTION was CARRIED.



6.5 11-41 Buckhurst Street, South Melbourne

Purpose

- 1.1 To provide a Council position for the Fishermans Bend Standing Advisory Committee on a request for the Minister for Planning to prepare, adopt and approve an Amendment to the Planning Scheme under Section 20(4) of the Planning and Environment Act for 11-41 Buckhurst Street, South Melbourne.

MOVED Crs Crawford/Baxter

3.1 RECOMMENDATION – PART A

That the Planning Committee advises the Fishermans Bend Standing Advisory Committee c/ the Department of Environment, Land, Water and Planning that Council:

- 3.1.1 Supports the application in its current form based on the matters set out in Sections 9 and 11 of this report.

3.2 RECOMMENDATION – PART B

That Council authorise the Manager City Development to instruct Council's Statutory Planners and/or solicitors on any future VCAT application for reviews and/or any independent advisory committee appointed by the Minister for Planning the consider the application.

The vote was taken under DIVISION.

FOR: Crs Bond, Voss, Baxter, Brand, Copsey, Crawford, Gross, Pearl and Simic

AGAINST: Nil

A vote was taken and the MOTION was CARRIED.

6.6 134-142 Ferrars Street, South Melbourne

Purpose

- 1.1 To provide a Council position on Ministerial Application 3/2013/MIN/B at the abovementioned address, to amend the existing permit under Section 72 of the *Planning and Environment Act 1987* to amend Condition 18 (Affordable Housing).

MOVED Crs Voss/Baxter

RECOMMENDATION – PART A

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

RECOMMENDATION – PART B

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



Condition 18 amended to read:

Affordable Housing

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

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

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

- (i) The provision of 6% of the total number of dwellings (rounded down to the nearest whole number) **as Affordable Housing one (1) bedroom dwellings within the building;**
- (ii) **All of the Affordable Housing dwellings are made available for rent at rates affordable for people on very low, low or moderate incomes in accordance with Section 3AA and 3AB the Planning and Environment Act (1987) (Vic.) definition of affordable housing.**
- (iii) Unless otherwise agreed by the Responsible Authority, utilise one or more of the following mechanisms for the delivery of the affordable housing:
 - **Transfer of the dwellings to a registered housing agency or other housing provider or trust approved by the Responsible Authority.**
 - **Leasing of the dwellings as affordable housing under the management of a registered housing agency or housing provider or trust approved by the Responsible Authority for a period of not less than 30 years.**
- (iv) **The Affordable housing dwellings must be made available for rent within six (6) months of the issue of a Certificate of Occupation for the development;**
- (v) The dwellings to be tenure blind.
- (vi) **Captured under 30-year timeframe condition outlined above.**
- (vii) One bicycle space must be allocated to each affordable housing dwelling.
- (viii) The owner **of the Affordable Housing dwellings** to be responsible for:
 - **All Owners Corporation costs.**



- **The** on-going management and maintenance of the building, including communal areas and facilities, resident amenity areas.
 - The on-going management and maintenance and individual apartments, including kitchens, other joinery, fixings, carpet and paint (except where damage is due to the occupants negligent activity)
- (ix) In the event the permit holder is unable to achieve an arrangement in accordance with this condition, to Council's satisfaction, the City of Port Phillip will be responsible for locating a Housing Association or Housing Provider.

RECOMMENDATION – PART C

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

The vote was taken under DIVISION.

FOR: Crs Bond, Voss, Baxter, Brand, Copsey, Crawford, Gross, Pearl and Simic

AGAINST: Nil

A vote was taken and the MOTION was CARRIED unanimously.

6.7 101 Salmon Street, Port Melbourne

Purpose

- 1.1 To provide a Council position on Ministerial Application 2014/002000-1 at 101 Salmon Street, Port Melbourne, to amend the existing permit under Section 72 of the Planning and Environment Act 1987 including the alteration of plans, permit conditions and permit preamble.

MOVED Crs Voss/Crawford

RECOMMENDATION - PART A

- 3.1 That Council advises the Minister (C/- the Department of Environment, Land, Water and Planning) and the applicant that:
- 3.1.1 Council supports the amendment application subject to conditions.
 - 3.1.2 In the event the Minister determines to grant an amended permit for the application, it should incorporate the conditions set out in Section 11.18 of this report.

RECOMMENDATION - PART B

- 3.2 That Council authorise the Manager City Development to instruct Council's Statutory Planners and/or solicitors on any future VCAT application for review, and/or any independent advisory committee appointed by the Minister for Planning to consider the proposal

MINUTES - PLANNING COMMITTEE MEETING - 24 JUNE 2020



The vote was taken under DIVISION.

FOR: Crs Bond, Voss, Baxter, Brand, Copsey, Crawford, Gross, Pearl and Simic

AGAINST: Nil

A vote was taken and the MOTION was CARRIED unanimously.

6.4 Statutory Planning Delegated Decisions - May 2020

Councillor Pearl declared a direct conflict of interest and left the meeting at 8.09pm.

Purpose

To present a summary of all Planning Permits issued in accordance with the Schedule of Delegation made under Section 98 of the Local Government Act 1989 and Section 188 of the Planning & Environment Act 1987 adopted by Council on 24 July 1996 and as amended, for the Port Phillip Planning Scheme.

MOVED Crs Gross/Copsey

That Council:

- 2.1 Receives and notes the May 2020 report (Attachment 1) regarding the summary of all Planning Decisions issued in accordance with the Schedule of Delegation made under Section 98 of the Local Government Act 1989 and Section 188 of the Planning & Environment Act 1987 adopted by Council on 24 July 1996 and as amended, for the Port Phillip Planning Scheme.

The vote was taken under DIVISION.

FOR: Crs Bond, Voss, Baxter, Brand, Copsey, Crawford, Gross and Simic

AGAINST: Nil

A vote was taken and the MOTION was CARRIED unanimously.

7. URGENT BUSINESS

Nil.

8. CONFIDENTIAL BUSINESS

Nil.

As there was no further business the meeting closed at 8.10pm.

Confirmed: 22 July 2020

Chairperson _____