



**11.1 AMENDMENT C203PORT (PLANNING SCHEME REVIEW) -
CONSIDERATION OF SUBMISSIONS**

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DEVELOPMENT**

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1. PURPOSE

- 1.1 To consider written submissions received to Amendment C203 (Planning Scheme Review) 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 and the Amendment.
- 1.3 To consider endorsing a response to issues raised in submissions, including recommended changes to the Amendment, to form the basis of Council's position at the Panel Hearing.

2. EXECUTIVE SUMMARY

- 2.1 Amendment C203port (Planning Scheme Review) is the outcome of a targeted review of local content in the planning scheme to improve its usability and efficiency as well as enable better decision making. This work has been underway since 2018 through the preparation of the *Port Phillip Planning Scheme Review Audit* (23 May 2018).
- 2.2 At its 7 July 2021 Ordinary Council Meeting, Council resolved to endorse the draft Municipal Planning Strategy, local policies and supporting documents as a basis for Amendment C203port to the Port Phillip Planning Scheme. It also resolved to request the Minister for Planning to authorise the preparation and exhibition of Amendment C203port to the Port Phillip Planning Scheme, pursuant to Section 8A of the *Planning and Environment Act 1987*.
- 2.3 On 5 October 2021, the Minister for Planning's delegate authorised the preparation and exhibition of Amendment C203port.
- 2.4 The amendment was exhibited for 5 weeks from 11 November 2021 to 17 December 2021. A total of 9 submissions were received, including 1 late submission, of which 8 sought changes to the Amendment and 1 raised no objection.
- 2.5 A summary of the key issues raised in the submissions and a recommended officer response is presented in Section 3.8 of this report, and a detailed assessment and recommendation is included as **Attachment 2**.
- 2.6 Considering the issues raised in the submissions, some generally minor changes are proposed to the Amendment, which are outlined in sections 4.14 to 4.24 of this report.
- 2.7 The next step will be for Council to decide whether to refer Amendment C203port to an independent Planning Panel to consider submissions, make any changes to the Amendment in response to submissions or to abandon the Amendment. This is scheduled for Council on 2 March 2022.



- 2.8 Subject to confirmation from the Minister for Planning and Planning Panels Victoria, pre-set Panel hearing dates have been scheduled for:
- Directions hearing: the week commencing Monday 24 March 2022.
 - Panel hearing: the week commencing Monday 2 May 2022.

3. RECOMMENDATION

That Council:

- 3.1 Having formally considered all written submissions made to Amendment C203port to the Port Phillip Planning Scheme including the one late submission, endorses the officers' response to the issues raised by the submissions and recommended changes to the Amendment (set out in **Attachments 1, 4 and 5**) 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 C203port, in accordance with Part 8 of the *Planning and Environment Act 1987*.
- 3.3 Refers those submissions received to Amendment C203port to the Panel to be appointed by the Minister for Planning, including any late submissions.
- 3.4 Writes to all submitters to Amendment C203port to inform them of Council's decision.

4. KEY POINTS/ISSUES

Background

- 4.1 Amendment C203port (Planning Scheme Review) is the outcome of a targeted review of local content in the planning scheme to improve its usability and efficiency as well as enable better decision making. In particular, Amendment C203port:
- Delivers Council's statutory obligation as Responsible Planning Authority under the *Planning and Environment Act 1987* to undertake a regular review of its planning scheme. The last review commenced in 2006 and was completed in 2011. It does this by:
 - Implementing recommendations of the *Port Phillip Planning Scheme Review Audit* (23 May 2018).
 - Making updates to local content to implement Council documents and strategies adopted or prepared since the last Planning Scheme Review, including the *Council Plan 2017-27, Act and Adapt – Sustainable Environment Strategy 2018-28, Art and Soul – Creative and Prosperous City Strategy 2018-22; Don't Waste It! – Waste Management Strategy 2018-28, In Our Backyard – Growing Affordable Housing in Port Phillip 2015-25, Move, Connect, Live – Integrated Transport Strategy 2018-28*.
 - Removing obsolete incorporated and reference documents.
 - Restructures, translates and redrafts all local policy content in the Municipal Strategic Statement and Local Planning Policy Framework of the Port Phillip Planning Scheme to comply with Victorian Government changes to planning schemes regarding language, format and structure introduced by Amendment VC148 in 2018. This new structure combines State and Local policy and will be



known as the Planning Policy Framework (PPF). A new Municipal Planning Strategy (MPS) will support the PPF, introducing Council's vision for the city and setting the basis for local content in the planning scheme. The PPF provides an overview of important planning issues within the municipality and outlines the strategic directions for land use planning and development in Port Phillip.

- 4.2 Most of this translation is 'policy neutral' and does not alter the meaning of the policy. Where it is not policy neutral, it gives effect to adopted Council strategies, as described above.
- 4.3 There are some limited instances where changes have been made to the local policy content that do not seek to implement an adopted Council document. These instances are captured in Column 2 of the table in **Attachment 2**. Overall, these changes are of a minor nature and do not change the intent of any existing policy. Rather, they seek to augment the existing policy by filling a known policy gap and/or responding to a recommendation of the *Port Phillip Planning Scheme Audit 2018*.
- 4.4 All local content currently contained in the Municipal Strategic Statement and Local Planning Policy Framework of the Port Phillip Planning Scheme has been reviewed and translated into the new format. Exceptions include two policies applying to the Fishermans Bend Urban Renewal Area, which will be addressed by the City of Port Phillip, City of Melbourne and Victorian Government in the future.
- 4.5 A full list of proposed changes by Amendment C203port to the planning scheme with a summary is contained in **Attachment 2**. The exhibited explanatory report which explains what the Amendment proposes in detail is contained at **Attachment 3**.
- 4.6 At its 7 July 2021 Ordinary Council Meeting, Council resolved to:
 - Endorse the draft Municipal Planning Strategy, local policies and supporting documents as a basis for Amendment C203port to the Port Phillip Planning Scheme.
 - Resolve to prepare Amendment C203port to the Port Phillip Planning Scheme to implement the Planning Scheme Review.
 - Delegate authority to the CEO to make minor corrections and updates, and to make editorial changes that reflect any changed obligations to Council required by state government agencies.
 - Request the Minister for Planning to authorise the preparation and exhibition of Amendment C203port to the Port Phillip Planning Scheme, pursuant to Section 8A of the *Planning and Environment Act 1987*.
 - Place Amendment C203port on exhibition, in accordance with section 19 of the *Planning and Environment Act 1987*, subject to Ministerial Authorisation.
- 4.7 On 5 October 2021, the Minister for Planning's delegate authorised the preparation and exhibition of Amendment C203port.
- 4.8 A summary of the Minister's authorisation conditions and how Officers responded to these conditions is presented in Table 1 below:



Table 1: Summary of authorisation conditions and Council Officer’s response

Minister’s authorisation conditions	Officer response
Ensure consistency with the <i>Ministerial Direction on the Form and Content of Planning Schemes</i> by improving clarity of provisions, deleting repetition with other areas of the planning scheme, correcting formatting errors and ensuring proposed maps meet the requirements of the Ministerial Direction.	Officers reviewed the provisions proposed by Amendment C203port, correcting any formatting and grammatical errors. No instances of repetition with other parts of the planning scheme were found. Proposed maps meet the requirements of the Ministerial Direction.
Update Clause 15.02-1L - Environmentally sustainable development (ESD) to be consistent with the Department of Environment, Land, Water and Planning standard template for local ESD policies.	Officers updated Clause 15.02-1L to be consistent with the template. However, 2 submitters have requested changes to this provision.
Review the proposed schedules to 59.15 and 59.16 in relation to the proposed local VicSmart application classes to avoid ambiguity and ensure they are as specific as possible.	An Officer and legal review was undertaken to ensure the proposed local VicSmart application classes are specific and unambiguous. As a result, minor changes to wording were made to improve clarity.
Amend the explanatory report to include content about the future translation of the Fishermans Bend Urban Renewal Area policy content via a separate process.	Officers updated the explanatory report accordingly.

Overview of written submissions received to Amendment C203port

- 4.9 The amendment was exhibited for 5 weeks from 11 November 2021 to 17 December 2021. The exhibition process is outlined in Section 4 of this report.
- 4.10 A total of 9 submissions were received, including 1 late submission, of which 8 sought changes to the Amendment and 1 raised no objection.
- 4.11 The key issues raised in the submissions include:
- Refinements are required to the proposed Heritage Policy and Heritage Design Guidelines, in response to concerns about Council’s overall approach to heritage and assessing planning permit applications in the Heritage Overlay.
 - The proposed Environmentally Sustainable Design (ESD) policy has been weakened by the removal of references to best practice, with other recommended changes required to the ESD policy.
 - Requesting the removal of exemptions to mandatory height controls in the Design and Development Overlay Schedule 26 (DDO26) – St Kilda Road North Precinct.
 - Requesting the preparation of a standalone policy for rooming houses and social housing to manage amenity issues and regulate rents charged to tenants.
- 4.12 Refer to **Attachment 1** for the full assessment of submissions and Council officer responses and recommendations.



Recommended response to submissions

- 4.13 Some changes are recommended in response to submissions.
- 4.14 With respect to the proposed Heritage Policy at Clause 15.03-1L only minor changes are recommended to improve the clarity of the policy, without changing their intent (reflected in **Attachment 4**).
- 4.15 Similarly, only minor changes are proposed in response to submissions made about the Heritage Design Guidelines (reflected in **Attachment 5**). Changes relate to updating demolition guidelines to acknowledge that some places in the Heritage Overlay graded Significant do not have a Statement of Significance, providing greater direction around the proportion of a building to be conserved and other minor clarifications.
- 4.16 No other changes are recommended to the Amendment in response to the issues raised in submissions. This is generally because:
- Policy already exists in the planning scheme addressing submitters' concerns.
 - Amendment C203port is introducing policy to address the submitters' concerns.
 - Further strategic work would be required to investigate a response to the submitter' concern.
 - The change is beyond the scope of Amendment C203port.
- 4.17 In particular, with respect to the proposed Environmentally Sustainable Development (ESD) policy at Clause 15.02-1L, the proposed policy adopted by Council is the preferred policy version of the councils forming the Council Alliance for a Sustainable Environment (CASBE).
- 4.18 As a condition of authorisation to prepare and exhibit Amendment C203port, the Minister for Planning required Council to change the drafting of the proposed ESD policy at Clause 15.02-1L from the version adopted by Council on 7 July 2021 for exhibition. This included removing reference to "best practice", in addition to other changes that could limit ESD outcomes.
- 4.19 Despite Council's adopted position (and the CASBE preferred policy) being generally consistent with that of the submitters, Council is bound by the Minister for Planning's conditions of authorisation. Hence, no change is recommended.
- 4.20 Council officers' responses provided at **Attachment 1** are proposed to form the basis of Council's position at an independent Planning Panel hearing.

Independent Planning Panel

- 4.21 The Panel process provides for an independent review of submissions and offers a further opportunity for submitters to have their submissions considered and directly address the Panel, including calling any expert evidence. This provides a fair, robust and transparent process enabling stakeholder interests to be fully considered and reconciled where possible.
- 4.22 In preparing its report and recommendations, the Panel will consider all written submissions referred to it.
- 4.23 The Panel will provide a report with recommendations to Council on whether the amendment should proceed. This will enable Council to make a final decision on whether to adopt the amendment as exhibited, adopted it with changes or abandon it.



Options for Council

- 4.24 After considering submissions Council has the option to either change the amendment in the manner requested, refer submissions to a Planning Panel for a third party assessment and recommendation, or abandon the amendment or part of the amendment. Under the requirements of the *Planning and Environment Act 1987* Council is required to refer unresolved submissions to an independent Planning Panel.
- 4.25 The submissions have been assessed and some remain unresolved. Accordingly, it is recommended that the submissions be referred to an independent Planning Panel for consideration.
- 4.26 Council does not have the option to adopt the amendment at this stage, given there are objecting submissions.
- 4.27 Council officers' responses provided at **Attachment 1** will provide the basis of Council's position at an independent Planning Panel hearing.

5. CONSULTATION AND STAKEHOLDERS

- 5.1 Exhibition of Amendment C203port occurred over five weeks from 11 November 2021 to 17 December 2021, pursuant to the statutory notification requirements of the *Planning and Environment Act 1987* and involved:
- Direct notification by letter to approximately 1,500 owners and occupiers of properties affected by the proposed removal of obsolete incorporated documents. Enclosed with the letter was a formal Notice of Amendment.
 - Direct notification by letter to Prescribed Ministers and Statutory Authorities.
 - Direct notification by email to key stakeholder groups.
 - Public Notices in *The Age* on Thursday 11 November 2021 and Thursday 18 November 2021, as well as in the Government Gazette on Thursday 18 December 2021.
 - Posts advising of the Amendment's public exhibition on Council's social media channels.
 - Articles in the October and November editions of *Diversity* advising of the Amendment's exhibition.
 - A dedicated project webpage on Council's *Have Your Say* website, containing Amendment documentation and supporting information, as well as allowing submissions to be made. Approximately 272 unique visits to the Have Your Say website were recorded over the exhibition period.
 - Four online information sessions were held. A general information session and heritage information session were each held on 22 November 2021 and 9 December 2021. Three people attended a session.
 - Availability of the Amendment documentation and supporting information on the State Government's Planning Amendments Online website.
 - Availability of amendment documentation at the Port Melbourne Library and Town Hall, St Kilda Town Hall and St Kilda Library.



5.2 A summary of engagement metrics is provided in Table 2.

Table 2: Summary of engagement metrics

Engagement method	Result
Submissions	A total of 9 submissions were received
Have Your Say page	A total of 272 unique visits were recorded. Approximately 25% of visitors returned more than once.
General online information session 22 November 2021	A total of 2 people attended the information session.
Heritage online information session 22 November 2021	A total of 2 people registered to attend the session, however only 1 person attended.
General online information session 22 November 2021	No people registered to attend this session.
Heritage online information session 22 November 2021	One person registered to attend this session, however did not attend.
Email enquiries	A total of 2 email enquiries were received.
Phone calls	A total one 1 phone call was received.

5.3 Table 2 indicates that despite notification and advertising attracting 272 unique visitors to the project Have Your Say website, this translated to a very low level of attendance at project online information sessions and a very low level of enquiries.

5.4 These figures suggest the information on Have Your Say project website responded to community enquiries without the need for the community to contact Officers for further information. Conversely, low attendance figures at online information suggests the need to consider different engagement approaches for similar planning scheme amendments in the future rather than holding drop in sessions. That said, these attendance figures also could reflect that Amendment C203port does not propose any changes to the zones and overlays applying to properties. It may also be reflective of community priorities at this point in time as a result of the ever changing COVID-19 landscape.

6. LEGAL AND RISK IMPLICATIONS

6.1 All affected owners and occupiers, as well as key stakeholder groups, were directly notified of the exhibition of Amendment C203port and were given the opportunity to provide a formal submission to the Amendment in accordance with the requirements of the *Planning and Environment Act 1987*. This provided a fair and transparent process.

5.2 The most significant risk implication that has been identified is the rapidly evolving situation around COVID-19 and any subsequent restrictions that may be enforced by the Victorian Government to manage this situation. This may impact Council's ability to meet the statutory timeframes set out in the *Planning and Environment Act 1987* and Ministerial Direction 15 *The Planning Scheme Amendment Process*. If this risk eventuated, Council would need to seek approval for an extension of time from the



Minister for Planning (likely to be granted), and this could further impact the timeframes for finalisation of the amendment.

- 6.2 Concerns around the spread of COVID-19 may impact whether submitters are able to participate in the meeting scheduled for 24 March 2022 given previous restrictions implemented on in-person attendance, or if they do not have access to the appropriate technology to enable online participation.
- 6.3 As per recent arrangements for independent Planning Panels, Planning Panels Victoria may reschedule, postpone or cancel face-to-face scheduled hearings at short notice in response to the ongoing risks around COVID-19.
- 6.4 If face-to-face hearings are cancelled, the Panel hearing may proceed 'on the papers' and without attendance from parties. This may impact the pre-set hearing times specified in section 9.3 below.

7. FINANCIAL IMPACT

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

8. ENVIRONMENTAL IMPACT

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

9. COMMUNITY IMPACT

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

10. ALIGNMENT TO COUNCIL PLAN AND COUNCIL POLICY

- 10.1 Amendment C203port is aligned with the 'Liveable Port Phillip', 'Sustainable Port Phillip' and 'Vibrant Port Phillip' strategic directions in the Council Plan 2021-31.
- 10.2 The Amendment implements the outcome of a targeted review of local content in the planning scheme to improve its usability and efficiency as well as enable better decision making. In turn, this will enable enhanced liveability outcomes for the municipality.
- 10.3 The Amendment also implements Council documents and strategies adopted or prepared since the last Planning Scheme Review, including the *Council Plan 2017-27, Act and Adapt – Sustainable Environment Strategy 2018-28, Art and Soul – Creative and Prosperous City Strategy 2018-22; Don't Waste It! – Waste Management Strategy 2018-28, In Our Backyard – Growing Affordable Housing in Port Phillip 2015-25, Move, Connect, Live – Integrated Transport Strategy 2018-28*. These strategies contribute to achieving the 'Liveable Port Phillip', 'Sustainable Port Phillip' and 'Vibrant Port Phillip' strategic directions in the Council Plan 2021-31.

11. IMPLEMENTATION STRATEGY

- 11.1 Timeline



11.1.1 Should Council decide to request the Minister for Planning to appoint an independent Planning Panel, the following pre-set Panel hearing dates will apply:

- Directions Hearing the week of Monday 24 March 2022.
- Panel hearing the week of Monday 2 May 2022.

11.1.2 These dates have been brought forward from the initial pre-set Panel hearing dates set out in the Explanatory Report (**Attachment 4**).

11.1.3 The Panel report and recommendations to Council would be anticipated to be received in June 2022.

11.1.4 Subject to the above dates being met, it is anticipated that Council would consider the Panel report and recommendations in August 2022 and decide to:

- Adopt Amendment C203port (with or without changes) and request Ministerial approval, or;
- Abandon the Amendment.

11.1.5 If adopted, Amendment C203port will be submitted to the Minister for Planning for final approval within 10 business days of Council's adoption.

11.1.6 Amendment C203port would take effect once notice of approval is published in the Victorian *Government Gazette*.

11.2 Communication

11.2.1 All submitters to Amendment C203port will be notified of the outcome of this Council Meeting.

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






11.2.3 Planning Panels Victoria (PPV) administer planning panel hearings. Therefore, should Council refer submissions to an independent planning panel, PPV will directly contact submitters about any Planning Panel Hearing matters, including confirmation of dates.

11.2.4 Once a Panel has been appointed, submitters will be contacted by PPV and invited to participate in the Planning Panel process.

12. OFFICER DIRECT OR INDIRECT INTEREST

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

ATTACHMENTS

1. Analysis of submissions received to Amendment C203port  [Download](#)
2. Summary of changes proposed by Amendment C203port  [Download](#)
3. Exhibited Amendment C203port Explanatory Report  [Download](#)
4. Updated Heritage Policy  [Download](#)
5. Proposed changes to the Heritage Design Guidelines  [Download](#)