



# ORDINARY MEETING OF COUNCIL 5 JUNE 2019

## 12.1 ST KILDA MARINA PLANNING SCHEME AMENDMENT

**EXECUTIVE MEMBER:** LILI ROSIC, GENERAL MANAGER, CITY STRATEGY AND SUSTAINABLE DEVELOPMENT

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### 1. PURPOSE

To present the recommended planning scheme amendment process and suite of planning controls necessary to facilitate the St Kilda Marina redevelopment as envisaged in the Site Brief endorsed by Council on 15 May 2019.

### 2. EXECUTIVE SUMMARY

- 2.1 The St Kilda Marina Site Brief endorsed by Council will underpin the procurement process for the redevelopment of the St Kilda Marina under a new long-term lease, and will form the strategic basis of a planning scheme amendment process.
- 2.2 The Site Brief considers the feedback provided by a Community Panel and the wider community through Council's online survey, as well as technical and other expert advice.
- 2.3 The Site Brief provides guidance on redevelopment of the St Kilda Marina on the foreshore by establishing parameters and advice on the type (as in land uses) and scale of future development of the St Kilda Marina including its marina operations and the range of associated commercial functions (such as restaurants, cafes, bars, recreational enterprises etc). It balances these with the functional and commercial requirements of the market for the sustainable operation of a modern marina, activation of the site as a destination with food and beverage and other aligned activities, and the opportunity for market innovation.
- 2.4 An amendment to the Port Phillip Planning Scheme is required as the existing planning controls would not adequately reflect the type of public and private use envisaged for the St Kilda Marina as specified in the vision and objectives in the Site Brief. Neither do the current planning controls provide the requisite level of certainty to all stakeholders including Council, the community and the future lease holders.
- 2.5 As it is proposed to appoint a commercial operator to develop and then use (or manage the use of) the various facilities at the St Kilda Marina and potentially expand the range of activities undertaken at the marina, it is appropriate to have the land rezoned from the Public Park and Recreation Zone (PPRZ) to a zone that is not primarily predicated on the use and development of the land by a public land manager. The proposed zone also needs to better support the possible mix of uses as envisaged in the Site Brief.
- 2.6 It is recommended that the site be rezoned from PPRZ to Special Use Zone (SUZ) with a new schedule and a Development Plan Overlay (DPO) with a new schedule be applied. The drafting of these controls will be based on the design criteria contained in the Site Brief. Other existing planning overlays should be retained.
- 2.7 It is recommended that Council remains the planning authority and undertakes the recommended Planning Scheme Amendment process generally concurrently with the proposed procurement process.



- 2.8 The planning scheme amendment process will include formal public exhibition of the proposed changes to the Planning Scheme. This statutory process will provide procedural fairness and allow the community to make submissions to Council and then if they wish to do so, to an Independent Planning Panel on the choice of controls, their content and the drafting of the proposed schedules to the SUZ and the DPO.
- 2.9 The SUZ provides for the use and development of land for specific purposes, identified in a customisable schedule to the zone and is an appropriate zone given it is to be applied to a single site that is proposed to be used for a mix of purposes ultimately for the enjoyment of the public at large but on a basis that retains the community or public element to the use of the land.
- 2.10 The DPO requires a development plan be approved prior to the grant of any planning permit. The approval of a development plan (which must be to the satisfaction of Council) occurs after the approval of an amendment but prior to the grant of a permit. A development plan must be generally in accordance with the DPO.
- 2.11 The key effect of the approval of a development plan under the proposed DPO is that any planning permit which is issued must be generally in accordance with the approved development plan. However, in acknowledgment of the approval of a development plan (which will act as a masterplan for the whole of the St Kilda Marina) third party rights are removed. That means that when a permit is sought, third parties are not formally notified. Furthermore, if a permit is issued, there are no rights of review to VCAT by third parties.
- 2.12 To ensure community views are considered, it is also recommended that Council undertake non statutory community consultation on the detailed design of the development, (particularly its “look and feel”), as a requirement of the lease prior to lodgement of the development plan, as well as on the Development Plan itself, prior to its any decision being made on these items by Council.
- 2.13 A further report will be presented to an Ordinary Council meeting later in 2019 that will:
  - a) Present the draft planning scheme amendment documentation for the St Kilda Marina site.
  - b) Seek Council’s resolution to request the Minister for Planning to authorise the preparation and exhibition of an amendment to the Port Phillip Planning Scheme to update the planning controls for the St Kilda Marina site.

### 3. RECOMMENDATION

That Council:

- 3.1 Endorses the recommended planning scheme amendment process and suite of planning controls to support delivery of the Site Vision and Objectives for the St Kilda Marina:
  - a) Council to remain the planning authority and undertake the Planning Scheme Amendment process generally concurrently with the proposed procurement process.
  - b) Rezone the site from PPRZ to Special Use Zone (SUZ) with a new schedule and apply a Development Plan Overlay (DPO) with a new schedule.



- 3.2 Notes that a further report will be presented to an Ordinary Council meeting later in 2019 that will:
- a) Present the draft planning scheme amendment documentation for the St Kilda Marina site.
  - b) Seek Council's resolution to request the Minister for Planning to authorise the preparation and exhibition of an amendment to the Port Phillip Planning Scheme to update the planning controls for the St Kilda Marina site.

#### 4. KEY POINTS/ISSUES

- 4.1 The St Kilda Marina is and has been located at 42 A -E Marine Parade, Elwood since 1969. The St Kilda Marina occupies approximately 8Ha (80,000m<sup>2</sup>) of foreshore Crown land for which Council is appointed as the Committee of Management. Existing uses include marine services (boat storage and launch infrastructure, repairs, fuel for boats and sales), restaurants/cafes, service station and car parking.
- 4.2 For the past 50 years the St Kilda Marina has been under one commercial lease agreement which expired on 30 April 2019. On 3 April 2019, Council approved an interim three-year lease with the existing tenant, Australian Marinas Pty Ltd.
- 4.3 On 7 February 2018, Council endorsed the Project Approach which sets out the various stages of the project and the timeline, and on 18 April 2018 Council endorsed The Community Stakeholder and Engagement Plan. Both these documents have now been updated to better reflect the work planned for Stages 4, 5 and 6 (refer to Attachments 2 and 3). The updated documents are also attached to the *St Kilda Marina Project - Endorsement of the Procurement Plan, Updated Probity Plan, Updated Project Approach and Community & Stakeholder Engagement Plan* report, with a recommendation that Council notes and endorses them as public documents.
- 4.4 Officers have implemented Stages 1 and 2 of the Project Approach with Stage 3 currently nearing completion with the conclusion of the community panel process and subsequent drafting of the Site Brief and Procurement Plan.
- 4.5 In Stage 2 of the project, which involved identifying the Site Vision and Objectives, a comprehensive community engagement program was undertaken to inform the development of a Vision and Objectives for the site.
- 4.6 As part of the engagement approach for Stage 3 of the project, Setting the Parameters, a 24-member Community Panel was established to bring a focussed community voice with broad perspective to the development of solutions for the future of the marina site.
- 4.7 The key document generated from the community panel process in Stage 3 of the project is the Site Brief, that translates the vision and objectives for the St Kilda Marina into design criteria for a future redevelopment of the site. Council endorsed the Site Brief at its ordinary meeting on 15 May 2019.
- 4.8 The Site Brief considers the feedback provided by a Community Panel and the wider community through online survey, as well as technical and other expert advice.
- 4.9 The Site Brief informs the public and the market about the site's history, current state and desired future. The desired future state is articulated through the site vision and objectives and a set of criteria for the site, all of which reflect the community's



expectation for the development of the working marina and its complementary uses and spaces.

- 4.10 While the Site Brief does not explain how the Marina is to be specifically developed, it does outline a series of design criteria to be provided in the framework for future redevelopment of the Marina. The design criteria include text and plan based guidance on the site's future form, function and issues such as height, scale, location and siting of new buildings including requirements for the location and quality of publicly accessible open space and connections.
- 4.11 Various elements are identified such as views and movement, marina function, and complementary uses. Each of the elements are accompanied by a series of "must have" and "nice to have", requirements that the redeveloped marina must achieve and should achieve or aspire to achieve if possible, practical and economical.
- 4.12 The Site Brief also comprises a series of plans and diagrams which assist in interpreting some of the recommendations. Importantly, the Site Brief does not show a preferred concept or masterplan. The diagrams within the document are aides to interpretation and illustrative rather than a preferred form of outcome.
- 4.13 A key intention behind the design criteria is to allow the potential tenderers to leverage market expertise and respond to the Site Brief with progressive and innovative solutions in a highly specialised sector.

## **5. PLANNING SCHEME AMENDMENT**

- 5.1 The current planning provisions for the St Kilda Marina site include:
  - a) Public Park and Recreation Zone (PPRZ) – to recognise areas for public recreation and open space, protect and conserve areas of significance and provide for commercial uses where appropriate
  - b) Design and Development Overlay 10 (DDO10 - Port Phillip Coastal Area) - to preserve existing beaches and natural beauty of the foreshore and enable public enjoyment
  - c) Heritage Overlay (HO187) – To conserve and enhance the historic beacon
  - d) Special Building Overlay (SBO1) – applies to a small portion of the site and ensures development is compatible with flood hazard and local drainage conditions.
- 5.2 A planning scheme amendment is needed to apply a more suitable suite of planning controls to efficiently facilitate the St Kilda Marina's redevelopment in accordance with the Site Brief.
- 5.3 The current planning controls are considered to lack sufficient specificity to adequately facilitate the redevelopment of the Marina, whilst also providing a level of certainty to all stakeholders including Council, the community and the future lease holders as to the intended outcomes.
- 5.4 The PPRZ is a public land zone which gives broad powers to a public land manager to use and develop the land without planning approval for the purposes of the public land manager. If the developer or manager of the public land is a person other than the public land manager, the requirement for a planning permit is triggered. Permit applications need to be considered in the context of the purpose of the PPRZ but



without the aid of a masterplan or similar overarching document encapsulating the Vision and Objectives.

- 5.5 As it is proposed to appoint a commercial operator to develop then use (or manage the use of) the various facilities at the St Kilda Marina and potentially expand the range of activities, it is appropriate to have the land rezoned to a zone (such as the Special Use Zone) that is not necessarily predicated on the use and development of the land by a public land manager and which better supports the possible mix of uses as envisaged in the Site Brief.
- 5.6 Furthermore, it is considered important for there to be planning controls that ensure that future permits are guided by and consistent with an approved masterplan.
- 5.7 In determining the most appropriate form of a planning scheme amendment, Council must consider:
  - a) The appropriate suite of planning controls to facilitate and guide the redevelopment.
  - b) The timing of the amendment, and how this fits with the procurement process (whether this occurs concurrent with, or after, or before the procurement process).
  - c) The Amendment process (a full planning scheme amendment, or whether to seek a Ministerial 20(4) Amendment).
- 5.8 Council officers have used the following criteria to assess the various options and develop a recommended planning scheme amendment process:
  - a) Ensure a clear, transparent and best practice approach to facilitate appropriate development on crown land in a coastal location.
  - b) A procedurally fair and balanced planning framework for all stakeholders, allowing appropriate community consultation which includes formal and informal notification.
  - c) Facilitate delivery of the Vision for the site in a timely manner by ensuring an appropriate level of certainty for tenderers in the procurement process that also supports the best possible outcome for the site through a competitive tender process.
- 5.9 The alignment of the Site Brief approval, lease procurement and planning scheme amendment is also necessary to ensure market and community confidence in the processes.

## **6. RECOMMENDED NEW PLANNING CONTROLS**

- 6.1 It is recommended that the new planning controls for the St Kilda Marina site should:
  - a) Allow nominated uses to occur on the land generally as recommended by the Site Brief.
  - b) Manage the scale and form of development in a sensitive location on coastal crown land generally as recommended by the Site Brief.
  - c) Streamline the permit approval process, where the proposed use and development is generally in accordance with an approved masterplan.
  - d) Provide the opportunity for the community to make submissions on the new planning controls through a Planning Scheme Amendment process.



- e) Provide, where possible, for the community to be able to make a submission on any development plan proposed for approval.
- 6.2 It is recommended that Council undertake a planning scheme amendment which involves the following:
- a) Rezone the site to **Special Use Zone (SUZ)** with an appropriate schedule; and
  - b) Apply the **Development Plan Overlay (DPO)** with an appropriate schedule.
- 6.3 Heritage matters are currently being further considered and it is anticipated that the additional detail will be presented at the Council's Planning Committee meeting that will consider the proposed planning scheme amendment for this site.
- 6.4 The existing Design and Development Overlay, Schedule 10, the Heritage Overlay and Special Building Overlay which apply to the site should be retained. This ensures that there is a minimal level of change to the applicable planning controls.
- 6.5 Specifically:
- Rezone to **Special Use Zone (SUZ)** –
- a) The SUZ provides for the use and development of land for specific purposes as set out in a customisable schedule to the zone.
  - b) As it is proposed to appoint a commercial operator to develop and then use the various facilities at the St Kilda Marina and potentially expand the range of activities, it is recommended that the land be rezoned to a zone (SUZ) that is not necessarily predicated on the use and development of the land by a public land manager as is generally the case with the existing PPRZ.
  - c) The SUZ is an appropriate zone given it is to be applied to a single site that is proposed to be used for a mix of purposes ultimately for the enjoyment of the public at large but on a basis that retains the community or public element to the use of the land. The possible mix of uses as envisaged in the Site Brief makes the site stand out as being an unusual site meriting a relatively site specific approach to the planning controls.
- Apply the **Development Plan Overlay (DPO)** –
- d) This Overlay requires a development plan to be approved prior to the grant of any planning permit. The trigger for the permit is under the SUZ. The development plan then operates as a type of masterplan for the site.
  - e) The key requirements under the DPO is that any planning permit must be generally in accordance with the approved development plan. There is no capacity to grant a planning permit that does not meet this requirement.
  - f) The approval of a development plan (which must be to the satisfaction of Council) occurs after the approval of the planning scheme amendment but prior to the grant of a permit.
  - g) The DPO provides a level of flexibility in that a development plan can be amended (to the satisfaction of Council), so long as it is in accordance with the requirements of the schedule to the DPO including any concept plan forming part of the schedule to the DPO.
  - h) Under the DPO, when a development plan is approved, planning permit applications are exempt from third party rights. That means that when a permit is



sought, third parties are not able to formally participate in the application process. Furthermore, if a permit is issued, there are no rights of review to VCAT by third parties.

- i) The recommended way forward is for the DPO schedule to include a concept plan with which any development plan must be consistent. This will ensure that the development plan is confined to certain development parameters informed by the design criteria set out in the Site Brief. The concept plan will be comprised of information from various plans and text in the Site Brief.
  - j) The level of detail in the concept plan will need to be thought through carefully. It must pass the test of providing (together with the text of the schedule) enough confidence for a planning panel to be satisfied that a development which is generally in accordance with the concept plan and the text in the schedule will be an acceptable outcome. It will also need to include enough detail to give Council, the community and potential tenderers certainty about the expected development outcome.
  - k) If the amendment commences concurrently with the procurement process (the option recommended by Council officers), it is envisaged that the design criteria set out in the Site Brief will mainly inform the information that is included in the Concept Plan (together with the text of the schedule) in the DPO.
- 6.6 To ensure community views are considered, it is recommended that Council undertake non statutory consultation with the community prior to the approval of any development plan under the DPO. It is normal practice for a council to undertake non-statutory consultation prior to the approval of a development plan whether this requirement is written into the DPO Schedule or not.
- 6.7 Consultation should include giving a form of notice to affected parties, receiving and considering submissions and providing a response to submissions.
- 6.8 It is also recommended that non statutory community consultation be undertaken on the detailed design ('look and feel') of the proposed development. This should be a requirement of the lease, prior to lodgement of the development plan.
- 6.9 Importantly, applying the above controls is a relatively standard approach to facilitating a redevelopment of a site that would benefit from a masterplanned approach. The controls are also recommended given the selected procurement process to redevelop the Marina.
- 6.10 Other planning controls considered for the site include an Incorporated Plan Overlay (IPO). This was considered to be less appropriate than a DPO because:
- a) A permit can be granted even if the application is not generally in accordance with the incorporated plan (although the third party notice exemptions are lost in the process). This is considered too flexible and too susceptible to ultimate determination by, for example, the Victorian Civil and Administrative Tribunal (VCAT) absent an appropriate framework in the form of a masterplan.
  - b) An incorporated plan must be put in place at the time of the planning scheme amendment and then cannot be changed without a further amendment. This level of rigidity in the incorporated plan is not likely to be attractive to a potential tenderer as part of the procurement process.



- c) The Site Brief does not include enough detail to inform an IPO. This also impacts on the timing of the amendment which would more likely have to wait for the procurement process to be well underway, if not completed.
- 6.11 A site specific control introducing an Incorporated Document (which acts like a planning permit with plans) was also considered as a potential option. This is not to be confused with an IPO as already discussed earlier. It is a completely separate planning tool. However, this was considered to be less appropriate than the recommended option involving the SUZ and a DPO because it has less flexibility than a DPO. It also involves a level of detail which would require the procurement process to be well underway if not completed prior to the amendment being put in place.
- 6.12 Accordingly, the recommended option is the SUZ and DPO while retaining other existing specific purpose planning overlays.

#### **Planning Scheme Amendment Process and Timing**

- 6.13 Council officers have considered 3 options for a planning scheme amendment process and timing:
  - a) Option 1 (Recommended): Concurrent amendment process - a full planning scheme amendment process will commence concurrently with the procurement process (refer Attachment 1). This would result in the amendment process commencing in June 2019 (soon after Council issues an invitation for an Expression of Interest (EOI) to the Market).
  - b) Option 2 (Not Recommended): Post tender amendment process - a full planning scheme amendment will commence after the procurement process and preparation of detailed designs for the site. This would likely result in the amendment commencing after the next Council Elections in October 2020.
  - c) Option 3 (Not Recommended): A Ministerial 20(4) Amendment – The Minister for Planning is Planning Authority for the amendment and the Minister exempts the usual notice and public involvement provisions and processes.
- 6.14 There are two other options that have not been explored in this report but have been considered. These are:
  - a) No planning scheme amendment but instead rely on the existing planning controls – there is a risk of not achieving the Vision and Objectives for the site due to the lack of specificity of the current controls. The planning process would be too open ended and potentially lead to disputes heading to VCAT and significant delays in reaching any final decision.
  - b) Delayed procurement process – procurement commences after the planning scheme amendment is complete (likely after October 2020) – this would result in a significant loss of momentum and could lead to a change in priorities for the site.
- 6.15 To mitigate risks to the procurement process, and also ensure that community input is sought early in the process, it is recommended that Council undertake the planning scheme amendment process concurrently with the procurement process (option 1). The reasons for this are summarised below.

#### **Option 1: Concurrent amendment process (recommended)**

- 6.16 The concurrent amendment process will commence in July, soon after Council commences its procurement process in June 2019 (refer to Attachment 3).





- 6.17 Once the revised planning controls for the St Kilda Marina site have been drafted, and Council resolves to undertake the full planning scheme amendment, it is anticipated that the amendment process will take approximately 12-18 months. This option should ensure the amendment process is complete before the new lease is planned to commence (in May 2022), providing a higher level of certainty to the tenderer and Council (as landlord) and the community about how these processes align and the outcomes to be achieved. The planning scheme amendment process must be completed before the developer can commence applying for the relevant planning approvals for the redevelopment of the site.
- 6.18 The planning scheme amendment process will include formal public exhibition of the proposed changes to the Planning Scheme. This process will provide procedural fairness to allow the community to make submissions to Council and then assuming that it is necessary (and we have assumed that it will be), to an Independent Planning Panel on the choice of controls and the drafting and content of the proposed schedules to the SUZ and the DPO.
- 6.19 Through the amendment process, it is important to note that the level of detail contained in the new controls will be primarily based on information and guidance that is contained within the Site Brief.
- 6.20 After the planning scheme amendment, the successful tenderer will need to apply for approval of a development plan and then apply for a planning permit. While it is recommended that there be an opportunity for non statutory consultation with the community on the proposed development plan there are no third party entitlements in relation to a planning permit application. This means that there are no statutory rights to receive a copy of any notice of decision or to seek review of Council's decision at VCAT. This applies to the approval of the development plan as well as the permit application after the approval of a development plan.

Option 2: Post tender amendment process (not recommended)

- 6.21 An alternative to Option 1 would be to undertake the amendment process after the selection of the preferred tenderer and the preparation of the detailed design for the St Kilda Marina (a post-tender amendment process).
- 6.22 There are much longer timeframes associated with this option, which will likely continue past the start date of the new lease (May 2022). This would require an extension to the interim lease to accommodate the completion of the planning scheme amendment. Relevant planning approvals for the redevelopment of the site could not occur until after the planning scheme amendment is completed.
- 6.23 This option would allow the preferred tenderers' response to the site brief (and development proposal) to inform the selection and drafting of the new planning controls. There would be a greater level of detail (and associated certainty) to be considered by the community through the statutory planning scheme amendment process. Essentially, the planning scheme amendment would be crafted to facilitate a specific development proposal.
- 6.24 This option therefore provides for consultation to occur on a greater level of detail (a development proposal) through the planning scheme amendment process. However, the timing may result in an unviable commercial risk because it increases the uncertainty regarding timing and outcome to the preferred tenderer after they have committed a significant investment into the process.



- 6.25 A further major risk to the contract/lease is that a decision on the amendment would occur after the 2020 Council election.
- 6.26 This option would likely undermine the procurement process as the outcomes of the planning scheme amendment process (including community views) would not be known until after the Council has signed a contract with the preferred tenderer, presenting a material risk to Council. This is also likely to lessen commercial interest in the project due to the significant risks involved for the successful tenderer.
- Option 3: Ministerial Amendment process (not recommended)
- 6.27 Option 3 is a Ministerial Amendment process, known as a “20(4)” amendment.
- 6.28 This process involves the Minister for Planning exercising his powers to exempt himself from having to provide the normal notice requirements. In this option, the Minister is Planning Authority for the amendment and could appoint an independent advisor or committee to provide him with advice on a proposed planning scheme amendment.
- 6.29 A 20(4) Ministerial Amendment is exempt from public notification, requiring a non statutory consultation process although it is not uncommon for the Minister to appoint an advisory committee and require it to call for submissions in relation to a proposed planning scheme amendment.
- 6.30 On balance this option was considered to be inappropriate for the St Kilda Marina, as:
- The Minister’s willingness to undertake a 20(4) is uncertain.
  - Council has less of an official role in this process as just a submitter to the panel or advisory committee, rather than being the Planning Authority.
  - The timing of such an amendment is uncertain as the Council is not the Planning Authority. Therefore, matters such as the timing of any advisory committee or final decision on an amendment is completely out of Council’s control.
- 6.31 In summary, it is recommended that Council should remain the planning authority and undertake the planning scheme amendment process itself. The process should involve the relatively standard approach of applying an SUZ and DPO, with appropriately formulated schedules with the process conducted generally concurrently with the procurement process (option 1). Non statutory community consultation should also be undertaken on the detailed design (“look and feel”) of the proposed development and the development plan, prior to Council’s approval of a development plan. Any planning permit would then have to be generally in accordance with the approved development plan.
- 6.32 A further report will be presented to an Ordinary Council meeting later in 2019 that will:
- Present the draft planning scheme amendment documentation for the St Kilda Marina site.
  - Seek Council’s resolution to request the Minister for Planning to authorise the preparation and exhibition of an amendment to the Port Phillip Planning Scheme to update the planning controls for the St Kilda Marina site.

## 7. CONSULTATION AND STAKEHOLDERS

- 7.1 Extensive consultation with the community has informed the development of the St Kilda Marina Site Vision and Objectives. These are included in the Draft Site Brief. A



report was presented to Council on 17 April 2019 providing a summary of activities undertaken and the outcomes of the consultation.

- 7.2 The Community and stakeholder engagement plan for Stage 4 & 5 of the project will be presented in the Council Meeting on 5 June 2019. This report outlines the engagement process to accompany procurement and the planning scheme amendment.
- 7.3 A drop in information session for the community and stakeholders is proposed to occur in June 2019 following this Council Meeting (dependent upon endorsement of the recommendations in this report) for the Procurement Plan and Community and Stakeholder Engagement Plan and planning amendment process. This will be an opportunity for the community and stakeholders to ask any clarifying questions on the Site Brief, Procurement Plan and future planning scheme amendment process and proposed suite of planning controls.
- 7.4 The recommended option (option 1) involves a full planning scheme amendment process with a statutory process of public notice and exhibition and an independent Panel Hearing and Review, to allow the community to have their say on the proposed planning scheme controls including the concept plan that will form part of the DPO Schedule. This will allow the community to have its say on the translation of the Site Brief into the planning controls.
- 7.5 Outside of the planning process, it is recommended that the following non statutory community consultation is undertaken by Council:
  - a) Consultation on the detailed design ('look and feel') of the proposed development. It is recommended that this should be a requirement of the lease, prior to lodgement of the development plan. This consultation will allow the community to comment on the aesthetics of the design.
  - b) Consultation on the Development Plan, prepared by the preferred tenderer, prior to its approval by Council. This consultation will allow the community to comment on whether any proposed development plan (master plan) is in accordance with the DPO and provides for appropriate outcomes.
- 7.6 The Community and stakeholder engagement plan for Stage 4 of the St Kilda Marina Project will be proposed for discussion with Councillors as part of the procurement plan.

## **8. LEGAL AND RISK IMPLICATIONS**

- 8.1 In considering a planning scheme amendment for the site, Council must consider its dual role as both the landlord and the Planning Authority and ultimately as the Responsible Authority. Council must ensure transparency of its decision making through maintaining a level of community engagement throughout both the procurement process and the planning process.
- 8.2 The proposed planning controls and amendment process may not be supported by the community or the Minister for Planning. This risk will be managed through the proposed full planning scheme amendment process, which in all likelihood will include an independent planning panel hearing.
- 8.3 To further mitigate this risk, it is recommended that Council undertake non statutory community consultation on the detailed design of the development, (particularly its "look and feel"), as a requirement of the lease prior to lodgement of the development plan, and on the Development Plan itself, prior to its approval by Council.



- 8.4 The proposed planning controls and amendment process may be deemed too risky, complex and time-consuming by the market and pose a risk that minimises market participation the procurement process. To mitigate this risk, it is recommended that Council commence the planning scheme amendment process concurrently with the procurement process.
- 8.5 The timing for the planning scheme amendment is indicative and subject to Ministerial approval. The Minister may authorise the amendment with conditions, and may also approve the amendment with changes to the planning controls.
- 8.6 The amendment process is connected to the procurement process, if one is delayed then the other may also be delayed.
- 8.7 The final Development Plan will not be considered by an independent Planning Panel or Planning Minister, but may need to be considered by VCAT in the event of a dispute with the selected tenderer.

## **9. FINANCIAL IMPACT**

The planning scheme amendment costs will include public exhibition, regulatory fees and likely legal representation at Planning Panel. This will require funding in FY 2019-20 and will be in addition to the approved budget for the project.

## **10. ENVIRONMENTAL IMPACT**

- 10.1 St Kilda Marina is a key foreshore site valued by not only the Port Phillip community but also the wider community, particularly boat owners and marine and foreshore enthusiasts.
- 10.2 A new lease arrangement for St Kilda Marina is recognised as an opportunity to improve the contribution of the site to the municipality and region. These aspirations are reflected in the Site Vision and Objectives, which identify broad environmental, social, cultural, and economic benefits that the project is seeking to achieve to provide improved benefits for the broader community.
- 10.3 The Site Brief articulates the mandatory and discretionary criteria that will guide respondents in the tender process to achieve the Site Vision and Objectives, with a key component focussing on Environmental and Coastal Resilience.
- 10.4 The Community Panel was generally supportive of the coastal criteria and the environmental design criteria, expressing high ambition for incorporating best practice environmental design into site infrastructure.
- 10.5 Where appropriate, coastal criteria and environmental design criteria will be included in the proposed planning controls.

## **11. COMMUNITY IMPACT**

- 11.1 The planning approach is intended to support community input at appropriate points in the process with a mixture of formal and informal participation rights.
- 11.2 The Site Brief articulates the mandatory and discretionary criteria that will guide respondents in the tender process to achieve the Site Vision and Objectives which aims to achieve considerably improved benefits for the community. These include but are not limited to significantly increasing and improving public realm and open space, year-round activation through the provision of facilities for the broader community, improving movement throughout the site, and improving marina functionality.



## 12. ALIGNMENT TO COUNCIL PLAN AND COUNCIL POLICY

- 12.1 This report contains information that aligns with Strategic Direction 4, “We are growing and keeping our character”. It supports the delivery of the specifically identified Council Plan key outcome, “a city of diverse and distinctive neighbourhoods and places”. The St Kilda Marina Lease is a specific priority in the Council Plan.
- 12.2 It also aligns with Strategic Directions 3 (We have smart solutions for a sustainable future) and 6 (Our commitment to you) by supporting delivery of the following outcomes:
- a) A financially sustainable, high-performing and well-governed organisation that puts the community first.
  - b) A city that is adapting and resilient to client change.
  - c) A water sensitive city.
- 12.3 St Kilda Marina is a key strategic site within Council's property portfolio and presents a significant opportunity in terms of social, environmental, economic and cultural possibilities for the St Kilda foreshore, the municipality and the State.

## 13. IMPLEMENTATION STRATEGY

### 13.1 TIMELINE

- a) Mid June 2019 – Stakeholder and Community Drop In information sessions relating to the Site Brief, Procurement Plan and planning scheme amendment process.
- b) July 2019 – Council meeting to resolve to request the Minister for Planning to authorise the preparation and exhibition of an amendment to the Port Phillip Planning Scheme to update the planning controls for the St Kilda Marina

### 13.2 COMMUNICATION

- a) Community and stakeholders expressed a strong desire to be kept informed of progress, and engaged in the decision making process where appropriate. In addition to regular project updates via emails to registered stakeholders and on Council's website, panel session summaries and videos were shared with the community via the Have Your Say Project page.
- b) A drop in session for the community and stakeholders is proposed to occur after the Council Meeting (where the Site Brief is planned to be endorsed and the preferred planning scheme amendment process resolved) in mid-June to provide a forum for questions, and information and clarification to be provided by those involved in the development of the Site Brief.
- c) Officers will continue to keep community and stakeholders informed of progress and engaged, where appropriate, in key decisions as the project moves forward.

## 14. OFFICER DIRECT OR INDIRECT INTEREST

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



# ORDINARY MEETING OF COUNCIL 5 JUNE 2019

**TRIM FILE NO:**

**66/02/280**

**ATTACHMENTS**

1. Attachment 1 - St Kilda Marina - Project Approach - May 2019
2. Attachment 2 - St Kilda Marina - Community and Stakeholder Engagement plan - May 2019
3. Attachment 3 - St Kilda Marina - Concurrent planning scheme amendment process timeline