

CITY OF PORT PHILLIP REPORT

STATUTORY PLANNING COMMITTEE

9 JUNE 2009

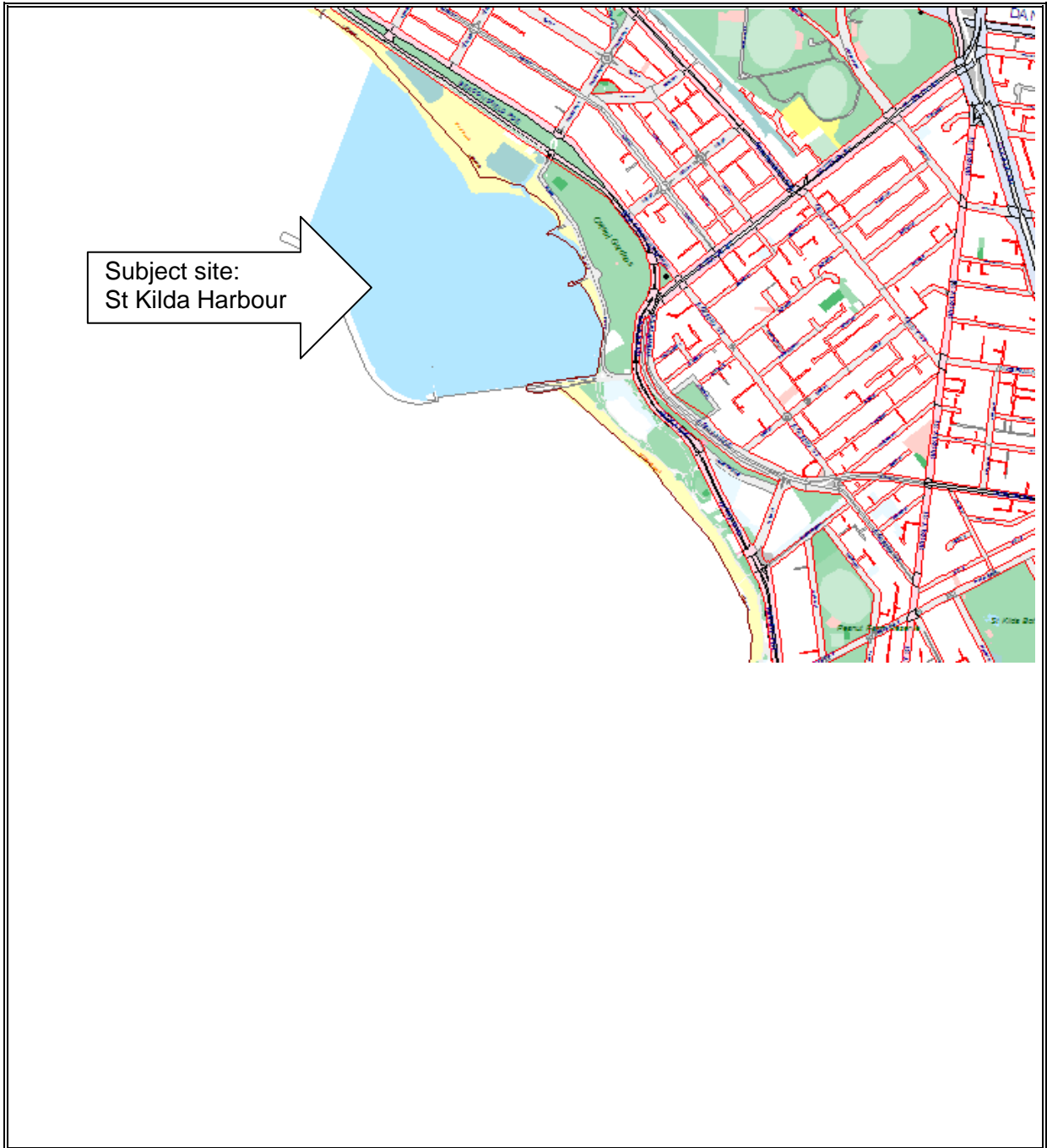
B1	ST KILDA HARBOUR
ADDRESS:	2 Jacka Boulevard, St.Kilda
PROPOSAL:	Replacement of existing RMYS marina, installation of breakwater extensions and wave attenuator.
WARD:	Catani
NEIGHBOURHOOD	St Kilda
TRIGGER FOR DETERMINATION BY STANDING COMMITTEE	Councillor Interest
APPLICATION NO:	1424/2006
APPLICANT:	Royal Melbourne Yacht Squadron
EXISTING USE:	RMYS Marina
ABUTTING USES:	Breakwater, St.Kilda Pier, Foreshore
ZONING:	Public Parks and Recreation Zone
OVERLAYS:	Design and Development Overlay 10
STATUTORY TIME REMAINING FOR DECISION AS AT DAY OF COUNCIL	Expired
RESPONSIBLE EXECUTIVE DIRECTOR:	Geoff Oulton, Executive Director Community Development & Planning
AUTHOR:	Richard Schuster, Co-ordinator, Planning Albert Park/St Kilda

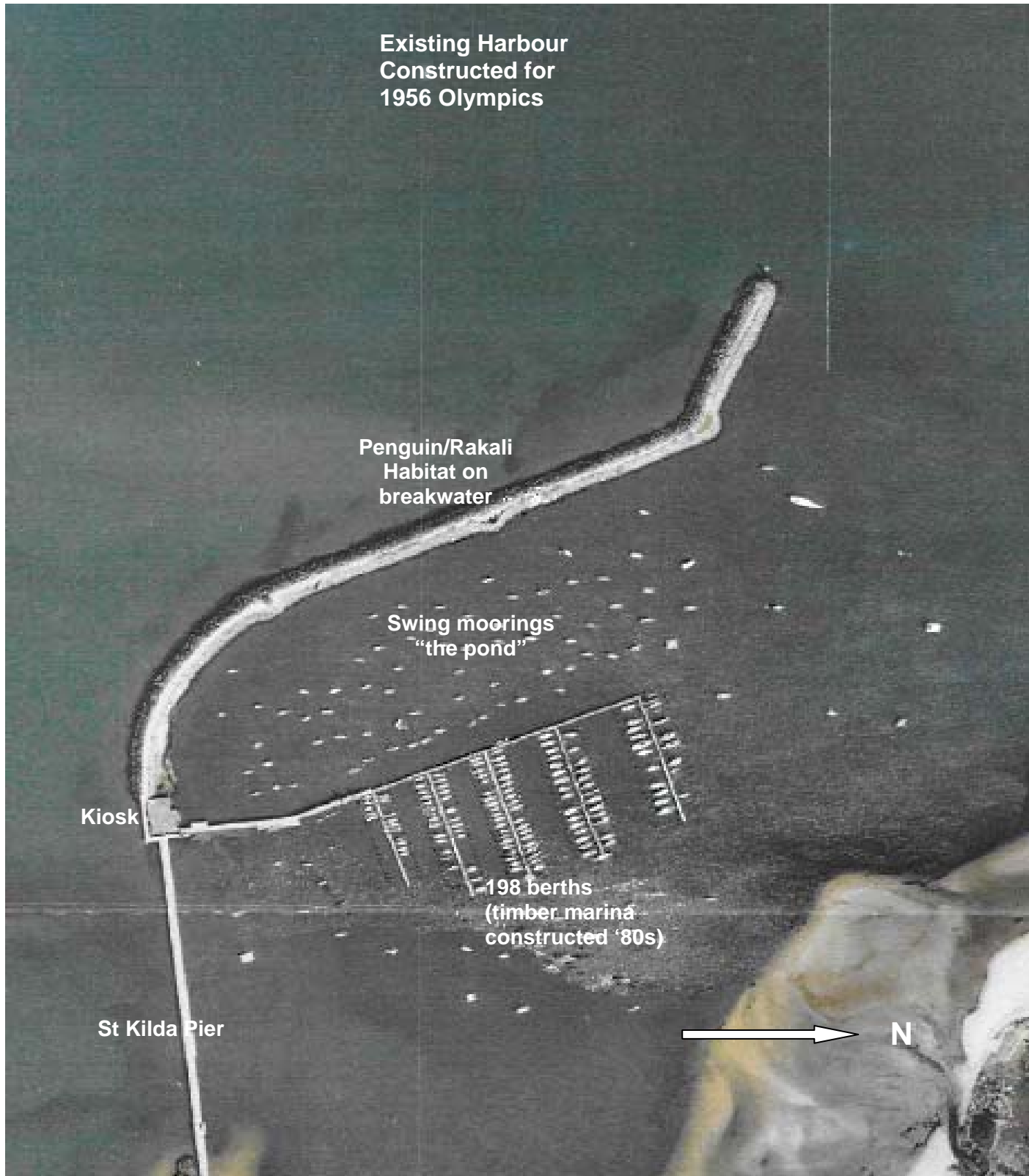
1. EXECUTIVE SUMMARY

- 1.1. The existing marina infrastructure is in need of replacement.
- 1.2. The relevant State Government bodies, being Parks Victoria (PV) and Department of Sustainability and Environment (DSE), support the Royal Melbourne Yacht Squadron (RMYS) proposal for its replacement.
- 1.3. There are no planning impediments to the issue of a planning permit subject to appropriate conditions including protection of penguins and Rakali (native water rats).

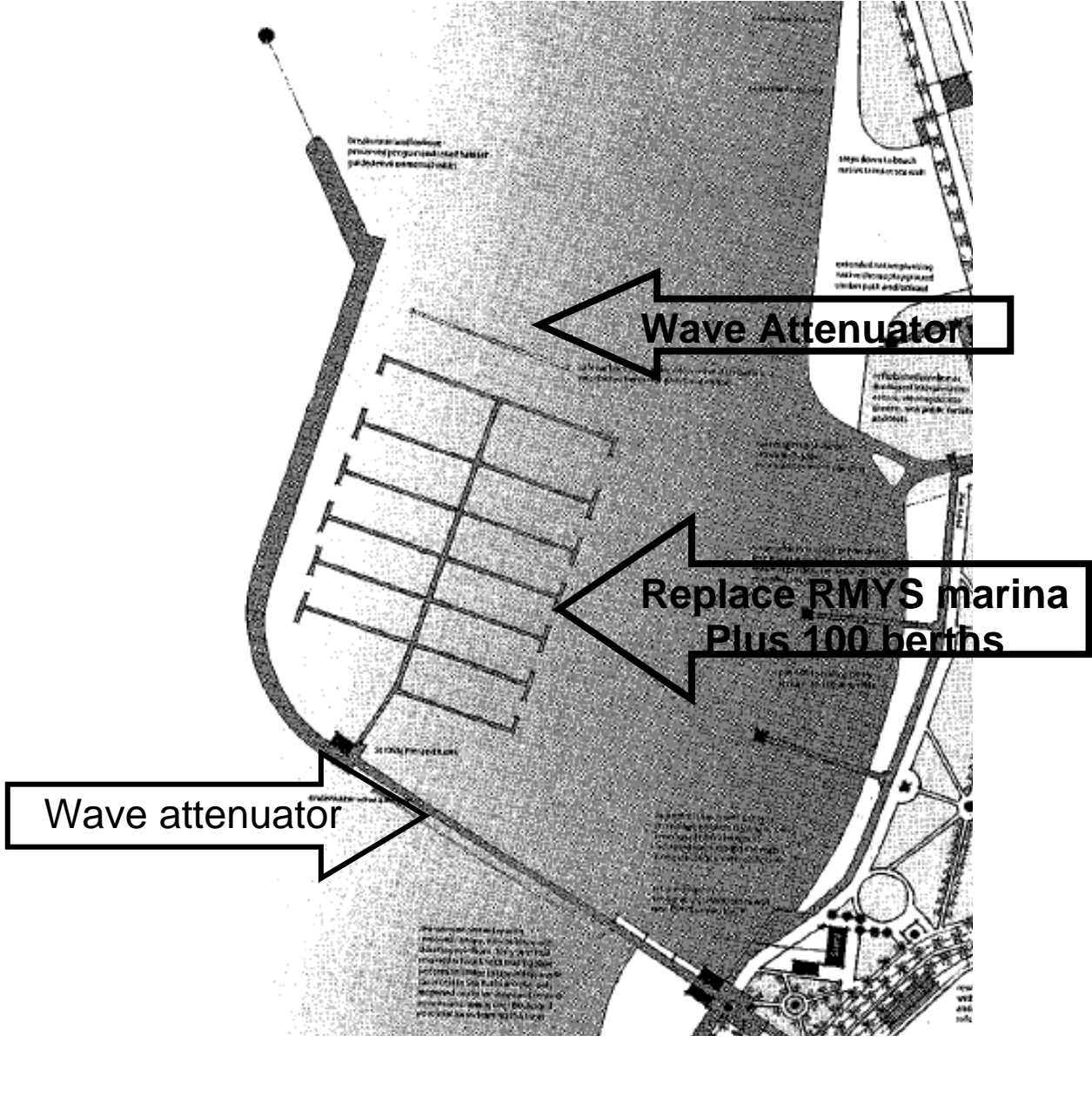
KEY ISSUES

1. Ensure RMYS proposal is consistent with longer term strategies for the Harbour.
2. Ensure the proposal does not adversely effect the marina environment.





ST KILDA FORESHORE UDF (APPENDIX 3):



2. RELEVANT HISTORY

- 2.1. The St.Kilda Breakwater was constructed for the 1956 Melbourne Olympics.
- 2.2. The existing Royal Melbourne Yacht Squadron (RMYS) timber marina was constructed in the 1980s.
- 2.3. The harbour area is currently highly exposed to storm waves.
- 2.4. Parks Victoria (PV) is the Committee of Management for the St Kilda Harbour and Pier. However the harbour area is managed by the RMYS under a management agreement with Parks Victoria. The Department of Sustainability and Environment (DSE) are responsible for the Seabed within the harbour and the Coastal Management Act.
- 2.5. The protection of the health and safety of the penguin and Rakali populations on the breakwater is managed by the St Kilda Breakwater Cooperative Management Advisory Committee consisting of representatives from Parks Victoria, DSE, Earthcare St Kilda, City of Port Phillip, RMYS and a scientific advisor.

3. PROPOSAL

- 3.1. The redevelopment would involve:
 - The construction of a new floating marina
 - Displacement of about 75 existing swing moorings in an area called the “Pond” (protected water adjacent to the breakwater). They would be relocated to Row A of the existing marina or to another grid point within the harbour.
 - An extension of the rock breakwater by 100m towards the shore.
 - A 25m addition near the northern end of the breakwater and
 - A 140m long wave attenuator.

3.2. Floating Marina:

The existing timber marina is dilapidated and in urgent need of repair. The new floating marina would be located to the west of the existing marina (in the area known as the “pond”) and provide space for 250 berths as per the Concept Plan work undertaken by Parks Victoria). This area is currently occupied by the swing moorings and is currently the most protected area in St.Kilda harbour. Location of the marina in the “pond” is necessary to avoid the need to undertake works on the harbour seabed – this is not possible due to high levels of contaminants.

The floating marina would consist of floating pontoons fixed to vertical piles, a main walkway and seven arms extending to the west. The vertical piles would be installed using a diesel pile driver. An access ramp would be constructed, linking the new marina’s deck with the existing pier arm.

The new floating marina would replace the existing 198 berth fixed marina.

Approx. 75 of the 150 swing moorings would be affected. The submitted plans indicates that up to 50 would be relocated to existing Arm A (fore aft mooring) or other locations within the harbour.

3.3. Breakwater Extensions:

Rock would be deposited where the northern end of the existing breakwater kinks to the west, to provide an overlap with the wave attenuator to give additional protection from north westerly approaching waves. This would create a 25m spur groyne two metres below the existing breakwater crest. Works would be timed to occur in May/June to minimise impact on the penguin and Rakali populations and managed with the assistance of the St Kilda Breakwater Cooperative Management Advisory Committee.

The southern breakwater would also be extended 100m parallel with the existing pier, to provide protection from waves approaching from the southerly and south westerly directions. It would also provide protection to the existing pier and kiosk. The extensions would match the existing breakwater.

The proposed breakwater extension is intended to significantly increase the area of the protected water. The applicant submits that no existing swing mooring holders will be relocated to wave conditions worse than those currently experienced as the works would provide for wave conditions equal to or better than present for the whole of the harbour.

3.4. Floating wave attenuator:

This would be added to the north end of the harbour to protect boats from waves approaching from a north westerly and northerly direction. It would be nominally 4m wide, draft of 1.8m and freeboard of 0.5m and would be held in place by steel piles driven into the seabed.

3.5. Facilities:

A sewage pump out unit would be installed for boats in the harbour and connect to the sewer on St.Kilda Pier.

No dredging of the harbour is proposed.

4. PLANNING SCHEME

4.1. Port Phillip Planning Scheme Provisions:

Clause 21.05-3:

Relevant strategies are to “reinforce the role of key activity destinations within the Foreshore area including...St Kilda Harbour...” and “ensure that the foreshore area’s important metropolitan tourism and recreational roles are balanced with the needs of local residents, the ecological health of the Bay and the environmental values of the Foreshore”.

Public Parks and Recreation Zone (PPRZ):

The key objectives of the PPRZ are:

- To recognise areas for public recreation and open space.
- To protect and conserve areas of significance where appropriate.
- To provide for commercial uses where appropriate.

A planning permit is not required for “*a building or works carried out by or on behalf of a public land manager or Parks Victoria under the relevant legislation*”. The works would be undertaken by the Royal Melbourne Yacht Squadron – not the public land manager – and therefore a planning permit is required for the buildings and works. A key decision guideline is:

- The comments of any public land manager (i.e. Parks Victoria)...having responsibility for the care or management of the land.

It is noted that Parks Victoria fully supports the application and if it had undertaken the works rather than RMYS, no planning permit would be required under the Zone.

Design and Development Overlay DDO10 (Port Phillip Coastal Area):

A permit is required to construct a building or works. “*Building*” includes by definition in the Planning and Environment Act:

- (a) *A structure and part of a building or a structure; and*
- (b) *Fences, walls, out-buildings, service installations and other appurtenances of a building and*
- (c) *A boat or a pontoon which is permanently moored or fixed to land.*

“Building” includes “a structure”. The Planning Scheme explicitly exempts “structures” (as a subset of “buildings”) or works which has consent under the Coastal Management Act 1995.

The RMYS marina would fall within the definition of a “structure”.

It then remains to be determined whether a permit is required for the marina by virtue of falling into the definition of “building” by virtue of falling within the meaning of “pontoon”. A pontoon is defined by the Macquarie Dictionary as “*a boat, or some other floating structure, used as one of the supports for a temporary bridge over a river or a floating construction serving as a temporary dock or floating bridge.*”

The proposed marina would constitute a floating construction serving as a...dock and is permanently moored or fixed to land and therefore would fall into the part (c) of the definition of a “building”. Accordingly a permit is required both under the zone and the Design and Development Overlay.

The DDO10 Objectives are:

- To co-ordinate development in the Port Phillip Bay coastal area.

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- To preserve the existing beaches and natural beauty of the Port Phillip Bay coastal area and to prevent deterioration of the foreshore.
- To improve facilities in the Port Phillip Bay coastal area to enable the full enjoyment of the area by the public.

The proposed structures would not contravene any of the objectives of the Design and Development Overlay under which a permit is required for the buildings and works.

Council must be satisfied that:

- The proposed development will not adversely impact upon natural ecosystems, coastal processes and the scenic landscape of foreshore areas.
- The risk of pollution and the effect of sewage, sullage or effluent is minimised.
- The natural beauty and future use and enjoyment of Port Phillip Bay and the foreshore by the public is enhanced.
- The proposed development is generally consistent with the Incorporated document "St Kilda Foreshore Urban Design Framework, 2002".

Use:

The Planning Scheme defines a "marina" as "*land used to moor boats...it may include boat recovery facilities and facilities to repair, fuel and maintain boats and boat accessories*". It includes the definitions of "jetty", "mooring pole", "pier" and "pontoon". Accordingly it is correct, in terms of the Planning Scheme definitions – to describe the proposal as a new "marina" notwithstanding that some potential objectors have questioned the use of this term.

In a Public Parks and Recreation Zone – use of land for the purposes of a "Marina" would not require a planning permit if it were conducted by or on behalf of the public land manager – in this case Parks Victoria. As the facility is by or on behalf of the Royal Melbourne Yacht Squadron, the use would need a planning permit.

The use has already been established and the subject harbour area is already used as a "marina" for at least 15 years. The existing marina was constructed in the 1980s. Accordingly the use has established use rights.

Pursuant to Section 63 of the Planning Scheme (existing uses), a use in Section 2 or 3 of a zone for which an existing use right is established may continue provided:

- *"No buildings and works are constructed or carried out without a permit. A permit must not be granted unless the building or works complies with any other building or works requirement in this scheme.*

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- *Any condition or restriction to which the use was subject continues to be met. This includes any implied restriction on the extent of land subject to the existing use right or the extent of activities within the use.*
- *The amenity of the area is not damaged or further damaged by a change in the activities beyond the limited purpose of the use preserved by the existing use right.”*

It is reasonable to conclude that whilst the buildings and works require a planning permit, the use of the harbour for the purposes of a “marina” does not as neither the second or third dot point above generates a need for planning permission.

Clause 52-06 – Car Parking:

“Marina” is not specified in the table to Clause 52.06. Accordingly the following applies:

“where a use is not specified in the table to Clause 52-06-5, an adequate number of car spaces must be provided to the satisfaction of the Responsible Authority”. This represents “consent” as opposed to a “planning permit”. There are no third party rights with regards to Council’s consent with regards to provision of parking in association with proposed “Marina”.

5. CONSULTATION

The proposal was extensively advertised by way of public notices in The Age, two local newspapers, two public notices on site (one on Pier Road towards WestBeach, the other at the entrance to St.Kilda Pier), and notices forwarded to Marine Safety Victoria; the Central Coast Board; Heritage Victoria; Williamstown Bay and River Cruises, Earthcare St.Kilda Incorporated; Esplanade Alliance and the St.Kilda Kiteboarding School.

In addition, a notice was given to all swing mooring holders via Royal Melbourne Yacht Squadron.

The application was placed on hold whilst the Master/Concept Plan work was undertaken as required by DSE. The issue of the Coastal Management Act consent granted by DSE reactivated the application after over three years. To ensure that interested parties were appraised of the reactivation of the application, public notice was forwarded to all those originally given notice. In addition, a public notice appeared in the Emerald Hill Times and Port Phillip Leader advising that the application had been reactivated and would be considered by Council’s Statutory Planning Committee on 9 June 2009.

In response to the original notification, a total of ten objections were received including five from swing mooring holders, one from Earthcare and a local resident. Two key issues have arisen, being concern about the re-location of the swing moorings and concern for the protection of the penguins and Rakali. The grounds of objection are listed hereunder with a response following:

- *The applicant has not consulted with the local community regarding potential environmental impacts.*

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Officer Response:

The applicant has consulted with a wide variety of government and semi-government authorities with regards to the environmental aspects of the proposal. They include:

- Parks Victoria, who have given their consent to the making of the application as the relevant public land manager,
- Commonwealth Environment Minister (Environmental Protection and Biodiversity Conservation Act).
- Department of Sustainability and Environment, who have granted a Coastal Management Consent.

Other consultation undertaken prior to the lodgment of the application (October to December 2005) were:

- A project web page.
- Introductory letters sent to key stakeholder groups (including swing mooring holders, neighbouring businesses, local businesses, police, yachting and boating industry associations and local interest groups.
- Project Information flyers located in local shops.
- Information display boards at St.Kilda Library, RMYS boat yard, RMYS members lounge and at public meetings.
- Community forums and Public Information Sessions together with targeted meetings with neighbouring businesses and local interest groups.
- Advertising by way of the Bayside Leader and Emerald Hill Times inviting participation in the community forums.
- Two meetings with the swing mooring holders.

The application has been further advertised as part of the planning permit application processes as described above.

The proposal for the Harbour area has also been the subject of extensive public consultation processes conducted by Parks Victoria in the development of the St Kilda Harbour Concept Plan 2008 (further detail below).

The applicant has submitted:

“An extensive community consultation program occurred prior to the lodgement of the planning permit application, whereby the views of the community were sought and incorporated in to the application. Detail of the community consultation process is detailed in Appendix I of the Planning Report.

Furthermore, as part of the Planning for the proposed marina upgrade, GHD has undertaken extensive assessment including coastal modelling of any possible effects to surrounding beaches, as detailed in the Coastal

Modelling Report. From the coastal modelling report it was concluded that the proposed development would have little or no impact on beaches adjacent to the harbour.”

- *Poor position of public notices.*

A public notice was located at the entrance to the pier and another located initially on the side of Westbeach Pavilion, but at the request of Council relocated to a position adjacent to the seawall at the northern end of Pier Road for the required period.

Key Issue No. 1: Swing Mooring Holders:

- *Relocation of the swing moorings to less sheltered water will deprive them of protection from weather and wave action adding to maintenance costs, limited opportunity to service vessels other than in good weather, difficulty in accessing the boat.*

In response the applicant has submitted:

“GHD conducted extensive wave modelling with the wave model SWAN Simulating Waves Near shore (as detailed in RMYS Wave Modelling Report). SWAN is an internationally accepted, numerical wave model developed by Delft Hydraulics (NL) to simulate the generation and transformation of waves.

Wave modelling was undertaken for a total of 252 cases, this included wind speeds ranging from 8m/s (15 knots) to 27m/s (52 knots).

It is well known that under existing conditions, large waves can occur in this area. Under current conditions the area between the Kiosk and Row A would not be considered ‘calmer’, and modelling shows that the area experiences significant wave heights of greater than 0.5m for 25 knot southerly winds, as can be seen in Table 8 of the Wave Modelling Report. This site would also fairly regularly experience significant wave heights of around 0.4m. (AS3962 Guidelines for design of marina – recommends < 0.4m for 1 in 50 yr events) As can be seen in Appendix F of the Wave Modelling Report, after the proposed works the proposed relocation site will not experience these type of wave conditions even under 1 in 100 yr storm events. New conditions at the location will be similar if not better than in the pond.

The wave modelling shows that due to diffraction at the tip of the southern breakwater extension, there is a gradual transition towards less protected waters as one moves east. This transition is more gradual than currently exists at the inshore end of the breakwater. As can be seen clearly in Appendix C of the Wave Modelling Report - Wave modelling for 1 in 1 yr wind occurrences of 29 knots (15m/s), will see significant wave heights of less than 0.2m in the new proposed locations for swing mooring holders, this is equal to that currently experience in the pond under the same conditions. (See table 8 of the Wave Modelling Report).

The boundary located by the 0.4m significant wave contours, as seen in Appendix C drawing SK003 of the Planning Report has been generated from the worst case wind and wave direction from the 252 cases analysed

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in the Wave Modelling conducted. Under varying wind directions the boundary would only improve in terms of the area suitable for mooring a vessel.

As can be seen in the Appendix of the Wave Modelling Report, the proposed harbour redevelopment will create a much larger area of suitable mooring conditions. The proposed area of relocation will experience suitable wave conditions with significant wave heights not exceeding 0.4m even under the most extreme conditions of a 1 in 100 yr event. This is equal to or better than conditions experienced at any of the current swing mooring locations.

The proposed breakwater extension will significantly increase the area of the protected water, as can be seen in the Appendix of the Wave Modelling Report. No existing Swing Mooring holders will be relocated to wave conditions worse than those currently experienced.

As the vessels will be relocated to new mooring sites with conditions equal to or better than existing, no deprecation in the ability to service a vessel over that currently experienced will occur.

Conditions within the Harbour will be improved as a result of the proposed Harbour redevelopment, including conditions at the location of any dinghy tenders. Whether it is dangerous for anyone to be out in a tender depends on the tender, experience and skill of the operator. However forecast sea conditions are equal to or better than the existing harbour layout, with conditions accessing moored vessels likely to improve over that of current.

Existing Swing Mooring holders will be provided with the option of a Fore Aft mooring on a modified Row A or relocation to a suitable new swing mooring with conditions equal to or better than that of their current mooring site. As outlined in section 3.2 of the Planning Report, any vessels not suitable for a Fore Aft mooring site is advised to relocate to a new swing mooring location. New dinghy racks will also be provided, representing a significant upgrade, as at present dinghy racks do not exist. As outlined in section 3 of the Planning Report, RMYS will bear the expense of all relocations. There is no reason why this relocation would add materially to annual maintenance costs.

Council Officer Comment:

The location of the marina in the "pond" – that is between the breakwater and the existing marina – has been made necessary because of the high levels of contaminants in the harbour seabed. By locating in the deeper waters of the "pond", no dredging is required and thus the contaminants would not be disturbed. It is clear that some swing mooring holders prefer the "pond" because it is seen as being the most protected part of St.Kilda harbour. The issue of who moors where within the harbour is not a planning consideration as the use, as discussed above, is not subject to planning control, because it has existing use rights. The arguments about the desirability of the location of the swing moorings is therefore an issue for the various RMYS members to resolve amongst themselves and is not an issue which the Council can resolve by way of a planning permit application. The above extracts from the applicant however, indicate that RMYS has adequately considered the interests of the swing mooring holders. The applicant has responded to each and

every detailed objection from swing mooring holders and the responses to each issue is held on file.

Further, the matter has been fully considered by both Parks Victoria and the Department of Sustainability and Environment in the development of the St Kilda Harbour Concept Plan and grant of the Coastal Management Act consent respectively. The Coastal Management Consent includes a condition that "RMYS, in conjunction with Parks Victoria, will be responsible for managing the removal of swing moorings consistent with the St Kilda Harbour Concept Plan (2008). This may involve transition of affected swing mooring holders to interim alternative mooring facilities as part of the Marina Precinct 1 works."

Key issue No.2: Concern regarding Penguin and Rakali protection:

Earthcare commented in its objection that:

- The relatively small distance from closest berths to the Breakwater, could disrupt penguins coming and going from their feeding expeditions – there would be much closer mixing of penguins and boats.
- Poor penguin access under or around the proposed wave wall.
- Creation of an extra rock node at Breakwater bend, may effect the penguins already nested there.
- The impact of lighting on penguins.

Officer Comment:

There was no overall impact on the penguin population as a result of the four year breakwater construction works completed in 1998, (one fatality was recorded) and the population of little penguins significantly increased in numbers after the 1998 construction. The little penguin population is numbered at over 500 and is not considered to be a threatened population.

The applicant has submitted that little penguins are highly manoeuvrable, regularly travel large distances and are able navigators of the marine environment. It is thus thought that neither the breakwater extensions nor the wave attenuator would become obstacles to the penguins as they return to/leave the breakwater. The draft of the wave attenuator is only approximately 1.8m and hence the penguins can easily dive below this. Similarly, it is thought that the penguins would have no difficulty in avoiding slow moving boats around the proposed marina;

Any noise impact created during construction and operation would be limited due to the nature of the penguin's behaviour: leaving the bay during the day to forage and returning at dusk; and whilst the penguins are visual feeders, they are not thought to feed within the harbour and it is unlikely that there will be any effect on their foraging success.

In accordance with Marine Safety Victoria requirements flashing green and red solar powered navigational lights would be installed at either end of the wave attenuator, along with low-level lighting on the floating marina. There is already a large navigation light at the end of the breakwater and nighttime tours to observe the little penquins.

The St. Kilda Breakwater Wildlife Management Advisory Committee is convened Under the Working Plan for the St. Kilda Breakwater Wildlife Management Cooperative Area (WMCA) to provide advice to Parks Victoria and the DSE on the management requirements of the St. Kilda Breakwater Wildlife Management Cooperative Area with regard to the Little Penguin colony and habitat protection.

The Committee has noted that the St Kilda Harbour Concept Plan aims to protect marine environmental values associated with the harbour and offered the following comments to Parks Victoria in the preparation of the Concept Plan relating to the protection of penguins and other wildlife on the St. Kilda Breakwater WMCA:

Northern wave attenuator

The design of the northern wave attenuator should accommodate the daily need for penguins to swim to and from the breakwater. The distance between the wave attenuator and the breakwater should be wide enough for penguins to pass through. The committee seeks further information regarding the depth of the attenuator and curtain, will it allow for penguins to swim under the floating structure?

Breakwater extension design

The extension to the breakwater should be designed to provide favourable penguin habitat and access and potentially include a sandy area that Rakali are able to use to come ashore. Construction works relating to the extension of the breakwater and the northern attenuator should be timed to occur from May to July outside of breeding and moulting season. A monitor should be present during construction works to ensure penguins are not crushed and burrows are not covered over when placing rocks.

Swimming island (not part of this application)

The swimming island should be designed so that it does not collect rubbish, which can pose a risk to marine animals, wildlife and sea birds.

Sea baths (not part of this application)

The construction of sea baths on the pier will increase visitor numbers to the pier. An increase in visitor numbers may also increase the risk of visitors harassing and harming the penguin colony especially on warm evenings and weekends. Management arrangements for the sea baths including opening times should consider the penguin colony and aim to minimise the risk posed to penguins from visitors to the sea baths.

Vessel management and traffic congestion

The design of the harbour will need to carefully consider the management and regulation of vessel traffic including licensed tour operators offering penguin watching tours in the harbour to ensure that vessel traffic does not impact on the movement of penguins. The extension to the breakwater may impact on penguin swimming to the breakwater by reducing the width of the entry/exit and decreasing the distance between vessels and penguins.

Environment Management Plan (EMP)

An Environmental Management Plan (EMP) for the St. Kilda Harbour be prepared to ensure that the building and ongoing management of the harbour do not impact on the wildlife which inhabit the St. Kilda Breakwater WMCA. The Site EMP will be required to address environmental

management issues such as water quality, air quality, noise and vibration, light spill, stormwater usage, energy consumption, prevention of pollution to the environment from boat construction and maintenance activities, and exotic marine pest introductions and translocations. The EMP should also consider prohibiting the use of copper based anti-foul paints, ensure that vessel owners do not release of sewage and grey water discharge in the harbour, addresses rubbish build up in the north eastern corner of the harbour, minimises the risk of fuel spills and requires all moorings with the harbour to be environmentally friendly moorings and minimise the need to dredge in the inner harbour to limit disturbance to sea grass within the harbour. An EMP is relevant to the design, construction and operation phases of the development.

Penguin viewing boardwalk (not part of this application)

The committee notes that the plan aims to integrate the management of penguins into the proposal through the inclusion of a penguin viewing boardwalk to facilitate viewing of the colony and protect the penguin colony from visitor harassment.

The installation of the penguin viewing boardwalk provides visitors with a safe and appropriate viewing platform and will also serve to increase penguin protection by separating visitors from penguin habitat. With the addition of the boardwalk access to the breakwater should be restricted for management purposes only to protect the penguins located between the kiosk and the current fence from the expected increase in visitor numbers especially to the sea baths on warm evenings. Fencing to close the breakwater from public access should be built on the pier structure to minimise construction costs and be sympathetic to the historic and scenic values of the pier and kiosk.

The penguin viewing boardwalk should be installed at a distance far enough away to discourage people jumping across to the breakwater. Lighting on the breakwater should be solar powered and be an orange-yellow light; bright enough to illuminate penguins for the viewing purposes without disturbing the penguins at night. Lighting on the breakwater should be restricted to the areas where the current boardwalk is located.

The St. Kilda Breakwater Wildlife Management Advisory Committee also advised that it looks forward to working with Parks Victoria to ensure that the penguin viewing boardwalk provides visitors with a safe and appropriate viewing platform while increase penguin protection.

It is reasonable to include a condition on any planning permit issued that an environmental management plan be submitted indicating how the interests of the penguin colony both during and after construction is to be protected in light of the comments provided by the St.Kilda Breakwater Wildlife Management Advisory Committee.

This would be reinforced by the Coastal Management Consent which requires a "Construction Environmental Management Plan (CEMP)" prior to commencement of works to be approved by Parks Victoria. The CEMP must specify a number of things related to safeguarding the environment including "measures to avoid and/or minimise the risk to wildlife values associated with the St Kilda Breakwater Wildlife Management Cooperative Area".

Other:

- Impact of groyne on St.Kilda Beach.

Applicant response:

As addressed above, Coastal Modeling concluded that there would be no measurable impact on surrounding beaches due to the proposed development.

- Impact of increased refuse discharge from additional boats. Other environmental impacts.

Applicant response:

As addressed in section 5.1 of the Environmental Statement, the operation of the new marina will expose the harbour to a small increase in the number of boats using the area, marginally increasing the likelihood of spills (fuel) into the harbour water. However the impacts are not expected to be significant or worse than existing. The new marina will introduce sewage pump out facilities not previously in the marina. Mooring conditions in the harbour will also be improved reducing the likelihood of spills due to vessel damage, both of which will provide a significant environmental benefit to the harbour.

The Environmental Statement Report indicates a slight increase in ambient noise levels may arise from increased operation of vessels especially during events. If the correct mitigation measures are undertaken little impact should be experienced.

- Replacement of the harbour will stir up the heavy metal deposits acknowledged to reside in the silt at the bottom of the harbour with adverse impact on the penguin and rakali rat populations.

Applicant response:

“As outlined in section 5.1 of the Environmental Statement, the impacts on the water quality as a result of the construction phase are expected to be minimal and temporary. Any increase in turbidity of the water is expected to be very localised and is expected to settle quickly”.

- Closing in the southern breakwater will lead to silting up of the harbour.

Applicant response:

“As outlined in the Planning Report and can be seen in Appendix B drawing SK002, the proposed Harbour Redevelopment is for a 100m extension of the existing breakwater at the southern end. This extension will not close the southern breakwater, still leaving a significant (200m approx) opening under the pier. As outlined in section 6 of the coastal modeling report, changes to the near shore wave climate due to the marina upgrade are expected to have no measurable impact on the littoral processes within the harbour. This will not lead to silting up of the harbour”.

- The proposal will lead to future expansions, which will exacerbate critical parking shortages and sewerage pumping problems.

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Applicant response:

“As detailed in the Planning Report the proposed Marina Redevelopment represents the entire extent of proposed works at this stage and are the only works for which a planning permit is being sought.”

- The proposal will exacerbate the problems with slipping of boats in Pier Road.

Applicant response:

“The slipway is not part of the proposed marina redevelopment. RMYS expect that the existing slipway will be adequate for the proposed redevelopment”.

- Upset the “sailing feel of the area – main objection is to a large marina encroaching on beach amenities.

Applicant response:

“The Royal Melbourne Yacht Squadron as the name suggests predominately caters for Yachts, and other sailing vessels, which will continue with and enforce the “sailing feel” of the area. The marina upgrade works will take place to the western side of the existing marina and will not encroach on the beach amenities. The proposed redevelopment is only marginally larger in boat numbers than the existing marina but occupies similar space. GHD has also conducted Coastal Modelling, to ensure the surrounding beaches will not be adversely affected by the proposed development. (See Coastal Modelling Report)”.

- At two briefings conducted by RMYS they were unequivocal in their intention to retain the existing wooden marina. This appears to be inconsistent with the application, which has been lodged.

Response:

The Coastal Management Act consent would require the existing marina to be removed within 12 months of completion of the new floating marina.

- There is already a marina nearby that is full of largely unused boats and a huge carpark.

Response:

The nearby St Kilda commercial Marina about 1 km south of the harbour is full, caters mostly for power boats and cannot cater for many sailing vessels due to its relatively shallow nature. For these reasons the St Kilda marina cannot be considered as an alternative to the Royal Melbourne Yacht Squadron Marina.

- Overdevelopment of the site:

Response:

The proposal represents only minimally greater development over what currently exists within the marina as the works are predominately replacement works of the existing facilities, not additional development.

6. OFFICER'S ASSESSMENT:

Strategic Issues:

The St.Kilda Foreshore Urban Design Framework states (p26):

"The Royal Melbourne Yacht Squadron has used the Harbour sustainably for many years. Increased use and capacity of the Harbour will require replacement of existing facilities, such as St.Kilda Pier and existing marina berths. Improvements must occur in a sensitive way to maintain water quality and biodiversity...

The piers and breakwater were originally constructed to provide a safe recreational harbour, but are not entirely sufficient in strong wind conditions. St.Kilda is exposed to wind generated waves and one suggested solution is to use wave attenuators to dissipate rolling storm event waves before they enter the Harbour. The advantage of these structures is that they allow coastal processes, such as the movement of sand along the shore and the flushing of the Harbour, to continue to support its recreational and ecological values.

The St Kilda Foreshore UDF acknowledges that the current harbour facilities are in poor repair

Strategies include:

- Develop a safe harbour, without causing unacceptable adverse impacts on Foreshore and Bay ecology, coastal processes and water quality.
- Ensure that development and management of the Harbour controls the uses, the maintenance of facilities and the development of new structures to allow for the sustenance of marine fauna and flora and the protection of views."

At p38 it says:

"Current harbour facilities are in poor repair and due for replacement. The expected lifespan is fifteen years from 2001. Installation of modern wave attenuators would improve facilities for boats whilst maintaining ecological processes. These wave attenuators are key features in developing a safe harbour, as they substantially reduce wave activity and height, reducing wave induced damage to boats and harbour structures and allowing all weather access and mooring.

As well as adequate shelter from waves, a working harbour requires a certain number of berths to be financially viable. Existing berth capacity could be extended to provide for the RMYS as well as for the additional number of berths required for viability. Economic investigations undertaken as part of the Framework process suggest the minimum number of additional berths is 100 permanent berths, 70 day trip berths, 30 specialist cabin cruiser berths and redeveloped RMYS berths."

The maps in the Framework document consistently indicate the new marina located within the "pond" area as proposed.

Proposals envisaged in the Framework are:

- Wave attenuators along with floating pens and environmentally sensitive for and aft moorings to replace swing moorings, allowing the retention of a recreational beach accessible for off-the-beach yacht classes,

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- Floating marina with public access along their spines,
- Public mooring areas – GHD say “it will provide a public use pontoon for short term berthing. This will be located off the existing outer low landing platform.
- Shelter and interpretation facilities around the Harbour and out to the breakwater,
- An increased number of boating berths and facilities.
- Facilities for a sustainable number of ferry passengers, eco-tourism operators and boat support services.

Further objectives are;

- Ensure sustainability of marine wildlife and bay ecology.
- Improve the attractiveness of places that embody the cultural heritage of St.Kilda and ensure the continued viability of existing iconic buildings, spaces, landmark and attractions: the Beach and Harbour.
- Objective 6: To protect, celebrate and enhance the environmental integrity of St.Kilda Harbour and foreshore.

The proposed works are considered consistent with the outcomes envisaged by the UDF.

The proposal is also consistent with the following relevant policy at 22.10:

- Encourage new use and development that contributes to the diverse character and builds on the principal role of the St.Kilda foreshore area as a leisure and entertainment precinct.
- Enhance the function of specific sites by consolidating yacht support services at the Royal Melbourne Yacht Squadron.

St.Kilda Harbour:

- Ensure the design and implementation of a safe recreational harbour.
- Ensure sustainable boat usage of the Harbour, consistent with the principles and requirements of the Designated Boat Zone and the Wildlife Management Conservation Area.
- Design and implement all maritime structures (land and sea based) in accordance with best practice principles in environmental design.
- Protect and manage access to habitat areas.

St.Kilda Harbour Concept Plan (Parks Victoria):

The St.Kilda Harbour Concept Plan has been prepared by Parks Victoria to guide the redevelopment of the St.Kilda Harbour prior to any approval being given to RMYS to undertake works in the precinct. The State Government would pay for works to the Pier and some of the other features and private developers would pay for the rest. RMYS will be

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responsible for the marina, the spine and the wave attenuation and removal of their existing berths.

The Concept Plan was released by Martin Foley, MP Albert Park at St.Kilda Kiosk on 11 August 2008 for a six week public consultation period. The plan was made available on the Parks Victoria website, at Parks Victoria's Albert Park office, Martin Foley's office and St.Kilda kiosk for viewing.

A number of presentations were made to key stakeholders and interest groups, including unChain St.Kilda, St Kilda kiosk operators, St Kilda Breakwater Wildlife Advisory Committee, City of Port Phillip Councillors, Heritage Victoria and peak boating industries and fishing bodies. Two public open days were held on 16 and 23 August 2008 at the RMYS building. The open day information was contained in the media release and advertised in the local newspapers. Signage was displayed on site and at the pier to invite interested members of the public to participate. Parks Victoria staff were in attendance on both days from 10am to 4pm to respond to queries and provide further information on the plan.

A feedback form was provided at the open days and was available on the website to assist in forming comments and to determine the support for the elements of the plan. 129 feedback forms were received during the public consultation period. Respondents were requested to respond if they strongly supported, supported, had no view, oppose or strongly oppose elements of the plan. Over 100 respondents (90%) "strongly supported" the new marina concept (250 berths for the RMYS) with 76% of respondents ranking the RMYS component in their top three elements of the harbour plan

Subsequently Parks Victoria advised Council on 24 December 2008 that it

"supports consideration by the DSE of the Coastal Management Act (CMA) consent application lodged by the Royal Melbourne Yacht Squadron (RMYS) in December 2005 for their proposed marina development within the St.Kilda Harbour. (The) RMYS application for the marina at St Kilda Harbour (is) consistent with the general arrangement of the concept plan, identified as the marina precinct 1. Conditional to Parks Victoria support of the RMYS planning permit application are a number of elements which are required to be modified to support the efficient operation of St.Kilda Harbour as a whole and to facilitate the implementation of a staged Concept Plan. The concept plan for the harbour is yet to be finalised, however, the RMYS marina redevelopment is a priority considering the poor condition of the existing infrastructure.

For consistency with the Concept Plan the following modifications to the existing RMYS planning permit include:

- *An increase of wet berths allocated to RMYS from 230 to 250 within the harbour. The increase in the number of berths reflects the ability of the club to grow membership and improve the use of the protected waters within the harbour.*
- *Realignment and increase in the length of the northern wave attenuator from 140 metres to 210 metres and the realignment of the rock spur. The modifications allow for the projected demand for wet berths within the harbour and improved efficiency for berthing in the lee of the existing rock breakwater. The increase in length of the northern attenuator and realignment of the rock spur provides protection beyond the footprint of the*

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proposed marina precinct 1 and allows growth for additional berthing facilities within the harbour, as projected through boating demand studies.

- *The southern wave protection as shown in the RMYS planning permit is not supported as the extended rock structure would impact on implementation of wave protection as proposed in the concept plan. Southern wave protection required for the marina precinct 1 is required to be staged so as not to adversely effect future implementation of wave protection and public use as developed through the Concept Plan process.*
- *The intent of the negotiations with RMYS will be that the existing timber structure is required to be removed entirely on completion unless otherwise directed by Parks Victoria. Relocation of the swing mooring holders will be required to be negotiated and may require some interim berthing arrangements to cater for the swing mooring holders hence some timber pens may be requested by Parks Victoria to be retained for a period of time. The staging of the redevelopment is to consider relocation of the swing mooring holders to suitable wave protection and water depth, allowing for some swing mooring holders to take up a berth in the new marina, offered a swing or pen mooring within the harbour or alternate site within Port Phillip Bay. The relocation of swing mooring holders and the plan from RMYS to cater for the displaced moorings will be the subject of detailed negotiation through the seabed lease process.*
- *Public access is to be made available along the marina spine as shown in the concept plan.*
- *Traffic management issues have been addressed and existing car parking provided within the St Kilda precinct is considered sufficient to support the Concept Plan proposal. A report was commissioned by City of Port Phillip and prepared by GTA consultants, titled St.Kilda Harbour Master Plan Transport Impact Assessment, May 2008.*
- *As part of the lease negotiation for marina precinct 1 an associated waver protection for the floating marina, Parks Victoria will seek an equitable contribution for the whole of harbour protection...from the RMYS. This reflects that RMYS is utilising an area of the harbour well protected by the existing rock breakwater; therefore minimising the quantum of protection works required for the floating marina to achieve the satisfactory design standards.*
- *Parks Victoria is the designed Port Manager under the Port Services Act 1995 for the Port of Port Phillip, and activities, including works, are required to be authorised. RMYS would be required to submit for approval to Parks Victoria certified drawings and computations for the proposed works, construction an demolition program including OH &S and navigation issues addressed to the satisfaction of Parks Victoria.*

In summary it is expected that RMYS is to reactive the planning application lodged to the City of Port Phillip in December 2005 as the Committee of Management for the development area marina precinct 1. Parks Victoria supports the reactivation of the RMYS Planning application.”

Coastal Management Consent (Department of Sustainability and Environment):

Referral to the Department of Sustainability and Environment (DSE) is required under the provisions of the Design and Development Overlay. Such a referral is also deemed to represent an application for a Coastal Management Consent pursuant to the Coastal Management Act 1995.

In May 2006, DSE advised in the following terms:

“Parks Victoria have commissioned Connell Wagner Pty Ltd to prepare a Draft Master Plan for St.Kilda Harbour...One of the key reasons for Parks Victoria preparing a Master Plan for St.Kilda Harbour is to provide a benchmark against which future redevelopment of the harbour, such as that proposed by the Royal Melbourne Yacht Squadron in Planning Permit application No. 1424/2005, can be assessed.

An assessment of the proposed redevelopment of RMYS marina facilities, as proposed in Planning Permit application No. 1424/2005, is required against the Draft St Kilda Harbour Master Plan”.

By letter received by the City of Port Phillip on 7 April 2009, DSE consented to the proposal subject to a number of conditions on the Coastal Management Consent which seeks to align the submitted application with the outcomes of the Concept Plan process. Conditions include:

- An increase in wet berths allocated to RMYS from 230 to 250 within the harbour.
- Realignment and increase in length of the northern wave attenuator from 140 metres to 210 metres.
- Realignment of the proposed spur groyne.
- Modification of the southern breakwater extension so as to be consistent with future staged redevelopment of St.Kilda Harbour, consistent with the St.Kilda Harbour Concept Plan 2008 (Parks Victoria).
- Modification of infrastructure design to plan for sea level rise of not less than 0.8 metres by 2100 having regard to the design life of the works.
- Public access to be made available along the new marina spine.

With regards to the concerns expressed by swing mooring holders the following condition is imposed on the Coastal Management Consent:

“RMYS, in conjunction with Parks Victoria, will be responsible for managing the removal of swing moorings consistent with St.Kilda Harbour Concept Plan (2008). This may involve transition of affected swing mooring holders to interim alternative mooring facilities as part of the Marina Precinct 1 works”.

Conditions also required a detailed Construction Environmental Management Plan (CEMP), an Operations Environment Management Plan (OEMP) and an Asset Replacement and Management Plan – all of which are required to be approved by Parks Victoria prior to commencement of works.

Environment Protection Authority:

As there will be no waste emissions created by way of the proposed development the marina will not require a Works Approval in accordance with Section 19A of the EPA Act or a licence pursuant to Section 20 and therefore no referral to the Environment Protection Authority is required pursuant to Clause 66.02 of the Planning Scheme.

Parking:

Council is required only to give “consent” for the level of parking to be provided. No third party rights exist with regards to Council’s consideration, or determination, of whether the level of parking to be provided is satisfactory.

The applicant’s traffic engineer advises:

- The net effect of the development is a 52 increase in berths once the old marina is demolished. (This has since increased to 52).
- In accordance with “Australian Standard 3962-2001 – Guidelines for the design of Marinas” (0.6 spaces per wet berth), this would generate the need for 30 car parking spaces .
- Traffic evidence indicates that the additional parking may be accommodated in the 440 space underground car park at the Sea Baths operated by Wilson Parking and just 150m from the RMYS clubhouse, which is currently underutilised. This car park has no reserved or private spaces and is open 24 hours per day.
- Even at peak demand (weekend midday – mid summer), the Seabaths car park has at least 40 spaces unoccupied.
- Additional traffic generated by the replacement marina equates to approx. 86 vehicle movements per day. This may be easily accommodated by the existing road network.

Further, in response to the exhibition of the Draft St Kilda Harbour Concept Plan, in January 2008 the City of Port Phillip commissioned a St Kilda Harbour Master Plan Transport Impact Assessment from GTA Consultants. Data was collected for their report on the following days:

Saturday 16 February 2008
Sunday 24 February 2008
Wednesday 27 February 2008
Friday 29 February 2008 and
Sunday 9 March 2008

Their report of April 2008 may be summarised as follows:

- 1494 long term car parking spaces exist within the areas immediately adjacent to the harbour of which between 63% and 81% were occupied (292 vacancies).
- The peak number of pedestrians accessing the existing marina ranged from a low of 5 (various times Friday 29 February) to a high of 132 (6pm-7pm Wednesday 27th February).

- Interview surveys indicated that 56% of the pedestrians accessing the existing marina drove (the remainder cycled, walked, used public transport or were dropped off). Therefore peak parking demand is 56% of 136 or 76.2 equivalent to a rate of 0.38 spaces per berth (198 existing berths). This rate is consistent with the Roads and Traffic Authority of New South Wales parking data for Pleasure Boat Facility (Marina) was used providing a rate of 0.6 spaces per racing berth, 0.3 spaces per wet berth for commercial types, 0.2 spaces per swing mooring and 0.5 spaces per Marina employee.
- 61% of drivers parked in Pier Road, 25% in the Seabaths car park, the remainder parking at the Yacht Club or on the pier.

The increase of berths from the current number of 198 to a proposed number of 250 (i.e. 52) would generate extra demand for 30 vehicles. This can be easily and adequately absorbed within the vacant car parking supply within the immediate vicinity as evidenced in dot point one above.

It is concluded that the availability of parking in vicinity of the RMYS clubhouse is such that the level of parking available to the marina is sufficient and therefore to the satisfaction of Council and that Council may give consent pursuant to Clause 52.06-5. This is recommended at Part B.

Construction Work Impact:

A construction management plan is required to ensure that works are carried out in a manner that does not adversely affect the public use of the pier and surrounds including regarding the delivery of rocks by truck for extension of breakwater. This may be achieved by permit condition.

7. ENVIRONMENTAL ASSESSMENT

- 7.1. It is important that the works be undertaken in a manner that does not disturb the little penguin and Rakali populations. This will be achieved by the requirement for an Environmental Management Plan with the input of the St.Kilda Breakwater Cooperative Management Advisory Committee. This will be required by both the Coastal Management Consent and the Planning Permit.
- 7.2. This type of work was successfully carried out for the major breakwater reconstruction in the 1990s when 22,000 tonnes of rock was installed.
- 7.3. GHD suggest that a hydrodynamic model study has shown, using simulations, that the construction of the breakwater extensions and wave attenuator will have no significant impact on the existing coastal processes at the harbour.
- 7.4. DSE and Parks Victoria are satisfied that the proposal will have no adverse environmental impact.

8. COVENANT

- 8.1. Not applicable

9. OPTIONS

- 9.1. Approve as recommended**
- 9.2. Approve with changed conditions**
- 9.3. Refuse**

10. CONCLUSION

Parks Victoria supports the proposal and DSE has now issued the Coastal Management Consent with conditions requiring minor variations to fully comply with the Concept Plan (received 7 April 2009). The proposal is consistent with the St.Kilda UDF.

Issues raised by third parties have been considered in the preparation of the St.Kilda Harbour Concept Plan and can be adequately addressed by permit conditions.

The best location for the swing moorings is not a planning matter requiring determination by Council but will no doubt continue to be the topic of discussion between RMYS and its members.

There is no impediment to the required replacement of the St.Kilda Safe Harbour, and no planning reason to prevent it from proceeding.

11. RECOMMENDATION – NOTICE OF DECISION

PART A:

That the Council being the Responsible Authority, (having caused the application to be advertised) and having received and noted the objections, is of the opinion that the proposed development will not cause material detriment to any person other than the applicant.

That a Notice of Decision to grant a permit be issued for buildings and works comprising replacement of the existing RMYS marina with a 250 berth floating marina in the area between the existing pier arm and the breakwater, relocation of 75 swing berths and installation of a floating wave attenuator and spur groyne at the northern end of the harbour and extension of the existing rock breakwater to the east along the pier at 2 Jacka Boulevard St.Kilda (St Kilda Harbour) subject to the following conditions:

1. Before the use and/or 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 drawn to scale with dimensions and three copies must be provided. The plans must be generally in accordance with the submitted documentation Royal Melbourne Yacht Squadron St Kilda Safe Harbour Ltd Redevelopment Planning Report (December 2005) prepared by GHD and the associated drawings and appendices but modified to show:
 - a) An increase in wet berths allocated to RMYS from 230 to 250 within the harbour.
 - b) Realignment and increase in length of the northern wave attenuator from 140 metres to 210 metres.

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- c) Realignment of the proposed spur groyne.
- d) Modification of the southern breakwater extension so as to be consistent with future staged redevelopment of St.Kilda Harbour, consistent with the St.Kilda Harbour Concept Plan 2008 (Parks Victoria).
- e) Modification of infrastructure design to plan for sea level rise of not less than 0.8 metres by 2100 having regard to the design life of the works.
- f) Public access to be made available along the new marina spine.

All of the details required above are to be to the satisfaction of the Responsible Authority.

- 2. The development and/or use as shown on the endorsed plans must not be altered without the written consent of the Responsible Authority.
- 3. All plans and documentation associated with completion of Marina Precinct 1 must be approved by Parks Victoria prior to commencement of works and the works undertaken to the satisfaction of Parks Victoria.
- 4. The existing RMYS marina infrastructure must be demolished and removed within 12 months of practical completion of the new Marina Precinct 1 to the satisfaction of Parks Victoria or as otherwise agreed by Parks Victoria.
- 5. RMYS, in conjunction with Parks Victoria, will be responsible for managing the removal of swing moorings consistent with the St Kilda Harbour Concept Plan (2008). This may involve transition of affect swing mooring holders to interim alternative mooring facilities as part of Marina Precinct 1 works.
- 6. All lighting of external areas must be suitably baffled so as not to cause nuisance or annoyance to nearby users and wildlife to the satisfaction of the Responsible Authority.
- 7. No form of public address system or sound amplification equipment installed in the premises shall be audible beyond the Harbour to the satisfaction of the Responsible Authority.
- 8. No advertising signs shall be displayed except with the further permission of the Responsible Authority.
- 9. The Construction Environmental Management Plan (CEMP), Operations Environment Management Plan (OEMP) and Asset Replacement and Management Plan as required by the Coastal Management Consent dated 24 March 2009 (DSE ref PP-CA 08/0180) must be submitted to and be to the satisfaction of Parks Victoria. Once approved by Parks Victoria, a copy of the documents must be provided to the City of Port Phillip.
- 10. Prior to the commencement of construction works allowed by this permit, a construction management plan to the satisfaction of Responsible Authority must be prepared and approved by the Responsible Authority. The plan must include a works program, with the objective of minimising the impact of construction works on the nearby publicly accessible land and public roads to the satisfaction

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of the responsible authority. The plan must also specify the means of reducing any impact on access, pedestrian and vehicular circulation and the impact of dust and noise (at the cost of the applicant). Once approved, works must be carried out in accordance with the approved construction management plan to the satisfaction of the Responsible Authority.

11. Prior to the commencement of construction works allowed by this permit, an environmental management plan to the satisfaction of the Responsible Authority must be prepared and approved by the Responsible Authority. The plan must indicate how the interests of the penguin colony both during and after construction are to be protected in light of the comments provided by the St.Kilda Breakwater Wildlife Management Advisory Committee. The Plan must address environmental management issues including but not limited to water and air quality, noise and vibration, light spill, prevention of pollution to the environment from boat construction and maintenance activities, exotic marine pest introductions and translocations, use of copper based anti-foul paints, management of sewage and grey water discharge, rubbish and the risk of fuel spills. Once approved, works must be carried out in accordance with the environmental management plan to the satisfaction of the

12. This permit will expire if one of the following circumstances applies:
- (a) The development is not started within two (2) years of the date of this permit.
 - (b) The development is not completed within two (2) years of the date of commencement of works.
 - (c) The use is not commenced within four (4) years.

The Responsible Authority may extend the periods referred to if a request is made in writing before the permit expires or within three months afterwards.

PART B:

That the Statutory Planning Committee, as delegate of Council, advise that the provision of car parking for the approved use is satisfactory, in accordance with Clause 52.06-5 of the Port Phillip Planning Scheme.