ITEM 2 ST KILDA HARBOUR

ADDRESS: 2 Jacka Boulevard, St.Kilda

PROPOSAL: To endorse plans as complying with Condition No.1 of Planning Permit 1424/2005 approving the replacement of the existing RMYS marina, installation of breakwater extensions and wave attenuator.

WARD: Catani

NEIGHBOURHOOD St Kilda

TRIGGER FOR DETERMINATION BY STATUTORY PLANNING COMMITTEE Councillor Interest

APPLICATION NO: 1424/2005

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

RESPONSIBLE EXECUTIVE DIRECTOR: George Borg, Manager, City Development.

AUTHOR: Richard Schuster, Co-ordinator, Planning Albert Park/St Kilda

TABLE OF CONTENTS

1. EXECUTIVE SUMMARY……………………………………………………………..PAGE 1
2. RELEVANT HISTORY………………………………………………………………PAGE 9
3. PLANNING SCHEME………………………………………………………………..PAGE 12
4. CONSULTATION RELATING TO PLANNING PERMIT……………………..PAGE 14
5. OFFICER'S ASSESSMENT OF PLANS SUBMITTED FOR ENDORSEMENT…PAGE 14
6. OFFICER DIRECT OR INDIRECT INTEREST…………………………….PAGE 17
7. OPTIONS………………………………………………………………………………PAGE 17
8. CONCLUSION…………………………………………………………………………PAGE 17
9. RECOMMENDATION………………………………………………………………..PAGE 17

1. EXECUTIVE SUMMARY

1.1. The existing marina infrastructure is in need of replacement and 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.
1.2. A planning permit was issued on 14 July 2009 to permit the proposed replacement subject to a condition requiring a number of modifications including one requiring the southern breakwater “to be consistent” with the St Kilda Harbour Concept Plan produced by Parks Victoria in 2008.

1.3. Plans have been lodged by RMYS seeking endorsement under the condition.

1.4. As the proposed method of compliance with the condition is different to that which was envisaged in 2009 by the concept plan, it is considered a matter of interest to the Councillors.

**KEY ISSUES**

Provision of a rock breakwater rather than an “integrated wave screen” designed into the sea pool shown as part of the Concept Plan.
Subject site: St Kilda Harbour
ST KILDA FORESHORE UDF:

- Wave Attenuator
- Replace RMYS marina
- Plus 100 berths
- Wave attenuator
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.

2.6 Planning Permit 1424/2005 allows:
- The construction of a new 250 berth floating marina.
- Relocation of 75 swing berths
- An extension of the rock breakwater.
- Installation of a spur groyne at the northern end of the harbour
- Additions to the northern end of the breakwater and
- A 210m long wave attenuator.

2.7 Condition 1 of Planning Permit 1424/2005 required amended plans to be endorsed prior to the use or development commencing, showing:
   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 140metres to 210 metres.
   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.

2.8 Southern Breakwater Extension:
   As submitted, the southern breakwater would have been extended 100m parallel with the existing pier as indicated bottom left of the diagram below:
Prior to the approval of the proposal by DSE by way of Coastal Consent, Parks Victoria, the public land manager, was asked to produce a “Draft Master Plan...to provide a benchmark against which future redevelopment of the harbour can be assessed”.

2.9 St.Kilda Harbour Concept Plan (Parks Victoria):

The St.Kilda Harbour Concept Plan was prepared by Parks Victoria to guide the redevelopment of the St.Kilda Harbour prior to approval of the RMYS project. 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 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 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 with 76% of respondents ranking the RMYS component in their top three elements of the harbour plan.

2.10 **Southern wave attenuation.**

The concept plan shows the following method of wave attenuation intended to be used:

The integrated wave screen would sit alongside the proposed pier sea pool shown on the concept plan. The concept plan states “one of the important benefits of the integrated wave screen solution is the protection of the important views from the pier out into Port Phillip Bay. The gentle arc of the outer edge of the pier (with the in built wave screen) becomes an alternative pedestrian pathway on calmer days, protecting the uninterrupted horizon views. Importantly this retains one of the great experiential qualities of the pier, with rough water on one side and calmer water on the other”.

2.11 Prior to the issue of the planning permit in 2009, DSE advised that it supported the RMYS scheme, but for consistency with the Concept Plan “the southern wave protection as shown in the RMYS planning permit (application) is not supported as the extended rock structure would impact on implementation of wave protection as proposed in the Concept Plan”.

2.12 As a result, Condition 1(d) of the planning permit requires modified plans to show “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)”.
2.13 The plans submitted for endorsement pursuant to Condition 1 of Planning Permit 1424/2005, are provided at pages 6, 7 & 8 of this report.

3. PLANNING SCHEME

3.1 Relevant Port Phillip Planning Scheme Provisions used for consideration of Planning Permit application 1424/2005:

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 was 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 supported 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 was required to construct a building or works.

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 was 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.
- 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.

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:**

In a Public Park 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 to be constructed by or on behalf of the Royal Melbourne Yacht Squadron, the use required 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 marina has existing use rights.

Pursuant to Clause 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.
- 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 was reasonable to conclude that whilst the buildings and works required a planning permit, the use of the harbour for the purposes of a “marina” did not as neither the second or third dot point above generated 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”.

4. CONSULTATION RELATING TO PLANNING PERMIT 1424/2005:

The application was extensively advertised by way of public notices in The Age, two local newspapers, two public notices on site (one on Pier Road towards West Beach, 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 Kite boarding 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. The two key issues which arose were concern about the re-location of the swing moorings and concern for the protection of the penguins and Rakali.

5. OFFICER’S ASSESSMENT OF PLANS SUBMITTED FOR ENDORSEMENT:

Referrals:

The plans submitted were referred to Council’s Foreshore Co-ordinator, who advised:

The RMYS design with the southern rock breakwater is consistent with the integrated wave screen shown in the 2008 Concept Plan.

Strategic Issues:

The proposal was approved in 2009 as being consistent with the St Kilda Foreshore UDF, which acknowledges that the current harbour facilities are in poor repair.

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.”

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

With regards to the amended plan submitted to Council for endorsement pursuant to Condition no.1, Parks Victoria and DSE has provided consents as follows:

**Coastal Management Consent (DSE) dated 8 December 2011:**

The amended application requests a change to the layout of the marina, an extension to the length and location of the wave attenuator and a change to the design and location and rock breakwater extensions.

As delegated, I consent to the condition 1 of the *Coastal Management Act 1995* consent dated 24 March 2009 being amended to now read:

- Condition 1, The works are to be carried out generally in accordance with plans titles “Royal Melbourne Yacht Squadron St Kilda Harbour Redevelopment, Proposed Marina Layout Plan” dated October 2011 and submitted documentation “Royal Melbourne Yacht Squadron St Kilda Safe Harbour Ltd Redevelopment Planning Report (December 2005) and ‘St Kilda Safe Harbour Ltd RMYS Marina Redevelopment Application for Coastal Management Act Consent Report (December 2005) (all reports prepared by GHD) and the associated drawings and appendices, except as modified for the purpose of compliance by the conditions of this consent. Note: The works referenced in this *Coastal Management Act 1995* consent are referred to as Marina Precinct 1 contained in the ‘St Kilda Harbour Concept Plan’ (2008) by Parks Victoria, the Committee of Management of St Kilda Harbour.

Furthermore in an email dated 27 March 2012, DSE clarified that the Coastal Management Consent applies to the RMYS marina, wave attenuator, spur and southern breakwater extension.

**Parks Victoria:**

Parks Victoria has approved a RMYS plan showing the extended rock southern breakwater by letter dated 7 November 2011, advising:
Parks Victoria also advised on 23 March 2012 that:

“I refer to the Royal Melbourne Yacht Squadron Planning Permit Application No. 1424/2005 for its proposed ‘Plan’ of works and the City of Port Phillip Council’s queries concerning the future St Kilda Harbour redevelopment works.

I advise the following:

1. The ‘St Kilda Harbour Concept Plan 2008’ has not been endorsed by government.

2. There is no government commitment to fund the ‘St Kilda Harbour Concept Plan 2008’.

3. The Royal Melbourne Yacht Squadron’s ‘Plan’ for the southern rock breakwater has the Department of Sustainability and Environment ‘Coastal Management Act’ consent and a letter of support from Parks Victoria.

4. The Royal Melbourne Yacht Squadron’s ‘Plan’ for the southern rock breakwater will not preclude the rebuild of the St Kilda pier or implementation of the Concept Plan into the future.” (Council Officer’s emphasis).

Amended southern breakwater.

The southern breakwater has been designed to be independent of the Concept Plan as it is unclear at this time whether the Concept Plan will be implemented by Parks Victoria. Accordingly, whilst the Marina requires protection, the protection envisaged by the concept plan is outside of the control of RMYS.

It is considered unreasonable to require the marina development to become dependent upon a Concept Plan which may or may not be implemented by a third party.

It is considered that the southern breakwater should not preclude the implementation of the Concept Plan. Parks Victoria has confirmed that the proposed breakwater would not preclude implementation of the Concept Plan although in a manner different to that which was envisaged by the Concept Plan. The difficulty for RMYS
however, is that the breakwater is an integral part of the project but the concept plan solution is beyond its control and may never be implemented.

On this basis it is considered that the proposed amended southern breakwater be considered “consistent with the Concept plan” as it does not preclude the implementation of the concept plan and be permitted as stand alone component of the project to allow the project to proceed. Furthermore, the amended southern breakwater will retain important views from the pier out to Port Phillip Bay.

6. OFFICER DIRECT OR INDIRECT INTERESTS

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

7. OPTIONS

7.1 Approve as recommended.
7.2 Approve subject to further requirements.
7.3 Refuse to endorse the plans submitted under Planning Permit 1424/2005.

8. CONCLUSION

8.1 Parks Victoria confirms that the amended proposal does not preclude implementation of the St Kilda Harbour Concept Plan and DSE has amended its Coastal Management Consent for the altered breakwater. The amended southern breakwater will retain important views from the pier out to Port Phillip Bay.


9. RECOMMENDATION: