

STRATEGY AND POLICY REVIEW COMMITTEE
2 JUNE 2008 **GOVERNANCE AND COMPLIANCE**

A10 **PROPOSED TRANSFER OF 121 LIARDET STREET, PORT MELBOURNE TO PORT PHILLIP HOUSING ASSOCIATION, SALE OF 1 & 2 / 144 NOTT STREET, PORT MELBOURNE AND SALE OF 2 / 63 CARLISLE STREET ST KILDA**

LOCATION/ADDRESS: **121 LIARDET STREET, PORT MELBOURNE**
144 NOTT STREET, PORT MELBOURNE
2 / 63 CARLISLE STREET, ST KILDA

RESPONSIBLE EXECUTIVE DIRECTOR: **SALLY CALDER, EXECUTIVE DIRECTOR, ORGANISATION SYSTEMS AND SUPPORT**

AUTHOR: **DAVID GRAFFEN, PROPERTY COORDINATOR**

FILE NO.: **3120/003-03**

ATTACHMENTS: **A COPY OF ALL SUBMISSIONS RECEIVED IN RESPONSE TO THE PROPOSAL.**

1. EXECUTIVE SUMMARY

- 1.1. At its meeting on 28th April 2008, Council resolved to commence the statutory procedures under the Local Government Act 1989 for the sale of 121 Liardet Street, Port Melbourne, to the Port Phillip Housing Association (PPHA) to enable a community housing project to be developed over the Kyme Place car park. The proposal also involves road discontinuance and subdivision to regularise the site boundaries and retain title to the ground floor car park. Council also resolved to commence the statutory procedures for the sale of 1 & 2 / 144 Nott Street, Port Melbourne and 2 / 63 Carlisle Street, St Kilda.
- 1.2. This decision was made in line with City of Port Phillip Housing Strategy which supports the provision of community housing, responds to housing affordability concerns and the needs of low income groups and contributes to social diversity.
- 1.3. The statutory procedures for the sale of land and road discontinuance require Council to publish a public notice inviting submissions from interested persons. Council is then required to consider those submissions and hear from persons wishing to speak in support of their submissions before deciding whether to proceed with a sale of land or road discontinuance.

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- 1.4. As a result of the statutory procedures 51 submissions were received with the majority of submissions, 45, being made in opposition to the proposal. Grounds include the following:
- Adverse impact on local traffic circulation
 - Loss of car parking
 - Adverse Impact on local amenity
 - Disaffection with the process
 - Challenging the legality of the proposal
 - Affect on business in the area
 - Opposition to community housing in this location
 - Six submissions were made in support of the proposal, supporting Council's stance on community housing.
- 1.5. Most of the submissions address statutory planning grounds. However, the planning permit application is yet to be finalised or submitted and the statutory planning process is not yet commenced. Some submissions cast doubt on whether a design can be achieved while accommodating a reasonable level of accessibility for surrounding development. It could therefore be preferable for the Port Phillip Housing Association to undertake the planning permit process before a decision is made on the sale if required.
- 1.6. This report recommends that having followed the statutory procedures and after due consideration of the submissions received, Council resolves to defer its decision on the sale of land and road discontinuance until a firm plan of the proposed community housing project is approved demonstrating to the satisfaction of Council that the proposed development can occur while allowing for satisfactory local traffic circulation and that other concerns of local residents have been investigated and discussed in full. Further that the investigation is to take place as part of a statutory planning process and that there be independent judgement in that process.
- 1.7. In effect this report acknowledges that:
- The proposal, in principle, aligns with Council's clear policy direction;
 - The majority of issues raised by submitters relate to statutory planning matters;
 - It would be appropriate to reverse the order of process by commencing a statutory planning process at this stage and deferring the sale of land process;
 - As the Council is land owner, Responsible Planning Authority, has a clear policy direction and has a prior relationship with Port Phillip Housing Association some members of the public may consider that Council's objectivity may be coloured;

- A planning decision could be made by an independent committee set up specifically to consider this proposal.

2. BACKGROUND AND CONTEXT

2.1. Proposal

Council is considering a proposal to sell rights to the land associated with the Kyme Place car park. The sale involves air rights and some ground level space to enable the Port Phillip Housing Association to establish a Community Housing Project but retaining title to ground level car parking. The sale does not require the Port Phillip Housing Association to pay for the land but instead it and the Office of Housing would be required to relinquish rights to 1 & 2 / 144 Nott Street, Port Melbourne and 2 / 63 Carlisle Street, St Kilda. Council would then sell those properties as compensation for the sale of rights in the car park land. It is also proposed to alter the boundary of the Kyme Place Car Park through road discontinuance and subdivision.

A preliminary plan prepared by the Port Phillip Housing Association as part of its feasibility study shows that a project could be developed on the site although it would be subject to planning approval.

2.2. Council's Strategic Objectives

In broad terms, the proposal is consistent with Council's plans and objectives as shown below:

2.2.1. Community Plan 2007-2017

The Community Plan was formed through consultation with the community using various techniques including Community Survey-2006, Qualitative Research -2006, Port Phillip Speaks Community Summit-28 April 2007 and Neighbourhood community meetings – May 2007. Amongst other things the community has informed Council that there is a need to support the more vulnerable members of the community and to continue to invest in affordable housing. More specifically, the Community Plan contains the following action under the heading of "Building Community":-

Continue to support the disadvantaged, disabled and low-income to remain in the city and support affordable housing even as the city grows more affluent.

2.2.2. Council Plan

The Council Plan outlines Council's four strategic objectives – under the headings of Social Equity, Economic Viability, Environmental Responsibility and Cultural Vitality and presents strategies to achieve the objectives. Council assesses proposals against the four strategic objectives and this will be addressed later in this report.

2.2.3. Property Strategy

The proposal is consistent with strategic objectives contained within Council's property strategy which include the following;

Providing the services required by residents

Optimising the service potential of assets

Maximising value for money

Contributing to economic growth

Using Council property to influence cultural vitality

2.2.4. Housing Strategy

The proposal is consistent with strategic objectives contained within Council's housing strategy which include the following;

To provide opportunities for new residential development in designated locations which have the capacity for change, and which offer highest accessibility to shops, public transport and services.

To encourage the provision of a diversity of dwelling types to meet the needs of all current and future residents of Port Phillip.

To support housing types that are adaptable and accessible.

To promote a range of housing models and projects applicable to public, community and private housing that address the housing needs of low to moderate income residents and contribute to social diversity.

To expand the supply, distribution and type of social (public and community) housing available for the benefit of current and future residents of Port Phillip.

2.3. Council Decision

At its meeting held on 28th April 2008, Council resolved as follows;

1. That it intends to reconfigure the boundary of the property generally known as 121 Liardet Street, , Port Melbourne comprising four Certificates of Title as follows: Volume 1884 Folio 619, Volume 9254 Folio 602, Volume 8838 Folio 197 and Volume 9254 Folio 603

1.1 by adding a small portion (16.54 square metres) through the discontinuance of part of the road known as Kyme Place that is not currently used or required for vehicle access and to remove a small portion (10.57 square metres) by subdivision and assign the status of "road" to that portion and to transfer the land defined by the reconfigured property to the Port Phillip Housing Association but retaining proprietary rights to 27 car spaces at ground level and therefore directs as follows:

• That the statutory procedures under Section 189 and of the Local Government Act 1989 (the Act) be commenced and notice is published in local newspapers inviting interested persons to make a submission under Section 223 of the Act for sale (transfer) of the land shown on the attached plan, to the Port Phillip Housing Association Ltd. save for proprietary rights to a

27 space, ground level car parking which will be retained by Council.

- The statutory procedures under Section 206 and Schedule 10 Clause 3 of the Act be commenced and notice is published in local newspapers inviting interested persons to make a submission under Sections 207A (a) and 223 of the Act for discontinuance of the road shown on the attached plan and for sale (transfer) of the land shown on the attached plan, to the Port Phillip Housing Association Ltd., save for proprietary rights to ground level car parking which will be retained by Council.*
- That officers are authorised make application for subdivision to create the property title for transfer to the Port Phillip Housing Association as described above.*

1.2. That the statutory procedures under Section 189 and of the Local Government Act 1989 (the Act) be commenced and notice is published in local newspapers inviting interested persons to make a submission under Section 223 of the Act for sale of the land described as 1 and 2/ 144 Nott Street, Port Melbourne, more particularly described in Certificate of Title, Volume 10168 Folio 898.

1.3. That the statutory procedures under Section 189 and of the Local Government Act 1989 (the Act) be commenced and notice is published in local newspapers inviting interested persons to make a submission under Section 223 of the Act for sale of the land described as 2/ 63 Carlisle Street, St Kilda, more particularly described in Certificate of Title, Volume 9198 Folio 981.

1.4. That Council resolves to appoint its Strategy and Policy Review Committee to hear and consider any submissions made under Section 223 related to the statutory procedures in 8.1.1, 8.1.2 and 8.1.3 above at its meeting to be held on 2nd June 2008.

And notes that decisions to be made in regard to the procedures commenced pursuant to the resolutions above are subject to the Office of Housing surrendering entitlements in regard to proceeds from the sale of 2/63 Carlisle Street, St Kilda, and Port Phillip Housing Association agreeing that the previous commitment by Council to transfer the property at 1&2, 144 Nott Street, Port Melbourne has lapsed.

2.4. Consultation

In accordance with the resolutions and the procedures set out in the Local Government Act, the relevant public notices were published in the Port Phillip Leader and the Emerald Hill Weekly in the week commencing on 5th May, 2008. The public notice relating to the sale of the Nott Street property contained erroneous text and was published correctly the following week.

In addition to the statutory requirements, information about the proposal was widely circulated through the following means;

By mail inviting local residents and ratepayers to attend an information session. Letters were sent to the owners and occupiers of the following;

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- Kyme Place all
- Liardet Street all between Dow St and Bay St
- Adams Place all
- Dow Street n/w side Nos. 161 -227
- Bay Street s/e side Nos. 162 - 232
- By arranging an information session at the Port Melbourne Town Hall on 30th April 2008 at which;
- a power point presentation was made
- information hand outs were distributed including a form to help make a submissions, and
- there was a question and answer period
- By posting an information page on the Council website, and
- By posting a sign on the site.

2.5. Submissions

2.5.1. Submissions have been received in response to the public notices. Council should now take into consideration all submissions received, hear from persons wanting to speak in support of their submissions and then decide on the matters.

2.5.2. Copies of all submissions are attached to this report. Of the 51 submissions received, 45 are made in opposition to the proposal while 6 are made in support of the proposal.

2.5.3. The following is a general summary of the main points made by submissions opposing the proposal:

Local traffic circulation	Adverse impact on traffic circulation. Increased traffic congestion Insufficient access for emergency vehicles. Rubbish collection. Road safety audit. Safety
Car Parking	Loss of car parking. Additional cars as a result of the new 31 dwellings. Location of additional car parking spaces.
Amenity	Loss of privacy. Safety concerns. Excess development. Loss of amenity / overshadowing Loss of public open space.
Legal	Conflict of Interest with Port Phillip Housing Association. Implied easement for the 0.5 metre strip of Kyme Place to

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	developers of 200 Bay Street "Cash in lieu" scheme
Process	Community consultation and notification process.
Community Housing	General opposition to community housing. Attracts anti-social behaviour Devalues property
Other	Soil contamination. Concerns regarding valuation basis for transfer and sale of related properties (ie Nott Street and Carlisle Street). Suggested alternative locations for community housing Economic impact on retail businesses in the surrounding area. Heritage values particularly associated with bluestone laneway.
Support for Community Housing	General support for Community Housing provision but also for the location

2.5.4. The following is a summary of the main points made by submissions in favour of the proposal:

- Site is appropriate for the development due to its close proximity to nearby community facilities and public transport.
- Proposal supports the intentions of Melbourne 2030 in that it represents a consolidation of housing within an urban activity area.
- Social benefit will be derived from encouraging and facilitating accommodation options for people from diverse cultural and socioeconomic backgrounds.
- Proposal will facilitate and increase in the stock of community housing in Port Melbourne.

2.6. Comment on submissions:

2.6.1. Local Traffic Circulation

This issue has come to light through the consultation process. Over time, occupants of nearby buildings and users of the Kyme Place Car Park and Kyme Place have made use of alternate through routes across the car park and along Kyme Place choosing for ease to avoid other traffic and delivery vehicles. Delivery vehicles often use a circuitous route along the car park and out via Kyme Place or vice versa to take advantage of a large turning circle afforded by such routes. Some new developments rely on the car park space, notably 208 Bay Street, to enable vehicular access to the rear garage. Occupants

of surrounding buildings use the Kyme Place Car Park as a place to leave rubbish bins on collection days. A small strip of Kyme Place (approximately 500mm width) which is part of the title for the car park is included within the proposed sale.

There may be options to address the concerns raised about traffic circulation through the statutory planning process.

2.6.2. Car Parking

The loss of car parking spaces is a major concern of submitters. Under the preliminary plan the number of car spaces within the site was to be reduced by six with two spaces created along the Liardet Street frontage and four spaces created in the local area.

However the plan does not make an allowance for car parking generated by the proposed development. The car parking requirement assessed for the Woodstock community housing project, which is of a similar type and scale, was for two spaces.

There is concern about lack of car parking for residence in the area, for those wishing to shop in the area and for business. Submitters have suggested that Council should create more car parking in the area.

2.6.3. Amenity

There are many issues raised by submitters concerning the proposed development. These include, overshadowing, overlooking, loss of privacy, safety concerns (by making Kyme Place the only pedestrian route which has an uneven cobblestone surface), loss of open public space, and that the development is excessive. These matters are concerned with planning issues that are best assessed and considered within the context of a statutory planning application process.

2.6.4. Legal

Some submitters are concerned that Council has a conflict of interest dealing in the land with Port Phillip Housing Association. Since 2004, Council has transferred its ownership and developer role in community housing to the PPHA under the Port Phillip Housing Trust with PPHA becoming the Trustee company under the Trust. Council remains committed to providing ongoing support to PPHA as its designated provider under the Port Phillip Housing Trust. While it is true that Council could have entered into a public competitive process with other community housing associations concerning the proposed sale, only the PPHA has the capacity to relinquish rights to the land at 144 Nott Street.

A view has been put forward that Kyme Place Car Park was purchased under a "cash in lieu" contribution scheme and that Council is therefore constrained in its dealings with the land. After local ratepayers objected to a special rate scheme to fund the purchase and construction of the Kyme Place car park, Council purchased the land in 1987 from general rate revenue which was recouped through a "cash in lieu" scheme. Under this

scheme, developers that were unable to meet car parking requirements under the planning scheme were otherwise able to pay a sum of money to Council. Council would use the funds to purchase and construct car parking.

When the former City of Port Melbourne purchased the land in 1987 it did so to become the registered proprietor. It did not purchase the land in "trust" on behalf of any individual or group. Therefore Port Phillip City Council as the legal successor to the former City of Port Melbourne, is within its rights to propose further development of the land, particularly since car parking is being retained.

The developer of 200 Bay Street submits that it has an implied easement over a strip of Kyme Place that is land that has been developed as part of the road but is within the 121 Liardet Street title. Further that the road discontinuance as proposed would prevent access to the property by trucks associated with businesses at the property.

2.6.5. Process

Submitters are concerned that there has been a lack of notification about the proposal and lack of consultation. Council is consulting through the procedures set out in the Local Government Act and has provided further additional information by writing to locals, holding a public meeting, posting information on its website and placing a sign on site.

2.6.6. Community Housing

Some submitters are opposed to community housing and/or opposed to the location of community housing at 121 Liardet Street, Port Melbourne. There may not be full understanding by all submitters as to what type of housing is proposed, and there appears to be some fear of the people who might benefit from placement. Those views are countered somewhat by submissions in support of the proposal on grounds that community housing is desperately needed. It is considered that the location of the site for community housing is close to ideal as there is a local need for affordable housing, it close to public transport, part of a major activity centre and therefore shops and services are readily accessible.

2.6.7. Other

The issue of soil contamination is raised in many submissions. It is considered that this issue has little bearing on the sale proposal. Soil contamination will be dealt with in accordance with applicable laws. Reports commissioned by Council confirm the existence of contamination but was written in the context of a specific development that was proposed at the time (2005).

Submitters have suggested that the proposed sale was not fully costed for Council's consideration. The analysis prepared for Council was based on valuation advice, however the most variable factor relates to soil contamination. The estimate of this

cost was based on the 2005 report and assuming increases that are consistent with the increase in EPA soil disposal costs to landfill. Alternative methods of soil remediation might be applicable to a different development proposal, particularly as there is recent emphasis to reduce the amount of soil disposed of at landfill sites.

Several submissions suggest alternative sites for new community housing. The nature of the proposal is to suggest greater use of the site at 121 Liardet Street, Port Melbourne rather than to investigate new sites for community housing.

It is submitted by some that the proposal would have an adverse affect on local businesses. It is considered that the proposal would have positive influence in local business.

Submissions concerning the heritage overlay that extends over Kyme Place are more appropriately considered within the context of a statutory planning application process.

2.7. Approval Processes

There are two important processes requiring decision that will be necessary if the Port Phillip Housing Association community housing project can proceed to fruition. It will be necessary for Council to decide to proceed with the sale of land (the subject of this report). In addition, a planning permit will be required. The planning process requires the assessment of planning matters following public consultation and any decision made by Council as the Responsible Planning Authority or any committee with delegated authority can be appealed to VCAT.

The process for sale was deliberately separated from a planning permit application process so that there is less confusion for those who want to engage in either process. The sale or the planning process may precede one another or alternatively they can be run at the same time. In this instance it was proposed to firstly decide on the sale matter so that if the decision was favourable, the Port Phillip Housing Association could prepare an application for funding and expend the considerable funds on the statutory planning permit process secure in the knowledge that it could gain ownership of the necessary land.

While Council should consider all matters raised in submissions about the land transfer it is difficult to assess arguments that refer to plans that are of a preliminary nature. Furthermore, most matters raised in regard to a future development are of a statutory planning nature and are more appropriately considered within a statutory planning process. So it would seem more appropriate that the sale process be deferred, and the statutory planning process be undertaken to ensure that a plan is viable and planning issues are properly assessed.

One possibility is that the council could establish a panel to decide on the statutory planning application and perhaps also the sale of land. This panel could be delegated by the council under section 86 of the Local Government Act to decide on statutory planning and sale of land in relation to the Kyme Place project. Such a panel could consist of councillor, community and

independent members. While this approach is arguably unnecessary, it could encourage confidence by submitters in the process.

If an independent panel was established and given delegated powers as above, the panel's decision on the statutory planning application would still be subject to appeal at VCAT in the same way as if Council's Statutory Planning Committee or the Council itself had made the decision.

3. RECOMMENDED OPTION

3.1. Criterion for recommendation

It is recommended that the sale process be deferred and that the Port Phillip Housing Association be encouraged to engage with the community about the type of community housing envisaged for the site and in consultation with the community, develop a viable plan for the site before making an application for a planning permit.

When and if a planning permit is granted, Council could re-advertise then decide on the sale of land. The land would not be sold unless a planning permit had been granted.

3.2. Sustainability Assessment

Social Pillar	A deferral of a decision on the sale of land would leave open a proposal that directly relates to the social pillar. Ultimately, if a community housing project is assessed to be achievable it will facilitate new affordable housing in Port Melbourne which is well located with ready access to shops, public transport and services. There is a long list of low income single Port Melbourne residents in need of affordable housing. Such a project contributes to social diversity which the community at large supports.
Economic Pillar	A deferral of a decision on the sale of land would leave open a proposal that potentially allows Council to align its property portfolio with community needs in a way that would also maximise value for money and be supportive of Council's social cultural and environmental goals.
Environmental Pillar	Inviting PPHA to commence the planning application process is the appropriate way to assess planning concerns about the project. In particular, local traffic circulation, car parking and amenity considerations which are linked to the local environment, can be assessed within the appropriate forum and may be decided by an independent body.
Cultural Pillar	The recommended option will allow continued discussion the local community in an appropriate forum and enable PPHA to explain what is proposed and how other projects of this type have contributed to social wellbeing and cultural diversity.

3.3. Policy and legislative implications

The proposal is well founded on Council's policy objectives. However, matters have been raised which need to be explored in a detailed design to assess whether the project is achievable.

The statutory procedures under the Local Government Act have been followed. If a sale decision is required following a statutory planning process the statutory procedures can be reconvened and concluded.

3.4. Risk implications

There is a risk that PPHA may not obtain funding for the proposal without gaining control of the land. There is a further risk that PPHA may not enter into a statutory planning process without the security of knowing that land will be transferred to it.

3.5. Resource implications

It is considered that Council should ensure that independent and expert reports are prepared in relation to traffic, car parking and other planning issues for assessment in the statutory planning process. Therefore should a panel be established it is recommended that an amount be allocated for this purpose.

4. ALTERNATIVE OPTIONS

4.1. Alternative 1

The alternative option is to abandon the sale proposal which is contrary to Council's clear policy direction. This option depends on whether a viable plan for community housing can be devised.

5. PARTICIPATION AND ENGAGEMENT

5.1. Internal

The people who have been engaged with in relation to this issue are:

- David Graffen - Property Coordinator
- Gary Spivak – Housing Development Officer
- Cathy Henderson – Manager Governance & Community Relations
- Toulia Kotsabouikis – Property Advisor
- Stefan Mitrik – Coordinator Traffic and Parking Management
- Janine Laver – Senior Urban Planner
- Maria Tomasetig, Sub-Division Officer

- Senior Executive Team
- Janet Bolitho – Ward Councillor
- Councillors

5.2. External

The external people and/or organisations who have been engaged with in relation to this issue are:

- Port Phillip Housing Association
- Office of Housing
- Mallesons Stephen Jaques solicitors (title search, advice on advice on relevance of s 191 (d) of the Local Government Act in relation to s 189 of the Act).
- The general community has been engaged through the statutory procedures prescribed in Section 223 of the Local Government Act.

In addition to the statutory requirements, information about the proposal was widely circulated through the following means;

- Mail to local residents, property owners and traders
- Holding an information session at the Port Melbourne Town Hall on 30th April 2008,
- Council website, and
- Sign on the site.

The statutory procedures have attracted 51 submissions of which 6 are in support and 45 are in opposition to the proposal.

Those persons wishing to be heard in support of their submissions are given the opportunity to address the Strategy & Policy Review Committee at this meeting.

6. IMPLEMENTATION

- 6.1. Council's decision on the proposal will be communicated to all submitters.
- 6.2. The recommended option relies on PPHA undertaking the statutory planning application process and considering issues raised by the community as it prepares its application for a planning permit.
- 6.3. The recommended option is to defer the decision on the sale of land while this statutory planning process takes place.
- 6.4. It would be possible to establish a panel/committee to make the decision on the planning permit and on the sale of land in relation to this project. Such a panel would need to be established under section 86 of the Local Government

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Act, with delegated powers. Such a panel would include representation of councillors, other community members, and independent members with relevant expertise.

- 6.5. Possible timelines for establishment of the panel this case would be:
- 23 June 08: Council makes decision to defer sale of land and establishes panel and terms of reference under section 86 of the Local Government Act
 - July 08: expressions of interest in panel membership is advertised
 - August 08: Council appoints the members of the panel
- 6.6. The statutory planning permit process could commence with initial consultation by PPHA with other parties, the preparation of expert reports and plans which could be completed by the end of November approximately.
- 6.7. If viable, a statutory planning permit application could then be made, advertised and decided upon by the Section 86 committee in the new year. Potentially, this could be completed by February or March 2009.
- 6.8. If a planning permit is ultimately issued, the matter of the sale of land could be re-convened.

7. COMMUNICATION

- 7.1. In accordance with the statutory procedures all submitters will be advised of Council's decision and the reasons for it.

8. RECOMMENDATION

That the Strategy and Policy Review Committee recommend that Council resolve:

- 8.1. That having commenced the statutory procedures for the sale of land and road discontinuance in respect of land at 121 Liardet Street and Kyme Place, Port Melbourne, 144 Nott Street, Port Melbourne, and 2/63 Carlisle Street, St Kilda, in accordance with the requirements of the Local Government Act and having received and considered submissions and heard from persons speaking in support of their submissions, to defer its decision.
- 8.2. To advise all persons who made a submission and the local community of its decision and the reasons for it.
- 8.3. To encourage the Port Phillip Housing Association to engage with the local community to explain its programs and plans and devise a revised plan for the proposed community housing project before making an application for a statutory planning permit.
- 8.4. To consider a supplementary report from officers on 23 June 2008 setting out a proposal to appoint a committee under section 86 of the Local Government Act to decide on any planning application made by Port Phillip Housing Association and any sale of land in respect of the Kyme Place car park in Port Melbourne, with the membership to include appropriate councillor and community representation and planning expertise.