

**ORDINARY MEETING OF COUNCIL
18 DECEMBER 2008**

ORDER OF THE DAY

ORDER 6	ST KILDA SKATE PARK
LOCATION/ADDRESS:	72 FITZROY ST, ST KILDA ALBERT PARK RESERVE, CORNER FITZROY ST AND LAKESIDE DVE, ST KILDA
RESPONSIBLE EXECUTIVE DIRECTOR:	GEOFF OULTON, EXECUTIVE DIRECTOR COMMUNITY DEVELOPMENT AND PLANNING
AUTHOR:	IAN HICKS, MANAGER CULTURE AND RECREATION
FILE NO.:	
ATTACHMENTS:	ATTACHMENT 1A: SKATE PARK SUPPLEMENTARY COUNCIL REPORT 2004 ATTACHMENT 1B: ASSESSMENT CRITERIA 2004 ATTACHMENT 1C: COUNCIL RESOLUTION NOVEMBER 2004 ATTACHMENT 2A: SKATE PARK COUNCIL REPORTS 2005 ATTACHMENT 2B: REPORT OF THE INDEPENDENT FACILITATOR ATTACHMENT 2C: COUNCIL RESOLUTION NOVEMBER 2005

1. PURPOSE

- 1.1. Since 1998 Council has considered a number of sites for development of a skate park in the St Kilda precinct.
- 1.2. The proposed site for the St Kilda Skate Park - on the corner of Fitzroy St and Lakeside Drive, Albert Park Reserve - is awaiting consideration by Victorian Civil and Administrative Tribunal (VCAT) with a hearing scheduled for 27 April 2009.
- 1.3. In the context of objections to the proposed skate park location and recent Council elections, this matter warrants thorough consideration by a new Council.
- 1.4. This report and its attachments provide a record of the Council decision making process to date.

- 1.5. This report proposes that Council satisfy itself (or otherwise) of the suitability of the proposed location for the St Kilda Skate Park (ie: Albert Park Reserve) through the engagement of a suitably qualified independent consultant(s) to undertake a process that would involve:
 - 1.5.1. an independent assessment of all 8 sites already considered (including 3 site on the Foreshore), in addition to any new sites that may be identified within the St Kilda precinct;
 - 1.5.2. an independent assessment of all material regarding the Albert Park Reserve site, including previous Council reports, plans and related studies, all grounds of community objection, all previous expert witness reports and statements presented to VCAT, and the previous decisions of VCAT.

2. RECOMMENDATION

That the Council resolve to

- 2.1. Note the current status of the St Kilda Skate Park.
- 2.2. Engage a suitably skilled and qualified recreation or Open Space planner to undertake an independent assessment of the 8 sites previously assessed and considered by Council, and any new sites that may be identified.
- 2.3. Apply the criteria outlined in the Sport and Recreation Skate Park Facility Guide 2001 and the Council criteria outlined in attachment 1A of this report as the basis for an assessment of the sites indicated in recommendation 8.2 above, and in addition establish the following Council objectives for the St Kilda Skate Park:
 - To provide a Local skate park for use by all ages and skill levels
 - To provide a safe facility
 - To minimise any impact on other community based facilities and stakeholders
 - Be consistent with the principles outlined in Council's Open Space Strategy 2006.
- 2.4. Establish a community reference group of key stakeholders and local skater representatives (including young people) to assist and provide input into the assessment process. The broad terms of reference for the community reference group being to:
 - Provide advice to the independent assessor;
 - Consider any additional criteria that the reference group agrees appropriate to the assessment process;
 - Consider any additional sites that the reference group agrees appropriate to the assessment process

Consider and provide comment to any draft recommendations of the independent assessor prior to a final report being presented to Council by the assessor.

- 2.5. Receive the report of the independent assessor to be presented to Council no later than March 2009.

3. BACKGROUND AND CONTEXT

- 3.1. In 1998 the City of Port Phillip Sport and Recreation Strategy called for the development of skate and roller blade facility.
- 3.2. The need for a skate park is identified through the extrapolation of ABS and other statistics that indicate between 25 – 30% of 7 -12 year olds will skate board in any given week. In CoPP, it is estimated that approximately 1300 young people will skate, with the skate facility being used an estimated 355 hours per week.
- 3.3. In the context of Councils Youth Development Framework the ‘constructive use of time’ is one of a number of themes that arose from the survey work of young people in 2006. It is in areas such as the ‘constructive use of time’ that young people indicated a deficiency.
- 3.4. In 2002 Council considered the development of a skate park at Marina Reserve Car Park Area (‘Turkey Toms’). This process proceeded through to applications for a planning permit and advertising, with a range of objections received. The project was pursued no further at the time.
- 3.5. In 2004 consideration was given by Council to the development of a skate facility. Council resolved that a range of locations be assessed for suitability, including previously considered sites such as the Marina Reserve Car Park Area (‘Turkey Toms’).
- 3.6. In November 2004 Council considered the outcomes of an assessment of 8 potential sites against 48 criteria.
The November 2004 report indicating the results of that assessment, the recommendation to Council and the Council resolution are contained in attachments 1A, 1B and 1C to this report.
- 3.7. In November 2005 Council considered the report of independent facilitator, Ms Jan King, and resolved to pursue the development of a skate facility at the currently proposed site – being Albert Park Reserve, Cnr Fitzroy St and Lakeside Drive, St Kilda.
The November 2005 report indicating the results of the community reference group design process and independent reports, the recommendation to Council and the Council resolution are contained in attachments 2A, 2B and 2C to this report.
- 3.8. A service and tenancy agreement was entered into with Parks Victoria for the use of land at the corner of Fitzroy St and Lakeside Drive. Following this an application for a planning permit was lodged. On legal advice the grounds to be determined by Council were limited to heritage matters.
- 3.9. Council resolved to grant a planning permit. The matter went before a directions hearing of VCAT on 10 August 2007. The Deputy President of VCAT (Mark Dwyer) ruled that Council was not the ‘public land manager’ of the land at 72 Fitzroy St, St Kilda for the purposes of the planning application. In the same ruling Mr Dwyer determined that the matter did not need to be remitted to Council and that the tribunal should hear the matter and the full range and extent of matters should be canvassed.

- 3.10. The matter was heard by VCAT in October 2007. VCAT determined to grant City of Port Phillip a planning permit. The matter was taken to the Supreme Court by a number of objectors. The grounds of that appeal being that Council's original advertising process incorrectly limited the grounds by which people could make object to the proposal.
- 3.11. Council wrote to the Supreme Court following a hearing of all parties and consented that the matter goes back to VCAT for re-advertising and rehearing.
- 3.12. In August 2008 a directions hearing of VCAT required a re-advertising of the planning application with the case to be remitted to a full hearing of VCAT on 10 November 2008.
- 3.13. At the 10 November 2008 rehearing, an adjournment was granted by VCAT with the hearing date now scheduled for 27 April 2009.

4. CONSULTATION AND STAKEHOLDERS

- 4.1. Internal
 - 4.1.1. It is not proposed at this stage (other than through the procurement exercise) that there will be any further staff / internal stakeholder engagement, unless required by the independent consultant
 - 4.1.2. No internal consultation on this report specifically has taken place to date.
- 4.2. External
 - 4.2.1. The external people and/or organisations who will be engaged with in relation to this issue are:
 - Community Stakeholders (as identified by Councilors)
 - Independent Consultant.
 - 4.2.2. No external consultation on this report specifically has taken place to date. It is envisaged that community engagement will take place via the establishment of the proposed community reference groups

5. DISCUSSION

The proposed course of action is:

- 5.1. That Council note the current status of the St Kilda Skate Park.
- 5.2. That an independent assessment be undertaken of the 8 sites previously assessed and considered (including 3 sites on the Foreshore) and this assessment be undertaken by a suitably skilled and qualified recreation or Open Space planner.
- 5.3. That the criteria to be used include the criteria outlined in the Sport and Recreation Skate Park Facility Guide 2001 and the Council criteria outlined in attachment 1B of this report, with a view to meeting the following Council objectives:

To provide a Local skate park for use by all ages and skill levels

To provide a safe facility

To minimise any impact on other community based facilities and stakeholders

Be consistent with the principles outlined in Council's Open Space Strategy 2006.

- 5.4. That a community reference group of key stakeholders and local skater representatives (including young people) be established to assist and provide input into the assessment process, the broad terms of reference for the reference group being to:

Provide advice to the independent assessor;

Consider any additional criteria that the reference group agrees appropriate to the assessment process;

Consider at any additional sites that the reference group agrees appropriate to the assessment process;

Consider and provide comment to any draft recommendations of the independent assessor prior to a final report being presented to Council by the assessor.

- 5.5. That the report of the independent assessor be presented to Council no later than March 2008.

- 5.6. Criterion for recommendation

In arriving at this recommendation the author has considered the following criteria:

- 5.6.1. Impartiality and Fairness – given there is a range of both support and objection to St Kilda Skate park being built on the proposed Albert Park Reserve location, it is envisaged that an 'independent' assessment and process would provide a mechanism for a re-look and re-assessment of the suitability of the proposed site and/or other sites with a high degree of impartiality and fairness.
This process does not constrain Council in its decision making, but merely provides an independent assessment of the process to date and potential sites, in order to inform any final decision of Council.
- 5.6.2. Timeliness – the engagement of an independent resource and the utilization of all existing documentation and resources would provide for this matter to be reconsidered quickly so as to inform Council by March 2009 of the findings of the independent assessment.
- 5.6.3. Community participation and engagement – given the high degree of engagement and participation that has occurred in the process to date, any new process should (in the officers view) involve and further engage the community.

5.6.4. **Efficiency** – by utilizing the extensive body of work that has been prepared over a number of years by both Council and community objectors and supporters of the proposed skate park. These include consultant and expert witness reports and statements, design plans, stakeholder comments etc.

An assessment completed within the proposed timelines also reduces the need for Council to take any action on the proposed site, as the results of this independent process will be known well in advance of the proposed VCAT hearing on 27 April 2008.

Should Council revoke the permit application at this stage and then at a later stage resolve to continue with this site, Council would have to duplicate and undertake another planning permit application process and replicate the process and resources already undertaken and expended.

5.7. Sustainability assessment

SOCIAL EQUITY: *To build a just, resilient, healthy and inclusive city with equitable access to responsive and relevant services and resources.*

Social Pillar	The recommended option acknowledges and responds to the statistical and indicative need for a skate park. The recommended option specifically commits to the establishment of a community reference group to ensure further community engagement and participation in civic dialogue from the diverse interest groups.
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ECONOMIC VIABILITY: *To promote effective stewardship of the council's assets and promote positive economic development within Port Phillip that also supports the council's social, cultural and environmental goals.*

Economic Pillar	The recommended option proposes the utilisation of the extensive body of research, consultant reports and assessment and design work that has been prepared by both Council and the objectors to date, and does not propose at this stage that a duplication of work and resources be embarked upon.
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ENVIRONMENTAL RESPONSIBILITY: *To foster a liveable and attractive urban environment that uses fewer finite resources*

Environmental Pillar	The recommended option is explicit in ensuring that criteria are applied that consider Councils environmental objectives, with particular regard to Open Space Strategy 2006.
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CULTURAL VITALITY; *To foster conditions that allow communities within Port Phillip to express, experience and enjoy diversity of values, beliefs and aspirations*

Cultural Pillar	The recommended option acknowledges that culturally in any community skate parks have precedents of arousing a high level of community concern and objection. This option respects the culture of arriving at difficult public policy decisions through a rigorous and considered process. The proposed recommendation will apply independent expertise and experience to assist Council in making a difficult decision while respecting that community representatives have culturally opposing views.
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5.8. Policy and legislative implications

This recommended option is consistent with Council policy and has no legislative impacts.

5.9. Risk implications

The officer is not aware of any risks associated with the recommended option.

5.10. Resource implications

The key resource implication is the engagement of an independent consultant to undertake the proposed assessment and report back to Council. The estimated cost of this engagement is \$30,000.

This is an unbudgeted expenditure. Should Council adopt this option then a case will be prepared to have this matter considered as part of the mid-year budget review process.

6. ALTERNATIVE OPTIONS

6.1. Alternative 1

To rescind the existing St Kilda Skate Park planning application and review a range of other sites, including the current Albert Park Reserve site.

6.1.1. Sustainability assessment

Social Equity Pillar	This option is not recommended as (in the officer's view) this option responds only to the current objections and objectors to the proposed site. This option would not provide recognition of the support and supporters for the proposed skate park at this site. Essentially this option would not be consistent with the principles that underpin the social equity pillar with regard to procedural fairness and justice.
Economic Viability Pillar	In the officer's view this option would still be viable in response to the objectives of the economic pillar.

Environmental Responsibility Pillar	In the officer's view this option would still be viable in response to the objectives of the environment pillar.
Cultural Vitality Pillar	This option is not recommended as (in the officers view) this option does not fit with the cultural objectives of the City of Port Phillip, specifically with regard to recognising and respecting diversity within community, particularly in this case a diversity of views. This option would arrive at a decision (ie: revoke the planning permit application) without a thorough process of assessment and understanding first being undertaken to ensure that any decision is an informed decision that takes on a diversity of views.

6.1.2. Policy and legislative implications

The policy implication of this option would be to rescind the previous decision of Council with regard to pursuing a planning application for a Skate Park at the corner of Lakeside Dve and Fitzroy St, St Kilda.

6.1.3. Risk implications

The risk to reputation with regard to Council following rigorous and thorough process in coming to a decision, particularly in the context of diverging views with regard to the suitability or otherwise of the proposed location.

6.1.4. Resource implications

Potential costs to the objectors for any costs incurred (and not already reimbursed) with regard to the current VCAT hearings.

6.2. Alternative 2

Council rescinds the existing St Kilda Skate Park planning application and does not pursue a skate park in St Kilda.

6.2.1. Sustainability assessment

Social Equity Pillar	This option is not recommended. In the officer's view this option does not respond to the social demand of young people identified through the available statistics and research.
Economic Viability Pillar	This option is not recommended as (in the officer's view) this option would not make proper use of the resources Council has utilized and available to it, so as to ensure that all evidence and materials that have been accumulated to date can be considered prior to any decision being arrived at.
Environmental Responsibility Pillar	In the officer's view this option would still be viable in response to the objectives of the environment pillar.

Cultural Vitality Pillar	<p>This option is not recommended as (in the officers view) this option does not fit with the cultural objectives of the City of Port Phillip, specifically with regard to recognising diversity within community, particularly in this case a diversity of views and needs.</p> <p>This option would arrive at a decision (ie: not pursue a skate park in St Kilda) without a thorough process of assessment and understanding first being undertaken to ensure that any such decision is an informed decision that considers a diversity of views and needs.</p>
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6.2.2. Policy and legislative implications

The policy implication of this option would be to rescind the previous decision of Council with regard to pursuing a planning application for a Skate Park at the corner of Lakeside Dve and Fitzroy St, St Kilda.

6.2.3. Risk implications

The risk to reputation with regard to Council not (in this case) being seen to providing infrastructure and support for a diversity of community needs.

6.2.4. Resource implications

Potential costs payable by CoPP to the objectors for any costs incurred (and not already reimbursed) with regard to the current VCAT hearings.

6.3. Alternative 3

To proceed with the existing St Kilda Skate Park planning application for current Albert Park Reserve site.

6.3.1. Sustainability assessment

Social Equity Pillar	<p>In the officers view this option allows for the diverse views and expert witness reports of all parties to be considered and adjudicated upon by an independent panel (VCAT)</p> <p>This option provides a forum for the views and opinions of the supporters and objectors for the proposed skate park at this site.</p> <p>However, this is not the recommended option because this option does not provide the 'newly' constituted Council with an opportunity to undertake its own review of the available information and evidence and/or establish it's own objectives for the development of a Skate Park in St Kilda. .</p>
Economic Viability Pillar	<p>In the officer's view this option would still be viable in response to the objectives of the economic pillar.</p>
Environmental Responsibility Pillar	<p>In the officer's view this option would still be viable in response to the objectives of the environment pillar.</p>

Cultural Vitality Pillar	In the officer's view this option would still be viable in response to the objectives of the cultural pillar as this option allows a 3rd party and independent process to take place that recognises and respects the diversity within community, particularly in this case a diversity of views.
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6.3.2. Policy and legislative implications

There are no policy or legislative implications associated with this option.

6.3.3. Risk implications

The risk to reputation of Council and/or Councilors, given the policy platforms on which a large number of elected Councilors stood with regard to the St Kilda Skate Park.

6.3.4. Resource implications

There are no resource implications related to the proposed process in this option.

However, should Council proceed and be successful with gaining a planning application, the estimated cost for construction of the skate park is \$800,000.

7. IMPLEMENTATION

7.1. A brief be prepared by officers for the engagement of an appropriately qualified and skilled independent consultant.

7.2. That officers procure the services of an independent consultant consistent with Local Government / Council procurement policies.

7.3. That a terms of reference for the St Kilda Skate Park community reference group be developed. These terms of reference will guide the selection of interested persons arising out of an advertised EOI process and also provide guidance on the role and responsibilities of the reference group.

8. COMMUNICATION

- 8.1. It is proposed that a press release be prepared to inform the community of Council's decision.
- 8.2. It is also proposed that an Expression of Interest (Eoi) process be implemented against criteria for the selection of community representatives onto the community reference group for St Kilda Skate Park.