

Public Question Time – answers to questions taken on notice*

Questions from Krystyna Kynst:

1. Why wasn't this protocol used in two recent Seabaths applications:
 - a) The proposal to convert part of the rooftop terrace public use space to private use, 104 times per year, and
 - b) The proposal to add a permanent structure to the rooftop for private use, 365 days per year, as licenced premises?
2. Will the protocol be invoked for the new Seabaths application, submitted 29 June for building and works associated with the construction of two external bars?
3. If, on the other hand, the protocol has been abandoned, when, and why did this happen?

Response

Question 1: Further to your question and upon investigation, the 'St Kilda Protocol' regarding major design and major land use matters established over 17 years ago was not formalised in the relevant Council Delegation Manuals. Therefore at this time, the protocol represents an informal understanding at the time between the then Manager, Strategic Planning and the then Councillors. As required by the Local Government Act, Council is currently in the process of reviewing our Delegation Manuals and the matter of the 'St Kilda Protocol' will be brought to the attention of Councillors as to whether they seek to, or not, formalise this protocol in the Delegation Manual.

With regards to the 2010 secondary consent, a decision was made as to whether a delegation issue was triggered taking into consideration the information hereunder and it was concluded that none was triggered:

1(a) There was no planning permit application for the use of the rooftop terrace for functions but was given a reference number on Council's database for tracking purposes. The application was what is called a "secondary consent" for an amendment to the approved Seabaths Development Plan bearing in mind that the primary consent for the use already exists in the Seabaths Incorporated Document which forms part of the planning scheme and no major new use was proposed. The uses allowed by the Incorporated Document are:

3. The land may be used and developed for the purpose of a health and fitness centre incorporating heated sea baths as a primary activity; a 25 metre (minimum length) swimming pool; saunas; steam baths; gymnasiums; health and beauty therapy centre; sports medicine centre; multi-purpose activity room which includes the sale and disposal of liquor for consumption in that area; drinking and/or eating areas (including liquor); take-away food facilities; entertainment; tourist, beach and health-related retailing; administrative and

maintenance facilities; other special events; a car park; and landscaping if the following conditions are met:

The 2010 consent does not include any approval for liquor licensing. Any new liquor licence would require a planning permit. Any liquor served to the approved rooftop functions was to be provided under existing Caterer's Licences, typically by existing tenants of the building.

Further to allowing "special events" in the Incorporated Document, a planning permit is not required for use of the rooftop for "events" in accordance with Clause 62.03 of the Port Phillip Planning Scheme.

62.0319/01/2006
VC37**Events on public land**

Any requirement in this scheme relating to the use of land or the construction of a building or the construction or carrying out of works does not apply to:

- an event on public land; or

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- temporary buildings or works required for the event;

where that event has been authorised by the public land manager or by the council under a local law.

An event includes land used to provide temporary cultural or community activities and entertainment such as a concert, festival or exhibition.

This does not apply to public land where a local provision of this scheme specifically regulates an event for a particular site.

The "events" have the required consent (and sub-lease) from the public land manager (DELWP).

Notwithstanding the above, the 2010 Secondary Consent request for the 104 functions was:

- *the subject of discussions with the Ward Councillor at the time*
- *as this matter did not involve major design or major land use matters, the 'St Kilda Protocol' would not have been triggered for this matter.*

Question 2: The proposed development of the Seabaths rooftop will be reported to Council to establish Council's position with regards to the current application before VCAT, if it is established that the matter will progress to a hearing. This will be dependent on whether the current application can obtain the necessary Coastal Management Act consents, because in the absence of those consents, it is our view that a VCAT hearing is futile.

Question 3: See response for Question 1 above.

**Note: answers to any questions in Public Question Time which were answered at the meeting are included in the minutes of that meeting.*