



**9.1 BALACLAVA PRECINCT - MARLBOROUGH STREET  
AFFORDABLE HOUSING - HEADS OF AGREEMENT**

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**1. PURPOSE**

- 1.1 To seek approval for entering a Heads of Agreement for the redevelopment of Council property at 46 – 58 Marlborough Street, Balaclava and for undertaking the statutory processes relating to selling the property, including the hearing and considering of public submissions.

**2. EXECUTIVE SUMMARY**

- 2.1 An objective of *Council Plan 2017-2027* is an increase in affordable housing, and in this context, it specifically notes that “progressing development of 46-58 Marlborough Street, Balaclava” is a priority for the next few years.
- 2.2 Council’s affordable strategy *In Our Backyard* includes a goal to deliver 1,000 new affordable dwellings in the City over the ten years. A key deliverable of *In Our Backyard* is “strengthened partnerships with PPHA”, the registered community housing organisation Port Phillip Housing Association.
- 2.3 Officers have been working with PPHA to investigate the opportunity to develop Council’s land at 46-58 Marlborough Street in Balaclava for community housing, along with replacement public carparking. The site has long been considered an opportunity for community housing.
- 2.4 PPHA as Trustee for the Port Phillip Housing Trust (“PPHA as Trustee”) could develop the subject site, and at completion of the development, would receive the components not retained by Council – being the carpark and the widened Balaclava Walk. It would carry out the development at its own cost.
- 2.5 A Heads of Agreement is an appropriate mechanism to formalise a co-operative venture for such development. It is valuable in documenting the intended outcomes of the potential venture, managing the risks of both parties, and setting out the multipart, staged decision process.
- 2.6 One such decision stage is Council determining whether to transfer the relevant property to the Trust, after giving public notice and hearing submissions under the *Local Government Act 1989*.



### 3. RECOMMENDATION

That Council:

- 3.1 Resolves that the statutory processes under the *Local Government Act 1989* be commenced to consider the sale of 46 - 58 Marlborough Street, Balaclava, and authorises appropriate members of Council staff to carry out the administrative procedures necessary to enable Council to carry out its functions under section 223 of that Act.
- 3.2 Resolves to hear and consider any submissions received pursuant to Section 223 of the *Local Government Act 1989* at a Council meeting.
- 3.3 Enters into a Heads of Agreement between Port Phillip City Council and Port Phillip Housing Association Limited in its capacity as trustee of the Port Phillip Housing Trust, for the redevelopment and sale of 46 – 58 Marlborough Street, Balaclava, (Attachment 1, and incorporating Attachments 2 & 3), subject to and conditional upon Council giving public notice of the proposed sale of the property under section 189 of the *Local Government Act*, hearing any submissions made under section 223 of the *Local Government Act*, and resolving to sell the property in accordance with the Heads of Agreement.
- 3.4 Delegates to the Chief Executive Officer the authority to complete the negotiation and enter in the Heads of Agreement on Council's behalf.

### 4. KEY POINTS/ISSUES

- 4.1 The City of Port Phillip has long been a leader in demonstrating how local government facilitates growth in affordable housing. This leadership includes the productive and successful relationship with PPHA as Trustee. Examples of housing development delivered include “Kyme Place” in Port Melbourne, “Woodstock” in Balaclava and Liardet in Port Melbourne.
- 4.2 As noted in Council’s affordable housing strategy *In Our Backyard*, City of Port Phillip desires to lever this relationship to boost the amount of affordable housing in the City.
- 4.3 The Council owned land at 46-58 Marlborough Street in Balaclava has for many years been considered an opportunity for affordable housing.
- 4.4 City of Port Phillip and PPHA as Trustee have considered co-venturing to realise this opportunity.
- 4.5 Their respective intentions and expectations, and the process and documentation required to pursue the potential venture, are recorded in the attached Heads of Agreement (Attachment 1), which incorporates the target development programme (Attachment 2) and the preliminary architectural concept sketch (Attachment 3).
- 4.6 The key elements of the potential venture are as follows:-
  - 4.6.1 Council transfers the relevant part of the land only once PPHA develops it. Development includes obtaining a planning permit and funding, construction, and subdivision.



4.6.2 PPHA as Trustee is to carry out the development at its own cost, and is responsible for all design and construction risks.

4.6.3 Council keeps the newly developed on-site replacement carpark, and a widened, embellished Balaclava Walk. The Trust is transferred the remainder.

4.7 The Heads of Agreement is considered a small, but important step in advancing the potential development, as it formalises the venture, and enhances clarity and transparency regarding its mechanics and intended outcomes.

4.8 The Heads of Agreement is conditional upon Council's resolving to transfer the land in accordance with the terms of that Agreement.

4.9 That process includes giving public notice of the proposed transfer under section 189 of the *Local Government Act*, and hearing any submissions made under section 223 of the Act. If Council resolves as recommended, Officers could ready to commence the process.

4.10 As the financial feasibility of the development relies on significant State government funding, the transfer of the land contemplated by the Heads of Agreement is also conditional upon PPHA as Trustee obtaining the required development funding from the State government. Officers are working with PPHA as Trustee to support to the securing of funding.

## 5. CONSULTATION AND STAKEHOLDERS

5.1 The Heads of Agreement has been prepared in conjunction with PPHA as Trustee, and has been considered by the Board of the Port Phillip Housing Association and the Port Phillip Housing Trust.

5.2 The primary consultation with the community regarding the potential transaction occurs through the processes under 223 of the *Local Government Act*. The primary consultation with the community regarding the development proposal occurs through the processes under the planning legislation, should the venture proceed to that stage. Together, they are an integral and core part of the broader communications and engagement for the project and for the delivery of *In Our Backyard*.

## 6. LEGAL AND RISK IMPLICATIONS

6.1 The potential sale of the land is subject to the provisions of the *Local Government Act 1989* sections 189 and 223 regarding the requirement for a Notice of Intention to Sell, inviting submissions from interested persons and considering any submissions received.

6.2 The preparation of the Heads of Agreement has been supported by Council's external legal advisors.

6.3 The Heads of Agreement includes cost incentives to promote the compliance of PPHA as Trustee with the development milestones.

## 7. FINANCIAL IMPACT

7.1 The adoption of the recommendations is anticipated to be delivered within the existing project programme and budget.



- 7.2 The potential development contemplated by the heads of agreement is highly unlikely to proceed if PPHA as Trustee does not secure the substantial development funding from State government required to make the development viable.

## 8. ENVIRONMENTAL IMPACT

- 8.1 No material environmental impacts arise from the adoption of the recommendations.
- 8.2 The concept sketch incorporates principles of environmentally sensitive design.
- 8.3 Should the development progress to its development application phase, it will also be assessed under Council's sustainable design standards.

## 9. COMMUNITY IMPACT

- 9.1 Affordable housing – including community housing – is important to the health and well-being of Port Phillip's residents. It contributes to creating a diverse, inclusive and equitable community.

## 10. ALIGNMENT TO COUNCIL PLAN AND COUNCIL POLICY

- 10.1 The recommendations of this report directly align with strategic direction 1 of the *Council Plan*: "We embrace difference and people belong". They contribute to the Plan's intended outcome of increasing affordable housing.
- 10.2 Council's affordable housing strategy is articulated in *In Our Backyard: Growing Affordable Housing in Port Phillip 2015-2025*. It prescribes the use of Council real estate for affordable housing.
- 10.3 Under *Council Plan 2017-2027* it is a near term priority to progress the site's development, and thereby facilitate the delivery of new community housing by local housing associations.
- 10.4 A key deliverable of *In Our Backyard* is "strengthened partnerships with PPHA".
- 10.5 The site is identified in the *Carlisle Street Activity Centre Structure Plan 2009* as a key social housing opportunity.

## 11. IMPLEMENTATION STRATEGY

### 11.1 TIMELINE

- 11.1.1 A detailed target programme is included as Attachment 2. It is intended as an annexure of the Heads of Agreement.
- 11.1.2 Under that programme, the key dates are:
- March 2018 – Council's public notification of intention to sell, calling for submissions
  - June 2018 – town planning application lodged
  - April 2019 – State & bank funding agreement executed
  - June 2019 – contract of sale and s.173 executed
  - November 2019 – building permit received
  - October 2021 – practical completion of construction works



- January 2022 - transfer of title to Port Phillip Housing Trust

11.1.3 Note that the contractual milestone dates under the terms of the Heads of Agreement are more generous than in the target programme. This is by intention, to mitigate the likelihood of non-timely performance, given the ramifications of PPHA as Trustee not meeting the milestones.

## 11.2 COMMUNICATION

11.2.1 In addition to planned project communication, the statutory processes relating to the potential transfer of Council land and to the potential development permit application include public notification and the opportunity for public submissions.

11.2.2 Key messages:

- Council is committed to ensuring our City is a welcoming and safe place for all.
- The delivery of community housing is a priority of the Council Plan.
- The potential development of the site is subject to a multiple stage decision process. Council welcomes public participation in this process.

## 12. OFFICER DIRECT OR INDIRECT INTEREST

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

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### **ATTACHMENTS**

1. Draft Heads of Agreement
2. Target development program
3. Preliminary architectural concept sketch