



6.1 ST KILDA MARINA PLANNING SCHEME AMENDMENT C171

EXECUTIVE MEMBER: LILI ROSIC, GENERAL MANAGER, CITY STRATEGY AND SUSTAINABLE DEVELOPMENT

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1. PURPOSE

- 1.1 To seek Council's agreement to make a request seeking authorisation of Amendment C171 in order for Amendment C171 to be prepared and exhibited.

2. EXECUTIVE SUMMARY

- 2.1 The St Kilda Marina Site Brief (the 'Site Brief') as endorsed by Council underpins the procurement process to facilitate the redevelopment of the St Kilda Marina under a new long-term lease.
- 2.2 The Site Brief provides a detailed consideration of the strategic planning issues concerning the St Kilda Marina site and provides guidance on the possible redevelopment of the St Kilda Marina by establishing parameters and providing guidance on the type (as in land uses) and scale of future redevelopment. The Key emphasis of the Site Brief is the retention of the St Kilda Marina as a working marina supplemented by a range of associated commercial and publicly accessible facilities (such as restaurants, cafes and recreational enterprises). The Site Brief seeks to encourage a redevelopment of the St Kilda Marina through the economically sustainable operation of a modern marina, activation of the site as a destination for food and beverage and other aligned activities, and also to provide the opportunity for market innovation.
- 2.3 Council resolved at its Ordinary Meeting on 5 June 2019 to endorse the recommended planning scheme amendment process and suite of planning controls to support delivery of the Site Vision and Objectives for the Marina. Specifically, Council resolved to:
- Remain the planning authority and undertake the planning scheme amendment process generally concurrently with the proposed procurement process.
 - Rezone the site from Public Park and Recreation Zone (PPRZ) to Special Use Zone (SUZ) accompanied by a new schedule to the SUZ and the application of a Development Plan Overlay (DPO) with a new schedule to ensure that the site is master-planned.
- 2.4 Following this resolution, Council Officers have further progressed the Amendment documentation. While the Site Brief took into account heritage considerations, additional regard has been given to the *St Kilda Marina Heritage Assessment*, prepared by Built Heritage (12 April 2018) (the 'Heritage Assessment') (Attachment 1). Consistent with the recommendations of the Heritage Assessment, it is proposed that Amendment C171 also extend the existing Heritage Overlay (HO187) which currently only applies to the Beacon at the St Kilda Marina to cover the entire St Kilda Marina site.



- 2.5 Amendment C171 is required to facilitate the redevelopment of the marina generally in the manner envisaged in the Site Brief. The revised planning provisions for the Marina are designed to:
- Allow nominated uses to occur on the land, generally as articulated in the Site Brief endorsed by Council on 15 May 2019.
 - Manage the scale and form of development in a sensitive location on coastal crown land through a 'master planned' approach, generally as articulated in the Site Brief.
 - Ensure the master plan is given a statutory basis through an appropriate planning control to assist the responsible authority (Council) in the subsequent decision making process in relation to approving a development plan and issuing one or more planning permits.
 - Balance the provision of appropriate planning controls with the provision of some certainty to outcomes that support the timely delivery of an acceptable redevelopment of the Marina.
- 2.6 The Design Criteria set out in the Site Brief, along with the recommendations contained within the Heritage Assessment, have informed the drafting of the planning controls and forms part of the overall strategic basis for Amendment C171.
- 2.7 Proposed Planning Scheme Amendment C171 would:
- Rezone the site from Public Park and Recreation Zone (PPRZ) to the Special Use Zone (SUZ) with a new schedule 4 (Attachment 2);
 - Apply the Development Plan Overlay (DPO) with a new schedule 2 (Attachment 3);
 - Amend the schedule to Clause 43.01 Heritage Overlay to extend Heritage Overlay 187 (HO187), which currently applies to the Beacon only, to apply to the entire St Kilda Marina site, and provide reference to *Permit Exemptions Incorporated Plan, St Kilda Marina, St Kilda (June 2019)* (refer to Attachment 4);
 - Update the *Port Phillip Heritage Review (Incorporated Document)* to (refer to Attachment 4):
 - Include reference to the *St Kilda Marina Heritage Assessment*, prepared by Built Heritage (12 April 2018);
 - Update Citation 2057, which currently applies to the Beacon only, to apply to the entire St Kilda Marina site, to expand the Statement of Significance and include guidelines for demolition and redevelopment;
 - Update the City of Port Phillip Heritage Policy Map (Incorporated Document) to extend the 'Significant heritage place' grading, which currently applies to the Beacon only, to the entire St Kilda Marina site;
 - Update the version number and date of this incorporated document.



- Introduce a *Permit Exemptions Incorporated Plan* (Incorporated Document) for the St Kilda Marina to exempt minor buildings and works triggered under the heritage overlay, and to exempt demolition or removal of a building, or to construct a building or construct or carry out works that are generally in accordance with an approved Development Plan (refer to Attachment 4);
- Make consequential changes to Clauses 21.07 (Incorporated Documents), Clause 22.04 (Heritage Policy) and the schedule to Clause 72.04 (Documents Incorporated in this Planning Scheme) to update the version number and date of the Port Phillip Heritage Review and update the City of Port Phillip Heritage Policy Map (refer to Attachment 5);
- Make consequential changes to 'Schedule to Clause 72.03 What Does this Planning Scheme Consist of?' to include reference to the new DPO map (refer to Attachment 5).

2.8 The proposed full list of administrative changes to the Port Phillip Planning Scheme proposed through Amendment C171 are outlined in Attachments 1 to 5.

3. RECOMMENDATION

That the Planning Committee:

- 3.1 Endorse the findings of the *Heritage Assessment, St Kilda Marina*, prepared by Built Heritage (12 April 2018) at **Attachment 1** as the strategic basis for proposing modified heritage controls to the St Kilda Marina site.
- 3.2 Authorise the Chief Executive Officer (CEO) or (delegate) to seek Ministerial Authorisation to prepare and exhibit Amendment C171 to the Port Phillip Planning Scheme, pursuant to Section 8A of the *Planning and Environment Act 1987*. The Amendment would comprise the following specific changes to the Port Phillip Planning Scheme (as outlined in **Attachments 1 to 5**):
 - i. Rezone the site from Public Park and Recreation Zone (PPRZ) to the Special Use Zone (SUZ) with a new schedule 4;
 - ii. Apply the Development Plan Overlay (DPO) with a new schedule 2;
 - iii. Amend the schedule to Clause 43.01 Heritage Overlay to extend Heritage Overlay 187 (HO187) to apply to the entire St Kilda Marina site, and provide reference to *Permit Exemptions Incorporated Plan, St Kilda Marina, St Kilda (June 2019)*;
 - iv. Update the *Port Phillip Heritage Review (Incorporated Document)* to:
 - a. Include reference to the *St Kilda Marina Heritage Assessment, prepared by Built Heritage (12 April 2019)*;
 - b. Update Citation 2057 to expand the Statement of Significance to apply to the entire St Kilda Marina site and include guidelines for demolition and redevelopment;



- c. Update the *City of Port Phillip Heritage Policy Map (Incorporated Document)* to extend the 'Significant heritage place' grading to the entire St Kilda Marina site;
 - d. Update the version number and date of this document, including the *City of Port Phillip Neighbourhood Character Map (Incorporated Document)*.
 - v. Amend the schedule to Clause 72.04 (Documents Incorporated into this Planning Scheme) to incorporate a Permit Exemptions Incorporated Plan for the St Kilda Marina to exempt:
 - a. Minor buildings and works triggered under the heritage overlay,
 - b. Demolition or removal of a building that is generally in accordance with an approved development plan, and
 - c. Construction of a building or carrying out works that are generally in accordance with an approved development plan.
 - vi. Make consequential changes to Clauses 21.07 (Incorporated Documents), Clause 22.04 (Heritage Policy) and the schedule to Clause 72.04 (Documents Incorporated in this Planning Scheme) to update the version number and date of the *Port Phillip Heritage Review, City of Port Phillip Heritage Policy Map* and *City of Port Phillip Neighbourhood Character Map*;
 - vii. Make consequential changes to 'Schedule to Clause 72.03 What Does this Planning Scheme Consist of?' to include reference to the new DPO map.
- 3.3 Authorise the CEO (or delegate) to finalise the documentation for Amendment C171 (including making changes that do not change the intent of the Amendment).
- 3.4 Place Amendment C171 on Exhibition, in accordance with section 19 of the Planning and Environment Act 1987, subject to Ministerial Authorisation.

4. KEY POINTS/ISSUES

Context

- 4.1 The St Kilda Marina is and has been located at 42 A - E Marine Parade, Elwood since 1969. The Marina occupies approximately 8Ha (80,000 m²) of foreshore Crown Land for which Council is appointed as the Committee of Management. Existing uses include marine services (boat storage and launch infrastructure, repairs, fuel for boats and sales), restaurants/cafes, service station and car parking.
- 4.2 The 50 year 'head lease' between Council and Australian Marinas (A'Asia) Pty Ltd (Australian Marinas), began on 18 March 1968 and, through a supplemental agreement to the original lease, expired on 30 April 2019.
- 4.3 On 7 February 2018, Council endorsed the Project Approach which sets out the various stages of the project, Stages 1 to 6, and the associated timeline. On 18 April 2018, Council endorsed The Community Stakeholder and Engagement Plan for Stages 1 to 3 of the project. Both are key documents guiding the project to secure a new long term lease arrangement for the site. They are available on the St Kilda Marina Project web page (<http://www.portphillip.vic.gov.au/st-kilda-marina.htm>).
- 4.4 To cover the gap between the expiry of the existing lease and the commencement of a new lease, Council at a meeting on 3 April 2019 approved an interim three-year lease



with the existing tenant (Australian Marinas Pty Ltd). The purpose of the interim lease is to support the continuity of existing operations on the site while procurement for a new long-term lease is undertaken, and enable a smooth transition between the existing and new lease.

- 4.5 Since the Council Meeting approving the Project Approach (February 2018), stages 1-3 of the Project Approach have been completed. Stage 3 recently concluded with the endorsement of the St Kilda Marina Project Site Brief, which sets out the current conditions and criteria for the desired future state of the site.
- 4.6 The project has moved into Stage 5. Work has been done to:
- Progress the strategic planning requirements for the site,
 - Finalise the Procurement Plan, which was endorsed by Council on 5 June 2019,
 - Update the Probity Plan and Community and Stakeholder Engagement Plan to reflect the requirements of the procurement and planning processes, also endorsed by Council on June 2019, and
 - Commence Procurement with the issue of an Invitation for an Expression of Interest (EOI) on 8 June 2019 which closed on 5 July 2019.

The Site Brief

- 4.7 Council has undertaken extensive community consultation to inform the development of the Site Brief which included (amongst other initiatives) a Community Open Day at the Marina, community drop in sessions, a mail out to over 7000 properties and notices in the local paper.
- 4.8 Amendment C171 seeks to facilitate the redevelopment of the Marina generally in the manner envisaged in the Site Brief. As such, all consultation undertaken to date forms part of the pre-consultation process for the proposed changes to the Planning Scheme.
- 4.9 The Site Brief was generated from the Community Panel process in Stage 3 of the project, that translated the vision and objectives for the Marina into design criteria for a future redevelopment of the site. Council endorsed the Site Brief at its ordinary meeting on 15 May 2019.
- 4.10 The Site Brief informs the public and the market about the site's history, current state and desired future. The desired future state is articulated through the site vision and objectives and a set of criteria for the site, all of which reflect the community's expectation for the redevelopment of the working marina and its complementary uses and spaces.
- 4.11 While the Site Brief does not explain how the Marina is to be specifically developed, it does outline a series of design criteria to be provided in the framework for future redevelopment of the Marina. The design criteria include text and plan based guidance on the site's future form, function and issues, such as height, scale, location and siting of new buildings, including requirements for the location and quality of publicly accessible open space and connections.
- 4.12 Various elements are identified, such as views and movement, marina function, and complementary uses. Each of the elements are accompanied by a series of mandatory ('must have') and discretionary ('desirable'), requirements that the redeveloped marina



must achieve, should achieve or aspire to achieve if possible, practical and economical.

- 4.13 Importantly, a key intention behind the design criteria is to allow the potential tenderers to leverage market expertise and respond to the Site Brief with progressive and innovative solutions in what is a highly specialised sector.

Existing Planning Scheme Controls

- 4.14 A planning scheme amendment is needed to apply a more suitable suite of zone and overlay controls to ensure the ongoing operation of the Marina and to efficiently facilitate its redevelopment in accordance with the Site Brief.
- 4.15 The current planning provisions for the Marina include:
- Public Park and Recreation Zone (PPRZ) – the purpose of which includes ‘to recognise areas for public recreation and open space, protect and conserve areas of significance and provide for commercial uses where appropriate’ (to be removed from the site).
 - Design and Development Overlay 10 (DDO10 - Port Phillip Coastal Area) - the purpose of which includes ‘to preserve existing beaches and natural beauty of the foreshore and enable public enjoyment’ (to be retained on the site).
 - Heritage Overlay (HO187) – the purpose of which includes ‘to conserve and enhance the historic beacon’ (proposed to be expanded to cover the entire site).
 - Special Building Overlay (SBO1) – applies to a small portion of the site and ensures development is compatible with flood hazard and local drainage conditions (to be retained on the site).
- 4.16 The current controls which are normally applied to public open space are considered to not be the best fit controls having regard to what is envisaged by the Site Brief. They do not sufficiently recognise the fact that the St Kilda Marina will be largely operated by private sector for commercial and community benefit purposes nor the fact that the place is a place that is to be redeveloped as a water based built environment.
- 4.17 The PPRZ is a public land zone which gives broad powers to a public land manager to use and develop the land without planning approval for the purposes of the public land manager. While it is true that if the developer or manager of the public land is a person other than the public land manager, the requirement for a planning permit is triggered, the zone is not designed with that in mind.
- 4.18 Furthermore, it is considered important that the planning controls ensure that redevelopment of the site is guided by and is consistent with an approved development plan, which operates as a type of masterplan for the site, providing specific guidelines for future development. Consequently, a more tailored and purpose built planning control is desirable. (Special Use Zone).

Approach to Drafting the Revised Controls

- 4.19 In preparing the revised planning controls for the Marina, Council Officers have sought to:
- Ensure the intent of the Site Brief (and specifically the Design Criteria contained within) is appropriately translated into the planning controls (Council’s



endorsement of the Amendment Process on 5 June 2019. This has had regard to the timing of the amendment and has also informed the selection controls.

- Include only content that is relevant under the *Planning and Environment Act 1987*.
- Simplify and clarify the language used in the Site Brief (where appropriate) and remove repetition consistent with the Department of Land Water and Planning's ('DELWP') guidelines regarding the formatting and drafting of planning scheme provisions. DELWP Officers reviewed the draft controls and requested changes (to ensure consistency with State Policy), including:
 - Removing some of the specific ESD requirements;
 - Removing the reduced car parking rate; and
 - Removing the increased bicycle rates.
 - It should be noted that these requested changes do not change the requirement to deliver on items as articulated in the Site Brief.
- Consider the requirements contained within the Site Brief that are not relevant to the Planning Scheme, which will be addressed through the future Marina Lease.
- Include additional requirements and objectives in the draft provisions consistent with a 'best practice' planning approach to:
 - Ensure a sufficient level of high quality detail (prepared by suitably qualified experts) is provided by the applicant for both the Development Plan and subsequent planning permit applications, to inform Council's assessment process.
 - Allow Council to comprehensively guide the future proposal against a comprehensive set of objectives that remain consistent with the intent of the Site Brief.
- Ensure that all the Design Criteria contained within the Site Brief are translated into either the SUZ4, DPO2, or addressed through the Marina Lease.

Proposed Planning Controls

- 4.20 In addition to Council's resolution on 5 June 2019 to rezone the site to SUZ and apply a DPO, it is also recommended that Amendment C171 expands the existing Heritage Overlay (HO187) to cover the entire Marina. This is based on further consideration of the *St Kilda Marina Heritage Assessment*, prepared by Built Heritage (12 April 2018) (the 'Heritage Assessment') (Attachment 1), which identifies the site's heritage significance.
- 4.21 Accordingly, proposed Planning Scheme Amendment C171 (refer to Attachments 1 to 5) seeks to:
- Rezone the site from Public Park and Recreation Zone (PPRZ) to the Special Use Zone (SUZ) with a new schedule 4 (refer to Attachment 2 for proposed SUZ4).



- Apply the Development Plan Overlay (DPO) with a new schedule 2 (refer to Attachment 3 for proposed DPO2).
- Amend the schedule to Clause 43.01 Heritage Overlay to extend Heritage Overlay 187 (HO187), which currently applies to the Beacon only, to apply to the entire St Kilda Marina site, and provide reference to *Permit Exemptions Incorporated Plan, St Kilda Marina, St Kilda (June 2019)* (refer to Attachment 4).
- Update the *Port Phillip Heritage Review (Incorporated Document)* to (refer to Attachment 4):
 - Include reference to the *St Kilda Marina Heritage Assessment, prepared by Built Heritage (12 April 2018)*;
 - Update Citation 2057, which currently applies to the Beacon only, to apply to the entire St Kilda Marina site, to expand the Statement of Significance and include guidelines for demolition and redevelopment;
 - Update the City of Port Phillip Heritage Policy Map (Incorporated Document) to extend the 'Significant Heritage place' grading, which currently applies to the Beacon only, to the entire St Kilda Marina site;
 - Update the version number and date of this incorporated document.
- Introduce a Permit Exemptions Incorporated Plan (Incorporated Document) (refer to Attachment 4) for the St Kilda Marina to exempt minor buildings and works triggered under the heritage overlay, and exempt demolition or removal of a building, or to construct a building or construct or carry out works that are generally in accordance with an approved development plan.
- Make consequential changes to Clauses 21.07 (Incorporated Documents), Clause 22.04 (Heritage Policy) and the schedule to Clause 72.04 (Documents Incorporated in this Planning Scheme) to update the version number and date of the Port Phillip Heritage Review and update the City of Port Phillip Heritage Policy Map.
- Make consequential changes to 'Schedule to Clause 72.03 what does this Planning Scheme Consist of?' to include reference to the new DPO map.
- Retain the existing Special Building Overlay schedule 1 (SBO1) and Design and Development Overlay schedule 10 (DDO10).

Special Use Zone Schedule 4

- 4.22 The SUZ provides for the use and development of land for specific purposes as set out in a customisable schedule to the zone.
- 4.23 The SUZ is an appropriate zone given it is to be applied to a single site that is proposed to be used for a mix of purposes ultimately for the enjoyment of the public. The possible mix of uses as envisaged in the Site Brief makes the site stand out as being an unusual site meriting a relatively site-specific and more tailored approach to the planning controls.



- 4.24 The customised SUZ schedule reflects the Site Brief (and the ongoing Marina use) by allowing, or prohibiting uses as specified in the Site Brief. Use of the SUZ provides increased certainty and transparency to support the implementation of the Site Brief.
- 4.25 The Site Brief includes a list of allowable and prohibited land uses, which have been translated into the SUZ4 (refer to Attachment 2) in Item 1.0 'Table of uses'.
- 4.26 The SUZ, as with all other zones, includes three standard categories of uses, consistent with the standard Victorian Planning Provisions including:
- Section 1– Permit not required,
 - Section 2– Permit required, and
 - Section 3– Prohibited.
- 4.27 Certain uses are Section 1 or Section 2 subject to conditions. For example, an education centre is a Section 1 use (Permit not required) on the condition it 'must be related to the marine function of the site'.
- 4.28 Item 4.0 of the SUZ4 requires a planning permit for buildings and works and includes a list of information under 'Application Requirements' that must be submitted with a planning permit application. The Application Requirements are tailored to implement the Site Brief.

Development Plan Overlay Schedule 2

- 4.29 A DPO can be used to guide the future use and development of the land through a master planned approach and accordingly, is the appropriate planning 'tool' to translate the vision, design criteria and development parameters articulated in the Site Brief, into the Planning Scheme.
- 4.30 The DPO requires a development plan to be approved prior to the grant of any planning permit. The trigger for the permit is under the SUZ. The development plan then operates as a type of masterplan for the site.
- 4.31 A key requirement under the DPO is that any planning permit must be generally in accordance with the approved development plan. There is no capacity to grant a planning permit that does not meet this requirement.
- 4.32 The DPO provides a level of flexibility in that a development plan can be amended (to the satisfaction of Council), providing it is in accordance with the requirements of the schedule to the DPO, including any concept plan forming part of the schedule to the DPO. The Concept Plan provides plan based guidance in addition to the text of the document.
- 4.33 Consistent with the Victorian Planning Provisions, the DPO2 (refer to Attachment 3) is structured as follows:
- Objectives
 - Requirements before a permit is granted
 - Conditions and requirements for permits
 - Requirements for development plan:



- Vision
 - Objectives
 - Table 1 specific requirements
 - Content of development plan
 - Concept plan (Figure 1).
- 4.34 The level of detail contained in the DPO2 is primarily based on information and guidance that is contained within the Site Brief.
- 4.35 Most of the Design Criteria in the Site Brief are included under the 'Requirements for development plan' (Section 4) of the DPO2.
- 4.36 Where the outcome of a Design Criteria is quantifiable and it is also a mandatory requirement ('must have'), the content is included as a 'Specific Requirement' in Table 1.
- 4.37 Where appropriate, the discretionary (i.e. 'nice to have') requirements in the Site Brief are included under 'Outcomes Sought' in Table 1.
- 4.38 The key elements shown in plan form in the Site Brief are included in the Concept Plan (Figure 1) with which any Development Plan must be consistent. This will ensure that the Development Plan is consistent with the Design Criteria set out in the Site Brief.
- 4.39 The DPO2 (which includes both text and a Concept Plan) contains sufficient detail to provide a suitable level of confidence that a development which is generally in accordance with the DPO2 will be an acceptable outcome, whilst also encouraging innovative design solutions.
- 4.40 Under the DPO2, the successful tenderer will need to apply for approval of a Development Plan prior to applying for a planning permit.
- 4.41 An effect of the approved Development Plan is that while planning permits must be obtained under the SUZ, third party rights are removed. That means that when a permit is sought, third parties are not required to be notified and if a permit is issued, there are no rights of review to VCAT by third parties.
- 4.42 Although the DPO removes third party rights in relation to a planning permit application, Council has endorsed the approach of undertaking non-statutory consultation with the community prior to the approval of the Development Plan and on the 'look and feel' of the proposed development as part of the Marina Lease.
- 4.43 Due to the complex operational arrangements of the Marina and the proposed procurement process, it is necessary and reasonable to provide a level of certainty to the future tenderer who is expected to invest significantly in the preparation of a concept and then a detailed design, Council and the community regarding the type of development outcomes to be achieved.
- 4.44 This approach is designed to provide an appropriate level of participation and certainty to all stakeholders such that proposals consistent with agreed outcomes for the site won't be subjected to uncertain approval timeframes.
- 4.45 Importantly, the above controls are a relatively standard approach to facilitating the redevelopment of a site that would benefit from a master planned approach.



Approach to Heritage

- 4.46 The Built Heritage (2018) assessment concluded that the Marina is of local heritage significance and recommended that a heritage overlay should be applied. Specifically, it identified primarily, that: *The Marina should continue to be used for a purpose that is compatible to its original use. Ideally, it should continue to function as a marina, or for similar boat related purposes.* Further, the elements of primary significance identified are the Marina Harbour (including boat ramps, finger piers, floating berths and dock-boxes), the two dry boat storage buildings, and the Beacon. The Site Brief also notes the Marina's local heritage significance.
- 4.47 Including the expanded Heritage Overlay within the suite of changes proposed to the Port Phillip Planning Scheme through Amendment C171 will provide the community with the opportunity to make a submission on Council's proposed approach to managing heritage issues for the Marina.

Expanded Heritage Overlay 187

- 4.48 Consistent with this report, it is recommended that the existing Heritage Overlay (HO187), which currently applies to the Beacon only, be amended and updated to apply to the whole Marina site.
- 4.49 The application of the Heritage Overlay to the entire Marina will require the heritage values of the Marina to be considered as part of any masterplan of a redevelopment proposal. The cultural heritage issues (specifically as identified in the statement of significance and the Citation 2057) will need to be balanced with the Site Brief's other objectives. However, it is considered that skilled designers will be able to resolve heritage matters whilst also delivering an innovative design response.
- 4.50 The application of an expanded Heritage Overlay (with a revised site Citation) provides the formal recognition of the social and cultural significance of the place while also enabling the ongoing viability of the Marina through innovative design. It will identify the Marina's significant heritage fabric, whilst also recognising that the continued use of the site provides the formal requires buildings to be 'fit for purpose'.
- 4.51 The application of the Heritage Overlay on the Marina site is also consistent with Council's approach to the management and protection of heritage buildings within the municipality.
- 4.52 Importantly, the application of a Heritage Overlay to the entire Marina will require the heritage values of the Marina to be considered as part of the preparation of the Development Plan.
- 4.53 Council's local heritage policy at Clause 22.04 of the Port Phillip Planning Scheme 'applies to all land within a Heritage Overlay' and generally does not encourage demolition of significant buildings. In this case, the site-specific planning controls proposed for the Marina will provide a more specific level of direction than is provided for by the general policy. The specific policies will relate directly to the context, opportunities and constraints of the Marina site.
- 4.54 The exemptions proposed in the Permit Exemptions Incorporated Plan (Incorporated Document) for the site are noteworthy. In keeping with normal practice, the Incorporated Document will exempt certain minor maintenance related demolition and building and works from permit triggers in the Heritage Overlay. This is a normal technique to manage the ongoing use and maintenance of heritage places. However, as proposed the Incorporated Document also provides that where a development plan



has been approved for the whole of the site, any demolition or buildings and works which is generally in accordance with that development plan is exempt from a permit under the Heritage Overlay. The Incorporated Plan draws its genesis from the provisions in Clause 43.01-3 of the Heritage Overlay (No permit required), which state:

- *No permit is required under this overlay:*
 - *For anything done in accordance with an incorporated plan specified in a schedule to this overlay.*

4.55 Noting that the permit process is exempt from 3rd party participation, it is considered that the Incorporated Plan as proposed is reasonably necessary to provide the level of certainty to the future development of the St Kilda Marina such that any development which is generally in accordance with the development plan should have a reasonable expectation of being subsequently permitted

Revised Citation (forming part of the Port Phillip Heritage Review)

4.56 Amendment C171 proposes to revise Heritage Citation 2057 (which currently applies only to the Beacon) to apply and be of relevance to the entire Marina site. Its drafting draws greatly from the Heritage Assessment. As a matter of logistics, Heritage Citations are all included in the document known as Port Phillip Heritage Review, which is (another) incorporated document in the Port Phillip Planning Scheme.

4.57 The *Port Phillip Heritage Review* (Incorporated Document) identifies properties of heritage significance (through individual citations) across the municipality based on expert assessments.

4.58 The revised Heritage Citation 2057 will provide more specific information regarding the history of the Marina, its cultural significance and how to manage the heritage significance of the Marina and guide decision making.

4.59 Specifically, the revised Heritage Citation 2057 includes a 'Policy basis' which states:

*The conservation of St Kilda Marina presents specific management issues, as the use of the site as a functioning marina is of primary heritage significance. While features such as the dry boat storage contribute to the significance of the place, **the upgrading or replacement of these facilities are likely to be necessary** to meet current standards and reflect the evolution of marine based leisure over time (e.g., through the increased size and diversity of boats). **Conservation by use is an important heritage principle and for this reason there are circumstances where it is appropriate to permit the demolition, removal and/or alteration of significant fabric** to facilitate the continued use of the culturally significant land use (marina) and ensure its continued viability.*

4.60 In response to the competing objectives to 1) protect significant heritage fabric and 2) redevelop the Marina as a working marina in accordance with the Site Brief, revised Heritage Citation 2057 provides guidance by stating that demolition of significant buildings may be permitted if:

- *The demolition and/or changes support the continued viability of the marina use*
- *The demolition and/or changes reflect a master-planned approach to the re-development of the marina.*



Management and consideration of Heritage in the Development Plan

4.61 Amendment C171 supports Council's master-planned approach to the redevelopment of the Marina where (through the Development Plan Overlay) a Development Plan becomes the primary and holistic decision making 'tool' which considers all matters as required by the planning scheme through the DPO Schedule 2 (DPO2). The DPO2 has been drafted to include the following requirement that must be included in the Development Plan:

A heritage chapter explaining how the development plan responds to the cultural heritage significance of the Marina and the guidelines set out in Citation 2057 (St Kilda Marina) in the Port Phillip Heritage Review (Incorporated Document) (June 2019).

4.62 In this way, all heritage matters will be considered 'up front' and will be addressed in the approved Development Plan rather than through any piecemeal permit process in the event the marina is redeveloped in stages. It is considered that a detailed consideration will have already been undertaken of the cultural significance of the place. It is reasonable then, to 'switch off' the permit triggers in the Heritage Overlay by the Permit Exemptions Incorporated Plan (Incorporated Document). All future planning permit applications must be generally in accordance with the approved Development Plan, which as noted will include a heritage report assessing any proposed demolition and new buildings.

State Planning Policy

4.63 The planning controls proposed by Amendment C171 are consistent with, and supported by, existing state planning policies, including policy within Clause 17.04-2S (Coastal and maritime tourism and recreation) of the Port Phillip Planning Scheme.

4.64 The objective of this policy is: *To encourage suitably located and designed coastal, marine and maritime tourism and recreational opportunities.*

4.65 Sitting under this objective, the relevant policy strategies, that relate to the use of the Marina, are:

- *Develop a network of maritime precincts around Port Phillip and Western Port that serve both local communities and visitors.*
- *Maintain and expand boating and recreational infrastructure around the bays in maritime precincts at Frankston, Geelong, Hastings, Hobsons Bay, Mordialloc, Mornington, Patterson River, Portarlington, Queenscliff, **St Kilda**, Stony Point/Cowes and Wyndham.*
- *Support maritime and related industries in appropriate locations.*

4.66 The Site Brief is also consistent with the intent of Clause 17.04-2S (Coastal and maritime tourism and recreation) of the Port Phillip Planning Scheme

Planning Scheme Amendment Process

4.67 On 5 June 2019 Council resolved to undertake concurrent planning scheme amendment and procurement processes for the site.

4.68 The planning scheme amendment is being undertaken concurrently with the Marina procurement process to:

- Manage these two separate processes in a timely manner.



- Achieve a balance in ensuring community involvement on the one hand and providing a level of certainty to the market on the other to ensure that the process is practical and viable.

Similar concurrent processes have been used to facilitate other large projects in Victoria, including the Marysville Hotel redevelopment following the Black Saturday fires and more recently the Ballarat Station redevelopment.

- 4.69 It is anticipated that the planning scheme amendment process will take approximately 12-18 months. This time takes into account the logistical council meeting cycles and a full statutory public participation process in relation to the amendment.
- 4.70 The planning scheme amendment process must be completed before a developer can commence applying for the relevant planning approvals (Development Plan and then a planning permit(s)) for the redevelopment of the site.
- 4.71 The planning scheme amendment process provides for extensive community consultation through the statutory exhibition process. Through this process the community can lodge submissions with Council on the content of the revised planning scheme provisions proposed for the Marina.
- 4.72 If Council does not resolve all submissions, to proceed, Council will be required to request that the Minister for Planning appoint an Independent Panel to consider all submissions to the Amendment.
- 4.73 The independent Panel would provide a report with recommendations to Council that Council must consider prior to resolving either to adopt, change or abandon the Amendment. If Council then resolves to pursue the amendment, the Minister for Planning makes the final decision.

5. CONSULTATION AND STAKEHOLDERS

- 5.1 Extensive consultation with the community has informed the development and content of the Site Brief. A Consultation Engagement Report providing a summary of activities undertaken and the outcomes of the consultation (refer to Attachment 6) was presented to Council on 17 April 2019.
- 5.2 The Community and Stakeholder Engagement Plan for Stages 4 & 5 of the project was presented to Council at the Ordinary Meeting on 5 June 2019. This report outlined the engagement process to accompany procurement and the planning scheme amendment.
- 5.3 Drop in information sessions for the community and stakeholders were held on 13 and 15 June 2019 for the Site Brief, Procurement Plan, Community and Stakeholder Engagement Plan and planning scheme amendment process. This was an opportunity for the community and stakeholders to ask any clarifying questions on the Site Brief, Procurement Plan and the future planning scheme amendment process and proposed suite of planning controls (which at the time did not include the proposed Heritage Overlay). A total of 13 people attended the drop-in sessions, including local residents and a Community Panel member, and were generally comfortable with the planning scheme amendment.
- 5.4 All interested parties, including those within the defined letter drop area (as shown in Attachment 7), have been sent correspondence from Council Officers advising them of the Planning Committee Meeting on 24 July 2019 in relation to Amendment C171.



- 5.5 Amendment C171 is proposed to undergo a full statutory exhibition process for four (4) weeks, in accordance with the Planning and Environment Act 1987. The extent of advertising proposed will include:
- Letters to be mailed to approximately 5,000 properties (approximately 9,000 owners/occupiers) within the broader Marina environs (refer to Attachment 7) and key community groups, statutory authorities and other relevant parties.
 - Two 'Drop-in sessions' with Council officers available to provide information to interested persons and the community.
 - Publication of a Public Notice in the Government Gazette and the Port Phillip Leader.
 - A dedicated Council webpage with an explanation of the planning scheme amendment and relevant documentation.
 - Relevant documentation will be made publicly available in Council's Town Halls and libraries.
- 5.6 The exhibition process provides a formal opportunity for all interested parties to make a written submission on the proposed planning scheme amendment.
- 5.7 Any submission to proposed Amendment C171 that cannot be resolved will be referred to an independent Planning Panel for independent review and recommendation.
- 5.8 Outside of the formal planning process, Council is committed to continue to engage with the community through:
- Consultation on the detailed design ('look and feel') of the proposed development. Council has endorsed this approach. This consultation will allow the community to comment on the aesthetics of the design.
 - If Amendment C171 is approved, consultation on the Development Plan, prepared by the preferred tenderer, prior to its approval by Council. This consultation will allow the community to comment on whether any proposed development plan (master-plan) is in accordance with the DPO2 and provides for appropriate outcomes.

6. LEGAL AND RISK IMPLICATIONS

- 6.1 In considering a planning scheme amendment for the site, Council must consider its dual role as both the landlord and the proponent for Amendment C171 and its statutory role as the Planning Authority and also ultimately its statutory role as the Responsible Authority. Council must endeavour to ensure the transparency of its decision making.
- 6.2 The proposed planning controls may not be supported by the community or the Minister for Planning in which case the existing zone provisions remain. Importantly, the existing planning provisions do not prevent the redevelopment of the Marina but there would be no mechanism for a statutory master-planned approach.
- 6.3 To further mitigate this risk, Council has committed to undertake non-statutory community consultation on the detailed design of the development, (particularly its 'look and feel'), as a requirement of the lease, and on the Development Plan itself, prior to its formal consideration by Council.



- 6.4 To mitigate the risk of market uncertainty and reduced participation in the procurement process, it is recommended that Council commence the planning scheme amendment process concurrently with the procurement process.
- 6.5 The timing for the planning scheme amendment is indicative and subject to the Minister undertaking his responsibilities to authorise and eventually approve Amendment C171 in a timely manner. The Minister may authorise the amendment with conditions, and may also approve the amendment with changes. Any significant changes to the planning scheme controls (as recommended and forming part of Amendment C171) may delay the processing and finalisation of the amendment.
- 6.6 Whilst the procurement process and planning scheme amendment process are separate processes, their timeframes are interdependent and accordingly, a delay in Council making a decision on Amendment C171 is likely to impact the procurement process. (see Attachment 8– Concurrent Planning Scheme Amendment Process).
- 6.7 The final development plan approved under the DPO2 will not be considered by an independent Planning Panel or Planning Minister. Council is responsible for considering and approving (or rejecting) that document.

7. FINANCIAL IMPACT

- 7.1 The planning scheme amendment costs will include public exhibition, regulatory fees and likely legal and other consultant representation at a Planning Panel. This will be funded through the Planning Scheme Amendment Program.

8. ENVIRONMENTAL IMPACT

- 8.1 The Marina is a key foreshore asset and facility that plays an important role for access to Port Phillip Bay and is also a valued destination by not only the Port Phillip community but also the wider community including boat owners and marine and foreshore enthusiasts.
- 8.2 Consistent with the Site Brief, Amendment C171 will ensure development is responsive to the Marina's significant coastal landscape, biodiversity and environmental context.
- 8.3 The coastal criteria and environmental design criteria in the Site Brief have been translated, where appropriate, into the proposed planning controls.

9. SOCIAL IMPACT

- 9.1 The redevelopment of the Marina is important to ensure the on-going operation of the Marina with enhanced public space and access, which will have a positive impact on the social amenity of the immediate and broader area. Amendment C171 will facilitate this.
- 9.2 Therefore, it is considered that the planning scheme amendment will have a positive social effect through the preservation of the Marina as a historically significant place, which reflects social history, but as an economically viable undertaking for the benefit of the current and future generations.

10. ECONOMIC IMPACT

- 10.1 Amendment C171 will facilitate the redevelopment of the marina ensuring its economic viability going forward. The redevelopment process will create jobs and depending on



the final form of redevelopment additional jobs may also be created especially if the future of the Marina is secure.

- 10.2 The proposed controls allow for a modest increase to commercial floor area on the site to support the provision of a range of additional tenancies associated with and that support the operation of the St Kilda Marina. The nature of those is outlined in the Site Brief and the range of permitted uses in the proposed SUZ schedule.

11. PROPOSED NEXT STEPS

- 11.1 Should Council decide to proceed with the planning scheme amendment, a request for Ministerial Authorisation for Amendment C171 will be sent to the Minister for Planning.
- 11.2 Once Authorisation is received, Amendment C171 will commence public exhibition.

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.

TRIM FILE NO:

66/02/280

ATTACHMENTS

- 1. Attachment 1 C171port Heritage Assessment St Kilda Marina**
- 2. Attachment 2 C171port Draft Special Use Zone Schedule 4**
- 3. Attachment 3 C171port Draft Development Plan Overlay Schedule 2**
- 4. Attachment 4 C171port Draft Heritage documentation**
- 5. Attachment 5 C171port Draft Amendment Documentation**
- 6. Attachment 6 C171port St Kilda Marina Project Stage Three Community Engagement Report**
- 7. Attachment 7 C171port Site Brief Letter Drop Area**
- 8. Attachment 8 C171port SKM Draft concurrent planning scheme amendment process**