



**Item 7.5 Request to annul the decision to approve planning application 875/2019**

A Petition containing 15 signatures, was received from local residents.

**The Petition states the following: -**

*On 05.05.2020 the City of Port Phillip Council issued the "Notice of Decision to Grant a Permit" to the application 875/2019 (2A Brighton Road, St Kilda). The decision was made by Angus Bevan on 30.04.2020 following the Decision Delegation.*

*We believe that Delegation of the Decision for 875/2019 application was in contradiction to the s6. Instrument of Delegation to Members of Council Staff (3.3.2), Planning and Environmental Act 1987, R6. Planning and Environmental Regulation 2015 and Heritage Act 1995:*

- (1) 875/2019 is an application for a partial demolition of a building, which is Heritage Gazetted in the Council Amendment C142port (map 6 and 7) as a Significant Heritage Place. Furthermore, the Activity Centre Structure Plan (2009) in Strategic Directions (4.3.2) states: "protect highly significant heritage and "iconic" buildings".*
- (2) 875/2019 is an application for a 300 patrons liquor licensing premises with hours of operations from 7am till 11pm/1am. The Activity Centre Structure Plan (2009) in Strategic Directions (4.3.2) states: "Reinforce the role and identity of the precinct as a 'civic and community services hub' - a focus for governance, civic activity and spaces, and service delivery to the local and wider communities".*
- (3) 875/2019 includes an application for a reduction in car parking requirements. The application contradicts the Port Phillip Planning Scheme 22.11-3, 10/05/2012, C80 requiring "development proposals to be self-sufficient in on-site parking". It is not fulfilling Port Phillip Planning Scheme 22.11-5, 10/05/2012, C80 requirements that application must be accompanied by "a Traffic and Parking Analysis Report and An Economic Impact Assessment", which were absent from the application.*

*We believe that the 875/2019 application for the 300 patrons liquor licensing with extended hours of operation also requires very close and cautious examination by the Port Phillip Council due to the following factors:*

- (a) The proposed premises will be just few meters away from the St Kilda Primary School (2B Brighton Road).*
- (b) The proposed premises will be on the grounds of the operational place of worship, The Holy Trinity Balaclava and Elwood Anglican Church.*
- (c) The proposed premises will be 5m away from the GRZ1. The Port Phillip Planning Scheme 22.11-4, 10/05/2012, C80, plans for the area: "Discourage licensed premises (bars/taverns, restaurant and nightclubs)".*
- (d) The proposed premises will be 50m away from the established 300 patrons liquor licensing venue, the Grosvenor Hotel, St Kilda.*

*The following Petitioners hereby request that*



*The City of Port Phillip to annul the decision to approve application 875/2019 made by Angus Bevan by Delegation.*

*The City of Port Phillip's legal requirement is to make a decision on the application only at a council meeting. It is also required to refer the development to the Minister for Environment, Land, Water and Planning, if the Council believes that it may impact on heritage value, regardless of how small this impact may be.*

*The Council has the moral obligation to refer the development to the Minister for Environment, Land, Water and Planning to assess the impact on the neighbouring primary school and GRZ1.*

*This will provide a greater level of certainty that Commonwealth legal requirements have been met and greater moral and social factors haven't been forgotten.*

## **OFFICER COMMENT**

### **Planning Application**

Application No. 875/2019 was received by Council in December 2019 seeking approval for the 'partial demolition of a building, buildings and works inclusive of internal alterations, use of land as a food and drinks premises, sale and consumption of liquor on the premises, and a reduction in car parking requirements' on the land at 2A Brighton Road, St Kilda.

The application went to public notice (advertising) in January 2020, by posting five notice boards on the land and sending a total of 188 letters out to nearby owners and occupiers. By April 2020, Council received a total of 13 objections and one letter of support from the Reverend of the Holy Trinity Balaclava and Elwood Church.

As part of the advertising process, the Minister for Environment, Land, Water and Planning via the Department of Environment, Land, Water and Planning and the Department of Education and Early Childhood Development, were notified of the proposal, as the registered owners of the St Kilda Primary School. No objections were received to the application from these Departments.

### **Consideration of the Planning Application**

In considering the application, the proposal was referred to a number of Council experts, including the Heritage Advisor, Strategic Planning, Traffic, Waste and Development Permits, who all provided in principle support.

The application was not required to be referred externally to any referral authority.

All objections were recorded and acknowledged.

The Canal Ward councillors were also made aware of the application.

### **Determination of the Application**

Council officers undertook a comprehensive assessment of the proposal in accordance with the requirements of the Planning and Environment Act 1987 and the Port Phillip Planning Scheme, including the consideration of all objections and relevant policies.



This assessment found that the proposal, subject to best practice conditions would result in an acceptable use and development of the land.

Council (under delegation) determined to support the application and issued a Notice of Decision to Grant a Planning Permit (NOD) in May 2020. Officers made the decision through the appropriate exercise of delegations and authorities and the decision was made in line with all Council's adopted policies and strategies.

### **Subsequent to the Determination of the Application**

A copy of the NOD was sent to all objectors to the application, who each had a 28 day period in which to seek a review of Council's decision (appeal) to the Victorian Civil and Administrative Tribunal (VCAT).

One objector (the lead petitioner) has lodged an appeal against Council's decision and the matter is now before VCAT for determination, at a hearing listed for 3 May 2021.

### **Petitioner's Requests**

The following response has been provided to the specific requests of the petitioners, which are repeated in italics.

*The City of Port Phillip to annul the decision to approve application 875/2019 made by Angus Bevan by Delegation.*

Council has no statutory ability to cancel its original decision. As an application to review Council's decision to VCAT has been lodged, the matter will be heard anew by VCAT, who will ultimately decide the application.

*The City of Port Phillip's legal requirement is to make a decision on the application only at a council meeting.*

Officers made the decision through the appropriate exercise of delegations and authorities and the decision was made in line with all Council's adopted policies and strategies.

*It is also required to refer the development to the Minister for Environment, Land, Water and Planning, if the Council believes that it may impact on heritage value, regardless of how small this impact may be.*

The Holy Trinity Church complex is of local significance and there is no statutory requirement for the application to be referred to the Minister for Environment, Land, Water and Planning under the heritage overlay or any other external agency. The application was referred to Council's Heritage Advisor, who generally supported the proposal.

*The Council has the moral obligation to refer the development to the Minister for Environment, Land, Water and Planning to assess the impact on the neighbouring primary school and GRZ1. This will provide a greater level of certainty that Commonwealth legal requirements have been met and greater moral and social factors haven't been forgotten.*

As outlined previously, the Minister for Environment, Land, Water and Planning via the Department of Environment, Land, Water and Planning and the Department of Education and Early Childhood Development, were notified as the registered owners of the St Kilda Primary School. No objections were received to the application from either Department.

# MEETING OF THE PORT PHILLIP CITY COUNCIL 2 DECEMBER 2020



## **OFFICER RECOMMENDATION**

That Council:

1. Receives and notes the Petition.
2. Inform the petition organiser of Council's inability to annul its decision.
3. Advises the petitioner that this matter is scheduled to be considered by VCAT, at a three day hearing commencing on 3 May 2021 (or any rescheduled date) and further advises the process for members of the public to be heard at the VCAT hearing.

**TRIM FILE NO:** F20/1

**ATTACHMENTS** Nil