



6.2 AMENDMENT C171PORT ST KILDA MARINA

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1. PURPOSE

- 1.1 To inform Councillors of the written submissions received during the public exhibition of Amendment C171port (St Kilda Marina) to the Port Phillip Planning Scheme.

2. EXECUTIVE SUMMARY

- 2.1 Amendment C171port to the Port Phillip Planning Scheme relates to St Kilda Marina. This Amendment is required to facilitate the redevelopment of the Marina generally in the manner envisaged in the St Kilda Marina Site Brief ("Site Brief")(endorsed by Council on 15 May 2019).
- 2.2 The revised planning provisions for the Marina are designed to facilitate the redevelopment of the St Kilda Marina and more specifically:
 - 2.2.1 Allow nominated uses to occur on the land generally as articulated in the Site Brief. 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.
 - 2.2.2 Ensure the master plan is given a statutory basis through an appropriate planning control to assist the responsible authority (Council) on the subsequent decision making process in relation to approving a development plan and issuing one or more planning permits.
 - 2.2.3 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.
- 2.3 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 the strategic basis of Amendment C171port.
- 2.4 On 5 June 2019, Council resolved at its Ordinary Meeting to endorse the recommended planning scheme amendment process and suite of planning controls to support the implementation of the Site Brief.
- 2.5 On 24 July 2019, Council's Planning Committee resolved to make a request to the Minister for Planning seeking authorisation of Amendment C171port to be prepared and exhibited.
- 2.6 On 25 September 2019, the Minister for Planning's delegate authorised Council to prepare and exhibit Amendment C171port (with conditions).
- 2.7 Amendment C171port was on formal Public Exhibition for one calendar month for 17 October to 18 November 2019. The formal Public Exhibition process included direct



letters to approximately 9,000 surrounding owners and occupiers, and stakeholders, an email to the St Kilda Marina 'interested persons list; and notices in the local paper and government gazette.

- 2.8 129 submissions have been received (See Attachment 1 for summary of written submissions).
- 2.9 Council is currently in the process of procuring a new long term lease for the St Kilda Marina through a competitive process.

3. RECOMMENDATION

That Council:

- 3.1 Receives and considers all submissions to Amendment C171port – St Kilda Marina.
- 3.2 Extends its thanks to all submitters and to persons presenting at this meeting.
- 3.3 Notes that a further report will be presented to a Special Council Meeting on 29 January 2020, that will:
 - Provide a consideration of and recommended response to each submission and the issues raised in submissions to form the basis of Council's position at the planning panel;
 - Provide a recommendation on whether to refer all submissions to an independent planning panel appointed by the Minister for Planning for consideration by the independent planning panel

4. KEY POINTS/ISSUES

The St Kilda Marina Site Brief

- 4.1 The Site Brief provides guidance on the possible redevelopment of the St Kilda Marina by establishing parameters and providing guidance on the type (as in land use) and scale of future development. 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. Please see Attachment 3 for a copy of the Site Brief.
- 4.2 The Site Brief underpins the procurement process to facilitate the redevelopment of the St Kilda Marina under a new long term lease.
- 4.3 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 7,000 properties and notices in the local papers, a community panel process including 23 community members selected from an EOI process to develop the Site Brief with the Council's project team including specialist consultants, and two surveys on 'Have your say' seeking feedback from the broad community on various elements of the site, one prior



to developing the Site Brief to inform the Site Visions and Objectives and one as the design ideas were evolving.

- 4.4 Amendment C171port 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.
- 4.5 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.
- 4.6 While the Site Brief does not explain how the Marina is to be specifically designed and 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 issues, such as height, scale, location and quality of publicly accessible open space and connections.
- 4.7 Various elements are identified, such as views and movement, marina function, and complementary uses. Each of these elements are accompanied by a series mandatory ('must have') and discretionary ('desirable'), requirements that the redeveloped marina must achieve, should achieve or aspire to achieve if possible, practical and economical.
- 4.8 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 Controls

- 4.9 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.
- 4.10 The current planning provisions for the Marina include:
 - 4.10.1 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 and replace with a more appropriate zone).
 - 4.10.2 Design and Development Overlay 10 (DDO10 – Port Phillip Coastal Areas) – 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).
 - 4.10.3 Heritage Overlay (HO187) (Beacon only) – the purpose of which includes *'to conserve and enhance the historic beacon'* (to be extended to cover the entire site).
 - 4.10.4 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 site).

Amendment C171port

- 4.11 As exhibited, Planning Scheme Amendment C171port proposes to:



- 4.11.1 Rezone the site from Public Park and Recreation Zone (PPRZ) to the Special Use Zone (SUZ) with a new Schedule 4, to provide for the use and development if the land for specific purposes consistent with the Site Brief, as set out in a customised schedule to the zone. Another benefit of this zone is that it is not necessarily predicated on the use and development of the land by a public land manager as is generally the case with the existing PPRZ;
- 4.11.2 Apply the Development Plan Overlay (DPO) with a new schedule 2 to ensure a master planned approach to the site, consistent with the Site Brief;
- 4.11.3 Amend the schedule to Clause 43.01 Heritage Overlay to extent the 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)*;
- 4.11.4 Update the Port Phillip Heritage Review (Incorporated Document) to:
- 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 Marina site, to expand the Statement of Significance and include guidelines for demolition and redevelopment;
 - Update the *City of Port Phillip Heritage Map* (Incorporated Document) to extend the 'Significant Heritage Place' grading, which currently applies to the Beacon only, to the entire Marina site;
 - Update the version number and date of this incorporated document.
- 4.11.5 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 and carry out works that are generally in accordance with an approved Development Plan;
- 4.11.6 Make consequential changes to Clause 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;
- 4.11.7 Make consequential changes to 'Schedule to Clause 72.04 'What does this Planning Scheme consist of?' to include reference to the new DPO map.

Authorisation

- 4.12 On 25 September 2019 the Minister for Planning's delegate authorised Council to prepare and exhibit Amendment C171port (with conditions). A Council can only prepare and exhibit an amendment if authorised to do so by the Minister for Planning. The purpose of authorisation is to identify whether the proposed amendment is consistent with State policy or interests and ensure that it makes proper use of the Victorian Planning Provisions.



- 4.13 Council officers lodged the revised amendment documentation addressing the Minister's conditions with DELWP (in accordance with the Conditions of Authorisation) on 26 September 2019. DELWP advised that the conditions of Authorisation were adequately resolved and agreed to commence public exhibition.

Public Exhibition of Amendment C171port

- 4.14 Amendment C171port was on formal Public Exhibition for one calendar month from 17 October to 18 November 2019. The formal Public Exhibition process included direct letters to 9,000 surrounding owners and occupiers, and stakeholders, an email to the St Kilda Marina 'interested persons list' and notices in the local paper and government gazette (for further information see Section 4).
- 4.15 129 submissions have been received representing the views of 199 people/organisations. These include:
- 4.15.1 93 of the submissions are from one town planning consultant (the content of these submissions is the same)
 - 4.15.2 Another submission is on behalf of 31 residents who live opposite the Marina on Marina Parade. A further 28 submissions are from local residents near the Marina in Elwood and St Kilda.
 - 4.15.3 Submissions have also been received from Melbourne Water, Port Melbourne Historical & Preservation Society and other stakeholders.
- 4.16 The vast majority of submissions request changes to the Amendment.
- 4.17 Please refer to Attachment 1 for a summary of all of the written submissions.

Overview of Submissions – Key Themes and Issues

- 4.18 Many of the submissions are very long and detailed and they generally cover all aspects of the amendment and raise concerns with the content of the Site Brief.
- 4.19 Please refer to Attachment 2 for a summary of the key themes and issues raised in submissions to Amendment C171port. This attachment also notes which submissions raised each issue / matter.
- 4.20 The key issues raised in submissions include the following:
- Concerns over the removal of third party appeal rights;
 - Both support and concern over the rezoning from PPRZ to SUZ;
 - Both support and concern over the 'master planned' approach to the Marina's redevelopment;
 - Both support and concern over the proposed approach to heritage;
 - Concerns relating to uncertainty around future development outcomes/lack of certainty around specificity/detail in the proposed planning controls;
 - Concerns regarding the complexity of the consultation and planning scheme amendment material;



- Concerns around extent/type of consultation (generally regarding the Marina redevelopment so far);
- Concerns regarding the need for additional technical reports;
- Concerns regarding attraction of commercial developers over marine operators / developers;
- Concerns that the Marina is an inappropriate location for increased commercial activity;
- Request that each building envelope has more detailed design guidelines / certainty;
- Concerns regarding potential visual bulk resulting from the proposed building envelopes, including along Marine Parade;
- Concerns over proposed building height/scale/site coverage of allowable development. Requests that the allowable building heights be lowered/site coverage limited;
- Concerns over the scale of allowable development relative to the existing heritage buildings;
- Concerns that the scale of allowable development is inconsistent with the foreshore environs and there is no precedent;
- Concern over proposed scale of allowable development and loss of 'open' feel of the marina. Concern that the Marina remain 'low density/scale';
- Concerns regarding the loss of views resulting from the scale and location of allowable development;
- Concerns regarding adverse impacts of increased traffic / parking on the surrounding area and lack of onsite provisions;
- Concerns regarding potential boat trailer parking in Moran Reserve "investigation area" and loss of public open space / vegetation;
- Concerns regarding contamination and environmental impacts;
- Concerns regarding noise and amenity impacts;
- Concerns regarding the redevelopment impact on, and the need to protect, the Marina's Fairy Penguin Colony;
- Concerns regarding the maintenance of the foreshore and surrounding areas.

4.21 It is proposed to provide a detailed report back to Council on the issues raised in submissions on 29 January 2020, as part of Council's consideration of and response to submissions.

Council consideration of submissions to Amendment C171port

4.22 Noting that the submissions each seek different and sometimes competing changes, after hearing submitters at this meeting, Council only has the following options available to it under section 23 of the Planning and Environment Act 1987:



- **Option 1:** Note submissions and request officers to present a report at a Special Council Meeting on 29 January 2020. This report would provide for the formal consideration and response to all submissions, and determine whether to refer the submissions to an independent Planning Panel for review. This is the recommended option.
 - **Option 2:** Not progress the Amendment C171 at this point.
- 4.23 At this stage in the amendment process, noting the competing submissions, the Planning and Environment Act 1987 only enables Council to either:
- Refer the submissions to an independent Planning Panel, or
 - Abandon the amendment.
- 4.24 The option of adopting an amendment is only available where there are not objecting submissions, or where changes can be made to the exhibited amendment to address all issues. As noted above, because submissions to Amendment C171port have presented opposing views, this option is not available to Council.
- 4.25 If Option 1 is supported, a further report will be provided to Council in early 2020 including:
- A summary of all submissions received;
 - Officer recommendations for responding to issues raised in submissions, including any recommended changes to the Amendment C171port considered appropriate to be presented to the panel.
- 4.26 Council's position on submissions and recommended changes to the amendment would form the basis of its submission to the independent Planning Panel.
- 4.27 A Panel would provide a report and recommendations back to Council which must be considered prior to Council resolving whether to adopt (with or without changes) or abandon Amendment C171port. Council is not obligated to adopt all of the Panel's recommendations, but must provide its reasons to the Minister for Planning as part of the amendment approval process.

5. CONSULTATION AND STAKEHOLDERS

- 5.1 Extensive consultation with the community and stakeholders has informed the development and context of the Site Brief.
- 5.2 Outside of the formal planning scheme amendment process, Council has committed to continue to engage with the community and stakeholders on the aesthetic of the proposal and the proposed development plan.
- 5.3 Amendment C171port was placed on public exhibition between 17 October 2019 to 18 November 2019, in accordance with the requirements of the *Planning and Environment Act 2987*.
- 5.4 Exhibition of the amendment involved:



- Direct notification (letters) to approximately 9,000 owners and occupiers within the surrounding neighbourhoods inviting interested stakeholders to make a submission.
- Direct notification (letters) to prescribed Ministers, local members of Parliament, community groups, relevant government agencies and infrastructure providers.
- Public Notices in the Port Phillip Leader and Government Gazette.
- Availability of amendment documentation and supporting information on Council's website. Amendment Documentation was also provided on the State Government's Planning Amendments Online website.
- Display of information folders at Council ASSIST centres and libraries in Port Melbourne and St Kilda.
- Two drop-in sessions were held providing the opportunity for interested persons to speak to a planner one on one.
- Stakeholders were also invited to call Council planners to discuss the amendment or meet one on one.

6. LEGAL AND RISK IMPLICATIONS

- 6.1 All affected owners and occupiers were notified of the exhibition of Amendment C171port and given the opportunity to make a written submission. The amendment is being processed in accordance with the requirements of the Act.
- 6.2 In considering a planning scheme amendment for the site, Council must consider only its role as Planning Authority to ensure transparency of its decision making.
- 6.3 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 in their present form there would be no statutory mechanism for a master-planned approach to the redevelopment.
- 6.4 The Minister's authorisation to prepare Amendment C171port (received on 25 September 2019) is not necessarily an indication of whether or not the amendment will ultimately be supported.
- 6.5 Timeframes related to the panel hearing and the release of the panel report may be subject to change by Planning Panels.
- 6.6 The Planning Panel report may recommend changes to Amendment C171port.
- 6.7 The Planning Scheme Amendment is subject to Ministerial approval. The Minister may approve the amendment with or without changes to the planning controls.
- 6.8 Consultation to date has ensured that Stakeholder views have been considered. The amendment process will provide on-going opportunities for submitters to make representations to Council and at any future independent Panel hearing.



- 6.9 Compliance with the statutory process for amendments, continued engagement with submitters and an independent review by a Panel will ensure an open and transparent process.

7. FINANCIAL IMPACT

- 7.1 The financial costs associated with Amendment C171port relate to the panel hearing, expert evidence and legal representation. Provision for these costs is made within the annual budget allocated for the Planning Scheme Amendments 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 marina and foreshore enthusiasts.
- 8.2 Consistent with the Site Brief, Amendment C171port 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. COMMUNITY IMPACT

- 9.1 It is considered that Amendment C171port will have a positive community benefit effect through the redevelopment of the Marina as a publicly available asset with increased public access and provision of public places for the benefit of current and future generations.

10. ALIGNMENT TO COUNCIL PLAN AND COUNCIL POLICY

- 10.1 AmendmentC171port aligns with Strategic Direction 4, "We are growing and keeping our character". It supports the delivery of the specifically identified Council Plan key outcome, "a city of diverse and distinctive neighbourhoods and places". The St Kilda Marina Lease is a specific priority in the Council Plan.
- 10.2 It aligns with Strategic Directions 3 (We have smart solutions for a sustainable future) and 6 (Our commitment to you) by supporting delivery of the following outcomes:
- A) a financially sustainable, high-performing, well-governed organisation that puts the community first.
 - B) a city that is adapting to climate change
 - C) a water sensitive city
- 10.3 The St Kilda Marina is a key strategic site within Council's property portfolio and presents a significant opportunity in terms of social, environmental, economic and cultural possibilities for the St Kilda foreshore, the municipality and the State.

11. PROPOSED NEXT STEPS

- 11.1 TIMELINE



11.1.1 All Submissions will be formally reported to Council along with the recommended response and any recommended change to Amendment C171port at a Special Council Meeting on 29 January 2020.

11.1.2 Subject to the outcome of Council's formal consideration of submissions, an independent Planning Panel would be requested to consider all submissions to Amendment C171port. It is anticipated that a Directions Hearing would then be held on or around 24 February 2020 with the Panel Hearing to commence on or around 30 March 2020.

11.2 COMMUNICATION

11.2.1 Council's website will be updated to reflect the next steps in the amendment process.

11.2.2 All submitters will be advised that Council will formally consider this matter again at a Special Council Meeting on 29 January 2020; including formulating a position on issues raised in submissions and a decision on referring the submissions to an independent Planning Panel.

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. Amendment C171port submissions summary
2. Summary of key themes raised in submission to AmC171port
3. St Kilda Marina Site Brief (endorsed 15 May 2019)