



**12.1 PREPARATION AND EXHIBITION OF AMENDMENT
C203PORT PLANNING SCHEME REVIEW**

**EXECUTIVE MEMBER: KYLIE BENNETTS, GENERAL MANAGER, CITY GROWTH AND
ORGANISATIONAL CAPABILITY**

**PREPARED BY: KATHRYN POUND, ACTING MANAGER CITY STRATEGY DESIGN
AND SUSTAINABILITY**

1. PURPOSE

- 1.1 For Council to request Ministerial Authorisation to prepare and exhibit Amendment C203port Planning Scheme Review to the Port Phillip Planning Scheme.

2. EXECUTIVE SUMMARY

- 2.1 The City of Port Phillip Planning Scheme Review (**the Review**) is a targeted review of local content to improve the usability and efficiency of the planning scheme and enable better decision making. The Review has been underway since 2018 through the preparation of the *Port Phillip Planning Scheme Review Audit Report* (23 May 2018) (**the 2018 Audit Report**).
- 2.2 The Review will be implemented into the planning scheme through Planning Scheme Amendment C203port (**the Amendment**).
- 2.3 All local content currently contained in the Municipal Strategic Statement and local policies has been reviewed and translated into a new format to comply with State Government changes. New background documents will be introduced and some existing ones (and one Incorporated document) will be amended. Local VicSmart planning provisions will be introduced. Updates to heritage provisions are proposed to deliver work produced through the Heritage Program.
- 2.4 A full list of proposed changes to the planning scheme with a summary of key changes is contained in **Attachment 1**. A full copy of all proposed provisions marked up to show what content is new and where it has been sourced from is contained in **Attachment 2**.
- 2.5 This report recommends that a request be made for Ministerial Authorisation to prepare and exhibit Amendment C203port Planning Scheme Review to the Port Phillip Planning Scheme. The Amendment would be put on public exhibition in September 2021.

3. RECOMMENDATION

That Council:

- 3.1 Endorse the draft Municipal Planning Strategy, local policies and supporting documents as a basis for Amendment C203port to the Port Phillip Planning Scheme.
- 3.2 Resolve to prepare Amendment C203port to the Port Phillip Planning Scheme to implement the Planning Scheme Review, generally in accordance with the documentation at **Attachments 1-25**.
- 3.3 Delegates authority to the CEO to reflect any changes made by Council at tonight's meeting which are not reflected in **Attachments 1-25**, to make minor corrections and updates, and to make editorial changes that reflect any changed obligations to Council required by state government agencies.



- 3.4 Request the Minister for Planning to authorise the preparation and exhibition of Amendment C203port to the Port Phillip Planning Scheme, pursuant to Section 8A of the Planning and Environment Act 1987.
- 3.5 Place Amendment C203port on exhibition, in accordance with Section 19 of the Planning and Environment Act 1987, subject to Ministerial Authorisation.

4. KEY POINTS/ISSUES

- 4.1 The Review is a targeted review of local content to improve the usability and efficiency of the planning scheme and enable better decision making. In particular it:
 - Delivers Council's statutory obligation as Responsible Planning Authority under the *Planning and Environment Act 1987 (the Act)* to undertake a regular review of its planning scheme. The last review commenced in 2006 and was completed in 2011. It does this by:
 - Implementing recommendations of the 2018 Audit report.
 - Making generally minor updates to local content to implement Council documents and strategies adopted or prepared since the last Planning Scheme Review, including the *Council Plan 2017-27, Act and Adapt, Don't Waste It, In Our Backyard, Art + Soul, Move, Connect, Live* and *Draft Public Space Strategy*.
 - Removing obsolete incorporated and reference documents.
 - Restructures and redrafts all local policy content to align with Victorian Government required changes to the format and drafting of planning schemes brought in through Amendment VC148 in 2018.
 - Updates the local heritage policy to implement new *Port Phillip Heritage Design Guidelines* (City of Port Phillip, 2021) which address known gaps and issues, and introduce the new *Heritage Design Guidelines* as a background document.
 - Introduces new local VicSmart planning provisions.
- 4.2 Each of these key outcomes is discussed in turn as follows:

Council's obligation to review the planning scheme & the 2018 Audit Report
- 4.3 Council has a statutory obligation as Responsible Planning Authority under the Act to undertake regular reviews of its planning scheme. The last review occurred when Amendment C62 was gazetted into the planning scheme on 27 June 2011. Amendment C62 implemented recommendations from a 2006 audit of the planning scheme.
- 4.4 Council planning officers undertook a comprehensive audit of the planning scheme in 2018. The *Port Phillip Planning Scheme Review Audit Report* (23 May 2018) (**the 2018 Audit Report**) makes 86 recommendations ranging from relatively minor corrections to improvements to Council processes and recommending significant further strategic work to reform key policy within the Scheme relating to housing, heritage, neighbourhood character, urban design, employment, transport, sustainability and public open space. Many, but not all, of these recommendations will be addressed through this review. The 2018 Audit Report is contained at **Attachment 25**.
- 4.5 At an Ordinary meeting of Council on 6 June 2018, Council resolved to adopt the 2018 Audit Report, submit it to the Minister for Planning under the *Planning and Environment Act 1987* and to commence progress with a program of updates to the local content



(policy and provisions) generally in accordance with the recommendations of the 2018 Audit Report.

- 4.6 Consequently, the 2018 Audit Report was submitted to the Minister for Planning, and the review of local content was commenced by planning officers.

New Victorian Government requirements on the form and content of planning schemes – Amendment VC148

- 4.7 Another key driver of the Review has been the Victorian Government's requirement for local content within planning schemes to be updated and translated into a new format. Reformed planning schemes were introduced through state-wide Amendment VC148 which was gazetted in 2018.
- 4.8 The key changes brought in by Amendment VC148 include:
- Introducing a new Municipal Planning Strategy at Clause 2 (with content taken in part from the existing Municipal Strategic Statement).
 - Relocating content from the Municipal Strategic Statement and local policies at Clauses 21 and 22 to sit under the Planning Policy Framework at Clauses 10-19 directly beneath the relevant state provision.
 - Changes to the structure of provisions, including to what can and cannot be included. For instance, it is no longer possible to include application requirements in the planning policy framework.
- 4.9 The Victorian Government allocated resources through DELWP's Smart Planning program to assist Councils to translate and redraft their local policy content. The local policy content has gone through a lengthy review process with DELWP staff who have provided detailed feedback on three drafts in August 2020, December 2020 and March 2021.

Alignment with Council Plan and policies

- 4.10 A key aim of the Review is to update local policy content to align with various adopted Council policies and the *Council Plan 2017-27*. This includes *Act and Adapt, Don't Waste It, In Our Backyard, Art + Soul, Move, Connect, Live* and *Public Space Strategy*.
- 4.11 The list at **Attachment 1** outlines which local provisions these documents have informed.
- 4.12 The new Council Plan 2021-2031 has recently been adopted by Council and it would be ideal to align this into the planning scheme through the Review. This is not possible because Council would not meet the State government's requirements to commence the implementation of the new format planning scheme. Future policy changes can be included in subsequent reviews.

Implementation of new heritage work

- 4.13 The 2017-2021 City of Port Phillip Heritage Program has produced a significant amount of work which is ready to be implemented into the planning scheme. This is discussed in further detail below.

Introduction of local VicSmart planning permit applications

- 4.14 A key recommendation of the 2018 Audit Report was to introduce local VicSmart applications into the planning scheme.



- 4.15 The Victorian Government introduced VicSmart planning permit applications for certain types of development in 2014. In 2017 provisions were introduced so that Councils could introduce their own additional VicSmart application types.
- 4.16 VicSmart is a streamlined assessment process for straightforward planning permit applications. An application identified in the Planning Scheme as being VicSmart has specified requirements for information, assessment processes and decision guidelines. Key features of VicSmart include:
- A 10-day application process.
 - Applications are not advertised and there are no third party appeal rights (i.e. objectors cannot appeal a decision to VCAT).
 - Information requirements are pre-determined.
 - What Council can consider when making a decision is limited.
- 4.17 Before VicSmart applications were introduced, in 2011 Council's City Development Unit developed a Fast Track application stream for certain minor application types. This streamlines the assessment process of eligible minor applications to 10 days for the cost of an additional fee. Council also employs a Fast Track Planner to deal with these applications (and VicSmart ones).
- 4.18 As part of the Review, in consultation with City Development, it is proposed to introduce 12 new VicSmart application types for minor application types. Eleven of the application types are already processed through Council's Fast Track service. These eleven types relate to planning permit triggers for minor buildings and works under the Heritage Overlay, Design and Development Overlay and commercial zones in addition to some types of signs. The one new category proposed is for certain liquor licence applications in limited circumstances.
- 4.19 This will essentially formalise and replace the Fast Track process and better utilise the state planning provisions. It will provide for a more streamlined process, with clearer expectations and timeframes for applicants and more efficient use of Council resources.
- 4.20 The proposed VicSmart provisions are contained in full **Attachment 4**. The VicSmart Strategic Assessment Report sets out a full background and overview of the proposed provisions and is contained at **Attachment 23**.

Key proposed changes forming part of the Amendment

Local policy translation

- 4.21 All local content currently contained in the Municipal Strategic Statement and local policies is being reviewed and translated into a new format, and several background documents will be introduced or amended. A full list of proposed changes to the planning scheme with a summary of key changes is contained in **Attachment 1**. A full copy of all proposed provisions is contained in **Attachment 2** (with source referencing) and **Attachment 3** (clean official version).
- 4.22 Much of the content translation has been policy neutral. This is because this work is a targeted review of local policy content based on strategic work that has been produced by Council since the last Planning Scheme Review was completed in 2011. It is not a wholesale review of all local planning policy objectives and is not an opportunity to review zoning and overlay controls that apply to specific parcels of land. Further strategic work would be required before such changes could be made. Careful



communication is required as part of the exhibition process to ensure that the community understands this.

- 4.23 There are some limited instances where changes have been made to the local policy content that do not seek to implement an adopted Council document. These instances are captured in column 2 of the table in **Attachment 1**. Overall, these changes are of a minor nature and do not change the intent of any existing policy. Rather, they generally seek to augment the existing policy by filling a known policy gap and/ or respond to a recommendation of the 2018 Audit report.

Updates to heritage provisions

- 4.24 The Amendment will make a number of changes to heritage provisions in the planning scheme to implement work produced through Council's Heritage Program:
- New Heritage Design Guidelines will be introduced as a background document to the planning scheme.
 - Updated local heritage policy will sit at Clause 15.03-1L to replace the existing policy at Clause 22.04. Key changes implement the new Heritage Design Guidelines.
 - Updated Fishermans Bend Estate Heritage Design Guidelines and Garden Estate Heritage Design Guidelines will be updated as background documents to the planning scheme. The updates comprise generally minor changes to align with the new Heritage Design Guidelines and correct identified errors.
- 4.25 A new Thematic Environmental History was also produced through Council's Heritage Program and was intended to be introduced as a background document as part of the PSR Amendment. However the Victorian Aboriginal Heritage Council recently advised Council that they consider that the traditional owners of the land of Port Phillip are represented by the Bunurong Land Council Aboriginal Corporation (BLCAC) and Wurundjeri Woi-wurrung Cultural Heritage Aboriginal Corporation (WWWCHAC). In light of this, the Thematic Environmental History requires further review and consultation before it can be implemented into the planning scheme.
- 4.26 The Heritage Updates Strategic Assessment Report sets out a full background and overview of the proposed changes and is contained at **Attachment 24**. Key changes are discussed as follows:
- New Heritage design guidelines*
- 4.27 New Heritage Design Guidelines will be introduced as a background document to the planning scheme. The Guidelines were produced under Council's 2017-2021 Heritage Program. They were prepared by Council Heritage, Urban Design and Planning staff in 2019-20, following targeted stakeholder consultation.
- 4.28 The Guidelines are a user-friendly document, containing images and pictures alongside text. They are aimed at prospective applicants, to explain to them what heritage outcomes are sought by Council, and how they can be achieved.
- 4.29 The Guidelines comprise detailed guidelines for eleven development themes. They seek to respond to key challenges and gaps identified by Council, including through public consultation on *Heritage Here and Now*, the recommendations of the *Port Phillip Planning Scheme Review Audit Report* (23 May 2018) and by internal reviews.
- 4.30 The Guidelines are proposed to be a background document to the planning scheme. Background documents do not form part of the planning scheme, but provide



background and explanation to provisions (in this case, to the updated local heritage policy).

Updates to local heritage policy

- 4.31 Council's existing local heritage policy at Clause 22.04 has not been reviewed since its introduction into the planning scheme in 2000 (Amendment C5). It applies to the assessment of all planning permit applications where the Heritage Overlay is a permit trigger. There is a large number of properties within the Heritage Overlay (approximately 60% of the municipality). The Heritage Overlay contains planning permit triggers for a number of different development types. Therefore this policy is one of the most frequently relied on policies in planning permit decision making.
- 4.32 Updated local heritage policy will sit at Clause 15.03-1L to replace the existing policy at Clause 22.04. Key changes implement the new Heritage design guidelines.
- 4.33 Key changes proposed to the local heritage policy include the inclusion of new strategies for conservation, significant trees and gardens, sustainability and services, relocation, fencing, signage, subdivision and public realm and infrastructure. Revised strategies and policies are also proposed for demolition, visibility of additions and car parking).
- 4.34 The updated Policy is proposed to comprise:
- **Policy application** specifying that the policy applies to all land within the Heritage Overlay
 - **General strategies** that are of an overarching nature and relevant to all applications
 - **Strategies** for each of the eleven development themes outlined in the Guidelines
 - **Policy guidelines** for additions
 - **Policy documents** which are the relevant Incorporated and Background documents (such as the City of Port Phillip Heritage Review)
- 4.35 Key changes proposed to the Policy are:
- General:**
- Removal of provisions that duplicate state provisions
 - Use of consistent, plain-English terminology (except where technical and defined terms are relevant)
 - Focus on 'what' outcomes are sought, with detailed explanation of 'how' these outcomes will be achieved contained within the Guidelines
 - Deletion of objectives (no longer permitted under Victorian government drafting requirements)
- Strategies and policies:**
- Inclusion of specific strategies for conservation, significant trees and gardens, sustainability and services, relocation, fencing, signage, subdivision and public realm and infrastructure
 - Revised strategies and policies for demolition, visibility of additions and car parking
 - Increase from three illustrations to eight figures to depict specific outcomes sought.
- 4.36 A detailed list of changes is contained in the Heritage Updates Strategic Assessment Report at **Attachment 24**.



Local ESD policy

4.37 The proposed local ESD policy at Clause 15.02-1L (contained in **Attachment 3**) is in the form proposed by CASBE and Council’s officers. It differs from the current DELWP accepted version in the drafting of the second strategy, shown in the table below:

| DELWP approved second strategy | CASBE & Council’s proposed second strategy |
|--|--|
| <p><i>Encourage environmentally sustainable development that:</i></p> <ul style="list-style-type: none"> • <i>Is consistent with the type and scale of the development.</i> • <i>Responds to site opportunities and constraints.</i> • <i>Uses a combination of methods, processes and locally available technology that demonstrably minimise environmental impacts.</i> | <p><i>Achieve Best Practice environmentally sustainable development that:</i></p> <ul style="list-style-type: none"> • <i>Is relevant to the type and scale of development.</i> • <i>Responds to site opportunities and constraints.</i> • <i>Utilises a combination of locally available techniques, methodologies and systems that have demonstrated to achieve optimum ESD outcomes.</i> • <i>Encompass the full life of the build.</i> |

4.38 DELWP Officers have advised Council Officers that this drafting is not supported. Therefore the Minister for Planning may include conditions at either the authorisation or final approval stage for the Amendment to require the wording be amended. It is not unusual for the Minister to require some changes to an amendment at either stage.

4.39 However, separate to this Amendment process, Council and CASBE have made submissions to the City of Yarra planning scheme amendment which proposes to update their local ESD policy in the same way (subject to minor tweaks consistent with CASBE’s latest position). Therefore, this drafting will be considered by an independent Panel who will make recommendations on this wording.

4.40 Separate to this Planning Scheme review process, Council is also part of a group led by CASBE seeking to review the local ESD policy and develop strategic justification to update various requirements and performance measures. If following this work, Council resolves to proceed with an update to the ESD Policy, this would require a separate Planning Scheme Amendment and would most likely supersede the version under the Planning Scheme Review.

Local Fishermans Bend policy

4.41 DELWP has taken on the role of translating the local policy content for Fishermans Bend into the new format, with input from Council, the Fishermans Bend Taskforce and City of Melbourne (who also have local Fishermans Bend content requiring translation which should be consistent with Council’s policy). The new local policy will likely sit at Clause 11.03-6L under ‘Planning for Places’ (along with all other place specific content)

4.42 To date, the translation has not been resolved. To ensure this does not delay the Amendment, it is proposed to omit the translated local policy for Fishermans Bend from the Amendment. Instead, it would be implemented into the planning scheme through a separate stand-alone amendment. This would likely be administered by DELWP and undertaken without public notice (because it would be wholly policy neutral).



5. CONSULTATION AND STAKEHOLDERS

Consultation to date

- 5.1 Extensive consultation on the translated local provisions has occurred with DELWP officers and Council officers.
- 5.2 The Heritage Design Guidelines underwent targeted stakeholder consultation in 2019, which informed the latest draft.

Exhibition of the Amendment

- 5.3 Amendment C203port is proposed to undergo a full statutory exhibition process for four (4) weeks, in accordance with the Act. This is expected to occur in September. This would include:
 - General 'Drop-in session/s' held in-person or online (depending on Covid constraints) with Council officers available to provide information.
 - Heritage specific 'Drop-in session/s' held in-person or online (depending on Covid constraints) with Council officers and Council's Heritage Advisor to provide information specifically about the heritage components.
 - Publication of a Public Notice in the government Gazette.
 - Direct notice sent to owners and occupiers of properties where an incorporated plan applies and is proposed to be removed.
 - Direct notice sent to statutory agencies, relevant Registered Aboriginal Party/s, adjoining Councils and people known to have participated in previous consultation on the heritage guidelines and thematic history.
 - A dedicated Council webpage on the 'Have your say' website with an explanation of the Amendment and relevant documentation.
 - Relevant documentation made publicly available in Council's Town Halls and libraries. Anyone can also request a hard copy of the documentation in the event that Covid impacts these premises being open or otherwise affects people's ability to view the documentation in person or online.
- 5.4 The exhibition process provides a formal opportunity for all interested parties to make a written submission on the proposed amendment.
- 5.5 All submissions received to the Amendment will be reported to Council. Any submissions that cannot be resolved will be referred to an independent Planning Panel for review and recommendation prior to any decision by Council to adopt or abandon the amendment.

6. LEGAL AND RISK IMPLICATIONS

- 6.1 The Amendment will be undertaken in accordance with the statutory requirements of the Act.
- 6.2 Council has a statutory obligation to regularly review the planning scheme under the Act, and to translate its local provisions into the new format planning scheme introduced by the state government in 2018.
- 6.3 There is a risk to Council in failing to regularly review the planning scheme. Where content becomes out-of-date and misaligned to other Council policies, the consistency and quality of decision making on planning permit applications and planning scheme amendments can be affected and there is a risk of decisions not being upheld at VCAT.



There is also a risk of local policies becoming less effective in delivering local objectives in planning decision making.

- 6.4 There is a risk to Council in delaying the amendment process to translate the local provisions into the new format planning scheme. This includes a risk that DELWP will do the translation without consulting Council, meaning Council has no say over how the translation occurs and the final output.

7. FINANCIAL IMPACT

- 7.1 The costs associated with undertaking the Amendment will be funded through the Planning Scheme Amendment 2021-22 program budget.
- 7.2 The expenses include payment of statutory fees, notification costs during public exhibition and running an independent Planning Panel hearing if there are any unresolved submissions.

8. ENVIRONMENTAL IMPACT

- 8.1 There will be a positive environmental impact from aligning the planning scheme with Council's existing vision and priorities including *Act and Adapt, Move, Connect, Live and Don't Waste It*.

9. COMMUNITY IMPACT

- 9.1 There will be a positive community impact from aligning the planning scheme with Council's existing vision and priorities.

10. ALIGNMENT TO COUNCIL PLAN AND COUNCIL POLICY

- 10.1 The Amendment is consistent with the Council Plan 2021-2031 Direction 2 'Liveable Port Phillip'.

11. IMPLEMENTATION STRATEGY

Timeline

- 11.1 Should the Planning Committee decide to proceed with the amendment, a request for Ministerial authorisation for the Amendment will be sent to the Minister for Planning.
- 11.2 Once authorisation is received, the Amendment will commence public exhibition, providing a formal opportunity for all interested parties to make a written submission on the proposed amendment. This is anticipated to occur in September 2021.

Communication

- 11.3 Information about the Amendment and the upcoming exhibition process will be provided on both Council's normal website and Have Your Say page.
- 11.4 If authorised, the Amendment will be publicly exhibited pursuant to s 19 of the Act (refer Section 5 - Consultation and stakeholders).

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.

MEETING OF THE PORT PHILLIP CITY COUNCIL

7 JULY 2021



TRIM FILE NO: 66/02/291-001

- ATTACHMENTS**
1. Attachment 1 - Overview of Changes to the Planning Scheme
 2. Attachment 2 - Proposed new provisions with source information
 3. Attachment 3 - Amendment documentation for Authorisation
 4. Attachment 4 - Act and Adapt - Sustainable Environment Strategy 2018 - 2028 (City of Port Phillip , 2018)
 5. Attachment 5 - Activating Laneways Strategy (City of Port Phillip July 2011 , adopted 22 August 2011)
 6. Attachment 6 - Art and Soul - Creative and Prosperous City Strategy 2018 - 2022 (City of Port Phillip , 2018)
 7. Attachment 7 - Australian Rainfall and Runoff - A Guide to Flood Estimation - Book 9 Runoff in Urban Areas (Commonwealth of Australia 2019)
 8. Attachment 8 - Car Share Policy 2016 - 2021 (City of Port Phillip , 2018)
 9. Attachment 9 - City of Port Phillip Biodiversity Study (Arcadis , 2020)
 10. Attachment 10 - City of Port Phillip Council Plan 2017 - 2027 full accessible version (City of Port Phillip , 2017)
 11. Attachment 11 - City of Port Phillip Housing Needs Assessment and Allocations Framework (Beverley Kliger & Associates , 2019)
 12. Attachment 12 - Compliance Guidelines For Clause 22.12 Stormwater Management WSUD (City of Port Phillip , 2017)
 13. Attachment 13 - Dont Waste It! - Waste Management Strategy 2018 - 2028 (City of Port Phillip, 2018)
 14. Attachment 14 - Getting Our Community Active - Sport and Recreation Strategy 2015 - 2024 (City of Port Phillip, 2015)
 15. Attachment 15 - Greening Port Phillip Strategy - An Urban Forest Approach 2010 (City of Port Phillip, 2010)
 16. Attachment 16 - Guidelines for Preparing a Waste Management Plan 2019 (City of Port Phillip, 2019)
 17. Attachment 17 - Heritage Design Guidelines (City of Port Phillip, 2021)
 18. Attachment 18 - Move Connect Live - Integrated Transport Strategy (City of Port Phillip, 2018)
 19. Attachment 19 - Fishermans Bend Guidelines (City of Port Phillip, updated 2021)
 20. Attachment 20 - Garden City Guidelines (City of Port Phillip, updated 2021)
 21. Attachment 21 - Public Space Strategy Draft V3 (City of Port Phillip, August 2020)
 22. Attachment 22 - Recreational Boating Facilities Framework (Central Coastal Board 2014)
 23. Attachment 23 - VicSmart Strategic Assessment Report June 2021
 24. Attachment 24 - Heritage Strategic Assessment Report - June 2021
 25. Attachment 25 - Port Phillip Planning Scheme Audit Report May 2018

****Due to the volume of attachments, these have been provided in separate pdf documents alongside the agenda.***