10. Reports by the Organisation

10.1 133 ESPLANADE, BRIGHTON
DENDY BEACH PAVILION
NOTICE OF DECISION TO GRANT A PLANNING PERMIT
APPLICATION NO.: 2016/266/1 WARD: NORTHERN

City Planning & Community Services - Development Services
File No: PSF/15/8755 – Doc No: DOC/16/218996

1. Purpose and background

To report a planning permit application for partial demolition and associated works to the existing heritage bluestone sea wall, the removal of native/indigenous vegetation, a waiver of loading bay requirements and alterations to an access to a Road Zone, Category 1 (refer Attachment 2) at 133 Esplanade, Dendy Beach Pavilion (refer Attachment 1).

This application will facilitate the redevelopment of the Dendy Street Pavilion (the subject land) to provide a new Brighton Lifesaving Club, a café/kiosk, place of assembly, associated public amenities and a redesigned car park.

<table>
<thead>
<tr>
<th>Applicant</th>
<th>Bayside City Council c/- Contour Consultants</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date application received</td>
<td>18 November 2016 (amended application)</td>
</tr>
<tr>
<td>Statutory days expired</td>
<td>18 February 2017</td>
</tr>
</tbody>
</table>

Dendy Street Beach Masterplan

Bayside City Council appointed Urban Initiatives in July 2012 to undertake the public engagement and design process required to develop an integrated Masterplan for Dendy Street Beach.

The Masterplan was developed, presented and approved by Council on 22 November 2013. The plan articulates Council’s vision for the future development of the site and provides the framework for the ongoing management and future decision-making that will affect Dendy Street Beach. The Masterplan is located on Council’s website via the below link:


The plan outlines the preferred building envelope for a new public building to house the Brighton Life Saving Club as well as a café/kiosk and public change rooms and toilets. A redeveloped and landscaped public car park is also illustrated. The Masterplan recommends the redesign of the existing carpark as part of any redevelopment of the buildings at Dendy Street Beach.

The Masterplan articulates parameters for the siting, size, form and materiality of both the building project and the stormwater diversion scheme. Recommended actions associated with the redesigned carpark are included in the proposed Masterplan, which include the provision of a layout that maximises efficiency, a bus parking bay and a clear emergency vehicle access route through the carpark to the proposed ramp to the foreshore promenade.

Proposed Design Response

This application facilitates the broader redevelopment of the Dendy Street Beach in association with the design objectives and guidelines outlined in the Council adopted...
Masterplan.

The final design response for the subject land was established in response to the adopted Masterplan following extensive community and stakeholder consultation which concluded that the preferred option for the site was a built form outcome reflective of the natural surroundings of the site.

2. Policy implications

Planning permit requirements

The application facilitates the redevelopment of the Dendy Beach Pavilion and surrounding land, which includes a place of assembly (surf lifesaving club and multi-purpose room), retail premises (café/kiosk), a redesigned carpark and new emergency disabled access to the beach.

This broader development does not require planning permission because it is conducted by or on behalf of the public land manager (Bayside City Council) under the Local Government Act 1989. This exemption is pursuant to Clause 36.02-1 and Clause 36.02-2 of the Public Park and Recreation Zone.

A Land Status Report prepared by The Public Land Consultancy dated 9 August 2016 provides confirmation that Bayside City Council is the owner and manager of the subject freehold land and the proposed works are not located on Crown Land. The report is provided at Attachment 3.

In light of the above, the subject matter of the permit application is limited due to how the planning provisions operate, and only the following aspects require planning permission:

Clause 43.01-1 (Heritage Overlay Schedule 491 – Sea Wall): A permit is required to demolish or remove a building (including partial demolition) and construct a building or to construct or carry out works. The proposed partial demolition and associated works involve three new single overflow penetrations in the bluestone sea wall below ground to the north of the proposed building for stormwater outfall and the removal of an existing below ground stormwater drain penetration directly in front of the existing lifesaving club.

Clause 3.0 (Vegetation Protection Overlay Schedule 1): A permit is required to remove, destroy or lop native vegetation. A total of eight native / indigenous trees are proposed to be removed under this application.

Clause 52.07 (Loading and Unloading of Vehicles): A permit is required to waive the loading bay requirements pursuant to Clause 52.07 associated with the proposed café/kiosk.

Clause 52.17 (Native Vegetation): A permit is required to remove, destroy or lop native vegetation, including dead native vegetation. A total of eight native / indigenous trees are proposed to be removed under this application.

Note: The Department of Environment, Land, Water and Planning (DEWLP) provided advice to Council that a planning referral for this application was not required as the Biodiversity Assessment Report submitted with the application identified that the native vegetation to be removed is within the low or moderate risk-based pathway and is below 0.5 hectares.

Clause 52.29 (Land Adjacent to a Road Zone, Category 1 or a Public Acquisition Overlay for a Category 1 Road): A permit is required to alter access to a road in a Road Zone, Category 1.

While the existing ingress and egress access ways to the Esplanade are being retained as part of the proposal, a planning permit is required under the provisions of this Clause as it is expected the volume and/or frequency of traffic to the car parking area will change as a result of the proposal. A referral to VicRoads is required pursuant to Section 55 of the Act.
The original application also sought approval for the inclusion of a liquor licence as part of the broader facility. This has since been removed from the application pursuant to Section 57A of the Planning and Environment Act 1987 following public notification.

A heritage report prepared by Insight Heritage Pty Ltd confirms that a mandatory Cultural Heritage Management Plan is not required since both the history of prior land use and the geotechnical investigations (conducted 16/4/2015 and 14/7/2016) demonstrate that the land has undergone Significant Ground Disturbance as defined in the Aboriginal Heritage Regulations 2007.

Planning scheme amendments

Planning Scheme Amendment C139 has been prepared by Council. Planning Scheme Amendment C139 implements the Bayside Drainage Development Contribution Plan and requires development to provide a financial contribution for drainage in this area. Council has adopted Amendment C139 and has submitted it to the Minister for Planning for approval. Whilst the Amendment is now considered 'seriously entertained', the Minister has not yet made a decision on the Amendment.

3. Stakeholder Consultation

External referrals

The application was referred to the following authorities:

<table>
<thead>
<tr>
<th>Referral Authority</th>
<th>Response</th>
</tr>
</thead>
<tbody>
<tr>
<td>VicRoads</td>
<td>No objection, subject to conditions.</td>
</tr>
</tbody>
</table>

Internal referrals

The application was referred to the following Council departments for comment:

<table>
<thead>
<tr>
<th>Internal Referral</th>
<th>Response</th>
</tr>
</thead>
<tbody>
<tr>
<td>Urban Design</td>
<td>No objection.</td>
</tr>
<tr>
<td>Heritage Advisor</td>
<td>No objection.</td>
</tr>
<tr>
<td>Traffic Engineer</td>
<td>No objection, subject to conditions.</td>
</tr>
<tr>
<td>Arborist</td>
<td>No objection, subject to conditions.</td>
</tr>
</tbody>
</table>

Public notification

The application was advertised pursuant to Sections 52(1)(a) and (d) of the Planning and Environment Act 1987 and 46 objections were received. The following concerns (summarised) pertaining to the merits of the proposal were raised:

*Heritage*

- Loss of heritage and cultural values;
- Lack of sufficient heritage consultation;
- Detrimental works to bluestone seawall;
- The absence of a Heritage Impact Assessment Report fails to comply with the Bayside Planning Scheme and Section 4 (Permits) of the Planning and Environment Act 1987.
- Non-compliance with the heritage objectives of Clause 43.01-1 (Heritage Overlay);

*Vegetation*

- Loss of vegetation and green lawns will have a detrimental impact on the amenity...
of the area;

- Grounds for removal of native vegetation are unjustified;
- Regrowing of vegetation extremely difficult;
- Evidence of early settler and Boon Wurrung culture will be compromised;
- Damage to natural dune ecosystem and historical place and increased dune instability and potential erosion;

**Traffic & loading bay facilities**

- Waiver of loading bay requirements is unacceptable;
- Increased traffic congestion due to rubbish and waste management vehicles;
- Traffic and car parking safety;

**Other**

- Increased rubbish to the area;
- Odours from the waste disposal/café/restaurant; and
- For Council to benefit from the exemption to a number of the permit triggers, it was asserted Council should directly operate the facility.

Concerns have also been raised in relation to the broader redevelopment of the subject land. Given the proposed building and the proposed use do not require a planning permit, the concerns relating to the broader redevelopment cannot be considered in the assessment of this application. The main issues raised related to the proposed built form, use, policy, consultation and character. These concerns that are not relevant to the permit triggers are discussed further in Attachment 4.

Following the completion of the advertising process, an amendment to the application was submitted pursuant to Section 57A of the *Planning and Environment Act 1987* to remove the liquor licence component from the proposal.

The amended permit application was not re-advertised as it was considered that no further loss of material detriment would occur as a result of the amendment. Notwithstanding, a description of the amended application was provided on Council’s website on 23 November 2016.

**Consultation Meeting**

A Planning Consultation Meeting was held on the 5 December 2016 which was attended by Council Officers, the permit applicant and objectors.

The discussion largely focused on concern of a perceived lack of consultation regarding the initial Masterplan project, along with the proposed use and built form (which is exempt from planning permission).

Objectors expressed concern that there had been insufficient community consultation prior to the lodgement of the planning application and that preliminary concerns had not been considered in the overall design response.

The discussion at the Consultation Meeting centred on the following:

- Cost of works;
- The development’s lack of consistency with the existing Dendy Street Beach Masterplan;
- Removal of existing vegetation to accommodate the shared vehicle/pedestrian path to the north of the building;
- Commercialisation of the site;
• Car parking;
• Loss of property values/views;
• Loss of existing character; and
• Disability access (DDA compliance).

No objections have been withdrawn since the conclusion of the meeting.

4. Recommendation

That Council:

Issues a Notice of Decision to Grant a Permit under the provisions of the Bayside Planning Scheme in respect to Planning Application No. 2016/266/1 of the land known and described as 133 Esplanade, Brighton (Dendy Beach Pavilion), for the partial demolition and associated works to the existing bluestone sea wall, the removal of native / indigenous vegetation, a waiver of loading bay requirements and alterations to an access to a Road Zone, Category 1 in accordance with the endorsed plans and subject to the following conditions from the standard conditions:

1. Before the development starts, amended plans to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the plans will be endorsed and will then form part of the permit. The plans must be drawn to scale with dimensions and three copies must be provided. The plans must be generally in accordance with the advertised plans, prepared by Jackson Clement Burrows Architects, Project No. 14-041, Council date stamped 7 June 2016 and 7 September 2016 and Site Office Landscape Architects, Council date stamped 7 June 2016 but modified to show:

a) A revised demolition plan which details the exact extent of demolition including the stormwater pipe penetrations (ie. Size of holes, the extent of bluestone removal and methods to ensure the bluestone wall remains intact). Such detail must be provided at a scale of 1:20 to the satisfaction of the Responsible Authority.

b) Detailed engineering drawings which demonstrate the repairs to the removed stormwater pipe penetration to the existing bluestone sea wall including the materials and finishes to be used consistent with the existing bluestone wall. Such detail must be provided at a scale of 1:20 to the satisfaction of the Responsible Authority.

c) The proposed steps adjacent to the existing bluestone wall must be constructed of a different material to ensure the steps are easily distinguishable from the existing bluestone wall.

d) A detailed landscape plan generally in accordance with the landscape concept plans prepared by Site Office dated 03/08/2016 and be drawn to scale with dimensions and three copies must be provided. The plan must show:

i. Removal of indigenous vegetation to be replaced with a similar extent of indigenous coastal vegetation;

ii. Removal of native vegetation to be replaced with a similar extent of indigenous coastal vegetation;

iii. Removal of non-native vegetation to be replaced with native or indigenous coastal vegetation of species likely to provide habitat for native and indigenous fauna;
iv. Removal of exotic vegetation to be replaced with native or indigenous coastal vegetation of species likely to provide habitat for native and indigenous fauna.

v. A survey, including, botanical names of all existing trees and vegetation to be retained on the site.

vi. A planting schedule of all proposed trees and shrubs, including botanical names, common names, pot sizes, sizes at maturity, and quantities of each plant. Plantings must be 80% indigenous by species and count.

vii. Landscaping and/or planting within all areas of the site not covered by buildings or hard surfaces.

viii. Details of surface finishes of pathways and driveways.

e) A Tree Management Plan in accordance with Condition 3 of this permit.

f) Any other changes to be in accordance with all conditions in this permit.

All changes to the plans must be to the satisfaction of the Responsible Authority.

2. The development as shown on the endorsed plans must not be altered without the prior written consent of the Responsible Authority.

Tree Management and Protection Plan

3. Before the development starts, including any related demolition or removal of vegetation, a Tree Management Plan (report) and Tree Protection Plan (drawing), to the satisfaction of the Responsible Authority, must be submitted to and be endorsed by the Responsible Authority.

The Tree Management Plan (report) must be specific to the site, be in accordance with AS4970-2009, prepared by a suitably qualified arborist and provide details of tree protection measures that will be utilised to ensure all trees to be retained remain viable post-construction. Stages of development at which inspections are required to ensure tree protection measures are adhered to must be specified.

The Tree Management Plan (report) must be in accordance with AS4970-2009, be drawn to scale and provide details of:

a) The Tree Protection Zone and Structural Root Zone for all trees to be retained on the site and all trees adjoining the subject land where any part of the Tree Protection Zone falls within the subject land.

b) Methods to be utilised and instruction on how to deploy them.

c) When the protection measures are to be deployed.

d) When the protection measures can be modified.

e) The process that will be followed if any damage occurs to a tree.

f) The process that will be followed if construction works require alteration to protection measures outlined in the report.

g) The stages of development at which inspections will occur.

The Tree Protection Plan must be drawn to scale and show:

a) The location of all tree protection measures to be utilised.

If tree protection measures are proposed to be changed during the development, one plan for each stage of tree protection measures must be submitted.

4. All protection measures identified in the Tree Management Plan and Protection Plans must be implemented, and development works undertaken on the land
must be undertaken in accordance with the Tree Management and Protection Plans, to the satisfaction of the Responsible Authority.

5. Before the occupation of the development the landscaping works shown on the endorsed plans must be carried out and completed to the satisfaction of the Responsible Authority.

6. The landscaping shown on the endorsed plans must be maintained to the satisfaction of the Responsible Authority, including that any dead, diseased or damaged plants are to be replaced.

7. All loading and unloading of goods to occur between 6am and 10am to the satisfaction of the Responsible Authority unless with the prior written approval of the Responsible Authority.

**VicRoads conditions**

8. The crossover and driveway are to be constructed to the satisfaction of the Responsible Authority and at no cost to the Roads Corporation (VicRoads) prior to the commencement of the use of the development hereby approved.

9. Driveways must be maintained in a fit and proper state so as not to compromise the ability of vehicles to enter and exit the site in a safe manner or compromise operational efficiency of the road or public safety (eg. by spilling gravel onto the roadway).

10. Prior to the commencement of the use of the development hereby approved, the access lanes, driveways, crossovers and associated works must be provided and available for use and be:

   a) Formed to such levels and drained so that they can be used in accordance with the plan.

   b) Treated with an all-weather seal or some other durable surface.

**Permit Expiry:**

11. This permit will expire if one of the following circumstances applies:

   a) The development is not started within two years of the date of this permit.

   b) The development is not completed within four years of the date of this permit.

   In accordance with Section 69 of the *Planning and Environment Act* 1987, a request may be submitted to the Responsible Authority within the prescribed timeframes for an extension of the periods referred to in this condition.

**Permit Notes:**

- This permit does not constitute any authority to carry out any building works or occupy the building or part of the building unless all relevant building permits are obtained.

**VicRoads Notes:**

- If the proposed development requires works within the arterial road reserve, separate approval under the Road Management Act for this activity may be required from VicRoads (the Roads Corporation). Please contact VicRoads prior to commencing any works.

5. **Council Policy**

   **Council Plan 2013-2017**

   Relevant strategies of the Council Plan include:
• 2.1.2 Ensuring our services and facilities are accessible and inclusive and respond to current and emerging needs.
• 3.1.1 Developing planning strategies and policies with our community that enhance Bayside’s liveability along with its natural and built environment.
• 3.1.3 Advocating Council’s planning and urban design objectives.
• 4.1.2 Protecting and enhancing Bayside’s biodiversity, foreshore, natural reserves and open spaces for the enjoyment of all our community
• 5.1.2 Encouraging and supporting our diverse culture by providing places to gather and connect
• 6.1.3 Promoting our shopping areas, strong business precincts and local tourism features
• 7.1.3 Maximising community utilisation of Council assets to improve financial and/or social return.

Bayside Planning Scheme
• Clause 11 Settlement
• Clause 12 Environmental and Landscape Values
• Clause 13 Environmental Risks
• Clause 14 Natural Resource Environment
• Clause 15 Built Environment and Heritage
• Clause 18 Transport
• Clause 19 Infrastructure
• Clause 21.02 Bayside Key Issues and Strategic Vision
• Clause 21.04 Environmental and Landscape Values
• Clause 21.05 Environmental Risks
• Clause 21.06 Built Environment and Heritage
• Clause 21.08 Open Space
• Clause 21.09 Transport and Access
• Clause 21.10 Infrastructure
• Clause 22.05 Heritage Policy
• Clause 36.02 Public Park and Recreation Zone (Schedule 2)
• Clause 42.02 Vegetation Protection Overlay (Schedule 1)
• Clause 43.01 Heritage Overlay (Schedule 491)
• Clause 43.02 Design and Development Overlay (Schedule 1)
• Clause 52.07 Loading and Unloading of Vehicles
• Clause 52.17 Native Vegetation
• Clause 52.29 Land Adjacent to a Road Zone, Category 1, or a Public Acquisition Overlay for a Category 1 Road
• Clause 65 Decision Guidelines
• Clause 81.01 Incorporated Documents – Bayside Coastal Strategy April 1997
Council Adopted Plans

- Dendy Beach Master Plan (November 2013)

6. Considerations

In considering this permit application, regard has been given to the State and Local Planning Policy Frameworks, the provisions of the Bayside Planning Scheme, objections received and the individual merits of the application.

6.1. Heritage Overlay

The subject land is affected by Heritage Overlay Schedule 491 (Foreshore Sea Wall) which is located along the north western boundary of the site. The extent of Heritage Overlay Schedule 491 relates to a linear wall with no adjacent land area included.

The Statement of Significance reads:

“The sea wall is of historical and aesthetic significance. Constructed during the Great Depression as part of a public works programme to improve the foreshore reserve, the wall illustrates the role of local government in providing local employment opportunities. Of interest is the use of bluestone from other sources, including the headstone of Ned Kelly and other hanged prisoners from the Old Melbourne Gaol. Extending for a considerable length, the wall is an important foreshore feature.”

Alteration to Bluestone Sea Wall below ground

As part of the overall redevelopment of the site, the current stormwater overflow outlet in front of the existing lifesaving club will be decommissioned with all stormwater redirected via an underground pipe to storm water detention tanks located below ground. The proposed water tanks and rain garden will be integrated into the broader landscape of the site.

To accommodate this new system, stormwater pipe penetrations to the existing bluestone sea wall are required. The Existing Conditions Site & Demolition Plan prepared by Jackson Clements Burrows Architects (A0-106) illustrates three new single overflow penetrations in the bluestone sea wall below ground to the north-west of the proposed building. The penetrations within the bluestone sea wall will each have a diameter of approximately 800mm. These stormwater penetrations trigger the requirement for a permit under the demolition requirements of Clause 43.01-1.

The remaining demolition works, including the demolition of the lifesaving club, car park and existing access ramps do not form part of this application as no planning permit is required for that component of the redevelopment.

In considering the suitability of the proposed demolition works to the bluestone wall, Council’s Heritage Policy at Clause 22.05-3.1 (Demolition) and Clause 43.01 (Heritage Overlay) provides guidance pertaining to demolition and associated buildings and works.

Clause 22.05-3.2 requires the retention of significant and contributory heritage buildings however allows the partial demolition of significant and contributory heritage buildings where the fabric to be demolished is of no significance, or where the demolition helps to reveal the original fabric of the building. Clause 43.01-4 of the Heritage Overlay requires the consideration of whether proposed demolition, removal or external alteration will adversely affect heritage significance of the place.

Following an assessment of the relevant heritage objectives and heritage significance of the subject land, the scope of demolition proposed, which is limited to the three stormwater pipe penetrations to the bluestone sea wall, can be supported. This is largely in light of the minor scale of demolition, the location of demolition and works below ground, and independent advice from Council’s Heritage Advisor who raised no objection to the proposal.

Importantly, no part of the visible wall is intended to be demolished and its setting and
cultural heritage significance will be largely uncompromised. This was also confirmed by Council’s Heritage Advisor.

Notwithstanding the above, the proposed demolition plan includes little detail relating to the demolition process, including the specific location and size of these penetrations. While it is possible to come to the conclusion that there will be no unreasonable impact on the cultural heritage significance of the place, further details relating to the demolition and reinstatement works are required in order to ensure the works will be appropriately undertaken. These requirements are to be addressed by permit conditions.

New works

An existing below ground stormwater drain penetration directly in front of the existing Lifesaving Club will be closed off and the bluestone wall will be subsequently reinstated.

Clause 22.05-3.4 (Restoration) seeks to ensure that restoration of contributory fabric is undertaken using the same materials as the original.

The proposed outcome is considered acceptable particularly given the stormwater drain will be removed and the existing wall will be reinstated. Importantly, the works will be located below ground and will therefore not be visible. As noted above, further details relating to these works will be addressed by permit conditions.

6.2. Vegetation and Landscaping

The purpose of Clause 52.17 (Native Vegetation) is to ensure permitted clearing of native vegetation results in no net loss in the contribution made by native vegetation to Victoria’s biodiversity, while Clause 42.02 (Vegetation Protection Overlay) seeks to protect areas of significant vegetation and to ensure that development minimises loss of vegetation.

The permit application proposes the removal of eight native / indigenous trees to facilitate the proposed redevelopment of the Dendy Beach Pavilion. These trees are numbered in the Arborist Reports prepared by Homewood Consulting Pty Ltd dated 9 April 2015 and 2 June 2016 which summarises the landscape contribution, significance and retention value of the trees proposed for removal.

These trees are also reflected on the proposed landscape plans prepared by Site Office, Revision 01, Council received 7 June 2016 and 18 November 2016. The following table provides a summary of the trees proposed to be removed:

<table>
<thead>
<tr>
<th>Tree No.</th>
<th>Species</th>
<th>Useful Life Expectancy (ULE)</th>
<th>Individual significance</th>
<th>Health / Structure</th>
<th>Retention value</th>
</tr>
</thead>
<tbody>
<tr>
<td>33</td>
<td>Coast Tea-tree (Leptospermum laevigatum)</td>
<td>10-20 years</td>
<td>Moderate</td>
<td>Fair/fair</td>
<td>If possible, retain</td>
</tr>
<tr>
<td>41</td>
<td>Dropping She Oak (Allocasuarina verticillata)</td>
<td>40+ years</td>
<td>Low</td>
<td>Good/fair</td>
<td>If possible, retain</td>
</tr>
<tr>
<td>50</td>
<td>Snowy Paperbark (Melaleuca nesophila)</td>
<td>10-20 years</td>
<td>Valuable</td>
<td>Fair/fair</td>
<td>Retain</td>
</tr>
<tr>
<td>51</td>
<td>West Australian Willow Myrtle (Agonis flexuosa)</td>
<td>10-20 years</td>
<td>Low</td>
<td>Fair/poor</td>
<td>If possible, retain</td>
</tr>
<tr>
<td>52</td>
<td>West Australian Willow Myrtle (Agonis flexuosa)</td>
<td>10-20 years</td>
<td>Low</td>
<td>Fair/poor</td>
<td>Not worth retaining</td>
</tr>
<tr>
<td>53</td>
<td>Coast Tea-tree (Leptospermum)</td>
<td>5-10 years</td>
<td>Moderate</td>
<td>Fair/poor</td>
<td>If possible, retain</td>
</tr>
</tbody>
</table>
As detailed above, 7 out of these 8 trees have a low to moderate individual significance and the loss of these trees is not unreasonable in the context of the overall development.

Importantly, it is considered that the level of tree removal will not adversely impact on the amenity of the area or subject land, particularly in light of their documented health, structure, landscape contribution and individual significance.

In addition, the proposed landscape plans demonstrate suitable landscaping across the subject land to offset the loss of trees proposed. The general landscaping concept will continue to ensure that the landscaped value and character of the subject land is maintained.

Concerns have been raised in regards to the loss of landscaping and the difficulties of replanting in this particular environment. However landscaping conditions requiring the planting of indigenous flora consistent with the area are required permit conditions.

The permit will also require the applicant to demonstrate suitable planting measures to ensure the longevity and viability of the proposed landscaping.

The Biodiversity Assessment Report dated August 2016 confirms there are no offset requirements associated with the removal of native vegetation within the study area. This is due to the small area and condition of vegetation to be removed within the study area, the offset target calculated using the NVIM tool was zero.

Of importance to this permit application however is the removal of two trees from the subject land, which are listed as Tree 50 and 54.

Tree 54 is located in the centre of the subject land and its removal is required to accommodate the north western most corner of the built form. This tree is known as a Coast Tree-tree (*Leptospermum laevigatum*) and has a life expectancy of 10-20 years with a moderate individual significance. Council’s Arborist has advised that while this tree is a good example of an indigenous coastal tree, replacement planting will compensate for its loss in a reasonable amount of time.

Tree 50 is earmarked for removal to facilitate the proposed steps and timber view point within the northern portion of the site. The proposed Arborist Report indicates that this tree, known as a *Melaleuca nesophil*a, has a ‘valuable’ individual significance and a life expectancy of 10-20 years. This tree is not native to Victoria and is subsequently not protected by the Vegetation Protection Overlay Schedule 1. Council’s Arborist has not objected to the removal of this tree subject to conditions requiring replacement of a species that will provide improved amenity and environmental. In light of tree replacement conditions, the removal of this tree is supported.

While only two of the trees listed in the table above are identified as ‘not worth being retained’, Council’s Arborist has supported the removal of these trees, subject to replanting of sufficient vegetation throughout the subject land. This is addressed by permit conditions.

Revised landscaping plans are also required to illustrate the proposed replacement planting for the subject land. The concept plans provided do not detail the proposed landscaping, including species and number of trees, and this is included as a condition of permit. Tree protection measures by way of permit conditions have also been included.
to ensure trees noted above are protected.

6.3. **Car parking and traffic**

Car parking requirement

The existing carpark on the subject land comprises a total number of 69 formal public car parking spaces. Vehicle access for the existing carpark is currently provided via two connections with the Esplanade at the eastern boundary of the site. This includes entry only and exit only connections to the north and south respectively.

As part of the broader redevelopment it is proposed to redesign the existing carpark while maintaining the existing entry and exit points along the eastern boundary. This design is consistent with the recommended actions outlined in the Dendy Street Beach Masterplan. The existing carpark will be redesigned to accommodate 58 carparking spaces.

While the proposed land uses do not require a planning permit, the applicable car parking provisions under Clause 52.06-5 must be provided. A planning permit is required to reduce the number of spaces required under Clause 52.06-5.

The proposed development falls under the land use categories of a place of assembly and food and drink premises under Clause 74 of the Bayside Planning Scheme. The car parking requirements for these proposed uses are set out under Clause 52.06 and the carparking table at Clause 52.06-5.

The table below sets out the statutory car parking requirements for the various uses of the proposed development.

<table>
<thead>
<tr>
<th>Proposed Use</th>
<th>Quantity / Size</th>
<th>Statutory Parking Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Place of Assembly (Lifesaving Club at ground floor level and use of the first floor northern component)</td>
<td>158 patrons</td>
<td>47 spaces (0.3 spaces to each patron permitted)</td>
</tr>
<tr>
<td>Café (food and drink premises)</td>
<td>149m²</td>
<td>5 spaces (4 spaces to each 100m² leasable floor area).</td>
</tr>
</tbody>
</table>

**Total car spaces required**

**52**

**Total car spaces proposed**

**58**

Based on the proposed statutory car parking assessment above, the proposed development has a peak car parking requirement for 52 spaces which exceeds a car parking surplus of 6 spaces under the requirements of Clause 52.06-5. A planning permit is therefore not required.

Vehicle crossing works

The existing ingress and egress access ways to the Esplanade will be retained as part of the current proposal. However, a planning permit is required under the provisions of Clause 52.29 as it is anticipated that the volume and/or frequency of traffic to the car parking area may change as a result. Subsequently, a referral to VicRoads has been undertaken which provided consent for the application subject to conditions. These conditions form part of the recommendation.

It is noted that VicRoads has not raised any concern with the anticipated traffic volume or the ingress or egress of vehicles from the site.

Loading and Unloading

Pursuant to Clause 52.07 (Loading and Unloading of Vehicles), a permit can be granted to waive the loading bay requirements associated with a new building for the sale of
goods if adequate provision is made for the loading and unloading of vehicles to the satisfaction of the Responsible Authority.

Given the plans do not include loading bay facilities in the overall design response, a permit is required to waive the loading bay requirements associated with the café/kiosk.

Due to the small scale and nature of the proposed café/kiosk, it is anticipated that small vehicles will undertake the majority of deliveries to the subject land instead of large semi-trailers. As such, it is considered that deliveries can use available on site car parking spaces or the proposed coach parking without unreasonably compromising the functionality of the existing car parking area.

In support of the waiver, the applicant has proposed a time based loading bay between 6am and 10am within the coach parking bay. As part of preliminary discussions, Council’s Traffic Engineer supported the use of the bus drop off pick up bay also as a loading zone provided a permit condition is in place. This would ensure any inconvenience to future occupants of the subject land is minimised. As such, a condition has been proposed to this effect.

6.4. **Objections received**

Issues raised by objectors that have not been addressed in the assessment above, are discussed below:

**Increased dune instability and potential erosion due to loss of vegetation**

While not applicable to the planning permit triggers of this application, a Geomorphology Report has been prepared which indicates that the area to the north of the Lifesaving Club has been identified as suitable for the establishment of a rainwater garden and has no dune vegetation left and shows significant anthropogenic influences.

**Increased rubbish and odour to the area from the proposed use**

The proposed use does not require a planning permit. This is not part of the permit application.

**Support Attachments**

1. Site and Surrounds Imagery ⬤
2. Development Plans ⬤
3. Land Status Report ⬤
4. Objections ⬤
*Note: Council has received approximately 46 objections from nearby land owners and residents. Due to the number of objections received, the properties have not been identified on the above plan.
View of the subject site looking south west.

View of the existing car park which forms part of the broader subject site.
Photo taken from The Esplanade, looking towards the existing car park and Brighton Lifesaving Club.

View of the rear of the existing Brighton Lifesaving Club, looking north east.
View of the rear of the existing Brighton Lifesaving Club, looking west.
DENDY BEACH PAVILION
133 ESPLANADE, BRIGHTON, VIC.
ARCHITECTURAL DRAWINGS

Received
7 SEP 2016

Planning Department
Architectural Plan

[Image of architectural drawings]
Item 10.1 – Reports by the Organisation
Item 10.1 – Reports by the Organisation
Item 10.1 – Reports by the Organisation
## Item 10.1 – Reports by the Organisation

### Council Meeting – 20 December 2016

**Attachment 2**

<table>
<thead>
<tr>
<th>Item Number</th>
<th>Report Title</th>
<th>Date</th>
<th>Pages</th>
</tr>
</thead>
<tbody>
<tr>
<td>10.1</td>
<td>Landscape Schedule</td>
<td>7 Jan 2016</td>
<td>55 of 200</td>
</tr>
</tbody>
</table>

**Advertised Plan**

**Site | Office**

**Issued for Town Planning**

**Landscape Schedule**

**DENBY BEACH PAVILION**

**LA001**
Item 10.1 – Reports by the Organisation
DENDY BEACH, BRIGHTON
Land Status Report
for
Bayside City Council

Fig 1 – the original plan of Dendy's Special Survey, 1941
INTRODUCTION

Bayside City Council is seeking to redevelop the Life-Saving precinct at Dendy Beach Brighton.

The proposed redevelopment involves demolition of the existing life-saving club and public toilet, and building a new life saving club storage facility with amenities on the ground floor, with separate compliant public toilets. On the first floor, a new life saving club office and patrol viewing facility would be constructed, as well as a community space with amenities, and new combined kiosk/café.

Fig 2 – General site configuration

The existing carpark layout is to be redesigned with reduced asphalt area and new compliant access path and road from carpark to the lower plaza area. Stormwater
management will be redesigned in line with Melbourne Water water-sensitive urban design principles.

Bayside Council has conducted community consultation and completed the concept design stage. Council has now reached the point of submitting plans for the Dendy Beach redevelopment for Planning Approval.

Bayside City Council has asked The Public Land Consultancy to review the land status of the Life-Saving precinct at Dendy Beach, Brighton. The Council has asked for answers to three specific questions:

1. Clarification that Bayside City Council is the land manager for this parcel of land.

2. Confirmation that all proposed works are to carried out are not on Crown Land and hence do not require referral to DELWP for CMA consent.

3. Confirmation that the historic bluestone wall is within the freehold Council Land.

ANALYSIS

1. Is Bayside City Council the land manager of the Life-Saving precinct at Dendy Beach?

Background

In 1841, Henry Dendy was granted 5120 acres of land near Brighton for £5120 in what was known at the time as a Special Survey. The extent of Dendy's Special Survey can be understood today as being defined by the present day roads eponymously known as North Road, South Road and East Boundary Road. The western boundary of the Special Survey was defined by an irregular line marked as "Port Phillip Bay" (Fig 1 on cover).

The granting of this land to Dendy was clearly shown in the term of the grant as freehold land, with the government of the day simply reserving the right to re-acquire such land as would be required for roads and railways.

Dendy was not to enjoy his land for long. He was bankrupt by 1843, and sold most of his land to his business partner JB Were. Various parcels within the Special Survey were subdivided and sold to others.

Subsequently, the Victorian Parliament enacted the Brighton Land Vesting Act (No. 577) on 31 October 1877. The Act vested the land described in the Schedule to the Act "for an indefeasible estate of fee simple" in the "Mayor, Councillors and Burgesses of the Borough of Brighton".
The Act also gave the Council rights and powers as though the land had been purchased by Council for the purpose of “public resort or recreation”.

Figs 3 and 4 show extracts from the Act.

**Land owner/manager/occupier**

For any parcel of land, the roles of land owner, manager and occupier may be three different legal persons.

In the case of a generic parcel of Crown land, the owner is the Crown. For current purposes the Crown is represented by the Minister administering the Land Act 1958, whose agent is DELWP. The manager may be, for example, a municipal council as the delegated manager through the *Crown Land (Reserves) Act 1978*. And within that land there may be leasehold land occupied by a commercial or community organisation.

In the case of the Brighton foreshore defined in the *Brighton Land Vesting Act 1877*, Bayside City Council as the successor in law to the Borough of Brighton is the owner, the manager, and for the most part, also the occupier of that land.

**Is the subject land contained within the land described in the Schedule to the Brighton Land Vesting Act 1877?**

The metes-and-bounds description in the Schedule to the Act is difficult to follow:

special survey, commencing at a point on the western side of St Kilda street one chain south of St Kilda street and which point of commencement is in a line with the said north side of Park street; thence northerly along the west side of St Kilda street twenty chains fifty links; thence westerly to the Port Phillip Bay; thence southerly along the Port Phillip Bay to the southern boundary of the said special survey; thence east along the southern boundary of the said special survey to the junction of Beacon terrace with the centre of the South road; thence along the western side of Beacon terrace north-westerly and northerly to the commencing point; which said piece of land is generally known as the Brighton Beach Reserve. And also all that piece of land...
The effect of the description is to encompass land between St Kilda St as the eastern boundary and "Port Phillip Bay" as the western boundary. The northern boundary is approximately 420 metres (twenty chains fifty links) north of Park Street; and the southern boundary is effectively South Road.

By "Port Phillip Bay" was meant High Water Mark as it was in 1877. We will need to address the question of where that boundary is now.

2 Are the proposed works located within Crown land or Council freehold land?

There are several different issues to be addressed in answering this question.

- The first is simply, is "vested" land actually still Crown land in this instance, or is it now effectively freehold land?
- Secondly, have there been any changes to HWM (artificial or natural) since 1841 or 1877, and hence any change in the western boundary of the vested land?
- Thirdly, is the footprint of the proposed works entirely within the vested land?
- And fourthly, could this land be deemed to be "Coastal Crown Land" for the purposes of the Coastal Management Act 1995?

Is "vested" land still Crown land?

The concept of "vesting" land varies from statute to statute. There is no single definition as to what vesting might mean. It is necessary to look at each individual statute and examine its provisions to determine what "vesting" actually means.

In the case of the Brighton Land Vesting Act 1877, the clear intent of parliament was to give the Council full control of the land "for an indefeasible estate of fee simple" (that is, full freehold title), "as though the land had been purchased by Council".

The implication is that Council, rather than the Government of Victoria, has the power to control, occupy, manage, and even dispose of the land should it so determine. This "ultimate" control says that the land is the equivalent of freehold land, and is therefore no longer Crown land.

Note however that the 1877 Act designated this freehold land to be for the purpose of "public resort or recreation". We are unaware of any legal interpretation of this restriction, but have no doubt that the current proposals for the life-saving club are compliant.
**Dendy Beach, Brighton**

Have there been any changes to HWM (artificial or natural) since 1841 or 1877, and hence any change in the western boundary of the vested land?

Changes to High Water Mark may take either of two forms:

a) Artificial or catastrophic changes, which would not result in any change to the cadastral boundary.

b) Gradual and imperceptible changes, which would result in the cadastral boundary moving in accordance with the doctrine of accretion.

It would appear that at various points along Brighton beach, between North and South Roads, there has been reclamation. In these places HWM may well have changed, but the cadastral boundaries have not. One of these places is the stretch of beach from immediately north of the Life-Saving Club northwards to the groyne opposite the end of Park Street.

This artificially reclaimed land is deemed to be unreserved Crown land, and has been given the Crown description CA.2048, Parish of Moorabbin. It is shown on Fig 5, and in further detail on PP3163-2048, appended as Fig 7. Note that this plan emanates from the Office of the Surveyor General, and is dated 2014.

Interpreting plan PP316302048. The western boundary of CA 2048 is High Water Mark as at 2014. The eastern boundary of CA 2048 is the western boundary of the vested land – that is, HWM as it was in 1877, subject to any later accretion. According to a report dated 17 March 1995 by DSE’s Divisional Surveyor high water mark can now be regarded as the line of the retaining sea wall.

According to the Divisional Surveyor’s Report dated 17/3/1995, high water mark has receded since 1877 and can now be regarded as the line of the retaining sea wall. The plan referred to in the Surveyor’s report has not been provided, but it seems that the reference to the sea wall means the outer (seaward) face of the sea wall. Thus the sea wall itself and the collapsed pathway on its landward side is within the freehold CA 1E3.

![Fig 5 - detail from PP3163:2048 from DELFW database](image)

**Fig 6 – Extract from our 2005 report (full report appended as Fig 1C)**

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1 This report not sighted, but referred to in our earlier report dated 2005.
Is the footprint of the proposed works entirely within the vested land?

Or, resolving the question a little further, are the proposed works within the vested land, or do they encroach onto CA 2048, or into Port Phillip Bay?

Here we turn to two screenshots taken from the LASSI database, and appended below as Figs 7 and 8. Fig 7 shows the boundaries of the vested land and CA 2048 in relation to other nearby cadastral boundaries. Fig 8 shows the same boundaries, overlaid on aerial photography.

From our examination of these images, and the site configuration on Fig 2, we are of the view that the footprint of the proposed works is entirely within the vested land.

Does the Minister administering the Coastal Management Act 1995 have the power to declare the land to be "coastal Crown land"?

As the land is not Crown land, the Minister may not declare it to be "coastal Crown land". Therefore the consent powers in sections 37 to 40 of the Coastal Management Act 1995 do not apply to any development on this land.

3 Is the bluestone sea-wall within Council freehold land or Crown land?

The bluestone wall is at the boundary between the vested land and the Crown land. The question is – as a boundary feature does the wall belong to Council or to the Crown?

In 2005 we provided advice on this matter (via Maddocks lawyers) to Council’s Mr Michael Coleman. That advice is attached as Fig 10 below.

It relies on a report by DSE’s Divisional Surveyor, dated 1995, which concluded that HWM was the face of the seawall – in other words, that the seawall itself is within the vested land.

We understand that some stormwater outlets will be cut through the seawall, to discharge on the seaward side of it. Conceivably this may intrude onto Crown land.

If indeed some stormwater works occur on Crown land, they must obtain Ministerial consent under the Coastal Management Act 1995 – but this consent has already been given.

By notice published in the Government Gazette of 5 September 2013, the Minister consented to “Repair and maintenance of existing gas, electricity, water, navigational, drainage, sewerage and telecommunications infrastructure.”
CONCLUSIONS

Is Bayside City Council the land manager of the Life-Saving precinct at Dendy Beach?

Through the operation of the Brighton Land Vesting Act 1877, Bayside City Council, as the successor in law to the Borough of Brighton is the owner, the manager, and for the most part, also the occupier of that land described in the Schedule to the Act.

The Schedule to the 1877 Act describes the boundaries of the land which include the Life-Saving precinct at Dendy Beach.

Bayside City Council is the owner and manager of the subject land.

Are the proposed works located on Crown land?

The form of vesting described by the provisions of the Brighton Land Vesting Act 1877 makes it clear that the intent of parliament was to give the Council full control of the land “for an indefeasible estate of fee simple” (that is, freehold title), “as though the land had been purchased by Council”.

Therefore the land is not Crown land.

We understand that works do not extend below the present-day High Water Mark, and therefore not into the unreserved Crown land of Port Phillip Bay.

We are unable to find any evidence that the “effectively freehold” status of the land has been changed since 1841 or 1877 back to Crown land, either by administrative action or natural processes.

The Minister administering the Coastal Management Act 1995 does not have the power to declare the land to be “coastal Crown land” as the land is not Crown land. No such declaration has been purported to be made.

Therefore the proposed works are not located on Crown land.

Is the bluestone sea-wall within Council freehold land or Crown land?

The bluestone wall is at the boundary between the vested land and the Crown land.

According to a report by DSE’s Divisional Surveyor, dated 1995, HWM at the time was the face of the seawall – in other words, that the seawall itself is within the vested land.

If stormwater drainage infrastructure crosses through the seawall onto the Crown land, its repair and maintenance has already been given the necessary consent.

* * * * *

THE PUBLIC LAND CONSULTANCY
Page 8
CROWN DIAGRAM

LOCATION OF LAND
Parish: Moonee Ponds
Section:
Crown Allotment: 2048
Last Plan Reference: Derived From

EDITION 1

NOTATIONS
WARNING: NO WARRANTY IS GIVEN AS TO THE
ACCURACY OR COMPLETENESS
OF THIS PLAN.
ANY DIMENSIONAL MEASUREMENTS ARE APPROXIMATE.
HIGH WATER MARK DETERMINED FROM AERIAL
PHOTOGRAPHY CIRCA 2013.

PP3163_2048

THIS PLAN HAS BEEN PREPARED
BY LAND VICTORIA FOR
CROWN DIAGRAM PURPOSES

Checked by: NLG
Date: 30/03/2014

LENGTHS ARE IN METRES

Fig 7 DELWP Plan PP3163_2048

THE PUBLIC LAND CONSULTANCY

Page 9
Fig 8 Screenshot of LASSI image showing boundaries of CA 2048
Fig 9 – Screenshot of LASSI image showing boundaries of CA 2048 superimposed on aerial imagery.
Bayside City Council - Request for Advice - Middle Brighton Banks

1. By email of 19 December 2003, Michael Corrie of Bayside City Council has asked for four pieces of advice.

2. There is clearly some urgency in relation to the first item, because the parties intend to undertake remedial works before Christmas.

3. The foreshore generally between North Road and South Road Brighton is freehold to the high water mark, known as Crown Allotment C A1 6. It rests in City of Bayside under the Brighton Land Trust Act 1977.

4. According to the Divisional Surveyor’s Report dated 17/3/1980, high water mark has receded since 1977 and can now be regarded as the line of the retaining sea wall. The plan referred to in the Surveyor’s report has not been provided, but it seems that the reference to the sea wall means the outer seaward face of the sea wall. Thus the sea wall itself and the collapsed pathway on its landward side is within the freehold C A1 6.

5. Most of Port Phillip foreshore is Crown reserve, usually under the relevant Council or Committee of Management. DSE’s normal practice in relation to Crown Reserve is for the Committee of Management to find funding for capital works from its own resources. Occasionally, DSE may make a contribution to capital works, but this is not generally the rule.

6. An exception has been major civil foreshore works, where government, originally through the Public Works Department, now DSE, generally funds sea walls, groynes, and marine structures. If the sea wall in question was on Crown land, DSE would probably pay 100% of its remediation costs.

7. As it is on freehold land, and in the apparent absence of any agreement to the contrary, we believe DSE could, if it so chose, decline to make any contribution.

8. DSE has in fact offered to pay 50% of the cost. We do not know how the 50/50 split was arrived at. It is probably negotiable.

9. Mr Corrie’s three further questions will require a more considered response.

Yours sincerely,

David Gabriel Jones
Principal

Fig 10 — Our 2005 advice on the ownership of the sea wall.
ATTACHMENT 4

Matters raised in objections which are not of relevance to the Planning Permit triggers.

Concerns have also been raised in relation to the broader redevelopment of the subject land. Given the proposed building and the proposed use do not require a planning permit, the concerns relating to the broader redevelopment cannot be considered in the assessment of this application. The main issues raised related to the proposed include built form, use, policy, consultation and character. These are discussed below.

**Built form**

- The use of ratepayers money for the development;
  
  *This is not a valid planning consideration and has no relevance to the criteria upon which assessment of a planning permit application is based.*

- Overdevelopment of the site;
  
  *The proposed built form does not require a planning permit.*

- Unfriendly built environment around Port Phillip Bay and locally along the Bayside foreshore;
  
  *The proposed built form does not require a planning permit.*

- Incorrect scale on plans and the development is larger than what is presented;
  
  *The proposed information provided is sufficient to assist in the assessment of this application.*

- Location of public toilets inadequate;
  
  *The proposed built form does not require a planning permit.*

- The footprint for the planned works would decimate a large area of open space coastal parkland;
  
  *The proposed built form does not require a planning permit.*

- The scale and use of the training room building is inappropriate;
  
  *The proposed built form does not require a planning permit.*

- Loss of views from surrounding properties;
  
  *The Victorian Civil and Administrative Tribunal has consistently found that although impact upon views can be considered amongst the amenity impacts of a proposal, there cannot be considered a right to any particular view. In the absence of particular planning controls which might require the protection of, or sharing of views, loss of views is often afforded very limited weight.*

- Lifesaving requirements can be satisfied in a building of 500m²;
  
  *The proposed built form does not require a planning permit.*

- Design detail of the building out of character with surrounding context;
  
  *The proposed built form does not require a planning permit.*
• A modest upgrade more suitable to the context;
  *The proposed built form does not require a planning permit.*

• Blocking of access to the beach by an overdevelopment;
  *The proposed built form does not require a planning permit.*

• Provision of viewing platforms and balcony not required;
  *The proposed built form does not require a planning permit.*

**Use**

• Unruly people due to liquor licence and function area;
  *The application has been amended to delete the liquor licence component.*

• Council is encouraging the sale and consumption of liquor in a coastal recreation area where families gather for healthy recreation;
  *The application has been amended to delete the liquor licence component.*

• Proposed intensive uses will dramatically increase activity in the area;
  *The proposed land use does not require a planning permit.*

• Noise and amplified music from the multi-purpose room will largely impact on the surrounding dwellings;
  *The proposed land use does not require a planning permit. Amenity protections are afforded by the Environment Protection Act 1970.*

• Sufficient food and drink premises already available.
  *The proposed land use does not require a planning permit.*

**Policy**

• The development is inconsistent with a community service and lifesaving activities by the inclusion of a licensed restaurant, café, bar and function centre that is not water related and contravenes the Victorian Coastal Strategy;
  *The proposed building and associated land use do not require a planning permit.*

• The development contravenes the Port Phillip Conservation Council Inc and the Victorian Coastal Strategy 2002;
  *The proposed development does not require a planning permit.*

• The proposal contravenes the Victorian Coastal Strategy 2014 which seeks to discourage the use of coastal Crown land as cheap alternative to private land, ensure developments are consistent with surrounding landscape character;
  *The proposed development does not require a planning permit. Notwithstanding, the works are not located on Crown land.*

• The application fails to comply with the Cancer Council’s SunSmart Shade Guidelines with particular reference to the fact that there is no natural shading and there is a high risk of reflected UV radiation exposure due to the significant increase in areas of concrete;
  *This policy is not applicable to the planning permit application.*

• The building fails to meet the 5 Green Star criteria and is an environmentally lazy design;
The proposed built form does not require a planning permit.

- Council omission of cultural evidence from the Bayside Coastal Management Plan;

The relevant information as part of the planning permit application has been provided in accordance with the Planning and Environment Act 1987.

Consultation

- Insufficient community consultation;

Consultation prior to the planning application has occurred and is not a valid planning consideration.

- Plans do not adequately inform residents of the proposed use and no business case has been provided;

The proposed use and built form do not require a planning permit and this information cannot be requested as part of this planning application.

- Misleading information from Council in regards to the redevelopment of the site by way of the commercial nature and heritage demolition;

The relevant information as part of the planning permit application has been provided in accordance with the Planning and Environment Act 1987.

- Commercial decision not based on community interests;

This is not a valid planning consideration as part of this application.

Character

- The location of the lifesaving club is unreasonably restrictive as the restaurant is given prime views;

The proposed built form and associated land use do not require a planning permit.

- The development will significantly change the unique character of the area;

The proposed built form and associated land use do not require a planning permit.

- Loss of tranquil space;

The proposed built form and associated land use do not require a planning permit.

- Commercial scale and development will create a loss of the rustic character of the area;

The proposed built form and associated land use do not require a planning permit.

- Services including lamp posts and high poles should be located underground;

The proposed built form and associated land use do not require a planning permit.

- Noise conditions should be implemented;

The proposed built form and associated land use do not require a planning permit.

Amenity protections are afforded by the Environment Protection Act 1970.

- Area already under pressure from tourists and visitors;

The proposed built form and associated land use do not require a planning permit.

Other

- Increased vandalism and graffiti;
The proposed built form does not require a planning permit and therefore matters pertaining to vandalism and graffiti cannot be considered in the determination of this application.

- Heritage sites should be preserved from commercialisation; and

Heritage requirements associated with this application only relate to the existing bluestone heritage sea wall.