

Agenda Paper

for the

Special Meeting of Council

To be held at the Council Chambers, Civic Centre,
Boxshall Street Brighton

on

**Wednesday, 13 September, 2017
at 7:00pm**

Cr: Cr Alex del Porto (Mayor)

Councillors: Cr Laurence Evans
Cr James Long BM JP
Cr Michael Heffernan
Cr Clarke Martin
Cr Rob Grinter
Cr Sonia Castelli



Members of the Gallery

Your attention is drawn to Section 92 of Council's Governance Local Law No 1.

Section 92 The Chair's Duties and Discretions

In addition to other duties and discretions provided in this Local Law, the Chair –

- (a) must not accept any motion, question or statement which is derogatory, or defamatory of any Councillor, member of Council staff, or member of the community.
- (b) may demand retraction of any inappropriate statement or unsubstantiated allegation;
- (c) must ensure silence is preserved in the public gallery during any meeting
- (d) must call to order any member of the public who approaches the Council or Committee table during the meeting, unless invited by the Chair to do so; and
- (e) must call to order any person who is disruptive or unruly during any meeting.

An Authorised Officer must, if directed to do so by the Chairman, remove from a meeting any Councillor or other person who has committed such an offence.

Your cooperation is appreciated

Chairperson of Council

To: Mayor and Councillors

In accordance with Section 84 of the Local Government Act 1989, a **Special Meeting of Bayside City Council** will be held at the Council Chambers, Civic Centre,, Boxshall Street Brighton, on **Wednesday, 13 September 2017** at **7:00pm** for the purpose of transacting the following business:

131 - 133 Esplanade, Brighton Dendy Street Beach Pavilion Support the Grant of a Planning Permit Application No. 2016/266/1 VCAT Reference No. P89/2017

Order of Business

1. Apologies
2. Disclosure of any Conflict of Interest of any Councillor
3. Reports by the Organisation
 - 3.1 131 - 133 Esplanade, Brighton Dendy Street Beach Pavilion Support the Grant of a Planning Permit Application No. 2016/266/1 VCAT Reference No. P89/2017 Ward: Central 5

1. Apologies

2. Disclosure of any Conflict of Interest of any Councillor

3. Reports by the Organisation

3.1 131 - 133 ESPLANADE, BRIGHTON DENDY STREET BEACH PAVILION SUPPORT THE GRANT OF A PLANNING PERMIT APPLICATION NO. 2016/266/1 VCAT REFERENCE NO. P89/2017 WARD: CENTRAL

City Planning & Community Services - Development Services
File No: PSF/15/8755 – Doc No: DOC/17/192113

1. Purpose and background

To report amended plans submitted in relation to VCAT Reference No. P89/2017 for 131 – 133 Esplanade, Brighton (Dendy Beach Pavilion) (refer Attachment 1) which proposes the construction of a two-storey building to accommodate the Brighton Lifesaving Club, a multi-purpose space, café and public terrace, the use for a minor sport and recreation facility (lifesaving club), place of assembly (multi-purpose space) and food and drink premises (café) and the redevelopment of the adjacent car park and associated bicycle facilities and pathways (Attachment 2).

| | |
|------------------------------------------|-----------------------------------|
| Applicant | Bayside City Council c/- Maddocks |
| Date amended application received | 7 August 2017 |

History

Planning Permit Application No. 2016/266/1 was received by Council's Planning Department on 18 November 2016 and sought approval 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. The application facilitates the redevelopment of the Dendy Street Beach Pavilion to provide a new Brighton Lifesaving Club, a café/kiosk, place of assembly, associated public amenities and a redesigned car park.

The permit applicant did not apply to Council for approval for the proposed land uses as it was considered that the use would be conducted by or on behalf of the public land manager (Council) in accordance with clause 36.02-1 of the Public Park and Recreation Zone. Similarly, the proposed development was not listed for approval as it was considered that the building was to be carried out by or on behalf of a public land manager (Council) in accordance with clause 36.02-2 of the Public Park and Recreation Zone.

The Planning Department recommended the application to be supported, subject to conditions, to the Planning and Amenity Committee Meeting on 20 December 2016 (refer Attachment 3). The Planning and Amenity Committee determined to support the application and a Notice of Decision to Grant a Planning Permit was issued on 22 December 2016.

The Tribunal received six (6) separate Application for Reviews pursuant to Section 82 of the *Planning and Environment Act 1987* in response to Council's decision.

On 6 April 2017, a preliminary hearing was held to determine the following question of law:

Is there an exemption under the planning scheme for the need for Bayside City Council to obtain a planning permit for use and development for the proposed café?

In relation to the above question of law, the Tribunal in its Order dated 19 May 2017 concluded that the proposed development of the Land would be by or on behalf of Council as the public land manager and as such would not require planning permission. However the proposed use of the land would not be by or on behalf of Council as public land manager and consequently;

- A planning permit would be required for the use of the Land as a Life Saving Club; and
- A planning permit would be required for the use of the Land for Retail or Food or Drink Premises (café or kiosk), unless that was demonstrated to be an ancillary use.

Following the Tribunal's Order dated 19 May 2017, Bayside City Council as the permit applicant, sought to amend the permit application to include permission for three uses on the subject land being a minor sport and recreation facility (lifesaving club), place of assembly (multi-purpose function space) and food and drink premises (café).

No permission is sought for the sale or consumption of liquor on the subject land as part of this application. In addition, Council is not proposing to rely on any claim of existing use rights in respect of the use of the subject land.

The Victorian Civil and Administrative Tribunal (VCAT) has listed the application for review for a seven day hearing on 13 – 17 and 20 – 21 November 2017. There will also be a three hour compulsory conference at 9:30am on 27 September 2017.

At the hearing of this matter, Bayside City Council (as the permit applicant) will seek leave of the Tribunal to substitute amended plans. These amended plans form the basis of this assessment.

In the Tribunal's Order made on 15 August 2017, the Tribunal exercised the power conferred by s51A(1) of the *Victorian Civil and Administrative Tribunal Act 1998* and invited Council, in its capacity of the Responsible Authority, to reconsider its decision having regard to the amended application.

Amended Proposal

The amended application is for a permit to include the following:

- Use the land as a minor sport and recreation facility (lifesaving club), place of assembly (multi-purpose function space) and food and drink premises (café) under clause 36.02-1 of the Bayside Planning Scheme;
- Partial demolition and/or works to the heritage bluestone sea wall and demolition and works associated with the construction of the new forecourt, timber decking and rain garden under clause 43.01-1;
- Remove native vegetation under clause 42.02-2 and clause 52.17-2;

The amended application does not change the following previously approved permit requirements:

- Waive the loading bay requirements under clause 52.07;
- Alter access to a road in a Road Zone, Category 1 under clause 52.29.

The proposal relates to the construction of a two storey building (Building) to accommodate the Brighton Lifesaving Club facilities, a multi-purpose space, café and public terrace, the use for a minor sport and recreation facility (lifesaving club), place of assembly (multi-purpose function space) and food and drink premises (café) and the redevelopment of the adjacent car park and associated bicycle facilities and pathways.

As the proposed construction of the Building (and the redevelopment of the adjacent car park and associated bicycle facilities and pathways) is being undertaken by or on behalf

of Council in its capacity as the public land manager, it does not require planning permission for its construction under clause 36.02-2 of the Bayside Planning Scheme.

2. Proposal

The proposed development plans have been amended as follows:

- The subject site address updated to 131 – 133 Esplanade, Brighton (previously listed as 133 Esplanade, Brighton);
- Proposed sea wall penetrations removed and existing stormwater drain penetration to be adjusted;
- Retaining wall to the east of the existing esplanade removed to allow new wall to raingarden demonstrated on the proposed demolition plan;
- The number of proposed trees to be removed increased from 8 to 11;
- Changes to existing tree removal due to Council maintenance and likely disturbance during works (trees 7 and 12 have been removed under contract maintenance);
- Provision of timber decking to the upper forecourt to minimise disruption to existing trees; and
- Shared access path layout revised to include paving pattern similar to new forecourt.

The amended plans (architectural and landscape) show the following changes:

- Drawing No. A0-000: Noted to include provision of revised sheets;
- Drawing No. A0-105: Changes to existing trees and trees to be removed noted to reflect landscape drawings; openings to sea wall removed; proposed overflow pit to beach removed; changes to existing outlet noted; extent of retaining wall demolished; east of beach path noted; no change to south end of sea wall noted;
- Drawing No. A0-106: Changes to existing trees and trees removed noted to reflect landscape drawings; openings to existing sea wall removed; changes to existing outlet noted; extent of retaining wall demolished east of beach path noted; no change to south end of sea wall noted;
- Drawing No. A1-101: Changes to existing trees and trees removed noted to reflect landscape drawings; access path layout and paving pattern revised; timber deck noted to south of rain garden; timber deck noted to rear of club; changes to existing outlet noted; no change to south end of sea wall noted;
- Drawing No. A1-102: Changes to existing trees and trees removed noted (to reflect landscape drawings); access path layout and paving pattern revised; timber deck noted to south of rain garden; timber deck noted to rear of club; changes to existing outlet noted;
- Drawing No. A1-103: Changes to existing trees and trees to be removed noted (to reflect landscape drawings); timber deck noted to rear of club; changes to existing outlet noted; no change to south end of sea wall noted;
- Drawing No. A1-104: Changes to existing trees and trees to be removed noted (to reflect landscape drawings); timber deck noted to rear of club; changes to existing outlet noted; no change to south end of sea wall noted;
- Drawing No. A1-105: Changes to existing trees and trees removed noted (to reflect landscape drawings); timber deck noted to rear of club; changes to existing outlet noted; no change to south end of sea wall noted;

- Drawing No. A3-101: Timber deck noted to rear of club;
- Drawing No. A3-102: Timber deck noted to rear of club;
- Drawing No. LA000: Updated design statement;
- Drawing No. LA001: Updated drawing schedule;
- Drawing No. LA100: Updated site plan;
- Drawing No. LA110: No change;
- Drawing No. LA115: No change;
- Drawing No. LA116: No change;
- Drawing No. LA117: The removal / retention of trees on the subject land;
- Drawing No. LA118: The removal / retention of trees on the subject land;
- Drawing No. LA120: Removal of pits on beach side of heritage wall; updated paving patterns; updated access ramp layout; tree 42 to be removed, and provision of timber edge to south end of raingarden;
- Drawing No. LA121: Updated paving pattern; updated access ramp layout; tree 42 and tree 8 shown to be removed; timber edge to south end of raingarden; timber decking in forecourt to building (to protect trees);
- Drawing No. LA130: Updated paving pattern; updated access ramp layout;
- Drawing No. LA131: Updated paving pattern; updated access ramp layout; tree 42 and tree 8 shown to be removed;
- Drawing No. LA132: Updated paving pattern, updated access ramp layout, tree 7 and 12 no longer shown; tree 34 shown to be removed;
- Drawing No. LA133: Removal of pits on beach side of heritage wall; updated paving pattern; updated access ramp layout;
- Drawing No. LA134: Removal of pits on beach side of heritage wall; updated paving pattern; updated access ramp layout; tree 42 to be shown to be removed; timber edge to south end of raingarden; timber to forecourt; tree 42 shown to be removed; update text notes; tree 12 removed from the plan;
- Drawing No. LA135: Updated paving pattern, updated access ramp layout, provision of timber forecourt, correct tree 25 labelled; and
- Drawing No. LA200: Deletion of pits and penetrations through the heritage sea wall; updated text.

The amended application is reflected in the following documents:

- A scaled set of amended plans (highlighting where changes are made) in Drawing No.s A0-000-A10-201, dated 4 August 2017, prepared by Jackson Clement Burrows Architects;
- A scaled set of amended landscape plans (highlighting where changes are made) in Drawing Nos. LA000-LA200, dated 27 July 2017, prepared by SITE Office;
- A revised Town Planning and Urban Context Report, prepared by Contour Town Planners dated August 2017;
- A revised Traffic Engineering Assessment prepared by Traffix Group dated August 2017;
- A Water Management Strategy, prepared by Storm Consulting, dated 1 August 2017; and

- An Arboricultural Report by Arbor by Design, dated 4 April 2017.

3. Policy implications

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 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.

Planning permit requirements

The amended application proposes partial demolition to the existing bluestone heritage sea wall, the construction of a two-storey building to accommodate the Brighton Lifesaving Club facilities, a multi-purpose space, café and public terrace, the use for a minor sport and recreation facility (lifesaving club), place of assembly (multi-purpose function space) and food and drink premises (café) and the redevelopment of the adjacent car park and associated bicycle facilities and pathways.

The Tribunal in its Order dated May 19 has confirmed that the proposed development of the Land would be by or on behalf of Council as public land manager and as such, would not require planning permission pursuant to clause 36.02-2 of the Public Park and Recreation Zone. However as listed previously in the report, the associated land uses require planning approval and are now included as part of the amended application and application for review.

The amended application requires a planning permit as follows:

- Clause 36.02-1 (Public Park and Recreation Zone): A permit is required for the use of the land as a minor sport and recreation facility (lifesaving club), place of assembly (multi-purpose function space) and food and drink premises (café).

Note: The previous application did not seek approval for these uses.

- 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 as part of the amended application involve partial demolition and/or works to the heritage bluestone sea wall and demolition and works associated with the construction of a new forecourt, timber decking and rain garden.

Note: The previous application sought approval for the partial demolition to allow the construction of 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.

Note: The amended application proposes the removal of 11 native / indigenous trees in lieu of the eight native / indigenous trees previously proposes.

- 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.

Note: The original application proposed a waiver of 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. The original application did not include provision of loading bay facilities.

- Clause 52.17 (Native Vegetation): A permit is required to remove, destroy or lop native vegetation, including dead native vegetation.

The amended application proposes the removal of 11 native/indigenous trees in lieu of the 8 native/indigenous trees previously proposed.

Note: In the original application, the Department of Environment, Land, Water and Planning (DELWP) provided advice to Council that a planning referral 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.

DELWP provided no further comments in relation to the amended application.

- 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.

Note: 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 *Planning and Environment Act 1987*.

VicRoads do not object to the amended application subject to conditions which are included as part of the recommendation.

Cultural Heritage Management Plan (CHMP)

The previous Council report (Attachment 2) concluded 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*.

In its Order dated 15 August 2017 the Tribunal has confirmed that the permit applicant advised on 4 August 2017 that a CHMP would be required and it has retained Ecology and Heritage Partners Pty Ltd to prepare a CHMP. The CHMP was to be submitted to Aboriginal Victoria for evaluation on 11 August 2017 in respect of the amended proposal pursuant to the *Aboriginal Heritage Act 2006* and the *Aboriginal Heritage Regulations 2006*.

Council's Planning Department has not received a copy of this report to date. Accordingly, this matter has not been considered in this report.

4. Stakeholder Consultation

External referrals

The Tribunal in its Order dated 15 August 2017 (Item 21) acknowledges the tight timeframes associated with an assessment of the amended application to provide a response by 20 September 2017.

No referrals were made by Council as part of this amended application. VicRoads were notified of the amended application and have advised Council that they do not wish to contest the application for review. The conditions required by VicRoads are included as part of the recommendation.

Internal referrals

| Internal Referral | Response |
|---------------------|--------------------------------------|
| Open Space Arborist | No objection, subject to conditions. |

The amended application was not referred to Council's Heritage Advisor. While the amended demolition plan illustrates an increase to the extent of demolition works proposed, the amended plans in fact demonstrate a reduction in the extent of works to the bluestone heritage wall compared to the previous works recommended for approval.

Public notification

Pursuant to the Tribunal's Order dated 30 May 2017, Bayside City Council (Applicant) was required to circulate amended plans and associated documents by 4 August 2017. The Applicant satisfied the notification requirements.

Consultation meeting

As this matter is before the Tribunal, a Consultation meeting was not held by Council on the amended plans.

A Compulsory Conference at VCAT is scheduled to be held on 27 September 2017. Council will attend this conference.

5. Recommendation

That Council:

Advises the Tribunal that it **Supports** the amended application dated 4 August 2017 in respect to VCAT Reference No. P89/2017 and Planning Application No. 2016/266/1 of the land known and described as **131-133 Esplanade, Brighton (Dendy Beach Pavilion)**, for the **use of the land as a minor sport and recreation facility (lifesaving club), place of assembly (multi-purpose function space) and food and drink premises (café), the removal of native vegetation, partial demolition and/or works to the heritage bluestone sea wall and demolition and works associated with the construction of the new forecourt, timber decking and rain garden, 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 and that the previously issued decision is **varied** as follows:

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 VCAT amended plans, prepared by Jackson Clement Burrows Architects dated 4 August 2017 (Council date stamped 7 August 2017) but modified to show:
 - a) 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.
 - b) Detailed engineering drawings which demonstrate the repairs to the existing bluestone sea wall including the materials and finishes to be used to be 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) A detailed landscape plan generally in accordance with the landscape concept plans prepared by Site Office Council date stamped 7 August 2017 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.
 - d) A Tree Management Plan in accordance with Condition 4 of this permit.
 - e) The proposed Arboricultural Report prepared by Arbor by Design dated 4 April 2017 updated to include an assessment of Tree 34 as listed on LA121 Revision 04 of the proposed landscape plan drawings prepared by Site Office.
 - 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 layout of the site and the size, levels, design and location of buildings and works shown on the endorsed plans must not be modified for any reason (unless the Bayside Planning Scheme specifies that a permit is not required) without the

prior written consent of the Responsible Authority.

3. Noise emanating from the subject land must comply with State Environment Protection Policy (Control of Music Noise from Public Premises) No. N-2, to the satisfaction of the Responsible Authority. Any works required to ensure and maintain the noise levels (from the plant and equipment area and loading bay or specify other as relevant) must be completed prior to the commencement of the use or occupation of the site and maintained thereafter, all to the satisfaction of the Responsible Authority.
4. The land uses may operate only between the following hours without the prior written consent of the Responsible Authority:
 - Lifesaving Club: 6am – 12am, seven days a week with a maximum 24 patrons;
 - Multi-purpose function space: 7am – 10pm, Sunday to Thursday and 7am - 12am Friday and Saturday with a maximum 134 patrons;
 - Lifesaving Club and Multi-purpose function space: 6am – 12am, seven days a week with a maximum number of 158 patrons; and
 - Food and drink premises (café): 7am – 10pm, Saturday to Thursday and 7am – 12am Friday and Saturday with a maximum 60 patrons.
5. External lighting must be designed, baffled and located so as to prevent any adverse effect on adjoining land to the satisfaction of the Responsible Authority.
6. 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.
7. No external sound amplification equipment or loudspeakers are to be used for the purpose of announcement, broadcast, playing of music or similar purpose.
8. The use and development must be managed so that the amenity of the area is not detrimentally affected, through the:
 - a) Transport of materials, goods or commodities to or from the land.
 - b) Appearance of any building, works or materials.
 - c) emission of noise, artificial light, vibration, smell, fumes, smoke, vapour, steam, soot, ash, dust, waste water, waste products, grit or oil.
 - d) Presence of vermin.

Tree Management and Protection Plan

9. 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 designed 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.

10. 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.
11. 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.
12. 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.

VicRoads conditions

13. Prior to the commencement of use or occupation, both entry and exit access crossovers at property boundary must be sealed with the edges of the crossover angled at 60 degrees to the road reserve boundary, at least for the first 3 metres from the edge of the road must be constructed to the satisfaction of the Responsible Authority (RA) and at no cost to VicRoads or the RA.
14. The cross overs must have a corner splay or area at least 50 per cent clear of visual obstructions extending at least 2 metres along the frontage road from the edge of an exit lane and 2.5 metres along the exit lane from the frontage, to provide a clear view of pedestrians on the footpath of the frontage road. The area clear of visual obstructions may include an adjacent entry or exit lane where more than one lane is provided, or adjacent landscaped areas, provided the landscaping in those areas is less than 900mm in height.
15. Prior to the commencement of the use or occupation of the development, all disused or redundant vehicle crossings must be removed and the area reinstated to the satisfaction of the Responsible Authority (RA) and at no cost to VicRoads or the RA.
16. Prior to the commencement of the use or the occupation of the buildings or works hereby approved, the access crossover and associated works must be provided and available for use.
17. Vehicles must enter and exit the land in a forward direction at all times.
18. The level of the footpaths must not be lowered or altered in any way to facilitate

access to the site.

Permit Expiry:

19. 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:

- No work must be commenced in, on, under or over the road reserve without having first obtaining all necessary approval under the Road Management Act 2004, the Road Safety Act 1986, and any other relevant acts or regulations created under those Acts.

6. Council Policy

Council Plan 2017-2021

Relevant strategic objectives of the Council plan include:

- Where neighbourhood character, streetscapes and heritage is respected and enhanced, and the community has a strong connection to place.
- Where development contributes to a high visual amenity, is ecologically sustainable, demonstrates high quality compliant design, and responds to the streetscape and neighbourhood context.
- Where a range of housing types is provided to accommodate the changing needs of the community, enabling people to age in place and providing opportunities for young adults and families to live and remain in the municipality.

Relevant strategies of the Council plan include:

- Make discretionary planning controls stronger, by advocating for Council's planning and urban design objectives to state government.

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)

7. Considerations

In its Order dated 15 August the Tribunal at Items 15-21 invited the Responsible Authority to reconsider its position in respect of the application under Section 51A of the *Victorian Civil and Administrative Tribunal Act 1998*.

The Tribunal considered this important in light of the substantial modification to the permit application to include various uses following declarations of the Tribunal, rather than only specific permissions under the planning scheme which were before the Council for its original determination (Item 20).

The Tribunal also noted that the invitation would increase transparency as well as opportunities for due process. It would also have the potential to provide improved certainty about the responsible authority's position in respect of the amended permit application or any conditions that should be included in a permit (if granted). In light of this recommendation, the amended application is submitted to Council for consideration.

Section 51A(1) of the VCAT Act provides:

At any time in a proceeding for review of a decision, the Tribunal may invite the decision maker to reconsider the decision.

Section 51A(2) then sets out what the decision maker may do. This takes the following form:

On being invited by the Tribunal to reconsider a decision, the decision maker may:

- a) Affirm the decision; or
- b) Vary the decision; or
- c) Set aside the decision and substitute a new decision for it.

The nature and extent of any reconsideration carried out pursuant to Section 51A are not defined in the VCAT Act. To this extent, Council has a discretion about how it approaches its reconsideration.

While a detailed assessment of the amended application has been made, the previous aspects of the original application which remain *unchanged* have not been revisited.

As such, only the *proposed amendments* as part of this application are assessed. Notwithstanding, consideration of the application in its entirety has been given significant regard.

7.1. **Proposed land uses**

Public Park and Recreation Zone

The subject land is included within the Public Park and Recreation Zone (PPRZ) pursuant to the provisions of the Bayside Planning Scheme. The purpose of the PPRZ is listed at clause 36.02 of the Scheme and is as follows:

- To implement the State Planning Policy Framework and the Local Planning Policy Framework, including the Municipal Strategic Statement and local planning policies.
- To recognise areas for public recreation and open space.
- To protect and conserve areas of significant where appropriate.
- To provide for commercial uses where appropriate.

Why is a planning permit required?

The use of the land as a minor sport and recreation facility (lifesaving club) and place of assembly (multi-purpose function space) are as of right uses that fall under Section 1 of the table to clause 36.02-1 provided that the following condition is met:

- *A use conducted by or on behalf of a public land manager or Parks Victoria under the relevant provisions of the Local Government Act 1989, the Reference Areas Act 1978, the National Parks Act 1975, the Fisheries Act 1995, the Wildlife Act 1975, the Forest Act 1958, the Water Industry Act 1994, the Water Act 1989, the Marine Act 1988, the Port of Melbourne Authority Act 1958, or the Crown Land (Reserves) Act 1978.*
- *A use specified in an Incorporated plan in a schedule to this zone.*

Pursuant to the VCAT Order dated 19 May 2017, the proposed use of the land is to be categorised as a minor sport and recreation facility (lifesaving club), place of assembly (multi-purpose function space) and food and drink premises (café).

Items 1(b), (c) and (d) of the VCAT order dated 19 May 2017 associated with *Wertheimer v Bayside CC [2017] VCAT 726* state the following:

The proposed use/s of the land associated with permit application No. 5/2016/266/1 would not be uses by or on behalf of Bayside City Council as public land manager under clause 36.02-1 of the Bayside Planning Scheme.

If the use of the subject land is proposed for Life Saving Club (or equivalent), a planning permit for this use of the land would be required under clause 36.02-1 of the Bayside Planning Scheme.

If the use of the subject land is proposed for Retail or Food and Drink Premises (café or kiosk), a planning permit for this use of the land would be required under clause 36.02-1 of the Bayside Planning Scheme, unless it was demonstrated to be an ancillary use of the subject land.

The Tribunal has directed that the proposed use of the land as a minor sport and recreation facility and place of assembly do not meet the Section 1 criteria listed above and therefore a planning permit is required for these uses.

The proposed use of the land as a food and drink premises (café) falls under the broader definition of a retail premises as defined in Clause 74 under the Table to the zone. The Tribunal has directed that this proposed use does not fall within the Section 1 exemption of the Table to Clause 36.02-1 which requires the use to be conducted by or on behalf of a public land manager. As such, the proposed food and drink premises falls within a Section 2 use (permit required).

Assessment

In light of the direction by the Tribunal and the subsequent amended application circulated by the Applicant, Council has been invited to reconsider its decision having regard to the proposed land uses which were not part of the original application.

The amended application (as defined in the Town Planning and Urban Context Report prepared by Contour Town Planners dated August 2017 pages 21 & 22) identifies the following hours and patrons numbers associated with each use:

| <i>Use</i> | <i>Proposed Operating Hours</i> | <i>Maximum Patron Numbers</i> |
|----------------------------------------------------------------------------------------------|-----------------------------------------------------------------------|-------------------------------|
| <i>Lifesaving club (low season being April to October)</i> | <i>6am-12am, 7 days a week</i> | <i>24</i> |
| <i>Multi-purpose function space (low season being April to October)</i> | <i>7am-10pm Sunday to Thursday 7am-12am Friday & Saturday</i> | <i>134</i> |
| <i>Lifesaving club and multipurpose function space (High season being November to March)</i> | <i>6am-12am, 7 days a week</i> | <i>158</i> |
| <i>Café</i> | <i>7am-10pm Sunday to Thursday 7am -12am Friday and Saturday</i> | <i>60</i> |

The proposed land uses are consistent with the purpose of the Public Park and Recreation Zone (PPRZ) which seeks to recognise areas for public recreation and open space and to provide for commercial uses where appropriate. The uses are permitted within the zone and on the land.

It is important to note that the existing building is currently used for the purposes of a lifesaving club and the proposed lifesaving club redevelopment will continue to provide an essential community function which will complement the activities of the Dendy Beach foreshore. The lifesaving club will continue to provide beach patrolling services for Dendy Street Beach on weekends and public holidays from November to April and includes associated activities such as training facilities for its members.

It is intended that the multi-purpose function space will be primarily used by the surf lifesaving club for training purposes, however there is the opportunity for the space to be hired for external meetings and private events. This is generally consistent with the purpose of the PPRZ and will continue to create an active foreshore and use of the building year round.

The proposed café/kiosk is located within the southern end of the subject land and are separated from the lifesaving club and multipurpose room by an entry deck and terrace. The proposed café/kiosk offers a suitable service to the local community and visitors to the site and will encourage activation and vitality of the site.

Collectively, the proposed land uses are consistent with the relevant objectives of the Bayside Planning Scheme and will work to enhance the enjoyment of the foreshore by the wider Bayside and Melbourne Community without detracting from the environment, character or public enjoyment of the coast. The land uses appropriately align with the Dendy Street Beach Masterplan 2012 which 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.

The proposed uses will not detrimentally impact on the amenity of the surrounding area in light of the existing site context, number of patrons proposed and associated operating hours. The trading hours are acceptable as they do not extend beyond 12am and the separation created by the Esplanade from the site to nearby properties will alleviate amenity impacts for residents. Notwithstanding, Condition 3 is included as part of the recommendation to ensure noise emanating from the subject land complies with State Environment Protection Policy (Control of Music Noise from Public Premises) No. N-2, to the satisfaction of the Responsible Authority.

7.2. 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 Heritage Overlay Schedule 491 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.

The amended plans propose partial demolition and works to the existing bluestone heritage sea wall to facilitate the installation of a larger stormwater outlet in replacement of the existing stormwater outlet to appropriately manage existing stormwater outfall issues.

The amended plans show an alteration to the extent of demolition works as demonstrated in the proposed demolition plan (Drawing No. A0106). The demolition plan shows the inclusion of the demolition of the existing retaining wall (to the east of the public footpath and not the sea wall) to the north of the club as part of the works proposed. While arguably the demolition of the retaining wall would not trigger a permit under the Heritage Overlay, the applicant conservatively sought the inclusion of these works as part of the heritage consideration of the application to avoid any further misinterpretation of the extent of works proposed under the Heritage Overlay.

The proposed demolition of part of the retaining wall and existing promenade to the eastern side of the pedestrian walkway is required for the construction of the raingardens for stormwater management and is unlikely to have an adverse impact on the heritage significance or legibility of the bluestone sea wall which runs along the western side of the pedestrian walkway.

Importantly, to limit the extent of demolition to the heritage bluestone seawall, the amended plans seek the adjustment of the existing stormwater drain penetration in lieu of the separate stormwater pipe penetrations as previously proposed.

The Water Management Strategy Report prepared by Storm Consulting Pty Ltd Council date stamped 4 August 2017 offers further details pertaining to the construction works proposed.

The amended application proposes the retention of the raingarden and water tanks.

As per the previous recommendation associated with the original application, 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.

The previous recommendation provided the following assessment:

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.

The amended proposal offers an improved outcome to the previous scheme by reducing the stormwater penetrations to the bluestone sea wall. This will ensure that the heritage significance of the bluestone wall will remain largely unaffected by the extent of works proposed. Importantly, the amended plans indicate that the new opening will be finished with bluestone block work sill and edges to match existing and reinforced concrete lintel to match existing. Overall, the proposed works will be designed to match the existing and will be largely imperceptible.

The previous recommendation required the provision of a revised demolition plan which details the extent of demolition and methods to ensure the bluestone wall remains intact. The amended plans include specifications associated with the extent of demolition and replacement works. These notations are acceptable and the previous condition is no longer required. Detailed engineering drawings which demonstrate the reinstatement of the bluestone sea wall is required as a condition of approval.

The extent of works proposed are considered acceptable particularly given the existing stormwater drain will be removed and the existing wall will be reinstated.

It is noted the proposed decking to the upper forecourt is outside the Heritage Overlay boundaries and does not require planning permission.

In light of Council's previous recommendation to support the extent of demolition and reinstatement works proposed, the proposed amended application is considered appropriate and meets the objectives of the Heritage Overlay.

7.3. 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 amended application proposes the removal of 11 trees in lieu of the eight 8 as previously approved by Council. Trees 8, 34, 4, 2, have been included on the amended landscape plans prepared by Site Office and Council date stamped 7 August 2017 (refer to Attachment 2). Trees 33, 41, 50, 51, 52, 53, 54 and 55 were considered as part of the previous determination by Council.

The landscape plans have been updated to reflect the existing and proposed context of the site as some trees which require removal to accommodate the proposed development were not correctly identified on the previous landscape plans.

Tree 8 is located along the eastern boundary of the site to the south of the northernmost vehicular crossing. The tree is now listed to be removed following further assessments of the dimensions of the crossing and location of the shared pathway. The Arboricultural Report prepared by Arbor by Design dated 4 April 2017 lists this tree as a Coast Banksia (*Banksia integrifolia*) and a recommended value to be retained due to the health and structure of the tree. Council's Open Space Arborist has however supported the removal of this tree to accommodate the required upgrade to the carpark. Importantly, it has been confirmed that this tree should have been listed as a tree to be removed in the previous assessment due to the car park modification. Replacement planting as a condition of approval will work to alleviate any impacts as a result of the loss of this tree.

Tree 34 is also shown to be removed and is correctly listed on the plan as being proposed to be removed. It is noted the tree was previously identified on the proposed landscape plan however was not illustrated as removed. The landscape plan has been updated to correctly identify this. The proposed Arboricultural Report fails to make mention of Tree 34. A condition is recommended to amend the report to include this tree. Notwithstanding, Council's Open Space Arborist has supported their removal subject to the proposed planting as demonstrated in the proposed landscape plans.

Tree 42 known as a Giant Honey Myrtle (*Melaleuca armillaris*) as listed in the Arboricultural Report (Attachment 2) is now registered for removal. The Arboricultural Report indicates that the tree should be retained if possible due to the health and structure of the tree. This tree was not listed in the original documentation however is required to be removed in light of location of the proposed shared access way.

The removal of the above listed plans as demonstrated in the amended application are consistent with the relevant objectives of the Bayside Planning Scheme having regards to the protection of landscape character and native vegetation. The original recommended permit conditions are included in the revised recommendation which require the planting of indigenous flora consistent with the valued landscaped character of the area. Importantly, the extent of proposed landscaping will compensate for the removal of the trees under this application. Tree protection measures by way of recommended conditions have also been included to ensure the retained trees remain protected during construction and viable post construction of the development.

7.4. Car parking and traffic

Car parking requirement

Pursuant to clause 52.06-2 (Provision of car parking spaces), the number of car parking spaces required under clause 52.06-5 must be provided to the satisfaction of the responsible authority before a *new use commences*.

The proposed development falls under the land use categories of minor sports and recreation facility, place of assembly and food and drink premises under clause 74 of the Bayside Planning Scheme.

The land use term minor sports and recreation facility falls under the broader land use category of leisure and recreation. There is no specified car parking rate pursuant to clause 52.06-5 for either minor sports and recreation facility or leisure or recreation. Therefore, car parking must be to the *satisfaction of the Responsible Authority*.

Pursuant to clause 52.06-5, a place of assembly requires a statutory rate of 0.3 car spaces to each patron permitted and a food and drink premises required 4 spaces to each 100 square metres of net floor area.

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

the proposed development.

| Proposed Use | Quantity / Size | Statutory Parking Rate |
|---------------------------------------------------------|-------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Place of Assembly | 134 patrons | 40 spaces (0.3 spaces to each patron permitted). |
| Minor sports and recreation facility (life saving club) | 24 patrons | 7 spaces (0.3 spaces to each patron permitted recommended by applicant's traffic report). Note: The number of car spaces is to be to the satisfaction of the Responsible Authority. |
| Café (food and drink premises) | 149m ² | 5 spaces (4 spaces to each 100m ² leasable floor area). |
| Total car spaces required | | 52 |
| Total car spaces proposed | | 58 |

The amended plans propose no change to the original car parking component, layout or car space numbers of the application.

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 car parking spaces, a reduction of 11 car spaces from what currently exists.

The amended Traffic Engineering Assessment prepared by Traffix Group dated August 2017 confirms the car parking requirement, based on the following predicted peak demands for each use:

- Lifesaving Club operating with use of all facilities plus café is open = 52 spaces;
- A separate use in the multi-purpose function space and the Lifesaving Club with access to ground level facilities only plus café is open = 52 spaces;
- Either of the above two scenarios with the café closed = 47 spaces.

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

Whilst a planning permit is not required, the car parking provided for the proposed uses is deemed to be appropriate for the uses because:

- All car parking required for the place of assembly is provided within the site, minimising any impact on the surrounding residential streets. This is an appropriate outcome should the space be used for events and that they do not detrimentally impact residential streets.
- The car parking rate of 0.3 spaces per patron for the minor sports and recreation facility (lifesaving club) is considered to be an acceptable rate because the two land uses (being the minor sports and recreation facility and the place of assembly) are closely aligned in that they both involve the congregation of people to the land

for either entertainment, sporting or religious purposes. In addition, the multi-purpose function space (place of assembly) will be largely used in conjunction with the lifesaving club (minor sports and recreation space) for training purposes. In this instance applying the same car parking rate is justified.

- There are alternate modes of transport for patrons to visit the site, being the availability of on-site bicycle parking, Middle Brighton station (1km away), a variety of Bus routes along New Street).
- The amended car park layout makes provision for private bus parking to accommodate groups of patrons visiting the site, given the tourist attractions in the area.

Bicycle parking

Pursuant to clause 52.34-1 (Provision of bicycle facilities) a new use must not commence until the required bicycle facilities and associated signage has been provided.

In accordance with Tables 1, 2 and 3 of clause 52.34-3, the following spaces are required:

- 1 space per 4 employees for staff and 1 space to each 20 square metres of net floor area for visitors associated with a minor sports and recreation facility;
- 1 space to each 1,500 square metres of net floor area for staff and 2 plus 1 spaces to each 1,500 square metres of net floor area for visitors for the place of assembly; and
- 1 space to each 300 square metres of leasable floor area for staff and 1 space to each 500 squares metres of leasable floor area for visitors associated with the proposed food and drink premises.

The lifesaving club (minor sports and recreation facility) will not have any employees and accordingly there is no staff bicycle parking requirement. The net floor area of the club is to be approximately 600 square metres. The multi-purpose function space has a total net floor area of 350 square metres while the café (food and drink premises) will have a leasable floor area of approximately 149 square metres. The proposed land uses generate a requirement for 5 visitor bicycle spaces. A total of 8 double racks (16 in total) are provided to the south of the proposed car park adjacent to the proposed disabled parking spaces. These spaces exceeds the statutory requirement under clause 52.34-1.

Vehicle crossing works

The amended plans propose no further changes to the vehicle crossing works of the application. VicRoads have provided support for the amended application subject to conditions which are included as part of the recommendation.

Support Attachments

1. Site and Surrounds Imagery
2. Amended Application
3. Report submitted to the 20 December 2016 Planning and Amenity Committee meeting
4. Decision Plans submitted to the 20 December 2016 Planning and Amenity Committee meeting

As Chief Executive Officer, I hereby declare that the contents of this agenda relating to the closed meeting of the ordinary meeting of Council are deemed confidential and accordingly members of Council are reminded that the contents of the agenda are not to be disclosed to any other party.



Adrian Robb

Chief Executive Officer