

### St Kilda Triangle Planning Pathways – Revised November 2023

The purpose of this document is to outline and assess the possible planning pathways available under the Port Phillip Planning Scheme (**Planning Scheme**) in the event that Council determined to proceed with a live music led / performance venue development on the site (**Project**). It sets out and compares possible planning pathways, at a high level, that would facilitate the delivery of the Project on this site.

This advice is based on an assessment of the options set out in the *St Kilda Triangle Design Feasibility for a Live Music and Performance Venue* Report, August 2023 prepared by MGS Architects. (**2023 MGS Report**)

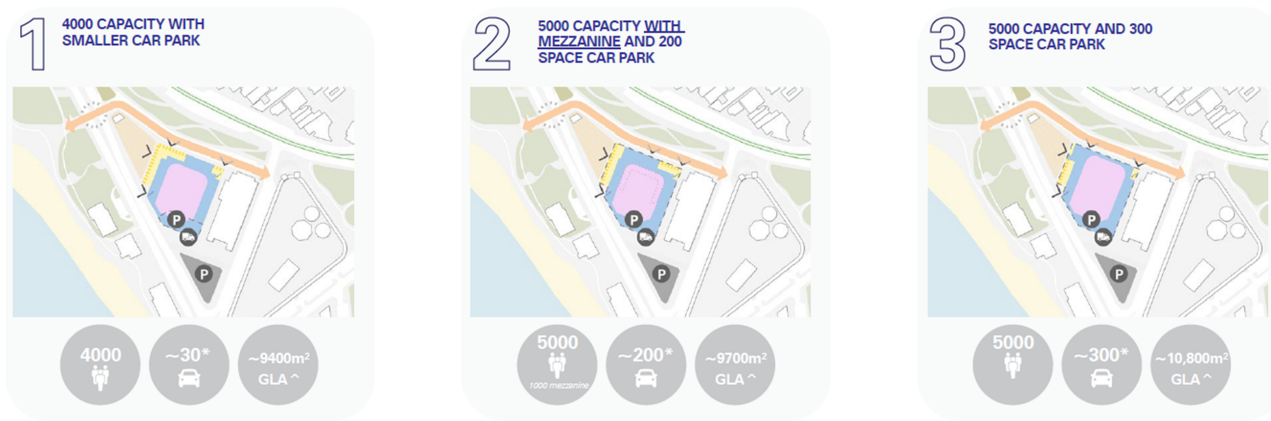
The following has been undertaken in providing this advice:

- The various options set out in the 2023 MGS Report are assessed against the existing planning controls in the Planning Scheme and the existing Approved Development Plan (2008).
- High level review of other planning pathways available based on consideration of matters such as community consultation and the statutory framework required to provide certainty to deliver the outcome and timing.
- Legal advice to ascertain the viability of the planning pathways presented and consider the pros and cons of each.

As outlined in the 2023 MGS Report, and further to a request by Council, the various options embody the spirit of the Masterplan 2016. It is not the scope of this planning advice to assess the various options against the Masterplan 2016, noting that the Masterplan 2016 is not referred to in the Port Phillip Planning Scheme.

The various options in the 2023 MGS Report are all variations of a similar proposal (key elements depicted below) and as such the planning pathways which have been investigated and the identified 'next steps' are relevant for each of the options.

Options from the 2023 MGS Report



**Legend**

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| <span style="color: purple;">■</span> Core venue     | <span style="color: blue;">■</span> Services and amenities | <span style="color: grey;">■</span> On-grade car park        |
| <span style="color: yellow;">■</span> Ancillary uses | <span style="color: green;">■</span> Landscape             | <span style="color: orange;">■</span> Activated public realm |

\*Refers to under-building parking. Temporary parking on future development site can be included in all options.

^ Gross Lettable Area (LFA) excludes basement areas

**Pathways investigated:**

- **Pathway 1:** Use the existing Planning Scheme controls (existing Special Use Zone – Schedule 3 (SUZ3) and Development Plan Overlay – Schedule 1 (DPO1)) **AND** the Approved Development Plan 2008
  - This pathway looked at whether a planning permit for the Project could be considered under the existing SUZ1 and DPO1 coupled with the existing Approved Development Plan 2008, thereby not requiring either any amendment to the Planning Scheme or an application for a new or modified Development Plan.
  - The Approved Development Plan was prepared under the provisions of the existing DPO1.
  - Under the SUZ1 and DPO1 controls, there are no 3<sup>rd</sup> party notification rights for a permit application and no 3<sup>rd</sup> party review rights in the event a permit is granted.
  - The Approved Development Plan 2008 was prepared by Citta Property Group for a substantially different development of the site which included the following elements namely, 18,000m<sup>2</sup> of open space, a gallery, recreation facilities (gym, adventure playground, dance studio, bowling), a cinema, a night club (3000 max patrons) eating and drinking venues, up to 1130 car parking spaces in basements, a hotel (approx. 70 rooms), entertainment spaces and retail.
  - Because it has been assessed that each of the various options for the Project are not “generally in accordance with” the Approved Development Plan 2008, this pathway is, in a practical sense. not available.
- **Pathway 2:** Use the existing Special Use Zone – Schedule 3 (SUZ3) and Development Plan Overlay – Schedule 1 (DPO1) BUT with a new Development Plan.
  - Council could proceed under the existing statutory frame as the DPO1 is quite general in its drafting.
  - This pathway, however, requires the preparation of a new development plan that seeks to: ensure that the future use and development of the land occurs in an integrated manner, provide certainty as to the scale and form of development of the land and provide a framework to achieve the purpose set out in Special Use Zone – Schedule 3.
  - Both the purposes of the SUZ3 and the decision guidelines of SUZ3 and DPO1 require a consideration of the consistency of the Project with the the *St Kilda Foreshore Urban Design Framework (2002)* as the underpinning strategic document. This is a very old document. However, the urban design framework sets out a series of objectives, strategies and key opportunities that still provide for an appropriate framework for the consideration of the St Kilda Triangle site and the project.
  - The existing DPO1 requires informal community consultation of any new Development Plan for 28 days prior to any decision by the Responsible Authority.
  - This pathway does not require a Planning Scheme Amendment. There is a requirement for any office component to be in association with another approved use under the SUZ4. Council officers think that this does not present any material difficulties going forward and even if there were a need to loosen the restriction on office as a separate land use, an amendment to the planning scheme at a later time could be facilitated in a manner that still maintained the integrity of the SUZ4 and the aims of the UDF.
  - Under this option a new Development Plan could be prepared by Council or a proponent.
- **Pathway 3:** Prepare a planning scheme amendment to introduce more tailored controls that better accommodate the preferred development option for the site.
  - Under this pathway, there would be a number of planning control options but, the preferred option should be guided by consideration of a more detailed concept design for the land, the preferred delivery arrangement, certainty for the outcome and timing.

- For the purposes of this analysis, two options are discussed under Pathway 3:
    - o **A)** a refresh of the drafting of the existing DPO1, SUZ3 and local policy
    - o **B)** a new Specific Control Overlay (SCO) and an associated Incorporated Document
  - These two options would require further strategic work to guide preparation of the amended and new planning controls and a consideration of the intent for the overall development of the site so as to identify a concept masterplan and/or design guidelines. Draft planning controls would then be prepared that reflect and facilitate the intent of the overall development of the site as illustrated in a concept masterplan and/or design guidelines. Either of these two options under Pathway 3 would provide a level of certainty to Council, the community, and the market on the preferred development outcomes.
  - A planning scheme amendment requires community consultation through the formal exhibition period. It also allows for independent review via either the standard planning panel process or potentially via the standing advisory committee for major projects.
- **Pathway 4:** Application made under Clause 53.22 – Significant Economic Development
    - This new clause in the Planning Scheme allows for an expedited pathway for applications for development that meet one of the categories for 'significant economic development' as set out within the clause.
    - Applications are made to the Minister for Planning and are assessed against the requirements under the clause which have the effect of overriding other requirements of the planning scheme. Notice of an application is not required, nor is there an avenue for review. Council would be involved in the assessment process as the proponent. However, for this pathway, because it is like a planning permit application, the detail of the proposal would need to be fully resolved before proceeding to make an application.  
This pathway does not require a Planning Scheme Amendment.
    - Under this option a planning application could be prepared by Council or a proponent. There are pros and cons (particularly in relation to certainty for the outcome, cost and resourcing, and timing) with each that should be explored further as the preferred option is refined.

#### Recommended Next Steps

- A preferred 'development option' for the Project should be refined. While that is taking place, a further review of Pathways 2, 3 and 4 (or any suitable variation of them) should be undertaken to understand the best way forward with a high level of certainty on the outcome for Council, the community, and the market being the key priority.

### Planning Review of existing provisions

The purpose of this table is to ascertain the ability for a preferred 'development option' to be considered under the existing Planning Scheme controls using the (existing) Approved Development Plan (2008). It focuses consideration on planning policy that directly relates to the St Kilda Triangle site.

| Control   | Assessment   |
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| <p><b>Policy</b></p> <p><b>CI 11.03-6L-01</b></p> | <p>This policy applies to the St Kilda Foreshore area, from Shakespeare Grove to north of Catani gardens (aligning with St Kilda Harbour) and includes the Triangle site.</p> <p>It includes general objectives and some that are specific to the Triangle site. The options explored generally align with the policy framework. Should the concept option be refined, regard will need to be given to the policy framework below to be consistent with existing policy.</p> <p>The strategies and objectives in clause 11.03-6L-01 are based on strategic work (<i>St Kilda Foreshore Urban Design Framework (2002) UDF</i>) that was introduced into the Planning Scheme in 2004, some 20 years ago. The UDF contemplated the retention and improvement of the Palace Entertainment Complex which stood on the site at time of the preparation of the UDF.</p> <p><b>General Objectives of the local policy includes:</b></p> <p><i>...To ensure an integrated approach to the revitalisation of the St Kilda Foreshore area, including any development of the Triangle site through the activity mix, built form and improvements to the public realm.</i></p> <p><b>Cultural heritage and activity mix objective</b> is to maintain and reinforce the unique cultural heritage and recreational importance of the St Kilda Foreshore area.</p> <p><b>Strategies</b> to this Objective include</p> <p><i>Support land use and development that contributes to the diverse character and reinforces the St Kilda Foreshore area as a key leisure and entertainment precinct.</i></p> <p><i>Encourage uses and facilities that reinforce the role of key activity destinations including St Kilda Pier, St Kilda Harbour, West Beach area and the Triangle site.</i></p> <p><i>Encourage the co-location of uses within defined activity nodes, including New public space at the Palais Theatre...</i></p> <p><b>Specific St Kilda Triangle site policy is set out below</b></p> |

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|  | <p><b>Objective</b></p> <p><i>To encourage the integrated renewal of the site for a variety of public spaces, and entertainment and cultural venues.</i></p> <p><b>Strategies</b></p> <p><i>Ensure that future use and development on the St Kilda Triangle site:</i></p> <ul style="list-style-type: none"> <li>• <i>Enhances local liveability.</i></li> <li>• <i>Creates a hub focused on the arts, entertainment and leisure.</i></li> <li>• <i>Provides a multipurpose community space.</i></li> <li>• <i>Includes limited commercial and retail land uses.</i></li> <li>• <i>Creates large areas of open space.</i></li> <li>• <i>Links Acland Street, Fitzroy Street and the foreshore through a highly pedestrianised environment.</i></li> <li>• <i>Establishes a key activity node within the St Kilda Foreshore area.</i></li> <li>• <i>Links new and existing buildings.</i></li> </ul> <p><i>Maintain the traditional cultural use of the site and allow for new contemporary leisure activities.</i></p> <p><i>Minimise noise transference through high quality facility design, landscaping and buffer zones.</i></p>  |
| <p><b>Zone</b> Special Use Zone – Schedule 3</p> | <p><b>Purpose</b></p> <p>The high-level Project options are consistent with the <b>Purpose</b> of the Zone in terms of public accessibility; complementary uses; views; height and siting. As the development of the Project options progresses, consistency with this purpose of the SUZ could be designed in; this includes protecting environmental factors of the Harbour and Foreshore; architectural design and view lines.</p> <p>Again, the strategies and objectives in the SUZ3 are based on strategic work (<i>St Kilda Foreshore Urban Design Framework (2002) UDF</i>) that was introduced into the Planning Scheme in 2004, some 20 years ago. The UDF contemplated the retention and improvement of the Palace Entertainment Complex which stood on the site at the preparation of the UDF.</p> <p>The UDF does not reflect the more contemporary nuanced outcomes for the site. The UDF is given substantial weight under the current SUZ3. For instance, the purpose of the SUZ3 is:</p> <p><i>To <b>implement</b> the Incorporated Document St Kilda Foreshore Urban Design Framework (2002), which envisages the integrated renewal of The Triangle Site to provide a variety of public spaces, and entertainment and cultural venues.</i></p> <p><i>To facilitate new buildings and complementary land uses which supports the continued viability of the Palais Theatre.</i></p> |

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|  | <p><i>To ensure the conservation and refurbishment of the Palais Theatre building and ensure that any new adjacent development is respectful of (whilst not replicating nor dominating) this significant heritage place.</i></p> <p><i>To ensure architectural and urban design outcomes associated with new development, complement and contribute to the established architectural themes of St Kilda, and the layered history and culture of the area.</i></p> <p><i>To maximise public accessibility and use of the land through the creation of versatile public space to support a variety of activities, with active edges and a high level of pedestrian connectivity to adjoining public spaces and destinations, in particular the Foreshore Reserve.</i></p> <p><i>To ensure that the height, siting and design of new development protects and enhances important views and vistas, including:</i></p> <ul style="list-style-type: none"> <li>• <i>Panoramic views of Port Phillip Bay and the horizon from The Upper Esplanade.</i></li> <li>• <i>Direct views of the Foreshore Reserve from the Upper Esplanade.</i></li> <li>• <i>Views to the Esplanade and St Kilda Hill from the Foreshore Promenade.</i></li> <li>• <i>Views towards landmark buildings and structures from the Upper Esplanade, and the Foreshore Promenade including the Palais, Luna Park, and Catani Arch.</i></li> </ul> <p><i>To encourage new development which creates new vistas to and from the Triangle Site.</i></p> <p><i>To ensure that the design of new buildings responds positively to their siting as 'buildings in space', ensuring roof forms which create visual interest when viewed from elevated public areas, and that all plant and equipment are internalised so as not conspicuous from public view.</i></p> <p><i>To protect the environmental values of the Harbour and Foreshore</i></p> |
|  | <p><b>Use</b></p> <p>Except for 'Office' use, the uses contemplated in the Options Report dated May 2023 are generally either Section 1 (as of right) or Section 2 (permit required) uses in the SUZ3.</p> <p>Office use is a Section 2 use on the condition that it is associated with or provides a direct service to a leisure or recreation related activity, or other approved use, within the zone. Office which is ancillary to any other approved use is not subject to this condition. Only a stand alone office use is subject to this condition. The condition is sufficiently broad to enable a consideration of a broad range of potential tenants provided that they are associated with the purpose and function of other permitted uses on the site.</p> <p>Page 16 of the Options Report contemplates office spaces for creatives. If one were to take a very narrow approach to the interpretation of the stated condition, this may potentially prohibit small office uses. However, it is considered that a purposive approach to the condition would not result in any unreasonable restrictions to the range of smaller office uses that could be facilitated that have a synergy with approved uses on the land.</p>   |

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|      | <p><b>Buildings and Works</b></p> <p>The SUZ3 states a planning permit is required for buildings &amp; works and decision guideline call up consistency with the Development Plan approved under DPO1 as a relevant consideration.</p>  |
| DPO1 | <p>Under the DPO (Clause 43.04-2), permits granted on the site must be “generally in accordance” with a development plan which is approved by the responsible authority. There is no provision allowing a permit to be granted that is not generally in accordance with the development plan.</p> <p>DPO1 requirements for a Development Plan include the need to specify, amongst other matters:</p> <ul style="list-style-type: none"> <li>• The proposed use and activity of each part of the land, including areas of open space accessible to the public (public areas).</li> <li>• Detailed Design Principles and Parameters for each part of the land, which will ensure integrated use and development within the zone.</li> <li>• A three-dimensional Building Envelope Plan detailing existing buildings and features on the land, the height and setback parameters of new buildings, location of public space and civic plazas, location of car parking provision and other services and facilities.</li> <li>• Shadow diagrams of existing and proposed conditions at 9.00 am, 11.00 am, 1.00 pm and 3.00 pm at 21 June.</li> <li>• An Access and Movement Plan.</li> <li>• A Landscape Concept Plan.</li> </ul> <p>Under the decision guidelines, in assessing a development plan the responsible authority must consider (among other matters) consistency with the Incorporated UDF namely the St Kilda Foreshore Urban Design Framework (2002), including but not limited to:</p> <ul style="list-style-type: none"> <li>• Retention, renewal and refurbishment of the Palais Theatre Building.</li> <li>• Private development and public works that support but do not detract from the viability of existing attractions and environmental assets.</li> <li>• Improved pedestrian and visual connections between the Triangle Site, the Foreshore and the Upper Esplanade.</li> <li>• Builds on the existing landscape, character and themes prevalent in the precinct.</li> <li>• The impact on existing view-lines to and from the Palais Theatre, Luna Park and important seascape views to and from the Upper Esplanade.</li> <li>• The appearance/treatment to the rear of the Palais Theatre Building.</li> <li>• The treatment of the forecourt space to the Palais Theatre to support improved pedestrian connection to the Upper Esplanade and access to the Triangle Precinct</li> <li>• The provision of a major public plaza and public spaces.</li> </ul> |



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| <p>Incorporated document</p>  | <p>Each of the SUZ3, DPO1 and 11.03-6 refer to the Incorporated Document <i>St Kilda Foreshore Urban Design Framework, 2002</i> (UDF).</p> <p>The UDF contains objectives, strategies, specific design principles and proposals for the St Kilda Triangle Site.</p> <p>The UDF provides insufficient guidance to assess a Development Plan modification or a new development plan application. It was also prepared at a time when the Palace Entertainment Complex was standing on the site.</p>  |
| <p>Approved Development Plan 2008 (DP) (approved under existing DPO1)</p> | <p>The 2008 Development Plan is a very prescriptive document that is heavy on detail. Because of the detail in the document, there will be less flexibility as to what can be regarded as being “generally in accordance” with the Development Plan. From review there appears to be significant differences between the approved Development Plan and the design scenarios in the Options Report such that it is unlikely that they would be ‘<i>generally in accordance with</i>’ the approved development plan.</p> <p>For example:</p> <ul style="list-style-type: none"> <li>• page 73 onwards of the DP covers land uses and gives an indicative location and size for each anticipated use. In the DP, place of assembly uses are anticipated, including night clubs with 3000-max patrons, as well as a cinema, exhibition space, and function space. The Options Report represents a departure from this and contemplates a live music venue with a capacity of between 4000-5000 people.</li> <li>• Page 72 specifies car parking provision rates for each of the anticipated uses. For a nightclub, the anticipated rate is 0.2 spaces per patron – for a 4000 patron venue, this would be 800 spaces. The Options Report contemplates significantly more patrons and less car spaces than this for the live music venue.</li> </ul> <p>The options appear to exceed the heights envisaged. The MGS 2008 options propose a music venue building with a proposed maximum building height of 20 AHD, and a lower level of 16 AHD. This exceeds the Building Envelope Plan 1 of the 2008 DP, which allocates part of the proposed area to a maximum RL of 23.00 and part to an RL of 11.2. (For the purposes of this assessment the reference to RL and AHD are comparable).</p> <p>Encroachment above building envelopes would potentially disrupt Views 2 ‘Upper Esplanade and Ribbon Garden’ and View 3 ‘Palace Footprint’ identified in the 2008 DP.</p> <p>Proposed basement car parking capacity is significantly reduced and would be single level only contained immediately below the proposed venue under all three options. This would not achieve the required rates for ‘Function’ or ‘Nightclub’ uses.</p> <p>The various options that comprise the proposal are not consistent with the Master Plan layout in the 2008 Development Plan, including:</p> |

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|  | <ul style="list-style-type: none"><li>• Alternative vehicle access provided off Jacka Boulevard directly to the underground car park contrary to the 2008 DP Master Plan layout.</li><li>• The location for the 'Nolan' building (Hotel) in the approved DP Building has been designed out in the MGS 2023 options and replaced with on grade parking. Nolan had a building envelope maximum height of RL 31.0.</li><li>• Proposed Landscape plan would be significantly different from DP 2008 master plan layout, removing the 'yellow brick road' walkway and retaining the slopes.</li></ul> |
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**Summary findings**

The options set out in the MGS document are not “generally in accordance” with the Development Plan.

**Considered planning process pathways – Viability and Pros and Cons**

The following table provides commentary on the viability of each of the 4 planning pathways as well as the pros and cons of each. The table below informs the recommended next steps.

| Pathway 1: Existing Planning Scheme controls AND the approved Development Plan 2008   | Commentary   |
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| <p>Special Use Zone – Schedule 3</p> <p>Development Plan Overlay – Schedule 1</p> <p>St Kilda Triangle Development Plan approved August 2008.</p> <p><b><u>NOT A VIABLE PATHWAY</u></b></p>   | <p>The SUZ3 and the DPO1 (assisted by a local policy at clause 22.09) together with the existing Approved 2008 Development Plan work “hand in glove” with each other to promote the objects of the <i>Incorporated Document St Kilda Foreshore Urban Design Framework (2002)</i>.</p> <p>This pathway is not viable as the existing Approved 2008 Development Plan is a very prescriptive document with a set vision in mind. Under the DPO (Clause 43.04-2), permits granted on the site must be “generally in accordance” with the Development Plan.</p> <p>The options set out in the MGS document are not “generally in accordance” with the Development Plan. (refer to previous table).</p> <p>There is no provision allowing a permit to be granted that is not generally in accordance with the Approved 2008 development plan.</p>  |
| Pathway 2: Existing Planning Scheme controls and a NEW Development Plan   | Commentary   |
| <p>Special Use Zone – Schedule 3</p> <p>Development Plan Overlay – Schedule 1 (DPO1)</p> <p>It requires the preparation of a Development Plan under the existing controls in the Planning Scheme.</p> <p>It does not require a Planning Scheme amendment.</p> <p><b><u>VIABILITY SUBJECT TO ABILITY TO MEET CURRENT PLANNING CONTROLS</u></b></p> | <p>Under the existing SUZ3 and DPO1 controls in the Port Phillip Planning Scheme a new Development Plan (under DPO1) would need to be prepared prior to the granting of a permit (under SUZ3) to use or subdivide land, construct a building or construct or carry out works (excluding temporary use and development – no longer than 12 months).</p> <p>The SUZ 4 refers to consistency with an approved Development Plan and the St Kilda Foreshore Urban Design Framework (2002) (an Incorporated Document) as decision guidelines.</p> <p>It is noted that Office use is a Section 2 use on the condition that it is associated with or provides a direct service to a leisure or recreation related activity, or other approved use, within the zone. Page 16 of the Options Report contemplates office spaces for creatives. This would potentially be a prohibited use unless they are assessed as being associated with the leisure, recreation or other approved use in the SUZ4.</p> <p>DPO1 does provide for community engagement as it requires public notification (no less than 28 days) when preparing a Development Plan. There are however no statutory 3<sup>rd</sup> party rights in assessing a Development Plan.</p> <p>Under the DPO a planning permit that is generally in accordance with a development plan is not subject to 3<sup>rd</sup> party participation or review rights.</p> |

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|  | <p>Council can conceivably proceed under the existing statutory framework as the DPO1 is quite general in its drafting. However, a high-level review of the 'Options' against the existing DPO1 and the incorporated St Kilda Foreshore UDF reveals some specific elements may not be addressed within the 'Development Options' that may need to be resolved in order for this to become a viable pathway.</p> <p>There are pros and cons (set out below) which need to be considered further as the preferred 'development option' is refined.</p> <p><b>Pros</b></p> <ul style="list-style-type: none"> <li>• It does not require a Planning Scheme amendment</li> <li>• DPO1 does provide for community engagement as it requires public notification (no less than 28 days) when preparing a Development Plan.</li> <li>• Approval of a Development Plan only requires Council approval, unlike an amendment which requires approval from the Minister for Planning.</li> <li>• A Development Plan can be amended prior to the issue of a permit, as long as it is in accordance with the DPO (to the satisfaction of Council).</li> </ul> <p><b>Cons</b></p> <ul style="list-style-type: none"> <li>• The existing controls do not provide sufficient guidance to deliver the preferred outcomes with certainty. The DPO1 wording is quite general in its drafting.</li> <li>• The decision guidelines refer to sets out a suit of decision guidelines that must be considered, including: <i>Consistency with the Incorporated Document St Kilda Foreshore Urban Design Framework (2002)</i>. This is an out-of-date document that does not provide sufficient strategic justification for a development plan. Since the introduction of the existing controls into the Planning Scheme in 2004, Council has prepared several additional strategies to guide the development of the Site. The usefulness of the document for decision making could be contested.</li> <li>• Ignores the commitments made to the community in the Masterplan (2016) process.</li> <li>• Additional strategic work is required to provide guidance and certainty for the future development of the site. The statutory framework to assess a Development Plan would need to be within the provisions of the Planning and Environment Act, ie through the Planning Scheme. Therefore, the additional provisions should be introduced into the Planning Scheme but this would trigger the need for a planning scheme amendment. If a planning scheme amendment was required, it may be better to consider either one of the two options under Pathway 3.</li> <li>• The community has non - statutory input into the development plan – no 3<sup>rd</sup> party rights.</li> <li>• There are no 3<sup>rd</sup> party review rights to planning permit application prepared generally in accordance with the Development Plan.</li> </ul> |
| <b>Pathway 3: Planning Scheme Amendment (PSA)</b>  | <b>Commentary</b>   |
| Prepare a planning scheme amendment to introduce more tailored controls that reflect the preferred | An amendment would introduce more tailored controls into the SUZ3 and DPO1 and the local policy to reflect the preferred development outcomes.  |

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| <p>development outcomes for the site. This could include (but is not an exhaustive list):</p> <p>a) Council could prepare a planning scheme amendment which refreshes both SUZ3, DPO1 and the local policy to give statutory recognition of the preferred option (once further developed).</p> | <p>Council could prepare a planning scheme amendment which refreshes both SUZ3, DPO1 and the local policy to give statutory recognition of the preferred development option (once further developed). It could explore ways of providing for limited third-party participation in the process of approving a development plan as proposed by Amendment C106 in 2012 (refer to background information below).</p> <p>The content of a Planning Scheme Amendment would need to be investigated as the preferred development option is refined.</p> <p>There are pros and cons (set out below) which need to be considered further as the preferred 'development option' is refined.</p> <p><b>Pros</b></p> <ul style="list-style-type: none"> <li>• Provide more certainty to Council, the community and the market.</li> <li>• Once the amendment is approved the development, in its entirety can proceed with a higher level of certainty. Some community participation albeit in an informal sense can be provided for through the drafting of the planning controls.</li> <li>• Refreshing SUZ3, DPO1 and the local policy would give statutory recognition of a key strategic guiding document for the approval of a development plan such as concept masterplan or design guidelines.</li> <li>• The amendment process coupled with the independent panel review provides a transparent process and procedural fairness to allow community to be heard.</li> <li>• There is some flexibility with using a Development Plan under a refreshed DPO1 as the provisions could ensure that there is sufficient flexibility in the process to respond to market requirements.</li> </ul> <p><b>Cons</b></p> <ul style="list-style-type: none"> <li>• The planning scheme amendment process includes a formal exhibition phase of community and stakeholder engagement.</li> <li>• A amendment requires the initial authorisation of and then approval by the Minister for Planning, not just Council.</li> <li>• An Amendment process has a timeframe of around 18 months, after further strategic work had been completed including preparation of design guidelines, traffic analysis, and assessment of environmental considerations.</li> <li>• In addition to the planning scheme amendment process, there are two subsequent processes required through the preparation and approval of a development plan, and a planning permit process.</li> <li>• There are no 3<sup>rd</sup> party review rights to planning permit application prepared generally in accordance with the Development Plan.</li> </ul> |
| <p>b) Council could prepare a planning scheme amendment that introduces a new Specific Control Overlay (SCO) and accompanying Incorporated Document that provides detailed guidance to facilitate use and development.</p>   | <p>The purpose of a Specific Control Overlay is to apply specific controls to achieve a particular land use and development outcome in extraordinary circumstances. It allows for land to be used or developed in accordance with a specific control contained in an incorporated document. The incorporated document could be the actual permission to undertake the development and could include detailed plans and conditions that would negate the need for a separate planning permit application process. Alternatively, it can provide for detailed plans to be prepared subsequently. Like the Development Plan Overlay, this option does not allow for formal notice requirements and third-party review rights however informal rights can be built into the provisions.</p>  |

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|   | <p><b>Pros</b></p> <ul style="list-style-type: none"> <li>• Provides certainty about the nature of the use and development to Council, the community and the market.</li> <li>• Depending on drafting of the Incorporated Document, it can provide some flexibility in the level of detail initially provided for in the incorporated document and can require detailed plans to be prepared later down the track. Once the amendment is approved, the development, in its entirety, can proceed with certainty with (depending on the drafting of the incorporated document) no need for a further planning permit.</li> <li>• Use of the SCO and new Incorporated Document would give statutory recognition of any key strategic guiding document prepared to guide development of the site.</li> <li>• The PSA process with independent panel review provides a transparent process and procedural fairness to allow community to be heard.</li> <li>• A subsequent planning permit process is not required.</li> </ul> <p><b>Cons</b></p> <ul style="list-style-type: none"> <li>• The planning scheme amendment process includes a formal Exhibition phase of community and stakeholder engagement.</li> <li>• An Amendment process has a timeframe of around 18months.</li> <li>• A PSA requires the approval of the Minister for Planning, not just Council.</li> <li>• There is limited flexibility with the ability to make changes to an incorporated document once approved. This means changes to the incorporated document (if ever thought of be necessary) may trigger the need for a subsequent planning scheme amendment.</li> <li>• There are no 3<sup>rd</sup> party review rights associated with an Incorporated Document.</li> </ul> |
| <p><b>Pathway 4:</b> Application made under Clause 53.22 – Significant Economic Development</p> | <p>Under this new clause, a planning permit application may be lodged directly with the Minister for Planning under the State Government's Development Facilitation Program (DFP Program), to develop the site, without the need to alter the existing planning controls.</p> <p>An application made under this clause is exempt from review rights.</p> <p>To be eligible, a project must be able to demonstrate that it has investment certainty or capacity to secure funding and meet the other criteria of the DFP Program.</p> <p><b>Pros</b></p> <ul style="list-style-type: none"> <li>• Does not require a planning scheme amendment process.</li> <li>• Application could be made by a proponent or Council.</li> </ul> <p><b>Cons</b></p> <ul style="list-style-type: none"> <li>• Assessment and approval by the Minister for Planning. While the role of Council is likely to be as the proponent, it is less clear if there would be any opportunity for the community to participate.</li> <li>• Minimal certainty for Council and the community regarding the final development outcome as it is in the hands of the Minister as responsible authority.</li> </ul>   |

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|  | <ul style="list-style-type: none"> <li>• There are no 3rd party review rights.</li> </ul> |
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## BACKGROUND INFORMATION

### Existing Planning Controls and Policy:

The Key planning controls on the site are Special Use Zone, Schedule 3 (SUZ3) and Development Plan Overlay 1 (DPO1), along with the local policy at 22.09. These controls all make reference to the *St Kilda Foreshore Urban Design Framework 2002*. These controls remain unchanged since they were introduced into the Port Phillip Planning Scheme through Amendment C036 in 2004.

Broadly speaking, the SUZ3 requires use to be consistent with the 2002 framework and the DPO1 requires any development plan to be consistent with key initiatives identified in the 2002 framework.

The DPO1 requires that a development plan be prepared for the site, and that subsequent planning permits must be generally in accordance with the approved development plan. It also provides for a number of requirements that an approved development plan must specify and include, alongside requirements for advertising and notification of any proposed development plan.

### St Kilda Triangle Framework 2012 and Amendment C106

On 28 August 2012, Council adopted the St Kilda Triangle 2012 (2012 Framework). It was proposed to be introduced into the planning scheme via amendment C106 (Amendment C106). Amendment C106 was prepared around 2012-13, however, Council did not pursue this Amendment any further and it lapsed. Accordingly, the 2012 Framework has not been introduced into the Scheme since it was adopted by Council.

Amendment C106 proposed to amend local policy, provisions in the SUZ3, replace DPO1 with a Design and Development Overlay (DDO24), and incorporate the Framework (2012) into the Scheme.

### St Kilda Triangle Masterplan 2016

The preparation and approval of the Masterplan, alongside the approval of a business case, was undertaken during Stage 2 of Council's Roadmap for Co-Design, being 'Collaborative Design'. The Masterplan derived from comprehensive community and stakeholder engagement in 2015 and background studies on matters such as car parking, transport and access, soil and groundwater contamination, view lines and a preliminary business case.

The Masterplan process involved an extensive, deliberate community engagement process in 2015 and ultimately was well supported by community. There was community expectation around delivery of the elements in the masterplan.

Considerable time has now passed since the introduction of the existing planning controls (SUZ3 and DPO1), which reference the 2002 UD Framework, and while Council has prepared a number of additional strategies (above Framework and Masterplan) to guide the development of the Site, they have not been incorporated into the planning scheme.