

14.1 PRESTON MARKET**Author:** Senior Planner**Reviewed By:** General Manager City Sustainability and Strategy

PURPOSE

The purpose of this report is to provide a progress update on the community engagement currently underway to inform the review of planning controls and future opportunities at Preston Market. The report also outlines the findings of a heritage study prepared by independent consultants for Council.

EXECUTIVE SUMMARYCommunity Engagement

Council is currently working in partnership with the Victorian Planning Authority (VPA) to review the planning controls and future opportunities for the Preston Market site. Community engagement is an important part of informing this review.

The first phase of the community engagement was recently concluded. The results have been compiled by an independent consultant and are planned for public release on 22 May by the VPA. Review of Planning Controls - The Community Engagement Findings Report - Phase One is attached for Council to note **(Appendix A)**.

The second phase of the community engagement has commenced and is expected to run until around mid-July. This phase includes sharing the community engagement summary with the wider community and seeking feedback on the key elements that were identified. A community reference group (CRG) has also been selected and over the next three months will be asked to explore issues and opportunities in more depth and provide feedback. The CRG will also support the development of a community vision for the Preston Market site.

The feedback from the community, along with advice on a range of technical issues including drainage, transport, planning, safety, waste management, community development will be used to develop recommendations for planning controls and other opportunities to support the market to thrive into the future. The draft report with proposed recommendations is expected to be shared with Council in late 2018.

Issues

Several principles underpin and guide Council's considerations of the future of the Market. These include:

- That Council is committed to seeing the market thrive into the future;
- That the engagement process for the review of planning controls is extensive and open to ideas;
- That the market needs to remain accessible to all traders and the community during and post construction of any development; and
- To ensure that Council's objectives are met in response to accessibility, environmental sustainability and improved connections to wider Preston Central.

Development of the market site has been a highly contested community issue for a long time. There are two main issues: a perception that the market is at risk and could be lost (demolished or cease to operate); and a risk that overdevelopment on other parts of the site would impact the viability or attractiveness of the market, and is therefore a threat.

It is important to note that Officers are not aware of any proposal by the owners of the Preston Market site to stop operating the market, although clearly this is a possibility. The site is privately owned and under private management, so the owner would have this choice, but it is not necessarily in the owners best interests - community goodwill associated with features like the market is often highly valued by developers.

Council has advocated for the market to thrive into the future for a long time, including advocating for the incorporated plan to be reviewed, which is currently underway as part of the review of planning controls and future opportunities in partnership with the VPA.

Heritage

Council has explored (and continues to explore) its options to prevent risk of the market being lost or impacted adversely by development on the site and recently this has included asking the Minister for Planning to apply heritage protection on two occasions, and additional further testing as to whether there is any meaningful protection available through heritage controls by seeking expert advice in the form of a Heritage Study, testing that through a Peer Review and further indepth testing by seeking legal advice from a Queen's Counsel (QC). The Heritage Study is in two volumes, Volume 1 summarises the history and community connections and Volume 2 provides is a technical report that includes assessment of Significance

The expert heritage advice has explored whether a heritage overlay could be applied to the Preston Market. There are two elements of heritage: social fabric, and built form, and a connection needs to be established between the two.

All the advice has concluded that the site has cultural value, thus social significance. However, the advice has varied in regards to whether a sufficient case has been made for the connection of the social significance to elements of the built form. In summary:

- The Heritage Study (Volume 2: significance) advised that the market has local significance and also that further exploration be done on the potential of state significance relating to space frame technology.
- The Peer Review was not confident that the built form could be meaningfully protected by a heritage overlay and raised a number of questions for further exploration.
- The Legal Advice advised that the connection to built form has not been made sufficiently to confidently make a case. It described that a heritage overlay had some merit on the grounds of built form however outlined that further work would be needed before Council could make a decision as to whether they should pursue this course.

The Legal Advice also clearly articulates that even if a case can be made for the application of heritage controls, a heritage overlay does not regulate the use of the land and cannot protect a use into the future (and thus require the use of the site as a market in perpetuity). What this means is that a heritage overlay, even if it were successful, would not achieve the primary goal of ensuring the market continues to operate.

On balance, Officers conclude that seeking a heritage overlay or interim heritage protection at this point would not be likely to succeed, and nor would it provide meaningful protection.

Despite this, the Heritage Study (both volumes) articulates very valuable analysis of the social value of the site and the attributes of the market built form that contributes to this (such as the layout and open air feel).

There are other strategies that Council can consider to pursue protections of important attributes. These include seeking to protect the attributes via the incorporated plan, or a design and development overlay, for example. The Heritage Study and Legal Advice have both identified the Incorporated Plan as tool that could be used to consider this.

If Council resolves to seek heritage protection at this point in time, it would require commitment of time and resources, without guarantee of success, and it also brings risks to other work in progress, including the current review of planning controls.

On balance, Officers are recommending that Council not pursue the application of heritage controls. Instead, Officers recommend referring the heritage study and technical reports on the same topics to the VPA and requesting that it be considered in an integrated way as part of the current review of planning controls.

In regards to communication with stakeholders, the owners of the market, the VPA and the community, Officers recommend releasing the heritage reports in full including the research report (Heritage Study Volume 1: history and community connections, **Appendix B**), and the technical reports (Heritage Study Volume 2: significance **Appendix C**) and the Peer Review (**Appendix D**). While it is not usual practice to release technical advice of this nature to the public, given the community interest, officers advise that there is no particular risk associated with releasing these, although they are likely to prompt a wide range of questions due to their complex nature.

Council Resolution

That:

- (1) Council reiterates Council's commitment to working in partnership with the VPA to review the planning controls and future opportunities and to engage with the community, key stakeholders and the owners of the Preston Market as an important part of this review.
- (2) Council notes the community feedback received to date received through the Community Engagement Findings Report – Phase One. (**Appendix A**).
- (3) Council notes the community engagement planned in Phase Two of the review of planning controls and future opportunities.
- (4) Council notes the rich social heritage and importance of the market to the community, and reiterates Council's commitment to working to preserve the long term viability of the market.
- (5) Council resolves not to seek approval from the Minister of Planning to apply heritage controls (whether interim or permanent) to the market site at this time.
- (6) Council request that the CEO write to the VPA to request that the Heritage Study and associated technical reports be considered in an integrated way as part of the current review of planning controls.
- (7) Council release heritage reports in full including the research report (Heritage Study Volume 1: history and community connections, **Appendix B**), and the technical reports (Heritage Study Volume 2: significance **Appendix C**) and the Peer Review (**Appendix D**) to the community on 22 May 2018.

- (8) Council request that Council Officers meet with site owners representatives to discuss the heritage reports and highlight Council's view of the importance of the market to the municipality and Melbourne more generally.
- (9) Council resolves that this Council report becomes public and that it releases all **Appendix A, B, C and D**
- (10) Council Immediately releases the Council resolution; and
- (11) The timing of the release of **Appendix A** to be done in consultation with the VPA.

BACKGROUND / KEY INFORMATION

Preston as a strategic location

Preston is in the midst of significant population growth and change and is experiencing substantial development pressure. Indeed, the population of the Preston Central Structure Plan area increases from 8,059 in 2016 to a forecast population of 17,350 in 2026, an increase of 9,291 persons and a more than doubling of the current population in 10 years. Preston Central:

- Is Darebin's largest activity centre, and performs a northern metropolitan regional role as a focus for community activity, services, housing and investment;
- Has a strategic location, just 8kms north of the city with excellent public transport links and services;
- Is subject to significant State Government investment in the coming years with the Bell Street Level Crossing Removal and station precinct redevelopment and the opening of the new Preston High School in 2019;
- Includes Council's largest land holdings – 3 ha – located in the heart of Central Preston, which creates an opportunity for Council to significantly contribute to development momentum should it wish to, and catalyse the renewal and place making process through its own land assets and set new benchmarks for urban design outcomes; and
- Is currently under-performing against a range of metrics for large activity centres. Stagnant employment and retail shop front vacancies are one such measure.

The Preston Activity Centre is forecast to continue to grow as a destination for new residents, businesses and visitors and the Planning settings for the area support this as identified in Plan Melbourne and local planning policy. The Preston community profile will continue to change as new communities and groups move to the area.

The Preston Market site is a significant strategic redevelopment site in the Central Preston Activity Centre. The Market is much loved by Council and the community, with the ongoing role and function of the Preston Market seen as an essential and major employment hub, a tourist destination and a community meeting space in the Central Preston Activity Centre.

History of Preston Market

The Preston Market site is approximately 4.6 hectares, bounded by Murray Road in the north, Cramer Street to the south, the rear of the High Street buildings to the east and the Preston Station car park to the west. Preston Market is located at the heart of site and is a loved local destination for people to buy their groceries or meet socially.

The Preston Market first opened in 1970 on the former Broadhurst Tannery. In 2004 the property was purchased by Salta properties, from the previous owners Centro MCS. The site was then rezoned from the Business 1 Zone to a Priority Development Zone Schedule 1 (PDZ1) in June 2007 as part of the Preston Central Structure Plan implementation.

Land within the site is predominately owned by Salta Properties and Medich Corporation, however there is another smaller landholder that owns several small parcels within the site (see map below – Ownership and Easements of the Preston Market site).

Ownership and Easements of the Preston Market site

Note that easements are shown within the red dashed lines.



	Darebin City Council
	Preston Market Development Group
	Various ownership
	Easements
	VicTrack

Preston Market – current controls

After advocacy from Council and the community to update the incorporated plan, in July 2017, the Minister for Planning, requested that the Victorian Planning Authority (VPA) review the current planning controls that apply across the overall Preston Market site, designating it as a strategic development site of state significance.

In doing so, the Minister has designated the VPA as the Planning Authority for the site. This means that the VPA is responsible for preparing amendments for the Minister of Planning that alter the planning scheme and controls that apply to the site. However, Council is still the Responsible Authority for the site, meaning that it has the authority to consider land use and development planning permit applications under existing controls.

In August 2017 the Minister also introduced interim height controls which apply a maximum mandatory height control of 9 metres to the existing footprint of the Preston Market site on an interim basis until 30 June 2019. This means that whilst the VPA review is being undertaken, the interim height controls remain in place and afford strong protections for the market (although not demolition controls). Elsewhere on the site height controls are expressed as preferred heights of up to 10 storeys. Notably the recent approval from VCAT has allowed three residential towers including a 14 storey residential apartment.

The main pedestrian walkways through the Market are carriageway easements (in favour of Council) on title at ground level that run the full width from building to building. These carriageway easements are intended to retain pedestrian access and restrict development for a height of up to 3 – 4 metres. (Note: the easements do not restrict air right entitlements).

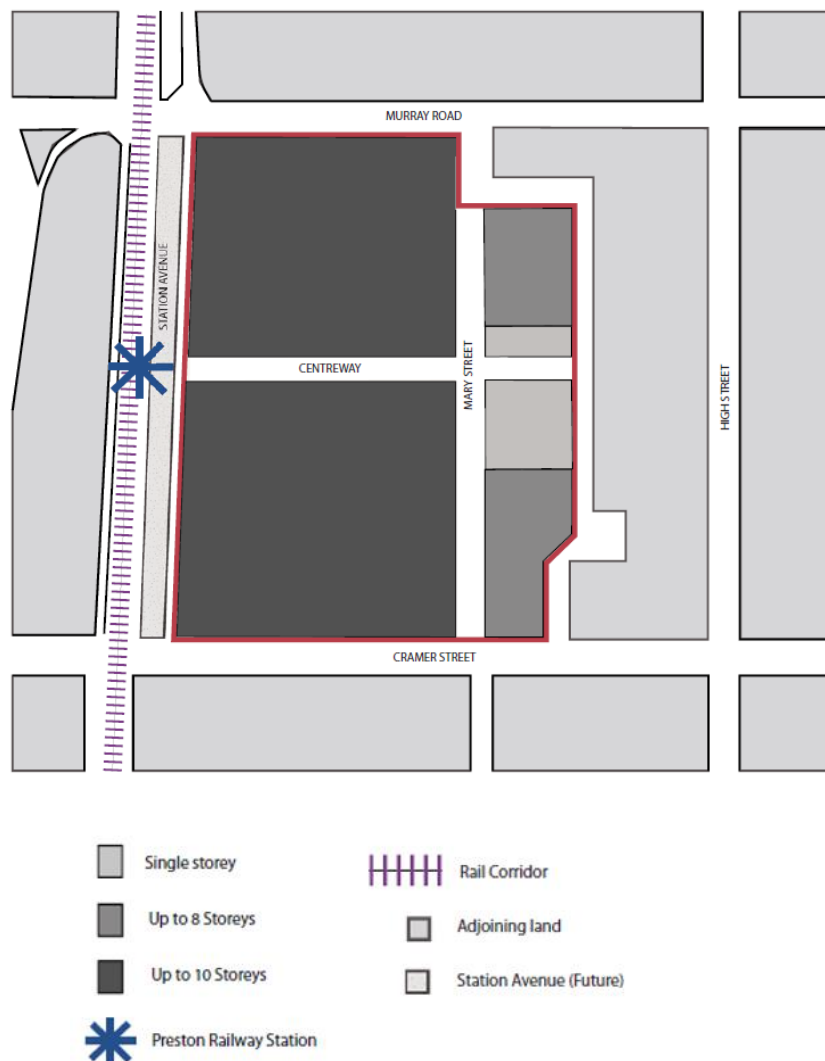
The site is included in the Priority Development Zone Schedule 1 (PDZ1) under the Darebin Planning Scheme and states the following objectives:

- To implement the use and development objectives and design principles of the Preston Market Incorporated Plan (2007).
- To encourage intensive development and use of the land for retail, residential, office, entertainment, community and civic activity.
- To encourage high quality urban design that is responsive to the site's environs, improves local accessibility and permeability through the site, and provides active edges throughout the site.
- To provide opportunities for sustainable travel and increased use of public transport.

Although the PDZ1 does not include maximum height limits, except over the market buildings, guidance on preferred building heights are achieved through the *Preston Market Incorporated Plan*. The *Preston Market Incorporated Plan* provides the principles that need to be applied to any land use and development proposal for the site.

Key elements of the existing Incorporated Plan include:

- A 10 storey preferred height limit over most of the site, four storeys at street frontage and single storey preferred at the intersection of Mary Street and Centreway;
- Enhancement of the traditional retailing style, openness, informality and ambience that is associated with the existing fresh food market;
- Mixed commercial land uses at ground level with high density residential development above, including provision for affordable housing;
- Two internal market plazas as focal points within the market;
- A multi modal transport interchange with enhanced pedestrian access to the market site;
- Open space at the train station, "Station Square" with an area of approximately 500 square metres;
- Support of active transport, particularly safe and well located pedestrian thoroughfares and connections;
- Promotion of active edges along Murray Road, Station Avenue and Cramer Street; and
- Office, leisure and entertainment uses at the upper levels of development only, except in Murray Street, Cramer Street and Station Avenue.

Preston Market – Preferred Building Heights – Preston Market Incorporated Plan 2007Current planning permits at the Preston Market

In May 2016 a planning permit was issued titled 'Stage 1A -Refurbishment of existing Market that allows the refurbishment of the existing market'. This was for cosmetic changes including minor additions and renovation works including the replacement of roof structures, installation of solar panels, demolition works, landscape improvements and new shop fit outs including an internal signage make over. These works are underway and the issue of this permit has been generally well supported.

Preston Market –planning control decisions – history

The Preston Market is already recognised in the Darebin Planning Scheme as a site of significance and its retention and enhancement is a key consideration central to the redevelopment and transformation of the broader Preston Central area as forecast through the Preston Central Structure Plan. This means the starting point to any relevant planning application or strategic review of the Preston Central area places the Preston Market as the starting point for any change that may impact this land use activity. The current Preston Central Structure Plan, Priority Development Zone and Incorporated Plan for the Preston Market requires considerations that demonstrates the market will be in a position of net benefit resulting from any decision Council makes that may impact the Preston Market.

The goal of the Preston Market being supported as ongoing land use activity in Preston have been consistent through all recent planning work and decisions made by Council, dating back to the introduction of the current planning controls in 2006/2007 Priority Development Panel review and implementation of the Preston Central Structure Plan. The Panel report recognises both Council's and the community's appreciation of the importance of the market with this review process forming a guide to the introduction of planning controls that forecast and supported the complete redevelopment of the Preston Site.

The introduction of the Priority Development Zone and Preston Market Incorporated Plan (Incorporated Plan) recognised that the site offers a significant urban renewal opportunity that with a retained fresh food market would contribute to the positive transformation of central Preston. The Panel report introducing the planning controls highlighted that the long term future of the market relies upon being supported by significant new residential development in Preston. The report recognises changing demographics, the need for more affordable and diverse housing were pivotal to supporting a strong and vibrant market. Preston Central in 2007 was dominated by essentially family housing and lacked housing diversity and characterised a relatively static population. In lay terms the characteristic of large single detached homes and limited housing diversity meant the immediate catchment surrounding the Preston Market would not grow unless there were more diverse housing opportunities provided.

The Incorporated Plan and 2007 structure plan aimed to address this requirement and ensure development opportunities were facilitated and like many of the great fresh food markets around the world, the vision would place Preston Market as part of a vibrant mixed use hub with diverse residential living opportunities. With a ready access to increased population within walking distance of the market its long term future would be supported and enhanced.

Partnership with the Victorian Planning Authority

The VPA and City of Darebin are working as partners to undertake a review of the planning control and opportunities at Preston Market. The review aims to support the operation of the market as an inclusive, accessible and vibrant hub for the community, visitors and workers, along with providing for a new neighbourhood in the future.

It's currently expected that this review will be completed towards the end 2018 which gives time for thorough community engagement. Together the VPA and Council are committed to meaningfully engaging with community members about this much-loved community asset.

The community engagement is being undertaken over three phases to seek community feedback to create a community vision and to inform the preparation of planning controls which balance the need to preserve the Preston Market as a vibrant hub with providing for a new neighbourhood.

At the end of each phase the community and stakeholder engagement findings will be shared with Council and the community. Phase one of the community engagement has recently finished and Phase two is about to commence.

Community engagement - next steps

The feedback from the community, along with advice on a range of technical issues including drainage, transport, planning, public realm, safety, waste management, community development will be used to develop recommendations for planning controls and other guidelines that retain the market and help it thrive into the future. The draft report with draft recommendations will be shared with Council later in 2018.

Technical advice and social and heritage study

Over the years, Council has sought technical advice on a range of topics to inform its work to support the Preston Market.

A letter to the Planning Minister, seeking interim heritage controls and the Ministers' support for the continuation and retention of the fresh food market on the site was sent in May 2015.

The Minister chose not to intervene and in his response advised that:

- He does not have the authority to require a particular use to continue on a site and encouraged Council to work collaboratively with the owners of the site to ensure the ongoing operation of the market; and
- Any request for application of heritage controls require supporting documentation, namely a heritage study undertaken by a qualified consultant.

At its meeting on 20 July 2015, the following General Business item was resolved:

That Council:

Receive a report at the first council meeting in September 2015 on the requirements and process of pursuing a planning scheme amendment to implement heritage controls to the 45 year old Preston Market site. The report should also outline the public exhibition process to be followed to ensure community input.'

At its meeting on 5 October 2015 a subsequent report was provided to Council and the following General Business item was resolved:

That Council:

- (1) Notes that the Preston Central Structure Plan, the strategic directions for the site and based on expert advice on heritage matters do not support the pursuit of heritage protection for the Market.
- (2) Notes that the Planning Scheme encourages the redevelopment and ongoing operation of the market within existing controls.
- (3) Authorises the Director of Assets and Business Services to engage in discussions with the Preston Market owners regarding future development plans with a view to strengthening Council's case for rail grade separation north of Bell St (Cramer Street and Murray Road, Preston).
- (4) Be provided with a report on the outcomes of future discussions with the owners of the Preston Market site, and other adjacent and nearby stakeholders as appropriate, in relation to efforts to protect the market component of the site as part of any proposed redevelopment.

At its meeting on 27 February 2017, the following General Business item was resolved:

That Council:

- (1) *Immediately writes to the Minister for Planning, Hon. Richard Wynn MP advising him as follows:*
 - a) *Council has on numerous attempts tried to resolve outstanding matters with the owner/ developers regarding the future of the Preston Market.*
 - b) *Council's decision to refuse the planning application permits D/398/2016 and D/293/2016.*
 - c) *Council's request for him to use his powers of intervention to call-in planning application permits D/398/2016 and D/293/2016 regarding the Preston Market site under section 97B of the Planning and Environment Act 1987.*
 - d) *In the event the applications are appealed to VCAT that he call-in the above planning applications under clause 58 of schedule 1 of the Victorian Civil and Administrative Tribunal Act 1998.*
 - e) *Council considers he should call in these planning applications because they are of regional significance beyond the immediate locality and raise issues of public interest due to the social significance of the Preston Market.*
 - f) *He immediately introduces interim planning controls that will safeguard the social significance of Preston Market pending a review of the Preston Market Incorporated Plan by Council.*
- (2) *Also writes to Local State and Federal MPs seeking letters of support that call on the Planning Minister to use his powers of intervention to call-in the current application regarding the market site and immediately introduces interim planning controls.*
- (3) *Accelerates the finalisation of a Preston Market Heritage Study identifying the historical, social, and cultural significance of the Preston Market and the site in order that such a study can support Council's request for the Minister for Planning to call in planning applications (stages 1B and 1C) and any subsequent planning applications for redevelopment of the Market site until such time that the Minister can introduce further planning controls over the Preston Market site that enhance the long term prospects of the Preston Market continuing its traditional retailing role in Preston.*

Responding to this resolution Council requested the Minister for Planning use his Ministerial powers to intervene in a number of ways, including applying an interim heritage control across the market site.

The Minister chose not to intervene and noted that a council requesting a blanket interim Heritage Overlay must provide:

- Robust justification for blanket controls, supported by strong, evidence-based arguments, and explaining how the request meets the tests of section 20(4) of the *Planning and Environment Act*.
- Evidence to show that the area is experiencing development pressure, resulting in the loss of buildings and degrading the heritage significance of the area.

- A request for an equivalent permanent Heritage Overlay and details of the proposed timing for exhibition of the amendment, so that the need for heritage protection can be balanced with the requirement to afford natural justice to the landowners of affected properties.

In 2017 Council commissioned a study to investigate the level of social and cultural heritage significance of the market site. The study explored the social history of the Market, as both a place and as a social artefact. Council sought advice more specifically on whether the Market held social, historical, or any other cultural value – addressing the questions of what is significant? How is it significant, and why is it significant?

Due to a limited number of consultancy firms available to undertake the work a consultant was appointed and commenced the study in July. Community engagement work started in August 2017, and a draft report was shared confidentially with councillors in December 2017. The report was finalised in April 2018 in two volumes: a research report summarising the historical and social research (Volume 1: History and Community Connections; **Appendix B**); and a heritage assessment which assessed on a technical planning basis whether the site meets the criteria for a heritage overlay (Volume 2: Significance **Appendix C**).

In line with standard practice on technical and often contested issues like heritage, a peer review of the draft report was sought in early 2018 to understand if the integrity of the methodology and conclusions of the study are robust enough to maintain a strong argument before an independent planning panel, should the Heritage Overlay be pursued.

The Peer Review (**Appendix D**) raised a number of questions which were further discussed with the consultant. Taken together the advice at this point did not provide a clear answer as to the strength of the case for a Heritage Overlay, so this was tested further by seeking Legal Advice from a QC experienced in heritage matters.

Previous Council Resolution

On February 27 2017

That Council:

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 - b) *Council's decision to refuse the planning application permits D/398/2016 and D/293/2016.*
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COMMUNICATIONS AND ENGAGEMENT

Consultation

The first phase of community engagement for the review of planning controls and future opportunities in relation to Preston Market recently concluded. The results have been compiled and are planned for public release on 22 May 2018. The Community Engagement Findings Report - Phase One is attached for Council to note (**Appendix A**).

The overarching key themes from the process with shoppers, residents, property owners and traders in response to the following questions were:

“What do you love about Preston Market?”

- Community: Food, Vibe, community meeting place, shopper/ trader relationships, small businesses, cultural diversity, accessibility, open layout, variety of shops.
- Traders: trader/ shopper relationships, variety of stalls, small businesses, competitive pricing, multicultural and diverse.
- Submitters: Variety of stalls, European flavour, vibrancy of market operations, shopper/ trader relationships, educational, open-air trading, less packaging, sense of place.

“What makes Preston Market unique?”

- Community: Market experience, community feel, history of the market, market character, and location for the community.
- Traders: Only market in Northern suburbs, authenticity, face to face service, small businesses, variety and competition, long tradition of operating at Market.
- Submissions: Built form or a traditional fresh food marketplace, open space in central location, openness to public.

“What could be changed or improved?”

- Community: Support uniqueness; increase diversity of offerings and different price points; trading hours; improve accessibility (active and public transport); upgrades to stalls, communal spaces, weather protection and bathrooms.
- Traders: Multi-level car parking; improve PT access; improve waste management; better weather protection; improve cleanliness, amenities and safety of site.

- Submitters: Celebration of traditional land owners and structure; Retention of current building, open space aspect and car parking; provision of green spaces, loading, street furniture and wayfinding.

The Capire Consulting Group has been engaged to deliver the community engagement throughout the project. The engagement activities for phase one included:

- Four pop-ups held at Preston Market with activity boards for participants to provide feedback
- Online engagement (mapping survey tool and survey responses submitted via email)
- Three trader meetings
- Targeted stakeholder sessions with interested groups or people with barriers to participating in broader engagement activities
- Trader discussions at the market
- High Street trader one-one-one meetings
- Written submissions

Council promoted these engagement activities through various communication channels including the

- Darebin Community News – all ward editions;
- Council's website and community engagement platform; and
- Council's Facebook and Instagram accounts.

Consultation to write this report was undertaken with

- Manager of City Development
- Coordinator Strategic Planning
- Senior Strategic Planner
- Victorian Planning Authority representatives
- Manager Communications
- Coordinator Economic Development

Communications

There is significant community interest in the Preston Market and it's important that there is meaningful community engagement throughout the review of planning controls and future opportunities. For this to be achieved, a strong and proactive communications plan is needed. This would ensure that the process is clear for the community, they know how to engage in discussion and share their views, and they see that Council is listening. Also, it will help quickly clarify any questions that arise.

This approach provides a way for Council to:

- Ensure that its key stakeholders hear first on issues, therefore maintaining a strong relationship;
- Support and build trust with the community; and
- Provide clarity to the community on Council's role and position.

The communications plan is proposed to include:

- Regular Councillor updates, briefings and reports
- Updates to engaged stakeholders
- Updates to traders both operating in the Market but also within Preston Central
- Media releases and local press briefings
- Posts on Council's Facebook and Instagram accounts
- Regular updates on Council's website and community engagement platform
- Publish notes from CRG meetings
- Promotion of future community engagement opportunities
- Updates to staff and general public

Key messaging is proposed to cover:

- Council's commitment to helping the market thrive
- Council's commitment to full community engagement
- How the review process works and how the community can get involved
- Local stories celebrating the market and what people love about it
- Practical Council services and activities that support the area

ANALYSIS

Alignment to Council Plan / Council policy

Goal 3 - A liveable city

Environmental Sustainability Considerations

Any future development of the site should incorporate environmental sustainability design.

Equity, Inclusion and Wellbeing Considerations

Any future development must integrate well with the wider neighborhood and contribute to connectivity and accessibility for pedestrians and active transport users with Central Preston Cultural Considerations

Economic Development Considerations

The Preston Market is an anchor and key economic generator in the Preston Central Principal Activity Centre and more broadly in Darebin. The market is worth considerable economic benefit to Darebin in terms of employment and its flow on benefits to Preston Central.

Financial and Resource Implications

Implementing any of the options is achievable within operating budgets.

Legal and Risk Implications

Risks have been discussed in the options and discussion.

Council has received confidential legal advice.

DISCUSSION

Review of Planning Controls and future opportunities at Preston Market - Phase one Community engagement report and plan for phase two

The feedback from Phase One has provided valuable insight into what is really valued and important about the market. The engagement has been planned, run and compiled by credible and independent consultants and officers have a high degree of confidence in the quality and independence of the feedback.

The report is planned to be shared with the community on 22 May, which provides further opportunity for the community to let VPA and Council know if they have any further feedback on the key elements that the report identifies.

The plan for Phase Two will build on the work from phase one, but is designed to allow more in-depth exploration of issues with the Community Reference Group, as well as the broader community. It has also been planned and will be run by expert and independent consultants. The first meeting is planned to be held on 23 May.

The independently appointed Community Reference Group includes 28 people, who provide good representation of community members who are interested in the future of the Preston Market precinct.

Membership includes individual Preston Market traders, residents and community members, future residents, representatives from local business and interest groups.

Principles guiding Council's work

The following principles form the basis of Council's response to the Preston Market process:

Proposed principles:

- Council loves the market and is committed to seeing the market thrive into the future.
- It's important to Council that the community engagement process undertaken is extensive, inclusive and open to ideas.
- The market needs to remain accessible to all traders and the community during and post construction and the new development.
- The built form of the site needs to continue to support and encourage the market as a desirable community meeting place.
- The site will consistently provide a hub of vibrant activity, with varied uses for residents, businesses and visitors.
- Any future development of the site should incorporate environmental sustainability design and include affordable housing.
- The location of the site is a good location for meeting Darebin's growing population's needs, as it is strategically located near transport, services and jobs.
- Any future development must integrate well with the wider neighbourhood and contribute to connectivity and accessibility for pedestrians and active transport users with Central Preston as a whole.
- Parking needs must be sufficiently addressed.

Heritage - overview

Council has explored (and continues to explore) its options to prevent risk of the market being lost or impacted adversely by development on the site and recently this has included asking the Minister for Planning to apply heritage protection on two occasions, and additional further testing as to whether there is any meaningful protection available through heritage controls.

To do this, Council sought expert advice in the form of a Heritage Study, testing that through a Peer Review and further indepth testing by seeking legal advice from a Queen's Counsel (QC). The Heritage Study is in two volumes, Volume 1 summarises the history and community connections and Volume 2 provides is a technical report that includes assessment of Significance.

The expert heritage advice has explored whether a heritage overlay could be applied to the Preston Market.

There are two elements of heritage: social fabric, and built form, and a connection needs to be established between the two.

All the advice has concluded that the site has cultural value, thus social significance. However, the advice has varied in regards to whether a sufficient case has been made for the connection of the social significance to elements of the built form. In summary:

- The Heritage Study (Volume 2: significance) advised that the market has local significance and also that further exploration be done on the potential of state significance relating to space frame technology.
- The Peer Review was not confident that the built form could be meaningfully protected by a heritage overlay and raised a number of questions for further exploration.
- The Legal Advice advised that the connection to built form has not been made sufficiently to confidently make a case. It described that a heritage overlay had some merit on the grounds of built form however outlined that further work would be needed before Council could make a decision as to whether they should pursue this course.

The Legal Advice also clearly articulates that even if a case can be made for the application of heritage controls, a heritage overlay does not regulate the use of the land and cannot protect a use into the future (and thus require the use of the site as a market in perpetuity). What this means is that a heritage overlay, even if it were successful, would not achieve the primary goal of ensuring the market continues to operate.

On balance, Officers conclude that seeking a heritage overlay or interim heritage protection at this point would not be likely to succeed, and nor would it provide meaningful protection.

The Heritage Study (both volumes) articulates very valuable analysis of the social value of the site and the attributes of the market built form that contributes to this (such as the layout and open air feel).

The Heritage Study identified the social and cultural value of the site and acknowledges the following attributes/valued elements identified within the research section:

- The open nature of the market layout (cruciform plan)/Market footprint
- The vibrant market-style of retailing/cultural diversity
- The built form (including the space frame elements of the roof structure); and
- The use of the Market as a meeting place (social engagement)

Other strategies

There are other strategies that Council can consider to pursue protections of important attributes. These include seeking to protect the attributes via the incorporated plan, or a design and development overlay, for example. The Heritage Study and Legal Advice have both identified the Incorporated Plan as tool that could be used to consider this. The current review of the planning controls with the VPA, including the integrated plan, is an opportunity to seek built form controls at the site where key attributes are retained. There may also be opportunities outside the planning processes that deliver community benefit after this review is completed.

If Council resolves to seek heritage protection at this point in time, it would require commitment of time and resources, without guarantee of success, and it also brings risks to other work in progress, including the current review of planning controls.

On balance, Officers are recommending that Council not pursue the application of heritage controls. Instead, Officers recommend referring the heritage study and technical reports on the same topics to the VPA and requesting that it be considered in an integrated way as part of the current review of planning controls.

In regards to communication with stakeholders, the owners of the market, the VPA and the community, Officers recommend releasing the heritage reports in full including the research report (Heritage Study Volume 1: history and community connections, **Appendix B**), and the technical reports (Heritage Study Volume 2: significance **Appendix C**) and the Peer Review (**Appendix D**). While it is not usual practice to release technical advice of this nature to the public, given the community interest, officers advise that there is no particular risk associated with releasing these, although they are likely to prompt a wide range of questions due to their complex nature.

Further explanation on various aspects of officers' advice is below

Would interim heritage protection protect the market operation while the review is taking place?

Although interim heritage protection could impose a requirement for a permit before any demolition, it cannot create any requirement for the market to continue to be run as a market. Continuing to run the market is a private decision for the owner. If the owner were prepared to demolish the building, it would also presumably be prepared to stop operation of the market.

The strongest protection for the market operation during the review is that the private owner sees value in strong community support and in working with government (at state and local level) rather than against it. Solutions to retaining the market use in the longer term on the Preston Market site sit outside the planning process and require a commitment from and/or negotiation with the land owners.

The effectiveness of Heritage Overlays

The Legal Advice confirmed the following items:

- A heritage overlay essentially regulates the 'built form' environment.
- The key controls imposed by a heritage overlay require that planning permission be sought before demolishing or constructing a building.
- A heritage overlay does not regulate the use of land.
- A heritage overlay cannot protect a valued use of land into the future.

- If a heritage overlay was introduced over the Preston Market, the market could close, without planning permission.

Social Significance

The Heritage Study recognises that the Market does have social and cultural significance.

The Legal Advice received confirms that in order to make a heritage overlay:

- It will be critical to establish a connection between the market's social significance and the tangible built form.
- The case built on this connection will need to be compelling as any proposed heritage control will be tested rigorously at Panel.
- That additional work in relation to the built form is required to be conducted before Council final decision to pursue is made.

OPTIONS FOR CONSIDERATION

In regards to next steps on the heritage review, there are several options open to Council. A table indicating risks and benefits of each option is below, then followed by suggested recommendations.

Options for consideration	Benefits	Risks
1 – Note the Community Engagement report and Phase Two consultation; note that heritage protection will not be pursued; request the VPA consider the Heritage Study and the technical reports as part of the review and release the reports publicly.	<ul style="list-style-type: none"> • Demonstrates a commitment to transparency. • Contributes to the rich understanding of the history and social value of the market. • Means findings of the Heritage Study are considered in an integrated way as part of the current review of planning controls and future opportunities. 	<ul style="list-style-type: none"> • The reports are complex and need to be taken in their entirety to understand what they mean. • Parts of the reports could be quoted in isolation in ways that would appear to call for heritage protection. Council would need to be prepared to respond to this question.
2 – Note the Community Engagement report and Phase Two consultation; note that heritage protection wouldn't be pursued; release Heritage Study (Volume 1: History and Community Connections) to the community; Share the technical reports with only the VPA project team.	<ul style="list-style-type: none"> • Demonstrates a commitment to transparency. • Contributes to the rich understanding of the history and social value of the market. • Means findings of the Heritage Study are considered in an integrated way as part of the current review of planning controls and future opportunities. 	<ul style="list-style-type: none"> • Officers consider it likely that Council would receive further questions regarding transparency relating to the technical advice that is not released, irrespective of Council's explanation.
3 – Ask the Minister for Planning to apply interim heritage protection; release all reports to the community; request that the VPA consider the Heritage Study and the technical reports on the same topic as part of the review.	<ul style="list-style-type: none"> • May appear to community that Council is taking strong action on their behalf. • Demonstrates Council's commitment to transparency. 	<ul style="list-style-type: none"> • Likely to raise expectations unrealistically that interim protection would protect the market. • If (as is regarded likely) a request for interim heritage controls fails, community trust in the review of planning controls may be weakened,

		and may prompt an adversarial campaign. <ul style="list-style-type: none"> • Risks weakening Council's opportunity to seek voluntary commitments, or prompt (although officers regard it as unlikely) the owner to cease operation of the market.
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IMPLEMENTATION STRATEGY

Details

- Council will continue to work in partnership with the VPA to undertake community engagement.
- Council will coordinate statements with the VPA relating to release of the community engagement report on 22 May 2018.
- Council will release information on the heritage study in line with Council's resolution on the 22 May 2018.

Communication

22 May 2018:

- Coordinated public release of the community engagement report by VPA and Council.
- Public statement from the Council reporting on the decision from 21 May 2018, welcoming the community feedback in the community engagement report, and sharing any other information in line with the resolution.
- Public statements would be released first to key stakeholders, then within 30 mins through broadcast channels including social media.
- All key stakeholders would be offered the opportunity to meet and be stepped through any advice released, if they wish.

23 May 2018 the first meeting of the CRG is scheduled to occur.

Commence proactive communications activities as outlined above.

Timeline

A detailed timeline will be presented to a future Council briefing session. However it is expected to include the following project timelines:

- Phase Two community engagement – mid May – approximately mid July
- Phase Three community consultation – to be advised
- Draft recommendations provided to Council for consideration – September
- Recommendations to Minister – October

RELATED DOCUMENTS

- Preston Market Incorporated Plan 2007
- Preston Central Structure Plan 2006

- Council Minutes – 20 July and 5 October 2015, 27 February 2017

Attachments

- Community Engagement Findings Report - Phase One (**Appendix A**) Confidential - enclosed under separate cover
- Heritage Study Research Report (**Appendix B**) Confidential - enclosed under separate cover
- Heritage Study - Technical Report (**Appendix C**) Confidential - enclosed under separate cover
- Preston Market Heritage Study Peer Review (**Appendix D**) Confidential - enclosed under separate cover
- Preston Market - QC advice - Heritage Study (**Appendix E**) Confidential - enclosed under separate cover

DISCLOSURE OF INTEREST

Section 80C of the *Local Government Act 1989* requires members of Council staff and persons engaged under contract to provide advice to Council to disclose any direct or indirect interest in a matter to which the advice relates.

The Officer reviewing this report, having made enquiries with relevant members of staff, reports that no disclosable interests have been raised in relation to this report.