



25 June 2021

[REDACTED]
Victorian Planning Authority
Level 25, 35 Collins Street
MELBOURNE VIC 3000

Our Ref: 5011719

Dear [REDACTED]

**DAREBIN DRAFT PLANNING SCHEME AMENDMENT C182
DRAFT PRESTON MARKET PRECINCT STRUCTURE PLAN**

Thank you for the opportunity to provide a response in relation to draft planning scheme amendment C182 to the Darebin Planning Scheme for the Preston Market Precinct (the Precinct) and referred to the Environment Protection Authority (EPA) via email on 18 May 2021. The draft amendment was also discussed in further detail at a meeting with the Victorian Planning Authority (VPA) on the 31 May 2021.

EPA have reviewed the following exhibited documents:

- Referral letter to EPA dated 18 May 2021;
- Explanatory report;
- Preston Market Precinct community brochure;
- Preston Central Incorporated Plan March 2007 (amended 2021);
- Preston Market Statement of Significance;
- Preston Market Incorporated Plan, April 2021;
- Preston Market Precinct Background Report, May 2021;
- Draft Preston Market Precinct Structure Plan, May 2021; and
- Draft Schedule 1 to the Activity Centre Zone.

Our Understanding of the Proposal

EPA understands the Victorian Planning Authority (VPA) have prepared a draft planning scheme amendment to the Darebin Planning Scheme, which seeks to implement the Preston Market Precinct Structure Plan. The VPA is the Planning Authority as directed by the Minister for Planning, tasked with a review the existing planning controls and delivery of a planning scheme amendment for the precinct to facilitate new development of the Precinct while retaining a market on the site.

For this reason, the Amendment seeks to:

- Rezone the land from Priority Development Zone – Schedule 1 to Activity Centre Zone – Schedule 1 (ACZ1);

- Apply various overlays to the site to facilitate development of the precinct in accordance with the Preston Market Precinct Structure Plan (the Structure Plan);
- Retain the Environmental Audit Overlay that affects a portion of the site; and
- Make other consequential changes to the Darebin Planning Scheme.

The amendment applies to the land as shown in the map below. It is bound by Murray Road to the north, Cramer Street to the south, St Georges Road to the west, and the access road to the rear of shops fronting High Street to the east.



The proposal seeks to retain part of the market building and proposes the balance of the market along the eastern side of the Precinct, allowing space in the centre and the western part of the Precinct for new mixed-use buildings. The Precinct will include new open space and community facilities.

VPA Fast Track Program

We understand that this project is part of the VPA – Fast-Track Program, an element of the Victorian Government’s response to support a post-COVID economic recovery, and that if required, the project will be considered by the VPA Projects Standing Advisory Committee (VPA SAC) which has been established to provide independent advice on draft planning scheme amendments to the VPA and the Minister for Planning.

It is in this context that EPA provides the comments below.

Potentially Contaminated Land

A portion of the precinct is subject to an Environmental Audit Overlay (EAO) that identifies potential land contamination due to the previous use of the site. The Preston Market Statement of Significance describes the previous uses of the site as follows:

- *“The tannery buildings were concentrated at what is now the centre of the Preston Market.*

- *It is likely that the east part of what is now the market site was vacant until the mid-1920s, when William Carter Cook established a timber yard on the east side of Mary Street, opposite the tannery.*
- *The site continued to be listed as the Broadhurst tannery in the directory. After the tannery closed in 1960, Cook used it for timber storage for at least five years”.*

The portion of the precinct that is affected by the EAO, will be subject to an Environmental Audit (which will result in the issue of a Certificate or Statement of Environmental Audit), prior to the commencement of a sensitive use or before the construction or carrying out of buildings and works in association with a sensitive use commences.

EPA take this opportunity to highlight the following:

- It appears that the Precinct land to the west of the railway corridor may be partially affected by the EAO. An Environmental Audit would be undertaken for the land to which the EAO is applied (i.e., that portion of the land).
- For the remainder of that land, EPA recommends the VPA undertake the steps outlined in ‘*How is potentially contaminated land identified?*’, from page 2 of PPN30. This is because the previous use of the Precinct on the eastern side of the railway corridor includes a Tannery, which is listed as having a high potential for contamination in General Practice Note on Potentially Contaminated Land PPN30 (PPN30). Use of land for a Tannery can cause contamination of groundwater which may move off-site.
- To inform these steps, EPA notes that Darebin Council may also be able to provide further information on the historical use of this land.
- Should the findings suggest that further assessment is required, VPA should include this requirement in the planning controls or required as part of the planning process. EPA may be able to provide further assistance on this, once the potential for contamination of this land is better understood.
- Should the findings deem that the site has a high potential for contamination, VPA may also consider applying the EAO to the land parcels affected.
- In addition, VPA should also look to include requirements in the schedule to the zone, for a complementary planning control to compel the outcomes of the audit(s), for example:
“Demonstrate how the conditions included in the Statement of Environmental Audit prepared for the site have been or will be met prior to the commencement of any use”.

Amenity Impacts

EPA notes that the Structure Plan acknowledges potential amenity impacts on sensitive uses, from the adjacent Preston Station and the market.

The PSP includes the following statement:

“The amendment should also require appropriate supporting documents to be submitted as part of any future development application when requested by the responsible authority. These may include:

- *Noise, Vibration and Light Spill Report for development immediately adjoining the Mernda Rail Line.*
- *Acoustic Report for noise impacts associated with loading and unloading from the redeveloped market”.*

This is translated across to the ACZ1 which requires:

- *"An application for use or development for accommodation above or immediately adjoining the market must be accompanied by a Noise Report prepared by a suitably qualified acoustic engineer. The report must consider potential amenity impacts from the market operations and recommend mitigation measures. The application must demonstrate how it complies with the recommendations of the Noise Report.*
- *An application for use or development for accommodation adjacent to the Mernda Rail Line or a Road Zone Category 1 must be accompanied by a Noise, Vibration and Light Spill Report prepared by a suitably qualified acoustic engineer, The report must detail recommended treatments of the development and/or the adoption of appropriate noise attenuation measures to ensure that:*
 - *Noise, vibration and light spill emissions associated with the operation of surrounding and nearby train lines and/or road traffic do not adversely impact on the amenity of the dwellings;*
 - *Internal noise levels in accommodation are:*
 - *Not greater than 40dB(A) for living areas, assessed LAeq,16h from 6am to 10pm; and*
 - *Not greater than 35dB(A) for bedrooms, assessed as an LAeq,8h from 10pm to 6am".*

EPA supports the inclusion of the requirements above, but recommends the following minor changes:

- An application for use or development for accommodation, child-care or place of assembly above or immediately adjoining the market must be accompanied by a Noise Report prepared by a suitably qualified acoustic engineer. The report must identify ~~consider~~ potential ~~amenity~~ noise impacts risks associated with ~~from~~ the market operations and recommend mitigation measures that minimise risk of harm to human health and the environment. The application must demonstrate how it ~~complies~~ will implement with the recommendations of the Noise Report.

These changes will ensure that other land uses which are sensitive to noise and would have a higher expectation of amenity are also captured. Additionally, it will ensure that the outcomes of the Noise Report will provide the earliest opportunity to identify risks and respond to them.

- An application for use or development for accommodation, child-care, or place of assembly within 80 metres from the centre of the nearest track associated with ~~adjacent to~~ the Mernda Rail Line or that is adjacent to a Road Zone Category 1 must be accompanied by a Noise, Vibration and Light Spill Report prepared by a suitably qualified acoustic engineer. The report must detail recommended treatments of the development and/or the adoption of appropriate noise attenuation measures to ensure that:
- Noise, vibration and light spill emissions associated with the operation of surrounding and nearby train lines and/or road traffic need to be designed to protect ~~do not adversely impact~~ ~~on~~ the amenity of sensitive uses ~~the dwellings~~;
- Internal noise levels ~~in~~ for accommodation are:
 - Not greater than 40dB(A) for living areas, assessed LAeq,16h from 6am to 10pm; and
 - Not greater than 35dB(A) for bedrooms, assessed as an LAeq,8h from 10pm to 6am.

The above change is made in accordance with Clause 58.04-3 of the Darebin Planning Scheme, which includes that for Railway servicing passengers in Victoria (and not including freight trains), a Noise

Influence Area of 80 metres is to be applied from the centre of the nearest track of the railway to the closest part of a proposed building.

EPA also recommends an additional requirement that verifies that buildings that will accommodate sensitive uses have been constructed in accordance with the recommendations of the Noise Report and Noise, Vibration and Light Spill Report respectively as a way of ensuring that the intended outcome with respect to noise attenuation has been achieved.

The planning authority must also have regard to the Passenger Infrastructure Noise Policy (Victorian Government, 2013), whereby a land use is being changed near an existing passenger rail corridor. The planning authority may also choose to seek the comments of the relevant transport body.

Noting that the current version of the planning controls put forward here pre-dates the introduction of the *Environment Protection Act 2017* (the EP Act 2017) on 1 July 2021, we would like to bring to your attention that the assessment of noise impacts and the required level of attenuation will need to accord with the EP Act 2017 and associated regulations as well as the general environmental duty (GED) (see below).

Environment Protection Act 2017

The Environment Protection Act 2017 will come into effect on 1 July 2021.

Whilst the advice EPA has provided to date aligns with the current framework for the assessment and management of potentially contaminated land under the *Environment Protection Act 1970*, we are cognisant of the impending changes to the planning framework to accommodate the EP Act 2017. We recommend that you engage with Department of Environment, Land, Water and Planning (DELWP) to understand the implication of any consequential changes to the planning framework on this planning scheme amendment.

General Environmental Duty (GED)

The GED is a centrepiece of the new laws. It applies to all Victorians. If you engage in activities that may give rise to a risk to human health or the environment from pollution or waste, you must understand those risks and take reasonably practicable steps to eliminate or minimise them. EPA will work with industry and the community to help them understand how to fulfil their obligations, by providing guidance, advice and other support.

For further information on what the new laws will mean for Victorian businesses go to <https://www.epa.vic.gov.au/for-business/new-laws-and-your-business>

For further information on what the new laws will mean for individuals and the community go to <https://www.epa.vic.gov.au/about-epa/laws/new-laws/the-new-act-for-the-community>

Noise

As previously mentioned, the GED requires all Victorians to understand and minimise their risks of harm to human health and the environment from pollution and waste, including noise. The definition of noise includes sound and vibration. Developing land that will include noise sensitive uses near existing sources of noise may be regarded as an activity that may give rise to risks of harm to human health from pollution.

As a person engaging in that activity, a developer may be required, under the GED, to minimise those risk of harm so far as reasonably practicable¹.

The Environment Reference Standard (ERS) will come into effect with the commencement of the EP Act 2017 on 1 July 2021. Part 3 of the ERS for Ambient Sound includes a table with indicators and objectives for the ambient (outdoor) acoustic environment, which differ across land use categories. Not meeting the objectives indicates an increased risk to the environmental values. However, the ERS must not be used as a proxy for attaining compliance with the GED.

The ERS is relevant for activities that are not directly regulated but may interact with the ambient sound environment. This can be either by directly emitting noise or increasing sound sources in the environment indirectly such as by increased traffic movements. In this context, consideration of the ERS – Ambient Sound is relevant when assessing strategic planning proposals where noise is identified as a relevant risk.

Strategic planning has the effect of facilitating the future establishment of land use and development that may interact with the ambient sound environment, but until established are not directly regulated by the noise limits set by the Environment Protection Regulations (which come into effect 1 July 2021).

The ERS – Ambient Sound can be used to assess whether a proposal poses a risk to human health and the environment from noise. This may include consideration of whether:

- the proposal would change the sound of the ambient environment;
- sounds emitted from a proposed land use would adversely affect or pose a risk to the environmental values; and
- the environmental values of the proposed land use may be adversely affected by sounds emitted from surrounding land uses.

Other matters – Ministerial Direction 19

In accordance with Clause 4 of Ministerial Direction 19, a planning authority must include in the explanatory report a statement of how the proposed amendment addresses the views of the EPA when seeking authorisation for the amendment.

Summary and Recommendations

In considering this proposal, EPA supports the VPA undertaking this project, but highlights the need for further consideration of potentially contaminated land on the western side of the railway corridor. EPA also recommends that the VPA considers the suggested wording around the audit and noise controls in the ACZ1.

We recommend that VPA engage with the Department of Environment, Land, Water and Planning (DELWP) to understand the implication of any consequential changes to the planning framework on this PSP and planning scheme amendment on the planning controls as drafted.

We would be happy to engage in a discussion with you regarding the comments above. If our assessment is not aligned with your view of the environmental risk, or if the proposal is subsequently amended, please contact [REDACTED]

¹What is reasonably practicable is determined considering the level or scale of risk of harm. Guidance is provided in EPA Publication 1856 *Reasonably Practicable*.

Kind regards



EPA Victoria