



12.1 EXTENSION TO INTERIM HERITAGE CONTROLS -
EXTENSION TO HERITAGE OVERLAY 7 (ST KILDA,
ELWOOD, BALACLAVA, RIPPONLEA)

EXECUTIVE MEMBER: KYLIE BENNETTS, GENERAL MANAGER, CITY GROWTH AND
ORGANISATIONAL CAPABILITY

PREPARED BY: KATHRYN POUND, HEAD OF CITY POLICY

1. PURPOSE

- 1.1 To determine whether to request the Minister for Planning exercise his powers under Section 20(4) of the Planning and Environment Act 1987 to extend the interim Heritage Overlay to 41-57 Dickens Street, 1-3 Ruskin Street, 1 Addison Street, 49-51 and 59-61 Mitford Street, Elwood (Proposed HO7 Precinct Extension).

2. EXECUTIVE SUMMARY

- 2.1 Council resolved to seek interim heritage controls to 41-57 Dickens Street, 1-3 Ruskin Street, 1 Addison Street, 49-51 and 59-61 Mitford Street, Elwood (Proposed HO7 Precinct Extension) at its Ordinary Council Meeting of 20 November 2019.
- 2.2 Interim controls were required because an application to demolish the buildings at 47 Dickens Street, Elwood had been received pursuant to Section 29A of the Building Act 1993 on 8 November 2019. There was no Heritage Overlay applied to the site, and a planning permit was not required for demolition. However, the site had been identified for a permanent Heritage Overlay as part of Planning Scheme Amendment C161. Specifically to form part of an extension to Heritage Overlay 7 (St Kilda, Elwood, Balaclava and Ripponlea (HO7) along with properties at 41-57 Dickens Street, 1-3 Ruskin Street, 1 Addison Street, 49-51 and 59-61 Mitford Street, Elwood. These properties are shown in the Map at Attachment 2.
- 2.3 Following Council's resolution at the 20 November 2019 Council meeting, the Interim heritage controls were applied for by Council officers. The controls were subsequently approved by the Minister for Planning (Amendment C188) on 30 April 2020. The interim heritage controls expire on 1 April 2021.
- 2.4 The permanent heritage controls for the extension to HO7 form part of Amendment C161 Part 2, which was exhibited last year and went to an Independent Planning Panel for consideration. Four supporting submissions were received which specifically related to the extension to HO7 and no non-supportive submissions were received.
- 2.5 The panel hearing for Amendment C161 Part 2 ran from 27 January until 1 February 2021. The panel are expected to publish their recommendation and findings on the amendment within the next two months. The panel's recommendations and findings will subsequently be reported to Council with an officer recommendation for proceeding with Amendment C161 Part 2 (i.e. to adopt, amend and adopt or abandon it).
- 2.6 Accordingly, it is necessary to seek a six month extension of the interim heritage controls while Amendment C161 Part 2 is progressed and finalised. Not extending the interim heritage controls leaves the buildings vulnerable to demolition.
- 2.7 In order to extend the interim controls, a request must be made to the Minister for Planning through a Section 20(4) Ministerial Planning Scheme Amendment. The amendment would be exempt from notice requirements. Affected landowners would be notified in writing of the Minister's decision.



3. RECOMMENDATION

That Council:

- 3.1 Requests the Minister for Planning to prepare and approve an amendment to the Port Phillip Planning Scheme, pursuant to Section 20(4) of the Planning and Environment Act 1987, to extend the interim Heritage Overlay 7 (HO7) and associated controls to land proposed for inclusion in the 'HO7 Precinct extension' as identified in Port Phillip Heritage Review Update (David Helms Heritage Planning, 2019). The amendment will include the following specific changes to the Port Phillip Planning Scheme, on an interim basis (six months):
 - 3.1.1 Amend Port Phillip Planning Scheme Map 8HO and the schedule to Clause 41.03 – Heritage Overlay to apply interim Heritage Overlay 7 (HO7) to:
 1. 41 and 43 Dickens Street, 1 Addison Street, 1-3 Ruskin Street and 45-57 Dickens Street, Elwood.
 2. 49-51 and 59-61 Mitford Street, Elwood.
 - 3.1.2 Apply a 'Significant Heritage Place' grading to each of the above properties on the Port Phillip Heritage Policy Map (Incorporated Document) except for 49 Dickens Street which is proposed as a 'Contributory Heritage Place'.
 - 3.1.3 Remove 'Contributory outside of the Heritage Overlay' gradings for 49, 59 and 61 Mitford Street, 1 Addison Street and 1-3 Ruskin Street, Elwood on the City of Port Phillip Neighbourhood Character Map (Incorporated Document).
 - 3.1.4 List the Port Phillip Heritage Review Update (David Helms Heritage Planning, 2019) as a reference document in Clause 22.04 (Heritage Policy).
 - 3.1.5 Make consequential changes to Clauses 21.07 (Incorporated Documents), Clause 22.04 (Heritage Policy) and the schedule to Clause 72.04 (Documents incorporated in this scheme) to update the version number and date of the Incorporated Documents listed above.
- 3.2 Authorises the Chief Executive Officer (CEO) or delegate to prepare and finalise the amendment documentation for the above planning scheme amendment.

4. KEY POINTS/ISSUES

- 4.1 The report put to Council at the Ordinary Meeting of Council on 20 November 2019 sets out the reason why the interim heritage controls were originally sought by Council, along with the relevant background. The report and its attachments form Attachments 1, 2 and 3 to this report.

5. CONSULTATION AND STAKEHOLDERS

- 5.1 All landowners and occupiers of properties directly affected by Amendment C161 which includes properties within the proposed HO7 Precinct extension, were formally notified of the amendment during the exhibition process and were able to lodge a submission.
- 5.2 The owners of properties within the proposed HO7 extension and who would be affected by the interim heritage controls were invited to attend this Council meeting, and of the intention of Council officers to seek an extension of the interim heritage protection.



- 5.3 Council officers have liaised with officers of the Department of Environment, Land, Water and Planning who have raised no concerns with the proposed request to apply the Heritage Overlay on an interim basis to all properties within the proposed HO7 extension, including 47 Dickens Street.
- 5.4 Should the Minister approve Council's request for interim heritage protection, the affected landowners will be advised in writing of the Minister's decision

6. LEGAL AND RISK IMPLICATIONS

- 6.1 Without an interim heritage overlay applied to 47 Dickens Street, Elwood, a planning permit would not be required for demolition. A Section 29(A) request for demolition of the buildings has been received by Council. Accordingly, the building and associated heritage fabric is at immediate risk of loss.
- 6.2 The extension of the interim heritage control would manage the risk of the building at 47 Dickens Street being demolished, without heritage issues being considered during the planning permit process.
- 6.3 No significant risk implications have been identified in relation to the processing of the required Ministerial Amendment. The Amendment would be undertaken in accordance with the requirements of the *Planning and Environment Act 1987*.

7. FINANCIAL IMPACT

- 7.1 There is provision in the Planning Scheme Amendments 2020/21 operational budget to meet the cost of the proposed Amendment.

8. ENVIRONMENTAL IMPACT

- 8.1 The application of interim heritage controls would have a positive environmental impact by protecting places of historic significance and facilitating the reuse and recycling of existing building stock.
- 8.2 The Victorian heritage strategy, *Victoria's Heritage: Strengthening our Community* details the environmental benefits of conservation:

'Heritage policies and programs can help achieve the broader goals of sustainability... [Heritage conservation] recognises the embodied energy and life-cycle value of traditional materials, and reduces the water associated with demolition and new buildings.'

9. COMMUNITY IMPACT

- 9.1 The application of interim heritage controls would have a positive social effect through the preservation of historically significant places for the benefit of current and future generations.
- 9.2 The interim heritage controls will likely have a direct cost impact on the owners of affected properties identified to be included in the heritage overlay because of additional permit requirements.
- 9.3 The matter of negative economic impacts, such as on property values and development potential, have been considered repeatedly by planning panels considering the introduction of heritage controls. The findings have been summarised in the Panel Report for Latrobe Planning Scheme Amendment C14, as follows:

"Panels have repeatedly ruled that such issues are not material to this stage of the planning progress – a position supported by Practice Notes and numerous VCAT



decisions. This view maintains that although it is appropriate for the responsible authority to consider all the objective of the Planning and Environment Act 1987 including, inter alia, 'fair, orderly, economic and sustainable use, and development of the land' (s.4(1)(a))... and... 'to balance the present and future interests of all Victorian's (s.4(1)(g)) – the question of personal economic impact or potential constraint on development are matters for the next stage of the planning process i.e. at the time a permit is applied for. This approach has the merit of separating two distinct issues: assessment of the significance of the place, and the question of its conservation, adaptation, alteration or demolition. This conforms with proper heritage conservation practice and mirrors the processes of the Victorian Heritage Act 1985. It reflects the desirability of considering long term matters (if we accept that heritage significance is likely to be somewhat enduring, if not immutable) at one point in time; and, shorter term matters (personal desire, financial considerations and economic circumstances) when they are most relevant."

- 9.4 Furthermore, Planning Panels Victoria has established the principle that social and economic effects relevant at the amendment stage are of a broad community nature rather than those of a personal kind (see Panel Report - Amendment C207 to the Melbourne Planning Scheme).

10. ALIGNMENT TO COUNCIL PLAN AND COUNCIL POLICY

- 10.1 The application of heritage controls is consistent with the 'We are Port Phillip' Council Plan 2017-2027 commitment to 'protecting heritage places' and 'ensuring new development integrates with, respects and contributes to the unique heritage, character and beauty of our neighbourhoods'.

11. IMPLEMENTATION STRATEGY

11.1 TIMELINE

- 11.1.1 If Council resolves to proceed with a request to extend the interim heritage protection, a request will be made to the Minister for Planning within two working days of this Ordinary Council Meeting.

11.2 COMMUNICATION

- 11.2.1 If Council supports requesting an extension to the interim heritage controls for properties within the HO7 Precinct extension, details of the planning scheme amendment required to apply the interim heritage controls will be made available on Council's website.
- 11.2.2 The owners of the affected properties will be advised in writing of Council's decision following this meeting

12. OFFICER DIRECT OR INDIRECT INTEREST

- 12.1 No officers involved in the preparation of this report have any direct or indirect interest in the matter.

TRIM FILE NO:

66/05/52

ATTACHMENTS

- 1. 20 November 2019 Council Report**
- 2. Map of affected properties**
- 3. Port Phillip Heritage Review Update - David Helms Heritage Planning, February 2019**