



12.1 AMENDMENT C161PORT PART 2 - ADOPTION

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

PREPARED BY: PHOEBE HANNA, STRATEGIC PLANNER  
KATHRYN POUND, HEAD OF CITY POLICY

1. PURPOSE

- 1.1 To consider the report and recommendations of the independent Planning Panel appointed by the Minister for Planning to review Amendment C161port Part 2 (Update Amendment) (**the Amendment**).
- 1.2 To determine whether to adopt Amendment C161port Part 2 (with or without changes) and request Ministerial approval.

2. EXECUTIVE SUMMARY

- 2.1 Amendment C161port is an update amendment and proposes numerous updates and technical corrections to the Port Phillip Planning Scheme (**the Scheme**), including zoning and overlay mapping changes. This delivers on Council's responsibility to keep the Scheme up to date and protect places of heritage significance.
- 2.2 This includes implementing the recommendations of:
  - *Port Phillip Heritage Review Update* (February 2019) by David Helms Heritage Planning,
  - *Heritage Assessment 2-6 Blanche Street and 110-118 Barkly Street, St Kilda* (Context Pty Ltd, December 2017)
  - *58 - 60 Queens Road, Melbourne Heritage Assessment* (Peter Andrew Barrett, November 2017).
- 2.3 At the Council Meeting on 16 September 2020 Council resolved to:
  - Split Amendment C161port into Part 1 and 2 to enable more efficient processing of the Amendment.
  - Adopt Amendment C161port - Part 1 and request Ministerial approval, and
  - Refer Amendment C161port - Part 2 to an Independent Planning Panel to review submissions and make recommendations to the amendment.
- 2.4 Amendment C161port Part 1 was subsequently submitted to the Minister for approval and approved by the Minister on 22 April 2021.
- 2.5 Amendment C161port Part 2 was subsequently heard by an independent Planning Panel at a four day hearing held from 27 January to 1 February 2021. The panel report was received by Council on 6 April 2021 and is contained at **Attachment 1**.
- 2.6 Overall, the Panel recommended that C161port Part 2 be adopted as exhibited subject to some changes. Of the recommended changes, only three significantly departed from Council's position. The list of the Panel's recommended changes and the officer response forms **Attachment 2**.



- 2.7 Officers are supportive of all the Panel's recommendations and recommend modifying the amendment documentation to reflect the changes proposed by the panel, with the exception of one minor matter at recommendation 1b). This concerns a change to the Heritage Overlay number of a place on the Victorian Heritage Register, which only Heritage Victoria can make. It is recommended that this change be referred to Heritage Victoria to rectify in their next 'fix-up' amendment.
- 2.8 Should Council decide to adopt Amendment C161port Part 2 (with or without changes), officers will submit the Amendment to the Minister for Planning for approval within 10 business days of the meeting.

### 3. RECOMMENDATION

That Council:

- 3.1 Adopts Amendment C161port Part 2 to the Port Phillip Planning Scheme, pursuant to Section 29 of the *Planning and Environment Act 1987 (the Act)*, with the changes reflected in the amendment documentation provided at **Attachment 3**.
- 3.2 Authorises the Chief Executive Officer (or delegate) to finalise the amendment documentation for Ministerial approval.
- 3.3 Submits the adopted Amendment C161port Part 2 documentation, together with the prescribed information, to the Minister for Planning for approval, pursuant to Section 31 of the Act.
- 3.4 Advises the Minister for Planning that Council accepts all the Panel's recommendations (apart from recommendation 1b) for the reasons outlined in Section 4 of this report.
- 3.5 Writes to all the submitters to Amendment C161port Part 2 to advise them of Council's decision.
- 3.6 Writes to Heritage Victoria and asks them to assign a new Heritage Overlay number to the Former Royal Australian Corps of Signals Drill Hall at Albert Road Drive, Albert Park (currently HO489), and amend the property address to '29A Albert Road Drive, Albert Park' in their next 'fix-up' amendment.

### 4. KEY POINTS/ISSUES

#### Amendment C161port

- 4.1 Amendment C161port is an update amendment and proposes numerous updates and corrections to the Port Phillip Planning Scheme. The amendment also proposes to implement the findings of several heritage reports and assessments completed for Port Phillip. The Explanatory Report used for the exhibition of the amendment contains the complete list of all proposed changes at the exhibition stage. This forms **Attachment 4**.

#### Authorisation

- 4.2 On 27 March 2019, at its Ordinary Council Meeting, Council resolved to request the Minister for Planning to authorise the preparation and exhibition of Amendment C161port.
- 4.3 On 13 March 2020, the Minister for Planning's delegate authorised Council to prepare and exhibit Amendment C161port (subject to generally minor conditions).



Public Exhibition

- 4.4 Amendment C161port was on public exhibition for one month from 25 June to 24 July 2020.
- 4.5 The exhibition process included direct letters to 2,500 directly affected property owners and occupiers, Prescribed Ministers, Statutory Authorities and stakeholders (for further information see **Section 5**).
- 4.6 151 submissions (including 13 late submissions) were received representing the views of 190 different people/organisations. The majority of the submissions received related to site-specific proposals within the Amendment.
- 4.7 The key issues raised in submissions included:
- Support for heritage overlay for individual properties
  - Support for rezoning proposals for individual properties
  - Objection to heritage overlay / change in heritage grading based on:
    - Loss of development potential for individual properties / ability to make building improvements
    - Financial burden associated with upkeep of heritage property
    - Personal financial impact/loss of property value
    - Degree of alterations to property/extent of demolition diminishing heritage significance
    - Tension between heritage value and flooding impact

Council's consideration of submissions and splitting up of the Amendment

- 4.8 At the 16 September 2020 Council Meeting, Council considered the issues raised in the submissions.
- 4.9 Council resolved to receive and consider all written submissions made to the Amendment. Council also resolved to adopt the Council officers' recommended changes to the exhibited amendment which responded to some of the submissions received. These changes were:
- Remove the proposed 'Contributory outside the Heritage Overlay' grading for 146 Dow Street from the Neighbourhood Character Map as the property has been demolished.
  - Remove the proposed 'Significant heritage place' grading from 333 and 341-351 Ferrars Street and amend Revised Citation 2311 for the Railway Cutting and Bluestone Bridges to remove reference to those properties, as they are contemporary buildings and not of significance.
  - Amend the Revised Citation for the Railway Cutting and Bluestone Bridges (Citation 2311) to specify those buildings which do not contribute to the significance of the railway cutting and bridges including the former South Melbourne Cycling Club where the significance has not been assessed or established.
  - Amend the proposed Revised Citation for the St Kilda Sea Baths to include the date of the reconstruction of the SeaBaths building.



- Amend the heritage grading of 293 The Boulevard, Port Melbourne to 'Non-Contributory' as a permit has been issued to redevelop the property which will significantly diminish its integrity.
  - Include a further correction in Amendment C161port Part 2 to amend the heritage grading of 3 Havelock Street from 'Significant' to 'Non-Contributory' inside Heritage Overlay 5 as it is a carpark.
  - Multiple corrections to the heritage controls applying to Elwood Primary School, Middle Park Primary School, South Melbourne Park Primary School and MacRobertson Girls' High School in response to submission 142.
- 4.10 Council resolved to take up the officer recommendation to split Amendment C161port into two parts. This was to enable the processing of Amendment C161port to continue in the most timely and efficient manner. Specifically:
- **Amendment C161port Part 1** – Included the proposed planning scheme changes and underlying strategic work where no submission has been made and where submissions have been made in support (and no objections). Part 1 has been adopted and gazetted.
  - **Amendment C161port Part 2** – Included all changes and underlying strategic work that is subject to unresolved objecting submissions. Submissions related to Part 2 were referred to a Planning Panel.
- 4.11 **Attachment 5** explains which components of the Amendment were included in each part. Specifically, Amendment C161port Part 2 comprises the following proposed changes to the Scheme:

Align zones to title boundaries

1. Amend Planning Scheme Maps 2 and 4 to:
  - Rezone part of 210-218 Dorcas Street, South Melbourne from the Commercial 1 Zone (C1Z) to the General Residential Zone - Schedule 1 (GRZ1).
  - Rezone part of 350-370 Kings Way, South Melbourne from the Public Park and Recreation Zone (PPRZ) to the Public Use Zone 2 (PUZ2).
  - Rezone part of 35 Lakeside Drive, Albert Park from the Public Use Zone 2 (PUZ2) to the Public Park and Recreation Zone (PPRZ).
  - Rezone part of 146 Dow Street, Port Melbourne from the Neighbourhood Residential Zone – Schedule 2 (NRZ2) to the General Residential Zone – Schedule 1 (GRZ1).

Update heritage provisions

2. Update the Schedule to Clause 43.01 (schedule to the Heritage Overlay) and corresponding planning scheme maps 2HO, 3HO, 6HO, 4HO, 7HO, 8HO, 9HO to:
  - Apply new individual Heritage Overlays to the following properties:
    - 110-118 Barkly Street, St Kilda, and 2-6 Blanche Street, St Kilda (HO507).
    - 12 Marine Parade, St Kilda (HO510)

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- 152-154 Mitford Street, Elwood (HO511)
  - 58-60 Queens Road, Melbourne (HO512)
  - Apply HO5 (St Kilda Hill Precinct) to an additional 3 properties.
  - Apply HO7 (Elwood, St Kilda, Balaclava, Ripponlea Precinct) to an additional 17 properties.
  - Extend HO260 (State School) to 161 Mitford Street, Elwood.
  - Extend HO220 (Surrey Court) to all land at 71 Ormond Road, Elwood.
  - Delete HO164 from the land bounded by Boundary Road, Munro Street, Ingles Street and Woodruff Street, apart from 164 Ingles Street and 14 Woodruff Street, Port Melbourne.
  - Delete HO215 from the Rail over Road Bridge at Nightingale Street, Balaclava, remove HO7 from the Rail over Road bridge at Carlisle Street, Balaclava.
  - Apply HO147 to the Rail over Road Bridges at Carlisle Street and Nightingale Street, Balaclava.
  - Delete HO1 (Port Melbourne) from the rear of 146 Dow Street, Port Melbourne.
  - Make corrections to the Schedule to the Heritage Overlay (Clause 43.01) for 15 heritage places (HO215, HO147, HO129, HO150, HO164, HO301, HO260, HO220, HO232, HO282, HO255).
3. Update the incorporated Port Phillip Heritage Review to:
    - Introduce three new citations.
    - Update 49 existing citations.
  4. Update the incorporated City of Port Phillip Heritage Policy Map to show:
    - 257 properties as a 'Significant Heritage Place' inside a Heritage Overlay grading.
    - 17 properties as a 'Contributory Heritage Place' inside a Heritage Overlay grading.
    - 25 properties as 'Non-contributory Heritage Place' inside a Heritage Overlay grading.
  5. Update the City of Port Phillip Neighbourhood Character Map (Incorporated Document) to show:
    - Five (5) additional properties as a 'Contributory Heritage Place outside the Heritage Overlay' grading.
    - One (1) property as 'Non-contributory Heritage place outside the Heritage Overlay' grading.
    - Consequential changes to remove 'Contributory Heritage Place outside the Heritage Overlay' grading where properties are being regraded.
  6. Amend Clause 22.04 (Heritage Policy) to reference the following documents:



- *Heritage Assessment 2-6 Blanche Street and 110-118 Barkly Street, St Kilda* (Context Pty Ltd, December 2017).
  - *58 - 60 Queens Road, Melbourne Heritage Assessment* (Peter Andrew Barrett, November 2017).
  - *Port Phillip Heritage Review Update* (David Helms Heritage Planning, February 2019).
7. 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 Port Phillip Heritage Review (including the City of Port Phillip Heritage Policy Map and the City of Port Phillip Neighbourhood Character Map).
8. Amends the Schedule to Clause 72.04 (Documents incorporated in this scheme) include four new incorporated documents, being the individual Statements of Significance for new individually significant properties HO507, HO510, HO511 and HO512.
- 4.12 At the 16 September 2020 Council Meeting Council also resolved to:
- Request the Minister to appoint an Independent Planning Panel in accordance with Part 8 of the Act to review submissions to Part 2 of the Amendment.
  - Refer all submissions relating to C161port Part 2 to the Planning Panel.
  - Write to all submitters to inform them of the Planning Committee's decision to refer the Amendment and submission to a Planning Panel.

#### Panel Hearing

- 4.13 The Minister for Planning's delegate appointed the Panel on 8 October 2020 and confirmed the Directions Hearing date as taking place the week commencing 26 October 2020.
- 4.14 Due to COVID-19 and the associated physical distancing requirements, the Directions and Panel Hearing for Amendment C161port Part 2 took place via video conference.
- 4.15 During the first Directions Hearing an adjournment request was made by one of the parties to the Hearing and as such the Panel Hearing due to commence on 23 November 2020 was adjourned, with the Panel Hearing date to be confirmed at a second Directions Hearing scheduled for 21 December 2020.
- 4.16 A second Directions Hearing was held on 21 December 2020, via video conference, where a date for the adjourned Panel Hearing was decided upon.
- 4.17 The four day hearing for C161port Part 2 was held from Wednesday 27 January – Monday 1 February 2021, via video conference. The two-person panel considered all written submissions received to the Amendment, as well as verbal submissions and evidence from:
- Ms Briana Eastaugh of Maddocks Lawyers, who represented Council.
  - Ms Natica Schmeder, Heritage Consultant, who was called upon by Council to undertake an independent review of the three background reports supporting the amendment and give evidence in relation to them.





- Mr Song, representing the owner of 207 Little Page Street Middle Park (submitter 151), who called on Mr Bryce Raworth, Heritage Consultant, of Bryce Raworth and Associates, to give evidence on behalf of the submitter who opposed the regrading of this property.
- Mr Box (submission 13) in support of the proposed regrading of 207 Little Page Street Middle Park from Non-Contributory to Significant.
- Mr McArdle and Mr Mercurio, representing Noramax Pty Ltd (submitter 66), who called upon expert heritage evidence from Mr Bryce Raworth in relation to 335 Ferrars Street South Melbourne.
- Mr Nicholls (submitter 93), representing himself and Ms Crossley in relation to 61 Farrell Street, Port Melbourne, where they opposed the proposed regrading from Contributory to Significant within a Heritage Overlay.
- The Meyden Group (submitter 131), who called upon expert heritage evidence from Ms Robyn Riddett of Anthemion Consultancies in relation to the Cosmopolitan Hotel at 2 Carlisle Street, 3, 5 and 9 Havelock Street, St Kilda.
- YVE Owners Corporation (submitter 148) who called upon expert heritage evidence from Mr Anthony Hemmingway, Heritage Consultant, in its support for the application of a heritage overlay to 58-60 Queens Road Melbourne.

4.18 The main matters considered during the panel process were:

- Council's approach to the grading of heritage properties.
- Property specific issues regarding the degree of intactness and integrity of individual properties to be included in the Heritage Overlay.
- The impact on development opportunities, property values and the structural condition of buildings.

Council's heritage evidence

4.19 Council engaged Ms Natica Schmeder of Landmark Heritage to undertake an independent peer review of the three background heritage reports supporting the Amendment and provide expert evidence in relation to them.

4.20 In her peer review and evidence, Ms Schmeder identified six key instances where her opinion differed from the author of the Port Phillip Heritage Review Update (2019). She also identified minor changes relating to citation details. The table below summarises the key instances where Ms Schmeder's opinion varied from Council's.

Property address	Council position as adopted at 16 September 2020 Council meeting	Ms Schmeder's position
321 - 341 Ferrars Street South Melbourne	Regrade from Non-Contributory to Significant	Removal of some properties from within the HO map. A property boundary mapping anomaly had caused some properties to be included in the HO map for the railway reserve that was only intended to include the bluestone bridge.



Elwood Primary School 161 Mitford Street Elwood	Extend current Elwood Primary Heritage Overlay to include a portion of 161 Mitford Street Elwood	Extend Heritage Overlay envelope slightly to include portion of the nature strip as it contains mature plane trees.
293 The Boulevard Port Melbourne	Regrade from Significant to Non-Contributory within Heritage Overlay 2	Grading should remain as Contributory until demolished (as approved to take place under planning permit)
291 The Boulevard Port Melbourne	Regrade from Significant to Contributory within Heritage Overlay 2	Downgrade further to Non-Contributory. This is because the dwelling has been significantly altered to the point where it has no contributory value.
137-139 Fitzroy Street St Kilda	Regrade from Non-Contributory to Significant within Heritage Overlay 5	Downgrade from Significant to Contributory. This is because significant alterations to the building have occurred over time and mean that the lower grading of Non-contributory is warranted.
207 Little Page Street Middle Park	Regrade from Non-Contributory to Significant within Heritage Overlay 440	No change to the heritage grading – leave as current grading of Non-Contributory. This is because many key elements of the building have been significantly altered and mean that the lower grading of Non-contributory is warranted.

- 4.21 Under delegation, Council officers adopted all of the above changes in accordance with Ms Schmeder's evidence except in relation to 207 Little Page Street, Middle Park, where the previously adopted Council position was retained. The affected property owners (and the Panel) were notified of this in writing on 16 and 17 December, prior to the hearing, so that they had an opportunity to respond.

#### Panel Report

- 4.22 The Panel report was originally emailed to Council on 12 March 2021, however as it was sent to an invalid email address it was never received. The report was only received by Council on 6 April 2021 after Council officers contacted Planning Panels directly to enquire about the outcomes of the panel.
- 4.23 In accordance with Section 26 of the Act, the report was sent to submitters and made publicly available on 7 April 2021. A copy of the Panel Report can be found at **Attachment 1**.
- 4.24 Under Ministerial Direction 15 (**MD15**) Council has a statutory obligation to make a decision on the Amendment within 40 business days of receiving the Panel Report. However, due to the timing of the receipt of the Panel Report and internal reporting requirements, Council was not able to consider adopting the Amendment within this timeframe. Accordingly, Council officers sought an exemption under MD15 from the





Minister for Planning to allow additional time to adopt the Amendment. This was approved by the Minister's delegate on 9 April 2021.

Panel response to key issues

4.25 In response to common issues raised in submissions, the Panel found that:

- **Heritage gradings:** several submitters and expert witnesses presenting to the Panel were concerned Council had nominated the threshold for inclusion in the Heritage Overlay and particularly for certain gradings too low. This included arguments that the use of a 'Significant' grading for properties within precincts was unsuitable and a 'Contributory' grading was more appropriate. The Panel found that although Council applies a lower bar to significant graded properties than some other councils, this reflects Council's long standing approach to gradings. Therefore, it is not appropriate to vary from this approach now, and remains acceptable.
- **Strategic justification:** the Amendment is well founded and strategically justified, and the Amendment should proceed subject to addressing the more specific issues raised in submissions as discussed in the following chapters.
- **Restriction development opportunities and impact on property value:** applying the Heritage Overlay would not create an unacceptable burden to the owners of the land affected by the Amendment. Further, that concerns relating to future redevelopment opportunities are immaterial to this stage of the planning process and more appropriately considered at the planning permit stage.
- **Structural condition:** while not all buildings covered by the Amendment may be in perfect condition, the structural integrity or condition of a building should not be a criterion for assessing heritage significance.

4.26 In response to the issues raised by submitters who appeared at the hearing and made verbal submissions to the panel, the Panel found that:

- **207 Little Page Street Middle Park:** the regrading of this property from Non-contributory to Significant is not supported (refer further discussion below).
- **335-337 Ferrars Street South Melbourne:** the entire former railway reserve (Railway Cutting and Road Bridges) as described in revised Citation 2311 should be identified and graded as Significant within HO440. The property and building at 335-337 Ferrars Street should not be included within HO440. The heritage mapping and Citation 2311 should be corrected to reflect that 335-337 Ferrars Street is located within HO441 and identified as Non-contributory (current grading). The concerns of Submitter 66 can be appropriately addressed by correcting relevant heritage and Citation mapping boundaries and amending wording in Citation 2311.
- **61 Farrell Street Port Melbourne:** the regrading of the property from Contributory to Significant is supported as proposed.
- **2 Carlisle Street, 3, 5 and 9 Havelock Street, St Kilda:** Part of 2 Carlisle Street (also known as both 11 Havelock Street and 3 Albert Street) should be regraded to Non-contributory in HO5. 3 Havelock Street should be regraded to Non-contributory in HO5. 5 Havelock Street should be regraded to Significant in HO5. 9 Havelock Street should not be removed from HO5.
- **58-60 Queens Road Melbourne:** an individual Heritage Overlay HO512 is appropriate for this property. The Statement of Significance for HO512 should be



amended to delete reference to the developers O'Donohue and Lynch and include Criterion D - Representativeness in the section of the Statement of Significance headed 'Why is it significant'.

- **96 Grey Street St Kilda:** the addition of 96 Grey Street, St Kilda as an individually Significant place within HO5 with its own place Citation is appropriate as exhibited.
- **152 and 154 Mitford Street Elwood:** the application of an individual Heritage Overlay to these properties is justified, notwithstanding potential flooding issues to be addressed in the management of these properties.

Panel recommendations

- 4.27 Overall, the Panel recommended that C161port Part 2 be adopted as exhibited subject to some changes. Of the recommended changes, only three significantly departed from Council's position. The list of the Panel's recommended changes and the officer response forms **Attachment 2**.
- 4.28 The three recommended changes that departed significantly from Council's position are discussed in the table below.

Panel recommendation that differed from Council's Position	Discussion
Regrading 207 Little Page Street, Middle Park from Non-contributory to Significant (Non-contributory grading recommended)	The Panel's recommendation was not consistent with Council's position. However, it was consistent with Council's heritage expert's position. This was the key matter on which there was a different position between Council and Council's heritage advisor. Consistent with Ms Schmeder's opinion, the Panel found that while in some ways the dwelling is recognisable as a Federation era dwelling, this is not in itself sufficient to justify a Significant grading within the precinct. Further, many key elements of the building have been significantly altered, including the bagging and overpainting of the brickwork, likely alteration or replacement of the windows and roof materials, and changes to detailing. Since the Panel report was issued, a planning permit was issued at the direction of VCAT for 'demolition of the existing dwelling and construction of a single double storey dwelling with basement and roof terrace'.
Regrading of the St Kilda Sea Baths from Non-contributory to Contributory (Non-contributory grading should remain)	This was on the basis of insufficient strategic justification to support the grading.
Regarding 293 The Boulevard, Port Melbourne, from Significant to Contributory (should be regraded to Non-contributory)	293 The Boulevard is a somewhat unique property, subject of an unsympathetic first floor addition in the late 1990s. It is currently graded Significant and as exhibited, was proposed to be graded Contributory. At the 16 September 2020 Council meeting, Council adopted the Officer recommended change of position to support a Non-



	<p>contributory grading, on the basis that a 2017 planning permit had been issued which included full demolition.</p> <p>On the basis of Ms Schmeder’s evidence, Council adopted another position under delegation for the Panel, that the grading should remain as Contributory – primarily on the basis that the demolition had not occurred yet.</p> <p>The Panel determined the property should be graded Non-contributory, on the basis of heritage evidence provided on behalf of the property owners that the dwelling was so significantly altered as to warrant the lowest grading.</p> <p>Since the panel hearing, the dwelling was demolished in accordance with the planning permit. Accordingly, a Non-contributory grading is appropriate and is the recommended approach for this property</p>
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- 4.29 The Act requires Council to formally consider the Panel’s report and recommendations, and determine whether to adopt (with or without changes) or abandon the Amendment.
- 4.30 Officers are supportive of the Panel’s recommendations and recommend modifying the amendment documentation to reflect the changes proposed by the panel, with the exception of one minor matter at recommendation 1b). This concerns a change to the Heritage Overlay number of a place on the Victorian Heritage Register, which only Heritage Victoria can make. It is recommended that this change be referred to Heritage Victoria to rectify in their next ‘fix-up’ amendment.

Adoption of Amendment documentation

- 4.31 A final version of the Amendment documentation which is recommended for adoption can be found at **Attachment 3** of this Council Report.

Options for Council

- 4.32 Under the Act, Council must consider all the Panel’s recommendations but it is not obligated to accept them. If in determining to adopt the amendment Council does not accept one or more of the Panel’s recommendations, it must provide its reason(s) why.
- 4.33 The options available to Council under the Act are:
- Option 1: Adopt the Amendment without changes.
  - Option 2: Adopt the Amendment with changes (accepting some or all of the Panel’s recommendations).
  - Option 3: Abandon the Amendment.
- 4.34 Adoption of the Amendment without changes (Option 1) is not recommended given the findings of the Panel. In the absence of a balanced consideration of the Panel’s findings, the Minister is likely to support the Panel’s recommendations.
- 4.35 Adoption of the Amendment with changes (Option 2) is recommended, aligned to the position detailed in the table at section 4.33.
- 4.36 Abandoning the Amendment (Option 3) is not recommended. The Amendment will ensure our Planning Scheme is up-to-date and facilitate clear and consistent decision-making on development applications.



## 5. CONSULTATION AND STAKEHOLDERS

- 5.1 Public exhibition of Amendment C161port took place from 25 June to 24 July 2020 in accordance with the Act and having regard to the restrictions imposed in response to COVID-19. Specifically it involved:
- Direct notification (letter) to owners and occupiers of affected properties (approx. 2,500 letters)
  - Direct notification (letter) to Prescribed Ministers, Statutory Authorities and Stakeholders
  - Public Notices in The Age Newspaper on Tuesday 23 June 2020 and in the Government Gazette on Thursday 25 June 2020
  - Amendment documentation and supporting information available to view on Council's website and the State Government's Planning Amendments Online website
  - Amendment documentation and supporting information available to view in hard copy by direct mail upon request, for those without internet access (one member of the community took Council up on this offer)
  - Virtual meetings between community members and a strategic planner to discuss the amendment (note: this was in place of face-to-face community drop-in sessions which could not be held due to COVID-19 restrictions)
  - Option for stakeholders to call or e-mail Council planners about the amendment.
- 5.2 In response to COVID-19, the Victorian Government introduced *the COVID-19 Omnibus (Emergency Measures) Bill 2020* which includes temporary changes to the Act. This meant that planning documents previously required to be physically available to view at state and local government offices are now only required to be available for online inspection, including planning scheme amendment documentation.
- 5.3 Submitters were notified on 17 September 2020 of Council's decision to refer all submissions to an independent Planning Panel, and advising that they would have the opportunity to submit their case at the hearing to the panel.
- 5.4 All submitters were invited to attend and participate in this Council Meeting and will be notified about the outcome of this meeting.

## 6. LEGAL AND RISK IMPLICATIONS

- 6.1 The Amendment is being processed in accordance with the requirements of the Act. This includes all affected owners and occupiers were notified of the exhibition of Amendment C161port and were given the opportunity to make a formal submission.
- 6.2 Under MD15 Council has a statutory obligation to make a decision regarding the Amendment within 40 business days of receiving the Panel Report. However, due to the timing around the receipt of the Panel Report and internal reporting timeframes, Council will not be able to consider adopting the Amendment within this timeframe. Council's request for an MD15 exemption to allow additional time to adopt the Amendment was approved on 9 April 2021.
- 6.3 In considering a planning scheme amendment, Council must consider only its role as Planning Authority to ensure transparency of its decision making.
- 6.4 The Amendment is subject to Ministerial approval. The Minister may approve the amendment with or without changes to the planning controls.



**7. FINANCIAL IMPACT**

- 7.1 The financial costs associated with the Amendment relate to the panel hearing, expert evidence and legal representation and statutory fees for Ministerial approval. Provision for these costs is made in the annual Planning Scheme Amendments program budget.

**8. ENVIRONMENTAL IMPACT**

- 8.1 Amendment C161port Part 2 will have a positive environmental impact by protecting places of historic significance.

- 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. It recognises the embodied energy and life-cycle value of traditional materials, and reduces the water use associated with demolition and new buildings'.*

**9. COMMUNITY IMPACT**

- 9.1 Amendment C161port Part 2 will have a positive community impact effect through the proper management and preservation of historically significant places, and through the proper management of places in the planning scheme.

**10. ALIGNMENT TO COUNCIL PLAN AND COUNCIL POLICY**

- 10.1 Amendment C161port Part 2 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 Should Council decide to adopt the Amendment (with or without changes), Council officers will lodge a request for approval to the Minister for Planning within 10 business days of this Council meeting.

**12. COMMUNICATION**

- 12.1 Submitters to Amendment C161port Part 2 will be notified of Council's decision.

**13. OFFICER DIRECT OR INDIRECT INTEREST**

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

**TRIM FILE NO:** 66/02/279

**ATTACHMENTS**

1. Panel Report
2. Panel recommendations with officer responses
3. Amendment documents for adoption
4. Exhibited Explanatory Report
5. Splitting up of Amendment C161port into Parts 1 & 2