



**10.3** AMENDMENT C215PORT - 21 DORCAS STREET, SOUTH MELBOURNE (PERMANENT HERITAGE OVERLAY)

**EXECUTIVE MEMBER:** BRIAN TEE, GENERAL MANAGER, CITY GROWTH AND DEVELOPMENT

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**1. PURPOSE**

- 1.1 To consider and endorse *the 21 Dorcas Street, South Melbourne Heritage Report and Place Citation* (Trethowan Architects, 2023) as the strategic basis for modified heritage controls for 21 Dorcas Street, South Melbourne.
- 1.2 To determine whether to request authorisation from the Minister for Planning to prepare and exhibit an amendment to the Port Phillip Planning Scheme to apply the Heritage Overlay to 21 Dorcas Street, South Melbourne, on a permanent basis.
- 1.3 To determine whether to write to the Minister for Planning endorsing officer's request for an interim heritage overlay to 21 Dorcas Street, South Melbourne.

**2. EXECUTIVE SUMMARY**

- 2.1 Two applications to demolish the building at 21 Dorcas Street, South Melbourne, have been received by Council pursuant to Section 29A of the Building Act 1993 on 3 July 2023 and 8 August 2023. Since no Heritage Overlay applies to the land, a planning permit for demolition is not required.
- 2.2 The building at 21 Dorcas Street, South Melbourne was assessed in the South Melbourne Structure Plan Stage 2 Heritage Review. That Review is on-going and assesses a number of places of potential heritage significance to inform the development of the new South Melbourne Structure Plan (SMSP). The Review is scheduled to be implemented as part of the planning scheme amendment to implement the broader SMSP.
- 2.3 In the interim, the *21 Dorcas Street, South Melbourne Heritage Report and Place Citation* (Trethowan Architects, 2023) has been prepared (the **Report**) (see **Attachment 1**). The Report:
  - 2.3.1 Recognises the house as *a rare surviving example of housing in this part of South Melbourne, developed at the turn of the twentieth century*, and
  - 2.3.2 Recommends the property for inclusion in the Heritage Overlay.
- 2.4 Given the identified significance of the house at 21 Dorcas Street, South Melbourne, and the immediate demolition threat, officers requested under delegation on 24 July 2023, that the Minister for Planning, apply an interim heritage overlay under 20(4) of the *Planning and Environment Act 1987*.
- 2.5 The officer request advised that Council intended to seek a permanent heritage overlay for the property as part of a future planning scheme amendment to implement the SMSP, scheduled for late 2024.
- 2.6 The Department of Transport and Planning (DTP) wrote to Council on 4 September 2023 and:



- 2.6.1 Requested additional information in support of the application for the interim heritage overlay, and
- 2.6.2 Advised Council that a request for a permanent heritage overlay via a separate planning scheme amendment must be lodged by Council, or that confirmation must be provided that Council will consider the matter at the next Council meeting, prior to 29 September 2023. This definitive timeframe would provide for natural justice and certainty to the landowner/s.
- 2.7 In response to the above, this report recommends that Council endorse the Report and commence the planning scheme amendment process (via Amendment C215port) to apply a permanent heritage overlay to 21 Dorcas Street, South Melbourne.
- 2.8 The amendment would follow the statutory process set out by the Planning and Environment Act 1987 and could take approximately up to 18 months.
- 2.9 This report also recommends that Council write to the Minister for Planning endorsing officer's request for an interim heritage overlay via Amendment C214port to provide heritage protection while Amendment C215port is progressed, noting the more definitive timeframes for its commencement.
- 2.10 Resources have been allocated in the 2023/24 Heritage Program and Planning Scheme Amendments Program to progress this project.

### 3. RECOMMENDATION

That Council:

- 3.1 Endorses the *21 Dorcas Street, South Melbourne Heritage Report and Place Citation* (Trethowan Architects, 2023) (**Attachment 1**) as the strategic basis for additional heritage controls proposed by Amendments C214port and C215port.
- 3.2 Endorses the officer request made to the Minister for Planning to approve Amendment C214port under Section 20(4) of the *Planning and Environment Act 1987* (the Act) which applies an interim heritage overlay to 21 Dorcas Street, South Melbourne.
- 3.3 Authorises the Chief Executive Officer (or their delegate) to:
  - 3.3.1 Seeks authorisation from the Minister for Planning to prepare and exhibit Amendment C215port to the Port Phillip Planning Scheme (**Attachment 2**), pursuant to Section 8A of the Act.
  - 3.3.2 Place Amendment C215port on exhibition, in accordance with Section 19 of the Act 1987, subject to Ministerial authorisation.
  - 3.3.3 Finalise the amendment documentation for authorisation and exhibition of Amendment C215port, including making minor changes that do not change its intent.
  - 3.3.4 Write to the Minister for Planning advising of Council's decision to commence the process for Amendment C215port and the timeframes for its progression.

### 4. KEY POINTS/ISSUES

#### Background

- 4.1 Council's heritage program takes an area-based approach to remove gaps in the heritage overlay and ensure heritage controls and documentation are robust and up to date.



- 4.2 The program is currently focusing on the reviews of Heritage Overlay 7 (St Kilda, St Kilda East, Balaclava and Ripponlea), Heritage Overlay 8 (Elwood) and South Melbourne.
- 4.3 The South Melbourne Heritage Review (the SMSP Review) is being completed in two stages by Trethowan Architects as an input to the South Melbourne Structure Plan (SMSP). The SMSP is due for completion in mid-2024 and scheduled to be implemented via a subsequent planning scheme amendment process in 2024.
- 4.4 The Review assesses a number of individual places (including the former house at 21 Dorcas Street, South Melbourne) and potential precinct extensions in the South Melbourne structure plan area, and will make recommendations for updates to the heritage controls in the Port Phillip Planning Scheme.

#### **Previous heritage assessments – 21 Dorcas Street, South Melbourne**

- 4.5 Amendment C5 to the Port Phillip Planning Scheme was a city-wide amendment that implemented the Port Phillip Heritage Review (Andrew Ward and Associates, 1998). It applied the Heritage Overlay to a wide range of precincts and individual properties across Port Phillip.
- 4.6 The original Port Phillip Heritage Review included an assessment of 21 Dorcas Street, South Melbourne with the field notes indicating it was assigned a 'D' grading. This grading translated to a 'Contributory outside the Heritage Overlay' grading on the basis that the property was not included in a heritage overlay at that time, and the property was designated as a 'yellow' property on the 'Neighbourhood Character Map' Incorporated Document.
- 4.7 Since the initial preparation of the Port Phillip Heritage Review, Council has progressively undertaken additional heritage studies (of both precincts and individual sites) to further develop, verify and refine this earlier work. These studies have identified 'gaps' and inconsistencies in heritage controls, due to the extensive scale of the initial city-wide heritage assessment and evolving heritage methodology over time.
- 4.8 Council's heritage advisor identified 21 Dorcas Street, South Melbourne as one such place warranting a further, more detailed assessment. The property was subsequently included in the scope for the Review.

#### **Applications to demolish 21 Dorcas Street, South Melbourne**

- 4.9 Council has received two applications to demolish the building at 21 Dorcas Street, South Melbourne, pursuant to Section 29A of the *Building Act 1993*:
  - 4.9.1 The first application was received on 3 July 2023. The application address was noted as 19 Dorcas Street, South Melbourne however 21 and 23 Dorcas Street, South Melbourne were also proposed to be demolished in the demolition plan.
  - 4.9.2 The second application was received on 8 July 2023 and applied to 19, 21 and 23 Dorcas Street, South Melbourne.
- 4.10 21 Dorcas Street, South Melbourne (as well as 19 and 23 Dorcas Street) currently has no Heritage Overlay and accordingly a planning permit for demolition is not required.

#### **Heritage Assessment of 21 Dorcas Street, South Melbourne**

- 4.11 Whilst the broader SMSP Review is on-going, the *21 Dorcas Street, South Melbourne Heritage Report and Place Citation* (Trethowan Architects, 2023) (**the Report**) has been finalised.



- 4.12 The Report identifies the house at 21 Dorcas Street to be of individual local significance to the City of Port Phillip as *'a rare surviving example of housing in this part of South Melbourne, developed at the turn of the century'*.
- 4.13 A draft Citation including a Statement of Significance has been prepared for the property and is included in the Report at **Attachment 1**.
- 4.14 The report recommends that 21 Dorcas Street, South Melbourne, be included in the Heritage Overlay.

**Proposed Planning Scheme Amendment (Amendment C215port - Permanent Heritage Overlay)**

- 4.15 Amendment C215port has been prepared to give statutory effect to the findings of the Report and apply a heritage overlay to 21 Dorcas Street, South Melbourne on a permanent basis.
- 4.16 Specifically, the Amendment would make the following changes to the Port Phillip Planning Scheme:
- Amend planning scheme map 4HO to apply Heritage Overlay 562 (HO562) to 21 Dorcas Street, South Melbourne.
  - Amend Clause 15.03-1L to include the *21 Dorcas Street, South Melbourne Heritage Report and Place Citation (Trethowan Architecture, 2023)* as a background document, and update the version number and date of the *Port Phillip Heritage Review, Port Phillip Heritage Policy Map* and *Port Phillip Neighbourhood Character Map* Incorporated Documents.
  - Amend the schedule to Clause 43.01 – Heritage Overlay to include HO562 applying to 21 Dorcas Street, South Melbourne on a permanent basis and list the *Statement of Significance: 'House', 21 Dorcas Street, South Melbourne, July 2023* (Incorporated Document).
  - Amend the schedule to Clause 72.04 (Incorporated Documents) to update the version number and date for the *Port Phillip Heritage Review, City of Port Phillip Heritage Policy Map* and *City of Port Phillip Neighbourhood Character Map* as Incorporated Documents, and add the *Statement of Significance: 'House', 21 Dorcas Street, South Melbourne, July 2023* as an Incorporated Document.
  - Amend the schedule to Clause 72.08 – Background Documents to include the *21 Dorcas Street, South Melbourne Heritage Report and Place Citation (Trethowan Architecture, 2023)* as a Background Document.
  - Apply a 'Significant heritage place' grading to 21 Dorcas Street, South Melbourne on the *Port Phillip Heritage Policy Map* (Incorporated Document).
  - Remove the 'Contributory Outside the Heritage Overlay' grading for 21 Dorcas Street, South Melbourne on the *Port Phillip Neighbourhood Character Map* (Incorporated Document).
- 4.17 Draft Amendment C215port documentation is included in Attachment 2.
- 4.18 If Council proceeds with the amendment, it will follow the statutory process outlined in the Act which includes the following steps typically over a 12-18 month period:
- Authorisation to commence amendment process from Minister for Planning.



- Public Exhibition including statutory notification to affected owners and occupiers and the opportunity for submissions to be made to Council.
- Review of submissions by Council and referral to independent Planning Panel if there are unresolved issues.
- Panel process providing opportunity for further independent review.
- Council consideration of panel outcome and adoption of amendment.
- Final approval of amendment by Minister for Planning

### Interim Heritage Controls

- 4.19 Interim heritage controls can protect places of significance whilst permanent controls are being considered through a planning scheme amendment process. This protects a building not currently included in the Heritage Overlay pending the completion of the planning scheme amendment process. An interim control does not prevent demolition outright, but rather triggers a requirement for a planning permit for demolition or works that change the appearance of the place to ensure heritage matters are considered.
- 4.20 Council is required to make a request to the Minister for Planning to exercise her powers pursuant to section 20(4) of the Planning and Environment Act 1987 to apply an interim heritage control, based on an assessment that the places are of local heritage significance. *Practice Note 29 'Ministerial Powers of Intervention'* identifies circumstances when the Minister may undertake a section 20(4) amendment. This includes that:
- “The matter will be the introduction of an interim provision or requirement and substantially the same provision or requirement is also subject to a separate process of review (such as the introduction of permanent controls in a planning scheme).”*
- 4.21 On 24 July 2023, the General Manager City Growth and Development under delegation, wrote to the Minister for Planning, requesting an interim heritage overlay be applied to 21 Dorcas Street, South Melbourne based on its significance outlined in the Report and in response to the threat of demolition.
- 4.22 The request advised that Council intended to seek a permanent heritage overlay for the property as part of a future planning scheme amendment to implement the SMSP, scheduled for late 2024.
- 4.23 Consequently, officers put a stay on the first application for demolition made on 3 July 2023, and refused the second application for demolition on 29 August 2023.
- 4.24 The Department of Transport and Planning (DTP) wrote to Council on 4 September 2023 and:
- 4.24.1 Requested additional information in support of the application for the interim heritage overlay including details on previous heritage assessments, and
- 4.24.2 Advised Council that a request for a permanent heritage overlay via a separate planning scheme amendment must be lodged by Council, or that confirmation must be provided that Council will consider the matter at the next Council meeting, prior to 29 September 2023. This definitive timeframe would provide natural justice and certainty to the landowner/s.



- 4.25 Should Council decide to commence the planning scheme amendment process to apply a permanent heritage overlay via Amendment C215port, officers will respond to DTP with confirmation of the proposed timing following this meeting.

## **5. CONSULTATION AND STAKEHOLDERS**

- 5.1 Landowners and occupiers of this property directly affected by C215port have been invited to this Council Meeting. The letter included information on how the proposed amendment affects their property, including a link to the information on Council's website.
- 5.2 Amendment C215port is proposed to undergo a full statutory exhibition process for four (4) weeks, in accordance with the Act. This would include:
- 5.2.1 Council officers and Council's Heritage Advisor available to meet with affected landowners and the community to provide information.
  - 5.2.2 Opportunity for interested persons / groups to make a submission on the proposed amendment.
  - 5.2.3 Publication of a Public Notice in the Government Gazette
  - 5.2.4 A dedicated Council webpage with an explanation of the amendment and relevant documentation
  - 5.2.5 Relevant documentation will be publicly available at Council's Town Hall.
- 5.3 All submissions made on the amendment are required to be reported to Council for consideration. Objecting submissions that cannot be resolved are required to be referred to an independent Planning Panel (appointed by the Minister for Planning).

## **6. LEGAL AND RISK IMPLICATIONS**

- 6.1 The request for interim planning controls is proposed to manage the 'risk' of building demolition prior to permanent heritage controls being introduced. Land owners will have the opportunity to make submissions in relation to the proposed heritage controls, through the full exhibition of Amendment C215port (permanent controls).
- 6.2 The amendment will be processed in accordance with the requirements of the Act.

## **7. FINANCIAL IMPACT**

- 7.1 A statutory fee of \$4,293.00 was paid in the request to approve Ministerial Amendment C214port. Provision for this cost is made within Council's Heritage Program 2023/24FY.
- 7.2 Provision for the costs to be incurred by proceeding with proposed Amendment C215port is included in Council's Planning Scheme Amendments budget 2023/24FY. The expenses include payment of statutory fees, notification during public exhibition and an independent Planning Panel hearing (including Panel costs, expert evidence and legal fees (if required)), if there are any unresolved submissions.

## **8. ENVIRONMENTAL IMPACT**

- 8.1 The amendment, if successful, will have a positive impact through protecting a place of historic significance and allowing the reuse and recycling of existing building stock.



## 9. COMMUNITY IMPACT

- 9.1 The amendment will make a positive impact on the community, through protecting historically significant places within Port Phillip for the benefit of current and future generations.
- 9.2 Amendment C215port is likely to impose additional cost on the property owner or developer of the property if it is included in the Heritage Overlay through increased planning permit requirements. The economic effects of requiring a planning permit may be reduced through the availability of Port Phillip's heritage, urban design and planning officers' pre-application advice prior to the lodgement of a planning permit application.
- 9.3 Overall, the amendment will have a positive economic impact through promoting the cultural economy through heritage conservation.

## 10. ALIGNMENT TO COUNCIL PLAN AND COUNCIL POLICY

- 10.1 The Council Plan 2021-31 (Year 3) prioritises the protection of Port Phillip's heritage and character (Liveable Port Phillip, Strategy No1)

## 11. IMPLEMENTATION STRATEGY

### 11.1 TIMELINE

- 11.1.1 Should the Council decide to proceed with the amendment, a request for Ministerial authorisation to exhibit Amendment C215port will be sent to the Minister for Planning.
- 11.1.2 Subject to the timing of authorisation, exhibition of Amendment C215port is scheduled for one month.
- 11.1.3 All submissions received are required to be considered by Council and any unresolved submissions must be referred to an independent Planning Panel.

### 11.2 COMMUNICATION

- 11.2.1 Information on Council's decision at this meeting will be provided to the affected landowner, and made available on Council's website.
- 11.2.2 If authorised, Amendment C215port will be publicly exhibited pursuant to Section 19 of the Act. See Section 5 – Consultation for proposed public exhibition.

## 12. OFFICER DIRECT OR INDIRECT INTEREST

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

- ATTACHMENTS**
1. **21 Dorcas Street, South Melbourne Heritage Report and Place Citation (Trethowan Architects, 2023)**[↓](#)
  2. **Proposed C215port amendment documentation**[↓](#)