



6.1 AMENDMENT C186PORT (MONTAGUE COMMERCIAL PRECINCT, FISHERMANS BEND) CONSIDERATION OF SUBMISSIONS AND REQUEST TO PROCEED TO INDEPENDENT PLANNING PANEL

EXECUTIVE MEMBER: LILI ROSIC, GENERAL MANAGER, CITY STRATEGY AND SUSTAINABLE DEVELOPMENT

PREPARED BY: SAMINDI YAPA, STRATEGIC PLANNER

1. PURPOSE

- 1.1 To consider written submissions received to Amendment C186port to the Port Phillip Planning Scheme during the public exhibition stage.
- 1.2 To determine whether to request the Minister for Planning to appoint an independent Planning Panel to consider submissions to the Amendment.
- 1.3 To consider endorsing a response to issues raised in submissions to form the basis of Council's position at the Panel hearing.

2. EXECUTIVE SUMMARY

- 2.1 Amendment C186port affects properties in the 'Montague Commercial Precinct' at 496-546 City Road and 151-163 Montague Street, South Melbourne.
- 2.2 Amendment C186port proposes to implement the recommendations of the *Fishermans Bend Heritage Review: Montague Commercial Precinct* (RBA Architects and Conservation Consultants, 2019) by applying permanent heritage controls to properties within the Montague Commercial Precinct.
- 2.3 On 4 December 2019, at its Ordinary Council Meeting, Council resolved to request the Minister for Planning to:
 - Authorise the preparation and exhibition of Amendment C186port; and
 - Extend the expiry date of the interim heritage controls applying to 496-510 City Road and 157- 163 Montague Street, South Melbourne and apply interim heritage protection to 530-546 City Road and 151-155 Montague Street, South Melbourne (Amendment C185port).
- 2.4 On 20 December 2019, the Minister for Planning's delegate authorised the preparation and exhibition of Amendment C186port.
- 2.5 The amendment was exhibited for 6 weeks from 16 January to 28 February 2020. 10 submissions were received (including 5 late submissions): 1 raised no objection and 9 opposed the amendment.
- 2.6 A high-level summary of the key issues raised in the submissions and a recommended officer response is presented in Section 3.8. A full summary of the submissions is provided at **Attachment 1**.
- 2.7 Considering the issues raised in the submissions, it is recommended that Council's submission to Panel support a change to the proposed heritage grading of 544-546 City Road from 'Significant' to 'Contributory'. No further changes are proposed.



- 2.8 The next step is for Planning Committee to decide whether to refer Amendment C186port to an independent Planning Panel to review submissions and make recommendations to the amendment, or to abandon the amendment.
- 2.9 With approval from the Minister for Planning, the timing for this next step had been deferred for a 3-month period due to the uncertainty surrounding the COVID-19 pandemic. This has required the pre-set panel hearing dates to be rescheduled to:
- Directions hearing: the week of 27 July 2020
 - Panel hearing: the week of 24 August 2020
- 2.10 Interim heritage controls are in place for all properties within the precinct which will expire on 30 October 2020. Due to delays within this process and the timing of the upcoming caretaker period and Council election, it is unlikely Council will be in a position to adopt the Amendment prior to the interim control expiry. Therefore, it is recommended that the Planning Committee seek to extend the interim controls to 30 April 2021 to allow sufficient time to finalise the amendment.

3. RECOMMENDATION

That Planning Committee:

- 3.1 Having formally considered all written submissions made to Amendment C186port to the Port Phillip Planning Scheme including the five late submissions, Council endorses the officers' response to the issues raised by the submissions and also endorses the recommended changes to the Amendment outlined in Attachment 1, as the basis for Council's submission to the Panel.
- 3.2 Requests the Minister for Planning to appoint an independent Planning Panel to consider the submissions received to Amendment C186port, in accordance with Part 8 of the *Planning and Environment Act 1987*.
- 3.3 Refers all submissions to the Panel to be appointed by the Minister for Planning, including the five late submissions.
- 3.4 Writes to all submitters to inform them of Planning Committee's decision to refer the Amendment and submissions to a Panel.
- 3.5 Requests the Minister for Planning to prepare and approve Amendment C192port to the Port Phillip Planning Scheme pursuant to Section 20A of the *Planning and Environment Act 1987* to extend the expiry date of interim Heritage Overlay 442 for six months.
- 3.6 Authorises the Chief Executive Officer (or delegate) to finalise the amendment documentation and Ministerial request for Amendment C192port.

4. RELEVANT BACKGROUND

- 4.1 The 'Montague Commercial Precinct' (the Precinct) is a group of late nineteenth century and early twentieth century buildings at 151-163 Montague Street and 496-546 City Road, South Melbourne.
- 4.2 Amendment C186port has been prepared to apply permanent heritage controls to the Precinct, in accordance with the recommendations of the *Fishermans Bend Heritage Review: Montague Commercial Precinct* (RBA Architects and Conservation Consultants, 2019) (the *Review*).



4.3 Specifically, the amendment proposes to:

- Amend the Schedule to Clause 43.01 (Heritage Overlay) and Planning Scheme Map 3HO to:
 - Apply Heritage Overlay HO513 (Montague Commercial Precinct) to 496-546 City Road, 151-163 Montague Street, South Melbourne and laneways R3087, R3091 and R3093 on a permanent basis.
 - Remove 512-512A, 516, 518, 522 and 524-528 City Road, South Melbourne from existing HO442 as the properties will now be included in HO513;
 - Delete interim control HO442 (Albert Park Residential Precinct / Part Montague Precinct).
- Introduce a new Statement of Significance (incorporated document) for the Montague Commercial Precinct by amending the Schedule to Clause 72.04 (Documents incorporated in this scheme).
- Amend the incorporated *Port Phillip Heritage Review Volumes 1-6* to:
 - Add a new precinct citation for HO513 (Montague Commercial Precinct).
 - Amend existing Citation 2371 relating to 506 City Road, South Melbourne, which is of individual significance.
 - Remove Citations 2370 (496-498 City Road, South Melbourne) and 2372 (159-163 Montague Street, South Melbourne) as these places contribute to the significance of the Montague Commercial Precinct but are not of individual significance.
 - List the *Fishermans Bend Heritage Review: Montague Commercial Precinct* (RBA Architects and Conservation Consultants, 2019) as a heritage study that has informed an update to the incorporated document.
- Amend the incorporated *City of Port Phillip Heritage Policy Map* to apply 'Significant Heritage Place', 'Contributory Heritage Place' and 'Nil / Non-contributory Place' gradings to properties in HO513 in accordance with the Statement of Significance.
- Amend the incorporated *City of Port Phillip Neighbourhood Character Map* to remove the 'Contributory Outside of HO' grading applying to 151 Montague Street, South Melbourne as it is now included in HO513.
- Amend Clause 22.04 (Heritage Policy) to list the *Fishermans Bend Heritage Review: Montague Commercial Precinct* (RBA Architects and Conservation Consultants, 2019) as a background document.
- Make other 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*).

4.4 On 4 December 2019, at its Ordinary Council Meeting, Council resolved to request the Minister for Planning to:



- Authorise the preparation and exhibition of Amendment C186port; and
- Extend the expiry date of the interim heritage controls applying to 496-510 City Road and 157-163 Montague Street, South Melbourne and apply interim heritage protection to 530-546 City Road and 151-155 Montague Street, South Melbourne (Amendment C185port).

4.5 On 20 December 2019, the Minister for Planning’s delegate authorised the preparation and exhibition of the amendment.

Authorisation

4.6 On 20 December 2019, the Minister for Planning’s delegate authorised Council to prepare and exhibit Amendment C186port. A Council can only prepare and exhibit an amendment if authorised to do so by the Minister for Planning. The purpose of authorisation is to identify whether the proposed amendment is consistent with State policy or interests and ensure that it makes proper use of the Victorian Planning Provisions.

Public Exhibition

4.7 The amendment was exhibited over a 6-week period from 16 January to 28 February 2020. The formal Public Exhibition process included direct letters to all owners and occupiers, and stakeholders, and notices in the local paper and government gazette (for further information see Section 4).

4.8 10 submissions were received (including 5 late submissions): 1 raising no objection and 9 opposing the amendment.

Overview of submissions – Key issues and Council position

4.9 The key issues raised in the submissions include:

- Conflict between the heritage overlay and the strategic direction for Fishermans Bend.
- Lack of strategic justification for the Amendment.
- Degree of intactness and integrity of individual properties to be included in the heritage overlay.
- Concerns over the structural condition of buildings
- Impact on property values.
- Impact on development potential.

A summary of key issues raised and a recommended officer response is outlined in Table 1 below.

Table 1: Summary of Issues

Summary of Issues	Summary of officer response and recommendations
General issues	
Inclusion of the Montague Commercial Precinct in the Heritage Overlay is inconsistent with the strategic vision for this	No change.



<p>part of Montague, which has been zoned to extend Melbourne's Capital City area (and a DDO applied).</p>	<p>There is a strong rationale for including the Montague Commercial Precinct in a Heritage Overlay as outlined in the <i>Fishermans Bend Framework</i> (September, 2018):</p> <ul style="list-style-type: none"> • It is consistent with the Delivering Montague Vision: A diverse and well-connected mixed-use precinct celebrating its significant cultural and built heritage, and network of gritty streets and laneways. • Objective 3.9: Protect architectural and cultural heritage to strengthen the sense of place and identity. • Strategy 3.9.1: Continue to evaluate locations, sites and buildings for their potential heritage value. • Strategy 3.9.2: Protect and enhance the existing heritage fabric. <p>The planning framework recognises that heritage places make an important contribution within this urban renewal area, and this is emphasised within the planning controls applied to this part of Montague which seek a low-rise and mid-rise scale <i>'that preserve identified character buildings and sensitively respond to heritage fabric'</i> (DDO30).</p>
<p>The analysis underpinning the proposed amendment lacks justification.</p>	<p>No change.</p> <p>The <i>Fishermans Bend Heritage Review: Montague Commercial Precinct (October 2019)</i> establishes the heritage significance of the Precinct and individual buildings. The methodology accords with the <i>Australia ICOMOS Charter for the Conservation of Places of Cultural Significance (2013)</i> (the Burra Charter), and complies with <i>Planning Practice Note 1</i>.</p>
<p>Impact on development potential under the Heritage Overlay.</p>	<p>No change.</p> <p>The Heritage Overlay does not prevent development but rather ensures that heritage matters are considered at the planning stage, with the intent to retain and reuse significant heritage fabric.</p>
<p>Property specific issues</p>	
<p>Request that the following properties be removed from proposed heritage overlay due to alterations and additions, impact on property value or due to the structural integrity of the building:</p> <ul style="list-style-type: none"> • 506 City Road • 530 City Road: • 534 City Road • 536 City Road 	<p>Amend the proposed heritage grading of 544-546 City Road, South Melbourne from 'Significant' to 'Contributory'.</p> <p>The Review assessed the level of intactness and integrity and determined that where alterations have occurred that these have not compromised the heritage significance of the place or its contribution to the heritage precinct.</p>



<ul style="list-style-type: none"> • 538 City Road • 540-542 City Road • 544-546 City Road • 153 and 155 Montague Street • 157-163 Montague Street • 151 Montague Street 	<p>However, based on the further evidence of the extent of alterations to 544-546 City Road, it is recommended that this property be afforded a 'Contributory' grading, rather than the proposed 'Significant' grading.</p> <p>The structural condition of the building does not implicitly negate its heritage significance. The identification and protection of heritage places at the planning scheme amendment stage will allow the structural integrity or condition of buildings to be properly assessed against identified heritage values at the planning permit application stage.</p> <p>Impact on individual property values is not a consideration in determining whether to apply the Heritage Overlay.</p>
<p>Object to the Heritage Overlay being applied to 506 City Road due to impact of development from adjoining property.</p>	<p>No change.</p> <p>Concerns about the impacts from adjoining development are more appropriately considered at the planning permit stage, rather than the planning scheme amendment stage.</p>

4.10 Refer to **Attachment 1** for a complete summary of submissions and Council officer responses and recommendations.

Recommended response to submissions

4.11 It is recommended that council officers' responses form the basis of Council's position at an independent Planning Panel hearing.

4.12 In summary, in response to the submissions received, it is recommended that Council's position to Panel support a change to the proposed heritage grading of 544-546 City Road, South Melbourne from 'Significant' to 'Contributory' to reflect the extent of alterations occurring to the property. No further changes are proposed.

Planning Panel Process

4.13 The Panel process provides for an independent review of submissions and offers a further opportunity for submitters to have their submissions considered, including any expert evidence. This provides a fair and transparent process that will enable stakeholder interests to be fully considered and reconciled where possible.

4.14 In preparing its report and recommendations, the Panel will consider all written submissions referred to it.

4.15 The Panel will provide its report and recommendations to Council on whether the amendment should proceed (with or without changes). This will enable Council to make a final decision on whether to adopt the Amendment (with or without changes).

Interim Heritage Controls

4.16 Interim heritage controls apply to the properties within the Montague Commercial Precinct and are set to expire on 30 October 2020.

4.17 The interim heritage controls were approved via Amendment C115 and the expiry date has been extended through Amendments C146, C152 and C157.



- 4.18 Due to delays within the Amendment C186port process and the timing of the upcoming caretaker period and Council election, it is unlikely Council will be in a position to adopt the amendment prior to the interim control expiry. On that basis, a further extension of the interim controls is required.
- 4.19 A planning scheme amendment (Amendment C192port) is required to extend the expiry date of the interim heritage controls for an additional six-months.
- 4.20 Specifically, the amendment would update the schedule to the Heritage Overlay (clause 43.01) to extend the expiry date of interim Heritage Overlay 442 to 30 April 2021.
- 4.21 The amendment would be prepared under Section 20A of the *Planning and Environment Act 1987* as a 'Prescribed amendment'. This section of the Act allows the Minister for Planning to prepare and approve certain classes of amendments without the need to notify affected properties.
- 4.22 The full list of classes is outlined in the *Planning and Environment Regulations 2015* and includes:
- (p) an amendment to extend the expiry of a clause in the Victoria Planning Provisions or a planning scheme for a period of 12 months or less, beginning on the day the amendment takes effect, if notice has been published in accordance with section 19(3) of the Act of the preparation of an amendment to introduce a clause that is similar or substantially the same; and*

Options

- 4.23 Under the Act, Council has the following options at this stage in the amendment process:
- Option 1 (recommended): Refer Amendment C186port and all submissions to an independent Planning Panel for review.
 - Option 2: Abandon Amendment C186port.
- Council does not have the option to adopt the amendment at this stage, given there are objecting submissions which are not proposed to be resolved.
- 4.24 Option 1 is recommended as it would enable the amendment process to continue and progress updated heritage controls for the Montague Commercial Precinct which is of local heritage significance to Port Phillip.
- The Panel process provides for an independent review of submissions and supporting expert evidence. This offers a transparent process to enable stakeholder interests to be fully considered and reconciled where possible. The Panel will provide its report and recommendations to Council to enable a final decision on whether to adopt the Amendment (with or without changes).
- Council officers' responses provided at **Attachment 1** would form the basis of Council's position at an independent Planning Panel hearing.
- 4.25 Option 2 would result in the Amendment not being progressed.
- Planning Committee could decide to take this option if it considered the work is not worth pursuing. This option should be taken in cognition that interim Heritage Overlay HO442 applying to 496-510 City Road, 530-546 City Road and 157-163 Montague Street, South Melbourne will expire on 30 October 2020.



5. CONSULTATION AND STAKEHOLDERS

5.1 Exhibition of Amendment C186port occurred over a 6-week period from 16 January to 28 February 2020 in accordance with the *Act* and involved:

- Direct notification (letter) to approximately 60 owners and occupiers of affected properties. Enclosed with the letter was a formal Notice of Amendment.
- Direct notification (letter) to approximately 110 owners and occupiers in the immediate surrounding area of HO513.
- Direct notification (letter) to Prescribed Ministers, Statutory Authorities and key stakeholder groups.
- Public Notices in the Port Phillip Leader on Tuesday 14 January 2020 and Government Gazette on Thursday 16 January 2020.
- Availability of the amendment documentation and supporting information on Council's website and the State Government's Planning Amendments Online website
- Availability of amendment documentation at St Kilda Town Hall and Emerald Hill Library and Heritage Centre.

6. LEGAL AND RISK IMPLICATIONS

- 6.1 All affected owners and occupiers were notified of the exhibition of Amendment C186port and were given the opportunity to provide a formal submission to the amendment in accordance with the requirements of the *Act*. This provided a fair and transparent process.
- 6.2 The most significant risk implication that has been identified is the rapidly evolving situation around COVID-19.
- 6.3 The Victorian Government's declared 'State of Emergency' may impact Council's ability to meet the statutory timeframes set out in the *Planning and Environment Act 1987* (the *Act*) and Ministerial Direction 15 *The Planning Scheme Amendment Process*. Council would need to seek approval for an extension of time from the Minister for Planning, and this could impact the timeframes for finalisation of the Amendment.
- 6.4 Concerns around the spread of COVID-19 may impact whether submitters are able to participate in the Planning Committee meeting given possible restrictions put in place on in-person attendance, or if they do not have access to the appropriate technology to enable online participation.
- 6.5 Planning Panels Victoria has advised that an independent Planning Panel may reschedule, postpone or cancel face-to-face scheduled hearings at short notice in response to the risks around COVID-19.
- 6.6 If face-to-face hearings are cancelled, the Panel hearing may proceed 'on the papers' and without attendance from parties. This may impact the pre-set hearing times specified in 8.3 below.
- 6.7 The Planning Scheme Amendment is subject to Ministerial approval. The Minister may approve the amendment with or without changes to the proposed planning controls.



7. FINANCIAL IMPACT

- 7.1 Costs associated with progressing Amendment C186port include panel hearing fees, expert evidence / representation at the panel and statutory fees at the approval stage. Provision for these costs is made in the annual Planning Scheme Amendments Program budget 2020/21.

8. ENVIRONMENTAL IMPACT

- 8.1 Amendment C186port will have a positive environmental impact by protecting places of historical significance and facilitation 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 Amendment C186port will have a positive community effect through the preservation of historically significant places in the Montague Precinct, South Melbourne for the benefit of current and future generations.

10. ALIGNMENT TO COUNCIL PLAN AND COUNCIL POLICY

- 10.1 Amendment C186port 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

TIMELINE

Planning Panel

- 11.1 Should Planning Committee decide to request the Minister for Planning to appoint an independent Planning Panel, the following pre-set panel hearing dates will apply:
- Directions hearing: the week of 27 July 2020
 - Panel hearing: the week of 24 August 2020
- 11.2 Planning Panels Victoria has advised that an independent Planning Panel may reschedule, postpone or cancel face-to-face scheduled hearings at short notice in response to the risks around COVID-19.
- 11.3 If face-to-face hearings are cancelled, the Panel hearing may proceed 'on the papers' and without attendance from parties.
- 11.4 Subject to no significant delays, the Panel report would be due to Council in either in late September or early October 2020.
- 11.5 Council would then consider the Panel report and recommendations to determine whether to adopt Amendment C186port (with or without changes) and request Ministerial approval or abandon the Amendment. Subject to Council's decision, approval of the Amendment would be anticipated for November 2020.



Interim Heritage Controls

11.6 Should Planning Committee decide to request a six-month extension to the interim heritage controls, a planning scheme amendment would be lodged with the Minister for Planning within five business days.

COMMUNICATION

11.7 If the Planning Committee requests the Minister for Planning to appoint an independent Planning Panel, all submitters will be notified via letter and of the opportunity to present verbally at the Panel hearing.

11.8 Council's website will be updated to reflect the decision at this meeting and the next steps in the Amendment process.

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: 66/02/286

ATTACHMENTS 1. Att - AmC186 submissions and response