
STRATEGY AND POLICY REVIEW COMMITTEE

7 APRIL 2008

POLICY AND PLANNING

A3	AMENDMENT C68: HERITAGE OVERLAY FOR NIGHTINGALE STREET PRECINCT - CONSIDERATION OF SUBMISSIONS
LOCATION/ADDRESS:	MARLBOROUGH STREET, ROSAMOND STREET, NIGHTINGALE STREET, WOODSTOCK STREET, GIBBS STREET, RAILWAY PLACE
RESPONSIBLE EXECUTIVE DIRECTOR:	GEOFF OULTON, EXECUTIVE DIRECTOR COMMUNITY DEVELOPMENT AND PLANNING
AUTHOR:	SONIA ANDERSON, STRATEGIC PLANNING
FILE NO.:	66/02/158
ATTACHMENTS:	1. LOCATION MAP 2. SUBMISSIONS TO AMENDMENT C69 (CONFIDENTIAL)

1. EXECUTIVE SUMMARY

- 1.1. Amendment C68 has been prepared to (permanently) include Nightingale Street Precinct in the Heritage Overlay in the Port Phillip Planning Scheme. Amendment C68 applies to the following properties:

31 – 55 Marlborough Street, 24 – 58 Rosamond Street, 27 – 57 Rosamond Street, 32 - 58 Nightingale Street, 19 - 47 Nightingale Street, 19 & 21 Woodstock Street, 1 – 17 Gibbs Street, 2 – 20 Gibbs Street and 1 – 5 Railway Place, Balaclava.

Refer to Attachment 1: for location map of Nightingale Street Precinct.

The above properties are currently subject to an Interim Heritage Overlay which was gazetted by the Minister for Planning on 17 January 2008.

- 1.2. Amendment C68 was placed on public exhibition on 14 February 2008 for a period of one calendar month. Notices were sent to all properties affected by the amendment as well as the immediately abutting properties. Notices were also placed in the Government Gazette and the local newspapers.
- 1.3. Following exhibition of the amendment, a total of six (6) submissions were received – three (3) submissions (from Department of Sustainability and Environment, South East Water and Melbourne Water) offered no objection; one (1) submission offered support for the amendment; and the remaining two (2) submissions opposed the amendment.
- 1.4. After consideration of all submissions, it is recommended that Council apply to the Minister for Planning to appoint an Independent Panel and that all submissions to Amendment C68 be referred to the Panel for consideration.

**AGENDA - STRATEGY AND POLICY REVIEW COMMITTEE - 7 APRIL, 2008
POLICY AND PLANNING**

2. BACKGROUND AND CONTEXT

- 2.1. In August 2007, Council resolved to prepare and exhibit Amendment C68 to include on a permanent basis a Heritage Overlay for the Nightingale Street Precinct.
- 2.2. In accordance with the requirements of Section 19 of the *Planning and Environment Act* 1987, notices were sent to all property owners and occupiers affected by the amendment. Notices were also sent to the owners and occupiers of abutting properties and a separate letter was sent to the relevant State Government Departments and servicing authorities.
- 2.3. A notice of the amendment was included in the Port Phillip Leader, Emerald Hill Times and Government Gazette.
- 2.4. Amendment C68 was made available for public viewing at the South Melbourne Service Centre, St Kilda Town Hall and the St Kilda Library. The amendment documentation was also made available on the Department of Planning and Community Development 'Planning Documents for Inspection' web page as well as on Council's "Planning Scheme Amendments Currently on Exhibition' web page.
- 2.5. Council officers were available to answer queries regarding the amendment. Over the course of the exhibition period, approximately 6 telephone calls were received.
- 2.6. A total of six (6) written submissions were received to Amendment C68. Council must now consider all submissions and decide on an appropriate response.
- 2.7. The following is an assessment of the submissions, including a summation of the issues raised by the submitters and officer comments. The discussion also includes a recommendation for the resolution of each issue.

Submission 1

Submitter: DSE

No objection

Property: General

Submission:	Officer Comment:
<p><i>"On behalf of the Minister, the Department of Sustainability and Environment has considered the amendment and has no objection.</i></p> <p><i>These comments are submitted without prejudice to the consideration of the Amendment by the Minister for Planning under section 35 of the Planning and Environment Act 1987. "</i></p>	<p>No change required.</p>

Officer Recommendation: No change required

**AGENDA - STRATEGY AND POLICY REVIEW COMMITTEE - 7 APRIL, 2008
POLICY AND PLANNING**

Submission 2

No objection

Submitter: South East Water

Property: General

Submission:	Officer Comment:
<i>"South East Water, as the Water Supply and Sewerage Authority, has no objection to Amendment C68 to the Port Phillip Planning Scheme. "</i>	No change required.

Officer Recommendation: No change required

Submission 3

No objection

Submitter: Melbourne Water

Property: General

Submission:	Officer Comment:
<i>"Melbourne Water does not object to Amendment C68 thus the introduction of a permanent Heritage Overlay (HO439) to properties within the 'Nightingale Street Precinct' and incorporation into the Port Phillip Heritage Review. "</i>	No change required.

Officer Recommendation: No change required

Submission 4

Objection

Submitter: Owner

Property: Property in Nightingale Street, Balaclava

Submission:	Officer Comment:
<p>The focus of the submitter's concern is with their investment property in Nightingale Street.</p> <p>The submission states: <i>"My main objection is going to be based on your strategy for Melbourne 2030 where Carlisle St precinct and surrounds is a major activity centre which is designed to support the growth in the area. My investment was based on the fact that the land could be used for a dual townhouse development."</i></p>	<p>The subject property in Nightingale Street, Balaclava is proposed to be graded as a 'significant heritage place' on the Heritage Policy Map associated within HO439.</p> <p>The State Government's Melbourne 2030 strategy does require activity centres such as Carlisle Street to provide significant new housing opportunities.</p> <p>Melbourne 2030 however, also includes strategies</p>

**AGENDA - STRATEGY AND POLICY REVIEW COMMITTEE - 7 APRIL, 2008
POLICY AND PLANNING**

Submission 4

Objection

Submitter: Owner

Property: Property in Nightingale Street, Balaclava

Submission:	Officer Comment:
	<p>which seek to 'protect heritage places and values' and 'recognise and protect cultural identity, neighborhood character and sense of place'.</p> <p>Council's <i>Housing Strategy 2007</i> adopts a balanced approach to achieving significant new residential development (in defined strategic redevelopment precincts / sites) whilst protecting the character and amenity in established residential areas and, in particular, areas with heritage value.</p> <p>The <i>Housing Strategy 2007</i> acknowledges the role of structure plans in defining the detailed growth opportunities 'in and around' major activity centres such as Carlisle Street.</p> <p>The Nightingale Street area has been identified as a potential heritage precinct as part of the strategic research undertaken during the development of the Carlisle Street Structure Plan.</p> <p>The Structure Plan, which is currently being prepared, will identify specific opportunities associated with key sites and precincts to achieve significant housing growth in line with Melbourne 2030 objectives. These include existing and future mixed use zones and existing 'at grade' car parks to the rear of the retail strip.</p> <p>The Structure Plan will not rely on established residential areas to deliver on housing growth objectives, and recognizes the limited redevelopment potential of areas (such as the Nightingale Street precinct) which are characterized by fine grain built form and subdivision patterns.</p> <p>The identification of the Nightingale Street Precinct and its inclusion in a Heritage Overlay will therefore have very minimal impact on the overall housing development potential available within and around the Carlisle Street Activity Centre.</p>
<p>The submission further states:</p> <p><i>"My objection will then follow that the Council have allowed the Woodstock Rooming House Development, the Council seem to have allowed 32</i></p>	<p>The submitter has referred to a number of developments that have occurred within / near the proposed heritage precinct.</p>

**AGENDA - STRATEGY AND POLICY REVIEW COMMITTEE - 7 APRIL, 2008
POLICY AND PLANNING**

Submission 4

Objection

Submitter: Owner

Property: Property in Nightingale Street, Balaclava

Submission:	Officer Comment:
<p><i>Nightingale Street to be developed in to 2 town houses, the council have allowed two dwellings , one at number 36 and one at 52 Nightingale St to be demolished for new dwellings to be erected. The council have also allowed multi town house sites at Number 5 and 10 Nightingale St, while this part of the street is not in the proposed overlay, the house at Number 35 sits in exactly the same category of development potential as Number 5 and 10. There is a substantial parcel of land which has rear access, It is a prime candidate for development. "</i></p>	<p>It must be recognized that development proposals are assessed in relation to the controls in operation at the time of the planning application.</p> <p>The submitter's comments in relation to proposed developments at 32, 36 and 52 Nightingale Street need to be clarified. The planning applications for these properties are at various stages of the planning process. Both 32 and 36 Nightingale Street will require planning approval for demolition, although a replacement development at 36 was approved prior to the introduction of the interim Heritage Overlay. Alterations and additions to the property at 52 Nightingale Street occurred prior to any heritage controls.</p> <p>Proposed HO439 does not, and is not proposed to, apply to 5 or 10 Nightingale Street and as such those applications were assessed accordingly.</p> <p>Development at 35 Nightingale Street would not be prohibited under the Heritage Overlay however, any development would need to be appropriate to the site and its heritage context.</p>
<p>The submission further states:</p> <p><i>"My objection will also follow that the house is in need of substantial repairs and like number 32 can not reasonable be expected to be updated to bring it up to speed with heritage aspect the council is looking for. A potential buyer will look at the land size and prospect for development like every single sale that has taken place in the street for the last 5 years. The houses are old and not renovated and it is unreasonable to expect someone to buy an unrenovated heritage house and be restricted. This is not Elizabeth Street, Elsterwick."</i></p>	<p>The introduction of a Heritage Overlay is not intended to ensure that buildings and streets are static relics of the past. There are many examples where the houses have been restored or sensitively extended to meet changing occupier needs. The Heritage Overlay encourages retaining the main characteristics of the Precinct that are intrinsic to its heritage value. The Heritage Overlay allows owners to upgrade or extend their properties, as long as it is done in a way that does not detract from the heritage value of the Precinct.</p>

Officer Recommendation: Refer submission to Panel and recommend the property remain in the Heritage Overlay as proposed.

**AGENDA - STRATEGY AND POLICY REVIEW COMMITTEE - 7 APRIL, 2008
POLICY AND PLANNING**

Submission 5

Objection

Submitter: Owner /Occupier

Property: 8 Gibbs Street, Balaclava

Submission:	Officer Comment:
<p>The submitter opposes the introduction of the Heritage Overlay to 8 Gibbs Street, Balaclava on the following basis:</p> <p><i>"I currently reside in a townhouse that I purchased in October 2004 at the abovementioned address. There is also another townhouse, 8A Gibbs St, which adjoins my property by a shared wall. Both these properties were built after the council agreed to subdivide the existing property and build two separate units. No part of the previous dwelling was retained and the townhouses are a completely new structure.</i></p> <p><i>Your FAQ outlines why a property is included in the heritage overlay "Historically the Nightingale Street Precinct is significant as a representative and substantially intact example of the close-grained working-class housing that proliferated in Melbourne's inner suburbs in the last three decades of the nineteenth century." Given the purpose of this overlay is to retain the historical features of the working-class housing, my property which is built in 2003/2004, retains no nineteenth century features and is a modern-day structure so attaching a heritage overlay serves no purpose (see attached photo). There are no working-class features but a modern-day townhouse. The council's concern for heritage is unfortunately too late for this property since they approved the sub-division and provided a planning permit for this building to be built. As such I respectfully request that the heritage overlay amendment is not attached to my property.</i></p>	<p>8 and 8A Gibbs Street, Balaclava are proposed to be included within HO439 but graded as "non-contributory buildings' on the Heritage Policy Map.</p> <p>As mentioned by the submitter, Nightingale Street Precinct is described as being "substantially intact". This infers that the majority of buildings (but not all of the buildings) within this Precinct have retained the "close-grained working-class housing" characteristics that are a part of the heritage significance of the precinct. There are a small number of contemporary buildings – all of which have been afforded a non-contributory grading.</p> <p>Non-contributory properties are buildings that (whilst not significant nor contributory to the heritage fabric themselves) are nevertheless included within the Heritage Overlay to preserve the integrity of the precinct as a whole.</p> <p>Within a heritage precinct the primary objective is to ensure the conservation of those elements that contribute to the area's significance. Where development does occur, it must occur in a manner that is appropriate to the significance, character and appearance of the heritage precinct. Non-contributory buildings are included in Heritage Precincts to ensure that any new development on these sites does not adversely impact on the significance of the Heritage Overlay, and should therefore consider the heritage characteristics of any adjoining heritage place and the streetscape.</p>

Officer Recommendation: Refer the submission to Panel and recommend that the property remain in the heritage overlay as proposed.

**AGENDA - STRATEGY AND POLICY REVIEW COMMITTEE - 7 APRIL, 2008
POLICY AND PLANNING**

Submission 6

Support

Submitter: Owner /Occupier

Property: 48 Nightingale Street,
Balaclava

Submission:	Officer Comment:
<p>The submitter supports the introduction of the Heritage Overlay to the Nightingale Street Precinct on the following basis:</p> <p><i>“As you may be aware Planning Scheme Amendment C68 follows recent Planning Permit Applications within the precinct that have varying degrees sought to undermine the integrity of the substantial strategic planning work undertaken, with respect to the heritage attributes of the precinct.</i></p> <p><i>It is firmly considered that the Amendment should be advanced and considered by your Council prior to any existing planning permit considerations being determined. If such applications seek to actively compromise the outcomes sought through the Amendment. It is requested that as part of your consideration of this submission your Council carefully consider whether the orderly and proper planning of the area is being compromised by planning permit applications which appear contrary to your amendments strategic objective. If you are of the opinion that any such unresolved permit applications are in existence could you please consider the available legal options (contained in the Planning and Environment Act) and if appropriate the VCAT Act) to delay the consideration of such applications prior to the resolution of Amendment C68.</i></p>	<p>The submitter supports the strategic intent of Amendment C68 to protect the heritage values of this precinct.</p> <p>The submitter raises concern that planning permit considerations by Council should not compromise the heritage protection sought by Amendment C68.</p> <p>This concern has been addressed by the introduction of an Interim Heritage Overlay, which will operate as Amendment C68 proceeds through the various stages of the Planning Scheme Amendment process.</p>
<p>The submission further states:</p> <p><i>It is beyond challenge, that the intentions of Amendment C68 draw strongly from the significant policy content contained within both the State Planning Policy Framework and that developed by your Council in its now well established Local Planning Policy.</i></p> <p><i>Further despite the proximity of the subject precinct to a Major Activity Centre it is suggested that the uniqueness of the precinct as identified by Heritage Alliance provides the primary driver for directing planning policy responses with respect to change within the precinct area. It is submitted that substantive areas outside the precinct provide significant opportunities for urban consolidation / greater land use diversification to address other compelling planning objectives.</i></p> <p><i>Should the need exist for this matter to be further</i></p>	<p>Noted.</p>

**AGENDA - STRATEGY AND POLICY REVIEW COMMITTEE - 7 APRIL, 2008
POLICY AND PLANNING**

Submission 6

Support

Submitter: Owner /Occupier

Property: 48 Nightingale Street,
Balaclava

Submission:	Officer Comment:
<p><i>considered by an Independent Panel I would propose to outline more detail the strong policy basis I believe exists to support the Amendment.</i></p>	
<p>The submission further states:</p> <p><i>Although it is recognised that this precinct has been identified at a relatively late stage in the comprehensive work undertaken throughout Port Phillip to identify locally significant heritage areas, it is considered that this is a consequence of your Council's relative prioritisation of areas rather than its 'relative' actual significance of your municipality. Further it is felt that the relative quality and diversity of the precinct is comparable if not better than other areas already covered by the heritage overlay in the Port Phillip Planning Scheme. As such it is suggested that the 'relativity' test for local significance has been met within the identified precinct.</i></p>	<p>Noted.</p>
<p>The submission further states:</p> <p><i>To reinforce the importance of the Amendment it is worth reflecting on how the precinct could be eroded without the controls sought through the Amendment. To best illustrate this point, I draw your attention to the west of the identified precinct in Nightingale Street where built form changes over recent decades has occurred and meant that the area's heritage attributes are no longer clearly legible at a precinct level.</i></p> <p><i>I cannot stress strongly enough therefore that this Amendment is critical in preserving that which Heritage Alliance have identified as significant within the precinct.</i></p>	<p>Noted.</p>
<p>The submission further states:</p> <p><i>Please note that despite this submission strongly supporting the intent of Amendment C68, I would request if any submissions area received in relation to the Amendment that would require the as exhibited amendment to be referred to an Independent Panel for consideration, that I be notified and provided the opportunity of addressing the panel.</i></p>	<p>Noted.</p>

Officer Recommendation: Council refers the submission to any Panel appointed as requested by the submitter (noting no change to the amendment is requested).

3. RECOMMENDED OPTION

3.1. In accordance with Section 23 of the *Planning and Environment Act 1987*, after consideration of all submissions, Council has the following options:

“(a) change the amendment in the manner requested; or

(b) refer the submission to a panel appointed under Part 8; or

(c) abandon the amendment or part of the amendment.”

3.2. It is recommended that Council request the Minister appoint an Independent Panel to consider all submissions.

3.3. Sustainability assessment

Amendment C68 will have the following sustainability implications;

Social

The application of a Heritage Overlay for Nightingale Street Precinct will provide a clear and equitable basis to protect this area of heritage significance.

Economic

The identification of a place (individual building or precinct) as significant and its inclusion in the Heritage Overlay does not prohibit development or future alterations/additions. Clause 22.04 - Heritage Policy - of the Port Phillip Planning Scheme provides direction for sympathetic alterations.

Environmental

The introduction of a Heritage Overlay to the Nightingale Street Precinct will allow protection to those properties identified as having heritage significance and therefore decrease the energy expended in demolishing houses and building new places.

Cultural

The introduction of a Heritage Overlay to the Nightingale Street Precinct will ensure the cultural heritage of Balaclava is retained through its built fabric.

3.4. Resource implications

Council would be responsible for the payment of Panel costs and, in addition, any presentation by expert witnesses (ie Council's heritage consultant). Provision will be made in the 2008/09 budget.

The inclusion of this precinct in the Heritage Overlay will increase the number of properties which require planning approval pursuant to heritage controls. As these properties are all less than 500m² in area, a planning permit is however, already required for new development / alterations.

The inclusion of the Heritage Overlay will increase the number of applications received by Council (including minor ones for example for painting) and therefore result in some increase in the resources required from the Statutory Planning department. Council already employs a Heritage Advisor on a full time basis who will be available to assist with any application.

4. ALTERNATIVE OPTIONS

4.1. The two alternative options available to Council are:

4.1.1. Change the amendment in the manner requested in the submissions.

4.1.2. Abandon the amendment or part of the amendment.

4.2. Changing the amendment in the manner requested by the submissions would require the two properties to be removed from the proposed Heritage Overlay. This is not recommended as it would result in disparate pockets of the Heritage Overlay that could compromise the significance of the Precinct. Council can not adopt an amendment unless changes to the amendment are made which fully address any objections raised by submissions (ie without an Independent Panel hearing).

4.3. Abandoning the amendment is not recommended as the identified heritage values of the precinct would not be protected.

5. PARTICIPATION AND ENGAGEMENT

5.1. Internal (Council)

5.1.1. The people who have been consulted in relation to this issue are:

Alma Ward Councillor (Cr Darren Ray)

Blessington Ward Councillor (Cr Dick Gross)

Co-ordinator St Kilda neighbourhood team - Statutory Planning Department.

Planning Enforcement Unit.

Heritage and Urban Design Officer

AGENDA - STRATEGY AND POLICY REVIEW COMMITTEE - 7 APRIL, 2008
POLICY AND PLANNING

5.2. External

- 5.2.1. Port Phillip's representative in the Department of Planning and Community Development was consulted prior to exhibition of Amendment C68.
- 5.2.2. A notice was sent to all affected owners and occupiers of Amendment C68 (approximately 200 letters) and communication was undertaken through Councils internet page and local media.
- 5.2.3. Council has been available to inform the community of the proposed changes to the Port Phillip Planning Scheme. All submitters will be informed if a Panel is requested.

6. IMPLEMENTATION

Council officers consider that not all of the submitted requests can be accommodated. As a consequence it is recommended that Council write to the Minister for Planning and request that a Panel be appointed to consider submissions to Amendment C68.

7. COMMUNICATION

Following the resolution of Council, a letter will be sent to all submitters advising them of Council's decision and advising of the opportunity for participation at the panel hearing.

8. RECOMMENDATION

That the Strategy and Policy Review Committee recommend that Council resolve to:

- 8.1. Request that the Minister for Planning appoint an Independent Panel to consider submissions to the amendment, in accordance with Part 8 of the *Planning and Environment Act 1987*.
- 8.2. Refer all submissions, and any late submissions received, to the Panel to be appointed by the Minister for Planning.
- 8.3. Inform all submitters of Council's decision.