



**6.2** 43 PAKINGTON STREET, ST KILDA - PDPL/00053/2023

**LOCATION/ADDRESS:** 43 PAKINGTON STREET, ST KILDA VIC 3182

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

**PREPARED BY:** MIMI NUCIFORO, PRINCIPAL PLANNER

## 1. PURPOSE

- 1.1 To consider and determine Planning Permit Application PDPL/00053/2023 for the demolition of a dwelling, fences and outbuildings in the Heritage Overlay (Schedule 7) at 43 Pakington Street, St Kilda.

## 2. EXECUTIVE SUMMARY

<b>WARD:</b>	Canal Ward
<b>TRIGGER FOR DETERMINATION BY COMMITTEE:</b>	Demolition of a contributory graded dwelling, fencing and outbuildings in the Heritage Overlay (Schedule 7)
<b>APPLICATION NO:</b>	PDPL/00053/2023
<b>APPLICANT:</b>	Ratio Consultants Pty Ltd on behalf of Port Phillip City Council.
<b>EXISTING USE:</b>	Residential (single dwelling)
<b>ABUTTING USES:</b>	Predominantly residential with a public park interface
<b>ZONING:</b>	Public Park and Recreation Zone
<b>OVERLAYS:</b>	Public Acquisition Overlay (Schedule 6) Special Building Overlay (Schedule 1) Heritage Overlay (Schedule 7)
<b>STATUTORY TIME REMAINING FOR DECISION AS AT DAY OF COUNCIL</b>	Expired

- 2.1 The application seeks approval for the demolition of the existing contributory graded dwelling, fencing and outbuildings at 43 Pakington Street, St Kilda. The site is within the St Kilda, Elwood, Balaclava and Ripponlea Heritage overlay (HO7).
- 2.2 The subject site has a total area of approximately 242m<sup>2</sup> and is developed with a single storey weatherboard dwelling with a pitched roof, bullnose verandah, a wire front fence with timber posts and timber paling boundary fencing.
- 2.3 Should the demolition be approved, Council would use the land to extend the existing Pakington Street Reserve to increase the provision of public open space. However, the development of the future park does not form part of the current application. The scope of Council's assessment relates to the demolition only having regard to the applicable heritage controls.
- 2.4 Council's Property and Assets Team have confirmed that should a planning permit for demolition be approved, public consultation led by Council's Open Space Team would



occur, and the community would be given the opportunity to provide comment on the future design of the park.

- 2.5 The land is located within the Public Park and Recreation Zone (PPRZ) and is subject to a Public Acquisition Overlay Schedule 6 (PAO), Special Building Overlay Schedule 1 (SBO) and Heritage Overlay Schedule 7 (HO). The existing building is graded 'contributory' and is sited within a streetscape comprising significant, contributory and non-contributory graded buildings.
- 2.6 Clause 15.03-1L (Heritage Policy) seeks to discourage the complete demolition of any building or feature which contributes to the significance of a heritage place unless the building is structurally unsound and the defects cannot be rectified, and to prioritise the conservation, restoration or adaptation of a heritage place over demolition.
- 2.7 The site is not of individual heritage significance, and its grading as 'contributory' means that it contributes to the character of the precinct. The loss of a contributory building would present an impact on the heritage significance of the HO precinct. However, this loss must be balanced against benefits to the community through the provision of public open space. Clause 71.02-3 (Integrated Decision Making) of the Planning Scheme requires the balancing of conflicting policy to arrive at a decision in favour of net community benefit.
- 2.8 In reaching a decision in favour of net community benefit, the zoning and overlay context is an important consideration.
- 2.9 The site sits within a Public Park and Recreation Zone (PPRZ). The use of the land as a dwelling within the PPRZ is a non-conforming use under the zone. It is not a land use outcome supported by the zoning context.
- 2.10 The site is also located within a Public Acquisition Overlay (PAO) which relates to acquisition for the purpose of open space. The PAO was applied to the site via Amendment C80 in May 2012. The expansion of the Pakington Street Reserve by acquiring the subject site is a priority action within the City of Port Phillip Public Space Strategy 2022-32. The site is the only parcel of land adjoining that park that is zoned PAO and PPRZ.
- 2.11 In summary, the strategic intent to demolish this dwelling and provide greater public open space has been in place for over 10 years. Whilst the loss of a contributory building would impact the heritage precinct contrary to heritage objectives, the proposal would allow for the expansion and upgrade of the Pakington Street Reserve, consistent with the priority actions within the City of Port Phillip Public Space Strategy 2022-32. On balance, the need for additional open space is considered to outweigh the adverse impacts to the heritage precinct and would result in net community benefit.
- 2.12 Subject to the retention of a mature Palm tree and incorporation of a heritage interpretation strategy to include the history of the site into the design of the future park extension it is recommended that a planning permit be issued.

### 3. RECOMMENDATION

- 3.1 That a Planning Permit be issued for **Demolition of a dwelling, fencing and outbuildings in the Heritage Overlay (Schedule 7) at 43 Pakington Street, St Kilda**
- 3.2 That the decision be issued as follows:  
**No alterations (demolition)**



1. The demolition of all buildings and fences shown on the endorsed plans must not be modified for any reason without the prior written consent of the Responsible Authority.

**Satisfactory Continuation and Completion**

2. Once the development has started it must be continued and completed to the satisfaction of the Responsible Authority.

**Heritage interpretation strategy**

3. Before the demolition works commence, a Heritage Interpretation Strategy must be submitted to and approved to the satisfaction of the Responsible Authority. The strategy must identify how the history (Indigenous and post-contact) of the site or the area is to be interpreted through landscape design, signage or retention of some original fabric in any future works.

**Retention of Palm Tree**

4. The Cotton Palm tree on site (noted as Tree 1 within Arboricultural Assessment and Report 43 Pakington Street, St Kilda 12 August 2022 Tree Logic Ref. 012420 Julie Roach– Treelogic Pty. Ltd) must be retained unless with the written consent of the Responsible Authority.
5. A Tree Protection Zone (TPZ) around the Cotton Palm tree must be constructed prior to the commencement of demolition in accordance with AS 4970 - 2009 Tree protection on development sites.

**Time for starting and completion**

6. This permit will expire if one of the following circumstances applies:
  - a) The demolition is not started within two years of the date of this permit.
  - b) The demolition is not completed within three years of the date of this permit.The Responsible Authority may extend the periods referred to if a request is made in writing:
  - before or within 6 months after the permit expiry date, where the use or development allowed by the permit has not yet started; andwithin 12 months after the permit expiry date, where the development allowed by the permit has lawfully started before the permit expires.

**4. RELEVANT BACKGROUND**

- 4.1 There is no relevant planning history or background for this application.

**5. PROPOSAL**

- 5.1 The total demolition of the existing contributory graded dwelling, fencing and outbuildings at 43 Pakington Street, St Kilda.
- 5.2 The plan which is the subject of this report is prepared by Ratio Consultants dated 6 February 2023.
- 5.3 Plans for the application are located at **Attachment 1**.

6. SUBJECT SITE AND SURROUNDS

Description of Site and Surrounds	
Site Area	242m <sup>2</sup>
Existing building & site conditions	<p>The subject site is occupied by a single storey weatherboard dwelling with a pitched roof and bullnose verandah and a wire front fence with timber posts. There is landscaping within the front and rear setbacks as well as a rear outbuilding.</p>  <p><i>Figure 1 – Subject site (Site visit image taken by officer 19-6-2023)</i></p> <p>There is also medium sized trees and shrubs including a large Cotton Palm tree on site.</p> 



	<i>Cotton Palm tree (Image from Arboricultural Assessment and Report 43 Pakington Street, St Kilda 12 August 2022 Tree Logic Ref. 012420 Julie Roach– Treelogic Pty. Ltd)</i>
Surrounds/ neighbourhood character	<p>Schedule 7 of the Heritage Overlay relates to the St Kilda, Elwood, Balaclava and Ripponlea Heritage place which is the area generally bounded by Carlisle Street to the north, Glenhuntly Road to the south, Hotham Street to the east and Mitford Street and Broadway to the west.</p> <p>Immediately east and west of the subject site are sites within the Neighbourhood Residential Zone and Heritage Overlay which are similar in style to the subject site.</p> <p>The application site is the only site adjoining the public park zoned Public Park and Recreation.</p> <p>Across the road and further west are sites in the Mixed Use Zone. Within the Mixed Use Zones are larger apartment buildings, modern infill developments, warehouse buildings and commercial buildings.</p> <p>Immediately adjoining properties are described as follows:</p> <ul style="list-style-type: none"> <li>• To the <b>west</b> of the subject site is a weatherboard dwelling with a pitched roof and bullnose verandah similar to the style of the subject site</li> <li>• To the <b>east</b> and <b>south</b> of the subject site is Pakington Street reserve which has a gravel walking path along the common boundary with the subject site, seating areas, a playground and landscaped areas.</li> <li>• To the <b>north</b> are dwellings in the Heritage Overlay, all single storey and identified as significant graded.</li> </ul>

6.1 Site maps are located in **Attachment 2**.

6.2 A photographic review of the subject site and surrounds are located in **Attachment 3**.

## 7. PERMIT TRIGGERS

7.1 The following zone and overlay controls apply to the site, with planning permission required as described.

Zone or Overlay	Why is a permit required?
Clause 43.01 Heritage Overlay (Schedule 7)	<p>Pursuant to Clause 43.01-1, a permit is required to:</p> <ul style="list-style-type: none"> <li>• Demolish or remove a building</li> </ul> <p><b>Permit required under the Heritage Overlay</b></p>
Clause 36.02	Pursuant to Clause 36.02-2, a permit is required to:



Public Park and Recreation Zone	<ul style="list-style-type: none"> <li>Construct a building or to construct or carry out works</li> </ul> <p><b>No permit required for demolition under the Public Park and Recreation Zone</b></p>
Clause 44.05 Special Building Overlay (Schedule 1)	<p>Pursuant to Clause 44.05-2, a permit is required to:</p> <ul style="list-style-type: none"> <li>Construct a building or to construct or carry out works</li> </ul> <p><b>No permit is required for demolition pursuant to the Special Building Overlay</b></p>
Clause 45.01 Public Acquisition Overlay (Schedule 6)	<p>Pursuant to Clause 45.01-1, a permit is required to:</p> <ul style="list-style-type: none"> <li>Construct a building or to construct or carry out works</li> </ul> <p><b>No permit is required for demolition pursuant to the Public Acquisition Overlay</b></p>

## 8. PLANNING SCHEME PROVISIONS

### 8.1 Planning Policy Framework (PPF)

The following Planning Policies are particularly relevant to this application:

Clause 15.03 Heritage

15.03-1L Heritage policy

Clause 19.02-6 (Open Space)

19.02-6L (Public Open Space and Foreshore)

### 8.2 Other relevant provisions

Clause 65 Decision Guidelines

Clause 71.02 Operation of the Planning Policy Framework

## 9. REFERRALS

### 9.1 Internal referrals

The application was referred to the following areas of Council for comment. The comments are discussed in detail in Section 9.

#### Heritage Advisor

*While demolition of Significant and Contributory places is usually not supported, it may be considered if there is a strategic outcome that will result in a 'net community benefit' and all other options of providing that benefit have been explored.*

*The planning report prepared by Ratio provides an appropriate assessment, which considers the heritage significance of the site and other relevant strategic planning policy and concludes that the proposed demolition, which will allow for improved open space outcome in this area.*





*To ensure the impacts of the demolition are mitigated, the planning permit should include a condition requiring the preparation of a heritage interpretation strategy to identify how the history (Indigenous and post-contact) of the site or the area could be interpreted through landscape design, signage or retention of some original fabric (whatever is appropriate).*

Planner Comments:

Should a permit be granted, it is recommended to include a requirement for the preparation of a heritage interpretation strategy in accordance with the Heritage Advisor's recommendation.

**9.2 External referrals**

The application was not required to be externally referred.

**10. PUBLIC NOTIFICATION**

10.1 Clause 52.31-2 states an application under any provision of the Port Phillip Planning Scheme to develop land by or on behalf of a municipal council is exempt from the notice requirements of section 52(1)(a), (b) and (d), the decision requirements of section 64(1), (2) and (3) and the review rights of section 82(1) of the Planning and Environment Act (1987).

10.2 'Development' (as defined by the *Planning and Environment Act 1987*) includes the 'demolition or removal of a building or works'. Therefore, the demolition works sought under this application is exempt from notice.

**11. OFFICER'S ASSESSMENT**

11.1 Clause 15.03-1L (Heritage Policy) provides policy guidance for consideration of this application. In particular, demolition and relocation. The relevant policy objectives seek to:

- *Prioritise the conservation, restoration or adaptation of a heritage place over demolition.*
- *Discourage the complete demolition of any building or feature that contributes to the significance of a heritage place unless the building or feature is structurally unsound and the defects cannot be rectified.*
- *Avoid the demolition of a Significant or Contributory building unless new evidence has become available to demonstrate that the building is not of heritage significance and does not contribute to the heritage place.*

11.2 There is no evidence to suggest that the building is not of heritage significance, and it has not been demonstrated that the building is structurally unsound. The demolition of the building would be inconsistent with the Heritage Policy objectives.

11.3 Importantly, the site is not of individual heritage significance. The grading of the building as 'contributory' means that it contributes to the significance of a precinct. The precinct is the St Kilda, Elwood, Balaclava and Ripponlea Heritage precinct. This precinct covers a large area and is not only related to Pakington Street. Therefore, whilst the loss of the building will have an impact, this impact is reduced as it relates to only one building within a larger heritage precinct and needs to be balanced against the zoning of the land.



- 11.4 In assessing the acceptability of the proposal, the Public Park and Recreation zoning, Public Acquisition Overlay and strategic context is an important consideration.
- 11.5 Importantly, this is the only parcel of land adjoining the Pakington Street Reserve which is in the Public Park and Recreation Zone, and has a Public Acquisition Overlay applicable.
- 11.6 The site sits within a PPRZ. The demolition works do not trigger the need for a planning permit pursuant to the zone, however the use of the land as a dwelling is a non-conforming use (ie. permit required) under the zone. The use of the land as a dwelling is not supported by the zone.
- 11.7 The site is also located within a PAO which relates to acquisition for the purpose of open space. The site is located adjacent to an existing park, and the demolition of the building would allow for the site to be absorbed for open space and increase the provision of open space for the community.
- 11.8 An objective of Clause 19.06-2L (Public Open Space and foreshore) is *'to ensure the retention, creation and optimum provision of high quality public open space'*. A Strategy to achieve this objective is to *'strengthen the public open space network by creating new open spaces or expanding existing open spaces, particularly in the following neighbourhoods: Balaclava / St Kilda East.'* The proposal to remove the dwelling and expand the public open space achieves the above objectives and reflects a priority action of Council's Public Open Space Strategy 2022-32.
- 11.9 On balance, the loss of a single contributory building on the site to allow for increased open space provision would present a net community benefit.
- 11.10 There are several onsite trees which are proposed to be removed. There are no tree controls which apply to the site, and therefore no permit is required for the removal of trees. Notwithstanding, an Arboricultural Report has been submitted and reviewed by Council's arborist. The trees to be removed are not considered to be of high value, apart from a large Cotton Palm tree (*Washingtonia Filifera*). This tree is noted as the 'most significant' tree on site within the Arboricultural Report and can be seen from many blocks away, adding amenity value to the area. Whilst tree removal is not a planning permit trigger for this site, it is considered that the Cotton Palm tree should be retained given the purpose of the site to expand the adjoining park would have a significant benefit requiring its retention. (**Recommendation conditions 3 and 4**).

## 12. COVENANTS

- 12.1 There is no restrictive covenant on the title for the subject site known as Lot 1 on Title Plan 745192U [Parent Title Volume 05840 Folio 864]
- 12.2 There is a carriageway easement along the eastern boundary of the subject site (A-1) which is 3.05m in width and runs along the entirety of the eastern boundary.

## 13. INTEGRATED DECISION MAKING AND CONCLUSION

- 13.1 Clause 71.02 of the planning scheme requires the decision-maker to integrate the range of policies relevant to the issues to be determined and balance the positive and negative environmental, social and economic impacts of the proposal in favour of net community benefit and sustainable development. When considering net community benefit, fair and orderly planning is key; the interests of present and future Victorians must be balanced; and, the test is one of acceptability.





13.2 The proposal would result in a number of positive, neutral and negative impacts, these are outlined below:

Positive:

- The demolition works would allow for increased open space provision, consistent with Open Space objectives of the Planning Scheme and Council's Public Open Space Strategy 2022-32.
- Retention of the Cotton Palm tree adds value to the amenity of the area.

Negative:

- The demolition of the contributory graded dwelling would have a negative impact on the heritage precinct.

13.4 Viewed holistically and balancing the material considerations along with the interests of present and future Victorians, the proposal is considered to result in a net community benefit and for these reasons, it is recommended to approve the application.

**14. OFFICER DIRECT OR INDIRECT INTEREST**

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

**15. OPTIONS**

- 15.1 Approve as recommended
- 15.2 Approve with changed or additional conditions
- 15.3 Refuse - on key issue

- ATTACHMENTS**
- 1. [Application Plans](#)
  - 2. [Site Map](#)
  - 3. [Photographic Review](#)