

Planning and Environment Act 1987

Panel Report

**Port Phillip Planning Scheme Amendment C174port
Tiuna Grove, Elwood - Heritage Overlay (HO8)**

5 May 2020

How will this report be used?

This is a brief description of how this report will be used for the benefit of people unfamiliar with the planning system. If you have concerns about a specific issue you should seek independent advice.

The planning authority must consider this report before deciding whether or not to adopt the Amendment.
[section 27(1) of the *Planning and Environment Act 1987* (the Act)]

For the Amendment to proceed it must be adopted by the planning authority and then sent to the Minister for Planning for approval.

The planning authority is not obliged to follow the recommendations of the Panel, but it must give its reasons if it does not follow the recommendations. [section 31 (1) of the Act, and section 9 of the *Planning and Environment Regulations 2015*]

If approved by the Minister for Planning a formal change will be made to the planning scheme. Notice of approval of the Amendment will be published in the Government Gazette. [section 37 of the Act]

The Amendment may be revoked by a resolution of either House of Parliament within 10 sitting days after notice of the Amendment is given to that House. [section 38(2) of the Act]

Alleged defects in procedures may be referred to the Victorian Civil and Administrative Tribunal. There are limits on the timing of such referrals. [section 39(1) of the Act]

Planning and Environment Act 1987

Panel Report pursuant to section 25 of the Act

Port Phillip Planning Scheme Amendment C174port

Tiuna Grove, Elwood - Heritage Overlay (HO8)

5 May 2020



Tim Hellsten, Chair

Contents

	Page
1 Introduction.....	1
1.1 The Amendment.....	1
1.2 Background.....	3
1.3 Summary of issues raised in submissions	4
1.4 Procedural issues.....	4
1.5 The Panel’s approach	6
1.6 Limitations.....	6
2 Planning context	8
2.1 Victorian planning objectives	8
2.2 Planning policy framework.....	8
2.3 Plan Melbourne	11
2.4 Planning scheme provisions	12
2.5 Ministerial Directions and Practice Notes.....	12
3 Strategic justification	14
3.1 The issue	14
3.2 Background.....	14
3.3 Heritage Assessment approach.....	18
3.4 Policy support.....	22
3.5 Conclusions.....	23
4 3 and 5 Tiuna Grove, Elwood	24
4.1 What is proposed?	24
4.2 The issues	24
4.3 Evidence and submissions.....	24
4.4 Discussion	28
4.5 Conclusions.....	29
5 7 Tiuna Grove, Elwood	30
5.1 What is proposed?	30
5.2 The issues	30
5.3 Evidence and submissions.....	30
5.4 Discussion	32
5.5 Conclusions.....	33
6 Other sites	34
6.1 15 Tiuna Grove, Elwood	34
6.2 21-23 Tiuna Grove, Elwood	35
7 Form and content of the Amendment	40
7.1 Post-exhibition changes	40
7.2 Discussion	40
7.3 Recommendations.....	40

Appendix A Submitters to the Amendment

Appendix B Document list

List of Tables

	Page
Table 1 Relevant parts of Plan Melbourne	12

List of Figures

	Page
Figure 1 Current extent of HO8 and subject land	2
Figure 2 Proposed changes to Heritage Policy Map 8.....	2
Figure 3 3 and 5 Tiuna Grove, Elwood	24
Figure 4 7 Tiuna Grove, Elwood	30
Figure 5 15 Tiuna Grove, Elwood	34
Figure 6 21-23 Tiuna Grove, Elwood	35
Figure 7 Eastern end laneway viewed from Ormond Road, Elwood	35

Glossary and abbreviations

Act	<i>Planning and Environment Act 1987</i>
Amendment	Port Phillip Planning Scheme Amendment C174port
Council	Port Phillip City Council
DELWP	Department of Environment, Land, Water and Planning
Heritage Assessment	<i>Tiuna Grove Heritage Assessment, 2019</i>
Heritage Policy Map	City of Port Phillip Heritage Policy Map (Version 32, July 2019 (Part of Port Phillip Heritage Review)
HO8	Elwood: Glen Huntly Road, Ormond Road Heritage Overlay precinct
Port Phillip Heritage Review	<i>Port Phillip Heritage Review – Volumes 1-6 (Version 28) July 2019</i>
VCAT	Victorian Civil and Administrative Tribunal

Overview

Amendment summary

The Amendment	Port Phillip Planning Scheme Amendment C174port
Common name	Tiuna Grove, Elwood - Heritage Overlay (HO8)
Brief description	Extend the HO8 to include 3, 5, 7 and 15 Tiuna Grove, Elwood on a permanent basis; remove it from the properties at 21-23, 25, 27, 29 and 31 Tiuna Grove, Elwood; update the precinct citation in the Port Phillip Heritage Review Incorporated Document; other consequential changes
Subject land	3, 5, 7, 15, 21-23, 25, 27, 29 and 31 Tiuna Grove, Elwood
Planning Authority	Port Phillip City Council
Authorisation	22 July 2019
Exhibition	12 September to 25 October 2019
Submissions	Number of Submissions: 26 Opposed or seeking changes: 10 Refer Appendix A

Panel process

The Panel	Tim Hellsten
Directions Hearing	St Kilda Town Hall, 24 February 2020
Panel Hearing	A Hearing was not conducted and the matter was considered 'on the papers' with the support of all parties
Site inspections	Unaccompanied, 24 February 2020
Parties	Port Phillip City Council represented by Briana Eastaugh of Maddocks, who called expert heritage evidence from Peter Barrett of Peter Andrew Barrett Heritage Ruth Jones Barbara Hoard Liz Johnstone Richard Moshinsky Lyn Harrison Matthew Harrison, Marks & Lisa Richardson, Helen Koutas & Elvis de Jong, Alicia Raftis represented by David Vorchheimer of HWL Ebsworth Lawyers Elwood Tiuna Pty Ltd represented by Jarryd Gray of Minter Ellison Christine McLoughlin
Citation	Port Phillip PSA C174port [2020] PPV
Date of this Report	5 May 2020

Executive summary

Port Phillip Planning Scheme Amendment C174port (the Amendment) seeks to implement the findings of the *Tiuna Grove Heritage Assessment, 2019* (Heritage Assessment) which was prepared following community and Council concerns regarding the potential demolition of the dwellings at 1-5 Tiuna Grove arising from a planning permit application for the development of 22 apartments.

Interim heritage controls were applied to 3, 5, 7 and 15 Tiuna Grove, Elwood through the approval of Port Phillip Planning Scheme Amendment C173 on 4 July 2019 following the preparation of the Heritage Assessment. Planning Permit 772/218 was granted on 11 February 2020 for a modified proposal involving the retention of the front portions of the dwellings at 3 and 5 Tiuna Grove and construction of a reduced building footprint comprising 12 apartments.

The Amendment proposes to apply the Heritage Overlay on a permanent basis to 3, 5, 7 and 15 Tiuna Grove, Elwood by including those properties in the *Elwood: Glenhuntly Road, Ormond Road* precinct (HO8) and removing the properties at 21-23, 25, 27, 29 and 31 Tiuna Grove, Elwood from HO8.

The key issues raised in submissions included:

- the Heritage Review methodology
- that the Heritage Overlay will restrict development
- the heritage fabric of 3, 5 and 7 Tiuna Grove has been altered and doesn't warrant inclusion in HO8
- the potential significance of an internal room at 3 Tiuna Grove
- the impact of the permit for 3-5 Tiuna Grove
- proposing 7 Tiuna Grove be identified as having a contributory heritage grading rather than a significant grading
- retaining HO8 over 21-23 Tiuna Grove and the laneway to the rear
- the loss of heritage properties in area
- requests for a review of HO8 and residential zoning.

Heritage Assessment

The Panel considers that the Heritage Assessment has been prepared using an appropriate methodology consistent with Planning Practice Note 1: Apply the Heritage Overlay and that the Amendment is consistent with and implements the Planning Policy Framework.

Extension of HO8

The Panel concluded that the Heritage Assessment and the evidence of Mr Barrett provided an appropriate level of justification to include 3, 5, 7 and 15 Tiuna Grove, Elwood in HO8 as comparative examples of early twentieth century and inter-war bungalows that characterise the significance of the Precinct.

The Panel supports the exclusion of 21-23 Tiuna Grove and the adjoining section of laneway from HO8 as exhibited. While the 1960s flats may be a good example of that era of development they are not identified as elements that are significant to or representative of HO8. The section of bluestone laneway to the rear of 21-23 Tiuna Grove, while a feature of

the area's early subdivision pattern, is not identified as important fabric within HO8 and at present is only partially included in HO8.

Dwelling gradings

The Panel considers that the exhibited gradings of 3, 5, 7 and 15 Tiuna Grove, Elwood are based on an appropriate level of analysis and extent of changes to those dwellings consistent with the gradings applied in the municipality's heritage precincts. Insufficient justification or evidence was provided to support the change of the exhibited building gradings.

Internal controls

While the Panel does not downplay the potential cultural or social associations of 3 Tiuna Grove, insufficient justification has been provided to support the application of internal controls to that building.

Recommendations

Based on the reasons set out in this Report, the Panel recommends that Port Phillip Planning Scheme Amendment C174port be adopted as exhibited subject to the following:

- 1. Amend the Schedule to Clause 43.01 to correct the Heritage place description of HO8 by replacing 'Glenhuntly' with 'Glen Huntly'.**
- 2. Amend the Citation and Statement of Significance for 'Elwood: Glen Huntly and Ormond Roads – HO8' contained in the Port Phillip Heritage Review, Volume 1, Version 32, July 2019 to:**
 - a) Replace all references to 'Glenhuntly' with 'Glen Huntly'.**
 - b) Under 'What is Significant?' in the Statement of Significance add after the first sentence in the third paragraph:**

Many of these are intact and evocative of Elwood in the early to mid-twentieth century being a desirable beachside suburb, a quality that continues today.

1 Introduction

1.1 The Amendment

(i) Amendment description

The purpose of the Amendment is to apply the Heritage Overlay on a permanent basis to 3, 5, 7 and 15 Tiuna Grove, Elwood by including those properties in the *Elwood: Glen Huntly Road, Ormond Road* precinct (HO8) and removing the properties at 21-23, 25, 27, 29 and 31 Tiuna Grove, Elwood from HO8.

The Amendment implements the findings of the *Tiuna Grove Heritage Assessment, 2019* (Heritage Assessment) which was produced following community and Council concerns regarding the potential demolition of 3 and 5 Tiuna Grove.

Specifically, the Amendment proposes to:

- apply HO8 to 3, 5, 7 and 15 Tiuna Grove, Elwood
- remove HO8 from 21-23, 25, 27, 29 and 31 Tiuna Grove, Elwood
- amend Clause 21.07 (Incorporated Documents) to change the version number and date of the *Port Phillip Heritage Review – Volumes 1-6 (Version 28 June 2019)* (Port Phillip Heritage Review) to Version 32, July 2019
- amend Clause 22.04 (Heritage Policy) to reflect the revised version number and date of the Port Phillip Heritage Review and include the Heritage Assessment as a reference document
- amend the Schedule to Clause 43.01 (Heritage Overlay) to remove interim HO8 which applies to 3, 5, 7 and 15 Tiuna Grove
- amend the Schedule to Clause 72.04 (Documents incorporated into this scheme) to revise the version number and date of the Port Phillip Heritage Review, the *City of Port Phillip Heritage Policy Map* (Heritage Policy Map) and the *City of Port Phillip Neighbourhood Character Map*
- amend the Heritage Policy Map to apply the following gradings:
 - ‘Significant Heritage Place’ grading to 3, 5 and 15 Tiuna Grove, Elwood
 - ‘Contributory Heritage Place’ grading to 7 Tiuna Grove, Elwood
 - ‘Nil grading’ to 21-23, 25, 27, 29 and 31 Tiuna Grove, Elwood
- amend the *City of Port Phillip Neighbourhood Character Map* to remove the ‘Contributory outside of the HO’ gradings for 3, 5, 7 and 15 Tiuna Grove, Elwood
- amend the HO8 precinct citation in the Port Phillip Heritage Review Incorporated Document and updating the version number and date.

(ii) The subject land

The Amendment applies to properties at 3, 5, 7, 15, 21-23, 25, 27, 29 and 31 Tiuna Grove, Elwood and to all other land within HO8 (Figure 1) which is generally bound by Shelley Street, Goldsmith Street, Ormond Road, Beach Avenue, Ormond Esplanade and Marine Parade, Elwood.

The proposed changes to the Heritage Policy Map (Map 8) are identified in Figure 2¹.

Figure 1 Current extent of HO8 and subject land



Source: Port Phillip Planning Scheme Amendment C174port Explanatory Report

Figure 2 Proposed changes to Heritage Policy Map 8



Source: Exhibited Heritage Policy Map 8

¹ The Heritage Map incorrectly excludes 21-23 Tiuna Grove as 'Nil' graded properties as identified at section 1.4 of the Report. The Amendment will result in 21-23, 25, 27, 29 and 31 Tiuna Grove being greyed out on the Heritage Map to match other Nil graded or Non Contributory sites.

1.2 Background

(i) Planning Permit application 772/2018

Planning Permit application 772/2018 was lodged with Council on 28 September 2018 for the development of a three storey building comprising 22 apartments at 1, 3 and 5 Tiuna Grove. The development proposal involved demolition of the three dwellings on the site for which no permit was required at the time of lodgement (before the introduction of interim heritage controls).

A building permit application for demolition of the dwellings under the *Building Act 1993* was issued on the 29 May 2019. Council subsequently considered heritage advice that the dwellings were of heritage interest and at risk of demolition. Peter Andrew Barrett Heritage was subsequently engaged by Council to undertake a heritage assessment of the dwellings at 3, 5, 7 and 15 Tiuna Grove.

Planning Permit 772/218 was granted following the issue of an Order by the Victorian Civil and Administrative Appeals Tribunal (VCAT) on 11 February 2020 for a modified proposal involving the retention of the front portions of the dwellings at 3 and 5 Tiuna Grove and construction of a reduced building footprint comprising 12 apartments.²

(ii) Interim controls

Council at its meeting of the 19 June 2019 resolved to request the Minister for Planning to apply interim heritage controls (HO8) to 3, 5, 7 and 15 Tiuna Grove, Elwood. On 20 June 2019 Council's Municipal Building Surveyor suspended the request for demolition of 3 and 5 Tiuna Grove. The Minister approved interim controls through Port Phillip Planning Scheme Amendment C173 on 4 July 2019. These controls sunset on 30 June 2020.

(iii) Heritage Assessment

Produced for Council by Peter Barrett, the *Tiuna Grove Heritage Assessment* July 2019 (Heritage Assessment) involved a review of the existing precinct citation, a visual inspection of Tiuna Grove from the public realm and an analysis based on The Burra Charter, 2013 and *Planning Practice Note No 1: Applying the Heritage Overlay, August 2018* (PPN01). The Heritage Assessment contains largely the same content as the earlier assessment provided by Mr Barrett on 17 June 2019 and which was considered at Council's 19 June 2019 meeting but was without an executive summary, methodology and description section or draft Statement of Significance.

The Heritage Assessment recommended:

- 3, 5 and 15 Tiuna Grove be included in HO8 and identified as 'Significant'
- 7 Tiuna Grove be included in HO8 and identified as 'Contributory'
- contemporary development at 21-23, 23, 25, 27 and 31 Tiuna Grove be removed from HO8 as those dwellings have no appreciable heritage value to the precinct
- update the format of the citation for HO8 contained within the Port Phillip Heritage Review.

² Elwood Tiuna Development Pty Ltd v Port Phillip CC [2020] VCAT 154 (Document 1).

Details of the Heritage Assessment are included in Chapter 3.

(iv) Port Phillip Heritage Review

The Amendment proposes to replace the existing precinct citation contained in the Port Phillip Heritage Review with a new citation to include additional historical content and what is significant and why using a more up to date format consistent with current heritage practice. It does not specifically refer to Tiuna Grove. The revised Statement of Significance for the HO8 precinct Citation is included in Chapter 3 of this Report.

Council's Part A submission set out a number of previous heritage studies that constitute much of the content of the current Port Phillip Heritage Review including:

- the *Port Phillip Heritage Review 1998*, which resulted in much of the content of Clause 22.04, the Schedule to Clause 43.01 and the Heritage Policy and Neighbourhood Character Maps. It was implemented through Port Phillip Planning Scheme Amendment C5
- the *Elwood Heritage Review, 2005* which considered heritage in Elwood and land covered by HO7, HO8 and HO318 and included the preparation of a thematic history and the reassessment of areas that fell outside these Heritage precincts. While Tiuna Grove was considered in the scope no recommendations were made in relation to it. It was implemented through Port Phillip Planning Scheme Amendment C54.

1.3 Summary of issues raised in submissions

26 submissions (including a late submission) were received following the exhibition of the Amendment of which 24 support or partly support with changes. Two submissions opposed the inclusion of 3, 5 and 7 in HO8. The key issues were:

- the Heritage Review methodology
- that the Heritage Overlay will restrict development
- the heritage fabric of 3, 5 and 7 Tiuna Grove has been altered and doesn't warrant inclusion in HO8
- the potential significance of an internal room at 3 Tiuna Grove
- the impact of the permit for 3-5 Tiuna Grove
- proposing 7 Tiuna Grove be identified as having a contributory heritage grading rather than a significant grading
- retaining HO8 over 21-23 Tiuna Grove and the laneway to the rear
- the loss of heritage properties in area
- requests for a review of HO8 and residential zoning.

1.4 Procedural issues

(i) Late submission

Following the Directions Hearing, Council received and referred to the Panel a late submission from Ms McLoughlin on the 2 March 2020.³

³ Document 2

(ii) Post-exhibition changes

Council's Planning Committee Report of 11 December 2019 identified proposed administrative changes to the Amendment focused on correcting the spelling of Glen Huntly Road which was referred to as Glenhuntly Road (or Rd) in the Schedule to Clause 43.01 and in the Port Phillip Heritage Review citation. A post-exhibition version of the Schedule to Clause 43.01 and the Heritage Review citation correcting this error were provided in Council's Part A submission.⁴

Council also advised that it proposed to correct a reference in the Explanatory Report that indicated only 25, 27, 29 and 31 Tiuna Grove were to be identified as 'Nil' grading in the Heritage Policy Map. It indicated that it was intended that this grading also be extended to 21-23 Tiuna Grove.

Council's post-exhibition changes are discussed in Chapter 7.

(iii) 'On the papers' proceedings

In response to the Novel Coronavirus Disease 2019 (COVID-19) pandemic and its potential impact on conducting public hearings involving face-to-face contact the Panel advised all parties on 19 March 2020⁵ that it was adjourning the Hearing that had been scheduled for 23 and 24 March 2020 under section 165 of the *Planning and Environment Act 1987* (the Act). The Panel advised that subject to the support of the parties that it was proposing to progress the proceeding through an 'on the papers' approach because:

- face to face contact should be minimised due to COVID-19
- there was no contested evidence (Council was the only party to call evidence)
- Council's Part A submission and the heritage evidence of Mr Barrett has already been circulated
- the Panel had undertaken an unaccompanied site inspection of Tiuna Grove, the adjacent laneway, adjoining streets and surrounds
- Council was in a position to provide its opening Part B submission to parties on what was scheduled as Day 1 of the Hearing (23 March 2020)
- submitters could be invited to provide any questions they have to the expert witness (Mr Barrett) in writing
- the expert witness could be required to respond in writing to those questions
- all parties could make written submissions after receiving responses to the witness questions
- Council would be provided the opportunity to make a closing submission.

All parties agreed to an on the papers approach and a draft set of directions for the proceedings were issued on 24 March 2020⁶ which set out key dates for the circulation of Council's Part B and closing submissions, witness questions, the witness' response to questions, Council's further questions of the witness and submissions. The final directions for the proceeding were issued on 26 March 2020.⁷ Ms Johnstone and Ms McLoughlin did

⁴ Document 1

⁵ Document 5

⁶ Document 6

⁷ Document 7

not add to their original submissions. Further written submissions were received from all other parties. The Panel acknowledges the positive way in which all parties participated in proceedings.

1.5 The Panel's approach

The Panel has assessed the Amendment against the principles of net community benefit and sustainable development, as set out in Clause 71.02-3 (Integrated decision making) of the Planning Scheme.

The Panel considered all written submissions made in response to the exhibition of the Amendment, observations from site visits, and submissions, evidence and other material presented to it. It has reviewed a large volume of material, and has had to be selective in referring to the more relevant or determinative material in the Report. All submissions and materials have been considered by the Panel in reaching its conclusions, regardless of whether they are specifically mentioned in the Report.

This Report deals with the issues under the following headings:

- Planning context
- Strategic justification
- 3 and 5 Tiuna Grove, Elwood
- 7 Tiuna Grove, Elwood
- Other sites
- Form and content of the Amendment.

1.6 Limitations

(i) Review of HO8

Ms Hoad⁸ supported the Amendment and sought a review of HO8 as it related to her property in Selwyn Avenue. Her written submission⁹ to the Panel further supported this position based on concerns about the loss of early twentieth century dwellings and because properties like her inter-war bungalow were not included in HO8. Submission 21 lamented that the delay in reviewing HO8 (and other Heritage Overlay precincts) had resulted in a loss of heritage fabric and inappropriate alterations. The submission requested the further review of identified significant and contributory buildings and inclusion of guidance on laneways. Submission 24 supported a more proactive response to reviewing HO8.

Submission 9 sought the correction of an anomaly in the Heritage Policy map which identified 35 Ormond Esplanade identified as 'Significant' when the original dwelling had been demolished. The new dwelling is not included in HO8. Council advised that while Council's internal heritage advisor supports the regrading of this property to a 'Nil' grading, additional grading changes are not within the scope of the Amendment and that a comprehensive review of HO8 is scheduled to occur through Council's four year Heritage Program and likely to commence in 2020-21. Council submitted that its Heritage Program provided for a systematic review approach of several precincts, identifying the completion of

⁸ Submission 4

⁹ Document 15

its recent review of HO6 which was progressing through a Planning Scheme Amendment Process as an example.¹⁰

The Panel agrees that it is not within the scope of this Amendment to consider additional grading changes beyond those contained within the exhibited Amendment. It acknowledges that Council has an ongoing program of review of the Heritage Overlay which includes a further review of HO8 as well as HO5 and HO7 in 2020-21. The Panel considers this a more appropriate and strategic approach.

(ii) Review of residential zones

Submissions 21 and 24 considered that the existing Neighbourhood Residential Zone Schedule 6 (Neighbourhood Residential Areas – Garden Suburban) that applied to Tiuna Grove, Selwyn Avenue and Bendigo Avenue had enabled infill development that had impacted detrimentally on heritage values. The submissions identified that the Neighbourhood Residential Zone Schedule 5 should apply instead to reduce the maximum height provisions.

While Council's submissions did not address this issue specifically it is not the intended purpose of the Amendment to consider matters outside the application of HO8. The application of Residential Zones is outside the scope of the Amendment and a matter for Council, potentially as part of its proposed review of its Housing Strategy which the Panel notes Council intends to commence in 2020/21.

(iii) Glen Huntly Road references

Any references to 'Glenhuntly Road' or 'Glenhuntly Rd' in this Report are to be read as referring to Glen Huntly Road. They are only used in this Report when referring to the existing use of that road name that appear in Amendment documentation or existing Port Phillip Planning Scheme provisions.

¹⁰ Port Phillip Planning Scheme Amendment C142port

2 Planning context

Council's Explanatory Report and Part A submission identified that the following provisions of the Act and the Planning Policy Framework were relevant to the Amendment which the Panel has summarised below.

2.1 Victorian planning objectives

Section 4(1)(d) of the Act is relevant to the Amendment:

conserve and enhance those buildings, areas or other places which are of scientific, aesthetic, architectural or historical interest, or otherwise of special cultural value
balance the present and future interests of all Victorians.

2.2 Planning policy framework

Council identified that the following clauses of the Port Phillip Planning Scheme are relevant to the Amendment:

State

- **Clause 15.01-5S** (Neighbourhood character) which seeks to recognise, support and protect neighbourhood character, cultural identity, and sense of place.
- **Clause 15.03-1S** (Heritage conservation) which seeks to ensure the conservation of places of heritage significance. Relevant strategies are:
 - Identify, assess and document places of natural and cultural heritage significance as a basis for their inclusion in the planning scheme.
 - Provide for the protection of natural heritage sites and man-made resources and the maintenance of ecological processes and biological diversity.
 - Provide for the conservation and enhancement of those places which are of, aesthetic, archaeological, architectural, cultural, scientific, or social significance.
 - Encourage appropriate development that respects places with identified heritage values.
 - Retain those elements that contribute to the importance of the heritage place. Encourage the conservation and restoration of contributory elements.
 - Ensure an appropriate setting and context for heritage places is maintained or enhanced.
- **Clause 15.03-1S** (Heritage Conservation) which seeks to ensure the conservation of places of heritage significance. Strategies include:
 - Identify, assess and document places of natural or cultural heritage significance as a basis for their inclusion in the planning scheme.
 - Provide for the protection of natural heritage sites and man-made resources.
 - Provide for the conservation and enhancement of those places which are of, aesthetic, archaeological, architectural, cultural, scientific, or social significance.
 - Encourage appropriate development that respects places with identified heritage values.
 - Retain those elements that contribute to the importance of the heritage place.
 - Encourage the conservation and restoration of contributory elements of a heritage place.
 - Ensure an appropriate setting and context for heritage places is maintained or enhanced.

- Support adaptive reuse of heritage buildings where their use has become redundant.

Municipal Strategic Statement and Local Planning Policies

- Clause 21.05-1 (Heritage) which aims to conserve and enhance the architectural and cultural heritage of Port Phillip with policy seeking to:
 - Protect, conserve and enhance all identified significant and contributory places, including buildings, trees and streetscapes.
 - Support the restoration and renovation of heritage buildings and discourage their demolition.
 - Encourage high quality design that positively contributes to identified heritage values.
 - Ensure that new development respects and enhances the scale, form and setbacks of nearby heritage buildings.
 - Encourage urban consolidation only where it can be achieved without affecting heritage significance.
- Clause 22.04 (Heritage Policy) outlines the objectives that are relevant to the conservation and protection of heritage places:
 - To retain and conserve all significant and contributory heritage places.
 - To discourage the demolition of significant and contributory heritage places.
 - To ensure all new development and redevelopment of significant and contributory places is respectfully and harmoniously integrated with the surrounding character.
 - To promote design excellence (in terms of building siting, scale, massing, articulation and materials) which clearly and positively supports the heritage significance of all Heritage Overlay areas.
 - To ensure that new development and any publicly visible additions and/or alterations in or to a heritage place maintains the significance of the heritage place and employs a contextual design approach.
 - To encourage development, in particular use of materials, that responds to the historic character of laneways and to minimise elements that adversely impact on that character.
 - To ensure that reconstruction and repair of significant heritage bluestone kerb and channelling, bluestone laneways and significant concrete kerb and channel is carried out in a way that reflects as closely as possible the original appearance.
- Clause 22.04-3 sets out a series of policies including:
 - Encourage the restoration and reconstruction of heritage places (including the accurate reconstruction of original streetscape elements such as verandahs) in all areas ...
 - Encourage the removal of alterations and additions that detract from the heritage significance of a heritage place.
 - Encourage new development to be respectful of the scale, form, siting and setbacks of nearby significant and contributory buildings.
 - Disregard the impact of buildings that are obviously atypical to the character of the streetscape when determining the appropriate mass and scale for new buildings or extensions or upper storey additions.
 - Encourage a contextual design approach for additions and/or alterations to a heritage place or for new development.
 - Additions and alterations:
 - Do not change the original principal facade(s) or roof.
 - Are distinguishable from the original parts of the heritage place to be conserved, if a contemporary architectural approach is used.

- Do not obscure or alter an element that contributes to the significance of the heritage place.
- Maintain an existing vista or viewlines to the principal facade(s) of a heritage place.
- An upper storey addition is sited and massed behind the principal facade so that it preferably is not visible, particularly in intact or consistent streetscapes.
- If visible from the front (principal) street, the roof of any addition is related to that of the heritage place in terms of form, pitch and materials.
- In cases where the original heritage place has been altered, the previous alterations and additions are retained and conserved where they help to interpret the history of its development and they contribute to the significance of the heritage place.
- New openings in the principal facade(s) visible from the street are avoided, or if openings are visible, they are proportionally related to those of the heritage place.
- Walls, windows, roofs and fences are complementary to the heritage place in terms of materials, finishes, textures and paint colours and are appropriate to its architectural style.
- New Development in Heritage Overlay Areas:
 - New development maintains and enhances an existing vista to the principal facade(s) of the heritage place, where a new development is adjacent to a heritage place ...
 - Front and side setbacks reflect those of the adjacent buildings and the streetscape, where this is an important element in the streetscape.
 - Roofs respond to any predominant roof form characteristic of the streetscape.
 - Door and window openings are complementary to the prevailing streetscape characteristics.
 - If it is a major development site containing a significant or contributory heritage place that is to be retained, the new development respects the scale and setting of the heritage place whilst responding to the prevailing building scale of the heritage overlay area.
 - Visible wall elevations of the new building are articulated in a manner that is complementary to the streetscape through the use of different materials, massing and the inclusion of windows and doors where appropriate.
 - Materials, textures and finishes complement those evident in the streetscape.
 - Colour schemes complement the appearance and character of the streetscape.
 - Front fences are appropriate to the architectural style of the building.
 - For a contextual approach, front fencing interprets the prevailing character of fencing in the immediate environs and in particular responds to prevailing fence height, degree of transparency, form and materials.
- Demolition:
 - Where a permit is required for demolition of a significant or contributory building, it is policy to:
 - Refuse the demolition of a significant building unless and only to the extent that:
 - the building is structurally unsound;
 - the replacement building and/or works displays design excellence which clearly and positively supports the ongoing heritage significance of the area.

- Refuse the demolition of a contributory building unless and only to the extent that:
 - the building is structurally unsound, and either
 - the replacement building and/or works displays design excellence which clearly and positively supports to the ongoing heritage significance of the area, or
 - in exceptional circumstances the streetscape is not considered intact or consistent in heritage terms.
- Require all applications for demolition of significant or contributory buildings to be accompanied by an application for new development.
- Allow the demolition of part of a heritage place if it will not affect the significance of the place.

Clause 22.04-5 sets out the following definitions:

- **Heritage place** is a place that has identified heritage value and could include a site, area, building, group of buildings, structure, archaeological site, tree, garden, geological formation, fossil site, habitat or other place of natural or cultural significance and its associated land.
- **Significant heritage places** include buildings and surrounds that are individually important places of either State, regional or local heritage significance and are places that together within an identified area, are part of the significance of a Heritage Overlay. These places are included in a Heritage Overlay either as an area or as an individually listed heritage place and are coloured “red” on the City of Port Phillip Heritage Policy Map in the Port Phillip Heritage Review, Volume 1-6.
- **Contributory heritage places** include buildings and surrounds that are representative heritage places of local significance which contribute to the significance of the Heritage Overlay area. They may have been considerably altered but have the potential to be conserved. They are included in a Heritage Overlay and are coloured “green” on the City of Port Phillip Heritage Policy Map, in the Port Phillip Heritage Review, Volume 1-6.
- **Non-contributory properties** are buildings that are neither significant nor contributory. They are included in a Heritage Overlay and have no colour on the City of Port Phillip Heritage Policy Map in the Port Phillip Heritage Review, Volume 1-6. However any new development on these sites may impact on the significance of the Heritage Overlay, and should therefore consider the heritage characteristics of any adjoining heritage place and the streetscape as covered in this policy.

2.3 Plan Melbourne

Plan Melbourne 2017-2050 sets out strategic directions to guide Melbourne’s development to 2050, to ensure it becomes more sustainable, productive and liveable as its population approaches 8 million. It is accompanied by a separate implementation plan that is regularly updated and refreshed every five years.

Plan Melbourne is structured around seven Outcomes, which set out the aims of the plan. The Outcomes are supported by Directions and Policies, which outline how the Outcomes will be achieved. Outcomes that are particularly relevant to the Amendment are set out in **Error! Reference source not found..**

Table 1 Relevant parts of Plan Melbourne

Outcome	Directions	Policies
Outcome 4: Melbourne is a distinctive and liveable city with quality design and amenity	Direction 4.4 respect our heritage as we build for the future	<p>Policy 4.4.1: Recognise the value of heritage when managing growth and change</p> <p>Policy 4.4.4: Protect Melbourne's heritage through telling its stories.</p>

2.4 Planning scheme provisions

A common zone and overlay purpose is to implement the Municipal Planning Strategy and the Planning Policy Framework.

(i) Zones

The land is in the Neighbourhood Residential Zone Schedule 6 (Neighbourhood Residential Areas – Garden Suburban). The purposes of the Zone are:

To recognise areas of predominantly single and double storey residential development.

To manage and ensure that development respects the identified neighbourhood character, heritage, environmental or landscape characteristics.

To allow educational, recreational, religious, community and a limited range of other non-residential uses to serve local community needs in appropriate locations.

(ii) Overlays

The purposes of the Heritage Overlay are:

To conserve and enhance heritage places of natural or cultural significance.

To conserve and enhance those elements which contribute to the significance of heritage places.

To ensure that development does not adversely affect the significance of heritage places.

To conserve specified heritage places by allowing a use that would otherwise be prohibited if this will demonstrably assist with the conservation of the significance of the heritage place.

The Heritage Overlay requires a planning permit to demolish, subdivide, build or carry out works. The Heritage Overlay enables its Schedule to specify additional controls for specific trees, painting previously unpainted surfaces, internal alterations and an incorporated plan (which may exempt buildings and works and other changes from requiring a planning permit). The Schedule may also identify if a place can be considered for uses that are otherwise prohibited, subject to a planning permit.

2.5 Ministerial Directions and Practice Notes

Ministerial Directions

The Amendment Explanatory Report discusses how the Amendment meets the relevant requirements of:

- Ministerial Direction 11 (Strategic Assessment of Amendments)
- Ministerial Direction (The Form and Content of Planning Schemes pursuant to section 7(5) of The Act) – referred to as Ministerial Directions 7(5) in this Report.

That discussion is not repeated here.

Planning Practice Note 1 – Applying the Heritage Overlay (August 2018)

Planning Practice Note 1: Applying the Heritage Overlay, August 2018 (PPN01) provides guidance about using the Heritage Overlay. It states that the Heritage Overlay should be applied to, among other places:

Places identified in a local heritage study, provided the significance of the place can be shown to justify the application of the overlay.

PPN01 specifies that documentation for each heritage place needs to include a statement of significance that clearly establishes the importance of the place and addresses the heritage criteria. It recognises the following model criteria (the Hercon criteria) that have been adopted for assessing the value of a heritage place:

- Criterion A:** Importance to the course or pattern of our cultural or natural history (historical significance).
- Criterion B:** Possession of uncommon rare or endangered aspects of our cultural or natural history (rarity).
- Criterion C:** Potential to yield information that will contribute to an understanding of our cultural or natural history (research potential).
- Criterion D:** Importance in demonstrating the principal characteristics of a class of cultural or natural places or environments (representativeness).
- Criterion E:** Importance in exhibiting particular aesthetic characteristics (aesthetic significance).
- Criterion F:** Importance in demonstrating a high degree of creative or technical achievement at a particular period (technical significance).
- Criterion G:** Strong or special association with a particular community or cultural group for social, cultural or spiritual reasons. This includes the significance of a place to Indigenous peoples as part of their continuing and developing cultural traditions (social significance).
- Criterion H:** Special association with the life or works of a person, or group of persons, of importance in our history (associative significance).

Particular provisions of PPN01 are discussed in Chapters 3, 4 and 6.

3 Strategic justification

3.1 The issue

The issue is whether the Amendment is strategically justified, and in particular whether it:

- is supported by an appropriate level of assessment, including whether the Heritage Review methodology is appropriate
- supports and implements the relevant sections of the Planning Policy Framework
- is consistent with the relevant Ministerial Directions and Practice Notes.

3.2 Background

(i) Heritage Assessment

The Heritage Assessment includes the following description of Tiuna Grove:

Tiuna Grove extends between Ormond Road and Ormond Esplanade in a northeast-southwest direction. The street is reasonably wide, and at mid-block the street alignment projects further southeast. Bluestone channel and kerbing extends along each side of the carriageway. Shallow nature strips extend between the kerb and asphalt-surfaced footpaths, these footpaths extend along the street adjacent to property boundaries. Asphalt and concrete-surfaced crossovers provide vehicular access to properties. Mature street trees, mostly plane trees, create a canopy of vegetation over many parts of the street ...

Tiuna Grove was developed from the late-nineteenth century. The late nineteenth century housing is two, substantial, two storey mansions on the northwest side of the street. The street experienced a significant phase of development in the early twentieth century, which was in the form of houses (mainly bungalows), and flats ... In 1915, only three houses were listed in Tiuna Grove, and by 1920 there were 13 houses listed (Sands & McDougall Melbourne Directories).

This phase of development defines much of the northwest side of the street, but fine examples of bungalow housing from the early twentieth century are also found at the northeast end of the southeast side of the street (No's 3, 5 and 15). Another bungalow (No 7), of early-twentieth century origin on the southeast side of Tiuna Grove, has been altered, but still contributes to the groups of bungalows found in this street ...

Construction details of the subject houses are: No 3, built in 1917-18, designed by Richardson & Wood architects; No 5, built 1916, builder A M Younger, who also built Ardoch in Dandenong Road; and No 7, built 1916, builder W E Coleman. The exact date of No 15 is not known, but visually it would appear to be contemporaneous with development that occurred in the 1910s or 20s.

There is a significant amount of mid-late twentieth century flat development, and contemporary development in the street. This includes a late inter-war block of flats, Calgary, (No 13). Another flat complex of the 1960s (No 1), retains an earlier bungalow at its rear ... The blocks of flats of 1960s and 70s origin are Modernist in their expression, and of little or no appreciable heritage value. Contemporary development, of units/apartments, form bookends at the northeast and southwest ends of Tiuna Grove, and these also have no appreciable heritage value.

The Heritage Assessment includes the following comment about Tiuna Grove in the context of HO8:

The HO8 Elwood: Glenhuntly and Ormond Roads precinct covers a large portion of the south part of Elwood. Tiuna Grove is named after the late-nineteenth century house 'Tiuna' (No 8 Tiuna Grove), which is part of the first phase of development of this heritage overlay. However, it was land sales in the early twentieth century that

saw Elwood evolve into a popular bayside residential precinct. The houses at No's 3, 5, 7, and one other No 15, are part of this phase of residential development.

The Heritage Assessment's analysis of Tiuna Grove identifies that:

The southeast side of Tiuna Grove is more eclectic in terms of its built form, with much of this defined by mid-late twentieth century development. A good portion of this built form on the southeast side of the street is Post-war Modernist blocks of flats of little or no appreciable heritage value. The existing boundaries of the HO8 Elwood: Glenhuntly and Ormond Roads heritage overlay extend over a portion of the southeast side of Tiuna Grove where contemporary development is now built at the Ormond Esplanade (southwest) end. This is on sites at No's 21-23, 25, 27, 29 and 31 Tiuna Grove. However, where there is a cluster of early twentieth century bungalows in Tiuna Grove, these are not included within the boundaries of the heritage overlay.

This cluster of early twentieth century housing is No's 3, 5, 7 and 15. Another house of early twentieth century origin, No 1, is still extant behind a block of 1960s flats that have been built in its front setback. I am of the view that the houses at No's 3, 5 and 15 are fine and relatively intact examples of twentieth century bungalows and are of significant value to the HO8 Elwood: Glenhuntly and Ormond Roads precinct. Change that has occurred to these houses is relatively minor and reversible, and has not impacted upon their significance.

Another house, No 7, has been altered since 2013, when a Google streetview image was prepared. A box-like addition, of a contemporary expression has now been built to the front of an earlier attic addition visible in the 2013 image. The house, nevertheless, still is interpreted as being from the early twentieth century phase of development, and can be considered to have contributory value to Tiuna Grove and the HO8 Elwood: Glenhuntly and Ormond Roads precinct.

Although the house at No 1 is extant, its façade may have been altered or obliterated when the block of flats to its front was built. In any case, if it is intact, it is unlikely the flats will be removed and the house will return to having a presence in this street. On this basis, the house is of non-contributory value to the HO8 Elwood: Glenhuntly and Ormond Roads precinct.

(ii) Port Phillip Heritage Review

The updated Statement of Significance to be included in the Port Phillip Heritage Review for the precinct Citation (reproduced below) uses the Statement of Significance format identified in PPN01 including the use of Hercon criterion.

What is significant?

The south portion of Elwood that has Glenhuntly Road as its east-west spine. It extends to the north to just beyond Shelley Street, between Marine Parade and the Elwood Canal; and to the southeast between Ormond Road and Ormond Esplanade, as far south as to parts of Vautier Street. The area also includes the Point Ormond Reserve and Port Phillip Bay foreshore, south of the Elwood Canal; and the Robinson Gardens recreational reserve.

Some residential development occurred in this area from the 1850s, such as Elwood House (c1855), and later Tiuna (1884) and Thalassa (1889), and a small number of villas. The establishment of an electric tramway by the Victorian Railways in 1906, which extended through Elwood between St Kilda Railway Station and Brighton Beach, stimulated residential development of this area from the early twentieth century. The opening of another electric tramway in 1915, which extended between Elsternwick Railway Station to Point Ormond, operated by the Melbourne & Metropolitan Tramways Board, further improved public transport links to Elwood, and consequently residential development continued to occur in the Inter-war years.

This early twentieth century development (1900-1918) and Inter-war development (1919-1939) is mostly defined by detached brick villas and bungalows, and flats. Underscoring the residential character of this area is the Elwood Shopping Centre at the junction of Broadway, Ormond and Glenhuntly Roads, and another shopping centre further southeast on Ormond Road. They contain

commercial and public buildings, including churches, contemporaneous with the residential development that occurred between 1900 and 1939, and established themselves as focal points of community life of this area.

The following features contribute to the significance of the HO8 Elwood: Glenhuntly and Ormond Roads area:

- The Port Phillip Bay foreshore, Point Ormond Reserve and Robinson Reserve;
- Housing from the first phase of residential development from the mid-late nineteenth century;
- Housing and flats from the development of the area in the early twentieth century (1900-1918) and the Inter-war period (1919-1939);
- Commercial, and public buildings, including churches, that were built in tandem with the residential development of the area from the early twentieth century;
- Public realm infrastructure and landscaping that contributes to the fine urban character of this area, such as street trees, bluestone channel and kerbing, and parks and reserves.

How is it significant?

The HO8 Elwood: Glenhuntly and Ormond Roads area is of local historical (Criterion A), aesthetic (Criterion E), and social (Criterion G) significance to the City of Port Phillip.

Why is it significant?

The area is of historical significance for the mid-late nineteenth century mansions and villas of this part of Elwood, whose residents were attracted to the area by its location adjacent to the foreshore of Port Phillip Bay. The housing and flats of the precinct of the early twentieth century and Inter-war years demonstrate the second, and most substantial, phase of residential development that was triggered by improved public transport links by the opening of two electric tramways through Elwood in 1906 and 1915 (Criterion A).

The commercial and public buildings, including churches, of the two shopping centres that are contemporaneous with the housing and flats of the early twentieth century and Inter-war years, are of historic significance. They established focal points for this community from the early twentieth century, and are evocative of aspects of life in this suburb as a place to shop, conduct business, worship and to socialise (Criterion A).

Aesthetically, the area is significant as retaining fine and relatively intact collections of housing and flats of the early twentieth century and Inter-war years. These are of styles that are representative of residential design of these years, with Edwardian-era villas and early bungalow designs with Arts & Crafts influences. Inter-war housing and flats demonstrate a broader range of architectural styles, which, in addition to Arts & Crafts, include influences from the West Coast of the United States such as the Californian Bungalow and Spanish Mission-styles; Moderne (Art Deco), and some buildings displaying tenets of emerging European Modernism. This array of architectural styles, within a setting that references garden suburb ideals, has created an area with a rich built form environment within the City of Port Phillip (Criterion E).

The commercial and public buildings of the shopping centres that were built in the early twentieth century and Inter-war years, underscore the surrounding residential character and use of this area. They contribute to the rich built form of this precinct, and are of aesthetic value as a relatively fine and intact collection of commercial and public buildings built prior to World War II. In terms of one shopping centre, it forms a focal point for this broader area and its community at a junction of three major thoroughfares (Criterion E).

The Port Phillip Foreshore, Point Ormond Reserve and Robinson Gardens are of social significance to Port Phillip, as public space and recreational areas that are known, used and valued by the community from the 1850s (Criterion G).

The two shopping centres, as focal points for this local community as a place to shop, conduct business, worship and socialise, are of social significance. They too are places known, used and valued by the local community (Criterion G).

3.3

3.4 Heritage Assessment approach

(i) Methodology

The Heritage Assessment set out a methodology for its preparation which included:

- having regard to the Australian ICOMOS Burra Charter, 2013
- having regard to PPN01 and the HERCON criteria used for the assessment of the heritage value of a place
- two inspections of the study area (Tiuna Grove and the broader HO8 Elwood-Glen Huntly Road, Ormond Road precinct including adjacent streets)
- a review the existing citation for the Precinct
- building application plans for the houses at 3, 5 and 7 Tiuna Grove.

(ii) Evidence and submissions

The submission from Mr Gray of Minter Ellison on behalf of Elwood Tiuna Pty Ltd¹¹ considered that the methodology and approach adopted by Mr Barrett in conducting his assessment varied vastly to previous studies prepared in respect of the precinct. Mr Gray submitted that Mr Barrett had recognised that the south-east side of Tiuna Grove, where 3-5 Tiuna Grove is located, is *"more eclectic in terms of its built form [than the north-west side], with much of this defined by mid-late twentieth century development"* and that *"a good portion of this built form on the southeast side of the street is Post-war Modernist blocks of flats of little or no appreciable heritage value"*. Despite that, he submitted, Mr Barrett has recommended that 3, 5, 7 and 15 Tiuna Grove (on the south east side) be included in the HO8 because they *"have heritage values consistent with the aesthetic and historic values"* of the precinct. Mr Gray considered this approach should be rejected because it contrasted with all previous studies undertaken for the precinct.

Mr Gray considered that rather than capturing sites that had slipped through the cracks, Council was shifting the goal posts to justify their inclusion. He submitted that none of the subsequent 27 reviews of the 1988 Port Phillip Heritage Review recommended or observed that the inclusion of 3 and 5 Tiuna Grove was warranted. Nor did any previous study recommend a change to the precise boundaries or irregular pattern of HO8 that underpinned the approach to that study. He further observed that the Elwood Heritage Review 2005 made no observations or recommendations about the potential significance of the south-east side of Tiuna Grove. Mr Gray considered that the two studies had identified bungalows and villas where they formed part of a cohesive streetscape rather than on the basis of their individual worth, with the Statement of Significance referencing bungalows and villas in a cursory way recognising their low contributory value as individual buildings in the precinct. He submitted that the Amendment sought to now elevate the role of bungalows and villas in the Statement of Significance.

Mr Gray was critical of the approach of Council and Mr Barrett which suggested that less importance was now being placed on heritage places adjoining each other in favour of applying a Heritage Overlay to places that share a common history or significance but do not necessarily form part of a contiguous group. He submitted that the application of a Heritage

¹¹ Submission 19 and Document 18

Overlay should not be taken lightly and requires a sound analysis and consistent systematic and strategic approach rather than an isolated assessment of specific properties.

Mr Vorchheimer of HWL Ebsworth for submitters 11, 17, 18 and 23¹² submitted that while no threshold test was applied to the Heritage Assessment, Mr Barrett's evidence and response to questions clarified that he had considered PPN01, the existing Port Phillip Heritage Review citation and Clause 22.04-5 in addition to his site inspections to support his recommendations.

The submission from Ms Harrison¹³ considered that the limited budget and scope for the Elwood Heritage Review, 2005 partly explained why 3-7 and 15 Tiuna Grove were not included in HO8. She pointed to two criteria applied to that assessment she considered relevant to the exclusion of those sites, namely excluding properties provided protection "*by other mechanisms beyond heritage overlay*" and excluding sites on the borders of existing precincts that could be annexed into them. Her submission included details of the removal of the single dwelling covenant from the title of Tiuna Grove in 2018 as an example of the loss of a mechanism which affords protection. She further noted that the Elwood Heritage Review of 2005 recommended that the areas abutting several Heritage Overlay areas including HO8 be reviewed.

In his written evidence Mr Barrett advised that he had reviewed the methodology used by Mr Andrew Ward in the preparation of the original 1998 Port Phillip Heritage Review which formed the basis of HO8 and the gradings applied. He indicated he had also undertaken historical research associated with HO8 and the particular sites using primary and secondary sources which were referenced in his evidence.

Mr Barrett indicated in his evidence that he was unclear why the 1998 Port Phillip Heritage Review prepared by Andrew Ward excluded the subject sites. He suggested that the methodology reference in that Review that "*a quick visual inspection of a building cannot be said to constitute a thorough appraisal*" contrasted his more detailed inspection of the houses and access to more historical information. He referred to references in the Review which noted that the irregular boundaries of heritage overlays can be attributed to:

... given the new planning scheme provisions and more particularly the urban character provisions, it was determined that heritage controls should only apply to those areas where the fabric of the place was considered to be so important that it should not be demolished. In other words, the areas of lesser cultural value could not unreasonably be managed by the urban character provisions of the Scheme. It is for this reason that the proposed heritage overlay areas have been drawn with precision and form highly irregular patterns. Their focus, after all, is on the conservation of fabric as well as character. It is argued in this Review that discrete areas, bounded more or less neatly by streets and natural boundaries are best managed by the urban character controls with heritage overlay controls applying only to those areas within the urban character areas where demolition control is required. It is partly as a consequence, therefore, of the new planning provisions, that the approach to the identification of the heritage overlay areas has changed.

Mr Barrett opined that this approach excluded many houses with significant or contributory values a situation which was likely to dilute the recognised heritage character of Elwood.

¹² Document 17

¹³ Submission 16 and Document 20

He considered that the approach to the inclusion of places within a Heritage Overlay has changed since the 1998 Port Phillip Heritage Review was prepared when the Overlay tended to be formed by *“identifying cohesive streetscapes of a building type, period and/or style”*. He considered that in recent years less importance has been placed on heritage places needing to adjoin each other in favour to applying the Overlay to *“places that share a common history and/or significance, but do not necessarily form a contiguous group”*.

Mr Barrett also referred to the Elwood Heritage Review 2005 which noted the need for areas abutting HO8, as well as other heritage overlays, to be reviewed for inclusion. The 2005 review stated:

The fieldwork component also revealed that a number of places of architectural and aesthetic interest were located just outside the boundaries of the three existing heritage precincts. The recommendation was subsequently made that the borders of these precincts be revised to include these significant, contributory and (occasionally) non-contributory places on their periphery. The revision of precinct boundaries allowed for the existing areas to become less fragmented, by the reinstatement of those portions of streetscapes that had been omitted – sometimes due to the presence of post-war buildings.

Council submitted that the methodology applied in the preparation of the Heritage Assessment was sound and consistent with standard heritage practice in Victoria and that regardless of the different methodology used from the 1998 Heritage Review, it accorded with the Burra Charter and PPN01 (particularly Hercon criterion A and E) and used comparative examples.

Council provided copies of the Field Notes used to inform the 1998 Port Phillip Heritage Review which assessed each of these properties as:

- 3 Tiuna Grove: “D” grade (Local importance), “CB” (Californian Bungalow), “H” (House).
- 5 Tiuna Grove: “F” grade (Local interest), “F” (Federation), “H” (House).
- 7 Tiuna Grove: “F” grade (Local interest), “CB” (Californian Bungalow), “H” (House).
- 15 Tiuna Grove: “D” grade (Local importance), “CB” (Californian Bungalow), “H” (House).

Council suggested that these assessments were not dissimilar to Mr Barrett’s aside from the grading of 5 Tiuna Grove. It suggested that this difference lay with the Port Phillip Heritage Assessment’s organisation of all preliminary heritage gradings into the following categories:

- all places given a preliminary grading of A, B, C or D within a Heritage Overlay or A, B or C outside a Heritage Overlay should be collectively termed “Significant Heritage Places”; and
- all places given a preliminary grading of E or F inside a Heritage Overlay or D, E or F outside a Heritage Overlay should be collectively termed “Contributory Heritage Places”.

Council submitted that this translation exercise meant that due to being outside of HO8, the subject properties were identified as ‘Contributory outside of Heritage Overlay’ and highlighted yellow on the Neighbourhood Character Map. It suggested that if the subject properties had been included in the HO8, the gradings would have been:

- 3 & 15 Tiuna: Significant inside HO
- 5 & 7 Tiuna: Contributory inside HO.

Council identified that at the time of preparing the 1998 Port Phillip Heritage Review, maps were produced to illustrate the Field Notes. The 'Heritage Status' map (2 March 1998) was provided in Council's Part B submission which showed several properties to the east, west and south of Tiuna Grove with equal or lesser heritage grading were included in the HO8.

In relation to the Elwood Heritage Review 2005 Council identified that while Tiuna Grove was included in the study area, given it was prepared at the suburb scale it only made recommendations for additional heritage overlay controls in relation to new precincts. In relation to the extension of existing precincts the Review noted that a partial review had been undertaken and that:

Some areas, while special to Elwood, do not constitute new heritage areas in their own right but do not contribute to the heritage significance of the development of Elwood and should be included as a part of the existing, larger Heritage Overlay precinct.

Council submitted that this underpinned the recommendations which were supported by the Amendment:

- It is recommended that areas abutting the existing HO7, HO8 and HO318 be reviewed for inclusion into those areas, or into revision of those areas.
- It is also recommended that the whole of the HO7 and HO8 areas be reviewed to ensure their relevance and applicability across the entire precinct. Potentially these large HOs may be divided into a number of small areas to more accurately address and reflect the heritage values of more 'like' precincts. This will allow for a more detailed analysis of what is significant, how it is significant and why these areas are significant to the City of Port Phillip.

(iii) Discussion

The Panel considers that the analysis undertaken in the Heritage Assessment is sound and consistent with the guidance included in PPN01. It appropriately applies Hercon criteria and includes a level of comparative analysis with other dwellings in the precinct.

Without the benefit of evidence from the author of the 1998 Port Phillip Heritage Review the Panel is unable to conclude why 3, 5, 7 and 15 Tiuna Grove were originally excluded from HO8 although Mr Barrett, Council and other submitters have advanced views that this was based on the methodology used to identify and map significant places in or out of heritage precincts. The same can be said about the approach taken for the 2005 Elwood Heritage Review, although that study does identify the need to further review HO8.

Notwithstanding this, the fact that the Heritage Assessment undertaken by Mr Barrett uses a slightly different methodology than was applied when the Port Phillip Heritage Review was first prepared is not particularly surprising given the precinct level of analysis undertaken. Mr Barrett's assessment brings the benefit of a fresh independent analysis that is focused on Tiuna Grove and is informed by more detailed site specific research and the more recent guidance of PPN01. His analysis and findings generally accord with the 1987 Field Notes in terms of gradings but provide further research to support his recommended gradings.

It is understandable that criticism might be laid that the identification of these sites has been a reactive response to a development proposal rather than as part of a broader review of HO8 as identified in the Elwood Heritage Review or Council's Heritage program. However, the current building permit process legitimises this approach and provides a process for considering the potential heritage significance of a place with the benefit of a more detailed

assessment. In this instance rather than just focusing on the land at 1-5 Tiuna Grove Council's approach has taken a wider examination of other sites in Tiuna Grove, including some and removing others and updating the place Citation to use current format guidelines. This is an acceptable approach and does not impact the wider review of HO8 still planned by Council.

The Panel accepts the evidence of Mr Barrett and the position of Council that the approach to designating precincts has evolved since 1998 and does not require that properties must form part of a cohesive streetscape in order to justify inclusion. PPN01 identifies that:

Places that share a common history and/or significance, but which do not adjoin each other or form a geographical grouping may be considered for treatment as a single heritage place. Each place that forms part of the group might share a common statement of significance; a single entry in the Heritage Overlay Schedule and a single Heritage Overlay number.

(iv) Findings

The Panel finds that the methodology applied in the Heritage Assessment is sound and consistent with PPN01.

3.5 Policy support

(i) Submissions

Mr Vorchheimer's submission distinguished between resident concerns about neighbourhood character and heritage significance. In the context of neighbourhood character he considered that the Amendment was an acceptable planning outcome. He submitted that it was consistent with the Vision for Elwood to maintain the distinctive suburban character and low rise built form and policy that seeks to protect the suburban and architectural character and direct medium density housing growth to other identified locations to meet the municipality's housing needs. From a heritage perspective he considered that the Amendment created an acceptable outcome because the additional dwellings were historically significant and comparable to other heritage places already in HO8 and removed the anomaly that excluded them.

Council submitted that the Amendment was consistent with Plan Melbourne and would ensure that policies for heritage conservation can be met through the identification, assessment and protection of heritage places within Port Phillip. It said that in turn this would encourage the appropriate development and the conservation and restoration of the contributory elements of the heritage places.

Council identified that the Amendment:

... will have a positive environmental impact by protecting a place of historic significance and allowing the reuse and recycling of existing building stock. The amendment will have a positive social effect through the preservation of a historically and culturally significant place for the benefit of current and future generations. The amendment is not expected to have any significant economic impact.

(ii) Discussion

No evidence or submissions were advanced that the Amendment was not supported by planning policy.

The Panel considers that the Amendment is supported by the Planning Policy Framework, Ministerial Directions and relevant Practice Notes. It has been underpinned by an appropriate level of analysis to identify and recognise properties of heritage value that display the significant heritage attributes of HO8 that are locally significant to Port Phillip City Council.

The Amendment will provide an opportunity for an appropriate planning control to be applied, in addition to other considerations, to ensure the future development of these sites is managed consistent with the values of the wider precinct.

Accordingly the Amendment will provide for sustainable development and provide a positive community benefit through the long term recognition and protection of places that are important to the local community.

(iii) Findings

The Panel finds that the Amendment is consistent with and supports the Planning Policy Framework, the relevant Ministerial Directions and PPN01.

3.6 Conclusions

The Panel concludes that the Amendment:

- is supported by, and implements, the relevant sections of the Planning Policy Framework
- is consistent with the relevant Ministerial Directions and Practice Notes
- is well founded and strategically justified
- should proceed subject to addressing the more specific issues raised in submissions as discussed in the following chapters.

4 3 and 5 Tiuna Grove, Elwood

4.1 What is proposed?

The Amendment proposes to apply HO8 to 3 and 5 Tiuna Grove, Elwood and identify the places as Significant.

Figure 3 3 and 5 Tiuna Grove, Elwood



Source: Heritage Assessment

4.2 The issues

The issues are whether:

- 3 and 5 Tiuna Grove should be included in HO8
- 3 and 5 Tiuna Grove should be identified as 'Significant' within HO8
- internal controls should apply to 3 Tiuna Grove.

4.3 Evidence and submissions

(i) Dwelling gradings

Council submission and evidence

Council did not support changing the gradings of 3 or 5 Tiuna Grove.

Mr Barrett considered that the dwellings:

- were in a section of the street that was more eclectic in terms of its built form
- were aesthetically fine and relatively early and intact examples of mid 1910s bungalow styles, a typology commonly found in Tiuna Grove and other streets in HO8
- had been altered but the extent of change was relatively minor and reversible and had not impacted upon their significance
- still retained a significant level of early detailing and character that could be interpreted as forming part of the early twentieth century and inter-war phase of development
- were comparative as Significant examples of the style as the dwellings at 2 and 6 Tiuna Grove
- are of significant value to HO8.

Council submitted that 3 and 5 Tiuna Grove were examples of the type of development representative of the precinct's heritage values with Mr Barrett's evidence stating:

I am of the view that the houses at No's 3, 5 and 15 are fine and relatively intact examples of early twentieth century bungalows and are of significant value to the HO8 Elwood-Glenhuntly Road, Ormond Road precinct. Change that has occurred to these houses is relatively minor and reversible, and has not impacted upon their significance.

Council submitted that Mr Barrett's updated and more thorough assessment of 5 Tiuna Grove as a Significant graded property should be preferred to the Contributory grading in the 1998 Port Phillip Heritage Review. It also referred to Mr Raworth's VCAT evidence for permit application 772/218 which identified that:

... conservation works will be undertaken to 3 & 5 Tiuna Grove. For 5 Tiuna Grove, this will include removal of non-original elements to the façade, such as the modern pergola, verandah posts and balustrade; and the replacement of the latter with a more sympathetic verandah form. While not yet detailed, conservation works are also proposed to 3 Tiuna Grove.

Council submitted that the assertion that the dwellings have been altered to a degree which impacts their significance was inconsistent with Mr Raworth's evidence.

The original submission from Elwood Tiuna Pty Ltd identified that applying the Heritage Overlay would limit current and future redevelopment opportunities. Council acknowledged that while the overlay introduces another level of control this is necessary to ensure heritage places are recognised and appropriately managed and that issues of personal economic impact or potential constraint on development were matters for the next stage of the planning process. Council considered that the recent permit approval of the site was a case in point where a revised proposal was prepared and a balanced outcome achieved.

Supporting submissions

Submissions 2, 3, 5, 7, 8, 11, 13, 14, 15, 16, 17, 21, 25 and 26 supported the inclusion of 3 and 5 Tiuna Grove within HO8. These submissions considered that the properties were characteristic of the heritage values of HO8 and important to the heritage character of Tiuna Grove.

Ms Harrison's submission included a link to a circa 1925 aerial photograph of the Elwood area held by the State Library of Victoria showing the extent of housing in Tiuna Grove and surrounding streets at the time. Ms Harrison submitted that the inclusion of the existing properties at 3, 5, 7 and 15 in that photo and their consistency with other surrounding properties supported her position that the sites should be included in HO8. Ms Harrison also considered that the single dwelling covenant at 3 Tiuna Grove (which was removed in 2018) was a factor in excluding the site from the 2005 Elwood Heritage Review.

Mr Vorchheimer's submission considered that the dwellings at 3 and 5 (as well as 7 and 15) Tiuna Grove possess elements in common with the majority of historic dwellings in HO8 including chimneys, verandas, roof forms, materials, front and side setbacks, garden setting and low front fences. The submission included the positions of each represented party¹⁴ and a common position. Mr Harrison did not support the permit approved partial demolition of 3 and 5 Tiuna Grove considering those changes compromised their heritage values. Ms Koutas and Mr de Jong considered that the dwellings at 3, 5 and 15 Tiuna Grove were

¹⁴ H Koustas & E de Jong (Submission 11), M Harrison (Submission 17), A Raftis (Submission 18) and M&L Richardson (Submission 23)

distinctive and relatively intact and their design and setting was characteristic of adjoining properties in HO8. Mr and Mrs Richardson considered including the sites removed an anomaly of structurally sound homes not accorded the same level of protection as those around them. Ms Raftis considered the dwellings (including numbers 7 and 15) represent the neighbourhood character, integrate with other places in the street and are historic examples of the character of HO8 and relate to the original mansion opposite 3-7 Tiuna Grove.

Mr Vorchheimer's submission referred to heritage advice from Mr Ray Tonkin¹⁵ obtained by residents in the lead up to the VCAT Hearing in relation to Planning Permit 772/218, which supported the inclusion of 3, 5 and 7 Tiuna Grove in HO8 as remnants of the Federation period subdivision and primary examples of places already in the HO8. He further referred to the evidence of Mr Bryce Raworth¹⁶ provided at the VCAT Hearing on behalf of the proponent that the dwellings at 3, 5, 7 and 15 Tiuna Grove were "... *early twentieth century bungalows characterised by red brick exteriors and pitched terracotta roofing*".

Opposing submission

Mr Gray opposed the application of HO8 to 3 and 5 Tiuna Grove. In the event the Panel were to support the application of HO8 he submitted that the Contributory Grading should be applied to both properties based on the extent of dwelling alterations including balustrade and Corinthian columns on the verandah at 5 Tiuna Grove not being original. He submitted there was no basis for including 1 Tiuna Grove in HO8 as some submitters had sought.

(ii) Internal controls

Council submission and evidence

The evidence of Mr Barrett in response to submissions identified:

The house at 3 Tiuna Grove was the home between 1994-2016 of playwright Julia Britton. Its Red Room was where actors and others came to meet and hear plays read. This contributes to that house's cultural significance.

Council however, submitted that HO8 does not include internal controls and that it did not consider it necessary to individually list 3 Tiuna Gove in the Heritage Overlay or include internal controls on the property in response to the submissions asserting the cultural and social importance of the place. It identified that PPN01 provided that:

The only instance where an individual property within a significant area should be scheduled and mapped is where it is proposed that a different requirement should apply. For example, external painting controls may be justified for an individual building of significance but not over the heritage precinct surrounding the building.

Council conceded that while it was possible to apply an internal control to a property within a precinct overlay, there are no examples of this approach in the Port Phillip Planning Scheme. Ultimately it considered in any event that the significance hasn't been formally assessed and it remains unknown whether it would meet the high threshold for local significance.

¹⁵ Included as Appendix 2 to Document 17

¹⁶ Included as Appendix 3 to Document 17

Supporting submissions

Ms Koutas and Mr de Jong considered that the heritage values of 3 Tiuna Grove were enhanced due to the cultural association of the dwelling and its 'Red Room' with the late playwright Julia Britton who resided there from 1994 until 2016 and produced fourteen of her works there. They submitted that the Red Room was a hub of cultural and community activity involving play and screenplay readings. They referred to a newspaper article which identified the cultural associations of the house.¹⁷

While Mr Vorchheimer agreed with the Significant grading of 3 Tiuna Grove he considered that the information about the cultural and social associations of the dwelling were unlikely to have been available during Mr Barrett's initial assessment which informed the Heritage Assessment. He submitted that internal controls should be applied to the place given its cultural and social importance.

In a response to a question from the Panel, Mr Vorchheimer acknowledged that PPN01 notes that internal controls should be applied sparingly and on a selective basis to special interiors of high significance. He submitted that 3 Tiuna Grove and specifically the 'Red Room' should be distinguished from the HO8 control generally as an individual property with a special interior of high significance. To support this position he outlined a history of the property¹⁸ compiled by Ms Britton and later finalised by Mr Robert Chuter. This included:

- the dwelling *"being a rare example of period home which retains virtually all its original interior fittings"* including the 'Red Room' (original dining room) *"which still boasts of its beautiful Tudor style wooden beams and wall to ceiling wooden panelling"* which was used for many *"artistic endeavours and lively events"*
- *"in 1922, Leslie Taylor, known as Squizzy Taylor was 'in hiding' in the backroom of Tiuna Grove after fleeing from another hideout in a house on Glenhuntly Road, Elwood. In the 1940's, the then lessee was killed in the Second World War. The dwelling became a share house in the late 1980's and in 1994, the famous Australian playwright Julia Britton (Hilda Hartt) leased the property"*
- Julia Britton wrote 14 or more of her plays in the house
- from 1994-2016, the dwelling became well-known as a creative hub with fourteen play and screenplay readings presented in the 'Red Room' along with many rehearsals for various stage productions and events and productions held in support of the National Trust of Victoria's property, Rippon Lea (from 1990-2001)
- an extensive list of personalities that have lived, stayed or been associated with the site.

Mr Vorchheimer submitted that the fact Council had not formally assessed the interior of 3 *"should have no consequence on its subsequent assessment and inclusion in HO8 in light of the submissions and material provided to the Panel"*. He considered that the submission information supported Hercon Criterion A, G and H.

¹⁷ *"Threatening a House with Quite A History"*, St Kilda News, September 5, 2019

¹⁸ Document 22 Response to Panel's Questions

Opposing submission

Mr Gray agreed with Council's position regarding internal controls, considering that loosely asserted cultural and social importance does not justify internal controls.

4.4 Discussion

Dwelling gradings

It is important to distinguish between the heritage values of a place and the contribution the dwellings make to the broader streetscape and character of Tiuna Grove. They are different concepts with different tools managing heritage outcomes as opposed to character outcomes. The Amendment relates to the application of HO8 and the Panel has accordingly focused its considerations on whether the dwellings possess the necessary level of heritage significance to be included in HO8.

The Panel notes that some submissions have raised concerns about the approved development for the site. It is not within scope of the Panel to make comment on the merits of Planning Permit 772/2018. While the permit is valid it has not been acted on and the Panel has confined its consideration to the identified heritage values included in the Heritage Assessment as the dwellings currently appear.

The Panel has only had the benefit of one set of heritage evidence which supports the inclusion of both sites as Significant dwellings within HO8. While the VCAT hearing evidence of Mr Raworth has been referred to it was not provided as part of this Hearing or tested through cross examination and was prepared for a different purpose. The Panel notes that the Raworth material made no commentary on the dwelling gradings but did describe the dwellings as *"early twentieth century bungalows characterised by red brick exteriors and pitched terracotta roofing"* and that:

While 3 Tiuna Grove is relatively intact, 5 Tiuna Grove has suffered some changes to its façade including the introduction of an attached pergola and balustrade to one side and of modern period-style columns to its porch. 5 Tiuna Grove has a fence comprising modern period style steel pickets on a brick plinth, while 3 Tiuna Grove currently has no fencing, although it previously had a low brick fence.

As identified earlier the Panel considers that the methodology applied by Mr Barrett in the preparation of the Heritage Assessment was sound. The Panel accepts the evidence of Mr Helms that the two dwellings are good examples of the mid 1910s bungalow styles important to HO8, and are comparative to other examples in the street. They also display the heritage fabric characteristics of Tiuna Grove and HO8 including form, setbacks and materiality. Together with the dwelling at 7 Tiuna they form part of a coherent group of dwellings that are appreciably part of the wider HO8 precinct in Tiuna Grove.

The Panel agrees with Mr Barrett that the extent of changes to the two dwellings is minor and easily reversible and does not impact their heritage significance. Based on a consistent approach to gradings they are appropriately graded Significant.

The Panel notes that the recent permit issued for the site while within the interim Heritage Overlay demonstrates that the Heritage Overlay does not prevent the partial demolition of buildings where an appropriate heritage outcome can be achieved. The Panel notes that in the event the current permit is acted on, the subsequent extent of changes and gradings will likely be examined as part of the broader HO8 review.

Internal controls

Given the implications of applying internal controls the bar or threshold for establishing significance is necessarily high.

The Panel acknowledges the work undertaken by submitters to further understand the former social and cultural associations with 3 Tiuna Grove. It does not underestimate the importance of these associations and in part they were acknowledged by Mr Helms in his evidence.

The Panel notes that PPN01 identifies that internal controls should be applied sparingly and on a selective basis to special interiors of high significance. It also identifies that an individual property within a precinct should not be scheduled and mapped unless a different requirement should apply. While this guidance is unclear as it also refers to a separate mapping of a place, it would suggest that it is possible for the Schedule to the Heritage Overlay to switch on internal alteration controls over a specified building. The support for such an approach appropriately requires a significant level of assessment and comparative analysis and for the Statement of Significance for the heritage place to explain what is significant about the interior and why it is important.

The Panel notes Council's position that providing schedule exemptions or requirements for individual buildings in precincts has not been adopted by Council. While understandable this is not necessarily a sound basis for not doing it. In this instance the Panel agrees with Council and Mr Gray that the necessary level of heritage assessment has not been undertaken to support the application of internal controls using the appropriate criterion of PPN01. Without an adequate level of heritage assessment, the level of attributed social or cultural significance is not sufficiently established. Indeed, while Mr Barrett acknowledged the submission information about the Red Room at 3 Tiuna Grove and Ms Britton he still did not recommend that internal controls be applied.

4.5 Conclusions

The Panel concludes:

- That 3 and 5 Tiuna Grove should be included in HO8 and identified as 'Significant'.
- There is insufficient evidence or assessment to support the application of internal to 3 Tiuna Grove.

5 7 Tiuna Grove, Elwood

5.1 What is proposed?

The Amendment proposes to apply HO8 to 7 Tiuna Grove, Elwood and to identify the place as Contributory.

Figure 4 7 Tiuna Grove, Elwood



Source: Heritage Assessment

5.2 The issues

The issues are:

- whether 7 Tiuna Grove should be included in HO8
- whether 7 Tiuna Grove should be identified as 'Contributory' within HO8.

5.3 Evidence and submissions

Council submission and evidence

Council noted that Mr Barrett's evidence described the alterations to 7 Tiuna as *"a box-like addition, of contemporary expression has now been built to the front of an earlier attic ... and other changes to the house and its setting [have been] made."* He identified however, that:

Despite these alterations, the house is still interpreted as being from the early twentieth century phase of development of Elwood, and is considered, due to its changes, to have a more modest grading, of contributory value, to Tiuna Grove and the HO8 Elwood-Glenhuntly Road, Ormond Road precinct.

Council considered that because the alterations are of a contemporary expression and are visible from the street, the Contributory grading was more appropriate than a Significant grading.

Council's closing submission considered that the submission from Mr Moshinsky¹⁹ owner of 7 Tiuna Grove provided a useful overview of the history of the property and highlights several changes to the property. Council however, considered that very few, if any, of those changes are both significant and visible to the street.

¹⁹ Submission 12

Council relied on the evidence of Mr Barrett who acknowledged that the introduction of a small, recessed addition to the south side of the property at ground level, and a second storey extension has impacted the significance of the property and in light of this he concluded that the appropriate grading is Contributory rather than Significant. Council considered overall that the house is still interpreted as an early twentieth century house which contributes to the significance of the HO8 precinct consistent with the definition of a Contributory place in Clause 22.04-5.

In his response to the questions²⁰ Mr Barrett stated:

The house at No 7, despite some change to its original appearance, contributes to the recognised character of this heritage overlay. Its mass and composition still allows it to be interpreted as an early house, I expect even to the untrained eye. It retains enough of its early character to be interpreted as an attic bungalow design, but not a significant or intact example of its style. Whereas, the other houses in the street (No's 3, 5 & 15) demonstrate less change, and what change that has occurred is relatively easily reversed. These other houses, are in my view, consistent with a significant grading because of their higher levels of intactness.

Supporting submissions

Submissions 2, 3, 4, 5, 7, 8, 11, 13, 16, 17 and 21 supported the inclusion of 7 Tiuna Grove within HO8.

Submissions 4, 16 and 17 considered the alterations to the dwelling were only minor and it warranted a Significant grading. Ms Hoad considered that while the property was structurally altered it was still a good example of the phase of Elwood's development described in HO8.

Ms Harrison's submission included a section of the 1925 aerial photograph to identify that the dwelling had a light colour render rather than the darker redbrick colour of its neighbours suggesting the render was original and that the original first floor attic was visible from the street. In her response to a question from the Panel²¹ regarding the extent of rendering shown on the photograph, she agreed that it was difficult to distinguish the full extent of rendering but that similar style Arts and Craft/Federation houses used a range of rendering styles and that rendering hadn't precluded other houses in the area having Significant gradings.²² Ms Harrison was concerned that if the extent of rendering was a determining factor in the grading it could be used as a technique by other landowners to achieve a lesser Contributory grading and then allow for new development. She also noted that it wasn't identified as a grading factor by Mr Barrett.

Ms Harrison considered that the building alterations including changes to the attic were sympathetic to the original roof style or age-related replacements which were to be expected and did not downgrade the building's heritage values. Ms Harrison identified other Elwood dwellings with more intrusive and contemporary changes to roof profiles that were graded Significant.²³ She considered that the dwelling should be graded Significant *"in order to best protect the continuing character and intactness of the streetscape"*.

²⁰ Document 10

²¹ Document 23

²² 1 and 3 Bendigo Avenue, 21 Normandy Road and 59-61 Milford Street

²³ 8 Selwyn Avenue, 346 and 369 Barkly Street

Ms Koutas and Mr de Jong considered that while modified the dwelling still referenced and contributed to the characteristics of the early twentieth century and interwar period.

Mr Vorchheimer noted Mr Barrett's evidence which described the dwelling as a "*fine example of mid 1910s bungalow styles, typology that is commonly found within this and other streets within HO8 Elwood – Glenhuntly Road, Ormond Road precinct*" and comparable to two significant places found opposite at 2 and 6 Tiuna Grove. He acknowledged that where extensions had been undertaken within HO8 they were generally set back so as to retain the first two original rooms and to generally remain invisible from the street. He indicated that while this was not the case for 7 Tiuna Grove, when compared to aerial imagery from 1925, the dwelling remains largely unchanged, and the alterations to the roof profile, while potentially a greater change than that at 3, 5 and 15 Tiuna Grove, was not considerable and could be reversed. He submitted that 7 Tiuna Grove, Elwood fitted the criteria of 'Significant' in Clause 22.08-5.

Opposing submission

The original submission from Mr Moshinsky, opposed the Amendment, identifying a series of renovations to the dwelling including rear and second storey extensions, façade alterations and new fencing. The submission considered that the Heritage Assessment overstated the heritage significance of the property and argued that it should be regraded as 'non-contributory'. Mr Moshinsky provided a more detailed written submission to the Panel²⁴ which outlined the history of the site since its construction in 1916 in the Arts and Crafts - late Federation style and set out an extensive list of external building changes including ground floor and second floor additions, rendering of original façade brickwork, removal of a chimney, and changes to or removal of original architectural details. The submission considered that the dwelling should not be identified as Contributory because:

- extensive and visible building alterations had reduced its intactness and lowered its integrity including the loss of Arts and Craft elements
- the Heritage Assessment had failed to consider the extent and nature of renovations
- "*the property does not relate to the main phase of development in or attributed significance in HO8*" and is not a significant or intact example of the style of buildings in HO8 and readily distinguished from the intact and unaltered bungalow styles of 3, 5 and 15 Tiuna Grove
- the site along with the adjoining lots is not part of a cohesive streetscape of building type, style or period and instead is a "*separate and distinctive part of the early twentieth century phase of Elwood's development*".

5.4 Discussion

The Panel notes that there have been many alterations made to 7 Tiuna Grove. These additions include structural alterations and have added contemporary design elements which have altered the house's original roof profile, are visible from the street and have impacted upon its original character. These changes while undertaken in a manner

²⁴ Document 16

respectful to the building's heritage values are not so easily removed than the more cosmetic changes to 3, 5 and 15 Tiuna Grove.

While the dwelling at 7 Tiuna Grove is aesthetically appealing and perhaps grander than the dwelling at 15 Tiuna Grove for example, architectural merit or aesthetics are not the only criteria for determining gradings. The purpose of the Heritage Overlay is not to manage broader streetscape and character considerations – that is the role of other tools that are not the subject of this Amendment.

In this instance the only expert heritage assessment undertaken or provided is that prepared by Mr Barrett. The Panel considers that it is a simplistic approach to apply an observation about the level of change found in one building of a similar grading with another building with the same grading or to compare the extent of changes in similar era buildings with a different grading without the appropriate level of heritage analysis and assessment. This is particularly the case where buildings are located within a precinct without the high level of individual analysis that would be anticipated if the places were identified as having individual heritage significance.

The Panel does not accept a position that because the site hasn't previously been identified for inclusion in HO8 following heritage reviews, it should continue to be excluded from it. As already identified the Panel considers that the methodology for the preparation of the Heritage Assessment is sound. The Heritage Assessment has the benefit of providing a more detailed street wide assessment than provided for in previous studies. The Panel considers that the dwelling at 7 Tiuna Grove clearly displays the characteristics of inter-war bungalows identified in HO8 and is a representative and coherent part of the precinct in terms of its setbacks, roof form and materiality. Grouped with 3-5 Tiuna Grove the dwelling is part of a cluster of dwellings that form a coherent part of HO8 as it relates to Tiuna Grove. Given the extent of dwelling changes however, the Panel accepts the evidence of Mr Barrett that the dwelling is appropriately graded Contributory.

5.5 Conclusions

The Panel concludes:

- That 7 Tiuna Grove should be included in HO8 and identified as Contributory.

6 Other sites

6.1 15 Tiuna Grove, Elwood

(i) What is proposed?

The Amendment proposes to apply HO8 to 15 Tiuna Grove, Elwood and identify the place as Significant.

Figure 5 15 Tiuna Grove, Elwood



Source: Heritage Assessment

(ii) The issues

The issues are:

- whether 15 Tiuna Grove should be included in HO8
- whether 15 Tiuna Grove should be identified as 'Significant' within HO8.

(iii) Evidence and submissions

Submissions 5, 7, 8, 11, 13, 16, 17 and 21 supported the inclusion of 15 Tiuna Grove within HO8. These submissions included common comments for 3, 5, 7 and 15 Tiuna Grove and have been summarised in previous chapters.

No submission was made by the owner of 15 Tiuna Grove.

(iv) Discussion

There were no opposing submissions regarding the inclusion of 15 Tiuna Grove in HO8. Based on the evidence of Mr Barrett the dwelling is an inter-war dwelling and appears relatively intact. It is comparative in terms of integrity and intactness to other bungalows in Tiuna Grove and HO8 generally.

(v) Conclusions

The Panel concludes:

- That 15 Tiuna Grove should be included in HO8.
- That 15 Tiuna Grove should be identified as 'Significant' within HO8.

6.2 21-23 Tiuna Grove, Elwood

(i) What is proposed?

The Amendment proposes to delete HO8 from 21-23 Tiuna Grove, Elwood and the portion of adjoining bluestone laneway.

Figure 6 21-23 Tiuna Grove, Elwood



Source: Google Maps streetview

Figure 7 Eastern end laneway viewed from Ormond Road, Elwood



Source: Google Maps streetview

(ii) The issue

The issue is:

- whether 21-23 Tiuna Grove, Elwood and the abutting section of laneway should be retained within HO8.

(iii) Evidence and submissions

21-23 Tiuna Grove

Council submitted that 21-23 Tiuna Grove should not be included in HO8 as the type of development it represents is not recognised as being of heritage value to the precinct. It identified that neither the current Statement of Significance in the Heritage Review nor Mr Barrett's recommended Statement of Significance recognised post-war or the 1960s era as contributing to the heritage significance of the precinct. The evidence of Mr Barrett identified that:

In realigning the boundary of the HO8 Elwood: Glenhuntly and Ormond Roads precinct, I recommend that the Panel remove the Post-war development at the southwest end of Tiuna Grove from this heritage overlay. These are sites at No's 21-23, 25, 27, 29 and 31 Tiuna Grove. These contemporary developments are of no appreciable heritage value to the precinct and its recognised heritage values defined in its statement of significance.

In my view that housing and the flats have no appreciable value to the HO8 Elwood-Glenhuntly Road, Ormond Road precinct and its recognised heritage values as described in the statement of significance.

Council noted that some of the submissions had asserted that the site was included in the HO8 because it represents an example of 1960s development. It submitted however, that the 1997 Field Notes which informed the 1998 Port Phillip Heritage Review assessed the site as comprising Contemporary Flats and having a status of 'Not Important'. Council submitted that this should have been translated as a 'Not Important' or 'N Grading' heritage status on the Heritage Status Map in the Port Phillip Heritage Review rather than 'Local Importance D'. It identified that the Port Phillip Heritage Review categorised:

All places given a preliminary grading of A, B, C or D within a Heritage Overlay or A, B or C outside a Heritage Overlay should be collectively termed 'Significant Heritage Places'. As a result, 21-23 Tiuna Grove was added to the Port Phillip Heritage map as a Significant heritage place.

Council identified that 21-23 Tiuna Grove was correctly regraded 'Non-Contributory' but retained within HO8 through Port Phillip Planning Scheme Amendment C170port in February 2020.

Council submitted that the flats are not contributory or significant when assessed against the HO8 statement of significance. It considered that it was now appropriate through the Amendment to remove this site along with the other contemporary development from the HO8. Council noted that:

While Mr Barrett has indicated that they could be assessed in a future study, that would only be the case if such a study looks at 1960s flat typology. No decision has been made to pursue this approach and in those circumstances Council considers it appropriate to remove the property from HO8.

Submissions 4, 13, 16, 17, 21, 23 and 24 supported the retention of 21-23 Tiuna Grove within HO8, considering the building an important example of 1950's and 1960's development and that its removal from HO8 was not justified. Submission 23 considered that the exclusion of these sites from HO8 was not addressed in the Heritage Assessment.

Mr Harrison considered that the building was identified by Council as an important example of 1960's development and consequently it should remain included in HO8. He considered

its removal was without sufficient justification and would be inefficient given the costs associated with undertaken the earlier study which supported its inclusion in the first place.

Submissions 4 and 11 considered that the flats appeared to be in original condition and remained unpainted. Submission 21 further identified that the development was not part of the contemporary development at 25-31 Tiuna Grove and the site warranted assessment for its unusual design and courtyard arrangement.

Mr Vorchheimer submitted that the site was an important example of 1960's development and that removing the site from HO8 had not been sufficiently justified and would result in an unacceptable outcome. In response to a question from the Panel he acknowledged that while it did not meet the description of HO8 he considered that the site plays a role in establishing the overall heritage character and that the Heritage Overlay provides an important place holder control while the broader review was undertaken. He submitted that the site should remain in HO8 but graded 'Non-contributory' and revisited as part of the wider review of the precinct.

Rear laneway

While Mr Barrett's written evidence did not mention the laneway in response to questions from the Panel²⁵ and Council²⁶ he considered that:

It would be preferable to retain the pitched bluestone lane at the rear of the flats at 2123 Tiuna Grove within the HO8 Heritage Overlay, as it is earlier heritage fabric than the flats, fabric which forms the subdivision of the early twentieth century.

It would be preferable that the bluestone lane at the rear of the properties on the south side of Tiuna Grove is included in its entirety in a heritage overlay. As far as I can determine, the lane was part of the original subdivision, and for this reason it would be preferable its length is subject to heritage controls to retain evidence of this original subdivision pattern, regardless of whether adjacent sites are not considered significant or contributory places to the HO8.

Council submitted that the removal of the section of the laneway behind 21-23 Tiuna Grove was an appropriate approach to realigning the boundary of HO8. It identified that the laneway was a Council asset and that it was unusual to retain a laneway in a Heritage Overlay when adjoining properties were not in a Heritage Overlay. Council considered it more appropriate to consider the importance of laneways in a holistic manner as part of the overall precinct review, rather than just looking at this single section. However, on the basis of Mr Barrett's evidence it submitted that it was content to alter its position and retain the portion to the rear of 21-23 Tiuna Grove within HO8.

Submission 21 opposed the removal of the rear bluestone laneway from HO8 where it abuts other HO8 properties in Bendigo Street. Submissions 4, 13, 23 and 24 raised similar concerns.

Mr and Mrs Richardson considered the lanes of Elwood an intimate part of the suburb's fabric and that heritage protection was necessary to signal that they were not a "*free for all activity zone*".

²⁵ Document 10

²⁶ Document 12

(iv) Discussion

21-23 Tiuna Grove

The Panel is somewhat sympathetic to the view of submitters that the removal of 21-23 Tiuna Grove is without a broader understanding of the role and importance of post war and 1960s flat development of which this site appears to be a good example and with little apparent external alteration. The removal of the site from HO8 will also mean that it would no longer enjoy the protections offered by the Heritage Overlay.

However, HO8 is a precinct wide control comprising predominately cohesive and extant early twentieth century and inter-war Significant and Contributory buildings with small numbers of Non-contributory intrusions. The flats at 21-23 Tiuna Grove, while setback behind landscaped front gardens which softens their setting in the streetscape, are markedly different from the prevailing character of the street in terms of the dominance of vehicle parking areas, the flat roof and more modern form. They do not demonstrate the heritage character and significance of HO8. No heritage evidence has been provided to suggest that they do.

The Panel considers there could be a case for retaining the flat complex as a Non-contributory building within HO8 if there remained sufficient numbers of adjoining sites on the south side of Tiuna Grove that were Contributory or Significant enabling the site to sit within a cohesive heritage streetscape. However, the Amendment proposes to remove the more recent contemporary developments at 25, 27, 29 and 31 Tiuna Grove for which there were no submissions suggesting their retention. This results in a situation where the site will sit isolated (on the south side) on the edge of the precinct (within Tiuna Grove) if it were retained.

Despite the lack of a broader assessment of the removal of 21-23 Tiuna Grove in the context of similar development in HO8, the Amendment has involved a broader consideration of the whole of Tiuna Grove as it relates to HO8 and sought to remove all buildings within Tiuna Grove that are not characteristic of its early twentieth century and inter-war significance. The Panel considers this approach consistent with PPN01 and that the site's removal from HO8 along with the sites at 25, 27, 29 and 31 Tiuna Grove is appropriate and justified.

The Panel's view that 21-23 Tiuna Grove should be removed is not a reflection of the building's aesthetic or architectural merits. Rather, it is simply that it does not reflect what is significant about the precinct. While the Panel agrees with Mr Barrett that a review of 1960s flat development may be an appropriate consideration as part of the proposed review of HO8, it notes that this building type is well represented throughout the municipality and may be better considered in the context of a broader assessment of the significance of this era of development to the municipality.

Rear laneway

There are a number of laneways included wholly or in part within the extent of HO8. While clearly part of the early subdivisions of Elwood, because their importance or existence is not mentioned in the precinct Citation or Statement of Significance it is difficult to know whether they have been included simply because of mapping protocols or because they have some intrinsic heritage value to the precinct as a whole.

The Panel notes that there are two nearby laneways (between Bendigo and Selwyn Avenues and Broadbent Lane) that are only partly included in HO8 and only where the Heritage Overlay applies to properties on either side of them. This would seem to suggest that the overlay mapping protocol has taken precedence to define the boundaries of the precinct rather than the significance of this feature to the heritage values of the precinct.

While acknowledging Council's preparedness to retain HO8 to the laneway at the rear of 21-23 Tiuna and the supporting opinion of Mr Barrett, this would not resolve the fact that the laneway would still have sections of it (on either side of 21-23 Tiuna) where the Overlay does not currently extend (to the rear of 17-19 and 25-31 Tiuna Grove). It is not appropriate for the Panel to recommend that HO8 be retained without supporting evidence and justification. That has not been provided and Mr Barrett's opinion relates to Tiuna Grove only rather than the wider HO8. Similarly, the Panel sees no real benefit in retaining that section of the laneway to the rear of 21-23 Tiuna in the HO8 if that property is to be removed from the Overlay. Retaining it without a clear link to the Statement of Significance would be to depart from the current mapping methodology adopted by Council in the mapping of HO8 and other Heritage Overlays.

The Panel considers that the appropriate response to laneways within HO8 is to consider the importance of laneway fabric as part of the overall review of the HO8. While it acknowledges this review may take some time to complete the Panel notes that the ownership of the laneway lies with Council which provides a mechanism for it to manage any changes to it in the interim.

(v) Conclusions

The Panel concludes:

- That there is no strategic or heritage basis to retain 21-23 Tiuna Grove, Elwood and the abutting section of laneway within HO8.

7 Form and content of the Amendment

7.1 Post-exhibition changes

Council's post-exhibition version of the Schedule to Clause 43.01 and the Port Phillip Heritage Review citation correcting the spelling of Glen Huntly Road were provided in Council's Part A submission.

Council also advised that it proposed to correct a reference in the Explanatory Report that indicated only 25, 27, 29 and 31 Tiuna Grove were to be identified as 'Nil' grading outside HO8 in the Heritage Policy Map. It was intended that this grading status would also be extended to 21-23 Tiuna Grove while removing it from HO8. The Panel agrees that this was clearly intended and is identified in the exhibited Heritage Policy Maps.

The evidence of Mr Barrett proposed an additional sentence be included in the precinct citation's Statement of Significance under 'What is Significant?' following the sentence *"This early twentieth century development (1900-1918) and inter-war development (1919-1939) is mostly defined by detached brick villas and bungalows, and flats"*:

Many of these are intact and evocative of Elwood in the early to mid-twentieth century being a desirable beachside suburb, a quality that continues today.

Mr Barrett considered that this reinforced that the *"development of villas and bungalows contributes much to what is valued within this suburb, both back then and now"*.

Council considered that this addition was minor in nature and simply reinforced the link between the early twentieth century development of this area and its particular (and continuing) attraction as a beachside location stated elsewhere in the exhibited Statement of Significance. Council considered there to be no broader or unforeseen consequences of the addition as it did not raise any new issues or themes. No other parties opposed the proposed change.

7.2 Discussion

The Panel considers the change to the Amendment documentation to correct the references to Glen Huntly Road to be minor in nature. It corrects an administrative error and will provide greater clarity. The Panel notes that Council intends to correct other references in the Port Phillip Planning Scheme to 'Glenhuntly Road' as part of a future Scheme review.

The proposed changes to the Explanatory Report to correct references regarding the Heritage Policy Map are administrative corrections and of no particular consequence to the Amendment. The Panel agrees that this change was clearly intended and was identified in the exhibited Heritage Policy Maps.

The Panel agrees that the inclusion of the proposed additional sentence in the Statement of Significance is linked to other content in the citation and is not particularly consequential.

7.3 Recommendations

The Panel recommends:

1. **Amend the Schedule to Clause 43.01 to correct the Heritage place description of HO8 by replacing 'Glenhuntly' with 'Glen Huntly'.**

2. Amend the Citation and Statement of Significance for ‘Elwood: Glen Huntly and Ormond Roads – HO8’ contained in the Port Phillip Heritage Review, Volume 1, Version 32, July 2019 to:

- a) Replace all references to ‘Glenhuntly’ with ‘Glen Huntly’.**
- b) Under ‘What is Significant?’ in the Statement of Significance add after the first sentence in the third paragraph:**

Many of these are intact and evocative of Elwood in the early to mid-twentieth century being a desirable beachside suburb, a quality that continues today.

Appendix A Submitters to the Amendment

No.	Submitter
1	Leslie Cannold and Brendan O'Shea
2	Liza-Jane Walden
3	Shayne O'Dwyer
4	Barbara Hoad
5	Therese Dennis
6	South East Water
7	Louise McKerrall
8	Kathy Lock
9	Jane Denton
10	Jo Lee
11	Helen Koustas and Elvis de Jong
12	Richard Moshinsky
13	Ruth Jones
14	Nicola Clare Warren
15	Louise Ann and Douglas Pemberton
16	Lyn Harrison
17	Matthew Harrison
18	Alicia Raftis
19	Elwood Tiuna Pty Ltd
20	Mary Holmes
21	Liz Johnstone
22	Jeremy Ley
23	Mark and Lisa Richardson
24	Henry Richardson
25	Emily Millward
26	Chris McLoughlin (late submission)

Appendix B Document list

No.		Description	Provided by
1	24/2/2020	<i>Elwood Tiuna Development Pty Ltd v Port Phillip CC</i> [2020] VCAT 154	Council
2	2/3/2020	Late submission from Chris McLoughlin	Council
3	13/3/2020	Council Part A submission	Council
4	"	Heritage evidence of Peter Barrett	Council
5	19/3/2020	Correspondence to parties regarding an 'on the papers' hearing process	Panel
6	24/3/2020	Draft Directions for on the papers Hearing program	Panel
7	26/3/2020	Final Directions for on the papers Hearing program	Panel
8	28/3/2020	Council Part B submission	Council
9	1/4/2020	Witness questions document	Panel
10	"	Witness questions response document	Mr Barrett
11	2/4/2020	Further witness questions document	Council
12	"	Further witness questions on behalf of the Planning Authority	M Barrett
13	6/4/2020	Request for extended time for submission	Tiuna Grove Pty Ltd
14	"	Amended directions regarding submission lodgement timeframes	Panel
15	7/4/2020	B Hoad submission	Ms Hoad
16	14/4/20	R & R Moshinsky submission	R & R Moshinsky
17	"	M Harrison, M & L Richardson, H Koutas & E de Jong, A Raftis submission	HWL Ebsworth
18	"	Elwood Tiuna Pty Ltd submission	Minter Ellison
19	"	R Jones submission	Ms Jones
20	"	L Harrison submission including copy of Supreme Court Order (SC 2017 01997) regarding covenant discharge on title for Lot 4 PS005443 (3 Tiuna Grove) , copy of Transfer of Land for that property and copy of Elwood Heritage Review	Ms Harrison
21	16/4/20	Panel's questions of specific submitters	Panel
22	20/4/20	Response to Panel's questions	HWL Ebsworth
23	"	Response to Panel's questions	Ms Harrison
24	"	Response to Panel's questions	Council

No.		Description	Provided by
25	22/4/20	Council's closing submission	Council
