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| 8.12 | AMENDMENT C150: REQUEST FOR INTERIM HERITAGE CONTROLS - 77 PARK STREET, SOUTH MELBOURNE |
| WARD: | GATEWAY |
| GENERAL MANAGER: | CLAIRE FERRES MILES, PLACE STRATEGY & DEVELOPMENT |
| PREPARED BY: | ALEXANDRA HODGSON, STRATEGIC PLANNER |
| TRIM FILE NO: | 66/02/267 |
| ATTACHMENTS: | 1. Site location and photograph 2. Preliminary Heritage Advice 3. C150 Amendment documentation |

PURPOSE

- To seek Council's endorsement of a request made to the Minister for Planning to apply a Heritage Overlay to 77 Park Street, South Melbourne, on an interim basis.
- For Council to consider making a request to the Minister for Planning to authorise the preparation and exhibition of an amendment to the Port Phillip Planning Scheme, to apply a Heritage Overlay to 77 Park Street, South Melbourne, on a permanent basis, subject to a full heritage assessment confirming local heritage significance.

I. RECOMMENDATION

That Council:

- 1.1 Endorses the request made to the Minister for Planning on 25 August 2017, to prepare and approve Amendment C150 to the Port Phillip Planning Scheme, pursuant to the 20(4) of the *Planning and Environment Act 1987*. Proposed Amendment C150 would make the following specific changes to the Port Phillip Planning Scheme (on an interim basis):
 - 1.1.1 Application of an individual Heritage Overlay (HO 504) to land known at 77 Park Street, South Melbourne, through updating Port Phillip Planning Scheme Maps 3HO and 4HO and the schedule to Clause 41.03 – Heritage Overlay.
 - 1.1.2 Application of a 'Significant Heritage Place' grading to 77 Park Street, South Melbourne, on the *City of Port Phillip Heritage Policy Map*.
 - 1.1.3 Consequential changes to Clauses 21.07 (Incorporated Documents), Clause 22.04 (Heritage Policy) and the schedule to Clause 81.01 (Documents incorporated in this scheme) to update the version number and date of the *Port Phillip Heritage Review* and *City of Port Phillip Heritage Policy Map*.
- 1.2 Authorises the CEO (or delegate) to seek Ministerial Authorisation to prepare and exhibit an amendment to the Port Phillip Planning Scheme, pursuant to Section 8A of the *Planning and Environment Act 1987*, to apply heritage controls to 77 Park Street, South Melbourne on a permanent basis, subject to a full heritage assessment confirming local



heritage significance. Permanent heritage controls would comprise the specific changes to the Port Phillip Planning Scheme outlined in paragraph 1.1 and the inclusion of a Citation for 77 Park Street, South Melbourne, in the *Port Phillip Heritage Review*.

- 1.3 Subject to Ministerial Authorisation being granted, resolves to prepare and exhibit an amendment to the Port Phillip Planning Scheme, pursuant to Section 8A of the *Planning and Environment Act 1987*, to apply a Heritage Overlay and associated controls to the property known as 77 Park Street, South Melbourne.
- 1.4 Authorises the CEO (or delegate) to finalise amendment documentation outlined above.

2. BACKGROUND

- 2.1 An application to demolish the buildings at 77 Park Street and 286-294 Kings Way, South Melbourne was received pursuant to Section 29A of the *Building Act 1993* (Demolition) on 18 August 2017. There is a live planning application (P239/2017) to construct a seven storey development on these two sites.
- 2.2 77 Park Street, South Melbourne, contains a former church that has been identified as being of likely local heritage significance but is not currently protected by a Heritage Overlay. The site at 286-294 Kings Way contains commercial buildings of no potential heritage significance. [Attachment 1](#) includes a location map of the land subject to the current development application and photographs of existing buildings, including the former Church.

3. KEY INFORMATION

Heritage Significance

- 3.1 Prompted by the development application, Council's heritage advisor has undertaken a preliminary review of 77 Park Street, South Melbourne, and has concluded that the site is highly likely to meet the threshold for local heritage significance.
- 3.2 A heritage consultant has been appointed to prepare a full heritage assessment of the site, to confirm and document the heritage significance of the former church. Preliminary advice from this consultant is provided at [Attachment 2](#). This supports the initial assessment by Council's heritage advisor that the site is likely to be of local heritage significance, stating that:

"...The former Church of Our Lady is highly likely to be worthy of local heritage significance as a stand-alone property and should be assessed for inclusion in the Heritage Overlay."

Purpose and Process for Interim Controls

- 3.3 Section 29B of the *Building Act 1993* specifies that a request for demolition can be suspended pending the amendment of a planning scheme, if a request is made to the Minister for Planning pursuant to 20(4) of the *Planning and Environment Act 1987* within the prescribed time (15 business days).
- 3.4 Council officers requested interim heritage controls be applied by the Minister for Planning (via Amendment C150 to the Port Phillip Planning Scheme) on 25 August 2017, within the prescribed 15 business days.
- 3.5 Given that 77 Park Street, South Melbourne has been identified as being of likely local



heritage significance, and is subject of an application for demolition, application of a Heritage Overlay to the site on an interim basis is justified.

- 3.6 Interim heritage controls are typically applied to protect places of significance whilst permanent controls are being processed through a full-exhibition amendment. This manages the risk of a building being demolished, without heritage issues being considered during the planning permit process.
- 3.7 An interim control does not prevent demolition outright, but it does trigger the requirement for planning permit to ensure heritage matters are considered. Clause 22.04 of the Port Phillip Planning Scheme specifies that the demolition of a significant heritage place should not be supported. The purpose of Clause 22.04 is to guide Council's application of discretion in planning permit applications required under the Heritage Overlay.
- 3.8 *Planning Practice Note 29: Ministerial Powers of Intervention in Planning and Heritage Matters* specifies circumstances in which intervention by the Minister pursuant to section 20(4) of the *Planning and Environment Act 1989* will usually be relevant. This includes:
- Criteria 3: "The matter will be the introduction of an interim provision or requirement and substantially the same provision or requirement is also subject to a separate process of review (such as the introduction of permanent controls in a planning scheme)."*
- Criteria 4: "The matter will raise issues of fairness or public interest, where there is a need for urgency and the public interest would be served by immediate action."*
- 3.9 Proposed Amendment C150 relates to an interim provision for heritage controls. Interim controls would facilitate the retention of a significant heritage place which is in the public interest.
- 3.10 This report also proposes that Council endorses the commencement of a separate planning scheme amendment process to implement permanent heritage controls for the site (i.e. provisions that are substantially the same as the interim provision).

Proposed Interim Heritage Controls – Amendment C150

- 3.11 Amendment C150 (interim controls) propose changes to the Port Phillip Planning Scheme to:
- 3.11.1 Apply an individual Heritage Overlay (HO 504) to land known as 77 Park Street, South Melbourne on an interim basis, through updating Port Phillip Planning Scheme Maps 3HO and 4HO and the Schedule to Clause 41.03 (Heritage Overlay).
- 3.11.2 Apply a 'Significant Heritage Place' grading to 77 Park Street, South Melbourne, on the *City of Port Phillip Heritage Policy Map*.
- 3.11.3 Make consequential changes to Clauses 21.07 (Incorporated Documents), Clause 22.04 (Heritage Policy) and the schedule to Clause 81.01 (Documents incorporated in this scheme) to update the version number and date of the *Port Phillip Heritage Review* and *City of Port Phillip Heritage Policy Map*.
- 3.12 Documentation for Amendment C150 is provided at Attachment 3.



Permanent Heritage Controls

- 3.13 Council should resolve to pursue permanent heritage controls for 77 Park Street, South Melbourne, to support its request to the Minister for interim controls. If approved, an interim Heritage Overlay would have a sunset clause necessitating the timely progress of an amendment for permanent controls.
- 3.14 Progressing a request for Ministerial Authorisation to exhibit permanent heritage controls should be subject to evidence of the full heritage assessment confirming and documenting that 77 Park Street is of local heritage significance.
- 3.15 In addition to the planning scheme changes made via Amendment C150 (see paragraph 3.11), permanent controls would also introduce a new individual citation for 77 Park Street, South Melbourne, in the *Port Phillip Heritage Review*.

Options

- 3.16 The following options are available to Council in relation to the heritage protection of 77 Park Street, South Melbourne:
 - 3.16.1 Option 1: Council endorse the request for interim Heritage Overlay for 77 Park Street, South Melbourne made to the Minister, and resolve to seek Ministerial Authorisation to prepare and exhibit an amendment to apply permanent controls over the site (subject to outcomes of the full heritage assessment).
 - 3.16.2 Option 2: Not endorse the request to the Minister for interim controls or seek authorisation for an amendment to introduce permanent controls.
- 3.17 Option 1 is recommended. Application of an interim Heritage Overlay recognises the preliminary assessment of 77 Park Street, South Melbourne as being of potential local heritage significance. This will ensure heritage matters are assessed as part of any planning permit application for the land, and that the protection of significant heritage fabric is considered in both the short and longer term (the later through subsequent application of permanent controls).
- 3.18 If Option 2 is pursued, the application to demolish the building could no longer be suspended pursuant to Section 29A of the *Building Act 1993*, and loss of the Church building would be likely.



FURTHER SUPPORTING INFORMATION

4. ALIGNMENT TO COUNCIL PLAN AND COUNCIL POLICY

- 4.1 Implementation of heritage controls supports delivery of the following objectives and actions in the *Council Plan 2017-2027*

Direction 4: *'We are growing and keeping our character'*

Outcome 4.2: *'A City of diverse and distinctive neighbourhoods and places'*

Key strategies:

- *'protecting heritage places that represent our historic, social, cultural and architectural identity'.*
- *'ensuring new development integrates with, respects and contributes to the unique heritage, character and beauty of our neighbourhoods'.*

5. CONSULTATION AND STAKEHOLDERS

- 5.1 The introduction of an interim heritage control pursuant to section 20(4) of the *Planning and Environment Act 1987* would not include a formal public / stakeholder notification process.
- 5.2 The owner of the subject property has been advised that Council will be considering authorising the request made to the Minister for Planning to apply interim heritage controls at this meeting.
- 5.3 The purpose of the interim controls would provide heritage protection whilst a further planning scheme amendment to apply permanent heritage controls is progressed.
- 5.4 The planning scheme amendment for permanent controls would undergo a formal public exhibition process in accordance with the notification requirements of the *Planning and Environment Act 1987*, allowing affected and interested persons/groups to make written submissions. Any objecting submissions must be referred to an independent Planning Panel for review, prior to Council considering adoption of the amendment and requesting Ministerial approval.

6. LEGAL AND RISK IMPLICATIONS

- 6.1 The application of an interim heritage control would manage the risk of the subject building being demolished, without heritage issues being considered during the planning permit process.
- 6.2 No significant legal risk implications have been identified in relation to the processing of the amendments. Amendment C150, and a subsequent amendment process to introduce permanent heritage controls, would be undertaken in accordance with the requirements of the *Planning and Environment Act 1987*.



7. SUSTAINABILITY – Triple Bottom Line

7.1 ENVIRONMENTAL IMPLICATIONS

7.1.1 The application of heritage controls to sites of heritage significance has a positive environmental impact by offering protection to a place of historic significance and promoting the reuse of existing building stock.

7.1.2 The Victorian heritage strategy, *Victoria's Heritage: Strengthening our Community* (DSE, 2006) details the environmental benefits of conservation in Chapter 2, specifically (at p21):

“Heritage policies and programs can help achieve the broader goals of sustainability. Conserving heritage places and giving them new life supports sustainability. It recognises the embodied energy and life-cycle value of traditional materials, and reduces the waste associated with demolition and new buildings.”

7.2 SOCIAL & CULTURAL IMPLICATIONS

7.2.1 The application of heritage controls to sites of heritage significance will have a positive social affect through enabling the preservation of a historically significant place, for the benefit of current and future generations.

7.3 ECONOMIC IMPLICATIONS

7.3.1 The application of heritage controls to sites of heritage significance is not expected to have significant broad economic impacts, although is likely to have a direct cost impact on the owner of the affected property through additional permit requirements and potential limitations on the redevelopment of the site (noting there is a current planning permit application).

7.3.2 The matter of negative economic impacts, such as on property values and development potential, have been considered repeatedly by Planning Panel's considering the introduction of heritage controls. The findings have been summarised in Panel Report for Latrobe Planning Scheme Amendment C14, as follows:

“Panels have repeatedly ruled that such issues are not material to this stage of the planning process – a position supported by Practice Notes and numerous CVAT decisions. This view maintains that although it is appropriate for the responsible authority to consider all the objectives of the Planning and Environment Act 1987 including, inter alia, ‘fair, orderly, economic and sustainable use, and development of the land’ (s.4(1)(a)) ... and ... ‘to balance the present and future interests of all Victorians’ (s.4(1)(g)) – the question of personal economic impact or potential constraint on development are matters for the next stage of the planning process i.e. at the time a permit is applied for. This approach has the merit of separating two distinct issues: assessment of the significance of the place, and the question of its conservation, adaptation, alteration or demolition. This conforms with proper heritage conservation practice and mirrors the processes of the Victorian Heritage Act 1985. It reflects the desirability of considering long term matters (if we accept that heritage significance is likely to be somewhat enduring, if not immutable) at one point in time; and, shorter term matters (personal desire, financial considerations and economic circumstances) when they are most relevant.”



7.3.3 The economic effects of requiring a planning permit may be reduced through the availability of advice from the City of Port Phillip’s heritage advisor and planning officers free-of-charge at any time prior to, during, or following the planning permit application process.

7.4 FINANCIAL IMPLICATIONS

7.4.1 Council will be required to pay a statutory fee of \$3,839.40 to request the Minister to prepare and approve interim heritage controls through Amendment C150.

7.4.2 In progressing permanent heritage controls for 77 Park Street, South Melbourne, Council will need to meet costs associated with the independent heritage assessment, public exhibition, any Panel hearing and statutory approval fees.

8. OFFICER DIRECT OR INDIRECT INTEREST

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