

*Planning and Environment Act 1987*

**Panel Report**

**Port Phillip Planning Scheme Amendment C143**

**Heritage Overlay HO472 - 19 Salmon Street and 299  
Williamstown Road, Port Melbourne**

**5 September 2017**

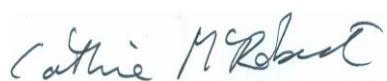
*Planning and Environment Act 1987*

Panel Report pursuant to section 25 of the Act

Port Phillip Planning Scheme Amendment C143

Heritage Overlay HO472 - 19 Salmon Street and 299 Williamstown Road, Port Melbourne

5 September 2017



Cathie McRobert, Chair

# Contents

	Page
<b>1      Introduction.....</b>	<b>1</b>
1.1    The Amendment.....	1
1.2    The citation.....	2
1.3    Procedural issues.....	4
1.4    Background.....	6
1.5    Summary of issues.....	8
1.6    Limitations .....	9
<b>2      Planning context .....</b>	<b>10</b>
<b>3      Heritage significance and the extent of HO472 .....</b>	<b>19</b>
3.1    The issues .....	19
3.2    Heritage assessments.....	19
3.3    Submissions and evidence .....	22
3.4    Discussion .....	26
3.5    Recommendations.....	28

**Appendix A                  Document list**

**Appendix B                  Amendment C143 chronology of events**

## List of Tables

Table 1      Beeston assessment against relevant HERCON criteria.....	24
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## List of Figures

Figure 1      The subject land .....	1
Figure 2      The Salmon Street elevation .....	2
Figure 3      The south elevation.....	2
Figure 4      The Plummer Street (north) elevation .....	2
Figure 5      The Smith Street (west) elevation.....	2
Figure 6      Citation site plan showing levels of significance.....	4
Figure 7      Aerial photograph of the Site showing the main stages of construction.....	19

## List of Abbreviations

CCZ1	Capital City Zone (Schedule 1)
DDO30	Design and Development Overlay Schedule 30 Fishermans Bend Urban Renewal Area
HO472	Heritage Overlay HO472
Plan Melbourne 2017	Plan Melbourne 2017-2050: Metropolitan Planning Strategy
PPN01	Planning Practice Note 1 Applying the Heritage Overlay (revised July 2015)
Prime Port	Prime Port Melbourne Pty Ltd
The Act	<i>Planning and Environment Act 1987</i>
The CMP	<i>Conservation Management Plan for the 'Former Rootes Factory, 19 Salmon Street Port Melbourne' HLCD</i> (February 2016)
The Permit Application	Permit Application No 201534819
The Site	19 Salmon Street, Port Melbourne
VCAT	Victorian Civil and Administrative Tribunal

# Overview

## Amendment Summary

<b>The Amendment</b>	Port Phillip Planning Scheme Amendment C143
<b>Common name</b>	Heritage Overlay HO472 - 19 Salmon Street and 299 Williamstown Road, Port Melbourne
<b>Brief description</b>	The Amendment proposes to apply a Heritage Overlay (HO472) to 19 Salmon Street and 299 Williamstown Road, Port Melbourne on a permanent basis.
<b>Subject site</b>	The Amendment affects land in the Fisherman's Bend Urban Renewal Area. The affected properties are shown in Figure 1.
<b>The Proponent</b>	City of Port Phillip
<b>Planning Authority</b>	City of Port Phillip
<b>Authorisation</b>	Authorisation and approval of the reduced extent of notice was received from the Minister's delegate on 11 January 2017.
<b>Exhibition</b>	13 February to 17 March 2017.
<b>Submissions</b>	Two opposing submissions (including one late submission) from: <ul style="list-style-type: none"> <li>- Prime Port Melbourne Pty Ltd ('Prime Port'), the owner of 19 Salmon Street</li> <li>- Moniton Pty Ltd, the owner of 299 Williamstown Road (withdrawn).</li> </ul>

## Panel Process

<b>The Panel</b>	Con Tsotsoros was originally appointed as the Panel. The Panel was reconstituted before the hearing to comprise Cathie McRobert, Chair.
<b>Directions Hearing</b>	Planning Panels Victoria, 25 May 2017 (chaired by Con Tsotsoros)
<b>Panel Hearing</b>	Planning Panels Victoria, 9 and 10 August 2017 (chaired by Cathie McRobert)
<b>Site Inspection</b>	Unaccompanied, 10 August 2017
<b>Appearances</b>	City of Port Phillip represented by Ian Pitt QC of Best Hooper Lawyers who called heritage evidence from: <ul style="list-style-type: none"> <li>- Roger Beeston of RBA Architects + Conservation Consultants</li> </ul> Prime Port represented by Adrian Finanzio SC and Rupert Watters of counsel, instructed by Rigby Cooke Lawyers who called heritage evidence from: <ul style="list-style-type: none"> <li>- Bryce Raworth of Bryce Raworth Conservation Urban Design</li> </ul>
<b>Date of this Report</b>	5 September 2017

## Executive Summary

### (i) Summary

Port Phillip Planning Scheme Amendment C143 (the Amendment) proposes to apply a Heritage Overlay (HO472) to 19 Salmon Street and 299 Williamstown Road, Port Melbourne on a permanent basis, with consequential changes to the incorporated document Port Phillip Heritage Review (Volumes 20, including the Heritage Policy Map and the place citation), the Neighbourhood Character Policy Map and the Clause 22.04 Heritage Policy.

After considering submissions Council resolved to exclude 299 Williamstown Road from HO472 on the basis of further expert heritage advice that that the heritage significance of this property does not justify its inclusion in the Heritage Overlay. The Panel accepts this change and the Panel consideration focusses on 19 Salmon Street (the Site).

The Amendment has had a somewhat protracted history involving: interim heritage protection which lapsed and was reinstated; errors in notification which resulted in removal from Amendment C117 and exhibition as a new Amendment; and VCAT striking out an application by Council for review of the Minister's decision to grant a permit for demolition and development (see Chapter 1.4).

There was overall agreement in submissions, the various heritage assessments and expert witness statements that:

- The description of the form and materials of the buildings, the history and circumstances of the development of uses on the land over time.
- The original 1941 building, and its Art Deco entry in particular, is the most significant element of the buildings on the Site, the 1943 extension is also significant and the post-1961 rear addition is of no significance.
- Components of the Site satisfy Criteria A and E of the HERCON heritage criteria.
- Planning Practice Note 1 (PPN01) indicates the threshold to justify inclusion in the Heritage Overlay is local significance to a particular community or locality.

At the hearing, Prime Port conceded that the proposed internal controls to the tower component within 19 Salmon Street are acceptable.

There is clear State and local policy support for the protection of places of heritage significance and also to facilitate the transformation of the Fishermans Bend Urban Renewal Area through redevelopment. The Act and the State planning policy require the balancing of competing policy to reconcile policy tensions at the Amendment stage, to the extent possible given the information available at this stage.

It is evident that the planning framework for Fishermans Bend has considered and sought to balance competing objectives. The planning framework does not dispense with heritage places in favour of urban renewal objectives; rather, it specifically recognises that heritage places make an important contribution to the area.

The issue in contention is whether the 1955 extension satisfies the threshold of local significance to justify the specific protection of those heritage values through inclusion in HO472. On this key issue, the Panel:

- Endorses the consensus view that the aesthetic and historic heritage significance of the 1940s buildings is sufficient to justify their inclusion in HO472.
- The 1955 extensions are of low heritage significance; they are not of aesthetic significance, post-date the significant war time uses, and are generic industrial buildings that do not communicate the nature or extent of the former car manufacturing operations.
- HO472 should apply to the area identified as being of primary significance in the Citation (excluding 229 Williamstown Road).

**(ii) Recommendations**

Based on the reasons set out in this Report, the Panel recommends that Port Phillip Planning Scheme Amendment C143 be adopted as exhibited subject to the following:

1. **Reduce the extent of HO472 to only include the part of the 19 Salmon Street that is shown as “Primary significance” in the Citation.**
2. **Update and revise the Citation to:**
  - a) Relate to the reduced extent of HO472
  - b) Remove reference to 299 Williamstown Road
  - c) Specify 1941 as the year the first stage of the building was constructed in the 'What is Significant' section.
  - d) Include reference to the 'Commonwealth Department of Works' being responsible for the design.
  - e) Express the name more succinctly its key uses – e.g. 'Former Commonwealth WWII Facility and Rootes Factory'.
  - f) Delete from the Citation recommendation:  
*~~Retain and adapt representative elements and elevations of secondary significant in any new redevelopment along the Plummer and Smith Streets elevations.~~*

# 1 Introduction

## 1.1 The Amendment

The Amendment proposes to implement the recommendations of the Fishermans Bend Heritage Study (Biosis, 2013) and the Fishermans Bend additional heritage place assessments (Biosis, 2015) by:

- Applying the Heritage Overlay (HO472) to 19 Salmon Street and 299 Williamstown Road, Port Melbourne on a permanent basis, with external paint controls and internal alterations controls to apply to the “tower component within 19 Salmon Street only”.
- Amending the incorporated document Port Phillip Heritage Review (Volumes 20, including the Heritage Policy Map) and the City of Port Phillip Neighbourhood Character Policy Map and to revise the heritage citation and update the grading for the Amendment site.
- Updating the Clause 22.04 Heritage Policy to reflect the updated version of the Port Phillip Heritage Review, and the reference document Fishermans Bend Additional Heritage Place Assessment (Biosis, 2015) to correct the property address.

### (i) Post-exhibition change supported by Council

After considering submissions Council resolved to exclude 299 Williamstown Road from HO472 on the basis of further expert heritage advice that the alterations to the buildings on that land affected their significance to an extent that the overlay is not justified.

### (ii) The site

The Amendment affects land within the Fishermans Bend Urban Renewal Area, which is known as the former Rootes/Chrysler factory. Figure 1 shows the affected properties at 19 Salmon Street and 299 Williamstown Road, Port Melbourne<sup>1</sup> (outlined in blue).



Figure 1 The subject land

The photographs below show the street elevations of 19 Salmon Street.

<sup>1</sup> 19 Salmon Street, Port Melbourne (Lots S3 on PS728869) and S2 on PS728869) and 299 Williamstown Road, Port Melbourne (Lot 6 on PS617506C)



## 1.2 The citation

The Citation, which is incorporated as part of Port Phillip Heritage Review, includes the following statement of significance for the subject site (emphasis added).

### ***What is Significant?***

*The former Rootes Ltd factory is a large complex of steel and timber framed, and fibre cement and corrugated iron clad factory buildings located on Plummer, Tarver, Smith and Salmon Streets in Fishermans Bend. The first stage of the complex was constructed initially in the 1940s for the Department of Munitions as an armoured vehicle factory for the war effort, and was then occupied by the Department of Aircraft Production Maintenance Division from 1943 to 1946. In 1946 British car manufacturer Rootes Ltd leased the complex and began manufacturing cars (Hillman, Humber, Singer, Sunbeam, Talbot, Karrier, Commer). The complex was substantially enlarged in the mid-1950s, and later used for manufacture of Chrysler vehicles.*

***The significant features are the two storey administration and amenities wing with Art Deco elements, large single level sawtooth roof production line buildings, the tall foundry building, parts store and engine plant buildings. The interior of the former administration and amenities wing including all of the original fabric and finishes and the room layout including, on the ground floor, the large square entrance hall, lobby and stairwell and the former typists room, and on the first floor, the former library, board room and telephone equipment room opening off the central corridor.***

### ***How is it Significant?***

***The former Rootes Ltd factory complex is of historical and aesthetic significance at the local level.***

### **Why is it Significant?**

*It is significant for its association with the top secret Commonwealth Department of Munitions manufacturing programme during the Second World War as the experimental tank depot from 1941 and then the Department of Aircraft Production Maintenance Division from 1943 to 1946. The complex demonstrates the role of wartime manufacturing and the aviation industry which were important in Fishermans Bend in the mid-20th century. (Criterion A)*

*It is of historical significance as the site of Australian tank design during World War Two, and as one of three major automotive factories established in Port Melbourne and Fishermans Bend in the mid twentieth century in response to growing demand for private motor vehicles and government policy to restrict imports in favour of locally produced manufacture. The complex is notable as the first place in Australia where British-designed vehicles were manufactured, as a direct consequence of government sponsorship and the self-sufficient and protective economic policies of the post-war period. (Criterion A)*

*It is also significant for the scale and form of the buildings, reflecting both the post war austerity in their design, and the vast spaces needed for vehicle manufacture on production line systems. (Criterion D)*

*Together with the port, the motor industry sustained the area's working class population residing to the south of the Williamstown Road at Garden City, Port Melbourne, Montague and further afield. (Criterion A)*

*The office and administration building at the north corner of Salmon and Tarver streets is of aesthetic and architectural significance for the Moderne elements (sometimes referred to as Art Deco) notably the bays of vertical strip windows with fin-like piers, banded corners, flagstaff and integrated clock face. This significance is enhanced by the high degree of intactness, which includes original interior fabric and finishes and room layout. (Criterion E)*

The citation identifies levels of significance within the Site, as follows:

*Primary significance – Buildings constructed up to 1946 including the Salmon Street office block (including the interior) and original sawtooth factory section extending 50m to the east of this block; foundry and 3 bays of original sawtooth factory east of Smith St & south of Tarver St.*

*Secondary significance – Post 1947 additions including eastern part of Salmon Street block; two bays east of Smith Street north of Williamstown Road.*

*No or limited significance – post 1960s additions and internal alterations, window shades, external alterations such as recladding (but not original structural framing).*

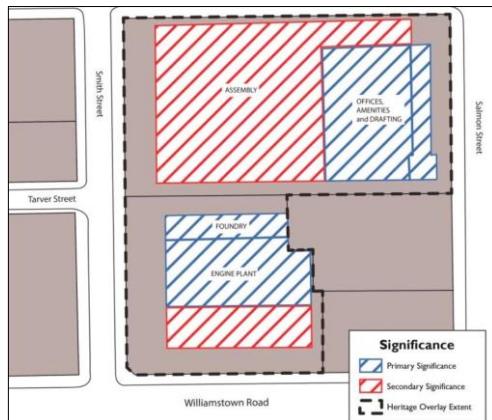


Figure 6 Citation site plan showing levels of significance.

### 1.3 Procedural issues

#### Request to adjourn the Panel Hearing

At the Directions Hearing the Panel refused a request by Prime Port to adjourn the hearing until after the Victorian Civil and Administrative Tribunal (VCAT) hearing (set down for 4 - 7 September 2017) relating to an application for demolition and development of 19 Salmon Street. On 31 May 2017 Prime Port wrote to the Panel seeking reasons for this ruling<sup>2</sup>.

The Panel chair, Mr Tsotsoros responded as follows:

#### *Background*

*The Directions Hearing held at Planning Panels Victoria on 25 May 2017 was attended by representatives from parties that sought to be heard – City of Port Phillip, Prime Port Melbourne Pty Ltd and Moniton Pty Ltd.*

*At the Directions Hearing, the Panel asked Council to coordinate feedback from all parties on preferred Hearing dates of either 3 and 4 August or 10 and 11 August. The Panel noted that where consensus was not achieved, it would confirm dates. Following evidence of no consensus being reached, the Panel issued a directions letter and timetable with a Hearing commencement date of 3 August 2017. The Panel has subsequently deferred the Hearing to 9 August 2017 (see attached timetable) to provide parties further opportunity to prepare.*

#### *Reasons for adjourning to the specified Panel Hearing date*

*In response to PPM's request, the Panel expands below upon reasons that it provided at the Directions Hearing to adjourn the Hearing from July to August, but not to adjourn pending the hearing of the VCAT matter. The Panel has decided to proceed with the Panel Hearing on 9 August 2017 for the following reasons.*

<sup>2</sup> In accordance with section 8 of the *Administrative Law Act 1978*.

***Additional time to prepare***

*Deferring the Hearing from the schedule date of 19 July 2017 specified in the Explanatory Report will provide each party additional time to prepare their case and secure suitable and available representation.*

***Relationship to the VCAT matter***

*The Panel is considering the permanent application of interim heritage controls. The matter before VCAT will be considering an application for demolition under the interim provisions. In the Panel's opinion these are separate matters and the Hearing of the planning scheme amendment should not prejudice any party in the VCAT hearing.*

***Cost and efficiency***

*On the matter of costs and efficiency, the Panel does not accept, on the submissions before it, that there is a significant additional cost or loss of efficiency to one party over another by holding the Panel Hearing prior to the VCAT matter being heard that would give rise to procedural unfairness or denial of natural justice. The material to be prepared by all parties for the Panel Hearing will involve some level of cost; that is often difficult to avoid in such matters.*

*As the affected party (ie PPM is subject to the applied planning control), the Panel accepts that it should cast a more critical eye over the question, in relation to that Party, however such a review still leads to the conclusion that there is ample time for PPM to prepare its case. In addition, it is likely that material adduced in, and for, the Panel Hearing may also have some currency for the VCAT matter.*

**Removal of 229 Williamstown Road from HO472**

Following advice that Council supported the removal of 229 Williamstown Road from HO472, Moniton Pty Ltd, the owner of that property, advised Planning Panels Victoria:

*On the basis that the Council has resolved to remove the Property from Amendment C143, our client:*

- (a) *withdraws its written submission dated 24 May 2017, in opposition to Amendment C143; and*
- (b) *does not propose to appear at the hearing set down for 9 and 10 August 2017.*

The Panel's role relates to the exhibited Amendment. The Panel advised the parties to the hearing that submitters would be provided with an opportunity to present their views at a reconvened hearing if the Panel consideration of the Amendment raised concerns about the removal of 299 Williamstown Road from HO472.

There was consensus in the evidence that evidence that 299 Williamstown Road should be removed from HO472. For example, evidence called by Council from Mr Beeston confirmed that:

*The building at 299 Williamstown Road, while having similar historical associations to 19 Salmon Street, has been compromised and degraded to such an extent that there is little to assist with the interpretation of these associations. 299 Williamstown Road does not warrant inclusion in the proposed heritage overlay.*

No issues have arisen to support the inclusion of 229 Williamstown Road in HO472 and the Panel supports the removal of that property from the Heritage Overlay. This will require updating of associated documents.

## **1.4 Background**

The Amendment has had a somewhat protracted history involving: interim heritage protection which lapsed and was reinstated; errors in notification which resulted in removal from Amendment C117 and exhibition as a new Amendment; and VCAT striking out an application by Council for review of the Minister's decision to grant a permit for demolition and development. Appendix B provides a timeline summarising the background to the Amendment.

### **(i) Amendment C117 (Fishermans Bend Heritage Areas)**

Amendment C117 was prepared to implement the recommendations of the Fishermans Bend Heritage Study (Biosis, 2013) and the Fishermans Bend Additional Heritage Place Assessments (Biosis, 2015). It proposed to apply permanent heritage controls to a number of properties in Fishermans Bend, including the former Rootes / Chrysler factory located at 19 Salmon Street, 291 & 323-337 Williamstown Road, 7-9 and 21 Smith Street and 332 Plummer Street, Port Melbourne. Changes Council supported after considering submissions included, in relation to HO472, limiting the internal controls to the tower component of 19 Salmon Street only and minor changes to the Citation.

The C117 Panel recommended, amongst other things:

- The removal of 291 and 337 Williamstown Road, 7-9 and 21 Smith Street, and 332 Plummer Street from HO472 (with consequential changes to associated documents).
- Limiting the scope of internal controls to the 19 Salmon Street tower component only.

Before Council's final adoption of Amendment C117, errors were identified in the notice of the Amendment as affected owners of 19 Salmon Street<sup>3</sup> and 299 Williamstown Road<sup>4</sup>, were not notified that the proposed application of HO472 would apply to their properties.

To address the notification issues, Council resolved to remove the proposed HO472 from Amendment C117 and request a new planning scheme amendment (Amendment C143) specifically to implement HO472.

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<sup>3</sup> On 13 November 2016, the owners of 19 Salmon Street notified Council that they did not receive notice of Amendment C117, the Directions Hearing or the Panel Hearing. It was found that notice was incorrectly addressed. On 29 November 2016, the landowner lodged an application for review with VCAT for failure to give notice.

<sup>4</sup> The owners of 299 Williamstown Road were notified of Amendment C117 as neighbouring property, rather than as a site proposed to be included in Heritage Overlay due to an error with the property registration information held by State Government.

The revised Amendment C117 came into effect on 4 May 2017.

**(ii) Permit Application No 201534819**

Prime Port applied to the Minister for Planning, who is the responsible authority for most planning permit applications in the Fisherman's Bend area, to demolish part of an existing building at 19 Salmon Street, to construct mixed use buildings for dwellings and retail uses, waive loading requirements and vary bicycle requirements. Permit Application No 201534819 (the Permit Application) proposed demolition of all existing buildings on the land except for the two-storey Deco/Moderne office building at the south-east corner of the Site (facing Salmon Street) and two bays of the adjoining factory building to the west (facing the southern boundary internal road).

Council objected to the Permit Application on 17 grounds, with the first nine grounds being most pertinent to the Amendment<sup>5</sup>:

1. *The extent of demolition of the existing buildings would be contrary to the objectives of the Fishermans Bend Strategic Framework Plan.*
2. *The extent of demolition of the existing buildings would be contrary to the City of Port Phillip Heritage Policy (Clause 22.04 of the Port Phillip Planning Scheme).*
3. *The extent of demolition of the existing buildings would compromise the heritage value of the subject site.*
4. *The extent of demolition of the existing buildings would detract from the history and character of Salmon Street and the Fishermans Bend Urban Renewal Area generally.*
5. *The extent of demolition proposed across the site would be unreasonable.*
6. *The buildings proposed to be demolished have not been demonstrated to be structurally unsound.*
7. *The proposed replacement buildings would not display design excellence which clearly and positively supports the ongoing heritage significance of the area.*
8. *The proposed replacement buildings would be inconsistent with the urban design objectives and ambitions of the Fishermans Bend Urban Renewal Area.*
9. *The proposed development would be an underdevelopment of the land.*

The Minister determined to grant a permit subject to a range of conditions. The conditions included, amongst others, a requirement for a complete architectural record of the building, a detailed demolition plan, detailed drawings of the extent of retention of the Rootes Factory heritage building on the corner of Salmon Street and the Travers Street extension,

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<sup>5</sup> Other grounds related to matters such as the road network, the inclusion of retail and commercial floorspace, open space, and the extent of overshadowing and hard surfaced areas.

and the ‘demolition method statement’ must consider the Conservation Management Plan (CMP) dated February 2016 that was prepared by HLCD Pty Ltd (see Chapter 3.2).

VCAT struck out an application by Council for review of the Minister’s decision to grant that permit on 1 August 2017<sup>6</sup>, concluding that:

*The Council lost its third party rights to review in relation to heritage issues on the lapsing of the Heritage Overlay on 31 January 2017. Whilst the Minister issued a Notice of Decision to Grant a Permit rather than a Permit and referred to demolition under the Heritage Overlay in the preamble, an incorrect reference, the Council has no third party rights of review.*

*The incorrect reference to demolition under the Heritage Overlay and the lack of reference to demolition under the Capital City Zone in the preamble are matters for the Minister to correct not the Tribunal.*

*As the Council had lost its third party rights of review on the lapsing of the overlay the Tribunal cannot give the Council such a right merely because a later overlay has been imposed. As at the time the Notice of Decision was granted there was no requirement for a permit under a Heritage Overlay, any demolition proposal would now require a new permit application under the Heritage Overlay that was imposed on 2 March 2017. As there is no failure to comply with an enactment it is not within the Tribunal’s power to disregard any failure to comply under Clause 62 of Schedule 1 of the VCAT Act. In this respect I rely upon the determination of DP Dwyer in Stanley Pastoral Pty Ltd v Indigo Shire Council [4].*

*I agree with the submissions of Prime Port that grounds 1-5 relating to heritage have no current application and should be struck out. I also agree with the submissions in relation to grounds 6-8, there being no basis or rights given to the Council with respect to such issues.*

*For the reasons given above, the application is struck out as misconceived pursuant to section 75 Victorian Civil and Administrative Tribunal Act 1998.*

As the Tribunal highlighted, an application for permit will be required for demolition under HO472.

## **1.5 Summary of issues**

There was agreement that the description of the form and materials of the buildings, the history and circumstances of the development and uses on the land over time, and that the heritage significance of at least part of 19 Salmon Street justifies the permanent application of the Heritage Overlay.

The key issues raised in submissions are briefly summarised as:

- Whether the proposed extent of HO472 supports planning policy objectives to both:
  - protect significant heritage values; and
  - facilitate efficient development of a major urban renewal area.

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<sup>6</sup> Port Phillip CC v Minister for Planning [2017] VCAT 1167

- The parts of the Site that are of sufficient heritage significance to justify the application of the Heritage Overlay.

The Panel has been selective in referring to the more relevant or determinative material in this report. Regardless of whether specifically mentioned in this report, the Panel considered all written submissions made in response to the exhibition of the Amendment; further submissions, evidence and other material presented during the Hearing and observations from the site visit.

This report deals with the issues under the following headings:

- The planning context
- Heritage significance and the extent of HO472.

## **1.6 Limitations**

As emphasised at the hearing, the Panel's role does not extend to evaluating the concurrent application for permit (see Chapter 1.4). The Panel has briefly reviewed the documentation provided that relates to the Application, which, in addition to being relevant to the consideration of the request to adjourn the Panel hearing, provided a directly relevant example of how the planning framework for the Site has operated.

## 2 Planning context

Council provided a response to the Strategic Assessment Guidelines as part of the Explanatory Report.

The Panel has reviewed Council's response and the policy context of the Amendment, and has made a brief appraisal of the relevant policy, zone and overlay controls and other relevant planning strategies.

### (i) Ministerial Directions and planning practice notes

Ministerial Directions and planning practice notes of particular relevance are:

- Ministerial Direction No 11 - Strategic Assessment Guidelines and Planning Practice Note 46 (Strategic Assessment Guidelines)
- Ministerial Direction on the Form and Content of Planning Schemes
- Planning Practice Note 1 Applying the Heritage Overlay (revised July 2015) (PPN01)
- Planning Practice Note 9 Metropolitan Strategy.

The guidance in PPN01 includes criteria to be used in preparing a heritage study and to establish the significance of a place to justify its inclusion in the HO. It indicates that documentation for each place must include a statement of significance that establishes the importance of the place and addresses specific heritage criteria. The thresholds applied should be either of 'State significance' or 'Local significance'. 'Local significance' includes places that are important to a particular community or locality. Some comparative analysis, which draws on other similar places within the study area, is required to substantiate the significance of each place.

### (ii) Planning policy context

There is ample planning policy support for the protection of significant heritage places. The objectives for planning in Victoria in the Act include '*to conserve and enhance those buildings, areas or other places which are of scientific, aesthetic, architectural or historical interest, or otherwise of special cultural value.*'<sup>7</sup> This intent is reaffirmed and amplified in the following State planning policies:

- Clause 9 requires planning authorities to consider and apply the strategy of Plan Melbourne 2017-2050: Metropolitan Planning Strategy (Plan Melbourne 2017). This includes:
  - Direction 4.4 to '*respect Melbourne's heritage as we build for the future*'.
  - Policy 4.4.1 to '*Recognise the value of heritage when managing growth and change*' with supporting commentary:

*With all three levels of government sharing responsibility for protecting Melbourne's post-settlement cultural heritage, decision-making must be consistent and credible and be based on clear and widely accepted heritage conservation principles and practices.*

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<sup>7</sup> Section 4(d) of the Act and Clause 10.02.

*Realising the community benefit of heritage will require careful management of the ongoing processes of change to the urban environment. Decisions must be based on an appreciation of Melbourne's past as well as an understanding of its future needs.*

*There will need to be continuous identification and review of currently unprotected heritage sites and targeted assessments of heritage sites in areas identified as likely to be subject to substantial change.*

- The Five Year Implementation Plan for Plan Melbourne 2017 Action 69 heritage planning initiatives include:

*Ensure that Melbourne's heritage assets and distinctive historic precincts are protected, enhanced and celebrated by:*

- *working with local governments to enhance and improve local heritage planning policies, controls and assessment processes*
- *...*
- ***ensuring heritage conservation values are considered in urban renewal precincts and other places across the city***

- Clause 11.06-4 (Place and identity), includes the strategy:

*Recognise the value of heritage by carefully managing the ongoing processes of growth and change in the urban environment.*

- Clause 11.06-9 (Cultural heritage and landscapes), which highlights the importance of cultural heritage and landscapes as economic and community assets.
- Clause 15.03-1 (Heritage conservation) which aims '*To ensure the conservation of places of heritage significance*' through strategies that include:

*Identify, assess and document places of natural and cultural heritage significance as a basis for their inclusion in the planning scheme.*

*...*

*Provide for the conservation and enhancement of those places which are of, aesthetic, archaeological, architectural, cultural, scientific, or social significance, or otherwise of special cultural value.*

*Encourage appropriate development that respects places with identified heritage values and creates a worthy legacy for future generations.*

*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.*

*Support adaptive reuse of heritage buildings whose use has become redundant.*

State policy to protect significant heritage places is amplified in the Municipal Strategic Statement Clause 21.05-1 (Heritage) and the Clause 22.04 (Heritage Policy), which aims, amongst other things, to:

*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.*

The local planning policy framework and PPN01 indicate the threshold for inclusion in the Heritage Overlay is ‘local significance’. The key issue to be addressed is whether the proposed additions to the Heritage Overlay reach the threshold of local heritage significance to justify inclusion in the overlay to ensure significant heritage values are considered in future planning decisions.

A concurrent policy theme of relevance to the evaluation of the Amendment is the unambiguous support for renewal of the Fishermans Bend to transform the area and accommodate major growth. State Planning policy (Clauses 11.06-1, 11.06-2, 16.01-2) promotes the redevelopment of Major Urban-Renewal Precincts in and around the Central City to deliver high-quality, distinct and diverse neighbourhoods offering a mix of uses.

Plan Melbourne 2017 identifies Fishermans Bend as a ‘Major urban renewal precinct’ and the ‘Fishermans Bend National Employment and Innovation Cluster’. These areas are to play an important role in accommodating future housing and employment growth and making better use of existing infrastructure<sup>8</sup>.

Local planning policy supports the renewal of this area from an industrial area towards a genuine mixed use environment with colocation of jobs with new dwellings and recognises the challenge of managing the transformation. The Fishermans Bend Strategic Framework Plan<sup>9</sup> is to guide development of the precinct.

### **(iii) Fishermans Bend Strategic Framework Plan (MPA 2014-15)**

The Fishermans Bend Strategic Framework Plan, which is an incorporated document in the Port Phillip Planning Scheme<sup>10</sup>, provides a long-term planning framework to guide urban renewal and informs the preparation and consideration of planning permit applications. It states in relation to heritage:

*“Fishermans Bend has changed and evolved significantly over the past 150 years. This history is evidenced in the urban structure and built form that exists today. In ensuring Fishermans Bend continues to retain links to its*

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<sup>8</sup> For example, Plan Melbourne 2017-2050 Directions 1.3 and 2.2 Policies 1.1.2, 1.1.3, 1.3.1, 2.1.4 and 2.2.2.

<sup>9</sup> Clause 21.06-8 (Fishermans Bend Urban Renewal Area).

<sup>10</sup> Amendment GC7 incorporated the Fishermans Bend Strategic Framework Plan (7 August 2014).

*colourful past and a character with authenticity, it is important that past qualities are preserved. Existing buildings and elements of the urban structure should be incorporated into new developments through contemporary responses and adaptive reuse, where appropriate. Development adjacent to historically significant items should be managed in a sensitive way and investigations into historical and Aboriginal archaeological resources should also be made when appropriate.*

*In most circumstances, specific heritage places are protected by the Heritage Overlay (HO) or are listed on the Victorian Heritage Register (VHR) which both provide further controls on development. In addition, a high-level heritage study, available on the MPA website, confirms there are no statutory triggers for a Cultural Heritage Management Plan.”*

The Fishermans Bend Strategic Framework Plan provides a vision, design objectives and guidelines for each of the four precincts, with objectives and standards of particular relevance including:

- To recognise the important contribution of heritages places to the character of Fishermans Bend (Objective 3.1)
  - Existing heritage places should be retained and incorporated into new developments through contemporary responses and adaptive reuse (Standard 1).
  - Buildings must have heights and setbacks that do not compromise the heritage character of an adjoining heritage place (Standard 2).
  - Development adjacent to historically significant items should demonstrate a complementary design response and provide a gradual transition between the heritage place and new development (Standard 3).
- To avoid undue visual dominance, overlooking and overshadowing (Objective 3.3).
  - Buildings must transition down in scale where interfacing with low rise residential areas, adjoining heritage buildings and existing or proposed public open spaces (Standard 1).

#### **(iv) Fishermans Bend Recast Vision (September 2016)**

The Fishermans Bend Recast Vision<sup>11</sup> implements the Ministerial Advisory Committee Report (October 2015) recommendations, including “*implementation of heritage building protection is urgent across the whole of the Fishermans Bend area*” and the commissioning of a Heritage Interpretation Plan to inform the planning process and provide a “*valuable input into defining the characteristics of distinct neighbourhoods, and assist in creating places with ‘soul’*”.

The Recast Vision provides a stronger vision for heritage within each of the precincts. The subject land is in the Wirraway Precinct which provides that:

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<sup>11</sup> Amendment GC50 amended the Fishermans Bend Strategic Framework Plan and introduced new built form controls on an interim basis, pending permanent provisions (14 November 2016).

- *The contemporary architecture in Wirraway sensitively references the area's cultural and industrial heritage.*

## 2.1 Planning scheme provisions

### (i) Zones

The site is within the Capital City Zone (CCZ1) which, amongst other things, requires a planning permit to:

- use land for use not in Section 1 or 3 of the Schedule to the zone, including Accommodation if it does not meet the threshold distance from industrial and/or warehouse uses referred to in the Table to Clause 52.10
- construct a building or construct or carry out works
- demolish or remove a building or works (prior approval for the redevelopment of the Site is required).

Applications for most land uses<sup>12</sup>, building or works, demolition or removal of a building or works and advertising signs are exempt from notice and decision requirements and third party review rights<sup>13</sup>.

### (ii) Overlays

An interim Heritage Overlay, HO472 '*Rootes Group Automobile Factory 19 Salmon Street & 299 Williamstown Road, Port Melbourne*' applies to the subject site and adjacent industrial building to the south at 299 Williamstown<sup>14</sup>. The interim Heritage Overlay lapsed on 31 January 2017 and a further Interim Heritage Overlay was placed on the land on 2 March 2017, which expires on 31 January 2018.

Design and Development Overlay Schedule 30 Fishermans Bend Urban Renewal Area (DDO30) guides built form to respond to the emerging scale and development patterns, while respecting the existing conditions and future development potential of adjacent sites.

The decision guidelines require consideration of the Fishermans Bend Strategic Framework Plan.

Other overlays that apply to the Site are the:

- Special Building Overlay
- Development Contributions Plan Overlay
- Parking Overlay.

## 2.2 Submissions

Prime Port submitted that the inclusion of the Site within a Heritage Overlay necessarily involves an assessment of the strategic planning outcomes or consequences that flow from applying a level of protection to existing fabric. While acknowledging that those parts of buildings which are of sufficient significance should be afforded protection through inclusion

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<sup>12</sup> Other than for a nightclub, a tavern, a brothel or an adult sex bookshop.

<sup>13</sup> Sections 52(1)(a), (b) and (d), 64(1), (2) and (3) and Section 82(1) of the Act.

<sup>14</sup> Amendment C115 applied interim heritage controls to a number of properties in the Fishermans Bend area. (14 January 2016) which were extended by Amendment C146 (2 March 2017).

in the Heritage Overlay, Prime Port submitted that an overly liberal application of the overlay has the potential to create policy tensions and inefficiencies in implementation which should be avoided. Strategic planning should ensure that planning priorities are articulated as clearly as possible and, as required by Clause 10, competing policy should be balanced at the Amendment stage to achieve an integrated planning framework that does not create unnecessary policy conflicts which might thwart the achievement of the planning vision. This balancing of policy to achieve a net community benefit should not be “kicked down the road” to the permit process and VCAT where the strategic vision is at risk of dilution or subversion.

Prime Port emphasised that the Fishermans Bend Urban Renewal Area is an area where “*the underlying strategic work points unequivocally to urban renewal on a large scale*”. It is expected to deliver 80,000 new higher density homes by 2050 and the Vision identifies the Wirraway precinct as an area of particular change with the junction of Plummer Street and Salmon Street as a proposed ‘local centre’. The planning framework is intended to facilitate fast and certain decisions to enable the prompt delivery of the outcomes sought:

*... A decision has been made that the Council should not be the responsible authority for land in Fishermans Bend. Further, the major built form planning controls for the area – Capital City Zone and Design and Development Overlay – exclude third party rights in respect of use and development.*

Prime Port argued that the inclusion of the whole of the Site in HO472, including parts that do not reach the necessary threshold of significance, would:

- Revive the operation of third party rights which, as demonstrated by the Permit Application, can create delays and opens up argument beyond the scope of heritage issues.
- “Turn on” the Clause 22.04 Heritage policy, although there is a disconnect between the generic policy and the strategic vision for transformation of this major urban renewal area.

Prime Port referred the Panel to alternative means of facilitating the protection of heritage fabric without compromising the strategic objectives for Fishermans Bend, including the CMP prepared as part of its Permit Application.

Council submitted that the recognition and protection of cultural identity of the Site through inclusion within a Heritage Overlay supports both State and local planning policy. Enabling an assessment of development proposals against heritage criteria, is of itself of net community benefit, the protection of land and buildings of heritage interest has a beneficial social effect. Any economic effect would be a product of any permit decision and would not be an economic effect on the community.

Council contended that issues such as demolition are not relevant in the assessment of whether the Heritage Overlay should apply to the Site but, rather, are relevant to the implementation of heritage policy in respect of land within a Heritage Overlay. Council submitted:

*... the weighing of all relevant criteria under the Planning Scheme in the manner identified in the decision of the Supreme Court of Victoria Court of*

*Appeal decision in City of Boroondara v 1045 Burke Road Pty Ltd & Ors [2015] VSCA 27 is an exercise to be undertaken where a permit for development is sought under, inter alia, a HO, as opposed to whether land should be included within a HO.*

Council submitted that the Amendment would not unduly constrain the strategic policy intent for Fishermans Bend as areas subject to the Heritage Overlay are relatively limited. The incorporated Citation provides clear guidance about development of the Site that balances the range of objectives. In addition, Council observed that, despite policy to refuse demolition of significant and contributory buildings, there is ample evidence of this occurring and this reflects the balancing the range of planning considerations when an application for permit is considered.

## **2.3 Discussion**

There is clear state and local policy support for the protection of places of heritage significance and also to facilitate the transformation of the Fishermans Bend urban renewal area through redevelopment.

In preparing Amendments to planning schemes, the Act requires a planning authority take into account environmental, social and economic effects<sup>15</sup> while the planning scheme requires planning authorities to:

- seek to ensure '*land use and development planning policies and practices which integrate relevant environmental, social and economic factors in the interests of net community benefit and sustainable development*'.
- '*endeavour to integrate the range of policies relevant to the issues to be determined and balance conflicting objectives in favour of net community benefit and sustainable development for the benefit of present and future generations*'.

The Panel does not agree with submissions from Council that the balancing of policy should be deferred to the permit application stage, although it is often during that process, when a full assessment of building fabric and development plans are available, that there is sufficient information available to make an informed evaluation of issues such as demolition and the effect of a development proposal on significant heritage values.

It is evident that the planning framework for Fishermans Bend has considered and sought to balance competing objectives. The planning framework does not dispense with heritage places in favour of urban renewal objectives; rather, it specifically recognises that heritage places make an important contribution to the area. The planning framework makes it clear that heritage places should be retained and incorporated into new developments and new development should provide a gradual transition in scale to a heritage place.

The Citation recommendations also appear to have undertaken a balancing of competing policy for the Site by identifying the extent of retention of significant fabric that is envisaged. Although all buildings on the Site were identified in the Citation as being of primary or secondary significance, the recommendations do not envisage the retention of all buildings on the Site.

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<sup>15</sup> Section 12 (2).

### An effective, efficient planning framework to implement strategic objectives

The Panel is concerned that the interaction of the zone, overlays, policy and incorporated documents would not establish clear guidance for the formulation of development proposals or planning decisions.

The Citation recommendations suggest a less restrictive approach to demolition than in the Clause 22.04 policy. Nevertheless, Council's objection to the Application and its grounds for review by VCAT reflected the Clause 22.04 policy, which aims to retain and conserve all significant and contributory heritage places. It is policy:

- to refuse the demolition of a significant and contributory buildings, except to the extent that the building is structurally unsound and accompanying development application displays design excellence which clearly and positively supports the ongoing heritage significance of the area.
- that additions and alterations do not change the original principal facade(s) or roof.
- through performance measures, to ensure that alterations and additions to heritage buildings are not visible.

This generic policy suggests a scale of development that is very different from the built form provisions that would apply in the immediate area under DDO30. In areas where redevelopment at significant scale is envisaged, a policy of 'concealment' of new development of land within the Heritage Overlay, as envisaged by the Clause 22.04 policy, will not necessarily strike the right balance. The Policy seems more suited to low scale residential heritage places or precincts than areas identified for intensive redevelopment.

It was put to the Panel that, despite the policy guidance, a more reasonable outcome that departs from the policy would be likely given the strategic context. Council highlighted that discretion exists and cited various examples where demolition is supported despite the policy. The Council objection to the Application illustrates a level of ambiguity in the basis for Council's position and reflected a policy conflict that should be avoided. Council opposed the demolition of buildings because they were not structurally unsound (and Councils heritage advisor sought retention of all buildings) but also objected on the ground that the proposal was an underdevelopment. On the other hand, Council strategic planning officer advice supported an approach in line with the recommendations of the Citation<sup>16</sup> which is an incorporated document.

The Panel agrees with Prime Port that a clear planning framework that avoids unnecessary ambiguity, argument and delays is particularly important in an area such as Fishermans Bend where strategic planning and planning scheme mechanisms have been designed to facilitate the efficient transformation of the area. Of concern was the inclusion in the Heritage Overlay of parts of the Site of limited or no heritage significance, as this invites debate about how that fabric should be treated and opens up third party rights with the potential for delays. The inclusion of such areas also means that the Clause 22.04 policy would apply, which imposes onerous requirements regarding concealment of new development and fails to recognise the consensus view that demolition of some of the fabric on the Site is reasonable.

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<sup>16</sup> 17 May 2016 report to Council.

Prime Port referred the Panel to North Urban Renewal Area Panel<sup>17</sup> findings which accorded priority to urban renewal objectives. The Panel recommended “turning off” the heritage policy in that area to address the disconnect between the planning intentions of the proposed DDO61 (to facilitate significant change) and the constraint associated with the generic heritage policy. The Panel agrees with this approach if areas the Heritage Overlay extends to parts of the Site of limited heritage significance.

The Panel also notes that the recast vision for Fishermans Bend recognises that existing fabric assists in “*creating places with ‘soul’*”. However, the Heritage Overlay has a specific function to protect significant heritage values, as distinct from contributing to character which can be addressed through other elements of the planning framework for Fishermans Bend, including the CCZ (which requires a permit for demolition) and DDO30.

The key issue is which parts of the Site reach the threshold of local significance to justify the specific protection of those heritage values.

### **Panel conclusions**

- There is clear state and local policy support for the protection of places of heritage significance and also to facilitate the transformation of the Fishermans Bend urban renewal area through redevelopment.
- The Act and the State planning policy require the balancing of competing policy to reconcile policy tensions at the Amendment stage, to the extent possible given the information available at this stage.
- It is evident that the planning framework for Fishermans Bend has considered and sought to balance competing objectives. The planning framework does not dispense with heritage places in favour of urban renewal objectives; rather, it specifically recognises that heritage places make an important contribution to the area.
- A clear planning framework that avoids unnecessary ambiguity, argument and delays is particularly important in an area such as Fishermans Bend where strategic planning supports the efficient transformation of the area. If the Heritage Overlay is applied to parts of the Site with limited heritage significance there is potential for the Clause 22.04 (Heritage policy), which applies across Port Phillip’s heritage areas, to contribute to ambiguous policy guidance in the Fishermans Bend Urban Renewal area.
- The key issue is which parts of the Site reach the threshold of local significance to justify the specific protection of those heritage values.

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<sup>17</sup> Amendment C196 to the Melbourne Planning Scheme.

### 3 Heritage significance and the extent of HO472

#### 3.1 The issues

There was overall agreement in submissions, the various heritage assessments and expert witness statements that:

- the description of the form and materials of the buildings site, the history and circumstances of the development of uses on the land over time is thorough.
- the original 1941 building, and its Art Deco entry in particular, is the most significant element of the buildings on the Site, the 1943 extension is also significant and the post-1961 rear addition is of no significance.
- components of the Site satisfy Criteria A and E of the HERCON heritage criteria.
- PPN01 indicates the threshold to justify inclusion in the Heritage Overlay is local significance to a particular community or locality.

At the hearing, Prime Port conceded that the proposed internal controls to the tower component are acceptable. This aspect of the Amendment is not discussed further.

Hence, the issue in contention is the level of significance of the 1955 extension (see Figure 7), and, consequently, whether the overlay should apply to that part of the Site.

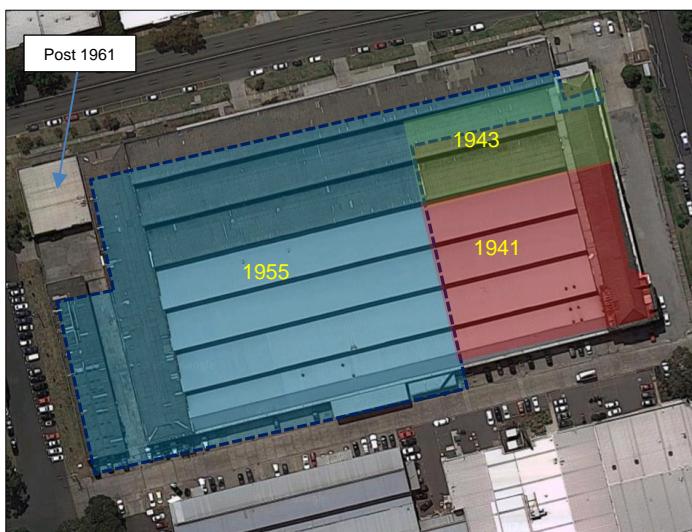


Figure 7 Aerial photograph of the Site showing the main stages of construction

#### 3.2 Heritage assessments

The Fishermans Bend Heritage Assessment undertaken by Biosis Pty Ltd in June 2013 identified the Rootes Chrysler Factory at Salmon and Plummer Streets for further investigation. The subsequent Biosis assessment in June 2015, which underpinned Amendment C117, supported the inclusion of 19 Salmon Street, 291 and 323-337 Williamstown Road, 7-9 and 21 Smith Street and 332 Plummer Street in the Heritage Overlay.

In July 2015 the National Trust of Australia [Victoria], the Art Deco and Modernism Society Inc. and the Port Melbourne Historical and Preservation Society jointly commissioned Built

Heritage Pty Ltd to prepare a heritage assessment of the 'Rootes Ltd Factory [Former] 19-25 Salmon Street, Port Melbourne'. The report supported an individual Heritage Overlay over all of 19 Salmon Street and considered that the earliest part of the building to be potentially of significance at the state level.

Following removal of the Rootes Chrysler Factory from Amendment C117, the Biosis assessment of that place was extracted and updated (November 2016). The November 2016 Biosis assessment, which included 229 Williamstown Road and the Site, included the Citation and recommendations which are proposed to be incorporated as part of the Amendment. This assessment identified the 1941 and 1946 buildings as being of primary and the 1955 buildings as being of secondary significance. In addition to the application of HO472 to the 19 Salmon Street and 229 Williamstown Road, the citation recommendations (below) identify the extent of retention of significant fabric that is envisaged:

- ***Retain the primary significant elements which relate to the original Defence Department factory and Rootes car factory dating up to 1946 comprising:***
  - *The two storey Salmon Street office block with main entrance tower,*
  - *The north and south elevations of the original sawtooth factory section extending for 50m ... of this block.*
- ***Retain and adapt representative elements and elevations of secondary significant in any new redevelopment along the Plummer and Smith Streets elevations;***
- ***Incorporate structural elements such as roof trusses and framing, as design and landscape features in future development.*** (emphasis added)

In February 2016, Helen Lardner of HLCD was commissioned to prepare a CMP for 19 Salmon Street (in conjunction with the Application for demolition and development of the Site). The Panel was advised that the preparation of the CMP by Ms Lardner of HLCD was at the suggestion of DELWP officers. The CMP documented the significance of the place and concluded that:

- The Art Deco corner entry of the 1941 building, including the interiors, such as the hall, library and board room is of primary significance.
- The remainder of the 1941 and 1943 buildings are of secondary significance. Although substantially altered, this part of the Site is representative of factory construction and demonstrates the relationship between the key components of the Site.
- The 1955 buildings and Chrysler's ownership are of low significance; they have low integrity and convey little further information.
- Later small additions have no significance.

As noted in the officer report to Council in May 2016, the CMP includes a detailed history of the Site and buildings, an assessment of the condition and heritage significance of the existing buildings, and a Conservation Works Schedule to ensure "...designed to ensure the long term conservation of heritage values." The CMP provides a detailed conservation policy and management plan, which addresses areas to be conserved and appropriate modifications. It is notable that the CMP commented in relation to the 1955 and subsequent development on the Site:

*In areas of low or no significance ... there are no restrictions on new buildings, landscaping or parking as long as there are no impacts on the view to the south east which is of primary significance<sup>18</sup>.*

Commentary from the Council's heritage advisor regarding the CMP was:

*(The Conservation Management Plan) is a comprehensive and well-researched document ... I generally agree with the findings, though ... I am a little concerned that the final recommendations for retention don't quite reflect the assessed levels of significance ....*

*I agree with the proposal to retain the whole of the 'corner' building including the interiors. This is clearly of primary significance and it is important to be retained in its entirety.*

*Agree with the recommendation to retain at least the first four bays (including their internal fabric) facing the internal roadway to provide an understanding of the original building (with suitable Interpretation). Would like to retain the whole of the extent assessed as secondary significance.*

*Disagree with the minimal retention proposed facing Salmon Street. According to the CMP this should be retained 'to demonstrate the relationship of the double storey office wing with the Art Deco corner entry in significant views'. While this wing has been altered at ground floor level, the retention of just one bay will not be sufficient to gain an appreciation of this part of the building. As a former office, this building has greater feasibility/opportunity for adaptive re-use. Retention of more of this building and adaptive reuse should be further explored.*

*Generally concede that most of the saw toothed additions can be demolished, although it would be good to retain more of these buildings.*

*The CMP guidelines for additions are generally supported, as they provide reasonably clear direction (without being overly prescriptive) of how new design should respond to the retained building. The one exception is the guideline in relation to the setback of new development to Salmon Street, which the CMP directs 'should not be set any closer to Salmon Street than the existing Art Deco building' (p.67, also in exec summary). This refers to the corner section that has a slightly lesser setback than the office wing, which is set further back. To retain the prominence of the corner office, new additions should have the same or greater setback than the office wing.*

*Given the extent of change interpretation will play an important role in understanding the historic extent of this complex and how the retained sections were once part of a much larger complex. I note that an interpretation plan is being prepared (p.68) (Extract from 17 May 2016 report to Council).*

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<sup>18</sup> Page 67 of the CMP.

### 3.3 Submissions and evidence

#### Submissions

Council contended that, consistent with the evidence of Mr Beeston, the Heritage Overlay should apply across the whole of the Site, with the levels of interest identified in the Statement of Significance because:

*... the local policy on heritage only applies to land within the HO and does not apply to land adjacent to land within a HO and that protection of areas of primary interest on the Subject Land requires that the whole of the Subject Land be in the HO so that it is not impacted by development on any area of the Subject Land attributed a lower level of interest.*

Council submitted that the assessment of the impact of any development proposal should be left to the planning permit process.

Prime Port submitted that the 1955 extension is a generic factory building of very low significance that has not been identified as having any aesthetic significance in any assessment and, as it was constructed after the war, plainly has no historical significance associated with World War Two use of the Site. Only Mr Beeston regards the 1955 extension as being of primary significance, whereas, Biosis stated it is of 'secondary' significance<sup>19</sup>, Built Heritage identified it as 'contributory'<sup>20</sup>, Ms Lardner (in the CMP) describe it as being of 'low' significance<sup>21</sup> and Mr Raworth considered it may be of interest but is not significant. The exclusion of the 1955 buildings is also consistent with the evidence of Ms Riddett and Mr Trethowan relating to other post-war buildings in the more extensive version of HO472 proposed by Amendment C117.

In relation to development of the automobile industry in Victoria, Prime Port submitted that the Rootes factory complex was not the first in Fishermans Bend or at any point the largest<sup>22</sup>. Further, the retention of this part of the Site would not illustrate the scale of the operation as the proposed Heritage Overlay does not include the extent of the expanded complex. Further, Prime Port argued that the 1955 extension does not contribute to the understanding of the complex as part of the '*first place in Australia where British-designed vehicles were constructed*' because:

- Those operations were established in 1946, well before the factory expansion in 1955.
- The 1955 buildings were used only briefly to manufacture vehicles until acquisition by Chrysler (in 1965) when production began to move to South Australia.
- Nothing about the generic buildings provides any understanding of the nature or processes of automobile manufacture employed at the time.

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<sup>19</sup> p. 23 RBA Architects + Conservation Consultants, *19 Salmon Street + 299 Williamstown Road, Port Melbourne August 2017*.

<sup>20</sup> p. 25 Built Heritage Pty Ltd, *Rootes Ltd Factory [former]: 19 – 25 Salmon Street, Port Melbourne 23 July 2015*.

<sup>21</sup> p. 57 HLCD Pty Ltd, *Former Rootes Factory 19 Salmon Street Port Melbourne – Conservation Management Plan February 2016*.

<sup>22</sup> Both General Motors Holden and Australian Motor Industries (later acquired by Toyota) had larger assembly plants in Fisherman's Bend in the same period.

Prime Port noted that applying the Heritage Overlay to the part of the Site identified as being of primary significance (and excluding the 1955 and subsequent buildings) would incorporate the factory buildings Biosis described as being of primary significance, namely the original sawtooth factory section extending 50m to the east of the Salmon Street office block. This would enable an appreciation of the relationship between the front wing and the factory.

Prime Port contended that the extent of the Heritage Overlay should recognise the individual elements of a complex that are significant, citing Amendment C149 to the Yarra Planning Scheme as a comparable example where the Panel did not support the inclusion of the whole of the Repco factory complex in Richmond in the Heritage Overlay. Further, the Port Phillip Amendment C117 Panel excluded 21 Smith Street and 332 Plummer Street from HO472, notwithstanding an acknowledged association with Rootes Ltd.

### Evidence

In addition to evidence from Roger Beeston (called by Council) and Bryce Raworth (called by Prime Port), reference was made to the findings and recommendations of the CMP by Helen Lardner of HLBH, which was prepared in support of the Application. Ms Lardner could not be called as an expert witness as she is a sessional Panel member.

As noted above, there was a high level of consistency between the expert witnesses, the updated assessment by Biosis (November 2016) and the CMP regarding heritage significance of the buildings on the Site, except for divergent expert views on the significance of the 1955 extension:

- It was Mr Raworth's view it is not significant and the level of historic interest does not meet the threshold for inclusion in the Heritage Overlay. He stated:

33. *The 1955 additions comprising the majority of the subject building adopt a generic sawtooth roofed factory design and are of lesser interest than the core 1940s fabric. Beyond their large size being suggestive of a major industrial enterprise, the 1955 additions do not retain any fabric that would be useful in understanding automobile manufacturing. While the additions demonstrate some of the principal characteristics of mid twentieth century factory design they only do so in a broad sense applicable to countless other extant industrial buildings of the period.*
- Mr Beeston considered the building is generally intact to its 1955 circumstance, the three main stages of construction between 1941 and 1955 relate directly to the occupation of the building, first for Commonwealth Government wartime purposes and then by Rootes car manufacturers. Although the entry block/tower is the most distinctive element of the building, it is part of a larger cohesive design. He recommended revision of the Citation to show all buildings constructed between 1941 and 1955 (including the free-standing rear building) as Primary Significance. The table below summarises Mr Beeston's assessment against relevant Practice Note criteria.

Table 1 Beeston assessment against relevant HERCON criteria

Criterion	Applicability	Threshold Level
Criterion A: Importance to the course or pattern of our cultural or natural history (historical significance).	<ul style="list-style-type: none"> <li>- Association with the Commonwealth Department of Munitions tank program undertaken by the Directorate of Armoured Fighting Vehicles during WWII, used as the experimental tank depot from 1941 to 1943.</li> <li>- Association with the Commonwealth Department of Aircraft Production Maintenance Division from 1943 to 1946.</li> <li>- One of three major automotive factories established in Port Melbourne/Fishermans Bend during the mid-twentieth century. The complex is notable as the first place in Australia where British-designed vehicles were manufactured.</li> </ul>	Local
Criterion B: Possession of uncommon, rare or endangered aspects of our cultural or natural history (rarity).	<ul style="list-style-type: none"> <li>- A surviving example of the few factory complexes purpose-built by the Commonwealth Government specifically for wartime research and design.</li> <li>- One of few buildings erected for the government's wartime tank manufacture program, and the only building in Victoria that was purpose built for a production related aspect of the program.</li> <li>- Built at a time when few buildings were being constructed in Victoria due to wartime restrictions.</li> </ul>	Potential local and State
Criterion E: Importance in exhibiting particular aesthetic characteristics (aesthetic significance).	<ul style="list-style-type: none"> <li>- A good and well detailed example of the Functionalist style and indicative of the high standards of the Commonwealth Department of Works at the time.</li> <li>- The high degree of intactness of both the exterior, and also surviving sections of the original interiors (including fabric and finishes and room layout).</li> </ul>	Local

Mr Beeston concluded that:

*The buildings at 19 Salmon Street are largely intact and meet the threshold for the HERCON criteria A (historic significance) and E (aesthetic significance) at the local level. In addition, the buildings are potentially also of significance at a state level under criterion B (rarity). 19 Salmon Street warrants the application of an individual heritage overlay in the Port Phillip Planning Scheme.*

*The primary phase of significance at the site is from 1941 to 1955, representative of the occupation of the site first by the Commonwealth Government for wartime purposes and then by the car manufacturers, Rootes.*

*With regards to the levels of significance for 19 Salmon Street, the whole building constructed between 1941 and 1955 (including the free standing rear building) is of primary significance, while the post-1961 rear addition is of no significance, or potentially intrusive.*

Mr Beeston noted that, as set out in PPN01, it is generally standard practice to include all of the parcel of land on which the relevant building is located. He commented:

*By singling out the tower component as being of greater significance than the rest of the building, it would be inevitable that future redevelopment of the site would seek to retain only the tower element. The tower, without the rest of the building to provide context, would become an isolated relic, and alone would not sufficiently provide the means by which to interpret the heritage values of the site.*

Mr Raworth considered the Site is of sufficient historical and architectural significance at a local level to warrant include part of the site in an individual Heritage Overlay. However, it was his view that:

38. *Accepting that other parts of the former Rootes complex are of lesser significance than the core 1940s fabric, there is a basis for further reducing the extent of the heritage overlay curtilage to only encompass the most significant parts of 19 Salmon Street. A reasonable approach would be for the heritage overlay to be applied to those parts of the factory complex that were identified as being of primary and secondary significance in the CMP. This would retain the key Moderne/stripped classical style elements along with a representative section of the sawtooth factory.*

He suggested that selectively applying the Heritage Overlay to key buildings within larger complexes is consistent with heritage listings for other industrial sites, such as Monsanto Chemicals in Brooklyn<sup>23</sup>, the former Nestle site in Mulgrave<sup>24</sup> and the former Repco factory in Richmond.

Both Mr Beeston and Mr Raworth acknowledged that the CMP is a comprehensive and well-researched document that was prepared by a respected heritage expert who adopted an appropriate methodology. Although the content of the management plan was broadly endorsed, Mr Beeston stated:

- *I would not recommend that the CMP (2016) be incorporated into the planning scheme in its current form, primarily due to the attribution of levels of significance which affords primary significance to the entry block/tower only, secondary significance to the remaining 1940s parts, and low significance to the Rootes extensions.*
- *Under the heritage overlay, applications for change at the site are appropriately assessed against the heritage provisions in the planning scheme (primarily clauses 15, 21.05, 22.04, 43.01).*
- *Consideration could be given to incorporating an alternative document into the planning scheme that includes site specific permit exemptions.*

While not a determinative issue, Mr Beeston preferred a description of the design of the 19 Salmon Street building the Functionalist style<sup>25</sup> rather than Art Deco. Mr Raworth

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<sup>23</sup> HO30 – Brimbank Planning Scheme

<sup>24</sup> HO86 – Monash Planning Scheme

<sup>25</sup> Mr Beeston indicated that ‘the Functionalist style has a strongly rectilinear format as compared to the similar (Streamlined) Moderne style of the mid to late 1930s, which is distinguished by curved corners (and shares some similarities with the related Art Deco style).’

commented that the buildings do not adhere to the design principle of ‘form follows function’ inherent in the Functionalist style. He described the significant parts of the building as ‘Moderne/stripped classical style’ but considered the CMP use of the term Deco, which tends to be more decorative, to be acceptable as it ties back to accepted categorisation in recognised reference documents.

### **3.4 Discussion**

The consideration of the Site by the C117 Panel and its recommendation to reduce the extent of the Heritage Overlay to area of HO472 proposed by the Amendment occurred in the absence of submissions and evidence relating to 19 Salmon Street and 299 Williamstown Road. There have been further assessments by Biosis, Ms Lardner, Mr Beeston and Mr Raworth and the preparation of the CMP to inform the consideration of the appropriate extent of HO472 in the Amendment.

#### **The significance of the 1955 extensions**

There is consensus in the heritage assessments undertaken and evidence to the Panel that the development from the 1950s is of less significance than the 1941 and 1943 buildings. None of the assessments identify the 1955 extensions as being of aesthetic significance (Criterion E).

In terms of historical significance (Criterion A), as the extension was constructed in 1955 it cannot relate to historically significant World War 2 uses. The Panel agrees with Prime Port that in Mr Beeston’s heritage assessment:

*... only a single element of that assessment relates to the post-War period where it is simply observed that the Land is ‘one of three’ major automotive factories established in Port Melbourne/Fishermans Bend during the mid-twentieth century. Beyond this, no explanation is provided about how the buildings identified for protection illustrate anything about the automobile manufacture process or relate to any significant historical event bearing on automobile manufacturing in Victoria.*

Although the 1955 extension was not identified as significant in terms of rarity (Criterion B) in expert assessments there was some discussion at the hearing of the rarity of surviving places with associations with the important car industry in Fishermans Bend. The Panel notes that the 1940’s buildings maintain the more significant aspect of this value and the protection of the whole of the Site would not convey the scale of the Rootes factory across multiple properties.

The Panel inspection confirmed that the 1955 extensions are generic industrial buildings that are not of aesthetic significance. Although the terminology used varied between the various expert assessments, all except Mr Beeston calibrated the significance across the Site to accord the post - 1940s buildings a low level of significance. The Panel prefers the view expressed by Mr Raworth (and in the CMP) that the retention of these buildings is not necessary to protect significant heritage values.

### Should the Heritage Overlay extend to the whole site?

Mr Beeston and Prime Port referred to guidance in PPN01 on the appropriate extent of the Heritage Overlay. Prime Port submitted there should be no presumption that a Heritage Overlay must apply to an entire title or complex, highlighting that "*The polygon should capture those elements of the place that are significant*". As Mr Beeston highlighted, it is generally standard practice to include all of the parcel of land on which the relevant building is located. However, on large sites, and particularly in the context of strategic policy support to facilitate redevelopment at a significant scale, the extent of the Heritage Overlay should relate to the extent of the land necessary to protect significant heritage values.

Amendment C149 to the Yarra Planning Scheme was cited as a comparable example where the Panel did not support the inclusion of the whole of the Repco factory complex in Richmond in the Heritage Overlay. The Panel agrees there are parallels and the C149 Panel observations are apply to the current Amendment:

*The Panel agrees that the historic significance of the Repco operation (with its Brabham association) and the quality of the Moderne buildings is sufficient to warrant inclusion in the overlay. The issue is then whether or not the open space and simple industrial buildings on the rest of the site are substantial contributors to the 'historic document'. Whilst it is self evident that all the site, including the simplest structures may have been utilised by Repco, the various uses are not documented or associated with a particular production process, historic event or social perception of the company. In this situation the Panel, on balance, finds that is not sustained.*

The Panel agrees with the view expressed by the C117 Panel (in relation to a reduction in the extent of the larger Heritage Overlay proposed at that time) that:

*The Panel considers that the eastern half of the block ... effectively demonstrates the development of the site during World War Two and that transition to car manufacturing. The Panel does not think it is necessary to include all parts of this very large complex.*

The Panel considers that the 1955 fabric adds little to the understanding of the evolution of the car industry in Victoria and accepts the view that the 1940's buildings include factory fabric that enables an understanding of the more aesthetically significant 1941 corner building and the more historically significant the World War 2 and early car manufacturing uses on the Site. Further, as the planning framework for Fishermans Bend requires consideration of impacts on significant heritage places and a transition in scale to them, it is not necessary to incorporate land to avoid nearby development outside the Heritage Overlay overwhelming significant heritage values.

The Panel considers the Heritage Overlay should apply to the area identified as being of primary significance in the Citation (excluding 229 Williamstown Road).

Mr Beeston suggested there could be a role for exemptions linked to a CMP and the Panel explored the possibility at the Hearing. However, the Panel noted that the CMP, which was only provided to the Panel at the hearing, does not form part of the Amendment and parties had not anticipated an evaluation of the document through this process. The CMP has

provided useful documentation of the Site and a further expert view about the significance of various elements of the Site. While the expert evidence (and the officer report to Council) endorsed the CMP and permit exemptions linked to the document would add to the certainty provided by the planning framework, the Panel process has not extended to a full evaluation of the proposed management measures to an extent that would support such a recommendation.

### **Conclusions**

The Panel concludes:

- The consensus view that the aesthetic and historic heritage significance of the 1940s buildings at 19 Salmon Street is sufficient to justify inclusion in HO472 is endorsed.
- The 1955 extensions are of low heritage significance. They are not of aesthetic significance, post-date the significant war time uses, and are generic industrial buildings that do not communicate the nature or extent of the former car manufacturing operations.
- HO472 should apply to the area identified as being of primary significance in the Citation (excluding 229 Williamstown Road).

### **3.5 Recommendations**

The Panel makes the following recommendations:

1. **Reduce the extent of HO472 to only include the part of the 19 Salmon Street that is shown as "Primary significance" in the Citation.**
2. **Update and revise the Citation to:**
  - a) Relate to the reduced extent of HO472
  - b) Remove reference to 299 Williamstown Road
  - c) Specify 1941 as the year the first stage of the building was constructed in the 'What is Significant' section.
  - d) Include reference to the 'Commonwealth Department of Works' being responsible for the design.
  - e) Express the name to more succinctly its key uses – e.g. 'Former Commonwealth WWII Facility and Rootes Factory'.
  - f) Delete from the Citation recommendation:  
*~~Retain and adapt representative elements and elevations of secondary significant in any new redevelopment along the Plummer and Smith Streets elevations.~~*

## Appendix A Document list

No.	Date	Description	Tabled by
1	9 August 2017	Council Part B submission	Mr Pitt QC
2	9 August 2017	VCAT Order Port Phillip CC v Minister for Planning [2017] VCAT 1167	Mr Pitt QC
3	9 August 2017	Permit Application No 201534819 Notice of Decision to grant a permit	Mr Finanzio SC
4	9 August 2017	Permit Application No 201534819 – Master Plan (Versions 1 and 2)	Mr Finanzio SC
5	9 August 2017	Addendum – Beeston Expert Witness Statement	Mr Pitt QC
6	10 August 2017	<i>Conservation Management Plan for the 'Former Rootes Factory, 19 Salmon Street Port Melbourne' HLCD (Feb 2016)</i>	Mr Finanzio SC
7	10 August 2017	Prime Port Melbourne Pty Ltd Submission	Mr Finanzio SC
8	10 August 2017	Panel Report Melbourne Planning Scheme Amendment C196 City North Structure Plan (extract)	Mr Finanzio SC
9	10 August 2017	Panel Report Melbourne Planning Scheme Amendment C198 City North Heritage Review (extract)	Mr Finanzio SC
10	10 August 2017	Permit Application No 201534819 (various documents - tabs 1-11)	Mr Finanzio SC
11	10 August 2017	Emails and correspondence relating to the engagement of HLCD Pty Ltd to prepare the CMP.	Mr Finanzio SC
12	10 August 2017	Extract of the <i>Planning and Environment Act 1987</i> (section 12)	Mr Finanzio SC

## Appendix B Amendment C143 chronology of events

(Source: Council submission)

### Appendix I: Chronology of events

