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Expert Witness Statement - Heritage
for
Port Phillip Amendment C203

30 May 2022

Prepared for the City of Port Phillip and under the instruction of Maddocks Lawyers by
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BArch(Hons), BBSoc, GradDip(Conservation), GradCert (Visual Arts), RAIA, M.ICOMOS

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1. Introduction

1.1 Name and address of expert

- [1] James (Jim) Maitland Gard'ner, Director, GJM Heritage, Level 3, 124 Exhibition Street, Melbourne, VIC 3000.

1.2 Expert's qualifications and experience

- [2] I hold a Bachelor of Building Science and an honours degree in Architecture from Victoria University of Wellington (New Zealand), a post graduate diploma in building conservation from the Architectural Association of London and a graduate certificate in visual arts from Harvard University. I am registered with the Architects' Registration Board of Victoria (16044) and am a member of the Australian Institute of Architects, the Victorian Planning & Environmental Law Association, DOCOMOMO Australia and Australia ICOMOS.
- [3] I have practiced as an architect on heritage buildings and new design projects in New Zealand and the United Kingdom, and have specialised in heritage conservation since 1997. I have worked as Project Architect on commercial projects in the World Heritage Listed City of Bath, and, as a Historic Buildings Architect at English Heritage, I provided technical and regulatory advice on a diverse range of heritage places including Stonehenge, Bolsover Castle, Derbyshire and the Wellington Arch in London. At the National Trust of Australia (Victoria) I led the classification of heritage places on the National Trust Register and the development of responses to heritage and planning permit applications.
- [4] In my role as the Director, Strategy and Policy and then as the Executive Director at Heritage Victoria I developed and implemented heritage policy and guidance to assist in the interpretation of the provisions of the *Heritage Act 1995* including in relation to: the assessment of 'reasonable or economic use' under s73(1)(b) of the Heritage Act; *Victoria's Framework of Historical Themes*; *The Victorian Heritage Register Criteria and Threshold Guidelines*; and the *Victorian Government Cultural Heritage Asset Management Principles*. I previously Chaired the Royal Exhibition Building and Carlton Gardens World Heritage Steering Committee and have been a member of the Heritage Chairs and Officials of Australia and New Zealand. From 2012-15 I held the position of Executive Director, Statutory Planning and Heritage in the Victorian State Government where I administered the *Environment Effects Act 1978* (Vic) and advised the Minister for Planning on planning scheme amendments and permit decision making under the *Planning and Environment Act 1987* (Vic).
- [5] As an independent heritage consultant, I advise on the heritage assessment of, and management and works to, heritage places including private dwellings, places of worship, institutional and commercial buildings, and industrial properties. I advise local and State Governments on statutory planning approvals and strategic planning matters related to heritage, and have undertaken place-specific assessments as well as heritage studies for broader areas and precincts. I have experience and expertise in formulating and implementing policy and controls for heritage places.

1.3 Statement identifying the expert's areas of expertise to make this report

- [6] I am expert in the assessment of cultural heritage significance of historic heritage places, the administration of legislation to regulate and manage historic heritage places and objects, and in providing advice and preparing documentation to support conservation and redevelopment of heritage places.
- [7] As Executive Director, Heritage Victoria under the Heritage Act I have been the independent statutory decision-maker for heritage permits for works to heritage places and objects, and consents for the disturbance or excavation of historical archaeological sites.
- [8] As a consultant I have prepared numerous Heritage Impact Statements detailing the impact of proposed works upon places included on both the Victorian Heritage Register and the Heritage Overlay, and have provided independent peer review of development proposals on behalf of local planning authorities.
- [9] I have provided expert evidence to VCAT, Planning Panels Victoria, Independent Planning Commissioners (New Zealand) and the Heritage Council of Victoria under the instruction of private property owners, developers and local and State governments.

1.4 Statement identifying other significant contributors to the report

- [10] This report was prepared with the assistance of Ms Renae Jarman, Director of GJM Heritage. The views expressed in this report are my own.

1.5 The identity and qualifications of the person who carried out any tests or experiments upon which the expert relied in making the report

- [11] No tests or experiments were relied upon in making this report.

1.6 Relationship between the expert witness and the client

- [12] Outside of providing heritage advice on various matters there is no private or business relationship between myself and the City of Port Phillip (Council) beyond my role as expert advisor and expert witness in this matter.

1.7 Instructions

- [13] On 10 May 2022 I was instructed by Maria Marshall, Partner, Maddocks Lawyers in respect of this amendment. My instructions are replicated below:
- review the exhibited Amendment documentation;
 - prepare a statement of evidence and appear as an expert witness at the Panel Hearing, listed to commence on 6 June 2022. Your expert witness report should:
 - be prepared in accordance with the *Guide to Expert Evidence*;
 - not refer to any submitter by name (please use submission numbers);

- express your opinion on the Amendment insofar as it relates to your area of expertise. In particular, we ask that you consider the following proposed Clauses:
 - 02.03 – Strategic Directions (to the extent it relates to heritage);
 - 11.03-1L – Activity Centres (to the extent it relates to heritage);
 - 15.01-1L-02 – (Urban Design) (to the extent it relates to heritage);
 - 15.01-5L (Neighbourhood character) (to the extent it relates to heritage);
 - 15.03-1L – Heritage (both the exhibited and ‘Panel’ version);
 - Schedule to clause 43.01 (Heritage Overlay);
 and the following documents:
 - *Port Phillip Heritage Design Guidelines, Revised February 2021* (both the exhibited and ‘Panel’ version) (Heritage Design Guidelines);
 - *Update to Local Heritage Policy: Strategic Assessment Report* (June 2021);
 - *Fishermans Bend Estate Design Guidelines*; and
 - *Garden City Estate Design Guidelines*.
- express your opinion on the key issues, as relevant to your expertise, raised by submissions to the Amendment (see further information on this below) and the Council position in respect of those matters.

[14] On 16 May 2022 I was further instructed to express my opinion on the following:

- Schedule to Clause 59.15 ‘Local VicSmart Applications’; and
- Schedule to Clause 59.16 ‘Information Requirements and Decision Guidelines for Local VicSmart Applications’.

[15] Nine (9) submissions (including one late submission) were received in relation to Amendment C203port. Of these four (4) related to heritage with three (3) requesting specific changes to either the exhibited Clause 15.03-1L or the Heritage Design Guidelines. I have read and considered the submissions relating to heritage.

1.8 Site inspections

[16] No specific site inspections were undertaken in relation to the preparation of this evidence. However, having undertaken work for Council and private property owners within the City of Port Phillip, I am generally familiar with the

nature and extent of historic (non-Indigenous) heritage places within the municipality.

1.9 Reports and documents relied upon

[17] All documents relied upon are listed at Annexure I.

1.10 Statement identifying the role the Expert had in preparing or overseeing the exhibited report(s)

[18] Neither GJM Heritage nor myself specifically were involved in the preparation of the exhibited documentation.

1.11 Facts, matters and assumptions upon which statement proceeds

[19] It is assumed that all documents referred to in paragraphs 13 and 14 above and Annexure I are current and correct in the information they contain at the time of completion of this report.

1.12 Any questions falling outside the expert's expertise

[20] No questions in relation to the historic (non-Indigenous) heritage matters that have been raised fall outside my expertise.

[21] I have not had specific regard to the economic and social impacts of this Amendment, as the assessment of these impacts falls outside my area of expertise.

1.13 Summary opinion

[22] It is my view that:

- Amendment C203port appropriately considers and addresses heritage in the proposed updated planning scheme provisions;
- Minor updates are required to Clause 02.03 – Strategic Directions and Clause 15.01-1L-02 – Urban Design to ensure consistency with other planning provisions and guidance;
- Clause 15.03-1L – Heritage is a well-considered local policy that is consistent with good heritage practice. I consider that some further amendments to the policy are warranted to improve its application and to more clearly differentiate between the policy outcomes sought and the more detailed Heritage Design Guidelines;
- Amendments are required to the Schedule to Clause 43.01 – Heritage Overlay to ensure the application requirements are clearly defined and reasonable in the context of the relevant proposed development;
- Amendments are required to the Schedule to Clause 59.15 – Local VicSmart Applications to ensure applications that are considered under this clause are clearly defined and will not compromise heritage outcomes;
- Amendments are required to the Schedule to Clause 59.16 – Information Requirements and Decision Guidelines for Local VicSmart Applications to

ensure consistency with the classes of application specified under Clause 59.15;

- The Heritage Design Guidelines contain useful general information on heritage development matters and serve as a useful communication tool. They require minor amendment to ensure they are not applied as a further statutory layer for applications under the Heritage Overlay and to ensure illustrated examples included within the guidelines are appropriate; and
- The Fishermans Bend and Garden City Estate Guidelines are appropriate for providing guidance on appropriate heritage outcomes within HO2 – The Garden City Housing Estates.

1.14 Declaration

[23] I have made all the inquiries that I believe are desirable and appropriate. No matters of significance which I regard as relevant have to my knowledge been withheld from the Panel.

A handwritten signature in blue ink, appearing to read 'Jim Gardner', with a long horizontal flourish extending to the right.

Jim Gardner, Director - GJM Heritage

2. Background to Amendment C203

- [24] C203port proposes to update Council's local policies by replacing the Municipal Strategic Statement (MSS) at Clause 21 and local planning policies at Clause 22 with a Municipal Planning Strategy (MPS) and local policies within the Planning Policy Framework (PPF), consistent with the structure introduced by Amendment VC148. These changes to local policy and replacement of the existing MSS with a MPS affect the heritage provisions of the Port Phillip Planning Scheme amongst other matters.
- [25] Of relevance to this evidence, the Amendment:
- introduces a new MPS at Clause 02.00 of the Scheme;
 - introduces new and revised local policy content into the PPF at Clauses 11 and 15; and
 - amends the Schedule to Clause 43.01 (Heritage Overlay) to include application requirements;
 - replaces the Schedule to Clause 59.15 (Local VicSmart Applications) to include new classes of VicSmart application;
 - introduces a new Schedule to Clause 59.16 (Information requirements and decision guidelines for local VicSmart applications) for applications under a Heritage Overlay; and
 - introduces a new schedule to Clause 72.08 (Background Documents) comprising a list of background documents that informed the revised content of the scheme.
- [26] The Amendment, insofar as it relates to heritage, was informed by the following key documents which will be included in the new schedule to Clause 72.08 (Background Documents):
- Fishermans Bend Estate Guidelines (Revised February 2021)
 - Garden City Estate Guidelines (Revised February 2021)
 - Heritage Design Guidelines (Revised February 2021).
- [27] C203port was exhibited between 11 November and 17 December 2021 and nine (9) submissions (including one late submission) were received. Of these, four (4) address heritage matters.
- [28] On 2 March 2022, Council considered the submissions and resolved to refer all submissions to a Planning Panel.

3. Heritage Opinion: Exhibited and ‘Panel version’ of amendment documentation relevant to Amendment C203port

[29] The following opinion is organised by the relevant clause of the Municipal Planning Strategy (MPS) or Planning Policy Framework (PPF). My comments address the exhibited instrument first and then the ‘Panel version’.

3.1 MPS Clause 02.03 – Strategic Directions

[30] As exhibited, Clause 02.03 of the proposed MPS contains a number of strategic directions relevant to heritage.

[31] Under the heading ‘Activity centres’ reference is made to the “distinctiveness and diversity” of the municipality’s Activity Centres “which needs to be protected and reinforced”. This is supplemented by Council objectives for specific Activity Centres, which address heritage matters as relevant. It is my view that this content appropriately addresses the diverse heritage places and characteristics found throughout the municipality.

[32] The heading ‘Built environment and heritage’ appropriately summarises and describes the importance of heritage places and elements to the municipality and identifies that “*Protecting, revealing and embracing the valued heritage and character of the City is a priority for Port Phillip*”. The suite of Council objectives aimed at “*Protecting and conserving valued heritage places and precincts*” are sound and appropriate; however it is my view that – for consistency with the terminology used in Clause 43.01 ‘Heritage Overlay’ – this dot point should be reworded to read (note: green represents my recommended additional text, red strike-through represents my recommended deleted text):

- ~~Protecting and c~~Conserving *and enhancing* valued heritage places and precincts by:

...

3.2 PPF Clause 11.03-1L – Activity Centres

[33] The importance of heritage places within the context of Activity Centres is identified both in the strategies and the specific guidance provided in relation to specific Activity Centres. The three overarching strategies that address heritage read:

Intensify retail development within existing retail strips (Commercial 1 Zone), subject to heritage and character considerations.

Support development within activity centres that positively contributes to the built form character of the centre whilst conserving heritage buildings, and streetscapes, and the distinctive and valued character of the traditional retail strips.

Ensure that the heritage scale and form of buildings in the Bridport Street/Victoria Avenue, Albert Park; Armstrong Street, Middle Park; and Glen Eira Road, Ripponlea Neighbourhood Activity Centre, is respected.

[34] I support these overarching strategies and those that are proposed for the individual Activity Centres.

3.3 PPF Clause 15.01-1L-02 – Urban Design

[35] Clause 15.01-1L-02 – Urban Design includes a section on ‘Landmarks, view and vistas’ which, in my view, appropriately addresses heritage considerations in the context of important views, vistas and heritage settings.

[36] This clause also includes a section on ‘Building form’ which includes the strategy to support new development that *“Respects and enhances places with significant heritage, architectural, scientific and cultural significance”*. It is my view that this wording should be revised to ensure consistency with the heritage values articulated in *Planning Practice Note 1: Applying the Heritage Overlay* (August 2018) as follows:

- ~~Respects~~ *Conserves* and enhances places with ~~significant heritage, architectural, scientific and cultural significance~~ *historical, rarity, research potential, representative, aesthetic, technical, social or associative heritage significance.*

3.4 PPF Clause 15.01-5L – Neighbourhood Character

[37] The provisions of Clause 15.01-5L – ‘Neighbourhood character’ relate to land zoned Neighbourhood Residential, General Residential or Residential Growth. The strategies for the areas identified within the policy – while generally not specifically mentioning “heritage” – are considered to be appropriate for managing the identified character of each of these areas insofar as they relate to heritage places.

3.5 PPF Clause 15.03-1L – Heritage

[38] The current Clause 22.04 ‘Heritage policy’ is proposed to be replaced by Clause 15.03-1L ‘Heritage’. The new policy has been informed by the *C203port Supporting Document: Heritage Justification Report* and implements – in part – policy guidance contained within the updated Heritage Design Guidelines.

[39] In general terms, it is my view that the exhibited Clause 15.03-1L represents a sound and well-considered approach to guiding a consideration of permit applications for heritage places that is based on good heritage practice. However, it is also my view that a number of the strategies should be amended to improve the operation and application of the policy. Many of the amendments I recommend address matters raised in submissions received in respect of C203port (refer to Section 4 below). I note that the ‘Panel version’ of the policy makes two minor changes in response to submissions received, however it is my view that further changes are appropriate.

[40] I provide my recommended revisions in the marked-up version of Clause 15.03-1L at Annexure II.

[41] In particular I note that it is my view that aspects of the proposed Clause 15.03-1L, particularly the diagrams, are more appropriately included within the Heritage Design Guidelines as they demonstrate one or more ways in which a

policy outcome can be achieved rather than being the only way in which it is intended that a particular strategy should be achieved.

- [42] A key matter within the ‘Demolition and relocation’ policy relates to when the complete demolition of buildings may be contemplated. The proposed policy reads:

Discourage the complete demolition of any building or feature that contributes to the significance of a heritage place unless the building or feature is structurally unsound and the defects cannot be rectified.

- [43] In my view, the test of “...and the defects cannot be rectified” is too high as in practice almost any building defect can be rectified if unlimited resources are made available. This may be unreasonably onerous on property owners or result in such substantial reconstruction that the retained building is reduced to a facsimile. While the reconstruction of all or a substantial part of a heritage building can be justified in exceptional circumstances (as discussed elsewhere within Clause 15.03-1L) it should not be applied more generally to any building that is found to be ‘structurally unsound’. I therefore recommend that this provision be reworded to read:

Discourage the complete demolition of any building or feature that contributes to the significance of a heritage place unless the building or feature is structurally unsound and rectification is unreasonable on financial or heritage grounds.

3.6 Schedule to Clause 43.01 – Heritage Overlay

- [44] C203port proposes to include a number of Application Requirements under the Schedule to Clause 43.01. It is my view that the following revisions should be made in respect of these proposed requirements:

- The term “heritage place” should be amended, noting that this term would apply to the “Heritage Place” identified in the Schedule to the Heritage Overlay. In some circumstances this is an individual building or structure, but in others it is a heritage precinct. Given that the proposed application requirements include, for example, items required when proposing “full demolition of a heritage place”, these items would not be triggered if the application was to demolish an entire building within a heritage precinct as the whole precinct (the “heritage place”) is not being demolished. It is my view that “heritage place” should be changed to “heritage place, building or structure” throughout as relevant.
- I do not believe that a structural engineering report should be required for part-demolition applications as this would cover even minor demolition works and would be unreasonably onerous for many applicants. It is my view that this requirement should be removed from the second dot point and included under a separate point that is prefaced with: “For applications that propose full or substantial demolition of a heritage building or structure...”.

- The third dot point should be amended to qualify that this requirement is only necessary when ‘External paint controls’ are triggered in the Schedule to the Heritage Overlay.
- The fifth dot point should be less prescriptive as a scale of 1:20 might be less appropriate than 1:50, 1:10 or 1:5 depending on the nature of the proposed works to be communicated. Instead, I recommend that this dot point conclude with “...drawings prepared at a scale that clearly shows the proposed details.”
- Under the application requirements “For an addition to a heritage place or new development:”, the sight-line requirement at sub-dot point 4 should be amended to state “For additions, a sight-line diagram taken from natural eye-level on the opposite side of the street, directly in front of the subject property”.
- The fifth sub-dot point under “For an addition to a heritage place or new development:” should be removed as the intent or purpose of this requirement is unclear.
- The sixth sub-dot point under “For an addition to a heritage place or new development:” calls for three-dimensional renders or photomontages for additions to a heritage place or new development. This is considered to be unreasonably onerous for rear additions which are substantially or wholly concealed from public realm views. I therefore recommend that this requirement be qualified to only apply for new buildings or additions that will be visible from the public realm.
- Application requirements for trees (dot point 8) should be qualified such that they are triggered only where “Tree controls” are specified in the Schedule to the Heritage Overlay.
- It is my view that the requirement for a condition or structural assessment of the potential impacts on a monument or memorial from nearby development (dot point 9) may go beyond the relevant considerations under the *Planning and Environment Act 1987*. It is generally a matter for the *Building Act 1993* or a Construction Management Plan to ensure that new construction is conducted in such a way as to ensure adjacent buildings and structures are not structurally compromised.

3.7 Schedule to Clause 59.15 – Local VicSmart Applications

[45] C203port proposes that a small number of permit application classes triggered by the Heritage Overlay be dealt with under the VicSmart process.

[46] I have some concerns at the inclusion of the following classes of application, particularly in the absence of a clear definition of “alter” or “works normal to a dwelling”, or the lack of specificity on the nature of the alterations/works to be contemplated under this Clause:

- *Externally alter a building if the alterations are located to the rear or side of the building and are not visible from the street (other than a lane) or public park.*

- *Externally alter a roof, if the alterations are not visible from a street (other than a lane) or public park.*
- *Construct or carry out works normal to a dwelling, including accessways, pedestrian paths or similar.*

[47] It is my view that the lack of notice and review rights for the potential scope of changes, in addition to the quick turn-around in decision-making, may lead to poor heritage outcomes, particularly for highly intact heritage places and therefore these classes of application should be removed from Clause 59.15.

[48] I note that while it may be possible to amend these classes to:

- *Minor external alteration of a building...*
- *Minor external alteration of a roof...*
- *Construct or carry out minor works...*

it is not clear what the threshold for “minor” works is, who decides that threshold and at what point in the application process. Given the specificity of the classes of VicSmart application included in the Heritage Overlay at Clause 43.01-1, it is my view that the classes proposed in C203port – even with a “minor works” clarification – may be too loosely defined to be of utility.

[49] It is my view that the following “Class of Application” should be refined (as amended below) to ensure that the removal of heritage signs goes through a thorough permit process, whether or not they are located on a significant or contributory graded building (note: green represents my recommended additional text, red strike-through represents my recommended deleted text):

- *Demolition of removal of a non-original or non-heritage sign, ~~unless the land is identified as a Significant heritage place in the incorporated document in the Schedule to Clause 72.04 ‘City of Port Phillip Heritage Policy Map’ (Version 35, March 2021).~~*

[50] It is my understanding that the following class of application is already exempt from requiring a permit under Clause 43.01 ‘Heritage Overlay’:

- *Externally alter a roof where the alterations are visible from a street (other than a lane) or public park and are undertaken to the same details, specifications and materials.*

By virtue of the following instance of when a permit is required (43.01-1):

- *Carry out works, repairs and routine maintenance which change the appearance of a heritage place or which are not undertaken to the same details, specifications and materials*

If, however, the intent of this class of application is to allow alterations to the form (i.e. the pitch, type [gable, hipped, skillion, gambrel etc.] and materials) of a roof as a VicSmart application then the lack of notice and review rights, in addition to the quick turn-around in decision-making, may lead to poor heritage outcomes.

3.8 Schedule 1 to Clause 59.16 ‘Information Requirements and Decision Guidelines for Local VicSmart Applications (Applications under Heritage Overlay)’

[51] It is my view that the ‘Information requirements’ and ‘Decision guidelines’ specified require tailoring to the application classes proposed for Clause 59.15. For example, no full-building demolition, new buildings or new signs are contemplated for consideration under the VicSmart process and therefore, plans for “any buildings to be demolished”, “elevations of proposed buildings” or “size and design of any proposed sign” should not be necessary.

3.9 Background Documentation

3.9.1 Heritage Design Guidelines

[52] It is my view that the Heritage Design Guidelines contain useful general information on heritage development matters and serve as a valuable communication tool as to how the strategies within the Heritage Policy can be achieved. They are therefore appropriately proposed to be included as a Background Document to the scheme. However, it is my view that the introduction to the Heritage Design Guidelines should be amended to be clear that they are intended to assist in a further understanding of the Heritage Policy rather than being another statutory tool to be complied with. In this regard I note that at page 5 of the Guidelines under “4. Prepare an application” it states:

*Once an approach has been agreed to, prepare your proposal and application (for) your detailed plan and submit an application. The application should demonstrate how the proposal has responded to the Heritage Policy, Heritage **and these guidelines** (emphasis added).*

[53] Amended recommended wording is provided in Annexure III under the headings “How to use the Guidelines” (page 4) and “4. Prepare an application” (page 5).

[54] It is also my view that two specific examples within the Heritage Design Guidelines should be amended.

[55] In relation to facadism, Case Study 1 – provided at page 18 – draws on an example from the Spitalfields area of London. While I agree this is an egregious example of retaining only the façade of a listed building, using such an extreme example and one from the United Kingdom reduces its usefulness as guidance in my view. It would be more informative to include an example from within the Melbourne Metropolitan area. For example, developments within the City of Yarra that demonstrate the concept of facadism include (amongst others):

- Woolworths Supermarket, 255 Smith Street, Fitzroy
- District Apartments, 160 Argyle Street, Fitzroy
- 332 Rae Street, Fitzroy North.

[56] Further, the example of “lightweight material and simple details...” provided at Photograph 12 (page 38) is, in my view, a poor heritage outcome that visually dominates the Edwardian-era factory building at 9-11 Cremorne Street, Richmond. As this photograph is intended to illustrate a good heritage

outcome, I recommend an example from within the City of Port Phillip be used to showcase positive heritage outcomes within the municipality.

- [57] Such an example might be drawn from the City of Port Phillip Design and Development Awards or - more broadly - from the Victorian Chapter of the Australian Institute of Architects (AIA) Awards. Examples that could be used within the Heritage Design Guidelines include, amongst others:
- Albert Park College Environmental Arts Hub by Six Degrees Architects (City of Port Phillip Design and Development Award Winner 2018)
 - La Mama Theatre Rebuilt, Faraday Street, Carlton by Meg White Architect with Cottee Parker (shortlisted Victorian Chapter AIA Awards 2022).

3.9.2 Fishermans Bend Estate and Garden City Design Guidelines

- [58] Collectively, the Fishermans Bend Estate Guidelines and the Garden City Estate Guidelines (both revised Feb 2021) cover the land subject to HO2 – The Garden City Housing Estates. These documents provide comprehensive guidance to property owners and provide advice that would greatly assist the Council in exercising discretion in relation to planning permit applications triggered under Clause 43.01-1 of the Port Phillip Planning Scheme.
- [59] Recognising that is it beyond the scope of C203port, I recommend that consideration be given to including these design guidelines within the Schedule to the Heritage Overlay for HO2 – The Garden City Housing Estates as part of a future planning scheme amendment.

4. Opinion in relation to submissions

[61] I have been instructed to provide an opinion on the key heritage-related issues raised by submissions to C203port and the post-exhibition changes made in response to those submission.

[62] The following table summarises the key heritage issues or change requested and provides a response to each (note: recommended additional wording is in green and recommended deleted text is in ~~red strikethrough~~):

Submitter No.	Key Issue / Change Requested	Recommended Response
2	Submitter 2 does not seek any specific changes to the proposed documentation.	No change
5	Include 'Policy Basis' referencing the Burra Charter, findings of the Heritage Council and Clause 43.01.	These matters are addressed in Clause 15.03-1S and should not be duplicated.
	Include Application Requirements	These are proposed to be included at the Schedule to Clause 43.01-1 and should not be duplicated.
	Include a number of additional general strategies (requested to be renamed 'policies')	<p>A number of the requested additional strategies relate to heritage assessment, recording and permit process matters that fall outside the scope of Clause 15.03-1L (which is to guide the exercise of discretion when assessing a permit application for works within the Heritage Overlay).</p> <p>I agree that the following strategy should be updated as follows to ensure that contemporary design responses apply to new development only:</p> <p style="text-align: center;"><i>Encourage high quality, contemporary design responses for new development that respects and complements the heritage place by using a contextual approach that:</i></p> <p style="text-align: center;">...</p> <p>I also agree that the following strategy requires refinement to clearly communicate its intent:</p> <p style="text-align: center;"><i>Avoid development that would result in the incremental or complete loss of significance of a heritage place by:</i></p> <p style="text-align: center;">...</p> <ul style="list-style-type: none"> • <i>Distorting or obscuring the significance of the heritage place or detracting from its interpretation and appreciation by copying using historic styles in and detail where these previously did not exist.</i> <p>In this regard, copying historic styles and details may be appropriate in reconstruction and other conservation works, but not for new development.</p>

	<p>Include a number of additional strategies under ‘Demolition and relocation’.</p>	<p>A number of the requested additional strategies are application requirements which are dealt with under the Schedule to Clause 43.01-1 and should not be replicated. The submitter also requests inclusion of a strategy for ‘demolition by neglect’; however, Clause 15.03-1L is only triggered where a permit application has been made. As noted by the submitter, demolition by neglect is more appropriately dealt with under a Local Law.</p> <p>I agree with the following change in respect of when demolition can be supported:</p> <p style="text-align: center;"><i>It will remove an addition or accretion that detracts from the significance of the place.</i></p> <p>In respect of relocation, many of the additional requested strategies are either application requirements or are actions that should be applied as a condition of permit to relocate. I do agree that some consideration also needs to be given to the proposed new location to ensure it is appropriate and that the structure does not remain “in storage” for an indeterminate period of time. I therefore recommend the following change:</p> <p style="text-align: center;"><i>Avoid the relocation of a building or feature that contributes to the significance of a heritage place unless a suitable new location is secured and either: ...</i></p>
	<p>Include a number of additional or revised strategies under ‘Conservation’</p>	<p>I agree with the request to expand the second strategy to include reinstatement of lost features, as follows (and noting that “like-for-like” replacement wouldn’t trigger a planning permit):</p> <p style="text-align: center;"><i>Encourage accurate (‘like for like’) replacement or reinstatement of features, details, materials or finishes that contribute to the significance of heritage places if they are damaged and cannot be repaired or are missing.</i></p> <p>It is noted that the submitter is concerned about reconstruction and it is agreed that this approach should only be utilised in particular circumstances. Nonetheless, it can be an appropriate conservation outcome. The following refinement of the circumstances in which reconstruction could be supported is recommended:</p> <p style="text-align: center;"><i>The building forms part of a row, terrace or group that have a degree of uniformity that should be maintained and can be replicated.</i></p> <p style="text-align: center;">...</p> <p style="text-align: center;"><i>The building or feature is a landmark or contributes to an important view or vista and there is strong community attachment to the building or feature.</i></p> <p>I consider that other requested changes or inclusions are either already appropriately addressed in the proposed policy or can be dealt with by a condition of permit.</p>
	<p>Include a number of additional or revised strategies under ‘Alterations’ and ‘Additions’,</p>	<p>It is agreed that the framing of the proposed strategies relates predominantly to a residential built form typology. It is therefore</p>

	<p>including combining the two sections and noting that the proposed strategies relate to residential building typologies only.</p>	<p>recommended that the following strategies be included in respect of additions to commercial and industrial buildings:</p> <p><i>Support additions to commercial and industrial buildings that are set back a minimum depth of the primary roof form (commercial) or two structural bays (industrial) to retain original or early fabric including the principal façade/s and roof features, and which:</i></p> <ul style="list-style-type: none"> • <i>respect the scale and massing of the existing heritage building or streetscape; and</i> • <i>maintain the prominence of the heritage features of the building or streetscape and do not detract from, or overwhelm, the heritage building or streetscape; and</i> • <i>are visually recessive against the heritage fabric.</i> <p>The submitter requests a number of changes that effectively qualify or provide further guidance on the setback and visibility of new additions. In my opinion this highlights the limitations of a sight-line or angular plane approach for determining the location of new development. It is my view that retention of a depth of heritage fabric is a preferable outcome over facilitating new development within a sight-line that – at worst – retains only the facade as a fixed element. I therefore recommend that the first strategy be amended as follows:</p> <p><i>Support additions to residential buildings that are:</i></p> <ul style="list-style-type: none"> • <i>Set back a minimum depth of two rooms to retain original or early fabric including the principal façade and primary roof form; and</i> • <i>Respectful of the scale and massing of the heritage place; and</i> • <i>Visually recessive against the heritage fabric; and</i> • <i>fully or substantially concealed when viewed at natural eye-level from the opposite side of the street if the associated building is within a heritage streetscape with a consistent scale or is a Significant place.</i> • <i>Partially concealed if the associated building is within a heritage streetscape with a diverse scale and is not a Significant place.</i> <p>The terms ‘fully’, ‘substantially’ and ‘partially’ concealed are not defined and it is my view that different levels of visibility or concealment should not be based on the grading of individual buildings</p> <p>Further, I note that setting new development back behind the front two rooms is consistent with the ‘Demolition’ guidance contained within the Heritage Design Guidelines.</p> <p>While consistent with the existing Heritage Policy, the 10 degree and 18 degree angular plane diagrams do not appear to be based</p>
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		<p>on a particular visibility (or concealment) outcome such as a natural eye-level view from the opposite side of the street or oblique views from within the heritage precinct. The diagrams included within Clause 15.03-1L should, in my view, be removed and included within the Heritage Design Guidelines to demonstrate one way of achieving “substantial concealment” along with a diagram that reflects a view/sight-line taken from the opposite footpath at natural eye level.</p> <p>I agree that the inclusion of the following strategy relating to when “alternative approaches to additions” can be supported is highly problematic and, like Submitter 5, I recommend its deletion:</p> <p>The heritage place is situated on a site where a different built form is encouraged by other provisions in the planning scheme.</p> <p>It is my view that this strategy may result in heritage buildings in a zone that encourages higher density development (such as the ACZ, C1Z, C2Z, or MUZ) being heavily comprised by larger scale new development. The balancing of competing planning objectives is a matter for Clause 71.02-3 (Integrated decision making), not the proposed Heritage Policy.</p> <p>Other strategies requested by the submitter are effectively covered under the ‘General’ (or other) strategies and do not need to be replicated.</p>
	<p>Include additional strategies under the headings of ‘Interiors’, ‘Colour controls’ and ‘Adaptation of heritage buildings to new uses’.</p>	<p>Paint colour schemes are appropriately considered under ‘Conservation’ with the following qualifier to ensure it is clear to applicants that the consideration only applies when External Paint Controls are triggered in the Schedule to the Heritage Overlay:</p> <p><i>Conserve original colour schemes and Ensure new colour schemes are appropriate to the architectural style of the building where external paint controls are triggered. and Discourage the painting of originally unpainted surfaces.</i></p> <p>Internal controls apply to a relatively small number of places in the Heritage Overlay within the City of Port Phillip and the heritage place type varies considerably from industrial buildings, to civic and religious buildings, hotels and private residences. Given the specific nature of each of these interiors it is difficult to establish general policy. Ideally site-specific Heritage Design Guidelines incorporated under Clause 43.01-6 would be prepared for these places, but this is beyond the scope of this Amendment. I therefore do not recommend that policies for interiors be included within Clause 15.03-1L.</p> <p>The requested strategies for the adaptation of heritage buildings essentially replicates strategies provided in other parts of the policy and I do not consider it to be useful to replicate those under a separate heading.</p>
	<p>Include additional or revised strategies under ‘New Buildings’.</p>	<p>I agree that the intactness of a streetscape or setting should not be a pre-condition for whether a new building should respect and</p>

		<p>complement adjacent heritage buildings. I therefore recommend that the first strategy be amended as follows:</p> <p><i>Support new buildings that respect and complement Significant and Contributory buildings in relation to form, scale, massing, siting, details and materiality in a consistent streetscape, or where the setting of the heritage place is intact.</i></p> <p>I also agree that the following strategy should be deleted for the reasons discussed under ‘Alterations’ and ‘Additions’ above:</p> <p><i>The heritage place is situated on a site where a different built form is encouraged by other provisions in the planning scheme</i></p> <p>I do not agree with the submitter that new buildings need to be “submissive in scale and character”, nor do I agree that new built form should be of an “innovative contemporary design”. In my view, a contextual design response that is respectful and complementary to surrounding heritage fabric can be equally appropriate, as set out in the proposed policy.</p> <p>I do not believe it is necessary to include a strategy discouraging the design of new buildings that threaten the structural viability of heritage buildings. It is a matter for the <i>Building Act 1993</i> or a Construction Management Plan prepared as a condition of the planning permit to ensure that new construction is conducted in such a way as to ensure adjacent buildings or structures are not structurally compromised.</p>
	<p>Include additional or revised strategies under ‘Car Parking’.</p>	<p>It is my view that new built form associated with car parking (i.e. garages and carports) would be appropriately considered under “Additions”. Re-naming the strategy heading as “Vehicle Access” may avoid confusion.</p> <p>I agree that some allowance needs to be made for circumstances where vehicle access is part of the historic fabric of the place (for example, motor garages or loop driveways for grand mansions). I therefore recommend amending the first strategy as follows:</p> <p><i>Discourage vehicle crossovers and driveways at the front of a Significant heritage place or any property within a heritage precinct where vehicle access was not historically provided for.</i></p> <p>I don’t believe there is a need for inclusion of additional strategies to address basement parking or car stackers. The principles set out in proposed Clause 15.03-1L are also appropriate for addressing these types of development considerations.</p>
	<p>Include additional or revised strategies under ‘Fencing’.</p>	<p>The requested conservation and reconstruction strategies are considered to be adequately captured under ‘Conservation’ in the proposed Clause 15.03-1L and do not require replication here.</p> <p>I agree that some revision to the third strategy is required to ensure consistency of fence type does not take precedence over good heritage outcomes, as follows:</p> <p><i>Encourage a consistent approach to new fences for heritage places that form part of a related group of buildings such</i></p>

		<p><i>as an attached pair or terrace row or houses, including reconstruction of historic fences if applicable forming part of a consistent streetscape.</i></p> <p>I do not believe that further strategies specifically discouraging tall and opaque fences are required as the strategies implicitly discourage these responses.</p>
	Include additional or revised strategies under 'Signage'.	<p>I do not believe that further amendment of the proposed signage strategies is necessary to capture the intent of the requested changes. It is noted that, through the requested changes, the submitter implies that some discouraged signage types may be historically appropriate for a place, and I agree with this sentiment. I therefore recommend the following amendment to the fourth strategy:</p> <p><i>Avoid the following types of signs unless consistent with the significance of the place:</i></p>
	Include additional or revised strategies under 'Significant Trees and Gardens'.	<p>The majority of the requested strategies go beyond the exercise of discretion provided for under the Heritage Overlay, especially in terms of tree removal under a Local Law, strategies around gardens, compliance with Australian Standards and encouraging archaeological investigations. Their inclusion in Clause 15.03-1L is not appropriate.</p> <p>I do agree that the second strategy should be clarified to refer to a tree identified in the Schedule to the Heritage Overlay as follows:</p> <p><i>Ensure that development, or changes in immediate environmental conditions, adjacent to a tree identified in the Schedule to the Heritage Overlay will not have a detrimental impact upon the integrity and condition of the tree.</i></p>
	Include new strategies in respect of 'Roof Terraces and Roof Gardens'	<p>I agree that roof terraces/decks/gardens are becoming increasingly prominent and can be problematic for heritage buildings if not sited appropriately. I therefore recommend the inclusion of the following strategies:</p> <p><i>Roof terraces and roof decks</i></p> <p><i>Encourage roof terrace and roof decks to be sited so that they are concealed when viewed from the street and, when on a corner, from the side street (excluding a laneway).</i></p> <p><i>Ensure that roof terraces and roof decks are set back from chimney, parapets and other roof features (for example roof lanterns).</i></p>
	Include additional or revised strategies under 'Sustainability and services'.	<p>I do not believe that further amendment of the proposed strategies is necessary to capture the intent of the requested changes.</p>
	Include additional or revised strategies under 'Subdivision'.	<p>I do not believe that further amendment of the proposed strategies is necessary to capture the intent of the requested changes.</p>

	Include additional or revised strategies under 'Public realm and infrastructure'.	The requested strategies go beyond the exercise of discretion provided for under the Heritage Overlay or are more appropriately contained within other planning scheme provisions.
	Include 'Definitions'	Consistent with the Ministerial Direction on the Form and Content of Planning Schemes, definitions should not be included within Clause 15.03-1L. These could be included in an expanded Attachment 1 to the Heritage Design Guidelines which includes a number of definitions.
5, 6	Requests changes to the 'Demolition', 'Relocation' and 'Additions' guidelines	<p>The submitters refer to guidance that is contained within the Heritage Design Guidelines but which has not been translated directly into proposed Clause 15.03-1L. It is considered that the strategies within proposed Clause 15.03-1L are sound to guide decision-making in respect of demolition and relocation.</p> <p>I note that the 'Demolition' guidance within the Heritage Design Guidelines for 'Contributory' buildings within a precinct refers to the retention "of the building to the depth of at least the front two rooms". It is my view that this guidance should be included under the 'Additions' sub-heading (as discussed above), so that in combination with the 'Demolition' strategies, an appropriate outcome for new built form in the heritage context is provided.</p> <p>I also agree that the strategies, as proposed, apply generally to a residential rather than commercial or industrial context. In response, I recommend the following inclusion under 'Additions':</p> <p><i>Support additions to commercial and industrial buildings that are set back a minimum depth of the primary roof form (commercial) or two structural bays (industrial) to retain original or early fabric including the principal façade/s and roof features, and which:</i></p> <ul style="list-style-type: none"> • <i>respect the scale and massing of the existing heritage building or streetscape; and.</i> • <i>maintain the prominence of the heritage features of the building or streetscape and does not detract from, or visually dominate, the heritage building or streetscape; and</i> • <i>are visually recessive against the heritage fabric.</i>
6, 8	Submitters 6 & 8 note that the example at Photo 12 on page 38 of the Heritage Design Guidelines is a poor example in respect of demonstrating additions in a commercial heritage context.	I agree that the example shown at Photo 12 is a sub-optimal heritage outcome for the heritage building and that it does not clearly illustrate the intention of the strategies contained within Clause 15.03-1L, particularly in respect of avoiding facadism. I recommend that Photo 12 be removed from the Heritage Design Guidelines and replaced with an example of a better heritage outcome.
8	Requests strengthening demolition policies, particularly to address demolition by neglect and facadism, as well as the relocation policies.	As per Submission 6, the submitter refers to guidance that is contained within the Heritage Design Guidelines but which has not been translated directly into proposed Clause 15.03-1L. It is considered that the strategies within proposed Clause 15.03-1L are sound to guide decision-making in respect of demolition and relocation.

		<p>Further, I note that facadism is explicitly discouraged under the heading 'Demolition and relocation', which reads:</p> <p><i>Avoid demolition where it would result in the retention of only the façade and/or external walls of a Significant or Contributory building.</i></p>
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5. Conclusion

[63] It is my view that Amendment C203port appropriately considers and addresses heritage in the proposed updated planning scheme provisions, subject to the following:

- Clause 02.03 'Strategic Directions' be amended in accordance with my evidence at Section 3.1;
- Clause 15.01-1L-02 'Urban Design' be amended in accordance with my evidence at Section 3.3;
- Clause 15.03-1L 'Heritage' be amended as per the revised policy at Annexure II;
- The application requirements under the Schedule to Clause 43.01 be amended in accordance with my evidence at Section 3.6;
- Clause 59.15 'Local VicSmart Applications' be amended in accordance with my evidence at Section 3.7;
- Clause 59.16 be updated to reflect the classes of application contained within Clause 59.15; and
- The *Port Phillip Heritage Design Guidelines 2021* be amended as per the revised text provided at Annexure III and with new examples to illustrate 'facadism' (Case Study 1) and 'Commercial and retail additions' (Photo 12).

ANNEXURE I – Documents relied upon in the preparation of evidence

The documents I have relied upon in the preparation of my evidence are:

- Explanatory Report
- Instruction Sheet
- Clause 02.03 – Strategic Directions
- Clause 11.03-1L – Activity Centres
- Clause 15.01-1L-02 – Urban Design
- Clause 15.01-5L – Neighbourhood Character
- Clause 15.03-1L – Heritage (as exhibited and the Panel version)
- Clause 43.01 – Heritage Overlay
- Schedule to Clause 43.01 – Heritage Overlay
- Schedule to Clause 59.15 – Local VicSmart Applications
- Schedule to Clause 59.16 – Information Requirements and Decision Guidelines for Local VicSmart Applications
- *Port Phillip Heritage Design Guidelines, Revised February 2021* (as exhibited and the Panel version)
- *Fishermans Bend Estate Heritage Design Guidelines, Revised February 2021*
- *Garden City Estate Heritage Design Guidelines, Revised February 2021*
- *Update to Local Heritage Policy: Strategic Assessment Report* (June 2021)
- Submissions received as a result of exhibition of C203port
- *The Australia ICOMOS Charter for Places of Cultural Significance* ('The Burra Charter'), 2013
- Ordinary Meeting of Council – Minutes and Agenda (containing Officer Report) (7 July 2021)
- Ordinary Meeting of Council – Minutes and Agenda (containing Officer Report and all attachments) (2 May 2022)
- Memorandum of Advice: Planning Scheme Amendment C2203port: Heritage Opinion (GJM Heritage, 9 May 2022)
- Planning Practice Note 1: *Applying the Heritage Overlay* (August 2018)
- Planning Practice Note 13: *Incorporated and Background Documents* (March 2020)
- *A Practitioner's Guide to Victorian Planning Schemes* (Version 1.4), Department of Environment, Land, Water and Planning (April 2020)
- Planning Panels Victoria: *Guide to Expert Evidence*.

ANNEXURE II – Clause 15.03-1L – Heritage (Panel version with my recommended changes tracked)

ANNEXURE III – Port Phillip Heritage Design Guidelines (Panel version with my recommended changes tracked) pages 1-5.