

## Attachment 2 – Amendment C132 Process

### 1.1 Authorisation

At the Ordinary Meeting of Council on 24 May 2016, Council resolved to request authorisation from the Minister for Planning to prepare and exhibit an Amendment to the Port Phillip Planning Scheme, pursuant to Section 8A(3) of the *Planning and Environment Act 1987* to apply a permanent Heritage Overlay and associated controls to No. 26 Stokes Street, Port Melbourne.

Authorisation from the Minister for Planning was received on 29 August 2016.

Amendment C127 (interim controls) was gazetted on 3 November 2016. The interim controls expire on 30 September 2017.

### 1.2 Exhibition process

Amendment C132 was placed on public exhibition between 3 October and 7 November 2016, in accordance with the requirements of section 19 of the *Planning and Environment Act 1987*.

Exhibition of the Amendment involved:

- Direct notification (letter) to owners and occupiers of nearby properties. This comprised 378 property owners/occupiers. Enclosed with the letter was a formal Notice of Amendment.
- Direct notification (letter) to prescribed Ministers, local members of parliament, community groups, historical societies, the National Trust, the City of Melbourne, relevant government agencies, and infrastructure providers.
- Public Notices - in the Port Phillip Leader on 4 October (in the 'Public Notices' section) and the Government Gazetted on 6 October 2016.
- Availability of Amendment documentation and supporting information on Council's website. Amendment documentation was also provided on the State Government's Planning Amendments Online website.
- Display of information folders at Council ASSIST centres and libraries in Port Melbourne and St Kilda.

### 1.3 Submissions received

Seven (7) written submissions were received during the exhibition period that concluded on 7 November 2016. A summary of written submissions received is included in Attachment 2.

Six of the seven submissions expressed support for the Amendment from owners of nearby properties. The submissions were supportive of the permanent heritage overlay due to the building's architectural significance, high degree of integrity and good condition.

One submission (received from the property owner) did not support the Amendment on the basis of the proposed application of the heritage control to the subject site. This submission contended that the subject site at 26 Stokes Street is not of significance and raised a number of issues outlined in the table below.

Key issue raised in submission	Outline of Recommended Officer Response
The site has never warranted heritage controls in the past despite multiple assessments.	The methodology for Council's Urban Design and Heritage Advisor's assessment accords with the Burra Charter and Heritage Victoria

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	<p>guidelines (which include clear 'criterion' for determining significance – Heritage Convention (HERCON) Criterion).</p> <p>Furthermore, Amendment C132 complies with the VPP Practice Note - <i>Applying the Heritage Overlay</i>.</p> <p>The fact that the site has not been considered suitable for inclusion in a Heritage Overlay until now does not mean it must remain so. Any property which is found to satisfy the HERCON criterion may have heritage controls applied to it.</p>
<p>The site lacks adequate heritage significance to warrant heritage controls.</p>	<p>Council's Urban Design and Heritage Advisor has determined that the building is of local heritage significance.</p> <p>The assessment of Council's Urban Design and Heritage Advisor recommends that 26 Stokes Street be included in a heritage overlay based on the relevant criterion as described above.</p> <p>The submission does not provide evidence which is contrary to Council's Urban Design and Heritage Advisor's assessment or identifies reasons why the building is not significant.</p>
<p>Due diligence prior to purchasing the property indicated demolition would be acceptable to Council</p>	<p>Any discussions or assurances given prior to the amendment process do not affect the merits of applying a heritage overlay.</p> <p>Council's role as a Planning Authority is to identify and protect places of heritage significance and in doing so to ensure appropriate heritage controls and information/evidence is available to inform future decisions on development applications.</p>
<p>The decision to apply heritage controls to the site occurred as a response to objections to the planning permit application.</p>	<p>The manner in which a site is discovered to have heritage significance is immaterial to the validity of its significance.</p>
<p>Effect of heritage controls on the development potential of the site</p>	<p>A Heritage Overlay does not prevent development but rather ensures that heritage matters are considered at the planning permit stage, with the intent to retain and reuse significant heritage fabric.</p> <p>Council's Heritage Policy does provide scope for partial demolition of significant and contributory buildings. This is typically supported where it would not affect the significance of the heritage place and the proposed development is deemed to be sympathetic.</p> <p>Previous Panels have consistently found that the economic impacts and impacts on development potential are not relevant to assessing significance or the application of controls, but rather are management considerations following this process (ie at the permit stage).</p>
<p>Financial and economic impacts of heritage controls / Loss of Property Value</p>	<p>Heritage controls are one of many factors which affect land values.</p> <p>It has been well established by previous Panels that impacts on property values are not a relevant consideration in the decision to apply heritage controls.</p> <p>Recent Panel findings, in the context of recent changes to the Planning and Environment Act 1987 that the social and economic impacts of an amendment must be considered, have determined that:</p> <p>Social or economic effects refer to community-wide impacts and not personal or internal project related issues.</p> <p>It is not sufficient to demonstrate that there has been a 'loss of expectations' or to 'anticipate rejection of a future permit application'.</p>

### 1.4 Council response to exhibition

At its Ordinary Council Meeting on 13 December 2016, Council considered all written and verbal submissions made to Amendment C132 to the Port Phillip Planning Scheme. No changes were proposed to Amendment C132 in response to the submissions.

Council resolved to refer Amendment C132 to an independent Planning Panel for review. Council also endorsed the recommended officer response to issues raised by submissions as the basis for Council's submission to the Panel.

### 1.5 Panel hearing

A Planning Panel Hearing was held on 31 March 2017, with a single member Panel.

Council presented its submission with representation by Teresa Biscucci of Best Hooper. Peter Andrew Barrett was called on to make an independent expert witness statement.

The landowner of 26 Stokes Street made a submission to Panel opposing the Amendment on the basis that the building does not warrant the land being included under the Heritage Overlay. The landowner as represented by Nicholas Crawford of TP Legal, with Bryce Raworth called on to make an expert witness statement.

A member of the community also made a submission to the Panel in support of the Amendment.

The written report of Panel was received on 21 April 2017 and found that sufficient justification exists to permanently apply the Heritage Overlay to 26 Stokes Street, Port Melbourne. The Panel recommends approving the amendment as exhibited, subject to amendments to the citation:

- Delete the reference to Criterion A (historical significance)
- More definitively describe why the dwelling meets Criterion D (representativeness)
- Add that the dwelling meets Criterion E (aesthetic significance) and describe elements on the dwelling which contribute to its Italianate character that should be conserved.

The Panel report is at Attachment 3.