



- 8.5** **AMENDMENT C143 - 19 SALMON STREET AND 299 WILLIAMSTOWN ROAD, PORT MELBOURNE - CONSIDERATION OF SUBMISSIONS**
- WARD:** **GATEWAY**
- GENERAL MANAGER:** **CLAIRE FERRES MILES, PLACE STRATEGY & DEVELOPMENT**
- PREPARED BY:** **KELLY WHITE, STRATEGIC PLANNER**
- TRIM FILE NO:** **66/02/260**
- ATTACHMENTS:**
- 1. Port Phillip C143 PPHR Citation No. 2366 (extract)**
  - 2. Summary of Individual Written Submissions**
  - 3. Responses to submissions**

**PURPOSE**

- To consider written and verbal submissions received to Amendment C143 to the Port Phillip Planning Scheme during the public exhibition stage.
- To determine whether to request the Minister for Planning to appoint an independent Planning Panel to consider submissions and the amendment.
- To consider endorsing a response to issues raised in submissions, which will form the basis of Council's position at the Panel hearing.

**I. RECOMMENDATION**

That Council:

- 1.1 Receives and considers all written and verbal submissions made to Amendment C143 to the Port Phillip Planning Scheme.
- 1.2 Requests the Minister for Planning appoint an independent Planning Panel to review the submissions received to Amendment C143, in accordance with Part 8 of the *Planning and Environment Act 1987*.
- 1.3 Refers all submissions to the Panel to be appointed by the Minister for Planning, including any late submissions.
- 1.4 Endorses the recommended officer response to issues raised by submissions as the basis for Council's submission to the Panel ([Attachment 3](#)).
- 1.5 Writes to all submitters to inform them of Council's decision to proceed to the Panel stage.



## 2. BACKGROUND

- 2.1. On 13 December 2016, Council resolved to:
- Request the Minister for Planning to authorise the exhibition of a new planning scheme amendment, Amendment C143 to the Port Phillip Planning Scheme specifically to implement Heritage Overlay 472 (HO472) for properties at 19 Salmon Street (Lot S2 and S3 on P728869) and 299 Williamstown Road, Port Melbourne (Lot 6 on PS617506C) which are proposed to be removed from Amendment C117.
  - Request the Minister to reduce the extent of notice required for the exhibition of the amendment to owners and occupiers affected by the amendment, Prescribed Ministers and other parties who submitted to Amendment C117 on the overlay pursuant to s20(2) of the Planning and Environment Act 1987.
  - Place Amendment C143 on exhibition in accordance with the Planning and Environment Act 1987, subject to Ministerial Authorisation.

### Background to heritage controls in Fishermans Bend

- 2.2. Fishermans Bend contains a mix of nineteenth and early twentieth century low scale residential, commercial and industrial development, including some early historic sites related to the growth of Melbourne's port and earliest work suburbs.
- 2.3. The Port Phillip Planning Scheme (prior to the introduction of interim heritage controls for some properties) includes Heritage Overlays on 25 individual properties, and three precinct-based Heritage Overlays (that covered a further 33 properties) within the Fishermans Bend urban renewal area.
- 2.4. In June 2013, the *Fishermans Bend Heritage Study* was commissioned by Places Victoria as an input to the preparation of the Strategic Framework Plan for Fishermans Bend. The study was prepared by Biosis Pty Ltd. This report identified a number of sites (not currently included in a Heritage Overlay) for further investigation to determine their level of heritage significance.
- 2.5. In early 2014, Council commissioned Biosis Pty Ltd to undertake further investigation, and to recommend where identified places required additional heritage protection. The result of this work was the *Fishermans Bend Additional Heritage Place Assessments*. This work also prepared (where necessary) individual citations for inclusion in the Port Phillip Heritage Review.

### Amendment C117 – Fishermans Bend Heritage Areas Permanent Controls

- 2.6. 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). Specifically the Amendment proposes to:
- Remove Heritage Overlay 4 (HO4 – a precinct overlay) from three properties at 400-430 City Road, Southbank (Johns & Waygood buildings) and apply individual HO's to them. (Noting Council resolved on 28 June 2016 to amalgamate all three sites into a single overlay – HO467.)
  - Apply an individual Heritage Overlay (HO470) to the electricity substation at 98 Johnson Street, South Melbourne (corner Munro Street).

## AGENDA - ORDINARY MEETING OF COUNCIL – 19 APRIL 2017



- Apply an individual Heritage Overlay (HO471) to the horse trough located on Ingles Street, near the intersection with Williamstown Road, Port Melbourne.
  - Apply an individual Heritage Overlay (HO472) to 19 Salmon Street, 291 & 323-337 Williamstown Road, 7-9 & 21 Smith Street and 332 Plummer Street, Port Melbourne (Rootes/Chrysler factory site).
  - Extend Precinct Heritage Overlay HO442 to include houses and shops at 496-510 City Road and 157-163 Montague Street, South Melbourne.
  - Making related changes to the *Port Phillip Heritage Review* to reflect updates to the heritage citations and gradings.
- 2.7. Amendment C117 was placed on public exhibition between 25 February and 30 March 2016, in accordance with the requirements of the *Planning and Environment Act 1987*.
- 2.8. Ten (10) written submissions were received during the exhibition period.
- 2.9. At its Ordinary Council Meeting on 28 June 2016, Council considered the submissions it had received and a response to those submissions and endorsed some changes to the amendment.
- 2.10. Council resolved to request an independent Planning Panel be appointed, referred all submissions to that Panel and endorsed the officer response as the basis for Council's submission to the Panel.
- 2.11. The Panel hearing was held over three (3) days in August 2016. The written report of the Panel was received on 20 September 2016.
- 2.12. The Panel's overall recommendation was for the Amendment to be approved as exhibited, subject to a number of specific changes. This included the following recommended changes to the Heritage Overlay proposed for the Rootes/Chrysler factory site:
- Remove 291 Williamstown Road and 7-9 Smith Street, 332 Plummer Street, 21 Smith Street and 337 Williamstown Road from the Amendment.
  - Amend the Heritage Overlay Map and Schedule to the Heritage Overlay to include 19-21 Salmon Street and 323-331 Williamstown Road only.
  - Amend the Schedule to the Heritage Overlay to reduce the scope of internal controls for 19 Salmon Street to the tower component only.
  - Amend the citation to exclude reference to 332 Plummer Street, 21 Smith Street and 7-9 Smith Street and 291 Williamstown Road and 337 Williamstown Road.
  - Revise the citation and the statement of significance to include assessment of interior to the tower component and rename the citation to include reference to the former Commonwealth Department of Munitions as well as Rootes.
- 2.13. Prior to Council's final adoption of Amendment C117, two issues were identified concerning two of the properties affected by the amendment through application of the Heritage Overlay (HO472) to the Rootes/Chrysler factory:

## AGENDA - ORDINARY MEETING OF COUNCIL – 19 APRIL 2017



19 Salmon Street - On 13 November 2016, Council was notified by the owners of the property at 19 Salmon Street (Lot S2 on PS728869) that they did not receive notice of Amendment C117, the Directions Hearing or the Panel Hearing. In investigating this matter, it was found that notice was sent to the landowner, however it was incorrectly addressed due to an error on Council's system.

On 29 November 2016, the landowner lodged an application for review with VCAT under section 39(1) of the *Planning and Environment Act 1987* for failure to give notice. The matter has been adjourned for administrative mention on 31 March 2017 with the hearing scheduled to commence on 28 July 2017.

323-331 Williamstown Road - It was also identified that references to the property at 323-331 Williamstown Road were incorrect. The property should have been referred to as 299 Williamstown Road. This was due to an error with the property registration information held by State Government. Due to this error, the owners of this property were notified of Amendment C117 as neighbouring properties to a site proposed to be included in Heritage Overlay but were not formally notified their property was included in Amendment C117.

- 2.14. Council considered the recommendations of the Panel and resolved to adopt Amendment C117 with changes, on 13 December 2016. To address the notification issues identified above, Council resolved to remove the properties at 19 Salmon Street and 299 Williamstown Road, Port Melbourne (Rootes/Chrysler factory) affected by Heritage Overlay 472 (HO472) from Amendment C117 and request a new planning scheme amendment (C143) specifically to implement that overlay.
- 2.15. Amendment C117 documentation was forwarded to the Minister for Planning for final approval on 30 December 2016.

### Amendment C143 – 19 Salmon Street and 299 Williamstown Road, Port Melbourne

- 2.16. Amendment C143 applies permanent heritage controls to 19 Salmon Street and 299 Williamstown Road, Port Melbourne. The Amendment reflects the changes recommended by the Panel and adopted by Council on 13 December 2016.
- 2.17. Specifically, the amendment makes the following changes to the Port Phillip Planning Scheme on a permanent basis:
  - Apply an individual Heritage Overlay (HO472) to (Lot S2 and Lot S3 on PS728869) 19 Salmon Street and 299 Williamstown Road, Port Melbourne, including updating the planning scheme maps and Schedule to the Heritage Overlay.
  - Include a new Citation in the Port Phillip Heritage Review (Incorporated Document in the Planning Scheme) ([Attachment 1](#)).
  - Apply a 'Significant Heritage Place' grading to the Heritage Policy Map.

### Exhibition Process

- 2.18. Amendment C143 was placed on public exhibition between 13 February and 17 March 2017.

## AGENDA - ORDINARY MEETING OF COUNCIL – 19 APRIL 2017



- 2.19. Pursuant to section 20(2) of the *Planning and Environment Act 1987*, Council was granted an exemption from the notification requirements of sections 19(2) and 19(3) of the Act. Exhibition was undertaken in accordance with the *Planning and Environment Act 1987* and involved:
- Direct notification (letter) to owners and occupiers of affected properties. Enclosed with the letter was a formal Notice of Amendment.
  - Direct notification (letters) to Prescribed Ministers.
  - Direct notification to submitters on Amendment C117.
  - 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.
  - Availability of amendment documentation at St Kilda Town Hall.

### Interim heritage controls

- 2.20. On 22 September 2015, Council resolved to request the Minister for Planning introduce interim heritage controls over sites that were not already protected by a Heritage Overlay. This would ensure that heritage matters were considered while the permanent controls (implemented through Amendment C117) were finalised.
- 2.1. The Minister for Planning approved Amendment C115 through a Ministerial Amendment (via Section 20(4) of the *Planning and Environment Act 1987*). The interim controls came into effect on 14 January 2016.
- 2.2. The interim heritage controls were extended until January 2018 through a Ministerial Amendment (via Section 20(4) of the *Planning and Environment Act 1987*) approved in January 2017.

### Planning Permit

- 2.3. On 25 June 2015, a planning application was lodged with the Minister for Planning for the construction of mixed use buildings for the purpose of dwellings and retail uses at 19 Salmon Street, Port Melbourne. The proposed redevelopment would involve partial demolition of the existing buildings.
- 2.4. The City of Port Phillip (CoPP) objected to the application on the grounds of heritage demolition, underdevelopment, internal road widths and lack of commercial space.
- 2.5. The Minister for Planning issued a Notice of Decision to grant a Planning Permit subject to conditions, on 1 February 2017.
- 2.6. On 22 February 2017 CoPP lodged an application for review with VCAT pursuant to the provisions of Section 82 of the *Planning and Environment Act 1987* (review of decision). The VCAT hearing dates are to be advised.



### 3. KEY INFORMATION

#### Overview of written submissions received to Amendment C143

- 3.1 One (1) written submission was received during the exhibition period that concluded on 17 March 2017. A summary of that submission is included in Attachment 2.
- 3.2 The submission, received from the property owner of Lot 3 on PS728869 19 Salmon Street, supported the application of the Heritage Overlay to the art deco entry area of the factory, and objected to the application of the Heritage Overlay to the remainder of the factory buildings at 19 Salmon Street. The submission questions the significance of some of the building form and raises the issues discussed in Section 3.4 (below).
- 3.3 A summary of key issues raised and recommended responses is included below. A comprehensive response to the submission is included in Attachment 3.

#### Summary of Key Issues

- 3.4 A number of issues relating to the application of heritage controls were raised in the objecting submission. The table below provides an overview of these issues and the recommended officer response. The responses draw on the advice of Council’s Urban Design and Heritage Advisor and the findings by previous independent Panels considering heritage amendments.

Key issue raised in submission	Outline of Recommended Response
<p>The building form beyond the Entry area is not of primary significance as it:</p> <ul style="list-style-type: none"> <li>a) is not of aesthetic significance,</li> <li>b) has been altered such that it no longer demonstrates the occupation of the site by AFV and Rootes Ltd.</li> </ul>	<p>The significance of this place has been established by the Biosis study, and is supported by a separate Built Heritage report commissioned by the Port Melbourne Historical Preservation Society and the National Trust.</p> <p>The methodology for the Biosis report accords with the Burra Charter and Heritage Victoria guidelines (which include clear ‘criterion’ for determining significance – HERCON Criteria).</p> <p>The Art Deco elements to the main office (Entry Area) exhibit the most appealing aesthetic characteristics when compared to the factory buildings, however these buildings provide a contribution to the heritage place.</p> <p>While there are different levels of alteration to the buildings at 19 Salmon Street, the buildings of primary and secondary significance nonetheless retain much of their original form, bulk and scale of the structures.</p>
<p>The Heritage Overlay should be limited to areas of ‘primary significance’ and therefore only applied to the extent of the Entry Area.</p>	<p>The methodology for the assessment of this place accords with the Burra Charter and Heritage Victoria Guidelines (which include clear ‘criterion’ for determining significance – HERCON Criteria).</p>





	Retaining the Heritage Overlay over the entire site provides a better mechanism for co-ordinated planning over the site, and greater opportunities for retaining and adapting heritage fabric.
The Heritage Overlay should not unnecessarily constrain development from achieving the intent of the Fishermans Bend Strategic Framework Plan.	The 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.
Future development of 19 Salmon Street must be undertaken in accordance with the Conservation Management Plan (CMP) prepared by Helen Lardner Conservation and Design.	<p>The CMP has no statutory weight given it is not a reference document or incorporated document in the Port Phillip Planning Scheme.</p> <p>There are a number of differences between the CMP and the Biosis Study, in particular relating to the levels of significance within the site, which is reflected in the recommendations for future use and development.</p> <p>The citation for the Rootes / Chrysler factory site provides design guidance for the redevelopment of sites of primary and secondary significance. These have been prepared having regard to the Statement of Significance and should be considered in any proposal for redevelopment.</p>

**Recommended changes to Amendment C143**

- 3.5 Based on the submission received, no changes are recommended to Amendment C143.

**Review of submissions**

- 3.6 The above officer response to submitter issues would form the basis of Council’s position at a Panel hearing.
- 3.7 Submissions will be heard at the Planning Forum on 19 April 2017. Submissions will then be considered at the Council meeting on 19 April 2017. It is noted that a small number of written submissions have been received and the importance of timely consideration of the Amendment.

**Options:**

- 3.8 The following options are available to Council in relation to the heritage protection of 19 Salmon Street and 299 Williamstown Road, Port Melbourne:
- Option 1: Refer Amendment C143 to an independent Planning Panel for review.
  - Option 2: Abandon Amendment C143.

Council does not have the option to adopt the amendment at this stage, given that there is an objecting submission.



## AGENDA - ORDINARY MEETING OF COUNCIL – 19 APRIL 2017



- 3.9 Option 1 would enable the amendment process to continue and progress a heritage overlay for 19 Salmon Street and 299 Williamstown Road, Port Melbourne. The Panel process provides for an independent review of submissions and supporting expert evidence. This offers a transparent process to enable stakeholder interests to be fully considered and reconciled where possible. The Panel will provide its report and recommendations to Council, prior to a final decision whether to adopt the amendment.
- 3.10 Option 2 would involve deciding not to proceed with Amendment C143. Council could decide to do this either on the basis that the work is not considered worth pursuing, or if it decided that it wanted to undertake further work and commence a new Planning Scheme Amendment in a different form in the future. This option is not recommended at this time, as there is sufficient strategic justification for pursuing a heritage overlay for 19 Salmon Street and 299 Williamstown Road, Port Melbourne, notwithstanding the issues raised in the submission.





## FURTHER SUPPORTING INFORMATION

### 4. ALIGNMENT TO COUNCIL PLAN AND COUNCIL POLICY

4.1 Implementation of heritage controls supports delivery of the following objectives and key actions in the *Council Plan (2013-17)*:

Objective 4.1: *‘Encourage viable, vibrant villages’*

- Key action: *‘maintain, create and foster welcoming, attractive and prosperous villages aligned to local character, heritage and community.’*

Objective 4.2: *‘Ensure growth is well planned and managed for the future’*

- Key action: *‘Lead, advocate for and regulate sustainable design and development for environmental, cultural and social benefits.’*

### 5. CONSULTATION AND STAKEHOLDERS

5.1 Amendment C143 has undergone public exhibition in accordance with the requirements of the *Planning and Environment Act 1987*. This includes direct notification to the owners and occupiers of properties that may be affected by the amendment, submitters on Amendment C117 and Prescribed Ministers.

### 6. LEGAL AND RISK IMPLICATIONS

6.1 No significant risk implications have been identified for the Amendment. Amendment C143 has been exhibited and processed in accordance with the requirements of the *Planning and Environment Act 1987*.

6.2 The submitter will be provided the opportunity to present to an independent Planning Panel who will then make a recommendation to Council in relation to the amendment. This provides a fair and transparent process.

### 7. SUSTAINABILITY – Triple Bottom Line

#### 7.1 ENVIRONMENTAL IMPLICATIONS

7.1.1 The amendments will have a positive environmental impact by protecting a place of historic significance and allowing the reuse and recycling of existing building stock.

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

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

#### 7.2 SOCIAL & CULTURAL IMPLICATIONS



- 7.2.1 The amendment will have a positive social effect through the preservation of a historically significant place, for the benefit of current and future generations.

### 7.3 ECONOMIC IMPLICATIONS

- 7.3.1 The amendment is not expected to have significant broad economic impacts, although it is likely to have a direct cost impact on the owner of the affected property through additional permit requirements and potential limitations on the redevelopment of the site (noting there is a current planning permit application which will be considered at a future VCAT hearing (date still to be advised)).

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

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

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

### 7.4 FINANCIAL IMPLICATIONS

- 7.4.1 Council has incurred direct costs associated with notification during the public exhibition of Amendment C143. Further costs in processing this amendment, Panel hearing costs and the payment of statutory fees (for Ministerial approval), have been allocated in the 2016/17 budget.



**8. IMPLEMENTATION STRATEGY**

**8.1 TIMELINE**

- 8.1.1 A request to the Minister for Planning for appointment of an independent Planning Panel to consider Amendment C143 would immediately follow this meeting.
- 8.1.2 A Directions Hearing for the Panel is scheduled for the week beginning 22 May 2017 and the Panel Hearing is scheduled for the week beginning 19 June 2017. The duration of the hearing is estimated at 1-2 days, with this dependent on the number of submitters seeking to present to the Panel and the number of expert witnesses that are called.
- 8.1.3 Council will consider the Panel's recommendations and determine whether to adopt Amendment C143

**8.2 COMMUNICATION**

- 8.2.1 Council's website will be updated to reflect the next steps of the amendment process.
- 8.2.2 Submitters will be informed of any Council decision to proceed to the Panel stage.
- 8.2.3 Planning Panels Victoria will invite all submitters to present at the Panel Hearing.

**9. OFFICER DIRECT OR INDIRECT INTEREST**

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