



ORDINARY MEETING OF COUNCIL 20 NOVEMBER 2019

PROPOSED INTERIM HERITAGE CONTROLS - EXTENSION TO HERITAGE OVERLAY 7 (ST KILDA, ELWOOD, BALACLAVA, RIPPONLEA)

EXECUTIVE MEMBER: LILI ROSIC, GENERAL MANAGER, CITY STRATEGY AND
SUSTAINABLE DEVELOPMENT

PREPARED BY: KELLY WHITE, SENIOR STRATEGIC PLANNER

1. PURPOSE

- 1.1 To determine whether to request the Minister for Planning exercise his powers under Section 20(4) of the *Planning and Environment Act 1987* to apply an interim Heritage Overlay to 41-57 Dickens Street, 1-3 Ruskin Street, 1 Addison Street, 49-51 and 59-61 Mitford Street, Elwood (Proposed HO7 Precinct Extension).

2. EXECUTIVE SUMMARY

- 2.1 An application to demolish the buildings at 47 Dickens Street, Elwood was received pursuant to Section 29A of the *Building Act 1993* on 8 November 2019. There is currently no Heritage Overlay applied to the site, and a planning permit is not required for demolition.
- 2.2 The property at 47 Dickens Street, Elwood is subject to a current proposal to apply the Heritage Overlay via Amendment C161 (Update Amendment) to the Port Phillip Planning Scheme.
- 2.3 The Amendment proposes to include land at 41-57 Dickens Street, 1-3 Ruskin Street, 1 Addison Street, 49-51 and 59-61 Mitford Street, Elwood (Attachment 1) in a permanent Heritage Overlay for the first time as part of an extension to Heritage Overlay 7 (St Kilda, Elwood, Balaclava and Ripponlea) (HO7).
- 2.4 The proposed HO7 Precinct Extension is strategically justified through the *Port Phillip Heritage Review Update* (David Helms Heritage Planning, 2019) which considers the significance of those properties to be comparable with other places in the precinct, and forming a logical extension of the precinct.
- 2.5 Amendment C161 is currently with the Minister for Planning, awaiting Authorisation.
- 2.6 It is considered appropriate that Council consider requesting the Minister for Planning to apply an interim Heritage Overlay to properties within the proposed HO7 extension (including 47 Dickens Street, Elwood) on the basis that:
 - There is a live request at 47 Dickens Street to demolish the two storey interwar flats located on the land.
 - A heritage assessment has found the proposed HO7 extension to be appropriate for inclusion in HO7 and warranting formal heritage protection through application of a Heritage Overlay.
 - There is an amendment process underway (Amendment C161) that is seeking to apply heritage controls to those properties on a permanent basis.
 - Inclusion of the broader HO7 precinct extension in an interim Heritage Overlay will ensure any future proposals for demolition will trigger a planning permit and would need to consider heritage.



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- 2.7 Council's submission of a request for interim heritage controls will enable Council's Municipal Building Surveyor to suspend the request for demolition of 47 Dickens Street (under Section 29A of the *Building Act 1993*) on the basis that an amendment is being sought that could result in a planning permit being required for demolition under the Heritage Overlay.
- 2.8 If a request for interim heritage controls were approved through a Section 20(4) Ministerial Amendment, it would be exempt from notice requirements. Affected landowners would be notified in writing of the Minister's decision.

3. RECOMMENDATION

That Council:

- 3.1 Requests the Minister for Planning to prepare and approve an amendment to the Port Phillip Planning Scheme, pursuant to Section 20(4) of the *Planning and Environment Act 1987*, to apply interim Heritage Overlay 7 (HO7) and associated controls to land proposed for inclusion in the 'HO7 Precinct extension' as identified in *Port Phillip Heritage Review Update* (David Helms Heritage Planning, 2019)(Attachment 2). The amendment will include the following specific changes to the Port Phillip Planning Scheme, on an interim basis (12 months):
- Amend Port Phillip Planning Scheme Map 8HO and the schedule to Clause 41.03 – Heritage Overlay to apply interim Heritage Overlay 7 (HO7) to:
 - 41 and 43 Dickens Street, 1 Addison Street, 1-3 Ruskin Street and 45-57 Dickens Street, Elwood.
 - 49-51 and 59-61 Mitford Street, Elwood.
 - Apply a 'Significant Heritage Place' grading to each of the above properties on the *Port Phillip Heritage Policy Map* (Incorporated Document) except for 49 Dickens Street which is proposed as a 'Contributory Heritage Place'.
 - Remove 'Contributory outside of the Heritage Overlay' gradings for 49, 59 and 61 Mitford Street, 1 Addison Street and 1-3 Ruskin Street, Elwood on the *City of Port Phillip Neighbourhood Character Map* (Incorporated Document).
 - List the *Port Phillip Heritage Review Update* (David Helms Heritage Planning, 2019) as a reference document in Clause 22.04 (Heritage Policy).
 - Make consequential changes to Clauses 21.07 (Incorporated Documents), Clause 22.04 (Heritage Policy) and the schedule to Clause 72.04 (Documents incorporated in this scheme) to update the version number and date of the Incorporated Documents listed above.
- 3.2 Authorises the Chief Executive Officer (CEO) or delegate to prepare and finalise the amendment documentation for the above planning scheme amendment.

4. KEY POINTS/ISSUES

- 4.1 A planning permit (807/2014) was issued on 21 July 2015 for the construction of a three storey addition to the existing building at 47 Dickens Street, Elwood. The permit



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included the retention of the existing interwar flats located at the front of the property. Construction of the development has commenced, but is not yet completed.

- 4.2 An application to demolish the buildings at 47 Dickens Street, Elwood was received pursuant to Section 29A of the *Building Act 1993* on 8 November 2019.
- 4.3 47 Dickens Street, Elwood currently has no Heritage Overlay on the land and accordingly, a planning permit for demolition is not required.
- 4.4 The property at 47 Dickens Street, Elwood is included in Amendment C161 to the Port Phillip Planning Scheme. The Amendment proposes to include the property in the Heritage Overlay for the first time as part of an extension to Heritage Overlay 7 (St Kilda, Elwood, Balaclava and Ripponlea). The Amendment is currently with the Minister for Planning, awaiting Authorisation.

Background to Heritage Controls in Port Phillip

- 4.5 Amendment C5 to the Port Phillip Planning Scheme was a city-wide amendment that implemented the *Port Phillip Heritage Review* (Andrew Ward and Associates, 1998). It applied the Heritage Overlay to a wide range of precincts and individual properties across Port Phillip.
- 4.6 Since the initial preparation of the *Port Phillip Heritage Review*, Council has progressively undertaken additional heritage studies (of both precincts and individual sites) to further develop, verify and refine this earlier work. These studies have identified some 'gaps' and some inconsistencies in heritage controls, due to the extensive scale of the initial city-wide heritage assessment and evolving heritage methodology over time.
- 4.7 A review of the field notes for the *Port Phillip Heritage Review* indicates that:
 - the properties at 41A-43 Dickens Street and 45-57 Dickens Street were not assessed. Accordingly, a nil grading was attributed to the properties at that time.
 - 1 Addison Street, 1-3 Ruskin Street, 49 and 51 Mitford Street, Elwood were afforded a preliminary grading of 'Local Importance D' which translated to 'Contributory outside of the Heritage Overlay' as the properties were not included in a heritage overlay.
 - 59 and 61 Mitford Street were afforded a preliminary grading of 'Local Interest F' which translated to 'Contributory outside of the Heritage Overlay'.
- 4.8 In 2005, the *Elwood Heritage Review* was finalised by Heritage Alliance. The work was commissioned by Council to re-assess the southern portion of the municipality (Elwood and a small part of Balaclava) bounded by Dickens Street, Hotham Street, Glen Huntly Road, St Kilda Street, Head Street and the coastline.
- 4.9 The project brief included the southern side of Dickens Street and western portion of Mitford Street in the streets that were to be re-assessed within the area. However, while the properties were included in the general investigation area, it appears they were not assessed as part of the study and no specific recommendations were made.

Proposed HO7 Precinct Extension (including 47 Dickens Street)



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- 4.10 In February 2019, the *Port Phillip Heritage Review Update* (the Report) was finalised by David Helms Heritage Planning (Attachment 2). The Report reviews several anomalies with existing heritage places across the municipality and makes recommendations to update heritage controls in the Port Phillip Planning Scheme.
- 4.11 The Report was prepared in accordance with the Australia ICOMOS Charter for Place of Cultural Significance, 2013 (the Burra Charter) and its guidelines using the Hercon criteria.
- 4.12 Amongst the numerous recommendations in the Report, is a proposal to extend Heritage Overlay 7 (St Kilda, Elwood, Balaclava and Ripponlea) (HO7) to include the following properties:
- the south side of Dickens Street between Mitford Street and Barkly Street at nos. 41-57 (including 47 Dickens Street), 1 Addison Street and 1-3 Ruskin Street, Elwood.
 - the west side of Mitford Street between Dickens and Milton Streets, Elwood at nos. 49, 51, 59 and 61.
- 4.13 The current Statement of Significance (included in the Port Phillip Heritage Review Incorporated Document) for HO7 includes the following:
- *The residential areas are noteworthy for their late Victorian, Federation period and inter-war housing; the apartments of the latter period and the terraces of the former being especially noteworthy.*
- 4.14 In support of the proposal to extend HO7, the Report (pgs. 7-9) provides that:
- Dickens Street extension*
- ‘The north side of Dickens Street between Mitford and Barkly streets is almost entirely included in HO7 (the exception is the building at the northeast corner of Barkly Street). Typically, the streetscape is composed of Edwardian and interwar houses and one interwar block of flats. However, on the south side only two properties are included: 39 Mitford Street (interwar flats at the south east corner of Dickens St) and 41A Dickens Street (interwar flats). The balance of the south side of Dickens Street through to Barkly Street is excluded. The excluded buildings, which are recommended for inclusion in HO7, are:
 - The interwar apartments at nos. 41 & 43 Dickens Street (these adjoin the aforementioned 41A Dickens & 39 Mitford Street already in HO7). Also forming part of this group are the interwar apartments at 1 & 3 Ruskin Street. All of these buildings would justify a Significant grading.
 - The house at 1 Addison Street. This is an intact Edwardian house with a typical complex hip and gable tiled roof, which situated on a triangular site at the intersection with Ruskin and Dickens Street. However, as it faces toward Dickens Street, it forms part of that streetscape and is recommended for inclusion. A Significant grading is appropriate.
 - Nos. 45-57 Dickens Street. This includes the south side between Addison and Barkly Streets, which contains Edwardian and interwar bungalows and one



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block of interwar flats in the Mediterranean style at no.47. All are Significant, except for the more altered no.49, which is Contributory.'

Mitford Street extension

- Mitford Street between Dickens and Milton streets is mostly included within HO7 and typically contains a mix of Edwardian and interwar houses and interwar flats. The exception is the section on the west side containing nos. 49-61, as follows:
 - No. 49 - An intact Edwardian house. A Significant grading is appropriate.
 - No.51 - Interwar flats, possibly designed by noted architect J. Esmond Dorney due to distinctive details such as the balusters to the balcony balustrade. A Significant grading is appropriate.
 - No.59 - Interwar gable fronted bungalow with original front fence. Minor alterations and non-original carport. Significant grading is appropriate.
 - No. 61 - Interwar gable fronted bungalow with original front fence. Minor alterations. Significant grading is appropriate.
- The inclusion of nos. 49, 51, 59 and 61 in HO7 is justified, as they are consistent with the surrounding development.

4.15 A comprehensive review of the HO7 Precinct is to be scheduled for a subsequent year under Council's Heritage Program. Through the Program, Council is undertaking a systematic and strategic review of its heritage overlay precincts, with Heritage Overlay 5 (St Kilda Hill), HO7 and Heritage Overlay 8 (Elwood: Glen Huntly Rd, Ormond Rd) the remaining precincts to be reviewed.

Update to permanent heritage controls – HO7 Precinct Extension

- 4.16 Amendment C161 to the Port Phillip Planning Scheme (the Scheme) has been prepared and groups together numerous updates and corrections, including updates to heritage controls, to the Scheme.
- 4.17 The amendment would give statutory effect to the *Port Phillip Heritage Review Update* (David Helms Heritage Planning, February 2019) and would affect multiple properties throughout the municipality.
- 4.18 Specifically, Amendment C161 includes (amongst numerous other proposals) a proposal to amend the Scheme to make the following changes:
- Amend planning scheme map 8HO to apply heritage overlay precinct HO7 on a permanent basis to:
 - 41 and 43 Dickens Street, 1 Addison Street, 1-3 Ruskin Street and 45-57 Dickens Street, Elwood.
 - 49-51 and 59-61 Mitford Street, Elwood.



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- Apply a 'Significant Heritage Place' grading to each of the above properties on the *Port Phillip Heritage Policy Map* (Incorporated Document) except for 49 Dickens Street which is proposed as a 'Contributory Heritage Place'.
 - Remove 'Contributory outside of the Heritage Overlay' gradings for 49, 59 and 61 Mitford Street, 1 Addison Street and 1-3 Ruskin Street, Elwood on the *City of Port Phillip Neighbourhood Character Map* as the places would be included within the Heritage Overlay.
 - List *Port Phillip Heritage Review Update* (David Helms Heritage Planning, 2019) as a reference document in Clause 22.04 (Heritage Policy).
- 4.19 Council's Planning Committee on 27 March 2019, decided to prepare Amendment C161 to the Port Phillip Planning Scheme, and request Authorisation from the Minister for Planning to exhibit the Amendment.
- 4.20 The Amendment was submitted to the Minister in April, along with Prescribed Amendment C160 which also proposes numerous technical corrections to the Planning Scheme.
- 4.21 Council officers are liaising with officers of the Department of Environment, Land, Water and Planning (DELWP) to make numerous administrative changes to the amendment documentation prior to receiving Authorisation of C161. It is anticipated that Authorisation would be received in December/January 2020 with public exhibition to commence in the first quarter of 2020.

Interim Heritage Protection

- 4.22 It is timely for Council consider to requesting the Minister for Planning to apply an interim Heritage Overlay to properties within the proposed HO7 extension (including 47 Dickens Street, Elwood) on the basis that:
- A heritage assessment has found the proposed HO7 extension to be appropriate for inclusion in HO7 and warranting formal heritage protection through application of a Heritage Overlay.
 - There is an amendment process underway (Amendment C161) that is seeking to apply heritage controls to those properties on a permanent basis.
 - There is a live request at 47 Dickens Street to demolish the two storey interwar flats located on the land.
 - Inclusion of the broader HO7 precinct extension in an interim Heritage Overlay will ensure any future proposals for demolition will trigger a planning permit and would need to consider heritage.
- 4.23 Interim heritage controls are typically applied to protect places of significance whilst permanent controls are being processed through a full-exhibition amendment. This manages the risk of a building being demolished, without heritage issues being considered during the planning permit process.
- 4.24 An interim control does not prevent demolition outright, but rather triggers a planning permit for demolition to ensure heritage matters are considered. Council's local



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heritage planning policy (Clause 22.04) is used to guide Council's discretion when considering a planning application for demolition.

- 4.25 Council needs to make a request to the Minister for Planning to exercise his powers pursuant to section 20(4) of the Act to apply or extend an interim heritage control via a Ministerial Amendment. Practice Note 29 'Ministerial Powers of Intervention' refer to circumstances when the Minister may undertake a section 20(4) amendment. This includes that:

"The matter will be the introduction of an interim provision or requirement and substantially the same provision or requirement is also subject to a separate process of review (such as the introduction of permanent controls in a planning scheme)."

The Minister is not obligated to approve Council's request.

- 4.26 The planning scheme amendment required to apply interim heritage controls would make the same changes identified in 4.18 above, albeit on an interim basis, to apply interim Heritage Overlay 7 (HO7) and associated controls to 41-57 Dickens Street, 1-3 Ruskin Street, 1 Addison Street, 49-51 and 59-61 Mitford Street, Elwood, while permanent controls are progressed.
- 4.27 Council's submission of a request for interim heritage controls will enable Council's Municipal Building Surveyor to suspend the request for demolition of 47 Dickens Street (under Section 29A of the *Building Act 1993*) on the basis that an amendment is being sought that could result in a planning permit being required for demolition under the Heritage Overlay.

Options

- 4.28 The following options are available to Council in relation to the interim heritage protection of the properties within the proposed HO7 Precinct Extension (including 47 Dickens Street, Elwood):
- Option 1: Resolve to request the Minister for Planning apply an interim Heritage Overlay and associated controls to those properties while the permanent controls are progressed through Amendment C161.
 - Option 2: Not proceed with a request to the Minister for interim controls.
- 4.29 Option 1 is recommended. Application of a Heritage Overlay recognises the heritage significance of the properties which has been established in the *Port Phillip Heritage Review Update* by David Helms Heritage Planning. This will ensure heritage matters are assessed in any future permit decisions, and that the protection of heritage fabric is considered in both the short and longer term.

5. CONSULTATION AND STAKEHOLDERS

- 5.1 All landowners and occupiers of properties directly affected by Amendment C161 which includes properties within the proposed HO7 Precinct extension, were invited to the Planning Committee Meeting of 27 March 2019, in writing. The letter included information on how the amendment affected their property, including a link to more information on Council's website.
- 5.2 The owners of properties within the proposed HO7 extension and who would be affected by the interim heritage controls have been invited to attend the Ordinary



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Council Meeting of 20 November 2019, and of the intention of Council officers to seek interim heritage protection.

- 5.3 Council officers have liaised with officers of the Department of Environment, Land, Water and Planning who have raised no concerns with the proposed request to apply the Heritage Overlay on an interim basis to all properties within the proposed HO7 extension, including 47 Dickens Street.
- 5.4 Should the Minister approve Council's request for interim heritage protection, the affected landowners will be advised in writing of the Minister's decision.

6. LEGAL AND RISK IMPLICATIONS

- 6.1 As no heritage overlay is applied to 47 Dickens Street, Elwood, no planning permit is currently required for demolition. A Section 29(A) request for demolition of the buildings has been received by Council. Accordingly, the building and associated heritage fabric is at immediate risk of loss.
- 6.2 The immediate application of an interim heritage control would manage the risk of the building at 47 Dickens Street being demolished, without heritage issues being considered during the planning permit process.
- 6.3 No significant risk implications have been identified in relation to the processing of the required Ministerial Amendment. The Amendment would be undertaken in accordance with the requirements of the *Planning and Environment Act 1987*.

7. FINANCIAL IMPACT

- 7.1 Council will be required to pay a statutory fee of \$3,998.70 to request the Minister to prepare and approve the interim heritage controls through Amendment C147.
- 7.2 There is provision in the Planning Scheme Amendments 2019/20 operational budget to meet the cost of the proposed Amendment.

8. ENVIRONMENTAL IMPACT

- 8.1 The application of interim heritage controls would have a positive environmental impact by protecting places of historic significance and facilitating the reuse and recycling of existing building stock.
- 8.2 The Victorian heritage strategy, *Victoria's Heritage: Strengthening our Community* details the environmental benefits of conservation:

'Heritage policies and programs can help achieve the broader goals of sustainability... [Heritage conservation] recognises the embodied energy and life-cycle value of traditional materials, and reduces the water associated with demolition and new buildings'.

9. COMMUNITY IMPACT

- 9.1 The application of interim heritage controls would have a positive social effect through the preservation of historically significant places for the benefit of current and future generations.



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- 9.2 The interim heritage controls will likely have a direct cost impact on the owners of affected properties identified to be included in the heritage overlay because of additional permit requirements.
- 9.3 The matter of negative economic impacts, such as on property values and development potential, have been considered repeatedly by planning panels 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 progress – 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 objective 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.”

- 9.4 Furthermore, Planning Panels Victoria has established the principle that social and economic effects relevant at the amendment stage are of a broad community nature rather than those of a personal kind (see Panel Report - Amendment C207 to the Melbourne Planning Scheme).

10. ALIGNMENT TO COUNCIL PLAN AND COUNCIL POLICY

- 10.1 The application of heritage controls is consistent with the ‘We are Port Phillip’ Council Plan 2017-2027 commitment to ‘protecting heritage places’ and ‘ensuring new development integrates with, respects and contributes to the unique heritage, character and beauty of our neighbourhoods’.

11. IMPLEMENTATION STRATEGY

11.1 TIMELINE

- 11.1.1 If Council resolves to proceed with a request for interim heritage protection, a request will be made to the Minister for Planning within two working days of this Ordinary Council Meeting. This timing would enable Council to refuse the Section 29(A) request for demolition of 47 Dickens Street, Elwood.

11.2 COMMUNICATION

- 11.2.1 If Council supports requesting interim heritage controls for properties within the HO7 Precinct extension, details of the planning scheme amendment required to apply the interim heritage controls will be made available on Council’s website.
- 11.2.2 The owners of the affected properties will be advised in writing of Council’s decision following this meeting.



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12. OFFICER DIRECT OR INDIRECT INTEREST

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

**TRIM FILE NO:
ATTACHMENTS**

F19/3

- 1. Attachment 1 - Location Map - Properties affected by proposed extension to HO7 Precinct**
- 2. Attachment 2 - Port Phillip Heritage Review Update - David Helms Heritage Planning, February 2019**

12.1 - Attachment 1