



12.1 AMENDMENT C186PORT (MONTAGUE COMMERCIAL PRECINCT - PERMANENT HERITAGE CONTROLS) - PANEL RECOMMENDATIONS AND ADOPTION

EXECUTIVE MEMBER: KYLIE BENNETTS, GENERAL MANAGER, CITY GROWTH AND ORGANISATIONAL CAPABILITY

PREPARED BY: SAMINDI YAPA, STRATEGIC PLANNER

1. PURPOSE

- 1.1 To consider the report and recommendations of the independent Planning Panel appointed by the Minister for Planning to review Amendment C186port – Montague Commercial Precinct – Permanent Heritage Controls.
- 1.2 To determine whether to adopt Amendment C186port (with or without changes) and request Ministerial approval.

2. EXECUTIVE SUMMARY

- 2.1 Port Phillip Planning Scheme Amendment C186port has been prepared to apply permanent heritage controls to properties in the Montague Commercial Precinct. This implements the recommendations of the *Fishermans Bend Heritage Review: Montague Commercial Precinct* (RBA Architects and Conservation Consultants, 2019) (the **Review**).
- 2.2 The 'Montague Commercial Precinct' includes properties at 496-546 City Road and 151-163 Montague Street, South Melbourne.
- 2.3 A Planning Panel Hearing took place on Monday 5 and Tuesday 6 October 2020, via video conference. The one-person Panel considered all written submissions received to the Amendment, including verbal submissions made during the Panel Hearing by three submitters.
- 2.4 The Panel report was received by Council officers on 22 October 2020. In accordance with Section 26 of the *Planning and Environment Act 1987*, the report was sent to all submitters and made publicly available on 19 November 2020.
- 2.5 Overall, the Panel recommends that Council adopt Amendment C186port as exhibited, subject to the following changes which were all recommended by Council to the Panel:
 - 1.1.1 Amend the heritage grading of 544-546 City Road, South Melbourne from 'Significant' to 'Contributory' and update the necessary incorporated documents (*Port Phillip Heritage Review* including the Heritage Policy Map and the Statement of Significance for HO513) to reflect that change.
 - Amend the *Port Phillip Heritage Review Volume 1, Chapter 6.40 Montague Commercial Precinct – HO513* to modify the property descriptions for 540-542 and 544-546 City Road and 151, 153-155 and 163 Montague Street, South Melbourne.
- 2.6 A copy of the Panel Report can be found at **Attachment 1**.
- 2.7 Officers are supportive of the Panel's recommendations and recommend modifying the amendment documentation to reflect the changes proposed by the Panel. Further detail about officer recommendations and the rationale for supporting the proposed changes can be found in **section 4.24** of this report.



- 2.8 Should Council decide to adopt Amendment C186port, officers will submit the Amendment to the Minister for Planning with a request for approval.

3. RECOMMENDATION

That Council:

- 3.1 Adopts Amendment C186port to the Port Phillip Planning Scheme, pursuant to Section 29 of the Planning and Environment Act 1987 (the Act), with the changes reflected in the amendment documentation provided at **Attachment 2**.
- 3.2 Authorises the Chief Executive Officer (or delegate) to finalise the amendment documentation for Ministerial approval.
- 3.3 Submits the adopted Amendment C186port documentation, together with prescribed information, to the Minister for Planning for approval, pursuant to Section 31 of the Act.
- 3.4 Advises the Minister for Planning that Council accepts the Panel's recommendations, for the reasons outlined in **section 4.24** of this report.
- 3.5 Writes to all submitters to Amendment C186port to advise them of Council's decision and thank them for their participation in the amendment process.

4. KEY POINTS/ISSUES

- 4.1 Port Phillip Planning Scheme Amendment C186port has been prepared to apply permanent heritage controls to the Montague Commercial Precinct (the **Precinct**), in accordance with the recommendations of the *Fishermans Bend Heritage Review: Montague Commercial Precinct* (RBA Architects and Conservation Consultants, 2019) (the **Review**).
- 4.2 The Precinct is located within the Montague Precinct of Fishermans Bend and includes a group of late nineteenth century and early twentieth century buildings at 496-546 City Road and 151-163 Montague Street, South Melbourne.
- 4.3 Specifically, the Amendment proposes to make the following changes to the Port Phillip Planning Scheme:
 - Amend the Schedule to Clause 43.01 (Heritage Overlay) and Planning Scheme Map 3HO to:
 - Apply Heritage Overlay HO513 (Montague Commercial Precinct) to 496-546 City Road, 151-163 Montague Street, South Melbourne and laneways R3087, R3091 and R3093 on a permanent basis.
 - Remove 512-512A, 516, 518, 522 and 524-528 City Road, South Melbourne from existing HO442 as the properties will now be included in HO513;
 - Delete interim heritage control HO442 (Albert Park Residential Precinct / Part Montague Precinct), as the permanent heritage controls will now apply.
 - Introduce a new Statement of Significance (incorporated document) for the Montague Commercial Precinct by amending the Schedule to Clause 72.04 (Documents incorporated in this scheme).
 - Amend the incorporated Port Phillip Heritage Review Volumes 1-6 to:



- Add a new precinct citation for HO513 (Montague Commercial Precinct).
 - Amend existing Citation 2371 relating to 506 City Road, South Melbourne, which is of individual significance.
 - Remove Citations 2370 (496-498 City Road, South Melbourne) and 2372 (159-163 Montague Street, South Melbourne) as these places contribute to the significance of the Montague Commercial Precinct but are not of individual significance.
 - List the Fishermans Bend Heritage Review: Montague Commercial Precinct (RBA Architects and Conservation Consultants, 2019) as a heritage study that has informed an update to the incorporated document.
 - Amend the incorporated City of Port Phillip Heritage Policy Map to apply 'Significant Heritage Place', 'Contributory Heritage Place' and 'Nil / Non-contributory Place' gradings to properties in HO513 in accordance with the Statement of Significance.
 - Amend the incorporated City of Port Phillip Neighbourhood Character Map to remove the 'Contributory Outside of HO' grading applying to 151 Montague Street, South Melbourne as it is now included in HO513.
 - Amend Clause 22.04 (Heritage Policy) to list the Fishermans Bend Heritage Review: Montague Commercial Precinct (RBA Architects and Conservation Consultants, 2019) as a background document.
 - Make other 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 Port Phillip Heritage Review (including the City of Port Phillip Heritage Policy Map and the City of Port Phillip Neighbourhood Character Map).
- 4.4 On 4 December 2019, at its Ordinary Council Meeting, Council resolved to request the Minister for Planning to:
- Authorise the preparation and exhibition of Amendment C186port; and
 - Prepare and approve Amendment C185port which sought to extend the expiry date of the interim Heritage Overlay 442 and extend interim controls to include additional properties within the Precinct.
- 4.5 On 20 December 2019, the Minister for Planning's delegate authorised Council to prepare and exhibit Amendment C186port. No conditions were imposed.

Public Exhibition

- 4.6 The Amendment was exhibited over a 6-week period from 16 January to 28 February 2020. The formal Public Exhibition process included direct letters to owners and occupiers, and stakeholders, and notices in the local paper and government gazette.
- 4.7 10 submissions were received (including 5 late submissions): 1 raising no objection and 9 opposing the amendment.
- 4.8 The key issues raised in the submissions included:
- Conflict between the heritage overlay and the strategic direction for Fishermans Bend.



- Lack of strategic justification for the Amendment.
- Degree of intactness and integrity of individual properties to be included in the heritage overlay.
- Concerns over the structural condition of buildings.
- Impact on property values.
- Impact on development potential.

Council's consideration of submissions

4.9 At the 24 June 2020 Planning Committee Meeting, Council considered the issues raised in the submissions and resolved to support a change to the exhibited Amendment to:

- Change the proposed heritage grading of 544-546 City Road, South Melbourne from 'Significant' to 'Contributory' to reflect the extent of alterations occurring to the property.

4.10 Council further resolved to:

- Receive and consider all written submissions made to the Amendment;
- Endorse Council officers' response to the issues raised in the submissions and also endorse the recommended change (outlined in 4.9 above) to the Amendment as the basis for Council's submission to the Panel;
- Request the Minister to appoint an Independent Planning Panel in accordance with Part 8 of the *Planning and Environment Act 1987* to review submissions to the Amendment;
- Refer all submissions to the Planning Panel; and
- Write to all submitters to inform them of the Planning Committee's decision to refer the Amendment and submission to a Planning Panel.

Panel Hearing and recommendations

4.11 Due to COVID-19 and the associated physical distancing requirements, the Directions and Panel Hearing for Amendment C186port took place via video conference.

4.12 During the Directions Hearing on 27 July 2020, it was identified that one of the submitters to the Amendment had not been notified of the Direction Hearing or Panel Hearing dates due to incorrect contact details being recorded for this submitter.

4.13 An adjournment request was made to the Panel by the submitter on 7 August 2020, requesting that the Hearing be adjourned to allow them sufficient time to prepare.

4.14 With agreement from all parties, the Panel confirmed the adjournment of the Panel Hearing by letter dated 13 August 2020.

4.15 A second Directions Hearing was held on 16 September 2020. Subsequently, the Panel Hearing took place on Monday 5 & Tuesday 6 October 2020.



- 4.16 The one-person Panel considered all written submissions made in response to the exhibition of the Amendment, further written and oral submissions, evidence and other material presented to it during the Panel process.
- 4.17 The Panel also received Council's submission in support of the Amendment with the recommended changes outlined in 4.9 above. This included expert evidence on heritage from Mr Anthony Hemingway from RBA Architects and Conservation Consultants.
- 4.18 The main matters considered during the panel process were:
- Whether the Amendment is strategically justified.
 - Property specific issues regarding the degree of intactness and integrity of individual properties to be included in the Heritage Overlay.
 - The impact on development opportunities, property values and the structural condition of buildings.

Panel response to key issues raised in submissions

- 4.19 The Panel Report was received by Council on 22 October 2020. In accordance with section 26 of the Act, the report was made available for inspection once 28 days have elapsed since the receipt of the report on 19 November 2020. A copy of the Panel Report can be found at **Attachment 1**.
- 4.20 In response to the common issues raised in submissions, the Panel found that:

Strategic Justification.

- Overall, that the Amendment:
 - Is supported by and implements the relevant section of the *Planning and Environment Act 1987*, Planning Policy Framework, Local Planning Policy Framework and various planning policies including the Fishermans Bend Framework.
 - The *Fishermans Bend Heritage Review: Montague Commercial Precinct, 2019* is based in sound research and detailed heritage assessment sufficient to justify the proposed heritage controls.
 - Should not be delayed or deferred pending the outcomes of further separate heritage studies for the broader Montague area.
 - Should proceed subject to addressing the more specific issues raised in submissions.

And that:

- The boundary of HO513 is appropriate and should not be modified.
- The Statement of Significance is soundly based and is generally satisfactory subject to minor changes in response to submissions.

Property specific issues

- **506 City Road** - That the dwelling at 506 City Road should be included in HO513 precinct with a 'Significant' grading and that the proposed individual heritage citation is appropriate.



- **530 City Road** - That 530 City Road should be included in HO513 as a 'Non-contributory' building.
- **532-538 City Road** - That the properties at 532-538 City Road should be included within HO513, and that a 'Significant' grading is appropriate.
- **540-546 City Road** - That the properties at 540-546 City Road should be included within HO513 with 540-542 and 544-546 City Road as 'Contributory' graded properties.
- **151 Montague Street** - That 151 Montague Street should be included within HO513 and graded as a 'Significant' building.
- **153-155 Montague Street** - That the properties at 153-155 Montague Street should be included within HO513 and graded as 'Contributory' buildings.
- **157-163 Montague Street** - That the three single storey shops at 157-161 Montague Street should be included within HO513 and graded as 'Contributory' buildings and the two-storey shop-residence at 163 Montague Street as a 'Significant' building.

Restricting development opportunities and impact on property values

- The Panel did not agree with submitters that applying the Heritage Overlay would create an unacceptable burden to the owners of the land affected by the Amendment. The Panel further agreed with Council that concerns relating to future redevelopment opportunities are immaterial to this stage of the planning process and more appropriately considered at the planning permit stage.

Structural condition

- The Panel acknowledged that not all buildings covered by the Amendment may be in perfect condition, however, agreed with Council that the structural integrity or condition of a building should not be a criterion for assessing heritage significance.

Panel recommendations

4.21 The Panel recommended that Amendment C186port be adopted as exhibited, subject to the following specific changes, which were consistent with Council's submissions to the panel:

- Amend the heritage grading of 544-546 City Road, South Melbourne from 'Significant' to 'Contributory' and update the following incorporated documents to reflect this change:
 - a) the Montague Commercial Precinct Statement of Significance for HO513 as shown in the Panel preferred version in Appendix D1 of the Panel Report.
 - b) the *Port Phillip Heritage Review Volume 1, Chapter 6.40 Montague Commercial Precinct – HO513* as shown in the Panel preferred version in Appendix D2 of the Panel Report.
 - c) the Heritage Policy Map as shown in the Panel preferred version in Appendix D3 of the Panel Report.
- Amend the *Port Phillip Heritage Review Volume 1, Chapter 6.40 Montague Commercial Precinct – HO513* to modify the property description for 540-542 and



544-546 City Road, South Melbourne as shown in the Panel preferred version in Appendix D2 of the Panel Report.

- Amend the *Port Phillip Heritage Review Volume 1, Chapter 6.40 Montague Commercial Precinct – HO513* to modify the property description for 151, 153-155 and 163 Montague Street, South Melbourne as shown in the Panel preferred version in Appendix D2 of the Panel Report.

Officer recommended response to Panel recommendations

- 4.22 The Act requires Council to formally consider the Panel’s report and recommendations and determine whether to adopt (with or without changes) or abandon the Amendment.
- 4.23 In summary, officers recommend that Council support the Panel’s recommendations and amend the Amendment documentation accordingly.
- 4.24 The following table outlines officer’s recommended position for Council in response to the Panel’s recommended changes.

No.	Panel Recommendations	Officer Recommendations
1	<p>Amend the heritage grading of 544-546 City Road, South Melbourne from ‘Significant’ to ‘Contributory’ and update the following incorporated documents to reflect this change:</p> <ul style="list-style-type: none"> a) Montague Commercial Precinct Statement of Significance for HO513 b) the <i>Port Phillip Heritage Review Volume 1, Chapter 6.40 Montague Commercial Precinct – HO513</i> c) the Heritage Policy Map 	<p>Accept the Panel’s recommendation</p> <p>The Panel’s recommendation is consistent with Council’s submission to the Panel and will ensure that the heritage grading attributed to 544-546 City Road, South Melbourne is reflective of the extent of alterations that have been made.</p> <p>This grading reflects that although the shopfronts have been altered, which is a typical change in contributory places within precincts, that the building remains as a representative example of an Interwar period building which contributes to the significance of the precinct.</p> <p>The incorporated documents outlined in the Panel’s recommendations are required to be amended to give effect to the grading change.</p>

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No.	Panel Recommendations	Officer Recommendations
2	<p>Amend the <i>Port Phillip Heritage Review Volume 1, Chapter 6.40 Montague Commercial Precinct – HO513</i> to modify the property description for 540-542 City Road, South Melbourne to include the following wording:</p> <ul style="list-style-type: none"> • <u>Built in c.1935</u> <p>And 544-546 City Road, South Melbourne, to include the following wording:</p> <ul style="list-style-type: none"> • <u>Built in c.1992</u> • The shopfront <u>has later replacement</u> timber window... 	<p>Accept the Panel’s recommendation</p> <p>a) This recommendation provides more precise construction dates for the properties. It is consistent with the recommendations made by Mr Hemingway (Council’s heritage expert) resulting from further historical research undertaken as part of his Expert Evidence Statement.</p> <p>b) The recommended wording change for 544-546 City Road, South Melbourne property description is consistent with the change in grading and reflects the alterations made to the shopfront.</p>
3	<p>Amend the <i>Port Phillip Heritage Review Volume 1, Chapter 6.40 Montague Commercial Precinct – HO513</i> to modify the property description to reflect the following wording changes:</p> <p>151 Montague Street</p> <ul style="list-style-type: none"> • <u>Built c.1925</u> <p>153-155</p> <ul style="list-style-type: none"> • <u>Built c.1924</u> <p>163 Montague Street</p> <ul style="list-style-type: none"> • Delete ...<u>and the original timber panelled door.</u> 	<p>Accept the Panel’s recommendation</p> <p>a) This recommendation provides more precise construction dates for the properties. It is consistent with the recommendations made by Mr Hemingway resulting from further historical research undertaken as part of his Expert Evidence Statement.</p> <p>b) The recommended wording change for 163 Montague Street, South Melbourne property description is supported as the original timber panelled door has been removed. This was revealed in the submission made by the property owner and was supported by evidence given during the Panel Hearing.</p>

Adoption of Amendment documentation

4.25 A final version of the Amendment documentation which is recommended for adoption can be found at **Attachment 2** of this Council Report.

Interim Heritage Controls



- 4.26 The properties within the Montague Commercial Precinct are currently included within interim Heritage Overlay 442 (**HO442**) to ensure that protection is provided to the subject properties while permanent controls are being progressed through Amendment C186port. The interim controls will expire on 30 April 2021.
- 4.27 The interim heritage controls were originally approved via Amendment C115 and the expiry date has been extended through Amendments C146, C152, C157, C185port and C192port.
- 4.28 In addition to extending the expiry date of interim HO442, Amendment C185port extended the interim heritage overlay to also include additional properties at 151-155 Montague Street and 530-546 City Road, South Melbourne.

Options for Council

- 4.29 At this stage of the amendment process, the options available to Council under The Act are:
- Option 1: Adopt the Amendment without changes.
 - Option 2: Adopt the Amendment with changes (accepting some or all of the Panel's recommendations).
 - Option 3: Abandon the Amendment.
- 4.30 Adoption of the Amendment without changes (Option 1) is not recommended given the findings of the Panel that recommend changes to the exhibited Amendment. Further noting that these changes were consistent with Council's submissions to the Panel. In the absence of a balanced consideration of the Panel's findings, the Minister is likely to support the Panel's recommendations.
- 4.31 Adoption of the Amendment with changes (Option 2) is recommended, aligned to the position detailed in the table at 4.24.
- 4.32 Abandoning the Amendment (Option 3) is not recommended as it will result in heritage controls for the Montague Commercial Precinct being abandoned. The Precinct is of local heritage significance, as outlined in the *Fishermans Bend Heritage Review: Montague Commercial Precinct* (RBA Architects and Conservation Consultants, 2019) and has been recommended for the heritage overlay.
- 4.33 Under the *Planning and Environment Act 1987* (the Act) Council must consider all the Panel's recommendations but it is not obligated to accept them. If in determining to adopt the amendment Council does not accept one or more of the Panel's recommendations, it must provide its reason(s) why.

5. CONSULTATION AND STAKEHOLDERS

- 5.1 Public exhibition of Amendment C186port took place from 16 January to 28 February 2020 in accordance with the Act and involved:
- Direct notification (letter) to approximately 60 owners and occupiers of affected properties. Enclosed with the letter was formal Notice of Amendment.
 - Direct notification (letter) to approximately 110 owners and occupiers in the immediate surrounding area of HO513.
 - Direct notification (letter) to Prescribed Ministers and Statutory Authorities and key stakeholder groups.



- Public Notices in the Port Phillip Leader on Tuesday 14 January 2020 and Government Gazette on Thursday 16 January 2020.
- Availability of amendment documentation and supporting information on Council's website and the State Government's Planning Amendments Online website
- Availability of amendment documentation at St Kilda Town Hall and Emerald Hill Library and Heritage Centre.

5.2 A letter was sent to submitters on 30 June 2020 notifying them of Council's Planning Committee's decision to refer all submissions to an independent Planning Panel, and advising that they would have the opportunity to submit their case at the hearing to the panel.

5.3 Following appointment of a Panel, Planning Panels Victoria liaised with submitters to communicate the Panel process including any requests to speak, and the Directions and Panel hearing dates.

6. LEGAL AND RISK IMPLICATIONS

6.1 All affected owners and occupiers were notified of the exhibition of Amendment C186port and given the opportunity to make a written submission. The Amendment is being processed in accordance with the requirements of the Act.

6.2 Under Ministerial Direction 15 (**MD15**) Council has a statutory obligation to make a decision regarding the Amendment within 40 business days of receiving the Panel Report. However, due to the timing around the receipt of the Panel Report and internal reporting timeframes, Council will not be able to consider adopting the Amendment within this timeframe. Council's request for an MD15 exemption to allow additional time to adopt the Amendment was approved on 24 November 2020.

6.3 In considering a planning scheme amendment for the site, Council must consider only its role as Planning Authority to ensure transparency of its decision making.

6.4 The Planning Scheme Amendment is subject to Ministerial approval. The Minister may approve the amendment with or without changes to the planning controls.

7. FINANCIAL IMPACT

7.1 The financial costs associated with Amendment C186port relate to the panel hearing, expert evidence and legal representation. Provision for these costs is made within the annual budget allocated for the Planning Scheme Amendments Program.

8. ENVIRONMENTAL IMPACT

8.1 Amendment C186port will 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 Amendment C186port will have a positive community effect through the preservation of historically significant places in the Montague Precinct, South Melbourne for the benefit of current and future generations.

10. ALIGNMENT TO COUNCIL PLAN AND COUNCIL POLICY

10.1 Amendment C186port 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 Should Council decide to adopt the Amendment (with or without changes), Council officers will lodge a request for approval to the Minister for Planning within 10 business days of this Council meeting.

11.2 COMMUNICATION

11.2.1 All submitters will be notified of Council's decision.

11.2.2 Council's website will be updated to reflect the decision at this meeting.

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.

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ATTACHMENTS

1. Att 1 - Port Phillip C186port Panel Report
2. Att 2 - Amendment Documents - Adoption Version