

Planning Panels Victoria

Boroondara Planning Scheme Amendment C381boro 9 Seattle Street, Balwyn North

Panel Report

Planning and Environment Act 1987

13 July 2023

How will this report be used?

This is a brief description of how this report will be used for the benefit of people unfamiliar with the planning system. If you have concerns about a specific issue you should seek independent advice.

The planning authority must consider this report before deciding whether or not to adopt the Amendment.
[section 27(1) of the *Planning and Environment Act 1987* (the PE Act)]

For the Amendment to proceed, it must be adopted by the planning authority and then sent to the Minister for Planning for approval.

The planning authority is not obliged to follow the recommendations of the Panel, but it must give its reasons if it does not follow the recommendations. [section 31 (1) of the PE Act, and section 9 of the *Planning and Environment Regulations 2015*]

If approved by the Minister for Planning a formal change will be made to the planning scheme. Notice of approval of the Amendment will be published in the Government Gazette. [section 37 of the PE Act]

Planning Panels Victoria acknowledges the Wurundjeri Woi Wurrung People as the traditional custodians of the land on which our office is located. We pay our respects to their Elders past and present.

Planning and Environment Act 1987

Panel Report pursuant to section 25 of the PE Act

Boroondara Planning Scheme Amendment C381boro

9 Seattle Street, Balwyn North

13 July 2023



Con Tsotsoros, Chair

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Glossary and abbreviations

the Amendment	Boroondara Planning Scheme Amendment C381boro
Council	Boroondara City Council
DELWP	Department of Environment, Land, Water and Planning
PE Act	<i>Planning and Environment Act 1987</i>

Overview

Amendment summary

The Amendment	Boroondara Planning Scheme Amendment C381boro
Brief description	Proposes to permanently apply the Heritage Overlay (HO945) to 9 Seattle Street, Balwyn North
Property	9 Seattle Street, Balwyn North
Planning Authority	Boroondara City Council
Authorisation	31 October 2022 subject to conditions (see Chapter 1.1)
Exhibition	9 February to 9 March 2023
Submissions	Received from: <ol style="list-style-type: none"> 1. Evonne Liang 2. Hua Liang 3. Owner of 9 Seattle Street

Panel process

The Panel	Con Tsotsoros
Directions Hearing	Planning Panels Victoria with online video, 14 June 2023
Parties	No submitter requested to be heard
Panel process	The Panel considered unresolved issues through a written process, in response to a request from Council
Site inspection	Unaccompanied, 7 July 2023
Citation	Boroondara PSA C381boro [2023] PPV
Date of this report	13 July 2023

Executive summary

Council engaged GML Heritage to conduct research for 9 Seattle Street, Balwyn North (the property) to determine if it had sufficient local heritage significance and to prepare a heritage citation. The Statement of Significance within the citation found the property met Criteria A (historical significance) and E (aesthetic significance) of the criteria referred to in Planning Practice Note 1 (Applying the Heritage Overlay).

Boroondara Planning Scheme Amendment C381boro (the Amendment) seeks to permanently apply the Heritage Overlay (HO945) to the property. The Amendment was exhibited from 9 February to 9 March 2023 and received three objecting submissions, including one from the owner.

Key issues raised in submissions include whether the property has sufficient heritage significance, property value, private financial impact, the quality of Balwyn North, building layout and suitability and onsite safety.

For the reasons set out in this report, the Panel concludes that the Amendment:

- is supported by, and implements, the relevant sections of the Planning Policy Framework
- is consistent with the relevant Ministerial Directions and Practice Notes
- is well founded and strategically justified and should proceed.

The Panel agrees that the property meets Criteria A and E and has sufficient heritage significance to justify applying the Heritage Overlay. The HO945 Statement of Significant clearly explains why the property achieves each criterion and is supported by comprehensive contextual information in the heritage citation. No submission provided contradictory information.

Planning Practice Note 1 sets out the criteria for assessing heritage significance. They do not include property value, private financial impact, quality of Balwyn North, building layout and suitability, and onsite safety. These matters are not relevant when considering whether the property has sufficient heritage significance to apply the Heritage Overlay.

Recommendation

Based on the reasons set out in this Report, the Panel recommends that Boroondara Planning Scheme Amendment C381boro be adopted as exhibited.

1 Introduction

1.1 The Amendment

The purpose of the Amendment is to permanently apply the Heritage Overlay (HO945) to 9 Seattle Street, Balwyn North (the property). The Amendment was authorised on 31 October 2022 subject to the following conditions:

1. Remove 76 Wattle Road, Hawthorn from the amendment by:
 - a. Removing 76 Wattle Road, Hawthorn from the Schedule to Clause 43.01 and making consequential changes to the proposed schedules to clauses 72.04, 72.08 and the amendment maps.
 - b. Making consequential changes to the instruction sheet and explanatory report.
2. Make the following changes to amendment documents in relation to 9 Seattle Street, Balwyn North:
 - a. Amend statement of significance for 9 Seattle Street, Balwyn North to update 'what is significant?', 'why is it significant?' and the primary source document title to 'Batrouney House (former), 9 Seattle Street, Balwyn North Heritage Citation (GML Heritage, July 2022)'.
 - b. Amend the Schedule to 72.08 (Background Documents) to amend the background document title for the heritage citation relating to 9 Seattle Street, Balwyn North and its corresponding amendment number.
 - c. Amend the Schedule to Clause 43.01 (Heritage Overlay) and the Schedule to Clause 72.04 (Incorporated Documents) to amend the statement of significance document title to 'Batrouney House (former), 9 Seattle Street, Balwyn North Statement of Significance, August 2022'.
 - d. Ensure that date for the statement of significance for 9 Seattle Street, Balwyn North is amended to 'August 2022' across all relevant ordinances.

1.2 Procedural issues

No submitter requested to be heard at a hearing. In response to a request from Council, the Panel agreed to consider unresolved issues through a written process. At the Directions Hearing, the Panel advised:

- it had sufficient information to inform itself, including its response to submissions set out in the officer report to the 1 May 2023 Council meeting
- it did not seek a further submission from Council unless it sought to present new information.

Council relied on its 1 May 2023 report as its response to issues in submissions and made no further submission to the Panel.

1.3 The Panel's approach

The Panel has assessed the Amendment against the principles of net community benefit and sustainable development, as set out in Clause 71.02-3 (Integrated decision making) of the Planning Scheme.

The Panel considered all written submissions made in response to the exhibition of the Amendment, observations from a site visit, submissions and other material provided to the Panel. All submissions and materials have been considered by the Panel in reaching its conclusions.

2 Strategic issues

2.1 Planning context

This chapter identifies planning context relevant to the Amendment. Appendix A highlights key imperatives of relevant provisions and policies.

Table 1 Planning context

	Relevant references
Victorian planning objectives	- section 4(1)(d) of the <i>Planning and Environment Act 1987</i> (PE Act)
Municipal Planning Strategy	- Clause 2.03-4 (Built environment and heritage)
Planning Policy Framework	- Clauses 15.01-5S (Neighbourhood character) 15.03-1S (Heritage conservation), and Clause 15.03-1L (Heritage in Boroondara)
Other planning strategies and policies	- Plan Melbourne Outcome 4, Direction 4.4, Policies 4.4.1 and 4.4.4
Planning scheme provisions	- Heritage Overlay
Ministerial directions	- Ministerial Direction 11 (Strategic Assessment of Amendments)
Planning Practice Note	- Planning Practice Note 1 (Applying the Heritage Overlay), August 2018 (updated 13 June 2023)

2.2 Strategic justification

(i) Submissions and Council response

The Explanatory Report states the Amendment:

- is consistent with Clause 15.03-1L and Ministerial Directions 7(5) and 9
- will have a net community benefit by protecting a place which contributes to Boroondara's heritage.

One submission considered the Amendment should not proceed because the Heritage Overlay would restrict housing supply needed to support Melbourne's growing population.

In response, Council stated:

- urban consolidation objectives might point to redevelopment opportunities, but these matters are not considered when assessing heritage
- heritage assessments focus only on considering a property from a heritage perspective, consistent with relevant state government practice notes and accepted professional heritage practice
- competing planning objectives (such as housing supply) are more appropriately considered during the planning permit application process
- applying the Heritage Overlay to one property will not discernibly impact on the ability to meet Boroondara's future projected housing demand.

(ii) Discussion

The methodology which supports the Amendment generally follows guidance in Planning Practice Note 1 and is founded on sound research prepared by GML Heritage. The research ensures the property meets the necessary threshold to justify its local significance and the application of the Heritage Overlay.

The Amendment meets State and local policies by identifying heritage of local significance then selecting the appropriate provision, the Heritage Overlay, to implement the outcomes. It delivers the net community benefit sought through Clause 71.02-3 by:

- identifying local heritage for present and future generations
- applying planning provisions so that future development proposals are assessed to ensure they sensitively respond to existing heritage fabric.

The provisions have prepared consistent with Ministerial Direction 7(5) and the Statement of Significance format reflects good practice.

The Panel agrees with Council regarding the Amendment's potential impact on housing supply. There is no evidence that applying the Heritage Overlay to a single property in the Neighbourhood Residential Zone Schedule 3 (Low Scale, Low Density Residential Areas) will negatively affect the ability for Boroondara to achieve its municipal housing supply, as sought by State policy.

(iii) Conclusions

For the reasons set out in this report, the Panel concludes that the Amendment:

- is supported by, and implements, the relevant sections of the Planning Policy Framework
- is consistent with the relevant Ministerial Directions and Practice Notes
- is well founded and strategically justified and should proceed.

3 9 Seattle Street, Balwyn North (HO945)

Exhibited Statement of significance



What is significant?

The former Batrouney House at 9 Seattle Street, Balwyn North, designed by architect Edgard Pirrotta in 1975, is significant. Significant fabric includes asymmetrical built form with a steeply raked parapet wall and curved corner to the principal façade, walls of bagged concrete blocks, original external colour scheme (albeit subtly softened by the original owners), irregular roofline that incorporates sections that are variously flat, low-pitched or more steeply raked, all clad with metal tray deck roofing, a long glazed vault, made of curved timber beams with perspex infill, which extends all the way from the front door to the staircase in the rear wing, flat-roofed double carport, exposed chimney flues, rainwater heads and downpipes, flight of shallow concrete-paved steps that lead from the street to the front door, and bagged and painted concrete-block retaining wall with curved corner walls at the driveway entry. The garage door is a later addition and is not significant.

How is it significant?

The house is of historic and aesthetic significance to the City of Boroondara.

Why is it significant?

9 Seattle Street, Balwyn North, is of local historical significance for the evidence it provides of Boroondara as a locus for fine, leading architect-designed public and private buildings from the 1850s into the postwar period. Built in 1975 to a design by prominent Melbourne-based Italian architect Edgard Pirrotta of Morris & Pirrotta, 9 Seattle Street featured in architecture critic Norman Day's 1976 publication *Modern Houses: Melbourne*, among profiles of some 50 modern houses by a then-emerging generation of younger architects. As a recipient of the September 1976 Age-RAIA House of the Week award, Batrouney House exemplifies the high concentration of modern mid-1970s houses in Boroondara that received architectural accolades or were awarded RAIA citations. **(Criterion A)**

9 Seattle Street, Balwyn North, is of local aesthetic significance as a fine and notably intact example of the Brutalist aesthetic as applied to residential architecture during the 1970s. With its irregular plan, jagged roofline and use of glazed vaulting, the house has a stark external form featuring walls of bagged concrete blocks and a roofline that incorporates sections that are variously flat, low-pitched or more steeply raked. The house retains many distinctive features including its long glazed vault, made of curved timber beams with perspex infill, which extends all the way from the front door to the staircase in the rear wing. As is typical of other examples of the style, the house's chimney flues, rainwater heads and downpipes are all exposed. Being highly intact, and retaining its original front and side fences and entry steps, the house is a bold and eye-catching element in the streetscape. **(Criterion E)**

3.1 Issues

(i) The issues

The issues are:

- whether the property at 9 Seattle Street, Balwyn North, has sufficient heritage significance to meet the threshold to justify applying the Heritage Overlay
- whether property value, private financial impact, the quality of Balwyn North, building layout and suitability, and onsite safety are relevant when considering whether the subject property has sufficient heritage significance to meet the threshold for applying the Heritage Overlay.

(ii) Submissions and Council response

Submissions objected to the Heritage Overlay (HO945) being applied to the subject land because they considered:

- the property does not have sufficient heritage value to justify the Heritage Overlay
- the house is not 'living friendly' and is unsuitable for people
- the sloping property is dangerous and unsafe for elderly people and young children
- the current house layout is unsuitable for families, and unenjoyable for anyone
- the house and Balwyn North are just standard.

Regarding heritage significance, Council stated:

- the heritage citation prepared by GML Heritage clearly assesses the property against the recognised heritage criteria which demonstrates it achieves Criteria A (historical significance) and E (aesthetic significance) and is individually significant
- no submitter provided evidence to support the claim the property has little or no heritage significance or that the assessment is incorrect
- the Amendment is consistent with the objectives of planning in Victoria
- it has a statutory obligation to continuously identify and protect places of heritage significance through the Heritage Overlay.

Regarding other issues in the submissions, Council stated:

- they are not relevant when assessing whether to apply the Heritage Overlay
- Planning Practice Note 1 identifies the criteria for assessing whether to apply the Heritage Overlay, and they do not include:
 - potential personal financial implications, such as property value or costs
 - development potential
 - the character of the surrounding streets or the level of change experienced in the area
- the only relevant test during the planning scheme amendment stage is whether the place meets at least one of the recognised heritage criteria
- the Heritage Overlay enables routine maintenance and repairs which do not change the external appearance of the building without the need for a planning permit
- structural condition including design and layout is most appropriately considered during a planning permit application for development, which will assess it against local heritage policy objectives.

- alterations and additions to the property which respond to liveability, safety, and use may be undertaken subject to an approved planning permit which has assessed the work against local heritage policy objectives.

(iii) Discussion

Heritage significance

The Panel agrees with Council regarding why the property has sufficient heritage significance to justify applying the Heritage Overlay.

The HO945 Statement of Significance explains why it is of local historical and aesthetic significance. The owner's submission did not provide reasons why they believed the property did not have sufficient heritage significance. No submission challenged information in the heritage citation regarding the property's significance.

One submission described the house as "*just a standard home*". Whether a house is 'standard' is not the test when assessing heritage significance. The test is whether it is comparable to other similar properties which have identified heritage significance. The HO945 heritage citation includes a comparative analysis which concluded the property is comparable with other Modernist post-war houses.

The Panel agrees with the citation that the highly intact house at 9 Seattle Street is comparable with:

- 300 Balwyn Road, Balwyn North (HO616)
- 43 Kireep Road, Balwyn (HO177)
- 12-14 Tannock Street, Balwyn North (HO928)
- 6 Reeves Court, Kew (HO822)
- 18 Yarra Street, Kew (Significant in HO530)
- 6 Fairview Street, Hawthorn (HO784)
- 29 Leura Grove, Hawthorn East (HO857).

Nonetheless, there is nothing typical or standard about the house. The HO945 citation states the house is designed in a Brutalist style and provides a history of Brutalism in Australia. This includes:

- The term Brutalism is closely associated with Le Corbusier's *béton brut* ('concrete in the raw', that is in its natural state when the formwork is removed, often to show the timber graining) (Goad & Willis 2012: p110).
- ...
- By the 1970s, Brutalist influenced houses in Melbourne shared many features in common. Circulation elements became overtly expressed and functional systems articulated with structure and service elements such as stairs, ramps and even ducting left exposed. Materials included rough, board-marked concrete, concrete block and face bricks, often manipulated to create complex sculptural forms, 45 degree chamfered corner elements and bold cantilevers.

These Brutalist style elements have been incorporated into the design of the house by a recognised architect. The building elevations in the citation show how the architect responded to the property's slope, through a stepped design approach. It includes landscaping with retaining walls and steps to make the external spaces more useable.

The property is important to Boroondara's cultural history and is locally significant for its 1970s Brutalist aesthetics in a residential setting.

Other issues

The Panel agrees with Council regarding other issues raised in submissions. All three submissions make broad statements without explaining reasons or providing information to support their claims. This includes the claim regarding onsite safety.

The Amendment proposes to apply the Heritage Overlay (HO945) to all of 9 Seattle Street as an individually significant place. The area beyond this curtilage, including the quality of Balwyn North, is therefore not relevant to the significance of the place.

The Panel does not agree with submissions that the house, which was designed by a professionally qualified and recognised architect, is unsuitable for families or people more broadly. As outlined in the HO945 citation, Trevor and Shamla Batrouney commissioned Edgard Pirrotta of Morris and Pirrotta to design a family home with multiple bedrooms and what appears to be a 'family room' next to the kitchen.

If the owner dislikes the layout, they can alter the interior without the need for a planning permit because the Amendment does not propose to apply the internal controls through the Heritage Overlay Schedule.

Planning Practice Note 1 does not include private financial impact or property value as criteria for assessing heritage. Nonetheless, the Heritage Overlay would not financially affect the owner if they sought to:

- change the interior because there would be no need for a planning permit
- maintain and repair the exterior without changing its appearance because there would be no need for a planning permit, as indicated in Council's response.

(iv) Conclusions

The Panel concludes:

- The property at 9 Seattle Street, Balwyn North meets Criteria A and E and has sufficient heritage significance to justify applying the Heritage Overlay.
- Property value, private financial impact, quality of Balwyn North, building layout, suitability and safety are not relevant when considering whether the property has sufficient heritage significance to apply the Heritage Overlay.

Appendix A Planning context

A:1 Planning policy framework

Council submitted that the Amendment is supported by various clauses in the Planning Policy Framework, which the Panel has summarised below.

Victorian planning objectives

The Amendment will implement section 4(1)(d) of the *Planning and Environment Act 1987* (the Act) to:

- conserve and enhance those buildings, areas or other places which are of scientific, aesthetic, architectural or historical interest, or otherwise of special cultural value
- balance the present and future interests of all Victorians.

Planning Policy Framework

The Amendment supports:

- **Clause 15.01-5S** (Neighbourhood character) which seeks to recognise, support and protect neighbourhood character, cultural identity, and sense of place.
- **Clause 15.03-1S** (Heritage conservation) which seeks to ensure the conservation of places of heritage significance. Relevant strategies are:
 - Identify, assess and document places of natural and cultural heritage significance as a basis for their inclusion in the planning scheme.
 - Provide for the protection of natural heritage sites and man-made resources and the maintenance of ecological processes and biological diversity.
 - Provide for the conservation and enhancement of those places which are of, aesthetic, archaeological, architectural, cultural, scientific, or social significance.
 - Encourage appropriate development that respects places with identified heritage values.
 - Retain those elements that contribute to the importance of the heritage place.
 - Encourage the conservation and restoration of contributory elements.
 - Ensure an appropriate setting and context for heritage places is maintained or enhanced.
- **Clause 15.03-1L** (Heritage in Boroondara) which applies to land affected by the Heritage Overlay and seeks:
 - To preserve 'significant' heritage places, protecting all significant heritage fabric including elements that cannot be seen from the public realm.
 - To facilitate sympathetic new buildings which extend the life of 'significant' heritage places.
 - To retain and conserve 'contributory' places and fabric in the Heritage Overlay which are visible from the primary street frontage.
 - To facilitate sympathetic additions, alterations and new buildings to 'contributory' heritage places which are massed, detailed, finished and located to preserve the presentation of the place from the street.
 - To ensure buildings and works to 'non-contributory' properties are sympathetic to the heritage values of the precinct and complement the precinct's heritage built fabric by being respectful of the scale, massing, rhythm and detailing.

A:2 Plan Melbourne

Plan Melbourne 2017-2050 sets out strategic directions to guide Melbourne's development to 2050 to ensure it becomes more sustainable, productive and liveable as its population approaches 8 million. It is accompanied by a separate implementation plan that is regularly updated and refreshed every five years.

Plan Melbourne is structured around seven Outcomes, which set out the aims of the plan. The Outcomes are supported by Directions and Policies, which outline how the Outcomes will be achieved. The following are relevant to the Amendment:

- **Outcome 4:** Melbourne is a distinctive and liveable city with quality design and amenity
 - **Direction 4.4:** Respect Melbourne’s heritage as we build for the future
 - **Policy 4.4.1:** Recognise the value of heritage when managing growth and change
 - **Policy 4.4.4:** Protect Melbourne’s heritage through telling its stories.

A:3 Planning scheme provisions

The Heritage Overlay purposes are:

- To implement the State Planning Policy Framework and the Local Planning Policy Framework, including the Municipal Strategic Statement and local planning policies.
- To conserve and enhance heritage places of natural or cultural significance.
- To conserve and enhance those elements which contribute to the significance of heritage places.
- To ensure that development does not adversely affect the significance of heritage places.
- To conserve specifically identified heritage places by allowing a use that would otherwise be prohibited if this will demonstrably assist with the conservation of the significance of the heritage place.

The Heritage Overlay requires a planning permit to demolish, subdivide, build or carry out works. The Heritage Overlay enables its Schedule to specify additional controls for specific trees, painting previously unpainted surfaces, internal alterations and an incorporated plan (which may exempt buildings and works and other changes from requiring a planning permit). The Schedule may also identify if a place can be considered for uses that are otherwise prohibited, subject to a planning permit.

A:4 Ministerial Directions, Planning Practice Notes and guides

Ministerial Directions

The Explanatory Report discusses how the Amendment meets the relevant requirements of:

- Ministerial Direction 11 (Strategic Assessment of Amendments)
- Ministerial Direction (The Form and Content of Planning Schemes pursuant to section 7(5) of The Act) – referred to as Ministerial Directions 7(5) in this Report.

That discussion is not repeated here.

Planning Practice Note 1 (Applying the Heritage Overlay), August 2018

Planning Practice Note 1 provides guidance about using the Heritage Overlay. It states that the Heritage Overlay should be applied to, among other places:

Places identified in a local heritage study, provided the significance of the place can be shown to justify the application of the overlay.

Planning Practice Note 1 specifies that documentation for each heritage place needs to include a Statement of Significance that clearly establishes the importance of the place and addresses the heritage criteria. It recognises the following model criteria (the Hercon criteria) that have been adopted for assessing the value of a heritage place:

Criterion A: Importance to the course or pattern of our cultural or natural history (historical significance).

- Criterion B:** Possession of uncommon, rare or endangered aspects of our cultural or natural history (rarity).
- Criterion C:** Potential to yield information that will contribute to an understanding of our cultural or natural history (research potential).
- Criterion D:** Importance in demonstrating the principal characteristics of a class of cultural or natural places or environments (representativeness).
- Criterion E:** Importance in exhibiting particular aesthetic characteristics (aesthetic significance).
- Criterion F:** Importance in demonstrating a high degree of creative or technical achievement at a particular period (technical significance).
- Criterion G:** Strong or special association with a particular community or cultural group for social, cultural or spiritual reasons. This includes the significance of a place to Indigenous peoples as part of their continuing and developing cultural traditions (social significance).
- Criterion H:** Special association with the life or works of a person, or group of persons, of importance in our history (associative significance).

Practitioner's Guide

A Practitioner's Guide to Victorian Planning Schemes Version 1.5, April 2022 (Practitioner's Guide) sets out key guidance to assist practitioners when preparing planning scheme provisions. The guidance seeks to ensure:

- the intended outcome is within scope of the objectives and power of the PE Act and has a sound basis in strategic planning policy
- a provision is necessary and proportional to the intended outcome and applies the Victoria Planning Provisions in a proper manner
- a provision is clear, unambiguous and effective in achieving the intended outcome.