

### 3 Presentation of officer reports

#### 3.1 Amendment C308boro - Hawthorn East Heritage Gap Study - Exhibition outcomes and request for Panel

##### Abstract

The purpose of this report is to inform the Urban Planning Special Committee (UPSC) of the exhibition outcomes of Amendment C308boro and recommend the amendment be referred to an independent Planning Panel to consider all submissions.

The amendment seeks to implement the recommendations of the Hawthorn East Heritage Gap Study (the Study) by applying the Heritage Overlay to 19 individual heritage places, eight heritage precincts and one extension to an existing heritage precinct (HO151) on a permanent basis. These places and precincts are considered to be of local cultural heritage significance to the City of Boroondara.

The amendment was exhibited from 26 April to 3 June 2019. A total of 53 submissions were received, including 4 supporting, 8 partially supporting, 39 objecting and 2 which did not state a position.

Generally, the issues raised by submitters include the impact of heritage controls on property values and future development opportunities, burden of planning permit requirements, conflict with zoning of land, disagreement with the heritage significance of individual properties and precincts and accuracy of the Study.

The submissions have been considered by officers and Council's heritage consultant. A summary of all submissions received, the officers' response and recommended changes are provided at **Attachment 1**. The revised Study (January 2020) is provided at **Attachment 2**.

In accordance with section 23 of the *Planning and Environment Act 1987*, Council as the planning authority must consider whether to change the amendment in response to submissions, refer the amendment to an independent Planning Panel or abandon the amendment in full or part. It is recommended the amendment be referred to an independent Planning Panel to consider all unresolved submissions.

## Officers' recommendation

That the Urban Planning Special Committee resolve to:

1. Receive and note the submissions to Amendment C308boro (**Attachment 1**) to the Boroondara Planning Scheme and the Hawthorn East Heritage Gap Study in accordance with section 22 of the *Planning and Environment Act 1987*.
2. Endorse the officers' response to submissions and recommended changes to Amendment C308boro and the Hawthorn East Heritage Gap Study as shown at **Attachments 1 and 2**.
3. Request that the Minister for Planning appoint a Planning Panel under section 153 of the *Planning and Environment Act 1987* to consider unresolved submissions to Amendment C308boro.
4. Refer the amendment and all submissions to a Planning Panel in accordance with section 23(1) of the *Planning and Environment Act 1987*.
5. Authorise the Director City Planning to undertake administrative changes to Amendment C308boro that do not change the intent of the amendment prior to a Panel Hearing.

**Responsible director: Shiran Wickramasinghe  
City Planning**

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## 1. Purpose

The purpose of this report is to:

- Provide a summary of the outcomes of exhibition and key issues raised in the submissions to Amendment C308boro.
- Respond to the key issues raised and summarise any changes made to the amendment as a result of the feedback.
- Seek a resolution from the UPSC to authorise officers to write to the Minister for Planning to appoint an independent panel and refer submissions to the Panel.

## 2. Policy implications and relevance to community plan and council plan

### **Council Plan 2017-2021**

The identification and protection of heritage places through the amendment is consistent with the strategic objective to *'Protect the heritage and respect the character of the City to maintain amenity and liveability whilst recognising the need for appropriate, well-designed development for future generations'* under Theme 4 - Neighbourhood Character and Heritage.

Specifically, it assists in implementing Council's commitment to *'Preserve the City's history and protect heritage properties and precincts by undertaking a municipal wide heritage review and introduce heritage overlays in the Boroondara Planning Scheme'* (Strategy 4.3).

The project will further assist Council in fulfilling its major initiative commitment to *'protect the City's heritage by continuing a municipal wide heritage assessment of all areas not currently subject to a heritage overlay in the Boroondara Planning Scheme'*.

### **Boroondara Community Plan 2017-27**

The Boroondara Community Plan 2017-27 sets out the 10 year vision for Boroondara's future based on values, aspirations and priorities important to the community.

The amendment implements Strategic Objective 4 of the Plan: *Protect the heritage and respect the character of the City to maintain amenity and liveability while recognising the need for appropriate, well-designed development for future generations.*

Specifically, the amendment implements the following strategy:

- **Strategy 4.3** - Preserve the City's history and protect heritage properties and precincts by undertaking a municipal-wide heritage review and introduce heritage overlays in the Boroondara Planning Scheme.

## Heritage Action Plan 2016

The Heritage Action Plan was adopted by Council on 2 May 2016 and establishes the framework to guide Council's heritage work program as it relates to the identification, protection, management and promotion of Boroondara's heritage assets.

The amendment is consistent with the following action of the Heritage Action Plan 2016:

- *Prepare and implement a heritage study of Hawthorn East as part of the Municipal Wide Heritage Gap Study*

## Boroondara Planning Scheme

The amendment is consistent with the objectives of the Planning Policy Framework (PPF) and Local Planning Policy Framework (LPPF). In particular it addresses the following Clauses:

- Clause 15.03-1 (Heritage Conservation) which seeks to *'ensure the conservation of places of heritage significance'* by identifying, retaining and protecting places with identified heritage significance;
- Clause 21.04-5 (Built Environment and Heritage) of the Municipal Strategic Statement which includes the objective *'to identify and protect all individual places, objects and precincts of cultural, aboriginal, urban and landscape significance'*; and
- Clause 22.03-2 (Heritage Policy) which seeks to *'preserve 'significant' heritage places, protecting all significant heritage fabric including elements that cannot be seen from the public realm'*.

Both the PPF and LPPF seek to ensure the Heritage Overlay is applied to protect places of heritage significance in the City of Boroondara.

## Plan Melbourne 2017-2050

The identification, assessment and protection of places of local heritage significance is supported by Outcome 4 of *Plan Melbourne* which seeks to ensure that *'Melbourne is a distinctive and liveable city with quality design and amenity'*. Direction 4.4 recognises the contribution heritage makes to Melbourne's distinctiveness and liveability and advocates for the protection of Melbourne's heritage places.

In particular, Policy 4.4.1 recognises the need for *'continuous identification and review of currently unprotected heritage sites and targeted assessments of heritage sites in areas identified as likely to be subject to substantial change'*.

The amendment is consistent with these Plan Melbourne directions and initiatives.

## Planning and Environment Act 1987

The amendment is consistent with the objectives of planning in Victoria, in particular the objective detailed in section 4(1)(d) of the *Planning and Environment Act 1987* (the Act), being:

*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.*

This means that Council has an obligation to continuously identify and protect places of heritage significance through the Heritage Overlay.

### 3. Background

On 25 July 2016, Council resolved to engage heritage consultants, Context, to commence the Municipal Wide Heritage Gap Study (MWHGS). The Hawthorn East Heritage Gap Study, the subject of Amendment C308boro, is the sixth suburb assessment undertaken as part of the wider MWHGS.

The draft Hawthorn East Heritage Gap Study (draft Study) recommended 19 individual places, eight heritage precincts and extensions to two existing heritage precincts to be included in the Heritage Overlay on a permanent basis.

Preliminary consultation on the draft Study was undertaken from 13 July to 13 August 2018. Council received 115 submissions, comprising 36 supporting, 62 objecting, 14 partially supporting submissions and three submissions where the position was unknown. One objecting submission was subsequently withdrawn. An additional four late submissions were received following preliminary consultation as annexed to the 17 December 2018 meeting minutes. Therefore, the number of submissions received during preliminary consultation totalled 119.

Following preliminary consultation, officers and Council's heritage consultant reviewed the feedback received and recommended several changes to the Study which was considered by UPSC at the meeting of 17 December 2018. At this meeting, the UPSC resolved to adopt the revised Study and seek authorisation from the Minister for Planning to prepare and exhibit Amendment C308boro. The UPSC also resolved to request the Minister for Planning to introduce interim heritage controls for all individual properties and precincts recommended in the Study.

As per the resolution of the UPSC, Council officers requested authorisation from the Minister for Planning to prepare and exhibit Amendment C308boro on 21 December 2018. The Minister's delegate conditionally authorised the amendment on 19 February 2019.

As part of the conditions of authorisation, DELWP officers requested Council justify the location of some of the proposed precinct boundaries and inclusion of non-contributory properties on or close to precinct boundaries prior to exhibition. Council officers met with DELWP officers to discuss this condition and provided written justification on 13 March 2019. On 27 March 2019, DELWP responded by advising approval to proceed with exhibition of the amendment.

Public exhibition of Amendment C308boro was undertaken from 26 April to 3 June 2019. All affected and adjoining property owners and occupiers were notified of exhibition, as well as key stakeholders and submitters to preliminary consultation.

### **Interim Heritage Overlays (Amendment C309boro)**

The Minister's delegate approved interim heritage controls to all properties and precincts recommended for inclusion in the Heritage Overlay under Amendment C308boro. The interim controls were gazetted in the Boroondara Planning Scheme on 15 April 2019 through Amendment C309boro and expire on 31 March 2020. A request has been made to the Minister for Planning to extend the interim heritage controls by a further twelve months to allow sufficient time to progress the permanent Heritage Overlays through Amendment C308boro.

### **Amendment C299boro (Planning Permit Exemptions, May 2019)**

The Minister for Planning introduced an Incorporated Plan into the Schedules to Clauses 43.01 and 72.04 to ensure a planning permit was not required under the Heritage Overlay for sites with interim heritage controls in place, where a valid permit under the Building Act had been issued prior to the interim heritage controls coming into effect. The incorporated plan was amended by the Minister for Planning in May 2019 to exclude 'Currajong House' at 337 Auburn Road, Hawthorn East.

The exemption has facilitated the loss of two contributory graded heritage properties to the Longford Estate and Environs Precinct, namely 360 and 368 Auburn Road, Hawthorn East.

On 16 January 2020, the Minister for Planning deleted the Incorporated Plan from the Boroondara Planning Scheme through the gazettal of Amendment C324boro. Gazettal of the amendment means that a planning permit is now required for all demolition and buildings and works to properties affected by an interim heritage control, including where a valid building permit has been obtained.

## **4. Outline of key issues/options**

As a result of the public exhibition process, Council received 53 submissions as follows:

- 4 supporting submissions
- 8 partially supporting submissions
- 39 objecting submissions
- 2 submissions which did not state a position

A summary of each submission and officer response is provided at **Attachment 1**. In addition, the key issues raised in the submissions are summarised below with a response from officers.

## Property value and financial implications

A number of submitters have raised concerns about the potential impact of heritage controls on property values and maintenance costs for individual properties. Officers are obliged to view financial or maintenance implications as irrelevant considerations in the assessment of appropriate heritage controls.

Planning Practice Note PPN01: 'Applying the Heritage Overlay' identifies the criteria for assessing the heritage significance of a heritage place and refers only to matters of a heritage nature.

Recent Planning Panels for similar heritage amendments have considered private economic effects of a Heritage Overlay, including the Panels which considered the Canterbury Heritage Gap Study (Boroondara Amendment C266) and the Camberwell Heritage Gap Study (Boroondara Amendment C274 Part 2) as part of the MWHGS. Each Panel concluded the impacts on land values or the individual financial circumstances of the land owner were outside the scope for consideration. Other Panels which have arrived at the same conclusion include Melbourne Amendment C207 and Moreland Amendment C149.

It is considered the implementation of the Study through the introduction of the Heritage Overlay will have positive social effects on the wider community. It will do so by identifying and facilitating the preservation of buildings which provide a valuable and recognisable contribution to the area.

## Future redevelopment opportunities, alterations to dwellings and property maintenance

A number of submitters have objected to the application of a Heritage Overlay to their property on the basis that this will prevent the redevelopment of the property either in the form of extensions to the existing dwelling or total demolition and construction of a new replacement building.

The potential impacts on any redevelopment plans the owner may have are not a valid consideration when deciding whether a Heritage Overlay should be applied, having regard to *Planning Practice Note 1: Applying the Heritage Overlay*.

The purpose of the Heritage Overlay is to 'conserve and enhance places of identified heritage significance'. The Heritage Overlay has been developed to implement the following objectives of the *Planning and Environment Act 1987*:

- (d) To conserve and enhance those buildings, areas or other places which are of scientific, aesthetic, architectural or historical interest, or other special cultural value [...]
- (g) To balance the present and future interests of all Victorians [...]

These objectives together with section 6(1) of the Act place an obligation on Council to identify and protect sites of heritage significance.

Officers acknowledge the introduction of a Heritage Overlay is an additional planning control. However, it does not prohibit demolition, alterations or additions. Rather, it triggers the requirement for a planning permit for such development and associated works.

The planning permit process is necessary to ensure proposed works do not detrimentally impact the significant features of heritage places. The Heritage Overlay can only be applied to places of identified heritage significance and cannot be misused as a form of development or 'neighbourhood character' control.

### **Structural Integrity of buildings**

Several submitters expressed the view their property has reached the end of its life-span and should be reconstructed in line with modern living standards. Alternatively, some submitters raised concern with the structural integrity of a building and the limitations of the Heritage Overlay to reconstruct a new building. The structural integrity of buildings are not a valid consideration when deciding whether a Heritage Overlay should be applied, having regard to *Planning Practice Note 1: Applying the Heritage Overlay*.

Typically, an assessment of the economic life of a building is subjective and is dependent on a range of factors including a property owner's willingness or desire to maintain or renovate the property. Many elements of a building's structural integrity are not visible from the public realm such as foundation and condition of internal framing, which are not matters for consideration in a heritage assessment. The assessment is focussed on intactness of a building as viewed from the public realm.

Council has a responsibility to identify and protect places of local cultural significance. If evidence can be provided that a building is structurally unsound, this can be considered through the planning permit process once the Heritage Overlay has been applied on an interim or permanent basis. However, officer experience is that most buildings are not necessarily 'structurally unsound' and usually require maintenance or repair.

### **Maintenance and repairs of heritage places**

Several submitters have raised concerns with the burden of planning permit requirements under the Heritage Overlay in relation to routine repairs and maintenance.

The Heritage Overlay provisions include an exemption from planning permit requirements for routine maintenance and repairs which do not change the external appearance of the building. Internal maintenance and repairs such as rewiring, plumbing, restumping, replastering, and installation of a new kitchen or bathroom do not require planning approval.

Planning Practice Note 1 (Applying the Heritage Overlay) provides specific guidance to when internal alteration controls should be activated and states this provision should be applied sparingly and on a selective basis to special interiors of high significance. For example, officer recommend the application of internal alteration controls to protect the church organ at 14 Rathmines Road, Hawthorn East (Victoria Road Precinct). It is noted no residential property in the amendment has been recommended for internal alteration controls.



The Heritage Overlay does not place an obligation on the owner to maintain a heritage building to a particular heritage standard. The onus is on an owner to maintain their property so that it does not fall into a state of disrepair. All houses require on-going maintenance in order to protect their condition, amenity and value, whether in the Heritage Overlay or not.

### **Competing planning policy objectives (i.e. urban consolidation and heritage protection)**

Several submissions raised the issue of competing policy outcomes arising from seeking to protect heritage places along main roads and in close proximity to public transport and activity centres. While urban consolidation objectives might point to redevelopment opportunities, these matters are not considered in heritage assessments.

Heritage assessments are focused only on considering a property from a heritage perspective, consistent with relevant state government practice notes and accepted professional heritage practice. If a property can be identified as being of individual heritage significance or as part of a coherent heritage precinct, then the property has been recommended for inclusion in the Heritage Overlay and assigned a grading.

The introduction of heritage controls in areas close to services is not necessarily a direct conflict as the Heritage Overlay does not outright prohibit further development. Council is required to consider and weigh up all relevant policies when assessing planning applications.

### **Non-contributory properties in a Heritage Overlay precinct**

Some submitters questioned the inclusion of their property in the Heritage Overlay despite the property being identified as non-contributory.

It is common practice for non-contributory properties to be included in the Heritage Overlay as part of a precinct, even though these buildings do not hold any heritage value in their own right. Their inclusion in the Heritage Overlay will ensure that future redevelopment does not detrimentally impact on the heritage significance of adjoining contributory and significant heritage places or the broader precinct. Any replacement building(s) or development needs to respect the heritage fabric and characteristics of the surrounding heritage precinct. This can only be achieved by including these properties in the Heritage Overlay as part of the precinct and triggering the need for a planning permit and assessment against Council's Heritage Policy. The Heritage Policy sets out built form design policy guidance on new buildings under the provisions relating to non-contributory places.

Council's Heritage Policy at Clause 22.03 of the Boroondara Planning Scheme supports full demolition of non-contributory properties in a Heritage Overlay subject to a sympathetically designed replacement building.

## **Recommendation to downgrade or excise properties from the proposed Heritage Overlay**

Many opposing submitters argued their properties did not have heritage value and should be downgraded and/or excised from a proposed heritage precinct. Some submitters provided supporting evidence to substantiate the extent of alterations made to their properties.

Following a review of the submissions received, Council's heritage consultant undertook further site inspections and obtained additional historical information, including historical building permits where available.

Council's heritage consultant considers it appropriate to downgrade the following properties due to alterations that have occurred or demolition:

- 32 Mayson Street, Hawthorn East (contributory to non-contributory)
- 48 Harts Parade Hawthorn East (contributory to non-contributory)
- 7 & 7A Fairmount Road, Hawthorn East (contributory to non-contributory)
- 1 Grandview Grove (contributory to non-contributory)
- 54 Lilydale Grove (contributory to non-contributory)

Council's heritage consultant also considers it appropriate to delete the properties at 1A - 5A Miami Street from the Stonyhurst & Athol Estates Precinct, delete 5-15 Grandview Grove from the Victoria Road Precinct, and to delete 360, 362, 364, 366 and 368 Auburn Road from the Longford Estate and Environs Precinct. Officers are recommending that the properties at 356 and 358 Auburn Road, Hawthorn East be retained in the amendment and proceed to an independent planning panel for consideration. Council's heritage consultant has also recommended the property at 336 Riversdale Road, Hawthorn East be deleted from the amendment as an individually significant heritage place on the basis of external alterations, particularly to the front door and windows and loss of the verandah fretwork.

Officers have been provided with building plans of 14 Grandview Grove, Hawthorn East from 1988. The building plans show the upper level of the dwelling is a new addition including the roof of the main tower. On this basis, the property cannot be readily discerned as a heritage place. Council's heritage consultant is recommending the property be downgraded from individually significant to non-contributory. No submission was received in relation to the property.

## **Requests for additional properties to be included in a Heritage Overlay**

Submitter 17 nominated the properties at 34-52 Cole Street, Hawthorn East to be included in the Heritage Overlay. Officers are unable to consider any further nominations as the study was adopted on 17 December 2018 and the planning scheme amendment process commenced. Officers acknowledge the nomination of the property and have registered the property on an internal database for future consideration following the conclusion of the Municipal Wide Heritage Gap Study.

## Accuracy of exhibited heritage citations

Officers note a number of submitters have raised questions and concerns surrounding the accuracy of detail in the exhibited heritage citations. Council's heritage consultant has reviewed the exhibited citations and made several changes to ensure they reflect the current condition of the individual properties and precincts as well as the level of significance required to meet the threshold of being included in a Heritage Overlay. Officers and Council's heritage consultant carried out the following in the review of the citations:

- Review of building permit histories of properties to clarify the extent of any alterations and additions.
- Site visits to view specific properties from the street to confirm any alterations and additions to properties including 64 Campbell Road, 336 Riversdale Road and 29 Leura Grove, 157 Auburn Road, 4, 6, and 8 Albert Street, Hawthorn East.

The revised draft Hawthorn East Heritage Gap Study is provided at **Attachment 2**.

## Next Steps

Overall it is considered there is sufficient merit to proceed with the amendment in its revised form. However, as there are unresolved submissions, the UPSC (under section 23 of the *Planning and Environment Act 1987*) can at this point:

- refer the amendment to an independent Planning Panel (recommended),
- change the amendment in response to a submission(s), or
- abandon the amendment (or parts of it).

As there are a number of unresolved submissions, it is the officers' recommendation the UPSC request the Minister for Planning to appoint an independent Planning Panel to consider the submissions to Amendment C308boro to the Boroondara Planning Scheme.

Specifically, unresolved submissions relate to the following individual places and precincts:

**Table 1: Summary of submissions received (with the submission number in Appendix 1) and unresolved submissions**

Precinct/Place	Supporting	Partially Supporting	Objecting	No position	Unresolved submissions	Total No. of submissions
Brickfields Environs Precinct	1 (34)		2 (05, 35)		2	3
Burwood Road Estate Precinct		1 (25)			1	1
Essington Estate and Environs Precinct		1 (36)	3 (01, 03, 45)		4	4

Precinct/Place	Supporting	Partially Supporting	Objecting	No position	Unresolved submissions	Total No. of submissions
Longford Estate and Environs Estate Precinct			7 (02, 14, 15, 27, 46, 49, 53)		7	7
Smith's Paddock (Burwood Reserve) Precinct			1 (13)		1	1
Stonyhurst & Athol Estates Precinct		1 (24)	3 (20, 23, 43)		4	4
Victoria Road Precinct		4 (08,19, 39, 42)	17 (04, 11, 12, 16, 22, 26, 28, 29, 30, 31, 32, 33, 37, 38, 44, 47, 52)		21	21
157 Auburn Road, Hawthorn and 3 Russell's Place, Hawthorn East			1 (48)		1	1
452 Barkers Road, Hawthorn East	1 (06)				0	1
64 Campbell Road, Hawthorn East			1 (21)		1	1
40 Havelock Road, Hawthorn East			1 (40)		1	1
5 Higham Road, Hawthorn East	1 (07)				0	1
29 Leura Grove, Hawthorn East			1 (51)		1	1
336 Riversdale Road, Hawthorn East			1 (18)		1	1
Other matters	1 (41)	1 (09)	1 (17)	2 (10, 50)	5	5
<b>Total No. of Submissions</b>	<b>4</b>	<b>8</b>	<b>39</b>	<b>2</b>	<b>50</b>	<b>53</b>

Following the Panel's consideration of the amendment, it will prepare a report with a set of recommendations regarding the amendment. The Panel Report must be publicly released 28 days after the report has been received by Council.

Following receipt of the Panel Report, officers will report back to the UPSC and Council on the outcome of the Panel's recommendations. Council may choose to change, adopt or abandon the amendment at that time. If Council chooses to proceed with the amendment, the Minister for Planning will make the final decision.

## **5. Consultation/communication**

All property owners and occupiers were notified in writing of the exhibition of Amendment C308boro and invited to make submissions during the public exhibition period between 26 April and 3 June 2019. The amendment documentation was also available on Council's website and at the planning counter.

Officers carried out site visits to 64 Campbell Road, Hawthorn East, 336 Riversdale Road, Hawthorn East, 29 Leura Grove, Hawthorn East, 157 Auburn Road, Hawthorn, and 4, 6, and 8 Albert Street, Hawthorn East. Officers also inspected Auburn Road, Hawthorn in the Longford Estate and Environs Precinct.

All people who lodged a submission, as well as owners and occupiers of the affected and adjoining properties were provided access to this report and invited to the UPSC meeting.

If the UPSC resolves to refer submissions to an independent planning panel, submitters will have the opportunity to appear at the public hearing and address the panel in support of their submission. Submitters that choose not to appear at the hearing will still have their written submission considered by the independent panel in their report.

Following the release of the panel report, submitters and other interested parties will have a further opportunity to address the UPSC before a decision is made on whether to adopt the amendment.

## **6. Financial and resource implications**

Resources to progress the planning scheme amendment will be sourced from the Strategic Planning Department 2019/20 operating budget.

## **7. Governance issues**

In the interest of transparency and good governance, a contractor who is engaged by the City of Boroondara and does not work within the City Planning Directorate has informed Council officers they are the owner of 358 Auburn Road, Hawthorn East. This contractor has had no involvement in the preparation of this report or provided advice other than to make a submission to the amendment.

The implications of this report have been assessed and are not considered likely to breach or infringe upon, the human rights contained in the *Victorian Charter of Human Rights and Responsibilities Act 2006*.

## 8. Social and environmental issues

The inclusion of the precincts and individually significant properties in the Heritage Overlay recommended by the Study would have positive social and environmental effects by contributing to the continual protection and management of the City's heritage.

## 9. Conclusion

Overall, it is considered that there is sufficient merit to proceed with the amendment in its revised form. Officers recommend the UPSC resolve to request the Minister for Planning appoint an independent Planning Panel to consider the submissions to Amendment C308boro to the Boroondara Planning Scheme in accordance with section 23 of the *Planning and Environment Act 1987*.

**Acting Manager:** Shiranthi Widan, Strategic Planning

**Report officer:** Robert Costello, Senior Project Planner