



# *Amendment C318 to the Boroondara Planning Scheme*

Submission by City of Boroondara  
6 May 2020

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## **PART A**

### **1 INTRODUCTION**

- 1.1 This report represents the City of Boroondara's submission to the Panel appointed to consider submissions to Amendment C318 to the Boroondara Planning Scheme.
- 1.2 This submission to the Panel is in two parts:
  - 1.2.1 Overview of Amendment C318 including its history, policy context and summary of key issues. (Part A).
  - 1.2.2 Summary and commentary on submissions to Amendment C318 (Part B). Part B will be presented to the Panel on 6 May 2020.
- 1.3 The exhibited amendment applies to fifteen individual properties and one precinct in Balwyn, Balwyn North and Deepdene.
- 1.4 Specifically, Amendment C318 amends the Schedule to Clause 43.01 (Heritage Overlay) and Planning Scheme maps 4HO, 8HO, 9HO and 10HO to introduce the Heritage Overlay to the following fifteen individual properties and one precinct on a permanent basis:

*Individually Significant Places:*

- 1 Mountain View Road, Balwyn North.
- 1 Reumah Court, Balwyn.
- 3 Brenbeal Street, Balwyn.
- 7 Mangan Street, Balwyn.
- 8 Kitchener Street, Deepdene.
- 8 Boston Road, Balwyn.
- 9 Boston Road, Balwyn.
- 28 Leonard Street, Deepdene.
- 32 Whitehorse Road, Deepdene.
- 113 Yarrbat Avenue, Balwyn.
- 129-131 Yarrbat Avenue, Balwyn.
- 146 Yarrbat Avenue, Balwyn.
- 171 Doncaster Road, Balwyn North.
- 269 Union Road, Balwyn.
- 958A Burke Road, Deepdene.

*Precincts:*

- Angle Road Precinct (comprising 1-13 and 2-12 Angle Road, Deepdene).

### **2 BALWYN HERITAGE PEER REVIEW HISTORY**

#### **BALWYN AND BALWYN NORTH HERITAGE STUDY (INCORPORATING DEEPDENE AND GREYTHORN)**

- 2.1 Council engaged heritage consultants Built Heritage Pty Ltd in late 2012 to carry out a heritage study of Balwyn and Balwyn North. This study was identified as a high priority project within the Boroondara Heritage Action Plan, which had been adopted by Council in 2012.
- 2.2 The draft Balwyn and Balwyn North Heritage Study (incorporating Deepdene and Greythorn) (the 'draft Study') recommended that 26 individual properties and four precincts (comprising 142 properties) be included in the Heritage Overlay. In addition, the draft Study identified 40 properties for further investigation to determine whether they met the threshold for heritage protection.
- 2.3 Council undertook preliminary consultation between 27 February 2015 and 27 March 2015.
- 2.4 A total of 137 responses were received. Of these, 94 responses were opposed to the recommendations, 22 were in support and 21 were neither in favour nor opposed, making comments on other matters such as the process of identifying properties or querying the heritage status of other buildings.
- 2.5 On 7 September 2015 the Urban Planning Special Committee (UPSC) resolved to not proceed with adopting the draft Study. A planning scheme amendment to implement the recommendations of the Study therefore did not commence. The UPSC reached this decision based on the community's strong opposition to the recommendations of the draft Study, particularly the emphasis on post-war architecture.
- 2.6 At this meeting, 19 submitters opposed the officer recommendation to commence the process of introducing the Heritage Overlay with 15 of these addressing the UPSC. Only four submitters addressed the UPSC in support of the officers' recommendation.
- 2.7 The UPSC also resolved that all properties be removed from Council's register of possible heritage properties. As a result, the properties were no longer subject to Council's adopted process to assess possible heritage properties during the report and consent procedures for demolitions of buildings under Section 29A of the *Building Act, 1993*.
- 2.8 Following the UPSC's decision, Council wrote to all affected property owners and occupiers to inform them of the decision.
- 2.9 It is important to note that the decision of the UPSC did not include any statement that the properties and precincts in question were not of heritage significance, nor was any fault identified within the draft study as a reason to not proceed with adopting the study or commencing a planning scheme amendment.

## **INTERNAL REVIEW**

- 2.10 Following the decision to not proceed with the draft Study, officers carried out an internal review of the citations in February 2016. This review considered the properties examined within the draft study on the following grounds:
  - 2.10.1 The initial score given to the property in the preliminary assessment by Built Heritage. Properties had been assessed on a range of issues including integrity,

rarity and vulnerability and awarded a score out of 20. Properties with a score of 15 or greater were given further consideration.

- 2.10.2 Whether a citation had been prepared for the property. During preparation of the draft Study, properties that were recommended for heritage protection had a full citation prepared. Many other properties had draft citations prepared, but these citations had not been completed.
- 2.10.3 What the recommendation from the draft Study had been. Whether the property had been recommended for heritage protection, further investigation, or not recommended for protection.
- 2.10.4 What responses had been received during the preliminary consultation period, and whether any submissions were supporting or opposing the recommendations.
- 2.11 This assessment led to the preparation of some additional citations for properties that had not had full citations prepared during the draft study process.
- 2.12 Ultimately, Council did not pursue this process any further than the preparation of the additional citations. These citations were not the subject of any public consultation, nor were they adopted by Council.

#### **PEER REVIEW**

- 2.13 On 20 March 2017, the UPSC resolved to undertake a peer review of the draft Study. The peer review was to exclude from consideration properties that have been demolished, properties already within the Heritage Overlay and any post-World War 2 properties. Post World War 2 properties have been defined as buildings which have been constructed in 1946 or later.
- 2.14 This decision to undertake the peer review was made as a result of community members expressing concerns about the sale and demolition of a number of properties that had been included in the draft Study.
- 2.15 Council resolved to undertake the peer review in two parts. Part One comprised a review of those properties that had a prepared citation and Part Two included a review of the remaining properties that had been assessed through the draft study but that had not had a citation prepared.

#### **AMENDMENT C276 - BALWYN HERITAGE PEER REVIEW STAGE 1**

- 2.16 Twelve individual properties and two precincts with completed citations underwent preliminary consultation and were then exhibited as Amendment C276 to the Boroondara Planning Scheme. Due to various changes and panel recommendations, the final approved version of Amendment C276 extended Heritage Overlays over eight individual properties and two precincts on a permanent basis.
- 2.17 Ultimately, Amendment C276 was adopted by Council on 25 February 2019. The amendment has been approved by the Minister for Planning and was incorporated into the Boroondara Planning Scheme on 26 July 2019.

### **3 PRELIMINARY CONSULTATION**

- 3.1 Concurrent with Amendment C276, Council's heritage consultants, Context Pty Ltd, carried out a review of the remaining properties from the Balwyn Heritage Study master list and identified 15 individual properties and one heritage precinct (comprised of 13 properties) as having heritage significance. This is referred to as Stage 2 of the peer review process.
- 3.2 In accordance with standard process, Council undertook preliminary consultation on draft citations between 7 May and 4 June 2019.
- 3.3 The preliminary consultation process included:
- Letters to all affected property owners and occupiers as well as all adjoining property owners and occupiers.
  - Publicly viewable documentation at Council's Planning counter (Camberwell office).
  - A project website with documents available for download.
- 3.4 At the conclusion of the preliminary consultation process, Council received seven submissions including five opposing and two supporting submissions
- 3.5 A report on the outcomes of the preliminary consultation process including the key issues raised, officers' response and recommendations was considered by the UPSC on 2 September 2019.
- 3.6 At this meeting the UPSC resolved to:
- Make some minor changes to citations in accordance with feedback received through the preliminary consultation process.
  - Adopt the citations that had undergone preliminary consultation.
  - Commence a planning scheme amendment to introduce the Heritage Overlay over fifteen individual properties and one precinct.
  - Request that the Minister for Planning introduce interim Heritage Overlays over the properties to ensure that they were not demolished during the amendment process.

### **4 AMENDMENT PROCESS**

- 4.1 Following the UPSC resolution, officers applied to the Minister for Planning seeking authorisation to prepare and exhibit a planning scheme amendment.
- 4.2 Officers at the Department of Environment, Land, Water and Planning (DELWP) under delegation from the Minister for Planning granted authorisation on 14 October 2019.

- 4.3 Exhibition commenced on 4 November 2019 and concluded on 13 December 2019 as required under Section 19 of the *Planning and Environment Act 1987* (the Act).
- 4.4 Letters were sent to all affected owners and occupiers, as well as owners and occupiers of adjoining properties, submitters to the preliminary consultation process and community interest groups. In addition, notices were published in the Progress Leader and the Government Gazette.
- 4.5 At the conclusion of the exhibition period, Council had received a total of nine submissions. Of these, three were in support of the amendment and six were opposed or sought changes to the amendment.
- 4.6 Two additional submissions were received after the exhibition period had concluded. One was in support of the amendment, and one was opposed.
- 4.7 On Wednesday 5 February 2020 Council officers and Council's expert heritage consultant carried out an on-site inspection of 129 Yarrbat Avenue, Balwyn in order to confirm claims made within the submission relating to that property.
- 4.8 Following the site inspection, Council made some changes to the citation for 129 Yarrbat Avenue to reflect modifications that had been made to the property and to more accurately note original elements of the property.
- 4.9 On 16 February 2020, the UPSC considered a report that detailed the outcomes of the exhibition period. The report provided a summary of the submissions received, as well as a response to each submission.
- 4.10 All submitters were invited to attend the UPSC meeting and were given the opportunity to address the committee.
- 4.11 At the meeting, the UPSC resolved to:
- 4.11.1 Receive and note the submissions to Amendment C318 to the Boroondara Planning Scheme in accordance with Section 22 of the Planning and Environment Act 1987.
  - 4.11.2 Endorse the officers' response to submissions and recommended changes to Amendment C318 subject to the following additional change:
    - a. Endorse changes to the citation for the property at 129-131 Yarrbat Ave, Balwyn.
  - 4.11.3 Request the Minister for Planning appoint a Planning Panel under Section 153 of the Planning and Environment Act 1987 to consider all submissions to Amendment C318.
  - 4.11.4 Refer Amendment C318 and all submissions to a Planning Panel in accordance with Section 23(1) of the Planning and Environment Act 1987.
  - 4.11.5 Authorise the Director City Planning to undertake administrative changes to Amendment C318 that do not change the intent of the amendment prior to a Panel Hearing.



- 4.12 In accordance with the resolution of the UPSC, Council officers requested a panel be appointed on 19 February 2020.

## 5 AMENDMENT CHRONOLOGY

- 5.1 Relevant milestones of the amendment can be summarised as follows:

Date	Milestone
20 March 2017	UPSC resolves to carry out Peer Review of draft Balwyn and Balwyn North Heritage Study (incorporating Deepdene and Greythorn).
25 February 2019	UPSC adopts Amendment C276 to the Boroondara Planning Scheme, concluding stage 1 of the peer review process.
7 May - 4 June 2019	Preliminary consultation with affected properties on Stage 2 Peer Review.
2 September 2019	UPSC resolves to seek authorisation to commence a Planning scheme amendment to introduce a permanent Heritage Overlay to fifteen individual properties and one precinct as Amendment C318 to the Boroondara Planning Scheme.
4 September 2019	Council officers write to the Minister for Planning seeking authorisation.
14 October 2019	Authorisation granted.
4 November - 13 December 2019	Public exhibition of Amendment C318.
16 February 2020	UPSC considers report detailing outcomes of exhibition period and resolves to refer Amendment C318 to a Planning Panel for consideration
19 February 2020	Council requests appointment of Panel
27 February 2020	Panel appointed
23 March 2020	Directions hearing held

## 6 STRATEGIC POLICY CONTEXT

- 6.1 This section will address how the amendment responds to the provisions and objectives of Planning Policy Framework (PPF) and the Local Planning Policy Framework (LPPF) of the Boroondara Planning Scheme.
- 6.2 It will identify the strategic context within which issues associated with Amendment C318 must be considered. It will also consider other relevant strategic documents that have informed and provide justification for the amendment.

6.3 The key documents that provide the strategic context for considering this Amendment are as follows:

6.3.1 Metropolitan Strategy – *Plan Melbourne*

6.3.2 Planning Policy Framework

6.3.3 Local Planning Policy Framework including the Municipal Strategic Statement (Clause 21) and local planning policies (Clause 22)

6.3.4 City of Boroondara’s Heritage Action Plan (2016)

6.3.5 Heritage Overlay Practice Note

### **PLAN MELBOURNE - METROPOLITAN STRATEGY**

6.4 The identification, assessment and protection of places of local heritage significance are 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.

6.5 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’*.

6.6 A detailed discussion and assessment of key directions contained within this policy is provided as part of the exhibited Explanatory Report provided to the panel.

### **PLANNING POLICY FRAMEWORK (PPF)**

6.7 The amendment is consistent with the objectives of the PPF and LPPF. In particular it addresses the following clauses:

6.7.1 Clause 15.03-1S (Heritage Conservation) which seeks to *‘ensure the conservation of places of heritage significance’* by identifying, retaining and protecting places with identified heritage significance.

6.8 The Heritage Overlay is the most appropriate mechanism for recognising and protecting the cultural heritage significance of the identified places and precincts.

6.9 For a more detailed assessment of Amendment C318 against relevant PPF Clauses and Ministerial Directions, please refer to the exhibited Explanatory Report provided to the Panel.

### **LOCAL PLANNING POLICY FRAMEWORK (LPPF)**

6.10 The current LPPF provides the relevant context and support for Amendment C318.

#### ***Municipal Strategic Statement & Local Planning Policies***

6.11 The amendment seeks to implement the objectives of the LPPF, which include:

6.11.1 Clause 21.04-5 (Built Environment and Heritage) of the Municipal Strategic Statement includes the objective *‘to identify and protect all individual places, objects and precincts of cultural heritage, aboriginal, townscape and landscape significance’*.

6.11.2 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’*.

### **BOROONDARA HERITAGE ACTION PLAN (2016)**

6.12 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.

6.13 The amendment is consistent with ‘ongoing’ priority action OAR26 of the Heritage Action Plan 2016:

6.13.1 *“Prepare and implement heritage controls to properties identified as ‘individually significant’ in the Balwyn, Balwyn North and Deepdene Heritage Study.”*

### **HERITAGE OVERLAY PRACTICE NOTE**

6.14 The Victoria Planning Provisions Practice Note *Applying the Heritage Overlay* (Revised January 2018) provides guidance in respect of the use of the Heritage Overlay in the planning scheme. The Practice Notes identifies that the following places should be included in a Heritage Overlay:

6.14.1 Any place that has been listed on the Australian Heritage Commission’s Register of the National Estate.

6.14.2 Any place that has been recommended for planning scheme protection by the Heritage Council.

6.14.3 Places listed on the National Trust Register of the National Trust of Australia (Victoria), provided the significance of the place can be shown to justify the application of the overlay.

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

6.15 The Practice Note continues by outlining the requirements for including places in the Heritage Overlay, noting that:

6.15.1 *“The heritage process leading to the identification of the place needs to clearly justify the significance of the place as a basis for its inclusion in the Heritage Overlay” and that, “the documentation for each place should include a statement of significance that clearly establishes the importance of the place”.*

6.16 The heritage citations prepared for the properties affected by the amendment comply with Practice Note requirements for writing statements of significance.

## 7 SUBMISSIONS

7.1 In response to the statutory exhibition of the amendment, a total of nine submissions and two late submissions have been received, including:

- Seven submissions opposing the proposed amendment.
- Four submissions supporting or not objecting to the proposed amendment.

7.2 A list of the submitters and corresponding submission number has been provided to the Panel.

7.3 While there are few consistent and repeated issues brought up in submissions, there are some key themes. A response to these themes raised in submissions is provided below.

### ***Lack of heritage justification***

Relevant submissions: 6, 7, 10

7.4 Some submissions raised objections on grounds that the citations and heritage study did not provide sufficient justification for heritage protection, or that there were deficiencies within the methodology of the heritage study.

### ***Council's response:***

7.5 In regard to methodology, Context Pty Ltd are highly experienced heritage experts who have prepared numerous heritage studies in the past for local government. Their methodology is consistent with industry accepted standards and practices as well as PPN1. Their methodology has been tested numerous times through other panel processes and has consistently been considered appropriate and acceptable (irrespective of any errors, omissions or inaccuracies that may exist in individual citations).

7.6 Recent examples include Boroondara Amendment C266 (Canterbury Heritage Gap Study), Boroondara Amendment C274 (Camberwell Heritage Gap Study), Boroondara Amendment C276 (Balwyn Heritage Peer Review Stage 1), Boroondara Amendment C284 (Hawthorn Heritage Gap Study) and C294 (Kew Heritage Gap Study) and C306 (Kew East and Mont Albert Heritage Gap Study). All of these studies have been supported by various panels.

7.7 The same methodology and level of rigour was used when identifying and recommending properties for the Study.

7.8 In relation to the accuracy of the exhibited heritage citations, while regrettable, errors do occur and consultants take care to be as accurate as they can be in preparing the study before it is tested through the preliminary consultation and exhibition process.

- 7.9 Council corrects errors where they are identified but it is important to distinguish and identify errors that are potentially fatal to the application of the HO or not. In most instances, the errors that have been identified have not changed the heritage expert's overall assessment and recommendation. This is part of the review process.
- 7.10 In past studies, where significant errors have been identified in a citation that called into question a place's significance Council's heritage expert has made recommendations to change the grading or remove properties from the HO. There have been no such errors identified in this case.

### ***Property values and financial implications***

Relevant submissions: 6, 7, 9

- 7.11 Submitters raised concerns about the potential impact of the heritage controls on property values and the maintenance costs of individual properties.

#### ***Council's response:***

- 7.12 Council submits the private financial impacts for property owners (such as those raised by submitters) are not relevant matters to take into account 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.
- 7.13 While Council acknowledges financial impacts may be considered if they overlap with, or translate into public economic effects, it submits the financial matters raised in the submissions are expressed on a site-by-site basis and not at a broader community level.
- 7.14 Council's approach to these submissions is consistent with the views of various planning panels and judicial authority
- 7.15 PPN01 identifies the criteria for assessing the heritage significance of a heritage place and refers only to matters of a heritage nature, matters of financial advantage or disadvantage are considered relevant to determining heritage significance.
- 7.16 Planning Panels for similar heritage amendments have also considered that private economic effects, e.g. impacts upon land values or the individual financial circumstances of the land owner, are outside the scope for consideration (for example, Moreland C129 and C149 Panel Reports, Melbourne C207 Panel Report).
- 7.17 Planning Panels have also consistently confirmed that private financial considerations are not relevant in reports on Boroondara heritage amendments, including Amendments C266 (Canterbury Heritage Gap Study) and C274 (Camberwell Heritage Gap Study) to the Boroondara Planning Scheme.

### ***Changes made in response to submissions***

Relevant submissions: 5, 7, 9

7.18 Some submissions made requests for specific changes to citations, or pointed out errors in citations.

*Council's response:*

7.19 At the UPSC meeting of 5 February 2020, Council resolved to make a number of changes to the exhibited citations in response to submissions that had been made. These changes were:

- 7.19.1 In response to Submission 5 (958A Burke Road, Deepdene - Former Frank Paton Memorial Church) Council made changes to clarify the establishment date of the rear tennis court and to state that the tennis court contributes to the significance of the site.
- 7.19.2 In response to Submission 7 (9 Angle Road, Deepdene) Council amended the citation for the Angle Road Precinct to reference additions to the rear of the property and to reference building works that occurred in more recent years. References to retaining elements that had been altered through these works were also removed from the citation.
- 7.19.3 In response to Submission 9 (129-131 Yarrbat Avenue, Balwyn), and following a visit to the site, Council made changes to the citation to reference the replacement of the driveway topping, alterations to the front and the rear of the property, and changes to the gardens.