

# URBAN PLANNING SPECIAL COMMITTEE



## MINUTES

(Open to the public)

**Monday 17 August 2020**

Online - Delivered via Webex Events.

**Commencement** 6.37pm

**Attendance**  
Councillor Garry Thompson (Chairperson)  
Councillor Cynthia Watson (Mayor)  
Councillor Jane Addis  
Councillor Phillip Healey  
Councillor Lisa Hollingsworth  
Councillor Steve Hurd  
Councillor Jim Parke  
Councillor Coral Ross  
Councillor Felicity Sinfield  
Councillor Jack Wegman

**Apologies** Nil

<b><u>Officers</u></b>	Phillip Storer	Chief Executive Officer
	Shiran Wickramasinghe	Director City Planning
	Simon Mitchell	Manager Statutory Planning
	Shiranthi Widan	Acting Manager Strategic Planning
	David Thompson	Manager Governance
	Christian Wilmsen	Team Leader Strategic Planning
	Celia Robinson	Coordinator Governance
	Cassandra Rea	Coordinator Statutory Planning
	Robert Costello	Senior Project Planner
	Helen Pavlidis	Governance Projects Officer
	Elizabeth Manou	Governance Projects Officer

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## 1. Adoption and confirmation of the minutes

### MOTION

Moved Councillor Healey

Seconded Councillor Hollingsworth

That the minutes of the Urban Planning Special Committee meeting held on 3 August 2020 be adopted and confirmed.

### CARRIED

## 2. Declaration of conflict of interest of any councillor or council officer

Nil

## 3. Presentation of officer reports

### 3.1 Amendment C306boro - Kew East and Mont Albert Heritage Gap Study - Consideration of Panel Report

Amendment C306boro to the Boroondara Planning Scheme seeks to implement the recommendations of the *Kew East and Mont Albert Heritage Gap Study* (the Study). As exhibited, the amendment proposed to apply the Heritage Overlay (HO) to ten (10) individual heritage places and three (3) heritage precincts.

Exhibition of the amendment and the Study was undertaken between 21 March 2019 and 3 May 2019. A total of forty-six (46) submissions were received. Of these, six (6) supported the amendment, nine (9) partially supported the amendment and thirty-one (31) objected to the amendment and the inclusion of their properties, or a precinct, in the Heritage Overlay.

A Panel hearing to consider the submissions received to Amendment C306boro was held on 19, 20 and 21 November 2019. Ten of the submitters presented at the Panel hearing.

On 31 January 2020, officers received the Panel's report for Amendment C306boro which is contained in **Attachment 1**. The Panel was generally supportive of the amendment and recommended it be adopted subject to the following key changes:

- Delete the properties on the western side of Munro Street, Kew East in the Boulevard Estate and Environs Precinct (HO838) (inconsistent with Council's submission to the Panel).
- Delete the property at 22 Elm Grove, Kew East (HO829) as an individually significant heritage place (inconsistent with Council's submission to the Panel).
- Amend various outbuildings and front fence controls proposed throughout the proposed Heritage Overlay Schedule (consistent with Council's submission to the Panel).

- Regrade 4 Cascade Drive, Kew East from contributory to non-contributory to the Boulevard Estate and Environs Precinct (consistent with Council's submission to the Panel).
- Regrade 1515 Old Burke Road, Kew East from contributory to non-contributory to the Boulevard Estate and Environs Precinct (inconsistent with Council's submission to the Panel).
- Regrade the property at 70 Windella Avenue, Kew East from contributory to non-contributory to the Windella Avenue and Environs Precinct (consistent with Council's submission to the Panel).
- Update citations to reflect changes recommended by officers and subsequently by the Panel (consistent with Council's submission to the Panel).

Officers agree with the Panel's recommendations and provide a detailed discussion and response to each recommendation of the Panel in **Attachment 2**.

It should be noted the property at 13 Strathalbyn Street, Kew East is proposed to be deleted from the amendment after officers were alerted to the property not being included in the exhibited planning scheme map for the Harp Village Commercial Precinct. The property is however identified in the study as a 'contributory' property within the precinct, including the Statement of Significance for the Harp Village Commercial Precinct. Its omission from the planning scheme map was as a result of a mapping error by officers at the Department of Environment, Land, Water and Planning in the preparation of the amendment documentation for exhibition. Given the exhibited map did not show the property to be included in the proposed precinct, the Heritage Overlay cannot be progressed for this property through Amendment C306boro. Council is at risk of facilitating a defect in procedure by retaining the property in the amendment in its current form on the basis of the error in the exhibited planning scheme map. No submissions were received in relation to the property through the exhibition process. Further, the property is not included in the interim Heritage Overlay affecting all other properties in the precinct.

The property retains its heritage significance as a contributory property to the precinct and is being retained in the study. Officers recommend a separate process be initiated to include the property in the Heritage Overlay on a permanent basis by way of s.20(2) *Planning and Environment Act 1987*, which allows Council to limit notice of the new amendment to the affected property owner. Officers also recommend a request be made to include the property in an interim Heritage Overlay to ensure any demolition proposed for the property can be considered at the planning permit stage.

The UPSC must decide whether to accept the officers' response to the Panel's recommendations, endorse the amendment subject to further changes, or potentially abandon the amendment.

It is recommended the UPSC endorse the officers' response to the Panel's recommendations and refer the amendment to an Ordinary Meeting of Council for adoption and submission to the Minister for Planning for final approval.

*There were no speakers wishing to make submissions to Council for this item.*

**MOTION****Moved Councillor Healey****Seconded Councillor Sinfield****That the Urban Planning Special Committee resolve to:**

- 1. Receive and acknowledge the Panel's report and recommendations, as shown at Attachment 1, in accordance with Section 27(1) of the *Planning and Environment Act 1987*.**
- 2. Endorse the officers' response to the Panel's recommendations and recommended changes to Amendment C306boro to the Boroondara Planning Scheme, as shown at Attachment 2.**
- 3. Adopt the revised Kew East and Mont Albert Heritage Gap Study as shown at Attachment 4.**
- 4. Delete 13 Strathalbyn Street, Kew East from Amendment C306boro.**
- 5. Write to the Minister for Planning to request authorisation to prepare and exhibit an amendment to the Boroondara Planning Scheme in accordance with Sections 4B, 8A, and 20(2) of the *Planning and Environment Act 1987* to include 13 Strathalbyn Street, Kew East in the Heritage Overlay.**
- 6. Following receipt of Authorisation from the Minister for Planning, exhibit the amendment in accordance with directions issued by the Minister for Planning or his delegate.**
- 7. Write to the Minister for Planning to request that he prepare, adopt and approve an amendment to the Boroondara Planning Scheme under Section 20(4) of the *Planning and Environment Act 1987* to introduce an interim heritage control to 13 Strathalbyn Street, Kew East on the basis of the recommendation to include the property in the Heritage Overlay in the Kew East and Mont Albert Heritage Gap Study.**
- 8. Refer the updated Amendment C306boro to an Ordinary Meeting of Council to be adopted in accordance with Section 29(1) of the *Planning and Environment Act 1987*.**
- 9. Authorise the Director City Planning to undertake administrative changes to the amendment and associated planning controls that do not change the intent of the controls.**

**CARRIED**

### 3.2 57 Roseberry Street Hawthorn East

#### Proposal

The proposal seeks to construct a new dwelling on a lot less than 500 square metres.

#### Issues

The following are key issues in respect of this application:

- Whether the proposal will be consistent with the preferred neighbourhood character (pages 16-21);
- Whether the proposal will result in any unreasonable amenity impacts to adjoining or nearby properties (pages 21-36); and
- Issues raised in the 23 objections received (pages 36-38)

#### Officer's response

The proposal is considered to be respectful of the preferred neighbourhood character as detailed in Council's Neighbourhood Character Study Precinct Statement (42). Whilst contemporary in design, the site is not located in a Heritage Overlay and the building form of a second floor located behind the roof ridge is appropriate in the streetscape.

The proposed dwelling will meet the relevant standards in terms of its maximum building height, north-facing windows and overshadowing open space. Overlooking, wall on boundary and car parking space non-compliances, can be addressed via conditions.

It is noted the site is located in a street with an inner suburban typology of narrow lots and small setbacks. Non-compliances with side setback standards are considered acceptable in this context and discussed in detail in the report.

Further details of the proposal, discussion of all issues raised by objections and an assessment against the relevant controls and policies are contained in the delegate's report and attachments.

*There were no speakers wishing to make submissions to Council for this item.*

#### **MOTION**

**Moved Councillor Wegman**

**Seconded Councillor Healey**

**That the Urban Planning Special Committee resolve that a Notice of Decision to Grant a Planning Permit No. PP19/0909 for the "construction of a new dwelling on a lot less than 500 square metres at 57 Roseberry Street, Hawthorn East" be issued under the Boroondara Planning Scheme subject to the following conditions:**

**Amended plans required**

- 1. Before the development starts, amended plans to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. The plans must be drawn to scale with dimensions and three (3) copies provided. When the plans are endorsed they will then form part of the permit. The plans must be substantially in accordance with the Section 57A Plans (received 22 April 2020) but modified to show:**
  - a) Increased front setback (measured to the front wall) to 6.8 metres from the street frontage with no reduction to any other setback;**
  - b) Increased ground floor side setback to 1m from the western boundary with no reduction to any other setback;**
  - c) An amended section of the proposed external screen to the north-facing window of the north bedroom at first floor level, showing compliance with Standard A15 of ResCode and the following:**
    - i. The length of the proposed screen fins (in millimetres);**
    - ii. The width of the gap between each screen fin (in millimetres); and**
    - iii. The length of the proposed screen fins must be equal or greater than the gaps between each screen fin.**
  - d) The south-facing window to the north bedroom at first floor level to be screened in accordance with Standard A15 of ResCode;**
  - e) The average height of the proposed eastern wall on boundary must not exceed an average of 3.2 metres, to comply with Standard A11 of ResCode;**
  - f) Provision of two car parking spaces in the rear setback of 4.9m length, 3.2m width and a setback of at least 1m from the rear laneway;**
  - g) Provision of a minimum 3m by 3m open space area within the secluded private open space of the dwelling exclusive of the car parking area required under Condition 1f);**
  - h) Provision of a minimum 25 square metres of secluded private open space and minimum 40 square metres of private open space, in accordance with Standard A17 of Rescode;**
  - i) The rear roller door with a minimum width of 6.4 metres;**
  - j) The existing fence height along the north elevation (TP2.01);**
  - k) The northern 'habitable door' to 59 Roseberry Street to be correctly labelled 'non-habitable door' on all floor plans;**
  - l) The 'Direction of Flow' of floodwaters to be corrected (southward flow) on the Ground Floor Plan (TP1.04);**
  - m) Submission of physical material samples;**
  - n) The Tree Protection Zones to be correctly plotted for the street tree directly adjoining the property and neighbouring trees 1-7 as numbered in the Treecology Arborist Report dated 18 February 2020 drawn on all site and floor plans;**

- o) A notation on all site and floor plans that no excavation works can occur within the calculated Structural Root Zone (SRZ) of Tree 5. Any foundations within the calculated Structural Root Zone (SRZ) of Tree 5 shown to be above existing grade and constructed without excavation; and**
- p) Notation on all site and floor plans that the street tree directly adjoining the property and neighbouring trees 1-7 as numbered in the Treecology Arborist Report dated 18 February 2020 are to be protected in accordance with the endorsed Tree Management Plan required by Condition 6 of this permit.**

**Layout not to be altered**

- 2. The layout of the site and the size, levels, design and location of buildings and works shown on the endorsed plans must not be modified for any reason (unless the Boroondara Planning Scheme specifies that a permit is not required) without the prior written consent of the Responsible Authority.**

**Landscape plan**

- 3. A landscape plan to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. The plan must be drawn to scale with dimensions and three (3) copies provided.**

**When endorsed, the plan will form part of the permit. The landscape plan must show:**

- (a) Detailed construction specifications for all permeable surfaces that include cross-section diagrams.**
- (b) One (1) small tree (minimum two metres tall when planted and must achieve a minimum mature height of 6 metres and canopy spread of 5 metres) in the secluded private open space of the dwelling;**
- (c) The small tree must be provided a minimum 3m x 3m permeable open space area, with the available soil area clearly shown on the landscape plan.**
- (d) All trees must comply with Australian Standard AS2303:2015 - Tree Stock for Landscape Use.**
- (e) All trees must be planted by an AQF Level 3 Qualified Arborist, Landscape Gardener or Horticulturist.**
- (f) All trees must be planted more than 1 metre away from any structures, property boundaries, easements, existing trees or shrubs.**

**Completion of landscaping works**

- 4. Landscaping as shown on the endorsed landscape plan/s must be carried out and completed to the satisfaction of the Responsible Authority prior to the occupation of the development.**

**Landscaping maintenance**

5. All landscaping works shown on the endorsed landscape plan/s must be maintained and any dead, diseased or damaged plants replaced, all to the satisfaction of the Responsible Authority.

**Tree Management Plan**

6. Prior to the endorsement of the plans referred to in Condition 1 of this permit, a Tree Management Plan must be submitted by a suitably qualified and experienced Arborist in relation to the management and maintenance of the street tree directly adjoining the property and neighbouring trees 1-7 as numbered in the Treecology Arborist Report dated 18 February 2020. The Tree Management Plan must be approved by the Responsible Authority prior to the commencement of any works including demolition and levelling of the site. The Tree Management Plan must make specific recommendations in accordance with the Australian Standard AS4970: 2009 - Protection of Trees on Development Sites and detail the following to the satisfaction of the responsible authority ensuring that the trees remains healthy and viable during construction.
- a) A tree protection plan to scale is to be submitted along with the tree management plan that is to show:
    - I. Tree protection zones and structural root zones of all trees to be retained,
    - II. All tree protection fenced off areas and areas where ground protection systems will be used
    - III. The type of foundations within the tree protection zone
    - IV. All services to be located within the tree protection zone and a notation to state that all services will either be located outside of the tree protection zone, bored under the tree protection zone, or installed using hydro excavation under the supervision of the project arborist; and
    - V. A notation to refer to the tree management plan for specific detail on what actions are required within the tree protection zone.
  - b) Details of how the root system of any tree to be retained will be managed. This must detail any initial non-destructive trenching and pruning of any roots required to be undertaken by the project arborist; and details of how any permeable surfaces within the Tree Protection Zone of retained trees will be constructed.
  - c) Supervision timetable and certification of tree management activities required by the Project Arborist to the satisfaction of the Responsible Authority;
  - d) All remedial pruning works that are required to be performed on the tree development of the site. The pruning comments must reference Australian Standards 4373:2007, Pruning of Amenity Trees and a detailed photographic diagram specifying what pruning will occur; and

- e) **No excavation works within the calculated Structural Root Zone (SRZ) of Tree 5. Any foundations within the calculated Structural Root Zone (SRZ) of Tree 5 to be above existing grade and constructed without excavation.**

**The recommendations contained in the approved tree management plan must be implemented to the satisfaction of the Responsible Authority.**

**Documentation and Certification by Project Arborist**

7. **Prior to the commencement of any site works, including demolition and excavation, the Responsible Authority must be provided with evidence that a project arborist has been engaged as part of the ongoing consultant team to oversee the design and construction, and to ensure the development does not have a detrimental impact on the ongoing health and stability of the trees to be retained. The project arborist must hold suitable qualifications and experience to the satisfaction of the Responsible Authority. Evidence of the appointment of the project arborist must be submitted to the satisfaction of the Responsible Authority (quoting the Planning Permit number and site address, emailed to [Boroondara@boroondara.vic.gov.au](mailto:Boroondara@boroondara.vic.gov.au)) not less than seven (7) days before the commencement of works on site.**
8. **Prior to the commencement of any site works, including demolition and excavation, a timetable for the supervision and certification of tree management activities which is to the satisfaction of the Responsible Authority must be prepared by the project arborist and submitted to the Responsible Authority for approval. A signed and dated copy of each stage of the supervision timetable certified by the project arborist (quoting the Planning Permit number and site address, emailed to [Boroondara@boroondara.vic.gov.au](mailto:Boroondara@boroondara.vic.gov.au)) must be submitted to the Responsible Authority not more than seven (7) days following the completion of each stage.**

**Drainage**

9. **The site must be drained to the satisfaction of the Responsible Authority.**

**Sediment laden run-off**

10. **No polluted and/or sediment laden runoff is to be discharged directly or indirectly into Council's drains or watercourses during and after development, to the satisfaction of the Responsible Authority.**

**Boundary walls**

11. **The external faces of walls on or facing boundaries must be cleaned and finished to an acceptable standard to the satisfaction of the Responsible Authority.**

**Permit to expire:**

**12. This permit will expire if:**

- a) The development does not start within two (2) years of the issue date of this permit; or
- b) The development is not completed within four (4) years of the issue date of this permit.

The Responsible Authority may extend the times referred to if a request is made in writing before the permit expires or:

- (i) within six (6) months afterwards if the development has not commenced; or
- (ii) within twelve (12) months afterwards if the development has not been completed.

Council and the Victorian Civil and Administrative Tribunal are unable to approve requests outside of the relevant time frame.

**Notes:**

*Headings are for ease of reference only and do not affect the interpretation of permit conditions.*

*This is not a Building Permit. A Building Permit may be required prior to the commencement of any works associated with the proposed development.*

*Prior to the commencement of any works on the site, the owner/developer must submit drainage plans for assessment and approval by the Responsible Authority (Asset Management).*

*Stormwater drains are to be connected to a legal point of discharge approved by Council. Drainage Connections within a road reserve, right-of-way, parkland, within an easement or to a Health Act drain must be to Council's standards. A Council Supervision Permit is required for this work. All fees and charges associated with the connection are to be borne by the applicant.*

*It is advised that multiple manoeuvres within the laneway will be required to access the proposed car parking spaces at the rear of the site.*

*The Tree Protection Local Law requires that a Local Law Tree Permit be sought from Council for the removal and/or lopping of a 'Significant Tree' and/or excavation within the critical root zone of a Significant Tree. A list of Significant Trees is available at <https://www.boroondara.vic.gov.au/waste-environment/trees-and-naturestrips/find-out-if-tree-protected>. A Local Law Tree Permit is also required to remove, damage kill or destroy any identified 'Canopy Tree' which may include any excavation within the tree protection zone of a 'canopy tree'. The Tree Protection Local Law identifies a 'Canopy tree' as any tree with a single trunk circumference of 110cm or a combined circumference of a multi stemmed tree of 110cm or greater measured at 1.5m above ground level. A Planning Permit does not constitute a Local Law Tree Permit or permission to remove, damage kill or destroy a significant or canopy tree.*

**The Tree Protection Local Law is available to download at: <https://www.boroondara.vic.gov.au/waste-environment/trees-and-naturestrips/remove-prune-or-carry-out-works-near-tree> alternatively please contact Council's Arborist – Statutory Planning (telephone 9278 4888) should a Local Law Tree Permit be required.**

**An Asset Protection Permit is required prior to the commencement of site works in accordance with Council's Protection of Council Assets and Control of Building Sites Local Law 2011.**

**Prior consent from Council and any and all public authorities is required to be obtained for alteration or reinstatement of assets or services affected as a result of the development.**

**The full cost of reinstatement of any Council assets damaged as a result of demolition, building or construction works, must be met by the permit applicant or any other person responsible for such damage, to the satisfaction of the Responsible Authority.**

**Discharge to the legal point of discharge will be allowed subject to the flow being limited to a rate equivalent to pre-development levels or less. Any additional discharge and / or runoff above the pre-development level is to be detained on site, via an approved storm water detention system. This matter should be discussed with Council's Asset Management Department.**

**The permit application has been assessed against the provisions of Clause 54 – One Dwelling on a Lot (ResCode) of the Boroondara Planning Scheme.**

**CARRIED**

### **3.3 Heritage protection of 12-14 Tannock Street, Balwyn North**

The purpose of the officer report is to seek a decision of the Urban Planning Special Committee (UPSC) to request the Minister for Planning apply an interim Heritage Overlay to 12-14 Tannock Street, Balwyn North and request authorisation to commence the planning scheme amendment process to introduce a Heritage Overlay to the property on a permanent basis.

The post War, Robin Boyd designed dwelling was identified in the draft Balwyn and Balwyn North Heritage Study (incorporating Deepdene and Greythorn) prepared by Built Heritage as an individually significant place and was recommended for heritage protection at the time. However following consideration of feedback received through the preliminary consultation process on the draft Study, the UPSC resolved on 7 September 2015 not to proceed with the implementation of the 2015 heritage study recommendations.

Subsequently on 20 March 2017, the UPSC considered a report regarding the conduct of further heritage work related to Balwyn known as the Balwyn Heritage Peer Review 2017. Given the strong community opposition to the recommendations of the draft Study, particularly in relation to the protection of post-war properties the peer review focussed on the properties constructed prior to World War II i.e. to exclude the review of places constructed in 1946 or later. Consequently, the property remains unprotected.

The property is currently on the market for sale and officers are aware of an online petition that is circulating seeking to protect the dwelling as well a planning permit application to subdivide the land (currently on hold).

Given the recommendation of the 2015 study to protect the subject property as an individually significant place and the community's interest in its protection, officers recommend the UPSC write to the Minister for Planning to request that he apply an interim Heritage Overlay to the property without delay, and to request authorisation to commence the amendment process to introduce the Heritage Overlay on a permanent basis. Should the Minister approve the application of the interim Heritage Overlay, any proposal for demolition of the existing dwelling would be subject to Council's approval through the planning application process.

It should be noted there are 18 individually significant post War properties (**Attachment 2**) that were recommended for heritage protection through the 2015 heritage study, 16 of which remain unprotected. Two of these properties 17 Yandilla Road, Balwyn North and 12-14 Tannock Street, Balwyn North are designed by architect Robin Boyd. Officers therefore recommend the UPSC to include these properties on Council's 'Possible heritage layer' until a report can be brought to a future UPSC meeting to enable the UPSC to further consider whether to progress the implementation of heritage controls for the properties. Placing these properties on the 'Possible heritage layer' will allow officers to review any report and consent application lodged for demolition of those properties under S29A of the *Building Act 1993*.

*1 speaker opposed to the officers' recommendation addressed the meeting.*

## MOTION

**Moved Councillor Parke**

**Seconded Councillor Watson**

**That the Urban Planning Special Committee resolve to:**

- 1. Adopt the heritage citation for 12-14 Tannock Street, Balwyn North contained in Attachment 1.**
- 2. Write to the Minister for Planning to request authorisation to prepare and exhibit an amendment to the Boroondara Planning Scheme in accordance with Section 4B and 8A(4) of the *Planning and Environment Act 1987* to include 12-14 Tannock Street, Balwyn North in the Heritage Overlay.**
- 3. Following receipt of authorisation from the Minister for Planning, exhibit the amendment in accordance with Section 19 of the *Planning and Environment Act 1987*.**
- 4. Write to the Minister for Planning to request that he prepare, adopt and approve an amendment to the Boroondara Planning Scheme under Section 20(4) of the *Planning and Environment Act 1987* to introduce an interim heritage control to 12-14 Tannock Street, Balwyn North.**

- 5. Authorise the Director City Planning to undertake administrative changes to the amendment that do not change the intent of the amendment or any changes required under the Minister for Planning’s Authorisation prior to the commencement of exhibition.
- 6. Include the properties listed in Attachment 2 on the ‘Possible heritage layer’.

**CARRIED**

**4. General business**

Nil

**5. Urgent business**

Nil

**6. Confidential business**

Nil

**The meeting concluded at 7.15pm**

**Confirmed**

**Chairperson** \_\_\_\_\_

**Date** \_\_\_\_\_