

# URBAN PLANNING DELEGATED COMMITTEE



## MINUTES

(Open to the public)

**Monday 3 May 2021**

Council Chamber, 8 Inglesby Road, Camberwell and Delivered Online.

**Commencement** 6.34pm

**Attendance**  
Councillor Jim Parke (Chairperson)  
Councillor Garry Thompson (Mayor)  
Councillor Victor Franco  
Councillor Wes Gault  
Councillor Di Gillies  
Councillor Lisa Hollingsworth  
Councillor Jane Addis  
Councillor Cynthia Watson  
Councillor Susan Biggar  
Councillor Nick Stavrou

**Apologies** Councillor Felicity Sinfield

<b><u>Officers</u></b>	Phillip Storer	Chief Executive Officer
	Shiran Wickramasinghe	Director Urban Living
	Simon Mitchell	Manager Statutory & Strategic Planning
	Kirstin Ritchie	Coordinator Governance
	Robert Costello	Senior Project Planner
	Nick Brennan	Senior Strategic Planner
	Helen Pavlidis	Senior Governance Officer

## Table of contents

<b>1.</b>	<b>Adoption and confirmation of the minutes</b>	<b>3</b>
<b>2.</b>	<b>Declaration of conflict of interest of any councillor or council officer</b>	<b>3</b>
<b>3.</b>	<b>Presentation of officer reports</b>	
3.1	Amendment C308boro - Hawthorn East Heritage Gap Study - Consideration of Panel Report	3
3.2	Kew Hebrew Congregation - referral by Minister for Planning to Standing Advisory Committee	7
<b>4.</b>	<b>General business</b>	<b>9</b>
<b>5.</b>	<b>Urgent business</b>	<b>10</b>
<b>6.</b>	<b>Confidential business</b>	<b>10</b>

## 1. Adoption and confirmation of the minutes

### MOTION

Moved Councillor Thompson

Seconded Councillor Biggar

That the minutes of the Urban Planning Delegated Committee meeting held on 12 April 2021 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 C308boro - Hawthorn East Heritage Gap Study - Consideration of Panel Report

Amendment C308boro to the Boroondara Planning Scheme seeks to implement the recommendations of the Hawthorn East Heritage Gap Study (the Study). As exhibited, the amendment proposed to apply the Heritage Overlay (HO) to eighteen (18) individual heritage places, eight (8) heritage precincts and one extension to an existing heritage precinct (HO161) on a permanent basis.

Exhibition of the amendment and the Study was undertaken between 2 May 2019 and 3 June 2019. A total of 60 submissions were received, including 4 supporting, 9 partially supporting, 45 objecting and 2 which did not state a position. This included seven late submissions that were received after the public exhibition period and the Urban Planning Special Committee (UPSC) meeting on 3 February 2020 and prior to the Panel hearing.

A Panel hearing to consider the submissions received to Amendment C308boro was held on 28 September and 1 October 2020. Ten parties presented at the Panel hearing.

On 18 November 2020, officers received the Panel's report for Amendment C308boro which is contained in Attachment 1. Two separate corrections reports were subsequently issued by the Panel to correct recommendations noted in the Panel Report. The corrections reports were included on the amendment webpage. Officers emailed the two corrections reports to all submitters to the amendment.

The Panel was generally supportive of the amendment and recommended it be adopted subject to the following key changes:

- regrade the property at 21 Aberdeen Street, Hawthorn East from contributory to non-contributory in the Brickfields Environs Precinct. ([Inconsistent with the resolution of the UPSC on 3 February 2020](#))
- Remove tree controls from certain properties within the Smith's Paddock (Burwood Reserve) Precinct. ([Consistent with the resolution of the UPSC on 3 February 2020](#))

- Remove 1a, 1, 3, 5 and 5a Miami Street, Hawthorn East from the Stonyhurst and Athol Estate Precinct and redraw the precinct boundary. [\(Consistent with the resolution of the UPSC on 3 February 2020\)](#)
- Regrade 7 and 7A Fairmount Road, Hawthorn East from contributory to non-contributory to the Stonyhurst and Athol Estate Precinct. [\(Consistent with the resolution of the UPSC on 3 February 2020\)](#)
- Carry out further research to assess submissions made in support of upgrading the status of Currajong, 337 Auburn Road, Hawthorn East from contributory to individually significant. [\(Inconsistent with the resolution of the UPSC on 3 February 2020\)](#)
- Remove the properties at 356 to 368 Auburn Road, Hawthorn East from the Longford and Environs Estate Precinct (HO844). [\(Partially consistent with the resolution of the UPSC on 3 February 2020\)](#)
- Regrade the property at 48 Harts Parade, Hawthorn East from contributory to non-contributory to the Longford Estate and Environs Precinct. [\(Consistent with the resolution of the UPSC on 3 February 2020\)](#)
- Regrade the properties at 32 and 46 Mayston Street, Hawthorn East from contributory to non-contributory to the Essington Estate and Environs Precinct. [\(Consistent with the resolution of the UPDC on 3 February 2020\)](#)
- Amend the Essington Estate and Environs Precinct citation to refer to the replacement gates at 44 and 46 Harold Street, Hawthorn East. [\(Consistent with the resolution of the UPSC on 3 February 2020\)](#)
- Regrade 54 Lilydale Grove, 10 Temple Street, and 1 Grandview Grove from contributory to non-contributory in the Victoria Road Precinct. [\(Consistent with the resolution of the UPSC on 3 February 2020\)](#)
- Remove the property at 22 Cambridge Street, Hawthorn East from the Victoria Road precinct Heritage Overlay. [\(Inconsistent with the resolution of the UPSC on 3 February 2020\)](#)
- Remove the tree controls on 122 Victoria Road, Hawthorn East in the Victoria Road Precinct. [\(Consistent with the resolution of the UPSC on 3 February 2020\)](#)
- Regrade 14 Grandview Grove, Hawthorn East from significant to non-contributory in the Victoria Road Precinct, and remove the associated fence controls and references to the property in the citation. [\(Consistent with the resolution of the UPSC on 3 February 2020\)](#)
- Remove the property at 4/15 Grandview Grove, Hawthorn East from the Heritage Overlay and the precinct boundary be redrawn to include the full width of the street to the property boundaries. [\(Consistent with the resolution of the UPSC on 3 February 2020\)](#)
- Update the Statement of Significance for 157 Auburn Road, Hawthorn and 3 Russells Place, Hawthorn East with text from the expert witness statement of Council's heritage consultant at the Panel hearing. [\(Partially consistent with the resolution of the UPSC on 3 February 2020\)](#)
- Update the Statements of Significance for 64 Campbell Road and 29 Leura Grove, Hawthorn East based on the attachments to Council's Part A submission to the Panel. [\(Consistent with the resolution of the UPSC on 3 February 2020\)](#)
- Remove tree and fence controls to 29 Leura Grove, Hawthorn East. [\(Consistent with the resolution of the UPSC on 3 February 2020\)](#)
- Remove 336 Riversdale Road, Hawthorn East from the Heritage Overlay. [\(Consistent with the resolution of the UPDC on 3 February 2020\)](#)

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

337 Auburn Road, Hawthorn ("Currajong")

Council received a community nomination prior to the Panel hearing seeking to regrade 337 Auburn Road, Hawthorn from contributory to the Longford Estate and Environs Precinct to individually significant. The late submission was forwarded to the Panel for consideration and the affected property owner was notified of the submission and opportunity to participate in the Panel hearing.

The Panel considered submissions from Council, the property owner and other submitters regarding the regrading and determined that whilst it was of a mind to recommend a regrading to "individually significant", such a recommendation would be premature.

The Panel raised concerns that fairness and natural justice may not have been available to all parties with respect to evidence presented through the late submission. The Panel also felt a wider comparative assessment would be required to resolve matters raised in relation to the architect, integrity and intactness of the property.

In response to the Panel's recommendation to further investigate the merits of regrading Currajong, officers commissioned Silberberg Consulting Pty Ltd to review the community nomination. The review found the property meets the threshold for individual significance based on Criterion D (representativeness) and Criterion E (aesthetic significance). However the assessment did not support regrading the property on the basis of Criterion H (social significance). A citation has been prepared for the property and is included at **Attachment 5**. Based on advice from the Department of Environment, Land, Water and Planning (DELWP) on how to progress a regrading of the property, officers are recommending the Urban Planning Delegated Committee (UPDC) endorse the "contributory" grading for Currajong as part of Amendment C308boro and initiate a separate planning scheme amendment to regrade the property to individually significant. Initiating a separate amendment process will allow all evidence to be fully considered by all parties.

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

It is recommended the UPDC 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.

- 1 speaker opposed to the officers' recommendation addressed the meeting.*
- 2 speakers in support of the officers' recommendation addressed the meeting.*
- 3 speakers neither in support or opposed to the officers' recommendation addressed the meeting.*

**MOTION****Moved Councillor Biggar****Seconded Councillor Thompson****That the Urban Planning Delegated Committee resolve to:**

- 1. Receive and acknowledge the Panel's report and recommendations, set out in 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 C308boro to the Boroondara Planning Scheme, set out in Attachment 2.**
- 3. Adopt the revised Hawthorn East Heritage Gap Study contained in Attachment 4.**
- 4. Adopt the citation prepared by Silberberg Consulting Pty Ltd for 337 Auburn Road, Hawthorn contained in Attachment 5.**
- 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 regrade 337 Auburn Road, Hawthorn from contributory to the Longford Estate and Environs Precinct to individually significant.**
- 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. Refer the updated Amendment C308boro to an Ordinary Meeting of Council to be adopted in accordance with Section 29(1) of the *Planning and Environment Act 1987*.**
- 8. Authorise the Director Urban Living to undertake administrative changes to the amendment and associated planning controls that do not change the intent of the controls.**

**CARRIED**

### 3.2 Kew Hebrew Congregation - referral by Minister for Planning to Standing Advisory Committee

The purpose of this report is to inform the Urban Planning Delegated Committee (UPDC) of the Minister for Planning's decision to call in the VCAT proceedings associated with the planning permit application for the Giant Steps School for autistic children located at 11 Malmsbury Street, Kew.

On 22 September 2020, under delegation from Council, a Notice of Decision to Refuse to Grant a planning permit was issued for a planning permit application for the Giant Steps School at 11 Malmsbury Street, Kew. The planning application proposes to expand an existing education centre and includes the demolition of some of the existing buildings and construction of new buildings. The new development seeks to facilitate an increase in the number of staff and students on site.

On 7 September 2020 the Urban Planning Delegated Committee (UPDC) resolved to adopt a heritage citation for the Kew Hebrew Congregation site at 11 Malmsbury Street/53 Walpole Street Kew and to write to the Minister for Planning seeking authorisation to prepare and exhibit a planning scheme amendment to introduce a Heritage Overlay (HO) across the entire site on a permanent basis. An existing HO covers the part of the site occupied by a synagogue.

Authorisation for Amendment C342boro was granted by the Minister for Planning on 13 November 2020.

The buildings under threat of demolition by the planning permit application are proposed for heritage protection by Amendment C342boro.

The planning permit application was refused on the grounds the proposed demolition would have a detrimental impact on the social and cultural heritage significance of the place. The applicant subsequently appealed Council's decision to VCAT.

On 9 April 2021, Council received notification from VCAT the Minister for Planning has called in the planning permit application for development of the site. The Minister's decision was prompted by his consideration the VCAT proceeding raises a major issue of policy and the determination of the proceeding may have a substantial effect on the achievement or development of planning objectives.

Section 151(1) of the *Planning and Environment Act 1987* gives the Minister for Planning the power to appoint an advisory committee to "advise on any matters which the Minister refers to them".

Clause 58(2)(a) of the *Victorian Civil and Administrative Tribunal Act 1998* gives the Minister for Planning the power to call in a proceeding for review of a decision under the *Planning and Environment Act 1987* if the Minister considers that:

- a) the proceeding raises a major issue of policy; and
- b) the determination of the proceeding may have a substantial effect on the achievement or development of planning objectives.

The Minister has referred the matter to the Priority Projects Standing Advisory Committee (SAC) for advice. The purpose of the SAC is to provide advice to the Minister for Planning on projects referred by the Building Victoria's Recovery Taskforce (BVRT), projects affected by Covid-19 and or where the Minister has agreed to, or is considering, intervention to determine if these projects will deliver acceptable planning outcomes. The SAC is expected to hold a hearing on the 11 May 2021. All parties have been invited to make submissions, including Council.

It should be noted the Minister's powers under Section 151(1) are broad and discretionary, and calling in the VCAT proceedings are consistent with this power. However, the information provided by the Minister to date is unclear in demonstrating why the referral of the planning application to the SAC is warranted. Projects eligible to be considered by the Priority Projects SAC includes those that are of regional or state significance, projects that are 'shovel ready' and have investment certainty, the project is dependent on a decision timeframe and the project aligns with government policy and priorities.

On 14 April 2021, the Minister also informed Council he was deferring making a decision on Council's application for an interim Heritage Overlay for the site until after he had completed consideration of the development application. The Minister has not provided any guidance on how consideration of the development permit might impact on his consideration of the permanent Heritage Overlay and has not provided any advice to Council regarding how to progress the planning scheme amendment.

This decision raises serious concerns with respect to the prioritisation of the development proposal over heritage protection.

The introduction of interim heritage controls would afford the site heritage protection whilst Council continues to progress Amendment C342boro and appropriately requires any development to have regard to the heritage values of the subject site.

The decision not to introduce interim heritage controls also disregards the prospect the heritage buildings can be re-purposed to meet the ongoing needs of the Giant Steps School.

The decision not to introduce interim heritage controls is also inconsistent with previous advice provided by the Minister and his delegates. Previously, the Minister and officers at the Department of Environment, Land, Water and Planning (DELWP) have indicated that interim heritage controls will be supported where Council is able to demonstrate a place is under threat of demolition. An active planning application where demolition of identified heritage places is proposed is considered to meet the test of 'under threat'.

In summary, Officers have a number of concerns with the Minister's Call-In of the VCAT proceedings in relation to the Giant Steps Planning Application as discussed in the officers' report.

Officers recommend the UPDC write to the Minister for Planning prior to the commencement of the SAC hearing to highlight the following:

- Council's concerns with the Ministerial Call-In process and referral to the Priority SAC as the project is not of state or regional significance and request the Minister reconsider his Call-In.



- Council's concerns the SAC will not adequately consider the heritage merits of the site as part of their deliberations, considering the SAC hearing process will not test the merits and provide recommendations on the heritage significance of the site in the way an independent Planning Panel hearing process would with respect to Amendment C342boro.
- Council's objection to the prioritisation of the development proposal over the heritage value of the site, particularly as heritage protection is a 'seriously entertained' proposal under Amendment C342boro.
- Council's objection to the Minister's decision not to introduce interim heritage controls to the site and request the Minister to expedite the introduction of interim heritage controls.

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

## **MOTION**

**Moved Councillor Stavrou**

**Seconded Councillor Thompson**

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

- 1. Receive and note the Priority Projects Standing Advisory Committee hearing process as outlined in Attachment 1.**
- 2. Write to the Minister for Planning to express:**
  - **Council's concerns with the Ministerial Call-In process and referral to the Priority SAC as the project is not of state or regional significance and request the Minister reconsider his Call-In.**
  - **Council's concerns the SAC will not adequately consider the heritage merits of the site as part of their deliberations, considering the SAC hearing process will not test the merits and provide recommendations on the heritage significance of the site in the same way an independent Planning Panel process would with respect to Amendment C342boro.**
  - **Council's objection to the prioritisation of the development proposal over the heritage value of the site, particularly as heritage protection is a 'seriously entertained' proposal under Amendment C342boro.**
  - **Council's objection to the Minister's decision not to introduce interim heritage controls to the site and request the Minister to expedite the introduction of interim heritage controls.**

**CARRIED**

**4. General business**

Nil

**5. Urgent business**

Nil

**6. Confidential business**

Nil

**The meeting concluded at 7.48pm**

**Confirmed**

**Chairperson**

\_\_\_\_\_

**Date**

\_\_\_\_\_