

# *Amendment C341boro to the Boroondara Planning Scheme*

Submission by City of Boroondara  
15 June 2021

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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 C341boro to the Boroondara Planning Scheme.
- 1.2 This submission to the Panel is in two parts:
  - 1.2.1 Overview of Amendment C341boro including its history, policy context and summary of key issues. (Part A).
  - 1.2.2 Summary and commentary on submissions to Amendment C341boro (Part B). Part B will be presented to the Panel on 17 June 2021.
- 1.3 The exhibited amendment applies to 12-14 Tannock Street, Balwyn North.
- 1.4 Specifically, Amendment C341boro amends the Schedule to Clause 43.01 (Heritage Overlay) and includes a new Planning Scheme map 5HO to introduce the Heritage Overlay to 12-14 Tannock Street, Balwyn North on a permanent basis.

### **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.

### **AMENDMENT C318 - BALWYN HERITAGE PEER REVIEW STAGE 2**

- 2.18 Fifteen individual properties and one precinct with newly prepared citations underwent preliminary consultation and were then exhibited as Amendment C318 to the Boroondara Planning Scheme.
- 2.19 Ultimately, Amendment C318 was adopted by Council on 21 September 2020. The amendment has been approved by the Minister for Planning and was incorporated into the Boroondara Planning Scheme on 18 December 2020.

## **3 IDENTIFICATION OF 12-14 TANNOCK STREET, BALWYN NORTH**

- 3.1 In July 2020 Council was made aware of an online petition seeking to protect 12-14 Tannock Street, Balwyn North. The petition was hosted on change.org and was prompted by the proposed sale of the site.
- 3.2 The property had been identified in the 2015 draft study as having individual significance, and had been recommended for heritage protection prior to the study being abandoned.
- 3.3 Given the significant community concern around the potential loss of the subject property that was identified to have individual significance, on 17 August 2020 the UPSC resolved to seek interim heritage protection of the property through the Minister

for Planning and to request Ministerial authorisation to prepare and exhibit a planning scheme amendment for permanent heritage protection.

- 3.4 The application relies on the assessment undertaken in 2015. Due to the short time frame, there was no time to carry out a review of the previously prepared heritage citation.

## 4 AMENDMENT PROCESS

- 4.1 Following the resolution of the UPSC, officers applied to the Minister for Planning seeking authorisation to prepare and exhibit a planning scheme amendment to introduce a Heritage Overlay to 12-14 Tannock Street on a permanent basis.
- 4.2 Officers at the Department of Environment, Land, Water and Planning (DELWP) under delegation from the Minister for Planning granted authorisation on 7 September 2020.
- 4.3 Exhibition commenced on 3 December 2020 and concluded on 1 February 2021 as required under Section 19 of the *Planning and Environment Act 1987* (the Act).
- 4.4 The exhibition included the following notices:
- 4.4.1 Letters sent to all affected and adjoining property owners and occupiers.
  - 4.4.2 Letters sent to prescribed Ministers and authorities and interest groups (including the main petitioner who sought heritage protection for the property).
  - 4.4.3 Notices published in the Victorian Government Gazette and The Age newspaper.
  - 4.4.4 Information and documentation available to view on a dedicated webpage on Council's website.
- 4.5 At the conclusion of the exhibition period, Council received 35 submissions including:
- 4.5.1 Six opposing submissions.
  - 4.5.2 Twenty supporting submissions.
  - 4.5.3 Nine submissions that supported but sought changes to the amendment.
- 4.6 On 12 April 2021, the Urban Planning Delegated Committee (UPDC) 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.
- 4.7 All submitters were invited to attend the UPDC meeting and were given the opportunity to address the committee.
- 4.8 At the meeting, the UPDC resolved to:
- 4.8.1 Receive and note the submissions to Amendment C341boro to the Boroondara Planning Scheme in accordance with Section 22 of the Planning and Environment Act 1987.
  - 4.8.2 Endorse the officers' response to submissions and recommended changes to Amendment C341boro.

- 4.8.3 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 C341boro.
- 4.8.4 Refer the amendment and all submissions to a Planning Panel in accordance with Section 23(1) of the Planning and Environment Act 1987.
- 4.8.5 Authorise the Director Urban Living to undertake administrative changes to Amendment C341boro that do not change the intent of the amendment prior to the Panel Hearing.
- 4.9 In accordance with the resolution of the UPDC, Council officers requested a panel be appointed on 13 April 2021.

## 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.
17 August 2020	UPSC resolves to seek authorisation to commence a Planning scheme amendment to introduce a permanent Heritage Overlay to 12-14 Tannock Street, Balwyn North as Amendment C341boro to the Boroondara Planning Scheme.
7 September 2020	Authorisation granted.
21 September 2020	UPSC adopts Amendment C318 to the Boroondara Planning Scheme, concluding stage 2 of the peer review process.
3 December 2020 - 1 February 2021	Public exhibition of Amendment C341boro.
12 April 2021	UPSC considers report detailing outcomes of exhibition period and resolves to refer Amendment C341boro to a Planning Panel for consideration
13 April 2021	Council requests appointment of Panel
20 April 2021	Panel appointed
12 May 2021	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 C341boro 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 C341boro 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 C341boro.

#### ***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 35 submissions have been received, including:
- 7.1.1 Six opposing submissions.
  - 7.1.2 Twenty supporting submissions.
  - 7.1.3 Nine submissions that supported but sought changes to the amendment.
- 7.2 A list of the submitters and corresponding submission number has been provided to the Panel.
- 7.3 A response to key themes raised in submissions is provided below.

### ***Matters raised in objecting submissions***

Relevant submissions: 29, 30, 31, 32, 33, 34

- 7.4 Submitters raised objections to Council proceeding with this amendment following the September 2015 decision by the UPSC to not proceed with the adoption of the draft Balwyn and Balwyn North Heritage Study (incorporating Deepdene and Greythorn). They stated that Council should not be revisiting this decision.
- 7.4.1 In 2015, the UPSC resolved to not proceed with the Balwyn and Balwyn North Heritage Study (incorporating Deepdene and Greythorn). The study was not adopted and it cannot therefore be used as the basis of any of Council's decision making. However, the UPSC did not resolve that the properties in the Balwyn area are not, or should never be, considered as having heritage significance.
  - 7.4.2 Since that time, Council has carried out a program of review of the recommendations of the draft Study, and two amendments to the Boroondara Planning Scheme to place Heritage Overlays over places that were recommended for heritage protection through that study.
  - 7.4.3 As the draft Study was never adopted by Council, and its recommendations were never tested through the exhibition or Panel process, Council holds that

this amendment process is not revisiting or overturning previous decisions, and that the process is in accordance with the relevant planning legislation.

- 7.5 Submitters noted that there have been extensive changes made to the property over time, such that it no longer presents as an intact and original property.

7.5.1 Council's heritage consultant does not agree that the house has been altered to an extent that the original 1948 dwelling can no longer be interpreted. One of the most distinctive elements of the original house, is the full-width plate glass window and slatted eaves (memorably recorded in the 1951 article in the *Australian Home Beautiful*), and still dominates the street frontage. The fact remains that, as the additions made in 1959 and 1971 were carefully conceived by Boyd himself, they contribute to the significance of the place rather than detract from it.

- 7.6 Submitters objected on the grounds that placing the property under a Heritage Overlay would have a detrimental impact on the value of the property.

7.6.1 Council cannot consider impacts on land values with respect to the application of heritage controls. Heritage controls are recommended to individual properties and precincts based on the technical assessment of a qualified heritage consultant based on the criteria set out in Practice Note 1: Applying the Heritage Overlay.

7.6.2 Planning Panels for similar heritage amendments have consistently concluded that private economic effects, such as potential impacts upon land values or the individual financial circumstances of the landowner are outside the scope for consideration (e.g. Melbourne C207 Panel and Moreland C149 Panel). The *Planning and Environment Act 1987* requires the consideration of broader, community-wide economic impacts. The application of a Heritage Overlay on any single property is unlikely to have such broad negative economic impacts.

### ***Matters raised in supporting submissions***

Relevant submissions: 1, 5, 8, 9, 28

- 7.7 Some submissions that were otherwise in support of the introduction of the Heritage Overlay requested that the controls applied to the property be stronger or more restrictive in some way, such as including tree controls or prohibiting any demolition or development.

7.7.1 Designating the property as a locally significant property is the highest level of control available to Council within the Planning Scheme. As an individually significant place, the property is afforded a greater level of protection through Council's local Heritage Policy guidelines (as contained at Clause 22.03 of the Boroondara Planning Scheme), than contributory places in heritage precincts, for instance.

7.7.2 The Heritage Overlay requires a planning permit for demolition and for buildings and works. This will ensure that the property is protected from inappropriate development or demolition. Council does not have the ability to prohibit demolition or development.

- 7.7.3 There has been no evidence provided that justifies the application of tree protection controls to the property. While the garden plantings may well provide a pleasant setting for the house, this is not considered adequate basis for the garden to be specifically identified as an element worthy of protection as part of the proposed heritage overlay.

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

- 7.8 At the UPSC meeting of 12 April 2021, Council resolved to refer Amendment C341boro to a planning panel for consideration. No changes were made to the citation or to the amendment in response to the submissions received.

## **8 CURRENT APPLICATIONS FOR 12-14 TANNOCK STREET**

- 8.1 As of the writing on this report, Council does not have any live planning permit applications that apply to 12-14 Tannock Street, Balwyn North.
- 8.2 On 24 May 2021, Council received an application for Report and Consent for Demolition under Section 29A of the *Building Act 1993*. The application proposes demolition of the existing building.
- 8.3 In accordance with adopted practice, Council is preparing an application for an interim Heritage Overlay and will suspend the report and consent application. Council will provide a further update on the progress of this process in its Part B.

### **END OF PART A**