

**Boroondara Planning Scheme Amendment C342boro
Kew Hebrew Congregation Heritage**

Panel Report

Planning and Environment Act 1987

13 September 2021

How will this report be used?

This is a brief description of how this report will be used for the benefit of people unfamiliar with the planning system. If you have concerns about a specific issue you should seek independent advice.

The planning authority must consider this report before deciding whether or not to adopt the Amendment.

[section 27(1) of the *Planning and Environment Act 1987* (the PE Act)]

For the Amendment to proceed, it must be adopted by the planning authority and then sent to the Minister for Planning for approval.

The planning authority is not obliged to follow the recommendations of the Panel, but it must give its reasons if it does not follow the recommendations. [section 31 (1) of the PE Act, and section 9 of the *Planning and Environment Regulations 2015*]

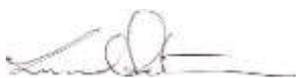
If approved by the Minister for Planning a formal change will be made to the planning scheme. Notice of approval of the Amendment will be published in the Government Gazette. [section 37 of the PE Act]

Planning and Environment Act 1987

Panel Report pursuant to section 25 of the PE Act

Boroondara Planning Scheme Amendment C342boro

13 September 2021



Lucinda Peterson, Chair

Contents

	Page
1 Introduction.....	1
1.1 The Amendment	1
1.2 Background	2
1.3 Procedural issues	3
1.4 Summary of issues raised in submissions	3
1.5 The Panel’s approach.....	4
1.6 Limitations.....	4
2 Planning context.....	5
2.1 Planning policy framework.....	5
2.2 Other relevant planning strategies and policies	6
2.3 Planning scheme provisions	6
2.4 Ministerial Directions and Practice Notes.....	6
2.5 Discussion and conclusion	7
3 General issues.....	8
3.1 Social effects.....	8
3.2 Property not previously identified for heritage significance	10
3.3 Community does not support the Heritage Overlay	11
4 Merits of heritage significance	13

Appendix A Submitters to the Amendment

Appendix B Document list

List of Figures

	Page
Figure 1 Current extent of HO559 (on Synagogue only)	1
Figure 2 Proposed extension of HO559	1
Figure 3 Subject site and features (Extract from KHC submission)	2

Glossary and abbreviations

Council	Boroondara City Council
DELWP	Department of Environment, Land, Water and Planning
Giant Steps	Giant Steps Melbourne
KHC	Kew Hebrew Congregation
PE Act	<i>Planning and Environment Act 1987</i>
Planning Scheme	Boroondara Planning Scheme
the Trust	Norman Smorgon House Trust

Overview

Amendment summary

The Amendment	Boroondara Planning Scheme Amendment C342boro
Common name	Kew Hebrew Congregation Heritage
Brief description	Extend the Heritage Overlay to the entire property and apply tree controls
Subject site	53 Walpole Street, Kew
Planning Authority	Boroondara City Council
Exhibition	18 February to 19 March 2021
Submissions	Number of Submissions: 10 Opposed: 3

Panel process

The Panel	Lucinda Peterson (Chair)
Directions Hearing	Video Conference by MS Teams, 18 June 2021
Panel Hearing	Video Conference by MS Teams, 22, 23, 29 and 30 July 2021
Site inspections	Unaccompanied, 3 August 2021
Parties to the Hearing	<p>Boroondara City Council represented by Louise Hicks of Counsel, instructed by Georgia De Castella of Maddocks, calling the expert evidence of:</p> <ul style="list-style-type: none"> - Dr Helen Doyle of Context in heritage - Mr Mark Huntersmith in heritage <p>Kew Hebrew Congregation and Trustees of Norman Smorgon Trust represented by Nick Sissons and calling the expert evidence of:</p> <ul style="list-style-type: none"> - Rabbi Steven Link in Jewish Religion/Culture - Ms Robyn Riddett in heritage <p>Giant Steps Limited represented by Barnaby Chessell (Counsel) and Arnold Bloch Leibler and calling the expert evidence of:</p> <ul style="list-style-type: none"> - Bryce Raworth of Bryce Raworth Pty Ltd in heritage <p>Dr John B Yaacov Myers, also representing Mr Asher Wanders</p>
Citation	Boroondara PSA C342boro [2021] PPV
Date of this report	13 September 2021

Executive summary

The Heritage Overlay (HO559) currently applies to the Bet Nachman Synagogue, which forms part of the larger Kew Hebrew Congregation (KHC) (otherwise known as the Kew Jewish Centre) at 53 Walpole Street, Kew. Boroondara Planning Scheme Amendment C342boro (the Amendment) proposes to extend HO559 across the entire site to recognise the overall complex for its cultural heritage significance.

Following World War II, the land and original 1886 villa 'Koorooanda' at 53 Walpole Street, Kew was purchased through the generous donation of Norman Smorgon and the KHC was established on the site. Since 1949 the site has been adapted and transformed to serve the Kew Jewish community, facilitated by Norman Smorgon House Trust and the KHC. The most prolific changes to the site were made between 1949 and 1966, which included: establishing Norman Smorgon House by adapting the villa for the first Synagogue and hall (1949, 1954 and 1959); establishing Hebrew classrooms (1959) and culminating in the construction of the Bet Nachman Synagogue (1965) and the Kew Jewish School (1966). The school building is now occupied by Giant Steps Melbourne school, which is a special school for children with autism (ASD).

Council received a planning permit application to expand facilities for the school across the balance of the site. The development would require the demolition of all buildings on the site (excluding the 1966 school building fronting Malmsbury Street and the Synagogue).

Council received a request from a member of the KHC to assess the heritage values of the entire site and Council engaged heritage consultants Context Pty Ltd to undertake a heritage assessment. Context found the various buildings on the site outside the existing Heritage Overlay have local historical, architectural (representative), rarity, social and associative heritage significance and recommended the Heritage Overlay be extended to the entire site.

Key issues raised in submissions included:

- General support for the expanded heritage protection (including a petition with 29 signatories that states support for the Amendment)
- Objection to the Permit Application
- Disagreement with the significance of the buildings on the subject site other than the main Synagogue building which is presently protected under HO559
- Errors in the assessment and citation
- Limitation on the development of the subject site
- Impact on the future operation of the school
- Social and economic impacts of the Amendment.

The Panel has considered Planning Practice Note 1 in its deliberations.

The KHC is a complex with a unique history and role within Boroondara, having been developed by and served the Jewish community for over 70 years. The Panel considers that its history is more than 'of interest' to Boroondara, noting that the current Thematic Environmental History (2012) draws out this site under the theme 'Places of Worship that demonstrate shifting demographics', and contribution of the Jewish Community to Boroondara and that this site clearly illustrates this contribution over generations.

The Panel finds that the citation is a comprehensive one and has been undertaken in a way that assesses both the entire site and its various elements separately.

On balance, having considered the evidence presented before it during the Hearing, the Panel finds that the entire complex has historical, rarity, social, and associative significance. In addition to these values, it finds that the Synagogue has representative significance, which is already recognised by the Heritage Overlay.

The Panel did not find that the school building on Malmsbury Street meets the threshold under Criterion D. While the building forms part of the history of the site and in this context has historical significance for its relationship with the site in the context of community, education and religion, it does not meet the threshold for representative (architectural) significance.

The Peppercorn, while a beautiful tree, is not an element that makes a heritage contribution to the site in relation to the site's postwar history which is the driver of the significance for the place. The Panel encourages Council to consider assess whether the tree itself warrants a specific Heritage Overlay through a separate process.

53 Walpole Street is complex site with many elements that have, and continue to, evolve. The Panel has considered the community-wide social effects of the Amendment, as it relates to Giant Steps Melbourne school; the nature of the heritage significance, being historical and social; and the extant fabric, which ranges from the highly intact Synagogue and school building to the adapted Norman Smorgon House.

The citation and Statement of Statement of significance should be augmented by facilitative guidelines or Conservation Management Plan that a) identifies those parts of the site where fabric is critical to understanding the site's significance, and those elements, such as the hall, caretaker's residence and class rooms where retention of fabric is not critical in understanding the place, b) provides guidance to properly record and interpret the site and c) guides the evolution of the site enables the concept of 'living heritage'. The Panel considers the Norman Smorgon House Trust Deed as an important foundation document for the site and its purpose should inform future heritage guidelines or Conservation Management Plan.

The Panel concludes:

- The Kew Heritage Congregation is of local cultural heritage significance and meets criteria A, B, G, H and D (Synagogue only)
- It is appropriate to extend the Heritage Overlay (HO559) to the site to recognise its local cultural heritage significance
- Specific tree controls are not supported without further assessment
- The Synagogue has primary significance, with the other elements on the site contributing to the site's significance to varying degrees
- The citation should be revised to reflect corrections set out in the KHC/Trust submission regarding dates, the role of Norman Smorgon and the Trust Deed
- The citation and Statement of Significance should be revised to distinguish those parts of the site that are significant or of primary significance and ancillary elements
- A Conservation Management Plan or policy guidelines should be prepared for the site.

Based on the reasons set out in this Report, the Panel recommends that Boroondara Planning Scheme Amendment C342boro be adopted as exhibited subject to the following:

- 1. Amend the Statement of Significance for the Kew Hebrew Congregation to:**
 - a) remove the 1966 school from Criterion D**
 - b) Identify the following elements of the site as significant:**

- **Bet Nachman Synagogue (c.1963-65), including ten stained glass windows designed by Louis Kahan.**
- c) **include the following elements which contribute to the significance:**
- **Norman Smorgon House, which comprises the remnant core of an original brick residence (c1886) that was adapted and used as a synagogue from c.1949-63, and the additions dating from 1954 and 1957**
 - **Classrooms (1959)**
 - **School building facing Malmsbury Street (1966)**
 - **Former caretaker's cottage (c.1970).**
2. **Amend the citation for the Kew Hebrew Congregation to:**
- a) **correct the botanical name for the Peppercorn tree that forms part of the subject site as Schinus areira**
 - b) **include corrections set out in the KHC/Trust submission regarding dates, the role of Norman Smorgon and the Trust Deed listed in Chapter 4 of this report under 'Details within the citation'**
 - c) **distinguish those elements on the site that are of Primary significance (the Synagogue) and those elements, such as the Norman Smorgon House, the caretaker's residence and 1959 classrooms where retention of fabric is not critical in understanding the place.**
3. **Amend the Heritage Overlay Schedule to remove reference to the Peppercorn tree from the tree controls column.**

Further recommendations

The Panel makes the following further recommendations:

Separate to this Amendment, Council should consider undertaking further strategic work to prepare heritage guidelines or a Conservation Management Plan for the Kew Hebrew Congregation in consultation with the Kew Hebrew Congregation and the Norman Smorgon House Trust.

Council should also undertake further assessment of the large Peppercorn tree on the Malmsbury Street frontage to ascertain its significance.

1 Introduction

1.1 The Amendment

(i) Amendment description

The purpose of the Amendment is to extend the existing Heritage Overlay (HO559 as shown in Figure 1) to the entire site (as shown in Figure 2) of 53 Walpole Street, Kew, known as the KHC, to formally recognise the heritage significance of additional features on the site and its history.

Specifically, the Amendment proposes to:

- amend the Heritage Overlay Schedule to amend the description of HO559 and to activate tree controls
- amend Map No. 7HO to extend HO559 to the property boundaries of 53 Walpole Street, Kew
- amend the schedule to Clause 72.04 to include 'Kew Hebrew Congregation, 53 Walpole Street, Kew, Statement of Significance, September 2020' as an Incorporated Document
- amend the schedule to Clause 72.08 to include the 'City of Boroondara, Kew Hebrew Congregation Heritage Citation (September 2020)' as a background document.

Figure 1 Current extent of HO559 (on Synagogue only)

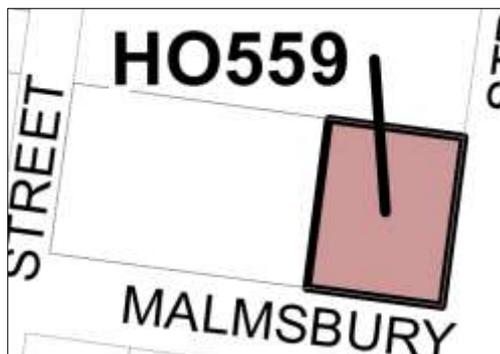
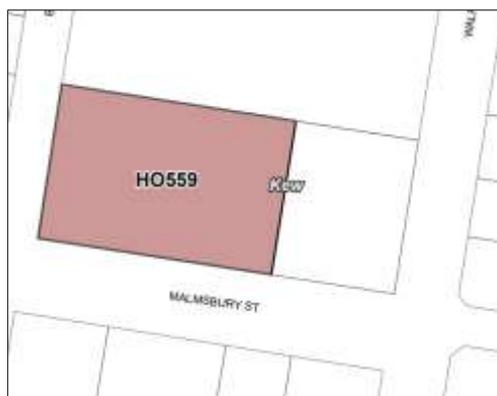


Figure 2 Proposed extension of HO559



(ii) The subject site

The Amendment applies to 53 Walpole Street, Kew (also known as 11 Malmsbury Street), as shown in Figure 3.

Figure 3 Subject site and features (Extract from KHC submission)

The site comprises a series of buildings as follows:

A - Norman Smorgon House - Modified 1886 Villa (which comprises the remnant core of an original brick residence (c1886) that was adapted and used as a Synagogue from c.1949-63, and the additions dating from 1954 (B) and 1957 (C)

B - Extension to the north (1954)

C - Shule Extension and entrance to the south (1957)

D - Former Classrooms (1959)

E - Bet Nachman Synagogue (1963-1964) (Currently included in HO559)

F - Double Storey School Building (1965-1966)

G - Caretakers Residence (1970)

H - Car Park

The western part of the site is currently occupied by Giant Steps Melbourne (Giant Steps) for the purposes of a school, using the 1966 School building and rear yard. The KHC, occupy the eastern portion of the site, comprising the Bet Nachman Synagogue (the Synagogue), Norman Smorgon House (the hall), the caretaker's residence and former classrooms.

A large mature Peppercorn tree is located at the front entrance of Norman Smorgon House, on the Malmsbury Street frontage.

1.2 Background

The Heritage Overlay (HO559) currently applies to the Bet Nachman Synagogue, which forms part of the larger KHC (otherwise known as the Kew Jewish Centre). The Heritage Overlay was introduced through Amendment C153 to the Boroondara Planning Scheme on 17 October 2014.

On 24 May 2020, Council received a request from a community member to investigate the potential heritage significance of the balance of the buildings located at 53 Walpole Street, currently not protected by the Heritage Overlay.

This request was made in response to a planning permit application on behalf of Giant Steps Melbourne school to expand facilities for the school by demolishing many of the existing buildings (excluding the 1966 school building fronting Malmsbury Street and the Synagogue). Council engaged heritage consultants Context Pty Ltd to undertake the heritage assessment. Context assessed the site and its various buildings not currently covered by the Heritage Overlay as having local historical, architectural (representative), rarity, social and associative heritage significance and concluded the Heritage Overlay should be extended to cover the entire site.

Council sought interim heritage controls through Amendment C336, however they were not approved.

A total of ten submissions were received to the Amendment, including five late submissions. One submission was withdrawn.

1.3 Procedural issues

(i) Status of submissions

The KHC Committee initially lodged a submission (Submission 2) in support of the Amendment. Following reconstitution of the Committee, a further submission was made by the new KHC Committee opposing the Amendment (Submission 8).

The Panel notes that Submission 8 is now the KHC Committee's formal position on the Amendment.

The Panel notes that Mr Wanders (Submission 7) and Dr Myers (Submission 9), previous members of the KHC Committee maintained their submissions in support of the Amendment. Submission 7 was submitted on behalf of Bet Nachman Synagogue members of the KHC. Submission 5 is a petition with 29 signatures, submitted on behalf of members of the KHC but is not a submission on behalf of the Committee.

(ii) Site inspection

Prior to the Panel Hearing, the Panel undertook an unaccompanied inspection on 3 August 2021, attended by the Panel and the Caretaker, who was unrelated to the Hearing for the purpose of site induction and supervision only. No submissions were made during the site inspection.

1.4 Summary of issues raised in submissions

(i) Individual submitters or groups of submitters

The key issues raised by submitters in support of the Amendment were:

- General support for the expanded heritage protection (including a petition with 29 signatories that states support for the Amendment)
- Opposed to the Giant Steps Melbourne Planning Permit Application.

The key issues raised by submitters opposing the Amendment were:

- Disagreement with the significance of the buildings on the Subject site other than the main Synagogue building which is presently protected under HO559
- Errors in the assessment and citation
- Limitation on the development of the Subject site
- Impact on the future operation of the school

- Social and economic impacts of the Amendment.

All submissions remain outstanding.

1.5 The Panel's approach

The Panel has assessed the Amendment against the principles of net community benefit and sustainable development, as set out in Clause 71.02-3 (Integrated decision making) of the Boroondara Planning Scheme (Planning Scheme).

The Panel considered all written submissions made in response to the exhibition of the Amendment, observations from site visits, and submissions, evidence and other material presented to it during the Hearing. It has reviewed a large volume of material and has had to be selective in referring to the more relevant or determinative material in the Report. All submissions and materials have been considered by the Panel in reaching its conclusions, regardless of whether they are specifically mentioned in the Report.

This Report deals with the issues under the following headings:

- Planning context
- General issues
- Merits of Heritage Significance.

1.6 Limitations

The Panel notes the site is currently subject to a proposal to expand the existing school. Council advised that, following its decision to refuse the Planning Permit Application, the Minister called in the Application for Review and referred it to a Standing Advisory Committee for a 'Roundtable Discussion.' The Roundtable Hearing for the Permit Application was conducted on 8 June 2021. At the Panel Hearing, Council advised that the outcome of the Roundtable Hearing had not yet been determined.

As part of its Directions, the Panel advised parties it is constituted to consider the Planning Scheme Amendment only. It is not constituted to consider the merits of the redevelopment proposal, or any alternative proposals put forward by submitters in their submissions.

2 Planning context

2.1 Planning policy framework

Council submitted that the Amendment is supported by various clauses in the Planning Policy Framework, which the Panel has summarised below.

Victorian planning objectives

The Amendment will implement section 4(1)(d) of the *Planning and Environment Act 1987* (the Act) to:

- conserve and enhance those buildings, areas or other places which are of scientific, aesthetic, architectural or historical interest, or otherwise of special cultural value
- balance the present and future interests of all Victorians.

Planning Policy Framework

The Amendment supports:

- **Clause 15.01-5S** (Neighbourhood character) which seeks to recognise, support and protect neighbourhood character, cultural identity, and sense of place.
- **Clause 15.03-1S** (Heritage conservation) which seeks to ensure the conservation of places of heritage significance. Relevant strategies are:
 - Identify, assess and document places of natural and cultural heritage significance as a basis for their inclusion in the planning scheme.
 - Provide for the protection of natural heritage sites and man-made resources and the maintenance of ecological processes and biological diversity.
 - Provide for the conservation and enhancement of those places which are of, aesthetic, archaeological, architectural, cultural, scientific, or social significance.
 - Encourage appropriate development that respects places with identified heritage values.
 - Retain those elements that contribute to the importance of the heritage place. Encourage the conservation and restoration of contributory elements.
 - Ensure an appropriate setting and context for heritage places is maintained or enhanced.

Clause 21 (the Municipal Strategic Statement)

The Amendment supports the Municipal Strategic Statement through:

- Clause 21.04-5 (Built Environment and Heritage) includes the objective to “identify and protect all individual places, objects and precincts of cultural heritage, aboriginal, townscape and landscape significance”.

Clause 22 (local planning policies)

The Amendment supports local planning policies through:

- 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”.

2.2 Other relevant planning strategies and policies

(i) Plan Melbourne

Plan Melbourne 2017-2050 sets out strategic directions to guide Melbourne's development to 2050 to ensure it becomes more sustainable, productive and liveable as its population approaches 8 million. It is accompanied by a separate implementation plan that is regularly updated and refreshed every five years.

Plan Melbourne is structured around seven Outcomes, which set out the aims of the plan. The Outcomes are supported by Directions and Policies, which outline how the Outcomes will be achieved. The following are relevant to the Amendment:

- **Outcome 4:** Melbourne is a distinctive and liveable city with quality design and amenity
 - **Direction 4.4:** Respect Melbourne's heritage as we build for the future
 - **Policy 4.4.1:** Recognise the value of heritage when managing growth and change
 - **Policy 4.4.4:** Protect Melbourne's heritage through telling its stories.

2.3 Planning scheme provisions

The Heritage Overlay purposes are:

- To implement the State Planning Policy Framework and the Local Planning Policy Framework, including the Municipal Strategic Statement and local planning policies.
- To conserve and enhance heritage places of natural or cultural significance.
- To conserve and enhance those elements which contribute to the significance of heritage places.
- To ensure that development does not adversely affect the significance of heritage places.
- To conserve specifically identified heritage places by allowing a use that would otherwise be prohibited if this will demonstrably assist with the conservation of the significance of the heritage place.

The Heritage Overlay requires a planning permit to demolish, subdivide, build or carry out works. The Heritage Overlay enables its Schedule to specify additional controls for specific trees, painting previously unpainted surfaces, internal alterations and an incorporated plan (which may exempt buildings and works and other changes from requiring a planning permit). The Schedule may also identify if a place can be considered for uses that are otherwise prohibited, subject to a planning permit.

2.4 Ministerial Directions and Practice Notes

Ministerial Directions

The Explanatory Report discusses how the Amendment meets the relevant requirements of:

- Ministerial Direction 11 (Strategic Assessment of Amendments)
- Ministerial Direction (The Form and Content of Planning Schemes pursuant to section 7(5) of The Act) – referred to as Ministerial Directions 7(5) in this Report.

That discussion is not repeated here.

Planning Practice Note 1 – Applying the Heritage Overlay (August 2018)

Planning Practice Note 1 provides guidance about using the Heritage Overlay. It states that the Heritage Overlay should be applied to, among other places:

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

The Practice Note specifies that documentation for each heritage place needs to include a statement of significance that clearly establishes the importance of the place and addresses the heritage criteria. It recognises the following model criteria (the Hercon criteria) that have been adopted for assessing the value of a heritage place:

- Criterion A:** Importance to the course or pattern of our cultural or natural history (historical significance).
- Criterion B:** Possession of uncommon, rare or endangered aspects of our cultural or natural history (rarity).
- Criterion C:** Potential to yield information that will contribute to an understanding of our cultural or natural history (research potential).
- Criterion D:** Importance in demonstrating the principal characteristics of a class of cultural or natural places or environments (representativeness).
- Criterion E:** Importance in exhibiting particular aesthetic characteristics (aesthetic significance).
- Criterion F:** Importance in demonstrating a high degree of creative or technical achievement at a particular period (technical significance).
- Criterion G:** Strong or special association with a particular community or cultural group for social, cultural or spiritual reasons. This includes the significance of a place to Indigenous peoples as part of their continuing and developing cultural traditions (social significance).
- Criterion H:** Special association with the life or works of a person, or group of persons, of importance in our history (associative significance).

Planning Practice Note 1 requires that the statement of significance must be specified in the schedule to the overlay and the title of the statement must also be listed in the schedule to Clause 72.04. Similarly, where detailed heritage design guidelines have been prepared for a heritage place, they may be incorporated into the planning scheme.

2.5 Conclusion

For the reasons set out in the following chapters, the Panel concludes that the Amendment is supported by, and implements, the relevant sections of the Planning and Policy Framework, and is consistent with the relevant Ministerial Directions and Practice Notes. The Amendment is well founded and strategically justified, and the Amendment should proceed subject to addressing the more specific issues raised in submissions as discussed in the following chapters.

3 General issues

This chapter refers to issues which were raised in submissions that do not relate directly to the heritage assessment of the place.

3.1 Social effects

(i) The issue

Whether the Amendment has wider social effects that should be considered.

(ii) Evidence and submissions

Giant Steps provided an affidavit dated 14 July 2021 by Mr Irvin, Chairman of Giant Steps Melbourne, which provided context around the work of the school in providing specialist education for children with autism. It set out the benefits of the proposed development to expand the school and the negative impact to the community if the development does not proceed.

At the Hearing Mr Irvin explained that the school plays a critical role in the community by providing tailored, high quality educational services for children with autism and is the only independent special education centre in Victoria offering individualised programs for children with autism. Given the demand for enrolments, a planning permit application was submitted to expand the school into the eastern portion of the site, increasing its enrolments from 35 students to 80 students; expanding its siblings support programs and post school programs; and expanding its services to provide training to members of the community, such as teachers, health care and respite workers and families.

Mr Irvin outlined the consequences of the development not proceeding, which would include restriction of enrolments; lack of opportunity to expand the programs; no sibling program to be provided; no post school programs; no expansion of learning spaces and multi-purpose spaces. This would affect the ability to provide the service, not just locally but to families across metropolitan Melbourne. At the Hearing, Mr Irvin explained that they had already established at the subject site and finding a central location to serve all of Melbourne was extremely difficult. The cost of finding an alternative central location and re-establishing elsewhere would be untenable.

Mr Chessell, for Giant Steps submitted:

This case can be distinguished from many that come before planning panels on the basis that (i) a particular planning application has been made in respect of the site, and (ii) Council has sought to determine that application having regard to the heritage values of the site. Indeed, there can be no ambiguity concerning Council's position in respect of the consequence of applying the Heritage Overlay to this site. It has *already refused* the permit application on the basis that the demolition of Norman Smorgon House would be unacceptable in heritage terms. It reached this position *before* a Heritage Overlay was even applied to the site. This is accordingly not a case in which there is any cause for speculation concerning what Council contends should occur if the control was applied.

If Giant Steps Melbourne's redevelopment proposal is stymied, students on the eligibility list with complex needs will forego a placement at the education centre. This would constitute a very significant loss to the community.

Giant Steps Melbourne submitted that, in circumstances where the heritage value of the buildings subject to the Amendment is extremely limited, the Panel should accord substantial weight to the real and substantial benefits that will be provided to the community if Giant Steps Melbourne's redevelopment proposal is not thwarted by the proposed planning control.

Council submitted that it had considered social and economic impacts of the Amendment and acknowledged that, in this case, a link may be made of a community-wide social impact. The Council agreed with Mr Irvin that he describes the impact of the Amendment, not to himself personally or Giant Steps Melbourne, but its broader impacts. That said, it submitted:

The process we are now engaged in is whether or not the complex is so significant that a heritage overlay is an appropriate response. It is not to determine whether the development proposal is in the net community benefit.

There is no evidence that the imposition of the overlay will prevent the development proceeding.

The impact of any heritage overlay will be limited to addressing heritage matters in the planning permit application and design. During the permit application process, all relevant planning issues including the heritage overlay will be weighed and balanced to reach an acceptable outcome in the net community benefit.

(iii) Discussion

The Panel notes similar considerations by other panels in relation to social and economic impacts, including Melbourne C207 and Moreland C149. The impacts to be considered are of a broad community nature and not personal. In addition, as found with Moreland C149, the Panel considers that the impacts to be considered need to be specific, and not general, in nature.

Having considered the submissions, there is no doubt in the Panel's mind of the importance of the school in serving children and their families with complex needs. Having considered the submissions, the Panel finds that the social and broader community benefit of the school is high and the impact of the Amendment as it currently stands does create uncertainty for the school at a critical time.

The Panel is mindful that the Heritage Overlay does not prohibit development. This is different to the impact that an Amendment may have, for example, that changes the zone and use provisions within the scheme, creating a situation where certain uses become prohibited. This is not the case here.

The Panel will not be drawn into the specific merits or otherwise of the planning permit application of the redevelopment of the school. The Panel is acutely mindful that its role is to consider the merits of the Amendment before it and this does include considering the social and economic effects of the Amendment.

In its most simple form, heritage amendments can encompass the application of a Heritage Overlay and a statement of significance, specifying what is important about the place, and why. Often this is enough information, coupled with the Heritage Overlay provisions, to guide design and decision making.

That said, a proposal to redevelop the site for a use that has community benefit is a not a hypothetical proposition.

Having regard to the site's use and its community benefit, the site's evolving history, the nature of its significance (social) and the complex and varying degrees of intrinsic fabric, the Panel considers

Council ought to be more proactive in providing guidance in the form of heritage guidelines to inform future decision making for the site.

(iv) Conclusion

The Panel concludes that:

- Community-wide social effects of the Amendment, as it relates to Giant Steps Melbourne school is considered as a factor in the Panel’s assessment of the Amendment.
- The composition of heritage controls needs to provide more guidance to inform future decision making.

3.2 Property not previously identified for heritage significance

(i) The issue

The issue is whether re-assessment is justified, given the whole property was not previously identified to be included in the Heritage Overlay.

(ii) Evidence and submissions

Giant Steps submitted the subject site was assessed in the “recent past” (referring to the Lovel Chen assessment in 2012) and it is appropriate to recognise that the buildings, except for the Synagogue, were not recognised as significant.

Council submitted that the fact the 2012 heritage citation states that the balance of the site is not of heritage significance should not be taken by the Panel as the final position in relation to those buildings. The 2012 assessment focussed on the Synagogue building, and not the complex. On this basis it was appropriate for Council to undertake its own examination of all the buildings on the site, which has led to the conclusion that they are worthy of heritage protection.

Mr Huntersmith, heritage expert for Council, advised that heritage is not static but evolving and significance changes over time. He considered there has been a marked shift in the appreciation of postwar places, buildings and structures in recent times which has resulted in many municipalities undertaking studies that focus on the postwar era and social significance. It is not unusual for gap studies to identify places of heritage significance that add layers to and expand existing historical understandings of a place.

Neither Ms Riddett nor Mr Raworth, providing evidence for submitters, saw issues with revisiting the site.

(iii) Discussion

The Panel notes that the site was previously considered in 2012 however it is not privy to the original scope of the heritage assessment as it related to 53 Walpole Street.

The Panel agrees that a full assessment of the complex is a reasonable undertaking and has not drawn any inference that because the Synagogue is the only element on the site that is currently within the Heritage Overlay, that the remaining complex ought to not be assessed.

(iv) Conclusion

The Panel finds that, despite the Heritage Overlay applying to only the Synagogue building, it is appropriate to assess the heritage values of the complex.

3.3 Community does not support the Heritage Overlay

(i) The issue

The issue is who has the right to represent the views of the Community.

(ii) Evidence and submissions

The KHC/Trust submitted that the initial request by the (former) KHC committee to seek heritage protection was *“not in any way shape or form, representative of the majority of the congregation and it was entirely inconsistent with how the buildings being sought to be protected are valued in Jewish culture.”*

The KHC/Trust acknowledged that there is a difference of opinion in the congregation around the matter of heritage and future development of the site. They submitted the new Committee and Trustees oppose any extension of the Heritage Overlay and it was their views that should be given priority as they speak for the formal entities.

Dr Myers and other submitters who made submissions as members of the congregation maintained that the site in its entirety is important from a cultural heritage viewpoint and ought to be considered.

Mr Raworth in his evidence (on social significance) considered:

There can be no clearer response to this question than that already provided by the Jewish community associated with the site, i.e. that the strong attachment of that community is with the Synagogue itself, and not the broader site.

In cross examination, Mr Raworth confirmed that the community response he was referring to was that of the current KHC Committee and the Deed Trustees.

On the other hand, Mr Huntersmith and Dr Doyle considered whether the place has social significance, supported by an initial request from a member of the congregation (from the former Committee).

Council submitted:

It is not clear to whom Mr Raworth is referring in his use of “Jewish community associated with the site” but in any event, the application of a heritage overlay is about significance not just to one particular group but to the community more broadly.

(iii) Discussion

It is clear to the Panel that there are various views within the congregation and within the immediate Jewish community affiliated with the site around those aspects of the site that are important and future priorities and development of the site. Disagreement by individuals and committees around such matters is not uncommon. The Panel will not be drawn into who is representing the views of the congregation or what position they hold in the hierarchy, suffice to acknowledge that not all parties are ‘on the same page’ when it comes to the matter of heritage.

While the views of the congregation and the community are important to consider, they do not necessarily define or determine whether a place is significant with reference to the criteria for assessing heritage places, except for Criterion G. The tests under the Planning Practice Note 1 provide that guidance.

(iv) Conclusion

The Panel understands there are different views among the community, members of the congregation and those with formal roles. In considering the cultural heritage values of the site under the requirements of Planning Practice Note 1, the Panel has not prioritised one party over another.

4 Merits of heritage significance

Exhibited Statement of significance

Why is it significant?

The site at 53 Walpole Street, Kew, and known as the Kew Hebrew Congregation, is important for its role in the development of Jewish worship, education, language studies, and community and cultural life in the City of Boroondara from 1949. The complex of buildings, which comprises the Bet Nachman Synagogue (c.1963-65); Norman Smorgon House, which comprises the remnant core of an original brick residence (c.1886), which was adapted and used as a Synagogue from c.1949-63, and added to in 1954 and 1957; classrooms (1959); a double-storey school building facing Malmsbury Street (1966); and former caretaker's cottage (c.1970), together represent the development of a cohesive social, religious and

cultural centre of Jewish life in Kew in the postwar period. It is also historically significant for its use as a Jewish day school, serving as the kindergarten and primary school section of Mount Scopus Memorial College, which was located in Burwood, from 1953, and providing a purpose-built school building from 1966. **(Criterion A)**

The complex at 53 Walpole Street, Kew, known as the Kew Hebrew Congregation and comprising a Synagogue, former Jewish day school and Jewish community buildings, is a rare place type in the City of Boroondara and in Victoria more generally. It is a rare intact postwar example of this place type. **(Criterion B)**

The Bet Nachman Synagogue is architecturally significant as a fine representative example of a postwar Synagogue. Frequently designed by emigre architects who had trained in the ateliers of Europe before the war, these buildings display characteristics of the modernist movement and were seen as symbols of survival and hope to a displaced community looking for a fresh start. Breaking from the traditional forms used for earlier synagogues that referenced classicism, these buildings used simple cubiform massing with flat roofs and sheer unadorned planar surfaces favoured by the International style. This frequently resulted in buildings that possessed a certain monumentality in form that was lightened by the use of pale brickwork and large horizontal bands of glazing. The Bet Nachman Synagogue is distinguished by its bold use of pre-cast concrete and a steel portal frame that, combined with striking sloped vertical elements and large areas of unbroken wall surfaces, has resulted in a composition that is more indicative of the emerging Brutalist movement of the 1960s than the earlier International style. The school building is architecturally significant as a representative example of an education building designed in the postwar International style. This is evident in its cubiform massing, flat roof, sheer wall planes of pale brickwork and large expanses of glazing, that combine to give a lightness and transparency to the building that is indicative of the style. **(Criterion D)**

The Kew Hebrew Congregation at 53 Walpole Street, Kew, is significant for its importance as a centre for Jewish worship, Jewish community life (including welfare, social activities, historical records and Hebrew language), particularly for the postwar (Eastern) European Jewish immigrants who came to Melbourne as displaced people following the Second World War. The site as a whole has played an ongoing role in both the spiritual and social life of the Jewish community, locally and across wider Melbourne, since 1949, when the first Synagogue was established in the existing Victorian-era house on the site. Norman Smorgon House has served the community for over sixty years as a gathering place for various functions and activities, including for ceremonial observances and rituals from 1949-c.1965 when it was used as a Synagogue, as an affiliated kindergarten (with Mount Scopus College) from 1951, and for hosting Shabbat dinners, weddings and school functions up until the present day. The Bet Nachman Synagogue has served the community for over fifty years as a purpose-built place of worship, and as a place where the community's culture and identity is celebrated through the observance of festivals and events throughout the Jewish year and the marking of life cycle events such as births, bar/bat mitzvahs, weddings and funerals. The school building facing Malmsbury Street, constructed in c.1965-66, has long connections with the Jewish community through its affiliation with Mount Scopus College, as it served as the Kew division of the college until the 1990s. **(Criterion G)**

The Kew Hebrew Congregation at 53 Walpole Street, Kew, is of significance to the City of Boroondara for its association with notable members of the Melbourne Jewish society, including businessman and philanthropist Norman Smorgon OAM (1884-1956), notable postwar architect, Anthony A. Hayden (1921-1984), and notable artist and Kew resident, Louis Kahan (1905-2002), who designed the ten stained glass windows in the Bet Nachman Synagogue. It is also significant for its association with Jewish teacher and spiritual leader, Rabbi Jacob Schreiber (born c.1920s). Schreiber led the Kew Hebrew Congregation through the period of significant expansion of its operations from the mid 1950s until the 1980s, and was influential in the development of Jewish community life in the postwar period in the City of Boroondara. **(Criterion H)**

(i) The issues

The issues are:

- whether the site reaches the threshold of local significance, having regard to Criteria A (historical), B (rarity), D (representative), G (social) and H (associative)
- whether the entire site warrants inclusion in the Heritage Overlay
- whether the citation and Statement of Significance is accurate
- whether the Statement of Significance adequately assists in future decision making around heritage matters.

(ii) Relevant policies, strategies and studies

A heritage citation was prepared by Context, which outlined the site's history and historical context, description and integrity, comparative analysis, assessment against criteria and a statement of significance.

Relevant policies and strategies are discussed in Section 2 of this Report.

(iii) Evidence and submissions**Summary of positions**

Council called two expert witnesses, Dr Doyle and Mr Huntersmith of Context, who authored the heritage citation and statement of significance. Giant Steps and the KHC/the Trust called heritage witnesses Mr Raworth and Ms Riddett, respectively. In addition, KHC/the Trust called Rabbi Link as an expert on matters of Jewish culture and historical use of the site.

Jewish culture evidence

Rabbi Link provided evidence based on his experience at the site over 24 years, from 1982 to 2008, where he served as Rabbi for the Kew Hebrew Congregation.

He explained, when the Kew Hebrew Congregation first established in 1949, the 1886 villa contained the first Synagogue. Now known as Norman Smorgon House, the villa was extended and altered extensively to accommodate a larger Synagogue and hall. The Synagogue within this building was a sanctified space.

When the Bet Nachman Synagogue was completed in 1965, it became the sanctified space and the hall reverted to 'bricks and mortar'.

He explained that the Synagogue is the focus for religious activities and the hall has a peripheral purpose, for hosting meetings, socialising after services, the breaking of the fast after weddings and the occasional Shabbat dinner (which more commonly occurs in the home, rather than a communal activity). He said the hall was never used as a function centre. Celebrations following religious events were held at venues off-site.

Rabbi Link explained the 1966 school building fronting Malmsbury Street, was a Jewish junior feeder school for Mount Scopus in Burwood, and is now occupied by Giant Steps Melbourne school.

For a few years, the classrooms on the northern side of the site, established in the 1959, were used to educate students who lived in the area however this use was very short lived – short classes were held to teach Hebrew however once the Jewish schools were established there was no longer a need for them.

He considered that the Synagogue is held in high regard as a place where religious milestones are sanctified, however other buildings on the property are ancillary and hold no significance in Judaism.

Heritage evidence overview

All heritage experts agreed the Synagogue, which is currently subject to HO559, is of cultural heritage significance, however they held different positions on the significance of other elements within the site (not currently included in HO559), and the applicability of the criteria.

All experts agreed that the place has historical significance, although they disagreed on several points including:

- the degree to which the fabric, despite the site’s historical significance, warrants protection and inclusion in the Heritage Overlay
- whether the historic associations and significance can be, and have been, transferred to the Synagogue, rendering the Amendment unnecessary.

Dr Doyle and Mr Huntersmith considered the entire site, or complex as they referred to it, is of cultural heritage significance and satisfies Criterion A, B, G and H, and both the Synagogue and the school building on Malmsbury Street satisfies Criterion D.

Council supported Dr Doyle and Mr Huntersmith’s assessment and maintained that the site should be “considered as a whole” and reaches the threshold of local significance as a single heritage place.

Ms Riddett opined that while the sites’ history applies across the whole of the site, rather than to individual elements, there is nothing intrinsic in the fabric of Norman Smorgon House (the hall), the caretaker’s residence and the classrooms that demonstrates historical use that satisfies Criterion A and G.

Ms Riddett considered the Heritage Overlay is only warranted over the Synagogue and the school (as it satisfies Criterion D) and the large Peppercorn tree.

Mr Raworth considered it is appropriate the Synagogue be subject to an individual Heritage Overlay; however the rest of the property is not of sufficient integrity nor sufficient historic value to warrant the extension of the Heritage Overlay across the whole of the property. He did not consider the balance of the site meets a threshold of local significance for any of the criteria identified in the proposed Statement of Significance. Regarding the Peppercorn tree, he noted that there is no link between the tree and the period of which the site is purportedly significant. There is no justification for it to be listed in the Heritage Overlay Schedule.

Submitter overview

Dr Myers submitted the hall had been used for a range of events by the congregation over many years. He rejected the view that all the heritage is manifested in the Synagogue and therefore formal heritage recognition of the Synagogue is “enough”. He described the place in the following way:

- The Hall is the heart
- The Synagogue is the intellect
- The School is the fruit.

He considered that the hall and the Synagogue are inter-linked, and the hall is central and significant for its functionality.

Dr Myers submitted that the Heritage Overlay should apply to the east of the site, limited to the Synagogue, hall, storerooms, kitchen and the tree. The western half comprising the 1966 school building should be excluded.

In his submission, Mr Wanders supported the individual assessment of all components and submitted that each have different values and significance. Other submitters in support were more general in their support for the Heritage Overlay.

Both Giant Steps and the KHC/Trust wholly opposed the heritage assessment and inclusion of any additional land or buildings within the Heritage Overlay. It was submitted that the current Statement of Significance lists all components as significant, placing them on an equal footing, which is not accurate. If the Heritage Overlay were applied, the Statement of Significance should be revised to assign the Synagogue as significant only.

Criterion A (Historical significance) - *Importance to the course, or pattern, of our [i.e. the City of Boroondara's] cultural or natural history*

Dr Doyle considered the whole site has historical significance – starting as a Jewish community centre and Synagogue after World War 2 when there was an influx of Jewish people who settled and established new roots in the Kew area and with a great sense of purpose, the complex was adapted and grew with the community. Secured through the generosity of Norman Smorgon, she considered that the circumstances around the establishment of the complex was different to other religious-based groups and had a different historical context as the land was not established through a Crown grant (as many other churches had been established) but rather through the generosity of a community member. She opined that the place “*tells the story of displacement and re-establishment, rather than colonisation*” and all the elements on the site tell that story. Dr Doyle maintained that the place is important to the history of Boroondara.

It was Mr Raworth’s view that:

While Norman Smorgon House and the other buildings within the complex are part of the congregation’s overall history, any true historical significance within the broader built form culminated in the construction of the Synagogue when historical significance was essentially ‘transferred’. The Kew Hebrew Congregation and the trustees of Norman Smorgon House themselves have previously commented to Council that any historical, social, spiritual, or cultural attachment to the Norman Smorgon House was transferred to the Bet Nachman Synagogue when it was completed in the mid-1960s.

Mr Raworth further considered:

Given the congregation and trustees have acknowledged the historical attachment to the broader place was transferred to the Synagogue, it is questionable whether the place can meet a threshold level of local significance that in itself warrants the broader site as being identified under a site-specific Heritage Overlay, rather than being of local interest to the history of the congregation.

Mr Raworth noted that the villa that evolved into Norman Smorgon House was only briefly associated with Synagogue activities, and for the subsequent decades has served a variety of purposes and activities that are less central to the site than those associated with the Bet Nachman Synagogue.

Acknowledging the *Victorian Heritage Register Criteria and Threshold Guidelines* are to be applied for considering potential State level places, he considered they can be applied at a local level as a test. Considering the following tests:

- The place/object has a CLEAR ASSOCIATION with an event, phase, period, process, function, movement, custom or way of life in Boroondara's cultural history. +
- The association of the place/object to the event, phase, etc IS EVIDENT in the physical fabric of the place/object and/or in documentary resources or oral history. +
- The EVENT, PHASE, etc is of HISTORICAL IMPORTANCE, having made a strong influential contribution to Kew, or more broadly Boroondara.

Mr Raworth found that the complex is potentially important to the Jewish community rather than Boroondara and while its history is of interest it is not of such importance to warrant protection of fabric beyond the Synagogue.

In establishing a threshold of significance, he considered that the site should be compared with other religious community places, rather than the narrower category of Jewish places and that it does not compare 'better than most', using step 2 of the Heritage Council's guidelines.

Ms Riddett agreed that the site is of sufficient heritage significance because of the Bet Nachman Synagogue and the double-storey school building facing Malmsbury Street as to warrant a Heritage Overlay over these two portions of the site however she did not consider that the threshold of historical significance had been met.

She considered that:

Norman Smorgon House does not comprise the remnant core of an original brick 1886 residence (c1886), rather it retains an incoherent and small collection of original elements. It has been considerably altered on numerous occasions and some of its original functions such as religious worship, originally intended to be temporary and which was superseded as the congregation grew, have been supplanted by new buildings i.e. the new Synagogue.

The 1959 classrooms and the former caretaker's residence demonstrate nothing of their original function other than at a most basic level and which is of limited, or no, historical interest. They add nothing meaningful to the historical significance of the site, which has been established already by the Synagogue and school building.

Ms Riddett considered, while Norman Smorgon House provides accommodation for a few ancillary functions on the site and as such has some history, these functions could also be accommodated in a different/new building on the site.

Council rejected the notion that historical attachment can be transferred. It accepted that spiritual attachment might be transferred but it is necessary to separate out religious from social attachment or historical significance.

Criterion B (Rarity) - Possession of uncommon, rare or endangered aspects of our [i.e. the City of Boroondara's] cultural or natural history

In their evidence, Dr Doyle and Mr Huntersmith did not specifically address the matter of rarity suffice to say that the place type, in its historical context of the phase of development following World War 2, is rare in Boroondara.

Mr Raworth considered, while the municipality might contain few other complexes that comprise a Synagogue, former Jewish day school and Jewish community buildings, religious complexes that experienced postwar growth more broadly are not an unusual typology within Boroondara. He considered the complex also does not display any unusual features elevates its status to the level required to support the application of an individual Heritage Overlay.

He opined:

It is not always appropriate to simply apply the criterion of rarity to places that have always been rare in their context (in this case a Jewish complex in Kew) as it is apparent that such rarity may, in fact, be indicative of a lack of importance within, or relevance to, the broader community of the municipality (as opposed to the relatively small Jewish community associated with the place).

While the place is rare as a Jewish complex in Kew, being the only such complex, it is not associated with a specific important event or phase, other than that associated with the postwar presence of the relatively small Jewish community who utilised the place. Moreover, the key element demonstrating the presence of the Jewish community in Kew remains the Synagogue, which has been in continuous use by this community since 1965. The other buildings within the site are less recognisable in their associations, have been used less consistently and in some instances, eg. the 1960s school building, have been in use by other, non-Jewish organisations, or by Jewish organisations that are not specifically local (eg Mount Scopus Jewish School). Moreover, the school itself and the subsidiary buildings that are in use with it, is not a rare building type.

Ms Riddett did not agree that Criterion B had been satisfied as there are many churches/chapels in Melbourne which have associated schools on site including such as Xavier and Genazzano (both in Boroondara); Christ Church Grammar School, South Yarra; Scotch College, Hawthorn; Academy of Mary Immaculate, Fitzroy; former Presentation Convent, Windsor; countless Catholic schools) and within wider Victoria. She saw there is no added value which establishes a case for rarity in that it is postwar as opposed to any other historical period.

Council submitted:

The changing demographic of the Jewish community after World War II saw changes in the way the community in Melbourne expressed their Jewish identity. In her paper *Making Modern Jewish Melbourne* Catherine Townsend¹ notes that the European Jews that immigrated to Melbourne at this time wanted to establish day schools to fully impart religious and cultural knowledge. Eastern Europe had a long tradition of synagogues with multiple attached functions with the whole site becoming community centres. This differed markedly to what had occurred in Melbourne to this date where Jewish families relied on the Christian private school system. As Townsend notes, the European Jew's 'vision of synagogues saw the production of community as important and was shaped by the goal of building a strong continuing post-Holocaust community.'

The complex at 53 Walpole Street remains as evidence of this important postwar immigration to the area and the establishing of a centre to promote a continuing post-Holocaust Jewish community. It is the only one of its type within Boroondara and is therefore rare.

Criterion D (Representativeness) - Importance in demonstrating the principal characteristics of a class of cultural or natural places or environments

Mr Huntersmith maintained the school building has local architectural (representative) significance and has local historical significance as an example of a postwar Jewish school in the City of Boroondara. He noted that while Planning Practice Note 1 does not provide clear guidelines for the assessment of Criterion D, the *Victorian Heritage Register Criteria and Threshold Guidelines* can be used, although they should be used with caution in relation to the thresholding step (step 2) for places being considered at the local level:

¹ Catherine Townsend's paper 'Making Modern Jewish Melbourne', attached to Council's Part B submission as Attachment 1.

In applying the Guidelines to assess if a place satisfies Criterion D, it is important to demonstrate that the subject place exhibits the principal characteristic of a particular class of cultural place. These characteristics are the major features, qualities or attributes that define that class of place. A class of cultural place generally refers to a sub-category of a broader place type.

In the instance of the school building, the broader place type is the education or school building typology, with the class being Modernist architectural design built in the post-World War II era. Key characteristics of the postwar Modern architectural idiom, often referred to as International style, include the use of steel, concrete, glass and prefabricated elements. The use of long-span structural frames and lintels meant that buildings no longer relied on load-bearing walls and larger areas of glazing were possible. These structural developments brought a new freedom to the expression of walls, windows, and roofs as independent design elements and a similar freedom to the planning of interior spaces.

This is evident in the school building in its cubiform massing, flat roof, sheer wall planes of pale brickwork and large expanses of glazing, that combine to give a lightness and transparency to the building that is indicative of the style. These characteristics remain evident in the built fabric as the building is of high intactness and integrity. As such, Criterion D is satisfied.

Mr Huntersmith relied on comparative examples including the 1969 extension to Camberwell High School, referencing the 1940-41 original building, within HO722. This was the most relevant comparative example. The 1950 single storey cream brick building at Balwyn Primary school, whilst not included in the Heritage Overlay represented the prototype for an innovative new type of state school architecture developed by Percy Everett, chief architect of the Public Works Department, and was considered comparable. The third postwar school building in Boroondara is the Preshill Classrooms and Hall, at 395 Barkers Road, Kew, built in 1962. However, he found that its innovative octagonal design, which represented a major departure from the more common nave-like halls designed for schools, was considered not comparable. Mr Huntersmith considered that there are few postwar school buildings within the Heritage Overlay in Boroondara and as such, intactness and integrity, as well as the limited comparable examples, showed the school building to be worthy of local significance as a representative example.

Mr Raworth did not agree that the school has representative significance. Having regard to comparative examples, he considered the school is a modest example of a school building and should not be considered significant within the broad realm of education buildings within Boroondara. Comparing the school building to the 1969 Camberwell High School addition was not appropriate as the reason why the Camberwell High School example is in the Heritage Overlay is because of the 1940s building and there is nothing special about the 1969 addition except that it is sympathetic with the original building.

Mr Raworth opined that while the school building is relatively intact to its exterior, apart from additions at the west end, it is not identified as a notable, fine, influential or pivotal example (thresholding tests in the Heritage Council guidelines referred to by Mr Huntersmith) and does not meet any measure of local significance on this basis. He considered that it does not have broader architectural merit sufficient to warrant its elevation to a threshold level of local significance at a municipal level.

Ms Riddett did not challenge the Context assessment of the 1966 school building and agreed with it meeting the local threshold for Criterion D.

Criterion G (Social significance) - *Strong or special association with a particular community or cultural group for social, cultural or spiritual reasons. This includes the significance of a place to Indigenous peoples as part of their continuing and developing cultural traditions*

The KHC/Trust submitted that any important aspects of the history and culture of the Jewish community and/or the Kew community on the site resides in the Bet Nachman Synagogue and does not extend to the hall, former classrooms, caretaker's residence or the current school buildings.

The KHC/Trust continued:

The story and evolution of KHC and this Subject site is ever evolving and dynamic. There is no material significance in the buildings for the Trustees and KHC, the buildings are a just a shell that contained the story of the evolution of the congregation.

Norman Smorgon established the Trust for the express purpose of making the Subject site available for the Jewish Community, for education and religious needs. The early days of the Subject site saw the need for the majority of the site to be used for education.

.....

The [Norman Smorgon Trust] Deed sought to allow for the use of the existing dwelling house, altering of the dwelling house, adapting or adding to the existing building or re-constructing the same or demolishing the existing building and erecting a new structure in such manner as in the opinion of the Committee required to render the property suitable for the purposes required including to permit the property to be used and enjoyed in perpetuity for religious education or other charitable purposes beneficial to the Jewish Community of Melbourne.

They supported Rabbi Link's position that to apply significance to buildings that do not hold sanctity is contrary to their beliefs, where the focus instead is on "doing good deeds." The KHC/Trust completely rejected the proposition of social significance and submitted that adequate assessments, such as a survey and more quantifiable analysis had not been done to demonstrate attachment to the community.

Dr Doyle opined that the starting point of their finding of local social significance related to the generally accepted understanding that community places such as places of worship, schools, public buildings, cemeteries have local social significance. She maintained that the site, comprising Norman Smorgon House, the Synagogue and the school demonstrate social significance (while the classrooms and caretaker's residence did not – presenting historical significance only).

On criticism that an independent assessment of social significance involving a wide survey of members (past and present) of the KHC was not undertaken in the preparation of the citation, Dr Doyle explained that it is not common practice in local heritage assessments to carry out such a survey or other rigorous means of identifying the extent of social attachment to a place and this would more likely be done in a situation where the sole criteria for potential heritage significance was social significance. Noting the current guidelines for the assessment of Criteria G at State level produced by the Heritage Council of Victoria in 2019, this type of survey (as well as investigations into the audience, attachment, period of the attachment, and resonance of the attachment) is also more likely to be undertaken for a place of social significance at the State level.

She explained the study team assumed that there was social significance associated with the place as it comprised a complex of religious and community buildings that had developed over time, and which have been in use since 1949. She considered that this seemed to be a reasonable

assumption to make given that the site was originally nominated by the community and was a view that was reinforced during the site visit in June 2020 undertaken by Mr Huntersmith. She acknowledged the KHC/Trust view but did not consider this negated social significance.

Dr Doyle disputed that social 'attachment' has been transferred to the Bet Nachman Synagogue, saying that:

social value is not a commodity that can be moved from one building to another but rather is inherent to a particular building or place. Social value is represented by the physical fabric of a place, so that one building or place will therefore not have the same social value as another building. The measure of social significance of a place that is connected to a particular faith group is not necessarily spoken for by the faith organisation or the doctrine of that faith group. Rather, it is determined by the individuals who comprise the users of the place and/or by those with who have an historical association with the place.

Further, the cultural heritage significance of a place associated with a faith group is determined through the recognised heritage assessment process in Victoria. If, as it is claimed, that Jewish tradition places little value on 'old buildings', it does not necessarily follow that the old buildings in question have no significance; it is but one opinion on the matter.

Ms Riddett considered the contribution of Jewish worship and cultural life to the City of Boroondara is clearly demonstrated in the existing Synagogue and school. While some customs and traditions of Jewish life are enacted in Norman Smorgon House there is no specific reason for them to continue there or, conversely, not to continue in another building on the site.

Mr Raworth, in undertaking his assessment, applied the Heritage Council's Threshold Guidelines:

- a) Existence of a community or cultural group. A community or cultural group is a group of people who share a common interest, including an experience, purpose belief system, culture, ethnicity or values. The members are connected through a common interest or cause and may:
 - Live or meet in the same locality, or
 - Were once located together and are now geographically dispersed, or
 - May have never met in person (for example are a virtual group and interact online).
- b) Existence of a strong attachment of a community or cultural group to a place or object. Attachment describes people's connection to a place or object. This includes feelings, memories and associations that are important to a community or cultural group's sense of identity, as well as practices, expressions and representations. The reason(s) may be related to a common cause, experience, ideal, belief or cultural practice. The intensity of attachment to place – from ordinary to profound – can fluctuate over time. The nature of the attachment may vary within the community or cultural group but must be strong or special. The place or object may be a source of positive association for some people and negative association for others.
- c) Existence of a time depth to that attachment:
 - i) Time depth is the length of time over which a community or cultural group's connection to place can be demonstrated to have endured. An appropriate time depth to underpin social value will typically be of long standing (a generation, or 25 to 30 years, may be accepted as a rough guide).

OR

- ii) Time depth can be of more recent origin, often provoked by a sense of loss or change, including change of use. People are sometimes unaware of their attachment to a place/object until it is under threat. If the time depth is

of this type, specific evidence should be provided as to why it should be considered a facet of social value.

Applying the above tests, Mr Raworth concluded that:

There can be no clearer response to this question than that already provided by the Jewish community associated with the site, i.e. that the strong attachment of that community is with the Synagogue itself, and not the broader site.

Giant Steps submitted that the fact there is division within the KHC is a telling sign that the matter of whether this site has social significance is inconclusive.

Council submitted the Synagogue is not, and never has been, standalone and that the historical significance is not only reflected in the Synagogue. Just to assign significance to the Synagogue is to misunderstand the nature of the activities on the site.

Dr Meyers considered that the place has deep social significance to the local congregation community and Norman Smorgon House has as much importance to the site as the Synagogue and are inter-dependent.

Criterion H (Associative significance) - *Special association with the life or works of a person, or group of persons, of importance in our [i.e. the City of Boroondara's] history*

Dr Doyle reiterated the findings of the study that, notable members of the Melbourne Jewish society, including the businessman and philanthropist Norman Smorgon OAM (1884-1956), notable postwar architect, Anthony A. Hayden (1921-1984), and notable artist and Kew resident, Louis Kahan (1905-2002), who designed the ten stained glass windows in the Bet Nachman Synagogue were associated with the site in a way that is significant to the site and Boroondara and the site is significant for its association with Jewish teacher and spiritual leader, Rabbi Jacob Schreiber who led the KHC through the period of significant expansion of its operations from the mid-1950s until the 1980s and was influential in the development of Jewish community life in the postwar period in the City of Boroondara.

Ms Riddett found that the association of Norman Smorgon, Anthony A. Hayden and Louis Kahan is clear and directly connected to the new Synagogue building. Norman Smorgon's association with the place is significantly celebrated in the naming of the Bet Nachman Synagogue after him which, in comparison with the naming of Norman Smorgon House, is a significant accolade and memorial.

Ms Riddett observed that Rabbi Jacob Schreiber is the only Rabbi mentioned in the citation and thus his contribution and associational significance has not been assessed against any contribution of any other Rabbi. While he was active in the place's formative years and over a period of 32 years, there is nothing intrinsic in the fabric of the place which can be specifically identified with him or any other Rabbi. She considered his contribution reflects the general history of the site which in essence is not dissimilar to many church and established school sites and was likely to be associated with the Synagogue and the functions of ministry, rather than any other specific fabric such as the classrooms and the caretaker's residence. It was her opinion that Criterion H had not been satisfied in respect of the classrooms and the caretaker's residence.

Mr Raworth expressed similar views. He considered the associations are evident within the history of the place but are representative of the associations that any community complex of buildings or religious complex might evidence. Moreover, these associations are most strongly represented in the Synagogue itself rather than in the other buildings within the complex, including the 1966 school building. Each of these persons is associated with the Synagogue, while only the architect Hayden has a strong association with the school building. Rabbi Schreiber and Norman Smorgon

were also associated with Norman Smorgon House but would likely also have seen the Synagogue to be the key building in the complex with which they identified, notwithstanding the fact that Norman Smorgon House was named for Smorgon in recognition of his role within the community and the site.

Integrity, Intactness and fabric

Mr Huntersmith considered the overall intactness and integrity of the 1966 school and the Synagogue is high. Dr Doyle considered that one can read the entire complex (in its postwar incarnation) and its parts, which all contribute to the significance of the place.

Ms Riddett opined that Norman Smorgon House, which subsumed the original 1886 villa, no longer presents as a Victorian villa and can now accommodate 500 people which is “completely at odds with a Victorian villa of ten rooms.” While the core of the original house may have remained extant in the 1950s and subsequent close decades, it does not remain now. What remains are incoherent remnants. The demolition, alterations and additions have been so comprehensive that any sensible appreciation of the original villa is almost impossible. Further, the remnants which do remain are more incoherent than not.

Giant Steps submitted that, except for the school building, Council said the buildings have some social, cultural and historical significance and as such the commentary in the Heritage Provisions Final Report (2007) is relevant:

Managing places with social or historic values that have little or no heritage fabric poses a particular problem for the planning system. As we have earlier commented, planning is about management of the environment and changes to it, and an appropriate ‘threshold’ that a heritage place should be required to pass is that it has something to be managed. This ‘something’ is usually tangible fabric but it may, for example, be a significant absence of built form, special spatial characteristic or a pattern of ownership. If such things are present, then however ephemeral they are, there will be something to manage. If not, a commemorative plaque is the appropriate way of signifying the importance of the place to the local community.

These comments are also reflected in Planning Practice Note 1.

Giant Steps submitted that, apart from the Synagogue, the buildings on the site do not have the necessary something, in terms of their degree of cultural heritage significance, which elevates them to the requisite threshold level warranting application of the Heritage Overlay. They considered that the continued protection of the Synagogue by HO559 adequately protects the cultural heritage values of the place.

Details within the citation

The KHC/Trust submission was highly critical of the citation and listed the following issues with it:

- The relevant Parish of Boroondara Plan shows that N A Fenwick purchase Crown Allotment 87 in 1851 not 1853.
- John Donaldson put an advert on 22 May 1886 in Argus not 5 May 1886.
- The Citation omits relevant details of the Jewish population increase postwar.
- The circumstances of how the Subject site was acquired fails to record or mention the Deed and does not recognise that the Subject site was acquired on trust by trustees and not Norman Smorgon.
- The citation fails to account for the exodus of the Jewish population from Carlton forming part of the shift in the Jewish population at the time.

- The details on the timing of the use of the classrooms and school building are misleading and without reference.
- Following acquisition of the Subject site, Sunday School services were moved from the dance hall opposite Kew Post Office to the Subject site. It is understood by the Trustee's that the Kindergarten and classes for Mount Scopus Memorial College commenced in 1966 at the same that the school building plans were being prepared and Norman Smorgon House was never used for the Kindergarten or school.
- The citation misrepresents the extent of the modification to the House.
- The details of the stained glass windows are inaccurate and misrepresenting the true position of the windows as they are a gift for the benefit and enjoyment of the KHC for as long as the new synagogue continues to be used as a functioning synagogue and it is expected they would be removed if the use ceased.
- The citation provides no evidence to support that Anthony Hayden designed the synagogue and school building, other than being a director of the firm recorded on record.
- Notes about the Norman Smorgon Foundation being an education endowment fund have no connection with the Deed and the Trust that holds the ownership of the Subject site.
- There is no arboriculture evidence to support the heritage significance of the Peppercorn tree or evidence of how it relates to the social significance being sought to be retained.

Dr Doyle and Mr Huntersmith agreed that the following changes should be made to the citation:

- The botanical name for the Peppercorn tree that forms part of the subject site was erroneously given as *Schinus molle*, whereas its correct name is *Schinus areira*.
- Remove the comment that activities in Norman Smorgon House continue 'up until the present day'.
- Correct errors in the dates outlined in the KHC/Trust submission.

(iv) Discussion

The site is complex with many elements that have, and continue to, evolve as the Trust Deed envisages. The assessment in the citation is comprehensive and assessed both the entire site and its various elements separately. The factual errors in the citation do not influence the ultimate findings but need to be corrected.

The Panel has considered the Planning Practice Note 1 in its deliberations.

The KHC is a complex with a unique history and role within Boroondara, having been developed by, and served, the Jewish community for over 70 years. The Panel considers that it's history is more than 'of interest' to Boroondara, noting that the current Thematic Environmental History (2012) and reflected in the citation, clearly draws out this site under the theme 'Places of Worship that demonstrate shifting demographics', as well as drawing out the contribution of the Jewish Community to Boroondara and this site clearly illustrates this contribution over generations. There is a very strong case for historical significance for this site. It has a clear association with an important phase of development in Boroondara and it is evident in the fabric, to varying degrees, that tell the story of this special place.

The Panel notes that Planning Practice Note 1 does not provide a methodology to determine social significance, although the words of the criterion are instructive – a strong or special association with a particular community or cultural group for social, cultural or spiritual reasons.

The Panel is cognisant of the current circumstances of the heritage assessment in the context of the existing development proposal. The Heritage Council's 2019 *Guidance on identifying places and objects of state-level social value in Victoria* is instructive:

Attachment to a place/object as a response to proposed change should not in and of itself necessarily be accepted as evidence of social value. The emotionally charged sentiment, and heightened sense of community that is generated when change is proposed to a place valued by a community needs to be balanced with other factors, such as the nature of the community and time depth, to understand its true relevance.

The Panel acknowledges that there are very different views within the congregation (including the KHC Committee and the Trust and the membership) around future development and opportunities for the site. However, it is clear from the submissions before it, the Context research and the Panel's own observation on site, and even the purpose of the Trust Deed, that the place does have social significance with a current and enduring connection to the site and has time depth.

The Panel has considered criticism that no surveys were undertaken to ascertain the extent of social value. During the Hearing, none of the experts could recall an example where a survey of social significance had been undertaken for a place being considered for local heritage assessment, and the Panel recognises that this is only one method of discerning whether a place has social significance.

The Panel notes in the submissions there was some conflation between sanctity and religious practices and historical and social significance.

While the sanctity and core religious activities are within the Synagogue and have been transferred from the old Synagogue to the new Synagogue, the social and historical significance of both the Synagogue and the balance of the site with its various roles, functions and use by generations, goes beyond the Synagogue. The Synagogue does not convey the whole postwar story of this community site on its own. Dr Myers' description of the complex as 'the heart, the intellect and the fruit' conveys this well.

The site is complex, with layers of changes, particularly between 1949 and 1966. The 1886 villa, subsumed by postwar changes, is not significant for its original purpose or form. However, Norman Smorgon House, demonstrates 'Living Heritage' that has evolved over the last 70 years.

While the site has historical significance for the broader Boroondara community, it has social significance to the local Jewish community.

On balance, having considered the evidence presented before it during the Hearing, the Panel finds that the entire complex does have historical, rarity, social, and associative significance. In addition to these values, it finds that the Synagogue has representative significance, which is already recognised in the Heritage Overlay.

Regarding the 1966 school, while the building does demonstrate characteristics of its class, is highly intact and has integrity, the citation did not make the case as to the building's Importance in demonstrating the principal characteristics of a class of cultural or natural places or environments which goes to the heart of Criterion D.

Based on comparative analysis, the Panel acknowledges there are very few postwar school buildings on the Heritage Overlay in Boroondara. The only comparator within the Heritage Overlay is the 1969 wing of Camberwell High School. Malmsbury Street is a finer example compared with the 1969 wing; however the Panel considers that the comparison being made is

effectively between an addition (in the Camberwell High School example) and the school building proper at Malmsbury Street. There has not been a comprehensive comparison of other postwar building types, which do exist within Boroondara but are not the Heritage Overlay. This is understandable as perhaps it is not a typology that has been explored in previous studies. However, given there are other examples of postwar school buildings within Boroondara, it is considered that the Malmsbury Street school has not adequately been tested to gauge its relative importance for Criterion D.

In this context, the Panel finds that the school building on Malmsbury Street does not meet the threshold under Criterion D. While the building contributes to the site's historical significance, it does not meet the threshold for representative (architectural) significance in its own right. The Panel considers that the case has not been made that the school is a particularly important representative example, other than being a school building.

On the matter of the Peppercorn tree, the Panel notes the guidance in Planning Practice Note 1, that states:

Tree controls should only be applied where there has been a proper assessment. The statement of significance for the heritage place should identify the particular trees that are significant (under "What is significant?") and why the tree or trees are important.

...

This control is designed to protect trees that are of intrinsic significance (such as trees that are included on the National Trust Heritage Register), or trees that contribute to the significance of a heritage place (for example, trees that contribute to the significance of a garden or area). The control is not meant to protect trees for their amenity value. See Planning Practice Note 7 – Vegetation Protection in Urban Areas for alternative methods of vegetation protection.

The Panel has applied the tests of Planning Practice Note 1 relating to when trees ought to be listed within the Heritage Overlay Schedule.

The Panel notes that the Statement of Significance does not relate to the original 1886 villa for its historical value prior to 1949, but postwar use and conversion to the KHC.

Although the Peppercorn tree is a likely planting from the Villa's original garden, it is unrelated to the history of the site that is identified for its period of significance, in terms of its postwar establishment. While Dr Myers in his verbal submission mentioned the cultural and religious value of retaining fruiting trees and by extension, the importance of the retention of the Peppercorn, this was not expanded upon at all in the citation.

The Panel considers, while it is a beautiful tree, the Peppercorn tree does not meet the tests as an element of heritage significance under the current citation. Just because it is a beautiful tree or has aesthetic value, these are unrelated matters that go to the heart of the significance of this site.

The Panel notes that the Council has a significant tree register which is administered through its local laws. Council is encouraged to consider investigating whether the Peppercorn tree warrants inclusion within this register. Alternatively, it may consider commissioning an assessment of whether the tree warrants a specific Heritage Overlay or the Vegetation Protection Overlay.

Regarding the Statement of Significance, the Panel notes that all the elements on the site are listed as significant. While they all relate to the site, in terms of fabric, the Panel does not consider that they all make an equal contribution and, given the site's history of adaption and change, the components on the site should be listed in a way that clearly differentiates those elements that are

intrinsically significant and those elements that are less critical; while contributing to the understanding of the site, could be adapted, replaced or removed with careful consideration to design and interpretation.

Having regard to the evidence, submissions and its own on site observations, the Panel considers the following:

- The entire site has historical, rarity, social and associative significance.
- The Synagogue has representative significance.
- Significant fabric includes the Synagogue.
- The following elements of the site are significant:
 - Bet Nachman Synagogue (c.1963-65), including ten stained glass windows designed by Louis Kahan.
- Elements that contribute to the significance include:
 - Norman Smorgon House, which comprises the remnant core of an original brick residence (c1886) that was adapted and used as a synagogue from c.1949-63, and the additions dating from 1954 and 1957
 - Classrooms (1959)
 - School building facing Malmsbury Street (1966)
 - Former caretaker's cottage (c.1970).

The recent additions made to the east, west and north of the school building facing Malmsbury Street are not significant.

Having regard to its heritage values, the fabric of Norman Smorgon House, classrooms, and the former caretaker's cottage are elements that could accommodate a higher degree of change and even demolition and interpretation.

Managing fabric

The Panel notes the Giant Steps' submission regarding Planning Practice Note 1's guidance dealing with places of historic and social significance:

Planning is about managing the environment and its changes. An appropriate test for a potential heritage place to pass in order to apply the Heritage Overlay is that it has 'something' to be managed. This 'something' is usually tangible but it may, for example, be an absence of built form or the presence of some other special characteristic. If such things are present, there will be something to manage and the Heritage Overlay may be applied.

In the context of Planning Practice Note 1's consideration of places of social and historical significance, the reference to applying historical markers are where there is no fabric to manage – here there is something to manage.

The Panel notes that, when it comes to the management of the fabric, there is often a higher degree of change contemplated for buildings without high architectural value. This is usually resolved through guidelines, a Conservation Management Plan or on a case-by-case basis depending on the plans proposed and weighing up all the matters that need to be considered through the planning permit process.

While this place is extant and intact to its historic and social significance, the Panel agrees with Ms Riddett that there is nothing intrinsic in the actual fabric of the hall at Norman Smorgon House and that this type of use can be replaced or transformed in the next chapter of the site.

Next steps

Given the live issue of a permit at the time of the heritage assessment, the heritage assessment process would have benefitted from a subsequent piece of work in the form of policy, development guidelines or Conservation Management Plan for the site to guide decision making rather than simply relying on the Heritage Overlay, Statement of Significance and citation.

The Panel notes that all the heritage experts at the Hearing considered that a Conservation Management Plan would be useful.

The Panel considers the following:

- The site is used by, and subject to a development proposal, for a use of high community value.
- Intrinsic to its social significance, the site is an evolving site, and unlike many heritage sites, change should continue to be expected.
- Given the unusual and complex elements of the site, a more facilitative heritage control regime in the form of guidelines should be developed expeditiously to provide greater guidance around how the place can change and be interpreted having regard to its living and evolving history and its heritage values.

The Panel notes the KHC/Trust submission:

The Deed sought to allow for the use of the House, altering of the House, adapting or adding to the existing building or re-constructing the same or demolishing the existing buildings on the Subject site and erecting a new structure in such manner as in the opinion of the Committee is required to render the property suitable for the purposes required, including to permit the property to be used and enjoyed in perpetuity for religious education or other charitable purposes beneficial to the Jewish Community of Melbourne.

The Panel notes that the Trust Deed is a tool which is completely unrelated to the Victorian Planning Provisions but to all intent and purposes guides those aspects of the use of the site (for the benefit of the Jewish community and charitable causes) that drive much of its social significance.

The Trust Deed contemplates that the site would experience change. The Panel considers the Trust Deed as an important foundation document for the site and its purpose should inform future heritage guidelines or Conservation Management Plan.

(v) Conclusions and recommendations

The Panel concludes:

- The Kew Heritage Congregation is of local cultural heritage significance and meets criteria A, B, G, H and D (Synagogue only).
- It is appropriate to extend the Heritage Overlay (HO559) to the site to recognise its local cultural heritage significance. Specific tree controls are not supported without further assessment.
- The Synagogue has primary significance, with the other elements on the site contributing to the site's significance to varying degrees.
- The citation should be revised to:
 - reflect corrections set out in the KHC/Trust submission regarding dates, the role of Norman Smorgon and the Trust Deed

- distinguish those parts of the site that are significant or of primary significance and ancillary elements.
- The Statement of Significance should be prepared in a way that clearly differentiates those elements that are intrinsically significant and those elements that contribute to the understanding of the site but could be adapted, replaced or removed with careful consideration to design and interpretation.
- The citation and Statement of Significance should be augmented by a policy or Conservation Management Plan that identifies those parts of the site where fabric is critical to understanding the site's significance, and those elements, such as the hall, caretakers residents and classrooms where retention of fabric is not critical in understanding the place, but ways to properly record and the approach to the evolution of the site enables the concept of 'living heritage'.
- While the Peppercorn tree is an impressive tree and is likely to be significant, the citation does not provide any context as to how it relates to the history of the site. the Heritage Overlay. A separate assessment of the tree to consider whether it warrants protection under either the Heritage Overlay as a significant tree, under the Vegetation Protection Overlay or within Council's own Significant Tree Register.

The Panel recommends:

- 1. Amend the Statement of Significance for the Kew Hebrew Congregation to:**
 - a) remove the 1966 school from Criterion D
 - b) Identify the following elements of the site as significant:
 - Bet Nachman Synagogue (c.1963-65), including ten stained glass windows designed by Louis Kahan.
 - c) include the following elements which contribute to the significance:
 - Norman Smorgon House, which comprises the remnant core of an original brick residence (c1886) that was adapted and used as a synagogue from c.1949-63, and the additions dating from 1954 and 1957
 - Classrooms (1959)
 - School building facing Malmsbury Street (1966)
 - Former caretaker's cottage (c.1970).
- 2. Amend the citation for the Kew Hebrew Congregation to:**
 - a) correct the botanical name for the Peppercorn tree that forms part of the subject site as *Schinus areira*
 - b) include corrections set out in the KHC/Trust submission regarding dates, the role of Norman Smorgon and the Trust Deed listed in Chapter 4 of this report under 'Details within the citation'
 - c) distinguish those elements on the site that are of Primary significance (the Synagogue) and those elements, such as the Norman Smorgon House, the caretaker's residence and 1959 classrooms where retention of fabric is not critical in understanding the place.
- 3. Amend the Heritage Overlay Schedule to remove reference to the Peppercorn tree from the tree controls column.**

Further recommendations

The Panel makes the following further recommendations:

Separate to this Amendment, Council should consider further strategic work to prepare heritage guidelines for the Kew Hebrew Congregation in consultation with the Kew Hebrew Congregation and the Norman Smorgon Trust.

Council should further assess the large Peppercorn tree on at the Malmsbury Street frontage to ascertain its significance.

Appendix A Submitters to the Amendment

No.	Submitter
1	Ms M Jones
2	Kew Hebrew Congregation (former Committee)
3	Norman Smorgon House Trust
4	Giant Steps Melbourne
5	Petition of Kew Hebrew Congregation members
6	Kew Historical Society
7	Bet Nachman Synagogue Members, KHC
8	Kew Hebrew Congregation (current Committee)
9	Dr J Yaacov Myers
10	Ms V Fink and Mr M Foxen

Appendix B Document list

No.	Date	Description	Provided by
1	15/07/2021	Council Part A submission	Ms De Casella, Maddocks
2	15/07/2021	Expert Evidence in Heritage for Boroondara City Council – Dr Helen Doyle and Mr Huntersmith	Ms De Castella, Maddocks
3	15/07/2021	Expert Evidence in Heritage Robyn Riddett for KHC	Mr Sissons, HWL Ebsworth Lawyers
4	15/07/2021	Expert Evidence in Jewish Culture and History Rabbi Steven Link	Mr Sissons, HWL Ebsworth Lawyers
5	15/07/2021	Expert Evidence in Heritage Bryce Raworth for Giant Steps Pty Ltd	Ms Scott, Arnold Bloch Leibler
6	15/07/2021	Affidavit of Barry Irvin dated 14 July 2021	Ms Scott, Arnold Bloch Leibler
7	21/07/2021	Council Part B submission	Ms De Castella, Maddocks
8	22/07/2021	Submission slides	Dr Myers
9	22/07/2021	Submission of Norman Smorgon Trust and KHC	Mr Sissons, HWL Ebsworth Lawyers
10	23/07/2021	Trust Deed (redacted)	Dr Myers
11	23/07/2021	Urban Planning Delegated Committee meeting 7 September 2020 – Officer report	Ms De Castella, Maddocks
12	23/07/2021	Letter of Brief for Expert Evidence (Robyn Riddett)	Mr Sissons, HWL Ebsworth Lawyers
13	26/07/2021	Submission slides version 2	Dr Myers
14	29/07/2021	“The Transformation of a Community“, Journal of the History Teachers’ Association NSW, S Rutland, 2006	Dr Myers
15	29/07/2021	Preliminary Consultation Map	Ms De Castella, Maddocks
16	29/07/2021	Trust Deed dated 29 July 1998	Dr Myers
17	29/07/2021	Giant Steps submission	Ms Scott, Arnold Bloch Leibler
18	29/07/2021	Giant Steps Planning Application	Ms Harrison-Ichlov, Arnold Bloch Leibler
19	30/07/2021	Submission presentation 1	Dr Myers
20	30/07/2021	Submission presentation 2	Dr Myers

21	3/08/2021	1962 Preshill Plans and photo of 1941 Camberwell High elevation	Ms Harrison- Ichlov, Arnold Bloch Leibler
22	6/08/2021	Mr Huntersmith responses to Mr Raworth images	Ms De Castella, Maddocks
