

**Boroondara Planning Scheme Amendment C337boro
Ashburton heritage gap study**

Panel Report

Planning and Environment Act 1987

1 December 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 C337boro

1 December 2021



Con Tsotsoros, Chair

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Glossary and abbreviations

Council	Boroondara City Council
DELWP	Department of Environment, Land, Water and Planning
PE Act	<i>Planning and Environment Act 1987</i>
Planning Scheme	Boroondara Planning Scheme

Overview

Amendment summary

The Amendment	Boroondara Planning Scheme Amendment C337boro
Common name	Ashburton heritage gap study
Brief description	Applies the Heritage Overlay to one heritage precinct and nine individual places in Ashburton
Subject land	Land in Ashburton identified in Table 1
Planning Authority	Boroondara City Council
Authorisation	27 October 2020, conditional on removing 55 Albion Road, Ashburton from the Home Farm Estate and Environs Precinct
Exhibition	6 May to 7 June 2021
Submissions	<p>Received from:</p> <ol style="list-style-type: none"> 1. John Thompson 2. Axel Ackermann 3. Kate Mason 4. Brad Mason 5. Anthony Byrnes 6. Mary Drost 7. Rudolf Rupaner 8. David Sparkes 9. Department of Environment, Land, Water and Planning 10. Pino Alescio 11. Warwick Bryce 12. Vivien Mason 13. Mark Simpson 14. Greg Price

Panel process	
The Panel	Con Tsotsoros (Chair)
Directions Hearing	By video conference on 4 October 2021
Panel Hearing	By video conference on 3 November 2021
Site inspections	Unaccompanied, 31 October 2021
Parties to the Hearing	<p>Boroondara City Council represented by Briana Eastaugh of Maddocks, calling expert evidence on:</p> <ul style="list-style-type: none"> - heritage from Natica Schmeder of GML Heritage Victoria - heritage from Mark Stephenson of Trethowan <p>Greg Price</p> <p>Anthony Byrnes</p>
Citation	Boroondara PSA C337boro [2021] PPV
Date of this report	1 December 2021

Executive summary

The *Planning and Environment Act 1987*, Planning Policy Framework and Plan Melbourne 2017-2050 seek to conserve places of heritage significance by, among other strategies, identifying, assessing and documenting places of cultural heritage significance as a basis for including them in the Boroondara Planning Scheme.

Council engaged heritage consultants to assess potential heritage places and a precinct in Ashburton. The two staged process resulted in the *City of Boroondara Municipal-Wide Heritage Gap Study Volume 8: Ashburton*, February 2021 (Heritage Study).

Boroondara Planning Scheme Amendment C337boro (the Amendment) seeks to implement the Heritage Study's recommendations by applying the Heritage Overlay to the Home Farm Estate and Environs Precinct and nine individual places. The Amendment was exhibited from 6 May to 7 June 2021 and received 14 submissions.

Common issues raised in submissions include building condition, development opportunity, building alterations and maintenance, property value, and financial implications. Issues about the Home Farm Estate and Environs Precinct include its significance and intactness, the contributory value and significance of certain properties, and the value of including non-contributory properties. The owner of 1 Keyes Street, Ashburton questioned its heritage significance within the context of surrounding development.

The Panel considered all submissions and materials in reaching its conclusions, regardless of whether they are specifically mentioned in the Report.

Strategic justification

The Heritage Study is based on a robust and thorough methodology, consistent with Planning Practice Note 1. The Amendment:

- is supported by, and implements, the relevant sections of the Planning Policy Framework
- is consistent with the relevant Ministerial Directions and Practice Notes
- is well founded and strategically justified
- should proceed subject to addressing the more specific issues raised in submissions.

The Panel concludes that building condition is not relevant when assessing the heritage significance of an individual place or a precinct but may be relevant during the planning permit process.

Common issues

The Heritage Overlay enables an owner to maintain their property without the need for a planning permit and apply for a planning permit to alter their property.

Building condition is not relevant when assessing the heritage significance of an individual place or a precinct but may be relevant during the planning permit process.

Development opportunity, building alterations and maintenance are not relevant when assessing the heritage significance of 1 Keyes Street, Ashburton or the Home Farm Estate and Environs Precinct.

Property value and financial implications are not relevant when assessing heritage significance or when deciding whether to apply a Heritage Overlay.

Home Farm Estate and Environs Precinct (HO918)

The Home Farm Estate and Environs Precinct (HO918) has been appropriately assessed and meets the threshold for local heritage significance. The precinct should include:

- 52, 54, 56, 58 and 60 Albion Road and 2, 4 and 6 Dunlop Street because collectively they present as part of a cohesive precinct, even with some non-contributory properties
- 62 Albion Road as a contributory property irrespective of its current condition
- 67 Albion Road because it is sufficiently intact to be a contributory property
- 1, 3 and 9 Dunlop Street because their architectural styles form part of the interwar period and contribute to the precinct's significance.

1 Keyes Street, Ashburton (HO924)

The property at 1 Keyes Street, Ashburton has sufficient heritage significance to justify the Heritage Overlay (HO924). Revising the HO924 Statement of Significance to identify alterations since 1953 and to note they are not significant will inform any future permit application seeking to manage the property's heritage fabric.

Recommendations

Based on the reasons set out in this Report, the Panel recommends that Boroondara Planning Scheme Amendment C337boro be adopted as exhibited subject to the following:

- 1. Amend the HO924 Statement of Significance for 1 Keyes Street, Ashburton to identify alterations since 1953 and to inform that they are not significant.**

1 Introduction

1.1 The Amendment

The Amendment proposes to:

- apply the Heritage Overlay to land shown in Table 1
- incorporate Statements of Significance through the Clause 72.04 Schedule
- include the *City of Boroondara Municipal-Wide Heritage Gap Study Volume 8: Ashburton*, February 2021 (Heritage Study) through Clause 72.08.

Table 1 Exhibited heritage places and submissions received

Place/precinct		Criteria*	HO Ref	Sub**
Precinct				
Home Farm Estate and Environs Precinct		A, D, E, H	HO918	12
57-79 & 52-96 Albion Road and 1-13 & 2-6 Dunlop Street, Ashburton and Glen Iris				
Individual Ashburton places				
3-7 Ashburn Grove	Ashburton Uniting Church	A, D, E, G	HO919	-
9 Donald Street	House	D, E	HO920	-
10A Fakenham Road	Ashburton Primary School	A, D, E, G	HO921	-
268 High Street	St Michael's Parish Hall	A, D, E, G	HO922	-
270 High Street	St Michael's Memorial Church	A, D, E, G	HO923	-
1 Keyes Street	House	D, E	HO924	1
10 Marquis Street	Victorian house	A, B	HO925	-
7 Vears Road	Pyrus Park	A, B	HO926	-
45 Yuile Street	House	D, E	HO927	-

* Model criteria specified in Planning Practice Note 1 (see Appendix A) | Sub = Number of submissions, SC: Schedule controls, Int: Internal controls, Ext: External controls | ** Number of submissions received

1.2 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 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 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:

- Strategic justification

- Common issues
- Home Farm Estate and Environs Precinct (HO918)
- 1 Keyes Street, Ashburton (HO924).

2 Strategic justification

2.1 Planning context

The Amendment's Explanatory Report and Council's submission identify the following as being relevant to the Amendment:

- Planning objectives at PE Act section 4(1)(d)
- Planning Scheme policy clauses 15.01-5S and 15.03-1S
- Plan Melbourne Outcome 4, Direction 4.4 and Policies 4.4.1 and 4.4.4
- Heritage Overlay
- Ministerial Directions 7(5)¹ and 11 and Planning Practice Notes 1 and 42.

Appendix A provides further details.

2.2 Council Plan and Heritage Study

(i) Council Plan 2017-2021

Council submitted that the Amendment is consistent with the City of Boroondara Council Plan 2017-2021 as follows:

Strategic objective under Theme 4 - Neighbourhood Character and Heritage to:

Protect the heritage and respect the character of the City to maintain amenity and liveability whilst recognising the need for appropriate, well-designed development for future generations.

Assists in implementing Council's commitment to:

Preserve the City's history and protect heritage properties and precincts by undertaking a municipal wide heritage review and introduce heritage overlays in the Boroondara Planning Scheme' (Strategy 4.3).

Fulfilling Council's major initiative commitment to:

Protect the City's heritage by continuing a municipal wide heritage assessment of all areas not currently subject to a heritage overlay in the Boroondara Planning Scheme.

(ii) Heritage Action Plan 2016

The Heritage Action Plan seeks to guide Council's heritage work program, particularly for identifying, protecting, managing and promoting Boroondara's heritage assets. The Action Plan classifies its implementation actions as:

- Very high – commence within one year of adopting the Action Plan
- High – commence within two years of adopting the Action Plan
- Ongoing / as Required.

Action H4 is to prepare and implement a heritage study of Ashburton as part of the municipal wide heritage.

¹ Ministerial Direction (The Form and Content of Planning Schemes pursuant to section 7(5) of the PE Act)

(iii) Heritage Study

Council engaged Context (now GML Heritage Victoria) and Trethowan Architecture to prepare the Heritage Study. The Study applied the following approach and methodology:

Stage 1 – Preliminary identification of places

- Desktop and community identification of places
- Preliminary survey
- Preliminary assessment
- Reporting preliminary recommendations.

Stage 2 – Assessment and reporting

- Locality and thematic histories
- Place and precinct histories
- Site visit and documentation
- Comparative analysis
- Assessment against criteria
- Statement of Significance
- Gradings within precincts
- Mapping and curtilages
- Statutory recommendations
- HERMES entry.

2.3 Submissions

Council submitted the Amendment is consistent with and implements policies and other associated documents set out in Chapter 2.1 and Appendix A of this Report.

Eight submitters supported the Amendment's proposal to apply the Heritage Overlay to the subject properties.

One submitter disagreed with the Heritage Study's methodology of picking out certain properties rather than applying the Heritage Overlay to an area. She referred to the entire area bounded by Riversdale Road, Canterbury Road and east of Burke Road. She explained that this area has hardly changed for 35 years. She acknowledged that not all properties in an area are heritage and submitted the heritage protection would:

- stop developers bulldozing houses at random to replace them with *"big ugly modern houses that don't fit in"*
- require developers to build houses which blend in well with heritage.

Other submissions considered the Heritage Study and the Amendment:

- provided an opportunity to retain some of the original character rather than have high density development in the future
- should extend the Home Farm Estate and Environs Precinct (HO918) to include:
 - 8-18 and 15-19 Dunlop Street
 - 44 and 79A Albion Road, 1-11 Dent Street and 2-24A Amery Street
 - 1-15 and 8-12 Maxwell Street and 16-22 Nairn Street
 - 7-23 Amery Street.

Ms Schmeder stated that these properties were assessed during the first stage of the Heritage Study and found to be less intact than the rest of the precinct. Council responded that these

properties are not subject of the Amendment so cannot be included at this point and do not warrant inclusion in the precinct.

2.4 Discussion

The Amendment seeks to implement part of Boroondara's municipal wide heritage review sought through Strategy 4.3 of its Council Plan 2017-2021. The Heritage Study responds to Action H4 of the Heritage Action Plan 2016.

The Heritage Study is based on a robust and thorough methodology, consistent with Planning Practice Note 1. It appropriately included only properties which achieve the threshold of local heritage significance. The PE Act and planning policy seeks to conserve and enhance heritage which achieves this threshold – not all older buildings. Protecting places and precincts beyond this threshold would reduce the value placed on heritage and apply unnecessary planning provisions on unjustified properties.

The Panel agrees with Ms Schmeder and Council that properties included in the Amendment were appropriately assessed through a two staged approach. From a procedural perspective, the Panel is unable to recommend the inclusion of additional properties that were not publicly exhibited.

2.5 Conclusions

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 Policy Framework
- is consistent with the relevant Ministerial Directions and Practice Notes
- is well founded and strategically justified
- should proceed subject to addressing the more specific issues raised in submissions as discussed in the following chapters.

3 Common issues

This chapter refers to issues which apply across more than one property. Where a submission raised only general issues, it is not referred to in subsequent chapters.

3.1 Building condition

(i) The issue

The issue is whether building condition is relevant when assessing the heritage significance of an individual place or a precinct.

(ii) Submissions

One submission considered the Heritage Overlay should not be applied to their property because the building was in poor condition.

Ms Schmeder stated that poor condition is generally not considered when assessing heritage significance. She explained that there is a large volume of Panel consideration on this matter. She referred to the Southern Grampians PSA C6 [2009] PPV which states:

The Panel takes the view that that there is a two-stage planning process in relation to management of heritage places – the objective identification of heritage significance (the current stage); and, second, ongoing management of the place having regard to such matters such as the economics of building retention and repair, reasonable current day use requirements etc. (consideration of permits for development).

This framework for management of heritage places is not set out in the Act nor in the Practice Note but has been adopted in practice by planning panels and by the Victorian Civil and Administrative Tribunal. The comments by the panel considering the Ballarat Planning Scheme Amendment C58 are instructive in this regard. At page 53 of their report the Panel said:

Panels have consistently held that whenever there may be competing objectives relating to heritage and other matters, the time to resolve them is not when the Heritage Overlay is applied but when a decision must be made under the Heritage Overlay or some other planning scheme provision. The only issue of relevance in deciding whether to apply the Heritage Overlay is whether the place has heritage significance.

This approach is also endorsed in the August 2007 report by the Advisory Committee on the 'Review of Heritage Provisions in Planning Schemes'.

Accordingly, the Panel rejects as irrelevant, or substantially discounts, those submissions or parts of submissions which have focused on personal impacts (or perceived impacts), the economic effects of the inclusion of the property in the Heritage Overlay, or on the condition of the building.

Ms Schmeder also referred to other matters which made similar conclusions including:

- Boroondara PSA C99 [2012] PPV
- Melbourne PSA C186 [2012] PPV
- Melbourne PSA C207 [2014] PPV
- Mornington Peninsula PSA C214 [2018] PPV
- Whitehorse PSA C140 [2011] PPV
- CBA Building Designers v Greater Bendigo CC [2010] VCAT 2008.

Council agreed with Ms Schmeder and submitted that the issue of structural integrity of buildings:

- is typically irrelevant when assessing whether a place has heritage significance

- is most appropriately considered during the planning permit application stage.

Council referred to the Advisory Committee report on the Review of the Heritage Overlay Provisions in Planning Schemes which states:

... structural integrity or condition should not be a criterion in assessing heritage significance. It would be contrary to the fundamental principle in the Burra Charter that ... the consideration of significance should not be coloured by consideration of the management consequences of listing. There are also good policy reasons why condition should not affect the assessment of criteria: if it were to be a factor, it would encourage owners of heritage properties who were opposed to listing to allow them to fall into disrepair.

(iii) Discussion

Having reviewed the comprehensive number of reports presented at the Hearing, the Panel agrees with Council and Ms Schmeder that building condition is not relevant when assessing heritage significance.

Building condition may be relevant:

- during the planning permit application stage
- if there is clear technical evidence that the building is in poor structural condition and unlikely to survive by the time the Heritage Overlay is applied.

(iv) Conclusion

The Panel concludes that building condition is not relevant when assessing the heritage significance of an individual place or a precinct but may be relevant during the planning permit process.

3.2 Development opportunity, building alterations and maintenance

(i) The issue

The issue is whether development opportunity, building alterations and maintenance are relevant when assessing the heritage significance of an individual place or a precinct.

(ii) Evidence and submissions

There were submissions which considered the Heritage Overlay would restrict development opportunities and their ability to maintain their properties.

Council acknowledged the Heritage Overlay would add further planning provisions with additional permit triggers. It considered this necessary so that future development was assessed to ensure that it sensitively responds to the heritage fabric.

Council referred to Latrobe C14 (PSA) [2010] PPV 53 Panel Report where the Panel states:

Panels have repeatedly ruled that such issues are not material to this stage of the planning process – a position supported by Practice Notes and numerous VCAT decisions. This view maintains that although it is appropriate for the responsible authority to consider all the objectives of the *Planning and Environment Act 1987* - including, inter alia, fair, orderly, economic and sustainable use, and development of the land (s.4(1)(a)) ... and ... to balance the present and future interests of all Victorians (s.4(1)(g)) – the question of personal economic impact or potential constraint on development are matters for the next stage of the planning process i.e. at the time a permit is applied for.

This approach has the merit of separating two distinct issues: assessment of the significance of the place, and the question of its conservation, adaptation, alteration or demolition. This

conforms with proper heritage conservation practice and mirrors the processes of the *Victorian Heritage Act 1985*. It reflects the desirability of considering long term matters (if we accept that heritage significance is likely to be somewhat enduring, if not immutable) at one point in time; and, shorter term matters (personal desire, financial considerations and economic circumstances) when they are most relevant.

Council also referred to Boroondara PSA C274 [2018] PPV and Boroondara PSA C266 [2018] PPV.

Council submitted that the Heritage Overlay does not preclude buildings, works or demolition to a property. It referred to its local planning policy at Planning Scheme Clause 22.03-3.2 which generally supports the demolition of a non-contributory building that does not compromise surrounding significant built fabric. It noted the policy discourages the full demolition of significant and contributory buildings.

(iii) Discussion

The Heritage Overlay does not prohibit development. A property owner can seek approval for future development, demolition, works and subdivision through a planning permit application. The degree to which land can be developed depends on existing zone and overlay provisions and planning policies. Applying the Heritage Overlay would enable Council to assess a proposal for future development on land with or near identified heritage fabric.

Planning Practice Note 1 does not include development opportunity as a criterion for assessing whether the Heritage Overlay should be applied to properties with potential local heritage significance. These matters are not relevant to the Amendment and will be considered through a future permit application.

The Panel notes that only those with development aspirations would ever need to apply for a permit. A property owner who only seeks to alter the building interior and conduct general external maintenance would not need to apply for a permit.

Not applying the Heritage Overlay to enable greater development opportunities may seriously conflict with Clause 71.02-3 (Integrated decision making) of the Planning Scheme. Land subject to the Amendment is in the most restrictive residential zone, Neighbourhood Residential Zone, so is unlikely to contribute to policies seeking urban consolidation and intensification. The net community benefit of achieving policies to protect and enhance identified significant heritage for the present and future generations would outweigh development related policies for the subject land.

(iv) Conclusion

The Panel concludes:

- The Heritage Overlay enables an owner to:
 - maintain their property without the need for a planning permit
 - apply for a planning permit to alter their property.
- Development opportunity, building alterations and maintenance are not relevant when assessing the heritage significance of 1 Keyes Street or the Home Farm Estate and Environs Precinct.

3.3 Property value and financial implications

(i) The issue

The issue is whether property value and financial implications are relevant when assessing heritage significance or when deciding whether to apply a Heritage Overlay.

(ii) Submissions

Several submissions considered the Heritage Overlay would reduce property value and increase the cost of maintaining or altering properties. At the Hearing, one party said the process can cost at least \$20,000.

Council submitted:

- private financial impacts on property owners are not relevant when assessing whether the Heritage Overlay should be applied
- private impacts may be considered if they overlap with public economic effects.

Council referred to:

- Planning Practice Note 1 which includes only matters of a heritage nature as criteria for assessing heritage criteria
- Stonnington PSA C91, C101 and C103 Panel report which states:
A number of submissions – written and at hearing – dealt with perceptions that the Heritage Overlay process would:
 - reduce the value of the property; and/or
 - Impede owners' freedom to repair, renovate or replace the building.Panels have repeatedly ruled that such issues are not material to this stage of the planning process - a position supported by Practice Notes and numerous VCAT decisions. It is not the purpose of this comment to re-confirm the (very appropriate) rationale for this position.
- Melbourne PSA C207 [2016] PPV which states:
The Panel agrees with Mr Morris [who appeared for an objecting submitter], relying on Gantidis, that the social and economic effects most likely to be relevant at the Amendment stage are those of a broad community nature rather than of a personal kind. Personal economic and social impacts, as against effects for the community as a whole, are generally not matters taken into account in planning decisions. This is also recognised in the Panel report on Amendment C50 to the Campaspe Planning Scheme at Section 5.10 ...
- Frankston PSA C53 [2010] PPV
- Moreland PSA C78 [2010] PPV
- Moreland PSA C129 [2013] PPV
- Dustday Investments Pty Ltd v Minister for Planning [2015] VSC 101.

(iii) Discussion

The PE Act and planning policy require social and economic matters and the principles of net community benefit and sustainable development to be considered. They relate to the interests of the broader community and do not extend to private individual financial impacts.

The Panel was not presented with information to demonstrate that the Amendment would have a negative social or economic effect on the Ashburton community. The Panel considers that the net community benefit of applying the Heritage Overlay to properties with identified heritage significance outweighs any potential individual financial impact.

Whether an individual property owner may be financially affected depends on various factors. These include existing zone and overlay provisions and development aspirations. These matters are hypothetical at this stage because:

- applying the Heritage Overlay recognises the heritage significance of a property and does not require an owner to do anything
- an owner seeking to maintain their property would not require a planning permit for such works.

Financial impact may be relevant during the planning permit application stage.

No submitter presented information which showed a direct correlation between the Heritage Overlay and property value.

(iv) Conclusion

The Panel concludes that that property value and financial implications are not relevant when assessing heritage significance or when deciding whether to apply a Heritage Overlay.

4 Home Farm Estate and Environs Precinct (HO918)

Exhibited Statement of Significance



What is significant?

The Home Farm Estate and Environs Precinct, comprising 57-79 & 52-96 Albion Road and 1-13 & 2-6 Dunlop Street, Ashburton and Glen Iris, is significant. The precinct was developed from the early 1920s to 1942. Original front fences (and gates) are contributory elements in the precinct.

How is it significant?

The Home Farm Estate and Environs Precinct is of local historical, architectural and aesthetic significance to the City of Boroondara.

Why is it significant?

The Home Farm Estate and Environs Precinct is of historical significance as a tangible illustration of the first residential boom in this area (formerly part of Malvern East), which took place during the interwar years. While several suburban estates were subdivided during the 1880s, in anticipation of the coming of the Outer Circle Railway line, there was only very scattered development until after World War I. It is also an excellent example of the 'spec building' which characterised interwar development in the area, whereby residences were constructed by local builders on land they owned with the intention of placing the houses directly on the market for sale. In the precinct, many houses were builder owned at the time of construction, and its architectural character was strongly influenced by builders such as RL Clarke, A Galbraith, J Treloar, DR Davies, GS Luckins, and WJ Bacon, with RA Dixon of particular note. In contrast to Victorian and Edwardian speculative development, which resulted in rows of identical or similar dwellings, these interwar examples were characterised by the pleasing variety in style and detail provided by a single builder in response to the interwar appetite for eclecticism. **(Criteria A and H)**

The Home Farm Estate and Environs Precinct is of architectural significance as a collection of good quality interwar dwellings that illustrate the range of styles and materials popular through the course of the interwar period. The earliest houses in the precinct are timber bungalows, including a substantial attic-storey bungalow at 13 Dunlop Street. By the late 1920s this moved to face brick California Bungalows. The more prestigious masonry construction remained the rule for the rest of the interwar period, moving through the classically inspired Mediterranean Revival (mostly rendered), medieval Old English (clinker brick and/or rendered), and then machine-age Moderne (usually rendered) style houses. **(Criterion D)**

The Home Farm Estate and Environs Precinct is of aesthetic significance in particular for the unusual Old English style house at 6 Dunlop Street, designed and constructed by R A Dixon and Sons in 1939. It is a restrained and elegant version of the style with a dramatically steep front gable and walls of multi-hued glazed brick, and a front fence of matching brick. The early 1920s attic-storey bungalow at 13 Dunlop Street also stands out with its fine and unusual Craftsman detailing, including curved exposed floor joist ends, shingle work and crossed timber panels, reminiscent of Swiss chalet bungalows popular in California. This house also retains its original brick fence and metal pedestrian gate. **(Criterion E)**

4.1 Precinct assessment

(i) The issue

The issue relates to the heritage significance of the Home Farm Estate and Environs Precinct (HO918).

(ii) Evidence and submissions

There were submissions which considered:

- the proposed heritage precinct is ‘not great’ and does not warrant the Heritage Overlay
- a non-contributory house is visible from every viewpoint in the precinct
- all of Dunlop Street should be removed from the precinct
- the Heritage Study should have occurred a few years earlier before 4, 8, 15 and 18 Dunlop Street were demolished
- preferred future development should be assessed through the existing permit application process rather than applying the Heritage Overlay
- a Heritage Overlay opt-in process would be fairer.

Submitters showed photos of more recent houses in the precinct.

Council submitted that 39 of the 45 properties have been designated as contributory and it is acceptable to have non-contributory properties in a heritage precinct. It maintained that the Amendment’s methodology was sound and in accordance with best practice. It referred to the comparative analysis undertaken in Stage 2 of the Heritage Study which compared the precinct against comparable places and precincts that are already in the Heritage Overlay. This is consistent with Planning Practice Note 1.

Ms Schmeder considered the precinct to be *“large enough to give a very good illustration of the typical kinds of residential development that characterised this part of Boroondara when it was first developed”*. She formed this conclusion while acknowledging the precinct’s relatively small size and recent developments. Ms Schmeder explained the precinct boundary:

- was determined having regard these non-contributory properties
- included the non-contributory properties because any future development on these sites may impact the precinct’s heritage significance.

(iii) Discussion

The precinct is relatively intact and has comparable interwar houses which are typical in this part of Boroondara, including Ashburton and Glen Iris. The HO918 Statement of Significance recognises that six of the precinct’s 45 properties are non-contributory. The Panel agrees with Ms Schmeder that these non-contributory properties should be included in the precinct because any future development on these sites may impact the surrounding heritage fabric.

The precinct presents as a cohesive and coherent heritage streetscape irrespective of the non-contributory properties. The precinct’s cohesiveness relies on whether the extent and location of non-contributory properties negatively affect the ability to understand the precinct. Based on close observations at its site visit, there is no vantage point in the precinct which persuaded the Panel that the precinct is not sufficiently intact.

The Panel does not support a Heritage Overlay opt-in process because it would result in unreliable and potentially unsound outcomes. The Heritage Study, which applied an evidence-based methodology consistent with Planning Practice Note 1, demonstrates why the precinct meets the threshold for local heritage significance. The protection of heritage is for the benefit of the broader community, and should not be solely based on the owner's choice.

(iv) Conclusion

The Panel concludes that the Home Farm Estate and Environs Precinct (HO918) has been appropriately assessed and meets the threshold for local heritage significance.

4.2 52, 54, 56, 58 and 60 Albion Road and 2, 4, 6 and 9 Dunlop Street

(i) The issue

The issue is whether 52, 54, 56, 58 and 60 Albion Road and 2, 4, 6 and 9 Dunlop Street should be included in the Home Farm Estate and Environs Precinct (HO918).

(ii) Evidence and submissions

Submitters objected to 52, 54, 56, 58 and 60 Albion Road and 2, 4, 6 and 9 Dunlop Street being included in the precinct. Collectively, they considered the northern side of Dunlop Street and adjacent part of Albion Road had significant redevelopments. They explained:

- 56 Albion Road is insignificant because:
 - it is a basic weatherboard with aluminium windows without similar architecture to neighbouring properties
 - it has an incompatible extension
- 58 and 60 Albion Road and 1 and 4 Dunlop Street have new buildings
- 2 and 6 Dunlop Street are not like other properties in Dunlop Street and do not form a coherent or cohesive precinct.

Ms Schmeder stated the north side of Dunlop Street still strongly contributes to the significance of the precinct despite losing the interwar house at 4 Dunlop Street. She found the new development at 4 Dunlop Street to be:

- a very contemporary design with boxy massing and materiality
- contextual in its front setback and the overall height of the house
- in keeping with its neighbours and not unduly visually intrusive.

Ms Schmeder supported the proposed heritage precinct in its exhibited form. She explained that the interwar period was characterised by stylistic eclecticism so interwar heritage precincts usually have different styles. The exception was when they were built over a very short time such as five years. She stated that 2 and 6 Dunlop Street make a very strong contribution to the precinct and:

- are *“two of the most idiosyncratic designs in the precinct”*
- have much in common with the houses on the south side of the street, as all houses except 4 Dunlop Street were built during the interwar period
- were brick interwar brick houses like the 1930s houses at 5 and 7 Dunlop Street, noting that Nos 2, 5 and 6 have strong Old English influence and No 7 is a historical Modern style.

Council adopted Ms Schmeder's evidence. It submitted that 4 Dunlop Street should be included in the precinct as a non-contributory property. It explained the property is a new development between contributory properties at 2 and 6 Dunlop Street.

Council and Ms Schmeder each acknowledged that 55, 58 and 60 Albion Road have new buildings, noting that this is the reason why they were categorised as non-contributory. Ms Schmeder noted that No 55 was removed from the precinct before the Amendment was exhibited in response to an authorisation condition. She stated that these properties were surrounded by contributory properties and formed part of a cohesive precinct. Council referred to 52, 54 and 56 Albion Road as surrounding contributory properties with California Bungalows that contribute to the precinct. Ms Schmeder considered these non-contributory properties needed to be included in the precinct because any future development could affect the heritage significance of the precinct. Council agreed.

(iii) Discussion

The properties at 52, 54, 56, 58 and 60 Albion Road and 2, 4 and 6 Dunlop Street form part of the broader relatively intact interwar precinct. The precinct comprises eclectic architectural styles and details, typical of the interwar period. These differences are evident when comparing 52, 54 and 56 Albion Road and 2 and 6 Dunlop Street. Though plainer, 56 Albion Road is a comparable example of housing which was typical in Ashburton.

The newer houses at 58 and 60 Albion Road attempt to blend in with the surrounding streetscape so these non-contributory properties do not diminish the significance of the precinct.

The houses at 2 and 6 Dunlop Street are unquestionably intact and fine examples of interwar architecture, consistent with the development era of the precinct. The recent modern house at 4 Dunlop Street is inconsistent with the surrounding architectural style but its muted colours and simple design response reduces its visual impact on the surrounding precinct. The Panel agrees with Ms Schmeder that Dunlop Street, even with its one non-contributory property, strongly contributes to the precinct.

(iv) Conclusion

The Panel concludes that 52, 54, 56, 58 and 60 Albion Road and 2, 4 and 6 Dunlop Street should be included in the Home Farm Estate and Environs Precinct (HO918).

4.3 62 Albion Road

(i) The issue

The issue is whether 62 Albion Road should be included as a contributory property in the Home Farm Estate and Environs Precinct (HO918).

(ii) Evidence and submissions

The owner of 62 Albion Road objected to the Heritage Overlay being applied to his property. He showed photos and provided information to demonstrate the dwelling was in poor condition. This includes peeling paint, cracks above the porch entrance, curved front steps and inside the house, and the rear addition. He submitted that applying the Heritage Overlay would create a substantial financial burden in maintaining the existing dwelling.

The owner requested that 62 Albion Road be designated a non-contributory property if it is included in the precinct.

Having reviewed the photos and other information provided by the owner, Ms Schmeder concluded that 62 Albion Road is a largely intact interwar house which:

- contributes to understanding interwar residential development in the precinct (Criterion A)
- illustrates the Moderne style which was popular in the late 1930s (Criterion D).

Of note, Ms Schmeder referred to the house's striking parapeted front porch, hipped roof form, rendered walls and chimney, curved front steps, horizontal oriented window openings, curved front path and low rendered front fence. She acknowledged the replaced front windows and rebuilding of the front fence, wing wall and front steps.

Ms Schmeder recommended that 62 Albion Road be included as a contributory property in the precinct.

Council adopted Ms Schmeder's evidence.

(iii) Discussion and conclusion

The Panel discusses issues of building condition and maintenance in Chapters 3.1 and 3.2 and does not repeat them here. The Panel agrees with Ms Schmeder that 62 Albion Road, even with its altered windows, is an intact interwar house which contributes to the precinct. Its striking features include its front portico and curved steps and chimney.

The Panel concludes that 62 Albion Road should be included as a contributory property in the Home Farm Estate and Environs Precinct (HO918).

4.4 67 Albion Road

(i) The issue

The issue is whether 67 Albion Road is sufficiently intact and contributes to the Home Farm Estate and Environs Precinct (HO918).

(ii) Evidence and submissions

The owner of 67 Albion Road objected to the Heritage Overlay being applied to the property. He considered the house:

- was not special and has no distinctive features
- is no longer intact following alterations, including an extension which enclosed the front verandah
- has not been owned by anyone notable.

Ms Schmeder stated that 67 Albion Road is still intact enough to demonstrate interwar domestic design despite the alterations. She added:

Constructed in 1938, it is a good example of the simple bungalows that were constructed at the end of the interwar period. For this reason, it contributes to the architectural significance of the precinct by demonstrating one of the common interwar house forms.

There are no claims that someone important lived at 67 Albion Road, and this is not necessary for a place to be of heritage value.

Ms Schmeder recommended the property be included as a contributory property in the precinct.

Council adopted Ms Schmeder's evidence and submitted:

- 67 Albion Road contributes to the architectural / representative significance (Criterion D) of the precinct, which justifies its contributory category
- it is not necessary for someone of significance to have lived in the property to justify the Heritage Overlay.

(iii) Discussion and conclusion

The Panel agrees with Ms Schmeder and Council that 67 Albion Road contributes to the precinct. The house just needs to be a representative example without the need to be special or have distinctive features. The house is simpler than others but forms part of the precinct's significance. The HO918 Statement of Significance did not rely on a famous person living at 67 Albion Road to conclude that the house contributed to the precinct's significance. Heritage includes different cross sections of society – not just famous people.

The Panel concludes that 67 Albion Road is sufficiently intact and contributes to the Home Farm Estate and Environs Precinct (HO918).

4.5 1 and 3 Dunlop Street

(i) The issue

The issue is whether 1 and 3 Dunlop Street should be included as contributory properties in the Home Farm Estate and Environs Precinct (HO918).

(ii) Evidence and submissions

A submitter considered:

- 1 and 3 Dunlop Street, when compared with other properties in the precinct:
 - were distinctly different because they do not have the same claimed characteristics
 - did not have a notable architect or builder
- the Heritage Study erroneously judges the development's time and does not compare it with other estates around that time
- houses in the precinct are remarkably similar to those in Ashburton, therefore discussion of houses in one area and not others may be biased or superficial.

Ms Schmeder considered that 1 and 3 Dunlop Street should be included as contributory properties in the Home Farm Estate and Environs Precinct (HO918). She stated that 1 and 3 Dunlop Street:

- are earlier than most of the other precinct houses on Dunlop Street
- are California Bungalows instead of the 1930s Art Deco and Old English houses that characterise much of this street
- are similar in form to the other California Bungalows in the precinct that dominate Albion Road
- like other 1920s houses in the precinct, do not have their builder or precise construction date recorded in the precinct citation because this information is not available
- contribute to the architectural significance of the precinct (Criterion D) as part of a collection of early to late interwar houses typical of their era.

Ms Schmeder agreed that Ashburton was largely developed in the interwar and early post-war periods, so it had many comparable subdivision estates and houses in the suburb. She explained that every street in Ashburton was surveyed during the Ashburton Heritage Gap Study.

Council adopted Ms Schmeder's evidence.

(iii) Discussion and conclusion

As referred to earlier in the Report, the interwar period comprised eclectic architectural styles. Seeking to retain only houses with homogenous architectural styles would mislead future generations about estates during this development era. The houses at 1 and 3 Dunlop Street help to explain the California Bungalow style in the earlier part of the interwar period. Houses in other parts of Dunlop Street explain how the different styles evolved. Collectively, they contribute to the precinct's representative significance and should be included as contributory properties.

The Panel concludes that 1 and 3 Dunlop Street should be included as contributory properties in the Home Farm Estate and Environs Precinct (HO918).

5 1 Keyes Street, Ashburton (HO924)

Exhibited Statement of Significance



What is significant?

The house at 1 Keyes Street, 1950, is significant. Its garage, front fence and garden setting contribute to its significance.

How is it significant?

1 Keyes Street is aesthetically and architecturally significant to the City of Boroondara.

Why is it significant?

The house at 1 Keyes Street is a significant example of a post-war house in Boroondara that sought aesthetic refinement through Waterfall styling, crafting the suburban 'dream home' within the limitations imposed by post-war restrictions. **(Criterion D)**

The house at 1 Keyes Street is a fine and early example of aesthetic characteristics of Waterfall home design, reflecting post-war 'dream home' optimism tempered by building restrictions. The house exhibits curves in its triple fronted plan, corner glazing, chimney details, and a pitched tiled roof with projecting corner eaves forming an entrance porch. The cream brick construction is accented by dark manganese brick and dark brown painted metalwork and window frames. The simple, restrained design is planned to address its corner site and is enlivened by the waterfall chimney, metal lacework, crazy paving steps and fence, and matching garage. 1 Keyes Street retains its original appearance, setting and details, and provides an outstanding example of Waterfall style, post-war housing in Boroondara. **(Criterion E)**

(i) The issue

The issue is whether 1 Keyes Street, Ashburton has sufficient heritage significance to justify the Heritage Overlay (HO924).

(ii) Evidence and submissions

The owner of 1 Keyes Street objected to the Heritage Overlay being applied to his property. He considered the property:

- is not of significance and many such homes have been demolished in the area
- is not in a heritage area and many homes in Keyes Street and Beatty Crescent have been demolished, rebuilt and are modern
- had been altered in 2003.

Council called expert evidence on heritage from Mr Stephenson of Trethowan Architecture. Mr Stephenson was available at the Hearing, however, he was not called to present or answer questions because the parties and the Panel had no questions to ask.

In his evidence statement, Mr Stephenson stated the Heritage Overlay (HO924) should be applied to 1 Keyes Street because it meets the threshold of local significance based on the HERCON Criteria. He explained:

- the dwelling achieved Criterion E through its fine and early characteristics of the Waterfall architectural style
- the property represents:
 - post-war domestic architecture that crafted the suburban 'dream home' during post-war restrictions (Criterion D)
 - an example of a post-war boom dwelling in Ashburton which fast became a new suburb that serviced this boom "*fuelled by the desire to move on with lives following World War 2*"
- the comparative analysis confirmed the property is a fine and early example of the style.

Mr Stephenson compared 1 Keyes Street with 6 Bulleen Road, Balwyn North (HO170), 171 Doncaster Road, Balwyn North (HO882), 2 Beatrice Street, Glen Iris (HO370) and 77 Studley Park Road, Kew (HO804).

Mr Stephenson referred to Council building permit file plans which identified alterations to the original dwelling. They included the family room added in 2003. He considered that none of the alterations impacted elevations viewed from the street, the main roofline of the building or the elements which make the house significant. For clarity, he recommended that the HO924 Statement of Significance be revised to inform that alterations since 1953 are not significant.

Council adopted Mr Stephenson's evidence and supported the recommended changes to the Statement of Significance.

Ms Schmeder supported Mr Stephenson's changes for the HO924 Statement of Significance.

(iii) Discussion

The Panel accepts Mr Stephenson's evidence for 1 Keyes Street. The house is a remarkable example of the Waterfall architectural style which compares well with those referred to by Mr Stephenson. The house has striking Waterfall style features including expansive curved windows and large decorative chimney with curved brickwork. The later alterations have been designed to

respond sensitively to the existing heritage fabric. Some of the alterations are difficult to distinguish from the original home so there would be benefit in revising the HO924 Statement of Significance to identify the alterations and inform that they are not significant to the place.

The Heritage Overlay (HO924) is for an individual place therefore its curtilage is restricted to 1 Keyes Street. Developments on neighbouring properties is not relevant when assessing whether 1 Keyes Street is individually significant.

(iv) Conclusions and recommendation

The Panel concludes:

- 1 Keyes Street, Ashburton has sufficient heritage significance to justify the Heritage Overlay (HO924).
- Revising the HO924 Statement of Significance to identify alterations since 1953 and to note they are not significant will inform any future permit application seeking to manage the property's heritage fabric.

The Panel recommends:

- 1. Amend the HO924 Statement of Significance for 1 Keyes Street, Ashburton to identify alterations since 1953 and to inform that they are not significant.**

Appendix A Planning context

A1 Planning objectives

PE Act

Section 4(1)(d) seeks 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 Scheme

Table 2 summarises the Planning Policy Framework clauses relevant to the Amendment, as set out in the Explanatory Report.

Table 2 State, regional and local policies

Relevant clauses
15 (Built environment and heritage)
15.01 (Built environment)
15.01-5S (Neighbourhood character) To recognise, support and protect neighbourhood character, cultural identity, and sense of place.
15.03 (Heritage)
15.03-1S (Heritage conservation) To ensure the conservation of places of heritage significance. Relevant strategies: <ul style="list-style-type: none"> - 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.
21 (Municipal Strategic Statement)
21.04 (Built Environment and Heritage)
21.04-5 (Heritage conservation) To identify and protect all individual places, objects and precincts of cultural, aboriginal, urban and landscape significance.
22 (Local planning policies)
22.03 (Heritage)

Relevant clauses

Clause 22.03-2 (Objectives)

- To preserve 'significant' heritage places, protecting all significant heritage fabric including elements that cannot be seen from the public realm.
- To ensure buildings and works to 'non-contributory' properties are sympathetic to the heritage values of the precinct and complement the precinct's heritage built fabric by being respectful of the scale, massing, rhythm and detailing.

A2 Other relevant planning strategies and policies

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.

A3 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.

A4 Ministerial Directions and Practice Notes

Ministerial Directions

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

- Ministerial Direction 9 (Metropolitan Planning Strategy)

- Ministerial Direction 11 (Strategic Assessment of Amendments)
- Ministerial Direction 15 (Planning Scheme Amendment Process)
- Ministerial Direction (The Form and Content of Planning Schemes pursuant to section 7(5) of The PE Act).

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.

Planning Practice Note 1 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).

Appendix B Document list

No.	Date	Description	Provided by
2021			
1	5 Oct	Panel directions and timetable	Planning Panels Victoria
2	22 Oct	Archicentre Australia Architect's Advice Report	Mr Byrnes
3	26 Oct	Letter – Submission and evidence	Council
4	26 Oct	Hearing submission – Part A	Council
5	26 Oct	Expert evidence – Natica Schmeder of GML Heritage	Council
6	26 Oct	Expert evidence – Mark Stephenson of Trethowan	Council
7	29 Oct	Hearing submission – Part B	Council
8	1 Nov	Photos and map	Mr Price
9	3 Nov	Hearing submission	Mr Byrnes