

## 6 Contract No. 2016/184, Municipal Wide Heritage Gap Study (City of Boroondara) - Consultancy Services

### Abstract

This report seeks Council endorsement to:

1. Award Contract No. 2016/184, Municipal Wide Heritage Gap Study (City of Boroondara) - Consultancy Services.
2. Adopt revised criteria for properties to be identified as a 'possible' or 'proposed' heritage place to trigger a referral of applications for Report and Consent for demolition under Section 29A of the *Building Act 1993* as outlined in **Attachment 2**.

In April/May 2016, Council's Strategic Planning Department undertook a public tender process in accordance with Section 186 of the *Local Government Act 1989* for the following services:

- Preparation of a Municipal Wide Heritage Gap Study
- Ongoing heritage consultancy services (including consideration of demolition requests under S29A of the *Building Act 1993*)

The Municipal Wide Heritage Gap Study presents a proactive work program to implement the priorities set out in the adopted Heritage Action Plan 2016 and will provide an unprecedented level of protection of heritage places within the municipality.

The ongoing heritage consultancy services tendered for are currently already provided under a separate contract (funded from the Strategic Planning Operating Budget) which expires on 30 September 2016. The awarding of the new contract would continue the current arrangement and services provided to the Strategic Planning Department.

Council received one response from Context Pty Ltd and the tender evaluation panel has finalised its assessment and recommendation to award the contract.

Confidential information is contained in **Attachment 1** (circulated in the confidential section of the agenda attachments) in accordance with Section 89(2) of the *Local Government Act 1989*, as the information relates to contractual matters and premature disclosure of the information could be prejudicial to the interests of Council or other persons. This item has been included in the public agenda to facilitate transparency and accountability in Council's decision making.

If discussion of the confidential information in the attachments to this report is required in order for Council to make a decision, this item will be deferred to the confidential section of the agenda.

Due to the value of the contract being in excess of \$500,000 over a maximum term of five years, the contract can only be awarded through a Council resolution.

The estimated cost of this contract in the 2016-17 financial year is \$334,955 (excl. GST) which will be funded from Council's adopted priority project budget of \$250,000 for the first year of the Municipal Wide Heritage Gap Study and the Strategic Planning operating budget for the provision of heritage consultancy services. Expenditure in future years will be in accordance with approved budget allocations.

Officers are also seeking adoption of a revised process for the identification of 'possible' and 'proposed' heritage places as part of the Section 29A demolition process originally adopted in May 2012. The proposed change relates to the periodic updating and superseding of the existing 'Possible Heritage Layer' (on a suburb basis) as draft suburb assessments are completed (for preliminary public consultation). The revised process also seeks to update the 'Proposed Heritage Layer' as suburb assessments are adopted by Council before seeking authorisation from the Minister for Planning for an amendment.

Further this report also seeks to formalise how Council deals with properties nominated for the Victorian Heritage Register if they are not already included in a Heritage Overlay.

## **Officers' recommendation**

That Council resolve:

### **Part A**

1. To award Contract No. 2016/184, Municipal Wide Heritage Gap Study (City of Boroondara) - Consultancy Services, to;
  - Context Pty Ltd (ACN 006 982 190)at their tendered lump sum and schedule of rates for an initial contract term of two years with possible extensions to a maximum contract term of five years. The estimated contract cost for the maximum term is \$928,501 (including GST). The cost to Council after the return of the GST Tax Input Credits is \$844,091.
2. To authorise the Chief Executive Officer or his delegate to execute the contract agreement with the above contractor.
3. To authorise the Chief Executive Officer or his delegate to negotiate extensions to Contract No. 2016/184, Municipal Wide Heritage Gap Study (City of Boroondara) - Consultancy Services, with the above contractor to the maximum five year contract term.
4. To note that expenditure under this contract in 2016-17 is in accordance with Council's adopted budget and expenditure in future years will be in accordance with the approved budget allocations.

### **Part B**

5. To endorse the revised Section 29A internal referral and decision-making process at Attachment 2 (as annexed to the minutes) subsequently superseding the process adopted on 14 June 2012 as contained in Attachment 3.

6. To replace the existing 'Possible Heritage Layer' for each suburb with a new 'Possible Heritage Layer' created by the draft suburb assessments as they are completed for preliminary consultation, which subsequently informs Council's Section 29A internal referral process.
7. To require a local heritage assessment be undertaken for properties nominated for the Victorian Heritage Register and include the property on the 'Possible Heritage Layer' to trigger the Section 29A process if full or partial demolition of the building is proposed.

**Responsible director: John Luppino**  
**City Planning**

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## **1. Purpose**

The purpose of this report is for Council to give consideration to:

- The awarding of Contract No. 2016/184, Municipal Wide Heritage Gap Study (City of Boroondara) - Consultancy Services.
- Endorse a revised Section 29A (S29A) internal referral and decision making process with regard to the full or partial demolition of buildings on the 'Possible Heritage Layer' or 'Proposed Heritage Layer'.
- Endorse an assessment process for the consideration of properties which have been nominated for the Victorian Heritage Register.

## **2. Policy implications and relevance to council plan**

This tender process has been carried out in accordance with the requirements of Council's Contracts and Tendering Probity Policy and Council's Procurement Policy.

### **Council Plan 2013-2017**

This contract is aligned with Council Strategic Objective 3 - Enhanced amenity and Strategy 10 - Land use, planning and building. The objective states "*the character of our neighbourhoods is protected and improved*". Strategy 10 states to "*engage with our community in striving for protection and enhancement of the natural and built environment*".

### **Public Health and Wellbeing Plan 2013-2017**

This report implements Strategic Objective 2 of the *Municipal Public Health and Wellbeing Plan 2013-17*, to '*enhance and develop our neighbourhoods to support health and wellbeing*'. In particular, identifying opportunities to strengthen Council's approach towards protecting Boroondara's cultural heritage implements Strategy 2.2: *to support practices that assist Council and the community maintain and enhance our natural environment for future generations*.

### **Heritage Action Plan 2016**

The Heritage Action Plan adopted by Council on 2 May 2016 is the framework which guides Council's heritage work program, particularly as it relates to the identification, protection, management and promotion of Boroondara's heritage assets.

The project implements actions of the Heritage Action Plan 2016 as follows:

*Very High - 2016/17 financial year*

VH2 - VH5: Prepare and implement heritage studies of Camberwell, Canterbury, Hawthorn and Kew as part of the Municipal Wide Heritage Gap Study.

*High - 2017/18 financial year*

H1 - H5: Prepare and implement heritage studies for Kew East, Hawthorn East, Glen Iris, Ashburton and Mont Albert as part of the Municipal Wide Heritage Gap Study.

*Ongoing / As Required*

OAR2: Continue to implement a referral process to ensure sites of possible heritage significance are assessed by a heritage consultant prior to issuing report and consent to demolition under Section 29A (S29A) of the *Building Act 1993*.

**Boroondara Planning Scheme**

The services to be performed by the contract are consistent with the State Planning Policy Framework and Council's Municipal Strategic Statement (Clause 21.05-3) objectives to identify and protect all individual places, objects and precincts of cultural heritage, aboriginal, townscape and landscape significance.

**3. Background**

Council requires a suitably qualified heritage consultant for the preparation of the Municipal Wide Heritage Gap Study and general heritage consultancy services to the Strategic Planning Department in accordance with the requirements of the specification.

**Invitation to tender**

In accordance with Council's tendering procedures and Section 186 of the *Local Government Act 1989*, Council invited tenders from suitably qualified and experienced organisations for the preparation of a Municipal Wide Heritage Gap Study and general heritage consultancy services to the Strategic Planning Department. An Invitation to Tender was advertised in the local government tenders section of "The Age" on Saturday 23 April 2016 and on Council's website. The closing date for submissions was 4.00pm, Friday 20 May 2016.

In response to the advertisement, Council received one submission:

- Context Pty Ltd (assisted by sub-consultants Trethowan Architecture).

**4. Outline of key issues/options**

In April/May 2016 Council undertook a public tender process for the following services:

- Preparation of a Municipal Wide Heritage Gap Study
- Ongoing heritage consultancy services (including consideration of demolition requests under S29A of the *Building Act 1993*)

The need for the tender was based on:

- The large number of properties within the municipality that remain unassessed for their potential heritage value and are therefore not protected from demolition or inappropriate alterations.
- The need for a pro-active process of identification and assessment of potential heritage places rather than relying on the re-active assessment when demolition of a possible heritage place is proposed under Section 29A of the *Building Act 1993*.
- Continuing the heritage consultancy services that are currently being provided under a separate contract (funded by the Strategic Planning operating budget). The existing contract expires on 30 September 2016.

The benefits of this study are:

- Council and the community will have greater certainty over heritage assessment priorities over the next two years.
- Council will move away from a re-active approach to heritage planning to a pro-active work program of heritage assessments, with greater transparency.
- Significantly improves the identification and protection of heritage places in a timely way to achieve an unprecedented level of protection of the municipality's heritage.

### **Tender process**

Based on the above and in accordance with Council's tendering procedures and Section 186 of the *Local Government Act 1989*, Council invited tenders from suitably qualified and experienced organisations for the abovementioned services.

An Invitation to Tender was advertised in the local government tenders section of "The Age" on Saturday 23 April 2016 and on Council's website. The closing date for submissions was 4.00pm, Friday 20 May 2016.

In response to the advertisement, Council received one submission:

- Context Pty Ltd (assisted by sub-consultants Trethowan Architecture).

### **Tender evaluation**

As a result of the tender evaluation (**Attachment 1**), the tender evaluation panel recommends that Council award Contract No. 2016/184, Municipal Wide Heritage Gap Study (City of Boroondara) - Consultancy Services to

- Context Pty Ltd (ACN 006 982 190),

at their tendered lump sum and schedule of rates.

## Budget allocation

The estimated cost of this contract for the 2016/17 financial year is \$334,955 (excl. GST) which is to be funded from the Strategic Planning budget as follows:

- The Municipal Wide Heritage Gap Study Priority Project Budget of \$250,000 for any services associated with the preparation of the heritage study.
- Strategic Planning operating budget of approximately \$87,000 for ongoing heritage consultancy services (including S29A demolition applications and other referrals).

Expenditure in future years will be in accordance with approved budget allocations. Annual project cost savings will occur as implementation of the Study progresses.

The estimated contract cost for the maximum term of five years is \$928,501 (including GST). The cost to Council after the return of the GST Tax Input Credits is \$844,091.

## Section 29A process

### *'Possible' and 'proposed' heritage places layer*

Councillors would be aware of the process for the consideration of requests for demolition of 'possible' or 'proposed' heritage places under Section 29A of the *Building Act 1993*. This process is intended to prevent the demolition of potential heritage places.

The 'possible' heritage place layer consists of:

- Individual properties identified in past heritage studies that were never fully assessed.
- Outstanding precinct recommendations.
- Individual property nomination.
- Properties identified for further investigation.

The 'proposed' heritage place layer includes properties that form part of an adopted heritage study or citation and are subject to an amendment to introduce a Heritage Overlay.

### *UPSC resolution 2 May 2016*

On 2 May 2016 officers presented a report to the Urban Planning Special Committee (UPSC) recommending a revised S29A process. The revised process was intended to reduce the number of S29A referrals given the significant resource implications and low success rate in obtaining approval for interim heritage protection from the Minister for Planning.

However, the UPSC did not adopt the revised S29A process proposed by officers and instead resolved the following:

PART A

*Subject to Council allocating resources in the 2016/17 financial year towards the preparation and implementation of a municipal wide heritage study, the Urban Planning Special Committee resolve to:*

- 1. Adopt the revised Heritage Action Plan 2016 as outlined in Attachment 2 (as annexed to the minutes).*
- 2. Prepare and implement a municipal wide heritage study commencing in the 2016/17 financial year in accordance with the revised Heritage Action Plan 2016 as outlined in Attachment 2.*

AND

PART B

*That the Urban Planning Special Committee resolve:*

- 1. To seek an urgent meeting between the Mayor, Councillor Parke and the Minister for Planning seeking clarification of the Department of Environment, Land, Water and Planning (DELWP) officers' position regarding consideration of interim heritage overlay requests, as stated in the DELWP correspondence dated 22 February 2016.*
- 2. Following the meeting with the Minister for Planning, that a report be presented to a future Urban Planning Special Committee meeting considering Council's s29A process and associated resourcing implications.*

To date, Council officers have been unsuccessful in arranging a meeting with the Minister for Planning. The Mayor wrote to the Minister highlighting Council's concerns with the advice provided in the DELWP correspondence of 22 February 2016, and requesting a meeting. Meanwhile, DELWP officers have verbally reaffirmed their advice contained in the letter of 22 February 2016. To recap, this advice suggests that the Minister is unlikely to approve interim heritage controls unless the heritage significance is beyond reasonable doubt, the place is a rare example or an amendment to introduce a permanent Heritage Overlay has been exhibited.

*Continuation of existing S29A process*

In evaluating the tender response it has become clear that there is scope (both from a consultant and Council staffing and budget perspective) for the existing S29A process to be retained.

However, officers are recommending a minor change that does not relate to the process itself but to the way that 'possible' and 'proposed' heritage places are identified to ensure that both layers accurately reflects the findings and recommendations of the Municipal Wide Heritage Gap Study rather than relying on outdated and superseded heritage studies.



Officers recommend that the 'possible' and 'proposed' heritage places layers are continuously updated as suburb-based heritage studies are finalised and progressed through the implementation process. Specifically that means:

- The 'possible' heritage place layer will be updated as draft suburb heritage assessments are completed, prior to undertaking preliminary consultation.
- The 'proposed' heritage place layer will be updated as suburb heritage assessments are completed and adopted by Council, prior to the commencement of a planning scheme amendment to include properties in the Heritage Overlay.

Until then, both the existing 'possible' and 'proposed' heritage place layers will continue to be used as they currently are.

This means that places identified on Council's 'possible' and 'proposed' heritage layer will continue to be subject to the existing process where Council seeks introduction of an interim Heritage Overlay, if the building is proposed to be partially or fully demolished and the place is;

- individually significant ('possible' and 'proposed' heritage place); or
- contributory value ('proposed' heritage place only);

and the extent of the proposed demolition would detrimentally impact on the heritage significance of the place.

It is also noted that properties forming part of any heritage amendment currently under way (e.g. C177 - Surrey Hills Stage 2, C236 - Precinct 24) will continue to be subject to the S29A process as a 'proposed' heritage place as outlined in **Attachment 2**.

The difference between the current process adopted on 4 June 2012 and the newly proposed process is that a property will only be included on the 'possible' and 'proposed' heritage layer if it was identified as part of the Municipal Wide Heritage Gap Study. Any properties identified in previously adopted studies will no longer be included on either list (unless they already form part of a current amendment). Effectively, the existing 'Possible' and 'Proposed' heritage layers will be superseded and made redundant by the new Study. Officers consider this to be appropriate given that the Municipal Wide Heritage Gap Study will be the latest and most up-to-date source of information and research that would have reviewed the recommendations of previous studies.

### **Properties nominated for the Victorian Heritage Register**

Council is notified when Heritage Victoria receives a public nomination for inclusion of a property in Boroondara on the Victorian Heritage Register (VHR). The VHR identifies properties of 'state' heritage significance. Officers propose that when such a nomination is received, officers will undertake an assessment to determine whether the property meets the threshold for 'local' heritage significance.

If the property meets the test for 'local' heritage significance, then the process for introducing heritage controls to the property will be initiated immediately and the property is included on the 'possible' heritage layer. This includes preliminary consultation with the affected and immediately adjoining property owners, Heritage Victoria and the VHR applicant.

As a result, the property will be subject to the S29A process (**Attachment 2**) should an application for partial or complete demolition be lodged while Council is undergoing the implementation process.

## **5. Consultation/communication**

Extensive consultation is proposed to be undertaken with affected and adjoining property owners and occupiers and other stakeholders on the recommendations of the suburb based draft heritage assessments completed under the Municipal Wide Heritage Gap Study. Consultation is also proposed as part of any planning scheme amendment process initiated as part of the Section 29A process endorsed by Council.

Further consultation with affected and adjoining property owners and occupiers and stakeholders will be undertaken as part of any formal planning scheme amendment to introduce permanent heritage controls to properties. This is likely to occur on a suburb-by-suburb basis. Consulted parties will also be invited to attend the public Council meetings scheduled to consider key milestones of any heritage assessments undertaken, planning scheme amendments, and any future Planning Panel hearings.

## **6. Financial and resource implications**

Financial and resource implications are discussed at Section 4 of this report.

## **7. Governance issues**

The implications of this report have been assessed and are not considered likely to breach or infringe upon, the human rights contained in the *Victorian Charter of Human Rights and Responsibilities Act 2006*.

The officers responsible for this report have no direct or indirect interests requiring disclosure.

## **8. Social and environmental issues**

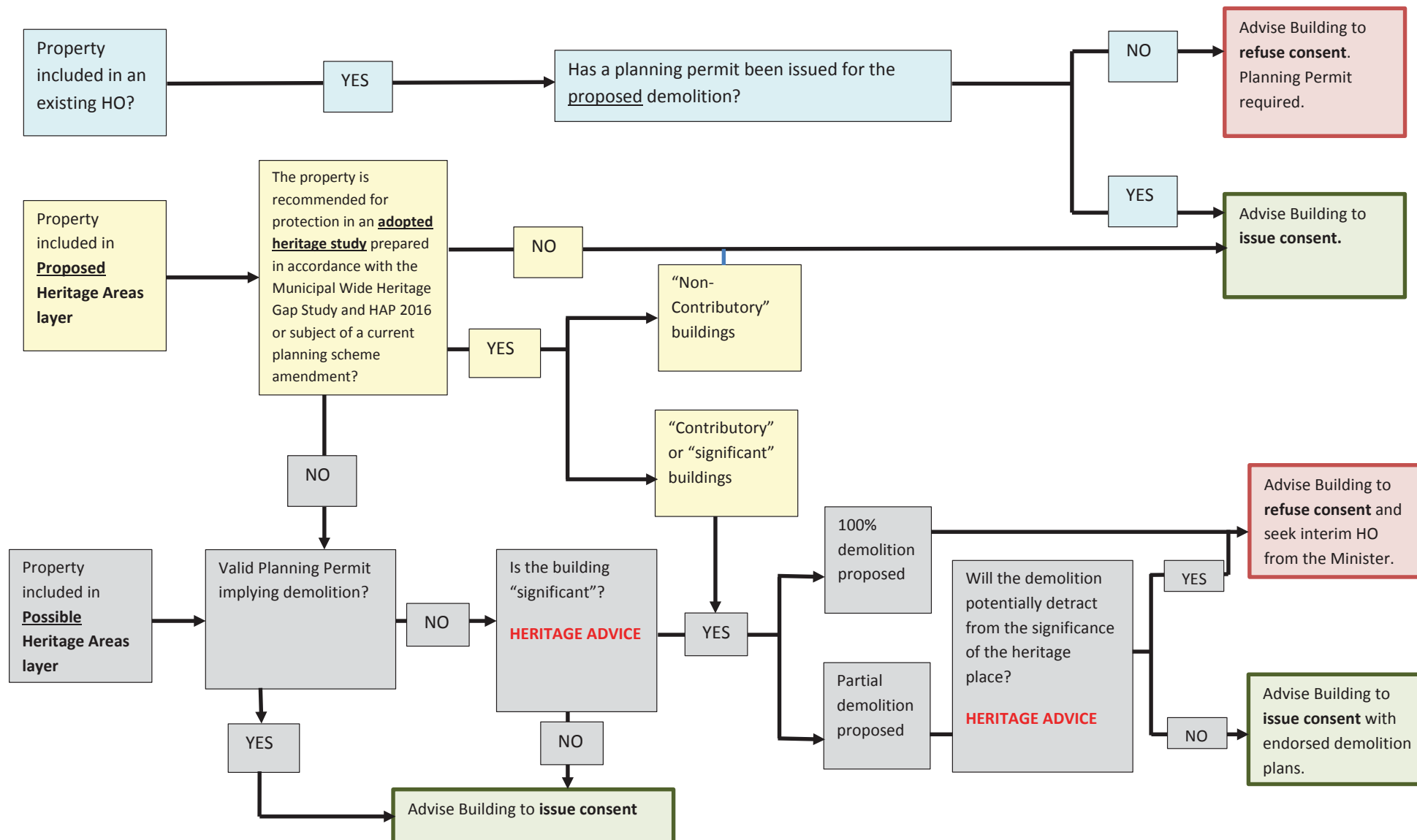
The most significant immediate impact on protecting more of the City's heritage will be achieved by initiating the Municipal Wide Heritage Gap Study. The protection of the City's local cultural heritage significance through ongoing implementation of the Heritage Action Plan 2016 and S29A decision making process will have positive social outcomes for the community.

**Manager:** Zoran Jovanovski, Strategic Planning

**Report officer:** Robert Costello, Senior Project Planner, Strategic Planning

# Proposed Section 29A Internal Process

Attachment 2



## Section 29A Decision Making Process May 2012

Attachment 3

