

Amendment C353boro Part 2 to the Boroondara Planning Scheme

Submission by City of Boroondara
4 February 2022

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PART A

1 INTRODUCTION

- 1.1 This report is the City of Boroondara's submission to the Panel appointed to consider submissions to Amendment C353boro Part 2 to the Boroondara Planning Scheme.
- 1.2 This submission to the Panel is in two parts:
 - 1.2.1 Overview of Amendment C353boro including its history, policy context and summary of key issues. (Part A).
 - 1.2.2 Summary and commentary on submissions to Amendment C353boro (Part B). Part B will be presented to the Panel on 11 February 2022.
- 1.3 Amendment C353boro Part 2 applies to two properties:
 - 1.3.1 26 Goldthorns Avenue, Kew.
 - 1.3.2 97 Argyle Street, Kew.
- 1.4 Specifically, Amendment C353boro Part 2 amends the Schedule to Clause 43.01 (Heritage Overlay) to introduce the Heritage Overlay to 26 Goldthorns Avenue, Kew and 97 Argyle Street, Kew on a permanent basis.

2 BOROONDARA MUNICIPAL WIDE HERITAGE GAP STUDY VOLUME 4: KEW

ADOPTION OF HERITAGE STUDY

- 2.1 At its Ordinary Meeting on 25 July 2016, Council resolved to engage heritage consultancy firm Context Pty Ltd to prepare the Municipal Wide Heritage Gap Study for the City of Boroondara.
- 2.2 The study seeks to implement a priority action graded as 'very high' in the Heritage Action Plan 2016 (adopted by Council 2 May 2016) by identifying and protecting valued heritage properties and precincts through inclusion of properties in the Heritage Overlay.
- 2.3 Kew was the fourth suburb to be assessed as part of the Municipal Wide Heritage Gap Study. The Kew Heritage Gap Study (the Study) (the subject of Amendment C294boro) was undertaken during 2017/18.
- 2.4 The draft Study recommended the application of the Heritage Overlay to 21 individually significant heritage places and nine heritage precincts (including a mix of 'significant', 'contributory' and 'non-contributory' places). It also recommended the extension of the existing Barrington Avenue Precinct (HO142), Barry Precinct (HO143), Glenferrie Road Precinct (HO150), Sackville Street Precinct (HO162), Kew Junction Commercial Heritage Precinct (HO520) and High Street South Residential Precinct (HO527) to include additional properties.
- 2.5 The significance of the individual properties and precincts was assessed against the criteria set out in *Planning Practice Note 1: Applying the Heritage Overlay* (August

2018) and was considered to meet the requirements and threshold for local protection through the Heritage Overlay.

- 2.6 Preliminary consultation on the draft Study was undertaken from 13 November to 8 December 2017.
- 2.7 In response to the preliminary consultation, Council received feedback from 84 parties.
- 2.8 Council's heritage consultants and officers considered the feedback received and recommended a number of changes to the draft Study, which were presented at the Urban Planning Special Committee (UPSC) meeting on 16 April 2018.
- 2.9 At its meeting on 16 April 2018, the UPSC resolved to adopt the Study subject to some changes to address submissions, and to commence a planning scheme amendment to implement the recommendations of the Study.

AMENDMENT C294

- 2.10 On 27 April 2018, Council wrote to the Minister for Planning and sought authorisation to prepare and exhibit Amendment C294boro to the Boroondara Planning Scheme.
- 2.11 By letter dated 24 October 2018, a delegate of the Minister for Planning authorised Council to prepare the Amendment.
- 2.12 The Amendment was formally exhibited from 21 February to 25 March 2019.
- 2.13 Council received 94 submissions to the Amendment.
- 2.14 On 5 August 2019, the UPSC resolved to refer Amendment C294boro and all submissions received to a planning panel for consideration.

PANEL HEARING

- 2.15 An independent Panel hearing to consider the submissions received was held on 17, 18, 21, 23 October and 6-7 November 2019. Thirty-seven submitters were represented at the Panel hearing.
- 2.16 A petition with 56 signatories was tabled at the Ordinary Meeting of Council on 25 November 2019 which sought to have the Goldthorns Hill and Environs Precinct abandoned.
- 2.17 On 21 January 2020, Council received the Panel's report for Amendment C294boro. The Panel generally supported the amendment and recommended that it be adopted subject to changes including the following:

2.17.1 Abandon applying the Heritage Overlay to:

2.17.1.1 The west side of Bradford Avenue (Nos.7 to 15), 20 Bradford Avenue, 12 Stoke Avenue and 365 Cotham Road in the Bradford Estate Precinct.

2.17.1.2 The Clifton Estate Residential Precinct.

2.17.1.3 The Goldthorns Hill and Environs Precinct (which included 26 Goldthorns Ave and 97 Argyle Street).

2.18 Of relevance to Amendment C353boro part 2, in the conclusion of the analysis of the Goldthorns Hill and Environs Precinct, the Panel concluded that:

2.18.1 *“Properties at 20 Goldthorns Avenue, 26 Goldthorns Avenue and 97 Argyle Road which have been categorised as Significant, should be assessed through a separate process to determine whether they meet the local heritage threshold as individual places.”*

2.19 The Panel also recommended that the property at 33 Thornton Street be regraded from Non-contributory to Contributory within the Thornton Estate Residential Precinct and that this regrading should be carried out through a separate amendment process to ensure that the property owner had opportunity to respond to the regrading.

ADOPTION OF AMENDMENT C294

2.20 On 20 July 2020, the UPSC considered a report on the recommendations of the independent Planning Panel including the officers’ response to the recommendations.

2.21 The UPSC resolved to accept many of the Panel’s recommendations, including the removal of the Goldthorns Hill and Environs Precinct from the amendment.

2.22 The UPSC resolved to undertake further heritage assessments of the following properties:

2.22.1 20 and 26 Goldthorns Avenue, Kew.

2.22.2 97 Argyle Road, Kew.

2.22.3 3-5, 6 and 7 and 8 Florence Avenue, Kew.

2.23 The UPSC also resolved to seek authorisation to commence a Planning Scheme Amendment to apply the Heritage Overlay to any of the above properties that were found to be of individual local significance.

3 FURTHER INVESTIGATION OF PROPERTIES AND PRECINCTS IN KEW

3.1 In accordance with the above UPSC resolution, Council engaged heritage consultants Context to investigate whether the seven (7) properties identified by the independent planning panel were worthy of protection under the Heritage Overlay as individually significant heritage places.

- 3.2 The heritage consultants ultimately recommended three of the seven properties for protection in the Heritage Overlay:
- 3.2.1 3-5 Florence Avenue, Kew.
 - 3.2.2 26 Goldthorns Avenue, Kew.
 - 3.2.3 97 Argyle Road, Kew.
- 3.3 Citations were prepared for the three properties.
- 3.4 A revised citation was also prepared for the Thornton Estate Residential Precinct which altered the grading of 33 Thornton Street from Non-contributory to Contributory.

4 C353boro AMENDMENT PROCESS

EXHIBITION

- 4.1 In accordance with the resolution of the UPSC, officers applied to the Minister for Planning seeking authorisation to prepare and exhibit a planning scheme amendment to introduce Heritage Overlays to the three properties on a permanent basis, and to change the grading of 33 Thornton Street.
- 4.2 Officers at the Department of Environment, Land, Water and Planning (DELWP) under delegation from the Minister for Planning granted authorisation on 26 May 2021.
- 4.3 Exhibition commenced on 22 July 2021 and concluded on 27 August 2021 as required under Section 19 of the *Planning and Environment Act 1987* (the Act).
- 4.4 The exhibition included the following notices:
- 4.4.1 Letters sent to all affected and adjoining property owners and occupiers.
 - 4.4.2 Letters sent to prescribed Ministers and authorities and interest groups (including the main petitioner who sought heritage protection for the property).
 - 4.4.3 Notices published in the Victorian Government Gazette and The Age newspaper.
 - 4.4.4 Information and documentation available to view on a dedicated webpage on Council's website.
- 4.5 At the conclusion of the exhibition process Council received a total of three submissions including:
- 4.5.1 One submission supporting the protection of 3-5 Florence Avenue in the Heritage Overlay.
 - 4.5.2 One submission objecting to the protection of 26 Goldthorns Avenue in the Heritage Overlay.
 - 4.5.3 One submission objecting to the protection of 97 Argyle Road, Kew in the Heritage Overlay.
- 4.6 No submissions were received in relation to regrading of 33 Thornton Street, Kew.

URBAN PLANNING DELEGATED COMMITTEE MEETING 8 NOVEMBER 2021

- 4.7 On 8 November 2021, the Urban Planning Delegated Committee (UPDC) considered a report that detailed the outcomes of the exhibition period. The report provided a summary of the submissions received, as well as a response to each submission.
- 4.8 At this meeting, the UPDC resolved to:
- 4.8.1 Split Amendment C353boro into two parts.
 - 4.8.2 Request the Minister for Planning to appoint an independent planning panel to consider submissions to Amendment C353boro Part 2.
- 4.9 Amendment C353boro was split into two parts by the UPDC decision.
- 4.10 Amendment C353boro Part 1 included the properties that had received no submissions or only supporting submissions, i.e., 3-5 Florence Avenue, Kew and the regrading of 33 Thornton Street, Kew.
- 4.11 Amendment C353boro Part 1 was adopted at an Ordinary Meeting of Council on 13 December 2021 and submitted to the Minister for Planning for approval. A decision has not yet been made by the Minister.
- 4.12 Amendment C353boro Part 2 included the properties that had received objecting submissions, ie 26 Goldthorns Avenue, Kew and 97 Argyle Road, Kew.
- 4.13 A request to appoint a Panel to consider Amendment C353boro part 2 was made on 10 November 2021.

5 C353boro AMENDMENT CHRONOLOGY

- 5.1 Relevant milestones of Amendment C353boro can be summarised as follows:

Date	Milestone
25 July 2016	Resolution to commence Municipal Wide Heritage Gap Study
2017/2018	Drafting of Kew Heritage Gap Study
13 November to 8 December 2017	Preliminary consultation of Kew Heritage Gap Study
16 April 2018	Adoption of Kew Heritage Gap Study
21 February to 25 March 2019	Exhibition of Amendment C294boro
5 August 2019	Resolution to refer Amendment C294 to Planning Panel
17, 18, 21, 23 October and 6-7 November 2019	Amendment C294boro Panel Hearing
21 January 2020	Panel report received by Council
20 July 2020	Resolution to make changes to Amendment C294boro as recommended by Panel
24 August 2020	Adoption of Amendment C294boro
22 February 2021	Approval of Amendment C294boro

26 May 2021	Authorisation granted for Amendment C353boro
22 July to 2 August 2021	Exhibition of Amendment C353boro
8 November 2021	UPDC considers submissions to C353boro. Resolution to split amendment and refer Part 2 to Panel
10 November 2021	Application to appoint a panel to consider C353boro Part 2 lodged.
13 December 2021	Adoption of Amendment C353boro Part 1
16 December 2021	Amendment C353boro Part 2 directions hearing

6 STRATEGIC POLICY CONTEXT

- 6.1 This section will address how the amendment responds to the provisions and objectives of Planning Policy Framework (PPF) and the Local Planning Policy Framework (LPPF) of the Boroondara Planning Scheme.
- 6.2 It will identify the strategic context within which issues associated with Amendment C353boro Part 2 must be considered. It will also consider other relevant strategic documents that have informed and provide justification for the amendment.
- 6.3 The key documents that provide the strategic context for considering this Amendment are as follows:
- 6.3.1 Metropolitan Strategy – *Plan Melbourne*
 - 6.3.2 Planning Policy Framework
 - 6.3.3 Local Planning Policy Framework including the Municipal Strategic Statement (Clause 21) and local planning policies (Clause 22)
 - 6.3.4 City of Boroondara’s Heritage Action Plan (2016)
 - 6.3.5 Heritage Overlay Practice Note

PLAN MELBOURNE - METROPOLITAN STRATEGY

- 6.4 The identification, assessment and protection of places of local heritage significance are supported by Outcome 4 of *Plan Melbourne* which seeks to ensure that ‘*Melbourne is a distinctive and liveable city with quality design and amenity*’. Direction 4.4 recognises the contribution heritage makes to Melbourne’s distinctiveness and liveability and advocates for the protection of Melbourne’s heritage places.
- 6.5 Policy 4.4.1 recognises the need for ‘*continuous identification and review of currently unprotected heritage sites and targeted assessments of heritage sites in areas identified as likely to be subject to substantial change*’.
- 6.6 A detailed discussion and assessment of key directions contained within this policy is provided as part of the exhibited Explanatory Report provided to the panel.

PLANNING POLICY FRAMEWORK (PPF)

6.7 The amendment is consistent with the objectives of the PPF and LPPF. In particular it addresses the following clauses:

6.7.1 Clause 15.03-1S (Heritage Conservation) which seeks to *‘ensure the conservation of places of heritage significance’* by identifying, retaining and protecting places with identified heritage significance.

6.8 The Heritage Overlay is the most appropriate mechanism for recognising and protecting the cultural heritage significance of the identified places and precincts.

6.9 For a more detailed assessment of Amendment C353boro against relevant PPF Clauses and Ministerial Directions, please refer to the exhibited Explanatory Report provided to the Panel.

LOCAL PLANNING POLICY FRAMEWORK (LPPF)

6.10 The current LPPF provides the relevant context and support for Amendment C353boro Part 2.

6.11 The amendment seeks to implement the objectives of the LPPF, which include:

6.11.1 Clause 21.04-5 (Built Environment and Heritage) of the Municipal Strategic Statement includes the objective *‘to identify and protect all individual places, objects and precincts of cultural heritage, aboriginal, townscape and landscape significance’*.

6.11.2 Clause 22.03-2 (Heritage Policy) which seeks *‘to preserve ‘significant’ heritage places, protecting all significant heritage fabric including elements that cannot be seen from the public realm’*.

BOROONDARA HERITAGE ACTION PLAN (2016)

6.12 The Heritage Action Plan was adopted by Council on 2 May 2016 and establishes the framework to guide Council’s heritage work program as it relates to the identification, protection, management and promotion of Boroondara’s heritage assets.

6.13 The amendment is consistent with ‘very high’ priority action VH5 of the Heritage Action Plan 2016:

6.13.1 *“Prepare and implement a heritage study of Kew as part of the municipal wide heritage [gap study].”*

HERITAGE OVERLAY PRACTICE NOTE

6.14 The Victoria Planning Provisions Practice Note *Applying the Heritage Overlay* (Revised January 2018) provides guidance in respect of the use of the Heritage Overlay in the planning scheme. The Practice Notes identifies that the following places should be included in a Heritage Overlay:

- 6.14.1 Any place that has been listed on the Australian Heritage Commission's Register of the National Estate.
- 6.14.2 Any place that has been recommended for planning scheme protection by the Heritage Council.
- 6.14.3 Places listed on the National Trust Register of the National Trust of Australia (Victoria), provided the significance of the place can be shown to justify the application of the overlay.
- 6.14.4 Places identified in a local heritage study, provided the significance of the place can be shown to justify the application of the overlay.
- 6.15 The Practice Note continues by outlining the requirements for including places in the Heritage Overlay, noting that:
 - 6.15.1 *"The heritage process leading to the identification of the place needs to clearly justify the significance of the place as a basis for its inclusion in the Heritage Overlay" and that, "the documentation for each place should include a statement of significance that clearly establishes the importance of the place".*
- 6.16 The heritage citations prepared for the properties affected by the amendment comply with Practice Note requirements for writing statements of significance.

7 SUBMISSIONS

- 7.1 In response to the statutory exhibition of the amendment, a total of three submissions have been received, including:
 - 7.1.1 Two opposing submissions, which were referred to this panel for consideration.
 - 7.1.2 One supporting submission, which was to a property included in Amendment C353boro Part 1 and not referred to this panel for consideration.
- 7.2 A list of the submitters and corresponding submission number has been provided to the Panel.
- 7.3 The matters raised in the submissions include:
 - 7.3.1 Submission 2 raised a number of concerns including the merit of the heritage assessment of 26 Goldthorns Ave, Kew due to past modifications and the need to undertake repairs and modify the property in the future.
 - 7.3.2 Submission 3 questioned the identification of 97 Argyle Road, Kew as having heritage significance as it was not identified for heritage protection in the Kew Urban Conservation Study prepared in 1988.
- 7.4 Council will address the individual points raised in each submission in its Part B submission to the Panel.

Changes made in response to submissions

- 7.5 At the UPSC meeting of 8 November 2021, Council resolved to split Amendment C353boro into two parts and to submit Part 2 to a planning panel for consideration. No further changes were made to citations or to the amendment in response to the submissions received.

8 CHANGES TO CITATION AS CIRCULATED ON 14 JANUARY 2022

- 8.1 On 14 January 2022, Council officers circulated a revised version of the exhibited citation for 96 Argyle Road, Kew.
- 8.2 This version of the citation had been prepared in November 2020 and included additional information regarding the architect of the property.
- 8.3 Council had intended to exhibit this version of the citation, but had accidentally used an earlier version of the citation in the authorisation and exhibition of the amendment.
- 8.4 The explanation and justification for the changes introduced through this revision will be covered in the evidence of Ms Schmeder.

END OF PART A