

3.2 Community Heritage Nomination Process - Adoption

Executive Summary

Purpose

This report presents a revised community heritage nomination process following consideration by the Urban Planning Delegated Committee on 16 May 2022 and the community feedback received during that meeting. A resolution is sought from the Urban Planning Delegated Committee to adopt the process as shown in Attachment 1.

Background

In recent years, Council's Strategic Planning Team has received an increasing number of requests from community members and groups to assess and protect properties through inclusion in Heritage Overlays. Many of these requests relate to properties already assessed through the Municipal Wide Heritage Gap Study or tested through an independent Planning Panel process. Often, nominations are triggered by a planning permit application or a property being for sale.

As there is no formally adopted process for community nominations, requests to assess or reassess properties have been responded to individually in an "ad hoc" manner. Assessing and processing these nominations individually is a resource intensive approach and has limited the Strategic Planning Team's ability to deliver other important strategic planning projects. A core purpose of the Municipal Wide Heritage Gap Study was to take a strategic and robust approach to introduction of Heritage Overlays and reduce the need for inefficient assessments of individual properties.

The need for a formal nomination process is further based on advice received from the Department of Environment, Land, Water and Planning (DELWP). Concerns raised by DELWP include the lack of strategic approach to the nominations, identification of places outside a formal nomination process, lack of transparency and the perception that Council may be 'shopping for advice' from different heritage consultants. These issues mean that Council is less likely to be granted authorisation to prepare an amendment for permanent controls or receive approval for interim heritage protection where there is not a transparent and formal nomination process.

Key Issues

At its meeting on 16 May 2022, the Urban Planning Delegated Committee considered a report recommending the adoption of a process for receiving, assessing eligibility for accepting and progressing community nominations to protect places of potential heritage significance.

Several speakers at the meeting opposed the process with a particular focus on the following aspects:

- Limiting the reconsideration of new evidence where a place was previously assessed to Criterion H (associative significance).
- Community consultation on the proposed community heritage nomination process

The UPDC resolved to defer adoption of the proposed process so that the process could be reconsidered before bringing a report back to the UPDC. The UPDC identified six aspects of the process for reconsideration:

- Including a timeframe for re-consideration of properties.
- Including eligibility criteria beyond Criterion H.
- Allowing any exceptional circumstances to be considered by the Director Urban Living.
- Receiving community feedback on the Community Heritage Nomination Process after the trial period.
- Review the extent of information required as part of a Community Heritage Nomination.
- Seeking clarity on how/when affected property owners are notified.

Officers have reviewed the originally proposed process based on the feedback received. The following changes are now proposed:

1. Allow reconsideration of a place previously assessed and not found to warrant inclusion in the Heritage Overlay after a period of 10 years (not automatically, only if a new nomination is lodged). This does not preclude the consideration of a place within the 10 year period if it meets the other eligibility criteria.
2. Accept a nomination where new information relating to Criteria A, B, C, F, G and H for a place previously assessed and not found to warrant inclusion in the Heritage Overlay (exclude Criteria D and E related to architectural merit).
3. Notify property owners when a nomination has been accepted and the property has been added to the future investigation list (rather than waiting until a heritage consultant is engaged to carry out the assessment).
4. Monitor places included on the future investigation list for any S29A demolition Report and Consent Applications or planning permit applications implying demolition and prioritise a heritage assessment to determine whether an interim HO request needs to be lodged.

The revised process still includes an initial assessment to determine whether the following key eligibility criteria have been met:

- The place was not previously assessed; or
- The place was last assessed 10 or more years ago; or
- The place was not previously rejected for heritage protection by Council, Panel and/or Minister for Planning; or
- New information/documentary evidence is submitted (not Criteria D or E).

Nominations lodged without supporting documentation or evidence will not be considered eligible for further investigation.

Where a nomination is accepted they will be progressed depending on whether the place is under threat of demolition (i.e. a Section 29A demolition application or planning permit application implying demolition lodged). Properties under threat will be assessed as a matter of priority and interim Heritage Overlays requested from the Minister for Planning as required. Properties not under threat will be added to a list of future investigation sites and will be assessed collectively once a year. Places on the future investigation list will also be monitored for Section 29A or planning permit applications.

Based on a cost analysis it is estimated that the current ad-hoc approach to processing community heritage nominations is between \$475,900 and \$524,600 per year. In contrast, the annual cost of the proposed process ranges from \$128,200 to \$274,000. This presents annual savings of potentially \$201k to \$396k which represents a significant financial benefit to Council and will enable the Strategic Planning Team to pursue other important projects on the work program.

A cost-comparison between the current ad-hoc approach to community nominations and a clear, coordinated nomination process has shown that the proposed process could result in annual savings of \$201k to \$396k. These savings estimates are based on the consideration of fees for heritage consultants, panel representation, amendment fees, panel costs and staff resourcing.

Next Steps

If adopted, the Strategic Planning Team will commence the procurement process to engage a panel of heritage consultants to undertake assessments of nominated properties.

Following a 12-month period after process inception, a review of the process will be carried out to evaluate its efficacy considering the following issues:

- success in introducing heritage controls;
- cost of heritage consultants and Council resources involved in assessments;
- Impact on other strategic work;
- feedback from nominators; and
- feedback from property owners impacted by the nomination process.

Officers' recommendation

That the Urban Planning Delegated Committee resolve to:

1. Adopt the Community Heritage Nomination Process shown at Attachment 1 including the nomination eligibility criteria.
2. Commence the procurement process for a panel of heritage experts.
3. Undertake an evaluation and review of the nomination process 12 months after its implementation.

Responsible director: Scott Walker, Director Urban Living

1. Purpose

The purpose of this report is to present a revised community heritage nomination process following consideration by the Urban Planning Delegated Committee on 16 May 2022 and the community feedback received during that meeting. A resolution is sought from the Urban Planning Delegated Committee to adopt the process as shown in Attachment 1.

2. Policy implications and relevance to community plan and council plan

Boroondara Community Plan 2021 – 2031

The Boroondara Community Plan 2021-31 sets out the 10-year vision for Boroondara's future based on values, aspirations, and priorities important to the community.

Adoption of a community heritage nomination process would assist in implementing Strategic Theme 4 of the Plan: Protect the heritage and respect the character of Boroondara, while facilitating appropriate, well-designed development.

Specifically, such a process would implement the following strategies:

- **Strategy 4.1** - Boroondara's heritage places are protected through ongoing implementation of heritage protection controls in the Boroondara Planning Scheme.
- **Strategy 4.6** - Engage with owners and developers to achieve a balance between development and protection of neighbourhood character, heritage and amenity.

Planning and Environment Act 1987

Establishing a formal Community Heritage Nomination Process will be consistent with the objectives of planning in Victoria, in particular the following objectives set out in Section 4(1) of the *Planning and Environment Act 1987* (the Act), being:

- (a) to provide for the fair, orderly, economic and sustainable use, and development of land;
- (d) 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.

Plan Melbourne 2017-2050

The identification, assessment and protection of places of local heritage significance are supported by Outcome 4 of Plan Melbourne which seeks to ensure '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.

Specifically, 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'.

Establishing a formal Community Heritage Nomination Process would ensure a transparent process for the identification of places of potential heritage significance consistent with Plan Melbourne policy directions.

Heritage Action Plan 2016

Adopted on 2 May 2016 the Heritage Action Plan (HAP) 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.

Establishing a formal Community Heritage Nomination Process would be consistent with the following aim of the Heritage Action Plan 2016:

- Ensure the identification, protection and management of the City's heritage assets re-enforces the identity of the City and community and reflects the municipality's history and pattern of development.

A review of the HAP is scheduled for the 2022/23 financial year. Adoption and implementation of a Community Heritage Nomination Process will not prejudice Council's ability to adopt a new overarching Heritage Strategy or Action Plan.

3. Background

Council's past approach to heritage assessments

Before commencing the Municipal Wide Heritage Gap Study in mid 2016, Council managed the assessment and protection of possible heritage places through its S29A Decision Making process (first adopted in 2012). The basis for this process was the Possible Heritage Layer which at the time included 21,000 properties identified either by previous heritage studies (never implemented) or nominated by community members or other stakeholders.

This caused significant resource demands due to the large number of properties in the Possible Heritage Layer remaining unassessed. Further, officers also noted the low success rate obtaining interim heritage protection from the Minister for Planning for places under threat. This low success rate was due to a lack of a current heritage study or planning scheme amendment to protect properties on a permanent basis.

The reactive nature of the process also meant resources had to be diverted from other projects on short notice resulting in delays in other project deliverables. Project and resource planning was significantly impacted by the demands placed on staff.

Municipal Wide Heritage Gap Study

To respond to these pressures, Council resolved in May 2016 to undertake the Municipal Wide Heritage Gap Study (MWHGS) to assess all areas not included in the Heritage Overlay (except Balwyn, Balwyn North, Deepdene and Surrey Hills). This comprehensive study was to provide a more efficient, coordinated and proactive approach to heritage protection.

Now almost completed (the Glen Iris Study is the last study awaiting final approval from the Minister for Planning), more than 5,000 properties will have been added to the Heritage Overlay. Together with the ~10,000 properties already protected prior to the study, only the Cities of Yarra and Port Phillip have more properties included in Heritage Overlays.

In addition to the MWHGS, Strategic Planning continues to progress the peer review of the draft Balwyn, Balwyn North and Deepdene heritage study (2015).

Community requests for increased heritage protection

Over the past two years, Council has received increasing numbers of requests from community members and community groups to protect properties through the Heritage Overlay. Many of these requests relate to properties or areas already assessed through the MWHGS or tested through an amendment process. Often, nominations are lodged in response to a planning permit application of a property being for sale.

The following nominations have been received and considered by Strategic Planning (amongst others):

- 14 Sevenoaks Street, Balwyn North (previously rejected by an independent Panel and Council)
- 49 Mangarra Road, Canterbury (previously rejected by an independent Panel and Council)
- 1 Cooalongatta Road, Camberwell
- 57 & 60 Berkeley Street, Hawthorn
- 1207 Burke Road, Kew
- Harcourt Street, Hawthorn
- Wattle Road, Hawthorn
- Roseberry Street, Hawthorn
- Balwyn Interwar Heritage

This increasing number of community nominations and the ad-hoc response to those nominations in the absence of a formal nominations process effectively presents a return to the inefficient way of managing possible heritage places used before the MWHGS.

DELWP advice

The need for a formal nomination process is further based on advice received from officers from the Department of Environment, Land, Water and Planning. DELWP Officers have advised that requests for properties to be included in an interim Heritage Overlay or authorisation for permanent Heritage Overlays are unlikely to be supported where those properties were not identified in a strategic way (i.e. either as part of a heritage study or otherwise clearly identified on Council's work program) based on the following concerns:

- The perception that Council is 'shopping for advice'. Where properties were previously considered as part of a study and not recommended for protection but are later recommended by a different heritage expert.
- The potential lack of transparency and procedural fairness. Under the current process property owners may not be aware of a nomination and may make investment decisions without that information.

Given the above DELWP advice, introduction of a clear nomination process is essential to ensure effective and efficient use of Council resources and not pursuing amendments with little chance of receiving support from DELWP.

The eligibility criteria proposed below will ensure that only nominations for places with the greatest chances of success will be accepted.

4. Outline of key issues/options

UPDC Meeting 16 May 2022

At its meeting on 16 May 2022, the Urban Planning Delegated Committee considered a report recommending the adoption of a process for receiving, assessing and progressing community nominations to protect places of potential heritage significance.

Several speakers at the meeting opposed the process with a particular focus on the following aspects:

- Limiting the reconsideration of new evidence where a place was previously assessed to Criterion H (associative significance).
- Community consultation on the proposed community heritage nomination process

In response to the concerns expressed by residents, the UPDC resolved to defer adoption of the proposed nomination process. Instead, the UPDC asked officers to reconsider the process before bringing a report back to the UPDC for consideration. The UPDC identified six aspects of the process for reconsideration:

- Including a timeframe for re-consideration of properties.
- Including eligibility criteria beyond Criterion H.
- Allowing any exceptional circumstances to be considered by the Director Urban Living.
- Receiving community feedback on the Community Heritage Nomination Process after the trial period.

- Review the extent of information required as part of a Community Heritage Nomination.
- Seeking clarity on how/when affected property owners are notified.

These are discussed in detail below.

The proposed nomination process

The proposed revised Community Heritage Nomination Process (**Attachment 1**) will provide a more efficient, consistent and transparent approach to the assessment of heritage nominations. It will focus Council resources on those properties and precincts most likely to be successfully added to the Heritage Overlay. This process will also increase the likelihood of State support and recognises the range of stakeholders potentially impacted (refer to discussion further below).

Eligibility criteria

Nominations will need to be lodged using an online nomination form and nominators will be required to provide certain information to support the nomination.

Strategic Planning Officers (with advice from Council's heritage consultant as required) will initially review each nomination received to determine whether the following eligibility criteria have been met:

- The place was not previously assessed; or
- The place was last assessed 10 or more years ago; or
- The place was not previously rejected for heritage protection by Council, Panel and/or Minister for Planning; or
- New information/documentary evidence is submitted (not Criteria D or E).

Nominations lodged without supporting documentation or evidence will not be accepted.

If a nomination is not accepted, officers will notify the nominator in writing of their decision.

Nominations accepted will then be assessed through two main streams:

1. Places 'under threat' of demolition:

Where a nominated property is subject to an application for demolition under S29A of the *Building Act 1993* or a planning permit application implying demolition, officers will:

- Instruct Council's heritage consultant to undertake a priority assessment (within 15 business days from the date of the S29A lodgement) to determine whether the property warrants inclusion in a Heritage Overlay.
- Lodge a request under Section 20(4) of the Planning and Environment Act 1987 to include the property in an interim Heritage Overlay.

- Prepare a UPDC report to commence the formal amendment process for a permanent Heritage Overlay without undertaking preliminary consultation. This will increase the chances of success for the interim Heritage Overlay request.

2. Places not 'under threat' of demolition:

Where a property is not under threat of demolition, officers will:

- Add the property to a list of possible heritage places for future investigation; and
- Notify the affected property owner that their property has been identified as a possible heritage property and will be part of a future investigation into its heritage significance; and
- Notify the nominator the nomination has been accepted for further investigation; and
- Monitor for any Section 29A demolition applications or planning permit applications and lodge interim Heritage Overlay requests as required.

Once a year, properties on the future investigation list will be assessed collectively as part of a strategic and resource efficient approach. For those places identified as warranting inclusion in the Heritage Overlay, a single planning scheme amendment process will be carried out (including preliminary consultation) to apply the Heritage Overlay permanently (subject to UPDC resolution).

Changes to process

The process set out above incorporates several changes in response to the feedback received at the UPDC meeting on 16 May 2022.

Below is a discussion of the six aspects identified in the UPDC resolution.

Including a timeframe for re-consideration of properties

Discussion of issue

At the UPDC meeting in May, one community member suggested a 5-year review period for places previously rejected irrespective of the need to provide new documentary evidence or information. The 5-year period was based on the provision of the Heritage Act 2017 which does not allow nominations of places for the Victorian Heritage Register where the Executive Director, Heritage Council or Minister for Planning have in the preceding 5 years rejected a nomination.

While the provisions of the Heritage Act are noted, a 5-year period from the date of determination is considered too short for reconsideration. Instead, 10 years from the date of the original assessment is considered the most appropriate and realistic timeframe to reconsider a place previously not considered to have met the threshold for inclusion in the Heritage Overlay.

This period provides sufficient time for greater appreciation and acknowledgement particularly where places previously might have been considered borderline. Appreciation of heritage does not change that quickly. As shown by the opposition to the Glen Iris Heritage Gap Study the appreciation for interwar housing for example is still not as broad as it is for Victorian, Federation or Edwardian houses. Similarly, the appreciation for mid-century and post war architecture is not common within the community (except for outstanding architectural examples by famous architects).

A review period of 5 years from the initial assessment (as suggested by a community member at the UPDC meeting in May) is considered too short given the time it takes from the preparation of a heritage study/assessment to implementation through a Heritage Overlay (2 to 3 years).

It is also important to note that where new information is provided (refer to next section), re-assessment can be considered before the 10 years. The inclusion of a specified timeframe for when a place can be reconsidered would be to address changing attitudes and a re-evaluation of a place's heritage value with the passage of time. Re-assessment of a place after 10 years can consider any of the HERCON Criteria without limitation.

Inclusion of a review period does not mean a place is automatically re-assessed after 10 years. Instead, nominations can be accepted after the expiry of the 10-year exclusion period and re-assessment will only occur as part of the annual group assessment or if Council initiates a heritage study.

Change recommended to process

Allow reconsideration of a place previously assessed and not found to warrant inclusion in the Heritage Overlay after a period of 10 years subject to a new nomination being lodged.

Including eligibility criteria beyond Criterion H.

Discussion of issue

The limitation of considering new documentary evidence to only Criterion H (associative significance) was the primary concern expressed by many speakers at the UPDC meeting in May.

Upon further consideration it is acknowledged that limiting new documentary evidence to Criterion H only may be too restrictive. It is therefore proposed to allow reconsideration of a place where new information has been provided with regards to all criteria except Criteria D (representativeness) and E (architecture) which should be explicitly excluded.

The architectural merit of a property is the first test applied by heritage consultants in identifying properties for further investigation and detailed assessment as part of the early-stage field work. The architecture and visual presentation of a place is an immediate indicator whether a property warrants a closer look. Therefore, it is not considered that places rejected based on their lack of architectural merit warrant reconsideration. In most instances re-assessing places for their architectural merit could be perceived as shopping for advice until a heritage consultant can be found to support a particular outcome (i.e. recommendation to include in a Heritage Overlay).

In contrast, Criteria A, B, C, F, G and H relate to matters that are less tangible and not necessarily linked to a building's design or architecture. They are therefore not immediately identifiable during fieldwork and may only be identified following research into a place's history (or relying on the knowledge of the local community). The relevance of the information or documentary evidence would need to be substantial and not superficial. Where required, officers would seek advice from Council's heritage consultant whether the new information or evidence has the potential to alter the original recommendation to not include the property in the Heritage Overlay.

It is important to note that reconsideration of a place previously rejected for inclusion in the Heritage Overlay based on new information relating to Criteria A, B, C, F, G and H can occur irrespective of the 10-year time frame proposed above. Reconsideration of a place after a 10-year period will be open to all HERCON Criteria without limitation.

Change recommended to process

Change the eligibility criteria to allow consideration of nominations where new information relating to Criteria A, B, C, F, G and H is provided that previously was not available to the heritage consultant and where the information has the potential to change the original recommendation to not include the property in the Heritage Overlay.

Allowing any exceptional circumstances to be considered by the Director Urban Living

Discussion of issue

Inclusion of a specific provision for special consideration is considered highly problematic as it would be difficult to define an 'exceptional circumstance'. Lack of clarity and transparency could encourage residents to seek a review of every nomination that does not meet the eligibility criteria and is therefore not accepted.

Without clarity around 'exceptional circumstances' and a clear decision-making framework for the Director Urban Living (a separate assessment process), the nomination process would not provide the required clarity and transparency.

It is also considered that the changes proposed to the community heritage nomination process would capture many of the scenarios that would be put forward under an 'exceptional circumstances' criteria.

Change recommended to process

No change proposed to the nomination process.

Receiving community feedback on the Community Heritage Nomination Process after the trial period

Discussion of issue

The draft process considered by the UPDC on 16 May 2022 already included community consultation (including with affected owners and nominators) on the process following a 12-month trial period.

Community concerns expressed at the UPDC meeting on 16 May regarding the nomination process centered primarily on the eligibility criteria. Broadening the eligibility criteria beyond Criteria H and the other proposed process changes address many of the community concerns.

Change recommended to process

No change proposed to the nomination process.

Review the extent of information required as part of a Community Heritage Nomination

Discussion of issue

The provision of documentary evidence or information to support a nomination is critical and it would not be appropriate to accept nominations without such information being provided. Given the potential implications on property owners, nominators need to be responsible for a complete and appropriate nomination. Without placing an obligation on nominators to provide some evidence, residents may nominate properties vexatiously or frivolously.

However, this does not mean nominators need to engage a heritage consultant to prepare a preliminary or detailed heritage assessment for a nomination to be accepted. Requiring a report from a heritage consultant may be excessive and require substantial costs being borne by the nominator. The process considered by the UPDC on 16 May 2022 did not include a requirement for a heritage consultant's report.

While a report from a heritage consultant supporting a nomination would be very helpful in determining whether a site is worthy of further investigation, requiring such a report would most likely deter nominations. Where a nominator is willing and able to provide a report from a heritage consultant this will of course be encouraged but it should not be a determining factor in deciding whether a nomination is accepted or not.

The online nomination form will be drafted to clarify that while a preliminary assessment by a heritage consultant supporting the nomination will be helpful and is encouraged, it is not a requirement for accepting the nomination.

Change recommended to process

No change proposed to the nomination process.

Seeking clarity on how and when affected property owners are notified

Discussion of issue

To ensure the greatest level of transparency for property owners of properties nominated (and accepted for investigation), it is proposed to notify the owners at the time of the nomination being accepted and the property being added to the future investigation list.

Notifying owners when a nomination is accepted will help in avoiding a situation where a property is sold and the new owners find out after settlement or the owners invest significant money into a potential renovation or new building design (that cannot progress due to heritage concerns).

This will also provide transparency while also allowing Council to act quickly should an application for demolition be lodged to seek interim heritage protection. However, it should also be noted that notifying property owners their property has been added to a future investigation list does not immediately provide clarity to the owners. Depending on timing, it may take months for Council to engage a consultant to carry out an assessment. In that period the owner will be aware the property might be of heritage significance and recommended for protection. Uncertainty about the outcome of an assessment would remain until the assessment is undertaken. In some instances, this may result in significant uncertainty for the owners for an extended period - sometimes for no reason if the assessment ultimately determines the place is not worthy of heritage protection.

Officers have also sought legal advice to clarify whether a property owner selling a property identified for future heritage assessment is required to provide this information to prospective buyers.

The advice is that Council notifying a property owner that their property has been identified for a future heritage review does not qualify as a “*notice, order, declaration, report or recommendation of a public authority directly and currently affecting the land*” specified by section 32D(a) of the *Sale of Land Act 1963*. That means this information may not necessarily need to be provided as part of the required Section 32 documentation.

However, Section 12 of the *Sale of Land Act 1963* includes the possibility of fines and imprisonment, if an owner knowingly conceals ‘material facts’ about a property with the intention of inducing a person to buy the property. While the Act does not define ‘material facts’, Consumer Affairs Victoria has published guidelines for practitioners as to what it regards as a material fact. Council’s legal representatives are of the view that a letter from Council advising the owner of a future investigation of the heritage significance of a house is probably a material fact pursuant to Section 12 as its contents could influence a purchaser in deciding whether to buy the property or to buy the property only at a certain price.

Change recommended to process

1. Notify property owners when a nomination has been accepted and the property has been added to the future investigation list (rather than waiting until a heritage consultant is engaged to carry out the assessment).
2. Monitor places included on the future investigation list for S29A demolition applications or planning permit applications implying demolition and prioritise a heritage assessment to determine whether an interim HO request needs to be lodged.

Regrading of properties in existing Heritage Overlay precincts

An increasing number of requests have been received to re-assess the grading of properties already included in the Heritage Overlay (7 Sefton Place, Camberwell, 570 Riversdale Road, Camberwell and 61 Prospect Hill Road, Camberwell). In most instances, these requests relate to non-contributory properties that are sought to be re-graded to contributory to provide greater protection from demolition.

Officers note that the proposed nomination process would not apply to the consideration of re-grading properties already included in the Heritage Overlay as part of a precinct.

Regrading of properties in existing heritage precincts would require a planning scheme amendment and would require the re-assessment of the entire precinct. This is particularly problematic in the case of precincts introduced prior to the early 2000s as heritage citations (and statements of significance) do not comply with current standards and statutory requirements. Drafting new precinct citations and statements of significance (which now must be incorporated into the Boroondara Planning Scheme) will open the entire precinct up to challenge by interested parties.

5. Consultation/communication

The proposed revised Community Heritage Nomination Process was discussed on several occasions with Council's Heritage Advisory Committee. Feedback from the Councillors on the Committee has been considered by officers in finalising this report and the revised draft process.

No further consultation on the revised nomination process is proposed given it is a process rather than a policy and community comment was provided at the UPDC Meeting on 16 May 2022.

As noted below, evaluation and review of the nomination process will be carried out after the first 12 months that will involve seeking feedback from owners of nominated properties and those that have lodged nominations.

6. Financial and resource implications

Implementation of the process is expected to attract additional financial costs associated with the engagement of a panel of heritage consultants to undertake heritage assessments (see below).

Implementation of the Community Heritage Nomination Process will be resourced through the Strategic and Statutory Planning Department's

Operating Budget for the 2022/23 financial year. Further budget allocations will be required for subsequent years (either through the priority budget or recurring budget).

Cost analysis

Based on recent heritage assessments, an assessment which results in the preparation of a heritage citation for an individually significant place could cost approximately \$4,000-\$6,000. An assessment which results in a heritage citation for a precinct could cost approximately \$10,000-\$15,000 (depending on the size of the precinct).

Additionally, planning scheme amendment fees will be incurred for applications to the Minister for Planning for interim heritage protection of properties (\$4,100 per application) and for the progression of amendments for permanent controls.

A cost-comparison between continuing the current approach to community nominations (ad-hoc on an individual basis) and a clear, coordinated nomination process has shown that the proposed process could result in annual savings (or avoidance of cost) of \$201k to \$396k, which can enable the Strategic Planning Team to pursue other important projects on the work program. These savings estimates are based on the consideration of fees for heritage consultants, panel representation, amendment fees, panel costs and staff resourcing.

These savings are achieved through efficiencies by only accepting nominations based on merits and grouping all accepted nominations into one amendment. Specifically, the benefits include:

- Significantly reduced staff resourcing requirements (allowing officers to progress other important strategic planning projects)
- less duplication of administration processes
- reduced expenditure on heritage consultants and legal representation due to fewer amendment processes and panel hearings
- Reduced panel and amendment fees
- Reduced costs associated with heritage assessments as only those nominations with the greatest chance of success are progressed.

Heritage expert panel procurement

Council will need to engage a panel of heritage consultant prior to implementing the nomination process. Without a panel of heritag consultants, Council would not be able to effectively resource the assessment of nominated places. Establishing a panel of heritage experts will allow more efficient procurement of expert advice as required rather than having to undergo a full procurement process each time a heritage assessment is required.

The scope of services would be to review heritage nominations for places under threat of demolition, provide a heritage assessment identifying places for protection in the Heritage Overlay against the heritage criteria specified in PPN1, or providing advice why a place does not meet the threshold. Additionally, the consultant will be required to review and respond to submissions received during any consultation process Council undertakes and will be required to prepare and give evidence at any associated planning panel hearing process.

Opportunity costs

Further to the above, the current 'ad hoc' process for considering community heritage nominations is resource intensive and results in an 'opportunity cost' to Council because insufficient team capacity remains to pursue other important planning projects. Implementing the proposed community heritage nomination process is therefore anticipated to enable the available resources to be allocated to pursue strategic planning projects in future which are included within the proposed Strategic Planning work program. Staff resourcing needs required to administer a nomination process can be considered as part of the 12-month evaluation and review process.

7. Governance issues

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

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*.

8. Social and environmental issues

The implementation of the Community Heritage Nomination Process will have positive social and environmental effects by contributing to the continual protection and management of the City's heritage.

9. Evaluation and review

Given the implications on financial and officer resources in implementing the process, officers recommend an evaluation and review of the process 12 months after its implementation to assess the rate of success of the nomination process. Factors to be considered in the evaluation could include:

- success in introducing heritage controls;
- cost of heritage consultants and impact on Council resources involved in assessments;
- Impact on other strategic work;
- Staff resource requirements;
- feedback from property owners materially impacted by the nomination process; and
- feedback from the nominator

Manager: David Cowan, Manager Strategic and Statutory Planning

Report officer: Christian Wilmsen, Coordinator Strategic Planning

	OPTION 1 DRAFT PROCESS CONSIDERED BY UPDC	OPTION 2	OPTION 3	OPTION 4	COMMENTS
1.	<p>Including a timeframe for re-consideration of properties.</p> <p>This relates to properties that were previously assessed and found to not warrant inclusion in the Heritage Overlay. The timeframe refers to when the previous assessment or decision was concluded. This does not preclude the consideration of a place within the timeframe if it meets the other eligibility criteria.</p>				
	<p>Reconsideration of a place previously rejected for heritage protection is only possible where other eligibility criteria are met (such as new information submitted). There is no opportunity to reconsider a place after a set period of time.</p>	<p>Allow re-consideration after 5 years.</p>	<p>Allow reconsideration after 10 years</p>	<p>Allow reconsideration after 15+ years</p>	<p>Proposed Option - Option 3</p> <p>10 years seems the most realistic timeframe to reconsider a place that previously was not considered to meet the threshold for inclusion in the Heritage Overlay.</p> <p>It provides sufficient time for greater appreciation and acknowledgement particularly where places previously might have been considered borderline. Appreciation of heritage does not change that quickly. As shown by the opposition to the Glen Iris Heritage Gap Study the appreciation for interwar housing for example) is still not as broad as it is for Victorian, Federation or Edwardian houses. Similarly, the appreciation for mid-century and post war architecture is not common within the community (except for outstanding architectural examples by famous architects).</p> <p>A review period of 5 years is considered too short while 15+ years seems to be too long</p>

					<p>and could be seen as a disincentive to the reconsideration.</p> <p>Given the time it takes from the preparation of a heritage study/assessment to implementation through a Heritage Overlay (2 to 3 years), a 5-year reconsideration timeframe also seems too short.</p> <p>It is also noted that where new information is provided, re-assessment can be considered before the 10 years. The inclusion of a specified timeframe for when a place can be reconsidered would be to address changing attitudes and a re-evaluation of a place's heritage value with the passage of time. Re-assessment of a place after 10 years can consider any of the HERCON Criteria without limitation.</p> <p>Inclusion of a review period does not mean a place is automatically re-assessed after ten years but only where a new nomination is lodged or as part of a heritage study initiated by Council.</p>
2. Including eligibility criteria beyond Criterion H.					
	<p>Allow reconsideration of a place previously assessed and not recommended for heritage protection only where new information or documentary evidence</p>	<p>Allow reconsideration of a place previously assessed and not recommended for heritage protection only where new information or documentary evidence</p>	<p>Allow reconsideration of a place previously assessed and not recommended for heritage protection only where new information or</p>		<p>Proposed option - Option 3</p> <p>Restricting the consideration of new information only with regards to Criterion H (associative significance) may be considered too limiting. Community opposition to this aspect of the process was significant.</p>

<p>relating to HERCON Criterion H (associative significance) is provided.</p>	<p>relating to all HERCON Criteria.</p>	<p>documentary evidence relating to HERCON Criteria A, B, C, F, G and H (excluding criteria related to the architectural value of the place - Criteria D and E).</p>		<p>It is therefore proposed to allow reconsideration of a place where new information has been provided with regards to all criteria <u>except</u> Criteria D (representativeness) and E (architecture) which should be explicitly excluded.</p> <p>The architectural merit of a property is the first test applied in identifying properties for further investigation and detailed assessment as part of the initial field work. The architecture and visual presentation of a place is an immediate indicator whether a property warrants a closer look. Therefore, it is not considered that most places discarded due to their lack of architectural interest warrant reconsideration. In most instances re-assessing places for their architectural merit could be perceived as shopping for advice until a heritage consultant can be found to support a particular outcome (i.e. recommendation to include in a Heritage Overlay). There could be endless renominations under these criteria.</p> <p>Criteria A, B, C, F, G and H relate to matters that are not immediately recognisable during fieldwork and may only be identified following research into a place's history (or relying on the knowledge of the local community). Such information, however, would need to be substantial and should not be superficial in nature.</p>
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					<p>It is important to note that reconsideration of a place previously rejected based on new information relating to Criteria A, B, C, F, G and H can occur irrespective of the 10-year time frame proposed above. Reconsideration of a place after a 10-year period will be open to all HERCON Criteria without limitation.</p>
<p>3. Allowing any exceptional circumstances to be considered by the Director Urban Living.</p>					
<p>No specific provision made for DUL to allow nominations that do not meet the eligibility criteria.</p>	<p>Allow nominators to write to the DUL to seek special consideration in 'exceptional circumstances' where a nomination has been rejected.</p>	<p>At the discretion of the Director Urban Living prepare a report for consideration by the UPDC seeking a formal decision to accept a nomination that does not meet the eligibility criteria in 'exceptional circumstances' only.</p>			<p>Proposed option - Option 1</p> <p>Inclusion of a specific provision for special consideration is considered highly problematic. Most importantly, it would be difficult to define an 'exceptional circumstance' to provide sufficient clarity and transparency. It would also require a clear decision-making framework.</p> <p>Without clarity around 'exceptional circumstances', the inclusion of such a provision may encourage residents to seek a review of every nomination not accepted.</p> <p>No change proposed to the process.</p>
<p>4. Receiving community feedback on the Community Heritage Nomination Process after the trial period.</p>					
<p>Consultation with affected property owners and nominators is already built into the evaluation and</p>					<p>Proposed option - Option 1</p> <p>The draft process considered by the UPDC on 16 May already included a proposed community consultation (including with</p>

<p>review process after a 12-month trial period.</p>				<p>affected owners and nominators) on the process following a 12-month trial period.</p> <p>It is considered that community concerns expressed at the UPDC meeting on 16 May regarding the nomination process centred primarily on the eligibility criteria. Broadening the eligibility criteria beyond Criteria H only will address many of the community concerns.</p> <p>Officers maintain their position that this is a process rather than a policy that does not require community consultation.</p> <p>No change proposed to the process.</p>
<p>5. Review the extent of information required as part of a Community Heritage Nomination.</p>				
<p>Nominators are required to provide supporting information or documentary evidence to substantiate the nomination and which heritage criteria are considered to have been met</p>	<p>Require nominators to provide a report or heritage assessment from a heritage consultant.</p>	<p>Encourage a report or assessment from a heritage consultant to support a nomination.</p>	<p>No information required.</p>	<p>Proposed option - Option 1</p> <p>The provision of documentary evidence or information to support a nomination is critical. Given the potential implications on property owners, nominators need to be held to account for their nomination. Without placing an obligation on nominators to provide some evidence, residents might be encouraged to nominate properties vexatiously or frivolously.</p> <p>This does not mean nominators need to engage a heritage consultant to support a nomination. Requiring a report from a heritage consultant may be excessive and require substantial costs being borne by the nominator. The process considered by the</p>

					<p>UPDC on 16 May did not include a requirement for a heritage consultant's report.</p> <p>While a report from a heritage consultant supporting a nomination would be very helpful in determining whether a site is worthy of further investigation, it could be seen as a way to deter nominations. Where a nominator is willing and able to provide a report from a heritage consultant this will of course be encouraged but it should not be a determining factor in deciding whether a nomination is accepted or not.</p> <p>The online nomination form will be drafted to clarify that while a preliminary assessment by a heritage consultant supporting the nomination will be helpful and is encouraged, it is not a requirement for accepting the nomination.</p> <p>No change proposed to the process.</p>
<p>6. Seeking clarity on how/when affected property owners are notified.</p>					
<p>Notify property owners when a heritage consultant has been engaged to carry out the assessment.</p> <p>Do not monitor for S29A or planning permit applications until a heritage</p>	<p>Notify property owners when a nomination has been accepted and the property added to the list of future investigation sites.</p>	<p>Notify property owner when a nomination has been accepted and the property added to the list of future investigation sites.</p> <p>Do not monitor for S29A or planning</p>	<p>Do not notify property owners when a nomination has been accepted and the property has been added to the list of future investigation sites.</p>	<p>Proposed option - Option 2</p> <p>To ensure the greatest level of transparency for property owners of properties nominated (and accepted for investigation), it is proposed to notify the owners at the time of the nomination being accepted and the property being added to the future investigation list.</p>	

<p>consultant has been engaged to carry out the detailed assessment to determine whether a place is worthy of inclusion in the Heritage Overlay.</p>	<p>Monitor for S29A and planning permit applications.</p> <p>If application is lodged undertake a priority assessment and seek interim HO protection as required.</p>	<p>permit applications until a heritage consultant has been engaged to carry out the detailed assessment to determine whether a place is worthy of inclusion in the Heritage Overlay.</p>	<p>Monitor for S29A and planning permit applications.</p> <p>If application is lodged undertake a priority assessment and seek interim HO protection as required.</p>	<p>Notifying owners when a nomination is accepted will help in avoiding a situation where a property is sold and the new owners find out after settlement or the owners invest significant money into a potential renovation or new building design (that cannot progress due to heritage concerns).</p> <p>Notifying the owners as soon as possible will provide transparency while also allowing Council to act quickly should an application for demolition be lodged to seek interim heritage protection.</p> <p>Option 2 is also the option with the greatest potential resource impact if property owners lodge (speculative) demolition applications that need to be responded to in a short amount of time and potentially resulting in single property planning scheme amendments (both interim and permanent Heritage Overlays).</p> <p>It should also be noted that notifying property owners their property has been added to a future investigation list does not immediately provide clarity to the owners. Depending on timing, it may take months for Council to engage a consultant to carry out an assessment. In that period the owner will be aware the property might be of heritage significance and recommended for protection. Uncertainty about the outcome of an assessment would remain until the assessment is undertaken. In</p>
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					some instances, this may result in significant stress for the owners for extended period - sometimes for no reason if the assessment determines the place is not worthy of heritage protection.
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COMMUNITY HERITAGE NOMINATION PROCESS

