

**SUBMISSIONS ON
BEHALF OF THE PLANNING AUTHORITY**

AMENDMENT C368BORO TO THE BOROONDARA PLANNING SCHEME

BOROONDARA CITY COUNCIL SUBMISSION: PART B

Introduction

1. This Part B submission is made with respect to Amendment C368boro to the Boroondara Planning Scheme and is in addition to and supplements Council's Part A submission to the extent that the Part A submission relates to Amendment C368boro.
2. The public holiday to commemorate the passing away of the Queen necessitated a 're-scheduling' of the Panel hearing and resulted in agreement between the parties and the Panel to separate (for the purposes of the Panel hearing) Amendment C367boro (relating to 57 and 60 Berkeley Street, Hawthorn) and Amendment C368boro (relating to 32 Corby Street, Balwyn North).
3. The Part B submission contains Council's commentary on the evidence already filed with respect to the property that is the subject of Amendment C368boro and outlines Council's final position with respect to the Amendment having regard to that evidence.
4. The Part B is filed prior to the submitters presenting their submission to the Panel, prior to their expert's evidence being presented and tested and prior to the Panel raising matters not previously raised by the Panel or other parties. The Council reserves the right to make further submissions (by way of reply) following the presentation of submissions, the testing of evidence and matters raised by the Panel.
5. Council has filed and served the expert heritage evidence of Mr Simon Reeves. Council relies on that evidence and the background matters set out in the evidence. That evidence supports Council's Amendment as it applies to 32 Corby Street, Balwyn North.
6. Further commentary and Council's final position, including commentary on Ms Katz and Ms Miller's evidence, now follows.

What the amendment does

7. The amendment seeks to apply Heritage Overlay HO940 to the land at 32 Corby Street, Balwyn North on a permanent basis.
8. Specifically, the proposed amendment seeks to:
 - Amend planning scheme map 4HO to apply HO940 to 32 Corby Street, Balwyn North on a permanent basis.
 - Amend the Schedule to Clause 43.01 (Heritage Overlay) to include 32 Corby Street, Balwyn North on a permanent basis.
 - Amend the Schedule to Clause 72.04 (Incorporated Documents) to include the Statement of Significance for 32 Corby Street, Balwyn North.
 - Amend the Schedule to Clause 72.08 (Background Documents) to include [Former] Withers House, 32 Corby Street, Balwyn North Heritage Assessment (Built Heritage, 14 July 2021).

Heritage significance

9. Withers House at 32 Corby Street, Balwyn North, designed and built by Alistair Knox, is identified to be of local representative and aesthetic significance to the City of Boroondara. The Statement of Significance justifies the application of an HO to the property as the place

is of local significance which is consistent with Planning Practice Note 01 (Applying the Heritage Overlay).

10. Council is satisfied that the Heritage Overlay is the appropriate planning mechanism to protect the identified heritage values of the property as the Heritage Overlay requires a planning permit to be granted for any demolition or any buildings and works that could affect the significance of a heritage place.

Mr Reeves' evidence

11. Mr Reeves' witness statement comprehensively sets out the manner in which he has examined the subject property and assessed its heritage significance. Ms Miller acknowledges this to be the case [see paragraph 20 of Ms Miller's statement]. Mr Reeves explains his approach to the comparative analysis given the features of the subject property in response to the submission made to Council that only five post-WW2 places were chosen and that the comparative analysis included properties that are not currently within a heritage overlay.

12. As to this aspect, Mr Reeves says:

In developing a comparative framework for significance at a local level, the first step is to compare the place with others of similar type, form and/or era already included on the HO Schedule. In this case, attention was drawn to the fact that the schedule included only five post-WW2 places in Balwyn and Balwyn North, all of which dated from an earlier period (from 1948 to 1955) and were demonstrative of the prevailing architectural styles of that earlier period. This observation was considered adequate to demonstrate that architect-designed 1960s houses in Balwyn and Balwyn North were unrepresented on the HO schedule, as was the subset of 1960s houses in the Mature Modern style. Having established this basis fact that there are no truly comparable buildings on the schedule, there is no value in attempting to demonstrate how the subject property meets the threshold set by other already on the schedule.

In any case, it is not always practicable, or appropriate, to assess a place against the thresholds set by places already on the HO Schedule, particularly when they were assessed in the distant past, prior to improved methodologies and standardisation of assessment criteria. It is relevant that four of the five post-WW2 houses cited in the first sub-section under heading 2.4.1 of my report were very early additions to the HO schedule, having been identified in Graeme Butler's original Camberwell Conservation Study (1991). Mr Butler's citations for these houses were relatively brief, with discussions of significance that cited no criteria, and comparisons in the form of a list of addresses of broadly contemporaneous comparators without further analysis of how they related to the subject building. While this approach was typical and wholly adequate for that time, it does not equate with the current industry standard, where a Statement of Significance has a distinct tripartite format that cites the HERCON Criteria, and comparative analyses are expected to be far more considered. As such, it is hardly a valid criticism that the subject property was not assessed using the methodologies and thresholds that were considered acceptable thirty years ago.

Council submits that this is an entirely justifiable and sustainable approach to a comparative analysis.

13. It is his opinion that the inclusion of 32 Corby Street, Balwyn North in the schedule to the Heritage Overlay is justified by the proposed citation and the place's importance to the City of Boroondara, as being of aesthetic and associative significance to the City of Boroondara.

The relevance of the two engineer reports

14. The submitter has filed two engineer reports as attachments to the heritage evidence. One report is by N2K (PVT) Ltd and attributes authorship to Mohammad Naeem. The second is by YG Consulting Engineers, with attribution of authorship to Yasin Guneyusu. Neither author is proposed to be called to give evidence and that has an obvious and significant impact on the weight that is to be given to the two reports, even without the qualifications and limitations that each report includes.

15. Council's Part A submission includes commentary, including Planning Panel commentary, on the relevance of structural integrity at the planning scheme amendment stage [see paragraphs 124-127]. In short, the structural integrity of the building is a matter of later "heritage management" and is rarely a consideration as to the heritage significance of a place or as to the inclusion of the place in a heritage overlay. Ms Miller acknowledges that to be the case [see paragraph 19 of Ms Miller's statement].
16. That is not to say that it is never relevant. It is clearly relevant at the statutory planning stage, where proposals for demolition or alteration are considered.
17. Council submits that no regard should be had to the engineer reports in the Panel's assessment of whether the subject property should or should not be accorded heritage overlay protection.
18. On the other hand, and as identified by Mr Reeves (and confirmed by Ms Miller and Ms Katz) of significance, is the intactness of the place. The property is virtually unaltered since the designer undertook further works in 1963-64. The property is an "uncommonly intact house" [see proposed citation].

Ms Miller's evidence

19. Ms Miller argues that the subject property does not meet the threshold of local significance for its aesthetic or associative values. She questions the merits of the comparative analysis undertaken by Mr Reeves (as detailed in the Built Heritage report and citation).
20. With respect to the Built Heritage's comparative analysis, Ms Miller says (at paragraph 65): *"The comparative analysis in this case has not demonstrated that the subject site meets the benchmark set by comparable post-war properties that are already included on the HO. The subject site does not compare favourably against places which have already been assessed as significant. Expanding the comparative analysis to places recommended for inclusion on the HO and places recommended for further assessment has not, in my opinion, demonstrated that the subject site is a high-quality example of the type. Drawing comparators from outside the existing HO is not the standard approach. If there are no comparators this could be evidence of a place's rarity, but the Heritage Assessment is not claiming that the subject site is rare."*
21. The above is an obvious expression of opinion, but no real analysis is included to underpin the opinions. They are at best opinions on matters upon which experts can differ. Mr Reeves has a different opinion and explains why he has undertaken the comparative analysis in the manner that he has.
22. Similar observations can be made with respect to Ms Miller's commentary on the Built Heritage comparative analysis of houses in the 'Mature Modern mode'. One can tend to 'muddy the water' with respect to the myriad of terms given to architectural eras and styles.
23. Yes, as Ms Miller points out, the earlier Context report described the subject property as "Melbourne Regional Style", as opposed to the Built Heritage "Mature Modern". But does anything really turn on that? Or, does anything really turn on Ms Miller's suggestion *"that 'mature modern' is not a generally recognised term for a sub-style within the context of post-war residential architecture. Rather, it is a description of modernism's stylistic and experimental apogee"* [parag 71]?
24. Differences in stylistic descriptions is partly acknowledged by Ms Miller where (at parag 75) she says: *"The 'mature modern' style is not identified in the Thematic Environmental History (TEH) as significant to shaping cultural development in the municipality, however this may be due to different stylistic terms being used"*.
25. With respect to Mr Reeves' comparative analysis of Mature Modern houses, Mr Reeves and Ms Miller clearly differ in their opinions. Mr Reeves says, and Council agrees, that: *"It is unclear on what basis it might be concluded that my assessment does not demonstrate that the characteristics of the Mature Modern sub-style are evident either in the subject property or in the three houses identified as the most pertinent local comparators. Visual evidence*

alone (ie the images reproduced in my assessment as Figures 8, 9 and 12) demonstrates the extent of stylistic similarity between the subject property and the contemporaneous architect-designed houses at 67 Hill Road, 47 Mountain View Road and 41 Campbell Road”.

26. As to the subject places' association with the architect Knox, Ms Miller contends (at parag 98) that: “...the subject site is not found to have a special association with Knox's career, nor is it representative of his design principles. It is clear that during this middle phase of his career Knox was obliged to prioritise making money over pursuing and developing his design principles. The return to his organic, environmental style is celebrated, with the middle-period designs appearing to represent a compromised position”.
27. That may be her opinion but that opinion is not shared by Mr Reeves, who explains (at page 13) his examination of the “aesthetic characteristic of Knox's work and Knox's mid-career work as:

My assessment does not ascribe significance to the subject property for the way it “exhibits particularly aesthetic characteristics of Knox's work in Boroondara”. The only discussion of aesthetic characteristics is in the context of the building's expression of the Mature Modern style. Its significance as an example of Knox's work is acknowledged under Criterion H (ie, associative significance) rather than Criterion E (ie, aesthetic significance). This associative significance is informed by the fact that the subject property demonstrates an early phase of Knox's career that is not otherwise well represented in the City of Boroondara.

Any building that is an outlier in its architect's body of work could be dismissed as an anomaly, even when those same qualities might bolster a case for historical rarity or aesthetic distinction. To illustrate this, one might refer to the Castles House at 2 Taurus Street, Balwyn North (Peter McIntyre, 1952), which has long been included on the heritage overlay schedule as HO189. The house is considered significant for its highly unusual form, dominated by a steep but distinctively offset A-framed roof. However, given that McIntyre never designed another house like this one, it could just as easily be dismissed as an “anomaly” “within his work.

28. Mr Reeves and Ms Miller disagree as to the value of The Victorian Heritage Register Criteria and Threshold Guidelines (Heritage Council of Victoria, updated 3 December 2020) in undertaking an assessment of places for heritage overlay protection for places of local significance. Mr Reeves refers to a number of Planning Panel reports that describe the “distorted” effect of using the VHR Guidelines in considering heritage significance at the local level (including the Panel report on the Boroondara Planning Scheme Amendment C318). Council agrees with Mr Reeves.

Ms Katz' evidence

29. Ms Katz was, apparently, engaged after Ms Miller. Nothing of course turns on that. Ms Katz does, though, come to the same conclusion as Ms Miller as encompassed by the following summary of her opinions (at parag 35):

When viewed against comparative examples from a similar era, the subject house does not exhibit the same level of sophistication in design as other sites which have been assessed as holding individual significance. As an example of Alistair Knox's work, the building is not of a style for which Knox is known. Further, the case has not been fully made that the association of Knox to Boroondara is important, particularly when compared to other localities such as Eltham and surrounds, where Knox's design ethos is especially prevalent.”

30. This is a view not shared by Mr Reeves.
31. Ms Katz is clearly not as troubled by Mr Reeves references and comparative analysis against the Modern Mature (or post War modernism) as Ms Miller. This is evidenced by her following statement (at parag 39):

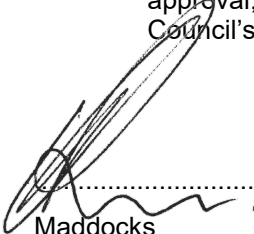
The building at 32 Corby Street known as the [former] Withers House does display many of the key characteristics typical of 1960s Modernism as expressed in domestic Melbourne architecture including the horizontal planes, the flat roof,

wide eaves and exposed beams, extensive use of glazing, the incorporated carport and the varied projection of the rectilinear forms".

32. It is a question of representativeness, associative significance and threshold that Ms Katz and Mr Reeves differ in opinion. It is therefore of little value in submissions to undertake a 'paragraph-by-paragraph' comparison of Ms Katz, Ms Miller and Mr Reeves evidence on those aspects as these are matters upon which opinions can differ and those opinions are not likely to change by such approach.
33. It is suffice to say that the Built Heritage report and citation and Mr Reeves' evidence statement comprehensively explain why reliance can be placed on, and weight given to, Mr Reeves' conclusions with respect to representativeness, associative significance and threshold.

Council's final position

34. Council's final position is that Amendment C368boro should proceed to adoption and approval, subject to the minor modification to the citation described in Attachment 3 to Council's Part A submission.



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