

URBAN PLANNING DELEGATED COMMITTEE



AGENDA

(Open to the public)

6.30pm, Monday 4 September 2023

Council Chamber, 8 Inglesby Road, Camberwell

Date of Issue: 25 August 2023

Please note: No audio, video, photographic or any other recording of proceedings at Council or Delegated Committee meetings is permitted without written authority from Council.

Order of Business

- 1 Adoption and confirmation of the minutes of the Urban Planning Delegated Committee meeting held on 17 July 2023**
- 2 Declaration of conflict of interest of any councillor or council officer**
- 3 Presentation of officer reports**
 - 3.1 Smythesdale Estate Precinct - Consideration of Panel Report - Amendment C388boro
 - 3.2 9 Seattle Street, Balwyn North - Consideration of Panel Report - Amendment C381boro
 - 3.3 High Street Commercial Precinct, Ashburton - Outcomes of Preliminary Consultation
 - 3.4 2 and 4 Logan Street and 183 Prospect Hill Road, Canterbury - Removal of a Restrictive Covenant (PP23/0348)
 - 3.5 675 Victoria Street, Abbotsford (City of Yarra) - Objection to Fifteen (15) storey mixed use development
- 4 General business**
- 5 Urgent business**
- 6 Confidential business**
- 7 Close of meeting**

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3 Presentation of officer reports

3.1 Smythesdale Estate Precinct - Consideration of Panel Report - Amendment C388boro

Executive Summary

Purpose

The purpose of this report is to inform the Urban Planning Delegated Committee (UPDC) of the recommendations of the independent Planning Panel appointed to consider submissions to Amendment C388boro (Smythesdale Estate Precinct) to the Boroondara Planning Scheme, and to consider the officers' recommendation to adopt the amendment.

Background

Amendment C388boro seeks to implement the recommendation in the heritage citation for the Smythesdale Estate Precinct by including the recommended properties in the precinct in the Heritage Overlay on a permanent basis.

On 3 October 2022, the heritage citation for the precinct was adopted by the UPDC. Authorisation was granted by the Department of Transport and Planning to prepare and exhibit Amendment C388boro to the Boroondara Planning Scheme on 27 October 2022. The amendment was publicly exhibited from 9 February to 3 April 2023. A total of 24 submissions were received, including 21 submissions which supported the amendment, 1 submission which partially supported the amendment, and 2 submissions which opposed the amendment.

On 1 May 2023, the UPDC resolved to request the appointment of an independent Planning Panel to consider the amendment, and to refer all submissions for consideration by the Panel.

Key Issues

An independent Planning Panel was appointed to consider submissions to the amendment. Two submitters in support of the amendment requested to be heard. At the Directions Hearing, parties agreed the amendment could be considered based on written submissions, without supplementary verbal submissions at a hearing.

Whilst the two parties to the hearing supported the amendment, both parties submitted the heritage precinct met the threshold for Criterion H (associative significance) based on Ms Jessie Henderson CBE, residing at 89 Harcourt Street, Hawthorn East. Ms Henderson was a pioneering voluntary social worker and an influential advocate for women's rights during the first part of the 20th century. The two parties circulated written submissions to the Panel and other parties on 7 July 2023 in support of Criterion H. The Panel subsequently sought a response from Council.

On 11 July 2023, Council circulated a memorandum from RBA Architects, heritage consultants, clarifying why the precinct did not meet the threshold for Criterion H.

The heritage consultant recognised Ms Henderson was a notable person who resided at the property, however no built heritage fabric could be attributed to Ms Henderson's time at the dwelling.

On 13 July 2023, officers received the Panel Report for the amendment which is provided at **Attachment 1**. The report was publicly released on 24 July 2023.

The Panel recommended the amendment be adopted as exhibited, and found the precinct met the threshold for inclusion in the Heritage Overlay based on Criterion A (historical), Criterion D (representativeness) and Criterion E (aesthetic - relating to 89 Harcourt only). The Panel agreed with Council's heritage consultant with respect to the threshold for Criterion H (associative significance) not being met in relation to Ms Henderson residing at 89 Harcourt Street, Hawthorn East.

Next Steps

Officers recommend the UPDC resolve to receive and acknowledge the Panel Report as it relates to Amendment C388boro and refer the amendment to a Council meeting to be adopted.

Officers' recommendation

That the Urban Planning Delegated Committee resolve to:

1. Receive and acknowledge the Panel's report and recommendations, as shown at **Attachment 1**, in accordance with Section 27(1) of the *Planning and Environment Act 1987*.
2. Endorse the officers' response to the Panel's recommendation as discussed in this report.
3. Refer Amendment C388boro to Council for adoption in accordance with Section 29(1) of the *Planning and Environment Act 1987*.
4. Authorise the Director Urban Living to undertake administrative changes to the amendment and associated planning controls that do not change the intent of the controls.

Responsible director: **Scott Walker, Director Urban Living**

1. Purpose

The purpose of this report is to:

- Inform the Urban Planning Delegated Committee (UPDC) of the Panel's recommendation for Amendment C388boro (**Attachment 1**) and the officers' response to the Panel's recommendation.
- Seek a resolution from the UPDC to refer Amendment C388boro to a meeting of Council for adoption.

2. Policy implications and relevance to community plan and council plan **Boroondara Community Plan 2021-31**

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, and includes the *Council Plan 2021-25*.

The amendment implements the Strategic Objective of the Theme 4 of the Plan, to "Protect the heritage and respect the character of Boroondara, while facilitating appropriate, well-designed development".

Specifically, the amendment implements Strategy 4.1 - "Boroondara's heritage places are protected through ongoing implementation of heritage protection controls in the Boroondara Planning Scheme."

Heritage Action Plan 2016

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.

The amendment is consistent with the following actions of the Heritage Action Plan 2016:

- Knowing - which seeks to identify, assess and document heritage places.
- Protecting - which seeks to provide statutory protection for identified heritage places.

Boroondara Planning Scheme

The amendment is consistent with the objectives of the Planning Policy Framework, addressing the following:

- Clause 2.03-4 Built environment and heritage of the Municipal Planning Strategy - which includes the strategic direction to 'protect all individual places, objects and precincts of cultural, aboriginal, urban and landscape significance'.
- Clause 15.03-1S Heritage conservation - which seeks to 'ensure the conservation of places of heritage significance' and to 'identify, assess and

document places of natural and cultural heritage significance as a basis for their inclusion in the planning scheme’.

- Clause 15.03-1L – Heritage in Boroondara - which seeks to ‘preserve ‘significant’ heritage places, protecting all significant heritage fabric including elements that cannot be seen from the public realm’.

The Planning Policy Framework seeks to ensure the Heritage Overlay is applied to protect places of heritage significance in the City of Boroondara.

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 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.

In particular, 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*’.

The amendment is consistent with these *Plan Melbourne* directions and initiatives.

Planning and Environment Act 1987

The amendment is consistent with the objectives of planning in Victoria, in particular the objective detailed in Section 4(1)(d) of the *Planning and Environment Act 1987* (the Act), being:

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.

This means that Council has a statutory obligation to continuously identify and protect places of heritage significance through the Heritage Overlay.

3. Background

The key milestones relating to Amendment C388boro are summarised in the table below.

Late 2021	Survey date of draft citation.
May - July 2022	Preliminary consultation period.
3 October 2022	UPDC resolved to (amongst other things) write to the Minister for Planning to request authorisation to prepare and exhibit an amendment to the Boroondara Planning Scheme.
18 October 2022	Council sought authorisation to prepare and exhibit an amendment to the Boroondara Planning Scheme.

27 October 2022	Authorisation granted.
9 February - 3 April 2023	Amendment C388boro exhibited.
1 May 2023	UPDC considered a report on the amendment and resolved to refer all submissions received to a Planning Panel for consideration.
2 May 2023	Request to appoint Panel submitted to Planning Panels Victoria.
3 May 2023	Panel appointed.
14 June 2023	Directions Hearing.
15 June 2023	Directions issued by Planning Panels Victoria.
13 July 2023	Panel Report received.
24 July 2023	Panel Report publicly released.

4. Outline of key issues/options

Panel Hearing

An independent Planning Panel was appointed to consider submissions to the amendment. The Panel also considered Amendment C381boro concurrently - an unrelated amendment proposing a Heritage Overlay for 9 Seattle Street, Balwyn North. This will be considered as part of a separate UPDC report.

On 14 June 2023, a Directions Hearing was held where it was agreed to have Amendment C388boro considered by written submissions only. Two submitters which supported the amendment were parties to the hearing, and sought to provide justification for the precinct meeting Criterion H (associative significance) under the *Practice Note 1: Applying the Heritage Overlay*. On 7 July 2023, further written submissions on this matter were provided to the Panel and other parties. The Panel subsequently sought a response from Council.

On 11 July 2023, Council circulated a memo from RBA Architects, heritage consultants, clarifying why the precinct did not meet the threshold for Criterion H. The memorandum stated:

- To justify Criterion H, there needs to be an “inextricable link” between the built fabric of the heritage place and the person/group. The criterion has not been met by a person residing at the heritage place where this is not reflected in the heritage fabric.
- Ms Henderson CBE was a notable figure who lived at 89 Harcourt Street, Hawthorn East for many years, but the property was not built for Ms Henderson CBE and there were no substantive changes to the built fabric while she owned the property.
- The property was not integral to Ms Henderson’s work developing her advocacy for women’s rights, and it is possible she could have taken the path no matter where she lived.

Planning Panel recommendation

On 13 July 2023, officers received the Panel Report for Amendment C388boro. The report was publicly released on 24 July 2023.

After considering the amendment and all submissions, the Panel found the amendment is well founded and strategically justified, and recommended the amendment be adopted as exhibited. The Panel found the heritage precinct met the threshold for local significance under Criterion A (historical), Criterion D (representativeness) and Criterion E (aesthetic - relating to 89 Harcourt only) under the *Planning Practice Note 1: Applying the Heritage Overlay*.

The Panel found the heritage precinct could not be justified under Criterion H, consistent with Council's submission. Whilst acknowledging Ms Henderson CBE was a significant figure with notable achievements, the Panel found there was no heritage fabric at 89 Harcourt Street, Hawthorn East to demonstrate a special association with her residing at the property for 45 years.

Officer recommendation

The Panel's recommendation to adopt the amendment as exhibited is consistent with Council's submission to the Panel. As detailed in the Panel Report, the Panel considered all written submissions made in response to the amendment, and supplementary material.

Officers recommend the UPDC resolve to receive and acknowledge the Panel Report, to accept the Panel's recommendation, and to refer the amendment to a meeting of Council for adoption.

5. Consultation/communication

All submitters were invited to participate in the independent planning panel process. Submitters which were not parties to the panel process had their written submissions considered by the Panel.

All relevant parties were notified in writing of the release of the Panel Report.

In addition to the above, all affected property owners and occupiers and submitters have been informed by letter of this UPDC meeting and given the opportunity to attend and present to the UPDC.

6. Financial and resource implications

Costs associated with the amendment will be funded through the Planning & Placemaking Department operational budget for the 2023/24 financial year.

7. Governance issues

No officers involved in the preparation of this report have a general or material conflict of interest requiring disclosure under chapter 5 of the Governance Rules of Boroondara City Council.

The recommendation contained in this report is compatible with the Charter of Human Rights and Responsibilities 2006 as it does not raise any human rights issues.

8. Social and environmental issues

The inclusion of the heritage precinct in the Heritage Overlay would have positive social and environmental effects by contributing to the continual protection and management of the City's heritage. The amendment is not considered to have any environmental impacts.

Manager: David Cowan, Manager Planning and Placemaking

Report officer: Mikaela Carter, Principal Strategic Planner

Planning Panels Victoria

Boroondara Planning Scheme Amendment C388boro Smythesdale Estate Heritage Precinct

Panel Report

Planning and Environment Act 1987

13 July 2023



How will this report be used?

This is a brief description of how this report will be used for the benefit of people unfamiliar with the planning system. If you have concerns about a specific issue you should seek independent advice.

The planning authority must consider this report before deciding whether to adopt the Amendment.
[section 27(1) of the *Planning and Environment Act 1987* (the PE Act)]

For the Amendment to proceed, it must be adopted by the planning authority and then sent to the Minister for Planning for approval.

The planning authority is not obliged to follow the recommendations of the Panel, but it must give its reasons if it does not follow the recommendations. [section 31 (1) of the PE Act, and section 9 of the *Planning and Environment Regulations 2015*]

If approved by the Minister for Planning a formal change will be made to the planning scheme. Notice of approval of the Amendment will be published in the Government Gazette. [section 37 of the PE Act]

Planning Panels Victoria acknowledges the Wurundjeri Woi
Wurrung People as the traditional custodians of the land on which
our office is located. We pay our respects to their Elders past and
present.

Planning and Environment Act 1987

Panel Report pursuant to section 25 of the PE Act

Boroondara Planning Scheme Amendment C388boro

Smythesdale Estate Heritage Precinct

13 July 2023



Con Tsotsoros, Chair

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Glossary and abbreviations

the Amendment	Boroondara Planning Scheme Amendment C388boro
Council	Boroondara City Council
HO953 heritage citation	Smythesdale Estate Precinct Heritage Citation (RBA Architects + Conservation Consultants, November 2022)
HO953 Statement of Significance	Smythesdale Estate Precinct Statement of Significance, November 2022
PE Act	<i>Planning and Environment Act 1987</i>
Planning Scheme	Boroondara Planning Scheme
the Precinct	Smythesdale Estate Precinct
RBA	RBA Architects + Conservation Consultants

Overview

Amendment summary	
The Amendment	Boroondara Planning Scheme Amendment C388boro
Common name	Smythesdale Estate Heritage Precinct
Brief description	Proposes to permanently apply the Heritage Overlay (HO953) to the Smythesdale Estate Precinct comprising 12 properties in Hawthorn East
Subject land	8, 10, 12, 14, 16 and 18 Carlyle Street and 81, 83, 85, 85A, 87 and 89 Harcourt Street, Hawthorn East
Planning Authority	Boroondara City Council
Authorisation	27 October 2022, subject to conditions (see Chapter 1.1(ii))
Exhibition	9 February to 3 April 2023
Submissions	<p>Received from:</p> <ol style="list-style-type: none"> 1. Joanne Bailey 2. Anthony Stephen 3. Kate Lloyd 4. Mathew Goldsworthy 5. Giorgio Beames 6. Evie Flynn 7. Adam Dinh-Vu 8. Patricia Jane Sturgess 9. David Jablonka 10. Scott Davidson 11. Jane Oldham 12. Fiona and Dean Anderson 13. Christopher Bradtke 14. Matthias Hansen 15. Susanne Leonard 16. Fiona Nicholson Stocker 17. Olivia Doyle 18. Ian Abbott 19. Melissa Khaw 20. Christina Branagan 21. Andrew Nunn 22. Sophie Stavelly 23. Tim O'Callaghan 24. Nerida Muirden

Panel process				
The Panel	Con Tsotsoros			
Directions Hearing	Planning Panels Victoria with online video, 14 June 2023			
Panel process	The Panel considered unresolved issues through a written process. No Panel Hearing was held, with agreement from all parties.			
Site inspections	Unaccompanied, 7 July 2023			
Parties to the process	<ul style="list-style-type: none"> - Christina Branagan - Nerida Muirden 			
Tabled documents	No	2023 date	Description	Provided by
	1	15 June	Panel directions	Planning Panels Victoria
	2	7 July	Further written submission	Ms Branagan
	3	7 July	Further written submission	Ms Muirden
	4	10 July	Email confirming Council will rely on its 1 May 2023 officer report	Council
	5	10 July	Panel inviting Council to expand on its response to Criterion H	Planning Panels Victoria
	6	11 July	Closing submission: Memo from RBA regarding Criterion H	Council
Citation	Boroondara PSA C388boro [2023] PPV			
Date of this report	13 July 2023			

Executive summary

The railway line extension from Hawthorn to Camberwell, including its announcement and subsequent opening during the late Victorian era, opened areas such as Hawthorn East for residential development. Ahead of the extension, Robert Sparrow Smythe acquired land on the north-west corner of Harcourt Street and Burke Road in Hawthorn East in December 1878.

Mr Smythe named the land the 'Smythesdale Estate', subdivided it into 33 lots and named the north-south street 'Carlyle' after his son. The lots were sold in March 1885. In April and May 2021, about 138 years after they were sold, community members nominated some of the subdivided properties as places of potential heritage value.

Council engaged RBA Architects + Conservation Consultants to conduct research to determine if the nominated properties had sufficient local heritage significance. The consultants found that 8, 10, 12, 14, 16 and 18 Carlyle Street and 81, 83, 85, 85A, 87 and 89 Harcourt Street in Hawthorn East, collectively referred to as the Smythesdale Estate Precinct (the Precinct) warranted a more detailed assessment. The assessment, as outlined in the Statement of Significance within the heritage citation, found the Precinct met Criteria A, D and E (for the significant property at 89 Harcourt Street) of the Planning Practice Note 1 criteria.

Boroondara Planning Scheme Amendment C388boro (the Amendment) seeks to apply the Heritage Overlay (HO953) to the Precinct comprising the 12 identified properties.

Key issues raised in submissions related to whether:

- the Amendment should proceed when there is a need for more housing
- the Precinct had sufficient heritage significance, and if the non-contributory property should be included
- the State requirements should be changed to no longer require a planning permit for certain buildings and works
- the Amendment will unreasonably impact property value, private financial impact, and potential development
- properties which were not exhibited should be included in the Amendment.

After considering all submissions and referral documents, the Panel concludes the Amendment:

- is supported by, and implements, the relevant sections of the Planning Policy Framework
- is consistent with the relevant Ministerial Directions and Practice Notes
- is well founded and strategically justified and should proceed.

General issues

The *Planning and Environment Act 1987* does not enable a planning authority or the Panel to recommend changes to State provisions related to heritage permit triggers through the Amendment.

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

The Heritage Overlay should not be applied to limit development because this does align with the overlay's purpose and would therefore be an inappropriate planning provision to achieve the intended outcome.

Properties which were not exhibited should not be included in the Amendment because:

- they have not been appropriately researched and assessed to determine their heritage significance
- it would be procedurally unfair to include properties which members of the community did not have an opportunity to make a submission.

Smythesdale Estate Precinct (HO953)

The Smythesdale Estate Precinct has sufficient heritage significance to justify applying the Heritage Overlay (HO953).

Jessie Henderson CBE is a historically significant figure with notable achievements, however there is no heritage fabric at 89 Harcourt Street, Hawthorn East to demonstrate a special association with the place she lived in for 45 years. The property therefore does not achieve Criterion H.

The non-contributory property at 85A Harcourt Street should be included in the Smythesdale Estate Precinct to ensure future development is appropriately assessed. The Heritage Overlay (HO953) would enable changes to the non-contributory property, including entire demolition of the existing building, subject to a planning permit to ensure that new development sensitively responds to surrounding heritage fabric.

Recommendation

Based on the reasons set out in this Report, the Panel recommends that Boroondara Planning Scheme Amendment C388boro be adopted as exhibited.

1 Introduction

1.1 The Amendment

(i) Amendment description

The purpose of the Amendment is to permanently apply the Heritage Overlay (HO953) to the Smythesdale Estate Precinct (the Precinct) comprising 12 properties in Hawthorn East.

Specifically, the Amendment proposes to:

- apply the Heritage Overlay (HO953) to 8, 10, 12, 14, 16 and 18 Carlyle Street and 81, 83, 85, 85A, 87 and 89 Harcourt Street, Hawthorn East (which form the Precinct) through the Planning Scheme map and Heritage Overlay Schedule
- amend the Clause 72.04 Schedule to introduce the Smythesdale Estate Precinct Statement of Significance, November 2022 as an incorporated document
- amend the Clause 72.08 Schedule (Background Documents) to introduce the Smythesdale Estate Precinct Heritage Citation (RBA Architects + Conservation Consultants, November 2022) as a background document.

(ii) Authorisation

The Amendment was authorised on 27 October 2022 subject to the following conditions:

1. Amend the incorporated Smythesdale Estate Precinct Statement of Significance, October 2022 to improve grammar, amend the grading table to include a column that identifies the heritage place name and move the grading table to the end of the document as outlined in Planning Practice Note 1: Applying the Heritage Overlay.
2. Amend the Smythesdale Estate Precinct Heritage Citation to ensure that the correct heritage place names are identified for the correct properties. It is noted that the heritage place name 'Lara' has been interchangeably used between 81 and 83 Harcourt Street, Hawthorn East.
3. Amend the Schedule to Clause 43.01 (Heritage Overlay) and the Schedule to Clause 72.04 (Incorporated Documents) to consistently record the incorporated Smythesdale Estate Precinct Statement of Significance document title as 'Smythesdale Estate Precinct Statement of Significance, October 2022'.
4. Amend the explanatory report to improve legibility, include a precinct map to identify the affected land, identify the history of the amendment relating to the preliminary consultation process and remove reference to how the amendment supports or implements the Municipal Strategic Statement as this was removed from the Boroondara Planning Scheme as part of the Boroondara PPF translation via Amendment C354boro on 26 May 2022.

(iii) The subject land

The Amendment applies to 8, 10, 12, 14, 16 and 18 Carlyle Street and 81, 83, 85, 85A, 87 and 89 Harcourt Street, Hawthorn East, as shown in

Figure 1. The Statement of Significance categorises each property as either significant, contributory or non-contributory.

Figure 1 Subject land and precinct property categories

1.2 Background

Table 1 Chronology of events

Date	Event
2016	
2 May	Council adopted the Heritage Action Plan which established the framework for guiding its heritage work program
2022	
20 May – 24 Jul	Council conducted preliminary consultation of the draft heritage citation with owners and occupiers of affected properties, government agencies and community and historical groups, and received 43 submissions
3 Oct	At its meeting, Council: <ul style="list-style-type: none"> - considered the outcomes of preliminary consultation - adopted a revised heritage citation - removed 48 Harcourt Street from the citation and the Heritage Overlay - resolved to request the Minister for Planning authorise it to prepare and exhibit the Amendment
27 Oct	Minister for Planning authorised the Amendment
2023	
3 Feb	Council began formally exhibiting the Amendment but found an error in the planning

	provisions during the process
2 Mar – 3 Apr	The Amendment was formally re-exhibited and Council received 24 submissions
1 May	At its meeting, Council considered submissions which responded to the exhibited Amendment and resolved to request a Panel

1.3 Procedural issues

Ms Branagan and Ms Muirden each requested to be heard at a hearing and attended the Directions Hearing. Ms Branagan supported the Amendment and did not request any changes and Ms Muirden generally supported the Amendment but sought changes to the Statement of Significance.

At the Directions Hearing, all parties agreed with Council's request for the Panel to consider unresolved issues through a written process, subject to having the opportunity to make a further written submission. The Panel agreed to Council's request and issued directions which provided an opportunity for further written submissions.

The Panel advised:

- it had sufficient information to inform itself, including its response to submissions set out in the officer report to the 1 May 2023 Council meeting
- it did not seek a further submission from Council unless it sought to present new information.

Council relied on its 1 May 2023 report as its response to issues in submissions. Further written submissions were received from Ms Branagan on 7 July 2023 and from Ms Muirden on 7 July 2023. Council provided a closing submission regarding Criterion H in response to a request from the Panel.

1.4 The Panel's approach

The Panel has assessed the Amendment against the principles of net community benefit and sustainable development, as set out in Clause 71.02-3 (Integrated decision making) of the Planning Scheme.

The Panel considered all written submissions made in response to the exhibition of the Amendment, observations from site visits, submissions, and other material provided to the Panel. It has been selective in referring to the more relevant or determinative material in the Report. All submissions and materials have been considered by the Panel in reaching its conclusions, regardless of whether they are specifically mentioned in the Report.

Submissions 1, 3, 4, 5, 6, 7, 8, 9, 10, 12, 13, 14, 15, 16, 17, 18, 19, 20 and 21 (about 88 per cent of all submissions) supported the Amendment and did not request to any change. These submissions do not have unresolved issues for the Panel to respond to and are not referred to further in this Report.

This Report deals with the issues under the following headings:

- Strategic issues
- General issues
- Smythesdale Estate Precinct (HO953).

2 Strategic issues

2.1 Planning context

This chapter identifies planning context relevant to the Amendment. Appendix A highlights key imperatives of relevant provisions and policies.

Table 2 Planning context

	Relevant references
Victorian planning objectives	- section 4(1)(d) of the <i>Planning and Environment Act 1987</i> (PE Act)
Municipal Planning Strategy	- Clause 2.03-4 (Built environment and heritage)
Planning Policy Framework	- Clauses 15.01-5S (Neighbourhood character) 15.03-1S (Heritage conservation), and Clause 15.03-1L (Heritage in Boroondara)
Other planning strategies and policies	- Plan Melbourne Outcome 4, Direction 4.4, Policies 4.4.1 and 4.4.4
Planning scheme provisions	- Heritage Overlay
Ministerial directions	- Ministerial Direction 11 (Strategic Assessment of Amendments)
Planning practice notes	- Planning Practice Note 1 (Applying the Heritage Overlay), August 2018, updated 13 June 2023

2.2 Strategic justification

(i) Submissions

Council stated:

- it engaged RBA Architects + Conservation Consultants (RBA) to conduct research for properties collectively referred to as the Smythesdale Estate Precinct to determine if it had sufficient local heritage significance and to prepare a heritage citation
- the HO953 Statement of Significance in the citation found the Precinct met Criteria A, D and E (for the significant property) of the criteria referred to in Planning Practice Note 1
- the Amendment is consistent with its Heritage Action Plan which includes the following actions:
 - Knowing - which seeks to identify, assess and document heritage places.
 - Protecting - which seeks to provide statutory protection for identified heritage places.

Mr Stephen submitted the Amendment should be abandoned because decisions regarding heritage need to be balanced with cost of living, housing supply shortage and Boroondara's changing demographics.

Ms Stavelly submitted the identified houses are nice but given the need for more housing, the Amendment seems like a 'bad idea'.

In response, Council stated:

- housing provision and affordability are not relevant when assessing heritage, as outlined in Planning Practice Note 1

- the most appropriate time to balance heritage protection with other policy objectives is during the permit application process
- applying the Heritage Overlay to the 12 identified properties:
 - will not have a negative community-wide social, environmental or economic impact
 - is expected to have positive social effects on the wider community by identifying and facilitating the preservation of heritage buildings.

(ii) Discussion

The Amendment responds to, and is consistent with, Council's Heritage Action Plan and associated program. The methodology which supports the Amendment generally follows guidance in Planning Practice Note 1 and is founded on sound research prepared by RBA. The research ensures the Smythesdale Estate Precinct meets the necessary local threshold to justify its significance and the application of the Heritage Overlay.

The Amendment meets State and local policies by identifying heritage of local significance then selecting the appropriate provision, the Heritage Overlay, to implement the outcomes. It delivers net community benefit as required by Clause 71.02-3 by:

- identifying local heritage for present and future generations
- applying planning provisions so that future development proposals are assessed to ensure they sensitively respond to surrounding heritage fabric in the Precinct.

The provisions have prepared consistent with Ministerial Direction 7(5) and the Statement of Significance format reflects good practice.

The Panel agrees with Council that housing provision and affordability, though important issues being addressed through separate processes, are not relevant when assessing heritage significance or whether to apply the Heritage Overlay.

The Panel considers requests to abandon the Amendment to be disproportionate to the issue of housing provision and affordability. The 12 properties are currently in the Neighbourhood Residential Zone with restrictions including a mandatory maximum building height of 9 metres (2 storeys). The Heritage Overlay would introduce heritage-related permit triggers and provisions to guide new development but does not add further restrictions. Irrespective, it is unlikely the potential impact on 12 properties would negatively affect Boroondara's municipal housing supply, as sought by State planning policy.

(iii) Conclusions

For the reasons set out in this report, the Panel concludes that the Amendment:

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

3 General issues

3.1 State planning permit requirements

(i) The issue

The issue is whether a planning permit should be required for proposal which does not seek to change the front façade or first 10 metres of a heritage building.

(ii) Submissions and Council response

One submission requested that a planning permit not be required if the proposal did not seek to change the front façade or first 10 metres of a heritage building.

Council explained the submission seeks to change permit triggers in the State provisions of the Heritage Overlay which it has no jurisdiction to change. It referred to section 23(3) of the PE Act which states that Council cannot refer a submission to the Panel which seeks to change the terms of any State standard provision in a planning scheme.

Council said that despite this, it disagreed the change would result in an acceptable change because:

- Clause 15.03-1L of the Planning Scheme requires a nuanced assessment of each proposal
- there may be alterations beyond 10 metres from the frontage which affect original fabric that is visible from the street including side returns, original roofs and chimneys.

(iii) Discussion

Council can only propose changes to local content in its Planning Scheme through the Amendment. It cannot propose changes to the State provisions in the Heritage Overlay which require permits for buildings and works. Section 25(3) of the PE Act does not enable a Panel to formally recommend changes to State provisions through the Amendment. The Panel is therefore unable to recommend that permit triggers in the Heritage Overlay be revised.

The Panel agrees with Council that alterations more than 10 metres from the façade may still be visible from the public realm and negatively impact the heritage fabric.

(iv) Conclusion

The Panel concludes the *Planning and Environment Act 1987* does not enable a planning authority or the Panel to recommend changes to State provisions related to heritage permit triggers through the Amendment.

3.2 Property value and private financial impact

(i) The issue

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

(ii) Submissions and Council response

Three submissions submitted that applying the Heritage Overlay to properties identified as the Smythesdale Estate Precinct may:

- affect the cost of living
- reduce property value
- add time and costs associated with the planning process.

In response, Council stated:

- property value and private financial implications are not relevant when assessing heritage significance or when deciding whether to apply the Heritage Overlay – this is consistent with Planning Panel findings such as Melbourne C207melb and Moreland C149
- the only valid test for applying the Heritage Overlay is whether the property has heritage value suitable for protection and enhancement
- it is difficult to estimate the economic effect of applying the Heritage Overlay to a property because its provisions enable a planning permit application to develop, subdivide or demolish
- personal economic matters relating to the use and development of a particular heritage place are most appropriately considered at the time planning permits are sought – this is consistent with Planning Panel findings such as Boroondara C266boro and C274boro.

Council referred to the *Boroondara PSA C333boro [2022] PPV* Panel Report, where the Panel stated:

There may be some financial impact on individuals associated with applying for a planning permit application. However, there is no evidence that this would unreasonably impact the broader community. There would be no need for a permit and no additional planning cost if an owner simply seeks to maintain their property without altering the appearance.

...

property value and personal financial implications are not relevant when assessing heritage significance or when deciding whether to apply the Heritage Overlay to properties subject to the Amendment.

(iii) Discussion

The Panel agrees with Council regarding issues of property value and private financial impact. When considering relevant sections of the PE Act, Planning Scheme and guidance in Planning Practice Note 1, these issues are not relevant to an Amendment solely proposing to apply planning provisions which identify and manage places with heritage significance.

The PE Act refers to the economic impact of a planning scheme amendment and the Planning Scheme seeks integrated decision making. In both contexts, planning is asked to consider impact at a broader or net community level. Neither extend to individual private financial impact.

There was no information provided to support claims that applying the Heritage Overlay will reduce property value. Property value is determined through a complicated set of factors, which would be challenging to single out one from the other. The Panel therefore agrees with Council that it would be difficult to estimate the economic effect of applying the Heritage Overlay.

Planning Practice Note 1 does not include property value and private financial impact as criteria when assessing whether a property has sufficient heritage significance to justify applying the Heritage Overlay.

(iv) Conclusion

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

3.3 Other issues**(i) The issues**

The issues are:

- whether the Heritage Overlay should be applied to limit development
- whether properties which were not exhibited should be included in the Amendment.

(ii) Submissions and Council response

There were submissions which sought to apply the Heritage Overlay to:

- properties for the purpose of limiting development
- 49, 69, 77-77a Harcourt Street which were not exhibited with the Amendment.

In response, Council stated:

- the nomination for 49 and 69 Harcourt Street has been added to an internal register for further review
- Council's heritage adviser considered 77 and 77a Harcourt Street when preparing the background work for the project and concluded they were not likely to achieve the threshold for local significance.

(iii) Discussion

The Panel does not support using the Heritage Overlay to limit development. The overlay specifies five purposes, none of which seek to limit development. It would therefore be inappropriate and bad practice to apply the Heritage Overlay for a purpose beyond its statutory role. The Amendment seeks to apply the Heritage Overlay to properties which have been appropriately assessed and found to achieve the local threshold of significance. Applying the overlay for a different reason would transform the Amendment beyond its purpose, resulting in serious procedural issues.

For procedural reasons, the Panel does not support 49, 69, 77-77a Harcourt Street being included in the Amendment. It would be unfair to include properties in the Amendment if their owners and tenants were not given the opportunity to make a submission through a formal public exhibition process. The Panel was not provided with citations and statements of significance to confirm whether each property has achieved the local threshold of significance. Council has advised it intends to review 49 and 69 Harcourt Street.

The Panel does not comment on whether the properties would be worthy candidates for further investigation regarding heritage significance to avoid prejudicing Council's future review process.

(iv) Conclusions

The Panel concludes:

- The Heritage Overlay should not be applied to limit development because this does align with the overlay's purpose and would therefore be an inappropriate planning provision to achieve the intended outcome.

- Properties which were not exhibited should not be included in the Amendment because:
 - they have not been appropriately researched and assessed to determine their heritage significance
 - it would be procedurally unfair to include properties which members of the community did not have an opportunity to make a submission.

4 Smythesdale Estate Precinct (HO953)

Exhibited Statement of significance

What is significant?

Smythesdale Estate Precinct at Hawthorn East includes 8-18 Carlyle Street (even only) and 81-89 Harcourt Street (odd only). The original fabric dating to the Victorian and early 20th century (Federation/Early Interwar) periods is significant. The significant elements are the original single storey houses, generally with an asymmetric façade and including the following elements:

- Hip roof, three with a gable end to the front, many retaining slate cladding
- Chimneys, mostly rendered
- Timber-framed houses - generally with ashlar boards to the façade
- Masonry houses – two face brick and two rendered
- Cornices with brackets and usually panelling
- Verandahs with cast iron frieze, some with cast iron columns, and corrugated sheet metal cladding
- Original timber-framed openings, including panelled doors (usually with sidelights) and double-hung sash windows
- Federation period additions to 18 Carlyle Street and early 20th century (Late Federation/Early Interwar) garage to 83 Harcourt Street
- Basalt kerbing and channelling to Harcourt Street.

Rear additions and all front fences are not significant.

How is it significant?

Smythesdale Estate Precinct is of local historical and representative significance and partly of aesthetic significance (relating to 89 Harcourt Street) to the City of Boroondara.

Why is it significant?

Smythesdale Estate Precinct is of historical significance for reflecting the late Victorian period suburban building in the area that followed the extension of the railway to Camberwell station. This extension was the impetus for opening up parts of Hawthorn East that had hitherto been relatively isolated and began to realise their residential development potential at the end of Melbourne's famed 'boom period'. This marked a shift from the earlier market gardening, etc. use of the area (when it was part of John Robert Murphy's 124-acre Crown Allotment 70, known as the Village of Rathmines subdivision). Whilst the building stock is varied, it generally represents the mid to upper end of the villa spectrum, especially 89 Harcourt Street, and so reflects the prestige of the area as a 'gentleman's retreat', established about in the vicinity from about 1870. The precinct area derives from the substantial holdings of the nearby residence Ultima (1099 Burke Road), when it was owned by entrepreneur/impresario Robert Sparrow Smythe who was a prominent citizen and lived in the area for some time. The name of the estate and Carlyle Street relate to his family. **(Criterion A)**

Smythesdale Estate Precinct is of representative significance as a small, cohesive group of late Victorian housing. They are generally comfortable suburban villas dating to the final phase of 19th century development before a long economic depression. They were all erected during a five-year period (1887 to 1892), though two have additions dating to the early 20th century, which are also significant being those to the north and south end of 18 Carlyle Street (Federation period) and the red brick garage at 83 Harcourt Street (late Federation/early Interwar period). Compared to many other such groups in the Hawthorn area, the precinct is distinguished by the preponderance of asymmetric facades and a few gable ends, when there was a clear preference in other parts or slightly earlier estates for symmetrical façade composition with a fully hipped roof. As such, this group of houses is indicative of a purer Italianate style ethos, informed by the English Picturesque Movement and suggestive of a vernacular Italian origin. The level of intactness is generally high with a mix of brick and timber-framed buildings (some of the latter with brick party walls), several retaining slate roof cladding, and usually having classical mouldings and other elements, as well as original cast iron detailing to the verandahs. **(Criterion D)**

Tempe at 89 Harcourt Street is of aesthetic significance as an intact and commodious, late Italianate style villa (likely architect designed) of rendered brick distinguished by an array of cast iron detailing - crestings, to the gablet, frieze and paired columns to the return verandah. Other notable elements include a cornice with fluted console brackets, near full length windows to the front, and entry with glazed and panelled door. Original elements also include slate roof cladding, chimneys, tessellated tiling to the verandah, and basalt stair. **(Criterion E)**

4.1 Precinct justification

(i) The issue

The issue is whether the Smythesdale Estate Precinct has sufficient heritage significance to justify applying the Heritage Overlay (HO953).

(ii) Background

The HO953 heritage citation refers to the railway line extension to Camberwell which opened during the late Victorian era and opened areas such as Hawthorn East for residential development. Ahead of the extension's imminent operation, Robert Sparrow Smythe acquired land on the north-west corner of Harcourt Street and Burke Road in Hawthorn East in December 1878.

Mr Smythe named the land the 'Smythesdale Estate', subdivided it into 33 lots and named the north-south street 'Carlyle' after his son. The lots were sold in March 1885. In April and May 2021, about 138 years since they were sold, community members nominated some of the subdivided properties as places of potential heritage value.

(iii) Submissions and Council response

Two submissions opposed the Amendment. Collectively, they submitted:

- the buildings subject to the Amendment do not have heritage significance
- the Heritage Overlay already applies to the area.

In response, Council stated:

- the heritage merits of the Amendment are outlined in the detailed HO953 heritage citation prepared by the heritage consultants
- the consultants found the Precinct is of historical, representative significance and partly aesthetic significance
- submissions did not provide any evidence or argument to support the claim that the heritage citation is incorrect.

(iv) Discussion

The Smythesdale Estate Precinct presents as a cohesive Victorian and early twentieth century streetscape. The only non-contributory property, being 85A Harcourt Street, has the narrowest property frontage along Harcourt Street and does not affect the ability to understand all subject properties as a single heritage precinct.

The HO953 heritage citation explains why the Precinct is of local historical, representative and aesthetic significance (for the significant property at 89 Harcourt Street) to Boroondara's local heritage. Submissions which questioned the Precinct's sufficient heritage significance did not explain why they disagreed with the citation's assessment.

The citation and associated Statement of Significance are based on comprehensive research, consistent with guidance in Planning Practice Note 1. The Panel accepts the citation's findings that the Smythesdale Estate Precinct achieves Criteria A, D and E. There was no information provided in submissions to support opposing views.

(v) Conclusion

The Panel concludes the Smythesdale Estate Precinct has sufficient heritage significance to justify applying the Heritage Overlay (HO953).

4.2 89 Harcourt Street (Significant property)**(i) The issue**

The issue is whether 89 Harcourt Street, Hawthorn East meets the local threshold for Criterion H.

(ii) Submissions and Council response

In her original submission, Ms Muirden requested that Ms Henderson's achievements be recognised in the HO953 Statement of Significance. This submission and further written submissions from Ms Muirden and Ms Branagan generally supported the Amendment. They submitted that 89 Harcourt Street has a special history with its previous owner, Jessie Henderson CBE, who lived there for 50 years from about 1900.

The submissions explained that Ms Henderson:

- dedicated her life to social welfare work, numerous charities and women's rights
- helped women find employment and advocated for women to stand for Parliament
- was a member of Hawthorn Benevolent Society and later served on local school and church councils in Camberwell in the 1890s
- was a member of the Melbourne District Nursing Society in 1912
- became president of the Melbourne District Nursing Society from 1923 to 1947
- was the founding member of the Housewives Association of Victoria in 1915
- was president of the National Council of Women of Victoria from the 1920s to 1940s
- was awarded a CBE¹ medal in 1936
- was member and Chairperson of a Charities Board in the 1940s
- is recognised for her importance and impact through her induction in the Victorian Honour Roll of Women
- is recognised by historians as a woman and person of significance to Australian history by her entry in the Australian Dictionary of Biography
- died in 1951 while residing at 89 Harcourt Street.

Regarding Ms Henderson's children, the submissions added:

- three of her sons served in the First World War but tragically two were killed in Gallipoli
- her sons Rupert and Alan lost to the war were among the first cohorts of pupils at Trinity Grammar School, Kew in 1905 and a school 'house' is still named after them
- there are archives which tell the story of their lives and deaths and connection to their commander, General 'Pompey' Elliot who was a local Camberwell resident
- George and Jessie Henderson named the house 'Lymwark' after their children.

The submissions requested that Ms Henderson's work be recognised in the Statement of Significance.

Council stated:

¹ Commander of the Order of the British Empire

- Council's heritage consultant reviewed the historical information regarding Ms Henderson and found the association did not meet the local threshold for local significance under Criterion H
- the heritage citation was revised before exhibition to include historical information about her as a notable resident.²

The HO953 heritage citation was exhibited with the following paragraph and included source references:

Details of the house at 89 Harcourt Street were provided in a 1951 sale notice, which at the time was known as Lymwark. The house was sold soon after the death of the notable long-standing occupant, Jessie Isabel Henderson, who owned the site for nearly half a century. Jesse Henderson CBE (1866-1951) was a pioneering voluntary social worker and an influential advocate for women's rights and needs during the first part of the 20th century including antenatal care, 'equal pay for equal work', and providing relief for unemployed young women during the 1930s economic depression.

Ms Branagan said that while 89 Harcourt Street's association with Ms Henderson (long term owner and resident) may not meet Criterion H:

- she is an important person to local history
- very few women are recognised in heritage place citations in Boroondara
- it seems highly likely that some of her work was undertaken at her house.

Having reviewed the further written submissions, the Panel asked Council to explain why it considered the property did not meet Criterion H. Council provided a memorandum prepared by RBA which stated:

- the house 'Tempe' was built by 1887 for Frederick Lavers who died in 1888, soon after its completion
- Jessie Henderson acquired the property in 1906 and resided there for about 45 years until her death
- Planning Practice Note 1 has no specific detail about testing when Criterion H should be applied
- The Victorian Heritage Register Criteria and Threshold Guidelines (Heritage Council Victoria) has an assessment process directed towards places of state significance but can be readily adopted for places of local significance.

The memo referred to the Guidelines' test for Criteria H:

H1. The place/object has a direct association with a person, or group of persons, who have made a strong or influential contribution in their field of endeavour.

And

H2. There is evidence of the association between the place/object and the

And

H3. The association relates:

- directly to achievements of the person(s); AND
- to an enduring and/or close interaction between the person(s) and the place/object.

The memo stated that if H1, H2 and H3 are satisfied, then Criterion H is likely to apply (but not necessarily at the State level).

² Council report for 3 October 2022 meeting, pp 3-4, 10, 12 and 13 and Attachment 2

Regarding 89 Harcourt Street, RBA recommended that Criterion H not be applied to HO953 and it explained:

- there needs to be an “*inextricable link*” between the fabric of the place and the person/group to apply Criterion H, which sets a relatively high bar for applying this criterion
- simply living at a place is not enough to meet Criterion H
- Ms Henderson is a notable figure who lived at the house for many years, but it was not built for her and there was no major change to the house while she owned it so there is nothing directly evident in the fabric to attribute a strong association to Ms Henderson
- it cannot be said that living at 89 Harcourt Street was integral to Ms Henderson developing her advocacy for women’s rights, and it is possible she could have taken the path no matter where she lived.

(iii) Discussion

No submission opposed the proposal to include 89 Harcourt Street in the Precinct as an individually significant property. The National Trust classified property contributes to the Precinct’s historical and presentative significance. The building’s late Italianate style with its intricate architectural details is why it achieves Criterion E (aesthetic significance). The house appears to be highly intact.

Historic documentation demonstrates that Jessie Henderson CBE is a historically notable figure for her social welfare work, charities and advocacy for women’s rights through her various roles from the 1890s to the 1940s. A considerable proportion of her work was around and during two world wars and during the 1930s economic depression when such work was greatly needed.

Planning Practice Note 1 explains that this criterion relates to “*Special association with the life or works of a person, or group of persons, of importance in our history*” but does not provide guidance. This means the life and achievements of Ms Henderson would have to have a special association with 89 Harcourt Street.

The Victorian Heritage Register Criteria and Threshold Guidelines (Heritage Council Victoria) provides guidance on applying Criterion H but the Panel has not applied it because it seeks a relatively higher threshold for State heritage which cannot be applied for local heritage. Nonetheless, it agrees with Council that there would need to be something in the heritage fabric which demonstrates the special association. Examples are:

- a building which demonstrates the works of a notable architect
- a house designed and built (or later transformed) as a symbol of someone’s achievements
- areas on the property showing evidence of activities related to their achievements.

The HO953 heritage citation explains that 89 Harcourt Street was purchased by Frederick Lavers in 1885 and the house was likely architect designed and built by 1887. The house represented his success as the contractor of the Queens Coffee Palace, Carlton which once stood at the corner of Victoria and Rathdowne Streets. Mr Lavers died in 1888, though family members continued to own the property until it was sold in 1906.

Ms Henderson did not alter the house’s exterior after she purchased it in 1906 until her death in 1951 because it appears highly intact today. While it is possible that Ms Henderson undertook some of her work at home, there is no documented evidence to support this assumption.

Although there is no obvious association between Ms Henderson's achievements and 89 Harcourt Street, her remarkable achievements are recognised through different publicly accessible documents including the online Australian Dictionary of Biography and Victorian Honour Roll of Women.

The HO953 heritage citation refers to Ms Henderson purchasing 89 Harcourt Street in 1906. Ms Branagan refers to Ms Henderson purchasing it around 1900 and living there "*for over 50 years*". The Panel accepts that Ms Henderson purchased the property in 1906 and resided there for 45 years, consistent with property title details.

(iv) Conclusion

The Panel concludes:

- Jessie Henderson CBE is a historically significant figure with notable achievements, however there is no heritage fabric at 89 Harcourt Street, Hawthorn East to demonstrate a special association with where she lived for 45 years.
- 89 Harcourt Street, Hawthorn East does not achieve Criterion H.

4.3 85A Harcourt Street (Non-contributory property)

(i) The issues

The issues are:

- whether the non-contributory property at 85A Harcourt Street should be excluded from the Precinct
- whether the Heritage Overlay will unreasonably restrict changes to the property.

(ii) Submissions and Council response

One submission considered that it did not make sense to prevent changes to a non-contributory property.

In response, Council stated:

- the Heritage Overlay does not prevent change, but requires a planning permit to assess the impact of demolition and most buildings and works on the area's heritage values
- it is established practice to include non-contributory properties in a heritage precinct to preserve the precinct's heritage values or surrounding contributory properties – this is consistent with Planning Panel findings such as Boroondara PSA C266 [2018] PPV; Boroondara PSA C274 Part 2 [2018] PPV; and Moreland PSA C174 [2019] PPV
- it is justified to include the non-contributory property in the Precinct.

(iii) Discussion

A non-contributory property should only be included in a heritage precinct if its future development is likely to impact on the sensitive heritage fabric of surrounding contributory properties. There may be instances where future development is unlikely to impact the precinct because the property is on the precinct's border and faces outward.

The non-contributory property at 85A Harcourt Street should be included in the Precinct because it is viewed as part of the heritage streetscape. The relatively new house at 85A Harcourt Street is

close to the heritage house at 85 Harcourt Street so any future development proposal should respond to this sensitive interface and be assessed through a planning permit application.

The Panel agrees with Council that the Heritage Overlay enables changes to a non-contributory property, subject to a planning permit application to assess any impact on surrounding heritage. This is affirmed by two strategies in Clause 15.03-1L of the Planning Scheme for non-contributory heritage places:

- Support the demolition of 'non-contributory' places.
- Ensure replacement buildings, development, alterations and additions are sympathetic with heritage fabric of the place, rather than any 'non-contributory' elements of the place.

Many of the strategies for non-contributory places refer to new development and alterations.

(iv) Conclusions

The Panel concludes:

- The non-contributory property at 85A Harcourt Street should be included in the Smythesdale Estate Precinct to ensure future development is appropriately assessed.
- The Heritage Overlay (HO953) would enable changes to the non-contributory property, including entire demolition of the existing building, subject to a planning permit to ensure that new development sensitively responds to surrounding heritage fabric.

Appendix A Planning context

A:1 Planning policy framework

Council submitted that the Amendment is supported by various clauses in the Planning Policy Framework, which the Panel has summarised below.

Victorian planning objectives

The Amendment will implement section 4(1)(d) of the PE Act to:

- conserve and enhance those buildings, areas or other places which are of scientific, aesthetic, architectural or historical interest, or otherwise of special cultural value
- balance the present and future interests of all Victorians.

Planning Policy Framework

The Amendment supports:

- **Clause 15.01-55** (Neighbourhood character) which seeks to recognise, support and protect neighbourhood character, cultural identity, and sense of place.
- **Clause 15.03-1S** (Heritage conservation) which seeks to ensure the conservation of places of heritage significance. Relevant strategies are:
 - Identify, assess and document places of natural and cultural heritage significance as a basis for their inclusion in the planning scheme.
 - Provide for the protection of natural heritage sites and man-made resources and the maintenance of ecological processes and biological diversity.
 - Provide for the conservation and enhancement of those places which are of, aesthetic, archaeological, architectural, cultural, scientific, or social significance.
 - Encourage appropriate development that respects places with identified heritage values.
 - Retain those elements that contribute to the importance of the heritage place.
 - Encourage the conservation and restoration of contributory elements.
 - Ensure an appropriate setting and context for heritage places is maintained or enhanced.
- **Clause 15.03-1L** (Heritage in Boroondara) which applies to land affected by the Heritage Overlay and seeks:
 - To preserve 'significant' heritage places, protecting all significant heritage fabric including elements that cannot be seen from the public realm.
 - To facilitate sympathetic new buildings which extend the life of 'significant' heritage places.
 - To retain and conserve 'contributory' places and fabric in the Heritage Overlay which are visible from the primary street frontage.
 - To facilitate sympathetic additions, alterations and new buildings to 'contributory' heritage places which are massed, detailed, finished and located to preserve the presentation of the place from the street.
 - To ensure buildings and works to 'non-contributory' properties are sympathetic to the heritage values of the precinct and complement the precinct's heritage built fabric by being respectful of the scale, massing, rhythm and detailing.

A:2 Plan Melbourne

Plan Melbourne 2017-2050 sets out strategic directions to guide Melbourne's development to 2050 to ensure it becomes more sustainable, productive and liveable as its population approaches 8 million. It is accompanied by a separate implementation plan that is regularly updated and refreshed every five years.

Plan Melbourne is structured around seven Outcomes, which set out the aims of the plan. The Outcomes are supported by Directions and Policies, which outline how the Outcomes will be achieved. The following are relevant to the Amendment:

- **Outcome 4:** Melbourne is a distinctive and liveable city with quality design and amenity
 - **Direction 4.4:** Respect Melbourne's heritage as we build for the future
 - **Policy 4.4.1:** Recognise the value of heritage when managing growth and change
 - **Policy 4.4.4:** Protect Melbourne's heritage through telling its stories.

A:3 Planning scheme provisions

The Heritage Overlay purposes are:

- To implement the State Planning Policy Framework and the Local Planning Policy Framework, including the Municipal Strategic Statement and local planning policies.
- To conserve and enhance heritage places of natural or cultural significance.
- To conserve and enhance those elements which contribute to the significance of heritage places.
- To ensure that development does not adversely affect the significance of heritage places.
- To conserve specifically identified heritage places by allowing a use that would otherwise be prohibited if this will demonstrably assist with the conservation of the significance of the heritage place.

The Heritage Overlay requires a planning permit to demolish, subdivide, build or carry out works. The Heritage Overlay enables its Schedule to specify additional controls for specific trees, painting previously unpainted surfaces, internal alterations and an incorporated plan (which may exempt buildings and works and other changes from requiring a planning permit). The Schedule may also identify if a place can be considered for uses that are otherwise prohibited, subject to a planning permit.

A:4 Ministerial Directions, Planning Practice Notes and guides

Ministerial Directions

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

- Ministerial Direction 11 (Strategic Assessment of Amendments)
- Ministerial Direction (The Form and Content of Planning Schemes pursuant to section 7(5) of The Act) – referred to as Ministerial Direction 7(5) in this Report.

That discussion is not repeated here.

Planning Practice Note 1 (Applying the Heritage Overlay), August 2018

Planning Practice Note 1 provides guidance about using the Heritage Overlay. It states that the Heritage Overlay should be applied to, among other places:

Places identified in a local heritage study, provided the significance of the place can be shown to justify the application of the overlay.

Planning Practice Note 1 specifies that documentation for each heritage place needs to include a statement of significance that clearly establishes the importance of the place and addresses the heritage criteria. It recognises the following model criteria (the Hercon criteria) that have been adopted for assessing the value of a heritage place:

Criterion A: Importance to the course or pattern of our cultural or natural history (historical significance).

- Criterion B:** Possession of uncommon, rare or endangered aspects of our cultural or natural history (rarity).
- Criterion C:** Potential to yield information that will contribute to an understanding of our cultural or natural history (research potential).
- Criterion D:** Importance in demonstrating the principal characteristics of a class of cultural or natural places or environments (representativeness).
- Criterion E:** Importance in exhibiting particular aesthetic characteristics (aesthetic significance).
- Criterion F:** Importance in demonstrating a high degree of creative or technical achievement at a particular period (technical significance).
- Criterion G:** Strong or special association with a particular community or cultural group for social, cultural or spiritual reasons. This includes the significance of a place to Indigenous peoples as part of their continuing and developing cultural traditions (social significance).
- Criterion H:** Special association with the life or works of a person, or group of persons, of importance in our history (associative significance).

Practitioner's Guide

A Practitioner's Guide to Victorian Planning Schemes Version 1.5, April 2022 (Practitioner's Guide) sets out key guidance to assist practitioners when preparing planning scheme provisions. The guidance seeks to ensure:

- the intended outcome is within scope of the objectives and power of the PE Act and has a sound basis in strategic planning policy
- a provision is necessary and proportional to the intended outcome and applies the Victoria Planning Provisions in a proper manner
- a provision is clear, unambiguous and effective in achieving the intended outcome.

3.2 9 Seattle Street, Balwyn North - Consideration of Panel Report - Amendment C381boro

Executive Summary

Purpose

The purpose of this report is to inform the Urban Planning Delegated Committee (UPDC) of the outcomes of the planning panel hearing held to consider Amendment C381boro for 9 Seattle Street, Balwyn North. The report also seeks a resolution to refer Amendment C381boro to a meeting of Council for adoption.

Background

The heritage significance of the property at 9 Seattle Street, Balwyn North was considered by Built Heritage, heritage consultants, during the preparation of the draft Balwyn and Balwyn North Heritage Study (including Deepdene and Greythorn) (the Balwyn Study) in 2015. In February 2021, Council engaged GML Heritage to undertake the Stage 3 Peer Review of the Balwyn Study. The property at 9 Seattle Street, Balwyn was assessed as being of local heritage significance in the Stage 3 Peer Review.

On 4 January 2022, planning permit application PP22/0001 was lodged for the construction of two (2) dwellings on a lot. The planning permit application implied full demolition of the building identified as an individually significant heritage place. However, as the site was not subject to the Heritage Overlay, heritage matters could not be formally considered. As a result, Council lodged a request with the Minister for Planning to apply an interim Heritage Overlay. Given the need to expedite the process, the property was removed from the Stage 3 Peer Review, and a separate planning scheme amendment initiated to include the property in the Heritage Overlay on a permanent basis.

On 18 July 2022, the UPDC resolved to adopt the heritage citation for the property and write to the Minister for Planning to seek authorisation to prepare and exhibit a planning scheme amendment. The Minister authorised Amendment C381boro on 31 October 2022.

Amendment C381boro was exhibited from 9 February to 9 March 2023. Council received three (3) submissions on the amendment. On 1 May 2023, a report was considered by the UPDC on the outcomes of the exhibition process and a request to appoint an independent planning panel. The UPDC resolved to request the appointment of an independent planning panel to consider all submissions received.

Key Issues

An independent Planning Panel was appointed to consider submissions to the amendment. No submitters requested to be heard at the panel hearing. At the Directions Hearing, parties agreed the amendment could be considered based on written submissions, without supplementary verbal submissions at a hearing. Council relied on the UPDC report of 1 May 2023 as its response to submissions and made no further submission to the Panel.

On 14 July 2023, the Panel Report was received and is contained at **Attachment 1**. The Panel Report was publicly released on 24 July 2023. The Panel found the property meets the threshold for inclusion in the Heritage Overlay and recommended the amendment be adopted as exhibited.

Next Steps

Officers recommend the UPDC resolve to receive and acknowledge the Panel Report as it relates to Amendment C381boro and refer the amendment to a meeting of Council to be adopted.

Officers' recommendation

That the Urban Planning Delegated Committee resolve to:

1. Receive and acknowledge the Panel's report and recommendation, as shown at **Attachment 1**, in accordance with Section 27(1) of the *Planning and Environment Act 1987*.
2. Endorse the officers' response to the Panel's recommendation as discussed in this report.
3. Refer Amendment C381boro to Council for adoption in accordance with Section 29(1) of the *Planning and Environment Act 1987*.
4. Authorise the Director Urban Living to undertake administrative changes to the amendment and associated planning controls that do not change the intent of the controls.

Responsible director: **Scott Walker, Director Urban Living**

1. Purpose

The purpose of this report is to:

- Inform the Urban Planning Delegated Committee (UPDC) of the Panel's recommendation for Amendment C381boro (**Attachment 1**) and the officers' response to the Panel's recommendation.
- Seek a resolution from the UPDC to refer Amendment C381boro to a meeting of Council for adoption.

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

Boroondara Community Plan 2021-31

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, and includes the *Council Plan 2021-25*.

The amendment implements the Strategic Objective of the Theme 4 of the Plan, to "Protect the heritage and respect the character of Boroondara, while facilitating appropriate, well-designed development".

Specifically, the amendment implements Strategy 4.1 - "Boroondara's heritage places are protected through ongoing implementation of heritage protection controls in the Boroondara Planning Scheme."

Heritage Action Plan 2016

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.

The amendment is consistent with the following actions of the Heritage Action Plan 2016:

- Knowing: which seeks to identify, assess and document heritage places.
- Protecting: which seeks to provide statutory protection for identified heritage places.

Boroondara Planning Scheme

The amendment is consistent with the objectives of the Planning Policy Framework. Specifically, it addresses the following Clauses:

- Clause 2.03-4 Built environment and heritage of the Municipal Planning Strategy – which includes the strategic direction to '*protect all individual places, objects and precincts of cultural, aboriginal, urban and landscape significance*'.
- Clause 15.03-1S Heritage conservation – which seeks to '*ensure the conservation of places of heritage significance*' and to '*identify, assess and*

document places of natural and cultural heritage significance as a basis for inclusion in the planning scheme’.

- Clause 15.03-1L Heritage in Boroondara – which seeks to ‘*preserve ‘significant’ heritage places, protecting all significant heritage fabric including elements that cannot be seen from the public realm’.*

The Planning Policy Framework seeks to ensure the Heritage Overlay is applied to protect places of heritage significance in the City of Boroondara.

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 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.

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’.

The amendment is consistent with these Plan Melbourne directions and initiatives.

Planning and Environment Act 1987

The amendment is consistent with the objectives of planning in Victoria, in particular the objective detailed in Section 4(1)(d) of the *Planning and Environment Act 1987* (the Act), being:

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.

This means that Council has a statutory obligation to continuously identify and protect places of heritage significance through the Heritage Overlay.

3. Background

The key milestones relating to Amendment C381boro are summarised in the table below.

Date	Event
February 2021	Council engaged GML Heritage to undertake the Stage 3 Peer Review of the Balwyn and Balwyn North Heritage Study (including Deepdene and Greythorn). The property at 9 Seattle Street, Balwyn was one of the properties identified for the Stage 3 Peer Review.
August 2021	Property owners notified prior to the commencement of the fieldwork that their property had been identified and would be investigated for heritage significance and for suitability for inclusion in the Heritage Overlay.

Date	Event
1 October 2021	Survey date of draft citation.
4 January 2022	Planning permit application PP22/0001 lodged for the construction of two (2) dwellings on a lot. The planning permit application implied full demolition.
18 July 2022	UPDC resolved to adopt the heritage citation and request authorisation to prepare and exhibit a planning scheme amendment, and to seek an interim Heritage Overlay from the Minister for Planning.
19 July 2022	Council sought authorisation to prepare and exhibit Amendment C381boro to the Boroondara Planning Scheme to include the property in the Heritage Overlay on a permanent basis. Council lodged Amendment C383boro requesting the Minister for Planning apply an interim Heritage Overlay to the property.
13 October 2022	Amendment C383boro gazetted applying an interim Heritage Overlay (HO945) to the property.
31 October 2022	Authorisation granted for Amendment C381boro.
9 February - 9 March 2023	Amendment C381boro exhibited.
1 May 2023	UPDC considered a report on the amendment and resolved to refer all submissions received to a Planning Panel for consideration.
2 May 2023	Request to appoint Panel submitted to Planning Panels Victoria.
3 May 2023	Panel appointed.
14 June 2023	Directions Hearing.
15 June 2023	Directions issued by Planning Panels Victoria.
14 July 2023	Panel Report received.
24 July 2023	Panel Report publicly released.

4. Outline of key issues/options

Panel Hearing

An independent Planning Panel was appointed to consider submissions to the amendment. The Panel also considered Amendment C388boro concurrently - an unrelated amendment proposing to apply the Heritage Overlay to the Smythesdale Estate Precinct, Hawthorn East. This will be considered as part of a separate UPDC report.

On 14 June 2023, a Directions Hearing was held where it was agreed to have Amendment C381boro considered by written submissions only. No submitter requested to be heard at a hearing.

Council relied on the UPDC report of 1 May 2023 as its response to submissions and made no further submission to the Panel.

Planning Panel Recommendation

On 13 July 2023, officers received the Panel Report for Amendment C381boro. The report was publicly released on 24 July 2023.

After considering the amendment and all submissions, the Panel found the amendment was well founded and strategically justified, and recommended the amendment be adopted as exhibited. The Panel found the individually significant property met the threshold for local significance under Criterion A (historical) and Criterion E (aesthetic) under the Planning Practice Note 1: Applying the Heritage Overlay. No changes to the amendment were required as a result of the planning panel process.

Officer Recommendation

The Panel's recommendation to adopt the amendment as exhibited is consistent with Council's submission to the Panel. As detailed in the Panel Report, the Panel considered all written submissions made in response to the amendment, and supplementary material.

Officers recommend the UPDC resolve to receive and acknowledge the Panel Report, to accept the Panel's recommendation, and to refer the amendment to a meeting of Council for adoption.

5. Consultation/communication

All submitters were invited to participate in the independent planning panel process. Submitters which were not parties to the panel process had their written submissions considered by the Panel.

All relevant parties were notified in writing of the release of the Panel Report.

In addition to the above, all affected property owners and occupiers and submitters have been informed by letter of this UPDC meeting and given the opportunity to attend and present to the UPDC.

6. Financial and resource implications

Cost associated with the amendment will be funded through the Planning and Placemaking Department operational budget for the 2023/24 financial year.

7. Governance issues

No officers involved in the preparation of this report have a general or material conflict of interest requiring disclosure under chapter 5 of the Governance Rules of Boroondara City Council.

The recommendation contained in this report is compatible with the Charter of Human Rights and Responsibilities 2006 as it does not raise any human rights issues.

8. Social and environmental issues

The inclusion of the property in the Heritage Overlay would have positive social effects by contributing to the continual protection and management of the City's heritage. The amendment is not considered to have any environmental impacts.

Manager: David Cowan, Manager Planning and Placemaking

Report officer: Rachel Brien, Strategic Planner

Planning Panels Victoria

Boroondara Planning Scheme Amendment C381boro 9 Seattle Street, Balwyn North

Panel Report

Planning and Environment Act 1987

13 July 2023



How will this report be used?

This is a brief description of how this report will be used for the benefit of people unfamiliar with the planning system. If you have concerns about a specific issue you should seek independent advice.

The planning authority must consider this report before deciding whether or not to adopt the Amendment.
[section 27(1) of the *Planning and Environment Act 1987* (the PE Act)]

For the Amendment to proceed, it must be adopted by the planning authority and then sent to the Minister for Planning for approval.

The planning authority is not obliged to follow the recommendations of the Panel, but it must give its reasons if it does not follow the recommendations. [section 31 (1) of the PE Act, and section 9 of the *Planning and Environment Regulations 2015*]

If approved by the Minister for Planning a formal change will be made to the planning scheme. Notice of approval of the Amendment will be published in the Government Gazette. [section 37 of the PE Act]

Planning Panels Victoria acknowledges the Wurundjeri Woi
Wurrung People as the traditional custodians of the land on which
our office is located. We pay our respects to their Elders past and
present.

Planning and Environment Act 1987

Panel Report pursuant to section 25 of the PE Act

Boroondara Planning Scheme Amendment C381boro

9 Seattle Street, Balwyn North

13 July 2023



Con Tsotsoros, Chair

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Glossary and abbreviations

the Amendment	Boroondara Planning Scheme Amendment C381boro
Council	Boroondara City Council
DELWP	Department of Environment, Land, Water and Planning
PE Act	<i>Planning and Environment Act 1987</i>

Overview

Amendment summary	
The Amendment	Boroondara Planning Scheme Amendment C381boro
Brief description	Proposes to permanently apply the Heritage Overlay (HO945) to 9 Seattle Street, Balwyn North
Property	9 Seattle Street, Balwyn North
Planning Authority	Boroondara City Council
Authorisation	31 October 2022 subject to conditions (see Chapter 1.1)
Exhibition	9 February to 9 March 2023
Submissions	Received from: <ol style="list-style-type: none"> 1. Evonne Liang 2. Hua Liang 3. Owner of 9 Seattle Street

Panel process	
The Panel	Con Tsotsoros
Directions Hearing	Planning Panels Victoria with online video, 14 June 2023
Parties	No submitter requested to be heard
Panel process	The Panel considered unresolved issues through a written process, in response to a request from Council
Site inspection	Unaccompanied, 7 July 2023
Citation	Boroondara PSA C381boro [2023] PPV
Date of this report	13 July 2023

Executive summary

Council engaged GML Heritage to conduct research for 9 Seattle Street, Balwyn North (the property) to determine if it had sufficient local heritage significance and to prepare a heritage citation. The Statement of Significance within the citation found the property met Criteria A (historical significance) and E (aesthetic significance) of the criteria referred to in Planning Practice Note 1 (Applying the Heritage Overlay).

Boroondara Planning Scheme Amendment C381boro (the Amendment) seeks to permanently apply the Heritage Overlay (HO945) to the property. The Amendment was exhibited from 9 February to 9 March 2023 and received three objecting submissions, including one from the owner.

Key issues raised in submissions include whether the property has sufficient heritage significance, property value, private financial impact, the quality of Balwyn North, building layout and suitability and onsite safety.

For the reasons set out in this report, the Panel concludes that the Amendment:

- is supported by, and implements, the relevant sections of the Planning Policy Framework
- is consistent with the relevant Ministerial Directions and Practice Notes
- is well founded and strategically justified and should proceed.

The Panel agrees that the property meets Criteria A and E and has sufficient heritage significance to justify applying the Heritage Overlay. The HO945 Statement of Significance clearly explains why the property achieves each criterion and is supported by comprehensive contextual information in the heritage citation. No submission provided contradictory information.

Planning Practice Note 1 sets out the criteria for assessing heritage significance. They do not include property value, private financial impact, quality of Balwyn North, building layout and suitability, and onsite safety. These matters are not relevant when considering whether the property has sufficient heritage significance to apply the Heritage Overlay.

Recommendation

Based on the reasons set out in this Report, the Panel recommends that Boroondara Planning Scheme Amendment C381boro be adopted as exhibited.

1 Introduction

1.1 The Amendment

The purpose of the Amendment is to permanently apply the Heritage Overlay (HO945) to 9 Seattle Street, Balwyn North (the property). The Amendment was authorised on 31 October 2022 subject to the following conditions:

1. Remove 76 Wattle Road, Hawthorn from the amendment by:
 - a. Removing 76 Wattle Road, Hawthorn from the Schedule to Clause 43.01 and making consequential changes to the proposed schedules to clauses 72.04, 72.08 and the amendment maps.
 - b. Making consequential changes to the instruction sheet and explanatory report.
2. Make the following changes to amendment documents in relation to 9 Seattle Street, Balwyn North:
 - a. Amend statement of significance for 9 Seattle Street, Balwyn North to update 'what is significant?', 'why is it significant?' and the primary source document title to 'Batrouney House (former), 9 Seattle Street, Balwyn North Heritage Citation (GML Heritage, July 2022)'.
 - b. Amend the Schedule to 72.08 (Background Documents) to amend the background document title for the heritage citation relating to 9 Seattle Street, Balwyn North and its corresponding amendment number.
 - c. Amend the Schedule to Clause 43.01 (Heritage Overlay) and the Schedule to Clause 72.04 (Incorporated Documents) to amend the statement of significance document title to 'Batrouney House (former), 9 Seattle Street, Balwyn North Statement of Significance, August 2022'.
 - d. Ensure that date for the statement of significance for 9 Seattle Street, Balwyn North is amended to 'August 2022' across all relevant ordinances.

1.2 Procedural issues

No submitter requested to be heard at a hearing. In response to a request from Council, the Panel agreed to consider unresolved issues through a written process. At the Directions Hearing, the Panel advised:

- it had sufficient information to inform itself, including its response to submissions set out in the officer report to the 1 May 2023 Council meeting
- it did not seek a further submission from Council unless it sought to present new information.

Council relied on its 1 May 2023 report as its response to issues in submissions and made no further submission to the Panel.

1.3 The Panel's approach

The Panel has assessed the Amendment against the principles of net community benefit and sustainable development, as set out in Clause 71.02-3 (Integrated decision making) of the Planning Scheme.

The Panel considered all written submissions made in response to the exhibition of the Amendment, observations from a site visit, submissions and other material provided to the Panel. All submissions and materials have been considered by the Panel in reaching its conclusions.

2 Strategic issues

2.1 Planning context

This chapter identifies planning context relevant to the Amendment. Appendix A highlights key imperatives of relevant provisions and policies.

Table 1 Planning context

	Relevant references
Victorian planning objectives	- section 4(1)(d) of the <i>Planning and Environment Act 1987</i> (PE Act)
Municipal Planning Strategy	- Clause 2.03-4 (Built environment and heritage)
Planning Policy Framework	- Clauses 15.01-5S (Neighbourhood character) 15.03-1S (Heritage conservation), and Clause 15.03-1L (Heritage in Boroondara)
Other planning strategies and policies	- Plan Melbourne Outcome 4, Direction 4.4, Policies 4.4.1 and 4.4.4
Planning scheme provisions	- Heritage Overlay
Ministerial directions	- Ministerial Direction 11 (Strategic Assessment of Amendments)
Planning Practice Note	- Planning Practice Note 1 (Applying the Heritage Overlay), August 2018 (updated 13 June 2023)

2.2 Strategic justification

(i) Submissions and Council response

The Explanatory Report states the Amendment:

- is consistent with Clause 15.03-1L and Ministerial Directions 7(5) and 9
- will have a net community benefit by protecting a place which contributes to Boroondara's heritage.

One submission considered the Amendment should not proceed because the Heritage Overlay would restrict housing supply needed to support Melbourne's growing population.

In response, Council stated:

- urban consolidation objectives might point to redevelopment opportunities, but these matters are not considered when assessing heritage
- heritage assessments focus only on considering a property from a heritage perspective, consistent with relevant state government practice notes and accepted professional heritage practice
- competing planning objectives (such as housing supply) are more appropriately considered during the planning permit application process
- applying the Heritage Overlay to one property will not discernibly impact on the ability to meet Boroondara's future projected housing demand.

(ii) Discussion

The methodology which supports the Amendment generally follows guidance in Planning Practice Note 1 and is founded on sound research prepared by GML Heritage. The research ensures the property meets the necessary threshold to justify its local significance and the application of the Heritage Overlay.

The Amendment meets State and local policies by identifying heritage of local significance then selecting the appropriate provision, the Heritage Overlay, to implement the outcomes. It delivers the net community benefit sought through Clause 71.02-3 by:

- identifying local heritage for present and future generations
- applying planning provisions so that future development proposals are assessed to ensure they sensitively respond to existing heritage fabric.

The provisions have prepared consistent with Ministerial Direction 7(5) and the Statement of Significance format reflects good practice.

The Panel agrees with Council regarding the Amendment's potential impact on housing supply. There is no evidence that applying the Heritage Overlay to a single property in the Neighbourhood Residential Zone Schedule 3 (Low Scale, Low Density Residential Areas) will negatively affect the ability for Boroondara to achieve its municipal housing supply, as sought by State policy.

(iii) Conclusions

For the reasons set out in this report, the Panel concludes that the Amendment:

- is supported by, and implements, the relevant sections of the Planning Policy Framework
- is consistent with the relevant Ministerial Directions and Practice Notes
- is well founded and strategically justified and should proceed.

3 9 Seattle Street, Balwyn North (HO945)

Exhibited Statement of significance



What is significant?

The former Batrouney House at 9 Seattle Street, Balwyn North, designed by architect Edgard Pirrotta in 1975, is significant. Significant fabric includes asymmetrical built form with a steeply raked parapet wall and curved corner to the principal façade, walls of bagged concrete blocks, original external colour scheme (albeit subtly softened by the original owners), irregular roofline that incorporates sections that are variously flat, low-pitched or more steeply raked, all clad with metal tray deck roofing, a long glazed vault, made of curved timber beams with perspex infill, which extends all the way from the front door to the staircase in the rear wing, flat-roofed double carport, exposed chimney flues, rainwater heads and downpipes, flight of shallow concrete-paved steps that lead from the street to the front door, and bagged and painted concrete-block retaining wall with curved corner walls at the driveway entry. The garage door is a later addition and is not significant.

How is it significant?

The house is of historic and aesthetic significance to the City of Boroondara.

Why is it significant?

9 Seattle Street, Balwyn North, is of local historical significance for the evidence it provides of Boroondara as a locus for fine, leading architect-designed public and private buildings from the 1850s into the postwar period. Built in 1975 to a design by prominent Melbourne-based Italian architect Edgard Pirrotta of Morris & Pirrotta, 9 Seattle Street featured in architecture critic Norman Day's 1976 publication *Modern Houses: Melbourne*, among profiles of some 50 modern houses by a then-emerging generation of younger architects. As a recipient of the September 1976 Age-RAIA House of the Week award, Batrouney House exemplifies the high concentration of modern mid-1970s houses in Boroondara that received architectural accolades or were awarded RAIA citations. **(Criterion A)**

9 Seattle Street, Balwyn North, is of local aesthetic significance as a fine and notably intact example of the Brutalist aesthetic as applied to residential architecture during the 1970s. With its irregular plan, jagged roofline and use of glazed vaulting, the house has a stark external form featuring walls of bagged concrete blocks and a roofline that incorporates sections that are variously flat, low-pitched or more steeply raked. The house retains many distinctive features including its long glazed vault, made of curved timber beams with perspex infill, which extends all the way from the front door to the staircase in the rear wing. As is typical of other examples of the style, the house's chimney flues, rainwater heads and downpipes are all exposed. Being highly intact, and retaining its original front and side fences and entry steps, the house is a bold and eye-catching element in the streetscape. **(Criterion E)**

3.1 Issues

(i) The issues

The issues are:

- whether the property at 9 Seattle Street, Balwyn North, has sufficient heritage significance to meet the threshold to justify applying the Heritage Overlay
- whether property value, private financial impact, the quality of Balwyn North, building layout and suitability, and onsite safety are relevant when considering whether the subject property has sufficient heritage significance to meet the threshold for applying the Heritage Overlay.

(ii) Submissions and Council response

Submissions objected to the Heritage Overlay (HO945) being applied to the subject land because they considered:

- the property does not have sufficient heritage value to justify the Heritage Overlay
- the house is not 'living friendly' and is unsuitable for people
- the sloping property is dangerous and unsafe for elderly people and young children
- the current house layout is unsuitable for families, and unenjoyable for anyone
- the house and Balwyn North are just standard.

Regarding heritage significance, Council stated:

- the heritage citation prepared by GML Heritage clearly assesses the property against the recognised heritage criteria which demonstrates it achieves Criteria A (historical significance) and E (aesthetic significance) and is individually significant
- no submitter provided evidence to support the claim the property has little or no heritage significance or that the assessment is incorrect
- the Amendment is consistent with the objectives of planning in Victoria
- it has a statutory obligation to continuously identify and protect places of heritage significance through the Heritage Overlay.

Regarding other issues in the submissions, Council stated:

- they are not relevant when assessing whether to apply the Heritage Overlay
- Planning Practice Note 1 identifies the criteria for assessing whether to apply the Heritage Overlay, and they do not include:
 - potential personal financial implications, such as property value or costs
 - development potential
 - the character of the surrounding streets or the level of change experienced in the area
- the only relevant test during the planning scheme amendment stage is whether the place meets at least one of the recognised heritage criteria
- the Heritage Overlay enables routine maintenance and repairs which do not change the external appearance of the building without the need for a planning permit
- structural condition including design and layout is most appropriately considered during a planning permit application for development, which will assess it against local heritage policy objectives.

- alterations and additions to the property which respond to liveability, safety, and use may be undertaken subject to an approved planning permit which has assessed the work against local heritage policy objectives.

(iii) Discussion

Heritage significance

The Panel agrees with Council regarding why the property has sufficient heritage significance to justify applying the Heritage Overlay.

The HO945 Statement of Significance explains why it is of local historical and aesthetic significance. The owner's submission did not provide reasons why they believed the property did not have sufficient heritage significance. No submission challenged information in the heritage citation regarding the property's significance.

One submission described the house as "*just a standard home*". Whether a house is 'standard' is not the test when assessing heritage significance. The test is whether it is comparable to other similar properties which have identified heritage significance. The HO945 heritage citation includes a comparative analysis which concluded the property is comparable with other Modernist post-war houses.

The Panel agrees with the citation that the highly intact house at 9 Seattle Street is comparable with:

- 300 Balwyn Road, Balwyn North (HO616)
- 43 Kireep Road, Balwyn (HO177)
- 12-14 Tannock Street, Balwyn North (HO928)
- 6 Reeves Court, Kew (HO822)
- 18 Yarra Street, Kew (Significant in HO530)
- 6 Fairview Street, Hawthorn (HO784)
- 29 Leura Grove, Hawthorn East (HO857).

Nonetheless, there is nothing typical or standard about the house. The HO945 citation states the house is designed in a Brutalist style and provides a history of Brutalism in Australia. This includes:

- The term Brutalism is closely associated with Le Corbusier's *béton brut* ('concrete in the raw', that is in its natural state when the formwork is removed, often to show the timber graining) (Goad & Willis 2012: p110).
- ...
- By the 1970s, Brutalist influenced houses in Melbourne shared many features in common. Circulation elements became overtly expressed and functional systems articulated with structure and service elements such as stairs, ramps and even ducting left exposed. Materials included rough, board-marked concrete, concrete block and face bricks, often manipulated to create complex sculptural forms, 45 degree chamfered corner elements and bold cantilevers.

These Brutalist style elements have been incorporated into the design of the house by a recognised architect. The building elevations in the citation show how the architect responded to the property's slope, through a stepped design approach. It includes landscaping with retaining walls and steps to make the external spaces more useable.

The property is important to Boroondara's cultural history and is locally significant for its 1970s Brutalist aesthetics in a residential setting.

Other issues

The Panel agrees with Council regarding other issues raised in submissions. All three submissions make broad statements without explaining reasons or providing information to support their claims. This includes the claim regarding onsite safety.

The Amendment proposes to apply the Heritage Overlay (HO945) to all of 9 Seattle Street as an individually significant place. The area beyond this curtilage, including the quality of Balwyn North, is therefore not relevant to the significance of the place.

The Panel does not agree with submissions that the house, which was designed by a professionally qualified and recognised architect, is unsuitable for families or people more broadly. As outlined in the HO945 citation, Trevor and Shamla Batrouney commissioned Edgard Pirrotta of Morris and Pirrotta to design a family home with multiple bedrooms and what appears to be a 'family room' next to the kitchen.

If the owner dislikes the layout, they can alter the interior without the need for a planning permit because the Amendment does not propose to apply the internal controls through the Heritage Overlay Schedule.

Planning Practice Note 1 does not include private financial impact or property value as criteria for assessing heritage. Nonetheless, the Heritage Overlay would not financially affect the owner if they sought to:

- change the interior because there would be no need for a planning permit
- maintain and repair the exterior without changing its appearance because there would be no need for a planning permit, as indicated in Council's response.

(iv) Conclusions

The Panel concludes:

- The property at 9 Seattle Street, Balwyn North meets Criteria A and E and has sufficient heritage significance to justify applying the Heritage Overlay.
- Property value, private financial impact, quality of Balwyn North, building layout, suitability and safety are not relevant when considering whether the property has sufficient heritage significance to apply the Heritage Overlay.

Appendix A Planning context

A:1 Planning policy framework

Council submitted that the Amendment is supported by various clauses in the Planning Policy Framework, which the Panel has summarised below.

Victorian planning objectives

The Amendment will implement section 4(1)(d) of the *Planning and Environment Act 1987* (the Act) to:

- conserve and enhance those buildings, areas or other places which are of scientific, aesthetic, architectural or historical interest, or otherwise of special cultural value
- balance the present and future interests of all Victorians.

Planning Policy Framework

The Amendment supports:

- **Clause 15.01-55** (Neighbourhood character) which seeks to recognise, support and protect neighbourhood character, cultural identity, and sense of place.
- **Clause 15.03-1S** (Heritage conservation) which seeks to ensure the conservation of places of heritage significance. Relevant strategies are:
 - Identify, assess and document places of natural and cultural heritage significance as a basis for their inclusion in the planning scheme.
 - Provide for the protection of natural heritage sites and man-made resources and the maintenance of ecological processes and biological diversity.
 - Provide for the conservation and enhancement of those places which are of, aesthetic, archaeological, architectural, cultural, scientific, or social significance.
 - Encourage appropriate development that respects places with identified heritage values.
 - Retain those elements that contribute to the importance of the heritage place.
 - Encourage the conservation and restoration of contributory elements.
 - Ensure an appropriate setting and context for heritage places is maintained or enhanced.
- **Clause 15.03-1L** (Heritage in Boroondara) which applies to land affected by the Heritage Overlay and seeks:
 - To preserve 'significant' heritage places, protecting all significant heritage fabric including elements that cannot be seen from the public realm.
 - To facilitate sympathetic new buildings which extend the life of 'significant' heritage places.
 - To retain and conserve 'contributory' places and fabric in the Heritage Overlay which are visible from the primary street frontage.
 - To facilitate sympathetic additions, alterations and new buildings to 'contributory' heritage places which are massed, detailed, finished and located to preserve the presentation of the place from the street.
 - To ensure buildings and works to 'non-contributory' properties are sympathetic to the heritage values of the precinct and complement the precinct's heritage built fabric by being respectful of the scale, massing, rhythm and detailing.

A:2 Plan Melbourne

Plan Melbourne 2017-2050 sets out strategic directions to guide Melbourne's development to 2050 to ensure it becomes more sustainable, productive and liveable as its population approaches 8 million. It is accompanied by a separate implementation plan that is regularly updated and refreshed every five years.

Plan Melbourne is structured around seven Outcomes, which set out the aims of the plan. The Outcomes are supported by Directions and Policies, which outline how the Outcomes will be achieved. The following are relevant to the Amendment:

- **Outcome 4:** Melbourne is a distinctive and liveable city with quality design and amenity
 - **Direction 4.4:** Respect Melbourne's heritage as we build for the future
 - **Policy 4.4.1:** Recognise the value of heritage when managing growth and change
 - **Policy 4.4.4:** Protect Melbourne's heritage through telling its stories.

A:3 Planning scheme provisions

The Heritage Overlay purposes are:

- To implement the State Planning Policy Framework and the Local Planning Policy Framework, including the Municipal Strategic Statement and local planning policies.
- To conserve and enhance heritage places of natural or cultural significance.
- To conserve and enhance those elements which contribute to the significance of heritage places.
- To ensure that development does not adversely affect the significance of heritage places.
- To conserve specifically identified heritage places by allowing a use that would otherwise be prohibited if this will demonstrably assist with the conservation of the significance of the heritage place.

The Heritage Overlay requires a planning permit to demolish, subdivide, build or carry out works. The Heritage Overlay enables its Schedule to specify additional controls for specific trees, painting previously unpainted surfaces, internal alterations and an incorporated plan (which may exempt buildings and works and other changes from requiring a planning permit). The Schedule may also identify if a place can be considered for uses that are otherwise prohibited, subject to a planning permit.

A:4 Ministerial Directions, Planning Practice Notes and guides

Ministerial Directions

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

- Ministerial Direction 11 (Strategic Assessment of Amendments)
- Ministerial Direction (The Form and Content of Planning Schemes pursuant to section 7(5) of The Act) – referred to as Ministerial Directions 7(5) in this Report.

That discussion is not repeated here.

Planning Practice Note 1 (Applying the Heritage Overlay), August 2018

Planning Practice Note 1 provides guidance about using the Heritage Overlay. It states that the Heritage Overlay should be applied to, among other places:

Places identified in a local heritage study, provided the significance of the place can be shown to justify the application of the overlay.

Planning Practice Note 1 specifies that documentation for each heritage place needs to include a Statement of Significance that clearly establishes the importance of the place and addresses the heritage criteria. It recognises the following model criteria (the Hercon criteria) that have been adopted for assessing the value of a heritage place:

Criterion A: Importance to the course or pattern of our cultural or natural history (historical significance).

- Criterion B:** Possession of uncommon, rare or endangered aspects of our cultural or natural history (rarity).
- Criterion C:** Potential to yield information that will contribute to an understanding of our cultural or natural history (research potential).
- Criterion D:** Importance in demonstrating the principal characteristics of a class of cultural or natural places or environments (representativeness).
- Criterion E:** Importance in exhibiting particular aesthetic characteristics (aesthetic significance).
- Criterion F:** Importance in demonstrating a high degree of creative or technical achievement at a particular period (technical significance).
- Criterion G:** Strong or special association with a particular community or cultural group for social, cultural or spiritual reasons. This includes the significance of a place to Indigenous peoples as part of their continuing and developing cultural traditions (social significance).
- Criterion H:** Special association with the life or works of a person, or group of persons, of importance in our history (associative significance).

Practitioner's Guide

A Practitioner's Guide to Victorian Planning Schemes Version 1.5, April 2022 (Practitioner's Guide) sets out key guidance to assist practitioners when preparing planning scheme provisions. The guidance seeks to ensure:

- the intended outcome is within scope of the objectives and power of the PE Act and has a sound basis in strategic planning policy
- a provision is necessary and proportional to the intended outcome and applies the Victoria Planning Provisions in a proper manner
- a provision is clear, unambiguous and effective in achieving the intended outcome.

3.3 High Street Commercial Precinct, Ashburton - Outcomes of Preliminary Consultation

Executive Summary

Purpose

The purpose of this report is to inform the Urban Planning Delegated Committee (UPDC) on the outcomes of the preliminary consultation on the independent peer review and the revised heritage citation for the High Street Commercial Precinct, Ashburton, prepared by GJM Heritage, heritage consultants. The report seeks a resolution to commence a planning scheme amendment to apply the Heritage Overlay to the recommended heritage precinct, on a permanent basis.

Background

The High Street Commercial Precinct, Ashburton was initially identified in the Draft Ashburton Heritage Gap Study prepared by Context in 2019 which recommended nine individual heritage places and two heritage precincts for inclusion in the Heritage Overlay.

Following preliminary consultation on the Draft Ashburton Heritage Gap Study in November/December 2019, the Urban Planning Special Committee (UPSC) resolved to defer consideration of the High Street Commercial Precinct being included in the Heritage Overlay, and commission an independent peer review by another qualified heritage consultant. The resolution was made at the meeting of 6 July 2020. A key factor in the decision to defer consideration of the proposed precinct was opposition from traders based on the challenging retail and business conditions which traders were facing due to Covid-19 lockdowns and restrictions on trading.

Following the UPSC resolution, GJM Heritage was commissioned to carry out an independent peer review of the High Street Commercial Precinct and the recommendation to include the precinct in the Heritage Overlay. GJM Heritage found there was a sound strategic basis for including the precinct in the Heritage Overlay subject to changes, including expansion of the precinct to include more properties to the east towards the railway line, on the northern side of High Street, Ashburton. Based on the advice provided from GJM Heritage, officers commissioned a revised heritage citation, provided at **Attachment 1**.

On 6 March 2023, officers tabled a report for consideration by the Urban Planning Delegated Committee (UPDC) recommending preliminary consultation be undertaken on the revised heritage citation prepared by GJM Heritage. The UPDC resolved to carry out preliminary consultation.

Key Issues

Preliminary consultation on the outcomes of the peer review was undertaken from 3 April 2023 to 13 May 2023. Owners and occupiers of the affected properties, as well as owners of adjoining and adjacent properties, community and historical groups were notified in writing of the consultation period and invited to provide feedback.

Thirty (30) submissions were received, including twenty-seven (27) objecting, one (1) opposing petition, one (1) partially supportive and one (1) supporting submission.

The key issues raised in the feedback include:

- Economic impacts and unfair limitation on future development potential.
- Issues with maintenance and repairs of heritage places.
- Concerns about the structural condition of buildings.
- Concerns about competing planning policy objectives (e.g., urban consolidation).

Officers and Council's heritage consultant have reviewed the feedback received and have provided a summary of and response to each submitter in the table at **Attachment 2**.

No properties are recommended to be excluded from the amendment. No changes are recommended to the citation prepared by GJM Heritage.

Next Steps

Officers recommend the Urban Planning Delegated Committee (UPDC) adopt the GJM Heritage citation provided at **Attachment 1** and resolve to seek authorisation from the Minister for Planning to prepare and exhibit a planning scheme amendment to introduce a Heritage Overlay to the properties on a permanent basis.

Officers' recommendation

That the Urban Planning Delegated Committee resolve to:

1. Receive and note the feedback received and outcomes of the preliminary consultation process undertaken on the High Street Commercial Precinct, Ashburton peer review.
2. Endorse the officers' response to the preliminary feedback received to the High Street Commercial Precinct, Ashburton peer review outlined in **Attachment 2**.
3. Adopt the High Street Commercial Precinct, Ashburton heritage citation contained in **Attachment 1**.
4. Write to the Minister for Planning to request authorisation to prepare an amendment to the Boroondara Planning Scheme in accordance with Section 4B and 8A(4) of the *Planning and Environment Act 1987* to include properties identified in the High Street Commercial Precinct in the Heritage Overlay.
5. Following receipt of authorisation from the Minister for Planning, exhibit the amendment in accordance with Section 19 of the *Planning and Environment Act 1987*.
6. Authorise the Director Urban Living to undertake administrative changes to the amendment that do not change the intent of the amendment, or any changes required under the Minister for Planning's Authorisation prior to the commencement of exhibition.

Responsible director: **Scott Walker, Director Urban Living**

1. Purpose

The purpose of this report is to:

- Provide a summary of the outcomes of the preliminary consultation process and key issues raised in the feedback to the High Street Commercial Precinct peer review.
- Provide an officers' response to the key issues raised in the feedback.
- Seek a resolution from the Urban Planning Delegated Committee (UPDC) to adopt the heritage citation and request authorisation from the Minister for Planning to prepare and exhibit a planning scheme amendment to implement the citation's recommendations.

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

Boroondara Community Plan 2021-2031

The Boroondara Community Plan 2021-2031 sets out the 10-year vision for Boroondara's future based on values, aspirations, and priorities important to the community.

The heritage assessments implement Strategic Objective 4 of the Plan: *Protect the heritage and respect the character of Boroondara, while facilitating appropriate, well-designed developments.*

Specifically, the heritage assessments implement the following strategy:

- **Strategy 4.1** - Boroondara's heritage places are protected through ongoing implementation of heritage protection controls in the Boroondara Planning Scheme.

Heritage Action Plan 2016

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.

The heritage assessments are consistent with the following action of the Heritage Action Plan 2016:

- Identify opportunities to improve the protection, management, and promotion of the City's heritage assets (including public and private buildings, parks, gardens, public spaces, objects, and other features).

Boroondara Planning Scheme

The identification and protection of the subject sites through the Heritage Overlay is consistent with the Planning Policy Framework (PPF), including the following Clauses:

- Clause 02.03-4 - **Built environment and heritage** of the Municipal Planning Strategy which includes the strategic direction to 'protect all individual places, objects and precincts of cultural, aboriginal, urban and landscape'.
- Clause 15.03-1S - **Heritage conservation** which seeks to 'ensure the conservation of places of heritage significance; and to 'identify, assess and document places of natural and cultural heritage significance as a basis for their inclusion in the planning scheme'.
- Clause 15.03-1L - **Heritage in Boroondara** which seeks to 'preserve 'significant' heritage places, protecting all significant heritage fabric including elements that cannot be seen from the public realm'.

The PPF seeks to ensure the Heritage Overlay is applied to protect places of heritage significance in the City of Boroondara.

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 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.

Specifically, Policy 4.4.1 '*Recognise the value of heritage when managing growth and change*' acknowledges 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.*'

The High Street Commercial Precinct is consistent with these Plan Melbourne directions and initiatives.

Planning and Environment Act 1987

The heritage assessment of the precinct is consistent with the objectives of planning in Victoria, in particular the objective detailed in Section 4(1)(d) of the *Planning and Environment Act 1987* (the Act), being:

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.

This means that Council has a statutory obligation to continuously identify and protect places of heritage significance through the Heritage Overlay.

3. Background

Ashburton Heritage Gap Study and Amendment C337boro

The Draft Ashburton Heritage Gap Study (Draft Study) was prepared by Context, heritage consultants, in 2019 and recommended nine (9) individually significant heritage places and two heritage precincts be included in the Heritage Overlay. This included the High Street Commercial Precinct.

Preliminary consultation on the draft Study was undertaken between 11 November 2019 and 9 December 2019. Fifty-six (56) submissions were received including 12 supporting submissions, four neutral submissions and 40 opposing submissions.

Thirty-one (31) of the opposing submissions received were from property owners, occupiers, and traders associated with the High Street Commercial Precinct, and the Ashburton Traders Association. Generally, submitters opposed the recommendation for the following reasons:

- The buildings do not display uncommon, unusual, rare, historical and cultural significance.
- Lack of heritage value of the subject properties based on simplicity of form and design.
- Alterations to properties, particularly at ground floor level.
- The recommendation is inconsistent with Victorian Government objectives encouraging residential intensification in shopping centres to support retail.
- A Heritage Overlay will hinder improvements and new development and negatively influence customers visiting the centre.
- The onset of the COVID-19 pandemic and associated lockdowns and restrictions created challenging economic and retail conditions for traders, and the recommendation was an unwanted distraction from business operations.

Resolution of 6 July 2020

On 6 July 2020, the Urban Planning Special Committee (UPSC) considered the Draft Study and preliminary feedback received. The UPSC resolved to adopt the study without the High Street Commercial Precinct. The UPSC also resolved to commission an independent peer review of the recommendation to include the High Street Commercial Precinct in the Heritage Overlay.

The UPSC resolved to proceed to a planning scheme amendment to implement the balance of the Draft Study, which formed the basis of Amendment C337boro.

Amendment C337boro implemented the recommendations of the Ashburton Heritage Gap Study by including 9 individual places and one precinct in the Heritage Overlay, and was gazetted by the Minister for Planning on 30 June 2022.

High Street Commercial Precinct, Ashburton Peer Review

Following the UPSC resolution of 6 July 2020, GJM Heritage was commissioned to carry out an independent peer review of the citation and recommendation to include the High Street Commercial Precinct in the Heritage Overlay.

GJM Heritage found the recommendation to include the High Street Commercial Precinct in the Heritage Overlay to be strategically justified, subject to the following changes:

- Include additional properties at 261-281 High Street (east of Y Street) and 216 High Street in the precinct.
- Regrade the three post-war buildings at 188-192 High Street from 'contributory' to 'non-contributory'.

- Regrade the two interwar buildings at 237-239 High Street from 'non-contributory' to 'contributory'.
- Include additional comparative analysis of the precinct with other post-war commercial high streets within Boroondara.

GJM Heritage also concluded the precinct does not satisfy Criterion E (aesthetic significance) under the HERCON criteria, and important attributes of the proposed precinct, including its very high level of consistency of built form, were not well articulated in the previous citation or the Statement of Significance.

Officers commissioned GJM Heritage to prepare a revised heritage citation for the precinct based on the advice in the peer review. The revised citation is provided at **Attachment 1**.

On 6 March 2023, the Urban Planning Delegated Committee (UPDC) considered a report on the peer review, and a recommendation to proceed to preliminary consultation on the citation prepared by GJM Heritage. The UPDC resolved to proceed.

Preliminary consultation

Preliminary consultation was undertaken on the citation prepared by GJM Heritage from 3 April 2023 to 13 May 2023. The preliminary consultation process involved a mailout to all affected and adjoining property owners and occupiers to the precinct, interest groups and previous submitters to the recommendation through preliminary consultation on the Draft Ashburton Heritage Gap Study.

Council received thirty submissions during preliminary consultation including:

- Twenty-seven opposing submissions;
- One partially supporting submission;
- One supporting submission; and
- One opposing petition (975 signatures).

A summary of each submission and officer response is provided in the table at **Attachment 2**.

4. Outline of key issues

Key issues raised in feedback

There are several key issues which have been raised through the feedback received. These are discussed as follows.

Economic impacts and unfair limitation on future development potential

Feedback received during preliminary consultation expressed concerns the implementation of the Heritage Overlay would create economic impacts on businesses, and place an unfair limitation on future development potential in the area.

It is accepted that there are economic and competitive challenges facing small strip-based retail centres such as High Street, Ashburton. It is understood that the additional planning controls associated with including properties in a Heritage Overlay are valid concerns for some local traders and landowners. The Heritage

Overlay will place some additional requirements and limitations on how these sites can be developed in future. Council must balance these concerns with appreciating how the heritage fabric of the centre contributes to the centre's built form and retail appeal.

In the case of the High Street Commercial Precinct, a section of the existing shopping centre has been recommended for heritage protection on the basis of intact interwar and early post war architecture.

From a planning scheme perspective, future development opportunities are not identified as a relevant concern to the assessment of heritage significance. *Planning Practice Note 1: 'Applying the Heritage Overlay'* identifies the criteria for assessing the heritage significance of a heritage place and refers to only matters of a heritage nature.

The trader and landowner concerns about how the Heritage Overlay may affect how individual land parcels can be developed in future is understood. However, there is no evidence that indicates the application of a Heritage Overlay would detrimentally affect the economic performance of a shopping centre.

Council has a responsibility to protect valued heritage places, and carries out heritage assessments and develops recommendations for this purpose. The Heritage Overlay is the most appropriate mechanism for protecting valued heritage places and precincts. Other planning objectives such as regulating building heights and design outcomes are not uncommon in an urban area such as Boroondara. However, these are most appropriately considered during the planning permit application process rather than the heritage assessment process.

In addition, the Heritage Overlay does not prohibit redevelopment but requires the identified heritage values be considered as part of the planning permit application process. Appropriate designs can be achieved within the Heritage Overlay. It is also noted not all commercial properties along High Street have been recommended for inclusion in the Heritage Overlay.

Maintenance and repairs of heritage places

Submitters raised concerns the application of a Heritage Overlay would prevent property owners from undertaking repairs and maintenance of properties.

The Heritage Overlay does not place a statutory obligation on the property owner to upkeep and maintain a heritage building to a particular heritage standard.

The Heritage Overlay provisions include an exemption from planning permit requirements for routine maintenance and repair that replace materials like-for-like and do not change the external appearance of the building. Internal maintenance and repairs such as rewiring, plumbing, restumping, replastering, and installation of a new kitchen or bath do not require planning approval (unless internal controls are activated). No internal controls are proposed for the buildings in the recommended precinct.

Submitters also raised concerns about increased costs associated with maintaining a heritage place. Private financial circumstances are not a valid consideration in a heritage assessment.

Concerns about the structural condition of a building

Submitters have expressed concerns some buildings are in poor condition and do not hold any heritage value as a result.

These issues are not matters relevant to a heritage assessment according to *Planning Practice Note 1: Applying the Heritage Overlay*. Typically, an assessment of the economic life of a building is subjective and is dependent on a range of factors including a property owner's willingness or desire to maintain or renovate the property. Many elements of a building's structural integrity are not visible from the public realm such as foundation and condition of internal framing and are not matters for consideration in a heritage assessment.

Council has a responsibility to identify and protect places of local cultural significance. If evidence can be provided that a building is structurally unsafe, then allowance could be made during the planning permit approval stage once the Heritage Overlay has been applied, i.e., allow for full demolition. However, officer experience is that most buildings can be protected with appropriate maintenance or repair.

Concerns about competing planning policy objectives (e.g., urban consolidation)

Submitters raised the issue of potentially competing policy outcomes arising from protecting heritage places close to public transport and other infrastructure. Whilst urban consolidation objectives might point to redevelopment opportunities, these matters are not considered in heritage assessments.

Heritage assessments are focused only on considering a property from a heritage perspective, consistent with *Planning Practice Note 1: 'Applying the Heritage Overlay'* and accepted professional heritage practice. If a property can be identified as being of heritage significance or as part of a coherent heritage precinct, then the property has been recommended for inclusion in the Heritage Overlay and assigned a grading.

The Heritage Overlay does not prohibit redevelopment but requires the identified heritage values be considered along with other planning objectives as part of the planning permit application process.

Strategic justification for the High Street Commercial Precinct

GJM Heritage has carried out an independent peer review of the earlier recommendation included with the Draft Ashburton Heritage Gap Study to include the High Street Commercial Precinct in the Heritage Overlay. GJM Heritage found the recommendation was strategically justified subject to changes and modifications to the citation, including an expansion of the precinct to include more properties.

The revised citation recommends the precinct be included in the Heritage Overlay based on Criterion A (historical significance) and Criterion D (representativeness). GJM Heritage found the recommendation cannot be justified against Criterion E (aesthetic significance) as had been recommended in the earlier citation.

The recommended precinct presents as a visually cohesive commercial shopping strip, with a consistent two-storey scale with shopfronts at street level, and which illustrates the major period of Ashburton's development. Specifically, the recommended precinct contains a fine representative sample of styles which were popular in the interwar and early post-war periods including Moderne, English Domestic Revival, Georgian Revival, Exotic and Functionalist/Modernist. On this basis, it has been deemed to meet the threshold for local heritage significance.

Each building in the precinct is assigned a heritage grading based on its contribution to the heritage fabric of the precinct.

5. Consultation/communication

All affected and adjoining property owners and occupiers to the precinct were notified in writing of the citation prepared by GJM Heritage and were invited to provide feedback. The High Street Commercial Precinct peer review was also available on Council's website.

All parties who provided written feedback, as well as owners and occupiers of the affected and adjoining properties were notified of this UPDC meeting.

If the UPDC resolves to proceed with a planning scheme amendment to implement the recommendation, and the Minister authorises an amendment be prepared and exhibited, the amendment will be exhibited in accordance with the requirements of Section 19 of the *Planning and Environment Act 1987*.

As part of the exhibition process, all affected and adjoining property owners and occupiers, previous submitters, and other interested parties will be notified in writing of the amendment and invited to lodge submissions. All parties will be able to present their views at a future UPDC meeting.

Where submissions are received but cannot be resolved, Council will need to refer submissions to an independent planning panel for consideration. All submitters will have the opportunity to make further submissions to a panel.

6. Financial and resource implications

Costs associated with a planning scheme amendment process will be funded through the Planning and Placemaking Department budget in 2023/2024.

7. Governance issues

No officers involved in the preparation of this report have a general or material conflict of interest requiring disclosure under chapter 5 of the Governance Rules of Boroondara City Council.

The recommendation contained in this report is compatible with the Charter of Human Rights and Responsibilities 2006 as it does not raise any human rights issues.

8. Social and environmental issues

The inclusion of the recommended precinct in the Heritage Overlay would have positive social and environmental effects by contributing to the continual protection and management of the City's heritage.

Manager: David Cowan, Manager Planning and Placemaking

Report officer: Robert Costello, Acting Coordinator Strategic Planning



HIGH STREET COMMERCIAL PRECINCT, ASHBURTON

Prepared by: GJM Heritage

Address: 225-281A & 162-214 High Street, Ashburton

Name: High Street Commercial Precinct, Ashburton	Survey Date: July 2021
Place Type: Commercial precinct	Architect: Various
Grading: Significant	Builder: Various
Extent of Overlay: See precinct map	Construction Date: Interwar & early Postwar





experienced its most intensive and significant development after World War II (Built Heritage 2012:17).

Ashburton was the name given to the local railway station (formerly named Norwood) on the Outer Circle Railway Line in 1890 at the suggestion of Camberwell City Councillor E Dillon. It was named after his birthplace in Ashburton Terrace in Cork, Ireland (McConville 2008; Victorian Places 2015). Up until the 1920s, the area from Gardiners Creek to the Outer Circle Railway was referred to as Glen Iris, with the area from the railway line to Boundary Road referred to as Burwood. The postal districts of Ashburton and Ashburton South were declared in 1923 (Lee 2016:13).

Interwar development

In the 1920s, Ashburton comprised mainly dairy farms, market gardens and orchards with access to the area provided by High Street, the railway (electrified in 1924) (Lee 2016:12, 17) and the recently constructed tram line. However, an influx of people and development throughout the 1920s, accompanied by the economic boom of the time, brought changes to the rural character of the Ashburton area (McConville 2008).

A number of estates were subdivided in the area with lots offered for sale in the 1920s including Waverley Golf Links (1922); the Great Glen Iris Railway Junction Estate (1923); the Ashburton Terminus Estate (1924); an estate located between High Street and Dent Street (1926, see Figure 1), subsequently known as the Tower Hill Estate; and the New Township Estate (1927). Ashburton Heights, developed by builder Clarence Gladstone Ward in 1926, featured concrete roads (Lee 2016:14).

The Ashburton Shopping Centre on High Street was surveyed in the 1920s with some shops and residences built by 1926 (seen in the Auction Notice at Figure 1). The Ashburton Post Office opened on 15 December 1927; the Ashburton Primary School opened in 1928; and the Ashburton Hall in High Street, which opened in 1927 by the Progress Association, served as a meeting place for the community as well as housing Catholic and Presbyterian church services (Victorian Places 2015).

Some development continued into the 1930s. Camberwell Council purchased land at the corner of High Street and Vears Road and, by 1932, had established Ashburton Park (Lee 2016:15). St Michaels Catholic Church was constructed in High Street in 1932, the Baptist Church built in Y Street in 1934, and the Methodist Church in Ashburn Grove in 1935 to a design by architects R M & M H King. The Ashburton Dairy was established by the Stocks family in High Street c1937 (Built Heritage 2012:81). However, for the most part, the economic depression of the 1930s slowed development in the area. Gardiners Creek was straightened in sections at this time by men on sustenance (welfare payments) (City of Boroondara 2018).

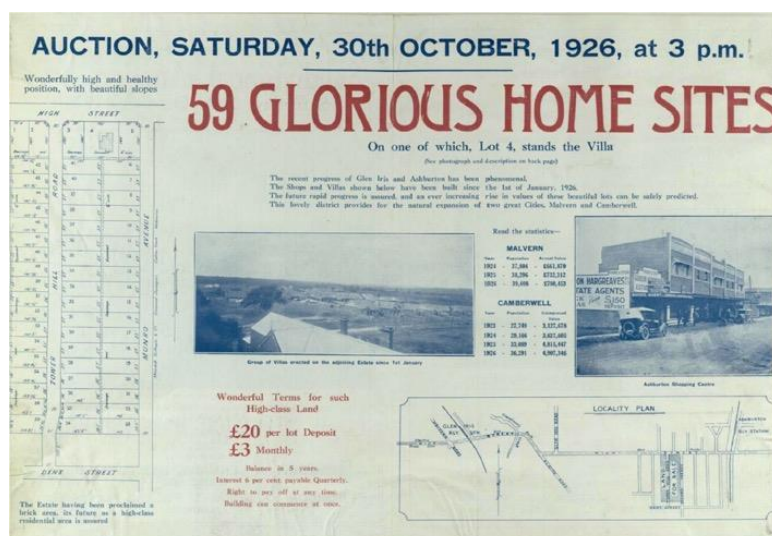


Figure 1. Estate plan for 56 home sites bounded by High Street, Munro Avenue, Dent Street and Tower Hill Road, Ashburton, 1926. Views include houses built on the adjoining estate (LHS) and Ashburton Shopping Centre (RHS) ('56 glorious home sites' 1926).

Post-war development

Unlike most other suburbs comprising what was then known as the City of Camberwell, open land still existed in Ashburton in 1945, including a large area bounded by High Street, Ashburn Grove, and Warrigal Road that included the Ashburton Forest (Built Heritage 2012:133). Post-war development in this area was stimulated by the Housing Commission of Victoria, founded in 1938, which laid out its first residential estate at Port Melbourne and had soon established others at Preston, Brunswick, Coburg, Williamstown, Newport and six regional Victorian centres. The provisions of the *Housing Act 1943* allowed for the acquisition of sites for several large-scale suburban estates.

Most of Ashburton and nearby Holmesglen were identified as sites for substantial public housing estates after World War II. In 1944, the Housing Commission acquired land for the Ashburton Estate, primarily east of the railway line (at that stage closed but soon to be re-opened), taking in the Ashburton Forest. Construction began in 1947, with the estate named 'Alamein' after El Alamein in north Africa, the site of the battle in 1942 which turned back the German army. World War II events and locations were used to name streets in the estate, including Tobruk Road, Liberator Street, Wewak Road and Victory Boulevard. In 1948 the railway line was extended from Ashburton to Alamein station (named in 1947) to service the new Housing Commission estate (Victorian Places 2015).

The Alamein estate brought new business to the Ashburton Shopping Centre, located between Munro Avenue and the railway station. The centre was expanded and upgraded after 1950, and following the opening of the Chadstone Shopping Centre in Malvern East in 1960, local traders upgraded displays, improved parking and diversified outlets, to ensure the success of the centre (McConville 2008). Industry was also attracted to the area, including the Nicholas Ltd Factory designed by architect D G Lumsden and built in Ashburton in 1955 (Built Heritage 2012:232).

The provision of services continued in the post-war period with a library designed by architect Daryl Jackson opening in High Street, Ashburton, in 1980 (Built Heritage 2012:191).



Today, Ashburton has an active strip shopping centre along High Street near the railway station. Ashburton Park and Warner Reserve have modern indoor and outdoor swimming pools and associated facilities. The Malvern Valley golf course is located nearby on Gardiners Creek (Victorian Places 2015).

Precinct History

[The following history is based on the 2020 Context Pty Ltd citation 'High Street Ashburton Commercial Precinct', with additional information as cited].

High Street, Ashburton was formed as part of the survey of the Parish of Boroondara in 1838. According to a journalist in the 1860s, High Street at that time consisted of an abattoir at one end, a blacksmith's forge at the other (see Figure 2), with a continuation of bog holes in between (cited in Lee 2016:6). The Gardiner Road Board and Boroondara Road Board carried out some limited gravelling of High Street in 1861-62, and formed and metalled it in 1864 (Lee 2016:7).

By 1892, John Lee had opened a store in High Street, next to the Ashburton Railway Station (Lee 2016:11).



Figure 2. Fisher's shoeing forge at 328-330 High Street, in operation by the 1860s ('Fisher's Shoeing Forge, 328-330 High Street, Ashburton', undated).

The High Street Commercial Precinct, Ashburton was developed on and adjacent to the 1888 Great Glen Iris Railway Junction Estate. The 1888 estate subdivision plan included commercial lots fronting the southern side of High Street (see Figure 3), however these were not developed until the 1920s and 1930s, during a period of consolidated residential development in the area.



Figure 3. Great Glen Iris Railway Junction Estate, Ashburton, 1888 ('Great Glen Iris Railway Junction Estate' 1888?).

The development of the precinct reflects the development phases of the Ashburton area more generally, with shops constructed in two main stages: during the interwar years of the 1920s and 1930s; and after World War II, in the 1950s.

Interwar development

In 1923, the subdivision plan for the Great Glen Iris Railway Junction Estate was amended by surveyor, E L G Cresswell, with streets renamed as follows: Baillieu Avenue became Highgate Grove; Gladstone Avenue became Lexia Street; Station Parade became Ward Street; and Station Street became Dent Street (Butler 1997).

The Ashburton Heights Estate was developed by builder Clarence Gladstone Ward in 1926 to the immediate west of the Great Glen Iris Railway Junction Estate. Ashburton Heights incorporated Dent Street, the eastern side of Munro Street, High Street and Highgate Grove. By August 1926, Ward had built 20 houses in this estate, all brick five- or six-roomed residences with garages (*Herald* 6 August 1926:18). Ward also built five shops in High Street (Lee 2016:14).

By the mid-1920s, the High Street Commercial Precinct, Ashburton comprised a real estate agent, Gordon Hargreaves, at 243 High Street in premises built by 1925 (see Figure 4), and a store (Lee 2016:11).



Figure 4. Gordon Hargreaves Real Estate building at 243 High Street in 1925 (Mawby 2018).

By 1926, C G Ward had built shops and dwellings at 245 and 249 High Street (BP; 'Ashburton Shopping Centre' 1926). Because of their architectural similarity, the shops and dwellings at 247, 251 and 253 High Street are likely to have been constructed by Ward in the same period (construction dates and builder details for these properties are not noted in the available City of Camberwell building cards) (see Figures 5 and 6) ('Ashburton Shopping Centre' 1926).



Figure 5. Gordon Hargreaves Real Estate building at 243 High Street, and five shops and dwellings at 245-253 High Street, in 1926 ('Ashburton Shopping Centre' 1926).

Additional shops in the High Street Commercial Precinct were erected in the late 1920s: numbers 184-186 in 1927 for V M Smith; number 194 in 1928 by a Mr Eddy; number 235 by builder H Fudge for butcher J T Hepburn; and number 259 by builder W Eddy in 1928 (BP). Numbers 269-271 High Street were built c1929 for owner H J Fudge (PSP), and are evident in a photo published in a 1934 auction pamphlet for 'Tower Hill Estate Ashburton' (Figure 6).

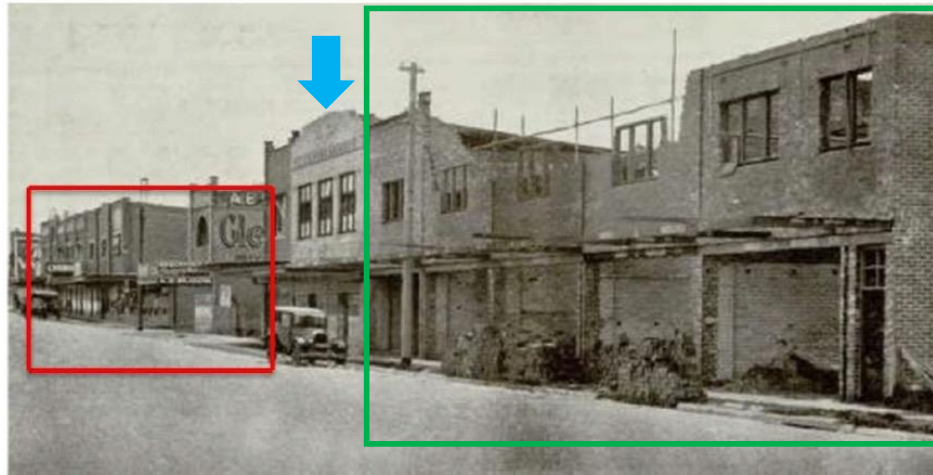


Figure 6. A photo of the north side the Ashburton Shopping Centre, published in 1934. The building at 269-271 High Street is evident, indicated by the blue arrow. The five two-storey brick shops and dwellings at 273-281 High Street) are shown under construction (outlined in green). The two-storey shops, believed to be 245-253 and 259 High Street, constructed in the 1920s, are outlined in red ('Tower Hill Estate' 1934).

By 1930, on the northern side of the High Street Commercial Precinct, the following businesses were in operation between Marquis Street and Y Street (from west to east): the Commercial Bank; James Hepburn butcher (number 235); G Hargreaves Pty Ltd estate agents (number 243); Walter Hooper confectioner; Miss G Turner fancy goods; Mrs D Cooney draper (number 251); Mrs K D Ross fruiterer; T S A McCausland chemist; Edward Lee boot repairer (number 257); and A E Richards ironmonger (number 259). East of Y Street to the railway line, were: A E Block, storekeeper; R M Bilson dairy produce; Norman L Gorrie hairdresser; and Mrs E L Berrisford, fruiterer (BP; S&Mc 1930).

By 1930, on the southern side of the High Street Commercial Precinct, the following businesses operated (from west to east): H Wetherall plumber; H G Johnston garage (number 192); and A O Bilson grocer (likely 194 High Street); and between Lexia and Ward streets, Mrs I Logan operated a newsagent (BP; S&MC 1930).

A number of shops with dwellings were constructed in the subject precinct in the 1930s.

On the southern side of High Street, builders R A Dixon and Sons constructed shops at numbers 180-182 in 1937; L E Newman at numbers 196-204 in 1938 and numbers 206-212 in 1939; and number 214 was built in 1931 for owner Isabella Logan (BP).

Builder R A Dixon and Sons worked on a number of high profile buildings around Melbourne at the time (*Herald* 6 June 1928:14). When R A Dixon died in 1932, an obituary described him as 'one of Melbourne's leading builders' (*Herald* 14 July 1932:29). By 1935, the Dixon building business was operating from Hawthorn (*Age* 30 March 1935:16).

On the northern side of High Street, R A Eddy built shops and dwellings at numbers 225-229 in 1939 and W A Medbury built two shops and a dwelling at 231 High Street in 1937 (the two shops at 231 and 233 High Street were combined into one in 1976) (BP).

Builder J Hattersby constructed shops and dwellings at 237-239 High Street in 1939 (BP). Early architectural drawings for the building show a curved and stepped parapet and four timber windows to the first floor of each shop (Figure 7), which is different to the current appearance of the building (Figure 8). It is likely that these design changes were made between the design and construction stages, as there is no obvious physical evidence of



alterations to the main elevation above ground level. The building at 237 High Street was occupied by the Bank of New South Wales and the ANZ Bank in the 1960s and 1970s (BP).

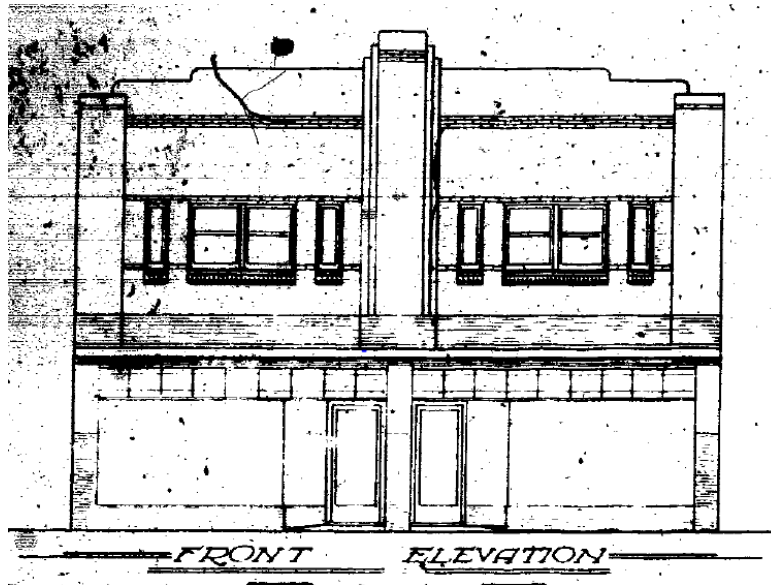


Figure 7. Architectural drawings for 237-239 High Street, which appear to show an earlier design for the building (Source: City of Camberwell building permit plans).



Figure 8. 237-239 High Street as it appears today. Note the simplified architectural detail and steel framed windows as built compared with the architectural drawings (Source: GJM Heritage, 2020)

Grocers Moran and Cato built a shop at 241 High Street in 1937 (BP).



In 1937, additions were made to the existing shop at 243 High Street, the Gordon Hargreaves Real Estate building, at a cost of £3400 (BP).

Two shops and dwellings at 255-257 High Street were built for Miss G E Moss after 1934 (BP; 'Tower Hill Estate' 1934).

The row of five two-storey shops and residences at 273-281 High Street was built c1934. The row is shown under construction in a photo published in a 1934 auction pamphlet for 'Tower Hill Estate Ashburton' (Figure 6).

By 1938, on the northern side of High Street, between Marquis and Y streets, the following businesses were in operation: J T Hepburn, butcher, at number 237; Richard Somers, estate agent, at 243; A E Barton, fruiterer, at 245; R H Eastman, confectioner, at 249; I and R Abbott, fancy goods, at 251; T S A McCausland, chemist, at 253; Ashburton Post Office at 255; and E T Owens, boot repairer at 259 (S&Mc 1938). By 1940, commercial occupants between Y Street and the railway line included: A E Block, storekeeper at 261; Mrs H Johnston, cakes, at 267; F D Hay, hairdresser, at 269; J O Conrick, confectioner, at 271; C R Ratford, butcher, at 273; N V Parris, fruiterer, at 275; R Miller, dairy produce, at 277; F Roberts, radio distributor, at 279; and Olivette Robes, frock shop, at 281 (S&Mc, 1940).

By 1938, on the southern side of High Street, the following businesses were in operation: B R O'Grady, butcher, at number 184; Mrs G Hepburn, dairy produce, at 186; A W Roscoe, manchester, at 192; W J Stevenson, grocer, at 194; and Mrs I Logan, newsagent, at 204 (S&Mc 1938).

Post-war development

In 1949, a newspaper article reported on the lack of shops at the newly opened Housing Commission Estate, Alamein, noting that residents had to access the Ashburton Shopping Centre, whose prices were 'thriving as a result of the influx of customers' and were 'generally higher than these new dwellers, who come mostly from industrial and semi-industrial suburbs', had formerly paid (*Age* 14 January 1949:5).

The influx of population into the Alamein Estate from the 1940s instigated another stage of development in the Ashburton Shopping Centre. In 1955, for instance, new lock-up shops of 40 feet deep and 60 feet deep, or built to specific requirements, were advertised for sale by real estate agent W J Giblett (*Argus* 15 June 1955:16).

L Smith erected three shops and dwellings at 178 High Street in 1950 (BP). Kensington building company Simmie & Co Pty Ltd built a single-storey shop at 216 High Street in 1953. Brighton builder, K Jellis, constructed a row of three single-storey shops at 188-192 High Street in 1954 (BP). R D Shields built brick shops at 162-170 High Street in 1957 on a site that formerly housed a residence built in 1926 (BP).

Builder Cooper Morison Pty Ltd made alterations to the Moran and Cato store at 241 High Street in 1958 (BP).

Part of the Ashburton shopping centre in 1988 can be seen in Figure 9.

Within the precinct, a large two-storey building at 261-267 High Street is a recent construction, replacing earlier commercial buildings.

The shopping centre, known today as Ashburton Village 3147, continues to serve the local community.



Figure 9. Shops at 245-259 High Street in 1988 (Source: City of Boroondara Library Service 'Shopping centre, High Street, Ashburton', 1988).

Description & Integrity

[The following description is adapted from the 2020 Context Pty Ltd citation 'High Street Ashburton Commercial Precinct'. It has been expanded to include the properties east of Y Street].

The High Street Commercial Precinct runs along both sides of High Street, Ashburton, from the Alamein train line (former Outer Circle Line) to just beyond Marquis Street on the northern side (Nos. 225-281A) and between Highgate Grove and just before Ward Street on the southern side (Nos. 162-214). It is located on the northern side of HO227 Great Glen Iris Railway Junction Estate, Ashburton, a residential area developed in the 1920s and 1930s which is part of the same subdivision as 182-216 High Street in this precinct.

The precinct consists of one and two-storey shops built largely in the Interwar period with a second wave of development occurring in the immediate Postwar period, to the end of the 1950s. This development coincided with an influx of people into the area after the completion of the Ashburton Housing Commission Estate, 'Alamein', in 1948.

All the shops are built to the front and side boundaries forming a continuous street wall. The earlier shops are built in a range of Interwar styles, whilst the latter 1950s shops exhibit a simplicity in design that accompanied a Postwar austerity. The precinct is enhanced by several sets of shops built to the same or similar designs.

The earliest shop built in the precinct dates from 1925. Located at 243 High Street, it is a red brick single storey shop with a simple stepped parapet set between engaged piers. By 1929 a number of additional shops had been constructed. All were two-storey in height. They include a group of five shops at Nos. 245-253 built in 1926, a pair of shops at Nos. 184-186 built in 1927, single shops at No. 194 and No. 235 built in 1928, a group of three shops at Nos. 255-259 built in 1928. These shops are representative of a simplified commercial architecture with some Arts and Craft influences. All are constructed in face brickwork, some with smooth or roughcast render bands (some overpainted). All have parapets concealing the roof form behind. The parapets sit between capped engaged piers defining the party walls of each individual shop. The upper-level facades and parapets of the shops between Nos. 245-259 are largely intact and provide a uniform streetscape that creates a sense of cohesion to the precinct.



Figure 10. Shops at 245-259 High Street, Ashburton (Source: Context, 2019).

East of Y Street, a pair of more architecturally refined shops at Nos. 269-271 were built c1929. Exhibiting some Egyptian Exotic Revival decorative motifs, the building has a stepped parapet, low relief render details and six vertically proportioned windows on the first floor, with what appears to be original joinery.



Figure 11. Shops at 269-271 and 273-275 High Street, Ashburton (Source: GJM Heritage, 2020).

Built in 1934, the row of shops at Nos. 273-281A are simpler in form and detailing but continue the character of the shops west of Y Street. These rendered brick shops have single central windows with expressed brick lintels and a decorative string course framing the opening. The flat parapets and engaged piers expressing the party walls are capped with a sawtooth brick on edge coping. Nos. 273, 275, 281 and 281A retain their original sliding sash windows with margin light to the upper sash. Other windows have been replaced. The brick detailing has been overpainted on all shops with the exception of No. 277 and the window lintel and string course to Nos. 281 and 281A. No shops east of Y Street retain early or original shopfronts.



Figure 12. Shops at 277-281A High Street, Ashburton (Source: GJM Heritage, 2020).

The western end of the precinct comprises distinctive group of shops built on opposing corners of Marquis Street. Nos. 231-233 High Street, on the eastern corner, was built in 1937 in the Georgian Revival architectural style whilst the group of three shops at Nos. 225-229, built in 1939, display the horizontal lines, curved corners and geometric forms of the Moderne architectural style.

The shops at 225-229 High Street retain typical elements of the Moderne architectural style to their first floors including sheer wall planes, a curved corner, horizontal banding in the brickwork and contrasting vertical banding at the corner, a raised parapet concealing a flat roof behind, and steel framed windows with horizontal glazing bars. The original sandy coloured wash survives on the rendered elements of the parapet.



Figure 13. Shops at 225-229 High Street, Ashburton (Source: Context 2019).

In contrast, the shops at 231-233 High Street demonstrate the restrained and simplified classicism of the Interwar Georgian Revival architectural style. In Australia, the Interwar Georgian Revival style began to make its presence felt during the 1920s. Constructed of red face brick with a terracotta tiled roof, 231-233 High Street demonstrates the symmetry, use of prominent pitched roof forms with gable ends, and six-over-six sliding sash windows with faux timber shutters common to the Georgian Revival style.



Figure 14. Shops at 231-233 High Street, Ashburton (Source: Context 2019).

The shops on the southern side of the precinct are built in a range of Interwar architectural styles, with some Postwar buildings. Interwar architectural styles include a simple commercial style with some Arts and Crafts influences (Nos.184-186 [1927], 194 [1928] & 214 [1931]), Moderne (Nos. 196-204 [1938]) and English Domestic Revival elements (Nos.180-182 [1937]).

Notable examples include the group of five shops at Nos. 196-204 High Street, constructed in 1938 by builder L E Newman. Built in the Interwar Moderne architectural style the building has a sheer rendered wall plane, horizontal recessed banding and striking curved corner to Lexia Street. Steel framed windows with horizontal glazing bars are protected by projecting slab awnings. Unusually the upper floors of Nos. 198-204 are recessed allowing for balconies. Whilst these have all been filled in with windows or open screen blocks, they remain legible elements.

The four shops at Nos. 206-212 were built the following year in 1939 by the same builder (L E Newman). These retain pressed metal 'Jazz Moderne' soffit lining to the awnings to Nos. 196-210 (spanning the two groups of shops built by builder L E Newman) which appears original.



Figure 15. The soffit lining to the awning of 196-210 High Street (Source: Context 2019).



An influx of population into the 'Alamein' Housing Commission Estate from the 1940s instigated another stage of development in the Ashburton Shopping Centre. Within the precinct, shops were built at Nos. 174-178 in 1950, 188-192 in 1954 and 162-170 in 1957.

The group of three shops at 174-178 High Street, built in 1950, exhibit stylistic traits of the Interwar Moderne architectural style, popular during the 1930s, and the early Postwar Functionalism. This building is of note for its high degree of intactness at both the street and first floor level. Distinctive features include the curved layout of the shop fronts shown on the original architectural drawings, and still evident at Nos. 174 and 176, fenestration at the upper-level with a horizontal band of steel framed windows with curved end, and tiled columns that demarcate the boundary of the individual shops and runs through the ground and first floor elevations.

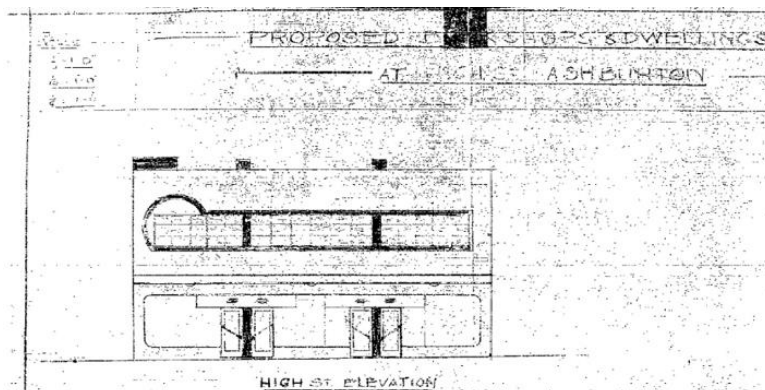


Figure 16. Detail of original architectural drawings for 174-178 High Street, Ashburton, showing the main elevation to High Street. Drawings by G James, dated 1950 (Source: City of Camberwell building permit plans).



Figure 17. Shops at 174-178 High Street, Ashburton, designed by G James in 1950 (Source: Context, 2019).

In contrast, Nos. 162-170 (1957) exhibit elements of Postwar Functionalist or Modernist architecture. Stylistic features included the simple flat roof line with projecting eaves, sloping windows at the upper-level (remnants of the original sloping shop front detail can



also be seen at No. 162 facing Highgate Grove), floor to ceiling windows, the use of new materials and technology creating uninterrupted floor spaces internally such as the lightweight expressed structural steel beams, and a stripping back of decorative styling coupled with textural surfaces for interest. The stacked stone cladding to the piers between the shopfronts is original, as is the shopfront at No. 170.



Figure 18. The shops at 162-170 High Street, Ashburton, constructed in 1957 (Source: Context 2019).

Nos. 188-192 are simple single-storey shops with plain undecorated parapets. Unlike the two-storey shops at Nos. 174-178 and 162-170 these buildings do not demonstrate stylistic features of late-Interwar and early-Postwar architecture and are not readily legible as buildings of that period.

Within the precinct there are a number of contributory buildings that retain elements of original shopfronts, including at Nos. 162, 164, 166, 168, 170, 172, 174, 176, 180, 182, 196, 196A, 202, 212, and 229.

These shops retain ground floor elements including recessed entries (some with original tiled or terrazzo floors), original soffits, original metal window frames, highlight windows and tiled stallboards.

The shopfronts at Nos. 172-176 High Street, which retain their original layout with curved glass form, drawn metal frame and curved corners at its western end (refer Figure 17). Whilst original tiles have been either replaced or removed, the black tiling to the central pillar appears original as do the timber doors. The arcade at Nos. 180-182 provides a through-block link to the rear car park with the two-street facing and the internal shopfronts remaining intact, although the original tiling has been lost.

All other shopfronts have been replaced.

There are four non-contributory properties in the precinct:

- The row of three shops at Nos. 188-192 (1954)
- Two-storey building at Nos. 261-267 (c.1980s).

Key Features

Elements that contribute to the significance of the High Street Commercial Precinct, Ashburton include, but are not limited to:

- Largely intact shops and commercial buildings dating from the Interwar and early Postwar periods
- Moderne, English Domestic Revival, Georgian Revival, Exotic and Functionalist/Modernist architectural detailing and decoration



- Consistent two-storey scale interspersed with single storey shops at 241-243 High Street
- Narrow allotments with buildings constructed to the street boundary
- Parapeted forms
- Gable form tiled roof to 231-233 High Street
- Rendered or unpainted brick walls
- Projecting canopies
- Original or early shop fronts, canopy soffits and first floor joinery.

Intactness/Integrity

The commercial buildings within the High Street Commercial Precinct, Ashburton, are largely intact to their original construction in the 1920s-1950s and retain a high degree of integrity to either the Interwar or early Postwar periods in fabric, form and detail. Some ground-floor shopfronts have undergone alterations, which is common in commercial precincts, and a number of face brick facades have been overpainted. In some instances, the first-floor balcony opening has been infilled with windows or blockwork (see Nos. 198-204), and in others the first-floor windows have been replaced (see Nos. 249 and 253). The upper-storey of No. 186 (but which was identical to No. 184), and the upper-storey windows of No. 225 (which is part of Nos. 225-229) have been boarded over. The above alterations do not diminish the ability to understand the significance of the precinct as a whole. The grouping retains a high degree of integrity, with a consistent, largely two-storey streetscape retained on both sides of High Street.

Comparative Analysis

[The following is informed by the comparative analysis in the 2017 Trethowan Architecture / Context Pty Ltd citation for 'South Camberwell Ashburton Commercial Precinct'].

The High Street Commercial Precinct, Ashburton, is of note as one of the most highly intact Interwar and early Postwar shopping strips in the City of Boroondara. Built between the 1920s and 1950s, the predominantly two-storey shops display a consistency of scale and architectural character and together present as a highly consistent, representative grouping of Interwar and Postwar shops.

Commercial precincts in the Heritage Overlay of the Boroondara Planning Scheme are generally included for their Victorian and/or Edwardian building fabric, illustrating early commercial centres within the municipality. Some precincts, such as the Kew Junction Commercial Precinct (HO520) include some contributory Interwar buildings. Other examples of these predominantly late nineteenth and early twentieth century commercial precincts included on the Heritage Overlay include: Burke Road North Commercial & Transport Precinct, Camberwell (HO505), Union Road Commercial Precinct, Surrey Hills (HO532), Auburn Village Precinct (HO260), Glenferrie Road Commercial Precinct (HO491) and Maling Road Shopping Centre and Residential Environs (HO145).

In regard to the High Street Commercial Precinct, Ashburton, there are few direct comparisons of commercial precincts which demonstrate Interwar and early Postwar development included in the Heritage Overlay of the Boroondara Planning Scheme.

Two precincts that are most comparable as Interwar shopping strips are the South Camberwell Commercial Precinct, 964-984 Toorak Road, Camberwell (HO738) and 523-531 Camberwell Road, Camberwell (part of HO1 - Golf Links Estate, Camberwell). These precincts contain a row of intact shops and shops/residences that present as a highly consistent grouping of representative Interwar retail buildings.



South Camberwell Commercial Precinct, 964-984 Toorak Road, Camberwell (HO738)

964-984 Toorak Road, Camberwell, forms a small commercial precinct comprising a row of single and two-storey shops constructed between 1926 and 1937, that are diverse in scale, form and detail. The strip is demonstrative of typical commercial/retail buildings and architectural characteristics of the Interwar period. A majority of the shopfronts were altered or replaced from the 1950s onwards.



Figure 19. South Camberwell Commercial Precinct, 964-984 Toorak Road, Camberwell (HO738) (Source: Trethowan Architecture, 2017).

523-531 Camberwell Road, Camberwell (part of HO1 - Golf Links Estate, Camberwell)

523-531 Camberwell Road, Camberwell is a small shopping strip that forms part of a larger Interwar heritage precinct which is largely residential in character. The commercial strip at 523-531 Camberwell Road comprises single and two-storey buildings of varying form and architectural detail typical of the Interwar period, with a number retaining original shopfronts. Shops are located on both sides of this part of Camberwell Road, but the row on the western side are excluded from the heritage precinct.



Figure 20. 523-531 Camberwell Road, Camberwell; Golf Links Estate, Camberwell (HO1) (Source: Google Streetview, 2017).

There are other comparative examples of smaller shopping strips of the same Interwar period that are not included on the Heritage Overlay.

The set of shops from 720-746 Riversdale Road, Camberwell, represent a small-scale shopping strip, developed near public transport. Although predominantly on a single side of Riversdale Road, shops are scattered along the opposing side, showing the continued



growth these sites maintained through the Interwar and Postwar periods. Several of the shops have undergone significant alterations, diminishing their integrity.

The shopping centre based around the junction of Camberwell and Toorak roads – formerly the village of Hartwell – was developed during the Interwar period with the expansion of rail transit, but is not included in the Heritage Overlay. The precinct demonstrates the characteristics of the suburban boom through its composition of single and two-storey buildings with no front or side setbacks, parapets, cantilevered awnings, and metal framed shopfronts. This precinct demonstrates the type of continued growth that occurred at the key intersections of Camberwell.

Another comparator not included on the Heritage Overlay is the small group of shops at 1210-1230 Toorak Road, Camberwell. Built between 1930 and 1941 this small shopping strip comprises sets of shops that were designed in the Moderne style with decorative expressed brick detailing. The buildings remain largely intact at the first-floor level, with shopfronts typically altered at the ground level.

Conclusion

The above comparative examples each comprise small rows of shops dating to the Interwar period, which illustrate commercial development in the suburbs of the City of Boroondara in the mid-twentieth century. These commercial buildings display characteristics typical of the Interwar or early Postwar period. The resulting streetscapes in these precincts display a similar (in the case of South Camberwell Commercial Precinct and 523-531 Camberwell Road, Camberwell) or lesser (in the case of 720-746 Riversdale Road, Hartwell Village, and 1210-1230 Toorak Road) degree of integrity as the High Street Commercial Precinct, Ashburton.

While the High Street Commercial Precinct, Ashburton, is comparable in the diversity of built form found in these other shopping centres, it comprises a substantially larger group of shops on both sides of High Street, with the intact building stock contributing to a continuous streetscape of high integrity which is uniform in scale, form and fabric and demonstrates cohesive architectural character. It is apparent that Interwar/Postwar commercial shopping strips are under-represented in the Boroondara Heritage Overlay.



Assessment Against Criteria

Criteria referred to in *Practice Note 1: Applying the Heritage Overlay*, Department of Planning and Community Development, August 2018, modified for the local context.

CRITERION A: Importance to the course, or pattern, of the City of Boroondara's cultural or natural history (historical significance).

The High Street Commercial Precinct, Ashburton, is illustrative of the development of Ashburton in the Interwar and early Postwar periods, when the commercial strip developed in response to the substantial residential growth of the suburb. This was largely a result of the subdivision of a number of residential estates in the area in the 1920s and the establishment of the 'Alamein' Housing Commission Estate east of the railway line in the immediate Postwar period. The High Street Commercial Precinct, Ashburton, clearly illustrates these important phases of development in the City of Boroondara.

CRITERION D: Importance in demonstrating the principal characteristics of a class of cultural or natural places or environments (representativeness).

The High Street Commercial Precinct, Ashburton, is a visually cohesive and largely intact representative example of an Interwar and early Postwar commercial shopping strip, that is uniform in scale, form and fabric. The buildings within the precinct clearly demonstrate a variety of architectural styles popular in the municipality and across Victoria more broadly in the Interwar and Postwar periods, including Moderne, English Domestic Revival, Georgian Revival, Exotic and Functionalist/Modernist architectural styles, with the majority of buildings remaining largely intact to their period of construction to demonstrate the key characteristics of these styles.

Together these commercial buildings present as a highly consistent, representative Interwar and early Postwar shopping precinct.



Statement of Significance

What is Significant?

The High Street Commercial Precinct, Ashburton, developed during the Interwar and early Postwar period.

The precinct comprises 225-281A and 162-214 High Street, Ashburton.

Elements that contribute to the significance of the place include (but are not limited to):

- Largely intact shops and commercial buildings dating from the Interwar and early Postwar periods
- Moderne, English Domestic Revival, Georgian Revival, Exotic and Functionalist/Modernist architectural detailing and decoration
- Consistent two-storey scale interspersed with some single storey shops at 241-243 High Street
- Narrow allotments with buildings constructed to the street boundary
- Parapeted forms
- Gable form tiled roof to 231-233 High Street
- Rendered or unpainted brick walls
- Projecting canopies
- Original or early shop fronts, canopy soffits and first floor joinery.

The single storey buildings at 188-192 and the two-storey building at 261-267 High Street are not significant. Later alterations and additions to the properties are not significant.

How is it significant?

The High Street Commercial Precinct, Ashburton is of local historical and representative (architectural) significance to the City of Boroondara.

Why is it significant?

The High Street Commercial Precinct, Ashburton, is illustrative of the development of Ashburton in the Interwar and early Postwar periods, when the commercial strip developed in response to the substantial residential growth of the suburb. This was largely a result of the subdivision of a number of residential estates in the area in the 1920s and the establishment of the 'Alamein' Housing Commission Estate east of the railway line in the immediate Postwar period. The High Street Commercial Precinct, Ashburton, clearly illustrates these important phases of development in the City of Boroondara (Criterion A).

The High Street Commercial Precinct, Ashburton, is a visually cohesive and largely intact representative example of an Interwar and early Postwar commercial shopping strip, that is uniform in scale, form and fabric. The buildings within the precinct clearly demonstrate a variety of architectural styles popular in the municipality and across Victoria more broadly in the Interwar and Postwar periods, including Moderne, English Domestic Revival, Georgian Revival, Exotic and Functionalist/Modernist architectural styles, with the majority of buildings remaining largely intact to their period of construction to demonstrate the key characteristics of these styles. Together these commercial buildings present as a highly consistent, representative Interwar and early Postwar shopping precinct (Criterion D).



Grading and Recommendations

Recommended for inclusion in the Schedule to the Heritage Overlay of the Boroondara Planning Scheme.

Recommendations for the Schedule to the Heritage Overlay (Clause 43.01) in the Boroondara Planning Scheme:

External Paint Colours <i>Is a permit required to paint an already painted surface?</i>	No
Internal Alteration Controls <i>Is a permit required for internal alterations?</i>	No
Tree Controls <i>Is a permit required to remove a tree?</i>	No
Victorian Heritage Register <i>Is the place included on the Victorian Heritage Register?</i>	No
Incorporated Plan <i>Does an Incorporated Plan apply to the site?</i>	No
Outbuildings and fences exemptions <i>Are there outbuildings and fences which are not exempt from notice and review?</i>	No
Prohibited uses may be permitted <i>Can a permit be granted to use the place for a use which would otherwise be prohibited?</i>	No
Aboriginal Heritage Place <i>Is the place an Aboriginal heritage place which is subject to the requirements of the Aboriginal Heritage Act 2006?</i>	No

Gradings

Number	Street	Grading	Built Date
225	High Street	Contributory	1939
227	High Street	Contributory	1939
229	High Street	Contributory	1939
231	High Street	Contributory	1937
233	High Street	Contributory	1937
235	High Street	Contributory	1928
237	High Street	Contributory	1939
239	High Street	Contributory	1939
241	High Street	Contributory	1937
243	High Street	Contributory	1925
245	High Street	Contributory	1926
247	High Street	Contributory	1926
249	High Street	Contributory	1926
251	High Street	Contributory	1926
253	High Street	Contributory	1926
255	High Street	Contributory	1928
257	High Street	Contributory	1928
259	High Street	Contributory	1928
261-267	High Street	Non-contributory	c.1980s
269	High Street	Contributory	c1929
271	High Street	Contributory	c1929
273	High Street	Contributory	c1934
275	High Street	Contributory	c1934



Number	Street	Grading	Built Date
277	High Street	Contributory	c1934
279	High Street	Contributory	c1934
281	High Street	Contributory	c1934
281A	High Street	Contributory	c1934
162	High Street	Contributory	1957
164	High Street	Contributory	1957
166	High Street	Contributory	1957
168	High Street	Contributory	1957
170	High Street	Contributory	1957
172	High Street	Contributory	1950
174	High Street	Contributory	1950
176	High Street	Contributory	1950
178	High Street	Contributory	1950
180	High Street	Contributory	1937
182	High Street	Contributory	1937
184	High Street	Contributory	1927
186	High Street	Contributory	1927
188	High Street	Non-contributory	1954
190	High Street	Non-contributory	1954
192	High Street	Non-contributory	1954
194	High Street	Contributory	1928
196	High Street	Contributory	1938
198	High Street	Contributory	1938
200	High Street	Contributory	1938
202	High Street	Contributory	1938
204	High Street	Contributory	1938
206	High Street	Contributory	1939
208	High Street	Contributory	1939
210	High Street	Contributory	1939
212	High Street	Contributory	1939
214	High Street	Contributory	1931

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The Argus, as cited.

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Victorian Places 2015, 'Ashburton', 'Alamein' and 'Glen Iris', Monash University and University of Queensland, <http://www.victorianplaces.com.au>, accessed 5 January 2019.

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1	Yes	<p>The submitter supports the inclusion of High Street Commercial Precinct in the Heritage Overlay as it will prevent inappropriate development affecting the shopping strip and losing its character.</p> <p>The submitter would like to see attempts made to restore properties to former aesthetics such as any future refurbishments should be in keeping with the original aesthetics / colour schemes.</p>	<p>Officers note the supportive submission and comments.</p> <p>The Heritage Overlay cannot compel property owners to maintain properties to a certain standard. The Heritage Overlay sets the planning control to assess any proposals for alterations, additions, or development.</p> <p>The inclusion of the precinct in the Heritage Overlay would result in the heritage provisions within the Boroondara Planning Scheme being applied to the precinct which includes the policy to <i>"Encourage reconstruction of features or finishes formerly removed only in instances where historic evidence of original or earlier appearance can be found"</i>. External paint controls are not proposed to be activated for the precinct.</p>	No change recommended.
2	Partially	<p>The submitter supports the inclusion of High Street Commercial Precinct in the Heritage Overlay on the following grounds:</p> <ol style="list-style-type: none"> It is a good collection of interwar shops. Cannot see it making a difference to the local community and/or Council. <p>The submitter also makes the following comments:</p> <ol style="list-style-type: none"> The significance of the shops at 180-182 High Street ('contributory') is understated due to the architectural detail and composition with strapped gables, extensive decorative brickwork, corbelled parapet and wing-walls and original tri-partite windows with dramatized proportions and margin glazing. These elements are very common in the work of local builder R.A Dixon who constructed many of the houses along Goodwin Street in Glen Iris (a street of state significance protected in the 90s). They warrant consideration as locally significant, more than just 'contributory' as they are of a quality much higher than others in the precinct and Ashburton. There are concerns about 162-170 High Street being included in the precinct because these are post-war shops which have a different architectural style and character. The properties have different proportions and materials and are located in a predominantly interwar precinct (whilst also being at the edge and austere). The submitter believes the building at 174-178 High Street 	<p>Officers note the supportive submission and comments.</p> <p>GJM Heritage advise as follows:</p> <ol style="list-style-type: none"> The commercial buildings within the High Street Commercial Precinct, Ashburton are substantially intact and display a range of architectural detailing and decoration from the Interwar and early Postwar periods, including Moderne, English Domestic Revival, Georgian Revival, Exotic and Functionalist/Modernist. All Interwar and early Postwar buildings are graded 'Contributory' to the precinct. <p>Constructed in 1937, the building at 180-182 High Street displays elements which are characteristic of the Interwar English Domestic Revival style, a style found throughout Boroondara, albeit predominantly in a residential setting. The submitter states the designer, builder R A Dixon, was responsible for other buildings in Boroondara with similar detailing, including houses in the Goodwin Street and Somerset Road Precinct, Glen Iris (HO226). It is noted all Interwar buildings in HO226 are also graded 'Contributory' to the precinct.</p> <p>Within the High Street Commercial Precinct, Ashburton the commercial building at 231 High Street was also built in 1937 in the English Domestic Revival style and is of similar architectural interest, displays similar detailing, a similar quality of work and level of</p>	No change recommended.

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		has a more consistent late-interwar character and would serve as a much better bookend to the precinct than 162-170 High Street.	<p>intactness. In a similar manner, the building at 225-229 High Street, constructed in 1939, is an example of the Moderne style and displays a similar quality of work and level of intactness as other buildings in the precinct. The commercial building at 180-182 High Street, Ashburton is considered to be appropriately graded 'Contributory' to the High Street Commercial Precinct, Ashburton precinct.</p> <p>b) Developed in the Interwar and early Postwar periods, the High Street Commercial Precinct, Ashburton reflects the substantial growth of Ashburton during these periods. Both the Interwar and the early Postwar buildings demonstrate a variety of architectural styles from these periods, however together they present as a visually cohesive commercial shopping strip, with a consistent two-storey scale with shopfronts at street level. Two intact Postwar commercial buildings at 162-170 and 174-178 High Street are located at the western end of the south side of High Street, at the corner of Highgate Grove. Like the Interwar buildings, these buildings present different architectural styles but continue the consistent two-storey scale with shopfronts at street level, from Lexia Street through to Highgate Grove. The commercial building at 162-170 High Street, Ashburton is appropriately considered to be 'Contributory' to the High Street Commercial Precinct, Ashburton precinct.</p>	
3	No	The submitter is opposed to the inclusion of High Street Commercial Precinct in the Heritage Overlay and believes the precinct has no heritage value.	<p>The heritage citation prepared by Council's heritage consultant provides an assessment justified against the heritage criteria set out in the <i>Planning Practice Note 1: Applying the Heritage Overlay</i>. The precinct satisfies Criterion A (historical significance) and Criterion D (representativeness).</p> <p>No evidence has been provided in the submission to substantiate the claim the precinct has no heritage significance.</p>	No change recommended.

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4	No	<p>The submitter is opposed to the inclusion of High Street Commercial Precinct in the Heritage Overlay on the following grounds:</p> <ol style="list-style-type: none"> 1. The selected properties are not endearing, particularly in comparison to other areas across Melbourne. 2. New development has occurred, and applying the Heritage Overlay will result in a lack of development and the continued presence of a visually unappealing streetscape/shopping precinct. 	<p>The heritage citation prepared by Council's heritage consultant provides an assessment against the recognised heritage criteria. The recommended precinct satisfies Criterion A (historical significance), and Criterion D (representativeness). As set out in the precinct citation, the High Street Commercial Precinct contains a fine representative sample of styles which were popular in the interwar and early post-war periods. While they may have less ornament than other eras, this does not mean they are devoid of decorative expression. As this is a fine group of interwar/post-war commercial buildings, and one which illustrates the major period of Ashburton's development, it has been deemed to meet the threshold for local heritage significance.</p> <p>Each building in the precinct identified by Council's heritage consultant is assigned a heritage grading based on its contribution to the heritage fabric of the precinct. A non-contributory grading has been assigned where appropriate to reflect differences in built form. Council's heritage consultant believes the precinct offers sufficient intactness to warrant inclusion in the Heritage Overlay.</p>	No change recommended.
5	No	<p>The submitter is opposed to the inclusion of High Street Commercial Precinct in the Heritage Overlay. The submitter believes no heritage characteristics are evident in the built form, and the proposed controls do not address the need for appropriate renewal of buildings in the precinct.</p> <p>The submitter believes height restrictions would be more suitable for the frontage of buildings if there is investment in renewing the area.</p>	<p>The heritage citation prepared by Council's heritage consultant provides an assessment against the recognised heritage criteria. The recommended precinct satisfies Criterion A (historical significance), and Criterion D (representativeness). No evidence has been provided in the submission to substantiate the claim the precinct has no heritage significance.</p> <p>The Heritage Overlay does not prohibit redevelopment or innovative architectural design however the control requires that the identified heritage values of a property are considered as part of the planning permit application process. No internal alteration controls are recommended, so no planning permit is required to undertake internal alterations where there is no external implication of the works. Additions and alterations to 'contributory' graded properties may be approved if they are consistent with Council's Heritage Policy.</p> <p>The area is covered by the Design and Development Overlay - Schedule 16 (DDO16) which manages built form</p>	No change recommended.

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			outcomes such as overall building heights and upper-level setbacks and will not be changed by the proposed application of heritage controls.	
6	No	<p>The submitter is opposed to the inclusion of High Street Commercial Precinct in the Heritage Overlay on the following grounds:</p> <ol style="list-style-type: none"> 1. The buildings are dilapidated and of no historical significance. 2. The inclusion of the precinct in the Heritage Overlay will disincentivise businesses from entering the area because of additional cost and planning complexity for no benefit. 	<p>The heritage citation prepared by Council's heritage consultant provides an assessment against the recognised heritage criteria. The recommended precinct satisfies Criterion A (historical significance), and Criterion D (representativeness).</p> <p>No evidence has been provided in the submission to substantiate the claim the precinct has no heritage significance. Council's heritage consultant has determined the proposed precinct has sufficient intactness and significance to warrant inclusion in the Heritage Overlay.</p> <p>Whilst officers understand the economic challenges faced by the High Street Commercial Precinct, there is concern to protect the heritage fabric of local shopping centres which tell a story of a suburb's evolution. Economic and business development objectives are not matters for consideration in a heritage assessment as outlined in <i>Practice Note 1: Applying the Heritage Overlay</i>. The matters for consideration in this instance are whether the precinct has heritage significance and warrants inclusion in a Heritage Overlay.</p>	No change recommended.
7	No	<p>The submitter is opposed to the inclusion of High Street Commercial Precinct in the Heritage Overlay on the basis of several buildings needing significant work to be fit for purpose into the future. The submitter believes a Heritage Overlay will only increase the cost without providing any real tangible benefits.</p>	<p>Council is required under the <i>Planning and Environment Act 1987</i> to identify and protect places of (amongst others) architectural and historical interest.</p> <p>The Heritage Overlay does not prohibit redevelopment or innovative architectural design however the control requires that the identified heritage values of a property are considered as part of the planning permit application process. No internal alteration controls are recommended, so no planning permit is required to undertake internal alterations where there is no external implication of the works. Additions and alterations to 'contributory' graded properties may be approved if they are consistent with Council's Heritage Policy.</p> <p>Construction costs and property maintenance are not matters for consideration in a heritage assessment as</p>	No change recommended.

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			outlined in <i>Practice Note 1: Applying the Heritage Overlay</i> . The matters for consideration in this instance are whether the precinct has heritage significance and warrants inclusion in a Heritage Overlay.	
8	No	<p>The submitter is opposed to the inclusion of High Street Commercial Precinct in the Heritage Overlay on the following grounds:</p> <ol style="list-style-type: none"> 1. There are other spaces more worthy of heritage protection than High Street. Ashburton has a strong community spirit represented in the green spaces and railway history. 2. By placing a Heritage Overlay on the entire shopping precinct, the Council will be memorialising the culture of neglect and lasting disregard for Ashburton exhibited by local government representatives at the time. 3. The precinct does not meet Criterion A and D of the Practice Note 1: Applying the Heritage Overlay: <ol style="list-style-type: none"> a) A deeper analysis of Ashburton's history finds the evidence to be highly problematic. The submitter is concerned the evidence is based on newspaper articles from the time, not any comprehensive history of Ashburton. The history devotes only a single short paragraph to the Shopping Precinct. The submitter notes, in the 1920s and 1930s, Ashburton's residents identified far more with Ashburton Primary School, the Ashburton Forest, Ashburton Train Station, and Ashburton Park as locations of significance over High Street. It also appears Camberwell Council did not imbue much significance to the street. At no point did either the local entrepreneurs or Camberwell Council ever build a substantial Public Hall, clock tower, fountain, central square, war memorial, or even a garden as a lasting monument in Ashburton's High Street. Had they done so, this could have acted as a centre point, landmark or meeting place for the Ashburton community to build its identity around that could be extended to High Street. Since they did not, instead, its residents formed their sense of community around local spaces without a commercial purpose. b) Instead of preserving a commercial precinct, recognition and financial support in maintaining other important local sites carries far more 	<p>Council is required under the <i>Planning and Environment Act 1987</i> to identify and protect places of (amongst others) architectural and historical interest.</p> <p>The heritage citation prepared by Council's heritage consultant provides an assessment against the recognised heritage criteria. The recommended precinct satisfies Criterion A (historical significance), and Criterion D (representativeness).</p> <p>As set out in the precinct citation, the High Street Commercial Precinct contains a fine representative sample of styles which were popular in the interwar and early post-war periods. While they may have less ornament than other eras, this does not mean they are devoid of decorative expression. As this is a fine group of interwar/post-war commercial buildings, and one which illustrates the major period of Ashburton's development, it has been deemed to meet the threshold for local heritage significance.</p> <p>In response to the specific points raised in relation to the citation (Point 3 opposite), officers advise as follows:</p> <ol style="list-style-type: none"> a) GJM Heritage advise the precinct has been assessed in accordance with <i>Planning Practice Note 1: Applying the Heritage Overlay</i> and has been considered in the context of other commercial shopping strips in Boroondara. The precinct clearly illustrates the historical development of the suburb of Ashburton in the Interwar and early Postwar periods, as indicated by both historical documents (including newspapers) and the intact representative collection of commercial buildings from these periods. It has been determined the threshold for local significance has been met. <p>As noted by the submitter, a comprehensive history of Ashburton has not been written, however a range of available primary and secondary sources were</p>	Refer to consultant.

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		<p>significance to the history of Ashburton than the High Street Shopping Precinct.</p> <p>c) Broadening the scope of the heritage significance to residents from the time, the High Street Shopping precinct is rarely mentioned in comparison to Ashburton Train Station and the railway, Ashburton Park, significant houses, and the Ashburton Primary School.</p> <p>d) The post office was referenced however its demolition was approved years ago.</p> <p>e) On the rare occasion the shopping precinct is mentioned in the historical recollections of Ashburton residents, it is the traders occupying the buildings that hold the most historical value and memories to residents, not the buildings themselves.</p> <p>f) Various historical evidence opposes the report.</p> <p>4. Disagrees with the buildings meeting the threshold for 'class of cultural places', rather they are a combination of opportunistic styles built by unremarkable builders over a period of time. Very few are built in any kind of complementary style to the other.</p> <p>5. Boroondara had over 15,000 buildings listed on its heritage register, however the government has only deemed 10 buildings in Ashburton as worthy of the heritage overlay (aside from the former Summerhill Estate). The buildings that did have historical significance to Ashburton's residents have not been preserved or maintained.</p> <p>6. Current building and planning rules are already working very well to help Ashburton's High Street move into the future. Heritage overlay will only provide a bureaucratic barrier to providing much needed commercial and residential accommodation in a highly desirable area, well served by public transport and with sufficient parking, a rare commodity around Ashburton.</p>	<p>used in the assessment of the significance of the precinct. These included newspaper articles and various histories including those noted by the submitter. Recollections by local residents, which the submitter stated 'made no mention of the shopping precinct as significant to their lives', are of interest, however these can be subjective and may not be based on factual evidence.</p> <p>Newspaper articles provide a valuable contemporary commentary on the development of the commercial High Street and are therefore important in understanding the history of the place. They may also provide valuable information about the development of other places in the suburb, for example the Ashburton Forest in the <i>Herald</i> 1926, as noted by the submitter.</p> <p>It is accepted there are many other places which reflect the development of Ashburton and these are – or may be – of local significance to the Boroondara. An assessment of places such as the local primary school, railway station or park, including comparison with examples throughout the municipality and an assessment of their intactness and integrity, may determine these places are of local significance to the municipality. However, this potential future work does not preclude the significance of the High Street Commercial Precinct, Ashburton also being recognised.</p> <p>The absence of a public hall, clock tower, fountain, central square, war memorial or garden in High Street may indicate the lack of civic importance given to the centre by the Camberwell Council at the time, however this is irrelevant to its historic and ongoing use as a commercial centre.</p> <p>b) Council does not currently provide a heritage grants program to support maintenance of private properties. This is outside the scope of the consideration of heritage controls being applied to the precinct. Council's heritage consultant has recommended the application of heritage controls to the precinct under the Boroondara Planning Scheme which is the most appropriate approach to recognising built heritage fabric through the Planning Scheme.</p>	

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			<p>c) The heritage citation does not rely on associational significance as a criterion for recommending the precinct for the Heritage Overlay. The basis of the recommendation is Criterion A (historical significance) and Criterion D (representativeness).</p> <p>d) GJM Heritage advise reference made to the Post Office in the assessment is the Post Office at 255 High Street, not the demolished Welfare Road Post Office.</p> <p>e) The Heritage Overlay is a built form planning control which introduces a planning permit requirement to consider any buildings and works against Council's Heritage Policy in the Boroondara Planning Scheme. Whilst the social value of the building occupants may hold sentimental value amongst community members this cannot be used to justify the application of the Heritage Overlay. <i>Planning Practice Note 1: Applying the Heritage Overlay</i> provides the criteria Council must use to establish heritage significance.</p> <p>f) Officers referred the submission to Council's heritage consultant for review and response. A detailed response has been provided above.</p> <p>GJM Heritage advise the High Street Commercial Precinct contains a collection of intact two-storey commercial buildings which demonstrate the principal characteristics of an Interwar and early Postwar commercial shopping strip. This is a recognised 'class of place' and the Precinct is highly representative of this class.</p> <p>The collection of buildings displays a range of architectural styles from these periods and were not intended to necessarily complement each other in style. This is typical of shopping strips from these periods – including the South Camberwell Commercial Precinct (HO738 City of Boroondara) and 523-531 Camberwell Road, Camberwell (part of HO1 City of Boroondara) and from other periods, including commercial precincts from the Victorian and Edwardian periods.</p> <p>The Ashburton Heritage Gap Study was the substantive study which first identified the High Street Commercial</p>	

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			<p>Precinct for heritage protection as well as nine individual heritage places and one heritage precinct. The Ashburton Heritage Gap Study was implemented by Amendment C337boro and has been finalised with the nine individual heritage places and the Home Farm and Environs precinct included in the Heritage Overlay.</p> <p>The Heritage Overlay does not prohibit redevelopment however the control requires that the identified heritage values of a property are considered as part of the planning permit application process. No internal alteration controls are recommended, so no planning permit is required to undertake internal alterations where there is no external implication of the works. Additions and alterations to 'contributory' graded properties may be approved if they are consistent with Council's Heritage Policy. The Heritage Policy discourages full demolition of significant and contributory heritage properties.</p>	
9	No	The submitter does not agree to the inclusion of 180 High Street, Ashburton in the Heritage Overlay.	<p>Landowner agreement is not required in determining whether a particular property or precinct has heritage significance and should be included the Heritage Overlay. As the Planning Authority under the <i>Planning and Environment Act 1987</i> Council is responsible for managing the Boroondara Planning Scheme. Specifically, Section 4 1(d) of the Act places an obligation on Council as the Planning Authority to identify and protect places of cultural heritage significance. Further, the identification and protection of heritage places is a key concern for residents of Boroondara and the Heritage Overlay is the statutory mechanism for protecting valued heritage places and precincts.</p> <p>Planning Panels Victoria have previously confirmed that an owner's permission is not required to place a property under the Heritage Overlay, saying "The Panel confirms that an owner's permission is not required to place a property under the Heritage Overlay. Nor is there any basis for property owners to claim compensation" (Boroondara PSA C266 [2018] PPV, p. 23).</p>	No change recommended.

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10	No	<p>The submitter is opposed to the inclusion of High Street Commercial Precinct in the Heritage Overlay on the following grounds:</p> <ol style="list-style-type: none"> 1. Putting a heritage overlay on a shopping strip is detrimental. 2. Property and business constraints. 3. Economic impacts 4. Lack of heritage value of the precinct. 	<p>Council is required under the <i>Planning and Environment Act 1987</i> to identify and protect places of (amongst others) architectural and historical interest.</p> <p>Whilst officers understand the economic challenges faced by the High Street Commercial Precinct, there is concern to protect the heritage fabric of local shopping centres which tell a story of a suburb's evolution. Economic and business development objectives are not matters for consideration in a heritage assessment as outlined in <i>Planning Practice Note 1: Applying the Heritage Overlay</i>.</p> <p>The Heritage Overlay does not prohibit property redevelopment or architectural innovation but requires that the identified heritage values are considered as part of the planning permit application process for any development. It is also noted no 'Internal alteration control' is recommended, so no planning permit is required to undertake internal alterations, for example upgrades to kitchen or bathrooms where there is no external implication of this work (e.g., increased building footprint or changes to external windows). Additions and alterations to 'contributory' graded properties may be approved if they are in keeping with Council's Heritage Policy.</p> <p>The heritage citation prepared by Council's heritage consultant provides an assessment justified against the heritage criteria set out in the <i>Planning Practice Note 1: Applying the Heritage Overlay</i>. The precinct satisfies Criterion A (historical significance) and Criterion D (representativeness). As set out in the precinct citation, the High Street Commercial Precinct contains a fine representative sample of styles which were popular in the interwar and early post-war periods. While they may have less ornament than other eras, this does not mean they are devoid of decorative expression. As this is a fine group of interwar/post-war commercial buildings, and one which illustrates the major period of Ashburton's development, it has been deemed to meet the threshold for local heritage significance.</p>	No change recommended.

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11	No	<p>The submitter is opposed to the inclusion of High Street Commercial Precinct in the Heritage Overlay on the following grounds:</p> <ol style="list-style-type: none"> 1. Disagrees the buildings have heritage significance. 2. Several of the properties are rundown. A Heritage Overlay will impact on landlords investing in upgrading the properties. 3. There will be an impact on other forms of development that will enhance the street appeal and provide mixed uses for the buildings such as residential, office and retail. This type of development could bring more people to the area and provide additional accommodation which has substantial existing transport benefits. 4. The buildings cited in the study have several alterations and improvements to the shopfronts and as a result display little of uncommon, unusual, rare or historical and cultural significance. The significant alterations to most of the facades make them unworthy of any further preservation as they are no longer a true representation of the architecture they are supposed to represent. In the vast majority of cases the window frames have been altered at various stages. None or few are original, or even alike. 5. Whilst they are old, they are not outstandingly notable or worthy of maintaining. These buildings fail to represent any aesthetic characteristics or do any of them possess any outstanding degree of creative or technical achievement. 6. All buildings are poor examples of architectural styles given their simplicity of form and design, making them cheap architectural examples. 7. Imposing a Heritage Overlay on properties in Ashburton Village will have a direct impact on the future economic prosperity of Ashburton Village shopping precinct which includes the retail nature and opportunity for investment and development appeal. 	<p>The heritage citation prepared by Council's heritage consultant provides an assessment justified against the heritage criteria set out in the <i>Planning Practice Note 1: Applying the Heritage Overlay</i>. The precinct satisfies Criterion A (historical significance) and Criterion D (representativeness). As set out in the precinct citation, the High Street Commercial Precinct contains a fine representative sample of styles which were popular in the interwar and early post-war periods. While they may have less ornament than eras, this does not mean they are devoid of decorative expression. As this is a fine group of interwar/post-war commercial buildings, and one which illustrates the major period of Ashburton's development, it has been deemed to meet the threshold for local heritage significance.</p> <p>The Heritage Overlay does not prohibit redevelopment or architectural innovation but requires that the identified heritage values are considered as part of the planning permit application process for any development. It is also noted no 'Internal alteration control' is recommended, so no planning permit is required to undertake internal alterations, for example upgrades to kitchen or bathrooms where there is no external implication of this work (e.g., increased building footprint or changes to external windows). Additions and alterations to 'contributory' graded properties may be approved if they are in keeping with Council's Heritage Policy. Further, the Heritage Overlay does not regulate the use of the land, which is managed by the Commercial 1 Zone. Council can consider planning applications for the range of uses allowed under the Commercial 1 Zone, with the Heritage Overlay providing a built form control if external works to the buildings are proposed or full or partial demolition.</p> <p>Officers acknowledge many of the shopfronts have been replaced. However, this is the case in most of Boroondara's current commercial HO precincts, such as HO520 Kew Junction Commercial Precinct and HO505 Burke Road North Commercial and Transport Precinct, Camberwell. Council's heritage consultant believes the precinct is sufficiently intact to justify inclusion in the Heritage Overlay.</p>	No change recommended.

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			<p>The shops reflect the principal period during which Ashburton was developed: the interwar and early post-war eras. While these shops reflect a range of styles, they reflect the high level of architectural eclecticism which characterised the interwar period. This is not considered to detract from its heritage significance. Further, the interwar period is characterised by an eclectic mix of architectural styles. One of the special features of the recommended precinct is the large number of cohesively designed building groups. Furthermore, there is a high percentage of surviving early buildings in the area recommended.</p> <p>Economic development objectives are not matters for consideration in a heritage assessment as outlined in Practice Note 1: Applying the Heritage Overlay. The matters for consideration in this instance are whether an individual property or precinct has heritage significance and warrants inclusion in a Heritage Overlay.</p>	
12	No	<p>The submitter is opposed to the inclusion of High Street Commercial Precinct in the Heritage Overlay on the following grounds:</p> <ol style="list-style-type: none"> 1. The buildings are varied with many modified since construction, making them unworthy of heritage significance. 2. The submitter is a longstanding landlord, with the properties in the same family since the 1950's. The Heritage Overlay will have a detrimental impact on the future prosperity of the Centre. 	<p>The heritage citation prepared by Council's heritage consultant provides an assessment against the recognised heritage criteria. The recommended precinct satisfies Criterion A (historical significance), and Criterion D (representativeness).</p> <p>The submitter has not provided evidence to substantiate the claim the precinct has little or no heritage significance. The shops situated along High Street, Ashburton reflect the principal period during which Ashburton was developed: the interwar and early post-war eras. As set out in the precinct citation, the High Street Commercial Precinct contains a fine representative sample of styles which were popular in the interwar and early post-war periods.</p> <p>The interwar period is characterised by its architectural eclecticism, and the buildings in the precinct reflect this reality. One of the special features of the recommended precinct is the large number of cohesively designed building groups. On this basis, the recommended precinct is far less mixed than what might be seen in another interwar shopping strip. Furthermore, there is a high percentage of surviving early buildings in the area recommended.</p>	No change recommended.

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			Matters relating to property ownership, length of tenure, and economic and business development issues are not relevant considerations in the assessment of applying heritage controls. <i>Practice Note 1: 'Applying the Heritage Overlay'</i> identifies the criteria for assessing the heritage significance of a heritage place and refers to only matters of a heritage nature. Heritage controls are recommended to individual properties and precincts based on the technical assessment of a qualified heritage consultant based on the criteria set out in <i>Planning Practice Note 1: 'Applying the Heritage Overlay'</i> .	
13	No	<p>The submitter is opposed to the inclusion of 273 High Street, Ashburton in the Heritage Overlay on the following grounds:</p> <ol style="list-style-type: none"> 1. The Heritage Overlay is a useless scheme designed to only benefit the council and revenue raising. 2. As a tenant in one of the properties, in the last 14 years, the landlord and tenant have made many renovations, but the building is falling apart. 3. The old sash windows rotted and started to fall out. The landlord and tenant tried for over 12 months to find a tradesperson who could renovate them to no avail. The original windows have been replaced with modern aluminium. 4. There are bricks falling out and damp rising. There aren't any original features left in the building and what is left needs repairing. The landlord and tenants should not need to pay the council additionally thousands of dollars to make repairs on a building that is of no historical value. 5. All the buildings are varied, adding a Heritage Overlay will prevent the area from progressing. 6. The ramifications of the Heritage Overlay will be negative for all landlords and tenants. This will restrict desire to rent in the area with any further heritage charges passed on to the tenant. This could lead to empty shops. 	<p>Council will not gain a financial benefit as a result of the recommended properties being included in the Heritage Overlay and is not a factor in recommending the properties by the heritage consultant. Council has heard consistently for many years that residents are concerned about the loss of heritage properties and precincts. Equally, Council is required under Section 4 (1)(d) of the <i>Planning and Environment Act 1987</i> to identify and protect places of architectural and historical interest. The property is part of a wider precinct recommendation.</p> <p>Structural integrity and maintenance issues of a building are not matters for consideration in heritage assessments and determining whether a place or precinct should be included in the Heritage Overlay. The heritage assessment is focused on heritage intactness of a building and considers the extent of external alterations to a building which may result in a building being graded lower or not meeting the threshold for inclusion in the Heritage Overlay. The planning permit process is the most appropriate stage to consider a building's structural integrity and management. Similarly, maintenance and repairs that change the external appearance are best considered through the planning permit process to ensure these do not detrimentally impact the significance of the place. Routine maintenance and repairs that do not change the external appearance (i.e., like-for-like replacement) do not require planning approval.</p> <p>The Heritage Overlay does not prohibit redevelopment or architectural innovation but requires that the identified heritage values are considered as part of the planning permit</p>	No change recommended.

Attachment 2: High Street Commercial Precinct, Ashburton - Preliminary Consultation
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			<p>application process for any development. It is also noted no 'Internal alteration control' is recommended, so no planning permit is required to undertake internal alterations, for example upgrades to kitchen or bathrooms where there is no external implication of this work (e.g., increased building footprint or changes to external windows). Additions and alterations to 'contributory' graded properties may be approved if they are in keeping with Council's Heritage Policy.</p> <p>Matters relating to business development and tenure arrangements are not relevant considerations in the assessment of appropriate heritage controls. <i>Planning Practice Note 1: 'Applying the Heritage Overlay'</i> identifies the criteria for assessing the heritage significance of a heritage place and refers to only matters of a heritage nature. Heritage controls are recommended to individual properties and precincts based on the technical assessment of a qualified heritage consultant based on the criteria set out in <i>Practice Note 1: 'Applying the Heritage Overlay'</i>.</p>	
14	No	<p>The submitter is opposed to the inclusion of 281 High Street, Ashburton in the Heritage Overlay on the following grounds:</p> <ol style="list-style-type: none"> 1. The shops have no heritage significance to protect. The buildings are old, and they don't have any heritage features such as those seen in commercial buildings in Auburn Road. 2. Ashburton commercial buildings are rundown and in desperate need of renovations. 3. Submitter would support a Heritage Overlay if there was something to protect and preserve. 	<p>The heritage citation prepared by Council's heritage consultant provides an assessment against the recognised heritage criteria. The recommended precinct satisfies Criterion A (historical significance), and Criterion D (representativeness).</p> <p>The High Street Commercial Precinct contains a fine representative sample of styles which were popular in the interwar and early post-war periods. While they may have less ornament than other eras, this does not mean they are devoid of decorative expression. As this is a fine group of interwar/post-war commercial buildings, and one which illustrates the major period of Ashburton's development, it has been deemed to meet the threshold for local heritage significance. The Heritage Overlay seeks to protect valued heritage properties and precincts which can be justified. There is no requirement for buildings in a precinct to be unique examples of their type, they only need to illustrate the themes which make the precinct important.</p> <p>The structural integrity and maintenance issues of a building are not matters for consideration in heritage assessments</p>	No change recommended.

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			and determining whether a place or precinct should be included in the Heritage Overlay. The assessment is focused on intactness of a building and considers the extent of external alterations to a building which may result in a building being graded lower or not meeting the threshold for inclusion in the Heritage Overlay.	
15,16,18,19,20,21,22,23,24,26,27,28,29	No	<p>The submitter is opposed to the inclusion of High Street Commercial Precinct in the Heritage Overlay on the following grounds:</p> <ol style="list-style-type: none"> 1. The buildings cited in the study display little of uncommon, unusual, rare or historical and cultural significance. The buildings are old, but they are not outstandingly notable or worthy of maintaining. The buildings fail to represent any aesthetic characteristics or do any of them possess any outstanding degree of creative or technical achievement. 2. There have been significant alterations to most of the facades making them unworthy of any further preservation as they are no longer a true representation of the architecture they are supposed to represent. In the vast majority of cases the window frames have been altered at various stages. Unfortunately, none or few are original or even alike. 3. All buildings are poor examples of architectural styles given their overwhelming simplicity of form and design making them cheap architectural examples. 4. Imposing a Heritage Overlay on properties in Ashburton Village will have a direct impact on the future economic prosperity and development of Ashburton Village shopping precinct. 	<p>The precinct has been assessed against the HERCON Criteria, not the individual buildings which are considered parts of the whole (contributory elements of the precinct). As set out in the precinct statement of significance, the precinct meets the following criteria for inclusion in the Heritage Overlay:</p> <ul style="list-style-type: none"> • Criterion A - illustrates the main development period of Ashburton (interwar and early post-war periods) for which it is of historical significance. • Criterion D - the contributory buildings illustrate the range of architectural styles popular in this period. <p>No claims have been made in relation to rarity (Criterion B) or outstanding creative or technical achievement (Criterion F). A heritage place or precinct needs to meet only <u>one</u> of the HERCON Criteria at the local level to warrant inclusion in the Heritage Overlay. The section of the Ashburton Shopping Centre recommended for the HO meets two criteria.</p> <p>Officers acknowledge many of the shopfronts have been replaced. However, this is the case in most of Boroondara's current commercial HO precincts, such as HO520 Kew Junction Commercial Precinct and HO505 Burke Road North Commercial and Transport Precinct, Camberwell. While there is a portion of shops which have seen their first-floor windows replaced, this is no more extensive than in other heritage precincts, and in many cases is the installation of a new window in a balcony opening. Council's heritage consultant believes the precinct is sufficiently intact to justify inclusion in the Heritage Overlay.</p> <p>The High Street Commercial Precinct contains a fine representative sample of styles which were popular in the interwar and early post-war periods. While they may have less ornament than other eras, this does not mean they are</p>	No change recommended.

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			<p>devoid of decorative expression. As this is a fine group of interwar/post-war commercial buildings, and one which illustrates the major period of Ashburton's development, it has been deemed to meet the threshold for local heritage significance. The Heritage Overlay seeks to protect valued heritage properties and precincts which can be justified. There is no requirement for buildings in a precinct to be unique examples of their type, they only need to illustrate the themes which make the precinct important.</p> <p>Whilst officers understand the economic challenges faced by the High Street Commercial Precinct, there is concern to protect the heritage fabric of local shopping centres which tell a story of a suburb's evolution. Economic and business development objectives are not matters for consideration in a heritage assessment as outlined in Practice Note 1: Applying the Heritage Overlay. The matters for consideration in this instance are whether an individual property or precinct has heritage significance and warrants inclusion in a Heritage Overlay.</p>	
17	No	<p>The submitter is opposed to the inclusion of High Street Commercial Precinct in the Heritage Overlay on the following grounds:</p> <ol style="list-style-type: none"> 1. The Ashburton Traders Association should have the leading say given business owners have the practical knowledge and experience to assess and understand what is best for the centre. All business owners are opposed to heritage classification because they see it negatively impacting the future of the Ashburton Commercial Precinct. 2. The premises are all involved in retail or retail services. This requires specialist expertise, knowledge, and background plus a large amount of investment and commitment to provide essential services. Its development is much more recent than the older areas such as Kew, Canterbury, Camberwell, or Surrey Hills and accordingly its needs, requirements and representation is different to the older areas. 3. The submitter questions the validity and reasonableness of the Urban Planning Delegated Committee to make judgement on the activities of a retail environment. 	<p>Council has invited submissions from the Ashburton Traders Association as well as affected property owners individually. Council considers each submission on its merits and seeks advice where required. Officers recognise the role the Ashburton Traders Association plays in the area however planning controls are ultimately being considered for individual land parcels and relate to heritage matters defined under the <i>Practice Note 1: Applying the Heritage Overlay</i>. The skills and expertise of the association and individual traders is understood by officers as well as the differing eras of development across the municipality.</p> <p>Council is a Planning Authority and has a responsibility to maintain the Boroondara Planning Scheme including the identification and protection of heritage places. The Urban Planning Delegated Committee (UPDC) is responsible for considering certain matters under the <i>Planning and Environment Act 1987</i> including matters relating to the planning scheme amendment process. The UPDC is guided by professional advice as well as the feedback provided by interested parties through submissions. The Ashburton</p>	No change recommended.

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		<p>4. Applying the Heritage Overlay places further pressure on traders.</p> <p>5. The constraints of heritage planning will not allow for required rebuilding, and realistic modifications to support the traders into the future.</p> <p>6. A large portion of new development and modern styles. The Heritage Overlay will restrict owners and tenants.</p> <p>7. The peer review suggests no consistency from heritage consultants on the merit of applying heritage controls to the area.</p> <p>8. The centre is not an intact shopping strip from the interwar years and has many post war buildings amongst the older buildings. It is an eclectic collection of building styles of medium to poor design and quality.</p> <p>9. Heritage advice obtained by the submitter suggests Ashburton does not exhibit great examples of the period in terms of quality or uniqueness. There are better examples elsewhere in other centres which is also accepted in the peer review.</p> <p>10. The reports do not support Council's Strategic objectives:</p> <ul style="list-style-type: none"> • <i>Objective 4: Protect heritage while facilitating well designed development.</i> • <i>Objective 6: Vibrant local economy & shops</i> <p>11. The review shows a heritage consultants sole commercial purpose is to sell heritage. It does so without regard to the problems, consequences, reality and hardships resulting. The studies and recommendations do not recognise the implications to the Ashburton Shopping Centre.</p> <p>12. Council has heritage assets for which it decided that the purpose and suitability should not take precedence over heritage, because the function and suitability for purpose was more important. Examples of this in the Solway ward include:</p> <ul style="list-style-type: none"> • Ashburton Pool complex • Markham Residential Estate • Ashburton Library • St. Michaels School, Ashburton • Ashburton Senior Citizen Complex <p>13. A disincentive to property and business investment.</p> <p>14. Conflicts with the Victorian State Government's plans for the future of the Ashburton Shopping Centre.</p>	<p>Traders Association is a relevant submitter on these matters but cannot make decisions as a Planning Authority.</p> <p>Whilst officers understand the economic challenges faced by the High Street Commercial Precinct, there is concern to protect the heritage fabric of local shopping centres which tell a story of a suburb's evolution. Economic and business development objectives are not matters for consideration in a heritage assessment as outlined in <i>Practice Note 1: Applying the Heritage Overlay</i>. The matters for consideration in this instance are whether the precinct has heritage significance and warrants inclusion in a Heritage Overlay.</p> <p>The Heritage Overlay does not prohibit redevelopment or architectural innovation but requires that the identified heritage values are considered as part of the planning permit application process for any development. It is also noted no 'Internal alteration control' is recommended, so no planning permit is required to undertake internal alterations, for example upgrades to kitchen or bathrooms where there is no external implication of this work (e.g., increased building footprint or changes to external windows). Additions and alterations to 'contributory' graded properties may be approved if they are in keeping with Council's Heritage Policy.</p> <p>Each building in the precinct identified by Council's heritage consultant is assigned a heritage grading based on its contribution to the heritage fabric of the precinct. A non-contributory grading has been assigned where appropriate to reflect differences in built form. Council's heritage consultant believes the precinct offers sufficient intactness to warrant inclusion in the Heritage Overlay.</p> <p>The heritage citation prepared by Council's heritage consultant provides an assessment against the recognised heritage criteria. The recommended precinct satisfies Criterion A (historical significance), and Criterion D (representativeness). As set out in the precinct citation, the High Street Commercial Precinct contains a fine representative sample of styles which were popular in the interwar and early post-war periods. As this is a fine group of interwar/post-war commercial buildings, and one which</p>	

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			<p>illustrates the major period of Ashburton's development, it has been deemed to meet the threshold for local heritage significance.</p> <p>The peer review of the original recommendation set out in the Ashburton Heritage Gap Study has been supported through the peer review subject to changes, and the precinct has been expanded to include more properties. Officers have undertaken preliminary consultation on the peer review and revised citation and are proceeding on the basis of the peer review recommendation. Council has appointed an independent heritage consultant to make recommendations on heritage matters based on their expertise to do so. The submitter has not provided any heritage advice to officers as noted in the submission.</p> <p>Council completed the Ashburton Heritage Gap Study which was implemented through Amendment C337boro. The amendment protected nine individual heritage places and one individual precinct. The properties nominated by the submitter were not recommended for the Heritage Overlay including Council owned sites. The St Michael's Parish Hall and Memorial Church was included in the Heritage Overlay through Amendment C337boro.</p> <p>In relation to wider strategic planning objectives such as activity centre development and urban consolidation, these are not matters for consideration in a heritage assessment as outlined in <i>Practice Note 1: Applying the Heritage Overlay</i>. The matters for consideration in this instance are whether the precinct has heritage significance and warrants inclusion in a Heritage Overlay. The introduction of heritage controls in areas close to arterial roads and public transport is not necessarily a direct conflict as the HO does not outright prohibit further development. The Heritage Policy at Clause 15.03 of the Boroondara Planning Scheme sets out specific policy guidance on alterations to commercial buildings.</p>	
25	No	<p>Submitter is opposed to the inclusion of High Street Commercial Precinct in the Heritage Overlay on the following grounds:</p> <ol style="list-style-type: none"> 1. The Precinct is not an intact shopping strip from the interwar years, it has many post war buildings It is an 	<p>The submitter states the buildings in the proposed precinct area are 'a very mixed collection'. The interwar period is characterised by its architectural eclecticism, and the buildings in the precinct reflect this reality. One of the special features of the recommended precinct is the large number of</p>	No change recommended.

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		<p>eclectic collection of buildings and styles of medium to poor quality; all buildings have been altered at ground level and many above ground e.g., with window replacements or infills.</p> <p>2. The significant alterations to most of the facades make them unworthy of any further preservation as they are no longer a true representation of the architecture they are supposed to represent.</p> <p>3. The reports do not support Council's Strategic objectives:</p> <ul style="list-style-type: none"> Objective 4: Protect heritage while facilitating well designed development. Objective 6: Vibrant local economy & shops <p>4. Several buildings have an advanced stage of concrete cancer including five post war shop buildings on the southern side.</p> <p>5. The report by GJM states that the buildings individually and as a collective do not meet Criterion E (aesthetic significance).</p> <p>6. Disagrees with the initial study that "High Street Ashburton has a finer collection of 1920s shops, both single and two-storeyed" than Maling Road. As a shopping precinct, Maling Road is known for being promoted by Council as an historic shopping precinct. Further to this, at a recent Traders' Presidents' meeting with council officers, the Maling Road Traders President said that the heritage overlay there was not something that should be wished on Ashburton as it made any changes or improvements almost impossible.</p> <p>7. The ground floor shop fronts do not have possible significance. In particular, the buildings at 245-259 High Street along with 225-231 High Street. Alongside these buildings is 213-233 High Street, this building has undergone extensive renovations and additions along the side and rear and is now a poor example of Georgian architecture.</p> <p>8. On the south side of High Street, the buildings between 162-170 and 174-178 High Street have been suggested to be largely intact, but the flat roof and projecting eaves are of little significance and do not represent other architecture in the area.</p> <p>9. There would be barriers for owners or tenants to do maintenance on buildings or proposed development on the basis a report will need to be sourced from a heritage expert at considerable expense and who may insist on</p>	<p>cohesively designed building groups. On this basis, the recommended precinct is far less mixed than what might be seen in another interwar shopping strip. Furthermore, there is a high percentage of surviving early buildings in the area recommended.</p> <p>Officers acknowledge many of the shopfronts have been altered. However, this is the case in most of Boroondara's current commercial HO precincts, such as HO520 Kew Junction Commercial Precinct and HO505 Burke Road North Commercial and Transport Precinct, Camberwell. While there is a portion of shops which have seen their first-floor windows replaced, this is no more extensive than in other heritage precincts, and in many cases is the installation of a new window in a balcony opening. Council's heritage consultant believes the precinct is sufficiently intact to justify inclusion in the Heritage Overlay.</p> <p>The structural integrity and maintenance issues of a building are not matters for consideration in heritage assessments and determining whether a place or precinct should be included in the Heritage Overlay. The assessment is focused on intactness of a building and considers the extent of external alterations to a building which may result in a building being graded lower or not meeting the threshold for inclusion in the Heritage Overlay. Routine maintenance and repairs that do not change the external appearance (i.e., like-for-like replacement) do not require planning approval.</p> <p>The heritage citation prepared by Council's heritage consultant provides an assessment against the recognised heritage criteria. It argues the place satisfies Criterion A (historical significance), and Criterion D (representativeness). The precinct has not been recognised under Criterion E.</p> <p>Council's heritage consultant agrees Maling Road has fine examples of Victorian and Edwardian shops, with a few examples from the early 1920s. Built over a period spanning approximately 40 years, Maling Road contains a range of architectural styles typical of its period of development, as does High Street, Ashburton. The build dates of shops in the Maling Road area reflect the time over which Canterbury</p>	

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		<p>conditions that would deter further investment. Simple changes such as replacing windows would become expensive and there may be a decline in amenity in the village.</p> <p>10. Ashburton is a centre in strong competition with centres like Chadstone. Loss of amenity and key shops will make the Village a less attractive place to shop.</p> <p>11. To unnecessarily preserve what are insignificant buildings opposes the objectives the Victorian State Government is striving to achieve by allowing development in areas close to commercial services and public transport, which the heritage overlay would inhibit.</p> <p>12. There are no economic, social, cultural or spiritual reason to include any of these buildings in High Street Ashburton in the heritage overlay. The alterations and additions to all these buildings highlighted over time have eliminated any need to preserve these buildings for historical purposes.</p> <p>13. Heritage applications such as the proposed add to the housing shortage. Calling an area "heritage" when there is nothing there of heritage significance and nothing appealing (i.e., of any "aesthetic" value) is really at the margin of heritage applications and represents poor planning. It simply acts a disincentive to do anything with the shops including the possibility of providing additional reasonably affordable housing.</p> <p>14. The proposal in combination with existing height limits of the Design and Development Overlay - Schedule 16 (DDO16) disincentivises owners to remodel their buildings to allow more accommodation in a location that is ideal with commercial amenity and public transport.</p>	<p>was developed in the same way that those on High Street demonstrate the period in which Ashburton was developed.</p> <p>The assessment acknowledges only a small number of the High Street premises included in the precinct have 'original or early shop fronts'. It is only these original or early shop fronts that are considered to contribute to the significance of the place, such as 174-178 High Street.</p> <p>Shop fronts at 245-259 High Street and 225-231 High Street have been altered. The buildings referred to at 213-233 (assumed to mean 213-223) are not included in the recommended precinct.</p> <p>Developed in the Interwar and early Postwar periods, the High Street Commercial Precinct, Ashburton reflects the substantial growth of Ashburton during these periods. Both the Interwar and the early Postwar buildings are largely intact and demonstrate a variety of architectural styles from these periods.</p> <p>The majority of buildings in the precinct present as parapeted facades, however variations include exposed gable ends at 180-182 High Street, exposed gable roof and eaves at 231 High Street and projecting eaves at 162-170 High Street. These are characteristic of particular Interwar and early Postwar styles. Together the buildings present as a visually cohesive commercial shopping strip, with a consistent two-storey scale and shopfronts at street level.</p> <p>The Heritage Overlay does not prohibit redevelopment but requires that the identified heritage values are considered as part of the planning permit application process for any development. It is also noted no 'Internal alteration control' is recommended, so no planning permit is required to undertake internal alterations, for example upgrades to kitchen or bathrooms where there is no external implication of this work (e.g., increased building footprint or changes to external windows). Additions and alterations to 'contributory' graded properties may be approved if they are in keeping with Council's Heritage Policy.</p> <p>Issues relating to economic impacts and centre competition are not relevant considerations in the assessment of heritage controls. <i>Planning Practice Note 1: 'Applying the</i></p>	

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			<p><i>Heritage Overlay</i> identifies the criteria for assessing the heritage significance of a heritage place and refers to only matters of a heritage nature. Heritage controls are recommended to individual properties and precincts based on the technical assessment of a qualified heritage consultant based on the criteria set out in <i>Practice Note 1: 'Applying the Heritage Overlay'</i>.</p> <p>In relation to wider strategic planning objectives such as activity centre development, urban consolidation and housing shortages, these are not matters for consideration in a heritage assessment as outlined in <i>Practice Note 1: Applying the Heritage Overlay</i>. The introduction of heritage controls in areas close to public transport is not necessarily a direct conflict as the HO does not outright prohibit further development. The Heritage Policy at Clause 15.03 of the Boroondara Planning Scheme sets out specific policy guidance on alterations to commercial buildings.</p> <p>The area is covered by the Design and Development Overlay - Schedule 16 (DDO16) which manages built form outcomes such as overall building heights and upper-level setbacks and will not be changed by the proposed application of heritage controls.</p>	
30	No	A petition was received with approximately 975 signatories in opposition to the proposal.	<p>Officers note that this petition was recorded as one submission and handled in accordance with Council's <i>Petitions Policy 2015</i>.</p> <p>Officers note the opposition to the recommendation to include the precinct in the Heritage Overlay. Council's heritage consultant has provided a heritage citation to support the recommendation, and the petition does not provide grounds upon which the citation is opposed. The merits of the citation would be examined further through a planning scheme amendment should the UPDC resolve to commence the process.</p>	No change recommended.

3.4 2 and 4 Logan Street and 183 Prospect Hill Road, Canterbury - Removal of a Restrictive Covenant (PP23/0348)

Application no.: PP23/0348

Responsible director: Scott Walker, Director Urban Living

Authorised by: David Cowan, Manager Planning and Placemaking

Report officer: Chiara Lorini, Senior Urban Planner

Executive Summary

Proposal

The proposal seeks to remove restrictive covenant W884794C from the subject sites. The restrictive covenant prohibits the use and development of the land for educational purposes, aged accommodation, religious/medical/surgical purposes, any institutional purpose, or for any sporting or recreational purposes associated with the aforementioned uses.

Issues

The following are key issues in respect of this application:

- Impact of the removal of the covenant on the owners of land benefitted by the restriction and other affected persons;
- Whether the application meets the tests for removal as set out in Section 60(2) of the *Planning and Environment Act 1987* (Act). In particular, whether the removal of the covenant is likely to result in detrimental loss of amenity or loss arising from change to the character of the neighbourhood or the introduction of alternative land uses; and
- Whether the removal of the covenant satisfies the objectives, policies and strategies set out in Clauses 15 and 19 of the Boroondara Planning Scheme.

Thirty-six objections have been received, including 6 received from beneficiaries of the covenant.

Officer's response

The removal of the covenant will likely result in loss of amenity, loss arising from change to the character of the neighbourhood, and material detriment to owners of land benefitting from the restriction due to the introduction of land uses other than a dwelling.

The removal of the restriction will also further affect other persons within the neighbourhood who enjoy the amenity afforded by the existence of the covenant.

The proposal does not satisfy the objectives, policies and strategies set out in the Boroondara Planning Scheme. Further, it is considered likely that one or more of the owners or occupiers of properties benefitting from the covenant would suffer the losses and detriment as set out in Section 60(2). On this basis, Council is obliged to refuse the application.

Officers' recommendation

That the Urban Planning Delegated Committee resolve that a Refusal to Grant a Planning Permit No. PP23/0348 for removal of a restrictive covenant at 2 and 4 Logan Street, Canterbury and 183 Prospect Hill Road, Canterbury be issued under the Boroondara Planning Scheme on the following grounds:

Refusal Grounds

1. The proposed covenant removal will likely result in financial loss, loss of amenity, loss arising from change of character the neighbourhood and other material detriment to owners of land which benefit by the restriction.
2. Pursuant to Section 60(2) of the *Planning and Environment Act 1987* the responsible authority must not grant a permit for the removal of a covenant where the owner of any land benefitted by the restriction will be likely to suffer financial loss, loss of amenity, loss arising from change to the character of the neighbourhood, or any other material detriment as a consequence of the removal.
3. The proposed covenant removal is not in conjunction with an application for the use or development of the site. As a consequence, the myriad of development and use possibilities make it impossible for the threshold tests of Section 60(2) to be satisfied.
4. The proposed covenant removal fails to satisfy the interests of affected people within the surrounding neighbourhood who will likely suffer material detriment.



PLANNING ASSESSMENT

Urban Planning Delegated Committee

Application Number	PP23/0348
Date Application Received	12/05/2023
Planning Officer	Chiara Lorini
Applicant	Strathcona Baptist Girls Grammar School Ltd C/O Urbis
Owner	Strathcona Baptist Girls Grammar School Ltd
Property Address	2 and 4 Logan Street, Canterbury and 183 Prospect Hill Road, Canterbury
Proposal	Removal of a Restrictive Covenant W884794C on the land associated with Lot 1 TP757840S (Vol 07978, Fol 083), Lots 1 and 2 on Title Plan 673679N (Vol 09313, Fol 998), Lot 1 of TP 673811R, (Vol 02265, Fol 924), Lots 1 and 2 on TP855694E (Vol 09268, Fol 107) and Lot 1 on TP443173H (Vol 03806, Fol 101)
Ward	Maling
Zoning	Clause 32.09 - Neighbourhood Residential Zone - Schedule 3
Overlays	Clause 43.01 - Heritage Overlay (HO145)
Neighbourhood Character Precinct	45
Particular Provisions	Clause 52.02 - Easements, Restrictions and Reserves
Permit Triggers	Clause 52.02 (Easements, Restrictions and Reserves) of the Boroondara Planning Scheme, a permit is required before a person proceeds: <ul style="list-style-type: none"> Under Section 23 of the <i>Subdivision Act</i> 1988 to create, vary or remove an easement or restriction or vary or remove a condition in the nature of an easement in a Crown grant.
Section 55 Referrals	None
Covenant	The subject sites are affected by Registered Restrictive Covenant as follows: 2 Logan Street - Covenant W884794C 20/11/2001 <ul style="list-style-type: none"> Lot 1 on TP 757840A Volume 07978 Folio 083 Lots 1 and 2 on TP 673679N Volume 09313 folio 998

	<p>4 Logan Street - Covenant W884794C 20/11/2001</p> <ul style="list-style-type: none"> • Lot 1 on TP 673811R Volume 02265 Foil 924 <p>4 Logan Street - Covenant W884794C 03/07/2000</p> <ul style="list-style-type: none"> • Lots 1 and 2 on TP 855694E Volume 09268 Folio 107 <p>183 Prospect Hill Road - Covenant W884794C 20/11/2001</p> <ul style="list-style-type: none"> • Lot 1 on TP 443173H on 03803 Folio 101 <div style="border: 1px solid black; padding: 10px; margin-top: 10px;"> <p style="text-align: center;">SCHEDULE 1</p> <p>Each of the Owners and their respective personal legal representatives, successors, transferees and assigns each jointly and severally agree with each other party to this deed not to undertake, suffer or permit the land owned by him, her or them in fee simple as set out in the Recitals to this Deed to be developed or used except wholly or predominantly for residential purposes without the prior consent in writing of all parties.</p> <p>In particular the land shall not be used or developed for:-</p> <ol style="list-style-type: none"> 1. Any school, pre-school kindergarten or any other educational purpose; 2. aged accommodation (other than as permitted by the third paragraph below); 3. any religious, medical or surgical purpose (other than as permitted by the third paragraph below ^{SET OUT BELOW}); 4. any institutional purpose; or 5. any sporting or recreational purpose associated with any of the purposes listed in items 1-4 above. <p>BUT NOTHING HEREIN shall prevent the use of the land for a dwelling and uses ancillary thereto or as a dwelling and for home occupation or home office purposes being more particularly defined as to allow a residential occupier to run a business from their home such as a medical practice, music lessons, language lessons or family day care up to a maximum of 4 children.</p> </div>
Advertised?	<p>Public notice of the application was given on 20 July 2023 by Council posting notices to beneficiaries, abutting and nearby property owners and occupiers and by the display of signs on the site for a period of not less than 14 days.</p> <p>Notice of the application was also publicly advertised in the <i>Age</i> newspaper on Wednesday 26 July 2023.</p>
Number of Objections Received	36 (inclusive of 6 objections from beneficiaries)
Recommendation	Refuse to Grant a Planning Permit.

PLANS ASSESSED IN THIS REPORT

Documents advertised July 2023

PROPOSAL

Details of the proposal are summarised as follows:

- The application seeks removal of the restrictive covenant no. W884794C to three properties (2 Logan Street Canterbury, 4 Logan Street Canterbury, and 183 Prospect Hill Road Canterbury).

THE SITE - 2 Logan Street

The site comprises of:

2 Logan Street - Covenant W884794C dated 20 November 2001

- Lot 1 on TP 757840A Volume 07978 Folio 083
- Lots 1 and 2 on TP 673679N Volume 09313 folio 998

Width of Frontage	21.34m
Maximum Depth of Site	47.25m
Total Site Area	919m ²
Easements	The subject site is not encumbered by any easements.
Fall of the Land	The site has a moderate fall from the east to the west of approximately 3 metres.



Figure 1a - Subject site - 2 Logan Street



The site comprises of:

- Lots 1 and 2 on TP 855694E Volume 09268 Folio 107

Width of Frontage	18.29m
Maximum Depth of Site	47.25m
Total Site Area	836m ²
Easements	The subject site is not encumbered by any easements.
Fall of the Land	The site has a moderate fall from the north to the south of approximately 2.5 metres.



Figure 1b - Subject site - 4 Logan Street

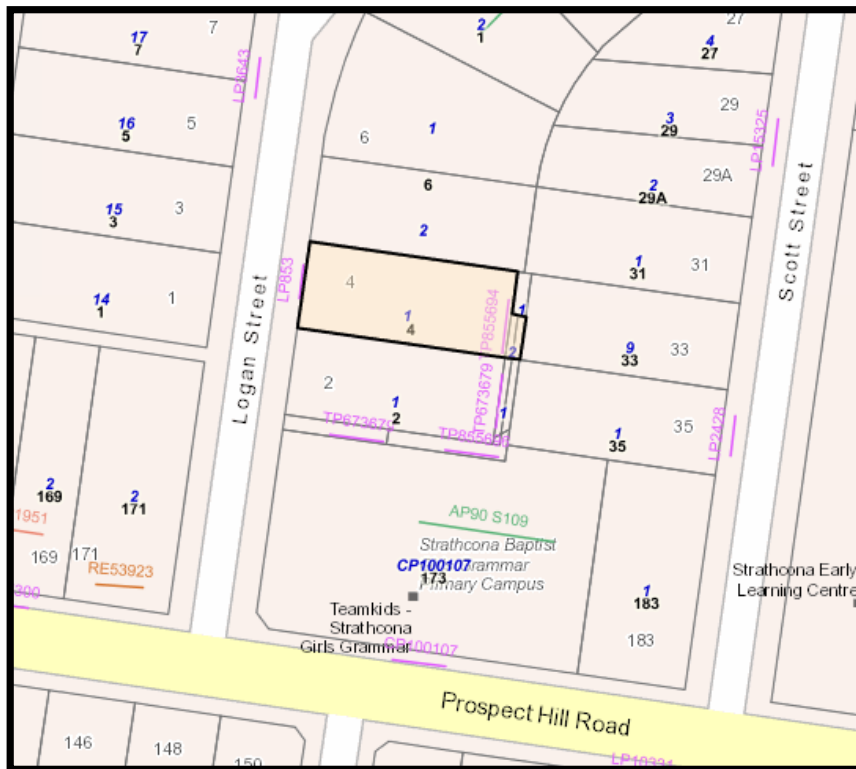


Figure 1b - Lassi (Land and Survey Spatial Information) showing the total parcel of land at 4 Logan Street

THE SITE - 183 Prospect Hill Road

The site comprises of:

183 Prospect Hill Road - Covenant W884794C dated 20 November 2001

- Lot 1 on TP 443173H on 03803 Folio 101

Width of Frontage	22.86m
Maximum Depth of Site	45.72m
Total Site Area	1045m ²
Easements	The subject site is not encumbered by any easements.
Fall of the Land	The site has a moderate fall from the north-east to the south-west of approximately 3 metres.



Figure 1c - Subject site - 183 Prospect Hill Road

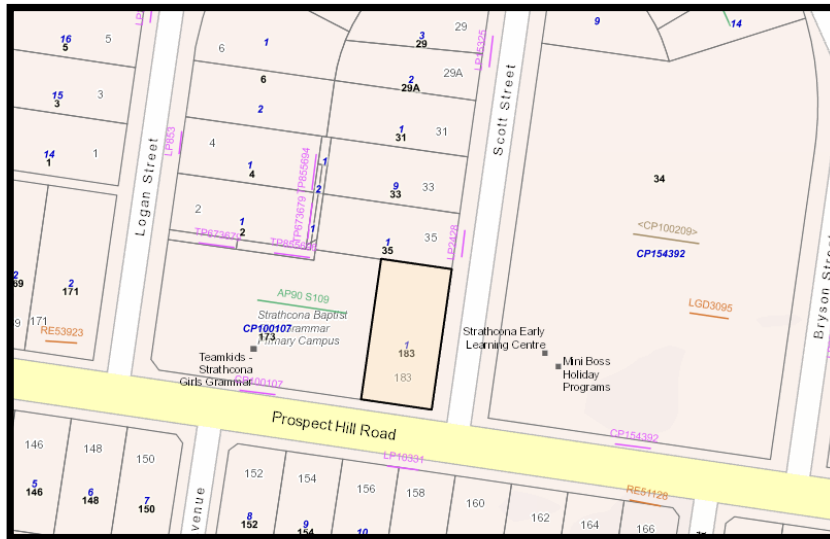


Figure 1c - Lassi (Land and Survey Spatial Information) showing the total parcel of land at 183 Prospect Hill Road

THE SURROUNDING AREA

The subject sites are located to the eastern side of Logan Street and the northern side of Prospect Hill Road (Figure 5). The subject sites were sold as part of the Claremont Park Estate in 1885 and are located to the south-western crescent shaped block of allotments. Advertisements for the Claremont Park Estate notes 'grand villa sites' and a predominantly residential area (Figure 2). Review of Melbourne Metropolitan Board of works plans (1907) and aerial photography from 1945 indicate that the area was established as a residential neighbourhood (Figure 3).

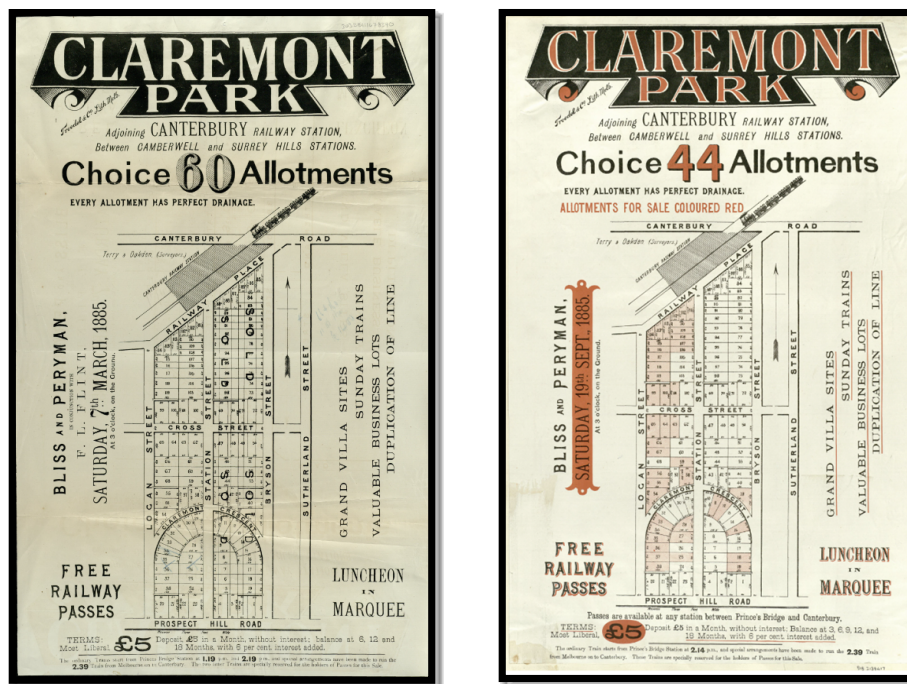


Figure 2 - 'Claremont Park Estate' sale advertisements from March and September 1885 - Source State Library Victoria

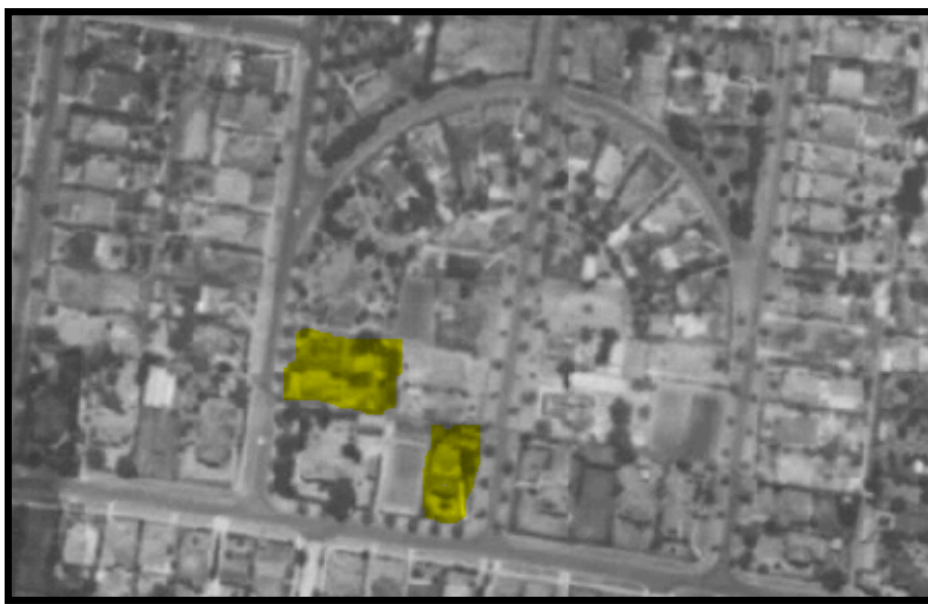


Figure 3a - Aerial image of the subject sites and surrounding area (1945). Source [Melbourne 1945](#)



Figure 3b - 1907 Melbourne Metropolitan Board of Works map of the south-eastern crescent block of the Claremont Park Estate (now Strathcona Girls Grammar School). Source - State Library of Victoria

Strathcona Girls Grammar School ('Strathcona') was established at 34 Scott Street in 1924 at the original namesake dwelling "Strathcona" within the Claremont Park Estate (Figure 3b). Subsequent expansions and developments to the school have occurred over the course of the last century since its founding. The school now encompasses the entire south-eastern crescent block of the Claremont Park Estate (bounded by Scott Street, Bryson Street and Claremont Crescent) in addition to the early learning centre currently under construction to the south-western crescent block (29A-35 Scott Street) and the Junior campus located at 173-181 Prospect Hill Road (Figure 4).

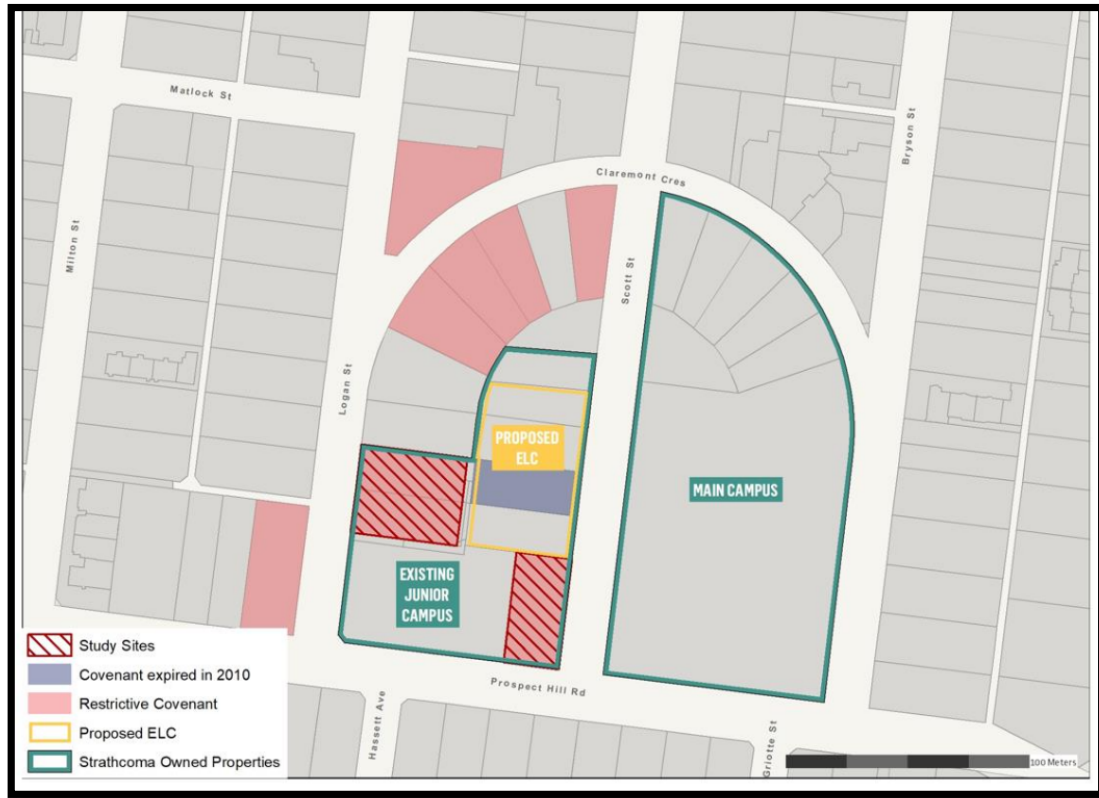


Figure 4 - Current Strathcona owned properties.
Source: Map provided within Urbis Planning Report

*** this plan does not show the former right of ways to the east and south of 2-4 Logan Street which forms part of the application to remove covenants.

No original dwellings remain to the original south-eastern crescent block of the Claremont Park Estate as it is now entirely developed for educational purposes. With the exception of the current Strathcona school sites, the surrounding area to the subject sites remains a relatively intact collection of Victorian and Federation dwellings set within mature landscaped gardens. The surrounding dwellings are generally comprised of brick with roofs of slate or tile which reflects the high quality of the era and predominantly single dwellings to allotments (Figure 5).

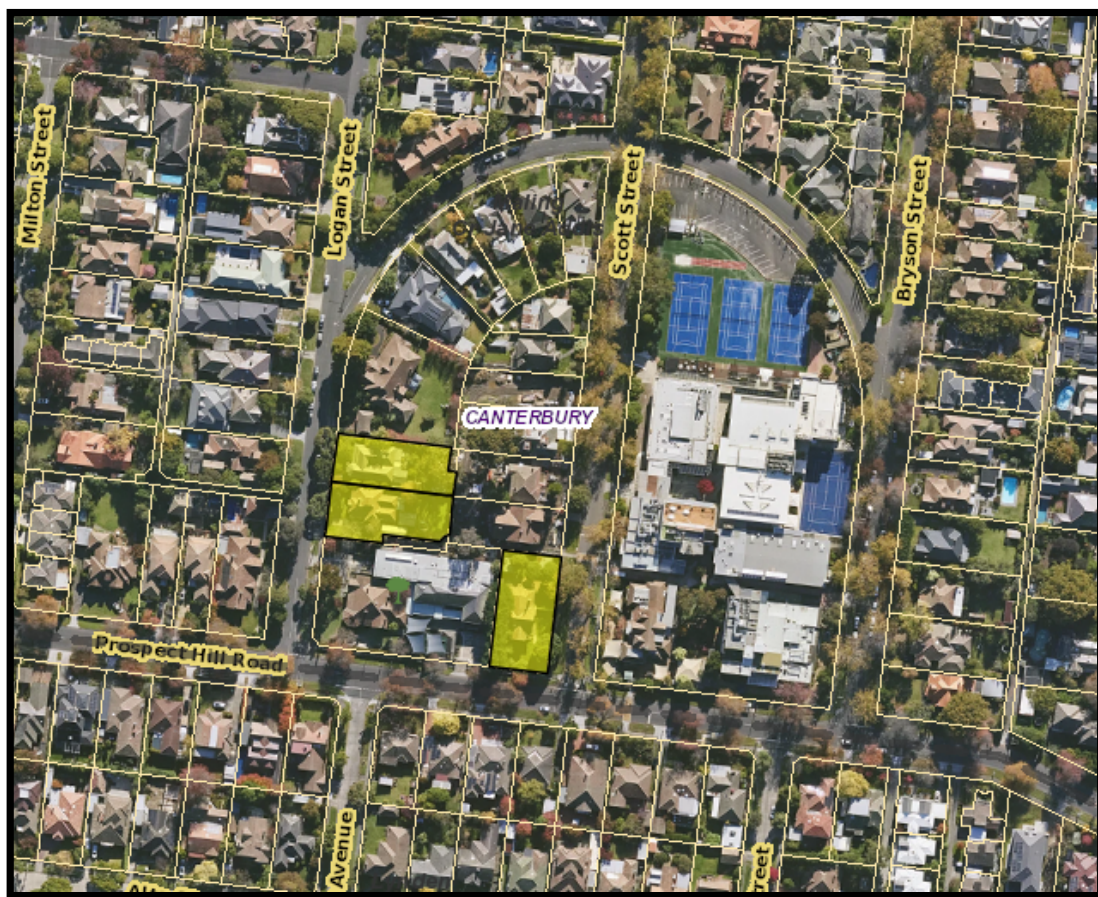


Figure 5 - Aerial image of the subject site and surrounding area

PERMIT HISTORY

A review of Council records indicates that there have been no relevant planning applications at the subject site.

Details of previous applications for the nearby sites are as follows:

173-181 Prospect Hill Road			
Application No	Date of Decision	Decision	Description of Proposal
PP02/00939	12/01/2004	Permit	Construct alterations & additions to an existing education centre.

33 & 35 Scott Street			
Application No	Date of Decision	Decision	Description of Proposal
PP13/01083	17/10/2014	Permit (at direction of VCAT)	Use of the land as an educational centre (uniform shop and administration areas) and construction of buildings and works to existing buildings in a Heritage Overlay.
PP14/00804	4/9/2014	Permit	Part demolition and construct buildings and works to an existing building in a Heritage Overlay.

29A, 31, 33, and 35 Scott Street			
Application No	Date of Decision	Decision	Description of Proposal
PA/2101441	15/4/2022	Permit (Responsible Authority: Minister for Planning)	Use of the land as an education centre, demolition of 29A Scott Street, partial demolition of 31, 33 and 35 Scott Street, construction of a building and carrying out works, waiver of the car parking requirements and display of business identification signage

OBJECTIONS

Of the thirty-six objections received, six are from beneficiaries of the covenant. Objections primarily relate to:

- Removal of the covenant will allow for expansion of the school into a residential street;
- Increased traffic and congestion (and increase in associated stress for local residents);
- Increased noise associated with an education use;
- Increased pollution;
- Light spill from security lighting associated with an education use;
- Loss of property values due to proximity with an educational use;
- Would allow for future development associated with an educational use that would impact the heritage character of the streetscape;

- Any use or development application is likely to be via State Government approval limiting input for local residents and Boroondara;
- Expansion of the school will degrade the heritage and residential character of the streetscape;
- Liveability of the area will be decreased;
- Proposed indicative uses are already available within current school grounds, so future development may occur;
- Insufficient evidence in application documents to support removal;
- Removal of covenant would allow for subsequent future development applications;
- Heritage Overlay may be insufficient to limit demolition of existing buildings.
- Current development to Scott Street has commercial character, similar development in Logan Street would erode residential character;
- School has not been honest previously with intentions to local residents.

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.

The report to Council and any decision arising of Council will be made available on Council's website and by inspection at the Council Offices in accordance with the requirements in the *Local Government Act 2020*, Council's Governance Rules and Public Transparency Policy.

CONSIDERATIONS

In assessing this application, consideration has been given to the following:

- The objectives of planning in Victoria as detailed in Section 4 of the *Planning & Environment Act 1987*;
- Section 60 of the *Planning & Environment Act 1987*; and
- The relevant provisions and decision guidelines of the Boroondara Planning Scheme including the decision guidelines of Clause 65; and
- The objections received.

PLANNER'S ASSESSMENT

PLANNING POLICY FRAMEWORK

The following policies are relevant to the assessment of the current application:

- Clause 15 - Built Environment & Heritage
- Clause 19 – Infrastructure

Of relevance to this application, strategies to achieve the objective to '*recognise, support and protect neighbourhood character, cultural identity and sense of place*' (Clause 15.01-5S - Neighbourhood Character), include to:

- Support development that respects the existing neighbourhood character or contributes to a preferred neighbourhood character.
- Ensure development responds to its context and reinforces a sense of place and the valued features and characteristics of the local environment and place by respecting the:
 - Pattern of local urban structure and subdivision.
 - Underlying natural landscape character and significant vegetation.
 - Neighbourhood character values and built form that reflect community identity.

The proposal is considered to be inconsistent with the strategies and outcomes sought by Clause 15.01-5S, as the removal of the restrictive covenant, will potentially allow for the use and development of the sites for education purposes that will adversely affect the established residential neighbourhood character.

Clause 15.01-5L - Neighbourhood Character

Clause 15.01-5L Neighbourhood Residential Zone Schedule 3

Objectives

- *To provide for development that maintains the spacious character including the consistent spine of backyards and low site coverage.*
- *To ensure development responds to the smaller lot sizes, narrower side setbacks, smaller front and rear gardens and higher site coverage of some inner urban areas.*

Policy

It is policy to:

- *Set development back from the front, side and rear boundaries, consistent with the preferred character of the precinct.*
- *Site development to retain an area of open space to the rear of the dwelling that is capable of accommodating canopy trees.*
- *Avoid attached dwellings set one behind the other that provide no visual separation between built forms.*
- *Design upper storeys of dwellings at the rear of lots to be recessive and have a reduced footprint to the ground floor.*

Clause 15.01-5L Variation or removal of a covenant or restriction on title

Objective

To ensure the variation or removal of a covenant does not adversely impact a precinct's preferred character.

Policy

It is policy to:

- *Discourage the removal of single dwelling covenants.*
- *Ensure the removal or variation of a restriction does not facilitate development that will adversely impact the precinct's preferred character including but not limited to building materials and dwelling setbacks.*

Planner's Comments:

The subject site is located within the Claremont Park Estate. Review of the site and surrounds indicates that the area has a well-established residential neighbourhood character which is broadly typified by detached single dwellings in mature gardens (with rear green garden spine) constructed of brick with slate or tile roofs.

The Claremont Park Estate was subdivided and sold in the late 1800s. Sale advertisements from the period (Figure 2) detail 'grand villa sites' and the subdivision established the estate as residential (with some commercial to Maling Road).

Since the establishment of Strathcona in 1924, a progressive erosion of the residential use and development has occurred to the southern end of the estate in favour of education. The restrictive covenant currently encumbering the subject sites was established in 2001 by local owners/residents expressly to maintain the residential neighbourhood character of the area.

The expansion of Strathcona has, thus far, been limited to the southeastern crescent block, the western side of Scott Street and the interface of the estate to Prospect Hill Road. The removal of the restrictive covenant to 2 and 4 Logan Street in particular would establish a clear avenue for use and development associated with an education centre that is inconsistent with the precincts preferred residential character.

Given the cohesive and intact nature of the Claremont Park Estate to Logan Street, it is considered that the proposal is inconsistent with the objectives of the Planning Scheme, which seek to ensure the variation or removal of a covenant does not adversely impact a precinct's preferred character. This will form a basis for the recommendation to refuse the proposal.

Council's current Single Dwelling Restrictive Covenant Policy was adopted December 2019. The covenant does not include a single dwelling element and this policy is therefore not relevant in the determination of the application.

Clause 19.02-2L - Educational Facilities

Council has established a clear vision to facilitate and encourage education facilities while ensuring the preferred character of established residential areas is achieved and residential amenity is maintained.

Objective

To accommodate the future development needs of education facilities, while limiting detrimental impacts on the neighbourhood character and amenity of surrounding residential areas.

Strategies

Encourage education facilities to locate in activity centres.

Avoid educational institutions establishing in the Commercial 2 Zone.

Provide education facilities where there are minimal adverse amenity impacts on adjoining residential properties particularly in relation to noise, car parking and access and circulation.

Prepare a masterplan for the overall development of education facilities prior to the further development of facilities.

Avoid demolition of existing dwellings for education facilities.

Avoid education facilities opening a new frontage to, or deriving access from, a local road.

Minimise isolating existing residential properties as a result of the expansion of education facilities.

Avoid education facilities encroaching into existing residential areas across a road from the main premises.

Ensure teacher and student numbers of education facilities are only increased if measures to reduce car dependency are implemented in accordance with a Sustainable Transport Plan.

Apply the Development Plan Overlay to land prior to an application being made for the use and development of land as an education facility.

Planner's Comments:

The proposal to remove the covenant from the land is inconsistent with the objectives and strategies set out in Clause 19.02-2L. Removal of the restrictive covenant provides opportunity for expansion of an educational use into Logan Street which is likely to result in material detriment (noise, car parking and access) to local residents.

Furthermore Council's Strategy specifically seeks to (as relevant to this removal of covenant request):

- *Avoid education facilities opening a new frontage to, or deriving access from, a local road.*
- *Minimise isolating existing residential properties as a result of the expansion of education facilities.*
- *Avoid education facilities encroaching into existing residential areas across a road from the main premises.*

The removal of the restrictive covenant would allow for:

- 2 and 4 Logan Street to provide a new frontage for Strathcona into Logan Street (the current corner allotment for the junior school fronts to Prospect Hill Road);
- The partial isolation of dwellings to the southern end of Logan Street within a principally educational area;
- Encroachment of the educational facilities across the road and away from the main premises (the south eastern crescent block of the Claremont Park Estate).

The proposal is inconsistent with the objectives of Clause 19 and will form a basis for the recommendation to refuse the application.

ZONING & OVERLAYS

A planning permit requirement is not triggered under the Neighbourhood Residential Zone.

Heritage Overlay

A planning permit requirement is not triggered under the Heritage Overlay.

PARTICULAR PROVISIONS

Clause 52.02 - Easements Restrictions and Reserves

The purpose of Clause 52.02 is:

To enable the removal and variation of an easement or restriction to enable a use or development that complies with the planning scheme after the interests of affected people are considered.

Clause 52.02 states that *before deciding on an application, in addition to the decision guidelines in clause 65, the responsible authority must consider the interests of affected people.*

Planner's Comments:

Hill v Campaspe SC (Red Dot) [2011] established that “affected people” for the purpose of consideration with regard to Clause 52.02 is not limited to only owners of land which are benefitted by the covenant. Deputy President Gibson further notes in *Hill v Campaspe [2011]* that nearby properties may enjoy the amenity afforded from the existence of the covenant:

‘In my view, the existence of the covenant has contributed to the amenity that the Murphy land enjoys, even though it does not have the legal benefit of the covenant. Equally, there are other properties within Lord Court, which do not have the benefit of the covenant but which nevertheless enjoy the amenity that has resulted from the existence of the covenant.’

Further to this, Deputy President Gibson then details that *‘I consider that the interests of affected people encompass the effects or consequences that will flow from the removal or variation of a covenant’* Hill v Campaspe [2011].

Council has received numerous objections from surrounding and nearby residents with regard to the proposed covenant removal. Objections have noted that the covenant has

provided a means of limiting the encroachment of Strathcona within the nearby residential area which has protected their amenity with regard to noise, traffic, and education related use and development.

It is considered that removal of the covenant will allow for uses and development that will adversely impact the amenity of surrounding residents. This will form a basis for the recommendation to refuse the application.

Section 60(2) of the <i>Planning and Environment Act 1987</i>
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Section 60(2) of the of the Act provides the legislative 'test' for the removal or variation of restrictive covenants created after 25 June 1991, as is the case with this particular covenant.

Section 60(2) states that:

(2) The responsible authority must not grant a permit which allows the removal or variation of a restriction (within the meaning of the Subdivision Act 1988) unless it is satisfied that the owner of any land benefitted by the restriction (other than an owner who, before or after the making of the application for the permit but not more than three months before its making, has consented in writing to the grant of the permit) will be unlikely to suffer-

- (a) financial loss; or*
 - (b) loss of amenity; or*
 - (c) loss arising from change to the character of the neighbourhood; or*
 - (d) any other material detriment -*
- as a consequence of the removal variation of the restriction.*

The tests to be applied to an application to vary or remove a covenant are quite onerous as the very purpose of the application is to remove the rights of the people who benefit from the covenant as a result of ownership of their land.

Several Tribunal cases provide commentary on assessing detriment as set out in Section 60(2) of the Act.

Waterfront Place Pty Ltd v Port Phillip CC (Red Dot) [2014] appropriately details that 'a permit to remove a restrictive covenant constitutes the expropriation of an interest in land without payment of compensation. Section 60(2) Planning and Environment Act 1987, which lays down threshold tests that give some protection to benefitting owners, must be considered as beneficial legislation and given as wide a meaning as the words reasonably allow'.

On this basis, Council must be satisfied that beneficiaries of the covenant will be unlikely to suffer any detriment of any kind as a result of the proposed removal of covenant. In this case, Council must assess whether the application meets the tests set out in Section 60(2) of the Act.

Planner's Comments:

In *Soto v Hobson Bay CC* (June 2023) Member Code highlights that *'it is relevant to construe the purpose of the covenant from its provisions and context in which it was created'*. In the application currently before Council, it is apparent that the purpose of the covenant was to maintain the subject sites for residential purposes and to prevent both the use and development for educational, aged care, religious, institutional or medical/surgical purposes (with the exception of an ancillary home occupation). Indeed, one of the beneficiaries involved in the establishment of the covenant has provided context in their objection to the current application. They have detailed that an integral purpose of the covenant was to limit the expansion of Strathcona further within the surrounding residential area.

With consideration to removal of a covenant, Council must, under section 60(2) turn its mind to the consequences of the removal and potential material detriment to benefitted landowners. Given that the covenant restricts both the use and development of the sites for the purposes of educational, aged care, religious, institutional or medical/surgical purposes Council must therefore consider the consequences with regard to both the potential uses and development for which the covenant currently prohibits.

In *Waterfront Place Pty Ltd v Port Phillip CC (Red Dot)* [2014] Senior Member Wright and Member Benz note *'If there is no specific development proposal before the Tribunal, the wide range of development options for the burdened land if the restriction is removed makes it almost impossible for the Tribunal to conclude that the threshold tests are satisfied'*. The difficulty in satisfying these threshold tests where the application for covenant removal is not in tandem with a development/use proposal is well established at VCAT (e.g. *Giosis v Darebin City Council* [2013]).

The application before Council is not in composite with an application for the use or development of the land. The permit applicant and landowner is Strathcona Girls Grammar School. They note that, in addition to the subject sites, they are the landowner of several contiguous parcels of land. They have provided plans within the advertised documents showing probable 'indicative uses' of the existing buildings to the subject sites. These uses are detailed as an archives storage area, foundation office and an administration/uniform office should the covenant removal be supported.

Any use of the land for educational purposes (or ancillary to an education facility) would ordinarily require a planning permit as 'Education' is a Section 2 (permit required use) within the Neighbourhood Residential Zone. Clause 13.07-1L (Discretionary Uses) is

relevant for any application that seeks the use and development of land in residential areas.

Similarly, any development of the land on these sites would necessitate a planning permit. The planning application before Council however solely seeks removal of the restrictive covenant.

Pursuant to Clause 72.01-1 of the Boroondara Planning Scheme however, the Minister for Planning is the responsible authority for the use and development of land for a:

- Primary school or secondary school, or education centre that is ancillary to, carried out in conjunction with, and on the same land or contiguous land in the same ownership as, a primary school or secondary school, if any of the following apply:
 - There is no existing primary school or secondary school on the land.
 - The estimated cost of development is \$3 million or greater.

The 'indicative' uses of the subject sites noted within the application documentation fails to satisfactorily address the future myriad 'consequences' of the variation of the covenant. As noted in *Soto v Hobson Bay CC* (June 2023) *'the consequence of a variation flows from the meaning and effect of the covenant as proposed to be varied'*.

In this instance, if permission were granted to remove the restrictive covenants from the site, there would be no restriction in seeking an alternative educational use or further development on the site (e.g.) further expansion of the early learning centre or junior school onto the subject sites akin to Planning Permit PA2101441 recently approved by the Minister for Planning.

The permit applicant notes that the subject sites are 'remote' from the remaining parcels of land which in their view ensures that there will not be detriment to the beneficiaries nor material detriment. Review of the burdened sites indicates that the closest benefitting allotment is 19m from 2 Logan Street (across the road). With regard to objections received from beneficiaries, the closest allotment is 10 Logan Street, 78m from 4 Logan Street (or colloquially 'three doors down'). It is considered that the benefitting lots and objections received from benefitting lots are not 'remote' but in sufficient proximity that any use or development of the subject sites may result in loss of amenity, loss of character to the neighbourhood or other material detriment.

Given that the restrictive covenant currently limits the use and development of the land, the potential scope of consequences is too broad for Council to conclude that the threshold tests of Section 60(2) are satisfactorily met. It is therefore considered likely that one or more of the owners/occupiers of benefitting lots would suffer the losses and detriment as set out in Section 60(2). On this basis, Clause 60(2) obliges Council to refuse the application.

OBJECTION RESPONSE

Summary of Objection	Planner's Comments
Covenant protects built form, heritage, and residential character of precinct providing consistent neighbourhood character.	<p>The Claremont Park Estate has been established with a consistent development pattern and visually cohesive residential neighbourhood character. It is considered that the covenant restrictions continue to operate in maintaining this residential character.</p> <p>This will form part of the recommended grounds for refusal.</p>
Removal of the covenant would adversely impact the residential and heritage character of the area	<p>The removal of the covenant, allowing for increased development opportunity on the site, potential introduction of alternative land uses, and deviation from the broadly cohesive residential character of the precinct is a reasonable basis for perceived detriment relating to neighbourhood and heritage character.</p> <p>This will form part of the recommended grounds for refusal.</p>
Removal of the covenant would allow for expansion of the school resulting in amenity impacts including security lighting light spill, increased noise, increased pollution, increased traffic and parking issues	<p>Removal of the restrictive covenant will likely result in amenity impact to affected persons, including the owners/occupiers of land benefitted by the restriction.</p> <p>This will form a basis for the recommended grounds for refusal.</p>
Removal of the covenant would allow for development applications via state government approval, bypassing local council and residents	<p>Pursuant to Clause 72.01-1 of the Boroondara Planning Scheme the Minister for Planning is the responsible authority for the use and development of land for a:</p> <ul style="list-style-type: none"> • Primary school or secondary school, or education centre that is ancillary to, carried out in conjunction with, and on the same land or contiguous land in the

	<p>same ownership as, a primary school or secondary school, if any of the following apply:</p> <ul style="list-style-type: none"> ○ There is no existing primary school or secondary school on the land. ○ The estimated cost of development is \$3 million or greater. <p>There are insufficient details about future land uses and development on the sites to clarify who will be the responsible authority for any future planning application.</p>
Removal of the covenant allows for subsequent applications for use and development - the application only lists indicative uses.	<p>Council is of the position that removal of the restrictive covenant will allow for potential development and uses that may result in detriment to nearby and benefitting owner/occupiers of the restriction.</p> <p>This will form a basis for the recommended grounds for refusal.</p>
Heritage Overlay may not prevent demolition of the dwellings	<p>The covenant located on the properties will not prevent demolition. However, any application seeking partial/full demolition of the subject sites would be subject to assessment of merit relevant to the applicable controls.</p>
Removal of the covenant will allow for encroachment of Strathcona into residential area.	<p>Council is of the position that removal of the restrictive covenant will result in encroachment of an educational use within a residential area which is inconsistent with the objective and strategies of Clause 19 of the Boroondara Planning Scheme.</p> <p>This will form a basis for the recommended grounds for refusal.</p>
Loss of buildings due to Heritage Overlay removal.	<p>The proposal seeks removal of the restrictive covenant, not the heritage overlay controls applicable to the site.</p>
Removal of the covenant would	<p>Section 60(2) notes that:</p>

adversely property values in the area	<p>'The responsible authority must not grant a permit which allows the removal or variation of a restriction (within the meaning of the Subdivision Act 1988) unless it is satisfied that the owner of any land benefited by the restriction (other than an owner who, before or after the making of the application for the permit but not more than three months before its making, has consented in writing to the grant of the permit) will be unlikely to suffer-</p> <ul style="list-style-type: none"> a.) financial loss; or b.) loss of amenity; or c.) loss arising from change to the character of the neighbourhood; or d.) and other material detriment. <p>Several objections have noted that the establishment of the school within Logan Street would likely result in a decrease in property value/financial loss. One objection further included supporting documentation from a local real estate agent noting that proximity to the school would likely result in a decreased valuation.</p> <p>The loss of property value will be part of the material detriment that will form a basis for the recommendation to refuse the application.</p>
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RECOMMENDATION

That Council, resolve to **Refuse to Grant a Planning Permit** on the following grounds:

- The proposed covenant removal will likely result in financial loss, loss of amenity, loss arising from change of character the neighbourhood and other material detriment to owners of land which benefit by the restriction.
- Pursuant to Section 60(2) of the *Planning and Environment Act 1987* the responsible authority must not grant a permit for the removal of a covenant where the owner of any land benefitted by the restriction will be likely to suffer financial loss, loss of amenity, loss arising from change to the character of the neighbourhood, or any other material detriment as a consequence of the removal.

- The proposed covenant removal is not in conjunction with an application for the use or development of the site. As a consequence, the myriad of development and use possibilities make it impossible for the threshold tests of Section 60(2) to be satisfied.
- The proposed covenant removal fails to satisfy the interests of affected people within the surrounding neighbourhood who will likely suffer material detriment.

3.5 675 Victoria Street, Abbotsford (City of Yarra) - Objection to Fifteen (15) storey mixed use development

Executive Summary

Purpose

The purpose of this report is to consider whether the City of Boroondara confirms its objection submitted to the City of Yarra in relation to a fifteen storey mixed use development proposed at 675 Victoria Street, Abbotsford located within the City of Yarra and abutting the Yarra River. The report includes an assessment of the proposal and outlines the issues of concern which have been raised in an objection which has already been lodged by officers to ensure that it was received by the City of Yarra within the public notification period.

Background

On 17 July 2023 the City of Boroondara received public notice of a proposed development abutting the Yarra River within the City of Yarra which forms the border of the two municipalities. The public notification period for the application formally closed on 14 August 2023 although at the time of writing this report no decision has been made.

The proposal is for a fifteen storey (48metre) high mixed use building comprising office space and dwellings upon three levels of basement car parking.

Following a review and assessment of the proposal an objection has been lodged by officers on behalf of the City of Boroondara to ensure that it was lodged within the public notification period. The issues raised in the objection include concern about the excessive scale, massing and bulk of the proposal in a sensitive landscape setting of the Yarra River Corridor and environment.

Key Issues

A detailed assessment of the proposal has been undertaken by Planning Officers which is outlined in detail within the report, with the following key conclusions:

- The site has clear strategic support for increased density and built form under the Yarra Planning Scheme, being a 'strategic development site' within a Major Activity Centre and Commercial 1 Zone, and having excellent access to public transport. However, whilst the local policy, reference documents and DDO1 potentially contemplate increased height, the proposal is well beyond an acceptable scale being 48m compared to a guideline height of 18m.
- The 15 storey component of the development would have separation distances of approximately 83m to the northern river bank and 210m to Young Street, Kew. Whilst this distance mitigates some of the visual impact and bulk of the building and specific amenity impacts to Boroondara residents, a 15 storey building as designed is considered to have a significant impact on the Yarra River corridor and its landscape character. It is considered that the proposed building should be significantly reduced in height.
- The development seeks to retain some vegetation to its northern interface and proposes additional canopy tree planting, to achieve heights of up to 30m.

However, given the space available and comparable building height and scale, the landscaping proposed would be insufficient to mitigate the detrimental impact of the building on the Yarra corridor environment.

Next Steps

Subject to confirmation that Council has concern with the proposed development and wishes to maintain an objection to the proposal, officers will reiterate the concerns and review any amended proposal submitted.

Officers' recommendation

That the Urban Planning Delegated Committee resolve to:

1. Confirm the City of Boroondara's objection to the proposed 15 storey mixed use development within the City of Yarra at 675 Victoria Street, Abbotsford, raising concern about the excessive scale, massing and bulk of the proposal in a sensitive landscape setting of the Yarra River Corridor and environment.
2. Authorise the Director Urban Living to review and assess any amended proposal submitted to the City of Yarra and withdraw the City of Boroondara's objection should the issues of concern raised in the objection relating primarily to scale, massing and bulk of the building within the Yarra River Corridor landscape setting be addressed.

Responsible director: **Scott Walker, Director Urban Living**

1. Purpose

The purpose of this report is to consider whether the City of Boroondara confirms its objection submitted to the City of Yarra in relation to a fifteen storey mixed use development proposed at 675 Victoria Street, Abbotsford located within the City of Yarra and abutting the Yarra River. The report includes an assessment of the proposal and outlines the issues of concern which have been raised in an objection which has already been lodged by officers to ensure that it was received by the City of Yarra within the public notification period.

Summary and reference details:	
Boroondara Reference	PENQ23/00454
Permit Application (City of Yarra) Ref	PLN22/0732
Notification End Date	14 August 2023
Address of the Land	675 Victoria Street & Lot 63B on PP2796, Abbotsford
Development Description	Construction of a mixed use building (15 storeys containing office and dwellings with roof plant above and basement levels), permit required for dwelling use only, the reduction of the car parking requirements associated with the office and tree removal (including native vegetation)
Date of objection	14 August 2023
Application Status (as of date of writing the report)	Not yet determined

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

The Boroondara Community Plan sets the strategic direction for the municipality based on seven themes and a series of strategic objectives. Local planning directions in the Planning Policy Framework (relating to issues such as heritage, urban design and architecture), and planning controls (such zones and overlays) play a critical role in delivering on Council's commitments set out in the Community Plan.

The key themes within the Community Plan that are relevant to the proposed development include:

Theme 3 - The Environment.

Theme 4 - Neighbourhood character and heritage.

3. Background

Public Notice

On 17 July 2023 the City of Boroondara received public notice of an application for a 15 storey mixed use development at 675 Victoria Street, Abbotsford from the City of Yarra pursuant to section 52(1) of the *Planning and Environment Act*

1987 (The Act). Subclauses (b) and (d) of s52(1) of the Act require the responsible authority (City of Yarra) to give notice of the application:

- *to a municipal council, if the application applies to or may materially affect land within its municipal district*
- *to any other persons, if the responsible authority considers that the grant of the permit may cause material detriment to them*

The City of Yarra has given notice to the City of Boroondara along with certain residents within Boroondara in Young Street, Kew which are located opposite the site on the other side of the Yarra River. A number of these residents have individually objected to the proposal direct to the City of Yarra.

An objection was lodged by officers on behalf of the City of Boroondara on 14 August 2023 to ensure that it was received by Yarra Council within the formal public notification period. A copy of the objection is included as an **attachment**.

At the time of writing this report City of Yarra had not determined the application.

Location and Relationship to the City of Boroondara

The subject site is located along the southern bank of the Yarra River within the City of Yarra. The municipal boundary of the City of Boroondara sits to its north while also wrapping around to the east of the site. The following (approximate) separation distances are highlighted:

- Separation from the Site to the north:
 - 29m to the boundary with the City of Boroondara
 - 45m to the north bank of the Yarra River
- Separation from the Site to the east:
 - 190m to the boundary with the City of Boroondara
 - 205m to the east bank of the Yarra River

The site also has frontage to Victoria Street (which becomes Barkers Road at the Victoria Street Bridge, to the east), which provides direct vehicle access to the City of Boroondara. The Main Yarra Trail traverses directly in front of the site, which crosses over the Yarra River at Walmer Bridge (into the City of Boroondara) to the west of the Site.

The image below shows the general location of the site within the context of the planning zones, the municipal boundaries (the City of Boroondara's boundary roughly follows the central point of the Yarra River), the Yarra River, along with the surrounding property boundaries.



Figure 1 - General location of the Site (outlined in blue) shown in the context of the planning zones and municipal boundaries, accessed from VicPlan on 27/07/2023

The aerial images below are taken from Weave, Council's internal mapping system.



Figure 2 - General location of the Site (outlined in blue) in the context of aerial imagery taken 22/07/2022, accessed from Weave 27/07/2023



Figure 3 - General location of the Site (outlined in blue) in the context of aerial imagery taken 22/07/2022, accessed from Weave 27/07/2023



Figure 4 - Oblique looking south, showing the Site (indicated by blue arrow) within the surrounding context

Proposed Development

The application seeks planning permission to construct a 15 storey, mixed use building, comprising office space and dwellings, upon 3 levels of basement; and, the removal of native vegetation along with access to a Transport Zone 2 road (Victoria Street).

The proposal would be predominantly residential; however, commercial office space would form the interface with Victoria Street, at ground floor level.

The proposal includes the provision for public access through the site, from Victoria Street to the Main Yarra Trail. Further, a building setback from the northern boundary, ranging from (approx.) 13m to 14.5m, would be landscaped and operate as communal open space.

The form of the building, as viewed from the north (City of Boroondara), would read as a podium and tower typology. The following key (approximate) parameters are provided (note all references to storeys are as viewed from the northern boundary of the site):

- Setbacks of storeys 1 - 3 to northern boundary: 13m to 14.5m
- Setbacks of storeys 4 & 5 to northern boundary: 23m
- Setbacks of storeys 6 - 15 to northern boundary: 38m
- Maximum height: 15 storeys (48m)
- Dwellings: 134
- Office space: 537sqm
- Car Parking spaces: 186

The figures below depict the general form and appearance of the building, its relationship with the Yarra River and the slope of the land.

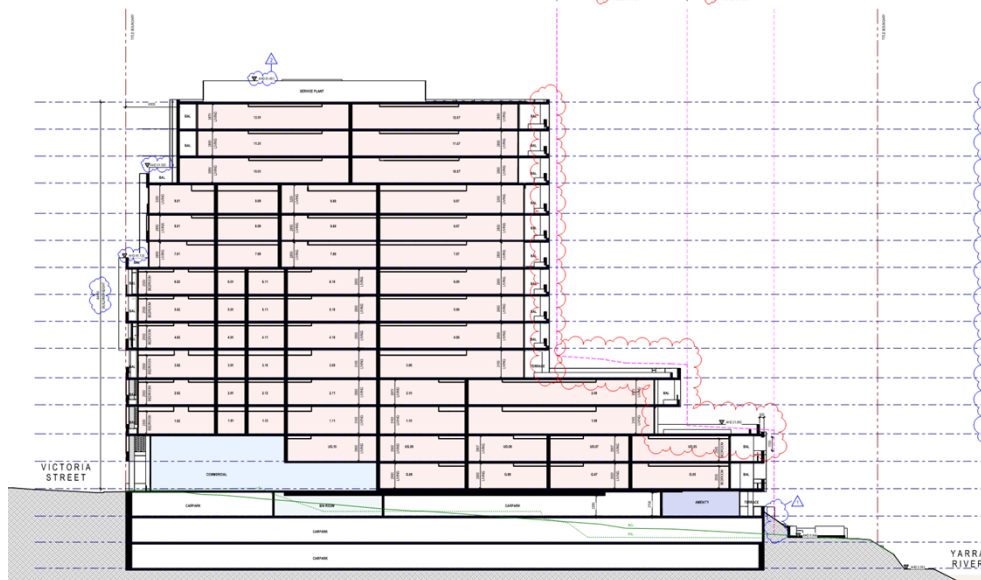


Figure 5 - Section of the proposed building



Figure 6 - Proposed access to Main Yarra Trail



Figure 7 - Render of the proposed development and its interface with the Yarra River



Figure 8 - Render of the proposed development, as viewed from the north

Planning Controls (Yarra Planning Scheme)

- Commercial 1 Zone
- Design and Development Overlay - Schedules 1-G & 2
- Significant Landscape Overlay - Schedule 1
- Land Subject to Inundation Overlay
- Development Contributions Plan Overlay - Schedule 1
- Adjoins Transport Zone 2 road
- Clause 52.06 (Car parking)
- Clause 52.17 (Native Vegetation)
- Clause 52.29 (Land Adjacent to the Principal Road Network)
- Clause 52.34 (Bicycle Facilities)
- Clause 53.18 (Stormwater)
- Clause 58 (Apartment Developments)
- Within area of Aboriginal Cultural Heritage sensitivity
- Adjoins Environmental Protection Overlay land

Commercial 1 Zone

Purpose:

- *To create vibrant mixed use commercial centres for retail, office, business, entertainment and community uses.*
- *To provide for residential uses at densities complementary to the role and scale of the commercial centre.*

Design and Development Overlay - Schedule 1-G (Yarra (Birrarung) River Corridor)

Relevant Design Objectives:

- To ensure new buildings, tennis courts, swimming pools and other structures are appropriately set back from the banks of the Yarra River and adjacent public open space.
- To ensure buildings are presented at a variety of heights, avoid visual bulk, are stepped back from the frontage of the Yarra River and adjacent public open space and use colours and finishes which do not contrast with the natural landscape setting.
- To avoid additional light spill and overshadowing from buildings on the banks and water of the Yarra River, its adjacent public open space, pedestrian and bicycle paths.
- To ensure sufficient space is provided between buildings to maintain views to the Yarra River and allow for the planting and growth of vegetation, including large canopy trees.
- To minimise impervious surfaces to allow for the filtration of water and retention and establishment of vegetation and canopy trees.

Requirements:

Map Reference Area	Location	Minimum setback	Maximum building height		Discretionary maximum building height
			0m to 10m from setback line	10m to 25m from setback line	>25m from setback line
G	Victoria Street, Abbotsford	25 metres	11 metres	18 metres	18 metres

LEGEND

- Area Boundary
- Mandatory Minimum Setback Line *
- Setback Reference Line

The following points are highlighted in relation to the above requirements:

- The minimum setback is measured from the setback reference line and includes basements and projections.
- Maximum building height is mandatory, albeit an additional 1m allowance is provided due to the slope of the land. Further, this only relates to parts of the building within 25m of the setback line, beyond which the maximum height is discretionary although “should” be adhered to with the requirements stating that:

Buildings should not exceed the discretionary maximum building height specified in the applicable table to this schedule, except for sloping sites where a building may exceed the maximum building height by up to 1 metre if the slope of the ground level, measured at any cross section of the site of the building wider than 8 metres, is greater than 2.5 degrees..

Design and Development Overlay - Schedule 2 (Main Roads and Boulevards)

DDO2 relates to the southern portion of the site and is primarily concerned with the interface with and impact upon Victoria Street.

Relevant Design Objectives:

- *To recognise the importance of main roads to the image of the City.*
- *To retain existing streetscapes and places of cultural heritage significance and encourage retention of historic buildings and features which contribute to their identity.*
- *To reinforce and enhance the distinctive heritage qualities of main roads and boulevards.*
- *To recognise and reinforce the pattern of development and the character of the street, including traditional lot width, in building design.*
- *To encourage high quality contemporary architecture.*
- *To encourage urban design that provides for a high level of community safety and comfort.*
- *To limit visual clutter.*
- *To maintain and where needed, create, a high level of amenity to adjacent residential uses through the design, height and form of proposed development.*

There are no specific requirements in DDO2, beyond the objectives outlined above.

Significant Landscape Overlay - Schedule 1 (Yarra (Birrarung) River Corridor Environs)

Landscape Objectives to be Achieved:

- *To retain vegetation that contributes to landscape character, heritage values or neighbourhood character.*
- *To maintain and protect linear public open space and provide for secluded areas of public open space with access to the river where appropriate.*
- *To encourage the co-location or clustering of buildings, jetties and mooring facilities on public land.*
- *To encourage bicycle and shared paths that are safe, well located and require minimal earthworks and vegetation removal.*

- *To ensure fencing within close proximity to the Yarra River is low in scale, visually permeable and does not contrast with the natural landscape character.*

In addition to the above, the decision guidelines advise that the following considerations (as relevant to the City of Boroondara) can be taken into account:

- *Whether the scale, form, siting and design of new buildings, including materials, colours and finishes, are sensitively integrated with the natural landscape setting of the river corridor.*
- *Whether the spacing between buildings allows for the planting of appropriate vegetation and canopy trees to filter views of the development.*
- *Whether the existing and proposed vegetation fronting the Yarra River will filter the majority of views of the proposed development.*

Other Planning Controls

The remaining planning controls, while highly relevant to the assessment of the proposal, are not relevant to the considerations of the City of Boroondara. The remaining planning controls are matters for the City of Yarra along with the relevant referral authorities.

Planning Policy

The key policy of the Yarra Planning Scheme, as it relates to both the development and the considerations of the City of Boroondara, are outlined below:

Clause 12.03-1R (Yarra River Protection) seeks to maintain and enhance the natural landscape character of the Yarra River corridor. The policy seeks a number of measures in relation to the Yarra River, including improving water quality, protecting archaeology, improving canopy cover, maintaining recreation and ensuring buildings respect and fit within the context of the river corridor.

Key Strategies:

- Promote a sense of place and landscape identity by:
 - Retaining a dominant and consistent tree canopy along the river corridor and in its broader landscape setting.
 - Ensuring that the appearance of development is subordinate to the local landscape setting, with any views of development being filtered through vegetation.
- Ensure that development is designed and sited to maintain and enhance the river's secluded and natural environment by:
 - Minimising the visual intrusion of development when viewed from major roads, bridge crossings, public open space, recreation trails and the river itself.
 - Ensuring that the siting and design of buildings avoids conflicting with the local natural landscape and environmental character.
 - Ensuring building height is below the natural tree canopy and all development is set back a minimum of 30 metres from the banks of the river.

Clause 21.08-1 (Neighbourhoods - Abbotsford) identifies the land as being a strategic development site.

Clause 22.11 (Victoria Street East Precinct Policy) is the key policy guiding development in the area and identifies the Site as being within the Victoria Street Major Activity Centre. The policy provides the following relevant objectives and policies.

Clause 22.11-2 (Objectives):

- To minimise the impact of building massing and siting when viewed from within the river corridor and ensure a vegetation dominated setting along the River edge.
- To relate the siting scale bulk and massing of new development to the distinctive landscape and ex-industrial character of this section of the Yarra River Corridor.
- To encourage high quality urban design and architecture throughout the precinct which contributes to the public realm, including the Yarra River corridor and street scapes.

Clause 22.11-2 (Policy):

- New development is encouraged to be set well back from the River with the area provided by setbacks and additional open space integrated with the River corridor to provide universal public access.
- Muted natural colours for fittings and bases, finished with graffiti proof paint, is encouraged.
- Built form does not unreasonably impact on the landscape within viewed from the River corridor and public access routes along the River corridor.
- Buildings should be set back to maintain views to important landmarks such as views from Victoria Street footpath to the Skipping Girl sign and to preserve or create view lines to the River corridor.
- Taller building elements may be constructed, provided that an appropriate height transition is provided within the site to minimise impacts on the amenity of the surrounding area including through the overshadowing of public spaces.

Scope of Considerations

Based on the strategic context of the land, being within a Major Activity Centre, Commercial 1 Zone, and being identified as a strategic development site with excellent access to public transport, it is clear that the Planning Scheme supports a development of increased density at this location. Further, the development appears to generally align with the mandatory control components under the Planning Scheme, which means that the height as proposed can be considered and may be possible subject to a planning permit.

Whether the development strikes the appropriate balance in terms of design quality, benefits, building height, scale and bulk to justify the significant departure from the discretionary height within the planning scheme is ultimately a decision for the City of Yarra. That said, there is an abundance of guidance within the Planning Scheme to direct development outcomes for the site.

The planning controls and policy remain relevant for the considerations of the City of Boroondara; however, this is only in so far as they impact upon the municipality and the Yarra River Corridor which is of relevance and importance to Boroondara and its residents.

The scope of considerations for the City of Boroondara relate to the ways in which the municipality may be affected by the proposed development, as viewed through the lens of the applicable planning controls and policy within the Yarra Planning Scheme. These are outlined as follows:

- Visual impact, bulk and scale of buildings and the Yarra River environment
- View lines
- Amenity impacts such as overlooking and overshadowing
- Main Yarra Trail
- Landscaping and tree removal
- Traffic impacts

4. Outline of key issues

Visual Impact, bulk and scale of buildings and the Yarra River environment

The development appears to generally comply with the mandatory built form controls of DDO1 for the setbacks between 0 and 25 metres from the setback reference line abutting the Yarra River. While there may be some minor encroachments, whether these are viewed as breaches is a matter for the City of Yarra. From the perspective of the City of Boroondara, any (potential) breaches are minor and inconsequential in terms of the visual impact upon the municipality.

However, beyond the mandatory setback requirements, DDO1 has a discretionary height control of 18m. The development seeks a height of approximately 48m (15 storeys) in this area of the site.

The interrelationship between vegetation and built form is highly relevant given the context and planning controls which have a consistent theme of retaining canopy cover along the river corridor and ensuring views to developments are filtered through vegetation.

The proposal would include retention of canopy cover in front of the site and at obliques. There is also significant canopy cover to the opposite riverbank (within the City of Boroondara). The retained vegetation (on both sides of the river) would ensure that views to the lower levels of the proposed development are filtered, as viewed from the City of Boroondara. The retained vegetation would be further enhanced by proposed planting.

However, it is also clear that views to the upper most levels of the development would not be screened, filtered or mitigated in any way, particularly when viewed from higher vantage points from within the City of Boroondara.

In terms of the visual impact, there are clear views to the site from Young Street and the properties abutting the river. The figures below provide some context and a benchmark to understand the likely visual impact as viewed from the junction between Young Street and Hodgson Street. In elevational view and as viewed from the north, the proposed development would sit approximately 4 storeys above the adjacent building at No. 679 Victoria St (the Honeywell site),

which acts as a reference point for understanding the scale and bulk of the proposal. The building at No. 679 Victoria St is 11 storeys in height.



Figure 9 - Photo taken 29/07/2023 showing the façade of the building at No. 679 Victoria St (outlined by red elliptical which corresponds to the figures below)



Figure 10 - Aerial depicting location of Site (outlined in blue), location that photo was taken (red view cone) and the façade of the building visible in the photo above (outlined by red elliptical)



Figure 11 - Front elevation of the proposal, within the context of the adjacent built form at No. 679 Victoria St (outlined by red elliptical which corresponds to the figures above)



Figure 12 - Oblique looking south, showing the Site (indicated by blue arrow) within the context of the adjacent built form at No. 679 Victoria St (outlined by red elliptical which corresponds to the figures above) and the surrounds, taken from Google Maps 3D and accessed 29/07/2023

The development fails to 'avoid visual bulk' to the Yarra River Corridor. This is a result of the development's proximity to the River Corridor along with its overall height and massing. DDO1 provides clear guidance for the subject site in terms of appropriate built form and bulk. The controls at Area G prescribe a tiered approach to heights and setbacks. The proposal completely disregards the planning controls, clearly exceeds the benchmark height of the adjoining buildings (such as the Honeywell site) and has not provided sufficient explanation and justification.

The development also fails to meet the strategies of the Yarra River Protection Clause and Victoria Street East Precinct Policy within the Yarra Planning Scheme. The development would not be subordinate to the landscape setting due to the excessive building bulk, scale and height over and above the natural tree canopy height (something that the policies explicitly discourage). The proposed building conflicts with the natural landscape and environmental character, to the detriment of the Yarra River Corridor.

View Lines

View lines in planning terms are typically understood to be a line of sight which connects specific viewing areas (such as important public spaces) with key landmarks (whether natural, cultural or built).

The siting of the proposed development is not considered to impact specifically upon any particular view lines, as viewed generally from the public realm within the City of Boroondara, although may impact some residents' views to the City skyline. However, the building sitting well above the canopy tree line will be a dominant structure in the landscape outlook across the Yarra River from properties and public areas within Boroondara.

Amenity Impacts Such as Overlooking and Overshadowing

The Planning Scheme seeks to limit views to sensitive areas (habitable rooms and secluded private open space) of dwellings, within a distance of 9m. The proposed development is well beyond 9m, to the nearest dwelling within the City of Boroondara. As such, it is not considered to result in any unreasonable overlooking.

Given the proposal sits to the south of the City of Boroondara (and the separation to the east is well beyond any shadow impacts), the proposal would not result in any shadows to land within the City of Boroondara.

Main Yarra Trail

The proposal does not seek to obstruct the trail. In fact, it proposes a landscaped setback which adjoins the trail (ranging from approximately 13m - 14.5m in depth) and seeks to facilitate additional pedestrian links (to Victoria Street).

It is not considered that the proposal would result in any direct detriment to the trail or users of the trail beyond the broader impacts of a large building overwhelming the landscape setting and ambience of the trail corridor.

Tree Removal and Landscaping

The existing trees onsite, which are relevant to the City of Boroondara (to the northern side of the site), are trees (as numbered by the submitted Tree Impact Assessment) 17 - 25. The figure below provides an extract from the existing tree plan.

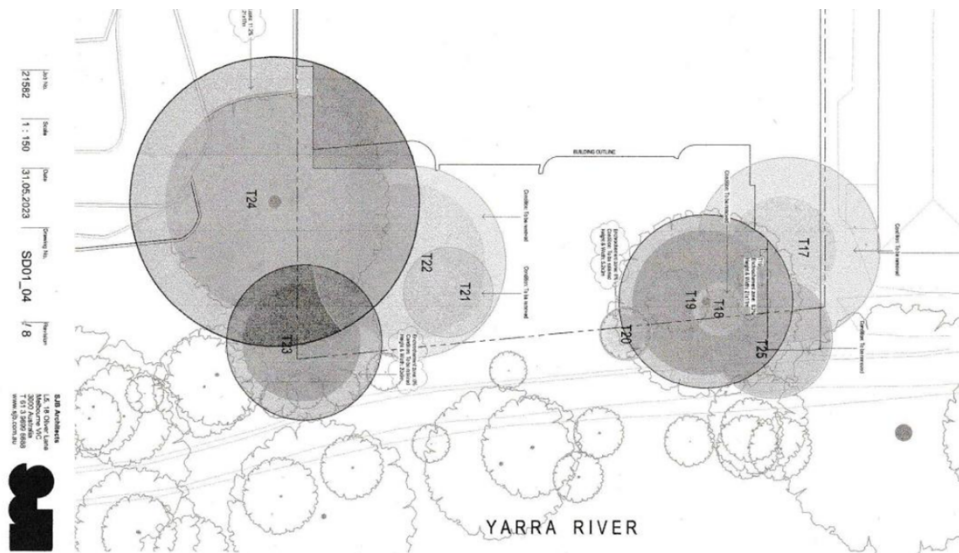


Figure 13 - Extract from existing Tree Plan

A summary of the proposed tree removal and retention, is provided as follows:

- Trees 17,18, 20, 21 & 22: Assessed as having low retention value - proposed to be removed.
- Tree 19: Native *Corymbia maculata* (Spotted Gum) - 21m high x 11 canopy - proposed to be retained.
- Tree 23: Native *Corymbia maculata* (Spotted Gum) - 20m high x 9 canopy - proposed to be retained.
- Tree 24: Assessed as having low retention value, however it is on a neighbouring property - proposed to be retained.
- Tree 25: Assessed as having medium retention value. Indigenous *Eucalyptus camaldulensis* (River Red Gum) - 18m high x 9m canopy - proposed for removal.

The overall tree removal and retention strategy is logical and has identified the most suitable trees to be retained. The strategy seeks to remove low value trees and retain larger native trees of higher value. It is also noted that a Landscaping Concept Plan has been submitted which seeks to replace removed trees and increase canopy cover overall.

The most controversial element of the tree removal strategy is the proposed removal of Tree 25, the River Red Gum which sits outside of the property boundary.

Tree 25 is proposed for removal to facilitate the proposed public access link, from Victoria Street to the Main Yarra Trail. The retention of Tree 25 is desirable however, the individual loss of this tree in itself does not have a direct detrimental impact on the City of Boroondara. Whether the loss of the tree provides for effective cost-benefit, or whether the pedestrian link is desirable at all, is a matter for the City of Yarra and relevant referral authorities.

In terms of the landscaping response, the Landscape Plan has been provided in 'concept' only, that is to say that specific species have not been nominated for specific locations, at this stage. This is not uncommon for a development of the scale and complexity proposed. If the proposal is approved, a condition of permit would typically be used to require the submission of a detailed landscape plan which aligns with the commitments and themes in the 'concept plan'.

While a detailed landscape plan has not been submitted, the 'concept plan' provides the following design intent and key details:

- In addition to the retained trees, the following can be accommodated on the Site: 15 Type A Trees (6m high x 4m canopy), 18 Type B Trees (8m high x 8m canopy) and 4 Type C Trees (12m high x 12 canopy).
- The planting strategy is to focus on native and indigenous species.
- To ground level, the following selection of trees are proposed: Black wattle, Blackwood, Drooping Sheoak, Spotted Gum, Yellow Gum, Red Flowering Yellow Gum. These trees range from 10m - 30m in height and 7m - 12m in canopy spread.
- Thick native and indigenous under-canopy planting is also proposed at ground level, to the river frontage.
- Trees, shrubs and planters are also proposed to the upper levels.

The below figure provides a render of the proposed landscaping scheme.



Figure 14 - Render of proposed landscaping scheme, from Landscape Concept Plan

The building setbacks to the Yarra River are considerable and capable of accommodating large canopy trees. However, no amount of landscaping can mitigate the scale, bulk and massing of the imposing building proposed which would sit well above the existing and future canopy line. Existing and proposed vegetation will not be sufficient to screen or filter the dominance of the building. Accordingly, the space provided for landscaping is considered insufficient for a building of the scale proposed.

Traffic Impacts

With respect to traffic impacts, the development would have direct access to Victoria Street, which in turn provides access to the City of Boroondara by way of the Victoria Street Bridge and Barkers Road. The consideration of the traffic impacts is confined to the impacts upon the land within the City of Boroondara. In addition, these considerations are confined further noting that Barkers Road is a Transport Zone 2 road, which is the jurisdiction of VicRoads (whom will be a determining referral authority to the proposal). As such, the considerations for the City of Boroondara are confined to the local roads which connect to Barkers Road.

The proposal is supported by a Traffic Impact Assessment which finds:

- 186 car parking spaces are proposed, which would serve the dwellings. No parking spaces are proposed for the office space.
- The likely vehicle movements are 3 vehicles per dwelling per day, or 0.3 movements at peak times.
- The application of these rates across the proposed 134 dwellings (note that no office parking is proposed) equates to a projected peak hour traffic generation of 40 vehicles.
- This results in 20 additional vehicle movements in the AM peak and 26 additional movements generated to/from the road network over and above the existing use.
- The Traffic Impact Assessment concludes that this level of traffic increase is low and will not have a material impact on the surrounding road network.

The proposal has also been discussed with the City of Boroondara's Traffic Engineers who generally concur with the findings of the traffic report submitted with the application but to give extra comfort have also tested the impact with a more conservative rate to the traffic movements (4-5 movements per dwelling per day or 0.4-0.5 movements at peak times). They have concluded that the traffic movements can be accommodated without a significant impact to the road network, even at the higher rate.

5. Consultation/communication

To assist in the assessment of the proposal, the application was reviewed with the following internal experts of the City of Boroondara:

- Arborist
- Urban Designer
- Traffic Engineer

Formal consultation with the community through public notice of the application has been undertaken by the City of Yarra. A number of Boroondara residents have lodged objections direct to Yarra but have also provided a copy to Boroondara for information. The issues raised by Boroondara residents in those objections include:

- Loss of amenity and landscape impacts on the river corridor;
- Proposal is contrary to the Yarra River Strategic Plan;
- Development exceeds the preferred height of 18 metres;
- Great weight should be given to the Yarra River policies based on previous VCAT case along the corridor under the new DDO1 controls;
- Proposal is an overdevelopment of the site and will destroy the riverscape environment and skyline;

6. Financial and resource implications

The review of the proposal and preparation of an objection has been undertaken by staff within operational budgets. There are no other broader budgetary or financial impacts of the proposal.

7. Governance issues

No officers involved in the preparation of this report have a general or material conflict of interest requiring disclosure under chapter 5 of the Governance Rules of Boroondara City Council.

The recommendation contained in this report is compatible with the Charter of Human Rights and Responsibilities 2006 as it does not raise any human rights issues.

8. Social and environmental issues

The proposal has the potential to provide for additional housing needs in an excellent location close to services and facilities. However, the positive outcomes of the development need to be balanced with the environmental and landscape character impacts on the Yarra River Corridor.

9. Conclusion

It is considered that the proposed development would unduly impact upon the natural character and setting of the Yarra River Corridor; by reason of its proximity, scale, bulk and overall height, which is 2.7 times higher than the 18m discretionary height control of the Design and Development Overlay 1 applying to the site; resulting in a development which fails to meet (or performs poorly against) the design objectives of DDO1, the decision guidelines of SLO1, the strategies of Clause 12.03- 1R and the objectives and policies of Clause 22.11, of the Yarra Planning Scheme.

The issues with the development, as they impact upon the Yarra River Corridor and the City of Boroondara, stem from the overall height, scale and bulk of the proposal. There is insufficient justification for a development as proposed, with the relevant planning controls and policies being explicit that a development of the scale proposed in this sensitive river corridor is discouraged.

Accordingly, it is considered that the City of Boroondara should maintain its objection to the application and seek a reduction in the height and scale of the building proposed.

Acting Manager: Erin McCarthy, Co-ordinator, Planning and Placemaking

**Report officers: Scott Walker, Director Urban Living
Jock Farrow, Principal Planner, Planning and Placemaking**

14 August 2023



info@yarracity.vic.gov.au

City Of Yarra
PO Box 168
RICHMOND VIC 3121

Dear Sir/Madam,

**LETTER OF OBJECTION TO PLANNING PERMIT APPLICATION PLN22/0732;
AT THE LAND: 675 VICTORIA STREET & LOT 63B ON PP2796, ABBOTSFORD**

Objector Details:

City of Boroondara
8 Inglesby Road, Camberwell
City of Boroondara Ref: PENQ23/00454

I refer to the notice (pursuant to section 52(1) of the *Planning and Environment Act 1987*) of the above referenced planning permit application, received by the City of Boroondara on 17 July 2023.

Following a detailed review of the proposal, the City of Boroondara hereby object to the proposal on the following grounds:

Objection:

The proposed development would unduly impact upon the natural character and setting of the Yarra River Corridor; by reason of its proximity, scale, bulk and overall height, which is 2.7 times higher than the 18m discretionary height control of DDO1; resulting in a development which fails to meet (or performs poorly against) the design objectives of DDO1, the decision guidelines of SLO1, the strategies of Clause 12.03-1R and the objectives and policies of Clause 22.11, of the Yarra Planning Scheme.

The issues with the development, as they impact upon the Yarra River Corridor and the City of Boroondara, stem from the overall height, scale and bulk of the proposal. There is insufficient justification for a development of the height proposed, with the relevant planning controls and policies being explicit that a development of the scale proposed in this sensitive river corridor is discouraged.

The planning controls and policy which are relevant to the grounds of objection, are outlined below.

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DDO1 Design Objectives:

- *To ensure new buildings, tennis courts, swimming pools and other structures are appropriately set back from the banks of the Yarra River and adjacent public open space.*
- *To ensure buildings are presented at a variety of heights, avoid visual bulk, are stepped back from the frontage of the Yarra River and adjacent public open space and use colours and finishes which do not contrast with the natural landscape setting.*
- *To ensure sufficient space is provided between buildings to maintain views to the Yarra River and allow for the planting and growth of vegetation, including large canopy trees.*

The development fails to 'avoid visual bulk' to the Yarra River Corridor. This is a result of the development's proximity to the River Corridor along with its overall height and massing. DDO1 provides clear guidance for the subject site in terms of appropriate built form and bulk. The controls at Area G prescribe a tiered approach to heights and setbacks with an 18m discretionary maximum building height for 25 metres and more from the setback line along the Yarra River. Within this area the proposed development has a 15 storey (48m) high building component despite the requirements within the DDO1 stating:

- *Buildings should not exceed the discretionary maximum building height specified in the applicable table to this schedule, except for sloping sites where a building may exceed the maximum building height by up to 1 metre if the slope of the ground level, measured at any cross section of the site of the building wider than 8 metres, is greater than 2.5 degrees.*

The proposal completely disregards the planning controls and fails to 'avoid visual bulk', to the detriment of the Yarra River Corridor. The scale and bulk of the buildings also fail to provide sufficient space for the adequate planting and growth of vegetation including large canopy trees.

SLO1 Decision Guidelines:

- *Whether buildings will protrude above the predominant tree canopy within a given area*
- *Whether the scale, form, siting and design of new buildings, including materials, colours and finishes, are sensitively integrated with the natural landscape setting of the river corridor.*
- *Whether the existing and proposed vegetation fronting the Yarra River will filter the majority of views of the proposed development.*

The development performs poorly against the SLO1 decision guidelines, as follows:

- The development would protrude well above the predominant tree canopy which appears to be approximately 20 metres. This means that the development would exceed the canopy height by an estimated 28 metres.
- The development fails to integrate sensitively with the natural landscape setting, resulting in a discordant and imposing form.
- Existing and proposed vegetation will not be sufficient to screen or filter the dominance of the building given its scale and bulk.

Clause 12.03-1R (Yarra River Protection) Key Strategies:

- *Promote a sense of place and landscape identity by:*
 - *Retaining a dominant and consistent tree canopy along the river corridor and in its broader landscape setting.*
 - *Ensuring that the appearance of development is subordinate to the local landscape setting, with any views of development being filtered through vegetation.*
- *Ensure that development is designed and sited to maintain and enhance the river's secluded and natural environment by:*
 - *Minimising the visual intrusion of development when viewed from major roads, bridge crossings, public open space, recreation trails and the river itself.*
 - *Ensuring that the siting and design of buildings avoids conflicting with the local natural landscape and environmental character.*
 - *Ensuring building height is below the natural tree canopy and all development is set back a minimum of 30 metres from the banks of the river.*

The development fails to meet the strategies of the Yarra River Protection Clauses within the Yarra Planning Scheme. The development would not be subordinate to the landscape setting due to the excessive building bulk, scale and height over and above the natural canopy height (something that the policies explicitly discourage). The proposed building conflicts with the natural landscape and environmental character, to the detriment of the Yarra River Corridor.

Clause 22.11 (Victoria Street East Precinct Policy):

Objectives:

- *To minimise the impact of building massing and siting when viewed from within the river corridor and ensure a vegetation dominated setting along the River edge.*

Policy:

- *Built form does not unreasonably impact on the landscape within viewed from the River corridor and public access routes along the River corridor.*

The impact of the building massing has not been minimised nor has it been designed to ensure that vegetation is the dominant view. The development would sit well above the canopy line, becoming a dominating presence within the River Corridor and resulting in an unreasonable impact upon the landscape character.

END OF OBJECTION.

If you have any further questions, please contact:

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Yours sincerely,



Scott Walker
DIRECTOR URBAN LIVING