

URBAN PLANNING DELEGATED COMMITTEE

MINUTES

(Open to the public)

Monday 4 September 2023

Council Chamber, 8 Inglesby Road, Camberwell.

Commencement 6.36pm

Attendance

Councillor Garry Thompson (Chairperson)
Councillor Felicity Sinfield (Mayor)
Councillor Jim Parke
Councillor Victor Franco
Councillor Wes Gault
Councillor Lisa Hollingsworth
Councillor Jane Addis
Councillor Cynthia Watson
Councillor Susan Biggar

Apologies

Councillor Di Gillies
Councillor Nick Stavrou

<u>Officers</u>	Phillip Storer Scott Walker David Cowan Bryan Wee Robert Costello Cassandra Rea Mikaela Carter Jock Farrow Elizabeth Manou Chiara Lorini Rachel Brien	Chief Executive Officer Director Urban Living Manager Statutory & Strategic Planning Manager Governance & Legal Acting Coordinator Strategic Planning Coordinator Urban Planning Acting Principal Strategic Planner Principal Urban Planner Senior Governance & Integrity Officer Senior Urban Planner Strategic Planner
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Election of temporary chairperson

The Manager Governance & Legal called for nominations for the position of temporary chairperson.

Councillor Watson nominated Councillor Thompson

Councillor Gault seconded the nomination

There being no further nominations, the Manager Governance & Legal declared Councillor Thompson elected as temporary chairperson.

Councillor Thompson assumed the chair.

Procedural Motion - Adjournment**MOTION**

Moved Councillor Sinfield

Seconded Councillor Watson

That the Urban Planning Delegated Committee meeting be adjourned due to technical issues.

CARRIED

The Urban Planning Delegated Committee meeting adjourned at 6.37pm.

Procedural Motion - Resumption**MOTION**

Moved Councillor Sinfield

Seconded Councillor Hollingsworth

That the Urban Planning Delegated Committee meeting be resumed.

CARRIED

The Urban Planning Delegated Committee meeting resumed at 6.39pm with all councillors present except Councillor Gillies and Councillor Stavrou.

1. Adoption and confirmation of the minutes

MOTION

Moved Councillor Hollingsworth

Seconded Councillor Addis

That the minutes of the Urban Planning Delegated Committee meeting held on 17 July 2023 be adopted and confirmed.

CARRIED

2. Declaration of conflict of interest of any councillor or council officer

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

3. Presentation of officer reports

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

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 an Ordinary Meeting of Council to be adopted.

*One speaker in support of the officers' recommendation addressed the meeting.
One speaker in support of the officers' recommendation had their written submission/presentation read out at the meeting.*

MOTION

Moved Councillor Sinfield

Seconded Councillor Hollingsworth

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 an Ordinary Meeting of Council to be adopted 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.**

CARRIED

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

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 an Ordinary 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 an Ordinary Meeting of Council to be adopted.

There were no speakers wishing to make submissions to Council for this item.

MOTION

Moved Councillor Parke

Seconded Councillor Watson

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 an Ordinary Meeting of Council to be adopted 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.**

CARRIED

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

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.

Four speakers opposed to the officers' recommendation addressed the meeting.

MOTION

Moved Councillor Parke

Seconded Councillor Sinfield

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.

LOST

MOTION**Moved Councillor Gault****Seconded Councillor Watson****That the Urban Planning Delegated Committee resolve to:**

- 1. Receive and note the submissions made during preliminary consultation on the revised High Street Commercial Precinct, Ashburton heritage citation prepared by GJM Heritage following the independent peer review.**
- 2. Abandon the High Street Commercial Precinct, Ashburton heritage citation and not proceed with a planning scheme amendment to implement the recommendation to include the proposed heritage precinct in the Heritage Overlay.**
- 3. Remove all the properties in the proposed High Street Commercial Precinct, Ashburton heritage precinct from Council's list of possible heritage properties.**
- 4. Write to the owners and occupiers of the affected properties (and immediately adjoining properties) as well as all submitters to preliminary consultation to inform them of the UPDC's resolution.**

CARRIED**Division****Councillor Parke called for a division****Affirmative**

Councillor Garry Thompson
Councillor Victor Franco
Councillor Wes Gault
Councillor Cynthia Watson
Councillor Susan Biggar

Negative

Councillor Felicity Sinfield (Mayor)
Councillor Jim Parke
Councillor Lisa Hollingsworth
Councillor Jane Addis

The Chairperson declared the Motion CARRIED

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

Councillor Addis declared a material conflict of interest in accordance with Section 128 of the Local Government Act 2020. Councillor Addis advised the nature of the interest was "*I am a beneficiary of the covenant*".

Councillor Addis left the Chamber at 8.14pm prior to the consideration and vote on this item.

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

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.

Eight speakers in support of the officers' recommendation addressed the meeting.

MOTION

Moved Councillor Hollingsworth

Seconded Councillor Parke

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.**

CARRIED

Councillor Addis returned to the Chamber at 8.56pm and resumed her seat.

Procedural Motion - Adjournment

MOTION

Moved Councillor Watson

Seconded Councillor Biggar

That the Urban Planning Delegated Committee meeting be adjourned.

CARRIED

The Urban Planning Delegated Committee meeting adjourned at 8.56pm.

Procedural Motion - Resumption

MOTION

Moved Councillor Parke

Seconded Councillor Watson

That the Urban Planning Delegated Committee meeting be resumed.

CARRIED

The Urban Planning Delegated Committee meeting resumed at 9.06pm with all councillors present except Councillor Gillies and Councillor Stavrou.

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

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.

There were no speakers wishing to make submissions to Council for this item.

MOTION

Moved Councillor Sinfield

Seconded Councillor Biggar

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.**

CARRIED

4. General business

Nil

5. Urgent business

Nil

6. Confidential business

Nil

The meeting concluded at 9.10pm.

Confirmed

Chairperson _____

Date _____