

## 7.2 36 Kooyongkoot Road, Hawthorn - Abandonment of Amendment C284Pt2boro

### Executive Summary

#### Purpose

The purpose of this report is to seek a decision from Council to abandon Amendment C284Pt2boro to the Boroondara Planning Scheme following the Urban Planning Delegated Committee (UPDC) decision at its meeting on 4 December 2023.

#### Background

Amendment C284Pt2boro seeks to apply a permanent Heritage Overlay to the property at 36 Kooyongkoot Road, Hawthorn.

The property was originally part of the Hawthorn Heritage Gap Study (Amendment C284boro). On 14 July 2020, following the release of the Planning Panel report for the amendment, a Section 39 (defects in procedure) appeal was made by the property owner. At its meeting of 3 August 2020, the UPDC resolved to split Amendment C284boro into two parts, and to defer consideration of Amendment C284 Part 2 until the VCAT proceedings pertaining to 36 Kooyongkoot Road, Hawthorn and any required actions arising concluded.

On 18 March 2021 during the legal proceedings, Minutes of Consent were signed by parties referring the matter to a Ministerial Advisory Committee (MAC). A MAC was appointed pursuant to Section 151 of the *Planning and Environment Act 1987*. The Terms of Reference for the Committee were signed by the former Minister for Planning on 14 September 2022.

A MAC hearing was held on 8 and 9 May 2023. The MAC returned its report to the Minister on 15 June 2023.

#### Key Issues

On 6 November 2023, Council received the MAC report recommending the amendment be abandoned. Council officers agreed with the MAC's recommendation the amendment be abandoned.

On 4 December 2023, the UPDC considered the MAC report and accepted the recommendation to abandon the amendment. The UPDC resolved to refer Amendment C284Pt2boro to a Meeting of Council for abandonment.

#### Next Steps

Officers recommend Council abandons Amendment C284Pt2boro consistent with the resolution of the UPDC and writes to the Minister for Planning to inform them of Council's decision to abandon the amendment.

## Officers' recommendation

That Council resolve to:

1. Abandon Amendment C284Pt2boro in accordance with Section 23(1)(c) of the *Planning and Environment Act 1987*.
2. Write to the Minister for Planning in accordance with Section 28(1) of the *Planning and Environment Act 1987* advising of Council's decision to abandon Amendment C284Pt2boro.

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

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## **1. Purpose**

The purpose of this report is to:

- Inform Council of the outcomes of the Urban Planning Delegated Committee (UPDC) meeting on 4 December 2023.
- Seek a resolution from Council to abandon Amendment C284Pt2boro.

## **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".

### ***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*, 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.

### **Plan Melbourne 2017-2050**

The identification, assessment and protection of places of local heritage significance are supported by Outcome 4 of Plan Melbourne 2017-2050, 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.

### **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.

### **3. Background**

The key milestones relating to this matter are summarised in the tables below. Due to the complex nature of the background, the chronology has been broken up into sections.

#### **Heritage assessment and preliminary consultation**

<b>Date</b>	<b>Event</b>
<b>25 July 2016</b>	Council engaged heritage consultants, Context Pty Ltd, to commence the Municipal Wide Heritage Gap Study. The Hawthorn Heritage Gap Study, subject of Amendment C284boro, was the third suburb assessment undertaken as part of the Municipal Wide Heritage Gap Study. The assessment undertaken by Trethowan Architecture, heritage consultants, (working as a sub-consultant) determined the subject land to be of individual heritage significance, meeting the threshold for local significance under Criterion D, E and H.
<b>9 October to 3 November 2017</b>	Preliminary consultation on the draft Hawthorn Heritage Gap Study undertaken. In response to the preliminary consultation, Council received feedback from 87 parties, including 37 opposing submissions and 26 supporting submissions and 24 partially supporting submissions.
<b>January 2018</b>	The owners of the subject land provided feedback during the preliminary consultation period that they did not support the inclusion of the property in the Heritage Overlay. They provided a heritage report from Lovell Chen to support their position.

**Amendment C284boro - Hawthorn Heritage Gap Study**

Date	Event
<b>19 March 2018</b>	Council's Urban Planning Delegated Committee resolved to write to the Minister for Planning (Minister) to request authorisation to prepare Amendment C284boro in accordance with Section 4B and 8A(4) of the <i>Planning and Environment Act 1987</i> to include properties identified in the Hawthorn Heritage Gap Study in the Heritage Overlay.
<b>5 April 2018</b>	Council wrote to the Minister and sought authorisation to prepare and exhibit Amendment C284boro.
<b>30 October 2018</b>	Authorisation granted by the Minister to prepare and exhibit Amendment C284boro.
<b>7 February to 12 March 2019</b>	Exhibition of Amendment C284boro. 59 submissions received, including nine supporting submissions, 19 partially supporting submissions, 30 opposing and one submission opposing which was later withdrawn. In addition, two late opposing submissions were received at the end of May 2019. Three submissions were received in relation to the subject land, two supporting the inclusion of the subject land in the Heritage Overlay and one objecting.
<b>17 June 2019</b>	Council's Urban Planning Delegated Committee resolved to: <ul style="list-style-type: none"> <li>remove the subject land as an individually significant place based on the advice of Council's heritage consultant</li> <li>refer Amendment C284boro and unresolved submissions to a Planning Panel in accordance with Section 23(1) of the <i>Planning and Environment Act 1987</i>.</li> </ul>
<b>28 June 2019</b>	Planning Panel appointed by the Minister for Planning to consider Amendment C284boro.
<b>18 July 2019</b>	Directions Hearing
<b>14, 15, 19 and 21 August 2019</b>	Panel Hearing
<b>3 October 2019</b>	Panel Report provided to Council
<b>31 October 2019</b>	Panel Report publicly released
<b>14 July 2020</b>	Council received initiating order for VCAT Proceeding P1033/2020 (Section 39 appeal)
<b>3 August 2020</b>	Council's Urban Planning Delegated Committee resolved to: <ul style="list-style-type: none"> <li>split Amendment C284boro into two parts</li> <li>defer consideration of Amendment C284 (Part 2) until the VCAT proceedings pertaining to 36 Kooyongkoot Road, Hawthorn and any required actions arising have concluded.</li> </ul>
<b>21 August 2020</b>	VCAT Practice Day Hearing
<b>18 March 2021</b>	Minutes of Consent in VCAT Proceeding P1033/2020 signed. Withdrawal Orders made on 23 March 2023.

**Interim Heritage Overlay**

Date	Event
<b>9 May 2019</b>	Interim Heritage Overlay introduced by Amendment C285boro, to the subject land (and others) until 31 March 2020
<b>12 March 2020</b>	Interim Heritage Overlay extended until 12 March 2021
<b>12 March 2021</b>	Interim Heritage Overlay extended until 11 March 2022
<b>11 March 2022</b>	Interim Heritage Overlay extended until 11 March 2023
<b>9 March 2023</b>	Interim Heritage Overlay extended until 1 December 2023

<b>24 October 2023</b>	Amendment C406boro sought to extend interim Heritage Overlay, as no update had been received on the release of the MAC report. No decision has been made on this amendment by the Minister to date
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### 36 Kooyongkoot Road Advisory Committee

Date	Event
<b>14 September 2022</b>	In accordance with the terms of the Minutes of Consent, the Minister appointed a Ministerial Advisory Committee and released its Terms of Reference.
<b>27 September 2022</b>	Council, the landowner of the subject land and the two submitters who filed submissions in relation to the subject land for Amendment C284boro, were notified in relation to the Amendment and asked to indicate whether they wish to be heard at the Committee Hearing. Council and the landowner indicated they wished to be heard at the Committee Hearing.
<b>13 October 2022</b>	Ministerial Advisory Committee - Directions Hearing
<b>8 and 9 May 2023</b>	Ministerial Advisory Committee Hearing and accompanied site inspection
<b>15 June 2023</b>	Ministerial Advisory Committee submit report to Minister for Planning
<b>6 November 2023</b>	Department of Transport and Planning release Ministerial Advisory Committee report to Council

## 4. Outline of key issues/options

### Ministerial Advisory Committee hearing

On 14 September 2022, a Ministerial Advisory Committee (MAC) was appointed to advise the Minister for Planning on whether 36 Kooyongkoot Road, Hawthorn should be included in the Schedule to the Heritage Overlay. The hearing was held on 8 and 9 May 2023. Council called expert heritage evidence.

On 3 August 2020, Council had resolved to defer consideration of the Amendment until the VCAT proceedings pertaining to the subject site and any required actions arising were concluded. This Advisory Committee hearing constitutes a required action, given it was conceived as part of the VCAT consent order. As such, Council did not present a formal position on the amendment but nevertheless did provide its expert to assist the Committee. Council's heritage expert maintained the property met the threshold for inclusion in the Heritage Overlay, under Criterion D, E and H of Planning Practice Note 1: Applying the Heritage Overlay.

The landowner was the only other party to the proceeding, and called three heritage experts. The key issues raised by the landowner included:

- The dwelling has been significantly altered externally and internally over time which has significantly eroded its heritage value. The dwelling cannot be described as intact
- While the dwelling is legible as a house designed in the Old English revival style, it is an altered example and not one that can satisfy Criterion D

- Noting the relative intactness of the comparative examples of the style identified in the draft citation, the dwelling presents as an altered and lesser example and not one which achieves the threshold of individual significance (Criterion E)
- The house is of some interest historically for its associations with architect John Scarborough and builders ARP Crow & Sons, however, the 'special' association with the life or works of the architect and the builder is not established. The associations are of historical interest but not of such significance that the house would warrant individual significance (Criterion H).

### **Ministerial Advisory Committee recommendation**

On 6 November 2023, officers received the MAC report. The MAC has recommended Amendment C284Pt2boro be abandoned, finding that the thresholds for local significance for Criterion D, E and H presented through the heritage citation and Council's heritage expert evidence have not been met.

Considering Criterion D (representativeness), the MAC found the alterations are cumulatively significant and result in a dwelling which is no longer intact. The significant alterations detract from one's ability to understand the pivotal characteristics of the style and the overall integrity of the dwelling is diminished.

Regarding Criterion E (aesthetic significance), the MAC finds the dwelling is an example of an Old English revival style residence, however, it is a broadly symmetrical design which differs from typical examples of the Old English revival style in the municipality.

In relation to Criterion H (associative significance), the MAC found the association of the building to John Scarborough or ARP Crow & Sons was not special, and an enduring connection to Boroondara was not demonstrated.

### **Officer recommendation**

While the recommendation to abandon is not consistent with Council's expert's submission to the MAC, officers accept the recommendation. The MAC made its recommendation based on all available evidence and written submissions and observations from a site visit.

Ultimately, the MAC was presented with differing professional opinions and preferred the evidence of three heritage experts appearing in support of the property owner's submission.

Officers recommend Council resolve to abandon the amendment.

### **Interim Heritage Overlay**

The interim Heritage Overlay HO790 affecting the site expired on 1 December 2023. Should Council resolve to abandon Amendment C284Pt2, officers will pursue an administrative amendment to have the redundant expired control deleted from the Schedule to the Heritage Overlay and the relevant planning scheme map.

## **5. Consultation/communication**

All relevant parties were notified in writing of the release of the MAC report and invited to the UPDC meeting on 4 December 2023, as well as this Council meeting.

## **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**

Abandoning the amendment is not expected to have any significant social or environmental implications, given the Panel has found the property to not hold any heritage value.

**Manager:** David Cowan, Manager Planning and Placemaking

**Report officer:** Mikaela Carter, Principal Strategic Planner