

3.2 7 Mangarra Road, Canterbury - Fire damaged heritage building - Proposed Specific Control Overlay

Executive Summary

Purpose

The purpose of this report is to inform the Urban Planning Delegated Committee (UPDC) of the ongoing strategic and heritage planning response to the disrepair and recent destruction by arson of the individually significant heritage dwelling ‘*Shenley Croft*’ (HO391) at 7 Mangarra Road, Canterbury.

UPDC endorsement is also sought to request the Minister for Planning to amend the Boroondara Planning Scheme to apply the Specific Control Overlay (SCO) to the land at 7 Mangarra Road, Canterbury in response to the circumstances that lead to the destruction of the dwelling. The SCO will seek to ensure any future development of the property includes the reconstruction of the heritage building.

Background

In 2009, ‘*Shenley Croft*’ was included in the Heritage Overlay as an individually significant heritage place.

Since 30 November 2020, when the property was purchased by the current owner, the heritage dwelling has remained vacant and fallen into disrepair.

On Saturday 9 December 2023, the heritage dwelling sustained significant fire damage, and was mostly destroyed. The Victoria Police has advised that the fire is being treated as a confirmed arson case.

Key Issues

The unlawful demolition of ‘*Shenley Croft*’ raises concern about the Heritage Overlay and its ability to protect places of heritage significance. There is a need to prevent or mitigate neglect and unlawful demolition, and potential development gains that could arise from such action.

Section 6B of the *Planning and Environment Act 1987* (the Act) was introduced to address this issue. It enables a planning scheme to be amended to regulate or prohibit development on land where a heritage building has been unlawfully demolished. Section 6B also provides that a planning permit must not be granted for the redevelopment of land on which there is or was a heritage building other than the reconstruction and reinstatement, or repair of a heritage building.

The most appropriate planning control to be implemented in this case is the Specific Controls Overlay (SCO) through a planning scheme amendment. This would be supported by an incorporated document which sets out the planning permit arrangements for the land.

On 10 January 2024, officers wrote a letter of intent to the Department of Transport and Planning (DTP) seeking Ministerial intervention to amend the Boroondara Planning Scheme pursuant to Section 20(4) of the Act to apply the SCO on a permanent basis.

Officers are also preparing an associated incorporated document for the Planning Scheme to accompany the amendment which would prevent the development of the property other than for the reconstruction of the heritage building.

Next Steps

This report seeks a resolution from the UPDC to confirm the request of the Minister for Planning to exercise ministerial discretion pursuant to Section 20(4) of the Act to amend the Boroondara Planning Scheme to apply the SCO (and associated incorporated document) on a permanent basis to the land at 7 Mangarra Road, Canterbury.

Council officers are awaiting advice from the Minister for Planning and officers of DTP to the letter of intent regarding a proposed planning scheme amendment.

Council's Municipal Building Surveyor (MBS) is seeking legal advice regarding the powers of the MBS, under the *Building Act 1993*, to require the property owner to further protect the remnants of the heritage building from deterioration given the damaged building is exposed to weather conditions.

Officers are also considering how Council responds as a Responsible Authority to any future planning permit applications.

Officers' recommendation

That the Urban Planning Delegated Committee resolve to:

1. Confirm and formally request the Minister for Planning to exercise powers pursuant to Section 20(4) of the *Planning & Environment Act 1987* to amend the Boroondara Planning Scheme to apply the Specific Controls Overlay (and associated incorporated document) on a permanent basis to the land at 7 Mangarra Road, Canterbury.
2. Authorise the Director Urban Living to take all necessary action to respond to the unlawful demolition of the heritage property at 7 Mangarra Road, Canterbury and to seek to ensure any future development of the property includes the reconstruction of the heritage building through appropriate planning controls which may include requesting the Minister for Planning for Authorisation to prepare a Planning Scheme Amendment if necessary.

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 response to date to the disrepair and damage by arson to the heritage property at 7 Mangarra Road, Canterbury.
- Inform the UPDC of the letter sent by Council officers to the Department of Transport and Planning (DTP) to seek Ministerial intervention under Section 20(4) of the *Planning and Environment Act 1987* (the Act) to apply the Specific Controls Overlay (SCO) to the land (and associated incorporated document), to prevent development of the land except for reconstruction of the heritage building.
- Seek a resolution from the UPDC to confirm and formally request the Minister for Planning to exercise powers pursuant to Section 20(4) of the *Planning & Environment Act 1987* to immediately amend the Boroondara Planning Scheme to apply the SCO on a permanent basis to the land at 7 Mangarra Road, Canterbury.

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

Boroondara Community Plan 2021-31

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

Specifically, the request to the Minister for Planning is consistent with 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 request to the Minister for Planning is consistent with the objectives of planning in Victoria, particularly by implementing the objective detailed at Section 4 (1) of 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.'*

A planning scheme amendment to implement the SCO will further the objectives of planning in Victoria by establishing a planning framework for the land in context of unlawful demolition and disrepair.

Plan Melbourne 2017-2050

The request to the Minister for Planning is consistent with Outcome 4 of *Plan Melbourne 2017-2050*, which seeks to ensure that *'Melbourne is a distinctive and liveable city with quality design and amenity'*.

Specifically, Direction 4.4 recognises the contribution heritage makes to Melbourne's distinctiveness and liveability and advocates for the protection of Melbourne's heritage places.

Boroondara Planning Scheme

The request to the Minister for Planning is consistent with the objectives of the Planning Policy Framework, addressing the following:

Municipal Planning Strategy

Clause 02.02 (Vision) identifies the need to protect the heritage and respect the character of the City to maintain amenity and liveability.

Clause 02.03-4 (Built environment and heritage) recognises that heritage precincts and individual heritage places cover a high proportion of the municipality and make a significant contribution to the City's character. It also acknowledges a commitment to the protection, conservation and enhancement of all heritage places in the City.

Local Planning Policy

Clause 15.03-1L (Heritage in Boroondara) aims to achieve the objectives as follow:

- *'To preserve 'significant' heritage places, protecting all significant heritage fabric including elements that cannot be seen from the public realm'.*
- *'Encourage reconstruction of features or finishes formerly removed, only where historic evidence of original or earlier appearance can be found.'*
- *'Ensure that materials and restoration techniques consistent with the historic period of the heritage place are used.'*
- *'Ensure development does not alter fabric that contributes to the cultural heritage significance of any part of a 'significant' heritage place including elements that cannot be seen from the public realm.'*
- *'Encourage the reuse of previously demolished building materials from the heritage place in the design and construction of new additions to buildings.'*

The requested planning scheme amendment will facilitate reconstruction of a heritage dwelling which fell into disrepair and was unlawfully demolished. The reconstruction of the heritage dwelling delivers on the vision to protect the City's heritage places.

3. Background

In 2009, Amendment C64 to the Boroondara Planning Scheme was gazetted and 'Shenley Croft' was included in the Schedule to Clause 43.01 (Heritage Overlay) (HO391), as an individually significant heritage place.

For many years, the James family resided at 'Shenley Croft' until the current owner took possession of the land on 30 November 2020. Since then, the heritage dwelling remained vacant and fell into disrepair.

The property was the subject of several customer complaints and site inspections made by Local Laws regarding overgrown vegetation, building disrepair and unsecured entry points to the property.

Since 2020, Council has received two planning applications for development at the property, including partial demolition of non-significant fabric at the rear of the heritage building. On 12 December 2023, the most recent planning permit application (for partial demolition to the existing building and construction of two dwellings) lapsed for failure to provide requested further information.

On Saturday 9 December 2023, the heritage dwelling sustained significant fire damage, and was mostly destroyed.

Council officers inspected the site on 9 and 11 December 2023 after the fire to support emergency services and advise on the safety of the premises.

The Council has been advised by Victoria Police that they are treating the fire as 'suspicious and as a confirmed arson'.

A timeline of relevant events relating to this matter is summarised in the table below.

Date	Event
2 December 2019	Property is sold to the current owner.
30 November 2020	Transfer of ownership and possession of the property to the current owner.
24 May 2021	Council received the first complaint from a community member concerning perceived neglect of the site.
10 August 2021	Local Laws officer inspected the site noting the overgrown grass, weeds and vegetation in the garden areas. It was also noted the dwelling appeared unoccupied. An email was sent to the property owner.
10 September 2021	Local Laws officer inspected the site noting the overall condition of the site as 'unsightly'.
6 October 2021	Local Laws officer inspected the site noting the nature strip fronting the site had been trimmed.
7 November 2022	Planning Permit (PP22/0188) issued for partial demolition and restoration of an existing dwelling in a Heritage Overlay in accordance with endorsed plans. Permit conditions requiring Archival Record and Conservation Management Plan.
23 December 2022	Planning permit application (PP22/1060) for partial demolition and construction of alterations to an existing dwelling and construction of two dwellings on a lot in a Heritage Overlay.

Date	Event
26 December 2022	Objection received to planning application for the site noting windows had been left open and there was a hole in the roof of the heritage dwelling.
27 December 2022	Objection received to planning application for the site, noting there were 3 holes in the roof, weeds and dead plants through the garden.
29 December 2022	Objection received to planning application for the site noting significant neglect to the site.
24 January 2023	Local Laws officer inspected the site noting there were weeds growing in the garden areas of the site.
5 May 2023	Planning Permit Condition 1 Plans (PCon23/0083) for Conservation Management Plan endorsed.
27 June 2023	Report and Consent (BR&C23/12593) for partial demolition of dwelling, demolition of outbuildings and dismantling removal of ballroom.
29 June 2023	Building permit (Bapp/23/86335) for partial demolition of dwelling, demolition of garage (re-location of ballroom).
24 November 2023	Local Laws officer inspected the site noting the front gate was damaged and open; the rear entry to the dwelling was open; and the dwelling was vacant. An email was sent to the property owner.
6 December 2023	Local Laws officer inspected the site noting since Council's last visit, gaps in the front fence had been boarded up to restrict access.
7 December 2023	Local Laws officer inspected the site, noting grass, weeds and other vegetation were encroaching on public land.
9 December 2023	The Heritage dwelling was destroyed by arson (unlawful demolition).
9 & 11 December 2023	Council's Building Services Department inspected the site immediately after the fire to support emergency services and advise on safety of the premises. An Emergency Order pursuant to s102 of the Building Act 1993 was issued to the owner to immediately secure the site, disconnect any services, and engage a structural engineer to assess the remaining structure
12 December 2023	Lapsed planning permit application (PP22/1060) for failure to respond to Request for Further Information.
December 2023	Council officers liaised with DTP representatives and sought advice regarding Section 6(B) of the Planning and Environment Act 1987

Date	Event
10 January 2024	Council officers write letter to DTP requesting ministerial intervention pursuant to 20(4) of the Act to undertake a planning scheme amendment to apply the Specific Controls Overlay to the subject land.

4. Key Issues

The unlawful demolition and disrepair of heritage places is a serious concern for Council and the local community. For the Heritage Overlay to be effective in the protection of heritage places, it is important that Council take action to prevent the HO being circumvented by the unlawful demolition of heritage places, or by allowing them to fall into disrepair.

Section 6B of the *Planning and Environment Act 1987*

In March 2021, the Act was amended to include Section 6B. The intent of Section 6B of the Act is to deter and prevent parties from obtaining a benefit from unlawfully demolishing heritage buildings or allowing heritage buildings to fall into disrepair resulting in demolition.

Section 6B enables a planning scheme to make provision for additional matters for the purposes of:

- *Furthering the objectives of planning in Victoria*
- *Deterring persons from unlawfully demolishing heritage buildings or allowing heritage buildings to fall into disrepair*
- *Preventing persons from obtaining a benefit from unlawfully demolishing heritage buildings or allowing heritage buildings to fall into disrepair*

The additional matters the planning scheme may make provision for are:

- *To regulate or prohibit the development of land on which there is or was a heritage building that has:*
 - *Been unlawfully demolished, in whole or in part, or;*
 - *Fallen into disrepair*
- *To require that a planning permit must not be granted for the redevelopment of land on which there is or was a heritage building that has been unlawfully demolished, in whole or in part, or fallen into disrepair, unless the development is for or includes:*
 - *The reconstruction or reinstatement of the building, in whole or in part, or;*
 - *The repair of the building*

It is considered that the damage sustained by the heritage building at 7 Mangarra Road, Canterbury by arson constitutes 'unlawful demolition' and, as such, meets the intent of Section 6B of the *Planning and Environment Act 1987* (the Act).

Specific Controls Overlay (SCO)

Pursuant to Section 6B of the Act, the Specific Controls Overlay (SCO), at Clause 45.12 of the Planning Scheme, could be applied to a property to prevent or restrict development where a heritage building has been unlawfully demolished or allowed to fall into disrepair resulting in demolition. The SCO would be supported by an incorporated document.

The SCO is considered the appropriate planning tool to provide planning certainty to the property owner, Council and the community given what has taken place. The SCO would introduce a control whereby a planning permit cannot be granted for development other than in accordance with the conditions of the incorporated document (reconstruction of the heritage building).

Similar to planning permit conditions, the associated incorporated document would guide reconstruction of the heritage dwelling.

A planning scheme amendment is required to apply the SCO to the land, and to introduce an associated incorporated document. The amendment will:

- enable the form and conditions of the future use and development of the land to be established with certainty;
- deter persons from unlawfully demolishing heritage buildings or allowing heritage buildings to fall into disrepair; and
- prevent the owner of the land obtaining a benefit from the unlawful demolition of a heritage building and from allowing the heritage building to fall into disrepair.

Current status – 7 Mangarra Road, Canterbury

Figures 1 and 2 below show the ‘Shenley Croft’ property following the fire on 9 December 2023.

Council’s Building Services Department inspected the site immediately after the fire to support emergency services and advise on the safety of the premises. An Emergency Order pursuant to s102 of the Building Act 1993 was issued to the owner to immediately secure the site, disconnect any services, and engage a structural engineer to assess the remaining structure.



Figure 1 – ‘Shenley Croft’ after the fire noting remaining original chimney stack
Note: photo taken by Council staff



Figure 2 – ‘Shenley Croft’ after the fire
Note: photo taken by Council staff

It is considered that the unlawful demolition of the heritage building at 7 Mangarra Road, Canterbury warrants a response by Council and the Minister for Planning under Section 6B of the Act.

On 10 January 2024, officers wrote to the Department of Transport and Planning (DTP) seeking Ministerial intervention to amend the Boroondara Planning Scheme pursuant to Section 20(4) of the Act to apply the SCO on a permanent basis. The Amendment would also seek to introduce an associated incorporated document to prevent the development of the property other than for the reconstruction of the heritage building.

5. Financial and resource implications

The actions outlined in this report can be resourced by the City Futures Department from the Strategic Planning operational budget for the 2023/24 financial year. The administration of the SCO is not expected to have any significant impacts on the resources and administrative costs of Council.

6. Governance issues

No officers involved in preparing 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.

7. Social and environmental issues

The protection of heritage places across Boroondara continues to have positive social and environmental effects. The proposed response as outlined in this report will have positive social and environmental effects by contributing to the continual protection and management of the City's heritage.

Manager: David Cowan, Manager City Futures

Report officer: Marie Sheriff, Principal Heritage Planner