

### 3.4 7 Mangarra Road, Canterbury - Presentation of Draft SCO Incorporated Document - Amendment C408boro

#### Executive Summary

##### Purpose

The purpose of this report is to present the Urban Planning Delegated Committee (UPDC) with the prepared draft 'control document', being the incorporated document, for the planning scheme amendment which seeks to apply the Specific Controls Overlay (inclusive of the associated incorporated document) on a permanent basis to the land at 7 Mangarra Road, Canterbury (also known as 7-9 Mangarra Road Canterbury) (the land).

This report responds to UPDC Meeting resolution on 5 February 2024 for Item 3.2, which states at part 4 that "*upon preparation of a control document, a further report is to be presented to the Urban Planning Delegated Committee or Council.*"

This report also informs the UPDC that on Thursday 8 February 2024, a request was formally lodged for planning scheme amendment C408boro (Amendment) with the Department of Transport and Planning (DTP). The Amendment seeks Ministerial intervention to apply the Special Controls Overlay (SCO) to the land and to introduce an incorporated document in the Boroondara Planning Scheme titled '*7 Mangarra Road, Canterbury, Incorporated Document, January 2024*' (Incorporated Document) to prevent development, including demolition, of the land except for the reconstruction of the heritage building.

##### Background

On 5 February 2024, the UPDC considered a report regarding the disrepair and unlawful demolition by arson of the heritage building at 7 Mangarra Road, Canterbury, and the Council officer's Letter of Intent to the Minister for Planning requesting Ministerial intervention to apply the SCO to the land.

The UPDC resolved that, amongst other things;

*4. Upon preparation of a control document, a further report is to be presented to the Urban Planning Delegated Committee or Council.*

In response to this resolution, Council officers have prepared this report and included the draft 'control document' being the Incorporated Document for 7 Mangarra Road, Canterbury at **Attachment 1**.

On Thursday 8 February 2024, the request was lodged with the DTP seeking Ministerial intervention, in accordance with Section 20(4) of the *Planning and Environment Act 1987* (Act), to apply the SCO to the land and to introduce the associated Incorporated Document in the Boroondara Planning Scheme.

The Amendment will apply the Specific Controls Overlay, Schedule 13 to the land and introduce an Incorporated Document in the Boroondara Planning Scheme titled '*7 Mangarra Road, Canterbury, Incorporated Document, January 2024*' (Incorporated Document)

The purpose of the Incorporated Document is to confine development, including demolition, to development authorised by and subject to the conditions contained in the Incorporated Document.

The Incorporated Document seeks to override any contrary or inconsistent provision in the Boroondara Planning Scheme to prevent demolition (including partial demolition) of the fire damaged heritage dwelling and require reconstruction of the heritage dwelling to 'its built form and habitable condition prior to 30 November 2020'.

Amendment C408 is now with the Minister for Planning.

### Key Issues

Section 6B of the Act was introduced to address the issue of unlawful demolition and disrepair resulting in demolition of a heritage place. In accordance with Planning Practice Note 95 (*Local heritage protection provisions in the Planning and Environment Act 1987*), Section 6B enables a planning scheme 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.*
- *require that a planning permit must not be granted for 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, 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.*
- *require that a planning permit must not be granted for 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, 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.*

The Incorporated Document has been drafted in accordance with the above legislative intent and the provisions of Section 6B, to restrict development, including demolition, and require reconstruction of the heritage building, known as 'Shenley Croft', on the land. Based on the draft Incorporated Document, the reconstruction works must commence within 12 months of the date of the Incorporated Document and be completed within 24 months of the commencement of the reconstruction works.

Amendment C408boro is now with the Minister for Planning to determine. It is possible that the Minister may amend the Incorporated Document. Should this be contemplated, Council officers will be required to advocate the Council position and negotiate with DTP to reach an appropriate outcome for the land.

## Next Steps

This report addresses the UPDC resolution of Monday 5 February 2024 for Item 3.2 which states, *'4. Upon preparation of a control document, a further report is to be presented to the Urban Planning Delegated Committee or Council.'*

This report also seeks a resolution from the UPDC to authorise the Director Urban Living to advocate the Council position and negotiate with the DTP to append an incorporated document (generally consistent with the draft at Attachment 1) to the SCO for 7 Mangarra Road, Canterbury that seeks to regulate or prohibit the development of the land to achieve the following objectives:

- To require the reconstruction of the heritage building, in whole or in part;
- To avoid the demolition of the remaining heritage fabric that can feasibly be incorporated or reused in the reconstruction of the heritage building;
- To prevent the future development of the site in a form that would benefit from the unlawful demolition of the heritage building.

Council officers will continue to work with the DTP to deliver the SCO to the land to achieve the above objectives.

## **Officers' recommendation**

That the Urban Planning Delegated Committee resolve to;

1. Accept the prepared draft Incorporated Document at Attachment 1 in accordance with the Urban Planning Delegated Committee resolution of 5 February 2024 for Item 3.2 point 4 as the proposed Incorporated Document for Planning Scheme Amendment C408boro in relation to 7 Mangarra Road, Canterbury.
2. Authorise the Director Urban Living to advocate the Council position and negotiate with the Department of Transport and Planning (DTP) to append an incorporated document (generally consistent with Attachment 1) to the Specific Control Overlay (SCO) for 7 Mangarra Road, Canterbury that seeks to regulate or prohibit the development of the land to achieve the following objectives:
  - a) To require the reconstruction of the heritage building, in whole or in part;
  - b) To avoid the demolition of the remaining heritage fabric that can feasibly be incorporated or reused in the reconstruction of the heritage building;
  - c) To prevent the future development of the site in a form that would benefit from the unlawful demolition of the heritage building.

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

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## **1. Purpose**

The purpose of this report is to:

- Present the Urban Planning Delegated Committee (UPDC) with the draft Specific Controls Overlay (SCO) Incorporated Document, developed in response to the disrepair and recent unlawful demolition by arson of the individually significant heritage dwelling ‘*Shenley Croft*’ (HO391) at 7 Mangarra Road, Canterbury.
- Inform the UPDC of the formal request to the Minister for Planning to exercise powers pursuant to Section 20(4) of the *Planning & Environment Act 1987* (Act) 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 amendment (including the Incorporated Document) 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 amendment 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 amendment (including the Incorporated Document) 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.’*

The 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 amendment (including the Incorporated Document) 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 amendment (including the Incorporated Document) 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 amendment (including the Incorporated Document) will facilitate reconstruction of a heritage dwelling which was allowed to fall 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.

Since its most recent sale in November 2020, the house has remained vacant, progressively fallen into disrepair and has now been mostly destroyed by arson. The property was the subject of several customer complaints and site inspections 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.

On both Saturday 9 December and Monday 11 December, Council officers inspected the site 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'.

On 10 January 2024, Council officers wrote a letter of intent to the DTP requesting ministerial intervention, pursuant to Section 20(4) of the Act, to undertake a planning scheme amendment to apply the Specific Controls Overlay (SCO) to the land.

On 5 February 2024, following the UPDC's consideration of the report regarding the disrepair and unlawful demolition by arson of *Shenley Croft*, the Committee resolved to:

1. *Confirm and formally request the Minister for Planning to exercise powers pursuant to Section 20(4) of the Planning and Environment Act 1987 to amend the Boroondara Planning Scheme to apply the Specific Controls Overlay (inclusive of an associated incorporated document) on a permanent basis to the land at 7 Mangarra Road, Canterbury (also known as 7-9 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.*
3. *Authorise the Director Urban Living 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.*
4. *Upon preparation of a control document, a further report is to be presented to the Urban Planning Delegated Committee or Council.*

Subsequently, on Thursday 8 February 2024, a formal request was submitted to the DTP seeking Ministerial intervention, in accordance with Section 20(4) of the Act, to apply the SCO to the land and to introduce the associated Incorporated Document in the Boroondara Planning Scheme.

In accordance with the UPDC resolution on 5 February 2024 for Item 3.2 point 4, this report has been tabled to present the draft Incorporated Document to the Committee.

#### **4. Outline of key issues/options**

Council officers recommend that the UPDC Confirm presentation of the prepared Incorporated Document in accordance with UPDC resolution of 5 February 2024 for Item 3.2 point 4.

Council officers will continue to work with the DTP to progress the amendment to seek the Specific Control Overlay (SCO) for 7 Mangarra Road, Canterbury to regulate or prohibit the development of the land to achieve the following objectives:

- To require the reconstruction of the heritage building, in whole or in part;
- To avoid the demolition of the remaining heritage fabric that can feasibly be incorporated or reused in the reconstruction of the heritage building;
- To prevent the future development of the site in a form that would benefit from the unlawful demolition of the heritage building.

## **5. Consultation/communication**

Not relevant to this UPDC Report which presents the Incorporated Document to the Committee.

## **6. 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.

## **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 protection of heritage places across Boroondara continues to have positive social and environmental effects. The Incorporated Document presented in this report will have positive social and environmental effects by contributing to the ongoing conservation and protection of the City's heritage.

**Manager:** David Cowan - Manager City Futures

**Report officer:** Marie Sheriff - Principal Heritage Planner

**BOROONDARA PLANNING SCHEME**

**7 MANGARRA ROAD, CANTERBURY**

(also known as 7-9 Mangarra Road, Canterbury)

**INCORPORATED DOCUMENT**

**Specific Controls Overlay, Schedule 13**

**Boroondara Planning Scheme Amendment C408boro**

**JANUARY 2024**

## **BOROONDARA PLANNING SCHEME**

### **1.0 INTRODUCTION**

This document is an incorporated document at Clause 45.12 – Specific Controls Overlay and the Schedule to Clause 72.04 – Incorporated Documents of the Boroondara Planning Scheme pursuant to section 6(2)(j) of the *Planning and Environment Act 1987*.

The land identified in Clause 3.0 of this document must be developed in accordance with the specific control in Clause 4.0 of this document.

The control in this document prevails over any contrary or inconsistent provision in the Boroondara Planning Scheme.

### **2.0 PURPOSE**

The purpose of this document is to confine development, including demolition, to development authorised by and subject to the conditions contained in this document.

### **3.0 THE LAND TO WHICH THIS INCORPORATED DOCUMENT APPLIES**

The whole of the land known as 7 Mangarra Road, Canterbury (also referred to as 7-9 Mangarra Road, Canterbury) being the land more particularly described in certificate of title volume 02386 folio 151 and mapped SCO13 by Clause 45.12 – Specific Controls Overlay of the Boroondara Planning Scheme.

### **4.0 CONTROL**

#### **4.1 Exemption from the planning scheme requirements**

Despite any provision to the contrary or any inconsistent provision in the Boroondara Planning Scheme:

- a) no planning permit is required for, and nothing in the Boroondara Planning Scheme operates to prohibit, control or restrict the development of the land for the purposes of the demolition or partial demolition of the fire damaged dwelling on the land and the reconstruction of the dwelling to its built form and habitable condition prior to 30 November 2020, in accordance with Clause 4.2 of this document.
- b) a planning permit must not be granted for, and no planning scheme provision permits the demolition or partial demolition of the fire damaged dwelling on the land or any other form of building or works on the land other than the demolition, partial demolition and the building and works authorised by this document.

**BOROONDARA PLANNING SCHEME****4.2 Conditions applying to the demolition and reconstruction**

The following conditions and/or requirements apply to the demolition and reconstruction permitted by this document:

**4.2.1 Demolition**

Before demolition (including fire, water or storm damaged buildings) starts:

- a) a demolition plan and demolition management plan prepared to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. Once approved the plan shall be endorsed and form part of this document.
- b) a structural engineering report prepared by a suitably qualified structural engineer with expertise in heritage conservation to the satisfaction of the Responsible Authority is to certify that the building or work to be demolished is structurally compromised to the extent that it cannot reasonably be restored, repaired or otherwise incorporated into a reconstruction of the dwelling on the land must be submitted to and approved by the Responsible Authority.
- c) a heritage impact assessment prepared by a suitably qualified heritage architect or heritage consultant to the satisfaction of the Responsible Authority which outlines how the heritage values of the dwelling that existed on the land prior to demolition will be suitably acknowledged as part of a reconstruction of the dwelling on the land must be submitted to and approved by the Responsible Authority.
- d) photographic heritage record of the buildings and works to be demolished or altered to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. The photographic record must be a digital archival quality copy and include:
  - i) views of each elevation of the building;
  - ii) two diagonally opposed views of each internal space in the building; and
  - iii) architectural design detailing of the building.

The photographic record must be to a high standard and taken with appropriate photographic equipment, to the satisfaction of the Responsible Authority.

**4.2.2 Reconstruction concept plan**

Before reconstruction of the dwelling starts:

- a) a reconstruction concept plan which shows construction on the land of a dwelling that is as near as practical in form and design to the dwelling which existed on the land on 30 November 2020 (but allowing for modifications made to the dwelling subsequent to that date in accordance with planning permits issued by the Responsible Authority) must be submitted to and approved by the

**BOROONDARA PLANNING SCHEME**

Responsible Authority. Once approved the plan shall be endorsed and form part of this document.

- b) a heritage impact assessment prepared by a suitably qualified heritage architect or heritage consultant to the satisfaction of the Responsible Authority which outlines how the reconstruction is as near as practical in form and design to the dwelling which existed on the land on 30 November 2020 (but allowing for modifications made to the dwelling subsequent to that date in accordance with planning permits issued by the Responsible Authority) must be submitted to and approved by the Responsible Authority.
- c) where the reconstruction of the dwelling incorporates a part or parts of the dwelling remaining on the land after the fire that occurred on 9 December 2023, an integration and conservation management plan prepared by a suitably qualified heritage architect to the satisfaction of the Responsible Authority to show how the retained parts will be conserved and integrated into the reconstruction must be submitted to and approved by the Responsible Authority. Once approved the report shall be endorsed and form part of this document.
- d) a planning report to the satisfaction of the Responsible Authority which addresses how the reconstruction responds to all relevant provisions of the Boroondara Planning Scheme, including the Heritage Overlay HO391, must be submitted to and approved by the Responsible Authority.
- e) a construction management plan must be prepared in accordance with Boroondara City Council's Construction Management Plan Template and provide details of the following:
  - i) Hours for construction activity in accordance with any other condition of this document.
  - ii) Measures to control noise, dust, water and sediment laden runoff.
  - iii) Measures relating to removal of hazardous or dangerous material from the land, where applicable.
  - iv) A plan showing the location of parking areas for construction and subcontractors' vehicles on and surrounding the land, to ensure that vehicles associated with construction activity cause minimum disruption to surrounding premises. Any car parking areas on the land must be made available for use by sub-constructors/tradespersons upon completion of such areas, without delay.
  - v) A traffic management plan showing truck routes to and from the land.
  - vi) Swept path analysis demonstrating the ability for trucks to enter and exit the land in a safe manner for the largest anticipated truck associated with the construction.

## BOROONDARA PLANNING SCHEME

- vii) Measures to ensure that sub-contractors/tradespersons operating on the land are aware of the contents of the construction management plan.
- viii) Contact details of key construction site staff.
- ix) A site plan showing the location of any land sheds, on-site amenities, building waste storage and the like.
- x) Any other relevant matters.
- xi) A tree management plan and tree protection plan prepared by a suitably qualified arborist in relation to the management and maintenance of trees on the land. The Tree Management Plan must make specific recommendations in accordance with the *Australian Standard AS AS4970 :2009 - Protection of Trees on Development Sites* to ensure that trees remain healthy and viable during construction.

### 4.2.3 Layout not to be altered

The use and development as shown on the approved reconstruction concept plan must not be altered without the written consent of the Responsible Authority.

All buildings, works and landscaping must be maintained in good order and appearance to the satisfaction of the Responsible Authority. Once the development has started it must be continued and completed to the satisfaction of the Responsible Authority.

### 4.2.4 Drainage

An approved stormwater drainage system must be constructed before the occupation of the development and provision made to connect this system to Boroondara City Council's stormwater drainage system.

The land must be drained to the satisfaction of Boroondara City Council.

## 5. COMMENCEMENT AND COMPLETION OF WORKS

The reconstruction of the dwelling on the land in accordance with the endorsed reconstruction concept plan must:

- a) commence within 12 months of the date of this document
- b) completed within 24 months of the commencement of reconstruction of the dwelling.

Except with the written consent of the Responsible Authority

## 6.0 EXPIRY OF DOCUMENT

This incorporated document expires on the date of issue of an occupancy permit under the *Building Act 1993* for the completed reconstruction of the dwelling on the land in accordance with the provisions of this document.

**DATED ##### 2024**