

**10.6                      Amendment C200moon Heritage Controls - post-exhibition consideration of submissions**

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**1.     Purpose**

1.1    The purpose of this report is to:

1.1.1 Present the outcomes of the public exhibition of Moonee Valley Planning Scheme Amendment C200moon.

1.1.2 Recommend that Council refer all submissions to an independent planning panel appointed by the Minister for Planning in accordance with section 23(1)(b) of the *Planning and Environment Act 1987* (the Act).

1.1.3 Seek Council endorsement of the recommended revisions to the exhibited Amendment C200moon documents as Council's position to be presented at the independent planning panel hearing.

1.1.4 Seek Council endorsement to formally request the Minister for Planning to extend the expiry of the interim heritage planning controls, under Section 20(A) of the Act, for 12 months from 16 January 2021 until 16 January 2022.

**2.     Background**

2.1    Council adopted the *Heritage Gap Study 2014* (Gap Study) on 25 November 2015, which identified potential gaps in heritage overlays and outlined a work program and structure to undertake future heritage studies.

2.2    On 19 September 2016, a Notice of Motion (NOM/2016/6) was carried unanimously to prioritise work for the Edwardian residential precinct in Edinburgh Street, Flemington. A precinct assessment as part of the *Moonee Valley 2017 Heritage Study, 28 February 2019* (Heritage Study) concluded that Edinburgh Street does not meet the threshold for local significance due to reduced streetscape visual consistency and cohesion, intrusive non-contributory buildings and unsympathetic changes to contributory buildings.

2.3    Council resolved on 13 June 2017 to commence the *Moonee Valley 2017 Heritage Study* (the Heritage Study) focussing on interwar, Victorian and Edwardian places and precincts and extensions to existing Heritage Overlay precincts across Moonee Valley.

2.4    In November 2017, Council engaged heritage consultants, Context, to complete the Heritage Study.

2.5    On 12 March 2019, Council resolved to, amongst other matters:

2.5.1 Request a Ministerial Amendment, Amendment C201moon (previously known as Amendment C200moon), to apply the Heritage

Overlay to 60 individual places, 18 precincts, one serial listing and nine precinct extensions on an interim basis; and

- 2.5.2 Request Ministerial authorisation to prepare and exhibit Amendment C200moon (previously referred to as Amendment C201moon) to apply the Heritage Overlay to Overlay the above places, precincts and listing . on a permanent basis.
- 2.6 On 21 March 2019, Council requested Ministerial authorisation to prepare and exhibit Amendment C200moon and approve Amendment C201moon to the Moonee Valley Planning Scheme.
- 2.7 Following these requests, Amendment C201moon was approved under delegation from the Minister for Planning on 7 January 2020 and subsequently introduced to the Moonee Valley Planning Scheme on 16 January 2020. The approval provides interim protection to 60 individual places, 18 precincts, one serial listing and nine precinct extensions for a period of 12 months, expiring on 16 January 2021, while a permanent Heritage Overlay control is being considered.
- 2.8 On 14 May 2019 Council resolved to exclude 2 Curtis Street, Essendon from a proposed extension to HO3, as part of Amendment C200moon and Amendment C201moon. The change was accepted by DELWP and is reflected in the approved Amendment C201moon documents.
- 2.9 On 27 August 2019 Council resolved to revise the grading of 15 Clarence Street, Flemington in proposed HO461, Flemington from contributory to non-contributory in Amendment C200moon and Amendment C201moon. The change was accepted by DELWP, however, it was not reflected in the approved Amendment 201moon documents. DELWP has advised the error will be fixed in a forthcoming amendment.
- 2.10 Conditional authorisation to prepare and exhibit Amendment C200moon was granted on 18 February 2020. The conditions relate to ensuring the amendment documents, including mapping planning schemes ordinances and incorporated documents, are consistent with the documents approved under Amendment C201moon and that notice of the amendment must be given to Heritage Victoria. These conditions were resolved prior to exhibition of Amendment C200moon.
- 2.11 Amendment C200moon was exhibited from 21 May to 2 July 2020.
- 2.12 Prior to exhibition, the pre-set Directions and Panel Hearings dates were confirmed. The Directions Hearing is scheduled to commence in the week of 21 September 2020 and the Panel Hearing is scheduled to commence in the week of 9 November 2020.

### **3. Issues**

#### **Submissions**

- 3.1 As a result of exhibition, Council received 120 submissions. 109 submissions were submitted by the close of exhibition and a further 11 were sent to Council as late submissions.

- 3.2 In summary, 27 of the submissions provided support, eight supported Amendment C200moon with changes, 76 oppose, and 9 submissions neither provided support nor opposed Amendment C200moon.
- 3.3 The Summary of Submissions (**Attachment A** – circulated separately) includes officer responses to issues raised in the submissions. In responding to submissions which raise heritage-related issues, officers have sought expert assistance from Landmark Heritage Pty Ltd, who formed part of the Project Team in preparing the Heritage Study.
- 3.4 In summary the key issues raised include:
- 3.4.1 Council's reasons for pursuing the Amendment
  - 3.4.2 Disagreement with the heritage grading of various properties, including the impact of existing alterations
  - 3.4.3 Proportion of non-contributory/contributory places in a precinct
  - 3.4.4 Concerns related to perceived impact on property rights, property values, insurance and maintenance costs and compensation
  - 3.4.5 Physical siting of the building or property
  - 3.4.6 Permit requirements, including associated fees, internal, paint and front fence controls
  - 3.4.7 Amendment process, including consultation and engagement
- 3.5 The Summary of Submissions provides a detailed response to each submission, however, an overview of the officer response to recurrent themes is also provided below for clarity.

### **Discussion of key issues**

3.6 Heritage grading of various properties, including impact of alterations

The majority of submissions opposing the Amendment questioned the heritage grading of the property, citing various internal and external alterations to the property.

The impact of alterations has been considered on a case by case basis, noting that modifications to a building do not necessarily result in heritage values being diminished. In many instances the alterations sympathetically respond to the heritage values of the property.

The Amendment does not seek to apply internal controls to any of the properties, therefore there is nothing that prohibits an owner from improving the internal amenity of the property.

3.7 Proportion of non-contributory/contributory places in a precinct

A number of submissions questioned the proportion of non-contributory/contributory places in a precinct.

The Heritage Study outlines a methodology which was used to determine the 'intactness' and 'integrity' of precincts. For precincts, the 'integrity' rather than 'intactness' of contributory places is the primary consideration. That is, while a contributory place may not be completely 'intact' (i.e.,

retaining all original fabric) any repairs or maintenance have been carried out using the same or similar materials, details and finishes, thus ensuring good 'integrity'. In addition, if precincts have 60+ percent of intact contributory places, are legible, visually and thematically coherent, and are better or on par with existing precincts, it is considered the precinct meets the threshold for 'intactness'.

3.8 Impact on property rights, property values, associated fees including planning permit fees insurance and maintenance costs and compensation

Several submissions raised concerns about the perceived financial impact of the Heritage Overlay and potential for a drop in the property value.

The potential or perceived impact on property values is not a relevant consideration when determining whether a property should be included in the Heritage Overlay or not. Previous planning panels have recognised the fact that public economic effects or financial impacts at a broader community level may be relevant economic matters to consider at the amendment stage, but private financial effects are not.

While the Amendment is likely to impose some additional costs on the owners or developers of the affected properties (as a planning permit will be required for most buildings and works), this does not outweigh the broader community benefits of the Amendment. In other words, the Amendment will achieve a net community benefit by ensuring heritage places are protected and heritage values are considered when determining whether new development is acceptable.

In relation to insurance costs, as long as buildings are structurally sound, water tight, secure and well maintained, there should not be any difficulty insuring heritage properties. The increase of insurance premiums is not relevant when considering the application of the Heritage Overlay.

A number of submissions also expressed concern that the Heritage Overlay would impact the opportunity for redevelopment. The Heritage Overlay does not preclude the opportunity for redevelopment, rather it is a planning tool used to consider whether the proposed works will have an impact on the heritage place and/or precinct.

3.9 Location and interface of a building or property

Some submissions highlighted the location and interface of a property or building to question the appropriateness of the application of the Heritage Overlay. The location or interface of a property alone is not considered when assessing whether a place satisfies the threshold for the Heritage Overlay. Further, the absence of a precinct surrounding an individually significant property does not impact its fundamental heritage significance.

3.10 Permit requirements to externally paint a building, replace/construct front fence and solar energy systems

A number of submissions raised concerns the Heritage Overlay would require planning permission for buildings and works.

Whilst the Amendment is likely to impose additional planning permission requirements on the owners of the affected properties, this does not

outweigh the justification for applying the Heritage Overlay to the places identified in the Heritage Study.

3.11 Amendment process, including consultation and engagement

It is appreciated that the planning system is complex. To help those affected by the Amendment, the planning scheme amendment process includes an exhibition period where submitters can provide feedback to Council on the Amendment. All information relating to the Amendment was available on Council's 'your say' platform. Additionally, a Frequently Asked Question document was enclosed with each notification letter. Should a submitter require further information or assistance the contact details for Council's Strategic Planning department were also provided.

**Proposed post-exhibition changes**

3.12 To respond to submissions received, it is proposed to take a revised package of Amendment material to the Panel Hearing. The package which forms the basis of Council's position for the hearing will make Council's position clear for the hearing, and illustrate the Council-adopted response to submissions.

3.13 The revised package of Amendment material includes revisions to Schedule to Clause 43.01 Heritage Overlay, the *Moonee Valley Permit Exemptions Policy – Heritage Overlay Precincts, May 2019* and the Statements of Significance, relating to:

- Glass Street (HO2);
- Holmes Road Residential (HO12);
- Ascot Vale Road & Maribyrnong Road (Ascot Vale Estate) (HO16);
- South Street & East Street (HO21);
- Aberfeldie Street and Waverley Street (HO450);
- Brown Avenue and Morphett Avenue (HO451);
- Warrick Street & Mascoma Street (HO453)
- Mackay Street (HO455);
- McCracken Street (HO456);
- Pascoe Vale Road (HO457);
- Roberts Street (HO459);
- 1C Ardoch Street, Essendon (HO481);
- 330 Buckley Street, Essendon (HO488);
- 27 & 32 Robb Street, Essendon (HO507);
- 57 Vanberg Road, Essendon (HO509).

- 3.14 A summary of each of the proposed changes is contained in **Attachment B** (separately circulated).
- 3.15 The detailed recommended revisions to the exhibited documents are shown in **Attachments C and D** (separately circulated).
- 3.16 As a result of the proposed changes, submissions #11, #23, #27, #37, #41, #54, #62, #65, #67 and #120 are considered to be resolved. Notwithstanding this, all 120 submissions will be referred to Planning Panels Victoria, the independent planning panel.

#### **4. Other issues**

- 4.1 During the review of submissions relating to the Pascoe Vale Road precinct (HO457), Council's heritage expert noted that since the precinct was assessed, in 2018, an unsympathetic second storey extension has occurred at 195 Pascoe Vale Road, Essendon, impacting the heritage significance of the place. Whilst a submission was not received specifically in relation to this property, it is considered appropriate to revise the grading of 195 Pascoe Vale Road, Essendon from contributory to non-contributory.
- 4.2 Also, in reviewing submissions, officers have noted an oversight in the package of Amendment material. That is, the exhibited Amendment did not include a marked-up Clause 72.08 Schedule which lists the Heritage Study as a background document to the Moonee Valley Planning Scheme. This was an oversight as a result of the translation of Amendment C201moon, which introduced the interim Heritage Overlay, and Amendment C193moon which introduced MV2040 into the Moonee Valley Planning Scheme. The Heritage Study was, however, exhibited with the Amendment and identified in the exhibited material as informing the basis of the Statements of Significance and submissions have been received in relation to its findings and contents. During the same review, officers noticed that HO458, in the Schedule to Clause 43.01, referred to properties associated with HO459, Roberts Street, Essendon, instead of properties in Robb Street, Essendon. The 'Panel Version' documentation has been revised to correct this oversight.
- 4.3 In accordance with Amendment C193moon approval, which implements the findings of the *Moonee Valley Planning Scheme review 2018*, the *MV2040 Strategy* directions, and the revised Planning Policy Framework introduced by Amendment VC148, the Heritage Study should be inserted as a background document in Clause 72.08 on the basis that this Heritage Study is the document informing the Statements of Significance accompanying the proposed Heritage Overlays. Further, the Schedule to Clause 43.01 requires updating to align with the changes to the schedule as a result of the approval of Amendment C193moon. The proposed revisions to Schedule to Clause 43.01 and Clause 72.08 are contained in **Attachments C and D** (separately circulated).
- 4.4 As a result of the preparation of a forthcoming heritage study scope, omissions and inconsistencies have been identified in the Heritage Study's future work sections. The revised Heritage Study is contained in **Attachments E and F** (separately circulated).

## 5. Extension of interim controls

- 5.1 The interim planning controls were introduced to the Moonee Valley Planning Scheme on 16 January 2020 via Amendment C200moon. The approval specified that the interim planning controls will expire 12 months from the date it was introduced to the Moonee Valley Planning Scheme.
- 5.2 The interim planning controls are therefore, due to expire on 16 January 2021.
- 5.3 The extension to the interim controls is being sought as a result of the delay in receiving authorisation to prepare and exhibit Amendment C200moon from DELWP as well as legislative changes to the *Planning and Environment Act 1987* to address planning processes affected by coronavirus (COVID-19).
- 5.4 It is necessary for the expiry date of the interim planning controls to be extended, under Section 20(A) of the Act, for 12 months from 16 January 2021 until 16 January 2022, to reduce the potential for development and demolition of heritage places while Amendment C200moon is being progressed.
- 5.5 Should an extension to the interim planning controls not be granted, the properties will not be protected and may result in potential development and demolition of heritage places without an assessment of heritage significance under the planning permit application process.

## Recommendation

### That Council resolves to:

- a. **Note submissions and officer responses received following exhibition of Amendment C200moon (Attachment A).**
- b. **Refer all submissions to Amendment C200moon to an independent planning panel in accordance with section 23(1)(b) of the *Planning and Environment Act 1987*.**
- c. **Note the ‘Panel Version’ recommended revisions to the exhibited documents, including the Schedule to Clause 43.01 Heritage Overlay, Clause 72.08, the *Moonee Valley Permit Exemptions Policy – Heritage Overlay Precincts, May 2019* and the Statements of Significance (Attachments C and D).**
- d. **Adopt the ‘Panel Version’ recommended revisions to the exhibited documents, including the Schedule to Clause 43.01 Heritage Overlay, Clause 72.08, the *Moonee Valley Permit Exemptions Policy – Heritage Overlay Precincts, May 2019* and the Statements of Significance (Attachments C and D) as Council’s position to be presented at the independent planning panel hearing.**
- e. **Authorise officers to effect minor changes to the ‘Panel Version’ recommended revisions to the exhibited documents, including the Schedule to Clause 43.01 Heritage Overlay, the *Moonee Valley Permit Exemptions Policy – Heritage Overlay Precincts, May 2019* and the Statements of Significance (Attachments C and D).**

- f. **Request the Minister for Planning to exercise his powers of intervention under Section 20(A) of the *Planning and Environment Act 1987* to prepare and approve an amendment the Moonee Valley Planning Scheme to extend the expiry date of the interim Heritage Overlay for 12 months, until 16 January 2022.**
- g. **Note the corrections to the *Moonee Valley 2017 Heritage Study (revisions 2020)* (Attachments E and F).**
- h. **Note Council officers will provide a further report to Council after receipt of the Panel report from Planning Panels Victoria to further consider Amendment C200moon.**
- i. **Notify the landowner of 195 Pascoe Vale Road, Essendon of the proposed revised grading from contributory to non-contributory.**

### **Attachments**

- A: Summary of Submissions (separately circulated)
- B: Summary of post-exhibition changes in response to submissions (separately circulated)
- C: 'Panel Version' Amendment documents - Schedule to Clause 43.01, Clause 72.08 and Moonee Valley Permit Exemptions Policy – Heritage Overlay Precincts, May 2019 (separately circulated)
- D: 'Panel Version' Amendment documents - Statements of Significance (separately circulated)
- E: Moonee Valley 2017 Heritage Study (revisions 2020) - Vol 1 (separately circulated)
- F: Moonee Valley 2017 Heritage Study (revisions 2020) - Vol 2 (separately circulated)