

**MOONEE VALLEY PLANNING SCHEME AMENDMENT C201
57 VANBERG ROAD, ESSENDON**

HERITAGE EXPERT WITNESS STATEMENT

by

JOHN BRIGGS

Instructed by

SUBMITTER 108

2 NOVEMBER 2020

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EXPERT WITNESS STATEMENT JOHN BRIGGS

AMENDMENT C201 MOONEE VALLEY

57 VANBERG ROAD, ESSENDON

I am the Principal of John Briggs Architects Pty Ltd, Architect and Conservation Consultant at 331A Bay Street, Port Melbourne. This Evidence Statement addresses the proposal under Amendment C201 to apply an Individual Heritage Overlay, HO509, to the subject property at 57 Vanberg Road, Essendon.

I am a Registered Architect, No. 4972, a member of the RAlA and hold a Bachelor of Architecture, University of Melbourne.

Of the 34 years that I have worked in the practice of Architecture, the last 30 years have been predominantly in the field of Conservation Architecture. My training in conservation architecture was in my employment with the firm Allom Lovell and Associates over 8 years where I was the Project Architect responsible for the heritage works at both the Regent Theatre and at the Gothic Bank at 380 Collins Street. I left Allom Lovell and Associates in 1998 to pursue practice in architecture and as a heritage consultant.

My work has provided me with broad experience in all aspects of heritage architecture including historical research, preparation and production of conservation reports and conservation plans for projects at all scales, as well as the preparation and presentation of submissions to Councils, Heritage Victoria, Planning Panels and to the Victorian Civil and Administrative Tribunal. I am a heritage advisor to the City of Melbourne. I have significant experience in the design, documentation and administration of restoration works, works to reconstruct missing historic elements and works to facilitate the adaptation of historic buildings for new use.

In preparing this statement I have been instructed by the owner of the property who is submitter to the Panel no. 108.

I have made all the inquiries that I believe are desirable and appropriate, and no matters of significance, which I regard as relevant, have to my knowledge been withheld from the Panel.

In giving my evidence, I confirm I:

will be alone in the room from which I am giving evidence and will not make or receive any communication with another person while giving my evidence except with the express leave of the Panel;

I will inform the Panel immediately should another person enter the room from which I am giving evidence;

during breaks in evidence, when under cross-examination, I will not discuss my evidence with any other person, except with the leave of the Panel; and

I will not have before me any document, other than this expert witness statement and documents referred to therein, or any other document which the Panel expressly permits me to view.



John Briggs
John Briggs Architects Pty Ltd

2 November 2020

Introduction

This witness statement builds upon a previous heritage assessment of the proposed Heritage Overlay provided to the property owner and understood to have been submitted to Council which was dated 2 July 2020. My office has also drawn a plan of the land showing the location of a possible plan of subdivision that in my view could be accepted without concern that associated development, subject to a heritage permit approval under Clause 43.01 would adversely affect the heritage significance of the place. In reviewing the previous report as this expert witness statement, I do not consider that my findings have altered. The initial heritage assessment and this revision responds to the instruction that I review the proposal to include the property in the Heritage Overlay with the attendant activation of heritage controls over the building and land under the Moonee Valley Planning Scheme. I inspected the site and surrounds in June 2020 and have reviewed the Statement of significance provided by Council, 20 May 2020 in their letter regarding the implementation of the 2017 Moonee Valley Heritage Study through Amendment C201. Since providing my initial assessment I have also provided a mark-up of Councils Statement of Significance. The mark ups are proposed to provide the clarity needed in not only indicating what is of significance, but also to give clarity to what is not contributory to the heritage importance of the place. In revising my previous document as this witness statement, I have included further detail in my understanding of the Planning Practice Note No. 1, Applying the Heritage Overlay. The amended PPN1 reflects recent developments of expectation with regard to the reliance upon Statements of Significance for use in the guidance of understanding and managing heritage places and expresses the associated need for clarity. Further to discussion regarding what comments of the garden are 'contributory' Submitter 108 has engaged an Arborist to evaluate the likely age of the Norfolk Island Pine, I have appended the letter from Lachlan Williams of Tree Response to this statement. The assessment provided was that the tree is likely to be between 60 and 80 year of age the heritage implication of which are discussed below.

Summary of Opinion

It is my understanding of the Planning Practice Note No.1, the identification of the place needs to clearly justify its significance and clearly establish and substantiate the importance of the place [and its parts] against relevant criteria.

There should be no doubt about the elements of the place that are under discussion and the note suggests, but does not require, that clarification could also be made of elements that are not significant.

The PPN1 also draws attention to the importance of including land surrounding a building, structure, tree or feature of importance to ensure that any development, including subdivision, does not adversely affect the setting, context or significance of the heritage item. A Statement of Significance is required

for each overly established after July 2018 to identify features or elements that are significant about the place as a guide to future decision makers.

For the subject site it is concluded desirable to retain the whole of the existing property within the Heritage Overlay mapping so that permit requirements continue to exist and to rely upon an amended Statement of Significance to achieve the expectations of PPN1 as set out above.

Where Councils statement of *What is Significant?* notes *"The recent metal palisade fence is not significant"*, I recommend the additions of the statement: *Neither is the area of land and additions north the original house, nor the modern garage and land west of the Norfolk Island Pine, contributory to heritage significance.*

And under *Why is it Significant?* In relation to the importance of the garden setting I suggest words to the effect of: *The post war additions and rear garden north of the original house and the garage and land west of the Norfolk Island Pine are not contributory to heritage significance.*

With the permit requirement over the whole of the existing property I see no reason to remove the ambiguity intrinsic in the opening statement of *What is significant?* that: *"... a Victorian era villa in a mature garden setting, established in 1887 and subsequently remodelled, is significant"*. It is a simple matter to remove doubt about what is meant by the "mature garden setting" and "remodelled" to exclude those elements not contributory without going to the extent of permit exceptions or reducing the heritage mapping.

Heritage Implications and Clarity

There should be no doubt that the application of an individual Heritage Overlay to an individual property has major implications to the way the property can be expected to be managed and developed over time. Contrary to some previous Panel Findings this is not a matter of advocacy but is a matter of reality. This fact, following determination that a place has heritage significance, that heritage controls impose significant constraints over the land and buildings should not influence the legitimate determination of significance. As addressed at page 2 of PPN1 the statement of what is Significant? should identify and establish beyond doubt, the elements or features of the place that are significant *"as a guide to future decision makers"*. And that *"Clarification could also be made of elements that are not significant"*. Given the substantial impost upon owners it is however essential, in meeting the requirement of fair and orderly planning, that the rigour expected by the Planning Practice Note No.1, *Applying the Heritage Overlay* is demonstrably exercised. This requires quite explicit regard for the following statement provided in PPN1 in relation to those aspects of the garden setting that do, and those that do not contribute to heritage value:

The heritage process leading to the identification of the place needs to clearly justify the significance of the place as a basis for its inclusion in the Heritage Overlay. The documentation for each place shall include a statement of significance that clearly establishes the importance of the place and addresses the heritage criteria. (emphasis added)

At this juncture of the application of the Heritage Overlay, with the attendant application of the standard heritage provisions of the Moonee Valley Planning Scheme, it is my view that the Statement of Significance should clearly explain, not only what are the significant elements but also, those elements of lesser or no importance to the significance of the place.

It is my view that the years of relying upon assumption, no matter how expert, and of kicking the heritage can further down the road for latter resolution should be behind us. With Statements of Significance now required to be referenced in the Schedule to the Heritage Overlay in order to do greater and more reliable work than has previously been expected, it is reasonable that these statements be sufficiently rigorous to direct what is, and is not, contributory to the point of requiring conservation.

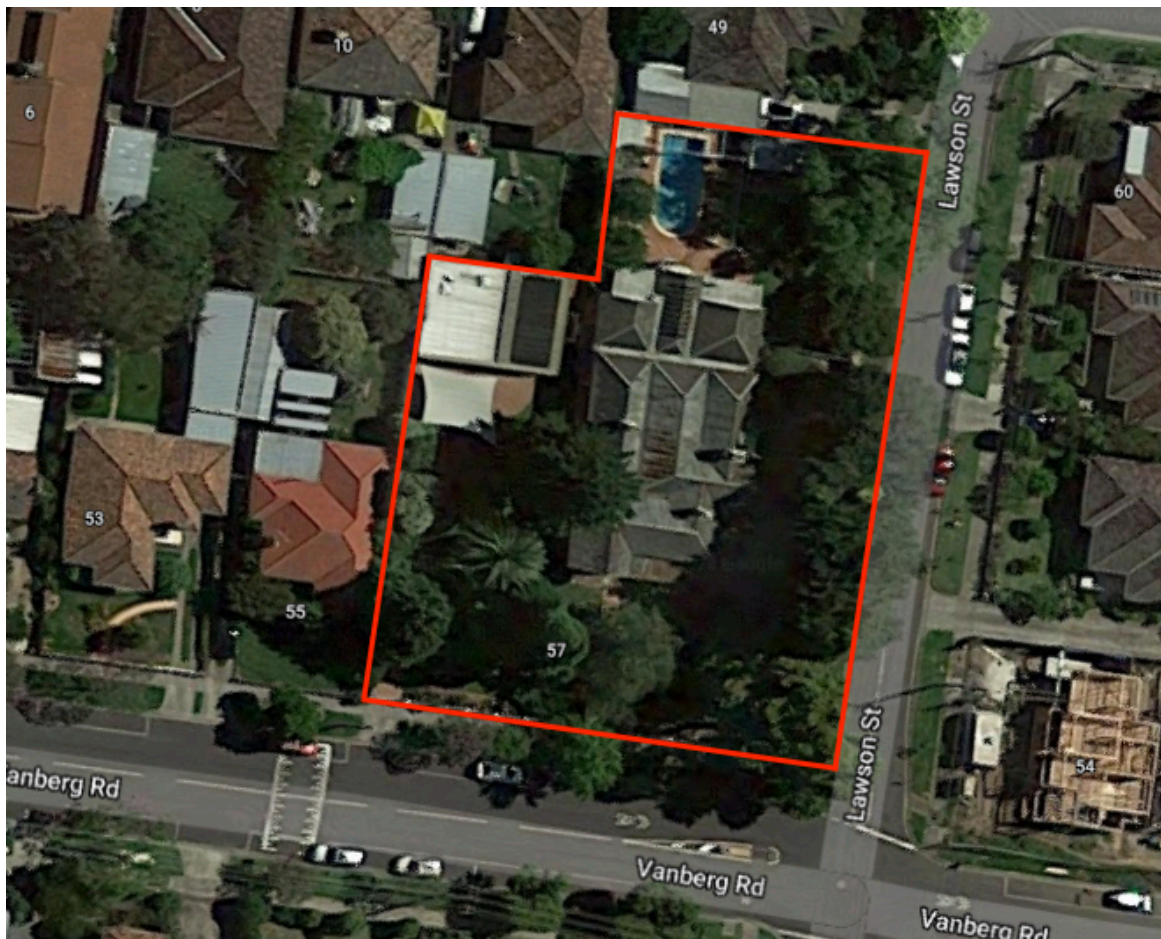


Figure 1 Aerial view of the property (Google Maps)

Statement of Significance with commentary

The following is the Statement of Significance as proposed in the Moonee Valley Heritage Study with my recommended clarifications of non-contributory areas shown in bold.

What is significant?

57 Vanberg Road, Essendon, a Victorian era villa in a mature garden setting, established in 1887 and subsequently remodelled, is significant.

Significant elements include the:

- *original (Victorian era) and subsequent (Edwardian and Interwar eras) building and roof forms;*
- *slate roof, chimneys, unpainted face brickwork;*
- *Interwar verandah including piers and balustrades, Edwardian Queen Anne gable ends including the decorative timber finial and barge boards;*
- *projecting bow window, leaded glass window sashes, window awnings, and window and door joinery from the Victorian, Edwardian and Interwar eras; and*
- *covered gate, early brick fence (intact underneath the recent metal palisades) and Norfolk Island Pine (*Araucaria heterophylla*) and Monterey Cypress (*Cupressus macrocarpa*).*

The recent metal palisade fence is not significant. [The post war additions and rear garden north of the original house and the garage and land west of the Norfolk Island Pine are not contributory to heritage significance.]

Comment: The note above “in a mature garden setting” is ambiguous and will, in my experience, often be taken to mean that the whole garden setting is contributory to the house and should be conserved as such. While the significance of the house, and particularly its frontage as experienced from the public domain, are not in dispute, that the whole of the garden and land on the title is contributory to the heritage importance has not been demonstrated. The above list of significant elements does not include or discuss the garden setting beyond the items of: the covered gate, early brick section of the fence, the Norfolk Pine and Monterey Cypress.

Whilst the metal palisade fence is specifically noted as non-contributory, the altered rear of the house, yard area, and garage to the west of the original third room of the house are not acknowledged. The total property, with a frontage close to 40 metres and a second side frontage 56 metres in length, is of a size that could retain a curtilage entirely adequate for appreciation of the heritage value of the house with development of both the area of the rear and west side of the property in an appropriate manner.

It is in my view reasonable to propose that the rear section of the property from the point at which the original house has been extended makes no contribution to the appreciation of, and therefore to, the heritage significance of the subject house. It is noted that the very fine Peppercorn tree in the rear northwest corner of the house is not listed above as a significant element although this tree is likely to be older than the Norfolk Island Pine that is noted as valuable. It should also be noted that the Pepper tree is recorded against Criterion E below providing levels of confusion in the attempt of any objective analysis of the important features to be considered in any future decision making.

How is it significant?

57 Vanberg Road, Essendon, is of local historical, aesthetic, and associative significance to the City of Moonee Valley.

Why is it significant?

Tower House at 57 Vanberg Road, Essendon, is historically significant for its demonstration of the boom and bust of the 1880s land boom. This is demonstrated through its location on the large Essendon Park Estate and the villa's ownership and occupation by Walter and Mary Penglase. The 117 acres of the Essendon Park Estate form a large subdivision in Moonee Valley that benefited from the development of the Essendon railway. The estate attracted construction of villa residences and substantial homes before ultimately development stalled in the economic depression of the 1890s resulting in piecemeal development.

The construction of 57 Vanberg Road and its ownership by Mary Penglase, wife of Cornish mining speculator Walter Trestrail Penglase (1837-1904) is also part of the boom and bust narrative. The construction and subsequent additions to 57 Vanberg Road demonstrate the fortunes of mining speculation, with additions and alterations to the newly built house in 1888 prior to Walter's insolvency in 1889. While insolvency threatened, it appears that Mary Penglase was able to retain the house for a few short years prior to its repossession by the bank in 1893. The story of the tower once deemed to have been part of Tower House but not verified, adds to the narrative of the house as a symbol of turbulent economic times in both land and mining speculation. (Criterion A)

57 Vanberg Road is aesthetically significant for its demonstration of a substantial Victorian era Italianate villa retaining much of its garden setting. The combination of the house and the garden setting containing mature trees contribute to the aesthetic value of the place. [The later additions and rear garden north of the original house and the garage and land west of the Norfolk Island Pine are not contributory to heritage significance.] 57 Vanberg Road demonstrates several eras of developments that encompass the Italianate, Queen Anne and Interwar styles overlaid on a single storey Italianate brick villa. It is an unusual, idiosyncratic house exhibiting multiple styles that is distinguished by the fine craftsmanship and the individual aesthetic merit of each layer. The expression of the Italianate is in the asymmetrical form and bichrome brickwork, the Queen Anne evident in the gable ends, with ornate timber bargeboards and timber finials and the Interwar period in the verandah columns, balustrade and bow-fronted window. Aesthetic value is derived from the Norfolk Island Pine (Araucaria heterophylla), several Monterey Cypress (Cupressus macrocarpa) and the Pepper tree (Schinus molle) (Criterion E)

57 Vanberg Road is historically significant from 1923 to 1959 for its association with potter John Goold, who was in partnership with the Westmoreland family in the Northcote Tile and Pottery Company. Established in 1897 by George Westmoreland, the Northcote Tile and Pottery Company was known as Westmoreland's until 1915, when it became Northcote Tile and Pottery Company. The business operates today as the Northcote Pottery. Northcote Tile and Pottery Company contributed their terra cotta products to the building of many suburbs including those in the City of Moonee Valley. (Criterion H)

Comment: In accord with the discussion above regarding the “in a mature garden setting”, aesthetic significance is attributed to the villa “retaining much of its garden setting” with only the “mature trees” being discussed. The history of the earlier garden setting and change to titles associated with the house has not been provided by Council and the relevant MMBW Detail Plans No. 2279 -2280 is not available online as is generally the case. The current size of the land is somewhat arbitrary in relation to the established heritage importance of the house and a curtilage important for the appreciation of that heritage significance. The lack of explanation regarding what particularly it is about the garden that contributes to the heritage value of property is in my view likely to provide a source of ongoing confusion for future decision makers who would be compelled to revisit the exercise being undertaken today. In my view the plain English reading of PPN1 indicates the Statement of Significance of this place cannot responsibly be adopted without further clarification.



Figure 2 View of the rear yard from the northwest corner (under the Peppercorn tree)

The rear portion of the property from the northern gutter of the original house has been entirely transformed from its early condition other than perhaps for the Peppercorn tree in at the extremity of rear northeast corner of the property. It is clear that this portion of the property makes no contribution to the heritage values of the house. It is the case that the rear of the property including the additions, and pool area are not of importance. The rear two fifths of the property as viewed from Lawson Street, which present a high fence and mature foliage to the public domain, is hidden from any meaningful view of the modern rear portion of the property.



Figure 3 View looking south along Lawson Street showing the high side boundary fence

As with many isolated heritage places that have an individual Heritage Overlay the existing planning scheme does not distinguish between places that are significant for their presentation to the public domain, or are significant for views of the place from within the private property boundary including the rear elements and fully private portions of the property. There is in the *Schedule to the Heritage Overlay* the option to activate heritage controls over trees, and outbuilding, along with paint, interiors and other items but not the open space of gardens. I again note that only the Pine and Cyprus but not the Peppercorn trees have been included on the list of those Significant Elements that are included at *What is significant?* but is noted as having aesthetic value under *Why it is significant?*

On the basis of the Arborists' assessment that the Norfolk Island Pine is likely to be less than 80 years of age this would mean it was planted at the very end of the inter-war period and has limited if any historical value. Its value is therefor as a significantly sized tree having presence in the area only during the post-war period. Whilst in a general sense such trees are appreciated aesthetically that this distinctive element is of heritage significance should properly require a comparative analysis of other trees in the municipality to clearly establish its value under Criterion C, Aesthetic significance. There appears no claim that the garden is itself of heritage value other than in contributing a setting for the house. In this regard it is the extent of the garden setting that needs to be preserved to ensure an appropriate appreciation of the house that is to be considered. Without changing the mapping of the Heritage Overlay to respond directly to an assessment of the necessary heritage curtilage for proper appreciation of the house, it falls to the provision of a suitably robust Statement of Significance to

appropriately address what the contributory, or non-contributory, elements of the setting. As internal controls are not proposed for this house, and as the rear and west side portion of the land and garden contain no original or early elements it is reasonable to expect that this should be acknowledged presently, rather than relying upon reassessment of these matters at some future time.



Figure 4 View of the house from the west of the property in front of the modern garage.

On the west side of the property it is my assessment that at least one quarter of the width of the property makes no contribution to the understanding or appreciation of the house, beyond perhaps the extent of the front fence. It is to be noted that the relatively large Canary Island palm tree is also not listed under the tree protection column of the Schedule to the Heritage Overlay, or with the Pine and the Cyprus amongst the elements of significance.

Conclusion

In my assessment the present Statement of Significance appropriately describes the house. On a comparative basis I expect it would be likely that the house would be demonstrated to be of local significance as an individual place. I am however concerned the 'heritage perspective' from which it is anticipated the heritage significance of the place should be appreciated is not identified. It is important at this juncture of determining that the place is of a level of significance worthy of protection, for that significance, including those aspects of setting and context important for the appreciation of the heritage value, to be clearly explained and identified. The importance of the parts should be addressed in accordance with the appropriate Planning Practice Note No. 1. Accordingly to leave no ambiguity regarding what is, and is not, established as having heritage value, and to provide appropriate guidance for future decision makers, further clarification is needed with regard to the garden setting in its various parts and with regard to contribution of those elements or features to heritage significance. In my view this work is not complete and further amendment to the Statement of the Significance of the place is required, as I have suggested above on page 2.

A handwritten signature in black ink, reading "John Briggs". The signature is written in a cursive, flowing style.

John Briggs
John Briggs Architects Pty Ltd

Lachlan Williams
Tree Response Pty Ltd
lachlan@treeresponse.com.au
0419 883 912
2/11/2020

To whom it may concern,

Michael Pickering contacted Tree Response regarding one nominated tree at 57 Vanberg Rd, Essendon. The client requested estimations on the tree's; current age, maximum dimensions and root barrier considerations.

The nominated tree is a mature *Araucaria heterophylla* (Norfolk Island Pine), located between the western side of the dwelling and the driveway. It is a high quality specimen recommended for long-term retention. It is a substantial landscape element of the site, but is moderately obscured by other trees closer to the boundary. It has the following attributes:

- Good health and structure (no defects visible).
- Long Useful Life Expectancy (ULE) (e.g. 40+ years), high amenity value.
- Diameter @ Breast Height (DBH): 75cm, Basal Diameter: 107cm.
- Tree Protection Zone (TPZ): 9.00m radius, Structural Root Zone (SRZ): 3.40m radius.
- Proximity to dwelling: 3.4m.

The client's dwelling and some mature Monterey Cypress on the eastern boundary are approximately 130 years old (anecdotal evidence), but it is unlikely the Norfolk Island Pine is this old. This is because the tree has excellent vigour and site conditions are favourable for tree growth (fertile soils and long-term irrigation), but the DBH is still <100cm. Trees of this species and health should be much larger when 130 years old. Based on the tree's condition and typical species growth rates, it is more likely to be 60-80 years old.



Maximum dimensions for the species in ideal situations are 30-60m with a DBH of 2m+, but this is typically on coastal sites similar to its endemic range. Based on the maturity, condition, estimated age, plus typical mature size of Norfolk Island Pine in Melbourne, the tree's potential size in another 50 years may approach 30m and a DBH of 100cm.

Evidence of cracking externally (and internally based on anecdotal evidence) exists on the adjacent dwelling wall. The tree is likely to be causing/compounding this damage in two ways; directly (e.g. roots lifting/pressing on footings) and indirectly (influencing the moisture/volume of the reactive soil). Reactive soils, irrigation, inferior quality footings (shallow bluestone), and proximity to the SRZ are all influencing factors. It is probable significant root mass exists along the edge of the footings, some roots may extend through/under the footings also. This should be clarified via non-destructive root investigation (e.g. Air Spading).

Installing a root barrier may be achievable to mitigate damage to the dwelling, but should consider the following:

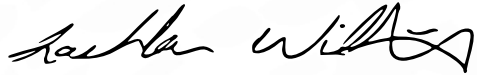
- Creating a trench between the dwelling and tree has potential to cause tree decline/death and even total tree failure.
- Confirm viable position for a root barrier prior to installation (to ensure the tree will not be compromised via excessive root damage). The most appropriate location for a root barrier is likely to be against the edge of the dwelling.
- Roots >75mm diameter must not be severed without consulting a qualified arborist (AQF Level 5+). Severing roots >50mm diameter must be minimised.
- Root barrier depth must be a minimum 1m, potentially 2m.
- Offset potential root severance required via mulching and irrigating the remainder of the TPZ area (install prior to works and retain for 24 months following).



The Norfolk Island Pine is estimated at 60-80 years old, it has reached common mature dimensions but should increase further in stature gradually with time. Mitigating the dwelling damage should be achievable without removing the tree or imposing excessive root damage.

For any queries regarding this letter, please don't hesitate to contact me.

Yours sincerely,



Lachlan Williams.

