

Date 9 November 2020

Submission on behalf of the Planning Authority Amendment C200moon to the Moonee Valley Planning Scheme

Council's submission: Part B

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Introduction

- 1. These submissions are made on behalf of Moonee Valley City Council (Council).
- 2. Council is the Planning Authority for Amendment C200moon (**Amendment**) to the Moonee Valley Planning Scheme (**Scheme**). Council has prepared and is the proponent of this Amendment.
- 3. On 2 November 2020, Council circulated its 'Part A' submission in accordance with Direction #5 of the Panel Directions issued on 30 September 2020 (**Panel Directions**). The Part A submission addressed the following themes:
 - 3.1 Background to the Amendment, including a chronology of events;
 - 3.2 Strategic context and assessment;
 - 3.3 Issues raised in submissions; and
 - 3.4 Proposed changes to the Amendment.
- 4. Together with Council's Part A submission, Council circulated the evidence of Ms Natica Schmeder of Landmark Heritage Pty Ltd.
- 5. Submitters to the Amendment have circulated evidence of:
 - 5.1 Mr Bryce Raworth, Bryce Raworth Conservation and Heritage, in relation to 10 and 12 Grandview Street, Moonee Ponds on behalf of Submitter #5;
 - 5.2 Mr Aron Paul, Trethowan Architecture, in relation to 48 Mackay Street, Essendon on behalf of Submitter #78: and
 - 5.3 Mr John Briggs, John Briggs Heritage Architects Pty Ltd and Mr Martyn Thompson, Peyton Waite in relation to 57 Vanberg Road, Essendon on behalf of Submitter #108.
- 6. This submission responds to Direction #13 of the Panel Directions directing Council to address the following issues through its 'Part B' submission:
 - 6.1 Response to submissions and evidence; and
 - 6.2 Council's final position on the Amendment.

General observations

- 7. It is important to Council that the Heritage Overlay is applied accurately and that places of cultural significance at the local level are properly represented in the Scheme.
- 8. Providing a framework for the protection of places of cultural significance will ensure the Council is delivering on its responsibility to protect heritage places and ensure new development integrates, respects and contributes to that heritage. This will deliver the greatest certainty for owners, applicants and Council (as responsible authority) and in making decisions on the appropriate built form outcomes for a particular site.
- 9. Council is conscious that "protection" in the context of the application of a Heritage Overlay is the identification (by mapping) and explaining (by the citation and statement of significance) of the cultural heritage significance of the place.

Maddocks

- 10. Under the heritage overlay, "protection" means setting up a permit trigger in the event that a person seeks to either alter or demolish a building which is within the Heritage Overlay. The permit process is then the stage at which it is determined whether the alteration or demolition should be permitted or what conditions should attach to that action if it is permitted.
- 11. It is common for panels to remark that the task of the panel is different to the task of the responsible authority and we agree. Panels are charged, in the first instance, with the task of considering proposals to identify properties within a heritage overlay and to consider whether the explanation of significance is appropriate. To the extent that a heritage policy ascribes a particular level of significance to a property such as non-contributory, contributory or significant, it is also the task of the panel to consider whether that descriptor is appropriate.
- 12. Having regard to this Panel's task in the context of a consideration of the submissions, the Panel will need to be persuaded that the foundations of what is proposed by the Amendment is sound; whether the research which has been undertaken is appropriate and whether it has been conducted in accordance with recognised and accepted norms and principles.
- 13. We submit that the strategic basis for applying heritage overlays hardly needs repeating; it is well founded in the State policy provisions of the scheme as well as the *Planning and Environment Act* 1987 (the **Act**) which provides the following objective under s 4(1)(d):
 - ...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.
- 14. The strategic basis of the Amendment with respect to local policies as well as Moonee Valley's approach to heritage planning is thoroughly explained in the Part A submission. We do not repeat this material here, other than to draw the Panel's attention to the following key policies and documents:
 - the Municipal Planning Statement (MPS) at clause 02.02 (Vision), clause 02.03-4 (Built environment and heritage) and clause 02.03-5 (Housing) which highlights the importance of heritage in achieving the vision for Moonee Valley;
 - 14.2 **clause 15.03-1L (Heritage Conservation)** which applies to land in the Heritage Overlay and seeks (amongst other matters) to maintain the distinctive historic character and visual cohesion of streetscapes within heritage precincts, and to discourage incremental loss of buildings and other features, including the public realm, that contribute to the significance of a heritage place; and
 - 14.3 City of Moonee Valley Permit Exemptions Policy, Heritage Overlay Precincts May 2019 (Permit Exemptions Policy), an incorporated document which sets out a series of permit exemptions for Contributory and Non-contributory places within heritage precincts.
- 15. The strategic basis of the Amendment is also firmly in line with the Council Plan 2017-21 and Council's municipal wide overarching strategy, MV2040. In particular:
 - 15.1 Theme 3 Sustainable Living of the Council Plan, which includes an objective (Objective 3.2) for growth and development to be well managed. The relevant strategies include:
 - 3.2.1.7 Identify and protect places of local heritage significance.
 - 3.2.1.10 Undertake Stage 2 Heritage Studies recommended by the Heritage Gap Study and implement overlays where appropriate.
 - 15.2 Strategic Direction 17: A city that fosters local identity, of the MV2040 Strategy which includes an objective (Objective 17.2) to celebrate the heritage of the city by identifying and protecting places and precinct of heritage significance, celebrating the important role they play in neighbourhood identity (MV2040, page 104).



16. Finally, Council submits that the key focus of the Panel with respect to this Amendment (and in response to the submissions received) relates to the requirements of the Heritage Overlay and Planning Practice Note 1: Applying the Heritage Overlay (PPN1).

Overview of the Amendment

- 17. The genesis of the Amendment is explained the Part A submission.
- 18. It demonstrates that this is a very significant and comprehensive Amendment.
- 19. It implements the recommendations of the 2017 Heritage Study, a 'Stage 2' assessment prepared by Context in relation to residential places of potential heritage significance identified in the earlier *Moonee Valley Heritage Gap Study 2014*, *Stage 1* (**Stage 1 Gap Study**), as well as by the community and by Context during fieldwork.
- 20. Context Pty Ltd is a highly experienced heritage consultancy which has previously prepared numerous heritage studies for local government.
- 21. The 2017 Heritage Study focuses on Interwar, Victorian and Edwardian places, new precincts and extensions to existing precincts to the Heritage Overlay.
- 22. As set out in the Part A submission, the 2017 Heritage Study is not the first Stage 2 assessment to come out of the Stage 1 Gap Study. Council has already undertaken the *Moonee Valley Heritage Study 2015* (2015 Heritage Study) which resulted in the gazettal of Amendment C164 on 10 August 2017.
- The Amendment represents the second 'Stage 2' study to come out of the Stage 1 Gap Study. The methodology of the study is detailed in Ms Schmeder's evidence statement¹ and summarised in Council's Part A submission². The methodology employed by the 2017 Heritage Study was rigorous and in accordance with best practice, including industry accepted standards and practices and PPN1. It involved staged analysis comprising a preliminary and then detailed assessment.
- 24. In particular, Council's heritage consultants have:
 - 24.1 used the recognised HERCON Criterion to assess the heritage significance of places and precincts;
 - 24.2 prepared detailed comparative analysis with similar places/precincts already in the Heritage Overlay;
 - 24.3 prepared statements of significance using the three part format of 'What is Significant?, 'How is it Significant?' and 'Why is it Significant?' in accordance with the PPN1;
 - 24.4 recommended additional controls in the Schedule to the Heritage Overlay, such as tree controls and fence and outbuilding exemptions, where warranted by the assessment of the heritage value of these elements; and
 - recommended the inclusion of significant places within a precinct Heritage Overlay, if they contribute to that precinct's significance.
- 25. Following this detailed process, the 2017 Heritage Study recommended the application of the Heritage Overlay to 60 individual places, 18 precincts, one serial listing and nine precinct extensions. The exhibited Amendment proposes to implement each of these recommendations.

¹ N. Schmeder evidence statement, pp. 8-11.

² Part A submission, pp. 8-9.



Submissions to the Amendment

- 26. In response to the exhibition of the Amendment, 123 submissions were received. The Part A submission provided an overview of the issues raised in those submissions.
- 27. For the purposes of this Panel Hearing, we confirm Council supports its response to the submissions summarised in Attachment A to the Council Report of 25 August 2020, subject to further changes recommended by Ms Schmeder in her evidence which are detailed below.
- 28. This Part B submission responds to the issues raised in submissions in two parts. The first part comprises a response to the **general themes and concerns** raised by submitters. The second part responds to **precinct and property specific issues** raised by submitters who have requested to be heard at the Panel Hearing, including:

Precinct Extensions

- 28.1 HO12 Holmes Road Residential Precinct Extension, including:
 - (a) 10 and 12 Grandview Street (Submitter #5)
 - (b) 11 Milverton Street (Submitter #8)
 - (c) 64 Eglinton Street (Submitter #14)
 - (d) 19 Milverton Street (Submitter #102)
 - (e) Milverton Street generally (Submitter #103)
- 28.2 HO21 South Street & East Street Precinct Extension, including specific response to:
 - (a) 10 Ayr Street (Submitter #62)
- 28.3 HO326 Newhall Avenue Precinct Extension, including a specific response to:
 - (a) 12 Milfay Avenue (Submitter #33)

New Precincts

- 28.4 HO450 Aberfeldie Street and Waverley Street, Aberfeldie, Essendon and Moonee Ponds Precinct, including a specific response to:
 - (a) 23 Waverley Street (Submitter #37)
- 28.5 HO451 Brown Avenue and Morphett Avenue, Ascot Vale Precinct, including a specific response to:
 - (a) 22 Brown Avenue (Submitter #74)
 - (b) Brown Avenue generally (Submitters #54, #68, #75, #94 #97, #99, #100 and #113³)
- 28.6 HO452 Queens Av and Burton Crescent Precinct, including specific response to:
 - (a) 182 Ascot Vale Road (Submitter #121)
- 28.7 HO455 Mackay Street, Essendon Precinct, including a specific response to:
 - (a) 48 Mackay Street (Submitter #78)

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³ Submitter's #54, #68, #75, #100, and #113 have not requested to be heard at the hearing. [8165681: 28164112_1]



- 28.8 HO456 McCracken Street, Essendon Precinct, including a specific response to:
 - (a) 29 McCracken Street (Submitter #18)
 - (b) 43 McCracken Street (Submitter #50)
 - (c) 41 McCracken Street (Submitter #64)
 - (d) 44 McCracken Street (Submitter #88)
- 28.9 HO457 Pascoe Vale Road, Essendon Precinct, including a specific response to:
 - (a) 193 Pascoe Vale Road, Essendon (Submitter #66)
- 28.10 HO459 Roberts Street, Essendon Precinct:
 - (a) General precinct submission (Submitters #104 and #106)
- 28.11 HO461 Clarence Street and Marshall Street, Flemington Precinct, including a specific response to:
 - (a) 21 Marshall Street, Flemington (Submitter #48)
- 28.12 HO462 Ardmillan Road, Moonee Ponds Precinct, including a specific response to:
 - (a) 33 Ardmillan Road, Moonee Ponds (Submitter #84)
- 28.13 HO465 Margaret Street & Park Street, Moonee Ponds Precinct, including a specific response to:
 - (a) 17 Park Street, Moonee Ponds (Submitter #90)

Individual Heritage Places

- 28.14 HO470 Houses 1 and 3 Adelaide Street (Submitter #82)
- 28.15 HO476 Tahoma 37 Sandown Street, Ascot Vale (Submitter #77)
- 28.16 HO485 Cloverlea (formerly Narwonah) 6 Banchory Street, Essendon (Submitter #40)
- 28.17 HO487 Loreto and Carmel 55 and 57 Brewster Street, Essendon (Submitter #114)
- 28.18 HO488 House 330 Buckley Street, Essendon (Submitter #60)
- 28.19 HO492 House 20 Hesleden Street, Essendon (Submitter #63)
- 28.20 HO503 Kala Thea 247 Pascoe Vale Road, Essendon (Submitter #26)
- 28.21 HO504 Kildare 71 Primrose Street, Essendon (Submitter #52)
- 28.22 HO509 The Pines 57 Vanberg Road, Essendon (Submitter #108)
- 29. The second part of this submission also addresses HO501 Wallbrook and Hursthill, which proposed to apply to 21 and 23 Nicholson Street, Essendon and is the subject of submission #44⁴. We note that Submitter #44 is not appearing at the hearing, however this property is discussed in detail because it is the subject of new recommendations from Ms Schmeder.

⁴ Submission #44 relates to 23 Nicholson Street.



- 30. In relation to the remainder of the submissions, Council recognises all submissions to the Amendment as important and before the Panel for consideration.
- 31. In relation to those submissions which objected to the Amendment but for which the submitter is not appearing at the hearing, Council confirms that it has considered those submissions as set out in the Council meeting report of 25 August 2020. For the purpose of this hearing, Council adopts its response to those submissions as set out in Attachment A to the Council meeting report and Ms Schmeder's response to the submissions in her evidence.

General themes and concerns

Amendment process and consultation

- 32. Several submitters have raised concerns about the consultation process associated with the Amendment.
- 33. As detailed above, the Amendment and the 2017 Heritage Study arose from the Stage 1 Gap Study, which identified places of potential heritage significance and ranked them according to priority.
- 34. The Stage 1 Gap Study underwent extensive consultation between 28 July and 29 August 2014. Throughout this period, affected landowners were each provided with notice of the study and an opportunity to lodge submissions in respect of it.
- 35. The 2017 Heritage Study commenced in 2017 and was finalised in 2019. Some submitters have commented on the period of time between the Stage 1 Gap Study and the 2017 Heritage Study.
- 36. As set out above, the 2017 Heritage Study is the second 'Stage 2' study to come out of the Stage 1 Gap Study. Council proceeded with the 2015 Heritage Study and Amendment C164 before undertaking the 2017 Heritage Study because the places assessed in the 2015 Heritage Study were considered a higher priority, relating to groups of places that were not well represented in the Heritage Overlay.
- 37. The Amendment has been prepared to implement the recommendations of the 2017 Heritage Study. Consultation has occurred through the usual means, including direct notification to all 2,519 affected property owners and occupiers. On 20 January 2020, affected owners and occupiers were also directly notified of the application of interim controls (Amendment C201) and of Council's intention to pursue permanent controls. Council considers that all affected parties have had an opportunity to lodge submissions with Council and appear at this hearing.
- 38. Council submits that it is common for councils to undertake a process of heritage studies and gap studies over time to ensure that significant heritage assets are protected in the Heritage Overlay. This was acknowledged by the Panel⁵ in Amendment C164 to the Scheme (which implemented the 2015 Heritage Study):

It is common and necessary for councils to undertake heritage studies over time to ensure significant heritage assets are appropriately identified, and if justified, included in a Heritage Overlay. Circumstances may include geographical gaps, emerging periods of development previously not considered important but have become so, gaps in typologies and new Criterion or methodologies.

39. Council submits that the Amendment process provides ample opportunity for affected parties to participate in the process and agitate any issues. New information provided by submitters has been considered by Council and Ms Schmeder, and, where appropriate, Council resolved to support changes to the exhibited Amendment documentation to respond to the submissions at the meeting of 25 August 2020. Council also supports further changes recommended by Ms Schmeder through her evidence which address issues raised by submitters.

⁵ Moonee Valley C164 [2016] PPV 148, pp.19-20.



Property values and financial implications

- 40. A number of submitters raise concerns about the potential impact of the heritage controls on property values and the maintenance costs of individual properties.
- 41. Council submits the private financial impacts for property owners (such as those raised by submitters) are not relevant matters to take into account in the assessment of appropriate heritage controls. PPN1 identifies the Criterion for assessing the heritage significance of a heritage place and refers only to matters of a heritage nature.
- 42. While Council acknowledges financial impacts may be considered if they overlap with, or translate into public economic effects, it is evident that the financial matters raised in the submissions are expressed on a site-by-site basis (that is to say how the Heritage Overlay affects the submitter personally) and not at a broader community level.
- 43. Council's approach to these submissions is consistent with the views of various planning panels and judicial authority.
- 44. In Amendment C129 to the Moreland Planning Scheme, the Panel specifically considered the potential impacts of a Heritage Overlay on property values. To this end, the Panel observed under the heading 'Property Ownership and Land Values':⁶

What is the issue?

The principal issue is the personal financial impact of inclusion of an owner's property in the Heritage Overlay. For some owners the issue plays out in a number of ways:

- a perception that property value will be diminished;
- a perception that future use or development of the property will be restricted or not be allowed;
- a perception that owners will be obliged to restore their properties to something approaching original condition entailing extra expenditure on repairs, maintenance or other works; and, consequently,
- a perception that controls are not equitable.
- 45. The Panel in Moreland Amendment C129 then went on to discuss the issues as follows⁷, referring to previous panel decisions in relation to Amendment C53 to the Frankston Planning Scheme and C78 to the Moreland Planning Scheme:

Discussion

In relation to financial impacts, in its decision on Frankston Amendment C53 (June 2010) the Panel held that:

Panels have repeatedly ruled that such issues are not material to this stage of the planning process – a position supported by Practice Notes and numerous VCAT decisions. This view maintains that it is appropriate for the responsible authority to consider all the objectives of the Planning and Environment Act 1987 - including fair, orderly, economic and sustainable use, and development of the land "(s.4(1)(a)) ... and ... to balance the present and future interests of all Victorians" (s.4(1)(g)). However, the question of personal economic impact or potential constraint on development are seen as matters for the next stage of the planning process i.e. at the time a permit is applied for.

The Frankston C53 Panel also noted that:

⁶ Moreland C129 (PSA) [2013] PPV 11, pp. 10-11.

⁷ Moreland C129 (PSA) [2013] PPV 11, pp. 10-11.



This approach has the merit of separating two distinct issues – assessment of the significance of the place; and, the question of its conservation, adaption, alteration or demolition. This conforms to proper heritage conservation practice including the Australia ICOMOS Charter for the Conservation of Places of Cultural Significance (the 'Burra Charter'), and mirrors the processes of the Victorian Heritage Act 1985.

It reflects the desirability of considering long term matters (if we accept that heritage significance is likely to be somewhat enduring, if not immutable) at one point in time; and shorter term matters (personal desire, financial considerations and economic circumstances) when they are most relevant. The so-called 'two-stage' process also underlines the proposition that heritage assets (unlike some other aspects of planning) are often irreplaceable. It is important that neither the Planning and Environment Act 1987 nor the Frankston Planning Scheme envisage their loss on the basis of personal whim or desire in continually changing economic or financial environments.

In addition, as noted in Moreland C78 and reiterated in this report, the Southern Grampians C6 Panel reasoned:

> The Panel takes the view that there is a two stage planning process in relation to management of heritage places - the objective identification of heritage significance (the current stage); and, second, ongoing management of the place having regard to such matters such as the economics of building retention and repair, reasonable current day use requirements etc. (consideration of permits for development).

> > [italics are the Panel's emphasis]

46. The Panel concluded that while it is appropriate for a planning panel to consider the 'fair, orderly, economic and sustainable use, and development of land' in accordance with the objective set out under s 4(1)(a) of the Act, 'personal' financial circumstances (amongst others) are not the type of economic matters envisaged by this objective:8

> This Moreland C129 Panel takes the view that it is appropriate for the planning authority to consider all the objectives of the Planning and Environment Act 1987 and, accordingly, it is guite appropriate to consider fair, orderly, economic and sustainable use, and development of the land and to balance the present and future interests of all Victorians; and it is open to the Panel to similarly balance these matters with heritage considerations, based on the evidence submitted to it.

> This Panel, however, adopts the position that personal financial (and other) circumstances are not the economic matters envisaged in s.4(1)(a) - which the Panel takes to refer to the economy in its usual broad community sense. By way of example, the Panel may consider conflict with policies regarding the location of a new airport as a relevant matter. Again, for the Amendment to meet the other tests of fair ... orderly ... sustainable use ... and development of the land, the Act requires the Panel to satisfy itself that the Amendment has been:

Developed, documented and exhibited in accordance with the Act – rigorously. transparently and with equal access to process; and

That there is no evidence submitted that establishes that there is no sustainable use for the property.

[underlining and italics are the Panel's emphasis]

47. Since the release of the Panel's report in Moreland Amendment C129 (2013), s 12(2)(c) of the Act has been amended and now states that a planning authority, in preparing a planning scheme amendment, 'must take into account its social effects and economic effects'.

⁸ Moreland C129 (PSA) [2013] PPV 11, p 11.



- 48. In Amendment C207 to the Melbourne Planning Scheme a question arose as to whether the private cost implications for property owners was a relevant consideration by a panel or planning authority in the context of considering the 'economic effects' of an amendment.
- 49. The panel distinguished private costs of this kind from public costs and benefits. Public costs were identified as a proper consideration in relation to planning scheme amendment matters while the panel held private economic impacts fell outside the scope for consideration. It was suggested however that the private costs (or at least the economics of building retention versus demolition) **might be** matters which were relevant if a planning permit triggered by the overlay were later to be considered:⁹

The Panel agrees with Mr Morris [who appeared for an objecting submitter], relying on *Gantidis*, that the social and economic effects most likely to be relevant at the Amendment stage are those of a broad community nature rather than of a personal kind. Personal economic and social impacts, as against effects for the community as a whole, are generally not matters taken into account in planning decisions. This is also recognised in the Panel report on Amendment C50 to the Campaspe Planning Scheme at Section 5.10...

The Panel recognises that the changes to s.12(2)(c) of the Act in relation to preparing amendments have implications for the manner in which various social and economic matters raised in relation to heritage amendments are to be treated. Where the social and economic effects raised in submissions are of a community nature, they may well be relevant matters. To meet the requirements of the Act, planning authorities and Panels will have to endeavour to consider those matters when preparing an amendment along with other relevant issues.

[Emphasis added]

- 50. The Panel's report in Melbourne Amendment C207 was considered by the Victorian Supreme Court per Garde J in *Dustday Investments Pty Ltd v Minister for Planning* [2015] VSC 101. In response to extensive submissions from the Plaintiff, Justice Garde found that the Plaintiff had failed to show any legal error on the part of the Panel which heard Amendment C207 to the Melbourne Planning Scheme.
- 51. In relation to the question of social and economic effects, Justice Garde determined:¹⁰

Where planning authorities are directed to consider conservation or heritage matters, or social and economic effects, consideration must inevitably be given as to the stage in the planning process that has been reached, and the nature of the consideration that is to be given to these matters or effects at that stage.

52. Subsequent panels have agreed, including the Moreland Amendment C149 Panel and the Panel in Amendment C164 to the Moonee Valley Planning Scheme (which implemented the 2015 Heritage Study), the C164 Panel concluded¹¹:

Concerns from individual property owners around loss of property value and increased maintenance and development costs are recurring issues raised at panels considering the application of heritage overlays. The Panel acknowledges there may be an increased financial burden on individual property owners, but the application of heritage controls may not necessarily lead to overall negative financial impacts. That said, the Panel must limit its considerations to the consideration of net community benefit or loss, not potential impacts on individual property owners.

...

Given the obligation for the Panel to consider social economic impacts at a community level and therefore achievement of net community benefit of the Amendment, the Panel consider the strength of the evidence to support the application of a Heritage Overlay must be sound and clearly justified so that the broader community benefit of applying additional development controls is apparent.

⁹ Melbourne C207 [2014] PPV (21 January 2014), pp. 22, 27.

¹⁰ Dustday Investments Pty Ltd v Minister for Planning [2015] VSC 101, paragraph 101.

¹¹ Moonee Valley C164 [2016] PPV 148 (1 December 2018), p 34.



- In Amendment C282 to the Stonnington Planning Scheme, the issue of the social and economic impact of applying a Heritage Overlay to a medical practice. The owner asserted that the HO148 would impact the property value and potentially impact the ability of the site to grow, which would have an impact on the provision of medical services to the community.
- 54. The Panel considered it relevant to consider the social and economic impact of the application of the HO148 to the medical facility, stating¹²:

Without diminishing the contribution made by the existing medical facility which no doubt provides an important service to its clients and has an established relationship with The Avenue Hospital, the MOG submission focused primarily on the potential loss of property value and associated equity issues for their site. The Panel acknowledges that the Amendment may have some economic impact on the land owner, however this is a private economic impact rather than a broader community impact. The Panel does not consider that these private impacts outweigh the broader community benefit of the Amendment.

Social and economic impacts are difficult to quantify and often intangible in the absence of any analysis and evidence. As identified in the *Heritage Listing & Property Valuations in Victoria, Heritage Victoria, March 2001* report, property values are influenced by a complex range of factors.

The Panel considers that the potential impacts, including impacts on future development, on 31-33 The Avenue or any other individual property affected by the Amendment will be relatively short-term impacts with the broader community benefit of retaining a precinct of cultural heritage significance having a more enduring impact.

- While Council recognises the concerns of the submitters are concerns genuinely held by them, Council considers that the social and economic concerns raised by submitters appear to be of a personal or property specific nature. This differs to the type of community wide social effects which could occur where the provision of medical services is restricted (although we note that the Panel in Amendment C282 found that this was not established in relation to the HO148 in any case).
- 56. In accordance with the above panel reports and judicial authority, Council submits that the personal and property specific economic factors asserted by several submitters are not relevant to the Panel's consideration.
- 57. Further, we note that no submitters have raised concerns relating to the public or community level social and economic considerations. Additionally, no submitters have provided quantifiable evidence of the purported economic impact of the Amendment. The economic and social effects of the Amendment were considered in the Explanatory Report to the Amendment which acknowledged that although there may be economic costs to individuals, this 'will be offset by the benefits to the broader community by protecting places of heritage significance which will result in a net community benefit.' Council adopts this position for the Panel hearing.
- 58. Additionally, Council notes that submitters #14 and #59 have requested changes to the land tax valuation for the land, compensation from the Council in respect of purported financial losses associated with the Heritage Overlay, and an exemption from future permit application fees.
- 59. The issue of financial support and incentives for owners of places affected by the Heritage Overlay was raised at the Panel Hearing for Amendment C164. The Panel found¹⁴:

There is a variety of incentives and support provided to owners of places provided by various Councils, and the extent of support depends on their own resources and priorities. Examples can include low interest loans, grants, rate discounts, heritage advisory services, consideration for land to be used for otherwise prohibited uses,

¹² Stonnington C282ston [2019] PPV 46, p13.

¹³ Explanatory Report, p 9.

¹⁴ Moonee Valley C164 [2016] PPV 148 (1 December 2018), p 34.



extending permit exemptions, facilitating maintenance and restoration works through conservation volunteers and waiving permit application fees. These measures can be applied as incentives or assistance to retain and maintain places of cultural heritage significance for future generations. There are few other zone or overlay controls beyond the Heritage Overlay where Councils tend to provide such incentives (thus acknowledging the community benefit of retaining privately owned heritage places).

The role of the Panel for this Amendment is to consider whether particular places ought to be included within the Heritage Overlay. The Panel is not in a position to undertake a comprehensive review of the Australian and Victorian system against other jurisdictions across the world nor to make formal recommendations to Council with regard to incentives they ought to apply. The Panel notes that the 2011 Heritage Strategy does consider some of these issues under its "Supporting" section (page 15).

[emphasis added]

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- 60. Consistent with the Panel in Amendment C164, Council submits that matters such as financial support for affected owners are not relevant considerations for the Panel in considering whether the Heritage Overlay should be applied.
- 61. Additionally, Council confirms that the purpose of the Amendment is not to raise revenue through increased permit application fees, as purported by the submitters.

Redevelopment opportunities

- A number of submitters raised concerns that the Heritage Overlay would limit redevelopment opportunities and make altering and maintaining these properties too onerous.
- 63. Council acknowledges that the Heritage Overlay introduces a layer of control for property owners by imposing additional permit triggers and relevant considerations to a future planning permit application.
- However in Council's submission, this is necessary to ensure those places with the requisite level of heritage significance are recognised and appropriately managed.
- 65. In Amendment C6 to the Southern Grampians Planning Scheme, the Panel commented:

The Panel takes the view that there is a two stage planning process in relation to management of heritage places – the objective identification of heritage significance (current stage); and, second, ongoing management of the place having regard to such matters such as the economics of building retention and repair, reasonable current day use requirements etc (consideration of permits for development).

This framework for management of heritage places is not set out in the Act nor in the Practice Note but has been adopted by planning panels and by the Victorian Civil and Administrative Tribunal.¹⁵

66. Further, in Amendment C266 to the Boroondara Planning Scheme, the Panel recognised provisions within the Scheme restricting land use and development are not uncommon and that alterations to heritage properties are possible. It stated:¹⁶

The Boroondara Planning Scheme has many provisions that restrict or enable land use and development in different circumstances. The Heritage Overlay gives Council the ability to assess certain permit applications in response to the heritage place, including applications to demolish or remove a building.

The extent of further development will vary depending on each property's individual characteristics including positioning of the building on the lot, the design and configuration of the significant building, location of buildings abutting the property and the aspirations of each land owner.

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¹⁵ Moonee Valley C164 [2009] PPV 27 (20 March 2009), p 21.

¹⁶ Boroondara C266 [2018] PPV 63 (5 July 2018), p 26.



Most of the exhibited properties are in the Neighbourhood Residential Zone or the General Residential Zone which restricts development through mandatory maximum building heights and mandatory garden area requirements. Clause 54 and 55 provisions (commonly referred to as ResCode), policy and overlays might also restrict a property owner's development plans.

Many buildings in the Amendment have been altered and modernised while retaining heritage significance, which demonstrates that heritage properties can be altered and modernised.

67. In addition, in Amendment C274 to the Boroondara Planning Scheme, the Panel concluded: 17

The application of the Heritage Overlay may restrict the development potential of a property, but this is not a justification for recommending against the application of the Heritage Overlay.

- 68. The above Panels have correctly understood and applied the right 'test'. If a property or precinct display the requisite levels of significance, this warrants heritage protection by application of a Heritage Overlay.
- 69. Future redevelopment opportunities of heritage properties are also immaterial to this stage of the planning process. They are properly considered at the time a planning permit is applied for.
- 70. Council considers this approach correctly recognises the importance of prioritising enduring and long term matters such heritage protection and conservation over matters of development potential, building condition, personal economic matters and planning approvals which are, by contrast, short-term in nature.
- 71. Importantly, while 'heritage' will become an additional matter for consideration, the introduction of the Heritage Overlay does not preclude nor encourage buildings, works or demolition of a property altogether.
- 72. It is a well-recognised and a generally accepted consequence that planning controls will set parameters in relation to the use and development potential of land. All properties in the municipality are subject to zoning controls and most are also subject to overlay controls.
- 73. Council's local heritage policy at clause 15.03-1L (Heritage conservation) of the Scheme sets out the relevant strategies and guidelines to guide decision making under the Heritage Overlay. This policy enables Council to consider applications on a base by case basis. Council acknowledges that clause 15.03-1L generally discourages the complete demolition of a significant or contributory heritage place unless:
 - the heritage place is structurally unsound and it cannot be feasibility be repaired or adopted for reuse;
 - the heritage place is in poor condition and it is proposed to deconstruct and accurately rebuilt it to the original condition.
- 74. However, it does not preclude the opportunity for partial demolitions, extensions and redevelopment. Further, Council's Permit Exemptions Policy exempts certain development from the need for a planning permit.
- 75. Council finally notes that any limitations associated with the proposed Heritage Overlay controls is consistent with those already extended to thousands of inner and middle ring properties in the metropolitan area already subject to Heritage Overlay controls.

¹⁷ Boroondara C274 Part 2 [2018] PPV 99 (17 October 2018), p 85.



Integrity and intactness of precincts

- 76. A number of submitters questioned the proportion of non-contributory and contributory places within a precinct.
- 77. This raises the issue of the threshold for 'integrity' and 'intactness' used to establish a precinct or precinct extension.
- 78. In considering this issue, it is first important to understand the difference between these two terms. The 2017 Heritage Study¹⁸ adopted the definitions of 'integrity' and 'intactness' as set out in the Panel Report for Amendment C14 to the Latrobe Planning Scheme¹⁹:

For the purposes of this consideration, the Panel proposes the view that intactness and integrity refer to different heritage characteristics.

Intactness relates to the wholeness of (or lack of alteration to) the place. Depending on the grounds for significance, this can relate to a reference point of original construction or may include original construction with progressive accretions or alterations.

Integrity in respect to a heritage place is a descriptor of the veracity of the place as a meaningful document of the heritage from which it purports to draw its significance. For example a place proposed as important on account of its special architectural details may be said to lack integrity if those features are destroyed or obliterated. It may be said to have low integrity if some of those features are altered. In the same case but where significance related to, say, an historical association, the place may retain its integrity despite the changes to the fabric (Structural integrity is a slightly different matter. It usually describes the basic structural sufficiency of a building).

Based on this approach it is clear that whilst some heritage places may have low intactness they may still have high integrity – the Parthenon ruins may be a good example. On the other hand, a reduction in intactness may threaten a place's integrity to such a degree that it loses its significance.

- 79. The 2017 Heritage Study used 'intactness' and 'integrity' as thresholds for establishing precincts which is described in detail in Ms Schmeder's evidence statement and in the 2017 Heritage Study.²⁰ In summary:
 - 79.1 'intactness' was used to measure the percentage of Contributory places in a precinct, with a precinct generally required to have moderate intactness (60-80% Contributory places) and in some cases high intactness (80-100% Contributory places); and
 - 79.2 'integrity' was used to establish whether a place was Contributory to a precinct. The 2017 Heritage Study states 'while the Contributory places 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'.'21
- 80. Despite the thresholds outlined above, both the 2017 Heritage Study and Ms Schmeder note that the intactness of a precinct is not the only relevant consideration. As stated by the Advisory Committee appointed to undertake the *Review of Heritage Provisions in Planning Schemes 2007* (**Advisory Committee Report**), it is 'neither possible nor desirable to set hard and fast rules about percentages.'²² In some cases, a precinct could have low intactness but warrant the Heritage Overlay because the remaining fabric demonstrates something important to the municipality.

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¹⁸ 2017 Heritage Study, Appendix A, p 11.

¹⁹ Latrobe C14 [2010] PPV 53 (19 May 2020), p 16.

²⁰ 2017 Heritage Study, Volume 1, pp. 11-12.

²¹ 2017 Heritage Study, Volume 1, p. 12.

²² 2017 Heritage Study, Volume 1, p 12 referring to Advisory Committee Report pp 2-54. [8165681: 28164112_1]



81. Council submits that each proposed precinct or precinct extension has been considered on a case-by-case basis having regard to the intactness and integrity measures applied above, which is consistent with established approaches to precinct heritage planning.

Intactness of Individual Places

- 82. A number of submitters raise concerns about the degree of intactness of individual properties proposed to be included in the Heritage Overlay due to the extent of alterations.
- 83. The specific concerns raised by the submitters are responded to in respect of each property in Ms Schmeder's evidence statement and in this Part B submission.
- 84. The 2017 Heritage Study addresses the 'intactness' in relation to individual places as follows:

For potential individual places, the 'intactness' of the building was a primary consideration; however, comparative analysis would determine whether a building with lower 'intactness', but good 'integrity' could also be of local significance if, for example, it is rare.

- 85. Ms Schmeder and Council support this position. That is, a high level of intactness is required for individual places except in a few exceptional cases.
- 86. Ms Schmeder confirms this approach has been applied in all but one case in respect of this Amendment. The one instance she considers that the approach has not been followed is in relation to the house at 32 Robb Street. This issue was identified through the submissions process and Council's resolved position supports removing 32 Robb Street from the Amendment.

Building condition and structural integrity

- 87. Several submitters object to the Amendment on the basis of issues of structural integrity or poor condition of the property.
- 88. This was considered by the Panel considering Amendment C129 to the Moreland Planning Scheme, under the heading 'Building condition of the properties':²³

A number of submissions (addressed throughout section 6) raised the poor condition of their property and questioned the reasons for Heritage listing. The Panel and Council acknowledge that financial aspects and conditions are of considerable concern to property owners. However, the question is whether they are a valid consideration when identifying heritage places and protecting them through the introduction of the HO. The Panel agrees with Council in that:

Structural integrity and intactness of heritage places are important considerations in heritage places but are quite separate concepts and need to be considered at different stages.

[emphasis added]

89. The Moreland Amendment C129 Panel also observed the Advisory Committee had considered this issue in the Advisory Committee Report, stating:²⁴

Structural integrity or condition should not be a criterion in assessing heritage significance. It would be contrary to the fundamental principle in the Burra Charter that... the consideration of significance should not be coloured by consideration of the management consequences of listing. There are also good policy reasons why condition should not affect the assessment of Criterion: if it were to be a factor, it would encourage owners of heritage properties who were opposed to listing to allow them to fall into disrepair.

[emphasis added]

²⁴ Moreland C129 [2013] PPV 11, p. 13.



- 90. Council supports this 'policy ground' advanced by the Advisory Committee.
- 91. Should a panel refuse to recommend heritage controls for a property on the basis of its poor condition, this may motivate some property owners potentially subject to heritage controls to allow remnant heritage fabric to fall into a state of disrepair. In the context of a planning system which does not compel property owners to actively undertake restorative works, it is only appropriate heritage fabric be identified for protection at a separate stage of the process from when redevelopment or demolition proposals are brought to the Responsible Authority.
- 92. As noted by the Panel in Amendment C129 to the Moreland Planning Scheme the benefit of this approach is to separate two distinct issues (assessment as opposed to conservation or demolition) so as to ensure longer term matters (such as heritage significance) and shorter term matters (such as private economic considerations) are considered at the time they are most relevant.
- 93. Adopting the position of both the Moreland C129 Panel and the Advisory Committee, Council submits the structural integrity or current condition of the buildings forming part of the Amendment do not warrant consideration as part of this Amendment process.
- 94. This is not to say that the structural integrity or condition of a building is irrelevant in the planning system. Such factors are highly relevant at the planning permit stage. Clause 15.03-1L deals with this specifically, as noted above.
- 95. However to consider such matters at this stage of the Amendment process would undermine the longer term consideration of heritage protection.

Protection through other controls - Rescode or the Neighbourhood Character Overlay

- 96. Submitters also questioned the proposed application of the Heritage Overlay, instead asserting that the Neighbourhood Character Overlay (**NCO**) would better protect the features of the area which the Heritage Overlay is proposed to protect.
- 97. With respect, Council does not agree with this position.
- 98. Council refers to *Planning Practice Note 91: Using the Residential Zones* (December 2019) (**PPN91**), which highlights the differences between the NCO and the Heritage Overlay²⁵:

While all areas have a history or a heritage, not all areas are historically significant. Heritage significance is determined by recognised criteria set by Commonwealth, state and local agencies, with reference to the Burra Charter.

The Heritage Overlay (HO) should be used where the objective is to conserve the existing building or buildings.

The HO has different objectives from the NCO and is not intended to operate as a neighbourhood character control. However, heritage descriptors may also contribute to the neighbourhood character of an area.

- 99. Council submits that the heritage significance of the precincts and properties subject of the Amendment has been established through rigorous assessment in the 2017 Heritage Study.
- 100. The purpose of the Amendment is to ensure that these matters of heritage significance are protected in Moonee Valley. The objective is conservation, rather than control of future neighbourhood character. Accordingly, the most appropriate control is the Heritage Overlay.
- 101. It is critical that the Heritage Overlay, rather than the NCO, is applied when seeking to protect matters of heritage significance. The importance of this is highlighted in the PPN91 which provides guidance on the demolition control in the NCO as follows²⁶:

²⁵ PPN91, p. 11.

²⁶ PPN91, p. 11.



The demolition control in the NCO holds the existing pattern of development until the character features of the site and the new development have been evaluated.

The demolition control should not be used to conserve existing buildings, but rather to ensure that demolition does not occur until the planning authority is satisfied that the new development meets the neighbourhood character objectives for the area.

- 102. Clearly, where a property is sought to be protected to ensure that its heritage significance is conserved, the NCO would not provide sufficient protection in terms of demolition, as the demolition control is focused on ensuring that new development accords with neighbourhood character.
- 103. Similarly, several submitters questioned why Rescode is not considered sufficient to prevent inappropriate developments.
- 104. Council confirms that Rescode is a tool to control development through the various minimum standards required to be obtained. The issue is that, like the NCO, Rescode is not a control designed to protect and conserve heritage places. Accordingly, it is not a replacement for the Heritage Overlay.

HO12 Holmes Road Residential Precinct Extension

- The HO12 precinct extension is considered to be of historic (Criterion A) and representative (Criterion D) significance as 'a good representation of the residential development of Moonee Ponds prior to 1945'. The exhibited Statement of Significance states that 'as a whole the precinct is a good representation of the residential development of Moonee Ponds prior to 1945'.
- 106. Additionally, Milverton Street and the south side of Holmes Road are noted in the exhibited Statement of Significance as 'aesthetically significant for the clear expression of the two key periods of development in housing stock, which comprises predominately Victorian and Federation / Edwardian houses on the east side and interwar bungalows on the west' (Criterion E).
- 107. Council received 12 submissions in relation to the HO12, with Submitters #5, #8, #14, #102 and #103 requesting to be heard at the hearing.

Submitter #5 - 10 and 12 Grandview Street, Moonee Ponds

What are the issues?

- 108. 10 and 12 Grandview Street are proposed to be included in the HO12 with a Contributory grading. Submitter #5 objects on the basis that:
 - 108.1 10 and 12 Grandview Street have been altered and should not be included in the HO12, and if they must be included, they should be graded as Non-contributory; and
 - 108.2 Grandview Street consists of a number of Non-contributory buildings which 'breaks up' the street.
- 109. Submitter #5 has called Mr Raworth to give evidence in support of the submission.

10 Grandview Street

110. As set out by Ms Schmeder, 10 Grandview Street was graded as Contributory 'on the basis that it is a distinctive Federation bungalow that features a pyramidal hipped slate roof that extends to form the front verandah.'27

²⁷ N. Schmeder evidence statement, p. 53.



- 111. Mr Raworth questions the inclusion of the property in the HO12 and the Contributory grading given the extent of alterations to the property. Ms Schmeder and Mr Raworth agree that modern additions have occurred to the property. They disagree as to the period of time that the alterations occurred.
- 112. Ms Schmeder has considered Mr Raworth's evidence and the extent of alterations asserted by him in relation to 10 Grandview Street. Mr Schmeder provided an Addendum to her expert evidence summarising the outcome of her review, which has been circulated.
- 113. In summary, Ms Schmeder disagrees with Mr Raworth's evidence as to the extent of alterations which have occurred since the 1980s. She found that the 'major remodelling was carried out during the Federation period, probably at a similar time as when the similar house at 18 Grandview Street was constructed.'28
- 114. Additionally, Ms Schmeder acknowledges that the upper level extension has affected the intactness of the property. However Ms Schmeder confirms that her position, as set out in out in her evidence statement, is that this does not 'negate its contribution to the precinct.'²⁹
- 115. Council agrees with Ms Schmeder's evidence that, despite having undergone some change, the property still presents as a Federation bungalow to the street and warrants the Contributory grading.
- 116. Finally, Council also agrees that the front fence to the property is a reasonably sympathetic replacement. Original Victorian and Edwardian era fences are very rare and so their presence is not required for a house to be contributory to a heritage precinct.

12 Grandview Street

- 117. As set out by Ms Schmeder, 12 Grandview Street was graded as Contributory on the basis that 'it is a highly ornate Italianate rendered asymmetrical villa.'30
- 118. Submitter #5 objected to the inclusion of the property in the HO12, noting the extent of alterations to the property.
- 119. Ms Schmeder and Mr Raworth considered the alterations noted by Submitter #5 and both confirmed that the Contributory grading is warranted, with Mr Raworth stating:

Although this building has been extended and altered over the years – a double storey extension has been added to the rear of the dwelling as well as a garage to the south – both elements are set back well behind the principal façade, and neither adversely affect the Victorian villa's presentation to the Street.

The dwelling makes a clear contribution to the extended Holmes Street Residential Heritage Precinct and, in my opinion, is correctly identified as a contributory heritage place.³¹

120. Council agrees with the position of Ms Schmeder, noting that this is consistent with that of Mr Raworth.

Grandview Street

121. Submitter #5 also questions the inclusion of Grandview Street in the HO12, citing the proportion of non-contributory buildings and what is considered by the submitter to be the highly modified nature of many buildings in the street. Mr Raworth supports this position, relying on the work of Ms Baker which finds the number of Significant and Contributory places in Grandview Street to be 57%³².

²⁸ N. Schmeder Addendum to evidence statement, p 4.

²⁹ N. Schmeder evidence statement, p 56.

³⁰ N. Schmeder evidence statement, p 55.

³¹ B Raworth evidence, para 44-45 pages 19-20.

³² On the basis of the 28 properties illustrated in Figure 2 of Ms Baker's report.



- 122. Ms Baker asserts that five properties within the Grandview Street area do not warrant the Contributory grading proposed in the Amendment.³³ Mr Raworth's evidence suggests he supports this position, adding that upon his further review, 15 Grandview Street should also be graded Non-contributory.
- 123. In her Addendum to her expert statement, Ms Schmeder addresses each property in turn and finds that 4 and 18 Grandview Street and 84 and 86 Eglington Street warrant the Contributory grading. She agrees with Mr Raworth that 15 Grandview Street should be identified as Non-contributory.
- 124. On this basis, she maintains that Grandview Street:

...has a mix of fine Victorian and Edwardian houses (and single interwar example) whose heritage significance as a group is very clear to me. While some have very visible rear extensions, these are largely in keeping with works that are permitted in other HO precincts in the municipality.³⁴

125. Council agrees with Ms Schmeder's evidence and considers the application of the HO12 to Grandview Street to be justified.

Council's response

- As the additional information in relation to 15 Grandview Street was received after the Council Meeting of 25 August 2020, Council has not had the opportunity to formally consider a recommendation to revise the heritage grading of the property. That said, Council acknowledges the advice of both Mr Raworth and Ms Schmeder and agrees that it would not be appropriate for a property that is non-contributory to the precinct to retain the contributory grading. Council invites the Panel to consider these matters and provide a recommendation.
- 127. Council does not otherwise support any changes to the Amendment in response to the issues raised by Submitter #5.

Submitter #8 - 11 Milverton Street, Moonee Ponds

What are the issues?

- 128. 11 Milverton Street is proposed to be included in the HO12 with a Contributory grading.
- 129. Submitter #11 objects to the inclusion of the property in the HO12 raising issues related to:
 - the heritage value of the property and surrounding properties;
 - 129.2 maintenance costs, property value, compensation and financial assistance; and
 - 129.3 loss of development opportunities.

Council's response

- 130. Council adopts Ms Schmeder's response to the heritage issues raised by Submitter #11 as set out at pages 57-58 of her evidence statement.
- 131. Additionally, Council acknowledges that there is a mix of styles and building materials, reflecting the three different eras of house construction. However this mix is not unusual and it is seen in many existing heritage precincts both in Moonee Valley and other municipalities. Council considers, supported by Ms Schmeder, that this house is included in a very impressive and intact row of interwar houses. On this basis, Councils continues to support its inclusion in the HO12 with a Contributory grading.

³³ Being: 84, 86 Eglinton Street and 4, 10 and 18 Grandview Street.

³⁴ N Schmeder Addendum to evidence statement, p 9.



- The issue of private economic costs and loss of development opportunities is addressed in detail in Council's response to the general themes raised by submitters above.
- 133. Council submits that the heritage significance of the property as Contributory to the HO12 is established. Council does not support any changes to the Amendment in response to the issues raised by Submitter #8.

Submitter #14 - 64 Eglinton Street, Moonee Ponds

What are the issues?

- 134. 64 Eglinton Street is proposed to be included in the HO12 with a Contributory grading.
- 135. Submitter #14 objects to the inclusion of 64 Eglinton Street in the HO12 raising issues relating to:
 - 135.1 lack of justification for the application of the HO12 on selected properties;
 - 135.2 heritage value;
 - 135.3 land tax and related costs and compensation;
 - 135.4 whether Rescode can suitably respond to inappropriate developments; and
 - there is no heritage value in the property due to alterations.

Council's response

- 136. Council adopts Ms Schmeder's response to the heritage issues raised by Submitter #14 as set out at pages 58-61 of her evidence statement.
- 137. Council's response to the issues raised by Submitter #14 are set out in detail on pages 12-16 of Attachment A to the Council Report of 25 August 2020. In summary:
 - 137.1 The 2017 Heritage Study outlines how heritage places and precincts were identified and recommended for inclusion in the Heritage Overlay. Council submits, supported by Ms Schmeder's evidence, that the methodology of the 2017 Heritage Study was sound.
 - 137.2 The areas proposed for inclusion in the HO12 precinct extension have very similar histories and patterns of development to the existing HO12 precinct.
 - While it is agreed that there have been a series of unsympathetic alterations to the house, the original elements of the house that survive include its massing (with a block front and M-hipped roof), its chimneys (bichrome brickwork and cement-render cornice), the paired timber eaves brackets forming a pierced hole, the four-panel front door and the side walls of handmade bricks (overpainted).
- The issue of private economic costs, compensation and Rescode is addressed in detail in Council's response to the general themes raised by submitters above.
- 139. Council does not support any changes to the exhibited Amendment in response to the issues raised by Submitter #14.

Submitter #102 - 19 Milverton Street

What are the issues?

140. 19 Milverton Street is proposed to be included in the HO12 with a Contributory grading.

Maddocks

- 141. Submitter #102 supports the application of HO12 to 19 Milverton St, but considers the property should be graded as Non-contributory, rather than Contributory, raising issues related to:
 - 141.1 intactness;
 - 141.2 the condition of the building;
 - 141.3 location of the property next to the modern house at 21 Milverton Street;
 - 141.4 development opportunities and costs.

Council's response

- 142. Council adopts Ms Schmeder's response to the heritage issues raised by Submitter #102 as set out at pages 61-63 of her evidence statement.
- 143. Council's response to the issues raised by Submitter #14 are set out in detail on pages 30-32 of Attachment A to the Council Report of 25 August 2020. In summary:
 - The house at 19 Milverton Street is a timber Victorian Italianate dwelling with an asymmetrical façade. While it is typical of its era and could be described as 'unexceptional' (as suggested by the submitter), this does not preclude it from inclusion in the Heritage Overlay. Heritage precincts are a tool designed to be able to protect buildings that are typical of their era, but which add up to create streetscapes and areas that stand out in their suburb or municipality.
 - While the house has undergone some alterations, the house is largely intact, retaining its original massing and roof form (M-hipped roof with projecting hipped bay) and several other features. Given the degree of intactness, Council considers the property warrants inclusion in the HO12.
 - The house sits within a context of Victorian, Edwardian and interwar houses that are considered to contribute to the precinct. Neighbouring houses of another era do not, in Council's submission, detract from contributory value.
- The issue of the condition of the building and development opportunities and costs is addressed in detail in Council's response to the general themes raised by submitters above.
- 145. Council notes that Planning Permit MV/528/2014 was issued on 23 March 2016 for the construction of 3 double storey dwellings on the property. The permit was amended twice, however, it is now considered expired as no extension of time has been applied for or issued.
- 146. Council does not support any changes in response to the issues raised by Submitter #102.

Submitter #103 - Milverton Street

What are the issues?

Submitter #103 supports the extension of the HO12 and recommends to include all properties in Milverton Street except for 12 and 14, to protect the integrity of the streetscape. Submitter #103 raises concerns about the impact of future works at 12 and 14 Milverton Street on HO12.

Council's response

- 148. Council acknowledges the support from Submitter #103 for the HO12.
- 149. In relation to 12 and 14 Milverton St, Council confirms that they are proposed to be included in the HO12 with a Non-contributory grading. This will ensure that Council can consider the potential impacts of the proposed development of these properties on the precinct as a whole.
- 150. Council does not support any changes in response to the issues raised by Submitter #103.



HO21 South Street & East Street Precinct Extension

- 151. The HO21 is considered to be of historic significance (Criterion A) demonstrating two phases of rapid residential expansion in Ascot Vale (late 19th Century boom and early 20th Century). It is also of representative (Criterion D) and aesthetic (Criterion E) significance, 'as a good example of an early twentieth century residential area that contains cohesive streetscapes of predominately Victorian and Federation / Edwardian era houses with a smaller amount of Interwar infill, which are related in scale, form and detailing.'³⁵
- 152. Council received three submissions in relation to the HO21, with Submitter #62 requesting to be heard at the hearing.

Submitter #62 - 10 Ayr Street

What are the issues?

- 153. 10 Ayr Street is proposed to be included in the HO21 with a Contributory grading.
- 154. Submitter #62 objects to the inclusion of the property in the HO21 raising issues relating to:
 - 154.1 intactness and the heritage significance of the property and Ayr Street; and
 - 154.2 property value and permit fees.

Council's response

- 155. Council adopts Ms Schmeder's response to the heritage issues raised by Submitter #62 as set out at pages 66-69 of her evidence statement.
- 156. Council's response to the issues raised by Submitter #62 are set out in detail on pages 43-47 of Attachment A to the Council Report of 25 August 2020. In summary:
 - The properties on Ayr Street are considered appropriate for inclusion in the extended HO21 precinct as they contribute to intact groups of Federation / Edwardian houses that form logical extensions to the HO21 precinct.
 - The house at 10 Ayr Street is part of a group of four dwellings built to the same design at 4-10 Ayr Street, as two semi-detached pairs. While it is acknowledged that there have been alterations to the house, they are not considered to be of a degree which impact on its contribution to the heritage precinct. Council notes that the house retains many original features such as corbelled chimneys, eaves brackets, tuckpointed brick façade with rendered bands, double-hung sash windows, a glazed front door with sidelights and a highlight and turned timber posts.
- 157. The issue of property value and permit fees is addressed is addressed in detail in Council's response to the general themes raised by submitters above.
- 158. Upon review of this submission, it was acknowledged that the timber Edwardian house at 2 Ayr Street has been demolished since the precinct extension assessment was carried out, and replaced with a contemporary semi-detached pair of two-storey dwellings (2 & 2A Ayr Street).
- 159. In response to this submission, Council supports a change to the Statement of Significance to downgrade 2 & 2A Ayr Street from Contributory to Non-Contributory, as per the Council resolution of 25 August 2020.

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³⁵ South Street & East Street Precinct, May 2019 Statement of Significance under 'What is significant?' [8165681: 28164112_1]



HO326 Newhall Avenue Precinct Extension

- 160. The HO326 is considered to be of historic significance (Criterion A) demonstrating 'a typical pattern in the suburbs between the wars, when large Victorian properties began to lose their viability and were carved up for closer settlement'. Additionally, the precinct is of representative (Criterion D) and aesthetic (Criterion E) significance, comprising 'particularly intact streetscapes of interwar houses.'36
- 161. Council received two submissions in relation to the HO326, with Submitter #33 requesting to be heard at the hearing.

Submitter #33 - 12 Milfay Avenue, Moonee Ponds

What are the issues?

- 162. 12 Milfay Avenue is proposed to be included in the HO326 with a Contributory grading.
- 163. Submitter #33 objects to the inclusion of the property in the HO326 raising issues relating to:
 - 163.1 the consultation process related to the Stage 1 Gap Study and 2017 Heritage Study;
 - 163.2 adverse financial impact to the submitter in reliance on Council's property information; and
 - the selection of properties proposed for inclusion in the Heritage Overlay.

Council's response

- 164. Council adopts Ms Schmeder's response to the heritage issues raised by Submitter #33 as set out at pages 70-71 of her evidence statement.
- 165. Council's response to the issues raised by Submitter #33 are set out in detail on pages 48-50 of Attachment A to the Council Report of 25 August 2020. In summary:
 - The properties cited by the submitter as indicating a selectiveness or inconsistency in the 2017 Heritage Study several were demolished before a full assessment could be conducted of these properties. In the case of 25-45 Moore Street, it is now recommended for inclusion in the extension of HO16 Ascot Vale Estate precinct.
 - The houses on Milfay Avenue are considered to have a very high level of intactness when viewed from the street. The alterations and extensions which have occurred are not considered to disqualify a property from inclusion in the Heritage Overlay.
- 166. Council has discussed the consultation process related to the Amendment in detail above. Council confirms that a letter was sent to the owner in relation to the Stage 1 Gap Study to provide notice of the consultation process.
- 167. The issue of private economic costs is discussed in detail in Council's response to the general themes raised by submitters above. Council noted in Attachment A to the Council Meeting Report of 25 August 2020 that the property report referred to by Submitter #33 was issued before the commencement of 2017 Heritage Study and that the Stage 1 Gap Study was not referred to because it is a background document.
- 168. Council does not support any changes to the Amendment in response to the issues raised by Submitter #33.

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³⁶ Newhall Avenue Precinct, May 2019 Statement of Significance under 'What is significant?' [8165681: 28164112_1]



HO450 Aberfeldie Street and Waverley Street, Aberfeldie, Essendon and Moonee Ponds Precinct

- The HO450 is considered to be of historic (Criterion A),representative (Criterion D) and aesthetic (Criterion E) significance. The exhibited Statement of Significance highlights the 'mixed streetscapes of Victorian, Federation and interwar era houses, which retain key features and detailing characteristic of their respective styles, contributes to the clarity and legibility of the three key phases of the precinct's development.'³⁷
- 170. Council received six submissions in relation to the HO450, with Submitter #37 requesting to be heard at the hearing.

Submitter #37 - 23 Waverley Street

What are the issues?

- 171. 23 Waverley Street was proposed to be included in the HO450 with a Contributory grading.
- 172. Submitter #37 objects to the inclusion of the property in the HO450 raising issues related to:
 - 172.1 heritage significance of the property;
 - 172.2 the precinct boundary; and
 - 172.3 loss of development opportunities.

Council's response

- 173. Council adopts Ms Schmeder's response to the heritage issues raised by Submitter #33 at pages 73-75 of her evidence statement.
- 174. Council's response to the issues raised by Submitter #37 are set out in detail on pages 53-55 of Attachment A to the Council Report of 25 August 2020. In summary:
 - 174.1 It is agreed that 23 Waverley Street and some other houses along the west side of this street are partially concealed behind high fences. In the case of 23 Waverley Street, it is also agreed that there is poor visibility from the street and it is mainly the roof that is visible.
 - While the Stage 1 Gap Study indicated that 1-57 Waverley Street should be considered as part of the precinct, the detailed precinct assessment in 2017 concluded that 25-57 Waverley Street should be left out of the precinct.
 - 174.3 Based on the rationale for that decision, that is, because their contribution to the precinct is compromised by the combination of the broad and busy street, lower siting and high front fences screening views of the houses, Council considers on further review that 23 Waverley Street should also be excluded from the precinct. In the circumstances, Council considers the boundary of the precinct more logically ends at 21 Waverley Street.
- 175. Council therefore agrees with Ms Schmeder's recommendation and supports removing the property from the Amendment. This change was reflected in Council's resolution of 25 August 2020.

³⁷ Aberfeldie Street & Waverley Street Precinct, May 2019 Statement of Significance, under 'Why is it significant?' [8165681: 28164112_1] page 23



HO451 Brown Avenue and Morphett Avenue, Ascot Vale Precinct

176. The HO451 precinct is considered to be of historic (Criterion A) and representative (Criterion D) significance:

...as a representative area of late nineteenth and early to mid twentieth century housing in this western part of Ascot Vale. It demonstrates the extent to which speculative subdivision progressed into the more remote areas of Moonee Valley during the nineteenth century boom, and how this resulted in isolated pockets of Victorian housing on large estates that were not fully developed until the midtwentieth century.³⁸

177. Council received 17 submissions to the Amendment in relation to HO451, with Submitters #74, #94-#97 and #99 requesting to be heard at the hearing.

Submitters #54, #68, #75, #94- #97, #99, #100 and #113 - Brown Avenue

What are the issues?

- 178. Submitters #54, #68, #75, #94- #97, #99, #100 and #113 lodged identical submissions which object to HO451 on the basis of issues related to the whole precinct, summarised as:
 - issues with the drafting of the Statement of Significance;
 - lack of intactness of the precinct which comprises a 'mish mash' of houses from the late 1800s to present day, resulting in no predominant style; and
 - insufficient information on the heritage significance of individual places in the exhibited Amendment documentation.
- 179. Submitter #55 raised similar issues to the group of submitters identified above, including citing a lack of consistent heritage characteristics in the precinct and concerns regarding the ability to undertake future works.

Council's response

- 180. Council adopts Ms Schmeder's response to the heritage issues raised by these submitters at pages 176-177 of her evidence statement. In relation to the concerns these submitters raise in relation to the 2017 Heritage Study methodology, Council also relies on the evidence of Ms Schmeder.
- 181. Council's response to the issues raised by these submitters is set out in detail on pages 58-63 of Attachment A to the Council Report of 25 August 2020. In summary:
 - 181.1 While the submitters are correct in noting that some of the originally single-storey houses have been altered with two-storey additions, the Statement of Significance addresses these as 'non-original alterations and additions' which are identified as non-contributory.
 - The application of the Heritage Overlay does not mean there can be no change to contributory buildings, rather, they can be remodelled and upgraded internally without planning permission and extended with a planning permit. Council's Heritage Guidelines provide guidance in this process, noting that there are many examples of upper-level extensions to heritage properties in Moonee Valley.
 - 181.3 Council agrees that the front setbacks of the houses vary somewhat, but can be described generally as medium-sized front gardens.

³⁸ Brown Avenue and Morphett Avenue Precinct, May 2019 Statement of Significance under 'Why is it significant?' [8165681: 28164112_1]

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- 181.4 For clarity in relation to front fences, Council agrees that the Statement of Significance should be amended to confirm that it is not intended to refer to fences of particular heritage significance.
- 181.5 Council does not agree with the submitters in relation to the intactness of the precinct, and considers that the precinct is notable as containing the most intact groups of Victorian era housing in this western part of Ascot Vale. It demonstrates how far development progressed during the 19th century land boom and how this resulted in isolated pockets of housing on large estates that were not fully developed until well into the 20th century.
- 181.6 It is common for a scattering of non-contributory houses in all but the smallest heritage precincts.
- As noted above, Council supports a change to the exhibited Statement of Significance for HO451 to revise the reference to 'low front fences' to 'front boundary treatments that allow views of the houses from the street' in accordance with Council's resolution of 25 August 2020.

Submitter #74 - 22 Brown Avenue

What are the issues?

- 183. 22 Brown Avenue is proposed to be included in the HO451 with a Contributory grading.
- 184. Submitter #74 objects to the inclusion of the property in the HO451, raising issues relating to:
 - the drafting of the Statement of Significance and character of Brown Avenue, James Street and Morphett Avenue;
 - the Amendment classifying the property as Contributory, not Significant, so the significance of the precinct must be established for it to warrant protection; and
 - 184.3 PPN1.

Council's Response

- 185. Council adopts Ms Schmeder's response to the heritage issues raised by Submitter #74 at pages 79- 80 of her evidence statement.
- 186. Council's response to the issues raised by the submitter is set out in detail on pages 67-72 of Attachment A to the Council Report of 25 August 2020. In addition to the similar issues raised in relation to the submissions above, Council notes:
 - While it is agreed that one of the earliest houses in the precinct is not single-storey (i.e. 28 Brown Street, which is recognised in the Statement of Significance), the remainder of contributory houses are single storey. A number of these have a visible two-storey extension, which are recognised as non-contributory elements.
 - 186.2 It is agreed that there is variance of a few metres amongst the front setbacks of the contributory houses in the precinct. Generally, however, they conform to a suburban type of having medium-sized front gardens.
 - The majority of pre-war houses in Moonee Valley have pitched roofs, this aspect does not particularly distinguish the Brown and Morphett Avenue Precinct.
 - 186.4 22 Brown Avenue is an intact timber California Bungalow of the 1920s and Council considers of sufficient contributory heritage significance to the HO451 precinct.
 - The Non-contributory houses at 20 and 25 Brown Avenue do not diminish the significance of the precinct.



- 186.6 Finally, Council considers that the significance of the precinct relates to Criterion A (historical significance) and Criterion D (representativeness). It is not asserted that the precinct meets Criterion E (aesthetic significance).
- 187. Council otherwise adopts Ms Schmeder's detailed response³⁹ to the various drafting issues related to the Statement of Significance identified by Submitter #74 and confirms that it supports revisions to the exhibited Statement of Significance:
 - 187.1 to include references to 'small groups of attached Victorian houses' and the houses have 'front boundary treatments that allow views of the houses from the street' (in accordance with Council's resolution of 25 August 2020); and
 - 187.2 to correct a typographical error in the proposed text from: 'with a notable exemption the two storey terrace house at 28 Brown Street' to read 'with a notable exception...' (a further change resulting from Ms Schmeder's evidence).

HO452 Queens Avenue and Burton Crescent Precinct

- 188. The HO452 precinct is considered to be of historic (Criterion A) and representative (Criterion D) significance demonstrating 'the housing boom in Ascot Vale during the first two decades of the twentieth century and the Federation/Edwardian housing stock which comprises detached Victorian Italianate 'survival' and Queen Anne villas.'40
- 189. Additionally, it is of aesthetic (Criterion E) significance in relation to the form and setting of the Federation / Edwardian housing.
- 190. Council received three submissions in relation to the HO452 precinct, with Submitter #121 requesting to be heard at the hearing.

Submitter #121 - 182 Ascot Vale Road

What are the issues?

- 191. 182 Ascot Vale Road is proposed for inclusion in the HO452 with a Contributory grading.
- 192. Submitter #121 objects on the basis of personal economic and financial considerations relating to the value of the property, potential to sell, increased maintenance costs and insurance premiums.

Council's response

- 193. The submission was received after the Council meeting of 25 August 2020 and accordingly is not addressed in Council's response at Attachment A to the Council Meeting Report of 25 August 2020. However, as the submission does not raise heritage issues, Council can respond to the issues raised.
- 194. The issue of property value, potential to sell, increased maintenance costs and insurance premiums is addressed in detail in Council's response to the general themes raised by submitters above.
- 195. While the submitter has not questioned the heritage significance of the property, Council notes that Ms Schmeder's evidence at pages 82-83 of her evidence statement confirms the appropriateness of the HO452 and the Contributory grading of this property.
- 196. Council does not support any changes to the exhibited Amendment in relation to the issues raised by Submitter #121.

³⁹ N. Schmeder evidence statement, 77-78.

⁴⁰ Queens Avenue and Burton Crescent Precinct, May 2019 Statement of Significance under 'Why is it significant?' [8165681: 28164112_1] page 26



HO455 Mackay Street, Essendon Precinct

- 197. The HO455 precinct is considered to be of historic (Criterion A) significance illustrating 'what was a typical pattern of development in Moonee Valley, when larger estates were subdivided in the late nineteenth-century land boom, but where most development occurred between c.1904 and the 1930s'.
- 198. Additionally, representative (Criterion D) significance is established as the period is 'a representative area of late nineteenth century and early to mid-twentieth century housing' with a mixture of 'Victorian, Federation and interwar era houses, which retain key features and detailing characteristic of their respective styles...'41
- 199. Council received three submissions in relation to the HO455, with Submitter #78 requesting to be heard at the hearing.

Submitter #78 - 48 Mackay Street

- 200. Submitter #78 objects to the inclusion of 48 Mackay Street in the HO455, raising issues relating to:
 - 200.1 the contribution of interwar houses to the HO455; and
 - 200.2 the site context of 48 Mackay Street.
- 201. Submitter #78 has called Mr Paul to give evidence in support of the submission.

Interwar houses in the HO455

202. Submitter #78 questions the contribution of interwar houses in the HO455. Supporting this position, Mr Paul states:

The heritage context or streetscape comprises almost entirely Edwardian / Federation period houses, with a Victorian house, and another interwar house at No. 38.

. . . .

Rather than let the period of significance of this cluster of early housing determine the boundary of the HO then, it appears that the boundary of the proposed Precinct has been drawn to include the whole of Mackay Street for the sake of including the whole street, rather than allowing the heritage significance of the precinct determine this boundary.⁴²

- 203. Ms Schmeder acknowledges the significant proportion of Edwardian houses in the HO455, noting however, that the four interwar properties comprise approximately 10 per cent of contributory properties to the precinct.
- 204. Ms Schmeder differs to Mr Paul in that she considers the interwar houses have a relationship between the Edwardian houses and the early interwar houses of the precinct. Houses such as 48 Mackay Street acknowledge the transition between the Edwardian period to the interwar period, through:

Transitional elements from the Edwardian villa including a high hipped roof that continues over the front verandah, terracotta roof tiles with ram's horn finials, an asymmetrical façade created by a projecting gable, half-timbering in that front gable and a canted bay window below it, and tuckpointed pressed red bricks.⁴³

⁴¹ McCraken Street Precinct, May 2019 Statement of Significance under 'Why is it significant?'

⁴² A Paul Report, para 44 and 45, page 12

⁴³ N Schmeder Report, para 353 page 86.



- 205. Council supports Ms Schmeder's approach, noting her position that there is strong precedent in precincts included in the Heritage Overlay in Moonee Valley 'to recognise the three primary early period of development (Victorian, Edwardian, interwar) as contributory in residential precincts, even if there is only a small number from one of those eras.'44
- 206. In this regard she notes:
 - 206.1 HO21 South Street & East Street Precinct (in Ascot Vale) and HO24 Wellington Street, Flemington Precinct which have a predominant Victorian and Edwardian character but contain a small amount of interwar infill which is considered Contributory;
 - 206.2 HO2 Glass Street Precinct (adjoining Mackay Street) which has a predominately interwar and Edwardian character, with a small number of Victorian and Edwardian contributory houses; and
 - 206.3 HO1 Edward Street/ Richardson Street, Essendon with a 'small number of Victorian dwelling and some Interwar bungalows'.
- 207. Mr Paul does not appear to acknowledge this in his evidence, instead focusing on a comparison with the interwar bungalows in the HO2 Glass Street Precinct.
- 208. Council submits the comparison with the HO2 is relevant to the extent that it shows that it is common to recognise a period of development in a precinct, even where there are only a small number of properties from that phase. Further, Council submits that it is very common for multiple eras of houses to be protected in a single heritage precinct.

Site context of 48 Mackay Street

- 209. Mr Paul asserts a 'marked lack of cohesion at the northern end of Mackay Street, with houses that contrast in quality and period to most contributory houses in the precinct.'45
- 210. His evidence points to various factors which he considers compromise the significance of other proposed Contributory houses (40, 50 and 51 Mackay Street) at the northern end of the street, stating:

Given what I would argue is the non-contributory quality of the houses at No. 50 (due to its mid-century period and style) and No. 51 (due to its defacement), the subject property is isolated and lacking in immediate heritage context to which it might contribute. On this side of the street, it is a long way from other contributory graded houses, and even further when one considers the low integrity of No. 40.46

- 211. Additionally, Submitter #78 considers that 48 and 50 Mackay Street could be removed from the precinct without undermining the significance of the precinct.
- 212. Council disputes this position, confirming that:
 - 40, 50 and 51 Mackay Street are considered to be Contributory to the HO455 precinct as per the assessment in the 2017 Heritage Study and Ms Schmeder's evidence; and
 - 212.2 the Non-contributory properties to the south of 48 Mackay Street do not isolate these properties from the rest of the streetscape.⁴⁷
- 213. Council does not support removing 48 Mackay Street from the Amendment in response to the issues raised by Submitter #78 or the evidence of Mr Paul.

⁴⁴ N Schmeder Report, para 365, page 88.

⁴⁵ A Paul evidence statement, p 10

⁴⁶ A Paul evidence statement, p 11.

⁴⁷ N Schmeder evidence statement, p 86.



- 214. Council acknowledges that, as stated in Mr Paul's evidence, the previous clinker brick and iron front fence has been demolished.
- 215. Council does not, however, agree with Mr Paul that:
 - 215.1 48 Mackay Street is a poor example of a contributing house; or
 - 215.2 that the house at 22 Mackay Street, constructed c1917, has been inaccurately ascribed as part of the interwar period; or
 - 215.3 that the extension at 51 Mackay Street renders it Non-contributory to the precinct; or
 - 215.4 that 40 Mackay Street is Non-contributory to the precinct.
- 216. Additionally, Council rejects Mr Paul's suggestion that the precinct extension to the north is an example of 'period creep' in his evidence statement⁴⁸. The drawing of final precinct boundaries in the 2017 Heritage Study was based in part on the comparative analysis of all existing Heritage Overlay precincts carried out by David Helms in 2012. The findings of the 2012 work are summarised in Appendix B of Volume 1 of the 2017 Heritage Study. This appendix indicates that even existing precincts that contain predominantly one era of dwelling, there is often a mixture of later dwellings considered significant.
- 217. Council notes that through the submission process Ms Schmeder confirmed that the Contributory grading of 24 MacKay Street and 17 Mackay Street appears to have been an error. However this change does not, in Council's submission, undermine the significance of the precinct or the proposed Contributory grading of 48 Mackay Street.
- 218. Council also confirms that the bluestone laneways are intended to be protected as part of the precinct. They are mentioned as a significant element in the Statement of Significance, however, in error were not shown in the mapped extent of the precinct.
- 219. Accordingly Council supports a change to the Amendment to:
 - 219.1 remove front fence controls for 48 MacKay Street in the Schedule to clause 43.01 Heritage Overlay;
 - 219.2 remove reference to the original front fence at 48 MacKay Street in the Statement of Significance;
 - 219.3 amend the exhibited Statement of Significance and the map in the Permit Exemptions Policy to revise the grading of 17 and 24 Mackay Street to Noncontributory; and
 - amend the relevant mapping in the Amendment material to include the bluestone laneways at the rear of 3-13 and 4-48 Mackay Street, as identified in the exhibited Statement of Significance.
- 220. These changes are reflected in Council's resolution of 25 August 2020.

HO456 McCracken Street. Essendon Precinct

- The HO456 precinct is considered to be of historic (Criterion A) and representative (Criterion D) significance as 'an illustration of what was a typical pattern in the suburbs of Moonee Valley in the interwar period, when large Victorian-era mansion estates were subdivided...'49
- 222. Council received seven submissions in relation to the HO456, with Submitters #18, #50, #64 and #88 requesting to be heard at the hearing.

⁴⁸ A Paul evidence statement, p. 12.

⁴⁹ McCracken Street Precinct, May 2019 Statement of Significance under 'What is Significant?' [8165681: 28164112_1]



Submitter #18 – 29 McCracken Street, Essendon

What are the issues?

- 223. 29 McCracken Street is proposed for inclusion in the HO456 with a Contributory grading.
- 224. Submitter #18 objects to the Amendment raising issues relating to:
 - 224.1 intactness and alterations;
 - 224.2 the garden setting not being original; and
 - 224.3 lack of visual cohesion of the tree on the nature strip.

Council's response

- 225. Council adopts Ms Schmeder's response to the heritage issues raised by Submitter #18 at pages 95-98 of her evidence statement.
- 226. Council's response to the issues raised by the submitter is set out in detail on pages 89-92 of Attachment A to the Council Report of 25 August 2020. In summary:
 - The masonry construction of 29 McCracken Street makes it one of the most substantial houses in the precinct and worthy of a Contributory grade.
 - The 2017 Heritage Study singles out the Canary Island palm trees in the garden of 27 McCracken Street as they appear to be early plantings. The tree identified is not located on the nature strip.
 - 226.3 It is acknowledged that there have been alterations to the house and to its setting (i.e the original driveway has been removed and a small detached garage replaced by a double garage forming part of a rear extension). However, these alterations are considered to make the house an amalgam of styles and eras and in the case of the changes to the setting, do not diminish the contributory value of the property. The house is still of an intactness which is sufficient to contribute to the significance of the precinct.
- 227. Council does not support any changes to the Amendment in response to the issues raised by Submitter #18.

Submitter #50 - 43 McCracken Street

What are the issues?

- 228. 43 McCracken Street is proposed for inclusion in the HO456 with a Contributory grading.
- 229. Submitter #50 objects to the Amendment on the basis that:
 - 229.1 the property was not included in the Stage 1 Gap Study;
 - 229.2 the extent of alterations; and
 - 229.3 increase in planning application fees.

Council's response

- 230. Council adopts Ms Schmeder's response to the heritage issues raised by Submitter #50 at pages 92-94 of her evidence statement.
- Council's response to the issues raised by the submitter is set out in detail on pages 95-96 of Attachment A to the Council Report of 25 August 2020. In summary:

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- 231.1 In relation to the Stage 1 Gap Study, Council confirms that the property was considered as part of the study, but that there was an error in the property addresses for the precinct in the 2017 Heritage Study. In other words, the precinct was mistakenly listed in the 2017 Heritage Study as 26-52 & 27-29 McCracken Street. The Stage 1 Gap Study correctly identifies the potential precinct for investigation as encompassing 26-52 & 27-49 McCracken Street.
- 231.2 The house at 43 McCracken Street is one of two of the most prestigious houses in the precinct. Whilst it is acknowledged that there is a prominent secondary storey addition and there has been some alteration to the front façade of the house, it is still considered to contribute to the precinct as it remains largely intact, retaining the aesthetic qualities that contribute to the precinct.
- 232. The issue of personal financial costs such as planning application fees is addressed in detail in Council's response to the general themes raised by submitters above.
- 233. Council supports the following changes to the Amendment, as per Council's resolution of 25 August 2020, in response to the issues raised by Submitter #50:
 - remove the front fence controls for 43 McCracken Street in the schedule to clause 43.01 Heritage Overlay;
 - remove reference to the original front fence at 43 McCracken Street in the Statement of Significance;
 - amend the 2017 Heritage Study precinct description by recording the alteration to the house at 43 McCracken Street, being a change in roof form of the projecting front room from an original hipped form to the current gabled form; and
 - correct the addresses of the potential precinct extension on page 44 of Volume 1 of the 2017 Heritage Study to 26-52 & 27-49 McCracken Street.

Submitter #64 - 41 McCracken Street

What are the issues?

- 234. 41 McCracken Street is proposed for inclusion in the HO456 with a Contributory Grading.
- 235. Submitter #64 objects on the basis that:
 - 235.1 the property was not identified in the Stage 1 Gap Study; and
 - 235.2 the extent of alterations.

Council's response

- 236. Council adopts Ms Schmeder's response to the heritage issues raised by Submitter #64 at pages 98-102 of her evidence statement.
- 237. Council's response to the issues raised by the submitter is set out in detail on pages 99-106 of Attachment A to the Council Report of 25 August 2020. In summary:
 - In relation to the Stage 1 Gap Study, Council confirms that the property was considered as part of the study, but that there was an error in the property addresses for the precinct in the 2017 Heritage Study (as noted above).
 - 237.2 The visual cohesion of the precinct is strong, on both sides of the street. Visual consistency is provided by the uniform setbacks, garden settings, and the large number of houses built in a similar style (interwar Bungalow) with similar forms, materials, and details, and over a relatively short time span, from c.1927 to 1935.



- While there have been alterations to the house, particularly to the non-original front porch and the roof materials, it is on par with the loss and replacement of the front verandahs of Victorian and Edwardian houses in existing heritage precincts and the house otherwise retains its transverse gabled roof form.
- 238. Council supports the following changes to the Amendment, as per Council's resolution of 25 August 2020 in response to the issues raised by Submitter #64:
 - correct the addresses of the potential precinct extension on page 44 of Volume 1 of the 2017 Heritage Study to 26-52 & 27- 49 McCracken Street; and
 - revise the precinct citation in the 2017 Heritage Study to state that 41 and 50 McCracken Street originally had iron roofs.

Submitter #88 - 44 McCracken Street, Essendon

What are the issues?

- 239. 44 McCracken Street is proposed for inclusion in the HO456 with a Contributory grading.
- 240. Submitter #88 objects on the basis that:
 - the HO456 fails to meet the relevant HERCON Criterion thresholds;
 - 240.2 the extent of alterations in the precinct; and
 - 240.3 the property does include the significant features of HO456 due to intactness.

Council's response

- 241. Council adopts Ms Schmeder's response to the heritage issues raised by Submitter #88 at pages 103-105 of her evidence statement.
- 242. Council's response to the issues raised by the submitter is set out in detail on pages 106-111 of Attachment A to the Council Report of 25 August 2020. In summary:
 - While the c1980s addition of a return verandah to the house should be acknowledged in the precinct citation, many of the other changes listed to the property are minor with little or no impact on the heritage value of the house.
 - The house at 44 McCracken Street still clearly illustrates the valued character of the precinct, which Council submits is of significance and which is: 'a residential area comprising a group of interwar bungalows built in c.1927-35'.
- Council supports changes to the Amendment, as per Council's resolution of 25 August 2020, in response to the issues raised by Submitter #88 to revise the precinct citation in the 2017 Heritage Study to make a note of the c1980s addition of a return verandah to 44 McCracken Street.

HO457 Pascoe Vale Road, Essendon Precinct

244. The precinct is considered to be of historic (Criterion A) and representative (Criterion D) significance as an:

...example of a residential area, which is associated with the suburban development and expansion of Essendon during the early twentieth century. The nineteenth century houses are a reminder of the nineteenth century origins of this area, while the Edwardian and inter-war housing provides a tangible illustration of how the opening of the electric tram in 1906 stimulated residential development along its route.



- 245. Additionally, architectural and aesthetic significance (Criterion E) is established through 'fine collection of Edwardian villas and Inter-war bungalows, many of which are complemented by original front fences, and garden walls and landscaping'.
- 246. Council received 5 submissions in relation to the HO457, with submitter #66 requesting to be heard at the hearing.

Submitter #66 - 193 Pascoe Vale Road

What are the issues?

- 247. 193 Pascoe Vale Road is proposed for inclusion in the HO457 with a Significant grading.
- 248. Given the Significant grading, the property is specifically described in the exhibited Statement of Significance as being of representative (Criterion D), aesthetic (Criterion E) and technical (Criterion F) significance as 'a fine and early example of California Bungalow, which demonstrate the Japanese influence seen in seminal examples in the United Stated designed by architects such as Greene & Greene' which was 'constructed in 1916 and designed by architects Gawler & Drummond.'50
- 249. Submitter #66 objects to the application of the HO457 and the Significant grading, raising issues related to:
 - 249.1 the elements identified in the Statement of Significance;
 - 249.2 the threshold for Criterion F;
 - 249.3 intactness; and
 - 249.4 redevelopment of the property, noting it is on the edge of the Moonee Valley Activity Centre.

Council's response

- 250. Council adopts Ms Schmeder's response to the heritage issues raised by Submitter #66 at pages 108-112 of her evidence statement.
- 251. Council's response to the issues raised by the submitter is set out in detail on pages 115-122 of Attachment A to the Council Report of 25 August 2020. In summary:
 - 251.1 While it is not asserted that the house was designed by Greene & Greene, it has adopted a purist version of the Craftsman Bungalows designed by Greene & Greene.
 - 251.2 While the upper storey of the house may be of light-weight construction, this does not mean that it is a later addition, as demonstrated in Ms Schmeder's evidence.
 - 251.3 Council maintains that the Significant grading of the property in the HO451 is warranted but supports some changes to the Statement of Significance in response to the submission.
- 252. The issue of development opportunities is addressed in detail in Council's response to the general themes raised by submitters above.
- 253. In responding to this submission, Ms Schmeder and Council became aware of extensive alterations to 195 Pascoe Vale Road. This is described by Ms Schmeder at page 111 of her evidence statement.

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⁵⁰ Pascoe Vale Road Precinct, May 2019 Statement of Significance under 'What is significant?' [8165681: 28164112_1]



- 254. In light of Ms Schmeder and Council's consideration of this submission, Council supports changes to the exhibited Amendment in accordance with Council's resolution of 25 August 2020 to:
 - revise the precinct citation in the 2017 Heritage Study to note the 1916 Gawler & Drummond tender notice and the 1918 photo of 193 Pascoe Vale Road;
 - 254.2 amend the Statement of Significance to include the built date and architect for 193 Pascoe Vale Road; and
 - revise the grading of 195 Pascoe Vale Road to Non-contributory in the Statement of Significance and the Permit Exemptions Policy.

HO459 Roberts Street, Essendon Precinct

- 255. The HO459 is considered to be of historic (Criterion A) and representative (Criterion D) significance for the 'intensive suburban development that occurred during the interwar period in the parts of the municipality that were at some distance from the main transport corridors.⁷⁵¹
- 256. The exhibited Statement of Significance states that Roberts Street includes 'popular styles of the 1920s, predominately timber Bungalows, with a smaller number of later interwar architectural styles, namely the Old English revival style.' Additionally, the Victorian dwelling at 37 Roberts Street is noted in the Statement of Significance as 'historically significant for the evidence it provides of the first phase of subdivision.'
- 257. Council received five submissions in relation to the HO459, with Submitters #104 and #106 requesting to be heard at the hearing.

Submitters #104 and #106 - general precinct submission

What are the issues?

- 258. Submitters #104 and #106 lodged similar submissions and support of the Amendment subject to changes to the HO459. The submitters:
 - 258.1 consider the HO459 should include 33-49 Roberts Street (western side of the street);
 - do not support the inclusion of 42-48 Roberts Street (eastern side of the street);
 - consider the houses from 51-59 Roberts Street have little heritage value (this is stated by Submitter #104 only); and
 - raises the impact on property values, which are already impacted by COVID-19 (this is stated by Submitter #104 only).

Council's response

- Council adopts Ms Schmeder's response to the heritage issues raised by Submitters #104 and #106 as set out at pages 114-116 of her evidence statement.
- 260. Council's response to the issues raised by Submitters #104 and #106 are set out in detail on pages 129-132 of Attachment A to the Council Report of 25 August 2020. In summary:
 - The submitters are correct that the bungalow at 42 Roberts Street was demolished in c2018 and therefore the property no longer contributes to the precinct.

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⁵¹ Roberts Street Precinct, May 2019 Statement of Significance under 'What is significant?' [8165681: 28164112_1]



- As 42A and 42B are already Non-contributory, and now 42 Roberts Street does not contribute to the precinct, the precinct boundary should be amended to remove 42, 42A and 42B.
- 260.3 44-48 Roberts Street are intact interwar dwellings and make a clear contribution to the precinct and should not be removed.
- 260.4 51 Roberts Street is Non-contributory but 53, 55 and 57 are California bungalows that contribute to the precinct. The presence of 51 Roberts Street does not provide a reason to exclude this row of bungalows.
- 260.5 59 Roberts Street is Contributory to the precinct as an example of an early post-war house.
- 260.6 29 Roberts Street is Contributory to the precinct as a highly intact example of California Bungalow.
- 260.7 31 Roberts Street is Non-contributory, but should be included in the precinct as it sits between two Contributory properties (29 & 33 Roberts St) and the overlay will ensure future development will not impact the heritage significance of these properties. Council notes also that the Permit Exemptions Policy would exempt the need for a permit for demolition and several other works at 31 Roberts Street.
- The issue of development opportunities is addressed in detail in Council's response to the general themes raised by submitters above.
- In response to the submissions, Council supports changes to the Amendment, to remove 42, 42A and 42B from the Amendment, as per the Council resolution of 25 August 2020.

HO461 Clarence Street and Marshall Street, Flemington Precinct

- 263. The HO461 precinct is of historic (Criterion A) and representative (Criterion D) significance on the basis that it comprises 'two phases of development...clearly demonstrated by the building stock which comprises Victorian era housing in Clarence Street and Federation/Edwardian era housing in Marshall Street and is representative of how the residential areas in Flemington developed during the late nineteenth and early twentieth century'.⁵²
- Additionally, it is of aesthetic (Criterion E) significance for 'the characteristic form, materials and detailing of the Victorian era houses in Clarence Street' and the 'contrast to the Federation /Edwardian era houses in Marshall Street.' 53
- 265. Council received 10 submissions in relation to the HO461, with submitter #46 requesting to be heard at the hearing.

Submitter #48 – 21 Marshall Street, Flemington

What are the issues?

- 266. 21 Marshall Street is proposed for inclusion in the HO461 with a Contributory grading.
- 267. Submitter #48 requests the property be graded as Non-contributory, raising issues relating to:
 - 267.1 heritage significance and the elements of the property which are purported to contribute to the significance of the precinct;
 - 267.2 planning permit requirements and costs as Submitter #48 would like to demolish and rebuild a house on the property; and

⁵² Clarence Street and Marshall Street Precinct, May 2019 Statement of Significance under 'Why is it significant?'

⁵³ Clarence Street and Marshall Street Precinct, May 2019 Statement of Significance under 'Why is it significant?'
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- the submitter's view that the property should be graded the same as the Non-contributory properties at 22, 29 and 37 Marshall Street.
- 268. Submitter #48 subsequently provided a Building Inspection Report dated 22 June 2020 to Council and the Panel on 6 October 2020. Submitter #48 also provided emails on 4 & 5 November 2020 which attach photos of the lounge room and bathroom and raise issues relating to the dilapidated state of the property and Submitter #48's desire to construct a new house.

Council's response

- 269. Council adopts Ms Schmeder's response to the heritage issues raised by Submitter #48 as set out at pages 118-120 of her evidence statement.
- 270. Council's response to the issues raised by Submitter #48 is set out in detail on pages 129-132 of Attachment A to the Council Report of 25 August 2020. In summary:
 - The house retains many of the typical features of Edwardian houses described in the precinct citation in relation to Milverton Street.
 - 270.2 The removal of the front verandah is not uncommon for contributory houses in existing precincts.
- 271. The Building Inspection Report dated 22 June 2020 was received after the Council meeting of 25 August 2020 and accordingly is not addressed in Council's response at Attachment A to the Council Report. However, Ms Schmeder has had the opportunity to address it and her response is contained at pages 120-121 of her evidence statement:

The most extensive structural work required is restumping, which is a cyclical maintenance task that must be done every 50 years or so. There is no evidence in this report that the house is seriously dilapidated or that its demolition is an inevitable outcome of its current condition. For this reason, its condition should be disregarded when considering whether 21 Marshall Street contributes to the precinct.⁵⁴

- 272. Council adopts Ms Schmeder's analysis of the structural issues raised in relation to the property. Council has also addressed the issue of structural integrity and development costs in detail in Council's response to the general themes raised by submitters above.
- 273. Council does not support any changes to the exhibited Amendment in response to the issues raised by Submitter #48.

HO462 Ardmillan Road, Moonee Ponds Precinct

- 274. The HO462 precinct is of historic (Criterion A), representative (Criterion D) and aesthetic (Criterion E) significance with 'predominant Federation/Edwardian and interwar housing stock interspersed with Victorian era dwellings'.⁵⁵
- 275. Council received one submission in relation to the HO462 from Submitter #84 who has requested to be heard at the hearing.

Submitter #84 - 33 Ardmillan Road, Moonee Ponds

What are the issues?

276. 33 Ardmillan Road is proposed to be included in the HO462 with a Non-contributory grading.

⁵⁴ N. Schmeder evidence statement, p. 120.

⁵⁵ Ardmillan Road Precinct, May 2019 Statement of Significance under 'What is significant?' [8165681: 28164112_1]



277. Submitter #84 supports the application of the HO462 to the precinct but requests that 33 Ardmillan Road be removed on the basis that it is Non-contributory.

Council's response

- 278. Council adopts Ms Schmeder's response to the heritage issues raised by Submitter #84 as set out at pages 123-124 of her evidence statement.
- 279. Similarly, Council's response to the issues raised by Submitter #84 is set out in detail on page 147 of Attachment A to the Council Report of 25 August 2020. In summary Council considers it appropriate for the property to be included in the HO462 even though it is Non-contributory in order to ensure that the development of the property does not have a detrimental impact on the heritage values and visual cohesion of the streetscapes. As noted earlier, the fact that the property is graded Non-contributory also means that it is exempt from a number of planning permit requirements according to the Permit Exemptions Policy.
- 280. Council does not support any changes in response to the issues raised by Submitter #84.

HO465 Margaret Street & Park Street, Moonee Ponds Precinct

- 281. The HO465 precinct is considered to be of historic (Criterion A), representative (Criterion D) and aesthetic significance (Criterion E) which 'demonstrates the housing boom in Moonee Ponds during the late Federation / Edwardian and early interwar period, while the remnant Victorian houses are associated with the first phase of suburban development in the late nineteenth century.'56
- 282. Council received six submissions in relation to the HO465, with submitter #90 requesting to be heard at the hearing.

Submitter #90 - 17 Park Street, Moonee Ponds

What are the issues?

- 283. 17 Park Street is proposed to be included in the HO465 with a Contributory grading.
- 284. Submitter #90 objects to the Amendment raising issues related to:
 - 284.1 alterations to the façade and fence;
 - 284.2 the fact that other properties in the vicinity are not included;
 - 284.3 the impact on property values; and
 - 284.4 the impact of the modern developments nearby.

Council's response

- 285. Council adopts Ms Schmeder's response to the heritage issues raised by Submitter #90 at page 128 of her evidence statement.
- 286. Council's response to the issues raised by Submitter #90 are set out in detail at pages 160-162 of Attachment A to the Council Report of 25 August 2020. In summary:
 - 286.1 Council agrees that the front fence of the property has been replaced with a sympathetic 'Edwardian style' brick and timber front fence. As few original Edwardian-era fences survive, an original fence is not required for the property to be Contributory.

⁵⁶ Margaret Street & Park Street Precinct, May 2019 Statement of Significance under 'What is significant?' [8165681: 28164112_1]



- The single storey rear extension is noted but considered minor and is barely visible to the street (other than the new chimney).
- The intactness of the property meets the threshold to allow it to be Contributory to the precinct.
- 286.4 The precinct meets the threshold for intactness having regard to Contributory buildings in a precinct.
- 287. The issue of property values is addressed in detail in Council's response to the general themes raised by submitters above.
- 288. Council does not support any changes to the Amendment in response to the issues raised by Submitter #90.

HO470 Houses

289. The houses at 1 and 3 Adelaide Street are considered of aesthetic (Criterion E) significance as a pair of timber Californian Bungalows with joinery detail and a prominent appearance. The exhibited Statement of Significance states:

In keeping with the Japanese influence on bungalows when they developed in California, this pair boasts picturesque detail of this type including taper-cut bargeboards to the outer sides of the paired gables of each front façade, the tapered architrave to windows and doors, the elaborate window hoods, and the pierced timber frieze to number 3.⁵⁷

290. Council received one submission in relation to the HO470 from Submitter #82 who has requested to be heard at the hearing.

Submitter #82 - 1 Adelaide Street

What are the issues?

- 291. Submitter #82 objects to the application of the HO470 to 1 Adelaide Street, raising issues related to:
 - 291.1 structural integrity;
 - 291.2 heritage significance, noting that only the windows are of interest; and
 - 291.3 development opportunities.

Council's response

- 292. Council adopts Ms Schmeder's response to the heritage issues raised by Submitter #82 as set out at page 43 of her evidence statement.
- 293. Council's response to the issues raised by Submitter #82 are also set out in detail at pages 165-167 of Attachment A to the Council Report of 25 August 2020. In summary:
 - 293.1 The property and 3 Adelaide Street have been identified as a matched pair of interwar Californian Bungalows which have aesthetic significance to Moonee Valley.
 - 293.2 There are far more features of heritage significance than just the windows, as detailed in the 2017 Heritage Study.⁵⁸ The study notes that the house at 1 Adelaide

⁵⁷ 1 and 3 Adelaide Street, Ascot Vale, May 2019 Statement of Significance under 'What is significant?'

⁵⁸ Moonee Valley 2017 Heritage Study, Final Report Volume 2: Individual Places (27 February 2019, revisions 2020), pp. 40-48.



Street occupies a prominent position at the junction of Adelaide and Brisbane Streets at the top of a hill. Importantly, it notes the existing form and features of the house which give a picturesque oriental appearance and the relatively high integrity to both houses, which retain their original building construction forms. The study also notes that the integrity of the buildings is enhanced by the high level of intactness of the main elements of the houses (i.e. chimneys, roof tiles, eaves and gable end detailing, decorative timberwork, leaded glass window sashes amongst other features⁵⁹.

- 294. The issue of structural integrity and development opportunities is addressed in detail in Council's response to the general themes raised by submitters above.
- 295. Council does not support any changes in response to the issues raised by Submitter #82.

HO476 Tahoma

- 296. The 'Tahoma' house at 37 Sandown Street is considered of representative (Criterion D) significance as a 'fine and intact representative example of a late Californian Bungalow with some stylistic influence from neoclassical styles popular at the time.'60
- 297. Council received one submission in relation to the HO476 from Submitter #77 who has requested to be heard at the hearing.

Submitter #77 - 37 Sandown Street

What are the issues?

- 298. Submitter #77 objects on the basis that:
 - 298.1 the property has structural damage; and
 - 298.2 the surrounding area has a range of dwelling styles, including modern townhouses.

Council's response

- 299. Council adopts Ms Schmeder's response to the heritage issues raised by Submitter #77 as set out at page 43 of her evidence statement.
- 300. Council's response to the issues raised by Submitter #77 are set out in detail on pages 165-167 of Attachment A to the Council Report of 25 August 2020. In summary:
 - 300.1 Council acknowledges that there is relatively recent damage to the original front brick fence. This could be repaired without a planning permit using original material and detail or matching bricks.
 - 300.2 No external alterations to the house are visible from the street.
 - 300.3 Council acknowledges the surrounding dwellings are varied in style. However, when assessing whether a property meets the threshold for a site-specific Heritage Overlay, the other properties on the street are not taken into consideration. It is appropriate to apply the Heritage Overlay to the dwelling because it provides the last example of California Bungalow style in the street and meets the threshold for local significance.
- 301. The issue of structural integrity is otherwise addressed in detail in Council's response to the general themes raised by submitters above.

⁵⁹ Ibid, p. 43 for the full description and integrity identified in the 2017 Heritage Study.

⁶⁰ 37 Sandown Road, Ascot vale, May 2019 Statement of Significance under 'What is significant?' [8165681: 28164112_1]



 Council does not support any changes to the Amendment in response to the issues raised by Submitter #77.

HO485 Cloverlea (formerly Narwonah)

- 303. The former 'Narwonah' house at 6 Banchory Street is an example of a very early Californian Bungalow in Moonee Valley which is considered of representative (Criterion D), aesthetic (Criterion E) and associative (Criterion H) significance.
- 304. Council received one submission in relation to the HO485 from Submitter #40 who has requested to be heard at the hearing.

Submitter #40 - 6 Banchory Street, Essendon

What are the issues?

- 305. It is not clear whether Submitter #40 supports or objects to the Amendment. Submitter #40 raises queries relating to:
 - 305.1 the aspects of the property which are considered significant;
 - 305.2 whether other properties form part of the Amendment; and
 - 305.3 whether it is a coincidence that other properties the submitter owns have also had the Heritage Overlay applied.

Council's response

- 306. Council adopts Ms Schmeder's response to the queries raised by Submitter #40 in relation to heritage issues as set out at pages 49-50 of her evidence statement.
- 307. Council's response to the queries raised by Submitter #40 is set out in detail at pages 171-172 of Attachment A to the Council Report of 25 August 2020. In summary:
 - 307.1 The exhibited Statement of Significance for the HO485 sets out why the property is considered to be significant, stating that it 'is a very early Californian Bungalow in the municipality, constructed for a prominent member of the Essendon area, which provided a model for what would become the most popular residential style of the 1920s'.
 - 307.2 The 2017 Heritage Study assessed the properties at 1-2, 17-19, 2-8 and 20-22 Balmoral Street, 5-23, 8 and 18 Banchory Street, 2-6, 8-18 and 11-15 Woolley Street and found that these properties do not meet the threshold for local significance. Council supports the conclusion of the 2017 Heritage Study.
 - The properties at 29, 47 and 51 Rose Street which the submitter owns are not relevant to the Amendment. They were assessed as part of the 2015 Heritage Study and the Heritage Overlay was applied as part of Amendment C164 to the Scheme. The Submitter's ownership of these properties was not a factor in the assessment undertaken in the 2015 Heritage Study or the 2017 Heritage Study.
- 308. Council does not support any changes to the Amendment in response to the queries raised by Submitter #40.



HO487 Loreto and Carmel

- 309. The pair of houses 'Loreto' and 'Carmel' at 55 and 57 Brewster Street are considered of representative (Criterion D) significance as 'fine representative examples of the stylistic eclectism applied to the standard hipped-roof houses of the late interwar period.'61
- 310. Council received one submission in relation to the HO487 from Submitter #114 who has requested to be heard at the hearing.

Submitter #114 - 55 Brewster Street

What are the issues?

- 311. Submitter #114 objects to the application of the HO487 on 55 Brewster Street raising issues relating to:
 - 311.1 the heritage significance of the property compared with other examples (which is purported to be demonstrated in a report which was not provided to Council);
 - 311.2 the intactness of the property having regard to dilapidation of the interiors;
 - 311.3 the small and insignificant number of features of heritage significance;
 - 311.4 financial loss;
 - 311.5 the Amendment and notification process; and
 - 311.6 suspension of their demolition application.

Council's response

- 312. Council adopts Ms Schmeder's response to the heritage queries raised by Submitter #114 at pages 34-36 of her evidence statement.
- 313. Council's response to the issues raised by Submitter #114 is set out in detail on pages 172-176 of Attachment A to the Council Report of 25 August 2020. In summary:
 - 313.1 Council agrees with Submitter #114 that the houses at 55 and 57 Brewster Street do not possess all the key characteristics of the Moderne and Old English styles. Instead, Council submits the threshold for heritage significance is met through their representativeness (Criterion D) of 'stylistic eclecticism' of the late interwar period as set out in the Statement of Significance and referred to above.
 - 313.2 The property was only assessed from the outside and so the state of the interiors was not assessed. No internal controls are proposed for the property so Council submits that the state of the interiors is not relevant to the heritage significance of the property.
 - 313.3 Council does not agree with Submitter #114 that there are minimal elements of heritage significance. The significant features were assessed through the 2017 Heritage Study and are acknowledged in the Statement of Significance.
 - 313.4 Council has a process for assessing demolition consents for properties included in heritage studies which has been in place since 2015. Council sought to have the interim heritage overlay applied to the property because it met the threshold for requiring interim protection in Council's process while the further studies were undertaken. We note also that the interim Heritage Overlay has also been applied to the rest of the properties subject of the Amendment during the Amendment process.

⁶¹ 55 and 57 Brewster Street, Essendon, May 2019 Statement of Significance under 'What is significant?'



- 314. The issues of financial loss, consultation and notification are addressed in detail in Council's response to the general themes raised by submitters above.
- 315. Council does not support any changes to the Amendment in response to the issues raised by Submitter #114.

HO488 House

- 316. The property at 330 Buckley Street, Essendon is of representative (Criterion D) significance as a 'fine and substantial example of a classic Queen Anne villa' which 'displays the principal characteristics of the style.'62
- 317. Council received two submissions in relation to the HO488, with submitter #60 requesting to be heard at the hearing.

Submitter #60 - 330 Buckley Street

What are the issues?

- 318. Submitter #60 objects to the Amendment raising issues relation to:
 - 318.1 restriction of development opportunities, including the installation of a solar system;
 - 318.2 structural integrity;
 - intactness of the property noting that the projecting gable bay to the side west elevation and bay window and window hood have been removed; and
 - 318.4 location of the property on a main road means that the fence and gate do not provide any privacy and safety to the home and should not be significant.

Council's response

- 319. Council adopts Ms Schmeder's response to the heritage queries raised by Submitter #60 at pages 18-20 of her evidence statement.
- 320. Council's response to the issues raised by Submitter #60 is set out in detail on pages 176-179 of Attachment A to the Council Report of 25 August 2020. In summary:
 - 320.1 Council acknowledges that after the property was assessed in the 2017 Heritage Study, the western projecting bay window (including rendered neck above it and casement windows within it) was removed, with French doors installed in its place. While Council considers this alteration should be acknowledged in the Statement of Significance, there are many other elements remaining in the house which make it significant, and are described in detail in the Statement of Significance.
 - 320.2 The front fence and associated pedestrian and vehicular gates are significant as rare and surviving examples of what was once a very popular fence type. Council submits that as there are limited original examples of these fence types across Moonee Valley, it is important it be protected.
 - 320.3 The interface of the property with the main road is not relevant to whether the place meets the threshold of significance for inclusion in the Heritage Overlay. As noted by Ms Schmeder, this is consistent with the definition of a Significant place in the Permit Exemptions Policy.

⁶² 330 Buckley Street, Essendon May 2019 Statement of Significance under 'Why is it significant?' [8165681: 28164112_1]



- 321. The issues of structural integrity and development opportunities are addressed in detail in Council's response to the general themes raised by submitters above.
- 322. Council supports changes to exhibited Statement of Significance for the HO488 to note the removal of the bay window and associated details from the western projecting gable in the place description, as per Council's resolution of 25 August 2020.

HO492 House

- 323. The house at 20 Hesleden Street is of representative (Criterion D) significance demonstrating 'the transition in the early interwar period from the ornamented forms of the Federation period to the clean lines and reliance on strong massing and contrasting material textures for visual interest.'⁶³
- 324. Council received one submission to relating to the HO492 from Submitter #63 who has requested to be heard at the hearing.

Submitter #63 - 20 Hesleden Street, Essendon

What are the issues?

- 325. Submitter #63 objects raising issues relating to:
 - 325.1 lack of consultation;
 - 325.2 intactness and alterations;
 - 325.3 the fact that other properties are purported to be better candidates for the Heritage Overlay, such as a property on the corner of Morton and Hesleden Street, which are not included in the Amendment; and
 - 325.4 lack of heritage context as well as visual importance and aesthetic interest.

Council's response

- 326. Council adopts Ms Schmeder's response to the heritage issues raised by Submitter #63 as set out at pages 38-40 of her evidence statement.
- 327. Council's response to the issues raised by Submitter #63 is set out in detail on pages 183-187 of Attachment A to the Council Report of 25 August 2020. In summary:
 - 327.1 Council notes that the owner of the property made an objecting submission to the recommendation of the Stage 1 Gap Study, stating that alterations had been made to the front façade including the replacement of porch posts with tapered masonry piers, and the addition of a timber hood and shingle cladding to the attic window. Council officers requested that the confirmation of these alterations be provided and Ms Schmeder be granted access to inspect the façade. These requested were not granted.
 - As no firm evidence of alteration to the front façade could be obtained, it is not possible to reassess the heritage significance of the place and accordingly Council submits that the Heritage Overlay is appropriate.
 - 327.3 The property is not included in a potential heritage precinct, so it must meet the threshold of heritage significance on its own to warrant heritage protection. Council submits that it does, on the basis of the representative (Criterion D) significance highlighted in the exhibited Statement of Significance.

⁶³ 20 Hesleden Street, Essendon, May 2019 Statement of Significance under 'Why is it significant?' [8165681: 28164112_1]



- The other properties pointed to by Submitter #63 do not form part of the Amendment. Council relies on the advice of Ms Schmeder who notes that Submitter #63 provided a photo of a Californian Bungalow which is common to many suburbs around Melbourne. This means that the house could have been contributory to a precinct but would have been unlikely to warrant a site specific Heritage Overlay, unlike the property Hesleden Street which meets the threshold of significance on its own.
- 328. Council does not support any changes to the Amendment in relation to the issues raised by Submitter #63.

HO503 Kala Thea

- 329. The 'Kala Thea' house is considered to be of representative significance (Criterion D) as a 'relatively late but successful example of the interwar attic-storey bungalow, which adopts the restrained ornamentation of the contemporary Californian Bungalow style'.⁶⁴
- 330. Council received one submission in relation to the HO503 from Submitter #26 who has requested to be heard at the hearing.

Submitter #26 - 247 Pascoe Vale Road, Essendon

What are the issues?

- 331. Submitter #26 objects to the Amendment raising issues relating to:
 - heritage value, noting that the house is on a busy road and there is nowhere to stop out front making it impossible for the public to enjoy the property;
 - 331.2 alterations which have occurred since 1929;
 - 331.3 relevance of Robert Gordon White to Moonee Valley;
 - 331.4 the drafting of the Statement of Significance; and
 - 331.5 property value and development opportunity.

Council's response

- Council adopts Ms Schmeder's response to the heritage issues raised by Submitter #26 as set out at pages 14-16 of her evidence statement.
- Council's response to the issues raised by Submitter #26 is also set out in detail on pages 189-191 of Attachment A to the Council Report of 25 August 2020. In summary:
 - 333.1 In accordance with PPN1, it is not relevant to assess the interface of the property and the proximity to the main road. Instead, Council submits that the heritage significance is established as a high quality interwar attic storey bungalow, as described in the exhibited Statement of Significance.
 - The alterations to the exterior of the building are acknowledged and are documented in the Statement of Significance. Council submits that these changes are not considered to be substantial enough to diminish the integrity of the building.
 - 333.3 Council confirms that the reference to Mr White is noted as part of the historical details at the start of the Statement of Significance but is not a basis for recommending the inclusion of the property in the Heritage Overlay.

⁶⁴ 247 Pascoe Vale Road, Essendon, May 2019 Statement of Significance under 'What is significant?' [8165681: 28164112_1]



- 333.4 The drafting of the Statement of Significance accords with the requirements of PPN1.
- The issues of property value and loss of development opportunity are addressed in detail in Council's response to the general themes raised by submitters above.
- 335. Council does not support any changes to the Amendment in relation to the issues raised by Submitter #26.

HO504 Kildare

- The property at 71 Primrose Street is of significance as a rare (Criterion B) 'example of a house using a combination of bluestone walling and freestone quoining'.
- 337. Additionally, it is of representative significance (Criterion D) with the Statement of Significance noting that while 'its integrity is diminished by the replacement of original roof tiles, loss of chimneys and front verandah, the significance is retained because its Victorian origins are clearly evidence and is enhanced by the unusual bluestone and freestone construction.'65

Submitter #52 - 71 Primrose Street

What are the issues?

- 338. Submitter #52 objects to the Amendment raising issues relating to:
 - the lack of intactness of the property and the current restoration works which are in process;
 - 338.2 delays which will be caused to the restoration works and additional costs; and
 - 338.3 the lack of a proposed Heritage Overlay over other properties such as 10 Primrose Street, Moonee Ponds.

Council's response

- 339. Council adopts Ms Schmeder's response to the heritage issues raised by Submitter #52 as set out at pages 31-33 of her evidence statement.
- 340. Council's response to the issues of Submitter #52 is also set out in detail at pages 189-191 of Attachment A to the Council Report of 25 August 2020. In summary:
 - 340.1 Council acknowledges that some alterations have occurred to the property since 2014 and those alterations have been acknowledged in the Statement of Significance. However, Council submits that the heritage significance of the property is established for its rare (Criterion B) example of stone construction and representative (Criterion D) Victorian Italianate villa.
 - In relation to the delays caused to restoration works, Council notes that clause 43.01 provides that a permit is not required to carry out works, repairs and routine maintenance which do not change the appearance of a heritage place or which are undertaken to the same details, specifications and materials.
 - 340.3 Council confirms that 10 Primrose Street is intended to be assessed as part of a future study.
- 341. Council does not support any changes to the Amendment in relation to the issues raised by Submitter #52.

⁶⁵ 71 Primrose Street, Essendon May 2019 Statement of Significance under 'Why is it significant?' [8165681: 28164112_1]



HO509 - The Pines

- The Tower House on the property at 57 Vanberg Road is considered to be of historic (Criterion A) significance for its 'demonstration of the boom and bust of the 1880s land boom.' Additionally, the aesthetic (Criterion E) significance of the property is established through its 'demonstration of substantial Victorian era Italianate villa retaining much of its garden setting.' The Statement of Significance also notes it is of associative significance (Criterion H) for its association with John Goold who was in partnership with the Westmorland family in the Northcote Tile and Pottery Company.
- 343. Council received one submission in relation to the HO509 from Submitter #108 who has requested to be heard at the hearing.

Submitter #108 - 57 Vanberg Road

What are the issues?

- 344. Submitter #108 supports the application of the HO509 to the property at 57 Vanberg Road, Essendon subject to changes to the Statement of Significance related to:
 - 344.1 the garden setting; and
 - 344.2 the land to the north and west more broadly.
- 345. Submitter #108 has called Mr Briggs to give heritage evidence and Mr Thompson to give planning evidence in support of the submission.
- While Mr Briggs has commented on and explored the subdivisional potential of his client's land, as set out above, it is an often confirmed principle that future development should not be taken into account when determining if a place should be protected in the Heritage Overlay.

Clarity of the Statement of Significance

347. Mr Brigg's evidence emphasises the importance of clarity in the Statement of Significance. Having regard to the PPN1, he states:

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.

.... With Statements of Significance now required to be reference in the Schedule to the Heritage Overlay in order to do greater and more reliable work than has been previously expected, it is reasonable that these statements be sufficiently rigorous to direct what is, and is not, contributory to the point of requiring conservation. ⁶⁶

- 348. Council agrees that that it is important for the Statement of Significance to be clear and accurate as to what is significant when describing a heritage place. This is reflected in the changes Council has supported to the exhibited Statement of Significance. Council does not agree, however, that this means a statement of significance is intended to 'carve up' every single element and area of land on a site. This is not the intent of PPN1.
- Council responds to each of the issued raised by the submitter in relation to the exhibited Statement of Significance below.

⁶⁶ J. Briggs evidence statement, p. 3.



Garden setting

- 350. Submitter #108 queried the significance and extent of the garden setting, noting that the significance of the garden and land more broadly to the rear and the side had not been established.
- 351. As set out in Ms Schmeder's evidence, the significance of the garden was assessed for Context in the 2017 Heritage Study by Richard Aitken, a recognised and published specialist on historic gardens. As also set out in Ms Schmeder's evidence in response to this submission, the present size and layout of the garden, particularly the front garden to the south and to both sides of the house (east and west), reflect its historical configuration.
- 352. The 1907 MMBW plan provided by Ms Schmeder in her Addendum of 6 November 2020 further demonstrates that the dimensions of the front garden, in which the house is located centrally with roughly equal side setbacks to the Vanberg Road frontage, was already established by this early date. In submitting to the Amendment, the submitter asserted that the significance of the garden and the land more broadly such as to the rear and side had not been demonstrated. Council submits that Ms Schmeder's review has established the historic continuity of the current front and side garden setting, as well as the presence of the west side driveway alignment since at least 1907.
- 353. The submitter sought the advice of Mr Williams of Tree Response in relation to the Norfolk Island Pine and on this basis Mr Briggs asserts that, given Mr Williams' assessment that the tree has an age of 60-80 years (i.e. planted c1940-1960), the Pine is of limited historical value.⁶⁷
- 354. Council notes that the significance of the tree has been referred to in respect of its aesthetic significance (Criterion E) but that in any event, if this dating is correct, it associates the tree with the period for which the property is considered historically significant, that is, it's association with potter John Goold from 1923 to 1959. Accordingly, Council supports the recognition of the Norfolk Island Pine in the Statement of Significance and the proposed tree controls.
- 355. Council also notes that the Tree Response letter concludes that mitigating the identified dwelling damage (cracking on the dwelling wall adjacent to the tree) should be achievable without removing the tree or imposing excessive root damage.
- 356. Submitter #108 also queried the inclusion of the Pepper Tree in the Statement of Significance, noting that it is not referred to under 'What is significant?' heading, but is listed under the 'Why is it significant?' heading in relation to aesthetic value of Criterion E.
- 357. Council confirms that the Pepper Tree is considered to be significant, being one of the oldest trees on the site at over 100 years old. It is not proposed to be subject to tree controls in the Schedule to the Heritage Overlay because it is already included in the Environmental Significance Overlay (**ESO**).
- 358. Nevertheless, given the Pepper Tree contributes to the significance of the HO509, Council agrees it is appropriate for it to be acknowledged in the Statement of Significance. As set out in Council's resolution of 25 August 2020, and Ms Schmeder's evidence, Council supports a revision to the Statement of Significance to include the Pepper Tree as a significant element under the 'What is significant?' heading, with an acknowledgement that it is protected under the ESO.

Extent of the garden setting and the land to the north and west more broadly

359. In September 2020, Submitter #108 provided Council with a marked up Statement of Significance which proposed to include the following text under the 'What is Significant?' heading:



Neither is the area of land and additions north [of] the original house, nor the modern garage and land west of the Norfolk Island Pine, contributory to heritage significance.

- 360. At the submitters request, and for the purposes of her evidence statement, Ms Schmeder considered the marked up Statement of Significance provided by the submitter in preparation for the hearing.
- 361. Subsequently, Mr Briggs has proposed similar but slightly different text on page 6 of his evidence statement:

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.

- To address Submitter #108's concerns relating to the clarity of the Statement of Significance, Council supports noting that the 'brick garage, and gabled rear extension' are not significant in the Statement of Significance.
- 363. Council does not support excluding the land north of the house or west of the Norfolk Island Pine from the extent of significance. Council adopts Ms Schmeder's analysis which finds that the current extent is appropriate because:
 - ...the current extent of the garden to the front and sides of the house have retained their early extent and layout; and
 - ...the rear yard provides an appropriate setting to the substantial house, though somewhat reduced in the 1960s, and it retains an associated tree in the north-east corner of the rear yard.⁶⁸
- 364. Council supports this analysis, noting that the rear garden contains the earliest identified planting associated with this property, the Pepper tree, and has always been part of the back yard of the house. Moreover, while reduced in size in the 1960s, it still gives an indication of the extensive original nature of this property and is of an appropriately substantial size to serve as the setting of such a substantial house.
- 365. Mr Brigg's notes in his analysis of the garden setting and the titles of the house, that the relevant MMBW Detail Plans No. 2279-2280 is not available online.
- 366. Ms Schmeder has reviewed Mr Briggs report and was also not able to obtain a copy of the MMBW Detail Plans No. 2279-2280. However, she was able to obtain a copy of the 160' to 1" MMBW Plan for this area (No. 103) which dates to 1907, showing the property 20 years after its establishment but prior to the 1920s works. On page 10 of the Addendum to her evidence statement Ms Schmeder compares the 1907 plan with the 1945 aerial of the site which was included in her evidence statement at page 27 and confirms:

One difference is the presence in 1907 of a small wing to the west (left) side of the house, which had been removed by 1945. I assume it was removed as part of the extensive remodelling carried out in the 1920s.⁶⁹

367. Council submits that Ms Schmeder's analysis in response to the submitter confirms that the extent of the garden setting to the front and sides (other than in relation to the removal of the small wing to the west) has remained consistent with the early extent and layout. Council maintains that the land to the north of the house or west of the Norfolk Island Pine should not be excluded from the extent of significance on this basis.

Planning evidence

368. Mr Waite confirms that the HO509 is appropriate for the protection of the dwelling and its immediate environs.

⁶⁸ N. Schmeder evidence statement, p. 29.

⁶⁹ N. Schmeder Addendum to evidence statement, p. 10.



- 369. He opposes the inclusion of the rear and west of the property in the Heritage Overlay on the basis that it is unnecessary and does not protect any relevant element of the house or its environs. Council has already addressed this above in relation to the discussion of Mr Briggs and Ms Schmeder's evidence.
- 370. In opposing the application of the Heritage Overlay Mr Waite asserts that:

The site has capacity to be subdivided along the lines of the concept plan of subdivision prepared by JB Architects and still retain the historical context and garden setting of The Pines.

371. Council confirms that it has not considered the capacity for the site to be subdivided in relation to the Amendment. The issue of the redevelopment of the property, including subdivision, is a matter for planning permit stage as discussed in detail above in relation to the general issues raised by submitters.

Council's response

- 372. In response to the issues raised by Submitter #108 and the expert evidence of Mr Briggs and Mr Waite, Council confirms that it considers the entire current extent of 57 Vanberg Road should subject to the Heritage Overlay.
- 373. Council supports the following amendments to the exhibited Statement of Significance to:
 - note that the brick garage and contemporary gabled rear extension are <u>not</u> significant;
 - 373.2 clarify that the Pepper tree is protected by the ESO; and
 - 373.3 note that the alignment of the circular front path and west boundary driveway are significant elements of the place (a further change resulting from Ms Schmeder's evidence).

HO501 Wallbrook and Hursthill

- 374. The two houses at 21-23 Nicholson Street are considered to be of representative (Criterion D) significance as 'a pair of Victorian-era Italianate terrace houses'. The exhibited Statement of Significance describes them as examples of 'the single-fronted, narrow terrace type with high level of integrity and overall intactness.'⁷⁰
- 375. Council received one submission in relation to the HO501 from Submitter #44 who has not lodged a request to be heard at the hearing.

Submitter #44 - 23 Nicholson Street

What are the issues?

- 376. Submitter #44 provided an original submission to Council which objects to the application of HO501 to 23 Nicholson raising issues relating to:
 - 376.1 siting, context and modifications;
 - 376.2 property values, maintenance costs and financial considerations; and
 - 376.3 impact on development opportunities.
- 377. Submitter #44 subsequently provided a letter which was provided to Ms Schmeder on 21 September 2020 raising more issues relating to intactness and condition of the property.

⁷⁰ 21 and 23 Nicholson Street, Essendon, May 2019 Statement of Significance under 'What is significant?' [8165681: 28164112_1]



Council's response

- 378. Council's response to the issues raised by Submitter #44 in its original submission to Council is set out in detail at pages 187-198 of Attachment A to the Council Report of 25 August 2020. In summary, at the time of considering the detailed submission, Council did not consider that any changes were necessary in response to the issues raised by Submitter #44.
- 379. However, on receiving the late submission which included more detail relating to intactness, Ms Schmeder reviewed the matter further. She found that a series of alterations to both 21 and 23 Nicholson Street had occurred which she considered had not been recorded accurately in the 2017 Heritage Study, as set out in detail at page 143 of her evidence statement.
- 380. This prompted Ms Schmeder to consider whether the pair of houses have sufficient intactness to meet the threshold for representative (Criterion D) significance. She found that it did not, stating that '21-23 Nicholson Street does not meet Criterion D at the local level, but could be Contributory in a precinct. No precinct, however, has been identified.'71 Her position is supported by detailed analysis (including comparative analysis) set out at pages 141-146 of her evidence statement.
- 381. As the additional information was received after the Council Meeting of 25 August 2020, Council has not had the opportunity to formally consider a recommendation to remove 21 and 23 Nicholson Street from the Amendment as set out in Ms Schmeder's expert statement. That said, Council agrees that it would not be appropriate to include places in the Heritage Overlay that do not meet the threshold for local significance. Council invites the panel to consider these matters and provide a recommendation.

Council's final position on the Amendment

- 382. Council supports the Amendment in its exhibited form, subject to the amendments adopted by Council at its meeting of 25 August 2020, which are shown in tracked changes formatting at Attachments C and D of the Council Meeting Agenda of 25 August 2020.
- 383. Council also acknowledges that Ms Schmeder has recommended further changes in her evidence, which include:

HO12 Holmes Road Residential Precinct

383.1 regrade 15 Grandview Street to Non-contributory to the precinct;

HO451 Brown Avenue and Morphett Avenue, Ascot Vale Precinct

amend the new text in the Statement of Significance to read 'with a notable exception [instead of exemption] of the two storey terrace house at 28 Brown Street';

HO509 The Pines - 57 Vanberg Road, Essendon

- revise the history in the place citation to add information about the west side of the block and the 1945 aerial showing the early garden layout;
- amend the Statement of Significance to note that the alignment of the circular front path and west boundary driveway are significant elements of the place;

HO501 - Wallbrook and Hursthill

- 383.5 remove 21 and 23 Nicholson Street from the Amendment.
- 384. A full list of all proposed changes to the Amendment is set out at Attachment 1.

[8165681: 28164112_1]

⁷¹ N. Schmeder evidence statement, p. 146.



Conclusion

- 385. This completes Council's 'Part B' submission.
- 386. Council reserves the right to respond to any new issues raised through the course of this hearing in its reply.

Maddocks
Briana Eastaugh
Lawyers for the Planning Authority
9 November 2020

Attachment 1 - Council's final position

The following summary includes the changes to the exhibited Amendment which were adopted by Council at its meeting of 25 August 2020.

The list below also illustrates changes that would be required to the exhibited Amendment which have been identified in Ms Schmeder's evidence statement (highlighted below in yellow) and in Mr Paul's evidence (highlighted in green below). While these changes have not been formally considered by Council, they are matters which Council officers consider are consistent with the intent and scope of the Amendment and which, subject to the Panel's recommendations, should be put to Council for adoption.

- 1. Amend Schedule to Clause 72.08 (Background Documents) to introduce the 2017 Heritage Study as a background report to the Planning Scheme.
- 2. Amend the exhibited Schedule to Clause 43.01 (Heritage Overlay) as follows:
 - 2.1 HO450, remove 23 Waverley Street, Essendon from the precinct;
 - 2.2 HO455, remove front fence controls for 48 MacKay Street, Essendon;
 - 2.3 HO456, remove front fence controls for 43 McCracken Street, Essendon;
 - 2.4 HO458, amend precinct name to be 'Robb Street, Essendon Precinct' instead of 'Roberts Street, Essendon Precinct' and remove the reference to properties in Roberts Street Essendon (included in error) and instead refer to the properties at 15-25 Robb Street;
 - 2.5 HO459, remove 42, 42A & 42B Roberts Street, Essendon from the precinct;
 - 2.6 HO481, remove reference to 1 Albion Street from the place;
 - 2.7 HO501, delete reference to this place to remove 21 and 23 Nicholson Street from the Amendment;
 - 2.8 HO507, remove 32 Robb Street, Essendon from the place.
- 3. Amend the exhibited Statements of Significance in response to submissions as follows:
 - 3.1 HO2, amend Statement of Significance to clearly state which buildings are noncontributory to the precinct;
 - HO12, amend the map enclosed in the Statement of Significance to include the bluestone laneway and Statement of Significance and precinct map by revising the grading of 15 Grandview Street from Contributory to Non-Contributory.
 - 3.3 HO16, amend the Statement of Significance and precinct map by revising the grading of 33A Gladstone Street, Moonee Ponds from Contributory to Non-contributory;
 - 3.4 HO21, amend the Statement of Significance and precinct map by revising the grading of 2 & 2A Ayr Street, Ascot Vale from Contributory to Non-contributory;
 - 3.5 HO450, remove 151A & 151B Park Street, Moonee Ponds and 23 Waverley Street, Essendon from the precinct map and the Statement of Significance;
 - 3.6 HO451, revise the Statement of Significance to:
 - include references to 'small groups of attached Victorian houses' and 'front boundary treatments' that allow views of the houses from the street;

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- include a reference to 'with a notable exception of the two storey terrace house at 28 Brown Street' ['exception', instead of 'exemption', is a change identified by Ms Schmeder to the new text inserted in to the version adopted by Council on 25 August 2020];
- amend the Statement of Significance and precinct map by revising the grading of 14 Brown Avenue, Ascot Vale from Contributory to Non-contributory;
- 3.7 HO453, remove 2 Tasma Street, Ascot Vale from the map enclosed in the Statement of Significance;
- 3.8 HO455, remove reference to the original front fence at 48 MacKay Street, Essendon, revise the grading for 17 and 24 MacKay Street, Essendon in the Statement of Significance from Contributory to Non-Contributory and amend the map enclosed in the Statement of Significance to include the bluestone laneway:
- 3.9 HO456, remove mention of the fence at 43 McCracken Street, Essendon from the Statement of Significance;
- 3.10 HO457, amend the Statement of Significance to include references to the built date and architect of 193 Pascoe Vale Road, Essendon and revise the grading of 195 Pascoe Vale Road, Essendon from Contributory to Non-contributory;
- 3.11 HO459, remove 42, 42A & 42B Roberts Street, Essendon from the precinct Statement of Significance;
- 3.12 HO481, amend the Statement of Significance to include a note that highlights the timber vigas (beams) have been replaced with cast-concrete facsimiles;
- 3.13 HO488, amend the Statement of Significance to note the removal of the bay window and associated details from the western projecting gable in the place description;
- 3.14 HO507, remove 32 Robb Street, Essendon from the Statement of Significance and amend to solely include 27 Robb Street as an individual place and clarify the significance of the rare design feature (Venetian Gothic polychromy) of 27 Robb Street;
- 3.15 HO509, amend the Statement of Significance to include a reference that the brick garage and contemporary gabled rear extension are not significant, a note clarifying the Peppercorn tree is protected by the Environmental Significance Overlay (ESO) and a note that the alignment of the circular front path and west boundary driveway are significant elements of the place;
- 4. Amend the exhibited Permit Exemptions Policy as follows:
 - 4.1 HO12, amend the map to include the bluestone laneway and revise the grading of 15 Grandview Street from Contributory to Non-Contributory;
 - 4.2 HO16, amend the map by revising the grading of 33A Gladstone Street, Moonee Ponds from Contributory to Non-contributory.
 - 4.3 HO21, amend the map by revising the grading of 2 & 2A Ayr Street, Ascot Vale from Contributory to Non-contributory;
 - 4.4 HO450, remove 151A & 151B Park Street, Moonee Ponds and 23 Waverley Street, Essendon from the map;
 - 4.5 HO451, amend the map by revising the grading of 14 Brown Avenue, Ascot Vale from Contributory to Non-contributory;
 - 4.6 HO453, remove 2 Tasma Street, Ascot Vale from the map;

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- 4.7 HO455, amend the map by revising the grading of 17 and 24 MacKay Street, Essendon from Contributory to Non-contributory;
- 4.8 HO457, amend the map by revising the grading 195 Pascoe Vale Road, Essendon from Contributory to Non-contributory;
- 4.9 HO459, remove 42, 42A & 42B Roberts Street, Essendon from the map;
- 5. Amend the 2017 Heritage Study to:
 - 5.1 Correct omissions and inconsistencies identified through the preparation of a forthcoming heritage study scope [Note: these corrections are shown in the version of the 2017 Heritage Study included as Attachments E and F to the Council Report of 25 August 2020];
 - 5.2 Make consequential reflect changes to the Amendment outlined above;
 - 5.3 Amend the precinct description in the HO16 citation to state that 3 Gladstone Street originally had weatherboards to the front façade;
 - 5.4 Amend the precinct description in the HO450 citation to add a mention of MMBW sewer vents ("stink pipes");
 - 5.5 Amend the precinct description in the HO456 citation to:
 - Record the alteration to the house at 43 McCracken Street, being a change in roof form of the projecting front room from an original hipped form to current gabled form;
 - State that 41 and 50 McCracken Street originally had iron roofs, not tile, and that the gabled front porch of 41 McCracken Street is not original;
 - Note the c1980s addition of a return verandah to 44 McCracken Street;
 - Correct the addresses of the potential precinct extension on page 44 of Volume 1 to 26-52 & 27-49 McCracken Street;
 - 5.6 Amend the precinct history in the HO457 citation to note the 1916 Gawler & Drummond tender notice and the 1918 photo of 193 Pascoe Vale;
 - 5.7 Amend the precinct description in the HO461 citation in relation to 38 Marshall Street to note the usual timber fretwork to the verandah and that the window hood is original:
 - 5.8 Amend the precinct description in the HO465 to note the original lattice form of the fretwork to 69-81 Margaret Street, which survives intact at Nos. 75 and 81;
 - Revise the history in the place citation for HO509 to add information about the west side of the block and the 1945 aerial showing the early garden layout;
- 6. Amend the maps as follows:
 - 6.1 Map 11HO to remove 151A & 151B Park Street from the HO450 and to remove 32 Robb Street from the HO507;
 - 6.2 Map 07HO to remove 42, 42A &42B Roberts Street from the precinct;
 - 6.3 Map 12HO to remove HO501 entirely.

Attachment 2 - Summary of Final Statements of Significance

HO Statement of Significance	Location of final version supported by Council for Panel Hearing
HO2 – Glass Street Precinct	Attachment D to Council Meeting Report of 25 August 2020
HO3 – Peterleigh Grove & Kalimna Street Precinct	As exhibited
HO7 – Riverview Estate & Trinafour Estate Precinct	As exhibited
HO12 – Holmes Road Residential Precinct	Attachment D to Council Meeting Report of 25 August 2020 with further change identified in N. Schmeder evidence statement to 15 Grandview Street
HO16 - Ascot Vale Estate Precinct	Attachment D to Council Meeting Report of 25 August 2020
HO19 – Fenton Street Precinct	As exhibited
HO21 – South and East Street Precinct	Attachment D to Council Meeting Report of 25 August 2020
HO326 – Newhall Avenue Precinct	As exhibited
HO371 – Levien Street Precinct	As exhibited
HO450 – Aberfeldie Street and Waverley Street Precinct	Attachment D to Council Meeting Report of 25 August 2020
HO451 – Brown Avenue & Morphett Avenue	Appendix A to N. Schmeder evidence statement
HO452 – Queens Avenue and Burton Crescent Precinct	As exhibited
HO453 – Warrick & Mascoma Street Precinct	Attachment D to Council Meeting Report of 25 August 2020
HO454 – Amelia Avenue Precinct	As exhibited
HO455 – Mackay Street Precinct	Attachment D to Council Meeting Report of 25 August 2020
HO456 – McCracken Street Precinct	Attachment D to Council Meeting Report of 25 August 2020
HO457 – Pascoe Vale Road Precinct	Attachment D to Council Meeting Report of 25 August 2020
HO458 – Robb Street	As exhibited
HO459 – Roberts Street Precinct	Attachment D to Council Meeting Report of 25 August 2020
HO460 - Scott Street Precinct	As exhibited



HO461 – Clarence Street & Marshall Street Precinct	As exhibited
HO462 – Ardmillan Road Precinct	As exhibited
HO463 - Dean Street Precinct	As exhibited
HO464 - Grace Street Precinct	As exhibited
HO465 – Margaret Street & Park Street Precinct	As exhibited
HO466 - Park Street Precinct	As exhibited
HO467 - Sydenham Street Precinct	As exhibited
HO468 – Tweedside Estate Precinct	As exhibited
HO469 – The Barn (former)	As exhibited
HO470 – Houses	As exhibited
HO471 – House	As exhibited
HO472 – Uralla	As exhibited
HO473 – Keston	As exhibited
HO474 – Terrace Pair	As exhibited
HO475 - House	As exhibited
HO476 – Tahoma	As exhibited
HO477 - St Leonards Road	As exhibited
HO478 - Semi -detached houses	As exhibited
HO479 – Les Colonnes	As exhibited
HO480 – Duplex	As exhibited
HO481 – Coonara (former)	Attachment D to Council Meeting Report of 25 August 2020
HO482 - Kelvin	As exhibited
HO483 – House	As exhibited
HO484 – House	As exhibited
HO485 – Colverlea (formerly Narwonah)	As exhibited
HO486 – Bonaventura	As exhibited
HO487 – Loreto and Carmel	As exhibited
HO488 – House	Attachment D to Council Meeting Report of 25 August 2020



HO489 – Winbush House	As exhibited
HO490 - Oolite Villa and Silurian Villa	As exhibited
HO491 – House	As exhibited
HO492 – House	As exhibited
HO493 – House	As exhibited
HO494 – House	As exhibited
HO495 – Restdown and Locksley	As exhibited
HO496 – House	As exhibited
HO497 – Terrace Row	As exhibited
HO498 – House	As exhibited
HO499 – Dumbarton Flats	As exhibited
HO500 – Terrace Row	As exhibited
HO501 - Wallbrook and Hurstill	N/A (removed from Amendment as per recommendation in N Schmeder evidence statement)
HO502 – House	As exhibited
HO503 – Kala Thea	As exhibited
HO504 – Kildare	As exhibited
HO505 – Litchfield	As exhibited
HO506 – Nirrana	As exhibited
HO507 - Riverlea and House	Attachment D to Council Meeting Report of 25 August 2020
HO508 - Terrace	As exhibited
HO509 – The Pines (Former Tower House)	Appendix A to N. Schmeder evidence statement
HO510 - Majella	As exhibited
HO511 - Duplexes	As exhibited
HO512 – Wahroonga	As exhibited
HO513 – Gowrie	As exhibited
HO514 – Dinizulu	As exhibited
HO515 – House	As exhibited
HO516 - Tyneside	As exhibited



HO517 – Sans Souci	As exhibited
HO518 – Creand	As exhibited
HO519 - Parthenon Flats	As exhibited
HO520 - The Oaks (former Shotts)	As exhibited
HO521 – House	As exhibited
HO522 – House	As exhibited
HO523 – Duplex	As exhibited
HO524 – Lamboreen Villas	As exhibited
HO525 – Houses	As exhibited
HO526 – House	As exhibited
HO527 – House	As exhibited
HO528 – House	As exhibited