



Maddocks

Date 9 November 2020

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

Council's submission: Part B

Introduction.....	1
General observations	1
Overview of the Amendment	3
Submissions to the Amendment	4
General themes and concerns	6
HO12 Holmes Road Residential Precinct Extension	16
HO21 South Street & East Street Precinct Extension.....	21
HO326 Newhall Avenue Precinct Extension	22
HO450 Aberfeldie Street and Waverley Street, Aberfeldie, Essendon and Moonee Ponds Precinct	23
HO451 Brown Avenue and Morphett Avenue, Ascot Vale Precinct	24
HO452 Queens Avenue and Burton Crescent Precinct.....	26
HO455 Mackay Street, Essendon Precinct	27
HO456 McCracken Street, Essendon Precinct	29
HO457 Pascoe Vale Road, Essendon Precinct	32
HO459 Roberts Street, Essendon Precinct.....	34
HO461 Clarence Street and Marshall Street, Flemington Precinct.....	35
HO462 Ardmillan Road, Moonee Ponds Precinct	36
HO465 Margaret Street & Park Street, Moonee Ponds Precinct.....	37
HO470 Houses	38
HO476 Tahoma	39
HO485 Cloverlea (formerly Narwonah).....	40
HO487 Loreto and Carmel	41
HO488 House	42
HO492 House	43
HO503 Kala Thea	44
HO504 Kildare	45
HO509 – The Pines	46
HO501 Wallbrook and Hursthill.....	49
Council’s final position on the Amendment	50
Conclusion	51

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.

- page 2

- ## Overview of the Amendment

- page 3

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)

³ Submitter's #54, #68, #75, #100, and #113 have not requested to be heard at the hearing.

- 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.

- ## General themes and concerns

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.

page 6

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.

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.

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).

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 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:

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

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'.

page 8

- 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.

page 10

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).

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.

62.	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.
64.	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:

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

- 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.

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 case by case basis. Council acknowledges that clause 15.03-1L generally discourages the complete demolition of a significant or contributory heritage place unless:
- 73.1 the heritage place is structurally unsound and it cannot be feasibility be repaired or adopted for reuse;
 - 73.2 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.
[8165681: 28164112_1]

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.

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.

- ### *Intactness of Individual Places*

- 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.

- ### *Building condition and structural integrity*

- 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]

page 14

- ### Protection through other controls - Rescode or the Neighbourhood Character Overlay

- 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.

page 15

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

105. 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

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

page 16

- 12 Grandview 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

- Grandview Street*

- page 17

- ...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

126. 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.

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:
 - 129.1 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.

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.

[8165681: 28164112 1]

- Submitter #14 – 64 Eglinton Street, Moonee Ponds**

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
- 135.5 there is no heritage value in the property due to alterations.

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.
 - 137.3 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).
138. 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.

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

- ### Council's response

- ### Submitter #103 – Milverton Street

147. 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.

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.

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.

What are the issues?

- ### 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:
 - 156.1 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.
 - 156.2 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 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.

page 21

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.

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
 - 163.3 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:
 - 165.1 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.
 - 165.2 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.

³⁶ Newhall Avenue Precinct, May 2019 Statement of Significance under 'What is significant?'
[8165681: 28164112 1]

169. 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.

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.
- 174.2 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?'

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 mid-twentieth 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.

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:
 - 178.1 issues with the drafting of the Statement of Significance;
 - 178.2 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
 - 178.3 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.
 - 181.2 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?'

- Submitter #74 – 22 Brown Avenue**

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:
184.1	the drafting of the Statement of Significance and character of Brown Avenue, James Street and Morphet Avenue;
184.2	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.

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:
 - 186.1 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.
 - 186.3 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.
 - 186.5 The Non-contributory houses at 20 and 25 Brown Avenue do not diminish the significance of the precinct.

- ## HO452 Queens Avenue and Burton Crescent Precinct

- Submitter #121 – 182 Ascot Vale Road**

Council's response

- page 26

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.

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.

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

• • • •

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

page 27

- ### Site context of 48 Mackay Street

- page 28

- ## HO456 McCracken Street, Essendon Precinct

- page 29

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.

- 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:
 - 226.1 The masonry construction of 29 McCracken Street makes it one of the most substantial houses in the precinct and worthy of a Contributory grade.
 - 226.2 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.

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.

230. Council adopts Ms Schmeder's response to the heritage issues raised by Submitter #50 at pages 92-94 of her evidence statement.

231. 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:

- Submitter #64 - 41 McCracken Street**

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.

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:

237.1 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 (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.

- Submitter #88 – 44 McCracken Street, Essendon**

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:
 - 242.1 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.
 - 242.2 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'.
243. 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.

...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.

- Submitter #66 – 193 Pascoe Vale Road**

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 States 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

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

page 33

- ### HO459 Roberts Street, Essendon Precinct

- Submitters #104 and #106 – general precinct submission**

Council's response

- page 34

- ## HO461 Clarence Street and Marshall Street, Flemington Precinct

- Submitter #48 – 21 Marshall Street, Flemington**

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

page 35

- ## HO462 Ardmillan Road, Moonee Ponds Precinct

- Submitter #84 – 33 Ardmillan Road, Moonee Ponds**

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

page 36

- ### 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.

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.

page 37

- ## HO470 Houses

- Submitter #82 – 1 Adelaide Street**

page 38

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.

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.

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.

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.

page 39

- ## HO485 Cloverlea (formerly Narwonah)

- Submitter #40 – 6 Banchory Street, Essendon**

305.3 whether it is a coincidence that other properties the submitter owns have also had the Heritage Overlay applied.

308. Council does not support any changes to the Amendment in response to the queries raised by Submitter #40.

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 eclecticism 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.

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.

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.

page 41

- H0488 House**

- Submitter #60 – 330 Buckley Street**

318. Submitter #60 objects to the Amendment raising issues relation to:

- ### Council's response

- page 42

- ## HO492 House

- Submitter #63 - 20 Hesleden Street, Essendon**

325. Submitter #63 objects raising issues relating to:

- 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.
- 327.2 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.

page 43

- ## HO503 Kala Thea

- Submitter #26 – 247 Pascoe Vale Road, Essendon**

331. Submitter #26 objects to the Amendment raising issues relating to:

- ### Council's response

- page 44

- ## HO504 Kildare

- Submitter #52 – 71 Primrose Street**

page 45

342. 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.

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.
346. 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.

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.
349. Council responds to each of the issues raised by the submitter in relation to the exhibited Statement of Significance below.

⁶⁶ J. Briggs evidence statement, p. 3.
[8165681: 28164112 1]

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 Gould 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.

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:

page 47

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.

362. 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.

...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

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.

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

Planning evidence

⁶⁸ N. Schmeder evidence statement, p. 29.

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

- ### Council's response

- ## HO501 Wallbrook and Hursthill

- Submitter #44 – 23 Nicholson Street**

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.

page 49

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.

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:

384. A full list of all proposed changes to the Amendment is set out at **Attachment 1**.

page 50

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

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.

- [8165681: 28164112 1]

- page 53

- page 54

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 & Morphet 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 Colonnnes	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



Maddocks

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