



Date 23 November 2020

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

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1. This submission is made on behalf of Moonee Valley City Council (**Council**).
2. This 'Part C' submission:
 - 2.1 provides Council's final response to all evidence and submissions made after Council's case; and
 - 2.2 responds to the Panel's outstanding questions.
3. Council acknowledges all submissions made to the Amendment after Council's submissions. The purpose of this Part C submission is to respond to new issues raised in those submissions. Where a property or submission is not responded to specifically here, it is because Council considers previous responses have addressed the submission.

4. In addition to the matters addressed through the course of the hearing, the Panel has asked Council to address:
 - 4.1 whether there is any commentary in previous Panel reports concerning the broader economic or social effects of a heritage amendment, particularly amendments that apply to a large area;
 - 4.2 the basis for properties identified as ‘Significant’ (compared with ‘Contributory’) within a precinct; and
 - 4.3 the availability of Council grants or funding in relation to heritage processes.

5. In Yarra Amendment C183¹, which concerned a heritage gap study in central Richmond, the Panel considered many submissions about the potential loss in property value due to the application of the Heritage Overlay. Amendment C183 applied to 10 new heritage precincts, 2 existing precincts, 11 new individual places and changes to 5 existing places.
6. One submitter filed evidence concerning the loss in value of an individual site. Yarra City Council filed evidence at a suburb scale on the valuation impact. The Panel found²:

The Panel does not consider development and the expectation to conserve and enhance heritage sites are mutually exclusive. There are many examples across Melbourne, and the Panel noted in Richmond, where heritage sites have accommodated significant yet sympathetic change. In this context the Panel is not convinced that the application of the Heritage Overlay will have significant community-wide economic impacts on the areas identified the central Richmond.

² Ibid, pp. 33-34.

The Panel notes that none of the evidence presented shared that the Amendment would have a negative economic impact on a broad community level. Considering the Explanatory Report, Council's report *Consideration of social and economic impacts, November 2014* and Council's submission to the Amendment, the Panel considers that the Council has adequately considered social and economic effects.

[our emphasis]

7. Similarly, in Boroondara Amendment C284³ the Panel noted in relation to property values⁴:

The Heritage Overlay is applied to a considerable portion of Hawthorn properties. However, the Panel was not presented with information from any submitter which demonstrated:

- the difference in property value between properties with and without the Heritage Overlay
- a clear and direct relationship between property value and the impact of the applying the Heritage Overlay to properties in Hawthorn.

Property value is made up of complicated and interrelated factors which generally cannot be singled out. The Panel is therefore not surprised that no submitter presented information which demonstrated that the Heritage Overlay would devalue their property.

8. Boroondara C294 concerned the Hawthorn Heritage Gap Study and applied to 7 new heritage precincts, the extension of 4 existing heritage precincts and 14 individual places. The Hawthorn Heritage Gap Study arose from the Boroondara *Municipal-Wide Gap Study*, which also dealt with the areas of Hawthorn East, Kew, Kew East, Glen Iris and Ashburton and which were subject to separate amendment processes.

9. Finally, in Greater Shepparton Amendment C205⁵, which applied to 178 individual places and additional sites in Shepparton, Tatura and Kialla Village and 30 places within existing heritage precincts, the Panel said:

The Panel acknowledges that the Amendment may have some economic impact on land owners, 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 Heritage Overlay applies to a considerable portion of the municipality. However, the Panel was not presented with information from any submitter which demonstrated:

- the difference in property value between properties with and without the Heritage Overlay
- a clear and direct relationship between property value and the impact of the applying the Heritage Overlay to properties

[our emphasis]

10. On this basis Council maintains the submissions set out in the Part B submissions in relation to the matter of potential economic and social effects of a planning scheme amendment.

³ [2019] PPV 53.

⁴ Ibid, pp. 21-22.

⁵ [2020] PPV 12.

Significant properties within a precinct

11. There are two reasons why a property may be identified as 'Significant' in a precinct as part of the Amendment.
12. Firstly, a property may be identified as 'Significant' within a precinct because it is an *existing* individually significant property in a site-specific heritage overlay. Where appropriate, individually significant properties are proposed to be incorporated into a precinct and maintained with a Significant grading.
13. Secondly, where a new 'Significant' property is identified in a precinct (either a precinct extension or a new precinct) this is because the property exhibits particularly significant or notable features worthy of a Significant grading. These features are generally identified under the 'Why is it significant' in the relevant statement of significance. For example, properties which are identified as Significant within a precinct and the description of that property include:
 - 13.1 46 Waverley Street (HO450), which is identified under 'Why is it significant' in the Statement of Significance as exhibiting:

...aesthetic (architectural) significance as a fine example of a Federation Queen Anne dwelling of high architectural quality that incorporates fine Art Nouveau timber detailing and retains a high degree of original fabric, including ornamental timber friezes, a prominent arched window and curvilinear Art Nouveau ornament above in smooth render to the projecting front bay, an ensemble of roof shapes to the terracotta tile roof with terracotta finials, dormer window echoing the main gable, and three tall, roughcast render chimneys with red brick detailing visible from the street.
 - 13.2 189 Pascoe Vale Road (HO457), which is identified under 'Why is it significant' in the Statement of Significance as follows:

The house at 189 Pascoe Vale Road is aesthetically significant as an intact example of the Spanish Mission style. The asymmetric, triple-fronted form with hipped roof massed like separate pavilions, the dominant porch with a decorative Baroque-inspired parapet with a scrolled cartouche above a triple arched loggia with barley-twist columns (smaller columns frame the blind window to the side of the garage), and the Serlian moulding (with tiled detailing) above the windows either side of the porch are all expressive of the style. The house is also of architectural significance for including an integrated garage, which is an early example, as most garages of the pre-World War II period were freestanding.
14. As the Panel is aware, the property at 193 Pascoe Vale Road is also identified with a 'Significant' grading for the reasons explained in Council's submissions and evidence.
15. In the Scheme, a 'Significant' property (as per the Permit Exemptions Policy) is defined as:

A *Significant* place is a heritage place that has cultural heritage significance independent of its context. That is, if the precinct did not exist, they are places of local significance that could be eligible for individual inclusion in the HO. These places may also contribute to the significance of a precinct. *Significant* places will usually have a separate citation and statement of significance.
16. On the basis of this definition and the analysis set out in the 2017 Heritage Study, Council considers that the 'Significant' grading attributed to these properties is appropriate.

17. Council does not currently offer funding or grants to owners of heritage properties for restorative works to their buildings. As noted in the Part B submission, this issue was raised in the Amendment C164 Panel Hearing and addressed by that Panel.⁶
18. There are programs available in other municipalities, such as the Cities of Melbourne, Yarra and Ballarat and others. The extent and type of assistance offered varies. Some are offered in partnership with Victoria's Heritage Restoration Fund and administered by the National Trust.
19. Council is in the process of researching and considering the potential for funding or grant opportunities to enable the preservation of highly significant heritage properties in the municipality. This arose from a Councillor Notice of Motion in March 2016 for officers to investigate the issue. While a review of the programs in other municipalities was conducted, it was determined that further research was required to ascertain more specific resource requirements to determine a program model appropriate for the municipality.
20. No further steps have been taken in relation to a potential program at this point in time.
21. In the meantime, Council continues to offer assistance via the statutory planning department of Council to owners of land who are looking to develop or otherwise deal with their properties which are subject to the Heritage Overlay. Any owner of land within a Heritage Overlay can contact the planning department to make general inquiries regarding the permit application process, including whether proposed buildings and works are exempt from the need for a permit in accordance with the Permit Exemptions Policy.

22. A number of overarching issues were raised by the Panel and submitters concerning Council's heritage program. This includes:

- 22.1 the conduct of gap studies and the extent of heritage planning in Moonee Valley;
- 22.2 the methodology of the 2017 Heritage Study and associated matters, including the role of the *Moonee Valley Heritage Guidelines (2016)* (**Heritage Guidelines**); and
- 22.3 that Council is 'conflating' issues of heritage and neighbourhood character.

23. The submissions of Mr Wren QC, which were at times quoted by other submitters, noted gap studies have a place, but opined there is a point at which one must ask – how many gaps can be left?⁷
24. Through the course of submissions on 16 November 2020, and at the request of the Panel, Council provided an overview of heritage studies which have been conducted over the past 15 years.⁸ In Council's submission this overview demonstrates:
 - 24.1 A number of studies have been carried out over this period however the geographical areas, and in particular the heritage themes the subject of this Amendment, have not been considered in detail since the heritage assessment work of the 1970s and 1980s.

⁸ Panel Document #37, Council response to Panel questions – Timelines.

- ## Methodology of the heritage studies and associated matters

27. Council's submissions and the evidence of Ms Schmeder have established the detail and rigour of the background work which led to the Amendment.
28. Preceded by reviews of the existing heritage overlays in Moonee Valley in 2009-2011, the Stage 1 Gap Study identified the themes and potential heritage places not currently within the overlay. This included various steps to identify those themes and places, conduct preliminary assessments and consult with the community.
29. The 2017 Heritage Study carried forward a key component of the gap study in the further assessment of Victorian, Edwardian / Federation and Interwar residential development. This study itself was then subject to various detailed and thorough steps to ensure:
 - 29.1 important themes and gaps in the heritage overlay, as identified in the Stage 1 Gap (using the TEH as a framework), were addressed;
 - 29.2 all places proposed for inclusion in the Heritage Overlay met the threshold of local significance, with that threshold being clearly defined and applied in assessing all places for inclusion (see Volume 1, Appendix A of the 2017 Heritage Study); and
 - 29.3 consistency in the proposed application and grading of properties in the overlay according to comparative assessments conducted for each place, which is in accordance with Planning Practice Note 1 – *Applying the Heritage Overlay (PPN1)*.
30. In Council's submission, the detailed methodology of both the Stage 1 Gap Study and the 2017 Heritage Study illustrate not only that the Amendment is strategically justified, but also that the work has been conducted with the requisite rigour to justify the inclusion of the additional places in the Heritage Overlay.
31. Council acknowledges there will be circumstances where the further assessment of properties brings to light new information which alters the property description in the documents (ie. the citation or statement of significance) or in some cases, justifies removing the property from the Amendment. Council also acknowledges there will often at times be a difference of opinion about whether the qualities of a house justify its inclusion in the overlay.

- ### *Integrity, intactness and the role of the Heritage Guidelines*

- ## Neighbourhood character and heritage

- ¹² Advisory Committee Report [2007], p. 17.

41. Council has sought to address the concerns about the Amendment process through the Part A and Part B submissions. This includes providing detail of the steps taken in the chronology attached to the Part A submission (Attachment A). This confirmed the notifications provided by Council throughout the amendment process, including in relation to the Stage 1 Gap Study in 2014, interim controls in January 2020, the Amendment, and notifications about Council's consideration of and response to the submissions.¹³
42. While Council understands that several submitters remain unhappy with the process, it considers that the consultation process and the opportunities provided throughout it for submissions and input have provided submitters with the opportunity to be heard. Given the completion of the Stage 1 Gap Study in 2014, Council also considers it appropriate for the proposed application of permanent heritage controls to be resolved.
43. In terms of the process following the close of the hearing, Council confirms:
 - 43.1 As indicated by the Panel, its report will be provided to Council approximately 40 business days after the close of the hearing (approximately late January 2021);
 - 43.2 Once it has received the Panel's report, Council must publicly release it no later than 28 days after receipt; and
 - 43.3 Council must consider the Panel's report before deciding whether or not to adopt the Amendment.
44. Council's consideration of the Panel's report and decision whether or not to adopt the Amendment (with or without changes) will be taken to a Council Meeting in 2021. The exact date of that meeting cannot be confirmed at this stage, however, it could be expected to go to Council in the first half of 2021.

45. Submitter #5's submission to the Panel¹⁴ requests changes to the Amendment, and alternative positions as set out at paragraph 3 of the submission. By way of overview, Council's position in respect of the key requests is as follows:
 - 45.1 the extension of HO12 is strategically justified and will protect these areas of local significance, including Grandview Street; and
 - 45.2 10 and 12 Grandview Street are appropriately identified as part of the HO12 precinct and graded 'Contributory';
46. Council relies on the work of the 2017 Heritage Study and Ms Schmeder's evidence statement in support of this.
47. It is noted that Ms Schmeder and Mr Raworth agree in relation to the proposed gradings of 12 Grandview Street (Contributory) and 15 Grandview Street (Non-contributory). They do not agree in relation to the proposed grading of 10 Grandview Street or the appropriateness of Grandview Street more generally being included within the HO12 extension.

¹⁴ Panel Document #29, Submission 10-12 Grandview Street, Moonee Ponds.

56. The comparison to the Monash L51 panel report in 1999 is of minimal assistance. The circumstances in that case were different. The proposal sought to apply the Heritage Overlay to 1,400 properties, including some 20% of the suburb of Oakleigh (well over 1,000 individual interwar houses). The level of precinct intactness, as described by the Panel at page 18 of the report, was much lower than is evident in this Amendment. In Monash L51, the Panel also concluded¹⁶ the amendment had 'not progressed very far beyond the identification and initial evaluation stage'.
57. The Updated Municipal Wide Heritage Overlay Map provided on 20 November 2020 illustrates the contrast. It shows the areas in this Amendment are targeted and well defined. The process of the background work shows the depth of consideration and comparison.
58. In considering submissions about what constitutes 'heritage value' the Monash L51 report does include discussion which is pertinent to this Amendment and the objecting submissions which have been received¹⁷:

In general, many submitters simply did not believe that the area within which they live has any heritage value. They viewed the area as 'not old enough' and the housing stock not of the quality they associate with 'heritage value'. This illustrates the difficulty Councils have in conveying clearly a concept of heritage value that goes beyond the obvious and undisputed examples - ie. the Italianate mansions, cathedrals, Flinders Street Station and the like. The heritage values to be found in Oakleigh are much more subtle, and are based on the story told by the area as a whole rather than any of the individual buildings in it.

'Heritage' is not solely the province of wealthy individuals and institutions with the means to commission the grandest buildings of their day. Heritage also belongs to ordinary people and the buildings in which they lived and worked. A row of simple miners' cottages tells us as much about our mining history as the mine-owner's mansion, and has a parallel heritage value.

59. In relation to the other properties questioned by Mr Raworth, firstly it is noted that Mr Raworth formed the erroneous conclusion that the building at 18 Grandview Street has been 'enhanced' through the addition of the two gablets to its front which he then opined may have given rise to 'different detailing' at the frontage and roof form. This was disproved by Ms Schmeder in her Addendum and it is noted Mr Raworth did not pursue the point thereafter. Further while there is a non-original two level extension to the property which is visible from the front, this is to the rear and well set back.
60. In relation to 86 Eglinton Street, the non-contributory basement addition to the Eglinton Street frontage and parking facility at the site boundary on Grandview Street do not detract from its contributory status. The presentation of this property to Grandview Street makes a strong contribution to the streetscape. Ms Schmeder was subject to criticism in cross examination and submissions on the 'highly cropped' image of this site in her evidence. The fervour of this criticism is curious, noting the images of this property in Ms Baker's analysis (which focused on the basement addition and carparking facility¹⁸) did not illustrate the primary entry to the property at Grandview Street.
61. While it is accepted there are prominent upper level additions to 4 Grandview Street and 64 Eglinton Street, these properties are still of sufficient integrity to be considered Contributory to the heritage precinct. As put by Ms Schmeder during evidence, PPN1 provides that the central pillar upon which a place should be considered for inclusion in the Heritage Overlay is by comparative analysis. It is not whether these houses would satisfy every element of a background document, introduced into the Scheme in 2017, which is taken into consideration in the statutory planning process.

¹⁶ Panel Document #31, Monash L51 Panel Report, p.54.

¹⁷ Ibid, pp. 15-16.

¹⁸ Panel Document #16, Heritage Expert – Bryce Raworth, pdf p.38.

- Submitter #78 – 48 Mackay Street, Essendon (HO455 – Mackay Street precinct)**

- ¹⁹ Panel Document #29, Submission 10-12 Grandview Street, Moonee Ponds, Attachment 3.

68. Finally, Mackay Street is not an 'interwar contributory streetscape', so comparison as a whole against HO2 (Glass Street Precinct) is not appropriate. The very mixed Wright Street component of HO2 is more appropriate, and Council submits that Mackay Street compares well to it. The north-eastern boundary of HO2 in Wright Street is characterised by Non-contributory properties and a Victorian era dwelling at 20 Wright Street.

Submitter #108 – 57 Vanberg Road (HO509 – The Pines)

69. Submitter #108 does not oppose the application of HO509 or the extent of the overlay. Rather, the submitter seeks to revise the Statement of Significance consistent with Mr Brigg's recommendation.
70. In response to one of the key contentions put, Council submits the reference to the garden setting in the Statement of Significance was well considered. It was not an 'after thought'.
71. The submitter contends there would be no detriment to the historic heritage value of the property if the northern and western garden segments were 'ignored'²⁰ and were to become future subdivisions. Council is not seeking to be adversarial in its approach, but rather simply notes 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.
72. It was also asserted that 'for the first time, Council, through its consultant, refers to an assessment and determination by Richard Aitken of Context'. When Council considered submitter #108's submission to the Amendment on 25 August 2020, it was noted Mr Aitken's assessment, as part of Context's work, determined the extent of the garden setting.²¹
73. The 1907 MMBW plan provided by Ms Schmeder demonstrates 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. This research 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. In Council's submission this substantial setting is appropriate to a house of its substantial size.
74. Mr Briggs was content for the Norfolk Island Pine to be recognised in the Statement of Significance and Mr Thompson rightly identified this as a matter for others to decide. Its location may present difficulties for the potential development of the land to the west, however, this is not an exercise that can be determined now.
75. Moreover 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. 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 the house.
76. Council considers the interpretation of PPN1 put forward by the submitter and Mr Briggs is incorrect. It would be a curious outcome in Council's submission for the overlay curtilage to extend to the entirety of the property based on the historical evolution of the property, only for parts of the land to be identified as non-contributory. Council agrees clarity in the Statement of Significance is desirable and has proposed changes to specify non-contributory elements. However, it is submitted that PPN1 is speaking to the entire place. It does not say that a Statement of Significance should be provided for each element of that place.
77. Council submits that Mr Briggs seems to be considering the subdivisional potential of the land. As set out previously, 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 overlay.

²⁰ Panel Document #40, Submissions of Mr Pickering, paragraph 11, p. 3.

²¹ Council Meeting Report of 25 August 2020, Attachment A, p. 205.

78. Submitter #14 raised several issues concerning alterations to the dwelling on the property which have already been addressed. The slide show presentation provided included an overview of comparable examples of properties in Eglinton Street and the surrounds. This is consistent with the primary submission to the Amendment, which argued there are several properties not in the Amendment which are 'obviously of heritage value'. Ms Schmeder's evidence statement addressed this point, noting²²:

236. In the Stage 1 Gap Study survey, I earmarked a number of groups of houses along Eglinton Street for further investigation as potential precincts. This included 1-11 & 2-24 Eglinton Street. Further investigation and comparison with existing precincts during the 2017 Heritage Study concluded that the group at the east end of Eglinton Road (nos. 1-11 & 2- 24) does not have the same level of integrity and visual cohesion. This is why it has not been recommended inclusion in the Heritage Overlay.
237. I agree that there are other groups of houses, such as the Edwardian villas at Nos. 59-65 and other single examples of houses on Eglinton Street that could be contributory in a heritage precinct. But as they are outside more cohesive areas of early development which could form (part of) a heritage precinct, they were not recommended for protection.

79. Were there to be a more intact condition of heritage properties on the southern side of Eglinton St, properties such as No.55 may be considered Contributory to that precinct. However, the advice to Council from its heritage consultants has been that the condition on this side of the street is not sufficiently intact to warrant the extension of HO12 to this area.

80. Submitter #66 raised concerns about the extent of the application of HO457 to the property and alterations to the property, including non-original extensions and changes. A supplementary submission was received from the submitter on the evening of 19 November 2020 raising concerns about the potential nomination of an outbuilding on the site in the Statement of Significance for the HO457 precinct, previous agreement from Context that the upstairs of the house was a later extension, and the scope of the overlay.

81. As agreed with the submitter, Ms Schmeder conducted an on-site inspection of the property on 19 November 2020. Ms Schmeder has provided a memorandum confirming the outcomes of that inspection which is appended to this Part C submission. Given the late production of additional material, plans and historical information on 19 November, Ms Schmeder has also considered that information.
82. Council continues to support the identification of 193 Pascoe Vale Road in the HO457 precinct with a 'Significant' grading. Council also supports the changes suggested by Ms Schmeder to the precinct citation in the 2017 Heritage Study to identify the non-original rear additions.
83. Council still considers, however, that it is appropriate for the overlay to apply to the entire property, in line with the guidance in PPN1. PPN1 sets out limited circumstances where the curtilage and Heritage Overlay polygon should be reduced. It is generally accepted it is desirable to apply the Heritage Overlay to site boundaries, unless there is some special reason for adopting a different extent.

²² Panel Document #12, N. Schmeder evidence statement, p. 59.

- Submitter #114 – 55 Brewster Street, Essendon (HO487 – Loreto and Carmel)**

- 92.2 It notes²⁴ that ‘Interwar houses from the 1930s appear to be under-represented in the Heritage Overlay of the Moonee Valley Planning Scheme.’ And then further, ‘few Interwar Old English or Moderne style residential places are included in the Heritage Overlay either as individually significant buildings or as contributory buildings to heritage precincts.’ In Council’s submission, this supports the importance of identifying and protecting the best houses and streetscapes from the late interwar period.

²⁴ GJM Memorandum of Advice, p.6.

- While the two buildings are certainly fine representative examples of this very specific and narrowly defined typology, in our view there is some question around their heritage value when compared with other examples of the stylistic type more broadly known and understood as 'Old English' or 'Moderne' Interwar styles in the municipality (which, we assert, is the correct basis for comparison).

...

In our opinion, the subject houses compare more directly with contributory houses within heritage precincts (or proposed precincts), as detailed above. In terms of the form and variety of decorative detailing, direct comparison can be made with the following contributory places:...

93. Council considers the pair of houses at 55 and 57 Brewster Street are excellent representative examples of the interwar form with Old English stylistic additions.
94. Finally, it is noted that the GJM Memorandum concludes ‘these are highly intact representative examples of late Interwar style houses’.²⁶ In Council’s submission, the intactness and setting of these houses distinguishes them from the comparative examples provided and warrants their recognition as an individually significant heritage place.

**Submitter #48 – 21 Marshall Street, Flemington
(HO461 – Clarence Street and Marshall Street, Flemington)**

95. On 15 November 2020, submitter #48 provided new information to the Panel concerning:
- 95.1 houses in the area which are not subject to the Amendment or which have been demolished; and
- 95.2 the condition of the dwelling at 21 Marshall Street.

96. Submitter #48 raises a question about 1-3 Marshall Street, which is not included in the Amendment. The submitter asks the Panel to consider her property to be the same as this development and also queries the demolition of 15 Clarence Street, Flemington.
97. In relation to 1-3 Marshall Street (which is situated on the corner of Marshall Street and Newmarket Street and outside the proposed HO461 boundary), the 2017 Heritage Study (Volume 1, p.60) confirms that the Stage 1 Gap Study identified a potential precinct in this area, including 1-55 Marshall Street and other surrounds. However, the 2017 Heritage Study preliminary investigation reduced the precinct size and identified a tighter boundary having regard to the visual cohesion of development in the area. The study notes:

²⁵ Ibid, p.13.

²⁶ Ibid, p.14

In Marshall Street, the eastern end comprising nos. 1-9A and 2 & 4 has been excluded, as it has lower integrity, while at the western end nos. 68-72 & 57-61 have been left out as they did not form part of the original subdivision and contain post-war houses.

98. In relation to 15 Clarence Street, the 2017 Heritage Study proposed to include the property as Contributory to HO461. On 3 January 2018, Council received a planning permit application for the construction of a dwelling on the lot and included the demolition of the existing dwelling. At that time, no interim heritage overlay applied. Council considered the permit application at its meeting of 26 February 2019, prior to the resolution of 12 March 2019 to endorse the 2017 Heritage Study, and it was not considered appropriate to seek an interim heritage overlay for the property in the circumstances.

Building condition

99. Submitter #48 also raises her concerns again regarding the condition of the property and technical building elements (ie. plumbing, gas and stormwater connections).
100. Council confirms that all aspects of the inspection report provided were considered. Council appreciates the concerns raised and the costs associated with repairs and maintenance. However, the matters raised in the building inspection report appear to have been caused by deferred maintenance, poor-quality repairs or non-compliant workmanship. They do not suggest that there are serious structural problems with the house.
101. The key matter for the Panel in considering the property is whether it is of sufficient heritage significance to warrant a Contributory grading in the HO461 precinct.

Submitter #90 – 17 Park Street, Moonee Ponds (HO465 – Margaret Street and Park Street, Flemington)

102. On 17 November 2020, a written submission was received from Best Hooper Lawyers on behalf of Submitter #90.²⁷ The written submission raised issues concerning alterations to the dwelling which were addressed by Ms Schmeder in her evidence statement.²⁸
103. Additionally, the submission asserts that having regard to the 'extent of alterations, combined with the mix-match of styles observed in the precinct, it is submitted that the precinct does not meet the threshold to warrant inclusion within the heritage overlay'.²⁹ The submission provides examples of altered and an 'ad-hoc subdivision pattern' which it is argued undermines the integrity of the precinct.³⁰ Of the examples Council submits:
 - 103.1 79 Margaret Street – the visible upper-level extension is acknowledged, however, it is set back approximately one room's depth from the front façade. The front façade and entrance porch have otherwise been retained. This property was the subject of an objecting submission (#47) and following Council's consideration of the submission it was affirmed this is considered to be Contributory. Ms Schmeder's considered this property at pages 202-204 of her evidence statement.
 - 103.2 51 and 57 Margaret St – the alterations identified to the side and rear of these properties do not diminish their contribution to the heritage significance of HO465.
104. Council does not agree that this precinct is a 'mismatch of subdivision pattern' or that the alterations and Non-contributory buildings within the precinct undermine its significance.

²⁷ Panel Document #43, Baskin Submission – 17 Park Street, Moonee Ponds.

²⁸ Panel Document #12, N. Schmeder evidence statement, p.127-128.

²⁹ Panel Document #43, Baskin Submission – 17 Park Street, Moonee Ponds, paragraph 20 p. 6.

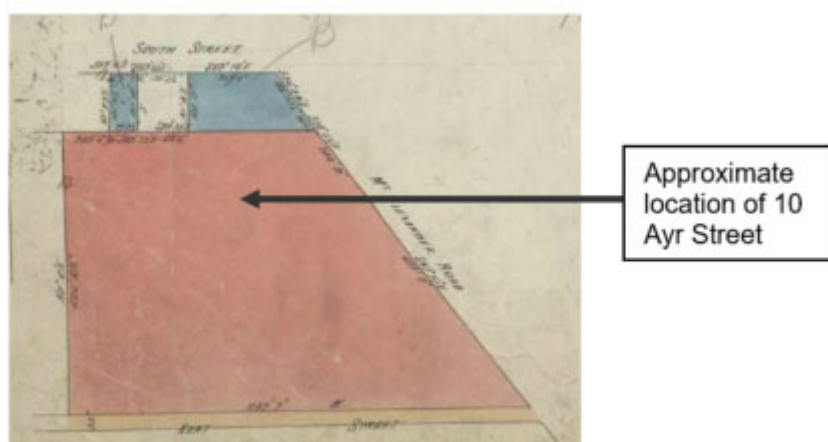
³⁰ Ibid, paragraph 22, p. 6.

- Non-original alterations and additions to the Contributory houses. For example, the alterations to the rear and chimney at 17 Park Street, Moonee Ponds.

107. While it would be possible to note these alterations in the HO465 Statement of Significance, Council does not consider it necessary. Non-original alterations and additions are covered in the blanket statement at the end of 'What is significant' as set out above.

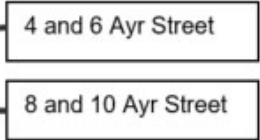
Build date

108. Council reiterates that the date on the title does not necessarily indicate the date the house was built.³² Submitter #62 stated at the hearing that previous titles could not be located.
109. We have undertaken historical title searches to establish the history of subdivision of the property and the area generally.
110. 10 Ayr Street was previously part of a large block bounded by Kent Street, Mt Alexander Road and South Street. Certificate of Title Volume 3178 Folio 436 shows this block being registered to Alexander McCracken on 25 November 1886, as shown in the below plan extracted from the imaged copy of the title:



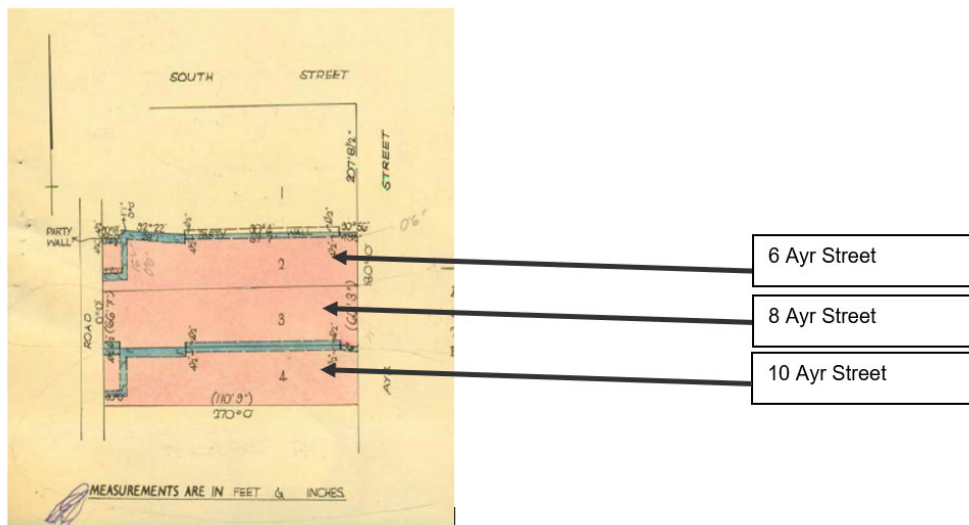
111. The plan and title history show the subsequent subdivision of this large block occurred from 1907 to 1915 in accordance with the following plan:

³² Panel Document #12, N Schmeder evidence statement, p. 67-68.



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- page 19



115. 10 Ayr Street was then transferred as a separate title on 9 August 1962 creating Certificate of Title Volume 8430 Folio 326, being the current title used for the land today and included in Submitter #62's presentation to the Panel³³:
116. These historical titles do not confirm the date on which the dwelling was constructed, as the dwelling is not referred to on the titles. However, the historical titles do confirm that 4 & 6 Ayr Street and 8 & 10 Ayr Street were previously comprised in two consolidated blocks following the subdivision of the area in the 1907-1915 period.
117. As set out in Ms Schmeder's evidence, 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'.³⁴ It makes sense for each pair of houses to have been built when the properties sat together as consolidated titles following the 1907-1915 subdivision of the area, rather than in the 1960s when 10 Ayr Street was further subdivided to create the separate lot it comprises today.

Intactness and Heritage Significance

118. In relation to properties identified by the submitter as similar but graded Non-contributory Council considers that the examples provided are less intact than 10 Ayr St. In particular³⁵:
- 118.1 in several examples the walls have been reclad or rendered, windows and doors replaced and reformatted and all posts and trim removed (e.g. 16 (Slide 25) & 20 Filson St (Slide 21), 45 South St (Slide 22), 32 Middle St (Slide 24)); and
- 118.2 at 45 South St (Slide 22) the front verandah has been extended over a lower new front window and at 67 South St (Slide 23) and 16 Filson St (Slide 25) the entire verandahs have gone.
119. Council recognises that 10 Ayr Street has lost the verandah cast-iron trim, that the weatherboards on the side elevation have been covered with red brick and metal roof tiles installed. However, the property exhibits a greater level of intactness than the examples cited. It retains its other original features including corbelled chimney, eaves brackets, tuckpointed brick façade with render bands, double-hung sash windows, a glazed front door with sidelights and a highlight and the turned timber posts.³⁶ It is also noted that the property exists as a semi-detached pair with No. 8 Ayr Street.

³³ Panel Document #46, slides 13-15.

³⁴ Panel Document #12, N. Schmeder evidence statement, p. 67.

³⁵ Panel Document #46, slides 21-25.

³⁶ Panel Document #12, N. Schmeder evidence statement, paragraph 274, p. 67.

120. As requested by the Panel, Ms Schmeder has considered the material produced by Mr Hocking during his presentation to the Panel on 18 November 2020. Her response is appended to this Part C submission.
121. A site visit was undertaken as part of the 2017 Heritage Study.
122. In light of the photograph from the 1990s, and having considered all matters of what has and has not been confirmed as to the changes asserted, on balance Ms Schmeder considers she would not have found 20 Hesleden Street to be of individual local significance and worthy of a site-specific Heritage Overlay. On that basis she recommends it be removed from the Amendment.
123. Council regrets that the citation prepared as part of the Stage 1 Gap Study was missed and not taken into account in the 2017 Heritage Study. In good faith it did, however, make several attempts to rectify this and get to the bottom of the points made by the submitter in their submission to the Amendment. Council confirms:
 - 123.1 Mr Hocking lodged his client's submission on 30 June 2020. The photo produced at Attachment C of Panel Document #41a was not provided.
 - 123.2 On 16 and again on 21 July 2020, Council emailed Mr Hocking asking for any photos showing the property before the alterations and additions referred to in the submission were made. Alternatively, Council suggested that Ms Schmeder could conduct an on-site inspection to view the porch and other parts of the building. Mr Hocking replied on both occasions however no further information or permission for the inspection was granted. On behalf of his clients Mr Hocking, as reflected in the submission (Panel Document #41) to the Panel, expressed distrust in Council's process and in the transparency of the Amendment.
 - 123.3 A building permit which was available at Council and associated with the property was reviewed by Ms Schmeder.
124. The submission notes that Mr Hocking has worked in planning and in Moonee Valley over the last 30 years and that he has a deep, thorough and complete understanding of both heritage controls and the considerations of the Scheme.³⁷ It is therefore still unclear to Council why, when this information was requested on two occasions following receipt of the submission in June 2020, Mr Hocking produced a photograph of the property during his submission on 18 November 2020 and did not at the least show it to Ms Schmeder when she presented her evidence. The late provision of this material has been unhelpful to the process at large given it is capable of resolving the issue prior to panel.

³⁷ Panel Document #41, Submissions 20 Hesleden Street, Essendon, paragraph 10, p. 3.

HO451 – Brown Avenue & Morphett Avenue Precinct

125. Submitter #74 appeared on her own behalf as well as on behalf of a number of residents in the proposed HO451 precinct. In relation to the comparative analysis and presentation provided, Council wishes to respond as follows:
- 125.1 The property works and alterations at 1, 3, 5 & 15 Brown Avenue, are relatively limited changes or works which in Council's view do not detract from the contributory value of these properties. The examples of works include new driveways, carports, changes to front fences, replacement of some windows and solar panels. Additionally, in several cases they have been undertaken in a manner which is sympathetic or in keeping with the original building. While there are some upper level extensions (for example at 5 and 7 Brown Avenue) they are set back and do not undermine the integrity of the property.
 - 125.2 The addition of a non-original Victorian bay window to the front façade of 9 Brown Avenue should be recorded in the precinct citation, however on balance Council considers the form and presentation of the dwelling to the precinct still warrant its 'Contributory' grading.
 - 125.3 In relation to 30 Brown Avenue ("whole of front house changed"), which appears to be supported by the photo provided (at Slide 21) that appears to demonstrate that significant changes have been made to the front façade. The roof form, eaves bracket and verandah roof profile do, however, remain.
 - 125.4 In relation to the raised roofline and upper-level additions to 12 and 21 Brown Avenue, these changes are evident and would have been taken into account by the assessor. Additionally, Council considers they have been undertaken in a manner which is sympathetic to the integrity of the house. For example, viewing No. 21 in context with its neighbour at 19 demonstrates this.

HO456 - McCracken Street Precinct


126. Council recognises that several owners in the proposed McCracken Street precinct object to the Amendment. However, supported by the evidence of Ms Schmeder, Council considers the visual cohesion of the properties identified in the McCracken Street precinct is strong. Ms Schmeder has noted that this is one of the few pockets of largely intact interwar development to survive in the Mar Lodge Estate and that there are a large number of houses built in the similar interwar bungalow style over a relatively short time span (c1927-1935).³⁸
127. Submitters #50 (43 McCracken Street), #18 (29 McCracken Street), #64 (41 McCracken Street) and #88 (44 McCracken Street) individually appeared and highlighted alterations to the properties.
128. Council recognises these changes and confirms that they were taken into consideration in the heritage assessments. They have been further acknowledged and considered by Ms Schmeder in her evidence statement. Council considers the level of integrity of these properties is acceptable, that the alterations made are either within an acceptable range or otherwise sympathetic to the original form of the dwellings. The houses are therefore considered to contribute to the heritage streetscape.

³⁸ Panel Document #12, N. Schmeder evidence statement, pp. 103-104.

129. As set out in the Part B submission, Council supports the Amendment in its exhibited form, subject to:

- (c) Remove 20 Hesleden Street from the Amendment.

- ## Conclusion

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Briana Eastaugh
Lawyers for the Planning Authority
23 November 2020**

Attachment 1 – Council’s final position (updated from Part B submission)

132. Amend Schedule to Clause 72.08 (Background Documents) to introduce the 2017 Heritage Study as a background report to the Planning Scheme.
133. Amend the exhibited Schedule to Clause 43.01 (Heritage Overlay) as follows:
 - 133.1 HO450, remove 23 Waverley Street, Essendon from the precinct;
 - 133.2 HO455, remove front fence controls for 48 MacKay Street, Essendon;
 - 133.3 HO456, remove front fence controls for 43 McCracken Street, Essendon;
 - 133.4 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;
 - 133.5 HO459, remove 42, 42A & 42B Roberts Street, Essendon from the precinct;
 - 133.6 HO481, remove reference to 1 Albion Street from the place;
 - 133.7 HO492, remove 20 Hesleden Street, Essendon from the Amendment;
 - 133.8 HO501, delete reference to this place to remove 21 and 23 Nicholson Street from the Amendment; and
 - 133.9 HO507, remove 32 Robb Street, Essendon from the place.
134. Amend the exhibited Statements of Significance in response to submissions as follows:
 - 134.1 HO2, amend Statement of Significance to clearly state which buildings are non-contributory to the precinct;
 - 134.2 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;
 - 134.3 HO16, amend the Statement of Significance and precinct map by revising the grading of 33A Gladstone Street, Moonee Ponds from Contributory to Non-contributory;
 - 134.4 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;
 - 134.5 HO450, remove 151A & 151B Park Street, Moonee Ponds and 23 Waverley Street, Essendon from the precinct map and the Statement of Significance;
 - 134.6 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;
 - 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;
- 134.7 HO453, remove 2 Tasma Street, Ascot Vale from the map enclosed in the Statement of Significance;
- 134.8 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;
- 134.9 HO456, remove mention of the fence at 43 McCracken Street, Essendon from the Statement of Significance;
- 134.10 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;
- 134.11 HO459, remove 42, 42A & 42B Roberts Street, Essendon from the precinct Statement of Significance;
- 134.12 HO481, amend the Statement of Significance to include a note that highlights the timber vigas (beams) have been replaced with cast-concrete facsimiles;
- 134.13 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;
- 134.14 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;
- 134.15 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;
- 135. Amend the exhibited Permit Exemptions Policy as follows:
 - 135.1 HO12, amend the map to include the bluestone laneway and revise the grading of 15 Grandview Street from Contributory to Non-Contributory;
 - 135.2 HO16, amend the map by revising the grading of 33A Gladstone Street, Moonee Ponds from Contributory to Non-contributory.
 - 135.3 HO21, amend the map by revising the grading of 2 & 2A Ayr Street, Ascot Vale from Contributory to Non-contributory;
 - 135.4 HO450, remove 151A & 151B Park Street, Moonee Ponds and 23 Waverley Street, Essendon from the map;
 - 135.5 HO451, amend the map by revising the grading of 14 Brown Avenue, Ascot Vale from Contributory to Non-contributory;
 - 135.6 HO453, remove 2 Tasma Street, Ascot Vale from the map;

- 135.7 HO455, amend the map by revising the grading of 17 and 24 MacKay Street, Essendon from Contributory to Non-contributory;
- 135.8 HO457, amend the map by revising the grading 195 Pascoe Vale Road, Essendon from Contributory to Non-contributory;
- 135.9 HO459, remove 42, 42A & 42B Roberts Street, Essendon from the map;
136. Amend the 2017 Heritage Study to:
 - 136.1 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];
 - 136.2 Make consequential reflect changes to the 2017 Heritage Study, consistent with those outlined above;
 - 136.3 Amend the precinct description in the HO16 citation to state that 3 Gladstone Street originally had weatherboards to the front façade;
 - 136.4 Amend the precinct description in the HO450 citation to add a mention of MMBW sewer vents ("stink pipes");
 - 136.5 Amend the precinct description in the HO451 to record the changes to 9 and 30 Brown Avenue;
 - 136.6 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;
 - 136.7 Amend the precinct history in the HO457 citation to note the 1916 Gawler & Drummond tender notice and the 1918 photo of 193 Pascoe Vale and identify the non-original rear additions to the property;
 - 136.8 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;
 - 136.9 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;
 - 136.10 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;
137. Amend the maps as follows:



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- 137.1 Map 11HO to remove 151A & 151B Park Street from the HO450 and to remove 32 Robb Street from the HO507;
- 137.2 Map 07HO to remove 42, 42A & 42B Roberts Street from the precinct;
- 137.3 Map 08HO to remove HO492 entirely; and
- 137.4 Map 12HO to remove HO501 entirely.