

Planning and Environment Act 1987

Panel Report

**Moonee Valley Planning Scheme Amendment C200moon
Proposed Heritage Properties and Precincts**

16 February 2021

How will this report be used?

This is a brief description of how this report will be used for the benefit of people unfamiliar with the planning system. If you have concerns about a specific issue you should seek independent advice.

The planning authority must consider this report before deciding whether to adopt the Amendment. [section 27(1) of the *Planning and Environment Act 1987* (the Act)]

For the Amendment to proceed, it must be adopted by the planning authority and then sent to the Minister for Planning for approval.

The planning authority is not obliged to follow the recommendations of the Panel, but it must give its reasons if it does not follow the recommendations. [section 31 (1) of the Act, and section 9 of the *Planning and Environment Regulations 2015*]

If approved by the Minister for Planning a formal change will be made to the planning scheme. Notice of approval of the Amendment will be published in the Government Gazette. [section 37 of the Act]

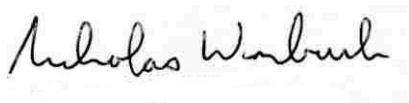
Planning and Environment Act 1987

Panel Report under section 25 of the Act

Moonee Valley Planning Scheme Amendment C200moon

Proposed Heritage Properties and Precincts

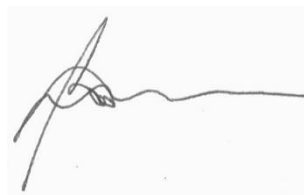
16 February 2021



Nick Wimbush, Chair



Amanda Cornwall, Member



Ray Tonkin, Member

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Glossary and abbreviations

Council	Moonee Valley City Council
DELWP	Department of Environment, Land, Water and Planning
HO###	Heritage Overlay ###
MPS	Municipal Planning Strategy
PPF	Planning Policy Framework
PPN01	Planning Practice Note 01 – Applying the Heritage Overlay
the Act	Planning and Environment Act 1987
the Amendment	Moonee Valley Planning Scheme Amendment C200moon
the Exemptions Policy	City of Moonee Valley Permit Exemptions Policy – Heritage Overlay Precincts, May 2019
the Heritage Guidelines	City of Moonee Valley Heritage Guidelines, 2016
the Planning Scheme	Moonee Valley Planning Scheme

Overview

Amendment summary	
The Amendment	Moonee Valley Planning Scheme Amendment C200moon
Common name	Proposed Heritage Properties and Precincts
Brief description	The Amendment applies the Heritage Overlay to 60 individual heritage places, 9 extended heritage precincts, 18 new heritage precincts and 1 serial listing, introduces Statements of Significance in the Schedule to the Heritage Overlay and updates the incorporated document <i>City of Moonee Valley Permit Exemptions Policy – Heritage Overlay Precincts, May 2019</i> to include the additional places and precincts
Subject land	Various properties within Moonee Valley
The Proponent	Moonee Valley City Council
Planning Authority	Moonee Valley City Council
Exhibition	21 May to 2 July 2020
Submissions	123 submissions were received including late submissions. Of these approximately two thirds were opposed to all or part of the Amendment

Panel process	
The Panel	Nick Wimbush (Chair), Amanda Cornwall and Ray Tonkin
Directions Hearing	23 September 2020 via videoconference
Panel Hearing	9, 10, 11, 13, 16, 17, 18, 20, 23 November 2020
Site inspections	Numerous inspections on an unaccompanied and accompanied basis were undertaken by the Panel including as a group and individually, covering all properties subject to submissions
Parties to the Hearing	See Appendix B
Citation	Moonee Valley PSA C200moon [2021] PPV
Date of this Report	16 February 2021

Executive summary

Moonee Valley Planning Scheme Amendment C200moon (the Amendment) seeks to apply the Heritage Overlay to 60 individual heritage places, nine extended heritage precincts, 18 new heritage precincts and one serial listing. The Amendment introduces Statements of Significance in the Schedule to the Heritage Overlay and updates the *City of Moonee Valley Permit Exemptions Policy – Heritage Overlay Precincts, May 2019* (the Exemptions Policy) in the planning scheme.

The Amendment was exhibited from 21 May 2020 until 2 July 2020 and 108 submissions were lodged. A further 15 late submissions were also accepted by Council and referred to the Panel bringing the total to 123. Of the submissions approximately two thirds objected to the Amendment or parts of it and one third supported the Amendment.

Council considered the Amendment and submissions (not including all late submissions) at a meeting on 25 August 2020 and resolved to refer all submissions to a Panel.

Key issues raised in objecting submissions included:

- the heritage values of properties or precincts had not been accurately established or did not reach the threshold of significance as required for the Heritage Overlay
- errors in identifying modern properties as heritage
- errors or perceived weaknesses in statements of significance leading to misidentification of heritage
- structural and other condition issues leading to the conclusion the Heritage Overlay should not be applied to particular properties
- the significance of alteration to properties leading to the conclusion that they are not Contributory to precincts
- negative impacts on development potential
- general negative economic and financial impacts
- the need for planning permits and increased cost and bureaucracy; and lack of clarity about what might require a planning permit under the overlay
- lack of, or poor, consultation and notice.

The Panel sat for nine days via videoconference due to COVID-19 restrictions and heard from 23 submitters or representatives, including a number who called expert evidence.

In general, the Panel considers the Amendment is well founded and supported in planning policy and has recommended it be adopted. The Amendment is large and affects many properties. In this report the Panel addresses many individual properties and precincts and has made specific recommendations for changes to the Amendment in some cases.

Recommendations

Based on the reasons set out in this Report, the Panel recommends:

1. **Adopt Amendment C200moon to the Moonee Valley Planning Scheme as exhibited subject to:**
 - a) **Making the changes to ordinance as shown in Appendix C to the Council meeting papers of 25 August 2020**
 - b) **Making changes to the Statements of Significance as shown in Appendix D to the Council meeting papers of 25 August 2020**

- c) Making changes to the Moonee Valley Heritage Study Volume 1 as shown in Appendix E to the Council meeting papers of 25 August 2020
 - d) Making changes to the Moonee Valley Heritage Study Volume 2 as shown in Appendix F to the Council meeting papers of 25 August 2020
 - e) Other changes as recommended in this report.
- 2. Amend the Statement of Significance for Glass Street, Essendon (HO2) to clearly identify the buildings that are Non-contributory to the precinct.
- 3. Change 19 Milverton Street, Moonee Ponds (HO12) from Contributory to Non-contributory in the Amendment.
- 4. Change the grading of 33A Gladstone Street, Moonee Ponds (HO16) from Contributory to Non-contributory in the Amendment.
- 5. Change the grading of 2 and 2A Ayr Street, Ascot Vale (HO21) from Contributory to Non-contributory in the Amendment.
- 6. Remove 23 Waverley Street, Essendon from HO450 and the Amendment.
- 7. Change the grading of 14 Brown Avenue, Ascot Vale (HO451) from Contributory to Non-contributory in the Amendment.
- 8. Amend the Statement of Significance for HO451 to correct 'exemption' to 'exception' for 28 Brown Avenue, Ascot Vale.
- 9. Remove 2 Tasma Street, Ascot Vale from HO453 and the Amendment.
- 10. Change the gradings of 17, 24, 40, 48 and 50 Mackay Street, Essendon (HO455) from Contributory to Non-contributory in the Amendment.
- 11. Amend HO456 to:
 - a) change the grading of 41 and 44 McCracken Street, Essendon from Contributory to Non-Contributory
 - b) note the addition of the neo-Federation front porch and bay window to the house at 29 McCracken Street, Essendon in the 1990s in the precinct description in the 2017 Heritage Study and the Statement of Significance; additions that are not of heritage significance
 - c) record the change in roof form of the projecting front room from an original hipped form to the gabled form of the house at 43 McCracken Street, Essendon and remove the incorrect mention of the front fence as original in the Statement of Significance and the 2017 Heritage Study
 - d) remove the front fence controls for 43 McCracken Street, Essendon in the Schedule to clause 43:01
 - e) state that 41 and 50 McCracken Street, Essendon originally had iron roofs, not tile in the 2017 Heritage Study and the Statement of Significance
 - f) correct the addresses of the potential precinct on page 44, Volume 1 of the 2017 Heritage Study to 26-52 and 27-49 McCracken Street, Essendon
 - g) delete the incorrect mention of late nineteenth century as the time of subdivision and build in the Statement of Significance.

- 12. Amend the Statement of Significance for 193 Pascoe Vale Road, Essendon (HO457) to identify that the enclosure to the back porch of the house, the carport, the bungalow/sleep-out and the swimming pool are all not of heritage significance.**
- 13. Change the grading of 195 Pascoe Vale Road, Essendon (HO457) from Contributory to Non-contributory in the Amendment.**
- 14. Remove the properties at 42, 42A and 42B Roberts Street, Essendon from HO459 and the Amendment.**
- 15. Revise HO481 to:**
 - a) Remove reference to a fence and outbuilding exemption at 1 Albion Street for 1C Ardoch Street, Essendon**
 - b) Note in the Statement of Significance and citation that the timber vigas (beams) have been replaced with cast-concrete facsimiles.**
- 16. Remove 330 Buckley Street, Essendon (HO488) from the Amendment.**
- 17. Remove 20 Hesleden Street, Essendon (HO492) from the Amendment.**
- 18. Remove 21-23 Nicholson Street, Essendon (HO501) from the Amendment.**
- 19. Remove 32 Robb Street, Essendon (part HO507) from the Amendment.**
- 20. Amend the Statement of Significance for 27 Robb Street, Essendon to emphasise its aesthetic significance as an individual place in accordance with Ms Schmeder's evidence.**
- 21. Amend the Statement of Significance for 57 Vanberg Road Essendon (HO509) to identify that the brick garage and contemporary gabled rear extension are not heritage significant; to note that the Environmental Significance Overlay applies to the Peppercorn Tree; and to include the Peppercorn Tree, the row of Cypressess and the Norfolk Island Pine as contributory to significance.**

1 Introduction

1.1 The Amendment

Moonee Valley Planning Scheme Amendment C200moon (the Amendment) as described in the Explanatory Report:

... applies the Heritage Overlay to 60 individual heritage places, 9 extended heritage precincts, 18 new heritage precincts and 1 serial listing, introduces Statements of Significance in the Schedule to the Heritage Overlay and updates incorporated document *City of Moonee Valley Permit Exemptions Policy – Heritage Overlay Precincts, May 2019* to include the additional places and precincts.

The details of the precincts and properties are listed in a series of five tables in the Explanatory Report (these are not repeated here).

1.2 Background

Moonee Valley City Council (Council) has been active in protecting properties of local heritage significance as enabled by the *Planning and Environment Act 1987* (the Act). In response to a question from the Panel, Council provided an overview table of past and proposed heritage studies.¹ In summary these include:

- City of Moonee Valley Gap Heritage Study 2005: Volume 1 Thematic History (revised November 2006) – Amendment C66
- Moonee Valley Gap Heritage Study Heritage Review, June 2009 – Amendment C103
- Review of Heritage Overlay Precincts, 2012 – Amendment C109
- Thematic Environmental History, 2012 – Amendment C134
- Heritage Overlay Review, 2014 – Amendment C144
- Thematic Heritage Study, 2012-14 (Commercial and business establishments) and Post-War Thematic Heritage Study, 2012-14 (Ascot Housing Estate Commission Precinct) – Amendments C142 and C143
- Moonee Valley Heritage Gap Study, 2014 – Amendment C193
- City of Moonee Valley Heritage Study, 2015 – Amendment C164

Future studies will focus on post-war places, trees and parks and work arising from previous heritage studies.

1.3 Procedural issues

(i) Challenge to Mr Tonkin

At the Directions Hearing the independence of Mr Tonkin was challenged. Mr Tonkin did not recuse himself and the reasons were provided in Tabled Document 7.

(ii) Consultation and notice

Many submitters were critical of consultation and notice about the Amendment. This issue is addressed in Chapter 4.3.

¹ Document 37.

(iii) COVID-19

The Panel Hearing was conducted by videoconference due to restrictions on gathering and movement imposed by Coronavirus Disease (COVID-19). Requests were made to defer the Hearing until such time as a face to face hearing was possible.

Given Panel Hearings of up to 10 weeks have been conducted via videoconference successfully through 2020, the Panel ruled that the matter should proceed. All parties are subject to the same difficulties and constraints on videoconference and the Panel did not consider a videoconference fundamentally results in denial of natural justice or lack of procedural fairness.

The Panel thanks all parties to the Panel Hearing for their presentations and submissions in these challenging circumstances.

1.4 Submissions and Council response

The Panel considered 123 submissions. Of these 80 were opposed to the Amendment, 38 supported it and five were unclear in their support or opposition.² Those objecting sought the removal of the Heritage Overlay or the change of properties from Contributory to Non-contributory. Reasons in objecting submissions included:

- the heritage values of properties or precincts had not been accurately established or did not reach the threshold of significance as required for the Heritage Overlay
- errors in identifying modern properties as heritage
- errors or perceived weaknesses in statements of significance leading to misidentification of heritage
- structural and other condition issues leading to the conclusion the Heritage Overlay should not be applied to particular properties
- the significance of alteration to properties leading to the conclusion that they are not Contributory to precincts
- negative impacts on development potential
- general negative economic and financial impacts
- the need for planning permits and increased cost and bureaucracy; and lack of clarity about what might require a planning permit under the overlay
- lack of, or poor, consultation and notice.

Council considered submissions, not including late submissions, at its meeting on 25 August 2020. It resolved to, in summary:

- note submissions and officer response (Attachment A to meeting agenda)
- refer all submissions to a Panel
- note and adopt 'Panel versions' of revised exhibition documents (Attachments C and D to meeting agenda)
- authorise Council's officers to make further minor revisions to the above
- request a further extension of the interim Heritage Overlay to the Minister for Planning

² Some submitters considered that as approximately two thirds of submissions were opposed the Amendment should not be considered. The Panel is bound under the Act to consider the Amendment and submissions. The decision to refer to a Panel and the ultimate decision on the Amendment lies with Council not the Panel.

- note corrections to the 2017 Heritage Study (Attachments E and F to the meeting agenda)
- note Council officers will bring a further report back to Council after the Panel Hearing
- advise a property owner of the change of grading of their property.

1.5 The Panel's approach

The Amendment is a large one, seeking to apply the Heritage Overlay to significant new precincts and properties. The Panel has focused its consideration on those objecting to or seeking to change the Amendment. Where a proposed Heritage Overlay received only a supporting submission (for example HO19, HO520), the Panel reviewed the proposed overlay but has not provided commentary on that submission or precinct.

The Panel has assessed the Amendment against the principles of net community benefit and sustainable development, as set out in Clause 71.02-3 (Integrated decision making) of the Planning Scheme.

The Panel considered all written submissions made in response to the exhibition of the Amendment, Council's consideration of the submissions, observations from site visits, and submissions, evidence and other material presented to it during the Hearing. It has reviewed a large volume of material and has had to be selective in referring to the more relevant or determinative material in the Report. All submissions and materials have been considered by the Panel in reaching its conclusions, regardless of whether they are specifically mentioned in the Report.

This Report deals with the issues under the following headings:

- Planning context
- Strategic justification
- General issues
- Extended heritage precincts
- New heritage precincts
- Serial listing
- Individual heritage places.

2 Planning context

2.1 Objectives of planning

In their Part A submission³, Council identified the following objectives of the Act as relevant:

- section 4(1)(a) - to provide for the fair, orderly, economic and sustainable use and development of land;
- section 4(1)(d) - to conserve and enhance those buildings, areas or other places which are of scientific, aesthetic, architectural or historical interest, or otherwise of special cultural value;
- section 4(1)(f) - to facilitate development in accordance with the objectives set out in paragraph (d); and
- section 4(1)(g) – to balance present and future interests of all Victorians.

Council submitted the Amendment implements these objectives by protecting locally significant heritage places

2.2 Moonee Valley Planning Scheme

(i) Policy review

Council submitted that the Moonee Valley Planning Scheme review was implemented into the planning scheme in June 2020 to make it consistent with Amendment VC148. Relevant to this Amendment it:⁴

- replaced the Municipal Strategic Statement at Clause 21 with a new Municipal Planning Strategy (MPS) at Clause 02;
- replaced local planning policies at Clause 22 with new and revised local policy content in the Planning Policy Framework (PPF);
- replaced the Schedule to Clause 43.01 (Heritage Overlay) with a new schedule that includes application requirements previously contained in the local planning policy at Clause 22.01;
- replaced the Schedule at Clause 72.04 (Documents Incorporated in this Planning Scheme) with a new schedule that groups all existing heritage permit exemption policies; and
- introduced the Stage 1 Gap Study in the Schedule to Clause 72.08.

(ii) Municipal Planning Strategy (MPS)

The new MPS introduces five ‘building blocks’ at **Clause 02.02 (Vision)** including:

- A beautiful city that celebrates its identity, heritage and open spaces.

And at **Clause 02.03-4 (Built environment and heritage)**:

Moonee Valley has extensive areas and numerous individual places of heritage significance and the protection and conservation of these heritage assets is required. Council supports:

- Protecting places of heritage significance;
- Allowing adaptive reuse and change of buildings where they provide for the retention and maintenance of a heritage place.

³ Document 11, para 83.

⁴ Document 11, para 77.

And at **Clause 02.03-5 (Housing)**:

- Protecting the city's significant heritage areas from inappropriate development.

(iii) Planning policy framework

Council submitted that the Amendment is supported by various clauses in the Planning Policy Framework including:⁵

Clause 15 (Built Environment and Heritage) which emphasises that 'planning should protect places and sites with significant heritage, architectural, aesthetic, scientific and cultural value'. The Amendment supports Clause 15 by introducing permanent planning controls to properties identified as of significant heritage, architectural, aesthetic, scientific and cultural value and promotes excellence in the built environment, creating places that 'reflect the particular characteristics and cultural identity of the community'.

And:

Clause 15.03-1S (Heritage conservation) includes the objective 'to ensure the conservation of places of heritage significance'. The strategies include:

- Identify, assess and document places of natural and cultural heritage significance as a basis for their inclusion in the planning scheme.
- Provide for the protection of natural heritage sites and man-made resources and the maintenance of ecological processes and biological diversity.
- Provide for the conservation and enhancement of those places which are of, aesthetic, archaeological, architectural, cultural, scientific, or social significance.
- Encourage appropriate development that respects places with identified heritage values.
- Retain those elements that contribute to the importance of the heritage place. Encourage the conservation and restoration of contributory elements.
- Encourage the conservation and restoration of contributory elements of a heritage place.
- Ensure an appropriate setting and context for heritage places is maintained or enhanced.
- Support adaptive reuse of heritage buildings where their use has become redundant;
- Consider whether it is appropriate to require the restoration or reconstruction of a heritage building in a Heritage Overlay that has been unlawfully or unintentionally demolished in order to retain or interpret the cultural heritage significance of the building, streetscape or area.

(iv) The Heritage Overlay

The Heritage Overlay (Clause 43.01) purposes are:

- To implement the State Planning Policy Framework and the Local Planning Policy Framework, including the Municipal Strategic Statement and local planning policies.
- To conserve and enhance heritage places of natural or cultural significance.
- To conserve and enhance those elements which contribute to the significance of heritage places.
- To ensure that development does not adversely affect the significance of heritage places.
- To conserve specifically identified heritage places by allowing a use that would otherwise be prohibited if this will demonstrably assist with the conservation of the significance of the heritage place.

⁵ Document 11, para 87.

The Heritage Overlay requires a planning permit to demolish, subdivide, build or carry out works. The Heritage Overlay enables its Schedule to specify additional controls for specific trees, painting previously unpainted surfaces, internal alterations and an incorporated plan (which may exempt buildings and works and other changes from requiring a planning permit). The Schedule may also identify if a place can be considered for uses that are otherwise prohibited, subject to a planning permit.

(v) Particular provisions

Council identified relevant particular provisions in the planning scheme including:

Clause 71.02-3 (Integrated decision making) which requires Council as the Planning Authority (as well as in the context of considering an application to a Responsible Authority) to:

... integrate the range of planning policies relevant to the issues to be determined and balance conflicting objectives in favour of net community benefit and sustainable development for the benefit of present and future generations.

2.3 Other relevant planning strategies and policies

(i) City of Moonee Valley Heritage Guidelines

Council developed the City of Moonee Valley Heritage Guidelines (Heritage Guidelines) in 2016, a background document to the Scheme (at Clause 72.08). The guidelines assist property owners, architects, town planners and building designers with how to conserve, restore and adapt buildings protected by the Heritage Overlay, and new infill buildings.

The guidelines define Significant, Contributory and Non-contributory places as follows:

Significant – A heritage place that has cultural heritage significance independent of its context. Such places may have their own Heritage Overlay number or they may be part of a wider heritage precinct. If located within a precinct, they would still be eligible for heritage protection even if the precinct did not exist around them.

Contributory – A place that contributes to the significance of a heritage precinct, but would not be protected if it was on its own.

Non-contributory – A place that does not contribute to the significance of a heritage precinct. In some instances a Significant place may be considered Non-contributory to a precinct, for example an important Modernist house within a Victorian era precinct.

2.4 Ministerial Directions and Practice Notes

(i) Ministerial Directions

Council submitted the Amendment has been prepared in accordance with **Ministerial Direction 9 (Metropolitan Planning Strategy)** because it accords with relevant Plan Melbourne policy.

Plan Melbourne 2017-2050 sets out strategic directions to guide Melbourne's development to 2050 to ensure it becomes more sustainable, productive and liveable as its population approaches 8 million. It is accompanied by a separate implementation plan that is regularly updated and refreshed every five years.

Plan Melbourne is structured around seven Outcomes, which set out the aims of the plan. The Outcomes are supported by Directions and Policies, which outline how the Outcomes will be achieved. The following are relevant to the Amendment:

- **Outcome 4:** Melbourne is a distinctive and liveable city with quality design and amenity
 - **Direction 4.4:** Respect Melbourne's heritage as we build for the future
 - **Policy 4.4.1:** Recognise the value of heritage when managing growth and change
 - **Policy 4.4.4:** Protect Melbourne's heritage through telling its stories.

The Explanatory Report also discusses how the Amendment meets the relevant requirements of:

- **Ministerial Direction 11 (Strategic Assessment of Amendments)**
- **Ministerial Direction (The Form and Content of Planning Schemes pursuant to section 7(5) of The Act)** – referred to as Ministerial Directions 7(5) in this Report.

That discussion is not repeated here.

Planning Practice Note 1 – Applying the Heritage Overlay (August 2018)

Planning Practice Note 1 (PPN01) provides guidance about using the Heritage Overlay. It states that the Heritage Overlay should be applied to, among other places:

Places identified in a local heritage study, provided the significance of the place can be shown to justify the application of the overlay.

PPN01 specifies that documentation for each heritage place needs to include a statement of significance that clearly establishes the importance of the place and addresses the heritage criteria. It recognises the following model criteria (the HERCON criteria) that have been adopted for assessing the value of a heritage place:

- Criterion A:** Importance to the course or pattern of our cultural or natural history (historical significance).
- Criterion B:** Possession of uncommon rare or endangered aspects of our cultural or natural history (rarity).
- Criterion C:** Potential to yield information that will contribute to an understanding of our cultural or natural history (research potential).
- Criterion D:** Importance in demonstrating the principal characteristics of a class of cultural or natural places or environments (representativeness).
- Criterion E:** Importance in exhibiting particular aesthetic characteristics (aesthetic significance).
- Criterion F:** Importance in demonstrating a high degree of creative or technical achievement at a particular period (technical significance).
- Criterion G:** Strong or special association with a particular community or cultural group for social, cultural or spiritual reasons. This includes the significance of a place to Indigenous peoples as part of their continuing and developing cultural traditions (social significance).
- Criterion H:** Special association with the life or works of a person, or group of persons, of importance in our history (associative significance).

3 Strategic justification

3.1 The issues

The planning context is set out in Chapter 2. Whether the Amendment is strategically justified within the context of planning policy and background studies is discussed in this chapter. The issues are whether the Amendment:

- is supported by an appropriate methodology in the 2017 Heritage Study, 2012 Moonee Valley Thematic Environmental History and Moonee Valley Heritage Strategy 2011
- is supported by, and implements the relevant sections of the Planning Policy Framework and relevant local heritage policies
- is consistent with the relevant Ministerial Directions and Practice Notes
- is generally strategically justified
- should proceed subject to addressing more specific issues raised in submissions as discussed in the following chapters.

3.2 Moonee Valley Thematic Environmental History

The Moonee Valley Thematic Environmental History 2012⁶ documents how Moonee Valley has developed and how the culture of the area has influenced the natural environment, buildings and structures. It assists in understanding the major themes that influenced development in the City of Moonee Valley which include:

- ‘Peopling Victoria’s places and landscaping’ (the early settlement of Moonee Valley)
- ‘Building towns, cities and the garden state’ (patterns of residential development including housing and garden styles).

The Thematic Environmental History followed the Moonee Valley Heritage Strategy 2011 (2011 Heritage Strategy) that Council commissioned to assist it in conserving the heritage of Moonee Valley and to identify further work required.

Council engaged Context Pty Ltd to undertake the Moonee Valley Heritage Gap Study 2014, Stage 1 (Stage 1 Gap Study) to identify in Moonee Valley’s heritage protection and provide a prioritised work program to guide future heritage studies. The draft Stage 1 Gap Study report underwent community consultation in July and August 2014 and Council received 199 submissions. Council adopted the Stage 1 Gap Study in November 2014.

The Gap Study recommended a framework for proceeding with future ‘Stage 2’ heritage studies over the next eight years.

Context Pty Ltd completed the Moonee Valley Heritage Study 2015 that comprised a ‘Stage 2’ heritage assessment for the high priority groups. It identified 354 places, small groups of buildings and precincts as potentially of heritage significance which were recommended for further assessment.

⁶ Adopted by Council in 2012.

3.3 Moonee Valley Heritage Study 2017 approach

(i) Background

Context Pty Ltd completed the 2017 Moonee Valley Heritage Study over 2017-2018. It is a 'Stage 2' heritage assessment of groups identified in the Stage 1 Gap Study:

- Interwar residential buildings and precincts (high priority)
- Victorian residential buildings and precincts (medium priority)
- Edwardian residential buildings and precincts (medium priority)
- Extensions to existing Heritage Overlay precincts (low priority).

It also assessed places of potential heritage significance identified by the community.

Council adopted the 2017 Heritage Study in March 2019 and resolved to request the Minister to apply the interim Heritage Overlay, prepare the Amendment and notify all affected property owners. The exhibited Amendment proposes to implement each of the recommendations.

The 2017 Heritage Study comprised a preliminary investigation of precincts and places identified in the Stage 1 study, followed by a detailed assessment and reporting.

The preliminary investigation involved:

- a preliminary 'desktop' review of all places, precincts and precinct extensions to prepare an initial shortlist
- a detailed analysis of the shortlist identified by desktop review to further refine this list
- internal peer review of the findings
- preparing a final shortlist of potential heritage places, precincts and extensions recommended for detailed investigation.

The detailed assessment involved:

- establish a threshold of local significance for both individual places and precincts
- define a precinct or precinct extension and individual heritage places.

The key tasks associated with the detailed investigation were: historic research, fieldwork, assessment (comparative analysis and applying the HERCON criteria), statutory recommendations, and review of existing Heritage Overlay places.

(ii) Evidence and submissions

Several submitters to the Panel provided further information about the accuracy of the Statements of Significance. These are discussed in Sections 5, 6 and 8 in the context of individual properties and precincts.

Council submitted that Context is a highly experienced heritage consultancy that has prepared many heritage studies for local government. It said their methodology was rigorous and consistent with industry standards and practices and with Planning Practice Note 1.

Council submitted their heritage consultants have:

- applied the recognised HERCON Criteria to assess the heritage significance of places and precincts

- prepared detailed comparative analysis with similar places and precincts already in the Heritage Overlay
- prepared statements of significance in the format of Planning Practice Note 1
- recommended additional controls in the Schedule to the Heritage Overlay
- recommended inclusion of significant places within a precinct Heritage Overlay if they contribute to that precinct's significance.

Ms Schmeder's evidence was that the methodology used by Context for the preliminary investigation goes beyond the normal two stage practice. So, each place and precinct has been through three steps of comparative analysis and refinement.⁷

Intactness and integrity

A number of submitters argued the thresholds for intactness and integrity should reflect the City of Moonee Valley Heritage Guidelines 2016, which require that any alterations to a heritage property are not visible from the street. Mr Wren QC (for submitter 5), for example, argued that Council is applying a lesser standard than is required for future permitted development to get properties into the Heritage Overlay.

Council submitted that the 2017 Heritage Study adopted definitions of 'intactness' and 'integrity' as thresholds for precincts that are consistent with established practice.

'Intactness' was used to measure the per centage of Contributory places in a precinct, with a precinct generally required to have at least moderate intactness (60-80 per cent) or high (80-100 per cent).

'Integrity' (legibility of original appearance) was used to measure whether a property was Contributory to a precinct. High intactness was not essential if repairs or maintenance have used the same or similar materials, details and finishes.⁸

The study states intactness (lack of alteration, retention of original building fabric) was a primary consideration. But comparative analysis would determine if a building with lower intactness, but good integrity could also be of local significance if, for example, it is rare.

Ms Schmeder said the definitions applied by the 2017 Heritage Study are appropriate and noted that intactness of a precinct is not the only consideration. She said a precinct could have low intactness but warrant protection because the remaining fabric demonstrates something important to the municipality. She summarised the approach by asking whether "a somewhat altered building is still recognisable ... and can still provide legible information about the significant themes of a precinct."⁹ She said this is in keeping with the definition from the Victorian Heritage Register Criteria and Threshold Guidelines.

Council supported the position adopted by the 2017 Heritage Study for assessing individual properties, which required a high level of intactness.

Research and assessments

Ms Schmeder's opinion was that the historical context and precinct or place histories in the 2017 Heritage Study are adequate to support the recommendations. She also said they are

⁷ Document 12, page 8-11.

⁸ Document 21, Council submission Part B, pp13.

⁹ Document 12, paragraph 45.

derived from a suitable range of sources. Ms Schmeder's opinion was that the peer review approach used in the 2017 Heritage Study pools the knowledge of each team member and ensures consistency for thresholds for shortlisting.

Mr Wren QC (for submitter 5) submitted that Ms Schmeder had insufficient budget to do an adequately detailed assessment of each property.

A number of submitters said the Stage 1 Heritage Gap Study had not identified their properties and it was more reliable than the 2017 Heritage Study.

Council¹⁰ submitted that the concept of heritage broadens as time passes. The fact that a building has been overlooked in previous heritage studies does not imply that it has marginal heritage significance.

Council submitted that consultants take care to be as accurate as possible when preparing the study before it is tested through the preliminary consultation and exhibition process. It said Council corrects errors that are identified, and, in most instances, they did not change the heritage expert's recommendation.

Ms Schmeder's role

Ms Schmeder explained her role in the Stage 1 Gap Study was leading a Context team comprising a historian, a researcher and an architect.

She was also involved as a contractor to Context in assessing individual places for Volume of the 2017 Heritage Study; houses built in the Edwardian and interwar periods. Her role was to review each draft history, description and comparative analysis by Context consultants. She then prepared an assessment against the HERCON criteria and noted which places, in her professional opinion, met the threshold of local significance. The Context consultants then prepared the statements of significance.

Mr Chris Wren QC (for submitter 5) questioned Ms Schmeder's independence as the peer reviewer of the 2017 Heritage Study. He submitted that as a heritage expert contracted to Council, she has a vested interest in maximising the number of properties that are heritage listed.

(iii) Discussion

The study methodology is consistent with guidance in Planning Practice Note 1 and with other previous heritage studies which form part of Moonee Valley's broader heritage program. The combined peer review and multi-staged approach has resulted in a more scrutinised process than generally expected. Council's comprehensive methodology forms a robust strategic basis for the Amendment.

The Panel found Ms Schmeder to be a highly experienced and thoughtful expert witness. She was very clear about her involvement in the previous heritage work for Council and the Panel sees no reason to doubt her ability and independence.

Just because sites proposed to be covered by the Heritage Overlay were not identified in an earlier heritage study is not a reason to exclude them. The Panel finds that gap studies are legitimate to address areas or themes not previously studied in detail and to reconsider places.

¹⁰ Document 57, Council Part C submission.

Heritage assessments are based on observations from the street and publicly available historical records, so there will be minor errors that local residents can readily identify. Residents can bring more detailed information about the history of a building as part of the public consultation process, which submitters have done. The Panel thanks those submitters for their efforts to improve the quality of information available.

The Panel agrees with Council that the 2017 Heritage Study and associated heritage citations do not have significant errors which need to be noted.

The Panel considers the methodology and thresholds used by the 2017 Heritage Study are robust and independent. By endorsing the methodology, the Panel has not made any conclusions about the heritage merits of properties and precincts. The Panel considers the merits of including specific places and precincts in the Amendment in the following chapters.

(iv) Conclusion

The Panel finds that the 2017 Heritage Study approach and methodology are appropriate to support the Amendment.

3.4 Policy support

(i) Submissions

No submission stated that the Amendment in principle had insufficient strategic justification.

Council submitted the Amendment is consistent with, or supported by, state and local policies summarised in Chapter 2 of this report. It meets section 4 of the Act by ensuring that future development proposals consider the heritage significance of properties with the Heritage Overlay.

Several submitters objected to the Amendment because it will benefit the community, but Council will not be contributing to the cost of maintenance for individual property owners (discussed in Chapter 4.2).

Council submitted that costs to individuals 'will be offset by the benefits to the broader community by protecting places of heritage significance which will result in a net community benefit'.¹¹

(ii) Discussion

An objective in the Act is to conserve and enhance buildings or places of historical interest through to the Victoria Planning Provisions and Planning Scheme.

Planning policy seeks to conserve historic buildings of interest for present and future generations. The 2017 Heritage Study and the Amendment have done this by including only places or precincts that have been assessed to meet local heritage significance to justify the Heritage Overlay. This has been achieved consistent with the Department of Environment, Land, Water and Planning's (DELWP) guidance in PPN01.

¹¹ Document 21, Council Part B submission, paragraph 57; Explanatory Report, Moonee Valley Planning Scheme Amendment C200moon, page 9.

The Panel is satisfied that the Amendment addresses the key statutory and policy objectives outlined in Chapter 2. The background studies that inform the Amendment and the Amendment itself have been prepared thoroughly and in accordance with the planning scheme and relevant Ministerial Directions and Practice Notes.

The Amendment thus in the Panel's view as a whole delivers net community benefit and sustainable development as required by Clause 71.02-3. Where the Amendment as it affects a particular property or precinct does not in the Panel's view meet this test, it is discussed and considered in detail later in this report.

The Panel has attempted to consider and address the concerns of submitters based on perceived detrimental financial impacts from the Amendment, particularly in Chapter 4.2. However, the Panel accepts there is a long established clear policy framework that these are matters that are largely not relevant at the time of applying the Heritage Overlay, but rather to be considered at the development application stage.

3.5 Conclusions and recommendation

The Panel concludes that the Amendment:

- is supported by appropriate methodology in the 2017 Heritage Study, 2012 Moonee Valley Thematic Environmental History and Moonee Valley Heritage Strategy 2011.
- is supported by, and implements the relevant sections of the Planning Policy Framework and relevant local heritage policies.
- is consistent with the relevant Ministerial Directions and Practice Notes.
- is well founded and strategically justified.
- should proceed subject to addressing the more specific issues raised in submissions as discussed in the following chapters.

The Panel recommends:

- 1. Adopt Amendment C200moon to the Moonee Valley Planning Scheme as exhibited subject to:**
 - a) Making the changes to ordinance as shown in Appendix C to the Council meeting papers of 25 August 2020**
 - b) Making changes to the Statements of Significance as shown in Appendix D to the Council meeting papers of 25 August 2020**
 - c) Making changes to the Moonee Valley Heritage Study Volume 1 as shown in Appendix E to the Council meeting papers of 25 August 2020**
 - d) Making changes to the Moonee Valley Heritage Study Volume 2 as shown in Appendix F to the Council meeting papers of 25 August 2020**
 - e) Other changes as recommended in this report.**

4 General issues

This chapter refers to issues that apply across more than one individual place or precinct. Where a submission raised only general issues, it is not referred to in subsequent chapters.

4.1 Building condition

(i) The issue

The issue is whether building condition is relevant when assessing the heritage significance of an individual place or a precinct.

(ii) Evidence and submissions

A number of submitters argued that their properties were in such poor condition that their long term conservation was not feasible and as a consequence proposed Heritage Overlays should not proceed.

For example, Submitter 48 provided the Panel with a Building Inspector report outlining the poor condition of the building and suggesting that its demolition was inevitable. Ms Schmeder responded in the following terms:¹²

While 21 Marshall Street requires some deferred maintenance, including restumping, it is still structurally sound and its demolition is not inevitable.

Submitter 77 was represented at the Hearing and provided the Panel with images of the condition of the property at 37 Sandown Road, Ascot Vale arguing that it was beyond repair. The images showed extensive termite damage to sub-floor timbers, but otherwise the building appeared to be in sound condition. The submitter also tabled a report from a pest control firm which found severe termite damage to some sub-floor timbers. It did not conclude that demolition was inevitable but recommended a series of maintenance actions.

Ms Schmeder's response to the building condition report was:¹³

The damage to the subject house due to pest infestation and poor maintenance is documented as repairable and cannot be described as extreme dilapidation leading to inevitable demolition.

Submitter 102 appeared at the Hearing and tabled an engineering report that argued there is so much deterioration of the sub-floor structure and deterioration of the superstructure that the only feasible response was full demolition.

Ms Schmeder's response to these submissions was:¹⁴

...if the Heritage Overlay is introduced on a permanent basis, matters such as structural integrity can be considered during the planning permit process. In addition, Clause 43.01 of the Moonee Valley Planning Scheme a permit is not required to carry out works, repairs and routine maintenance which does not change the appearance of a heritage place or which are undertaken to the same details, specification and materials.

In response to Submission 102 the Council commissioned a further review of the level of significance of this place and agreed that the property should be identified as Non-

¹² Document 12, para 499.

¹³ Document 12, para 188.

¹⁴ Document 12, para 255.

Contributory. In this case it could make demolition more straightforward, but still ensures that a permit needs to be obtained for demolition.

(iii) Discussion

It is not unusual for submitters to Heritage Overlay amendments to argue that the condition of their property is so bad that demolition is the only feasible outcome. The usual response is that the condition of the place is not a matter to be considered at the time of introducing the control. It may be a valid issue when permits for demolition and redevelopment are considered.

Having said that there are some qualifications to this position.

The Panel that considered submissions to Yarra C173 Part 2 came to the following conclusion:

The Panel takes the view that condition may be relevant to determining whether a property should be included in a Heritage Overlay, but only in circumstances where the case for demolition is irrefutable and the community wide costs of including the place in a Heritage Overlay are unreasonable.

This position was reinforced in an earlier Supreme Court decision (*Dustday Investments Pty Ltd v Minister for Planning* [2015] VSC 101 (20 March 2015) where Justice Garde said:¹⁵

... the position of the panel that there should be serious justification and persuasive evidence before a building with heritage significance is permitted to be demolished at the amendment stage is an opinion that is entirely open to the panel to adopt, as was its recommendation to the planning authority and the Minister.

(iv) Conclusion

The Panel concludes that building condition is not normally relevant when assessing the heritage significance of an individual place or a precinct. However, in line with the positions quoted above it is open to a Panel to find that the condition of a place is so poor that its demolition is inevitable and that the place, therefore should not be covered by the Heritage Overlay.

It is the conclusion of this Panel that none of the submissions pointing to the poor condition of the various properties warrant the Panel using such discretion, except for the dwelling at 19 Milverton Street, Moonee Ponds where multiple technical assessments concluded that the condition was one of extreme dilapidation.

4.2 Property value and financial implications

(i) The issue

The issue is whether private financial impacts on property owners are relevant when assessing heritage significance or when deciding whether to apply a Heritage Overlay.

Submitters defined the issue the following ways:

- a perception that property value will be diminished and the ability to sell impeded if a Heritage Overlay applies
- the costs and time required for planning permits not otherwise required
- higher insurance premiums

¹⁵ At para 105.

- a perception that heritage controls are not equitable, and Council should provide owners with grants, land tax concessions and fee waivers to cover the extra costs
- the Heritage Overlay is not necessary because property owners will invest in high value heritage properties on their own initiative.

(ii) Evidence and submissions

The following submissions illustrate the issues raised by submitters.

Submission 14¹⁶ expressed concerns about the costs associated with doing works at a heritage property illustrated by a case study of a property they own in another municipality.

At the Hearing Mr Georgilopoulos (submission 14) sought rate relief and land tax relief, discounts or waiver of permit fees and other forms of financial compensation for heritage listed properties.

Mr Agushi (submission 104) told the Panel his house at 46 Roberts Street Essendon is of little heritage value and if a Heritage Overlay is applied it will severely reduce the market value. He said he purchased the house in February 2019 without knowledge of the heritage study and real estate agents currently value the property at approximately \$105,000 less. He said other similar houses in the street that sold since the Heritage Overlay have sold for less while a nearby house outside the overlay has sold for more.¹⁷

In contrast, Mr Agushi supported his other property in the same street being graded as individually significant because he said it's of high heritage value and deserves to be recognised.

Submission 26 said the owners plan to sell the property to a developer to obtain a higher price and this would not be possible if it is under a Heritage Overlay.

Mr Leptos (submission 121) told the Panel they are planning to sell the house and real estate agents have advised him the Heritage Overlay will reduce the price by \$70,000 and make it harder to sell.

He said he had to change insurers because of the interim Heritage Overlay, which resulted in an increase in his insurance costs. He submitted that Council should offer help to owners of houses under a Heritage Overlay. He cited the heritage grants offered by the Cities of Melbourne and Yarra.

Submission 71 said the owners are currently planning a single storey extension at the rear of the house that will not impact the façade. It said the Heritage Overlay will cause unnecessary costs and a lengthy process and they will sell their house if it proceeds.

Council submitted that costs incurred by individuals as a result of the Heritage Overlay of a personal nature are not relevant at the planning scheme amendment stage. The only relevant consideration is the heritage significance of a heritage place in accordance with the heritage criteria set out in PPN01.¹⁸

¹⁶ Document 27.

¹⁷ Document 58 and 58a.

¹⁸ Document 21, Council Part B submission, pp7-11.

Council cited the decision of the Victorian Supreme Court in *Dustday Investments Pty Ltd v Minister for Planning*.¹⁹ It referred to subsequent panel reports that have agreed the amendment stage is to objectively identify heritage places; the planning permit stage considers the economics of retaining and repairing a building.

Council submitted that financial impacts may be considered if they translate into public social and economic effects of a planning scheme amendment, as required by the Act. But it said the social and economic issues raised by submitters are not community wide social or economic impacts.

At the Panel's request Council outlined previous panel decisions that considered whether a heritage amendment would have broader economic and social effects.²⁰ In summary the panels ruled:

- there was no evidence that the Heritage Overlay would have demographic impacts such as forcing families to leave the area or wholesale property devaluation²¹
- property value is made up of complicated and interrelated factors²²
- social and economic impacts are difficult to quantify and often intangible without analysis and evidence.²³

Council submitted there was no evidence to support the claim that a Heritage Overlay would have a detrimental impact on property values.

Council submitted that landowner requests for changes to land tax valuation, compensation and an exemption from permit application fees are not relevant considerations for the Panel.²⁴

Council said it does not have any grants or funding programs for owners of heritage properties and none are planned. The statutory planning department offers advice to owners of land subject to the Heritage Overlay.²⁵

(iii) Discussion

The Panel acknowledges submitters' concerns about private financial impacts of the Heritage Overlay and that those concerns have caused them distress. But Planning Practice Note 1 and judicial authority cited by Council make it clear that the key issue for the Panel is the heritage significance of the properties. Private financial issues of a personal or property specific nature are not relevant at the planning amendment stage.

The requirement under the Act for planning authorities to consider social and economic impacts of planning scheme amendments is limited to community wide impacts. No submitter provided information about wider social or economic impacts of the Heritage Overlay even though it applies to a wide area, as shown by the Municipal Heritage Overlay map.²⁶ The Panel therefore has no basis to assess those impacts.

¹⁹ As above at page 9; [2015] VSC 101 at paragraph 101.

²⁰ Document 57, Council Part C submission, pp 3-4.

²¹ Yarra Amendment C183 [2016] PPV 68.

²² Boroondara Amendment C284 [2019] PPV 53.

²³ Greater Shepparton Amendment C205 [2020] PPV 12.

²⁴ Document 21, paragraphs 59-60.

²⁵ Document 57, Council Part C submission, pp 3-4.

²⁶ Document 55, Final Municipal Heritage Overlay Map.

The Panel recognises that a Heritage Overlay can result in property owners incurring extra costs and delays associated with planning permits and potentially increased insurance costs.

Council acknowledged the costs associated with a Heritage Overlay. In its Part C submission Council said it does not offer funding to owners of heritage properties. It has been researching possible grants or funding programs to preserve highly significant heritage properties in the municipality since 2016.²⁷ The Panel encourages Council to provide incentives to homeowners to manage their heritage properties and to ameliorate the costs incurred because of the Heritage Overlay.

(iv) Conclusion

The Panel concludes that property value and private financial implications are not relevant when deciding whether to apply the Heritage Overlay.

4.3 Notice and consultation

(i) The issues

The issues are:

- whether there was adequate consultation during the 2014 Gap Study and 2017 Heritage Study
- whether notice was properly provided for the Amendment
- whether Council should have delayed the Amendment due to difficulty in communication through Covid-19.

(ii) Evidence and submissions

Several submitters said they had not been notified during the 2014 and 2017 heritage studies. Others submitted they purchased property around 2017 or after unaware that heritage listing was being considered.

Submission 33, for example, suggested they did not receive correspondence about the two studies and therefore had not had the opportunity to comment at that time. When the property was purchased in 2016 there was nothing on the property report to indicate an overlay was being considered.

Submission 105 submitted that they did not receive notice of the Amendment and were not invited to participate in the earlier community consultation.

Submission 63 noted there was a significant gap in consultation after the 2014 Gap Study so there has been a significant gap in communication between then and the Amendment.

In their Part A submission (Attachment 2)²⁸, Council provided a detailed chronology of events since 2014 leading to the Panel Hearing including the opportunities provided to the community and the direct notice provided to affected landowners.

In its Part B submission,²⁹ Council provided further information including:

²⁷ Document 57, paras 17-20.

²⁸ Document 11.

²⁹ Document 21, para 32 onwards.

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.

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.

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.

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.

...

- 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.

Council submitted that notice of the Amendment included:³⁰

- a letter to all 2,519 affected property owners and occupiers³¹
- an email to community members interested in heritage on 21 May 2020
- notice to the Minister and other prescribed Ministers
- notice to Heritage Victoria
- published in The Age on 20 May 2020
- published in the Victorian Government Gazette on 21 May 2020
- made available on Council's 'your say' platform on 20 May 2020 and on DELWP's website.

In their closing submission, Council submitted:³²

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.

³⁰ Document 11, para 56.

³¹ Council submitted that due to delays because of COVID19, all letters were not with Australia Post until 29 May 2020; but that this still meets the statutory requirements of the Act.

³² Document 57, para 42.

(iii) Discussion

To a large degree, the community consultation in the earlier stages of the development of the heritage studies is not relevant to the Panel's consideration; our focus is on the statutory notice under the Act.

In passing, the Panel notes that Council appeared on their submissions to have done extensive consultation to develop the studies leading to the Amendment. However extensive this consultation, some submitters still feel it was inadequate or deficient. The Panel can also understand why some of the submitters may feel concerned about the 'hiatus' in communication as Council worked its way through various priorities.

Regarding notice for the Amendment, again the Panel understands some submitters are adamant they did not receive notice, or the whole process was unfair because the restrictions of COVID-19 meant they were not able to discuss issues with neighbours, for example.

There is little the Panel can do to further investigate where the truth lies. The Panel accepts in good faith that the Council did undertake a mail out to all affected properties and made the usual public notice. It also accepts in good faith that some submitters may not have received that notice or in some cases may not have understood what it was.

What is not apparent from the facts is a widespread defect in notice that would give rise to concern for the Panel.

The notice (and the efforts of some submitters) has generated over 120 submissions and Council has undertaken to refer late submissions right up to the Hearing. That is a significant number of submissions for an Amendment in the Panel's experience.

(iv) Conclusion

The Panel makes no conclusion on the earlier consultation for the studies leading to the Amendment. The Panel concludes that the notice for the Amendment meets the requirements of the Act.

5 Extended heritage precincts

5.1 Glass Street, Essendon (HO2)

(i) The issues

The issues are whether:

- the proposed extension of the Glass Street precinct should be included
- Non-contributory properties should be listed in the Statement of Significance.

(ii) Evidence and submissions

The Statement of Significance includes the following features:³³

The Glass Street and precinct, (sic) is a residential area, which comprises detached timber or brick bungalows predominantly dating from the Interwar era with a smaller number of late Victorian and Federation/Edwardian houses is significant.

The following houses and any associated early/original front fences are contributory to the precinct:

- 1-11, 15-21 and 4-8, 12, 14 & 18-24 Cooke Street
- 1-7, 11-21, 25 & 27 and 2-18 & 22 Crisp Street
- 1-7 Dalene Street
- , 49-87 and 50, 52, 56-68 & 74-80 Glass Street
- 1-7, 11-23 and 2-20 & 30 Wright Street.

Key attributes that contribute to the significance of this precinct include:

- the consistency of scale (one storey), form (asymmetrical plan often with projecting porch), siting (uniform or similar front and side setbacks), and original materials and detailing (weatherboard, face brick or render with iron or tiled hip or gable roof) of the Contributory houses
- the variety of distinctive window and porch treatments that are representative of houses of the Edwardian and interwar eras
- the high degree of intactness to the early to mid-twentieth century development date with contributory buildings typically surviving with their presentation to the street being largely intact
- the 'garden suburb' character created by the generous garden setbacks, with original front fences and low height of fences and lack of building within the front setback area meaning that dwellings are visible from the street
- the location of vehicle accommodation within the rear yards of properties
- consistent road alignments and allotment patterns resulting from the late nineteenth and twentieth century subdivisions
- the remnant bluestone kerb and channel.

The Panel considered two submissions in response to the proposed Amendment.

Submission 7 supported the extension of HO2 to more houses in Glass Street, Essendon.

Submission 19 objected to the Heritage Overlay applying to 1/47 Glass Street because it is a 1970s block of units. Council in response said 1/47 Glass Street is not Contributory to the

³³ Note the quotes from Statements of Significance are from the exhibited versions.

precinct in the Statement of Significance. Council supported revising the Statement of Significance to clearly identify the Non-contributory properties.³⁴

(iii) Discussion

The Panel inspected the precinct and has considered the citation for the precinct.

The Panel is satisfied that the precinct meets the threshold of local significance to be included in the Heritage Overlay.

The Panel supports statements of significance being drafted in a way that is readily understood by the public and particularly those who may be impacted. The Panel agrees with Council's proposal to revise the Statement to clearly identify the buildings that are Non-contributory to the precinct.

(iv) Conclusions and recommendation

The Panel concludes:

- The proposed extension of the Glass Street precinct (HO2) meets the threshold of local significance to be included in the Heritage Overlay.
- The Statement of Significance should be revised to clearly identify the Non-contributory buildings.

The Panel recommends:

- 2. Amend the Statement of Significance for Glass Street, Essendon (HO2) to clearly identify the buildings that are Non-contributory to the precinct.**

5.2 Peterleigh Grove/Kalimna Street, Essendon (HO3)

(i) The issue

The issues are:

- whether 4 Curtis Street should be included in the overlay
- whether the proposed extension of the Peterleigh Grove and Kalimna Street precinct should be included in the Amendment.

(ii) Evidence and submissions

The Statement of Significance includes the following features:

The Peterleigh Grove and Kalimna Street precinct in Essendon is a residential area comprising houses from c.1880 to c.1945. The housing includes Victorian and Edwardian cottages and villas, Queen Anne Revival villas, and interwar houses and bungalows.

The following elements contribute to the significance of the precinct:

1. The houses and any associated early or original front fences, as appropriate, at:
 - 7, 13-29, 2-8, & 12-28, 32-34 Ardoch Street
 - 1-17, 2-16, 20, 26-30 & 34 Brewster Street
 - 3-9 & 6-10 Curtis Street

³⁴ Summary of submissions, attachment A to Council officer response to submissions, endorsed at Council meeting of 25 August 2020, at page 3.

- 3, 7-19, 23-31, 2, 28 & 30 Kalimna Street
- 1, 1A, 3, 5, 7, 2-6, 10, & 12 Kiora Street
- 64-78 & 82-90 Napier Crescent
- 253-285 Pascoe Vale Road (excluding 255A)
- 1-41 & 2-42 Peterleigh Grove

Key attributes that contribute to the significance of this precinct include:

- the consistency of scale (one or two storey), form, siting (uniform or similar front and side setbacks), and original materials and detailing (weatherboard face brick or render with iron or tiled hip or gable roof, verandah/porches with cast iron or timber detailing) of the contributory houses
- Peterleigh Grove is notable as an almost completely intact late 1930s estate where many houses also retain original or early front fences. The intact groups of Edwardian era housing in Kalimna Street and the large Edwardian villas and interwar bungalows along Pascoe Vale Road are also notable.
- the high degree of intactness to the late nineteenth century and early twentieth century development dates
- contributory buildings that typically survive with their presentation to the street being largely unaltered
- original front fences and low height of fences meaning that dwellings are visible from the street
- road alignments and allotment patterns resulting from the nineteenth century subdivision
- the absence of vehicle accommodation in front setback areas
- the wide median strip and mature Canary Island Palms (*Phoenix canariensis*) in Brewster Street.
- the bluestone kerb and channel in various streets throughout the precinct, and the unmade rear laneways to some properties.

Submission 12 supported Council extending HO3 to avoid island blocks within heritage areas.

Submission 42 objected to 4 Curtis Street being included in the Heritage Overlay because the adjoining properties at 2 Curtis Street and 8 Westgreen Court are not included as Contributory and for heritage and era sake.

Council's response to the submission³⁵ was that 2 Curtis Street has been demolished with a permit and 8 Westgreen Court was not identified in the 2014 Heritage Gap Study as meeting the threshold of local significance.

Ms Schmeder's expert report refers to the 2017 Heritage Study, which states 4 Curtis Street is comparable stylistically and historically to other early post-war houses in the precinct. Her opinion was that 8 Westgreen Court does not appear to be an interwar or early post-war house.

(iii) Discussion

The Panel visited the precinct and based on submissions and evidence considers the precinct meets the threshold of local significance to be included in the Heritage Overlay.

The fact that the neighbouring properties at 2 Curtis Street and 8 Westgreen Court are not Contributory does not diminish the contribution that 4 Curtis Street makes to the precinct.

³⁵ Attachment A to Council officer response to submissions, endorsed at Council meeting of 25 August 2020.

No submissions have raised issues that challenge the heritage merits of the precinct or the property at 4 Curtis Street being included.

(iv) Conclusion

The Panel concludes no changes to HO3 are recommended as a result of submissions.

5.3 Riverview Estate and Trinafour Estate, Essendon and Moonee Ponds (HO7)

(i) The issue

The issue is whether there is a drafting error in the Amendment.

(ii) Evidence and submissions

Submission 6 supported the proposed extension to the existing precinct HO7.

Submission 53 also supported the proposed extension to HO7. The submitter owns 1 Leslie Road, Essendon which is one of a between the wars pair. The submission points out that immediately behind these dwellings at 2 and 4 Sherbourne Street there are identical properties to the Leslie Road dwellings. They are included in the Statement of Significance but excluded from the Amendment map. It submitted that this must be a drafting error.

Council's response noted that 1 and 3 Leslie Road is already covered by HO7 and 2 and 4 Sherbourne Street are covered by HO279.

(iii) Discussion

The Panel acknowledges the submissions and the Council response.

(iv) Conclusion

The Panel concludes that no changes to HO7 are recommended as a result of submissions.

5.4 Holmes Road Residential, Moonee Ponds (HO12)

(i) The issues

The issues are:

- whether the proposed extension of HO12 includes properties that lack heritage value
- whether the Amendment will have an impact on property values and increase insurance premiums
- whether the Amendment will introduce permit requirements for a range of works, including fence construction.

(ii) Evidence and submissions

The Statement of Significance includes the following features:

The Holmes Road Residential precinct, which is a residential area comprising houses and one former shop constructed c.1880 to c.1935 at nos. 55 -79 and 48-82 Holmes Road, 62-90 Eglinton Street, 1-19 and 2-20 Grandview Street, 1A and 1B Grace Street, 2A, 2B and 2C Grosvenor Street, and 1-21 and 2-26 Milverton Street, Moonee Ponds is significant.

Significant features of the precinct include:

- The original form, scale, detached siting and detailing of the Contributory houses.
- The bluestone laneways at the rear of the houses and the bluestone kerb and channelling.
- The extent to which development in key periods before and after 1900 with Interwar infill is apparent.
- The low or transparent front fences, which allow views to the front and side elevations of the houses.
- The relatively high intactness of the majority of the houses when viewed from the street.

On this basis, the following buildings and features contribute to the significance of the precinct:

- The houses or flats at nos. 62-78 & 82-90 Eglinton Street, 1, 3, 7, 11, 13, 15 & 19 & 4, 6-20 Grandview Street, 50-62, 68-72 & 76-82, & 55-75 Holmes Road, 1- 21 & 2-10, 16-26 Milverton Street, and 1A & 1B Grace Street.
- The original or early front fences at 1A & 1B Grace Street, 52, 57, 60, 72, 73 & 76 Holmes Road, and 7-11, 17 & 21 Milverton Street.
- The brick outbuilding at the rear of the house at 69 Holmes Road.
- The former Grand View Store at 79 Holmes Road.
- The former stables at 2A Grosvenor Street.

The Panel considered 11 submissions (Nos 5, 8, 14, 17, 20, 38, 58, 59, 81, 102, 112) for this component of the Amendment. The Panel heard from five of these submitters. Two submissions (102 and 112) generally supported the Amendment but suggested some changes.

Submission 5

Submission 5 made extensive submissions about properties at 10 and 12 Grandview Street. These properties are designated as Contributory to the significance of the precinct. The submitter was represented by Mr Wren QC, who called expert evidence from Mr Raworth.

Mr Wren's submission identified the following points as the basis for the submission:³⁶

- the extension to HO12 is not warranted as the properties proposed to be included are in no way remarkable, significant or rare
- the extension diminishes the importance of other Heritage Overlays in the Moonee Valley Planning Scheme
- the justification for this extension would seem to be matters of neighbourhood character, rather than heritage and the Council should use the Neighbourhood Character Overlay in preference to numerous extensions to the Heritage Overlay
- 10 Grandview Street is not a Contributory (or significant) building to this precinct. It is a heavily modified building that has been altered, added to, and changed in form over a series of works
- 12 Grandview Street is included and whilst it has greater integrity than No 10, the proposed precinct boundaries are not warranted and therefore it should not be covered by a Heritage Overlay.

He recommended that the proposed extension of HO12 be abandoned, but if the Panel recommends that the expansion proceed, Nos 4, 6, 10, 15 and 18 Grandview Street and 84 and 86 Eglinton Street should be designated as Non-contributory places.

³⁶ Panel summary from Document 29, para 5.

Mr Wren also tabled a heritage analysis of the properties proposed to be included in this extension completed by Ms Baker. Ms Baker works in Mr Raworth's office, but Mr Wren went to some lengths to establish the independence of her analysis. Her work challenged the classification of a number of properties as Contributory to the proposed extended precinct and concluded that there were insufficient Contributory properties in the extension area to warrant it proceeding.

Mr Raworth also referred to this report, indicated his support for the analysis and as a result that there were insufficient Contributory buildings to warrant the proposed extension to the precinct.

Mr Raworth spent a considerable amount of time in his evidence detailing the later changes to 10 Grandview Street. He stated:³⁷

On the basis of this analysis, I believe that the dwelling at 10 Grandview Street, Moonee Ponds, is of insufficient integrity and significance –to warrant classification as a contributory heritage place within the extended Holmes Street Residential Heritage Precinct. It has been altered beyond recognition of its original Victorian form ...

And:³⁸

... the dwelling at 10 Grandview Street has been altered to an extent that it should be more accurately reassessed as a non-contributory element within the broader extended Holmes Street Residential Heritage Precinct, HO12 ...

For 12 Grandview Street his evidence was that the property contributes to the extended precinct and is correctly identified. Overall, for Grandview Street he concluded:³⁹

Regardless of this, the review demonstrates that Grandview Street is a relatively poor heritage context, with a substantial proportion of ungraded properties ...

Council responded in the following terms:⁴⁰

- the late Victorian and Federation/Edwardian houses on the east side demonstrates important phases in the residential development of Moonee Ponds
- this group of “*typical*” houses form a precinct of local heritage significance
- it is agreed that there are some Non-contributory properties on Grandview Street. This is not uncommon for all but the smallest heritage precincts
- the Heritage Study methodology which was used to determine heritage consistency of ‘intactness’ and ‘integrity’: For Contributory places within precincts the ‘integrity’ rather than ‘intactness’ was a primary consideration. For ‘intactness’, if precincts have 60+ percent of intact Contributory places, are legible, visually and thematically coherent, and are better or on par with existing precincts, it is considered the precinct meet the threshold for intactness
- for 10 Grandview Street in particular:
 - its Contributory grading was determined on the basis that it is a distinctive Federation bungalow that features a pyramidal hipped slate roof that extends to form the front verandah
 - it was agreed that an upstairs loft had been constructed on the side of the house by extending the roof form, and a freestanding carport has been constructed next

³⁷ Document 16, para 41.

³⁸ Document 16, para 46.

³⁹ Document 16, para 53.

⁴⁰ Taken from Attachment A to Council meeting of 25 August 2020.

- to it. The front façade is still highly intact and retains its original verandah roof, posts, and Arts and Crafts fretwork. There is similar fretwork to the front door, as well as box bay windows with leadlight casement windows
- the front fence is reasonably sympathetic replacement.
- for 12 Grandview Street:
 - Its Contributory grading is based on the understanding that it is a highly ornate Italianate rendered asymmetrical villa
 - The rear extension and garage are clearly modern interventions
 - The front fence is a fairly accurate reproduction palisade fence that is appropriate in its form and materials to this Victorian house
 - The front verandah (including roof and floor tiles) may be a reproduction, it is an appropriate restoration of this Victorian house.

Ms Schmeder provided extensive responses to this submission.

By and large she reinforced the Council's response, but made the following specific observation:⁴¹

I agree that there are some non-contributory properties on Grandview Street. In total, there are four on the west side of the street and two on the east side, making a total of 27% of properties on this street are non-contributory and the remaining 73% contributory or significant. As set out in the methodology of the 2017 Heritage Study, Context sought to delineate precincts that at least had a "moderate" intactness (defined as 60-80% contributory and significant places overall). Grandview Street on its own is at the top of this range. In my professional experience, the presence of non contributory properties is common in all but the smallest heritage precincts. So long as these non contributory properties do not form the dominant character of the streetscape or precinct, their presence is considered acceptable.

On 10 Grandview Street:⁴²

I agree that an upstairs loft has been constructed on the side of the house by extending the roof form, and a freestanding carport has been constructed next to it (as shown below). While immediately noticeable, this extension is recognisable as a modern intervention and the original roof form is still legible. Importantly, the front façade is still highly intact and retains its original verandah roof, posts, and Arts and Crafts fretwork. There is similar fretwork to the front door, as well as box bay windows with leadlight casement windows.

On 12 Grandview Street she reinforced the Council's response and agreed that it should be graded as Contributory to the precinct.

In summary she concluded:

- While the house at 10 Grandview Street has a highly visible extension on its south side, this does not negate its contribution to the precinct
- While the reproduction front verandah of 12 Grandview Street has reinstated the integrity of this house, which is acceptable for a Contributory property
- The heritage significance of the enlarged HO12 Holmes Road Residential Precinct, including Grandview Street, has been demonstrated in the revised citation
- Therefore 10 and 12 Grandview Street have been correctly graded Contributory, and Grandview Street has been correctly included in the HO12 extension.

⁴¹ Document 12, para 211.

⁴² Document 12, para 214.

Submission 8

Submitter 8, Dr Nguyen, appeared at the Hearing for 11 Milverton Street and made the following points:

- The property is a hybrid and has undergone alterations throughout its life
- There is nothing of heritage value about this property or a number of the other properties in the proposed precinct extension
- Owners will face financial disadvantage from this proposal and Council has not made any move to make provisions for compensation for this disadvantage
- The Council responded in the following terms:⁴³The properties along Milverton Street are to be included in the Heritage Overlay as they reflect the key stages of development - predominantly Victorian Italianate villas in bi-chrome brick or timber, and Federation/Edwardian houses on the east side and Interwar bungalows on the west. The consequent mix of styles and building materials is not unusual and it is seen in many existing heritage precincts both in Moonee Valley and other municipalities
- The submitter's house is in a very impressive in an intact row of interwar houses
- The Heritage Overlay does not preclude the landowner from undertaking maintenance of a place
- The impact to property values is not a relevant consideration when determining whether a property should be included in the Heritage Overlay or not. The key issue at the amendment stage is the heritage significance of the property. Private economic issues of a personal or property specific nature are not relevant at this stage. Further, there is no basis for property owners to claim compensation as a result of the application of the Heritage Overlay.

Ms Schmeder supported the Council's response concluding:⁴⁴

- The row of interwar bungalows on the west side of Milverton Street, including 11 Milverton Street, are of high heritage value individually and as a group, and clearly warrant protection in the Heritage Overlay as contributory properties.
- 11 Milverton Street is an externally intact dwelling that retains its original front fence and a range of decorative details. It clearly contributes to the extended HO12 precinct, which recognises Victorian through interwar period development as significant.

Submission 14

Submitter 14, Mr Georgilopoulos, appeared at the Hearing for 64 Eglington Street and in his presentation made the following points:

- The property has undergone extensive alterations and these changes were detailed by means of an illustration.
- There are many other properties in Eglington Street which appear to have greater heritage value, but are not proposed for protection. These were illustrated in his presentation.
- He is concerned about the potential cost of undertaking works to a property in a Heritage Overlay (illustrated by a case study in another municipality).

⁴³ Taken from Attachment A to Council meeting of 25 August 2020.

⁴⁴ Document 12, para 232.

- Council should provide rate and land tax relief for heritage listed properties, discounts or exemptions from permit fees and other forms of financial compensation for such properties.

Council responded in the following terms:⁴⁵

- It is agreed that there are other groups and single examples, that could be Contributory in a heritage precinct. They are outside more cohesive areas of early development and were not recommended for protection. The areas proposed for inclusion have very similar histories and patterns of development to the HO12 precinct.
- There have been a series of unsympathetic alterations to the Victorian house at 64 Eglinton Street, as listed by the submitter. However, sufficient original elements of the house that survive to warrant its inclusion as a Contributory element in the precinct. It appears 64 Eglinton Street was originally identical to the bi-chrome brick house next door at No. 62 and that a row of three houses (62 and 64 Eglinton and 1 Grosvenor Street in HO325) had the same designer. The presence of this row of related houses both increases the contribution of 64 Eglinton Street, and provides an accurate model for its restoration should the current or a future owner wish.
- The Heritage Overlay is introduced to specifically ensure that the heritage significance of a property is considered when future development applications are received. The potential requirement for permit application fees as part of a future process is not a relevant consideration to the planning scheme amendment process.
- Property value, loss of development opportunity, increases in insurance premiums along with claims for compensation and financial assistance were dealt with in responses to other submissions, but in summary Council considered that they were not matters for consideration as part of this amendment process.

Ms Schmeder reinforced the Council submission and concluded:⁴⁶

- The house at 64 Eglinton Street is still recognisable as a Victorian Italianate house and one that was constructed by the same builder as the two neighbouring houses to the east. The intact houses could serve as an accurate model should an owner wish to restore 64 Eglinton Street.
- Therefore the Contributory grading is appropriate.

Submission 102

Submission 102 related to 19 Milverton Street. The submitter Ms Bayley and her sisters appeared at the Hearing. The submission was made on behalf of the beneficiaries of an estate and outlined in detail their long running plans to develop the site. This, in summary included:

- An application to develop the site in June 2014
- A permit issued under the direction of VCAT in March 2016
- Lapsing of the permit in 2018
- Preparation of a second set of plans with the intention of seeking a further permit in January 2020
- Inclusion of the property as part of the extension to HO12 in January 2020.

⁴⁵ Taken from Attachment A to the Council meeting of 25 August 2020.

⁴⁶ Document 12, para 243.

The submitters expressed disappointment with what they saw as the failure of the Council to keep them informed as their planning processes proceeded. Their submission was that the house was dilapidated and that the Contributory status should be changed to Non-Contributory based on Council's definition.

Council responded:⁴⁷

- The house at 19 Milverton Street is typical of its era and could be described as *"unexceptional"*. Heritage precincts generally contain buildings that are typical of their era, but which add up to create streetscapes and areas that stand out in their suburb or municipality.
- The house has undergone some alterations, but is largely intact, retaining its original massing and roof form projecting hipped bay, bi-chrome brick chimneys, pairs of decorative brackets to the eaves, Ashlar-look boards to the front façade, double-hung sash windows in moulded architraves (with sidelights to the front window), and a four-panelled front door.
- While the Victorian house at 19 Milverton Street stands at the north end of a row of interwar bungalows, and to the north is a 1930s brick house at No. 21 given the row of Victorian houses across from it at 16-26 Milverton Street, it is not isolated from other Victorian houses. Victorian, Edwardian and interwar houses are all considered to contribute to the precinct.
- While the house may be in poor condition, the condition of building is not a key consideration in heritage assessments. The assessment is focussed on intactness of a building as viewed from the public realm. If the Heritage Overlay is introduced on a permanent basis, matters such as structural integrity can be considered during the planning permit process. In addition, Clause 43.01 of the Moonee Valley Planning Scheme a permit is not required to carry out works, repairs and routine maintenance which does not change the appearance of a heritage place or which are undertaken to the same details, specification and materials.
- The impact of the Heritage Overlay on development opportunity is not a matter for consideration.

Ms Schmeder reiterated much of the Council's submission, concluding:⁴⁸

- HO12 Homes Road Residential Precinct and Milverton Street are both characterised by Victorian and interwar development, and both eras contribute to the precinct's heritage significance. Therefore, the position between two interwar houses does not diminish the contribution of 19 Milverton Street to the precinct.
- While it has lost its original front verandah, the house at 19 Milverton Street is intact enough to contribute to the precinct.
- Therefore no changes are recommended to Amendment C200moon.

Following the Hearing and with leave from the Panel, Council commissioned a peer review of the dilapidation report commissioned by the submitter. This report confirmed the state of dilapidation as 'extreme', and as a result Council submitted by email on 18 December 2020 that the grading of the property should be changed from Contributory to Non-contributory.⁴⁹

⁴⁷ Taken from Attachment A to Council meeting of 25 August 2020.

⁴⁸ Document 12, para 256.

⁴⁹ Document 62 and 63.

Submission 17

Submission 17 (17 Milverton Street) expressed concern about the impact of the proposed Heritage Overlay on their property's value and the fact that they would need to obtain permits for the replacement of front fences.

Council's position was summarised in the following terms:

- It is acknowledged that some minor alterations have been made to the fence, but it still retains its overall form and materials, so is still considered worthy of consideration as a Contributory element to this precinct. Regardless sympathetic alterations are likely to be approved and repairs can be undertaken without a planning permit
- the impact on property values is not considered relevant to the amendment process.

Ms Schmeder in evidence supported the Council position above.⁵⁰

Submission 20

Submission 20 (5 Milverton Street) indicated that they didn't believe that their property had heritage value and expressed concern about the impact of the Amendment on property rights.

Council's position was summarised in the following terms:

- While the property was purchased prior to the Heritage Overlay being proposed planning controls can be introduced at any time to achieve a particular outcome.
- A Contributory building does not need to be completely intact. As the submitter stated the addition is to the back of the property however from the front it is considered to maintain its intactness and therefore warrants the Heritage Overlay.
- HO12 does not require a planning permit for internal works.
- The Heritage Study does not identify the existing front fence to be original.
- The Statement of Significance does not identify the garages and outbuildings as being significant to the precinct.
- Property value issues are not relevant in the planning amendment process.
- It is common for all but the smallest heritage precincts to contain some non-Contributory properties. In the case of Milverton Street, there are just two and they do not dominate the street's heritage character.

Ms Schmeder in evidence supported the Council position above.⁵¹

Submission 38

Submission 38 (7 Milverton Street) indicated that they didn't believe that their property had heritage value.

Council responded in the following terms:

- As viewed from the street, this is a highly externally intact California Bungalow that makes a valuable contribution to the precinct
- It is agreed that three of the four bays of the fence have been rebuilt in its original configuration and with the same type of materials. This kind of repair is supported for properties in the Heritage Overlay.

⁵⁰ Document 12, para 5.4.1.

⁵¹ Document 12, para 5.4.1.

Ms Schmeder in evidence supported the Council position above.⁵²

Submission 58

Submission 58 (3 Milverton Street) sought agreement for them to undertake works to an existing extension to the property.

Council's response is summarised:

- The Heritage Overlay does not preclude opportunity for redevelopment. The proposed heritage precinct will seek to protect the original parts of the Contributory house exteriors, and not later extensions.
- A planning permit is not required for internal alterations in a Heritage Overlay.

Submission 59

Submission 59 (24 Milverton Street) made a written submission which stated they believed the proposed extension to HO12 was not sufficiently justified.

Council's position was:

- That the assessment of the properties in the proposed extension was undertaken using an appropriate methodology
- the consequent need for planning applications, the cost of same and the need for compensation and financial assistance were common to a number of submissions but are not relevant at this stage of the planning process.

Ms Schmeder in evidence supported retention of the property as Contributory.⁵³

Submission 81

Submission 81 (11 Grandview Street) stated the property and the precinct lacked heritage value.

Council acknowledged that this property had been the subject of reconstruction works and responded that:⁵⁴

- Photos provided by the submitter confirm the above works as well as showing a few changes to decorative elements. Overall they illustrate that they have done an excellent job of rescuing a neglected and somewhat altered house.
- ...
- In summary, the works to this house have introduced some Victorian style details to an Edwardian house, but the house retains a very large proportion of its original form, material and details, and is still contributory on this basis.

Ms Schmeder confirmed her view that the property, whilst having some alterations, still meets the threshold of being Contributory and no change to the Amendment is recommended.⁵⁵

Submission 112 generally supported the proposed Amendment.

(iii) Discussion

The proposed inclusion of this extension to HO12 was hotly contested and the Panel undertook several site inspections to confirm its views on the proposal.

⁵² Document 12, para 5.4.1.

⁵³ Document 12, para 5.4.1.

⁵⁴ Attachment 20 to Council meeting of 25 August 2020.

⁵⁵ Document 12, para 5.4.1.

The task for the Panel is to determine whether the proposed extension matches the stated significance of the precinct. The elements identified as significant in the adopted Statement of Significance are:

- The original form, scale, detached siting and detailing of the Contributory houses.
- The bluestone laneways at the rear of the houses and the bluestone kerb and channelling.
- The extent to which development in key periods before and after 1900 with Interwar infill is apparent.
- The low or transparent front fences, which allow views to the front and side elevations of the houses.
- The relatively high intactness of the majority of the houses when viewed from the street.

Overall, the Panel believes the proposed extension is soundly based and the proposed boundaries are appropriate. In coming to this conclusion, the Panel was assisted by the analysis prepared by Ms Carolynne Baker and tabled by Mr Wren. While the analysis wasn't tested through cross examination it was of use to the Panel when it undertook its own inspections.

Submitter 14 made strong arguments for the inclusion of other properties⁵⁶ in Eglinton Street in a Heritage Overlay and used these properties as comparators pointing to the consequential inadequacy of his own property. Council agreed there are properties which could be included in an expanded precinct, but they are not seen as warranting a further expansion of the boundaries of the precinct now. It is not the Panel's role, and it cannot, include additional places into the Heritage Overlay.

Submission 5

Ms Schmeder and Mr Raworth submitted substantial evidence on the grading of the property at 10 Grandview Street as Contributory including details on the history of the development of the site. To a significant extent they agreed. The house was originally constructed in the nineteenth century and significantly altered and added to in the Federation and interwar periods. Their evidence parted company over the period of changes to the front of the house. Mr Raworth suggested some of the current details date from no later than the 1980s and Ms Schmeder suggested they also dated from the interwar period. Mr Raworth rejected the Panel's suggestion that if the two witnesses sat down with all of the information, they would be able to come up with an agreed position. He said it was unlikely to produce a shared opinion.

In the end, the Panel is faced with determining whether the place is properly included in the overlay and whether it is properly designated as Contributory. The Moonee Valley Heritage Guidelines define Significant, Contributory and Non-contributory places in the following way:

- Significant – A heritage place that has cultural heritage significance independent of its context. Such places may have their own Heritage Overlay number or they may be part of a wider heritage precinct. If located within a precinct, they would still be eligible for heritage protection even if the precinct did not exist around them.
- Contributory – A place that contributes to the significance of a heritage precinct, but would not be protected if it was on its own.

⁵⁶ The submitter provided a long list of candidates.

- Non-contributory – A place that does not contribute to the significance of a heritage precinct. In some instances a Significant place may be considered Non-contributory to a precinct, for example an important Modernist house within a Victorian era precinct.

To the first question the answer is yes for the reasons given above. To the second the answer is also yes, as the place does contribute to the significance of the precinct, but with the rider that what we see on this site is not what was originally constructed there.

To the uneducated eye the Panel believes that the property in its current state does not appear out of place in the precinct and the Statement of Significance for the precinct as drafted justifies its inclusion as Contributory.

The submission and supporting evidence for 12 Grandview Street did not make strong arguments against the inclusion of this property in the Heritage Overlay as a Contributory building. The Panel believes that this designation is appropriate for this property.

Submission 8

11 Milverton Street is an attractive example of an interwar bungalow with an original front fence. The submitter argued that it has been altered. The Panel does not dispute that this was the case, but it is not obvious. Much of this submission was devoted to the need for financial compensation in return for inclusion in the overlay. These issues are outside the Panel's remit.

Submission 14

The Panel accepts that the property at 64 Eglinton Street has been the subject of numerous changes. However, it remains apparent that it was constructed in the late nineteenth century and fits the Statement of Significance as drafted. The submitter's request for land tax and rate relief is not a matter that the Panel can address. The submitter would be better to explore these suggestions with Moonee Valley City Council.

Submission 102

The submitters outlined what they considered to be a long history of misunderstandings and mis-steps in the management of the planning process for 19 Milverton Street. Subsequently, the Council arranged a further inspection and report on the condition of this property and acting on the advice of structural engineers submitted by email on 18 December 2020 that the grading of the property should be changed from Contributory to Non-contributory.⁵⁷

The Panel considers Council's responses and Ms Schmeder's evidence to the submissions on 3, 5, and 24 Milverton Street, and 11 Grandview Street to be sound and the submissions do not require a change to the Amendment.

Other matters in relation to property values and permit requirements are considered in Chapter 4.

(iv) Conclusions and recommendation

The Panel concludes that:

- The exhibited boundaries of HO12 are appropriate.
- 19 Milverton Street be changed from Contributory to Non-contributory.

⁵⁷ Documents 63 and 64.

The Panel recommends:

- 3. Change 19 Milverton Street, Moonee Ponds (HO12) from Contributory to Non-contributory in the Amendment.**

5.5 Ascot Vale Road and Maribyrnong Road, Ascot Vale and Moonee Ponds (HO16)

(i) The issues

The issues are:

- whether particular properties should be included in the Heritage Overlay
- whether HO16 should be extended to the north to Newton Parade.

(ii) Evidence and submissions

The Statement of Significance includes the following features:

- The original form, scale, detached siting, materials and detailing of the Contributory houses.
- The bluestone laneways and bluestone kerb and channel in some streets.
- The pedestrian walkway extending from Gladstone Street to Maribyrnong Road.
- The extent to which development in key periods before and after 1900 with interwar infill is apparent.
- The low front fences, which allow views to the front and side elevations of the houses.
- The relatively high intactness of the majority of the houses when viewed from the street.

Submission 10 supports the Heritage Overlay along Gladstone Street.

Submission 43

Submission 43 suggested that Newton Parade should be included in HO16.

Submission 25

Submission 25 objected to the inclusion of 3 Gladstone Street as Contributory on the following grounds:

- previous heritage studies in 2014 and 2017 have not identified the property as being significant
- listing will reduce the development potential of the property leaving the submitter at a financial disadvantage
- the house is a 'mock reproduction' without the original front
- the application of the overlay on the street is inconsistent and other houses should be included.

The submitter requested either the Heritage Overlay boundary be shifted south to exclude the property or the property be identified as Non-contributory. The submitter did not appear at the Hearing.

Council's response to the submission⁵⁸ stated that the 2017 Heritage Study identified the property for inclusion and as the most comprehensive study its inclusion is appropriate. It

⁵⁸ Attachment A to the Council meeting of 25 August 2020.

also acknowledged that the house has had some alterations including a replacement front, but this did not amount to a case for making it Non-contributory. It submitted the replaced front should be acknowledged in the citation.

Ms Schmeder supported the retention of the Heritage Overlay over the house and said:⁵⁹

- My inspection of the house from the footpath indicates that it has retained a number of features that indicate it is a Victorian Italianate dwelling: the original roof form (M-hipped roof with a projecting hipped bay), early or original slate cladding (with two colours of slates and a diaper band of octagonal slates), rendered and corniced chimneys, and the plan form shown on the 1905 plan (including a front verandah across two-thirds of the front façade).

And:

- ... While the Ashlar-look boards that now clad the front façade may not have been an original feature (and this should be recorded in the citation), and have replaced the original weatherboards, on the whole the restoration of this house has been very successful and is of the sort supported in existing heritage precincts. In my opinion, the surviving elements of this house are sufficient for its to contribute to the precinct, and this restoration has enhanced these original features.

She noted the other house mentioned on the street by the submitter is a “*poor quality reproduction*” and not appropriate for the Heritage Overlay.

Submission 65

Submission 65 noted that their property at 33A Gladstone Street was a modern construction (2004) at the rear of 33 Gladstone Street. Council and Ms Schmeder acknowledged the submissions and recommended the property be changed to Non-contributory.

Submission 91

Submission 91 objected to 5 Gladstone Street being included in the overlay as they submitted most of the period features have been removed over time and the overlay will prevent redevelopment.

In response Council submitted that the house is one of a pair and retains enough period features for a Contributory house. Ms Schmeder in evidence reinforced this view and outlined the features to include:

- decorative polychrome brickwork contrasting with roughcast render
- decorative timber trusswork on the front gable popular on Edwardian Queen Anne houses
- the front verandah, including cast iron posts
- original window openings with flat arched lintels and stone or rendered sills (albeit the windows have been replaced).

(iii) Discussion

Submission 43

In response to Submission 43, Council submitted that Newton Parade is already covered by the Heritage Overlay (HO264).

⁵⁹ Document 12, para 5.5.1.

Submission 25

While 3 Gladstone Street has been altered, including a new front, the Panel is satisfied on the evidence and from viewing the property from the street that it retains sufficient original fabric to be included as a Contributory property. It was identified in the 2017 Heritage Study and is markedly different from the reproduction house nearby identified by the submitter. The other issues raised in the submission about financial disadvantage are discussed in Chapter 4.

Submission 65

The Panel accepts that 33A Gladstone Street is a modern house that should be Non-contributory.

Submission 91

The Panel is satisfied on the evidence and from viewing the property that it retains sufficient elements from the period (as does 7 Gladstone Street) to be included as a Contributory property. The overlay will require any redevelopment proposals to consider the heritage elements and the broader financial issues are discussed in Chapter 4.

(iv) Conclusions and recommendation

The Panel concludes:

- 33A Gladstone Street should be designated as Non-contributory.
- No other changes to the Amendment are required.

The Panel recommends:

- 4. Change the grading of 33A Gladstone Street, Moonee Ponds (HO16) from Contributory to Non-contributory in the Amendment.**

5.6 South Street and East Street, Ascot Vale (HO21)

(i) The issues

The issues are:

- whether planning controls for fences and painting are appropriate
- whether 10 Ayr Street meets the threshold of significance for the Heritage Overlay.

(ii) Evidence and submissions

The Statement of Significance includes the following features:

The South Street and East Street precinct, which is a residential area comprising late Victorian, Federation, Edwardian and Interwar era houses constructed c.1890 to c.1940, is significant.

The following buildings and features contribute to the significance of the place:

-
- Varying frontage widths, containing both detached and attached housing, but possesses commonality of a limited form range (hipped and gabled roofs, verandahs or porches, some parapets), materials, detailing, ornament and siting.
- The extent to which the majority of development occurred in two main periods before and after 1900 with a small amount of interwar infill is apparent.
- The low front fences, which allow views to the front and side elevations of the houses.

- The relatively high intactness of the majority of the houses when viewed from the street.
- The bluestone laneways and bluestone kerb and channelling throughout the precinct.

Submission 21 supported the extension of the Heritage Overlay *“to balance the need for development while maintaining the area’s character and history”*.

Submission 46

Submission 46 objected to the need for planning permits for fences and painting, submitting that front fences should be replaceable without a permit and identified that most side fences do not have any heritage significance.

In response Council outlined the permit controls around fences and painting for this precinct; confirming that fences are a significant part of the heritage values of the precinct both for retaining original fences and protecting views of heritage properties. There are exemptions for permits for fences in some circumstances.

Submission 62

Submission 62 opposed the inclusion of 10 Ayr Street in the Heritage Overlay on many grounds. These can be summarised as:

- alterations or removals that diminish heritage significance and intactness including to:
 - Roofing materials
 - Façade features
 - Fences and gates
 - Ornamental detailing
- the house is later, perhaps built around 1962
- the low front fence has been replaced and has no heritage value
- not opposed to HO21 but considers the changes to 10 Ayr Street are such that it does not meet heritage criteria and should be graded Non-contributory
- the property does not demonstrate the attributes of other houses on the street due to the removal of heritage features.

The submitter, Ms Xuereb, attended the Hearing and provided a comprehensive presentation explaining the above points and others including outlining the poor condition of elements of the property.⁶⁰

Council provided a response to the submission at its meeting of 25 August 2020 essentially confirming in their view that the property has sufficient heritage significance to warrant the Contributory label.

Ms Schmeder in evidence⁶¹ provided a detailed response to the issues raised by the submitter. This included:

- agreeing that there have been changes to cladding and roofing, but that these changes have little impact on the house’s contribution to the heritage precinct

⁶⁰ Document 46.

⁶¹ Document 12, p66.

- agreeing that the front fence is post-war and has no heritage value, but this does not mean the house is Non-contributory
- agreeing that a number of ornamental details have been removed but that:
... The house retains its other original features, such as corbelled chimneys, eaves brackets, tuckpointed brick façade with render bands, double-hung sash windows, a glazed front door with sidelights and a highlight, and the aforementioned turned timber posts.

Her evidence was that alteration of other houses in the precinct identified by the submitter was much greater than 10 Ayr Street. Ms Schmeder (and Council) agreed that 2 and 2A Ayr Street should be downgraded to Non-contributory as they are modern townhouses.

Ms Schmeder also outlined the sequence of land development and subdivision and confirmed that in her view the property was built around 1910, not 1962 as suggested by the submitter.

(iii) Discussion

Submission 46

The Statement of Significance for HO21 specifically mentions fences as an important element of the heritage of the precinct and this was not seriously challenged in the submission. The Panel is satisfied that the balance of fence protection and paint controls is warranted to protect the identified heritage values and permit exemptions apply in some circumstances.

Submission 62

The Panel is satisfied that the house at 10 Ayr Street is of the Federation/Edwardian era rather than a post-war dwelling. There have been significant changes to its original features but the Panel accepts Ms Schmeder's evidence that the extant form and features comprise a level of intactness appropriate for the dwelling to be Contributory in the precinct. The poor condition of some features as put by the submitter do not of themselves diminish the house to the point where it could be considered Non-contributory.

(iv) Conclusions and recommendation

The Panel concludes:

- The grading of 2 and 2A Ayr Street should be changed to Non-contributory.
- no other changes to the Amendment are required.

The Panel recommends:

- 5. Change the grading of 2 and 2A Ayr Street, Ascot Vale (HO21) from Contributory to Non-contributory in the Amendment.**

5.7 Newhall Avenue, Moonee Ponds (HO326)

(i) The issues

The issues are:

- whether Council failed to adequately communicate the proposed Amendment
- whether one of the properties has sufficient heritage value
- the impact on property values.

(ii) Evidence and submissions

The Statement of Significance includes the following features:

The Newhall Avenue precinct, a residential area developed from 1926 on the site of two of Essendon's oldest houses, is significant. The houses at nos. 1-9, 2-14 and 18 Newhall Avenue and 4- 14 Milfay Avenue and the original front fences to most of the houses contribute to the significance of the precinct.

2-14, 18 and 1-9 Newhall Avenue and 4- 14 Milfay Avenue are contributory.

Submission 33

Submission 33 (12 Milfay Street) opposed the Amendment on the basis that the property lacked heritage value, there was a lack of consultation by the Council and the imposition of the Heritage Overlay would have financial implications.

Council responded by outlining the process it had gone through in formulating and exhibiting the amendment, along with the points where consultation had been undertaken. The submitter had supported their claim of inconsistency with respect to identification and the Council responded by detailing the status of the various properties that were cited. Council also pointed out that the financial implications referred to were not a consideration in determining whether a place had heritage significance.

Ms Schmeder provided evidence with respect to this submission and concluded:⁶²

Milfay Avenue, even with the pre-2014 demolition of the house at No. 2, is a striking interwar streetscape that contributes greatly to the HO326 precinct.

Submission 76

Submission 76 (8 Milfay Street) opposed the Amendment on the basis that it would have a negative impact on their property's value, and they were not informed at the time of purchase that the place was potentially affected by an amendment.

Council clarified that the Section 32 Statement that the submitter referred to was issued prior to the interim Heritage Overlay being approved and the amendment being exhibited.

(iii) Discussion

The Panel inspected the precinct and considered the citation. It believes the proposed extension to this precinct meets the stated significance and that the proposed designation of 8 and 12 Milfay Street as Contributory is appropriate.

The issue of property value is discussed in Chapter 4.

(iv) Conclusion

The Panel concludes that the extension to HO326 be approved as exhibited.

⁶² Document 12, para 294.

6 New heritage precincts

6.1 Aberfeldie Street and Waverley Street, Aberfeldie and Essendon (HO450)

(i) The issues

The issues are:

- lack of reasons for including specific properties in the precinct
- appropriateness of the precinct boundaries
- impact of the Amendment on development opportunities and renovation plans.

(ii) Evidence and submissions

The Statement of Significance identifies the following features as contributing to the significance of the precinct.

The Aberfeldie Street and Waverley Street precinct, which comprises the houses at 1-53 & 4-30 Aberfeldie Street, 229-237 Buckley Street, and 2-58 Waverley Street, Aberfeldie, 1-23 Waverley Street, Essendon, and 60-74 Waverley Street, Moonee Ponds, is significant.

The following features contribute to the significance of the precinct:

- The pattern of development in the precinct which comprises mixed streetscapes of Victorian, Federation and interwar era houses, and the original form, siting, materials and detailing characteristic of their respective styles.
- The clarity and legibility of the three key phases of the precinct's development.
- The notable group of Victorian houses, at 6, 12, 18, 20 and 26, and 3 and 15 Aberfeldie Street, and at 2-8, 9, 14-16, 52 and 72 Waverley Street.
- The individually significant places as listed below.
- Original and earlyfront fences at 3, 4, 10A, 14A, 22, 23, 28A, 29, and 53 Aberfeldie Street and 10 Waverley Street are significant.
- Original garages to the interwar houses at 10A, 14A and 53 Aberfeldie Street are significant.
- The bluestone kerb and channels to Aberfeldie Street.
- The bluestone drainage channels that line the footpath on the east side of Aberfeldie and Waverley Streets.
- Rear lanes paved with bluestone pitchers.
- The street tree plantings of Canary Island Palms (*Phoenix canariensis*) on the Alma Street extension.

The houses at 3 (HO143), 18 (HO144) and 20 Aberfeldie Street (HO145), 46 Waverley Street, and 229 Buckley Street (HO170), are of individual significance within the precinct. Resurrection House, at 6 Aberfeldie Street (HO30), is also significant to the precinct.

The houses at 237, 235, 233 and 231 Buckley Street, 4, 10A, 12, 14A, 16, 22, 24, 26, 28A, 30 and 5, 7, 9, 11, 17, 19, 21, 23, 25, 27, 29, 31, 33, 35, 37, 45, 47, 49, 51, 53 Aberfeldie Street, 2, 4, 6, 8, 10, 12, 14, 16, 18, 20, 24, 26, 30, 38, 40, 40A, 42, 44, 46A, 48, 50, 52, 54, 56, 58, 60, 62, 66, 68, 70, 74 and 1, 3, 5, 7, 9, 11, 13, 15, 17, 19, 21 and 23 Waverley Street are Contributory.

Submitters 9 and 11 made written submissions supporting the Amendment.

Submission 37

Submission 37 (23 Waverley Street) opposed the Amendment because there were no specific justification to include his property, the precinct boundaries were illogical and the application of the Heritage Overlay would inhibit development opportunities.

Council responded that the precinct comprises a mix of Victorian, Federation and interwar houses and 23 Waverley Street is included because it is an intact interwar bungalow. It stated that 23 Waverley Street and other houses along the west side of the street are partially concealed behind high fences.

Council also clarified the rationale for the current precinct boundary. It submitted that future development issues were not a matter to be considered as part of the Amendment.

However, Ms Schmeder agreed with the submitter that the property, like other properties excluded from the precinct, lacked visibility and that it should be removed from the precinct:⁶³

The same cannot be said of 23 Waverley Street. As noted by the submitter, it conforms with the description of the excluded southern part of the street, being a low-set house behind a high, solid masonry fence. While this lack of visibility would not have been such an important consideration should the house have stood in the middle of a precinct (for factors including the reversibility of the fence), it is not a logical property with which to end a precinct.

Submission 39

Submission 39 (19 Aberfeldie Street) was a written submission opposing the Amendment but did not provide any reasons.

Council responded by clarifying the reasons for the property's inclusion in the precinct.

Submission 45

Submission 45 (11 Waverley Street) was a written submission which opposed the Amendment on the basis that it would have an impact on the value of their property and their desire to renovate the property.

Council responded by pointing out that the Heritage Overlay would not prevent renovations and redevelopment but would provide for heritage to be considered.

Submission 98

Submission 98 (3/10A Aberfeldie Street) was a written submission which included a photograph of an historic sewerage vent in an adjacent driveway.

(iii) Discussion

The application of the Heritage Overlay to this precinct has attracted a relatively high level of submission support.

The Panel inspected the proposed precinct and does not share the general concerns about the proposed boundaries expressed in Submission 23. It believes the Statement of Significance as proposed by Council is appropriate. However, the Panel agrees with Ms Schmeder that 23 Waverley Street should be excluded from the precinct given it is on the edge of the precinct and has low visibility from the public domain.

⁶³ Document 12, para 308.

The Panel has discussed property value and financial impacts in Chapter 4 and does not repeat them here. It suggests Submitter 45 discuss their renovation plans with Council.

(iv) Conclusion and recommendation

The Panel concludes that the precinct should be approved except for 23 Waverley Street which should be excluded.

The Panel recommends:

6. Remove 23 Waverley Street, Essendon from HO450 and the Amendment.

6.2 Brown Avenue and Morphett Avenue, Ascot Vale (HO451)

(i) The issues

The issues are:

- whether the precinct as a whole is adequately justified
- whether particular houses in the precinct should be graded Contributory.

(ii) Evidence and submissions

The Statement of Significance includes:

The Brown Avenue & Morphett Avenue precinct is a residential area, which predominantly comprises Victorian, Federation/Edwardian and Interwar houses. Development of the precinct commenced in the late 1880s and was complete by the 1940s. The Contributory places include the houses, and any associated original or early front fences, at 1-9, 13, 15, 19-23, 27-33 & 2A-6, 10, 12, 14, 16, 18 & 22-30 Brown Avenue, 70 Charles Street, and 1-29 & 2, 4 & 8-14 Morphett Avenue. Key attributes include the predominantly detached siting with similar or uniform front and side setbacks, single storey scale and prominent hipped and/or gabled roof forms with porches and verandahs of the houses, and the low front fences that allow views of the houses from the street.

The Progress Kindergarten at 11 Brown Avenue and the house and former stables at 23 Brown Avenue are of individual significance and have their own citation and statement of significance.

Submission 67 related to 14 Brown Avenue which is a ten year old Victorian reproduction. Council acknowledged this error and agreed the property will be identified as Non-contributory.

Submissions 54, 68, 75, 94, 95, 96, 97, 99, 100, and 113 all objected, raising the following issues:

- the Statement of Significance differs from the established character of the area
- to categorise the area as predominantly single storey is incorrect as there are original two storey properties and many that have been made two storey by alteration
- the front setbacks are extremely varied and not all have 'low front fences'
- the Council has not provided information that supports that the properties have individual significance
- the three streets have a mish mash of houses from the late 1800s to current times with no predominant style.

Submission 55

The submission objected to the Heritage Overlay on the basis that:

- there is a mix of styles and eras without a dominant style
- many houses need improvement and the Heritage Overlay will discourage people from building new homes or renovating and people will not be able to build their dream homes
- the Heritage Overlay will discourage people from moving into the area.

Submission 69

Submission 69 objected to the Heritage Overlay on the grounds that families have moved into the area and altered houses to suit their lifestyle over time.

The submitter's house, at 2A Brown Avenue, was constructed in the 1950s and a second storey and has been added and paint colours changed, with a higher front fence added.

Submission 74

Plan Urban consultants submitted on behalf of the owners of 22 Brown Street who objected to the application of the overlay to the precinct. The primary ground was that:

The main concern resonates round the fact that the area does not warrant heritage status with the Statement of Significance appearing to differ from the established character along Brown Avenue (from James Street north towards Doncaster Avenue).

The character elements that were said to be inconsistent were:

- predominantly single storey scale: this was incorrect as there are original two storey dwellings and many alterations to add second storeys to dwellings in the precinct
- uniform front and side setbacks: the front setbacks are extremely varied (3.0 to 9.0 metres) and side setback whilst originally set off boundaries on many properties are now built to the boundary
- predominantly detached siting: there are areas such as 26-30 Brown Avenue where their properties are joined in a near 'terrace' arrangement
- low front fences: front boundary fences vary considerably from fences, walls, hedges and open frontages
- prominent hipped and or gabled roof forms porches and verandahs: these vary and are not unique in Ascot Vale.

The submission noted that the period of the precinct of nearly 60 years is different to the approach in other areas of Moonee Valley where there is a greater homogeneity in terms of era and built form in heritage precincts.

Submission 74 noted that the Californian Bungalow at 22 Brown Street was not individually significant and there are many better examples with better heritage values, including in HO20 nearby.

The submitter, Ms Scerri attended the Panel Hearing and made a detailed submission outlining the above matters and also provided a presentation of many of the properties on Brown Avenue and the extent to which they have been altered.

Submission 122

Submission 122 objected to the Heritage Overlay being applied over 10 Brown Avenue and the broader Brown Avenue and Morphett Avenue Precinct. The reasons given were that:

- the properties are not predominantly single storey as stated in the Statement of Significance
- there is significant variation in front and side setbacks and consistent setbacks should not be used as a reason for imposing the Heritage Overlay
- the statement that there are consistent low front fences is incorrect as there are variations in height and even the presence of fences.

For 10 Brown Avenue it was submitted:

- the property is not identified as individually significant and is only significant within the precinct which has flaws as identified above
- there have been significant alterations to the house including:

... the original brick house has been rendered completely, window awnings have been removed, timber roof features have been added, all front facing aluminium windows have been removed and replaced with reused timber windows that do not suit the era of the house, the side fence has been increased, the front fence has been rendered, a garage has been added and an undercover enclosed walkway has been added attaching the house to the garage. When looking at our property it is a completely different image to when it was originally built and therefore does not currently uphold the heritage of its original design.

Submission 123

Submission 123 objected to the Heritage Overlay on the basis that there is a mixture of houses within the street and not all are historically significant. The submission stated that heritage should be based on a case by case assessment and to treat all eras of building the same and call it heritage seemed unjust.

Council response

Council's response at the 25 August 2020 meeting noted that the Statement of Significance is correct in describing the area as predominantly Victorian, Federation/Edwardian and Interwar houses, some of which were originally two storey but mostly single storey. Council agreed there are many two storey later alterations and these are noted in the Statement as Non-contributory.

As Ms Schmeder put it in evidence:

No significance is attributed to later rear extensions, as noted in the statement of significance: 'Non original alterations and additions to the Contributory houses ... are Non-contributory.'

Council's view on the 'low front fences' submitted that the key is whether the houses can be viewed from the street and are not hidden behind high fences, so the heritage and aesthetic attributes of the precinct can be seen. Council submitted this should be clarified in the Statement of Significance.

On individual significance, Council's view was that as the houses are identified as Contributory within a precinct, they do not have individual significance (apart from 11 and 23 Brown Avenue) and are not assessed as such. So, the level of investigation is for contribution to a precinct, and the Statement does not include information to establish individual significance of each house.

Council noted that as to whether the precinct is a 'mish mash' of houses, this is one of the main reasons for identifying the precinct; it had its genesis in the Victorian era, but was not

developed in one period, with later development occurring during the Federation/Edwardian and finally the Interwar period leading to a diverse housing stock across time. In response to Submission 55 they quoted from the Heritage Study:

... the precinct is typical of [subdivision patterns of the nineteenth century] and it is notable as containing the most intact groups of Victorian era housing in this western part of Ascot Vale, which in the nineteenth century was relatively remote from public transport services. It demonstrates how far development progressed during the nineteenth century land boom and how this resulted in isolated pockets of housing on large estates that were not fully developed until well into the twentieth century. While some of the houses have been altered (e.g., replacement of windows, modifications to verandahs) and some have visible additions, most retain good integrity when viewed from the street. As a whole, the precinct has good cohesion and integrity and provides a clear illustration of the key phases of development with legible boundaries.

Council submitted that the Heritage Overlay does not preclude the opportunity for development. This would be via planning permit, which allows for heritage values to be properly considered.

In evidence, Ms Schmeder said:

Application of the Heritage Overlay does not mean that there can be no change to contributory buildings. Instead, they can be remodelled and upgraded internally without planning permission, and extended with a planning permit. While care should be taken not to overwhelm the presentation of a contributory house with an extension, there are many cases in Moonee Valley's existing heritage precinct where visible upper level extensions have been built one room back from the façade and are quite visible ...

Ms Schmeder in evidence also acknowledged that there are some groups of Victorian houses built to the side boundary but concluded:

... I agree that there are groups of Victorian houses built to the side boundary that do not illustrate this key attribute, and this could be reflected in the statement of significance. As part of the precinct historical significance (Criterion A) is due to 'in isolated pockets of Victorian housing' that were later surrounded by interwar development, the contrast between the two eras of dwellings, in their style, scale, and subdivision pattern, does not in any way detract from the heritage significance of the precinct.

She further submitted that later extensions to side boundaries do not detract from the heritage value of a house provided they are legible as a later addition and do not dominate views to the house.

Council and Ms Schmeder agreed that there are other better examples of Californian Bungalows than 22 Brown Street, but that it is an intact example that is appropriate to be identified as Contributory within this precinct.

Ms Schmeder also identified an error in the Statement of Significance changes for HO451 she had put to the Council meeting of 25 August 2020; namely the use of the word 'exemption' instead of 'exception' in relation to 28 Brown Avenue.

(iii) Discussion

The proposed Brown Avenue and Morphett Avenue Precinct attracted perhaps the most submissions of any of the precincts. Notably more objecting submissions were received from Brown Avenue compared to Morphett Avenue.

Many of the submissions raised consistent issues related to perceived weaknesses in the Statement of Significance regarding the lack of homogeneity in built form, single storey predominance, setbacks, fences and the degree of alteration of properties.

The Panel has reviewed the 2017 report and the Statement of Significance and considers that the most significant elements of the proposed precinct comes down to two major aspects:

- the relatively remote (in metropolitan terms) development of Victorian dwellings in the 19th century in the western part of Ascot Vale
- the 'catching up' of development in the Federation/Edwardian and later interwar period to 'infill' the area.

Accordingly, the sweep of history is reflected in a small area where the heritage significance lies more so than in any era represented within the precinct. The issues of detail could perhaps have been better written in the Statement of Significance and Ms Schmeder has suggested some changes which the Panel accepts.

There appears to be some confusion as to where 'individual significance' ends and 'contribution' begins; this is not surprising as it can be a challenging area. However, in this case Panel does not accept the submissions for individual houses said to be Non-contributory except for the modern house at 14 Brown Street.

The ability to make changes to properties and the cost this may incur is addressed by the Panel in Chapter 4 of this report.

The Panel notes and supports the minor text correction in relation to 28 Brown Avenue in the Statement of Significance.

(iv) Conclusions and recommendations

The Panel concludes:

- 14 Brown Street should be identified as Non-contributory.
- Changes to the Statement of Significance suggested by Ms Schmeder in her evidence at paragraph 335 should be adopted (some of these are already in Attachment D to the Council meeting document of 25 August 2020).
- No other changes to the precinct should be made.

The Panel recommends:

- 7. Change the grading of 14 Brown Street, Ascot Vale (HO451) from Contributory to Non-contributory in the Amendment.**
- 8. Amend the Statement of Significance for HO451 to correct 'exemption' to 'exception' for 28 Brown Street, Ascot Vale.**

6.3 Queens Avenue and Burton Crescent, Ascot Vale (HO452)

(i) The issues

The issues are:

- whether particular properties (Contributory and Non-contributory) should be included in the overlay
- whether Queens Avenue should be included as a precinct.

(ii) Evidence and submissions

The Statement of Significance identifies the following features:

The Queens Avenue & Burton Crescent precinct is a residential area that comprises houses built from c.1901 to c.1915.

The following features contribute to the significance of the precinct:

- The overall consistency of housing form (hipped or hip and gable roofs, single storey), materials and detailing (weatherboard, imitation Ashlar or face brick, corrugated metal slate or tile roofs, verandahs with cast iron or timber frieze decoration, render or brick chimneys) and detached siting (small front setbacks and narrow side setbacks) and low front fences.
- Streetscape materials such as bluestone kerb and channel and bluestone laneways.
- The mature Oaks (*Quercus sp.*) along the north side of Queens Avenue.

The houses at 1-35 Queens Avenue, 2-20 & 15 Burton Crescent, 174-190 Ascot Vale Road, 70-74 Kent Street and 1 Clissold Street are Contributory to the precinct.

Submission 105

Submission 105 objected to the inclusion of Queens Avenue in the Heritage Overlay and 7 Queens Avenue in particular. They requested the Heritage Overlay be removed from the street, be removed from 7 Queens Avenue, or that 7 Queens Avenue be marked as Non-contributory.

The specific grounds relied for removing Queens Avenue generally included:

- the houses in Queens Avenue are aesthetically pleasing but not remarkable in heritage terms and the Neighbourhood Character Overlay might be appropriate
- some elements of the avenue do warrant heritage consideration
- the avenue contains buildings with modern extension and additions which impact the single storey cohesion of the street
- other elements such as solar panels, carports and fences impact on integrity and intactness.

The submission made a number of observations about 7 Queens Avenue as follows:

- the house does not meet the criteria for integrity and intactness as heritage features have been removed
- the roofline has been changed, the bullnose verandah and cast-iron frieze removed and chimneys have been removed.

The submission also raised the issue of insufficient notice and consultation. The submitter did not appear at the Hearing.

Council in its response to the submission⁶⁴ did not accept that the submission required changes to the Amendment. In summary they considered that the both the street and the house at 7 Queens Avenue meet the criteria for inclusion in the Heritage Overlay. It acknowledged there are changes to the street and 7 Queens Avenue, but these do not detract from the heritage significance to the point where the street or house should be removed from the Amendment.

On notice and consultation Council submitted that it had given appropriate notice of the 2014 Heritage Gap Study and the Amendment.

⁶⁴ Table attached to the Council meeting of 25 August 2020.

Ms Schmeder in her evidence supported retaining the Heritage Overlay over Queens Avenue on the basis that:

- there are recent additions and extensions on the street, but these are generally concealed from the street or set back and the single storey character of the street remains
- there are intrusive elements such as carports, but these do not detract from the dominant form of timber Edwardian houses
- the variety of fence types, most non-original, are generally sympathetic and allow an appreciation of the houses.

On 7 Queens Avenue her evidence was that:

- while the house has had unsympathetic alterations, it is still identifiable as an Italianate dwelling of c1900 with original plan and roof form with remnant significant features
- it stands in a group of highly consistent houses built around the same time
- there are houses of a similar level of intactness in the Heritage Overlay in Moonee Valley.

Submission 107

Submission 107 objected to the inclusion of 76 Kent Street in the Heritage Overlay. The house is marked as Non-contributory, being a modern reproduction. The submission also identified other properties that have not been included in the Amendment that it considered have greater heritage value.

Council in response submitted that no change to the Amendment was required. The Heritage Overlay often includes Non-contributory properties to ensure their redevelopment is sensitive to surrounding heritage properties.

Council submitted that the other properties identified as having heritage value were not identified in the Gap Study.

Submission 121

Submission 121 (182 Ascot Vale Road) objected to the inclusion of the property in the Heritage Overlay. The grounds largely went to suggested economic, financial and insurance issues that may be raised by the listing.⁶⁵

Apart from noting elements such as later additions and fences and the proximity of other properties without heritage significance, the submitter did not suggest that the house did not have heritage significance.

The submission was a late submission so was not considered by Council at the 25 August 2020 meeting. In their Part B submission⁶⁶ Council noted that the objection did not go to heritage matters and did not propose any changes to the Amendment.

In her evidence Ms Schmeder noted that the grounds of objection did not go to heritage matters but considered the heritage values of the house for completeness. She concluded:⁶⁷

⁶⁵ Document 54.

⁶⁶ Document 21, para 193.

⁶⁷ Document 3, para 345.

In summary, the house at 182 Ascot Vale Road is a substantial and highly intact example of an Edwardian Queen Anne villa, which contribute to all aspects of the precinct's significance.

(iii) Discussion

Submission 105

The Panel has considered the submission relating to the precinct and 7 Queens Avenue. It is satisfied on the evidence that the precinct meets the threshold of significance at the local level for inclusion in the Heritage Overlay. In particular, as described in the Statement of Significance the overall consistency of housing form and materials is striking.

In relation to 7 Queens Avenue, the Panel notes it has been altered and lost some of its features. However, the form of the dwelling in the streetscape is still clearly identifiable as one built in the 1901-1915 period and the Panel considers it should remain identified as Contributory.

Submission 107

The Panel notes the property is listed as Non-contributory. It is within a precinct of houses that have heritage significance and it could not logically be excluded, for example if it was on the extreme end of a precinct. Its inclusion within the Heritage Overlay as Non-contributory is therefore appropriate.

The Panel has not considered in detail the other properties identified in the submission as more appropriate in the Heritage Overlay as they are not part of this Gap Study or this Amendment.

Submission 121

The Panel considers the non-heritage issues in Chapter 4.3. The Panel notes and acknowledges the difficult time that the owners appear to have had in 2020 due to COVID-19 and other factors.

There is nothing before the Panel however that suggests the house does not meet the heritage criteria threshold of significance; the non-significant later alterations and additions have already been identified in the Statement of Significance in a general sense.

The Panel does not consider the heritage merits of including the property have been challenged.

(iv) Conclusion

The Panel concludes:

- The precinct and building gradings are appropriate.
- No changes to HO452 in the Amendment are recommended as a result of submissions.

6.4 Warwick Street and Mascoma Street, Ascot Vale (HO453)

(i) The issues

The issues are:

- whether the precinct is of sufficient historic significance and representativeness to the City of Moonee Valley to be included in the Heritage Overlay
- whether 2 Tasma Street, Ascot Vale has been included in the precinct in error.

(ii) Evidence and submissions

The Statement of Significance includes:

The Warrick Street & Mascoma Street precinct is a residential area that comprises houses predominantly built from c.1907 to c.1915 with two houses dating from 1937. The following features contribute to the significance of the precinct:

- the overall consistency of housing form (hipped or hip and gable roofs, single storey), materials and detailing (weatherboard, imitation Ashlar or face brick, corrugated metal slate or tile roofs, verandahs with cast iron or timber frieze decoration, render or brick chimneys) and siting (small front setbacks and narrow side setbacks).
- streetscape materials such as bluestone kerb and channel and bluestone laneways.

Submission 57 supports the Amendment.

Submission 101

Submission 101 objected to the Amendment on the grounds that:

- it was difficult to understand what works may require a permit as the documents are hard to find and ambiguous
- unsympathetic additions undertaken in the street within existing planning rules have been 'ugly' and the submitter is concerned the overlay may prevent them from doing sympathetic alterations in future
- it is not clear what Non-contributory means as it applies to the two houses to the west of 51 Warrick Street
- the houses to the east appear heritage worthy but are outside the precinct and presumably not subject to the same heritage controls.

In response Council identified the relevant Clause 43.01, schedules and exemptions policy in the Moonee Valley Planning Scheme and drew attention to Councils' heritage guidelines available on their website.

As Council and the evidence of Ms Schmeder explained:

- the Non-contributory rating of the properties next to 51 Warrick Street will help to ensure they are not redeveloped unsympathetically to the heritage precinct
- the precinct boundary ends at 53 Warrick Street as it is intended to cover that part of Warrick Street with the strong consistent group of Edwardian houses on both sides of the street from 53 Warrick Street westwards.

Submission 120

The submitter noted that the house at 2 Tasma Street was developed in the 1960s or 1970s' together with the adjoining 40 Warrick Street.

Council acknowledged the error in their Part B submission⁶⁸ and recommended the property be removed from the precinct. Ms Schmeder concurred, noting that as future development of the site should not affect the heritage values of Tasma or Warrick Streets it was appropriate to remove it from the precinct.

(iii) Discussion

Submission 101

The submission raised a number of issues but did not in the Panel's mind fundamentally challenge the heritage values of the property at 51 Warrick Street. Based on the evidence and viewing the property from the street the Panel is satisfied that it meets the criteria for significance as a Contributory property and should be retained in the Amendment as exhibited.

Submission 120

The Panel agrees that this later house at 2 Tasma Street should be removed from the Amendment. Given its location on the proposed map, the map should be altered to remove the property rather than just making it Non-contributory.

(iv) Conclusions and recommendation

The Panel concludes:

- Remove 2 Tasma Street, Ascot Vale from the Amendment.
- The precinct meets the appropriate criteria for the application of the Heritage Overlay and no other changes to the Amendment are required.

The Panel recommends:

9. Remove 2 Tasma Street, Ascot Vale from HO453 and the Amendment.

6.5 Mackay Street, Essendon (HO455)

(i) The issues

The issues are:

- whether 17 and 24 Mackay Street have been graded as Contributory in error
- whether the precinct should be more tightly defined to include only Victorian and Federation houses and not interwar dwellings
- whether the houses at 38, 40, 48, 50 and 51 Mackay Street should be graded as Non-contributory.

(ii) Evidence and submissions

The Statement of Significance identifies the following features:

The Mackay Street precinct, which comprises the houses at 3-51 and 4-50 Mackay Street, Essendon, and subdivided in c.1888-1890s and developed c.1900-42, is significant.

The following features contribute to the significance of the precinct:

⁶⁸ Document 21, Attachment 1, para 3.7.

- The pattern of development in the precinct which comprises a mixed streetscape of Victorian.
- Federation and interwar houses, and the key features and original detailing characteristic of their respective styles, in many cases transitional styles.
- Bluestone laneways at the rear of 3-13 and 4-48 Mackay Street.
- Original and early front fences at 22 and 48 Mackay Street.
- Original garage at 50 Mackay Street.

The houses at 3, 9, 11, 13, 15, 17, 19, 21, 23, 25, 27, 29, 31, 35, 37, 39, 41, 43, 45, 47, 49, 51 and 4, 8, 10, 12, 14, 16, 20, 22, 24, 26, 30, 32, 34, 36, 38, 40, 48, 50 are Contributory.

Submission 78

Submission 78 objected to 48 Mackay Street being included in the Heritage Overlay and requested the precinct be redrawn to remove 38, 40, 48 and 50 and 51 from the precinct. It pointed out the brick fence at number 48, which is mentioned in the Statement of Significance, has been removed.

Council in response confirmed that the brick fence at 48 Mackay Street has been removed when inspected in July 2020. It recommended reference to the fence be removed from the Statement of Significance and fence controls.⁶⁹

Submitter 78 was represented by Louise Hicks who called expert evidence from Mr Paul. Mr Paul, who appeared at the Panel Hearing and had his evidence tested under cross examination, recommended in summary that:

- the boundaries of the precinct be redrawn up to and including numbers 36 and 49
- the Statement of Significance be amended to identify the period of significance as c.1888 to 1919 (Victorian and Edwardian/Federation) and remove reference to interwar and mid century housing and to the garage at number 50
- the build date of the house at number 22 be correctly identified as 1917.⁷⁰

Mr Paul's opinion was that the precinct is dominated by Federation and Victorian era dwellings with some transitional examples. He said the small number of interwar dwellings are not a distinct or significant feature of the streetscape. He argued the three interwar houses at 38, 48 and 50 should be removed from the precinct and number 22 should be correctly described in the precinct citation as a late Federation house rather than an interwar house.⁷¹ This would mean the Victorian, Edwardian/Federation houses could stand alone as a cohesive group without the interwar houses.

Mr Paul argued there is a lack of cohesion at the northern end of Mackay Street, with houses of less quality and a different period to most Contributory houses in the precinct. He said 48 and 50 are geographically isolated at the northern end of the precinct by the infill at numbers 42-46. In his opinion the unsympathetic dominant upper addition to number 51 made it Non-contributory.

Mr Paul presented a series of photos to the Panel to demonstrate his arguments.⁷²

⁶⁹ Document 21, Council Part B submission at page 29.

⁷⁰ Document 13.

⁷¹ Document 13, paragraph 44. Mr Paul said the build date is 1917 but the history in the 2017 Heritage Study identified it as built 'by 1920' which led to its incorrect categorisation as interwar in the precinct citation (2017 Heritage Study at page 217).

⁷² Document 36.

Mr Paul's evidence was that:

- 48 Mackay Street is an isolated and modest interwar bungalow “... *sitting at the precinct periphery in a highly compromised context.*”⁷³ In his opinion removing the house would not detriment a more tightly defined precinct
- number 50 relates poorly to the interwar examples in the precinct and has few distinguishing features to warrant identifying it as Contributory
- 40 Mackay Street, the next Contributory house to the south of number 48, has “*very poor*” original detailing and intactness, with all original features stripped, including chimneys, windows, verandah, interwar features or decorative elements⁷⁴
- the adjacent Glass Street Precinct has comparative interwar Bungalows that are more intact and visually cohesive. Other comparative precincts HO7 and HO301 have more interwar properties that are better quality examples
- it would not be appropriate to include Non-contributory dwellings at the northern end of the Mackay Street to create a buffer zone for the Glass Street precinct.

Mr Paul also mentioned the bluestone laneways that are included in the Statement of Significance appear to fall outside the mapped boundaries.⁷⁵

Ms Schmeder in her evidence⁷⁶ agreed that Victorian and Edwardian houses are the majority of Contributory buildings in the precinct, but the four interwar properties still comprise about 10 percent of the Contributory properties.

Her opinion in summary was:

- 48 Mackay Street is an excellent example of the continuity of roof forms and materials between Edwardian houses and the early interwar examples in the precinct
- numbers 48 and 50 Mackay Street are not isolated by the Non-contributory properties to the south. Those dwellings are of a consistent single storey scale, with front setbacks and brick cladding similar to the rest of the precinct
- the extension to 51 Mackay Street, on the opposite side of the street, is intrusive but the front façade remains intact and the transverse gable roof form is still clearly legible. She considered it still contributes to the significance of the precinct
- there is a strong precedent in Moonee Valley's Heritage Overlay precincts to recognise the three primary early periods of development (Victorian, Edwardian, interwar) as Contributory even if there is a small number from one of those eras
- there are many other precincts in the Moonee Valley Heritage Overlay that have a predominant Victorian and Edwardian character with a small amount of Contributory interwar infill including HO21 in Ascot Vale, and HO24 Wellington Street Precinct, Flemington. In the adjoining HO2 Glass Street Precinct, which has a predominantly interwar and Edwardian character, a small number of Victorian and Edwardian houses contribute. In HO1, which is predominantly Edwardian, there are a small number of Victorian dwellings and some interwar bungalows that contribute
- the interwar house at number 22 Mackay Street and its neighbour at 20 Mackay Street illustrate how the single gable-fronted houses of the Edwardian period evolved to the multi-gable -fronted interwar bungalow form. To grade one of these two intact

⁷³ Document 13, page 11.

⁷⁴ Document 13, paragraph 40.

⁷⁵ Document 13, paragraph 48.

⁷⁶ Document 12, pages 85-91.

dwelling, Contributory and the other Non-contributory would be an artificial distinction.

Under cross examination about number 22, Ms Schmeder said she observed classic transition to interwar form with aspects of both Federation and interwar.

She said that in her opinion number 51 is also interwar. She argued there needs to be a decision about whether interwar houses contribute to the significance of the precinct rather than counting the number of houses classified as interwar.

Ms Schmeder's opinion was that 38 Mackay Street is more obviously an early 1920s California Bungalow, but it shares its scale and materiality with Edwardian era houses.

She argued that if interwar dwellings are removed from the precinct, they should be retained as Non-contributory properties to ensure there is not a gap between two adjacent precincts. This would prevent future development that would have a negative impact on both precincts.

Ms Schmeder agreed that the bluestone laneways should be added to the precinct maps.

Ms Hicks (submitter 78) submitted that extending the precinct north to include number 40, the four lots of Non-contributory dwellings at 42-46, 48 and 50 to effectively buffer the heritage precinct in Glass Street is 'highly problematic.'⁷⁷ She submitted that it is inappropriate for Council to use the Heritage Overlay tool because it has no requirement to consider adjacent Heritage Overlays when developing land.

She said the comparative precincts HO21 and HO24 include interwar dwellings, but they are filling gaps in cohesive rows of earlier houses (HO24) or "*interwar infill*" in HO21. They are not scattered and isolated as is the case here.

Submission 27

Submitter 27 pointed out that the building at 24 Mackay Street was built in the 1970s and shares no common characteristics with the Victorian and interwar houses in the street.

Ms Schmeder's opinion was the grading of the flats at 24 Mackay Street as Contributory was clearly an error. Council agreed to revise the Amendment to grade 24 Mackay Street as Non-contributory.

Council agreed to grade number 17 as Non-contributory as it has been demolished since the precinct was assessed.⁷⁸

Council also confirmed that they intended to protect the bluestone laneways as part of the precinct. They are mentioned as a significant element in the Statement of Significance but are not shown on the mapped extent of the precinct in error.⁷⁹

Submitter 22

Submitter 22 supported the Heritage Overlay applying to 11 Mackay Street, Essendon and all of the houses from 3-51 and 4-50 Mackay Street, Essendon.

⁷⁷ Document 35.

⁷⁸ Document 21, Council Part B submission, pp 28-29.

⁷⁹ As above.

(iii) Discussion

The Panel inspected the precinct on several occasions and has considered the citation and the comparative analysis.

The task for the Panel is to determine whether or not the proposed precinct matches the stated significance of the precinct.

Overall, the Panel believes the proposed precinct is soundly based and the proposed boundaries are appropriate. But the Panel has some reservations about the designation of some properties as Contributory.

The Panel noticed a marked lack of cohesion at the northern end of the precinct when it inspected the precinct.

The Panel adopts Mr Paul's evidence that numbers 48 and 50 are isolated at the northern end of the precinct and are comparatively modest examples of their style. Number 48 has key features of Edwardian and early interwar houses but its context is compromised. Number 50 has minimal features, is not a strong example of an interwar house and is later than the other interwar houses in the precinct.

The Panel considers the other houses at 22 and 38, are Contributory. The Panel adopts Ms Schmeder's evidence that number 38 is an early 1920s California Bungalow that shares its scale and materiality with Edwardian era houses and number 22 shows transitional forms of interwar and Federation. The Panel considers the Edwardian house at number 40 does not contribute to the precinct because it has had almost all of its features removed. The citation identifies it as borderline and includes it only because its original form remains legible. Ms Schmeder and Mr Paul regarded it as marginal.

The Panel considers the houses at number 40, 48 and 50 are Non-contributory to the precinct. They should not be removed from the precinct. The purpose of a Non-contributory grading is to prevent future development that would have a negative impact on the proposed precinct.

The Panel accepts that while the number of interwar houses in the precinct is small, it is part of why the precinct is significant. The Panel adopts Ms Schmeder's evidence that it would create an artificial distinction to remove mention of the interwar style houses.

The Panel considers that number 51 is Contributory to the precinct. The Panel adopts Ms Schmeder's evidence that number 51 remains intact with the transverse gable roof form clearly legible despite the intrusive addition.

The Panel agrees with Council's proposed revisions to recognise numbers 17 and 24 do not contribute to the precinct and to amend the map of the precinct to include the bluestone laneways.

(iv) Conclusions and recommendation

The Panel concludes:

- The precinct meets the threshold level of local significance to justify being included in the Heritage Overlay.
- The properties at 17, 24, 40, 48 and 50 Mackay Street should be regraded from Contributory to Non-contributory.

- The map in the Statement of Significance should be amended to include the bluestone laneway.

The Panel recommends:

10. Change the gradings of 17, 24, 40, 48 and 50 Mackay Street, Essendon (HO455) from Contributory to Non-contributory in the Amendment.

6.6 McCracken Street, Essendon (HO456)

(i) The issues

The issues are:

- whether the proposed precinct meets the threshold for local significance to be included as a precinct
- whether the houses at 29, 40, 41, 43, 44 and 49 should be included or graded Non-contributory rather than Contributory
- whether the fence control on number 43 should be removed.

(ii) Evidence and submissions

The Statement of Significance identifies the following features:

The McCracken Street precinct, at 30-50 and 27-49 McCracken Street, Essendon, a residential area comprising a group of interwar bungalows built in c.1927-35 on the Mar Lodge Estate subdivision (1921), is significant.

- The pattern of development, which comprises a late nineteenth century subdivision with houses almost entirely built in the interwar years.
- The relatively intact group of interwar bungalows, and the original form, materials, setback, and detailing that are characteristic of interwar timber bungalows.
- The well-maintained garden setting.
- Original or early front fences at 29, 37 and 43 McCracken Street.
- The mature Canary Island palm trees and lych gate at 27 McCracken Street.
- The wide nature strips.
- The visual cohesion enhanced by the street trees (*Lophostemon confertus*).

The houses at 27, 29, 31, 33, 37, 39, 41, 43, 45, 47, 49 and 30, 32, 34, 36, 38, 40, 42, 44, 46, 48, 50 McCracken Street are Contributory. The house at 27 McCracken, situated on a prominent corner, is distinguished by two mature Canary Island Palms and a lych gate at the corner.

The Panel considered seven submissions in response to the Amendment (18, 49, 50, 64, 88, 93 and 109) and a petition with the signatures of residents submitted by submitter 88.

General issues

Should the precinct be included?

Several submitters objected to the Heritage Overlay generally because it does not meet any heritage criteria in PPN01. The main reasons were that many of the houses have significant alterations and the dwellings have differing design characteristics, materials and fence types. Submission 88 was the most detailed on this issue.

Council in response said:⁸⁰

- the 2017 Heritage Study stated the visual cohesion of the precinct is strong and acknowledged that most or all of the houses have undergone internal alterations and rear extensions
- some upper level extensions are more visible than is supported in existing precincts, but if the original form can still be understood by observers, then the house is considered to contribute to the precinct
- the variety of styles in the precinct reflects typical interwar residential development.

At the Panel Hearing Peter Cook (submitter 88) presented photos of houses in the proposed precinct to demonstrate that the alterations have removed too much of the original features to be classified as heritage. He also presented photos of a group of homes in neighbouring Woolley Street that were removed from the precinct in the 2014 Heritage Gap Study because of a lack of intactness. He said the comparison demonstrates that the proposed McCracken Street precinct has far less attributes.

Mr Cook presented a petition to demonstrate opposition by a majority of the 22 homeowners in the proposed Heritage Overlay precinct.⁸¹

Mr Cook questioned that if Heritage Overlays are for community benefit, then what about the residents? He presented a Herald Sun article from 23 April 2014 about great stress caused to the people affected by the 2014 Heritage Study and that it had attracted 100 objections. He said the article quotes Brad Teal Real Estate saying houses under a Heritage Overlay sell for a lot less.

Mr Cook told the Panel the residents are a close community and are living in terror and disbelief. He said the impact the Heritage Overlay is having on these people must be addressed.

Ms Schmeder's evidence was that the precinct *"...is one of the few pockets of largely intact interwar development to survive in the Mar Lodge Estate, as there has been extensive redevelopment across most of this area in recent decades."*⁸²

Mention in 2014 Heritage Gap Study

Submitters 18, 64, 50 and others said the precinct was not identified in the 2014 Heritage Gap Study. Council in response stated the 2014 Gap Study identified 29-49 McCracken Street as a potential precinct and mistakenly listed 27-29 McCracken Street in the background section.

Council's final revisions to the Amendment⁸³ included correct addresses of the potential precinct extension on p.44 of Vol. 1 of the 2017 Heritage Study to: 26-52 and 27-49 McCracken Street in the adopted version.

Garden controls

Several submitters said their gardens are not original plantings and should not be part of the Heritage Overlay. Submitter 49, for example, stated the garden settings are the work of current residents and while appropriate, they are not heritage.

⁸⁰ Attachment A Council officer's report endorsed by Council 25 August 2020.

⁸¹ Document 51 and 51a.

⁸² Document 12 at paragraph 437.

⁸³ Document 57.

Ms Schmeder's evidence was that there are no controls over garden plantings.

Pattern of development

In response to questions from the Panel Ms Schmeder recommended further revisions to the Statement of Significance indicated in track changes as follows:⁸⁴

The McCracken Street precinct, at 30-50 and 27-49 McCracken Street, Essendon, a residential area comprising a group of interwar bungalows built in c.1927-35 on the Mar Lodge Estate subdivision (1921), is significant.

The following features contribute to the significance of the precinct:

- The pattern of development, which comprises ~~a late nineteenth century~~ an interwar subdivision with houses ~~almost entirely~~ built in the interwar years.
- ...

Submission 18

Submission 18 opposed 29 McCracken Street being included as Contributory to the proposed precinct. It submitted the property is brick not timber and has been significantly changed from the original interwar house. It is not 'a relatively intact interwar timber bungalow' as described in the Statement of Significance.

The submission said modifications since the 1990s include demolishing the original curved porch and replacing it with a new front verandah, a new front wall with box bay window in neo-Federation style and Federation ram horns on the roof. The original garage has been demolished and the driveway removed and a new driveway and double garage have been constructed with entry from Mountain Street.

Council in response⁸⁵ cited the 2017 Heritage Study recommendation to protect McCracken Street which mentions at the two brick bungalows the at 29 and 43 are exceptions that share other stylistic features.

It said the 2017 Heritage Study acknowledged the window units have been replaced, the original front porch has been replaced with a larger front verandah, and the front door and leadlight windows. These alterations make the house an amalgam of styles and eras but it is sufficiently intact to contribute to the significance of the precinct.

Ms Arif (submitter 18) appeared at the Panel Hearing and presented before and after photos to illustrate the changes made to the house since the 1990s.⁸⁶

Ms Schmeder's opinion was the house is still sufficiently intact to contribute to the significance of the precinct. She said the 1993 rear extension and attached garage, do not have any impact on views to the house from McCracken Street.⁸⁷

At the Panel Hearing Ms Schmeder recommended the precinct description in the Statement of Significance be revised to include the addition of the neo-Federation front porch and bay window and that these elements are not of heritage significance.

⁸⁴ Document 38.

⁸⁵ Attachment A to Council officer response to submissions, endorsed at Council meeting of 25 August 2020 at pp89-90.

⁸⁶ Document 45.

⁸⁷ Document 12 at pp95-97.

Submission 64

Submission 64 objected to the house at 41 McCracken Street being included because the house has been extensively rebuilt since 1997 and less than five per cent of the original house exists. It said changes to the house include removal of the front portico and roof in 2002 and a new iron roof with a completely different roof line, guttering and spouting.

The submission identified that the additions to the house have changed the appearance from the street, so it is not historically intact or representative of Bungalow style housing c1927-35. The driveway and pathway have been completely redesigned and outbuildings have no relevant architectural or historical features. The submission attached a 1988 sketch of the house and concluded that: there is no evidence to support the statement in the 2017 Heritage Study (page 229) that the houses in the precinct all originally had terracotta tile roofs.

Council in response⁸⁸ made the following key points:

- the house has a transverse gable roof with double-hung timber sash windows with a four paned upper sash, typical of 1920s houses
- it is quite likely the porch was altered in 1988 so it was not an original feature
- the form, materials and details of the 2002 porch are in keeping with those common for 1920s timber bungalows and is on par with the loss and replacement of the front verandahs of Victorian and Edwardian houses in existing heritage precincts
- the new front porch should be noted in the precinct description, so the porch can be considered Non-contributory
- a 1946 aerial of the house indicates that the original roof was corrugated iron, not terracotta and this should be corrected in the precinct citation
- the intactness of carports, pathways, driveways and the front garden are not considered essential for a property to be Contributory
- the claim that five per cent of the house is original appears to refer to the rear extension and internal alterations. Apart from the porch, the front façade, roofline and chimney of the house are all intact.

At the Hearing Ms Race and Mr McIver (submitter 64) presented a photo of the house in 1988 to demonstrate it was very stripped back and not a bungalow style house like the others in the street.⁸⁹ They said the new porch is the defining feature of the house that makes it look like the other houses in the street. Ms Race said the house is so altered that they were genuinely shocked at it being proposed as heritage.

Ms Schmeder's evidence⁹⁰ was:

- the house is recognisable as an interwar bungalow, and the new porch is sympathetic in design
- there are many houses that have lost their front verandah and have a more or less accurate replacement that are Contributory to heritage precincts in Moonee Valley and other municipalities
- the rear extension is not visible from the street so the house retains its transverse gabled roof form

⁸⁸ Attachment A to Council officer response to submissions, endorsed at Council meeting of 25 August 2020 at pp 99-106.

⁸⁹ Document 44 and 44a.

⁹⁰ Document 12, pages 98-102.

- 41 McCracken Street is of an intactness that allows it to contribute to the significant interwar character of the precinct
- the construction of the gabled front porch should be recorded in the precinct citation.

Submitter 50

Submission 50 objected to the house at 43 McCracken Street being included as Contributory to the precinct. The submission's main points were:

- the changes made to the façade, particularly the gable and prominent second storey addition, change the originality of the house
- a member of the public would struggle to distinguish the old from the new
- the property is not part of a 'relatively intact group of interwar timber bungalows' because it is brick and has been significantly altered
- the 2017 Heritage Study incorrectly identifies the 16 year old front fence as original.

Council in response⁹¹ said the 2017 Heritage Study correctly states 43 McCracken Street has a prominent second storey addition. But it concluded the house will still contribute to the precinct because of characteristic features of the principal façade as viewed from the street.

Council acknowledged the projecting front room originally had a hipped roof and that the alteration diminishes the intactness of the front façade of the house, which should be documented in the citation. But it said 43 McCracken Street *"... is still one of the finest and most substantial interwar houses in the precinct and retains a range of significant materials, forms and details."*⁹²

Council agreed to:

- remove the mention of the fence as original from the Statement of Significance and remove the front fence controls in the Heritage Overlay
- amend the 2017 Heritage Study precinct description to record a change in roof form of the projecting front room from an original hipped form to the current gabled form.

The submitter, Kathy Rose, told the Panel that she and her husband purchased the house in 2002. The original house was a single storey, white art deco house in poor, original condition. They changed the look of the house frontage to look more like a California bungalow and mimicked the building materials for overall consistency. Ms Rose presented detailed photos to demonstrate each of the changes.

Ms Rose said that if Council's heritage consultant had not identified the new gable roof or new fence how would a member of the community be able to differentiate the old and the new?

Ms Schmeder's opinion was that the property is an example of a substantial and well-detailed late interwar house. She concludes:

As one of the most substantial and well-detailed interwar houses in the precinct, 43 McCracken Street still contributes to the significance of the precinct despite external alterations.⁹³

In response to questioning at the Hearing Ms Schmeder said the house's level of intactness made the Contributory grading borderline.

⁹¹ Attachment A to Council officer response to submissions, endorsed at Council meeting of 25 August 2020 at pp95-99.

⁹² As above page 98.

⁹³ Document 12, paragraph 391.

Council's final revisions to the Amendment⁹⁴ included:

- removing the front fence controls for 43 McCracken Street, Essendon in the Schedule to Clause 43.01 Heritage Overlay
- amending the 2017 Heritage Study precinct description by recording the change in roof form of the projecting front room from an original hipped form to the gabled form.

Submitter 88

Submission 88 objected to the house at 44 McCracken Street being included because it has been significantly altered and has no historical, cultural or architectural significance. The submission provides details of the modifications to the house including:

- replaced the roof and replaced the chimney with an altered design
- new return verandah
- installed larger windows
- added a corner decorative post
- added weatherboards into both upper front gables and timber blocks under them
- added wider façade strap battens and brick pier timber decorative
- changed the quad on gable faces to Ovolo to represent a nicer house of that period.

The submission stated the owners have also built a new garage, rear extension, new driveway and new front fence.

Council in response⁹⁵ confirmed the submitter's information that the return verandah is a later addition to the house. It acknowledged a new rear extension with gabled projections to the back half of the house. Council provided a 1946 aerial as evidence of the original house configuration, being a main gable-fronted roof and an off-centre gabled front porch which both survive.

At the Hearing the submitter, Mr Cook, told the Panel that when they purchased the house in the mid 1980s it was featureless and derelict. He presented a photo of the front of house 1-2 years later showing the house had a complete lack of features.

Mr Cook presented⁹⁶ a series of photos to demonstrate the changes they have made since then. He concluded the house is nothing more than a replica and of no heritage significance.

Ms Schmeder's evidence⁹⁷ was that the most significant changes to the house are the addition of the return verandah, which she said is reversible, and changes to the front porch supports and windows. She said many of the other changes are minor with little or no impact on the heritage value of the house.

In her opinion the house still clearly illustrates the valued character of the precinct and is still intact enough to contribute to the precinct. She recommended the precinct citation should note the addition of the c1980s return verandah.

⁹⁴ Document 57.

⁹⁵ Attachment A to Council officer response to submissions, endorsed at Council meeting of 25 August 2020 at pp 108-111.

⁹⁶ Document 51.

⁹⁷ Document 12 at pp103-105.

Submitters who did not appear (49, 93 and 109)

Submission 49 opposed the house at 40 McCracken Street being included in the proposed precinct because it has minimal original features and does not add heritage value to the area.

Submission 93 opposed the Amendment because the precinct and the property at 49 McCracken Street lack heritage value.

Submission 109 supported the Amendment.

(iii) Discussion

The proposed precinct was strongly contested and the Panel inspected the precinct twice to confirm its views.

The Panel discusses the non-heritage issues raised by the submitters in Chapter 4.

Representativeness and historic significance

The task for the Panel is to determine whether or not the proposed precinct matches the stated significance of the precinct.

Most objectors to the proposed precinct said it did not meet any heritage criteria because the houses have been too extensively modified and they are a mix of styles and materials.

The citation for the precinct acknowledges almost all of the modifications mentioned by the submitters and concluded that they have sufficient integrity and intactness to contribute to why the precinct is significant.

The Panel adopts Ms Schmeder's evidence that the McCracken Street precinct is largely intact. Despite the alterations to most of the houses the original form can still be understood, so the houses tell part of the story of Essendon's interwar development.

Overall, the proposed precinct is soundly based and the proposed boundaries are appropriate. But the Panel has some reservations about the designation of Contributory to some properties.

The Panel agrees with Ms Schmeder's recommendation that the 'What is significant?' section of the Statement of Significance be amended to delete the incorrect mention of late nineteenth century as the time of subdivision and build.

Submission 18

The Panel acknowledges the detailed information presented by submitter 18, including historical photos of 29 McCracken Street to demonstrate the changes the owners have made. The Panel agrees that the neo Federation verandah and bay window are substantial changes.

The Panel's role is to decide whether the house is properly included in the overlay and designated as Contributory. The Panel's answer to both questions is yes. The Panel adopts Ms Schmeder's evidence that the house is still sufficiently intact to contribute to the significance of the precinct.

The Panel agrees with Ms Schmeder's recommendation to revise the precinct description to include the addition of the neo-Federation front porch and bay window at 29 McCracken Street and state that they are Non-contributory.

Submission 64

The extent of alterations to the front façade of the house at 41 McCracken Street render it not sufficiently intact to contribute to the precinct. The information provided by the submitters demonstrate the 2002 gabled front porch cannot reliably be classified as an accurate replacement of the original. It is more like a reproduction.

Ms Schmeder is stretching the definition of intactness to say the modifications contribute to the precinct because they are consistent with the style and material of bungalow houses of the time. The alterations go well beyond repairs and maintenance using 'like for like' materials. All that remains visible of the original house is the transverse gabled roof form and that is not enough to contribute to the significant themes of the precinct.

Submission 50

The submission objected to 43 McCracken Street being included in the Heritage Overlay because it has been significantly modified. It pointed out two modifications to the house that are not picked up in the 2017 Heritage Study: a new gable roof on the projecting front room and the fence is not original.

These alterations diminish the intactness of the house, but it is still recognisable as part of the group of interwar bungalows in McCracken Street. The original form of the house is still legible to the Panel. However, the Panel considers it is borderline.

The Panel adopts Ms Schmeder's evidence that despite the external alterations 43 McCracken Street is one of the most substantial and well-detailed interwar houses in the precinct and still contributes to the significant themes of the precinct.

The 2017 Heritage Study states that the two masonry houses at 29 and 43 are exceptions in a precinct of timber interwar bungalows that share other stylistic features. It is therefore not out of place in the precinct.

The Panel agrees with revisions to the Amendment recommended by Council⁹⁸:

- remove front fence controls for 43 McCracken Street, Essendon in the Schedule to Clause 43.01 Heritage Overlay
- amend the 2017 Heritage Study precinct description by recording the change in roof form of the projecting front room from an original hipped form to the gabled form.

Submission 80

The extent of the alterations to the house at 44 McCracken Street make it not of sufficient intactness or integrity to contribute to the precinct.

Ms Schmeder supported the 2017 Heritage Study applying integrity as the appropriate measure for Contributory properties in a precinct.⁹⁹ It recognised that high intactness is not essential, because there could be repairs or maintenance using the same or similar materials, details and finishes, that ensure good integrity.

The Panel considers that number 44 only provides information about the significant themes of the McCracken Street precinct as a reproduction. The modifications to the house go well beyond repairs and maintenance using similar materials.

⁹⁸ Document 57, Council submission Part C.

⁹⁹ Document 12, paragraph 44-46; discussed in Section 3.3 of this report.

Submission 49 and 93

Submission 49 did not provide the Panel with any information that challenged the merits of the house at 40 McCracken Street being graded as Contributory to the precinct.

Submission 93 did not provide the Panel with any information that challenged the merits of the house at 49 McCracken Street being graded as Contributory to the precinct.

(iv) Conclusions and recommendations

The Panel concludes:

- The precinct meets the threshold of local significance to justify the Heritage Overlay.
- The precinct description in the 2017 Heritage Study should be amended to:
 - note the addition of the neo-Federation front porch and bay window to the house at 29 McCracken Street in the 1990s, additions that are Non-contributory
 - record the change in roof form of the projecting front room from an original hipped form to the gabled form of the house at 43 McCracken Street and remove mention of an original front fence
 - correct the addresses of the potential precinct extension on page 44 of Volume 1 to 26-52 and 27-49 McCracken Street
 - state that 41 and 50 McCracken Street originally had iron roofs, not tile.
- The Statement of Significance should be amended to:
 - note the addition of the neo-Federation front porch and bay window to the house at 29 McCracken Street in the 1990s and that the additions are not of heritage significance
 - record the change in roof form of the projecting front room from an original hipped form to the gabled form of the house at 43 McCracken Street and remove mention of an original front fence
 - grade the houses at number 41 and 44 McCracken Street as Non-contributory
 - delete the incorrect mention of late nineteenth century as the time of subdivision and build in the 'What is significant?' section.
- the front fence controls for 43 McCracken Street, Essendon should be removed in the Schedule to Clause 43.01 Heritage Overlay.

The Panel recommends:

11. Amend HO456 to:

- a) **change the grading of 41 and 44 McCracken Street, Essendon from Contributory to Non-Contributory**
- b) **note the addition of the neo-Federation front porch and bay window to the house at 29 McCracken Street, Essendon in the 1990s in the precinct description in the 2017 Heritage Study and the Statement of Significance; additions that are not of heritage significance**
- c) **record the change in roof form of the projecting front room from an original hipped form to the gabled form of the house at 43 McCracken Street, Essendon and remove the incorrect mention of the front fence as original in the Statement of Significance and the 2017 Heritage Study**
- d) **remove the front fence controls for 43 McCracken Street, Essendon in the Schedule to clause 43:01**

- e) state that 41 and 50 McCracken Street, Essendon originally had iron roofs, not tile in the 2017 Heritage Study and the Statement of Significance
- f) correct the addresses of the potential precinct on page 44, Volume 1 of the 2017 Heritage Study to 26-52 and 27-49 McCracken Street, Essendon
- g) delete the incorrect mention of late nineteenth century as the time of subdivision and build in the Statement of Significance.

6.7 Pascoe Vale Road, Essendon (HO457)

(i) The issues

The issues are:

- the extent of Heritage Overlay coverage of 193 Pascoe Vale Road
- the condition of properties within the precinct
- the lack of heritage value of individual properties
- the implications of the Heritage Overlay on plans to redevelop properties.

(ii) Evidence and submissions

The Statement of Significance identifies the following features:

The Pascoe Vale Road precinct in Essendon is a residential area that was developed from c.1880 to c.1940 and contains predominantly Federation, Edwardian and interwar houses and bungalows with two Victorian houses.

The following elements contribute to the significance of the precinct:

- The houses at 189, 193-199, 203-213 & 217-237 Pascoe Vale Road, 20A Buckley Street, 1, 2 & 4 Fletcher Street and 13 Loeman Street are Contributory. The houses at 189, 193, 205 & 207 Pascoe Vale Road are also of individual significance.
- The original or early front fences at 189, 199, 203-207, 211 & 235 Pascoe Vale Road.
- The bluestone kerb and channel and mature street trees (Elms and Oaks) in Fletcher Street, and the laneways in Pascoe Vale Road between nos. 223 and 225 (which has a pitched bluestone central drain) and nos. 235 and 237 (paved in bluestone pitchers), and the early post box outside 2 Fletcher Street.

Key attributes that contribute to the significance of this precinct include:

- The scale, form, siting, materials and detailing of the Significant and Contributory houses
- The high degree of intactness to the development dates from the late Victorian to interwar periods
- Significant and Contributory houses that typically survive with their presentation to the street being largely intact
- The consistently low height of front fences road alignments and allotment patterns resulting from the nineteenth century subdivision.

Submission 66

The submitter, Dr Teo, for 193 Pascoe Vale Road was represented at the Hearing by Ms Moorhouse Perks. She made the following points:

- There is concern about the physical condition of the house.
- The leadlight windows were added by the current owner.
- This is a large property which is graded as significant. The rear additions to the property should not be included in the HO. The carport was constructed in 1986. A copy of the plans for this structure was tabled.

- The cost of restoring the property would exceed the resale value.

Council responded by pointing out what the Statement of Significance says about the house:

The house at 193 Pascoe Vale Road is architecturally and aesthetically significant as a fine and early example of a California Bungalow, which demonstrates the Japanese influence seen in seminal examples in the United States designed by architects such as Greene and Greene. Of note is the low gable pitch with very wide eaves, flat verandah roof with shaped rafter ends, resting on chunky timber brackets and the use of single storey pavilions in front of a two storey mass, which is a very unusual composition in Victoria. Other details of note include the heavy dwarf verandah posts with timber corbels at base, casement windows with diamond lead lights and Arts and Crafts floral highlights, timber shingles in gables resting on timber corbels, and walls of roughcast render above a tuckpointed red brick plinth. The significance of the house is enhanced by its high degree of intactness. (Criteria D, E and F).

Council also pointed out that the lightweight upper floor was clearly an original element given the published photos of 1918 which show it in its current configuration.

Ms Schmeder reinforced Council's response, but following a later inspection of the property agreed that the additions at the rear were not of significance. She recommended:¹⁰⁰

Note in the precinct description that the enclosure to the back porch of the house, the carport, the bungalow/sleep-out and the swimming pool are all non-original elements of no heritage value.

Submission 36

The owners of 229 Pascoe Vale Road made a written submission in which they opposed the Amendment on the basis that the property does not contribute to the significance of the precinct.

Council responded noting that while the timber bungalow at 229 Pascoe Vale Road is simple in its details, it is typical of many interwar bungalows. While there have been some changes to the front of the building it still contributes to the interwar character of the precinct.

Submission 80

The owners of 219 Pascoe Vale Road made a submission which indicated that it is their view that their property doesn't warrant the application of the Heritage Overlay and that Heritage Overlays should be applied on an individual basis.

Council responded in the same terms as it responded to submitter 14 by outlining the process for determining heritage significance. It did not agree to the proposal that Heritage Overlays should be applied on an individual basis.

Submitter 89

The submission for 221, 223 and 225 Pascoe Vale Road stated that the property lacks heritage value and the proposed Heritage Overlay would impact on their ability to make the property more sustainable.

Council responded by pointing out that many older houses in Moonee Valley and elsewhere had been retrofitted to accommodate energy saving measures and that the most sustainable measure was to not demolish an existing structure.

Submitter 92

¹⁰⁰ Document 57b.

The owner of 215 Pascoe Vale Road made a written submission which stated that the property lacked heritage value and the application of the HO would inhibit their ability to redevelop.

Council pointed out that this property is designated as Non-contributory and redevelopment is always a possibility depending on the nature of the proposed replacement building.

Ms Schmeder came to the following conclusions about the precinct:¹⁰¹

- The intact two storey bungalow form of 193 Pascoe Vale Road is not only intact, but it is an unusual and early adoption of the bungalow form from California. For these reasons, it clearly meets Criterion F at a local level, and warrants a significant grade.
- The tender notice suggesting that Gawler and Drummond were the design architects may contribute to our understanding of their oeuvre, so this attribution should be recorded.
- The Pascoe Vale Road Precinct citation should be revised to:
 - Note the 1916 Gawler and Drummond tender notice and the 1918 photo of 193 Pascoe Vale.
 - Amend the Statement of Significance to include the built date and likely architects of this house.
- The grading of 195 Pascoe Vale Road should be revised from contributory to non-contributory due to its extensive alteration.

She subsequently added to this with the recommendation reported above for the rear of 193 Pascoe Vale Road.

(iii) Discussion

The Panel inspected this precinct and undertook an accompanied inspection of 193 Pascoe Vale Road.

It believes that the boundaries of the precinct are appropriate and that the significance of the precinct is appropriately dealt with in the tabled Statement of Significance.

The issues about 193 Pascoe Vale Road warrant reconsidering the grading of that property. The rear additions to the property do not contribute to the significance of the place. Ms Schmeder agreed in her supplementary evidence to the Panel (following a close inspection of the property).

The Panel agrees with this but believes the property in its entirety should remain part of the precinct (HO457).

The Panel also supports altering the proposed grading of 195 Pascoe Vale Road from Contributory to Non-contributory as supported by both the Council and Ms Schmeder. They noted the extensive alterations which have changed its presentation to the street.

The Panel cannot deal with submissions that claim the application of the Heritage Overlay will impede redevelopment and the completion of further building works. Submitters should consult with the Council about their future plans.

(iv) Conclusions and recommendations

The Panel concludes:

- The precinct boundaries of HO457 are appropriate.

¹⁰¹ Document 12, para 474.

- The rear portion of 193 Pascoe Vale Road should be designated as Non-contributory, but the original house should remain graded as Significant.
- The grading of 195 Pascoe Vale Road be changed to Non-contributory.

The Panel recommends:

12. Amend the Statement of Significance for 193 Pascoe Vale Road, Essendon (HO457) to identify that the enclosure to the back porch of the house, the carport, the bungalow/sleep-out and the swimming pool are all not of heritage significance.

13. Change the grading of 195 Pascoe Vale Road, Essendon (HO457) from Contributory to Non-contributory in the Amendment.

6.8 Roberts Street, Essendon (HO459)

(i) The issues

The issues are:

- whether Roberts Street Precinct should be included in the Amendment
- whether particular properties should be included in the precinct.

(ii) Evidence and submissions

The Statement of Significance identifies the following features:

29-59 and 42-60 Roberts Street, Essendon, a residential area comprising one Victorian house built 1888-c.1892 and otherwise interwar bungalows built c.1928-35 on the 1888 Buckley Park Estate subdivision, is significant.

The following features contribute to the significance of the precinct:

- The Victorian dwelling at 37 Roberts Street constructed in c.1892.
- The interwar bungalows and Old English revival style dwellings constructed between c.1928. and
- 1935, as shown on the precinct map.
- The overall consistency of built form (asymmetrical massing, prominent street-facing gables, jerkin-head gables, projecting timber-framed windows, some with bow or bay windows, with weatherboard and shingle walls and gable ends).
- The good degree of intactness to its key interwar phase of development.
- The landscape qualities of the streetscape, characterised by houses with consistent form, setbacks and garden settings, wide lawn nature strips, and mature street trees.

The Victorian dwelling at 37 Roberts Street is individually significant for the evidence it provides of the first phase of subdivision before the 1890s Depression.

The houses at 29, 33, 35, 39, 41, 43, 45, 47, 49, 53, 55, 57, 59 and 42, 44, 46, 48, 50, 52, 54, 56, 58 and 60 are Contributory. Non-original alterations and additions to the Contributory houses are not significant.

- The front fences at 29 and 35 Roberts Street contribute to the significance of the precinct.

Submissions 104 and 106

The submissions supported the Roberts Street Precinct but with a more limited boundary on the west side of the street from 33 to 49.

The submissions said the houses on the west side of the street from 51 to 59 have little heritage value due to modifications and on the east side the houses are not as intact. They

indicate that the houses on the east side from 42 to 48 should be removed because number 42 has been demolished, 42A and 42B are Non-contributory and 44, 46 and 48 have no heritage value.

Submission 104 stated that if heritage controls are applied to houses with low heritage value such as numbers 44, 46 and 48 the value and saleability of the properties will be reduced. It said Council should not compound the impact of the Corona virus on property values.

Council in response¹⁰² agreed to remove the Non-contributory properties at 42 (demolished with permit in 2018), 42A and 42B from precinct.

It said numbers 44 and 46 are highly externally intact 1930s bungalows, and number 48 is half of an intact pair with number 50, with a cohesive built form.

Ms Schmeder's evidence¹⁰³ was that there is no reason to remove 44, 46 and 48 from the precinct as interwar houses of the 1920s and 1930s contribute to its significance. Her opinion was that the houses at numbers 53-57 are intact California Bungalows and 59 is an early post-war house, which is noted in the precinct description. Her evidence was that the presence of a single Non-contributory house at number 51 is not a strong enough reason to exclude this row of California Bungalows.

Mr Agushi (submitter 104) appeared at the Hearing representing himself and Mr Canko, submitter 106.¹⁰⁴ He explained that they purchased the house at 46 Roberts Street in February 2019 with the intention to demolish it and had no knowledge of the heritage study. He said there had been a lack of transparency and consultation by Council and Council had not promoted a greater understanding of heritage in the community.

He was concerned the Heritage Overlay had caused a drop in property values and number 46 is of low heritage value so not worth investing in. He owns another property in the street that is individually significant, and he has invested in restoring it because he thinks it is worth it.

Mr Agushi challenged the integrity and intactness of the houses in the precinct on the basis that little of their original form remains. He said the houses at numbers 54 and 56 have had modifications to the roofs and facades and at 58 the owner has added a front room which has reduced the set back. He presented photos to illustrate the modifications and high fences at some properties that are not noted in the Statement of Significance.

Council's final submission in response to submitter 104¹⁰⁵ noted the feedback about the notification of the Heritage Study and said it would ensure better communication strategies in future. Other key points were:

- the extensions to 54 and 56 Roberts Street are recorded in the citation
- there is no other evidence to support the submitter's opinion that the owner of number 58 has added a front room and replaced the front façade.

Submitters who did not appear

Submitter 23 pointed out that the original house at 42 Roberts Street has been demolished.

¹⁰² Attachment to Council officers paper approved at Council meeting 25 August 2020, pp129-132.

¹⁰³ Document 12, pp 112-117.

¹⁰⁴ Document 58 and 58a.

¹⁰⁵ Document 62, supplement to Council Part C submission.

Submitter 72 opposed the house at 43 Roberts Street being included in the precinct because it would impact on property values.

Submitter 119 opposed the Heritage Overlay applying to the property at 29 Roberts Street as they have been advised that it is not worth restoring and they wish to demolish it. The submission stated that they are now overshadowed by a double storey house to the north (number 31) and would like to build their own two storey house so it is tall enough to install solar panels.

Council's response¹⁰⁶ acknowledged the solar access issue but stated it is not a heritage issue.

Ms Schmeder's opinion¹⁰⁷ was that 29 Roberts Street is a highly intact timber California Bungalow that is particularly distinguished by its intact setting. She argued retaining 29 Roberts Street in the precinct warrants including the property at 31 as Non-contributory rather than removing it from the precinct. She stated that its front setback is in keeping with the rest of the street, and its Old English style and clinker brick walls reference the Old English Duplex at numbers 48-50.

(iii) Discussion

The Panel inspected the precinct on two occasions and it has reviewed the citation.

The Panel appreciates the time and effort of the submitters who appeared before the Panel and it acknowledges the distress that they appear to have experienced during the process.

The questions for the Panel are whether the precinct is justified and whether individual properties should be graded Contributory places or removed from the overlay.

The Panel considers each of the houses graded Contributory are justified as contributing to the precinct's significance. The Panel believes to the uneducated eye the Contributory properties do not appear out of place in the precinct despite their modifications and the Statement justifies their inclusion as Contributory.

The Panel adopts Ms Schmeder's evidence that there is no reason to remove numbers 29, 44, 46 and 48 from the precinct and numbers 53 to 59 contribute to the precinct and that inclusion of the Non-contributory properties at 31 and 51 is justified.

The exceptions are the Non-contributory properties at 42, 42A and 42B. The Panel adopts Ms Schmeder's evidence that those properties should be removed from the precinct.

The Panel discusses the non heritage issues raised by submitters in Chapter 4.

¹⁰⁶ Attachment to Council officer's paper endorsed at Council meeting 25 August 2020, pp132-134.

¹⁰⁷ Document 12, page 116.

(iv) Conclusions and recommendation

The Panel concludes:

- The Roberts Street Precinct should be included in the Amendment.
- The properties at 42, 42A and 42B Roberts Street should be removed from the precinct and the Amendment.

The Panel recommends:

14. Remove the properties at 42, 42A and 42B Roberts Street, Essendon from HO459 and the Amendment.

6.9 Scott Street, Essendon (HO460)

(i) The issues

The issues are:

- the absence of heritage value in the precinct
- the impact of the Heritage Overlay on property value.

(ii) Evidence and submissions

The Statement of Significance identifies the following features:

8-30 Scott Street, Essendon, a small residential area comprising a short row of timber Edwardian and early Interwar era dwellings built c1910-c1923, is significant.

The following features contribute to the significance of the precinct:

- The houses constructed c1910-c1923, as shown on the precinct map.
- The overall consistency of housing form (complex roof form, asymmetrical form), materials and detailing (weatherboard external cladding, gable end decoration), and siting (elevated siting, consistent front setbacks).

The house at 10 Scott Street is not Contributory.

Submitter 13 made a written submission for 20 Scott Street which stated that in their view the property lacked heritage value and the application of the Heritage Overlay would have a negative impact on the property's value.

Council responded by acknowledging that the submitter is correct in stating that Scott Street as a whole lacks consistency. However, the section recommended for coverage by the Heritage Overlay is a highly intact and visually distinctive group of timber Edwardian houses.

Ms Schmeder reiterated the Council's response.

(iii) Discussion

The Panel inspected the precinct and believes that the precinct does demonstrate a consistency of housing form as indicated in the Statement of Significance. No 20 Scott Street is designated as a Contributory building and the Panel believes that this is an appropriate grading.

The Panel discusses property value impact issues in Chapter 4.

(iv) Conclusion

The Panel concludes that the proposed HO460 is appropriate and no change to the Amendment is required.

6.10 Clarence Street and Marshall Street, Flemington (HO461)**(i) The issue**

The issue is whether 17 Marshall Street and 21 Marshall Street should be included in the Heritage Overlay.

(ii) Evidence and submissions

The Statement of Significance includes:

The Clarence Street & Marshall Street precinct is a residential area that comprises housing constructed in two periods: from c.1885 to c.1910 (Clarence Street) and c.1909 to c.1915 (Marshall Street).

The following features contribute to the significance of the precinct:

- In Clarence Street, the overall consistency of Victorian housing form (hipped roofs, single storey), materials and detailing (face brick, weatherboard or imitation Ashlar, bracketed eaves and other Italianate details, corrugated metal roofs, rendered chimneys, verandahs with cast iron decoration) and detached siting with small front setbacks and narrow side setbacks, which is complemented by terrace houses with parapets and boom style cement decoration (9, 11) and transverse gable roofs and original cast iron fences (1, 3).
- In Marshall Street, the overall consistency of Edwardian housing form (hipped roofs with projecting gables, single storey), materials and detailing (weatherboard or imitation Ashlar, corrugated metal roofs, half-timbered or notched weatherboard gable ends, verandahs with timber or cast iron frieze, roughcast chimneys) and detached siting with small front setbacks and narrow side setbacks.
- Streetscape materials such as bluestone kerb and channel, and bluestone rear laneways.
- Mature street trees (Planes) in Marshall Street.

Of the 10 submissions received for the precinct, eight submissions supported the application of the overlay either for reasons related to specific properties or because of the overall consistency of Edwardian (Marshall Street) and Victorian (Clarence Street) housing. Submissions 4, 30, 31, 34, 35, 115, 116 and 117 supported the Amendment and application of the overlay.

Submission 48

Submission 48 objected to the overlay being applied to 21 Marshall Street on the following grounds:

- the house is lacking in historical embellishments, interesting designs or different materials and is a simple weatherboard
- the owner has long term plans to demolish the house
- if the house is retained it will need to be renovated or fixed and because of the heritage requirements it will be more costly than a new house
- there are other houses nearby marked as Non-contributory and 21 Marshall Street should also be considered Non-contributory given its lack of heritage features.

Ms Kim Si Cao appeared at the Hearing and tabled materials to support her view¹⁰⁸ as well as outlining in more detail the points above. She also submitted that given the age of the house it is in poor condition with rotting weatherboards and timber, termites, rain incursion via the chimney and asbestos in an outbuilding at the rear of the property. She was distressed at the financial burden that she considers inclusion in the Heritage Overlay will cause her.

In response in the attachment to the Council minutes, Council noted while alterations have occurred such as the removal of the original verandah, the house contains many Victorian elements which make it Contributory to the precinct. They also noted that issues to do with demolition should be considered through the planning permit process and that other houses identified in the street as Non-contributory are either post-war or heavily modified.

Ms Schmeder in her evidence outlined in detail the remaining attributes:¹⁰⁹

While the front verandah of 21 Marshall Street has been removed, the house retains many of the typical features of Edwardian houses as described in the precinct citation, including: a main hipped roof and a projecting front gable, notched weatherboards in the gable end, two roughcast rendered chimneys with chimney pots, paired double-hung timber windows, an original four-panel front door and surround, and the front façade clad in Ashlar-look boards (imitating stone). The boom-style cement decoration, parapets, and iron front fences mentioned in the statement of significance are Victorian elements, which are seen in the precinct on Clarence Street.

She noted that removal of verandahs in such precincts is not uncommon (including elsewhere in this precinct) and does not of itself make the house Non-contributory.

Submission 111

Submission 11 objected to the inclusion of 17 Marshall Street on the grounds that:

- there are already many changes externally and internally and the homogeneity of the examples on the street is not as strong as people are led to believe
- external changes including solar panels, double glazed windows and other environmental improvements are not part of heritage
- the overlay will affect future development opportunities
- the Amendment will add additional cost of regulations and red tape
- there are sufficient planning controls in place already.

Council in response considered that the house still meets the standards for a Contributory dwelling and provided information on other aspects of the submission. It noted issues around the future development of the property should be addressed through a planning permit which may result in additional costs and administration; but that this is not relevant to this Amendment.

In evidence Ms Schmeder noted that the Heritage Overlay at the local level usually only seeks to protect the external elements of a house, and whilst this house has been altered externally, there is enough extant to warrant its inclusion as Contributory in the Heritage Overlay including:

- its original massing (M-hipped roof, projecting gable to one side of the verandah)
- verandah joinery (verandah beam, turned timber posts, ladderback frieze and timber brackets)

¹⁰⁸ Tabled Documents 6, 6a, 17, 39 and 56.

¹⁰⁹ Expert witness statement, para 494.

- paired double-hung sash windows.

(iii) Discussion

Submission 48

The Panel notes the distress the submitter has experienced at the thought of the Heritage Overlay but is satisfied that the house has the heritage values ascribed to it and it should be included in the overlay. On the material before the Panel, it does not appear that the house is in such poor condition that it must be demolished. Many of the items Ms Cao identified are normal repairs and maintenance. The development potential of the property should properly be considered through the planning permit process with the locally significant heritage elements part of that decision making.

The Panel has reviewed the other properties identified as Non-contributory by the submitter. It accepts that they are much later and the reason for that designation is clear and different to 21 Marshall Street.

Submission 111

The Panel is satisfied that the house should remain as Contributory to the precinct. While altered based on the evidence there is enough remnant original fabric of the building exterior to support the listing. The submitter has raised a number of other issues, but these do not go to whether the house should be listed as Contributory or not.

(iv) Conclusion

The Panel concludes no changes to the Amendment or HO461 are required.

6.11 Ardmillan Road, Moonee Ponds (HO462)

(i) The issues

The issues are:

- whether the precinct boundaries are appropriate
- whether particular properties should be Contributory, Non-contributory or significant.

(ii) Evidence and submissions

The Statement of Significance identifies the following features:

The Ardmillan Road precinct is a residential area that comprises houses built from c.1885 to c.1925.

The following features contribute to the significance of the precinct:

- The houses at 15, 17, 23-31, 39-47 & 26-48 Ardmillan Road are contributory.
- Nos. 21, 28, 30, 34, 40*, 44, 46 & 48 are Significant.
- The overall consistency of housing form (hipped or hip and gable roofs, single storey with a smaller number of attic stories and one double storey), materials and detailing (weatherboard, imitation Ashlar or face brick, corrugated metal slate or tile roofs, verandahs with cast iron or timber frieze decoration, render or brick chimneys) and detached siting on garden allotments and low front fences.
- The deep front setbacks of the houses at 36-48 Ardmillan Road containing mature trees including the Mexican Fan Palm (*Washingtonia robusta*) and

Smooth-barked Apple (*Angophora costata*) at nos. 42-44 and the Scotch Elm (*Ulmus glabra*) at no.46

- The mature Canary Island Palm (*Phoenix canariensis*) at no.19 streetscape materials such as bluestone kerb and channel

Non-original alterations and additions to the Significant and Contributory houses and the houses at 19 & 33 Ardmillan Road are Non-contributory.

*The house at 40 Ardmillan Road has a separate citation and statement of significance.

Submitter 84

The owner of 33 Ardmillan Road made a written submission which supported the application of the Heritage Overlay but suggested that their Non-contributory property should be excluded from the precinct.

Council

Council responded by pointing out that it was common for Non-contributory properties to be retained within the boundaries of a heritage precinct (this is what the Non-contributory grading is about) and it was important to ensure that any future development on such properties took account of the significance of the precinct.

Ms Schmeder supported Council's position in relation to Non-contributory properties in the Heritage Overlay.

(iii) Discussion

The Panel inspected the precinct and largely supports the proposed boundaries of the Heritage Overlay as exhibited with the exception of 11 Ardmillan Road. This interwar dwelling has distinctive features and it seemed to the Panel that it could reasonably be included in this precinct. Since the property was not included in the exhibited amendment it is left to the Panel to suggest that its inclusion be considered for a future amendment.

Equally, the Panel questions the grading of eight properties as significant. It appeared to the Panel that the dwellings at 21, 28, 30 and 34 are typical to the precinct and therefore Contributory to the precinct. The properties sitting between 42 and 48 Ardmillan Road are distinctive and substantial interwar dwellings and the significant grading may be appropriate but warrants review and further consideration. The property at 40 Ardmillan Road is a large two storey Victorian villa with an individual overlay (HO147). The retention of the individual overlay within the precinct is also questioned as this could mean that the property is not considered to be part of the precinct and therefore the precinct policies will not apply.

It is also noted that the property at 23 Ardmillan Road has been redeveloped and it should be regraded as Non-contributory.

The Panel agrees with the grading of 33 Ardmillan Road as Non-contributory. It is located in the centre of the proposed precinct and a re-drawing of the boundaries to exclude it would result in an awkward delineation and would enable an unsympathetic development to occur on the site in the future.

It is not the role of the Panel to rework the heritage assessments which underpin this Amendment, but in this case it seems that there are a number of questions about the makeup of the precinct that point to the need for a further review of the boundaries and grading of

properties. It is noted that the Statement of Significance endeavours to clarify some of the grading issues under the 'Why it is Significant?' section, but the Panel finds this unconvincing.

(iv) Conclusions

The Panel concludes:

- That the proposed HO462 be approved as exhibited.
- That the grading of significant and Contributory to properties within the precinct warrants further review; this should be done through a separate process and Amendment.
- That the inclusion of 11 Ardmillan Road in the Heritage Overlay could be considered in a future Amendment.

6.12 Grace Street, Moonee Ponds (HO464)

(i) The issues

The issues are:

- the alleged lack of heritage value in the precinct
- the failure to properly delineate the precinct.

(ii) Evidence and submissions

The Statement of Significance identifies the following features:

The Grace Street precinct is a residential area that comprises houses built from c.1885 to c.1895.

The following features contribute to the significance of the precinct:

- The houses at 1-27, and 2 & 6-20 Grace Street.
- The consistency of the housing form (predominantly single storey with hipped roofs), materials and detailing (face brick or stucco walls, slate roofs, verandahs, Italianate style detailing, brick or render chimneys) and siting (small front and narrow side setbacks).
- Bluestone kerb and channel and asphalt laneway with central bluestone pitcher channel.

Submission 85 supported the Amendment.

Submitter 16

Submission 16 made a written submission in relation to 27 Grace Street which opposed the Amendment on the basis that their property lacked heritage significance given that it has undergone many alterations and additions.

The Council responded by reiterating the process by which the identification had occurred and the consequent Statement of Significance. It acknowledged that the property had been subdivided and certain alterations had been made to the original house. However, Council pointed out that sufficient material of the original house remained for it to be a Contributory element in the precinct.

Ms Schmeder reinforced the Council's submission and recommended that the property at 27 Grace Street remain as Contributory.

Submitter 73

The written submissions for 1 Grace Street opposed the Amendment and questioned the lack of controls over their rear neighbour.

Council responded by indicating that only places with heritage significance should be covered by a Heritage Overlay and Council cannot respond to a hypothetical development proposal as suggested by the submitter.

(iii) Discussion

The Panel inspected this precinct and having considered the submissions believes that the Statement of Significance presented by the Council appropriately describes the importance of the precinct.

The Panel does not accept that the extent of alterations to 27 Grace Street has diminished its contribution to the precinct.

It is also not possible for the Panel to recommend further additions to the precinct but can suggest that the Council consider options for addressing Submitter 73's concerns.

(iv) Conclusion

The Panel concludes that HO464 should be approved in the Amendment as exhibited.

6.13 Margaret Street and Park Street, Moonee Ponds (HO465)

(i) The issues

The issues are:

- whether the alterations to properties has detrimentally impacted their significance
- whether the properties in the precinct are in poor condition
- the impacts on property values.

(ii) Evidence and submissions

The Statement of Significance identifies the following features:

- The houses at 35-45, 51-59, 65-81 and 40-68 and 72 Margaret Street, the interwar shop at 63 Margaret Street, 2-18 and 7-17 Park Street and 48-54 Taylor Street, and the front fences at 51 Margaret Street and 8 Park Street.
- The houses at nos. 35, 40, 68, 76 and 78 Margaret Street, 9 Park Street and 52 Taylor Street and the terrace at 42-64 Margaret Street are Significant.
- The overall consistency of housing form (hipped or hip and gable roofs, single storey), materials and detailing (weatherboard, imitation Ashlar or face brick, corrugated metal slate or tile roofs, verandahs with cast iron or timber frieze decoration, render or brick chimneys), detached siting (small front setbacks and narrow side setbacks) and low front fences.
- Streetscape materials such as bluestone kerb and channel and bluestone laneways.

Submissions 29 and 79 made written submissions supporting the Amendment.

Submitter 32

Submission 32 for 7 Park Street made a written submission pointing out that the property had undergone alterations, was in poor condition and had previously approved permits.

Council responded by pointing out that there are no alterations to the property that are visible from the street and that the changes to the rear of the place do not detract from its Contributory status.

Ms Schmeder reinforced the Council's position and pointed out that the exclusion of the apartments at 5 Park Street was an appropriate response to drawing the boundaries.

Submitter 47

The owner of 79 Margaret Street made a written submission opposing the grading of their property as Contributory on the basis that it has been extensively altered and added to.

Council acknowledged that a quite visible upper level extension has been built at 79 Margaret Street, set back about one room's depth from the front façade. The front façade and entrance porch, however, have been retained and are highly intact. There is also an upper level extension at the nearby 73 Margaret Street. Both of these houses are a part of a row of identical single fronted brick Edwardian dwellings at 69-81 Margaret Street, which differ only in the varied designs of their porch fretwork.

Ms Schmeder reinforced the Council's response and recommended that the 2017 Heritage Study's precinct description be revised and note that the original lattice form of the fretwork to 69-81 Margaret Street, which survives intact at Nos. 75 and 81.

Submitter 90

Submission 90 for 17 Park Street made a written submission opposing the inclusion of their property in the Amendment on the basis that it has been significantly altered and renovated.

Council responded by acknowledging that the front fence of this property had been changed and that the 1990s alterations had changed the original form. However, it believed that these changes had been undertaken in a sympathetic manner and did not detract from its Contributory status.

Ms Schmeder supported retaining the house in the Amendment and concluded:¹¹⁰

Despite the presence of a rear extension executed in the same materials and details, the majority of the original house survives intact, allowing this fine and substantial dwelling to contribute to the heritage significance of the precinct.

Submitter 118

The submission for 8 Park Street opposed the Amendment on the basis that it would have a negative impact on the value of the property and impact their insurance premiums.

Council responded by pointing out that any impact on property value or insurance premiums were not matters to be considered in proposing a Heritage Overlay.

(iii) Discussion

The Panel inspected this precinct and as a result poses the following questions:

- what is the rationale for the designation of some properties as 'Significant' when it appeared that they were really Contributory to the stated significance of the precinct?
- should the HO311 remain in the Moonee Valley Planning Scheme?

¹¹⁰ Document 12, para 515.

The Statement of Significance goes to some lengths to describe the significance of individual properties within the precinct. However, it does not make a convincing case as to why these properties were of greater importance than their Contributory neighbours. Moonee Valley's Heritage Guidelines provide the following definitions.

Significant – A heritage place that has cultural heritage significance independent of its context. Such places may have their own Heritage Overlay number or they may be part of a wider heritage precinct. If located within a precinct, they would still be eligible for heritage protection even if the precinct did not exist around them.

Contributory – A place that contributes to the significance of a heritage precinct, but would not be protected if it was on its own.

It appears to the Panel that a strict application of these definitions might lead to a downgrading of some properties to Contributory.

HO311 has been in the Moonee Valley Planning Scheme for some time as an individual place (despite consisting of a number of properties). Its inclusion in HO465 and continuation as HO311 seems an anachronism and Council should make a conscious decision as to what it should be.

Whilst the broad assessment of the boundaries of this precinct seems appropriate and it is not the role of the Panel to rework the assessments which lead to this proposed amendment, in this case the Panel believes that a further independent review of the grading of properties should be completed before the Amendment is submitted for approval.

(iv) Conclusions

The Panel concludes:

- That the boundaries of the precinct are appropriate, and the heritage values identified in it, appropriate.
- That the Significant and Contributory property gradings within the precinct warrants further review; this should be done through a separate process and Amendment.
- If HO311 is to remain in the planning scheme, it should be removed from HO465.

7 Serial listing

7.1 Tweedside Estate Serial Listing (HO468)

(i) The issues

The issues are:

- whether the Tweedside Estate Serial Listing meets the threshold of local significance to justify the Heritage Overlay and the requirements for a serial listing
- whether particular properties should be included in the serial listing.

(ii) Evidence and submissions

The Statement of Significance identifies the following features:

The Tweedside Estate group listing comprising the houses constructed c.1885 to c.1895 at 2, 4 & 7 Black Street, 266 Buckley Street, 9 & 20-22 Elder Parade, 4 & 6 Forrester Street, 1, 3, 7-11 Laluma Street, 17, 33-35, 37, 45 & 49 Lincoln Road, 1 Lyon Street, 37 McCarron Parade, and 16 & 20 Thomson Street, Essendon.

The features that contribute to the significance of the place are the Victorian era houses of four broad types: Symmetrical or asymmetrical double fronted villas, single fronted cottages, terrace and semi-detached houses and the overall consistency of form (hipped roofs, single storey), materials and detailing (weatherboard with imitation Ashlar, bi-chrome brick or stucco external cladding, slate or corrugated metal roofs, full width or return verandahs with cast iron decoration, brick or brick and render chimneys) and predominantly detached siting.

The houses at 266 Buckley Street and 37 McCarron Parade are of individual significance and have their own citation and statement of significance.

All the other houses within the listing are Contributory.

Submissions

Submitter 3 opposed the Amendment applying to 49 Lincoln Rd, Essendon because the property is located on a main road and has been without restrictions for many years and “*so why change if it works*”? The submission also objected because the Heritage Overlay would mean the loss of opportunity for development.

Council in response to the submission¹¹¹ stated:

- the interface of a property is not considered when assessing heritage
- the Heritage Overlay does not preclude redevelopment, it allows Council to consider whether proposed works will impact the significance of a place or precinct
- applying the Heritage Overlay is a component of accepted planning practice.

Submitter 71 opposed the Amendment applying to 4 Black Street, Essendon because the character of the street is altered with many contemporary houses and town houses, and because delays and costs caused by planning permits would force them to leave.

Council in response to the submission¹¹² stated the character of the streetscape is less of a consideration for assessing properties in a serial listing than for a precinct. What is more important for a serial listing is the common characteristics shared by the places in the listing.

¹¹¹ Table attached to Council officers report endorsed at Council meeting on 25 August 2020, page 163-164.

¹¹² As above pp 164-165.

Redevelopment around the properties that belong to the serial listing is therefore not relevant.

Does the serial listing meet the threshold?

Council's submission stated that research for the 2017 Heritage Study found that about 40 houses had been built on the Tweedside Estate in the late nineteenth century of which approximately half survive today. It therefore decided a serial listing was appropriate.

Council submitted the houses in the proposed serial listing have relatively good integrity when compared to others in the listing and comparable places within the Heritage Overlay. It said the listing excludes houses of lower integrity and houses built after 1900.

Council submitted previous panel reports that discussed serial listings (reviewed in 2018 Planning Panels Victoria 'Heritage Issues' report). The Campaspe C50 Panel (at pages 49-50) said serial listing is better applied to small proximate collections of properties that do not necessarily have the same built form, are too few to create a sense of precinct and share a common history.

The Moreland C149 Panel (at pages 38-38) emphasised that places to be included in a 'group' or 'serial' listing should have well defined characteristics to be recognisable as a group because the buildings are not proximate and do not create a recognisable place.

The 2017 Heritage Study concluded a 'group' or 'serial' listing is appropriate for the Tweedside Estate for the following reasons:

- The houses all have strong historic/thematic associations as houses built in the late nineteenth century on the Tweedside Estate subdivision.
- The remaining houses are not proximate to one another ... are surrounded by unrelated buildings and do not form precincts.
- While not of standard designs, the late Victorian style houses are distinctive as much earlier houses within areas that are now otherwise predominantly characterised by interwar or post-war houses and flats.¹¹³

(iii) Discussion

The Panel visited all of the houses in the listing and has reviewed the citation.

The proposed serial listing covers 22 houses out of an original 40 and they are spread across eight streets. It agrees that a precinct approach is not appropriate.

The Panel reviewed previous panel reports cited by Council that discussed the criteria for applying a serial listing. Applying those criteria, the question for the Panel in this case is whether the 22 houses covered by the serial listing share a common history and have very well defined characteristics to be seen as contributing to the group?

The Panel acknowledges the value to Moonee Valley of the history of early housing estates during the land boom years prior to 1890 and believes that some of it should be preserved.

The Panel is satisfied that the citation sets out the shared history of the houses. The Panel believes the houses clearly present as late Victorian style houses distinct from the other houses built since 1900, even though their styles vary.

The non heritage issues raised by submitters are discussed in Chapter 4.

¹¹³ 2017 Heritage Study, Volume 1, page 107.

(iv) Conclusions

The Panel concludes that the Tweedside Estate Serial Listing:

- Meets the threshold of local significance to justify the Heritage Overlay and meets the requirements for a serial listing.
- No changes to HO468 are recommended as a result of submissions.

8 Individual heritage places

8.1 1 and 3 Adelaide Street, Ascot Vale (HO470)

(i) The issues

The issue is whether 1 Adelaide Street should be included in the Heritage Overlay.

(ii) Evidence and submissions

The Statement of Significance includes:

The pair of bungalows at 1 and 3 Adelaide Street, Ascot Vale, is significant. The two houses were built in 1927 for estate agent Harold M Butler, and he and his family resided in number 3.

The significant fabric includes the:

- original building and roof form as a pair of detached dwellings;
- verandahs including decorative timberwork, brick steps and brick balustrades;
- fenestrations;
- weatherboard cladding;
- chimneys;
- roof tiles;
- eave and gable end detailing;
- window hoods;
- door and window joinery and leaded glass; and
- post and woven wire fence and gates at number 3.

Submission 82 objected to the Heritage Overlay being placed on 1 Adelaide Street on the following grounds:

- the house is in very poor condition structurally and needs to be demolished
- the property has no heritage significance except perhaps for the ‘cute’ windows on the front façade
- significant development has occurred around the property meaning there is very little natural light reaching the property
- redevelopment of the rear of the property should be allowed
- there are significant drainage issues from Sydney Street adversely affecting the property which Council needs to address.

The owner of 1 Adelaide Street Mr Habermann presented to the Panel and articulated the concerns above, including showing photographs of the house condition and drainage issue. The submitter also provided an overview of the planning history of the property and his dealings with Council.

In response Council at the meeting of 25 August 2020 noted that the structural integrity of a house is not something that is addressed at the heritage listing stage but can be considered at the planning permit stage.¹¹⁴

¹¹⁴ This general issue is discussed in Chapter 4 of this report.

Council considered that the heritage value of the property is clear. In evidence Ms Schmeder stated:¹¹⁵

... As noted in the statement of significance, while the front windows with battered architraves and elaborate window hoods are a striking feature of the pair, they are not the only distinguishing feature. Others include the expressed joinery to the front door surrounds, leadlight windows, leadlight glazing to the front doors and sidelights, and the retention of other intact details such as the brick porch balustrades and timber verandah friezes (more elaborate at No. 3, but still intact at No. 1). Finally, the construction of the two houses as a pair gives them landmark quality as viewed from Brisbane Street.

She concluded that in her opinion the property (and 3 Adelaide Street) should be covered by the Heritage Overlay.

(iii) Discussion

The Panel considers that the heritage values of the property were not seriously challenged, and the Heritage Overlay is appropriate for 1 and 3 Adelaide Street. Issues of dilapidation and the acceptability of alterations or even demolition can properly be considered through the planning permit process.

The Panel notes the submissions regarding alleged ongoing drainage issues. The submitter was clearly distressed by this situation and the Panel encourages Council to work with the submitter to resolve these issues as appropriate. They are not however, issues that the Panel can consider in relation to the application of the Heritage Overlay.

(iv) Conclusion

The Panel concludes no changes to the Amendment are required for HO470.

8.2 13 Milton Street, Ascot Vale (HO473)

(i) The issue

There appear to be no specific issues surrounding the application of the Heritage Overlay to this property.

(ii) Submissions

Submitter 10 made a written submission supporting the proposed Amendment.

Submission 28 comprises a sequence of emails which seem to indicate support for the protection of this property.

(iii) Discussion

There are no issues surrounding the application of the Heritage Overlay to this property.

(iv) Conclusion

The Panel concludes no changes to the Amendment are required for HO473.

¹¹⁵ Expert witness statement, part para 166.

8.3 37 Sandown Road, Ascot Vale (HO476)

(i) The issue

The issue is whether the Heritage Overlay should be placed on the property given its condition and changing site context.

(ii) Evidence and submissions

The Statement of Significance includes:

‘Tahoma’ at 37 Sandown Road, Ascot Vale, is significant. It was built in 1934-35 by local builder Robert John Shaw for owner Robert Walker.

Significant fabric includes the:

- original building form and roof form and fenestrations;
- glazed terracotta roof ties and unpainted chimney;
- unpainted face brick work and smooth rendered walls including clinker and red brick detailing and tuckpointing;
- eaves details;
- gable ends details including scalloped shingles;
- porch details including piers, arch, brick balustrade and planter boxes;
- bow window with scalloped shingles;
- door and window joinery, leaded glass panes; and
- brick front fence and curved concrete pedestrian path.

Submission 77 objected to a site specific Heritage Overlay being placed on 37 Sandown Road. Tract consultants submitted on behalf of the owner on two major grounds, being the poor structural integrity of the house and the site context among many modern townhouse developments. The submission identified that the street is undergoing significant change, and the building is not of such heritage interest that it should contribute to a precinct in the area.

Mr Camilleri presented to the Panel on behalf of the owners the Brancatisanos. He provided several reports¹¹⁶ that went to issues around building condition, pest damage and water damage. In summary he submitted:

- the house has very significant termite damage including in the sub-floor structure
- there is significant damage and mould incursion from water associated with the fire hydrant on the street being knocked over
- the original front fence is damaged
- the property contains asbestos
- there is significant damage from water and exposure to features on the front of the house including windows.

He went on to outline some of the costs involved in bringing the property up to rental standard including roof replacement, window replacement and other repairs.

Council responded in the attachment to the minutes of 25 August 2020 that:

- the conditions issues do not go to whether the property should have the Heritage Overlay applied or not¹¹⁷

¹¹⁶ Documents 52a-52d.

¹¹⁷ See Chapter 4 of this report.

- the surrounding context of the house is not relevant to whether the overlay should be applied.

Ms Schmeder in evidence supported Council's position and concluded that:¹¹⁸

It is my opinion that:

- As a place that has demonstrated local significance, the subject house does not need to be in a similar streetscape or heritage precinct to warrant inclusion in the Heritage Overlay.
- The damage to the subject house due to pest infestation and poor maintenance is documented as repairable and cannot be described as extreme dilapidation leading to inevitable demolition.
- Therefore it should not be taken into account when considering whether the property warrants inclusion in the Heritage Overlay.
- Therefore, no changes are recommended to Amendment C200moon.

(iii) Discussion

The Panel considers that there was nothing presented to it that challenges the basis for the heritage listing itself. The heritage values and statement of significance were not questioned. The Panel also accepts that the heritage value ascribed to the house should not be read in the context of new development around it; its significance must be viewed independently of these influences.

The Panel considers the issue of condition in a general sense in Chapter 4 and notes that generally condition does not go to whether a house should be listed, except in cases of very high levels of dilapidation, but is rather an issue to be dealt with via a planning permit.

The Panel acknowledges the case as put forward by the submitter and notes the considerable expense that may be involved in repairing/restoring the house. These however are matters that should be considered in the context of the house's acknowledged heritage value.

(iv) Conclusion

The Panel concludes no changes to the Amendment for HO476 are required.

8.4 1C Ardoch Street, Essendon (HO481)

(i) The issues

The issues are:

- whether the proposed heritage place should be listed as individually significant
- whether there are errors in the Statement of Significance and the description of the place in the Amendment.

(ii) Evidence and submissions

The Statement of Significance identifies the following features:

'Coonara' at 1C Ardoch Street, Essendon, is significant. The house was built in 1917-18 for James and Edith Oliver.

Significant fabric includes the:

¹¹⁸ Expert witness statement, para 188.

- original building form and roof form;
- corner tower, verandah, and fenestration;
- chimneys and slate roof;
- detailing to the corner tower including its protruding rough-hewn beams, roughcast; rendered walls and inverted crescent motif on the corner pillar;
- gable end detailing and oriel window;
- verandah, door and window joinery and leaded glass window sashes; and,
- remnants of the original garden.

Submission 41 generally supported the Amendment with recommended changes to the Statement of Significance to correct the following errors:

- the fences were constructed in the 1950s and are not significant
- the 'hewn timbers in Spanish section' are cast cement that replaced the rotting originals in 1990, but there are a number of original 'hewn timber' elements remaining.

The submission stated Clause 43.01-4 incorrectly refers to front fence and garage controls for 1 Albion Street, Essendon. The fence at 1C Ardoch Street is made of tea tree and would have been constructed in the 1950s. It was therefore considered not significant, and noted that the site does not have a garage to Albion Street.

In response Council stated¹¹⁹ the Statement of Significance notes that the carport and fences are not significant. Therefore, Council agreed that the front fence and garage have been incorrectly referenced in the Schedule to the Heritage Overlay. It also said the Statement of Significance identifies the rough-hewn beams as significant fabric. The replacement with case concrete copies should be noted in the Statement and citation.

It recommended that:

- remove reference to 1 Albion Street in the Schedule to Clause 43.01 Heritage Overlay for 1C Ardoch Street
- the Statement of Significance should be revised to note that the timber vigas (beams) have been replaced with cast-concrete facsimiles.

(iii) Discussion

The Panel inspected the property and considers the proposed heritage place meets the threshold of local significance to be included in the Heritage Overlay.

The Panel accepts the recommendation of submitter 41 and Council that the mention of 1 Albion Street be omitted from the Heritage Overlay and the Statement of Significance be revised to note the timber beams have been replaced with concrete facsimiles.

(iv) Conclusions and recommendations

The Panel concludes:

- The proposed heritage place should be included in the Heritage Overlay.
- The reference to fence/outbuilding exemption at 1 Albion Street should be removed from the Schedule to Clause 43.01 Heritage Overlay for 1C Ardoch Street.

¹¹⁹ Table attached to Council officers report endorsed at Council meeting on 25 August 2020, pages

- The Statement of Significance should be revised to note that the timber vigas (beams) have been replaced with cast-concrete facsimiles.

The Panel recommends:

15. Revise HO481 to:

- Remove reference to a fence and outbuilding exemption at 1 Albion Street for 1C Ardoch Street, Essendon**
- Note in the Statement of Significance and citation that the timber vigas (beams) have been replaced with cast-concrete facsimiles.**

8.5 6 Banchory Street, Essendon (HO485)

(i) The issue

The issue is whether the proposed heritage place should be listed as individually significant.

(ii) Evidence and submissions

The Statement of Significance identifies the following features:

The former 'Narwonah' (now 'Cloverlea') at 6 Banchory Street, Essendon, is significant. It was built in 1915 as the home of George Alfred Mitchell, a prominent businessman and City of Essendon councillor and mayor.

Significant fabric includes the:

- original building form and roof form, porch, fenestrations and original setbacks;
- chimneys and slate roof;
- gable end and eaves details;
- roughcast walls and weatherboard cladding;
- projecting polygonal oriel window resting on struts;
- porch details including timber posts and roughcast dwarf walls; and
- window and door joinery including leadlights to windows and large entrance sidelights with Art Nouveau leadlights.

Submitter 40 sought to clarify why the house is graded individually significant. It asked *"is it because the home was built by or for a mayor of the now non-existent City of Essendon 100 years ago?"*

The submitter also asked if the property will be potentially surrounded by 'brick veneer' developments because they are not under a Heritage Overlay and whether it was a coincidence that other properties she owns, on Rose Street, Essendon, have been heritage listed.

Council in response¹²⁰ stated the property is a very early Californian Bungalow in the municipality, constructed for a prominent member of the Essendon area. It provided a model for what would become the most popular residential style of the 1920s.

The Stage 1 Heritage Gap Study assessed a potential heritage precinct on Banchory, Balmoral and Woolley streets and found they did not meet the threshold for local significance. The heritage consultants concluded that 6 Banchory Street was of potential individual significance, so it was assessed as an individual place.

¹²⁰ Attachment A to the Council officer's report endorsed at Council meeting on 25 August 2020, at pages 171-172

Ms Schmeder's evidence¹²¹ was that the house warrants protection because of unusual architectural details and intactness and it was designed and built for a prominent member of the community.

Ms Schmeder explained that the form of other houses in the street will depend on the other planning scheme controls on the street.

Ms Schmeder said she identified the Rose Street and Buckley Street Commercial Precinct (now HO424) based on her street-by-street survey, in 2013-2014, during the Stage 1 Gap Study, with no knowledge of who owned the properties.

(iii) Discussion

The Panel has inspected the property and it accepts the evidence of Ms Schmeder that the house warrants protection as an individual place.

(iv) Conclusion

The Panel concludes the property in HO485 should be listed as individually significant and no change to the Amendment is required.

8.6 55 and 57 Brewster Street, Essendon (HO487)

(i) The issue

The issue is whether 55 and 57 Brewster Street meet the threshold of local significance to be listed as an individual heritage place.

(ii) Evidence and submissions

The Statement of Significance identifies the following features as contributing to significance:

The pair of houses 'Loreto' and 'Carmel' at 55 and 57 Brewster Street, Essendon, are significant. They were constructed by Ascot Vale owner-builder Robert Joseph Shaw in 1936 as a speculative venture and showcase of his talents.

Significant fabric includes the:

- original building forms and roof forms;
- chimneys and tiled roofs;
- face brick and cement rendered walls including tapestry brick highlights;
- porches, windows and front doors;
- door and window joinery, leaded glass panels to principle window sashes;
- window boxes, metal embellishments including gates and name plates;
- brick front fences, gates, concrete front paths and divided track driveway; and
- garage at number 57.

Submission 114 objected to 55 Brewster Street being included in the Heritage Overlay because it lacks the heritage values required for an individually significant place. It stated the submitter had commissioned an expert heritage report that raised questions about the heritage value of the property when compared to other examples 'Old English' or Moderne' interwar styles in Moonee Valley. The report found that places considered to be of individual significance

¹²¹ Document 12.

generally demonstrate these styles in both form and detail more clearly than 55 Brewster Street.

It said the subject houses compare more directly with Contributory houses within precincts rather than individual places.

The submission stated that the claim that the dwelling is highly intact was made based on an external visit to the property but it is dilapidated and a Heritage Overlay would impede plans to make improvements. The submission said the house should not be rated as individually significant because of a few features such as the chimney and pitched roof.

The submission said that the owners had applied for a demolition permit years ago as they planned to rebuild. Council had subsequently issued a suspension notice, which had impacted their plans and caused significant loss of income. The submission said the process has caused 18 months of stress and the Council had completely failed them.

Council in response¹²² said:

- the citation correctly identified 55 and 57 Brewster Street as significant because they are exemplars of the stylistic eclecticism of the late interwar period
- the heritage assessment took into account the entirety of the two houses, as viewed from the public domain, not just the chimney and the hipped roof
- the numerous other features of 55 Brewster Street that are significant are set out in the Statement of Significance
- Council adopted a process on 25 May 2015, to assess demolition consents for properties identified in heritage studies
- Council assesses an application against the threshold criteria and if the building meets the threshold the demolition consent is suspended and Council requests the Minister to approve an interim Heritage Overlay.

Mr Pasquale appeared at the Panel Hearing on behalf of the submitters. He told the Panel that the submission was based on an expert report they had commissioned from Mr Gard'ner. The expert report had not been provided to Council but Mr Pasquale provided it after appearing at the Hearing.¹²³ Mr Gard'ner did not appear before the Panel so his evidence was not subject to cross examination.

Mr Pasquale told the Panel Mr Gard'ner's report identified that to be of individual significance the houses generally need to demonstrate the Moderne and Old English styles in both form and detail more clearly than 55 Brewster Street. In his opinion the subject houses compare more directly with Contributory houses within precincts rather than individual places.

Ms Schmeder¹²⁴ agreed that 55 and 57 Brewster Street do not possess all the key characteristics of the Moderne and Old English styles, in comparison to other individually significant houses in Moonee Valley. Instead, she indicated that they are fine representative examples of the stylistic eclecticism of the period.

In her opinion while many such houses are Contributory to existing precincts, 55 and 57 Brewster Street are exemplars of eclectic interwar design. In her professional opinion, the pair is correctly identified as locally significant as representative examples of this type.

¹²² Attachment A to Council officer's report endorsed by Council on 25 August 2020 at pp 172-176.

¹²³ Document 50.

¹²⁴ Document 12.

(iii) Discussion

The Panel acknowledges the uncertainty and frustration the owners appear to have experienced as a result of the Heritage Overlay over a number of years.

The Panel has inspected the properties and has considered the citation in the 2017 Heritage Study.

The Panel appreciates the submitter's time and diligence in compiling their submission and Mr Pasquale's well prepared submission at the Hearing.

The Panel considers that both experts statements provide a basis to support the two properties being graded as an individually significant place. Mr Gardn'er argued that 55 Brewster Street is only Contributory to a possible precinct and not individually significant, but with little conviction.

The Panel adopts Ms Schmeder's expert opinion that the pair of houses is correctly identified as a locally significant place because they are exemplars of eclectic interwar design. The interplay between the two is striking and the high level of intactness is evident.

The Panel considers the non heritage issues raised by the submitter in Chapter 4.

(iv) Conclusions

The Panel concludes:

- 55 and 57 Brewster Street meet the threshold of local significance to be listed as an individual heritage place.
- No changes to the Amendment are recommended as a result of submissions.

8.7 330 Buckley Street, Essendon (HO488)

Figure 1: 330 Buckley Street, Essendon

**(i) The issue**

The issue is whether the property at 330 Buckley Street meets the threshold for local significance to be listed as individually significant.

(ii) Evidence and submissions

The Statement of Significance identifies the following features as contributing to significance:

The house at 330 Buckley Street, Essendon, is significant. It was built in 1916 by builder Leslie Woods as his home. He and his wife Christina Margaret remained there until 1974, resulting in its high level of intactness.

Significant elements of the place include the:

- detached, single storey built form;
- timber block front and weatherboard cladding;
- main hipped roof form with a small central half-gable and projecting gable bays to the front (south) and side (west) elevations, and associated details including terracotta tiles, ridge cresting, finials and cappings;
- unpainted red brick chimneys;
- detailing to the gable ends, eaves and porch;
- original pattern of fenestration, elements of window and door joinery, bay windows and window hood; original building setbacks at front and side; and
- crimped wire front fence and associated pedestrian and vehicular gates.

Submissions 60 and 87 objected to 330 Buckley Street, Essendon being included in the Heritage Overlay. They said it lacks heritage significance, it would limit their plans for future expansion and the chimneys have become compromised.

Submission 60 opposed the Heritage Overlay for several reasons:

- the property lacks heritage value because it has been subdivided and only one of the two bay windows remain
- a Heritage Overlay would restrict the possibility of building a double storey and limit their ability to install solar panels to make the house more energy efficient
- the Statement of Significance should be corrected to acknowledge the western bay window and rendered neck have been removed and replaced with French doors
- the fence should not be significant because it provides no privacy or sound proofing on a busy road and they would like to replace it with a picket fence.

Council in its response¹²⁵ accepted that the western projecting bay window and gable has been removed since the property was assessed. It said the Statement of Significance should be revised to note the change.

Council acknowledged the solar access issue but said it is not a heritage matter.

It said the Heritage Overlay does not preclude opportunity for redevelopment. But the roof form of Federation Queen Anne villas, of which this is an excellent example, is one of the most important elements of the overall design and a key marker of the style.

Ms Hastie, submitter 60, appeared at the Panel Hearing and reiterated the same points made in her submission.

Ms Schmeder's evidence¹²⁶ was:

- the removal of the western projecting bay window was an unfortunate alteration, but the house still exhibits many elements that make it significant
- as the principal façade of the house, its massing, roof and fence details are still intact, it still meets the threshold of local significance as 'a fine and substantial example of a classic Queen Anne villa'¹²⁷

¹²⁵ Attachment A to Council officer's report endorsed by Council on 25 August 2020 at pp 176-180.

¹²⁶ Document 12, pp 17-19.

¹²⁷ As above paragraph 86.

- the fence and gates are part of the significant fabric of the place
- it is rare to find an original surviving post and crimped wire fence of this type in Moonee Valley and the Melbourne metropolitan area more broadly.

Council endorsed Ms Schmeder's evidence and submitted there are many elements that make the house significant, as detailed in the Statement of Significance.¹²⁸

(iii) Discussion

The Panel inspected the property on numerous occasions and has considered the citation and the comparative analysis.

The question for the Panel is whether the house meets heritage criteria D in PPN01 in demonstrating the principal characteristics of a class of cultural or natural places or environments (representativeness). Is it a 'fine and substantial example of a classic Queen Anne villa', as stated in the Statement of Significance?

The Panel considers the house clearly stands out in the neighbourhood and it is a substantial Edwardian dwelling, despite the alterations, but that is not enough.

The Panel considered that the comparative analysis in the citation does not provide a basis for concluding that the house compares well with the other individually significant houses in its style in Moonee Valley. The comparative houses are more substantial, have more features and are more intact.

The Panel acknowledges that a surviving wood and crimped wire fence is rare, but it does not make the property a fine and substantial example of a classic Queen Anne villa.

(iv) Conclusion and recommendation

The Panel concludes the property at 330 Buckley Street, Essendon does not meet the threshold for local significance to be protected as an individually significant place.

The Panel recommends:

16. Remove 330 Buckley Street, Essendon (HO488) from the Amendment.

8.8 1/50 and 2/50 Fletcher Street, Essendon (HO489)

(i) The issue

The issue is whether 2/50 Fletcher Street should be included in the Heritage Overlay.

(ii) Evidence and submissions

The Statement of Significance includes the following features:

Winbush House at 50 Fletcher Street, Essendon, is significant. The two storey Moderne style house was designed by architect Harry Winbush as his home in 1936 (and extended to incorporate his office in 1959).

- Significant fabric includes the:
 - original building form and roof form;
 - roof parapet with brick banding;

¹²⁸ Council Part B submission, pp42-43.

- rendered and face brick walls including unpainted face brick details such as tapestry brick accents;
- window and door joinery including the leaded glass window to stairwell;
- stepped entry porch beneath a cantilevered concrete roof;
- brick garage; and
- low brick front fence.

The 1950s south extension and office to the north at 2/50 Fletcher Street, Essendon, are contributory elements of the place.

Submission 24 opposed the inclusion of 2/50 Fletcher Street in the Heritage Overlay but accepted that 1/50 (Winbush House) did warrant inclusion. Their submission pointed out that 2/50 was constructed in 1959 as an addition to the original house and its inclusion would inhibit future development opportunities.

Council responded by pointing out that it is proposed that 1/50 Fletcher Street be designated as Significant and 2/50 as Contributory. It also quoted an extract from the 2017 Heritage Study:

The original owner (who was also the architect) extended the building in the 1950s two decades after its original construction in a style that matched the original design, adding wings to the south and north – these extensions, complementary to the original design albeit with slightly simplified detailing, are considered as contributory to the overall place.

It also submitted that potential changes to property value and development opportunities were not a matter for consideration in the formulation of a Heritage Overlay.

Ms Schmeder reiterated the Council's submission.

(iii) Discussion

The Panel inspected this place and accepts that it meets the definition for significant places as applied by Moonee Valley and the Statement of Significance clearly indicates what is important about the place. It was designed by a well-known mid-century architect as his home and office and it is difficult to separate the two components even though the 1959 extension is described as Contributory. This Contributory designation should not be confused with the Contributory grading provided for places within heritage precincts.

(iv) Conclusion

The Panel concludes the application of HO489 to this property should proceed as exhibited.

8.9 52 Hedderwick Street, Essendon (HO491)

(i) The issues

The issue is whether the house meets the threshold of local significance to justify being listed as individually significant.

(ii) Evidence and submissions

The Statement of Significance identifies the following features as contributing to significance:

The house at 52 Hedderwick Street, Essendon, is significant. It was built in 1933 for Harold and Margaret Lycett.

Significant fabric includes the:

- original building form and roof form which extends over the porte-cochere and verandah;
- tiled roof and tiled window hood, original chimneys;
- weatherboard cladding;
- entry porch of rendered brick with face brick detailing with evidence of tuckpointing;
- jerkin-head gable end;
- verandah and porte-cochere details including brick balustrade with inlaid panel, simple brick piers and pre-cast-concrete columns; and
- door and window joinery and leaded glass panels to principal window sashes.

Submission 51 opposed the Heritage Overlay because the house has been altered and therefore lacks heritage value and it is not in a heritage precinct. The submission stated there are more new homes in the street and surrounding streets that are mostly double storey, so the house looks out of place.

Council in response¹²⁹ said the presence of new houses nearby is not considered when assessing if a property should be included in the Heritage Overlay.

Ms Schmeder's evidence¹³⁰ was that the owner has not provided any information about specific alterations to the property. In her opinion later additions to the house are not of heritage significance, and this is specifically set out in the Statement of Significance.

Ms Schmeder's opinion was that 52 Hedderwick Street is very important in itself (locally significant), so it is recommended to be protected individually.

(iii) Discussion

The Panel visited the property and has considered the citation. The submitter did not present any new information to challenge the heritage merits of the house.

The Panel considers that the house is of aesthetic significance for its unusual combination of the features of a number of popular interwar styles. The Panel accepts the evidence of Ms Schmeder that the house is locally significant and should be protected individually.

(iv) Conclusion

The Panel concludes the property (HO491) meets the threshold for local significance to justify being listed as individually significant and no change is required to the Amendment.

8.10 20 Hesleden Street, Essendon (HO492)

(i) The issue

The issue is whether the house at 20 Hesleden Street meets the threshold for local significance to warrant a site specific Heritage Overlay.

(ii) Evidence and submissions

The Statement of Significance identifies the following features:

¹²⁹ Attachment A to Council officer's report endorsed by Council on 25 August 2020 at pp182-183.

¹³⁰ Document 12 at 138-139.

The house at 20 Hesleden Street, Essendon, is significant. The timber Attic Bungalow was constructed in 1920 for owner Harold Broadbent.

Significant fabric includes the:

- original building form and roof form, contrasting weatherboard and shingle cladding, porch and fenestrations;
- corrugated iron roof and original chimneys;
- eaves and gable end details;
- window hoods;
- porch detailing including piers, balustrades and shingled hood; and
- window and door joinery and leadlight casement windows.

Submission 63 objected to the Heritage Overlay because the house is not of local significance and the heritage assessment is based on mistakes. It identified that the owner has made significant modifications to the house since 1990 that have been misread as original features in the heritage assessment.

Council in response¹³¹ noted the owner's submission to the 2014 Heritage Gap Study set out alterations made to the front façade. It stated that Council officers sought to confirm the alterations by searching Council archives for historic building permit plans and asked the submitter to provide evidence of the changes such as a photograph. Council stated that it asked the submitter to permit their heritage expert to enter the property to closely inspect the front façade but the submitter did not respond.

Mr Hocking for the submitter¹³² presented the Panel with details about the alterations to the dwelling, supported by a photo of the house from the 1990s.

During the Hearing the Panel asked Council and the owner to organise for Ms Schmeder to inspect the property. After inspecting the property Ms Schmeder provided a response to the new information (document 57a) that concluded¹³³:

Due to the documented change in appearance of the house since the 1990s, adding faux-Federation detail that gave it a distinctive appearance as a transitional example of an attic-storey bungalow, I no longer consider it to meet the threshold of local significance.

She recommended the house should be removed from the Amendment.

(iii) Discussion

Given the information provided by submitter 63 and the revised opinion of Ms Schmeder the Panel accepts there is no basis for 20 Hesleden Street to be listed as having heritage significance.

The owner asserted that modifications to the house since 1990 rendered it not a heritage property in submissions to Council in 2014 and again in 2020. It is unfortunate that the owner was not able to provide Council with details of the changes to support those submissions or to arrange for an onsite inspection by Council's heritage expert at an earlier stage.

¹³¹ Attachment A to Council officer's report endorsed by Council on 25 August 2020 at pp 183-189.

¹³² Documents 41 and 41a.

¹³³ Document 57a.

(iv) Conclusion and recommendation

The Panel concludes 20 Hesleden Street, Essendon does not meet the threshold for local significance and should be removed from the Amendment.

The Panel recommends:

17. Remove 20 Hesleden Street, Essendon (HO492) from the Amendment.

8.11 21 and 23 Nicholson Street, Essendon (HO501)

(i) The issues

The issues are:

- the impact of surrounding development on the property
- the impact on the Amendment on the valuation of the property.

(ii) Evidence and submissions

The Statement of Significance includes the following features:

21-23 Nicholson Street, Essendon, a pair of Victorian Italianate terrace houses built in 1892 is significant.

Significant fabric includes the:

- original built form (as a single storey terrace form) and associated roof forms, original pattern of fenestration;
- dividing and wing walls, sections of face brickwork, parapet and its ornamentation, verandah (including columns, balustrading friezes and brackets), original chimneys, and original window and door joinery.

The submitter for 21 Nicholson Street provided a written submission which pointed out that adjacent developments would overwhelm their property and the application of the Heritage Overlay would have a negative impact on the value of the property.

Council responded by accepting that there had been some alterations to the property but that the concerns about property value, potential adjacent developments and the cost of maintenance are not matters for consideration in applying the Heritage Overlay.

Ms Schmeder made a detailed response to the subsequent submission by the submitter and following a site inspection confirmed a long list of alterations that had occurred to the building. She also undertook a further comparative assessment against other places in Moonee Valley and concluded that 21-23 Nicholson Street didn't warrant the application of the Heritage Overlay.

(iii) Discussion

The Panel inspected this place and agrees with Ms Schmeder's conclusions. The two properties are relatively modest single storey terrace houses, designed in a style and manner that is common in the Melbourne metropolitan area. Consideration of Ms Schmeder's evidence confirms that these are not individually significant in the context of other Moonee Valley properties.

The Panel noted that these two houses are at the end of a streetscape of Edwardian era weatherboard dwellings (Nos 7-23). If these had been included as a small precinct the

conclusions about the application of the Heritage Overlay may have been different. However, it is not the role of this Panel to recommend this.

(iv) Conclusion and recommendation

The Panel concludes that 21-23 Nicholson Street do not meet the threshold for individual significance and the proposed HO501 should not be applied.

The Panel recommends:

18. Remove 21-23 Nicholson Street, Essendon (HO501) from the Amendment.

8.12 247 Pascoe Vale Road, Essendon (HO503)

(i) The issue

The issue is whether 247 Pascoe Vale Road meets the threshold of individual significance to warrant a site specific Heritage Overlay.

(ii) Evidence and submissions

The Statement of Significance identifies the following features:

‘Kala Thea’ at 247 Pascoe Vale Road, Essendon, is significant. This brick attic-storey bungalow was built in 1929 for owner Robert Gordon White.

Significant fabric includes the:

- original building form and roof form;
- front porch and fenestrations;
- tiled roof and terracotta finials and chimneys;
- subtle expression of structural detailing including the attic gable end detailing and eaves detailing;
- unpainted face brickwork;
- window and door joinery;
- leaded glass sash windows;
- metal name plate; and
- brick front fence.

Submission 26 objected to the property at 247 Pascoe Vale Road being included in the Heritage Overlay. It stated that the owners have inherited the house after the death of her parents. The key points were:

- the house lacks heritage value because it has been significantly altered since 1929
- it adversely impacts property rights and value and opportunity for redevelopment
- it is unfair to place a Heritage Overlay on the house in the context of a busy main road and where all the original dwellings have been destroyed or built over
- a new fence is needed to block the noise from increased traffic
- the reference to the original owner in the Statement of Significance is self serving as he is not a significant person in Moonee Valley
- the Statement of Significance is a proforma and includes vague statements such as ‘the subtle expression of structural detailing’.

In response Council¹³⁴ stated:

- the interface of a place is not considered when assessing a Heritage Overlay
- the house is recognised for high-quality interwar brick attic-storey bungalow design
- the changes to the exterior of the house are documented in the citation and noted in the Statement of Significance and are not considered to diminish its integrity
- the fact the house was built as a home for Robert Gordon White is noted only as part of the historical details.

Ms Simpson (submitter 26) told the Panel she and her sister cared for their mother in the house when she was dying from cancer and they do not want to live there. They wish to sell it to a developer so they can achieve the best price.

The submitter told the Panel the front fence was recently damaged by police in a high speed chase and will need to be repaired.

She said the reference to the importance of Robert White so prominently in the Statement of Significance is offensive and confusing. She said her mother was more important and the listing of post-Colonial heritage is offensive to her families' Aboriginal heritage.

Ms Schmeder's evidence was as follows:¹³⁵

- the comparative analysis in the place citation supports her opinion that individual heritage protection is warranted
- the changes to the house are not substantial enough to diminish the integrity of the building and its architectural significance
- confirmed the front fence had been damaged and expressed the hope that the damaged part of the fence is repaired in-kind
- agreed the format of the Statement of Significance can be considered a proforma. She suggested the submitter read the entire place citation
- concluded the assessment of the house demonstrated it is of local significance and warrants inclusion in the Heritage Overlay.

(iii) Discussion

The Panel visited the property and has considered the Statement of Significance and the place citation.

The submitter did not present any new information to challenge the heritage merits of the house and front fence.

The Panel considers the house and fence are of architectural significance for its fine design. The Panel adopts the evidence of Ms Schmeder that the house is locally significant and should be protected individually.

The Panel respectfully acknowledges the difficulty inherent for some Aboriginal people as submitted in listing post-Colonial building heritage, but the Panel is required to consider the proposed listing as put before it and assess the property against policy in the planning scheme.

The Panel discusses the non heritage issues raised by the submitter in Chapter 4.

¹³⁴ Attachment A to Council officer's report endorsed by Council on 25 August 2020 at pp 189-191.

¹³⁵ Document 12, pp13-16.

(iv) Conclusion

The Panel concludes:

- That the property at 247 Pascoe Vale Road, Essendon (HO503) meets the threshold of local significance to be listed an individual heritage place.
- No changes are recommended to the Amendment as a result of submissions.

8.13 71 Primrose Street, Essendon (HO504)**(i) The issues**

The issues are:

- the extent of originality of the property
- the comparative heritage value as measured against other places in Moonee Valley.

(ii) Evidence and submissions

The Statement of Significance identifies the following features:

71 Primrose Street, Essendon, a stone-fronted Victorian Italianate house built in 1891-92 is significant.

The significant fabric includes the:

- original built form, roof form, basic pattern of fenestration;
- face basalt and freestone quoining to the principal façade;
- unpainted sections of the face brickwork;
- decorative stringcourse and associated brackets;
- early door and window joinery; and
- raised basalt verandah and steps.

Submitter 52 opposed the inclusion of the property in the Heritage Overlay. They argued that until they commenced restoration works the heritage values of the place would not have been identified. As a result, many of the visible elements of the place have been replaced and whilst they are pursuing restoration with the assistance of the Essendon Historical Society they did not believe that the property warrants heritage protection.

The submitter, Ms Hadj, appeared at the Hearing and tabled early photographs of the property along with photographs of 77 Ardmillan Road which they claimed was more worthy of heritage protection.

The Council's response to the submission made the following points:¹³⁶

This property was identified as potentially significant in 2014, before any apparent restoration works were undertaken. It was recommended for further assessment, in the Moonee Valley 2017 Heritage Study, due to the use bluestone masonry and quoining to the front façade, which are rare in Moonee Valley. The retention of the original windows, door, verandah and front palisade fence enhanced this. The loss of the chimneys and later terracotta tiles to the roof was noted, but the property overall was still considered to be of high heritage value. (*Council response to submissions*)

Council acknowledged that changes had been made since the original identification, but considered that the place still warranted the application of the HO.

¹³⁶ From Attachment A to the Council meeting papers of 26 August 2020.

In her evidence Ms Schmeder acknowledged that changes had been made to the property, but that it still retains:

- its original building envelope (walls, plan form, roof form)
- front windows and door
- metal palisade fence
- bluestone masonry façade.

She considered that the place has rarity value at a local level of significance.

(iii) Discussion

The Panel inspected this property and agrees that whilst it has a common architectural form for a late Victorian villa, the use of basalt as a construction material is rare in Moonee Valley. To that end the submitter pointed us to a grander basalt house at 77 Ardmillan Road. The application of the Heritage Overlay does not involve the selection of single properties based on their relatively superior architectural form or history. Rather, the test is whether a place meets one or more of the heritage criteria and the Panel is satisfied that this property does so.

(iv) Conclusion

The Panel concludes no changes to HO504 in the Amendment are recommended as a result of submissions.

8.14 27 and 32 Robb Street, Essendon (HO507)

(i) The issues

The issues are:

- whether 32 Robb Street has individual heritage significance
- whether the proposal to include two separate houses under one Heritage Overlay follows accepted practice.

(ii) Evidence and submissions

The Statement of Significance identifies the following features:

27 and 32 Robb Street, Essendon, two similar Victorian era Italianate villas built in 1888 and c.1886- 91 respectively are significant.

Significant fabric includes the:

- original built forms, roof forms, original pattern of fenestration on the principal and side elevations;
- polychromatic brickwork, slate roof, basalt foundations, verandahs with iron friezes, original chimneys; and
- decorative eaves and brackets, Gothic hood moulds, tessellated verandah floor, original window and door joinery.

Submission 70 was made on behalf of the owners of 32 Robb Street by Ms Laidlaw, Planning Consultant. The submission made the following points:

- My client's property along with the dwelling at 27 Robb Street are proposed to collectively comprise a single heritage place, HO507, which is titled '*Riverlea and House*', my client's dwelling being the unnamed 'House'. There is no

proven link between the two properties in terms of any occupier, builder or architect.

- The sites are on opposite sides of the street and they are separated by some 55 metres.
- The method of listing is unusual and confusing, and further, it implies that neither dwelling would be historically significant were it not for the existence of the other, despite their physical separation, which means that the two properties can never be read or viewed as one.

The submission also pointed out that the architectural style of this property is not unusual in Moonee Valley and it has been the subject of alterations which detract from its original appearance and intactness.

The submitter also provided a letter of advice from Mr Raworth, Heritage consultant which made the following points:

- whilst identified as Contributory to a heritage precinct the buildings are not of individual interest sufficient to warrant the proposed control
- both houses have been significantly altered
- there are many other similar properties in the municipality which are already identified as Contributory to a heritage precinct or covered by individual overlays.

The Council responded:

- the associative criterion (H) is not used to justify the significance of the place
- while Italianate Victorian villas might be reasonably common in Moonee Valley, there are few that have Venetian Gothic details as seen in the Robb Street pair. This point should be made clearer in the Statement of Significance. It would also be more appropriate to address this aspect of their significance under Criterion E (aesthetic significance)
- 32 Robb Street is a more modest example of the style and has been altered to a point that its heritage value is severely compromised
- the method of listing both places under the one overlay is unusual and does not comply with the provisions of PPN01.

Following consideration of the submission (including the advice from Mr Raworth) the Council came to the view that 32 Robb Street was of lesser significance than No 27 and as a consequence 32 Robb Street should be removed from the amendment and the Statement of Significance should be updated to solely include 27 Robb Street as an individual place.

The Statement of Significance should also be clarified to emphasise the aesthetic significance of the rare design feature (Venetian Gothic polychromy) of 27 Robb Street.

Ms Schmeder in her evidence agreed with the final position of the Council and concluded that the application of the Heritage Overlay to 32 Robb Street should not proceed and that a revised Statement of Significance be provided for 27 Robb Street (she provided a draft of such a statement).

(iii) Discussion

The Panel inspected these places and agrees with the submissions made on behalf of the owners and the conclusions of the Council that:

- 32 is a lesser example of a Venetian Gothic styled villa
- it has been significantly altered

- it does not meet the threshold for a place of individual significance
- 27 does meet the threshold and the Statement of Significance should be adjusted accordingly. The Panel believes that the draft provided by Ms Schmeder is appropriate for that purpose.

(iv) Conclusions and recommendations

The Panel concludes:

- that 32 Robb Street should not form part of this amendment.
- that the Statement of Significance for 27 Robb Street be modified in accordance with Ms Schmeder's evidence.

The Panel recommends

19. Remove 32 Robb Street, Essendon (part HO507) from the Amendment.

20. Amend the Statement of Significance for 27 Robb Street, Essendon to emphasise it aesthetic significance as an individual place in accordance with Ms Schmeder's evidence.

8.15 57 Vanberg Road, Essendon (HO509)

(i) The issues

The issues are:

- whether the proposed boundaries of the Heritage Overlay are appropriate
- should non-significant elements of the place be included in the proposed overlay.

(ii) Evidence and submissions

The Statement of Significance includes the following features:

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

Significant elements include the:

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

Submitter 108 supports the application of the Heritage Overlay as proposed for 57 Vanberg Road, Essendon.

However, the submitter requests that the Statement of Significance be revised to clearly reference both the significant elements, and elements of lesser or no importance.

The submitter referred to the guidance provided in PPN01, which points to the need for a statement of significance that clearly establishes the importance of the place.

The submitter sought clarification of:

- the extent of the garden setting included as Contributory, noting that the garden to the frontage is not disputed, but that the significance of the garden and land more broadly such as to the rear and side has not been demonstrated
- the Peppercorn Tree (*Schinus molle*) in the rear northwest corner is not listed as significant, nor the large Canary Island palm, though the Peppercorn Tree is older than other specified trees, but then is included under Criterion E
- whether overlays should be applied to trees, or the garden setting in which they are located
- the extent of controls to Non-contributory built form to the rear.

The submitter was represented at the Hearing by Mr Pickering who called expert heritage evidence from Mr Briggs, Heritage Architect and planning evidence from Mr Thompson, Town Planner.

Mr Briggs' evidence¹³⁷ reinforced the position of the submission that any Statement of Significance should clearly define the elements of the place that are of significance and those that are not. He was of the view that this was particularly important when describing the significance of the garden and clarifying that the later building additions at the rear of the house are not.

Mr Briggs supported the inclusion of the whole of the allotment in the Heritage Overlay.

Mr Thompson summarised his views in the following manner:¹³⁸

- The imposition of the Heritage Overlay HO509 is appropriate for the protection of the Pines and its immediate environs
- The site has the capacity to be subdivided along the lines of the concept plan of subdivision prepared by JB Architects and still retain the historical context and garden setting of The Pines
- The imposition of the Heritage Overlay to the rear and West of the dwelling is unnecessary as it does not protect any relevant element of the house or its environs.

The concept plan referred to is included below.

¹³⁷ Document 14.

¹³⁸ Document 15, para 12.

Figure 2: Concept Plan Vanberg Road, Essendon

In responding to the submission, the Council recommended the following changes to the citation:

Amend the Statement of Significance to include:

- 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).

Ms Schmeder's evidence provided considerable detail about the history of the development of the site and concluded:¹³⁹

The entire current extent of 57 Vanberg Road should be recognised as having heritage value because:

- As the current extent of the garden to the front and sides of the house have retained their early extent and layout; and
- As 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.

(iii) Discussion

The Panel undertook an accompanied inspection of this site.

There is general agreement that the house at 57 Vanberg Road is significant and that the garden is in part significant. There appears to be some confusion about the significance of the Peppercorn Tree in the north east corner of the site.

It is appropriate that any Statement of Significance makes it clear as what is important and what isn't. To that end the proposed amendments recommended by the Council and Ms Schmeder seem appropriate. It seems unnecessary to try and delineate individual trees and plantings in the western side of the garden as not being significant. It is more important to nominate the trees and plantings that are important (refer discussion on the Peppercorn Tree

¹³⁹ Document 12.

below). It is not unusual for Heritage Overlays affecting larger properties such as this to embrace Non-contributory plantings and other elements. In the end the test applied to any future planning application has to be whether a subdivision or development has a negative impact on the heritage significance of the whole site.

It is appropriate that the modern built elements are identified as not contributing to the significance of the place.

The Panel was somewhat perplexed about the status of the Peppercorn Tree. Whilst it is recognised by the ESO it also has heritage significance as an element of the early development of the site and as indicated above probably should be noted as an important element in the Statement of Significance. Equally, consideration should be given to noting the row of Monterey Cypress (along the east boundary) and the Norfolk Island Pine (just west of the house). Mr Pickering was anxious to point out the history of the Norfolk Island Pine (relatively young given the age of the house), but it seems that this tree makes an important contribution to the presentation of the property.

(iv) Conclusions and recommendations

The Panel concludes:

- That the whole property should be included in HO509 as proposed by the exhibited Amendment.
- The Statement of Significance should be amended as proposed by Council and further consideration should be given to the manner in which the Peppercorn Tree, the row of cypresses and the Norfolk Island Pine are noted in the description of 'What is Significant?'

The Panel recommends:

21. Amend the Statement of Significance for 57 Vanberg Road Essendon (HO509) to identify that the brick garage and contemporary gabled rear extension are not heritage significant; to note that the Environmental Significance Overlay applies to the Peppercorn Tree; and to include the Peppercorn Tree, the row of Cypresses and the Norfolk Island Pine as contributory to significance.

8.16 2 and 4 Ngarveno Street, Moonee Ponds (HO523)

(i) The issue

The issue is whether the potential need for planning permits should prevent listing of the property.

(ii) Evidence and submissions

The Statement of Significance includes the following features:

The semi-detached pair at 2 and 4 Ngarveno Street, Moonee Ponds, is significant. The pair was constructed for, and likely by, Robert James Wilson, builder and carpenter, in 1909, and number 4 was then occupied by his son.

The two dwellings are significant to the extent of their 1909 fabric.

Significant fabric includes the:

- single storey, semi-detached built form;

- timber block front and weatherboard cladding;
- shared pyramidal hipped roof of corrugated iron (with a west-facing gablet to the ridge);
- unpainted brick chimneys;
- detailing to the porch, gable ends;
- original pattern of fenestration, elements of window and door joinery, and decorative leaded glazing; and
- original building setbacks.

Submission 86 recognised the heritage significance of the property but did not support the overlay if it required the expense and difficulty of obtaining planning permits for alterations to fencing or painting. The submitter sought more information from Council as to what was allowed under the Heritage Overlay without painting.

Council provided a response in their attachment to the Council meeting of 25 August 2020 in terms of the requirement of Clause 43.01 and its associated scheduled which is not repeated here.

(iii) Discussion

The Panel is aware that there are a number of exemptions in Clause 43.01 which may assist the submitter in their understanding of what is allowed without the requirement for a permit.

The submitter has not questioned the heritage value of the property and thus the Panel considers no change should be made to the Amendment.

(iv) Conclusion

The Panel concludes no changes to HO523 in the Amendment are recommended from the submission.

8.17 32-42 Taylor Street, Moonee Ponds (HO524)

(i) The issue

The issue relates to the need to clarify the extent of permit requirements.

(ii) Evidence and submissions

The Statement of Significance includes the following features:

Lamboreen Villas, 32-42 Taylor Street, Moonee Ponds, a two storey Italianate terrace row built in 1881 is significant.

Significant elements include the:

- original built form and roof forms of individual terraces;
- wing walls including their decorative ends where intact; original chimneys, parapets and ornamentation;
- pattern of fenestration, original window and door joinery; two-level cast iron verandahs including original posts, cast iron balustrades and friezes; and
- original tessellated verandah floor tiles.

Submitter 83 did not oppose the application of the overlay, but sought clarification as to what matters would require a planning permit.

The Council responded with advice that Clause 43.01 and the schedule to 43.01 sets out the requirements for permits.

(iii) Discussion

The Panel supports the inclusion of 83 Taylor Street in the overlay.

(iv) Conclusions and recommendations

The Panel concludes:

- That the property at 32-42 Taylor Street warrants the application of HO524.
- Council should ensure that Submitter 83 is aware of the provisions of Clause 43.01 and the schedule to 43.01.

Appendix A Submitters to the Amendment

No.	Submitter	No.	Submitter
1	Bes V	33	Dean Anthony
2	David Harper	34	Lynne Osman
3	Julie Anne Ternar	35	Jennie & Paul Gallivan
4	Vukosava Jokic	36	Phuong Anh Doan & Thai Nguyen
5	Sally O'Farrell	37	Pinakin Prabhakar
6	Scott Craven	38	Kevin & Ann Adams
7	Pauline Conlan	39	David Galtieri
8	Dr John Nguyen	40	Chris Barrett
9	Teresa Di Sipio	41	Kaye & Laurie McMaster
10	Ivan & Dragica Baric	42	Paul Gervasi
11	Jessica Boyce	43	Raewyn Voight
12	Peter Vasil	44	Ross King
13	Jonathan Philpin	45	Jason Laughlin
14	Bernard Georgilopoulos	46	Nicole T
15	Carol Lorrae Lambert	47	John Katanas
16	John and Piera Murone	48	Kim Si Cao
17	Anthony Cutri Molinaro & Samantha Francesca Cutri	49	Daniel & Helen Turner
18	Ayla Arif	50	Kathy Rose
19	Wenjun Song & Yu Wang	51	Ellie Nguyen
20	Mark and Rosalie Birney	52	Hayley Hadj
21	Alex Lawrence	53	Geoffrey & Noeline Hutton
22	Peter Kendall	54	David & Mary McAlister
23	Nadia Origlia	55	Paul Grant
24	Phyllis Skaftouros	56	John & Josephine Forcone
25	John Pagliuso	57	Hayley Hadj
26	Bianca Simpson	58	Dr. Arthur & Mrs Filia Papagelis
27	Robert Fuller	59	Antonia Batsakis
28	Judy Maddigan	60	Tracey Hastie
29	Silvana Girardello	61	Caroline & Tom Trevaskis
30	Sophie Morrison	62	Genevieve Xuereb
31	Andrew Short	63	Peter and Robyn Goldstein
32	Joe D'Agostino	64	Amanda Race & Peter McIver

No.	Submitter	No.	Submitter
65	Chris Peart	96	Matthew & Silvia Young
66	Dr AC & TY Teo	97	Natalie Young
67	Dominic Lococo	98	Jenny Macaffer
68	Joe Tancredi	99	Tim Davenport
69	Loretta Thorp	100	Sean Grainger
70	Edwina Laidlaw	101	Frank McNamara
71	Cameron & Mrs Jessica Trewin	102	Mary H Bayley, Ursula F Soulsby, Irene M Moloney, and Bernadette H Moloney
72	Debra Richards	103	Sue O'Riley
73	Richard Wawrzon	104	Gavin Agushi
74	Mitchell Belden	105	Suzanne Cleary & David Hoskin
75	Mark Anderson	106	Bashkim Canko
76	Mr & Mrs Angelo & Melissa Ioculano	107	Fiona Forrest
77	Giovanna Brancatisano	108	Rita Pickering
78	Claire Miller	109	Ilce Markovski
79	Rebecca Cleaver & Steve Purtell	110	Catherine Strack
80	Leo Gmehling	111	Stella Hyde
81	Denis Broadhurst	112	Peter Gould
82	Brett Habermann	113	Angelina Trimboli
83	Simonetta Guastella	114	Adelina & Fernando Pasquale
84	Michael & Therese Harrison	115	Philip Smith
85	Steve & Sofia Binns	116	Cheryl Smith
86	Joshua & Carlee Mark	117	Elizabeth Walsh
87	Andrew Bolkunowicz	118	Gabriel Accadia
88	Peter Cook	119	Michael Walsh
89	Neil Bottos	120	Jearn Kan
90	Timur & Necla Baskin	121	Steven Leptos
91	Elio Fois	122	James Orr
92	Lina Trovatello	123	Jennifer McIver
93	Lucia Marino		
94	Anne Kerr		
95	Michael Williams & Sibylle Ritzman		

Appendix B Parties to the Panel Hearing

Submitter	Represented by
Moonee Valley City Council	Briana Eastaugh of Maddocks calling evidence on: - heritage from Natica Schmeder (Landmark Heritage Pty Ltd)
Sally O'Farrell	Chris Wren QC instructed by Rigby Cooke and calling evidence on: - heritage from Bryce Raworth (Bryce Raworth Pty Ltd)
Roman Polidoro	Louise Hicks of Counsel calling evidence on: - heritage from Aron Paul (Trethowan Architecture)
Rita Pickering	Michael Pickering calling evidence on: - heritage from John Briggs (John Briggs Heritage Architects Pty Ltd) - town planning from Martyn Thompson (Peyton Waite)
Kim Si Cao	
Dr John Nguyen	
Bernard Georgilopoulos	
Brian and Kathy Rose	
Bianca Simpson	
Tracie Hastie	
Dr AC Teo and Mr. TY Teo	Katherine Moorhouse Perks
Hayley Hadj	
Ayla Arif	
Adelina and Fernando Pasquale	Anthony and Lara Pasquale
Genevieve Xuereb	
Amanda Race and Peter McIver	
Peter and Robyn Goldstein	Russell Hocking
Giovanna Brancatisano	Damien Camilleri
Kim Scerri	
Peter Cook	
Steven Leptos	
Tim Agushi and Bashkim Canko	Tim Agushi
Mary H Bayley, Ursula F Soulsby, Irene M Moloney, and Bernadette H Moloney	Mary H Bayley and Ursula Soulsby
Brett Habermann	

Appendix C Document list

No.	Date	Description	Presented by
1	2/9/20	Notice of Direction Hearing	Panel
2	13/9/20	Attachment to submission 48	Kim Si Cao
3	16/9/20	Correspondence to Panel and Minister	Kim Scerri
3a	"	Attachment regarding Brown Street properties	"
4	22/9/20	Attachment to submission 44	Ross King
5	30/9/20	Directions and Timetable	Panel
6	6/10/20	Attachment to submission 48	Kim Si Cao
6a	"	Building Inspection Report Marshall Street, Flemington	"
7	7/10/20	Statement of Reasons; Challenge to Member	Panel
8	9/10/20	Correspondence regarding finalisation of evidence	Panel
9	20/10/20	Submitter Maps (for Panel only)	Maddocks for MVCC
10	21/10/20	Timetable V2	Panel
11	2/11/20	Council Part A submission	Maddocks for MVCC
11a	"	Attachment to Part A submission	"
11b	5/11/20	Addendum to 11a	"
12	2/11/20	Heritage Evidence – Natica Schmeder	"
13	"	Heritage Evidence – Aron Paul	Ratio Consultants for Roman Polidoro
14	"	Heritage Evidence – John Briggs	Michael Pickering for Rita Pickering
15	"	Town Planning Evidence – Martyn Thompson	"
16	"	Heritage Expert – Bryce Raworth	Rigby Cooke for Sally O'Farrell
17	3/11/20	Attachment to submission 48	Kim Si Cao
18	6/11/20	Addendum to N Schmeder evidence	Maddocks for MVCC
19	"	1945 Aerial Photo from N Schmeder	"
20	"	1931 Aerial Photo from N Schmeder	"
21	9/11/20	Council Part B submission	Maddocks for MVCC
22a	"	Photo – 193 Pascoe Vale Road, Essendon	Katherine Moorhouse Perks
22b	"	Photo – rear of 193 Pascoe Vale Road, Essendon	"
22c	10/11/20	Carport Plans 193 Pascoe Vale Road, Essendon	"

No.	Date	Description	Presented by
23	“	Appendix A – Draft Heritage Gap Study Consultation Findings November 2014	Maddocks for MVCC
24	“	Appendix B – Draft Moonee Valley Response to Community Feedback November 2014	“
25	“	Council Report Heritage Gap Study November 2014	“
26	“	List of Places not in Stage 1 Gap Study	“
27	“	Presentation 64 Eglinton Street, Moonee Ponds	Bernard Georgilopoulos
28	“	Objection 15 Grandview Street, Moonee Ponds ¹⁴⁰	Craig and Tara Dunstan
29	11/11/20	Submission 10-12 Grandview Street, Moonee Ponds	Chris Wren QC for Sally O’Farrell
30	“	Brimbank C125 Panel report	“
31	“	Monash L51 Panel Report	“
32	“	Video overlay MMBW Plans on Aerial Photo	“
33	“	MVCC Council Meeting Agenda 20 December 2016	“
34	13/11/20	Presentation 43 McCracken Street, Essendon	Kathy and Brian Rose
35	“	48 McKay Street, Essendon submission	Louise Hicks for Roman Polidoro
36	“	Expert evidence presentation – Aron Paul	“
37	16/11/20	Council response to Panel questions – Timelines	Maddocks for MVCC
38	“	N Schmeder response to Panel	“
39	“	21 Marshall Street – New evidence	Kim Si Cao
39a	“	Photograph 1-3 Marshall Street, Flemington	“
39b	“	Photograph 15 Clarence Street, Flemington (Demolished)	“
40	“	Submissions	Michael Pickering for Rita Pickering
40a	“	Hand drawn diagram 57 Vanberg Road	“
40b	“	57 Vanberg Road photos	“
41	“	Submissions, 20 Hesleden Street, Essendon	Russell Hocking for Peter and Robyn Goldstein
41a	“	Attachments to Submission, 20 Hesleden Street, Essendon	“

¹⁴⁰ Note no original submission – referred to the Hearing.

No.	Date	Description	Presented by
42	17/11/20	Marked up Statement of Significance, 57 Vanberg Road	Michael Pickering for Rita Pickering
42a	"	Concept subdivision, 57 Vanberg Road	"
43	"	Baskin submission – 17 Park Street, Moonee Ponds	Best Hooper for Timur and Necla Baskin
44	"	41 McCracken Street submission	Peter McIver and Amanda Race
44a	"	41 McCracken Street presentation	"
45	"	29 McCracken Street presentation	Ayla Arif
46	"	10 Ayr Street submission	Genevieve Xuereb
47	"	71 Primrose Street Reference images	Hayley Hadj
48	"	55 Brewster Street, Essendon presentation	Anthony Pasquale
49	18/11/20	Submitter 8, 11 Milverton Street submission	Dr John Nguyen
50	"	GJM Heritage Report 55 Brewster Street, Essendon	Anthony Pasquale
51	"	Submission 41 McCracken Street, Essendon	Peter and Kathy Cook
51a	"	Submission on behalf of residents of McCracken Street	Peter and Kathy Cook
52a-e	19/11/20	Various property reports (<i>note not circulated to all parties at submitters request</i>)	Damien Camilleri for the Brancatisanos
53	20/11/20	Submitter 74 Brown Avenue presentation	Kim Scerri
53a	23/11/20	Submitter 74 Speaking notes	"
53b-c.	20/11/20	Submitter 74 Signatories and statutory declaration	"
54	"	Submitter 121 submission	Steven Leptos
55	"	Updated Municipal HO Map	Maddocks for MVCC
56	23/11/20	21 Marshall Street further submission	Kim Si Cao
57	"	Council Part C Submission	Maddocks for MVCC
57a	"	Note from N Schmeder 20 Hesleden Street	"
57b	"	Note from N Schmeder 193 Pascoe Vale Road	"
58	"	Submitter 104 and 106 submission	Tim Agushi for Tim Agushi and Bashkim Canko
58a	"	Submitter 104 and 106 speaking notes	"
59	"	Submitter 102 submission	Mary Bayley and Ursula Soulsby

No.	Date	Description	Presented by
59a-d	“	Submitter 103 attachments	“
60	“	Submitter 82 presentation (<i>photographs not to be circulated</i>)	Brett Habermann
60a	“	Correspondence re: stormwater issues	“
61a-e	“	Land Titles 10 Ayr Street	Maddocks for MVCC
The following documents were submitted after the Hearing with leave from the Panel			
62	26/11/20	Closing reply to submissions 104 and 106	
63	18/12/20	Letter from Council regarding 19 Milverton Street	“
64	18/12/20	Structural Assessment Report 19 Milverton Street	“