

**Darebin Planning Scheme Amendment C191dare
Thornbury Park Estate heritage precinct**

Panel Report

Planning and Environment Act 1987

31 August 2022

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 or not to adopt the Amendment.

[section 27(1) of the *Planning and Environment Act 1987* (the PE 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 PE 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 PE Act]

Planning and Environment Act 1987

Panel Report pursuant to section 25 of the PE Act

Darebin Planning Scheme Amendment C191daredare

31 August 2022



Sarah Raso, Chair



Jessica Tulloch, Member

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Glossary and abbreviations

Council	Darebin City Council
DELWP	Department of Environment, Land, Water and Planning
ESD	Environmentally sustainable design
Heritage Study	Thornbury Park Estate Precinct – Report, Citation and Schedules (RBA Architects and Conservation Consultants, 2021)
HVH	Hip V Hype Pty Ltd
HVH Report	Sustainability and Heritage – Darebin City Council' dated 3 June 2022
Incorporated Document	City of Darebin Heritage Study Incorporated Plan – Permit exemptions (2011, amended 2021)
PE Act	<i>Planning and Environment Act 1987</i>
Planning Practice Note 1	Planning Practice Note 1 – Applying the Heritage Overlay (August 2018)
Planning Scheme	Darebin Planning Scheme
Post-WWII	Post-World War II
SBO	Special Building Overlay
Statement of Significance	Thornbury Park Estate Precinct Statement of Significance, July 2021

Overview

Amendment summary

The Amendment	Darebin Planning Scheme Amendment C191dare
Common name	Thornbury Park Estate Heritage Review
Brief description	Implement the recommendations of the Thornbury Park Estate Precinct – Report, Citation and Schedules (RBA Architects and Conservation Consultants, 2021) by applying a Heritage Overlay to the Thornbury Park Estate heritage precinct
Subject land	1,052 properties in Thornbury which together form the precinct referred to as the Thornbury Park Estate. See Figure 1 and Appendix B.
Planning Authority	Darebin City Council
Exhibition	5 August to 15 October 2021
Submissions	Number of Submissions: 179, including one petition (See Appendix C)

Panel process

The Panel	Sarah Raso (Chair) and Jessica Tulloch
Directions Hearing	Tuesday 10 May 2022 and Wednesday 8 June 2022 (both by Videoconference)
Panel Hearing	Tuesday 12 July and Wednesday 13 July 2022 Hearing Room 1, Planning Panels Victoria, 1 Spring Street, Melbourne and by video conference
Site inspections	Accompanied (in part) Tuesday 24 May 2022 and unaccompanied on Tuesday 26 July 2022
Parties to the Hearing	<ul style="list-style-type: none"> - Darebin City Council represented by Darren Wong of Planology, who called expert evidence on heritage from Anthony Hemmingway of RBA Architects and Conservation Consultants - Catherine Maguire and Brett Elser (29, 54) - Stephen Joyce and Michelle Harvey (32) - Robin Harper and Andrew Warmington (40) - Stacia Goninon (87) - Paul Vascotto and Ana Rachman (98) - Frank Berra (103) - Stephen Carbone (162) - Edward Bucknell (167)
Citation	Darebin PSA C191dare [2022] PPV
Date of this report	31 August 2022

Executive summary

Darebin Planning Scheme Amendment C191dare (the Amendment) seeks to implement the recommendations of the *Thornbury Park Estate Precinct – Report, Citation and Schedules prepared by RBA Architects and Conservation Consultants, 2021* (Heritage Report). It does this by applying the Heritage Overlay to the area known as the Thornbury Park Estate Precinct.

The Amendment was exhibited from 5 August to 15 October 2021, and further consultation was undertaken in February 2022. The Amendment received 178 submissions.

Key issues raised in submissions related to the conflict between heritage conservation and environmentally sustainable design (ESD) and between addressing potential flooding and retaining heritage. Other general issues raised related to property value and financial implications, development opportunity, building alterations and maintenance and building condition. Issues specific to the heritage precincts and individual places, included objecting to the Heritage Overlay being applied to individual properties, heritage designation and the removal of land from the precinct.

Strategic justification

The Heritage Report has applied a sound methodology consistent with Planning Practice Note 1 – Applying the Heritage Overlay (August 2018) and is based on well researched assessments to reach its findings.

The Amendment:

- is supported by, and implements, the relevant sections of the Planning Policy Framework
- 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 set out in this report.

General issues

Development opportunity, building alterations, maintenance, building condition, property value and private financial implications are not relevant when assessing heritage significance or when deciding whether to apply the Heritage Overlay.

ESD outcomes and potential flooding are not relevant when assessing the heritage significance of a precinct. Some of these matters may be relevant during the planning permit application process. The Heritage Overlay does not prohibit a type or form of development and a permit can be sought for any form of development with the Planning Scheme providing a broad range of policy guidance. Such policies will need to be balanced and weighed by the responsible authority when assessing an application for a planning permit. The Panel is confident that heritage and environmentally sustainable design can co-exist harmoniously.

Darebin City Council (Council) has sought advice from the Panel on the best approach to facilitate development of high performing sustainable homes in the context of the Heritage Overlay. The Panel makes an informal recommendation on this matter which is outlined below.

Thornbury Park Estate Precinct

The Thornbury Park Estate Precinct generally meets the threshold of local heritage significance to justify the Heritage Overlay (HO318). However, its size presents challenges, and the Panel is not persuaded the precinct reads as one intact and cohesive precinct. The Bracken Avenue Linear Park

serves as a physical and visual barrier where to the east is a higher number of non-contributory places compared to the remainder of the precinct. Equally, the area to the west of Comas Grove has limited connection to the precinct, due to both the sloping of the land and the presentation of the housing stock which differs significantly from the houses to the east of Comas Grove.

The precinct should be reduced in size to an area which is bound by Miller Street to the north, Bracken Avenue Linear Park to east, Smith Street to the south and Comas Street to the west with the inclusion of:

- the Church Manse and the properties surrounding it between Hill and Fyffe streets on the west side of Comas Grove
- the Interwar houses which sit to the west of Comas Grove between Miller and Rennie Streets.

This central part of the precinct is legible and cohesive, with a higher concentration of contributory and significant properties which interact together a single precinct.

The Post-World War II (Post-WWII) housing stock should be removed from the precinct. With the removal of the properties west of Comas Grove from the precinct, which are predominantly Post-WWII housing stock, very few Post-WWII homes remain. The remaining Post-WWII homes from the revised precinct should therefore be removed. The Post-WWII homes do not contribute to the heritage significance of the precinct.

Precinct-wide issues

Non-contributory properties should generally be included in a heritage precinct to ensure any future development on that land does not adversely impact the significance of the precinct.

It is not appropriate to limit properties in the Heritage Overlay to those which are designated significant.

Neighbourhood character is different from heritage, and a neighbourhood character planning control would not be a suitable alternative to the Heritage Overlay for protecting heritage.

While places do not have to be completely intact to be categorised contributory in the precinct, it is appropriate that properties which are not sufficiently intact be designated non-contributory.

Conclusion

The Panel concludes Darebin Planning Scheme Amendment C191dare:

- is supported by, and implements, the relevant sections of the Planning Policy Framework
- 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.

Recommendations

Based on the reasons set out in this Report, the Panel recommends that Darebin Planning Scheme Amendment C191dare be adopted as exhibited subject to the following:

- 1. Amend the land to which Heritage Overlay HO318 applies to reflect the Panels' preferred precinct boundary as shown in Figure 2.**
- 2. Amend the Statement of Significance for HO318 (Thornbury Park Estate Precinct) as follows:**

- a) **Update the Gradings Map Plan to reflect the Panels' preferred precinct boundary as shown in Figure 2.**
 - b) **Update the Gradings Map Plan to designate the following properties as non-contributory:**
 - **119 Miller Street**
 - **115 and 115A Miller Street**
 - **107 Miller Street**
 - **95 Miller Street**
 - **100 Rennie Street**
 - **102 Rennie Street**
 - **179 Hutton Street**
 - **159 Hutton Street**
 - **200 Harold Street**
 - **72 Keon Street**
 - **163 Hutton Street**
 - **185 Hutton Street**
 - **85 Fyffe Street**
 - **76 Rennie Street.**
 - c) **Update the Gradings Table to reflect the new precinct boundary and revised grading of properties.**
 - d) **Delete all references to "Post-WWII" in the 'What is significant?' section.**
 - e) **Update the 'Why it is significant?' section to reflect the Panel's recommendations.**
- 3. Replace the Gradings Map Plan in Thornbury Park Estate City of Darebin Heritage Study Incorporated Plan – Permit Exemptions (2011, amended 2021) to reflect the new precinct boundary and revised grading of properties.**

Further recommendations

The Panel informally recommends that Council:

- Consider preparing a report or study which provides guidance to applicants and decision makers when balancing heritage with issues such as environmentally sustainable design and overland flooding. This could consider matters such as:
 - How decision makers should balance the following that might impact the heritage fabric of a place:
 - achieving environmentally sustainable design outcomes and thermal efficiency
 - increasing the finished floor level of an existing building in an overland flow area
 - addressing mould and its associated health impacts of existing buildings.
- Case studies and examples of the kind of design alterations and reconstruction that might be appropriate in the Heritage Overlay if undertaken to improve for example, the thermal efficiency of a home, to achieve a higher environmental rating, to achieve a higher finished floor or to address health concerns such as mould.
- Consider the preparation of a new planning scheme amendment and/or Information Sheets that would implement the findings of the study or report.

- Revise the heritage citation in the Thornbury Park Estate Precinct – Report, Citation and Schedules (RBA Architects and Conservation Consultants, 2021) to reflect changes in this Report.
- Consider preparing an educational pamphlet for the community to help them understand how houses which are subject to the Heritage Overlay can be adapted.

1 Introduction

1.1 The Amendment

(i) Amendment description

Darebin Planning Scheme Amendment C191dare (the Amendment) proposes to implement the recommendations of the Thornbury Park Estate Precinct – Report, Citation and Schedules prepared by RBA Architects and Conservation Consultants, 2021 (Heritage Study) by applying the Heritage Overlay to the area known as the Thornbury Park Estate.

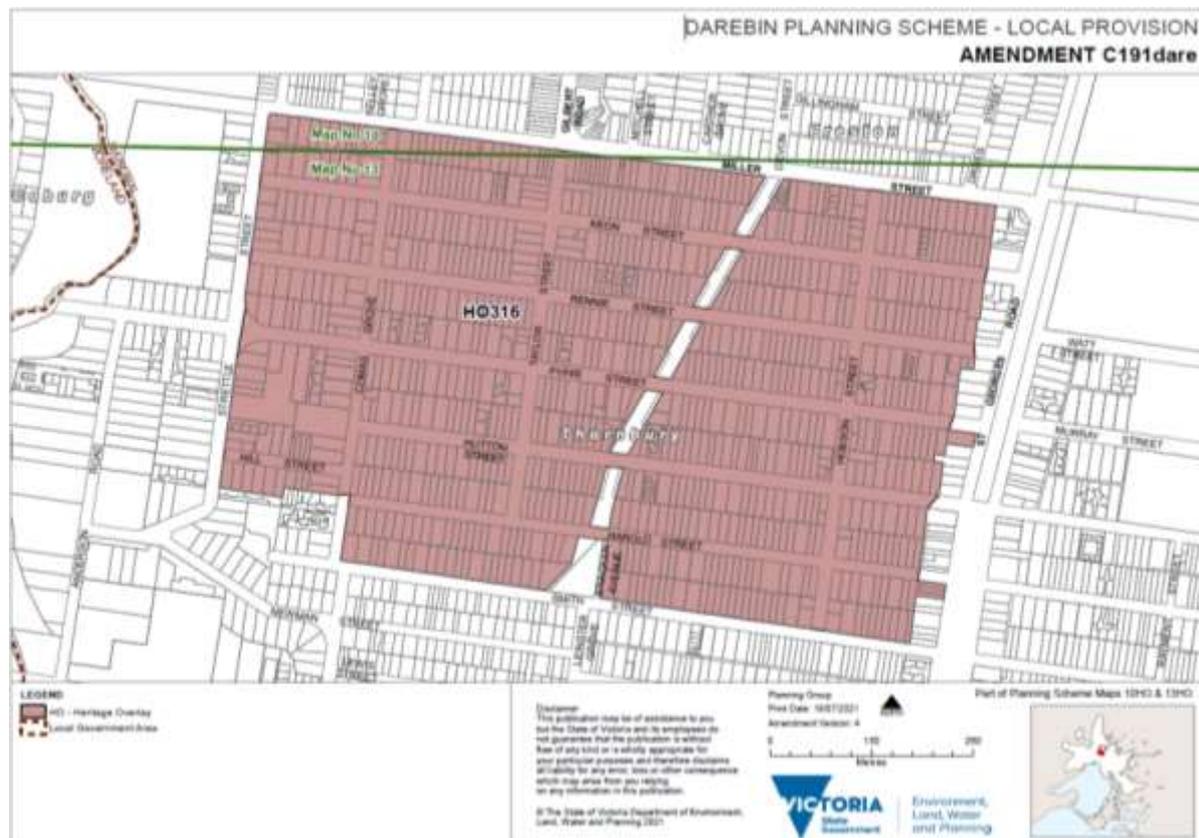
Specifically, the Amendment proposes to:

- apply the Heritage Overlay (HO318) to land in the Thornbury Park Estate Heritage Precinct
- incorporate the City of Darebin Heritage Study Incorporated Plan – Permit exemptions (2011, amended 2021) (Incorporated Document) and the Thornbury Park Estate Precinct Statement of Significance, July 2021 (Statement of Significance) through the schedule to Clause 72.04 (Documents Incorporated in this Planning Scheme)
- include the Heritage Study in the schedule to Clause 72.08 (Background documents).

The Incorporated Document is specific to Darebin and provides additional exemptions from the need for a permit to those that would ordinarily apply under the Heritage Overlay. Consistent with Clause 43.01-2, the Incorporated Document is confined to specifying permit exemptions.

The Amendment applies to land shown in Figure 1 and the properties listed in Appendix B.

Figure 1 Subject Land



1.2 Background

Council provided a detailed background to the Amendment in its Part A submission, including a chronology of events which the Panel has summarised in Table 1.

Table 1 Amendment C191dare chronology events

Date	Event
April 2012	Council commissioned John Briggs Architect and Conservation Consultant to undertake a heritage assessment of 33 Comas Grove, Thornbury (JBA Assessment)
2018	Council commissioned Context to undertake an initial heritage assessment of the building stock within the study area of Comas Grove, Fyffe Street, Hutton and Harold Streets, as well as those streets just beyond them
July 2019	Context undertook a more detailed heritage assessment (Thornbury Park Estate Precinct – Preliminary Heritage Assessment, Context 2019). It recommended: <ul style="list-style-type: none"> - the Comas Grove area (encompassing parts of Comas Grove, and Harold, Hutton, Fyffe, Rennie and Keon Streets) is likely to meet the threshold for inclusion within the Heritage Overlay - a significant grading for 33 Comas Grove, Thornbury - that Council request the Minister for Planning for an interim HO for the potential heritage precinct to allow further detailed heritage assessments to be undertaken
July 2019	Council resolved to protect the heritage values of 31-33 Comas Grove, Thornbury and to proceed with progressing permanent heritage controls for the Church Manse and surrounding area (known as Thornbury Park Estate)
August 2019	Council requested the Minister for Planning to apply an interim Heritage Overlay (Amendment C188) to Thornbury Park Estate
August 2019	Council commissioned RBA Architects and Conservation Consultants to undertake a detailed heritage assessment for a potential Thornbury Park Estate Precinct
March 2020	Minister for Planning (under delegation) refused Council's request to approve Amendment C188 for three reasons: <ul style="list-style-type: none"> - consent to demolish the Church Manse at 31-33 Comas Grove, Thornbury had been issued - a heritage study to support the Amendment had not been completed - Council had not yet resolved to proceed with the Amendment
July 2021	Heritage Report was issued
May 2020	Council deferred the Amendment
April 2021	Council resolved to: <ul style="list-style-type: none"> - request the Minister for Planning authorise the preparation and exhibition of the Amendment - exhibit the Amendment - seek community and stakeholder feedback

	<ul style="list-style-type: none"> - request the Minister for Planning prepare and approve the Amendment - authorise the Manager City Futures to make minor alterations and corrections, where necessary, to the Amendment
11 June 2021	<p>The Minister for Planning authorised Council to prepare the Amendment subject to two conditions:</p> <ul style="list-style-type: none"> - Revise the Statement of Significance as follows: <ul style="list-style-type: none"> - In “What is Significant”, group the elements that relate to Federation, Interwar and Post-WWII period dwellings under separate headings for each period. - Add another column to the table in the Statement of Significance noting the applicable period for each property. - Remove reference to 181 and 183 Smith Street, Thornbury from the table of properties. - Remove the Public Park and Recreation Zoned parkland from the HO maps. - Amend the HO315 [sic] (Thornbury Park Estate Precinct) entry to the Schedule to Clause 43.01 to: <ul style="list-style-type: none"> - Refer to the Statement of Significance as ‘Thornbury Park Estate Precinct Statement of Significance, April 2021’. - Remove ‘Listed statement of significance in the schedule to Clause 72.04.’ - Amend the schedule to Clause 72.04 to correctly reference title and date of statement of significance
July 2021	Council amended the Amendment and requested re-authorisation of the Amendment
5 August to 15 October 2021	Council exhibited the Amendment
December 2021	Council considered submissions to the exhibited Amendment and resolved to undertake further consultation
February 2022	Council undertook further consultation
29 March 2022	<p>Council considered submissions to the exhibited Amendment and resolved to request a Panel to consider unresolved issues in submissions.</p> <p>Council resolved to request the preparation of sustainability report to identify whether homes subject to the Heritage Overlay can achieve specific sustainable ratings. Specifically, whether the design and adaptation of heritage listed residential buildings can achieve net zero emissions on a standalone basis for individual households using a whole of house approach without the need to buy off-sets and achieve good ESD ratings (7+ NatHER). Council resolved that the findings from this report be presented to the Panel.</p>

1.3 Proposed post-exhibition changes

At its 29 March 2022 meeting, Council resolved to propose changes to the Amendment, including redesignating:

- 81 Harold Street from contributory to non-contributory
- 58 Hutton Street from contributory to non-contributory
- 70 Hutton Street from contributory to non-contributory
- 152 Smith Street from contributory to non-contributory
- 98 Rennie Street from contributory to non-contributory
- 135 Hutton Street from contributory to non-contributory
- 171A Harold Street from high intactness to medium intactness.

Council also resolved to update the Heritage Report and Statement of Significance to reflect these changes.

1.4 Interim controls

Although not before the Panel, the Thornbury Park Estate is subject to an interim Heritage Overlay. The control was introduced by Amendment C197dare.

At the request of the Department of Environment, Land, Water and Planning (DELWP), any properties with active planning or building permits or building consents not yet enacted or completed were removed from the interim Heritage Overlay even though these properties would be affected by the Amendment.

Council officers audited planning and building permits from the preceding six years to determine whether there were any current permits or approvals. 14 properties were identified and were removed from the interim Heritage Overlay by Amendment C205dare.

On 17 September 2021, the Minister for Planning approved:

- Amendment C197dare to apply an interim Heritage Overlay
- Amendment C205dare which removed the 14 properties with existing planning or building approvals from the interim Heritage Overlay.

The exemptions provided in the Incorporated Document do not apply to the interim Heritage Overlay.

On 22 April 2022, the interim Heritage Overlay was extended until 29 April 2023 (Amendment C207dare).

1.5 Procedural issues

All procedural issues are outline in Table 2.

Table 2 Procedural issues chronology of events

Date	Event
Sustainability and Heritage, City of Darebin, Report	
3 June 2022	The Sustainability and Heritage, City of Darebin report prepared by Hip V Hype Pty Ltd (HVH) and dated 3 June 2022 (HVH Report) was prepared and circulated to the Panel all parties.
Adjournment	
6 June 2022	Panel received two requests to adjourn the Hearing from Submitter 98 and Submitter 29. Submitter 98 sought an adjournment for two weeks on the basis that further

time was required to analyse and respond to the HVH Report and that inputs to the model relied on in the report should be shared.

Submitter 29 sought an adjournment for one week on the basis that further time was required read and consider the documents filed.

7 June 2022	<p>Council indicated it supported an adjournment of the Hearing for 1-2 weeks because Mr Hemmingway, its expert witness, was unwell. Several submitters also confirmed in writing they supported the adjournment requests.</p> <p>Panel confirmed in writing that it will adjourn the Hearing given Mr Hemmingway is unwell and will hold a Directions Hearing on 8 June to discuss any procedural matters and new Hearing dates.</p>
8 June 2022	<p>Directions Hearing:</p> <ul style="list-style-type: none"> - the Panel adjourned the Hearing to Tuesday 12 July and Wednesday 13 July - Council indicated it would provide the Panel and all parties with the inputs to the model relied on and referred to in the HVH Report - Submitter 98 asked the Council to enquire whether it could also provide: <ul style="list-style-type: none"> - a scaled plan from the model which includes a schedule of window types, head height measurements for windows and floor to ceiling heights - the whole of house report from the model. - Council indicated it would seek instructions on this and provide a response to the Panel and all parties.
14 June 2022	<p>Council circulated to the Panel and all parties the model inputs, dimensioned plans and the inputs used for the whole of house report.</p>
19 June 2022	<p>Submitter 98 circulated to the Panel and all parties some additional questions and requests in relation to the material filed by the Council on 14 June. In particular, Submitter 98 noted the scaled plans do not include a schedule of window types, head height measurements for windows and floor to ceiling heights.</p>
22 June 2022	<p>The Panel indicated in writing that while the scaled plans provided by the Council do not include the level of detail sought by Submitter 98, the Panel will not be making any further directions and any further issues can be raised at the start of the Hearing.</p>
26 June 2022	<p>Submitter 98 wrote to the Panel and all parties again indicating the Council's material provided on 14 June lacked several inputs from the model referred to in the HVH Report which should be released.</p>
29 June 2022	<p>Council wrote to the Panel and all parties and provided a memo from HVH which responds to the matters raised by Submitter 98.</p> <p>No further correspondence in relation to this matter was received, and no party wished to comment on this further at the commencement of the Hearing.</p>
Clerical Error	
19 April 2022	<p>The Panel sent a letter by email to submitters advising that Council had referred the matter to an independent Panel.</p>
20 July 2022	<p>Due to a clerical error, Planning Panels Victoria realised the letter of 19 April 2022 was not sent to a small group of submitters who had only provided a postal address.</p>

	As a result, by letter dated 20 July 2022 the Panel allowed these submitters an opportunity to request to be heard before the Panel Chair at a reconvened Hearing, or to make a further written submission to the Panel in writing.
16 August 2022	No submitter sought to make a submission at a reconvened Hearing, however Submitter 124 sought to make a further written submission. The Panel gave Submitter 124 an opportunity to file a submission with Planning Panels Victoria.
18 August 2022	The Panel determined to allow the Council an opportunity to consider whether a further response is required to Submitter 124's further submission, or whether its existing submissions cover the issues raised. The Panel updated all parties on this procedural issue and confirmed that all parties will be provided with a copy of the further written submission from Submitter 124 and any further response from the Council but indicated the parties would not be invited to respond or provide a written response.
23 August 2022	Submitter 124 provided further written submission.

1.6 Summary of issues raised in submissions

Council received 178 submissions, of which 110 objected and 68 supported the Amendment. The Panel notes that Submission 48 was withdrawn (Appendix C).

Building condition, development opportunity, building alterations, maintenance, property value and financial implications were issues raised in multiple submissions.

Submissions raised precinct-wide issues including property categories and assessments (such as contributory and non-contributory), precinct cohesiveness and whether some properties or streets should be removed from the proposed precinct.

There were property owners who objected to the Heritage Overlay being applied to their property because they considered their property was not significant enough, was too altered and no longer presented in its original form. Other submitters strongly supported the application of the Heritage Overlay to the precinct.

Submissions also raised issues in relation to the conflict between heritage conservation and environmentally sustainable design (ESD) and between addressing potential flooding and retaining heritage.

1.7 The Panel's approach

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, 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:

- Strategic justification
- General issues
- Thornbury Park Estate Precinct.

1.8 Limitations

There were submissions which queried whether the Heritage Overlay could be applied to properties in and outside the Thornbury Park Estate which did not form part of the Heritage Study. These areas included west of St Georges Road, the area between Smith Street and Normanby Street and houses on Newman Street between Strettle Street and Comas Grove.

The Panel has not considered these properties because:

- they are not supported with the same assessment rigour given to properties which formed part of the Heritage Study and exhibited through the Amendment
- Council is best placed to decide whether these properties should be investigated through the appropriate process
- potentially affected property owners and tenants were not provided with natural justice through an opportunity to review the proposal or to make a submission.

2 Strategic justification

2.1 Planning context

The Explanatory Report and Council's submission identify the following as being relevant to the Amendment:

- planning objectives at PE Act section 4(1)(d)
- Planning Scheme policy clauses 15.01-5S, 15.03-1S, 21.10 and 22.01
- Plan Melbourne Outcome 4, Direction 4.4 and Policies 4.4.1 and 4.4.4
- Heritage Overlay
- Ministerial Directions 7(5)1, 9, 11 and 15 and Planning Practice Note 1.

Appendix A provides further details.

Clause 71.02-3 (Integrated decision making) provides guidance on balancing planning objectives, stating:

Victorians have various needs and expectations such as land for settlement, protection of the environment, economic wellbeing, various social needs, proper management of resources and infrastructure. Planning aims to meet these needs and expectations by addressing aspects of economic, environmental and social wellbeing affected by land use and development.

The Planning Policy Framework operates together with the remainder of the scheme to deliver integrated decision making. Planning and responsible authorities should endeavour 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.

2.2 Thornbury Park Estate Precinct Heritage Study

The Heritage Study was undertaken by RBA Architects and Conservation Consultants. The final report was completed in July 2021.

Council commissioned the work in 2019 which followed the previous studies undertaken by John Briggs Architect and Conservation Consultant in 2012 and Context (2018 and 2019). Refer to Chapter 1.2 for more details.

The methodology for the Heritage Study was guided by the processes and criteria outlined in the Burra Charter, 2013¹. The key tasks included:

- site inspections
- historical research and analysis of the extant fabric in relation to documentary evidence
- preparation of a physical description
- assessment of the significance of the places based on the research and the extant fabric
- preparation of a citation (statement of significance, history and description), with reference to the relevant HERCON criteria

¹ The Australia International Council on Monuments and Sites (ICOMOS) Charter for Places of Cultural Significance

The Statement of Significance designated each property in the Thornbury Park Heritage Precinct using the definitions established in the *City of Darebin Heritage Study Incorporated Plan – Permit Exemptions*:

Significant: a single heritage place that has cultural heritage significance which may be independent of its context. These places also contribute to the significance of a heritage. Significant places within a heritage precinct will not usually have a separate Statement of Significance.

Contributory: a place that contributes to the significance of a heritage precinct, but would not be significant on their own.

Non-Contributory/Not Significant: are places which do not contribute to the significance of a heritage precinct. In some instances, a Significant place may be considered non-contributory or not significant within a precinct. For example, an important Modernist house within a Victorian precinct.

(i) Evidence and submissions

Council submitted the Amendment is required to protect the Thornbury Park Estate which has been identified in the Heritage Study as worthy of protection under the Heritage Overlay.

Council submitted the Amendment is supported by the Heritage Study and the evidence of Mr Hemmingway, and that both “*provide a reliable and persuasive basis for the controls*”. Council said the Heritage Overlay is the appropriate planning tool to protect heritage values given it requires a permit to be granted for building and works, including demolition.

Many submitters supported the Amendment and its strategic basis. Submitter 40 (Robin Harper) said:

There is relatively little of this part of Darebin protected by the heritage overlay and we consider that the assessment of the Thornbury Park Estate is well considered. The protection of this estate from further erosion of heritage character will ensure that the layers of development of this part of Thornbury are retained for future generations to appreciate, observe and understand.

No submitter considered the Amendment should not progress because it was not strategically justified.

(ii) Discussion

Section 4(1) of the PE Act seeks to conserve buildings, areas and places of interest and to balance the present and future interests of all Victorians. This is reflected through Plan Melbourne and in State and Local planning policies. These policies require Council to identify, protect, enhance and promote local heritage and the Amendment is supported by and implements these policy directions.

The Panel considers:

- the approach taken in the Heritage Study is sound, is based on appropriate methodology and research, and provides a solid base for strategically justifying the Amendment
- the Amendment appropriately considers the needs of present and future interests of all Victorians by introducing planning provisions that ensure local cultural heritage values are considered when assessing a planning permit application
- the Heritage Overlay is the appropriate planning tool to protect the heritage precinct and individual places.

The methodology used to identify and assess properties within the precinct is typical and consistent with the processes and criteria outlined in the Burra Charter (2013). The Panel finds the grading of properties as Significant, Contributory and Non-Contributory and the form of the

Statement of Significance is consistent with *Planning Practice Note 1 – Applying the Heritage Overlay (August 2018)*.

(iii) Conclusions

For the reasons set out in the following chapters, the Panel concludes that the Amendment:

- is supported by, and implements, the relevant sections of the Planning Policy Framework
- 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.

3 General issues

3.1 Environmentally sustainable design outcomes

(i) The issue

The issue is whether ESD outcomes are relevant when assessing the heritage significance of a precinct. Council invited the Panel to consider how it might approach the assessment of high performing sustainable homes in the context of the Heritage Overlay.

(ii) Evidence and submissions

The ability to achieve an ESD outcome was a significant issue for many submitters. Submissions considered the Heritage Overlay would restrict the ability to alter a house to achieve a modern living standard, achieve energy efficiency, address existing design problems or meet owner needs. This included the ability to alter a house to achieve a 9-star NatHERS rating and to build a new home which can achieve 9 stars.

Submitter 98 presented the Panel with a detailed submission on this issue. Among many other points, it was submitted:

- the Panel should consider a blended heritage and ESD approach to allow for the conservation of heritage properties whilst also recognising that heritage should be mutually exclusive to achieving high ESD outcomes
- the Heritage Overlay should explicitly address ESD principles.

Submitter 29 referred the Panel to renovations of interwar period homes, submitting renovations:

- typically involve the home being stripped back to the timber frame which will remove most of its embodied energy
- don't necessarily generate any less waste than a full demolition and re-build.

Submitter 29 also made submissions in relation to her family's intentions to build a PassivHaus home, (an ultra-energy efficient home that regulates its own temperate and humidity) which will no longer be realised if the Heritage Overlay is approved.

In response to submissions, Council engaged HVH to undertake a case study and investigate whether the introduction of the Heritage Overlay would likely impact the ability to achieve a 7-star NatHERS rating and a net zero emissions outcome. HVH prepared the HVH Report.

The HVH Report summarised its findings as follows:

The analysis within this report has demonstrated addressing the impacts of climate change and producing high performing homes that are within a heritage overlay is achievable when renovating the property.

Within the context of the proposed Thornbury Estate Heritage Precinct, two typical Californian Bungalow designs were thermally modelled both pre and post a hypothetical renovation (one minor and one major). The aim was to determine whether a 7 Star NatHERS rating and a net-zero operational energy could be achieved while being consistent with the heritage significance of the local area.

Through careful design in regards to orientation, choice of technology and retention of key façade features, environmental and heritage outcomes can be achieved through:

1. Improving the building's thermal envelope - through reducing penetrations, significantly increasing insulation, and improving the thermal performance of glazing;
2. Removing all natural gas appliances- and replacing them with highly efficient electrified alternatives - such as heat pump hot water systems, induction cooktops and reverse cycle air conditioning;
3. Installing onsite solar PV - to reduce the consumption of electricity from the grid; and
4. Purchasing 100% GreenPower - for any residual electricity consumed from the grid.

Council submitted the HVH Report:

- provides a reliable basis that the introduction of the Heritage Overlay will not frustrate or prevent the achievement of environmentally sustainable homes and more specifically achieving a 7-star rating and a net zero emissions outcome
- shows how a 7-star rating and zero carbon can be achieved.

Submitter 98 submitted the modelling undertaken by HVH contains many errors and as a result it ought to be given little weight. Submitter 98 was able to model the same scenarios as HVH to demonstrate his position. It was also submitted the HVH Report should have modelled actual houses from the Precinct rather than fictitious scenarios.

In response Council submitted:

- the HVH Report is sound, well-reasoned and has adopted appropriate benchmarks having regard to the 'purpose' of the work
- HVH were not asked to undertake a NatHERS Star rating of individual properties but were asked to undertake an assessment based on a typical house in the precinct
- this approach is entirely appropriate and fit for purpose for the type of decision that is before the Panel – the Amendment is looking to apply the Heritage Overlay to a precinct and it is appropriate to look at the effects of that overlay to the precinct and not an individual property.

Submitter 98 submitted that a blended approach to heritage and ESD should be considered.

Submitter 98 made suggestions which could incorporate:

- allowing the removal and replacement of heritage windows (which might also include leadlight windows) whilst maintaining the original dimensions of windows
- allowing for the replaced heritage windows to be awnings or casements because this type of window has a greater openability than double-hung heritage windows resulting in better cross ventilation
- allowing for the replacement of front doors with thermally efficient well sealed doors (of the same size and dimension as the original door)
- allowing the reconstruction of facades to facilitate thermal envelope upgrades
- considering whether a sympathetic extension might be visible if required to capture passive solar heating.

Whilst Council demonstrated a willingness to consider the interaction of ESD considerations and heritage outcomes, it submitted that strictly speaking, the consideration of ESD implications is not a matter for the Panel when considering the introduction of the Heritage Overlay. It submitted ESD considerations can be considered through the permit application process. Council submitted:

The new controls will require a planning permit to demolish, alter a building and construct or carry out buildings and works.

Within the HO, a very common form of planning application is for the partial demolition of a dwelling and the construction works to build an extension. Council, in its capacity as the responsible authority under the Act, will be required to assess such an application.

Clause 43.01-8 sets out an extensive list of decision guidelines which in part state:

Before deciding on an application, in addition to the decision guidelines in Clause 65, the responsible authority must consider, as appropriate:

- The Municipal Planning Strategy and the Planning Policy Framework.

Importantly, this decision guideline calls up consideration of clause 21.02 which expressly requires consideration of ESD. For example, the Overview states in part:

- Darebin City Council is committed to environmental sustainability and actively encourages sustainably-designed buildings that reduce energy consumption and water use, encourage recycling and sustainable transport and that use recycled and sustainable materials.

And Objective 3 states:

- To promote and facilitate development that incorporates best practice environmentally sustainable design and promotes sustainable living and business practices.

And strategies include:

- Encourage the adaptive reuse of buildings to reduce the amount of waste going to landfill.
- Encourage the design of new and retrofitted buildings and public spaces to incorporate high standards of energy efficient design, water sensitive urban design, sustainable transportation, waste reduction and protection of biodiversity.

In conclusion, Council submitted:

- when deciding an application under the Heritage Overlay, the Planning Scheme will require Council to consider these policies, together with other relevant matters such as those arising under the Heritage Overlay
- the Planning Scheme provides an appropriate policy framework for heritage and ESD considerations to be balanced at the permit application stage
- ESD is an important issue but is not an issue that this Amendment can or needs to resolve.

(iii) Discussion

Council's declaration of a climate emergency in 2016 demonstrates its support for measures which address climate change and minimise the carbon footprint within the municipality. The HVH Report was useful in demonstrating that it is possible to address the impacts of climate change and produce high performing homes that are within the Heritage Overlay. These homes may not be as environmentally efficient as a new build, but nonetheless, can achieve a high ESD outcome.

The Panel has not considered in any detail the inaccuracies in the HVH modelling that Submitter 98 alleges. The Panel in this case is not placing any reliance on the modelling undertaken in its final recommendation.

The Panel agrees with Council that heritage protection and environmental sustainability are not mutually exclusive, and how a development proposal responds to a range of policy considerations is best dealt with through the planning permit application process.

However, the Panel appreciates the strong community position with respect to ESD considerations, and in particular, the position adopted by Submitter 98 in suggesting that a blended approach to heritage and ESD is worthy of consideration. While the Panel is not able to

make a recommendation in relation to this issue, Council should consider, in consultation with the State Government, how this might one day be achieved.

Council, at the permit application stage, should consider the importance of ESD when assessing permit applications within the Heritage Overlay and balance any competing policy. As Council noted, when assessing a standard planning application Council, in its capacity as the responsible authority, it will need to consider:

- the purposes of the Heritage Overlay
- the decision guidelines at Clause 43.01-8 which include:
 - The Municipal Planning Strategy and the Planning Policy Framework.
 - Whether the demolition, removal or external alteration will adversely affect the significance of the heritage place.
 - Whether the proposed works will adversely affect the significance, character or appearance of the heritage place.
 - Whether the location, style, size, colour and materials of the proposed solar energy system will adversely affect the significance, character or appearance of the heritage place.
- Clause 15.03-1S (Heritage conservation)
- Clause 15.01-2S (Building design)
- Clause 21.02-3 (Built Environment)
- Clause 22.02-4 (Heritage).

These clauses require a consideration of sustainability and provide flexibility and guidance when assessing an application under the Heritage Overlay for a decision maker to have regard, and give effect, to (in appropriate circumstances) the various range of clear and strong sustainability policies in the Planning Scheme. These policies will need to be balanced and weighed by the responsible authority when assessing an application for a planning permit.

In this regard, Council should have real regard to the new purpose in the Planning Scheme "*To support responses to climate change*" and place robust weight on policies and outcomes that would achieve this purpose.

Council appropriately drew the Panel's attention to the importance of decision making in this regard and submitted:

Further, Council emphasises that a decision maker's obligation to 'consider' heritage policy does not mean that it must be strictly or blindly followed, even in general terms. In appropriate circumstances, a decision maker is entitled to turn its mind to the matters raised by heritage policy and determine that no or limited weight should be given to it in a particular case.

...

The advice from the responsible authority is that this balancing exercise has been undertaken to achieve acceptable outcomes. This is not to say that some changes to proposals are required from time to time. However, changes to a proposal are part and parcel of the permit application process when a responsible authority negotiates with permit applicants to achieve acceptable planning outcomes.

The HO does not prohibit any form of development, including the demolition of significant heritage fabric. A permit can be sought for any form of development under the HO and the Scheme then

provides a broad range of policy to guide individual decisions. There are numerous examples where other policy through the balancing exercise has outweighed heritage policy.²

The decision maker's balancing exercise must factor in the global need to address climate change and give appropriate weight to ESD when assessing the built form implications this might have on heritage fabric. For example, Submitter 98's suggestions with respect to design and reconstruction suggestions should be carefully considered and not automatically discounted by the decision maker in favour of a strict approach to heritage policy. Surely, a balance can be reached between protecting heritage fabric, and allowing the community to update homes so that they are sustainable and environmentally friendly.

The Panel is confident that heritage and ESD can co-exist harmoniously however is cognisant that achieving an environmentally sustainable home is more involved for a heritage home than it is for a home which is not subject to the Heritage Overlay. The Heritage Overlay enables buildings and works to occur, albeit with a planning permit, and importantly, no property was nominated for internal controls. This means that considerable changes can be made to homes which are subject to the Heritage Overlay when, generally, those changes are not visible from the public realm. For example, modern, environmentally sustainable rear extensions could be permissible.

(iv) Conclusion

The Panel concludes environmentally sustainable design outcomes are not relevant when assessing the heritage significance of a precinct but may be relevant during the planning permit assessment process.

3.2 Flooding

(i) The issue

The issue is whether potential flooding is relevant when assessing the heritage significance of a precinct.

(ii) Evidence and submissions

Many residents submitted that the Heritage Overlay should not be applied to land with the Special Building Overlay (SBO).

Submitter 103 submitted:

- a balance should be struck between the need to manage the requirements under the SBO, in particular, the need to raise building levels, and the preservation of heritage buildings
- the two authorities required to consider a permit application under the Heritage Overlay and the SBO (being the responsible authority and the floodplain manager) may not be able to balance the competing interests resulting in a lengthy and potentially expensive debate.

Submitter 29 submitted that Council should be encouraging owners to rise the floor levels of their homes and not make this task more difficult and questioned how Council proposes to protect homes from future flood events.

² See for example *1045 Burke Rd Pty Ltd v Boroondara CC & Ors* [2013] VCAT 1108 and *The University of Melbourne v Minister for Planning* (includes Summary) (Red Dot) [2011] VCAT 469

Submitters 29 and the owner of 68 Keon Street provided evidence of damage to their property from previous flood events. During the site inspection, the owner of 68 Keon Street indicated on his property the water level of a previous flood event. He pointed out the required finished floor level of the recently constructed dwellings at 66A and 66B Keon Street by way of comparison to the existing floor level of his property at 68 Keon Street. Submitter 29 submitted that the Heritage Overlay would limit the ability for homeowners to mitigate against the health impacts from mould.

Council submitted:

- the Heritage Overlay should be applied to land with an existing SBO
- if land has the requisite degree of significance, then the Heritage Overlay should be applied
- the balancing of heritage considerations and flood risk should be undertaken at the permit application stage when the decision maker will have the benefit of a particular proposal to make informed judgements when weighing any competing objectives.

The Council referred to the Panel Report for Amendment C161 to the Port Phillip Planning Scheme to demonstrate the interplay between the Heritage Overlay and the SBO. One issue which the Panel discussed was whether concerns about flood management are relevant to a decision to apply the Heritage Overlay. The Panel Report states:

The Panel is aware of the significant flooding issues (including flash flooding) that affect properties within the Elster Creek (Elwood) catchment. It is expected that the new Flood Management Plan will go some way to addressing these issues more systemically than on an individual property basis.

Notwithstanding, in the Panel's opinion, the values of the property that would justify the application of any individual overlay should be considered with a primary focus to the purpose of that overlay itself. In this instance, Council is correct that these purposes seek to protect and preserve heritage assets.

The Panel accepts the heritage analysis undertaken in both the PPHR Update and subsequently by Ms Schmeder, that these semi-attached dwellings have multiple elements of heritage significance justifying the application of an individual heritage overlay to these properties.

It is not unusual for multiple overlay controls to apply to a single property and for a decision maker to need to reconcile policy, the purpose of the controls and decision guidelines when an integrated permit application is evaluated. The Panel has experience with properties in both the Heritage Overlay and Special Building Overlay and is aware that there may be various design and engineering techniques that can potentially satisfy both.

There is also an opportunity under the provisions of the Heritage Overlay to carry out rectification works to enhance or repair damage, albeit this is likely to require relevant assessments to be provided to ensure key heritage fabric is suitably protected.

(iii) Discussion

The issue is whether the heritage significance of the precinct justifies the application of the Heritage Overlay and not whether heritage considerations ought to be balanced against the requirements of the SBO. The Victoria Planning Provisions enables the ability to layer considerations through multiple overlays through an integrated decision making framework. This exercise will be undertaken at the permit application stage.

It is not unusual for multiple overlay controls to apply to a single property and for the decision maker to be tasked with the job of reconciling competing policy and decision guidelines. Indeed, Mr Hemmingway indicated that there may be various design and engineering techniques that could satisfy both.

(iv) Conclusion

The Panel concludes potential flooding is not relevant when assessing the heritage significance of a precinct but may be relevant during the planning permit assessment process.

3.3 Building condition**(i) The issue**

The issue whether building condition is relevant when assessing the heritage significance of a precinct or whether an individual property should be given a significant or contributory grading.

(ii) Evidence and submissions

Submitters raised issues that many properties proposed for inclusion in the Heritage Overlay are in poor condition and have structural problems.

Submitters raised a range of issues relating to building condition:

- interwar houses are approximately 100 years old and need significant work or renovations
- many properties were poorly built
- many houses have issues with foundations and are damaged by movement because of expansion and contraction of clay over many years
- dwellings are no longer structurally sound and there are safety issues
- many dwellings have been substantially altered and are no longer intact.

Submitters 98 and 29 referred the Panel to specific issues in their homes which included significant cracking and movement requiring substantial repair, particularly in the case of Submitter 98's home which was built with no stumps or foundations.

Council referred the Panel to two previous Panel reports³ and submitted that consistent with the approach taken in these examples, the Panel should proceed on the basis that building condition is not relevant to assessing the heritage significance of the precinct or whether an individual property should be given a significant or contributory grading. Council submitted this approach is consistent with Planning Practice Note 1 which does not include building condition as a relevant criterion for assessing heritage significance. Council noted that building condition will be a relevant consideration in the consideration of a permit application to demolish or alter a contributory or significant place.

Mr Hemmingway said he did not consider building condition because this is a separate issue to the assessment of intactness and potential contribution to a proposed precinct.

(iii) Discussion

Building condition is not directly relevant to whether a place is of heritage significance or if the Heritage Overlay should be applied. Heritage significance is assessed against the recognised heritage criteria in Planning Practice Note 1. A place may be in poor condition, or it may have been altered, but its heritage values are still legible and understood. Where a submission considers that poor condition impacts the intactness of a heritage place, the Panel has considered whether the

³ Boroondara C284 (PSA) [2019] PPV 53 and Yarra C245 (PSA) [2020] PPV 38.

precinct still achieves the necessary threshold for heritage significance, as discussed later in this report.

Building condition may be considered during the planning permit application process when the proposal will be assessed against relevant planning policy objectives, including heritage.

(iv) Conclusion

The Panel concludes building condition is not relevant when assessing the heritage significance of a precinct but may be relevant during the planning permit assessment process.

3.4 Development opportunity, building alterations and maintenance

(i) The issue

The issue is whether development opportunity, building alterations and maintenance are relevant when assessing the heritage significance of a place or precinct.

(ii) Evidence and submissions

There were submissions which considered the Heritage Overlay would:

- restrict the ability to maintain, alter or develop their properties
- restrict development opportunities on land with growth potential
- remove ability to demolish a house and replace it with a new building or a dual occupancy development
- restrict the ability to alter a house to achieve a modern living standard, address problems or meet owner needs
- discourage owners from maintaining and improving their houses.

Submitter 29 referred the Panel to her development plans for a new dual occupancy development on her property which would not be realised if the Heritage Overlay is approved. Many other submitters described similar situations having purchased their properties with the intention of demolishing the existing home and building new modern homes.

Council acknowledged the Heritage Overlay introduces another layer of control and will add to the planning controls applying to these submitters' properties. Council submitted:

When balancing the merits of heritage regulation against other issues raised in the submissions, it is important to remember that heritage significance is an enduring and long term concern, whereas matters of development potential, building condition, economic matters or current or mooted planning approvals are by contrast short-term in nature.

Council referred the Panel to the Panel Report for Amendment C14 to the Latrobe Planning Scheme which said that Panels have repeatedly ruled that 'economic and personal factors' are not material to this stage of the planning process. The Panel said that although it is appropriate for the responsible authority to consider all the objectives of the *Planning and Environment Act 1987* (PE Act) – including fair, orderly, economic and sustainable use, and development of the land (s.4(1)(a)), and to balance the present and future interests of all Victorians (s.4(1)(g)) - the question of personal economic impact or potential constraint on development are matters for the planning permit application stage.

(iii) Discussion

The Panel agrees with Council's submissions relating to development opportunity, building alterations and demolition. In determining whether the Heritage Overlay should be applied to a place, it is appropriate to separate the assessment of heritage significance from questions of development potential, conservation, adaptation, alteration and demolition.

The Heritage Overlay:

- does not prohibit alterations and additions, or demolition
- allows property maintenance that does not change a property's appearance without the need for a planning permit
- ensures Council can assess the potential impact of a development proposal on properties with heritage significance.

The Heritage Overlay enables an owner to:

- apply for a planning permit to develop their land, including alterations and demolition
- maintain their property without the need for a planning permit.

The Heritage Overlay seeks to have any future proposal assessed against the existing heritage fabric. This is inherent in one of its purposes to "*ensure that development does not adversely affect the significance of heritage places*". Because a control limits development, on its own, is not sufficient justification to abandon the control. As discussed elsewhere, the Panel accepts that the Heritage Study provides an appropriate basis for assessing the precinct proposed to be included in the Heritage Overlay and the precinct has been assessed against the Planning Practice Note 1 criteria. This provides an appropriate justification for applying the Heritage Overlay.

(iv) Conclusion

The Panel concludes development opportunity, building alterations and maintenance are not relevant when assessing the heritage significance of a place or precinct.

3.5 Property value and financial implications**(i) The issue**

The issue is whether property value and financial implications are relevant when assessing heritage significance or when deciding whether to apply the Heritage Overlay.

(ii) Evidence and submissions

Numerous submissions considered:

- the Heritage Overlay would reduce property values for reasons ranging from the inability to demolish their house to nobody wanting to buy a house because of substantial improvement costs
- the Heritage Overlay will have financial implications when properties are proposed to be redeveloped, including the cost of lodging a permit application and potentially engaging a heritage architect or expert
- referred to costs already incurred on things such as consultants and architects working on designs for new homes which can no longer be realised.

Submitter 29 said that her family had spent approximately \$15,000 on development plans and the like before their demolition permit was revoked and the interim Heritage Overlay being

introduced. Similarly, Submitter 31 indicated costs spent being in the order of \$15,000 for architects, planners and builders. Submitter 58 expressed concern having invested over \$1 million on a property on the basis it could be demolished and redeveloped. Submitters 174 and 178 described similar situations.

Council referred to the findings of previous Panels⁴ and submitted that these matters are not relevant when determining whether the Heritage Overlay should be applied. Council submitted that the findings made by these Panels are equally applicable to the Amendment. Council also referred to the decision of Justice Garde in *Dustday Investments Pty Ltd v Minister for Planning* in relation to Amendment C207 to the Melbourne Planning Scheme which considered the need to consider the social and economic effects of an amendment, as required by section 12(2) of the PE Act. Of relevance to the question of social and economic effects, Justice Garde found:

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

(iii) Discussion

Property value is influenced by many complicated and dynamic variables and it would be difficult to single one out. The Panel was not presented with any information or evidence demonstrating the Amendment would impact property values. The Panel agrees that protecting the precinct's heritage character and values is likely to ensure it is a desirable and valuable place to live for certain members of the community.

There may be some financial impact on individuals associated with applying for a planning permit application. However, there is no evidence that this would unreasonably impact the broader community. There would be no need for a permit and no additional planning cost if an owner simply seeks to maintain their property without altering the appearance.

The Panel agrees with Council that, with respect to section 12(2) of the PE Act, the economic effects considered as part of an Amendment should be of a broader or community nature and not individual circumstances.

(iv) Conclusion

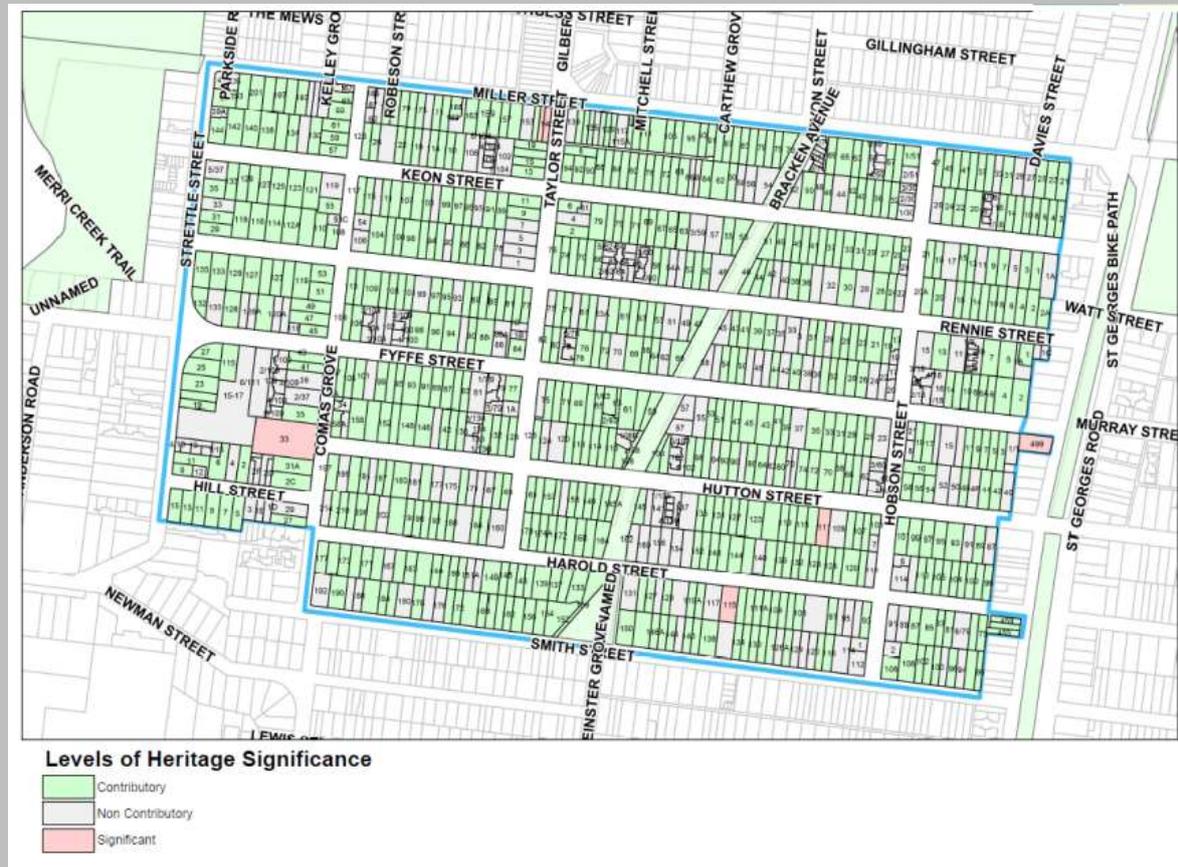
The Panel concludes property value and financial implications are not relevant when assessing heritage significance or when deciding whether to apply the Heritage Overlay.

⁴ Stonnington C91, C101 and C103, Moreland C129 and Whitehorse C157

4 Thornbury Park Estate Precinct

The following is an extract from exhibited version the *Statement of Significance: Thornbury Park Estate Precinct* (HO318). The table of each property is not replicated in this report.

Exhibited Statement of significance



What is significant?

The following original elements contribute to the significance of the Thornbury Park Estate Precinct:

Generally:

- single-storey dwellings,
- consistent setbacks.

Buildings dating to the Federation period:

- Intact roof forms - typically gabled with a main gambrel or hipped section,
- Original type of roof cladding - mostly corrugated metal sheeting, some with terracotta tiles, a few finials,
- Intact chimneys – usually with defined caps, mainly face brick but some rendered or with rendered elements,
- Finishes to gable ends - mainly roughcast sheeting with battens, a few with distinctive bargeboards,
- Intact timber-framed walls of painted weatherboard, some with roughcast sheeting,
- Verandahs - mainly offset or corner types, with turned timber posts, brackets or fretwork/friezes,
- Bay windows, some with hoods,

- Timber-framed windows - mainly casements with highlights, some double-hung sashes, some lead lighting and stained glass,
- Timber doors - typically panelled with some glazing, some with a sidelight.

Buildings dating to the Interwar period:

- Intact roof forms - gable, often with exposed rafter ends (1920s); or hipped (1930s),
- Original type of roof cladding - mostly corrugated metal sheeting, some tiled, and a few finials (metal or terracotta),
- Intact chimneys - mainly face brick but some rendered,
- Finishes to gable ends – including shingles or shingled boards, upper lattice vent,
- Intact timber-framed walls of painted weatherboard, some with roughcast sheeting (bungalows/1920s),
- Intact brick walls - red, clinker, cream; some (partly) rendered (generally 1930s), some tuck-pointing,
- Masonry porches - balustrade wall (brick and/or render) and/or piers with tapered or Solomonic columns; some with timber decks (1920s); smaller masonry porches (1930s),
- Bay windows - many faceted with a shingled skirt,
- Timber-framed windows - including boxed-framed, mainly double-hung sashes (some with multi-paned upper sashes) but also casements, some lead lighting and stained/textured glass (geometric designs), some hoods,
- Original timber doors - typically with some glazing,
- Original low brick fences – face brick and/or rendered (1930s),
- Commercial buildings - both single and two storey with parapets, with more elaborate detailing to the two storey. A pair with an expressed roof in Miller Street.

Buildings dating to the Post-WWII period:

- Roof forms - mainly hipped, with a few gable ends,
- Tiled roof cladding,
- Chimneys - mainly face brick,
- Walls – usually brick (clinker or cream), a few timber-framed examples with painted weatherboard,
- Masonry porches or concrete cantilevered canopies,
- Windows – mostly timber-framed with double-hung sashes, and a few steel-framed, often including one/some to a corner,
- Doors - typically timber with glazing,
- Original low brick fences.

How is it significant?

The Thornbury Park Estate Precinct, Thornbury, is of historical, representative and aesthetic significance to the City of Darebin.

Why is it significant?

The Thornbury Park Estate Precinct is of historical significance as a large subdivision that illustrates the emergence and rapid consolidation of Thornbury as a residential suburb during the early to mid-20th century, changing from its hitherto largely rural character, especially at its western end. Whilst two subdivisions had occurred during the 1880s in the vicinity, they had resulted in only sparse development at best by the end of the first decade of the 20th century. Both earlier subdivisions also employed the same

name (Thornbury Park Estate) as they too derived from the extensive land holdings of Job Smith (CA 131+136, consisting of nearly 370 acres at their maximum), which came to be known as 'Thornbury Park', after a place in Hertfordshire. Smith built/lived in a farm house on the high ground near the west end of Smith Street, which survived to the mid-20th century. Smith maintained his farm, where he cultivated rare grasses, etc. until he eventually sold all the land during the late 1880s.

Subsequently the land was retained in two large holdings (owned by the Commercial Bank of Australia, after the default by Australian and British Land Deposit Agency with the 1890s crash, and the Trustees Executors and Agency Co.) for over 20 years until there was sufficient cause to subdivide the land.

The Thornbury Park Estate Precinct was mostly being offered for sale from late 1911, though not officially subdivided until 1914, at which time the subdivision of the smaller portion at the south-west corner was undertaken. Although sales were strong during the 1910s, substantial development did not occur in earnest until the early 1920s, after the opening of the St Georges Road electric tram (1920) and the electrification of the rail line (1921). Much of the ensuing construction was likely undertaken by builders such as Dunlop & Hunt and the prolific, local firm of Stewart & Davies. This pattern demonstrates the broader speculative dynamics in the district around this time and the integral part played by these types of builders in providing the suburban dream to a wide demographic. (Criterion A)

The Thornbury Estate Precinct is of representative significance for containing manifold good and generally intact examples of modest late Federation, Interwar and Post WWII period house designs, many of the type practiced by suburban builders, as well as examples of State Savings Bank homes. The prevailing Federation/Interwar period bungalow type (typically gabled roof form, asymmetric façade with a side porch in timber [Federation period] or masonry [Interwar period] with an underlying Arts and Crafts aesthetic) provides a cohesion to the precinct along with the remnant subdivision pattern, which is broadly interpretable as a mix of original allotments and others divided in half. The economical yet presentable housing stock, which is almost entirely detached, is indicative of standard types of residences constructed during the main development phase of the 1910s and 1920s – being mainly timber-framed with corrugated metal roof cladding. Differentiation is provided by employment of an array of detailing in varying combinations so that whilst similar, houses in small groups of consistent types are made individual (for instance, to the gable ends [shingling, battened sheeting, and/or lattice to apex, etc.] and bay windows [bowed or faceted]).

Robust/broad elements to many porches such as tapered or helical/Solomonic columns are a distinguishing feature. The humbleness of the construction is evidenced however by the lack of 'extraneous' detailing such as decorative glasswork, which is common in more middle-class examples. The latter houses – dating to the 1930s (or late Interwar period) and late 1940s through the 1950s (or Post-WWII period) - tend to be brick with tiled roofs and a uniformly larger (though some are paired/semidetached). The groups of commercial buildings to Miller Street and St Georges Road are often single storey with a few interspersed more elaborate, two storey examples reflecting contemporary design approaches and providing an intrinsic complementary component to this large residential precinct. (Criterion D)

The Thornbury Estate Precinct is of aesthetic significance for including a few individually notable buildings. Most in this group are relatively substantial, have a greater level of detailing, and higher quality palette of materials. For instance, most have roofs clad in terracotta (glazed or unglazed) tiles in contrast to the prevailing, more economical material palette in the precinct of corrugated metal sheeting. (Criterion E)

- 33 Comas Grove - this sprawling Californian Bungalow style house with red brick dado and roughcast rendered walls above has an original dormer. The garden retains a semi-circular driveway, beds with stone edging, and some substantial specimen trees.
- 115 Harold Street – the most elaborate/picturesque Queen Anne style house in the precinct. It is distinguished by ornate gable ends with bargeboards, dentillated band, and bay window with slender barley twist columns.

- 111 Hutton Street – the only example of the Federation bungalow style in the precinct. Unusually it has a symmetrical façade in red brick with diamond quarrels to both sashes.
- 145-147 Miller Street – commercial building with an array of retained classicising elements (detailing to the pediment, elongated hoods, and recessed windows with frames) and an unusually intact canopy with decorative metal sheeting (fascia and soffit).
- 499 St Georges Road – a substantial early 1940s largely cream-brick Moderne style, originally a combined house/surgery. L-shaped and geometric form with curved balcony and umber brick plinth and tapestry brick banding ('speedlines'). It retains original timber doors with porthole glazing and timber-framed corner windows, as well as integrated garage with original metal tilt-door.

Primary source

Thornbury Park Estate Precinct (RBA Architects and Conservation Consultants, 2021)

4.1 Precinct assessment

(i) The issues

The issues are whether:

- the proposed heritage boundary is appropriate and justified
- Post-WWII housing should be included in the Thornbury Park Estate
- the Thornbury Park Estate meets the threshold of local heritage significance to justify the Heritage Overlay.

(ii) Evidence and submissions

Threshold for heritage significance

In relation to the overall precinct, there were submissions which considered:

- the entire precinct should not proceed because:
 - the precinct and its streetscapes lack integrity or heritage value due to the extent of demolition, alterations and disparate housing mix
 - of the low quality of the historical building fabric and its lack of any clear architectural cohesion
 - the scale of the precinct and the number of non-contributory buildings
- the low intactness of Fyffe and Rennie streets
- properties on Strettle Street and along the north side of Smith Street should be excluded because they do not contribute to the precinct.

Council submitted that previous Panels have consistently held the key factor to consider before applying the Heritage Overlay is whether the significance of the heritage fabric is sufficient to warrant the Heritage Overlay. In this case, Council submitted the question for the Panel is whether the Heritage Study and Mr Hemmingway's evidence justify applying the Heritage Overlay to the Thornbury Park Estate. Council said the evidence of Mr Hemmingway provides a sound and uncontested strategic basis for the justification and extent of the proposed Heritage Overlay.

Mr Hemmingway said the Thornbury Park Estate, whilst unusually large, has a large percentage (approximately 73 per cent) of intact significant and contributory buildings. He acknowledged that places within the precinct have a varying degree of intactness, but overall, the precinct remains

“legible as a Federation period subdivision developed largely over the late Federation, Interwar and Post-WWII periods”. He concluded that the precinct *“meets the threshold for local heritage significance as a result and relates to the key themes outlined in the Thematic History”.*

Council submitted that heritage is not confined to the grandest or the most unique buildings or places but provides *“important glimpses into the past to provide an understanding of a place for the benefit of the whole community”.*

Council submitted a place does not fail to contain heritage value because its buildings are not generally grand or ornate. Specifically, Council said:

The Statement of Significance for the Thornbury Park Estate explains that it contains ‘economical yet presentable housing stock’ which has a ‘humbleness in its construction’. This means that one should not expect to see overly grand or ornate buildings present in the estate as one might see in places such as Eaglemont and North Fitzroy. These more humble buildings are not necessarily any less important or should not necessarily be valued any less.

Similarly, Mr Hemmingway stated that the perceived low quality of the building fabric does not affect the ability of a place to meet the threshold for significance at the local level. He said buildings do not need to be completely intact to be designated contributory in the precinct, noting that all places have been assessed in accordance with the Burra Charter.

In relation to specific submissions about Fyffe Street, Mr Hemmingway said it is mostly intact with around 68 per cent of the places designated contributory. He acknowledged this is less than the average across the total precinct (which is approximately 73 per cent) and the southern side is generally more intact than the north. He went on to say:

That being said, when taken as a whole, Fyffe Street continues to contribute to the heritage value of the TPE. It is acknowledged that some of the individual streets have a lower level of intactness than the precinct as a whole, but this is not a reason to exclude them from the precinct if the precinct as a whole has the requisite level of intactness, which is this case it does.

Mr Hemmingway noted that Rennie Street is considerably intact with approximately 76% of places designated contributory (higher than the overall precinct average). In relation to the inclusion of Strettle Street he said those parts of Strettle Street which are included contain a high number of intact places, noting however these are mostly from the Post-WWII period.

Mr Hemmingway addressed Smith Street and why only the north side was included. He said while both sides were assessed, research identified the houses on the south side being part of an earlier, 1880s subdivision. He said development began during the late 19th century (Victorian period) rather than from the late 1910s (late Federation period) as with the Thornbury Park Estate subdivision.

Precinct boundary and Post-WWII housing

Submitters sought specific changes to the proposed boundary of the Heritage Overlay. Some submitters said the precinct is too large and others said the Heritage Overlay should be applied more broadly.

In response to this, Mr Hemmingway said the Heritage Study carefully considered the boundaries of the Heritage Overlay. He said the study area for assessment came from the 2019 Context report and largely corresponds to the c.1911 second Thornbury Park Estate subdivision. Mr Hemmingway explained how RBA Architects and Conservation Consultants undertook a review of the study area and concurred with the boundaries, albeit with some minor differences to boundaries along Miller Street to the north of the precinct and Smith Street to the south. Council

submitted the approach adopted by RBA and Mr Hemmingway is well researched and provides a rational basis for the proposed boundaries of the precinct.

The owner of 199 Miller Street submitted that the area to the east of Comas Grove should be removed from the Heritage Overlay. In making this submission she relied on a written assessment prepared by heritage consultant, Mr Aron Paul of Trethowan Architecture, which was provided to the Panel and parties in advance of the Hearing.

Mr Paul highlighted that the area west of Comas Grove was largely developed in the Post-WWII period and *“relates to a different historical period to the building stock that makes the broader precinct notable”*. Mr Paul said:

Post war housing stock does not contribute to the historical significance of the place and is better represented by the existing HO103 Kelley Grove to the north of the proposed HO318 Thornbury Park Estate. The post-war housing west of Comas Grove is very typical and not outstanding in its architectural or representative qualities.

Mr Paul considered the inclusion of Post-WWII housing in the precinct *“relates poorly to its historical significance as an Interwar housing estate and detracts from, rather than contributes to, the core areas of the precinct”*.

Regarding 199 Miller Street, Mr Paul highlighted that this section of Miller Street lacks cohesion as a heritage streetscape and said:

The house at 199 Miller Street is one of four interwar houses that sit isolated on the south side of Miller Street, west of Comas Grove. The other houses in this group, while more intact than the subject property, have had their presentation to the street compromised to a greater extent by inappropriate hard landscaping in the front setbacks.

The group of four houses are typical in their design and there is no question of them being individually significant. It is therefore unnecessary to extend the precinct boundary along the south side of Miller Street simply to include these outliers. These types of houses are already well represented in the rest of the precinct with much higher level of intactness and appropriate garden settings, in more cohesive streetscapes.

The assessment prepared by Mr Paul was tabled at the Hearing and the owner of 199 Miller Street read the assessment in full to the Panel. The Council did not make any submissions as to the weight the Panel ought to give this assessment, nor did it object to the assessment being tabled or relied upon.

(iii) Discussion

The Thornbury Park Estate is large, and therefore not without its challenges. The precinct originated as a large subdivision. The Heritage Study notes:

Subdivisions, and hence precincts, of this scale are unusual on a broader scale and even more so at this level of intactness and/or consistency.

The Panel agrees with Mr Hemmingway that the precinct is legible as a Federation period subdivision, albeit with a varying degree of intactness. While the building stock is generally humble and unassuming, this should not detract from its ability to meet the threshold for significance at a local level. The buildings do not need to be completely intact to be designated contributory. The contributory and significant homes generally:

- contribute to the character of the streetscape and precinct
- were constructed during the period of significance

- are intact, and those which are altered remain largely identifiable as an example of its type/period
- comprise of single storey weatherboard homes with consistent front setbacks.

When viewed as a whole however, the Panel is not convinced that the precinct reads as a single, intact and cohesive precinct.

East of the Bracken Avenue Linear Park

The Panel observes that east of the Bracken Avenue Linear Park, there are a higher number of non-contributory places compared to the remainder of the precinct. Within this part of the precinct, there are clusters of non-contributory places including on Fyffe Street, Hutton Street and Harold Street where all three intersect Bracken Avenue and Hobson Street. The number and location of these non-contributory pockets restrict the ability to understand that surrounding properties are interrelated within one precinct.

The Heritage Study acknowledges that Bracken Avenue *“broadly dissects the precinct into east and west halves”* and notes:

Rennie Street is considerably intact, more so to the western part.

There has been slightly more change on this street [Harold Street] however, especially on the east side of the intersection with Bracken Avenue.

Although the street [Hutton Street] is considerably intact overall, there has been a concentration of change in the vicinity of Bracken Avenue.

The Panel finds the Bracken Avenue Linear Park serves as a physical and visual barrier which is further accentuated by the high concentration of non-contributory houses on every east-west street that it intersects with. Its cohesiveness is therefore notably eroded through this concentration and location of non-contributory properties.

West of Comas Grove

Similarly, the Panel agrees with Mr Paul that the area west of Comas Grove also has a limited connection to the rest of the precinct.

During both site inspections, the Panel observed that the land falls away significantly to the west of Comas Grove and the slope is particularly prominent along Strettle Street. The Panel considers the contribution the houses in this part of the precinct make to the precinct’s significance is significantly different to the contribution the houses east of Comas Grove make.

In general, to the east of Comas Grove the homes are single storey, weatherboard construction and the land is flat. Conversely, to the west of Comas Grove there are more houses that have a two-storey or split-level presentation to the street, particularly on Rennie and Strettle Streets. The houses are largely brick construction, with low brick front fences which is attributed the high proportion of homes constructed in the Post-WWII era.

From a historical perspective, the area to the west of Comas Grove has generally been developed in the postwar period and therefore relates to a different historical period to the building stock to the east of Comas Grove. The high number of Post-WWII houses in this area, compared to the remainder of the precinct which is historically significant as an Interwar subdivision, restrict the ability to understand the housing stock being from within one precinct.

The exception to this is:

- the Church Manse and the properties surrounding it between Hill and Fyffe streets on the west side of Comas Grove
- the Inter-war houses which sit to the west of Comas Grove between Miller and Rennie Streets.

The Manse and the adjoining interwar homes are an intact group of properties and are readily connected to the rest of the precinct thereby contributing to its heritage significance, particularly when viewed from the corner of Hutton and Fyffe streets. The slope of the land along this part of Comas Grove is also less prominent. The Panel notes that some of these houses have brick or rendered facades with low brick fences, including the Manse. This is attributed to their construction in the Late Interwar period.

The Interwar houses which sit to the west of Comas Grove between Miller and Rennie Streets equally contribute to the heritage significance of the area and can be readily appreciated as being part of the Interwar precinct. They front Comas Grove which gives them a clear connection, unlike others further west which front Keon and Miller Streets and have no visual connection to the precinct.

Miller Street (west of Comas Grove) and Hill Street both have limited connection to the rest of the precinct, and by virtue do not readily contribute to its heritage significance. In addition to the slope and high proportion of Post-WWII homes, both streets have non-contributory houses that serve to bookend their eastern sections and limits their visual connection to the rest of the precinct.

The non-contributory aged care facility behind the Manse (facing Strettle Street) is a significant property which dilutes the intactness of this part of the precinct.

The Panel is therefore recommending a reduced precinct (see Figure 2) which is bound by Miller Street to the north, Bracken Avenue Linear Park to east, Smith Street to the south and Comas Street to the west with the inclusion of properties on the west side of Comas Street between Fyffe and Hill streets, and between Miller and Rennie Streets. This central part of the precinct is legible and cohesive, with a higher concentration of contributory and significant properties and is cohesive enough to meet the threshold of local heritage significance.

Figure 2 Panel preferred version of Thornbury Park Estate Precinct (red solid line)

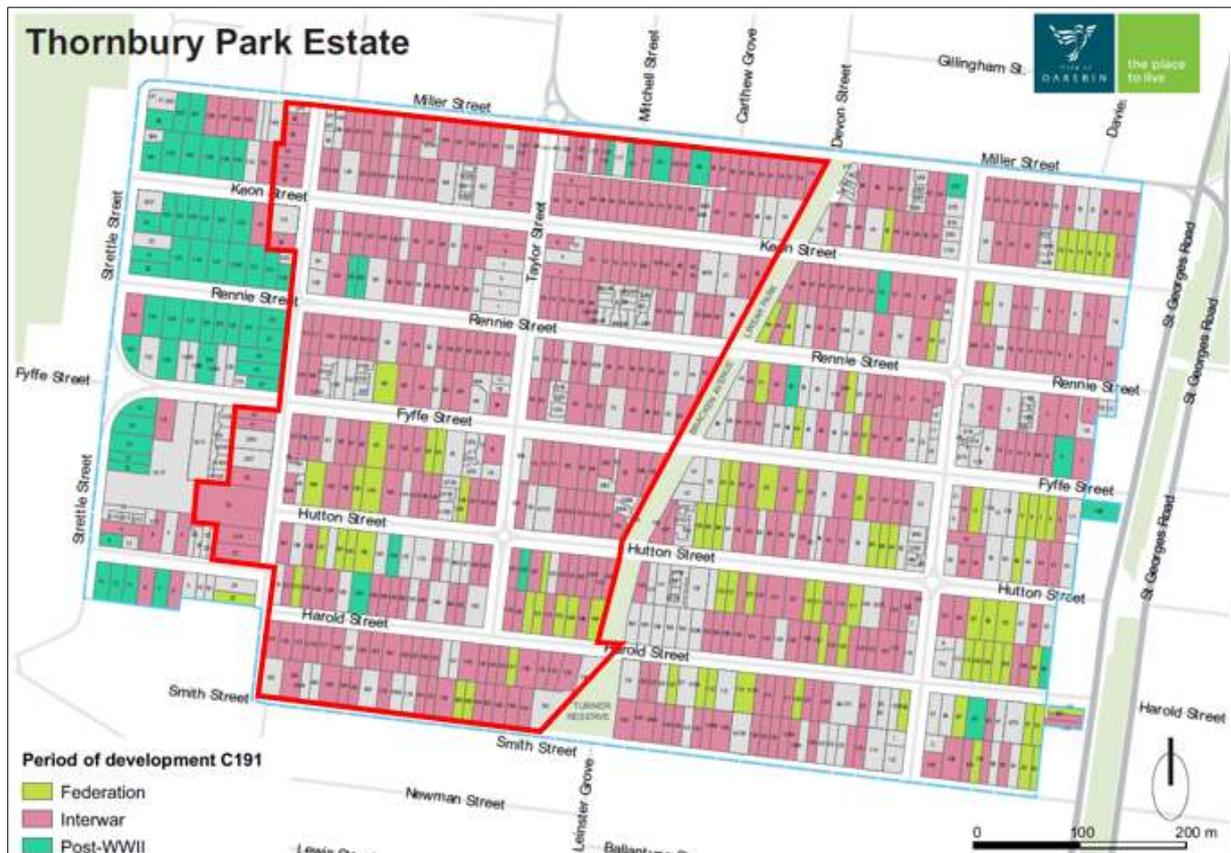


Figure 2 demonstrates the breakdown of development periods in the precinct and identifies which homes are from the Federation, Interwar and Post-WWII periods. The Panel sought this information from the Council at the conclusion of the Hearing.

In recommending the removal of the properties west of Comas Grove from the precinct very few Post-WWII homes remain. The Panel questions whether the remaining Post-WWII houses contribute to the precinct on the basis that they, as noted in the Heritage Study “*are more likely to have been constructed in brick than those dating to either the Federation or Interwar periods*”.

The comparative analysis in the Heritage Study did not reference any other precincts that spanned the three periods of construction as proposed in this amendment. The comparative analysis does however highlight several precincts that encompass both the federation and interwar eras.

The Panel notes Mr Paul’s comments regarding Kelley Grove (HO103) being “*a contiguous, intact cul de sac heritage precinct of post-war brick dwellings that much better represent the period of post-war subdivision and development*”. The Panel undertook a site inspection of Kelley Grove and agrees.

Mr Hemmingway submitted that approximately 73 per cent of buildings in the precinct were either contributory or significant. In cross examination, Mr Hemmingway was not able to confirm a percentage of building stock in a precinct which should be contributory for it to meet the threshold for significance but said a high level of consistency is important.

Redesignating the nine Post-WWII properties and the five properties assessed as low for intactness (refer to chapter 4.2) to non-contributory will reduce the overall percentage of contributory and significant properties.

However, the Panel is satisfied that with the revised precinct boundary, the number of contributory and significant properties remains high and will meet the threshold for local significance. It has a higher concentration of Federation and Interwar properties and is a legible and cohesive precinct.

(iv) Conclusions and recommendations

The Panel concludes:

- The Thornbury Park Estate Precinct should be reduced in size (see Figure 2).
- Post-WWII housing does not contribute to the Thornbury Park Estate Precinct and the remaining properties in the reduced precinct should be designated non-contributory.
- The Panel's preferred Precinct (Figure 2) meets the threshold for local significance to justify the Heritage Overlay.

The Panel recommends:

Amend the land to which Heritage Overlay HO318 applies to reflect the Panels' preferred precinct boundary as shown in Figure 2.

Amend the Statement of Significance for HO318 (Thornbury Park Estate Precinct) as follows:

- a) **Update the Gradings Map Plan to reflect the Panels' preferred precinct boundary as shown in Figure 2.**
- b) **Update the Gradings Map Plan to designate the following Post-WWII properties as non-contributory:**
 - **119 Miller Street**
 - **115 and 115A Miller Street**
 - **107 Miller Street**
 - **95 Miller Street**
 - **100 Rennie Street**
 - **102 Rennie Street**
 - **179 Hutton Street**
 - **159 Hutton Street**
 - **200 Harold Street.**
- c) **Update the Gradings Table to reflect the new precinct boundary and revised grading of properties.**
- d) **Delete all references to "Post-WWII" in the 'What is significant?' section.**
- e) **Update the 'Why it is significant?' section to reflect the Panel's recommendations.**

Replace the Gradings Map Plan in Thornbury Park Estate City of Darebin Heritage Study Incorporated Plan – Permit Exemptions (2011, amended 2021) to reflect the new precinct boundary and revised grading of properties.

4.2 Precinct-wide issues

(i) The issues

The issues are whether:

- a non-contributory property should be excluded from a heritage precinct

- the Heritage Overlay should be limited to only properties which are designated significant
- it is more appropriate to protect neighbourhood character rather than heritage
- it is appropriate that places which display low integrity or intactness be designated contributory.

(ii) Evidence and submissions

Non-contributory properties

Several submitters sought to remove their non-contributory properties from the heritage precinct. Others submitted the Heritage Overlay should only include properties which are designated as significant.

Council submitted that such an approach is contrary to the established principles for identifying a heritage precinct. Council submitted:

The statutory framework expressly contemplates that there will be non-contributory buildings located within a precinct, and in turn the HO. Council submits that the proposed inclusion of non-contributory places within the HO is necessary to ensure that their development does not impact on the heritage values of the precinct.

Council considered that including non-contributory buildings in the precinct is appropriate and necessary to protect its identified heritage values.

Significant properties

Mr Hemingway said:

There are very few places in the precinct that would have heritage significance independent of their context, except for the five individually notable places graded significant. These places are 'are relatively substantial, have a greater level of detailing, and higher quality palette of materials' than the contributory graded places, which are more modest and similar in appearance.

...

As much of the significance of the TPE is derived from it being a large group of generally intact examples of modest housing, the values of the place would not be conserved by just applying the heritage overlay to the significant graded places, even if they are generally more elaborate and/or substantial.

Neighbourhood character

Some submitters also opposed the Heritage Overlay and suggested the Council should instead be protecting neighbourhood character rather than heritage fabric. Council submitted that Mr Hemmingway's evidence and work undertaken confirms the Thornbury Park Estate is significant from a heritage perspective. Council said:

In light of Mr Hemmingway's findings, Council considers that the HO is the preferred planning tool to manage the future development of the Thornbury Park Estate.

Designating properties which display low integrity or are nominated as low for intactness

Submitters raised concerns that some contributory places display low integrity to their original condition and should be designated non-contributory.

Mr Hemmingway's evidence was that places do not have to be completely intact to be designated contributory in the precinct. He drew a distinction between the condition of the place and its potential heritage value and fabric noting that a place which is in poor condition can usually be

repaired with matching detailing. His evidence also referenced the Heritage Study which says that a place has been attributed a contributory grading if the following apply:

It contributes to the character of the streetscape/precinct, and

It was constructed during the period of significance (identified as the main or secondary phases of development in the statement of significance), and

It is an intact example or a place which though altered, remains largely identifiable as an example of its type/period, and

It typically retains its form, most original materials, and at least some original detailing (which might include openings [windows + doors], chimneys, verandah or porch, decorative elements, etc.),

Generally any changes that have occurred are reversible, allowing for accurate reconstruction in accordance with the Burra Charter,

If it forms part of a similar group, then it could be more altered if other examples in the group are intact,

If there are visible additions, they are sufficiently set back such that the original section is not overwhelmed and the original roof form remains legible. For instance, the addition is set behind the main ridge (when it is parallel to the street).

Several parties pointed to inconsistencies in the designation of properties which are nominated low for intactness – some being contributory and some being non-contributory. For example, 20 and 22 Fyffe Street (both non-contributory with low intactness) and 46 Rennie Street (contributory with low intactness). Mr Hemmingway said that generally those homes which might appear as significant, but for specific new additions or features which are not ‘readily reversible’, have been designated low for intactness.

Questioned on whether this approach might be somewhat inconsistent given the lace detailing on the 22 Fyffe Street home (non-contributory) is more readily reversible than the second storey addition at 46 Rennie Street (contributory), Mr Hemmingway acknowledged that there may be errors in the designation, given over 1,000 properties were assessed.

(iii) Discussion

Non-contributory properties

The Panel agrees with Council that it is common practice for non-contributory buildings to be included in the Heritage Overlay precinct boundary. This is to ensure any future development on those sites does not adversely impact the significance of the precinct. While a non-contributory property can be significantly altered or replaced, it must still fit within the heritage streetscape and sensitively respond to its surrounds and the precinct’s significance.

Significant properties

It is not appropriate to limit properties in the Heritage Overlay to those which are designated as significant. Most of the properties in the precinct are designated contributory and it is these properties which contribute so meaningfully to the precinct’s overall significance.

Neighbourhood character

The Panel does not consider that a neighbourhood character tool would be appropriate. Neighbourhood character is different from heritage. Heritage is about the conservation of culturally significant places and precincts whereas character is more about the way houses, vegetation and topography create a visual sense of place. The purpose of the Amendment is to

manage the future development of the Thornbury Park Estate given its heritage significance. The Heritage Overlay is an appropriate planning tool to manage the future development of the area.

Grading of properties which display low integrity or are nominated as low for intactness

The Panel accepts that places do not have to be completely intact to be designated contributory in the precinct. However, the Panel has more difficulty in accepting Mr Hemmingway's 'readily reversible' test when assessing a building's level of intactness. It is difficult to understand why, properties with features such as lace detailing which is arguably 'readily reversible' are given a non-contributory designation, and properties with upper floor additions which are less easily reversed are designated contributory. The Panel notes Mr Hemmingway's acknowledgement that there may be errors in the assessments, given the sheer scale of the precinct.

Of those properties which remain in the Panel's preferred version of the precinct, there are only five properties which are designated contributory with low intactness. The Panel considers that these five properties should be designated non-contributory. Mr Hemmingway's evidence in relation to the issue was not compelling enough to justify the contributory designation.

(iv) Conclusions and recommendations

The Panel concludes:

- it is appropriate and justified to include a non-contributory property in the precinct to ensure future development on that land responds sensitively to the heritage fabric on neighbouring contributory properties in the precinct
- it is not appropriate to limit the heritage precinct to significant properties only
- the correct planning tool to manage the future development of the precinct is the Heritage Overlay rather than through a neighbourhood character control
- places which are not sufficiently intact to contribute to the precinct's significance should be designated as non-contributory.

The Panel recommends:

Amend the Statement of Significance for HO318 (Thornbury Park Estate Precinct) as follows:

- a) **Amend the Gradings Map Plan to designate the following properties with low intactness as non-contributory:**
 - **72 Keon Street, Thornbury**
 - **163 Hutton Street, Thornbury**
 - **185 Hutton Street, Thornbury**
 - **85 Fyffe Street, Thornbury**
 - **76 Rennie Street, Thornbury**
- b) **Update the Gradings Table to reflect the revised grading of properties.**

4.3 Individual properties

(i) The issues

The issue is whether some properties should be redesignated non-contributory or whether the Heritage Overlay should not be applied to them.

(ii) Evidence and submissions

A total of 26 submitters requested their individual property be either removed from the Heritage Overlay or designated non-contributory (see summary in Table 3).

Mr Hemmingway provided a response to each of these requests in his evidence.

Table 3 Panel summary of specific change sought by property

Sub No.	Address	Era	Intactness	Inside Panel proposed HO boundary
1	171A Harold Street	Interwar	High	Yes
14	27 Keon Street	Interwar	High	No – east Bracken Avenue
28	31 Strettle Street	Interwar	High	No – west Comas Grove
29	62 Keon Street	Interwar	High	Yes
31	144 Keon Street	Postwar	High	No – west Comas Grove
33	138A Smith Street	Interwar	High	No – east Bracken Avenue
43	47 Fyffe Street	Interwar	Medium	No – east Bracken Avenue
58	66 Fyffe Street	Interwar	High	Yes
57	455A St Georges Road	Interwar	Medium	No – east Bracken Avenue
71	123 Harold Street	Federation	High	No – east Bracken Avenue
73	11 Strettle Street	Interwar	High	No – west Comas Grove
76	26 Rennie Street	Interwar	High	No – east Bracken Avenue
79	212 Harold Street	Interwar	High	Yes
81, 93	118 Smith Street	Interwar	High	No – east Bracken Avenue
94	117 Keon Street	Interwar	Medium	Yes
95	154 Smith Street	Interwar	High	Yes
96	113 Hutton Street	Interwar	Medium	No – east Bracken Avenue
97	115 Hutton Street	Interwar	High	No – east Bracken Ave
83	25 Strettle Street	Postwar	Medium	No – west Comas Grove
87	199 Miller Street	Interwar	Medium	No – west Comas Grove
100	39 Rennie Street	Interwar	High	No – east Bracken Avenue
105	50A Rennie Street	Interwar	High	Yes
113	132 Harold Street	Federation	High	No – east Bracken Avenue
114	1/51 Miller Street	Postwar	High	No – east Bracken Avenue
116	166 Harold Street	Interwar	Medium	Yes
167	174 Smith Street	Interwar	Medium	Yes

In relation to 62 Keon Street, Mr Hemmingway was asked in cross examination if it was unusual to have the front door to the side. He confirmed that this was common and reflected the informality of the 'arts and crafts' influence on houses in the 20th century.

(iii) Discussion

The Panel recommends the precinct be reduced in size (refer to Chapter 4.1 and Figure 2). The Panel has not assessed those properties that fall outside the recommended precinct boundary.

The Panel has undertaken an assessment including a site inspection of the remaining nine sites:

- 171A Harold Street
- 62 Keon Street
- 66 Fyffe Street
- 212 Harold Street
- 117 Keon Street
- 154 Smith Street
- 50A Rennie Street
- 166 Harold Street
- 174 Smith Street.

All the remaining nine sites are considered to have a High or Medium level of intactness in the Heritage Study.

The Panel agrees with Mr Hemmingway's assessment of the remaining sites that they contribute to the precinct and should retain their contributory designation. The relevant properties are intact examples of interwar homes which relate to their period of significance.

(iv) Conclusion

The Panel concludes no change should be made to the contributory designation of the remaining nine sites.

Appendix A Planning context

Planning Objectives

Victorian planning objectives

The Amendment will implement section 4(1)(d) of the *Planning and Environment Act 1987* (the Act) 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
- balance the present and future interests of all Victorians.

Planning Scheme

The Amendment supports:

- **Clause 15.01-5S** (Neighbourhood character) which seeks to recognise, support and protect neighbourhood character, cultural identity, and sense of place.
- **Clause 15.03-1S** (Heritage conservation) which seeks to ensure the conservation of places of heritage significance. Relevant strategies are:
 - 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.
 - Ensure an appropriate setting and context for heritage places is maintained or enhanced.

Clause 21 (the Municipal Strategic Statement)

The Amendment supports the MSS by:

- Clause 21.01 (Introduction)
- Clause 21.02-3 (Built Environment)
- Clause 21.02 -4 (Heritage).

Other relevant planning strategies and policies

Plan Melbourne

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.

Planning scheme provisions

The Heritage Overlay 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.

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.

Ministerial Directions and Practice Notes

Ministerial Directions

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

- Ministerial Direction 9 (Metropolitan Planning Strategy)
- Ministerial Direction 11 (Strategic Assessment of Amendments)
- Ministerial Direction 15 (The Planning Scheme Amendment Process)
- 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 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.

Planning Practice Note 1 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).

Appendix B Subject land

The Amendment applies to individual properties at the following addresses:

- 27-67 and 34 – 64 Comas Grove, Thornbury
- 1 – 115 and 2 – 132 Fyffe Street, Thornbury
- 75 – 177 and 96 – 214 Harold Street, Thornbury
- 1 (1D and 1E)– 15 and 2-12 Hill Street, Thornbury
- 25 Hobson and 2 -10 Hobson Street, Thornbury
- 40- 158 and 87-197 Hutton Street, Thornbury
- 1A – 133 and 2-144 Keon Street, Thornbury
- 21 -205 Miller Street, Thornbury
- 1 -135 and 2 -118 Rennie Street, Thornbury
- 90-192 Smith Street, Thornbury
- 455 –459 and 499 St. Georges Road, Thornbury 9-41 Strettle Street, Thornbury
- 1-19 and 2-8 Taylor Street, Thornbury.

Appendix C Submitters to the Amendment

A total of 178 submission were received including one petition with 20 signatures.

On 25 July 2022 Council advised the office of Planning Panels Victoria that submission 48 had been withdrawn after the submitter sold their property.

No.	Submitter	No.	Submitter
1	Andrew Pattison	29	Catherine Maguire
2	Scott and Cathy Riddle	30	Soozah Clark
3	Tammy and Aryeh Seligmann	31	Hariklia Papadopoulos
4	Meghann Mackay	32	Stephen Joyce and Michelle Harvey
5	Emily Fraresso	33	Matthew and Jenna McGowan
6	Helen Kooloos	34	Ann Jeanes
7	Adam Kooloos	35	Denise Chevalier
8	Vikraman Selvaraja	36	Katy Cornish
9	Soon Tzu Speechley	37	Cameron Knight
10	Tim Cooke	38	Diana Ward
11	Ms Ruth Agar	39	Ms Janet Hammill
12	Michael Foster	40	Robin Harper and Andrew Warmington
13	Moreland City Council	41	Mitch Harris
14	Joe and Linda Pepe, Andy Dal Pozzo	42	Geoff and Leanne Freeth
15	James Lomax	43	Fiona Walters
16	Jason Cormier	44	Gordon Pattullo
17	Tara Laursen	45	Susan Lawrence and Peter Davies
18	Anna Robinson	46	Les and Bernadette Rudd
19	Ian Lyster	47	Polly Watkins and Malte Wagenfeld
20	Sara Jane and Essie Smith	48	WITHDRAWN
21	Simon Cornish	49	Renee Wierzbicki
22	Greg Ireton	50	Edna Primoratz
23	George and Georgia Pavlakis	51	Margaret Hanrahan
24	Michael Smith	52	Natalie Fundera
25	Anita Carmelli	53	Charlotte Stafford
26	Steffen Couwel	54	Brett Esler
27	Chris Sgourakis	55	Max Sargent
28	Evangelia Belic	56	Sue Sukkar

No.	Submitter	No.	Submitter
57	Sue Zhang	90	Doris Lombardo
58	Umit Baykur	91	Sharon Temple
59	Susan Stearn	92	Bob Stafford
60	Paul Sinclair	93	G Seven
61	Alex Dal Santo	94	Peter Ryan
62	Alice Glover	95	Marie Geary
63	Bernard Lyons	96	David Chapple
64	Gillian Dite	97	Greg Hodnett
65	James McDonald	98	Paul Vascotto and Ana Rachman
66	Patrick Senn	99	Annette Kalkbrenner
67	Evie Hartshorne	100	Samantha Knott and Jeremy Allan
68	Greg Wood	101	Geoffroy Denis
69	Roger Killmier	102	George Apostolopoulos
70	Sue Helme	103	Frank Berra
71	Jared Hammett	104	Jason Ortenzio
72	Ben Purcell	105	Margot Kilgour
73	Sara Webb	106	Antonina Bandalo
74	Fabio Palermo	107	Sheryll Venn
75	Donna Stergiopoulos	108	Waled Shihata
76	Peter Pacella	109	Karim Shihata
77	Ms Nicole O'Brien	110	Elizabeth Reynolds
78	Anonymous	111	Michael Divito
79	Matthew Dive	112	Chantelle Izzi
80	Anonymous	113	Helen Lyon
81	Susan Seven	114	Grant and Amy Young
82	Nicola McGowan	115	Will Jones
83	Kenneth Koh	116	Ms Lauren Krnjacki
84	Elise Needham	117	Lola Jones
85	Jennifer Whitehead	118	Zaim Ramani
86	Jack Whitehead	119	Mynever Ramani
87	Stacia Goninon	120	Nazim Ramani
88	Mohammed Shihata	121	Lynetta Ramani
89	Sam Power	122	Zanie Redzepi

No.	Submitter	No.	Submitter
123	Sami Redzepi	152	Marsha Degen
124	Feime Redzepi	153	Tristan Gamillis
125	Shpendi Zeneli	154	Janice and Mark Lucas
126	Qamil Redzepi	155	Andrew Sloan
127	Vezire Redzepi	156	Ms Deirdre Baker
128	Ms Ana Athanasiadis	157	Huai Wong
129	Samuel Fontana	158	Olwyn Eaton
130	Tania Fontana	159	Ms Cassandra Chapple
131	Adam Fontana	160	Ms Sue O'Brien
132	Neim Ramani	161	Barry O'Brien
133	Melika Ramani	162	Stephen Carbone
134	Lindim Ramani	163	Tom Wilcox
135	Ramis Zeneli	164	Nicki Russell
136	Skenderije Zeneli	165	Joe and Georgette Jabbour
137	Bianca Mustafa	166	Lorraine Tugnett
138	Limoza Nuri	167	Edward and Georgette Bucknell
139	Jessica Hartsilver	168	Con Raphael
140	Fellenxa Muke	169	Sharon Laurence
141	Peter Canals	170	Frances Hoban
142	Sheila Ball	171	Markus Tschuch
143	Warren Seagar	172	Andrew Xuerub
144	Sophie Brown	173	Margaret Azoury
145	Robyn Knott	174	Mark Bavaresco
146	David Galligan	175	Nick Testro
147	Pia Ednie Brown	176	Alex Siderakis
148	Bruce Mowson	177	Vicky Siderakis
149	Sofia Giannatselis	178	Tony Owczarek
150	Nevzat Redzepi	179	Petition (with 20 signatures)
151	Emerson Redzepi		

Appendix D Document list

	Date 2022	Description	Presented by
1	27 Apr	Directions Hearing letter	PPV
2	13 May	Directions and timetable	PPV
3	18 May	Map of Submitters	Darebin Council
4	20 May	Timetable and distribution list – version 2	PPV
4a	20 May	PPV MS Teams Guide v2	PPV
5	23 May	Examples of properties in the SBO	Mr Berra
6	26 May	Clause 72.04 HO Exemptions Incorporated Document - tracked changes	Darebin Council
7	26 May	Timetable and distribution list – version 3	PPV
8	30 May	Timetable and distribution list – version 4	PPV
9	1 June	Council Part A Submission	Darebin Council
10	1 June	Expert witness statement of Anthony Hemingway	Darebin Council
11	3 June	Thornbury Park Estate Precinct Heritage Study Nov 2021	Darebin Council
12	6 June	Adjournment request from Mr Vascotto	Mr Vascotto
13	6 June	Council Part B Submission	Darebin Council
14	6 June	Adjournment request from Ms Maguire and Mr Elser	Ms Maguire
15	6 June	Letter regarding adjournment requests and timetable – version 5	PPV
16	6 June	Council response regarding circulation of Hip v Hype model	Darebin Council
17	7 June	Response from Mr Berra to Panel letter dated 6 June	Mr Berra
18	7 June	Response from Council supporting adjournment request	Darebin Council
19	7 June	Email advising an adjournment of the Hearing and further Directions Hearing	PPV
20	10 June	Further Directions and timetable (version 6)	PPV
21	14 June	Letter filing modelling data	Darebin Council
22	14 June	Case 1 - Original	Darebin Council
23	14 June	Case 1 - Minor Renovation	Darebin Council
24	14 June	Case 2 - Original	Darebin Council
25	14 June	Case 2 - Major Renovation	Darebin Council
26	14 June	Case Study One As Is Dimensions	Darebin Council
27	14 June	Case Study One Minor Renovation Dimensions	Darebin Council
28	14 June	Case Study One Renovated 3.5kW North WoH Report	Darebin Council

	Date 2022	Description	Presented by
29	14 June	Case Study One Renovated 4.8kW North WoH Report	Darebin Council
30	14 June	Case Study Two As Is Dimensions	Darebin Council
31	14 June	Case Study Two Major Renovation Dimensions	Darebin Council
32	19 June	Follow up questions regarding modelling data	Mr Vascotto
33	23 June	Letter filing amended submitter map	Darebin Council
34	23 June	Amended submitter map	Darebin Council
35	26 June	Further letter from Paul Vascotto	Mr Vascotto
36	29 June	Part C Submission - Council's Response to Panel's questions	Darebin Council
37	29 June	HVH Memo	Darebin Council
38	4 July	Frank Berra - Submission	Mr Berra
39	5 July	Paul Vascotto and Ana Rachman - Presentation (1 of 2)	Mr Vascotto
40	5 July	Paul Vascotto and Ana Rachman - Presentation (2 of 2)	Mr Vascotto
41	5 July	Paul Vascotto and Ana Rachman - Submission	Mr Vascotto
42	7 July	Brett Esler - Submission	Mr Elser
43	7 July	Brett Esler - Letter from Melbourne Water	Mr Elser
44	7 July	Brett Esler - Survey Plan of 62 Keon Street	Mr Elser
45	7 July	Catherine Maguire - Submission	Ms Maguire
46	7 July	Catherine Maguire - Carter Grange Letter	Ms Maguire
47	7 July	Catherine Maguire - Letter from Alex Slater	Ms Maguire
48	7 July	Catherine Maguire - Initial calculations for proposed PassivHaus at 62 Keon Street	Ms Maguire
49	7 July	Catherine Maguire - Edge Environment – Energy efficient dwellings – Can embodied energy spoil the story	Ms Maguire
50	7 July	Catherine Maguire - Nature Climate Change -Detection of continental-scale intensification of rainfall - Guerreiro et al 2018	Ms Maguire
51	12 July	Hemmingway Supplementary Statement	Darebin Council
52	12 July	Steve Joyce Slides	Mr Joyce
53	12 July	Steve Joyce Notes	Mr Joyce
54	12 July	Hemmingway Witness Statement – Last page (omitted from previous version)	Darebin Council
55	12 July	Stephen Carbone Notes	Mr Carbone
56	13 July	Extract from Darebin Webpage re: internal controls for significant properties	Mr Vascotto
57	13 July	62 Keon Submission	Ms Maguire

	Date 2022	Description	Presented by
58	13 July	Community consultation questions	Mr Vascotto
59	13 July	Response to community consultation questions	Mr Vascotto
60	13 July	Embodied Energy Master	Mr Vascotto
61	13 July	Condensation Master	Mr Vascotto
62	13 July	Robin Harper Submission	Ms Harper
63	13 July	Council Meeting Agenda 26 April 2021	Darebin Council
64	13 July	Email regarding condensation management and interstitial condensation	Ms Maguire
65	25 July	Thornbury Park Estate Heritage - period Map	Darebin Council
66	2 August	Email regarding property data	Darebin Council
67	2 August	Email requesting property data of non-contributory properties	PPV
68	8 August	Email with property data	Darebin Council