

Moreland City Council

90 Bell Street

Coburg Victoria 3058

Telephone 61 3 9240 1111

Facsimile 61 3 9240 1212

info@moreland.vic.gov.au

www.moreland.vic.gov.au

Part B (1) - Submission by the Planning Authority Moreland City Council

Planning Scheme Amendment C208more

Implementation of the Heritage Nominations Study

**1 March 2022**

**TRIM: D22/26811**

**Contents**

[1. Introduction 3](#_Toc96942579)

[1.1 Structure of submission 3](#_Toc96942580)

[2. Overview 4](#_Toc96942581)

[3. Summary of issues raised in submissions 5](#_Toc96942582)

[3.1 Common Key Issues 5](#_Toc96942583)

[Financial Implications and Property Values 5](#_Toc96942584)

[Maintenance and repairs of heritage places 8](#_Toc96942585)

[Development Restrictions & Property rights 10](#_Toc96942586)

[Public Exhibition and Consultation 15](#_Toc96942587)

[Heritage Grants and Support 16](#_Toc96942588)

[Heritage Nominations 16](#_Toc96942589)

[The appropriateness of the Heritage Overlay 17](#_Toc96942590)

[Social Significance 19](#_Toc96942591)

[3.2 Heritage Specific Issues 21](#_Toc96942592)

[Level of Heritage Significance 21](#_Toc96942593)

[Building Condition and Intactness of a Heritage Place 22](#_Toc96942594)

[Specific Heritage Issues to be addressed in Expert Witness Statement 24](#_Toc96942595)

[4. Final Position on the Amendment 26](#_Toc96942596)

# **Introduction**

1. This submission is made by Moreland City Council (Council). Council is the Planning Authority for Amendment C208more (the Amendment) to the Moreland Planning Scheme (Planning Scheme).
2. My name is Nia Kolokas. I am a Senior Strategic Planner at Moreland City Council (Council) and I will be presenting Council’s submission to the Panel on Amendment C208more.
3. I will be assisted throughout the submission by Kim Giaquinta, Unit Manager Strategic Planning at Moreland City Council who has overseen the preparation and management of the Amendment in her role as my direct supervisor.
4. Expert evidence in relation to the preparation of the Moreland Heritage Nominations Study (MHNS) and application of the Heritage Overlay (HO) will be presented by Dr Luke James of Extent Heritage Pty Ltd (Extent Heritage) on day one of this hearing (Tuesday 1 March 2022).
5. Expert evidence in relation to 151A Lygon Street Brunswick East will be presented on day four of the hearing (Tuesday 3 May 2022).

## **Structure of submission**

1. This submission forms Part B (1) of Council’s Submission to the Panel. Part A was circulated as directed by the Panel on the 22 February 2021 and provides the strategic justification for the Amendment and overview of the Amendment process undertaken.
2. Part B (1) addresses submissions received as a result of the public exhibition of the Amendment and specific matters as directed by the Panel.
3. Council’s Part B (1) Submission will be presented in the following format:

* Brief overview of the Amendment
* Key issues raised in submissions and response
* Response to evidence tabled

1. It is not Council’s intention to run through the strategic justification and the process that was undertaken for the Amendment except where relevant to a key issue. A detailed assessment is contained within Council’s Part A submission.

# **Overview**

1. The Amendment sought to implement the findings of the Moreland Heritage Nominations Study 2020 (MHNS) and Moreland Heritage Gap Study 2019 (MHGS) by introducing a heritage overlay (HO) on a permanent basis to 45 individual places, 1 serial listing, 7 new precincts and 3 precinct extensions in Brunswick, Brunswick East, Brunswick West, Coburg, Coburg North, Fitzroy North, Glenroy, Oak Park, Pascoe Vale and Pascoe Vale South. The exhibited Amendment also sought to rectify a number of mapping anomalies of the Moreland Heritage Overlay and update the significance of 6 HO listings.
2. The Amendment as exhibited proposed to:

* Amend Clause 15.03-1L (Heritage in Moreland) of the Moreland Planning Scheme to make reference to the *Moreland Heritage Nominations Study, 2020*.
* Amend the Schedule to Clause 43.01 (Heritage Overlay) to introduce the Heritage Overlay to 45 new individual places, 1 serial listing, 7 new precincts and 3 precinct extensions and include a reference to their associated Statement of Significance Incorporated Plan.
* Amend the Schedule to Clause 43.01 (Heritage Overlay) to introduce a separate Statement of Significance Incorporated Plan to four (4) existing individual places and two (2) existing precincts.
* Amend the Schedule to Clause 43.01 (Heritage Overlay) to delete the Heritage Overlay from 5 existing individual places.
* Amend the Schedule to Clause 72.04 (Documents Incorporated in this Planning Scheme) to include the Statements of Significance of all heritage places, serial listing, precincts and precinct extensions listed above and referenced in the updated *Moreland Heritage Exemptions Incorporated Plan 2020*.
* Amend Planning Scheme Maps 2HO, 6HO, 7HO, 8HO, 9HO, 10HO, 11HO, 12HO, 14HO and 15HO in line with the above changes and to rectify mapping anomalies.

1. On 12 August 2020, Council resolved to write to the Minister for Planning to seek Authorisation to prepare the Amendment, and following receipt of the Minister’s Authorisation, proceed to public exhibition in accordance with Section 19 of the *Planning and Environment Act 1987* (the Act).
2. On 9 July 2021, the Department of Environment, Land, Water and Planning (DELWP) confirmed that Council was granted authorisation to prepare and exhibit Amendment C208more subject to conditions.
3. The Amendment was exhibited from 13 August 2021 to 1 October 2021, in accordance with Section 19 of the Act.
4. A total of forty four (44) submissions were received to the Amendment, forty one (41) during the exhibition period and three (3) late submissions.
5. On 8 December 2021, Council resolved to request the Minister for Planning to appoint a Panel in accordance with Part 8 of the Act to consider submissions.

# **Summary of issues raised in submissions**

1. In total, forty four (44) submissions were received regarding Amendment C208more.
2. Council will first address key issues which were raised across the submissions that are not related specifically to the heritage value of a particular site or precinct. The second part of our response to submissions will respond specifically to issues around heritage value, including a response to submitters to the panel process.

## **Common Key Issues**

1. In general, submissions raised concerns specific to a particular site and circumstance, however there were consistent themes which emerged across submissions which can be addressed in broad terms.

### **Financial Implications and Property Values**

1. A number of submissions raised concerns that the application of the HO would result in a decrease of their property values and/or increase in maintenance costs.[[1]](#footnote-1)
2. Council acknowledges that financial aspects and conditions are of considerable concern to property owners. However, the question is whether they are a valid consideration when identifying heritage places and protecting them through the introduction of the HO.
3. Council submits that the private financial impacts for property owners (such as those raised by submitters) are not relevant economic matters when considering an amendment to the Planning Scheme. Financial implications are more appropriate considerations when seeking an application for a planning permit.
4. This matter has been considered by various Panels previously who have consistently reached the conclusion that the particular private financial circumstances should not be considered at the time of identifying a heritage place, instead appropriate at the planning permit application stage. The comments by the Panel in Amendment C58 to the Ballarat Planning Scheme are instructive in this regard:[[2]](#footnote-2)

*Panels have consistently held that whenever there may be competing objectives relating to heritage and other matters, the time to resolve them is not when the Heritage Overlay is applied but when a decision must be made under the Heritage Overlay or some other planning scheme provision. The only issue of relevance in deciding whether to apply the Heritage Overlay is whether the place has heritage significance.*

[Emphasis added]

1. This approach is also consistent with the views of the Panel in C129 to the Moreland Planning Scheme, where the Panel noted under the heading ‘Property Ownership and Land Values’:[[3]](#footnote-3)

***What is the issue?***

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

* + - *a perception that property value will be diminished;*
    - *a perception that future use or development of the property will be restricted or not be allowed;*
    - *a perception that owners will be obliged to restore their properties to something approaching original condition entailing extra expenditure on repairs, maintenance or other works; and, consequently,*
    - *a perception that controls are not equitable.*

*…*

***Discussion***

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

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

*The Frankston C53 Panel also noted that:*

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

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

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

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

1. More recent panels have also endorsed this approach as seen in Amendments C266 and C274 (Part 2) to the Boroondara Planning Scheme. The Panel in Amendment C266 stated:[[4]](#footnote-4)

*The Panel recognises the concerns of the submitters but PPN1 and judicial authority cited by Council make it clear that the key issue at the amendment stage is the heritage significance of the property. Private economic issues of a personal or property specific nature are not relevant at this stage. Council may consider those matters when presented with a planning permit application.*

[Emphasis added]

1. It is noted that s12(2)(c) of the Act was amended in February 2013 and now states that a planning authority ‘must take into account its social effects and economic effects’ when preparing a planning scheme amendment.
2. The Panel for Amendment C207 to the Melbourne Planning Scheme, in considering the amendment to s12(2)(c) of the Act, addressed whether the private cost implications for property owners was now a relevant consideration by the Panel.
3. The Panel held that while public costs were a proper consideration in relation to a planning scheme amendment, private economic impacts, such as impact upon land values or the private financial circumstances of the land owner were not:[[5]](#footnote-5)

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

*…*

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

[Emphasis added]

1. Subsequent panels have agreed with the views of the C207 panel including Amendment C149 to the Moreland Planning Scheme and Amendment C89 to the Glenelg Planning Scheme. The Panel in Amendment C149 to the Moreland Planning Scheme stated:[[6]](#footnote-6)

*The Panel agrees with the views of the C207 panel that private financial impacts are not appropriate economic matters to take into account when considering an amendment unless they overlap with or translate into public economic effects of some kind.*

*The financial matters raised in the present Amendment have generally not been expressed as translating into public effects.*

1. In Amendment C89 to the Glenelg Planning Scheme, the Panel concluded:[[7]](#footnote-7)

*Section 12(2)(c) of the Planning and Environment Act 1987 requires a planning authority, when preparing an amendment, to take into account its social effects and economic effects. Council addressed this in the Amendment’s explanatory report. However, the economic effect is generally considered in relation to the broader community rather than individual circumstances.*

1. While Council acknowledges financial impacts may be considered if they overlap with, or translate into public economic effects, it submits the financial matters raised in the submissions are expressed on a site-by-site basis and not at a broader community level.

### **Maintenance and repairs of heritage places**

1. Seven (7) submissions raised concerns that the HO would impact their ability to undertake maintenance and repairs on their properties (including that maintenance and repairs would be costly).[[8]](#footnote-8)
2. A planning permit is not required for works, routine repairs or maintenance that do not change the appearance of the heritage place and use the same materials and specifications, a view confirmed by Panel in Part 2 of Amendment C74 to the Whitehorse Planning Scheme:[[9]](#footnote-9)

*With regard to the need for planning permits to undertake repairs and restoration, we note that the HO does not require permits for routine repairs and maintenance, providing the same materials and design details are used.*

…

*Furthermore, application of the HO does not require owners to undertake repairs or restoration of their property. Rather, it sets out certain expectations if such repairs or restoration are to be undertaken, ie. that they will use the same materials and details as the existing structure, or else will be subject to permit.*

1. Council’s Heritage Policy at Clause 15.03-1L makes it clear that external alterations and extensions to heritage-listed places can still occur, providing they do not adversely affect the heritage significance of the place, particularly in relation to the front of the building and the view from the public realm. Below is an extract from Moreland’s local heritage strategy at Clause 15.03-1L relating to new buildings, alterations and additions.

***New buildings, alterations and additions strategies***

*Encourage new buildings and alterations and additions that:*

* *Respect the existing scale, massing, form and siting of contributory or significant elements and do not dominate the heritage place or precinct.*
* *Avoid alterations to the contributory or significant buildings (including new windows or door openings).*
* *Adopt innovative and contemporary design that makes a positive contribution to the heritage place.*
* *Do not imitate historic styles and detailing.*

*Ensure that new buildings, alterations and additions do not obscure important view lines to contributory or significant heritage buildings or their features.*

*Encourage the restoration or reconstruction of missing architectural elements that formed part of the original heritage fabric, if adequate evidence about its previous or original form is available.*

*Avoid using non-contributory and atypical built forms as a reference point for new works.*

*Encourage new buildings to be set back the same distance (or an average) from the front boundary as existing adjacent or nearby contributory or significant buildings.*

*Encourage new buildings to adopt side setbacks that reflect the side setbacks of adjoining or nearby contributory or significant buildings, where these setbacks are an important feature of the heritage place.*

*Encourage new buildings to adopt a facade height that is consistent with adjoining or nearby contributory or significant buildings.*

*Design alterations and additions (including upper storey additions) to contributory or significant heritage places to adopt the following:*

*Additions to contributory heritage places should be visually recessive, including from the opposite side of any street (not a laneway) or public park abutting the property, and not dominate the heritage place.*

*Additions to individually significant places should, as far as possible, be concealed by existing heritage fabric when viewed from the front and visually recessive when viewed from any other adjoining street (not a laneway).*

*Existing facades, rooflines, chimneys or other elements that form part of the contributory or significant fabric of the heritage place should be preserved and not altered (such as new windows or door openings).*

*Ensure that, on corner sites, upper storey additions are distinct from, and read as secondary elements to the heritage place when viewed from the secondary street frontage.*

1. Clause 15.03-1L provides other useful guidance on what demolition can be considered appropriate and how to design new vehicle accommodation, outbuildings, front fences, shopfronts, external materials, signage, and ancillary equipment.
2. Furthermore, the Moreland Heritage Exemptions Incorporated Plan will enable owners to make minor changes to their properties without requiring planning permission depending on the heritage grading of their property.
3. Recent changes to the Planning and Environment Act in March 2021 introduced a Section 6B ‘Heritage Buildings’ that states:
4. *Without limiting section 6, a planning scheme may make provision for the additional matters set out in subsection (2) for any of the following purposes:*

*…*

*1(c) to prevent persons from obtaining a benefit from:*

1. *Unlawfully demolishing heritage buildings; or*
2. *allowing heritage buildings to fall into disrepair*.
3. It is of our view that this requirement relating to letting a heritage building ‘fall into disrepair’ does not apply any additional burden to an owner or occupier beyond what Moreland’s existing local laws relating to dilapidated, dangerous and unsightly premises[[10]](#footnote-10). Instead Section 6B seeks to deter unlawful demolition of heritage buildings and prevent people from obtaining any benefit by providing authorities a mechanism to regulate or prohibit future outcomes on land in particular instances.

### **Development Restrictions & Property rights**

1. Sixteen (16) submissions raised concerns that the HO would conflict with existing controls that direct growth or will prevent them from developing and modernising their property, many citing they were being denied the same rights as other property owners.[[11]](#footnote-11)
2. Council acknowledges the HO introduces another layer of control for property owners by imposing additional permit triggers and relevant considerations to a future planning permit application.
3. However, Council contends that this is necessary to ensure that those places with identified heritage value are recognised and that any new buildings or alterations or additions to existing buildings do not detrimentally impact on the identified heritage significance of a particular place.
4. Council also submits that any concerns relating to future redevelopment opportunities of heritage properties are immaterial to this stage of the planning process and are more appropriate to be considered at the planning permit application stage.
5. Council’s approach to these submissions is consistent with the views of various planning panels. In Amendment C14 to the LaTrobe Planning Scheme, the Panel commented:[[12]](#footnote-12)

*Panels have repeatedly ruled that such issues are not material to this stage of the planning process – a position supported by Practice Notes and numerous VCAT decisions. This view maintains that although it is appropriate for the responsible authority to consider all the objectives of the Planning and Environment Act 1987 - including, inter alia, 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 next stage of the planning process i.e. at the time a permit is applied for.*

*This approach has the merit of separating two distinct issues: assessment of the significance of the place, and the question of its conservation, adaptation, alteration or demolition. This conforms with proper heritage conservation practice and mirrors the processes of the Victorian Heritage Act 1985. It reflects the desirability of considering long term matters (if we accept that heritage significance is likely to be somewhat enduring, if not immutable) at one point in time; and, shorter term matters (personal desire, financial considerations and economic circumstances) when they are most relevant.*

*The Panel observed that in the long life of many heritage properties economic uses can rise and fall – sometimes with no impact on owners, sometimes with substantial impact. In many cases threats to continuing economic viability may be mitigated by permit allowances or use changes. In other cases, personal situations change. In some cases demolition may be an appropriate response. In all these situations it would seem highly desirable for all parties that consideration is: (a) based on clear understanding of significance; and (b) at a time when action is real and current, not conjectural.*

*The so-called two-stage process also underlines the proposition that heritage assets (unlike some other aspects of planning) are often irreplaceable and it is important that neither the Planning and Environment Act 1987 nor the Latrobe Planning Scheme envisage their loss on the basis of personal preference or desire in a continually changing economic or financial environment.*

[Emphasis Added]

1. More recently, the Panel in Amendment C89 to the Glenelg Planning Scheme reiterated this view, stating:[[13]](#footnote-13)

*The Heritage Overlay allows permit applications for additions, works and demolition through the planning permit process. Future development will vary depending on factors such as the owner’s development aspirations, proposed design, property size, other existence planning policy and provisions, and how the building is positioned. Other planning policy and provisions such as zones and overlays specify circumstances where development needs to be sympathetic to neighbourhood character and respond to neighbouring amenity.*

*The Panel considers that the Heritage Overlay does not unreasonably restrict future development. Rather, it ensures that heritage matters will be considered as part of a future development. Any impact on future development, whether perceived or real, can be considered at the planning permit stage when details are known.*

*…*

*The Panel agrees with Council that any potential restriction on future development is not relevant when assessing whether the heritage place meets sufficient local threshold significance for the Heritage Overlay.*

[Emphasis Added]

1. The planning system is a long-established part of government regulation of land use and development in Victoria. The submitters land is already subject to planning controls under the Moreland Planning Scheme, such as zone and overlay controls that require permission for certain uses and development of land.
2. Council submits that the application of the HO is an accepted practice in Victoria regarding the regulation of land use and development under statutory planning schemes.
3. This is a view supported by previous Panels, including the Panel in Planning Scheme Amendment C50 to the Campaspe Planning Scheme who commented:[[14]](#footnote-14)

*The Panel would comment that the Heritage Overlay (including its earlier incarnations) is an accepted planning tool in the statutory planning system. Planning schemes in turn are a long-established component of the package of legislation in the State which regulates how people use land. That package also includes health and building regulations, traffic and parking rules. Planning schemes seek to regulate land use and development in the interests of broad social, economic and environmental objectives set in part at State and in part at local government level. Individual landowners are both subjected to planning restrictions on the use and development of their land in the furtherance of those objectives and at the same time benefit by restrictions on the use and development of land by others*.

1. The proposed application of the HO on these properties does not prohibit future development.
2. Two (2) submissions raised concerns that the application of the heritage overlay would conflict with specific zoning, local planning policies and controls.[[15]](#footnote-15)

*Submission No. 27 – The HO contradicts with the directions of the Brunswick Structure Plan and is not in line with Design and Development Overlay 23 that encourage multi dwelling development and employment outcomes.*

*Submission Number 42 – The HO ignores the fact that the property is in a local activity centre designated for growth.*

1. Submission number 27 raised the concern that the application of the HO to 113 Nicholson Street, Brunswick East conflicted with growth outcomes directed by the Brunswick Structure Plan, Balfe Park Precinct Urban design framework and Schedule 23 to the Design and Development Overlay (DDO23) affecting that property. The submission further elaborated that this conflict will consequently impact the future development potential of the land.
2. DDO23 was introduced into the Moreland Planning Scheme through Amendment C113 and was a combined Amendment and Planning Permit Application (MPS/2009/770). The Amendment enabled a transition of the land from industrial to a mixed use function and facilitates a new built form character of up to 5 storeys. It applies to part of Precinct 3B of the Brunswick Structure Plan, on properties that surround the north, south and east sides of Balfe Park and since introduced, enabled a number of apartment and mixed use developments.
3. It is not uncommon for heritage places to be located within areas designated for growth. For example, the Brunswick Activity Centre (BAC) is an area of Moreland designated for growth and is affected by a number of DDO’s that directs a range of heights up to 8 storeys. It is also an area of Moreland that contains a large number of heritage places which add to the character of this activity centre. In some instances, the heritage buildings are grouped together. However, there are many examples of single heritage buildings surrounded by non-heritage buildings.
4. There are many examples in the BAC where the original heritage building is integrated successfully into the design of a larger mixed use building. In these instances, the design has managed to balance the heritage values of the place with other policies directing growth, in addition to many other policies of the Scheme, such as sustainability, transport and stormwater to name a few.
5. The application of the HO to 113 Nicholson Street Brunswick East and 413 Gaffney Street Pascoe Vale South will not prohibit development applications consistent with the applicable zone and DDO controls. Future development applications are not a matter for consideration as part of this Amendment.
6. As noted by the Panel for Amendment C134 to the Moreland Planning Scheme:[[16]](#footnote-16)

*The Heritage Overlay informs decision makers what is significant, but not how development should respond to that significance by way of a built form response.*

1. The Panel for City of Melbourne Amendment C387 summarised this sentiment of developments needing to address and balance the many policies in the scheme, and that it is not a relevant consideration to establishing whether a building meets the threshold for local significance:[[17]](#footnote-17)

*The Heritage Overlay is not a defacto prohibition on demolition or alteration. It provides a mechanism to manage the significant heritage fabric of a place and to consider the related decision guidelines and heritage policies through the planning permit application process. However, this also requires balanced consideration of other policies consistent with Clause 71.02-3 (Integrated decision making). This might include policies relating to urban consolidation, sustainable development, urban design or environmental performance objectives or other economic and social drivers. Discretion within this decision making framework allows, in some instances, for buildings to be demolished or partly demolished, and more frequently, altered or adapted.*

*The Panel agrees with Council’s position that the effect of the Heritage Overlay on future development outcomes is not relevant to establishing whether the building meets the threshold for local significance.*

1. This is a position consistently adopted by previous panels. The Panel in Amendment C99 to the Boroondara Planning Scheme provided a convenient summary of the panel’s approach:[[18]](#footnote-18)

*Panels have generally been consistent in their view that consideration of matters beyond the issue of whether or not an individual site or a precinct has the requisite level of local significance, lie outside the proper scope of the assessment of a proposal to apply a Heritage Overlay.[1] These views have normally been expressed in response to submissions about personal disadvantage to the submitter as a result of the heritage listing such as such as economic consequences for a landowner, costs of repair of a building in poor condition, a desire to demolish and rebuild, and the like.*

*It is our view, however, that even when the competing issues raised are broader and of a public nature such as urban consolidation, they remain outside the proper scope for consideration in relation to the matter of whether a Heritage Overlay should be applied.*

*The decision as to whether a planning scheme overlay which signals and regulates particular characteristics of land should apply to any site is not a decision which is normally taken having regard to ‘trade-offs’ against other competing objectives and controls of a scheme. Places are not excluded from the Environmental Significance Overlay, for example, because the planning authority wishes to see the land developed. The consideration of application of that overlay is based on whether or not the land has significance. Similarly areas are included or not included within flooding overlays purely on the basis of whether flood liability applies. In the same way, when a Heritage Overlay is proposed to be applied to a property or area, the consideration should be whether or not it has local heritage significance.*

[Emphasis Added]

1. This was a view also adopted by the Panel in Planning Scheme Amendment C150 to the Boroondara Planning Scheme, where the Panel considered the potential conflict of the HO with housing diversity objectives. The Panel stated:[[19]](#footnote-19)

*The need to balance apparently competing objectives is not uncommon in planning. It is seldom required that one objective must be abandoned to allow another to be achieved. There are many instances where, through careful design and a flexible approach, satisfactory compromises can be reached that respect all objectives. In particular, the redevelopment of non-contributory sites within heritage precincts can provide an opportunity for sensitively designed new housing that increases the diversity of existing stock.*

*The Panel is satisfied that the proposed provisions would not prevent new housing being developed in the precincts that would both contribute to housing diversity policies and the heritage values of the area. Applying the Heritage Overlay decision guidelines and the Clause 22 policy would enable all relevant objectives to be considered when determining the most appropriate outcome for planning applications.*

*While we have commented on this issue in the context of the amendment - given that the Council and submitters both addressed it, it should be noted that Panels have consistently held that where competing planning objectives are involved, the time to resolve them is not when the Heritage Overlay is applied but when a decision must be made on a planning permit application. The Panel’s view is that the issue of relevance in deciding whether to apply the Heritage Overlay is whether the place has heritage significance.*

1. Importantly, the HO does not prohibit the construction of new buildings or alterations to existing buildings nor does it preclude demolition. Council’s local heritage policy (at Clause 15.03 of the Scheme) supports demolition of ‘non-contributory’ places provided there is a replacement building and partial demolition in certain circumstances:

*Encourage retention of contributory or significant heritage fabric required to maintain the original streetscape appearance.*

*…*

*Support partial demolition of a heritage place, if either:*

* *The fabric proposed to be removed does not contribute to the heritage significance of the place.*
* *The removal will enhance the significance of the place or facilitate conservation outcomes in accordance with the provisions of this policy.*
* *The extent of demolition will not result in facadism.*

1. This policy also supports new buildings, alterations and additions provided they do not adversely affect the heritage significance of the existing heritage place (as discussed earlier).
2. Council has also introduced the Moreland Heritage Permit Exemptions Incorporated Plan into the Moreland Planning Scheme as part of the Amendment C174more part 1. This incorporated document seeks to streamline processes and allow exemptions from planning permit requirements for heritage properties in regard to minor buildings and works.
3. This incorporated document and associated permit exemptions would apply to all new places and precincts included in Moreland’s HO. It should be noted that this Amendment seeks to update the existing Moreland Heritage Permit Exemptions Incorporated Plan to include new and modified precinct maps to align with the changes to the HO by this Amendment.
4. Submission 44 raised concerns that the HO will eliminate the ability to re-purpose Richards Reserve. This is a misconception, as planning policy supports the adaptive re-use of heritage places. Policy 4.4.3 of Plan Melbourne and State that states ‘*Regeneration of heritage assets through adaptive reuse can deliver unique and exciting places that can be used well into the future. Rehabilitating old buildings and places also creates opportunities for new investment and jobs’*.
5. State heritage policy in the Moreland Planning Scheme at Clause 15.03-1 – Heritage Conservation, further supports this direction by stating ‘*Support adaptive reuse of heritage buildings where their use has become redundant*’.
6. The consideration of a places future uses is however not relevant to this Amendment for the same reasons stated above regarding future development opportunities.

### **Public Exhibition and Consultation**

1. A number of submissions raised concerns with the consultation of the heritage study and exhibition of the Amendment, specifically that exhibition occurred whilst Victoria was experiencing restrictions relating to Covid 19. Two submitters[[20]](#footnote-20) also outlined that they did not receive notification of the Amendment. These submitters have been able to provide a submission and participate in the panel process.
2. The exhibition process has been detailed in Council’s Part A Submission.
3. The exhibition process and period of notification for all Planning Scheme Amendments is strictly defined by the requirements of the Act. The Act does not specify the times of the calendar year that notification should or should not occur, similarly, considerations for public holidays are also not addressed by the Act.
4. Council considers that a fair, proper and adequate consultation process was undertaken. Exhibition of the Amendment commenced on Friday 13 August 2021 and closed on Friday 1 October 2021. This is three additional weeks of exhibition than what is required by the Act to take into account the difficulty that Covid restrictions can impose on the community.
5. Notification letters were accompanied by a four-page colour information factsheet describing the amendment, responding to frequently asked questions relating to the application of the HO and included a list of all properties included in the Amendment. A dedicated webpage was set up on Council’s website to provide access to all the Amendment documentation and included a property search tool to for the community to search if a property was affected. This webpage also included an electronic form to easily lodge a submission to the Amendment. This information is considered to have provided valuable assistance to the community in understanding the proposed planning scheme amendment.
6. Furthermore, all owners and occupiers of properties proposed to be included in the HO were directly notified and invited to attend one-on-one consultation sessions held in early September 2021. Each consultation session ran for 30 minutes and offered an opportunity to discuss the Amendment and what it would mean for their property, as well as to find out more about the planning scheme amendment process. This was in addition to Council Officers being available throughout the Exhibition period (and beyond) to discuss any aspect of the amendment via the phone or email.
7. Council believes that it has made every effort to inform affected property owners of the amendment and provide them with the opportunity to participate in the democratic, statutory process to challenge the proposal.
8. Council also resolved to accept and refer all late submissions to Panel following the close of Exhibition (as formalised by the 8 December 2021 Council resolution. This benefit has been demonstrated by a number of submissions, in particular Submission 44 that was received approximately 17 weeks following the close of exhibition.
9. Submissions 42 and 43 state that they did not receive notification of the Amendment. Council Officers have checked the C208more consultation records. The owner’s details for 413 Gaffney Street Pascoe Vale and 47 Hanover Street Brunswick were accurate in these records. Officers have confirmed that the number of letters prepared and sent by the mailing house matches the number of owners & occupiers listed to be notified.

### **Heritage Grants and Support**

1. Three submissions[[21]](#footnote-21) sought compensation or support from Council to help preserve heritage and history for the community.
2. Council currently does not offer any applicable grants to preserve or reconstruct features of heritage places. In understanding that funding can help support the management of local heritage assets, Council committed to investigate incentives in the current 2021-22 Council Action Plan at Action 72:

*72) Investigate financial incentives to encourage maintenance of heritage buildings*

1. Council has begun investigating the costs to offer and administer grants through the Victorian Heritage Restoration Fund. This program could offer grants to residents for conservation, restoration and reconstruction works of heritage features on local heritage places in Moreland.
2. These grants would not capture infrastructure upgrades unless they were part of the site’s heritage fabric. However, there are other programs that provide assistance to help owners modify their homes to be more efficient.

### **Heritage Nominations**

1. Two submissions requested the inclusion of additional properties in the heritage overlay, being:

* 201-209 Nicholson Street Brunswick East (Submission 26)
* Edward Street East Precinct that includes 192-198, 237-243 and 255-257 Edward Street Brunswick East (Submission 38)

1. This Amendment seeks to implement the findings of the Moreland Heritage Nomination Study and complete the implementation of the Moreland Heritage Gap Study. As such, the heritage of places and precincts in this Amendment have been through a robust assessment process, undertaken in accordance with established methodologies. It is therefore not appropriate for these additional properties to be considered as part of this Amendment.
2. Council however does register public nominations for future heritage studies. The properties at 201-209 Nicholson Street Brunswick East have been added to this register.
3. With regard to the nominated Edward Street Brunswick East Precinct, Stage 1 of the Moreland Heritage Gap Study conducted by Context Pty Ltd included a preliminary assessment of a potential Edward Street East Precinct comprising of 184-232 & 205-289 Edward Street Brunswick East. This assessment determined:

*Stage 1 findings*

*This part of Edward Street contains the block between Lygon and John streets, with the exception of the former Tip Top complex (HO208), recently redeveloped.*

*It contains a mix of late Victorian, Federation/Edwardian, interwar and postwar houses, including some recent townhouses that may have replaced potentially contributory dwellings. Overall, there is low visual cohesion and low integrity, and many of the potentially contributory houses are of borderline significance because of the degree of alteration.*

*This period of development is already represented in the nearby precincts such as Allan Street (HO384), Edward Street (HO73), Warburton Street (HO251) and Weston Street (HO194).*

*Stage 1 recommendations*

*Not recommended for Stage 2 assessment.*

1. This preliminary study concluded that the properties nominated by Submitter 38 do not warrant being part of a heritage precinct due to low visual cohesion, low integrity and that they are already well represented in the Moreland Heritage Overlay. However, at the 8 December 2021 Council meeting Council resolved to scope out a future study to investigate remnant Victorian cottages as follows:

*(7) As part of the review of the Moreland Heritage Action Plan 2017-2032 provide Council with information about the scope and cost of a review of early, mid and late Victorian era cottages in Moreland to determine if there are any additional individual buildings or group/serial precincts worthy for inclusion in a heritage overlay, noting that the Heritage Action Plan review will be reported to Council in 2022.*

1. This study would capture any Victorian cottages along Edward Street in Brunswick East, including the properties nominated in Submission 38.

### **The appropriateness of the Heritage Overlay**

1. The operation of the Heritage Overlay was raised in five submissions[[22]](#footnote-22). Two submissions sought information on what it means to have a property in a heritage overlay, including asking about particular types of works, with the others raising the following specific issues:

* Neighbourhood Character policy is adequate to manage the identified character (Submission 37 – Railway Place Precinct).
* Concerns with using a HO to manage the social significance and intangible heritage of places (Submission 29 - CERES Park and Joe’s Market Garden).
* No need to specify external paint controls in the Schedule to Clause 43.01, the parent provision provides an adequate permit trigger for unpainted surfaces (submission 18 – 28 McMahons Road Coburg North).

1. The Victoria Planning Provisions (VPP) include a number of overlay tools to manage development outcomes. Each overlay tool has a particular focus and specifies a particular planning outcome. When it comes to informing and protecting a particular character, the overlays on offer have clear themes, such as heritage, environment/landscape and built form. In choosing the appropriate tool, the purpose of the overlay is an important consideration.
2. The purpose of the HO can be summarised as to conserve and enhance heritage places and ensure that development does not adversely affect the significant of heritage places. The HO provides a clear mechanism in the planning system to consider changes to heritage places to ensure heritage significance is maintained. Neighbourhood Character policy, as suggested in the submissions as a suitable alternative, does not offer this same mechanism.
3. How the demolition of buildings is considered in the planning system is a good example to use to demonstrate that Neighbourhood Character policy in the Scheme is inadequate to manage the identified heritage of a place or precinct. In using Railway Place Precinct as an example, without a HO currently applying to the properties, a land owner would only need building consent to demolish part or all of their dwelling, a process that sits outside of the planning system. This could occur along the entire street, resulting in all the heritage buildings being removed. Neighbourhood Character policy in the scheme is unable to prevent this kind of change.
4. Council submits that the Heritage Overlay is the appropriate tool to apply to places and precincts identified by the MHNS and MHGS as being locally significant. This aligns with Practice Note 1 – Applying the Heritage Overlay, which directs:

*What places should be included in the Heritage Overlay?*

*…*

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

1. DELWP’s ‘A Practitioners Guide – Victorian Planning Schemes’ (2020) is a guide in the preparation and application of a planning scheme provision in Victoria and its intended use is by practitioners considering or preparing a new or revised provision for a planning scheme. Within the guide it describes the differing overlays available in the Victoria Planning Provisions (VPP’S), describing the Heritage Overlay as an overlay:

*‘for conserving and enhancing places of natural and cultural significance and ensuring that development does not adversely affect the significance of heritage places*

1. It further outlines that ‘heritage places should be included in the schedule to the heritage overlay’, and, ‘the heritage process leading to the identification of a place must clearly justify the significance of the place as a basis for its inclusion in the heritage overlay’.
2. The MHNS and MHGS offer an appropriate assessment methodology, justification and recommendation for places and precincts to be included in the HO by this Amendment inline with both Practice Note 1 and the DEWLP’s Practitioners Guide.

### **Social Significance**

1. The heritage significance of CERES Park and Joe’s Market Garden has not been questioned by any submitters, with Submitter 29 as the lease and operator of both sites supporting the heritage status of both places. Submitter 29 however raised concerns with using the HO tool to recognise the significance of these places, stating that the HO has not been designed to manage the intangible heritage of places with social significance.
2. The use of the HO for places of historical or social significance is outlined in Planning Practice Note 1 and also discussed in the Heritage Provisions Review Final Report prepared in 2007 by Planning Panels Victoria by stating that:[[23]](#footnote-23)

*Managing places with social or historic values that have little or no heritage fabric poses a particular problem for the planning system. As we have earlier commented, planning is about management of the environment and changes to it, and an appropriate ‘threshold’ that a heritage place should be required to pass is that it has something to be managed. This ‘something’ is usually tangible fabric but it may, for example, be a significant absence of built form, special spatial characteristic or a pattern of ownership. If such things are present, then however ephemeral they are, there will be something to manage.* *If not, a commemorative plaque is the appropriate way of signifying the importance of the place to the local community…*

*Greater flexibility should be provided (by means of a schedule or incorporated plan) to vary the provisions of the HO to reflect the specific values of a place and to modify the controls required to protect its significance.*

1. The Advisory Committee report for C124 to the Mooney Valley Planning Scheme in considering the heritage to the Moonee Valley Racecourse, provides some useful commentary on using the HO over areas of intangible heritage:[[24]](#footnote-24)

*Having accepted the Racecourse is of at least local significance as a complex, with a number of (at least) contributory elements within it, one of the key issues in relation to Amendments C124 and C120 is how to manage changes to the Racecourse site, including what should be retained, adapted, interpreted or even relocated. There are indeed many parts of the complex which make up the Racecourse site which need to be managed. In addition, the ‘absence of built form’ (the racetrack itself) is a feature and part of the complex of historical and social significance*…

*The approach of including the entire site within the heritage listing is consistent with those sporting or event complexes such as the Flemington Racecourse and Sandown Racecourse. Where there is a site which is proposed to undergo considerable change across it as proposed by the Master Plan, it is considered that using a ‘whole-of-site approach’ is all the more critical given the issue around how to manage change across the complex.*

*The Committee understands that Council does not wish to apply the Heritage Overlay to the entire site due to administrative reasons. Given the size of the site and the ongoing operation of the Racecourse the Council, and the Club, are concerned that the Heritage Overlay will trigger unnecessary planning permits. The question is, can this administrative issue be dealt with by reconsidering the way the Heritage Overlay can operate?*

*There is considerable flexibility in the way the Heritage Overlay can be applied which can assist in future management of complex sites and sites undergoing change. The Committee considers that the Council has underestimated, and not explored, how this planning tool could more fully recognise and manage heritage aspects across the site but at the same time provide flexibility and reduce unnecessary permit requirements. The Heritage Overlay can provide the same sort of flexibility that sites within the Victorian Heritage Register (such as the Flemington Racecourse and the MCG) enjoy through the use of an Incorporated Plan.*

1. This Panel for C124 further discusses using an Incorporated Plan in conjunction with the HO:[[25]](#footnote-25)

*All experts agreed that if the Heritage Overlay is applied to the whole site, an Incorporated Plan should be applied. This Incorporated Plan can be prepared to form the bridge between the heritage values of the site and the site’s future development. In other words, from an administrative point of view, by ‘tailoring’ the Heritage Overlay control via an Incorporated Plan, this can provide greater direction and certainty about future management and development and focus permit triggers.*

*The Committee considers there is an opportunity to apply an Incorporated Plan, informed by the Statement of Significance and a Conservation Management Plan, to provide a list of permit exemptions, exemptions for third party notice, management and demolition guidelines, an interpretation strategy and guidance on the process of managing internments. Importantly, the Incorporated Plan can inform the high level strategic planning for the site at the earliest stage, as well as inform future planning permit applications regarding restoration, retention, adaption, relocation, demolition and interpretation across the site in the latter stages of decision making.*

1. Council concedes that the HO provision is drafted with a strong focus on the management of tangible heritage. Whilst both CERES Park and Joe’s Market Garden have little to no structures identified as significant in the statement of significances, the absence of structures in key areas of the site is relevant to managing and maintaining the significance of both places. As such the application of the HO is considered appropriate.
2. Council agrees with the suggested approach by the above Panel and Submitter 29 of using an incorporated document to provide greater guidance on the management of the heritage of CERES Park and Joe’s Market Garden, including site specific permit exemptions. Council has begun to explore this option. Council engaged Extent Heritage to consider what kind of permit exemptions to the HO could be applied to these two sites. Initial feedback lends Council to consider a Conservation Management Plan as the most suitable tool for a more holistic view of management of these sites in the context of all planning controls relevant to the site, and which can include appropriate planning exemptions, potentially beyond just the HO.
3. As detailed in Council’s Part A submission, Council’s Heritage Action Plan identifies heritage actions which are already underway and sets out the parameters for further identification, conservation and management of the city’s heritage. These actions are not confined to planning but apply across the organisation. Council is currently reviewing the progress of the Heritage Action Plan in preparation to reporting the Plan’s progress to Council in the first half of this year. This will include suggesting new actions to address issues and projects that have come up over the past few years. In response to the issues raised and suggestions of Submission 29, a new action to prepare Conservation Management Plans for both CERES Park and Joe’s Market Garden will be included in the update report to Council.

## **Heritage Specific Issues**

1. This section of Council’s submission deals with the heritage specific issues raised in submissions, namely issues of local significance threshold and building condition and intactness and the use of the Heritage Overlay tool.
2. Each submission was referred to Extent Heritage for their expert review and comment. In considering the submissions Extent undertook further site inspections and research as required.
3. This review informed the response by the Council Officer to all submissions set out in the 8 December 2021 Council report.
4. A general response to these issues is provided below. The expert heritage evidence prepared by Council’s expert witness, Dr Luke James of Extent Heritage, will provide a specific response to the submissions where the submitter has requested to be heard at the panel hearing.

### **Level of Heritage Significance**

1. Twenty (20) submissions[[26]](#footnote-26) raised concerns that their properties did not meet the thresholds of local significance to warrant heritage protection, citing that changes have occurred impacting on the integrity and condition, and, visual cohesion of the street.
2. Council’s heritage consultants followed the approach to applying the HO set out in *Planning Practice Note 1: Applying the Heritage Overlay*, Victoria Planning Provisions (Practice Note) to identify the significance of the places included in the Amendment. To satisfy the requirements of the Practice Note, Council’s heritage experts have:

* Used the recognised HERCON criteria to assess the heritage value of places and precincts;
* Prepared detailed comparative analyses to substantiate the significance of places and precincts; and
* Prepared statements of significance using the three-part format of ‘What is Significant’, ‘How is it Significant?’ and ‘Why is it Significant?’

1. Submissions raising concerns about the level of significance of a property were further considered by Council’s heritage experts in responding to submissions. This resulted in the following recommendations (which Council adopted at their 8 December 2021 meeting) to:

* Remove 13 Ash Grove Oak Park from the Amendment.
* Remove Duke Street Precinct Brunswick East from the Amendment.
* Remove the HO from part of the bluestone retaining walls adjacent to 64 Vincent Street Oak Park
* Remove the HO from the south-eastern building at 31 The Avenue Coburg
* Change the heritage grading of 34 & 54 Hanover Street Brunswick to ‘non-contributory’ (noting that the dwelling at 34 Hanover Street Brunswick has been demolished)
* Change the heritage grading of 32 Hanover Street Brunswick to ‘non-contributory’ following its demolition.

1. Council’s expert witness in their statement also recommends additional changes to the heritage value of the following properties (further detail provided at Paragraph 126 and in Dr James Expert Witness Statement):

* Change the heritage value of 491 & 487 Moreland Road Pascoe Vale South to non-contributory to the Coonans Hill Precinct.
* Remove 78 Albion Street Brunswick East from the Glenmorgan, Albion and Clarence Streets Precinct.

1. Council submits the remainder of all proposed places are of heritage significance and application of the HO is warranted.

### **Building Condition and Intactness of a Heritage Place**

1. Sixteen (16) submissions[[27]](#footnote-27) raised concerns about substantial alterations to their houses and/or condition of the property and that the alterations/condition meant the application of HO was not appropriate.
2. Whilst structural integrity or condition and intactness of a heritage place are important considerations, these are quite separate concepts and need to be considered at different stages in the planning process.
3. This is a view that has been adopted by previous Planning Panels, including the Panel to Amendment C129 to the Moreland Planning Scheme, where the Panel stated:[[28]](#footnote-28)

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

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

[Emphasis added]

Intactness

1. The intactness of a heritage place is a key consideration when assessing the heritage value of a particular place, precinct and grading of buildings. The central question in this regard is whether alterations to a place have significantly compromised the heritage value. The level of intactness of places is also relevant when considering the level of cohesiveness of a precinct.
2. Most of the properties subject to Amendment C208more were constructed in the late nineteenth/early twentieth centuries. It is reasonable to expect that these properties would have undergone some change since construction to accommodate changing living requirements. The key issue is whether the changes have compromised the identified heritage significance of the place.
3. Further to this, the intactness of properties within precincts is key to determining the extent of any precinct boundary.
4. Based on the assessment of an experienced heritage expert, Council submits that the properties proposed for inclusion in the HO as individual places or as contributory places in precincts are sufficiently intact and are of sufficient local heritage significance to warrant inclusion in the HO.
5. Council acknowledges that while in many instances places have been altered, those changes to the fabric are considered to be superficial and largely inconsequential to the heritage value. Often these non-sympathetic alterations to the fabric may even be reversible and if removed or replaced with sympathetic features, the visual appearance and heritage value would be enhanced (eg verandahs, window frames etc.).
6. It should also be noted that intactness becomes less critical if a particular place has historical rather than aesthetic/architectural significance as discussed earlier in relation to social significance of places and confirmed by Advisory Committee on the Review of the Heritage Overlay Provisions in Planning Schemes.

Structural integrity or condition

1. The issue of structural integrity is one that is irrelevant to determining whether a place has heritage significance. It is a matter for heritage management and not identification and therefore needs to be considered at the planning permit stage.
2. The Advisory Committee on the *Review of the Heritage Overlay Provisions in Planning Schemes* made the following remarks about this issue:[[29]](#footnote-29)

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

1. The relevance of building condition in relation to the proposed application of the HO was also discussed by the Panel in Amendment C207 to the Melbourne Planning Scheme. The Panel, in citing previous Panel decisions including Amendment C99 to the Boroondara Planning Scheme and Amendment C140 to the Whitehorse Planning Scheme, commented:[[30]](#footnote-30)

*In all we were not persuaded by the arguments presented on this issue that the nature of the decision-making framework, including the limitations applying to decisions on permits, is such that condition should normally be taken into account at the listing stage.*

*Having said this we do acknowledge that condition may sometimes be relevant in extreme cases of dilapidation where demolition is an inevitable outcome. In such circumstances, the case for demolition would have to be irrefutable and the community-wide costs and benefits of the demolition versus conservation outcomes would have to be clearly identified.*

*As Mr O’Farrell submitted:*

*It is conceivable that there could be an amendment that presents sufficient negative environmental, social and economic effects that a Panel might find that the amendment results in a net detriment to the community.*

*He suggested that it might be found that it would be a waste of community resources to go to the permit stage to consider whether the demolition should be allowed. He nevertheless said that there would have to be a very high certainty threshold to be passed to make the decision at the amendment stage. We agree that the case for demolition would have to be unassailable.*

*We also consider that it is possible that condition may become relevant in the circumstances where the necessary renovations of a building, which is being considered for listing/retention, are so extensive that the original fabric of the building is in large measure lost and the form and nature of the heritage place would no longer be able to be appreciated. In that way, the significance of the place would be degraded. Again we would expect that the certainty threshold would be a very high one.*

[Emphasis added]

1. In Amendment C274 (Part 2) to the Boroondara Planning Scheme, the Panel stated:[[31]](#footnote-31)

*The structural integrity of a building is a matter that is relevant to whether it can or should be retained. In the Panel’s view this assessment should be undertaken by a suitably qualified professional and appropriately undertaken as part of the detailed assessment of a planning permit application.*

1. Council submits that the external alterations and building condition raised by submitters are not extensive or of such an extreme case of dilapidation to detract from the heritage significance or integrity of that place.
2. As such Council considers the application of the HO in each of these instances is still warranted.

### **Specific Heritage Issues to be addressed in Expert Witness Statement**

1. The next part of Council’s submission will be provided by Dr James as part of his expert evidence. From the outset Council adopts the evidence of Dr James.
2. Dr James’s expert witness statement addresses the study methodology used for the MHNS and the background to the study. The statement also sets out Dr James’s response for each submission where the submitter is appearing at the panel hearing. The response provides:

* A summary of the significance of the place/precinct.
* A response to the heritage issues raised by submissions
* Conclusions and recommendations for changes to Amendment C208more, or the place or precinct citation (where relevant).

1. In addition, Dr James’s statement of evidence provides a response to the submissions where the submitter is not appearing at the Panel Hearing.
2. The recommendations of Dr James include additional changes to the Amendment beyond what was resolved at the 8 December 2021 Council meeting, summarised in the table below.

| **HO reference** | **Property** | **Description of change** | **Reason for change** |
| --- | --- | --- | --- |
| HO583 | 28 McMahons Road Coburg North | Retain ‘No’ to the external paint controls in the schedule to Clause 43.01 | HO requires a planning permit for external painting of an unpainted surface, which is adequate to trigger and consider painting of the dwellings facebrick. |
| HO207 (Coonans Hill Precinct) | 491 Moreland Road Pascoe Vale South | Change the heritage grading to non-contributory to the precinct | Dwelling has been demolished. |
| HO207  (Coonans Hill Precinct) | 487 Moreland Road Pascoe Vale South | Change the heritage grading to non-contributory to the precinct | Further analysis determined the building did not retain sufficient characteristics to be graded contributory to the precinct due to the degree of alterations and additions to the building’s facade |
| HO85  (Glenmorgan, Clarence and Albion Street Precinct) | 78 Albion Street Brunswick East | Remove the property from the precinct (and Amendment) | Further analysis determined 78 Albion Street did not display the characterisation consistent with the precinct due to its uncharacteristic front setback and unsympathetic alteration. |
| HO172  (The Grove/Sydney Road Precinct) | 31 The Avenue Coburg | Remove HO172 from 31 The Avenue Coburg | Additional assessment of this places contribution to precinct HO172 conducted in February 2022 determined there to be no fabric on the site that contributes to the significance of HO172. |

1. As Directed by the Panel, a response and expert evidence relating to 151A Lygon Street Brunswick East on Tuesday 3 May 2022 when that matter is scheduled to be heard.

# **Final Position on the Amendment**

1. Amendment C208more seeks to implement the recommendations from the MHNS and MHGS prepared for Council by expert heritage consultants Context and Extent Heritage.
2. Implementation of the recommendation of this study is part of Council’s ongoing commitment to identify and protect the municipality’s heritage fabric for current and future generations.
3. It further fulfils Council’s statutory obligations as a responsible authority to implement the objectives of the Planning and Environment Act 1987, and to implement State and Local objectives, strategies in the Planning Policy Framework, Plan Melbourne and Municipal Planning Strategy as well as relevant guidelines and practice notes.
4. In Council’s view, the MHNS and MHGS provide a comprehensive and robust analysis of the identified heritage significance of buildings and precincts within the municipality. In undertaking that exercise, a rigorous assessment of the identified heritage elements of each place has been very carefully documented.
5. Council appreciates the submissions that contest the heritage significance of the places recommended to be included in the HO. These submissions have assisted Council and its heritage consultants in providing a further assessment of the various sites and more rigorously applying the criteria of heritage significance.
6. In a number of cases it has resulted in the review of citations which further support and highlight the heritage value of the various buildings, the removal of some properties from the Amendment or a change in the heritage grading of others. It is noted that in most of the cases where there has been a submission contesting the HO, it is Dr James’s professional expert opinion, supported by Council that the heritage place should still be included in the HO.
7. It is respectfully submitted that the Panel recommend approval of Amendment C208more with the changes supported by Council and proposed in this submission.

1. Submission Numbers – 3, 5, 9, 12, 23, 25, 31, 34, 41, 42 & 43. [↑](#footnote-ref-1)
2. Page 51 [↑](#footnote-ref-2)
3. Page 10-13 [↑](#footnote-ref-3)
4. Page 23 [↑](#footnote-ref-4)
5. Page 24, 27 [↑](#footnote-ref-5)
6. Page 9 [↑](#footnote-ref-6)
7. Page 19-20 [↑](#footnote-ref-7)
8. Submission Numbers - 9, 23, 25, 31, 34, 41 & 43. [↑](#footnote-ref-8)
9. Page 25 [↑](#footnote-ref-9)
10. Part 11 – Dilapidated, Dangerous and Unsightly Premises of Moreland City Council General Local Law 2018 [↑](#footnote-ref-10)
11. Submission Numbers - 8, 9, 13, 17, 19, 21, 22, 23, 24, 27, 31, 33, 35, 36, 39 & 43 [↑](#footnote-ref-11)
12. Page 17 [↑](#footnote-ref-12)
13. Page 18 [↑](#footnote-ref-13)
14. Page 71 [↑](#footnote-ref-14)
15. Submission Numbers – 27 & 43 [↑](#footnote-ref-15)
16. Page 29 [↑](#footnote-ref-16)
17. Page 29 [↑](#footnote-ref-17)
18. Pages 13-15 [↑](#footnote-ref-18)
19. Pages 9-11. [↑](#footnote-ref-19)
20. Submission Numbers – 42 & 43 [↑](#footnote-ref-20)
21. Submission Numbers – 12, 41 & 42 [↑](#footnote-ref-21)
22. Submission Numbers – 5, 18, 29, 31, 33 & 37 [↑](#footnote-ref-22)
23. Page 90-91 [↑](#footnote-ref-23)
24. Page 56-57 [↑](#footnote-ref-24)
25. Page 57 [↑](#footnote-ref-25)
26. Submission Numbers - 8, 10, 16, 21, 22, 24, 25, 27, 28, 30, 31, 33, 34, 35, 36, 37, 39, 40, 42 & 43 [↑](#footnote-ref-26)
27. Submission Numbers - 8, 10, 16, 22, 24, 27, 28, 32, 33, 35, 36, 37, 39, 40, 42 & 43 [↑](#footnote-ref-27)
28. Page 13. [↑](#footnote-ref-28)
29. *Review of Heritage Provisions in Planning Schemes,* Advisory Committee Report, August 2007, Pages 2-46. [↑](#footnote-ref-29)
30. Pages 26-27. [↑](#footnote-ref-30)
31. Page 86. [↑](#footnote-ref-31)