Planning and Environment Act 1987

Panel Report

Stonnington Planning Scheme Amendment C282ston
Extension of The Avenue Precinct, Windsor Heritage Overlay and three individual heritage places

1 August 2019
Planning and Environment Act 1987
Panel Report pursuant to section 25 of the Act
Stonnington Planning Scheme Amendment C282ston
Extension of The Avenue Precinct, Windsor Heritage Overlay and three individual heritage places
1 August 2019

Tim Hellsten, Chair
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Panel process

| The Panel | Tim Hellsten (Chair) |
| Directions Hearing | Malvern Town Hall, 30 May 2019 |
| Panel Hearing | Planning Panels Victoria, 2 and 5 July 2019 |
| Site inspections | Unaccompanied, 30 May and 22 July 2019 |
| **Appearances** | - Stonnington City Council represented by Kristen Richardson of Maddocks, calling expert evidence on heritage from Bryce Raworth of Bryce Raworth Pty Ltd |
|                   | - MOG Properties Pty Ltd represented by Nick Tweedie SC, assisted by Robert Forrester of Counsel and instructed by Rory O’Connor of Hall and Wilcox |
|                   | - Dimitrios Georgandas represented by George Pollalis |
| **Citation** | Stonnington PSA C282ston [2019] PPV |
| **Date of this Report** | 1 August 2019 |
Executive summary

Stonnington Planning Scheme Amendment C282ston (the Amendment) proposes to apply the Heritage Overlay to individual places at 1026 Malvern Road, Armadale (HO636), 44 Murphy Street, South Yarra (HO639) and 46 Kyarra Road, Glen Iris (HO638). It also proposes to extend The Avenue Precinct, Windsor (HO148) to include the odd numbered properties between 31 to 53 The Avenue, Windsor.

The Amendment follows heritage assessments of identified places undertaken by Bryce Raworth Pty Ltd for Council in 2018 and the recommendation to review the extent of The Avenue Precinct and the contribution made by sites on the western side of the street in the Conservation Review: City of Prahran, Context Pty Ltd, December 2013.

The Amendment was exhibited from 14 February to 15 March 2019 and received four submissions. None of the submissions referred to the individual sites at 1026 Malvern Road, Armadale and 46 Kyarra Road, Glen Iris.

One submission related to 44 Murphy Street, South Yarra (HO639) which sought to apply internal controls and to identify additional structures within the statement of significance.

Two submissions opposed the Amendment’s expansion of The Avenue Precinct, Windsor and sought the exclusion of 31-33 The Avenue from the precinct and the identification of the site at 47-47A The Avenue as ‘non-contributory’. The key issues raised in these submissions related to:

- the lack of cohesiveness of the precinct as a result of new development
- the impact on the legibility and integrity of the current precinct
- extent of building alterations on the significance of individual buildings
- potential impacts of heritage controls on owners.

The Panel considers that the exhibited citations and statements of significance and heritage evidence from Mr Raworth provide a sufficient basis to conclude that the identified individual places and the extended The Avenue Precinct have an appropriate level of local cultural heritage to warrant the Heritage Overlay. The Panel had some reservations about the extent of Council’s considerations of the social and economic impacts of the Amendment and level of comparative analysis undertaken for The Avenue Precinct. On balance, the Panel considers that the Amendment will provide a net community benefit, is strategically justified and was prepared in a manner broadly consistent with Planning Practice Note 1 Applying the Heritage Overlay, August 2018.

The Panel supports the proposed extent of The Avenue Precinct, although it recommends that 31-33 The Avenue, Windsor be identified as a ‘contributory’ graded site. The Panel supports Council’s intention that the mapped extent two portions of The Avenue Precinct join up and include street trees on the western side of the street. However, it does not support the inclusion of street trees between 31 and 37 The Avenue because of their poor form.

The Panel has suggested several minor changes to the Amendment documentation to ensure the consistent use statement of significance descriptions and titles.
Recommendations

Based on the reasons set out in this Report, the Panel recommends that Stonnington Planning Scheme Amendment C282ston be adopted as exhibited subject to the following:

1. Amend The Avenue Precinct, Windsor statement of significance to identify 31-33 The Avenue as having a ‘contributory’ grade.

2. Amend the curtilage of The Avenue Precinct, Windsor Heritage Overlay (HO148) to include the nature strip and street trees on the west side of the Avenue between 39 The Avenue and 53 The Avenue and join up with the existing curtilage of HO148 between 46 and 56 The Avenue.

3. Amend The Avenue Precinct, Windsor Statement of significance to identify the property at 47-47A The Avenue as ‘Non-contributory’.

4. Amend the ‘Mayfield’ 44 Murphy Street, South Yarra Statement of significance to include the brick front fence and bay seating as a contributory element to the significance of the place as identified in Appendix B of this Report.
1 Introduction

1.1 The Amendment

The purpose of Stonnington Planning Scheme Amendment C282ston is to apply the Heritage Overlay to:

- 1026 Malvern Road, Armadale (HO636)
- 44 Murphy Street, South Yarra (HO639)
- 46 Kyarra Road, Glen Iris (HO638)
- 31 to 53 The Avenue (odd numbers only), Windsor (HO148).

Specifically, the Amendment proposes to:

- Amend Planning Scheme Map Nos 1HO, 4HO, 5HO and 7HO
- Amend the Schedule to Clause in 43.01 Heritage Overlay to include three new heritage places and amend the entry for The Avenue Precinct and add reference to new or amended statements of significance
- Amend the Schedule to Clause 72.04 to incorporate new or revised statements of significance.

1.2 Amendment context

(i) Supporting documents

The extension of The Avenue Precinct, Windsor Heritage Overlay is supported by a Memorandum of Heritage Advice, The Avenue Heritage Overlay Precinct, Bryce Raworth Pty Ltd, 2018 (Memorandum) and The Avenue Precinct, Windsor Statement of Significance prepared by Bryce Raworth Pty Ltd. These documents were exhibited with the Amendment. The statement of significance is proposed to be incorporated into the Stonnington Planning Scheme Amendment.

The application of the Heritage Overlay to the three individual heritage places is supported by the following citations and statements of significance prepared by Bryce Raworth Pty Ltd:

- 'Mayfield', 44 Murphy Street, South Yarra Heritage Citation Report
- Mayfield, 44 Murphy Street, South Yarra Statement of Significance
- ‘Tiri-Tiri’, 46 Kyarra Road, Glen Iris Heritage Citation Report
- ‘Tiri-Tiri’, 46 Kyarra Road, Glen Iris Statement of Significance
- ‘Tuena’, 1026 Malvern Road, Armadale Heritage Citation Report
- ‘Tuena’, 1026 Malvern Road, Armadale Statement of Significance.

(ii) Chronology of events

Council provided a chronology of events leading to the exhibition of the amendment in its Part A submission (Table 1).
<table>
<thead>
<tr>
<th>Date</th>
<th>Event</th>
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<tbody>
<tr>
<td>1993</td>
<td><em>Conservation Review: City of Prahran, 1993</em> (conducted by Nigel Lewis of Context Pty Ltd) prepared. It recognised the need to investigate the west side of The Avenue, Windsor as a possible extension of The Avenue Urban Conservation Area</td>
</tr>
<tr>
<td>17 September 2017</td>
<td>Council received request under s 29A of the <em>Building Act 1993</em> for demolition of the Victorian Era stables at the rear of 31-33 The Avenue</td>
</tr>
<tr>
<td>18 September 2017</td>
<td>At its ordinary meeting, amongst other things, Council resolved to:</td>
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<td></td>
<td>- commission a heritage consultant to undertake a peer review for 3 places including the property at 46 Kyarra Road, Glen Iris</td>
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<tr>
<td></td>
<td>- investigate the interwar place at 44 Murphy Street, South Yarra for potential heritage significance, and</td>
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<td></td>
<td>- undertake further heritage investigation into 12 places within an investigation area which included 1026 Malvern Road, Armadale</td>
</tr>
<tr>
<td>4 December 2017</td>
<td>Letter from a resident requesting heritage protection of the stables tabled at Council meeting</td>
</tr>
<tr>
<td>2018</td>
<td>Bryce Raworth Pty Ltd prepared memorandum of heritage advice regarding The Avenue precinct extension and statements of significance and heritage citation reports for:</td>
</tr>
<tr>
<td></td>
<td>- 1026 Malvern Road, Armadale</td>
</tr>
<tr>
<td></td>
<td>- 46 Kyarra Road, Glen Iris, and</td>
</tr>
<tr>
<td></td>
<td>- 44 Murphy Street, South Yarra</td>
</tr>
<tr>
<td>17 September 2018</td>
<td>At its ordinary meeting, Council resolved to:</td>
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<tr>
<td></td>
<td>- note the Heritage Advice [from Bryce Raworth Pty Ltd]</td>
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<td></td>
<td>- write to the Minister requesting authorisation to prepare the Amendment under ss 4B and 8A(4) of the Act, and</td>
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<td></td>
<td>- write to, and request the Minister prepares, adopts and approves an amendment to the Scheme under s 20(4) of the Act introducing interim heritage controls to the properties and precinct extension recommended for inclusion in the Heritage Overlay</td>
</tr>
<tr>
<td>21 September 2018</td>
<td>Council wrote to the Minister seeking authorisation to prepare Amendment C282ston</td>
</tr>
<tr>
<td>3 December 2018</td>
<td>Council adopted the Stonnington Heritage Strategy and Action Plan 2018-2029</td>
</tr>
<tr>
<td>17 December 2018</td>
<td>Minister authorised Council to prepare Amendment C282ston</td>
</tr>
<tr>
<td>14 February 2019</td>
<td>Amendment C282ston formally exhibited</td>
</tr>
<tr>
<td>15 March 2019</td>
<td>Amendment C282ston gazetted</td>
</tr>
</tbody>
</table>
Date | Event
--- | ---
6 May 2019 | At its ordinary meeting, Council resolved to:
- request the Minister appoint an Independent Planning Panel under s23 of the Act to consider the remaining unresolved submissions received in response to the Amendment
- adopt a position in support of the Amendment C282ston in its submission to the Panel Hearing, generally in accordance with the Council officers’ response to the submissions
- refer the submissions and any late submissions received prior to the directions hearing affecting to the independent Planning Panel appointed, and
- authorise Council’s officers to make minor changes to Amendment documents.

5 June 2019 | Directions hearing for Amendment C282ston.

(iii) **Interim heritage controls**

The Stonnington Planning Scheme was amended in 28 March 2019 (Amendment C283ston) to introduce interim heritage controls to the individual places (same HO numbers as proposed by Amendment C282) and the extended portion of The Avenue Heritage Precinct (HO640). These controls are set to expire on 7 January 2020. The Amendment if approved will replace the interim controls with permanent controls.

1.3 **Authorisation**

The Amendment was authorised on 17 December 2018. The delegate authorisation letter from the Department of Environment, Land, Water and Planning (DELWP) was conditional on minor revised amendment detail and documentation which were broadly satisfied. The conditional authorisation however, also identified the following:

> It is recommended that external paint controls are specified for 44 Murphy Street, South Yarra.

The conditional authorisation is discussed in Chapter 5.

1.4 **Summary of issues raised in submissions**

Four submissions were received to the exhibition of the Amendment. Two of the submissions supported the Amendment, although Submission 2 sought additional heritage controls. The two opposing submissions (Submission 1a/1b and Submission 3) related to The Avenue Precinct Heritage Overlay and identified concerns about:

- the lack of cohesiveness of the precinct as a result of new development
- the impact on the legibility and integrity of the existing precinct
- the extent of building alterations on the significance of individual buildings
- potential impacts of heritage controls on owners.
1.5  **Issues dealt with in this Report**

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. All submissions and materials have been considered by the Panel in reaching its conclusions, regardless of whether they are specifically mentioned in the Report.

This Report deals with the issues under the following headings:

- Planning context
- Common issues
- The Avenue Precinct, Windsor
- ‘Mayfield’, 44 Murphy Street, South Yarra
- Drafting matters.

1.6  **Issues not dealt with in this Report**

No submissions were received in relation to the Amendment’s proposed application of the Heritage Overlay to ‘Tuena’, 1026 Malvern Road, Armadale (HO636) and ‘Tiri-Tiri’, 46 Kyarra Road, Glen Iris (HO638). The Panel has not formed a view on the Amendment as it relates to these sites however, it considers that the prepared statements of significance and place mapping is consistent with *Planning Practice Note 1 Applying the Heritage Overlay, August 2018*. 
2 Planning context

Council provided a response to the Strategic Assessment Guidelines as part of the Explanatory Report. The Panel has reviewed Council’s response and the policy context of the Amendment and has made a brief appraisal of the relevant zone and overlay controls and other relevant planning strategies.

2.1 Planning policy framework

Council submitted that the Amendment is supported by various clauses in the Planning Policy Framework which the Panel has summarised below:

Victorian planning objectives

The Amendment meets objective 9(1)(d):

To conserve and enhance those buildings, areas or other places which are of scientific, aesthetic, architectural or historical interest, or otherwise of special cultural value

Council submitted that the Amendment meets this objective by ensuring the heritage significance of the identified properties and precinct are considered in future development proposals.

Clause 15.03-1S (Heritage conservation)

Objective:

To ensure the conservation of places of heritage significance.

Relevant strategies include:

- Provide for the conservation and enhancement of those places that are of aesthetic, archaeological, architectural, cultural, scientific or social significance.
- Retain those elements that contribute to the importance of the heritage place.
- Ensure an appropriate setting and context for heritage places is maintained or enhanced.

Council submitted that the objective and strategies form the framework of the Amendment through the identification and assessment of places of heritage significance and including them in the planning scheme to conserve and enhance those places.

Municipal Strategic Statement

Clause 21.06-10 (Built Environment and Heritage)

The Amendment is consistent with the following objectives and strategies by acknowledging the importance of identifying and protecting the significant heritage character of Stonnington:

Objective:

To protect and enhance all significant and contributory heritage places within the City of Stonnington

Relevant strategies include:

- Identify additional places which meet the threshold of at least local significance, to ensure representation of all the historic themes relevant to the City.
• Ensure the retention of the key attributes that underpin the significance of the heritage place
• Encourage the conservation of elements that contribute to the significance of heritage places
• Ensure that new development within the Heritage Overlay respects the significance of the place
• Promote design excellence that clearly and positively supports the ongoing significance of heritage places
• Ensure that the design process and the consideration of applications respond to the heritage citation (including any statement of significance), the relevant historic themes and the ascribed level of significance of the heritage place
• Ensure that heritage values are recognised and given appropriate weight when competing policies apply.

Local Planning Policy

Clause 22.04 (Heritage Policy)

Council submitted that Amendment meets the Clause objectives including:

To retain all significant and contributory heritage places
To conserve and re-use significant and contributory heritage places
To ensure that new development respects the significance of heritage places.

Council’s submission identified the policy definitions of levels of significance for heritage places as relevant to the Amendment:

The heritage citation prepared for each place applies a building grade which corresponds with the following levels of significance:

• ‘Significant places’ means places of either state or local significance including individually listed places graded A1, A2 or B.
• ‘Contributory places’ means buildings and other places in a heritage precinct graded C which are contributory to the built form attributes and significance of a heritage precinct.
• ‘Ungraded places’ means buildings and other places which do not contribute to the significance of a heritage precinct.

The Amendment broadly is consistent with the policies set out in Clause 22.04 and generally accords with its definitions.

2.2 Other relevant planning strategies and policies

(i) Plan Melbourne

Council submitted that the Amendment supported Direction 4.4 of Plan Melbourne as identified in Table 2.

2.3 Heritage Overlay 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 undertake demolition, subdivision, buildings and works. The Heritage Overlay enables the Schedule to:

- identify additional controls for specified trees, external painting (painting previously unpainted surfaces) and internal alterations
- allow prohibited uses to be permitted
- identify outbuildings and fences which are not exempt from a permit under the Heritage Overlay.

The Amendment does not propose to identify additional controls to the identified individual Heritage Overlay places. The Amendment proposes to retain the existing Schedule tree control (applying to Plantanus species street trees) applying to the existing The Avenue Precinct Heritage Overlay (HO148). Council submitted that it is intended that the Heritage Overlay mapping for HO148 extends over street trees on the eastern side of The Avenue. This is discussed in section 4.2 of this Report.

**Table 2** Plan Melbourne Directions

<table>
<thead>
<tr>
<th>Outcome</th>
<th>Directions</th>
<th>Policies</th>
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<tbody>
<tr>
<td>4. Melbourne is a distinctive and liveable city with quality design and amenity</td>
<td>4.4 Respect Melbourne’s heritage as we build for the future</td>
<td>4.4.1 Recognise the value of heritage when managing growth and change by:</td>
</tr>
</tbody>
</table>

- Protecting Melbourne’s post-settlement cultural heritage through consistent and credible decision-making based on clear and widely accepted heritage conservation principles and practices
- Decisions based on an appreciation of Melbourne’s past and an understanding of its future needs including the processes of change to the urban environment
- Continuous identification and review of currently unprotected heritage sites and targeted assessments of heritage sites in areas identified for substantial change

### 2.4 Ministerial Directions and Practice Notes

The following Ministerial Directions are relevant to the Amendment:

- *Ministerial Direction 11 (Strategic Assessment of Amendments)*
- *Ministerial Direction on the Form and Content of Planning Schemes under section 7(5) of the Act.*

The following planning practice notes are relevant to the Amendment:

- *Planning Practice Note 1 Applying the Heritage Overlay, August 2018 (PPN01)*
• **Planning Practice Note 46 Strategic Assessment Guidelines, August 2018** (PPN46).

Council submitted the Amendment was consistent with the identified Ministerial Directions and Practice Notes.

**Planning Practice Note 1**

Council submitted that PPN01 was relevant to the Amendment.

PPN01 provides guidance about using the Heritage Overlay. It states that the Heritage Overlay should be applied to, among other places:

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

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

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

The exhibited statements of significance use the Hercon criteria and have been prepared in a form consistent with PPN01.

**2.5 Relevant studies**

The key studies relating to The Avenue Precinct, Windsor are discussed in section 4.2 of this Report. Council’s Part A and Part B submissions provided an overview of the background studies that informed the identification of the individual places and is not reproduced in this Report.

**2.6 Amendment VC148**

Amendment VC148 was gazetted on 31 July 2018. VC148 made substantial changes to the structure and content of the planning policy framework, as well as other provisions in the
Planning Scheme. Among other changes, a statement of significance for each heritage place must now be incorporated in the planning scheme. The Amendment has been prepared in a form consistent with VC148.

2.7 Conclusions and recommendations

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, Municipal Strategic Statement and Local Planning Policy Framework, and is generally consistent with the relevant Ministerial Directions and Practice Notes. The Amendment is well founded and strategically justified, and the Amendment should proceed subject to addressing the more specific issues raised in submissions as discussed in the following chapters.
3 Common issues

3.1 Social and economic impact

The submission from MOG Properties Pty Ltd (MOG) raised concern about Council’s assessment of the social and economic impacts of the Amendment and in particular the impacts on their property. Because of the provisions of the Act this is a threshold issue for the Amendment.

(i) The issues

The issues are:

- Whether an appropriate level of analysis of social and economic impacts was undertaken in the preparation of the Amendment.
- Whether the Amendment will have negative social and economic impacts.
- Whether the Amendment will have a net community benefit.

(ii) Relevant provisions of the Act, Planning Scheme and Practice Notes

Planning and Environment Act 1987

When preparing an amendment, section 12 of the Act requires the planning authority to have regard to the objectives of planning in Victoria, the Victorian Planning Provisions and Municipal Strategic Statement and other documents which form part of the scheme, and that it must take into account the social and economic effects of the amendment (section 12(2)(c)).

Clause 71.02 (Operation of the Planning Policy Framework)

Clause 71.02-1 (Purpose of the Planning Policy Framework) identifies that:

The Planning Policy Framework seeks to ensure that the objectives of planning in Victoria (as set out in section 4 of the Act) are fostered through appropriate land use and development planning policies and practices that integrate relevant environmental, social and economic factors in the interests of net community benefit and sustainable development.

Clause 71.02-3 (integrated decision making) identifies that:

Society has 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.

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.

(iii) Planning Practice Note 46

PPN46 identifies that in addressing whether an amendment implements the objectives of planning and identifies any environmental, social and economic effects:
An environmental, social and economic assessment should include an evaluation of the costs and benefits to businesses and the community arising from any requirement of the amendment.

The practice note identifies that:

The normal way of assessing the social and economic effects of an amendment is to consider whether or not the amendment results in a net community benefit.

(iv) Submissions and evidence

Mr Tweedie SC for MOG, owner of 31-33 The Avenue (Submission 1a and 1b) submitted that Council had failed to undertake a “proper, balanced or informed assessment of the social and economic impacts of this Amendment in the course of its preparation” and therefore had not demonstrated a net community benefit consistent with the provisions of the Act and PPN46. He considered the following social and economic impact statement in the Explanatory Report to be mere assertion and without a clear basis:

It is considered that the long-term social and economic effects of the amendment are positive

Mr Tweedie was critical of Council’s position that it was up to the submitter to provide evidence to demonstrate an economic impact, and which was focused on wider, community impacts rather than private economic impacts. He submitted that the Act did not make a distinction between private and community economic or social impacts. He added that including the site in the Heritage Overlay was likely to have a significant impact on MOG in terms of impacts on property value and ability to expand. This would have a wider community impact based on the nature of the service provided the community and the ability to meet patient demands at the site (including accessible, off street carparking).

Mr Tweedie characterised the operations of MOG as providing “essential medical services to the community”, identifying the number surgeons working from the premises (15) and the large number of patients supported by the facility and its important relationship with The Avenue Hospital (located opposite). A letter of support was provided from The Avenue Hospital (Document 38) which reinforced the importance of MOG in meeting the needs of growing patient numbers, relieving the pressure from the public hospital system and supporting the operations of the hospital.

Mr Tweedie questioned the expertise of Mr Raworth to give evidence relating to economic impacts and critical of the evidence relating to the potential impact on land values and reference to unidentified residential and commercial studies. Mr Tweedie submitted that while MOG intended to act on its recent planning permit, the cost of development was in the order of $6 million which required substantial borrowing, the ability of which was potentially impacted by a substantial reduction in site value. Mr Tweedie provided a letter from Charter Keck Cramer (Document 40) regarding the impact on land values from applying the Heritage Overlay to 31-33 The Avenue. The letter outlined the desktop level analysis undertaken and conclusion of a probable property value reduction impact in the order of 20-30 per cent (based on retention of existing buildings and limited alternative uses to commercial or medical activities). Referring to the advice of Charter Keck Cramer and the Heritage Listing & Property Valuations in Victoria, Heritage Victoria, March 2001 report (Document 44), Mr Tweedie
submitted that the impacts of heritage controls on property values were potentially more significant for commercial properties than they were for residential properties.

MOG’s submission concluded that the reduced property value would potentially limit the ability to undertake the approved extension or continue to grow the site (future expansion being limited to the former dwelling structures) and thus represent “an adverse social and economic impact on the community”.

Submission 3 considered that the inclusion of 47-47A The Avenue in the Heritage Overlay would “bring about enormous problems to us”. The nature of these problems was not articulated further in the submission or at the Hearing based on Council’s proposed post-exhibition changes relating to the grading of this site.

Council advised that social and economic impacts were considered in the preparation of the Amendment and acknowledged that no formal assessment had been prepared. While conceding the Amendment may have individual impacts, it submitted that they did not outweigh the community benefits of applying the Heritage Overlay. Council considered that MOG’s identification of economic impacts were assertions unsupported by evidence. In relation to the site’s operation, Council identified that it was operating as a private medical facility and did not deliver the level of broader community benefit that a public hospital would.

(v) Discussion

Social and economic impact analysis

The Panel considers that both the Act and PPN46 require the assessment of social and economic impacts of an Amendment. The Panel notes that while PPN46 identifies the ways in which social and economic (and environmental) impacts can be assessed, there is no particular guidance about the level of detail required. The Panel considers that the level of social and economic analysis of the impacts of the Amendment undertaken by Council to be rudimentary (at least as part of the Amendment documentation). While there is limited reference to it in the Explanatory Report, Council advised that it had considered the wider social and economic impacts of the Amendment.

While the limited demonstrable social and economic impact analysis is potentially problematic, the Panel considers that the level of analysis required should relate to what is being proposed by the Amendment. In this case, the Amendment applies to the extension of an existing precinct and does not introduce individual site Heritage Overlay controls. As identified in this Chapter 4, the Panel does not consider the case for The Avenue Precinct having cultural heritage value to be marginal with at least three Criteria met. As a result, it is considered that a detailed exercise of understanding and balancing the various social and economic benefits of the proposal is not particularly determinative. If the case for heritage significance was weaker, the issue of potential negative social and economic impacts may have altered the balance of considerations in favour of recommending a reduction in area or abandonment of the Amendment.

The Panel considers that an adequate level of assessment has been undertaken by Council in the preparation of this Amendment however, it encourages Council to employ a more robust and upfront analysis for future amendments.
Private and community impacts

Without diminishing the contribution made by the existing medical facility which no doubt provides an important service to its clients and has an established relationship with The Avenue Hospital, the MOG submission focused primarily on the potential loss of property value and associated equity issues for their site. The Panel acknowledges that the Amendment may have some economic impact on the land owner, however this is a private economic impact rather than a broader community impact. The Panel does not consider that these private impacts outweigh the broader community benefit of the Amendment.

Social and economic impacts are difficult to quantify and often intangible in the absence of any analysis and evidence. As identified in the *Heritage Listing & Property Valuations in Victoria, Heritage Victoria, March 2001* report, property values are influenced by a complex range of factors.

The Panel considers that the potential impacts, including impacts on future development, on 31-33 The Avenue or any other individual property affected by the Amendment will be relatively short-term impacts with the broader community benefit of retaining a precinct of cultural heritage significance having a more enduring impact. The Amendment delivers an outcome that is consistent with the objectives of the Act and Planning Policy Framework, Municipal Strategic Statement and Local Planning Policy which aim to conserve heritage places within Melbourne and the Municipality where they ‘make the grade’. Including sites in the Heritage Overlay establishes the need to take heritage values into account rather than precluding development. The Panel considers that the identification of 31-33 The Avenue as ‘contributory’ rather than ‘significant’ will provide some comfort from the potential impacts on property values and acknowledge the site’s particular circumstances.

The Panel notes that private economic considerations can be further examined in more detail at the permit stage.

(vi) Conclusion

The Panel concludes:

- The level of social and economic analysis undertaken by Council was adequate for the Amendment.
- The Amendment may have a negative economic impact on individual land owners however this does not outweigh the broader community benefits of the Amendment.
- The Amendment will provide a net community benefit.
4 The Avenue Precinct, Windsor

4.1 What is proposed?

(i) Statement of significance

Exhibited Statement of significance

<table>
<thead>
<tr>
<th>What is significant?</th>
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<tbody>
<tr>
<td>The Avenue Precinct, Windsor, is a small residential area of freestanding Victorian villas developed from the early 1880s to 1900. Elements that contribute to the significance of the precinct include:</td>
</tr>
<tr>
<td>• The consistent construction dates.</td>
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<tr>
<td>• The consistent open setbacks of the villas.</td>
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<tr>
<td>• The detached form and generally consistent scale of individual villas.</td>
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<tr>
<td>• Few prominent additions and alterations.</td>
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<tr>
<td>• All the buildings along the eastern side of The Avenue within the precinct are of high individual distinction and have been identified as significant buildings under the City of Stonnington Planning Scheme. These villas remain largely intact to their original states, and typically survive with their presentation to the street unaltered retaining verandahs and decorative detailing.</td>
</tr>
<tr>
<td>• Few examples of non-contributory modern infill development with the exception of the developments at 35, 37 and 49 The Avenue.</td>
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<td>• Face brick or rendered masonry materiality, and rooftops with chimneys and pitched roof forms clad in slate or tiles.</td>
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<tr>
<td>• Garden setbacks to the street which are generally (with the exception of 46 and 54) free from prominent vehicle accommodation.</td>
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<tr>
<td>• A number of buildings along the east side of The Avenue retain original fences to the street. All of the buildings have fences that are sympathetic to the late Victorian character of the precinct.</td>
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<tr>
<td>• The large plane trees in the median strips along both sides of The Avenue.</td>
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</table>

How is it significant?

The Avenue Precinct, Windsor, is of local historical (HERCON Criteria A, C, & F) and aesthetic significance (HERCON Criteria B, D, & E).

Why is it significant?

The Avenue Precinct is of historical significance retaining remnants of one of the earliest and most elegant streets in the former City of Prahran (8.2 Middle-class suburbs and the suburban ideal). Development in the area generally derives from the surge of building construction which swept across South Yarra, Prahran and Windsor during the land boom which continued into the 1880s and beyond (3.3.1 Crown Land Sales, 3.3.3 Speculation and land boomers). The Precinct is unusual for the extent to which development proceeded unabated during the recession of the 1890s. The Precinct is of some additional interest for its associations with noted developer, Henry Cheel, and with St Matthew's Church.

The Avenue Precinct is of aesthetic significance for its collection of late Victorian buildings set on large garden allotments. Many of the villas on the eastern side of the street are unusually grand by local standards, reflecting the stature of their original occupants (8.4.1 Houses as a symbol of wealth status and fashion). This small sequence provides an intact example of the former character of The
Avenue prior to the major flat and institutional redevelopment. Such consistently high levels of individual significance are rarely encountered within Council's Heritage Overlay areas. Areas of this level of intactness to their early state are becoming increasingly rare.

On the western side of the street, the Victorian villas that remain contribute to the character and significance of the area despite their generally lower level of intactness and architectural distinction. Although there is some non-contributory infill development on the western side of The Avenue, the streetscape’s legibility to its late-nineteenth century state has not been unduly compromised.

Mature plane trees along the both sides of The Avenue provide a garden setting for the group (8.7.1 Creating leafy suburbs). The established gardens and remaining examples of palisade fencing are also important streetscape attributes.

35, 37 and 40 The Avenue are identified ‘non-contributory’ places. 47 The Avenue is identified as a ‘contributory’ place. All other places are identified as ‘significant’. The exhibited statement of significance retains the ‘significant’ grading levels of all buildings on the east side of The Avenue included in the existing heritage precinct.

(ii) Exhibited Heritage Overlay Map

The Amendment proposes to extend The Avenue Precinct Heritage Overlay (HO148) to apply to the odd numbered properties between numbers 31 and 53 on the western side of The Avenue, Windsor. The exhibited Amendment Map identified the extent of the proposed expanded The Avenue Precinct (Figure 1). The mapped extent of HO148 does not extend beyond property boundaries. The mapped area matches the extent of the interim heritage control (HO640).

Figure 1    Exhibited Amendment Map for the expanded The Avenue Precinct, Windsor
4.2 Heritage significance

(i) The issues

The Amendment proposes to include the properties on the west side of The Avenue between 31 to 53 The Avenue, Windsor within an expanded The Avenue Heritage Overlay (HO148).

The issues are:

- Does the extended The Avenue Precinct have local cultural heritage significance?
- Are the gradings for the sites in the extended The Avenue Precinct appropriate?
- Are the boundaries of the extended The Avenue Precinct appropriate?

(ii) Background

Heritage studies

Council in its submission and evidence identified a series of heritage studies, reviews and gap analysis commissioned for the municipality (including the former City of Prahran) dating from 1983 (Prahran Conservation Study, History of the Development of Prahran) to the recent Heritage Strategy Action Plan 2018-2029. This body of work is identified in the Appendix A Document List of this Report (Documents 3, 7-11, 13-18 and 20-24).

In support of the proposed extended The Avenue Precinct Heritage Overlay, Council and the heritage evidence relied primarily on the:

- Prahran Conservation Study, Nigel Lewis and Associates, 1983
- Prahran Character and Conservation Study 1992, Nigel Lewis and others (Character and Conservation Study)

The 1983 Conservation Study identified buildings and areas of heritage significance. The Study identified the buildings at 31-33, 44 and 48-52 The Avenue as having an ‘A2’ grading and 56 The Avenue an ‘A1’ grading. No other buildings in the existing or proposed extended precinct were identified.

The 1992 Character and Conservation Study built on the 1983 Conservation Study and other work in 1986 and 1989 as well as the recommendations of the Panel to Prahran Planning Scheme Amendment L7. It was prepared to support a Prahran Planning Scheme Amendment L24. The Study identified 16 precincts comprising Urban Conservation Areas and Prahran Character Areas (Volume 1). The Avenue was identified as Precinct 8, with 42-56 The Avenue identified as an Urban Conservation Area and the balance of the Avenue, a Prahran Character Area. Volume 2 of the Study (Buildings and Streetscape Grading Register) graded buildings in The Avenue and its streetscape. The buildings in the current The Avenue Precinct were graded

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1 A building of major architectural or scientific interest
2 Of historic or architectural importance at the regional or state level
'A2'\textsuperscript{3} or higher, other than 42 and 46 which were respectively graded ‘C’\textsuperscript{4} and ‘B’\textsuperscript{5} respectively. The buildings within the proposed expanded The Avenue precinct ranged from ‘A2’ (31-33 The Avenue), ‘C’ (35 and 37) and ‘B’ (remainder). The Study identified the existing The Avenue Heritage Overlay area as a ‘level 2’ streetscape\textsuperscript{6} and the area on the western side and subject to this Amendment as a ‘level 3’ streetscape.\textsuperscript{7}

The Conservation Review was prepared following the Panel’s recommendations in Prahran Planning Scheme Amendment L24 for abandonment and further work. The purpose of the Conservation Review was to review ‘A1’ graded buildings and the number of proposed Conservation Areas “and determine whether the designation is warranted and boundaries are appropriate”. The Conservation Review describes the development history of The Avenue, provides a description of the area (comprising the eight detached dwellings on the east side of the street), its heritage characteristics and significance. The significance of the area is attributed to the relatively intact, consistent architectural character of the 1880’s villas, iron palisade fencing and the large canopy street trees (Plane trees).

The Conservation Review, description of The Avenue Urban Character Area identifies that opposite the area “are other villas of similar form but generally more altered”. The analysis identified that:

- Opposite, those villas that remain contribute to the overall quality of the area despite their generally lower level of intactness. Redevelopment on the western side of the street for high density would impact on this group of houses. Consideration should be given to extending the Urban Conservation Area to include both sides of the street.

The Conservation Review recommended that the Urban Conservation Area be adopted as exhibited in Amendment L24 and:

- Review the extent of the Urban Conservation Area to consider the contribution made by the remaining villas of similar form and development period on the western side of the street.

The area of review was shown hatched on a map which is reproduced in Figure 2.

The expanded The Avenue Precinct was not identified for further examination in the City of Stonnington, Heritage Overlay Gap Study, Heritage Overlays Precincts Final Report, Bryce Raworth, March 2009 which examined potential Heritage Overlay precincts. Council however, indicated that the City of Stonnington Heritage Review Strategy, Baron Planning and Projects Pty Ltd, 2006 identified that “many recommendations from previous studies have not been translated into the Planning Scheme” and that there was an opportunity to review previous assessments and introduce controls over places of local significance. Council also referred to the Heritage Strategy and Action Plan 2018-2029 which establishes a framework for reviewing existing places and citations and assessing new places not currently protected by the Heritage Overlay.

\textsuperscript{3} Of regional or metropolitan significance
\textsuperscript{4} Reasonably intact representatives
\textsuperscript{5} Making an architectural and historic contribution within the local level
\textsuperscript{6} Having a regional or local significance because of their scale of a particular period
\textsuperscript{7} Prahran Character Area which does not exhibit the intactness of scale or character as Urban Conservation Areas. Level 3 indicates a higher level of cohesiveness than streets not graded.
Existing extent of The Avenue Precinct, Windsor

The Avenue Precinct Heritage Overlay (HO148) was introduced through Prahran Planning Scheme Amendment L24 in 1994, supported by the work undertaken in the Conservation Review. The Heritage Overlay was extended in 2015 to include 42 The Avenue, Windsor through Stonnington Planning Scheme Amendment C181. The Avenue Precinct Heritage Overlay currently applies to 8 ‘significant’ level properties on the eastern side of The Avenue, between 42 and 56 The Avenue (Figure 3). The precinct comprises seven, single-storey asymmetrical Victorian Villas and one double storey Federation building (St Matthews Vicarage). The Heritage Overlay extends over the adjoining portion of the road reserve (footpath and nature strip) containing established Plane trees (Plantanus species).

Figure 2  Conservation Review map: The Avenue Urban Conservation Area

Source: Conservation Review: City of Prahran, Context Pty Ltd, 1993 p67 (Document 15)
Post-exhibition changes

Council confirmed at the Hearing that it intended that the expanded The Avenue Precinct Heritage Overlay would join up with the existing Precinct extent and include the street trees adjoining the western side of The Avenue as generally mapped in Mr Raworth’s evidence (Figure 4).

Source: Raworth evidence p16
(iii) **31-33 The Avenue, Windsor**

31-33 The Avenue, Windsor comprises two single-storey symmetrical Victorian era dwellings that have been repurposed as a medical practice (Melbourne Orthopaedic Group) which was established in the 1970’s. The former dwellings (Figure 5) are joined by a modern linking structure and have undergone many changes (summarised in Document 26) including a rear addition, consolidation of titles, external façade changes including changes to the verandas and demolition of former stables. The demolition of the stables in 2018 provided the impetus for Council to engage Bryce Raworth Pty Ltd to investigate the extension of HO148.

![Figure 5 31-33 The Avenue, Windsor](source: Melbourne Orthopaedic Group submission (Document 39))

A Planning Permit (0637/18) issued for the site on 16 April 2019 allows for a three-level extension to the rear of the existing buildings incorporating a basement and ground level carpark (accessed from Cyril Street) and upper level of consulting rooms.

The 1983 Conservation Study and 1992 Character and Conservation Study graded the buildings (then separate) as ‘A2’. Since 1992 the site has not been identified in any subsequent studies as having an individual level of cultural heritage significance, including the more recent:

- *City of Stonnington Heritage Review, Sites to be considered for additional planning scheme control, Malvern and Prahran Areas, Revised, Bryce Raworth, December 1996*
- *Victorian Houses Study Stage 1, John Stratham (16/11/14). Document 3 (a spreadsheet provided by Council) suggests that the site was examined as part of this study and identified as “Generic buildings connected by modern infill” with no further investigation proposed.

(iv) **Evidence and submissions**

Council submitted that the extension to The Avenue Precinct was strategically justified and that the significance of the precinct was appropriately and rigorously established against PPN01. It adopted the evidence of Mr Raworth and considered that the precinct extension “results in a coherent and readily identifiable precinct of predominantly Victorian development on both sides of the street”. Council identified that the precinct boundaries perform a critical role in maintaining the precincts integrity.
Mr Raworth’s evidence outlined the assessment criteria used to examine the precinct. He referred to the building significance gradings identified in Clause 22.04 indicating that most buildings in the precinct extension have been graded ‘significant’ or the equivalent of a ‘B’ grading. This was because they were largely intact typical examples of modest late-Victorian housing. He considered that the buildings on the western side of The Avenue were more representative examples of Victoria villas that had undergone change but contributed to the significance of the precinct in terms of period, character and scale.

In relation to the precinct extent, Mr Raworth opined that the boundaries of the proposed precinct were carefully chosen to include buildings and streetscapes that best demonstrated the identified significance of the area. He identified that the extension of the precinct would reduce the proportion of significant buildings (‘A1’ and ‘A2’ grading) from 100 per cent to 80 per cent which he considered “a generous proportion”. While acknowledging that the larger precinct included some double storey apartment blocks and town houses, he considered that they did not disrupt the visual continuity between the villas at 31-33 The Avenue and similar buildings to the north and east, because of their setback, scale and massing. Mr Raworth opined that the removal of these buildings (35 and 37 The Avenue) had the potential to compromise the integrity of the broader precinct.

In relation to 31-33 The Avenue, Council’s submission emphasised that while the property has been identified as significant in a number of studies, it agreed that the heritage fabric of the place did not warrant individual Heritage Overlay protection. Rather it submitted, referring to Mr Raworth’s evidence, the buildings share many of the attributes of the existing statement of significance for HO148 including front and side setbacks, scale of built form, pitched roof and palette of materials and were constructed during the same period. Council considered that the site buildings remain legible to their Victorian form, despite alteration and contribute to the precinct extension.

Mr Raworth considered the street facades of 31-33 The Avenue “to be of reasonable integrity to their original condition and appearance apart from a modern addition connecting the 2 buildings”. He concluded the property should be graded as ‘significant’ within the proposed precinct. He opined that “overlay precincts generally rely on streetscape presentation and the presentation of the buildings to The Avenue is the key consideration in determining whether the site contributes to the heritage character of the precinct”.

Mr Tweedie opposed the Heritage Overlay being applied to 31-33 The Avenue or its inclusion as part of the proposed precinct on the basis that there was insufficient cultural heritage significance to warrant its application. He submitted that the Amendment should be abandoned because:

- the extensive changes made to the former dwellings on the site to accommodate a medical practice which give it an appearance as a “single, con-joined commercial building”
- the failure of any previous studies identifying the site at 31-33 The Avenue as significant and the lack of any action by Council between the Conservation Review in 1993 and the exhibition of the Amendment
- the lack of a rigorous and thorough assessment of significance including a comparative analysis consistent with PPN01, this being limited to a single paragraph in the citation and two paragraphs in Mr Raworth’s evidence
• the site comprises generic villas and was not legible as part of a precinct given its separation from the balance of the proposed precinct by a double-storey apartment block at 35 The Avenue and double storey town houses at 37 The Avenue
• a potential to undermine the significance of the existing precinct by including 31-33 The Avenue and other ‘non-contributory’ buildings.

Mr Tweedie identified the likely dilution of the integrity of the existing The Avenue Precinct with a comparison of the proposed statement of significance with the existing statement of significance (sourced from the Victorian Heritage Database, Document 41). He identified in this comparison, the removal of some of the existing unique significance elements and references to levels of intactness as well as the introduction of new language which differentiated between the heritage values and significant elements on the east and west sides of the street.

(v) Discussion

Previous heritage studies and timeframes

There was a difference of opinion between Mr Tweedie and Mr Raworth regarding the interpretation of the mapping in the 1993 Conservation Review (Figure 2) and what land was identified to form part of a future precinct review. The Panel considers that the wording of the Conservation Review recommendation along with the mapping identifies the need for a further review and the mapping should not be read as identifying a definitive boundary for the review. Rather, it is the task of the subsequent review to confirm this task through appropriate analysis guided by the recommendation.

Despite the lapse of time and lack of implementation, the Panel considers the Conservation Review and the identification of sites of significance in the earlier 1983 and 1992 studies form an appropriate basis for reviewing the extent of the Avenue Precinct. The Panel acknowledges that while it is far from ideal, many reviews are undertaken in a reactionary manner where places are potentially under threat. The risk in this approach is that the original heritage values of places can be significantly diminished over time because of new development activity. The Avenue has experienced a change in building form and use that has impacted on its overall Victorian era characteristics, confining that character to a much smaller precinct. The key issue for the Panel is whether the extended precinct has a level of cultural heritage significance that warrants the Heritage Overlay, and whether its application has strategic and contextual merit.

Heritage significance

The exhibited statement of significance identifies that the extended precinct is of local historical and aesthetic significance and meets seven of the eight Hercon criterion (A to F). These are the same criterion contained in the existing precinct’s statement of significance. The exhibited citation for the proposed precinct does not identify how these particular criteria were relevant to the extended precinct. Mr Raworth advised the Panel that for the expanded precinct:

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8 The evidence of Mr Raworth also includes this version of the statement of significance prepared by John Statham in May 2013.
• Criterion A - was strongly met, reflecting a pattern of housing activity from the 19th and early 20th century
• Criterion B - was nominal or slightly relevant but primarily applied to the rarity and significance of buildings on the east side of the street
• Criterion C - was of limited application
• Criterion D - was probably met at a local level for the representativeness of 19th century Victorian villas
• Criterion E - was met to a high level given the aesthetic contribution made by significant and contributory buildings and the Italianate aesthetic
• Criterion F - was weak.

The Panel considers that the extended precinct is essentially a new, larger precinct comprising significantly intact Victorian villas on the east side (the significance of which has already been established) and largely intact Victorian villas on the west side, albeit with non-contributory elements. While on one view this might diminish the unique characteristics of the existing precinct, including additional buildings on the west side potentially further enhances and protects the heritage characteristics of it from the intrusion of new built form. On balance, the heritage characteristics of the proposed western extension of the precinct (form, setback, materiality, building era) satisfy Hercon Criterion A, D and E and will complement and enhance the local heritage significance of the exiting precinct rather than ‘lowering the bar’.

The Panel acknowledges that the comparative analysis undertaken was limited and that this is an important step in establishing the relative significance of a place. It appears that Council did not focus on this element of assessment given that the Amendment involves an extension to an existing precinct Heritage Overlay. Previous Panels have identified that a comparative analysis is a critical step in establishing a place’s heritage value and comparative standing. The statement of significance and heritage evidence identified that The Avenue streetscape is similar to those in other Heritage Overlay Precincts within the Municipality9 without identifying their comparative condition, integrity or heritage value.

In the context of the proposed The Avenue Precinct extension, the Panel does not consider the limited comparative analysis fatal to the Amendment, in part due to the existing heritage studies undertaken. In the absence of evidence to the contrary, the Panel considers that the proposed precinct compares well with the limited examples cited by Mr Raworth in terms of small groupings of relatively intact Victorian era dwellings with canopy street trees. The proposed precinct would appear to be distinguished from other streets by the regularity of its larger lot sizes and its more consistent and elaborate Victorian villa forms.

31-33 The Avenue

It was acknowledged that the buildings at 31-33 The Avenue have been altered, are used for a commercial purpose and are unlikely to revert to a residential use. The Amendment does not seek to identify the place as individually significant despite its identification in previous heritage studies. Rather the place has been identified as having a ‘significant’ grading within The Avenue Precinct because it was considered to reflect the identifiable freestanding villa

9 Fawkner Street, South Yarra (part of HO131), Donald Street, Prahran (part of HO126) and Elm Grove, Armadale (part of HO130)
contributory elements of the precinct and possess identifiable Victoria era qualities. The buildings at 35, 37 and 49 do not possess these characteristics as they comprise more recent apartment or town house structures and are appropriately identified as ‘non-contributory’.

Despite alteration and modern intrusions (including the linking structure), the buildings are still readily identifiable as two former dwellings which possess the same Victorian villa characteristics, proportions and setbacks as the other Victorian era dwellings in the existing and proposed precinct. The Panel considers that the linking structure because of its design, use of materials and setback is respectful of those buildings and allows them to be readily identifiable as two former dwellings. This is likely to remain the case if the recently issued planning permit is activated. While the new additions will be visible from The Avenue, they are substantially set back from the street and the two former dwellings will remain visually prominent in the street.

The Panel considers that, to the casual observer positioned in different parts of The Avenue, 31-33 The Avenue is visually linked to the existing precinct on the east side of the street and the significant buildings on the west side of the street. While the form of 35 The Avenue (building height, high side fence and front fence and hedge treatment) limits some views to 31-33 The Avenue from other parts of the existing and proposed precinct, it remains visually connected and identifiable as possessing the heritage elements and characteristics of the precinct. The high wall and prominent building form of 29 The Avenue acts as a distinct southern edge to the west side of the precinct, much like The Avenue Hospital buildings do on the east side.

However, the Panel is concerned about the identification of the property in the statement of significance as having a ‘significant’ grading. The Heritage Overlay Precincts Final Report, Bryce Raworth Pty Ltd, March 2009 identified 36 potential Heritage Overlay precincts – the majority of which comprised only buildings of ‘contributory’ and ‘non-contributory’ grading. The extended The Avenue Precinct however grades all predominantly intact Victorian villas ‘significant’ although the proposed statement of significance differentiates between the significance levels of the east and west side of the proposed precinct. The Panel considers that the Victorian villas on the west side of The Avenue are potentially less significant than those on the east side which have higher levels of intactness and elaborate detail. The more appropriate grading for the west side villas may be ‘contributory’. Mr Raworth’s evidence identified that detailed research into the significance of individual buildings in the extended precinct was not warranted as the precinct was the focus of the proposed heritage control. Not having received submissions from other ‘significant’ graded villa property owners, the Panel is reliant on the evidence of Mr Raworth in this regard and on balance accepts his evidence that they are significant to the precinct.

Despite being identified as having an ‘A2’ level of significance, the site and buildings and site at 31-33 The Avenue have undergone significant alteration which has potentially diminished its level of significance. The established medical consulting room use, consolidation of lots and joining of the former dwellings and creation of extensive carparking areas distinguishes it from the other remaining Victorian villas on the west side of The Avenue. While visually connected and a tangible part of the extended precinct it is more isolated than other villas because of the more modern apartment and town house intrusions. The Panel considers that the property should be graded ‘contributory’.
Heritage Overlay extent

While the proposed precinct includes non-contributory buildings, the Panel agrees that they do not significantly detract from the more significant parts of the precinct because of their setback and form.

If 31-33 The Avenue (and 35 and 37) by virtue of their ‘non-contributory’ forms were removed from the proposed precinct there would still remain a sufficient number of ‘significant’ grade Victorian villas to support an expanded precinct given the heritage elements present and their strong visual relationship with the existing precinct. However, the Panel considers that the curtilage of The Avenue Precinct should include the properties at 31-33, 35 and 37 The Avenue. Future development at these sites has the potential to significantly impact on the overall heritage and aesthetic character of the precinct.

No submissions were made in relation to the ‘non-contributory’ buildings at 51 and 53 The Avenue, however like 31-33, 35 and 37 The Avenue they have an important visual relationship with the remainder of the precinct. It is therefore appropriate that they be included in the precinct to ensure any future development is sympathetic to the identified heritage characteristics.

The Panel considers that overall the boundaries of the extended precinct are appropriate, with limited non-contributory intrusions and able to be relatively easily read as a coherent precinct.

Street trees

The existing statement of significance (Document 41) and extent of HO148 acknowledges the contribution made by the existing established street trees on the east side of The Avenue. During its visits to The Avenue Precinct, the Panel noted the strong visual contribution the established street trees on the west side of the street made as part of a continuous avenue of canopy trees on both sides of The Avenue. This is particularly the case north of 39 The Avenue where the vegetation has not been as badly reshaped as part of ongoing pruning activities to accommodate powerlines. South of 39 The Avenue, the street trees are less mature and do not provide a canopy form or make any significant streetscape or cultural heritage contribution and correspond with significant changes in built form from that point in the street.

While not supported by an arborist report or included in the exhibited Amendment mapping, the Panel supports the expansion of the curtilage of the proposed Heritage Overlay to include existing street trees (Plantanus species) and it joining up with the existing curtilage of the current HO148 to provide for a contiguous precinct. This format is widely used for heritage precincts in the Stonnington Planning Scheme and was supported by Council and does not affect any private land.

The Panel considers that the Conservation Review and the exhibited The Avenue Precinct Citation (memorandum) provides an appropriate basis for the inclusion of street trees on the west side of the street to mirror those on the east side. The Panel agrees with the observations of the Panel for Stonnington Planning Scheme Amendment C181 that the street trees (on the east side) were planted contemporaneously and contribute “to the visual amenity of the street, in providing a leafy foreground to the buildings fronting it”. While the trees on the west side of the street are not as consistent in the shape of their crown as those
on the east side, as a continuous avenue they contribute significantly to the heritage setting of The Avenue and its Victorian era villas.

The Panel does not agree with Mr Raworth’s proposal (Figure 3) that the curtilage of the Heritage Overlay be extended to include the street trees between 31 and 37 The Avenue. The street trees in these locations are either more recent plantings or poorly formed and constitute a break to the more substantial street trees to the northern end of The Avenue. The Panel considers that the proposed Precinct extension should join up with the southern and northern edges of the existing Precinct (46 and 56 The Avenue).

(vi) Conclusions and recommendations

The Panel concludes:

- The expanded The Avenue Precinct, Windsor has local cultural heritage significance.
- All sites identified in the exhibited Amendment on the west side of The Avenue between 31 and 53 The Avenue should be retained within the proposed extended precinct.
- 31-33 The Avenue be identified as having a ‘contributory’ grade in the statement of significance.
- The curtilage of The Avenue Precinct include the nature strip and street trees on the west side of the Avenue between 39 The Avenue and 53 The Avenue and join up with the existing curtilage of HO148 between 46 and 56 The Avenue.

The Panel recommends:

1. Amend The Avenue Precinct, Windsor statement of significance to identify 31-33 The Avenue as having a ‘contributory’ grade.

2. Amend the curtilage of The Avenue Precinct, Windsor Heritage Overlay (HO148) to include the nature strip and street trees on the west side of the Avenue between 39 The Avenue and 53 The Avenue and join up with the existing curtilage of HO148 between 46 and 56 The Avenue.

4.3 47 and 47A The Avenue, Windsor

(i) The issue

The Amendment identifies the dwelling at 47 The Avenue as a ‘contributory’ graded building in the exhibited statement of significance.

The issue is:

- Whether 47 and 47A The Avenue should be identified as a ‘contributory’ or ‘non-contributory’ site.

(ii) Post-exhibition changes

Council provided the Panel with a proposed post-exhibition version of The Avenue Precinct statement of significance (Document 28) which identifies 47 and 47A The Avenue as a ‘non-contributory’ place rather than a ‘contributory’ place (Panel’s emphasis). Council also identified proposed changes to the citation (‘primary source’ document) to identify the site as
47-47A The Avenue, identify it as ‘non-contributory’ and include additional information about the extent of site alterations.

(iii) Submissions and evidence
Submission 3 opposed the Amendment based on the extensive alterations to the site at 47-47A The Avenue, Windsor. Mr Pollalis for submitter 3 supported Council’s characterisation of their submission (sections 9.2.1 and 9.2.2 of Council’s Part B submission) and indicated that they were comfortable with Council’s post-exhibition recommendations.

Mr Raworth acknowledged that the site had “undergone numerous unsympathetic alterations over the years and has been denuded much of its Victorian detailing”. He indicated that following further reconsideration the order of change was such that the buildings contributory status was marginal. However, he indicated that it was appropriate to include such sites in the Heritage Overlay to encourage infill development that was compatible with the broader heritage precinct.

(iv) Discussion and conclusions
The Panel agrees with the evidence of Mr Raworth that façade changes to the property at 47-47A The Avenue over a number of years have significantly impacted on the building’s identification as a Victorian era villa and reduced the building’s overall contributory value to the precinct.

The dwelling at 47-47A The Avenue does however sit comfortably within the precinct, given its setback and form and does not impede the visual relationship with the dwellings to the south and at 51-53 The Avenue or its relationship to the Victorian villas on the east side of the precinct.

The Panel considers that it is appropriate to retain the dwelling within the precinct to ensure any future development does not compromise the cultural heritage values of the precinct.

The Panel concludes:
- 47-47A The Avenue should be identified as ‘Non-contributory’ in The Avenue Precinct Statement of significance.

(v) Recommendation
The Panel’s recommendation is based on the exhibited version of the statement of significance and not the version provided by Council at the Hearing (Document 28) which applied to the interim control (HO640). The Panel makes further observations about the drafting of the statements of significance and references within schedules to Clause 43.01 and 72.04 in Chapter 6.

The Panel recommends:
3. Amend The Avenue Precinct, Windsor Statement of significance to identify the property at 47-47A The Avenue as ‘Non-contributory’.
5 ‘Mayfield’ 44 Murphy Street, South Yarra

5.1 Statement of significance

**Exhibited Statement of significance**

Mayfield at 44 Murphy Street, South Yarra is a complex of double-storey English Domestic Revival style flats arranged around a central semi-enclosed courtyard. The flats were constructed in 1934 to a design by prominent interwar Melbourne architect Robert Bell Hamilton.

Elements that contribute to the significance of the place include (but are not limited to):

- The original external form, materials and detailing of the buildings.
- The unpainted state of the face brick and terracotta elements.
- The domestic garden setting (but not the fabric of the garden itself).

Later additions and alterations, including the dormer additions, garages, and the driveway gate, are not significant.

**How is it significant?**

Mayfield is of local architectural significance to the City of Stonnington.

**Why is it significant?**

Mayfield is architecturally significant as a fine and largely intact example of interwar flat development in the English Domestic Revival style (Criterion D). The flats are the work of noted interwar architect Robert Bell Hamilton, one of the most important and influential designers of flats in interwar Melbourne (TEH 8.6.3 - Architect Designed apartments).

Mayfield is also architecturally significant as an early prototype for Hamilton’s ‘luxury flat’ design configured around a central courtyard (Criterion E, TEH 8.6.2 - Developing apartment living).
5.2 The issues

The issues are:
- Whether the statement of significance should be amended to include the brick front fence and bay seating.
- Whether the Heritage Overlay for the place should include external paint controls and internal controls.

5.3 Submissions and evidence

Council’s Part A submission provided an overview of the process for identifying the site for further heritage analysis.

Submission 2 supported the application of the Heritage Overlay to 44 Murphy Street, South Yarra. The submission identified that the brick walls at the driveway entrance with its integrated seating should be identified as a contributory heritage element and suggested that the stained-glass windows and interior elements such as common property entrances and stairwells also be protected.

Mr Raworth stated that the exhibited site citation included reference to the brick walls with integrated seating. He recommended that the citation and statement of significance be amended to include as a contributory element “The brick front fence and bay seating”. Council included the proposed change in the revised version of the citation included in Council’s Part A (Document 1) and the post-exhibition version of the statement of significance in its Part B submission (Document 28 and Appendix B).

Mr Raworth opined that internal alteration controls should only apply to “interiors of particular note and significance” referring to PPN01 which identified that they be used “sparingly and on a selective basis to special interiors of high significance.” Mr Raworth considered that the site did not meet the threshold level of significance to support internal controls and identified that few buildings in Stonnington warranted such a control and could not be justified on this basis.

Council’s submission and Mr Raworth’s evidence acknowledged DELWP’s letter of authorisation which recommended the application of external paint controls. Council said that it sought the advice of Mr Raworth before exhibiting the Amendment and elected not to apply external paint controls based on that advice. Mr Raworth opined that he considered external paint controls unwarranted as the “repainting of painted surfaces does not usually adversely affect the significance of a place, particularly in residential precincts” and that few Heritage Overlay places in Stonnington had them. He stated that large portions of the building at 44 Murphy Street comprised face brickwork, the painting of which would still require a planning permit and was discouraged under Clause 22.04-4.3.

5.4 Discussion

The Panel supports the evidence of Mr Raworth and Council’s submission in respect to the application of the Heritage Overlay (HO639) to 44 Murphy Street, South Yarra. The citation and statement of significance sets out a sound basis for the place demonstrating cultural heritage significance at the local level. The Panel is satisfied that Council has demonstrated
that the place meets Hercon Criterion D (representativeness) as a fine and largely intact example of interwar flat development in the English Domestic Revival Style. The Panel considers that the place also meets Criterion E based on the relationship with noted interwar architect Robert Bell Hamilton and as an early prototype for luxury flat design around a central courtyard. The building is aesthetically notable at the local level and the citation includes an appropriate level of comparative analysis to support the application of a Heritage Overlay based on satisfying criterion D and E.

The Panel considers that the Amendment and the prepared statement of significance is consistent with PPN01. The Panel supports the application of the Heritage Overlay (HO639) and the post exhibition changes proposed by Council in response to submission 2 and based on the heritage advice of Mr Raworth. It also supports the inclusion of a specific reference to the brick front fence and bay seating as a contributory element to the significance of the place.

The Panel does not support the application of internal controls to the place. Insufficient evidence was provided to suggest that the interiors are of a special level of significance to meet the threshold of PPN01 or any of the Hercon criterion. Neither Council nor its heritage evidence support the application of internal controls.

It is unclear why DELWP sought the external paint controls through its condition of authorisation. The Panel does not support the application of external paint controls to this place as it introduces an unnecessary and potentially burdensome requirement.

As identified by Mr Raworth, the buildings feature extensive unpainted face brick work which would still require approval to paint even if external paint controls did not apply. The Panel concurs with Mr Raworth that the existing painted surface colour scheme is broadly appropriate and respectful to the heritage values of the place. The Panel agrees with Mr Raworth that, in most cases, owners of properties in the Heritage Overlay are respectful when undertaking external painting and that as paint schemes are not permanent, they do not fundamentally impact on the significance of places such as this. The Panel is satisfied that Council has undertaken the necessary level of heritage assessment to demonstrate that external paint control provisions are unnecessary.

5.5 Conclusions and recommendation

The Panel concludes:

- The statement of significance should be amended to include the brick front fence and bay seating as a contributory element to the significance of the place.
- External paint controls and internal controls should not apply.

The Panel recommends:

4. Amend the ‘Mayfield’ 44 Murphy Street, South Yarra Statement of significance to include the brick front fence and bay seating as a contributory element to the significance of the place as identified in Appendix B of this Report.
6 Drafting matters

While not identified in submissions or raised during the Hearing, the Panel notes several minor discrepancies in the Amendment documentation’s reference to the statements of significance:

- the exhibited statement of significance for 44 Murphy Street, South Yarra did not include the place name in parenthesis, however this format was used for the other individual places and within the schedules to the Heritage Overlay and Clause 72.04
- the schedule to Clause 72.04 includes a ‘February 2019’ date against the new and updated statements of significance. This date does not appear on the statements of significance or within the document descriptions contained within the schedule to Clause 43.01. Consistent use of dates should be applied.
- the ‘Primary source’ references in the statements of significance refer to citations which are dated. These dates do not appear on the citations. While the citations have no statutory purpose, the consistent use of dates should be applied to ensure the correct version of documents are identifiable.

Council is encouraged to address these minor inconsistencies before finalising the Amendment.
### Appendix A  Document list

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<td>Conservation Review, City of Prahran, Volume 1: Study methods and recommendations, Context Pty Ltd, December 1993, Volume 1 of 4</td>
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<td>Heritage Listing &amp; Property Valuations in Victoria, Heritage Victoria, March 2001</td>
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Appendix B  Council’s proposed post-exhibition version of HO639 (Mayfield, 44 Murphy Street, South Yarra) Statement of significance

Tracked Added
Stonnington Planning Scheme

Heritage Place: Mayfield, 44 Murphy Street, South Yarra

PS ref no: HO639

What is significant?

Mayfield at 44 Murphy Street, South Yarra is a complex of double-storey English Domestic Revival style flats arranged around a central semi-enclosed courtyard. The flats were constructed in 1934 to a design by prominent interwar Melbourne architect Robert Bell Hamilton.

Elements that contribute to the significance of the place include (but are not limited to):
- The original external form, materials and detailing of the buildings.
- The unpainted state of the face brick and terracotta elements.
- The domestic garden setting (but not the fabric of the garden itself).
- The brick front fence and bay seating.

Later additions and alterations, including the dormer additions, garages, and the driveway gate, are not significant.

How is it significant?

Mayfield is of local architectural significance to the City of Stonnington.
Why is it significant?

Mayfield is architecturally significant as a fine and largely intact example of interwar flat development in the English Domestic Revival style (Criterion D). The flats are the work of noted interwar architect Robert Bell Hamilton, one of the most important and influential designers of flats in interwar Melbourne (TEH 8.6.3 - Architect Designed apartments).

Mayfield is also architecturally significant as an early prototype for Hamilton’s ‘luxury flat’ design configured around a central courtyard (Criterion E, TEH 8.6.2 - Developing apartment living).

Primary source

‘Mayfield’, 44 Murphy Street, South Yarra Heritage Citation Report, Bryce Raworth Pty Ltd, 14 August 2018