

**Boroondara Planning Scheme Amendment C388boro
Smythesdale Estate Heritage Precinct**

Panel Report

Planning and Environment Act 1987

13 July 2023

How will this report be used?

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

The planning authority must consider this report before deciding whether to adopt the Amendment.

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

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

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

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

Planning Panels Victoria acknowledges the Wurundjeri Woi Wurrung People as the traditional custodians of the land on which our office is located. We pay our respects to their Elders past and present.

Planning and Environment Act 1987

Panel Report pursuant to section 25 of the PE Act

Boroondara Planning Scheme Amendment C388boro

Smythesdale Estate Heritage Precinct

13 July 2023



Con Tsotsoros, Chair

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Glossary and abbreviations

the Amendment	Boroondara Planning Scheme Amendment C388boro
Council	Boroondara City Council
HO953 heritage citation	Smythesdale Estate Precinct Heritage Citation (RBA Architects + Conservation Consultants, November 2022)
HO953 Statement of Significance	Smythesdale Estate Precinct Statement of Significance, November 2022
PE Act	<i>Planning and Environment Act 1987</i>
Planning Scheme	Boroondara Planning Scheme
the Precinct	Smythesdale Estate Precinct
RBA	RBA Architects + Conservation Consultants

Overview

Amendment summary

The Amendment	Boroondara Planning Scheme Amendment C388boro
Common name	Smythesdale Estate Heritage Precinct
Brief description	Proposes to permanently apply the Heritage Overlay (HO953) to the Smythesdale Estate Precinct comprising 12 properties in Hawthorn East
Subject land	8, 10, 12, 14, 16 and 18 Carlyle Street and 81, 83, 85, 85A, 87 and 89 Harcourt Street, Hawthorn East
Planning Authority	Boroondara City Council
Authorisation	27 October 2022, subject to conditions (see Chapter 1.1(ii))
Exhibition	9 February to 3 April 2023
Submissions	<p>Received from:</p> <ol style="list-style-type: none"> 1. Joanne Bailey 2. Anthony Stephen 3. Kate Lloyd 4. Mathew Goldsworthy 5. Giorgio Beames 6. Evie Flynn 7. Adam Dinh-Vu 8. Patricia Jane Sturgess 9. David Jablonka 10. Scott Davidson 11. Jane Oldham 12. Fiona and Dean Anderson 13. Christopher Bradtke 14. Matthias Hansen 15. Susanne Leonard 16. Fiona Nicholson Stocker 17. Olivia Doyle 18. Ian Abbott 19. Melissa Khaw 20. Christina Branagan 21. Andrew Nunn 22. Sophie Stavelly 23. Tim O'Callaghan 24. Nerida Muirden

Panel process

The Panel	Con Tsotsoros			
Directions Hearing	Planning Panels Victoria with online video, 14 June 2023			
Panel process	The Panel considered unresolved issues through a written process. No Panel Hearing was held, with agreement from all parties.			
Site inspections	Unaccompanied, 7 July 2023			
Parties to the process	<ul style="list-style-type: none"> - Christina Branagan - Nerida Muirden 			
Tabled documents	<i>No</i>	<i>2023 date</i>	<i>Description</i>	<i>Provided by</i>
	1	15 June	Panel directions	Planning Panels Victoria
	2	7 July	Further written submission	Ms Branagan
	3	7 July	Further written submission	Ms Muirden
	4	10 July	Email confirming Council will rely on its 1 May 2023 officer report	Council
	5	10 July	Panel inviting Council to expand on its response to Criterion H	Planning Panels Victoria
	6	11 July	Closing submission: Memo from RBA regarding Criterion H	Council
Citation	Boroondara PSA C388boro [2023] PPV			
Date of this report	13 July 2023			

Executive summary

The railway line extension from Hawthorn to Camberwell, including its announcement and subsequent opening during the late Victorian era, opened areas such as Hawthorn East for residential development. Ahead of the extension, Robert Sparrow Smythe acquired land on the north-west corner of Harcourt Street and Burke Road in Hawthorn East in December 1878.

Mr Smythe named the land the 'Smythesdale Estate', subdivided it into 33 lots and named the north-south street 'Carlyle' after his son. The lots were sold in March 1885. In April and May 2021, about 138 years after they were sold, community members nominated some of the subdivided properties as places of potential heritage value.

Council engaged RBA Architects + Conservation Consultants to conduct research to determine if the nominated properties had sufficient local heritage significance. The consultants found that 8, 10, 12, 14, 16 and 18 Carlyle Street and 81, 83, 85, 85A, 87 and 89 Harcourt Street in Hawthorn East, collectively referred to as the Smythesdale Estate Precinct (the Precinct) warranted a more detailed assessment. The assessment, as outlined in the Statement of Significance within the heritage citation, found the Precinct met Criteria A, D and E (for the significant property at 89 Harcourt Street) of the Planning Practice Note 1 criteria.

Boroondara Planning Scheme Amendment C388boro (the Amendment) seeks to apply the Heritage Overlay (HO953) to the Precinct comprising the 12 identified properties.

Key issues raised in submissions related to whether:

- the Amendment should proceed when there is a need for more housing
- the Precinct had sufficient heritage significance, and if the non-contributory property should be included
- the State requirements should be changed to no longer require a planning permit for certain buildings and works
- the Amendment will unreasonably impact property value, private financial impact, and potential development
- properties which were not exhibited should be included in the Amendment.

After considering all submissions and referral documents, the Panel concludes the Amendment:

- is supported by, and implements, the relevant sections of the Planning Policy Framework
- is consistent with the relevant Ministerial Directions and Practice Notes
- is well founded and strategically justified and should proceed.

General issues

The *Planning and Environment Act 1987* does not enable a planning authority or the Panel to recommend changes to State provisions related to heritage permit triggers through the Amendment.

Property value and private financial implications are not relevant when assessing heritage significance or when deciding whether to apply the Heritage Overlay.

The Heritage Overlay should not be applied to limit development because this does align with the overlay's purpose and would therefore be an inappropriate planning provision to achieve the intended outcome.

Properties which were not exhibited should not be included in the Amendment because:

- they have not been appropriately researched and assessed to determine their heritage significance
- it would be procedurally unfair to include properties which members of the community did not have an opportunity to make a submission.

Smythesdale Estate Precinct (HO953)

The Smythesdale Estate Precinct has sufficient heritage significance to justify applying the Heritage Overlay (HO953).

Jessie Henderson CBE is a historically significant figure with notable achievements, however there is no heritage fabric at 89 Harcourt Street, Hawthorn East to demonstrate a special association with the place she lived in for 45 years. The property therefore does not achieve Criterion H.

The non-contributory property at 85A Harcourt Street should be included in the Smythesdale Estate Precinct to ensure future development is appropriately assessed. The Heritage Overlay (HO953) would enable changes to the non-contributory property, including entire demolition of the existing building, subject to a planning permit to ensure that new development sensitively responds to surrounding heritage fabric.

Recommendation

Based on the reasons set out in this Report, the Panel recommends that Boroondara Planning Scheme Amendment C388boro be adopted as exhibited.

1 Introduction

1.1 The Amendment

(i) Amendment description

The purpose of the Amendment is to permanently apply the Heritage Overlay (HO953) to the Smythesdale Estate Precinct (the Precinct) comprising 12 properties in Hawthorn East.

Specifically, the Amendment proposes to:

- apply the Heritage Overlay (HO953) to 8, 10, 12, 14, 16 and 18 Carlyle Street and 81, 83, 85, 85A, 87 and 89 Harcourt Street, Hawthorn East (which form the Precinct) through the Planning Scheme map and Heritage Overlay Schedule
- amend the Clause 72.04 Schedule to introduce the Smythesdale Estate Precinct Statement of Significance, November 2022 as an incorporated document
- amend the Clause 72.08 Schedule (Background Documents) to introduce the Smythesdale Estate Precinct Heritage Citation (RBA Architects + Conservation Consultants, November 2022) as a background document.

(ii) Authorisation

The Amendment was authorised on 27 October 2022 subject to the following conditions:

1. Amend the incorporated Smythesdale Estate Precinct Statement of Significance, October 2022 to improve grammar, amend the grading table to include a column that identifies the heritage place name and move the grading table to the end of the document as outlined in Planning Practice Note 1: Applying the Heritage Overlay.
2. Amend the Smythesdale Estate Precinct Heritage Citation to ensure that the correct heritage place names are identified for the correct properties. It is noted that the heritage place name 'Lara' has been interchangeably used between 81 and 83 Harcourt Street, Hawthorn East.
3. Amend the Schedule to Clause 43.01 (Heritage Overlay) and the Schedule to Clause 72.04 (Incorporated Documents) to consistently record the incorporated Smythesdale Estate Precinct Statement of Significance document title as 'Smythesdale Estate Precinct Statement of Significance, October 2022'.
4. Amend the explanatory report to improve legibility, include a precinct map to identify the affected land, identify the history of the amendment relating to the preliminary consultation process and remove reference to how the amendment supports or implements the Municipal Strategic Statement as this was removed from the Boroondara Planning Scheme as part of the Boroondara PPF translation via Amendment C354boro on 26 May 2022.

(iii) The subject land

The Amendment applies to 8, 10, 12, 14, 16 and 18 Carlyle Street and 81, 83, 85, 85A, 87 and 89 Harcourt Street, Hawthorn East, as shown in

Figure 1. The Statement of Significance categorises each property as either significant, contributory or non-contributory.

Figure 1 Subject land and precinct property categories

1.2 Background

Table 1 Chronology of events

Date	Event
2016	
2 May	Council adopted the Heritage Action Plan which established the framework for guiding its heritage work program
2022	
20 May – 24 Jul	Council conducted preliminary consultation of the draft heritage citation with owners and occupiers of affected properties, government agencies and community and historical groups, and received 43 submissions
3 Oct	At its meeting, Council: <ul style="list-style-type: none"> - considered the outcomes of preliminary consultation - adopted a revised heritage citation - removed 48 Harcourt Street from the citation and the Heritage Overlay - resolved to request the Minister for Planning authorise it to prepare and exhibit the Amendment
27 Oct	Minister for Planning authorised the Amendment
2023	
3 Feb	Council began formally exhibiting the Amendment but found an error in the planning

provisions during the process

2 Mar – 3 Apr	The Amendment was formally re-exhibited and Council received 24 submissions
1 May	At its meeting, Council considered submissions which responded to the exhibited Amendment and resolved to request a Panel

1.3 Procedural issues

Ms Branagan and Ms Muirden each requested to be heard at a hearing and attended the Directions Hearing. Ms Branagan supported the Amendment and did not request any changes and Ms Muirden generally supported the Amendment but sought changes to the Statement of Significance.

At the Directions Hearing, all parties agreed with Council's request for the Panel to consider unresolved issues through a written process, subject to having the opportunity to make a further written submission. The Panel agreed to Council's request and issued directions which provided an opportunity for further written submissions.

The Panel advised:

- it had sufficient information to inform itself, including its response to submissions set out in the officer report to the 1 May 2023 Council meeting
- it did not seek a further submission from Council unless it sought to present new information.

Council relied on its 1 May 2023 report as its response to issues in submissions. Further written submissions were received from Ms Branagan on 7 July 2023 and from Ms Muirden on 7 July 2023. Council provided a closing submission regarding Criterion H in response to a request from the Panel.

1.4 The Panel's approach

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

The Panel considered all written submissions made in response to the exhibition of the Amendment, observations from site visits, submissions, and other material provided to the Panel. It has been selective in referring to the more relevant or determinative material in the Report. All submissions and materials have been considered by the Panel in reaching its conclusions, regardless of whether they are specifically mentioned in the Report.

Submissions 1, 3, 4, 5, 6, 7, 8, 9, 10, 12, 13, 14, 15, 16, 17, 18, 19, 20 and 21 (about 88 per cent of all submissions) supported the Amendment and did not request any change. These submissions do not have unresolved issues for the Panel to respond to and are not referred to further in this Report.

This Report deals with the issues under the following headings:

- Strategic issues
- General issues
- Smythesdale Estate Precinct (HO953).

2 Strategic issues

2.1 Planning context

This chapter identifies planning context relevant to the Amendment. Appendix A highlights key imperatives of relevant provisions and policies.

Table 2 Planning context

	Relevant references
Victorian planning objectives	- section 4(1)(d) of the <i>Planning and Environment Act 1987</i> (PE Act)
Municipal Planning Strategy	- Clause 2.03-4 (Built environment and heritage)
Planning Policy Framework	- Clauses 15.01-5S (Neighbourhood character) 15.03-1S (Heritage conservation), and Clause 15.03-1L (Heritage in Boroondara)
Other planning strategies and policies	- Plan Melbourne Outcome 4, Direction 4.4, Policies 4.4.1 and 4.4.4
Planning scheme provisions	- Heritage Overlay
Ministerial directions	- Ministerial Direction 11 (Strategic Assessment of Amendments)
Planning practice notes	- Planning Practice Note 1 (Applying the Heritage Overlay), August 2018, updated 13 June 2023

2.2 Strategic justification

(i) Submissions

Council stated:

- it engaged RBA Architects + Conservation Consultants (RBA) to conduct research for properties collectively referred to as the Smythesdale Estate Precinct to determine if it had sufficient local heritage significance and to prepare a heritage citation
- the HO953 Statement of Significance in the citation found the Precinct met Criteria A, D and E (for the significant property) of the criteria referred to in Planning Practice Note 1
- the Amendment is consistent with its Heritage Action Plan which includes the following actions:
 - Knowing - which seeks to identify, assess and document heritage places.
 - Protecting - which seeks to provide statutory protection for identified heritage places.

Mr Stephen submitted the Amendment should be abandoned because decisions regarding heritage need to be balanced with cost of living, housing supply shortage and Boroondara's changing demographics.

Ms Stavely submitted the identified houses are nice but given the need for more housing, the Amendment seems like a 'bad idea'.

In response, Council stated:

- housing provision and affordability are not relevant when assessing heritage, as outlined in Planning Practice Note 1

- the most appropriate time to balance heritage protection with other policy objectives is during the permit application process
- applying the Heritage Overlay to the 12 identified properties:
 - will not have a negative community-wide social, environmental or economic impact
 - is expected to have positive social effects on the wider community by identifying and facilitating the preservation of heritage buildings.

(ii) Discussion

The Amendment responds to, and is consistent with, Council's Heritage Action Plan and associated program. The methodology which supports the Amendment generally follows guidance in Planning Practice Note 1 and is founded on sound research prepared by RBA. The research ensures the Smythesdale Estate Precinct meets the necessary local threshold to justify its significance and the application of the Heritage Overlay.

The Amendment meets State and local policies by identifying heritage of local significance then selecting the appropriate provision, the Heritage Overlay, to implement the outcomes. It delivers net community benefit as required by Clause 71.02-3 by:

- identifying local heritage for present and future generations
- applying planning provisions so that future development proposals are assessed to ensure they sensitively respond to surrounding heritage fabric in the Precinct.

The provisions have prepared consistent with Ministerial Direction 7(5) and the Statement of Significance format reflects good practice.

The Panel agrees with Council that housing provision and affordability, though important issues being addressed through separate processes, are not relevant when assessing heritage significance or whether to apply the Heritage Overlay.

The Panel considers requests to abandon the Amendment to be disproportionate to the issue of housing provision and affordability. The 12 properties are currently in the Neighbourhood Residential Zone with restrictions including a mandatory maximum building height of 9 metres (2 storeys). The Heritage Overlay would introduce heritage-related permit triggers and provisions to guide new development but does not add further restrictions. Irrespective, it is unlikely the potential impact on 12 properties would negatively affect Boroondara's municipal housing supply, as sought by State planning policy.

(iii) Conclusions

For the reasons set out in this report, the Panel concludes that the Amendment:

- is supported by, and implements, the relevant sections of the Planning Policy Framework
- is consistent with the relevant Ministerial Directions and Practice Notes
- is well founded and strategically justified
- should proceed subject to addressing the more specific issues raised in submissions as discussed in the following chapters.

3 General issues

3.1 State planning permit requirements

(i) The issue

The issue is whether a planning permit should be required for proposal which does not seek to change the front façade or first 10 metres of a heritage building.

(ii) Submissions and Council response

One submission requested that a planning permit not be required if the proposal did not seek to change the front façade or first 10 metres of a heritage building.

Council explained the submission seeks to change permit triggers in the State provisions of the Heritage Overlay which it has no jurisdiction to change. It referred to section 23(3) of the PE Act which states that Council cannot refer a submission to the Panel which seeks to change the terms of any State standard provision in a planning scheme.

Council said that despite this, it disagreed the change would result in an acceptable change because:

- Clause 15.03-1L of the Planning Scheme requires a nuanced assessment of each proposal
- there may be alterations beyond 10 metres from the frontage which affect original fabric that is visible from the street including side returns, original roofs and chimneys.

(iii) Discussion

Council can only propose changes to local content in its Planning Scheme through the Amendment. It cannot propose changes to the State provisions in the Heritage Overlay which require permits for buildings and works. Section 25(3) of the PE Act does not enable a Panel to formally recommend changes to State provisions through the Amendment. The Panel is therefore unable to recommend that permit triggers in the Heritage Overlay be revised.

The Panel agrees with Council that alterations more than 10 metres from the façade may still be visible from the public realm and negatively impact the heritage fabric.

(iv) Conclusion

The Panel concludes the *Planning and Environment Act 1987* does not enable a planning authority or the Panel to recommend changes to State provisions related to heritage permit triggers through the Amendment.

3.2 Property value and private financial impact

(i) The issue

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

(ii) Submissions and Council response

Three submissions submitted that applying the Heritage Overlay to properties identified as the Smythesdale Estate Precinct may:

- affect the cost of living
- reduce property value
- add time and costs associated with the planning process.

In response, Council stated:

- property value and private financial implications are not relevant when assessing heritage significance or when deciding whether to apply the Heritage Overlay – this is consistent with Planning Panel findings such as Melbourne C207melb and Moreland C149
- the only valid test for applying the Heritage Overlay is whether the property has heritage value suitable for protection and enhancement
- it is difficult to estimate the economic effect of applying the Heritage Overlay to a property because its provisions enable a planning permit application to develop, subdivide or demolish
- personal economic matters relating to the use and development of a particular heritage place are most appropriately considered at the time planning permits are sought – this is consistent with Planning Panel findings such as Boroondara C266boro and C274boro.

Council referred to the *Boroondara PSA C333boro [2022] PPV* Panel Report, where the Panel stated:

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

...

property value and personal financial implications are not relevant when assessing heritage significance or when deciding whether to apply the Heritage Overlay to properties subject to the Amendment.

(iii) Discussion

The Panel agrees with Council regarding issues of property value and private financial impact. When considering relevant sections of the PE Act, Planning Scheme and guidance in Planning Practice Note 1, these issues are not relevant to an Amendment solely proposing to apply planning provisions which identify and manage places with heritage significance.

The PE Act refers to the economic impact of a planning scheme amendment and the Planning Scheme seeks integrated decision making. In both contexts, planning is asked to consider impact at a broader or net community level. Neither extend to individual private financial impact.

There was no information provided to support claims that applying the Heritage Overlay will reduce property value. Property value is determined through a complicated set of factors, which would be challenging to single out one from the other. The Panel therefore agrees with Council that it would be difficult to estimate the economic effect of applying the Heritage Overlay.

Planning Practice Note 1 does not include property value and private financial impact as criteria when assessing whether a property has sufficient heritage significance to justify applying the Heritage Overlay.

(iv) Conclusion

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

3.3 Other issues**(i) The issues**

The issues are:

- whether the Heritage Overlay should be applied to limit development
- whether properties which were not exhibited should be included in the Amendment.

(ii) Submissions and Council response

There were submissions which sought to apply the Heritage Overlay to:

- properties for the purpose of limiting development
- 49, 69, 77-77a Harcourt Street which were not exhibited with the Amendment.

In response, Council stated:

- the nomination for 49 and 69 Harcourt Street has been added to an internal register for further review
- Council's heritage adviser considered 77 and 77a Harcourt Street when preparing the background work for the project and concluded they were not likely to achieve the threshold for local significance.

(iii) Discussion

The Panel does not support using the Heritage Overlay to limit development. The overlay specifies five purposes, none of which seek to limit development. It would therefore be inappropriate and bad practice to apply the Heritage Overlay for a purpose beyond its statutory role. The Amendment seeks to apply the Heritage Overlay to properties which have been appropriately assessed and found to achieve the local threshold of significance. Applying the overlay for a different reason would transform the Amendment beyond its purpose, resulting in serious procedural issues.

For procedural reasons, the Panel does not support 49, 69, 77-77a Harcourt Street being included in the Amendment. It would be unfair to include properties in the Amendment if their owners and tenants were not given the opportunity to make a submission through a formal public exhibition process. The Panel was not provided with citations and statements of significance to confirm whether each property has achieved the local threshold of significance. Council has advised it intends to review 49 and 69 Harcourt Street.

The Panel does not comment on whether the properties would be worthy candidates for further investigation regarding heritage significance to avoid prejudicing Council's future review process.

(iv) Conclusions

The Panel concludes:

- The Heritage Overlay should not be applied to limit development because this does align with the overlay's purpose and would therefore be an inappropriate planning provision to achieve the intended outcome.

- Properties which were not exhibited should not be included in the Amendment because:
 - they have not been appropriately researched and assessed to determine their heritage significance
 - it would be procedurally unfair to include properties which members of the community did not have an opportunity to make a submission.

4 Smythesdale Estate Precinct (HO953)

Exhibited Statement of significance

What is significant?

Smythesdale Estate Precinct at Hawthorn East includes 8-18 Carlyle Street (even only) and 81-89 Harcourt Street (odd only). The original fabric dating to the Victorian and early 20th century (Federation/Early Interwar) periods is significant. The significant elements are the original single storey houses, generally with an asymmetric façade and including the following elements:

- Hip roof, three with a gable end to the front, many retaining slate cladding
- Chimneys, mostly rendered
- Timber-framed houses - generally with ashlar boards to the façade
- Masonry houses – two face brick and two rendered
- Cornices with brackets and usually panelling
- Verandahs with cast iron frieze, some with cast iron columns, and corrugated sheet metal cladding
- Original timber-framed openings, including panelled doors (usually with sidelights) and double-hung sash windows
- Federation period additions to 18 Carlyle Street and early 20th century (Late Federation/Early Interwar) garage to 83 Harcourt Street
- Basalt kerbing and channelling to Harcourt Street.

Rear additions and all front fences are not significant.

How is it significant?

Smythesdale Estate Precinct is of local historical and representative significance and partly of aesthetic significance (relating to 89 Harcourt Street) to the City of Boroondara.

Why is it significant?

Smythesdale Estate Precinct is of historical significance for reflecting the late Victorian period suburban building in the area that followed the extension of the railway to Camberwell station. This extension was the impetus for opening up parts of Hawthorn East that had hitherto been relatively isolated and began to realise their residential development potential at the end of Melbourne's famed 'boom period'. This marked a shift from the earlier market gardening, etc. use of the area (when it was part of John Robert Murphy's 124-acre Crown Allotment 70, known as the Village of Rathmines subdivision). Whilst the building stock is varied, it generally represents the mid to upper end of the villa spectrum, especially 89 Harcourt Street, and so reflects the prestige of the area as a 'gentleman's retreat', established about in the vicinity from about 1870. The precinct area derives from the substantial holdings of the nearby residence Ultima (1099 Burke Road), when it was owned by entrepreneur/impresario Robert Sparrow Smythe who was a prominent citizen and lived in the area for some time. The name of the estate and Carlyle Street relate to his family. **(Criterion A)**

Smythesdale Estate Precinct is of representative significance as a small, cohesive group of late Victorian housing. They are generally comfortable suburban villas dating to the final phase of 19th century development before a long economic depression. They were all erected during a five-year period (1887 to 1892), though two have additions dating to the early 20th century, which are also significant being those to the north and south end of 18 Carlyle Street (Federation period) and the red brick garage at 83 Harcourt Street (late Federation/early Interwar period). Compared to many other such groups in the Hawthorn area, the precinct is distinguished by the preponderance of asymmetric facades and a few gable ends, when there was a clear preference in other parts or slightly earlier estates for symmetrical façade composition with a fully hipped roof. As such, this group of houses is indicative of a purer Italianate style ethos, informed by the English Picturesque Movement and suggestive of a vernacular Italian origin. The level of intactness is generally high with a mix of brick and timber-framed buildings (some of the latter with brick party walls), several retaining slate roof cladding, and usually having classical mouldings and other elements, as well as original cast iron detailing to the verandahs. **(Criterion D)**

Tempe at 89 Harcourt Street is of aesthetic significance as an intact and commodious, late Italianate style villa (likely architect designed) of rendered brick distinguished by an array of cast iron detailing - crestings, to the gablet, frieze and paired columns to the return verandah. Other notable elements include a cornice with fluted console brackets, near full length windows to the front, and entry with glazed and panelled door. Original elements also include slate roof cladding, chimneys, tessellated tiling to the verandah, and basalt stair. **(Criterion E)**

4.1 Precinct justification

(i) The issue

The issue is whether the Smythesdale Estate Precinct has sufficient heritage significance to justify applying the Heritage Overlay (HO953).

(ii) Background

The HO953 heritage citation refers to the railway line extension to Camberwell which opened during the late Victorian era and opened areas such as Hawthorn East for residential development. Ahead of the extension's imminent operation, Robert Sparrow Smythe acquired land on the north-west corner of Harcourt Street and Burke Road in Hawthorn East in December 1878.

Mr Smythe named the land the 'Smythesdale Estate', subdivided it into 33 lots and named the north-south street 'Carlyle' after his son. The lots were sold in March 1885. In April and May 2021, about 138 years since they were sold, community members nominated some of the subdivided properties as places of potential heritage value.

(iii) Submissions and Council response

Two submissions opposed the Amendment. Collectively, they submitted:

- the buildings subject to the Amendment do not have heritage significance
- the Heritage Overlay already applies to the area.

In response, Council stated:

- the heritage merits of the Amendment are outlined in the detailed HO953 heritage citation prepared by the heritage consultants
- the consultants found the Precinct is of historical, representative significance and partly aesthetic significance
- submissions did not provide any evidence or argument to support the claim that the heritage citation is incorrect.

(iv) Discussion

The Smythesdale Estate Precinct presents as a cohesive Victorian and early twentieth century streetscape. The only non-contributory property, being 85A Harcourt Street, has the narrowest property frontage along Harcourt Street and does not affect the ability to understand all subject properties as a single heritage precinct.

The HO953 heritage citation explains why the Precinct is of local historical, representative and aesthetic significance (for the significant property at 89 Harcourt Street) to Boroondara's local heritage. Submissions which questioned the Precinct's sufficient heritage significance did not explain why they disagreed with the citation's assessment.

The citation and associated Statement of Significance are based on comprehensive research, consistent with guidance in Planning Practice Note 1. The Panel accepts the citation's findings that the Smythesdale Estate Precinct achieves Criteria A, D and E. There was no information provided in submissions to support opposing views.

(v) Conclusion

The Panel concludes the Smythesdale Estate Precinct has sufficient heritage significance to justify applying the Heritage Overlay (HO953).

4.2 89 Harcourt Street (Significant property)**(i) The issue**

The issue is whether 89 Harcourt Street, Hawthorn East meets the local threshold for Criterion H.

(ii) Submissions and Council response

In her original submission, Ms Muirden requested that Ms Henderson's achievements be recognised in the HO953 Statement of Significance. This submission and further written submissions from Ms Muirden and Ms Branagan generally supported the Amendment. They submitted that 89 Harcourt Street has a special history with its previous owner, Jessie Henderson CBE, who lived there for 50 years from about 1900.

The submissions explained that Ms Henderson:

- dedicated her life to social welfare work, numerous charities and women's rights
- helped women find employment and advocated for women to stand for Parliament
- was a member of Hawthorn Benevolent Society and later served on local school and church councils in Camberwell in the 1890s
- was a member of the Melbourne District Nursing Society in 1912
- became president of the Melbourne District Nursing Society from 1923 to 1947
- was the founding member of the Housewives Association of Victoria in 1915
- was president of the National Council of Women of Victoria from the 1920s to 1940s
- was awarded a CBE¹ medal in 1936
- was member and Chairperson of a Charities Board in the 1940s
- is recognised for her importance and impact through her induction in the Victorian Honour Roll of Women
- is recognised by historians as a woman and person of significance to Australian history by her entry in the Australian Dictionary of Biography
- died in 1951 while residing at 89 Harcourt Street.

Regarding Ms Henderson's children, the submissions added:

- three of her sons served in the First World War but tragically two were killed in Gallipoli
- her sons Rupert and Alan lost to the war were among the first cohorts of pupils at Trinity Grammar School, Kew in 1905 and a school 'house' is still named after them
- there are archives which tell the story of their lives and deaths and connection to their commander, General 'Pompey' Elliot who was a local Camberwell resident
- George and Jessie Henderson named the house 'Lymwark' after their children.

The submissions requested that Ms Henderson's work be recognised in the Statement of Significance.

Council stated:

¹ Commander of the Order of the British Empire

- Council's heritage consultant reviewed the historical information regarding Ms Henderson and found the association did not meet the local threshold for local significance under Criterion H
- the heritage citation was revised before exhibition to include historical information about her as a notable resident.²

The HO953 heritage citation was exhibited with the following paragraph and included source references:

Details of the house at 89 Harcourt Street were provided in a 1951 sale notice, which at the time was known as Lymwark. The house was sold soon after the death of the notable long-standing occupant, Jessie Isabel Henderson, who owned the site for nearly half a century. Jesse Henderson CBE (1866-1951) was a pioneering voluntary social worker and an influential advocate for women's rights and needs during the first part of the 20th century including antenatal care, 'equal pay for equal work', and providing relief for unemployed young women during the 1930s economic depression.

Ms Branagan said that while 89 Harcourt Street's association with Ms Henderson (long term owner and resident) may not meet Criterion H:

- she is an important person to local history
- very few women are recognised in heritage place citations in Boroondara
- it seems highly likely that some of her work was undertaken at her house.

Having reviewed the further written submissions, the Panel asked Council to explain why it considered the property did not meet Criterion H. Council provided a memorandum prepared by RBA which stated:

- the house 'Tempe' was built by 1887 for Frederick Lavers who died in 1888, soon after its completion
- Jessie Henderson acquired the property in 1906 and resided there for about 45 years until her death
- Planning Practice Note 1 has no specific detail about testing when Criterion H should be applied
- The Victorian Heritage Register Criteria and Threshold Guidelines (Heritage Council Victoria) has an assessment process directed towards places of state significance but can be readily adopted for places of local significance.

The memo referred to the Guidelines' test for Criteria H:

H1. The place/object has a direct association with a person, or group of persons, who have made a strong or influential contribution in their field of endeavour.

And

H2. There is evidence of the association between the place/object and the

And

H3. The association relates:

- directly to achievements of the person(s); AND
- to an enduring and/or close interaction between the person(s) and the place/object.

The memo stated that if H1, H2 and H3 are satisfied, then Criterion H is likely to apply (but not necessarily at the State level).

² Council report for 3 October 2022 meeting, pp 3-4, 10, 12 and 13 and Attachment 2

Regarding 89 Harcourt Street, RBA recommended that Criterion H not be applied to HO953 and it explained:

- there needs to be an “*inextricable link*” between the fabric of the place and the person/group to apply Criterion H, which sets a relatively high bar for applying this criterion
- simply living at a place is not enough to meet Criterion H
- Ms Henderson is a notable figure who lived at the house for many years, but it was not built for her and there was no major change to the house while she owned it so there is nothing directly evident in the fabric to attribute a strong association to Ms Henderson
- it cannot be said that living at 89 Harcourt Street was integral to Ms Henderson developing her advocacy for women’s rights, and it is possible she could have taken the path no matter where she lived.

(iii) Discussion

No submission opposed the proposal to include 89 Harcourt Street in the Precinct as an individually significant property. The National Trust classified property contributes to the Precinct’s historical and presentative significance. The building’s late Italianate style with its intricate architectural details is why it achieves Criterion E (aesthetic significance). The house appears to be highly intact.

Historic documentation demonstrates that Jessie Henderson CBE is a historically notable figure for her social welfare work, charities and advocacy for women’s rights through her various roles from the 1890s to the 1940s. A considerable proportion of her work was around and during two world wars and during the 1930s economic depression when such work was greatly needed.

Planning Practice Note 1 explains that this criterion relates to “*Special association with the life or works of a person, or group of persons, of importance in our history*” but does not provide guidance. This means the life and achievements of Ms Henderson would have to have a special association with 89 Harcourt Street.

The Victorian Heritage Register Criteria and Threshold Guidelines (Heritage Council Victoria) provides guidance on applying Criterion H but the Panel has not applied it because it seeks a relatively higher threshold for State heritage which cannot be applied for local heritage. Nonetheless, it agrees with Council that there would need to be something in the heritage fabric which demonstrates the special association. Examples are:

- a building which demonstrates the works of a notable architect
- a house designed and built (or later transformed) as a symbol of someone’s achievements
- areas on the property showing evidence of activities related to their achievements.

The HO953 heritage citation explains that 89 Harcourt Street was purchased by Frederick Lavers in 1885 and the house was likely architect designed and built by 1887. The house represented his success as the contractor of the Queens Coffee Palace, Carlton which once stood at the corner of Victoria and Rathdowne Streets. Mr Lavers died in 1888, though family members continued to own the property until it was sold in 1906.

Ms Henderson did not alter the house’s exterior after she purchased it in 1906 until her death in 1951 because it appears highly intact today. While it is possible that Ms Henderson undertook some of her work at home, there is no documented evidence to support this assumption.

Although there is no obvious association between Ms Henderson’s achievements and 89 Harcourt Street, her remarkable achievements are recognised through different publicly accessible documents including the online Australian Dictionary of Biography and Victorian Honour Roll of Women.

The HO953 heritage citation refers to Ms Henderson purchasing 89 Harcourt Street in 1906. Ms Branagan refers to Ms Henderson purchasing it around 1900 and living there “*for over 50 years*”. The Panel accepts that Ms Henderson purchased the property in 1906 and resided there for 45 years, consistent with property title details.

(iv) Conclusion

The Panel concludes:

- Jessie Henderson CBE is a historically significant figure with notable achievements, however there is no heritage fabric at 89 Harcourt Street, Hawthorn East to demonstrate a special association with where she lived for 45 years.
- 89 Harcourt Street, Hawthorn East does not achieve Criterion H.

4.3 85A Harcourt Street (Non-contributory property)

(i) The issues

The issues are:

- whether the non-contributory property at 85A Harcourt Street should be excluded from the Precinct
- whether the Heritage Overlay will unreasonably restrict changes to the property.

(ii) Submissions and Council response

One submission considered that it did not make sense to prevent changes to a non-contributory property.

In response, Council stated:

- the Heritage Overlay does not prevent change, but requires a planning permit to assess the impact of demolition and most buildings and works on the area’s heritage values
- it is established practice to include non-contributory properties in a heritage precinct to preserve the precinct’s heritage values or surrounding contributory properties – this is consistent with Planning Panel findings such as Boroondara PSA C266 [2018] PPV; Boroondara PSA C274 Part 2 [2018] PPV; and Moreland PSA C174 [2019] PPV
- it is justified to include the non-contributory property in the Precinct.

(iii) Discussion

A non-contributory property should only be included in a heritage precinct if its future development is likely to impact on the sensitive heritage fabric of surrounding contributory properties. There may be instances where future development is unlikely to impact the precinct because the property is on the precinct’s border and faces outward.

The non-contributory property at 85A Harcourt Street should be included in the Precinct because it is viewed as part of the heritage streetscape. The relatively new house at 85A Harcourt Street is

close to the heritage house at 85 Harcourt Street so any future development proposal should respond to this sensitive interface and be assessed through a planning permit application.

The Panel agrees with Council that the Heritage Overlay enables changes to a non-contributory property, subject to a planning permit application to assess any impact on surrounding heritage. This is affirmed by two strategies in Clause 15.03-1L of the Planning Scheme for non-contributory heritage places:

- Support the demolition of 'non-contributory' places.
- Ensure replacement buildings, development, alterations and additions are sympathetic with heritage fabric of the place, rather than any 'non-contributory' elements of the place.

Many of the strategies for non-contributory places refer to new development and alterations.

(iv) Conclusions

The Panel concludes:

- The non-contributory property at 85A Harcourt Street should be included in the Smythesdale Estate Precinct to ensure future development is appropriately assessed.
- The Heritage Overlay (HO953) would enable changes to the non-contributory property, including entire demolition of the existing building, subject to a planning permit to ensure that new development sensitively responds to surrounding heritage fabric.

Appendix A Planning context

A: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 will implement section 4(1)(d) of the PE Act to:

- conserve and enhance those buildings, areas or other places which are of scientific, aesthetic, architectural or historical interest, or otherwise of special cultural value
- balance the present and future interests of all Victorians.

Planning Policy Framework

The Amendment supports:

- **Clause 15.01-5S** (Neighbourhood character) which seeks to recognise, support and protect neighbourhood character, cultural identity, and sense of place.
- **Clause 15.03-1S** (Heritage conservation) which seeks to ensure the conservation of places of heritage significance. Relevant strategies are:
 - Identify, assess and document places of natural and cultural heritage significance as a basis for their inclusion in the planning scheme.
 - Provide for the protection of natural heritage sites and man-made resources and the maintenance of ecological processes and biological diversity.
 - Provide for the conservation and enhancement of those places which are of, aesthetic, archaeological, architectural, cultural, scientific, or social significance.
 - Encourage appropriate development that respects places with identified heritage values.
 - Retain those elements that contribute to the importance of the heritage place.
 - Encourage the conservation and restoration of contributory elements.
 - Ensure an appropriate setting and context for heritage places is maintained or enhanced.
- **Clause 15.03-1L** (Heritage in Boroondara) which applies to land affected by the Heritage Overlay and seeks:
 - To preserve 'significant' heritage places, protecting all significant heritage fabric including elements that cannot be seen from the public realm.
 - To facilitate sympathetic new buildings which extend the life of 'significant' heritage places.
 - To retain and conserve 'contributory' places and fabric in the Heritage Overlay which are visible from the primary street frontage.
 - To facilitate sympathetic additions, alterations and new buildings to 'contributory' heritage places which are massed, detailed, finished and located to preserve the presentation of the place from the street.
 - To ensure buildings and works to 'non-contributory' properties are sympathetic to the heritage values of the precinct and complement the precinct's heritage built fabric by being respectful of the scale, massing, rhythm and detailing.

A:2 Plan Melbourne

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

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

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

A:3 Planning scheme provisions

The Heritage Overlay purposes are:

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

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

A:4 Ministerial Directions, Planning Practice Notes and guides

Ministerial Directions

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

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

That discussion is not repeated here.

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

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

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

Planning Practice Note 1 specifies that documentation for each heritage place needs to include a statement of significance that clearly establishes the importance of the place and addresses the heritage criteria. It recognises the following model criteria (the Hercon criteria) that have been adopted for assessing the value of a heritage place:

Criterion A: Importance to the course or pattern of our cultural or natural history (historical significance).

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

Practitioner's Guide

A Practitioner's Guide to Victorian Planning Schemes Version 1.5, April 2022 (Practitioner's Guide) sets out key guidance to assist practitioners when preparing planning scheme provisions. The guidance seeks to ensure:

- the intended outcome is within scope of the objectives and power of the PE Act and has a sound basis in strategic planning policy
- a provision is necessary and proportional to the intended outcome and applies the Victoria Planning Provisions in a proper manner
- a provision is clear, unambiguous and effective in achieving the intended outcome.