

AMENDMENT C207 LILYDALE HERITAGE - CONSIDERATION OF PANEL REPORT AND ADOPTION OF AMENDMENT

Report Author: Senior Strategic Planner
Responsible Officer: Director Planning & Sustainable Futures
Ward(s) affected: Melba, Billanook

The author(s) of this report and the Responsible Officer consider that the report complies with the overarching governance principles and supporting principles set out in the Local Government Act 2020.

CONFIDENTIALITY

This item is to be considered at a Council meeting that is open to the public.

SUMMARY

Amendment C207 proposes to amend the Yarra Ranges Planning Scheme to apply the Heritage Overlay to thirteen places in Lilydale, amend the existing Heritage Overlay for five places in Lilydale, and add both the new and updated Statements of Significance for 20 heritage places as Incorporated Documents in the Planning Scheme.

The amendment was placed on public exhibition from 10 November 2022 to 12 December 2022 and five submissions were received. Of those, two submissions opposed the application of the Heritage Overlay, one submission supported the amendment and requested a number of modifications to address accuracy of historical information and the proper acknowledgement of sources in the Statements of Significance for several properties, and two submissions stated that they had no objection to the amendment.

At the Council Meeting of 11 April 2023, Council considered submissions and resolved to request the appointment of an independent planning panel appointed by the Minister for Planning.

The Panel hearing was held on 1 August 2023. The Panel has now provided its report and recommendations to Council.

The Panel has recommended that Amendment C207 be adopted with some modifications, including reduction in the size of the curtilage (mapped HO area) for the olive tree at 2-4 Albert Hill Road and refinement of the planning scheme provisions applying to the heritage trees at 57 Warburton Highway. A copy of the panel report is at Attachment 1.

It is recommended that Council adopt Amendment C207 consistent with the Panel's findings.

RECOMMENDATION

That Council

- 1. *Having considered the recommendations of the Panel Report, adopt Amendment C207 to the Yarra Ranges Planning Scheme with changes in accordance with the Panel's recommendations and generally in accordance with Attachments to this report.***
- 2. *Submit Amendment C207 to the Minister for Planning for approval.***
- 3. *Write to submitters advising of the outcome of Council's decision.***

RELATED COUNCIL DECISIONS

At the Council Meeting of 26 July 2022, Council resolved to prepare and exhibit Planning Scheme Amendment C207.

At the Council Meeting of 11 April 2023, Council considered submissions and resolved to request the appointment of an independent planning panel appointed by the Minister for Planning.

DISCUSSION

Purpose and Background

Purpose

The purpose of this report is to discuss the recommendations of the Planning Panel and to recommend adoption of Amendment C207 with changes.

Background

On 13 December 2022, Council adopted the new Lilydale Structure Plan.

Early work on the Structure Plan identified that there are a number of properties in Lilydale with potential heritage significance that are not protected by a Heritage Overlay. Council officers commissioned expert heritage advice to complete a review of potential heritage properties in Lilydale with a focus on the Main Street of Lilydale and surrounding residential areas, and to finalise Statements of Significance for properties that meet the threshold for local heritage protection. This work also includes updating several outdated Statements of Significance for properties that already have heritage protection in the planning scheme.

Amendment C207 proposes to amend the Yarra Ranges Planning Scheme to apply the Heritage Overlay to the following places:

Table 1

Description of Place	Address
Olinda Hotel	161 Main Street, Lilydale
Former Hutchinson's Store	251 Main Street, Lilydale
Crown Hotel	267 Main Street, Lilydale
Beresford Buildings	279-281 Main Street, Lilydale
Artis Building	284 Main Street, Lilydale
Single storey shop	295 Main Street, Lilydale
Former Deschamps Wine Store Olive Tree	2-4 Albert Hill Road, Lilydale, and small section of Cave Hill Road adjoining
Lilydale First World War Memorial	Main Street, Lilydale
Willowbank	16 Crestway, Lilydale
Towri	1/33-61 Edinburgh Road, Lilydale
Heatherlie	57 Warburton Highway, Lilydale
Lilydale Primary School No.876	63-65 Castella Street, Lilydale
Lilydale Heritage Railway Station Goods Shed	Maroondah Highway, Lilydale

Amendment C207 also proposes to amend the existing Heritage Overlay for the below places:

Table 2

Description of Place	Address	Proposed Amendment to the HO
Queen Victoria Jubilee Street Trees (HO77)	Main Street, Lilydale	Reduction in mapped curtilage area within Main Street (to be replaced by HO401 – Lilydale Historic Street Trees)
Former W Johnson Bootmakers Shop/Residence (HO203)	335 Main Street, Lilydale	Removal of allowance for prohibited uses in the Schedule to the Heritage Overlay
Former Poon Kee's Store (HO213)	172 Main Street, Lilydale	Removal of allowance for prohibited uses in the Schedule to the Heritage Overlay
Lilydale-Warburton Railway (HO214)	Lilydale-Warburton Railway (former)	Reduction in mapped curtilage area near the Historic Lilydale Railway Station (to exclude the rail stabling yard)
Lilydale Historic Street Trees (HO401)	Anderson Street, Castella Street, Clarke Street, Cave Hill Road (south), The Eyrie (part) and historic street trees along the western boundary of the Lilydale Recreation Reserve, Lilydale	Increase in mapped curtilage area within Main Street (to replace HO77 Queen Victoria Jubilee Street Trees)

Amendment C207 will also add both the new and updated Statements of Significance for 20 heritage places as Incorporated Documents in the Planning Scheme. This includes updated Statements for the below existing heritage protected places:

Table 3

Description of Place	Address
The White Dog Hotel (HO 64)	292 Main Street, Lilydale
Former Oliver's Grocery Store/Lilydale Rural Supplies Shop (HO205)	148 Main Street, Lilydale

Interim Heritage Controls

To enable protection of the heritage places whilst Amendment C207 was exhibited, Council also resolved at the Ordinary Meeting of 26 July 2022, to seek the application of an interim Heritage Overlay (Amendment C206).

To date the request is still under consideration by the Minister for Planning, and therefore no interim controls apply to the heritage places.

Key Issues

Submissions

A total of five submissions were received in response to the amendment exhibition.

Planning Panel Request

Section 23 of the Planning and Environment Act 1987 states that after considering a submission which request a change to the amendment, the planning authority must:

- Change the amendment in the manner requested; or
- Refer the submission to a panel appointed under Part 8; or
- Abandon the amendment or part of the amendment.

Given that two submissions raised matters that could not be resolved, Council resolved on 11 April 2023 to refer the Amendment and submissions to an independent Planning Panel appointed by the Minister for Planning.

A Planning Panel provides Council and all submitters with an opportunity to have the amendment proposal and matters raised within submissions further considered. Following the completion of the Panel, which generally includes a hearing, the Panel will provide a report to Council with its recommendations for consideration.

Planning Panel Hearing

The Minister for Planning formally appointed a one-person Panel on 18 April 2023.

A Directions Hearing was held by video conference on 13 June 2023.

The formal Panel Hearing was held on 1 August 2023. Council called an expert from Extent Heritage as an expert witness.

The significant issues addressed by the Panel during the hearing were:

- The health and physical condition of the olive tree at 2-4 Albert Hill Road.
- The appropriate dimensions of the curtilage (mapped area) of the proposed overlay (HO437) covering the tree at 2-4 Albert Hill Road.
- The evidence to support the heritage listing of the identified features at 57 Warburton Highway ('Heatherlie').

Panel Report

The Panel submitted its report to Council on 11 August 2023 (Attachment 1).

The Panel supports the amendment and concluded that:

- The Olive Tree at 2-4 Albert Hill Road, Lilydale is of historical significance and should be included in the Heritage Overlay (HO437).
- The proposed curtilage of HO437 is excessive and not justified and should be reduced to 5.9 metres measured from the centre of the tree trunk.
- The Statement of Significance and citation for HO437 be amended to reflect the recommended reduced curtilage.
- 'Heatherlie' at 57 Warburton Highway, Lilydale is of historical, aesthetic and associative significance and should be included in the Heritage Overlay (HO441).
- The Heritage Overlay Schedule should be amended to apply trees controls specifically to the pine trees along the driveway rather than extending tree controls across the entire place.
- The proposed post-exhibition changes to amend the Heritage Overlay Schedule to identify the bakery and worker's cottage and front boundary wall and gate as 'Outbuildings or front fences not exempt under Clause 43.01-4 are not justified and not supported.
- The place citation for 'Heatherlie' should be amended to correct references to the bakery roof materials, reflect the recommended tree controls and generally include the changes identified in the heritage evidence of Extent Heritage.
- The Panel supports the response of Extent Heritage to the suggestions proposed to several citations by the Lilydale & District Historical Society. These changes are minor in nature and do not impact on the level of significance attributed to the places.

The Panel recommends that Yarra Ranges Planning Scheme Amendment C207 be adopted as exhibited, subject to the following changes:

- Amend the Heritage Overlay curtilage of HO437 to a radius of 5.9 metres from the tree trunk centre.
- Amend the Heritage Overlay schedule to refer to 'The pine (Pinus) trees lining the driveway' in the 'Tree controls apply' column for 'Heatherlie' at 57 Warburton Highway.
- Amend Schedule 1 to Clause 72.08 (Background documents) to consolidate all proposed place citations into a single background document.
- Amend the Former Deschamps Olive Tree, 2-4 Albert Hill Road, Lilydale Statement of Significance, June 2022 to delete the words "and its 15m tree protection zone (TPZ)" under the heading 'What is significant?'
- Amend the Heatherlie, 57 Warburton Highway, Lilydale Statement of Significance, June 2022 to add the word 'as' after the words "associative significance" under the heading 'How is it significant?'
- Amend the Former Deschamps Olive Tree, 2-4 Albert Hill Road, Lilydale Citation (Extent heritage Pty Ltd, December 2021) consistent with the recommended changes to the Statement of Significance and to include a revised curtilage map.
- Amend the Heatherlie, 57 Warburton Highway, Citation, June 2022 to include changes: a) to identify the correct bakery building roof materials, and b) amend the 'Recommended Heritage Controls' Table to identify that tree controls only apply to the pine trees along the driveway.
- Amend the citations consistent with the changes identified in Attachment 7 of this Report.

Panel Findings

In making its recommendations the Panel considered the following main issues.

Olive Tree, 2-4 Albert Hill Road

The main issues considered by the panel was whether the Olive tree is of heritage significance and what the curtilage of the tree should be.

All parties to the hearing agreed that the tree is of heritage significance and the Panel accepted that as one of the earliest plantings within Lilydale and its historical relationship to the former wine growing activity that was a formative part of Lilydale's settlement it meets the threshold criterion for historical significance (Criterion A).

The key issue considered by the Panel was whether Council's proposed fifteen metre curtilage is appropriate and raised concerns with using the TPZ (generally used for arboriculture assessment purposes) to apply the curtilage.

The Panel considered the relevant factors in determining what the heritage curtilage should be are:

- The setting and context of the tree.
- What requires management from a heritage perspective.

The Panel agreed that the location of buildings too close to the tree canopy may impact future growth or the appreciation of the tree and that some space around it is required. However, it considered that Council's proposed fifteen metre curtilage is unjustified, excessive, and overly conservative.

The Panel found that the 5.9 metre TPZ radius proposed by the landowner's expert in evidence is a more logical basis for the curtilage as it provides space around the tree and its canopy and extends only within the necessary part of the road reserve (confined to gas tank and guard rails and the driveway). The revised curtilage will require changes to the citation and Statement of Significance.

It is considered that the Panel's recommendation should be accepted, and that the amended curtilage will provide adequate protection to the tree.

57 Warburton Highway ('Heatherlie')

The Panel considered whether the buildings and trees on the site are of heritage significance.

Heritage Significance

The Panel was satisfied that 'Heatherlie' meets the HERCON criterion threshold for historical (A), aesthetic (E) and associative (H) significance and agreed that the methodology of preparing the citation and relying on materials and documentation gathered from research if a site inspection cannot be conducted, is appropriate, particularly if it is appropriately robust. It found that the heritage assessment is robust, applies appropriate sources and has not sought to attribute significance to elements of the site in a manner that is overstated.

The Panel agreed with Council that the condition of the buildings on the site or the need to undertake maintenance is not determinative of their heritage significance and is a matter for consideration at the planning permit stage.

Bakery and outbuildings

Based on the photographs provided by the landowner, the citation and Statement of Significance should be amended to reflect the bakery building roof materials. The Panel does not see any benefit in identifying the bakery and workers cottage as outbuildings that would not be exempt from notice and review provisions of the Heritage Overlay, as proposed by Council's expert witness, and was not satisfied that Council has properly established the need for this provision to be switched on.

Front boundary wall and gates

The Panel agreed with Council that future emergency access requirements are not determinative of the aesthetic significance of the walls and gate and whether they should be included in the Heritage Overlay. Alterations to these including repairs and maintenance can be considered at the planning permit stage.

The Panel, whilst acknowledging that the stone walls from the interwar period in the residence gardens have been altered, repaired crudely in places, or require rebuilding, does not diminish their contribution to the interwar design and aesthetics of the residence and the Sorenson landscape design.

Pine Trees

The Panel agreed that the row of pine trees along the driveway are a distinctive and important element of the historical and aesthetic significance of the place, and that whilst safety issues are an important consideration in relation to the future management of the trees, they are not determinative in relation to whether the trees are of heritage significance. They are issues that can be considered at the planning permit stage. The Panel also noted that permit exemptions exist for vegetation that presents an immediate risk of personal injury or damage to property.

The Panel also recommended that the forested areas of the site beyond the house, outbuildings and garden setting that are not significant, albeit important to the setting and early history of the property, should not have individual tree controls as this would be an unnecessary burden on the landowner and the responsible authority.

As such the Panel recommended that the schedule to the Heritage Overlay be amended to identify only the trees that are affected by the tree control provisions.

Updated Citations

The Panel supported the proposed additions, corrections and further researched information proposed for inclusion in the citations for HO203, HO433, HO439 and HO440 (as discussed in Attachment 7) by the Lilydale and District Historical Society. The Panel was satisfied that these changes do not change the exhibited versions of the findings or attributed significance.

Council's heritage adviser has advised that some of the requested wording changes have not been included in the revised citations as they don't offer any additional information establishing the heritage value or the information repeats what is already contained in the citation. A table detailing the requested changes and the reasons where content has not been included is attached (Attachment 7).

It is considered that the matters of critical importance raised by the Society have been included in the revised citations consistent with the Panel's recommendations (Attachment 9).

Other matters

The Panel recommended that Schedule 1 to Clause 72.08 (Background documents) be amended to consolidate all proposed citations into a single background document, rather than having separate documents.

Council has sought advice from the Department of Planning (DTP) on the Panel's recommendation. DTP has advised that they have discussed with Heritage Victoria and are comfortable with this approach. This revised document is attached (Attachment 9).

Options considered

Option 1

Adopt the amendment with changes as detailed above and in Attachments 2 to 10 to this report. The Panel findings are reasonable and would enable progression of Heritage protections for the associated properties which is a priority for Council. Hence this option is recommended.

Option 2

Adopt the amendment without making the changes recommended by the Panel. Any adoption of an amendment that is contrary to any of the Panel's recommendations, must advise the Minister for Planning of the reasons why the recommendations have not been accepted. Officers accept the Panel's recommendations as reasonable and having merit, hence this option is not recommended.

Option 3

Abandon the Amendment. If heritage protection of the properties was not pursued, Council would be failing in its obligations under the *Planning and Environment Act 1987* and the Yarra Ranges Planning Scheme. This option is not recommended.

Recommended option and justification

It is recommended Option 1 be pursued and that the amendment be adopted in accordance with the recommendations of the Panel. The Panel has reached its findings after careful consideration of all the evidence presented to it.

FINANCIAL ANALYSIS

The costs associated with Amendment C207 are covered by the recurring Planning Scheme Amendments operational budget for Strategic Planning.

The cost of having a heritage expert prepare the background reports to support the amendment, prepare citations for each site and appear before a panel as an expert witness has totalled \$55,000.

Council must also pay the cost of the panel hearing which was \$5,137.

APPLICABLE PLANS AND POLICIES

The proposal to apply permanent heritage protection or modify existing heritage protection to twenty properties in Lilydale is consistent with the following Council strategies and plans:

- Council Plan (2021-25) opening statement: “We acknowledge that history shapes our identities, engages us as citizens, creates inclusive communities, is part of our economic well-being, teaches us to think critically and creatively, inspires leaders and is the foundation of our future generations.”
- Council Plan (2021-25): Quality Infrastructure and Liveable Places.
- Yarra Ranges Planning Scheme:
 - Clause 02.03-5 Built Environment and Heritage: Yarra Ranges’ diversity of heritage buildings and places reflect its origins and contributes to its identity. There is a need to protect the important elements of heritage to nurture greater community awareness and appreciation of Yarra Ranges’ past.
 - Clause 15.03-1S Heritage Conservation: ensure the conservation of places of heritage significance.
 - Clause 21.06-1- Heritage Conservation Objectives and Strategies.

RELEVANT LAW

The planning scheme amendment has been prepared in accordance with the legislative requirements of the *Planning and Environment Act 1987*.

SUSTAINABILITY IMPLICATIONS

Economic Implications

The amendment is not expected to have any adverse or significant economic effects. Inclusion of a site within the HO does not prohibit changes to that site or building, but rather requires an application process whereby heritage considerations can be properly addressed, along with other factors before any decision on an application is made. It is considered economic impacts on future development are offset by the contribution that the heritage places offer to the broader community.

Social Implications

The amendment will have positive social and cultural effects. Protection of heritage places benefits the community by adding to the understanding of Yarra Ranges’ rich cultural history, providing a link to the past and giving a sense of place.

Environmental Implications

The amendment will not have any adverse effects on the environment. Retaining heritage buildings for adaptive reuse can also lead to environmental and economic benefits through the substantial reduction in building, demolition and new construction waste, and the conservation of embodied energy in the existing building.

COMMUNITY ENGAGEMENT

Amendment C207 was publicly exhibited from 10 November to 12 December 2022 in accordance with the statutory requirements of the *Planning and Environment Act 1987*.

Notification comprised:

- Notices published in the 8 November 2022 edition of the Lilydale Star Mail paper.
- Letters sent by mail to the affected landowners and adjoining landowners and occupiers and other key stakeholders including the local heritage society.
- Letters sent by email to prescribed and relevant government agencies and departments.
- Notice published in the Government Gazette on 10 November 2022.

In addition, information was made available from Council's and the Department of Transport and Planning's websites.

COLLABORATION, INNOVATION AND CONTINUOUS IMPROVEMENT

The amendment will contribute to protection of Yarra Ranges heritage. As part of the amendment process Council sought the views of all the relevant state government departments who have raised no objections.

RISK ASSESSMENT

Until the relevant properties are protected permanently by a Heritage Overlay, there is a risk of demolition or works that may compromise the integrity of the heritage places.

CONFLICTS OF INTEREST

No officers and/or delegates acting on behalf of the Council through the Instrument of Delegation and involved in the preparation and/or authorisation of this report have any general or material conflict of interest as defined within the *Local Government Act 2020*.

ATTACHMENTS TO THE REPORT

1. Amendment C207 Panel report
2. Amendment C207 Explanatory Report
3. Planning Scheme Amendment Maps
4. Schedule to Clause 43.01 Heritage Overlay
5. Schedule to Clause 72.04 Incorporated Documents
6. Schedule to Clause 72.08 Background Documents
7. Response to the Lilydale and District Historical Society submission
8. Amended Statements of Significance
9. Amended Citation
10. Lilydale Street Trees Incorporated Document