

## **PROPOSED AMENDMENTS TO SEEK INTERIM AND PERMANENT HERITAGE OVERLAY CONTROLS IN LILYDALE**

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Report Author: Senior Strategic Planner  
Responsible Officer: Director Planning, Design and Development  
Ward(s) affected: Billanook; Melba;

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*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 on that is open to the public.

### **SUMMARY**

Through early work on preparing a new Lilydale Structure Plan, it was identified that there are a number of properties in Lilydale with potential heritage significance that are not protected by a Heritage Overlay (HO) in the Planning Scheme.

Council engaged qualified heritage consultants to identify gaps in heritage protection in Lilydale's Main Street and surrounding areas and to assess which places meet the threshold for local heritage protection in the planning scheme. This work has recommended the protection of 13 new sites and updates to the existing heritage statements of significance or mapping for 7 places that are already protected by the HO.

It is proposed that the schedule to the HO in the Planning Scheme be amended to include the 13 new places through a planning scheme amendment that will be publicly exhibited.

Concurrently, it is proposed that the HO be applied to the new places on an interim basis, to ensure the heritage values of the places are protected while the planning scheme amendment for permanent heritage protection is exhibited.

In order to apply interim controls, Council must request the Minister for Planning to use his powers of intervention under section 20(4) of the Planning and Environment Act 1987 to prepare, adopt and approve an amendment to the Yarra Ranges Planning Scheme (Amendment C206).

In order to commence the amendment process for a permanent control, Council must seek authorisation from the Minister for Planning to prepare and exhibit an amendment (Amendment C207).

## RECOMMENDATION

### *That Council*

- 1. Request the Minister for Planning to prepare, adopt and approve Amendment C206 to the Yarra Ranges Planning Scheme under section 20(4) of the Planning and Environment Act 1987 to apply the Heritage Overlay to 13 places, on an interim basis until 31 December 2023, generally in accordance with the attachments to this report.**
- 2. Request the Minister for Planning to authorise the preparation and exhibition of Amendment C207 to apply the Heritage Overlay on a permanent basis to 13 places, make changes to seven (7) places already protected by a Heritage Overlay, and consequential changes, generally in accordance with the attachments to this report.**
- 3. Subject to the Minister's authorisation, exhibit Amendment C207 to the Yarra Ranges Planning Scheme.**

## RELATED COUNCIL DECISIONS

At the Council Meeting of 24 September 2019 Council resolved that:

- Council adopt the Lilydale Place Plan to guide decision making for Lilydale's future liveability. The adopted Place Plan included an Action 4.1 to 'Create Inviting Streets and Public Spaces', which included advocacy for restoration of streetscapes and heritage; and
- At the Council meeting of 14 December 2021 for the draft Lilydale Structure Plan, Council also noted an update on the Lilydale Heritage Review.

## DISCUSSION

### *Purpose and Background*

#### *Purpose*

Amendments C206 and C207 propose to amend the Yarra Ranges Planning Scheme to apply the Heritage Overlay on an interim and permanent basis 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

Description of Place	Address
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

Further details of the heritage significance of the properties and the amendment proposals are outlined in the key issues section of this report and the attached Explanatory Reports (Attachments 1 and 2).

### ***Background***

The completion of a new Structure Plan for Lilydale is an action of the Council Plan 2021-2025, under Quality Infrastructure and Liveable Places Action 7.

Early work on the Structure Plan identified that there are properties in Lilydale of 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.

It was originally intended that this work would form an action of the Structure Plan and be included as part of a planning scheme amendment to implement the Structure Plan, following its adoption by Council.

However, in order to expedite this process, protection of heritage places through a separate planning scheme amendment is proposed to ensure properties are protected as soon as possible. The application of the HO will introduce a planning permit trigger for demolition and other major work, and requires consideration of the heritage place in any planning decision.

### ***Key Issues***

#### **Heritage Studies**

Council officers commissioned a study in 2019 to identify gaps in heritage protection in Lilydale (*Stage 1a Lilydale Main Street Heritage Review Gap Study, Trevor Westmore Urban Design and Heritage Conservation, 2019*).

In 2021, officers sought a peer review of the heritage gap study, and the preparation of statements of significance for properties that meet the threshold for local heritage protection (*Lilydale Stage 1a Heritage Gap Study Peer Review and Review of Stage 1b Lilydale Heritage Review Gap Study: Lilydale Heritage Study, Extent Heritage Pty Ltd, 2022*).

This work has been prepared in accordance with:

- Australia ICOMOS Charter for Places of Cultural Heritage Significance (the Burra Charter);
- Department of Environment, Land, Water and Planning's Practice Note 01 – Applying the Heritage Overlay, August 2018;
- Heritage Victoria Model Consultants Brief for Heritage Studies, Heritage Victoria, 2010; and
- The Heritage Overlay Guidelines: Glossary of Terms, Heritage Victoria, 2007.

The work prepared by Extent Heritage:

- Recommends the application of the HO to 13 properties that are not currently protected by a HO (Table 1 in Summary above);
- Recommends the amendment of the existing HO for 7 properties (Table 2 above); and
- Provides new and updated statements of significance (heritage citations) for the properties in Tables 1, 2 and 3 for inclusion in the Yarra Ranges Planning Scheme under Clause 72.04 (Documents Incorporated in this Planning Scheme).

A copy of the Extent Reports are at Attachments 3 and 4.

### **Statements of Significance**

For every heritage place (that is, a precinct or individual place) a statement of significance must be prepared using the format of 'What is significant?'; 'How is it significant?' and 'Why is it significant?' Statements of Significance must be incorporated into a planning scheme and will be included on the Victorian Heritage Register. A statement also provides essential information relating to:

- The curtilage, or area of significance;
- A physical analysis of the place;
- A comparative analysis with other places, to demonstrate significance; and
- Suggested conservation measures.

In Yarra Ranges, some statements of significance for existing heritage places were created many years ago and no longer adhere to contemporary information requirements.

Therefore, the planning scheme amendment to apply permanent heritage controls (Amendment C207) also seeks to include updated citations for places identified in Tables 2 and 3, and to incorporate these into the Planning Scheme.

## **Changes to the Existing Heritage Overlay**

### **Heritage Tree Controls**

There are two Heritage Overlays that apply to Lilydale's street trees:

- Queen Victoria Jubilee Trees, Main Street (HO77). The intention of HO77 is to recognise and protect trees planted in 1897 to commemorate Queen Victoria's Diamond Jubilee and to beautify the town; and
- Lilydale Historic Street Trees (HO401), which apply to Clarke Street, Castella Street, Anderson Street, Cave Hill Road, and the Eyrie. It also includes the mature Elms on the western boundary of the Recreation Reserve. These trees were planted as part of annual Shire arbour days, which occurred from 1897 to 1920.

As part of the heritage studies, it was identified that there were discrepancies between the HO statements of significance and the curtilage of HO mapping. For example, the HO77 statement of significance refers to the area between Cave Hill Road and the railway line being the location of significant trees, yet the HO mapping includes areas of Main Street far removed from this.

It was also identified through level crossing removal works that not all street trees in areas affected by the Heritage Overlay are significant. For example, there are many more recently planted trees that should not be affected by heritage controls.

To rectify these issues, a review was undertaken to bring the HO mapping into alignment with Statements of Significance. Within HO areas, there was an inventory created of all trees to inform which of the trees has heritage significance. These improvements have been integrated into the revised heritage controls and Statements of Significance.

### **Prohibited Uses**

The Schedule to the Heritage Overlay has the potential to allow for land uses that would otherwise be prohibited by other planning controls, thereby overriding other parts of the Planning Scheme. The intention is to provide for flexibility of land use, to avoid heritage buildings becoming unused and derelict.

Two properties, 172 Main Street (HO213) and 335 Main Street (HO203) in Lilydale, currently allow prohibited uses. This allowance is proposed to be removed.

Both the properties are now successfully occupied by businesses, which shows they can be viably used for commercial purposes. Given that Main Street, Lilydale is an area identified in the draft Lilydale Structure Plan as encouraging active street frontages and an engaging environment for pedestrians, commercial uses are preferred rather than non-commercial uses. Therefore, a continued allowance for land uses otherwise prohibited is not considered necessary or desirable in Main Street.

### Lilydale-Warburton Railway (HO214)

As part of the level crossing removal works in Lilydale, it was identified that parts of the rail stabling yard are affected by HO214 (that applies to the Lilydale-Warburton former railway route), even though these areas have no significance.

A review of the mapping curtilage confirmed the mapping can be reduced in size to exclude the rail stabling yard. This is proposed as part of revised HO mapping in Amendment C207.

### White Dog Hotel (HO64) and the Former Oliver's Grocery Store/Lilydale Rural Supplies Shop (HO205)

These properties have no proposed Heritage Overlay changes. However, as part of Council's work to review Statements of Significance, it was established that the relevant Statements for these properties were outdated and lacking in required detail.

For example, the Statements do not contain essential components such as an analysis of heritage significance against required National Heritage Convention (HERCON) criteria, a clear description of the area of significance, or clear conservation recommendations.

Therefore, as part of Amendment C207 it is proposed to add updated Statements of Significance for these places and include them as Incorporated Documents in the Yarra Ranges Planning Scheme.

### **Request for Interim Controls**

The *Planning and Environment Act 1987* the *Heritage Act 2017* and the *Victorian Civil and Administrative Tribunal Act 1998* provide for the intervention of the Minister for Planning in planning and heritage processes.

The Minister may do this by using his powers of intervention under Section 20(4) of the *Planning and Environment Act 1987* to prepare, adopt and approve an amendment without public notice.

Even the shortest and most straightforward planning scheme amendment process will take over six months due to the consideration of submissions and the likely appointment of an independent planning panel. It is therefore reasonable to seek interim heritage protection of the properties while they are considered for permanent protection.

The exemption will allow the prompt approval of Amendment C206 to apply interim heritage controls that will assist in protecting the heritage places while permanent heritage controls are considered through Amendment C207. The interim controls will be replaced with the permanent heritage controls upon approval of the amendment.

The interim heritage control will still allow any applications for redevelopment of the site to proceed, while ensuring consideration of heritage values. It is proposed that the interim heritage control be in place until 31 December 2023, which is expected to be enough time to exhibit and finalise the amendment for the permanent control.

### **Permanent Controls**

As required by the Department of Environment, Land Water and Planning (DELWP), any request for an amendment to apply interim heritage controls must also include a request seeking authorisation to prepare and exhibit an amendment for a permanent heritage controls.

### **Excluded Properties**

#### **131 Mangans Road, Lilydale (Coldstream Hill)**

This property has been nominated by a historian as having potential heritage significance, and there has also been concern raised by the Lilydale and District Heritage Society that the buildings on the property may be demolished. The property has also been nominated for State protection. Heritage Victoria has not assessed this request to date.

The land surrounding the house has been progressively subdivided over recent years and is part of the Tudor Retirement Village.

The owner of the site is now deceased, and Council officers have not been able to legally access the site to assess its current condition, which is an essential requirement for an analysis of heritage significance. The site and its bordering land are now overgrown with vegetation, and observation of the site's condition from outside its boundaries has not been possible.

Council understands there is not yet an Executor of the estate, and therefore no party Council can approach to obtain legal consent to access the property.

Due to these circumstances, the Coldstream Hill property is unable to be included in the current Planning Scheme amendments. Once an Executor has been appointed, officers will seek to obtain legal access to the property to enable further consideration of the heritage significance of the place.

#### **Poyner Shops (245-247 Main Street, Lilydale)**

The two double-storey attached shops at 245-247 Main Street were built in the late 19<sup>th</sup> century, developed by Edward Poyner who was an early settler of Lilydale and notable early developer. They now comprise two attached, double-storey terrace shops.

Both shops were originally part of a larger grouping of four terrace shops, all developed by Edward Poyner, however two of the original shops have been demolished. The two remaining shops have been significantly altered over time with new shopfronts and glazing at ground level, and the loss of the pediment.

Attachment 5 contains images showing the shops historically and currently.

The two remaining shops were identified in the *Stage 1a Lilydale Main Street Heritage Review Gap Study* as potentially being of heritage significance, noting however that significance is diminished due to demolition of half the original fabric and loss of its pediment, verandah and shopfronts.



The further review of this property by Extent Heritage has concluded that the place does not meet the threshold for a local heritage protection as the alterations have significantly compromised the heritage integrity of the place, and specifically:

- Half of the building has been demolished;
- The parapet has been heavily altered;
- The ground-level shopfronts have been heavily altered; and
- Only one quarter of the original façade and half the roof form is intact.

On this basis, there is no justification to apply a HO to the remaining shops.

### ***Options considered***

#### ***Option 1 – seek interim and permanent heritage controls for the identified properties***

Council has an obligation under the *Planning and Environment Act 1987* 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. The Yarra Ranges Planning Scheme also contains objectives that seek to conserve places of heritage significance.

Council has also previously given a commitment through the adoption of the Lilydale Place Plan to further protect heritage places in Lilydale.

Heritage protection enables historically and culturally significant places to be protected for the benefit of current and future generations by adding to the understanding of Yarra Ranges' rich cultural history, providing a link to the past and giving a sense of place.

#### ***Option 2 – not proceed with heritage protection of the identified properties***

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

The risk of permanently losing places that are of identified historic and cultural significance would significantly increase.

### ***Recommended option and justification***

It is recommended Option 1 be pursued. The application of an interim HO is an appropriate response to the identification of heritage values where they had not been previously recognised. Permanent application of the HO will be considered through an exhibited amendment process to provide all stakeholders with an opportunity to comment.

## **FINANCIAL ANALYSIS**

The costs associated with Amendment C206 and Amendment C207 are covered by the recurring Planning Scheme Amendments operational budget for Strategic Planning.

## **APPLICABLE PLANS AND POLICIES**

This report contributes to 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; and
- Yarra Ranges Planning Scheme:
  - Clause 15.03-1S Heritage Conservation: ensure the conservation of places of heritage significance; and
  - Clause 21.06-1- Heritage Conservation Objectives and Strategies.

## **RELEVANT LAW**

The proposed interim and permanent heritage overlay planning scheme amendment requests have been prepared in accordance with the legislative requirements of the *Planning and Environment Act 1987*.

## **SUSTAINABILITY IMPLICATIONS**

### ***Economic Implications***

The amendments are 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.

This may limit development that is inconsistent with maintaining heritage values, which will improve the character of the building and the wider area. It is considered that economic impacts on future development will be offset by the contribution that the heritage place offers to the broader community.

### ***Social Implications***

The amendments will have a positive social and cultural effects through the preservation of historically and culturally significant places for the benefit of current and future generations. 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 is not anticipated to have any adverse environmental impacts. 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**

In preparation to commence a planning scheme amendment, Council officers have written to all affected landowners to advise them of the potential heritage significance for their property, and potential application of a Heritage Overlay.

Council officers have also met with the Lilydale and District Historical Society, in order to brief them on the expert work undertaken, and recommendations for a planning scheme amendment.

### ***Amendment C206***

If Council supports the application of an interim Heritage Overlay to the identified places, and resolves to seek a Ministerial Amendment under Section 20(4) of the Planning and Environment Act 1987, the Minister for Planning may exempt himself from the notice requirements of the Act and the amendment would be prepared, adopted and approved by the Minister without any public notice.

The effect of the exemption is that third parties will not receive notice of the amendment and will not have the opportunity to make a submission or be heard by an independent planning panel.

However, the exhibition of Amendment C207 to apply permanent heritage controls to the properties will provide the opportunity for the community and affected parties to make submissions on the proposal.

### ***Amendment C207***

If Council supports the amendment proposal to apply permanent heritage controls, and resolves to seek authorisation from the Minister for Planning to prepare and exhibit the amendment, and the Minister grants authorisation, the amendment will be subject to standard notification requirements for planning scheme amendments as required under the Planning and Environment Act 1987, including:

- Notification in a local newspaper;
- Letters to affected and nearby property owners and stakeholders including the Lilydale and District Historical Society;
- Information available on Council's website and Council offices; and
- Direct notification to relevant government agencies and departments.

A further report would be prepared for Council to consider all submissions received through the exhibition process.

## **COLLABORATION, INNOVATION AND CONTINUOUS IMPROVEMENT**

No collaboration with other Councils, Governments or statutory bodies was sought.

## **RISK ASSESSMENT**

Until the properties are protected with 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. Explanatory Report Amendment C206
2. Explanatory Report Amendment C207
3. Extent Heritage Gaps Study Stage 1A
4. Extent Heritage Gaps Study Part 1B
5. Poyner Shops