

YARRA RANGES PLANNING SCHEME AMENDMENT C210 - CONSIDERATION OF SUBMISSIONS- APPLICATION HERITAGE OVERLAY – 1 MONTROSE ROAD, MONTROSE

Report Author: Executive Officer Strategic Planning
Responsible Officer: Director Planning Design & Development
Ward(s) affected: Walling;

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 C210 proposes to apply the Heritage Overlay (HO430) to 1 Montrose Road, Montrose.

The amendment was placed on public exhibition from 7 July 2022 to 8 August 2022 and six submissions were received. Of those, one submission makes reference to matters unrelated to the proposed Heritage Overlay, one submission supports retention of the existing building, two submissions support the amendment and also request changes and one submission opposing the application of the HO has been received from the land owner.

In response to submissions, this report recommends that Council refer the Amendment and submissions to an independent Planning Panel appointed by the Minister for Planning.

RECOMMENDATION

That Council

- 1. Note the matters raised in submissions to Amendment C210.***
- 2. Request the Minister for Planning to appoint an independent Planning Panel under section 23 of the Planning and Environment Act 1987 to consider submissions to Amendment C210.***
- 3. Write to all submitters advising them of Council's decision to refer the submissions to a Panel.***
- 4. Present a submission generally in accordance with the position outlined in this report and attachments to a Panel Hearing.***
- 5. Receive a further report to consider the Panel's recommendations.***

RELATED COUNCIL DECISIONS

At the Ordinary Council Meeting of 10 May 2022, Council resolved to prepare and exhibit Planning Scheme Amendment C210.

DISCUSSION

Purpose and Background

Purpose

Planning Scheme Amendment C210 was exhibited from 7 July 2022 to 8 August 2022. The amendment proposes to apply a Heritage Overlay to 1 Montrose Road, Montrose on a permanent basis.

The purpose of this report is to discuss the submissions received to Amendment C210 and recommend that the amendment be referred to an independent planning panel, appointed by the Minister for Planning.

Background

1 Montrose Road, Montrose contains a single residential dwelling known as Alta Dena, as shown on the photos and plan in Images 1 and 2 below.



Image 1 - View of front façade of Alta Dena (Extent Heritage Pty Ltd 2022)



Image 2 - Aerial location plan

In January 2022, Council received planning permit application YR2022/13, for use and development of 1 Montrose Road, Montrose for a childcare centre. The proposal involves partial demolition of the existing residential building and re-purposing of the building for a childcare centre. The application received 27 objections, including on the basis that the building is of heritage value. The application is currently subject to VCAT proceedings.

The site had not previously been identified as being of heritage significance in any existing Council heritage studies, and prior to this application had not been nominated for heritage protection. Subsequent to the advertising of the permit application, a formal nomination for inclusion in the Heritage Overlay was received from a community member.

Council sought heritage advice on the property from a qualified heritage consultant. The investigation identified that the property, including five trees, meets the threshold for local heritage protection and recommended its inclusion in the Heritage Overlay of the Yarra Ranges Planning Scheme. The Statement of Significance which provides further details on the significance of the property is at Attachment 1.

Interim Heritage Controls

To enable protection of the heritage place whilst Amendment C210 was exhibited, Council also resolved at the Ordinary Meeting of 10 May 2022, to seek the application of an interim Heritage Overlay.

The Minister for Planning subsequently used his powers of intervention under section 20(4) of the *Planning and Environment Act 1987* to prepare, adopt and approve Amendment C209 on 7 July 2022. The interim control will apply to the property until 1 May 2023.

Key Issues

Submissions

A total of six submissions were received in response to the amendment exhibition. A summary of submissions is at Attachment 2 and further discussed below.

Submission 1

The submitter raised concerns that the site is a poor location for a childcare centre, and also considers that the existing building should be retained due to its age.

Response to submission: The submitters concerns with the use of the building for a child care centre are noted. The submitter has also made an objection to the planning permit application for the childcare centre and their specific concerns with the proposed use will be further considered through the planning permit process. This Planning Scheme Amendment does not make any recommendations around use which would otherwise be part of the statutory Planning Application process, hence it is not possible to further consider this matter through the planning scheme amendment process. The expression of support for retention of the existing building is noted.

Recommendation: No changes are required to the amendment.

Submission 2

The submitter raised concerns that the site is a poor location for a child care centre.

Response to submission: The submitters concerns with the use of the building for a child care centre are noted. The submitter has also made an objection to the planning permit application for the childcare centre and their specific concerns with the proposed use will be further considered through the planning permit process. This Planning Scheme Amendment does not make any recommendations around use or the appropriate location of specific uses which would otherwise be part of the statutory Planning Application process, hence it is not possible to further consider this matter through the planning scheme amendment process.

Recommendation: No changes are required to the amendment.

Submission 3

The amendment was referred to Melbourne Water as a relevant agency. It has no objection to Amendment C210.

Response to submission: Melbourne Water's submission is noted.

Recommendation: No changes are required to the amendment.

Submission 4

The submitter has raised concerns that the Statement of Significance does not sufficiently recognise the key historic features of the main house, and that the garage/cottage annexe is original and should be included in the Statement of Significance.

Response to submission: The submission was referred to Council's heritage consultant for further assessment. The consultant's advice is that there is insufficient evidence to support the requested changes as further discussed below and within Attachment 3. Any change to a planning scheme requires a sufficient standard of evidence to justify the change, which has been done through obtaining expert advice to consider the matters raised by the submitter. Expert evidence needs to be relied upon to ensure the integrity of the amendment. The Panel process will allow further consideration of the merits of the submitters concerns.

Recommendation: No change proposed to be made to the amendment. The submission will be referred to an independent Planning Panel for further consideration.

Submission 5

The submitter objects to the amendment on the following grounds:

- The site does not meet criteria to qualify for a HO;
- The subject building has been substantially modified;
- The identified trees do not meet criteria to qualify for a HO; and
- The site is not tourist-related.

No further information or evidence was provided with the submission to support these statements.

Response to submission: The submission was referred to Council's heritage consultant for further assessment. The consultant's advice is that there is insufficient evidence to support the objections. The submitter has verbally advised that they intend to provide evidence to further support their submission at a panel hearing.

Recommendation: No change proposed to be made to the amendment. The submission will be referred to an independent Planning Panel for further consideration.

Submission 6

The submitter has raised concerns that:

- The Statement of Significance does not sufficiently recognise the key historic features of the main house;
- Extensions to the main building are sympathetically designed and deserve to be included in the Statement of Significance; and
- The garage/cottage annexe is original and should be included in the Statement of Significance.

Response to submission: The submission was referred to Council's heritage consultant for further assessment. The consultant's advice is that there is insufficient evidence to support the requested changes as further discussed below and within Attachment 3, with the exception of including additional historical detail that can be included in the Statement of Significance. Any change to a planning scheme requires a sufficient standard of evidence to justify the change, which has been done through obtaining expert advice to consider the matters raised by the submitter. Expert evidence needs to be relied upon to ensure the integrity of the amendment. The Panel process will allow further consideration of the merits of the submitters concerns.

Recommendation: Amend the Statement of Significance to include additional historic details on the house as provided by the submitter. No other changes proposed to the amendment. The submission will be referred to an independent Planning Panel for further consideration.

Further heritage advice

The three submissions that raised issues of heritage merit were referred to Council's Heritage Adviser for further assessment and advice. The table below and Attachment 3 provide additional detail of the specific grounds of each submission and the analysis and response provided by Council's Heritage adviser.

Submission	Heritage Advisor Response
Submission 4	Heritage Advisor Response
The Statement of Significance has overlooked the following important features: <ul style="list-style-type: none">• The use of Montrose Bricks - from the Heritage Listed Montrose Brickworks.• Original internal features - Brick Fireplaces, Tasmanian Blackwood panelling and balustrading, exposed timber beam ceilings, sculptured plaster ceilings and ceiling roses.	Use of Montrose Bricks in the construction of Alta Dena has not been substantiated through physical or archival evidence following fabric analysis and historical research. Brickwork used for the main residence will be sufficiently protected through Clause 43.01-1 of the Yarra Ranges Planning Scheme, which states that "A <i>permit is required to externally alter a building by</i>

Submission	Heritage Advisor Response
<ul style="list-style-type: none"> • Sympathetically modernised kitchen/bathroom. • Outbuildings – Coach house/garage and Servants' quarters/Governess' cottage annex. <p>The steeply pitched roof section of the Servants' quarters/Governess cottage points to its construction at the same time as the house.</p> <p>The additions and extensions to the property over time, should be valued for their essential contribution to the evolving needs of the occupants throughout the decades.</p>	<p><i>structural work, rendering, sandblasting or in any other way; and to externally paint an unpainted surface”</i></p> <p>The test for the application of internal controls is contained in the <i>Applying the Heritage Overlay Planning Practice Note 1, DELWP, 2018</i> which says that “<i>internal controls should be applied sparingly and on a selective basis to special interiors of high significance.</i>” In this instance there is no evidence that the subject interiors are of particularly high significance.</p> <p>There is currently no documentary evidence to corroborate whether the coach house/garage formed part of the original design or if it was added in subsequent decades. Even in the case of the former, the structure is currently of low integrity.</p> <p>The “servants' quarters/Governess' cottage annex”, is referenced in the citation as the “c.1953-1962 freestanding single-storey outbuilding to the north-east corner of the property” and does not form part of the property's original design.</p> <p>The claim regarding the value of additions and extensions in relation to the evolving needs of occupants is ultimately an argument about the social value of Alta Dena and its ongoing use (Criterion G), a criterion that the place does not satisfy.</p>
Submission 5	Heritage Adviser response
<p>The land does not meet the threshold of significance to justify the application of HO430.</p> <p>The building on the land has been substantially altered and is no longer intact.</p> <p>The five trees nominated, being a Grey Poplar (<i>Populus x canadensis</i>), two Lilly Pillis (<i>Syzygium smithii</i>), Japanese Cedar (<i>Cryptomeria japonica</i>) and mature sweet gum (<i>Liquidambar</i>) do not meet the threshold of significance and are not of local significance.</p> <p>The house on the land does not form any link to tourism.</p>	<p>No evidence has been provided to substantiate why the land does not meet the threshold for heritage significance.</p> <p>While there are some alterations to the property, they cannot be classified as ‘substantial’. Alterations and additions are generally either sympathetic in design or comprise recessive rear extensions that do not detract from the form, detailing and fenestration of the extant c.1930 main residence. Where alterations do exist, they are noted in the citation.</p> <p>No evidence has been provided to substantiate why the five trees nominated do not meet the threshold for heritage significance.</p>

Submission	Heritage Advisor Response
	<p>The link to tourism as referenced in the citation refers to the historical theme of the Yarra Ranges area being used as a holiday destination for wealthy Melbournians, particularly in the Interwar era. Constructed as a holiday home for the original owner in c. 1929, Alta Dena clearly reflects this historical theme.</p>
Submission 6	Heritage Adviser response
<p>The heritage citation has inadequately identified the significance of several aspects of the property including internal original features of the main dwelling sympathetic to the Arts & Crafts movement of the time, in particular the use of fine wood and exquisite craftsmanship.</p> <ul style="list-style-type: none"> a) Classic large rooms and open floor plan; b) Timber wainscoting/panelling on walls; c) Timber ceiling beams; d) Sculptured plaster ceilings and ceiling roses; e) Detailed brick fireplaces; and f) Tasmanian blackwood staircase and balustrading. <p>Rear extensions to the main dwelling built in the 1950's (just 20 years later) have been sympathetically constructed and do not detract from the properties historical value.</p> <p>George Rodd with his brother Earnest were founders of one of Australia's most iconic brand names G&E Rodd.</p> <p>The freestanding single story outbuilding (cottage) to northeast corner of the property - we challenge the heritage report that states this building is c1952-1963 and not original and therefore of no significance. The cottage shows numerous architectural similarities to the main dwelling.</p> <p>Eva and Harold Cropper lived in the cottage from 1951 to 1970.</p>	<p>As noted above, the internal features of the property are of some interest, however they are not considered to meet the threshold of high significance as required by the PPN01.</p> <p>The Heritage Citation does not state that the c.1953 rear extension to the main dwelling detracts from the heritage significance of the property. Rather, the exclusion of this extension was made on the basis that it does not contribute to the historical and aesthetic values of the place.</p> <p>While Building Files indicate that George and Verna Rose Rodd, manufacturing jewellers, owned Alta Dena in the 1950s, their association with the residence and subsequent extension does not inform the cultural heritage significance of the place.</p> <p>Extent Heritage notes that similarities in architectural features are not substantial evidence of original fabric, particularly where there is archival evident that indicates otherwise.</p> <p>While oral evidence has been provided in relation to the Cropper's occupancy at the freestanding structure at the north-east corner of the property between 1951 and 1970, this does not account for the period prior to the Cropper's occupancy, and therefore does not preclude the likelihood of its later construction date.</p> <p>Extent Heritage agrees that Alta Dena satisfies Criterion A and Criterion E of the HERCON criteria assessment. However, as detailed above, this is ultimately limited to the extant 1930 main residence and associated early landscape plantings, which clearly embodies the cultural heritage significance of the place.</p>

Planning Panel

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 three submissions raise matters that cannot be resolved, it is proposed that Council 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.

Status of Planning Permit YR2021/1066

Planning permit YR2021/1066 proposes to develop and use the site for a child care centre. The application is subject to an Application for Review at VCAT on the grounds that Council's failed to determine the application within the prescribed time.

A compulsory conference was held by VCAT on 26 August 2022, and the application has been set down for a full hearing on 25 November 2022. Council's position at the hearing will be that had Council been able to make a decision on the application it would have issued a Notice of Refusal.

Options considered

Option 1

Refer the amendment and submission to an independent planning panel. This will enable all parties with an opportunity to have their concerns or requested changes to the amendment further considered.

Option 2

Change the amendment as requested by submitters. As discussed under Submissions 4 and 6 above, the advice of Council's heritage consultant is that amending the Heritage Overlay to also include internal controls does not meet the HERCON heritage criteria. Submission 5 does not request changes but does not support the amendment and is therefore unresolvable.

Option 3

Abandon the amendment. If heritage protection of the property 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 a place that is of identified historic and cultural significance would significantly increase.

Recommended option and justification

It is recommended Option 1 be pursued. The further consideration of the amendment and matters raised by submitters by an independent Planning Panel provides all parties with an opportunity to have their concerns further considered. Modifying the amendment as requested by the submitters is not justified and abandoning the amendment would result in the place having no permanent heritage protection.

FINANCIAL ANALYSIS

The costs associated with Amendment C210 are covered by the recurring Planning Scheme Amendments operational budget for Strategic Planning.

APPLICABLE PLANS AND POLICIES

The proposal to apply permanent heritage protection to 1 Montrose Road, Montrose 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 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 planning scheme amendment has been prepared and exhibited 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 considered to be offset by the contribution that the heritage place offers 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 C210 was publicly exhibited from 7 July 2022 to 8 August 2022 in accordance with the statutory requirements under the *Planning and Environment Act 1987*. Notification comprised:

- Notices published in the 5 July 2022 edition of the Mountain Views paper;
- Letters sent by mail to the affected landowner and adjoining landowners and occupiers and other key stakeholders including local heritage societies and the local National Trust Branch;
- Letters sent by mail to all persons who had lodged an objection to planning permit application YR2021/1066, for the proposed use and development of a childcare centre on the site, as many of these objections raised potential heritage value as a concern;
- Letters sent by email to prescribed and relevant government agencies and departments; and
- Notice published in the Government Gazette on 7 July 2022.

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

COLLABORATION, INNOVATION AND CONTINUOUS IMPROVEMENT

The amendment will contribute to protection of Yarra Ranges heritage and as part of the amendment process Council is required to seek the view of all the relevant state government departments who have raised no objections.

RISK ASSESSMENT

Until the property is protected permanently by a Heritage Overlay, there is a risk of demolition or works that may compromise the integrity of the heritage place.

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. Statement of Significance
2. Summary of submissions
3. Heritage Adviser response to submissions