

AMENDMENT C210 1 MONTROSE ROAD, MONTROSE - CONSIDERATION OF PANEL REPORT AND ADOPTION OF AMENDMENT

Report Author: Senior Strategic Planner
Responsible Officer: Director Planning & Sustainable Futures
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 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. Two submissions supported the amendment but requested changes and one submission opposed the amendment.

At the Ordinary Meeting of 11 October 2022, Council resolved to seek the appointment of an independent Panel to consider submissions to the amendment.

The Panel hearing was held on 14 and 15 December 2022. The Panel has now provided its report and recommendations to Council.

The Panel has recommended that Amendment C210 be adopted with some modifications, the most significant of which is the deletion of individual protection of five identified trees. A copy of the panel report is at Attachment 1.

It is recommended that Council adopt Amendment C210 consistent with the Panel's findings.

RECOMMENDATION

That Council:

- 1. *Having considered the recommendations of the Panel Report, adopt Amendment C210 to the Yarra Ranges Planning Scheme with changes in accordance with the Panels recommendations, and generally in accordance with Attachments to this report.***
- 2. *Submit Amendment C210 to the Minister for Planning for approval.***
- 3. *Write to submitters advising of the outcome of Council's decision.***

RELATED COUNCIL DECISIONS

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

At the Ordinary Council Meeting of 11 October 2022, Council considered submissions and resolved to request the appointment of an independent planning panel appointed by the Minister for Planning.

DISCUSSION

Purpose

The purpose of this report is to discuss the recommendations of the Planning Panel and recommendation to adopt Amendment C210 with changes.

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 YR-2021/1066, 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.

On 16 September 2022, Council resolved under delegated authority to advise VCAT that it would have resolved to refuse the application due to it strongly failing to align with the objectives of the Heritage Overlay (Interim Control HO430) and failing to provide adequate measures to minimise internal and external noise emission.

The application was subject to a review at VCAT which commenced on 25 November 2022. On 5 December 2022 the Tribunal made an order directing the applicant and Council to provide written submissions addressing any implications arising from gazettal of Amendments C148yr and C195yr by 16 December 2022. VCAT issued its decision on the application on 1 February 2023 directing Council to issue a permit.

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.

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.

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 three submissions raised matters that could not be resolved, Council resolved on 11 October 2022 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 October 2022.

A Directions Hearing was held by video conference on 7 December 2022.

The formal Panel Hearing was held on 14 and 15 December 2022. Council called Ms Michelle Bashta of Extent Heritage as an expert witness.

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

- The heritage value of the outbuildings on the site, which two submitters considered had heritage value and deserved inclusion in the Statement of Significance;
- The heritage value of the interiors of the main dwelling, which two submitters considered had heritage value and deserved specific protection in the Schedule to the Heritage Overlay; and
- The heritage value of the five trees individually identified and included in the Statement of Significance. The individual protection of the trees was opposed by the site owner on a number of grounds relating to heritage value and tree health.

Panel Report

The Panel submitted its report to Council on 17 January 2023 (Attachment 1).

The Panel supports the application of the Heritage Overlay to Alta Dena and considers the approach taken in the Heritage Citation is sound and based on appropriate methodology and research and provides a solid base for strategically justifying the Amendment.

The Panel concluded that:

- Alta Dena meets the threshold of historical and aesthetic significance (Hercon Criteria A Historical Significance: Importance to the course or pattern of our cultural or natural history and Criteria E: Aesthetic Significance: Importance in exhibiting particular aesthetic characteristics);
- Internal controls are not appropriate or justified;
- The cottage and garage do not meet the threshold for heritage protection; and
- The five trees identified in the Statement of Significance do not meet the threshold for individual heritage protection.

The Panel recommended that Amendment C210 be adopted subject to the following changes:

- Amend the Statement of Significance to delete reference to the five trees and to delete the Plan of significant vegetation in accordance with the Panel's Preferred version in Appendix D of the report;
- Amend the Heritage Overlay Schedule to delete the permit requirement for tree removal for H0430;
- Amend the Heritage Citation:
 - so that it is consistent with the revised Statement of Significance;
 - to delete any reference to tree controls applying;
 - to incorporate the additional historical background information in relation to George and Verna Rodd in accordance with the tracked changes (to pages 6, 7 and 9) as shown in Appendix E of the report; and
- Amend the Statement of Significance to incorporate Mr Raworth's suggestions in accordance with the Panel Preferred version in Appendix D of the report.

Panel Findings

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

Heritage Significance

All parties to the hearing agreed on the heritage significance of the main dwelling and its protection in the Heritage Overlay of the Planning Scheme.

The main issues addressed by the Panel related to whether the outbuildings on the site also had heritage significance and whether internal heritage controls should apply to the main building interiors.

The Panel agreed with Council's submission and the testimony of the landowners heritage expert witness, that the outbuildings on the site were not of sufficient significance to justify inclusion, and that the interiors, although intact and visually attractive, did not meet the threshold test of exceptional quality required to justify specific internal controls.

Tree Protection

The Panel considered whether five trees on the site warranted individual protection as was proposed in Amendment C210.

The landowner submitted through expert evidence that the trees did not meet the threshold for individual tree controls.

The Panel found that the trees while significant in size, are relatively unremarkable in appearance and there has been nothing presented to demonstrate their significance

other than the fact that they have been identified as forming part of the early or original landscape treatment. The trees do not add to the historical significance of Alta Dena and there is no evidence to suggest they have any association with Tudor Revival architecture or the interwar period. They do not demonstrate a historic planting style or reflect a degree of rarity to warrant individual protection.

It is considered that the Panel's recommendation should be accepted in this instance. A Significant Landscape Overlay (SLO22) already applies to the site and contains a permit trigger to remove, destroy or lop any indigenous vegetation or substantial tree, where a substantial tree is defined as having a diameter at breast height (DBH) greater than 0.16 metres 1.3 m above the ground. This trigger will allow individual consideration of any trees that are proposed to be removed.

Options considered

Option 1

Adopt the amendment with changes in accordance with the Panel's recommendations, as detailed above and in Attachments 2-7 to this report, including deletion of tree control for five trees and an updated statement of significance.

Option 2

Adopt the amendment without making the changes recommended by the Panel. The Panel in making its decision has considered whether the five trees warrant individual protection. The Panel assessed the trees against the HERCON criteria and concluded that the trees did not meet the criteria for individual protection. 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.

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.

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.

The interim heritage control applying to the property is due to expire in May 2023. Timely protection of Alta Dena will ensure the permanent heritage significance of the place and its protection.

FINANCIAL ANALYSIS

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

The cost of having a heritage expert investigate and prepare the statement of significance for this site and appear before a panel as an expert witness has totalled \$10,000.

Council must also pay the cost of the panel hearing which was \$7,500.

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 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: and
- Clause 15.03-1S Heritage Conservation: ensure the conservation of places of heritage significance.

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 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 Transport and Plannings 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 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. Amendment C210 Panel Report
2. Amendment C210 Explanatory Report
3. Heritage Overlay HO430 Planning Scheme Map
4. Schedule to Clause 43.01 Heritage
5. Schedule to Clause 72.04 Incorporated Documents
6. Schedule to Clause 72.08 Background Documents
7. Amendment C210 Statement of Significance