

AMENDMENT C207 LILYDALE HERITAGE OVERLAY SUBMISSIONS – CONSIDERATION OF SUBMISSIONS AND REFERRAL TO PANEL

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Ward(s) affected: Billanook; Melba

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 presented at a Council meeting that is open to the public.

SUMMARY

Amendment C207 proposes to apply a Heritage Overlay (HO) to 13 new sites in Lilydale and update the existing heritage statements of significance or mapping for 7 places in Lilydale that are already protected by the HO.

The amendment was placed on public exhibition from 10 November 2022 to 12 December 2022 and five submissions were received. Of those, two submissions oppose the application of the Heritage Overlay, one submission supports 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.

In response to submissions, this report recommends that Council, at the meeting on 11 April 2023, 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 C207.***
- 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 C207***
- 3. Write to all submitters advising them of Council's decision to refer the submissions to a Panel.***
- 4. Present a submission to a Panel Hearing generally in accordance with the position outlined in this report and attachments.***

RELATED COUNCIL DECISIONS

At the Council Meeting of 24 September 2019, Council resolved to 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.

At the Council Meeting of 14 December 2021 for the draft Lilydale Structure Plan, Council noted an update on the Lilydale Heritage Review.

At the Council Meeting of 26 July 2022, Council resolved to:

- Prepare and request authorisation from the Minister for Planning to exhibit Planning Scheme Amendment C207; and
- Request the Minister for Planning to prepare, adopt and approve Amendment C206 to apply interim heritage protection to the 13 new places on an interim basis until 31 December 2023.

DISCUSSION

Purpose

The purpose of this report is to discuss the submissions received to Amendment C207 and recommend that the amendment be referred to an independent planning panel, appointed by the Minister for Planning.

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

Key Issues

Interim Heritage Controls

As discussed above, 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.

Submissions

A total of five submissions were received in response to the amendment exhibition. A summary of submissions is at Attachment 1 and further discussed below.

Submission 1

The submitter opposes the application of the Heritage Overlay to Heatherlie at 57 Warburton Highway, Lilydale on the following grounds:

- The trees lining the driveway are unhealthy and dangerous and should not be listed in the Statement of Significance;
- The front entry gates require enlargement to enable emergency vehicle access, and should not be listed in the Statement of Significance;
- Inclusion in a Heritage Overlay would hinder repairs to the stone boundary wall; and
- The 'bakery' outbuilding on the site is in poor condition and unworthy of retention.

Response to submission

The submission was referred to Council's heritage consultant for further assessment. The consultant's advice is that as the site owner has declined to allow a site inspection of the property, there is insufficient evidence to support the requested changes, as further discussed below and within Attachment 2.

Recommendation

No change is proposed to the amendment. The submission will be referred to an independent Panel for further consideration.

Submission 2

The submitter opposes the application of the Heritage Overlay to the Former Deschamps Wine Store Olive Tree at 2-4 Albert Hill Road, Lilydale, on the basis that the olive tree is in poor health, and that if the amendment is to go ahead the mapped area of the overlay is excessively large and unreasonably affects too much of the site.

An arborist's assessment has been submitted on behalf of the submitter that states that the tree's health is compromised by the large amount of sealed surface over its root system and has approximately 10 to 15 years of life remaining.

Response to submission

The submission was referred to Council's arborist for comment. Council's arborist does not support the landowner's arborist's assessment and considers that a 15 metre tree protection radius remains the valid measure to determine the size of the mapped overlay.

The submission was also referred to Council's heritage consultant for further assessment, along with a copy of Council's arborist's response. The consultant agrees with the Council arborist's assessment and conclusions and supports the protection of the tree as currently proposed. This is further discussed below and within Attachment 2.

Recommendation

No change is proposed to the amendment. The submission will be referred to an independent Panel for further consideration.

Submission 3

The submitter supported the amendment, but requested modifications to the Statements of Significance for several of the heritage places, relating to the accuracy of historical information and the proper acknowledgement of sources.

The submission was referred to Council's heritage consultant for further assessment. The consultant advice is that it supports the proposed modifications as further discussed below and within Attachment 3.

Response to submission

The requested changes to better reflect historical details and acknowledgment of sources will not affect the integrity of the amendment and will ensure that the most accurate advice is contained in the Statement of Significance for each heritage place. The requested changes are supported.

Recommendation

The amendment documentation (Statements of Significance) that will be included as background and incorporated documents in the Planning Scheme be updated in accordance with the advice in Attachment 3.

Submission 4

This submission was made the Victorian School Building Authority (VSBA) on behalf of Lilydale Primary School at 63-65 Castella Street, Lilydale that is proposed to be included in the Heritage Overlay.

The submitter does not oppose the amendment, but notes that the Minister for Education is exempt from planning scheme requirements for development, in accordance with an exemption granted by an order from the Governor in Council under Section 16 of the *Planning and Environment Act 1987*.

Response to submission

The VSBA's submission is noted.

Recommendation

No changes are required to the amendment.

Submission 5

This submission was made by Vic Track Access regarding the proposed changes to existing HO214 Lilydale-Warburton Railway affecting Lilydale railway station and its surrounds. The submission states it has no objection to Amendment C207.

Response to submission

The submission is noted.

Recommendation

No changes are required to the amendment.

Further Heritage Advice

The three submissions that raised concerns or requested changes were referred to Council's Heritage Adviser for further assessment and advice.

Table 4 below and Attachments 2 provide additional detail of the specific grounds raised by Submissions 1 and 2 and the analysis and response provided by Council's Heritage adviser.

As Submission 3 requested a large number of changes these are further detailed in Attachment 3.

Table 4

Submission	Heritage Adviser Response
Submission 1	Heritage Adviser Response
<p>Opposes the tree controls on the property on the basis that:</p> <ul style="list-style-type: none"> • The row of planted Pinus Radiata on the driveway are declining and snagging. They are all at the end of their lives and are a significant risk to life and property. • One of these mature pines was responsible for a death of a motorist in 2018 and is the subject of a live court case in relation to this matter. 	<p>The health and overall condition of the driveway plantings do not immediately determine the validity of tree protections to the site.</p> <p>If alterations or maintenance to these trees are to be undertaken, a permit application can be made by the landowners to Council, likely with an Arborist report detailing the works and health of the trees, for review who will assess whether the works will have a detrimental impact on the cultural heritage significance of the site.</p>
<p>Opposes the application of the HO to the front entrance gate on the basis that:</p> <ul style="list-style-type: none"> • The front entrance gate is stone but needs repair and more importantly is too narrow so that the CFA, emergency services and deliveries cannot access the property. • The 2.5m width of the entrance gate needs to be widened to allow access to the property for larger vehicles and particularly fire trucks and emergency services larger machinery. • We border a significant forested area and represent an important fire break between us, and the township of Lilydale so there needs to be access. • The Stone gate pillars are an impediment to this access and need modification. 	<p>The gateway is measured currently at 2.5 metres wide.</p> <p>It is acknowledged that the CFA note that the minimum trafficable width required for fire services is 3.5 metres wide.</p> <p>Noting this, we still encourage the inclusion of protections to the boundary wall and gate, with any future changes associated with emergency access be appropriately managed as part of a future permit process under the planning scheme.</p> <p>However, it is also recognised that the entire property boundary is not bounded by the stone wall, but in fact mostly post and wire fencing. An additional break can be made for large vehicle access, as is very common with rural properties.</p> <p>We do not accept that the 1939 boundary wall and entrance gates should be exempt from protections.</p>
<p>The workers cottage on the property is in knockdown condition, not structurally sound and not in any way unique or worthy of preservation – if it had been inspected rather than desk top reviewed.</p>	<p>The site owner has noted the 1884 bakery and worker’s cottage as damaged and altered, and requiring demolition due to the financial burden its replacement would mean.</p> <p>However, the photos provided by the submitter show an intact stone ruin, and the information provided by the site owner does not negate the cultural heritage significance of said ruin.</p> <p>Economic and financial considerations do not factor into assessing the cultural heritage significance of a site.</p> <p>The owners have not agreed to a site inspection.</p>
<p>The stone walling around the house is in poor condition and largely needs to be replaced in many areas as it has not been maintained over the years and refilled with concrete.</p>	<p>The submitter has noted the gardens around the house have been substantially altered, in the case of the stone retaining walls, plantings and mature Poplars.</p> <p>They similarly note that very little remains of the Sorenson landscaping. To reiterate what has been recorded as significant, as shown in the Statement of Significance: the form, scale, detailing and siting of the</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 two 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.

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 1 and 2 above, the advice of Council's heritage consultant is that there has been insufficient evidence provided to justify making changes to the amendment as exhibited. The submissions are therefore unresolvable.

Option 3

Abandon the amendment. If heritage protection of the subject sites 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 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 who oppose the amendment by an independent Planning Panel provides all parties with an opportunity to have their concerns further considered. Abandoning the amendment would result in the places having no heritage protection.

FINANCIAL ANALYSIS

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

This includes the costs associated with engaging a heritage consultant to prepare statements of significance, reviewing submissions and appearing as an expert witness at a Planning Panel.

Council must also cover the costs associated with the Planning Panel.

APPLICABLE PLANS AND POLICIES

The proposal to apply permanent heritage protection to the subject sites is consistent with the following Council strategies and plans:

1. 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.”*
2. Council Plan (2021-25): Quality Infrastructure and Liveable Places.
3. Yarra Ranges Planning Scheme:
 - a. Clause 15.03-1S *Heritage Conservation*: ensure the conservation of places of heritage significance; and
 - b. Clause 15.03-1L *Heritage*.

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 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 C207 was publicly exhibited from 10 November 2022 to 12 December 2022 in accordance with the statutory requirements under 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 land owners and occupiers and other key stakeholders including the local heritage society;
- Letters sent by email to prescribed and relevant government agencies and departments; and
- 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 is required to seek the view of all the relevant State government departments who have raised no objections.

RISK ASSESSMENT

Until the subject sites are protected permanently by a Heritage Overlay, there is a risk of demolition or works that may compromise their heritage integrity.

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. Summary of Submissions
2. Heritage Advisor Response to Submissions 1 and 2
3. Heritage Advisor Response to Submission 3