

**IN PLANNING PANELS VICTORIA**

**‘PART B’ SUBMISSION  
ON BEHALF OF THE PLANNING AUTHORITY**

**AMENDMENT C214glen TO THE GLEN EIRA PLANNING  
SCHEME**

23 July 2021

## INTRODUCTION

1. Glen Eira City Council (**Council**) is the Planning Authority for Amendment C214glen (**Amendment**) to the Glen Eira Planning Scheme (**Scheme**). Council prepared and is the proponent of the Amendment.
2. This 'Part B' submission is made in accordance with the Panel's Directions (**Directions**).
3. This submission addresses the following matters in accordance with the Directions:
  - 3.1 Council's response to submissions; and
  - 3.2 Council's final position on the Amendment.
4. It is noted that the Panel's Directions seek Council's response to evidence in the Part B submission. No evidence will be adduced by any submitter and, as a result, no response is made.
5. In addition to its submissions and the exhibited material, Council relies on a memorandum of opinion prepared by Ms Anita Brady, expert heritage consultant (see separate attachment).
6. Ms Brady was requested to provide a peer review in relation to one of the documents in the Amendment namely the *City of Glen Eira Thematic Environmental History (Refresh) 2020 (TEH)* which is proposed by the Amendment to become a background document within the Scheme.
7. Ms Brady's memorandum of opinion is provided to the Panel to assist the Panel in its deliberations about the TEH and is relied upon by Council in respect of submissions made concerning the TEH.

## COUNCIL'S RESPONSE TO SUBMISSIONS

8. Council notes a number of general themes emerge from the opposing submissions received, including from those submitters seeking to be heard, broadly relating to:
  - 8.1 the Amendment overstates heritage significance;<sup>1</sup>
  - 8.2 restricting development and change and other adverse impacts on property owners / heritage overlay resulting in lessened property values;<sup>2</sup>
  - 8.3 impact of modifications on heritage values (previous alterations, renovations etc that have altered the character of the place or precinct);<sup>3</sup>
  - 8.4 perceived errors in citations;<sup>4</sup>
  - 8.5 request for increased paint controls;<sup>5</sup>
  - 8.6 identification of individual places in precincts;<sup>6</sup>
  - 8.7 references to the TEH, given the TEH does not yet have the status of a background document within the Scheme<sup>7</sup>; and
  - 8.8 lack of strategic justification for HO233 as directly referable to the TEH.<sup>8</sup>

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<sup>1</sup> Submissions nos.1, 2, 5, 6, 13, 14, 16.

<sup>2</sup> Submission nos.1, 5, 7, 10, 19, 22, 23.

<sup>3</sup> Submission nos. 2, 5, 7, 8, 11, 13, 14, 16, 20.

<sup>4</sup> Submission nos.1, 2, 4, 5, 6, 9, 11, 12, 13, 14, 15, 16, 21, 22, 24.

<sup>5</sup> Submission no 18.

<sup>6</sup> Submission no 18.

<sup>7</sup> Submission no 6.

<sup>8</sup> Submission no.6.

9. Council addresses each of these themes in the following part of this Submission (including as are conveniently dealt with together, say in the case of restricting development opportunities and adverse private economic impacts).

### **Overstating of heritage significance of individually significant places**

10. A number of submitters assert the heritage citations prepared by Built Heritage and set out within the *City of Glen Eira Post-War & Hidden Gems Heritage Review 2020 (Review)* 'overstate' the heritage significance of the identified individual heritage places and three of the precincts proposed for inclusion in the Heritage Overlay by the Amendment.
11. Notably, none of the submitters alleging their properties do not meet the requisite heritage significance rely on expert heritage evidence to support these broad assertions and a written opinion from an expert in heritage architecture has only been produced to Council on behalf of one submitter<sup>9</sup>.
12. Council refers the Panel to paragraph 48 onwards of Council's 'Part A' submission demonstrating the comprehensive strategic basis on which this Amendment is pursued.
13. Council respectfully rejects the various assertions made in the opposing submissions to the affect that the heritage analysis undertaken by Built Heritage has resulted in an elevation of heritage values, relative to the relevant threshold for the local level of heritage protection.
14. In Council's submission, the proper process for the application of the Heritage Overlay has been adopted by Council in this case, strictly in accordance with the requirements of the Heritage Overlay and Planning Practice Note 1 (Applying the Heritage Overlay) (**Practice Note**).
15. The Practice Note states under the heading 'What places should be included in the Heritage Overlay?': 'places identified in a local heritage study, provided the significance of the place can be shown to justify the application of the overlay', having regard to the recognised heritage criteria.
16. The citations and statements of significance prepared by Built Heritage are comprehensive and are prepared under the guidance of the Practice Note. The methodology that has been adopted in preparing the Review is proper, having been founded on extensive and rigorous research drawing on the relevant criteria established under the Practice Note. The work has been undertaken with the requisite level of comparative analysis.
17. In undertaking the preparation of the Review, Built Heritage's Mr Simon Reeves took into account the TEH a document which itself has been subject to further peer review by Ms Anita Brady.
18. Ms Brady states her overview opinion on the TEH in the following succinct manner<sup>10</sup>:
- This peer review of the *City of Glen Eira Thematic Environmental History (Refresh) 2020*, prepared by Simon Reeves of Built Heritage Pty Ltd, concludes that the Thematic History is rigorous and comprehensive; follows an accepted methodology for these histories including being based on, and referring to, Victoria's Framework of Historical Themes; and is an appropriate replacement for the existing 1996 Environmental History in the Planning Scheme including as a 'policy reference' to clause 21.10 and Clause 22.01 Heritage Policy.
19. The more granular details relied on by submitters to assert that the heritage values of places identified for inclusion in the Heritage Overlay in the Amendment are overstated have been analysed in the Appendix C response to submissions appended to the Agenda to the Council meeting of 27 April 2021. The Panel has this information available through the material supplied by the Planning Authority prior to this Panel hearing. Bearing in mind the third resolution of Council made on 27 April 2021, Council does not advance any further material for the Panel's consideration in relation to this matter and awaits the Panel's report and recommendation about the Amendment.

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<sup>9</sup> Submission 9 appends an opinion from Mr Peter Barrett and submission 15 appends an opinion from Mr Bruce Trethowan of Trethowan Architects

<sup>10</sup> Page 6.

**Restricting development opportunities in areas where higher density development is encouraged  
and**

**Adverse impacts on property values and vacancy rates**

20. A number of submitters raise concerns applying the Heritage Overlay will unduly restrict development opportunities including at an individual property level (alterations and additions).
21. Other submitters raise concerns about the Amendment's adverse impacts on property values.
22. While Council recognises applying the Heritage Overlay introduces a layer of additional planning control for affected properties, including properties that may be consolidated or capable of consolidation and bearing the hallmarks of 'development potential', Council regards this as appropriate to ensure the cultural heritage significance of the precinct is recognised, properly documented and appropriately managed.
23. The submissions on this topic have been made in other panel hearings concerning the introduction of the Heritage Overlay in activity centre and other areas designated for growth. Some salient observations to assist this Panel are extracted from such decisions, below.
24. We direct the Panel to the panel's report in [Amendment C207 to the Melbourne Planning Scheme](#) where the relevance and extent of considering 'economic effects' in a planning scheme amendment context was examined.
25. The Panel constituted by Member Moles (Chair) and Member Tonkin distinguished between private and public costs and benefits. Public costs were regarded as a proper consideration in relation to planning scheme amendment matters while private economic impacts fell outside the scope for consideration. The panel said<sup>11</sup>

**The Panel agrees with Mr Morris [who appeared for an objecting submitter], relying on *Gantidis*, that the social and economic effects most likely to be relevant at the Amendment stage are those of a broad community nature rather than of a personal kind.** Personal economic and social impacts, as against effects for the community as a whole, are generally not matters taken into account in planning decisions. This is also recognised in the Panel report on Amendment C50 to the Campaspe Planning Scheme at Section 5.10

...

The Panel recognises that the changes to s.12(2)(c) of the Act in relation to preparing amendments have implications for the manner in which various social and economic matters raised in relation to heritage amendments are to be treated. **Where the social and economic effects raised in submissions are of a community nature, they may well be relevant matters. To meet the requirements of the Act, planning authorities and Panels will have to endeavour to consider those matters when preparing an amendment along with other relevant issues.**

[Emphasis added]

26. The Panel's report in Amendment C207 was considered by Justice Garde in [Dustday Investments Pty Ltd v Minister for Planning](#)<sup>12</sup> where Justice Garde determined the Plaintiff had failed to show any legal error on the part of the Panel hearing Amendment C207 to the Melbourne Planning Scheme. In relation to the question of social and economic effects, Justice Garde determined:<sup>13</sup>

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<sup>11</sup> Pages 22, 27.

<sup>12</sup> [2015] VSC 101.

<sup>13</sup> Paragraph 101.

**Where planning authorities are directed to consider conservation or heritage matters, or social and economic effects, consideration must inevitably be given as to the stage in the planning process that has been reached, and the nature of the consideration that is to be given to these matters or effects at that stage.** The nature and level of information available at the rezoning or amendment stage will often be significantly less than that available at the permit stage. By the time of a permit application, much more detail is likely to be available as to the proposed use and development including development plans, building specifications, site information, expert reports and the like. At the permit application stage, the considerations the responsible authority is required to take into account include the matters listed in s 60 of the Act, the decision and comments of referral authorities and the considerations relevant to the application under the operative planning scheme.

[Emphasis added]

27. In [Amendment C294 to the Boroondara Planning Scheme](#), the Panel relevantly stated:<sup>14</sup>
- The Act and Planning Scheme require social and economic matters and the principles of net community benefit and sustainable development to be considered. They relate to the interests of the broader community and do not extend to individual impacts.
28. From the outset Council observes no submitter presents the panel with any evidence of probative value demonstrating the alleged adverse indirect social or economic effects likely to impact on the affected properties.
29. Council submits there is an inherent economic value in preserving heritage character where such character is established from a robust and rigorous assessment undertaken in accordance with the [Planning Practice Note 1 – Applying the Heritage Overlay, August 2018 \(Practice Note\)](#).
30. Council considers the Amendment will have positive social effects through retaining and protecting places of heritage significance for present and future generations, thereby resulting in a net community benefit.
31. Council acknowledges the Amendment will increase the number of sites subject to the Heritage Overlay, potentially increasing planning applications. However, the economic effects of the Amendment will be offset by the public benefit from the heritage places to the broader community over many generations.
32. Council respectfully rejects assertions the Amendment will impact significantly on the ability of affected properties to contribute to the policy objectives of the Scheme, particularly those associated with urban consolidation and the provision of student housing. The Heritage Overlay does not prohibit development, but instead requires the significance of affected properties to be considered when assessing permit applications.
33. Council regards the key policies of relevance are those contained in the Planning Policy Framework and Local Planning Policy Framework seeking to balance heritage recognition and preservation with the provision of housing diversity to meet population growth in accessible locations including activity centres.
34. Council's heritage policy at [clause 22.01 of the Scheme](#) seeks to protect and enhance heritage and retain contributory buildings and incorporate them into overall development. Importantly, in respect of demolition, Council's heritage policy at clause 22.01 of the Scheme seeks to retain significant and contributory buildings.
35. In doing so, Council's policy allows for the partial demolition of significant and contributory buildings where the fabric to be demolished is of no significance, or for the purpose of additions if the addition will not affect the heritage significance of the building and is sympathetic in its scale and form.

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<sup>14</sup> Section 4.2

36. Council does not consider the Amendment will adversely impact on the achievement of additions and new works to the individually protected places in the Amendment, in line with reasonable expectations of property owners to adapt and modernise their homes to meet contemporary residential standards.
37. Council directs the Panel to the panel's comments in respect of [Amendment C198 to the Yarra Planning Scheme](#) where submitters similarly opposed applying the Heritage Overlay on grounds including restricting development opportunities and undermining opportunities to revitalise a nearby commercial strip.
38. The panel chaired by Member Martin said (under the heading 3.1.3 Discussion and conclusions):

The Panel notes that the 2015 social and economic impacts report mentioned above quoted from the report of the panel that considered Amendment C207 to the Melbourne Planning Scheme, one of the first heritage amendments to be assessed after the changes to s12(2)(c) of the Act:

In summary, the panel members in their report concluded that:

*...that the social and economic effects most likely to be relevant at the Amendment stage are those of a broad community nature rather than of a personal kind. Personal economic and social impacts, as against effects for the community as a whole, are generally not matters taken into account in planning decisions...[pp.4-5]*

The social and economic impacts report concluded (p.5):

*While it is acknowledged that Amendment C198 may have social and economic impacts of a personal nature for owners of heritage places, there are substantial broader community benefits...*

**The Panel recognises that the application of an HO may have a significant effect on property owners, particularly in cases where sites are perceived to have development potential. However, it supports the view of the Melbourne C207 panel (and many of its predecessors) that the relevant social and economic considerations at the amendment stage are those of a broad community nature.**

**The Amendment involves a relatively small number of properties, most of which are adjacent to existing HO precincts. The submissions put before the Panel did not provide evidence of any adverse indirect social or economic effects likely to impact on the relevant neighbourhoods or the municipality as a whole from approval of the Amendment. The Panel does not accept that the extension of an HO to a relatively small additional area has the potential to undermine significantly the revitalisation of a nearby commercial strip.**

The Panel supports the views of many previous panels that the key consideration in determining whether or not an HO should be applied – in pursuit of the objective in the Act and the provisions of the SPPF and LPPF – is the heritage significance of the place. An owner's opposition to an HO, on grounds such as impediments to development, costs or impact on property prices, does not of itself constitute a reason to exclude a place providing its heritage significance has been shown to meet the appropriate threshold.

Application of an HO does not prohibit development, but instead requires the heritage significance of a place to be taken into account when determining what is appropriate on a particular site...

[Emphasis added]

39. Here too Council submits the Amendment involves a relatively small number of highly valued individual places, the heritage significance of which has been demonstrated via a rigorous and comprehensive heritage assessment undertaken in accordance with the Practice Note.

40. Council's position also accords with consistent commentary from previous panels considering heritage amendments.
41. The panel's report in respect of [Amendment C66 to the Moonee Valley Planning Scheme](#) relevantly states (under the heading 11.3.4. Discussion):<sup>15</sup>

Mr Finanzio sought to introduce argument that heritage controls could inhibit the attainment of other planning objectives such as those implied by the current Business 1 Zoning of the subject land. Mr Finanzio also argued that the development approvals process was an uncertain one in which the heritage advisor would be likely to be against actions such as demolition irrespective of other policy framework objectives. Mr Montebello noted that this argument has been considered in a number of other Panel reports in particular Whittlesea Amendment C24 in which it was stated that

*“the fact that there may be other objectives and strategies applying to a place is irrelevant; they will not change the heritage significance”.*

Clearly the provision of a heritage overlay would apply in addition to other planning objectives or requirements such as may exist in the provisions of a zone. The Panel also agrees with the findings in Ballarat Amendment C58 that stated:

*“the time to resolve such matters is not when the heritage overlay is applied but rather when some other decision is required under the heritage overlay or other planning scheme provision”.*

Part of this determination would be whether a particular development proposal provided net benefit to the community. **The function of the Panel is therefore to determine whether the place is of sufficient cultural heritage significance at local level to warrant heritage protection.**

[Emphasis added]

42. In the Panel's report considering [Amendment C58 to the Ballarat Planning Scheme](#) the panel constituted by Members Gibson (Chair) Baron and Jacka said (under the heading 7 Balancing competing objectives):

It is sometimes argued that the Heritage Overlay should not be applied to certain properties because the objectives of the overlay, namely 'to conserve and enhance heritage places of natural or cultural significance', and 'to ensure that development does not adversely affect the significance of heritage places', will be contrary to the achievement of other planning objectives.

**Panels have consistently held that whenever there may be competing objectives relating to heritage and other matters, the time to resolve them is not when the Heritage Overlay is applied but when a decision must be made under the Heritage Overlay or some other planning scheme provision. The only issue of relevance in deciding whether to apply the Heritage Overlay is whether the place has heritage significance.**

[Emphasis added]

43. In [Amendment C24 to the Whittlesea Planning Scheme](#), the panel constituted by Member Gibson said (under the heading 4.3 Competing environmental objectives and strategies):<sup>16</sup>

Amendment C24 involves a consideration of whether or not this land has heritage significance. If the place lacks heritage significance, the Heritage Overlay should not be applied. **If it does have heritage significance, then the fact there may be other objectives and strategies applying to the place is irrelevant; they will not change the heritage significance.** For this reason the Panel does not consider that the competing environmental objectives referred to by Parks

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<sup>15</sup> The panel was constituted by Members Wale (Chair) and Howe.

<sup>16</sup> Whittlesea Panel Report Amendment C24, Page 18

Victoria should influence its finding about the heritage significance of any part of The Farm Vigano or the application of the Heritage Overlay to such land.

On the other hand, **just because the Heritage Overlay is applied to the whole of the land does not mean that automatically the whole of the land must be retained in its existing state.**

[Emphasis added]

### Impact of modifications on heritage values and perceived errors in citations

44. A number of submissions refer to previous alterations, renovations and demolitions that, in the submitter's view, has eroded the character of the proposed heritage places and precincts, collectively raising concerns about 'intactness'.
45. A survey of past heritage panel reports and the [Advisory Committee August 2007 final report into Heritage Provisions Review](#)<sup>17</sup> bears out the approach that is taken in Victoria when assessing cultural heritage significance at the local level.
46. In the [AC Final Report](#) the following discussion and guidance is offered<sup>18</sup>:

Our draft recommendations were:

- Condition, including structural integrity, should not be a consideration in assessing significance.
- If it is relevant to the values attributed to it, the degree to which a place is intact should be a consideration in assessing significance.
- Existing guidelines for assessing intactness should be examined with a view to providing general guidance.

#### 2.2.4 Formal consultation views

The submissions supported the notion that intactness (which is sometimes referred to as 'integrity') and condition or structural integrity should be considered differently.

There was agreement that the degree of intactness is relevant to an assessment of significance, provided that it relates to the values attributed to the place. It is critical that intactness be clearly articulated in the citation sheet and statement of significance, including whether later changes contribute to significance.

Submissions highlighted the need for guidelines on the role of intactness - prepared by heritage specialists - to facilitate a consistent approach, particularly for the most common type of places. It was pointed out, however, that the threshold of intactness could vary between regions. It was suggested that in compiling common criteria, previous studies that have discussed this matter should be referred to.

#### 2.2.5 Final conclusions and recommendations

The Committee maintains its earlier conclusions in relation to this issue.

We recommend:

- While intactness should be relevant in an assessment of significance, condition or structural integrity should not influence the inclusion of a place in a HO.

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<sup>17</sup> Chaired by Jenny Moles, with Members Vicki Davies, Helen Martin and Helen Weston reporting in August 2007

<sup>18</sup> Section 2.2.3 to 2.2.5

- Guidelines for assessing intactness should be developed with a view to providing a consistent approach. These should be included in a Planning Practice Note, Heritage Victoria advisory note and/or in the standard heritage study brief.

47. Regrettably from the perspective of developing a consistent approach to this subject in the context of the application of the Heritage Overlay, clear guidance on intactness has not been provided through amendments to the Practice Note.
48. The Panel considering [Amendment C149 to the Yarra Planning Scheme](#) expressed its views on this issue as follows:<sup>19</sup>

A number of submissions raised the poor condition of their property and questioned the reasons for heritage listing. The Panel and Council acknowledge that building condition (and its financial implications) can be of considerable concern to property owners. However, the question is whether they are a valid consideration when identifying heritage places and protecting them through the introduction of the Heritage Overlay.

The Panel again concurs with previous Panels in relation to this matter. In its report on Latrobe C14 (May 2010) the Panel made the following observations:

*The question of 'intactness' is frequently discussed in heritage debates - both as a positive (e.g. "a very intact example ") or a negative (e.g. "no longer intact"). Equally frequently the term 'integrity' is applied as a synonym for intactness. For the purposes of this consideration, the Panel proposes the view that intactness and integrity refer to different heritage characteristics.*

***Intactness relates to the 'wholeness' of (or lack of alteration to) the place. Depending on the grounds for significance, this can relate to a reference point of original construction or may include original construction with progressive accretions or alterations.***

***Integrity in respect to a heritage place is a descriptor of the 'veracity' of the place as a meaningful document of the heritage from which it purports to draw its significance. For example a place proposed as important on account of its special architectural details may be said to lack integrity if those features are destroyed or obliterated. It may be said to have low integrity if some of those features are altered. In the same case but where significance related to, say, an historical association, the place may retain its integrity despite the changes to fabric. Structural integrity is a slightly different matter. It usually describes the basic structural sufficiency of a building.***

*Based on this approach it is clear that whilst some heritage places may have low intactness they may still have high integrity - the Parthenon ruins may be a good example. On the other hand, a reduction in intactness may threaten a place's integrity to such a degree that it loses its significance.*

With these comments in mind, this Panel assessed the condition of buildings in the context of the impact alterations may have had on the place's significance.

[Emphasis added]

49. While Council acknowledges some properties covered by the Amendment have been altered or renovated, these were thoroughly considered by the heritage consultant in preparing the background material supporting the Amendment and writing the citations and statements of significance.

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<sup>19</sup> Page 9.

50. Council also notes that a number of submitters have raised through submissions specific concerns about various matters of detail pertaining to the citations and statements of significant for places identified for heritage protection in the Amendment.
51. These matters were given a second focus of attention again, at the point of considering the specific issues raised in submissions in the preparation of the Appendix C response to submissions appended to the Agenda to the Council meeting of 27 April 2021.
52. Ultimately, bearing in mind Council's third resolution of the same date, Council does not make any further submissions in relation to these matters of detail.
53. Council awaits the Panel's report and recommendation about the Amendment.

### **Request for increased paint controls**

54. Submission 18 is a submission prepared in support of the Amendment. The submitter raises for the planning authority and Panel's attention the manner according to which the schedule triggers the need for a planning permit for external paint controls.
55. In particular the submission states:

We have previously voiced concerns to Council about the lack of paint controls for heritage properties where the unpainted brick exterior is a key feature of their heritage significance. While it is very pleasing to see that external paint controls on HO 206 Tudor Revival shops at 158 – 166 Hawthorn Rd, Caulfield North have been included to protect their original stained finish of timber work, this is the exception rather than the rule in this Amendment C214glen. The Glen Eira Heritage Design Guidelines 2020 do not address this issue in our view.

We ask that exterior paint controls are reviewed and included for unpainted brick work and/or stonework for all relevant properties in the Amendment. We have provided a number of details from the many relevant listings in this Amendment by way of example of how prevalent these omissions are:

- HO215 St Elmo, 133 Tucker Road, Bentleigh – unpainted biochromatic brick exterior
- HO204 325/325A Bambra Road, Caulfield South – unpainted brickwork exterior
- HO207 1950197 Hawthorn Road, Caulfield North – unpainted clinker brick features on rendered exterior
- HO209 35 Labassa Grove, Caulfield North – unpainted exterior stonework
- HO210 1 Lockerbie Court, St Kilda East – unpainted clinker brick features
- HO211 475 Neerim Road, Murrumbeena – unpainted bichromatic exterior
- HO 214 273 Orrong Road, St Kilda East – unpainted clinker brick exterior

(Emphasis added)

56. Council refers the Panel to the permit requirement at clause 43.01-1 of the Heritage Overlay which states a permit is required to (inter alia):
  - Construct a building or construct or carry out works, including:

...

- Externally paint a building if the schedule to this overlay specifies the heritage place as one where external paint controls apply.
- Externally paint an unpainted surface.

57. Notably, under the provisions of clause 43.01-1, it is always the case that a permit is required to externally paint any unpainted surface.
58. To this extent, Council submits respectfully the highlighted aspects of submission 18 (emphasized in the quotation above) are misconceived in that the submission proceeds in the impression that painting unpainted brickwork or stonework only requires a permit under the Heritage Overlay if the paint controls box in the schedule is ticked.
59. In Council's submission, no change ought be made to the Amendment to revise the identification of paint controls in the schedule otherwise than as proposed in the exhibited form of the Amendment.

### Identification of individual places in precincts

60. Submission 18 raises this matter in the following passage:

Please also consider whether one or more properties in proposed heritage precincts are significant in their own right, so meriting their own heritage overlay.

61. In response, Council notes the following extract from [Planning Practice Note 1 – Applying the Heritage Overlay, August 2018](#):

The provisions applying to individual buildings and structures are the same as the provisions applying to areas, so there is no need to separately schedule and map a significant building, feature or property located within a significant area.

The only instances where an individual property within a significant area should be scheduled and mapped is where it is proposed that a different requirement should apply. For example, external painting controls may be justified for an individual building of significance but not over the heritage precinct surrounding the building.

Alternatively, tree controls may be justified for a specific tree or property within a significant precinct but not over the whole precinct. In such situations the individual property or tree should be both scheduled and mapped.

Significant buildings or structures within a significant precinct can be identified through a local planning policy.

62. Bearing in mind the submissions put on behalf of Council in relation to the identification of the need for the exhibited form of the schedule in the Amendment to be amended to 'tick' paint controls, and the level of detail provided in the Statements of Significance for the precincts identified in the Review, Council does not support the amendment of the Amendment in the manner proposed by submitter 18.

### References to the TEH, given TEH status

63. This issue is raised by submission 6 to the Panel. The argument is encapsulated in particular in the following passage:<sup>20</sup>

The Refresh cannot be considered as background information relevant to a consideration by Council to amend the Planning Scheme unless, and until, the Planning Scheme has been amended to include the Refresh.

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<sup>20</sup> Pages 8-9 of the initial submission (see also page 10 of the late submission)

It is stated in the 'Fact Sheet – October 2020' that Glen Eira City Council (**Council**) proposes to replace the "Glen Eira Heritage Management Plan (Volume 1) with the Refresh to "provide a reference for identifying significant places and precincts for further research and potential heritage protection".

A decision to include the Refresh has not yet been made and it therefore does not, and cannot, form part of the Glen Eira Planning Scheme. Until this decision is made, a decision cannot be made based on the background information contained in the Refresh. The decision to adopt the Refresh must be made separately to the decision to implement further recommendations for potential heritage protection contained in the Review.

On this basis the decision to amend the Glen Eira Planning Scheme by adopting the Refresh must be made first with the ability for that decision to be reviewed and objected to in the appropriate way prior to making a decision to further amend the Glen Eira Planning Scheme by adopting the Review that is stated to be based on the inclusion of the Refresh in an Amended Planning Scheme.

64. The position of Council in response to this aspect of this submission is outlined in the quotation from the Appendix C response to submissions appended to the Agenda to the Council meeting of 27 April 2021:

It is not unusual for a Council to exhibit, within one planning scheme amendment, both a thematic environmental history and a number of citations for inclusion of places and precincts within a Heritage Overlay, using the Thematic History as a background document. This was undertaken by Glen Eira Council in 1999 with the inclusion of both the original Ward history and proposals for number precincts and places to be included within the Heritage Overlay.

65. Council submits no lack of procedural fairness attends the concurrent exhibition of both the TEH and HO233 (or for that matter any of the post war places identified for heritage protection through the preparation of a Statement of Significance forming part of the Review).
66. More generally, it is correct to say that little if any recognition is given to the cultural heritage significance of built fabric that dates from the post war era places in the document that has performed the role of a thematic environmental history in Glen Eira for many years, being the *Glen Eira Heritage Management Plan* (Volume 1) prepared in 1996 by Andrew Ward.
67. In many ways, the absence of reference to historic themes dating from the post war era, and along with that, to the historic importance of places of significance dating from that era, is a reflection of the state of thinking about heritage pre-dating Victorian Planning Provisions era planning schemes.
68. From at least the turn of this century if not before, the value and importance of historic buildings and other places dating from the post war era to an understanding of the cultural heritage of Victoria (including at a local level, of the City of Glen Eira) has been broadly recognised and understood. It remains the case, however, that a number of planning authorities are still in a process of identifying and protecting the particular buildings and places from this era under the Heritage Overlays in their respective planning schemes.
69. It is a relevant matter for the Panel to appreciate that the TEH will update the current document performing the role of a thematic environmental history for Glen Eira to include reference to post war historic themes, allowing buildings and other places of cultural heritage significance to be identified and protected in line with the ambitions of state policy not only as part of the Amendment, but to guide and manage future actions by the planning authority.

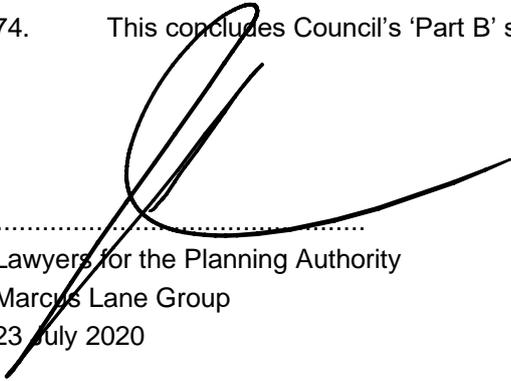
#### **Lack of strategic justification for HO233 directly referable to the TEH**

70. Submitter 6 raises a number of concerns that have been dealt with generally above insofar as they relate to the broad strategic justification for the Amendment and approach and methodology of the consultant heritage expert to Council and alleged text errors with the citation, but also specifically raise in issue that the fabric sought to be included in HO233 is not specifically covered by the TEH.

71. In Council's submission, it is not the case that a place identified for protection at the local level will only warrant inclusion in the Heritage Overlay if it has been explicitly identified in the TEH. It is not the proper role of a municipal TEH to exhaustively identify every building, structure or other place of cultural heritage significance to that municipality. Rather, the TEH ought establish the historic themes of importance (including fabric dating from a certain era that will serve to illustrate that historic theme) and then guide and inform heritage studies that, after proper heritage process has been followed, identify the buildings, structures or other places that represent those themes.
72. The more detailed matters going to the asserted lack of strategic justification for HO233 as raised in the lengthy submission have been analysed in the Appendix C response to submissions appended to the Agenda to the Council meeting of 27 April 2021. The Panel will be assisted in responding to submission 6 and reporting on the matters raised by reference to the text in Appendix C in this regard, noting that in the preparation of the Appendix C document, Council's planning officers obtained comments from Mr Simon Reeves.

## COUNCIL'S FINAL POSITION ON THE AMENDMENT

73. As noted in Council's 'Part A' submission, Council pursues the Amendment as exhibited, save for the post-exhibition changes set out at paragraph 3 of the resolution of Council of 27 April 2021.
74. This concludes Council's 'Part B' submission.



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Lawyers for the Planning Authority  
Marcus Lane Group  
23 July 2020