

Planning and Environment Act 1987

Panel Report

Yarra Ranges Planning Scheme Amendment C158

Review of the Heritage Overlay

1 September 2016

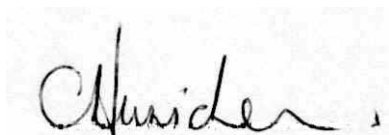
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Panel Report pursuant to Section 25 of the Act

Yarra Ranges Planning Scheme Amendment C158

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A handwritten signature in black ink, appearing to read 'C. Hunichen', is written over a light grey, textured rectangular background.

Catherine Hunichen, Chair

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List of Abbreviations

DELWP	Department of Environment, Land, Water and Planning
HO	Heritage Overlay
LPPF	Local Planning Policy Framework
MSS	Municipal Strategic Statement
PPN01	Planning Practice Note No 1 – Applying the Heritage Overlay
SLO	Significant Landscape Overlay
SPPF	State Planning Policy Framework
VHD	Victorian Heritage Database
VPP	Victoria Planning Provisions

Overview

Amendment Summary

The Amendment	Yarra Ranges Planning Scheme Amendment C158
Common Name	Updates to the Heritage Overlay
Subject Site	Various sites throughout the municipality
The Proponent	Yarra Ranges Shire Council
Planning Authority	Yarra Ranges Shire Council
Authorisation	22 January 2016
Exhibition	18 February to 21 March 2016
Submissions	Number of Submissions: 8. Opposed: 7

Panel Process

The Panel	Ms Catherine Hunichen
Directions Hearing	Yarra Ranges Shire Offices, Lilydale, 19 July 2016
Panel Hearing	Yarra Ranges Shire Offices, Lilydale, 8 August 2016
Site Inspections	Unaccompanied – 19 July 2016; Accompanied – 8 August 2016
Date of this Report	1 September 2016

Executive Summary

(i) Summary

Amendment C158 to the Yarra Ranges Planning Scheme (the Amendment) is a review and rationalisation of the Heritage Overlay (HO). The Amendment seeks to update the Schedule to the HO by deleting specific permit requirements for external paint and removal or lopping of trees. It also proposed to update the HO planning scheme maps by amending the extent of the overlay applying to various sites and ensuring that the mapped area applies to the correct location.

The proposed changes include:

- Removal of internal alterations controls to 2 places
- Removal of tree controls to 90 heritage places
- Removal of paint controls to 34 heritage places, and
- Changes to the extent and/or location of the mapped area of the HO to 47 places.

Following the exhibition of the Amendment seven objecting submissions were received and one submission supported the Amendment.

This report of the Panel addresses the issues raised in submissions under the following headings:

- Planning context
- Methodology and strategic justification
- Specific site issues

While the Panel acknowledge and is sympathetic to the plight of many Council planning departments where the numbers of permit requirements and subsequent number of applications are ever increasing and resources diminishing, the removal of planning controls, as proposed by this Amendment, should be undertaken with care, rigour and where appropriate the assistance of relevant expertise.

The Panel's findings regarding the issues raised in submissions and evidence are summarised as follows:

With respect to the proposal to remove tree controls from 90 heritage places, the Panel finds:

- The information on many of the heritage citations is limited and based on old and dated information
- Limited site inspections were undertaken and those inspections were primarily to determine if the trees still existed and matched the description in the citation
- No assessment was undertaken of original garden layouts or how the vegetation contributed to the heritage significance of the site
- These assessments were not conducted or peer reviewed by a heritage expert.

With respect to the proposal to remove paint controls from 34 heritage places, the Panel finds:

- Information about the original paint scheme for heritage sites is not often included in the heritage citations

- No assessment has been provided about the contribution paint schemes, regardless of whether the building has an original finish or whether it has been painted more recently in an original colour scheme, has on the heritage significance and appearance of a building and its setting
- The review of the permit requirement for paint controls was not conducted or peer reviewed by a heritage expert.

With respect to the proposed mapping changes proposed, the Panel finds:

- Mapping errors with regard to the location of the HO have been corrected
- The extent of the HO applied to many larger sites has been reduced to apply to the heritage item and a suitable curtilage around that item.

With respect to the proposed removal of internal alteration controls, no submissions were made in relation to this issue by the Council or any submitters.

This Amendment has impacted a large number of properties within the HO and has received wide support for the removal of planning permit requirements for paint and tree removal controls and has attracted only seven objecting submissions. However the Panel is not supportive of the methodology and rigor of the assessments on which the removal of these permit controls is based. A way forward for the Council and one that will build on the work undertaken to date, is to 'split' the Amendment into two parts.

(ii) Recommendations

Based on the reasons set out in this Report, the Panel recommends that:

- 1. Yarra Ranges Planning Scheme Amendment C158 be split into two parts as follows:**
 - Part 1 to include the removal of HO10, HO30 and HO90 from the Heritage Overlay, the removal of the internal alteration permit controls from HO137 and HO395, and all exhibited mapping changes
 - Part 2 to include the removal of paint and tree controls.
- 2. Amendment C158 Part 1 be adopted subject to the following changes:**
 - The title information for the site at 'Rostrevor', 411 Mt Dandenong Tourist Road, Sassafras (HO11) be clarified in conjunction with the land title and LandVic data to determine the correct extent of the mapping of the Heritage Overlay for this site.
 - The mapping of the Heritage Overlay for 'Cooring Yering', 32 The Gateway, Lilydale (HO78) be adopted in accordance with the revised area shown in Figure 7.
- 3. Consideration of Amendment C158 Part 2 be deferred until the proposed removal of paint and tree controls have been reviewed by a heritage specialist to provide the rigour and a methodology for any changes to the Heritage Overlay, and to provide a policy position for the Council on the application and/or removal of these controls.**

1 Introduction

1.1 Panel process

Yarra Ranges Planning Scheme Amendment C158 (the Amendment) was prepared by the Yarra Ranges Shire Council as the Planning Authority. As exhibited, the Amendment proposes to:

- Amend the Schedule to the HO by deleting a number of redundant provisions relating to external painting, internal modifications and vegetation controls
- Amend HO maps 8, 12, 15, 18, 19, 20, 21, 23, 27, 34, 36, 40, 41, 45, 46, 47, 52, 53, 58, 66, 67, 68, 69, 75, 76 and 77.

The Amendment was authorised by the Department of Environment, Land, Water and Planning (DELWP) on 22 January 2016.

The Amendment was placed on public exhibition between 18 February and 21 March 2016, with 7 opposing submissions received and one submission offering no objection.

[A1] At its meeting of 14 June 2016, Council resolved to refer the submissions to a Panel. As a result, a Panel to consider the Amendment was appointed under delegation from the Minister for Planning on 27 June 2016 and comprised Ms Catherine Hunichen (Chair).

A Directions Hearing was held in relation to the Amendment on 19 July 2016. Following the Directions Hearing, the Panel undertook an unaccompanied inspection of the sites the subject of the submissions, with the exception of 'Yeringberg' 810-812 Maroondah Highway, Yering and 'Cooring Yering' 32 The Gateway, Lilydale, where both sites were not visible from the public realm.

The Panel then met in the offices of the Yarra Ranges Shire Council on 8 August 2016 to hear submissions about the Amendment. Those in attendance at the Panel Hearing are listed in Table 1.

Table 1 Parties to the Panel Hearing

Submitter	Represented by
Yarra Ranges Shire Council	Mr Kris Hansen, Senior Strategic Planner , Yarra Ranges Shire Council
National Trust of Australia (Victoria)	Ms Caitlin Mitropoulos
Mr Di Battista	

During the Hearing an accompanied inspection of 'Cooring Yering' was undertaken, with the owner of the site, Mr Di Battista and Mr Hansen representing the Council.

1.2 The proposal

(i) The subject area

The Amendment applies to various parcels of land included in the HO throughout the municipality.

(ii) Purpose of the Amendment

The purpose of the Amendment is to both improve the operation of the planning scheme and reduce the number of permit applications for what are considered unnecessary and unjustified permit requirements.

The Amendment is required to delete painting controls and tree controls from a number of properties within the Schedule to the HO, where they are considered to be redundant or unjustified. This would also have the effect of reducing the number of planning permit applications for minor buildings and works that have little or no impact on the heritage significance of the site.

It is also proposed to amend the boundaries of the HO of 48 sites to more accurately apply the overlay to the area of identified heritage significance.

1.3 Background to the proposal

The Amendment is a review and rationalization of the HO. It proposes to update the Schedule to the HO by deleting the permit requirements for external painting and the removal or lopping of trees, and update the planning scheme maps by correctly identifying and/or reducing the areas of overlay coverage applying to particular sites.

The Amendment is not intended to change the basis for determining the heritage values of relevant sites, nor is it intended to increase or lessen the heritage significance of any site within the overlay. It is proposed to simplify the operation of this aspect of the planning scheme while continuing to recognize the heritage value of the subject sites and providing an appropriate level of protection under the planning scheme.

The assessment process included a desktop review and an analysis of the available information, including existing heritage studies and where necessary, site inspections.

The Amendment does not propose to change any of the citations of heritage places within the Overlay.

The Amendment is supported by the Yarra Ranges Shire Council Plan (2013-2017). The *Key Strategic Activity 11 (High Performing Organisation)* that includes the action:

Streamline the planning scheme through advocacy the State Government and amendments to the Scheme.

A prescribed measure of this outcome is:

Number of redundant planning controls removed.

1.4 Issues dealt with in this report

The Panel considered all written submissions, as well as submissions presented to it during the Hearing. In addressing the issues raised in those submissions, the Panel has been assisted by the information provided to it as well as its observations from inspections of specific sites.

This report deals with the issues under the following headings:

- Planning context
- Methodology and strategic justification
- Specific site issues.

2 Planning context

Council provided a response to the Strategic Assessment Guidelines as part of the Explanatory Report and the submission to the Panel.

The Panel has reviewed the policy context of the Amendment and made a brief appraisal of the relevant overlay controls and other relevant planning strategies.

2.1 Policy framework

(i) State Planning Policy Framework (SPPF)

Council submitted that the Amendment is supported by the following clauses in the SPPF:

State Planning Policy for heritage conservation is addressed in Clause 15.03-1. The Council is satisfied that Amendment C158 is consistent with the proper identification, assessment and documentation of places of natural and cultural heritage significance as the basis for their inclusion in the HO of the planning scheme.

(ii) Local Planning Policy Framework (LPPF)

Council submitted that the Amendment supports the following local planning objectives:

The objective of Clause 21.06-1 Heritage, states:

To protect and conserve the Shire's cultural heritage.

This objective is to be implemented by applying the HO to buildings and sites that have been identified as being of heritage significance.

The Amendment does not change any of the assessments of heritage value in the relevant heritage studies but seeks to remove planning permit requirements where the available evidence can satisfactorily demonstrate that these provisions are unjustified and serve no purpose.

2.2 Planning scheme provisions

(i) Overlays

Heritage Overlay

The most appropriate Victoria Planning Provisions tool for the identification and protection of heritage places, buildings, objects and trees, is the HO.

The purpose of the overlay is:

- To conserve and enhance heritage places of natural or cultural significance.
- To conserve and enhance those elements which contribute to the significance of heritage places.
- To ensure that development does not adversely affect the significance of heritage places.

- To conserve specifically identified heritage places by allowing a use that would otherwise be prohibited if this will demonstrably assist with the conservation of the significance of the heritage place.

The Amendment seeks to ensure the HO is accurate and reflects the policy directions of the Council. The Amendment is consistent with the purposes of the overlay.

Significant Landscape Overlay

To protect landscape areas of significance there are a range of tools available, including the Significant Landscape Overlay, Vegetation Protection Overlay and the Environmental Significance Overlay. Yarra Ranges Shire Council has chosen the Significant Landscape Overlay (SLO) to protect the landscape character of the Shire. This Overlay has been applied extensively across the municipality.

The purpose of the Significant Landscape Overlay is:

- To identify significant landscapes
- To conserve and enhance the character of significant landscapes.

A schedule to this overlay must contain:

- A statement of the nature and key elements of the landscape
- The landscape character objective to be achieved.

Clause 53

The purpose of Clause 53 is to ensure that the Yarra Ranges Planning Scheme fulfils the requirements of Section 46F of the *Planning and Environment Act 1987* that states the planning scheme must be consistent with the Upper Yarra Valley and Dandenong Ranges Regional Strategy Plan. Of relevance to this Amendment, is the requirement to obtain a permit to remove, destroy or lop vegetation with exceptions for land in residential zones, the Industrial 1 Zone, trees within 2 metres of a dwelling and for bushfire management purposes.

2.3 Ministerial Directions and Practice Notes

(i) Ministerial Directions

Council submitted that the Amendment meets the relevant requirements of the following Ministerial Directions:

Ministerial Direction 11 - Strategic Assessment of Amendments

The Amendment is consistent with Ministerial Direction 11 (Strategic Assessment of Amendments)

The Form and Content of Planning Schemes (s7(5))

The Amendment is consistent with the Ministerial Direction on the Form and Content of Planning Schemes under Section 7(5) of the Act.

(ii) Planning Practice Notes

Planning Practice Note No 1 – Applying the Heritage Overlay (revised July 2015)

The Victoria Planning Provisions Practice Note *Applying the Heritage Overlay* (PPN01) provides guidance in respect to the application of the HO in a Planning Scheme. The Practice Note recommends that places identified in a local heritage study, should be included in the HO, provided the significance of the place can be shown to justify the application of the overlay.

The Practice Note provides little guidance for the application of external paint controls as follows:

Applying external painting controls

External painting controls over particular heritage places can be applied in the schedule by including a ‘yes’ in the ‘External Paint Controls Apply?’ column.

However, with regard to the application of tree controls, more guidance is provided:

Applying tree controls

The schedule can apply tree controls over heritage places. The tree controls could apply to the whole of a heritage place (for example, over a house site or an area) or a tree or group of trees could be specifically nominated as the heritage place.

Tree controls are applied by including a ‘yes’ in the ‘Tree Controls Apply?’ column. Tree controls should only be applied where there has been a proper assessment. The statement of significance for the heritage place should identify the particular trees that are significant (under “What is significant?”) and why the tree or trees are important.

When mapping a heritage place, PPN01 states:

Curtilages and Heritage Overlay polygons

The Heritage Overlay applies to both the listed heritage item and its associated land. It is usually important to include land surrounding a building, structure, tree or feature of importance to ensure that any development, including subdivision, does not adversely affect the setting, context or significance of the heritage item. The land surrounding the heritage item is known as a ‘curtilage’ and will be shown as a polygon on the Heritage Overlay map. In many cases, particularly in urban areas and townships, the extent of the curtilage will be the whole of the property (for example, a suburban dwelling and its allotment).

However, there will be occasions where the curtilage and the Heritage Overlay polygon should be reduced in size as the land is of no significance. Reducing the curtilage and the polygon will have the potential benefit of lessening the number of planning permits that are required.

Examples of situations where a reduction in the curtilage and polygon may be appropriate include:

- *A homestead on a large farm or pastoral property where it is only the house and/or outbuildings that is important. In most cases with large rural properties, the inclusion of large areas of surrounding farmland are unlikely to have any positive heritage benefits or outcomes.*

Mapping heritage places

All heritage places must be both scheduled and mapped.

In each case, care should be taken to ensure that there is an accurate correlation between the Heritage Overlay schedule and the Heritage Overlay map.

The need for care is exemplified by the fact that the Heritage Overlay map will be the determining factor in any dispute as to whether a control applies.

Councils are encouraged to review their planning schemes to ensure that all heritage places are correctly mapped and that there are no discrepancies between how places are identified in the Heritage Overlay schedule and Heritage Overlay maps.

Planning Practice Note No 7: Vegetation protection in urban areas (August 1999)

This practice note provides both information about the range of overlays available for the protection of vegetation and the purpose of each of those overlays. With regard to choosing which overlay to use the practice note states:

The following questions should be asked when choosing an overlay to protect vegetation:

- *What is to be protected (individual or group of trees, area of habitat, etc.)?*
- *Why is it being protected (heritage, scientific, cultural, landscape or habitat value)?*
- *How should it be protected (protection of the root zone, requirements about buildings and works, subdivision)?*
- *What other requirements apply to the land and are there any gaps (zone provisions, other overlays, native vegetation provisions)?*

The overlay selected should accurately reflect the identified objectives. In other words, there should be transparency in the application of planning policy and requirements. This may involve weighing up various reasons for protecting the vegetation. For example, the principal reason for a tree's significance may be its cultural value rather than its habitat value.

The tree may be of Aboriginal significance or contribute to the setting of an historic building. Therefore, the HO may be more appropriate than a VPO.

How the Significant Landscape Overlay is to be used is described in this Practice Note as follows:

The SLO also has broader applicability than the VPO. Its function is to identify and conserve the character of a significant landscape. The SLO is appropriate when vegetation is primarily of aesthetic or visual importance in the broader

landscape and should be used where vegetation is identified as an important contributor to the character of an area.

2.4 Discussion and conclusion

The Panel concludes that the Amendment is supported by, and implements, the relevant sections of the State and Local Planning Policy Framework, particularly conducting a review of planning controls to ensure that they are still relevant, correct and achieve the policy outcomes required by the scheme and the Council.

The practice notes provide little guidance on the strategic justification or the threshold or level of rigour of investigation needed where the removal of planning controls are proposed. This issue is addressed in Chapter 3 below.

The more specific issues raised in submissions are discussed in Chapter 4.

3 Methodology and strategic justification

3.1 The issues

The methodology and rigour of the review of the permit controls within the HO and the expertise of the conduct of the review have been questioned.

The issues raised by the National Trust submission relate to the strategic justification for the changes to the HO, the methodology used to underpin the proposed changes and the expertise of the officers to make decisions about the changes proposed, particularly the proposal to remove paint and tree permit controls for a large number of properties. The issue relating to the removal of tree controls was supported by the Save the Dandenongs League Inc.

Other submissions raised concerns about the proposed mapping changes to the overlay. While this issue is more fully addressed in Section 4 of this report, as the issue relates to specific properties that are the subject of submissions, the general principles of amending the mapping of the HO are addressed below.

3.2 Submissions

Council submitted that even though there is little support within both the SPPF and the LPPF for the continuous improvement and review of planning controls, the Amendment does not lack importance.

In summary, Council outlined the overarching basis for the review of the HO control:

- the deletion of redundant or unjustified planning controls
- a reduction in permit requirements resulting in cost savings, removal of demanding assessment processes, improvements in decision outputs and improved community satisfaction
- an improved and less onerous planning scheme.

Methodology of the review

Council stated that if a planning control is to be placed on a building, a threshold of justification must be crossed, and this threshold must be justified by evidence.

Council advised that the methodology used to determine the changes proposed to the HO commenced with a desktop review of the overlay in conjunction with a review of the building citations in the relevant heritage studies, the Yarra Ranges Heritage Study 2000 by Context Pty Ltd (reviewed in 2005), Sites of Local Significance (Shire of Sherbrooke, 1994) and 'Balance Yeringberg' (Lovell Chen, July 2015). Once mapping anomalies and opportunities to review the permit requirements for some internal alterations, paint controls and tree controls on a number of sites were identified, site inspections and the review of aerial photography was undertaken to help inform the final recommendations on whether or not to remove these permit requirements.

This review was undertaken by officers of the strategic planning department of Council. It is Council's position that heritage expertise was not required for the review of the overlay controls and the preparation of the Amendment. The Amendment is based on a review of

relevant heritage studies and an assessment of whether this information was supported by inspections of the sites.

The National Trust advised of their support of the intent of the Amendment, ie: to improve the accuracy of the HO. However, they submitted that the approach used by Council is based on old and less detailed documentation, particularly as most of the heritage citations were 11-16 years old and are not compliant with present industry standards for building citations that provide information on: 'what is significant', 'how is it significant' and 'why is it significant' as outlined in the PPN01.

Concern about the methodology and rigour of this review and the lack of heritage expertise of the Council officers who conducted the review was also raised by the National Trust. The National Trust suggested that the assessments and the site visits should have been undertaken by a heritage advisor or heritage specialist to ensure a thorough examination of the proposed overlay changes and site inspections.

The National Trust provided an outline of the methodology used to justify the changes to the HO. A spreadsheet was prepared by Council's strategic planning officers that identified the heritage place, whether the citation for the building or place mentioned paint, tree or internal controls and a recommendation for the retention or removal of the control from the overlay (A sample of this spreadsheet is included in Appendix C to this Report).

Council acknowledged that the information on this spreadsheet was supplemented by site inspections for many, but not all of the sites.

The National Trust submitted that they could not support the Amendment as there were inaccuracies in the spreadsheet and the assessment of that information was not adequate. Examples of some of the inaccuracies are outlined in the section 'Removal of Tree Controls' below.

With regard to the content of the Amendment, the National Trusts' two primary concerns were the removal of tree controls for National Parks, sanctuaries and reserves and secondly the removal of external paint controls for commercial and public buildings that maintain an important position in a streetscape. Each of these specific issues is addressed below.

Removal of Tree Controls

The approach to the review and recommendation to remove tree controls from the HO by the Council was outlined as:

There were a number of identified examples of sites which were listed in the schedule to the HO as requiring a planning permit for tree removal when vegetation was not identified as significant in the Heritage Study citation, and this was considered sufficient justification for removing planning permit controls for tree removal.

Inspections also sought to establish whether vegetation observed on the site matched the description in the documentation.

Council submitted that in accordance with the requirements of the PPN01 for the application of tree controls, that the citation for the heritage place should identify the particular trees that are significant and why the tree or trees are important. It was put to the Panel that

many of the citations in the heritage studies noted the presence of vegetation on the site, but attributed no value or significance to it.

As an example of this approach, Council submitted:

HO143 Ferntree Gully National Park Sanctuary and aviary. The Heritage Study notes the existence of an aviary in use from 1936 to the 1970s and the role of surviving features in documenting the changing perceptions of the role of National Parks. Without question, this is a heavily vegetated landscape where trees are a visually dominant element. However, this in itself does not mean that the trees in and of themselves contribute any heritage value to this site.

Council submits that this is an example of the threshold for justification not being met. ... a worst-case scenario of substantial vegetation loss would be of considerable aesthetic and character detriment, but not of specific heritage detriment.

Council further submitted that regardless of whether tree controls were removed, many existing sites with tree controls (214 of the 428 heritage sites listed in the schedule to the HO) would remain protected, requiring a planning permit for their removal under the provisions of the SLO which extends across a significant part of the municipality.

The Yarra Ranges Shire Council also has the control included in Clause 53 of the planning scheme, where a permit is required for the removal of trees, with the exception of trees in any of the residential zones or the Industrial 1 Zone. Council did acknowledge that in this instance the limited environmental importance of a tree was the basis for the permit requirement, not heritage considerations.

The National Trust referred to the PPN01 in relation to the application of the HO to trees, where it states:

Tree controls should only be applied where there has been a proper assessment. The statement of significance for the heritage place should identify the particular trees that are significant and why the tree or trees are important.

The National Trust submitted that this approach would likely not have been used at the time of the Yarra Ranges Heritage Study conducted prior to 2000. Ideally all citations or statements of significance should be updated to be in this format, however this is not the case with the HO as the format for the citations are not based on current approach outlined in the practice note and are often brief, providing limited information. The National Trust submitted that this being the case, the justification for any removal of tree controls should have been more thorough and undertaken by an environmental heritage practitioner.

The National Trust also referred the Panel to the spreadsheet assessment used by the Council for the review of the permit controls. In most instances, where the sites reviewed noted 'no reference to trees' in the citation, the tree controls were deleted from the schedule to the HO. In other cases where it was noted that the citation referred to 'mostly bushland', tree controls were also to be deleted. The same approach was used where 'Vegetation mentioned, but no significance ascribed'. No further information about which sites attracted further review or a site inspection was provided by the Council.

The National Trust submitted that there was information on the Victorian Heritage Database (VHD) that provided additional documentation about many of the sites where tree controls were proposed to be removed.

The National Trust provided a range of excerpts from the VHD to support their submission and demonstrate where the rigour of the assessment and review for these heritage sites was not adequate and contained errors. These examples include the following:

- National Rhododendron Gardens (HO78) – Council’s spreadsheet notation and recommendation: ‘significant plantings – include trees’; ‘Delete tree controls’.

The National Trust note in the ‘physical description’ contained in the VHD for this site, states:

A 43 hectare attractively landscaped garden planted with large numbers of rhododendrons, azaleas, camellias and impressive mountain ash. The garden also features a lake, fern gullies and areas of lawn.

There is a clear reference to tree species. No assessment of the original garden layout or contribution of the trees to the heritage significance of the site was made.

- Ferntree Gully Park Sanctuary and Aviary (HO143) – Council’s spreadsheet notation and recommendation: ‘vegetation is mentioned, no significance ascribed’. ‘Delete tree controls’.

The National Trust submitted the VHD ‘physical description’ that states:

A Fern Gully and typical Dandenong Ranges vegetation ...

Dry sclerophyll open forest on elevation range. Featuring a gully supporting some wet sclerophyll vegetation, eg: tree ferns. Highly visited and very accessible for people wanting relaxation in bush surrounds.

- Monbulk Returned Servicemen’s League (HO234) – Council’s spreadsheet notation and recommendation: ‘no reference to trees in the citation’; ‘Delete tree controls’.

Whereas in the VHD physical description identifies the features of the site as:

Setback from the road within a cleared setting with mature indigenous and imported trees lining the east and west side boundaries. Located at the foot of these trees are a number of memorial plaques.

- Yarra Track (HO171) – Council’s spreadsheet notation and recommendation: ‘no reference to trees in the citation’; ‘Delete tree controls, mark on map’.

The VHD physical description identifies the gently winding track as it passes:

Cleared grazing land and remnant and regrowth bush, including eucalypts and casuarinas.

Similar inconsistencies were identified for HO169, HO170, HO397, HO 175 and HO404. It is the National Trust’s position that this lack of rigour raises concerns around the basis for the Amendment. The National Trust believes that all places included in the Amendment should be subject to further scrutiny by a heritage expert.

The Save the Dandenongs League echoed the concerns expressed by the National Trust, that a large number of sites within the Heritage Overlay will no longer have the vegetation on the sites protected.

Paint controls

Council's approach to the removal of paint controls from some 32 buildings in the HO is that the ideal would be to retain buildings in the most original state possible. To this end, where the Council was satisfied that the external surface of the building was the original material or finish it was accepted that permit controls for external painting should be retained. To support this submission, the Council pointed to the red brick St Johns Anglican Church in Castella Street, Lilydale and the Gainsborough Store, Main Street, Warburton, where the original material – unpainted brick in the case of the church and painted weatherboard for the Store – remain intact and unchanged.

Paint controls were proposed to be removed where the Council was satisfied that from an inspection, the original external surface had been covered, effectively altering the original external appearance, 'never to be regained'.

In such circumstances it was determined that no meaningful heritage outcome could be achieved by retaining permit controls. The Council pointed to the Mechanics' Institute/Athenaeum in Castella Street in Lilydale as a good example of this approach. This building has been painted in varying colour schemes a number of times, none of which has resulted in the heritage values of the building being compromised as the physical form of the building has not altered. The Council also advised that no evidence of the original paint scheme had been found.

Council also submitted that the painting of buildings in inappropriate colours did not impact on the heritage value of the building, rather it could be termed an 'offence against taste' (Page 9 of Councils' submission).

Council also advised that the majority of heritage places, some 284 places, were introduced into the HO through Amendment C16. A review of the Panel report for this Amendment found no thorough assessment of the basis for the application of paint and tree controls into the HO.

The National Trust presented an alternate view of the value of retaining paint controls. It was their submission that paint controls are justified if the building impacts upon a significant streetscape and where original paint schemes are identified. It also submitted that even if a building has been painted, the original paint scheme is not lost, as paint scrapings and other methods can identify original paint colours.

The National Trust also used the example of the Mechanics Institute, Library and Athenaeum as a site where paint controls should be retained. It is a public building located within a prominent streetscape with a paint scheme that contributes to its heritage significance.

It further submitted that buildings on key main streets, prominent commercial and public buildings, justify paint controls that will result in a sympathetic paint scheme that reflects the style and age of the building and can contribute to the integrity of a streetscape and the heritage character of the building. The Trust maintained that paint controls ensure that the future painting of buildings will be in colours that are sympathetic to the style and age of the

building, regardless of whether the building has been previously painted in an inappropriate colour scheme.

This issue was supported by reference to a Panel Report for Maroondah C42 (2010) where the question of how to apply external paint controls under the HO were addressed. The Report noted:

External paint controls may also be desirable for particular properties or complexes, such as current or former institutional or community buildings, although this needs to be determined on a case-by-case basis.

We encourage Council to revisit this issue and determine which properties required external paint controls because of their potential streetscape impact on a wider area or in order to preserve particular valued features of the buildings (such as their original paint scheme).

The National Trust concluded that if any paint controls are to be removed for a building there should be an assessment by a heritage advisor or consultant to recommend their removal.

Changes to mapping of the Heritage Overlay

Council proposed to amend the mapping of the heritage overlay to a number of sites throughout the municipality. The basis for the changes proposed is to ensure that the mapping of heritage places are applied correctly and are as accurate as possible.

The PPN01 states:

... care should be taken to ensure that there is an accurate correlation between the Heritage Overlay schedule and the Heritage Overlay map.

The need for care is exemplified by the fact that the Heritage Overlay map will be the determining factor in any dispute as to whether a control applies (for example, in cases where there is conflict between the Heritage Overlay map and the property description or address in the Heritage Overlay schedule).

Councils are encouraged to review their planning schemes to ensure that all heritage places are correctly mapped and that there are no discrepancies between how places are identified in the Heritage Overlay schedule and Heritage Overlay maps.

Council have endorsed this approach. Council noted that three sites are no longer of any heritage significance – one building had been demolished and two properties, already in the HO, were recommended in the heritage study not to be included in the overlay due to their significantly altered state.

Many of the other mapping changes proposed include reducing the area affected by the overlay, particularly on large sites where it is proposed to reduce the overlay to a curtilage around the heritage place, in line with the PPN01 which guides the application of the overlay to larger sites, using as an example:

A homestead on a large farm or pastoral property where it is only the house and/or outbuildings that is important. In most cases with large rural

properties, the inclusion of large areas of surrounding farmland are unlikely to have any positive heritage benefits or outcomes.

In many other instances, the HO had been incorrectly applied – to the wrong location or to an area with no heritage significance. This approach was well supported through the amendment process, with only 4 landowners requesting a further reduction in the area affected by the overlay and only 1 requesting removal from the overlay. These submissions are addressed in Section 4 below.

3.3 Discussion

The Panel has addresses each issue below:

Methodology of the review

The Panel is aware of the costs and lack of resources often available to keep heritage studies updated and reviewed as well as the increasing number of planning permit applications that can be required under the provisions of the HO. This places a strain on Council's planning departments. Regardless, care should be the approach when seeking to change or amend planning controls in the HO, or any planning control, without appropriate expertise or a peer review by a heritage specialist.

A primary objective for the review of a planning control should not be one where the end purpose is the reduction in the number of permit requirements.

Changes to existing planning controls, even those that are based on older information, included in heritage studies that are 16 years old, should not be removed without a clear methodology and high level of rigour and assessment.

Council's contention is that there is an:

overall benefit to the public in relieving Council of excessive demand on its staff and resources, there is direct benefit to affected landholders in being spared unjustified time, effort and cost of planning controls (Page 4 of Council's submission).

Suggesting the primary justification for removing planning controls and permit requirements is a community benefit, is not an appropriate strategic or planning response to this Amendment.

A lack of rigour in the assessment of information available about a number of the sites is evident in the examples regarding the identification of trees on heritage sites provided to the Panel by the National Trust. The use of information included in the VHD appears not to have been used.

Council's advice was that upon inspections, if a building had been recently painted, then the original paint scheme was considered to be lost. The contention that only original finishes – which could be 100 years old and in poor condition – are worthy of requiring paint controls, does not take into consideration the maintenance of original paint schemes, where a building has been painted in original colours to retain its' original appearance or a desire to display and celebrate public buildings as an example of heritage protection and conservation.

While many planners deal with heritage matters on a day to day basis, they are not specialist in this field and are not qualified to correctly determine heritage values and significance. It is general practice that this work is carried out by heritage professionals – bringing expertise, experience and knowledge as well as an understanding of the level of rigour required in assessing heritage places, buildings and sites.

Tree controls

While the Council relied on guidance in the PPN01, for how tree controls should be applied within the HO, the Council has taken a simplistic approach to determining the removal of these controls.

Council submitted that if a building citation (or statement of significance) does not directly mention significant trees, then it is likely that no trees of heritage significance are located on site. If vegetation was mentioned in the citation, an inspection to determine the value of the tree or trees was conducted where possible and if the trees still existed.

The Panel finds this approach somewhat curious, given that the Heritage Study, developed in 2000 and reviewed in part in 2005, is not structured in the way recommended by the PPN01, ie: the citations do not identify 'what is significant' and 'why is it significant'.

In the Panel's mind and given the submission by the National Trust on this issue, there is a disconnect between the information shown in Council's heritage citations and that of the Victorian Heritage Database. The National Trust provided numerous examples to the Panel where the property description referenced vegetation, often by species and the Council's notation in the spreadsheet of controls did not recognise any vegetation on the site or of more concern, noted that some vegetation could be on site, yet it recommended the removal of the tree control without an inspection.

Council's position is that most trees will be protected regardless, through the provisions of the SLO or Clause 53 of the planning scheme. This approach is based not on the heritage merits of any tree, but on view that trees in general contribute to the landscape as a whole. The Council have not provided any assessment or criteria relating to how the SLO has been applied. The owner of the property Cooring Yering at 32 The Gateway, Lilydale noted that while this site of some 100+ hectares, was heavily treed and that the tree controls in the HO were to be removed, the SLO did not apply to this site. Yet the residential allotments adjoining this site, developed in the 1990's and with sparse tree coverage were included in the SLO.

Any trees not included in the HO or SLO would likely be subject to the provisions of Clause 53 of the planning scheme. However this control does not apply to residential zones, trees within 2 metres of a dwelling or where there is a risk of bushfire.

Council has relied on their position that the aesthetic or landscape value of trees is not a heritage matter. The Panel has not been convinced that this simplistic approach is correct. A heritage building may have been constructed amid a landscape setting and over time that setting may have altered due to loss of original trees because of age or bushfire. The question of whether the replacement of these trees results in a lesser heritage value has not been satisfactorily addressed and may be better determined by heritage experts.

This approach as a whole suggests a lack of rigour and expertise in the review of the controls and supports the National Trust's concern that any review of the planning controls within the HO should be conducted or overseen by a heritage or environmental specialist. The Panel agrees.

Paint controls

In early conservation and heritage studies during 1980's – 2000's, it was usual to apply blanket paint controls to all buildings and places within a heritage overlay. This conservative approach appears to have evolved into a less stringent approach over time as many heritage advisors and specialists agree that painting is an 'alteration' that can easily be changed or removed and is a process that does not alter the fabric of the building, with the exception of unpainted render and brickwork.

Council's contends that if a building had been recently painted, then the 'deed was done' and the original external appearance of the heritage place was lost. There is no assessment or information provided by the Council that a recent painting of a building could not be a reflection of the original paint scheme for the building (repainting of a building in original colours and maintaining that painting in good condition, rather than allow the paint to deteriorate and flake off, does not suggest that the original appearance of the building is lost). Allowing the original paint finishes to deteriorate without any maintenance could negatively impact on the original fabric of the buildings.

Based on limited criteria, the Council have sought to identify buildings that may not require paint controls. Council have not acknowledged that original paint schemes can be 'found' through paint scrapings and other documentary evidence.

An alternative approach could be to develop consistent and clear criteria for buildings that should require the application of paint controls. For example as a general principle, require paint controls for:

- Rows of identical houses
- Public buildings
- Unpainted brickwork or rendered building
- Where there is clear evidence of an original paint scheme.

This approach could become an adopted Council policy and would provide a consistent approach to the painting of heritage buildings.

Regardless, any changes to this permit requirement should be overseen by a heritage expert, particularly when determining what an original paint scheme was.

Mapping of heritage sites

Council has been guided by the principles for mapping heritage sites and places outlined in the PPN01, particularly for larger sites where in many instances the extent of the overlay has been reduced but provides for a curtilage around each site.

With regard to the mapping 'errors' provided as examples to the Panel (and addressed more fully in Section 4 below) the Panel is satisfied that Council's approach to ensuring that the HO extends over the correct heritage place and is removed from adjacent properties, roadways and other elements on the site that have no heritage significance, is sound.

Council have used existing land data, aerial photography and site inspections to determine the location of the heritage assets. The Panel is also satisfied that this mapping exercise is a more factual process where 'errors' are easily identified and do not require heritage expertise to correct. It is a primary element of any planning scheme to ensure that the scheme is clear and as accurate as possible, which will in itself reduce permit applications.

While the National Trust did not make a submission about the proposed mapping changes to the HO, they did agree in principle that the mapping of the overlay should be applied to the correct location and be as accurate as possible.

3.4 Conclusions

The Panel notes that pursuant to the requirements of Section 12 of the *Planning and Environment Act 1987*, planning schemes, including Municipal Strategic Statements are required to be reviewed every four years, in line with the review of Council plans. This in itself provides the strategic basis for any review of planning controls to ensure they effectively evaluate the planning scheme to ensure that it meets the objectives of planning and Council initiatives contained with the Council Plan.

The Panel finds that the approach taken by the Council for the review of the permit requirements of the HO has focused too much on the desire to decrease permit requirements that are seen as superfluous and not impacting significantly on the main objective of the planning control – in this instance, the heritage protection of buildings, places and objects.

Council's approach to the removal of tree controls was somewhat simplistic – if there was no mention of the significance of a tree in a citation, it was assumed that the tree controls could be removed.

With regard to the removal of paint controls, the Panel agrees that the current approach to the application the painting of heritage sites is more relaxed, acknowledging that paint can be removed, original paint schemes can be determined through such methods as paint scrapings and often advice about appropriate paint schemes can be provided by Heritage Advisors without the need for a planning permit.

In the review of both controls, there has been no assessment against the objectives of the HO itself, particularly the objective that states:

To conserve and enhance those elements which contribute to the significance of heritage places.

(Panel's emphasis)

As an example, no consideration has been given to the 'contribution' the painting of a heritage building in the original paint scheme may have on the significance and appearance of the building. Similarly, the bushland within which a heritage building is located, may not be the original bushland setting, but may nonetheless provide an example of the typical setting of the heritage building.

This view is endorsed by Planning Practice Note No.7, Vegetation Protection in Urban areas, where it states:

The tree may be of Aboriginal significance or contribute to the setting of an historic building. Therefore the HO may more appropriate than a VPO.

(Panel's emphasis)

The Panel finds that the review of the paint and tree control permit requirements should, at a minimum be peer reviewed by a heritage specialist to ensure the review is sufficiently rigorous and provides a clear methodology to determine whether the heritage value and/or significance of each place would be adversely impacted by the removal of these controls. This same review could also provide the Council with a clear policy position on the application of these controls across the whole Schedule to the HO, ie: paint controls will only apply to:

- Public Buildings
- Unpainted brickwork and render
- Rows of identical buildings.

A policy on tree controls could apply to:

- Public gardens
- Sites with original planting schemes
- Sites where trees contribute to the aesthetic, landscape and historic setting.

The Panel supports the correction of mapping errors and applying the HO to the correct area or site of heritage significance. This will improve the operation of the planning scheme as well as providing the correct planning information to landowners, the community and planning practitioners.

This Amendment has impacted a large number of properties within the HO and attracted only seven objecting submissions, indicating wide support for the intent and outcomes of the Amendment. However the Panel is not supportive of the methodology and rigour of assessment on which the proposal to remove permit controls for painting and tree removal are based.

The Panel concludes that the best way forward for the Council that will build on the work already undertaken to date, is to 'split' the Amendment into two parts.

3.5 Recommendations

The Panel recommends the Amendment be split into two parts as follows:

- **Amendment C158 Part 1 - the removal of HO10, HO30 and HO90 from the Heritage Overlay, the removal of the internal alteration permit control for HO137 and all exhibited mapping changes. Part 1 be adopted subject to those modifications recommended in Chapter 4 of this report.**
- **Amendment C158 Part 2 – the proposed removal of paint and tree controls. The changes to these controls should be reassessed and reviewed by a heritage specialist to provide the methodology and rigour for any changes to the Heritage Overlay and provide of a policy position for the Council on the application and/or removal of these controls.**

4 Specific site issues

Five submissions were received from landowners directly affected by the proposed changes to the mapping and paint and tree permit provisions in the schedule to the HO.

The issues relating to each site are addressed below.

The National Trust in their submission about the Amendment drew attention to two sites to illustrate their concerns with the proposed changes to the HO. These issues and other examples provided at the Panel hearing are addressed in Section 3 above.

4.1 HO17 – ‘Brick House’, 187 Lysterfield Road, Lysterfield

The site is occupied by a red brick house and outbuildings, set within a rural property.

Proposed amendment change: mapping change to apply the HO to the correct location of the heritage buildings; removal of tree controls.



Figure 1 Brick House and outbuildings at 187 Lysterfield Road, Lysterfield



Figure 2 Aerial photo of 187 Lysterfield Road, Lysterfield

(i) Submissions

The owner of this property, Ms Buxton, identified a number of anomalies with the building citation for this site, including the exact date of the construction of the building, also noting that there had been a number of changes to the buildings on the site over time. Due to these changes and the inaccuracies in the building citation, Ms Buxton considered that there was little remaining heritage significance left and recommended removing the HO entirely from the site.

Council noted that the buildings and outbuildings were developed by John Buckley, who was the original settler of this land. This site was introduced into the HO prior to 2000 and was identified as a heritage site as part of the Shire of Sherbrooke Planning Scheme – Sites of Local Significance, 1994. Regardless of the issues relating to the exact date the house was built and other possible errors, the Council believe that there is agreement that the house is over 100 years old and is directly related to John Buckley, one of the first landowners and settlers in the area.

Council is seeking to apply the HO to the correct location of the building and outbuildings, which will also result in a much reduced overlay area.

(ii) Discussion

From the information submitted to the Panel, it is clear that this site has connections to an original settler in this area, who also built a home and associated buildings on the site. This property has been included in the HO for in excess of 16 years, although with the location of the overlay clearly in the incorrect location.

Council is seeking to address an obvious error in the mapping of the overlay for this site which will also result in a substantial reduction in the area affected by the overlay.

The Amendment also seeks to remove the tree controls from the area impacted by the overlay. While there are some trees surrounding the buildings on the site, it appears that the area surrounding the building has been long ago cleared and any trees associated with the original setting lost. Regardless, the Panel has not been provided with evidence of a rigorous strategic process where an investigation and assessment of the original layout of this site has been conducted to determine the original setting of this site.

(iii) Conclusions

The proposed mapping change will result in the correct location of overlay onto the heritage buildings identified in the Shire of Sherbrooke Heritage Study.

The request to remove of the HO on this site is not a matter under the consideration of this Panel. Any proposal to remove the overlay would be the subject of a future heritage assessment and amendment process.

The Panel has not been provided with satisfactory information and justification as to why tree controls are to be removed from this site.

(iv) Recommendation

- The mapping of the Heritage Overlay for 187 Lysterfield Road, Lysterfield (HO17) be adopted as exhibited.
- The removal of tree controls be reviewed and assessed by a heritage specialist, providing a strategically justified and Council policy for the application and removal of these controls.

4.2 HO405 – ‘Yeringberg Balance’, 810-820 Maroondah Highway, Yering

This site is occupied by the winery and homestead complex known as Yeringberg. Part of the property, including the winery, stables well, fountain and residence are listed on the Victorian Heritage Register as H694 and HO1 in the HO. The remainder of the complex is of local heritage significance and included in the HO as HO405. The Amendment affects only the extent the HO as it impacts HO405.

Proposed amendment change: Reduce the extent of the application of the HO to the area of local heritage significance.

No changes are proposed to the area of the site included in the Victorian Heritage Register.



Figure 3 Aerial photo of the revised Heritage Overlay for Yeringberg

(i) Submissions

The owner of the site, Mr de Pury questions the inclusion of more recently constructed structures within the revised overlay area as they have no heritage significance, such as the ‘workers cottage’ and ‘large timber shed’ and request that the extent of the overlay be further reduced.

Council’s submission to the Panel states that the collection of buildings on the site forms part of the overall homestead complex in terms of the layout and arrangement of buildings.

The site was subject to a comprehensive inspection and assessment by Lovell Chen in 2015. This assessment highlighted the significant built and vegetation elements respectively.

The study identified 19 structures or items that were subject to assessment. Of these, three were of 'local significance', four of 'local interest', one of 'local interest' and potentially of 'local significance' and the remainder are of no significance. The 'locally significant' elements are:

- The 1932 weatherboard dwelling
- The conservatory ruins
- The avenue of trees.

The proposed revised overlay area would comprise of two separate areas:

- The 1932 weatherboard dwelling, conservatory ruins and copse of cork trees, and
- The avenue of trees in the north west corner of the site.

Council advised that these two areas of identified heritage significance have been provided with a curtilage around each feature. It is the Council's submission that the revised overlay area would not include the 'workers cottage' which has been removed from the overlay area, but would include a more recently constructed building on the site of what was previously the 'large timber shed'. This structure is within close proximity to the weatherboard house and the copse of cork trees and in an area considered to be within the curtilage of these heritage items.

(ii) Discussion

Council have acknowledged that the Lovell Chen reassessment of the site contains some errors and confusing information. Regardless, the most locally significant elements within the complex of buildings are proposed to remain included in the HO. A significant area is proposed to be deleted from the overlay.

Council also advised that the proposed changes to the overlay were referred to Heritage Victoria for comments and review. No submission was received about the changes to the overlay for this site.

(iii) Conclusions

The Panel finds that the area of the HO has been reduced to include two areas of local heritage significance. Each of these items has been provided with an a suitable curtilage around them to provide context for the building and/or trees and to ensure that any future buildings and works constructed within this curtilage, including works to other buildings within the overlay with no recognised heritage significance, would not negatively impact on their heritage significance.

(iv) Recommendation

- **The mapping of the Heritage Overlay for 'Yeringberg Balance', 810-820 Maroondah Highway, Yering (HO405) be adopted as exhibited.**

4.3 HO11 – Rostrevor, 411 Mt Dandenong Tourist Road, Sassafras



Figure 3 'Rostrevor' at 411 Mt Dandenong Tourist Road, Sassafras

The site is occupied a substantial double storey timber dwelling originally used as a guest house. The house is painted white and set amid a densely landscape setting.

Proposed amendment change: mapping change to remove the adjoining property from the HO; removal of tree controls.

(i) Submissions

Mr Johnson, the owner of Rostrevor, raised a number of concerns that are outside the ambit of this Panel's considerations. Of relevance however, was Mr Johnson's concern about inaccuracies in the description of the heritage site, being described as 411 – 415 Mt Dandenong Tourist Road. Mr Johnson noted that 411 and 415 Mt Dandenong Tourist Road are separate titles and in different ownership. The Heritage Overlay has been applied to the land at 415 Mt Dandenong Tourist Road and extends to a garage building that was built in the 1980's, both sites having no heritage significance.

In response, Council advised that while the description about the heritage place is not entirely accurate, the Amendment did not propose to make changes to any statement of significance or building citation at this time. The Amendment was to primarily correct the location of the Heritage Overlay as it applied to the heritage building on the site at 411 Mt Dandenong Tourist Road and delete the overlay from 415 Mt Dandenong Tourist Road.

(ii) Discussion

All parties agree that the Heritage Overlay should not extend to the property at 415 Mt Dandenong Tourist Road, a site that does not have any heritage significance.

Council also advised that to date, no building permit had been found for the garage building at the frontage of 411 Mt Dandenong Tourist Road. A further inspection of this building could confirm if this building is of a more recent construction and in the future, the building citation for this site could be amended to reflect this information.

In its' submission to the Panel, the Council noted that there was a discrepancy between the title information and Land Data information in correctly identifying the boundaries of this site, calling into question the correct location of the HO. Council further submitted that this

issue could be addressed in a subsequent amendment when the correct title boundaries were identified.

It is also proposed to remove the tree controls for this site. The existing paint controls are to be retained.

(iii) Conclusions

It has been agreed that the property at 415 Mt Dandenong Tourist Road has no heritage significance and had been incorrectly included in the HO. The Amendment will remove this site from the HO map.

The issue regarding the correct location of the site boundary of 411 Mt Dandenong Tourist Road should be resolved prior to adopting any mapping change to this site. A review of Land Vic data and the information shown on the title for this site should enable some resolution to the location of the site boundaries and allow the overlay to be applied in the correct location. It would be a waste of Council resources to amend the boundary of the overlay through a further amendment process.

The Panel has not been provided with satisfactory information and justification as to why tree controls are to be removed from this site. Given that the Council is proposing the removal of paint controls for a large number of sites, no information was provided indicating that the existing painting of the building was the original finishes that would justify the paint controls being retained on this building.

(iv) Recommendation

- **The title information for the site at 'Rostrevor', 411 Mt Dandenong Tourist Road, Sassafra (HO11) be clarified in conjunction with the land title and Land Vic data to determine the correct extent of the mapping of the Heritage Overlay for this site. The removal of tree controls be reviewed and assessed by a heritage specialist, providing a strategically justified and Council policy for the application and removal of these controls.**

4.4 HO46 – Reefton Hotel, 1600 Woods Point Road, McMahons Creek

The site is occupied by a single storey timber hotel building, timber accommodation building and various outbuildings.

Proposed amendment change: mapping change to apply the HO to the correct location of the building and reduction of the extent of the overlay; removal of paint and tree controls.



Figure 4 Reefton Hotel and accommodation building



Figure 5 Aerial photo of revised Heritage Overlay for the Reefton Hotel

(i) Submissions

Submitters, Peter and Karyn Gadsby agreed to the changes to delete the paint and tree controls and were generally supportive of the proposal to reduce the area covered by the overlay. However, they requested that the mapped area be further reduced to exclude the outbuildings at the rear of the hotel building and extend only to the boundary of the hotel and staff living quarters.

In response Council submitted that the PPN01 recommends that the HO should extend over the heritage item and an area of curtilage around that item. This is particularly relevant on larger sites where it is not necessary to apply the overlay to the whole land title area.

Council considered that the proposed area of the HO provided a suitable curtilage around the hotel buildings and did not propose any change to the overlay.

(ii) Discussion

The current mapping of the HO extends only onto part of the heritage buildings and a large treed area. The proposed mapping change seeks to apply the HO to the correct location, ie: the hotel and adjacent accommodation building and some outbuildings at the rear and provide a curtilage around the buildings.

No information was provided outlining the reasons for the removal of the paint and tree controls.

(iii) Conclusions

The Panel is satisfied that the HO will be applied to the correct location and complies with the guidelines of PPN01 and the objectives of the HO in relation to mapping heritage places and providing a curtilage around a place of heritage significance to ensure that any future development does not adversely affect the significance to the heritage place.

The hotel building is painted timber and is within a landscaped setting. While the submitter supports the removal of the paint and tree controls, the Panel has not been provided with satisfactory strategic justification for the removal of these controls – no evidence has been submitted that the current paint colours are not the original colour scheme or that the hotel building was not originally located within a landscaped treed setting.

(iv) Recommendation

- **The mapping of the Heritage Overlay for Reefton Hotel, 1600 Woods Point Road, McMahons Creek (HO47) be adopted as exhibited.**
- **The removal of paint and tree controls be reviewed and assessed by a heritage specialist, providing a strategically justified and Council policy for the application and removal of these controls.**

4.5 HO78 - Cooring Yering, 32 The Gateway, Lilydale



Figure 6 Aerial photo of the revised Heritage Overlay for Cooring Yering.

The site is occupied by a substantial double storey mansion, set within extensive landscape surrounds.

The Amendment proposes to reduce the extent of the HO as it applies to the site: removal of paint and tree controls.

(i) Submissions

Originally the proposed changes to the HO relating to this site appeared not to include the removal of the paint controls. The Council confirmed at the commencement of the Panel hearing that it was proposed to remove the paint controls from this site as part of the Amendment.

The owner, Mr Di Battista, fully supports the removal of paint controls and tree controls. The building was originally constructed of face brickwork; however the exterior brickwork of the building has been painted a number of times. The owner of the site had considered the removal of the paint to return the building to its original condition, but any removal would impact on the lime mortar, which would require replacement. This process proved too costly and onerous to undertake.

With regard to the trees on the site, the submitter noted that approximately 20 trees over the last few years have been lost due to age and drought conditions. Mr Di Battista suggested that there was no evidence of any original tree planting associated with the dwelling.

Mr Di Battista also requested a minor change to the proposed boundary of the revised mapping of the HO that was proposed by the Council. It was proposed that the boundary of the overlay follow the line of the existing fencing around the main dwelling, as proposed by the submitter and shown of figure 12 above. The overlay would still contain the dwelling and a substantial curtilage around the building and would be easily identified by the fence line, rather than relying on tree lines, that could alter over time.

Council are proposing to reduce the extent of overlay to this site to the vegetated area around the building, effectively reducing the extent of the overlay by half. The affected area would comprise approximately 60 metres to the west of the building, 45 metres south of the building, 35 metres north of the building and 45 metres east of the building and generally be defined by tree planting around the building. While the Council prefer the boundary of the HO as proposed by the Amendment, it was acknowledged that the minor changes proposed by the owner of the site were acceptable.

Council also agreed that as the building had been painted a number of times, the original appearance of the building had been compromised and paint controls were no longer required. As the building citation did not specifically reference trees, then those controls could be removed.

(ii) Discussion

The proposed reduction in the extent of the overlay is considered appropriate. However, the Panel supports the position put by the owner of the site that the boundary of the overlay should be defined by the existing fencing around the heritage building, ensuring that the garage building on the north boundary was not included within the overlay area. This boundary provides both a good curtilage around the building and a definable area for the overlay. The Council's proposed boundary would become somewhat undefinable if the position of the Council with regard to the removal of tree controls were supported by the Panel, ie: the vegetation boundary, formed by the trees around the building, could be removed without any permit and thereby removing the definable boundary with them.

Both Mr Di Battista and the Council noted that this site as a whole is not included in the SLO, which is one of the Council's 'fall back' positions for protecting trees, if tree controls are to be removed from the Schedule to the HO. Clause 53 of the Planning Scheme would apply as the site is within a Green Wedge Zone, however the assessment for tree removal is based on environmental rather than heritage or landscape values. No assessment of the vegetation on the site was provided to the Panel in relation to vegetation that may be associated with the development or original layout of the site.

(iii) Conclusions

The Panel is satisfied that the extent of the revised HO has been applied correctly and complies with the guidelines of PPN01 in relation to mapping heritage places/sites and provides a good curtilage around the place of heritage significance.

The building has been painted and is in a landscaped setting. The Panel notes that the submitter supports the removal of the paint and tree controls. The Panel agrees that the original fabric of the building has been altered by both a range of paint schemes and also the removal of the original verandah to the frontage of the building and replacement with a 1930's portico.

With regard to the removal of the tree controls, it is evident from the site inspection that the building is set amongst what were originally formal gardens and landscape surrounds. The heritage value or significance of this landscape surrounds and if it contributes to the heritage significance, setting and appearance of the site has not been provided to the Panel.

The Panel agrees with both the submitter and the Council that the painting of original brickwork has altered the external fabric of the building and in all likelihood the building will be repainted again, rather than having the paintwork removed. The Panel finds that the removal of any controls - the paint and or tree controls should be part of a thorough and strategic review with the Council forming a clear policy position for all buildings within the HO in relation to paint and tree controls. Such an assessment should be strategically justified and at a minimum reviewed by a heritage specialist.

(iv) Recommendations

- **The mapping of the Heritage Overlay for 'Cooring Yering', 32 The Gateway, Lilydale (HO78) be adopted in accordance with the revised map shown in Figure 7.**
- **The removal of paint and tree controls be reviewed and assessed by a heritage specialist, providing a strategically justified and Council policy for the application and removal of these controls.**

Appendix A Submitters to the Amendment

No.	Submitter
1	Linda Buxton
2	Peter & Karen Gadsby
3	National Trust of Australia (Victoria)
4	Malcolm Johnson
5	Don and Lisa Di Battista
6	Guill de Pury
7	Save the Dandenongs League Inc.
8	Department of Environment, Land, Water and Planning

Appendix B Document list

No.	Date	Description	Presented by
1	8/8/16	Updated Schedule to the Heritage Overlay	Yarra Ranges Shire Council
2	8/8/16	Zoning maps and aerial photos of submitters sites	Yarra Ranges Shire Council
3	8/8/16	Photographs of submitters sites	Yarra Ranges Shire Council
4	8/8/16	Yarra Ranges Shire Council submission	Yarra Ranges Shire Council
5	8/8/16	Appendices to Yarra Ranges Shire Council submission	Yarra Ranges Shire Council
6	8/8/16	National Trust submission	Caitlin Mitropoulos

Appendix C Sample of Council's assessment of Heritage Controls

Id	HO	Name	Address	External paint	Internal modifications	Tree controls	Recommendation
206	10	Emblings Cottage	362 Mt Dandenong Tourist Rd, Sassatras	Heavily altered - citation recommends removal from overlay		No reference to trees in citation	Delete from overlay
436	30	Mangoolah Homestead	86 Main St, Upwey	House almost completely modified - consider removing from HO		Landscaped gardens	Delete from overlay
329		McNally Real Estate Offices (former)	47 Main St, Upwey		Demolished under planning permit - structurally unsound		Delete from overlay
370	203	Lawdei Hair Design / Evolution of Self	335 Main St, Lilydale	Citation identifies painting			Delete
411	205	Lilydale Rural Supplies Shop	148 Main St, Lilydale	Has been painted			Delete paint controls
821	213	Poon Kee's Store	172 Main St, Lilydale	Has been painted			Delete paint controls
802	47	The Tunnel - Big Peninsula	Peninsula Rd, McMahon's Creek			No reference to trees in citation	Delete tree controls
106	63	California Bungalow houses	419-425 Main St, Lilydale	Mixed weatherboard and render		No reference to trees in citation	Delete tree controls
552	78	National Rhododendron Gardens	24 The Georgian Rd, Olinda			Significant plantings - includes trees?	Delete tree controls
205	101	Erberson War Memorial	Investigate - not marked			No reference to trees in citation	Delete tree controls
421	110	Lovers Walk	Belgrave			No reference to trees in citation	Delete tree controls
534	122	Mt Morton Reserve	97 Mt Morton Rd, Belgrave Heights			Vegetation not particularly significant	Delete tree controls
227	142	Fernree Gully National Park Kosk	Fernree Gully National Park			No reference to trees in citation	Delete tree controls
228	143	Fernree Gully National Park Sanctuary and aviary	Fernree Gully National Park			Vegetation mentioned, but no significance ascribed	Delete tree controls
595	144	One Tree Hill Lookout	Fernree Gully National Park			No reference to trees in citation	Delete tree controls
678	149	Russell's Mill	Beenak Rd, Beenak			No reference to trees in citation	Delete tree controls
725	165	St Brigid's Catholic Church, Presbytery, Convent & School	1 High St, Healesville			No reference to trees in citation	Delete tree controls
770	169	Terminus Hotel	23 Harker ST, Healesville			Trees referenced, but not subject to recommendations	Delete tree controls
885	170	Yambacoona	36 Old Fernshaw Rd, Healesville			Gardens referenced, but not subject to recommendations	Delete tree controls
273	173	Graceburn Weir	500 Marcondah Hwy, Healesville			No reference to trees in citation	Delete tree controls
168	175	Corranderk Bushland				Mostly bushland	Delete tree controls
531	178	Mt Juliet Cairn	Mt Juliet, 500 Marcondah Hwy, Healesville			No reference to trees in citation	Delete tree controls
19	183	Arcadia	97 Monbulk Rd, Kallista			No reference to trees in citation	Delete tree controls
838	188	Wadhurst	2 Norton Rd, Kallista			No reference to trees in citation	Delete tree controls
202	190	Dunbar Cottage and Dairy	31 Falls Rd, Kalorama			No reference to trees in citation	Delete tree controls
338	195	House - Mt View	210 Cambridge Rd, Kilsyth			No reference to trees in citation	Delete tree controls
366	196	Langley House	78 Durham Rd, Kilsyth			No reference to trees in citation	Delete tree controls
117	200	Cashin's House	73 Castella St, Lilydale			No reference to trees in citation	Delete tree controls
1012	202	Bluestone guttering	Castella St, Lilydale			No reference to trees in citation	Delete tree controls
	211	Bluestone guttering, Mt View Estate	Deschamps Ave and Belle Vue, Lilydale			No reference to trees in citation	Delete tree controls