

**WHITEHORSE PLANNING SCHEME
AMENDMENT C129**

PANEL REPORT

27 MAY 2011

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Nick Wimbush, Chair



Jim Holdsworth, Member

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1. Background

1.1 The Amendment

Amendment C129 to the Whitehorse Planning Scheme proposes:

- to apply the Heritage Overlay (HO) on a permanent basis to 28, 30, 32, 34, 36, 38, 40, 42 and 44 William Street in Box Hill;
- To make various consequential changes to the Municipal Strategic Statement (MSS) at clauses 21.04, 22.01 and 22.03 as described in the amendment explanatory report; and
- Replace the schedule to the HO to remove the interim control reference currently in place for William Street.

Whitehorse City Council is the Planning Authority for the Amendment.

1.2 The Panel

The Panel was appointed to consider submissions on 10 February 2011. The Panel consisted of Mr Nick Wimbush (Chair) and Mr Jim Holdsworth.

1.3 Exhibition and submissions

The Amendment was exhibited between 21 October 2010 and 19 November 2010. Eight submissions were received on the Amendment and the submitters are listed in Table 1.

Table 1: Submitters

Submitter	Organisation (if any)
Mr M Kearney	Melbourne Water
Mr E Kyriacou	Department of Sustainability and Environment
Mr H Lai	VicRoads
Ms J Yeo	
A Basile and S Basile	
Mr E Chin	
Mr and Mrs Hughes	
Mr D Wheeler and Ms T Imbastaro	

1.4 Hearings and inspections

A Directions Hearing was held on 4 April 2011 in Box Hill. No requests to be heard were received from submitters. It was agreed that a brief hearing proceed to allow Council to present the evidence of their heritage expert Ms Helen Lardner.

Notice of the hearing and site inspection was provided to submitters for information. The Panel inspected the proposed HO from the public domain on 2 May 2011 accompanied by Ms Elizabeth McIntosh from Council and Ms Helen Lardner and Lisa Sturis from HLCD Pty Ltd.

The hearing was held in the Box Hill Town Hall on 2 May 2011 following the site inspection. Council called Ms Lardner to give heritage evidence.

2. Background and planning context

2.1 History of heritage studies

2.1.1 Overview of heritage studies

In its submission Council provided an extensive overview of heritage studies undertaken in the municipality. These were:

- (City of Box Hill) Heritage and Conservation Study 1990;
- City of Nunawading Survey Project 1994;
- Whitehorse Heritage Review 1999;
- Whitehorse Heritage Review 2001 (two parts);
- City of Whitehorse Heritage Review 2002: Assessment of Precincts (also known as City of Whitehorse Heritage Review 2001: Part 2 Assessment of Precincts);
- Heritage Precincts Report 2004;
- City of Whitehorse Individual Properties Review 2006 (two components: Elmore Houses, Blackburn and Gem of Box Hill, Court House Estate & Mates' Housing Development Precinct and Windsor Park Estate);
- William Street Precinct Report 2010; and
- City of Whitehorse Heritage Assessments 2010.

2.1.2 The William Street Precinct

Of the studies above, the first one to identify the values most relevant to the Amendment is the *Whitehorse Heritage Review* (2001) undertaken by Andrew Ward. Part 2 of the 2001 review identified 14 precincts of heritage significance, of which William Street was one.

Council undertook a process of reviewing the precincts through the City of Whitehorse Heritage Review 2002: Assessment of Precincts study. The results of this study were then reviewed by the Whitehorse Heritage Steering Committee.

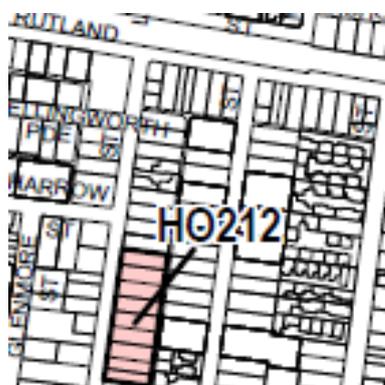
As a result of this process the William Street Precinct (then comprising 46 properties of which 33 were determined to contribute heritage values) was determined as having insufficient or unclear merit.

Following consultation in 2003 the precinct as put forward was not considered for inclusion in the HO at that time but was marked for further consideration in future for a smaller precinct.

A permit application was submitted in late 2009 for new dwellings at 32 William Street requiring the demolition of the existing house. As a result Council applied for and received an interim heritage control via Amendment C128 (HO212).

The precinct boundary used for the interim control and Amendment C129 was defined in the *William Street Precinct Report 2010* by HLCD Pty Ltd as shown in Figure 1.

Figure 1: Extent of Proposed Permanent Heritage Overlay¹



2.2 Planning context

2.2.1 Policy framework

There are many planning policies that apply to the Amendment. The Explanatory Report exhibited with the amendment set out the details of the most relevant policies and these are further elaborated on in Council's submission to the Panel.

The policy framework for heritage protection is set out primarily in:

- The objectives of the *Planning and Environment Act 1987*;
- At Clause 15.03 Heritage of the State Planning Policy Framework; and
- At local policy Clause 22.01 Heritage Buildings and Precincts in the Local Planning Policy Framework of the Whitehorse Planning Scheme.

The Panel has reviewed Council's assessment of directly relevant and supporting policy and considers that the Amendment is supported by such

¹ Extract from Map No 2HO in the Whitehorse Planning Scheme

policy. No submissions took issue with Council's approach in principle to the Amendment.

2.3 Strategic Assessment Guidelines

Council provided an extensive response to the Strategic Assessment Guidelines in the Amendment Explanatory Report and in Section 6 of their submission to the Panel (updated to respond to the revised Practice Note). No one commented on or took exception to Council's approach and the Panel concludes that the assessment of the Amendment against the guidelines is thorough and provides strategic support for the Amendment.

2.4 Practice Notes

Applying the Heritage Overlay

Council provided an analysis of the application of the Heritage Overlay at Section 6.1.3 of their submission. The Panel has reviewed the Amendment in the context of this analysis and the Practice Note and are satisfied that it has been properly considered.

3. Issues in the Amendment

3.1 Issues raised in submissions

The following issues were raised in submissions and have been considered by the Panel.

3.1.1 Heritage matters

The following heritage matters were raised in submissions:

- Precinct boundary definition:
 - the precinct should be extended to include the west side of William Street (odd numbers);
 - the precinct should be extended to cover properties at 2-22 William Street;
 - the precinct boundary should cover the original Ellingworth's Estate; and
 - specific properties should be removed from the overlay due to alterations (44 William Street).

No submissions questioned the fundamental heritage values identified in the heritage studies and the Panel accepts the basic premise of the precinct's heritage significance.

In addition to the issues identified in submissions, the Panel considers the precinct boundary on the western side requires consideration given the importance of the public realm to the significance of the private properties of the precinct.

3.1.2 Other matters

The following other matters were raised in submissions:

- The need for permits on heritage-listed properties and the increased costs that this adds for owners;
- Property devaluation;
- Conflict of interest; and
- The length of time taken for the precinct recommendations to come forward.

3.2 Definition of precinct boundaries

3.2.1 The size of the precinct

As outlined in Section 3.1.1 above, several alternatives have been put forward for the boundary of the precinct. The boundary used for the interim control extends only to the outer boundaries of the subject properties (as shown in Figure 1) and this is Council's position.

The Panel agrees that this should be the minimum area for the precinct, that is, it should include all properties within the area, despite not all buildings being original.

In terms of an alternative larger extent, there are several factors to consider.

Ms Lardner's evidence included (at Appendix B) a plan of William Street showing the boundaries of Heritage precincts recommended in two previous studies (Ward (2001) and Butler (2002)) as well as the boundary recommended by HLCD in 2010. The 'Ward boundary' included all properties on both sides of William Street from no. 7 in the south to no. 60 in the north. The 'Butler boundary' included properties on both sides of the street and extended from no 2 in the south to no 51 in the north but excluded nos 21, 38, and 54 – 60.

It was evident to the Panel, on visual inspection, that there had been some changes to the building fabric of some buildings within the Ward and Butler boundaries since those studies were conducted, thereby reducing the validity of the extents of the recommended precincts.

Ms Lardner's evidence included (at Appendix 2 to Appendix A of her evidence, Appendix A being the Precinct Citation) copies of two of William Ellingworth's subdivision plans, one of 1881 and one of 1889. These plans show that the east side of William Street was subdivided prior to the west side and was part of a subdivision that included properties on the west side of Rose Street and the intervening lane.

Given the age of the original buildings on the west side of the street, and the extent of newer buildings to the north of no. 44 William Street and south of no. 28 William Street, Ms Lardner's evidence was that a smaller precinct, extending only to include nos. 28 to 44 William Street, is appropriate. Her opinion was that, should other buildings beyond this limited boundary be found to be of sufficient heritage significance in the future, individual citations and heritage protection could be put in place for those properties.

The Panel notes that the building at no. 42 William Street is of more recent construction than its neighbours and makes no contribution to the heritage value of the proposed precinct. This is a not uncommon situation in heritage precincts. The Panel considers that it is preferable that the northern boundary of the precinct extends to include no 44, rather than omit it and no 42.

As to the suggestion to include nos 2-22 in the HO, the Panel notes and accepts Ms Lardner's evidence that whilst these properties could be considered at a later date for a HO, they date from a later period and are stylistically different to the properties in HO212.

3.2.2 The public realm

Relevant to this consideration is the Statement of Significance of the precinct which states, in part, that the precinct is of local historical and aesthetic significance to the City of Whitehorse due to the well preserved Edwardian style dwellings and the similarity of materials, form and level of detailing that provide the streetscape with a consistent and homogenous appearance.

Heritage Overlay areas frequently include streets, lanes and other public open spaces, particularly larger areas. The public realm is as much a contributor to the visual integrity and heritage value of an area as private properties. The statement of significance recognises the streetscape contribution of the buildings. In this instance, the elements of the street environment of William Street; kerbs and gutters, street trees, nature strips and the materials of the road and footpath surfaces; contribute to the character of the area and reinforce the collective heritage value of the individual buildings and their gardens.

Having regard to these factors, the Panel considers that the precinct boundary should extend across to the western side of the William Street road reserve to the extent necessary to cover the public realm elements for the length of the street equivalent to the length of the precinct.

The Panel recommends that:

The exhibited Heritage Overlay area be modified to extend across to the western side of the William Street road reserve to the extent necessary to cover the public realm elements for the length of the precinct.

3.2.3 The Precinct Citation

Ms Lardner with her evidence provided a revised William Street Precinct Citation (dated April 2011) to the Panel. The Panel notes that the revisions are minor in nature and respond to submissions made to the Amendment by; clarifying the historical pattern of subdivision; recognising public realm elements; and recognising the loss of a portion of bluestone kerbing to a bus stop.

3.3 Other matters

3.3.1 Permit triggers and hardship

One submission noted the additional costs that may be incurred by the householder for applying for permits under the HO.

In response Council acknowledged that the HO does impose additional costs on landowners but that several factors may mitigate this, including:

- Exemptions for repairs and maintenance;
- Exemptions from fees and notice for some minor works; and
- The presence of Council's free heritage advisory service and heritage assistance fund.

Council in their submission also drew the Panel's attention to Amendment L47(D) to the Stonnington Planning Scheme in relation to devaluation of properties. The quote provided relates to hardship and the Panel considers that it is relevant in relation to this submission.

In summary, hardship may be a relevant matter in later decisions considering a permit for alterations or demolition. That will be up to the responsible authority to determine at that time. However, hardship is not a reason in itself to avoid reflecting the heritage values of the precinct and its contributory properties in the planning scheme.

The Panel does not consider that this submission should result in a change to or abandonment of the amendment.

3.3.2 Reduced property values

One submission raised the issue of a decrease in property value as a result of the application of the HO. No evidence was called to support the claim.

There is a consistent approach to this issue in previous Panel reports that suggests that some potential future impact on property value is not a reason in itself to not identify and protect heritage values.

This was clearly articulated in the Warrnambool Planning Scheme Amendment C68 Panel Report earlier this year when the Panel, drawing on quotes from Latrobe Planning Scheme Amendment C14, concluded that:

The Panel's role is to address the key question of whether or not a property or precinct has heritage significance. If heritage significance has been tested through the panel process and clearly established, the Council is under a statutory obligation to provide appropriate heritage protection.

For the reasons outlined above, the Panel does not address personal and economic issues or building condition further in this report.....

We adopt this position and consider that the argument of reduced property value, even if it could be made, is not an argument that should be used to prevent the protection of heritage via the application of the HO to the William Street Precinct.

It is arguable that the protection afforded by the HO can make a property more attractive to some people and hence increase the value.

3.3.3 Conflict of interest

A Whitehorse Councillor lives within the proposed precinct. Two of the submitters expressed concern that this may give rise to a conflict of interest in decision making about the Amendment.

The Panel considers that this issue is not related to the merits of the Amendment *per se* and is an issue that should be managed through Council's governance arrangements.

3.3.4 Process delays and time taken for Amendment

One submission expressed concern that the Amendment to apply the HO has taken nearly ten years since the precinct was identified in the *Whitehorse Heritage Review 2001*.

The Panel notes that bringing the Amendment forward in a timelier manner would have been desirable. However it considers the delay has not materially altered the heritage values sought to be protected within the precinct and is not a reason to alter or abandon the Amendment.

4. Conclusion

The Panel concludes that Amendment C129 is supported in policy and in the consideration of the heritage values in the proposed William Street Precinct. The Panel recommends that:

Subject to the alterations to the precinct boundary recommended in this report, that Amendment C129 to the Whitehorse Planning Scheme be adopted as exhibited.

The exhibited Heritage Overlay area be modified to extend across to the western side of the William Street road reserve to the extent necessary to cover the public realm elements for the length of the precinct.