

Date: 29 May 2023

**Melton Planning Scheme
Amendment C231melt**

Part A Submission on behalf of Melton City Council

Planning Panels Victoria

INTRODUCTION

1. These submissions are made on behalf of the Melton City Council (**Council**) as the planning authority for Amendment C231melt (**Amendment**) to the Melton Planning Scheme (**Planning Scheme**).
2. This Part A submission will be supplemented by Council's Part B submission and expert evidence to be filed in accordance with the Panel's Directions.
3. The Amendment seeks to implement the recommendations of the 'City of Melton Heritage Assessment Project 2020/21' which was prepared by Lovell Chen Architects and Heritage Consultants (**Heritage Assessment**). Consistent with the recommendations of the Heritage Assessment, the Amendment proposes to apply the Heritage Overlay to 5 additional places.
4. Specifically, the Amendment proposes to:
 - 4.1. Amend the Schedule to Clause 43.01 to include the following heritage places on a permanent basis:
 - a. HO138 – The Oaks Homestead at 1809-1859 Gisborne-Melton Road, Kurunjang;
 - b. HO139 – Diggers Rest Army Housing Estate at Unit 1-6, Unit 8-18, 117 Diggers Rest-Coimadai Road, Diggers Rest;
 - c. HO140 – Minns Road Bridge over Toolern Creek, Kurunjang;
 - d. HO141 – Soldier Settlement Housing at 115-131 Napier Street, 480-580, 726-738, 740-794 & 796-830 Mt Aitken Road, Diggers Rest;
 - e. HO142 – Hillview house at 332 Benson Road, Toolern Vale.
 - 4.2. Amend Planning Scheme Maps as follows:
 - a. 1HO to include HO142;
 - b. 2HO to include HO141 and delete part of HO60¹;
 - c. 3HO to include HO139;
 - d. 6HO to include HO138 and HO140.
 - 4.3. Amend the Schedule to Clause 72.04 to incorporate the following documents:
 - a. Statement of Significance: 115-131 Napier Street, 480-580, 726-738, 740-794 and 796-830 Mt Aitken Road, Diggers Rest "Mt Aitken Soldier Settlement Housing" June 2022;
 - b. Statement of Significance: Unit 1-6, Unit 1-18, 117 Diggers Rest-Coimadai Road, Diggers Rest, "Diggers Rest Army Housing Estate" June 2022;

¹ The exhibited planning scheme maps show HO60 deleted, and re-applied minus the curtilage of the proposed HO141. In the event the Panel does not support the application of HO141 to this place, Council would propose that the extent of HO60 remain unchanged from the current extent shown in the Planning Scheme.

- c. Statement of Significance: 332 Benson Road, Toolern Vale “Hillview” June 2022;
- d. Statement of Significance: 1809-1859 Gisborne-Melton Road, Kurunjang”, “The Oaks Homestead”, June 2022;
- e. Statement of Significance: Bridge over Toolern Creek, Kurunjang, “Minns Road Timber Bridge”, June 2022;
- f. *Diggers Rest Army Housing Estate Heritage Design Guidelines and Permit Exemptions.*

PANEL DIRECTIONS

- 5. The Panel Directions dated 18 May 2023 require Council’s Part A submission to address:
 - 5.1. The background to the Amendment including chronology of events;
 - 5.2. The strategic context and assessment;
 - 5.3. issues identified in submissions;
 - 5.4. any suggested changes to the Amendment in response to submissions.
- 6. Each of these will be discussed in turn.

BACKGROUND TO THE AMENDMENT

History of the Amendment

- 7. The Amendment and the *Heritage Assessment* that supports are grounded in an extensive body of heritage assessment and strategic work.
- 8. The paragraphs that follow provide a historic overview to contextualise the Amendment before describing the work undertaken in the Heritage Assessment.

Earlier heritage assessments and strategic work

- 9. The following documents provide the strategic background in which the *Heritage Assessment* was undertaken and support the preparation of the Amendment:
 - 9.1. *Shire of Melton Heritage Study (May 2007)*;
 - 9.2. *Melton Dry Stone Walls Study (August 2011)*;
 - 9.3. *City of Melton Heritage Strategy 2017-2021*
 - 9.4. *City of Melton Heritage Assessments Project 2018*
- 10. In particular, and for the reasons set out below, the *Heritage Assessment* and the Amendment implements directions of the *Shire of Melton Heritage Study (May 2007)* and the *City of Melton Heritage Strategy 2017-2021*.

Shire of Melton Heritage Study (May 2007)

11. The *Shire of Melton Heritage Study* (David Moloney², May 2007), identified and assessed places of cultural heritage significance in the municipality. The *Shire of Melton Heritage Study* was commissioned by Council in two stages as follows:

11.1. Stage 1:

- a. preparation of a thematic history of post-contact settlement and development of the study area (the whole of the municipality);
- b. identification of all post-contact places of potential cultural significance in the study area;
- c. estimation of the resources required to fully research, document, and assess the cultural significance of all the places identified in Stage 1;

11.2. Stage 2:

- a. assessment and documentation of the identified places of post-contact cultural significance against the Australian Heritage Commission's criteria;
- b. review of the Thematic Environmental History;
- c. provision of recommendations for statutory registers; and
- d. provision of recommendations for a heritage conservation program for the study area.³

12. The *Shire of Melton Heritage Study* comprises 6 volumes and was exhibited as part of Amendment C71 to the Melton Planning Scheme. The study (volumes 1-6) is a reference document to Clause 21.07 of the Melton Planning Scheme.⁴

13. *Shire of Melton Heritage Study*⁵ contains 5 detailed schedules as follows:

13.1. Schedule No. 1: List of Heritage Places Recommended for Inclusion on the Victorian Heritage Register;

13.2. Schedule No. 2: List of Heritage Places Recommended for Inclusion on the Melton Shire Planning Scheme;

13.3. Schedule No. 3: 'Conservation Desirable' Places;

- a. The term 'Conservation Desirable' is explained as follows:

Places listed as Conservation Desirable have not been included in this Study, but nevertheless contribute to an understanding of the heritage values of the Melton Shire.

...It is recommended that they be subject to further investigation, either prior to development proposals, or in a future review of this Heritage Study.

² As the principal consultant, assisted by Dr David Rowe, Pamela Jellie, and Judith Bilitza.

³ *Shire of Melton Heritage Study, Volume 1* at Executive Summary, 2.0

⁴ Clause 21.07-4 (Heritage – Reference Documents).

⁵ The *Shire of Melton Heritage Study* (after stages 1 and 2) comprises 6 volumes, was adopted by Council in 2007, and exhibited as part of Amendment C71 to the Planning Scheme. Amendment C71 was gazetted in August 2010, implementing the protection of the properties listed in Schedules No. 1 and No. 2 (subject to the removal of some properties following the recommendations of the C71 panel).

*Some of these places have not been examined for inclusion in the recommendations for planning scheme controls due to the Study's limitations in terms of resources. Other places have been considered not to meet the relevant Assessment Criteria and Significance Thresholds to warrant inclusion as a heritage overlay in the Melton Planning Scheme at this stage. However they contribute to an appreciation of the development of the Shire's history, and further research into, or restoration / reconstruction of these places may raise their heritage value to meet the threshold of local significance.*⁶

- b. The schedule also identifies 'places that might be considered worthy of heritage protection in a future study', describing these as:

*... places that do not meet the relevant Assessment Criteria and Significance Thresholds to warrant inclusion as a heritage overlay in the Melton Planning Scheme. But with inevitable losses of existing heritage places, and with developments in understanding heritage and changing criteria, they might be reassessed in a future Heritage Study.*⁷

- 13.4. Schedule No. 4: Historical Sites and Potential Archaeological Sites;
- 13.5. Schedule No. 5: Places Recommended for Further Investigation or Works;
14. Amendment C71 was gazetted in August 2010, implementing the protection of the properties listed in Schedules No. 1 and No. 2 to *Shire of Melton Heritage Study* (subject to the removal of some properties following the recommendations of the C71 panel).
15. However, the schedules to the *Shire of Melton Heritage Study* also had a broader strategic purpose, informing the direction of further strategic and heritage assessment work since 2007, including work supporting the current Amendment.
16. Relevant to the current Amendment:
- 16.1. The Oaks Homestead, 1809-1895 Gisborne-Melton Road, Kurunjang (Proposed HO138);
- 16.2. The Diggers Rest Army Housing Precinct, Diggers Rest-Coimadai Road (Proposed HO139);
- 16.3. The Minns Road Timber Bridge (described in the *Shire of Melton Heritage Study* as 'Bridge, timber, no longer in use ... Minns Road, over Toolern Creek') (Proposed HO140);
- 16.4. Hillview, 332 Benson Road, Toolern Vale (described in the *Shire of Melton Heritage Study* as 'House, (Hillview) ... 332 Benson Rd, W side, N end') (Proposed HO142)
- were listed as 'Conservation Desirable' in Schedule No. 3.
17. In addition, the properties forming the Proposed HO141, Mt Aitken Soldier Settlement serial listing were variously identified as either "Conservation Desirable" or "places that might be considered worthy of heritage protection in a future study".

Melton Dry Stone Walls Study (August 2011)

18. The *Melton Dry Stone Walls Study (Planning Collaborative August 2011)* identified, surveyed and classified all dry stone walls in the municipality, developed a methodology for assessing

⁶ *Shire of Melton Heritage Study, Volume 1, at pdf 62.*

⁷ *Shire of Melton Heritage Study, Volume 1, at pdf 65.*

the significance of dry stone walls, and recommended that a number of dry stone walls be included in the Schedule to the Heritage Overlay.

19. The Melton Dry Stone Walls Study formed the basis of amendment C100, which was gazetted on 12 May 2016.

City of Melton Heritage Strategy 2017-2021

20. The *City of Melton Heritage Strategy 2017-2021*⁸ was prepared and adopted by Council on 18 September 2017 to provide Council with a strategic framework for the identification, conservation and monitoring of heritage assets, sites and features in the municipality, via a series of themes, goals, objectives and actions.

21. In association with *Theme 2: protecting and managing*, and the goal of ensuring that ‘all heritage places are protected, appropriately managed and valued by the community’, a key action is to:

Continue to implement recommendations from the Melton Heritage Study 2007, including:

- *Review schedules of heritage places identified for further investigation in the Melton Heritage Study 2007.*
- *Undertake documentation and assessment of places listed in the Conservation Desirable Schedule in the Melton Heritage Study 2007.*⁹

City of Melton Heritage Assessments Project 2018

22. The *City of Melton Heritage Assessments Project 2018*, prepared by RBA Architects & Conservation Consultants, assessed 13 places which were included in the *Shire of Melton Heritage Study (May 2007)*. These sites were selected for assessment due to their location in the Urban Growth Zone and susceptibility to redevelopment in the near future.
23. Of the 13, 10 were identified in the *Shire of Melton Heritage Study* as “Conservation Desirable”, and 2 places were listed as “places that might be worthy of heritage protection in a future study”, while a further property was added to the study following receipt of a development application.
24. The *City of Melton Heritage Assessments Project 2018* formed the basis of amendment C198Melt which was gazetted in May 2021.

Local planning policy: Clause 21.07

25. The findings and recommendations of these studies, strategies and projects are reflected in the local planning policy found at Clause 21.07.
26. Clause 21.07-3.1 provides the following contextual overview of heritage issues in the municipality:

The City of Melton is the boundary between two tribes of the Kulin nation: the Wurundjeri to the east of the Werribee River and the Wathaurong on the west side of the Werribee River. The remnant grassland landscape, river and creek valleys and volcanic cones of the City provide reminders of indigenous stewardship and occupation of the land. The names of creeks and locations, such as Djerriwarrh, Toolern and Kororot are testament to the continuing relationship of indigenous people with this area. Evidence of pre-contact Aboriginal occupation of the landscape is concentrated around watercourses and on the high rises above the plain, and is mainly demonstrated in artefact scatters.

⁸ Clause 21.07-4 (Heritage – Reference Documents).

⁹ *City of Melton Heritage Assessments Project 2018*, p. 16.

The City of Melton was first settled by European pastoralists in the 1830s and 1840s, attracted to the extensive volcanic grasslands, deep creeks and easy access to ports at Melbourne and Geelong. Most of the City was taken up by three large pastoral holdings, Exford, Greenhills and Rockbank. These properties left a legacy of elegant homesteads and outbuildings, dry stone walls, dams, historic roads, fords and bridges. In the late nineteenth century smaller farmers moved into the area, as the large estates were broken up. These settlers created small dairy holdings, took up cropping and processed chaff, planted shelter belts, built wooden homesteads and constructed more dry stone walls.

The dry-stone wall landscape of the City is expressive of both the natural history of the volcanic creation of the area and the cultural history of its human modification.

Identification and planning around heritage assets in the early stages of Precinct Structure Planning is critical in ensuring cultural values are protected and enhanced.

Council adopted the Shire of Melton Heritage Study in May 2007 and the Melton Dry Stone Walls Study in August 2011 which identified and assessed places of cultural heritage significance.

27. The clause goes onto identify key issues, objectives and strategies at sub Clauses 21.07-3.2 and 3.3. In addition, Clause 21.07-3.4, Implementation, informs the strategic justification of the present Amendment. That clause relevantly provides:

Scheme implementation

Applying the Heritage Overlay to places of identified heritage significance, such as sites in the Shire of Melton Heritage Study, or any other relevant heritage studies

Further strategic work

Reviewing and update the Shire of Melton: Environmental History 2007 to identify places which could be included in future gap studies.

Assessing Conservation Desirable sites in Shire of Melton Heritage Study Volume 1 2007 and make recommendations for protection under a Heritage Overlay.

Reviewing the environmental history from the Melton Heritage Study 2007 to ensure consistency with Victoria’s Framework of Historical Themes which now forms the basis of heritage studies in Victoria.

The Heritage Assessment and the Amendment.

28. As identified previously, the strategic work for the Amendment commenced with the adoption of the *Shire of Melton Heritage Study* in 2007, which identified the relevant places as either “Conservation Desirable” or “places that might be considered worthy of heritage protection in a future study”.

29. This strategic history was summarised as follows in the Council minutes for its meeting held 18 July 2022:

The Shire of Melton Heritage Study was completed in two stages from 2007-2007 [sic]. One of the objectives of Stage 1 of the study was to identify all post-contact places of potential heritage significance.

Of the 650 places that were identified in Stage 1, 475 were identified as being ‘Places of Potential Heritage Significance’. Of these 475 places, only 191 places were assessed in further detail in Stage 2 of the study. The following recommendations were made on these places as part of Stage 2:

- 109 places were recommended for inclusion in the Schedule of the Heritage Overlay of the Melton Planning Scheme, completed as part of Amendment C71 in 2007.
- 56 places were identified as “Conservation Desirable” – that is any place where a heritage assessment should be prepared prior to any development proposal might impact upon it.
- 22 sites were listed as places which might be considered worthy of heritage protection in a future study.

Places recommended for future investigation and potential protection have since been incrementally addressed (depending on priority) through a range of processes, such as the development of Precinct Structure Plans. As a result, 13 out of 56 places on the “Conservation Desirables” list were the last to be assessed to determine whether these were of sufficient significance to be added to the Schedule to the Heritage Overlay within the Melton Planning Scheme

30. Ultimately, the *Heritage Assessment* examined 16 places nominated by Council to assess their heritage significance and whether the heritage overlay should be applied.

31. As documented in the Heritage Assessment:

The 16 places nominated for assessment as part of this project were identified in the Shire of Melton Heritage Study Stage 2, prepared in 2007 by David Moloney et al.

Nine of the 16 places were identified in the 2007 study as ‘Conservation Desirable’ places, identified in Schedule 3 (A) of the 2007 study [sic]. These places were defined in this study as contributing to an understanding of the heritage values of the Melton Shire and were recommended for further investigation, either prior to development proposals, or in a future review of the 2007 heritage study as follows: ¹⁰....

32. The 9 places listed as ‘Conservation Desirable’ in the *Shire of Melton Heritage Study (May 2007)* were:

- 32.1. House (Hillview) – located at 332 Benson Road, Toolern Vale;
- 32.2. Cottage (stone, relocated) – located at 2130-2170 Diggers Rest-Coimadai Road, Toolern Vale;
- 32.3. Farm ruin (The Oaks homestead) – located at 1809-1859 Gisborne-Melton Road, Kurunjang;
- 32.4. House (Hilton Brae) including ruins of possible outstation – located at 574-638 Ryans Lane, Toolern Vale;
- 32.5. Diggers Rest Army Housing Estate & Admin Building – located at Diggers Rest-Coimadai Road & 107-207 Plumpton Road, Diggers Rest;
- 32.6. Bridge, timber, no longer in use – located on Minns Road, over Toolern Creek;
- 32.7. House (Roseview) – located at 1498-1620 Melton Highway, Plumpton;
- 32.8. House (Shirley) – located at 1646 Melton Highway, Plumpton;
- 32.9. Soldier Settlement Housing;

¹⁰ Heritage Assessment, p. 1.

- a. House (Corvette),
located at 480-580 & 726-830 Mt Aitken Road, Diggers Rest.¹¹
33. In addition, the 8 places¹² identified from the *Shire of Melton Heritage Study (May 2007)* as places that might be considered worthy of heritage protection in a future study were:
- 33.1. Soldier Settlement Housing:
 - a. House (now Boomera Gate No. 1);
 - b. House (original Boomera?);
 - c. House (Menindee);

Located at 480-580 & 726-830 Mt Aitken Road, Diggers Rest;
 - 33.2. Former Tame Wire Fence Company, 1376-1432 Calder Highway, Diggers Rest;
 - 33.3. House, 2 Diggers Rest-Coimadai Road, Diggers Rest;
 - 33.4. House, 14 Exford Road, Melton South;
 - 33.5. House, 1232-1290 Beattys Road, Grangefields;
 - 33.6. House (Camelot Lodge), 230 Troups Road, Fieldstone;
 - 33.7. House, 570 Parwan-Exford Road, Parwan;
 - 33.8. House, 28-100 Water Reserve Road, Rockbank.¹³
34. The *Heritage Assessment* records a three-stage process of assessment in which:
- 34.1. Stage 1 – Preliminary advice on 16 nominated places.
 - 34.2. Stage 2 – Assessment of significance: Places recommended for further assessment by the first stage, were further assessed including historical research, physical analysis, comparative analysis and assessment against the HERCON criteria.¹⁴
 - 34.3. Stage 3 – Recommendations for statutory heritage controls: Recommendations were made for statutory heritage controls.¹⁵
35. Under the Stage 1 assessment, all 16 places were assessed via a review of the *Shire of Melton Heritage Study* and (for some properties) a visual assessment and/or review of available aerial photographs and images.¹⁶
36. Stage 1 of the *Heritage Assessment* recommended against conducting further investigation of 3 of the 16 properties.¹⁷
37. Stage 2 of the *Heritage Assessment* is described as follows:

¹¹ Heritage Assessment, Table 1, p. 1-2.

¹² Noting the Mt Aitken Road Soldier Settlement housing properties were included in both lists.

¹³ Heritage Assessment, Table 2, p.2.

¹⁴ Heritage Assessment p. 11.

¹⁵ Heritage Assessment p. 13.

¹⁶ Heritage Assessment, Table 3, p. 5-10.

¹⁷ Heritage Assessment p. 4-5.

The results of the preliminary assessment were presented to the City of Melton in February 2020. The 13 places recommended for further assessment as part of this study were agreed upon with Council. A full assessment of the cultural heritage values was undertaken for each of the 13 places identified for further assessment as part of this study. No further investigation was undertaken for the three nominated places which were not considered likely to meet the threshold for inclusion in the HO.

The assessment methodology included historical research, physical analysis (based on the visual inspections/review of places as outlined in Section 2.1.1), comparative analysis and an assessment against the HERCON assessment criteria as outlined below. Additionally, visual inspections were undertaken of the following places in August and September 2021 as part of the assessment of significance of these places:

- Place ID: 80/153, Diggers Rest Army Housing Estate & Admin Building, Diggers Rest-Coimadai Road & 107-207 Plumpton Road, Diggers Rest
- Place ID: 123, House (Shirley), 1646 Melton Highway, Plumpton
- Place ID: 453, House (Camelot Lodge), 230 Troups Road, Fieldstone – this inspection was undertaken by the City of Melton only, with photographs provided to Lovell Chen.¹⁸

38. Finally, the *Heritage Assessment* recommended applying the Heritage Overlay to the 5 places subject to the current Amendment on the basis that they were of local significance. Table 4¹⁹ to the *Heritage Assessment* is reproduced below:

ID	Place	Comment/recommendation
01	House (Hillview), 332 Benson Road, Toolern Vale	<p>Farming property established in the c. 1870s, comprising a timber house with iron roof, large wood stable and hay loft, stone dairy, cow shed, stockyards and garden. Photographs of c. 2001 and aerial images indicate that the property is currently comprised of a weatherboard residence, with c. 1980s alterations, and a complex of outbuildings in a rural landscaped setting.</p> <p>The property at 332 Benson Road, Toolern Vale is of local historical significance to the City of Melton. Recommended for inclusion in the Schedule to the Heritage Overlay of the Melton Planning Scheme on the basis of information available for this assessment. It is recommended that further investigation, including a visual investigation of the place, be carried out to confirm site/building condition and integrity, and if the place satisfies additional criteria.</p>
34	Farm ruin (The Oaks homestead), 1809-1859 Gisborne-Melton Road, Kurunjang	<p>Bluestone ruin of a large farm structure which survives as evidence of substantial farming operation in the area dating from the 1860s-70s. The property was in the possession of a prominent local family for more than a century.</p>

¹⁸ Heritage Assessment, p.11.

¹⁹ Heritage Assessment, p.14-15.

		<p><i>The farm ruin at 1809-1859 Gisborne-Melton Road, Kurunjang is of local historical significance to the City of Melton.</i></p>
80, 153	<p><i>Diggers Rest Army Housing Estate, 1-117 – 6-117, 8-117 – 18-117 Diggers Rest-Coimadai Road, Diggers Rest</i></p>	<p><i>Housing estate established by the Australian military in the post-war period within the former Diggers Rest transmitting station site. The housing estate is a group of detached single storey residences constructed in the 1950s and 1960s on the south side of Diggers Rest-Coimadai Road and within the site to the north of the Former Army Radio Station to house married military personnel working at the station site.</i></p> <p><i>The Diggers Rest Army Housing Estate and Administration Building is of local historical and representative significance to the City of Melton, and is recommended for inclusion as a precinct in the Schedule to the Heritage Overlay of the Melton Planning Scheme.</i></p> <p><i>There is one building within the property which is included in the Schedule to the Heritage Overlay of the Melton Planning Scheme. This is the former Army Radio Station (HO49). This building does not form part of the Diggers Rest Army Housing Estate precinct.</i></p>
222	<p><i>Minns Road timber bridge, over Toolern Creek, Kurunjang</i></p>	<p><i>A four span timber bridge of 1888 which crosses the Toolern Creek on the original alignment of Minns Road. The Minns Road timber bridge is comprised of three piers made up of four piles with transverse cross bracing and additional angled support piles to each side. Round timber stringers and substructure support a timber deck with a low timber balustrade extending partway along the length of the deck to both sides. Capped bluestone abutments support the east and west ends of the bridge.</i></p> <p><i>The Minns Road timber bridge is of local historical, rarity and representative significance to the City of Melton</i></p>
134, 135, 142, 143	<p><i>Mt Aitken Estate Soldier Settlement Housing, 115-131 Napier Street, 480-580, 726-738, 740-794 & 796-830 Mt Aitken Road, Diggers Rest</i></p>	<p><i>Four soldier settlement houses on Mt Aitken Road and one on Napier Street which are part of the post-war farm settlement scheme for ex-servicemen. The farming allotments were formerly part of the Mt Aitken pastoral estate, and were acquired by the State Government in 1947. The farmhouses of this scheme were of a standard type, typically modest single-storey weatherboard construction, stepped frontages and entry porches. The five soldier settlement properties were acquired as freehold by each of the ex-servicemen during the 1960s and 1970s. The five soldier settlement houses on Mt Aitken Road are of local historical, rarity and representative significance at a local level to the</i></p>

		<i>City of Melton, and are recommended for inclusion in the Schedule to the Heritage Overlay of the Melton Planning Scheme as a serial listing.</i>
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39. The conclusions of the third stage of the *Heritage Assessment* are supported by the detailed citations/ statements of significance for each of the 5 heritage places.

Chronology of events

40. The following table documents the chronology of key events relevant to the Amendment:

Date	Event
May 2007	<i>Shire of Melton Heritage Study</i> finalised.
September 2017	<i>City of Melton Heritage Strategy 2017-2021</i> adopted by Council.
2020-2022	<i>Heritage Assessment</i> completed by Lovell Chen.
18 July 2022	The Heritage Assessment was adopted by Council at its meeting held 18 July 2022. Council resolved to seek authorisation to prepare and exhibit the Amendment.
9 August 2022	Authorisation granted by the Minister for Planning.
10 November – 12 December 2022	Public exhibition of the Amendment.
24 April 2023	Submissions received in response to exhibition were considered at the Council meeting held 24 April 2023. Council resolved to: <i>1. Request the Minister for Planning establish an independent planning panel to consider unresolved submissions received in response to Amendment C231 in accordance with the Planning and Environment Act 1987.</i> <i>2. Authorise the Chief Executive Officer to negotiate and resolve issues that are raised during the independent planning panel process prior to Amendment C231 being reported back to Council for consideration.</i>
11 May 2023	Directions Hearing.

STRATEGIC ASSESSMENT

41. Ministerial Direction No.11 (30 July 2018) requires an amendment to be assessed against the following considerations:

- *Why is an amendment required?*
- *How does the amendment implement the objectives of planning in Victoria?*

- How does the amendment address any environmental, social and economic effects?
 - How does the amendment address any relevant bushfire risk?
 - Does the amendment comply with the requirements of any other Minister's Direction applicable to the amendment?
 - How does the amendment support or implement the Planning Policy Framework and any adopted State policy?
 - If the planning scheme includes a Local Planning Policy Framework, how does the amendment support or implement the Local Planning Policy Framework, and specifically the Municipal Strategic Statement?
 - If the planning scheme includes a Municipal Planning Strategy, how does the amendment support or implement the Municipal Planning Strategy?
 - Does the amendment make proper use of the Victoria Planning Provisions?
 - How does the amendment address the views of any relevant agency?
 - Does the amendment address the requirements of the Transport Integration Act 2010?
- (2) Assess the impact of the new planning provision on the resource and administration costs of the responsible authority.

42. Each of these will be addressed in turn.

43. **Why is the Amendment required?**

- 43.1. State heritage policy at clause 15.03-1S seeks to 'ensure the conservation of places of heritage significance'. Notable amongst the strategies to that clause are to:
- a. Identify, assess and document places of natural and cultural heritage significance as a basis for their inclusion in the planning scheme.
 - b. Provide for the conservation and enhancement of those places that are of aesthetic, archaeological, architectural, cultural, scientific or social significance.
- 43.2. Consistent with this policy direction, Council commissioned the *Heritage Assessment* which recommended five additional heritage places be brought within the heritage overlay. The Amendment is required to implement that recommendation.
- 43.3. The Amendment will ensure that a planning permit is required for the demolition of significant heritage buildings and trigger a planning permit for a range of buildings and works, to ensure the heritage significance of the places are assessed and protected at the development stage.

44. **How does the amendment implement the objectives of planning in Victoria?**

- 44.1. The objectives of planning in Victoria are set out in section 4(1) of the *Planning and Environment Act 1987* (Vic) (**PE Act**). Of these objectives (a)-(d) and (f)²⁰ are particularly relevant:

(a) to provide for the fair, orderly, economic and sustainable use, and development of land;

²⁰ Noting that section 4(1)(e) relates to public utilities and other assets.

(b) to provide for the protection of natural and man-made resources and the maintenance of ecological processes and genetic diversity;

(c) to secure a pleasant, efficient and safe working, living and recreational environment for all Victorians and visitors to Victoria;

(d) to conserve and enhance those buildings, areas or other places which are of scientific, aesthetic, architectural or historical interest, or otherwise of special cultural value;

...

(f) to facilitate development in accordance with the objectives set out in paragraphs (a), (b), (c), (d) and (e);

44.2. The Amendment implements these objectives through the application of the Heritage Overlay to regulate the demolition and alteration of places identified as having heritage significance at the local level. By introducing a permit trigger for specified development of the affected land, including (broadly) subdivision, demolition and buildings and works, thereby ensuring that future development is properly assessed in the context of the local significance of the heritage places.

44.3. Through the application of this overlay, protection and conservation is afforded to these heritage places, while the established planning mechanisms are used to facilitate the fair and orderly development of land.

45. How does the amendment address any environmental, social, and economic effects?

45.1. Environmental effects

a. The Amendment will not generate any detrimental impact on the environment. Environmental sustainability benefits are afforded by the retention of heritage places through maintenance, restoration and re-use of buildings.

45.2. Economic effects

a. The Amendment is not expected to have any adverse economic impacts. According to previous Panel decisions and judicial authority, relevant economic effects are generally those impacts on the broader community, not personal financial implications.

b. The conservation and enhancement of places with local heritage significance can stimulate economic growth through the restoration and re-use of buildings, by increasing the attractiveness of future residential communities that are planned to surround those places, contributing to the future character of the area.

c. Furthermore, the application of the Heritage Overlay does not prohibit development, subdivision or demolition (where allowed by the underlying zoning), but rather requires a planning permit to be obtained. Meanwhile, routine maintenance and repairs that do not alter the appearance of a building do not require a planning permit under the Heritage Overlay.

45.3. Social effects

a. The Amendment will produce social benefits for the municipality and the wider community by protecting for current and future generations a heritage place identified as having local heritage significance. The

conservation and enhancement of places with local heritage significance plays an important role in defining local identity, provides a link to the past and creates a sense of place by adding to the character and interest of the municipality.

46. Does the amendment address relevant bushfire risk?

46.1. Whilst it is acknowledged that many of the places proposed to be included within the Heritage Overlay are within a bushfire prone area, the Amendment is not anticipated to impact upon bushfire risk.

47. Does the amendment comply with the requirements of any Minister's Direction applicable to the amendment?

47.1. The Amendment is consistent with relevant ministerial directions as follows:

47.2. Ministerial Direction No.9 – Metropolitan Strategy

- a. The Amendment is consistent with *Plan Melbourne*.
- b. Plan Melbourne identifies a vision for the future growth of Melbourne, which is implemented through outcomes, directions and policies.
- c. Direction 4.4 recognises that heritage:
 - i. will continue to be one of competitive strengths for Melbourne;
 - ii. contributes to the city's distinctiveness and liveability; and
 - iii. is an important component of Victoria's tourism industry.
- d. Policy 4.4.1 – Recognise the value of heritage when managing growth and change – recognises that decisions must be based on an appreciation of Melbourne's past as well as planning for of its future needs. To ensure that the value of heritage, there must be "continuous identification and review of currently unprotected heritage sites" as well as "targeted assessments of heritage sites in areas identified as likely to be subject to substantial change." The *Heritage Assessment* implements this policy.
- e. Policy 4.4.3 – Stimulate economic growth through heritage conservation – provides that heritage is fundamental to Melbourne's cultural economy. It recognises that rehabilitating old buildings and places creates opportunities for investment and jobs as well as contributing to community and historical identity.
- f. Policy 4.4.4 – Protect Melbourne's heritage through telling its stories – recognises that "there is more to heritage than place". Heritage involves telling and protecting stories which shape Melbourne's development and create a sense of place and community.

47.3. Ministerial Direction No.11 – Strategic Assessment of Amendments

- a. The requirements of this direction have been followed in the preparation of this Amendment.

47.4. Ministerial Direction – The Form and Content of Planning Schemes

- a. The Amendment is consistent with the Ministerial Direction on the Form and Content of Planning Schemes.

48. How does the amendment support or implement the Planning Policy Framework and any adopted State policy?

- 48.1. Clause 15.03-1S (Heritage Conservation) provides:

Objective

To ensure the conservation of places of heritage significance.

Strategies

Identify, assess and document places of natural and cultural heritage significance as a basis for their inclusion in the planning scheme.

Provide for the protection of natural heritage sites and man-made resources.

Provide for the conservation and enhancement of those places that are of aesthetic, archaeological, architectural, cultural, scientific or social significance.

Encourage appropriate development that respects places with identified heritage values.

Retain those elements that contribute to the importance of the heritage place.

Encourage the conservation and restoration of contributory elements of a heritage place.

Ensure an appropriate setting and context for heritage places is maintained or enhanced.

Support adaptive reuse of heritage buildings where their use has become redundant.

Consider whether it is appropriate to require the restoration or reconstruction of a heritage building in a Heritage Overlay that has been unlawfully or unintentionally demolished in order to retain or interpret the cultural heritage significance of the building, streetscape or area.

- 48.2. The Amendment is consistent with the objective and strategies through:

- a. The identification, assessment and documentation of places of cultural heritage significance at the local level through the Heritage Assessment;
- b. Seeking to conserve those places of cultural heritage significance through the application of the Heritage Overlay; and
- c. Documenting the significance of the heritage places through incorporating statements of significance.

49. How does the amendment support or implement the Local Planning Policy Framework, and specifically the Municipal Strategic Statement?

- 49.1. The importance and challenges of heritage conservation are recognised in the Municipal Strategic Statement (**MSS**).

- 49.2. Clause 21.01-1 Municipal Profile recognises:

The municipality has a variety of significant natural and cultural heritage places and landscapes associated with precontact, post contact settlement and pastoral activity that is fundamental to the city's identity

49.3. Further, Clause 22.01-3 identifies 10 strategic themes as the key issues facing the municipality. Built environment and heritage is noted as one of these key issues.

49.4. In turn, Clause 21.07 set out built environment and heritage policy.

49.5. Clause 21.07-1.1 relevantly provides:

Council has a key role to play in creating vibrant, flexible, integrated and connected public spaces relevant to people's day to day lives. Good design also means that spaces, buildings and pathways are suitable for use by people with disabilities. Protecting the municipality's heritage assets contributes to an attractive environment and creates an important sense of place.

49.6. Recognising this, the Amendment is responds to and implements:

- a. Objective 1 to Clause 21.07-3.3: *To protect, conserve and enhance places of historic, aboriginal, and cultural significance.*
- b. Strategy 1.1 to Clause 21.07-3.3: *Ensure places of cultural heritage significance are protected, conserved and enhanced.*

49.7. The Amendment is also supported by the *City of Melton Council and Wellbeing Plan 2021-2025*, which commits Council to 'support the conservation and restoration of heritage places' (Strategy 2.3.4).

50. Does the amendment make proper use of the Victoria Planning Provisions?

50.1. The Amendment makes proper use of the Victorian Planning Provisions through the schedule to the Heritage Overlay at Clause 43.01.

50.2. In addition, the Amendment appropriately seeks to incorporate statements of significance proposed HO138-142. The Heritage Overlay is the most appropriate tool to 'conserve and enhance heritage places of natural or cultural significance' and to 'ensure that development does not adversely affect the significance of heritage places.'

51. How does the amendment address the views of any relevant agency?

51.1. The Amendment was publicly exhibited in November and December 2022 including by direct notice to the following agencies:

- a. VicRoads;
- b. Southern Rural Water;
- c. Melbourne Water;
- d. DELWP.

51.2. Council did not receive any correspondence from those agencies regarding the Amendment.

52. Does the Amendment address relevant requirements of the Transport Integration Act 2010?

- 52.1. The Amendment does not seek to apply the Heritage Overlay to the existing or proposed road or rail network. On this basis Council submits that the Amendment will not impact the transport system.

53. Resource and administrative costs

- 53.1. The Amendment will increase the number of sites subject to the provisions of the Heritage Overlay, therefore potentially resulting in more planning applications and in turn additional officer resources being taken in assessing those applications.
- 53.2. Noting the limited number of additional places proposed to be included in the Heritage Overlay, the anticipated increase in planning applications is not expected to have a significant impact on resourcing and administrative costs.

54. Does the Amendment comply with PPN1?

- 54.1. PPN1 provides that the Heritage Overlay should be applied to places identified in a local heritage study, provided that the significance of the place can be shown to justify the application of the overlay.
- 54.2. Council submits that the *Heritage Assessment* appropriately assessed the various heritage places against the established criteria set out in PPN1²¹, and that the 5 proposed heritage places are of local significance warranting the application of the Heritage Overlay.

ISSUES RAISED IN SUBMISSIONS

55. Two submissions were received in response to the exhibition of the Amendment.
56. Attachment 1 to this submission is a table summarising the issues raised in submissions and providing a response to each issue. This table was considered at the Council meeting held 24 April 2023.
57. Council will expand upon on its position on the issues raised in submissions in the Part B submission.

CHANGES PROPOSED TO THE AMENDMENT

58. Council suggests three sets of changes to the Amendment.
59. Firstly, Mr Mornement’s expert witness statement expresses support for:
- 59.1. The amended version of the Heritage Design Guidelines and permit exemptions proposed by Council; subject to two additional refinements.²²
- 59.2. Updating the citation for HO141 as set out at paragraph 74 of his statement.
- 59.3. Amending ‘the mapping for HO139, to exclude land that does not contribute to the cultural heritage values of the Army Housing Estate.’²³
- 59.4. Not imposing external paint controls in respect of HO139.²⁴

²¹ See Heritage Assessment, p. 11-12.

²² Page 20, 29

²³ Page 29.

²⁴ Page 29

- 59.5. Allowing planning permits to be issued for otherwise prohibited uses.²⁵
60. Council respectfully requests the Panel recommend the Amendment is approved subject to:
- 60.1. Updating the citation for HO141 as set out at paragraph 74 of Mr Mornement's witness statement.
- 60.2. The revisions to the Heritage Design Guidelines and permit exemptions included at Appendix A to Mr Mornement's statement. These changes were prepared on behalf of Council to improve the clarity of the document.
61. Council takes a neutral position at this time regarding:
- 61.1. The further changes to the Diggers Rest Army Housing Estate Heritage Design Guidelines and Permit exemptions recommended at paragraph 58 of Mr Mornement's witness statement.
- 61.2. Amending 'the mapping for HO139, to exclude land that does not contribute to the cultural heritage values of the Army Housing Estate.'
- 61.3. Not imposing external paint controls in respect of HO139.
62. Secondly, Council agrees with the submission from Prime Equity Group that an addressing error has occurred and that references to 117 Diggers Rest-Coimadai Road should be updated. However, Council considers the property address should be 19-115 Diggers Rest-Coimadai Road not 107-207 Plumpton Road, Diggers Rest as was requested by the submission. Council observes that 19-115 Diggers Rest-Coimadai Road is the address used in Councils Intramaps and rate databases, while the property appears in VicPlan under both addresses.
63. Council respectfully requests the Panel recommend the Amendment is approved subject to replacing all references in the Amendment documentation to 117 Diggers Rest-Coimadai Road, Diggers Rest, with 19-115 Diggers Rest-Coimadai Road.
64. Thirdly, Council proposes to update the Amendment to allow prohibited uses to be permitted in respect of proposed:
- 64.1. HO139 – Diggers Rest Army Housing Estate at Unit 1-6, Unit 8-18, 117 Diggers Rest-Coimadai Road, Diggers Rest;
- 64.2. HO141 – Soldier Settlement Housing at 115-131 Napier Street, 480-580, 726-738, 740-794 & 796-830 Mt Aitken Road, Diggers Rest;
- 64.3. HO142 – Hillview house at 332 Benson Road, Toolern Vale.
65. The effect of this change would be to allow a planning permit to be granted for uses that would otherwise be prohibited under the underlying controls, whether because they are listed as section 3 uses or because the relevant section 2 conditions cannot be met.
66. This mechanism is established by Clause 43.01-9 which provides:

Use of a heritage place

A permit may be granted to use a heritage place (including a heritage place which is included in the Victorian Heritage Register) for a use which would otherwise be prohibited if all of the following apply:

²⁵ Page 29, 30.

The schedule to this overlay specifies the heritage place as one where prohibited uses may be permitted.

The use will not adversely affect the significance of the heritage place.

The benefits obtained from the use can be demonstrably applied towards the conservation of the heritage place.

Decision guidelines

Before deciding on an application, in addition to the decision guidelines in Clause 65, the responsible authority must consider the effect of the use on the amenity of the area.

67. The allowance of prohibited uses arises from discussions between the two submitters and Council. While Council does not agree that the various issues raised in submission mean proposed HO139 and HO141 are not of local significance, Council acknowledges the comments of submissions regarding the nature of the underlying Green Wedge (or in the case of HO142, Rural Conservation) zoning.
68. It is submitted the proposed application of this clause to the three overlays is consistent with the established usage of the provision in the municipality, noting prohibited uses are currently permitted in respect of the numerous (primarily residential and/or agricultural) places of local significance²⁶ covered by the Heritage Overlay under the Melton Planning Scheme.
69. It is further submitted that the permittance of prohibited uses to these 3 discrete overlays, is consistent with the concern expressed in PPN1. That practice note relevantly provides:
- It is possible to make a prohibited use permissible at a specific place by including a 'yes' in the Prohibited uses may be permitted? column.*
- This provision should not be applied to significant areas because it might result in the de facto rezoning of a large area. The provision should only be applied to specific places. For example, the provision might be used for a redundant church, warehouse or other large building complex where it is considered that the normally available range of permissible uses is insufficient to provide for the future conservation of the building...*
70. In Council's view, the limited curtilage of the proposed overlays, combined with the design guidelines and permit exemptions for HO139 – Diggers Rest Army Housing Estate, will avoid the provision functioning as a de facto rezoning.
71. Council understands the permittance of prohibited uses is not disputed by the parties to this proceeding, however at the time of writing Council is currently seeking the views of the owners of HO141 (to the extent those properties are not owned by G Adams), and HO142.
72. Regarding the third change, Council respectfully request the Panel recommend:
- 72.1. The Amendment is approved subject to allowing prohibited uses in respect of:
- a. HO139;
 - b. That part of HO141 controlled by G Adams (being 740-794 and 796-830 Mount Aitken Road).
- 72.2. The Amendment is approved subject to allowing prohibited uses in respect of:

²⁶ Being places not identified by the Schedule to the Heritage Overlay as being included on the Victorian Heritage Register under the *Heritage Act 2017*.

- a. That part of HO141 not controlled by G Adams (being 115-131 Napier Street, 480-580, 726-738, Mount Aitken Road, Diggers Rest);
- b. HO142,

subject to Council receiving written confirmation from those landowners that they do not oppose this change.

RESOLUTION OF SUBMISSION OF PRIME EQUITY

- 73. Further to discussions between the Council and the Prime Equity submitter, it is understood that a position of consensus has been reached on the following basis:
 - 73.1. The submitter does not oppose the imposition of the Heritage Overlay to the extent exhibited provided that:
 - a. Prohibited uses are permitted as proposed by the Council;
 - b. The revised wording of the Diggers Rest Army Housing Estate Heritage Design Guidelines and Permit exemptions proposed by Council are included.
- 74. It is understood that Prime Equity will remain part of the Panel to the extent necessary to answer any questions posed by the Panel in clarification.

CONCLUSION

- 75. The Amendment represents the end point of a progressive heritage assessment process commenced in 2007, that is reflected in several separate strategic projects and local policy at clause 21.07.
- 76. The *Heritage Assessment* documents the considered assessment of the 5 heritage places against the established significance criteria, concluding that the places are of local significance warranting the application of the Heritage Overlay. This view is shared by Mr Mornement.
- 77. Council's core submission that the Amendment appropriately proposes to apply the heritage overlay to the 5 places will be furthered in its Part B submission after the receipt and consideration of the evidence of submitter parties.

29 May 2023

GREG TOBIN & AARON SHRIMPTON
HARWOOD ANDREWS
on behalf of
MELTON CITY COUNCIL