

Planning Panels Victoria

36 Kooyongkoot Road Advisory Committee

Advisory Committee Report

Planning and Environment Act 1987

15 June 2023

Planning Panels Victoria acknowledges the Wurundjeri Woi Wurrung People as the traditional custodians of the land on which our office is located. We pay our respects to their Elders past and present.

Planning and Environment Act 1987

Advisory Committee Report pursuant to section 25 of the PE Act

36 Kooyongkoot Road Advisory Committee

15 June 2023



Sarah Raso, Chair



Jessica Tulloch, Member

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Glossary and abbreviations

Council	Boroondara City Council
Gap Study	City of Boroondara Municipal Wide Heritage Gap Study: Volume 3 Hawthorn, prepared by Trethowan Architects in association with Context Pty Ltd
Guidelines	The Victorian Heritage Register Criteria and Threshold Guidelines, Heritage Council of Victoria, 1 December 2022
interim Heritage Overlay	Heritage Overlay, Schedule HO790, Dalsworth, 36 Kooyongkoot Road, Hawthorn
Minister	Minister for Planning
PE Act	<i>Planning and Environment Act 1987</i>
PPN01	Planning Practice Note 1 (Applying the Heritage Overlay), August 2018
subject land	36 Kooyongkoot Road, Hawthorn
VCAT	Victorian Civil and Administrative Tribunal

Overview

Summary

Name	36 Kooyongkoot Road Advisory Committee
Purpose	To advise the Minister for Planning on whether 36 Kooyongkoot Road, Hawthorn should be included in the Heritage Overlay
Subject land	36 Kooyongkoot Road, Hawthorn
Planning Authority	Boroondara City Council
Authorisation	30 October 2018
Exhibition	Amendment C284boro was exhibited from 7 February to 12 March 2019
Submissions	<ul style="list-style-type: none"> - Susan Lachal - Mark Kerr - Rod Warren

Advisory Committee process

The Committee	<p>Original appointment (14 September 2022): Sarah Raso (Chair), Elizabeth McIntosh</p> <p>Reconstituted Committee (19 October 2022): Sarah Raso (Chair), Elizabeth McIntosh, and Jessica Tulloch</p>
Supported by	Chris Brennan
Directions Hearing	Video conference, 13 October 2022
Committee Hearing	Hearing Room 1, 1 Spring Street, Melbourne, 8 and 9 May 2023
Site inspections	Accompanied, 8 May 2023
Parties to the Hearing	<p>Boroondara City Council represented by John Rantino of Maddocks calling heritage evidence from Mark Stephenson of Trethowan Architecture</p> <p>Susan Lachal represented by Peter O'Farrell of Counsel instructed by Norton Rose Fulbright calling heritage evidence from:</p> <ul style="list-style-type: none"> - Anita Brady of Anita Brady Heritage - Jim Gard'ner of GJM Heritage - Peter Lovell of Lovell Chen
Date of this report	15 June 2023

Executive summary

The purpose of the 36 Kooyongkoot Road Advisory Committee is to advise the Minister for Planning on whether 36 Kooyongkoot Road, Hawthorn should be included in the Schedule to the Heritage Overlay.

36 Kooyongkoot Road, Hawthorn is currently subject to an interim Heritage Overlay – Schedule HO790 – Dalsworth, 36 Kooyongkoot Road, Hawthorn. This will expire on 1 December 2023.

The interim Statement of Significance for 36 Kooyongkoot Road, Hawthorn is incorporated at Clause 72.04 of the Boroondara Planning Scheme. It states that the property is architecturally, aesthetically and associatively significant to Boroondara pursuant to Criterion D, E and H at the local level.

The owner of the subject land, and Boroondara City Council were represented at the Committee Hearing, and both filed expert evidence and written submissions.

The key issues raised by the landowner included:

- the dwelling has been significantly altered externally and internally over time which has significantly eroded its heritage value
- the dwelling cannot be described as intact
- while the dwelling is legible as a house designed in the Old English revival style, it is an altered example and not one that can satisfy Criterion D
- noting the relative intactness of the comparative examples of the style identified in the draft citation, the dwelling presents as an altered and lesser example and not one which achieves the threshold of individual significance (Criterion E)
- the house is of some interest historically for its associations with architect John F. D. Scarborough and builders ARP Crow & Sons, however, the ‘special’ association with the life or works of the architect and the builder is not established
- these associations are of historical interest but not of such significance that the house would warrant individual significance (Criterion H).

The Committee accepts that it is appropriate, and a requirement that councils “*identify and assess and document*” places of heritage significance. It also accepts the Heritage Overlay is the correct tool to protect places identified as meeting the requisite threshold of significance. Whether the land at 36 Kooyongkoot Road, Hawthorn meets that threshold is the key question.

The Committee concludes 36 Kooyongkoot Road, Hawthorn does not meet the threshold for heritage significance (having regard to Criterion D, E and H) and should not be included in the Schedule to the Heritage Overlay.

The extent of works that the subject land has undergone are significant, even more so when considered cumulatively. The Committee considers the alterations, particularly those to the front façade, result in a dwelling which is no longer intact in terms of its heritage significance. While the dwelling largely reads as a house from the Old English revival style, the symmetrical construction and the significant alterations detract from one’s ability to understand the pivotal characteristics of the style and the overall integrity of the dwelling is diminished. The dwelling has undergone significant alteration to key stylistically defining elements and does not satisfy Criterion D such that an individual heritage listing is warranted.

The dwelling is an example of an Old English revival style residence utilising features typical of the style such as half-timbering, a steeply pitched tile roof, tall slender chimneys with decorative details and clinker bricks. However, it is a broadly symmetrical design, both in its elevation and floor plan, which differs from examples of the Old English revival style in the municipality. Its symmetry is dominant, and not typical of the asymmetrical composition the style and period are known for, and consequently does not meet the threshold for aesthetic significance.

Finally, the dwelling on the subject land does not meet the threshold for Criterion H. The association asserted with either John Scarborough (the architect) or ARP Crow & Sons (the builder) and the subject land is not special, and an enduring connection to Boroondara has not been demonstrated.

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

- 1. 36 Kooyongkoot Road, Hawthorn should not be included in the Heritage Overlay.**

1 Introduction

1.1 The Committee

The Minister for Planning (Minister) appointed the 36 Kooyongkoot Road Advisory Committee (Committee) on 14 September 2022 pursuant to section 151 of the *Planning and Environment Act 1987* (PE Act) comprising:

- Sarah Raso (Chair)
- Elizabeth McIntosh.

The Committee was reconstituted on 19 October 2022 to include Jessica Tulloch.

For personal reasons Elizabeth McIntosh decided to take no further part in the matter after the Directions Hearing. Sarah Raso (Chair) and Jessica Tulloch formed the Committee for the purposes of the Committee Hearing and are the authors of this report.

The Committee was assisted by Chris Brennan, Senior Project Officer, Planning Panels Victoria.

1.2 The Committee's role

The Minister signed Terms of Reference (Document i and Appendix A) for the Committee on 14 September 2022. The Terms of Reference set out the scope of the Committee's role and how it is to undertake its task.

The purpose of the Committee as set out in Clause 2 of the Terms of Reference is:

...to advise the Minister for Planning on whether 36 Kooyongkoot Road, Hawthorn (the property) should be included in the HO.

1.3 The subject land

The subject land is 36 Kooyongkoot Road, Hawthorn (as shown in Figure 1). It is an 'L' shaped site measuring approximately 1,850m² in area on the western side of Kooyongkoot Road.

Figure 1 Aerial photo of subject land



1.4 Background

Amendment C284boro, which sought to implement the City of Boroondara Municipal Wide Heritage Gap Study: Volume 3 Hawthorn (Gap Study), was exhibited from 7 February to 12 March 2019.

Three submissions were received relating to the subject land, one opposing and two supporting the application of the Heritage Overlay.

In response to submissions received, Boroondara City Council's (Council) Urban Planning Delegated Committee resolved to (amongst other things):

- endorse the officers' response to submissions and recommend changes to Amendment C284boro and the Hawthorn Heritage Gap Study
- refer the Amendment and unresolved submissions to a Planning Panel in accordance with Section 23(1) of the PE Act.

A Panel Hearing was held on 14, 15, 19 and 21 August 2019, and the Panel released its Report to Council on 4 October 2020. The report was publicly released on 31 October 2020.

Following an appeal to the Victorian Civil and Administrative Tribunal (VCAT) pursuant to section 39 of the PE Act relating to the Panel's findings concerning the subject land, Council's Urban Planning Delegated Committee resolved to split Amendment C284boro into two parts, and to defer consideration of the subject land until any actions arising from the VCAT proceedings concluded.

Amendment C284boroPt1 (excluding the subject land) was approved and gazetted on 12 March 2021.

Amendment C284boroPt2 seeks to apply the Heritage Overlay on a permanent basis to the subject land.

Amendment C284boroPt2 remains current. Four extension requests have been sought, and granted, to allow more time for Council to adopt the Amendment before it lapses under section 30(1)(a)(ii) of the PE Act. The most recent extension extends the lapsing date of the Amendment to 25 January 2024.

An interim Heritage Overlay (HO790, Dalsworth, 36 Kooyongkoot Road, Hawthorn) (interim Heritage Overlay) currently applies to the subject land. The interim Heritage Overlay will expire on 1 December 2023.

Council provided a detailed background in its Part A submission, including a chronology of events which the Committee has summarised in Table 1.

Table 1 Chronology of events

Date	Event
Heritage assessment and preliminary consultation	
25 July 2016	Council engaged heritage consultants, Context Pty Ltd, to commence the Municipal Wide Heritage Gap Study. The Gap Study, the subject of Amendment C284boro, was the third suburb assessment undertaken as part of the Municipal Wide Heritage Gap Study. The assessment undertaken by Trethowan Heritage Consultants (working as a sub-consultant) determined the subject land to be of

	individual heritage significance, meeting the threshold for local significance for Criterion D, E and H.
9 October to 3 November 2017	Preliminary public consultation on the draft heritage citation for the subject land contained within the Gap Study was undertaken. In response to the preliminary consultation, Council received feedback from 87 parties, including 37 opposing submissions and 26 supporting submissions and 24 partially supporting submissions.
January 2018	The owners of the subject land provided feedback during the preliminary consultation period that they did not support the inclusion of the property in the Heritage Overlay. They provided a heritage report from Lovell Chen to support their position.
Amendment C284boro	
19 March 2018	Council's Urban Planning Delegated Committee resolved to write to the Minister for Planning (Minister) to request authorisation to prepare Amendment C284boro in accordance with Section 4B and 8A(4) of the PE Act 1987 to include properties identified in the Hawthorn Heritage Gap Study in the Heritage Overlay
5 April 2018	Council wrote to the Minister and sought authorisation to prepare and exhibit Amendment C284boro.
30 October 2018	Conditional Authorisation of Amendment C284boro.
7 February to 12 March 2019	Exhibition of Amendment C284boro. 59 submissions were received during exhibition, including nine supporting submissions, 19 partially supporting submissions, 30 opposing and one submission opposing which was later withdrawn. In addition, two late opposing submissions were received at the end of May 2019. Three submissions were received in relation to the subject land, two supporting the inclusion of the subject land in the Heritage Overlay and one objecting.
17 June 2019	Council's Urban Planning Delegated Committee resolved to: <ul style="list-style-type: none"> - remove the subject land as an individually significant place based on the advice of Council's heritage consultant - refer Amendment C284boro and unresolved submissions to a Planning Panel in accordance with Section 23(1) of the PE Act.
28 June 2019	A Planning Panel was appointed by the Minister for Planning to consider Amendment C284boro
18 July 2019	Directions Hearing
14, 15, 19 and 21 August 2019	Panel Hearing
3 October 2019	Panel Report provided to Council
31 October 2019	Panel report released to the public
14 July 2020	Council received the initiating order for VCAT Proceeding P1033/2020 (the Section 39 appeal)
21 August 2020	VCAT Practice Day Hearing

18 March 2021	Minutes of Consent in VCAT Proceeding P1033/2020 were signed. Withdrawal Orders were made on 23 March 2023
3 August 2021	Council's Urban Planning Delegated Committee resolved to: <ul style="list-style-type: none"> - split Amendment C284boro into two parts - defer consideration of Amendment C284boroPt2boro until VCAT Proceeding P1033/2020 concluded.
Interim Heritage Overlay	
9 May 2019	Interim Heritage Overlay introduced by Amendment C285boro, to the subject land (and others) until 31 March 2020
12 March 2020	Interim Heritage Overlay extended until 12 March 2021
12 March 2021	Interim Heritage Overlay extended until 11 March 2022
11 March 2022	Interim Heritage Overlay extended until 11 March 2023
9 March 2023	Interim Heritage Overlay extended until 1 December 2023
36 Kooyongkoot Road Advisory Committee	
14 September 2022	In accordance with the terms of the Minutes of Consent, the Minister appointed a Ministerial Advisory Committee and released its Terms of Reference.
27 September 2022	Council, the landowner of the subject land and the two submitters who filed submissions in relation to the subject land for Amendment C284boro, were notified in relation to the Amendment and asked to indicate whether they wish to be heard at the Committee Hearing. Council and the landowner indicated they wished to be heard at the Committee Hearing.
13 October 2022	Directions Hearing
8 and 9 May 2023	Committee Hearing and accompanied site inspection

1.5 Expert evidence

The Committee had the benefit of expert heritage evidence from four experts as shown in Table 2.

Table 2 Summary of heritage experts

Party	Expert	Firm
Council	Mark Stephenson	Trethowan Architecture
Susan Lachal (landowner)	Anita Brady	Anita Brady Heritage
	Jim Gard'ner	GJM Heritage
	Peter Lovell	Lovell Chen

1.6 The Committee's approach

Pursuant to its Terms of Reference, the purpose of this Committee is to advise the Minister on whether the subject land should be included in the Heritage Overlay. Clause 11 of the Terms of Reference sets out that the Committee must not consider the Panel Report for Amendment C284boro.

Apart from the exclusion in Clause 11, Clause 12 of the Terms of Reference required the Committee to inform itself in anyway it sees fit, and must consider:

- a) Relevant provisions of the Act and Boroondara Planning Scheme, including any adopted plans, strategies or planning scheme amendments (excluding Amendment C284).
- b) *Plan Melbourne 2017-2050* and any other policy document that the Advisory Committee considers relevant.
- c) All relevant material provided or for the applicant or otherwise provided to the Advisory Committee.
- d) All relevant materials prepared by or for Boroondara City Council or otherwise provided to the Advisory Committee.
- e) All submissions and objections received by the Advisory Committee.

The Committee directed the parties to agree on a list of documents to be provided to the Committee and this was provided on 28 November 2022 (Documents 1 to 16).

Clause 19 required the Committee to provide the following parties with a reasonable opportunity to be heard:

- a) Landowner/s (or nominated representative) of the property and other residents as noted in Clause 5
- b) Boroondara City Council.

Clause 5 noted that three submissions were received by Council in relation to 36 Kooyongkoot Road, Hawthorn: one from the landowner and two submissions from other residents. Only the landowner and Council elected to be heard at the Committee Hearing.

The owner of the subject land, and Council were represented at the Committee Hearing and both filed expert evidence and written submissions.

Key issues raised by the landowner were:

- the dwelling has been significantly altered externally and internally over time which has significantly eroded its heritage value
- the dwelling cannot be described as intact
- while the dwelling is legible as a house designed in the Old English revival style, it is an altered example and not one that can satisfy Criterion D
- noting the relative intactness of the comparative examples of the style identified in the draft citation, the dwelling presents as an altered and lesser example and not one which achieves the threshold of individual significance (Criterion E)
- the house is of some interest historically for its associations with architect John F. D. Scarborough and builders ARP Crow & Sons, however, the 'special' association with the life or works of the architect and the builder was not established
- these associations are of historical interest but not of such significance that the house would warrant individual significance (Criterion H).

The Committee has also had regard to the submissions of two landowners who filed submissions with Council to Amendment C284boro in relation to the subject land. Both these submissions supported the application of the Heritage Overlay to the subject land.

Key issues raised by the two neighbouring landowners were:

- the subject land contains a significant house worthy of protection

- the house is impressive and significant, as it was built by ARP Crow & Sons, builders of other significant properties, including the Footscray Town Hall and the Rosella Factory in Richmond
- the house was designed by architect Mr John Scarborough who designed the Baillieu Library at Melbourne University and the Littlejohn Memorial Chapel at Scotch College, amongst many other famous buildings including churches and public buildings
- Council's ability to control the future demolition of the house or subdivision of the land.

Clause 16 of the Terms of Reference required the Committee to produce a written report for the Minister which provides:

- a) Advice as to whether the HO should be applied to the property.
- b) The consideration of:
 - i. relevant State and local policy
 - ii. any expert advice provided to the Advisory Committee
 - iii. initial written submissions made in the panel hearing for Amendment C284boro regarding the property.
- c) An assessment of submissions made to the Advisory Committee.
- d) Any other relevant matters raised in the course of the Advisory Committee hearing.
- e) A list of persons who made submissions considered by the Advisory Committee.
- f) A list of persons consulted of heard.

Under its Terms of Reference, the Committee has considered all written submissions made in relation to the subject land in response to Amendment C284boro, observations from its site visit, and submissions, evidence and other material presented to it during the Committee Hearing in relation to the Amendment.

This Report deals with the issues under the following headings:

- Planning context
- Threshold issues
- Heritage significance.

2 Planning context

Council submitted Amendment C284boro is consistent with State and Local policy as set out in the exhibited Explanatory Report. The relevant provisions are outlined in Table 3, and Appendix C highlights key imperatives of relevant provisions and policies.

Table 3 Planning context

	Relevant references
Victorian planning objectives	- section 4(1)(d) of the PE Act
Municipal Planning Strategy	- Clause 2
Planning Policy Framework	- Clauses 15.01-5S (Neighbourhood character), 15.01-5L (Neighbourhood character - Boroondara), 15.03 (Heritage), 15.03-1S (Heritage conservation), 15.03-1L (Heritage in Boroondara)
Other planning strategies and policies	- Plan Melbourne Outcome 4, Direction 4.4, Policies 4.4.1 and 4.4.4 - Boroondara Community Plan 2021-31
Planning scheme provisions	- Heritage Overlay
Ministerial directions	- Ministerial Direction 1 (Form and Content of Planning Schemes) - Ministerial Direction 9 (Metropolitan Planning Strategy) - Ministerial Direction 11 (Strategic Assessment of Planning Scheme Amendments) - Ministerial Direction 15 (Planning Scheme Amendment Process)
Planning practice notes	- Planning Practice Note 1 (Applying the Heritage Overlay), August 2018

The PE Act and the Planning Policy Framework, including Plan Melbourne 2017-2050, seek to protect places which have sufficient heritage significance. Section 4 of the PE Act, which seeks to conserve and enhance places of historical interest, is implemented throughout the Planning Policy Framework, including Clause 15.03. In this instance, local significance to Boroondara. Planning Practice Note 1 (Applying the Heritage Overlay), August 2018 (PPN01) provides broad level guidance, from assessing potential heritage places through to applying the Heritage Overlay to the justified properties.

The Committee accepts that it is appropriate, and a requirement that councils “*identify and assess and document*” places of heritage significance. It also accepts that the Heritage Overlay is the correct tool to protect places identified as meeting the requisite threshold of significance. Whether the land at 36 Kooyongkoot Road, Hawthorn meets that threshold is the key question. This is addressed in the following chapters of the Report.

3 Threshold issues

3.1 Comparative analysis

(i) The issue

The issue is whether it is appropriate for comparative analysis to include properties from a different era or style, or to include properties which have been assessed against different heritage criterion.

(ii) Background

The Gap Study provided the following methodology for determining if a place meets the local threshold for heritage significance:

When the place or precinct under assessment was considered to be of equal or better quality than the 'benchmarks' it was judged to meet the threshold of local significance and considered worthy of inclusion in the Boroondara Heritage Overlay.

(iii) Evidence and submissions

Council, noting that comparative analysis is subject to "*judgement and opinion*" said:

Council acknowledges and accepts that undertaking a comparative analysis is an important aspect in determining whether a place meets the requisite threshold for local significance and to acknowledge that one's choice of heritage places against which to make the comparison is an important part of that exercise.¹

Ms Brady explained that comparative analysis "*should establish how a particular place compares with other similar or related examples of the place. The analysis typically seeks to establish whether the place is a lesser, equivalent, or more important example or comparison*".²

Mr Lovell undertook a comparative analysis against other buildings in the Old English revival style. He concluded:

The conclusion which can be drawn from consideration of the above properties is that 36 Kooyongkoot Road is a representative example of the use of the Old English style in domestic architecture in Boroondara, but not one which stands out as an exemplar nor one which is intact.³

Mr Gard'ner agreed with Mr Lovell's assessment. He said:

While I consider the level of comparative analysis undertaken as part of the Gap Study to be consistent with the intent of PPN01, Mr Lovell's more detailed analysis provides a larger array of comparable examples of English Domestic Revival architecture within the City of Boroondara.⁴

Mr Stephenson took a different approach to a comparative assessment of intactness and included comparisons with altered houses from other 20th Century styles in Boroondara (in addition to examples of Old English revival style homes). His assessment made a comparison of the subject land with 2 Snowden Place, Canterbury (HO629). He said:

¹ Document 24.

² Document 23.

³ Document 21.

⁴ Document 22.

... despite alterations to the front windows, overpainting of the upper level, infill of the porch and an addition above the front garage, the original design remains recognisable. By comparison, the subject site has undergone less alteration compared to 2 Snowden Place, with no additions or alterations to its symmetrical massing as seen on the principal facades visible to the public realm.⁵

Mr Stephenson referred to the Panel Report for Amendment C266 to the Boroondara Planning Scheme which considered whether the Heritage Overlay should apply to 2 Snowden Place. He said:

The house at 2 Snowden Place (Figure 3) is a post-war Modern house by a notable architect, Charles Hollinshed. Despite the removal of some of the upper-level windows and the addition of a prominent upper-level addition to the front elevation of the house above the garage, the Panel determined that 'the house still represents Hollinshed's design concept' and was thus 'sufficiently intact to justify the Heritage Overlay'.⁶

Mr Stephenson did not make any specific comparison of the subject land with the other three 20th Century examples in his witness statement.

(iv) Discussion

In his assessment, Mr Stephenson placed significant emphasis on the Panel Report for Amendment C266 to the Boroondara Planning Scheme for 2 Snowden Place. He used this comparison to give weight to the notion that despite the alterations to the subject land, the initial 'design concept' by Scarborough is sufficiently intact.

Mr Stephenson in response to questions put on behalf of the landowner agreed that 2 Snowden place was a Modernist house designed by an architect, for that architect to live in.

The Committee finds the comparison against 2 Snowden Place tenuous. The Committee agrees with the landowner that the comparison is an "*entirely different set of circumstances*".

PPN01 requires comparative analysis to be undertaken as part of the assessment of potential heritage places:

To apply a threshold, some comparative analysis will be required to substantiate the significance of each place. The comparative analysis should draw on other similar places within the study area, including those previously included in a heritage register or overlay.⁷

The Committee is not satisfied the comparison against 2 Snowden Place meets the requirements of PPN01. There are few, if any, similarities between the two places to enable any meaningful comparison.

In the first instance, the two properties are not comparable based on the different architectural style and era of construction.

Second, 2 Snowden Place was designed by Charles Hollinshed as his residence. Hollinshed lived at the property for two decades. Not only does that satisfy Criterion H, the Statement of Significance highlights that it also meets the threshold for Criterion A:

2 Snowden Place (1951) is of historical significance as it is representative of an established pattern of architects designing homes for themselves in the City of Boroondara. This pattern continues today with John Wardle's own house on Kevin Grove in Kew (Criterion A).

⁵ Document 20.

⁶ Ibid.

⁷ Planning Practice Note 1 (Applying the Heritage Overlay), August 2018, page 2.

This is a vastly different proposition to what is before the Committee:

- a home designed by an (albeit notable) architect for someone else to reside in
- a home constructed by a (albeit notable) builder, for a less prominent member of that family business to reside in.

No party suggested that the subject land meets Criterion A.

On this basis, the Committee has given little weight to the comparative analysis against 2 Snowden Place.

(v) Conclusion

The Committee concludes:

- Comparative analysis should draw on places in the same era and style of construction.
- Comparative analysis should draw on places assessed against the same relevant criterion(s).

3.2 Recognisability

(i) The issue

The issue is whether recognisability is an appropriate consideration in assessing the heritage significance of a place (in this case for the purposes of Criterion D and E).

(ii) Evidence and submissions

Mr Stephenson referenced the Boroondara C177boro Panel Report which noted:

*As the recent Yarra C173 Part 2 Panel noted, "A precinct should be able to show a consistency or built form which can be discerned on the ground and able to be precisely described in a statement of significance". That Panel also addressed the intactness precincts, questioning the inclusion in a precinct where the precinct is difficult to recognise on the ground due to the low proportion buildings that contribute to historic or architectural significance.*⁸

Mr Stephenson acknowledged that his review of several Panel reports identified *"most discussions of intactness revolve around the assessment of precincts rather than of individual houses"*.

However, he went on to conclude:

*... 'recognisability' is an important measure of the integrity of a place and on deliberation of this matter, I do not believe the alterations have removed the ability to recognise the Old English Revival style or the fact it was designed by Scarborough.*⁹

In response to a question from the landowner, Mr Stephenson disagreed that the term 'recognisability' was more appropriate for the consideration of heritage precincts, not individual places.

The landowner asked whether an individually listed place needed to meet a higher threshold than recognisability. Mr Stephenson was of the view that a heritage place should have the *"hallmarks of the style to be considered of that style"*.¹⁰

⁸ Document20.

⁹ Ibid.

¹⁰ Ibid.

Mr Gard'ner used the term 'recognisable' on one occasion in his witness statement when discussing whether the subject land was intact or not:

...the alterations mean that the subject site cannot be considered an 'intact example' and the prominent gable-ended balcony has been so altered as to no longer be readily **recognisable** to its original design or earlier detailing.¹¹ (Committee emphasis)

During his oral evidence, Mr Gard'ner said that legibility differs from recognisability. He was of the view that whether a contributory property is recognisable in a precinct is a different test to the one before the Committee.

When questioned about the use of the term 'recognisable', Mr Gard'ner said that he preferred the term 'legible' but accepted that 'recognisable' could also be used. Ms Brady said she preferred the term 'legible' because it is a defined term.

(iii) Discussion

The Committee notes the discussion about the recognisability of properties in the Yarra C173(Part 2) Panel report relates more to whether a streetscape is recognisable, or whether a building is recognisable enough to be listed as contributory within a precinct.

For example, the Yarra C173(Part 2) Panel said:

The house is still very recognisable as a simple gable fronted weatherboard house from the nineteenth century.

For these reasons the Panel believes that the property has been appropriately designated as contributory and as a consequence the boundaries of the Lincoln Street precinct are appropriate.

and:

The subject property is a representative 19th century cottage in a street recognisably consistent with the values for which the precinct has significance.

The term 'integrity' is defined in The Victorian Heritage Register Criteria and Threshold Guidelines, Heritage Council of Victoria, 1 December 2022 (Guidelines) as:

Integrity: Refers to the degree to which the heritage values of the place or object are **legible** and able to be understood and appreciated. For example, does it include all the elements necessary to express its significance? If considerable change to the intactness of a place or object has occurred (through changes to the fabric or setting, physical deterioration etc) the significant values may not be readily identifiable and the place or object may have low-level integrity. It should be noted that non-original fabric can contribute to the integrity of a place/object.¹² (Committee emphasis)

The term 'recognisable' is not used in the Guidelines or PPN01.

The Committee considers use of the term 'recognisable' suggests a lower threshold to be met than 'legible'. The threshold for considering the heritage significance of an individual place ought to be much higher than whether a house is contributory within a precinct or streetscape. An individual place should be more than 'recognisable', it should demonstrate that it has retained a high degree of its significant values so it is *'legible, and able to be understood and appreciated'*, as per the definition of 'integrity'.

¹¹ Document 22.

¹² The Victorian Heritage Register Criteria and Threshold Guidelines, Heritage Council of Victoria, 1 December 2022, page 6.

The Committee finds that 'legible' is the more appropriate test for an individual property, particularly as it is used in the Guidelines.

(iv) Conclusion

The Committee concludes:

- Recognisability is not an appropriate consideration in assessing the heritage significance of an individual place.
- The term 'legible' is the appropriate test for assessing the heritage significance of an individual property.

3.3 Reversibility

(i) The issue

The issue is whether reversibility is a relevant consideration in assessing the integrity, comparability and heritage significance of a place (in this case for the purposes of Criterion D and E).

(ii) Evidence and submissions

Council submitted the question of reversibility is not whether there are fundamental differences between the experts as to whether the alterations made to the front of the dwelling (central porch, dormer windows, garden, overpainting) are reversible. Rather, Council submitted the reversibility of alterations is squarely a factor in assessing the integrity, comparability and heritage significance of a place, even acknowledging that neither the planning authority nor the responsible authority can compel a landowner to reverse alterations of the past.

Mr Stephenson said the reversibility of alterations is a valid consideration when determining whether an altered place meets the threshold of significance or not.

Ms Brady said reversibility of alterations is not a factor in assessing the integrity of a place. She said:

At present, the dwelling has a significantly modified frontage. While changes can sometimes easily be reversed – such as removing paint from an originally unpainted surface – the assessment of heritage significance should be based on the building in its current form and appearance. Many 'old' buildings are not considered to be of sufficient heritage value to justify a heritage control because of changes which have occurred and the consequent impact on intactness. It is an important heritage assessment consideration, and it does not rely on possible future reversal of changes.¹³

The landowner agreed with this approach and submitted that an assessment of potential heritage places must be based on the place at the time of that assessment. It submitted that in undertaking an assessment, one can consider the extent of changes and their reversibility, but fundamentally it is the current form and appearance of the building that forms the basis for an assessment. It submitted:

Planning Panels have on numerous occasions recommended that places not be subject to a heritage overlay, based on the extent of change present at the time of assessment. Such considerations go directly to the intactness and integrity of a place, inter alia. The current form and appearance of the place is always the basis of such an assessment.

¹³ Document 23.

Any consideration of reversibility must be legitimate. In other words, it must be plausible and sensible that someone would seriously consider reversing what is now a home with entirely different styling and function – that is not the case in this instance. It must also be considered within the context of the current form and appearance of the place, and its significance or lack thereof.¹⁴

(iii) Discussion

The Committee prefers the evidence of Ms Brady and agrees the assessment of heritage significance should be based on the building in its current form and appearance. Changes to a building go directly to the question of integrity and intactness and the current form and appearance of a place should be the basis of a heritage assessment, and not an assessment based on whether changes to the place might or could be reversed.

(iv) Conclusion

The Committee concludes:

- While changes can often be reversed, the assessment of heritage significance should be based on how intact the building is in its current form.

¹⁴ Document 25.

4 Heritage significance

4.1 Statement of Significance

Exhibited Statement of Significance



What is significant?

The dwelling and front boundary wall of 36 Kooyongkoot Road, Hawthorn, built in 1934 by ARP Crow and Sons to a design by John Francis Deighton Scarborough, are significant.

How is it significant?

'Dalsworth' at 36 Kooyongkoot Road is architecturally, aesthetically, and associatively significant to the City of Boroondara.

Why is it significant?¹⁵

'Dalsworth' at 36 Kooyongkoot Road is of architectural and aesthetic significance as an accomplished example of the Old English style popular during the 1930s-50s. The dwelling makes cohesive use of typical features of the style such as half-timbering, steeply pitched tile roof, tall slender chimneys, clinker bricks and dormer windows. Additional interest can be found in the symmetry of the design and the large projecting covered balcony, both of which are unusual for the period and the style. **(Criteria D and E)**

'Dalsworth' is associatively significant as an early work of architect John F. D. Scarborough, and one of the few known surviving examples of his residential work. It is also the work of a prominent Melbourne builder, ARP Crow and Sons, built for Robert Crow, the son of company founder ARP Crow, and himself a builder. **(Criterion H)**

PPN01 sets out the following heritage criteria, one or more of which must be met at the local level to warrant including a property in the Schedule to the Heritage Overlay:

¹⁵ The Assessment against Criteria differs between the exhibited citation in the Gap Study and that included in the interim Statement of Significance. The latter combines the assessment of Criterion D and E under Criterion E, whereas the former separates the assessment of the two criteria.

Criterion A: Importance to the course or pattern of our cultural or natural history (historical significance).

Criterion B: Possession of uncommon, rare or endangered aspects of our cultural or natural history (rarity).

Criterion C: Potential to yield information that will contribute to understanding our cultural or natural history (research potential).

Criterion D: Importance in demonstrating the principal characteristics of a class of cultural or natural places or environments (representativeness).

Criterion E: Importance in exhibiting particular aesthetic characteristics (aesthetic significance).

Criterion F: Importance in demonstrating a high degree of creative or technical achievement at a particular period (technical significance).

Criterion G: Strong or special association with a particular community or cultural group for social, cultural or spiritual reasons. This includes the significance of a place to Indigenous peoples as part of their continuing and developing cultural traditions (social significance).

Criterion H: Special association with the life or works of a person, or group of persons, of importance in our history (associative significance).

The citation and Statement of Significance prepared as part of the Gap Study states that 'Dalsworth' at 36 Kooyongkoot Road, Hawthorn meets Criterion D (representativeness), E (aesthetic significance) and H (associative significance) at the local level.

4.2 Assessment against Criterion D – representativeness significance

(i) The issue

The issue is whether the subject land meets the threshold of architectural significance to justify the Heritage Overlay (Hercon Criteria D)

(ii) Background

The Statement of Significance states:

'Dalsworth' at 36 Kooyongkoot Road is of architectural and aesthetic significance as an accomplished example of the Old English style popular during the 1930s-50s. The dwelling makes cohesive use of typical features of the style such as half-timbering, steeply pitched tile roof, tall slender chimneys, clinker bricks and dormer windows. Additional interest can be found in the symmetry of the design and the large projecting covered balcony, both of which are unusual for the period and the style. (Criteria D and E).

The Citation states:

36 Kooyongkoot Road is an intact example of an Old English revival style residence. The dwelling includes the principal characteristics of the style through its steeply pitched, tiled gable roof; tall, narrow chimneys with decorative details; clinker bricks; and half-timbering. Other unusual features include the large central balcony, which is more reminiscent of earlier Queen Anne Revival.

(iii) Evidence and submissions

In addressing both Criterion D and E, for which the physical presentation of the place is relevant, the level of intactness is a key consideration.

'Intactness' describes the amount of change that has occurred to the fabric of a place and 'integrity' *"refers to the degree to which the heritage values of the place or object are legible and*

able to be understood and appreciated".¹⁶ Intactness is referenced across the Gap Study, both as relevant to the approach and methodology, and in individual property assessments.

The landowner submitted the subject land has undergone significant modifications which have impacted its intactness and reduced its integrity such that it does not warrant inclusion in the Schedule to the Heritage Overlay. It said those works were not designed having regard to any heritage considerations and the new design has transformed the dwelling into something quite different. The landowner's submission highlighted the following modifications to the place:

- a) East (Kooyongkoot Road frontage) elevation:
 - i. first floor works to the large central gable in the front façade. The works included:
 - 1. demolition of existing built form, including the brick spandrels to the front and sides of the central balcony and their replacement with glass balustrades and metal handrails, creating an open balcony;
 - 2. introduction of faux heavy timber framing elements with timber uprights and GRP (glass reinforced plastic) ogee elements; and
 - 3. the extension and replacement of flanking windows on the north and south sides.
 - ii. replacement of the two first floor original dormer windows to the front façade, which originally had small sash windows with side sections and a section of wall beneath the sills, and also a small steel balustrade. The works included:
 - 1. demolition of existing built form, including window breasts;
 - 2. new windows with new details and materials; and
 - 3. cottage leadlight panes in steel frames.
 - iii. construction of a basement car park within the front setback, serviced by a car lift, and circular staircase adjacent to the front door. The works included:
 - 1. extensive excavation works;
 - 2. insertion of a spiral staircase through floor of front porch to dwelling;
 - 3. works to the brick balustrade on front porch;
 - 4. installation of a vehicle car lift/platform in front setback; and
 - 5. the reworking of the layout and materials in the front setback, including a large area of hard surface (platform) on south side and raised garden beds and lawn.
 - iv. the low brick fence at the Property's frontage is original, but a steel palisade fence has been erected above it, with tall steel gates installed across the driveway.
- b) South elevation:
 - v. ground floor works to provide a new family entrance installed in place of a window and flanking walls which were removed. The works included:
 - 1. demolition of the garage; and
 - 2. a new entrance with double timber doors, flanked by a perforated metal screen.
- c) North elevation:
 - vi. first floor works installing new windows to match the original windows to the west.
- d) West elevation:

¹⁶ The Victorian Heritage Register Criteria and Threshold Guidelines, Heritage Council of Victoria, 1 December 2022, p.8.

- vii. first floor works to the large central gable, which originally had three windows; replaced with new details and materials to complement new works to the gable on front façade; and
- viii. ground floor reworking of the façade with new windows/glazing installed throughout, including to the existing 1950s addition, rear wall removed and replaced with steel framed windows, and new extension to south side of ground floor.¹⁷

In relation to the impact of the changes, Mr Lovell said:

... they greatly diminish the value of the property as might be ascribed to its ability to demonstrate the principal characteristics of this class of places. While Dalsworth is legible as a house designed in the Old English revival style, the alterations are to elements which are pivotal in informing an understanding of the style. As such, while the altered place, if located in a precinct might be regarded as contributory, it is not a place which warrants individual recognition on the basis of satisfying Criterion D.¹⁸

On the application of the PPN01 threshold for Criterion D, Ms Brady said:

VPP Practice Note emphasises that a heritage place which meets the threshold for Criterion D should have 'importance in demonstrating the principal characteristics' of this type of place, in this instance a dwelling in the Old English style. To be a 'representative' example of a building or house of this style, and to reach the local significance threshold, the intactness – or lack of – is a key consideration. If the house is to be 'important' for its ability to demonstrate the 'principal characteristics' of this style, again as per the VPP Practice Note, then intactness and integrity are critical to this, otherwise the house is demonstrating later changes, non-original fabric and modifications.¹⁹

Ms Brady concluded the alterations to the dwelling have detracted from and diminished its ability to be 'important' in demonstrating this style. She said while the dwelling may still be seen as a 1930s Old English revival style dwelling, the impact of the works on its original design, and intactness, render it as not being 'important'.

Mr Gard'ner said:

...the alterations made to the house in 2007 have diminished the integrity of the subject site and its legibility as an intact example of an English Domestic Revival house of the Interwar-period. The extent of these changes were, it appears, not evident to Context and Trethowan when the original citation prepared in 2017 as part of the Gap Study. The substantial changes to the upper-level of the principal elevation in particular means that the subject site does not demonstrate the principal architectural characteristics of its style and period as well as, or better than, other examples included on the Schedule to the Heritage Overlay of the Boroondara Planning Scheme ...²⁰

The landowner submitted the consistency of the respective independent opinions of Ms Brady, Mr Lovell and Mr Gard'ner, and their clear, cogent rationale was compelling, and the subject land does not meet the threshold for Criterion D.

Council submitted there is common ground between Mr Stephenson and the experts called by the landowner as to the intactness of the dwelling and the setting. That is, they agree the dwelling and setting have undergone alterations since the house was constructed. Council submitted this does not diminish the dwelling's intactness such that the Heritage Overlay ought not apply, and as viewed from the street, the architectural, aesthetic and representative features of the subject

¹⁷ Document 25.

¹⁸ Document 21.

¹⁹ Document 23.

²⁰ Document 22.

place remain recognisable. Council said such changes could be further expanded upon in the citation and the statement of significance if the Heritage Overlay was to be applied.

Mr Stephenson said the dwelling is an intact example of an Old English revival style residence. He said it includes the principal characteristics of the style through its steeply pitched, tiled gable roof tall, narrow chimneys with decorative details; clinker bricks; and half-timbering. He said:

The issue of 'intactness' is often more nuanced than simply identifying whether a building has been modified. From this, it is possible to determine that there are no hard and fast rules about percentages of acceptable alteration before a property loses its intactness. Compromised intactness does not automatically equate to a critical loss of integrity.²¹

In referring to the alterations to the front façade, Mr Stephenson said despite the changes, the original design continues to be 'recognisable' in terms of the overall form, massing, materiality, and significant areas of surviving detailing outside of these defined areas.

Mr Stephenson produced a comparative analysis to demonstrate other dwellings subject to the Heritage Overlay in Boroondara, including examples of Old English revival style houses and properties from a different era of style and construction but which he said have undergone a similar level of alterations. Mr Stephenson concluded that his wider comparative analysis confirms:

- the subject land is equal to other significantly graded properties in Boroondara by displaying all the typical characteristics of the Old English revival style
- similarly altered properties have reached the required threshold for significance and have been added to the Heritage Overlay.

The landowner criticised Mr Stephenson's evidence and said it should be given limited weight. The landowner referred to Mr Stephenson's previous evidence statement for Amendment C284boro, dated 7 August 2019, which concluded the subject land should be removed from the Heritage Overlay. He said:

... I believe these alterations have significantly diluted the original design. I now consider that the house no longer meets the threshold of significance due to the level and extent of alterations to the principal facades.²²

The landowner submitted, with respect, *"Mr Stephenson's change of opinion has not been explained by him in a way that is cogent, logical, rational or comprehensible"*.²³

(iv) Discussion

The extent of works that the subject land has undergone are significant, even more so when considered cumulatively. Extensive works to the building's interior, extensions and changes to the gardens, frontage, side and rear extensions combined with the significant changes to the front elevation of the building make up a large list of alterations. While some changes might be reversible – such as removing paint from an originally unpainted surface – as the Committee concluded earlier, the assessment of heritage significance should be based on the building in its current intactness.

PPN01 emphasises that a heritage place which meets the threshold for Criterion D should have *"importance in demonstrating the principal characteristics"* of this type of place, in this instance a

²¹ Document 20.

²² Document 15.

²³ Document 25.

dwelling in the Old English revival style. The Committee accepts the evidence of Ms Brady that to reach this threshold of significance, the intactness of the dwelling is a key consideration, particularly if the dwelling is 'important' for its ability to demonstrate the 'principal characteristics' of this style.

The alterations, particularly those to the front façade including the extensive changes to the large central gable and the replacement of the dormer windows, are such that the Committee considers the dwelling can no longer be accurately described as intact in terms of its heritage significance. The Committee accepts the evidence of Mr Gard'ner, Ms Brady and Mr Lovell that the impact of the changes diminishes the value of the dwelling and its ability to demonstrate the principal characteristics of this class of places. While the dwelling largely reads as a house from the Old English revival style, the alterations detract from one's ability to understand the pivotal characteristics of the style and the overall integrity of the dwelling is diminished.

Significantly, Mr Stephenson who is the only expert who considers the alterations don't impact the dwelling's intactness, was not aware of the further changes that had taken place since 2019. When questioned he said he wasn't aware of these further changes until he read the witness statements of the experts to be called by the landowner. Even then he chose not to return to the subject land to view the changes. This is even more curious given he previously considered the alterations made prior to August 2019, significantly "*diluted*" the original design and on this basis he did not consider the dwelling met the threshold of significance. When questioned, Mr Stephenson was not able to clearly explain the reason for his change of expert opinion. As a result, the Committee has given limited weight to the evidence of Mr Stephenson.

As the Committee has concluded in Chapter 3.1, comparative analysis should draw on places in the same era and style of construction. The comparative analysis undertaken by Mr Stephenson against other Old English revival style dwellings does not include dwellings that display the same level of alterations as this dwelling has undergone, and those dwellings which have undergone alterations are from a different era. The Committee considers the examples provided of Old English revival style dwellings are more intact and have higher integrity than the subject land.

Overall, the Committee considers the dwelling has undergone significant alteration to key stylistically defining elements and does not satisfy Criterion D such that individual listing is warranted.

(v) Findings

The Committee finds:

- The dwelling has undergone significant alteration to key stylistically defining elements and does not satisfy Criterion D such that an individual heritage listing is warranted.
- Comparative analysis against other Old English revival style dwellings does not demonstrate that the comparison buildings have undergone the same level of alterations that the subject land has undergone.

4.3 Assessment against Criterion E – aesthetic significance

(i) The issue

The issue is whether the subject land meets the threshold of aesthetic significance to justify the Heritage Overlay (Hercon Criterion E).

(ii) Background

As noted in Chapter 4.2, the Statement of Significance states:

'Dalsworth' at 36 Kooyongkoot Road is of architectural and aesthetic significance as an accomplished example of the Old English style popular during the 1930s-50s. The dwelling makes cohesive use of typical features of the style such as half-timbering, steeply pitched tile roof, tall slender chimneys, clinker bricks and dormer windows. Additional interest can be found in the symmetry of the design and the large projecting covered balcony, both of which are unusual for the period and the style. (Criteria D and E)

The Citation states:

The dwelling features a dominant gabled balcony over the entrance with half-timbered details.

The symmetry of massing is unusual for the style and period. Old English revival styles favoured asymmetrical composition, while the L-shaped plan would become the leading vernacular form in the late 1930s and beyond. In contrast, the symmetry of the front façade of 36 Kooyongkoot Road is broken only by the projecting bay window at ground level.

Other unusual features include the large central balcony, which is more reminiscent of earlier Queen Anne Revival.

(iii) Evidence and submissions

The landowner relied on the evidence of Mr Gard'ner, Mr Lovell and Ms Brady and submitted the subject land does not meet the threshold for Criterion E.

Ms Brady said:

The suite of changes has diminished the overall original design and its legibility, and in a cumulative way add to the impacts on the dwelling in terms of meeting the local significance threshold for this criterion.

Again, with reference to the VPP Practice Note on Criterion E, there is the test of the dwelling being 'important' for its aesthetic value, and it is considered here that the external changes throughout have detracted from this 'importance'.

As with Criterion D, the attribution of this criterion also goes to the issue of comparisons and comparative examples, as commented on further below at Section 4.2.²⁴

Mr Lovell noted the dwelling presents as broadly symmetrical to the street, and originally comprised a square floor plan at ground level, which differs from all examples of the Old English revival style in the municipality. He said that while the aesthetic presentation is 'particular', it is not of importance in exhibiting a feature of significance. Mr Lovell said:

Even more unusual is the seemingly 'functionalist' loggia-like form of the entrance porch with its tripartite openings surmounted by the now much altered gable roofed balcony. The arrangement presents as idiosyncratic rather than directional. Such features contribute to an overall composition which moves away from the more picturesque responses so often associated with the style to one which is more experimental or at least atypical.²⁵

Mr Lovell said that while Scarborough would have intended this architectural outcome, it does not elevate the design as one of importance in exhibiting aesthetic characteristics. Mr Gard'ner made similar comments and said although the dwelling was designed by a prominent architect, this does not automatically elevate a building to the threshold of local aesthetic significance, particularly given the alterations have substantially diminished the original design intent.

²⁴ Document 23.

²⁵ Document 21.

Mr Stephenson said that while symmetry of massing is unusual for the style and period, the symmetry is considered distinctive which contributes to its significance.

Mr Gard'ner criticised this characterisation and said it misunderstands the architectural style where the dwellings are always asymmetrical. He said that rather than elevating the interest in this it diminishes its representativeness and does not reinforce any aesthetic value.

(iv) Discussion

The Committee concluded in Chapter 4.2 that the alterations made to the dwelling have diminished the integrity of the subject land and its legibility as an intact example of an Old English revival style house. The substantial changes mean that the subject land does not demonstrate the principle aesthetic characteristics of its style and period. The alterations made mean the dwelling can no longer be described as an intact example of the period.

The Committee does not agree with Mr Stephenson and his evidence that the dwelling's symmetry should be considered distinctive and therefore contribute to its significance. The symmetrical nature of the building, both in its elevation and floor plan, differs from all examples of the Old English revival style dwellings in the municipality and it cannot be said to exhibit a significant feature of its period. Equally, the symmetrical nature of the dwelling's façade is not influential and did not lead to this style being adopted elsewhere.

In the definition for integrity, *The Victorian Heritage Register Criteria and Threshold Guidelines, 2022* poses the following question:

..does it include all the elements necessary to express its significance?

The Committee is of the view that the asymmetrical design feature of houses of the Old English revival style is important. The dwelling does not demonstrate this (being largely symmetrical), which is a missing element needed to express its significance of the style and era.

(v) Finding

The Committee finds that the dwelling on the subject land does not meet the threshold for Criterion E for the following reasons:

- The symmetrical nature of the building (both elevation and floorplan) is not representative of an Old English revival style residence.

4.4 Assessment against Criterion H – associative significance

(i) The issue

The issue is whether the subject land meets the threshold of associative significance to justify the Heritage Overlay (Hercon Criterion H).

(ii) Background

The Statement of Significance states:

'Dalsworth' is associatively significant as an early work of architect John F. D. Scarborough, and one of the few known surviving examples of his residential work. It is also the work of a prominent Melbourne builder, ARP Crow and Sons, built for Robert Crow, the son of company founder ARP Crow, and himself a builder. (Criterion H)

The Citation states:

36 Kooyongkoot Road is significant for its association with John F. D. Scarborough, a prominent architect. Scarborough was president of the RAlA 1940 – 1942, a trustee for the Housing Commission of Victoria and designed several noted buildings around Australia. The dwelling is also of interest for its association with the Crow family. The house was built by ARP Crow and Sons for Robert Crow, himself a builder, one of the sons of Archibald Rae Paterson Crow and brother of former Master Builders Association president James Crow. ARP Crow and Sons were well-known Melbourne builders specialising in highly technical brickwork, responsible for the construction of high profile, notable buildings throughout Melbourne and with operations in all states and brother of James Crow (former president of the Master Builders Association).

(iii) Evidence and submissions

Mr Stephenson considered Criterion H had been met through the “*direct connection*” to Scarborough and ARP Crow & Sons “*whose work has been recognised for its heritage significance at the local level in other parts of the municipality and Victoria*”.²⁶ He put significant weight on the fact Scarborough constructed five buildings within Scotch College, the most notable being the Littlejohn Chapel (HO608). Mr Stephenson did not provide a discussion on the association between ARP Crow & Sons and Boroondara.

Mr Lovell explained the application of Criterion H is “*often challenging*”. He said:

The criterion requires that the association be ‘special’ and that the person or group of persons be of importance to Boroondara’s history. The word special is critical in considering the criteria in that all places have associations of a general nature and for relatively few will that association be more than this.²⁷

Ms Brady also highlighted the importance of the association being special. She said the “*significance of the association has to be substantiated, which goes further than just identification of the association*”.²⁸

Mr Gard’ner explained the association needs to be special “*and the person or group of persons should also be of importance in Boroondara’s history*”. Mr Lovell said that the test “*requires there to be a direct and enduring relevance to the municipal history as opposed to a broader lens which accepts that a person or group of persons of importance in a wider context...*”²⁹

All three witnesses for the landowner essentially came to the same conclusions. In summary:

While this house and the Little John Chapel at Scotch College (where he was a member of a three person team) happen to be in Boroondara it cannot be concluded that these projects evidence a special association with Scarborough as a person of importance to the history of Boroondara.³⁰ **(Lovell)**

...the design of this residence is an outlier in Scarborough’s oeuvre, which more commonly adopted modern architectural influences and was predominantly civic, institutional or ecclesiastical in nature. ‘Dalsworth’ is not a prominent or notable commission or design within Scarborough’s body of work.³¹ **(Gard’ner)**

While Scarborough achieved recognition in his career, this is not necessarily demonstrated in this altered dwelling. Further, neither the architect, Scarborough, or the original owner, Robert Crow, was of such importance to Hawthorn or Boroondara...³² **(Brady)**

²⁶ Document 20.

²⁷ Document 21.

²⁸ Document 23.

²⁹ Document 22.

³⁰ Document 21.

³¹ Document 22.

³² Document 23.

This house, while associated with Robert Crow, does not demonstrate the type or scale of construction for which ARP Crow & Sons could be considered of historical importance.³³

(Gard'ner)

Robert Crow was a family member of a prominent building company, but because he built a house to live in within Boroondara does not elevate his importance in the local context.³⁴

(Lovell)

(iv) Discussion

There was no dispute amongst the witnesses regarding the importance of Scarborough as a prominent architect in Victoria.

Similarly, there was agreement the dwelling was built for, and occupied by, Mr and Mrs Robert Crow, Robert being the son of Archibald Rae Paterson Crow, one of the founders of the ARP Crow & Sons building company. ARP Crow & Sons were recognised builders in Melbourne, known for their highly technical brickwork, and responsible for many high-profile buildings including the Footscray Town Hall, the Rosella Factory in Richmond and the Theosophical Society in Russell Street.

The Committee agrees with the witnesses for the landowner that the association with either Scarborough or ARP Crow & Sons and the subject land is not special, and an enduring connection to Boroondara has not been demonstrated.

Scarborough's connection to Boroondara is limited to his recognised ecclesiastical work for the Littlejohn Memorial Chapel at Scotch College (HO608) and the Frank Paton Memorial Uniting Church, Deepdene (HO884). The Committee notes that Scarborough is identified in the citation for Scotch College as meeting Criterion H. The Committee does not agree with Mr Stephenson that this translates to a connection to the subject land. Scarborough was not known for his residential work and there is little, or no record of his houses surviving, including the house known as Shangri. This does not make the subject land a rarity but demonstrates that Scarborough was simply not known for his residential work.

The Committee accepts that while *"members of the Crow family building dynasty are people of prominence (importance)"*, Robert Crow does not share the same level of notoriety as his father, Archibald Rae Paterson Crow or brother James Crow (former president of the Master Builders Association).

ARP Crow & Sons were known for specialising in large, complex brick structures, not domestic commissions.

Other than Robert Crow residing in the area, and his two sons attending Scotch College in the 1930s, there is little connection beyond this of the wider Crow family's connection with Boroondara.

(v) Findings

The Committee finds that the dwelling on the subject land does not meet the threshold for Criterion H for the following reasons:

³³ Document 22.

³⁴ Document 21.

- Scarborough, whilst a recognised architect in Victoria, was not known for his residential architecture in general, or in Boroondara. He is predominantly known for his work on buildings of a civic, institutional or ecclesiastical nature.
- There is no special connection of Scarborough with Boroondara beyond his ecclesiastical work on the Littlejohn Memorial Chapel at Scotch College (HO608) and the Frank Paton Memorial Uniting Church, Deepdene (HO884).
- ARP Crow & Sons were known for specialising in large, complex brick structures, not domestic commissions.
- Robert Crow does not share the same level of notoriety as his father, Archibald Rae Paterson Crow (founder of ARP Crow & Sons) or brother James Crow (former president of the Master Builders Association).
- ARP Crow & Sons has no special association with Boroondara.

Appendix A Terms of Reference

36 Kooyongkoot Road Advisory Committee

Version: February 2022

Advisory Committee appointed pursuant to section 151 of the *Planning and Environment Act 1987* (the Act) to report on application of the Heritage Overlay (HO790) to property at 36 Kooyongkoot Road Hawthorn.

Name

The Advisory Committee is to be known as the “36 Kooyongkoot Road Advisory Committee” (Advisory Committee).

1. The Advisory Committee is to have members with the following skills:
 - a. Statutory and strategic planning;
 - b. Heritage planning.

Purpose

2. The purpose of the Advisory Committee is to advise the Minister for Planning on whether 36 Kooyongkoot Road, Hawthorn (the property) should be included in the HO.

Background

3. Amendment C284boro sought to implement the recommendations of the ‘City of Boroondara Municipal-Wide Heritage Gap Study Volume 3: Hawthorn’ (Context Pty Ltd, 20 July 2020) (Hawthorn Heritage Gap Study) by introducing the HO on a permanent basis to 14 individual heritage places, seven heritage precincts, and expanding four existing heritage precincts. The amendment was considered by a planning panel, and split into two by Boroondara City Council at adoption. Amendment C284 Part 1 affects 13 individual heritage places (excluding 36 Kooyongkoot Road, Hawthorn), seven heritage precincts, and four expanded existing heritage precincts on a permanent basis. The amendment was adopted by the council, approved by the Minister and gazetted on 12 March 2021.
4. Amendment C284 Part 2 affects the property at 36 Kooyongkoot Road, Hawthorn. The amendment sought to include the property as an individually significant place within the HO. The amendment has not been adopted by the council.
5. Three submissions were received by the council about 36 Kooyongkoot Road, Hawthorn: one from the landowner and two submissions from other residents.
6. The landowner requested changes to the amendment to remove the property from the HO while the other submissions supported its inclusion.
7. The applicant and owner of the property at 36 Kooyongkoot Road, Hawthorn, filed an application under section 39 of the Act in the Victorian Civil and Administrative Tribunal (VCAT) alleging departure by the panel from the rules of natural justice in respect of its consideration of the proposed inclusion of the property within the HO.
8. By the consent of the parties to the proceeding, the proceeding was withdrawn by VCAT Order of 23 March 2021.
9. A newly constituted Advisory Committee is required to consider the merits and advise the Minister on whether the property should be included within the HO.

Method

- 10 The Advisory Committee may apply to the Minister to vary these Terms of Reference in any way it sees fit before submitting its report.
- 11 The Advisory Committee must not consider the Panel Report for Amendment C284 in its assessment of the property.
- 12 Apart from the exclusion in Clause 11 above, the Advisory Committee may inform itself in any way it sees fit, but must consider:
 - a. Relevant provisions of the Act and the Boroondara Planning Scheme, including any adopted plans, strategies or planning scheme amendments (excluding Amendment C284);
 - b. Plan Melbourne 2017-2050 and any other policy document that the Advisory Committee considers relevant;
 - c. All relevant material prepared by or for the applicant or otherwise provided to the Advisory Committee;
 - d. All relevant materials prepared by or for Boroondara City Council or otherwise provided to the Advisory Committee; and
 - e. All submissions and objections received by the Advisory Committee.
13. The Advisory Committee must provide the following parties with a reasonable opportunity to be heard:
 - a. Landowner/s (or nominated representative) of the property and other residents as noted in Clause 5; and
 - b. Boroondara City Council

Submissions are public documents

14. The Advisory Committee must retain a library of any written submissions or other supporting documentation provided to it directly until a decision has been made on its report or five years has passed from the time of its appointment.
15. Any written submissions or other supporting documentation provided to the Advisory Committee must be available for public inspection until the submission of its report, unless the Advisory Committee specifically directs that the material is to remain 'in camera'.

Outcomes

16. The Advisory Committee must produce a written report for the Minister providing the following:
 - a. Advice as to whether the HO should be applied to the property.
 - b. The consideration of:
 - i. relevant State and local policy;
 - ii. any expert advice provided to the Advisory Committee;
 - iii. initial written submissions made in the panel hearing for Amendment C284boro regarding the property.
 - c. An assessment of submissions made to the Advisory Committee.
 - d. Any other relevant matters raised in the course of the Advisory Committee hearing.
 - e. A list of persons who made submissions considered by the Advisory Committee.
 - f. A list of persons consulted or heard.

Timing

17. The Advisory Committee is required to commence this work as soon as it practicable from the date it is formally notified of its appointment.
18. The Advisory Committee is required to submit its report in writing as soon as practicable but no later than 30 business days from the last day of its hearings or from the date of any further information requested by the Advisory Committee.

Fee

19. The fee for the Advisory Committee will be set at the current rate for a Panel appointed under Part 8 of the Act.
20. The costs of the Advisory Committee will be met by the Department of Environment, Land, Water and Planning.



Hon Lizzie Blandthorn MP
Minister for Planning

Date: 14.9.22

Appendix B Document list

No.	Date	Description	Presented by
2022			
i	27 Sep	Advisory Committee Terms of Reference	Planning Panels Victoria (PPV)
ii	27 Sep	Committee Directions Hearing notice letter	PPV
iii	18 Oct	Committee Directions and Hearing Timetable	PPV
1	28 Nov	Boroondara Planning Scheme Amendment C284boro Exhibited Explanatory Report – Feb 2019	Boroondara City Council (Council)
2	28 Nov	Exhibited Ordinance Clause 43.01 – Feb 2019	Council
3	28 Nov	Exhibited Ordinance Clause 72.04 – Feb 2019	Council
4	28 Nov	Exhibited Ordinance Clause 72.08 – Feb 2019	Council
5	28 Nov	Exhibited Map Sheet – Feb 2019	Council
6	28 Nov	Exhibited Incorporated Document - Dalsworth Statement of Significance – Feb 2019	Council
7	28 Nov	Exhibited Background Document – Dec 2018	Council
8	28 Nov	Submission – Kerr 10/02/2019	Council
9	28 Nov	Submission – Warren 11/02/2019	Council
10	28 Nov	Submission – Lachal 07/03/2019	Council
11	28 Nov	Council's Urban Planning Delegated Committee officer report to refer submissions to C284boro to panel 17/06/2019	Council
12	28 Nov	Council's UPDC minutes 17/06/2019	Council
13	28 Nov	Council's Part A submission 07/8/2019	Council
14	28 Nov	Council's Part B submission 14/08/2019	Council
15	28 Nov	Statement of Evidence - Mark Stephenson (Trethowan 2020) 07/08/2019	Council
16	28 Nov	Statement of Evidence - Peter Lovell (Lovell Chen 2020)	Council
2023			
17	1 Feb	Letter regarding Committee reconstitution	PPV
18	15 Mar	Letter regarding extension of interim controls	Council

No.	Date	Description	Presented by
19	21 Apr	Council Part A Submission	Council
20	28 Apr	Statement of Evidence – Mark Stephenson	Council
21	28 Apr	Statement of Evidence – Peter Lovell	Susan Lachal
22	28 Apr	Statement of Evidence – Jim Gard’ner	Susan Lachal
23	28 Apr	Statement of Evidence – Anita Brady	Susan Lachal
24	4 May	Council Part B Submission	Council
25	8 May	Hearing submission	Susan Lachal

Appendix C Planning context

C:1 Planning policy framework

Council submitted Amendment C284boro is supported by various clauses in the Planning Policy Framework, which the Panel has summarised below.

Victorian planning objectives

The Amendment will implement section 4(1)(d) of the *Planning and Environment Act 1987* (the Act) to:

- e) 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) balance the present and future interests of all Victorians.

Planning Policy Framework

The Amendment supports:

- **Clause 15.01-5S** (Neighbourhood character) which seeks to recognise, support and protect neighbourhood character, cultural identity, and sense of place.
- **Clause 15.03** (Heritage) by including properties that contribute to the heritage significance of Boroondara.
- **Clause 15.03-1S** (Heritage conservation) which seeks to ensure the conservation of places of heritage significance. Relevant strategies are:
 - g) Identify, assess and document places of natural and cultural heritage significance as a basis for their inclusion in the planning scheme.
 - h) Provide for the conservation and enhancement of those places which are of, aesthetic, archaeological, architectural, cultural, scientific, or social significance.
- **Clause 15.03-1L** (Heritage in Boroondara) which seeks to “preserve ‘significant’ heritage places, protecting all significant heritage fabric including elements that cannot be seen from the public realm”.

Municipal Planning Strategy

The Municipal Planning Strategy further acknowledges the significant contribution heritage assets make to Boroondara’s character. Amendment C284boro is consistent with and implements the strategic direction outlined in the Municipal Planning Strategy at Clause 02.03-4 to “protect all individual places, objects and precincts of cultural, aboriginal, urban and landscape significance”.

C:2 Other relevant planning strategies and policies

i) Plan Melbourne

Plan Melbourne 2017-2050 sets out strategic directions to guide Melbourne’s development to 2050 to ensure it becomes more sustainable, productive and liveable as its population approaches 8 million. It is accompanied by a separate implementation plan that is regularly updated and refreshed every five years.

Plan Melbourne is structured around seven Outcomes, which set out the aims of the plan. The Outcomes are supported by Directions and Policies, which outline how the Outcomes will be achieved. The following are relevant to the Amendment:

- **Outcome 4:** Melbourne is a distinctive and liveable city with quality design and amenity

- **Direction 4.4:** Respect Melbourne’s heritage as we build for the future
- **Policy 4.4.1:** Recognise the value of heritage when managing growth and change
- **Policy 4.4.4:** Protect Melbourne’s heritage through telling its stories.

ii) Municipal Wide Heritage Gap Study

The Gap Study was prepared in accordance with The Burra Charter: The Australia International Council on Monuments and Sites (ICOMOS) Charter for Places of Cultural Heritage Significance (rev. 2013) and PPN01.

The assessment undertaken by Trethowan Heritage Consultants (working as a sub-consultant) determined the subject land to be of individual heritage significance, meeting the threshold for local significance for Criterion D, E and H.

iii) Boroondara Community Plan 2021-31

The Boroondara Community Plan 2021-31 sets out the 10-year vision for Boroondara’s future based on values, aspirations and priorities important to the community, and includes the Council Plan 2021-25.

Amendment C284boro implements the Strategic Objective of Theme 4 of the Plan, to “Protect the heritage and respect the character of Boroondara, while facilitating appropriate, well-designed development”.

Amendment C284boro implements Strategy 4.1 - “Boroondara’s heritage places are protected through ongoing implementation of heritage protection controls in the Boroondara Planning Scheme.”

C:3 Planning scheme provisions

The Heritage Overlay purposes are:

- i) To implement the State Planning Policy Framework and the Local Planning Policy Framework, including the Municipal Strategic Statement and local planning policies.
- j) To conserve and enhance heritage places of natural or cultural significance.
- k) To conserve and enhance those elements which contribute to the significance of heritage places.
- l) To ensure that development does not adversely affect the significance of heritage places.
- m) 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 Heritage Overlay requires a planning permit to demolish, subdivide, build or carry out works.

The Heritage Overlay enables its Schedule to specify additional controls for specific trees, painting previously unpainted surfaces, internal alterations and an incorporated plan (which may exempt buildings and works and other changes from requiring a planning permit). The Schedule may also identify if a place can be considered for uses that are otherwise prohibited, subject to a planning permit.

C:4 Ministerial Directions, Planning Practice Notes and guides

Ministerial Directions

Amendment C284boro complies with the requirements of the following Minister’s Directions:

- Ministerial Direction 1 - The Form and Content of Planning Schemes.
- Ministerial Direction 9 Metropolitan Planning Strategy.

- Ministerial Direction 11 Strategic Assessment of Planning Scheme Amendments.
- Ministerial Direction 15 The Planning Scheme Amendment Process.

Planning Practice Note 1 (Applying the Heritage Overlay), August 2018

PPN01 provides guidance about using the Heritage Overlay. It states that the Heritage Overlay should be applied to, among other places:

Places identified in a local heritage study, provided the significance of the place can be shown to justify the application of the overlay.

Planning Practice Note 1 specifies that documentation for each heritage place needs to include a statement of significance that clearly establishes the importance of the place and addresses the heritage criteria. It recognises the following model criteria (the Hercon criteria) that have been adopted for assessing the value of a heritage place:

- Criterion A:** Importance to the course or pattern of our cultural or natural history (historical significance).
- Criterion B:** Possession of uncommon rare or endangered aspects of our cultural or natural history (rarity).
- Criterion C:** Potential to yield information that will contribute to an understanding of our cultural or natural history (research potential).
- Criterion D:** Importance in demonstrating the principal characteristics of a class of cultural or natural places or environments (representativeness).
- Criterion E:** Importance in exhibiting particular aesthetic characteristics (aesthetic significance).
- Criterion F:** Importance in demonstrating a high degree of creative or technical achievement at a particular period (technical significance).
- Criterion G:** Strong or special association with a particular community or cultural group for social, cultural or spiritual reasons. This includes the significance of a place to Indigenous peoples as part of their continuing and developing cultural traditions (social significance).
- Criterion H:** Special association with the life or works of a person, or group of persons, of importance in our history (associative significance).

Practitioner's Guide

A Practitioner's Guide to Victorian Planning Schemes Version 1.5, April 2022 (Practitioner's Guide) sets out key guidance to assist practitioners when preparing planning scheme provisions. The guidance seeks to ensure:

- the intended outcome is within scope of the objectives and power of the PE Act and has a sound basis in strategic planning policy
- a provision is necessary and proportional to the intended outcome and applies the Victoria Planning Provisions in a proper manner
- a provision is clear, unambiguous and effective in achieving the intended outcome.