



Planning and Environment Act 1987
Panel Report

Campaspe Planning Scheme
Amendment C50
New Heritage Places and Provisions

16 July 2013

Planning and Environment Act 1987

Panel Report pursuant to Section 25 of the Act

Amendment C50 to the Campaspe Planning Scheme

New Heritage Places and Provisions

A handwritten signature in black ink that reads "Jennifer A Moles". The signature is written in a cursive style with a large initial 'J'.

Jennifer A Moles, Chair

A handwritten signature in black ink that reads "Ray Tonkin". The signature is written in a cursive style with a large initial 'R'.

Ray Tonkin, Member

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Executive Summary

As the National Trust submitted, the Shire of Campaspe is a municipality rich in heritage places. The Campaspe Planning Scheme already includes more than 120 overlays in the schedule to the Heritage Overlay including some which apply to extensive precincts containing scores of properties.

This Amendment C50, which proposes to include over one hundred additional places in the Heritage Overlay schedule, some of which are again precincts, was nevertheless the subject of a considerable number of objecting submissions. The majority of the submissions came from residents of Kyabram who contest the heritage values of their properties but who also have presented trenchant criticisms of the process around the preparation and exhibition of the Amendment.

The Panel has spent much more time than is usual for such an amendment responding to and assessing those process criticisms and dealing with other administrative requests. Although we have found that, overall, the process issues have not been such that it has been necessary for the Panel to adjourn its proceedings and provide an interim report, or to recommend that the Amendment should not proceed, we have found the process criticisms to have some foundation. There have been a not inconsiderable number of technical errors and mistakes in the supporting Gap Study and post Gap Study review material, as well as the Amendment itself and the process around it. The Council representatives attempted to shore up the failings during the Panel process with suggested revisions and corrections but it must be said that the many changes made throughout the planning process have threatened to preclude fair participation by the community. It would seem that much of the resultant community concern might have been avoided if greater care and attention to detail had been exercised earlier in the preparation of the Amendment documentation, the mapping, notification processes and access to documentation.

In terms of the merits of the Amendment, subject to some notable exceptions, the Panel is broadly satisfied that the background strategic work including the Gap Study and the post Gap Study review adequately supports the proposed additions to the Heritage Overlay. The proposed precincts have proved to be the most problematic to assess largely for the usual reasons of boundary delineation difficulties and the presence of numbers of non-contributory places. The absence of a written record of the strategic review work which led to the precinct definitions and revisions has compounded the usual problems.

We have recommended that the Amendment should be split into two parts. This would allow most of the Amendment to proceed to adoption and approval as Part 1 with other components requiring review and/or further notice to be dealt with as Part 2. Alternatively some components requiring further work or notice might be deleted from the current Amendment entirely and held over for another amendment.

In this respect, we have recommended that the churches, halls and schools group for which individual assessments have not yet been done should not proceed without the assessments being completed; the East Echuca Precinct requires further review and notice; the Tongala precinct delineation should be reviewed; and the proposed document outlining the precinct review work conducted by Ms Kemp after the Gap Study, requires compilation and some form of review.

Importantly, we have also recommended that there needs to be a thorough investigation of whether the process used for the preparation of the amended Planning Scheme maps for exhibition has led to notice inadequacies. This issue was identified in the context of the late

application to appear before the Panel by the occupier of the former Star Hotel, Echuca. It seems that because inadvertent changes to the mapping of existing overlays has taken place, there may be properties - either unaffected by overlays at present which will become subject to overlays, or where overlays will be deleted – that did not receive notice of the Amendment. While at the time of the Star Hotel Directions Hearing, we were persuaded that all existing properties were intended to be sent notice, our later (albeit cursory) review of the maps and mailing lists suggests that this may not have occurred. It is certainly the case that owners and occupiers of properties from which a mapped overlay is being removed would not have received notice of the Amendment unless the overlay was embedded within a precinct overlay.

If the suspected notice irregularities associated with the mapping methodology are found to have occurred, the affected properties should also be omitted from Part 1. As a consequence, the exhibited Planning Scheme maps may have to be substantially amended before they are adopted as a component of Part 1 to remove those properties to be processed under Part 2 of the Amendment or a later amendment.

We have made a number of other recommendations in response to matters raised in submissions which principally have implications for the inclusion of properties in the Heritage Overlay and the definition of some precincts.

The Panel is pleased to see that the Shire of Campaspe has moved to update the existing Planning Scheme heritage provisions as relate to precincts and generally broaden the protection of its heritage places. The addition of places from the inter-war and post war periods is particularly to be commended, given there appears to be some lack of appreciation by parts of the community that places from periods later than the turn of the 20th century (or perhaps the first decade of that century) can be of heritage importance, or that modestly built places are part of the heritage of the shire just as much as its more elaborate or ornate buildings.

1 Background

1.1 The Amendment

Amendment C50 (the Amendment) to the Campaspe Planning Scheme (Planning Scheme) relates to places identified in the *Campaspe Shire (Gaps) Heritage Study*, December 2005 (the Gap Study), and to a number of other places in the municipality which are said to be of heritage significance. It is proposed to modify and add a number of heritage precincts¹ and add 111 new individual places². As described in more detail in Section 2.1 of this report, other changes to the Planning Scheme relating to heritage places are also proposed. They include a new Incorporated Plan, a revised Clause 22 policy and additional reference documents at Clause 21.05.

The planning authority is the Campaspe Shire Council.

1.2 The Panel

The Panel was appointed under delegation on 10 September 2012 pursuant to sections 153 and 155 of the *Planning and Environment Act 1987* to hear and consider submissions relating to the Amendment.

Ms Jennifer Moles and Mr Ray Tonkin constitute the Panel.

At the Directions Hearing, both Ms Moles and Mr Tonkin declared that they had no conflict of interest in relation to the Amendment.

(i) Hearings and inspections

The first Directions Hearing was held on Thursday 15 October 2012 at Echuca. The Panel Hearings were held on Wednesday 5 and Thursday 6 December 2012 at Echuca and Thursday 19 and Friday 20 December 2012 at Kyabram. A second Directions Hearing relating to one property was held in Melbourne on Wednesday 3 April 2013 and a further Hearing was scheduled for Friday 14 May 2013. This Hearing was later cancelled following gazettal of Amendment C97 to the Planning Scheme.

The Panel has inspected all of those individual places about which submissions were made, making accompanied inspections of the exterior and surrounds of Burnewang Homestead, Elmore, and the interior and exterior of the former Butter Factory, Kyabram. We also made unaccompanied inspections of individual places in Echuca, other parts of Kyabram, Lockington, Rochester, Rushworth and Tongala. None of these inspections involved the inspection of building interiors.

The Panel has inspected all proposed precincts including the contributory and non-contributory buildings.

¹ The effect of the Amendment will be to include 12 Heritage Precincts in the schedule to the Heritage Overlay (by altering four existing precincts and retaining one, as well as introducing another seven (in the case of Echuca, in part by splitting an existing precinct and expanding it).

² The submission at the Panel Hearing by Mr Staalkjaer, on behalf of the residents' group from Union Street, Kyabram, raised the matter of the inconsistency between what was resolved to be exhibited and the exhibition documentation. This included the numbers of individual places and precincts. See the discussion of this at Section 5.1.

At the request of the residents' group from Union Street, Kyabram, we also inspected a number of streets in Kyabram which were said to be comparable or preferable to Union Street in terms of potential heritage significance.

It should be noted that, as was foreshadowed at the first Panel Directions Hearing, the Panel has **not** inspected those properties proposed for inclusion in individual place Heritage Overlays about which no specific submissions were received. Individual places recommended for inclusion in the Planning Scheme in their own Heritage Overlay and about which no submissions were made are distributed across extensive rural areas of the Shire and some 17 small settlements. The Panel took the view that the expense of inspecting these scores of properties was not warranted. This was raised at the Directions Hearing and there was no objection to this course of action.

(ii) Pre-Hearing procedural issues

A large number of procedural issues were dealt with in relation to this Amendment. Many arose before the Hearing. The more significant of the pre-Hearing procedural matters are outlined below.

Further notice

At the Directions Hearing, the Council advised that when the Amendment documentation was prepared, an incorrect approach was taken to the depiction on the Clause 22 maps of those individually significant places that are situated within a precinct. Some properties were not shown as contributory to the relevant precinct when it was intended that they should have been shown on the exhibited Clause 22 maps and the list of properties as contributory.³ The Council sought and was granted leave to give further notice to the owners of those individually significant properties that had been omitted from the Clause 22 maps and the list of buildings as contributory to the precinct.

Evidence of this further notice was provided to the Panel on 12 November 2012.

No additional requests to be heard were received as a result of this further notice.

Request for adjournment and release of documents

On 1 November 2012, a request was made by Mr Michael Staalkjaer on behalf of the Union Street residents to adjourn the Kyabram component of the Panel Hearing and reorder the Panel timetable which had been issued following the Directions Hearing. Contrary to what had been foreshadowed, the Kyabram component of the Hearing was scheduled over three days with only 7 and 19 December being in Kyabram. It was said by Mr Staalkjaer that the case for the Kyabram submitters would be prejudiced by the order of Hearing proposed. The request was also made on the basis that the collapse of the finance company, Banksia Securities, was having major ramifications for the residents of Kyabram and the surrounding area. It was further said that the presentations by submitters had been prejudiced by the failure of the Council to make relevant documents available under Freedom of Information (FOI) legislation and unless the Panel directed the release of the unspecified documents earlier requested, the prejudice would remain. It was said that there could be no issue of

³ For example, the property included as Individually Significant Heritage Overlay 506 (HO506) was not shown as contributory to the Precinct HO501 on the Clause 22 map of contributory buildings nor was it included the list of contributory properties.

Hearing urgency given the Gap Study was commissioned in 2002 and the Council had taken seven years to bring the Amendment forward.

The Council opposed the adjournment on the basis that reasonable efforts had been made to accommodate all parties' timetabling requirements, the Banksia Securities collapse may not be resolved for some time and the Council had properly dealt with the FOI request earlier. It was also said that the Council's post-exhibition proposed changes to the Amendment are editorial in nature, none would transform the Amendment and, where necessary, notice had been or would be given to owners.

A reply was received from Mr Staalkjaer to the Council response on 6 November 2012 correcting some misinterpretations of his submission and reiterating concerns about procedural unfairness.

Having further considered the issue and the possibility of the Panel cancelling other commitments so as to be available for an additional day in the last week before Christmas, the Panel requested advice on the availability of the parties in the last sitting week before Christmas.

In his response, Mr Staalkjaer reiterated his request for a direction for release of all relevant documents and indicated that, failing the giving of that direction, submitters might have to resort to a FOI proceeding before the Victorian Civil and Administrative Tribunal (VCAT) necessitating a delay in the Panel Hearing.

Following final consideration of the issue, the Panel rescheduled the last two days of Hearing to 19 and 20 December 2012 in Kyabram and altered the order of proceedings to meet the submitters' concerns.

The Panel also indicated in its letter to the parties of 14 November 2012 that it declined to direct the release of unspecified documents but did direct the provision to Mr Staalkjaer of the Burnewang and Mason submissions which had been missing from the Council's 'Case Book' of submissions and the Council responses to them which had been presented to the Council at its meeting of 21 August 2012.

Renewed request for background material

On 21 November 2012, Mr Staalkjaer again wrote on behalf of the Union Street residents concerned that the post exhibition changes proposed to be made by the Council, which had been circulated in accordance with the Panel's direction, included reference to an additional document (the *Campaspe Heritage Precincts Review 2012*) to which the submitters had not had access. He also said that no access had been given to document referred to in Ms Kemp's circulated witness statement (*Reviewed Precinct Citations (2011-2012)*). He sought immediate access to these documents and renewed the request for a direction that the submitters be given access to all relevant documents. He also requested that their witness be permitted to circulate his expert report five days later than earlier directed so as to be given adequate time to deal with the additional material.

The Council reply of the same date indicated that the documents were not new but *simply a compilation of the citations for each of the precincts which have previously been made available to submitters*. The Council also advised that the two documents referred to were actually only the one document (given different names by Ms Kemp and in the proposed changes to the Amendment documentation).

In the circumstances, on 22 November 2012, the Panel declined to make any further directions in response to the Union Street residents' request.

National Trust late request to call witness

On 26 November 2012, the National Trust of Australia (Victoria) (the National Trust) wrote seeking the Panel's approval of their late intention to call an expert witness to address the concerns of the Union Street submitters and to reschedule the Trust's appearance to one of the Kyabram days. It was indicated that the Council would accommodate their revised presentation within its allocated time slot and the evidence could meet the earlier directed circulation date.

The Panel considered the matter and wrote to the parties on 27 November 2012 advising:

In the Panel's view, a party is entitled to choose whether or not it calls evidence before a Panel and a change of intention in that regard is possible provided it does not inconvenience or disadvantage other parties. The Panel is satisfied that there would be no disadvantage and has determined to allow the Trust's request. A revised Hearing timetable is attached.

Requested withdrawal of material

In accordance with Panel directions, the Council on 13 November 2012 circulated a copy of the Amendment documentation showing changes it would make at time of adoption. These changes in the main related to corrections to inconsistencies and irregularities.

Later that day, Minters, lawyers on behalf of Burnewang Pastoral Company Pty Ltd (Burnewang), a submitter, wrote claiming the material circulated by the Council disclosed information provided to the Council on a without prejudice basis and requested that it should not be made available to the Panel.

Minters wrote some time later advising that this email was sent in error.

(iii) Submissions and appearances

The Panel has considered all written submissions to the Council and Panel (a list of all submitters is included as Appendix A), as well as presentations and evidence from the Hearing (a list of all Panel Hearing exhibits is included as Appendix B) and invited post-Hearing correspondence. We have been assisted in our understanding of the issues by our inspections of the precincts, comparative areas and individual sites about which submissions were received.

The Panel heard the parties listed in Table 1.

Submitter	Represented by
Campaspe Shire Council	Mr Egils Stokans, Russell Kennedy, lawyers, assisted by Mr James McNulty, Strategic Land Use Planner, Campaspe Shire Council. Mr Stokans called the following expert witness: <ul style="list-style-type: none">- Ms Deborah Kemp, Heritage Concepts, Conservation Architect and Heritage Adviser
National Trust of Australia (Victoria)	Mr Paul Roser, Senior Manager, Advocacy and Conservation, National Trust. He called the following expert witness: <ul style="list-style-type: none">- Mr Justin Francis, Heritage Consultant
Burnewang Pastoral Company Pty Ltd (Elmore)	Mr Stuart Morris QC instructed by Minter Ellison Lawyers
Mr Bruce Muirhead (Echuca)	Ms Marlene Muirhead
Mr Kevin and Ms Barbara Crisp (Echuca)	Mr Kevin Crisp

Ms Bronwyn and Mr Greg Hancock (Echuca)	Ms Bronwyn Hancock
Ms Val and Dr Jennette O’Rielly (Rochester)	Dr Jennette O’Rielly
Goulburn Valley Water (Kyabram and Tongala Water Towers)	Mr Daniel Hughes
Mr John Stroomer (Kyabram)	
Mr Des and Ms Peta Tinetti (Kyabram)	Ms Peta Tinetti
Mr Geoff Beamish (Kyabram)	
Ms Jeanie Borthwick (Tongala and Kyabram)	Ms Kerri Walker-Staalkjaer
Ms Glenda Walker (Kyabram)	Ms Kerri Walker-Staalkjaer
Union Street Residents’ Group (Kyabram)	Mr Michael Staalkjaer and Ms Kerri Walker-Staalkjaer. Mr Staalkjaer called the following expert witness: - Mr Bryce Raworth, Conservation Consultant and Architectural Historian of Bryce Raworth Pty Ltd. ⁴
Mr Michael Staalkjaer and Ms Kerri Walker-Staalkjaer (Kyabram)	Ms Kerri Walker-Staalkjaer
Mr John and Ms Lillian Viney (Kyabram)	Mr John Viney
Mr Herb Prior (Kyabram)	Mr Peter Berner
Mr John and Ms Miriam Young (Kyabram)	Ms Miriam Young
Mr Rob and Ms Marie Bullingham (Kyabram)	
Ms Belinda and Mr Peter Berner (Kyabram)	
Mr Mick Coventry (Kyabram)	
Mr David and Ms Ruth Green (Kyabram)	Ms Ruth Green
Ms Angela McGregor (Kyabram)	
Ms Ann-Maree Dillon and Mr John O’Shanassy (Kyabram)	Ms Ann-Maree Dillon
Ms Kerrie Campbell (Kyabram)	
Star Hotel Echuca Pty Ltd (Echuca)	Mr Michael Staalkjaer, BizLaw, lawyers (3 April 2013 only).

Table 1: Parties to the Panel Hearing⁵

⁴ Mr Raworth also gave evidence on behalf of Mss Glenda Walker and Jeanie Borthwick concerning the Kyabram Commercial Precinct.

⁵ Mr Dennis Boundy was scheduled to appear but did not do so due to illness. The Panel received a supplementary written submission instead. Mr Jarrah Lukjanov from Select Planners was also initially scheduled to appear for ALDI Stores but later, after the circulation by the Council of post-exhibition changes to the Amendment, withdrew his request to be heard advising that ALDI was satisfied with the Council changes. These are discussed later in the report.

(iv) Post Hearing correspondence

After the close of the Panel Hearing at the end of 2012, there were a number of administrative matters dealt with by the Panel.

Written submissions required

At the close of hearings on 20 December 2012, the Panel requested that as much of the material from the Union Street residents' submission folder as could conveniently be supplied electronically be forwarded to the Panel. The material was received on 27 December 2012.

Also, because the Union Street residents' extensive submission had not been fully presented at the Hearing, and the Panel had indicated that it would nevertheless read and consider all of that submission, Mr Stokans requested and was given leave to reply to the material in writing by no later than 16 January 2013. His reply was received on 15 January 2013.

The Panel further directed at the close of the Hearing that the submission for Mr Staalkjaer and Ms Walker-Staalkjaer that was presented verbally by Ms Walker-Staalkjaer be provided in writing. She indicated that she would do so within a day or so. That material was received on 14 January 2013. Mr Stokans' response for the Planning Authority to the written submission was received on 15 January 2013.

Changes to the Act

On Day 2 of the Panel Hearing in Echuca, during the presentation on behalf of Burnewang, the Panel directed the attention of the parties to the Panel report concerning Melbourne Planning Scheme Amendment C186 and in particular the discussion in that report of the effects of section 12 of the *Planning and Environment Act 1987* (the Act) as relate to amendments involving the application of the Heritage Overlay. Further written submissions were also permitted by Burnewang in relation to this matter and were received as well as a Council response.

Later, in the week beginning 25 February 2013, the Panel became aware of an approved change to section 12(2)(c) of the Act. The *Planning and Environment Amendment (General) Act 2013* (No 3 of 2013) (the Amending Act) indicates that the approved change will come into effect by 28 October 2013 if not earlier proclaimed. It therefore may well be in place before the present Amendment process is completed by the Council and/or the Minister.

The Panel gave a direction on 4 March 2013 inviting further written submissions from parties to the Panel Hearing in relation to the forthcoming legislative change by no later than 15 March 2013. In response there were three submissions received: they were from the Council's lawyers, the lawyers for Burnewang, and the Staalkjaers.

The Council response was that as the Amending Act had not been proclaimed and it contains no relevant transitional provisions, the Panel must act in accordance with the law as it stands. It was said that the Panel had closed the hearing to consider the matters raised in submissions and prepare its report, and it should not be reopened to consider further submissions based on section 12(c).

Burnewang did not seek to add anything nor change previous submissions made to the Panel.

The Staalkjaers' view was that the matter should not be left to written submissions and submissions should not be required within such a short time frame. They suggested that a further hearing date should be scheduled to allow submissions concerning the change to the

legislation (and to allow other submitters to be heard – see below). They said that considering that the Shire *'has had over 7 years since the GAP Study and over 5 years since the 17 December 2007 Council meeting that resolved to prepare Amendment C50, an extra few weeks to ensure appropriate notice and a chance to be heard is given is not being unreasonable'*.

In response to these submissions and in light of the decision to reconvene the Hearing on 14 May 2013 in relation to the Star Hotel Echuca (see below), the Panel determined that it would put aside time at that further scheduled Hearing to hear submissions from the Staalkjaers and a reply from the Council in relation to this issue of changes to the Act.

The Panel direction of 5 April 2013 indicated that the submissions should be legal or in principle submissions only and should not be directed to individual property or submitter circumstances as these submissions had already been presented on earlier days of the Hearing. The Panel emphasised that it was not necessary for the Staalkjaers or any other submitters to obtain valuation or other personal economic advice for the purpose of these presentations as the Staalkjaers had suggested may be required.

The Hearing scheduled for 14 May 2013 was later cancelled on 7 May 2013 following gazettal of Amendment C97 to the Planning Scheme which resolved the issue of the application of the Heritage Overlay to the Star Hotel Echuca (see discussion below).

The Panel in cancelling the 14 May 2013 Hearing, instead invited written submissions from the Staalkjaers on the changes to the Act by no later than Friday 17 May 2013. A reply by the Council was also allowed by Friday 24 May 2013.

The Staalkjaers' submission was received on 17 May and a response by the Planning Authority on 22 May 2013.

The issue of the implications of section 12 of the Act and the proposed changes to the legislation are discussed in Section 5.10 of this report.

Notice to Star Hotel, 45-47 The Esplanade, Echuca and others

On 1 March 2013, Mr Michael Staalkjaer of BizLaw, the lawyers for Star Hotel Echuca Pty Ltd (Star Hotel), a tenant with a long term lease for 45-47 Murray Esplanade, Echuca, which is a property owned by the City of Echuca, wrote to the Panel requesting that the Panel report not be concluded within the next week. BizLaw claimed that their client had not received notice of the Amendment and that the proposed interior controls in the Amendment may have major ramifications for their client's commercial operations. It was said that this matter had come to light during preparation for a proceeding⁶ listed on 28 February 2013 before VCAT. The solicitors indicated that their client was considering whether to request to be heard by the Panel.

The Council responded to this correspondence on 5 March 2013 providing mail merge material indicating that a notice of the Amendment had been given to the occupier of the premises. The Council email also explained that the individual place Heritage Overlay, HO34, which was intended to apply to the hotel (and which already includes interior controls) was at that time incorrectly mapped in the Planning Scheme and this was to be corrected as part of Amendment C50. It further indicated that applications for planning permit had nevertheless been sought and processed for the property previously - apparently assuming the correct application of HO34. A copy of this Council response was provided to BizLaw.

⁶ VCAT No P1443/2012, Star Hotel Echuca Pty Ltd (Paul Jarman) v Campaspe Shire Council

The material provided to the Panel did not make it clear, however, whether the application for permit was made assuming the application of HO34 or instead HO1. HO1 is the Heritage Overlay applying to the precinct surrounding the subject property and shown on the current Planning Scheme map as applying to that property.

The material earlier supplied to the Panel indicated that the notice that was sent to the Star Hotel was the form of notice directed to properties in the proposed revised HO1 (not the notice to individual Heritage Overlay properties). It was accompanied by a brochure describing the new precinct. The Star Hotel is listed amongst the buildings contributing to the precinct.

While the letter itself refers to '*amending Planning Scheme Map No...34HO*', this appears as part of a longer list of HOs, and is, in any case, incorrect in so far as the Planning Scheme map number is actually 8HO.

In the Panel's view the letter sent to the Star Hotel about the Amendment appeared less than clear and its being accompanied by the information brochure for the precinct at the very least would not alert the reader to any intention to include the property in its own individual Heritage Overlay with interior controls.

BizLaw wrote again to the Panel on 13 March 2013 on behalf of a Mr and Mrs Weeks, the owners of 62 Eyre Street, Echuca. They advised that their clients said that they did not receive notice of Amendment C50 and in particular the proposal to apply heritage controls to their property which is currently not subject to any Heritage Overlay on the Planning Scheme maps⁷. BizLaw indicated that they would further research this matter and advise the Panel by 29 March 2013 whether their clients (and possibly others) wished to make a request to be heard by the Panel.

These letters were circulated to all parties and responses invited. The Panel received a response from the Council's lawyers on 15 March 2013 concerning the Weeks' matter and a reply from BizLaw on 19 March 2013.

Having considered all of the correspondence concerning the Star Hotel and the Weeks' property, the Panel indicated in written directions dated 21 March 2013 that it would conduct a Directions Hearing so as to be able to explore the issues further before resolving on the application(s) to be heard.

The Directions Hearing was held at the Planning Panels Victoria offices on 3 April 2013. The Panel was presented with submissions by BizLaw for the Star Hotel and Russell Kennedy for the Council.

Having heard the parties and having received a number of documents concerning planning events relating to the Star Hotel, the Panel ruled that it would reconvene the Hearing to hear submissions and evidence for the Star Hotel and to allow Council submissions and a reply. The Panel directions made it clear that the application made to and allowed by the Panel related to the consideration of the merits of the proposed application of HO34 to the property. The Panel's reasons are set out in full in its correspondence of 5 April 2013. The final paragraph of the section of that correspondence relating to the Star Hotel provides a summary of the Panel's reasons:

⁷ The Maps currently apply HO62 to the property at 70 Eyre Street but the schedule to the Heritage Overlay indicates that HO62 applies to 62 Eyre Street, Echuca.

Considering all of the circumstances surrounding this application to the Panel, including the possible non-receipt of notice; notice limitations; the current VCAT dispute involving issues of levels of significance; uncertainty around the nature of the request for Ministerial intervention as to whether the controls sought are 'interim' or permanent; whether that request will be successful or whether it would require the merits of listing to be assessed either in advance or later – we think it would be both fair, convenient and useful for the Panel at this point to undertake an assessment of the appropriateness of the inclusion of the Star Hotel in an individual place Heritage Overlay (and in particular the application of interior controls) as requested by BizLaw for Mr Jarman.

The Panel correspondence indicated that the Panel was satisfied by the information provided that notice had been adequate to other properties including that owned by the Weeks.

The Panel scheduled a further Hearing for 14 May 2013 at Echuca to consider matter of whether the Star Hotel should be included in HO34 and in particular whether interior controls should be activated. The Echuca venue was chosen, as a site inspection was considered appropriate and arranged for the evening before the Hearing. As discussed above, time was also set aside at the Hearing to hear submissions about forthcoming changes to the Act.

During the lead up to the Hearing, a dispute arose in the week of 22 April 2013 about access by the Council's expert witness to the Star Hotel premises for the purpose of preparing expert evidence for the Panel Hearing. After a lengthy exchange of correspondence, including a direction by the Panel that access must be afforded to the Council's witness, Ms Kemp was not given access to the property for the purpose of her report to the Panel in sufficient time to allow the inspection to inform her report.

The Panel wrote to the parties on 1 May 2013 indicating its dissatisfaction with what had transpired and allowing Ms Kemp to supplement her written evidence orally at the forthcoming further day of Hearing, following her inspection of the premises with the Panel planned for the evening before the Hearing.

On 6 May 2013, however, the Council wrote to the Panel advising that on 26 April 2013, Ministerial Amendment C97 to the Planning Scheme had been gazetted. That amendment, which had been processed by the Minister under section 20(4) of the Act, applied HO34 to the site of the Star Hotel, 45-47 Murray Esplanade, Echuca. Interior controls were also applied.

The Panel then wrote to the Council's and the Star Hotel's lawyers on 7 May 2013 and cancelled the further day of Hearing. The Panel's letter indicated that the Panel saw no point in reconvening the Hearing to consider whether Amendment C50 should (through application of HO34) apply interior controls to the property, as they were now in place.

The Panel's correspondence then set out arrangements for further written submissions on the issue of changes to the Act as set out above.

BizLaw then wrote to the Panel on 8 May 2013 indicating that their client disagreed with the Panel's decision to cancel the further day of Hearing and requesting that a further day be set aside to allow submissions by their client not only on the issue of interior controls but the Amendment generally. Their letter also indicated that their client took exception to some matters put in the Council letter to the Panel of 6 May.

The Panel considered the further matters put and, on 13 May, wrote again to the parties confirming the cancellation of the Hearing scheduled for 14 May 2013. The Panel indicated that it would be advising the Council that it had not considered the merits of including the Star Hotel site in HO34. The Panel further indicated that the issue of further mapping anomalies had already been addressed in its letter of 7 May 2013. The directions concerning submissions on changes to the Act were affirmed.

In response to this Panel letter, BizLaw wrote again to the Panel on 17 May 2013. Their correspondence included the invited submission on changes to the Act but also included uninvited submissions and evidence concerning the Star Hotel, and submissions concerning the Amendment process generally.

The Council's reply, dated 22 May 2013, provided invited comments in relation to the legislative changes issue and said that the other material from BizLaw should not be accepted.

The Panel has considered the material forwarded relating to the changes to the Act. These are discussed in Section 5.10 of this report.

2 What is proposed?

2.1 Details of the exhibited Amendment

The exhibited Explanatory Report indicates:

The amendment proposes to apply the Heritage Overlay to a number of individual buildings, sites and precincts. The heritage places ... include private and public buildings, bridges, and other historically significant structures.

More particularly the exhibited documentation described the Amendment as proposing to:

- include six new heritage precincts in the Planning Scheme applying to parts of Tongala, Kyabram, Lockington and Echuca;
- alter the controls and extent of five existing heritage precincts in Echuca, Rochester and Rushworth;
- add the Heritage Overlay to 111 new individual places across rural and urban parts of the Shire;
- replace the existing Clause 22 policy relating to heritage matters with a new policy that would apply to all heritage places. This includes precinct Statements of Significance, and lists and maps indicating the contributory and non-contributory buildings within each precinct, as well as introducing general heritage objectives and policy;
- add a new Incorporated Document to provide for permit exemptions applying separately to contributory and non-contributory buildings in the following precincts only:
 - HO3 Francis Street Heritage Precinct;
 - HO86 East Echuca Residential Precinct;
 - HO87 Echuca North Residential Precinct;
 - HO128 Kyabram Union Street Precinct;
 - HO301 Rushworth Central Area Precinct;
 - HO401 Lockington Precinct; and
 - HO501 Tongala Precinct.
- add the following documents to the list of reference documents in Clause 21.05:
 - Campaspe Shire (Gaps) Heritage Study (December 2005);
 - Burra Charter: The Australian ICOMOS Charter for Places of Cultural Significance (1999);
 - Business Signage Guidelines for Historic Areas (August 2011)⁸; and
- make consequential changes to the Planning Scheme maps and administrative changes to the Planning Scheme.

Importantly, as a consequence of the exhibited Amendment:

- There would then be twelve new or revised heritage precincts in the Planning Scheme.
- There would be a much expanded Clause 22.02. Its application would be extended to all heritage places.

It would include a policy basis section. It would also include a section containing Statements of Significance for all 12 precincts proposed to be included in the Scheme.⁹ The Statements of Significance would be in the currently recommended format of 'what,

⁸ These guidelines are intended to apply only to the Echuca Port and Central Rushworth area (as defined in the guidelines themselves).

⁹ Clause 22.02 as proposed incorrectly refers to the precincts as residential. This should be corrected.

how and why' each precinct is significant. The Statement of Significance for each precinct includes a map and an address list of contributory properties. The maps and lists of contributory places include individually significant places which have their own Heritage Overlay number on the Planning Scheme maps and are listed in the Schedule to the Heritage Overlay at Clause 43.01, as well as other places which merely contribute to the precinct.

The Clause would also include a policy section relating to various issues such as demolition, alterations and additions, subdivision, new buildings, front fences and the like. A useful definitions section is proposed. A list of policy references similar to that proposed for Clause 21.05 is included.

- There would be an Incorporated Plan providing for permit exemptions in the case of single dwelling properties.
- The Statements of Significance for individual heritage places would remain outside the Planning Scheme (contained in the relevant heritage study referenced in the Scheme where they derive from such a study, and in all cases in the State HERMES heritage data base).

2.2 Background heritage study and subsequent strategic work

The exhibited Explanatory Report indicates that:

This amendment seeks to implement the recommendations of the Campaspe Shire Heritage GAP Study commissioned in September 2003. The study area included unsurveyed rural areas; the towns of Rochester, Kyabram and Lockington and the surrounding smaller towns of the shire which had not previously been surveyed.

It also advises that:

Heritage Victoria administered the project and provided project funding through the Public Heritage Program in 2002-2003.

It further says that:

As a result of the Study, and further strategic work undertaken by Council since the completion of the Gap Study, statements of significance were prepared for a number of individual places, as well as 6 additional precincts and modification of 5 existing precincts, identified as having significance and all are included within this Amendment. It is also proposed to retain 1 existing precinct.

(i) The Gap Study

The Gap Study was prepared by Robyn Ballinger, Thomas Henty, Lorraine Huddle and Ian Wight. The Study is presented in three volumes:

- Volume 1: Study Overview and Recommendation
- Volume 2: Thematic Environmental History
- Volume Three: Place Records

Volume 1 of the study (at page 4) indicates that 191 places of potential significance were to be reviewed and other potentially significant places identified and addressed with recommendations made for the conservation of the municipality's cultural heritage. A much larger group of places was apparently identified (884 places referred to at page 8) but only 76 were assessed in detail. Relevant to the issues raised before the Panel, the study indicates (at page 8) that:

Another 35 places with a prime facie case of historic and social significance within larger communities, such as churches, halls and schools were recommended for protection without the preferred degree of architectural assessment and historic research undertaken.

The study recommends 109¹⁰ places for inclusion in the Heritage Overlay (pages 18 to 31). The recommendations include four new heritage precincts: Kyabram Commercial Precinct; Kyabram Union Street Precinct; Lockington Heritage Precinct; and Tongala Heritage Precinct. The Gap Study does not address the existing precincts in Echuca, Rochester and Rushworth.

The Gap Study also indicates (at page 8) that no interiors were assessed (page 8); and private residences had histories recorded only if they were associated with significant people or events, or histories were readily accessible. It goes on to say that the mapping of urban places and the inclusion of all assessed places on the Heritage Victoria LHPD database (now HERMES Date Base) was to be undertaken by the Council itself (page 8).

The Gap Study was preceded by two other relevant heritage studies: *City of Echuca Heritage Conservation Study 1992* by Andrew C Ward and Associates (the Ward Study); and the *Waranga (Shire) Conservation Study 1988* by Graeme Butler (the Waranga Study).¹¹

(ii) Further strategic work

The post Gap Study ‘further strategic work’ referred to in the Explanatory Report principally comprised the rewriting of the Statements of Significance from the Gap Study into the currently preferred format and a review of the heritage precincts identified in the Gap Study. The latter work, involving consideration of the current relevance of the precinct boundaries, identification of contributory and non-contributory buildings and preparation of Statements of Significance, was undertaken in the main by Ms Deborah Kemp of Heritage Concepts, the Council’s current Heritage Adviser. The Council submission to the Panel indicated that Ms Kemp’s work was assisted by earlier work undertaken by Ms Lorraine Huddle, who had been a member of the team undertaking the Gap Study and later a Heritage Adviser. This strategic work saw the fragmentation and the redefinition, expansion and renaming of the three existing precincts in Echuca as five precincts (one with two parts).

The results of the post Gap Study precincts work was presented at the Panel Hearing by Ms Kemp as a series of ‘Heritage Precinct Reports’, each containing a Statement of Significance in the currently preferred format. The ‘what is significant’ section includes a general description and a list of contributory buildings. Attached to each Statement of Significance is a series of photographs showing the contributory properties within the precinct.

Statements of Significance were also prepared or re-written for a number of individual places not identified in the Gap Study, being Burnewang House and Farm Complex, Elmore¹²; the Bull Ring and the Council Chambers, both in Gillies Street, Rochester; the former Pettifer Motors building, Kyabram; Kyabram Plaza Theatre; and ‘The Rookerie’ homestead, Terrick Terrick East. The latter three places were shown as being assessed by Mr Justin Francis, a former Heritage Adviser to the Council¹³. Mr Francis was also one of two experts assessing

¹⁰ Two places are not accounted for in the proposed schedule to the Heritage Overlay included in the study itself. The number in the exhibited Amendment is said to be 111.

¹¹ With Dr C McConville and John Feeney (historians) and Joyce Hammond (local historian).

¹² First identified for heritage controls in the Waranga Study.

¹³ Also called to give evidence by the National Trust at the Panel Hearing.

three trees that are proposed to be subject to individual Heritage Overlays as part of the current Amendment: a Moreton Bay Fig in Wilson Road, Tongala; a Blue Gum in Campbell Street, Tongala; and a Date Palm on the corner of Anstruther and Annesley Streets, Echuca.

The post Gap Study strategic work also included the preparation of three further generic Statements of Significance – being for the groups of halls, schools and churches which were all given a prime facie grading of locally significant in the Gap Study but which were not subject to individual assessment.

2.3 Amendment background

Resolution to prepare and exhibit Amendment

The Council at its meeting on 17 December 2007 resolved to prepare the present Amendment.

Ministerial authorisation to exhibit the Amendment was granted on 30 January 2012.

Exhibition

The Amendment was exhibited between 23 April 2012 and 25 June 2012. Notices were placed in three local newspapers and the Council submission to the Panel advised letters were sent to some 1200¹⁴ properties in the relevant parts of the Shire.

Submissions

In response to public exhibition, some 56 submissions were received¹⁵. Six raised no objections, six sought changes that the Council could accommodate and the remaining 44 either objected outright or raised matters that could not be accommodated. Of the 44 objecting submissions, 27 related to the Kyabram Union Street Precinct.

A petition with 1200 signatures was also forwarded to the Council.

A summary of the issues raised in the written submissions was included in the Council's submission to the Panel:

In principle objections to heritage controls per se

The discriminatory nature of heritage controls

Infringement of property rights

The Amendment's flawed strategic basis

The Amendment goes beyond the recommendations of the Gap Study

The validity of contributory buildings nominated in the Heritage Policy

The lack of transparency in nominating contributory places

The validity of Precinct boundaries

Restrictions on developments and increased development cost

The effect of alterations to nominated buildings

Fall in property values, and lack of compensation

¹⁴ Also said to be 1400 in other parts of the Council submission.

¹⁵ These included six after the closing date.

Mapping anomalies

Incorrect or inadequate citations

Inadequate/inaccurate Statements of Significance

Impediment on commercial activity in activity centres

Opposition to external paint controls and tree protection

Inadequate notice.

The Council formally considered the submissions on 21 August 2012. It resolved to adopt the contents and recommendations contained in the 'Case Book' of the submissions and the proposed Council response, and to request the appointment of a Panel.

Post-exhibition changes by Council

At the 21 August 2012 Council meeting, the Council in adopting the Case Book, effectively resolved that would make a number of changes to the Amendment at time of adoption and would recommend them to Panel.

The changes as agreed are summarised in an officer memo provided to the Panel:

1. *correct map 20 in relation to the correct site for HO225 – 46 Railway Road, Rochester*
2. *GVW – correct map no's 23 (HO511) & 26 (HO101) to affect only the water towers not entire sites*
3. *Tongala Shire Hall – map no 23, HO510 – ensure in correct location*
4. *RSL Building in Rochester – Map no 20 – HO227 – remove HO from SES buildings*
5. *Union St Precinct HO128, map no 26 – houses gone – remove from being contrib., remove hse nos 24 & 12 from being contribs to Union St precinct (HO128)*
6. *HO3 – map no 9 – amend precinct boundary to remove new units on High Street*
7. *& remove 357A High Street from being contrib*
8. *check each precinct to ensure in each any individuals are contrib to the precinct – particularly in Tongala Precinct 70, 62 & 56 Mangan to be made contributory, as well as 44 Miller Street*
9. *work on Incorporated Document to clarify requirements and exemptions and use plainer english*
10. *remove no 2 Union Street from list in SOS and local policy as is not included in proposed HO*
11. *alter HO2 to remove Aldi site and neighbouring sites from precinct.*

These changes are also reflected in the post-exhibition revised documentation which was circulated in response to the direction of the Panel (see Appendix C). These changes put forward on behalf of the Council includes that there is a Council willingness to reduce the area of the Heritage Overlay proposed to apply to Burnewang Homestead (which would be done after access was allowed); and the need to finalise the correct location of HO26 in Rotary Park (awaiting confirmation).

There are also other changes to precincts shown in the post-exhibition version of the documentation in Appendix C. The changes include:

- Renaming of some of the precincts for purposes of consistent description and/or due to boundary revisions in the case of existing precincts: 'Francis Street' became 'Echuca Central Residential'; 'East Echuca' became 'Echuca East'; 'Rushworth Central Area' became 'Rushworth Central'; 'Old Echuca Township Area' became 'Old Echuca Township'; and 'Echuca Central Area' became 'Echuca Central'.
- Correction of a street address in Old Echuca Township Precinct.
- Correction of the inconsistency between the list of contributory properties and map for the Echuca Central Residential Precinct in Clause 22.02.
- Correction of Kyabram Commercial Precinct at Clause 22.02 to add omitted individual places as contributory to the precinct and retract the extent of the precinct at either end of the southern side of Allan Street and in the western part of the northern side of that street.
- Removal of 9 Esmonde Street as contributory to Rushworth Central Precinct.
- In the Lockington Precinct, correct the accidental omission of an individually significant place as contributory to the precinct; and correct the address for 1-3 McColl Street.

The Panel was advised that affected individual place property owners/occupiers were sent notice about the above these proposed changes to the exhibited documentation.

The post exhibition documents at Appendix C also show other policy changes. They include in Clause 21:

- Provision of a policy basis for consideration of permit exemptions.
- Clarifying that permit applications for demolition are to be accompanied by details of the proposed replacement development.
- Rewording of the requirements about single vehicle crossovers.
- Introduction of reference to the *Business Identification Signage Guidelines* which were exhibited as a new reference document.
- Changes to Clause 21.04-2 in relation to '*Heritage*' to reflect changes made by other parts of the Amendment, including:
 - supplementing the Heritage Strategies section by referring to the varying contributions that can be made by buildings to heritage areas and the need for development to be sympathetic to streetscape and the area characteristics; and
 - change to the heritage policy component of the Environment Implementation section to refer to the use of policy to '*guide decisions about conservation, demolition and adaptation of heritage places*' rather than its use '*to maintain and protect Echuca's heritage assets and encourage reuse of heritage places.*'
- Change to Clause 21.05: '*Create an additional reference document to consist of Ms Kemp's precinct reviews. This is to provide for clarity and ease of understanding as the reviews have been based on the findings of the Gap Study but references them at this location will aid in applications/developers/planners in understanding where the controls have originated.*'

The post-exhibition documents also include changes to the schedule to the Heritage Overlay. They are:

- Changes to the names of the precincts
- The addition of HO84 relating to 23 Crofton Street, Echuca

-
- Deletion of HO421 'The Rookerie' homestead at Terrick Terrick East (its having been demolished).

Changes are also shown as applying to the Incorporated Plan:

- Clarifying that the exemptions only apply to development '*when in association with the use of the land for a single dwelling*'.
- Consistent naming of relevant precincts.

Panel comment

The Panel does not believe that any of these post-exhibition changes shown in Appendix C are inappropriate with a few exceptions as outlined in this report including, most notably, as relate to the Aldi property (discussed in Section 6.2(iii)), the Kyabram Commercial Precinct (see Section 6.6) and the issue of the new reference document as discussed below. We respond to the Staalkjaers' criticisms of the policy content in Section 5.11.

Documenting the post Gap Study review

As noted in Section 1.2(ii) above, the post exhibition identification of a document entitled *Campaspe Heritage Precincts Review 2012* led to a request by the Union Street Residents to obtain that document. The strategic work underpinning the proposed heritage precincts was and has continued to be a contentious issue. This is particularly so because the Amendment purports to be one which, at least in the main, implements the Gap Study, but clearly goes much further than that study in relation to precincts. The brief reference in the Explanatory Report *to further strategic work undertaken by Council since the completion of the Gap Study* well understates the importance of the further strategic work.

At the time the request was made for the document, the Council's lawyers advised that it was *simply a compilation of the citations for each of the precincts which have previously been made available to submitters*. When questioned at the Hearing about the content of the un-exhibited document, Mr Stokans advised variously that it would merely be a compilation of the Statements of Significance for the (nine) precincts or that it would contain other material. His initial written submission to the Panel, for example at paragraph 8.7 includes:

For each precinct there is an historical background, a set of references, physical description, Statement of Significance stating the relevant AHC criteria and policy which includes a map of the precinct, the policy basis, objectives, policy, decision guidelines, map and historical background and physical description. The AHC criteria have been updated to the Hercon criteria.

While this submission suggests that the document had already been prepared, this was not the case. By the close of the Hearing, the document was not available.

Planning Practice Note 01: *Applying the Heritage Overlay*, September 2012 includes:

The heritage process leading to the identification of the place needs to clearly justify the significance of the place as a basis for its inclusion in the Heritage Overlay.

The Panel, as is explained in this report, is satisfied by the presentations at the Hearing as informed by our own inspections, that there is a sound strategic basis for the precincts that are proposed as part of the Amendment (subject to some changes) and that they should generally proceed to adoption (as well as the new individual listings and other changes).

It is one thing, however, for a strategic case supporting an amendment or part of it to be made out at a Hearing, but quite another to seek to have the Panel agree to preparation of a new strategic document post-exhibition and post-Panel which sets out the strategic case and give that document status in the Planning Scheme, without its being subject to any form of review of content.

Planning authorities frequently suggest changes to scheme amendments during the panel processing phase, as has occurred here. However they generally do not go so far as to suggest the inclusion of a new reference document which has not yet been written. In the Panel's view the Council's suggestion to introduce this document which has not and cannot be reviewed by either the Panel or the public is unacceptable. It is something which should have been put together for the purposes of exhibition.

In this respect we agree with Mr Staalkjaer that it is not the proper course of events if the strategic justification for an amendment is only presented in evidence given at a Panel Hearing, rather it should already be apparent in documents relating to the Amendment.

If the Council wish to add such a reference document, and we recommend that they should, it should be completed and be subject to a review process. We believe the only appropriate way to do this would be by preparing the document and making it available for public comment.

We have recommended later in the report that, for a number of reasons, the further processing of the Amendment should involve some aspects of the Amendment not proceeding to adoption at this stage. This might be done by the splitting of the Amendment allowing one part to be adopted, with review and re-exhibition of other components. Alternatively, some elements requiring review might be omitted from the present Amendment entirely and dealt with by a subsequent amendment process. We recommend this in relation to various parts of the Amendment in Sections 5 and 6 of our report. We suggest that the new document setting out the basis of the revisions to the heritage precincts could be included in the second part of the Amendment or the later amendment.

It would have to be said that it is somewhat unusual for a panel to recommend that the strategic document which underpins intended statutory controls be prepared after the statutory controls are proposed (and possibly introduced). The role of the review of the precincts, however, was given only the briefest mention in the exhibited Amendment documentation, and its importance only became clear to the Panel during the Hearing process as a result of the Union Street submissions and Ms Kemp's evidence.

While not all planning scheme provisions are supported by scheme reference documents, we consider it is important that the full history of the delineation of these precincts and the basis upon which delineation occurred be recorded. It is clear that the precincts really have little to do with the Gap Study¹⁶ and are sourced from the later work which was described to the Panel at the Hearing. This strategic work needs to be properly and accurately recorded. The documentation needs to set out the methodology and outcomes of the review in relation to the precincts and individual places, the use of the HERCON criteria, the principles applied in defining precincts, comparisons used to establish thresholds and the like.

While we say that the strategic document needs to be compiled and exhibited for comment in a second part of a split Amendment or in a later amendment, we confirm that we support

¹⁶ Except that the four new precincts are added broadly in the same part of the four towns as proposed in the Gap Study.

the implementation of the most of the precincts as part of the present Amendment (in modified form in some cases). Any debate about the content of the exhibited strategic document then should centre on the accuracy and clarity of its recording of the process of precinct delineation.

Recommendation

The Panel recommends:

- **That a document be compiled outlining the post Gap Study review work methodology and outcomes, not only in relation to the precincts but also the individual places.**
- **This document be proposed for inclusion as a reference document in Part 2 of a split Amendment or a later amendment.**
- **The document should be subject to public notice and/or review.**

3 Planning context

This section of the report briefly sets out the planning context for the Amendment. It includes an overview of relevant parts of the State Planning Policy Framework (SPPF), the existing Municipal Strategic Statement (MSS) and Local Planning Policy Framework (LPPF). It also sets out the effects of the Heritage Overlay and other controls of the Planning Scheme.

The submissions from the Council discussed the most relevant policies and the Panel notes that, with the exception of Burnewang, other submitters really did not take issue with what was put forward as relevant existing policy. The existing policy component of this chapter is generally consistent with the description in the Council submission and the Explanatory Report. Other policies raised by Burnewang and their relevance are discussed in Section 7.4. We also describe the changes proposed to local policy.

3.1 State Planning Policy Framework

Clauses 10.02 and 15.03 of the SPPF which promote the conservation of heritage places are the key policies.

Clause 10.02 provides in part:

The State Planning Policy Framework seeks to ensure that the objectives of planning in Victoria (as set out in Section 4 of the Planning and Environment Act 1987) are fostered through appropriate land use and development planning policies and practices which integrate relevant environmental, social and economic factors in the interests of net community benefit and sustainable development.

The objectives of planning in Victoria are:

- (a) To provide for the fair, orderly, economic and sustainable use, and development of land.*
- (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.***
- (e) To protect public utilities and other facilities for the benefit of the community.*
- (f) To facilitate development in accordance with the objectives set out in paragraphs (a), (b), (c), (d) and (e).*
- (g) To balance the present and future interests of all Victorians.*

(Panel emphasis)

Clause 15 *Built Environment and Heritage* provides so far as is relevant:

Planning should ensure all new land use and development appropriately responds to its landscape, valued built form and cultural context, and protect places and

sites with significant heritage, architectural, aesthetic, scientific and cultural value.

Clause 15.03-1 *Heritage conservation* has as its stated objective:

To ensure the conservation of places of heritage significance.

It contains the following 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 and the maintenance of ecological processes and biological diversity.*
- *Provide for the conservation and enhancement of those places which are of, aesthetic, archaeological, architectural, cultural, scientific, or social significance, or otherwise of special cultural value.*
- *Encourage appropriate development that respects places with identified heritage values and creates a worthy legacy for future generations.*
- *Retain those elements that contribute to the importance of the heritage place.*
- *Encourage the conservation and restoration of contributory elements.*
- *Ensure an appropriate setting and context for heritage places is maintained or enhanced.*
- *Support adaptive reuse of heritage buildings whose use has become redundant.*

3.2 Local Planning Policy Framework

(i) Municipal Strategic Statement

The Explanatory Report comments in relation to the MSS:

The Local Planning Policy Framework of the Campaspe Planning Scheme recognizes heritage assets as being vital features for the built and natural environment, and irreplaceable records of cultural development.

In this respect, the Key Influences upon the MSS include:

Aboriginal and historic heritage assets of the Shire are recognised as being vital features of the man made and natural environment and are irreplaceable records of our cultural development.

Key strategic issues currently set out at Clause 21.04-2 Environment (Heritage) are:

- *Protection of sites and precincts of historic, cultural and natural significance.*
- *Aboriginal Cultural Heritage.*
- *Port of Echuca.*
- *Rushworth National Trust Streetscape.*

Strategies in that clause relating to heritage are:

- *Identify Aboriginal and historic places and features of significance.*
- *Ensure the protection, maintenance and enhancement of Aboriginal and historic places and features.*
- *Encourage appropriate forms of compatible development adjacent to Aboriginal and historic places and features through planning controls and guidelines.*
- *Protect Aboriginal and historic places and features of significance.*

-
- *Balance development and conservation by implementation of appropriate controls.*

Implementation measures include the use of Clause 22.02 to assist in managing heritage places.

Reference Documents listed at Clause 21.05 currently include:

- Waranga Conservation Study, Graeme Butler, 1988;
- North Central Goldfields Project, Historic Mining Sites of Rushworth (Waranga North) Mining Division, David Bannear, 1993; and
- Echuca Heritage Conservation Study, Andrew Ward, 1992.

(ii) Local Planning Policy

Clause 22.02 is a particular local policy relating to heritage. It currently relates only to precincts HO1 and HO3 in Echuca. Statements of Significance are included for three existing precincts (Echuca Central Area, Echuca East Area and Francis Street Residential Area) as well as objectives, statements of policy and decision guidelines. All of the policies and guidelines apply to all of the Echuca precincts. The single Reference Document for the clause is the Ward Study.

3.3 Panel comment on policy framework

As noted earlier, the exhibited Amendment proposes to change the local policy content of Clauses 21 and 22 of the Scheme as it relates to heritage. The changes are set out in Section 2.1.

So far as post-exhibition policy changes are concerned, the exhibited Clause 21.04 is proposed to be amended to provide a clearer, more contemporary expression of the strategic basis for the heritage policy and provisions. As earlier noted, in Clause 21.05, it is proposed to add a fourth new reference document – the Campaspe Heritage Precincts Review 2012. In Clause 22.02, post-exhibition changes introduce consistency in the naming regime for the precincts, correct around 14 addresses in the 12 contributory buildings lists and policy maps, and introduce a title and legend for the 12 precinct maps.

In the Panel's view the post-exhibition changes to Clause 21.04 are either inconsequential or amount to a contemporary re-expression of the same policy. Our views concerning the unacceptability of the introduction of the additional reference document in Clause 21.05 without that document being completed are set out in Sections 2.3 and 5.1 (iii)).

So far as these post-exhibition changes to the policy section of Clause 22.02¹⁷ are concerned, in the main they are minor corrections except for a new section that provides the policy basis for use of the Business Signage Guidelines for Historic Areas (2011), which was shown as a new reference document in the exhibited version of the Amendment. This new policy basis is acceptable. None of the post-exhibition changes to Clause 22.02 could be said to be controversial except for the further precinct changes which are discussed later in this report.

¹⁷ Clause 22.02 is wrongly number from Clause 22.02-1 onwards as Clause 22.06. This should also be corrected.

Mr Staalkjaer's written submission to the Panel included some criticisms of the new local policy content which would be introduced by the Amendment. They are discussed in Section 5.11.

3.4 Statutory planning framework

The Heritage Overlay is the principal statutory tool proposed to be applied to conserve the identified heritage places. This is the most appropriate statutory approach as it affords control over demolition as well as new buildings and works (by requiring a planning permit for both), and importantly it allows consideration of matters pertinent to the conservation of heritage places¹⁸.

The Heritage Overlay provisions at Clause 43.01 of the Planning Scheme comprise a 'head clause' and a 'schedule'. The requirements of the head clause cannot be varied but the schedule provides the opportunity to include additional requirements on the identified heritage places if deemed appropriate, such as a requirement for a permit to lop or remove a tree, make internal alterations or paint an already painted building exterior. It also provides the opportunity to remove permit requirements by use of an Incorporated Plan (or Document) referred to in the schedule and in Clause 43.01-2.

The requirements for and exemptions from planning permission under the Heritage Overlay need also to be read together with the permit exemptions which always or sometimes apply as specified in Clause 62 of the Scheme.

The Heritage Overlay head clause at Clause 43.01-4 includes decision guidelines for permit applications made under the overlay. They include:

- *The State Planning Policy Framework and the Local Planning Policy Framework, including the Municipal Strategic Statement and local planning policies.*
- *The significance of the heritage place and whether the proposal will adversely affect the natural or cultural significance of the place.*
- *Any applicable statement of significance, heritage study and any applicable conservation policy.*
- *Whether the location, bulk, form or appearance of the proposed building will adversely affect the significance of the heritage place...*
- *Whether the demolition, removal or external alteration will adversely affect the significance of the heritage place.*
- *Whether the proposed works will adversely affect the significance, character or appearance of the heritage place...*
- *Whether the lopping or development will adversely affect the health, appearance or significance of the tree.*

In the present Amendment it is not only proposed to apply the Heritage Overlay to new places but to alter the controls applying to many existing places.

The application of the Heritage Overlay may be applied to an individual property or a number of properties¹⁹ forming a recognisable heritage precinct²⁰. Both are proposed here.

¹⁸ In many central places in the towns, the current zoning (or other overlay) provisions already mean that planning permission is required for new buildings and works but the considerations may not extend to heritage matters.

¹⁹ It can also apply to parts of properties, to built structures such as bridges or natural elements such as trees.

Recently the Heritage Overlay has been used to identify places which share a common history and/or significance but which do not adjoin each other, or form a close geographical grouping. The application of the Heritage Overlay to these places with these associations is referred to as a group or serial listing. This Amendment proposes a variant on group or serial listing for some schools, halls and churches. Part of the Statement of Significance for these groups would be common material though the places are not given a shared Heritage Overlay number. It was also suggested at the Panel Hearing that significant buildings in at least two of the exhibited precincts might be better treated as a group or serial listing.

3.5 Panel comment on statutory planning framework

As quoted above, the Heritage Overlay decision guidelines refer to amongst other things to Statements of Significance. These statements are key to a proper understanding of how to respond to development proposals in a heritage place – explaining what is significant, and how and why that significance arises. We comment on the adequacy of the proposed Statements of Significance associated with this Amendment in Sections 5.5 and 5.9.

Boundary delineation for proposed precincts is often a matter in contention and this Amendment is no exception – see the discussion in Section 5.4. Statutory difficulties can also arise where individual properties which have their own basis of significance are situated amongst other properties forming a precinct – see the discussion in Section 5.7. Other difficulties can arise with respect to application of group listings – see the discussions in Sections 5.9 and 6.4.

The structure of this heritage Amendment is nevertheless broadly consistent with the approach supported by general practice. In particular the drafting of the final Statements of Significance is in the accepted contemporary format (a small number are still to be finalised), the inclusion of a policy to guide decision-making on permits of various kinds is useful, and the inclusion of an Incorporated Plan to provide for permit exemptions will relieve property owners and the Council alike from some of the administrative and cost burden of applying for and processing permits under the overlay.

For the reasons discussed in Section 5.1 and other parts of this report, we do have concerns, however, about some structural elements of the Amendment and the process leading to its exhibition. In the Panel's view the manner of preparation and public notice arrangements for the Amendment have been less than transparent and have threatened to preclude fair participation by the community in the processing of the Amendment (see the discussion at Sections 5.2). We also think that there are preferable approaches to some of the statutory elements such as are discussed in Section 5.7. We have further concerns about the Mapping process for this Amendment and its consequences – intended or otherwise. These are discussed in Section 5.8.

In summary, while we find that the Amendment is generally supported by policy and for the most part prepared in accordance with current practice, there are elements of the Amendment which require improvement or reconsideration and we make recommendations accordingly.

²⁰ See Section 5.4 for a discussion of the issue of precinct delineation.

4 Report structure and response to issues

This Panel report is broadly divided into sections as follows.

Chapters 1-4 include the background to the Amendment, information concerning the Panel process and the planning context for our recommendations and our report structure.

Chapter 5 deals with a number of key general issues raised in a number of submissions or during the Panel Hearing. They include issues relating to all precincts and individual places as well as some general process matters. They are dealt with under the following section headings:

- Technical irregularities and other failings
- Notification, access to documents and fairness
- The role of expert witnesses
- Precinct delineation
- Statements of Significance
- Group v precinct listing
- Individually significant places within precincts
- Other mapping issues
- The approach to schools, halls and churches
- Consideration of social and economic matters and changes to the Act
- The Clause 22 policy
- In principle objections to heritage controls
- Condition and integrity.

Chapter 6 deals with each of the proposed precincts, and submissions made about the precincts and/or individual properties within them.

Chapter 7 deals with contested individual places outside heritage precincts.

Chapter 8 sets out our consolidated recommendations.

There are four appendices:

- Appendix A: List of submitters
- Appendix B: List of documents from the Panel Hearing
- Appendix C: Post-exhibition changes proposed by Council
- Appendix D: Burnewang Incorporated Document.

5 General issues

5.1 Technical irregularities and other failings

(i) What is the issue?

The issue is whether the errors of process identified in submissions and at the Hearing, especially in the General and Joint Submission for the Union Street residents (the Union Street submission) presented by Mr Staalkjaer, are so significant that the Amendment should not proceed.

Ms Walker-Staalkjaer's submission put it this way:

We submit that when you 'trash' the process, which we submit has happened here, that it cannot validate a merit assessment. If the process is not done correctly then the heritage precinct cannot be found to be valid, even if some heritage significance value exists, which we submit does not anyway with regard to Union Street.

(ii) Evidence and submissions

The Staalkjaers' submissions

The Union Street submissions and the Staalkjaers' own submission received in writing after the Hearing, alleged a large number of irregularities in terms of the Council preparation and exhibition of the Amendment and others were identified in the course of the Panel Hearing. They included the following matters.

Exceeding the Gap Study

It was submitted by Mr Staalkjaer that the Council at its meeting of 18 December 2007 did not authorise all of the proposed changes to the Planning Scheme included in the Amendment. The submission by Mr Staalkjaer at the Hearing included:

1.1 *The authority for the Council Officers to prepare the proposed C50 as described in the Explanatory Report is to be found in the Minutes of the Shire of Campaspe Council dated 18 December 2007...*

1.2 *At the Council meeting the Councillors were informed by a report of Campaspe Shire Officer Mr Andrew Cowin, Strategic Planner, that:*

"This amendment seeks to implement the recommendations of the Campaspe Shire Heritage GAP Study. The Campaspe Shire (Gaps) Heritage Study was commissioned in September 2003. There were two components to the review:

- 1. Research, assessment and documentation of places of significance (previously unsurveyed areas of the Shire, including Rochester, Kyabram and Lockington and smaller towns and rural areas of the Shire).*
- 2. Thematic environmental history of the whole of the Shire of Campaspe".*

and further states in section '5 – Discussion'

The amendment proposes to implement the finding of the Heritage GAP Study. As a result the amendment seeks to apply the Heritage Overlay to 71 individually identified heritage places; 35 community places (including schools, churches and halls); and introduce 4 additional heritage precincts being Tongala Precinct, Kyabram Commercial Precinct, Kyabram Union Street Precinct and Lockington Precinct.

In addition the amendment seeks to refine the existing boundaries of the precincts within Echuca and introduce two new precincts East Echuca Residential Precinct and Echuca North Residential Precinct. Further, the amendment corrects a number of minor mapping anomalies relating to various independently listed places within the Shire of Campaspe.

Mr Staalkjaer submitted that the Council formal resolution related only to the implementation of the Gap Study but the Amendment had (unlawfully) gone beyond it and included other Scheme changes not based on that study.

These submissions were consistent with the written submission to the Council (Submission 25) where these issues were raised.

Specifically it was noted at the Hearing that the exhibited Explanatory Report indicated that 111 new individual places (rather than 106 as in the resolution of the Council) were included in the Amendment.²¹ It was also noted that Ms Kemp's written evidence referred to 74 individual places and 35 places in the halls, schools and churches group, totalling 109 places²².

It was also said that the origins of those individual places, including a number of trees, not identified in the Gap Study but now proposed for inclusion in the Heritage Overlay Schedule as part of the Amendment, are unclear. Under cross-examination, Ms Kemp indicated that she did prepare the Statements of Significance for some of these additional places but did not select the places.

The Union Street submission further asserted that given the 2007 Council resolution, no authority exists for the proposed amendments to Clauses 21 and 22 which are not mentioned in the officer report.

Moreover, it was said that while the officer report to the Council of December 2007 refers to the addition of four new precincts and the splitting of the Echuca Precinct into three, this is

²¹ The Panel also notes that, at Clause 1.5.1, the Gap Study indicates that having assessed 76 individual places in detail:

69 places were recommended for addition to the Heritage Overlay...;

35 community places (schools, churches and halls) with a prima facie case of historic and social significance, in current use within larger communities, were recommended for inclusion on the Heritage Overlay...;

1 place was recommended for addition to the Victorian Heritage Register;

3 places were recommended for inclusion to the Victorian Heritage Inventory; and

6 places were not recommended for inclusion on any of the above.

This totals 108 individual places (if the Heritage Inventory places are included or 105 places if excluded). The discrepancy between the officer report to the Council meeting on 18 December 2007 and the Gap Study itself amounts to only one place but there are six additional places in the Explanatory Report beyond those recommended by the Gap Study.

²² It was further said that the 35 places in the Group Listing was actually 36 places.

to be compared to Clause 1.5.2 of the Gap Study which recommended only the four new precincts, being Tongala, Kyabram Commercial, Kyabram Union Street and Lockington.

Ms Walker- Staalkjaer's written submission after the Hearing also addressed the mistaken reference in the Gap Study to original cyclone wire fencing at her property. She asserted that the Gap Study could not be corrected without the Shire conducting another heritage study. She also questioned the rigour of the Gap Study given that Ms Huddle advised her that only four hours per precinct were available to her to complete the precinct work.

Ms Kemp's post Gap Study review

It was submitted that the post Gap Study work which contributed to the exhibited Amendment was not properly defined or Ms Kemp exceeded her brief for that work. The rigour of Ms Kemp's work was also questioned.

Specifically, it was said that while it was clear that the post Gap Study precinct review leading to the Amendment was partly undertaken by Ms Kemp, the process of authorisation for this further work was not made clear.

It was noted that the evidence provided by Ms Kemp in response to questioning was that the additional post Gap Study work included:

- a desk top review of existing precincts by Ms Lorraine Huddle – adopted by Ms Kemp (at least in part)
- a 2011 review by Ms Kemp
- individual work by Mr Justin Francis
- other work by unknown persons.

It was also said that the further work done by Ms Kemp to update the Gap Study Statements of Significance in the now recommended format, went beyond a policy neutral review and she made a number of additions to those Statements of Significance, such as referring to garden settings.

The rigour of Ms Kemp's work and the independence of her evidence to the Panel were also challenged. This is discussed further in Section 5.3.

Notice and exhibition

Exhibition irregularities were also said to occur.

It was said that the proposed reference documents (the Burra Charter and the Gap Study) and the Incorporated Document including the individual building citations were not exhibited together with the Amendment itself. This was said to be contrary to section 18 of the Act and the Planning Practice Note 13: Incorporated and Reference Documents, August 2000.

Mr Staalkjaer also addressed notice irregularities claiming that a number of submitters said that they either had not received direct notice of the Amendment which affected their properties or the notice sent was inadequate.

Further, in the context of submissions and correspondence concerning the Star Hotel and the Weeks' property in Echuca (see Section 1.2 (iv)), it was alleged that there were a large number of properties for which unrecognised individual Heritage Overlay mapping changes occurred and no notice had been sent to these properties.

This arose because of the approach taken to the Amendment maps: they were prepared to be a complete replacement for all of the Planning Scheme Heritage Overlay maps and were intended to show existing Heritage Overlays as well as the new and revised overlays. Because of changes to the base for the mapping and the remapping of properties subject to

existing individual place overlays by address without reference to the existing Scheme maps, there were instances where individual overlays which had previously been wrongly mapped would be relocated by the Amendment.

It was also said that the reliance of the Amendment on the post Gap Study work was not made clear in notice of the Amendment.

Post-exhibition Council consideration

Post-exhibition irregularities were also identified.

The Case Book put together by Council Officers (including each submission, details of the affected property and a response) and which was available to Councillors at the time the decision was taken to refer the submissions to a Panel, apparently did not include the letter from the legal representatives for Burnewang of 25 June 2012 setting out the company's detailed objecting submissions, nor the submission by Mr Kevin Mason.

The National Trust's input

Mr Staalkjaer's written submissions sought to cast doubt on the National Trust's full understanding of the Amendment and its background work as a submitter to the Panel, saying that they could not have had access to the full documentation via the relevant web sites. He also queried the reliability of Mr Francis' evidence, as it was claimed that he had earlier indicated to Ms Walker-Staalkjaer before the Hearing that he had had no involvement with post Gap Study work when it was clear from Ms Kemp's evidence and the documentation that he had been involved.

The Council submissions and Hearing behaviour

It was asserted by Mr Staalkjaer that the Council submissions showed a lack of accuracy and imprecise language. He noted the continued reference to the incorrect number of new Heritage Overlays; the references to public availability of documents which were not available at time of exhibition (including the additional postings on the Council website of citations not originally exhibited); the misquoting of the Advisory Committee *Report on the Review of Heritage Provisions in Planning Schemes*; the failure to include all post-exhibition changes recommended by the Council in the apparently complete list in its submission (changes to individual citations made in October 2012 and the precinct review and changes to the citation for the Kyabram Commercial Precinct).

Mr Staalkjaer at the Hearing and Ms Walker-Staalkjaer in her post Hearing written submissions were particularly critical of the Council, towards the end of the Panel Hearing, apparently making available for the first time on the public table of documents (without any notice), a document entitled *City of Echuca Conservation Study Additional Data Sheets 1994*. The Staalkjaers said that they had been asking for access to all relevant material for eight months but this had just been provided. Ms Walker-Staalkjaer said that the Council's behaviour had been quite unreasonable in terms of access to material.

The Council

The Council response on these irregularities and alleged defects is set out in the Case Book response to Submission 25 and as part of its two written submissions and two written replies presented at the Hearing as well as Ms Kemp's evidence. The Council's post-Hearing written reply to the Staalkjaers' submission at the Hearing is also relevant.

The Council responses included the following.

Exceeding the Gap Study

In relation to the issue of the Amendment going beyond what the Council 'authorised', the Case Book did not provide a direct response but the general response to Submission 25 included:

Submission is noted. The Shire is responsible for the protection and conservation of places or objects that are of scientific, architectural, historic or of cultural heritage significance as detailed in the Planning and Environment Act 1987. The primary tool used to achieve this protection is the Heritage Overlay within the Campaspe Planning Scheme.

As part of this amendment heritage assessments of both individual properties and precincts were carried out by a qualified and experienced professionals using standard criteria including: Age, Rarity, Characteristic, Association with a historic person or event, Cultural, Social, Influence, Scientific, Aesthetic, Architectural, Technical or Creative. In addition a more recent review was conducted of all proposed precincts, amended precincts and individual properties given the lapse of time since the completion of the study, to ensure the proposals remained relevant.

Mr Stokans said that Ms Kemp was engaged to review and update the Gap Study due to the lapse of time since its completion and to assess any additional individual places that were uncovered during the review. The review process is set out in her evidence.

Ms Kemp's post Gap Study review

Mr Stokans submissions included that Ms Kemp's review of the Gap Study as it related to Echuca was assisted by work previously done by Ms Lorraine Huddle following completion of the Gap Study when she was the heritage adviser to the Shire.

He also referred to a number of panel reports where the concept of 'rigour' is discussed and defined. The Hobsons Bay Planning Scheme Amendment C17 Panel said the test was that the assessment should be such that there is a high level of confidence that any further research or analysis would have only a low probability of providing further relevant verifiable information.

Mr Stokans also submitted that Ms Kemp had used the now preferred HERCON criteria in assessing significance and that, in order to establish whether a place met the threshold of local significance, comparative analysis was done by the Gap Study authors and Ms Kemp. He also noted that the unique nature of precincts makes comparisons difficult. He noted that precincts needed to find support in the Environmental History.

In terms of criticisms by submitters of the accuracy of some of the information in some Statements of Significance, it was said that these had been investigated and appropriate corrections made in the post-exhibition versions.

He submitted overall that the Gap Study had in effect been peer reviewed by reputable and acknowledged heritage professionals and having regard to the absence of competing expert evidence that there are no grounds for rejecting Ms Kemp's expert opinion.

He went on to refer to the evidence given by Ms Kemp concerning the delineation of precincts. He acknowledged that the task is partly subjective but should be viewed as guided by professional expertise.

Mr Stokans also submitted on 15 January 2013 reply that there was no reason why Ms Kemp could not extend the scope of the previous heritage studies in formulating her own expert

opinions. He said that those opinions form the strategic basis of Amendment C50. He further suggested that the changes made to the Statements of Significance for the precincts did not alter the essence of the Gap Study citations. He went on to say that the identification of contributory places was the consultant's subjective opinion and in fact virtually all places have been modified in some way.

Mr Stokans' written submission of 15 January 2013 also advised that the additional data sheets referred to in paragraph 21 of Ms Walker-Staalkjaer's written submission of 13 January 2013 are part of the Ward study which has been part of the Planning Scheme since 1994. He further said that the place records relating to Pettifer Motors and Kyabram Plaza Theatre referred to in Ms Walker-Staalkjaer's written submission are derived from the Gap Study Thematic History and were updated by Ms Kemp. He advised that the Rookerie Homestead had been demolished and hence removed in the post exhibition changes to the Amendment.

In his earlier submissions at the Hearing, Mr Stokans identified Mr Francis as the author of the 10 individual citations of which the origins had been unclear. He said Mr Kemp had done further research into them to ensure they had an appropriate strategic basis.

Notice and exhibition

Mr Stokans submissions included that the Amendment was placed on public exhibition for an extended period of 60 days. He said:

The Amendment documentation, the Gap Study, Ms Kemp's citations, as well as a folder of relevant planning scheme clauses, was made available to the public at Council's offices at Echuca, as well as on Council's website and Facebook page.

He also said that 1400 affected landowners and occupiers were notified in writing and that a number of individually tailored information sheets were distributed with the notices. The information included responses to frequently asked questions, and if the property was within a precinct, information was provided about the precinct. Information sessions in seven towns were also advertised in the press, Mr Stokans said.

Mr Stokans also made other submissions on this matter set out in Section 5.2.

National Trust

Mr Roser's submission for the National Trust noted that there is nothing unusual about the methodology pursued by the Council in getting the Amendment to exhibition and the Panel. He said that it is a common matter for studies to be reviewed and modified before implementation, and the studies are the more robust for such scrutiny and review. He also said that the 2005 to 2011 gap had allowed the material to be brought into currently accepted formats.

(iii) Discussion

Section 166 of the *Planning and Environment Act 1987* (the Act) relates to technical defects in the preparation of Amendments. It provides:

(1) A panel may continue to hear submissions and make its report and recommendations despite any defect, failure or irregularity in the preparation of a planning scheme or amendment or any failure to comply with Division 1, 2 or 3 of Part 3 in relation to the preparation of the planning scheme or amendment.

(2) A panel may adjourn the hearing of submissions and make an interim report to the planning authority if it thinks there has been a substantial defect, failure or irregularity in the preparation of a planning scheme or amendment or any failure to comply with Division 1, 2 or 3 of Part 3 in relation to the preparation of the planning scheme or amendment.

(3) The interim report may recommend that the planning authority give notice of the planning scheme or amendment to a specified person or body.

These provisions of the Act contemplate a panel either continuing to report on an amendment despite deficiencies (it would seem, recognised deficiencies) in the preparation of the amendment, or making an interim report if the defects or failures are substantial.

The question to be addressed by us is whether the defects are so substantial that it warrants preparation of an interim report and/or a recommendation that the Amendment should not proceed. In making this assessment we have had particular regard to the extensive nature of the Amendment and the issue of fairness and notice to affected persons.

In the Panel's view, many of the irregularities associated with this Amendment pointed out by the submitters are not so substantial as to warrant our making an interim report or recommending against proceeding with part of the Amendment. We agree with Mr Roser that the correction of aspects of an amendment through the exhibition and Panel process is not unusual and the amendment is generally improved and more robust as a result. We also agree with Mr Stokans that inaccuracies and errors can be rectified as part of the post Panel process.

We have recommended that the Amendment proceed – but only in part. We have found some errors and irregularities able to be rectified prior to adoption but others are more substantial, and these elements require further review and public notice under a second part of the Amendment prior to adoption of that part or processing via a subsequent amendment.

Exceeding the Gap Study

In relation to the issue of the Amendment going beyond the Gap Study, we make the following comments:

- We acknowledge that the officer report informing the Council resolution of 18 December 2007 referred principally to the implementation of the Gap Study. However, the second paragraph of the section headed 'Discussion' refers to the Amendment seeking to make additional changes particularly in relation to heritage mapping.

It is true that the report and hence resolution is not comprehensive in terms of the detail of the subsequent Amendment but the resolution itself does not seek to limit the content of Amendment C50 in any way.

- The Panel notes that the Staalkjaers' General Submission to the Council in response to exhibition of the Amendment raises this issue of the Amendment going further than implementation of the Gap Study. While there is only a general response to this particular issue in the Case Book, the issue was before the Council and the Council did not resolve to correct or otherwise respond to the apparent irregularity asserted in the submission, at its meeting of 21 August 2012.
- The Panel also notes that the Staalkjaers and Ms Campbell addressed the Council at that meeting.

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- Further, the officer report informing that Council meeting about the Amendment referred to the Gap Study as being implemented, but also referred to the post Gap Study work:

In addition, owing to the lapse in time taken to develop implementation documents for the amendment, a review was conducted in more recent times of all proposed precincts, existing precincts and individual properties to ensure their continued relevance for heritage protection. This review also investigated additional individual properties and amended the shape of a number of existing and proposed precincts (including Echuca, Rochester & Rushworth). This additional work was all documented with statements of significance.

Following the completion of the implementation documentation for the planning scheme amendment a meeting was sought with the Department for Planning and Community Development as well as Heritage Victoria. This meeting was held on 8 November 2011 at which general support for the approach taken in the formulation of the amendment was indicated.

It would appear that the Council decision to proceed to Panel was taken in the knowledge that there had been post Gap Study work.

- The Panel also notes that at about that time, in an article in the *Waranga News* of 6 September 2012, the Mayor (Councillor Kevin Simpson) was quoted in relation to the Amendment. This included: *'To ensure the information is up to date when Council considers this matter, a more recent review of all proposed precincts, existing precincts and individual properties was completed to ensure their continued relevance for heritage protection'*. Also one of the Shire councillors (Councillor Simpson) in describing the Amendment is quoted in that article as saying that it *'...seeks to implement the findings of the Campaspe Heritage Gaps Study as well as the subsequent review work'*.

In the Panel's view, this is a further indication of a full appreciation by at least the Mayor and this Councillor of the additional input to the Amendment of work other than the Gap Study.

- So far as corrections to the Gap Study are concerned, we are of the view that preface or erratum could be added to the study indicating that there were certain corrections made as a result of the exhibition and Panel process.

Ms Kemp's Gap Study review

In relation to the issue of the extent of Ms Kemp's further work, its authorisation and its rigour, we make the following comments:

- We were not provided with any clear understanding about how it was that Ms Kemp was engaged to undertake the review work post Gap Study. Nevertheless we were not provided with any evidence to suggest that it was other than appropriately authorised. We would comment here that most Councils have in place a system of standing delegated decision making to Council officers. This may explain why certain administrative decisions are not recorded in Council minutes. In our experience, delegation can relate to the completion of amendment documentation for exhibition.
- It is clear that some of the Statements of Significance from the Gap Study were not only reformatted by Ms Kemp but they had additional material added. While this goes beyond her own description of her brief for the post Gap Study review, to rewrite the Statements in the currently accepted format for such Statements, we do not accept that it is necessarily inconsistent with bringing the Amendment documentation up to date. We note also that to the extent that the Statements were modified by her at that time,

such as extending the period of significance to inter-war, they were nevertheless accepted by the Council and placed on exhibition.

We acknowledge also that there have been some more recent changes to the Statements of Significance post-exhibition but they do not in our view substantially alter the effect of the Statements as matters which would be taken into account when decisions would be made about the relevant properties.

We discuss Statements of Significance further below in Section 5.5.

- In terms of the rigour of Ms Kemp's work we agree with the Council submission that:
The selection of properties as meeting the local significance threshold inescapably involves subjective evaluation guided by professional expertise.

We are also of the view that Ms Kemp in giving tested evidence satisfactorily explained the approach and method she adopted for review of the precincts.

Other discussion of Ms Kemp's role as a witness and criticisms of her evidence are discussed in Section 5.3.

As we have indicated in Section 2.3, Ms Kemp's post Gap Study work requires documentary compilation as part of a second stage of the Amendment.

Notice and exhibition

Concerning exhibition and notice irregularities, we largely deal with those in the following section of the report.

Concerning the public notice of the post Gap Study work as a basis for the Amendment, we will say that we agree with the view put by Mr Staalkjaer that the post Gap Study work, although it receives a mention in the Explanatory Report for the Amendment²³, is generally somewhat underplayed in the public documentation for the Amendment.

We would nevertheless comment:

- The notices sent to affected persons did not contain the Explanatory Report as they were intended to but this document could have been obtained by those persons if they were concerned about the Amendment.
- The limited reference in the Explanatory Report to the post Gap Study review is not the same failing as was of concern in *Freeman v Knox [2007] VCAT 414 (20 March 2007)* where the report failed to explain the effect of that amendment rather than background to it.
- It is clear that the notice was sufficient to alert at least some members of the community to the fact that the basis of the Amendment was more than the Gap Study alone.

Concerning the issue of non-exhibition of the reference documents referred to in the exhibited Amendment:

- We note that there is no requirement to 'comply with', as distinct from an obligation to 'have regard to' Practice Notes²⁴, such as No 13 from August 2000 relating to Incorporated and Reference Documents referred to by the Staalkjaers.

²³ The report includes reference to the Gap Study as the strategic basis 'and further strategic work undertaken by Council since the completion of the Gap Study'.

²⁴ See section 12(2) 9a) of the Act and *Freeman v Knox CC [2007] VCAT 414 (20 March 2007)*.

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- Concerning section 18 of the Act, we note that the obligation on the Planning Authority is to make any document applied, adopted etc *available during office hours for any person to inspect free of charge until the amendment is approved or lapses*.
 - We remain unclear as to the availability of the documents, but it appears that at the least if they were requested they could have been made available.
 - Also in so far as the real concern is fairness to would-be submitters, it is clear that the submitters concerned about this issue had access to the documents before the Panel Hearing.

Post-exhibition Council consideration

Concerning the matter of the omission from the Case Book of the reasons for the submission from Burnewang and the submission from Mr Mason, these are not major failings, and their submissions have been addressed at the Panel stage of the process and can be further addressed by the Council post-Panel.

The National Trust input

The Panel does not discount the Trust's input and Mr Francis' evidence in particular. Albeit Mr Francis was uncertain about his involvement in earlier work, his evidence provided a further professional view on the Amendment and the merits of the Union Street Precinct in particular. This has been of assistance to the Panel. We also were given an improved understanding of the origins of the additional individual places not sourced from the Gap Study.

The Council submissions and Hearing behaviour

The Panel agrees with Mr Staalkjaer that the inaccuracies in the Council presentations were not helpful to the Panel. We would observe that had there been greater precision in the presentation to the Panel, this might have assisted in allaying concerns by persons involved in the Panel process about the rigour of the Amendment generally.

Overall, it is our view that most of the technical failings and irregularities in this Amendment and its processing are not so substantial that they cannot be remedied. They also do not preclude the Amendment proceeding. Some failing are, however, more significant and recommend review of parts of the Amendment as discussed below.

5.2 Notification, access to documents and fairness

(i) What is the issue?

The issue is whether notice was provided to affected persons in accordance with the Act and adequate access was available by interested persons to the relevant documentation and background material.

(ii) Evidence and submissions

Mr Staalkjaer addressed the matter of inadequate notice to affected persons on a number of occasions throughout the Panel process.

He said:

- A number of affected properties did not receive direct notice of the Amendment. There were eight properties identified in Kyabram and one in Tongala.
- The issue of inadequate notice was also raised in the context of the application to be heard by the Echuca Star Hotel at the second Directions Hearing, and concerning the

Weeks' and other properties in Echuca. It was alleged that there had been various unrecognised changes made to the Planning Scheme maps resulting in no notice being given to land owners/occupiers.

- The notices to the owners of affected properties were said to be defective in as much as:
 - they did not include the affected property address. This was said to be particularly relevant to people whose rate address is different to that of the affected property (such as Mr Beamish, the owner of the former Pettifer Motors building in Kyabram);
 - the nature of the changes as directly affecting the addressee's property were not made clear;
 - they misleadingly said or implied that all properties were identified through the Gap Study and there was no indication of the post Gap Study work; and
 - the letters, contrary to their own terms, were not accompanied by the Explanatory Report.

Mr Staalkjaer referred also to the post exhibition changes proposed for the Kyabram Commercial Precinct and said that notice to owners/occupiers about proposed changes to contributory status had not been given and should be. This was said to be appropriate as persons with interests in properties still identified as contributory may wish to argue for non-contributory status for their building on the same basis as applied to other buildings that had been regraded to non-contributory.

He also argued that community consultation with respect to the Gap Study and subsequent strategic and statutory work had been inadequate.

He was particularly critical of Ms Kemp's answer to a question in cross examination that consultation with all affected property owners during a heritage study was not always useful, as the places may not proceed to recommended protection. He said that this was contrary to her own previous practice and to the Burra Charter.

He also said that the consultation sessions held during the exhibition period were too late in the piece and were by nature information sessions rather than consultation. He cited 'misinformation' which was reportedly provided to meeting attendees and others seeking information about the effects of the proposed heritage controls. He further said that any impression given by the Council that heritage studies were generally provided at consultation meetings was incorrect.

The Council response in relation to the notice issue included:

- Notice was given directly to some 1400²⁵ landowners and occupiers of properties across the municipality affected by the Amendment.
- Individually tailored information sheets were developed and distributed with the letters. If the property was in a precinct, information about the precinct was sent.
- Notices were placed in three local newspapers.
- The notice period was 60 days rather than the more usual 30 day period.
- Consultation meetings were held in Rushworth, Gunbower, Tongala, Rochester, Lockington, Echuca and Kyabram.
- It only has to be established that the direct notices to owners/occupiers were sent, not received (see section 145(2) of the Act).

²⁵ Also said to be 1200.

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- Notice was sent to the address for rate notices included on the Council's data base and if an address is out of date it is the land owner's responsibility to notify the Council of the change.
 - People who alleged non-receipt of notices had become aware of the Amendment in any case and had not been disadvantaged.
 - It was acknowledged at the second Directions Hearing that some unrecognised changes to the Planning Scheme maps may have occurred because the proposed Amendment maps are a complete replacement for the existing maps and they were prepared from 'first principles'. However it was said that even if mapping changes had occurred, the land owners/occupiers would have received notice because notice was given to all properties in existing Heritage Overlays.

The Panel also notes that the officer report to Council of 21 August 2012 refers to the alleged failure to send notices. It says:

A number of submissions stated they did not receive correspondence in relation to the amendment. Council registers outgoing mail in the Corporate Records Management System and Council records show that letters informing of the amendment were sent to all affected landowners.

- The Amendment documentation, Ms Kemp's citations and a folder of relevant Planning Scheme clauses was made available to the public at the Council offices at Echuca as well as on the Council's website and Facebook page.

Concerning prior consultation, Mr Stokans submitted that the Panel process provided adequate opportunity for public contribution to the public understanding of the heritage values of the municipality. He said that there was no requirement that each stage of the heritage assessment be subject to a public consultation process. He said that the requirements of section 19 of the Act were met.

(iii) Discussion

The question of whether notice failures arose because of the 'first principles' method of preparing the new Heritage Overlay Planning Scheme maps is discussed below in Section 5.8.

Concerning the non-receipt of notices by ten or eleven persons identified by the Staalkjaers and BizLaw, the Panel accepts both the Council advice that their records show that notices were sent out and the submitters' advice that they believe that they were not received.

It is conceivable that some notices did go astray. It is equally possible that they did not go astray and the notice was given little or no attention before it was disposed of, with the full import of the content of the notice only much later recognised by the receiver when concerns were expressed by others about the proposed Amendment.

So far as lost notices are concerned, the Panel accepts the Council submission that there is no failure of notice if the planning authority sends the notices out but they are not received.

There is no evidence to suggest that the non-receipt by ten or so persons is the tip of a notice failure iceberg.

The persons concerned about notice failure all have had the opportunity to present their concerns to the Panel.

Concerning Mr Staalkjaer's assertions that the content of the direct notices were inadequate to advise owners and occupiers about the nature of the Amendment and its effects on their properties, the Panel agrees that the notices might have been more informative and it would be necessary for recipients to seek a further explanation or to review the exhibited

documentation. This is nevertheless not unusual. For the reasons set out in our letter of 5 April 2013 concerning the outcome of the Directions Hearing about the former Star Hotel, Echuca, we indicate further reasons for our view that the notices were generally adequate.

We do not accept, however, that the notices were 'misleading' in so far as they referred to the Gap Study as the basis for the Amendment. We have indicated in Section 5.1 that we agree that Ms Kemp's post Gap Study work played a bigger background role to the Amendment than is suggested by the formal documentation, but identifying the rationale for the Amendment as the implementation of the Gap Study is not, in our view, incorrect. It was it seems only the time delay in implementing that study that led to its being further reviewed and the substantial changes introduced to the precincts in particular. If the delay had not occurred the Gap Study alone may well have provided the strategic basis for the Amendment.

We regard the accidental omission of the Explanatory Report from the letters to affected persons as unfortunate but the notices themselves provided information about the Amendment.

The Panel does not agree with Mr Staalkjaer that all persons who have properties recognised as contributory to a precinct should now be given further notice about the removal of other properties from the contributory properties list - because they might wish to argue for the removal of their property from the contributory group on the same basis as the others were removed.

Affected persons were afforded an opportunity to make submissions to the Council and, if a submission was made, the opportunity to present to the Panel was made available. It is not practical in response to changes to other properties to notify all property owners in a precinct again. These owners could have chosen to oppose the inclusion of their property in the relevant precinct during exhibition and if necessary they might have informed themselves about the basis for inclusion in and exclusion from precincts by attending a consultation meeting or making other enquiries. There are no new types of considerations which have resulted in the removal of the other properties from precincts but this is a result of a professional judgment based on established considerations.

Concerning the Council's public consultations, the Panel is satisfied that, had persons chosen to attend them, relevant information would have been made available to them and their input would have been accepted. Whether the sessions were run as consultations or information sessions was a matter for the Council to determine. There is no relevant legislative requirement concerning such meetings.

We do acknowledge, however, the support given by the Burra Charter to genuine consultation early in the consideration of heritage significance of places and the development of policies for management. This is a good principle to follow even if not legislated. It reportedly leads to better outcomes in terms of the content of studies and amendments, as well as greater understanding by the community about heritage values and the effects of statutory controls. In the case of the present Amendment, however, given the considerable time delay between the heritage investigations and the preparation of the Amendment, it is likely that the group of owner/occupiers to be consulted would likely have changed considerably. It is nevertheless a consideration which should be applied to further heritage proposals by the Council.

(iv) Conclusion

The Panel believes that subject to the concerns discussed in Section 5.8, any notice failures do not warrant re-notification and affected persons have had an opportunity to be heard.

5.3 The role of expert witnesses

(i) What is the issue?

The issue is whether the expert witnesses complied with the PPV Guide to Expert Evidence and provided the Panel with sufficient assistance to understand the merits of the cases being put by the various parties.

(ii) Evidence and submissions

Mr Staalkjaer undertook a forensic examination of Ms Kemp's evidence (both written and oral) and made the following submissions:

- Ms Kemp was mis-instructed and should not have been required to provide the strategic justification for the Amendment at the Panel Hearing. This should have been established by the Council and have been clear at the time of exhibition.
- Ms Kemp provided inaccurate and false evidence in relation to all of the proposed precincts.
- Ms Kemp seemed to misunderstand, and misquoted, the Gap Study.
- Ms Kemp's evidence that the Amendment was based on the Gap Study is incorrect and that she, as the consultant undertaking the 2011 Precinct Review, amended its findings; and it is these amended findings (particularly as they relate to Lockington, Tongala, Kyabram Commercial Precinct and Kyabram, Union St Precinct) that are the actual basis for the Amendment.
- The Shire of Campaspe Planning Department may, in fact have been greatly involved in the drafting of Ms Kemp's evidence.

Some of the detailed matters identified by Mr Staalkjaer were:

- certain places with apparent heritage significance had been overlooked in her work, such as the St Martin's church, Muskerry, and other churches. St Martin's church is identified as warranting an individual Heritage Overlay in the Waranga Study;
- a vacant block at 24 Union Street, Kyabram had been overlooked in 2011;
- she was uncertain or inconsistent in her answers under cross-examination about whether certain changes to the precinct boundaries had been recommended by her or by others such as 2008 changes to the Kyabram Commercial Precinct (referred to in Council minutes of 17 June 2008); and
- her description of the process of review of the precinct boundaries was inaccurate or inconsistent in certain respects.

Some of the inaccuracies and uncertainties identified were:

- contrary to her written evidence, the Rushworth (HO301), Rochester(HO501) and Echuca North Residential (HO87) and Central Business (HO2) Precincts Statements of Significance could not have been updated by her as none existed in the Planning Scheme²⁶;

²⁶ She later said under cross examination that she had prepared the Statement of Significance for Rochester.

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- the Rushworth Precinct was not simply expanded in one location but two and four retractions also occurred; similarly inaccurate descriptions of other precinct boundary changes occur in her written evidence;
 - Mr Mason's 1960s property in Rushworth had been assessed by her as contributory to the precinct in 2011 and later as non-contributory in 2012;
 - the boundaries of the Rochester Precinct were inconsistently said first to not be altered and later conceded as altered in four places;
 - the Statements of Significance for Old Echuca Township Precinct (HO1), Echuca Residential Precinct (HO3), Kyabram Commercial (HO127) and Tongala (HO501) were first described as being reviewed and updated, but later it was conceded that they had been completely re-written;
 - the list of contributory buildings in the Echuca Residential Precinct omits two properties shown on the policy map as contributory;
 - the authorship of changes to the boundaries of that precinct remains uncertain;
 - Ms Kemp retracted her initial support for the definition of an Echuca East Precinct (HO86) in her evidence for the Hearing;
 - the Statement of Significance for the Kyabram Commercial Precinct was altered with respect to the significant periods of development without justification;
 - all precincts identified in the Gap Study have been significantly redefined and their Statements of Significance altered in material ways without adequate strategic justification being offered;
 - paint and tree controls for Lockington Precinct (HO401) and Tongala Precinct (HO501) have not been justified;
 - inconsistent approaches to the inclusion of churches in the 'church group' as to whether they are included in or excluded from precincts;
 - it is incomprehensible that the identified diversity of architecture in the Tongala Precinct can be said to contribute to the creation of one precinct; and
 - Ms Kemp inaccurately quoted from or précis aspects of the Gap Study.
- Some of the inaccurate references to and misquotations from the Gap Study by Ms Kemp were, Mr Staalkjaer said, as a result of her not adopting a proper role as an independent witness but instead acting as an advocate for the Council's position.
 - Ms Kemp's evidence showed signs of having been edited by the Council (officers): tracked changes not identified as being made by Ms Kemp, with some of them indicated as made by the Campaspe Shire Council, appear on some pages of her evidence. Some 'conversational' material also appears to have been inadvertently left in the final statement of evidence²⁷. Mr Staalkjaer said that this raised further concerns that the expert's report was less independent than it should be.

Mr Staalkjaer argued that Ms Kemp's expert evidence should be rejected in its entirety or should have its value substantially discounted on the basis that it is simply a partisan presentation for the Council's position.

Mr Stokans for the Council in his submissions in reply in January 2013 said that Ms Kemp was an experienced Heritage Adviser who is well aware of her role as an expert witness and had made it clear at all times that she was an independent adviser to the Council.

²⁷ See Part 111 of Ms Kemp's written evidence at pp 12, 69 and 71. Also comments on p62 at the end of paragraph 3.

Mr Stokans also suggested that it was inevitable that not all remaining heritage places without Planning Scheme protection would be included in any particular study or amendment.

He did not make any submissions about the accuracy or independence of Mr Raworth's evidence and Mr Staalkjaer did not make submissions about the accuracy or independence of Mr Francis' evidence.

(iii) Discussion

The PPV Guide to Expert Evidence sets out the 'Expert's Duty to the Panel' as:

An expert witness has a paramount duty to the Panel and not to the party retaining the expert.

An expert witness has an overriding duty to assist the Panel on matters relevant to the expert's expertise.

An expert witness is not an advocate for a party to a proceeding.

It also goes on to set out the responsibilities of an expert who relies on a report prepared by them:

Where an expert has prepared a report that has been used to inform the preparation of an amendment or proposal, the expert should not provide a revised version of that report. The expert should provide a brief report that includes:

- *an unambiguous reference to the report, or reports that the expert relies upon;*
- *a statement identifying the role that the expert had in preparing or overseeing the exhibited report(s);*
- *a statement to the effect that the expert adopts the exhibited report and identifying:*
 - *any departure of the expert from the finding or opinions expressed in the exhibited report;*
 - *any questions falling outside the expert's expertise;*
 - *any key assumptions made in preparing the report; and*
 - *whether the exhibited report is incomplete or inaccurate in any respect.*

Where a report has not been used to prepare an amendment or proposal, the report should include:

- *the facts, matters and all assumptions upon which the report proceeds;*
- *reference to those documents and other materials the expert has been instructed to consider or take into account in preparing his or her report, and the literature or other material used in making the report;*
- *a summary of the opinion or opinions of the expert;*
- *a statement identifying any provisional opinions that are not fully researched for any reason (identifying the reason why such opinions have not been or cannot be fully researched); and*
- *a statement setting out:*
 - *any questions falling outside the expert's expertise, and*

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- whether the report is incomplete or inaccurate in any respect.

The Panel acknowledges that at times during the Hearing it appeared that Ms Kemp was either being relied upon by the Council to argue the general strategic case supporting the Amendment, or on her own volition she was defending the strategic basis of the Amendment. While this is not the proper role of an independent expert, it is not unusual in panel proceedings of this kind, for the expert called by a planning authority to have been intimately involved in the strategic work leading to the amendment. The expert's evidence in those circumstances can take on a complexion of advocacy. This is recognised by panels and the evidence treated accordingly. It should be said, however, that the earlier involvement of the expert in the amendment process normally allows the expert to give more factually informed answers about how the amendment was prepared than would an independent witness brought in only for the purpose of the Hearing. There are tradeoffs to be considered in assessing the value of evidence to be presented by the two types of witness.

It must also be said that, in the present case, Mr Staalkjaer asked many questions of Ms Kemp about the strategic work leading to the Amendment other than her own and she chose to answer them. That her answers were not always consistent or her recall accurate is perhaps understandable. Ms Kemp would have been within her rights to not answer these questions and refer these matters to the Council to be dealt with in its submissions.

We do not find it problematic that, in response to questions, Ms Kemp claimed to have made certain recommendations herself which were later acknowledged to have earlier been made by others. We accept that it is possible that as part of her review task Ms Kemp adapted or adopted the work of others. The recommendations or views of others can at the same time be her recommendations or professional views if she adopts them.

As for the inaccuracies in Ms Kemp's own work, we acknowledge that there were some things that she could not recall or perhaps might have done better. Given the extensive nature of the review task, that there are some inconsistencies is not entirely surprising and, in our view, these small matters do not defeat the overall soundness of the conduct of the review task.

(iv) Conclusion

Ms Kemp withstood a vigorous and lengthy process of cross examination at both the Echuca and Kyabram Hearings and it was largely through her evidence and this cross examination that the Panel came to a much better understanding of the analysis and work that led to the preparation of the Amendment. This understanding persuaded us that the strategic basis of the Amendment is indeed sound.

As we indicated, we do think it unfortunate that a document setting out the review process was not available at the time of exhibition or at least by the time of the Hearing and are of the view that one should be prepared for ultimate inclusion as a reference document of the Scheme. The review work is clearly as important as the Gap Study itself in defining the content of the Amendment especially with respect to the precincts. We have earlier said, however, that the review document cannot be introduced as a reference document without its content being reviewed in some way.

The Panel would observe that if the strategic basis of the Amendment and in particular the precinct delineation process had been more clearly enunciated at the time of exhibition, or the now proposed reference document had been available, this issue would not likely have become such a major concern to the submitters.

5.4 Precinct delineation

(i) What is the issue?

Heritage precincts will always include places which contribute to the significance of the precinct but may include other intervening non-contributory places. Issues arise as to whether the numbers of non-contributory places are so high that a sense of the precinct is lost and whether the permissions required for contributory and non-contributory properties should be varied.

The issue is how precincts should be defined.

We provide some general commentary on this issue as a basis for our views about the particular precincts in Chapter 6.

(ii) Evidence and submissions

Mr Staalkjaer made extensive submissions about the strategic justification, description and the properties included as contributory and non-contributory in all precincts proposed as part of this Amendment.

A number of submitters from the Kyabram precincts queried whether a precinct really existed if the percentage of contributory places fell below a certain level.

Mr Raworth in his evidence about the Kyabram precincts said:

There are currently no guidelines on the minimum percentage of contributory places to determine whether appropriate thresholds to establish a precinct have been met. That said, it is probably fair to say that a heritage precinct should be stylistically legible and largely intact, containing a high proportion of contributory fabric. It is my opinion that neither of the precincts under consideration by the Panel contains an appropriately high proportion of contributory buildings.

Ms Kemp in her evidence made the following comments:

A precinct will include a high proportion of buildings that contribute to the cultural heritage significance of the precinct. There is no absolute percentage for the number of contributory buildings but if the proportion of non-contributory buildings is too great, a sense of precinct is difficult to appreciate.

All of the precincts adequately demonstrated the values as described in the statement of significance.

The final post-exhibition precincts are considered to meet the thresholds of local significance. [It should be noted that during the review process the Tongala Precinct [HO501] was the only precinct that was considered to have a marked deficit of culturally significant fabric. Therefore to fully reflect the identified historic themes, values and criteria its boundaries were revised.]

It is considered that all of the precincts are coherent and have a sense of being a precinct. It is noted the sense or appreciable qualities of a precinct can vary – from an intact streetscape with a row of Victorian terrace houses to a diverse and seemingly eclectic range of buildings.

She also quoted the 2007 Advisory Committee *Report on the Heritage Provisions in Planning Schemes*:

In 2.3.5 Advisory Committee report, there is the following comment

Percentage of significant/contributory buildings (fabric) within a precinct

There were varying views on this question. One submitter considered that the proportion of significant or contributory buildings within a precinct should not be used as a measure of delineation, unless it could be shown to represent a critical threshold below which people ceased to appreciate the heritage significance of the area. Thresholds should not be arbitrary or subjectively applied. Other submitters pointed out that precincts in rural or regional towns are likely to be more heterogeneous than those in metropolitan areas. These commentators considered that a 50 per cent representation of significant buildings/components was an acceptable proportion.

(iii) Discussion

The Panel was somewhat perplexed about some of the decisions made about the boundaries of some of the precincts proposed for Heritage Overlays in this Amendment. For example, the Echuca Central Residential Precinct (HO3) appeared to have its boundaries extended to the south in an odd way to pick up four properties, three of which were designated non-contributory; the Echuca East Residential Precinct (HO86) seemed to have had its boundaries extended to pick up one or two otherwise isolated properties, which do not necessarily contribute to the values recognised in the Statement of Significance; and the Kyabram Commercial Precinct (HO127) went through several transformations, first as a result of the Ms Kemp's review and then after exhibition when a considerable number of properties were deleted from the precinct.

By way of general comment, the Panel would firstly say that it does not believe that there is any magical threshold of contributory v non-contributory buildings which must be reached before a precinct designation is warranted. In so saying, we agree with the findings of the Advisory Committee quoted by Ms Kemp. The key objective is to draw the precinct boundaries in a way that defines a place with recognisable heritage characteristics. The numbers of contributory buildings is one factor in helping provide this sense of place but there are other factors. Other factors include the scale and degree of intactness of the contributory buildings, the extent of street frontage they occupy and whether they are prominently sited within the precinct, as well how recessive or otherwise are the non-contributory buildings. There may be other factors tying together a group of significant buildings such as a regular street setback or a garden setting.

The Panel believes that given a recognisable place is to be defined, it is therefore inappropriate to stretch precinct boundaries around street corners simply to pick up the occasional contributory building. It might be more appropriate to provide such places with individual place Heritage Overlays rather than lose the sense of place of the precinct.

Further, the basis of significance of the precinct should be quite clear including the period of significance and it is inappropriate to gather in heritage properties not clearly related to that basis of significance.

An issue also referred to at the Hearing is whether the level of significance for places in a precinct can be less than for that of places that are afforded their own Heritage Overlay.

The Panel records its view that it is the precinct as a whole that needs to pass the local significance threshold in the same way that an individual place does. The contributory places within the precinct are properly viewed as contributory elements to the place much like the significant component parts of an individual building of significance. Given this approach it is only indirectly relevant to consider the integrity of the individual contributory places rather than consider their collective integrity as a group. This being said, it is of course possible that a building may have individual significance as well as contributing to the precinct values as has been recognised by this Amendment.

(iv) Conclusion

The Panel does not wish to make any specific recommendations with respect to these issues, but these factors have been relevant in our assessment of individual precincts that follows.

Concerning Mr Staalkjaer's general submissions about failings in the strategic justification for the proposed new and revised precincts are addressed in Sections 5.1 and 5.3.

5.5 Statements of Significance

(i) What is the issue?

The issue is whether the Statements of Significance included in the policies (precincts) and in the reference documents (individual places) are adequate to guide the management of these places within the context of the Planning Scheme.

(ii) Evidence and submissions

Mr Stokans for the Council submitted:

The Statements of Significance have been compiled from the citations prepared by Ms Kemp which identify what it is about the place that is significant and why, and at what level the heritage significance has been determined and in accordance with HERCON criteria.

Mr Morris QC for Burnewang submitted that the Statement of Significance adopted the Burnewang homestead for the purpose of this Amendment had over-stated the significance of the place and unreasonably and unnecessarily elevated aspects of its social significance. He suggested that the simpler Statement of Significant appearing in the Waranga Conservation Study was more useful.

Throughout Mr Staalkjaer's submissions, there was criticism of the methods of preparation of the Statements of Significance and their reliability.

(iii) Discussion

The Statements of Significance prepared for this Amendment are primarily a product of Ms Kemp's review work. It became apparent from her evidence that this was more than a review of precincts identified in the Gap Study and preparation of Statements of Significance for them. Her work also included the redrafting of the Statements of Significance for individual places identified in that study and a small number of others, to bring them into line with the now preferred 'What, How and Why' format, measured against the national criteria (commonly referred to as the HERCON criteria).

This updating was a commendable move by the Council, but it has not necessarily resulted in clear and succinct statements, which will be useful to owners, managers and decision makers in understanding what is and what isn't important about a place.

The Burra Charter has the following to say about Statements of Significance:

26.2 Written statements of cultural significance and policy for the place should be prepared, justified and accompanied by supporting evidence. The statements of significance and policy should be incorporated into a management plan for the place.

The Guidelines to the Burra Charter make the following further observations about the Statements:

The practitioner should prepare a succinct statement of cultural significance, supported by, or cross referenced to, sufficient graphic material to help identify the fabric of cultural significance.

It is essential that the statement be clear and pithy, expressing simply why the place is of value but not restating the physical or documentary evidence.

The Heritage Victoria guidelines for the preparation of Statements of Significance (for places of State significance) say that the Statements should be prepared under three headings:

What is significant?

This should be dedicated to a description of the place or object including facts about size, layout, construction date, designers and builders, materials, integrity, condition and so on. While this section should be brief, usually no more than one paragraph, there should be no doubt about the elements of the place or object which are under discussion.

How is it significant?

This section is the shortest part of the statement and always takes the same form. The place or object is stated to be of 'aesthetic, archaeological, architectural, cultural, historical, scientific or social' (delete those not applicable) significance to the State of Victoria.

Why is it significant?

This section explains the exact nature of the significance claimed in the above section. It is extremely important not to fall back on mere statements of fact which should be in the first section. Rather than saying, for example, that a place or object is the oldest surviving example, the statement should read 'the (place or object) is historically important (or significant) as the oldest known surviving example of...'. Significance should never be implied, it should always be explicit.

Where a place or object has been claimed in the 'How' section to be of significance in a certain category or categories (aesthetic, archaeological, architectural, cultural, historical, scientific or social), then each of those categories must be addressed specifically in this part of the statement. The categories may be conjoined, for example, social and historical, or aesthetic and architectural, but there must be an explanation for each and every category of significance claimed.

The capacity of a Statement of Significance to serve a useful purpose in the Planning Scheme (either as part of the local policies, an incorporated document or a reference document) should be tested against this guidance. In the end a Statement must be useful to owners, managers and decision makers - be they Council officers, councillors or VCAT - in managing the place. They must clearly identify the basis of significance and where possible identify the contributory elements to it.

The Panel is of the view that this is not always the case with the Statements of Significance prepared for this Amendment. In particular, there appears to have been a tendency during the drafting to embrace as many criteria as possible under the 'How' heading, rather than succinctly focussing on the values and criteria that can be readily identified as contributing to significance of the relevant place. Social significance in particular is so frequently ascribed that the criterion loses its impact.

We also agree with one submitter's comment that some of the descriptions of why places are significant employ a circular logic (see Section 6.11).

We would also say that the redrafted Statements of Significance for the precincts have tended to recognise other elements of significance not identified in the original Gap Study. This may be acceptable as an outcome of the review in many cases but we have found the alleged contributions to significance by gardens and trees to be overstated in some cases.

(iv) Recommendation

The Panel recommends:

That the Council undertakes a further review of the Statements of Significance prepared for this Amendment with a view to adopting Statements that clearly meet the Burra Charter and Heritage Victoria guidelines.

5.6 Group v precinct listing

(i) What is the issue?

The issue is when is it appropriate to apply a group listing rather than define a heritage precinct.

(ii) Evidence and submissions

This matter was raised in relation to the East Echuca Residential Precinct.

Mr Stokans referred to the presence in that precinct of 'early vernacular cottages' associated with saw milling. They are dispersed across the proposed precinct and share a common significance.

Mr Stokans said it might be preferable that these cottages could be treated a group or serial listing, that is they would be given a single Heritage Overlay number and would share a common Statement of Significance. Ms Kemp also thought this approach had merit.

Mr Raworth in giving evidence concerning the Kyabram Commercial Precinct acknowledged the possibility of instead treating the area within the proposed precinct as a group listing of places contributing to an understanding of the commercial centre.

(iii) Discussion

Planning authorities and panels are often faced with this issue of how best to treat geographically dispersed buildings which share a common basis of significance.

If the buildings and other associated heritage items are reasonably proximate then the delineation of a heritage precinct is perhaps the preferable approach. It allows heritage input to decisions about changes to non-contributory properties adjoining or near the buildings that are of significance. This can reinforce and enhance the values of the precinct as a whole by ensuring that extensions, alterations and redevelopments of non-contributory

properties are done in a way which complements the contribution made to the place as a whole by the contributory buildings.

If instead the significant buildings are very dispersed and well in a minority in the totality of buildings in the area in question, it may be better to give them a serial or group listing in order to avoid the inclusion in a precinct of an excessive number of intervening non-contributory properties. Too many non-contributory buildings can lead to a dilution of the sense of precinct and cause an unnecessary administrative requirement for permit processing.

Serial listing is especially appropriate if the places have a recognisably common building form such as the East Echuca miners' cottages. While the term 'group listing' is sometimes used in relation to this type of listing, the Panel suggests that it is better applied to small proximate collections of properties which do not necessarily have the same built form and are too few to create a sense of precinct, but which share a common history.

(iv) Conclusion

Group or serial listing can be a useful tool in managing dispersed heritage places which have a common history or other common basis of significance. This option has been considered in our assessment of the precincts. The Panel has not identified any area or places other than East Echuca where a group or serial listing would be appropriate.

5.7 Individually significant places within precincts

(i) What is the issue?

In the Amendment, it is proposed:

- so far as the Planning Scheme maps are concerned, to allocate to individually significant properties within a precinct their own Heritage Overlay number. On Planning Scheme Map 23, which relates to Tongala, for example, the proposed precinct overlay (HO501) is shown as having a number of Heritage Overlays applying to individually significant buildings 'interrupting' its extent – being HO506, 507, 508 and 510;
- so far as the precinct maps (and lists of places) in Clause 22 are concerned, to include the individually significant places situated within the precinct amongst the places/buildings contributory to the precinct²⁸; and
- so far as the HERMES Data base is concerned to indicate on the electronic file that the place is both individually significant with its own HO number and is part of and contributory to a wider precinct with a different HO number.

The issue is whether this statutory approach to individually significant places within precincts is sufficiently transparent.

(ii) Evidence and submissions

Mr Stokans submitted that while the DPCD Planning Practice Note 01 on *Applying the Heritage Overlay* says there is no need to separately map a significant building feature or property located within a significant area (precinct), this does not mean that you cannot do

²⁸ See Section 1.2 (ii) concerning the inconsistent approach had been taken to the depiction on the exhibited Clause 22 maps of the Individually Significant places that are situated within a precinct. For example, the place included as Individually Significant HO506 was incorrectly not shown as contributory to precinct HO501 on the Clause 22 map of contributory buildings.

it. He said that, given a DPCD reluctance to allow places to be ‘double listed’ or double mapped, that is they must be shown on the Planning Scheme maps (and in the Heritage Overlay schedule) as only in one Heritage Overlay, the challenge is how to indicate that some places within precincts have individual significance in their own right, as well as contributing to the significance of the precinct, while others have significance only in their own right.

(iii) Discussion

Where significant individual heritage places are situated within a heritage precinct, there will be times when the basis of its significance differs from that of the precinct. The building in question may, for example, be from a later or earlier period than the period of significance for the precinct. In such circumstances it is clearly appropriate for the individual place to be allocated its own Heritage Overlay number and separate Statement of Significance. Places which are on the VHR also are required to be separately identified by their own Heritage Overlay number whether or not they sit within and/or contribute to the values of a precinct.

Less clear is the manner of treatment of places that are identified as contributing to the wider precinct values but which have values additional to those of the precinct, especially where the additional values suggest that the place warrants additional permit requirements to the remainder of the precinct. A dwelling, for example, may contribute to a precinct as a representative example or an exemplary example of dwellings in a precinct. It may, however, have a garden that warrants tree controls, or interior controls may be appropriate, when they are not warranted for the remainder of the precinct.

The current Planning Practice Note 01 on *Applying the Heritage Overlay* recommends that even if a place is assessed as beyond being merely contributory to a precinct, it should simply be included in the precinct HO with particular reference made to it in the precinct Statement of Significance in a local policy; and it is only if additional controls are required that it should be separately scheduled and mapped.

The Practice Note includes:

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

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

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

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

In the absence of an option for separate schedules and maps for individually significant places and precincts as recommended by the Advisory Committee *Report on the Review of Heritage Provisions in Planning Schemes* of 2007, the Panel generally supports this approach of not applying separate overlays to individually significant places in a precinct.

The Panel would also comment that it may not even be necessary to apply individual overlays to places in a precinct where controls are to be applied additional to those applying in the wider precinct, such as tree controls. It is suggested that it would be possible to select the additional control, intended to apply to only some properties in a precinct, for the entire precinct in the Schedule to the Heritage Overlay, and use an Incorporated Plan to then indicate that that additional control applies only to nominated properties. This approach was recommended in the recent Panel report on the Greater Shepparton Planning Scheme Amendment C110 at Section 5.3.

This has not been the approach in the Campaspe Planning Scheme to the mapping of individually significant places, partly because, as Mr Stokans submitted, there are individual places already in their own individual Heritage Overlays within areas proposed for precinct overlays.

The problem that arises is that if places within a precinct are ascribed their own Heritage Overlay number on the Planning Scheme maps (separate to that of the precinct), the precinct will to a greater or lesser extent be eroded in terms of its mapped legibility²⁹ and there can be confusion as to whether the precinct controls or policies apply to individual places within it. In the case of the present Amendment, the cohesiveness of the mapped small Rochester Precinct (HO203) is somewhat disrupted by individual place Overlays as is the Rushworth Precinct (HO301) and HO1 and HO2 in Echuca.

In some measure, however, the disturbance to the understanding of the extent and applicability of the precinct policies in this Amendment is off-set by the inclusion in Clause 22 of maps for each precinct which show the contributory and non-contributory properties, and a list of contributory buildings. It was explained to the Panel that the properties shown as contributory to the precinct include those in individual place Heritage Overlays where relevant.³⁰ This has the potential to allow the full extent of the precinct and its controls and policies to be understood. We think that this might be further assisted if there was direct reference to the dual significance of relevant places in Clause 22. We suggest that this might be done before each list of contributory buildings and perhaps by advice next to each precinct map of contributory and non-contributory buildings. We recommend accordingly below.

Nevertheless the fundamental problem remains that because the Planning Scheme maps are the entry point into the Scheme and its zone and overlay requirements, readers, seeing that the land of interest to them is included in a particular individual place Heritage Overlay, might be mistakenly led to the view that the precinct policies and Statement of Significance are not intended to apply to this individual place (albeit a complete and more careful reading of the Scheme, including Clause 22, might reveal this was not intended to be the case).

Further there is the related issue that the precinct controls do not usually legally apply to individual places of significance set within a precinct where they have been ascribed their own Heritage Overlay number. The Panel report on Greater Shepparton Planning Scheme Amendment C110 at section 5.2 comments on this problem as follows:

²⁹ The extent of the 'holes' which were to be created in proposed heritage precincts in Buloke Shire by proposed Individual Place Heritage Overlays was a matter of concern to the Panel considering Buloke Planning Scheme C14.

³⁰ The Panel understands that, in this Amendment, **all** of the places with Individual HOs were assessed as contributory to the precinct in which they are situated.

The Panel understands that in producing the final approved Planning Scheme Maps after an amendment process, 'holes' will normally be cut in the precincts as electronically mapped, around any individual place Heritage Overlays. Indeed when a planning certificate is issued for places apparently double listed, only the individual place Heritage Overlay will be said to apply. This can only cause confusion for users of the Scheme.

The Panel is of the view that it is in the interests of readability of this and other planning schemes that some method should be devised which enables dual significance to be shown on planning scheme maps. The Panel recommends to the Council that this mapping issue should be discussed with DPCD (now Department of Transport, Planning and Local Infrastructure).

In this respect, separate precinct and individual place maps for the Heritage Overlay could be introduced, with the Schedule to the Heritage Overlay used to record that a place is included in two overlays. This might be done by putting both the individual place Heritage Overlay number and the precinct Heritage Overlay number in the first column of the table in the Schedule which is headed 'PS Map Ref'. This matter is again discussed in the Panel Report on Greater Shepparton Planning Scheme Amendment C110, at Section 5.2.

Nevertheless under the present mapping policy regime by DTPLI, the mapping arrangement put forward by the Council as supported by Clause 22 is an acceptable one. The depiction of individual place Heritage Overlays on the Planning Scheme maps as dark pink and precincts in a lighter pink helps to clarify the extent and possibly the relationship of the overlays.

(iv) Recommendation

The Panel recommends:

- **In Clause 22 in the Statement of Significance for each precinct, before the list of contributory properties include a sentence to indicate that some of the contributory premises have their own individual Heritage Overlays in addition to contributing to the precinct values. Notations to the Clause 22 maps to the same effect are also recommended.**
- **In Clause 22, delete the word 'residential' in the first paragraph under the heading Statements of Significance for heritage precincts.**
- **The Council should discuss the ongoing difficulties associated with the inability to have dual mapping of properties as both individually significant and as part of a precinct with DTPLI.**

5.8 Other mapping issues

(i) What is the issue?

The issue that was identified in the context of the Star Hotel application to be heard by the Panel was that the approach that was taken to preparing the Planning Scheme maps³¹ for exhibition has resulted in the potential for Heritage Overlays being relocated to other properties. It appears that some individual place overlays are currently wrongly mapped. It was said that any mapping changes of this kind introduced by the proposed Amendment were not deliberate and had arisen inadvertently.

³¹ This is a reference to the main Scheme maps not to the maps in Clause 22.

(ii) Evidence and submissions

BizLaw identified in the course of preparing for the VCAT proceeding concerning the former Star Hotel (see Section 1.2(iv)) that the exhibited Planning Scheme maps would have the effect of relocating HO34 to their client's property. HO34 is intended to apply to the hotel (as indicated by the address for the overlay given in the Schedule to the Heritage Overlay and the content of the relevant Statement of Significance) but is wrongly placed on the existing Planning Scheme map 8HO. It was asserted that other properties were also being affected this way by the Amendment including that owned by a Mr and Mrs Weeks. At the Directions Hearing concerning the Star Hotel, Mr Staalkjaer argued that it was improper and contrary to the Act for these changes to be included in the Amendment without notice.

Mr McNulty said that he had been unaware of the mapping change in the case of the Star Hotel. The change had come about, he said, because the Heritage Overlay maps for the Amendment had been prepared from 'first principles' rather than by additions or alterations to the existing maps, that is both new and existing overlays were added to a new cadastral base. He indicated that he had not cross checked the existing Heritage Overlay maps against the exhibited maps and so was unaware of how many other properties would be affected in this way as a result of the completely new maps being prepared to replace the existing maps.

It was nevertheless said that any properties affected by mapping changes of this kind would have received notice as all properties in existing Heritage Overlays were sent notice about the other Scheme changes which would be effected by the Amendment.

(iii) Discussion

As earlier noted, the Panel concluded from the information provided at the Directions Hearing concerning the Star Hotel that any properties affected by the re-mapping would have been sent notice by the Council and, certainly in the case of the Star Hotel and the Weeks' properties, the mailing records indicate that notice was intended to have been given. The Panel nevertheless found it concerning that the Council officer was unaware of the number of such changes that might have occurred in this manner.

The Panel accepts that if the changes resulting from the re-mapping were unknown, this may explain why there is no reference to these changes in the documentation surrounding the Amendment, including in the Explanatory Report and the direct notices to property owners/occupiers. It appears, however, on further review that not all mapping changes of this kind could have been unknown nor could they have been simply the relocation of incorrectly mapped individual place overlays.

With respect to changes being unknown, the Panel notes that at the 18 December 2007 Council meeting, when the Council resolved to prepare the Amendment, the officer report included:

Further, the amendment corrects a number of minor mapping anomalies relating to various independently listed places within the Shire of Campaspe.

This seems to suggest that some changes were known, but, so far as the Panel can see, there is no subsequent reference in the Amendment documentation to correction of these anomalies.

Also, since the last Directions Hearing, the Panel has felt it appropriate to do a cursory check of the existing Planning Scheme maps and those proposed to replace them. We have found a number of changes which go beyond simply relocating the Heritage Overlay. Particularly in

those cases where only parts of properties are included in an overlay, there are some instances of the substantial redrawing of the overlay boundary, such as applies to HO18/HO31. These may or may not be the 'anomalies' referred to in 2007.

Of even more concern is that a check of the mail merge lists supplied to the Panel by the Council for some properties where changes of this kind were identified, indicates that direct notice appears not to have been given to the owners/occupiers in all instances. Examples are HO21 at 589-591 High Street, Echuca and HO51 (Former Brothel) Little Hopwood Street, Echuca.

While Panel accepts that it is possible that the owners of these properties may have addresses elsewhere, it would seem that, contrary to what we were told at the second Directions Hearing, there may have been instances where direct notice was not properly given.

The Panel, having considered this matter further, believes that it is imperative that a thorough analysis be done of the proposed Planning Scheme maps to identify changes which may have arisen from the mapping approach adopted, and a check made as to whether the owners/occupiers of the affected properties (if appropriate both where the overlay is being removed as well as applied) were included on the notice lists. The adequacy of any notification to properties where mapping 'anomalies' were being deliberately corrected should also be checked.

The Panel is of the view that where changes are identified and no direct notice has been given, it needs now to be given to comply with the Act.

In order to not delay the further processing of other parts of the Amendment which have been correctly processed and assessed, it would be appropriate that the properties which would be affected by overlay relocations and correction of mapping anomalies, where no notice has been given, either be deleted from the Amendment entirely and dealt with by a subsequent amendment, or included in a separate part of a split Amendment. In other sections of this report we have recommended that some other aspects of the Amendment require revision and further notice may be required. Any required notifications arising from the mapping issues could be done at the same time as that required for those other matters.

The form in which the Planning Scheme maps in a Part 1 of the Amendment (and the Heritage Overlay Schedule) might proceed to adoption, however, is not easy to determine. It may be best simply to omit places which are wrongly mapped from the maps and Schedule (given the Heritage Overlays in those cases have no legal effect) as well as their proposed revised position on the maps, together with any intended corrections of mapping anomalies where no notice was given. This is a matter which should be discussed and agreed with DTPLI.

(iv) Recommendation

The Panel recommends:

- **There should be a complete review of the Planning Scheme maps for this Amendment to identify any properties where the application of the Heritage Overlay is being 'inadvertently' altered ; and for each identified property, a check should be made of the mailing lists for earlier notice to ascertain whether direct notice was given to the owners/occupiers in accordance with the Act. This should include both the property address for the old and new position of the overlay where relevant.**
- **Where such properties are identified as having been inadequately notified, either:**

-
- they should be deleted from the Amendment and its further processing, and included in a subsequent amendment, or
 - they should be included in Part 2 of a split Amendment for further processing, allowing Part 1 to proceed to adoption.
- Properties affected by ‘mapping anomalies’ as referred to in the officer report to Council in December 2007 should also be reviewed for any further required notice and deferred if necessary to Part 2 of the Amendment or a later amendment.
 - Any submissions received in response to any further notice should be processed in the manner provided by the Act before a decision is made upon the application of Scheme changes to those properties.
 - The Council should discuss with DTPLI the appropriate way to revise the Planning Scheme maps for the Amendment (or Part 1 of it), assuming the Amendment (or Part 1) is to proceed to adoption in absence of these properties for which further notice and processing is required.

5.9 The approach to schools, halls and churches

(i) What is the issue?

The issue is whether the proposed ‘serial’ listing of schools, halls and churches across the Shire is an appropriate approach.

(ii) Evidence and submissions

The Panel did not receive any submissions from the owners, managers or representatives of the owners of the 35 schools, halls and churches which have been proposed to be included in the Scheme with generic Statements of Significance. These places were initially identified in the Gap Study and three generic Statements of Significance were prepared by someone subsequent to that study. This became apparent during the evidence provided by Ms Kemp. The group approach and the generic Statements were not referred to in the Explanatory Report nor in the Council’s initial submission to the Panel. In Ms Kemp’s words:

None of the 35 places were part of the review process. The only aspect that has been changed is the format of the statement of significance. The Statement of Significance was reviewed and rewritten to reflect current practices.

There are, in fact 36 such places listed under the three headings.

Mr Staalkjaer submitted that this ‘Group’ approach did not fit the definition provided by the Practice Note:

Ms Kemp’s proposed groups do not share a common history or significance, they do not have a common statement of significance, they are not included as a single entry in the HO schedule nor do they have a single HO number.

Mr Stokans post Hearing response to Ms Walker-Staalkjaer’s written submission included that all of these community places have *prima facie* social and historic significance. In his closing reply he also stated that a description of each place’s significant elements could be prepared post Panel.

(iii) Discussion

The only relatively clear information about the origins and purpose of this manner of dealing with community buildings was in the Gap Study in Volume 1, Section 1.3, *Methodology*:

Community places with a prima facie case of historic and social significance, such as churches, halls, and schools, in current use within larger communities were recommended for heritage overlay protection without the preferred degree of architectural assessment and historic research. This was done for three reasons:

- to acknowledge the importance of these places to the community and the overwhelming (albeit not necessarily 100%) desire by the community to protect them for future generations,*
- as a means of directing the funds to privately owned places which the owners might rightly query the evidence for protection,*
- as a means of directing funds to places where research was necessary to establish whether a place had sufficient cultural significance for protection.*

The Panel saw little value in pursuing the authorship of the Statements of Significance presented to it, given we were more concerned about the adequacy of the overall approach taken to these places.

The exhibition of planning scheme amendments and any subsequent panel process is an important way of completing public consultation, and attracting comment and formal submissions, about the significance of places proposed to be given heritage status in a scheme. It is therefore important to inform the community as to what it is said is significant about the places. Mr Staalkjaer is correct that the schools, halls and churches group in this Amendment do not share a common history or significance. It seems, therefore, that the communities and individuals with an interest in these places could not have been provided with adequate information about the history and significance of the places sufficient to enable them to make an informed decision as to whether or not to make a submission about the Amendment.

Also, as pointed out in Section 5.5 above, the role of a Statement of Significance is to inform owners, managers and decision makers about what is important about a place to enable appropriate management. The common Statement approach taken here does not allow that in any useful way. Each of these places will have its own distinctive features and values and they must be highlighted if the controls introduced by the Heritage Overlay are to be administered appropriately.

The Panel agrees that the approach taken in this instance does not meet the Practice Note criteria for group, thematic and serial listings. Despite the common Statement of Significance, they are all treated as individual listings with their own Heritage Overlay numbers. It is the Panel's view that individual listing is the correct approach here, but it necessitates identification of the separate values of each place in its own Statement of Significance and consequent further notice. This is best arranged by allocating these places to a delayed Part 2 of the Amendment which should be re-exhibited when revisions have been completed. Alternatively these places might be omitted from the Amendment entirely and processed under a subsequent amendment.

(iv) Recommendation

The Panel recommends:

- The 36 places (churches, halls and schools) proposed as a 'group' listing be included in a Part 2 of this Amendment and not proceed to adoption until further review work is completed. Alternatively they should be deleted from the Amendment and be included in a later amendment after the further review.**
- Individual Statements of Significance should be prepared for each of these places and their proposed inclusion in the Heritage Overlay be subject to further notice and**

processing in accordance with the Act whether as Part 2 of the Amendment or a later amendment.

5.10 Consideration of economic matters and changes to the Act

(i) What is the issue?

Section 12 so far as is relevant to the consideration of a planning scheme amendment currently provides:

12(2) In preparing a planning scheme or amendment, a planning authority must have regard to the Minister's directions; and

*(aa) **must** have regard to the Victoria Planning Provisions; and*

*(ab) in the case of an amendment, **must** have regard to any municipal strategic statement, strategic plan, policy statement, code or guideline which forms part of the scheme; and*

*(b) **must** take into account any significant effects which it considers the scheme or amendment might have on the environment or which it considers the environment might have on any use or development envisaged in the scheme or amendment; and*

*(c) **may** take into account its social effects and economic effects (Panel emphasis).*

Upon gazettal of the Planning and Environment Amendment (General) Act 2013 or by 28 October 2013 whichever ever comes first, section 12(2)(c) will read: '**must** take into account its social effects and economic effects.' (Panel emphasis).

The issue is whether, and if so how, social and economic matters should be considered under the current and proposed legislation in the preparation of the Panel's advice to the Council on the Amendment and submissions to it.

(ii) Evidence and submissions

A number of submissions raised social and economic matters in objecting to the inclusion of properties in the Heritage Overlay. Most issues were of a personal nature including that heritage controls would prevent the submitter's derelict house from being demolished or would impose unacceptable maintenance and restoration costs on the owners. The Staalkjaers' submissions referred to some broader economic considerations.

In principle submissions on this issue in the context of the current legislation were also made during the Panel Hearing by Mr Morris QC for Burnewang. He was also invited by the Panel to make further written submissions on the matter given the then only recent discussion of the issue in the Melbourne Planning Scheme Amendment C186 Panel report. That report had discussed some of the same cases that Mr Morris relied upon. A further written submission was received and Council submissions in reply.

After that exchange of correspondence, the Panel became aware of the forthcoming changes to section 12(c) of the Act and we considered that the parties should be given a further opportunity to address the issue. The processes around the further submissions are discussed in Section 1.2(iv) above. Suffice to say that Burnewang declined the invitation to make further submissions and the Staalkjaers and the Council made written submissions on 19 and 22 May 2013 respectively.

The Council submissions

The Council's submissions at the Hearing encouraged the Panel to approach the issue of social and economic effects of the Amendment in the same manner as previous panels.

The approach by the panels is that set out in the 2004 report of the Panel considering Ballarat Planning Scheme Amendment C58:

Panels have consistently held that whenever there may be competing objectives relating to heritage and other matters, the time to resolve them is not when the Heritage Overlay is applied but when a decision must be made under the Heritage Overlay or some other planning scheme provision. The only issue of relevance in deciding whether to apply the Heritage Overlay is whether the place has heritage significance.³²

The Council's primary written submission after the Hearing was that the Panel should be guided by the Act as it stands at the time the Panel makes its recommendations and the issue of changed legislation should only be addressed if it occurs before the Panel reports.

Mr Stokans also addressed the matter of whether 'may' should be read as 'must' under the current provisions. He referred to the decision by the Supreme Court: *Returned & Services League of Australia (Victorian Branch) Inc., Glenroy Sub-Branch v Moreland City Council and Carlton Cricket & Football Social Club Pty Ltd* (1977) VSC 29 (3 July 1997) (RSL case), in which the meaning of 'may' and 'must' are considered in the context of section 60 (1A)(a) of the Act. That section provides:

...if the circumstances appear to so require may consider-

(a) any significant social and economic effects of the use or development for which the application is made...

The Court held in the RSL case (adopting the words in another decision) that:

The word 'may' is merely used to confer authority; and the authority must be exercised, if the circumstances are such as to call for its exercise.

Mr Stokans argued that section 12 can be distinguished from section 60 in so far as it is not qualified by 'if the circumstances appear to so require' and hence the possible conversion of 'may' into 'must' does not apply. He said that this makes sense given a planning authority is exercising a strategic function rather than a statutory one. He said that established conservation practice which limits the assessment of heritage significance to conservation criteria is consistent with this framework.

He also said that the recommendations of the Productivity Commission to which Ms Walker-Staalkjaer referred have not been adopted in planning and are not reflected in the Act.

In relation to the Burra Charter Article 6-3, referenced by the Staalkjaers, which refers to consideration of an owner's circumstances, he said that read together with Article 6-2 this article indicates that these issues may be relevant after cultural significance has been established.

Concerning the weight to be given to the large number of objections made by persons signing the petition of which Mr Staalkjaer was the head petitioner, Mr Stokans referred to the decision in *Minawood v Bayside City Council [2009] VCAT 440*. In that decision, VCAT

³² Ballarat C58 Panel report 2006 Chapter 7: Balancing competing objectives, page 51 ff.

commented albeit in the context of consideration of a planning permit, that a planning consideration '*should not be a political exercise or a popularity contest*'. He also said that there was nothing novel in applying heritage controls to activity centre areas (which was one concern by submitters) and that panels had commented earlier that the trade off against development objectives should occur at the permit stage. He said that the development pressures in Campaspe towns were, in any case, modest.

Burnewang submissions

The focus of Mr Morris' submission for Burnewang at the Hearing was a request that an Incorporated Plan be developed for the Burnewang property which would provide permit exemptions for certain specified works. Mr Morris in his presentation chose to support this request by addressing the nature of considerations by a Panel.

It was suggested that the approach taken by earlier heritage panels whereby a place is assessed for heritage significance and, if significance is established, the overlay is then applied without consideration of other planning objectives, has been incorrect. His submission was that in considering an amendment to a planning scheme (later in his submission referred to as *in considering whether to prepare an amendment*), a planning authority must consider all matters raised by the objectives of planning in Victoria. He said that therefore the Panel must consider matters beyond merely heritage significance, such as the effects of the overlay on other strategic planning objectives, the economic effects of the overlay including on certainty, fairness and facilitating development.

He supported this by saying that the objectives of planning are multifaceted, sometimes in tension and require balancing in planning decisions, including by planning authorities preparing amendments to introduce heritage controls. The objectives of planning in Victoria are set out in section 4(1) of the Act:

- (a) *to provide for the fair, orderly, economic and sustainable use, and development of land;*
- (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;*
- (e) *to protect public utilities and other assets and enable the orderly provision and co-ordination of public utilities and other facilities for the benefit of the community;*
- (f) *to facilitate development in accordance with the objectives set out in paragraphs (a), (b), (c), (d) and (e);*
- (g) *to balance the present and future interests of all Victorians.*

He also referred to section 6(1) of the Act which sets the scope of a scheme (and amendments). It provides:

A planning scheme for an area-

- (a) *must seek to further the objectives of planning in Victoria within the area covered by the scheme; and*

(aa) must contain a municipal strategic statement, if the scheme applies to the whole or part of a municipal district; and

(b) may make any provision which relates to the use, development, protection or conservation of any land in the area.

Mr Morris went on to refer to and quote from the decision in *Australian Conservation Foundation v Minister for Planning* [2004] VCAT 2019 (ACF case) which he said gave support to his proposition that the Panel in assessing the Amendment should consider matters beyond heritage significance. He said that VCAT had held that the objectives of the Act were broad, and indirect as well as direct environmental effects could be considered. Importantly he submitted that:

*This case establishes the position that a planning authority (and a panel or advisory committee) must consider **all** relevant planning issues, including any **indirect** environmental, social and economic effects that are identified as being within the scope of the Act (emphasis in original submission).*

Like Mr Stokans, Mr Morris referred to the RSL case. In that case, he said, the Court of Appeal found VCAT to be legally at fault when, in the context of a permit decision, it had precluded a party from putting forward evidence of a social and economic nature. He said that the Court held that while the Act indicates that a responsible authority *may* consider social and economic effects, a planning (sic – responsible) authority must consider social and economic effects *if the circumstances require*. He said that the Court’s findings are directly applicable to a planning authority’s duties under section 12(2)(c) and a panel’s responsibilities.

Mr Morris further suggested that because many members of panels are or have been also involved in assessing matters under the *Heritage Act 1995*, they may have wrongly imported into the planning system the approach under that Act, whereby reasonable and economic use are matters only entertained at the permit stage rather than the listing stage of heritage places. Alternatively he suggested that the incorrect approach by panels may have been the result of a panel notion about the way that the planning system should work, but it is a view inconsistent with the Act, and, he said, *the Act rules*.

Mr Morris’ invited post Hearing written submissions included that the scope of the relevant considerations should not be set by past panel reports nor Practice Notes. There was, he said, too much emphasis in the planning system on planning lore rather than the law. The relevant considerations are instead set by the Act. He referred again to sections 4, 6 and 12 and noted that the Melbourne C186 Panel report, to which he had been referred, did not address sections 4 or 6 of the Act, which the ACF case said set the potential scope of a planning scheme and amendments to it. He also said that the Melbourne C186 Panel placed undue importance on the phrase ‘if the circumstances so require’: he submitted that the principle in the RSL case is equally applicable regardless of the inclusion or non-inclusion of that phrase.

This Burnewang post Hearing written submission related to the current legislation only.

The Staalkjaer submissions

Ms Walker-Staalkjaer’s presentation at, and written submission after, the Panel Hearing referred to economic implications of the Amendment. She referred in particular to Recommendation 9 of the Productivity Commission Inquiry Report No 37 of 6 April 2006. That recommendation relates to ‘Getting incentives right for privately-owned heritage places’. She said that it stated that when heritage controls were being applied

retrospectively (that is where applied after a property had been purchased), the owners should be able to appeal the listing on the basis of its imposing unreasonable costs.

Her submission also referred to Article 6-3 of the Burra Charter which refers to consideration of owners' circumstances in considering heritage matters.

Her submission also made reference to the large number of signatories (1200) to the petition and the overwhelming support for opposition to the Union Street precinct. On one view this may raise a social impact consideration.

The Staalkjaers' submissions on the proposed changes to the Act supported the Burnewang position in relation to the current provisions. They also said that the revised legislation made it clear that a panel could no longer limit its considerations to the heritage merits and defer issues such as condition of buildings and costs of repair to later permit decisions. They said in as much as the Amending Act had already been approved, it was appropriate to adopt that approach now.

The submission in relation to the Staalkjaers' own property referred to the cost of applying for permits and the possible need to engage heritage experts. It was said that the Staalkjaers agreed with the submissions for Burnewang about the extremely lengthy and costly process of challenging a planning permit rejection.

Concerning the broad economic benefits of heritage tourism to the Shire which had been asserted by the Council, Ms Walker-Staalkjaer said that this might occur in those places where there were sufficient heritage buildings together, such as the Port of Echuca, but would not occur as a result of an overlay in Union Street, Kyabram.

Concerning the particular social, economic or amenity benefit of a Heritage Overlay to residents of Union Street, as asserted by Mr Stokans, of its precluding two storey flat development, she said the overlay was not required, as single dwelling covenants applied to most of the properties, already preventing flat development.

(iii) Discussion

We consider that it is appropriate to principally address the submissions made by Mr Morris for Burnewang and by others in the context of the current legislation. Given the imminent change to the legislation, however, we have provided some additional comments which may assist the Council in considering the issues raised in the submissions in the event that the new legislative context is in place before the Amendment process is concluded.

Previous panels considering heritage amendments, in setting aside the consideration of competing objectives relating to matters other than heritage significance for 13 years or more, have done so in the context of the above provisions of sections 12, 4 and 6 of the Act as quoted above.

This Panel agrees with the general thrust of Mr Morris' submissions that the nature of the Act provisions confirm that planning decisions are multifaceted and that competing objectives and policies are required to be weighed and balanced so as to achieve a net community benefit.

The Panel believes, however, that within the present legislative context, the Panel is not required to approach all planning decisions, or even all planning decisions about amendments, in the same way. The range of matters to be considered in any particular case will be confined to those matters relevant to the decision having regard to the purpose and

nature of the decision. The consideration of social and economic effects is clearly identified as discretionary under the present legislation and it is appropriate to consider whether they are relevant in considering this heritage Amendment.

The oft quoted Ballarat C58 Panel, which considered that it was not relevant to consider matters other than heritage significance when considering the application of the Heritage Overlay, does not itself greatly elaborate on its reasons for adopting that approach (see Section 7.1 of that report). It does say that matters other than heritage significance should be deferred to a later management or permit stage of planning decisions about the land; and in going on to adopt the findings of other panels in relation to heritage amendments, it supports its approach by finding that it is consistent with sound conservation practice. Impliedly, if not explicitly, that Panel held that the other issues were not relevant in the context of a heritage amendment proposing the application of new overlays.

Indeed the Ballarat C58 Panel reinforces this finding by contrasting the limited considerations relevant to the consideration of the application of overlays from the wider considerations which it believed should apply when it is proposed to introduce a new heritage policy in the scheme.

Having discussed its approach to considerations applying when overlays are proposed, the Panel said in (the little quoted) Section 7.2:

The Panel believes that a different situation is presented when determining whether to include a local planning policy on heritage conservation where the objectives and potential outcomes may conflict with other planning objectives within the planning scheme or strategies such as Melbourne 2030. In these circumstances the Panel considers that an application of the Planning Practice Note on Strategic Assessment Guidelines for planning scheme amendments and Ministerial Direction 9 on the Metropolitan Strategy requires an assessment of the effect of operation of any local planning policy on the achievement of objectives or the implementation of any directions or policies within the planning scheme or Melbourne 2030. More specifically, a panel must assess whether an amendment is inconsistent with strategic directions elsewhere in the planning policy framework or whether it may compromise the implementation of the Metropolitan Strategy.

The reason for the difference in approach is based on the difference in the nature of the Heritage Overlay compared to a local planning policy and the expectations that councils (and the community) have about heritage conservation policies.

The Heritage Overlay is the means of identifying places of recognised heritage significance within the planning scheme. It requires a planning permit to be obtained before demolishing or removing a building, constructing a building or carrying out various development or works. The provisions of the Heritage Overlay apply in addition to the provisions of the zone and any other provision of the planning scheme (Clause 41). This is notwithstanding they may have different objectives or produce different outcomes.

By contrast, a local planning policy is a tool for day-to-day decision-making in relation to a specific discretion in a zone or overlay. It helps the responsible authority and other users of the planning scheme to understand how a particular discretion is likely to be exercised. A local planning policy enables a planning authority to give local expression to the wide discretion provided in many zones and overlays, including the Heritage Overlay. Local planning policies however are statements of intent or expectation. They are not controls [31].

The Planning Practice Note on writing a local planning policy acknowledges that some local planning policies may compete and deciding between them is a normal function of the planning system. However, it warns that repetitive or contradictory local planning policies for the same theme or area will only confuse and weaken the planning authority's intentions.

The problem is that many local planning policies on heritage conservation contain quite rigid policies, which many councils treat as tantamount to controls, about prohibiting demolition of significant or contributory buildings and restricting new development in height (often to much less than ResCode provisions) or form (eg to single detached dwellings). Councils (and some members of the community) then expect that these policies should take precedence over other policies or directions in the planning scheme or Metropolitan Strategy, such as promoting a mix of housing types and encouraging higher density and mixed use development near public transport routes and in proximity to Activity Centres.

Unfortunately, these local planning policies are frequently introduced without a proper examination of their implications for the operation of other aspects of the planning scheme or the achievement of other planning scheme objectives. Rarely are they backed up by an analysis of their potential impacts on the type of policies or directions referred to above. Nor are they introduced as part of a comprehensive housing strategy for a municipality.

The current Panel agrees with that approach by the Ballarat C58 Panel.

Some of the earlier reports referred to in the Ballarat C58 report give more extensive or other reasons for deferring 'trade offs' with competing considerations to a later stage when considering the application of the Heritage Overlay.

One of the earlier panel reports referred to by the Ballarat Panel was the report for Whittlesea Planning Scheme Amendment C24 which proposed a site specific Heritage Overlay for 'Farm Vigano' on the Plenty River. In that report, the C24 Panel again supports the deferral of consideration of competing objectives - in that case environmental objectives for the management of land along the river - to a later management stage. The Panel again explains that this is consistent with sound conservation practice:

The Australian ICOMOS Burra Charter is an accepted guide to practice for heritage conservation. Article 6.1 of the Burra Charter provides as follows:

The cultural significance of a place and other issues affecting its future are best understood by a sequence of collecting and analysing information before making decisions. Understanding cultural significance comes first, then development of policy and finally management of the place in accordance with the policy.

There is thus a clear distinction between the understanding and assessment of significance, and the development of policy and management arrangements, as may arise when management plan is developed for the property management...³³

The Panel also said:

Parks Victoria referred the Panel to a range of strategic documents including:

³³ Whittlesea Planning Scheme Amendment C24 Panel report 2003, Section 3.3.

The Metropolitan Strategy, Melbourne 2030

Linking People and Spaces, a strategy for Melbourne's open space network prepared by Parks Victoria in 2002 and referenced in Melbourne 2030.

SPPF and LPPF of the Whittlesea Planning Scheme, which specify objectives relating to open space, protecting and enhancing the riparian vegetation of waterways, and improving wildlife corridors.

It was submitted that objectives in these documents, and strategies to support their implementation, should take precedence over the heritage significance of the cleared areas of The Farm Vigano and retention of them as cleared areas.

The Panel agrees that when the time comes to make decisions about whether or not to revegetate cleared areas of The Farm Vigano, which have previously been used for vegetable gardens, orchards and the like, there will likely be competing objectives relating to heritage and the environment that will need to be balanced. However, the time for such decisions is not now.

*Amendment C24 involves a consideration of whether or not this land has heritage significance. If the place lacks heritage significance, the Heritage Overlay should not be applied. If it does have heritage significance, then the fact there may be other objectives and strategies applying to the place is irrelevant; **they will not change the heritage significance**. For this reason the Panel does not consider that the competing environmental objectives referred to by Parks Victoria should influence its finding about the heritage significance of any part of The Farm Vigano or the application of the Heritage Overlay to such land³⁴(Emphasis added).*

The Ballarat C58 Panel also refers to the large number of principles set out in the Stonnington C47D Panel report of 2000. They include:

Re Effect of Hardship Issues on the Panel's Considerations

In reaching a recommendation in relation to the buildings in this amendment, we have chosen not to take into account any issues of property owners' hardship. We accept that hardship, as it may financially affect the owners of properties of heritage significance (particularly the owners at the time of this amendment's gazettal), may be a relevant consideration in a future decision as to whether to allow alterations to, or demolition of, a heritage building. However, that decision is one to be made at the relevant point in time.

*We also consider that transparency of the planning process should be maintained. This certainly relates to the objective of fairness [Planning & Environment Act 1987, Clause 4(1)(a)] and will assist in the process of balancing the "present and future interests of all Victorians" [Planning & Environment Act 1987, Clause 4(1)(g)]. **This transparency will be assisted by separating the process of designating heritage significance from the process of making decisions about building's conservation, whether this be related to its replacement, unreasonably expensive maintenance or unsuitability for modern living**³⁵ (Our emphasis).*

³⁴ Whittlesea C24 Panel report, Section 4.3: Competing environmental objectives and strategies.

³⁵ Stonnington Planning Scheme Amendment C47D Panel report, 2000, Section 5.9.

The Chief Panel Member's Final Report on NFPS Panel Reports [1999] PPV 110 (1 April 1999) does not discuss the manner in which decision making in relation to the application of the Heritage Overlay (except in relation to the need for review of existing overlays) should occur. In making a general comment about the application of issue-specific overlays to public land at Section 6.1.4, however, Ms Gibson also appears to accept the view that issue-specific overlays should be applied without any form of trade-off:

There were frequent submissions made by authorities such as Vic Roads and the PTC that overlays, particularly environmental overlays, should not apply to land for which they were the land managers.

*The panels believe this is an issue which needs to be dealt with on a Statewide basis. In general terms, it believes that **if land has a particular character that justifies the application of an overlay**, then any buildings or works which have an impact on the reason for the overlay should require a permit. If it can be demonstrated that the buildings or works have been designed to specifically address the issues or purpose of the overlay, then there is provision within the relevant schedules to exempt those buildings or works from the need for a permit... the panels do not consider that buildings and works should be exempt from the need for a permit under an overlay just because a public authority proposes them or the land is public land.*

The above Panel discussions suggest that the considerations by the panels dealing with heritage amendments were influenced by what was considered to be good conservation practice (including as set out in the Burra Charter).

Other reasons have been set out more recently concerning why it is not appropriate to consider matters beyond heritage significance when it is proposed to apply overlays in an Amendment.

The Melbourne C186 Panel report contained a set of reasons which were in part adopted from the Panel report in Boroondara C99. The C186 Panel said:

In relation to this heritage Amendment we do not think that the circumstances require us to consider matters beyond whether the places which are the subject of the proposed Heritage Overlays have heritage significance – in particular we do not think we are required to consider and trade-off other economic policies of the Planning Scheme. We adopt the reasoning of the panel which considered Boroondara Planning Scheme Amendment C99 as quoted above in making this finding. The Heritage Overlay like most other overlays in the VPPs is a tool with a particular purpose to recognise and manage heritage places. It should be applied to those places where heritage significance is found to apply.

The Boroondara C99 Panel views adopted in the Melbourne C186 report were:

Panels have generally been consistent in their view that consideration of matters beyond the issue of whether or not an individual site or a precinct has the requisite level of local significance, lie outside the proper scope of the assessment of a proposal to apply a Heritage Overlay.[1] These views have normally been expressed in response to submissions about personal disadvantage to the submitter as a result of the heritage listing such as such as economic consequences for a landowner, costs of repair of a building in poor condition, a desire to demolish and rebuild, and the like.

It is our view, however, that even when the competing issues raised are broader and of a public nature such as urban consolidation, they remain outside the proper scope for consideration in relation to the matter of whether a Heritage Overlay should be applied.

The decision as to whether a planning scheme overlay which signals and regulates particular characteristics of land should apply to any site is not a decision which is normally taken having regard to 'trade-offs' against other competing objectives and controls of a scheme. Places are not excluded from the Environmental Significance Overlay, for example, because the planning authority wishes to see the land developed. The consideration of application of that overlay is based on whether or not the land has significance. Similarly areas are included or not included within flooding overlays purely on the basis of whether flood liability applies. In the same way, when a Heritage Overlay is proposed to be applied to a property or area, the consideration should be whether or not it has local heritage significance.

We would also say that planning scheme overlays with few exceptions do not impose prohibitions on development but require that certain values pertaining to the land are taken into account in any proposal to develop the land. Some development proposals may be judged to be inappropriate having regard to all the factors relevant to the permit decision and refused as a result, but others will be judged as satisfactory. This is true of the Heritage Overlay.

In the present case, the Panel is in effect being requested to make a decision in the context of the Amendment about potential demolitions in the area(s) proposed to be made subject to the Heritage Overlay. In our view, these matters are normally and properly dealt with under planning permits. It is only when a permit application outlining the proposed use and development is before a planning body that the proper trade-offs or balancing of policies can be made.

In this respect we refer to the report of the Panel considering Whitehorse Amendment C140 which includes:

The Panel notes that the management of heritage places is a two stage planning process. Firstly the objective identification of heritage significance (the current stage); and secondly the ongoing management of the place having regard to such matters such as the economics of building, retention and repair, reasonable current day use requirements etc as part of the consideration of an application for development.

This approach to the management of heritage places has been adopted in practice by planning panels and by the Victorian Civil and Administrative Tribunal. The comments by the panel considering the Ballarat Planning Scheme Amendment C58 are often referred to. At page 53 of their report the Panel said:

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

The more recent views, quoted above, both adopt the Ballarat C58 approach as representing good conservation practice but also recognise the issue-specific nature of the Heritage

Overlay. It is suggested that the issue-specific or specialised nature of the Heritage Overlay does not warrant a multifaceted approach to the decision as to whether the overlay should be applied to particular properties. In the terms of the RSL case, it is that Panel's and our view that the circumstances are such that they do not call for the exercise of the authority conferred by 'may' in relation to consideration of social and economic effects. The circumstances do not warrant consideration of matters other than heritage significance.

It also has to be remembered that the Council has already taken a number of decisions relating to this Amendment – to prepare it and place it on exhibition and later to request a panel to advise on submissions which it could not accommodate. The first and the last of those decisions might well have involved consideration of the social and economic implications of the introduction of further Heritage Overlays and a revised heritage policy, and have made a balanced decision having regard to other planning objectives. Indeed the report to Council deals with such issues. This may have been what led Mr Morris in his written submission to refer to input of social and economic matters *in considering whether to prepare an amendment*.

Concerning the VCAT rulings in the ACF case, we agree with the Melbourne C186 Panel that the case can be distinguished from the present one on the basis that it was dealing with the mandatory direction in the Act to consider the environmental effects of an amendment³⁶. While Mr Morris claimed that it stood for the proposition that direct and indirect social and economic effects should be considered as well as environmental issues, the decision appears not to have been made having regard to discretionary v mandatory provisions – and social and economic matters are not so much as mentioned.

In relation to the ACF case's reference, and Mr Morris', to sections 4 and 6 of the Act, we agree with Mr Stokans that section 4 is a list of objectives not powers, and section 6 sets out a mandatory and discretionary list of what a scheme can provide for; but together they do not mandate consideration of social or economic effects.

So far as the recommendations of the Productivity Commission Report of 2006 are concerned, they have not been adopted into the planning system in any way and we propose not to give them any weight.

We note the provisions of the Burra Charter to which Ms Walker-Staalkjaer referred, but the article in question relates to management of the place not its listing or recognition of significance. In our view, references in the Burra Charter to *policy for managing a place*, should be considered in terms of the planning system, to be the administration of the scheme once heritage provisions have been applied.

We are also not persuaded that, because the Amending Act has been approved albeit not proclaimed, we should adopt its approach to mandatory consideration of these matters. It may indeed be, as the Staalkjaers submitted, that the revisions to section 12 are designed to alter past approaches to considerations of these issues, including in the application of the Heritage Overlay, but the purposes for the change are less than clear and this is speculation. We see no need as yet to depart from the usual approach by Panels on this issue.

Concerning the petition and the numbers of objecting submissions issue, we believe that planning decisions should be made on merit and not based on submitter numbers. We have no way of knowing what the petitioners were told about the Amendment and its effects and

³⁶ See the Melbourne C186 Panel report for a fuller discussion of that Panel's views on this case.

other information available to the petitioners. It is not in our view a significant social effect even if we were inclined to consider social issues.

Concerning the forthcoming changes to the Act and the introduction of a provision that social and economic effects of an amendment *must* be considered, the Panel makes the following observations:

- A requirement to *consider* does not imply that the matters required to be considered must prevail in any balancing decision.
- The social and economic matters most likely to be relevant are those of a broad community nature rather than a personal kind. This has been the long standing approach taken to such issues in planning decision making. See for example, *Kentucky Fried Chicken Pty Ltd v Gantidis* [1979] HCA 20; 910790 140 CLR 675 (1 May 1979) and the planning commentary on social and environmental effects contained in Butterworths Pty Ltd *Planning and Environment Service (Victoria)* at paragraph 432,350 and *ff*.
- Personal economic effects or at least the economic effects for a particular building will continue to be able to be considered at the permit stage. It is to be noted that section 60 of the Act, which relates to matters to be considered when deciding on planning permit applications, consents and the like, is also to be changed by the Amending Act – making social and economic matters a mandatory consideration.
- The availability of information about the direct and indirect social and economic effects for the wider community may not always be to hand at the time of deciding whether to include properties in a Heritage Overlay (or at least not without considerable financial outlay on a broad cost-benefit analysis). Some of the information currently available about economic effects is also inconsistent, for example in relation to land values which appear to respond differently to the heritage listing depending on the location of the property.
- It is to be noted that section 12(2) of the Act, directs that consideration be given to *significant* environmental effects but there is no reference in the consideration of social and economic effects to their being significant.

(iv) Conclusion

In relation to our assessment of whether or not properties should be included in the Heritage Overlay, we have adopted the long standing approach by panels to consider only heritage significance.

5.11 The Clause 22 policy

(i) What is the issue?

Mr Staalkjaer had a number of criticisms of the proposed Clause 22 policy, in particular it's being non-responsive to the heritage of Campaspe and the characteristics of the particular towns affected.

(ii) Submissions

Mr Staalkjaer said that the policy has simply been copied verbatim from the Bayside Planning Scheme and as a result the policy is flawed, imprecise and overreaching.

He said the policy should have been developed in accordance with the steps recommended in the Burra Charter. In particular there should have been consultation with the community and content included which was responsive to owners' needs and resources. He acknowledged that the incorporated plan in some measure made the policy more area

specific, but said that there should have been further provisions, for example, to recognise that Kyabram is a town involved in the development of alternative energy programs. The exemptions should have recognised solar panels. He suggested that the precincts in Lockington, Tongala and Kyabram should have special exemptions allowing extensions to recent buildings developed in the absence of heritage controls. He suggested that fencing generally should also be made exempt from the need for a permit as fences do not interfere with heritage value.

In so far as the policy was a standard policy adopted from elsewhere, Mr Staalkjaer said, it lacks the required strategic justification.

Ms Walker-Staalkjaer's written submissions after the Hearing also addressed similar themes. She said that the Bayside policy was simply being transplanted into the Campaspe Planning Scheme.

Mr Stokans' response was that the policy was a sound generic heritage policy applied elsewhere, having passed scrutiny as an amendment and there was no reason it should not be applied in Campaspe. He said it was a policy similar to many local heritage policies. He suggested that the policy basis at Clause 22.06-1 provided the necessary local flavour. He further said that the policy would not place unreasonable limits on owners as asserted by Mr Staalkjaer and there are a number of permit exemptions provided in the proposed Incorporated Plan.

(iii) Discussion

We have reviewed the policy and agree with Mr Stokans that it is suitable for inclusion in the Campaspe Planning Scheme. The policy embraces sound conservation practices; and, while they are stated as 'performance measures', they are really principles guiding decision making. We see no difficulty with the judicious application of the policy throughout the Shire and do not believe it would undermine the achievement of other planning objectives.

Mr Staalkjaer's suggestion that the policy should be refined by inclusion of area specific exemptions in the Incorporated Document or be more responsive to energy efficiency needs is something that could be considered by the Council as part of a later heritage review.

(iv) Conclusion

We see no reason why the exhibited policy should not proceed to adoption.

5.12 In principle objections to heritage controls

(i) What is the issue?

Various submitters opposed the application of the Heritage Overlay on the basis that it infringed personal rights.

The issue is to what extent these submissions should influence the outcome in relation to the amendment.

(ii) Submissions and evidence

There were a number of objections of this type. Submitters raised issues such as it was discriminatory to apply heritage controls to private property; the controls were unreasonable, unfair or unwarranted; the controls represented an infringement of property rights; and that properties would be reduced in value with no corresponding right or compensation. The overlay was also seen as introducing 'controls' on how people live in

their properties. The reference to the properties in Union Street as the ‘Shire’s heritage assets’ was objected to by Ms Walker-Staalkjaer, for example, on the basis that this did not reflect a correct view that they are people’s homes.

Mr Stokans responded that provided the controls are only introduced where they are justified, the in principle objections cannot be sustained. He also referred to the necessary subservience of individual property owners’ rights to the broader community interest in preserving heritage places for present and future communities. Concerning property values he said that no evidence had been provided to support the assertions of change. He also noted that the Act does not provide for compensation unless property is being acquired.

(iii) Discussion

The Panel would comment that the Heritage Overlay (including its earlier incarnations) is an accepted planning tool in the statutory planning system. Planning schemes in turn are a long established component of the package of legislation in the State which regulates how people use land. That package also includes health and building regulations, traffic and parking rules. Planning schemes seek to regulate land use and development in the interests of broad social, economic and environmental objectives set in part at State and in part at local government level. Individual landowners are both subjected to planning restrictions on the use and development of their land in the furtherance of those objectives and at the same time benefit by restrictions on the use and development of land by others.

(iv) Conclusion

It is not appropriate to give any weight to these objections put in submissions.

5.13 Condition and integrity

(i) What is the issue?

Some submissions challenged the proposed application of the Heritage Overlay on the basis that buildings were in poor condition or structurally unsound.

(ii) Submissions and evidence

Mr Stokans noted that this is generally viewed as something to be dealt with when a planning permit was being considered and not at the stage when the place is being considered for inclusion in the overlay. He noted that the proposed heritage policy recommends that demolition would be allowed where a building is structurally unsound, where deterioration is such that substantial reconstruction would be required and the replacement building shows design excellence.

(iii) Discussion

The Panel agrees with the Council submissions with respect to this matter. As a matter of policy it is generally inappropriate to allow building condition to impinge on the question of whether a place should be included in the Heritage Overlay. Condition as distinct from intactness does not take away from significance. As a matter of policy it should be precluded as a basis for rejecting the application of the overlay to significant places, as to do otherwise has the potential to encourage deliberate neglect of buildings.

(iv) Conclusion

In our assessment of whether particular properties should be included in the Heritage Overlay we have not taken building condition, but only building integrity or intactness, into account.

6 The proposed precincts

6.1 Old Echuca Township (HO1)

(i) Statement of Significance

What is Significant?

The old Echuca township area is significant as it demonstrates the nature of the historic port and the development of the settlement at Echuca. Its establishment was contemporaneous with the development of the river trade and associated industries such as boat building and repair centres and the timber industry which was a major source of employment.

Settlement dates from the 1850s. A small settlement grew around the location of the punt operated by Henry Hopwood. The discovery of gold in the early 1850s saw this settlement grow and it became the main crossing point between the Riverina, the Bendigo goldfields and Melbourne. In 1854 Philip Chauncy surveyed an area for the township of Echuca. Much of the early survey area falls within the Heritage Overlay area. River trade and the establishment of the port began with the introduction of steam boats in 1853. The completion of the Melbourne, Mt Alexander and Murray River railway in 1864 and the opening of the first inter-colonial bridge over the Murray River in 1878-1879 saw Echuca develop into the largest inland port in Australia. The Echuca port facilitated the movement of goods through Echuca from the Murray Darling catchment which included the rich pastoral districts of the Riverina to Melbourne. The port was serviced by direct rail access with the construction of railway sidings adjacent to the wharf and by 1877 there were seven railway sidings approaching the wharf. This gave the township an economic supremacy well into the 1880s.

The built form of the area is significant in that the impact of the port, the railway and the railroad bridge can be readily interpreted through the types and stylistic characteristics of individual buildings. Collectively they demonstrate the early growth of the township around the port.

A number of trees were planted in 1868. These trees were sourced from a Melbourne nursery. Of these there are two that are located within this precinct: the ficus macrophyllia - outside the police station and the araucaria bidwilli at the former Town hall.

The survival of a large number of buildings, trees and places that are associated with the development of Echuca as the largest inland port gives this heritage precinct a high degree of integrity and intactness.

How is it Significant?

It is of historic, social and aesthetic significance to the Campaspe Shire.

Why is it Significant?

It is of historic and social significance as it provides tangible physical evidence of the initial development of the historic port township of Echuca and its subsequent development.

It demonstrates the early growth of the township around the port and the beginnings of the eventual expansion of the town area south along High Street and east to Hare Street - a consequence of the growing dominance of rail and later road transport asserted themselves over the river. There are a number of timber shops, timber verandahs and original shop

fronts and this includes notable timber shop fronts. The survival of the timber shop fronts is important for their relationship with the timber industry.

The retention of the integrity of the majority of these places contributes to the significance of the precinct.

The trees that date from the 1868 planting are of historic significance for their association with the development of the township. The species chosen are of note and in particular the araucaria bidwilli a tree that was popularised during the 19th century by its prolific planting particularly in public parks and reserves.

The open spaces within the precinct and the semi-natural vegetation that has been retained along the riverbanks assist in the interpretation of the timber industry which was integral to the prosperity of Echuca.

The precinct is of social significance important for its association with events, development and cultural phases which have had a significant role in the occupation and evolution of the community.

It is of aesthetic significance for the number of grandiose public buildings and commercial premises that are found throughout the precinct. They are important as examples of the fine work of the Victorian Public Works Department and of private architectural practices including those of Vahland and Getzschmann; E J Henderson and A A Fritsch. The works of Vahland and Getzschmann in particular provide a particular architectural character to the precinct.

The diversity of building types and the number of industrial sites demonstrates the diversity of activities that occurred in the area during its heyday.

The other less prominent buildings provide important aesthetic qualities as they illustrate contemporaneous building styles.

The open spaces within the precinct and the semi-natural vegetation are of aesthetic significance.

The timber wharf has technical significance as a rare surviving example of the construction techniques associated with the construction of 19th century timber wharfs.

(ii) General issues

The issue in relation to this precinct are the sourcing of the strategic basis for its delineation and the identification of contributory buildings, as well as the preparation of the Statement of Significance.

Evidence and submissions

Mr Staalkjaer made submissions concerning this precinct which is already included in the Planning Scheme and has been reviewed by Ms Kemp in the post Gap Study work on precincts. His submission included:

It is submitted that the Panel:

- Cannot be satisfied that appropriate strategic basis exists for the inclusion or amendment of the proposed Echuca Township Precinct in C50;*
- Finds that there is inadequate documents, reports or studies to warrant the proposed amendments to the Echuca Township Precinct;*

-
- *Find that the proposed Echuca Township Precinct amendments are not supported by any existing study or work;*
 - *Reject the asserted '2011 precinct review' as basis for the proposed Echuca Township Precinct amendments;*
 - *Find that no strategic basis exists for allocation of Contributory and Non and Non Contributory places exists within the proposed Echuca Township Precinct.*

It is therefore submitted that the Panel should not support the inclusion of the proposed HO1 Echuca Township Precinct within C50 without further and proper strategic work.

Ms Kemp's evidence was that the precinct had been enlarged to include the former Echuca Courthouse (HO12) and the former police station (HO13) as contributory items. They were formerly included in the residential precinct to the north.

(iii) Individual place issues

The former Star Hotel, 45-47 Murray Esplanade, Echuca

The only individual place issue was that raised in the BizLaw submissions for Mr Paul Jarman, the occupier of the Council owned property, the former Star Hotel, 45-47 Murray Esplanade. While not making a written submission to the Council, Mr Jarman sought to make a submission to the Panel opposing the inclusion of the property in an individual place Heritage Overlay set within the boundaries of the precinct. Mr Jarman claimed no or inadequate notice; and that he should be given an opportunity to argue the merits of including the property in an individual place overlay with interior controls, even though this opportunity had only come about as a result of a mapping error in the existing Scheme.

While, after a Directions Hearing, the Panel agreed to hear from Mr Jarman in relation to heritage significance of the building, and of its interior in particular, the Panel later changed its mind after a Ministerial amendment to the Scheme placed the property in the individual place overlay.

We have therefore not considered the merits of heritage listing of this property.

See also the discussion in Section 1.2.

(iv) Discussion

This precinct has been contained in the Campaspe Planning Scheme for some time. The boundary revisions proposed in the Amendment in the main result from the proposal to alter the three existing precincts in Echuca to create five. The north-western end and the eastern end of the precinct have been allocated to other precincts. The previous extension of the existing precinct to the western side of the Campaspe River has also been contracted.

The Panel was persuaded by Ms Kemp's evidence given at the Hearing that there has been reasonably careful thought given to the redefinition of Echuca precincts overall. It is unfortunate, however, that the precinct review was not documented and made available at the time of exhibition nor in time for the Panel Hearing. As recommended elsewhere, that documentation should be prepared and become a reference document of the Scheme following some form of review. It should where appropriate include a full explanation of how existing precinct boundaries were first defined in Echuca and other towns such as Rushworth and more recently revised.

The Panel notes that the precinct already contains a considerable number of individual place overlays set within the boundaries of the precinct and that the exhibited Amendment would add many more contributory places not earlier identified or specified in previous studies. The Panel can understand that this is a response to changing views about the nature of heritage places since the precinct was first identified when the most significant buildings were all allocated individual place Heritage Overlays.

We note also that some places appear to have been deleted. It is possible that this may be the outcome of demolitions or differing professional opinions; but, given the individual place Heritage Overlays generally remain somewhere within the precinct, it seems that it is more likely that the 'removal' of overlays is actually their relocation as a result of the redrawing of the Scheme maps for the Amendment - including existing as well as new heritage places. This, it has been acknowledged by the Council, has led to some changes to the location of existing overlays. See the discussion in Section 1.2 and Section 5.8.

The Panel has reviewed the proposed revised precinct boundaries and the contributory buildings and is satisfied that they are generally suitable for adoption subject to the concerns about mapping as described in Section 5.8.

(v) Recommendation

The Panel recommends:

Subject to our general recommendations in Sections 2.3 and 5, the Old Echuca Township Precinct should be adopted as exhibited.

6.2 Echuca Central (HO2)

(i) Statement of Significance

What is Significant?

The Echuca Central Precinct is significant as it demonstrates the growth of Echuca as it expanded away from the port. Initially the expansion to the south of the port occurred because of population growth and the scarcity of land in the narrow neck of the port area. The expansion was supported by the opening of the Melbourne, Mt Alexander and Echuca railway in 1864 and the opening of the first inter-colonial bridge over the Murray River at Echuca in 1878. During the late 19th and early 20th century the port declined in importance and the central precinct area established itself as the commercial centre of Echuca. Buildings, including the Post Office, churches, schools, banks, hotels and commercial buildings demonstrate this commercial shift. All of these buildings with their diverse architectural expressions and built fabric contribute to the historic urban character of this precinct.

Significant places include mature trees and other contributory structures. The mature trees, including the Kurrajongs make an important contribution to the aesthetic significance of the area.

How is it Significant?

It is of historic, social and aesthetic significance to the Campaspe Shire.

Why is it Significant?

It is of historic and social significance as it provides tangible physical evidence of the evolution of the township during the late 19th and early 20th century. It demonstrates the

pattern of growth of the commercial centre south along High Street and east to Hare Street at a time when the dominance of rail and later road transport asserted themselves over the river.

The retention of the integrity of the majority of these places contributes to the significance of the precinct.

The precinct is of social significance important for its association with events, development and cultural phases which have had a significant role in the occupation and evolution of the community.

It is of aesthetic significance for its diversity of building types, mixture of architectural periods and architectural expression. Many of the buildings are good representative examples with a number of places illustrating regional characteristics and unusual architectural features.

The historic places in the precinct have largely retained a high degree of integrity and intactness.

(ii) General issues

Evidence and submissions

Mr Staalkjaer made some general submissions concerning this precinct. They included that the precinct boundaries had been modified without any documentation being available to support the changes; while there had been a Statement of Significance for the precinct in the 1992 Ward Study, this had not been adopted and a completely new one was prepared by Ms Kemp; the addition of defined contributory buildings in the review work is without supporting documentation. He also raises some concerns about the negotiated arrangement concerning the Aldi property as discussed below.

Mr Staalkjaer's written submission included:

It is submitted that the Panel:

- *Cannot be satisfied that appropriate strategic basis exists for the inclusion or amendment of the proposed Central Business Precinct in C50;*
- *Finds that there is inadequate documents, reports or studies to warrant the proposed amendments to the Central Business Precinct;*
- *Find that the proposed Central Business Precinct amendments are not supported by any existing study or work;*
- *Rejects the asserted '2011 precinct review' as basis for the proposed Central Business Precinct amendments;*
- *Find that no strategic basis exists for allocation of Contributory and Non Contributory places exist within the proposed Central Business Precinct.*

It is therefore submitted that the Panel should not support the inclusion of the proposed HO2 Central Business Precinct within C50 without further and proper strategic work.

Ms Kemp's evidence was that the shape of the precinct has been retracted slightly in her review to remove non-contributory items from the precinct. The mapping shows all contributory buildings.

(iii) Individual place issues

208-222 Anstruther Street

Evidence and submissions

In the post exhibition version of the map for the precinct there has been a substantial contraction of the exhibited easterly extent of the northern part of the precinct along Anstruther Street. The Case Book explains that this had been in response to a submission by Urbis consultants on behalf of Aldi Stores.

The existing Planning Scheme Schedule indicates that an individual place Heritage Overlay (HO15) applies to St Mary's Catholic Church, in Hare Street in this area, The property extends east along Anstruther Street, however the existing Planning Scheme maps do not show HO15 and the Amendment was intended to correct this omission.

Aldi have developed a store and car park on part of the land having demolished school buildings associated with the church. They are also investigating the reuse of a 1919 red brick building on the site which had previously been approved for demolition by the Council but overturned at VCAT. Aldi argued to the Council that the Amendment would limit their ability to adapt the building by making it contributory to the HO2 precinct.

While the Council response in the Case Book notes that the Heritage Overlay would not prohibit development on the site, it indicates that it was deemed appropriate to vary the precinct in this area. The post exhibition change removes from the precinct - the land of the existing Aldi store, the car park, a vacant site east of the store, new buildings at 193 Annesley Street and the church at 197 Annesley Street (covered by an individual Heritage Overlay (HO9)).

In the current absence of the site specific Heritage Overlay (HO15), the site is shown as being in the precinct overlay (HO1 – proposed to be converted to HO2 in this area).

Mr Staalkjaer also noted that retraction of the precinct boundary in the north-east corner along Anstruther Street as a result of the Aldi 'negotiation' with the Council and said that it had resulted in the individual Heritage Overlay for St Mary's church (HO15) traversing the precinct boundary.

(iv) Discussion

It is the Panel's view that, with the exception of the post-exhibition change to the Aldi property, the precinct delineation in this case has been satisfactorily supported by Ms Kemp in her evidence.

It is to be expected that if the Council had had concerns about Ms Kemp in her precinct review extending beyond her brief as suggested by Mr Staalkjaer, this matter would have been addressed before the Amendment went on exhibition.

As we have said, we are of the view that it has been unfortunate that the documentation of her review work was neither available during exhibition nor in time for the Panel process. If that documentation had been available, then many of the concerns expressed by Mr Staalkjaer about lack of a sound basis for aspects of the Amendment would likely not have arisen. Although no written record is even now available, submitters could have chosen (and many did choose) to pursue their concerns to the Panel Hearing and could avail themselves of information provided in that context.

Concerning the submission by Aldi, the Panel has checked the existing Planning Scheme maps and confirmed that HO15 St Mary's church is not marked albeit it is listed in the

Schedule as being in Hare Street. We have been given no map indicating the extent of HO15 if it were to be mapped. We are not able to assess Mr Staalkjaer's claim that HO15 would sit only partially within the revised precinct.

It appears to us that the current position is that the land intended to be in HO15 it is not lawfully included in HO15. HO1 apparently has current effect, ensuring that heritage considerations apply.

It is not clear at all to us why the inclusion of the site within the revised precinct is opposed but not its inclusion in a site specific overlay (HO15). If the Amendment were to proceed as recommended in the Case Book, the land would shift from being contributory to a precinct to having its own Heritage Overlay. If we are right that the precinct controls may not have legal effect over site specific overlays, as discussed in Section 5.7, there seems only to be an opposition to the effect on the precinct being called up as a permit consideration if HO2 were 'applied'.

We are of the view that at least the land west of the Aldi store, and that within a suitable buffer to the Wesleyan church in HO9 should be included in the precinct. In the absence of a proper map which would us to better consider this issue and refine our recommendations, we advise that we support the exhibited version of the boundary.

We are conscious, however, that Aldi withdrew their request to be heard by the Panel on the basis that the Council were proposing this retraction of the precinct overlay. They should be advised of the Panel outcome and be provided with an opportunity to address the Council before adoption of the Amendment.

(v) Recommendation

The Panel recommends:

Subject to our general recommendations in Sections 2.3 and 5, the Echuca Central Precinct be adopted as exhibited, including the full easterly extent of the precinct in Anstruther Street.

6.3 Echuca Central Residential (HO3)

(i) Statement of significance

What is significant?

The Francis Street Precinct [as this precinct was originally named] demonstrates the evolution and changing character of the township of Echuca during the late 19th and early 20th century. The Francis Precinct supplanted Echuca's West End as the most sought after residential location towards the end of the 19th century. This was initially a product of a shortage of suitable residential land in the West End but the eventual decline of river trade and commercial activity in the port area meant that the focus of the township moved southward.

The precinct is particularly notable for its early 20th century residential development in the Federation style. There are also a number of 19th century villas generally of smaller and less grandiose proportions. There are also several houses in the Californian Bungalow style; the English Domestic Revival and Georgian Revival styles. The prominent architectural characteristic is picturesque and these values are supported by a number of distinguished landscaped garden settings.

The Francis Street residential area has retained its high quality historic residential character and this is supported by the quality and variety of architectural styles. Development largely consists of single storey housing with generous setbacks, garden settings and low transparent fences. This contributes to the sense of spaciousness and openness that is complemented by the public domain with its wide streets, gravelled verges and street trees. The general openness of the precinct enables views to the nearby riverine vegetation and environment.

How is it significant?

It is of local historic, social and aesthetic significance to the Campaspe Shire.

Why is it significant?

The precinct is of historic and social significance as it provides tangible evidence of the impact of the economic, social and physical changes that were associated with the reduced river trade and the decline of the port area during the late 19th and 20th century. The retention of the integrity of the majority of these places contributes to the significance of the precinct.

The precinct is of social significance important for its association with events, development and cultural phases which have had a significant role in the occupation and evolution of the community.

It is of particular aesthetic significance for its Federation era architecture. These houses are fine regional representations of the style and display many of the characteristics associated with this period.

The other significant buildings include examples of 19th century villas; Californian Bungalows and Interwar houses such as the English Domestic Revival and Georgian Revival styles. They are also of aesthetic significance as they contribute to the architectural diversity and are good representative examples of their period.

The Francis Street precinct has aesthetic significance for several of its mature ornamental private gardens that complement the prevailing domestic architectural styles and are further enhanced by the mature treed avenues and street tree groups throughout the area. The overall impact is picturesque and prestigious.

(ii) General issues

Submissions and evidence

Mr Staalkjaer again raised the issues of the absence of a proper strategic basis for this precinct noting that it Ms Kemp had substantially redrawn the boundaries, had rewritten the Statement of Significance as well as nominated the contributory buildings. He said she had altered a precinct identified in the Ward Study based on large Federation houses by adding inter-war properties. He also said that the added basis of significance for the precinct then allowed it to be extended along High Street. He also noted an awkward boundary dog-leg had been created to 'rope in' some additional places. He also noted discrepancies between the mapped and listed contributory places and that by extending the precinct in High Street, 28 further properties had been added but only 11 were designated as contributory. He also said the precinct had a low rate of contributory buildings. He also submitted that the authorship of the High Street expansion of the precinct remained unclear.

His submission included:

It is submitted that the Panel:

- *Cannot be satisfied that appropriate strategic basis exists for the inclusion or amendment of the proposed Echuca Residential Precinct in C50;*
- *Finds that there is inadequate documents, reports or studies to warrant the proposed amendments to the Echuca Residential Precinct;*
- *Find that the proposed Echuca Residential Precinct amendments are not supported by any existing study or work;*
- *Reject the asserted '2011 precinct review' as basis for the proposed Echuca Residential Precinct amendments;*
- *Find that no strategic basis exists for allocation of Contributory and Non Contributory places within the proposed Echuca Residential Precinct;*
- *Find that the uncertainty regarding the development of the proposed precinct is evidence of a lack of rigor in the planning process.*

It is therefore submitted that the Panel should not support the inclusion of the proposed HO3 Echuca Residential Precinct within C50 without further and proper strategic work.

Ms Kemp's evidence was non-contributory items had been removed in her review, the precinct expanded to include new contributory items. She also extended the boundary to High Street and added further places demonstrating the values of the revised Statement of Significance.

(iii) Individual place issues

Evidence and submissions

347 High Street

Mr Bruce Muirhead presented at the Hearing in relation to his property at 347 High Street, Echuca. Mr and Mrs Muirhead object to inclusion of the property in the Heritage Overlay. Particular reference was made to the poor state of the property when purchased in 1976 and the extensive work they have done to it: Mr Muirhead's words were '*We have created heritage*'.

Mr Stokans made submissions on behalf of the Council and called Ms Deborah Kemp to provide expert evidence. With respect to the property at 347 High Street, Ms Kemp made the following comments.

347 High Street Echuca is a late Victorian styled house. It has a corrugated metal hipped roof and a bull-nosed profile verandah with a decorative metal frieze. The house is clad with weatherboards. Like most houses from this period it has a symmetrical façade with a central door and windows on either side of the door. There is a lean-to garage to the side with a skillion roof. This is relatively diminutive in scale and does not markedly detract from the aesthetic significance. The house is representative of its style and period of construction.

The Council recommended no changes be made to the Amendment with respect to this property.

323 High Street

Ms Bronwyn and Mr Greg Hancock made submissions at the Hearing concerning 323 High Street, Echuca. The Hancocks object to the inclusion of 323 High Street Echuca within the precinct and seek to have the property excluded from the Amendment entirely. They live next door to the subject property, at 321 High Street (their property is not proposed to be part of the Heritage Overlay). The submitters wish to purchase the subject site for their private use.

The Hancocks' submission was generally supportive of the Amendment but stated that the subject property should not be included in the overlay as it will be prohibitively expensive to retain the integrity of the property, which is also assessed by them as no longer of aesthetic significance given its continued deterioration. The submitters emphasised defects of the property at the Hearing and provided photographs of these.

When questioned about the ownership arrangements it became apparent, that while they act as caretakers for the property (it is vacant), they have no definite arrangements with the owner (who lives overseas) with respect to purchase of the property.

The Council initially recommended that no changes be made to the Amendment with respect to this property, but after further considering the delineation of the precinct boundary in this area and recommending that the boundaries be modified, the Council has effectively allowed the submission - as the property will be situated outside the precinct.

The National Trust made a submission of general support for the Amendment, but did not make specific submissions or provide any evidence with respect to this precinct.

70 Hopwood Street

Ms Mandy and Mr Mick Flett made a written submission to the Council concerning their property at 70 Hopwood Street, Echuca. The submitters seek to have their property included in the precinct. The subject property was mapped as being contributory to the precinct, however a clerical error led to the property address not being included in the list of contributory places to the precinct.

The Council acknowledged the error and recommended that the Amendment be changed in the manner sought to include 70 Hopwood Street as being contributory to the precinct.

357A High Street

Ms Marlene and Mr Leon Jay made a written submission to the Council concerning the property at 357A High Street, Echuca. Their submission requests that their property, which is proposed to be included as contributory to the precinct, not be listed as contributory, on the basis that it is a unit constructed in the 1960s or 1970s.

The Council recommended that the Amendment be changed in the manner requested.

(iv) Discussion

Concerning Mr Staalkjaer's general submissions, we advise again that we were satisfied by Ms Kemp's oral evidence that some thought had gone into the re-delineation of the Echuca precincts generally. We record again that the absence of documentation around the precinct review except as presented in evidence to the Panel is unfortunate and requires proper rectification. Also we recognise that as part of the review Ms Kemp added inter-war places as contributory to the precinct but we accept that has been an appropriate professional judgment.

The Panel inspected this precinct and believes that the revised Statement of Significance reasonably describes the revised precinct's significance. However, the Panel has some concerns about the boundaries and nomination of contributory buildings at the southern end of the precinct.

We agree that the inclusion of the three properties to the south of Leichardt Street in the precinct might be justified given the physical form of the three buildings. However, only 323 High Street is nominated as a contributory building. It appears to the Panel that 28 and 30 Francis Street would also probably meet the criteria for contributory buildings in this precinct. Without such a nomination, the boundaries of the precinct appear contrived. Given that the Francis Street properties have not been exhibited as contributory to the precinct the Panel believes that the boundary of the precinct should be adjusted to align with the northern side of Leichardt Street. The Panel notes and agrees with the comments by the panel in its report concerning Warrnambool Planning Scheme Amendment C68 to which Mr Staalkjaer referred, that extending precincts 'around the corner' may 'adversely affect the significance and 'readability' of the precinct as a whole.

The Panel realises that a consequence of this is that 323 High Street would be removed from the precinct. Whilst this concurs with the wishes of Mr and Mrs Hancock, the Panel records that it does not accept their submission that the building at 323 High Street is in such poor condition that it should not be included as a contributory building within a heritage precinct. The condition of the building is not such that its architectural form cannot be ascertained and it is the Panel's view that in different circumstances it would meet the criteria for a contributory building in HO3.

The Panel was also concerned that the boundaries of the precinct appear to have been contrived to incorporate the building at 371 High Street. While it is certainly an interesting building, it remains unclear as to why it should be included in the precinct given its values would not appear to relate to the basis of the precinct's significance. It would seem that it would be better nominated as a place of individual importance.

The Panel has carefully considered the submissions of Mr and Mrs Muirhead. It is true that they have done extensive renovations to a building that was in very poor condition at the time of purchase. They have, however, done an excellent job of rehabilitating the building: the work they have completed is sympathetic to the architectural style of buildings in the precinct and, as a consequence, it should remain a contributory building to the precinct. Given the policies that are applied to the precinct, the Panel would be surprised if this designation resulted in any adverse outcomes for the Muirheads.

The Panel also agrees with the Council's proposal to incorporate 70 Hopwood Street as a contributory building and to delete 357A High Street as a contributory building.

(v) Recommendation

The Panel recommends:

- **Subject to our general recommendations in Sections 2.3 and 5, the proposed Echuca Central Residential Precinct (HO3) be included in the Planning Scheme, but that the boundaries of the precinct be re-drawn to exclude the properties at 323 and 371 High Street and 28 and 30 Francis Street.**
- **The property at 357a High Street should be changed to non-contributory to the precinct.**

-
- The property at 70 Hopwood Street, Echuca should be included in the list of contributory properties to the precinct in Clause 22 consistent with the map in that clause.
 - The Campaspe Shire consider a further amendment to the Planning Scheme to include properties omitted at the southern end of the precinct and to introduce an individual Heritage Overlay over the property at 371 High Street.

6.4 Echuca East (HO86)

(i) Statement of significance

What is Significant?

The Echuca East Precinct is one of the earliest residential, industrial and commercial areas of Echuca. It developed independently of the main residential and commercial centre of Echuca and this sense of neighbourhood, self-sufficiency and independence is still appreciable and is supported by the extent and variety of (extant and former) commercial enterprises in Pakenham Street.

The precinct developed in response to the establishment of timber and river based industries. The former sawmill site is one of the few remaining historic industrial sites in Echuca. The development of Shinbone Alley during the 19th century - an early industrial and residential area [now an archaeological site] was integral to the commercial activities of the port.

There are a number of early vernacular cottages, and these provide important physical evidence as to the character and nature of working class housing associated with the development of the port.

The early 20th century housing contributes to the working class character of this precinct.

The wide streets, gravelled verges, variety of street trees, modest scale of housing, garden settings, sympathetic 20th century infill, low density housing and general single storey character of the precinct contribute to the historic and aesthetic character of the precinct.

The natural environment of the Murray River, its banks and surrounding reserves contribute to the overall setting of the precinct.

How is it Significant?

It is of local historic, social and aesthetic significance to the Shire of Campaspe

Why is it Significant?

It is of historic and social significance as it provides tangible physical evidence of the development of East Echuca as a comparatively independent suburb and as one of the earliest residential and commercial areas of Echuca. The retention of the integrity of the majority of the significant places contributes to the significance of the precinct.

This precinct is integral to demonstrating the viability of the river based industries during the 19th and early 20th century. It retained its role as a working class service suburb for the leading industries during this period.

An understanding of the working class character of the area is supported by the number of surviving 19th century Victorian vernacular workers' cottages.

The historic commercial development along Pakenham Street contributes to an understanding of the independence of this precinct.

Shinbone Alley is of archaeological significance as it provides physical evidence of early 19th century industries and housing.

The former sawmill sites is of historical significance as it provides tangible physical evidence of one of the most important industrial activities during the 19th and 20th centuries.

The precinct is of social significance important for its association with events, development and cultural phases which have had a significant role in the occupation and evolution of the community.

The historic places in the precinct have largely retained a high degree of integrity and intactness.

It is of aesthetic significance for its modest scaled working class architecture this includes residential and commercial. The Victorian era vernacular workers cottages are important for their aesthetics, and for their regional architectural features.

There are a number of modest scaled commercial buildings that demonstrate the working class character of this precinct. Of particular note are the simple vernacular shopfronts as they contribute to the particular aesthetic character of this precinct.

The wide streets, gravelled verges, variety of street trees, modest scale of housing, garden settings, sympathetic 20th century infill, low density housing and general single storey character of the precinct contribute to the historic and aesthetic character of the precinct.

The natural environment of the Murray River, its banks and surrounding reserves contribute to the overall setting of the precinct.

(ii) General issues

The key issue which arises in relation to this precinct is whether a coherent precinct has been defined or some other approach should be taken to managing the heritage values of this area.

Evidence and submissions

It was Ms Kemp's expert evidence that the area might instead be considered to contain a cluster of vernacular saw millers' cottages suitable for a group listing with other places given individual place listings. Mr Stokans submission for the Council also suggested that a group listing may be preferable. He noted that the area had been recommended for a precinct listing before the revised Practice Note 01 of 2012, which provides for Group, Thematic and Serial Listings was available. It was said that if the group listing approach was applied, the significant places would then share a common overlay number and a common Statement of Significance. He suggested that if a group listing approach were taken to the cottages, the saw mill itself would require an individual place overlay, as in the exhibited Amendment it is only included in the precinct overlay. We were provided with a redraft of a Statement of Significance and mapping details that might be used to implement a group listing and individual listing approach in this part of Echuca.

Mr Staalkjaer made submissions which are relevant to this precinct. His submissions included that the precinct is a new one not deriving from the Gap Study. Ms Kemp had defined the precinct but later retracted her written evidence and proposed a serial listing instead. He said there was no justification given for the addition of inter-war properties, some contractions of the boundaries were sensible but in other parts there were large areas of non-contributory land.

His submissions in summary were:

It is submitted that the Panel:

- *Cannot be satisfied that appropriate strategic basis exists for the inclusion or amendment of the proposed New Echuca East Precinct in C50;*
- *Finds that there is inadequate documents, reports or studies to warrant the proposed creation of the Echuca East Precinct;*
- *Find that the proposed Echuca East Precinct amendments are not supported by any existing study or work;*
- *Reject the asserted '2011 precinct review' as basis for the proposed Echuca East Precinct amendments;*
- *Find that no strategic basis exists for allocation of Contributory and Non Contributory places within the proposed Echuca East Precinct;*
- *The proposed new precinct is in breach of VPP1 by not being based on an appropriate study or report and also not in accordance with the Burra Charter.*

It is therefore submitted that:

- *the Panel should not support the inclusion of the proposed HO86 Echuca East Precinct in C50; and*
- *Further and proper strategic work is required to amend the proposed precinct and develop individual and/or group listings.*

(iii) Individual place issues

106 Hovell Street

Evidence and submissions

Mr Kevin and Mrs Barbara Crisp made one of the only two submissions concerning an individual place within the proposed precinct. Mr Crisp also presented to the Panel. Their property is on the eastern side of Hovell Street at the southern edge of the precinct. Their mid 20th century house is identified as contributory. They object to the inclusion of the property in the Heritage Overlay. The Crisps' submission indicates that they purchased the property with a view to redeveloping it, it is much altered and in very poor condition (with the interior lining removed so inspect the structure), and they are concerned about the economic impost of its inclusion in the precinct.

Council recommended no changes to the precinct as a result of this submission.

Crown Allotment 20, Section 54A, Parish of Echuca North

This is the site of the former Murray River Saw Mill. It is an extensive allotment on flood prone public land adjacent to the river managed by the Department of Sustainability and Environment (DSE) (now Department of Environment and Primary Industries).

DSE made a written submission to the Council indicating that they requested that CA20 and the adjoining section of road reserve be excluded from the proposed East Echuca Precinct (HO86). DSE suggested the site is no longer held under licence as a saw mill and it requires assessment by DSE to determine its heritage significance and future use.

The Council submitted that given the site's important role in the history of Echuca it should be included under heritage control as proposed. The Statement of Significance for the precinct notes that it is one of the few remaining historic industrial sites in Echuca. The site is already subject to heritage control under the current HO1.

(iv) Discussion

The Panel has inspected the precinct which has been delineated here and has considered the basis for its significance. It is clear that the scattered remnant nineteenth and early twentieth century vernacular workers' housing associated with the saw mill is an important part of the heritage fabric of this area. The early commercial premises at the western end of the precinct in Pakenham Street are also evocative of the early conditions in this part of Echuca. There are a small number of other heritage dwellings dispersed throughout the area apparently of later origins than, and not associated with, the saw mill. The character of the streetscapes in the area is considerably influenced by non-contributory dwellings from later periods of development.

The Panel supports an alternative approach to managing the heritage assets of this area. We think that a group listing of the saw mill workers' cottages would be appropriate as the sense of place has been so eroded by the extensive non-contributory modern housing that a precinct is not warranted. We also believe that the early commercial premises at the western end of the area could also be given its own group listing (or perhaps a less extensive precinct listing). The saw mill should be given an individual place listing. The remaining buildings in the area would need to be reviewed to ascertain whether they are worthy of individual Heritage Overlays.³⁷

This further recommended revised approach and further review while they are not a direct response to Mr Staalkjaer's submission do so indirectly. If a further review is conducted transparently with adequate notice to affected persons and documentation of the strategic work, the same concerns should not arise about the proposals for the area.

In light of our general view that the precinct overlay should be abandoned and the heritage controls for this area of Echuca should be revisited, it is not really necessary to deal with the individual place submissions.

Concerning the saw mill site, however, we advise that we strongly recommend that it should be included in a Heritage Overlay. It is a last vestige of the industrial development in this part of the township and has played an important part in the development of East Echuca. It provides a key part of the necessary explanation of the presence of the vernacular cottages scattered through the precinct. Whether the heritage controls are introduced via a precinct overlay, a site specific listing or as part of a thematic group, is something that should be determined as part of the further review we have recommended above. It may be possible to reduce the extent of the land within the allotment that is subject to heritage controls – though the importance of the river environs generally to the history of Echuca, as mentioned in the National Trust submission, should not be overlooked.

In relation to the Crisp property, the Panel would simply comment that if, contrary to our recommendations, the precinct is retained, we question its extension so far south along Hovell Street. The southward extension appears to be designed to pick up two contributory places (one on either side of the street), but, on the eastern side especially, this results in

³⁷ We were provided with document which showed an alternative listing approach for the East Echuca area (PA17) which we generally support.

the inclusion of a considerable number of non-contributory places. We query the presence of any sense of precinct here, and suggest that the southern extent of the precinct should be reviewed if a precinct is retained at all. We think that at the most the southern boundary should not extend past 112 Hovell Street on the eastern side and 119 on the western side, and possibly not southwards of Pakenham Street at all.

(v) Recommendation

The Panel recommends:

- **Echuca East Precinct (HO86) should be abandoned as part of Amendment C50 or included in Part 2 of a split Amendment.**
- **The heritage controls for this area should be revisited. A group or serial listing of saw millers' cottages should be considered as well as a small group or precinct listing of Pakenham Street commercial properties. The saw mill should be considered for an individual place Heritage Overlay or perhaps as part of a thematic listing with its associated cottages. All other properties in the area should be reviewed to determine whether an individual place Heritage Overlays can be supported for any of them.**
- **The revised heritage controls should be re-exhibited either as a component of part 2 of the Amendment or as a new amendment, and processed in accordance with the Act.**

6.5 Echuca North Residential Precinct (HO87)

(i) Statement of significance

What is Significant?

The Echuca North Precinct area developed in conjunction with the port of Echuca. The earliest settlement in this area occurred when Henry Hopwood established a punt in the 1850s. This was followed by the introduction of steam boats in 1853. The discovery of gold in the early 1850s saw the port and the settlement grow and it became the main crossing point between the Riverina, the Bendigo goldfields and Melbourne. Development continued with the opening of the Melbourne, Mount Alexander and Echuca Railway (1864) and the first inter-colonial bridge over the Murray River (1878). The port was serviced by direct rail access with the construction of railway sidings. The development of the Echuca North precinct was contemporaneous with the development of the river trade and associated industries.

In 1854 Philip Chauncy surveyed an area for the township of Echuca and the precinct area is included in this survey. The sale of the surveyed blocks meant that Echuca's most prosperous citizens could build fine 19th century villas and houses. This is particularly evident in Dickson Street where there are a number of substantial villas.

The pattern of subdivision has evolved since 1854 as a consequence of the gradual subdivision of the original allotments. This is evident at the northern end of Watson and Dickson Street where the subdivision created blocks with frontage to Watson and Dickson Streets and a laneway to the rear. Of note are the few remaining large lots in Dickson Street which have also retained their Watson Street frontage. A consequence of the gradual intensification of settlement is that throughout the precinct there is a diversity of architectural styles and scale of development.

The wide streets provide vantage points for views to the Murray and Campaspe Rivers and the port area this is important as it reinforces the relationship of this area to the waterways. This sense of openness is supported by the relatively uniform low building heights, low front fences and/or transparent fences and spacious gardens with generous front and side

setbacks. Most of the houses have mature ornamental private gardens and these are complemented by the avenues of street trees and street tree groups found throughout the precinct.

The survival of a large number of buildings and places that are associated with the development of Echuca as the largest inland port gives this heritage precinct a high degree of integrity and intactness.

How is it Significant?

It is of local historic, social, and aesthetic significance to the Campaspe Shire.

Why is it Significant?

It is of historic and social significance as it provides tangible physical evidence of the development of early Echuca and the port area following the discovery of gold, the opening of the railway and the bridge over the Murray River.

It demonstrates the early character of the historic port and the development of the settlement at Echuca.

The continued development of the precinct area during the 19th and the early 20th century demonstrates the wealth and vitality of the port during this period.

The retention of the integrity of the majority of these places contributes to the significance of the precinct.

The precinct is of social significance important for its association with events, development and cultural phases which have had a significant role in the occupation and evolution of the community.

It is of aesthetic significance for the number of fine 19th century villas and houses many of which demonstrate regional characteristics and the influence of a number of regional architects such as Vahland and Getzschmann; E J Henderson and A A Fritsch.

It is of aesthetic significance for the diversity of architecture that is found within the precinct. Many of the architectural features that are identified with each period/style, have a regional character and this contributes to a strong sense of place and region.

The proximity to the Campaspe and the Murray Rivers and the visual links with the waterways and the port are of aesthetic significance.

This precinct area is rendered attractive not only by Victoria Park and the Campaspe and Murray River banks but by its proximity to the early town centre.

(ii) General issues

Evidence and submissions

Mr Staalkjaer again made submissions on this precinct. They included that, as with other precincts, Ms Kemp's evidence was incorrect and inaccurate. In particular there was no existing Statement of Significance, except that for the larger HO1, for her to review as claimed; her explanation that the 11 non-contributory places at the southern end of Bolton Street forming the southern part of the precinct were retained in the precinct to afford control over the area, was not satisfactory; this part of the precinct therefore had an unacceptably low rate of contributory properties; certain other changes should be made to the boundaries and contributory status of properties in the precinct (as below).

In summary his submission was:

It is submitted that the Panel:

- *Cannot be satisfied that appropriate strategic basis exists for the inclusion or amendment of the proposed New Echuca North Residential Precinct in Amendment C50;*
- *Finds that there is inadequate documents, reports or studies to warrant the proposed creation of the Echuca North Residential Precinct;*
- *Find that the proposed Echuca North Residential Precinct amendments are not supported by any existing study or work;*
- *Reject the asserted '2011 precinct review' as basis for the proposed Echuca North Residential Precinct;*
- *Find that no strategic basis exists for allocation of Contributory and Non Contributory places within the proposed Echuca North Residential Precinct;*
- *The proposed new Echuca North Residential Precinct is in breach of VPP1 by not being based on an appropriate study or report and has not been assessed in accordance with the Burra Charter.*

It is therefore submitted that:

- *The Panel should not support the inclusion of the proposed HO87 Echuca North Residential Precinct in C50.*
- *Further and proper strategic work is required to amend the proposed precinct.*
- *The Panel should recommend that in any future work or assessment:*
 - o *7 Connelly Street be removed as a contributory property;*
 - o *The area west of Bolton Street and Charlotte Street be excluded from the precinct;*
 - o *The School building on the corner of Charlotte Street and Connelly Street be excluded from the precinct;*
 - o *The area along Bolton and Warren Street be removed from the precinct.*

In relation to the precinct, Ms Kemp's evidence was that the precinct had been retracted to remove non-contributory items and the mapping now shows all contributory items.

(iii) Individual place issues

There were no individual place issues raised by owners or occupiers.

(iv) Discussion

As we have earlier said, it is to be expected that if the Council had had concerns that Ms Kemp in undertaking her precinct review was extending beyond her brief, this matter would have been addressed before the Amendment went on exhibition.

We reiterate our view that it has been unfortunate that the documentation of her significant review work was neither available during exhibition nor in time for the Panel process. If that documentation had been available, then many of the concerns expressed by Mr Staalkjaer

about lack of a sound basis for aspects of the Amendment would likely not have arisen. Although no written record is even now available, it was possible for submitters to choose to pursue their concerns to the Panel Hearing and they could have availed themselves of information provided in that context.

Concerning the issue of the boundaries of the precinct as referred to in Mr Staalkjaer's submission, we advise that we have inspected the precinct and are for the most part satisfied that it has a consistent residential heritage identity. We support the removal of 7 Connelly Street as a contributory building, however, as it is either much altered or a new building. We note that it was not assessed as contributory on Ms Huddle's map of the precinct.

We agree with Mr Staalkjaer's concern about the inclusion of a large number of non-contributory properties at the southern end of the precinct in Bolton Street and the absence of any contributory properties in this part of the exhibited precinct. We understand that this area, if it were not included in the precinct, would fall between the southern boundary of this precinct and the northern boundary of the Echuca Central Precinct. We can understand that Ms Kemp and the Council may wish about the precincts to allow design control at the margins, but we do not believe this is a proper application of the overlay. It is not necessary that all of the central area of the town be included in one or other of the precinct Heritage Overlays. In our view the precinct should be contracted to remove the properties south of No 16 Bolton Street and on the west side of Dickson Street southwards of No 9.

(v) Recommendation

The Panel recommends:

- **Subject to our general recommendations in Sections 2.3 and 5, the Echuca North Residential Precinct (HO87) should be adopted as exhibited except that:**
 - **the southern boundary of the precinct should be contracted to remove properties in Bolton Street east southwards of No 16 and in Dickson Street west southwards of No 9; and**
 - **No 7 Connelly Street should be re-designated as a non-contributory building.**

6.6 Kyabram Commercial Precinct (HO127)

(i) Statement of significance

What is Significant?

The Kyabram Commercial Precinct is dominated by buildings and structures from the 19th and 20th century.

The precinct demonstrates the three major population increases in Kyabram. The first in 1885 when sales of building allotments on the south side of Allan Street between Church and Albion Streets took place. At this time the only commercial premises operating on the north side of Allan Street in these blocks were the Post Office, a store the Albion Hotel and a butchery. The second occurred from the end of the First World War and into the 1920s and particularly with the arrival of many soldier settlers. The third increase occurred at the end of World War II which was associated with the arrival of returned soldiers and Italian migrants in the district. There are several examples from each of the main periods of development.

The retention of the integrity of the majority of these places contributes to the significance of the precinct.

How is it Significant?

The Kyabram Commercial Precinct is of local historic, social and aesthetic significance for the Campaspe Shire.

Why is it Significant?

The Kyabram Commercial Precinct is historically and socially significant as it provides tangible evidence of the three main periods of development during the 19th and 20th century.

The variety of building types demonstrates the character of development of Kyabram from its earliest days and into the present day. The diversity of architectural periods is important as it contributes to an understanding of the historical development of the township.

The precinct is recognised by the community as having public value for its associations with the whole of the community and district, whose history is interwoven with the history of the place, particularly the Mechanics Institute Hall and Library from 1891. It is important for its association with events, development and cultural phases which have had a significant role in the occupation and evolution of the community.

It has aesthetic and architectural significance as it demonstrates many original and early design qualities associated with the commercial development of Allan Street, between the 1880s and the 1950s. It is a stylistic mix of predominantly Victorian, Federation and Inter-war architectural styles that have been built and maintained throughout most of the precinct. The qualities include predominantly brick wall construction, hipped or gabled galvanised corrugated iron roof forms, one storey and some two storey heights, decorative parapets, posted verandahs and some cantilevered verandahs from the Inter-war period.

The diversity of the architecture contributes to the streetscape values. The area is enhanced by several architecturally fine buildings such as the former Mechanics Institute Hall and Library, The Kyabram Hotel, and Richards Buildings. The picturesque skylines created by the pitched rooflines and parapets, and accented by a backdrop of sky contribute to the aesthetics of the streetscape.

(ii) General issues

The appropriateness of the precinct designation and its boundaries are the main issues here.

Evidence and submissions

The Council adjusted the boundaries of this precinct following the exhibition of the Amendment. These amendments reduced the size of the precinct by removing properties between 153 and 177 Allan Street (on the north side). This was further to the significant reduction that was a result of Ms Kemp's earlier Precinct Review.

Mr Staalkjaer submitted that the Panel:

- *Find that the proposed C50 Kyabram Commercial Precinct has no connection or correlation with the GAP Kyabram Commercial Precinct.*
- *Cannot be satisfied that the appropriate strategic basis exists for the inclusion of the new C50 Proposed Kyabram Commercial Precinct.*
- *Find that there are no adequate documents, reports or studies to warrant the creation of the proposed creation of the Kyabram Commercial Precinct.*
- *Rejects the asserted '2011 Precinct Review' as the basis for the C50 Proposed Kyabram Commercial Precinct.*
- *Find that no strategic basis exists for the allocation of contributory and non contributory places within the Kyabram Commercial Precinct.*

-
- *Find that the Proposed Kyabram Commercial Precinct is in breach of VPP1 by not being based on an appropriate study or report undertaken in accordance with the Burra Charter.*

He further submitted that:

- *The Panel should not support the inclusion of the proposed HO127 Kyabram Commercial Precinct in C50.*
- *The Panel should recommend a complete review of the proposed Kyabram Commercial Precinct and that the Panel should recommend that such a review should include:*
 - *The use of individual overlays as opposed to a precinct within the commercial area;*
 - *A reassessment of the contributory places and the exclusion of 202 Allan Street as contributory to any future precinct;*
 - *Complete a full and proper assessment of all contributory places to ensure that they in fact represent and maintain their significance against appropriate criteria.*

Mr Staalkjaer called expert evidence from Mr Bryce Raworth. His evidence related to both the proposed precinct and the contributory status of 202 Allan Street. Of the precinct he said:

The proposed Kyabram Commercial Precinct (HO127) is not of sufficient integrity and significance to warrant the introduction of a precinct type overlay. The proportion of contributory heritage buildings within the street is relatively low, and some of the identified contributory buildings are of very limited value. Although there are some very fine heritage buildings in the proposed precinct, these would be more appropriately recognised by means of individual overlays or small grouped overlays rather than by means of the present large precinct overlay.

Mr Stokans referred to this precinct in his reply to the Staalkjaers' submission after the Hearing. His reply acknowledged that the exclusion of the non-contributory places from the precinct in the latest boundary revision had the effect of disturbing the continuity and the cohesion of the precinct somewhat, but he said the Council preferred this outcome to that suggested by Mr Raworth of a series of individual listings only. He said that an individual listings approach ignores the important cultural and historic role of the centre as a whole.

(iii) Individual place issues

Evidence and submissions

There were two submissions concerning individual places in this precinct.

202 Allan Street

Ms Glenda Walker, the owner of 202 Allan Street, objected to the inclusion of that property in the Kyabram Commercial Precinct. She requested that the property be made non-contributory to the precinct if it is included at all. Her submission states that HO127 has little or no heritage value.

The submitter claimed that many properties have been renovated and an individual assessment should be carried out of those worth protecting. She also submitted that the application of the proposed precinct controls may affect business developments in Kyabram. She said that no consultation occurred as part of the Gap Study.

The submitter also queried the reduction in size of the precinct from that proposed in the Gap Study. She further queried the use of photographs included in Gap Study, stating that the building characteristics displayed in photo no longer exist.

Ms Kerry Walker-Staalkjaer represented Ms Walker at the Hearing. She relied upon evidence from Mr Raworth.

His expert evidence with respect to the heritage significance of 202 Allan Street in part was:

... the building at 202 Allan Street is a building that has negligible contributory value. It should be identified as a non-contributory element or it should be excluded from the proposed heritage overlay precinct...

Although the Walker Real Estate building at 202 Allan Street is identified as a contributory place in the current citation for the proposed Kyabram Commercial Precinct (HO127), I do not believe that it contributes to the significance of the precinct.

As found today, the building at 202 Allan Street is composed of an aluminium framed window of recent provenance and an exceedingly plain rendered parapet, the sole feature of which is a single ruled line. Although I have no information about the date of the parapet, it appears that the parapet is postwar, or very late interwar, and the balance of the facade is 1960s or later. The metal soffit to the cantilevered canopy, which has an interwar period character, is presumably from the postwar period (c1968) like other canopies in the street.

Mr Raworth also produced a series of photographs which confirmed his findings about this building.

The Council's response to the question of the inclusion of this building as a contributory building was:

The subject property has been proposed to be contributory to the precinct owing to the characteristics it displays such as the 'parapets, posted verandahs and some cantilevered verandahs from the Interwar period'.

Mr Stokans post Hearing reply to the Staalkjaers' submissions included that even if the Panel concluded that 202 Allan Street was rebuilt and non-contributory, it was within the period of significance for the precinct and it was preferable that it be retained in it.

178-180 Allan Street

Mrs Jeanie Borthwick made a submission with respect to 178-180 Allan Street Kyabram. She objected to the inclusion of this property in the Amendment and wished to see the Heritage Overlay as it applies to this property removed from the Amendment. Ms Borthwick also claimed that she had not received correspondence in relation to the Amendment nor was she consulted about the completion of the Gap Study.

The Council's response indicates that Council records show a letter was sent to the submitter on 23 April 2012.

(iv) Discussion

The Panel is essentially faced with four questions here:

- Is there an adequate strategic basis for the inclusion of this precinct in the Planning Scheme?
- Are the boundaries of this precinct appropriate?
- Does the Statement of Significance adequately describe what is important about this precinct?
- Has anyone been disadvantaged by the progressive changes to the boundaries and notation of contributory and non-contributory buildings in this precinct?

The strategic basis for this precinct has been worked through in both the Gap Study and Ms Kemp's precinct review. Both consistently identified a precinct in this part of the town and the review appears to have refined the basis of its identification and for the most part (see comment about 202 Allan Street below) satisfactorily identified contributory buildings. It is unfortunate, however, that the results of the review have not been presented to the public in a clearer way. This would have answered much of the criticism that has been directed at the nomination of this precinct.

The Panel does not support Mr Raworth's approach of identifying individual buildings or smaller groups in this part of Kyabram. We believe that it is appropriate to apply a precinct in the commercial centre to ensure that non-contributory sites adjoining significant buildings are developed sympathetically. We believe that, by and large, the boundaries of the precinct as exhibited are appropriate. The extended area as identified in the Gap Study is less convincing as a commercial precinct (many of the properties to the west of Lake Street are not commercial).

However, the Panel was surprised at the post-exhibition proposal to delete properties between 153 and 177 Allan Street. As indicated at Section 5.4 above the delineation of precinct boundaries should not be about ensuring that there is a minimum percentage of contributory buildings in a precinct. It is more important that the boundaries define an identifiable place with the values described in the Statement of Significance. In this instance the deleted properties are an integral part of the Kyabram commercial area and should be included, albeit as non-contributory buildings. The maintenance of the significance of this precinct will, to some extent, be determined by what happens on these sites. It is therefore appropriate that the Heritage Overlay is available to assist in managing any change on these sites.

The Panel believes that the Statement of Significance as proposed to be included at Clause 22.02 is a good description and explanation of the precinct. The Panel acknowledges the forensic analysis of the dates of construction of buildings in the precinct as presented by submitters, but in the end feels that, whilst useful information it doesn't undermine the stated significance of the precinct.

Finally, the question of disadvantage must be addressed. Whilst there is a level of confusion about what was exhibited and what is now proposed, we consider that no one would appear to have been disadvantaged by the proposed changes. The Amendment has received a great deal of publicity in Kyabram and it would be difficult to accept that interested parties were not aware of the Amendment and that a commercial precinct was proposed.

So far as the individual place submissions are concerned, the Panel undertook a street inspection of all properties proposed for inclusion in the Kyabram Commercial Precinct and had some difficulty in understanding why the building at 202 Allan Street was included as a

contributory building. It is clearly not the same building as presented in early photographs; and, even if this is the result of renovations and alterations or new construction, it has left the building without features that would warrant it having contributory status.

The building at 178 -180 Allan Street, while included in the precinct, is not nominated as a contributory building. As explained above, the Panel believes that the precinct approach is appropriate for the Kyabram Commercial Precinct and it is inevitable and appropriate that non-contributory buildings are included.

(v) Recommendation

The Panel recommends:

Subject to our general recommendations in Sections 2.3 and 5, that the post exhibition version of Kyabram Commercial Precinct (HO127) be included in the Planning Scheme subject to the following:

- **The status of 202 Allan Street within the precinct be changed to non-contributory; and**
- **the properties at 153 to 177 Allan Street be included within the precinct as non-contributory.**

6.7 Kyabram Union Street Precinct (HO128)

(i) Statement of significance

What is Significant?

The Kyabram Union Street Precinct is a residential area that largely developed during two major population increases. The first increase occurred from the end of the First World War and into the 1920s with the arrival of many soldier settlers and the establishment the Kyabram Co-operative Cannery. This population surge resulted in the subdivision of Union Street in 1923.

The second period of growth followed World War II and was associated with the arrival of returned soldiers and Italian migrants in the district.

This resulted in a number of houses being constructed in Union Street.

The precinct is comprised of houses that predominantly date from the 1920s and 1930s with some from the late 1940s and 1950s.

The precinct is notable for its homogeneous character which is determined by a predominant mix of Inter-war American Bungalow and mid 20th century bungalows. The houses are of a similar scale and the architectural features share similar proportions. Most of the houses are constructed from similar materials with weatherboard being a dominant feature. Other materials include: face brick work, rendered masonry, brick chimneys, timber framed double hung windows, terracotta tiles or galvanised corrugated metal roofing.

The consistent character of the precinct is supported by all the houses being freestanding single storey houses, with similar setbacks (front and side), side driveways and all having a pleasing suburban garden setting with low front fences.

The retention of the integrity of the majority of these places contributes to the significance of the precinct.

How is it Significant?

It is of local historic, social and aesthetic significance to the Shire of Campaspe.

Why is it Significant?

The Kyabram Union Street Precinct is of historic and social significance as it provides tangible evidence of the impact of two of the major population increases in Kyabram during the 20th century.

It is important for its association with events, development and cultural phases which have had a significant role in the occupation and evolution of the community.

It is of architectural and aesthetic significance as it demonstrates many original and early design qualities associated with the residential development in Union Street, between the 1920s and 1950s . It is a stylistic mix of predominantly Inter-war American Bungalow and mid twentieth century Bungalow houses. The asymmetrical presentation of the bungalows, with their porches, eave lines, timber detailing and picturesque skylines created by the pitched rooflines and chimneys and garden setting contribute to the aesthetic significance of the streetscape.

(ii) General issues

The general issues relevant to this precinct are those related to the strategic basis of the Amendment (addressed at Section 5.1 above), the delineation of the precinct boundaries (in part dealt with at Section 5.4 above) and the designation of contributory and non-contributory buildings within the precinct.

Evidence and submissions

Mr Staalkjaer made the following submissions:

It is submitted that the Panel:

Cannot be satisfied that the appropriate strategic basis exists for the inclusion of the Union Street precinct in C50;

Finds that the Shire of Campaspe has rejected GAP as the basis for the proposed planning amendment;

Finds that there is inadequate documents, reports or studies to warrant the proposed amendments to the Kyabram Union Street Precinct;

Finds the proposed Kyabram Union Street Precinct amendments are not supported by the GAP study;

Reject the asserted '2011 precinct review' entirely and as a basis for the proposed Kyabram Union Street Precinct amendments;

Find that no strategic basis exists for changing:

the Contributory and Non Contributory places within the proposed Kyabram Union Street Precinct;

Boundaries of the proposed Kyabram Union Street Precinct;

It is submitted that the Panel find:

That Kyabram Union Street Precinct HO128 does not exhibit the required High proportion of contributory places to justify a precinct;

That the properties within the proposed Kyabram Union Street Precinct HO128, do not display the required High degree of Intactness and integrity to warrant the creation of a precinct.

That the evidence does not support the application of HERCON criteria A, D & G to the Kyabram Union Street Precinct.

It is further submitted that the Panel recommend that any further heritage consideration for Kyabram Union Street Precinct HO128:

Reassesses the contributory status of properties in any proposed precinct;

Exclude the proposed tree controls from the Kyabram Union Street Precinct HO128;

Provides a better and more comprehensive Incorporated Plan specifying details for exceptions and assessment criteria for:

minor works;

environmental and alternative energy upgrades;

external paint restrictions;

front fence restrictions;

extensions to existing Contributory places; and

different heritage precincts depending on whether they are residential or commercial.

Alternatively that an separate and town specific heritage policy be developed to allow for the ongoing development and evolution of the town of Kyabram and the Union Street precinct in line with the limited remaining heritage value that remains;

Ensure that all planning applications for 'use' permits, that do not currently require a permit, be free of charge to the residents being impacted by this change.

It is therefore submitted that the Panel should not support the inclusion of the proposed HO128 Kyabram Union Street Precinct within C50 without further and proper strategic work.

He called Mr Bryce Raworth to provide expert evidence. Mr Raworth, in summary made the following points:

- *Many of the dwellings that have been designated contributory have, in fact, been altered to the extent that little fabric remains.*
- *This precinct is of mixed character and modest integrity, and the decision to push for a precinct in this street seems somewhat arbitrary given the broadly comparable character of other streets and sections of streets in neighbouring parts of Kyabram.*
- *With respect to the proposed paint controls, I note that many of the dwellings along Union Street are clad in non-original materials, making the decision to implement authentic heritage colour schemes somewhat redundant.*
- *With respect to the proposed tree controls, in general tree controls are designed to protect particular trees that are culturally significant in some way – such as rare or particularly old specimens, or trees that otherwise contribute to the significance of the place – rather than vegetation that contributes to 'a pleasing garden setting'.*

Ms Walker-Staalkjaer submitted that a person coming to the proposed Union Street Heritage Overlay area would not get a sense that they are entering a heritage precinct.

Mr Stokans' submissions on Union Street included that the campaign against the inclusion of Union Street in a precinct was based on a misunderstanding of the nature of heritage precincts. In particular it did not appreciate that inter-war buildings can have significance; the significance is about the precinct as a whole and not the individual properties (the sum of the whole being greater than the sum of its parts); alterations do not necessarily diminish the heritage significance of the precinct; and that a precinct can contain non-contributory buildings.

He also referred to the findings of the Bayside Planning Scheme Amendment C37/C38 Panel which held that an obvious requirement of a precinct is that the observer should have no doubt that they are looking at a precinct - its boundaries should be visually clear and the precinct should be clearly different to the adjoining areas.

Mr Stokans also made submissions directed to persuading the Panel that the number or percentage of contributory places in an area should not determine whether or not a precinct should be defined; but noted that in any case the percentage of contributory places in Union Street was relatively high – over 84 per cent. He further said that there was nothing unusual in proposing heritage protection for inter-war places which has been done in many planning schemes.

Mr Stokans also made the following points as part of his submissions:

- Opposition by the residents was based on a misconception that even small and insignificant changes to the building fabric would disqualify the precinct from having heritage significance.
- Mr Raworth had taken a very strict approach to the extent of allowable changes within a place of significance inconsistent with his views in other advices.
- The Panel should prefer the evidence of Ms Kemp and Mr Francis in relation to the Union Street Precinct – both of whom concluded that the changes to the dwellings did not obfuscate the heritage significance of the precinct.

He called Ms Kemp at the Hearing to provide expert evidence. Concerning Union Street, she made the following points:

- *A precinct does need to have a high proportion of buildings that contribute to the cultural heritage significance of the precinct. There is no absolute percentage for the number of contributory buildings but if the proportion of non-contributory buildings is too great, a sense of precinct is difficult to appreciate.*
- *Union Street is noted for its high percentage of contributory places.*
- *There are a number of houses within the Kyabram township area that are representative of the Interwar Period and c1930s – 1950 period. These can be found in a number of residential streets. Some of these houses are extremely good examples and potentially deserve to be recognised as being of Individual Significance.*
- *There are varying degrees of incremental change to be found within this precinct. Most of these are typical and considered to be part of the evolution of fabric.*

Mr Roser for the National Trust made the following submissions:

It is also our submission that the study has been undertaken with an appropriate level of rigour and with strategic justification and we support in broad terms the implementation of the proposed controls and policy into the scheme...

It is clear that the significance of the place – Union Street – is as a precinct and not the individual houses per se. The houses must be assessed as part of a precinct group rather than as an individual places...

The argument being made against inclusion of Union Street by submitters is that loss of original fabric is fatally diminishing the significance of the precinct.

This fetish for analysis of fabric, a longstanding issue for Planning Panels, in this instance comes down to aluminium windows, later replacement cladding, altered porches, unsympathetic fencing, concrete verandahs, removal of chimneys, addition of car ports, sun blinds, change of profile to a gutter... how far do we split the 'intactness' atom for places that are being considered for contributory significance?...

The proposed inclusion of paint controls is entirely consistent with precinct controls across Victoria and should be retained.

Regarding tree controls, we would only comment that unlike the analysis of the buildings in the Union Street precinct there is little detail provided to support tree controls

Mr Roser called Mr Justin Francis as expert witness. He made the following points:

- *The amendment as exhibited...included a map excluding the two most southern properties numbers 1 and 2, although number 2 was included in the "list" of properties and as contributory. Number 2 should of course be included in the map, but I believe number 1 should be included also.*
- *The houses in this section of Union Street are remarkably similar in terms of their architectural style, their scale, their materials and the siting on their respective blocks.*

(iii) Individual place issues

Evidence and submissions

A large number of submissions were received with respect to this proposed precinct.

Mr Norm and Ms Aileen Briggs, 12 Union Street, Kyabram

The submission states that since the study was undertaken the dwelling was removed and a new dwelling is currently under construction. The owners request that their property to be removed from the precinct.

Council recommendation

Remove contributory status but retain the site within the precinct.

Ms Marie and Mr Robert Bullingham, 9 Union Street, Kyabram

The submission details alterations that have been undertaken in the past 60 years, which the owners believe reduces its significance such that it isn't important to the precinct. The submission states that the presence of a Heritage Overlay would negatively impact the value of their property.

They request that HO128 be removed completely from the proposed Amendment or that the heritage study be reassessed or 9 Union Street be a non-contributory building within the proposed overlay.

Appearance at Hearing

Mr and Mrs Bullingham appeared at the Hearing and tabled photographs and drawings which confirmed the level of change that has occurred to this building. These illustrations, in particular demonstrated how the roof form is dramatically different to its original form. They also expressed concerns about the lack of proper consultation during the study and Amendment process as well as the likely delays to approvals for change in the precinct.

Council recommendation

No changes are recommended.

Mr John and Ms Miriam Young, 23 and 25 Union Street, Kyabram

The submission objects to the inclusion of the subject properties in the Heritage Overlay but if they are to be included it should be non-contributory. With respect to 23 Union Street the submission lists defects of the property and states that if unable to demolish they would encounter a significant financial loss. With respect to 25 Union Street, the submission lists a series of alterations that have occurred on the property and state that little remains to make the dwelling worthy of a Heritage Overlay.

Appearance at Hearing

Ms Young appeared at the Hearing and elaborated on her written submission. She challenged the stated significance of the precinct and with the use of photos went through details of the house in order to demonstrate the lack of architectural and aesthetic significance. She also made the point that the purported backdrop of trees was in fact due to trees growing outside the precinct the future of which would not be controlled by the proposed Heritage Overlay. She also supported her argument that 23 Union Street is in poor condition with an Inspection Report from Laurie McGoldrick, Consulting Engineers.

Council recommendation

No changes are recommended

Ms Belinda and Mr Peter Berner, 33 Union Street, Kyabram

Submission states that the precinct has little or no heritage value owing to the changes made to the street in recent years. It also states it is unfair to remove rights of residents for the benefit of the wider community. Believes Amendment will reduce value of property and prevent them from upgrading their dwelling. They list a series of changes that have occurred on the property and changes that they wish to make. Submission states these changes will be unable to be done if the overlay is placed on their property. The submitters are also not satisfied with the nature of public consultation.

Appearance at Hearing

The Berners appeared at the Hearing and made further submissions and tabled photographs of the house and its surrounds. They expressed particular concern about the difficulty of residents in understanding what was proposed and the failure of the Council to undertake appropriate consultation. They also elaborated on their concerns that should the Amendment be approved that they would be unable to make alterations to their property. They also pointed out that some of the substantial trees that attracted the proposed tree controls had been removed.

Council recommendation

No changes are recommended.

Mr Michael Staalkjaer and Ms Kerri Walker-Staalkjaer, 28 Union Street, Kyabram

The written submission to the Council by the Staalkjaers objects to the inclusion of the Kyabram Union Street Precinct in the Heritage Overlay on the grounds that the precinct has little or no heritage value owing to the changes made to the street in recent years. The submission seeks that if Kyabram Union Street Precinct is retained their property should be declared non-contributory.

The submission goes on to argue that the Gap Study (completed during 2003-2005) is outdated. It also discusses the percentage of contributory properties within the precinct referring to the Hume Planning Scheme Amendment C55 Part 2 Panel Report.

The submitters state that works conducted on the property have resulted in the loss of any heritage value and that the description of the fence at the property is incorrect.

The submission questions the appropriateness of the consultation process for the Amendment and results of the Gap Study and claims that these processes (or lack of them) are inconsistent with the Burra Charter.

The submission expresses concerns around the burden being placed on residents requiring planning permits that are not currently required, opposes the proposed tree controls, and feels the Amendment will result in higher numbers of permit applications causes a greater cost to Council for a precinct with little or no heritage value or integrity.

The submitters seek the following:

- Remove Kyabram Union Street Precinct, or
- Reassess the heritage foundation it is based on, additionally
- Declare subject property non-contributory,
- Remove tree controls,
- Remove any permit application fees,
- Clarify paint controls,
- Amend incorporated document to clarify;
 - External repair and paint work,
 - Installations of environmental improvements to properties including air conditioning, solar power and heating,
 - Upgrade and replacement of windows,
 - Upgrade and replacement of roofs, including details and type of materials allowed.

Appearance at Hearing

Ms Walker-Staalkjaer appeared at the Hearing representing herself and Michael Staalkjaer as owners of 28 Union Street. She supported their written submission and in summary sought deletion of the precinct control. She expressed concern about their limited ability to extend their house out of view of the street and feared a rejected application, the cost of applying for permits and pursuing and challenging permit decisions, the failure of the Council to produce an updated version of the Gap Study, the desire of the Council to use this as a control tool, rather than a management mechanism. She also suggested that the Council had been unreasonable and had either misled or lied to residents affected by this Amendment.

Her written submission provided after the Hearing included that if the precinct was retained in the Amendment and tree controls should be removed, additional matters (their house extension) should be added to the Incorporated Plan as permit exemptions and their house should be included as non-contributory.

Council recommendation

No changes are recommended.

Messrs Stephen and Clem Mullins, 27 Union Street, Kyabram

The submission objects to the application of the Heritage Overlay to their property and the Kyabram Union Street Precinct in general. They go on to detail a number of alterations that have been undertaken since the completion of the Gap Study, which they believe preclude it from being an important part of the precinct. They also question the need for a precinct in this area, as many of the existing residences have been altered. The submission states that the presence of a Heritage Overlay would negatively impact the value of their property and be a cost to them to have to apply for permits in the future that they do not now require.

The submission requests that HO128 be removed completely from the proposed Amendment or that the heritage study be reassessed or 27 Union Street be a non-contributory building within the proposed overlay.

Council recommendation

No changes are recommended.

Mr Les and Ms Carolyn Dillon, 26 Union Street, Kyabram

The Dillons' property is shown in the exhibited Amendment as being non-contributory to the Union Street precinct. It has been developed with a modern house in 2011.

The submission expresses opposition to the Kyabram Union Street Precinct as the submitters believe that it has little or no heritage value, and that the Gap Study is outdated and inaccurate. The submission also states that they believe that the requirement that residents of Union Street would have to apply for planning permission for works currently not requiring a permit would be unnecessarily burdensome. The submitters also wish to see the removal of tree controls.

Council recommendation

No changes are recommended.

Mr Peter and Ms Lynn Vick, 24 Union Street, Kyabram

The submission indicates that since the Gap Study was undertaken the dwelling was removed and a new dwelling has been constructed. The submitters oppose the introduction of the Kyabram Union Street Precinct as it has little or no heritage value, and that since the Gap Study is outdated and inaccurate. They also indicate that residents should not have to apply for permits that other do not have to in other areas of Kyabram and that this is unfair. And that tree controls should be removed.

Council recommendation

Remove contributory status but retain the site within the precinct.

Ms Jennifer Doolan, 18 Union Street, Kyabram

The submitter objects to the inclusion of her property in HO128 stating that the Kyabram Union Street Precinct is of little or no heritage value. She believes that the Gap Study is outdated and inaccurate and that she should not have to apply for permits to improve her dwelling and that this will affect the resale of her property. She also listed a series of alterations that have occurred on the property in recent times.

Council recommendation

No changes are recommended.

Ms Tina Levens, 14 Union Street, Kyabram

The submission objects to the inclusion of the property in HO128, listing a series of alterations that have occurred on the property in recent times and stating that the dwelling now bears little resemblance to the original and is not worthy of historic protection. Ms Levens expresses opposition to the Kyabram Union Street Precinct as it was little or no heritage value, and that the Gap Study is outdated.

Council recommendation

No changes are recommended.

Ms Ann-Maree Dillon and Mr John O'Shanassy, 11 Union Street, Kyabram

The submitters object to the inclusion of their property in HO128, stating that the property has little or no heritage value. They assert that the Gap Study is outdated and that information given at information session was insufficient. The submission also lists a series of alterations that have occurred on the property in recent times and suggest that the dwelling now bears little resemblance to the original and is not worthy of historic protection.

Appearance at Hearing

Ms Dillon appeared at the Hearing and elaborated on her written submission. She pointed out that 11 Union Street was built outside the periods mentioned as important in the Statement of Significance and detailed the divergences from other aspects of the Statement. She summed up her position in the following terms: *The proposed Heritage overlay on our property is another obstacle that we just do not need or want.*

Council recommendation

No changes are recommended.

Ms Joy and Mr James Stacey, 3/10 Union Street, Kyabram

The submission objects to the inclusion of the property as contributory in HO128 and states opposition to the Kyabram Union Street Precinct on the basis that very few original dwellings remain. The submitters seek removal of HO128, its reassessment, and proper consultation along with the allocation of 10 Union Street as non-contributory to the precinct (it is designated as non-contributory). They also object to the proposed tree controls.

Council recommendation

No changes are recommended.

Mr John and Ms Lillian Viney, 16 Union Street, Kyabram

The submission seeks removal of this property from the precinct. They express opposition to the precinct and argue that the property has little or no heritage value. They state that the Gap Study is outdated and is critical of the timing of exhibition and timing of the community consultation session in Kyabram. The submission queries what documentation was made available and the timing of it. They object to having to obtain planning permits in the future for works which they do not require permits for now. The submitters list a series of alterations that have occurred on the property in recent times and to other properties in the precinct. They believe that the dwelling now bears little resemblance to the original and is not worthy of historic protection.

Appearance at Hearing

Mr Viney appeared at the Hearing where he elaborated on the written submission. He expressed further concern about the nature of the study and consultation process. He also pointed out that there are many buildings of a similar age to the Union Street properties in Kyabram. He also argued that there will be a diminution of property values as a result of this Amendment and quoted research by Scott, Keck Herron White to support this view. He also pointed out that the designation of the precinct could cause difficulties in obtaining insurance.

Council recommendation

No changes are recommended.

Mr Alex and Ms Helen Munro, 1/10 Union Street, Kyabram

This submission objects to the inclusion of this property as contributory in HO128 (it is designated as non-contributory) and states opposition to the Kyabram Union Street Precinct as properties have poor heritage integrity. The submitters seek removal of HO128, its reassessment, and proper consultation.

Council recommendation

No changes are recommended.

Mr Geoffrey and Ms Gwenda Ward, 7 Union Street, Kyabram

The submitters object to the inclusion of their property in HO128, listing a series of alterations that have occurred on the property in recent times that they believe reduce its heritage value.

Council recommendation

No changes are recommended.

Mr David and Ms Ruth Green, 34 Union Street, Kyabram

The submission objects to the inclusion of this property in HO128 and its status as contributory. They go on to state opposition to the Kyabram Union Street Precinct as they believe it is of little or no heritage value. They state that the Gap Study is outdated and inaccurate. They list a series of alterations that have occurred on the property in recent times. The submission objects to the inclusion of tree controls in the schedule to the overlay.

Appearance at Hearing

Ms Green appeared at the Hearing. She expressed concern about the lack of proper consultation about the Amendment, indicating that she had not been provided with all of the information. She took exception to the wording of the Statement of Significance suggesting that the references to soldier settlers and post war migrants was spurious when dealing with the history of Union Street.

Council recommendation

No changes are recommended.

Mr Craig and Ms Sharon Gemmill, 22 Union Street, Kyabram

The submitters object to the inclusion of their property in HO128 and its status as a contributory building. They believe that the Kyabram Union Street Precinct as it was little or no heritage value, they state the Gap Study is outdated and inaccurate. They also list a series of alterations that have occurred on the property in recent times that reduce its heritage value. The submission also objects to the inclusion of tree and paint controls in the schedule to the overlay and argues that residents should have no financial burden as a result of applying for permits resulting from this Amendment.

Council recommendation

No changes are recommended.

Ms Kerrie Campbell, 30 Union Street, Kyabram

The submitter objects to the inclusion of her property in HO128 as a building contributory to the precinct. The submission opposes the introduction of the Kyabram Union Street Precinct saying that it has little or no heritage value. She argues that the Gap Study is outdated and inaccurate. She also lists a series of alterations that have occurred on her property in recent times. She also expresses concern that at the time of purchase she consulted the Council about controls on the property and Gap Study was never mentioned. She believes that this will affect the resale value of her property.

Appearance at Hearing

Ms Campbell appeared at the Hearing and submitted that she wasn't properly informed of the proposed Amendment. She feels disillusioned over the actions of the Council and believes that the Gap Study is unreliable and outdated and that there should be a further study undertaken before a proposal such as this proceeds.

Council recommendation

No changes are recommended.

Mr Daniel Arnold and Ms Kristie Day, 31 Union Street, Kyabram

The submission objects to the inclusion of the property in HO128 as being contributory to the precinct. The submitters argue that the Union Street Precinct has little or no heritage value, and believe that the Gap Study is outdated and inaccurate. At the time of purchase, the submitters consulted about controls on the property and the existence of the Gap Study was never mentioned. They also list a series of alterations that have occurred on the property in recent times. The submission states that inadequate consultation has occurred. The submitters believe that the listing will affect the resale value of their property.

Council recommendation

No changes are recommended.

Ms Angela McGregor, 29 Union Street, Kyabram

The submitter objects to the inclusion of her property in HO128 as a contributory building to the precinct. She believes that she was not given enough correct information about the Amendment. The submission states opposition to the Kyabram Union Street Precinct as it was little or no heritage value, and argues that the Gap Study is outdated and inaccurate. She points out that the house has been substantially renovated over the years and this detracts from any perceived heritage significance. She objects to the anticipated time and cost associated with getting a permit for simple works and objects to the tree and paint controls. She believes that this will affect the resale value of her property.

Appearance at Hearing

Ms McGregor attended the Hearing, but her submission was presented by Ms Walker-Staalkjaer. She re-stated her belief that the property was so altered that it did not have the qualities that would make it contributory to the precinct. She elaborated this view by arguing that, despite claims to the contrary, the building could not be easily returned to its original form.

Council recommendation

No changes are recommended.

Mr Mark McCarthy, 6 Union Street, Kyabram

The submission objects to the inclusion of the property in HO128 and as being contributory to the precinct. The submission states the properties in the Kyabram Union Street Precinct have not retained an aesthetic character worth protecting. His house has been renovated over the years. The submitter also objects to the proposed tree controls.

Council recommendation

No changes are recommended.

Mr Mick and Ms Jan Coventry, 4 Union Street, Kyabram

The submitters object to the inclusion of their property in HO128 and being designated a contributory building to the precinct. They believe that the properties in the Kyabram Union Street Precinct have little or no heritage value and have not retained an aesthetic character worth protecting. Their house has been renovated over the years. The submission goes on to list other properties in Kyabram with more significance. They believe that the Gap Study is outdated and they are concerned it has been completed without proper assessments or consultation with property owners. The submitters believe that the Heritage Overlay will have a detrimental economic impact on property owners.

Appearance at Hearing

Mr Coventry appeared at the Hearing and elaborated on his written submission. He expressed particular concern about what he saw as the unfairness of singling out Union Street for these controls. He argued that there are many similar houses in Kyabram which have not been proposed for such controls. He believes this Amendment is inconsistent and discriminatory. He also indicated that he couldn't remember receiving notification of the Amendment.

Council recommendation

No changes are recommended.

Mr Herb Prior, 3 and 5 Union Street, Kyabram

The submission objects to the inclusion of Mr Prior's two properties in HO128 and both being designated as contributory to the precinct. The submitter argues that the properties in the Kyabram Union Street Precinct has little or no heritage value. His houses have been renovated over the years. The submission also lists other properties in Kyabram with more significance. He argues that the Amendment will make the upkeep of the properties more expensive.

Appearance at Hearing

Ms Walker-Staalkjaer appeared at the hearing on behalf of Mr Prior and read a submission prepared in his words. This largely repeated and expanded on his written submission and submitted that the proposed precinct controls were ill-conceived and that individual assessments would be a better way forward.

Council recommendation

No changes are recommended.

(iv) Discussion

The Panel has been required to consider significant submissions with respect to the inclusion of Union Street as a heritage precinct in the Planning Scheme. Despite submissions to the contrary, as outlined above and in individual place submissions dealt with below, the Panel believes that there is sufficient strategic justification for the inclusion of this heritage precinct in the Planning Scheme. We accept the submission put by the National Trust that *the study has been undertaken with an appropriate level of rigour and with strategic justification and we support in broad terms the implementation of the proposed controls and policy into the scheme*. Whilst the Panel has some empathy with the confusion expressed by a large number of submitters over the lack of or inadequate consultation, in the end it is the Panel's responsibility to assess whether there is merit in the proposal and the provisions of the Act have been complied with.

The initial identification of this precinct occurred in the Gap Study in 2005. The precinct in the exhibited Amendment closely resembles the boundaries of the Gap Study precinct and the precinct as finally proposed by the Council in the post exhibition version has taken into account the loss of some original houses and adjusted the list of contributory/non-contributory buildings. The Council has moved to overcome any confusion over whether Nos 1 and 2 Union Street should be included in the precinct through its post exhibition changes which confirm that both properties are outside the defined precinct. It is clear that the exhibited maps did not include these properties, but the list of contributory buildings did include No 2. Whilst the Panel was surprised that these two properties were not included in the precinct, the Council has now clarified that the listing of No 2 as contributory was a mistake and that it should not be considered as part of the precinct.

The argument that there is a sufficient lack of consistency and integrity within this part of the street to warrant application of a precinct overlay, in the opinion of the Panel is not correct. Heritage precincts rarely consist of a uniform set of buildings and as indicated by Ms Kemp: *there are varying degrees of incremental change to be found within this precinct*. Equally the arguments put by many submitters that the significance of the precinct is

undermined by the degree of alteration of many of the buildings was countered by the National Trust when it described this concern as a *'fetish for analysis of fabric'*. The Panel believes that, despite alterations to individual buildings, the precinct does present as a relatively consistent area. The Panel also notes the high percentage of contributory buildings in the defined precinct and has no doubt that it is a recognisable heritage place.

The argument was also advanced that this precinct has been somewhat unfairly singled out in a town which has any number of residences constructed in the inter-war period. Ms Kemp indeed pointed out that there are many good examples of houses from this period in Kyabram and perhaps they warrant some form of protection. In this instance, however, we are considering the Union Street Precinct and the Panel agrees with the Council that it does contain a significant number of buildings, within a relatively small area that demonstrate a consistency of design elements from the period identified in the Statement of Significance.

The Panel inspected a number of other streets in Kyabram which the submitters had suggested were equally or more suited to designation as heritage precinct. This comparative exercise sought to confirm our view that Union Street is a clearly recognisable precinct with contributory housing from a definable era having largely consistent street setbacks, recognisable period form and a generally consistent scale.

We believe that the introduction of paint and tree controls in this precinct seems to be unnecessary. As was correctly pointed out by submitters, many of the trees that are said to add to the heritage character of the precinct are located outside the precinct; and, as submitted by the National Trust, there is a general lack of detailed analysis to support the inclusion of these controls. Also, the imposition of paint controls is odd in a precinct where many of the buildings have been reclad.

The Panel was faced with a great number of submissions opposing the Amendment as it related to individual properties as well as Union Street as a whole. However, there was a similarity between all these individual submissions which could be précised under the following headings:

- Concern about the adequacy of the Gap Study.
- Concern about the singling out of Union Street properties.
- Concern about the negative impact on the value of properties.
- Concern about the cost in time and money in having to apply for permits.
- Analysis of how individual properties do not fit within the attributed significance of the precinct.
- Discussion as to why particular properties cannot be described as having heritage values. In particular, the notion that buildings of this age are not historically important.
- Detailed assessments of the changes that have occurred to buildings since their construction.
- Opposition to paint and tree controls within the precinct.
- The failure of the Council to properly notify and consult.

The first two and the second last of these are dealt with in the discussion on general issues above.

A number of the other issues are not matters properly considered by this Panel. For example, the concern about property valuations is undoubtedly very real to owners. Increased insurance premiums were also mentioned. However, even if we were inclined to consider these matters, we have little in the way of authoritative evidence to support the claims made in the submissions. Equally there is no reason to believe that the Council's

administration of the Planning Scheme will impose unreasonable costs and delays on owners wishing to undertake works.

The issues of the appropriateness of particular properties being included in the precinct, and as contributory buildings, is the key issue to be dealt with by the Panel. Associated with this is the impact on significance of past changes made to buildings.

The Statement of Significance for the precinct in part says:

It is of architectural and aesthetic significance as it demonstrates many original and early design qualities associated with the residential development in Union Street, between the 1920s and 1950s. It is a stylistic mix of predominantly Interwar American Bungalow and mid twentieth century Bungalow houses. The asymmetrical presentation of the bungalows, with their porches, eave lines, timber detailing and picturesque skylines created by the pitched rooflines and chimneys and garden setting contribute to the aesthetic significance of the streetscape.

The Panel inspected all the properties in Union Street from the street and accepts that many of them have undergone alterations to a lesser or greater extent. Despite this, the form of the buildings largely remains obvious and they are, as the statement says, *a stylistic mix of predominantly Interwar American Bungalow and mid twentieth century Bungalow houses.*

The Panel notes the instances where buildings have been demolished and new buildings constructed, and supports the Council's recommendation that these sites be re-designated as non-contributory.

Therefore, the Panel believes that the inclusion of properties within the precinct is appropriate with the proposed changes to the nomination of contributory and non-contributory status as proposed by the Council.

It is difficult for the Panel to comment on individual claims of the lack of notification or the level of consultation leading up to the Amendment, other than to note that many people were aware of the Amendment and took the opportunity to express their concerns. This issue is dealt with in general in Section 5.2.

(v) Recommendation

The Panel recommends:

Subject to our general recommendations in Sections 2.3 and 5, that the Kyabram Union Street Precinct be included in the Planning Scheme as exhibited subject to the following changes:

- **the properties at 12 and 24 Union Street be re-designated as non-contributory;**
- **the property at 2 Union Street be removed from the list of contributory buildings;**
- **the proposed tree controls for this precinct not proceed; and**
- **the proposed paint controls for this precinct not proceed.**

6.8 Rochester Central (HO203)

(i) Statement of significance

What is Significant?

The Rochester Precinct is of local cultural heritage significance.

The precinct illustrates a particular pattern of development, built character and landscape features that contribute to an understanding of the historic development of the township.

How is it Significant?

It is of local historic, social and aesthetic cultural heritage significance to the Campaspe Shire.

Why is it Significant?

The Rochester Precinct is of historic and social significance as it provides tangible physical evidence of the evolution of the township during the 19th century and up to the 1950s.

It is of historic and social significance as it demonstrates the impact that a number of government policies had on the development of the physical fabric of Rochester. These include policies such as the: Land Selection Acts, Closer Settlement Policies and Irrigation Trusts. These changes led to an intensification of agriculture and an increasing local prosperity which stimulated development in Rochester.

It is of historic and social significance as it illustrates the impact of the railway. After the railway was constructed development moved from the east (near the Campaspe River) to the west. The railway was important as it facilitated economic diversity and prosperity.

The number of large and fine commercial and public buildings (including the Shire Hall) within the precinct are of historic significance as they demonstrate the extent of economic vitality and prosperity during different periods. The concentration of built fabric from the late 19th through to the Inter-war period is of historic significance. This period of development is associated with the intensification of agriculture. This period has defined the historic and aesthetic character of the township.

The basalt gutters in Gillies Street are of historic significance as they demonstrate the type of gutters that were constructed in the township during its establishment.

The 1950s commercial development at 50-54 Mackay Street is of historic and aesthetic significance as it provides a representative example of the impact that post war prosperity had on Rochester. It is of aesthetic significance for its utilitarian architecture and the use of cream face brickwork.

The precinct is of aesthetic significance for its concentration of fine Federation and Inter War buildings.

The palm trees that line the west side of Moore Street are of historic and aesthetic significance. The elm trees in Gillies Street are of historic and aesthetic significance.

The built character of Moore Street with its collection of architecturally diverse two storey buildings is of aesthetic significance. The predominantly single storey character of Gillies and Mackay Streets provides an aesthetic and architectural counterpoint to the Moore Street.

The early 20th century metal parapets to a number of shop fronts are of aesthetic significance for the utilitarian character and adaptation of an earlier masonry aesthetic.

(ii) General issues

The issues raised relate to the strategic basis for this precinct, the delineation of boundaries and the nomination of contributory building status.

Evidence and submissions

Mr Staalkjaer dealt with general issues pertaining to the proposed Rochester Central Precinct (HO203) and submitted that the Panel should not support the inclusion of the proposed precinct without further and proper strategic work. In particular he submitted that the Panel:

- Cannot be satisfied that an appropriate strategic basis exists for the inclusion of or changes to the proposed Rochester Precinct in C50. In this respect he noted that Ms Kemp had acknowledged that no study exists to support the precinct;
- Should find that there are inadequate documents, reports or studies to warrant the proposed changes to the Rochester Precinct;
- Should find that the proposed Rochester Precinct changes are not supported by any existing study or work;
- Should reject the asserted '2011 Precinct Review' as basis for the proposed Rochester Precinct changes; and
- Should find that no strategic basis exists for the allocation of contributory and non-contributory places within the proposed Rochester Precinct.

Ms Kemp in her evidence made the following comments:

- *The Statement of Significance was reviewed and rewritten to reflect current practices.*
- *The precinct boundary has remained unchanged. However, the individual places are also now contributory.*
- *The mapping includes all contributory buildings.*

(iii) Individual place issues

Rochester Railway Station Complex: HO210

Statement of significance

The only Statement of Significance that the Panel could identify referring to the station was that related to the Rochester Central Precinct as quoted above. The identified contributory places are:

Gillies Street: 5- 9, 10 - 20, 11 - 23, 22, 25, 27, 28, Bull Saleyard ring, basalt gutters, roadside avenue of elm trees

Moore Street 32- 34, 31, 33, 35 [ANZ Bank], 39 [Hotel Rochester], 40 - 44, 41, 43, 45, 46, 47, 49 [Commercial Hotel], 55, the park and that includes the palm trees; the palm trees to the roadside; the peppercorn tree to the railway station forecourt, Rochester Post Office [38]

Mackay Street 49 [Criterion Hotel], 50-54, 56, 55, 58, 68, 70 "C 72 (sic?), 74, 78, 80, Rochester Shire Hall.

The issue

The issue is whether the Rochester railway complex should be subject to the Rochester Central Precinct Overlay as shown in the exhibited Amendment.

Evidence and submissions

Mr Bruce Dixon, Property Coordinator, V-Line, made a written submission to the Council:

... V-Line objects to the application of the Heritage Overlay to the rail corridor at Rochester Railway Station.

The submitter stated that certain as of right alterations or upgrades would require a planning permit under the proposed Amendment. It is said that any variation that has the potential to make railway works or changes more difficult into the future is not supported by V/Line. A request is made to remove the rail corridor from the Heritage Overlay.

The Council responded in the following terms:

The controls affecting much of the subject site are already in place. The proposed amendment seeks to rectify what appears to be a mapping anomaly where the precinct applies currently to approximately half of the subject site. The current precinct boundary runs half way through one of the existing buildings on the site.

The individual heritage overlay that applies currently to the subject site will remain unchanged as part of the amendment. It is proposed that the entire site, rather than part of it, will also be located within the precinct for central Rochester. Heritage controls therefore already apply to the rail corridor.

The Heritage Overlay already applies to the rail corridor without negative impacts upon V/Line or VicTrack and will remain largely unchanged as a result of this amendment. The amendment also proposes more appropriate local policy controls to guide development on the site and surrounding area.

This amendment will not make railway works or changes more difficult into the future as the submitter contends as the controls on the subject site and on the railway corridor already exist. Heritage places are important for enriching our lives and our communities. Buildings, areas, landscapes and other places of heritage value provide a window into the past and to the very origins of our communities. Heritage places add character, appeal and interest to towns and the countryside. They are irreplaceable and precious.

The railway precinct and rail corridor have had a significant impact on the development of Rochester and it appropriate that they continue to be recognised in the manner proposed. In addition it is worth noting that VicTrack, the owners of the land, have not objected to the amendment.

(iv) Discussion

The Panel records that under cross examination, Ms Kemp, contrary to her evidence in chief, acknowledged that the precinct boundary had been retracted in four places. She also acknowledged that she had prepared, rather than had rewritten, the Statement of Significance, having undertaken research in the Mechanics Institute library in Rochester.

While Mr Staalkjaer urged us to reject the precinct on the basis that no proper study exists, we do not think that it is appropriate to review the inclusion of the precinct per se given it has been in the Scheme for some time largely with the same boundaries.

That Ms Kemp prepared rather than rewrote the Statement of Significance for this precinct we do not see as problematic. She is a qualified heritage professional who undertook appropriate research and if the Council had been concerned about her extending beyond her brief, this precinct may not have proceeded to exhibition.

The Panel inspected the precinct and believes that it warrants the application of the Heritage Overlay as proposed by the Council. We accept Ms Kemp's evidence that some minor changes are appropriate to the precinct now in the Scheme. We also accept the contributory buildings nominated for the precinct.

However, in inspecting the precinct, it was difficult to understand why the avenue of trees and adjacent residences to the south of the town were not included in the precinct. It is not for the Panel to recommend such an inclusion at this stage, but it can suggest that in any future review of heritage provisions in the Planning Scheme that this area be considered for its significance to the town.

The Panel accepts that the Rochester railway complex has heritage importance and should be covered by a Heritage Overlay.

We understand from the Council submission that an individual place overlay (HO210) already applies to the railway land including the rail track and it will remain unchanged. The Amendment proposes to rectify an error whereby only part of the HO210 is included in the existing precinct and would bring the entire railway complex within the precinct overlay (HO203). This will not affect the railway operations in a different way from the current planning situation.

The Panel supports the inclusion of the whole of the railway complex as part of the precinct overlay (HO203) shown on the Clause 22 maps and its nomination as contributory to the precinct (HO203).

Recommendation

The Panel recommends:

Subject to our general recommendations in Sections 2.3 and 5, that the proposed Rochester Central Precinct (HO203) be adopted including that the full extent of the Rochester railway complex individual place overlay (HO210) be included in and identified as contributory to the precinct.

6.9 Rushworth Central (HO301)

(i) Statement of significance

What is Significant?

Rushworth was established during the Victorian gold rushes in 1853 and it became a substantial 19th century gold rush town. This is characterised by the number and scale of public institutions such as: the Courthouse, Town Hall, Post Office, Banks, Churches and railway station. In addition the breadth of commercial development is also notable. Moreover, both the public and commercial buildings demonstrate many fine architectural features which contribute to an understanding of the early prosperity of this township.

The earliest settlement in Rushworth developed along the routes to the major alluvial workings. This irregular pattern is still evident today, as demonstrated by Wigg Street which cuts diagonally across the township. In contrast the commercial centre has an ordered urban layout and typifies many of the elements of a government surveyed town. However, the scale of the central commercial area [High Street] is notable and unusual. The location of the rotunda, other public structures and associated landscaping contributes to the refinements of this urban design. The number of notable buildings on both sides of the High Street reserve reinforces the sense of civic importance.

The Anglican Church, off axis but at the highest point in High Street, marks one end of the township which is notable for the early group of commercial buildings on the east and the town's judicial and government area (Court House, Town Hall) on the west. At the other end of High Street there is the later civic/commercial development dating from the 1880-90s (Presbyterian Church, 1892, Post Office, 1885).

During the early 20th century, the Closer Settlement policies in the early 20th century and the construction of the Waranga Basin and the development of irrigation schemes supported the growth associated with gold mining.

The retention of the integrity of the majority of these places contributes to the significance of the precinct.

How is it Significant?

The Rushworth Precinct is of historic, social and aesthetic significance to the Campaspe Shire.

Why is it Significant?

The Rushworth Precinct is of historic and social significance as it provides tangible physical evidence of the impact of the discovery of gold in the region and the continuing success of the reef mining. The richness of this gold field is illustrated by the stature of the surviving 19th century and early 20th century buildings.

The pattern of settlement is of historic significance. The irregularity of some of the residential streets assist in an appreciation of how the town originally developed along the routes to the alluvial gold fields. The pattern of settlement imposed by the township survey is associated with an urban vision not found in other regional gold rush towns. The scale of the central commercial area [High Street] and the notable buildings which line both sides of the street, demonstrates the unfulfilled 19th century vision for Rushworth as a gracious and vital township.

The impact of Closer Settlement policies, the construction of the Waranga Basin and the development of irrigation schemes can be identified in a number of early 20th century buildings or modifications to existing 19th century buildings. Of particular note are the Glasgow Buildings which are a product of the early 20th century economic activities.

The variety of architecture found in the precinct is of historic significance as it demonstrates different growth periods and in turn the historic themes such as the discovery of gold, Land Selection, Closer Settlement and the two eras of railway-building activity.

The precinct is of social significance for its association with events, development and cultural phases which have had a significant role in the occupation and evolution of the community.

It is of aesthetic significance for the number of fine 19th and early 20th century civic buildings, commercial buildings and houses.

It is of aesthetic significance for the representation of a regional vernacular found in some of the smaller houses and commercial premises.

It is of aesthetic significance for the diversity of architecture that is found within the precinct. Many of the architectural features that are identified with each period/style, have a regional character and this contributes to a strong sense of place and region.

As a streetscape, the dominance of red bricks both in religious, civic and commercial buildings, is a cohesive factor which adds to the expected parapeted form and wide-verandahed commercial character anticipated in a rural town in this area.

The surviving granite guttering in Wigg Street, adjacent to the Criterion Hotel is significant as it contributes to the aesthetic significance of the urban environment.

(ii) General issues

The issue is what is the strategic basis for the precinct and the nomination of contributory places.

Evidence and submissions

Mr Staalkjaer noted that contrary to Ms Kemp's evidence in chief, the existing precinct boundaries were not expanded in the exhibited precinct to include a contributory place in Esmonde Street, but rather the precinct was been substantially reduced in four different areas and expanded in two. This precinct has its origins in the Waranga study of 1988 but there was no identification at that time of the buildings which were contributory. He said that there is no proper strategic basis for the precinct boundaries or contributory buildings. He also noted the inconsistent responses by Ms Kemp and the Council to the property in Esmonde Street which was the subject of Mr Mason's submission.

He made the made the following submissions:

It is submitted that the Panel:

- *Cannot be satisfied that the appropriate strategic basis exists for the inclusion or amendment of the proposed Rushworth Precinct in C50;*
- *Finds that there is inadequate documents, reports or studies to warrant the proposed amendments to the Rushworth Precinct;*
- *Find the proposed Rushworth Precinct amendments are not supported by the original WCS 1988;*
- *Reject the asserted '2011 precinct review' as a basis for the proposed Rushworth Precinct amendments;*
- *Find that no strategic basis exists for allocation of Contributory and Non Contributory places within the proposed Rushworth Precinct.*

It is therefore submitted that the Panel should not support the inclusion of the proposed HO301 Rushworth Precinct within C50 without further and proper strategic work.

Ms Kemp in her evidence stated:

- *The Statement of Significance was reviewed and rewritten to reflect current practices.*
- *The precinct boundaries have been expanded to include a contributory place in Esmonde Street. This place provides tangible physical evidence of the development of Rushworth and it demonstrates a historic theme/criteria. [HERCON criteria A]*
- *Refer to the precinct citations [APPENDIX C] for a full list of contributory and non-contributory places.*
- *HO301 Rushworth Precinct is assessed as being of local cultural heritage significance It is considered to meet the following HERCON Criteria. HERCON criteria A G D E.*

A written submission was also received from Ms Cheryl Macansh, a member of the Rushworth Historical Society, supporting the Amendment and indicating that she was thrilled that Rushworth and other towns in the Shire are having lots of historically significant buildings listed.

(iii) Individual place issues

Mr Kevin Mason, 9 Esmonde Street, Rushworth

Evidence and submissions

Mr Kevin Mason made a submission about this property which is identified in the exhibited Clause 22 as a contributory building to the Rushworth Central Precinct:

- Objecting to the inclusion of the property and all of Esmonde Street in the Heritage Overlay.
- Stating that the property was built in the 1960's and should not be listed in the Heritage Overlay.

The Council initially responded in the 'Case Book' in the following manner:

The Heritage Advisor in their review of the Rushworth Precinct noted the contributory nature of the building within the precinct. It is considered appropriate to retain the dwelling as a contributory building within the precinct.

However, in the post exhibition changes the Council proposed to remove it as a contributory building.

16 Horne Street and 25 Moora Road, Rushworth

Evidence and submissions

Mr D V Boundy made written submissions with respect these properties which are included as contributory to the Rushworth Central Precinct. It was said:

16 Horne Street Rushworth

16 Horne Street is a vacant block that adjoins 14 Horne Street. Historically this block was specifically excluded from the original heritage controls proposed for Rushworth.

25 Moora Road Rushworth

The reference to this property as Burge House in the Waranga Conservation Study is incorrect. The submission also copies a copy of a letter to the editor published in the Waranga News on 31 May 2012 which goes into some further detail about this issue.

Mr Boundy did not attend the Panel Hearing due to an accident but forwarded a supplementary written submission to the Panel in relation to the above matters.

Concerning the property at 16 Horne Street he said that contrary to the Council view (below) there were no structures built across the boundary of 14 Horne Street and the boundary was misplaced on the Council map. He also said he was concerned about whether he would obtain permission to build on No 16.

Concerning 25 Moora Road, he restated his issue with mis-naming of the property.

The Council responded in the following manner.

16 Horne Street Rushworth

This property is known and rated as number 14 Horne Street and has been for some time. It would also appear from examination of aerial photography that

structures associated with the dwelling are constructed across this property boundary. Irrespective of this fact the subject property is currently included within the Heritage Overlay (HO301 Rushworth Precinct) and will remain so as a result of this amendment. The amendment will result in more appropriate local policy controls for the subject site.

25 Moora Road Rushworth

The reference to Burge House was taken directly from page 49 of Volume 3 of the Waranga Conservation Study. It simply states here that the first major owner/occupier was Burge, Charles – A storekeeper.

The property has been recognised as a good example of a mid to late Victorian Period (c1875-1900) dwelling on page 23 of volume 1 of the study. The reference to Burge would appear to be a simple acknowledgement of the first owner/occupier of the dwelling and not the reason the property is recognised in the study. Therefore there is no reason to amend this reference given that it would appear to be factually correct.

(iv) Discussion

The Panel inspected the precinct and believes that the revised boundaries are by and large appropriate and the defined precinct well illustrates the long held significance attributed to the township of Rushworth. This significance was originally identified in the Waranga Study and has been more recently confirmed in Ms Kemp's heritage precinct review. We think that the identification of contributory buildings has been satisfactorily undertaken by Ms Kemp and is consistent with the Statement of Significance. It is, as we have earlier said unfortunate that there was no proper record of the post Gap Study strategic work available at the time of exhibition nor indeed the Panel Hearing, but we are satisfied that the changes here have brought the precinct up to date in terms of current conditions on the ground and in terms of expectations for Statements of Significance.

In our view there is no need to modify the Amendment as it relates to the Rushworth Central Precinct (HO301) as exhibited in response to Mr Staalkjaer's submission.

The Panel agrees with Mr Mason and the ultimate position of the Council, however, that 9 Esmonde Street should be removed as a contributory building to the precinct.

In relation to Mr Boundy's submissions, it seems to the Panel that there may remain an issue about whether 14 and 16 Horne Street should be treated as the one property for the purpose of the overlay. Even if they are rated together, there is no reason that the contributory status could not be applied only to part of the joint property. We suggest that the issue of how widely on the joint property contributory status should be applied could be revisited.

As for the issue of the name of the property at 25 Moora Road, it would seem appropriate that future reference to it should simply be by its address. It isn't possible for the Panel, or anyone else for that matter to change the name given to the property in the Waranga Study.

(v) Recommendation

The Panel recommends:

Subject to our general recommendations in Sections 2.3 and 5, that the Rushworth Central Precinct should be adopted subject to the following:

- The property at 9 Esmonde Street should be redesignated as non-contributory; and
- before adoption, the Council should review the issue of whether contributory status should be applied to 14 Horne Street (whether or not that property is part of a joint property at 14-16 Horne Street).

6.10 Lockington (HO401)

(i) Statement of significance

What is Significant?

The Waranga Basin reservoir on the Goulburn River was completed in 1905 to irrigate the west Goulburn Valley. The construction of the Waranga Basin and the development of irrigation had a marked impact on settlement in the region. The irrigation channel at Lockington was opened in 1911.

The channel ran west through the township between Singer Road and Deakin Street, and north along Hopetoun Street to finish at the Echuca-Serpentine Road. It is flanked by a plantation reserve where it runs through Lockington.

Lockington was first surveyed in 1915 by the State Rivers and Water Supply Commission. The survey was based on a traditional grid pattern with four lots positioned on a crescent set aside for public purposes.

Lockington is located on the Cohuna-Elmore railway line which provided a rail link to the Melbourne markets and ports.

The 1920s was a time of regional growth and this is associated with the development of irrigation, Closer Settlement and the intensification of agriculture. A number of families were recruited from Britain and other parts of Australia to the Bamawn Estate - a large estate near Lockington. There they were encouraged to grow fruit on their irrigated blocks which averaged 20 - 40 ha.

A number of public buildings, commercial premises and residential areas were established in Lockington during this period and this has defined the historic character of the township. The commercial area is notable for the retention of much of the original shopfront architecture and sheet metal parapets. The precinct has maintained an appreciable sense of its original character dating to its establishment.

Post World War Two was also a time of regional growth and there a number of buildings from this period.

The historic places in the precinct have largely retained a high degree of integrity and intactness.

Places that contribute to the significance of the precinct include:

Barton Street: nos 2, 4, 6, 8, 10, 12, 14,

Deakin Street: nos 2, 4

Hopetoun Street: nos 5, 7, 9, 11, 13, 15, The Lockington Wall of Remembrance

McColl Street: no 1

Wills Street: no 5 [St Marys Anglican Church]

Lockington Road and Hopetoun Street: the open reserve areas

Hopetoun Street, Shakespeare Court, McColl Street and Barton Street: Public and Civic reserve

How is it Significant?

It is of local historic, social and aesthetic significance to the Campaspe Shire Council.

Why is it Significant?

It is of historic and social significance as it provides tangible physical evidence of the development of Lockington.

It demonstrates the principles of urban planning as espoused by the State Government and the State Rivers and Water Supply Commission

The township was largely developed in direct response to the introduction of irrigation through the construction of the Waranga Basin and was a railway town on the Cohuna-Elmore rail line.

It assists in demonstrating concerted government efforts through the Closer Settlement Acts aimed at settling families on irrigation blocks.

The mid twentieth century buildings assist in demonstrating that the post World War II period was a time of growth and prosperity for Lockington and region.

The precinct is of social significance important for its association with events, development and cultural phases which have had a significant role in the occupation and evolution of the community.

It is of historic and aesthetic significance for its settlement pattern.

It is of aesthetic and architectural significance as it demonstrates many of the original built characteristics associated with the earliest part of the civic and commercial centre of Lockington.

It is of aesthetic and architectural significance for the stylistic mix of predominantly Inter-war bungalows and mid twentieth century housing. They demonstrate a regional character and response to settlement during the two main periods of growth. They illustrate qualities that include hipped or gabled galvanised corrugated iron or tiled roof forms, one storey heights, brick chimneys, timber framed double hung windows and wide eaves.

Of historic and aesthetic significance are the metal sheet clad parapets in the commercial areas as they demonstrate a utilitarian character while also observing contemporaneous stylistic aesthetics.

The residential areas contribute to the aesthetic significance through their picturesque skylines created by the pitched rooflines and chimneys and are accented by a backdrop of sky and trees, and gardens visible over low fences. The aesthetic values are also enhanced by views from many directions of the irrigation channel, plantation, the sweeping crescent with palm trees and War Memorial, the prominent 1980s public hall and the view down McColl Street to the church and tower.

(ii) General issues

Evidence and submissions

Mr Staalkjaer's submissions included that this precinct was identified in the Gap Study but it had been substantially altered in the post Gap Study review. He noted that some of the changes to the precinct inclusions detracted from the significance as described in the Statement of Significance. He noted also that Ms Kemp had also made a number of additions to the Statement of Significance for the precinct not mentioned in her evidence in chief rather than merely rewriting it. They included adding reference to State Rivers and Water Supply urban planning; the development of irrigation in the Waranga basin; and the town's being a railway on the Cohuna-Elmore rail line. He said that Ms Kemp went beyond what was appropriate by drawing on the environmental history in the Gap Study and ignoring the statement of significance already included in that study.

He made the following general submissions:

It is submitted that the Panel:

- *Cannot be satisfied that appropriate strategic basis exists for the inclusion or amendment of the proposed new Lockington Precinct in C50;*
- *Finds that there are inadequate documents, reports or studies to warrant the proposed inclusion of the Lockington Precinct;*
- *Find that the proposed Lockington Precinct amendments are not supported by any existing study or work and is not supported by or based on GAP;*
- *Reject the asserted '2011 precinct review' as basis for the proposed Lockington Precinct amendments;*
- *Find that no strategic basis exists for the reallocation of additional contributory places outside the GAP precinct or the expansion of the contributory places to 29 McColl Street;*
- *Find that no strategic basis or reason exists for the allocation of the park block south of the hall site and north of McColl Street being included as a contributory place within the precinct;*
- *The proposed new precinct is in breach of VPP1 by not being based on an appropriate study or report and not being undertaken in accordance with the Burra Charter.*

It is therefore submitted that:

- *The Panel should not support the inclusion of the proposed HO401 Lockington Precinct in C50.*
- *Further and proper strategic work is required to amend the proposed precinct, assess the inclusion of further places within the precinct and the appropriateness of excluding the Church and street view along McColl Street from the precinct and develop individual and/or group listings.*

In her statement of evidence Ms Kemp made the following comments:

The Statement of Significance was reviewed and rewritten to reflect current practices.

Precinct Boundary and Mapping

The shape of the precinct has been retracted with the exclusion of St Marys Anglican Church (HO411) Wills Street. This church is already included as one of the churches in the group listing.

1-3 McColl Street has been mapped to include 1 & 3 McColl Street as both these lots are contributory.

12 and 14 Barton Street have been included as contributory items in the precinct.

4 Deakin Street has been included as a contributory item in the precinct.

HO406 15 Barton Street [The Masonic Lodge] is an individual item and is now also mapped as a contributory item.

All the additional items contribute to the cultural heritage significance of the precinct and demonstrate criteria A & D.

The mapping includes all contributory buildings.

During cross examination she conceded that the trees worthy of tree controls were confined to those on public land including the palm trees on the hall site.

(iii) Individual place issues

There were no individual place submissions for this precinct.

(iv) Discussion

The Panel has discussed the general issues around the strategic basis of the Amendment at Section 5.1 above. General views on precinct delineation are set out in Section 5.4. We would further say that while we agree with Mr Staalkjaer that Ms Kemp perhaps went further in this precinct than in most others in making substantial additions to the Statement of Significance, however, she did draw on the Thematic History and the Council has apparently accepted the revisions as within her brief. We can but comment again that if the revision process had been recorded in a document before exhibition or before the Panel process, many submitter concerns would likely have been alleviated.

The Panel inspected this precinct and it must be said that we were perplexed as to how, in both the Gap Study and the 2011 review, the boundaries proposed in this Amendment were arrived at. For example, if the irrigation channels through the town were such defining features, and clearly they are, why was only one of them included in the precinct? Equally, why isn't the residential area on the western side of the railway line included as part of the precinct?

Given the Panel's recommendation with respect to the group listing of churches (at Section 5.9 above) the proposed changes to the boundaries of this precinct mean that St Mary's Anglican Church may end up without either a status in the precinct or as an individual building.

We would also comment that we do not support the lot on the northern side of McColl Street, immediately south of the Public Hall Reserve (possibly at No 4 McColl Street), being nominated as contributory to the precinct - given that it is a vacant grassed block.

Despite these problems, the Panel believes that there is a precinct worthy of a Heritage Overlay at Lockington and is prepared to recommend the approval of the precinct as exhibited.

However, we suggest that the Council may wish to consider a further review of the history of Lockington and a further review of the heritage precinct. If a further revision of the precinct is thought appropriate, it might be dealt with as a subsequent amendment.

(v) Recommendation

The Panel recommends:

- Subject to our general recommendations in Sections 2.3 and 5, that the Lockington Precinct (HO401) as revised in the post exhibition documents be adopted except that No 4 McColl Street should be redesignated as non-contributory.
- The Council consider undertaking a further review of the significance of the town and if appropriate propose an alternative precinct designation to be processed via a subsequent amendment.
- The tree controls in the precinct apply only to specified trees on public land by specifying this in the Heritage Overlay Schedule or by application of exclusions through the Incorporated Plan.

6.11 Tongala Precinct (HO501)

(i) Statement of significance

What is Significant?

A post office operated in the area from 1876 but it was not until 1882 that the Tongala settlement moved from its original site on the Goulburn River to its current site. The relocation occurred after the proposed route for the railway was surveyed. The railway line and station at Tongala opened in 1888, and consolidated settlement at the present site. Tongala was originally the administrative centre for the former Shire of Deakin with the first Shire offices established in Mangan Street. Areas of the Shire of Echuca and Waranga Shire were severed to form Deakin Shire in 1893.

The Waranga Basin reservoir on the Goulburn River was completed in 1905 to irrigate the west Goulburn Valley, and land for irrigation districts was purchased including the Wyuna estate near Tongala. The construction of the Waranga Basin and the development of irrigation had a marked impact on settlement in the region. The Tongala Irrigation District was constituted in 1912, the same year Tongala was gazetted a town and a district office of the State Rivers and Water Supply Commission was established. In 1916, Tongala was described by the Victorian Municipal Gazetteer as an agricultural township with a post and telegraph office, State school, four churches, Shire offices, bank, public hall, creamery, police station, cheese factory, district office of SRWSC, timber-yard and hotel. After World War One, further irrigation channels were established in 1919-20 and Australian and British soldier settlers took up farms for citrus, lucerne and dairying around Tongala.

The 1920s was a time of growth and a number of buildings were established during this period and this has defined the historic character of the township.

The retention of the integrity of the majority of these places contributes to the significance of the precinct.

Places that contribute to the significance of the precinct include:

Cavell St: Cnr Cavell & Miller Sts; 2 (Post Office); 4; 9;

Mangan St: Tongala Hotel; former bank; row of shops; Old Furniture Shop; St Patricks Catholic Church; house; Reserve; 41; 46; 48; 50; 52; 54;

Miller St: 40; 41

How is it Significant?

It is of historic, social and aesthetic significance to the Campaspe Shire.

Why is it Significant?

Tongala is of historic and social significance as it provides tangible physical evidence of the development of Tongala and in particular the impact of the construction of the Waranga Basin and the development of irrigation in this region. The development of the town demonstrates the impact of Closer Settlement and Soldier Settlement programs.

The precinct is of social significance important for its association with events, development and cultural phases which have had a significant role in the occupation and evolution of the community.

It is of aesthetic and architectural significance as the commercial, public and residential buildings illustrate a regional architectural character associated with the development of the Goulburn Valley during the early 20th century. Of note are the number of shop fronts that have retained their sheet metal parapets. This architectural feature is a characteristic of commercial architecture from this period and from this region.

The aesthetic significance of the residential area is characterised by single storey houses which are located on large sites with generous front and side setbacks, low fences and garden settings. This is complemented by the wide streets, nature strips and a mixture of street trees.

The diversity of the architecture contributes to the streetscape values of both the commercial and residential areas.

The historic places in the precinct have largely retained a high degree of integrity and intactness.

(ii) General issues

The strategic basis for this precinct, the delineation of boundaries and the nomination of contributory building status.

Evidence and submissions

Mr Staalkjaer submitted that the Tongala Precinct as exhibited cannot be said to be that proposed in the Gap Study with an updated Statement of Significance. The Gap Study proposed a much smaller precinct of 18 properties with seven being contributory, compared with an exhibited 38 properties in the precinct and 31 contributory properties. He noted the expansion of the precinct to take in residential properties in Miller Street and a church (otherwise included in the church 'group') as well as additional properties in commercial Mangan Street. He said that the inclusion of both a residential and a commercial component in the precinct was inappropriate. He argued that there was no justification for the application of tree controls. He again noted the absence of any documentation of the review work which would properly explain the post Gap Study changes.

He made the following submissions:

It is submitted that the Panel:

- *Find that the proposed C50 Tongala Precinct has no connection or collation with the GAP Tongala Precinct;*
- *Cannot be satisfied that the appropriate strategic basis exists for the inclusion of the new proposed C50 Tongala Precinct;*
- *Find that there are no adequate documents, reports or studies to warrant the proposed creation of the proposed C50 Tongala Precinct;*

-
- *Reject the “2011 Precinct Review” as the basis for the proposed C50 Tongala Precinct;*
 - *Find that no strategic basis exists for the allocation of contributory and non-contributory places within the proposed C50 Tongala Precinct.*
 - *Find that the proposed new C50 Tongala Precinct is in breach of VPP1 by not being based on an appropriate study or report and it was not assessed in accordance with the Burra Charter.*

It is therefore submitted that:

- *The Panel should not support the inclusion of the proposed HO501 Tongala Precinct in C50;*
- *The Panel should recommend a complete review of the proposed Tongala Precinct;*
- *The Panel should recommend that such a review should include a separation of commercial and residential properties;*
- *The Panel should recommend an exclusion of tree and paint controls in the residential areas;*
- *The Panel should recommend the reassessment of 42 and 46 Miller Street as contributory items;*
- *The Panel should recommend the reassessment of contributory items within a commercial precinct.*

Ms Kemp in her evidence made the following comments:

Statement of Significance

The Statement of Significance was reviewed and rewritten to reflect current practices.

Precinct Boundary and Mapping

The extent of the precinct in Mangan Street has been increased. This was done to reflect the historic significance of Mangan Street and its reflection of a number of identified historic themes, social & aesthetic values.

The north side of Mangan Street is notable for its range of Interwar development which clearly demonstrates the impact that the Closer Settlement & Soldier Settlement Policies and the development of irrigation had on the township.

46 Miller Street has also been added as a contributory item to the precinct. It is a good representative example of an Interwar bungalow. It has been included to provide an increased representation of Interwar bungalow type as these are representative of an important historic theme.

The precinct has been retracted at the north end of Cavell Street with the removal of non-contributory items from the edge of the boundary.

The precinct has also been retracted from the south side of Mangan Street with the removal of non-contributory items.

In answer to a question in cross examination she suggested that the tree controls in this precinct could be refined by use of Incorporated Plan exemptions.

The Panel also notes that the Case Book of Council responses to submissions having discussed the submission concerning 46 Miller Street, goes on to say that a number of minor mapping anomalies have been identified for the precinct requiring correction. Changes said to be required as corrections to Clause 22.02 to identify properties included in individual

place Heritage Overlays within the precinct as contributory to the precinct, including 44 Miller Street (HO506), 70 Mangan Street (HO508) and 62 Mangan Street (HO507). It notes also that HO510 had been mapped on the wrong property - on 54 Mangan Street rather than 56 Mangan Street. The 56 Mangan Street property should also be shown as contributory to the precinct. These changes are shown on the post exhibition Clause 22 maps with the exception that contributory status appears to have been added to rather than removed from 54 Mangan Street.

(iii) Individual place issues

Ms Lynette Mahncke, 46 Miller Street, Tongala

Ms Mahncke made a written submission objecting to the inclusion of the property in the precinct Heritage Overlay for Tongala and its being designated as being contributory to the precinct. Her submission states that the Tongala Precinct has little or no heritage value, and that the Gap Study is outdated and inaccurate. The submitter also lists a series of alterations that have been made to the property in recent times that she believes reduce its heritage value.

Ms Mahncke writes that she is also concerned about the effect of the overlay on the value of her property.

Council recommendation

No changes to the Amendment were recommended by the Council in response to this submission.

Mr Mitchell and Ms Megan Kelsey, 52 Mangan Street, Tongala

The Kelseys' submission was similar to that of Ms Mahncke except that the changes described as having occurred to their house are more substantial.

Council recommendation

No changes to the Amendment were initially recommended by the Council in response to this submission in the Case Book. However at the Hearing it was Ms Kemp's evidence that it should be retained within the precinct but as a non-contributory building.

Mr Bob Eliason, 6 Cavell Street, Tongala

The submitter, who has owned this former bush nursing hospital on the south-eastern corner of Cavell and Miller Streets for 20 years, objects to its inclusion in the precinct overlay for Tongala. He claims that there have been substantial alterations over the years and it has no heritage value.

Council recommendation

The Council responded that the review of precincts was relatively recent and the alterations would have been taken into account in assessing the building as contributory.

The Council recommended no changes in response to this submission. Ms Kemp recommended the property should be retained as a significant place.

Ms Jeanie Borthwick, 64 Mangan Street, Tongala

A submission was made on behalf of Ms Jeanie Borthwick (whose submission also addressed her property at 178-180 Allan Street, Kyabram) objecting to the inclusion of this property in the Tongala Precinct as a contributory building. No reasons were given. The submission claimed, however, that no notice was received concerning the Amendment.

Appearance at Hearing

Ms Walker-Staalkjaer represented Ms Borthwick at the Panel Hearing. She submitted that no notice was given to her of the Gap Study or the Amendment. She noted that her property was not considered contributory in the Gap Study but had been later added. She described extensions and reroofing of the building as well as a recent verandah and parapet addition. She said that she did not believe her shop matched the shop characteristics described in the Statement of Significance, nor does it have any historic connection with Soldier Settlement, closer settlement or the Waranga Basin. Ms Borthwick also submitted that the provision in the Statement of Significance that *'Tongala is of historic and social significance as it provides tangible physical evidence of the development of Tongala'* is a self serving and circular position which, if acceptable, should result in all of the properties in Tongala being listed. She sought to have the precinct removed from the Amendment or alternatively her property reassessed as non-contributory to the precinct.

Council recommendation

The Council said that their records indicate that notice was sent and recommended no change to the Amendment as a result of her submission.

Ms Kemp's evidence given in answer to cross examination was that the property contributes to the architectural diversity of the precinct and fits with the historic theme identified for the precinct. It is also a representative example of commercial architecture from the period of significance, she said. She conceded that changes had been made to the building but was of the view that they did not fundamentally change its significance.

(iv) Discussion

The Panel has discussed the general issues around the strategic basis of the Amendment at Section 5.1 above and the issue of precinct delineation in Section 5.4.

We would further say, as we also did in relation to the Lockington Precinct, that while we agree with Mr Staalkjaer that Ms Kemp perhaps went further in this precinct than in most others in making changes, the Council has apparently accepted revisions of this magnitude as within her brief. We can but comment again that if the revision process had been recorded in a document before exhibition or before the Panel process, many submitter concerns would likely have been alleviated.

The changes made to this precinct from the original Gap Study proposal are indeed substantial. Not only has the number of properties included expanded significantly as noted by Mr Staalkjaer, but the precinct is no longer one oriented to Cavell Street based around seven significant buildings, but is a precinct principally defined along the northern side only of Mangan Street and extending along part of Miller Street linked by Cavell Street.

We have earlier discussed our concerns about precinct delineation which defines boundaries in a forced manner (see Sections 5.4 and 6.3). These concerns have led us to recommend against the inclusion of certain parts of some precincts. This same issue arises here given the precinct extends to two parallel street with a cross street linkage. Also the Miller Street

component is extended some distance to the east to 'rope in' the church on the corner of Pankhurst Street.

We believe that the exhibited precinct boundaries should be reviewed with a view to creating two smaller precincts or providing a group listing for the properties in Miller Street separate from the Mangan Street precinct. The church at the eastern end of Miller Street, in the proposed precinct, might instead be considered for an individual place overlay. Despite some concern that the Mangan Street component of the precinct is single sided, we accept that the Mangan Street precinct is a clearly identifiable place, unlike the proposed precinct as a whole. Where Cavell Street sits in a redefinition of precinct boundaries will also need to be considered.

The Panel believes that the post exhibition version of the Statement of Significance is generally appropriate. We will say, however, that we agree with the submissions for Ms Borthwick that some of the components of the Statement of Significance are not helpful and in fact present a circular position. We have elsewhere (Section 5.5) recommended that the Statements of Significance for this Amendment should generally be reviewed before adoption. We agree with Ms Kemp's concession concerning tree controls and they should be applied more sparingly in the precinct(s) by using the Incorporated Plan to exempt all but those where controls are appropriate.

We are of the opinion that Ms Mahncke's property is correctly designated as a contributory building to the historic central area of Tongala. The changes made to the building are not so substantial that its heritage contribution has been lost.

We agree with Ms Kemp that the Kelseys' property should be regraded to non-contributory because of the extent of changes.

We support the Council position that Mr Eliason's property despite changes is contributory to the precinct.

Concerning Ms Borthwick's property, we agree with Ms Kemp that the changes to this building have not fundamentally removed its contribution to the precinct values. It should, in our view, be retained as a contributory building.

We have not considered the concerns by these submitters about property devaluation as relevant to assessing the significance of the places.

These submitter properties together with others should be re-assessed in the context of the further precinct review.

(v) Recommendation

The Panel recommends:

- **Subject also to our general recommendations in Sections 2.3 and 5, that the Tongala Precinct be included in Part 2 of this Amendment or deferred to a later amendment so that the extent of the precinct can be reviewed with a view to defining a Mangan Street precinct and a separate Miller Street precinct or group with consequential changes to the Statement(s) of Significance.**
- **The tree controls for the Tongala Precinct(s) should be applied selectively to particular trees of significance by application of exemptions in the Incorporated Plan.**
- **The property at 52 Mangan Street, Tongala should not be recognised as contributory to the Tongala Precinct.**

6.12 Balaclava Hill Open Cut Mine and Whroo Township Site Area (HO312)

(i) Statement of significance

What is Significant?

The Balaclava Hill Open Cut Mine and Whroo Township Site Area.

Substantial remains of the old town survive including the stone guttering, tree avenues, exotic planting remnants, footings and chimney bases. More substantial and more visible however are the cemetery and the all-pervading gold workings (alluvial and particularly the quartz) also the valuable elements such as the puddling mill, dams and cyanide vats.

The most important of these elements and almost the reason for the growth of the town itself is the Balaclava mine complex.

How is it Significant?

It is of historic, social and aesthetic significance to the Shire of Campaspe.

Why is significant?

It is of historic and social significance as it provides tangible physical evidence of a relatively unaltered gold era character and native forest setting, provides a clear expression of the early primitive nature of the gold fields.

(ii) General and individual place issues

We were told that this is essentially an archaeological site.

There were no submissions concerning this place and the Panel did not inspect it.

The Panel sees no reason why this place should not be included in HO312 as proposed.

(iii) Recommendation

The Panel recommends:

Subject to our general recommendations in Sections 2.3 and 5, that the Balaclava Hill Open Cut Mine and Whroo Township Site Area (HO312) as exhibited be adopted.

7 Individual places outside precincts

7.1 RSL Memorial Hall, Victoria Street, Rochester: HO227

(i) Statement of Significance

What is Significant?

The Rochester R.S.L. Memorial Hall and War Memorials, corner Victoria and Mary Streets Rochester.

How is it Significant?

It is of local historic, social and aesthetic cultural heritage significance to the Campaspe Shire.

Why is it Significant?

It is of historic significance for its special importance for its long association over 87 years with the branch of the Returned Sailors, Soldiers Imperial League of Australia which was formed in 1918 in Rochester with club rooms established in Mackay Street. Public conscriptions in 1918-19 raised £251 for the purpose of establishing a soldiers' memorial at Rochester. A decision to build a Memorial Hall was made in 1920. The Arts and Crafts style R.S.L. building was erected in 1922. A memorial to Sgt Williamson who was killed in the Boer War, which had been erected at the corner of Gillies and Moore Streets in 1902, was moved to the front of the building and inscriptions added over the years. Interest in the sub branch was revived during World War Two and a red brick Memorial Wall dedicated to those who served during that war. The Community Welfare Committee established a garage and depot at the rear of the R.S.L. Hall for the St John of God ambulance c1971. HERCON criteria A.

It is of social significance as it is recognised by the community as having public value and is held in high esteem for its social associations with the whole community, but particularly the members of the R.S.L whose twentieth century history is interwoven with the history of the place. Members of the sub branch were actively involved in raising funds for the war effort and continue to help returned soldiers and their families in the area. HERCON criteria G.

It is of aesthetic significance as a good example of a cultural landscape developed over the past 87 years. It containing an early twentieth century Inter-war Arts and Crafts hall, and associated memorials such as flagpoles, Boer War Memorial, and the Wall of Remembrance established by the RSL in Rochester. HERCON criteria A.

(ii) The issue

The issue is the extent of mapping for the hall overlay. This is a new overlay outside the central precinct.

(iii) Evidence and submissions

Mr Lindsey Macague, Deputy Controller-Administration, Rochester SES, made a written submission to the Council seeking the deletion of the SES Buildings at 5 Victoria Street from the Heritage Overlay as proposed under Amendment C50.

This was agreed to by the Council as part of the post exhibition changes. The Council submission to the Panel included:

Proposed HO227 is intended to cover the RSL Memorial Hall on the corner of Victoria Street, in Rochester and it appears that a simple mapping error has also included the SES buildings behind the Hall.

It is appropriate that the HO be altered in this location to only cover the RSL Hall as originally intended and remove the SES buildings from heritage protection.

(iv) Discussion

The Panel accepts the proposal by the Council to adjust the mapping of HO227 to exclude the SES buildings.

(v) Recommendation

The Panel recommends:

HO227 should not include the SES buildings at the rear of the RSL Memorial Hall in Victoria Street, Rochester.

7.2 46 Railway Road, Rochester: HO225

(i) Statement of significance

What is Significant?

The house at 46 Railway Road Rochester

How is it Significant?

It is of local historic, social and aesthetic cultural heritage significance to the Campaspe Shire.

Why is it Significant?

It is of historic significance as the house represents the further development of Rochester from the early 1900s with the advent of irrigation. HERCON criteria A.

It is of aesthetic significance as a very good example of an elaborately designed and symmetrical Federation Queen Anne substantial house in a park-like rural setting. It is constructed of timber and clad in timber weatherboards, double-hung timber windows, timber doors and extensive return verandah with decorative timber fretwork brackets, valance and columns, and face red brick (painted) chimneys accenting the picturesque roof design, which is clad with corrugated metal. HERCON criteria D.

(ii) The issue

Whether the property should be covered by a Heritage Overlay as proposed in the exhibited Amendment (HO225).

(iii) Evidence and submissions

R W & V M Williamson, 46 Railway Road, Rochester objected in writing to the proposal to apply an individual place Heritage Overlay to their property but gave no specific reasons.

The Council responded by referring to the Statement of Significance and that the property has been identified as of local aesthetic and historic significance.

(iv) Discussion

The Panel made an unaccompanied external inspection of the property and has no reason to dispute the significance of the property as outlined by the Council.

(v) Recommendation

The Panel recommends:

The Heritage Overlay (HO225) as proposed for 46 Railway Road, Rochester be adopted after correctly siting it on the maps.

7.3 1 Reserve Road, Rochester: HO222

(i) Statement of significance

What is Significant?

The house at 1 Reserve Road Rochester.

How is it Significant?

It is of a historic, social, technical and aesthetic cultural heritage significance to the Campaspe Shire.

Why is it Significant?

It is of historic significance as one of few substantial remaining early residences associated with the settlement of Rochester east of the Campaspe River.

HERCON criteria G

It is of aesthetic significance as a very good example of an elaborately designed late nineteenth/early twentieth century substantial house constructed of unpainted red brick, double-hung timber windows, timber doors, extensive verandah with decorative cast iron brackets, valance and columns, and face red brick chimneys accenting the picturesque roof design, which is clad with galvanised corrugated iron.

HERCON criteria A

It is of technical significance for the extensive use of decorative cast iron and the (former railway) iron gates.

HERCON criteria F

Recommendations 2005

(ii) The issue

The issue is the extent of the proposed individual place Heritage Overlay.

(iii) Evidence and submissions

Dr Jennette O’Rielly made a written submission to the Council on behalf of he mother as owner of the property.

It made four main points: the owner of the property did not receive notice of the proposed Amendment; the submission acknowledges the heritage significance of the dwelling on lot 4 but objects to the Heritage Overlay extending to the adjoining lots 1-3, 5 and 6 which are in the same ownership arguing, that there is sufficient garden curtilage to the dwelling

provided on lot 4 alone; and the recent additions to the dwelling have not been noted in the citation but the 'railway gates' at the front of the property are noted which were only purchased in the 1990's.

Appearance at the Hearing

Dr O'Rielly appeared at the Hearing and elaborated on her written submission. She also provided correspondence concerning the origin of the 'railway gates' which said they were made for another property in the 1950's.

The Council's response in relation to the submission was that a notice was sent to the property and the owner attended a consultation meeting, bringing the letter with her. It is not usual for Statements of Significance to mention all new features. The gates were noted but they were not directly linked to the dwelling. It is considered appropriate to reduce the mapping to lots 1, 2, 3 and 4 only and remove lots 5 and 6. The Council and their Heritage Adviser support the retention of the overlay not only on lot 4 but on the three lots which sit within the setback of the dwelling and lot 4 to Bridge Road. This would allow heritage considerations to apply to the development of those lots.

(iv) Discussion

The Panel has inspected the property from the abutting public roads and agrees with the Council position that it is important that heritage considerations apply when development would be proposed on any or all of lots 1-3 as well as lot 4. Lots 1-3 occupy the setback of the dwelling to Bridge Road which offers the main view to the dwelling albeit it has an address in Reserve Road. Lots 5 and 6 are to the rear of the dwelling and the rear extensions and no controls are necessary.

It is apparent that the gates at the street frontage are not railway gates at all and there seems little point in mentioning them in the statement of significance. We agree with the submitter that claiming scientific significance for the decorative cast iron is inappropriate – it should be mentioned as a significant element of the dwelling's design. We also agree with the submitter that a description of the house as a homestead is inappropriate.

(v) Conclusions and recommendations

The Panel recommends:

- **Map 21HO be amended to reduce the size of proposed HO222 by deleting lots 5 and 6 on LP 80533.**
- **The Statement of Significance for the property be amended to remove any implied significance for the 'railway gates', any implied scientific significance for the cast iron lace work and the description of the house as a homestead.**

7.4 Burnewang House, Elmore: HO239

(i) Statement of significance

What is Significant?

Burnewang House, outbuildings and the garden setting are of cultural heritage significance.

How is it Significant?

Burnewang House, outbuildings and gardens are of local historic, social and aesthetic significance to the Shire of Campaspe.

Why is it Significant?

Burnewang House, outbuildings and gardens are of historic and social significance as they provide tangible physical evidence of a turn of the century farming mansion with outbuildings and garden setting.

It is of historic and social significance for its association with the post World War I Soldier Settlement Schemes; and later in 1950 as a home run by the Returned Soldiers and Services League for returned soldiers.

It is of historic and social significance for its association with the Salvation Army [c1980s - c1990s] and the rehabilitation of those dependent on drugs and alcohol.

HERCON criteria A & G

It is of historic significance for its connection with the early pastoral settlement of the area [c1840s].

HERCON criteria A

It is of aesthetic and architectural significance as an intact example of an early twentieth century two storey mansion with outbuildings and a garden setting.

It is of architectural significance for its Federation Free-Classical architecture.

HERCON criteria E

It is a rare local example of a large and finely designed mansion that was designed by the pre-eminent Melbourne architectural firm of Reed, Smart and Tappin.

HERCON criteria B

(ii) The issue

The issue is whether the application of the Heritage Overlay is appropriate, whether permit exemptions might be applied via an Incorporated Document and whether the Statement of Significance properly reflects the property's significance.

(iii) Evidence and submissions

Mr Andrew Burnes' initial written submission for Burnewang Pastoral Company Pty Ltd (Burnewang) simply opposed the application of the Heritage Overlay to the property. His lawyers later supplied reasons for opposing the overlay. They included that the house does not have sufficient significance to warrant application of the overlay, the Statement of Significance fails to recognise recent works, the reference to 'farm complex' is too vague; the proposed tree controls are unnecessary and an undue imposition; the overlay area is disproportionate to significance; the planning authority had invalidly considered only heritage matters and not considered wider social and economic effects; the Amendment is not authorised by the Act; the Amendment is contrary to the Australian Constitution in that it amounts to a compulsory acquisition of property without compensation; and if the overlay is applied, it should be accompanied by an Incorporated Plan that provides for specified permit exemptions.

At the Hearing Mr Stuart Morris QC appeared on behalf of Burnewang. He identified the key concerns for his client as:

- The Amendment should only be adopted if the relevant controls are modified and clarified and changed to include an Incorporated Document, as proposed by Burnewang's lawyers, primarily to create permit exemptions for the place.

-
- There are legal matters which challenge the whole nature of the controls being proposed.

He submitted that his client accepted that Burnewang House probably had heritage significance, but that a judgement should be made in the terms of the Act and the Practice Note on *Applying the Heritage Overlay*. If significance was found then the property should be described as:

Burnewang House, and the associated land, as designated on the Planning Scheme Heritage Overlay Map.

He also commented on the currently proposed Statement of Significance proposed for Burnewang. He suggested that Ms Kemp's determination to find elements of social significance had led to the references to the RSL and the Salvation Army occupancies, which in themselves are interesting pieces of history, but not central to the significance of the place. He indicated that he preferred the briefer statement prepared as part of the Waranga Study.

His overriding position was that the Council should *regulate lightly* and, with a view to achieving such an approach, tendered a draft Incorporated Document.

He also submitted that the tree controls should not proceed.

Mr Staalkjaer made general submissions about the strategic basis of the Amendment and the resolutions of the Council. He pointed out that the Council resolution was to implement the recommendations of the Gap Study, but that this place was not identified or documented in the Gap Study, but rather had been identified and documented as part of the Waranga Study in 1988. Nevertheless the proposed Statement of Significance did not derive from the Waranga Study nor from the Gap Study.

In the post exhibition changes to the Amendment, the Council indicated a willingness to reduce the size of the Heritage Overlay on the property but this depended on an inspection being arranged.

Ms Kemp in her evidence made the following points:

The Heritage Overlay does not prohibit development, alterations or demolition. The planning permit process assists with the management of change while maintaining the cultural heritage significance of the place.

It should be noted that the owners have not been able to establish a suitable time for council to meet them and to discuss potential management practices.

It should also be noted that the owners have supplied council with a draft 'Management Plan' and a proposed Incorporated Document. These documents have the intent of supplying the owners with a number of permit exemptions. However, it is difficult to know how these exemptions were developed as a site inspection is yet to be arranged...

The property is of local cultural heritage significance and should be included as HO239 in the Schedule to the Heritage Overlay as part of the Amendment C50.

No change to clause 43.1 the Schedule to the Heritage Overlay is required in response to this submission or to clause 22.02.

(iv) Discussion

The Panel inspected this property in company with Mr Morris, the property manager and Mr McNulty from the Council.

It is the Panel's view that Burnewang House has heritage significance and warrants the application of the Heritage Overlay. However, we believe that the Statement of Significance should focus on the place as it currently exists and we question the relevance of the RSL and Salvation Army occupancy to the place as it stands. In this we agree with Mr Morris' submission that the original Waranga Study Statement of Significance is crisper and more useful for identifying elements of significance and guiding management.

The Panel also believes that the boundaries of the proposed overlay should be reviewed, the significant buildings should be clearly delineated and an Incorporated Plan based on that tabled by Mr Morris should be included in the Amendment. We have made some annotations or suggested changes to the Incorporated Plan included in Appendix D to this report. Many are simply for clarity and the more significant ones were discussed during the Hearing and accepted by Mr Morris for his client. We record that based on our inspection we do not have any difficulty with the list of exemptions as proposed in the Burnewang Incorporated Plan as suggested by Mr Burnes' lawyers.

In relation to tree controls, the Panel believes that there are important trees on the property within the potential Heritage Overlay area. If they are to be subject to heritage controls, however, they need to be precisely identified and described, perhaps as part of the Incorporated Plan, in order that all tree management works in the heritage area defined on the property are not caught up in the need for planning permits.

Mr Staalkjaer's procedural submissions are dealt with at Section 5.1 above.

Discussion of Mr Morris' submissions concerning the proper considerations of the Panel is included in Section 5.10.

(v) Recommendation

The Panel recommends:

That Burnewang House should be included as HO239 in the adopted Amendment, but only after the boundaries of the overlay are reviewed, the Statement of Significance is further considered and an appropriate Incorporated Plan providing for specified works exempt from the need for permission is included as part of the Amendment.

7.5 Tobacco Kilns, 91 Island Road, Gunbower Island: HO606

(i) Statement of significance

*The tobacco kilns, are **aesthetically** significant on a LOCAL level (AHC criterion E 1) as an example of a pair of c1960s rectangular gabled purpose built concrete/adobe block tobacco kiln buildings set in a rural scene of grassed land and gum trees creating an evocative cultural landscape.*

*The tobacco kilns are **historically** significant on a LOCAL level (AHC criteria A 4, B 2). The structures typify the tobacco kilns built in the district in the 1960s (?) and are one of a few remaining examples of buildings associated with the tobacco industry in the Gunbower-Patho-Torrumbarry area. They are of importance for their association, for over fifty years (1920s to 1970s) with developments of the*

tobacco industry which have had a significant role in the occupation and evolution of the Gunbower community.

*The tobacco kilns are **scientifically** significant on a LOCAL level (AHC criteria F1) as they demonstrate the technical design of a tobacco kiln of the c1960s era in northern Victoria.*

Overall, the tobacco kilns, are culturally significant at a LOCAL level.

This Statement is from the Gap Study and appears not to have been updated by Ms Kemp.

(ii) The issue

The issue is whether the buildings are of sufficient importance to warrant the proposed overlay.

(iii) Evidence and submissions

Mr Vince Catanese, the owner, in his written submission objects to the application of the Heritage Overlay to the tobacco kilns. He believes that the kilns have fallen into a state of disrepair and as such are a safety hazard (as a consequence he would not allow anyone to enter the property).

Ms Kemp in her evidence provided the following summary of significance:

The tobacco kilns are of historic and social significance as they provide tangible physical evidence of the character and type of development associated with the tobacco industry.

They are of historic significance for their association with the tobacco industry in the Gunbower - Patho - Torrumbarry area. This industry was an important early 20th century industry for the area.

The kilns are of technical significance as they demonstrate the particular design of the tobacco kiln for this period and locality.

They are of aesthetically significant for the architectural expression of their building type. They contribute to the rural cultural landscape.

This is rare surviving building type for the Gunbower region – once an important tobacco growing area.

(iv) Discussion

The Panel inspected these kilns and found them standing and relatively secure. They are constructed of concrete blocks, possibly made on site.

Whilst the importance of tobacco growing and drying was relatively short-lived in this area and these are relatively late constructions, the Panel was not provided with any evidence to suggest that they weren't important survivors from the industry and therefore believes that the Heritage Overlay is justified.

The Panel remains confused as to what the Council proposes to do about the Statement of Significance for this property. The statement available is drawn from the Gap Study, but is written using the AHC criteria. To establish consistency it is necessary for this statement to be re-written in a format which uses the HERCON criteria.

(v) Recommendation

The Panel recommends:

- That HO606 (Tobacco Kilns, 91 Island Road, Gunbower Island) be adopted.
- That before submitting the Amendment for approval, the Statement of Significance be redrafted to make it consistent with other statements included in the Amendment.

7.6 Water Towers, Tongala and Kyabram: HO511 and HO101

(i) Statement of significance

*The Kyabram water tower, John Allan Road Kyabram, is **aesthetically** significant on a LOCAL level (AHC criteria D 2, E 1) as a focal point in the townscape of Kyabram for over 77 years.*

*The Kyabram water tower, John Allan Road Kyabram is **historically** significant on a LOCAL level (AHC criteria A 4, H 1). Constructed in 1928, it is Kyabram's second water tower, and reflects growth in population by the mid-1920s and projection of town population to 4,000 as Kyabram experienced an increase in population through Soldier Settlement.*

Overall, the Kyabram water tower, John Allan Road Kyabram is culturally significant at a LOCAL level.

This element of the Statement of Significance is as it appears in the Gap Study and on HERMES.

What is Significant?

The Tongala Water Tower.

How is it Significant?

It is of local historic, technical and aesthetic cultural heritage significance to the Campaspe Shire.

Why is it Significant?

It is of historic significance for its integral function in the formation of the town under Closer Settlement in 1912. Part of the infrastructure work undertaken by the Tongala Waterworks Trust to supply the township with water was the building of a water tower, urgently needed by the next summer. HERCON criteria A.

It is of technical significance as a good example of a relatively early, but typical reinforced concrete water tank by the innovative engineer John Monash, owner of the Reinforced Concrete and Monier Pipe Construction Company (RCMPC) and for recognition that the top is the highest point for a surveyor's trigonometry point in the town and surrounding land. HERCON criteria F.

It is of aesthetic significance as a focal point in the townscape of Tongala for over 91 years. HERCON criteria D.

The above content is as it appears on HERMES.

HO511 Tongala Water Tower and HO101 the Kyabram Water Tower are of local historic, social, aesthetic and technical significance to the Campaspe Shire. HERCON criteria A, B, D, F & G.

The above paragraph is from Ms Kemp's evidence.

(ii) The issue

Whether the Kyabram and Tongala Water Towers are correctly identified and described in the Amendment.

(iii) Evidence and submissions

Mr Bruce Hammond, General Manager Technical Services, Goulburn Valley Water made a written submission to the Council. The submission did not object to the application of the Heritage Overlay to the water tower facilities at Kyabram and Tongala owned by that company provided a number of outcomes are achieved for both sites:

- Only the footprint of the towers are included.
- Existing and future use is protected.
- External paint controls are removed or better explained.

In addition, he said:

- The exhibition maps show the Kyabram tower in the wrong location.
- The Tongala site is entirely covered and this should be amended to the tower only.

Mr Daniel Hughes, Senior Engineer, Strategic Planning, Goulburn Valley Water made further submissions at the Hearing. He reinforced the written position of Goulburn Valley Water and commented that the revised post exhibition mapping as proposed by Council was acceptable.

He also indicated that works to sustain existing uses (replacement of pipework, ladders and communication assets) needed to be protected. He reinforced the need for clarity about the proposed paint controls.

In her evidence Ms Kemp made the following comment:

The submitter noted that the mapping for both towers did not accurately reflect the significant structures.

This has been noted and the mapping is to be revised to include the water towers only. The proposed overlay area will provide an appropriate curtilage to the significant fabric – both to retain a setting and to provide sufficient scope to protect the significant fabric.

(iv) Discussion

The Panel is satisfied that both the Kyabram and Tongala Water Towers are of sufficient importance to warrant the application of the proposed Heritage Overlays. The Panel also believes that the post exhibition reduced extent and placement on maps of the overlays is appropriate.

However, the Panel remains confused as to what is proposed as the Statement of Significance for these structures. As can be seen, there is a statement for Kyabram drawn from the Gap Study and HERMES (using the old AHC criteria), a statement for Tongala drawn from HERMES (using HERCON criteria) and a simple statement included in Ms Kemp's evidence. The Panel notes that there are no entries in the Victorian Heritage Database for either structure. The Panel believes that an appropriate Statement of Significance for each of these structures needs to be formulated and provided to the owner before the Amendment is submitted for approval.

As for the request for exemption from permits for maintenance work (including repainting of existing signage), the Panel points out that Clause 62 of the Planning Scheme provides that

repairs and routine maintenance are exempted from the need for a permit unless specifically required elsewhere in the Scheme. When the Heritage Overlay provisions are examined, they provide that a permit is required to:

*Carry out works, repairs and routine maintenance which **change the appearance of a heritage place or which are not undertaken to the same details, specifications and materials** (Panel emphasis).*

This arguably would let routine repair works including painting for maintenance purposes to occur without the need for a permit unless it is proposed to undertake it in a way which would change the appearance of the towers. Painting of hand rails, ladders and the like in the same colour as the existing colour would appear to fit within this exemption.

However it has to be said that when the other requirements of the Heritage Overlay for permits are examined, this does become uncertain. The other permit requirements in the overlay include permission to:

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

These requirements of the overlay always apply: in the case of unpainted surfaces at all times; and in the case of already painted surfaces, when scheduled-in.

It is possible that because the Scheme applies different permit requirements to painting from those applying to repairs and routine maintenance, that routine maintenance should not be seen as extending to painting.

This is a matter that the Council may like to discuss with DTPLI³⁸. In the meantime, the Panel suggests that if permission for painting is to be triggered for this overlay, a permit exemption for maintenance painting of already painted metal work etc in the same or similar colour to that existing could be included in an Incorporated Plan; or a permit exemption for maintenance painting might be included directly in the Heritage Overlay schedule itself.

(v) Recommendation

The Panel recommends:

- **That HO511 and HO101 (Kyabram and Tongala Water Towers) be adopted as shown in the post exhibition mapping and the Case Book response.**
- **That prior to submitting the Amendment for approval that the Statements of Significance for both these places (individual statements) be finalised taking account the views of Goulburn Valley Water.**
- **That painting controls should be applied as proposed but an Incorporated Plan be used to provide permit exemptions for routine maintenance involving painting of already painted surfaces in the same or similar colour to the existing; or a permit exemption for maintenance painting be specified in the Heritage Overlay schedule where the painting permission is triggered.**

³⁸ The effect of the recently proposed 'Vicsmart' changes to the VPPs on the operation of the overlay should also be considered.

7.7 Former Pettifer Motors building, 280-284 Allan Street, Kyabram: HO108

(i) Statement of Significance

The Panel was faced with two Statements of Significance for this property. The first Statement below is that included in the documents provided to the Panel for consideration. The second was included in the written statement of evidence provided by Ms Kemp.

The former Pettifer Motors Building at 280-284 Allan Street Kyabram is aesthetically significant on a LOCAL level (AHC criterion E1, D2) as an unusual example of a large commercial showroom which although functionalist in style, is impressive in its size and features a decorative almost castellated parapet.

The former Pettifer Motors Building at 280-284 Allan Street Kyabram is historically significant on a LOCAL level (AHC criteria A 4, H 1) as possibly the first purpose built car show room in the town and the site of the first Holden car to be displayed in this area.

The former Pettifer Motors Building at 280-284 Allan Street Kyabram is architecturally significant on a LOCAL level (AHC criteria E1) for its unusual Inter-War Functionalist Style, presenting an elaborate and attractive solid façade to the main street with its high decorative, almost castellated parapet which in effect hides an otherwise large plain corrugated galvanised iron shed behind.

The former Pettifer Motors Building at 280-284 Allan Street Kyabram is socially significant on a LOCAL level (AHC criteria G1), for the role it has played in showcasing some of the earliest domestic motor vehicles to early farming communities in this part of the State.

Overall, the former Pettifer Motors Building at 280-284 Allan Street Kyabram is culturally significant at a LOCAL level.

Ms Kemp's summary of significance was:

280–284 Allan Street (the former Pettifer's Motors) is of historic significance as one of the earliest purpose built car show room in the town.

It is of historic significance as the location of the first Holden car to be displayed in this area.

HERCON criteria A.

It is of social significance for the role it has played in showcasing some of the earliest domestic motor vehicles to farming communities in this part of the State.

HERCON criteria G.

It is of aesthetic significance as a regional example of a large Interwar commercial showroom.

It is of architectural significance for its Inter-war Styling. This includes the symmetrical Interwar masonry facades with their Dutch gables and bays.

HERCON criteria D.

The scale, style and building type is a rare regional surviving example.

HERCON criteria B.

(ii) The issue

The issue is whether an individual HO should apply to this site.

(iii) Evidence and submissions

Mr Geoff Beamish, the owner of the property, made a written submission to the Council objecting to the inclusion of his property in the Amendment and requested that HO108 not apply to his property.

Mr Beamish also claimed that he had not received correspondence in relation to the Amendment nor was he consulted on the completion of the Gap Study.

Mr Beamish made further submissions at the Panel Hearing:

- The building was built in 1922 as a General Motors garage (it wasn't a GMH garage).
- He bought it in 1955 and it ceased to operate as a garage in 1960.
- There are new aluminium windows in the façade.
- The building has a structural problem and is braced internally.

Mr Staalkjaer made a variety of submissions about proposed Individual Heritage Overlays. In relation to the Pettifer Motors building, these were in summary:

- This property was not assessed for an individual Heritage Overlay in the Gap Study as it was included in the Kyabram Commercial Precinct in that study and no subsequent study in accordance with Planning Practice Note No 1: Applying the Heritage Overlay or under the Burra Charter has been conducted to assess the property.
- There is no evidence as to who wrote this heritage citation report. It is not an assessment from the Gap Study or other underlying study which is an incorporated or reference document to the Planning Scheme. The heritage citation report has no status in the Planning Scheme and can therefore not be relied upon by the Council to place an individual place Heritage Overlay on 280-284 Allan Street Kyabram as part of the Amendment.
- The owner of the property received a letter from the Campaspe Shire regarding Amendment C50 dated 23 April 2012 addressed to 48 Tulloh Street, Kyabram. The letter contained a copy of the Authorisation A02168 and the generic '*Fact Sheet Campaspe Planning Scheme Amendment C50 – Heritage Gap Study*'. The letter did not contain the Explanatory Report as stated in the letter. The letter did not say what property address was affected by the notice. The owner could not ascertain from the letter, authorisation or fact sheet what property was affected by the Amendment. The letter did not contain the heritage citation report. The heritage citation report was only made available on the Campaspe Shire website post exhibition on 27 November 2012 and was not forwarded to the property owner.
- Ms Kemp states that the citation demonstrates that there has been appropriate research and investigation. However, as the citation was not undertaken as part of a heritage study as per Planning Practice Note No 1: Applying the Heritage Overlay or the Burra Charter, and the author of the research is unknown, this evidence is incorrect.
- Ms Kemp also stated under cross examination that she has not reviewed the individual Heritage Overlays, so Ms Kemp's evidence regarding this property is not based on the Gap Study but on a heritage citation report, which is and will not be part of the Planning Scheme, undertaken by an unknown person without any information about the rigor of the assessment. This raises serious concerns about Ms Kemp's evidence that this property should be included in the Amendment.

Ms Kemp in her evidence summarised the significance of the building as follows:

The former motor showroom is considered to meet the thresholds of local significance. It has its own intrinsic historic significance – as an early motor showroom and the place for the display and sale of the first Holden car in Kyabram.

It also demonstrates a regional architectural response to a new building type. The architectural response – the use of an Interwar styled parapet that has its aesthetic roots in the Arts and Crafts styling is of note – albeit this styling was common to most shopfronts and similar buildings during this period.

(iv) Discussion

After considering all of the submissions and evidence, and undertaking an external inspection of the building, the Panel believes that it is a distinctive and important building in Kyabram.

It appears that this building was included in the Kyabram Commercial Precinct as defined in the Gap Study. However, as a consequence of Ms Kemp's 2011 precinct review, it was later excluded from the precinct. Ms Kemp instead recommended that the building be included in an individual place Heritage Overlay in the Scheme.

The submissions of Mr Staalkjaer with respect to the relationship of the place to the Gap Study and the consequent validity of the Amendment were raised about many places in the Amendment. As we have said we find it unfortunate that the post Gap Study review work has not yet been documented and had it been so earlier, many concerns could have been alleviated.

The source of the various Statements of Significance remains something of a mystery to the Panel. We believe that the Council must clarify which Statement is to be used for the future management of this property should it be included in the Scheme. The Council should also ensure that the source of the statement is recorded in the new review document and the owners of the property are fully aware of the ultimate content of the Statement.

As we have said previously, the structural condition of a building is not a matter that this Panel should base its judgment on. Should the Heritage Overlay proceed, matters related to its structural adequacy can be dealt with as part of a permit process.

After considering all of the submissions and evidence related to the notifications sent to Mr Beamish, it appears that he did receive correspondence from the Council, but it seems that this correspondence may not have been clear as to what was proposed. Despite this, Mr Beamish not only made a written submission but appeared in person at the Hearing. Therefore the Panel does not believe that the difficulties associated with notification have put the owner to any great disadvantage.

(v) Recommendation

The Panel recommends:

- **That HO108 (Pettifer Motors, Allan Street, Kyabram) be adopted.**
- **That before the Amendment is submitted for approval, the Statement of Significance for the property should be reviewed and finalised, and the owners of the place be provided with a copy and have the implications explained to them.**

7.8 Dwelling, 10 Richards Street, Kyabram: HO109

(i) Statement of significance

*The house at 10 Richards Street, Kyabram is **aesthetically** significant on a LOCAL level (AHC criterion D2) as an example of the typical form and materials of a late nineteenth/early twentieth century modest cottage, constructed with a gable roofed timber frame and weatherboard cladding with a long skillion roof at the rear and two face red brick chimneys. The simple gable roof, and a skillion verandah is clad with galvanised corrugated iron.*

*The house at 10 Richards Street, Kyabram, is **historically** significant on a LOCAL level (AHC criterion A 4) as one of few remaining early residences associated with the period of Kyabram's settlement between its survey in 1875 and its consolidated settlement with the arrival of the railway in 1887.*

Overall, the house at 10 Richards Street, Kyabram, is culturally significant at a LOCAL level.

The above Statement is from the Gap Study.

(ii) The issue

The issue is whether the property is of sufficient local heritage significance to warrant the application of the Heritage Overlay.

(iii) Evidence and submissions

Mr Des Atkins and Ms Peta Tinetti, 10 Richards Street, Kyabram made a written objection to the Council and appeared at the Panel Hearing.

Their written submission objects to the inclusion of the property in the Heritage Overlay and claims that they not receive correspondence regarding the Amendment.

They also argued that the dwelling has no historical value as it was moved to that location and few original features of the dwelling exist. They also believe that the dwelling is in a very poor state of repair and a series of photos were provided to demonstrate this.

At the Hearing, the submitters claimed that the building was probably moved to the site between the late 1940s and 1960. They provided a copy of the town sewerage plan from 1940 that shows that the house was not on the block at that stage.

They also submitted that, despite claims about the construction materials for this house being typical of the late nineteenth/early twentieth century, they believe that this is not so, as the chimneys in particular are similar to those on the later Atkins family home in Oswald Street.

They also tabled photographs to highlight changes made to the building and their claim that it is in poor condition.

Ms Kemp in her evidence provided the following summary of significance:

It is of historic significance as it is associated with the period of Kyabram's settlement between its survey in 1875 and its consolidated settlement with the arrival of the railway in 1887.

It is of aesthetic significance for its vernacular architecture which is associated with its period of development.

It is a relatively rare surviving house of its period and this includes its scale and style.

She went on to respond to the owners' submission:

There is no evidence to support or disprove whether this house was relocated. The scale of the house is such that it appears more likely to have come from a township – although Land Selection houses could be relatively small.

It is noted that the relocation of housing did occur – particularly during the gold rushes. However, this was said to occur during the 1960s.

The design of the chimneys is more typical of an earlier period than c1960– although it is noted that the respondent said that they were built in that manner 'because he knew they functioned well.'

It is noted that most of the evidence with regard to its relocation is anecdotal and the fact that the chimneys do appear to be in a style that is earlier than 1960s it is still possible that it was not this particular house that was re-located.

Moreover, if one accepts that it was relocated from a neighbouring area then its form could still contribute to the cultural heritage significance of Kyabram – with regard to its intrinsic architectural significance.

(iv) Discussion

The Panel found the evidence provided by Mr Atkins and Ms Tinetti persuasive. It is obvious that this house was not sited at its current location in 1940 and given its architectural form it seems likely that it was moved from somewhere else after 1940. This may have been from within the town or elsewhere in the district.

Given that the Gap Study Statement of Significance relies on the expectation that this was an early Kyabram town house, it is difficult to see how the application of the Heritage Overlay can proceed on its current basis.

Ms Kemp counters this with her view that even if it was relocated from elsewhere it should also be seen as important for *its intrinsic architectural significance*.

(v) Recommendation

The Panel recommends:

That proposed HO109 (10 Richards Street, Kyabram) not be included in the Planning Scheme.

7.9 Former Butter Factory, 1 Edis Street, Kyabram: HO107

(i) Statement of significance

The former Kyabram Butter Factory, Kyabram is of aesthetic significance at a LOCAL level (AHC criterion E 1), as it forms part of the cultural landscape of Kyabram and Building 3 is a good example of the International Style of architecture.

The former Kyabram Butter Factory, Kyabram is of historical significance at a LOCAL level (AHC criterion H 1) as one of Kyabram's earliest industries.

Overall, the former Kyabram Butter Factory, Kyabram is of LOCAL cultural significance.

This Statement is as it appears in the Gap Study.

(ii) The issue

Whether the property is of sufficient significance to warrant the application of the Heritage Overlay.

(iii) Evidence and submissions

Mr John Stroomer of 1 Edis Street, Kyabram, the owner of the property, objected to the its inclusion in the Heritage Overlay for the following reasons:

- The devaluation of the site.
- Restrictions of use and future development and rezoning of the site.
- The site may be of value in the future as a residential zone.
- Buildings are a mixture of styles/age/deterioration that do not really present as something that is worthy of a heritage classification.
- The age of the buildings does not truly represent what the community would class as truly of heritage value.
- Buildings are not of cultural significance for the local community or of any real value other than for use as industrial space.

Mr Stroomer appeared at the Hearing and took the opportunity to clarify the history of the complex. He also produced original drawings for the New Store (built in the early 1960s). This analysis provided an understanding of the origins and functions of the buildings that were used as part of the Butter Factory operation.

He also elaborated on his view that the complex is not of heritage significance to Kyabram, pointing to the fact that its operation was relatively short-lived and does not rate a mention or depiction on the town's Heritage Mural.

Mr Stroomer also tabled a copy of a Shire of Campaspe Heritage Citation Report, which had otherwise not been provided to the Panel in the Council's documents. This includes an expanded and revised Statement of Significance.

Ms Kemp in her evidence made the following points:

Cultural heritage significance

HO107 1 Edis Street Kyabram (former Butter Factory) is of local historic, social and aesthetic cultural heritage significance to the Campaspe Shire.

HERCON criteria A & D.

Summary of significance

It is of historic significance as it is one of Kyabram's earliest industries.

HERCON criteria A.

It is of aesthetic significance as it forms part of the cultural landscape of Kyabram and Building 3 (factory and storeroom) is a good example of a regional response to the International Style of architecture.

HERCON criteria D.

This appears to be the Statement of Significance included in the Shire of Campaspe Heritage Citation Report, tabled by Mr Stroomer.

She went on to respond to the claim of a lack of heritage significance:

HO107 1 Edis Street meets the thresholds for local cultural heritage significance. The Butter Factory is integral to understanding the historic development of Kyabram and region.

Its architecture demonstrates a typical design that was used in the development of this industry.

(iv) Discussion

The Panel inspected the complex in company with Mr Stroomer and Mr McNulty from the Council. This inspection assisted in gaining an understanding of the sequence of development and its use as a butter factory, later as a store by Murray Goulburn, and more recently as a pottery workshop.

It is difficult to accept that the Butter Factory was not an important complex in a town where development in part relied on the growth of the dairy industry in the district. However, it is important that owners have a clear understanding as to what is significant and why. In the end it is this definition that will assist the owner in managing his future use and development of the site.

(v) Recommendation

The Panel recommends:

- **That proposed HO107 (Former Butter Factory, 1 Edis Street, Kyabram) be adopted.**
- **That before the Amendment is submitted for approval, the elements of significance on this site be clearly identified and the Statement of Significance be reviewed to reflect this.**

7.10 National Trust trees

The National Trust submission noted that a number of its classified trees may not be included in Heritage Overlays under the Planning Scheme, including some identified since the Gap Study was completed.

(i) Recommendation

The Council should consider reviewing the currency of its individual tree listings in light of the National Trust submission and include some or all of the trees in a later Amendment or possibly Part 2 of the current Amendment providing notice is given and strategic justification provided.

7.11 Other submissions

There were a number of other submissions from public agencies which did not object to the Amendment. We have noted that they were made but need not comment on them.

8 Consolidated recommendations

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

Amendment C50 should be split.

Part 1 should comprise those elements which we do not specifically recommend be included in Part 2.

Part 1 should proceed to adoption.

The elements included in Part 2 should be subject to further review, exhibition and assessment (or alternatively omitted from the Amendment and processed via a subsequent amendment).

This principal recommendation is subject to the following further general and particular recommendations:

GENERAL RECOMMENDATIONS:

- 1 A document should be compiled outlining the post Gap Study review work methodology and outcomes, not only in relation to the precincts but also the individual places.

This document should be proposed for inclusion in the Planning Scheme as a reference document as component of Part 2 of the Amendment (or a later amendment).

The review document should be subject to public notice and/or review.

- 2 Before adopting them as a component of Part 1, the Council should undertake a further review of the Statements of Significance prepared for this Amendment with a view to adopting statements that clearly meet the Burra Charter and Heritage Victoria guidelines.
- 3 In Clause 22, in the Statement of Significance for each precinct, before the list of contributory properties, include a sentence to indicate that some of the contributory premises have their own individual Heritage Overlays in addition to contributing to the precinct values.

Notations should also be added to the Clause 22 maps to the same effect.

- 4 In Clause 22, delete the word 'residential' in the first paragraph under the heading Statements of Significance for heritage precincts.
- 5 The Council should discuss with DTPLI the ongoing difficulties associated with the inability to have dual mapping of properties as both individually significant and as part of a precinct.
- 6 There should be a complete review of the Planning Scheme maps for this Amendment to identify any properties where the application of the Heritage Overlay is being 'inadvertently' altered; and for each identified property, a check should be made of the mailing lists for earlier notice to ascertain whether direct notice was given to the owners/occupiers in accordance with the Act. This should include both the property address for the old and new position of the overlay where relevant.

Where such properties are identified as having been inadequately notified, either:

- they should be included in Part 2 of the Amendment for further processing; or
- they should be deleted from the Amendment and its further processing, and included in a subsequent amendment.

7 Properties affected by 'mapping anomalies' as referred to in the officer report to Council in December 2007 should also be reviewed for any further required notice and deferred if necessary to Part 2 of the Amendment or a later amendment.

Any submissions received in response to any further notice should be processed in the manner provided by the Act before a decision is made upon the application of Scheme changes to those properties.

8 The Council should discuss with DTPLI the appropriate way to revise the Planning Scheme maps for the Amendment (or Part 1 of it), assuming the Amendment (or Part 1) is to proceed to adoption in absence of these properties for which further notice and processing is required.

9 The 36 places (churches, halls and schools) proposed as a 'group' listing should be included in Part 2 of the Amendment and further reviewed. Alternatively they should be deleted from the Amendment and be included in a later amendment after the further review.

Individual Statements of Significance should be prepared for each of these places and their proposed inclusion in the Heritage Overlay be subject to further notice and processing in accordance with the Act whether as Part 2 of the Amendment or a later amendment.

RECOMMENDATIONS CONCERNING PRECINCTS AND INDIVIDUAL PROPERTIES WITHIN THEM:

10 Subject to our general recommendations (nos 1 – 9), the Old Echuca Township Precinct (HO1) should be adopted as exhibited.

11 Subject to our general recommendations (nos 1 – 9), the Echuca Central Precinct (HO2) be adopted as exhibited, including the full easterly extent of the precinct in Anstruther Street.

12 Subject to our general recommendations (nos 1 – 9), the post exhibition version of the proposed Echuca Central Residential Precinct (HO3) be included in the Planning Scheme, but that boundaries of the precinct be re-drawn to exclude the properties at 323 and 371 High Street and 28 and 30 Francis Street.

13 The property at 357a High Street should be changed to non-contributory to the precinct.

14 The property at 70 Hopwood Street, Echuca should be included in the list of contributory properties to HO3 in Clause 22 consistent with the map in that clause.

15 The Campaspe Shire should consider a further amendment to the Planning Scheme to include properties omitted at the southern end of precinct HO3 and to introduce an individual Heritage Overlay over the property at 371 High Street.

16 Subject to also to our general recommendations (nos 1 – 9), the Echuca East Precinct (HO86) should be included in Part 2 of the split Amendment or abandoned as part of Amendment C50 and dealt with by a subsequent amendment.

The heritage controls for this area should be revisited. A group or serial listing of saw millers' cottages should be considered as well as a small group or precinct listing of Pakenham Street commercial properties. The saw mill should be considered for an individual place Heritage Overlay or perhaps as part of a thematic listing with its associated cottages. All other properties in the area should be reviewed to determine whether an individual place Heritage Overlays can be supported for any of them.

The revised heritage controls should be re-exhibited either as a component of part 2 of the Amendment or as a new amendment, and processed in accordance with the Act.

- 17 Subject to our general recommendations (nos 1 – 9), the Echuca North Residential Precinct (HO87) should be adopted as exhibited except that:
 - a. the southern boundary of the precinct should be contracted to remove properties in Bolton Street east southwards of No 16 and in Dickson Street west southwards of No 9; and
 - b. No 7 Connelly Street should be re-designated as a non-contributory building.
- 18 Subject to our general recommendations (nos 1 – 9), the post exhibition version of Kyabram Commercial Precinct (HO127) should be included in the Planning Scheme subject to the following:
 - The status of 202 Allan Street within the precinct be changed to non-contributory; and
 - the properties at 153 to 177 Allan Street be included within the precinct as non-contributory.
- 19 Subject to our general recommendations (nos 1 – 9), the Kyabram Union Street Precinct should be included in the Planning Scheme as exhibited subject to the following changes:
 - the properties at 12 and 24 Union Street be re-designated as non-contributory;
 - the property at 2 Union Street be removed from the list of contributory buildings;
 - the proposed tree controls for this precinct not proceed; and
 - the proposed paint controls for this precinct not proceed.
- 20 Subject to our general recommendations (nos 1 – 9), the proposed Rochester Central Precinct (HO203) should be adopted including that the full extent of the Rochester railway complex individual place overlay (HO210) be included in and identified as contributory to the precinct.
- 21 Subject to our general recommendations (nos 1 – 9), the Rushworth Central Precinct (HO301) should be adopted subject to the following:
 - The property at 9 Esmonde Street should be redesignated as non-contributory; and
 - before adoption, the Council should review the issue of whether contributory status should be applied to 14 Horne Street (whether or not that property is part of a joint property at 14-16 Horne Street).
- 22 Subject to our general recommendations (nos 1 – 9), the Lockington Precinct (HO401) as revised in the post exhibition documents should be adopted except that No 4 McColl Street should be redesignated as non-contributory.

-
- 23 The Council should consider undertaking a further review of the significance of the town of Lockington and if appropriate propose an alternative precinct designation to be processed via a subsequent amendment.
 - 24 The tree controls in the Lockington Precinct should be applied only to specified trees on public land by specifying this in the Heritage Overlay Schedule or by application of exclusions through the Incorporated Plan.
 - 25 Subject also to our general recommendations (nos 1 – 9), the Tongala Precinct (HO501) should be included in Part 2 of this Amendment or deferred to a later amendment so that the extent of the precinct can be reviewed with a view to defining a Mangan Street precinct and a separate Miller Street precinct or group with consequential changes to the Statement(s) of Significance.
 - 26 The tree controls for the Tongala Precinct(s) should be applied selectively to particular trees of significance by application of exemptions in the Incorporated Plan.
 - 27 The property at 52 Mangan Street, Tongala, should not be recognised as contributory to the Tongala Precinct.
 - 28 Subject to our general recommendations (nos 1 – 9), the Balaclava Hill Open Cut Mine and Whroo Township Site Area (HO312) as exhibited should be adopted.

INDIVIDUAL PLACES OUTSIDE PRECINCTS:

- 29 HO227 should not include the SES buildings at the rear of the RSL Memorial Hall in Victoria Street, Rochester.
- 30 HO225 as proposed for 46 Railway Road, Rochester, should be adopted after correctly siting it on the maps.
- 31 Map 21HO should be amended to reduce the size of proposed HO222 by deleting lots 5 and 6 on LP 80533.
- 32 The Statement of Significance for the property at 1 Reserve Road, Rochester be amended to remove any implied significance for the ‘railway gates’, any implied scientific significance for the cast iron lace work and the description of the house as a homestead.
- 33 Burnewang House, Elmore, should be included as HO239 in the adopted Amendment, but only after the boundaries of the overlay are reviewed, the Statement of Significance is further considered and an appropriate Incorporated Plan providing for specified works exempt from the need for permission is included as part of the Amendment.
- 34 HO606 (Tobacco Kilns, 91 Island Road, Gunbower Island) should be adopted, except that the Statement of Significance should be redrafted so as to make it consistent with other statements included in the Amendment.
- 35 HO511 and HO101 (Kyabram and Tongala Water Towers) should be adopted as shown in the post exhibition mapping and in the Case Book response.
- 36 Before adoption, the Statements of Significance for the Kyabram and Tongala Water Towers (individual statements) should be finalised taking account the views of Goulburn Valley Water.
- 37 Painting controls should be applied as proposed in HO511 and HO101 but an Incorporated Plan should be used to provide permit exemptions for routine

maintenance involving painting of already painted surfaces in the same or similar colour to the existing; or a permit exemption for maintenance painting be specified in the Heritage Overlay schedule where the painting permission is triggered.

- 38** That HO108 (Pettifer Motors, Allan Street, Kyabram) be adopted as exhibited, except that, before adoption, the Statement of Significance for the property should be reviewed and finalised, and the owners of the place be provided with a copy and have the implications explained to them.
- 39** The proposed HO109 (10 Richards Street, Kyabram) should not be adopted.
- 40** HO107 (Former Butter Factory, 1 Edis Street, Kyabram) be adopted except that before adoption, the elements of significance on this site be clearly identified and the Statement of Significance be reviewed to reflect this.
- 41** The Council should consider reviewing the currency of its individual tree listings in light of the National Trust submission and include some or all of the trees in a later amendment, or possibly Part 2 of the current Amendment providing notice is given and strategic justification provided.

Appendix A: List of submitters

No	Submitter		Organisation	Property
1	Michael and Mandy	Flett		ECHUCA
2	Cheryl	Macansh		RUSHWORTH
3	Bruce	Muirhead		ECHUCA
4	Thomas	Cybula	VicRoads	BENDIGO
5	Lindsey	Macague	Rochester SES	ROCHESTER
6	R & V	Williamson		ROCHESTER
7	Leon & Marlene	Jay		ECHUCA
8	Bruce	Dixon	V-Line	
9	Andrew	Burnes	Burnewang Pastoral Company Pty Ltd	ELMORE
10	Emma	Demaine	VicTrack	
11	Jennette	O'Rielly		ROCHESTER
12	Norm & Aileen	Briggs		KYABRAM
13	Robert & Marie	Bullingham		KYABRAM
14	Gregory & Bronwyn	Hancock		ECHUCA
15	Kevin	Mason		RUSHWORTH
16	John & Miriam	Young		KYABRAM
17	John & Miriam	Young		KYABRAM
18	Vince	Catanese		GUNBOWER
19	Bruce	Hammond	Goulburn Valley Water	TONGALA and KYABRAM
20	Bob	Eliason		TONGALA
21	D V	Boundy		RUSHWORTH
22	Neil	Repacholi	Goulburn Murray Water	
23	Peter & Belinda	Berner		KYABRAM
24	Michael & Kerri	Staalkjaer & Walker-Staalkjaer		KYABRAM
25	Michael & Kerri	Staalkjaer & Walker-Staalkjaer		
26	Michael	Staalkjaer	Union Street Residents	KYABRAM
27	Michael	Staalkjaer	Head petitioner	KYABRAM
28	Clem and Stephen	Mullins		KYABRAM
29	Les & Carolyn	Dillon		KYABRAM
30	Peter & Lynn	Vick		KYABRAM
31	Jennifer	Doolan		KYABRAM

32	Tina	Levens		KYABRAM
33	Ann-Maree & John	Dillon & O'Shanassy		KYABRAM
34	James & Joy	Stacey		KYABRAM
35	Glenda	Walker		KYABRAM
36	John & Lillian	Viney		KYABRAM
37	Alex & Helen	Munro		KYABRAM
38	Geoffrey & Glenda	Ward		KYABRAM
39	David & Ruth	Green		KYABRAM
40	Craig & Sharon	Gemmill		KYABRAM
41	Lynette	Mahncke		TONGALA
42	Mitchell & Megan	Kelsey		TONGALA
43	Kevin & Barbara	Crisp		ECHUCA
44	Kerrie	Campbell		KYABRAM
45	Daniel & Kristie	Arnold & Day		KYABRAM
46	Angela	McGregor		KYABRAM
47	Mark	McCarthy		KYABRAM
48	Mick & Jan	Coventry		KYABRAM
49	Herbert	Prior		KYABRAM
50	Jarrah	Lukjanov	Aldi Stores	ECHUCA
51	Amanda	Johnson	Department of Sustainability and Environment	ECHUCA
52	Paul	Roser	National Trust of Australia (Victoria)	
53	Geoff	Beamish		KYABRAM
54	Jeanie	Borthwick		KYABRAM and TONGALA
55	Des	Atkins		KYABRAM
56	John	Stark	Country Fire Authority	
57	John	Stroomer		KYABRAM

Note: Submissions 51-57 inclusive were received after the closing date.

Appendix B: List of documents from Panel Hearing

DOCUMENT	DATE	DESCRIPTION	PRESENTED BY
1	5.12.12	Campaspe Shire Council Submission	Egils Stokans for Campaspe Shire Council (Council)
2	5.12.12	Maps showing existing HOs, changes as proposed at Exhibition and post Exhibition changes	Egils Stokans for Council
3	5.12.12	Details of post Exhibition changes	Egils Stokans for Council
4	5.12.12	Statement of evidence from Deborah Kemp (called by Council)	Deborah Kemp
5	5.12.12	Submission from Bruce Muirhead re 347 High Street, Echuca	Bruce Muirhead
6	5.12.12	Submission from Stuart Morris QC, on behalf of Burnewang Pastoral Company Pty Ltd	Stuart Morris QC
7	5.12.12	Copy of City of Echuca Conservation Study by Andrew Ward	Egils Stokans for Council
8	6.12.12	Submission with attachments from Kevin and Barbara Crisp re 106 Hovell Street, Echuca.	Kevin Crisp
9	6.12.12	Submission from Bronwyn and Greg Hancock re 323 High Street, Echuca with attached expert reports on condition	Bronwyn and Greg Hancock
10	6.12.12	Submission from John Stroomer re Kyabram Butter Factory	John Stroomer
11	6.12.12	Submission by Peta Tinetti and Des Atkins re 10 Richards Street, Kyabram	Peta Tinetti and Des Atkins
12	6.12.12	Submission from Goulburn Valley Water re Kyabram and Tongala Water Towers	Daniel Hughes, Senior Engineer, Strategic Planning, Goulburn Valley Water
13	6.12.12	Submission with attachments from Valerie O'Rielly re 1 Research Road, Rochester	Jennette O'Rielly
14	6.12.12	Copy of letter concerning origins of gates at 1 Research Road	Jennette O'Rielly
15	19.12.12	Supplementary submission by Council (relating to Kyabram)	Egils Stokans for Council
16	19.12.12	Statement of evidence from Deborah Kemp Part 111 (called by Council)	Deborah Kemp
17	19.12.12	Supplementary evidence from Deborah Kemp re East Echuca (called by Council)	Deborah Kemp
18	19.12.12	Documents relating to public notice of Amendment provided by Council	Egils Stokans for Council

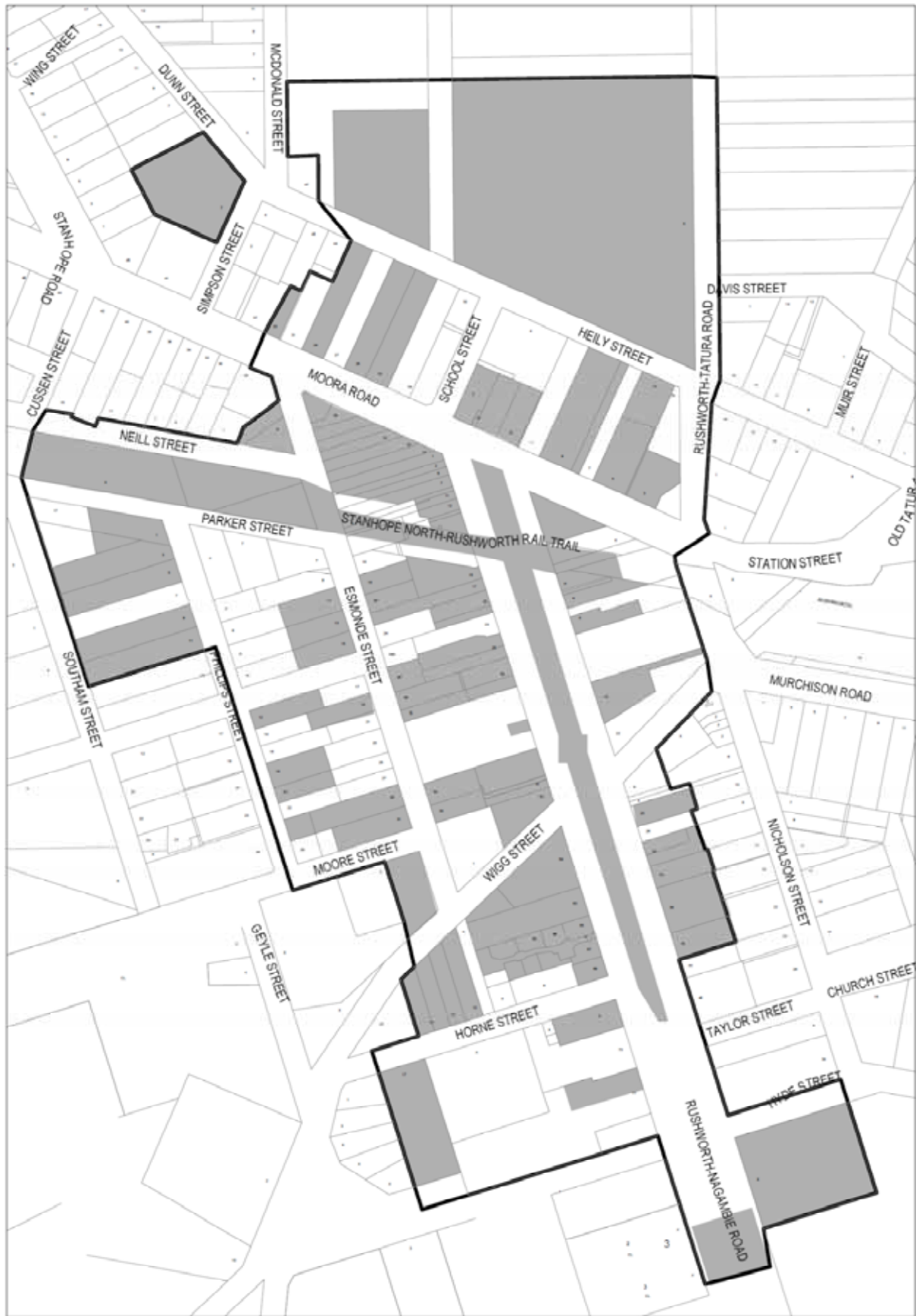
19	19.12.12	Statement of evidence from Justin Francis (called by the National Trust of Australia (Vic))	Justin Francis
20	19.12.12	National Trust submission	Paul Roser
21	20.12.12	Submission from Jenny Borthwick re 176 Allan Street, Kyabram and 64 Mangan Street, Tongala	Kerri Walker-Staalkjaer
22	20.12.12	Submission from Glenda Walker re 202 Allan Street, Kyabram	Kerri Walker-Staalkjaer
23	20.12.12	Submission by Michael Staalkjaer with attachments	Michael Staalkjaer
24	20.12.12	Photos of Union Street, Kyabram	Michael Staalkjaer
25	20.12.12	Copy of Kyabram petition	Michael Staalkjaer
26	20.12.12	Statement of evidence from Bryce Raworth (called by Michael Staalkjaer)	Bryce Raworth
27	20.12.12	Sewerage map of Kyabram	Bryce Raworth
28	20.12.12	City of Bayside Heritage Policy (introduced by Amendment C38)	Egils Stokans for Council
29	20.12.12	Review of City of Bayside Heritage Precincts by Bryce Raworth	Egils Stokans for Council
30	20.12.12	VCAT Decision: Belvurn Partners and Associates Pty Ltd v Melbourne CC (2005)	Egils Stokans for Council
31	20.12.12	Photos of inter-war bungalows in City of Bayside.	Egils Stokans for Council
32	20.12.12	Submission by John and Lillian Viney re 16 Union Street, Kyabram	John Viney
33	20.12.12	Submission by Herb Prior re 3 and 5 Union Street, Kyabram (read by Peter Berner)	Herb Prior
34	20.12.12	Submission by Miriam Young re 23 & 25 Union Street, Kyabram.	Miriam Young
35	20.12.12	Submission by Ruth and David Green re 34 Union Street	Ruth Green
36	20.12.12	Submission by Angela McGregor re 29 Union Street, Kyabram	Angela McGregor
37	20.12.12	Submission by Marie and Robert Bullingham re 9 Union Street (principally photos and plans)	Marie and Robert Bullingham
38	20.12.12	Submission by Peter and Belinda Berner re 33 Union Street, Kyabram	Peter and Belinda Berner
39	20.12.12	Submission and photos by Mick Coventry re 4 Union Street, Kyabram	Mick Coventry
40	20.12.12	Submission by Ann-Maree Dillon and John O'Shanassy re 11 Union Street, Kyabram.	Ann-Maree Dillon

41	20.12.12	Submission by Kerrie Campbell re 30 Union Street, Kyabram	Kerrie Campbell
42	20.12.12	Copy of Union Street covenant	Egils Stokans for Council
43	20.12.12	Reply submission from Council	Egils Stokans for Council
44	20.12.12	Model for proposed church, hall and school citations	Egils Stokans for Council

Appendix C: Post-exhibition changes proposed by Council



HO128 Union Street Precinct, Kyabram



H0301 Rushworth Precinct



HO401 Lockington Precinct



HO501 Tongala Precinct



H02 Echuca Central Precinct



H03 Echuca Central Residential





H01 Echuca Township Precinct



H087 Echuca North Residential Precinct



H086 Echuca East Residential Precinct



HO203 Rochester Precinct



HO312 Whroo

Post Exhibition Changes

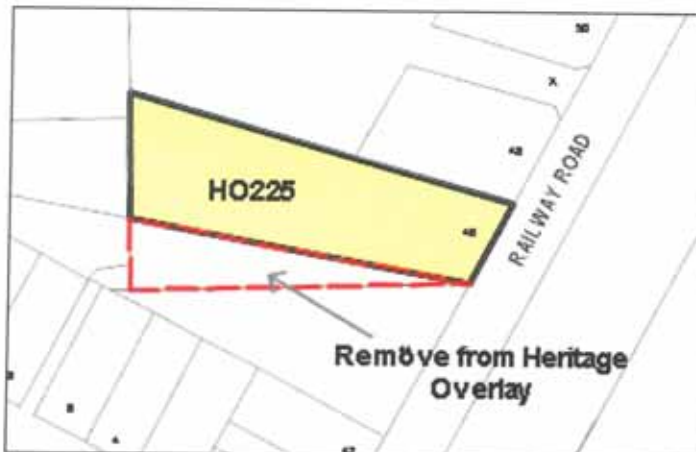
1. Changes to individual heritage places

A number of minor changes to individual properties have been recommended following exhibition and amendment C50. These changes have come about as a result of clerical errors noticed during exhibition and also as a result of submissions received. The changes are as follows:

Exhibited Map Number 20 – HO 225, 46 Railway Road Rochester, part of neighbouring garden has been incorrectly included under heritage overlay for this property. Mistake was picked up when reviewing submission 6 in the case book.



HO225 as exhibited

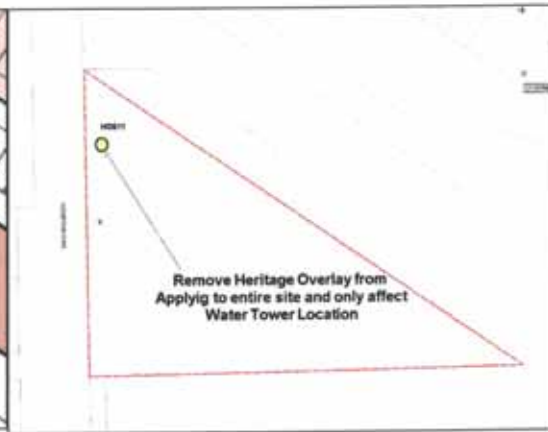


Corrected mapping for HO225

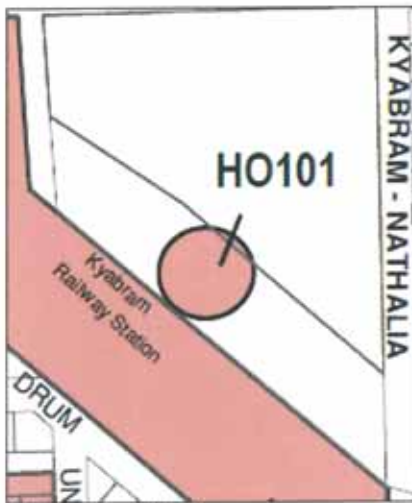
Exhibited Map Numbers 23 & 26 – HO 511, Tongala Water Tower, & HO101, Kyabram Water Tower.
Tongala – Heritage Overlay was incorrectly applied to entire site when it should only affect the area of the water tower,
Kyabram – Heritage Overlay was exhibited covering the incorrect structure and is to be corrected.
Change has been requested by GVW in Submission 19 in the case book.



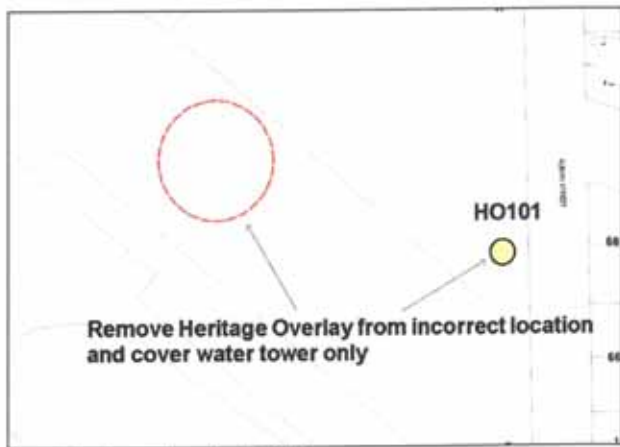
HO511 as exhibited



Corrected mapping for HO511

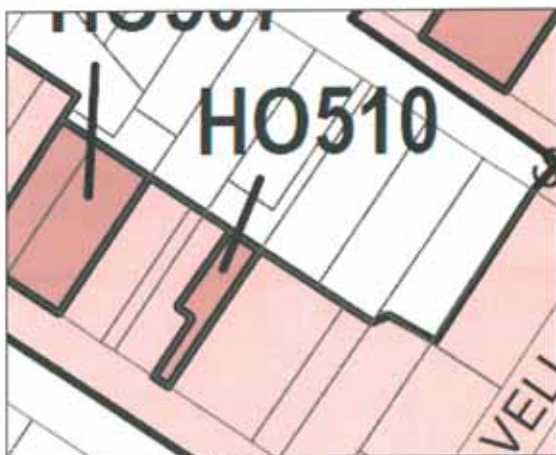


HO101 as exhibited

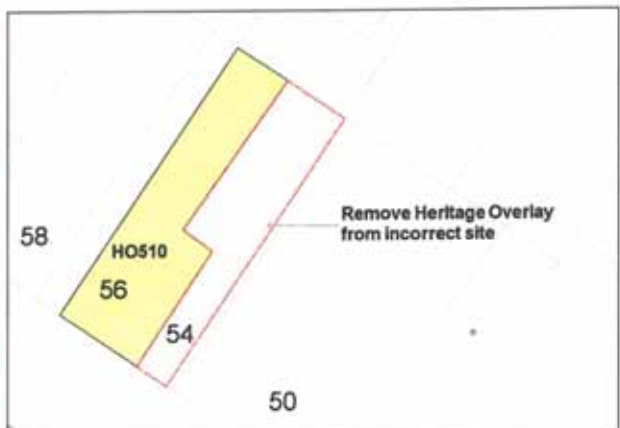


Corrected mapping for HO101

Exhibited Map Number 23 – HO510, 56/54 Mangan Street Tongala – Tongala Shire Hall, Heritage Overlay had been incorrectly mapped on number 54 when it should be 56 Mangan Street. 54 Mangan Street should contributory to the precinct only.

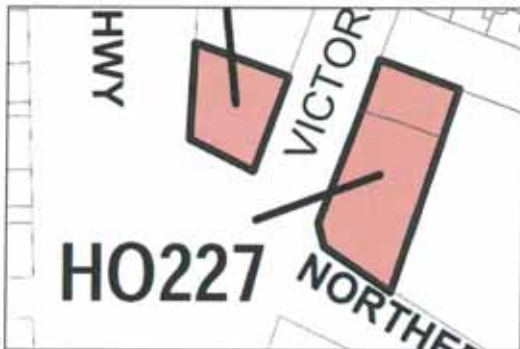


Exhibited location of HO510



Corrected Mapping for HO510

Exhibited Map Number 20 – HO 227, 5 Victoria Street Rochester – RSL Hall, Heritage Overlay has been incorrectly applied to new sheds to rear of Hall where SES operates. It is proposed to remove the HO from the SES buildings to rear of RSL building in response to Submission 5 in case book.

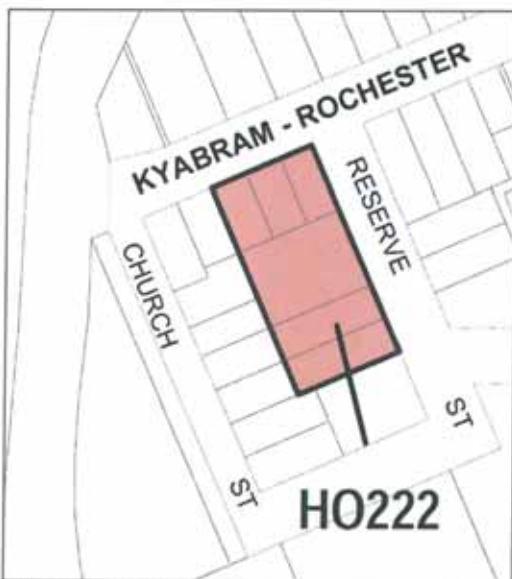


HO227 as exhibited



Corrected Mapping for HO227

Exhibited Map Number 21, HO 222, 1 Reserve Street Rochester – Remove Heritage Overlay from southern two lots on site as they do not contribute to the heritage significance of the place. Change is made in response to Submission 11 in the case book. This submission sought further reductions in the HO however they can not be accommodated as they would affect the heritage significance of the place. The case book outlines additional information in regards to this property.



HO222 as exhibited



Corrected Mapping for HO222

Exhibited Map Number 29, HO 239 – Burnewag House and Farm Complex – Submission 9 Burenwang House – Council is willing to reduce the extent of heritage overlay applying to the property to only affect those areas only that are significant – ie House, garden and Stable – however to appropriately ascertain the extent of the overlay a site visit is required to verify. At this time consent to access to the property has not been provided.



Exhibited location of HO239

Exhibited Map Number 10, HO 26 – Blacksmith's Shop, Rotary Park, Echuca – heritage place currently covered by Heritage Overlay but is mapped in the wrong location, amendment sought to rectify this however conversation with the Rotary Park has indicated exhibited mapping is still wrong location – we are awaiting confirmation from the club as to the correct location of the blacksmith's shop so it can be mapped correctly.



Exhibited location of HO26

2. Changes to Precincts

A number of minor changes are also being recommended to a number of the precincts following the exhibition period, these are both as a result of errors noted during exhibition and as a result of submissions received. The changes are as follows:

HO1 Old Echuca Township Area

Rename from Old Echuca Township Area to Old Echuca Township Precinct – for consistency across each precinct.

In High Street correct Street address for contributory places, listed in exhibited documents as 527-531, should read 531-535

Map of precinct has been annotated for clarity within the local policy.

HO2 Echuca Central Area

Rename from Echuca Central Area to Echuca Central Precinct – for consistency across each precinct.

Map of precinct has been annotated for clarity within the local policy.

In response to submission 50 – Alter Echuca Central Precinct (HO 2) to remove Aldi site and neighbouring sites to east from precinct. Historically the existing HO1 precinct has applied to these sites however significant change has occurred to allow the development of the Aldi Store and its associated car parking, neighbouring properties to the east are vacant and new build and a church with individual controls (which will remain). It is therefore appropriate to alter the precinct in this location.



Exhibited HO2 Precinct



Amended HO2 Precinct

HO3 Francis Street Precinct

Francis Street Precinct (HO3) should be renamed "Echuca Central Residential Precinct". historically the precinct was based around Francis Street however this amendment has expanded the amendment to cover more streets of equal importance and it is not appropriate to name the precinct after one street within that precinct. The revised name will also better link with the other residential precincts in Echuca.

Map of precinct has been annotated for clarity within the local policy.

Francis Street Precinct (HO3) – Exhibited Map Number 9 – amend precinct boundary to remove new units on High Street – Nos 2/366 High Street Echuca & 2/368 High Street Echuca (are both modern units to rear of heritage properties and should not be included in HO).

As a result of Submission 1 in the case book – Alter Clause 22.02 to list 70 Hopwood Street as being contributory to the precinct (HO3) – is mapped this way but by error the number was left off the list in the written statement.

In addition in response to Submission 7 amend precinct to remove 357A High Street from being contributory (is a modern unit built in recent times and should not be contributory to the precinct).



Exhibited HO3 Precinct



Amended HO3 Precinct

HO86 Echuca East Residential Precinct

Map of the precinct has been annotated to read "HO 86 Echuca East Residential Precinct (Note - Shaded properties are contributory to precinct)" for clarity in line with all other precincts within the local policy.

HO87 Echuca North Residential Precinct

Map of the precinct has been annotated to read "HO 87 Echuca North Residential Precinct (Note - Shaded properties are contributory to precinct)" for clarity in line with all other precincts within the local policy.

HO127 Kyabram Commercial Precinct

Map of precinct has been annotated for clarity within the local policy.

Properties with individual controls within the precinct have been made contributory to the precinct. These include 222-232 Allen Street as well as 243 Allen Street being the Richards Buildings and the Plaza Theatre. In addition Street number 233 had been mapped as being contributory to the precinct but in the local policy it had not been included in the written text as being contributory, this has also been fixed.

The properties to be made contributory to the precinct have been given additional notification to this effect.

The shape of the precinct has been retracted slightly to remove non-contributory places and the result is better definition to the precinct as is indicated in the following mapping.



Exhibited HO127 Precinct



Amended HO127 Precinct

HO128 Kyabram Union Street Precinct

Map of precinct has been annotated for clarity within the local policy.

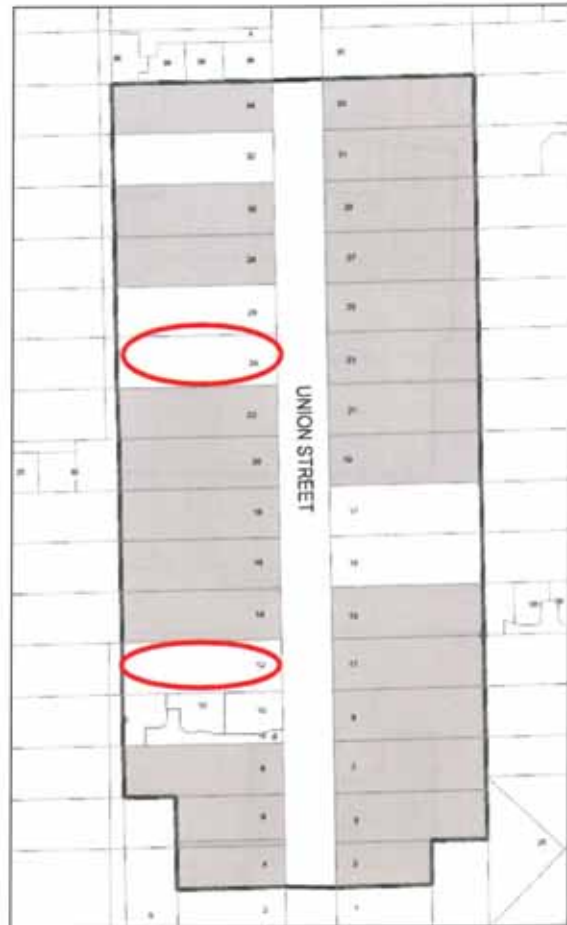
In the exhibited version of the local policy, number 2 Union Street was listed as contributory to the precinct, this is clearly a mistake as this property is not included in the precinct. Number 2 Union St shall be removed from the final version.

In response to Submission 12 in the case book, 12 Union Street Kyabram has been removed from being contributory to the precinct. Since the precinct was reviewed this dwelling has been demolished and a new dwelling is currently under construction.

Similarly in regards to Submission 30 in the case book relating to 24 Union St, it is proposed to remove the property from being Contributory to the precinct as it has been demolished.



Exhibited HO128 Precinct



Amended HO128 Precinct

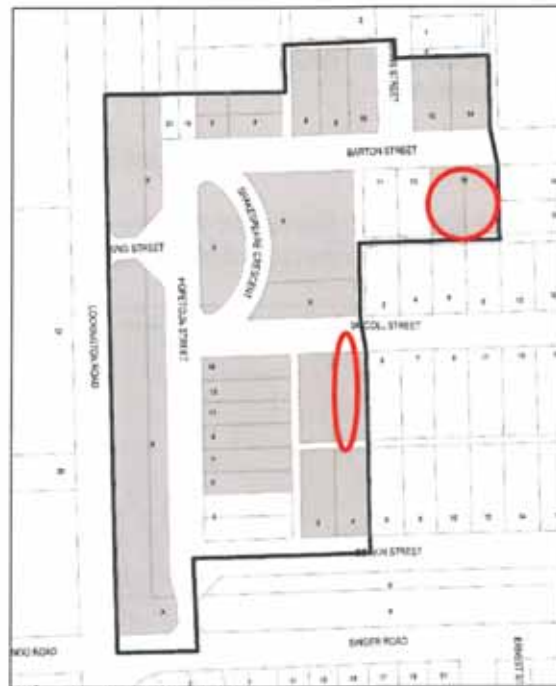
HO203 Rochester Central Area

Rename from Rochester Central Area to Rochester Precinct – for consistency across each precinct.

In addition as exhibited, number 1 McColl Street has been identified as being contributory to the precinct however this property actually consists of two lots being 1-3 McColl Street and it appears as if structures belonging to the dwelling exist on each lot. It is therefore an error that only one lot had been mapped as contributory and it is now proposed to rectify this error.



Exhibited HO401 Precinct



Amended HO401 Precinct

HO501 Tongala Precinct

Map of precinct has been annotated for clarity within the local policy.

Submission 41 – no changes as a result of submission however errors came to light in precinct as a result of this submission and shall be corrected

In the Tongala Precinct multiple individual properties exist that had not been identified as being contributory to the precinct. They are 70, 62 & 56 Mangan Street, as well as 44 Miller Street. And are to be made contributory to the precinct as they also are contributory to the precinct and should be identified as such. The land owners have been provided with additional notification to this effect.

Insert a policy consideration and context for the proposed Business Identification Signage Guidelines that was not exhibited. The document had been exhibited but no context for its consideration had previously been provided within the local policy. This is a clear error in that the guidelines have not been mentioned in the local policy but for clarity should be mentioned here.

Create an additional Reference document to consist of Ms Kemp's precinct reviews. This is to provide for clarity and ease of understanding as the review have been based on the findings of the Gap Study but references them at this location will aid in applications/developers/planners in understanding where the controls have originated.

4. Changes for other scheme clauses

Clause 21.04 requires updating and had not been contemplated prior to exhibition, however, it has become apparent that changes proposed as part of this amendment require to be reflected in the MSS at Clause 21.04.

21.05 – change to reflect additional reference document for the precinct reviews

Schedule to HO

Deletion of the following two properties –

15 Crofton St (HO85) – dwelling is currently within the precinct of HO1 and it was proposed with reducing the precinct at this location and in creating HO 87 (Echuca North Residential Precinct) that this dwelling be retained as an individual property with its own HO number. However, upon review since the completion of the exhibition of C50, it does not appear that there is sufficient merit in retaining this property or enough detailed background information to justify this level of protection. It is therefore proposed to delete this property from the heritage overlay.

Rookery (HO421) – Property was demolished without a permit since the Gap Study was completed – planning permit for a replacement including a condition requiring a plaque to record the original homestead that was proposed to be protected.

5. Changes to incorporated document

As acknowledged in response to Submission 26 in the case book, some minor redrafting to improve clarity of the Incorporated Document is required. This is simply to better define where and when exemptions apply. In addition the changes to precinct titles and other minor changes to other documents require to be reflected in the Incorporated Document.

Appendix D: Burnewang Incorporated Document

NOTE: The changes shown in:

~~red strikethrough~~ are the Panel's deletions

blue underline are the Panel's insertions

SITE PLAN TO BE ADDED

Campaspe Planning Scheme

Campaspe Planning Scheme

Incorporated Document

BURNEWANG HOUSE

October 2012.

PANEL NOTE: DATE ABOVE TO BE MODIFIED

This document is an incorporated document in the Campaspe Planning Scheme pursuant to Section 6(2)(j) of the Planning and Environment Act 1987.

Incorporated Documents – Clause 81.01 – Schedule Campaspe Planning Scheme

**Campaspe Planning Scheme
Incorporated Document
Burnewang House
Incorporated Plan for HO239 referenced in the schedule to Clause 43.01.**

1. INTRODUCTION

This document is an incorporated document in the schedule to Clause 81.01 of the Campaspe Planning Scheme.

Pursuant to the schedule ~~at~~ to Clause 43.01 of the Campaspe Planning Scheme, the land identified in ~~the an incorporated plan document~~ may be developed ~~and used~~ in accordance with the specific controls contained in the ~~document~~ plan. This ~~schedule~~ plan allows the land to be ~~used and~~ developed for the purposes set out in ~~this schedule~~ the plan subject to the specific controls specified below despite any prohibition or restriction which would otherwise apply to those purposes under the provisions of ~~this scheme~~ Clause 43.01.

2. ADDRESS OF THE LAND

This incorporated plan applies to all of the land within HO239 ~~occupied by~~ - Burnewang House, located on Burnewang Road, Burnewang, as shown on the attached site plan. The land is identified as HO239 in the schedule to Clause 43.01.

3. STATEMENT OF SIGNIFICANCE

(PANEL NOTE: TO BE MODIFIED TO ACCORD WITH REVISED STATEMENT OF SIGNIFICANCE)

Burnewang House is of historic and social significance as it provides tangible physical evidence of a turn of the century farming mansion with outbuildings.

It is of historic and social significance for its association with the post World War 1 Soldier Settlement Scheme and later in 1950 as a home run by the Returned Soldiers and Services League for returned soldiers.

It is of historic significance for its connection with the early pastoral settlement of the area [c1840s].

It is of aesthetic and architectural significance as an intact example of an early twentieth century two storey mansion with outbuildings.

It is of architectural significance for its Federation Free-Classical architecture.

It is a rare local example of a large and finely designed mansion that was designed by the pre-eminent Melbourne architectural firm of Reed, Smart and Tappin.

4. NO PLANNING PERMIT REQUIRED

A planning permit is not required under Clause 43.01 of the Campaspe Planning Scheme for the following:

-
- Demolition, removal, external alteration or painting of any building, except for the Burnewang House, [the Smokehouse](#) and Stables.
 - Demolition or removal of Burnewang House, [the Smokehouse](#) and Stables as identified in the 'Burnewang Site Plan' (attached) [only to the extent necessary to allow any other works authorised by the 'Burnewang Management Plan'](#), if the demolition or removal is carried out in accordance with the 'Burnewang Management Plan'.
 - Construction of a building or the construction or carrying out of works outside the preservation zone identified in the 'Burnewang Site Plan'.
 - Construction of a building or the construction or carrying out of works within the preservation zone identified in the 'Burnewang Site Plan' if the construction of the building or carrying out of works is in accordance with the 'Burnewang Management Plan'.
 - Externally altering by structural work, rendering, sandblasting or in any other way of Burnewang House, [the Smokehouse](#) and Stables, as identified in the 'Burnewang Site Plan', if ~~the external alteration is carried out~~ in accordance with the 'Burnewang Management Plan'.
 - Externally painting of Burnewang House, [the Smokehouse](#) and Stables, as identified in the 'Burnewang Site Plan', if the external painting is carried out in accordance with the 'Burnewang Management Plan'.
 - Externally painting [of](#) an unpainted surface of Burnewang House, [the Smokehouse](#) and Stables, as identified in the 'Burnewang Site Plan', if the external painting of the unpainted surface is ~~carried out~~ in accordance with the 'Burnewang Management Plan'.
 - Carrying out works, repairs and routine maintenance, whether or not they change the appearance of the heritage place, or which are not undertaken to the same details, specifications and materials, if carried out in accordance with the 'Burnewang Management Plan'.
 - Removing, destroying or lopping any tree, except for any tree identified in the 'Burnewang Site Plan'.
 - Removing, destroying or lopping any tree identified in the 'Burnewang Site Plan', if the removal, destroying or lopping of the tree is carried out in accordance with the 'Burnewang Management Plan'.

Incorporated Documents – Clause 81.01 – Schedule Campaspe Planning Scheme

END OF DOCUMENT

Campaspe Planning Scheme

BURNEWANG MANAGEMENT PLAN

Application

This document applies to the Burnewang House, [Smokehouse](#) and Stables, the preservation zone and any identified trees as identified in the 'Burnewang Site Plan', which forms part of the Incorporated Document 'Burnewang House, October 2012' [PANEL NOTE: DATE TO BE MODIFIED](#).

Purpose

The document identifies those **activities works** which may be undertaken on the Burnewang House, [Smokehouse](#) and Stables, within the preservation zone and in relation to identified trees, without the need for a planning permit, which would otherwise be required pursuant to the provisions of the Heritage Overlay.

Planning permit not required

For the purposes of the Incorporated Document, 'Burnewang House, October 2012' [PANEL NOTE: DATE TO BE MODIFIED](#), a planning permit is not required for the following:

Demolition or removal of buildings

- Demolition of the lean to, located on the eastern facade of Burnewang House, close to the north east corner of Burnewang House;
- Demolition of the external stairs to the upper level of the Stables, located on the northern side of the stables;
- Demolition of the existing wire mesh fence on the eastern boundary of the preservation zone;
- Demolition of the 'Paint Shed' located to the east of Burnewang House, within the preservation zone;

Construction or carrying out of works

- Landscaping works, including paving, within the preservation zone, provided such works do not exceed a height of 1.5 metres, measured from natural ground level;
- Relocation of any existing services or utilities attached to Burnewang House, [the Smokehouse](#) or the [Stables](#), or within the preservation zone;
- Construction of a new fence along the eastern boundary of the preservation zone, provided such new fence is constructed of timber and less than 1.2 metres in height;

-
- Constructing external stairs to the upper level of the Stables, provided such stairs are located on the northern side of the Stables and constructed of timber or metal;

External alterations

- Addition of tuck pointing on any unpainted facade of Burnewang House, [the Smokehouse](#) and the Stables;

External Painting

- External painting of any painted surface, provided that [the responsible authority is satisfied that](#) the same paint colours are used;

Works, repairs and routine maintenance

- Removal of the paint on the surface of the brickwork on the ground level covered verandah on the western facade of Burnewang House;
- Restoration of tuck pointing on the facade of Burnewang House, [the Smokehouse \(if any\)](#) and the Stables;

Incorporated Documents – Clause 81.01 – Schedule Campaspe Planning Scheme

END OF DOCUMENT