

Planning and Environment Act 1987

Panel Report

Wyndham Planning Scheme Amendment C209

Dry Stone Walls

13 January 2016

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Panel Report pursuant to Section 25 of the Act

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A handwritten signature in black ink, appearing to read 'Peter McEwan', written in a cursive style.

Peter McEwan, Chair

A handwritten signature in black ink, appearing to read 'Helen Martin', written in a cursive style.

Helen Martin, Member

Contents

	Page
Executive summary	1
1 Introduction	4
1.1 The proposal.....	4
1.2 Background to the proposal.....	4
1.3 Issues dealt with in this report.....	5
2 Planning context	7
2.1 Policy framework.....	7
2.2 Planning scheme provisions.....	7
2.3 Ministerial Directions and Practice Notes.....	9
2.4 Discussion.....	9
3 Are the nominated walls of local significance?	11
3.1 The issue.....	11
3.2 Evidence and submissions.....	11
3.3 Discussion and conclusions.....	15
4 Issues relating to specific properties	19
4.1 Black Forest Road, Werribee (Submissions 3 and 14).....	19
4.2 Talliver Terrace, Truganina (Submission 8).....	23
4.3 1645 Boundary Road, Mount Cottrell (Submission 1).....	24
4.4 1315 Bulban Road, Little River (Submission 5).....	25
4.5 Is the HO redundant at 1490 Dohertys Road, Mount Cottrell? (Submissions 2).....	26
4.6 Should HO130 be extended at Little River Farmers Common? (Submissions 4 and 6).....	28
5 Does the HO impose financial and administrative burdens?	30
5.1 Evidence and submissions.....	30
5.2 Discussion and conclusions.....	30
6 Changes to the Heritage Overlay Schedule and mapping	32
6.1 The issue.....	32
6.2 Submissions and evidence.....	32
6.3 Discussion and conclusions.....	32
7 Drafting of clause 22.07: Dry Stone Walls	34
7.1 The issue.....	34
7.2 Submissions and evidence.....	34
7.3 Discussion and conclusions.....	35
Appendix A Submitters to the Amendment	
Appendix B Document List	
Appendix C Post-exhibition amendments to clause 22.07	
Appendix D Panel recommended clause 22.07	

List of Abbreviations

Council	Wyndham City Council
DCPO	Development Contributions Plan Overlay
DELWP	Department of Environment, Land, Water and Planning
DTPLI	Department of Transport, Planning and Local Infrastructure (former)
ESO	Environmental Significance Overlay
GRZ	General Residential Zone
GWZ	Green Wedge Zone
HO	Heritage Overlay
LPPF	Local Planning Policy Framework
MSS	Municipal Strategic Statement
PAO	Public Acquisition Overlay
PPN01	Planning Practice Note 01: Applying the Heritage Overlay, July 2015
PSP	Precinct Structure Plan
RCZ	Rural Conservation Zone
SPPF	State Planning Policy Framework
UGZ	Urban Growth Zone
VCAT	Victorian Civil and Administrative Tribunal
VPP	Victoria Planning Provisions

Overview

Amendment Summary

The Amendment	Wyndham Planning Scheme Amendment C209
Common Name	Dry Stone Walls
Subject Site	Various sites across the municipality
Planning Authority	City of Wyndham
Authorisation	The Amendment was authorised by the Department of Environment, Land, Water and Planning (DELWP) on 28 April 2015.
Exhibition	From 27 May to 3 July 2015
Submissions	Number of Submissions: Opposed: 16 Unresolved: 7

Panel Process

The Panel	Peter McEwan, Chair Helen Martin, Member
Directions Hearing	Wyndham Civic Centre, 26 October 2015
Panel Hearing	Wyndham Civic Centre, 25 November 2015
Site Inspections	Unaccompanied, 26 November 2015
Appearances	<ul style="list-style-type: none"> • Kristien Van den Bossche of Wyndham City Council, calling evidence from: Gary Vines of Biosis in heritage • Peter and Sue Jones • Dominic Scally of Best Hooper Lawyers on behalf of K O'Shea • Joanne Lardner of counsel instructed by Norton Rose Fulbright Lawyers, on behalf of Peet No 131 Pty Ltd, calling evidence from: Ian Travers of AHMS in heritage
Date of this Report	13 January 2016

Executive summary

(i) Summary

Amendment C209 seeks to implement a number of the recommendations of the Wyndham Dry Stone Walls Study (2015) by utilising the Heritage Overlay (HO) to provide protection to the dry stone walls, support decisions made on permit applications by a new Local Planning Policy and make consequential changes to the planning scheme.

(ii) Background

In July 2013 Council engaged heritage consultants Biosis Pty Ltd to identify, record, assess and provide management recommendations for dry stone walls in Wyndham.

The Dry Stone Walls Study identified the places included in this Amendment as being of heritage significance to the City of Wyndham. The Study recommended measures including utilising the HO to provide protection for significant groups of walls and use of clause 52.37 for individual walls.

(iii) Key issues raised in submissions

- Disagreement about the heritage significance of individual dry stone walls
- Support for the inclusion of particular dry stone walls
- Concern about imposition of financial and administrative burdens
- The HO is redundant given other controls on particular sites.

The Panel has considered sixteen submissions, including appearances by representatives of five submitters and the submissions and evidence of Wyndham City Council (Council).

A fundamental issue is that the controls appear to have been prepared and justified in terms of the use of the HO for groups of walls that had a clear historical and geographical association and continuing reliance on clause 52.37 – Post boxes and dry stone walls for the remainder of the historic walls in the City of Wyndham. Following advice from DELWP that the use of the clause 52.37 mechanism is intended for temporary use only pending the completion of appropriate heritage studies, the Council has sought to implement the controls through use of the HO. This raised issues around the appropriate threshold of significance.

(iv) Conclusions

The Panel concludes that the Dry Stone Walls Study provides a sound basis for the application of the HO to defined dry stone walls precincts (or groups of walls), walls related to existing HO places, and to the most significant of the individual walls not included in either the precincts or the extended HO listings. However, it does not support the inclusion of all historic (pre-1940) walls in the HO through the serial listing proposed as HO134. Instead, the Panel believes that this listing should only apply to walls classified in the Dry Stone Walls Study as A or B.

Introduction of a Dry Stone Wall Policy in the Local Planning Policy Framework (LPPF) at clause 22.07 is also supported, with some alterations shown at Appendix D.

(v) Recommendations

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

Wyndham Planning Scheme Amendment C209 be adopted as exhibited subject to the following:

1. **Delete all walls classified as C or D in the Wyndham Dry Stone Walls Study (2015) from the proposed Heritage Overlay HO134.**
2. **Check the mapping for the following Heritage Overlays to ensure that all walls listed in the relevant Statements of Significance are identified as part of the relevant heritage place or precinct:**
 - **HO28 Robertson's Truganina Estate**
 - **HO30 Vineyard Estate**
 - **HO119 Skeleton Waterholes Reserve**
 - **HO38 Missen's farm**
 - **HO9 Peppercorns**
 - **HO10 Volant house (Arva)**
 - **HO18 Cobbledicks Ford and Reserve walls**
 - **HO53 Mouyong**
 - **HO130 Little River Farmers Common stone walls**
 - **HO131 Wesleyan Chapel site**
 - **HO132 Ballan Road walls Werribee**
 - **HO133 Old Melbourne Road.**
3. **Consider creating a new precinct 'Little River Farmers Common South' (or similar) to cover the walls south of Little River township in the block bounded by Flinders Street, Rothwell Road and McLeans Road.**
4. **Delete the Heritage Overlay from:**
 - **170 William Road, Little River (HO134)**
 - **Lot 11 Mouyong Road, Little River (HO134)**
 - **Lots 1 and 2 on LP97350 (within Tarneit North PSP) (HO36)**
 - **Western boundary of the Manor Lakes Estate (Manor Lakes, Wyndham Vale Structure Plan Area) (HO134 and HO132)**
 - **Lot 9 Leakes Road, Truganina South (within Truganina South PSP) (HO134)**
 - **Those sections at the frontage of 1490 Dohertys Road, Mount Cottrell, where a dry stone wall no longer exists (HO134)**
 - **Those sections of the walls on the northern and eastern boundaries of CA 2 Section 15 Parish of Mambourin (Black Forest Road, Werribee) to which Permit WYP8483/15 applies.**
5. **Revise the Schedule to the Heritage Overlay to ensure that all places where dry stone walls are identified as part of the significance of the place have a 'Yes' in the column relating to exemptions under clause 43.01-3, with particular attention to HO9, HO36, HO38 and HO119; and remove the 'Yes' from this column for HO64, which is listed on the Victorian Heritage Register.**

- 6. Revise clause 22.07: Dry Stone Walls as shown in Appendix D to this report.**

1 Introduction

1.1 The proposal

1.1.1 The subject area

The Amendment applies to all land in the City of Wyndham that contains a dry stone wall constructed prior to 1940, except the area covered by the Tarneit North and Truganina Precinct Structure Plans.

1.1.2 Amendment description

The Amendment proposes to:

- Amend the Municipal Strategic Statement to include objectives and strategies relating to the protection of dry stone walls and include the Wyndham Dry Stone Walls Study (2015) as a reference document at clauses 21.06, 22.05 and the newly introduced 22.07.
- Introduce a Dry Stone Walls Policy into the Local Planning Policy Framework at clause 22.07 to provide guidance when considering planning permit applications in the Heritage Overlay (HO) relating to the removal or alteration of a dry stone wall.
- Amend the maps and the description of heritage places in the schedule to the Heritage HO to include specific reference to dry stone walls where they are currently included as part of the place or are in proximity to, or associated with, existing HO areas.
- Apply the HO to individual dry stone walls which form important individual groups, whether as part of major routes, or approaches to towns and apply a single HO to other dry stone walls in other locations as a single 'group listing'.
- Amend the schedule to clause 52.37 Post Boxes and Dry Stone Walls to specify that a permit is only required for dry stone walls under this provision for land within the Truganina and Tarneit North Incorporated Structure Plan areas for land described as 'existing dry stone wall to be retained' or 'existing dry stone wall with potential for retention.'

1.1.3 Purpose of the Amendment

The Amendment proposes to implement a number of recommendations of the Wyndham Dry Stone Walls Study by utilising the HO to provide protection to the walls and to support decisions made on permit applications by a new Local Planning Policy.

1.2 Background to the proposal

The need for a dry stone wall study was identified in the recommendations of the Panel Report to Wyndham Planning Scheme Amendment C86 in 2009.

One of the recommendations of this report was that:

Council immediately undertake a study to identify significant pre 1940 dry stone walls in the municipality; and seek the amendment of the Wyndham Planning Scheme to include the municipality in the Schedule to clause 52.37...

In October 2013 the Minister for Planning approved Wyndham C86 introducing a Schedule to clause 52.37 to require a planning permit for works to dry stone walls, on a temporary basis, while a comprehensive study of all dry stone walls in the municipality was conducted.

Council engaged Biosis Pty Ltd to prepare a Dry Stone Walls Study in July 2013. The Study was prepared between July 2013 and October 2014 and was followed by a period of public consultation during October 2014.

The aim of the Dry Stone Walls Study was to identify record, assess and provide management recommendations for dry stone walls in Wyndham. The study found that dry stone walls in Wyndham are of historical and aesthetic significance, and in some cases, of social and archaeological or scientific significance for their association with the physical demonstration of the process of survey, subdivision, alienation and development of land from the period of first land sales to the late nineteenth century.

The Dry Stone Walls Study documents the thematic history of dry stone walls and outlines the assessment methodology for ascertaining the historical significance of walls. The study also includes statements of significance for historically significant walls.

A number of dry stone walls were identified as having geographic and historic connections to existing Heritage Overlay places, and so these were proposed to be expanded to include adjacent and associated dry stone walls. The proposed expanded Heritage Overlay areas were:

- HO9 Peppercorns
- HO10 Volant house (Arva)
- HO18 Cobbledicks Ford and Reserve walls
- HO28 Robertson's Truganina Estate
- HO30 Vineyard Estate
- HO36 Doherty's Dry Creek Tarneit farm
- HO38 Missen's farm
- HO53 Mouyong
- HO119 Skeleton Waterholes Reserve.

Four new HO precincts were proposed for groups of walls with a common historical significance and visual relationship. The proposed new HOs are:

- HO130 Little River Farmers Common stone walls
- HO131 Wesleyan Chapel site
- HO132 Ballan Road walls Werribee
- HO133 Old Melbourne Road.

Of the remaining walls outside of proposed HOs, it was recommended in the Dry Stone Walls Study that those classified on the significance assessment from A to D, should continue to be protected under clause 52.37 of the Wyndham Planning Scheme, and that the schedule to this clause be amended to include land containing these walls.

1.3 Issues dealt with in this report

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

This report deals with the issues under the following headings:

- Planning context
- Are the nominated walls of local significance?
- Issues relating to specific properties
- Does the HO impose financial and administrative burdens?
- Changes to the Heritage Overlay Schedule and mapping
- Drafting of clause 22.07: Dry Stone Walls.

2 Planning context

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

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

2.1 Policy framework

2.1.1 State Planning Policy Framework

Council submitted that the Amendment is consistent with the State Planning Policy Framework, in particular clause 15.03 (Heritage) and implements the policy by including places which have been identified and assessed as having local cultural heritage significance in the Schedule to the HO.

2.1.2 Local Planning Policy Framework

Council submitted that the Amendment is consistent with the Local Planning Policy Framework, particularly clause 21.06-1 (Urban Environment) which notes that:

...The siting and design of development needs to consider character and local heritage values...

clause 22.05 Heritage Conservation Policy notes that:

Wyndham's landscape has experienced major changes in the past few decades with rapid growth in the areas of residential development and industry. However many of Wyndham's heritage places consist of remnants of the municipality's rural beginnings and early settlement of the Western Plains. The protection and management of these significant heritage assets helps our understanding of the past, enriches the present and will be of value to future generations ...

The Amendment responds to clause 21.06-3 Further Strategic Work, which includes:

Identify dry stone walls considered appropriate for protection.

2.2 Planning scheme provisions

2.2.1 Zones

Properties that were the subject of opposing submissions considered in this report are zoned as follows:

- 1645 Boundary Road, Mount Cottrell – Rural Conservation Zone (RCZ)
- 1490 Dohertys Road, Mount Cottrell – Urban Growth Zone (UGZ)
- Black Forest Road, Werribee – UGZ Schedule 6 (UGZ6)
- Flinders Street, Rothwell Road and McLeans Road, Little River – Green Wedge Zone (GWZ)
- 1315 Bulban Road, Little River – Green Wedge Zone (GWZ)
- Talliver Terrace, Truganina – General Residential Zone Schedule 1 (GRZ1).

2.2.2 Overlays

(i) Heritage Overlay

clause 43.01 Heritage Overlay contains the following purposes:

- To implement the State Planning Policy and the Local Planning Policy Framework, including the Municipal Strategic Statement and local planning policies.
- To conserve and enhance heritage places of natural or cultural significance.
- To conserve and enhance those elements which contribute to the significance of heritage places
- To ensure that development does not adversely affect the significance of heritage places.
- To conserve specifically identified heritage places by allowing a use that would otherwise be prohibited if this will demonstrably assist with the conservation of the significance of the heritage place.

Under the HO a planning permit is required to undertake demolition, subdivision, and construct buildings and works.

As noted in section 1.2 above, existing HOs applying to nine properties are proposed to be amended and/or extended to include dry stone walls relating to those places. These include HO10, which applies to part of the land at 1645 Boundary Road, Mount Cottrell and is discussed in section 3.1.4 below.

(ii) Other Overlays

Various other overlays apply to properties containing dry stone walls that are proposed for listing under the HO as part of Amendment C209. These include:

- A Public Acquisition Overlay (PAO) Schedule 7 and an Environmental Significance Overlay (ESO) Schedule 4 apply to the whole of the land at 1645 Boundary Road, Mount Cottrell.
- A PAO Schedule 5 applies to parts of the land at 1490 Dohertys Road, Mount Cottrell and a Development Contributions Plan Overlay to the whole property.
- An ESO Schedule 5 applies to the whole of the property at 1315 Bulban Road, Little River.
- A Development Plan Overlay (DPO) Schedule 2 applies to the land south of Talliver Terrace, Truganina.

2.2.3 Particular provisions

clause 52.37 Post Boxes and Dry Stone Walls contains the following purpose:

- To conserve historic post boxes and dry stone walls.

Under clause 52.37 a permit is required to demolish, remove or alter a dry stone wall constructed before 1940 on land specified in the schedule to this provision.

The Schedule to clause 52.37 notes that a permit is required for all dry stone walls in Wyndham except in the Truganina Precinct Structure Plan Area and for land zoned Urban Growth Zone 13 where the land is described on Plan 3 of the incorporated Tarneit North Structure Plan as 'existing dry stone wall to be retained' or 'existing dry stone wall with potential for retention'.

The Amendment proposes to amend the Schedule to clause 52.37 to change the permit requirement for buildings and works under this clause for land described as 'existing dry

stone wall to be retained' or 'existing dry stone wall with potential for retention' on Plan 3 of the Incorporated Precinct Structure Plans for Tarneit North and Truganina.

2.3 Ministerial Directions and Practice Notes

2.3.1 Ministerial Directions

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

(i) Strategic Assessment Guidelines

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

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

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

2.3.2 Planning Practice Notes

(i) Planning Practice Note 01 – Applying the Heritage Overlay, July 2015

Council submitted that the Amendment meets the relevant provisions of PPN01, noting that the significance of the walls was assessed using the HERCON criteria recommended in the practice note.

(ii) Planning Practice Note 08 - Writing a Local Planning Policy, June 2015

The Amendment proposes to insert a new local planning policy, Dry Stone Walls Policy at clause 22.07 of the planning scheme. The Amendment is consistent with PPN08.

(iii) Planning Practice Note 13 - Incorporated and Reference Documents, June 2015

The Wyndham Dry Stone Walls Study (2015) is listed as a Reference Document to the proposed policy at clause 22.07.

Council submitted that the 2015 study is considered an appropriate reference document because it provides background information to assist in understanding the context of the Dry Stone Walls Policy. It also contains the citations for current HO places that are to be amended to refer to dry stone walls within the existing HO area or extended to cover adjacent walls, as well as proposed new HO precincts containing historically significant groups of dry stone walls.

2.4 Discussion

The Panel concludes that the Amendment is generally well founded and implements the relevant sections of the State and Local Planning Policy Frameworks.

The Panel considers that subject to minor changes to the Amendment suggested by Council post-exhibition and recommendations in this report, the Amendment should be implemented to further conserve and protect dry stone walls in the municipality.

With this in-principle support, the Panel addresses a number of specific issues raised by submitters in the following chapters. There was extensive discussion at the Panel hearing about the issue of thresholds of significance in accordance with PPN01. This is discussed and addressed at 3.1.

The Panel believes that the statements of significance for the dry stone wall precincts should be incorporated documents in the planning scheme, rather than only reference documents. However, this was not proposed as part of Amendment C209 and therefore interested parties did not have a chance to comment on the proposal. The Panel suggests that Council should consider incorporating the document through a future amendment.

3 Are the nominated walls of local significance?

3.1 The issue

A number of submissions opposed the introduction of an HO on the basis that the requisite level of significance has not been established. Of particular concern was the 'threshold of significance' issue. The threshold issue is considered here, then aspects of individual sites.

3.2 Evidence and submissions

Council gave an explanation for the inconsistency between the recommendations of the Dry Stone Walls Study and C209 as exhibited:

The Study recommended that the HO be applied individually to four (4) [*groups of*] dry stone walls, while the remaining dry stone walls were to be protected by listing them in the schedule to clause 52.37 'Post Boxes and Dry Stone Walls'.

Planning officers were advised by the DELWP during preliminary discussions on 1 April 2015, that all dry stone walls requiring protection in the Study should be covered by the HO and use of clause 52.37 would not be supported as this was originally offered as an interim blanket control where councils had not undertaken a comprehensive study to identify walls and/or analyse their significance. Consequently, Council officers prepared the amendment in line with DELWP's advice prior to public notification and applied the HO to all significant walls in lieu of clause 52.37.

The approach taken by Council is preferred for the following reasons:

- It is considered to be an improvement in the statutory mechanism adopted to protect the walls, because it allows all walls to be clearly mapped in the planning scheme and landowners can easily be made aware of their planning controls on planning certificates and on property searches.
- The application of the HO after the preparation of a dry stone wall study is consistent with the recommendations of the C86 Panel Report; and
- This approach is supported by the Minister for Planning Heritage Provisions Review in 2006 which noted that:
 - The Committee considers that Victoria Planning Provisions measures directed to the conservation of historical dry stone walls (perhaps those constructed before 1940) should be introduced on an interim basis initially then on a permanent basis as appropriate assessment are completed.

For each of the submissions listed where the level of significance of the wall was challenged, Council undertook a site visit.

Council submitted that the methodology adopted in the Dry Stone Walls Study to identify the heritage significance of the walls is consistent with PPN01.

Mr Vines provided an explanation of the methodology and assessment used in the Dry Stone Walls Study. He submitted that the methodology was based on the methodology employed in the previous Melton Dry Stone Walls Study and numerous previous studies both in this region and overseas:

The approach has been to record and classify walls according to their construction form, style, scale, historical associations and degree of preservation. The resultant significance ranking is as objective as can be achieved with such a structural form, and given the degree of variability that might occur along any length of wall. For example any given

section of wall may have some parts entirely intact, some parts where coping stones have been dislodged, and some where most of the wall has collapsed. The grading attempts to present the average condition of the overall length of wall.

While the original study proposed continuation of clause 52.37 for protection of dry stone walls and separate Heritage Overlays for specific groups of walls, in both cases it considered significance of walls in the context of Victorian Planning Provisions, and in particular the Practice Note on 'Applying the Heritage Overlay' as well as the 'The Australia ICOMOS Charter for Places of Cultural Significance'; the ICOMOS Practice Note "Understanding and assessing cultural significance" 2013, and the Heritage Victoria criteria and threshold guidelines for assessing the cultural heritage significance of places and objects for possible state heritage listing.

Council determined that the A to D ranked walls would be included in a grouped or serial listing under the HO (HO134):

The approach taken by Council to adopt the Dry Stone Walls Study recommendation for protecting walls ranked A to D, but to do this under the Heritage Overlay rather than clause 52.37, is consistent with the objectives and conclusions of the study, and in conjunction with the proposed Local Policy Frameworks, provides a sound mechanism for meeting the aims for conservation of historic dry stone walls.

In written evidence Mr Vines addressed a number of criteria from PPN01 in assessing the heritage values of the dry stone walls in Wyndham. He went on to address measures which help determine significance within heritage criteria according to the relative degree of integrity, rarity and intactness:

Based upon the Burra Charter, the Australian Heritage Commission criteria, and also JS Kerr's 'The Conservation Plan', qualifiers to the significance criteria have been used in the assessment of dry stone walls. Qualifiers include measures which help determine significance within heritage criteria according to the degree of integrity, rarity and representativeness.

Condition and Integrity, Intactness and authenticity are not fundamental criteria of significance, but rather qualifiers of significance. So for example, all other things being equal, a wall which is highly intact would be rated more highly than one which is deteriorated, or which has been reconstructed. The 'intactness' of a wall [the amount of the original wall which remains] is distinct from its 'authenticity' or 'integrity' [the degree to which the wall has been subject to restoration or reconstruction], and from its 'condition' [its present state of repair].

Rarity - Rare walls are outstanding, exceptional, seminal walls, in terms of structural type, an historical theme, aesthetic value, or walls which were once common, but are now scarce, rare or endangered. Thresholds for rarity of walls in the study area can be determined following survey and analysis of data, generally assuming that types of walls with only a limited number of examples, (for example less than one percent of the total) would be considered rare. Similarly, rarity can be assessed against data on other parts of Victoria to determine potential rarity at the state level.

Representativeness - Representative walls are exemplary, or the best, examples of typical walls. Within the study context the different categories of typical walls were based on structural types / subtypes, or walls that represent particular historical themes or aesthetic values. Analysis of field survey data allows identification of representative traits of the identified categories of walls, and therefore consideration of which walls best demonstrate these traits.

Mr Vines, in his expert witness statement, reiterated a section from the Dry Stone Walls Study (p.84) that summarises the significance of Wyndham's dry stone walls:

While dry stone walls, individually and as part of wider cultural landscapes, may have a range of significance values, their aesthetic and historical significance can be considered to be present wherever dry stone walls, or even remnants of a wall survive. This is because they nearly always represent some of the earliest and oldest built fabric related to European settlement in a given area. They are a key component in the cultural landscape, demonstrating the transition from the pre-settlement and squatting era unimproved open plains to a subdivided privately owned and fenced landscape.

Aesthetic values also lie in the individual structures, with a small number of walls demonstrating a rustic beauty which results from the combination of technical mastery in the design of the wall, and the complex texture and patterning of their weathered, lichen-encrusted natural stone surfaces.

The critical aspects of a wall's significance are therefore its original form and character, special historical associations, and its level of integrity. A wall where at least part of the original structure is intact will be more significant than one where all the coping and most of the height of the wall has fallen off the original alignment or been removed...

Mr Vines went on to explain that the significance criteria above were adopted to classify walls in the field, and in the mapping and assessments in the Dry Stone Walls Study resulting in the following classifications:

A – Full height walls & ½ walls with special historical associations; at least 40% integrity

Full height walls are between 1.1 and 1.3m high, nearly always with substantial coping stones, and often with through stones. 1.2 [*the figure 1.2 appears in Mr Vine's evidence and the original Dry Stone Walls Study, but the Panel has assumed that this is meant to read ½*] height walls with historical associations are generally part of substantial farming properties, or related to specific land uses or periods of development, such as the Little River Farmers Common.

B – Full height walls less than 40% but more than 20% intact; & ½ height composite walls at least 40% integrity

These are the more intact 'typical' walls of the area. Some full-height walls, less than 40% intact, have been altered with the introduction of post and wire, possibly because the skill to rebuild them to full height was no longer available. Half-height walls, more than 40% intact, still have some small sections that are intact to their original height and construction, but in most cases have up to half their structure either fallen or inexpertly replaced.

C – Half-height composite walls, less than 40%, but more the 20% intact

These walls still have some small sections which demonstrate their original form, but more than half their structure is either fallen or inexpertly replaced, and in many cases substantial amounts of stone have been removed, for example walls along well used local roads have had much of the coping stone stolen.

D – Full and half height walls less than 20% intact

These walls still demonstrate their original form but do not have any sections intact, and have a large part of their stone removed. E – Wall remnants and single course walls

These were either never intended as dry stone walls in the first place, but were merely where farmers had piled gleaned stone from the paddocks, or where a wall once existed but had been removed apart from foundation stones.

Recent and past removals – No longer extant

A large number of walls identifiable from historical maps 1917 and aerial photographs, or which have been photographed or recorded in the recent past, are no longer extant. These have been removed as part of farm improvements or urban development. ('recent removed' refers to walls that were recorded or identified from aerial photographs as being extant in the last 10-15 years, but which have since been demolished, while 'past removed' refers to walls known from historical sources such as the 1917 and 1933 map or 1945 aerial photographs, but which cannot be identified on the ground).

Modern walls

There are a few walls built from scratch in the last 20 years which are not considered to be part of the present study and may not qualify for any form of heritage protection. These include modern domestic landscaping and property entrances, and the feature wall at Doherty's Road erected by the Truganina Landcare Group.

The Dry Stone Walls Study identified more than 625 discrete sections of dry stone wall, comprising over 300 kilometres of total length, with over 250 kilometres still standing.¹

One third of the total sections of wall identified have either been removed or exist only as remnants. Of the remaining 417 sections (classified A to D), 162 (or 39%) are assessed as either A or B. These A or B walls have an integrity of at least 40% for half-height walls or 20% for full height walls.

In relation to thresholds for heritage listing, Mr Vines said:

While the original study proposed continuation of clause 52.37 for protection of dry stone walls and separate Heritage Overlays for specific groups of walls, in both cases it considered significance of walls in the context of established thresholds and criteria under the Victorian Planning Provisions, the Burra Charter, ICOMOS Practice Note "Understanding and assessing cultural significance", and Heritage Victoria HERCON criteria and threshold guidelines.² ...

The approach taken by Council to adopt the Dry Stone Walls Study recommendation for protecting walls ranked A to D, but to do this under the Heritage Overlay rather than clause 52.37, is consistent with the objectives and conclusions of the study, and in conjunction with the proposed Local Policy Frameworks, provides a sound mechanism for meeting the aims for conservation of historic dry stone walls.

In cross-examination, Mr Vines said that the heritage assessment in the Dry Stone Walls Study followed appropriate standards and guidelines, regardless of the statutory mechanism

¹ Pg 139 Wyndham Dry Stone Walls Study, 2015.

² See - Department of Planning and Community Development 2012, Practice Note 01, 'Applying the Heritage Overlay'; Australia ICOMOS "The Australia ICOMOS Charter for Places of Cultural Significance" Australia ICOMOS Incorporated, International Council on Monuments and Sites, 2013; Australia ICOMOS Practice Note "Understanding and assessing cultural significance" 2013; Victorian Heritage Register Criteria and Threshold Guidelines, Endorsed by Heritage Council 6 December 2012 http://www.dpcd.vic.gov.au/__data/assets/pdf_file/0009/127485/HV-VHR_Criteria_and_Thresholds_Guidelines-2012.pdf.

eventually adopted to implement its recommendations. He said that 'local significance is still local significance'.

At the Hearing Mr Vines stated that the stone walls in Wyndham are all very similar. There were so many places to consider; therefore they were approached in a 'landscape sense', not just particular sites. He stated that there was no difference between one wall and another, 'only stylistic or construction differences'. Mr Vines, in response to a question from Council, noted that walls are constantly falling down and being repaired. In his opinion this makes them different from other heritage places.

Mr Vines told the Hearing that he had originally been open to the idea of only listing the best of the walls, but on further investigation found that this was arbitrary and would not result in a good heritage outcome. He said that it was not easy to determine what the 'best' walls were:

You cannot just pick out a few to consider.

This is not an individual value; it is a landscape heritage value.

Mr Vines twice expressed to the Panel his view that:

Either all the walls are significant or none of them are.

Mr Scally submitted that the Amendment suggested that all walls classified A to D are of similar or equal value. He queried whether all these walls had sufficient significance to warrant listing under the HO.

Mr Travers stated that the proposition that all dry stone walls requiring protection in the Dry Stone Walls Study should be covered by the HO ignored the fact that the significance assessment and relative levels of importance contained within the Study do not support the inclusion of all of the walls in the municipality in the overlay:

Blanket protection, through the Heritage Overlay, of the kind proposed by the Amendment has not been afforded to other heritage items in the municipality, for example historic ruins or archaeological sites (Aboriginal or 'non-Indigenous'), and the application of such an approach is contrary to the requirement for an item to meet the appropriate threshold of significance to warrant inclusion on the Heritage Overlay.

Ms Lardner submitted that:

Inclusion of places that do not demonstrate the requisite significance would cast doubt over the significance of other places which do demonstrate the necessary level of significance for inclusion in the overlay.

She put the view that use of 'a municipal wide precinct overlay' was problematic for a number of reasons.

3.3 Discussion and conclusions

The Dry Stone Walls Study was prepared by a qualified historian and archaeologist with extensive experience in the analysis of dry stone walls. The Study used a robust and sound methodology to determine the location, integrity and intactness, and condition of dry stone walls in Wyndham.

The Panel notes that the Study discusses at some length the elements that might contribute to a finding of aesthetic, historical, technical/scientific or social significance in relation to dry stone walls. Overall, the Panel acknowledges that dry stone walls in the municipality are of historical significance as the main surviving built fabric related to the earliest stage of land settlement in Wyndham (Criterion A). They are evidence of the dry stone wallers' art and technique which was adapted to local conditions, land uses and stone types. In this they differ from the more common angular bluestone walls of the western district (Criterion F). They are part of an important rustic, vernacular aesthetic which, along with remaining farm and civic buildings, formed a significant part of the character of this region (Criterion E). The Panel also acknowledges that the walls collectively have a level of social significance to the current community of Wyndham and some are of archaeological significance.

The Panel recognises the potential loss of cultural heritage by the rapid urban development in the City of Wyndham. A planning response is required for managing significant remaining dry stone walls. The HO provides an opportunity for Council to respond to development pressures in an environment of competing uses. Many possible responses were noted during the Hearing. The introduction of a HO does not presume that all dry stone walls must be retained in situ.

Most of the discussion at the Hearing focussed on the serial listing of dry stone walls in the proposed HO134. The Amendment also proposes to amend the maps and the description of heritage places in the schedule to the HO to include specific reference to dry stone walls where they are currently included as part of the place or are in proximity to, or associated with, existing HO areas.

The issue for the Panel is the threshold of significance. It not convinced that it is appropriate to include all walls graded A to D in the HO. The Panel considers the 'all or nothing' approach taken by Mr Vines at the Hearing was less than helpful.

PN01 requires some comparative analysis to substantiate the significance of each place proposed for heritage controls.

Mr Vines noted that qualifiers have been used in the assessment of the relative significance of dry stone walls, but this is not reflected in the Amendment, which proposes a blanket approach.

The Panel notes that the Dry Stone Walls Study anticipated that walls would be protected through two different mechanisms:

- The HO would be used for groups of walls with a common historical significance and visual relationship to each other, which would be treated effectively as HO 'precincts' (even if mapped as serial listings, i.e. discontinuous areas of land, linked by a single HO number and statement of significance). This included extensions to existing HO listings to encompass dry stone walls related to the identified places.
- The remainder of the dry stone walls in the municipality would continue to be protected under clause 52.37.

The Study (and Mr Vines' evidence) stated in relation to the groups of walls originally recommended for HO listing:

Individual groups of dry stone walls that are related to specific historical events, property or activity have been identified in the study as warranting special consideration. These are generally associated with larger farming and grazing undertakings, and have resulted in complex networks of dry stone walls which are associated historically and functionally with the place. Several of these are already included on the City of Wyndham Heritage Overlay [p.16, DSW Study].

When DELWP advised Council that the schedule to clause 52.37 was not appropriate for long-term protection of dry stone walls on a municipality-wide basis (being intended only as an interim control while assessments were undertaken), Council decided to apply a new 'serial' HO listing to all the other walls classed as A-D. The Panel supports the use of a serial listing, which has substantial benefits over clause 52.37 (particularly in terms of transparency and public understanding) but believes it should have been applied selectively.

As the Panel sees it, the Study does not provide sufficient support for inclusion in the HO of all walls, whatever their integrity and intactness, when they are not in a precinct. Mr Vines, during cross examination at the Hearing, attributed the Study's choice of clause 52.37 for individual walls and the HO for groups of walls principally to convenience mapping. As noted above, he stated that the Study had found all the walls to be of local significance. The Panel notes in this regard that the Study report says:

While separate statements of significance are provided for groups of walls proposed for inclusion in the Heritage Overlay, the balance of the walls in the municipality are also considered to be significant [p.140].

However, although the issue of thresholds is not addressed directly, the language used in other parts of the Dry Stone Walls Study implies that there is a qualitative distinction between those places to be protected under the HO and those recommended to remain under clause 52.37. For example:

Walls identified as having strong historical and landscape associations with other historical places, and in particular with existing Heritage Overlay places, have been considered for inclusion within extended or new Heritage Overlays. Some other local groups of walls, while having strong historical and cultural associations, are either fragmentary or have very low integrity, and therefore have not been proposed for extended or new Heritage Overlays [p.173].

Table 10 of the Study (pp.143-145), describes how each of the groups of historic walls (identified in Section 9 of the report) were assessed in terms of a potential HO. For three of them, it comments that the 'fragmentary nature of surviving walls do not justify HO'. It is not easy to see how this judgement can then be used to support application of HO134 to all remaining walls, even taking into account the fact that the author(s) were focussed at the time on assessing walls as groups or assemblages, rather than for their individual significance.

The Panel does not believe it is appropriate to provide blanket protection in the planning scheme for all dry stone walls, except in limited areas where clear historical and geographical associations justify such an approach. Within the defined dry stone wall precincts (HO130, HO131, HO132 and HO133) the Panel accepts that the landscape heritage values are important and that groups of walls have a common historical significance and visual relationship with one another. The Panel considers that walls of lower integrity

assessed as C or D can be seen as contributory to the overall assemblage of walls; therefore, their inclusion under the HO controls is appropriate. The same applies to the walls proposed for inclusion by extending existing HOs (HO9, HO10, HO18, HO28, HO30, HO36, HO38, HO119). In these cases, the walls – whatever their integrity – form a contributory part of a wider heritage place.

However, outside the precincts, the Panel believes that the HO should be applied only to those walls that are assessed as being significant in their own right. It considers that the Study's summary appraisal using the classification of A to E provides a good basis for determining the comparative intactness and integrity of dry stone walls in different locations. The Panel accepts that the level of integrity and state of a wall is an indicator of relative significance. The classification is less useful in assessing the comparative rarity and/or representativeness of walls or their historical importance (other than via the inclusion in category A of half-height walls of 'special historical significance'). Nevertheless, in the absence of any more detailed information or evidence that might assist in establishing a threshold, the Panel is of the view that only those walls classified as either A or B warrant inclusion in HO134. It notes that this approach is consistent with the statement in the Dry Stone Walls Study (p.84) and Mr Vines' evidence:

The critical aspects of a wall's significance are therefore its original form and character, special historical associations, and its level of integrity. **A wall where at least part of the original structure is intact will be more significant than one where all the coping and most of the height of the wall has fallen off the original alignment or been removed** [*Panel emphasis*].

Mr Vines, in cross examination at the Hearing, agreed that he expected that the classification (A-D) would be used as one part of the assessment of a planning application to alter or remove a wall.

The Panel concludes that the mapping for HO134 should be amended to remove those walls classified as C or D. The Statement of Significance should be altered accordingly.

The Panel suggests that the mapping for the expanded HO places (HO9, HO10, HO18, HO28, HO30, HO36, HO38 and HO119) and the new precincts (HO130, HO131, HO132 and HO133) should be checked to ensure that all walls listed in the Statements of Significance are mapped as part of the precinct or place, rather than being shown as part of HO134 (as has occurred in at least one case that the Panel has identified).

The Statements of Significance for these thirteen HO's should be amended to include the HO numbers (where required) and to remove the recommendations about inclusion in the HO. While the Panel is aware that the listing of walls for each place or precinct includes the classification of each wall, consideration could be given to including a note (under the relevant table) to the effect that: 'Walls classified A or B are individually significant and contributory within the precinct; walls classified C or D are contributory within the precinct'.

4 Issues relating to specific properties

4.1 Black Forest Road, Werribee (Submissions 3 and 14)

4.1.1 Evidence and submissions

Peet No 131 Pty Ltd (Peet) submitted that the HO should be removed from the dry stone walls adjacent to land that was the subject of a recent planning application:

It is contradictory to apply retrospective requirements for the retention of the dry stone walls where a subdivision has been approved.

Council submitted:

The land is located within the Black Forest Road South Precinct Structure Plan (PSP) area. The PSP does not provide any controls for dry stone walls, consequently a permit is currently required to demolish/alter a dry stone wall pursuant to clause 52.37.

On 24 August 2015, Council was considering a permit application for the removal of a portion of dry stone wall along the northern and eastern boundaries of the land (WYP8483/15). Council resolved to delete the HO from the land only if the planning permit was granted for the demolition of the dry stone wall.

Council has issued the permit application to demolish sections of the wall, therefore it is considered that it is appropriate to delete the HO from the portion of the wall to which the permit application applies. The HO will continue to apply to the remaining walls on the land.

It is not considered that the application of the HO on the land conflicts with the previous planning work and approvals given for the site because the dry stone walls were not assessed for removal as part of the PSP process (as the PSP is silent on dry stone walls) nor the subdivision that was approved by Council.

With regard to the remainder of the Peet land, Ms Lardner pointed to the grading of the walls in the Dry Stone Walls Study as B for those on eastern and southern boundaries and C for that on the western boundary. She also noted that the walls on the northern side (Black Forest Road), for which a permit for removal has been granted, were classified A.

Mr Travers, in his statement of evidence, agreed with the classification of the dry stone walls on the balance of the property as B and C. He pointed out, on the basis of his inspection, that:

... the extent to which the walls survive was seen to be variable, particularly on the east and west sides of the property. Indeed, towards the northern end of western boundary the wall was seen to be completely absent ...

Mr Travers also drew attention to the conclusion in the Study (p.144) regarding the potential significance of the Scott/Handley farm walls on Black Forest Road, Werribee: 'Fragmentary nature of surviving walls do not justify an HO'. He stated that the dry stone walls on the property were not of sufficient significance to warrant inclusion in the HO. He also put the view that, if retention of the walls in their original state were to be achieved, this should have been considered from the beginning of the PSP planning process. As it was, he did not consider their retention to be practical.

Ms Lardner submitted that there was a consensus of opinion before the Panel concerning the significance to be attributed to the dry stone walls on the balance of the Peet land. On this basis she submitted the Panel ought accept the evidence before it and recommend that these walls be deleted from the Amendment:

Should the Panel contemplate a different course, it is submitted that a recommendation including reference to the walls on the balance of the Peet land in the schedule to clause 52.37 of the planning scheme is open to the Panel.

Peet intends to make application for a subdivision permit for the balance of the Peet land in the forthcoming week or so. It is therefore unlikely that the Amendment will be gazetted prior to a decision on that application being made or the time within which a decision is to be made expiring.

Ms Lardner expressed a concern that:

If the dry stone walls on the balance of the Peet land were to be included in the Heritage Overlay and thus attract the operation of the proposed Local Policy, there would be little likelihood that a permit, similar to or the same as the (recent) demolition permit, would issue.

This would give rise to a situation where the walls attracting the highest grading have been permitted to be demolished whilst walls of less significance are required to be retained.

Mr Vines, in his statement of evidence, noted the relationship between the Dry Stone Walls Study and the concurrent preparation of Precinct Structure Plans (PSPs) for areas identified for future urban development:

During the preparation of the Study, the process for preparing Precinct Structure Plans was concurrently underway in parts of the City of Wyndham, including areas where numerous dry stone walls are present. While there is potential for managing dry stone walls in the PSP process through provision of compatible land use, reserves and location of infrastructure, the PSP outcome does still not preclude preservation of particular sections of dry stone walls, as there will be options for partial retention, relocation and reconstruction of walls or other mitigation measures, during later planning and design stages including development plans, subdivision plans and functional layout plans as part of the planning permit process. It is anticipated that where recommendations of this report are inconsistent with approvals under the PSP process, the latter will take precedence. However, future development applications within that process may still provide opportunities for conservation of dry stone walls not identified in the PSPs.

Mr Vines also stated, with relation to the Peet land:

The subject land is within the Black Forest South PSP, which notes that "Where practicable dry stone walls of cultural significance should be retained in-situ and within the public realm."³ Town Centre Guidelines for the PSP also address "natural or cultural landscape features such as rivers and creeks, tree rows, topographic features or other heritage structures which assist in creating a sense of place."⁴

³ Black Forest Road South Precinct Structure Plan Background Planning Report
<http://www.mpa.vic.gov.au/wp-content/Assets/Files/Black%20Forest%20Road%20South%20-%20Draft%20Background%20Report.pdf>

⁴ <http://www.mpa.vic.gov.au/wp-content/Assets/Files/BFRSPSP.pdf> section 4.3

He later clarified (as per his footnote) that his reference to the PSP was from a Background Report not the PSP itself.

Mr Vines informed the Panel that the dry stone walls within the subject property are of a character typical of those in the municipality:

The walls on the eastern southern and western boundaries of the allotment are more intact, but are lower-half walls with post and wire fence topping them. These walls were assessed in the study as being of A and C value respectively.

Mr Vines was questioned about the reference in the Dry Stone Walls Study⁵ which identified dry stone walls on the property as part of the Scott/Hanley farm and noted the walls as:

Not proposed [for heritage overlay] Fragmentary nature of surviving walls do not justify HO.

Mr Vines responded:

It should be noted that this comment relates to the assessment of specific groups of dry stone walls, which were considered to be historically and visually related and so were considered for potential heritage precinct overlays, either as part of existing heritage overlay areas, or as new precinct heritage overlays. Each of the selected precincts was considered to represent an important historical phase, or a distinctive landscape. The Scott/Handley walls were considered to not sufficiently meet this criterion. However, they were separately evaluated as walls of a sufficient standard to warrant protection through the proposed continuing use of clause 52.37.

The Wyndham Dry Stone Wall Study also notes that "it is anticipated that where recommendations of this report are inconsistent with approvals under the PSP process, the latter will take precedence."

It is understood that while there has been an approval of part of the subdivision plan for CA 2 Sec.15, this does not necessarily prevent the retention of at least some parts of the dry stone walls on this property.

Locations for potential retention of dry stone walls in the approved or proposed subdivisions, include areas of road reserve on the south of Black Forest Road, within proposed open space and drainage reserves, and around the proposed recreation reserve at the southern end of the allotment.

4.1.2 Discussion and conclusions

The Black Forest South PSP, including the Peet land, was approved in August 2013 through Amendment C169 to the Wyndham Planning Scheme. For some reason it was silent on the issue of dry stone walls, although the Panel was informed that this matter was covered in a Background Report. The Panel agrees with Mr Travers that the matter should have been considered in the PSP, but does not believe that the failure to take the walls into account at that stage necessarily makes their retention impractical.

The Panel's site inspection confirmed Mr Travers' information that no wall is visible in the most northerly section of the western boundary of the Peet land. The rest of this boundary has a dry stone wall (number 141). Approximately one third of its length, the more northerly section, is a half height wall of variable integrity, topped by a wire fence (with some

⁵ Pg 144 Table 10 Wyndham Dry Stone Walls Study, 2015

remaining timber posts) and the southern two thirds is a full height wall, of reasonably consistent integrity, with a wire fence behind it on the adjoining land. The Panel notes that this wall was classified as C in the Dry Stone Walls Study. The wall on the southern boundary (number 140) is recorded in the study as a full height wall, classified B, but appeared to the Panel to be lower than the southern section of wall 141, and topped with a wire fence. It seemed to be of consistent height and integrity. Conditions on the day did not allow for inspection of the southern section of the wall on the eastern boundary (number 139), which the Study classified as B. The Panel did, however, view the northern portion of this wall, which has been approved for demolition.

On 5 May 2015 Council issued the first planning permit for a staged subdivision of a portion of the Peet land. The subdivision permit approves subdivision of a total of 477 lots over a 14 stage subdivision. On 20 November 2015 Council determined to issue a permit which allows demolition of all of the existing dry stone walls which are located within the land affected by the subdivision permit. According to the Dry Stone Walls Study, some of the walls that are to be demolished pursuant to the demolition permit received a higher grading than did the balance of the walls on the Peet land.

Council tabled a copy of the planning permit and endorsed plan for the approved subdivision of the land (WYP7570/14) and copy of the planning permit for the approved removal of dry stone walls from the land (WYP8483/15).

The Panel notes that the demolition permit requires, amongst other things, the reconstruction of a 100m length of the walls to be demolished within the area the subject of the subdivision permit in accordance with a dry stone wall management plan. This would appear to be a reasonable outcome.

The Panel agrees with Council that, given that a permit has been approved to demolish sections of the walls, it is appropriate to delete the proposed HO from the portion of the wall to which the permit applies.

The Panel accepts the explanation by Council and Mr Vines that while the dry stone walls on the Peet land do not warrant a specific area-based HO because of their fragmentary nature, there is an argument for their inclusion in a serial HO (HO134). However, as discussed in Chapter 3 above, the Panel believes HO134 should be restricted to walls classified as either A or B in the Dry Stone Walls Study. This means that, if the walls on this land were to be included under HO134, heritage controls would not apply to the wall on the western boundary (number 141), but would apply to the wall on the southern boundary (number 140) and the southern section of the wall on the eastern boundary (number 139).

An Indicative Master Plan⁶ showing detailed subdivision layout for the remainder of the PEET land was tabled at the Hearing. The Panel accepts Ms Lardner's assurance that a subdivision permit application for this land is imminent and its consideration could precede any gazettal of Amendment C209. According to Ms Lardner's information, a request to demolish the remaining dry stone walls would be included in the permit application, as required under clause 52.37. This, unlike the previous sequential application process, should allow the

⁶ Dated 17/11/2015

values of the walls and their potential for retention to be taken into account during assessment of the proposed subdivision.

The Panel notes Ms Lardner's advice that the imminent subdivision application for the balance of the Peet land is likely to be considered in the context of the current clause 52.37. Nevertheless, it recommends that the B-graded walls on the southern boundary (number 140) and the southern section of the eastern boundary (number 139) should be retained in HO134 until such time as a permit for their removal is issued and acted upon.

In this context, the Panel agrees with Mr Vines that there may still be opportunities for retention of dry stone walls in the proposed subdivisions of the balance of the land, within proposed open space and drainage reserves and around the proposed recreation reserve at the southern end of the allotment.

4.2 Talliver Terrace, Truganina (Submission 8)

4.2.1 Evidence and submissions

A written submission was received from Westbourne Grammar, regarding a wall on the boundary of the school's property facing Talliver Terrace, Truganina (Submission 8).

The submission describes the wall as:

A piecemeal fence and does not appear to have been constructed in any formal or traditional manner... built around an existing barb wire fence [and]... this wall/fence/rock jumble has little or no significance or historic value.

Council submitted:

According to the Study the wall is categorised as a C level wall.

The issue raised in this submission has not been supported by any comparative heritage analysis of the relevant dry stone walls and no additional information has been provided to Council to justify a departure from the recommendations proposed by the Study.

Consequently, Council is not prepared to diverge from the findings of the Study in this instance.

Mr Vines said that the Talliver Terrace wall:

... is the only surviving dry stone wall in the area, which was once part of the large Leake family farm Rose Grange and the original purchasers were H. Creswick and the Smith Brothers in 1858. Therefore, despite the condition of the wall, it reflects the oldest constructed feature in the area.

Mr Vines informed the Panel that this area had many kilometres of walls up to the 1980s, but almost all have been removed for urban development.

As such, he argued that it was seen as important to retain at least some fragments of the remaining walls in order to demonstrate the historical connection of the area to its farming history:

While the remaining section of the wall in the Westbourne Grammar site will be isolated, there would still be an opportunity for conservation, restoration, interpretation and landscaping to make a feature of this wall and use it to educate the students at the college and local community about the local history of their suburb.

Mr Vines also informed the Panel that this dry stone wall:

is an extension of a wall to the east for which planning approval has recently been sought to relocate and reconstruct in the adjoining creek reserve as part of the College Green housing development. The proposal for this wall involved relocation and reconstruction due to the need to provide access to Talliver Terrace, where proposed housing allotments have frontages to the road.

4.2.2 Discussion and conclusions

The Panel has previously recommended that only dry stone walls classified as either A or B should be included in HO134. The Westbourne Grammar wall is classified as C:

C – Half-height composite walls, less than 40%, but more the 20% intact

These walls still have some small sections which demonstrate their original form, but more than half their structure is either fallen or inexpertly replaced, and in many cases substantial amounts of stone have been removed, for example walls along well used local roads have had much of the coping stone stolen.

The Panel inspected this wall. It presents as much as rubble as it does a wall. It may have some additional historical significance as indicated by Mr Vines. However, given the relocation and reconstruction of the adjoining section, which will form part of the College Green development, this historical connection will fortunately not be lost.

The Panel concludes that this section of wall should be removed from HO134.

4.3 1645 Boundary Road, Mount Cottrell (Submission 1)

4.3.1 Evidence and submissions

The written submission stated that dry stone walls on the property did not meet the relevant threshold for including in the HO. It said that the historic dry stone walls had either been demolished or were merely remnants and were of no significance. It did not support inclusion of the internal remnant dry stone walls in HO10 because the walls made no contribution to the public realm. The walls on Boundary Road and Shanahans Road, it was claimed, were of much later construction and of no historical significance.

Council submitted:

HO10 exists on the land and applies to the Volant House. There are remnant dry stone walls surrounding the property that are associated with the house but not referenced in the description of the place or contained within the mapping of HO10.

The Study classified the dry stone walls on the land as B, C and E walls. The level B and C walls are proposed to be included within the HO.

The Study reviewed (the) citation for HO10 and updated it with regard to the dry stone walls on the land and recommended that HO10 be extended to include the dry stone walls around the main paddocks associated with Volant House (HO10), including the boundary walls, paddock walls and the stone enclosure.

Mr Vines gave evidence that the walls were identified for inclusion in the HO as part of the contextual landscape of the historic place that has already included in the overlay:

As such, the walls are considered to meet the criteria for historical and aesthetic significance as set out in the DSW Study because they represent some of the earliest and

oldest built fabric related to European settlement in a given area and they are a key component in the cultural landscape, demonstrating the transition from the pre-settlement and squatting era unimproved open plains to a subdivided privately owned and fenced landscape.

With regard to the suggestion that earlier dry stone walls are either demolished or merely remnants and walls along the road frontages are of much later construction, Mr Vines replied:

Evidence from early maps indicates that most of the identified walls were in existence prior to 1917, and while few individual walls can be dated by direct historical sources, sufficient evidence exists to show that almost all surviving walls originate in the period immediately after the first private sale of land.

Available evidence indicates that the walls on the Morton property are substantial, relatively intact, and of an historical period and character which warrants conservation, as much as any other walls in the City of Wyndham or other comparable regions.

4.3.2 Discussion and conclusions

Dry stone walls associated with the property at 1645 Boundary Road include walls around the Volant House (now known as 'Arva') and on the boundaries of the property at Boundary Road and Shanahans Road.

The walls mapped as part of the extended HO10 are listed in the amended Statement of Significance. They are mostly classified C or D, with a small section of B. The Panel considers that the Statement of Significance substantiates the connection between the walls and the heritage place and therefore it supports inclusion of these walls in the schedule description and mapping of HO10.

However, the Panel notes that one of the walls listed in the Statement of Significance for HO10 appears to have been mapped as part of HO134 (number 770 on the western boundary, facing Shanahans Road, classified C). The mapping should be amended to show this wall as part of HO10.

In addition, the Statement of Significance for HO9 on the adjoining land to the east lists wall number 1523 (classified A), which forms the northern part of the boundary between the two properties, but it is absent from the Amendment mapping. This may be because it is located within the already mapped polygon for HO9, which appears to extend onto the property at 1645 Boundary Road. However, this should be checked and amended if necessary.

4.4 1315 Bulban Road, Little River (Submission 5)

4.4.1 Evidence and submissions

Submission 5 stated that the front stone wall fence is not original. It has undergone extensive repairs and amendments over the last 10 years.

Council responded:

Based on the Study, the walls at the front of the property are historically significant and warrant heritage protection because they are part of a more extensive boundary wall on what was George Hall's selection of former Little River Common land from 1877.

Mr Vines said:

The dry stone wall at the front of 1315 Bulban Road (Wall 727) is part of a more extensive boundary wall on what was George Hall's selection of former Little River Farmers Common land from 1877. It has therefore been considered as part of a larger group of walls, including the former eastern (203) and southern (206) boundary walls, and there is another extensive wall opposite on the north side of Bulban Road (726, 728).

The condition of the wall does suggest inexpert restacking of stones, but it is at least partly reflecting the original construction form, retains the original material and is located on the original alignment.

It is recognised that many dry stone walls are in a similar condition, but that this is not a reason for excluding them from future conservation.

4.4.2 Discussion and conclusions

The Panel inspected this site and noted that the wall is a full-height wall of consistent integrity is part of a larger group of walls in this area. The Dry Stone Walls Study shows its classification as B. As previously discussed, those walls which are classified as either A or B, should be included in HO134, therefore this wall should be retained in Amendment C209.

4.5 Is the HO redundant at 1490 Doherty's Road, Mount Cottrell? (Submission 2)

4.5.1 Evidence and submissions

The submission made the following points:

- The dry stone walls are of little historical value
- The application of the HO along Sewells Road is redundant given the existing PAO5 which runs along the entire western boundary
- Dry stone walls are hazardous to children attempting to climb them
- The dry stone wall has been incorrectly mapped.

Council submitted:

A Heritage Overlay is proposed to be applied to the dry stone walls along the western and southern boundary of the land because it is historically significant.

The Study classifies the walls as B level walls.

As foreshadowed in the Directions Hearing on 26 October 2015, Council has acknowledged that a section of wall along the frontage has been removed and will amend the mapping of the HO to reflect this.

The PAO5 identifies land required for future road purposes (Outer Metropolitan Ring Road). The likely construction of this road could be 30 years or more years into the future and the precise design has not been determined. Without a HO, Council is unable to consider options to retain or relocate the dry stone wall at this site.

The public risk created from dry stone walls will be taken into account during the assessment of applications.

Council tabled correspondence between the landowners, Council and VicRoads.

Mr Vines informed the Panel that the partially collapsed nature of some parts of the walls at 1490 Doherty's Road is typical of the vast majority of Wyndham walls where coping stones are dislodged and up to 30% of all stones are dislodged. He continued:

However, all the original stones are generally still present even if lying on the ground adjacent to the wall, and large sections of the walls are standing to their original height, as shown in the Sewells Road Section below.

It is acknowledged that a section of wall along the Doherty's Road frontage has been removed, and the mapping should be updated to reflect this. Modification of the Heritage Overlay extent to exclude this area would also be appropriate.

It is also acknowledged that there are unmapped openings in dry stone walls show as continuous walls in some maps. This is simply due to the practicalities of survey, where not every breach could be mapped at the time of survey.

In regard to the PAO, Mr Vines noted that the likely construction of this road is uncertain, and may be 30 or more years into the future:

The precise design has not been determined and there may be options within this to retain dry stone walls.

Reconstruction of walls is one of a number of options provided in management recommendations in the study. It is acknowledged that this is not best practice heritage conservation management, but that where no other option is available, it provides an opportunity to retain an aspect of the landscape of the Wyndham area in new developments, which helps link to the past and give a distinctive local appearance.

Retaining the permit provision for these walls provides future opportunities for mitigation either in the design of new roads and developments that might retain walls in their existing locations, or as compensatory works in reconstructing walls as part of new roadside landscaping.

Mr Scally, for the property owner, argued that application of an HO was contrary to orderly planning in circumstances where a PAO applied, particularly where the purpose the PAO is to facilitate a project of State importance. Mr Scally also noted Council's agreement to delete the proposed HO134 from that part of the Dohertys Road frontage where the wall had been removed and indicated his client's acceptance of this change.

4.5.2 Discussion and conclusions

The Panel inspected this wall and confirmed that, as stated in the original submission, part of the wall on the Dohertys Road frontage has been removed.

The VicRoads correspondence⁷ tabled by Council includes the following:

I can advise that the imposition of the heritage overlay is not likely to prevent the delivery of the OMR (Outer Metropolitan Ring) into the future. To reaffirm Council's advice, the Heritage Overlay allows for future options to be considered such as to retain or to relocate. Until detailed design work is undertaken it will not be possible to determine whether or not there will be any impact upon the stone walls.

Clearly there is not a conflict between the introduction of a HO and the existence of a PAO over the stone walls in this location.

The Panel concludes that, given the classification of these walls as B, they should remain in the Amendment as part of HO134. However, the mapping should be amended to delete that part the Dohertys Road frontage where the wall (number 914) has been removed.

⁷ 12 October 2015.

4.6 Should HO130 be extended at Little River Farmers Common? (Submissions 4 and 6)

4.6.1 Evidence and submissions

Submissions 4 and 6 supported the Amendment but also requested that the Little River Farmers Common HO130 should be extended to cover the walls south of the railway line in the block bounded by Flinders Street, McLeans Road and Rothwell Road.

Council responded that the Little River Farmers Common stone walls (proposed HO130) include the walls either side of Edgars Road and walls extending perpendicular for 100 metres either side and along Narraburra Road, McPhersons Road and Bulban Road. The listing does not include walls south of the Melbourne to Geelong Rail line which intersects the Little River township.

Council submitted that this issue was specifically considered by the Dry Stone Walls Study 2015, which noted in the citation for the Little River Farmers Common stone walls (p.283):

- Little River Historical Society suggested continuing the heritage overlay area to the south of the railway line to include Flinders Street, McLeans Road and Rothwell Road walls in the township and to link with the Rothwell Reserve, Rothwell Bridge and other important sites. While this would encompass more of the former Commons land, and have some historical relevance, it was considered difficult to justify due to the discontinuous nature of surviving walls in this area.

Council went on to explain that the walls south of the railway line are nevertheless proposed to be protected via a HO, albeit a different heritage listing (HO134 Dry Stone Walls):

In practical terms, the outcome sought by the submitters which is ultimately the protection of the walls via a HO will be achieved.

Mr Vines advised that the group of walls proposed for HO130 (Little River Farmers Common), was based on an almost continuous extent of walls on both sides of Edgars Road leading into Little River:

The distinction between the walls described in the submissions, and those of the Farmers Common HO130, is to some extent dependent on proximity and contiguity, the gap created by the railway line and more developed part of the township.

Mr Vines argued that the walls south of the railway line do relate historically to the walls in the proposed HO130, but that the discontinuity created by the railway line and the township prevent an appreciation of a visual relationship between the two areas:

The group of walls proposed for HO130, were based on an almost continuous extent of walls on both sides of Edgars Road leading into Little River. These were recognised as the boundary walls to properties created on the Little River Farmers Common in the first decades of settlement in the region. There were many other sections of walls also part of this historical development, extending off Edgars Road and dividing paddocks on the former Commons Land, but the density and continuity of the walls was not comparable to those along Edgars Road.

Mr Vines noted that proposal for including the Little River walls in the serial dry stone wall Heritage Overlay (HO134) provides a comparable level of protection:

The historical and social connection of these walls to the Little River Farmer's Common and the township's history can be demonstrated in the recommended education and interpretation program, which the Historical Society also supports.

Mr and Mrs Jones appeared at the Hearing to expand on their submission supporting the conservation of the group of walls south of Little River township, but requesting that these walls be added to HO130 Little River Farmers Common Dry Stone Walls, rather than forming part of the general grouping of walls under HO134. They considered that listing under HO134 lacked the strength that would be achieved by recognising the specific historical association of these walls with the Little River Farmers Common. They pointed to the unity of character of the walls in Rothwell Road, McLeans Road and Flinders Street and their importance to the green wedge character of the southern approach to the township. Mr and Mrs Jones also noted the relationship of the walls to other historic places in Little River.

4.6.2 Discussion and conclusions

The Panel appreciates that the primary concern of both submissions 4 and 6 was for the protection of the walls, and recognises that the exhibited HO134 would have resulted in the walls being heritage listed, regardless of the HO number. The Panel accepts the evidence of Mr Vines that the common heritage shared by this group of walls and the others relating to the Little River Farmers Common could be demonstrated in other ways.

However, the Panel also notes that only two of the walls in this group (numbers 645 and 646 on Flinders Street) are classified B and the remainder as C (numbers 222, 323, 664 and 647) or D (numbers 225 and 648). Under the recommendations made earlier in this report about applying HO134 only to A and B classified walls, the majority of those in the area south of Little River township would be excluded from the HO.

The Panel inspected these walls and observed their coherence as a group, their relationship to the historic landscape of the Little River township and their links to other heritage places within it. While it agrees that the Flinders Street walls demonstrate a higher level of integrity than the others, it believes that they alone would not effectively represent the walls of this part of the area that was covered by the Little River Farmers Common.

However, the Panel also accepts the advice of Mr Vines and Council that, in view of the way that HO dry stone wall precincts were defined in the Study, these walls do not fit neatly within HO130 because they are geographically and visually separated from the other walls in that precinct.

In view of the strong support for heritage listing of this group of walls from the Little River Historical Society and from two owners, and the fact that no other party expressed opposition, the Panel suggests that Council should consider creating another precinct for this area, that could be called 'Little River Farmers Common South' or similar. A separate Statement of Significance would need to be created for the new precinct, but the historical component could be based substantially on that used for HO130. Since Amendment C209 proposed heritage listing for these walls as part of HO134, the Panel considers that their inclusion in a new precinct would not constitute a transformation of the Amendment.

5 Does the HO impose financial and administrative burdens?

5.1 Evidence and submissions

Several submissions referred to financial and administrative burdens. Submission 5 was concerned that the Amendment would require a permit for ongoing repair or maintenance and that this would create a cost imposition. Concern was also expressed that the overlay restriction would significantly reduce the value of the property.

In relation to additional financial burden Council submitted that:

An additional financial burden of having to maintain heritage protected walls raised by submitters suggests that the protection and maintenance of dry stone walls is expensive. It is acknowledged that the expertise of a professional dry stone waller may be required in certain instances. This would generally be borne by the developer or service authority where development is proposed, that might impact on the wall.

The repair and maintenance to a wall does not require a planning permit or in some instances, a professional waller, and can be done by the land owner themselves, thus reducing costs. Finally, Council submits that there is no obligation for land owners to bring their wall up to a certain standard following the application of the HO to that wall.

Council submitted that:

Evidence of property devaluation as a result of the Amendment has not been provided to support this submission. The location of dry stone walls is typically along property boundaries. These are not considered to be a large impediment to the future development of the land.

In relation to this issue section 12(2) of the Act requires that the planning authority must take into account its social effect and economic effects of an amendment as well as environmental effects.

Council submitted that the social and economic effects likely to be relevant at the amendment stage are those of a broad community nature rather than a personal kind. This is consistent with the long-standing approach taken to such issues in planning decision making by both Planning Panels and VCAT.

The cost of applying for permits is expressed in terms of a personal impact rather than a community impact and is not one that the Panel should take into account.

In any event, it is questionable whether additional permits would be required for routine maintenance because under the Heritage Overlay, a permit is not required to carry out works, repairs and routine maintenance which do not change the appearance of a heritage place undertaken to the same details, specifications and materials (clause 43.01-1).

5.2 Discussion and conclusions

The Panel notes that in relation to planning permit applications there is a long held view in case law that property valuation is not a valid consideration. A similar view has generally

been adopted over a long period of time by panels and planning authorities in considering amendments.⁸

In relation to additional costs of planning applications, the Panel acknowledges that in some cases additional costs are likely to be incurred. The Panel also notes that a permit application is currently required to demolish, remove or alter all dry stone walls in the municipality under clause 52.37 Post boxes and Dry Stone Walls.

No submission or evidence was provided to indicate the extent of any financial hardship. The Panel considers that such costs should not be significant and will not outweigh the broader community objectives being pursued in the Amendment.

In relation to the issue of maintenance raised by the submitter, the Panel notes that the HO does not require a permit for works, repairs or maintenance which do not change the appearance of dry stone wall.⁹

⁸ Panel report, Mitchell Planning Scheme Amendment C92, May 2015.

⁹ clause 43.01-1.

6 Changes to the Heritage Overlay Schedule and mapping

6.1 The issue

After exhibition, the Amendment documentation was altered in order to resolve issues raised in some submissions. A number of mistakes and inaccuracies and more recent changes have resulted in the need to make changes to the listing of dry stone walls in the schedule in relation to the proposed HO134.

6.2 Submissions and evidence

Post exhibition Council changed the Amendment documentation to delete the HO from properties where it was applied as a result of an error (e.g. the dry stone wall was removed or the HO duplicates previous planning work such as the preparation of precinct structure plans for dry stone walls on the same land).

Council site visits confirmed that there was no dry stone wall at:

- 170 William Road, Little River
- Lot 11 Mouyong Road, Little River.

Council submitted that the Amendment was not intended to apply to land within PSP areas where detailed assessment of and planning for dry stone walls were undertaken during the preparation of the plans:

- Lots 1 and 2 on LP97350 (within Tarneit North PSP) (proposed extension of HO36)
- Western boundary of the Manor Lakes Estate (Manor Lakes, Wyndham Vale Structure Plan Area)
- Lot 9 Leakes Road, Truganina South (within Truganina South PSP).

Mr Vines' evidence included recognition that the part of the dry stone wall on the Dohertys Road frontage of 1490 Dohertys Road, Mount Cottrell had been removed.

Council submitted that the HO should be removed from the portion of dry stone walls to which Planning Permit WYP8483/15 applies:

- A portion of the northern and eastern boundaries of CA 2 Section 15 Parish of Mambourin.

6.3 Discussion and conclusions

The Panel concurs with Council that the HO should be removed from locations where it has been confirmed that a dry stone wall no longer exists or where the HO duplicates previous planning work.

In addition to those places identified by Council, the Panel agrees that the HO should be removed from the section of the frontage to 1490 Dohertys Road, Mount Cottrell where dry stone walls no longer exist (see section 4.5).

It also supports removal of HO134 from those sections of CA 2 Section 15 Parish of Mambourin (Black Forest Road, Werribee) to which Permit WYP8483/15 applies.

The mapping for Amendment C209 should be amended accordingly. The relevant Statements of Significance (reference document) should be edited to reflect these changes.

The Panel has noted a few inconsistencies in the treatment of dry stone walls in the exhibited Schedule to the HO. While most of the HO places that are being extended to cover additional dry stone walls and most of the new HO dry stone wall precincts have a 'Yes' in the column referring to fences not exempt under clause 43.01-3, there are several where this is lacking. These include HO9, HO36 (where it may no longer be relevant), HO38 and HO119. On the other hand, a 'Yes' has been included in this column for HO64, Werribee Park. This is inappropriate, as this place is listed on the Victorian Heritage Register and not subject to permits under the HO. The schedule entries should be checked for consistency and amended if necessary.

7 Drafting of clause 22.07: Dry Stone Walls

7.1 The issue

The Amendment proposes the insertion of a new Local Policy into the planning scheme.

7.2 Submissions and evidence

Council submitted that:

The amendment proposes to insert a new local planning policy, Dry Stone Walls Policy at clause 22.07 of the Planning Scheme. The policy is required to guide discretion on how permit applications relating to dry stone walls will be considered under the HO as the decision guidelines in the HO require consideration of 'any applicable heritage study and any applicable conservation policy.' The policy sets out the overarching objective, policies and decision guidelines to manage the subdivision of land containing a dry stone wall and buildings and works to dry stone walls.

Most importantly, the policy establishes the following hierarchy of preference to be adopted when considering an application relating to a dry stone wall:

- Retention and conservation in original setting (Avoid impacts to the dry stone wall in new development)
- Reconstruction on new alignments
- Demolition and removal.

In discussion of the HO Council later submitted:

If competing objectives prevail in favour of development then changes to or removal of the walls will be permitted. This represents the proper order and function of planning in Victoria.

Ms Lardner submitted:

The policy, as presently drafted, includes some challenging objectives which, if applied strictly, may result in there being very little, if any, opportunity to undertake demolition, alteration or additions to a dry stone wall. For example, it is difficult to contemplate how the following objective could be met other than in circumstances where the level of intactness of a wall included in the overlay had deteriorated at the time an application was being considered by Council:

- To ensure that any demolition, alterations or additions will not adversely impact the cultural significance of a dry stone wall.

Additionally and in relation to any proposed demolition and removal, the policy proposes to:

- Discourage the demolition of a dry stone wall unless it can be demonstrated that the demolition is unavoidable.

In terms of subdivision, the policy proposes to:

- Ensure the cultural significance and landscape values of dry stone walls are retained in new subdivisions.

Ms Lardner submitted that the guidelines relevant to the subdivision policy, if strictly applied, would seriously impact on development proposals including those that are earmarked within the municipality of Wyndham to assist in the delivery of urban

development to cater for forecasted population increases over the next three to four decades.

Mr Scally noted that the post-exhibition changes by Council were supported by his client.

Council undertook a number of minor edits to the proposed Dry Stone Walls Policy at clause 22.07-3 in order to clarify the guidelines for the demolition and removal of dry stone walls.

At the Hearing Council noted that the Dry Stone Wall Policy at clause 22.07 requires a Dry Stone Wall Management Plan as a mandatory requirement:

Council is willing to reconsider the wording within the Policy to include the statement “unless otherwise agreed to by the Responsible Authority,” as there may be circumstances where our heritage advisor does not need a full report. This would be in order to offset costs to land owners where appropriate.

The draft Policy also includes the following Objective:

- To ensure that planning applications to demolish, remove or alter a dry stone wall and to subdivide land containing a dry stone wall are assessed against the guidelines set out in the Wyndham Dry Stone Walls Study (2015).

7.3 Discussion and conclusions

The Panel accepts as reasonable the post-exhibition changes proposed by Council and shown at Appendix C.

The Panel also accepts the submission by Ms Lardner regarding the last Objective in clause 22.07-2. It is not clear how such an objective can be achieved. Objectives may be highly aspirational, but they must also be achievable. The Panel has recommended alternative wordings for two of the objectives.

In addition, the Panel considers that the Objective that seeks to ensure that applications are assessed against the guidelines set out in the Dry Stone Walls Study is inappropriate, given that the Study is only proposed as a reference document. This would be inconsistent with the advice given in Planning Practice Note 13 – Incorporated and Reference Documents, which indicates that reference documents should provide general background, rather than being used to support the exercise of discretion. The Panel notes that many of the guidelines from the Study are already included in the draft clause 22.07. It has suggested the addition of a few more, as well as a suggestion made by Mr Travers concerning the use of mortar. It has also added appropriate decision guidelines, including those from the Study relating to subdivision.

The Panel concurs with Council’s stated position that including a HO over the walls does not prohibit the removal or relocation of the walls. It simply allows Council an opportunity to assess the appropriateness of an application in consideration of heritage objectives.

The Panel has therefore recommended minor wording changes to the policy statements at 22.07-3.1: *Demolition and removal* and at 22.07-3.2: *Subdivision*, to facilitate the negotiation of an optimum outcome given the legitimate competing interests which need to be considered when determining approval of permits.

These changes are shown at Appendix D.

Appendix A Submitters to the Amendment

No	Submitter
1	John Morton
2	Kevin O'Shea
3	Urbis on behalf of PEET Limited
4	Little River Historical Society Inc.
5	Alfred and Carmen Spiteri
6	Peter and Sue Jones
7	Country Fire Authority
8	Westbourne Grammar
9	Dennis Family Corporation
10	Janet O'Hehir
11	C Camilleri
12	Urbis on behalf of Tarneit West Development Project Pty Ltd
13	City of Melton
14	PEET No 131 Pty Ltd (repeat of Submission 3)
15	Maria Vella
16	DELWP
17	Diane Billing

Appendix B Document List

No	Date	Description	Presented by
1	25/11/15	Council Part B Submission and attachments	Council
2	25/11/15	Black Forest Road South PSP (extract – p.45)	J Lardner for Peet
3	25/11/15	Melton Heritage Study 2011	J Lardner for Peet
4	25/11/15	Plans showing walls to be removed from Black Forest Road property	Council
5	25/11/15	Supplementary submission to Submission 2	D Scally for owner
6	25/11/15	Aerial photography of Black Forest Road property	J Lardner for Peet
7	25/11/15	Supplementary submission (to Submission 3) for Peet No 131 Pty Ltd	J Lardner for Peet
8	25/11/15	Extract from Black Forest Road South PSP	J Lardner for Peet
9	25/11/15	Black Forest Road, Werribee Indicative Master Plan	J Lardner for Peet
10	25/11/15	Supplementary submission to Submission 4	P and S Jones
11	25/11/15	PowerPoint presentation – P and S Jones	P and S Jones

Appendix C Post-exhibition amendments to clause 22.07

Track changes: Changes in [blue](#) and [red](#) were recommended by Council in Attachment 3 to their submission and at the Hearing.

22.07 DRY STONE WALLS

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Proposed C209

This policy applies to all permit applications required to demolish, remove or alter a dry stone wall on land specified in the schedule to the Heritage Overlay.

This policy also applies to permit applications for the subdivision of land containing a dry stone wall, where the wall is identified in the schedule to the Heritage Overlay.

22.07-1 Policy basis

Dry stone walls are one of the characteristic features of Melbourne's western basalt plains. They were constructed as part of the general fencing of private property, and were among the first European constructions on the plains, coming soon after land tenure was established.

Dry stone walls in Wyndham are of historical and aesthetic significance, and in some cases social and archaeological or scientific significance for their association with and physical demonstration of the process of survey, subdivision, alienation and development of land from the period of first land sales, to the late nineteenth century.

The risk of loss of cultural heritage posed by urban development occurring in Wyndham's growth fronts poses a threat to the conservation of dry stone walls. Good planning and design outcomes should be developed for managing dry stone walls to ensure that this important aspect of Wyndham's heritage is retained.

22.07-2 Objectives

- To encourage the retention and conservation of dry stone walls.
- To ensure the cultural significance of dry stone walls is not adversely impacted by the construction of nearby buildings and works.
- To ensure that planning applications to demolish, remove or alter a dry stone and to subdivide land containing a dry stone wall are assessed against the guidelines set out in the Wyndham Dry Stone Walls Study (2015).
- To ensure that any demolition, alterations or additions will not adversely impact the cultural significance of a dry stone wall.

22.07-3 Policy

The following hierarchy of preference will be adopted when considering a planning application relating to a dry stone wall:

- Retention and conservation in original setting (Avoid impacts to the dry stone wall in new development).
- Reconstruction on new alignments.
- Demolition and removal.

22.07-3.1 Demolition and removal

It is policy to:

- Discourage the demolition of a dry stone wall unless it can be demonstrated that the demolition is unavoidable.

Guidelines

The following guidelines apply in the application of the policy:

- Discourage the demolition and removal of a dry stone wall [unless it is demonstrated that it lacks historic value](#); ~~the wall~~ is shown ~~to be~~ structurally unsound; its removal is required for the purpose of utility installation and roads; or, any reasonable circumstance where the demolition of the wall is demonstrated [necessary to be appropriate](#).

22.07-3.2 Subdivision

It is policy to:

- Ensure the cultural significance and landscape values of dry stone walls are retained in new subdivisions.

Guidelines

The following guidelines apply in the application of the policy:

- The design and layout of subdivisions should:
 - Retain dry stone walls in an open area where lots front on to public open space or roads in locations that do not impact on the passive surveillance of the open space.
 - Incorporate a dry stone wall reserve comprising of a 5 metre strip centred in the middle of the wall, wherever possible. Avoid engineering works occurring within the 5 metres strip.
 - Minimise new openings through walls and utilise existing historic openings for entrances into new subdivisions, in a manner that minimises the impact on the wall.

22.07-3.3 Additions and alterations

It is policy to:

- Ensure the cultural significance and integrity of dry stone walls are not adversely impacted through the construction of additions or alterations.

Guidelines

The following guidelines apply in the application of the policy:

- Maintain the original alignment and construction style of a wall in any addition or alterations to walls.
- Ensure the adaptation of a dry stone wall utilises materials, design and construction techniques that are compatible with the existing wall.
- Ensure the demolition or removal of a section of a dry stone wall does not change its alignment or style.

- Ensure the construction of new wall ends when any section of a dry stone wall is demolished for a through way.

22.07-3-4 Reconstruction of dry stone walls

It is policy to ensure that the reconstruction of dry stone walls is undertaken in accordance with the following guidelines:

- Reconstruction of dry stone walls should be undertaken by a professional dry stone waller utilising stone which matches the original type and design of the wall to the satisfaction of the Responsible Authority.
- Stone removed and not reinstated should be used to repair or rebuild walls elsewhere or stockpiled for this purpose in the future.
- The original alignment and construction style of a wall should be maintained in the reconstruction of a wall.
- Wall ends at openings should be reconstructed as proper vertical tied end walls.

22.07-3.5 Application requirements

An application to demolish, remove or alter a dry stone wall and to subdivide land containing a dry stone wall must be accompanied by a dry stone wall management plan, [unless otherwise agreed to by the Responsible Authority](#), which includes the following (but not limited to):

- A written report that explains how the proposal seeks to manage the conservation of the dry stone wall consistent with the management recommendations set out in the Wyndham Dry Stone Walls Study (2015);
- A justification for the proposed alteration, removal or demolition of the wall;
- Process for repair/reconstruction of wall ends or reinstatement of wall sections, including original fencing materials;
- The method of adaptation and integration of walls into new urban spaces;
- Options for the conservation and management of dry stone walls, and the mitigation of impacts where these cannot be avoided; and
- Plans and elevations (A3 size) including (but not limited to):
 - Feature survey of all dry stone walls showing the width, length and height of the walls and record of any openings, crossovers, structures, fencing, driveways or distinguishing features of the walls;
 - The extent of alteration, addition or demolition required and the details of the alignment of any additions or alterations;
 - Materials and size of any proposed new fence; and
 - Representative photographs of the section of the wall.

22.07-4 Policy Reference

Wyndham Dry Stone Walls Study (2015)

Appendix D Panel recommended clause 22.07

Track changes: Changes in [blue](#) and ~~red~~ were recommended by the Panel.

Note: Post-exhibition amendments by Council are incorporated.

22.07 DRY STONE WALLS

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Proposed C209

This policy applies to all permit applications required to demolish, remove or alter a dry stone wall on land specified in the schedule to the Heritage Overlay.

This policy also applies to permit applications for the subdivision of land containing a dry stone wall, where the wall is identified in the schedule to the Heritage Overlay.

22.07-1 Policy basis

Dry stone walls are one of the characteristic features of Melbourne's western basalt plains. They were constructed as part of the general fencing of private property, and were among the first European constructions on the plains, coming soon after land tenure was established.

Dry stone walls in Wyndham are of historical and aesthetic significance, and in some cases social and archaeological or scientific significance for their association with and physical demonstration of the process of survey, subdivision, alienation and development of land from the period of first land sales, to the late nineteenth century.

The risk of loss of cultural heritage posed by urban development occurring in Wyndham's growth fronts poses a threat to the conservation of dry stone walls. Good planning and design outcomes should be developed for managing dry stone walls to ensure that this important aspect of Wyndham's heritage is retained.

22.07-2 Objectives

- To encourage the retention and conservation of dry stone walls.
- To ensure the cultural significance of dry stone walls is not adversely impacted by the construction of nearby buildings and works.
- To ensure that planning applications to demolish, remove or alter a dry stone [wall](#) ~~and~~ [or](#) to subdivide land containing a dry stone wall are assessed against the guidelines set out ~~in the Wyndham Dry Stone Walls Study (2015).~~ [below](#).
- ~~▪ To ensure that any demolition, alterations or additions will not adversely impact the cultural significance of a dry stone wall.~~
- [To encourage the retention of the cultural significance of a dry stone wall when any demolition, alterations or additions take place.](#)

22.07-3 Policy

The following hierarchy of preference will be adopted when considering a planning application relating to a dry stone wall:

- Retention and conservation in original setting
- Avoid impacts to the dry stone wall in new development.
- Reconstruction on new alignments.

- Demolition and removal.

22.07-3.1 Demolition and removal

It is policy to:

- Discourage the demolition of a dry stone wall unless it can be demonstrated that the demolition is **unavoidable** [appropriate](#).

Guidelines

The following guidelines apply in the application of the policy:

- Discourage the demolition and removal of a dry stone wall unless it is demonstrated that:
 - the wall lacks historic value; [or](#)
 - the wall is structurally unsound; [or](#)
 - the wall's removal is required for the purpose of utility installation and roads; [or](#)
 - demolition of the wall is **demonstrated to be** [appropriate on the basis of any](#) other reasonable circumstance.

22.07-3.2 Subdivision

It is policy to:

- [Ensure](#) the cultural significance and landscape values of dry stone walls are retained in new subdivisions.

Guidelines

The following guidelines apply in the application of the policy:

- The design and layout of subdivisions should:
 - Retain dry stone walls in an open area where lots front on to public open space or roads in locations that do not impact on the passive surveillance of the open space.
 - Incorporate a dry stone wall reserve comprising of a 5 metre strip centred in the middle of the wall, wherever possible. Avoid engineering works occurring within the 5 metres strip.
 - Minimise new openings through walls and utilise existing historic openings for entrances into new subdivisions, in a manner that minimises the impact on the wall.
 - [Locate new buildings at an appropriate distance from any dry stone walls to be retained, taking account of the depth of proposed foundations, disturbance to bedrock, and mitigation works to protect the walls during construction.](#)

22.07-3.3 Additions and alterations

It is policy to:

- Ensure the cultural significance and integrity of dry stone walls are not adversely impacted through the construction of additions or alterations.

Guidelines

The following guidelines apply in the application of the policy:

- Maintain the original alignment and construction style of a wall in any addition or alterations to walls.
- Ensure the adaptation of a dry stone wall utilises materials, design and construction techniques that are compatible with the existing wall.
- Ensure the demolition or removal of a section of a dry stone wall does not change its alignment or style.
- [Minimise new openings in walls where possible.](#)
- Ensure the construction of new wall ends when any section of a dry stone wall is demolished for a through way.
- [Discourage increases in the height of walls through the addition of new stone courses.](#)
- [Discourage the use of mortar in the repair of dry stone walls.](#)

22.07-3-4 Reconstruction of dry stone walls

It policy to ensure that the reconstruction of dry stone walls is undertaken in accordance with the following guidelines:

- Reconstruction of dry stone walls should be undertaken by a professional dry stone waller utilising stone which matches the original type and design of the wall to the satisfaction of the Responsible Authority.
- [Mortar should not be used in the reconstruction of dry stone walls.](#)
- Stone removed and not reinstated should be used to repair or rebuild walls elsewhere or stockpiled for this purpose in the future
- The original alignment and construction style of a wall should be maintained in the reconstruction of a wall.
- Wall ends at openings should be reconstructed as proper vertical tied end walls.

22.07-3.5 Application requirements

[Unless otherwise agreed to by the Responsible Authority](#), an application to demolish, remove or alter a dry stone wall ~~and~~ [or](#) to subdivide land containing a dry stone wall must be accompanied by a dry stone wall management plan, which includes the following (but not limited to):

- A written report that explains how the proposal seeks to manage the conservation of the dry stone wall consistent with the management recommendations set out in the Wyndham Dry Stone Walls Study (2015);
- A justification for the proposed alteration, removal or demolition of the wall;
- Process for repair/reconstruction of wall ends or reinstatement of wall sections, including original fencing materials;
- The method of adaptation and integration of walls into new urban spaces;
- Options for the conservation and management of dry stone walls, and the mitigation of impacts where these cannot be avoided; and,

- Plans and elevations (A3 size) including (but not limited to):
 - Feature survey of all dry stone walls showing the width, length and height of the walls and record of any openings, crossovers, structures, fencing, driveways or distinguishing features of the walls;
 - The extent of alteration, addition or demolition required and the details of the alignment of any additions or alterations;
 - Materials and size of any proposed new fence; and
 - Representative photographs of the section of the wall.

22.07-4 Decision Guidelines

Before deciding on an application the responsible authority will consider:

General

- The views of other landowners of the same dry stone wall, where ownership is shared between multiple property owners. Those views may be sought using Section 52 of the Planning and Environment Act 1987 (unless exempt under the provisions of clause 43.01-3).
- The heritage significance of the dry stone wall as cited in the relevant Statement of Significance.
- Any requirements or guidelines relating to the dry stone wall in a Precinct Structure Plan.

Subdivision

- Whether the subdivision avoids damage to or demolition of dry stone walls.
- Whether existing gaps and openings are utilised as far as possible.
- Whether the design provides for the conservation and maintenance of walls within suitable land and curtilage, for example linear reserves.
- Whether there are opportunities to relocate and reconstruct walls.

22.07-5 Policy Reference

Wyndham Dry Stone Walls Study (2015)