

AMENDMENT C203DARE

**HEIDELBERG ROAD CORRIDOR- PROPOSED PERMANENT HERITAGE OVERLAY
OVER SEVEN (7) INDIVIDUAL PROPERTIES**

PART B SUBMISSION- DAREBIN CITY COUNCIL

INTRODUCTION

- 1 This submission is made on behalf of Darebin City Council (Council). Council is the Planning Authority for Amendment C203dare (Amendment) to the Darebin Planning Scheme (Scheme).
- 2 On 4 July 2022 Council circulated its Part A Submission to the Amendment in accordance with the Panel's directions.
- 3 Council's Part A Submission contained:
 - 3.1 a background to the Amendment;
 - 3.2 a chronology of events; and
 - 3.3 the strategic context and assessment.
- 4 Council's Part B submission will:
 - 4.1 summarise the key issues;
 - 4.2 respond to issues raised in submissions;
 - 4.4 explain the strategic rationale of the Amendment and why Panel should support this amendment;
 - 4.5 respond to matters in Panel's directions; and
 - 4.6 outline Council's final position on the Amendment.

SUBMISSIONS

- 5 Council undertook community consultation with 44 affected landowners/ occupiers and 244 adjoining landowners/occupiers, as well as notices in The Age, Victorian Government Gazette, notifications sent to Government Authorities and Ministers as well as updating the Your Say and Corporate Darebin websites.
- 6 Council received four submissions to this amendment, two supporting the amendment and two objecting.
- 7 Council considers the Amendment is generally supported, given the number of objecting submissions is very low.
- 8 One of the submissions (submission 1) was generally supportive of the Amendment and did not refer to specific properties.
- 9 Three of the submissions related to a specific property. As a result, GML Heritage undertook further site inspections and a comparative analysis of relevant local and wider examples of like heritage places. Consequently, minor changes to the Amendment documents are recommended in relation to the descriptions, statements of significance, and place citations for the following properties:
 - 9.1 273-289 Heidelberg Road, Northcote
 - 9.2 257 Heidelberg Road, Northcote
 - 9.3 607 Heidelberg Road, Alphington

SUMMARY OF KEY ISSUES RAISED BY SUBMISSIONS

- 10 The issues raised by submissions to the Amendment can be summarised below:
- 10.1 Support for heritage protection (submitter 1,2)
 - 10.2 Protection for mature eucalypt trees (submitter 2)
 - 10.3 Doubt regarding the significance of places due to current building condition and modifications (submitters 3, 4)
 - 10.4 Individual financial loss and property devaluation (submitters 3, 4)
 - 10.5 Excessive control on individual rights and perceived lack of fairness of process (submitters 3,4)
 - 10.6 Impact of Heritage Control on the ability to respond to the climate emergency (submitter 4)
 - 10.7 Significant changes in immediate context impacts heritage (submitter 4)

RESPONSE TO SUBMISSIONS

Justification for the Heritage Overlay

- 11 The main question for the Panel to consider is whether the seven identified properties within this amendment have sufficient heritage value to justify the application of the Heritage Overlay.
- 12 Council relies on the comprehensive heritage review titled Heidelberg Road Heritage Assessment and Statements of Significance prepared by Dr Kim Roberts, of GML Heritage (formerly Context) dated September 2020 to make the case that all seven properties have heritage significance. Council submits this report provides a comprehensive and sound strategic basis for the proposed individual Heritage Overlays.
- 13 The report has been prepared in accordance with The Burra Charter: The Australia ICOMOS Charter for Places of Cultural Heritage Significance (rev. 2013) and the Victoria Planning Provisions Practice Note No. 1 'Applying the Heritage Overlay' (2018) (PPN01). The report also uses HERCON Criteria as recommended in Practice Note No. 1 'Applying the Heritage Overlay' (2018) (PPN01). This methodology is considered best practice in Victoria and was adopted by the Heritage Council in 2008.
- 14 Dr Roberts, an experienced associate in heritage matters will be available to speak at the main panel hearing and answer any questions relating to the heritage rationale of this amendment.

- 15 In the absence of any different professional heritage advice from any of the opposing submitters, Council respectfully submits there is no evidence suggesting the properties have no heritage significance.
- 16 Council has a statutory obligation under the Planning and Environment Act 1987 to conserve places identified to have heritage significance. Failure to apply appropriate heritage overlay control via the planning scheme risks non compliance with Council's duty as a responsible authority.

Protection of Trees

- 17 Submitter 2 submits that the green open space as well as the mature trees at 273-289 Heidelberg Road, Northcote contribute to its heritage value and should be protected.
- 18 In the C203dare Statement of Evidence: Heidelberg Road Heritage Assessment Report, Dr Roberts states that although the exact age of the eucalypts is not known, a 1981 aerial confirms the trees were planted after 1981. Tree controls were not recommended as the three eucalypts have little or no historical or aesthetic significance.
- 19 Dr Roberts recommends a minor revision to the statement of significance amendment documentation to acknowledge the contribution of the eucalypts to the landscape setting.

Building condition

- 20 Submitter 3 and 4 submit that the condition of their property is run-down and several modifications have been made to the fabric of the dwelling that deteriorate it's heritage significance and does not justify a Heritage Overlay.
- 21 In relation to the submission regarding the dwelling at 257 Heidelberg Road, Northcote, Dr Robert's advice is as follows:

The house retains a good level of integrity, appears externally highly intact, with no obvious additions or alterations readily visible when viewed from Heidelberg Road. Buildings developed in the post-war period are gradually gaining more recognition. As described in the historical context provided in the Heidelberg Road Heritage Assessment report and defined in the Darebin Thematic Environmental History (2007), the immediate post-war period (late 1940s) was one of the key periods of residential development in the City of Darebin and broader metropolitan Melbourne. The house is a typical example of a Moderne style brick house built in the 1940s demonstrating this phase of development.
(GML Heritage , 2022)

- 22 In relation to the submission regarding the dwelling at 607 Heidelberg Road, Alphington, Dr Robert's advice is as follows:

Overall, the place retains good level of intactness and integrity... A place may be highly intact but in a fragile condition. Minor changes are recommended to clarify descriptions of the later changes. (GML Heritage , 2022)

- 23 This issue has been considered in a recent Panel Report. In Amendment C284 to the Boroondara Planning Scheme the Panel had to consider a range of submissions opposing a proposed Heritage Overlay. The C284 Panel explained the relevance of building condition in the following terms:

(iii) Discussion

The Amendment proposes to apply the Heritage Overlay to properties which achieve local heritage significance. The Amendment does not propose to develop any of the subject properties. The Heritage Overlay enables the ability to apply for future development, demolition, works and subdivision through a planning permit application. This includes allowing an owner to improve the condition of their building.

Building condition and development opportunities are therefore not relevant to the Amendment and will be considered through a future permit application. The Panel considers that building condition may be relevant where there is clear technical evidence that the building is in a such poor structural condition, that the heritage fabric is unlikely to survive in the short term.

The Panel notes that only those with development aspirations would ever need to apply for a permit. Property owners who only seek to alter the building interior and conduct general external maintenance would not be required to apply for a permit.

(iv) Conclusion

The Panel concludes that building condition, development opportunity, building alterations and maintenance are not relevant when considering whether a place has sufficient local heritage significance to justify the Heritage Overlay. (Boroondara C284 , 2019, pp. 19-20)

- 24 And in Amendment C245 to the Yarra Planning Scheme, the Panel responded to the relevance of building condition when assessing heritage significance in the following terms.

The Panel said:

For the reasons submitted by Council, the Panel also does not agree that the condition

of the building is a reason to not apply the Heritage Overlay. The Panel accepts the long-held principle that structural integrity or condition of a building should not be a criterion for assessing heritage significance.

That is not to say that the condition of the Hall's Buildings is irrelevant in the planning system. Such factors are highly relevant at the planning permit stage. However, to consider such matters at this stage of the Amendment process would undermine the 'longer term consideration' of heritage protection. (Yarra C245, 2020, p. 62)

- 25 Consistent with the approach of the C284 and C245 Panels, the Panel should proceed on the basis that building condition is not relevant to assessing the heritage significance of an individual property at this stage of the planning process. This is also necessary as there has been no technical evidence provided to Council or before Panel confirming irrevocably poor structural condition.
- 26 This approach is also consistent with Applying the Heritage Overlay Practice Note which does not include building condition as a relevant criterion for assessing heritage significance.

Financial impacts

- 27 Submitter 3 and 4 submit that imposing a heritage overlay will have financial impacts including restricting development opportunity, significant costs of repairing the dwelling and devaluation of property.
- 28 Previous panel decisions in relation to heritage have demonstrated that cost and devaluation are not relevant when considering whether to apply the Heritage Overlay. Financial implications to individual property owners must be offset against the benefit to the community and community's understanding and identifying with the past. There is an overall economic benefit to the broader community in retaining heritage fabric for current and future generations to enjoy.
- 29 In relation to financial impacts, in its decision on Frankston Amendment C53 (June 2010) the Panel held that:
Panels have repeatedly ruled that such issues are not material to this stage of the planning process – a position supported by Practice Notes and numerous VCAT decisions. This view maintains that it is appropriate for the responsible authority to consider all the objectives of the Planning and Environment Act 1987 - including fair, orderly, economic and sustainable use, and development of the land”(s.4(1)(a)) ... and ... to balance the present and future interests of all Victorians” (s.4(1)(g)). However, the question of personal economic impact or potential constraint on development are seen

as matters for the next stage of the planning process i.e. at the time a permit is applied for. (Frankston C53, 2010, pp. 18-19)

- 30 The Frankston C53 Panel also noted that:

This approach has the merit of separating two distinct issues – assessment of the significance of the place; and, the question of its conservation, adaption, alteration or demolition. This conforms to proper heritage conservation practice including the Australia ICOMOS Charter for the Conservation of Places of Cultural Significance (the ‘Burra Charter’), and mirrors the processes of the Victorian Heritage Act 1985.

It reflects the desirability of considering long term matters (if we accept that heritage significance is likely to be somewhat enduring, if not immutable) at one point in time; and shorter term matters (personal desire, financial considerations and economic circumstances) when they are most relevant. The so-called ‘two-stage’ process also underlines the proposition that heritage assets (unlike some other aspects of planning) are often irreplaceable. It is important that neither the Planning and Environment Act 1987 nor the Frankston Planning Scheme envisage their loss on the basis of personal whim or desire in continually changing economic or financial environments. (Frankston C53,

2010, p. 19)

- 31 In addition, as noted in Moreland C78, the Southern Grampians C6 Panel reasoned:

The Panel takes the view that that there is a two stage planning process in relation to management of heritage places – the objective identification of heritage significance (the current stage); and, second, ongoing management of the place having regard to such matters such as the economics of building retention and repair, reasonable current day use requirements etc. (consideration of permits for development).

- 32 The Moreland Amendment C129 Panel concluded by outlining the following key points:

- ...it is not sufficient to demonstrate that there has been a loss of expectations, or anticipated inconveniences. And, it is not sufficient to simply demonstrate a cost of repairs or maintenance (for example, it appears reasonable to assume that some expenditure on maintenance may be anticipated by any owner in the retention of any building). It is also not sufficient to anticipate rejection of a future permit application. [Frankston Planning Scheme Amendment C54 29 January 2010];*

...

- Concerns that heritage listing may impact negatively on property value may not be borne out in practice. A Heritage Victoria report in 2001 found that:*

"Generally speaking heritage controls do not affect property values for residential buildings, particularly buildings in precincts" [See Heritage Listing and Property Valuations in Victoria March 2001]; ... (Moreland C129, 2013)

- 33 The Panel considering Amendment C157 to the Whitehorse Planning Scheme, also considered this issue and said:

Adverse impact on property values: Much has been written about potential financial impacts of the HO, but there is no definitive evidence available to support the view of some submitters that heritage controls diminish property values. In 2001 Heritage Victoria reviewed a number of studies on the effects of heritage on property values. The study found that, generally speaking, heritage controls do not affect property values for residential buildings and particularly not for buildings in heritage precincts. Because the HO itself does not preclude further development, it is difficult to gauge if there is any real impact on property values. Some studies concluded that the HO can make residential property more attractive to purchasers who value the heritage significance of a precinct and the protection the HO provides against unsympathetic development in their immediate area.

- 34 The findings made by the Panels referred to above are equally applicable to this Amendment. Council further submits that:

34.1 The Amendment was prepared taking account of relevant issues. As noted by the Moreland Amendment C129 Panel, the Amendment process is a part of Victoria's long-established planning system which already identifies various zones and overlay controls which affect land throughout the community (unless it is Commonwealth owned); and

34.2 given the lack of evidence presented to the Panel on heritage matters by the submitters, there is no basis to suggest the Amendment precludes the 'fair, orderly, economic and sustainable use, and development of the land' through the application of the HO. The Act is clear that 'as with many other aspects of societal regulation, the application of heritage and other planning controls is intended principally to confer a wider net community benefit than an individual benefit ...'. (Moreland C129, 2013, p. 12)

- 35 Since the release of Moreland Amendment C129 Panel Report, section 12(2) of the Act was amended to provide that a planning authority, in preparing a planning scheme amendment, must take into account its social effects and economic effects.

- 36 In Melbourne Amendment C207, the parties made legal submissions to the Panel regarding the effect of this amendment to the Act. (Melbourne C207, 2014)

- 37 In response to submissions, the Panel concluded:

The Panel recognises that the changes to s.12(2)(c) of the Act in relation to preparing amendments have implications for the manner in which various social and economic matters raised in relation to heritage amendments are to be treated. Where the social and economic effects raised in submissions are of a community nature, they may well be relevant matters. To meet the requirements of the Act, planning authorities and Panels will have to endeavour to consider those matters when preparing an amendment along with other relevant issues. (Melbourne C207, 2014, p. 27)

- 38 The social and economic considerations of a personal or property-specific nature are not to be taken into account at the amendment stage. These are matters to be considered at the permit application stage.

Restricting development opportunities

- 39 Council acknowledges that the HO introduces another layer of control for property owners. Council accepts that a planning control which imports additional permit triggers and relevant considerations will add to the planning controls applying to these submitters' properties.
- 40 However, in Council's submission, the HO is necessary to ensure that those places with the requisite level of heritage value are recognised and appropriately managed. (Buloke C14 Interim Panel Report. 19 July 2011 (extracted from page 12 of Moreland C129,2013).
- 41 When balancing the merits of heritage regulation against other issues raised in the submissions, it is important to remember that heritage significance is an enduring and long term concern, whereas matters of development potential, building condition, economic matters or current or mooted planning approvals are by contrast short-term in nature.
- 42 As the Panel considering Amendment C14 to the Latrobe Planning Scheme said under the heading 'Economic and personal factors':
- Panels have repeatedly ruled that such issues are not material to this stage of the planning process - a position supported by Practice Notes and numerous VCAT decisions. This view maintains that although it is appropriate for the responsible authority to consider all the objectives of the Planning and Environment Act 1987 – including, inter alia, fair, orderly, economic and sustainable use, and development of the land (s.4(1)(a))... and ... to balance the present and future interests of all Victorians (s.4(1)(g)) – the question of personal economic impact or potential constraint on development are matters for the next stage of the planning process i.e. at the time a permit is applied for.*

This approach has the merit of separating two distinct issues: assessment of the

significance of the place, and the question of its conservation, adaptation, alteration or demolition. This conforms with proper heritage conservation practice and mirrors the processes of the Victorian Heritage Act 1985. It reflects the desirability of considering long term matters (if we accept that heritage significance is likely to be somewhat enduring, if not immutable) at one point in time; and, shorter term matters (personal desire, financial considerations and economic circumstances) when they are most relevant.

The Panel observed that in the long life of many heritage properties economic uses can rise and fall - sometimes with no impact on owners, sometimes with substantial impact. In many cases threats to continuing economic viability may be mitigated by permit allowances or use changes. In other cases, personal situations change. In some cases demolition may be an appropriate response. In all these situations it would seem highly desirable for all parties that consideration is: (a) based on clear understanding of significance; and (b) at a time when action is real and current, not conjectural. The so-called two-stage process also underlines the proposition that heritage assets (unlike some other aspects of planning) are often irreplaceable and it is important that neither the Planning and Environment Act 1987 nor the Latrobe Planning Scheme envisage their loss on the basis of personal preference or desire in a continually changing economic or financial environment. (Latrobe C14, 2010)

- 43 These observations are equally relevant to development ambitions of these submitters.

Surrounding development context

- 44 Submitters 3 and 4 submit that there has been new and high density development along the Heidelberg Road corridor and the Heritage Overlay should not be applied to their land to allow new development to occur to coincide with the emerging new development pattern. In Boroondara C178, in response to a submission that the urban context of a place was now so unsympathetic, due to large new commercial buildings on adjoining sites, that that it was inappropriate to list the building under the Heritage Overlay. The panel decided that the changed urban context did not impact on the place to such an extent that its heritage values could no longer be appreciated (Boroondara C178, 2015, pp. 35-39)

- 45 This point is exemplified in Yarra C245, with the panel stating

The Panel agrees with Council that the contemporary and changing environment surrounding the site does not detract from the heritage significance of the place. Indeed, contemporary built form is required to respect the values of heritage buildings. (Yarra C245, 2020)

- 46 In Boroondara, C284 the Panel concludes that building condition, development opportunity, building alterations and maintenance are not relevant when considering whether a place has sufficient local heritage significance to justify the Heritage Overlay. The panel stated

The Heritage Overlay enables the ability to apply for future development, demolition, works and subdivision through a planning permit application. This includes allowing an owner to improve the condition of their building. (Boroondara C284, 2019)

Environmentally Sustainable Design (ESD)

- 47 Submitter 4 raises points about the HO restricting the ability to respond to the Climate Emergency and ESD for example the installation of solar panels.
- 48 Council takes its commitment to tackling the climate emergency very seriously. Council also has a duty to protect heritage under the Planning and Environment Act 1987. Both objectives are important, and generally both can be achieved. Council supports environmentally sustainable development (ESD) through local policy.
- 49 Heritage overlays can co-exist with ESD policies to help encourage new development to minimise environmental impact whilst maintaining heritage value.
- 50 Dr Roberts maintains that Installation of solar panels on key street frontages are generally discouraged. Works or development (i.e. installation of solar panels) to the rear would be possible but it needs to be carefully sited, scaled, and designed.
- 51 Council submits that these practical matters like the most sensitive placement and design of solar panels on can be considered at permit stage and although street facing solar panels are discouraged, they are not prohibited outright. Individual circumstances can be considered.
- 52 Council acknowledges the concerns of this submitter that the HO introduces another layer of control for property owners. Council concedes that a planning control which imports additional permit triggers and relevant considerations will add to the planning controls for these submitters' properties. However, in Council's submission, this is necessary to ensure that those places with the requisite level of heritage value are recognised and appropriately managed.

Following the introduction of the HO

- 53 Council has already highlighted the two step process involving the planning scheme amendment process and the permit application process. Given ESD considerations cannot be strictly considered in this process, it is useful to illustrate how ESD considerations can be considered through the permit application. For the purposes of this example, Council assumes that the Amendment has been approved as proposed.

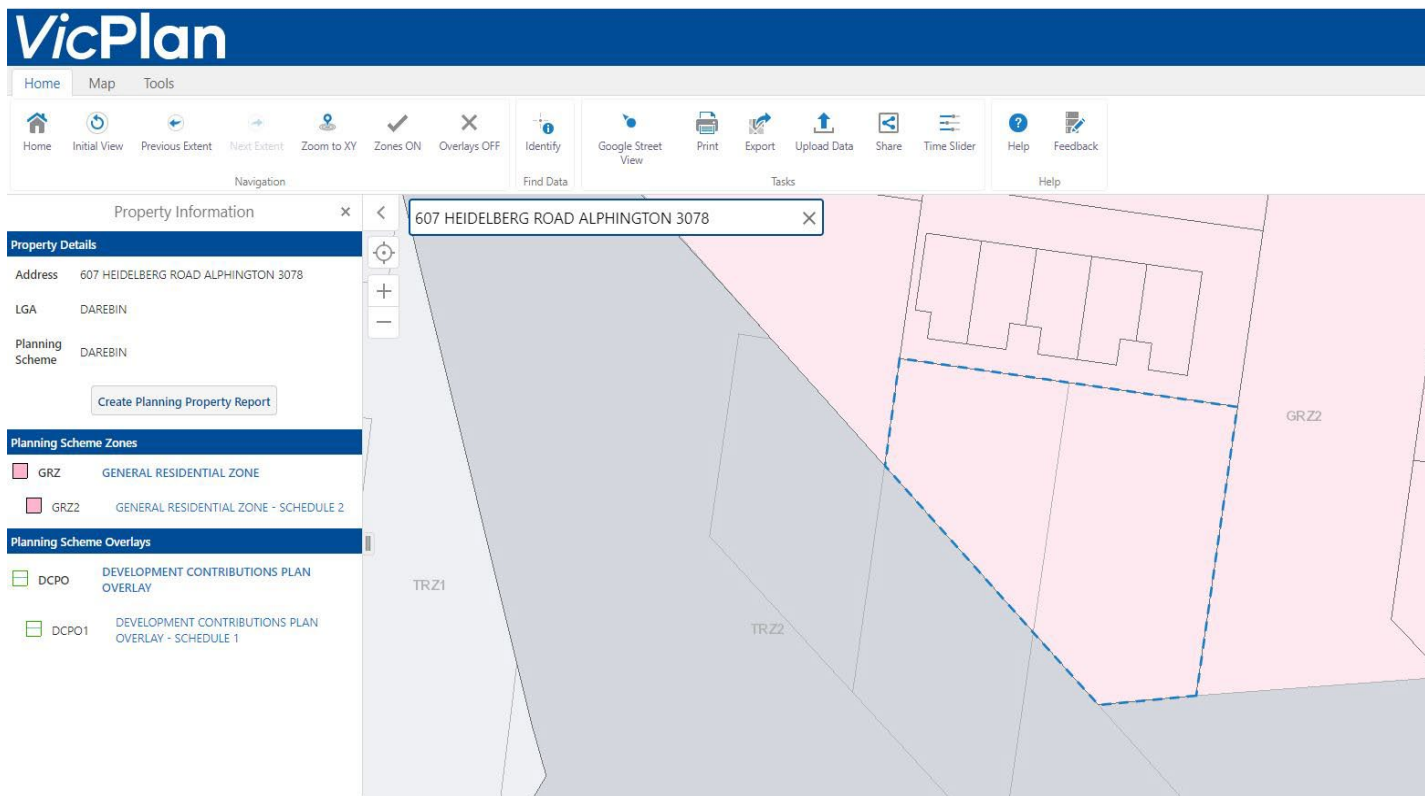
- 54 The new controls will require a planning permit to demolish, alter a building and construct or carry out buildings and works.
- 55 Within the HO, a very common form of planning application is for the partial demolition of a dwelling and the construction works to build an extension. Council, in its capacity as the responsible authority under the Act, will be required to assess such an application.
- 56 Clause 43.01-8 sets out an extensive list of decision guidelines which in part state: Before deciding on an application, in addition to the decision guidelines in Clause 65, the responsible authority must consider, as appropriate:
- The Municipal Planning Strategy and the Planning Policy Framework.
- 57 Importantly, this decision guideline calls up consideration of clause 21.02 which expressly requires consideration of ESD. For example, the Overview states in part: Darebin City Council is committed to environmental sustainability and actively encourages sustainably-designed buildings that reduce energy consumption and water use, encourage recycling and sustainable transport and that use recycled and sustainable materials.
- 58 And Objective 3 states: To promote and facilitate development that incorporates best practice environmentally sustainable design and promotes sustainable living and business practices.
- 59 And strategies include:
- Encourage the adaptive reuse of buildings to reduce the amount of waste going to landfill.
 - Encourage the design of new and retrofitted buildings and public spaces to incorporate high standards of energy efficient design, water sensitive urban design, sustainable transportation, waste reduction and protection of biodiversity.
- 60 When deciding an application under the HO, the Scheme will require Council to consider these policies, together with other relevant matters such as those arising under the Heritage Overlay. In Council's view, the Scheme provides an appropriate policy framework for heritage and ESD considerations to be balanced at the permit application stage.
- 61 This position is also confirmed by Council's experience, in its capacity of the responsible authority under the Act, with administering its existing heritage overlays. Council's statutory planning department has advised that it has not had any situations where the achievement of both heritage and ESD objectives could not be met, and an appropriate balance struck.
- 62 Both planning policy and practical experience reveal that achieving heritage outcomes is not mutually exclusive to achieving ESD outcomes.
- 63 When balancing the merits of heritage protection against other issues raised in the

submissions, it is important to remember that heritage significance is an enduring and long term concern, whereas matters of development potential, building condition, economic matters or current or mooted planning approvals are by contrast short-term in nature.

Response to Panel Directions

- 64 10b) of the Panel Directions received on 26 May 2022 direct Council to include a report on questions regarding titles and mapping relating to the property relevant to Submission 4.
- 65 Submission 4 relates to the property at 607 Heidelberg Road Alphington.
- 66 Council has obtained a copy of title for 607 Heidelberg Road, Alphington and viewed the aerial photograph on the Vic Plan website. This confirms that the property has been subdivided into two lots with the dwelling situated over the two lots. Given this, it is considered appropriate to apply the HO to the entire property and the two lots to ensure any future development takes into account the heritage characteristics of the dwelling.
- 67 The map below obtained from VicMap clearly shows the property subdivided into two lots and the dwelling overlapping both lots. Council has also emailed Planning Panels Victoria a recent copy of title of the property for their reference.

Figure 1: Zoning Map showing property with blue perimeter in two lots. Source Vic Plan, accessed on 6 June 2022



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