

**Greater Bendigo Planning Scheme Amendment C271gben
Heritage Overlay – 55 Condon Street, Kennington**

Panel Report

Planning and Environment Act 1987

8 July 2022

How will this report be used?

This is a brief description of how this report will be used for the benefit of people unfamiliar with the planning system. If you have concerns about a specific issue you should seek independent advice.

The planning authority must consider this report before deciding whether or not to adopt the Amendment.

[section 27(1) of the *Planning and Environment Act 1987* (the PE Act)]

For the Amendment to proceed, it must be adopted by the planning authority and then sent to the Minister for Planning for approval.

The planning authority is not obliged to follow the recommendations of the Panel, but it must give its reasons if it does not follow the recommendations. [section 31 (1) of the PE Act, and section 9 of the *Planning and Environment Regulations 2015*]

If approved by the Minister for Planning a formal change will be made to the planning scheme. Notice of approval of the Amendment will be published in the Government Gazette. [section 37 of the PE Act]

Planning and Environment Act 1987

Panel Report pursuant to section 25 of the PE Act

Greater Bendigo Planning Scheme Amendment C271gben

Heritage Overlay – 55 Condon Street, Kennington

8 July 2022



John Roney, Chair

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Glossary and abbreviations

Amendment	Greater Bendigo Planning Scheme Amendment C271gben
Council	Greater Bendigo City Council
GRZ	General Residential Zone
Heritage Citation	<i>'La Rocca' Residence and East Bendigo Observatory Heritage Citation</i> , History Making Pty Ltd, 28 July 2019 updated by the City of Greater Bendigo April 2021
HO937	Heritage Overlay number 937
National Trust	National Trust of Australia (Victoria) Bendigo and Region Branch
PE Act	<i>Planning and Environment Act 1987</i>
Peer Review	<i>Peer Review 'La Rocca' Residence and East Bendigo Observatory Heritage Citation, 55 Condon Street</i> , Plan Heritage, 12 March 2021
PPN01	Planning Practice Note 1 – Applying the Heritage Overlay
Strath CCC	Strath CCC Pty Ltd

Overview

Amendment summary

The Amendment	Greater Bendigo Planning Scheme Amendment C271gben
Common name	Heritage Overlay – 55 Condon Street, Kennington
Brief description	Amendment C271gben proposes to apply the Heritage Overlay (HO937) to part of the land at 55 Condon Street, Kennington and make associated changes to the Schedule to Clause 43.01 (Heritage Overlay) and the Schedule to Clause 72.04 (Documents incorporated in this Planning Scheme)
Subject land	55 Condon Street, Kennington
Planning Authority	Greater Bendigo City Council
Authorisation	7 June 2021
Exhibition	18 November to 20 December 2021
Submissions	<p>Number of Submissions: 7 Fully supported: 3 Opposed: 2</p> <ul style="list-style-type: none"> Mr S Ottrey Strath CCC Pty Ltd and Triple Towers Pty Ltd National Trust of Australia (Victoria), Bendigo and Region Branch Mr G House Department of Environment, Land, Water and Planning – Loddon Mallee Region, Planning and Approvals Ms P Willmott Ms E Conway

Panel process

The Panel	John Roney
Directions Hearing	Video conference Directions Hearing 19 May 2022
Panel Hearing	Video conference Hearing 21 and 22 June 2022
Site inspection	Unaccompanied, 16 June 2022
Parties to the Hearing	<ul style="list-style-type: none"> Greater Bendigo City Council represented by Ms Bridget Maplestone of Greater Bendigo Council, who called expert evidence on heritage from Ms Annabel Neylon of Plan Heritage Pty Ltd. National Trust of Australia (Victoria), Bendigo and Region Branch represented by Mr Peter Cox OAM. Strath CCC Pty Ltd represented by Mr John Cicero of Best Hooper, who called expert evidence on: <ul style="list-style-type: none"> heritage from Ms Anita Brady of Anita Brady Heritage Pty Ltd arboriculture from Mr Michael Rogers of John Patrick Landscape Architects Pty Ltd (Mr Rogers provided a written evidence statement but it was not contested. With the agreement of all parties he did not attend the Hearing).
Citation	Greater Bendigo Planning Scheme PSA C271gben [2022] PPV
Date of this report	8 July 2022

Executive summary

Greater Bendigo Planning Scheme Amendment C271gben (the Amendment) seeks to apply the Heritage Overlay (HO937) to part of the land at 55 Condon Street, Kennington and make associated changes to the Schedule to Clause 43.01 (Heritage Overlay) and the Schedule to Clause 72.04 (Documents incorporated in this Planning Scheme).

In July 2019, History Making Pty Ltd prepared a heritage assessment for the property – the *‘La Rocca’ Residence and East Bendigo Observatory Heritage Citation, History Making Pty Ltd, 28 July 2019 updated by the City of Greater Bendigo April 2021* (Heritage Citation).

The Heritage Citation confirmed the heritage significance of the former East Bendigo Observatory and the residence ‘La Rocca’ and recommended they be included within a Heritage Overlay. It also recommended that internal alteration controls should be applied to the former observatory building and that three clusters of trees should have heritage controls.

The Heritage Citation formed the strategic justification for the exhibited Amendment.

Following exhibition of the Amendment and the review of submissions, Council commissioned Plan Heritage Pty Ltd to complete a peer review of the Heritage Citation – the *Peer Review ‘La Rocca’ Residence and East Bendigo Observatory Heritage Citation, 55 Condon Street, Plan Heritage, 12 March 2021* (Peer Review).

The Peer Review generally supported the Heritage Citation, however recommended a number of changes to the Statement of Significance to improve the clarity and intent of the document. It also recommended the removal of the tree controls.

On 20 April 2022, Council resolved to endorse the findings and recommendations of the Peer Review as the basis for its submissions to the Panel. This resulted in a revised Statement of Significance for the site.

Submissions generally supported the inclusion of the former East Bendigo Observatory within HO937 and the deletion of the three clusters of trees initially identified as having heritage significance.

The main point of dispute was the heritage significance of the residence ‘La Rocca’ and whether it should be included in the Heritage Overlay.

The key issues discussed in the report include:

- the heritage significance of 55 Condon Street with respect to:
 - the former East Bendigo Observatory
 - the trees on the site
 - the residence ‘La Rocca’
- the Heritage Overlay boundary
- drafting issues.

The former East Bendigo Observatory

The Panel concludes the former East Bendigo Observatory is of local heritage significance and demonstrates:

- historical significance (Criterion A)
- rarity (Criterion B)
- representativeness (Criteria D)

- aesthetic significance (Criteria E)
- technical significance (Criteria F)
- associative significance (Criteria H).

Parts of the Statement of Significance should be modified to clarify the elements of the former observatory that are of heritage significance.

The Panel agrees it is appropriate to apply internal alteration controls to the former observatory building.

Trees

The three clusters of trees identified in the exhibited Statement of Significance are not of heritage significance.

The residence 'La Rocca'

The Panel considers the residence 'La Rocca' is part of a heritage 'complex'. In this context, the residence should be assessed as part an overall 'site', rather than as an individual heritage place.

It is acknowledged that the residence 'La Rocca' has been modified over time, however there is sufficient fabric in place to assist in understanding and appreciating the dwelling. Although the mid twentieth century alterations and additions to the residence diminish the significance of the place, the remaining fabric enables the building to be understood as a transitional late Victorian or early Edwardian residence.

The Panel considers the residence 'La Rocca' does not meet the threshold for aesthetic significance (Criterion E). The heritage significance of the residence is, however, justified on other criteria.

The residence 'La Rocca' is a unique building. It is the only known surviving residence in association with a (former) private observatory. The residence 'La Rocca' contributes to the importance of the former East Bendigo Observatory building and provides an important setting and context for the observatory. The understanding and appreciation of the observatory would be diminished without the residence 'La Rocca'.

The Panel considers the residence 'La Rocca' satisfies the criteria for historical significance (Criterion A), rarity (Criterion B) and associative significance (Criterion H).

Heritage Overlay boundary

The heritage curtilage should be setback 10 metres from the front (southern side) of the residence 'La Rocca'.

The aerial photograph in the exhibited Statement of Significance should be modified to improve the clarity and intent of the image.

The heritage curtilage shown on the Heritage Overlay Map should be modified to ensure that it is consistent with the resolved version of the heritage curtilage in the Statement of Significance.

Drafting issues

A number of consequential drafting changes are required to the Statement of Significance, the Heritage Overlay Map, the Schedule to Clause 43.01 and the Schedule to Clause 72.04 to ensure consistency with the conclusions of this report.

Recommendations

Based on the reasons set out in this Report, the Panel recommends that Greater Bendigo Planning Scheme Amendment C271gben be adopted as exhibited subject to the following:

Statement of Significance

1. Amend the Statement of Significance for HO937, as shown in Appendix B, to:
 - a. clarify which elements of the former East Bendigo Observatory have heritage significance
 - b. delete reference to the residence 'La Rocca' having aesthetic significance and make drafting changes to clarify the historical significance of the place
 - c. delete reference to the three clusters of trees as elements of heritage significance
 - d. modify the name of the Statement of Significance to "Statement of Significance: Part of 55 Condon Street, Kennington, July 2022"
 - e. modify the name of the heritage place to "Part 55 Condon Street, Kennington, former East Bendigo Observatory site"
 - f. modify the second sentence in the second paragraph under the heading 'Why is it significant?' to state "The East Bendigo Observatory was the focus of astronomical, magnetic and meteorological scientific investigation in late nineteenth and early twentieth century Bendigo ..."
 - g. delete the date in the 'Primary Source' document "(Updated November 2021)" and replace it with "(Updated April 2021)"
 - h. include an additional 'Primary Source' document titled "*Peer Review 'La Rocca' Residence and East Bendigo Observatory Heritage Citation, 55 Condon Street, Kennington*, prepared by Plan Heritage Pty Ltd, 12 March 2021".
2. Amend the aerial photograph in the exhibited Statement of Significance to:
 - a. correct the location of the lot boundary and the east, west and north boundaries of the heritage curtilage to match the lot boundary
 - b. delete the three circles indicating the location of the clusters of trees
 - c. show the southern boundary of the heritage curtilage setback 10 metres from the front of the residence 'La Rocca' and ensure that this boundary is perpendicular to the east and west property boundaries
 - d. annotate the lot boundary, heritage curtilage, observatory building, the residence 'La Rocca' and the 10-metres setback from the front of the residence 'La Rocca' to show each of these elements.

Heritage Overlay Map

3. Amend the Heritage Overlay Map (23HO) to ensure that it accurately matches the southern heritage curtilage boundary as shown on the aerial photograph in the resolved version of the Statement of Significance.

Schedule to Clause 43.01 (Heritage Overlay)

4. Amend the Schedule to Clause 43.01, as shown in Appendix C, to:
 - a. modify the name of the heritage place to "Part 55 Condon Street, Kennington, former East Bendigo Observatory site"

- b. modify the name of the Statement of Significance to “Statement of Significance: Part 55 Condon Street, Kennington, July 2022”**
- c. replace the word “Yes” with the word “No” under the heading ‘Tree controls apply?’**
- d. delete the text “Yes (East Bendigo Observatory)” under the heading ‘Outbuildings or fences not exempt under Clause 43.01-4’ and replace with the word “No”.**

Schedule to Clause 72.04 (Documents incorporated in this Planning Scheme)

- 5. Amend the name of the document in the Schedule to Clause 72.04 to “Statement of Significance: Part of 55 Condon Street, Kennington, July 2022”.**

1 Introduction

1.1 The Amendment

(i) Amendment description

The purpose of Amendment C271gben to the Greater Bendigo Planning Scheme (the Amendment) is to apply the Heritage Overlay (HO937) to part of the land at 55 Condon Street, Kennington.

Specifically, the exhibited Amendment proposes to:

- apply the Heritage Overlay (HO937) to part of the land at 55 Condon Street, Kennington
- amend the Schedule to Clause 43.01 (Heritage Overlay) to insert a new heritage place (HO937 – La Rocca Residence and East Bendigo Observatory) and references to the *Greater Bendigo Heritage Incorporated Plan – Permit Exemptions, January 2018* and the *Statement of Significance: 55 Condon Street, Kennington, November 2021*
- amend the Schedule to Clause 72.04 (Documents Incorporated in this Planning Scheme) to insert a new incorporated document titled *Statement of Significance: 55 Condon Street, Kennington, November 2021*.

Figure 1: Proposed Heritage Overlay for part of 55 Condon Street, Kennington



Source: Exhibited Amendment

As exhibited, the proposed Statement of Significance states:

Statement of Significance: Part of 55 Condon Street, Kennington, November 2021

Heritage Place: Part of 55 Condon Street Kennington (La Rocca residence and East Bendigo Observatory)

PS ref no: HO937

What is significant?

The La Rocca residence, East Bendigo Observatory and the clusters of Red Ironbark (northern part of property), and Sugar Gums (to the south of residence) identified as being in excess of 100 years old at 55 Condon Street, Kennington, are of heritage significance.

Internal elements of the East Bendigo Observatory that contribute to the significance of the place include the roof mechanism, the equipment platform that remains within the central chamber and the timber cabinetry in the adjacent wing.

The proposed curtilage takes in the residence, observatory and notable clusters of trees, as shown below. The curtilage allows a setback of 10 metres from the front of the residence.



How is it significant?

The “La Rocca” residence and former East Bendigo Observatory and grounds are of historic and aesthetic significance to the City of Greater Bendigo.

The former East Bendigo Observatory is of historic, technical and aesthetic significance to the State of Victoria.

Why is it significant?

The East Bendigo Observatory at part of 55 Condon Street, Kennington, designed by architect John Beebe and constructed in 1900, is of historic significance as an early private observatory built in Bendigo, and is important for its role in recording official meteorological readings for Bendigo from 1908 until 1914. The building is a rare and relatively intact early

twentieth century example of a small, privately built and owned observatory. The observatory is also indicative of the interest in the sciences, specifically astronomy, which gathered popularity in the late nineteenth and early twentieth centuries in Victoria. It is unusual because of its location on the same site as a residence, La Rocca, also designed by John Beebe, where the Beebe family lived from 1900 to circa 1919. The observatory retains the original mechanism to open the domed roof, timber cabinetry and equipment platform inside. (Criterion A and Criterion B)

The East Bendigo Observatory at part of 55 Condon Street, Kennington, built to house a 4.5-inch refracting telescope, is of technical significance as it reflects advances in Australian science and astronomy, as are the roof mechanism and equipment platform that remain within the central chamber and the timber cabinetry in the adjacent wing. The East Bendigo Observatory was the focus of astronomical, magnetic and meteorological scientific investigation in nineteenth century Bendigo, and was instrumental in providing Bendigo with accurate meteorological statistics in the period 1908-1914. The building evidences the city's early endeavours into scientific research. (Criterion F).

The East Bendigo Observatory at part of 55 Condon Street, Kennington, is of research potential because it demonstrates changing trends in the design of astronomical and support structures. Purpose built for the site, it is also representative as an example of a particular building typology. (Criterion C and Criterion D)

The East Bendigo Observatory and La Rocca residence at part of 55 Condon Street, Kennington, are of aesthetic significance. The observatory follows the nineteenth century international professional observatory designs popular in Britain, Europe and the USA, which featured an elevated central dome room, and adjacent wings, one of which housed a transit telescope. The observatory has significance for the integrity of the original fabric, including internal fittings and clusters of eucalypts that provide insight into the original setting. The La Rocca residence, also designed by Beebe, is characteristic of Victorian residences in the area. (Criterion E)

The East Bendigo Observatory and La Rocca residence at part of 55 Condon Street, Kennington, are significant for their association with Bendigo architect and talented amateur astronomer, John Beebe (1866-1936). Beebe trained as an architect at Bendigo School of Mines, graduating in 1900. In 1901, Beebe formed a partnership with W C Vahland's architect son, Harry, which lasted only until 1902 when Harry Vahland died at the age of 42 years. William Vahland senior returned from retirement and re-joined the firm. Subsequently the Vahland and Beebe partnership designed a number of buildings in Bendigo, as well as additions to the Lorne Hotel (1908) and a new Marong Shire Hall (1908).

Beebe's portfolio of work as a sole practitioner in Bendigo from 1909 to 1916 included a number of buildings in Bendigo and in northern Victoria that comprised hotels, shops, warehouses, factory buildings and residences. The final main phase of remodelling the Bendigo Town Hall was undertaken by Beebe in 1913-15, in association with J G Austen and E J Keogh. Beebe also designed the new infectious diseases wards at the Bendigo Hospital in 1915-16 (demolished) and the Tomlins Simmie & Co electric flourmills in East Bendigo (1912).

After moving to Queensland in 1916, Beebe was responsible for the design of a number of projects in that state, with perhaps the best well-known being the bridge portals on the Hornibrook Highway (1935). In addition, Beebe designed an observatory built at St Leo's College in Brisbane in 1919.

As an amateur astronomer, from his East Bendigo Observatory, in 1910 Beebe located Comet P/Halley at least one night earlier than the Melbourne Observatory, and in 1912 obtained positional observations of Comet Gale, which were published in the Journal of the British Astronomical Association in 1913. Beebe was made a Fellow of the Royal Astronomical Society in March 1917. In 1921-22, Beebe was employed by the Queensland Lands Department to co-ordinate the site survey for a suitable observational site for the forthcoming solar eclipse. He also served as president of the Astronomical Society of Queensland in 1936 and was co-editor of the Society's bulletin from 1933. (Criterion H)

Primary Source

Citation for 'La Rocca' residence and East Bendigo Observatory, 55 Condon Street Kennington, prepared by Dr Robyn Ballinger, History Making Pty Ltd, 29 July 2019 (Updated November 2021)

(ii) The subject land

The subject land at 55 Condon Street, Kennington has a frontage to Condon Street of approximately 16 metres, a depth of approximately 200 metres and a total site area of approximately 8,440 square metres (Figure 4). The land includes:

- a weatherboard dwelling known as 'La Rocca' located near the centre of the site
- a former observatory building towards the rear of the site
- extensive vegetation, including multiple large Sugar Gums and Red Ironbark trees
- numerous small outbuildings located around the dwelling
- a substantial rise in elevation from front to back – with the observatory located at the highest point.

Figure 2: Subject land: 55 Condon Street, Kennington



Source: Council Part A Submission, Appendix 6

1.2 Background

Prior to the initiation of the Amendment, 55 Condon Street, Kennington had not been studied for its heritage significance. No comprehensive heritage study had been undertaken for this part of the municipality.

55 Condon Street, Kennington was listed for sale by the previous owner in mid 2019. When the property was listed for sale, interested parties alerted Council officers to its potential heritage

significance principally because of the presence of the red brick observatory building (the former East Bendigo Observatory) on the site.

In July 2019, Council commissioned History Making Pty Ltd to prepare a heritage assessment for the property. This resulted in a report dated 28 July 2019 which was later amended by Council in April 2021 – the *‘La Rocca’ Residence and East Bendigo Observatory Heritage Citation, History Making Pty Ltd, 28 July 2019 updated by the City of Greater Bendigo April 2021* (Heritage Citation).

The Heritage Citation was not informed by a site inspection because the then owners did not agree to provide access to the site.

The Heritage Citation confirmed the heritage significance of both the ‘La Rocca’ residence and the former East Bendigo Observatory building to the City of Greater Bendigo. It noted that established trees were scattered throughout the site *“and some are likely to pre-date the construction of the house”*. It recommended that tree controls should be applied to the property.

The Heritage Citation included a Statement of Significance that formed the strategic justification for the exhibited Amendment. The exhibited Statement of Significance was similar but not identical to the wording of the Statement of Significance in the Heritage Citation.

Following exhibition of the Amendment and the review of submissions, Council commissioned Plan Heritage Pty Ltd to complete a peer review of the Heritage Citation – the *Peer Review ‘La Rocca’ Residence and East Bendigo Observatory Heritage Citation, 55 Condon Street, Plan Heritage, 12 March 2021* (Peer Review).

The Peer Review included a detailed review of the Heritage Citation, the exhibited Amendment, submissions to the exhibited Amendment and a site inspection. It generally supported the Heritage Citation, however recommended a number of changes to the Statement of Significance to improve the clarity and intent of the document. It also recommended the removal of the tree controls and outbuilding and fence controls.

On 20 April 2022, Council resolved to endorse the findings and recommendations of the Peer Review as the basis for the Council submissions to the Panel. The author of the Peer Review (Annabel Neylon) was called by Council to give evidence at the Hearing.

1.3 Procedural issues

At the Directions Hearing, Council and Strath CCC Pty Ltd (Strath CCC) advised that it intended to call expert witnesses in heritage. Directions were issued with respect to the preparation and distribution of evidence.

Subsequent to the Directions Hearing, on 7 June 2022 Strath CCC sought leave to call an additional expert witness – Ms Kylie May, an arborist.

The request did not provide any reasons why the calling of Ms May was not flagged prior to or at the Directions Hearing. It noted that the additional expert witness statement would be prepared and distributed in accordance with the Directions. The request said no change to the timetable would be required as the additional evidence would be given within the time allocated for Strath CCC in the Hearing timetable.

On 8 June, the Panel advised all parties of this request and provided an opportunity for parties to provide comments by before making a ruling on the request.

On 8 June Strath CCC then advised the Panel that Ms May was not available and proposed to call Mr Michael Rogers instead.

No comments were received by the Panel with respect to the request from Strath CCC.

On 9 June the Panel advised all parties that it agreed to accept additional evidence from Mr Rogers subject to the evidence being completed and circulated in accordance with the Panel's original Directions and there would be no changes to the Hearing timetable.

On the day evidence was due to be circulated, Strath CCC sought leave to submit the evidence of Mr Rogers after the due time. The Panel reluctantly agreed to this request and the evidence was submitted in accordance with the modified timeframe.

At the commencement of the Hearing, Strath CCC advised that if no parties or the Panel had any questions for Mr Rogers, it would be unnecessary to call him. As this was the case, Mr Rogers was not called to give his evidence.

1.4 Summary of issues raised in submissions

There were seven submissions received. Three submissions supported the Amendment, including:

- the Department of Environment, Land, Water and Planning (Loddon Mallee, Planning and Approvals)
- two submissions from local residents.

Two submissions generally supported the Amendment but had some issues of concern:

- the National Trust of Australia (Victoria) Bendigo and Region Branch (National Trust) said:
 - the buildings including the 'La Rocca' residence and the former East Bendigo Observatory were of heritage significance
 - the vegetation contains trees that are in excess of 100 years old
 - it had not been able to access the site in order to fully understand the heritage significance of the place
 - all parties needed to cooperate to ensure the elements of heritage significance are protected
- a local resident said that the Heritage Overlay should extend over all of the site and that if this did not occur then photographs should be taken to properly document the site.

The former and current owner of the site objected to the Amendment and stated:

- the residence 'La Rocca' lacks heritage significance and is a poor example of its kind and does not satisfy the asserted heritage criteria
- the dwelling has been substantially altered and damaged
- the three clusters of trees do not warrant heritage protection
- the Amendment should not proceed or be allowed in part only in respect to the former observatory.

The former owner provided an arborist report accompanying its submission and a heritage report prepared by Minerva Heritage (October 2021).

Strath CCC provided a heritage report from Anita Brady Heritage (February 2022) accompanying its submission.

1.5 The Panel's approach

The Panel has assessed the Amendment against the principles of net community benefit and sustainable development, as set out in Clause 71.02-3 (Integrated decision making) of the Planning Scheme.

The Panel considered all written submissions made in response to the exhibition of the Amendment, observations from site visits, and submissions, evidence and other material presented to it during the Hearing. It has reviewed a large volume of material, and has had to be selective in referring to the more relevant or determinative material in the Report. All submissions and materials have been considered by the Panel in reaching its conclusions, regardless of whether they are specifically mentioned in the Report.

This Report deals with the issues under the following headings:

- Planning context
- Heritage significance of 55 Condon Street
- Heritage Overlay boundary
- Drafting issues.

1.6 Limitations

(i) Heritage Citation

Council submitted that the proposed Statement of Significance was derived from a detailed Heritage Citation prepared by History Making Pty Ltd.

The Amendment does not propose to include the Heritage Citation as a background document in the Planning Scheme. The relevant and important parts of the citation have been included in the Statement of Significance. The Heritage Citation has been supplemented by the findings and recommendations of the Peer Review.

The Statement of Significance is proposed to be included within the Planning Scheme as an Incorporated Document. The Panel acknowledges and supports this approach.

The Panel makes no specific comment on the content of the Heritage Citation and makes no recommendations regarding any changes to it. The Panel's comments are confined to the Statement of Significance and the associated matters to be included within the Planning Scheme.

It is a matter for Council to determine whether the Heritage Citation should be amended having regard to the recommendations of the Peer Review and the Panel with respect to the Statement of Significance. Further comments regarding the 'Primary source' documents listed at the end of the Statement of Significance are included in Chapter 5.2.

(ii) Building condition

A submission to the exhibited Amendment stated that the residence 'La Rocca' was in poor condition and had been partially damaged by a recent storm. This issue was not pursued in any detail by Strath CCC at the Hearing.

The Panel notes that in accordance with long held planning principles, the condition of a building is not relevant when considering the overarching question of whether a building has heritage

significance. Even if building condition and structural issues were of relevance to the current strategic process, no evidence was tabled to suggest that the building is not structurally sound.

That is not to say that the condition of a building 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.

The identification and protection of heritage places at the amendment stage enables the structural integrity or condition of buildings to be properly assessed against identified heritage values at the planning permit application stage. This provides for the most appropriate balancing of competing priorities (in cases where a redevelopment proposal might undermine the heritage significance of a place).

The Heritage Overlay enables an application to be made for a permit to demolish, construct a new building or alter an existing building. It envisages future development, while providing the ability to assess proposals in response to existing heritage fabric.

(iii) Future development

The Panel was advised that Strath CCC has lodged a planning permit application for the development of the land. No specific details were provided at the Hearing. Consistent with the comments above, the future development of the site is not a fundamental consideration for the Panel as part of the assessment of the heritage significance of the place.

2 Planning context

2.1 Planning and Environment Act 1987

The following State policy objectives set out in section 4 of the PE Act are relevant to the Amendment:

- (d) to conserve and enhance those buildings, areas or other places which are of scientific, aesthetic, architectural or historic interest or otherwise of special cultural value; and
- (g) to balance the present and future interests of all Victorians.

Council submitted the Amendment implements these objectives by protecting a heritage place for present and future generations.

2.2 Planning Policy Framework

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

Clause 11.03-6S (Regional and local places)

Clause 11.03-6S (Regional and local places) includes an objective to “*facilitate integrated place-based planning*”.

This objective is supported by strategies including:

- Integrate relevant planning considerations to provide specific direction for the planning of sites, places, neighbourhoods and towns.
- Consider the distinctive characteristics and needs of regional and local places in planning for future land use and development.

Council submitted the Amendment is consistent with this clause because protecting a heritage place will contribute to the distinctive character of Greater Bendigo.

Clause 15.03-1S (Heritage conservation)

Clause 15.03-1S of the Planning Scheme includes the objective to ensure “*the conservation of places of heritage significance*” and a range of strategies including:

- Identify, assess and document places of natural and cultural heritage significance as a basis for their inclusion in the planning scheme.
- Provide for the conservation and enhancement of those places which are of, aesthetic, archaeological, architectural, cultural, scientific, or social significance.
- Encourage appropriate development that respects places with identified heritage values.
- Retain those elements that contribute to the importance of the heritage place.
- Encourage the conservation and restoration of contributory elements of a heritage place.
- Ensure an appropriate setting and context for heritage places is maintained or enhanced.

Council submitted the Amendment supports this clause by identifying, assessing and documenting the heritage significance of 55 Condon Street to provide for its protection in the Planning Scheme.

2.3 Municipal Planning Strategy

Clause 02.03-5 (Built environment and heritage)

Under the heading ‘Heritage’, Clause 02.03-5 states:

Greater Bendigo is set apart due to its extensive Victorian and Edwardian era heritage places - a legacy of its wealthy gold mining history. The municipality has many buildings, structures, archaeological sites, gardens and vegetation with international, state and local heritage significance, reflecting the major role Bendigo played in one of the biggest gold rushes and migrations in the world.

Further work is required to fully identify and protect some places of post contact heritage significance.

...

The strategic directions for heritage are:

Protect the city's valuable sites, places and features of natural, archaeological, and cultural heritage significance.

Balance the protection of heritage places with support for sensitive and innovative development to accommodate projected population growth.

Support high quality sympathetic contemporary design when undertaking new development in heritage precincts and places.

Encourage the restoration of heritage places and sympathetic development to support contemporary uses of heritage buildings.

...

Council submitted the Amendment is consistent with the Municipal Planning Strategy because it proposes to protect an identified place of cultural heritage significance.

2.4 Loddon Mallee Regional Growth Plan

The *Loddon Mallee Regional Growth Plan, May 2014* provides broad direction for land use and development across the Loddon Mallee region, as well as more detailed planning frameworks for the key regional centre of Bendigo.

Council submitted that a key principle of the *Loddon Mallee Regional Growth Plan* is to protect and enhance the natural and built environment with settlement growth and development to be sympathetic to environmental and heritage assets.

2.5 Heritage reports

(i) 'La Rocca' Residence and East Bendigo Observatory Heritage Citation

The Heritage Citation prepared by History Making Pty Ltd (dated 28 July 2019 and updated by the City of Greater Bendigo April 2021) formed the strategic basis for the exhibited Amendment. It was based on desktop research and aerial photographs because the then owners of the site did not provide access allow History Making or Council to complete a site inspection.

The Heritage Citation included matters associated with:

- the contextual history of the site
- site history and development
- the association with John Beebe as the architect of the former East Bendigo Observatory and 'La Rocca' residence, the original occupier of 'La Rocca' and as an astronomer
- description of the property and integrity with respect to the residence 'La Rocca', trees on the site and the former observatory
- comparative analysis
- assessment against the Hercon criteria
- a Statement of Significance

- recommended controls in the Schedule to Clause 43.01 (Heritage Overlay)
- an extensive list of references.

The Heritage Citation concluded:

The La Rocca residence and East Bendigo Observatory at 55 Condon Street, Kennington, are of heritage significance.

The observatory was designed by Bendigo architect and amateur astronomer John Beebe on the same site as the Beebe family residence, 'La Rocca', also designed by Beebe. Both buildings were constructed in 1900. Clusters of *Eucalyptus tricarpa* (Red Ironbark) to the north of the property and *Eucalyptus cladocalyx* (Sugar Gum) to the south of the residence are likely early plantings or regrowth forest and contribute to the setting of both the house and the observatory.

After the suitability of the site of Bendigo's government observatory was questioned in 1908, from March 1908 Beebe's private observatory took on the role of the official observatory in Bendigo. In addition to meteorological readings, Beebe's observatory, officially known as the East Bendigo Observatory, recorded the passing of comets, the transit of Venus and Aurora Australis, all of which were published in both Bendigo and Melbourne newspapers. In 1907, Beebe offered the use of his observatory to the students of the Bendigo School of Mines. In 1910, Beebe located Comet P/Halley at least one night earlier than the Melbourne Observatory, and in 1912 obtained positional observations of Comet Gale. Beebe's expertise was recognised when he was made a Fellow of the Royal Astronomical Society, based in London, in March 1917.

The observatory was moved in 1914 from Beebe's building to the Supreme Court yard near the Bendigo Gaol. Beebe departed Bendigo in 1916 for Brisbane, where he continued his work as an architect and his interest in astronomy. The property remained in the ownership of John Beebe until 1919.¹

It said the 'La Rocca' residence and the former East Bendigo Observatory were of local heritage significance and:

- the residence 'La Rocca' and former East Bendigo Observatory satisfy criteria regarding historical significance, rarity, aesthetic significance and associative significance (Criteria A, B, E and H)
- the former East Bendigo Observatory also satisfies criteria regarding research potential, representativeness and technical significance (Criteria C, D and F).

The Heritage Citation stated that the former East Bendigo Observatory is also of historic, technical and aesthetic significance to the State of Victoria.

It recommended:

- the proposed curtilage include the residence, observatory and three clusters of trees and should be setback approximately 10 metres from the front of the residence
- internal controls should be applied to the observatory
- tree controls should be applied to the two identified clusters of *Eucalyptus tricarpa* (Red Ironbark) to the north of the property and the cluster of *Eucalyptus cladocalyx* (Sugar Gum) to the south of the residence
- the observatory should be identified in the Schedule to Clause 43.01 as an "outbuilding or fence not exempt under Clause 43.01-4".

Figure 3 shows the proposed Heritage Overlay curtilage as expressed in the Heritage Citation. The yellow line is said to be the 'full property boundary', the red line is the 'proposed curtilage' and the green circles are the 'significant tree clusters'.

¹ Heritage Citation, page 19

It was acknowledged by the expert witnesses and Council that the coloured lines do not align with the stated features. The yellow lines do not match the actual title boundary and should be located further to the north east. This has a corresponding impact on the location of the proposed curtilage and the cluster of trees.

This image was used in the explanatory report accompanying the exhibited Amendment and in the exhibited Statement of Significance and caused some confusion in the Hearing.

Figure 3: Heritage Overlay proposed in Heritage Citation



Source: Heritage Citation

(ii) Peer Review 'La Rocca' Residence and East Bendigo Observatory Heritage Citation

The Peer Review was completed by Plan Heritage Pty Ltd (March 2022) and included:

- a review of the Heritage Citation
- a review of a report prepared by Minerva Heritage titled 'La Rocca' Residence and former East Bendigo Observatory, 55 Condon Street, Bendigo – Heritage Assessment, October 2021 for Roxine Ottrey (Part of submission 1)
- review of a report prepared by Anita Brady Heritage titled *City of Greater Bendigo Amendment C271: Proposed Heritage Overlay HO937, 55 Condon Street, Kennington, February 2022* prepared for Best Hooper on behalf of Ahdy Elghitany (Part of Submission 2)

- review of the Statement of Significance and Heritage Overlay boundary
- relevant place citations and Statements of Significance for comparable examples within the Heritage Overlay and Victorian Heritage Register
- consideration of Victorian Planning Practice Note 1 - Applying the Heritage Overlay, August 2018 (PPN01)
- desktop research
- a site inspection.

The Peer Review concluded:

- the Heritage Citation was prepared with regard to PPN01
- there should be changes to the citation to improve the clarity and detail provided in the physical description (originally prepared without access to the site), the place history – particularly noting alterations and changes to the site in the latter twentieth century and to the comparative analysis sections
- the trees are not of heritage significance
- references to the observatory as being of State heritage significance should be removed because the Amendment deals with local heritage significance and any assessment of State significance should be made by Heritage Victoria.
- the proposed Heritage Overlay polygon as exhibited was appropriate, but noted a case could be made for an extended polygon which applied to the whole of the lot *“to better manage development and provide a simplified and easily understood polygon in line with PPN01”*²
- the Schedule to Clause 43.01 as exhibited required changes to remove tree controls and outbuilding and fence controls, but the internal controls proposed for the Observatory were supported.

The Peer Review referenced the Statement of Significance in the Heritage Citation rather than the version associated with the exhibited Amendment. Although the two versions are similar, they are not the same.

The review of the Statement of Significance recommended some minor changes to the arrangement and set out of ‘What is Significant’ and ‘How is it Significant’ and recommended a simplified approach which sets out what, how and why the place is significant at the local level.

The Peer Review found that:

... the East Bendigo Observatory meets the threshold for historical, aesthetic, scientific/technical and associative significance with additional threshold indicators of both rarity (as a class of place) and representativeness (as a design which embodies the typical characteristics of a class of place) at the local level. The La Rocca residence is considered to be an uncommon example of a residence for a private Observatory, however, due to its lack of integrity and intactness to its c.1900 design it is not considered to meet the threshold for local significance.³

The Peer Review stated that:

Elements which contribute to the significance of the place are:

- the c.1900 Observatory building
- the residence ‘La Rocca’ to the extent of its 19th Century fabric

² Peer Review, page 24

³ Peer Review, page 19

- its location at the apex of the hill and separation from surrounding development.

Elements which are not considered significant are:

- post 1920 additions to the Observatory
- trees (planted and self seeded) surrounding the Observatory
- all outbuildings, animal enclosures, modern structures and fences.⁴

2.6 Planning scheme provisions

A common zone and overlay purpose is to implement the Municipal Planning Strategy and the Planning Policy Framework.

(i) Zones

The land is in the General Residential Zone. The purposes of the Zone are:

To encourage development that respects the neighbourhood character of the area.

To encourage a diversity of housing types and housing growth particularly in locations offering good access to services and transport.

To allow educational, recreational, religious, community and a limited range of other non-residential uses to serve local community needs in appropriate locations.

(ii) Overlays

The land is not subject to any Overlay controls.

The purposes of the proposed Heritage Overlay are:

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 specified 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.

2.7 Ministerial Directions and Practice Notes

Ministerial Directions

Council submitted the Amendment is consistent with the Form and Content of Planning Scheme Ministerial Direction under section 7(5) of the PE Act.

It submitted the Amendment is consistent with Ministerial Direction 11 - Strategic Assessment Guidelines by:

- supporting the Planning Policy Framework and the Municipal Planning Strategy making proper use of the Victorian Planning Provisions through the use of the Heritage Overlay to protect areas of local heritage significance
- applying the Heritage Overlay consistent with PPN01.

Planning Practice Notes

Planning Practice Note 1 - Applying the Heritage Overlay (PPN01) provides guidance about using the Heritage Overlay. It states that the Heritage Overlay should be applied to, among other places:

⁴ Peer Review, page 20

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

PPN01 specifies that documentation for each heritage place needs to include a statement of significance that clearly establishes the importance of the place and addresses the heritage criteria. It recognises the following model criteria (the Hercon criteria) that have been adopted for assessing the value of a heritage place:

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

2.8 Discussion and conclusion

For the reasons set out in the following chapters, the Panel concludes that the Amendment is supported by, and implements, the relevant sections of the Planning Policy Framework, and is consistent with the relevant Ministerial Directions and Practice Notes. The Amendment is well founded and strategically justified, and the Amendment should proceed subject to addressing the more specific issues raised in submissions as discussed in the following chapters.

3 Heritage significance of 55 Condon Street

3.1 Revised Statement of Significance

(i) What changes to the Statement of Significance are proposed by Council?

The text of the exhibited Statement of Significance is provided in Chapter 1.1.

Council circulated a revised version of the Statement of Significance prior to the Hearing.⁵ This version was based on the recommendations in the Peer Review and the version prepared by Ms Neylon in her expert witness statement. Council supported the revised Statement of Significance and submitted that it reflected the further research and review completed since the exhibition of the Amendment in response to submissions.

The Council preferred changes to the exhibited Statement of Significance text are shown below. Proposed new text is shown in blue underlined and proposed deleted text is shown ~~red strikethrough~~. There was no change proposed to the aerial photograph.

Statement of Significance: Former East Bendigo Observatory site, June 2022 ~~Part of 55 Condon Street, Kennington, November 2021~~

Heritage Place: Part of 55 Condon Street Kennington ~~(La Rocca residence and East Bendigo Observatory)~~

PS ref no: HO937

What is significant?

The former La Rocca residence, East Bendigo Observatory site (c.1900) at 55 Condon Street, Kennington is significant ~~and the clusters of Red Ironbark (northern part of property), and Sugar Gums (to the south of residence identified as being in excess of 100 years old at 55 Condon Street, Kennington, are of heritage significance.~~

Elements which contribute to the significance of the place are:

- the c.1900 Observatory building exterior
- the c.1900 Observatory interior, including the roof mechanism, the equipment platform that remains within the central chamber and the timber cabinetry in the adjacent wing.
- the residence 'La Rocca' to the extent of its c.1900 fabric
- the location at the apex of the hill and its separation from surrounding development.

Elements which are not considered significant are:

- Post 1920 additions to the Observatory
- Trees (planted and self-seeded) surrounding the Observatory
- All outbuildings, animal enclosures, modern structures, and fences.

~~Internal elements of the East Bendigo Observatory that contribute to the significance of the place include the roof mechanism, the equipment platform that remains within the central chamber and the timber cabinetry in the adjacent wing.~~

~~The proposed curtilage takes in the residence, observatory and notable clusters of trees, as shown below. The curtilage allows a setback of 10 metres from the front of the residence.~~

How is it significant?

The ~~"La Rocca" residence and~~ former East Bendigo Observatory site is ~~and grounds are~~ of historic, and aesthetic, scientific and associative significance to the City of Greater Bendigo.

~~The former East Bendigo Observatory is of historic, technical and aesthetic significance to the State of Victoria.~~

⁵ Document 9

Why is it significant?

The Former East Bendigo Observatory site (comprising the former observatory and associated residence) at ~~part of~~ 55 Condon Street, Kennington, designed by architect John Beebe and constructed in 1900, is of historic significance as an early private observatory complex built in Bendigo. The observatory, and is historically important for its role in recording official meteorological readings for Bendigo from 1908 until 1914. The building is a rare and relatively intact early twentieth century example of a small, privately built and owned observatory with its associated residence 'La Rocca'. The former observatory is also of historic significance as it is indicative of the interest in the sciences, specifically astronomy, which gathered popularity in the late nineteenth and early twentieth centuries in Victoria. It is unusual because of its location on the same site as a residence, La Rocca, also designed by John Beebe c.1900 (but significantly altered after a fire in 1958), where the Beebe family lived from 1900 to circa 1919. The observatory retains the original mechanism to open the domed roof, timber cabinetry and equipment platform inside. (Criterion A and Criterion B)

The former East Bendigo observatory building at part of 55 Condon Street, Kennington, built to house a 4.5- inch refracting telescope, is of technical significance as it reflects advances in Australian science and astronomy, as are the roof mechanism and equipment platform that remain within the central chamber and the timber cabinetry in the adjacent wing. The East Bendigo Observatory was the focus of astronomical, magnetic and meteorological scientific investigation in nineteenth century Bendigo, and was instrumental in providing Bendigo with accurate meteorological statistics in the period 1908-1914. The building evidences the city's early endeavours into scientific research. (Criterion F).

The former observatory building, East Bendigo Observatory at part of 55 Condon Street, Kennington, is of research potential because it demonstrates changing trends in the design of astronomical and support structures. Purpose built for the site, it is also representative as an example of a particular building typology. purpose built for the site and designed by Beebe is representative of the professional Observatory building typology, popular in England, Europe and the USA in the later nineteenth and early twentieth century. The typical characteristics of this type of Observatory included an elevated central dome, flanked by adjacent wings, one of which housed a transit telescope and also featured a retractable domed roof (Criterion C and Criterion D)

The former observatory is East Bendigo Observatory and La Rocca residence at part of 55 Condon Street, Kennington, are of aesthetic significance as an externally intact example of a professional Observatory design which demonstrates the key forms of the building type and retains a high degree of integrity. The observatory follows the nineteenth century international professional observatory designs popular in Britain, Europe and the USA, which featured an elevated central dome room, and adjacent wings, one of which housed a transit telescope. The former observatory has significance for the integrity of the original fabric, including internal fittings although the instruments have been removed. The location and setting of the observatory at the apex of one of the highest hilltops in Bendigo is also of aesthetic significance, providing a striking built form from the lower approaches of the hillside. At the time of the Observatory's operation, the hilltop would have been cleared of vegetation to allow for the astronomical equipment to access the full transit of the night sky and its elements. and clusters of eucalypts that provide insight into the original setting. The La Rocca residence, also designed by Beebe, is characteristic of Victorian residences in the area. (Criterion E)

The former East Bendigo Observatory and La Rocca residence at part of 55 Condon Street, Kennington, are significant for their association with Bendigo architect and talented amateur astronomer, John Beebe (1866-1936). Beebe trained as an architect at Bendigo School of Mines, graduating in 1900. In 1901, Beebe formed a partnership with W C Vahland's architect son, Harry, which lasted only until 1902 when Harry Vahland died at the age of 42 years. William Vahland senior returned from retirement and re-joined the firm. Subsequently the Vahland and Beebe partnership designed a number of buildings in Bendigo, as well as additions to the Lorne Hotel (1908) and a new Marong Shire Hall (1908).

Beebe's portfolio of work as a sole practitioner in Bendigo from 1909 to 1916 included a number of buildings in Bendigo and in northern Victoria that comprised hotels, shops, warehouses, factory buildings and residences. The final main phase of remodelling the Bendigo Town Hall was undertaken by Beebe in 1913-15, in association with J G Austen

and E J Keogh. Beebe also designed the new infectious diseases wards at the Bendigo Hospital in 1915-16 (demolished) and the Tomlins Simmie & Co electric flourmills in East Bendigo (1912).

After moving to Queensland in 1916, Beebe was responsible for the design of a number of projects in that state, with perhaps the best well-known being the bridge portals on the Hornibrook Highway (1935). In addition, Beebe designed an observatory built at St Leo's College in Brisbane in 1919.

As an amateur astronomer, from his East Bendigo Observatory, in 1910 Beebe located Comet P/Halley at least one night earlier than the Melbourne Observatory, and in 1912 obtained positional observations of Comet Gale, which were published in the Journal of the British Astronomical Association in 1913. Beebe was made a Fellow of the Royal Astronomical Society in March 1917. In 1921-22, Beebe was employed by the Queensland Lands Department to co-ordinate the site survey for a suitable observational site for the forthcoming solar eclipse. He also served as president of the Astronomical Society of Queensland in 1936 and was co-editor of the Society's bulletin from 1933. (Criterion H)

Primary Source

Citation for 'La Rocca' residence and East Bendigo Observatory, 55 Condon Street Kennington, prepared by Dr Robyn Ballinger, History Making Pty Ltd, 29 July 2019 (Updated ~~November 2021~~ [June 2022](#))

Parties at the Hearing responded to the revised Statement of Significance.

The Panel has considered the exhibited and revised version of the Statement of Significance.

Recommendations regarding changes to the Statement of Significance contained in Appendix B of this report are based on the revised version of the Statement of Significance.

(ii) The issues

The key issues are:

- whether the former observatory is of heritage significance
- whether any of the trees on the site are of heritage significance
- whether the residence 'La Rocca' is of heritage significance.

Each of these matters is discussed below.

Further drafting changes to the Statement of Significance are dealt with in Chapter 5.

Figure 4: John Beebe, probably taken in his study in Queensland



Source: Heritage Citation, page 6

3.2 The former East Bendigo Observatory

(i) Evidence and submissions

Council submitted the Peer Review process confirmed the former East Bendigo Observatory is of local heritage significance. It agreed that whether it is of State significance is a matter for others to determine as part of a separate process.

Ms Neylon and Ms Brady gave expert heritage evidence and agreed that the former East Bendigo Observatory building was of heritage significance and they supported the application of internal alteration controls in the Schedule to Clause 43.01.

Strath CCC did not dispute the views of Ms Neylon or Ms Brady with respect to the heritage significance of the former observatory or the application of internal alteration controls.

No party disputed the revised Statement of Significance presented by Council with respect to the former observatory building.

Figure 5: Observatory building, west side



Source: Document 12, Brady evidence statement, page 25

Figure 6: Observatory building, north side



Source: Document 12, Brady evidence statement, page 24

Figure 7: Observatory dome showing steel straps used in opening and closing the dome



Source: Document 17, National Trust of Australia (Victoria) submission, page 2

Figure 8: Interior of observatory showing the main dome, concrete telescope platform at centre and dome operating mechanism at top right



Source: Document 12, Brady evidence statement, page 26

Figure 9: Interior of observatory showing dome operating mechanism



Source: Document 17, National Trust of Australia (Victoria) submission, page 2

(ii) Discussion

There was widespread agreement from parties, including Strath CCC, that the former observatory is a unique building that warrants heritage protection. The Panel accepts that the former East Bendigo Observatory is of local heritage significance and agrees with the heritage criteria expressed in the revised Statement of Significance.

The detailed heritage assessment for the observatory clearly demonstrates that it is of:

- historical significance (Criterion A)
- rarity (Criterion B)
- representativeness (Criteria D)
- aesthetic significance (Criteria E)
- technical significance (Criteria F)
- associative significance (Criteria H).

The revised Statement of Significance appropriately clarifies a number of matters with respect to the former observatory building and these modifications are supported. The revised Statement of Significance identifies that the post-1920 additions to the observatory are elements that are not of heritage significance. This is appropriate and helps to clarify the relevant heritage fabric.

The Panel agrees it is appropriate to apply internal alteration controls to the former observatory building. It acknowledges that internal alteration controls are not commonly applied, however it

considers the circumstances clearly warrant these controls in this instance. The interior features of heritage significance are clearly expressed in the revised Statement of Significance.

(iii) Conclusions and recommendations

The Panel concludes:

- The former East Bendigo Observatory building is of local heritage significance.
- The revised Statement of Significance clarifies which elements of the building have heritage significance.
- Internal alteration controls should apply to the former East Bendigo Observatory building.

The Panel recommends:

Amend the Statement of Significance for HO937 to clarify which elements of the former East Bendigo Observatory building have heritage significance, as shown in Appendix B.

3.3 Trees

(i) Evidence and submissions

The Heritage Citation states:

The site is heavily treed ... including some native eucalypts that appear to pre-date the house ... The trees, most notably clusters of *Eucalyptus cladocalyx* (Sugar Gum) to the south of the house and *Eucalyptus tricarpa* (Red Ironbark) at the northern end of the property appear to be either early plantings or regrowth forest. They contribute to the setting of both the house and the observatory.⁶

Under the heading “What is significant?”, the exhibited Statement of Significance states:

The La Rocca residence, East Bendigo Observatory and the clusters of Red Ironbark (northern part of property), and Sugar Gums (to the south of residence) identified as being in excess of 100 years old at 55 Condon Street, Kennington, are of heritage significance.

...

The proposed curtilage takes in the residence, observatory and notable clusters of trees ...

An image shows three clusters of trees in the northern part of the site (refer Figure 3 in Chapter 2.5).

Under the heading “How is it significant?”, the exhibited Statement of Significance does not specifically refer to the trees, although states:

The ‘La Rocca’ residence and former East Bendigo Observatory and grounds are of historic and aesthetic significance to the City of Greater Bendigo.

Under the heading “Why is it significant?”, the exhibited Statement of Significance refers to the trees within the context of the analysis of Criterion E (aesthetic significance):

The observatory has significance for the integrity of the original fabric, including internal fittings and clusters of eucalypts that provide insight into the original setting.

Submissions from the former and current owners of the property objected to the reference to the trees within the Statement of Significance. They said the trees were not of heritage significance and provided a report from Axiom Tree Management Pty Ltd (*Preliminary Arborist Report, July*

⁶ Heritage Citation, page 13

2021) that assessed 76 trees on the site, including the trees identified in the Statement of Significance. In summary, the report concluded:

- most of the trees on the site are self-sown *Eucalyptus tricarpa* (Red Ironbark) and planted *Eucalyptus cladocalyx* (Sugar Gum)
- most of the large trees are *Eucalyptus tricarpa* which are indigenous and widespread throughout the local area, especially on elevated locations
- the *Eucalyptus tricarpa* do not appear planted or contain historical significance
- *Eucalyptus cladocalyx* is not native to Victoria and has been commonly planted throughout Victoria over the last century and windrow plantings such as these are common and widespread
- the *Eucalyptus cladocalyx* have been lopped in the past which has resulted in them containing significant defects prone to failure.

The Peer Review noted that PPN01 limits the inclusion of tree controls within the Heritage Overlay and states:

This control is designed to protect trees that are of intrinsic significance (such as trees that are included on the National Trust Heritage Register), or trees that contribute to the significance of a heritage place (for example, trees that contribute to the significance of a garden or area). The control is not meant to protect trees for their amenity value.

The Peer Review said the Heritage Citation and Statement of Significance failed to properly justify the inclusion of the trees within the Heritage Overlay controls. Although the trees had some amenity value, they were not of heritage significance. Ms Neylon further noted that:

... from my work on the Conservation Management Plan for the Royal Melbourne Observatory, ... all land around an Observatory was maintained as a cleared space to allow clear and unimpeded views to the night sky to record the transit of various planets, observations of phenomena such as comet activity and other observational work. The trees around the Observatory therefore would not represent an appropriate or significant context and setting from an historically accurate perspective, while they may provide an appreciable setting to the building today. Their removal would be considered a positive outcome for interpretation and understanding [of] the Observatory building and its use.⁷

Council agreed with the assessment in the Peer Review and proposed to delete the trees from the relevant controls. The revised Statement of Significance and the Schedule to Clause 43.01 were amended accordingly.

Ms Neylon and Ms Brady gave evidence that supported this approach. Ms Neylon noted:

No evidence was provided in the Statement of Significance or citation to demonstrate how or why these trees contributed to the setting of the observatory or 'La Rocca' as claimed in the Statement of Significance, nor is any comparative analysis regarding other examples provided.

The Peer Review found that the trees are of no significance to the heritage place. The Red Ironbark were all regenerated trees which had self-seeded. The Sugar Gum remaining was not found to be exceptional, nor was it found to contribute to the setting of the residence.⁸

⁷ Peer Review, page 25

⁸ Document 14, Neylon evidence statement, paragraphs 94 and 95

Figure 10: Observatory building (centre) on its elevated site and treed setting (mostly Red Ironbarks), viewed from the south



Source: Document 12, Brady evidence statement, page 23

Ms Brady said:

... the Red Ironbark trees in the northern part of the property, in a general sense, contribute to the current setting of the observatory on its elevated site. Individual trees are also not necessarily significant in heritage terms, but as a group or collection they enhance this setting. The trees are, however, not of heritage value or significance because of their association with the establishment and function of the observatory.⁹

The evidence statement of Mr Rogers confirmed the conclusions in the report prepared by Axiom Tree Management Pty Ltd.

The National Trust supported the revised Statement of Significance.

(ii) Discussion

The Panel agrees with the Council and the expert witnesses that the trees on the site are not of heritage significance and they should not be referenced in the Statement of Significance. It follows that the Schedule to Clause 43.01 should be modified to delete reference to the application of tree controls to HO937.

(iii) Conclusions and recommendations

The Panel concludes:

- The three clusters of trees identified in the exhibited Statement of Significance are not of heritage significance.
- The Statement of Significance should be modified to delete reference to the trees having heritage significance.

⁹ Document 12, Brady evidence statement, paragraph 76

- The Schedule to Clause 43.01 should be modified to delete the application of tree controls to HO937.

The Panel recommends:

Amend the Statement of Significance for HO937 to delete reference to the three clusters of trees as elements of heritage significance, as shown in Appendix B.

Amend the Schedule to Clause 43.01 to replace the word 'Yes' with the word 'No' under the heading 'Tree controls apply?' for HO937, as shown in Appendix C.

3.4 Residence 'La Rocca'

(i) Evidence and submissions

Council submitted that the heritage significance of the place should be seen within a complex consisting of the former East Bendigo Observatory and its associated residence. It said the Amendment did not propose that an individual Heritage Overlay be applied to the residence 'La Rocca' alone and the heritage assessment of the residence should be seen within this context. Council submitted the residence 'La Rocca' is a contributory element to this heritage place.

Council submitted none of the heritage reports, including the evidence statements prepared by the heritage experts, concluded that the residence 'La Rocca' has no heritage significance. It said there is clear evidence that the residence 'La Rocca' is associated with the former East Bendigo Observatory building and as such the residence forms part of complex worthy of protection under the proposed Heritage Overlay.

Council relied on the evidence of Ms Neylon to support its position.

Figure 11: Residence 'La Rocca' from the front (south) elevation



Source: Document 12, Brady statement of evidence, page 21

Ms Neylon agreed the place should be seen as a site consisting of two related heritage elements. For this reason, she recommended the place should be named 'Former East Bendigo Observatory site, Part 55 Condon Street, Kennington'. Ms Neylon said this better describes the site and

provides a context to understand the inter-relationship of the elements which contribute to the overall significance of the place.

Ms Neylon said the description in the Heritage Citation for the residence 'La Rocca' was insufficient to accurately describe the building and its intactness and integrity. She said although the residence was not intact, it was still legible as a transitional late Victorian/early Edwardian residence.

The Peer Review found that the elements of the original c.1900 residence designed by Beebe which survive include:

- basic asymmetrical plan (with additions to the rear)
- the biochromatic brick chimneys (one partially lost through storm damage)
- return verandah (roof, timbers and posts including some Corinthian capitals)
- front steps and curved balustrade
- front door and frame, leadlight transom sash and side windows
- two of the original double hung sash windows and the original window hoods.

The following alterations to the building were noted:

- altered roof form to the projecting wing at the front (at least)
- loss of all original external windows other than two double hung sash windows on west elevation.
- loss of decorative cast iron lace work and brackets, some capitals to verandah columns, verandah decking.
- ogee profile guttering
- skillion addition to the rear.

Ms Neylon said the impact of intactness on heritage significance should be considered on a case by case basis and take account of whether:

- there is sufficient fabric in place to assist in understanding and appreciating the place
- the extant changes and alterations impact on the understanding and appreciation of the particular place
- the level of intactness should be reflected in the Statement of Significance.

Ms Neylon said an inspection of the residence in March 2022 clearly demonstrated that the roof form had been altered at some time in the latter half of the twentieth century, as evidenced by the pitch of the roof, width of eaves and hip roof form of the projecting wing of the façade. Storm damage evident at the time of the site visit had caused damage to a portion of one of the original chimneys on the southern side of the residence, and a portion of the return verandah and roof. She stated:

Despite the alterations and storm damage, it is my opinion that the building is still able to be understood as a transitional late Victorian/early Edwardian residence including its composition, footprint, chimneys, return verandah, front door, steps and limited decorative detailing including remnant Corinthian capitals, window hoods and decorative leadlight glass features.¹⁰

PPN01 defines local significance as including *“those places that are important to a particular community or locality”* for a particular criterion or criteria. Ms Neylon said that implied a high degree of relativity when determining where the threshold of significance sits for a given locality:

¹⁰ Document 14, Neylon evidence statement, paragraph 134

For example, in a suburb where there was extensive 19th-century suburban development, such as central Bendigo the threshold is quite high for a Victorian house to be of local significance. In an outer suburb, such as Kennington, where there was only scattered 19th-century development and even less of it survives, the threshold is correctly set much lower.¹¹

Ms Neylon said comparative analysis elevated the importance of the residence 'La Rocca'. She noted the Amendment site is a rare surviving example of a private observatory within Victoria and that 'La Rocca' is the only residence associated with a private observatory known to survive within Victoria from this period.

Ms Neylon said there was insufficient comparative examples or analysis in the Heritage Citation of other residential buildings from the key period of development or other residential buildings designed by Beebe to demonstrate that 'La Rocca' was of aesthetic significance as "*characteristic of Victorian residences in the area*" as claimed in the exhibited Statement of Significance.

Ms Neylon noted that the Minerva Heritage Report stated that the residence 'La Rocca' "*...falls short of the threshold required to qualify for an individual heritage overlay.*" In response, she said:

This statement is not disputed, and it is my opinion that if the Heritage Overlay was proposed to apply only to the residence the place would not meet the threshold for local significance.

However, the exhibited documentation does not propose an individual Heritage Overlay to be applied to the residence alone, it proposes to apply the Heritage Overlay to both the residence and the observatory as a complex.¹²

Ms Neylon concluded:

It is my opinion that the residence 'La Rocca' does not meet the threshold for local significance against Criteria E as set out in the exhibited Statement of Significance. Rather, it is my opinion that the association between the observatory and the residence, as elements of the same site, designed and utilised by John Beebe for almost 20 years as an observatory and associated residence is historically important, and that the residence La Rocca, contributes to an understanding of the historical significance of the site. It provides evidence of the use of the site as a private observatory by the fact that the residence was constructed nearby within the same period as the observatory and assists in the understanding regarding the purpose, function, and history of former East Bendigo Observatory site.

The historical significance of the place is in its ability to demonstrate an important period in the history of the municipality (and Victoria more broadly) where the rapid advances in scientific technology and research, particularly in astronomy led to major changes in the way in which time and space were understood. This led to an increasing interest, popularity and patronage of public Observatories, the development of astrological societies and the construction of smaller private observatories or observatory towers by amateur astrologers, few of which remain. The close construction period and proximity between Beebe's residence and his private observatory, coupled with its location at the highest point in the district demonstrates that the site was deliberately chosen for its suitability to house both an observatory and a family residence.

There is documentary evidence presented in the Heritage Citation ... that the observatory and the residence were both designed and occupied by John Beebe, architect, and amateur astronomer ... in 1900. There is further evidence provided to demonstrate that the Beebe family resided at the property until 1919. In this manner, the residence, La Rocca contributes to the associative significance (Criterion H). It contributes to the historical significance of the place as it assists in an understanding of the use and purpose of the observatory as a private (if sophisticated) enterprise which was later utilised as a Municipal observatory during the period 1908-1914, operated by Beebe who continued to live with his family at La Rocca during this period.

¹¹ Document 14, Neylon evidence statement, paragraph 77

¹² Document 14, Neylon evidence statement, paragraph 136

The connection between the residence and the observatory is clearly demonstrated, and although the residence 'La Rocca' is altered, there is sufficient fabric remaining to clearly identify the residence as being from the key period of historical significance (1900-1919) in the elements of the original building which survive.¹³

Figure 12: Former east Bendigo Observatory (foreground right) and residence 'La Rocca' (background left)



Source: Document 17, National Trust submission, page 1

In response to questions from Strath CCC, Ms Neylon said:

- the observatory and residence were different building typologies
- it was not necessary for two elements to have the same building typology to be considered within the same heritage complex
- the late Victorian remnants of the residence 'La Rocca' enriches the understanding of the site and the former observatory
- that some aspects of her evidence statement differed from her Peer Review report, however she said this was as a result of further information and more detailed consideration of the issues.

Strath CCC relied on the evidence of Ms Brady, who stated:

The heritage value of the residence largely if not solely arises out of the historical association with Beebe and the observatory, with the residence helping to demonstrate the origin and use of the observatory as a private undertaking/operation. However ... the residence is not agreed to be of aesthetic significance.

...

The changes which have occurred to the house have resulted in it being undistinguished in a physical sense, and very much altered from Beebe's original design. While it was designed by Beebe, it has since had a series of owners and various changes have been made, taking the dwelling a long way from its original appearance. The fact that the house retains some original elements does not elevate it to being of aesthetic significance. As per Criterion E, it is not 'important' in an aesthetic sense or for 'exhibiting particular aesthetic characteristics'. While the residence does help to convey aspects of the history of the site, it is otherwise an unremarkable and ordinary building.¹⁴

Ms Brady recommended that reference to the aesthetic significance of the residence be removed from the Amendment documentation.

¹³ Document 14, Neylon evidence statement, paragraphs 139-142

¹⁴ Document 12, Brady evidence statement, paragraphs 54-55

Ms Brady acknowledged that the residence 'La Rocca' had some heritage significance, however she said the heritage values were diminished by the substantial changes to the dwelling. She said in these circumstances it would be appropriate to 'memorialise' the dwelling through some sort of interpretive feature close to the observatory to provide recognition of the residence 'La Rocca'.

In response to questions from Council, Ms Brady said she did not know of any other examples of a private observatory with an associated residence anywhere else in Victoria.

Strath CCC submitted that on the basis of Ms Brady's evidence the residence 'La Rocca' should not be included within HO937. It said the contribution that the residence 'La Rocca' makes to the heritage significance of the observatory is so minimal that it justifies exclusion from the Heritage Overlay. It submitted:

... the extensive series of changes made to the residence, including those necessitated by the fire damage in 1958 causing loss of original fabric and detailing, have resulted in a departure from Beebe's original design which diminish any historic association with Beebe and the Observatory. The residence is not as Beebe designed it and it is not as it was when Beebe designed and built the Observatory, straining the association with the Observatory further. Moreover, the residence is in an uninhabitable state of disrepair, rectification of which would further alter what is left of any original fabric.¹⁵

The National Trust submitted that the residence 'La Rocca', while not intact, can still be seen as a building that was built around 1900. It submitted a number of photographs of various parts of the dwelling that supported this statement.

The National Trust said the residence is a rarity because it is the only private residence in Victoria that has a private observatory.

Figure 13: Original verandah post detail



Source: Document 17, National Trust submission, page 3

Figure 14: Original double hung sash windows and original window hoods



Source: Document 17, National Trust submission, page 4

¹⁵ Document 18, Strath CCC Pty Ltd submission, paragraph 25

Figure 15: Original leadlight above front door

Source: Document 17, National Trust submission, page 3

Figure 16: Original biochromatic chimney detail

Source: Document 17, National Trust submission, page 4

(ii) Discussion

The main point of dispute for the Amendment is the heritage significance of the residence 'La Rocca' and whether it should be included in the Heritage Overlay.

The Panel agrees it is appropriate to consider the residence 'La Rocca' as part of a heritage 'complex'. In this context, the residence should be assessed as part an overall 'site', rather than as an individual heritage place.

It is acknowledged that the residence 'La Rocca' has been modified over time, however the Panel considers there is sufficient fabric in place to understand and appreciate the dwelling. Although the mid twentieth century alterations and additions to the residence diminish the significance of the place, the remaining fabric enables the building to be understood as a transitional late Victorian or early Edwardian residence.

That said, the Panel accepts the evidence from Ms Neylon and Ms Brady that the residence 'La Rocca' does not meet the threshold for aesthetic significance (Criterion E). The heritage significance of the residence is, however, justified on other criteria.

The residence 'La Rocca' is a unique building. It is the only known surviving residence in association with a private (former) observatory. The relationship between the residence and the observatory helps to understand the operation and circumstances of the observatory. The Panel considers this relationship is important in helping to understand the heritage significance of the whole site. The understanding and appreciation of the observatory as a private observatory would be diminished without the inclusion of the residence 'La Rocca'.

That is not to say that the former East Bendigo Observatory building and the residence 'la Rocca' are of equal heritage significance. The observatory is clearly the 'cornerstone' of the whole site. The residence, however, makes an important contribution to the appreciation and understanding of the observatory building.

Clause 15.03-1S (Heritage Conservation) seeks “to ensure the conservation of heritage places of heritage significance”. This clause recognises that heritage places may have a variety of elements which contribute to the significance of the place, and includes the following strategies (amongst others) for achieving this objective:

- Retain those elements that contribute to the importance of the heritage place.
- Encourage the conservation and restoration of contributory elements of a heritage place.
- Ensure an appropriate setting and context for heritage places is maintained or enhanced.

The Panel considers the residence ‘La Rocca’ contributes to the importance of the former East Bendigo Observatory building and provides an important setting and context for the understanding of the former observatory.

Within this context, the Panel considers the residence ‘La Rocca’ satisfies the criteria for historical significance (Criterion A), rarity (Criterion B) and associative significance (Criterion H).

The Panel accepts the various changes to the exhibited Statement of Significance recommended by Ms Neylon and supported by Council. These changes delete reference to the residence ‘La Rocca’ having aesthetic significance and include a number of other drafting changes to clarify the significance of the place.

(iii) Conclusions and recommendations

The Panel concludes:

- The residence ‘La Rocca’ is of historical significance, demonstrates rarity and is of associative significance (Criteria A, B and H).
- The residence ‘La Rocca’ is not of aesthetic significance (Criterion E).
- The revised Statement of Significance appropriately clarifies the heritage significance with respect to the residence ‘La Rocca’.

The Panel recommends:

Amend the Statement of Significance for HO937 to delete reference to the residence ‘La Rocca’ having aesthetic significance and to make drafting changes to clarify its historical significance, as shown in Appendix B.

4 Heritage Overlay boundary

4.1 The issue

The issue is the appropriate curtilage for HO937.

4.2 Planning Practice Note 1 – Applying the Heritage Overlay

PPN01 provides guidance regarding Heritage Overlay mapping. It states:

The Heritage Overlay applies to both the listed heritage item and its associated land. It is usually important to include land surrounding a building, structure, tree or feature of importance to ensure that any development, including subdivision, does not adversely affect the setting, context or significance of the heritage item. The land surrounding the heritage item is known as a 'curtilage' and will be shown as a polygon on the Heritage Overlay map. In many cases, particularly in urban areas and townships, the extent of the curtilage will be the whole of the property (for example, a suburban dwelling and its allotment).

However, there will be occasions where the curtilage and the Heritage Overlay polygon should be reduced in size as the land is of no significance. Reducing the curtilage and the polygon will have the potential benefit of lessening the number of planning permits that are required with advantages to both the landowner and the responsible authority. Examples of situations where a reduction in the curtilage and polygon may be appropriate include:

- A homestead on a large farm or pastoral property where it is only the house and/or outbuildings that is important. In most cases with large rural properties, the inclusion of large areas of surrounding farmland is unlikely to have any positive heritage benefits or outcomes.
- A significant tree on an otherwise unimportant property.
- A horse trough, fountain or monument in a road reservation.
- A grandstand or shelter in a large but otherwise unimportant public park.

...

All heritage places must be both scheduled and mapped.

In each case, care should be taken to ensure that there is an accurate correlation between the Heritage Overlay schedule and the Heritage Overlay map.

The need for care is exemplified by the fact that the Heritage Overlay map will be the determining factor in any dispute as to whether a control applies (for example, in cases where there is conflict between the Heritage Overlay map and the property description or address in the Heritage Overlay schedule).

4.3 What is proposed?

The exhibition map showed the proposed extent of HO937 (Figure 1). The exhibited Statement of Significance also included the words:

The proposed curtilage takes in the residence, observatory and notable clusters of trees, as shown below. The curtilage allows a setback of 10 metres from the front of the residence.

The referenced image was an aerial photograph with a red dashed line apparently indicating the curtilage (although this was not annotated or described in a legend). A copy of the aerial photograph is shown in Figure 3. As noted in Chapter 2.5, the coloured lines on the aerial photograph do not align with the stated features. This makes it very difficult to determine the location of the intended heritage curtilage on the aerial photograph.

The Panel sought clarification from Council with respect to:

- the intended location of the heritage curtilage on the aerial photograph

- whether the intended location on the aerial photograph aligns with the exhibited Heritage Overlay Map.

In response, Council produced a revised aerial photograph in an updated Statement of Significance (Document 19). The aerial photograph showed:

- a red line aligning with the property boundary (not annotated)
- a yellow line showing the heritage curtilage (not annotated)
- the observatory building and 'La Rocca' residence annotated
- the deletion of the three green circles showing the clusters of trees
- an annotation stating the southern boundary of the heritage curtilage was a "10-metre setback from front of the dwelling".

Figure 17: Council preferred location of heritage curtilage



Source: Document 19

The revised Statement of Significance does not include the exhibited text above the aerial photograph describing the curtilage. The text was replaced by the annotations on the aerial photograph.

4.4 Evidence and submissions

Council submitted it was appropriate to apply the Heritage Overlay to that part of the site that is of heritage significance. It said this was in accordance with the guidance provided in PPN01.

Council confirmed in its closing submission that its preference was for the southern boundary of the heritage curtilage to be 10 metres from the southern facade of the residence 'La Rocca' to ensure an appropriate setting for the building. It acknowledged that it was open for the Panel to consider a lesser setback.

The Panel noted to Council that the southern boundary of the heritage curtilage in Document 19 was not perpendicular to the side property boundaries and does not match the boundary on the Heritage Overlay Map.

Council agreed that the southern boundary of the heritage curtilage should be perpendicular to the side property boundaries and that it should match the Heritage Overlay Map. It said all images should be drawn showing a 10-metre setback from the front of the residence 'La Rocca'.

Ms Neylon gave evidence that the heritage curtilage should include all of the relevant heritage fabric to be protected. This included the residence 'La Rocca'. She noted that the errors in the exhibited mapping made it difficult to be clear about the location of the southern boundary of the heritage curtilage, however she was generally satisfied with a setback of 10 metres from the front of the residence 'La Rocca'.

Consistent with her evidence that the residence 'La Rocca' should not be included in the Heritage Overlay, Ms Brady stated that the heritage curtilage *"could effectively be drawn in line with the fence that borders the rear yard of the dwelling"*, although she acknowledged that the fence was not a straight line. Ms Brady said a distance of approximately 10 to 12 metres from the north side of the house (or approximately 15 to 17 metres from the south side of the observatory building) would be appropriate.

Ms Brady said that if the residence 'La Rocca' was included in the Heritage Overlay then she considered the southern heritage curtilage boundary should be setback 6 to 8 metres from the south side of the residence. She said a 10-metre setback was unnecessary where the building was not of aesthetic significance.

Strath CCC agreed with Ms Brady. It said the southern setback:

- is not a public or street interface and does not require an *"overly generous"* setback of 10 metres
- could be 6 to 8 metres even if it was a public or street interface
- does not need to provide for a 'setting' as this is not relevant in this instance.

Strath CCC submitted that if the residence 'La Rocca' is included in the Heritage Overlay then a setback of 6 metres is *"more than generous"*.

The National Trust submitted that although it supported the application of the Heritage Overlay over the former observatory and the residence 'La Rocca', it did not have a view about the location of the curtilage at the front of the dwelling.

One submission said that HO937 should be applied to the whole of 55 Condon Street because they could remember formal gardens to the front of the property including lawns, a large fountain, curved driveways, low height stone walls and landscaping extending all the way to Condon Street.

In response to this submission, Ms Neylon said there was little evidence “*on the ground*” that shows the remains of any formal landscaping in the front of the property.

4.5 Discussion

The inconsistency between the Heritage Overlay Map and the aerial photograph in the Statement of Significance caused significant confusion at the Hearing. Care needs to be taken to ensure that the heritage curtilage in the Statement of Significance is correctly and accurately drawn. The Statement of Significance is an Incorporated Document and it is important that the curtilage is exactly the same as the Heritage Overlay Map to avoid the potential for misunderstanding and confusion.

The Panel has considered the heritage curtilage boundary within the context of its conclusion that the residence ‘La Rocca’ is of heritage significance and should be included in HO937 (refer Chapter 3.4).

The Panel agrees with Council that the heritage curtilage should be setback 10 metres from the southern façade of the front room of the dwelling. This is an appropriate setback to provide a reasonable setting for the front of the building. The Panel does not consider a setback of 6 or 8 metres is sufficient to provide an appropriate setting in this instance having regard to:

- the slope of the land
- the open and spacious setting the house currently enjoys
- the southern side of the house presents the entrance to the building.

The aerial photograph in the exhibited Statement of Significance should be modified to show:

- the southern boundary of the heritage curtilage drawn 10 metres from the front of the dwelling and perpendicular to the east and west property boundaries
- the lot boundary, heritage curtilage, observatory building, the residence ‘La Rocca’ and the southern boundary appropriately annotated to show each element.

The Heritage Overlay Map should be drawn so that the southern boundary of the heritage curtilage matches the same boundary in the Statement of Significance.

4.6 Conclusions and recommendations

The Panel concludes:

- The heritage curtilage should be setback 10 metres from the front (southern side) of the residence ‘La Rocca’.
- The aerial photograph in the exhibited Statement of Significance should be modified to improve the clarity and intent of the image.
- The heritage curtilage shown on the Heritage Overlay Map should be modified to ensure that it is consistent with the resolved version of the heritage curtilage in the Statement of Significance.

The Panel recommends:

Amend the aerial photograph in the exhibited Statement of Significance for HO937 to:

- a) **correct the location of the lot boundary and the east, west and north boundaries of the heritage curtilage to match the actual lot boundary**
- b) **delete the three circles indicating the location of the clusters of trees**

- c) show the southern boundary of the heritage curtilage setback 10 metres from the front of the residence 'La Rocca' and ensure that this boundary is perpendicular to the east and west property boundaries**
- d) annotate the lot boundary, heritage curtilage, observatory building, the residence 'La Rocca' and the 10-metre setback from the front of the residence 'La Rocca' to show each of these elements.**

Amend the Heritage Overlay Map (23HO) to ensure that it accurately matches the southern heritage curtilage boundary as shown on the aerial photograph in the resolved version of the Statement of Significance.

5 Drafting issues

5.1 Introduction

In addition to the changes to documents recommended in preceding chapters, a number of largely administrative or drafting changes are recommended to several documents. These include changes to:

- the Statement of Significance
- the Schedule to Clause 43.01 (Heritage Overlay)
- the Schedule to Clause 72.04 (Documents Incorporated in this Planning Scheme).

5.2 Statement of Significance

(i) Discussion

Chapter 3.1 describes the extensive changes to the Statement of Significance proposed by Council. The Panel accepts these proposed changes and has used this version as its 'base' for the Panel preferred version of the Statement of Significance in Appendix B. This includes several addition changes as following.

- The name of the Statement of significance should be modified to 'Statement of Significance: Part of 55 Condon Street, Kennington, July 2022'.
- The name of the 'Heritage Place' should be modified to 'Part 55 Condon Street, Kennington, Former East Bendigo Observatory site'.

These changes are consistent with the recommendations of Ms Neylon and the structure used in the naming of other heritage places and Statements of Significance in the Schedule to Clause 43.01.

In addition, under the heading 'Why is it significant?', the second sentence of the second paragraph should be modified to state:

The East Bendigo Observatory was the focus of astronomical, magnetic and meteorological scientific investigation in [late](#) nineteenth [and early twentieth](#) century Bendigo, and was instrumental in providing Bendigo with accurate meteorological statistics in the period 1908-1914. (Panel additions noted in blue)

Ms Brady initially suggested that the sentence should be modified to refer to only the early twentieth century because the observatory was constructed in 1900. In response to questions from the Panel, she agreed that the year 1900 is the last year of the nineteenth century and accepted the sentence should refer to "*late nineteenth and early twentieth century Bendigo*".

Finally, Council proposed that the reference to the Heritage Citation in the 'Primary Source' should refer to "(Updated June 2022)" instead of "(Updated November 2021)".

The Panel has only been given a copy of the Heritage Citation updated in April 2021. It has not been presented with a version of the Heritage Citation updated in November 2021 or June 2022. Council said there were no such documents. The Panel considers that the reference to the Heritage Citation should refer to "(Updated April 2021)".

Strath CCC submitted the inclusion of this document as a 'Primary source' in the Statement of Significance has the potential to cause confusion in the future because the Heritage Citation is not consistent with the final outcome expressed in the Statement of Significance.

The Panel understands the concerns expressed by Strath CCC and suggests that the Peer Review report should be added as a 'Primary source'. The Heritage Citation and Peer Review both help to tell the story of the evolution of the Statement of Significance. The Panel acknowledges that the Peer Review does not match the final outcome expressed in the Panel preferred version of the Statement of Significance, however it is of assistance in understanding many of the nuanced changes that have occurred as part of the evolution of the heritage assessment of the site.

The Panel is reluctant to recommend the inclusion of a fully updated heritage citation as the 'Primary source' when it has not seen that document.

(ii) Conclusions and recommendations

The Panel concludes:

- The Statement of Significance should be amended to:
 - modify the name of the Statement of Significance
 - modify the name of the heritage place
 - clarify the operational period of the East Bendigo Observatory
 - modify the date of the Heritage Citation referred to in the 'Primary Source'
 - include the Peer Review as an additional 'Primary Source' document.

The Panel recommends:

Amend the Statement of Significance for HO937, as shown in Appendix B, to:

- e) **modify the name of the Statement of Significance to "Statement of Significance: Part of 55 Condon Street, Kennington, July 2022"**
- f) **modify the name of the heritage place to "Part 55 Condon Street, Kennington, Former East Bendigo Observatory site"**
- g) **modify the second sentence in the second paragraph under the heading 'Why is it significant?' to state "The East Bendigo Observatory was the focus of astronomical, magnetic and meteorological scientific investigation in late nineteenth and early twentieth century Bendigo ..."**
- h) **delete the date in the 'Primary Source' document "(Updated November 2021)" and replace it with "(Updated April 2021)"**
- i) **include an additional 'Primary Source' document titled "Peer Review 'La Rocca' Residence and East Bendigo Observatory Heritage Citation, 55 Condon Street, Kennington, prepared by Plan Heritage Pty Ltd, 12 March 2021".**

5.3 Schedule to Clause 43.01

(i) Discussion

The recommended changes to the tree controls in the Schedule to Clause 43.01 are outlined in Chapter 3.3. The following additional changes should be made to the Schedule to Clause 43.01.

First, under the heading 'Heritage place' the name of the 'Heritage place' and the Statement of Significance should be modified to be consistent with the names recommended in the Statement of Significance document.

Second, under the heading 'Outbuildings or fences not exempt under Clause 43.01-4' the response should be "No". This is consistent with the recommendations in the Peer Review, which noted that the observatory building should not be considered an 'outbuilding' because it is specifically

referred to in the Statement of Significance as a key component of the heritage site. This approach was supported by Council and the Panel accepts it too.

(ii) Conclusions and recommendations

The Panel concludes:

- The Schedule to Clause 43.01 should be amended for HO937 to:
 - modify the name of the heritage place
 - modify the name of the Statement of Significance
 - modify the response to the heading 'Outbuildings or fences not exempt under Clause 43.01-4' from "Yes (East Bendigo Observatory)" to "No".

The Panel recommends:

Amend the entries for HO937 in the Schedule to Clause 43.01 Heritage Overlay, as shown in Appendix C, to:

- a) **modify the name of the heritage place to "Part 55 Condon Street, Kennington, Former East Bendigo Observatory site"**
- b) **modify the name of the Statement of Significance to "Statement of Significance: Part of 55 Condon Street, Kennington, July 2022"**
- c) **delete the text "Yes (East Bendigo Observatory)" under the heading 'Outbuildings or fences not exempt under Clause 43.01-4' and replace with the word "No".**

5.4 Schedule to Clause 72.04

(i) Discussion

The name of the document listed in the Schedule to Clause 72.04 (Documents incorporated in this Planning Scheme) should be modified to be consistent with the name of the Statement of Significance recommended in this report.

(ii) Conclusions and recommendations

The Panel concludes:

- The date in the name of the document in the Schedule to Clause 72.04 should be modified to refer to July 2022.

The Panel recommends:

Amend the name of the document in the Schedule to Clause 72.04 to "Statement of Significance: Part of 55 Condon Street, Kennington, July 2022".

Appendix A Document list

No.	Date	Description	Provided by
1	6/5/22	Letter – from Panel to submitters advising of Directions Hearing	Planning Panels Victoria (PPV)
2	23/5/22	Letter – from Panel to parties regarding Directions, Distribution list and Hearing Timetable (version 1)	“
3	24/5/22	Email (dated 19/5/22) – from Strath CCC Pty Ltd advising Panel of access arrangements for site inspection	Strath CCC Pty Ltd
4	“	Email – from Strath CCC Pty Ltd advising Council and Mr Cox of access arrangements for site inspection	“
5	8/6/22	Email – from PPV to all parties advising of request to submit additional expert evidence (arborist) on behalf of Strath CCC Pty Ltd – including copy of email dated 7 June from Best Hooper on behalf of Strath CCC Pty Ltd	PPV
6	“	Email – from Best Hooper on behalf of Strath CCC Pty Ltd to all parties advising of a change to the name of the proposed additional expert witness	Strath CCC Pty Ltd
7	9/6/22	Email – from PPV to all parties advising of email to the Panel from City of Greater Bendigo sent on 8/6/22 regarding the Statement of Significance	PPV
8	“	Email – from PPV to all parties confirming it agrees to Strath CCC Pty Ltd calling expert evidence from Mr Rogers (arborist)	“
9	“	Email – from Council to PPV responding to Document 7 and including revised Statement of Significance – Clean copy and Tracked Changes	Council
10	10/6/22	Email – from Council to Panel forwarding copy of email from Best Hooper to Council dated 10 June regarding Document 7	“
11	“	Council Part A submission – including Appendices 1 -17	“
12	14/6/22	Ms Brady evidence statement - heritage	Strath CCC Pty Ltd
13	“	Email – from Panel to Best Hooper responding to request for additional time to lodge evidence statement of Mr Rogers	PPV
14	“	Ms Neylon evidence statement - heritage	Council
15	“	Mr Rogers evidence statement - arboriculture	Strath CCC Pty Ltd
16	17/6/22	Council Part B submission – including Appendices 1 - 12	Council
17	20/6/22	Submission – National Trust of Australia (Victoria), Bendigo and Region Branch	Mr Cox
18	21/6/22	Submission – Strath CCC Pty Ltd	Strath CCC Pty Ltd

No.	Date	Description	Provided by
19	“	Revised Statement of Significance – including updated heritage curtilage on aerial photograph and updated ‘Primary Source’	Council

Appendix B Panel preferred version of the Statement of Significance

Tracked Added

~~Tracked Deleted~~

The Panel preferred version of the Statement of Significance is based on the revised version of the Statement of Significance submitted by Council in Document 9.

The Panel preferred version of the Statement of Significance does not include changes to the aerial photograph under the heading 'What is significant?' The recommended changes to the aerial photograph are discussed in Chapter 4 and the revised version of the aerial photograph should be inserted into the Statement of Significance where indicated.

Statement of Significance: [Part of 55 Condon Street, Kennington, July 2022](#) ~~Former East Bendigo Observatory site June 2022~~

Heritage Place: Part of 55 Condon Street
Kennington, [Former East Bendigo Observatory site](#)

PS ref no: H0937



La "Rocca" residence



Former East Bendigo Observatory

What is significant?

The, former East Bendigo Observatory site (c.1900) at 55 Condon Street, Kennington is significant.

Elements which contribute to the significance of the place are:

- the c.1900 Observatory building exterior
- the c.1900 Observatory interior, including the roof mechanism, the equipment platform that remains within the central chamber and the timber cabinetry in the adjacent wing.
- the residence 'La Rocca' to the extent of its c.1900 fabric
- the location at the apex of the hill and its separation from surrounding development.

Elements which are not considered significant are:

- Post 1920 additions to the Observatory
- Trees (planted and self-seeded) surrounding the Observatory
- All outbuildings, animal enclosures, modern structures, and fences.

[Updated aerial photograph to be inserted by Council]

How is it significant?

The former East Bendigo Observatory site is of historic, aesthetic, scientific and associative significance to the City of Greater Bendigo.

Why is it significant?

The Former East Bendigo Observatory site (comprising the former observatory and associated residence) at 55 Condon Street, Kennington, designed by architect John Beebe and constructed in 1900, is of historic significance as an early private observatory complex built in Bendigo. The observatory is historically important for its role in recording official meteorological readings for Bendigo from 1908 until 1914. The building is a rare and relatively intact early twentieth century example of a small, privately built and owned observatory with its associated residence 'La Rocca'. The former observatory is also of historic significance as it is indicative of the interest in the sciences, specifically astronomy, which gathered popularity in the late nineteenth and early twentieth centuries in Victoria. It is unusual because of its location on the same site as a residence, La Rocca, also designed by John Beebe c.1900 (but significantly altered after a fire in 1958), where the Beebe family lived from 1900 to circa 1919. The observatory retains the original mechanism to open the domed roof, timber cabinetry and equipment platform inside. (Criterion A and Criterion B)

The former Observatory building, built to house a 4.5-inch refracting telescope, is of technical significance as it reflects advances in Australian science and astronomy, as are the roof mechanism and equipment platform that remain within the central chamber and the timber cabinetry in the adjacent wing. The East Bendigo Observatory was the focus of astronomical, magnetic and meteorological scientific investigation in [late](#) nineteenth [and early twentieth](#) century Bendigo, and was instrumental in providing Bendigo with accurate

meteorological statistics in the period 1908-1914. The building evidences the city's early endeavours into scientific research. (Criterion F).

The former observatory building, purpose built for the site and designed by Beebe is representative of the professional Observatory building typology, popular in England, Europe and the USA in the later nineteenth and early twentieth century. The typical characteristics of this type of Observatory included an elevated central dome, flanked by adjacent wings, one of which housed a transit telescope and also featured a retractable domed roof (Criterion D)

The former observatory is of aesthetic significance as an externally intact example of a professional Observatory design which demonstrates the key forms of the building type and retains a high degree of integrity. The observatory follows the nineteenth century international professional observatory designs popular in Britain, Europe and the USA, which featured an elevated central dome room, and adjacent wings, one of which housed a transit telescope. The former observatory has significance for the integrity of the original fabric, including internal fittings although the instruments have been removed. The location and setting of the observatory at the apex of one of the highest hilltops in Bendigo is also of aesthetic significance, providing a striking built form from the lower approaches of the hillside. At the time of the Observatory's operation, the hilltop would have been cleared of vegetation to allow for the astronomical equipment to access the full transit of the night sky and its elements. (Criterion E)

The former East Bendigo Observatory and La Rocca residence at part of 55 Condon Street, Kennington, are significant for their association with Bendigo architect and talented amateur astronomer, John Beebe (1866-1936). Beebe trained as an architect at Bendigo School of Mines, graduating in 1900. In 1901, Beebe formed a partnership with W C Vahland's architect son, Harry, which lasted only until 1902 when Harry Vahland died at the age of 42 years. William Vahland senior returned from retirement and re-joined the firm. Subsequently the Vahland and Beebe partnership designed a number of buildings in Bendigo, as well as additions to the Lorne Hotel (1908) and a new Marong Shire Hall (1908).

Beebe's portfolio of work as a sole practitioner in Bendigo from 1909 to 1916 included a number of buildings in Bendigo and in northern Victoria that comprised hotels, shops, warehouses, factory buildings and residences. The final main phase of remodelling the Bendigo Town Hall was undertaken by Beebe in 1913-15, in association with J G Austen and E J Keogh. Beebe also designed the new infectious diseases wards at the Bendigo Hospital in 1915-16 (demolished) and the Tomlins Simmie & Co electric flourmills in East Bendigo (1912).

After moving to Queensland in 1916, Beebe was responsible for the design of a number of projects in that state, with perhaps the best well-known being the bridge portals on the Hornibrook Highway (1935). In addition, Beebe designed an observatory built at St Leo's College in Brisbane in 1919.

As an amateur astronomer, from his East Bendigo Observatory, in 1910 Beebe located Comet P/Halley at least one night earlier than the Melbourne Observatory, and in 1912

obtained positional observations of Comet Gale, which were published in the Journal of the British Astronomical Association in 1913. Beebe was made a Fellow of the Royal Astronomical Society in March 1917. In 1921-22, Beebe was employed by the Queensland Lands Department to co-ordinate the site survey for a suitable observational site for the forthcoming solar eclipse. He also served as president of the Astronomical Society of Queensland in 1936 and was co-editor of the Society's bulletin from 1933. (Criterion H)

Primary Source

Citation for *'La Rocca' residence and East Bendigo Observatory, 55 Condon Street Kennington*, prepared by Dr Robyn Ballinger, History Making Pty Ltd, 29 July 2019 (~~Updated June 2022~~ [April 2021](#)).

[Peer Review 'La Rocca' Residence and East Bendigo Observatory Heritage Citation, 55 Condon Street, Kennington, prepared by Plan Heritage Pty Ltd, 12 March 2021.](#)

Appendix C Panel preferred version of the Schedule to Clause 43.01 (Heritage Overlay)

Tracked Added

~~Tracked Deleted~~

The Panel preferred version of the Schedule to Clause 43.01 is an extract that includes the entries for HO937 only.

SCHEDULE TO CLAUSE 43.01 HERITAGE OVERLAY

2.0 Heritage places

The requirements of this overlay apply to both the heritage place and its associated land.

PS map ref	Heritage place	External paint controls apply?	Internal alteration controls apply?	Tree controls apply?	Outbuildings or fences not exempt under Clause 43.01-4	Included on the Victorian Heritage Register under the Heritage Act 2017?	Prohibited uses permitted?	Aboriginal heritage place?
HO937	<p>Part of 55 Condon Street Kennington Former East Bendigo Observatory site</p> <p>Incorporated plan: Greater Bendigo Heritage Incorporated Plan – Permit Exemptions, January 2018</p> <p>Statement of significance: Statement of Significance: Part of 55 Condon Street Kennington, November 2024 July 2022</p>	No	Yes (East Bendigo Observatory)	Yes (Clusters of Eucalyptus tricarpa (Red Ironbark) to the north of property and Eucalyptus cladocalyx (Sugar Gum) to the south of residence) No	Yes (East Bendigo Observatory) No	No	No	No