

**Queenscliffe Planning Scheme Amendment C40quen
Fisherman's Flat Urban Conservation Precinct (HO1)**

Panel Report

Planning and Environment Act 1987

26 August 2024

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

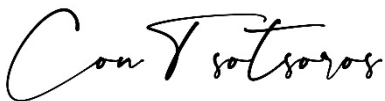
Planning and Environment Act 1987

Panel Report pursuant to section 25 of the PE Act

Queenscliffe Planning Scheme Amendment C40quen

Fisherman's Flat Urban Conservation Precinct (HO1)

26 August 2024



Con Tsotsoros, Chair

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Glossary and abbreviations

2011 Heritage Study	<i>Queenscliffe Heritage Review Volume 1 Summary Report and Recommendations (Lovell Chen, November 2009, reissued December 2011)</i>
Council	Borough of Queenscliffe
Heritage Design Guidelines	<i>Fisherman’s Flat Urban Conservation Precinct Heritage Design Guidelines (Borough of Queenscliffe, 2023)</i>
Heritage Review	<i>Heritage Review of Places in Fisherman’s Flat Urban Conservation Precinct (HO1), Fisherman’s Flat, Queenscliff, Victoria (Ecology and Heritage Partners, August 2023)</i>
HO1 Precinct	Fisherman’s Flat Urban Conservation Precinct
PE Act	<i>Planning and Environment Act 1987</i>
Planning Scheme	Queenscliffe Planning Scheme
Practitioner’s Guide	A Practitioner’s Guide to Victorian Planning Schemes

Overview

Amendment summary

The Amendment	Queenscliffe Planning Scheme Amendment C40quen
Common name	Fisherman's Flat Urban Conservation Precinct (HO1) Urban Conservation Precinct (HO1)
Brief description	Implements the <i>Heritage Review of Places in Fisherman's Flat Urban Conservation Precinct (HO1), Fisherman's Flat, Queenscliff, Victoria (Ecology and Heritage Partners, August 2023)</i>
Subject land	Properties comprising the HO1 Precinct shown in Figure 1
Planning Authority	Borough of Queenscliffe
Authorisation	22 January 2024
Exhibition	7 March to 12 April 2024
Submissions	<p>Received from:</p> <ol style="list-style-type: none"> 1. Richard Bell 2. Carmen Bell 3. Anthony De Fazio 4. Kelly Harris 5. Queenscliffe Community Association 6. David Kenwood 7. Scott and Melinda Whitehorn 8. VicTrack 9. June Negri 10. 6 Wharf Street owners 11. 6 Wharf Street owners (additional submission) 12. Tony and Marg Sutas

Panel process

The Panel	Con Tsotsoros
Directions Hearing	By video conference, 13 June and 8 July 2024
Panel Hearing	By video conference, 6 August 2024
Site inspections	Unaccompanied, 28 June 2024
Parties to the Hearing	Borough of Queenscliffe represented by Dinah O'Brien, who called expert evidence on heritage from Oona Nicolson of Ecology and Heritage Partners Queenscliffe Community Association represented by David Connoley, President Carmen Bell David Kenwood Richard Bell 6 Wharf Street owners
Citation	Queenscliffe PSA C40quen [2024] PPV
Date of this report	26 August 2024

Executive summary

In the 1850s, the Crown reserved an area of the Queenscliff township specifically for fishermen's residences. The area is bound by Wharf Street, Hesse Street, Harbour Street and the waterway. Modest houses were constructed for the fishing community who resided there for many decades. The historic subdivision's wide streets and mostly double fronted properties remain today. This area is referred to as the Fisherman's Flat Urban Conservation Precinct (HO1 Precinct).

The HO1 Precinct has been long recognised as a place of local heritage significance in the Borough of Queenscliffe. The current HO1 Statement of Significance was last updated in 1982. In 2005, the Borough of Queenscliffe (Council) determined it needed to review the *Queenscliffe Urban Conservation Study (Allom Lovell & Associates, 1982)*. The heritage review process started in late 2007 and took about 15 years to complete. This includes Council engaging:

- Lovell Chen to review heritage in the Borough (2011 and 2021 Heritage Studies)
- Ecology and Heritage Partners in 2022 to peer review the 2021 Heritage Study.

The peer review resulted in the *Heritage Review of Places in Fisherman's Flat Precinct (HO1), Fisherman's Flat, Queenscliff, Victoria (Heritage Review)*. The Heritage Review was completed in October 2022 and revised in January and August 2023.

Queenscliffe Planning Scheme Amendment C40quen (the Amendment) seeks to implement the findings of the Heritage Review. This includes:

- referencing the Heritage Review in the Planning Scheme as a background document
- incorporating the *Fisherman's Flat Urban Conservation Precinct Heritage Design Guidelines 2021 (Heritage Design Guidelines)* into the Planning Scheme.

Key issues raised in submissions include whether:

- five properties have been accurately categorised as contributory or non-contributory
- details in the HO1 Statement of Significance and the Heritage Review accurately reflect certain properties
- the Heritage Design Guidelines should be revised.

No submission questioned the Amendment's strategic justification.

Strategic justification and general issues

The Amendment:

- is supported by, and implements, the relevant sections of the Planning Policy Framework
- is consistent with the relevant Ministerial Directions and Practice Notes
- is well founded and strategically justified and should proceed subject to addressing the more specific issues discussed in this report.

For a property to be considered contributory:

- the building's current form should be assessed as contributing to the HO1 Precinct's significance
- the building should have most of its original heritage fabric
- building fabric alterations should be reversible.

Development opportunity, building alterations, maintenance and property value are not relevant when assessing the heritage significance of the HO1 Precinct or categorising a property as contributory or non-contributory.

Fisherman's Flat Urban Conservation Precinct (HO1)

The HO1 Statement of Significance and Heritage Review has incorrectly categorised 28 and 34 Beach Street, 15 Bridge Street and 6 Wharf Street. They should be revised to recategorise:

- 28 Beach Street as a contributory property because it is a Federation house rather than a modern construction
- 34 Beach Street as a contributory property because it is an early Victorian weatherboard house rather than a rendered masonry dwelling built after April 1994
- 15 Bridge Street as a contributory property because it is a Victorian weatherboard house rather than a post-war house
- 6 Wharf Street as a non-contributory property because it has not contributed to the HO1 Precinct since:
 - significant and irreversible alterations in 1991 removed much of original heritage fabric
 - the building no longer presents as being constructed during the HO1 Precinct's development era of significance.

The Panel considers the property at 36 Beach Street is non-contributory because of the scale and type of irreversible alterations to the building's façade. The 2011 Heritage Study found the property to be non-contributory however the Heritage Review identifies it as contributory. The Panel has made no recommendation regarding this property because its category was not queried in a submission. However, Council should review its category through a separate process.

The HO1 Statement of Significance and Heritage Review have correctly categorised 8 Wharf Street as non-contributory. This is a fine copy of the original building but has no apparent original heritage fabric.

Other issues

Planning Policy Framework provisions in the Queenscliffe Planning Scheme (Planning Scheme) appropriately use verbs specified in *A Practitioner's Guide to Victorian Planning Schemes* (Appendix 2). The Panel has made no recommendation regarding Planning Policy Framework provisions because they are beyond of the scope of the Amendment.

Heritage Review

The exhibited Heritage Review is appropriate to be a background document in the Planning Scheme if it is revised before Council adopts Queenscliffe Amendment C40quen to:

- include changes supported by the heritage evidence of Ms Nicolson in Table 4 of this report
- add house names identified in Table 4 of this report, subject to confirmation of their accuracy.

Heritage Design Guidelines

The exhibited Heritage Design Guidelines are appropriate but would benefit from deleting reference to 'discouraging building heights exceeding 6 metres'. This is because the mandatory maximum building height specified in Design and Development Schedule 6 does not enable new built form to exceed a building height of 6 metres.

The Guidelines should also include an introduction that explains the document's purpose.

Drafting issues

The map in the HO1 Statement of Significance should be replaced with a clearer map that provides more guidance.

The *Araucaria hetrophylla* (Norfolk Island Pine) at 35 Beach Street should be identified in the HO1 Statement of Significance as significant rather than being separately listed through HO12. This will avoid 35 Beach Street being listed twice – once for the property as part of the HO1 Precinct and the other for the significant tree. This neutral translation should be made through the Amendment because it will not alter the intent or outcome of the HO12 listing.

The Heritage Review should be revised to correct references to Planning Scheme policy clause numbers and property addresses before it is referenced in the Planning Scheme as a background document.

Recommendations

Based on the reasons set out in this report, the Panel recommends that Queenscliffe Planning Scheme Amendment C40quen be adopted as exhibited subject to the following:

1. **Amend the *Fisherman's Flat Urban Conservation Precinct Statement of Significance*, as shown in Appendix B, to:**
 - a) recategorise 28 Beach Street from non-contributory to contributory
 - b) recategorise 34 Beach Street from non-contributory to contributory
 - c) recategorise 15 Bridge Street from non-contributory to contributory
 - d) recategorise 6 Wharf Street from contributory to non-contributory
 - e) identify the *Araucaria hetrophylla* (Norfolk Island Pine) at 35 Beach Street as significant
 - f) identify secondary cottages at 8 and 16 Bay Street, 6, 15, 23, 31 and 35 Beach Street and 23 Bridge Street as contributory buildings
 - g) insert a clear, high resolution precinct map which identifies the precinct boundary, contributory properties and non-contributory properties and is titled 'Fisherman's Flat Urban Conservation Precinct Map (HO1)'.
2. **Amend the *Fisherman's Flat Urban Conservation Precinct Heritage Design Guidelines* to:**
 - a) include an introduction that explains its purpose
 - b) replace 'Heritage Policy Map 1' with a new clear, high resolution precinct map which identifies the precinct boundary, contributory properties and non-contributory properties and is titled 'Fisherman's Flat Urban Conservation Precinct Map (HO1)'
 - c) delete reference to 'discouraging buildings from exceeding 6 metres'.
3. **Amend the Heritage Overlay Schedule to:**
 - a) replace 'No' in the HO1 'Tree controls apply?' with:
Yes – 35 Beach Street: Araucaria hetrophylla (Norfolk Island Pine). Controls apply to the Norfolk Island Pine and land beneath the canopy edge of the tree for a distance of three metres from the canopy edge.
 - b) delete the HO12 listing.

Further recommendations

The Panel makes the following informal recommendations for the Borough of Queenscliffe's consideration:

4. **Amend the *Heritage Review of Places in Fisherman’s Flat Urban Conservation Precinct (HO1), Fisherman’s Flat, Queenscliff, Victoria (Ecology and Heritage Partners, August 2023)* to:**
 - a) **replace references to:**
 - **Clause 22.02 (Heritage policy) with Clause 15.03-1L**
 - **Clause 22.03 (Urban Character Study) with Clause 15.01-5L**
 - **1 Bridge Street with 1 Beach Street**
 - b) **make consequential changes resulting from other Panel recommendations.**

5. **Through a separate process, recategorise 36 Beach Street from contributory to non-contributory in the:**
 - a) ***Heritage Review of Places in Fisherman’s Flat Urban Conservation Precinct (HO1), Fisherman’s Flat, Queenscliff, Victoria (Ecology and Heritage Partners, August 2023)***
 - b) **HO1 Statement of Significance.**

1 Introduction

1.1 The Amendment

(i) The subject land

The Amendment applies to land colour-shaded in Figure 1 (subject land).

Figure 1 Subject land



Source: Council Part A submission

The subject land, otherwise known as Fisherman's Flat, is:

- about 6 hectares, comprising 74 individual land parcels and road reserve, and bordered to the:
 - north by Swan Bay
 - east by the Queenscliffe Maritime Museum and Queenscliff Harbour
 - west by the Queenscliff Boat Ramp and associated carpark
 - south by parklands and the northern end of Hesse Street
- in the north-east corner of the township of Queenscliff
- about 28 kilometres southeast of Geelong's central city.

(ii) Amendment description

The purpose of the Amendment is to:

- introduce a Statement of Significance for Fisherman's Flat
- revise the *Fisherman's Flat Urban Conservation Precinct Heritage Design Guidelines (Borough of Queenscliffe, 2021)*

- introduce the *Heritage Review of Places in Fisherman’s Flat Urban Conservation Precinct (HO1), Fisherman’s Flat, Queenscliff, Victoria (Ecology and Heritage Partners, August 2023)* (Heritage Review) as a background document in the Queenscliffe Planning Scheme (Planning Scheme).

Specifically, the Amendment proposes to:

- amend the Heritage Overlay Schedule
- amend Clause 72.04 (Incorporated Documents) Schedule to:
 - insert the *Fisherman’s Flat Urban Conservation Precinct Statement of Significance* (Ecology and Heritage Partners, August 2023) incorporated document
 - replace the *Fisherman’s Flat Urban Conservation Precinct Heritage Design Guidelines* (Borough of Queenscliffe, 2021) incorporated document with *Fisherman’s Flat Urban Conservation Precinct Heritage Design Guidelines* (Borough of Queenscliffe, 2023) (Heritage Design Guidelines).
- amend the Clause 72.08 (Background Documents) Schedule to reference the Heritage Review.

1.2 Background

Table 1 Chronology of events

Background summary	
2005	Council determined it needed to review the Queenscliffe Urban Conservation Study (Allom Lovell Associates, 1982)
Dec 2007	Council appointed Lovell Chen to review heritage in the Borough in two parts
Aug 2009	Lovell Chen completed Part 1 and Council decided not to proceed with Part 2
2011	Council released a revised version of the 2009 Lovell Chen report (2011 Heritage Study)
Jul 2018	Amendment VC148 was introduced
2020	Lovell Chen completed the Queenscliffe Planning Scheme Review (Lovell Chen report)
Sep 2020	Council adopted a revised version of the Lovell Chen report and resolved to seek authorisation from the Minister for Planning to prepare and exhibit a planning scheme amendment to implement its recommendations
24 Feb 2022	A new Municipal Planning Strategy was introduced into the Planning Scheme and local policy content was relocated into the Planning Policy Framework [Amendment C38quen]
2022	Council engaged Ecology and Heritage Partners to peer review the 2021 Heritage Study
27 Oct 2022	Ecology and Heritage Partners completed the Heritage Review
27 Jan 2023	A second version of the Heritage Review was completed after a Council briefing
4 Aug 2023	A third version of the Heritage Review was completed after community consultation
25 Oct 2023	Council resolved to seek authorisation from the Minister for Planning to prepare and exhibit a planning scheme amendment to implement the Heritage Review
22 Jan 2024	Amendment C40quen was authorised subject to conditions
7 Mar to 12 Apr 2024	Amendment exhibited

1.3 Procedural issues

(i) Rescheduled Hearing and party withdrawal

At the first Directions Hearing on 13 June 2024, Council advised it would be calling Ms Nicolson of Ecology and Heritage Partners as a heritage expert. The Hearing was originally scheduled for 8 July 2024.

On the morning of the Hearing, the Panel and parties were advised that Ms Nicolson was unavailable due to unforeseeable circumstances. The Panel held a second Directions Hearing on 8 July 2024 in place of the scheduled Hearing. The Hearing was subsequently rescheduled to 6 August 2024.

Kelly Harris requested to be heard at the Hearing, then withdrew as a party before her allocated time.

(ii) Council's response to submissions

At its 22 May 2024 meeting, Council resolved not to propose any changes to the Amendment, though it had agreed to some changes requested by submitters. It resolved to refer all issues raised in submissions to the Panel.

At the Hearing, Council referred to submissions which requested the heritage category for 28 and 34 Beach Street, 15 Bridge Street and 6 Wharf Street be revised. Council submitted it would be unfair to determine revised precinct categories because such a proposal was not put to affected property owners.

Panel response

Generally, Councils resolve to propose changes to the Amendment during the meeting when they consider issues raised in submissions, particularly when the heritage consultant that prepared the Heritage Review agrees with the changes. However, in this instance, Council did not propose any change, so it did not give notice to any affected property owner.

The Panel has made recommendations to properties based on strategic planning (rather than procedural) reasons. Council should consider the appropriate process for notifying affected property owners before the Amendment is adopted.

This is not necessary for the 6 Wharf Street owners who participated in the Hearing process.

1.4 Limitations

Council submitted the following issues are not relevant to the Amendment:

- Financial impact
- Altering and maintaining buildings and existing open space
- Small second dwellings
- Exemptions from planning permits for buildings and works specified in Planning Scheme Clause 62.02-1
- Site coverage and planting
- Signage policy
- Traffic controls and undergrounding powerlines
- Using and maintaining the wharf shed

- Bellarine Distinctive Areas and Landscapes Statement of Planning Policy
- The Wreck Bell
- Using dwellings for short stay accommodation.

The Panel generally agrees, and discusses:

- financial impact and building alterations and maintenance in Chapter 2.4
- contributory secondary cottages in Chapter 3.7.

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 extensive 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:

- Strategic and general issues
- Fisherman's Flat Urban Conservation Precinct (HO1)
- Other issues.

2 Strategic and general issues

2.1 Planning context

The Explanatory Report identifies planning context relevant to the Amendment, as outlined in Table 2. Appendix C highlights key imperatives of relevant provisions and policies.

Table 2 Planning context

	Relevant references
Victorian planning objectives	- section 4 of the PE Act
Municipal Planning Strategy	- Clause 02.02 (Vision) - Clause 02.03-4 (Built form and heritage)
Planning Policy Framework	- Clauses 15.01-1S (Built environment) - Clauses 15.01-5S (Neighbourhood character), 15.01-5L-01 (Neighbourhood character in the Borough) and 15.01-5L-2 (Neighbourhood character in Queenscliffe urban heritage areas) - Clause 15.03-1S (Heritage conservation)
Planning scheme provisions	- Heritage Overlay
Ministerial directions	- Ministerial Direction 11 (Strategic Assessment of Amendments)
Planning practice notes	- Planning Practice Note 1 (Applying the Heritage Overlay) - Planning Practice Note 46 (Strategic Assessment Guidelines)

2.2 Methodology

2.2.1 Research

(i) The issue

The issue is whether the Heritage Review methodology should have included consultation as part of its research phase.

(ii) Evidence and submissions

One submission considered the Heritage Review process:

- should have included consultation with owners, onsite inspections if permitted by owners, and a review of Council planning and building files
- was less robust because it excluded these checks
- would have benefitted from direct consultation to confirm whether there was factual information regarding a property.

Council submitted it resolved in 2022 to consult with owners. Ms Nicolson explained:

- this information was passed on to the Heritage Review consultants but was broad in nature
- submissions to the Amendment provided information more specific to the properties.

Ms Nicolson stated that direct consultation with owners was not part of the scope of the Heritage Review. At the Hearing, she said it would have been useful if there was an opportunity for owners to provide information earlier in the process, even if it was a questionnaire.

In her expert report, Ms Nicolson recommended many changes to the Heritage Review and consequential changes to HO1 Statement of Significance. She acknowledged the Heritage Review had errors and omissions, and incorrectly categorised four properties.

In response to a request from the Panel for more details, the Heritage Review's methodology was expanded to add sources which informed the HO1 Precinct background history and assessments.

(iii) Discussion

Having reviewed changes recommended by Ms Nicolson in her expert report, it is questionable whether the Heritage Review was accurate enough to be exhibited. Council should have been able to confidently support the Heritage Review's research, content and ultimate recommendations. The research phase should have included checks, whether it be consultation with owners or searching Council files. For example, where a building was suspected as being recently constructed, Council files should have been checked to confirm any corresponding building permit.

No heritage study report is perfect, and its information can evolve over time. There are instances where a demolition permit is acted upon, and a property is no longer contributory because it has lost all heritage fabric.

However, in this instance, four of the five properties questioned in submissions are now proposed to be recategorised to either contributory or non-contributory due to errors. This raises the question as to whether the categories for other unchallenged properties are also incorrectly categorised. The scope of the Panel's consideration is limited to issues raised in submissions, so it has not reviewed the categories for all remaining properties in the HO1 Precinct.

2.2.2 Approach to categorising a property in the HO1 Precinct

(i) The issue

The issue is whether the approach to categorising each property in the HO1 Precinct as contributory and non-contributory is appropriate.

(ii) Evidence and submissions

There were submissions which objected to the exhibited precinct category (contributory, non-contributory) for certain properties.

In her expert report, Ms Nicolson recommended many changes to the Heritage Review and consequential changes to HO1 Statement of Significance. She acknowledged the Heritage Review had incorrectly categorised four properties.

In response to a request from the Panel for more detail, the Heritage Review's methodology was expanded to explain the method for determining where a property was contributory or non-contributory:

The layouts of individual allotments and whether the present structures were deemed as contributory and non-contributory was based largely on historical aerial imagery of the area as early as 1910, along with an Allotments Township Plan of Fisherman's Flat produced in 1959, which provided allotment layouts, buildings present (including outbuildings) and construction materials. A comparison was able to be made between historical aerial

photography, the Allotment Plan, and modern satellite imagery, in collaboration with information gathered during the site visits, to determine:

- if sufficient alteration to the building(s) had occurred since the earliest iteration of buildings present and construction materials;
- if original elements still existed on structures but had been covered by modern cladding; and
- if original elements and allotment layouts were present, to what degree of condition were they in.

In addition, a number of local residents supplied further information to the Council in the course of the project. Some information was submitted to Panel as well. The relevant submissions provided key information for the review that was otherwise unknown to the author at the time of writing. Information provided a greater context of the history of allotments, more accurate construction dates, and in some instances, original historical photographs that contradicted what had been previously written about citations.

One submission had a different perspective regarding new materials used in a ‘museum restoration’ of the original building. The submission referred to places and buildings that have been destroyed then reconstructed to their original form:

- City of Würzburg – destroyed during World War II
- Notre Dame De Paris – destroyed by a fire in 2019.

At the Hearing, the Panel referred Ms Nicolson to an example where a heritage place had been destroyed by a fire then reconstructed to its original form. It asked for her view on whether the St Kilda Pier (Melbourne) kiosk had less heritage significance since being reconstructed with new materials. She replied that the kiosk:

- is the last of its type, is greatly celebrated and continues to have high social value
- has a high social significance than a building in a local precinct, with a bigger impact on the community.

The Queenscliffe Community Association agreed the kiosk continues to have cultural and social significance. It considered the kiosk’s contribution is through its form and not through its fabric.

At the Hearing, the Panel assessed the methodology applied by the Heritage Review with the altered building at 36 Beach Street. Chapter 3.3 discusses this property in more detail.

(iii) Discussion

The HO1 Precinct is a heritage place. This single entity is made up of individual properties. For a property to be categorised as contributory, it has to contribute to the HO1 Precinct’s heritage significance. This is explained in the Statement of Significance. Based on information presented through expert evidence and submissions, this assessment should consider:

- the scale and type of alterations, and whether they are reversible
- whether there is enough heritage fabric to contribute to the HO1 Precinct’s significance.

The assessment should be based on how the building appears from the public realm in its current form.

The Panel agrees with Ms Nicolson that a building should have sufficient original heritage fabric to contribute to the HO1 Precinct’s significance. Any building alteration needs to be assessed to determine whether it is reversible and if the original fabric exists beneath any alterations such as cladding. Based on Ms Nicolson’s evidence, the Panel considers an alteration to be reversible if the building’s heritage fabric:

- was not detrimentally affected by the alteration

- will not be detrimentally affected by works needed to restore the building to its original form.

It is admirable there are owners who seek to construct a new house that copies the design of the original building. This contributes to the streetscape's style but not to the HO1 Precinct significance. This is because the HO1 Statement of Significance explains the Precinct is significant for, among other things "*fishermen's residences ranging in date from the 1860's and 1870's through to the c.1940's*". A copied building would have no original fabric from that era.

Council should maintain clear documentation to differentiate between original and copied heritage buildings. This is important to avoid misleading people into believing the copied buildings have enough heritage fabric to contribute to the HO1 Precinct's significance.

The Panel has considered the category of properties in the HO1 Precinct accordingly.

2.2.3 Conclusions

The Panel concludes that for a property to be considered contributory:

- the building's current form should be assessed as contributing to the HO1 Precinct's significance
- the building should have most of its original heritage fabric
- building fabric alterations should be reversible.

2.3 Strategic justification

(i) Discussion

No submission considered the Amendment lacked strategic justification where it should be abandoned. There are considerable Planning Scheme policies which seek to appropriately protect and manage heritage which achieves the local threshold of significance.

In this report, the Panel has considered whether a house is sufficiently intact and is of the development era to contribute to the HO1 Precinct.

The Panel has not made any recommendation regarding the content of the Heritage Review because this document will not form part of the Planning Scheme. It has however considered whether the Heritage Review is sufficiently accurate to be referenced as a background document in the Planning Scheme.

(ii) Conclusions

For the reasons set out in this report, the Panel concludes that the Amendment:

- is supported by, and implements, the relevant sections of the Planning Policy Framework
- is consistent with the relevant Ministerial Directions and Practice Notes
- is well founded and strategically justified and should proceed subject to addressing the more specific issues raised in submissions as discussed in the following chapters.

2.4 General issues

(i) The issue

The issue is whether development opportunity, building alterations, maintenance and property value are relevant when assessing the heritage significance of an individual place or a precinct.

(ii) Submissions

Submissions opposed the proposed provisions because they:

- will make houses unviable as permanent family residences
- will make it difficult and expensive to adapt houses to modern living conditions
- would encourage houses to be used as holiday homes or short-term accommodation
- may discourage some derelict properties being improved
- will discourage people from joining the community
- may lower property value.

Council submitted that change cannot be prohibited. It noted that *“even the Burra Charter enables change to occur to heritage buildings”*.

(iii) Discussion

Development opportunity, building alterations, maintenance and property value are often raised as issues in submissions for a planning scheme amendment proposing to apply the Heritage Overlay. Panels have consistently found these issues are not relevant when assessing whether a property has sufficient local heritage significance to justify applying the Heritage Overlay. Panels have found:

- the Heritage Overlay enables building alterations, extensions and demolition
- a planning permit is not needed for maintenance works that do not alter the appearance of the house
- property value is made up of a complicated formula of dynamic factors and there is no evidence to correlate applying the Heritage Overlay with property value
- social and economic effects specified in the PE Act refer to impact on the broader community and do not extend to individual private financial impact.

The Panel was open to new information which demonstrated otherwise. None was presented.

(iv) Conclusions

The Panel concludes that development opportunity, building alterations, maintenance and property value are not relevant when assessing the heritage significance of the HO1 Precinct or categorising a property as contributory or non-contributory.

3 Fisherman's Flat Urban Conservation Precinct (HO1)

Table 3 Precinct exhibited Statement of Significance

Exhibited Statement of significance
<p>What is significant?</p> <p>The Fisherman's Flat precinct is significant for its low-scale and residential building stock, comprising modest fishermen's residences ranging in date from the 1860's and 1870's through to the c.1940's, as well as for its relatively intact subdivision pattern. While no individual building is significant, many intact contributory buildings with the precinct are identified in the individual citations.</p> <p>Contributory buildings:</p> <p>Bay Street: 8, 10, 16, 20, 22, 24</p> <p>Beach Street: 2, 4, 5, 6, 8, 9, 11, 12, 14, 15, 18, 19, 20, 22, 23, 24, 26, 27, 31, 32, 35, 36, 37</p> <p>Bridge Street: 6, 8, 16, 18, 19, 20, 22, 23, 24</p> <p>Wharf Street: 4, 6, 12, 14, 20, 22, 26, 28, 36, 38, 40, 44, 46</p> <p>Features that do not contribute to the significance of this precinct include non-original alterations and additions to the contributory buildings nominated above and the houses at 2 Bay Street, 18 Bay Street, 10 Beach Street, 16 Beach Street, 30 Beach Street, 1 Bridge Street, 10 Bridge Street, 12-14 Bridge Street, 18 Wharf Street, 30 Wharf Street, 32 Wharf Street and 42 Wharf Street.</p>
<p>How is it significant?</p> <p>The Fisherman's Flat precinct is of local, historic, aesthetic and social significance to the Borough of Queenscliffe. The precinct is characterised by its original subdivision pattern which allowed for double-fronted properties and its modest dwellings built between the 1860's and the 1940's.</p>
<p>Why is it significant?</p> <p>Historically, the precinct is representative of an integral part of Queenscliffe's history, demonstrated by the modest nature of the dwellings.</p> <p>The Fisherman's Flat precinct is historically important as a defined area of the Queenscliff township specifically reserved by the Crown in the 1850's for development as fishermen's residences. Until the 1950's, the allotments were all leased from the Crown Lands Department. The largely intact subdivision layout dates to 1856. Its wide streets and dual frontage arrangements are distinct from the more traditional layout of the broader township and demonstrate the physical and social differences that existed between the fishing community and other residents and visitors to Queenscliff in the nineteenth century. Despite modifications, many of the fishermen's residences are still broadly intact externally and though modest in their form and fabric, provide a valuable insight into the lives of a community of great importance in the history of the township of Queenscliff and the Borough as a whole.</p> <p>The Fisherman's Flat precinct is of significance for its strong historical association with the fishing community in Queenscliff. While the buildings themselves are simple and modest with few architectural pretensions, the precinct as a whole has a particular visual quality that derives from its wide streets, unusual subdivision pattern and the consistency of scale, form and siting of its building stock. Individual buildings retain a strong sense of cohesion from the consistency of massing and detailing within the precinct.</p>

3.1 28 Beach Street



(i) The issue

The issue is whether it is appropriate to categorise 28 Beach Street as a non-contributory property.

(ii) Background

Exhibited HO1 Statement of Significance and Heritage Review category: non-contributory

(iii) Evidence and submissions

Council referred to the Heritage Review which notes the house is a 'modern construction'.

Two submissions requested that 28 Beach Street be categorised as a contributory property. They explained:

- while the 1959 map segment is missing, the map in the Heritage Review shows the owner as Shapter
- the 2011 Heritage Study and Heritage Review describe it as a Federation building.

One of the submissions showed a photograph of the house taken around 1930 which shows the façade and fretwork that exist today.

Ms Nicolson no longer supported the Heritage Review's recommendation to categorise 28 Beach Street as contributory after reviewing additional historical information provided in the two submissions.

Ms Nicolson said she did not request Council to check whether a building permit existed for this property for a new dwelling.

(iv) Discussion

The existing house appears to be a building constructed during the Federation era. The 1930s photograph provided in a submission shows the same building, including the height, roof pitch, window and timber details. It is unclear how this was mistaken for a modern construction.

(v) Conclusion and recommendation

The Panel concludes that 28 Beach street is a contributory property with a Federation house and should be reflected accordingly in the HO1 Statement of Significance and Heritage Review.

The Panel recommends:

Amend the *Fisherman's Flat Urban Conservation Precinct Statement of Significance*, as shown in Appendix B, to recategorise 28 Beach Street from non-contributory to contributory.

3.2 34 Beach Street



(i) The issue

The issue is whether it is appropriate to categorise 34 Beach Street as a non-contributory property.

(ii) Background

Exhibited HO1 Statement of Significance and Heritage Review category: non-contributory

(iii) Evidence and submissions

Two submissions requested that 34 Beach Street be recategorised to contributory. They referred to the building as an original fisherman's cottage. One of the submissions explained the information previously provided for the Heritage Review was for 34 Wharf Street, and not 34 Beach Street.

Ms Nicolson stated the Heritage Review justified categorising 34 Beach Street as non-contributory because the house:

- is constructed of rendered masonry and built in 1994
- was not weatherboard as described in 2011 Heritage Study.

Ms Nicolson no longer supported the Heritage Review's recommendation to categorise 34 Beach Street as non-contributory after reviewing additional historical information provided in submissions. She agreed with the 2011 Heritage Study that the house was the original weatherboard house.

(iv) Discussion

It is evident the heritage consultants mistook information regarding 34 Wharf Street for 34 Beach Street. The photograph for 34 Beach Street shows a weatherboard house while the one for 34 Wharf Street shows a rendered masonry house.

The Panel agrees with Ms Nicolson's recommendation to correct 34 Beach Street's category to contributory, consistent with its category in the 2011 Heritage Study.

(v) Conclusion and recommendation

The Panel concludes that 34 Beach Street is a contributory property with an early Victorian weatherboard house and should be reflected accordingly in the HO1 Statement of Significance and Heritage Review.

The Panel recommends:

Amend the *Fisherman's Flat Urban Conservation Precinct Statement of Significance*, as shown in Appendix B, to recategorise 34 Beach Street from non-contributory to contributory.

3.3 36 Beach Street

(i) The issue

The issue is whether it is appropriate to categorise 36 Beach Street as a contributory property.

(ii) Background

The Panel referred to this property as an example during the Hearing to assess the Heritage Review's methodology. The Panel has made no formal recommendation because no submission questioned its precinct category.

(iii) Evidence and submissions

Ms Nicolson explained the Heritage Review categorised 36 Beach Street as contributory because the original structure is evident, and the original weatherboard cottage was preserved beneath the modern dwelling. She confirmed the 2011 Heritage Study categorised this property as non-contributory.

Figure 2 36 Beach Street front and rear photos



Source: Heritage Review

At the Hearing, she agreed:

- sections of walls had been cut to increase the window opening sizes
- larger modern windows have been installed
- new timber slats have been added above the new windows
- new weatherboards have been added in the façade gables
- the walls have non-original brick cladding
- if the walls are real brick veneer, the method for adding the brick veneer is likely to have require sections of weatherboard to be removed throughout.

Ms Nicolson said she uncertain whether any weatherboard remained behind the cladding.

(iv) Discussion

There is evidence to confirm the house at 36 Beach Street was constructed during the Precinct's development era of significance. This means little because the house no longer presents as a building of that era, and does not contribute to the HO1 Precinct's significance.

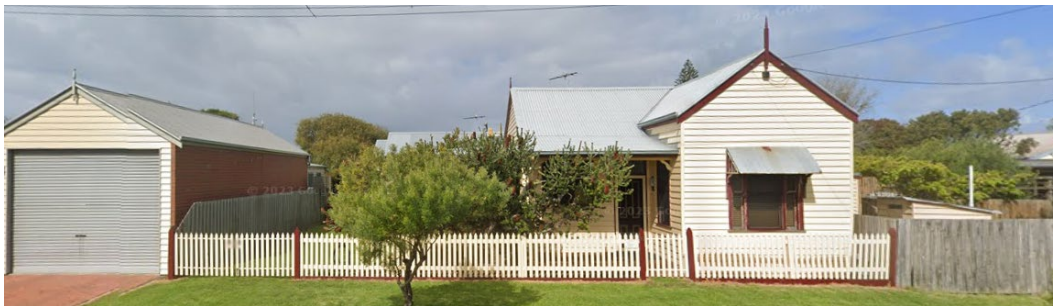
The alterations are irreversible, as they have detrimentally affected most of the heritage fabric visible from the public realm. Sections of walls have been removed to increase the window opening sizes. The brick veneer appears to use real bricks when viewing the imperfect mortar, and the brick edges exposed next to windows and around the arches. Assuming real bricks, it is likely that much of the weatherboards have been removed or damaged to enable the brick veneer.

The Panel has not made a formal recommendation regarding this property because its precinct category was not raised as an issue in a submission. However, it is clearly a non-contributory property and Council should review its category through a separate process.

(v) Conclusion and informal recommendation

The Panel concludes that 36 Beach Street is a non-contributory property because of the scale and type of alterations to its façade.

The Panel informally recommends that 36 Beach Street be recategorised from contributory to non-contributory in the *Heritage Review of Plans in Fisherman's Flat Urban Conservation Precinct (HO1), Fisherman's Flat, Queenscliffe, Victoria (4 August 2023)* and *Fisherman's Flat Urban Conservation Precinct Statement of Significance* through a separate process.

3.4 15 Bridge Street**(i) The issue**

The issue is whether it is appropriate and justified to categorise 15 Bridge Street as a non-contributory property.

(ii) Background

Exhibited HO1 Statement of Significance and Heritage Review category: non-contributory

(iii) Evidence and submissions

Council referred to the Heritage Review which states there are no remnants of the original cottage.

Two submissions requested the property be recategorised to contributory. One of these provided the names of previous resident fishermen and families who leased and owned the house in 1907, 1915, 1950 and 1963.

Ms Nicolson stated the Heritage Review justified categorising 15 Bridge Street as non-contributory because it concluded the house is:

- a modern weatherboard construction
- not an original fisherman's cottage as indicated in 1957 aerial photograph.

The property was not listed in the 2011 Heritage Study.

Ms Nicolson no longer supported the Heritage Review's recommendation to categorise the property as non-contributory after reviewing additional historical information provided in a submission and aerial mapping that confirmed the original footprint aligned with that of the current house, excluding the north and east extensions.

Ms Nicolson said she did not request Council to check whether any building permit existed for this property for a new dwelling.

(iv) Discussion

The property at 15 Bridge Street contributes to the HO1 Precinct.

It is unclear how the house at 15 Bridge Street was mistaken for a new building. Unlike 34 Beach Street, the heritage consultants did not mistake the property for another. The house presents as a building constructed during the Victorian era. Its extensions to the north and east do not obstruct the Victorian building's presentation to the public realm. There is no evidence of it being a copy constructed after the second world war.

(v) Conclusion and recommendation

The Panel concludes that 15 Bridge Street contributes to the Fisherman's Flat Urban Conservation Precinct (HO1).

The Panel recommends:

Amend the *Fisherman's Flat Urban Conservation Precinct Statement of Significance*, as shown in Appendix B, to recategorise 15 Bridge Street from non-contributory to contributory.

3.5 6 Wharf Street



(i) The issue

The issue is whether it is appropriate and justified to categorise 6 Wharf Street as a contributory property.

(ii) Background

Exhibited HO1 Statement of Significance and Heritage Review category: contributory

The Heritage Review explains:

Two original fisherman's cottages on site, before property converted to 'Bonnie View Guest House' in mid-1920s (see 1928 aerial photograph below). Brick façade a later edition.

(iii) Evidence and submissions

Submissions considered that 6 Wharf Street:

- has been significantly altered and no longer resembles the original building
- should not have been categorised as contributory without the heritage advisor assessing existing plans or speaking with its owners.

One submission provided leasehold information for 1896 to 1934 including names of three fishermen, and freehold information for 1934.

At its 22 May 2024 meeting, Council:

- agreed that reviewing existing plans would have helped to better understand the current building
- noted that heritage studies do not often inspect building interiors unless internal alteration provisions are proposed
- resolved to refer this issue to a Panel.

At the Hearing, the owner of 6 Wharf Street provided annotated plans and elevations from 1991 and more recent photos of the building to demonstrate the extent of alterations to the original heritage fabric.

Ms Nicolson stated the Heritage Review justified categorising 6 Wharf Street as contributory because the property was originally comprised of two fisherman's cottages before being converted into a guesthouse with large portions of original dwellings retained or beneath modern brick façade. It explained the guesthouse was also managed and held under a leasehold agreement by a fisherman and his family from 1896 to 1934 affording the citation greater social significance.

Ms Nicolson no longer supported the Heritage Review's recommendation to categorise the property as contributory after reviewing relevant submissions. She explained:

In particular the information provided regarding significant fire to the structure in the early 1990s was pertinent to this decision.

(iv) Discussion

The Panel supports Ms Nicolson's recommendation to recategorise the property from contributory (as recommended by the Heritage Review) to non-contributory, but not for reasons provided in her expert report. The Panel has given Ms Nicolson's report more weight than submissions, but found itself agreeing with the logic raised in the submissions of the 6 Wharf Street owners.

When consultants conducting the Heritage Review inspected the building at 6 Wharf Street, it no longer resembled the original building and did not contribute to the significance of the HO1 Precinct specified in the HO1 Statement of Significance. This is because it had significant irreversible alterations that are unsympathetic to the original heritage fabric. A comparison with empirical evidence such as plans or historic photographs would have assisted to demonstrate the extent of alterations. In this case, this was not needed because the building could no longer be recognised as contributing to the HO1 Precinct's significance.

The fire which destroyed a large proportion of the building helped to explain why alterations were made. However, it was not a determining factor for assessing whether the property contributes to the HO1 Precinct. The 1991 alterations themselves demonstrate the property is non-contributory.

(v) Conclusion and recommendation

The Panel concludes that 6 Wharf Street is not a contributory property because it no longer contributes to the Fisherman's Flat Urban Conservation Precinct (HO1) due to the extent of alterations to the original heritage fabric.

The Panel recommends:

Amend the *Fisherman's Flat Urban Conservation Precinct Statement of Significance (Borough of Queenscliffe, 2023)*, as shown in Appendix B, to recategorise 6 Wharf Street from contributory to non-contributory.

3.6 8 Wharf Street



Source: Heritage Review

(i) The issue

The issue is whether it is appropriate and justified to categorise 8 Wharf Street as a non-contributory property.

(ii) Background

Exhibited HO1 Statement of Significance and Heritage Review category: non-contributory

(iii) Heritage Review

The Heritage Review categorises 8 Wharf Street as non-contributory and explains:

Despite restoration from 'The Salt House' accommodation back to 'Le Quamby' guesthouse, significant works to the original structure have occurred in multiple phases.

(iv) Evidence and submissions

Two submissions requested that 8 Wharf Street be recategorised to contributory. One of them stated the property was not a fisherman's lease, and provided names of the storekeepers in 1878, 1881, 1883 and 1888 and owner in 1893.

Ms Nicolson did not support the request to recategorise 8 Wharf Street to contributory. She referred to the Heritage Review which includes:

- aerial photographs capture in 2009, 2014 and 2019 which showed the destruction of most of the original heritage fabric (see Figure 3)
- photographs of the façade in its original form and in 2009 and 2023.

Figure 3 8 Wharf Street – historic aerial photographs



Source: Heritage Review

Council agreed with Ms Nicolson's advice that 8 Wharf Street remain non-contributory.

(v) Discussion

When compared with historic photos, 8 Wharf Street is a remarkable imitation of the original building. While well intended, this imitation may mislead someone into thinking that it is the original building with the original heritage fabric that contributes to the HO1 Precinct. It does not.

There are buildings such as the St Kilda Pier kiosk that replicated the original kiosk after it was destroyed by a fire. The Panel agrees with Ms Nicolson that the kiosk is different to the guesthouse at 8 Wharf Street because it is an individual place, unique, and socially important to a statewide population. The relatively new building at 8 Wharf Street is a piece of the overall heritage place – the HO1 Precinct. While 8 Wharf Street itself does not have heritage fabric to contribute to the precinct's significance, the HO1 Precinct overall meets the local threshold for heritage significance.

(vi) Conclusion

The Panel concludes that 8 Wharf Street has been correctly categorised as non-contributory.

3.7 Contributory secondary cottages

(i) The issue

The issue is whether the HO1 Statement of Significance should be revised to clarify that secondary cottages identified in the Heritage Review at 8 and 16 Bay Street, 6, 15, 23, 31 and 35 Beach Street and 23 Bridge Street are contributory buildings.

(ii) Evidence and submissions

A submission requested the HO1 Statement of Significance be revised to identify properties that have retained secondary cottages with brick chimneys. It specifically referred to 8 and 16 Bay Street, 6, 15, 23, 31 and 35 Beach Street and 23 Bridge Street.

Ms Nicolson supported the request to identify properties with contributory secondary cottages, noting they had been identified in the exhibited Heritage Review. The Statement of Significance in the post-exhibition tracked version of the Heritage Review included the requested changes.¹

(iii) Discussion

The Heritage Review explicitly identifies original secondary cottages on properties in the HO1 Precinct. When reading content regarding secondary cottages in the Heritage Review, there is no doubt they form part of the contributory property.

Generally, a contemporary statement of significance for a heritage precinct simply:

- maps contributory and non-contributory properties
- states that original heritage fabric is contributory and everything else is not.

If this approach was adopted, there would be no need to identify every secondary cottage. Nonetheless, for this circumstance, identifying each secondary cottage in the HO1 Statement of Significance will clarify what was intended.

(iv) Conclusion and recommendation

The Panel concludes the HO1 Statement of Significance should be revised to clarify that 8 and 16 Bay Street, 6, 15, 23, 31 and 35 Beach Street and 23 Bridge Street are contributory buildings.

The Panel recommends:

Amend the *Fisherman's Flat Urban Conservation Precinct Statement of Significance (Borough of Queenscliffe, 2023)*, as shown in Appendix B, to identify secondary cottages at 8 and 16 Bay Street, 6, 15, 23, 31 and 35 Beach Street and 23 Bridge Street as contributory buildings.

¹ Document 18a

4 Other issues

4.1 Planning Policy Framework provisions

(i) The issue

The issue is whether it is appropriate to revise Planning Policy Framework provisions through the Amendment.

(ii) Evidence and submissions

The Queenscliffe Community Association submitted that Planning Scheme Clauses 21.02 and 21.04 should be revised to use 'avoiding', 'reinforcing' and 'requires' in the following context:

- avoiding inappropriate development that compromises areas of acknowledged natural, aesthetic, built, cultural or environmental sensitivity
- reinforcing Queenscliff's distinct heritage, urban character and natural coastal setting
- requires new development to enhance and harmonise with the borough's urban character including its significant view lines, heritage, low lying recessive built form and intact native and remnant indigenous vegetation.

Council explained that Amendment C38quen replaced the Municipal Strategic Statement with a Municipal Planning Strategy in February 2022 so Clauses 21.02 and 21.04 no longer exist, and some of their content was relocated to Clause 15.03-1L. Council did not support the requested changes because planning policy used language in accordance with drafting rules and conventions.

(iii) Discussion

Appendix 2 of A Practitioner's Guide to Victorian Planning Schemes (Practitioner's Guide) suggests verbs to use and avoid when writing strategies for the Planning Policy Framework. The Guide states:

- 'require' cannot be included because policy cannot specify an obligation or necessity
- lists 'avoid' and 'reinforce' as useable verbs.

However, the Amendment does not propose to change any Planning Policy Framework provision therefore changes to these clauses are beyond the scope of the Amendment.

(iv) Conclusion

The Panel concludes:

- Planning Policy Framework provisions in the Queenscliffe Planning Scheme appropriately use verbs specified in the Practitioner's Guide (Appendix 2).
- Changes to Planning Policy Framework provisions are beyond of the scope of the Amendment.

4.2 Heritage Review report

(i) The issue

The issue is whether the Heritage Review should be revised to make corrections and add new information referenced as a background document in the Planning Scheme.

(ii) Evidence and submissions

There were submissions which sought changes to the Heritage Review report. Ms Nicolson responded to requests outlined in Table 4.

Table 4 Heritage Review requested changes

St No	Requested report change	Ms Nicolson response
Bay Street		
24	Add the house name 'Denby' [page 57]	-
Beach Street		
1	Delete the reference to 'single storey' because the photograph shows an upper floor	Supported
4	Add the house name 'Bluey's' [page 64]	-
9	Delete " <i>footprint identical to 1959 Allotment plan</i> " because the current footprint for 9 Beach Street is not identical	Supported
20	Add the house name 'Rosebud'	-
27	- Delete " <i>rare surviving example in the Borough of this form of cottage.....of the 1880s/1890s</i> " because there was no subdivision on the east side of Beach Street before 1907 and the house was built between 1908 and 1921 - Delete reference VHI H7821-0091 (<i>Lacco's The Sail Loft and Slipway</i>) on page 121 because it does not apply	Supported
35	- Include the property in the HO1 area on relevant maps - Change the place name from La Belle to Kia Ora [page 139] - Do not reference VHI H7821-0091 (<i>Lacco's The Sail Loft and Slipway</i>) [page 139]	Supported
39	Delete " <i>no remnant features of original fisherman's cottage on property</i> " because no cottage has ever existed at 39 Beach Street	Supported
Bridge Street		
1	- Correct the text and photograph on page 152 because it represents 1 Bridge Street and 2 Bay Street as a single property with one house, but they are individual properties [page 152] - Replace references to 1 Bridge Street with 1 Beach Street [tables on pages 6 and 264]	Supported
6	Add the house name 'Rouen' [page 155]	-
19	Add the house name 'Iona' [page 176]	-
18, 20, 22, 24	refer to them as the 'Railway Cottages' [page 173]	Supported
Other requested changes		
	Remove reference to VHI H7821-0098 from all Beach Street properties	Supported

St No	Requested report change	Ms Nicolson response
	Remove reference to VHI H7821-0091 from 27 and 35 Beach Street, as it only applied to 31 Beach Street	Supported
	Include and correct information based on displays at the front of properties in the HO1 Precinct	Supported

Council submitted that errors identified in the Heritage Review:

- are minor in nature such as spelling errors and incorrect occupant or dwelling names
- are not fatal to the Heritage Review
- do not determine whether a building is categorised as contributory or non-contributory
- can be corrected before requesting the Minister for Planning to approve the Amendment.

(iii) Discussion

The Panel cannot make a formal recommendation regarding the Heritage Review content because it will not form part of the Planning Scheme. However, the Amendment proposes to reference the Heritage Review as a background document. The Practitioner's Guide advises that such a document should not inform statutory planning decisions.

The Panel agrees with Council that the errors are minor in nature and do not determine whether a property is contributory. Council is best placed to decide whether additional useful information such as house names and further historical details should be included in the Heritage Review. This type of information does not determine whether the Heritage Review is suitable to be referenced as a background document in the Planning Scheme.

What determines its suitability, among other things, is whether the Heritage Review is accurate and will not misguide the reader. Council should make the changes supported by Ms Nicolson to the Heritage Review before it is introduced as a background document in the Planning Scheme.

(iv) Conclusion

The Panel concludes that *Heritage Review of Plans in Fisherman's Flat Urban Conservation Precinct (HO1), Fisherman's Flat, Queenscliffe, Victoria (4 August 2023)* is appropriate to be a background document in the Queenscliffe Planning Scheme if Council revises it before adopting Queenscliffe Amendment C40quen is adopted to:

- include changes supported by Ms Nicolson in Table 4
- add house names identified in Table 4 subject to Ms Nicolson confirming their accuracy.

4.3 Heritage Design Guidelines

(i) The issue

The issue is whether the exhibited Heritage Design Guidelines are appropriate to be incorporated into the Planning Scheme.

(ii) Background

The Amendment proposes to incorporate the Heritage Design Guidelines into the Planning Scheme through the Clause 72.04 Schedule.

(iii) Evidence and submissions

Council responded to a submission which requested changes to the exhibited Heritage Design Guidelines, as shown in Table 5.

Table 5 Heritage Design Guidelines requested changes

Submission requested changes	Council response
<p>Add:</p> <p>The intention of these guidelines is to assist property owners, designers, residents and the community propose changes that conserve and respect the heritage character of Fisherman's Flat. The guidelines provide design criteria for new buildings, alterations or additions to existing buildings for properties covered by Heritage Overlay 1. The guidelines outline the Borough's preferred outcomes for Fisherman's Flat and apply to the entire precinct visible from the public realm.</p> <p>Context</p> <p>The Fisherman's Flat precinct is historically important as a defined area of the Queenscliff township specifically reserved by the Crown in the 1850's for development as fishermen's residences. Until the 1950's, the allotments were all leased from the Crown Lands Department. The largely intact subdivision layout dates to 1856. Its wide streets and dual frontage arrangements are distinct from the more traditional layout of the broader township and demonstrate the physical and social differences that existed between the fishing community and other residents and visitors to Queenscliff in the nineteenth century.</p> <p>Fisherman's Flat has an exceptionally high integrity and authenticity dating to its 19th Century configuration with 75 percent of buildings contributory.</p>	<p>Not supported</p> <p>The What?, How? and Why? relating to the importance and protection of the Fisherman's Flat Urban Conservation Precinct is detailed in the Statement of Significance. There is no need to repeat the information in the design guidelines.</p>
Conservation	
<p>Add:</p> <ul style="list-style-type: none"> • Protect the Norfolk Island Pine listed as HO12. 	<p>Not supported</p> <p>HO12 is individually nominated for protection under the Heritage Overlay – there is no need to replicate the reference here</p>

Submission requested changes	Council response
Building siting, design and form	
<p>Requested changes shown as tracked content:</p> <p>Encourage The use of the traditional building design of the precinct, including narrow eaves, gable roofs, verandahs, vertical rectangular windows and unbroken facades is supported.</p> <p>...</p> <ul style="list-style-type: none"> • Disallowing Discouraging buildings to exceed one storey or 6 metres above natural ground level, and restrict existing buildings above these heights from increasing further in height, <u>or exceed 6 metres in alterations or additions.</u> • Discouraging the alteration of building height of any surviving secondary cottages/sleepouts (outbuildings) <u>unless required by a referral authority.</u> ... • Relocation of contributory buildings within the allotment is not supported, 	<p>Not supported</p> <p>‘Encourage’ is the correct verb. It is not clear what the intent of the word change is.</p> <p>The use of the words ‘discourage’ and ‘disallow’ contradicts the Design and Development Overlay Schedule 6 provisions which specify a mandatory maximum building height in Fisherman’s Flat that cannot be exceed by a permit.</p> <p>There is no mandatory referral requirement for a planning permit application for development in the HO1 Precinct in the Planning Scheme.</p> <p>The recent Victorian Civil and Administrative Tribunal decision for 5 Beach Street supports the opportunity to explore relocation options where they respect the heritage values of the building and the HO1 Precinct.</p>
<p>Add:</p> <ul style="list-style-type: none"> • Where an addition is visible from the public realm or is considered to impact on the heritage place, restrict the form of the building which would damage the heritage place. • Respect the massing, scale, proportions, fenestration, materials and heritage character of the heritage place and the surrounding historic streetscape. • Avoid elements that detract from the heritage significance of the area, such as unroofed or open upper-level decks or balconies, dormer windows, reflective glass, glass balustrades, stainless steel and roller shutters. 	<p>Not supported</p> <p>The outcome of the first two points are already anticipated in the Purpose and Decision Guidelines of the Heritage Overlay.</p> <p>Unroofed or open upper-level decks or balconies are not prohibited (unless they exceed six metres and single storey). There is no expert evidence to substantiate the proposed restrictions to materials and finishes. The burden of proving how the materials listed can be effectively used in Fisherman’s Flat without diminishing acknowledged heritage values lies with the planning permit applicant.</p>
<p>Add:</p> <p>Ancillary services such as solar panels, service units and water tanks should not adversely impact or damage the heritage significance of a place through their appearance or location.</p>	<p>The requirement for a planning permit is only triggered where they are visible from a street (not a laneway) or public park. The assessment of the suitability in both design and location is undertaken in accordance with the decision guidelines in the Heritage Overlay.</p>
Materials, colours and finishes	
<p>Requested changes shown as tracked content:</p> <p>Encourage Continue the use of the traditional building materials of the precinct, including <u>in any in-fill development, including</u> such as:</p>	

Submission requested changes	Council response
<p>Add:</p> <p>Permit applications must specify materials, finishes and colours for all external surfaces.</p> <p>Materials that are not considered appropriate are:</p> <ul style="list-style-type: none"> • Glass when used for elements other than windows or doors. • Metallic finishes other than galvanized or painted. • Prefabricated panels such as aluminium or composite panels, or stone veneer panels. • Aluminium windows, frames and doors. • Precast concrete. 	<p>It is not appropriate to specify application requirements in the design guidelines.</p> <p>Application requirements can be specified in the Schedules to the Design and Development Overlay or Heritage Overlay. The Amendment does not propose to modify the application requirements of these schedules.</p> <p>There is no background work that substantiates the proposed additions to the materials and finishes list. There is also no reason given as to why any of the materials listed cannot be effectively used in Fisherman’s Flat.</p>
Demolition	
<p>Add:</p> <p>Demolition or removal of contributory building fabric degrades the significance of the place and is not supported.</p> <p>Poor condition of a heritage place should not in itself be a reason for permitting demolition.</p>	<p>The Planning Scheme provides the opportunity for each application to be assessed on its merits and the combination of the design guidelines and relevant overlays provide significant guidance on the achievement of good outcomes.</p>

Ms Nicolson did not support any of the request changes based on existing planning policies.

(iv) Discussion

The Heritage Design Guidelines would benefit from an introduction that explains its purpose.

The Panel does not support revising the Heritage Design Guidelines to:

- add further context because this is set out in the HO1 Statement of Significance and should not be repeated
- reference the Norfolk Island Pine listed as HO12 because this is not a design guideline
- replace ‘encourage’ and ‘discourage’ because they are the verbs suggested the Practitioner’s Guide Appendix 2
- specify ‘unless required by a referral authority’ because the Heritage Overlay does not trigger a statutory referral
- add new building siting, design and form guidelines because these are general heritage considerations already specified in the Heritage Overlay provisions
- add new permit application requirements relating to materials, colours and finishes because such provisions should only exist in Planning Scheme provisions
- add new demolition policies because they should be in the Planning Policy Framework, and each permit application should be assessed on its merits.

The reference to discouraging buildings to exceed one storey or 6 metres above natural ground level should be deleted because it is not possible to exceed 6 metres in the HO1 Precinct. Design and Development Overlay Schedule 6 applies a mandatory maximum building height of 6 metres for new built form.

(v) Conclusions and recommendations

The Panel concludes the exhibited *Fisherman's Flat Urban Conservation Precinct Heritage Design Guidelines 2021* are appropriate, however they:

- would benefit from including an introduction that explains its purpose
- should delete reference to discouraging building heights exceeding 6 metres because the mandatory maximum building height specified in Design and Development Schedule 6 does not enable this for new built form.

The Panel recommends:

Amend the *Fisherman's Flat Urban Conservation Precinct Heritage Design Guidelines 2021* to:

- a) include an introduction that explains its purpose**
- b) delete reference to 'discouraging buildings from exceeding 6 metres'.**

4.4 Drafting issues**4.4.1 The issues**

The issues are:

- whether content proposed to be incorporated into the Planning Scheme has been appropriately drafted
- whether 35 Beach Street should be listed only with Heritage Overlay (HO1) rather than also being listed separately as an individually significant property (HO12).

4.4.2 HO1 Precinct map**(i) Submissions**

Submissions requested the Statement of Significance and Design Guidelines be revised to:

- replace the precinct map because it has poor resolution
- add a map showing the location of contributory buildings and secondary cottages.

Council submitted that it proposed to replace the map with a higher resolution colour-coded map.

(ii) Discussion

The same precinct map included in the Statement of Significance and Design Guidelines is inappropriate because it:

- has low resolution, pixellated and difficult to read
- has limited value because it does not colour-code non-contributory and contributory properties, similar to many other similar maps found in such documents
- is incorrectly titled 'Heritage Policy Map 1' rather than for the purpose it serves in each document.

The map should be presented in a higher resolution, show non-contributory and contributory properties in two different colours, and match its title with the Precinct's name.

4.4.3 Heritage Review clause references

A submission requested changes to Table 9, page 264 and the table on page 6 in the Heritage Review to replace references to:

- Clause 22.02 (Heritage policy) with Clause 15.03-1L

- Clause 22.03 (Urban Character Study) with Clause 15.01-5L
- 1 Bridge Street with 1 Beach Street.

At its 22 May 2024 meeting, Council agreed to these changes and resolved to refer them to the Panel.

The Panel agrees with these changes, which Council should make before it adopts the Amendment.

4.4.4 35 Beach Street double listing

(i) Evidence and submissions

The Panel noted the Heritage Overlay lists 35 Beach Street twice because it is:

- categorised as a contributory property in the HO1 Statement of Significance (HO1)
- identified as an individually significant property for its Norfolk Island Pine in its front yard (HO12).

At the Hearing in response to a Panel question, Ms Nicolson agreed the Norfolk Island Pine should form part of the HO1 Precinct, noting this issue was for Council to decide. Council was open to the Panel commenting on this matter.

(ii) Discussion

The Amendment presents an opportunity to modernise how 35 Beach Street is listed, consistent with the Department of Transport and Planning advice in Planning Practice Note 1. Neutrally translating the Heritage Overlay Schedule provisions from HO12 into HO1 would not change their intended outcome or someone's property rights.

4.4.5 Conclusions and recommendations

The Panel concludes:

- The map in the HO1 Statement of Significance should be replaced with a clearer map that provides more guidance.
- The Araucaria hetrophylla (Norfolk Island Pine) at 35 Beach Street should be identified in the HO1 Statement of Significance as significant.
- 35 Beach Street should be listed once in the Fisherman's Flat Urban Conservation Precinct (HO1) rather than also being listed in HO12.
- The Heritage Review should be revised to correct references to Planning Scheme policy clause numbers and property addresses.

The Panel recommends:

Amend the *Fisherman's Flat Urban Conservation Precinct Statement of Significance*, as shown in Appendix B, to:

- identify the Araucaria hetrophylla (Norfolk Island Pine) at 35 Beach Street as significant**
- insert a clear high resolution precinct map which identifies the precinct boundary, contributory properties and non-contributory properties.**

Amend the Heritage Overlay Schedule to:

- replace 'No' in the HO1 'Tree controls apply?' with:**

Yes –

35 Beach Street: Araucaria hetrophylla (Norfolk Island Pine). Controls apply to the Norfolk Island Pine and land beneath the canopy edge of the tree for a distance of three metres from the canopy edge

- b) delete the HO12 listing.**

Amend the *Fisherman’s Flat Urban Conservation Precinct Heritage Design Guidelines* and *Fisherman’s Flat Urban Conservation Precinct Statement of Significance* to replace ‘Heritage Policy Map 1’ with a new map that:

- a) has a clear resolution, colour codes non-contributory and contributory properties and marks significant Norfolk Island Pine heritage place area at 35 Beach Street with a corresponding legend**
- b) is titled ‘Fisherman’s Flat Urban Conservation Precinct Map (HO1)’.**

The Panel informally recommends:

Amend the *Heritage Review of Places in Fisherman’s Flat Urban Conservation Precinct (HO1), Fisherman’s Flat, Queenscliff, Victoria (Ecology and Heritage Partners, August 2023)* be revised to:

- a) replace references to:**
- Clause 22.02 (Heritage policy) with Clause 15.03-1L**
 - Clause 22.03 (Urban Character Study) with Clause 15.01-5L**
 - 1 Bridge Street with 1 Beach Street**
- b) make consequential changes resulting from other Panel recommendations.**

Appendix A Document list

No.	Date	Description	Provided by
2024			
1	17 Jun	Panel Directions and Hearing Timetable (version 1)	Planning Panels Victoria
2	1 Jul	Council Part A submission	Council
3	1 Jul	Expert report and attached Heritage Review – Oona Nicolson	Council
4	3 Jul	Hearing submission and attachment	Carmen Bell
5	5 Jul	Hearing submission and attachment	Queenscliffe Community Association (QCA)
6	5 Jul	Council Part B submission	Council
7	5 Jul	HO1 Statement of Significance (version 1)	Council
8	5 Jul	HO1 Heritage Design Guidelines (version 1)	Council
9	5 Jul	Heritage Review (Version 1)	Council
10	5 Jul	6 Wharf Street – west and south elevations, 1991	6 Wharf Street owners
11	5 Jul	6 Wharf Street – west and south corner detail, 1991	6 Wharf Street owners
12	5 Jul	6 Wharf Street – west elevation photo, 2024	6 Wharf Street owners
13	5 Jul	6 Wharf Street – aluminium windows photos, 2024	6 Wharf Street owners
14	5 Jul	Hearing submission	Richard Bell
15	5 Jul	Hearing submission	David Kenwood
16	8 Jul	Further submission with: <ul style="list-style-type: none"> a) annotated photo – Fisherman’s Flat ~1879 b) annotated photo – Wakefield rural store 	QCA
17	11 Jul	Panel Directions and Hearing Timetable (version 2)	Planning Panels Victoria
18a	23 Jul	Heritage Review with post-exhibition tracked changes	Council
18b	23 Jul	Expert report (revised) – Oona Nicolson	Council
19	29 Jul	Further Hearing submission and attachment	Carmen Bell
20	29 Jul	Further Hearing submission	Richard Bell
21	29 Jul	Further Hearing submission and attachments	QCA
22	1 Aug	Queenscliffe Heritage Overlay (HO1) Statement of Significance 1982	Planning Panels Victoria
23	6 Aug	Fisherman’s Flat Laneways document	David Kenwood
24	6 Aug	Photo – 36 Beach Street	Richard Bell
25	6 Aug	HO1 Statement of Significance (Reformatted ‘Why is it significant?’ by Oona Nicolson)	Council

Note: Any document emailed after 5.30pm is dated as being received the next business day.

Appendix B Panel recommended Statement of Significance (HO1)

Borough of Queenscliffe, 2023

Heritage Place: Fisherman's Flat Urban Conservation Precinct	PS Ref No: HO1
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Insert a precinct category map using the colour coding below

Categories



What is significant?

The Fisherman's Flat precinct is significant for its low-scale and residential building stock, comprising modest fishermen's residences ranging in date from the 1860's and 1870's through to the c.1940's, as well as for its ~~relatively~~largely intact subdivision pattern. ~~While no individual building is significant, many intact contributory buildings with the precinct are identified in the individual citations.~~

Individually significant tree

Norfolk Island Pine at 35 Beach Street

Contributory buildings:

Houses at:

Bay Street: 8, 10, 16, 20, 22, 24
 Beach Street: 2, 4, 5, 6, 8, 9, 11, 12, 14, 15, 18, 19, 20, 22, 23, 24, 26, 27, 28, 31, 32, 34,
 35, 36, 37
 Bridge Street: 6, 8, 15, 16, 18, 19, 20, 22, 23, 24
 Wharf Street: 4, ~~6~~, 12, 14, 20, 22, 26, 28, 36, 38, 40, 44, 46

Original 'sleepouts' / secondary cottages at:

Bay Street: 8, 16
 Beach Street: 6, 15, 23 (two buildings), 31, 35
 Bridge Street: 23

Non-contributory buildings

~~Features that do not contribute to the significance of this precinct include n~~Non-original alterations and additions to the contributory buildings nominated above and the houses at:

Bay Street: 2, 4, 6, 12, 18
Beach Street: 1, 10, 16, 30, 39
Bridge Street: 1, 10, 12-14
Wharf Street: 6, 8, 10, 16, 18, 24 (municipal easement) 30, 32, 34, 42

~~-2 Bay Street, 18 Bay Street, 10 Beach Street, 16 Beach Street, 30 Beach Street, 1 Bridge Street, 10 Bridge Street, 12-14 Bridge Street, 18 Wharf Street, 30 Wharf Street, 32 Wharf Street and 42 Wharf Street.~~

How is it significant?

The Fisherman's Flat precinct is of local, historical, aesthetic and social significance to the Borough of Queenscliffe.

~~The precinct is characterised by its original subdivision pattern which allowed for double-fronted properties and its modest dwellings built between the 1860's and the 1940's.~~

Why is it significant?

~~Historically, the precinct is representative of an integral part of Queenscliffe's history, demonstrated by the modest nature of the dwellings.~~

~~The~~HO1 (Fisherman's Flat pPrecinct) is of historically important significance as it is a defined area of the Queenscliff township specifically reserved by the Crown in the 1850's for development as fishermen's residences. Until the 1950's, the allotments were all leased from the Crown Lands Department (Criterion A).

HO1 (Fisherman's Flat Precinct) is of aesthetic significance as it is a~~The~~ largely intact subdivision layout that dates to 1856. Its wide streets and dual frontage arrangements are distinct from the more traditional layout of the broader township and demonstrate the physical and social differences that existed between the fishing community and other residents and visitors to Queenscliff in the nineteenth century. Despite modifications, many of the fishermen's residences are still broadly intact externally and though modest in their form and fabric, ~~provide a valuable insight into the lives of a community of great importance in the history of the township of Queenscliff and the Borough as a whole.~~

While the buildings themselves are simple and modest with few architectural pretensions, the precinct as a whole has a particular visual quality that derives from its wide streets, unusual subdivision pattern and the consistency of scale, form and siting of its building stock. Individual buildings retain a strong sense of cohesion from the consistency of massing and detailing within the precinct (Criterion E).

~~The~~HO1 (Fisherman's Flat pPrecinct) is of social significance as it provides a valuable insight into the lives of a community of great importance in the history of the township of Queenscliff and the Borough as a whole. The Fisherman's Flat Precinct has a for its strong historical association with the fishing community in Queenscliff (Criterion G).~~While the buildings themselves are simple and modest with few architectural pretensions, the precinct as a whole has a particular visual quality that derives from its wide streets, unusual subdivision pattern and the consistency of scale, form and siting of its building stock. Individual buildings retain a strong sense of cohesion from the consistency of massing and detailing within the precinct.~~

Primary source

Heritage Review of Places in Fisherman's Flat Urban Conservation Precinct (HO1), Fisherman's Flat, Queenscliff, Victoria, (Ecology & Heritage Partners, 4 August 2023)

This document is an incorporated document in the Queenscliffe Planning Scheme pursuant to section 6(2)(j) of the *Planning and Environment Act 1987*

Appendix C Planning context

C:1 Planning policy framework

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

Victorian planning objectives

The Amendment will implement section 4(1)(d) of the PE Act to:

- conserve and enhance those buildings, areas or other places which are of scientific, aesthetic, architectural or historical interest, or otherwise of special cultural value
- balance the present and future interests of all Victorians.

Planning Policy Framework

The Amendment supports:

- **Clause 15.01-5S** (Neighbourhood character) which seeks to recognise, support and protect neighbourhood character, cultural identity, and sense of place.
- **Clause 15.03-1S** (Heritage conservation) which seeks to ensure the conservation of places of heritage significance. Relevant strategies are:
 - Identify, assess and document places of natural and cultural heritage significance as a basis for their inclusion in the planning scheme.
 - Provide for the protection of natural heritage sites and man-made resources and the maintenance of ecological processes and biological diversity.
 - Provide for the conservation and enhancement of those places which are of, aesthetic, archaeological, architectural, cultural, scientific, or social significance.
 - 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.
 - Ensure an appropriate setting and context for heritage places is maintained or enhanced.

C:2 Planning scheme provisions

The Heritage Overlay purposes are:

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

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

C:3 Ministerial Directions, Planning Practice Notes and guides

Ministerial Directions

The Explanatory Report discusses how the Amendment meets the relevant requirements of:

- Ministerial Direction 11 (Strategic Assessment of Amendments)
- Ministerial Direction (The Form and Content of Planning Schemes pursuant to section 7(5) of the PE Act).

That discussion is not repeated here.

Planning Practice Note 1 (Applying the Heritage Overlay)

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

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

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

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

Practitioner's Guide

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

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