

**Baw Baw Planning Scheme Amendment C142bawb  
The Gables, Drouin Heritage Overlay**

**Panel Report**

*Planning and Environment Act 1987*

**6 August 2021**

**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

Baw Baw Planning Scheme Amendment C142bawb

**6 August 2021**

A handwritten signature in black ink, appearing to read 'Tim Hellsten', with a stylized flourish at the end.

Tim Hellsten, Chair

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## Glossary and abbreviations

the Amendment	Baw Baw Planning Scheme Amendment C142bawb
Citation	<i>The Gables Citation, Plan Heritage 2020</i>
Council	Baw Baw Shire Council
DCP	<i>Drouin Development Contributions Plan, September 2014</i>
NDA	Net Developable Area
PE Act	<i>Planning and Environment Act 1987</i>
PPN01	<i>Planning Practice Note 1: Applying the Heritage Overlay, August 2018</i>
PSP	<i>Drouin Precinct Structure Plan, September 2014</i>
Statement of Significance	<i>The Gables, 101 Lardner Road, Drouin Statement of Significance</i>
VPA	Victorian Planning Authority

## Overview

### Amendment summary

The Amendment	Baw Baw Planning Scheme Amendment C142bawb
Common name	The Gables, Drouin Heritage Overlay
Brief description	Apply the Heritage Overlay (HO355) to part of the subject land and amend the Schedule to Clause 43.01 to identify the place, apply tree, outbuilding and fencing controls and amend the Schedule to Clause 72.04 to incorporate 'The Gables, 101 Lardner Road, Drouin Statement of Significance'
Subject land	101 Lardner Road, Drouin
Planning Authority	Baw Baw Shire Council
Authorisation	18 January 2021 conditional
Exhibition	11 February – 11 March 2021
Submissions	<ol style="list-style-type: none"> <li>1. Judith Farmer and John Farmer</li> <li>2. SD Planning</li> </ol>

### Panel process

The Panel	Tim Hellsten
Directions Hearing	1 June 2021 by videoconference
Panel Hearing	28 and 29 June 2021 by videoconference
Site inspections	Accompanied, 16 June 2021
Parties to the Hearing	<p>Baw Baw Shire Council represented by Kristen Richardson who called heritage evidence from Annabel Neylon of Plan Heritage</p> <p>Judith Farmer and John Farmer</p> <p>Cottier Estate Ltd and Warwick Guy represented by Kate O'Reilly of SD Planning</p>
Citation	Baw Baw PSA C142bawb [2021] PPV
Date of this report	6 August 2021

## Executive summary

Baw Baw Planning Scheme Amendment C142bawbbawb (the Amendment) seeks to apply the Heritage Overlay (HO355) to the part of the property known as The Gables, located at 101 Lardner Road, Drouin.

The Amendment has been proposed by Baw Baw Shire Council (Council) with the support of the landowner. The Amendment is required to ensure that the significant elements of The Gables are protected in the event of future development of the subject and adjoining land which are in the Urban Growth Zone and within areas designated for growth in the *Drouin Precinct Structure Plan*, September 2014 (PSP).

A heritage Citation was prepared for Council by Plan Heritage which identified that The Gables was one of most substantial and complex design of the Federation/Edwardian period buildings within the municipality and of historical and aesthetic significance. It recommended that the Heritage Overlay be applied including tree controls for two Elms and a Magnolia on the property.

Two submissions were received to the Amendment from the landowner and the adjoining landowners and developers. The key issues raised in submissions included:

- the impact of the Heritage Overlay on achieving the PSP and the *Drouin Development Contributions Plan*, September 2014 (DCP) outcomes
- that the Amendment is premature until the PSP and DCP are reviewed
- the appropriate curtilage for the Heritage Overlay.

The Panel's primary task for the Amendment is to determine whether The Gables is of local heritage significance based on the supporting heritage assessment and then whether the Heritage Overlay should be applied. In considering whether the Heritage Overlay should be applied, The Panel has had regard to the wider Planning Policy Framework and provisions of the Baw Baw Planning Scheme.

The Panel concludes:

- The Amendment and Statement of Significance has been prepared in a manner consistent with the relevant Ministerial Directions and Practice Notes.
- The Gables satisfies the threshold for local heritage significance satisfying Criterion A (heritage significance) and Criterion E (aesthetic significance).
- Applying the Heritage Overlay (HO355) to a portion of the subject land is appropriate.
- The Amendment is supported by, and implements the relevant sections of the Planning Policy Framework and Local Planning Policy Framework.

The Panel considers that applying the Heritage Overlay to the Gables will not compromise the broader growth objectives of the PSP or the wider application of the DCP. Council will however need to consider the flow on implications of reducing the Net Developable Area resulting from the Heritage Overlay and make the necessary changes to both the PSP and DCP. Council suggested that this could be done as part of the current PSP/DCP review process. The Panel agrees. The Panel acknowledges the approach taken by Council to consider how the curtilage of the Heritage Overlay ought to be applied to provide the most appropriate setting for The Gables principally but also pragmatically respond to the site's future development and integration with adjoining land.

The Panel observes that the piecemeal approach to applying the Heritage Overlay within the PSP area is not an orderly planning approach. The Panel suggests that Council should consider undertaking a wider high level heritage assessment of the PSP area to see if further detailed

assessment is warranted for particular sites and to then undertake a single Amendment as appropriate. It is suggested that this is something could consider as part of its current PSP review process.

The Panel supports the Amendment with changes:

- to the curtilage of the dwelling Heritage Overlay polygon consistent with Council's proposed changes subject to confirming it includes the brick lined well
- to the Statement of Significance to include photographs of all significant elements and an aerial photograph image overlain by dimensioned polygons and which identify the location of the elements of significance.

## **Recommendations**

Based on the reasons set out in this Report, the Panel recommends that Baw Baw Baw Baw Planning Scheme Amendment C142bawb be adopted as exhibited subject to the following:

- 1. Amend the curtilage of HO355 on Map 30HO consistent with Figure 4 of the Panel's Report subject to Council confirming it includes the brick lined well.**
- 2. Amend the Statement of Significance to include:**
  - a) photographs of 'The Gables' dwelling, the well and identified significant Trees, and an image of The Gables and identified Trees**
  - b) an aerial photograph image overlain by dimensioned polygons and which identify the dwelling, well, two English Elms and Magnolia.**

# 1 Introduction

## 1.1 The Amendment

### (i) Amendment description

Baw Baw Planning Scheme Amendment C142bawb (the Amendment) seeks to apply the Heritage Overlay (HO355) to the part of the place known as 'The Gables', located at 101 Lardner Road, Drouin. This includes:

- the curtilage containing the timber farmhouse, brick lined well (now filled in), outbuildings including the former dairy, fowl house, woodshed, modern barn and garage
- three significant trees (two English Elms and a Magnolia).

Specifically, the Amendment:

- amends Baw Baw Planning Scheme Map No. 30HO<sup>1</sup> by applying the Heritage Overlay to the place, comprising two separate curtilages, one encapsulating the overlapping canopy of the two Elms and the other to the dwelling, outbuildings and garden area including the Magnolia (HO355)
- amends the Schedule to the Heritage Overlay at Clause 43.01 to identify the place (HO355) and switch on tree controls to the three significant trees and switch off outbuildings and fencing exemptions
- amends the Schedule to Clause 72.04 (Documents Incorporated in this Planning Scheme) to identify 'The Gables, 101 Lardner Road, Drouin Statement of Significance' (Statement of Significance).

### (ii) The subject land

The Amendment applies to land shown in Figure 1, at 101 Lardner Road on the south-eastern edge of Drouin. The exhibited extent of the Heritage Overlay (HO355) is shown in Figure 2.

The subject land comprises a battle axe shaped lot, approximately four hectares in area and accessed via a 300 metre long driveway off Lardner Road. The subject land is undulating, sloping down to the northern boundary of the site abutting the Melbourne-Bairnsdale rail line and to a drainage line which transects the site and adjoining sites from east to west across the driveway before sloping back up to Lardner Road. Visually, the site presents largely as cleared farmland (its current use) with views extending across it to the dwelling from Lardner Road. The site comprises open grazing paddocks, with trees largely confined to planted rows along the western and eastern boundaries, internal fence lines, isolated planted trees (including the two identified Elms) and trees around the dwelling (including the identified mature Magnolia adjacent to the eastern elevation of the dwelling) and the fenced, grassed tennis court to the west of the dwelling. The former homestead dwelling, known as 'The Gables', is located to the high point of the site along with other structures including a garage, former dairy building, corrugated iron chicken house (which contains a brick lined well) and modern Colorbond clad barn structure.

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<sup>1</sup> The Explanatory Report incorrectly refers to the amendment to Map No. 29HO although other Amendment documentation correctly refers to Map No. 30HO

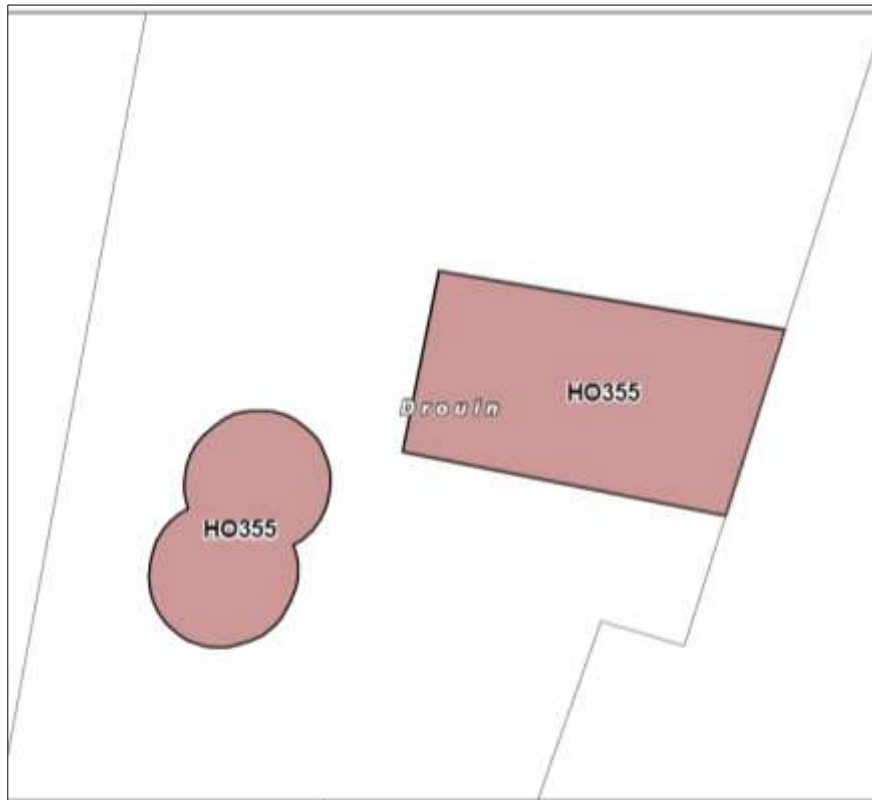


The exhibited Heritage Overlay curtilage extends approximately in line with existing fencing to the north and south of the dwelling, the eastern edge of the tennis court (as fenced) to the west of the dwelling and the eastern boundary as shown in Figures 1 and 2.

**Figure 1** Portion of subject land including proposed HO355



**Figure 2** Exhibited extent of the proposed Heritage Overlay (HO355)



## 1.2 Background

### (i) Chronology of events

Table 1 sets out a chronology of events for the Amendment.

**Table 1** Chronology of events

Date	Event
October 2014	Drouin Precinct Structure Plan approved and the growth area including subject land was zoned Urban Growth Zone (UGZ2)
April 2020	Council engages Plan Heritage to undertake a heritage assessment of the cultural heritage values of the subject land and provide advice as to whether the site was likely to meet the thresholds for local significance for inclusion in a Heritage Overlay. Final Citation provided to Council in September 2020
November 2020	The Statement of Significance is prepared by Council based on the Citation
16 December 2020	Council resolves to seek authorisation to prepare and exhibit the Amendment
18 January 2021	Amendment authorised with the condition that: Notice of the amendment be given to the Victorian Planning Authority when the amendment is exhibited
5 February 2021	Notice of Amendment provided to the Victorian Planning Authority (VPA)
11 February – 11 March 2021	Amendment exhibited
28 April 2021	Council considers submissions and resolves to refer them to Planning Panels Victoria
28 July 2021	Hearing commenced

### (ii) Heritage assessment

Council appointed Annabel Neylon of Plan Heritage to undertake a heritage assessment of The Gables. This follows engagement by Council with community groups concerned about the potential loss of heritage properties within PSP areas and identification of several properties including The Gables. *The Gables Citation, Plan Heritage 2020* (Citation) was subsequently produced which identified that “*The Gables, ... is one of the most substantial and complex design of the Federation/Edwardian period buildings within the municipality*” and of historical and aesthetic significance and that the Heritage Overlay should be applied including tree controls for the identified Elms and Magnolia.

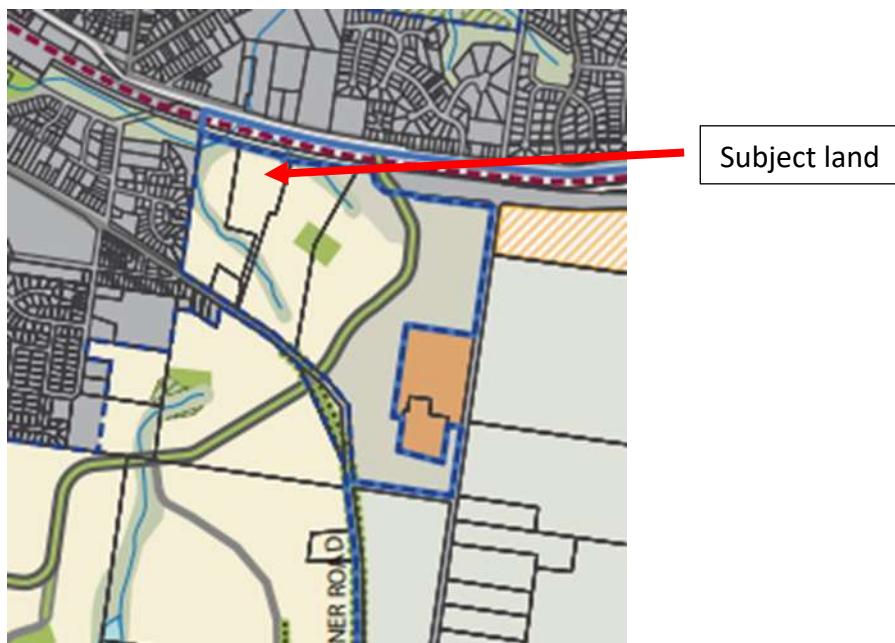
The exhibited Statement of Significance was prepared by Council as a direct translation of the Statement of Significance component of the Citation.

### (iii) Drouin Precinct Structure Plan and Development Contributions Plan

The *Drouin Precinct Structure Plan*, September 2014 (PSP) and *Drouin Development Contributions Plan*, September 2014 (DCP) were prepared by the Metropolitan Planning Authority (now VPA)

and Council. The documents were introduced into the Baw Baw Planning Scheme as incorporated documents along with the application of the Urban Growth Zone to the subject land and adjoining areas identified for growth by Planning Scheme Amendment C108 in October 2014 with the DCP updated in November 2017 by Amendment GC75. The Drouin PSP area covers 843 hectares and will accommodate 7,400 new dwellings. The subject land and adjoining land to the west, east and south are located within the South-East (Part 2) portion of the PSP (excerpt contained in Figure 3) and identified for 'residential'. The subject land is identified in the PSP and DCP as land parcel SE-02, with the land to the west (Lot 3 PS 521719) identified as parcel SE-01 and the site to the east (121 Ladner Road) SE-04. All three sites include areas of encumbered land associated with waterway corridors and drainage assets and conservation areas.

**Figure 3** South-East section of Drouin Precinct Structure Plan – future urban structure plan



### 1.3 Summary of issues raised in submissions

Two submissions were received following the exhibition of the Amendment:

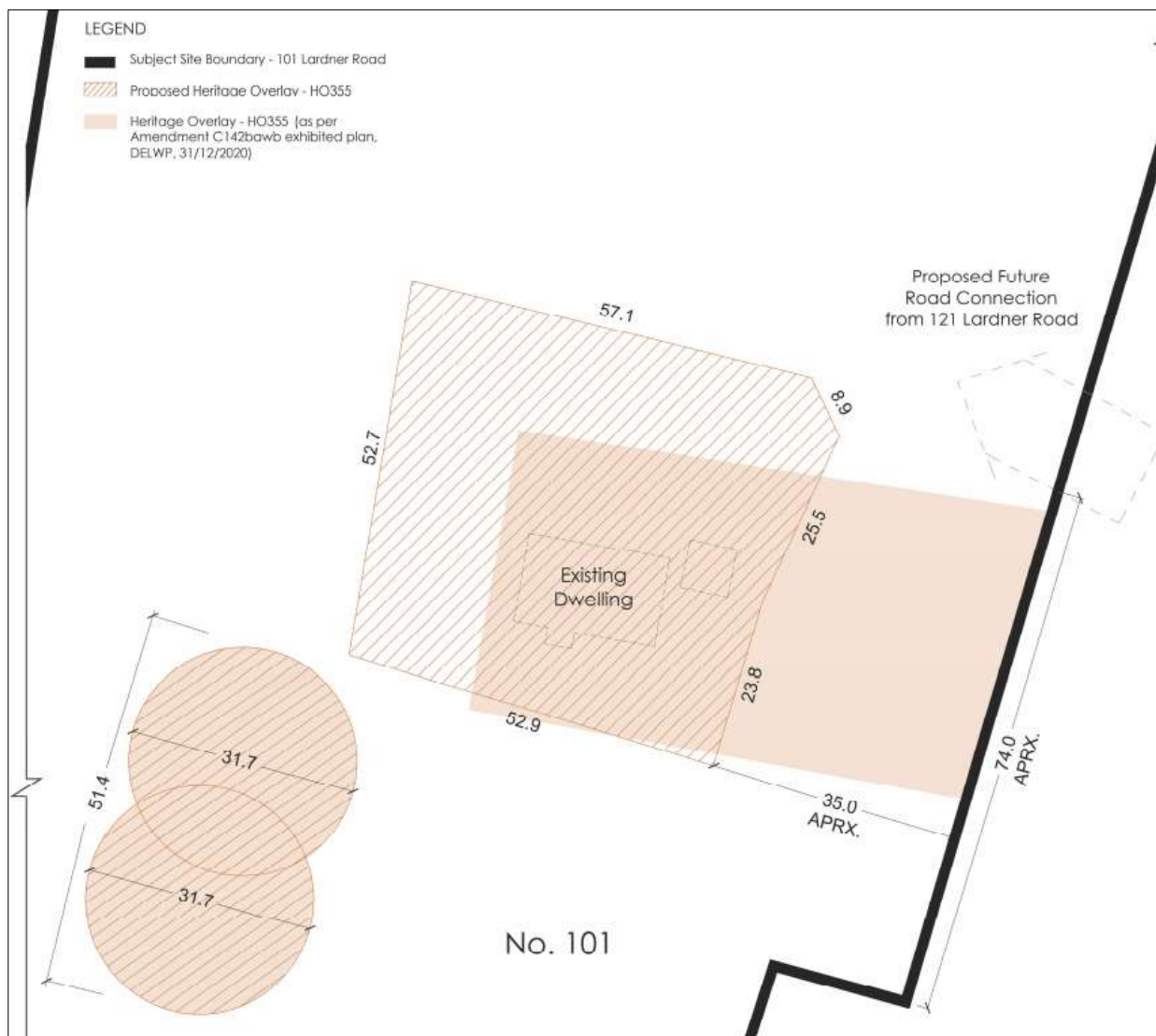
- Submission 1, from Judith and John Farmer who supported the Amendment but sought a reduction in the Heritage Overlay curtilage to avoid future proposed roads associated with development within the PSP area
- Submission 2, prepared by SD Planning on behalf of the owners of adjoining land to the west (Lot 3 PS 521719) and east (121 Lardner Road), concerned about the impact of the Heritage Overlay on the PSP and DCP outcomes and considering it premature until those documents are reviewed.

Council supported a change to the Heritage Overlay curtilage in response to submission 1 but did not support the abandonment of the Amendment sought by Submission 2. Council's proposed post exhibition amended curtilage (included in the Council report of 28 April 2021 and Council's Part A submission – Appendix B<sup>2</sup> which is reproduced in part in Figure 4), proposes to alter the shape of the Heritage Overlay polygon applying to the dwelling area:

<sup>2</sup> Document 2

- by moving it off the eastern boundary by approximately 35 metres excluding the Colorbond barn and the dairy structure which the Statement of Significance identifies as elements that do not contribute to its significance. The brick lined well is intended to be retained in the revised curtilage
- aligning it with existing fencing to the south
- extending it to the north approximately 12-18 metres to align it with a potential east-west access road, extending from 121 Lardner Road consistent with that site's planning permit for subdivision
- extending it to the western fence of the tennis course.

**Figure 4** Council's prosed changes to Heritage Overlay HO355 curtilage



Council calculated the area of the revised polygons be 3,444 square metres in total comprising the dwelling area polygon (2,106 square metres) and Elm trees polygon (1,388 square metres).

## 1.4 Procedural issues

### (i) Conduct of Hearing

The Committee advised parties that it would be conducting the Directions Hearing and Main Hearing by video conference due to physical distancing restrictions associated with the coronavirus disease pandemic. No party objected to this hearing format. A link was provided on Council's website that allowed the Hearing to be viewed live by members of the community.

### (ii) Authorisation

The Amendment was authorised on the condition that Council notify the VPA. Council advised that the VPA was formally notified of the Amendment's exhibition and contacted again by Council after it had not replied. On the 24 June 2021, the VPA responded to the Amendment and confirmed it supported the Amendment stating:

The VPA acknowledge the importance of recognising the heritage significance through the proposed Heritage Overlay and understands that future development within the approved Drouin PSP will need to account for the new provisions. The VPA has undertaken an assessment of the proposed Heritage Overlay in relation to the approved PSP and does not believe that any conflict arises in terms of the approved land use provisions and requirements.

## 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 Baw Baw 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 all material provided 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
- Strategic justification
- Heritage significance of The Gables.

## 2 Planning context

### 2.1 Planning policy framework

Council submitted that the Amendment implements or is supported by various clauses in the Planning and Environment Act (the PE Act), the Planning Policy Framework and Municipal Strategic Statement, which the Panel has summarised below.

#### Victorian planning objectives:

The Amendment will assist in implementing State policy objectives set out in section 4 of the PE Act by:

- (a) to provide for the fair, orderly, economic and sustainable use and development of land;
- (d) to conserve and enhance those buildings, areas or other places which are of scientific, aesthetic, architectural or historical interest, or otherwise of special cultural value;
- ...
- (g) to balance the present and future interests of all Victorians.

#### Planning Policy Framework:

- **Clause 11.01-1S Settlement** which recognises Drouin as a regional centre where sustainable development is supported. Its strategies include:
  - Deliver networks of high-quality integrated settlements that have a strong identity and sense of place, are prosperous and are sustainable by:
  - Preserving and protecting features of rural land and natural resources and features to enhance their contribution to settlements and landscapes.
- **Clause 11.03-6S Regional and local places** which seeks to:
  - Consider the distinctive characteristics and needs of regional and local places in planning for future land use and development.
- **Clause 15 Built Environment and Heritage** which provides that: as the objective:
  - planning should protect places and sites with significant heritage, architectural, aesthetic, scientific and cultural value; and
  - planning should ensure all land use and development appropriately responds to its surrounding landscape and character, valued built form and cultural context.
- **Clause 15.03-1S Heritage conservation** which seeks to ensure the conservation of places of heritage significance by addressing the following strategies:
  - Identify, assess and document places of natural and cultural heritage significance as a basis for their inclusion in the planning scheme.
  - Provide for the protection of natural heritage sites and man-made resources.
  - Provide for the conservation and enhancement of those places that are of aesthetic, archaeological, architectural, cultural, scientific or social significance.
  - [...]
  - Retain those elements that contribute to the importance of the heritage place.
  - [...]
  - Ensure an appropriate setting and context for heritage places is maintained or enhanced.
- **Clause 15.01-1S Urban Design** which seeks to:
 

create urban environments that are safe, healthy, functional and enjoyable and that contribute to a sense of place and cultural identity.



**Municipal Strategic Statement:**

- **Clause 21.03 Settlement** which recognises that the rural character and heritage of the shire are highly valued by the community.
- **Clause 21.09 Heritage** which identifies the following key issues:
  - The appreciation of heritage places and their significant role in the culture of the municipality.
  - The need to address the incremental loss of heritage places which would otherwise provide links to the history of the development of the Shire.
  - Finding a way to retain heritage places while allowing the development of towns, districts and communities of the Shire.

And seeks:

- to conserve the distinctive and often unique heritage characteristics that contribute to the identity of communities within Baw Baw Shire and to the identity of the municipality as a whole.
- to conserve the cultural significance of the heritage place or precinct by protecting and conserving the fabric that contributes to the significance of the place.

And implement the following strategies:

- Strategy 1.1: Encourage a 'best practice' and a consistent approach to the conservation of heritage places that is based upon a clear understanding of the reasons for their significance.
- Strategy 1.2: Retain the historic character and fabric of heritage precincts and places throughout the Shire as important evidence of past development.
- Strategy 1.3: Ensure development and maintenance of public land [roads, parks, buildings, etc] respects and enhances heritage places and precincts it contains or abuts, as appropriate.

And apply the Heritage Overlay to heritage places of local significance.

## 2.2 Other relevant planning strategies

### (i) Gippsland Regional Growth Plan

The Gippsland Regional Growth Plan provides broad direction for land use and development across the Gippsland region, as well as more detailed planning frameworks for the key regional centres of Bairnsdale, Leongatha, Sale, Warragul/Drouin and Wonthaggi.

### (ii) Drouin Precinct Structure Plan

Clause 21.04 (Main Towns) includes strategic growth directions to 2036 for towns including Drouin informed by the *Growth Management Strategy and Structure Plans – Warragul and Drouin* (2005) and the *Baw Baw Settlement Management Plan* (2013). For Drouin, Clause 21.04-4 sets out that any further residential rezoning of land within the growth areas will be subject to Precinct Structure Plans. The PSP includes the following design considerations for the South East area:

- Retain existing vegetation and maintain rural character of town gateway along Larder Road.
- Retain significant vegetation along Buln Buln Road.
- Allow for appropriate integration with existing and new neighbouring development.
- Present soft residential interface to Princes Freeway.
- Ensure development addresses prominent sections of the township boundary as illustrated on Plan 3.

Council advised the Panel that the preparation of the Drouin PSP was not supported by an analysis of post contact heritage.

Council advised that it was reviewing the Drouin and Warragul Precinct Structure Plans in the context of rapid growth and impacts on the rural character and natural environment. It has produced the *Draft Warragul and Drouin PSP Review Report* which outlines recommended changes to the PSPs to improve their implementation, seeking community feedback between 11 June and 22 July 2020 and a peer review on the document. Council is currently considering the feedback and peer review outcomes and anticipates a decision on the review at a Council meeting in August 2021 which will then be followed by the preparation of amendment documents. It advised that work on the DCP review is ongoing.

## 2.3 Planning scheme provisions

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

### (i) Zones

The subject land and adjoining land is in the Urban Growth Zone. The purposes of the Zone are:

- To manage the transition of non-urban land into urban land in accordance with a precinct structure plan.
- To provide for a range of uses and the development of land generally in accordance with a precinct structure plan.
- To contain urban use and development to areas identified for urban development in a precinct structure plan.
- To provide for the continued non-urban use of the land until urban development in accordance with a precinct structure plan occurs.
- To ensure that, before a precinct structure plan is applied, the use and development of land does not prejudice the future urban use and development of the land.

### (ii) Overlays

The Amendment proposes to apply the Heritage Overlay to portions of the subject land, and its purposes 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.

The Heritage Overlay requires a planning permit to demolish, subdivide, build or carry out works. The Heritage Overlay enables its Schedule to specify additional controls for trees, painting previously unpainted surfaces, internal alterations and an incorporated plan. The Amendment proposes to include the Statement of Significance as an incorporated document, apply tree controls and turn off outbuildings and fence exemption provisions to specific fabric elements.

The Development Contributions Plan Overlay (Schedules 1 and 3) applies to the subject and adjoining land.



## 2.4 Planning Scheme Amendment C139bawb

Amendment C139bawb proposes to translate the Baw Baw Planning Scheme Municipal Strategic Statement and Local Planning Policy Framework to the Planning Policy Framework format established by Amendment VC148. Among other changes Amendment C139bawb updates local policies including clauses 21.09. It anticipated that this translation would not affect how the local heritage policy is considered.

## 2.5 Ministerial Directions and Practice Notes

### (i) Ministerial Directions

The Explanatory Report discusses how the Amendment meets the relevant requirements of Ministerial Direction 11 (Strategic Assessment of Amendments) and *Planning Practice Note 46: Strategic Assessment Guidelines*, August 2018 (PPN46). That discussion is not repeated here.

The amendment is consistent with the form and content of planning schemes established in the Minister's Direction under section 7(5) of the PE Act.

### (ii) Planning Practice Notes

*Planning Practice Note 1: Applying the Heritage Overlay*, August 2018 (PPN01) 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.

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).

PPN01 also provides guidance for undertaking an appropriate level of comparative analysis, the application of tree controls and identifying significant outbuildings and fence elements.

In relation to establishing the curtilage of a Heritage Overlay PPN01 identifies:

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.

...

Suggested steps in establishing a curtilage and polygon include:

1. Review the heritage study documentation and ask the question 'What is significant?'. The polygon should capture those elements of the place that are significant. If there are multiple elements that are widely dispersed on the property, one option may be to have multiple polygons which share the same Heritage Overlay number.
2. In addition to capturing the elements that are significant, it is almost always necessary to include a curtilage (see definition above) to:
  - retain the setting or context of the significant building, structure, tree or feature
  - regulate development (including subdivision) in proximity to the significant building, tree or feature.
3. Where possible, uncomplicated and easily recognised boundaries (such as a fence line) leave little room for potential dispute in terms of the land affected by any future Overlay.
4. Use aerial photos where they exist to assist in identifying a reduced curtilage.
5. Where access is possible, 'ground truthing' may be of assistance.
6. Explain the basis for the reduced curtilage polygon in the heritage study documentation.
7. Where questions might arise in the future as to the extent of the polygon shown on the planning scheme map, use the entry in the Schedule to the Heritage Overlay (i.e. column two) to specify the area covered by the polygon. For example:

*"The heritage place is the Moreton Bay Fig Tree and land beneath and beyond the canopy of the tree and extending for a distance of five metres from the canopy edge."*

## 3 Strategic justification

### 3.1 The issues

The issues are whether the Amendment:

- is supported by, and implements the relevant sections of the Planning Policy Framework and Local Planning Policy Framework
- is consistent with the relevant Ministerial Directions and Practice Notes
- is generally strategically justified.

### 3.2 Heritage assessment approach

#### (i) Methodology and content

The Citation does not set out the methodology for undertaken for the site heritage assessment and preparation of the Citation, however the Citation contains the following elements:

- recommendations
- history including locality history, thematic context, site use and development and associations
- physical description
- a comparative analysis
- a Statement of Significance and proposed curtilage.

Annabel Neylon of Plan Heritage provided heritage evidence at the Hearing.<sup>3</sup> Ms Neylon's evidence identified that she was the author of the Citation with the assistance and contributions from Dr Robyn Ballinger (on the contextual and place history) and Natica Schmeder (on the main homestead description), both of Plan Heritage. The evidence of Ms Neylon set out the assessment methodology applied to the site which included:

- a preliminary review of the place, its history and elements based on historical information and site photographs provided by the owner and initial review of the HERMES database for comparative places
- following the preliminary review which indicated it was likely that the place would likely meet the threshold a full assessment was undertaken including:
  - reviewing various heritage inventories and registers
  - a site visit
  - undertaking historical research including examination of *the Baw Baw Thematic Environmental History, Context, 2006* and independent research
  - reviewing documentation including photographs, title documents, parish plans, newspaper articles provided by the property owner and an oral history and research prepared by the local historical society
- undertaking a comparative analysis of Federation period dwellings in a rural context included in a Heritage Overlay within the Baw Baw Planning Scheme and identified in the HERMES database noting site visits to these places was not possible at the time due to COVID-19 restrictions

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<sup>3</sup> Document 3

- consideration of The Burra Charter: The Australia ICOMOS Charter for Places of Cultural Heritage Significance (revised 2013)
- assessment against the criteria in PPN01
- first draft Citation with initial single Heritage Overlay polygon reviewed by Council and the landowner
- Citation updated in response to further information about the place including likely later planting dates of the Arizona Cypress and row of four Monterey Cypress near the tennis court and amending the Heritage Overlay to create two curtilages around the Elms and a more refined area around the residence and Magnolia
- revised Citation (with amended curtilage) prepared in September 2020.

## **(ii) Submissions and evidence**

At the Hearing, SD Planning clarified that it did not object to the application of heritage controls on the property perse or even that they could be applied to PSPs. Rather, it was concerned that Council sought to rely on PPN01 rather than undertake the more detailed assessment of the proposal in the context of the PE Act, other policy supporting growth including the PSP. The submission was however critical that the heritage assessment considering it had overly relied on material provided by the landowner, contained limited information about the dwelling itself and that the comparative analysis was limited to sites with the Heritage Overlay in the Baw Planning Scheme rather than a wider analysis of Federation period farmhouses. The submission also questioned why the site hadn't been assessed as part of the *Baw Baw Shire Heritage Study* (2011) or identified, along with the trees in the PSP preparation process consistent with current practice.

Mr and Ms Farmer considered that the heritage assessment was thorough and appropriately considered local information and sources including rates records and oral histories provided by the Drouin Heritage Group.

Ms Neylon concluded that the heritage values of The Gables had been assessed using a rigorous methodology. She indicated that it was not unusual for primary and secondary information to be provided from heritage groups and landowners to augment historical research, but in all instances this information was analysed and checked by heritage experts to ensure objective advice was provided.

Council adopted the evidence of Ms Neylon and submitted that it had been prepared in a thorough and independent manner, consistent with PPN01 and the Planning Policy Framework. Council advised that it understood the preparation of the PSP was not informed by a post contact heritage assessment but noted that its non-identification in the 2011 Heritage Study or the PSP did not diminish the opportunity for identifying additional sites for heritage controls. It submitted that places are often identified when they come under scrutiny because of a rezoning or a planning permit application.

## **(iii) Discussion**

The evidence of Ms Neylon was important in understanding the methodology for undertaking the heritage assessment of the subject land as this was not included in the Citation.

The Panel considers that Council has adopted the correct strategic approach to considering whether The Gables has the level of local heritage significance to warrant applying the Heritage Overlay. It has appropriately sought a heritage assessment from an appropriately qualified and

experienced heritage expert to answer this question. The Panel agrees with Council and Ms Neylon that the Citation was prepared in a manner consistent with PPN01, including undertaking a comparative analysis and that the Statement of Significance contains the necessary information to help form a view as to whether the place satisfies the necessary threshold of local heritage significance.

The Panel places little weight on the fact that neither the Baw Baw Shire Heritage Study or PSP identified The Gables or the three trees. It is not uncommon for municipal wide heritage studies, because of their scope and budget, to not identify all places and elements of potential interest from the public realm. As identified by Ms Neylon, the 2011 Heritage Study did not consider the theme of Federation farmhouses. The potential threat of building loss or place impact because of future development is often the driver for a more detailed examination of places that may have been overlooked for a range of reasons. While it may now be sound planning practice to undertake both pre and post contact heritage assessments as part of the preparation of PSPs, it appears that this was not the approach applied in 2011, perhaps because there were no clear indicators to do so at the time.

The primary issue for the Panel's consideration, is not with the methodology used for the heritage assessment or the format and content of the Citation but whether the Citation, including the comparative analysis adequately demonstrates that The Gables achieves an appropriate threshold level of significance as set out in PPN01 to support the Heritage Overlay. This is considered in Chapter 4.

### **3.3 Policy support**

#### **(i) Submissions**

SD Planning's original submission considered that Council's justification for the Heritage Overlay was not balanced against the broader Planning Scheme controls and would have an impact on the PSP and the development potential of 121 Lardner Road and by extension Lot 3 PS521817 by creating a parcel of land:

- that is unattractive for development
- would be in conflict with the PSP and render the land unable to achieve the density of development outlined in the land budget and potentially result in a shortfall in the development contributions collected in the precinct.

The SD Planning submission to the Hearing identified the current planning status of its client's parcels:

- 121 Lardner Road (to the east of the subject land) – has a planning permit for 86 lots accessed from a connection street to Lardner Road and three roads which will interconnect with the subject land, as shown in the masterplan included in Figure 5 along with an aerial image of the interface with superimposed subdivision layout
- Lot 3 PS 521719 (to the west of the subject land) – no planning permit application or extensive pre-planning has taken place although conceptually how the site might be integrated with the subject land was contemplated by the developer in the planning for 121 Lardner Road (Figure 6). Given the high costs of constructing a crossing over the waterway it was anticipated that development of the northern section of the lot would rely on access through the subject land.

**Figure 5 Masterplan for 121 Lardner Road and aerial image showing access streets to subject land**

Source: SD Planning submission pages 12 and 13 (Document 5)

The submission set out the current land budget arrangements for sites SE-02 as set out on the PSP and DCP suggesting that they could not be amended without an amendment to the PSP and DCP through a Planning Scheme amendment process.

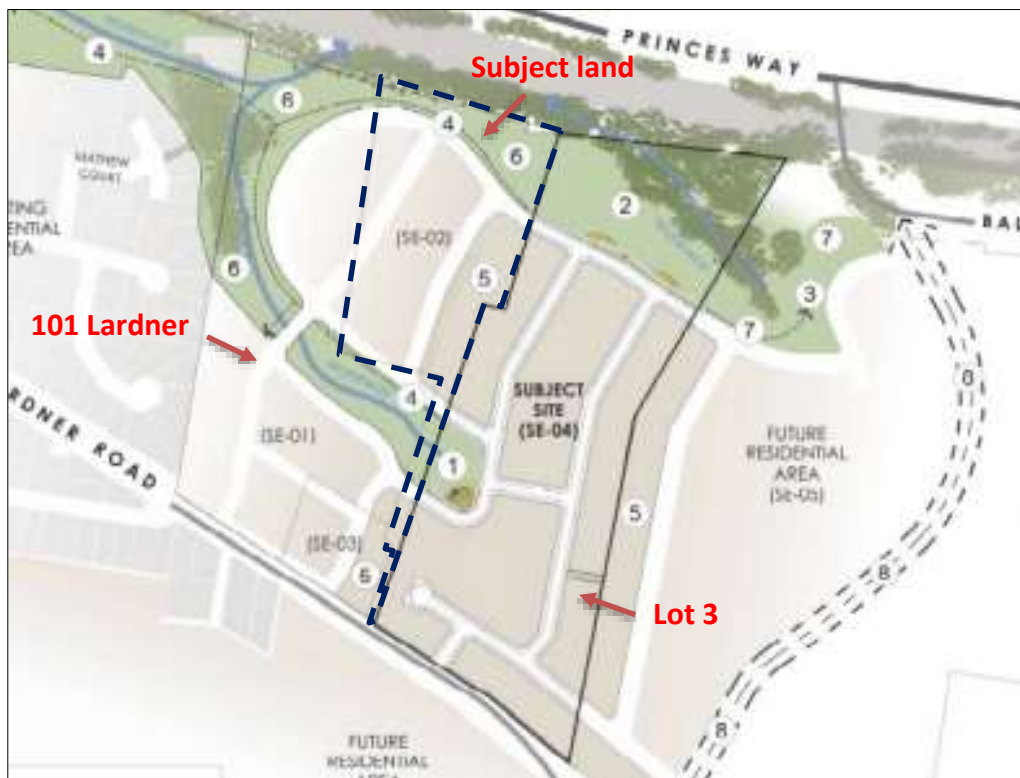
SD Planning was emphatic that its submission was not suggesting that the landowners of the adjoining lots would suffer a financial lot. It considered that the Amendment had not undergone an appropriate level of rigour and assessment to reasonably conclude that it was balanced planning outcome. SD Planning noted that Council had:

- not balanced the objectives of the PE Act including the fair, orderly, economic and sustainable use and development of land, providing for affordable housing and balancing the interests of all Victorians
- not fulfilled its planning authority duties under Section 12 of the PE Act to provide sound, strategic, co-ordinated planning of the use and development of land in this area or had regard to the DCP or consider any significant effects including social and economic effects (noting that the later must be considered)
- not undertaken a balanced approach as required by Clause 71.02 (Integrated Decision Making) to ascertain net community benefit
- not considered other policies including Clause 11.02-2S (Structure Planning), Clause 11.03-2S Growth areas or Clause 21.04-4 Drouin, the purpose of the Urban Growth Zone and Ministerial Direction 12 (Urban Growth Areas)



- not assessed the impacts on incorporated documents including the PSP and how it could achieve the preferred development form, or on the DCP including the reduction of Net Developable Area (NDA) land budgets, infrastructure delivery and levy collection
- not provided any real level of assessment of how applying the Heritage Overlay outweighs the impacts and effects on the PSP/DCP and future development possibilities including those at 101 Lardner Road
- myopically focused on PPN01 to justify the Amendment
- only changed the curtilage late in the process in response to submissions.

**Figure 6** Indicative Park Master Plan – ‘Startup’ Precinct Option 1 (with Panel’s notations)



Source: SD Planning submission page 14

While not suggesting an extensive or detailed economic impact assessment was required, SD Planning considered that the subject land’s location in a PSP deserved more than a cursory explanation. Ms O’Reilly acknowledged that while the Heritage Overlay could be applied where justified in a PSP area it was unusual and normally undertaken as part of a PSP consistent with VPA guidelines and practice.

SD Planning considered the subject land was not in any immediate threat and that the more orderly and proper planning approach was to abandon the Amendment and undertake a proper assessment of the site and the wider PSP area potentially as part of the PSP/DCP review to provide a balanced weighing up of policy. This, the submission stated, would avoid a blinkered approach, the potential adverse or unintended social and economic effects and “*kicking the can down the line*” for another day.

Mr and Mrs Farmer accepted the role of the subject land and adjoining land to accommodate future growth consistent with the PSP. Although indicating it was unlikely that they would have the means to develop the land and were not currently looking to develop, they considered any impact of the Heritage Overlay (such as a reduction of land value as a result of a potentially lower

lot yield) would be theirs to bare. They considered that applying the Heritage Overlay and minor reduction in NDA would not impact on the development of adjoining lots and cognisant of this had sought a smaller curtilage to accommodate connection to adjoining lots.

They identified that the Heritage Overlay was required to protect the house and other important fabric for future generations as future development occurs identifying concerns that no heritage analysis had been undertaken within the PSP area and trees identified in the PSP as significant and to be retained had been removed. Ms Farmer did not support a delay in the application of the Heritage Overlay while further review of the PSP took place.

Ms Neylon's evidence indicated that the subject land's inclusion in a PSP area was not relevant and that what was relevant was whether the place was of sufficient cultural heritage significance to meet the threshold for local significance. It was her experience that *"it is not unusual to find Heritage Overlay places included within PSP areas"*.

While Ms Neylon identified that most of her heritage assessments in PSP areas was done during their preparation, it was not unusual to apply Heritage Overlays or vary curtilages as new information comes to light. She considered that the application of the Heritage Overlay did not conflict with the objectives of the PSP.

Council submitted that the primary task for the Panel was to consider whether The Gables met the threshold to be a place of local heritage significance as established through appropriate analysis. It noted that the application of a Heritage Overlay did not prohibit development and would not impact development of the adjoining sites and that private economic impacts were not relevant at this stage of the process. It acknowledged that the application of the Heritage Overlay would impact the PSP/DCP land budget but considered this impact minimal and an adjustment that could be attended to as part of the review of the PSP/DCP. Council confirmed that the DCP attributed a NDA of 3.47ha to the subject land (parcel SE-02) allowing for other identified encumbered land which the DCP's defined as including 'heritage areas'. It submitted that the effect of the NDAs potential reduction by 3,444 square metres (assuming all of that area was considered encumbered) was not considerable when the South East Area comprised 672 hectares of NDA. It pointed to the VPA's advice that it did *"not believe that any conflict arises in terms of the approved land use provisions and requirements"*.

Council refuted the submission of SD Planning and considered that they had fulfilled their obligations under section 12 of the PE Act and that officers had considered the wider impacts of the Amendment, including on the PSP and DCP, in its report to Council in December 2020 and in the Explanatory Report. It said this analysis was done in an objective and robust manner and that a more detailed economic assessment would have been expensive and unwarranted given the site-specific nature of the Amendment.

Council's Part B submission included two subdivision concepts prepared to inform Council's response to submissions in its April 2021 report to demonstrate how the subject land could be integrated into the development of adjoining lots (Figure 7). Council rejected the notion that because the site was in a PSP it was unable to apply a Heritage Overlay with the appropriate level of analysis when new information comes to light.



**Figure 7 Council's indicative residential development scenario options**

Source: Council's Part B submission pages 18 and 19 (Document 4)

Council said that the Amendment did not conflict with the PSP because it will:

... allow for the orderly development of the subject land and its surrounds and accommodate growth while appropriately recognising and protecting the heritage values of the subject land and in so doing achieve the objective of preserving the rural character by retaining significant elements of the landscape and maximising views to the town's hinterland.

Council submitted that providing a framework for the protection of places of cultural significance would ensure that it was delivering on its responsibility to protect heritage places and ensure new development integrates, respects and contributes to that heritage. This, it said, would deliver the greatest certainty for owners, applicants and Council (as responsible authority) and in making decisions on the appropriate built form outcomes for a particular site.

It concluded that the Amendment was consistent with the Planning Policy Framework, Ministerial Directions and relevant Planning Practice Notes.

## **(ii) Discussion**

The Panel does not consider that the Urban Growth Zone or designation of the site and adjoining land for the urban growth of Drouin through the PSP renders the application of the Heritage Overlay inappropriate or calls for a more measured approach to applying the Heritage Overlay.

The primary consideration for the Panel in this matter is whether The Gables is a place of local heritage significance and secondly whether the Heritage Overlay should be applied. This is discussed by the Panel in Chapter 4. The impact of the Heritage Overlay in terms of future development is a relevant but secondary consideration and generally a matter for the next phase of the planning process.

This does not mean the planning authority should divorce itself from considering the wider policy and legislative considerations. Clearly consideration of these matters is required to be considered in reaching a balanced decision as sought by Clause 71.02.

Both the PE Act, Planning Policy Framework and the Municipal Strategic Statement provide strong strategic policy support for the identification and protection of places of heritage significance in the Baw Baw Shire and establish a strategic basis for this Amendment.

There is little guidance in the PE Act, Ministerial Directions or Planning Practice Notes as to what the requisite level of analysis is required to establish social and economic impacts and whether a broader net community benefit has been achieved. In this case, the Panel considers that Council has been able to demonstrate that it has considered economic impacts to an acceptable level and the impact of the Amendment on achieving the vision of the PSP or DCP outcomes, albeit not to the level sought by SD Planning.

It is apparent that Council has reasonably contemplated the impacts of the Amendment on the PSP and DCP at the time it prepared the Amendment and have responded to submissions by further amending the Heritage Overlay curtilage in a manner that at least conceptually would seem to be consistent with the PSP and broadly accommodate initial plans identified in the SD Planning submission. The Amendment is consistent with the PSP design considerations which include retaining existing vegetation and maintaining the rural character of town gateway along Larder Road.

The Panel considers the Amendment to be strategically justified and has considered matters outside PPN01 in a fair and balanced matter.

The Panel does agree with SD Planning however, that an ongoing piecemeal approach to applying the Heritage Overlay to individual sites within the PSP area is undesirable and does not provide the level of certainty required to enable the delivery of the wider growth area outcomes sought. It would be a better approach for Council to consider undertaking a wider high level heritage assessment of the PSP focusing on areas where development has not advanced to see if further detailed assessment is warranted for particular sites and to then undertake a single Amendment if strategically justified. This is something which could consider as part of its current PSP review process.

During the Hearing, the Panel noted an error in the Explanatory Report referring to Planning Scheme Map 29HO rather than Map 30HO. Council acknowledged this error. The Panel considers this a minor technical issue as other Amendment documentation correctly referred to Map 30HO. The Panel considers this a minor technical issue and does not require a specific Panel recommendation. It is noted here so that it can be addressed by the Department of Environment, Land, Water and Planning through the next step of the Amendment process.

### **3.4 Conclusions**

The Panel concludes that:

- The Amendment is supported by, and implements the relevant sections of the Planning Policy Framework and Local Planning Policy Framework.
- The Amendment has been prepared in a manner consistent with the relevant Ministerial Directions and Practice Notes.
- The Amendment is generally strategically justified subject to addressing the more specific issues raised in submissions as discussed in the following chapter.
- Council should consider undertaking a wider review of post contact heritage within the PSP area as an action of the current PSP review.

## 4 Heritage significance of The Gables

### 4.1 The issues

The issues are whether:

- The Gables is of local heritage significance and the Heritage Overlay (HO355) should be applied
- the Heritage Overlay curtilage is appropriate.

### 4.2 Citation and Statement of Significance

#### (i) Citation

The Citation includes a history and physical description of the subject land which is summarised below:

- the site was part of a larger parcel taken up by JPB Damyon in 1880 with a sawmill operating on the site in the 1880s
- the site was subdivided with the northern portion purchased in 1889 to Robert Butler and known as 'Aberfeldie' and used for farming including dairying) with an earlier dwelling possibly located adjacent to the mature Elms
- the current house may have been the one described in a sale advertisement in 1893 before the property was sold to George Kings
- the site was sold to Edmund Kowarzik in 1898 who further subdivided the site creating and selling a smaller 30 acre site to Edward Hamilton in 1911 and the property likely being renamed The Gables around this time. The current dwelling was possibly constructed around this time based on the physical fabric of the building
- The Gables was owned by a series of owners between 1921 and 1982 during which time it was further subdivided to its present size
- the original access carriageway is believed to have come from the north and terminated at front of the house (overlooking the township of Drouin), although the formal address has been Lardner Road since around c.1912
- a number of substantial plantings survive both in the residential garden and within the surrounding paddocks including a mature Magnolia located close to the eastern elevation of the residence (Figure 8), two substantial specimens of English Elms in the home paddock to the south west (Figure 9) and an Arizona Cypress, and Peppercorn Tree in the paddocks to the north west. A row of four Monterey Cypress are the remains of a number of pines and cypresses which once surrounded the house.

**Figure 8 Eastern elevation of dwelling and identified Magnolia**

Source: Citation

**Figure 9 The two identified English Elms to be included in HO355**

Source: Citation

The Citation describes the dwelling as follows:

The substantial main house is the largest building on the site. It is an attic story Federation period weatherboard dwelling with some references to the Federation Queen Anne style located on the west side of the graveled central core at the end of the driveway. The original building form (including verandahs) is almost square in plan with the main entrance on the northern side and a large modern skillion addition on the east. The main roof is clad in corrugated iron and includes a steeply pitched hip form with gablets at the east and west ends of the ridge into which roof ventilators in the form of louvred timber panels are fitted. There are lower ridge height gable roof forms projecting to the north and west with a further gable form incorporated into the verandah roof projecting diagonally from the north west corner of the building. On the northern main roof plane is an introduced attic level dormer roof projection and a skylight on the south side (also introduced).

The gable ends are defined by simple timber barge boards and gable end battens to the outer edge of the eave. The gable end battens on the north and west gable ends appear to be introduced, and repeat the original detail on the projecting north west gable which is clearly present in early photographs of the house and believed to be original. There are two red brick chimneys – one on the east and the other on the west side of the original building.



The chimneys have decorative cappings with stepped brickwork and projecting lines of bricks on each face and terracotta chimney pots on top.

The northern elevation of the building is the main façade with a central front paneled door with side and high lights door accessed from the verandah. The front door, side and high lights date from the late twentieth century and have replaced the original front door. To the east of the front door is a projecting gable roofed space and to the west is the continuation of the verandah which wraps around the diagonal boxed window and gable roofed verandah facing north west.

The timber verandah which wraps around part of the north and west elevations butting into the projecting gable ends was replaced in the late twentieth century. The original verandah was replaced with this structure in the late twentieth century, and while the dimensions, profile and form of the verandah generally replicate the original structure, there are minor changes such as the narrow planks of hardwood timber verandah decking and introduced timber balustrade. The turned timber posts with slender brackets and decorative timber fretwork to the valance appear to replicate the original details. The west side of the verandah leads to a secondary entrance door to the house. Projecting from the hip roof form above the main entrance door is the dormer window.

All of the gable ends, including the dormer are decorated with scalloped weatherboards below the timber battens featured in the gable apex.

There is a modern skillion addition at the east end with a modern multi angled deck area enclosed by a timber lattice balustrade and clear plastic blinds. This deck area connects the main house to the garage which is further east. The east elevation (skillion addition) replicates the style and design of the verandah on the original part of the house, with simple square posts rather than turned timber posts, and no balustrade.

On the southern elevation there is an introduced section of building in the form of a projecting room with gable roof over. This represents an extension of the original projecting room undertaken in the late twentieth century. A modern timber pergola structure is located on the east side connecting with the skillion addition verandah.

The timber framed windows around the building vary in detail. What appears to be the original form of the windows is the paired (or triple) timber casements with smaller fanlight sashes above as seen on the south elevation, and the diagonal projecting window facing north west (in which the fanlight sashes retain the original textured and coloured glass). The main windows on the north and west elevation are modern replacement timber window of similar proportions.

Figure 10 includes photographs of the dwellings northern, western and southern elevations respectively.

**Figure 10** Northern, western and southern elevations of the dwelling





Source: Panel's photographs

The comparative analysis identifies that:

There is a modest selection of Edwardian/Federation houses built c.1902-1918 included in the Baw Baw Shire Heritage Overlay. As rural homesteads of any era often differ from dwellings of the same era in towns, it is considered most appropriate to compare 'The Gables', 101 Lardner Road, to other rural properties outside of Baw Baw's townships rather than directly comparing to the Edwardian/Federation residences located within the townships, although the dwelling at 28 Albert Street, Warragul<sup>4</sup> is perhaps the most stylistically comparable residence within the municipality.

These other examples are located largely in the southern half of the municipality where agricultural practices were established from the late nineteenth century. Most of the houses are single storey in scale, clad in weatherboard and asymmetrical with a loosely bungalow form exhibited in the broad mass of roof form. The dwellings are relatively simple in their design, with a principal hipped roof (usually one, but sometimes more) projecting gables. There is little decorative detail, complicated or exaggeration in the roof forms or planes and relatively straight forward arrangement.

The Citation includes the following comparative rural homesteads:

- Thorngrove Farm, 2765 Main Neerim Road, Neerim, c. 1914-16 (HO300)
- Dutton Lea (homestead complex and gardens), 120 Stocks Road, Drouin, c.1905 (HO241)
- HO295 Glenaveril, 1105 McDonalds Track, Narracan, c.1909 (HO295).

By comparison, the Citation considers that *"The Gables is one of the most substantial and complex design of the Federation/Edwardian period buildings within the municipality"* with other examples simple in form, with limited decoration or detailing save on the gable ends. Although acknowledging that dwelling has experienced some alterations and additions, including the changes to window and doors, and the addition a new dormer window, alteration of front door and some windows and extension of the existing skillion:

... it is distinguished by its Queen Anne style, demonstrated by the highly pitched hip and gable roof forms, complexity of arrangement and decorative detailing. It compares more closely in its form and decoration to 'town' residences such as the (much more intact) dwelling located at 28 Albert Street, Warragul which is the best example of the Federation house within the municipality.

<sup>4</sup>

Ms Neylon's evidence identified that the correct address of this comparative property was 58 Albert Street Warragul

**(ii) Statement of Significance****Exhibited Statement of Significance – The Gables, 101 Lardner Rd, Drouin (part)****What is significant?**

'The Gables' located at 101 Lardner Road Drouin is significant. Elements which contribute to the significance of the place include the timber dwelling c.1910, two mature English Elms (*Ulmus procera*), a mature specimen of Magnolia (*Magnolia soulageana*) and a brick lined well (now filled in).

The following elements of the place do not contribute to its significance: The outbuildings, including the former dairy (now altered), fowl house, woodshed, modern barn and garage; farm and garden fencing, and alterations and additions to the residence which postdate c.1920.

**How is it significant?**

'The Gables' at 101 Lardner Road, Drouin is of local historical and aesthetic significance to the Baw Baw Shire

**Why is it significant?**

'The Gables' at 101 Lardner Road, Drouin is historical significance as it represents an historical period in the pastoral history of the municipality where dairy farming on small acreage was a viable financial proposition capable of supporting a family farm. Supported by the construction of creameries, collection facilities and the transportation via railway, Drouin supported a number of small dairy farms in the immediate vicinity. The house constructed around c.1910 for lawyer, Edward James Hamilton was originally situated on a small holding of thirty acres immediately outside of the township of Drouin. Although Hamilton and his family resided only until 1917, The Gables was the central focus of a small, highly productive farming enterprise from at least this point through to the mid twentieth century. The intensive farming practices of dairying and orcharding is evidenced by the farmhouse, brick lined well and former dairy (although altered). (Criterion A).

The Gables is of aesthetic significance one of the most distinctive and substantial Federation period farmhouses surviving within the Baw Shire. Although the external form of the dwelling has experienced minor alterations and additions (including the skillion addition to the west, a timber pergola and a new attic style dormer window in the northern plane of the roof, replacement of some doors and windows) the overall form and arrangement of the building is clearly visible and intact. The dwelling exhibits key features common to the Federation period including exaggerated high-pitched hip roof forms, an asymmetrical arrangement and plan and projecting gables. There are elements of the Queen Anne style evident in the picturesque asymmetrical massing of the building, the arrangement of the projecting north facing gable located on the corner of the building, decorative detailing, including the gablets with timber louvres, notched weatherboards and decorative timber detailing on gable ends, tripartite and casement windows with coloured textured glass paned high lights, the decorative timber brackets and valance. It is one of the more decorative and expressive examples of a Federation period dwelling within the municipality, and the most elaborate aesthetically of the farmhouses from this period. Further adding to the aesthetic significance of The Gables is its rural setting on the brow of a hill, deliberately sited to overlook the township of Drouin. The substantial specimens of English Elm (*Ulmus procera*) in the home paddock and the large Magnolia to the east of the residence are of aesthetic significance for their outstanding size and contribution to the setting of The Gables. (Criterion E)

The well structure (now filled in) is identified in the photograph in Figure 11.

**Figure 11** Well structure

Source: Panel's photograph

## 4.3 Evidence and submissions

### (i) Heritage significance

SD Planning considered that little was contained in the Citation about:

- what was significant about the dwelling itself, for example no architect or builder of note was identified
- its cultural value was limited to its previous agricultural setting
- how the comparative analysis supported the contention that the dwelling was one of the *"most distinctive and substantial Federation period farmhouses in Baw Baw Shire"* when the analysis had limited itself to existing Heritage Overlay places and not reviewed or identified other Federation farmhouses in the municipality
- hadn't contemplated the PSP and changes in the place's context as development occurs around it.

SD Planning also considered that little regard was had to 'divorcing' the Elm trees from the dwelling polygon, how they would be accommodated within future development (such as a park which had not been identified in the PSP) and their ongoing contribution to the dwelling and had not assessed the health of the trees.

Ms Farmer's submission included information that complemented or added to the Citation in relation to the subdivision and ownership of the land and corroborated the potential for the dwelling to have been erected in the early 1890s. The submission identified that the Elms were approximately 25 metres tall with diameters at breast height of 4.0 metres and 4.6 metres. Ms Farmer considered that the Elms were possibly the oldest in Drouin a position informed based on her knowledge as a member of Friends of Drouin's Trees. She considered that the trees were likely to meet a number of the significance criteria of the *Baw Baw Significant Tree Register* including landscape and aesthetic values, age and outstanding size. The Farmer's identified that the Elms



had been maintained with the support of an arborist and that they were disease free and structurally sound.

Ms Neylon's oral evidence provided an overview of the comparative analysis a process she described as rigorous. She concluded that 'The Gables' at 101 Lardner Road, Drouin was of local heritage significance meeting the threshold criteria A and E.

In relation to Criterion A, Ms Neylon identified that the location of the dwelling on the brow of the hill, overlooking Drouin and its long history of agriculture and relevant remaining intact features meant that The Gables was of local significance to Drouin and Baw Baw Shire and that it compared well to other rural Federation homesteads. While it was unfortunate that the details of the builder or architect could not be determined this did not diminish its significance and was not important to establish that Criterion A was met.

In terms of Criterion E, Ms Neylon identified that while the dwelling had been altered, those alterations were relatively sympathetic and did not detract from its aesthetic significance. She considered in terms of aesthetic values, the dwelling "*stands on itself*", with its decorative detailing, exaggerated high-pitched roof elements, angled façade and tall chimney elements comparing favourably with the dwelling at 58 Albert Street Warragul. With its rural setting, these elements were particularly significant.

In response to submissions from SD Planning, Ms Neylon advised that the future context of the site in terms of the setting of the dwelling and tree was not part of her assessment and was not relevant to determining heritage value. She further identified that the Elms contributed aesthetically to the dwelling and were also more broadly significant to the landscape and cultural history of Baw Baw in terms of their outstanding size and age. The health of the trees was not relevant to their heritage significance.

Ms Neylon recommended that the comparative analysis section of the Citation be corrected to correctly refer to '58 Albert Street Warragul' rather than '28 Albert Street'. In response to questions from the Panel, Ms Neylon considered that it was appropriate for the Statement of Significance to include the identified place elements of significance including the dwelling, trees and the well.

Council relied on the evidence of Ms Neylon and the findings of the Citation to support the position that The Gables met the threshold for local heritage significance, satisfying criterion A (historical significance) and E (aesthetic significance). It considered that the application of the Heritage Overlay was appropriate.

Council submitted that while the issue of tree health was irrelevant, tree health or how the trees might be accommodated within any future development was a matter for the next stage of planning. It supported Ms Neylon's suggested changes to the Citation indicating that it was desirable that there was consistency between the Citation and Statement of Significance. It did not oppose recommendation that the Statement of Significance be updated to include additional photographs.

## **(ii) Curtilage**

The original submission of Mr and Mrs Farmer proposed that the curtilage of the Heritage Overlay be amended to reduce its footprint to exclude the outbuildings (elements that did were identified as not contributing to its significance) and extending the separation from the eastern boundary while accommodating the canopy of the Magnolia and other garden trees including a Golden Elm.

They considered that the larger envelope proposed in the exhibited Amendment reduced lot yield and created a risk that a future developer would seek to remove the Heritage Overlay or demolish the dwelling. They supported the curtilage extending to the north given the dwellings primary aspect to the north and north west. They considered that this would provide an attractive setting and street view from a potential east-west road. The submission supported a separate curtilage for the two elms. Ms Farmer's Hearing submission included a subdivision concept for the site which provided for an east-west road aligned with 121 Lardner Road and which would yield 34 lots (including The Gables lot). While supporting the amended curtilage proposed by Council, she considered it could be further reduced by up to 8 metres on the west to accommodate some additional developable land. The dwelling curtilage was shown extending across a future road reserve and the two Elms were shown within the road reserve on the concept subdivision plan.

SD Planning noted that no aerial photography or survey plan underpinned the proposed amended polygon or the concept plans prepared by Council and that it was not entirely clear whether it included the well or clearly how the northern boundary was to be determined. It submitted that this was undesirable and conflicted with the parameters set out in PPN01 requiring that the Heritage Overlay should be applied in a clear and transparent manner that avoids the potential for confusion and poor outcomes if not carefully resolved.

The submission queried whether the creation of a separate polygon for the two Elms divorced them from the dwelling polygon and would see their contribution diminish with future development.

The evidence of Ms Neylon stated that the identified curtilage of the two Heritage Overlay polygons included in the exhibited Citation was mindful of the guidance in PPN01 to capture all elements of significance, retain sufficient setting and be uncomplicated and easily recognisable (such as a fence line). She considered the Heritage Overlay polygon encompassing the two trees was approximately twice the size of each canopy extent which was sufficient to protect above and below ground fabric and provide an appropriate setting and context for the trees. In response to the Farmer's submission Ms Neylon identified that at the request of Council she participated in a meeting with the submitter viewing a plan of subdivision for the adjoining property at 121 Lardner Road which showed an east-west road which would intersect with the subject land that would logically extend across it some 10 metres north of the current northern garden fence. On this basis, Ms Neylon considered that the revised Heritage Overlay curtilage around the homestead as proposed by Council was appropriate and would:

- retain all contributory buildings, features and elements (including the well)
- provide a *"reasonable context and setting for the main house, if the road were to be developed in the future"* particularly to the principal northern and western elevations of the residence and a reasonable curtilage to manage development
- exclude as far as practicable non-contributory features and the balance of land that contains no significant heritage fabric.

In response to questions from Ms O'Reilly, Ms Neylon identified that it was not uncommon for disparate elements to be within separate polygons.

Ms Neylon recommended that the Citation be amended to include the revised curtilage possible overlaying an aerial image. She did not support the suggestion of the Farmers to reduce the curtilage at the western edge away from a fence line, considering it unnecessary and unlikely to deliver any positive outcomes.

The Panel asked Ms Neylon whether such a plan should also be included in the Statement of Significance given that the Citation was not proposed to be an incorporated or background document. Ms Neylon responded that this was not normally done (other than for precincts) but that she thought it probably could be.

Council recommended that its amended Heritage Overlay curtilage be included in the Citation (possibly identified over an aerial photograph) and applied as a basis for the Heritage Overlay. It noted that the location of the curtilage in relation to any future roads was a matter for a more detailed design response at the development stage. It indicated that it would not oppose Panel recommendations regarding the inclusion of an aerial photograph-based curtilage map in the Statement of Significance.

## **4.4 Discussion**

### **(i) Heritage Significance**

No party disputed The Gables had local heritage significance. Rather, the opposing submission focused on whether applying the Heritage Overlay was strategically appropriate and balanced in the context of other policy and legislative considerations. As identified earlier in this Report, the primary focus of the Panel is to consider firstly whether the place meets the threshold of local significance based on an appropriate level of analysis and secondly whether the Heritage Overlay should be applied, the latter informed by a range of considerations including Clause 71.02. The Panel has identified in Chapter 2 that the Amendment is strategically justified and the implications of the PSP/DCP while not irrelevant are not determinative in whether the Heritage Overlay should be applied. The fact that the site is within the PSP area is not relevant to whether the site is of local heritage significance.

The Citation is critically important in identifying what is significant and why. The Panel is satisfied that the Citation is rigorous, based on an appropriate level of analysis and comparative analysis. The comparative photographs and verbal evidence provided by Ms Neylon was useful in establishing this.

The Panel considers that the Citation and evidence of Ms Neylon supports the conclusion that The Gables does reach the necessary threshold to be identified as having local heritage significance. The Panel considers that the case for satisfying Criterion E is clear and while only one criterion needs to be satisfied the Panel considers that the Citation provides a reasonable basis for concluding that Criterion A is also met although more marginally.

The Panel considers that applying the Heritage Overlay to The Gables is appropriate and justified on the basis of the evidence and Citation subject to resolution of issues regarding the Heritage Overlay curtilage. The Heritage Overlay will ensure that heritage values of The Gables can be managed and protected for the benefit of current and future generations. This benefit, as identified by Council, is more significant strategically than the potential short term impacts of acquiring planning permits, development yield or individual economic impact.

As acknowledged by Ms Neylon, the Panel considers that the Statement of Significance should include images of the identified significant elements including the dwelling (preferably the more prominent northern elevation), the magnolia, brick lined well and the two Elms. This is considered good practice and will assist in future interpretation.

The Panel considers that there is merit in making the minor changes to the Citation recommended by Ms Neylon's given the Citation is identified as a source in the Statement of Significance and consistency between the two documents is important. However, unlike the Statement of Significance, which is proposed to be an incorporated document, the Citation does not have a statutory role. While an important resource, its primary utility in this instance is to support the basis for establishing local heritage significance. Such a change is considered a minor technical tidy up and does not require a Panel recommendation, but is supported, nonetheless.

## **(ii) Heritage curtilage**

While the threshold issue should be whether The Gables has heritage significance, it is critical that the Heritage Overlay curtilage is of an appropriate size to protect its heritage values. This should primarily be done in the context of what is significant and retaining an appropriate setting and context rather than the possible impacts on future development. While being cognisant of future site development and not overly constraining future development in the subject land's growth area location setting is a reasonable and pragmatic consideration it should not be the primary basis for establishing it.

PPN01 provides important guidance on the establishment of Heritage Overlay curtilages. While normally extending to the whole property, PPN01 identifies situations where the curtilage can be reduced. The key considerations in curtilage mapping include:

- including the identified elements of significance
- ensuring the significant elements have sufficient land surrounding them to ensure that any development, including subdivision, does not adversely affect the setting, context or significance of the heritage item which can involve separate polygons where multiple elements are widely dispersed
- where possible use uncomplicated and easily recognised boundaries such as fence lines and use aerial photos where they exist to assist in identifying a reduced curtilage.

The Panel considers that characteristics of the subject land including its size and its disparate elements support the two Heritage Overlay curtilages. While the two Elms have an aesthetic relationship with the dwelling, they also have a wider landscape and aesthetic value as acknowledged by Ms Neylon. Therefore, it is considered that their physical separation in a mapping sense is reasonable.

The Panel prefers the Council's proposed revised Heritage Overlay curtilage for the dwelling polygon as supported by Ms Neylon's evidence. It preserves the key views to the dwelling and the landscape setting of the dwelling including its garden setting while utilising existing fencing where practicable. The Panel considers the nuanced approach to defining the curtilage to be appropriate from a heritage perspective while also pragmatic in acknowledging future site development, whenever that might be.

The Panel acknowledges that there are some elements of the revised dwelling polygon that are not entirely resolved. It is understood by Council and Ms Neylon that the well is included but could not confirm it. It should be confirmed. The northern boundary relies on a likely future road alignment rather than an existing fence line. Council identified that any future road would be subject to more detailed design at the planning permit stage and identified that, subject to a planning permit, could still extend into part of the Heritage Overlay. While an understandable approach, the Panel considers that it would be preferable based on Ms Neylon's evidence on the revised curtilage, that any future road should not intrude into it.

While a detailed survey might assist in confirming the location of the well and determining the western and eastern boundaries the Panel considers it desirable at the very least that the Statement of Significance include a dimensioned curtilage, potentially laid over an aerial photograph and which clearly identifies the significant features. In the absence of reading or searching for the Citation this would assist Council, the landowner and any future site developer understand the 'on the ground' extent of the Heritage Overlay and minimise any future disputes. While inclusion of such content in a Statement of Significance might not be standard practice, it would be of use given the site area and disparate location of significant elements. Its inclusion would seem to conflict with what PPN01 indicates should be in a Statement of Significance and supports some aspects of its guidance.

## 4.5 Conclusions and recommendations

The Panel concludes that:

- The Gables satisfies the threshold for local heritage significance satisfying Criterion A (heritage significance) and Criterion E (aesthetic significance).
- The application of the Heritage Overlay (HO355) to a portion of the subject land is appropriate.
- The Heritage Overlay curtilage should be altered consistent with Council's proposed changes set out in its Part A submission (and Figure 4 of the Panel's Report) subject to confirming it includes the brick lined well.
- The Statement of Significance should be altered to include photographs of all significant elements and an aerial photograph image overlain by dimensioned polygons and which identify the location of the elements of significance.

The Panel recommends:

1. **Amend the Heritage Overlay (HO355) curtilage on Map No. 30HO consistent with Figure 4 of the Panel's Report subject to Council confirming it includes the brick lined well.**
2. **Amend the Statement of Significance to include:**
  - a) **photographs of 'The Gables' dwelling, the well and identified significant Trees**
  - b) **an aerial photograph image overlain by dimensioned polygons and which identify the dwelling, well, two English Elms and Magnolia.**

## Appendix A Document list

No.	Date	Description	Provided by
1	15 June 2021	Drouin Precinct Structure Plan and Drouin Development Contributions Plan both September 2014, Metropolitan Planning Authority	Council
2	30 June 2021	Council's Part A submission including: a) Attachment B Post-exhibition amended HO355 curtilage b) VPA response to Council 24 June 2021	"
3	21 July 2021	Witness statement of Annabel Neylon of Plan Heritage	"
4	27 July 2021	Council's Part B submission	"
5	"	SD Planning submission including 8 attachments	Kate O'Reilly
6	"	Submission of Judith and John Farmer	Judith Farmer
7	28 July 2021	Ms Neylon's comparative analysis table	Council
8	"	Details of landowners represented by SD Planning	Kate O'Reilly
9	29 July 2021	SD Planning addendum submission	"
10	"	VPA Working in the Latrobe Valley Report	"