

INDEPENDENT PLANNING PANEL
APPOINTED BY THE MINISTER FOR PLANNING
PLANNING PANELS VICTORIA

IN THE MATTER of Amendment C387 to the Melbourne Planning Scheme

BETWEEN:

MELBOURNE CITY COUNCIL

Planning Authority

-and-

VARIOUS SUBMITTERS

AFFECTED LAND: 137 individual places and 5 precincts within the suburb of Melbourne

PART C SUBMISSION OF THE PLANNING AUTHORITY

I. OVERVIEW

1. Melbourne City Council (**Council**) is the Planning Authority for Amendment C387 (**Amendment**) to the Melbourne Planning Scheme (**Scheme**).
2. This Part C submission addresses the submissions made in relation to the substantive content of the Amendment that Council has not yet addressed in the Part A submission circulated on 2 August 2021, the Part B submission circulated on 26 August 2021 and the expert evidence called by Council.
3. Further, this submission seeks to directly respond to specific questions raised by the Panel throughout the course of the hearing.

II. RESPONSE TO THE ENQUIRIES OF THE PANEL

4. The Panel has raised a number of specific matters about which it seeks a response from Council in its Part C submission.
5. These matters are:
 - (a) identification of the changes to the Amendment agreed between Council and submitters to the Panel;

- (b) a status update in relation to planning applications if possible, with a focus on sites with active demolition permits; and
- (c) a response to Submission 53 in relation to the Flinders Street Viaducts;
- (d) a response to the submission of Melbourne Heritage Action in relation to the expansion of the Little Lonsdale Street precinct;
- (e) whether improved or updated images ought be included in the Statements of Significance proposed to be incorporated into the Scheme;
- (f) Council's explanation of the genesis, meaning and operation of the term 'significant heritage place' in clause 22.04;
- (g) a copy of the consultant's brief for the HGHR. This has been included in Appendix A1.

A. CHANGES TO THE AMENDMENT

- 6. Council's Part B submission identified a number of changes to the Amendment accepted by Council. Appendix A includes an updated list of changes to the Amendment and the agreed Statement of Significance in relation to the RACV Building.

B. PLANNING PERMIT UPDATE

- 7. A status update with regard to specific planning permits is provided at Appendix B.

C. FLINDERS STREET VIADUCTS

- 8. The totality of Submission 53 provides:

The Australasian Alliance of Walking Activity Groups (AAWAG) supports a focus for walking under and near the Flinders Street Viaducts.

View lines to the structure above from further away, such as across the other side of streets and the left bank of the Yarra River need to form a component of the the (sic) historic walking environment and precinct.

The railway viaduct is in part still supported using rubber bearings on skew piers, a practice which railway structural engineers have only accepted again in recent history in Victoria.

9. This submission makes an assertion regarding a feature of the construction of the railway viaduct – namely, that it is supported using rubber bearings on skew piers. The implication of the submission appears to be that it is appropriate to include this information within the Statement of Significance for the Flinders Street Viaducts.
10. Evidence of this feature has not been provided to the Panel, and Council has not been able to satisfy itself that this assertion is correct. Further, while the Flinders Street Viaducts are identified as meeting the threshold for Criterion F, technical significance, there are no submissions or evidence before the Panel that this component of the structural support (if evident) is properly regarded as important in demonstrating a high degree of creative or technical achievement, or innovative. In these circumstances, and noting that VicTrack has elected to not participate in the Amendment, Council does not consider it appropriate that the Statement of Significance be amended to include reference to rubber bearings on skew piers.

D. EXPANSION OF THE LITTLE LONSDALE STREET PRECINCT

11. Submission 51 from Melbourne Heritage Action included the following submissions with regard to the proposed expansion of the Little Lonsdale Street precinct:

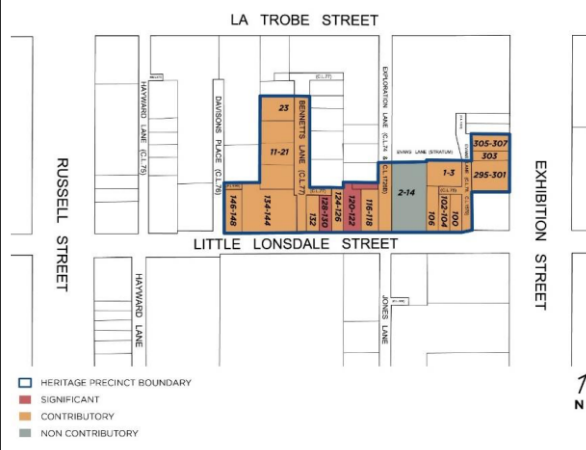
We also note that the Little Lonsdale Street precinct extension might be tenuous. The original precinct came about as part of our lobbying efforts in 2011, and was limited to a short run of buildings all built before WW1, from the 19th century 'slum' era or the immediately following industrial era. The proposed expansion extends it to a disparate range of places such as an electrical substation, and a former car showroom. The integrity of the precinct is also greatly undermined by the large modern apartment tower on the corner of Exploration Lane.

12. It is correct that the precinct was originally identified by Melbourne Heritage Action, but Council does not agree that the expansion of the precinct is tenuous or would undermine it.
13. The Little Lonsdale Precinct originally extended from Bennetts Lane to Exploration Lane. The Amendment proposes to extend the precinct to both the east and west.

STATEMENT OF SIGNIFICANCE

Heritage Place: Little Lonsdale Street Precinct

PS ref no: Interim HO1297



14. Council considers the proposed expansion of the precinct is strategically justified, well considered and supported by the proposed citation and Statement of Significance. While the property at 2-14 Exploration Lane is Non-Contributory, and the property at 106 Little Lonsdale Street is to be recategorised as Non-Contributory due to its later construction date, Council submits that the precinct retains sufficient cohesion and legibility.

E. IMPROVED OR UPDATED IMAGES IN THE STATEMENTS OF SIGNIFICANCE

15. Council considers the images contained within Statements of Significance should be sufficiently current and clear such that they properly inform and assist in future decision-making. Where the Panel considers images contained in Statements of Significance are not satisfactorily contemporary or clear, the Council request a recommendation that they be updated prior to adoption of the Amendment.

F. ORIGIN OF DEFINITION OF SIGNIFICANT HERITAGE PLACE

16. This issue is addressed in detail below.

III. IMPLICATIONS OF A HERITAGE OVERLAY IN THE HODDLE GRID

A. IMPORTANCE OF THE HODDLE GRID

17. Council agrees with submitters that the social and economic impacts of the Amendment are relevant and notes that they are addressed in the Explanatory Report.

Council also agrees that planning policy for the central city in addition to heritage policy is generally relevant to any planning scheme amendment. In circumstances where policy expressly identifies the importance of heritage to the identity, prosperity and reputation of the capital city, it would be wrong to proceed on the basis advanced by some submitters that heritage protection is mutually incompatible with the broader economic and social roles of the central city. In supporting clearer and more expansive heritage policies aimed at achieving good heritage outcomes in the central city, the C258 Panel said at page 23:

Good heritage outcomes are critical within the central city as well as the surrounding neighbourhoods. The central city is in many respects the showcase for Melbourne and heritage places play a key part in defining its identity - they lend the city its own particular character. Retaining and enhancing the city's identity contributes social and economic benefits.

18. Notwithstanding vague submissions to this effect, there is no evidence before the panel of adverse social or economic impacts associated with the Amendment. There is no evidence before the Panel that the environmental performance or workplace amenity is compromised in the buildings proposed for heritage protection or will be compromised if Heritage Overlays are applied. And there is no evidence before the Panel that adaption of heritage buildings is not possible or unviable. To the contrary, Mr Biles accepted that there are many examples of successfully redeveloped heritage places in the Hoddle Grid, including examples of postwar heritage buildings such as the former Russell Street Automatic Telephone Exchange and Postal Building at 114-120 Russell Street.
19. Council does not agree that the social and economic importance of the central city is a matter which informs whether the threshold for local significance for the purposes of a Heritage Overlay is satisfied, as was suggested in oral submissions on behalf of the Julliard Group. Such an approach tends to confuse the exercise of determining whether the threshold for protection is met. Whether the threshold for local significance is met remains the primary consideration for the Panel in considering submissions to the Amendment. While in principle there may be circumstances where countervailing evidence demonstrates that other considerations override heritage significance to an extent that a Heritage Overlay should not be introduced, no such evidence has been called in this hearing.

20. Rather, the material before the Panel demonstrates that there is a reasonable balance within the Hoddle Grid of land subject to heritage controls and land not subject to heritage controls; a reasonable balance between prewar and postwar buildings recognised as Significant; a policy framework which distinguishes management of heritage places inside and outside the capital city; and many instances of successfully redeveloped heritage places which achieve balanced planning outcomes for the city.
21. In Council's submission, no submitter has advanced a good reason for the Panel to depart from the findings of the C305 Panel set out in the Part B submission in relation to the compatibility of heritage protection with opportunities for urban growth in the central city.

B. IMPACT OF A HERITAGE OVERLAY

22. Although many submissions proceeded on the basis that introduction of a Heritage Overlay amounted to a defacto prohibition on demolition, this is not a proper reflection of the discretion available under the Heritage Overlay, the role of heritage policy, the integrated planning decision making contemplated by clause 71.02-3 and the principles established by the Court of Appeal in *Boroondara CC v 1045 Bourke Road Pty Ltd* [2015] VSCA 27. Following a discussion of the centrality of integrated decision making in the Victorian planning system commencing at [30], Warren CJ explained at [39]-[40]:

...Although the Tribunal would have refused to grant a demolition permit sought in isolation on the basis of heritage considerations, in the context of the overall development proposal it considered that demolition was justified. It follows that the Tribunal was satisfied that a demolition permit would be granted in that context. Since it was also so satisfied in respect of the other triggered permit requirements, it was possible for the Tribunal also to be satisfied that it should grant the overall permit that the respondent sought. Every permit requirement 'box' was 'ticked'. But had there been a 'cross' on demolition, it would not have been open to the Tribunal to grant a permit for the overall development, given that it would entail the demolition of Arden.

The sense in which it is not necessary to tick every box is at the level of the particular considerations that are relevant to a decision whether to grant a permit, subject of course to the applicable decision guidelines. It is for this reason that in this case, where there was a 'cross' for heritage considerations but a 'tick' on many other considerations, it was possible for the Tribunal to arrive at an integrated decision, balancing all relevant considerations in the context of the global application, that a demolition permit should be granted, even though it was the Heritage Overlay that originally imposed the requirement for a demolition permit.

23. In Garde AJA's reasons, he explained at [134] and [142]-[143]

The correct statement of the position is that in deciding whether a permit should be issued under the Heritage Overlay control, the decision-maker is required to take into account all of the considerations directed by the Act and the Scheme to be taken into account for an application under that control. These are not confined to heritage considerations as is apparent from ss 4, 60 and 84B of the Act, and cls 15, 20, 21, 22, 43 and 65 of the Scheme.

...

In reaching its decision, the Tribunal did take into account considerations extending beyond strictly heritage considerations. Those considerations included the architecture of the proposed building, neighbourhood character policy, development on main roads, the physical and strategic context, and the interfaces of the site.

All of these considerations were relevant considerations in an application under the Heritage Overlay having regard to the provisions of the Act and the Scheme. So too are considerations such as urban consolidation, housing diversity, sustainable development and urban design. The weight to be given to these considerations is fundamentally for the decision-maker and not for the Court to determine.

24. These principles are well illustrated by the Tribunal's decision in *University of Melbourne v Minister for Planning* [2011] VCAT 469 in which the Tribunal balanced the policy support for retention of Ampol House, a C grade heritage building in a site specific Heritage Overlay in the City of Melbourne against the need for a purpose built infectious diseases research facility and ultimately approved full demolition and redevelopment for the Peter Doherty Institute.
25. The Heritage Overlay in the VPP format planning scheme does not operate in the same way as clause 216 under the old format Melbourne planning scheme which prohibited demolition of notable buildings, irrespective of competing planning considerations.

C. CONSEQUENCE OF THE AMENDMENT

26. As matters presently stand for most redevelopment in the capital city, a permit is required for demolition by virtue of the Schedules to the Capital City Zone. Other than a general requirement in the buildings and works control to take into account the policy framework, nothing in the Zone or Schedules indicates that heritage considerations are relevant to the exercise of discretion in relation to demolition. Unless the place is in a Heritage Overlay, heritage policy which refers to the various heritage studies does not apply. Because a permit is required for demolition and because some graded buildings are not included in the Heritage Overlay, confusion

arises as to whether the grading of the building is relevant in deciding whether to allow demolition. The Amendment resolves this uncertainty by including graded buildings which satisfy the threshold for local significance in the Heritage Overlay so that their heritage status is relevant to the question of demolition and by including all other extant formerly graded buildings from previous studies in Appendix 6 to provide clarity that they do not have heritage values protected by the Scheme.

27. Insofar as it has been suggested that the only relevant information about the significance of a place for future management is that contained in the incorporated statement of significance, Council notes that the Amendment in relation to any given place consists of four components: inclusion of the land in the Heritage Overlay map and Schedule to clause 43.01; incorporation of the Significant or Contributory status of the place in the Heritage Inventory; incorporation of the statement of significance in the planning scheme; and inclusion of the HGHR as a reference document to clause 22.04. It is not correct to assert that only the Heritage Overlay and the statement of significance are relevant in understanding why a place is included in the Heritage Overlay.
28. Although it does not form part of the planning scheme, the HGHR and its citations, including the statement of significance for each place have informed the Amendment, provide information to explain why each place was proposed for inclusion in the Heritage Overlay and assist in understanding the significance of the place in question. Moreover, the provisions of clause 43.01 give an additional role to the HGHR and its citations in the exercise of discretion under the Heritage Overlay.
29. Clause 43.01-5 requires specification of a statement of significance for each heritage place in the schedule to the Heritage Overlay. Clause 43.01-8 provides *inter alia*

Before deciding on an application, in addition to the decision guidelines in Clause 65, the responsible authority must consider, as appropriate:

The Municipal Planning Strategy and the Planning Policy Framework.

The significance of the heritage place and whether the proposal will adversely affect the natural or cultural significance of the place.

Any applicable statement of significance (whether or not specified in the schedule to this overlay), heritage study and any applicable conservation policy.

...

30. It can be seen that clause 43.01-8 requires consideration of any applicable statement of significance *and* a heritage study *and* any applicable conservation policy; consequently, in considering a permit application under clause 43.01, the HGHR including its citations will be a relevant consideration. Because the HGHR has been adopted by Council, it will be a relevant consideration under s60(1A)(g) of the Act. Council does not agree that the qualifying words “as appropriate” in clause 43.01-8 will render the citations irrelevant to the exercise of discretion, but it accepts that the incorporated statements of significance are to be given greater weight than the citations in understanding why a place is of significance. This is consistent with the requirements of clause 43.01-5 introduced as part of VC148; the expectations of the Practice Note 1 for the contents of a statement of significance; and the greater weight to be given to the incorporated content of a scheme as opposed to a reference document which sits outside the scheme.
31. The relative weight to be given to the HGHR citations compared with the incorporated statements of significance will be further influenced by the provisions of clause 22.04.
32. Clause 22.04 states that it is to be applied in conjunction with Statements of Significance as incorporated into the scheme. It then provides a definition of *assessed significance* which reads:

The assessed significance of an individual heritage place or heritage precinct is identified in the relevant Statement of Significance, as contained in the place citation. This normally identifies what is significant, how it is significant, and why it is significant.

33. Two of the stated policy objectives are:

To recognise and conserve the assessed significance of heritage places and streetscapes, as referenced in this policy or incorporated into this planning scheme as the basis for consideration of development and works. Further information may be considered, including in relation to streetscapes, where there is limited information in the existing citation or council documentation.

To ensure new development is respectful of the assessed significance of heritage places.

34. Under the policy in clause 22.04, *assessed significance* is relevant to demolition and to alterations.
35. These policy provisions relating to assessed significance reinforce the greater weight to be given to incorporated statements of significance compared with the full citations in the HGHR.
36. Accordingly, it is important that the statements of significance satisfactorily reflect the content of the citations in terms of capturing what, how and why a place is significant. If the Panel forms the view that the statements of significance should be expanded or refined in relation to any place by reference to the content of the HGHR citation for that place, Council requests it to make a recommendation to that effect. As part of the exhibited material, the contents of the HGHR citations are part of the Amendment, are known to all submitters and have been the subject of extensive evidence and cross examination.
37. In this respect, Council records the position conveyed on 27 August that it does not seek to vary the citations or statements of significance to introduce new criteria based on the evidence of Mr Reeves; that it regards the citations and statements of significance together as sufficient to support inclusion in the Heritage Overlay; and that if the Panel or parties consider that further matters should be included, it is open to the Panel to make recommendations accordingly. In this regard, Mr Reeves' material provides further information and the Panel hearing has provided the opportunity to test or take issue with that material.

IV. PREVIOUS STUDIES

38. In relation to postwar buildings, the following matters should be appreciated about the previous heritage studies:
 - (a) The 1985 Study included buildings after 1960 only if they were 'award winning';
 - (b) The 1993 Study only graded postwar buildings which satisfied the descriptions 'exceptional', or of 'real significance' for either their 'quality' or because they 'acted as landmarks of style or construction' and excluded buildings which were representative.

39. In relation to all buildings, the following matters must be appreciated from previous studies:
- (a) Neither the 1985 Study nor the 1993 Study utilised the HERCON criteria which are now contained in Practice Note 1;
 - (b) Following the 1993 Study, only Notable buildings were protected by a control which prohibited demolition and only buildings in a heritage precinct were protected by a control which required consideration of heritage matters in assessing permit applications. Accordingly, there was no scope to protect C and D graded buildings outside a precinct, unless they met the high threshold for Notable buildings. In Council's submission, the threshold for Notable buildings in 1993 is a higher threshold than the threshold for local significance in 2021, not least because such status provided full protection from demolition;
 - (c) The 2002 study did not involve any further review of ungraded buildings and was not progressed in relation to new Heritage Overlays in any case;
 - (d) The 2011 Study did not involve any further review of ungraded buildings.
40. In the circumstances, it is submitted that a C or D grading or the absence of a grading from a previous study cannot be regarded as determinative of or even influential in an assessment of a building's local significance for the purposes of an individual Heritage Overlay in 2021. The evidence of Mr Gard'ner is that recognition, including by a heritage consultant, can change with the effluxion of time in relation to rarity and significance.

V. CRITERIA AND DEFINITION OF 'SIGNIFICANT HERITAGE PLACE'

A. CRITERIA

41. The Act refers to conservation of buildings, areas or other places which are of scientific, aesthetic, architectural or historical interest or otherwise of special cultural value.
42. It can be seen that this list of interests and values does not completely align with the HERCON criteria in the Practice Note, but does appear to cover Criteria A, D, E and F, where architectural interest is understood to align with representativeness.

43. It can further be seen that the list of kinds of significance in clause 22.04: historic, aesthetic, scientific, social or spiritual does not completely align with either the Act or the HERCON criteria. Taken literally, it would appear to exclude Criterion D architectural representativeness.
44. The common approach between Council, the submitting parties and all expert witnesses is that the appropriate criteria to employ are the HERCON criteria set out in the Practice Note.
45. Council does note that although aesthetic and architectural significance are not used interchangeably in s4 of the Act and although representative and aesthetic significance are not used interchangeably in the HERCON criteria, it appears to be the practice of some heritage consultants to conflate and overlap them, a practice which tends to confuse and obscure the distinction between Criteria D and E.

B. CLAUSE 22.04

Definition of ‘Significant heritage place’

46. Clause 22.04 provides the following definition of ‘Significant heritage place’:

A significant heritage place is individually important at state or local level, and a heritage place in its own right. It is of historic, aesthetic, scientific, social or spiritual significance to the municipality. A significant heritage place may be highly valued by the community; is typically externally intact; and/or has notable features associated with the place type, use, period, method of construction, siting or setting. When located in a heritage precinct a significant heritage place can make an important contribution to the precinct.

Role of policy

47. As part of the planning policy framework in the planning scheme, clause 22.04 provides guidance for decision making: a planning authority must take it into account in preparing an amendment; and a responsible authority must take it into account and give effect to it when making a decision: cl 71.02-2.
48. Clause 23.03 explains how local policies operate:

A Local Planning Policy is a policy statement of intent or expectation. It states what the responsible authority will do in specified circumstances or the responsible authority’s expectation of what should happen. A Local Planning Policy gives the responsible authority an opportunity to state its view of a planning issue and its intentions for an area. A Local Planning Policy

provides guidance to decision making on a day to day basis. It can help the community to understand how the responsible authority will consider a proposal. The consistent application of policy over time should achieve a desired outcome.

When preparing amendments to this planning scheme and before making decisions about permit applications, planning and responsible authorities must take any relevant Local Planning Policy into account.

49. Local policy does not act as a mandatory requirement. It guides rather than dictates decision making: *SMA Projects v Port Phillip CC* [1999] VCAT 1312.
50. Although clause 22.04 contains definitions and these must be taken into account by planning authorities, the definitions do not have the same force as definitions contained in a zone, overlay or clause 73.

Relationship with Practice Note

51. The role of the Practice Note is to provide guidance about the use of the Heritage Overlay and to identify what places should be included in the Heritage Overlay. It reflects the expectations of the Minister and the Department about a uniformity of approach to be taken to Heritage Overlays across all municipalities in Victoria.
52. The Practice Note has a narrower and more specific role than that of policy in clause 22.04 which is relevant to both strategic and statutory planning, but is principally directed to management of heritage places once they have been included in a Heritage Overlay.

History in Amendment C258

53. The definition of 'Significant heritage place' was introduced into clauses 22.04 and 22.05 as part of Amendment C258. Amendment C258 was the culmination of four significant pieces of work called for by Council's Heritage Strategy:
 - (a) The heritage policy review which reviewed clauses 22.04 and 22.05 and introduced definitions of Significant, Contributory and Non-Contributory places;
 - (b) The grading conversion which converted the former A-D letter grading system to a Significant, Contributory and Non-Contributory categorisation system based on the definitions from the policy review;

- (c) The preparation of statements of significance for the 6 large precincts outside the Capital City Zone in Carlton, East Melbourne and Jolimont, North and West Melbourne, Parkville, South Yarra and Kensington;
 - (d) The implementation of the West Melbourne Heritage Review, which used the Significant and Contributory definitions.
54. An explanation of relevant background, submissions and evidence to the C258 Panel, the C258 Panel recommendations and Council's response to the recommendations is found in Appendix C.
55. The definitions in clause 22.04 were developed by Lovell Chen as part of its review of the heritage policies. Council accepted Lovell Chen's recommended definitions and progressed the Heritage Policy Review and the Heritage Grading Review using these definitions. The definitions were not altered during the progress of Amendment C258 because other planning scheme amendments such as C271 for Guilford and Hardware Laneways, C305 for Southbank and C327 (as it then was) for the Hoddle Grid had commenced and utilised the definitions.
56. What can be understood from the background material associated with Amendment C258 is that the principal initial purpose of the definitions was to inform the conversion from A-D gradings to categorisation as Significant and Contributory. Because it was converting from A-D letter gradings to a new classification system, Council sought to incorporate some of the concepts from the old letter grading definitions into the policy review, including for example use of the terms historical, social, aesthetic, scientific, and a reference to intactness. However, it can clearly be seen that there was no direct translation from the previous letter grading definitions (Panel Document 58) into the new Significant and Contributory definitions. Moreover, it should also be understood that the previous letter grading definitions were contained in the previous version of clause 22.05 for heritage places outside the Capital City Zone but the previous version of clause 22.04 contained no letter grading definitions at all.
57. What can further be seen from the background to Amendment C258 is that the specific content of the definitions was not addressed in detail in the evidence, it was not in issue at the panel hearing and was not the subject of detailed consideration by the Panel given

the Panel's recommendation not to proceed with the concept or definition of 'Significant heritage place'.

Meaning

58. In Council's view, the definition of 'Significant heritage place' can be understood in three parts. The first sentence of the definition explains the necessary threshold of individual importance in its own right; the reference to importance mirrors the language of the HERCON criteria A, D, E and F and the language of the Practice Note which describes local significance to include 'those places that are important to a particular community or locality'.
59. The second part of the definition contains inclusive descriptions which provide a deeper understanding of what kind of place is a significant heritage place.
 - (a) The second sentence in the definition lists four types of significance, but the list does not align with the eight HERCON criteria and does not expressly refer to rarity, research potential, representative or associative significance. It cannot be taken that places which meet one of these four criteria cannot be significant heritage places in Melbourne because those criteria are not listed in the definition.
 - (b) The third sentence in the definition lists three characteristics which are joined by the expression 'and/or'; this expression conveys that any, some or all of those characteristics (but not none of those characteristics) will be found in a significant heritage place. The first of the characteristics is plainly expressed in optional language; the second is qualified by the expression 'typically' (not 'substantially' or 'highly') which either refers to typical levels of intactness or allows variations from a condition of intactness; the third contemplates notable features associated with any of a set of six identifying categories. It can be observed that 'notable' is not defined in the clause, elsewhere in the Scheme or in the Act and hence is to be given its ordinary meaning which can be discerned from the dictionary. The Shorter Oxford English Dictionary variously defines notable as "worthy or deserving of note, especially on account of excellence, value or importance; remarkable, striking, eminent; easily noted, attracting notice, conspicuous; able to be noted or observed." The use of the term 'notable' in the definition in clause 22.04 is to be distinguished from the meaning and operation given to Notable

Buildings under the old format planning scheme. ‘Notable example’ is also an expression used and explained in the VHR Guidelines for the threshold for criterion D.

60. Finally, the third part of the definition explains the relationship between a significant heritage place and a precinct: namely, that it may (but need not) be contributory to a precinct.
61. In Council’s submission, the first part of the definition is the necessary precondition for being a ‘Significant heritage place’; the second part of the definition is a description of potential qualities of a significant heritage place but does not establish further preconditions for a significant heritage place; the third part of the definition explains an operational relationship which may arise for a significant heritage place in a precinct, but again does not prescribe a necessary precondition for a significant heritage place. Strictly speaking, the definition goes beyond specifying the necessary and sufficient conditions for a place to be a member of the specific set of significant heritage places.
62. The definition of ‘Significant heritage place’ needs to be read alongside the definition of ‘Contributory heritage place’ which adopts a similar structure: first in describing a place as important for its contribution to a precinct; second in referring to four of the 8 HERCON criteria; third in giving three characteristics joined by the expression ‘and/or’. Of the three characteristics, the first is common with significant heritage place; the second refers to a representative example of type, period or style; the third refers to combining with other visually or stylistically related places to demonstrate historic development.
63. What can be gleaned from this comparison is that the intactness of a place or the notable features of a place contrast a ‘Significant heritage place’ from the representative example or combined effect of a ‘Contributory heritage place’. What should not be taken from this comparison is that a significant heritage place cannot satisfy criterion D in its own right. Such an interpretation would directly conflict with the protection of places of architectural significance in the Act, with the provisions of Practice Note 1, with established heritage practice, with the conceptual analysis informing the VHR Guidelines and with the inclusion of places in individual Heritage Overlays (and thus subject to the definition of significant heritage place) for criterion D architectural representativeness. Some examples are included in Appendix D.

64. Council does not support a legalistic interpretation of the definition. As is evident from the background to Amendment C258, the definition was drafted by a heritage consultant not by a lawyer. The second part of the definition should not be seen as either necessary or sufficient to satisfy the accepted threshold of importance. That is, a place might be highly valued by the community but not individually important in its own right; equally, a place might be important in its own right but not exhibit any of the characteristics listed in the second part of the definition.
65. Rather than being a prescriptive tool to determine whether a building is a significant heritage place, the aspects of the definition which go beyond the requirement of importance should be seen as various characteristics which may be found in a significant heritage place. That is, the definition is descriptive or illustrative rather than a set of necessary preconditions which must be met before a place can be included in an individual Heritage Overlay.
66. In this regard Council agrees with Mr Morris's submissions to this Panel to the effect that the components of the definition are not absolute requirements but qualitative factors that influence whether a building is thought to be individually important.
67. As noted by Council in its oral Part B submissions, the concept of importance is central in Clause 22.04. The definition of Significant heritage place does not imply it is limited to a restricted number of places; it is neither inherently exclusive or exclusionary. It invokes the notion of a threshold in its reference to 'importance' but the language does not, of itself, invoke a comparison. It requires heritage places to be of a certain standard – not a 'better' standard by reference to other places.

Operation

68. Treating the definition as descriptive rather than prescriptive requirement for inclusion in a Heritage Overlay is consistent with the approach of the C305 Panel for Southbank which excluded the definitions in the policies from the categorisation exercise and stated in the executive summary at page 2:

Heritage places should be categorised consistent with guidance in Planning Practice Note 1. Each place's category will determine which policies in either Clause 22.04 or 22.05 are applicable. These policies, as introduced through Amendment C258, should not influence how heritage is categorised.

69. Specifically, in relation to the University of Melbourne's submission for 45-99 Sturt Street (PMG workshops) the C305 Panel stated:

Council, the C258 Panel and the Minister for Planning considered that heritage policy introduced into the Planning Scheme through Amendment C258 was an appropriate response to heritage properties. The Panel Hearing process for that Amendment provided an opportunity to express their views. This includes whether they consider the policies somehow elevate a heritage place to a higher 'grading'.

Amendment C258 introduced more focussed policies for different heritage places. Each place's category will be determined through separate planning scheme amendments.

Amendment C305 is one such amendment. It seeks to apply the Heritage Overlay to properties considered to have sufficient local heritage significance. It does this by categorising them as contributory or non-contributory within a precinct, including them in a thematic group, or as an individual listing.

Each property needs to be objectively assessed to determine how they should be categorised. Planning Practice Note 1 provides guidance on assessing potential heritage places and there should be no influence beyond this scope.

Reverse engineering a property's category to achieve a more favourable policy outcome would directly conflict with objectives in the Act and with State policy which seek to protect heritage places for present and future generations.

(v) Conclusion

The Panel concludes:

- *Heritage places should be categorised consistent with guidance in Planning Practice Note 1.*
- *Policy introduced through Amendment C258 should not influence how heritage is categorised.*

70. For these reasons, Council submits that the Panel should focus on the question of importance for the purposes of criterion A, D and E in determining whether the threshold for local significance is met, rather than trying to fit places into the second part of the definition of 'Significant heritage place'. It is noteworthy that none of the witnesses addressed their evaluation of local significance to the second part of the definition of 'Significant heritage place', focusing instead on the HERCON criteria found in Practice Note 1 and further analysed in the VHR Guidelines.

VI. TOOLS

71. There are a number of tools that have been utilised by submitters and experts to assist the Panel in ascertaining the appropriate threshold for local Significance and determine whether individual places meet the threshold.

72. These tools are Clause 22.04, the Practice Note and the VHR Guidelines. Almost without exception witnesses relied on the Practice Note criteria rather than the definition in clause 22.04 in evaluating the significance of a place.

A. CLAUSE 22.04

73. For the reasons set out above, the factors mentioned in the definition are not necessary preconditions but rather descriptive characteristics that have a bearing on whether a place meets the standard of individually important.

B. PRACTICE NOTE

74. The Practice Note is not incorporated into the Scheme and does not have the status of a Ministerial Direction and accordingly is not a mandated consideration. However, it contains directions which are universally applied across all heritage amendments at local government level, provides helpful guidance and is a tool utilised by all experts and submitters before the Panel.

75. The Practice Note provides a qualitative dimension to each criterion of significance. It further requires that the Statement of Significance for each place establish the importance of the place to the municipality.

76. With regard to comparative analysis, the Practice Note provides:

To apply a threshold, some comparative analysis will be required to substantiate the significance of each place. The comparative analysis should draw on other similar places within the study area, including those previously included in a heritage register or overlay. Places identified to be of potential state significance should undergo analysis on a broader (statewide) comparative basis.

77. Importantly, this is not a prescription. Rather it is a direction to look for similar places in the Heritage Overlay or the Victorian Heritage Register, and does not exclude consideration of places not already subject to heritage protection.

78. Further, while it is clear the Practice Note is seeking important examples to warrant inclusion in the Heritage Overlay, the Practice Note does not set a threshold of ‘early’ or ‘fine’ or identify that places be ‘the best’, or indeed ‘better than most’.

C. VHR GUIDELINES

79. It has been acknowledged throughout the Panel hearing that the VHR Guidelines were not prepared to assist in ascertaining the threshold for local significance. They were prepared to assess places for inclusion on the Victorian Heritage Register. Accordingly, it is exceedingly important that when utilised at a local level, the role for which they were prepared is kept front of mind. They are deliberately set at a high level to reflect the high level of importance required for places of State significance.
80. The VHR Guidelines are useful in fleshing out the criteria as defined in the Practice Note and accordingly can assist in heritage assessment at the local level. Mr Gard’ner’s assessment, cautious to avoid distortion, utilised Step 1 as a way of understanding the nuances of the criteria. Step 2 was employed carefully and only in relation to Criterion D. Mr Gard’ner further considered the definitions to be useful where they could be applied within the context of the municipality without unduly distorting the analysis.
81. All other experts appearing before the Panel who utilised the VHR Guidelines accepted they should be used with caution and that it was not simply a matter of substituting ‘Melbourne’ for ‘Victoria’ in the text. However, this caution was not always evident in their analysis. In Council’s submission a number of assessments inappropriately utilised every step of every test, including exclusionary criteria. The most obvious distortion arising from use of the VHR Guidelines in this way is the expectation that buildings will allow a clear association with an historical phase to be understood ‘better than most’ others with the same association; places of local level significance will rarely if ever enable better understanding of an important historical phase than places of State level significance, so where both are found in a municipality application of this test would disqualify any local level historical significance.
82. Another obvious distortion arises in circumstances where the tests for State significance require that a building be exceptional, outstanding or landmark; this evidently sets the threshold too high for significance at a local level.

83. The utilisation of the VHR Guidelines in relation to Criterion A and D is discussed further below.

VII. INTACTNESS

84. Advocates asked questions of Mr Gard'ner and Mr Reeves and made submissions to the Panel to the effect that there should be no or exceedingly limited variation to the expectation of intactness just because a place was located in the Hoddle Grid where development imperatives and pressures are greatest. However, no expert witness expressed this view or gave evidence to the Panel that it was an appropriate position to adopt with regard to the Amendment.
85. Mr Gard'ner's evidence was clear that if no or limited allowance for alterations is made, at ground level in particular, the heritage resource in the municipality would be severely diminished. That is not to say it is Council's position that changes at ground level can never be relevant and that every alteration at ground is automatically regarded as meaningless when considering intactness and integrity. Rather, it is a question of whether the intactness at ground level, or lack thereof, affects the overall integrity of the built form such that it is no longer sufficiently legible to warrant inclusion in the Heritage Overlay.
86. In undertaking this assessment, it must be noted that many buildings are included within the Heritage Overlay and indeed on the Victorian Heritage Register despite the fact that much if not all original heritage fabric has been lost at the ground level.¹ The question that has clearly been considered in these cases – and in Council's view, the appropriate question – is whether the loss of the ground level affects the legibility of the whole to such a degree that heritage protection of the remaining fabric is no longer warranted.
87. This approach appears to have been adopted by all experts giving evidence to the Panel.
88. In his evidence in chief for Nubrik House, Mr Raworth said *"I agree with the GJM view that you have to expect there will be some degree of change"*. Mr Statham agreed in cross-examination that in the Hoddle Grid it is appropriate to give attention to building fabric above street level, and in the event that fabric is intact, what has happened at ground level is of less importance. Ms Gray noted in her evidence in chief *"Ground floor level changes are common*

¹ A selection of these buildings is included within Council's Part B submission.

and it is unusual to find buildings that do not have alterations". In response to questions in cross-examination, Ms Gray said *"I accept entirely it's commonplace, and is more often the case than not. My observation was to say that, depending on the building it can have a greater or lesser impact on legibility"*. In response to a question asked in cross-examination for Paramount House about whether intactness is absolute, Mr Trethowan replied *"It is not, it is a term that's hard to apply. A certain level of change is acceptable"*. He further agreed that ground level changes are *'quite typical'* in the Hoddle Grid. When asked whether it was correct that it would be inappropriate to disqualify buildings in the Hoddle Grid on the basis of ground floor alterations, because that would exclude postwar buildings altogether, Mr Trethowan replied *"That's correct"*.

89. Buildings in the Hoddle Grid will typically have experienced a degree of change, and ground level alterations are ubiquitous. This ought not be regarded as unacceptable or an impediment to inclusion in the Heritage Overlay, but instead it should be understood as an inherent characteristic of the Hoddle Grid. With regard to postwar buildings, typical elements of their original design and construction including ground floor plazas, loggias or colonnades have typically been eroded over time as a result of commercial pressures to maximise the income-earning floorspace of a building and modernise a building.
90. Accordingly, intactness is a relative and not an absolute term.
91. Appendix 5 of Volume 1 of the HGHR employed the use of a benchmarking tool to ascertain the degree of change that could reasonably be regarded as common in the Hoddle Grid and to assist in establishing whether alterations had reduced integrity or legibility. It was a useful aid, but Mr Gard'ner did not apply it slavishly; rather it informed his judgement about the overall legibility of a place.²
92. Considerations of whether a building is 'reasonably' intact reflect the inclusion of other places within the Heritage Overlay in the Hoddle Grid in the past notwithstanding changes to them. The Scottish Amicable building, utilised by Mr Raworth as a comparator in a number of his expert witness statements, and plainly regarded by Mr Raworth as a very high quality building worthy of its inclusion in the Heritage Overlay,

² At [70] of his evidence, Mr Gard'ner said it assisted in establishing whether or not the alterations had so changed a place that its integrity was reduced to the point that it did not warrant inclusion on the Heritage Overlay.

had significant alterations at ground level. This fact did not preclude recognition and protection of its remaining heritage fabric.

93. Council considers this approach is appropriate and that notions of buildings being ‘very highly’ or ‘exceptionally’ intact are inappropriate for the Hoddle Grid, unsupported by expert evidence and inconsistent with the approach of previous panels.

VIII. CRITERION A

94. There was substantial discussion throughout the Panel hearing with regard to the appropriate application of Criterion A, and specifically whether it had been applied too broadly with regard to postwar buildings which share the same historical association.
95. Mr Gard’ner’s evidence is that the buildings recognised under Criterion A are a number of largely intact buildings constructed in the same important but relatively short period. While they have individual or distinct styles, owners or purposes, they share a historic narrative and are variations of the modernist movement of the postwar period. Rather than a ‘generic’ association, the group is regarded as having a shared or common association. Mr Gard’ner’s view is that Criterion A is *prima facie* satisfied if the place was constructed in a significant period, or for a purpose that was important, while retaining sufficient intactness to its period of construction; for the historical association to reach the threshold of importance, the place must demonstrate the association at least as well as other local examples with the same association.
96. A number of experts in their reports sought to rely upon the VHR Guidelines in their assessment of Criterion A, then conclude that the place in question did not meet the criterion as the required association was not immediately legible in the built fabric. Even at the State level, historical associations are not required to be evident in built fabric. It is sufficient if the association is evident in physical fabric and/or documentary resources or oral history. As Mr Gard’ner explained, there are a relatively small number of building types that are able to clearly demonstrate their use and function through their fabric alone – such as a church, theatre or the platforms of a railway station. The vast majority of heritage buildings, commercial buildings in particular, do not have their history writ large on their façades, no matter how significant.

97. This does not mean they are not worthy of heritage recognition and excluding all places where heritage associations were not evident in built fabric would result in a severely diminished cultural landscape.
98. A number of experts also sought to add additional qualifiers for buildings identified pursuant to Criterion A such that a building only met the threshold if they were 'outstanding', a 'landmark' example, 'skyline changing' and/or 'better than most'. Importantly, no heritage studies in which this approach was taken to local significance were identified. Council considers all these additional tests are inappropriate on the basis that they set the threshold for local significance too high and would immediately exclude all buildings with a more humble form of development in favour of monumental towers covering a city block.
99. Further, applying the 'better than most' test is plainly appropriate at a State level but leads to the exclusion of places that are properly recognised as having historical significance at a local level. In Mr Gard'ner's view this approach inevitably leads to an outcome where only 'the best' of 19th century churches or 19th century terrace houses or 19th century shopping strips are protected at the local level. This is not consistent with the objectives of heritage policy and is more akin to the approach for places nominated to the Victorian Heritage Register. This is where the distortion is evident in utilising the VHR Guidelines without substantive (not just geographic) adjustment. It is contrary to long established heritage practice to protect only those places that are 'better than most' at a local level. A place doesn't have to be the best or the earliest to warrant inclusion. This simply sets the bar too high.
100. For all places with identified significance pursuant to Criterion A the HGHR has provided clear documentary evidence to link the historic uses, phases or events to the place. Further, in all cases the built fabric remains sufficiently intact to the period of significance to understand the fuller picture and to prompt an inquiry into the rich documentary resource which now exists in the citations in the HGHR.

IX. CRITERION D

101. Criterion D in Planning Practice Note 1 is:

***Criterion D:** Importance in demonstrating the principal characteristics of a class of cultural or natural places or environments (representativeness).*

102. Most experts who have appeared before the Panel have utilised the VHR Guidelines to seek to explore and draw out what it means to be important as a representative example. While giving evidence Mr Gard'ner noted that he considered it is not enough that a building demonstrate particular characteristics, a building must be a 'good' or a 'fine' representative example. In other words, it is not enough to be a 'merely' representative example, one must be something more.
103. In considering what it means to be a good representative example, Council's oral Part B submission noted that Criterion D tends to require the passage of time to recognise and appreciate the representative examples that are worth valuing. As illustrative of that point, it is evident that earlier heritage studies more often than not selected postwar buildings for recognition that are now classified as meeting Criterion E, or aesthetic significance. More than half the C grade buildings from 1993 are now put forward under Criterion E, and only a handful of the ungraded buildings in 1993 are now recognised for Criterion E. There is a clear reflection in earlier studies of a preference for aesthetic architectural significance rather than representative architectural significance.
104. Mr Gard'ner utilised the VHR Guideline definitions of 'notable' and 'fine' to assist in establishing whether a representative example could properly be referred to as a good representative example. Many other experts who have appeared before the Panel have done the same, but have rejected the aspect of the definition of 'fine' that includes reference to a large number of characteristics that is typical of the class on the basis that a building must be more than typical to be fine, and hence notable.
105. In rejecting this definition of 'fine', experts then sought to utilise their own terms to demonstrate what it means to be a good representative example and in doing so proceeded to assess whether the building in question:
- (a) was ugly;
 - (b) was least loved;
 - (c) provided a mannered response;
 - (d) was a landmark;

- (e) was outstanding;
- (f) had an architectural dialogue between the podium and the tower;
- (g) had an architectural dialogue between the front and the back;
- (h) was well resolved;
- (i) was better than most;
- (j) had architectural distinction;
- (k) was influential;
- (l) was remarkable;
- (m) was unusual;
- (n) was exceptional;
- (o) was influential;
- (p) was pivotal;
- (q) had a refined arrangement of elements;
- (r) showed a balanced arrangement;
- (s) displayed characteristics of a higher quality;
- (t) was exemplary;
- (u) represented a key evolutionary stage; and/or
- (v) demonstrated a higher order of importance.

106. Mr Raworth also suggested in response to questions of the Panel in relation to the building at 178-188 William Street that, by reference to the illustrative examples in the VHR Guidelines, Criterion D required an unusual typology or an unusual class of building – not a standard building type. Putting to one side for a moment the fact that this notion did not appear in Mr Raworth’s evidence for that building, or indeed any

other, there is just no reference to an unusual building type being a requirement of Criterion D in any of Clause 22.04, the Practice Note or the VHR Guidelines.

107. The most obvious difficulty with importing the terms referenced above into an assessment of representative significance is that they do not appear in the text of Clause 22.04, the Practice Note or the VHR Guidelines. Accordingly, to conclude that a building is not representative at a local level because it is not, for example, pivotal or influential, is to set the threshold for local significance even higher than the threshold for State significance.
108. The second difficulty is that many of the descriptors involve an assessment of stylistic taste and require judgements about the quality of the building that are both inherently subjective and appropriately within the scope of Criterion E, aesthetic significance. Both Mr Raworth and Mr Trethowan agreed that it was possible for a building to be important for representative significance at a local level, but in the Council's submission, both witnesses are importing notions more consistent with a building that is found to be of aesthetic significance pursuant to Criterion E.
109. Buildings that meet Criterion D are characteristic in their architecture. Buildings recognised under Criterion E are properly regarded as more impressive or pleasing visually, buildings which one would expect to be higher quality examples in terms of their design – buildings that are ground breaking or innovative, buildings that have received acclaim or recognition or buildings that are described as 'fine' in terms of their architectural resolution. Council submits that the opinion of a number of experts with regard to Criterion D has muddled the waters between the two criteria and transported into the threshold for Criterion D matters that properly belong to Criterion E.
110. In this regard, the Panel's question about whether examples or exemplars should be protected is apposite³ – Criterion D is concerned with representative examples that are important in demonstrating the characteristics of a class. Criterion E is concerned with exemplars by reference to their aesthetic significance. So much is evident from the Step 2 test for Criterion E in the VHR Guidelines which specifically asks whether the place

³ The subtle differences in meaning between these two terms is not readily apparent from the dictionary definitions of the two terms. Example is defined as 'a typical instance; a fact or thing illustrating a general principle; a person thing illustrating a certain quality'; exemplar is defined as 'a model for imitation; an example. A typical instance; a specimen; a typical embodiment of a quality'.

is appreciated or valued, has received critical recognition or acknowledgement of exceptional merit.

111. In Council's submission, buildings identified for representative significance ought not be held to the standard of aesthetic significance.
112. The other methods by which the buildings put forward under Criterion D may be assessed to establish whether they are a 'fine' representative example, is by reference to the comparative analysis and the buildings not put forward for a Heritage Overlay included within Appendix 6 of Volume 1 of the HGHR.
113. Evidently Mr Gard'ner is the only expert who has appeared before the Panel that has undertaken a comparative analysis by reference to the buildings in the HGHR, those already in the Heritage Overlay, and where deemed appropriate, buildings on the Victorian Heritage Register.
114. The Council's considers Mr Gard'ner's approach of employing the concepts embedded in the definition of 'notable' within the VHR Guidelines is appropriate and sets the proper threshold for significance under Criterion D at a local level.
115. There is a very useful discussion of Criterion D in the C270 Stonnington Panel report. Amendment C270 Stonnington introduced the Heritage Overlay to 36 individual places and two precincts covering 29 properties following a typological Federation Houses Heritage Study. The heritage study was criticised by submitters for *inter alia* inadequate comparative analysis and application of an inappropriate threshold for significance. The submitter criticisms and Panel conclusions are summarised in the executive summary:

Submissions and evidence were critical of the rigour of the Study methodology and assessments of significance. It was argued that the Study was not sufficiently comprehensive and the broad brush approach to comparative analysis to assess the significance of places recommended for inclusion in the HO was lacking. Further, various places did not satisfy the preconditions set out in the Study and did not reach the threshold necessary to justify an individual HO due to the attributes of the house, modifications that impacted on the integrity of the place or an inability to see the heritage fabric from the street.

The Panel concludes that the Study:

- *methodology adhered generally to protocols established in Planning Practice Note 1: Applying the Heritage Overlay, January 2018 (PPN1) and to the brief.*

- *set reasonable limits to its period and sensibly adopted three broad Federation house styles: Queen Anne; Arts and Crafts; and Bungalow. This was a period of progression and change in architectural thought that is expressed in overlapping style – further typological subdivision would be counter-productive.*
- *sifting process was reasonable, objective and expert. It took account of the effect of modifications on the integrity of places; changes were mentioned in the citations and excluded from the extent of significance.*

116. Amongst its findings in relation to Criterion D, the Panel said at page 13,

The Panel does not agree with objecting submissions that it is necessary for a place to be an exemplar of the particular styles or features of the period to be included in the HO or that it is not necessary to include a property because similar or better examples are already represented in the HO. Indeed, PPN1 indicates that part of the expected analysis is to determine whether the heritage significance is comparable to places already in the HO. As Mr Rantino submitted, it would be inequitable to exclude representative places on the basis that sufficient examples are already protected as this would mean that recognition would be dependent on when a place is assessed rather than the significance of the place.

117. The C270 Panel also made useful observations about the relevant threshold to be applied, including for Criterion D. It recorded the different approaches of the witnesses at pages 16-17 as follows:

Whereas Mr Trethowan suggested that individual places need to be noteworthy and in an upper echelon of range – they should “float to the top of the pond” and Ms Brady referred to “stand out” examples, Mr Gard’ner considered these tests to be more relevant to state-level protection – it is significance to the local community, he said, which is the relevant benchmark for the HO.

118. In the context of local letter gradings and definitions that had been used as preconditions in the Heritage Study in addition to the HERCON criteria, the C270 Panel made the following comments at pages 18-19:

The Panel recognises that the preconditions were well intentioned and were articulated in an attempt to provide greater transparency by amplifying the basis for assessments. The Panel also recognises that the assessment of places involves judgement and it is appropriate for that judgement to be open to testing. However, in submissions at the Hearing, Council invited the Panel:

... to note at the outset that, with respect to Criterion D, the word is ‘representativeness’. It is not, ‘benchmark example’ or ‘outstanding’ or ‘set apart’ or ‘unusually fine’ as seems to be proffered by Mr Trethowan.

As Mr Rantino acknowledged at the Hearing, the preconditions have been unhelpful as they have been interpreted by some as elevating the threshold for inclusion in the HO.

The use of language in the preconditions – such as “a particularly well-resolved example”, “displaying high quality detailing and/or finishes that are equal to – or better than – other places of a similar typology” and “They must be intact (as evident from the street)” - invited an interpretation that the intent was to ‘raise the bar’. This is particularly of concern where inclusion in the HO was justified on the basis of the representativeness criterion. As discussed above, the Panel does not support such an approach, which should be reconsidered in future Council heritage assessments.

(i) Conclusions

- *The test for inclusion in the HO is whether a place is assessed as locally significant in terms of one (or more) HERCON criterion.*
- *A municipality should not undermine the consistency in the protection of heritage values by ‘raising the bar’ for inclusion in the HO.*
- *The Study preconditions and adoption of an A2 grading as a threshold were interpreted as elevating the threshold for inclusion in the HO and the approach should be reconsidered in future heritage studies.*
- *The A2 letter grading in citations perpetuates the practice of departing from the recognised threshold and should be deleted from all of the proposed citations.*

119. These observations of the C270 Panel also have some application to the use of the definition of ‘Significant heritage place’ in clause 22.04 and whether it should be used as a tool for assessing local significance in addition to or in lieu of the HERCON criteria applied under the Practice Note.

X. COMPARATIVE ANALYSIS

A. COMPARATIVE ANALYSIS FOR POST WAR PLACES

120. A number of submitters and witnesses have criticised the comparative analysis, particularly that undertaken by GJM, for the later collection of post war places.⁴

121. In responding to these criticisms, Council makes the following points:

- (a) The comparative analysis undertaken for the introduction of places for a whole new class of places, in this case post war modernist office buildings, is necessarily different from a more conventional comparative analysis where a handful of the

⁴ There does not appear to be any criticism of the comparative analysis undertaken for the 1950s and early 1960s glazed curtain wall buildings for example Gilbert Court at 100 Collins Street.

most similar places already within an HO can be selected against which to compare each of a small number of new proposed places;

- (b) The Practice Note does not prescribe any particular approach to comparative analysis;
- (c) The inclusion of places on the VHR and excluded places in Appendix 6 provides an upper and lower bound against which to measure the relative importance of a proposed place;
- (d) A comparison with Scottish Amicable, being one of only two postwar places⁵ which was in an individual Heritage Overlay for local level significance provides helpful guidance as to the inclusion of place for criterion A, but is of less assistance in relation to places put forward under criterion D for which Scottish Amicable was not included;
- (e) There are very real challenges of comparing many places within a class with multiple relevant factors affecting the importance of a place;
- (f) Mr Gard'ner provided a sound explanation for not reducing the later collection of postwar buildings ('beyond the curtain wall') into smaller sub-classes.
- (g) The Context citations for Nubrik House, CML and Cowan House provide a greater degree of commentary about the relative qualities of each proposed place;
- (h) Preparation of a hierarchy of places from best to worst has not been undertaken by *any* witness. Nor has any submitter's witness prepared an alternative comparative analysis with sufficient rigour and detail to properly assess and compare a proposed place against the other places put forward in the Amendment;
- (i) Mr Gard'ner through his evidence demonstrated an expansive and detailed knowledge of all the places under consideration and an ability to explain why each satisfied the threshold in his assessment, including by reference to other places within the Amendment.

⁵ The HGHR also identifies 380 Russell Street as an early example of Brutalist architecture: see TEH, page 15. This building was included in the Heritage Overlay in 2001 pursuant to Amendment C19. Four additional levels were added to the original 5 level building following a Tribunal decision in 2006 (*Dira Mivora Pty Ltd v Melbourne CC* [2005] VCAT 69) and a permit application for demolition of the building was lodged in September 2020.

122. These matters are expanded upon below.

B. NEW CLASS OF PLACES

123. The Amendment brings forward a number of places within a new class – post war modernist office buildings – which are not presently represented at the local level. Consequently, there is no existing or established marker of importance within the class against which to compare these places.

124. Moreover, the Amendment brings forward a large number of places, not just a handful; by virtue of the larger number of places there is a more complex matrix of similarities and differences to analyse than if one were comparing two or three new places with an existing body of similar places already protected in the scheme.

125. The kind of analysis which can be done with relative ease in the case of a small number of places which are compared with an existing group of protected places is very different from the present case where multiple buildings are to be compared with multiple other buildings, all of which are proposed for inclusion in the Heritage Overlay.

C. PRACTICE NOTE

126. It is important to appreciate that the Practice Note does not dictate the way in which comparative analysis is to be undertaken. It provides,

To apply a threshold, some comparative analysis will be required to substantiate the significance of each place. The comparative analysis should draw on other similar places within the study area, including those previously included in a heritage register or overlay. Places identified to be of potential state significance should undergo analysis on a broader (statewide) comparative basis.

127. What can be seen is that ‘some’ analysis is required and that it should draw on other ‘similar’ places within the study area. The Practice Note does not spell out that better and worse examples are to be found, that specified qualities are to be compared, that detailed scrutiny of each place and its relevant comparators is required or that the comparative analysis should be documented in any particular way.

128. Whilst reliance was placed on the commentary in the Bayside C37 and C38 panel report by some submitters, it should be noted that the comparative analysis in the Bayside Heritage Study which was the subject of that panel hearing consisted of a list of

properties (sometimes none, sometimes one, sometimes many) with no images, no explanation of why the comparators were relevant and no commentary whatsoever.

129. By contrast, the citation for each place in the HGHR contains a detailed contextual history identifying important historical themes and architectural trends, a site specific description of the relevant characteristics of each place, identification of buildings constructed in the same period displaying similar characteristics together with images, addresses, dates of construction and architects, and concluding commentary identifying how the place is similar to the other examples presented.

D. PLACES ON THE VICTORIAN HERITAGE REGISTER

130. The inclusion of the five post war places on the VHR within the comparative analysis is useful insofar as it illustrates the best examples of criterion A, D and E. It demonstrates the bar that a place proposed for local protection does *not* have to meet.

E. HGHR APPENDIX 6 EXCLUDED PLACES

131. Just as the inclusion of the places on the VHR provides an indication of a higher threshold of importance, the places included within Appendix 6 of the HGHR provide an indication of a lower level of importance which does not meet the threshold for significance. Read as a whole, the HGHR provides upper and lower bounds between which the threshold for local significance can be found. With the exception of three buildings, no witness identified a place in Appendix 6 of the HGHR as of the same or greater importance or significance as any place proposed for inclusion in the Heritage Overlay.
132. One of these places was the Perpetual Trustees building at 50 Queen Street which Mr Raworth said was a better example than Nubrik House. In relation to this place, Council relies on the evidence of Mr Gard'ner that the level of alteration of the Perpetual Trustees building is greater than has occurred at Nubrik House (acknowledged by Mr Raworth as one of the two most intact buildings assessed by him) and that it lacks the dramatic vertical emphasis of the expressed piers at Nubrik House because it uses the same brick for the recessed spandrel panels.
133. Two other places not proposed for the Heritage Overlay were identified by Mr Trethowan in his oral evidence: Council House I at 200 Little Collins Street and 176

Flinders Street. As foreshadowed at the time this material was produced, Council has sought a response from Mr Gard'ner about these places and it is included at Appendix E. Council accepts that these two places could be listed in Appendix 6 of the HGHR.

134. The inclusion of Appendix 6 demonstrates that a subset of the class of places has been brought forward for consideration.
135. In terms of available information about the number of post war buildings constructed in the Hoddle Grid until 1975, Council CLUE data referred to by Mr Gard'ner in his oral evidence indicates that in the four decades from 1940 to the end of the 1970s approximately 241 buildings were constructed in the Hoddle Grid. Accepting that the postwar period assessed in the HGHR is a 30 year period not a 40 year period, this number should be reduced by proportionately which would amount to approximately 180 buildings constructed in this period (noting this is conservative, given the relatively low construction activity of the 1940s). Further accepting that some of these are not office buildings, it can be seen that bringing forward 55 places for inclusion (of which 45 are offices) is not a disproportionate number. The breakdown by decades is included in Appendix F.
136. Further, in response to the Panel's queries about the relative representation of postwar buildings relative to other periods of Melbourne's history, Council has prepared a map depicting all places in individual Heritage Overlays in the Hoddle Grid colour coded by reference to whether they are pre war or post war buildings and broken down into VHR buildings, existing HO buildings and HGHR buildings. It can be seen that whether as a proportion of all buildings or as a proportion of locally significant buildings, post war buildings represent no more than 13% of the total. The map is attached as Appendix G.

F. SCOTTISH AMICABLE

137. In his evidence for Nubrik House, the Reserve Bank, the MLC building and 178 William Street, Mr Raworth opined that because the other postwar places proposed for inclusion in the Amendment had not been tested, they did not establish a benchmark for an individual Heritage Overlay; he instead chose to rely on the "useful" and "instructive" comparison of Scottish Amicable.

138. The historical importance of Scottish Amicable is conveyed in its statement of significance in terms which apply to each of Nubrik House, the Reserve Bank, the MLC building, the CML building and Dalgety House:

The building is also significant for its association with the historical post-war period in Melbourne, when commercial architecture began to recover after the war, and numerous multi-storey office buildings and headquarters were constructed. Successful firms embraced Modernist architecture, and sought expression through the new corporate towers which symbolised progress, modernity, efficiency and power. (Criterion A)

139. Using Scottish Amicable as an architectural comparator for the Reserve Bank and the MLC building is less useful and instructive because neither of these places is put forward under criterion E which is the basis on which the aesthetic/architectural significance of Scottish Amicable is recognised.
140. In any case, as Mr Trethowan emphasised in his response to questions about the extent of alterations, Scottish Amicable has been demolished so he doubted its utility as a comparator for intactness.

G. DIFFICULTY OF COMPARATIVE EXERCISE

141. The citation for each place identifies a range of characteristics of places which can be considered relevant to an assessment of its relative importance: its intactness at ground and upper levels, overall integrity, the date of its construction, the architect, the commissioning corporation, typical features, notable features. Other factors identified by submitters' witnesses include the extent of professional or public recognition at the time of construction or subsequently, the level of sophistication in the design, and the scale of the building.
142. To illustrate the difficulty of comparing the buildings at the level of forensic detail which seems to be expected by some, Council has prepared an abbreviated table recording the evidence in relation to various aspects of the eight contested office buildings. What the chart shows is that before even proceeding to a subjective assessment about the relative design merit of a building, each building performs differently against the various characteristics said to be relevant to importance, and depending on the relative weight attaching to each characteristic, it is a very complex exercise to say that one building is "better" than another. The chart is attached at Appendix H.

143. Mr Trethowan, the submitter witness who undertook the most wide-ranging review of postwar modernist buildings in the Hoddle Grid in his Appendix C, was prepared to agree that an exhaustive comparative exercise would be complex, demanding and extremely difficult task.
144. As both Mr Gard'ner and Ms Gray explained, the later collection of postwar buildings (described as 'beyond the curtain wall') was more eclectic than the earlier curtain wall collection. As a consequence, specific groupings of these buildings within the comparative analysis would risk reducing buildings into too small a set of sub-classes, thereby artificially affecting the analysis. Numerous possible sub-classes of Post-War Modernist office building exist and might be grouped by:
- (a) façade material (eg brick, glass, concrete, stone cladding);
 - (b) structural system (eg reinforced concrete, steel, brick, hybrid);
 - (c) architectural expression (eg a grid-like façade, a strong horizontal emphasis or a strong vertical emphasis); and/or
 - (d) sub-style within the broader Modernist category (eg International Style, Brutalism, Structural Expressionism, Functionalism).
145. Dividing up the comparative analysis using these grouping could result in unreasonably small sub-classes and in many cases a building might end up being one of very few (or perhaps the only example) that displayed those characteristics.
146. In this regard, the Stonnington C270 Panel makes useful observations in response to Mr Trethowan's criticism in that case that the comparative analysis should have been much more detailed and had failed to explore sub-groups within the building typology. At page 14, the C270 Panel commented

Mr Trethowan's comments on the comparative analysis in the Study were interesting. There does seem to be confusion between style, type and form. Apperley, the reference he suggested as the source for the three Federation styles used in the Study, is well known and, in its way, is a useful tool.⁶ The complications flowing from its taxonomic approach are also well known. He suggested that the reference was biased against Melbourne's Federation

⁶ These, he suggested, were taken from R Apperley, R Irving and P Reynolds, *A Pictorial Guide to Identifying Australian Architecture, Styles and Terms from 1788 to the Present* (2011).

architecture but one of the authors, Robert Irving was born in Melbourne and had taught there.⁷ There are 12 sub-styles under the chapter on Federation architecture, each apparently given equal weight. Only three of the sub-styles are predominantly domestic—those used in the Study.

The Study set reasonable limits to its period and sensibly subdivided the initial large sample into three subgroups: Queen Anne; Arts and Crafts; and Bungalow. Further typological subdivision would be counter-productive. The Panel believes that breaking down the three styles into sub-groups of building types according to the mansion house, the villa, the cottage, the duplex, and flats would have been too complicated for such a small sample as the original 101 places. In fact, apart from blocks of flats which were rare before 1918, each of these building types is represented in the Study's final recommendations.

The Panel accepts that the Study's Methodology adhered generally to protocols established in PPN1 and to the brief.

H. EVIDENCE OF COMPARATIVE ANALYSIS

147. Finally and possibly due to the complexity of the exercise identified above, it can be observed that no witness with the exception of Mr Reeves undertook their own comparative analysis with other buildings in the Amendment, on a comprehensive basis, a selective basis or on a site specific basis. Not one of the submitters' witnesses has identified a series of other places in the class which were said to be better and a series of other places in the class which were said to be worse and ranked a given place in question within the class. Moreover, there seems a degree of inconsistency in the practice of some witnesses when they author heritage studies and the criticisms they make of the comparative analysis in the HGHR.
148. What is apparent is that Mr Gard'ner had a comprehensive and impressive grasp of the thematic issues, the architectural styles, the place details, and the chronology of development. He proffered a clear, persuasive and consistent rationale for the inclusion of each place within the Amendment.
149. Mr Gard'ner is the only expert who thoroughly examined all places in the HGHR including those that did not meet the threshold and it cannot be said on any assessment of his evidence that he has not in a professional and exemplary way discharged the advisement in the Practice Note that *some* comparative analysis be undertaken.

⁷ Expert witnesses failed to mention the reference, George Tibbets whose Chapter 4, '*An Emanation of Lunacy*', in Trevor Howells, *Towards The Dawn, Federation Architecture in Australia 1890-1915* (1989), is devoted to the period, its local architects and its architectural developments.

XI. METHODOLOGY

150. On at least one issue, all witnesses are agreed: the HGHR is a timely and valuable body of work for heritage places in the Hoddle Grid. Mr Statham described it as a solid and overdue piece of work; Mr Raworth applauded the broad thrust of the Amendment and agreed that the HGHR was an important and positive step; Ms Gray stood by her advice of December 2020 that *‘a greater appreciation of post-war buildings has emerged in recent decades, that multi storey office buildings of the post-war years formed one of the most fertile grounds for Modern architecture and that it is reasonable to consider buildings illustrating this period and this form of development as warranting protection under the Planning Scheme’*; she also agreed that the HGHR was an important and positive step; and Mr Trethowan said he *‘supported the whole exercise’*.
151. While a small number of errors have been identified, the generality of some of the statements of significance for postwar places has been criticised and some of the comparative analysis for postwar places has been attacked (addressed above), it is submitted that the methodology for selection and assessment of places for the Heritage Overlay documented in the HGHR is of a very high standard and meets the Practice Note expectations for clear justification for the application of the overlay. No witness or submitter has suggested that the Amendment should be abandoned outright for want of rigour or professionalism in the HGHR.

XII. EVIDENCE

152. A number of submissions to the Panel have sought to comment on the nature of the evidence given by experts. These submissions have been critical of the manner in which Council has put forward the evidence of Mr Reeves and included assertions that the position of Council has been to cherry pick the evidence upon which it chooses to rely.
153. Mr Reeves was called before the Panel as an independent expert. His views are his own and Council called him to give his evidence to the Panel. Perhaps unsurprisingly, particularly given the scope of the HGHR and the extensive documentation prepared in support of the Amendment, his views and those of Mr Gard’ner did not align on every single property reviewed. There were two properties identified by Mr Reeves as not reaching the requisite threshold for inclusion in the Heritage Overlay, and a number

of citations where he considered the inclusion of additional information and/or additional criteria was warranted.

154. Council could have elected not to call the evidence of Mr Reeves, but considered his evidence would be of assistance to the Panel. Further, Council considers it appropriate that the Panel perform its role in weighing the evidence of all experts, including Mr Reeves, and making recommendations as to whether the threshold for local significance is met, whether the citations and statements of significance are appropriate and whether the Amendment should proceed as proposed in relation to the places for which submissions have been received.
155. Further allegations of Council cherry-picking evidence were made by Senior Counsel for Phileo Australia Pty Ltd in relation to the evidence presented to the Panel by Mr Trethowan. While Mr Trethowan was called to give evidence in relation to three properties, his evidence included appendices which included an *Architectural Overview – International Style* and a *Typological Review*. This evidence has been put before the Panel, it provides useful additional information in understanding post war modernism in office design and can reasonably assist the Panel in forming its views. It was circulated in accordance with the directions of the Panel and is entirely incapable of taking other submitters by surprise. On that basis, it was entirely appropriate that Council explore Mr Trethowan's views in relation to properties included in his appendices as he had elected to include them in his evidence. It is also to be noted that while Senior Counsel for Phileo Australia Pty Ltd objected to questions being asked by Council of Mr Trethowan in relation to his *Typological Review*, Mr Tweedie then sought to make extensive oral submissions in relation Mr Trethowan's *Architectural Overview – International Style* on the basis that '*he's done the best job of identifying the principal characteristics of the era*' and '*I didn't hear anyone say he'd got it wrong*'. In these circumstances, allegations that Council is inappropriately cherry picking evidence are unfortunate.
156. Council endorses the submissions of Senior Counsel for Sunsuper Pty Ltd and Julliard Group Pty Ltd in relation to the evidence provided to the Panel as both balanced and fair. Mr Morris' submissions were to the effect that:

All experts are persons of a high level of competence. No challenge has been made on that basis. The Panel ought conclude they know their stuff. No challenge has been made to their integrity. Nor is there any proper basis for such a challenge. They are not people who are mouth pieces

for their clients. They are as close to genuine experts as you get in this game. They put their integrity very high in importance.

You are entitled to conclude that each believes that they have said. It is their opinion. And there is a basis to support that opinion. The difference between them is a matter of the threshold. Where we establish the height of the hurdle to include a building in a Heritage Overlay.

157. In short, Council agrees that the primary difference between the witnesses is where they set the threshold.
158. Questions asked of Mr Trethowan sought to establish that he had employed a threshold of ‘outstanding’. Council considers this threshold manifestly too high at a local level and plainly not supported by the direction provided by the Practice Note or Clause 22.04 of the Scheme.
159. Mr Raworth, when giving evidence in relation to Nubrik House, was asked whether professional recognition of heritage has advanced since the 1985 and 1993 heritage studies, particularly in relation to postwar buildings, and also whether his own professional recognition had advanced. He replied “*I think so, I would hope so*”. It is in the context of this statement that Council invites the Panel to conclude that Mr Raworth’s evidence over the course of the hearing demonstrated quite the opposite. Mr Raworth was unable to identify a single building that was graded C or was ungraded in his 1993 study that he now considers warrants heritage protection. His evidence that representative places considered under criterion D were not of sufficient importance to warrant heritage protection suggested his thinking about post war buildings has not evolved since 1993. In introducing further qualifiers to historical and representative importance, including some of those outlined in [107] above, Mr Raworth has fixed the bar too high for local level significance and would appear to be employing the 1993 test for Notable Buildings rather than the 2021 test for importance.
160. Council considers the evidence of Mr Gardner with regard to the appropriate threshold for inclusion in the Heritage Overlay was considered and strikes the appropriate balance.

XIII.SERIAL LISTING

161. The 20 April 2021 advice of Mr Trethowan in relation to Dalgety House, produced to the Panel at the request of Council, made clear that while Mr Trethowan does not

consider Dalgety House reaches the threshold of an individually Significant heritage place, he does consider the building is worthy of heritage protection via a precinct or serial listing. During cross-examination Mr Trethowan agreed he considered the same position applies to Cowan House – namely, that he considers that Cowan House has heritage values that are worthy of protection via a precinct or serial listing.

162. Unfortunately, Council was not in a position to ask Mr Trethowan whether this was also his view in relation to 516-520 Collins Street because without notice to Council, Submitter 18 elected not to call him to give evidence and the Panel limited Council's questions of Mr Trethowan in relation to other sites.
163. It was also the case that during the course of the hearing questions were asked of expert witnesses by the Panel in relation to the potential and/or appropriateness of certain properties being included within the Heritage Overlay via a serial listing. While this course is not proposed by the Amendment, and Council's experts were not asked for their views about the appropriateness of such a course, Council considers it appropriate to respond to the question posed by the Panel.
164. The potential for places to be included in a serial listing was raised by Mr Raworth in the panel hearing for Amendment C258. Council's Part B submission for that amendment comprehensively responded to the proposed serial listings as follows:

E. SERIAL LISTING

- 162. It has been suggested in the evidence prepared by Mr Raworth that it may be appropriate for a serial listing approach to be introduced for buildings, including industrial and residential buildings, as an alternative for D (and some C) graded buildings currently individually identified in the Heritage Overlay. This appears to be proposed for places of lower significance so they can form part of a wider category of representative development typologies in lieu of attributing Significant status to a building which is perceived to be of less value than others in that category.*
- 163. This approach was suggested in passing by the C186 panel as a potential alternative to defining small precincts.*
- 164. Group, thematic and serial listings are described in the Practice Note as:*

Places that share a common history and/or significance but which do not adjoin each other or form a geographical grouping may be considered for treatment as a single heritage place.

Each place that forms part of the group might share a common statement of significance; a single entry in the Heritage Overlay Schedule and a single Heritage Overlay number.

This approach has been taken to the listing of Chicory Kilns on Phillip Island in the Bass Coast Planning Scheme. The kilns are dispersed across the island but share a common significance. Group listing of the kilns also draws attention to the fact that the kilns are not just important on an individual basis, but a collectively significant as a group.

The group approach has also been used for the former Rosella Factory Complex in the Yarra Planning Scheme. This important factory complex had become fragmented through replacement development making it hard to justify a precinct listing. The group listing, with a single Heritage Overlay number, has meant that the extent and significance of the complex can still be appreciated.

165. *In Moreland Planning Scheme Amendment C149, the Panel considered the appropriateness of two serial listings concerning interwar factories (which were said to date from the 1920s and 30s and were in the eclectic and moderne style) and moderne apartment blocks respectively. The serial listing had been proposed by the planning authority.*

166. *In its report, the panel found in relation to the proposed serial listing of interwar factories:*

The Panel agrees with the expert evidence, called in opposition to the serial listing and the particular properties in it, that the group is not defined by sufficiently particular characteristics to warrant a serial listing. As Mr Lovell argued, the association between the buildings in the group is merely one of their generic use as factories and their sharing a common 10-15 year interwar period of construction. They do not display a common building form nor do they share an association with a particular type of manufacturing (such as textile manufacturing as was initially thought). The Panel agrees that there is nothing to distinguish these factories from many others in the area of Moreland. The Panel notes the similar views about the appropriateness of a proposed serial listing of halls, schools and churches expressed in the panel report on Campaspe Planning Scheme Amendment C50.

We do not, however, agree with Mr Cicero and Mr Lovell that a serial listing should be viewed as a 'fall back' position when individual and precinct listing have failed to be strategically justified. Group or serial listing can be a useful educative or informative management tool revealing associations between places which are not proximate and which have a common basis of heritage significance. In the Panel's view there is no reason to view inclusion in a serial listing as a 'third rate' option – a building included in such a grouping should be seen as contributing to the grouping in a similar way that a building in a precinct makes a contribution to it. However given the buildings in a serial listing are not proximate and do not create a recognisable place in the same way as occurs with a precinct, they must have very well defined characteristics to be able to be recognised as a group. This is lacking in the case of this proposed group.

167. *With regard to the proposed serial listing of moderne apartment blocks, the C149 panel found:*

The Panel has inspected the four properties subject to the serial listing and agrees that they clearly present as having common basis of heritage significance. The Panel supports a serial listing of Moderne apartments in Lygon Street: they are a small group of buildings all with a distinctive design and common building use. They are a relatively rare building type in the area. We consider that 434C and 301 Lygon Street are excellent examples of the genre. In our view this is not a generic listing of the kind proposed for the interwar factories which is discussed and rejected above. The apartments make both an aesthetic and historic contribution to the area.

168. *In Amendment C173 to the Yarra Planning Scheme, the panel considered the appropriateness of three new serial listings:*

- *the Eleazer Lesser Edwardian Duplexes, being a number of geographically dispersed houses constructed by one developer in Richmond;*
- *Cremorne Industrial Buildings; and*
- *Richmond Industrial Buildings.*

169. *With regard to the Eleazer Lesser Edwardian Duplexes, the C173 panel found:*

In the case of the Yarra properties, the common features of these buildings is that they were built with funds from local developer Eleazer (Elly) Lesser, they are groups of multiple buildings and some are of the same architectural design.

Melbourne's suburbs are filled with numerous dwellings that were funded by a single developer, however, and often they are of a similar design. For example, many of the terrace houses of inner Melbourne fall into this category, and, whilst many of them would be subject to heritage controls, they would be identified as individual places or as part of precincts. The Panel points to the approach taken in this Amendment in applying a single Heritage Overlay to Wilford Terrace in Cremorne Street, Cremorne (see Section 6(i) above).

The Panel is also concerned that the buildings are sufficiently stylistically different and altered to such variable extends that a common statement of significance would not usefully guide planning decisions where significant fabric and non-significant elements are required to be identified.

The Panel inspected all of these sites and noted that whilst some of them stand alone (as pairs or small groups) others are in larger groups that could be described as small precincts.

The Panel does not believe that in this instance the guidance provided by the Practice Note is being appropriately followed. The Panel considers that the Council needs to find an alternate mechanism for identifying the significance of some or all of these places in the Planning Scheme. The Panel suggests that these places should be re-evaluated as individual places or in a precinct context and be provided with statements of significance accordingly.

171. *With regard to the Cremorne Industrial Buildings, the Panel found that they were spread across the Cremorne area and had no common architectural forms, histories or ownership, past or present. The Panel also recommended the proposed serial listing for the Richmond*

Industrial Buildings be reconsidered as they, similarly, had no common architectural forms, histories or ownership, past or present.

171. *Council submits that the following principles can be derived from the Moreland C149 and Yarra C173 panel reports:*

- (a) the group proposed for serial listing must be defined by a common basis of heritage significance, which may include common architectural forms, histories or association with a particular type of manufacturing or ownership – past or present;*
- (b) these characteristics must be very well defined to be able to be recognised as a group;*
- (c) generic use (eg. factories), period of construction or a common developer are insufficient to identify a group as having a particular characteristic;*
- (d) a common statement of significance must be capable of guiding planning decisions, which may be difficult or impossible where the buildings proposed to be included in a serial listing are stylistically different or altered to varying degrees;*
- (e) serial listing is not a fall-back position where individual and precinct overlays fail to be strategically justified; and*
- (f) a building within a serial listing must contribute to the group in a similar fashion as a building in a precinct overlay contributes to the overall precinct.*

172. *Council submits that, in each instance Mr Raworth has identified that the use of a serial listing is or may be appropriate:*

- (a) potential serial listing groups such as ‘industrial buildings in the City North Area’, ‘wool warehouses’, ‘South Yarra contributory buildings’, ‘low significance buildings’, ‘contributory buildings in Carlton/South Carlton’ and ‘lowly graded site-specific Heritage Overlay places’ fail to identify an appropriate common basis for heritage significance, as discussed above;*
- (b) all properties which would be suitable for inclusion in a serial listing have not been clearly identified, and accordingly determination of whether a common statement of significance is capable of guiding planning decisions cannot be made; and*
- (c) no common characteristics have been identified at all.*

173. *Council does agree with Mr Raworth that buildings protected by individual heritage overlays in the University of Melbourne main campus may appropriately be the subject of a future serial listing, but they would still have to be demonstrably of a strong connecting theme and of a similar style and form to enable them to be managed by a common statement of significance. Evidence demonstrating that University of Melbourne buildings adequately demonstrate these characteristics has not been provided to the Panel.*

165. The C258 Panel rejected Mr Raworth’s proposed serial listing of properties:

The Panel notes that if group or serial listings were to be used, the places in the group could be listed as a Contributory place in the same way as for precincts. However, the Panel agrees with

the Council's Part B submissions that the buildings in the serial listing groups suggested by Mr Raworth for various of his ten clients, were insufficiently linked in terms of history, or particular or distinctive aesthetic characteristics to warrant being grouped in this way. The use of serial listing as recommended by Mr Raworth was very much as a fall-back or third rate grading. This approach was rejected in the Panel report for Moreland Planning Scheme Amendment C149 of May 2014, as noted by the Council. The present Panel agrees.⁸

166. The subject of serial listings was also raised in evidence called in relation to a number of buildings in the panel hearing for Amendment C305 for Southbank. While Council in that amendment sought to apply serial listings to substations and laneways, it did not consider serial listing to be appropriate for the buildings identified as they displayed insufficient commonality to justify the approach. While the Panel noted that a serial listing may have been more appropriate for the City Road Industrial and Warehouse Precinct,⁹ its recommendation was to remove the Heritage Overlay from those properties rather than to create a serial listing.

167. Council reiterates its submissions to the Amendment C258 panel that the proper approach to serial listing requires:

- (a) that the group be defined by a common basis of heritage significance which may relate to common architectural forms, histories or associations;
- (b) these characteristics must be very well defined;
- (c) generic use, period of construction or a common developer are properly regarded as insufficient;
- (d) a common statement of significance must be capable of guiding planning decisions; and
- (e) a building within a serial listing must contribute to the group in a similar fashion as a building in a precinct overlay contributes to the overall precinct.

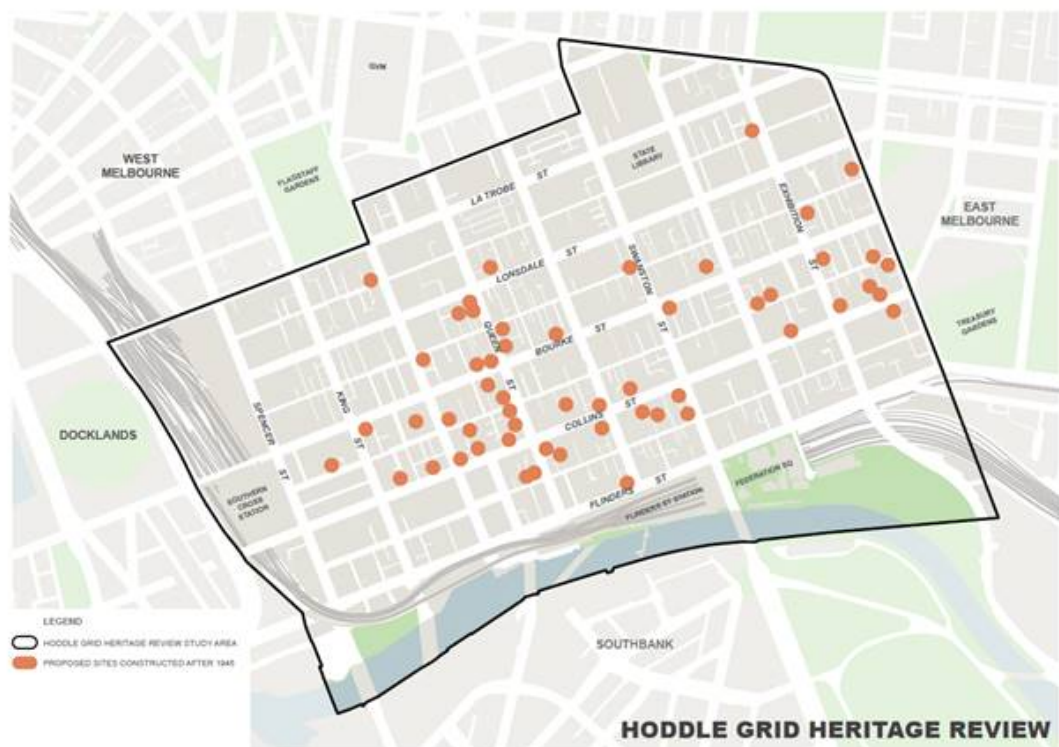
168. In this case, there are a number of places identified for inclusion in the heritage overlay on the block bounded by Collins Street, Queen Street, Bourke Street and William Street, including the two properties for which Mr Trethowan supports heritage protection as contributory buildings at 457-469 Little Collins Street (Cowan House) and 457-471

⁸ Melbourne C258 (PSA) [2019] PPV 29 (21 May 2019), page 38.

⁹ Melbourne C305 (PSA) [2020] PPV 68 (4 September 2020), page 3.

Bourke Street (Former Dalgety House); the other 6 properties in that block are 111-129 Queen Street (Former Royal Automobile Club of Victoria) where there is agreement with the submitter as to its Significant status, 430-442 Collins Street (Royal Insurance Group building) which appears to be considered amongst the best of all postwar places in the Amendment by all witnesses, 103-105 Queen Street (Former Ajax House) which is contested and three other places where no submissions have been received, being Dillingham Estates House at 114-128 William Street, Southern British Insurance at 155-161 Queen Street and National Bank of Australasia Stock Exchange Bank at 85-91 Queen Street. Accordingly, within this group are places which are unchallenged in terms of their Significant status.

169. The block has the largest number of postwar office buildings proposed for inclusion in the Heritage Overlay as depicted in Panel Document 114 extracted below:



170. To include these in a serial listing, the Panel would need to be satisfied these places had such a well-defined common basis of heritage significance that a single statement of significance could appropriately guide future planning decisions. This is difficult in circumstances where different criteria are proposed for a number of these places, different subthemes are invoked and different aesthetic qualities are identified, for example at:

- (a) Royal Insurance at 430-442 Collins Street: Criteria A, D & E.

- (b) Cowan House at 457-469 Little Collins Street: A, D & E.
 - (c) RACV Building at 111-129 Queen Street: Criteria A, D, E, G & H.
 - (d) Dalgety House at 457-471 Bourke Street: Criteria A & D.
 - (e) Ajax House at 103-105 Queen Street: Criteria A & D.
171. Preparation of a single, uniform Statement of Significance for all places within the block is further complicated by the variation in the collection of later postwar buildings discussed above in relation to the comparative analysis.
172. If a serial listing were to be pursued for this block on the basis of Mr Trethowan's evidence about Cowan House and Dalgety House, it begs the question why a serial listing approach is not suitable in other locations in the Hoddle Grid. This was not the approach pursued across the Amendment area and Council does not support this block being treated differently from the balance of postwar modernist office buildings in the Hoddle Grid.
173. It should be noted that early in the HGHR process Council considered a potential Queen Street precinct depicted in draft in the map at Appendix I and determined that it was not sufficiently contiguous or coherent to justify as a precinct. Postwar buildings within Queen Street were then assessed for individual significance: some of them were considered to satisfy the threshold for an individual Heritage Overlay and included in the Amendment; others were not and they have been included in Appendix 6 with the notation "identified as potential contributory place as part of the Queen Street Precinct".¹⁰

XIV. SPECIFIC PLACES

174. To the extent submitters objected to the inclusion of their properties within the Heritage Overlay as Significant heritage places, Council relies upon the expert evidence of Mr Gard'ner and Mr Reeves as to both the level of significance of the heritage place and the appropriateness of its inclusion within the Heritage Overlay.

¹⁰ QBE House at 10-16 Queen Street; Perpetual Trustees at 40-52 Queen Street; Bank of Singapore House at 97-101 Queen Street; 163-173 Queen Street; 224-236 Queen Street.

175. Accordingly, this submission does not seek to reiterate submissions made by Council or evidence called, rather it will address matters raised in submissions and evidence that have yet to be addressed by Council.

A. 256-260 KING STREET

176. 256-260 King Street, known as the 'Former Paramount House' is identified as Significant within the HGHR and recommended for individual Heritage Overlay HO1253 on the basis of its historical (Criterion A) significance and possession of uncommon, rare or endangered aspects of our cultural or natural history (Criterion B) significance.

177. Council relies upon the expert evidence of Mr Gard'ner as to the Significance of Former Paramount House and the appropriateness of its inclusion in the Heritage Overlay.

178. Specifically with regard to integrity, Council relies upon the evidence of Mr Gard'ner that the building's historical use remains sufficiently evident in the extant fabric as well as its documentation in historical resources. The alterations to the ground level on King Street are typical of modifications within the Hoddle Grid, and above ground level this elevation retains a good degree of legibility. The secondary elevation to Gough Lane is properly regarded as highly intact.

179. Council relies upon the evidence of Mr Gard'ner with regard to Criterion B, and specifically that this aspect of the historical connection with early cinema, while less elaborate and less customer-focused than the places already recognised within the Heritage Overlay and the Victorian Heritage Register, is nonetheless important and rare within the Hoddle Grid.

B. 53-57 LONSDALE STREET

180. Shops and residences at 53-57 Lonsdale Street are identified as Significant within the HGHR and recommended for individual Heritage Overlay HO1253 on the basis of its historical (Criterion A), representative (Criterion D) and associative (Criterion H) significance.

181. While agreement has been reached between Council and the submitter in relation to this building with regard to the appropriateness of its inclusion in the Heritage Overlay, there remain two issues of dispute:

- (a) the appropriateness of referencing rear building fabric in the citation and Statement of Significance; and
- (b) the appropriateness of the site being identified for Significance pursuant to Criterion H for its special association with Italian restaurants, restaurateurs and their clientele for nearly a century.

182. Council relies upon the expert evidence of Mr Gard'ner as to these outstanding issues.

C. 25 ELIZABETH STREET

183. 25 Elizabeth Street, known as '*Former Universal House*' is identified as Significant within the HGHR and recommended for individual Heritage Overlay HO1247 on the basis of its historical (Criterion A), representative (Criterion D) and aesthetic (Criterion E) significance.

184. Council particularly notes the evidence of Mr Statham in cross-examination where he agreed that while earlier studies undertook what was described as 'a broad look' at heritage, there hasn't been a comprehensive review of heritage in the Hoddle Grid for an extended period of time because neither the 2002 study nor the 2011 study undertook that exercise.

185. Further, Mr Statham expressed the opinion that when looking at the Hoddle Grid, he agreed with Mr Gard'ner's position that it's of primary importance to have regard to built fabric above street level and that alterations at ground level are properly regarded as of less importance.

186. Council relies upon the expert evidence of Mr Gard'ner as to the Significance of Former Universal House and the appropriateness of its inclusion in the Heritage Overlay.

D. 204-208 KING STREET

187. 204-208 King Street, known as ‘*Former Great Western Hotel*’ is identified as Significant within the HGHR and recommended for individual Heritage Overlay HO1341 on the basis of its historical (Criterion A), representative (Criterion D) and social (Criterion G) significance.
188. Council has provided a list of remaining hotels in the Hoddle Grid at Appendix J, of which 14 are still used as hotels and 15 have been adaptively reused. Of these, all but 4 are in Heritage Overlays. Nine of the places are included in the Heritage Overlay for social significance in their citation.
189. Since its temporary closure in 2018, the Great Western Hotel has reopened as Hotel Animal and its use as a licensed premises continues. Accordingly, its social significance to the community of hotel patrons is ongoing.
190. Retention of the western and southern elevations of the Hotel as depicted in the endorsed plans under the Permit satisfies some heritage considerations but if a new permit application were made under the Heritage Overlay, heritage policy would encourage greater upper level setbacks behind the retained heritage fabric where presently none are proposed in the approval.

E. 134-144 LITTLE LONSDALE STREET & 17-23 BENNETTS LANE

191. 134-144 Little Lonsdale Street and 17-23 Bennetts Lane are proposed to be included as ‘Contributory’ to the Little Lonsdale Street Precinct as part of the extension of HO984, the Little Lon Precinct. The Little Lonsdale Precinct is identified as Significant within the HGHR on the basis of its historical (Criterion A), representative (Criterion D), aesthetic (Criterion E) and associative (Criterion H) significance.
192. In assessing the original permit application for development of this site, the heritage advisor for Council recommended the following outcomes (see Folder 10):

It is recommended that the proposed demolition of the existing buildings and the occupation of the airspace above those buildings should be refused on heritage grounds. The development of the site with taller form should retain, as accepted conservation standard, the clear airspace over the original building at 146-148 Little Lonsdale Street, a depth of slightly over 10 metres. The abutting 142-144 Little Lonsdale and the frontage to 134-140 should have a minimum setback of 8 metres to ensure the Lonsdale frontages are not overwhelmed. Along Bennetts Lane the setback

to taller built form should be a minimum of a structural bay in depth, which as a minimum could not be less than 5 metres.

193. The endorsed plans for the Permit provide for retention of 146-148 Little Lonsdale with clear airspace above, but the setback behind the retained elements of the façade at 142-144 Little Lonsdale Street varies from 5m at Level 2, 3m at Level 3 and 0m at Levels 4-6 with increasing setbacks from Level 7 up, and no setback behind the reconstructed facades on Bennetts Lane.
194. While the heritage outcome for 146-148 Little Lonsdale is acceptable, the outcome for the balance of the contributory heritage buildings within the precinct is highly compromised.
195. If the development proceeds to completion as shown in the endorsed plans, Council agrees that a revised statement of significance is appropriate with further changes to those identified by the submitter in its submission at [44]. Specifically, in the event that the development proceeds to completion, the statement of significance could record:
 - (a) 134-140 Little Lonsdale Street is non contributory;
 - (b) The significance of 142-144 Little Lonsdale is limited to its retained façade;
 - (c) The significance of 17-23 Bennetts Lane is limited to its reconstructed facades.
196. Given the retention of the contributory heritage building at 146-148 at the western end of the Little Lonsdale Street precinct and the retention of the façade of 142-144 Little Lonsdale and reconstruction of the facades at 17-23 Bennetts Lane, Council submits that the boundaries of the precinct should be retained.

F. 114-122 EXHIBITION STREET

197. 114-122 Exhibition Street, known as ‘*Former Morris House*’ is identified as Significant within the HGHR and recommended for individual Heritage Overlay HO1330 on the basis of its historical (Criterion A) and representative (Criterion D) significance.
198. The Council relies upon the evidence of Mr Gard’ner as to the significance of the building’s association with Charity Organisation Society and the Australian American Association. Council considers it is inappropriate and unhelpful to place reliance on

previous heritage studies in which the place was graded with regard to the historical significance of this place as, as conceded by Mr Raworth during cross-examination, the age of those studies is such that public and professional recognition of historical significance at a local level has changed. Council notes Mr Raworth's evidence did not mention any other heritage studies in relation to Morris House, or suggest the scope of those studies ought properly have included consideration of Morris House.

199. This progress in terms of the recognition of historical significance is due to a variety of factors including the fact that other heritage places are lost so the remaining heritage places are subsequently regarded as of greater value and in Mr Raworth's words, the ever-increasing emphasis on historical (as opposed to architectural) significance. This increasing emphasis on historical significance is plainly evident in relation to Morris House as the 1985 Building Identification Form for the place notes 'Charity Organisation Society' but does not state whether this is in relation to the fact that the Charity Organisation Society commissioned the building or the importance of its associations with the building. No description or explanation is included at all. In Mr Raworth's words – while the authors of the study '*were aware of the Charity Organisation Society, they would have placed less emphasis on its associations than we would today*'. The Australian American Association is not mentioned at all, so it's entirely unclear whether the 1985 or 1993 studies were even aware of the association. As Mr Raworth agreed, there can be 'no doubt' the documentary resources relied upon by those studies were more limited as they were undertaken prior to the use of the internet as a mass digitisation and resource tool. Council was surprised that Mr Raworth did not regard the almost certain association of the place with the welfare of Aboriginal children, including removal from their families as part of the 'child rescue' movement, as recorded in the citation to be an important historical theme.
200. Council also considers Mr Raworth's evidence indicated a failure to have proper regard to the reversible nature of almost all changes that have been made to the building fabric, with the exception of the introduction of a corner entrance and new balcony on Exhibition Street. Further, Mr Raworth's evidence overstated the impact of the rooftop balcony on the heritage significance of the place – the alteration Mr Raworth considered to be the most substantial change in terms of its heritage impact. Council considers the evidence of Mr Gardner that the roof structures are properly regarded as 'lightweight'

is to be preferred having regard to the glass balustrade utilised and the fact that the awning is retractable – a factor unknown to Mr Raworth when preparing his evidence.

201. Council relies upon the evidence of Mr Gard’ner that the building retains a good degree of legibility to its original built form and is properly included in the heritage overlay on the basis of its historical and representative significance. Council has included photographic evidence of the retention of the detailing above the ground floor entrances beneath the fabric awnings at Appendix K.

G. 490 FLINDERS STREET

202. 490 Flinders Street, known as Willis’ Buildings, is identified as Significant within the HGHR and recommended for individual Heritage Overlay HO1337 on the basis of its historical (Criterion A) and representative (Criterion D) significance.
203. In her presentation to the panel, Counsel for the submitter places ongoing reliance on gradings from past studies without any acknowledgement of the passage of time, the diminished pool of mid-Victorian shops in the City and the greater appreciation of historic and representative values which has emerged over the last 30 years. There was no scope for individual heritage protection at the time of the 1993 Study other than by way of a prohibition on demolition for notable buildings (usually A and B graded buildings), so C graded buildings, however important by reference to current criteria, were unprotected unless they were in precincts. To exclude this building from the Heritage Overlay on the basis of its previous gradings is to overlook the thorough and up to date assessment of significance undertaken in the Review by reference to the criteria in Practice Note 1.
204. As a mid-Victorian shop building from 1869, the building is a relatively early place in the Hoddle Grid. The citation expressly states that Victorian shops are “increasingly rare in terms of their use and building typology in this part of the city”.
205. In assessing the intactness of this building, it is appropriate to look beyond the graffiti which is easily reversible; the ground floor hoarding which covers some remaining original detailing at ground level (which can be seen in the photograph in the citation); and other changes to the shopfronts which are typical of the Hoddle Grid.

206. Under Practice Note 1, it *is* enough for a building to be “typical” under criterion D, provided it is important as a typical representative. This building is important as a typical representative by virtue of its relative earliness, its relative intactness and relative level of architectural detailing.
207. In Council’s submission, this place is as good as the other individually Significant buildings depicted in the comparative analysis, which do not rely on their context for their significance; and this place is more important than the plainer and less ornamented examples of Victorian shops in Appendix 6, for example at 184-186 King Street (volume 1, PDF93 and 273-275 King Street (volume 1, PDF94).
208. A chimney can be discerned in the photograph of the place in Appendix B.
209. There is no suggestion that commencement of development pursuant to the Permit is imminent; if the building is demolished in accordance with the Permit, then the Heritage Overlay can be removed.

H. 57-67 LITTLE COLLINS STREET

210. 57-67 Little Collins Street, known as the ‘*Former Craig Williamson Pty Ltd complex*’ is identified as Significant within the HGHR and recommended for individual Heritage Overlay HO1348 on the basis of its historical (Criterion A) and representative (Criterion D) significance.
211. It is of note that Ms Riddett agreed during cross-examination that: the façade of the building is generally intact; the façade above ground level is highly intact; it is common that buildings in the Heritage Overlay retain intactness to their principal façade(s) only; all alterations at ground level are typical for the Hoddle Grid; and alterations to the side elevations have not and do not impact the legibility of the façade of the building. In the context of those concessions, her conclusions that the building ‘reads’ as a mishmash are perplexing.
212. Ms Riddett’s evidence said that the building’s associations with the Commonwealth are not of Significance, and that the Commonwealth was ‘just another tenant’. These conclusions are perhaps unsurprising given Ms Riddett conceded in cross-examination that she hadn’t read the Postwar Thematic Environmental History and was entirely unaware that the relevant association was a postwar theme, despite the fact that it was plainly stated to be so in the citation – extracted in its totality in Ms Riddett’s evidence.

213. Further, Ms Riddett's conclusion that the building had 'no notable features' was made in a complete vacuum. Contrary to the submissions made by Black Swan who did not support her evidence in this regard, she was adamant that it was entirely inappropriate to utilise the Step 2 analysis of the VHR Guidelines or the examples of what it means to be a 'notable building'. Consequently, analysis of notable features was absent in her evidence. She just stated they weren't apparent.
214. Finally, Ms Riddett's evidence-in-chief was emphatic that, while there may in fact be no words to this effect in either document, it was unequivocal that both the Practice Note and the VHR Guidelines include an implied requirement that a comparative analysis must rank buildings from best-to-worse, then form a conclusion about the Significance of the place. But, as confirmed with Ms Riddett during cross-examination, her own consulting practice does not always conform to this so-called requirement. Ms Riddett then conceded that a ranking, or perhaps a discussion, may be appropriate depending on the circumstances of the case.
215. It is Council's submission that, in the context of Ms Riddett's evidence which appears contradictory and lacking in foundation in several respects, Mr Gard'ner's evidence with regard to 57-67 Little Collins Street should be preferred by the Panel.

I. 457-471 BOURKE STREET

216. 457-471 Bourke Street, known as 'Former Dalgety House' is identified as Significant within the HGHR and recommended for individual Heritage Overlay HO1326 on the basis of its historical (Criterion A) and representative (Criterion D) significance.
217. Mr Trethowan accepted that Dalgety House is altered at ground level but its upper levels are highly intact; he agreed that the ground level changes were comparable to those at Scottish Amicable which was included in an individual Heritage Overlay notwithstanding its alterations.
218. Mr Trethowan expressed the opinion in his written evidence that Dalgety House meets the threshold for Criterion A. In response to questions, he accepted that Dalgety House shared similar characteristics to Scottish Amicable in terms of criterion A historical significance for its association with the historical postwar period in Melbourne when successful firms embraced Modernist architecture.

219. Although it was not disclosed to the Panel, Mr Trethowan had previously formed the view that Dalgety House warrants heritage protection. He has employed a threshold for criterion D of ‘outstanding’ which is too high. A reasonable inference to draw is that had Mr Trethowan adopted a lower threshold than ‘outstanding’, he would have supported an individual Heritage Overlay.
220. Mr Trethowan accepted in cross examination that Dalgety House has a large number of identifiable elements typically character of the international style; and a large number of typical characteristics of modernist buildings; and that on this basis, Dalgety House met the definition of ‘notable’ in the VHR Guidelines. Although Mr Trethowan rejected the description of Dalgety House as ‘fine’ he did so by reference to his own judgement about the aesthetic qualities of the design rather than the definition in the VHR Guidelines, the primary tool by which he evaluated the building.
221. In Council’s submission, Mr Trethowan’s opinion that Dalgety House is not ‘fine’ because it does not have a ‘balanced arrangement’ is hard to justify when looking at the building through the eyes of the curious and interested observer, is contradicted by the expert evidence of Mr Gard’ner and Mr Reeves and results in an unsatisfactory contest of subjective aesthetic difference of opinion between architects.

J. 516-520 COLLINS STREET

222. The office building at 516-520 Collins Street is identified as Significant within the HGHR and recommended for individual Heritage Overlay HO1326 on the basis of its historical (Criterion A) and representative (Criterion D) significance.
223. Ms Gray accepted that the definition of the class as postwar modernist office buildings was appropriate. She also accepted that notwithstanding ground level alterations, the upper levels were intact and the building overall was clearly legible as a postwar modernist office building.
224. Ms Gray prepared earlier advice that suggested a standard of ‘particularly early, rare or fine examples or having exceptionally strong historic or heritage values’; in response to questions, she accepted that this was an aspirational statement and “probably too high” a threshold for local level significance under either criterion A or D. To similar effect, she asserted in her written evidence that to meet criterion A, a place must reflect *strongly*

on important historical themes, adding language to the HERCON criteria which she subsequently accepted it does not include.

225. Ms Gray accepted there was an historical subtheme of more modest speculative development and could not identify any other building with an association with that subtheme. She agreed that if the Panel accepted that it was a subtheme worth specific recognition, the citation could be adjusted to include that reference.
226. Ms Gray agreed that this building have a large number of characteristics which are typical of the period, with unusual feature of the curved ends of the spandrels. She didn't regard the overall outcome as 'remarkable' and says it does not 'strikingly deliver' on the place type, but Council submits that again, these are not the tests to meet the threshold for local significance under criterion D. Ms Gray has accepted that this building displays the characteristics which would satisfy Mr Gard'ner's use of the term 'fine'.
227. In her evidence, Ms Gray emphasised the importance of design by an architect, recognition by the profession or the public and the level of refinement in the design. Her example of BHP House as a powerful building because it was a corporate statement with the use of steel as the product of the building owner provides a useful analogy with Nubrik House involving a corporate statement with the use of brick as the product of the building owner.
228. It should be noted that in his written evidence, Mr Trethowan acknowledged that this building met Criterion A.

K. 111-129 QUEEN STREET

229. 111-129 Queen Street, known as '*Former Royal Automobile Club of Victoria*' is identified as Significant within the HGHR and recommended for individual Heritage Overlay HO1068 on the basis of its historical (Criterion A), representative (Criterion D), aesthetic (Criterion E), social (Criterion G) and associative (Criterion H) significance.
230. A citation and statement of significance have been agreed with the submitter and included in Appendix A.

L. 269-275 WILLIAM STREET

231. 269-275 William Street, known as '*Nubrik House*' is identified as Significant within the HGHR and recommended for individual Heritage Overlay HO1378 on the basis of its historical (Criterion A), representative (Criterion D) and aesthetic (Criterion E) significance.
232. Mr Raworth agreed that it was reasonable to describe Nubrik House as 'highly intact' and included 'an extensive list' of typical characteristics of postwar modernist buildings. The building clearly meets the first two definitions of 'notable' under the VHR Guidelines which Mr Raworth elected to use as his primary evaluation tool. He takes no issue with the characterisation of the role of brick in the method of construction. Of the other brick buildings identified by Mr Raworth, he agrees with the inclusion of the RACV Club in the Heritage Overlay, he accepts that the Raymond Priestley building is outside the Hoddle Grid but would warrant a Heritage Overlay and accepts that 319 Collins Street and 54 Market Street have been reclad at the upper levels and lost their vertical emphasis so they are no longer comparable and 56 Queen Street has a much greater degree of alteration than Nubrik House (noting that all of 319 Collins Street, 54 Market Street and 56 Queen Street have been excluded from the Amendment). Mr Raworth accepted that there were no brick buildings in Appendix 6 which were better than Nubrik House and none of the brick buildings identified by him used brick in the way employed at Nubrik House. While Mr Raworth considers that the use of brick by the brick producer in the design is of 'small 'i' interest', it is regarded by both Mr Gardner and Mr Reeves as a material contributor to the importance of the building. Ms Gray's evidence about companies using their own materials as an expression of their corporate power tends to support their view.

M. 303-317 COLLINS STREET

233. 303-317 Collins Street, known as '*Former MLC Building*', '*Royal Bank Plaza*' and '*IOOF Centre*' (current name) is identified as Significant within the HGHR and recommended for individual Heritage Overlay HO1319 on the basis of its historical (Criterion A) and representative (Criterion D) significance.
234. The preoccupation of this submitter with its 'fake architect' allegation was a total red herring. Mr Raworth did not identify any error in the citation or statement of

significance insofar as the design of the building is attributed to both Civil and Civic and Demaine, Russell, Trundle, Armstrong & Orton. He was obviously uncomfortable with any description of Mr Kudlicki as a ‘fake architect’ being attributed to him.

235. The former MLC building shares the characteristics of Scottish Amicable in terms of being commissioned by and named for an important Australian life insurance firm, the involvement of a known and reputable architectural firm in its design; it has a clear association with the postwar period in which successful firms embraced Modernist architecture and sought expression through new corporate towers which symbolised progress, modernity, efficiency and power. This building has further notable features relating to its prominent corner location, its distinctive curved form and its scale as the tallest building in the Hoddle Grid at the time of construction. It is highly intact at the upper levels and although its lower level changes have removed important features of the original design, these changes are clearly distinguishable from the original fabric and the overall legibility of the original building remains.
236. Mr Raworth was unaware in cross examination about the use of aluminium window frames; the citation records the use of aluminium window frames at page 378.
237. The former MLC building is regarded by all of Mr Gard’ner, Mr Reeves and Mr Trethowan as appropriate for heritage protection as an individually significant place, noting Mr Trethowan’s evidence that his Outstanding List was a compilation of places which warranted registration at the State level.
238. This case provides an unfortunate instance of one architect regarding a building as ‘outstanding’ and another regarding it as ‘ugly’ and ‘least loved’. In Council’s submission it is highly undesirable for questions of heritage importance to turn on the personal likes and dislikes of architects and for subjective judgements of taste and about style to determine application of an overlay control. This is a building which is highly distinctive by virtue of its curved form and in Mr Gard’ner’s assessment, demonstrates many of the key architectural devices employed during this period for the purposes of criterion D; according to Mr Gard’ner it demonstrates the key architectural and economic drivers of the post war period in the city and in Council’s submission conveys clearly its association with the bold corporate ambitions of the post war modernist building boom for the purposes of Criterion A; it is an obvious candidate for inclusion in the Heritage Overlay.

239. It is a good case study of how Criterion D should not be confused with Criterion E; the building does not need to have enjoyed public acclaim or appreciation to satisfy Criterion D but very heavy reliance is placed by this submitter on the basis of the absence of previous recognition.

N. 56-64 COLLINS STREET

240. 56-64 Collins Street, known as '*Former Reserve Bank of Australia*' is identified as Significant within the HGHR and recommended for individual Heritage Overlay HO1313 on the basis of its historical (Criterion A) and representative (Criterion D) significance.

241. The Reserve Bank is an example of the very high threshold that was applied to postwar buildings which received a grading in the 1993 Study; Mr Raworth confirmed that to secure a grading it was necessary to be exceptional, of real significance quality or a landmark. He was unable to confirm whether the ground floor additions had occurred before or after the C grading was given to the building.

242. This is also a useful case study to illustrate that Mr Raworth's threshold for local significance is unreasonably high. When it was put to him that the only reason the building doesn't warrant inclusion in the Heritage Overlay was due to its loss of intactness, he rejected that proposition. Even though he gave it a C grading according to the heightened standard for postwar buildings in 1993 and even without the changes to ground level and the upper levels, it appears that Mr Raworth does not consider this building significant at the local level.

243. Mr Raworth referred to the 'flurry' of documents in the last three years, prior to which 'no one thought this building was critical' (although of course he thought it was of sufficient note to grade it!). The so-called flurry of documents is the manifestation of the growing public and professional appreciation of modernist design, an evolution which Mr Raworth appeared to embrace when asked about it in his evidence for Nubrik House. His position in relation to the former Reserve Bank reveals that his thinking about the value of modernist design has not shifted in the 30 years since the 1993 Study was undertaken.

244. Mr Raworth accepted that even with the overcladding of the marble at the upper levels, the building was still legible as a postwar modernist building with its original fenestration materials and geometric pattern. He agreed that the former Reserve Bank includes a range of typical or common characteristics of postwar modernist buildings, including its box-like form, its scale, its granite spandrels, its aluminium framed windows, its different treatment at ground and upper levels, its butterfly roof. This is a large range of typical features which are retained at the former Reserve Bank building and justify the application of criterion D by reference to the VHR Guidelines which Mr Raworth himself invokes.
245. Mr Raworth was unable to say that the former Reserve Bank was not similar to or comparable to the 42 postwar office buildings in relation to which no submission has been received and which should be expected to be included in the Heritage Overlay.

O. 308-336 COLLINS STREET

246. 308-336 Collins Street, known as '*Former Colonial Mutual Life Assurance Building & Plaza*' with 'Children's Tree' sculpture is identified as Significant within the HGHR and recommended for individual Heritage Overlay HO1313 on the basis of its historical (Criterion A), representative (Criterion D) and aesthetic (Criterion E) significance.
247. Like MLC, Dalgety House and Nubrik House, CML shares with Scottish Amicable the historical association of a successful Australian corporation engaging a major architectural firm to design a progressive, modern building during the postwar central city building boom. Mr Raworth agreed that criterion A was met to a degree that is comparable to the other Hoddle Grid office example that was subject to an individual Heritage Overlay for local level significance. That was the test he applied at [22] of his evidence for inclusion in the Heritage Overlay.
248. This place is particularly important for its retention of an appreciable portion of its original plaza and its original sculpture. Very few remaining places in the Hoddle Grid demonstrate the open ground level plaza typical of postwar modernist office buildings. According to Mr Edwards, the sculpture is a very good modernist sculpture, it is highly valued and much loved by the community. He regards retention on the site as a commendable option. Mr Reeves's research has demonstrated the thematic links

between the CML building and the sculpture in the eyes of the artist, the commissioning corporation and the art critic.

249. Like the Reserve Bank, the CML building shows that Mr Raworth's threshold for local significance is unreasonably high. Even though he gave it a C grading according to the heightened standard for postwar buildings in 1993 and even with the multitude of references in recent publications, including in MELMO: Modernist Architecture in Melbourne (chapters 5 and 6 are included as Appendix L) and in the key reference text Tall Buildings (published in 2001, not 30 years ago as Mr Raworth told the Panel), Mr Raworth was not willing to answer that the place would have warranted inclusion in the Heritage Overlay but for the changes that have been made to it. Even with the overcladding of the travertine on the upper level columns and spandrels and with the encroachments at ground level, Mr Raworth agrees that one can still read the building as a postwar modernist building.
250. The overcladding of the travertine on the upper levels will need to be replaced. Together with the other options under consideration by Grey Puksand for the owner, the option to pursue restoration of the travertine or replacement with a sympathetic alternative consistent with the heritage values of the place should be preserved.
251. In Council's submission, the Panel should take the same approach to the CML building as the C186 panel took to the National Mutual building in 2011, namely to preserve the opportunity for restoration of the upper levels. Faced with an emergency order from Council to repair the marble panels which were failing, the owner of the National Mutual building opposed the inclusion of its building in the Heritage Overlay. The C186 panel said at page 91:

The matter of the condition of the building's marble cladding is clearly a major issue of concern for the owner. We were advised, and we accept, that the existing cladding is likely to be virtually all, if not completely, removed; and it will not be possible to reinstate it, as its removal causes breakage of the marble panels.

Mr O'Farrell in his closing submissions urged the Panel not to consider the matters of building maintenance, economic imposts, the existing permit and the like, on the basis that they are irrelevant to the task of the Panel. We cannot agree. If a clear outcome for the building cladding had been described to us and we were persuaded that the outcome would significantly reduce the integrity of the building and hence its heritage values (rather than its condition as such), it would properly be a matter for us to consider.

Nevertheless the evidence presented by Mr Sheldon was to the effect that the final solution for re-cladding of the building and any other required structural works has not been identified. In the absence of a clear understanding about these matters, the Panel believes that it is not beyond the realms of possibility that a cost effective, sensitive solution which would maintain the appearance of the building (and hence its significance) could be found.

As a consequence, the integrity of the structure has not weighed heavily in our assessment of its significance.

P. 588-600 LITTLE COLLINS STREET

252. 588-600 Collins Street, known as ‘*Stella Maris Seafarer’s Centre*’ is identified as Significant within the HGHR and recommended for individual Heritage Overlay HO1355 on the basis of its historical (Criterion A) significance and its strong or special association with a particular community or cultural group (Criterion G).
253. Mr Raworth agreed that the historical significance of welfare to seafarers is established by the registration of St Augustine’s Church and the Mission to Seafarers under criterion A for this association.
254. This place has a clear association to that historically significant function through its signage and form. No other place within the Hoddle Grid better evidences the physical manifestation of the spiritual concern of the Church for this vulnerable community than the Stella Maris Centre.
255. In Council’s submission, if the site were included in the Heritage Overlay a permit would be required to remove the sign. Pursuant to clause 62.05, a permit is not required for the demolition or removal of a building or works unless a permit is specifically required for demolition or removal. Pursuant to clause 43.01-1, a permit is required to demolish or remove a building. Under s3 of the Act, a building includes a structure or part of a structure and other appurtenances to a building. In Council’s submission, the sign is a structure appurtenant to the building. Accordingly, its removal would require a planning permit.
256. Similarly, pursuant to clause 43.01-1, a permit is required to construct or display a sign. The exemption under clause 62.02-1 for construction of or putting up for display a sign consistent with the requirements of Clause 52.05-10 does not authorise construction of business identification sign as of right.

257. Fabric on the site which evidences the historical association is present to be managed and accordingly, the application of Criteria A and G is appropriate to guide future management of the place.
258. The recognition of social significance can support the use on the site and facilitate redevelopment of the site to retain the use.
259. While the property arm in the hierarchy of the Catholic Church may oppose the application of a Heritage Overlay, the recognition afforded by criterion G is fitting acknowledgement of the important work in caring for seafarers of other members of the church community, namely the volunteers and staff of Stella Maris.

Q. 457-469 LITTLE COLLINS STREET

260. 457-469 Little Collins Street, known as the '*Cowan House*' is identified as Significant within the HGHR and recommended for individual Heritage Overlay HO1010 on the basis of its historical (Criterion A), representative (Criterion D) and aesthetic (Criterion E) significance.
261. Cowan House retains a relatively high level of intactness to its lower levels by Hoddle Grid standards in terms of retention of its undercroft and colonnades as well as very little change at the upper levels. By comparison with Scottish Amicable, the ground level changes are less at Cowan House.
262. Mr Trethowan agrees that this place is of criterion A significance. He agrees that it contains a 'large' and 'good' number of typical characteristics of the International Style. He accepts that it meets the VHR Guidelines for a 'fine' example. Mr Trethowan describes the curtain wall as a good example of something that is different.
263. The Houston Building may be the 'stand out' example of E&G Kolle's work but that is not a basis on which to exclude the only other intact example of their work in the Hoddle Grid. An expectation for a criterion D building to be a 'stand out' example was before the Stonnington C270 panel and not adopted by it.
264. Mr Trethowan agreed that Cowan House is important enough that future decision making should have reference to its heritage values, albeit that he regarded them as contributory values not individually significant.

265. Once again, Mr Trethowan's threshold of 'outstanding' and 'stand out example' is too high. Once again, a reasonable inference to draw is that had Mr Trethowan adopted a lower threshold than 'outstanding' or 'stand out', he would have supported an individual Heritage Overlay for Cowan House, given his admission that it warrants heritage protection.

R. AMP TOWER & ST JAMES BUILDING COMPLEX, 527-555 BOURKE STREET

266. 527-555 Bourke, known as the '*AMP Tower & St James Building Complex*' is identified as Significant within the HGHR and recommended for individual Heritage Overlay HO1310 on the basis of its historical (Criterion A), rarity (Criterion B), representative (Criterion D) and aesthetic (Criterion E) significance. The Part B submission erroneously identified the Heritage Overlay number as HO1010 and should be corrected.

267. Mr Biles acknowledge that this is a famous and iconic building in Melbourne for its scale and form; and that it represents the hugely significant shift towards monumental tower and urban plaza design in the mid-1960s, as recorded in Philip Goad's Melbourne Architecture (extract annexed at Appendix L). He accepted that in making future decisions about the place, it is important to have an appreciation of the heritage values of the places as part of the conversation.

268. In Council's submission, notwithstanding the broad provisions of urban design policy requiring site responsive design, there is no guarantee that heritage considerations will be taken into account in the absence of a Heritage Overlay.

S. 103-105 QUEEN STREET

269. 103-105 Queen Street, known as the '*former Ajax House*' is identified as Significant within the HGHR and recommended for individual Heritage Overlay HO1367 on the basis of its historical (Criterion A) and representative (Criterion D) significance.

270. The submitter has not called any evidence to support its position and has not disputed the accuracy of the contents of the citation. Neither Mr Gard'ner nor Mr Reeves was subject to cross examination in relation to this place, although written questions from the submitter were put to Mr Reeves who provided a response.

271. Built in 1956, Ajax House dates from the same period as the earliest curtain walled buildings, for example Gilbert Court at 100 Collins Street (1954-1955), Laurens House (1956), HC Sleigh (1953-1955) and ICI House (1955-1958) and is amongst the earliest examples of the postwar office buildings. The citation records that

The building was one of the major 40 metre high building projects carried out between 1954 and 1956, when Melbourne saw an office-building boom, especially along Queen Street.

272. The citation also explains how early postwar design exhibited both the new modernism and elements of the interwar Functionalist style. The comparative analysis records,

During the early 1950s, following the end of the World War Two, building activities in central Melbourne slowly revived. The Post-War Modernist style, which accompanied the development of the curtain wall, was becoming popular and was used in many corporate buildings. While some examples adopted fully glazed curtain walls, in other examples a greater range of materials were used to achieve variety of expression. A group of buildings built in the mid-1950s to early 1960s combined expansive glazed panels with solid masonry sections to achieve a distinctive aesthetic.

While embracing the new curtain wall technique, the design of Ajax House at 103-105 Queen Street displays some characteristics of the Functionalist style. The style was fashionable pre-World War Two and continued to be popular in the postwar period, especially for modern service facilities such as car showrooms and institutional buildings, as well as for infrastructure buildings such as the Russell Street Automatic Telephone Exchange and Postal Building at 114-120 Russell Street. The style was also adopted for some medium-rise commercial buildings such as Ajax House.

273. Council disputes that the building has to be the largest, on the most prominent site, by the most important company to warrant inclusion in the Heritage Overlay. Like Scottish Amicable, this building was named for the insurance company which commissioned it. Although not a corner site on two main streets, the citation records the auctioneer's description as 'a magnificent corner site in the hub of the insurance, commercial and financial world...'. It further states,

The design reflects the new modernism of the early postwar period, emphasising a modern and progressive aesthetic.

274. The principal claims to distinction of this building are its early date and its hybrid design which illustrates an important development in the early postwar period. The submitter's focus on the notable fenestration pattern to Queen Street overlooks that the design treatment extends along the more expansive Little Collins Street façade and fails to

appreciate the composition of the building as a whole in which the glazing relates to the more traditional use of solid masonry.

275. In identifying that the comparative analysis in the HGHR was satisfactory in relation to this place, Mr Reeves described it as

placing the building in the context of other early post-WW2 office buildings that were demonstrative of a hybrid approach that combined the emerging curtain wall aesthetic with a more traditional use of masonry or ceramic cladding. This has been acknowledged (by the National Trust and others) as a distinct architectural trend of the early-to-mid-1950s, when architects (and especially those of an older pre-WW2 generation) hedged their bets by combining the progressive with the more conventional.

276. It is accepted that the building is not as highly intact as some of the other curtain wall examples in the comparative analysis, but the uncontested evidence of Mr Reeves is that the removal of the ceramic tiling has not defaced the building ‘to the point that its original form and appearance can no longer be readily interpreted’. Indeed, Mr Reeves is of the view that if the building had remained intact in terms of its façade tiling, signage and ground level treatment, it would be exceptionally rare, almost certainly of significance at the State level.

277. In Council’s submission, the building remains legible, it is an important early example which shows the transition from the prevailing interwar design to postwar modernism and should be included in the Heritage Overlay.

T. 430-442 COLLINS STREET

278. 430-442 Collins Street, known as the ‘Royal Insurance Group Building’ is identified as Significant within the HGHR and recommended for individual Heritage Overlay HO1010 on the basis of its historical (Criterion A), representative (Criterion D) and aesthetic (Criterion E) significance.
279. Each of Mr Gard’ner, Mr Reeves, Mr Trethowan and Mr Raworth considers this building important, including potentially at the State level.
280. There is no basis for acceding to Mr Morris’ request to emphasise the significance of southern and western façades of this building when his own witness Mr Trethowan confirms that all elevations of this building are important.

XV. CONCLUSION

281. The Amendment is the most comprehensive heritage review of Hoddle Grid in decades. While there were plain differences of opinion in relation to individual assessments of places, it was common ground amongst all experts that appeared before the Panel that the Review was a comprehensive, timely and valuable piece of work, especially in relation to postwar places.
282. The Amendment is underpinned by clear strategic support for heritage protection in the Scheme and a body of rigorous and detailed work that provides a solid and robust foundation for the inclusion of the places and precincts identified within the Heritage Overlay.
283. The Council submits the Amendment has clear strategic justification and respectfully requests that the Panel recommend adoption of the Amendment as exhibited with the recommended changes identified in the Part B submission, in Appendix A and elsewhere in this Part C submission.

Susan Brennan

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APPENDICES

A1 – Melbourne City Council HGHR Consultant’s brief (extract)

A – Proposed changes to Amendment documents

B – Status of permits for specified places in Amendment

C – Summary of Amendment C258

D – Examples of Statements of Significance using Criterion D

E – Gard’ner response to Trethowan examples of 200 Little Collins Street and 276 Flinders Street

F – Table of places constructed in the Hoddle Grid 1940s-1970s from CLUE data

G – Map of prewar and postwar significant places in Hoddle Grid

H – Comparative chart of contested postwar office buildings

I – Map of draft potential Queen Street precinct

J – List of historic hotels in the Hoddle Grid

K – Photos of Morris House entrances

L – Extracts from MELMO: Modernist Architecture in Melbourne

M – Extract from P Goad, Melbourne Architecture