

INDEPENDENT PLANNING PANEL

**APPOINTED BY THE MINISTER FOR PLANNING
PLANNING PANELS VICTORIA**

IN THE MATTER OF *AMENDMENT C394* TO THE MELBOURNE PLANNING
SCHEME

FISHERMANS BEND IN-DEPTH HERITAGE REVIEW

PART B SUBMISSION OF THE PLANNING AUTHORITY

DATE: 3 DECEMBER 2021

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Introduction

1. The City of Melbourne (**Council**) is the Planning Authority for Amendment C394 (**Amendment**) to the Melbourne Planning Scheme (**Scheme**).
2. Council has prepared and is the proponent of this Amendment which seeks to apply a heritage overlay over the following land:
 - 2.1 Vegemite Way, Port Melbourne (Former Kraft Vegemite Factory site);
 - 2.2 224- 236 Salmon Street, Port Melbourne (Electricity Substation site);
 - 2.3 206 Lorimer Street, Docklands (Shed 21 site).

(collectively **Amendment Land**).
3. On 23 November 2021 Council circulated its 'Part A' submission in accordance with direction #2 of the Panel Directions issued on 26 October 2021 (**Directions**). The Part A submission:
 - 3.1 provided the background to the Amendment;
 - 3.2 outlined a chronology of events;
 - 3.3 included the strategic context and assessment;
 - 3.4 identified the issues raised in the submissions and Council's response; and
 - 3.5 explains the changes proposed to the Amendment documentation as a result of the issues raised in submissions.
4. Together with its Part A submission, Council circulated the evidence of Ms. Helen Lardner of HCLD Pty Ltd.
5. No other evidence has been filed in this matter.
6. Council's Part B submission responds to direction #11 of the Panel Directions requiring Council to address the following issues through its 'Part B' submission:
 - 6.1 Response to submissions and evidence; and

6.2 Council's final position on the Amendment.

Recalling the strategic basis and opening remarks

7. The strategic basis of the Amendment as well as the City of Melbourne's approach to heritage planning is thoroughly explained in the Part A submission.
8. We submit that the strategic basis for applying heritage overlays does not require repeating. It is, of course, well founded in the State policy provisions of the scheme as well as the Planning and Environment Act 1987 (**Act**) which provides the following objective under s 4(1)(d):

*...to conserve and enhance those buildings, areas or other places
which are of scientific, aesthetic, architectural or historical
interest or otherwise of special cultural value.*

9. It is relevant to briefly recall, however, that the background and strategic basis lays the foundation for the Amendment. Thus, Council submits that the key focus of the Panel with respect to this Amendment (and in response to the submissions received) relates to the requirements of the Heritage Overlay and Planning Practice Note 1: Applying the Heritage Overlay (**PPN01**).
10. In this regard, and in response to key issues raised by submitters, Council's submission will highlight the consistency of Council's proposed approach having regard to the guidance offered by PPN01.
11. As outlined in Council's Part A Submission, PPN01 outlines recognised heritage criteria to be used for the assessment of the heritage value of a heritage place [being the criteria also known as the HERCON Criteria established in the Victorian Heritage Register Criteria and Threshold Guidelines (2014)].
12. The criteria being:
 - **Criterion A:** Importance to the course or pattern of our cultural or natural history (historical significance).
 - **Criterion B:** Possession of uncommon rare or endangered aspects of our cultural or natural history (rarity).

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

13. Having regard to this Panel's task in the context of considering the submissions, the Panel will need to be persuaded that the foundations of what is proposed by the Amendment is sound, whether the research which has been undertaken is appropriate and whether it has been conducted in accordance with recognised and accepted norms and principles.
14. Ultimately, the key objective is to ensure heritage places with deemed local cultural significance are properly protected and represented in the Scheme. This includes an accurate and appropriate application of the Heritage Overlay (including by mapping) and explaining (by the citation and statement of significance).
15. Providing a framework for the protection of places of cultural significance will ensure the Council is delivering on its responsibility to protect heritage places and ensure new development integrates, respects and contributes to that heritage.

Summary of key issues raised in submissions

16. The key matters raised in the submissions were summarised in Council's Part A submission as follows:
- 16.1 opposition to applying the HO for the substation land at 224- 236 Salmon Street, Port Melbourne;
 - 16.2 opposition to including reference to the former General Motors Holden site within the *Fishermans Bend In-Depth Heritage Review*;
 - 16.3 request for local heritage protection to be pursued for the former General Motors Holden complex not afforded VHR protection;
 - 16.4 support for the proposed curtilage as relating to the proposed heritage overlay for Shed 21 at 206 Lorimer Street;¹
 - 16.5 support for the proposed inclusion of the Kraft Vegemite Factory in the heritage overlay and appropriateness of amending its statement of significance to record the distinctive smell of the Vegemite manufacturing process;
 - 16.6 support for future VHR listings based on the heritage work undertaken in the *Fishermans Bend In-Depth Heritage Review*.
17. A detailed officer response to each submission was provided in the Future Melbourne Committee (FMC) report dated 17 August 2021.
18. Relevantly, there is no evidence before this Panel that seeks to persuade that a heritage overlay is an inappropriate planning outcome for any of the three sites which comprise the Amendment Land. To the contrary, Council's position to apply the heritage overlay is supported by the expert evidence of Ms Lardner. In our submission, the application of a heritage overlay over the Amendment Land is strategically sound, and has heritage merit having regard to the years of extensive work carried out by HCLD Pty Ltd.

¹ Which provides for the ability to realise future use and development as anticipated by the BPWDP.

19. Council has referred all 10 submissions received to the Panel. Submitters electing to be heard at the Directions Hearing have since expressed their comfort with the Amendment following the circulation of Council's Part A submission and the expert evidence of Ms Lardner. To the extent there are any issues that remain outstanding, Council submits these are of a minor nature (relatively speaking), and is a matter for the Panel to consider and make recommendations as necessary (having regard to the position Council advances regarding its proposed way forward).

Council's response to key issues raised in the submissions

20. Council's response to the key issues raised in the submissions is set out below.

Opposition to applying the HO for the substation land at 224- 236 Salmon Street, Port Melbourne;

Submitter position

21. Submitters #3, #4 and #8 support HO1383 over the Electricity Substation Site.
22. Submitter #9 is the only submitter to oppose the heritage overlay.
23. Submitter #9 disputes the:
- 23.1 heritage significance of the Electricity Substation Site as expressed in the exhibited Statement of Significance;
 - 23.2 extent of the curtilage proposed to apply to the substation.
24. Submitter #9 argues the substation ought not be protected by the heritage overlay because:
- 24.1 it does not satisfy criterion A of PPN01;
 - 24.2 it does not satisfy criterion E of PPN01;
 - 24.3 only 2 of a possible 9 criterion are applied.

25. While their primary position is to oppose the heritage overlay per se, in the alternative, Submitter #9 suggests if a heritage overlay is to be supported the following should occur:
- 25.1 the curtilage be limited to the physical building;
 - 25.2 the reuse and redevelopment of the substation building and its incorporation into any redevelopment be acknowledged and provided for.

Council position

26. Council acknowledges that the application of the Heritage Overlay to a property adds a layer of control over the redevelopment of land. But the application of a heritage overlay is done only with appropriate strategic justification underpinning the pursuit of protecting the heritage asset.
27. In considering and ultimately concluding the appropriateness of applying the heritage overlay over the Electricity Substation Site in the manner exhibited, HCLD Pty Ltd have:
- 27.1 used the recognised HERCON Criterion to assess the heritage significance of places and precincts;
 - 27.2 prepared detailed comparative analysis with similar places already in the Heritage Overlay;
 - 27.3 prepared statements of significance using the three part format of ‘What is Significant?’, ‘How is it Significant?’ and ‘Why is it Significant?’ in accordance with PPN01.
28. Council submits the approach adopted by HCLD Pty Ltd is both appropriate and consistent with the methodology outlined by PPN01.
29. Confirming the findings of the *Fishermans Bend In Depth Heritage Review* where the Electricity Substation Site was recommended (in part) for heritage overlay

protection , Ms Lardner's expert evidence statement explains the rationale as follows:²

*The construction of the 1935 Electricity Substation is of **historical significance** as a successful government catalyst to stimulate manufacturing in Fishermans Bend by the provision of electricity. It contributed to Fishermans Bend becoming an important industrial precinct through wartime and later. It is also of **aesthetic significance** for the application of an architectural style to a functional building and reflected the aesthetic of the newly established GMH complex at the time.*

[emphasis added]

30. As such, Ms Lardner's evidence to the Panel is the heritage overlay ought to be applied to the Electricity Substation Site in the manner exhibited (see image below reflecting the proposed mapping in red).



31. Criteria A and E³ are advanced in the statement of significance as the basis for the application of the heritage overlay.
32. No evidence or submissions are before this Panel that seek to persuade the Panel that a heritage overlay is an inappropriate planning outcome for the Electricity Substation site.

² At page 11 of the Expert Evidence Statement of Ms Helen Lardner.

³ See page 15-16 of the Expert Evidence Statement of Ms Helen Lardner.

33. In Council’s submission, Ms Lardner’s evidence ought to be accepted, and the heritage overlay and statement of significance relating to the Electricity Substation site be supported by the Panel as exhibited.

Opposition to including reference to the former General Motors Holden site within the Fishermans Bend In-Depth Heritage Review;

Submitter position

34. Submitters #6 and #7 oppose retaining inclusion of the former General Motors Holden site (**Former GMH site**), within the *Fishermans Bend In-Depth Heritage Review*. While the Amendment does not directly impact the Former GMH site, both submitters say it is inappropriate to include reference to the site on the basis that the *Fishermans Bend In-Depth Heritage Review* is sought to be referenced as a background document:

34.1 at clause 22.04 Heritage Places within the Capital City Zone;

34.2 as a background document in the schedule to clause 72.08 Background documents.

35. In support of their position, both submitters point to Practice Note 13: Incorporated and Background Documents, March 2020 (**PPN13**) submitting that content beyond the scope of an amendment should not be included in a background document.
36. Submitter #6 and #7 highlight the Panel’s approach in Melbourne C305 (PSA)[2020] PPV 68 which concerned a similar issue in respect of heritage in Southbank.⁴
37. Submitter #7 points to the substantive issue identified in the Ministerial authorisation letter.⁵

⁴ Council provided a brief overview of Amendment C305 in its Part A submission from paragraph 23.

⁵ The wording of which is outlined in Council’s Part A submission at paragraph 56.

Council's position

38. Council's Part A submission, at paragraph 112, outlines Council's proposed changes to the Amendment in response to these submissions. In essence, that is to remove reference to the Former GMH site from the proposed background document a position consistent with the FMC resolution of 17 August 2021. No additional properties were considered to be removed because no other submissions were received from other Fishermans Bend landowners seeking the same outcome.
39. The submissions of Submitters #6 and #7 seeking to have the Former GMH site removed from the proposed background document is consistent with that advanced by the same two submitters to the Amendment C305 Panel. In that Panel, it was recommended that the Fishermans Bend properties (which were not the subject of Amendment C305) be removed.
40. While Council proposes to only remove the Former GMH site in response to the submissions received from Submitters #6 and #7, it accepts the issue is broader than the Former GMH site based on the Ministerial authorisation letter.
41. The Minister's authorisation highlighted an area of concern with the Amendment's inclusion of the *Fishermans Bend Indepth Heritage Review* as a background document in the Scheme because of it referring to properties that were not the subject of the Amendment. However, the Ministerial authorisation did not require the Amendment be amended prior to its exhibition.
42. In respect of background documents, PPN13 explains it is important to consider the relevance of a document to the planning scheme before referencing it. It goes onto give the example that there is no point in referencing a document on the landscape or aesthetic qualities of an avenue of honour if the planning scheme does not contain any provisions that address its preservation.
43. In terms of evidence, Ms Lardner does not support the *Fishermans Bend Indepth Heritage Review* being altered for the reasons explained in her expert evidence statement.⁶ In response to the submitters' concern, she recommends a standalone

⁶ See page 28 of the Expert Evidence Statement of Ms Helen Lardner.

report be prepared using the material from the *Fishermans Bend Indepth Heritage Review* relating only to the Amendment Land.⁷

44. Council welcomes a recommendation from the Panel in respect of the appropriate way forward in response to this issue having regard to the guidance in PPN13, the submissions and evidence on this issue.

Request for local heritage protection to be pursued for the former General Motors Holden complex not afforded VHR protection;

Submitter position

45. Submitter #5 submits Council should extend the heritage overlay at the local level to any buildings forming part of the complex which are not determined to be of state significance as part of the Minister's consideration of VHR listing.

Council position

46. As outlined in the chronology attached to Council's Part A submission, part of the land known as the Former GMH site was just recently added to the Victorian Heritage Register gazetted on 1 September 2021.
47. As such, the opportunity to consider the parts of the Former GMH site which have not been afforded state level protection is now known.
48. A potential, future piece of work for Council is to consider pursuing heritage protection at the local level in the manner advocated by Submitter #5. However, for present purposes, this matter sits outside the scope of the Panel's consideration of this Amendment.

Support for the proposed curtilage as relating to the proposed heritage overlay for Shed 21 at 206 Lorimer Street;

Submitter position

⁷ Ibid.

49. Submitters #3, #4, #7, #8 and #10 expressed support for the exhibited amendment as it relates to the application of the heritage overlay on the Shed 21 site.
50. No submitter opposed the application of the heritage overlay in the manner exhibited.

Council position

51. From Council's perspective it is significant the heritage overlay is being embraced by the land owner, Submitter #7, and the abutting land owner to the south, Submitter #10.
52. There are no opposing submitters. No evidence or submission is before this Panel that seeks to advance that a heritage overlay is an unjustified or inappropriate planning outcome for the Shed 21 site.
53. The application of the heritage overlay is supported by the extensive work undertaken by the *Fishermans Bend In-Depth Heritage Review* summarised in Ms Lardner's evidence.⁸ Ms Lardner opines the site is worthy of heritage protection because of:⁹
- 53.1 historical reasons relating to Victorian economic growth and handling of steel;
- 53.2 technical reasons for its mechanism of the port function and particularly the transverse arrangement of overhead cranes.
54. Thus, the Shed 21 site is concluded to have heritage significance meeting Criteria A and F.
55. It is the case that both the *Fishermans Bend In-Depth Heritage Review* and Ms Lardner's evidence recommend a greater curtilage surrounding Shed 21 than has been reflected in the exhibited amendment.

⁸ At page 19 of the Expert Evidence Statement of Ms Helen Lardner.

⁹ At page 20 of the Expert Evidence Statement of Ms Helen Lardner.

56. The difference is illustrated by the following images as taken from Ms Lardner's evidence.¹⁰



The exhibited extent of land for Shed 21 North is to the top of the page.



The *In-depth Heritage Review 2021* recommended extent of land.

57. Ms Lardner explains:¹¹

The elements of the shed which make sense of its heritage values are the shed itself, its relationship to the water, the loading bays, the road and the connection to the street. The loading bays are under the tray for the electrical supply extending past the roof on the south. The road apron, which is further south of this with nothing overhead and allows the simultaneous loading and function of the transverse cranes, is not included in the exhibited extent of land for Shed 21.

58. Ms Lardner opines the curtilage ought to reflect her recommendations, not the mapping sought by the exhibited amendment. Her key reasoning being:¹²

The recommended extent took its alignment from the existing road apron and this should be regarded as heritage fabric essential to the operation of the site.

¹⁰ Ibid.

¹¹ Ibid.

¹² At page 21 of the Expert Evidence Statement of Ms Helen Lardner.

It would detract from understanding of the operation of Shed 21 to drive through the loading bays as if this was the road.

59. Council considers the exhibited curtilage will not compromise the heritage values of the place. The proposed extent of the exhibited curtilage is appropriate to:

59.1 capture the elements of the place which are significant being the steel framed open shed building itself with all its facets; and

59.2 retain the immediate setting of the significant shed buildings extending to include:

(a) the waterfront and Yarra River to the north;

(b) the hardstand areas surrounding the buildings to the west, east and south (to the newly subdivided property boundary).

60. A portion of the driveway as it extends to the Lorimer Street point of vehicle access is also included in Council's preferred curtilage.

61. Relative to Ms Lardner's recommendation, the exhibited (and Council's preferred) version of the curtilage only differs by excluding highly altered portions of sealed road to the east, south and west.

62. In Council's submission, it has complied with PPN01 by not limiting the extent of the curtilage to the Shed 21 buildings themselves and incorporating the setting surrounding the Shed 21 building to ensure protection of the heritage fabric.

63. In respect of curtilages and heritage overlay polygons, PPN01 states as follows:¹³

The Heritage Overlay applies to both the listed heritage item and its associated land. It is usually important to include land surrounding a building, structure, tree or feature of importance to ensure that any development, including subdivision, does not adversely affect the setting, context or significance of the heritage item.

¹³ PPN01 at p.5

64. In discussing circumstances where it is appropriate to seek a reduced curtilage, PPN01 provides:¹⁴

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

65. An appropriate setting around the Shed 21 building has been sought for protection by the extent of the heritage mapping proposed in line with the guidance offered by PPN01, as stated above.
66. Although not determinative, the extent of mapping proposed by Council is also cognisant of other planning controls, the relevant Development Plan – the BPWDP, land ownership and subdivision. In respect of the latter, we also say that a curtilage should make sense on the ground. The fact that the land to the south and to the east forms part of another land holding entitling its boundary to be fenced off accordingly means that the relationship between the Shed 21 site and the neighbouring land no longer makes that sense on the ground.

Support for the proposed inclusion of the Kraft Vegemite Factory in the heritage overlay and appropriateness of amending its statement of significance to record the distinctive smell of the Vegemite manufacturing process;

Submitter position

67. Submitters #3 and #4 unconditionally support the proposed controls as they relate to the Former Kraft Vegemite Factory site.
68. While Submitter #8 also supports the Amendment as it relates to the Former Kraft Vegemite Factory site, the submission suggests that the Former Kraft Vegemite Factory statement of significance recognise the distinctive smell of Vegemite which

¹⁴ Ibid.

emanates from the factory to the public realm as is clearly discerned from an approach to the site.

69. Submitter #8 states:

There are numerous examples internationally of efforts to recognise and protect significant experiential aspects of places and cultural landscapes, such as sounds and smells.

Council position

70. In response to this submission, as explained in Attachment 2 to the FMC report of 17 August 2021, Council resolved to amend the description section of the citation (as contained in the *Fishermans Bend In-Depth Heritage Review*) to include reference to the distinctive Vegemite smell.

71. Council maintains it is an appropriate response to include reference to the smell within the citation, but not the statement of significance being incorporated under the Scheme.

72. This is a position that Submitter #8 is satisfied with as evidenced by correspondence to the Panel ahead of the hearing advising¹⁵ as follows:

Having reviewed Council's Part A submission and the Expert Evidence of Ms Lardner, we are satisfied that our suggested changes, namely additions to the citation for the former Vegemite Factory at 1 Vegemite Way, have been addressed.

73. Ms Lardner evidence opines the smell should also be protected by including reference to the distinctive smell in the Statement of Significance. She describes it as an example of 'intangible cultural heritage' and 'should the manufacture of Vegemite cease at the site in the future, the distinctive smell would remain a recognised part of the site's history which can be interpreted'.¹⁶

¹⁵ Email issued by Felicity Watson, on behalf of the National Trust, dated 26 November 2021

¹⁶ At page 22 of the Expert Evidence Statement of Ms Helen Lardner.

74. Council is unaware of any Victorian or Australian examples where the aroma emanating from a heritage place has been protected by heritage controls. Indeed, the inference could be drawn that the National Trust too is also unaware of any such example. Had it been, it would have highlighted this in their submission.
75. We have been unable to find a Panel report that has considered the issue.
76. The Burra Charter 2013 also does not offer guidance on the appropriateness or otherwise of seeking to protect aromas or smells, although the term ‘smell’ appears in the explanatory note explaining the defined term ‘setting’ which is said may include:¹⁷

*Structures, spaces, land, water and sky; the visual setting including views to and from the place, and along a cultural route; **and other sensory aspects of the setting such as smells and sounds.** Setting may also include historical and contemporary relationships, such as use and activities, social and spiritual practices, and relationships with other places, both tangible and intangible.*

[emphasis added]

77. Council is uncomfortable with a statement of significance protecting the smell emanating from the heritage place in circumstances where:
- 77.1 Council cannot control the use of land through the heritage overlay and would have no reasonable way of controlling the existence of a smell on a property;
- 77.2 the statement of significance itself forms a development control in the Scheme being the basis around which development decisions are made on heritage places.
78. As such, we think it is inappropriate to apply heritage protection to the aroma through an incorporated document in the Scheme. Rather, an appropriate response is that proposed to amend the citation as explained in paragraph 112 of Council’s Part A submission.

¹⁷ At p.3 of the Burra Charter 2013

Support for future VHR listings based on the heritage work undertaken in the Fishermans Bend In-Depth Heritage Review.

Submitter position

79. Submitters #3 and #5 support the inclusion of sites not covered by the Amendment but which have been considered by the *Fishermans Bend In-Depth Heritage Review*.
80. Submitter #5 makes this submission in relation to Westgate Park/West Gate Bridge, while Submitter #3 identifies the following sites for VHR nomination:
- 80.1 the former Government Aircraft Factory (GAF);
 - 80.2 the Westgate Gate Bridge;
 - 80.3 GMH complex.

Council position

81. From Council's perspective, the submissions advanced by the above submitters are outside the scope of the Panel's consideration as part of this Amendment.

Other matters

Kraft Vegemite Factory Site: External Paint Controls

82. Submitter #4 refers to support for the Amendment including external paint controls in respect of the Former Kraft Vegemite Factory Site.
83. Ms Lardner opines that external paint controls are appropriately applied to the 1943 boiler and chimney, 1956 administration block and 1959 cool store buildings forming part of the Former Kraft Vegemite Factory Site.
84. Council exhibited the Amendment without external paint controls applying to proposed HO1381. From Council's perspective while external paint controls could be applied, this isn't necessary because Clause 43.01.1 Permit Requirement of the Heritage Overlay already provides for the following permit requirement:

“A permit is required to externally paint an unpainted surface”.

85. As the materiality of the Former Kraft Vegemite Factory Site is entirely comprised of unpainted brick, a permit is required irrespective of whether or not paint controls are activated or not.

Council’s final position on the Amendment

86. Council’s Part A submission, at paragraph 112, presented the changes that Council proposes in response to the submissions received to the Amendment.
87. It is, of course, a matter for the Panel having regard to the Council’s Part A and B submissions, and on a reading of the independent expert evidence report of Ms Lardner, to form its own views with respect to the Amendment and matters raised in submissions.
88. While Council proposes no further changes to the Amendment, it does welcome the Panel’s recommendation particularly regarding the final form and content of the proposed background document (the *Fishermans Bend In-Depth Review*) and the inclusion of citations for places not directly related to new heritage overlays in Clause 43.01.

Conclusion

89. The Council submits that the Amendment is strategically justified and respectfully requests the Panel support the Amendment.
90. This completes the Part B submission for the Council.

Ann-Maree Drakos
Legal Counsel - Planning
City of Melbourne
3 December 2021