

22.02

26/07/2018
C219

DEVELOPMENT GUIDELINES FOR SITES SUBJECT TO THE HERITAGE OVERLAY

This policy applies to all land within a Heritage Overlay.

22.02-1

30/09/2010
C85

Policy Basis

The MSS highlights the importance of heritage to the identity and character of the municipality and one of its objectives is to protect and enhance the City's heritage places.

This policy provides guidance for the protection and enhancement of the City's identified places of cultural and natural heritage significance.

22.02-2

30/09/2010
C85

Definitions of Words used in this Policy

- Adaptation: modifying a place to suit the existing use or a proposed use.
- Architectural integrity: the quality of closely reflecting the architecture of the period in which a building was created.
- Conservation: the process of looking after a place so as to retain its cultural significance.
- Cultural significance: aesthetic, historic, scientific, social or spiritual value for past, present or future generations.
- Fabric: all the physical material of the place including components and fixtures, and can include building interiors.
- Heritage place: anything subject to the Heritage Overlay and can include a site, area, land, landscape, tree, building or other work, or group of buildings of heritage significance, and may include components or spaces. When used in the context of a building graded individually significant, the heritage place is initially the individually significant building and then the broader heritage area. When used in the context of a contributory building, the heritage place is the broader heritage area.
- Maintenance: the continuous protective care of the fabric and setting of a place. It is distinguished from repair which involves restoration and reconstruction.
- Preservation: maintaining the fabric of a place in its existing state and retarding deterioration.
- Reconstruction: returning a place to a known earlier state and is distinguished from restoration by the introduction of new material into the fabric.
- Restoration: returning the existing fabric of a place to a known earlier state and is distinguished from reconstruction by no introduction of new material into the fabric (note a permit is only required for works, repairs and routine maintenance which change the appearance of a heritage place or which are not undertaken to the same details, specifications and materials).

22.02-3

19/10/2017
C235

Levels of Significance

Every building of cultural significance has been assessed and graded according to its heritage contribution. The levels of significance used are:

- Individually significant: The place is a heritage place in its own right. Within a Heritage Overlay applying to an area each individually significant place is also Contributory.
- Contributory: The place is a contributory element within a larger heritage place. A contributory element could include a building, building groups and works, as well as building or landscape parts such as chimneys, verandahs, wall openings, rooflines and paving.

- Not contributory: The place is not individually significant and not contributory within the heritage place.

The level of significance of every building is identified in the incorporated document, *City of Yarra Review of Heritage Overlay Areas 2007 Appendix 8* (as updated from time to time). Details of methodology used to determine levels of significance can be found in *City of Yarra Review of Heritage Overlay Areas 2007 (Graeme Butler and Associates)*, *City of Yarra Heritage Gaps Review Two 2013*, *City of Yarra Heritage Gaps Study July, 2014 – Smith Street South (Anthemion)*, and *Heritage Gap Study: Review of Central Richmond, Stage 2 Final Report, November 2014*.

22.02-4 Objectives

30/09/2010
C85

- To conserve Yarra's natural and cultural heritage.
- To conserve the historic fabric and maintain the integrity of places of cultural heritage significance.
- To retain significant view lines to, and vistas of, heritage places.
- To preserve the scale and pattern of streetscapes in heritage places.
- To encourage the preservation, maintenance, restoration and where appropriate, reconstruction of heritage places.
- To ensure the adaptation of heritage places is consistent with the principles of good conservation practice.
- To ensure that additions and new works to a heritage place respect the significance of the place.
- To encourage the retention of 'individually significant' and 'contributory' heritage places.
- To protect archaeological sites of cultural heritage significance.

22.02-5 Policy

19/10/2017
C235

It is policy to:

22.02-5.1 Demolition

19/10/2017
C235

Full Demolition or Removal of a Building

Generally encourage the retention of a building in a heritage place, unless

- The building is identified as being not contributory.
- The building is identified as a contributory building, and
 - new evidence has become available to demonstrate that the building does not possess the level of heritage significance attributed to it in the incorporated document, *City of Yarra Review of Heritage Areas 2007 Appendix 8* (as updated from time to time) and
 - the building does not form part of a group of similar buildings.

Note: The poor condition of a heritage place should not, in itself, be a reason for permitting demolition.

Encourage the retention of original street furniture and bluestone road or laneway materials and details (where relevant).

An application for demolition is to be accompanied by an application for new development.

Removal of Part of a Heritage Place or Contributory Elements

Encourage the removal of inappropriate alterations, additions and works that detract from the cultural significance of the place.

Generally discourage the demolition of part of an individually significant or contributory building or removal of contributory elements unless:

- That part of the heritage place has been changed beyond recognition of its original or subsequent contributory character(s).
- For a contributory building:
 - that part is not visible from the street frontage (other than a laneway), abutting park or public open space, and the main building form including roof form is maintained; or
 - the removal of the part would not adversely affect the contribution of the building to the heritage place.
- For individually significant building or works, it can be demonstrated that the removal of part of the building or works does not negatively affect the significance of the place.

22.02-5.2 Original Location

30/09/2010
C85

Encourage the retention of a heritage place or a contributory element to a heritage place in its original location unless:

- The location is not an important component of the cultural significance of the heritage place.
- It can be shown that the relocation is the only reasonable means of ensuring the survival of the heritage place.

22.02-5.3 Reconstruction and Restoration

30/09/2010
C85

Encourage restoration of a heritage place or contributory element if evidence exists to support its accuracy.

Encourage the reconstruction of a building or works which previously existed in a heritage place if:

- The reconstruction will enhance the heritage significance of the heritage place
- Evidence exists to support the accuracy of the reconstruction.

Encourage the reconstruction of original or contributory elements where they have been removed. These elements include, but are not limited to, chimneys, fences, verandahs, roofs and roof elements, wall openings and fitting (including windows and doors), shopfronts and other architectural details and features.

22.02-5.4 Painting and Surface Treatments

30/09/2010
C85

Encourage the removal of paint from originally unpainted masonry surfaces.

Encourage the retention of historic painted signs.

Discourage the sand blasting of render, masonry or timber surfaces; and the painting of unpainted surfaces.

Encourage paint colours to be consistent with the period of the heritage place.

22.02-5.5 Culturally Significant Trees

30/09/2010
C85

Encourage the retention of culturally significant trees in a heritage place unless:

- The trees are to be removed as part of a maintenance program to manage loss of trees due to deterioration caused by old age or disease.
- The trees are causing structural damage to an existing structure and remedial measures (such as root barriers and pruning) cannot be implemented.

Ensure additions and new works respect culturally significant trees (and where possible, significant garden layouts) by siting proposed new development at a distance that ensures the ongoing health of the tree.

22.02-5.6 Subdivision

30/09/2010
C85

Support the subdivision of sites which do not detract from the heritage value of the place or contributory element.

Where appropriate, use a building envelope plan to protect the heritage values of the place. The building envelope plans should:

- Reflect the original rhythm of the streetscape.
- Allow sufficient space surrounding the heritage place or contributory element to a heritage place to retain its significance or contribution.

22.02-5.7 New Development, Alterations or Additions

30/09/2010
C85

22.02-5.7.1 General

30/09/2010
C85

Encourage the design of new development and alterations and additions to a heritage place or a contributory element to a heritage place to:

- Respect the pattern, rhythm, orientation to the street, spatial characteristics, fenestration, roof form, materials and heritage character of the surrounding historic streetscape.
- Be articulated and massed to correspond with the prevailing building form of the heritage place or contributory elements to the heritage place.
- Be visually recessive and not dominate the heritage place.
- Be distinguishable from the original historic fabric.
- Not remove, cover, damage or change original historic fabric.
- Not obscure views of principle façades.
- Consider the architectural integrity and context of the heritage place or contributory element.

Encourage setbacks from the principal street frontage to be similar to those of adjoining contributory buildings; where there are differing adjoining setbacks, the greater setback will apply.

Encourage similar façade heights to the adjoining contributory elements in the street. Where there are differing façade heights, the design should adopt the lesser height.

Minimise the visibility of new additions by:

- Locating ground level additions and any higher elements towards the rear of the site.
- Encouraging ground level additions to contributory buildings to be sited within the 'envelope' created by projected sight lines (see Figure 1)
- Encouraging upper level additions to heritage places to be sited within the 'envelope' created by projected sight lines (for Contributory buildings refer to Figure 2 and for Individually significant buildings refer to Figure 3).
- Encouraging additions to individually significant places to, as far as possible, be concealed by existing heritage fabric when viewed from the front street and to read as secondary elements when viewed from any other adjoining street.

Discourage elements which detract from the heritage fabric or are not contemporary with the era of the building such as unroofed or open upper level decks or balconies, reflective glass, glass balustrades and pedestrian entrance canopies.

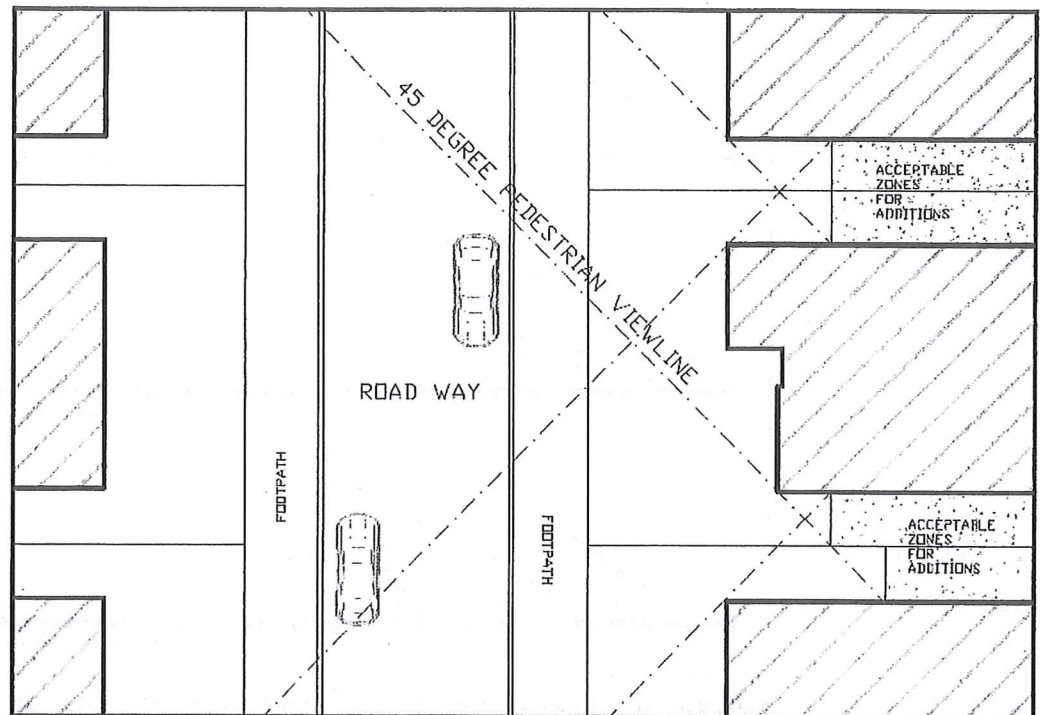


Figure 1 acceptable areas for ground level additions are sited within the area created by drawing a 45 degree view line from the opposite footpath through the front corner of the subject building and the corners of adjacent buildings.

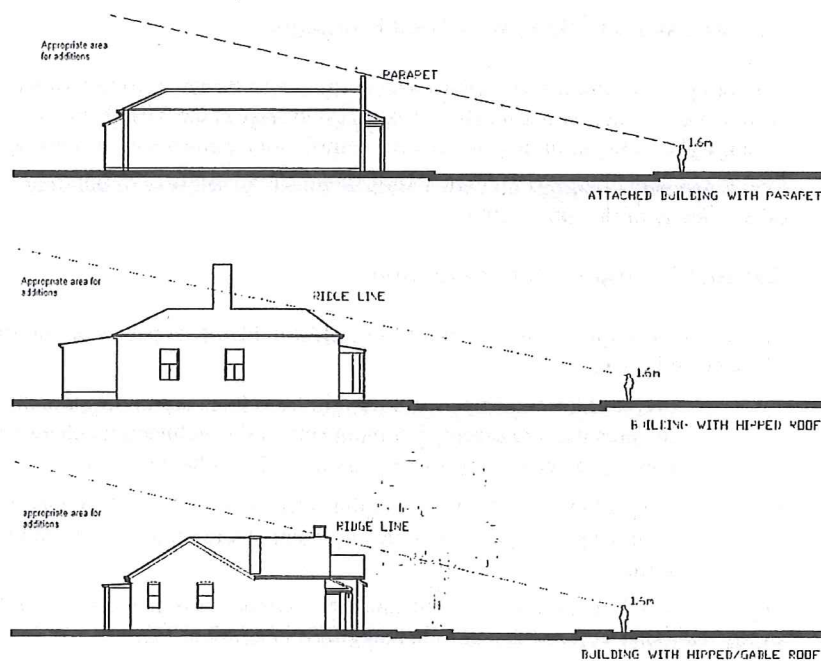


Figure 2 – appropriate areas for upper level additions to contributory buildings are sited within the ‘envelope’ created by projecting a sight line from 1.6 metres above ground level (eye level of average adult person) from the footpath on the opposite side of the street through the top of the front parapet or the ridge line of the principal roof form.

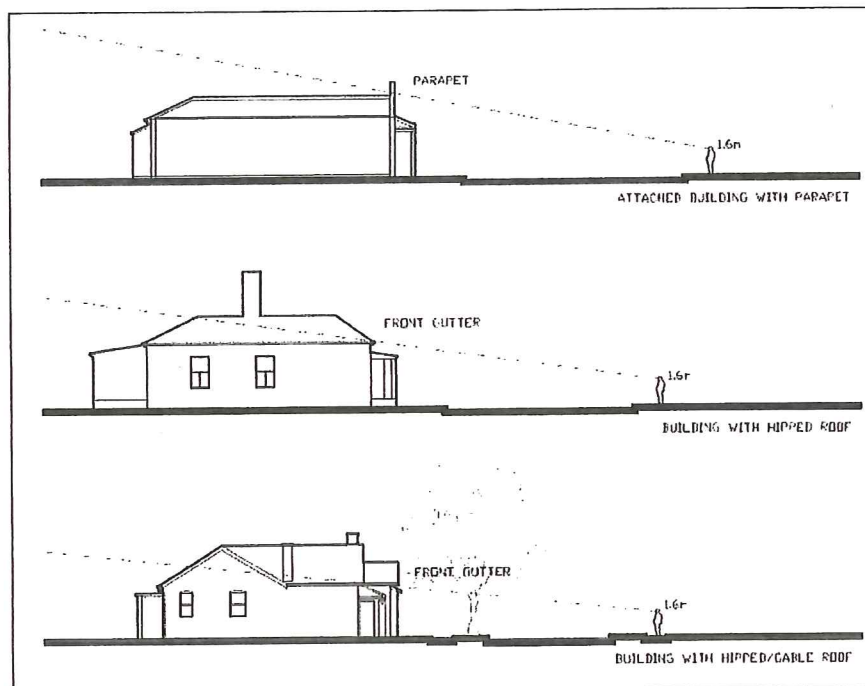


Figure 3 – appropriate areas for upper level additions to individually significant buildings are sited within the ‘envelope’ created by projecting a sight line from 1.6 metres above ground level (eye level of average adult person) from the footpath on the opposite side of the street through the top of the front parapet or the gutter line of the principal roof form.

22.02-5.7.2 Specific Requirements (where there is a conflict or inconsistency between the general and specific requirements, the specific requirements prevail)

30/09/2010
C85

Corner Sites and Sites with Dual Frontages

Encourage new building and additions on a site with frontages to two streets, being either a corner site or a site with dual street frontages, to respect the built form and character of the heritage place and adjoining or adjacent contributory elements to the heritage place.

Encourage new buildings on corner sites to reflect the setbacks of buildings that occupy other corners of the intersection.

Residential Upper Storey Additions

Encourage new upper storey additions to residential heritage places or contributory elements to heritage places to:

- Preserve the existing roof line, chimney(s) and contributory architectural features that are essential components of the architectural character of the heritage place or contributory elements to the heritage place.
- Respect the scale and form of the heritage place or contributory elements in the heritage place by stepping down in height and setting back from the lower built forms.

Sightlines should be provided to indicate the ‘envelope’ from the street of proposed upper storey additions (refer to the sightline diagrams in 22.02-5.7.1).

Industrial, Commercial and Retail Heritage Place or Contributory Elements

Encourage new upper level additions and works to:

- Respect the scale and form of the existing heritage place or contributory elements to the heritage place by being set back from the lower built form

elements. Each higher element should be set further back from lower heritage built forms.

- Incorporate treatments which make them less apparent.

Carpports, Car Spaces, Garages, and Outbuildings

Encourage carports, car spaces, garages and outbuildings to be set back behind the front building line (excluding verandahs, porches, bay windows or similar projecting features) of the heritage place or contributory element or to be reasonably obscured. New works should be sited within the 'envelope' shown in Figure 1 of 22.02-5.7.1.

Discourage:

- new vehicle crossovers in streets with few or no crossovers
- high fencing, doors and boundary treatments associated with car parking that are unrelated to the historic character of the area
- new vehicle crossovers in excess of 3 metres wide in residential streets.

Front Fences and Gates

Encourage front fences and gates to be designed to

- allow views to heritage places or contributory elements from surrounding streets
- be a maximum of 1.2 metres high if solid or 1.5 metres high if more than 50% transparent (excluding fence posts)
- be consistent with the architectural period of the heritage place or contributory element to the heritage place.

Ancillaries and Services

Encourage ancillaries or services such as satellite dishes, shade canopies and sails, access ladders, air conditioning plants, wall and roof top mounted lighting, roof top gardens and their associated planting, water meters, and as far as practical aerials, to contributory or significant buildings, to be concealed when viewed from street frontage.

Where there is no reasonable alternative location, ancillaries and services which will reduce green house gas emissions or reduce water consumption, such as solar panels or water storage tanks, or provide universal access (such as wheel chair ramps), may be visible but should be sensitively designed.

Encourage ancillaries or services in new development to be concealed or incorporated into the design of the building.

Encourage ancillaries or services to be installed in a manner whereby they can be removed without damaging heritage fabric.

22.02-6 Archaeological Sites

30/09/2010
C85

Encourage applicants to consult with Heritage Victoria where any proposed buildings or works may affect archaeological relics to facilitate compliance with Part 6 of the *Heritage Act 1995* (Protection of Archaeological Places).

22.02-7 Decision Guidelines

30/09/2010
C85

Before deciding on an application the responsible authority will consider:

- Whether there should be an archival recording of the original building or fabric on the site.
- The heritage significance of the place or element as cited in the relevant Statement of Significance or Building Citation.

22.02-8

References

26/07/2018
C219

- Heritage Citation: 112-124 Trenerry Crescent, Abbotsfod. GJM Heritage, July 2016.
- Heritage Citation: 20-60 Trenerry Crescent, Abbotsfod. GJM Heritage, July 2016.
- Heritage Gap Study: Review of 17 Precincts Stage 2 Report August 2014, Revised 16 October 2016 (Context Pty Ltd)
- Heritage Review of Predefined Areas In Abbotsford & Collingwood Stage 2 Report July 2015 (Context Pty Ltd).
- Heritage Gap Study: Review of Central Richmond, Stage 2 Final Report, November 2014 (Context Pty Ltd).
- City of Yarra Heritage Gaps Study July 2014 – Smith Street South (Anthemion Consultancies)
- City of Yarra Heritage Gaps Review One 2013 [Appendix A and B includes Statements of Significance] Incorporated Plan under the provisions of clause 43.01 Heritage Overlay - methodology report, July 2014
- City of Yarra Heritage Gaps Review Two 2013
- City of Yarra Heritage Gaps Study October 2012 – 233-251 Victoria Street, Abbotsford (Anthemion Consultancies)
- City of Yarra Review of Heritage Overlay Areas 2007 (Graeme Butler and Associates) [Appendix 7 includes Statements of Significance]
- Yarra Heritage Database 2007 including photos
- “City of Yarra Heritage Review”, Allom Lovell and Associates, 1998.
- “City of Yarra Heritage Review”, Building Citations Volume 2 Part I and II, Allom Lovell and Associates
- “Protecting Archaeological Sites in Victoria”, Heritage Victoria, 1998.
- The Australian ICOMOS Charter for the Conservation of Places of Cultural Significance
- “Fitzroy Urban Conservation Study Review”, Allom Lovell and Associates, 1992.
- “Collingwood Conservation Study”, Andrew Ward and Associates, 1989.
- “Richmond Conservation Study”, J and T O’Connor and Coleman and Wright Architects, 1985.
- “Carlton, North Carlton and Princes Hill Conservation Study”, Nigel Lewis and Associates, 1984.
- “City of Northcote Urban Conservation Study”, Graeme Butler Architect, 1982.
- “South Fitzroy Conservation Study”, Jacob Lewis Vines Architects, 1979.
- “North Fitzroy Conservation Study”, Jacob Lewis Vines Architects, 1978.

EMAIL



BEST HOOPER LAWYERS

To: Colin Charman
Melbourne City Council

Email: Colin.Charman@melbourne.vic.gov.au

cc: Planning Panels Victoria

Email: planning.panels@delwp.vic.gov.au

cc: Stadiums Pty Ltd

Email: iPitt@besthooper.com.au

cc: East Melbourne Historical Society & East Melbourne Group

Email: info@emhs.org.au

cc: Melbourne South Yarra Resident' Group

Email: butcher42@bigpond.com

cc: Carlton Residents' Association Inc.

Email: planningcra@gmail.com

cc: Melbourne Heritage Action

Email: melbourneheritageaction@gmail.com

cc: Kaye Oddie

Email: koddie@bigpond.com

cc: National Trust of Australia (Victoria)

Email: felicity.watson@nattrust.com.au

cc: Nitzal Investment Trust

Email: Iriordan@tract.net.au

cc: Association of Professional Engineers

Email: frankp@townplanning.com.au

cc: Hotham History Project Inc.

Email: info@hothamhistory.org.au

cc: St James Old Cathedral Bellringers

Email: lauragoodin@gmail.com

cc: Bill Cook

Email: talbcook@tpg.com.au

cc: Department of Justice and Regulation

9/451 Little Bourke Street
Melbourne 3000

PO Box 13312
Law Courts 8010

DX 215 Melbourne

Tel 03 9670 8951
Fax 03 9670 2954

www.besthooper.com.au

BEST HOOPER PTY LTD
ACN 137 307 692

9 August 2018

Email: liz.drury@justice.vic.gov.au

cc: Bardsville Pty Ltd

Email: simon@fulcrumplanning.com.au
tcincotta@besthooper.com.au

cc: Melbourne Business School

Email: planning@au.kwm.com

cc: Goldsmiths Lawyers

Email: gary@goldlaw.com.au

cc: Jennifer McDonald

Email: jennifermcdonald12@hotmail.com

cc: Parkville Association Inc.

Email: parkvilleassociation@gmail.com

cc: Dustday Investments Pty Ltd and Botex Pty Ltd

Email: dvorchheimer@hwle.com.au
kmarkis@hwle.com.au

cc: University of Melbourne

Email: sally.macindoe@nortonrosefulbright.com

cc: Oliver Hume Property Funds

Email: tamara.brezzi@nortonrosefulbright.com

cc: The Lost Dogs' Home

Email: sue@glossopco.com.au

cc: Tom Flood

Email: Tom@tjflood.com.au

From: Dominic Scally

Facsimile: (03) 9670 2954

Direct Line: 03 9691 0219

Direct Email: dscally@besthooper.com.au

Principal: Dominic Scally

Our Ref: DHS:180880

Subject: 322 Walsh Street, South Yarra VIC 3141
Amendment C258 to the Melbourne Planning Scheme

Date: 9 August 2018

Dear Sir,

On Tuesday 7 August 2018, David Helms presented expert evidence in support of the Council. That evidence is part heard, and will resume next Monday. During evidence in chief, Mr Helms asserted that he had been advised by the City of Melbourne that DELWP will not entertain any review of individual heritage gradings for properties within the municipality until the issue of the translation to new gradings (ungraded, contributory and significant) is resolved under this Amendment.

In cross examination by Mr Tweedie SC, Mr Helms said that he had been advised by the City of Melbourne this is the case, but could not verify if there was any written instruction to this effect from DELWP. For completeness, we respectfully request the City of Melbourne confirm if in fact DELWP has provided these instructions to the City of Melbourne, and if that is documented, please provide us, and in turn the Panel, a copy of these instructions.

In our opinion, such instructions are relevant to the question whether the Panel can or should recommend investigation of particular properties from significance should be undertaken before a final decision in respect to the methodological translation of heritage values is gazetted. This issue applies in particular to our clients' property at 322 Walsh Street where it is presently graded D3, and as single building place, would under the methodology, be graded "significant".

Please telephone the writer if this correspondence requires clarification.

Yours faithfully

BEST HOOPER



Dominic Scally
Principal

Dominic Scally

From: Maree Fewster <Maree.Fewster@melbourne.vic.gov.au>
Sent: Monday, 13 August 2018 2:43 PM
To: Planning.Panels@delwp.vic.gov.au; 'info@emhs.org.au'; 'butcher42@bigpond.com'; 'planningcra@gmail.com'; 'melbourneheritageaction@gmail.com'; 'koddie@bigpond.com'; 'felicity.watson@nattrust.com.au'; 'lriordan@tract.net.au'; 'frankp@townplanning.com.au'; 'info@hothamhistory.org.au'; 'lauragoodin@gmail.com'; Ian Pitt QC; 'talbcook@tpg.com.au'; 'liz.drury@justice.vic.gov.au'; 'simon@fulcrumplanning.com.au'; 'planning@au.kwm.com'; 'gary@goldlaw.com.au'; 'jennifermcdonald12@hotmail.com'; 'parkvilleassociation@gmail.com'; 'dvorchheimer@hwle.com.au'; 'kmarkis@hwle.com.au'; 'sally.macindoe@nortonrosefulbright.com'; 'tamara.brezzi@nortonrosefulbright.com'; 'sue@glossopco.com.au'; 'Tom@tjflood.com.au'; Dominic Scally; Tania Cincotta
Cc: Robyn Hellman; Colin Charman
Subject: RE: 322 Walsh Street, South Yarra | Amendment C258 to the Melbourne Planning Scheme (BH 180880)
Attachments: COM_SERVICE_PROD-#10043221-v1-WEST_MELBOURNE_HERITAGE_REVIEW_PSA_C272_-_....pdf; Melbourne C258 - Authorisation letter (signed).PDF

Matter: 180880
Saved: -1
Timer: 0

Dear Madam/Sir,

I am writing in response to your letter dated 9 August 2018 regarding **322 Walsh Street, South Yarra VIC 3141 Amendment C258 to the Melbourne Planning Scheme**.

During the preparation of Amendments C272 and C258, the Department has verbally advised City of Melbourne Officers on numerous occasions that it would not approve any further heritage amendments under the old letter grading system. Accordingly, the Department advised the Council to include the West Melbourne Heritage Review (C272) in Amendment C258 because the Department wanted to ensure that the West Melbourne Heritage Review, and any others after it, were approved under the contemporary gradings system.

The Department did not advise the Council that it could not begin or exhibit any more heritage reviews. It did advise that no new reviews would be approved under the letter grading system.

Please find attached the authorisation letters for both Amendments C272 and C258.

Please note also that following discussions about the proposed C258 Heritage Inventory with the Department in late 2016, the Department advised that all of the recent heritage reviews which used the contemporary system as well as the letter grading system (City North – C198, Arden Macaulay – C207, Kensington – C215) must be included in the C258 Heritage Inventory. This was because while these recent reviews had already been approved and incorporated into the planning scheme under the existing letter grading system, the contemporary gradings of these reviews had never been formally exhibited. Hence, the Department advised that they should be exhibited as part of Amendment C258.

Yours sincerely,

Maree Fewster | Senior Strategic Planner | Planning Policy | Urban Strategy

City of Melbourne | Council House 1, 200 Little Collins Street Melbourne 3000
T: 03 9658 9072 | E: maree.fewster@melbourne.vic.gov.au | www.melbourne.vic.gov.au

We value: Integrity | Courage | Accountability | Respect | Excellence

The City of Melbourne respectfully acknowledges the Traditional Owners of the land, the Boon Wurrung and Woiwurrung (Wurundjeri) peoples of the Kulin Nation and pays respect to their Elders, past and present.

Please consider your environmental responsibility before printing this email.

From: Colin Charman

Sent: Thursday, 9 August 2018 3:10 PM

To: Susan Brennan; Maree Fewster; Robyn Hellman; Carly Robertson; Serena Armstrong

Subject: FW: 322 Walsh Street, South Yarra | Amendment C258 to the Melbourne Planning Scheme (BH 180880)

Importance: High

FYI

From: Emma Hughes [<mailto:EHughes@besthooper.com.au>]

Sent: Thursday, 9 August 2018 3:08 PM

To: Colin Charman

Cc: 'planning.panels@delwp.vic.gov.au'; Ian Pitt QC; 'info@emhs.org.au'; 'butcher42@bigpond.com'; 'planningcra@gmail.com'; 'melbourneheritageaction@gmail.com'; 'koddie@bigpond.com'; 'felicity.watson@nattrust.com.au'; 'lriordan@tract.net.au'; 'frankp@townplanning.com.au'; 'info@hothamhistory.org.au'; 'lauragoodin@gmail.com'; 'talbcook@tpg.com.au'; 'liz.drury@justice.vic.gov.au'; 'simon@fulcrumplanning.com.au'; Tania Cincotta; 'planning@au.kwm.com'; 'gary@goldlaw.com.au'; 'jennifermcdonald12@hotmail.com'; 'parkvilleassociation@gmail.com'; 'dvorchheimer@hwle.com.au'; 'kmarkis@hwle.com.au'; 'sally.macindoe@nortonrosefulbright.com'; 'tamara.brezzi@nortonrosefulbright.com'; 'sue@glossopco.com.au'; 'Tom@tjfflood.com.au'; Dominic Scally

Subject: 322 Walsh Street, South Yarra | Amendment C258 to the Melbourne Planning Scheme (BH 180880)

Dear Sir/Madam,

On behalf of Dominic Scally, please see correspondence attached.

Kind regards,

Emma Hughes Legal Secretary

On behalf of **Dominic Scally**, Principal

Direct Tel: (03) 9691 0241 | **Dominic Scally:** (03) 9691 0219

Reply to: dscally@besthooper.com.au

Address: Level 9 / 451 Little Bourke Street, Melbourne, Victoria, 3000



LATEST NEWS

AIG forum w Hon. Matthew Guy
MP and Mr. John Cicero

Article By **Edward Mahony**



Please consider the environment before printing this e-mail.

Disclaimer: The content of this e-mail is intended solely for the use of the individual or entity to whom it is addressed. If you have received this communication in error, be aware that forwarding it, copying it, or in any way disclosing its content to any other person, is strictly prohibited. If you have received this communication in error, please notify the author by replying to this e-mail immediately.

Message protected by MailGuard: e-mail anti-virus, anti-spam and content filtering.
<http://www.mailguard.com.au>

[Report this message as spam](#)

This email is intended solely for the named addressee.
If you are not the addressee indicated please delete it immediately.

Message protected by MailGuard: e-mail anti-virus, anti-spam and content filtering.
<http://www.mailguard.com.au>



Department of Environment, Land, Water & Planning

8 Nicholson Street
East Melbourne, Victoria 8002
Po Box 500
East Melbourne, Victoria 8002
www.delwp.vic.gov.au

File: FOL/16/19500

Mr Ben Rimmer
Chief Executive Officer
Melbourne City Council

Attention: Ros Rymer
Urban Planner
Email address: rosrym@melbourne.vic.gov.au

Dear Mr Rimmer

PROPOSED MELBOURNE PLANNING SCHEME AMENDMENT C272

I refer to your council's application for authorisation to prepare an amendment to the Melbourne Planning Scheme. The amendment proposes to implement the recommendations of the heritage review by Graeme Butler & Associates titled "*West Melbourne Heritage Review 2016*".

Under delegation from the Minister for Planning, in accordance with section 8A of the *Planning and Environment Act 1987* (the Act), I authorise your council as planning authority to prepare the amendment subject to the following condition:

- As the amendment affects Crown land notice of the amendment must be given to Native title Services Victoria (www.nts.vic.gov.au)

The department notes that Council is currently preparing a planning scheme amendment to review two heritage policies of the Melbourne Planning Scheme: Clause 22.04 - Heritage Places within the Capital City Zone and Clause 22.05 - Heritage Places outside the Capital City Zone. It is understood that a key element of this review is to update the current heritage grading system to meet best practice as encouraged by the Applying the Heritage Overlay 2012 Practice Note. Depending on the timing of this forthcoming amendment and the processing of Amendment C272 it may be necessary to make changes to Amendment C272 to align it with the new grading system. Council is encouraged to contact the department prior to exhibition of Amendment C272 to discuss the relationship between these amendments.

The amendment must be submitted to the Minister for approval.

The authorisation to prepare the amendment is not an indication of whether or not the amendment will ultimately be supported.

Privacy Statement

Any personal information about you or a third party in your correspondence will be protected under the provisions of the Privacy and Data Protection Act 2014. It will only be used or disclosed to appropriate Ministerial, Statutory Authority, or departmental staff in regard to the purpose for which it was provided, unless required or authorised by law. Enquiries about access to information about you held by the Department should be directed to the Privacy Coordinator, Department of Environment, Land, Water and Planning, PO Box 500, East Melbourne, Victoria 8002



Please note that Ministerial Direction No. 15 sets times for completing steps in the planning scheme amendment process. This includes council:

- giving notice of the amendment within 40 business days of receiving authorisation; and
- before notice of the amendment is given, setting Directions Hearing and Panel Hearing dates with the agreement of Planning Panels Victoria. These dates should be included in the Explanatory Report Practice Note 77: Pre-setting panel hearing dates provides information about this step).

The Direction also sets out times for subsequent steps of the process following exhibition of the amendment.

The Minister may grant an exemption from requirements of this Direction. Each exemption request will be considered on its merits. Circumstances in which an exemption may be appropriate are outlined in Advisory Note 48: Ministerial Direction No.15 – the planning scheme amendment process.

In accordance with sections 17(3) and (4) of the Act the amendment must be submitted to the Minister **at least 10 business days** before council first gives notice of the amendment.

Please submit the amendment electronically to planning.amendments@delwp.vic.gov.au

If you have any further queries in relation to this matter, please contact Kirsten Webber of Planning Services on 8392 5472.

Yours sincerely



Jason Close
Manager Planning Services

16/16/16



Department of Environment Land, Water and Planning

8 Nicholson Street
East Melbourne, Victoria 3002
PO Box 500
East Melbourne, Victoria 3002
www.delwp.vic.gov.au

File: FOL/16/30308

Martin Cutter
Chief Executive Officer (Acting)
Melbourne City Council

Dear Mr Cutter

PROPOSED MELBOURNE PLANNING SCHEME AMENDMENT C258 – A03421

I refer to your council's application for authorisation to prepare an amendment to the Melbourne Planning Scheme. The amendment proposes to make changes to facilitate the introduction of a revised system for identifying heritage significance (removal of the letter grading system).

Under delegation from the Minister for Planning, in accordance with section 8A of the *Planning and Environment Act 1987* (the Act) I authorise your council as planning authority to prepare the amendment subject to the following conditions:

- Prior to exhibition of the amendment:
 - Modification to the amendment documentation to include the changes proposed to be made by Melbourne Planning Scheme Amendment C272, using the significant/contributory system to identify significance for all properties affected by Amendment C272, as agreed to by council officers. Council is also encouraged to abandon Amendment C272.
 - The local policies be modified to include reference to the Statements of Significance.
 - The Explanatory Report be updated to address the policy changes proposed for the Capital City Zone (excluding Capital City Zone Schedule 5), as a result of the changes proposed to Clause 22.04 - Heritage Places within the Capital City Zone.
- As the proposed amendment affects Crown land, Native Title Services Victoria should be given notice of the amendment.

The changes proposed to the local policies, Clause 22.04 and Clause 22.05, result in duplication between the policies. It is understood that council wish to exhibit the local policies as two separate documents to ensure that the policy changes are clear.

The Government has recently committed to a Smart Planning program which aims to reduce the size and complexity of planning regulation in Victoria, this includes an intention to reduce duplication of provisions. As such, whilst the intention of retaining two local policies for the exhibition period is understood, if the policy content remains duplicated, council is strongly encouraged to consider combining the two policies if/when the amendment is adopted.

The amendment must be submitted to the Minister for approval.

Privacy Statement

Any personal information about you or a third party in your correspondence will be protected under the provisions of the Privacy and Data Protection Act 2014. It will only be used or disclosed to appropriate Ministerial, Statutory Authority, or departmental staff in regard to the purpose for which it was provided, unless required or authorised by law. Enquiries about access to information about you held by the Department should be directed to the Privacy Coordinator, Department of Environment, Land, Water and Planning, PO Box 500, East Melbourne, Victoria 3002



The authorisation to prepare the amendment is not an indication of whether or not the amendment will ultimately be supported.

Please note that Ministerial Direction No. 15 sets times for completing steps in the planning scheme amendment process. This includes council:

- giving notice of the amendment within 40 business days of receiving authorisation; and
before notice of the amendment is given, setting Directions Hearing and Panel Hearing dates with the agreement of Planning Panels Victoria. These dates should be included in the Explanatory Report Practice Note 77: Pre-setting panel hearing dates provides information about this step).

The Direction also sets out times for subsequent steps of the process following exhibition of the amendment.

The Minister may grant an exemption from requirements of this Direction. Each exemption request will be considered on its merits. Circumstances in which an exemption may be appropriate are outlined in Advisory Note 48: Ministerial Direction No.15 – the planning scheme amendment process.

In accordance with sections 17(3) and (4) of the Act the amendment must be submitted to the Minister **at least 10 business days** before council first gives notice of the amendment. Given the complexity and scale of the amendment, the department requests that council provide this information well in advance of the 10 business days.

Please submit the amendment electronically to planning.amendments@delwp.vic.gov.au

If you have any further queries in relation to this matter, please contact Pelta Tapper, Senior Planner of Central Metro on 8683 0998.

Yours sincerely



Jason Close
Manager, Planning Services

21/12/16



PLANNING PERMIT

For further reference
contact: Franca Piccolo
Telephone: 9658 8411
Development Planning Branch
Council House
200 Little Collins Street

Permit No.	TP98/879
Planning Scheme	MELBOURNE PLANNING SCHEME
Responsible Authority	CITY OF MELBOURNE

ADDRESS OF THE LAND

322 Walsh Street, South Yarra

THE PERMIT ALLOWS

The demolition of the existing building and the development of a three storey building accommodating six apartments with ancillary semi-basement car parking in accordance with the attached endorsed plans.

THE FOLLOWING CONDITIONS APPLY TO THIS PERMIT.

- 1 Prior to the commencement of the development hereby permitted the Applicant shall submit to the Responsible Authority three (3) copies of plans drawn to scale generally in accordance with the plans substituted at the hearing of Application for Review No 1998/89708 but modified to show:
 - (a) height of the front fence reduced and transparent design that better integrates the dwelling with the street;
 - (b) deletion of the first floor level;
 - (c) height of the south boundary wall, closest to the east boundary, allowing compliance with E6.T10 of the Good Design Guide;
 - (d) screening along the proposed balconies and terraces;
 - (e) screening to the windows to the north elevation to prevent direct overlooking to the adjacent building at 324 Walsh Street;
 - (f) the number of parking bays in the basement reduced to accommodate the needs of the reduced number of units;
 - (g) parking bays and the enclosed penthouse secure car spaces along the south wall increased to a minimum 3m wide to facilitate easier vehicular access/egress;
 - (h) location of appropriate traffic control system to give priority to vehicles entering the carpark;
 - (i) location and provision of garbage bins and storage;
 - (j) bicycle parking provided on the site.

These amended plans shall be to the satisfaction of the Responsible Authority and when approved shall be the endorsed plans of this permit.

- 2 A schedule of all external materials and finishes shall be submitted to the satisfaction of the Responsible Authority prior to the commencement of any buildings and works on the land. The schedule shall show the materials, colour and finish of all external walls, roof, fascias, window frames, glazing types, doors, fences and paving (including car-park surfacing), outbuildings and structures.

Conditions Continued

Date Issued: 17th May 1999

Signature of the
Responsible Authority

IMPORTANT INFORMATION ABOUT THIS NOTICE

WHAT HAS BEEN DECIDED?

The Responsible Authority has issued a permit.

WHEN DOES A PERMIT BEGIN?

A permit operates:

- a. from the date specified in the permit; or
- b. if not date is specified, from:
 - (i) the date of the decision of the Victorian Civil and Administrative Tribunal, if the permit was issued at the direction of the Tribunal; or
 - (ii) the date on which it was issued, in any other case.

WHEN DOES A PERMIT EXPIRE?

1. A permit for the development of land expires if -
 - (a) the development or any stage of it does not start within the time specified in the permit, or
 - (b) the development requires the certification of a plan of subdivision or consolidation under the *Subdivision Act 1988* and the plan is not certified within two years of the issue of the permit, unless the permit contains a different provision; or
 - (c) the development or any stage of it is not completed within the time specified in the permit, or if no time is specified, within two years after the issue of the permit or in the case of a subdivision or consolidation within 5 years of the certification of the plan of subdivision or consolidation under the *Subdivision Act 1988*.
2. A permit for the use of land expires if -
 - (a) the use does not start within the time specified in the permit, or if no time is specified, within two years of the issue of the permit; or
 - (b) the use is discontinued for a period of two years.
3. A permit for the development and use of land expires if -
 - (a) the development or any stage of it does not start within the time specified in the permit, or
 - (b) the development or any stage of it is not completed within the time specified in the permit, or if no time is specified, within two years after the issue of the permit; or
 - (c) the use does not start within the time specified in the permit, or if no time is specified, within two years after the completion of the development; or
 - (d) the use is discontinued for a period of two years.
4. If a permit for the use of land or the development and use of land or relating to any of the circumstances mentioned in section 6A(2) of the *Planning and Environment Act 1987*, or to any combination of use, development or any of those circumstances requires the certification of a plan under the *Subdivision Act 1988*, unless the permit contains a different provision -
 - (a) the use or development of any stage is to be taken to have started when the plan is certified; and
 - (b) the permit expires if the plan is not certified within two years of the issue of a permit.
5. The expiry of a permit does not affect the validity of anything done under that permit before the expiry.

WHAT ABOUT APPEALS?

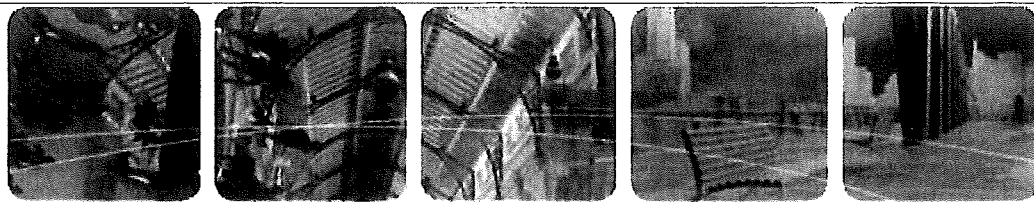
- The person who applied for the permit may appeal against any condition in the permit unless it was granted at the direction of the Victorian Civil and Administrative Tribunal where, in which case no right of appeal exists.
- An appeal must be lodged within 60 days after the permit was issued, unless a Notice of Decision to grant a permit has been issued previously, in which case the appeal must be lodged within 60 days after the giving of that notice.
- An appeal is lodged with the Victorian Civil and Administrative Tribunal.
- An appeal must be made on a Notice of Appeal form which can be obtained from the Victorian Civil and Administrative Tribunal, and must be accompanied by the prescribed fee.
- An appeal must state the grounds upon which it is based.
- An appeal must also be served on the Responsible Authority.
- Details about appeals and the fees payable can be obtained from the Victorian Civil and Administrative Tribunal.

Conditions continued TP98/879

- 3 There shall be no vehicular reversing into or out of the development at Walsh Street.
 - 4 Tandem spaces proposed are acceptable subject to each tandem pair being assigned to part allotment.
 - 5 Prior to the commencement of the use hereby permitted, the landscaping shown on the endorsed plan shall be planted in accordance with the endorsed plan to the satisfaction of Council and shall thereafter be maintained to the satisfaction of Council.
 - 6 All garbage and other waste material shall be stored in an area set aside for such purpose to the satisfaction of the Responsible Authority.
 - 7 No garbage bin or waste materials generated by the permitted use shall be deposited or stored outside the site and bins must be returned to the garbage storage area as soon as practicable after garbage collection.
 - 8 The owner of the subject land shall construct all necessary vehicle crossings and demolish all unnecessary vehicle crossings at no cost to Council and in accordance with plans and specifications first approved by the Responsible Authority, Council's Group Manager – Engineer Services.
 - 9 The owner of the subject land shall not be permitted to alter existing street levels in Walsh Street for the purpose of constructing new vehicle crossing or pedestrian entrances without first obtaining approval from the Responsible Authority, Council's Group Manager – Engineering Services.
 - 10 The owner of the subject land shall construct a stormwater drainage system for the development and make provision to connect this system to the nearest Council controlled underground stormwater drainage system and where necessary upgrade Council's system to accept the discharge from the site in accordance with plans and specification first approved by the Responsible Authority, Council's Group Manager – Engineering Services.
 - 11 The development as shown on the endorsed plan(s) shall not be altered or modified without the prior consent of the Responsible Authority.
 - 12 The development hereby permitted shall at all times comply with the approved plans and the conditions of the permit and be maintained to the satisfaction of the Responsible Authority.
 - 13 The time for the commencement of the development hereby authorised is pursuant to Section 68(1) of the Planning and Environment Act 1987 specified as two (2) years from the date of issue of this permit and the time for completion is specified as two (2) years from the date of such commencement.
- The time within which the development is to be commenced or completed may on application made before or within three (3) months after the expiry date of this permit be extended by the Responsible Authority.

Note: This permit is issued in accordance with the Victorian Civil and Administrative Tribunal decision dated 7th May 1999 pursuant to Section 85(1)(b) of the Planning and Environment Act 1987.

Date Issued: 17 th May 1999	Signature of the Responsible Authority
--	--



Planning and Environment Act 1987

Panel Report

Melbourne Planning Scheme

Amendment C186

'Individual Heritage Places'

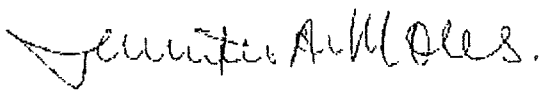
11 July 2012

Planning and Environment Act 1987 (the Act)

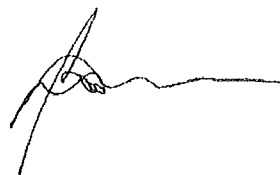
Panel Report pursuant to Sections 153 and 155 of the Act

Amendment C186 to the Melbourne Planning Scheme

'Individual Heritage Places'

A handwritten signature in black ink, appearing to read 'Jennifer A Moles'.

Jennifer A Moles, Chair

A handwritten signature in black ink, appearing to read 'Ray Tonkin'.

Ray Tonkin, Member

The submission pointed to inconsistent and confusing wording between the Explanatory Report and the Amendment's List of Changes document concerning whether external paint controls applied to those 12 buildings where interior controls are proposed. On the one hand the Explanatory Report includes under the heading 'What the Amendment does':

External paint controls apply for 99 places but none of the other requirements in the schedule will apply. Twelve (12) places include select building interiors.

The List of Changes document provides under the heading 'Overlays':

The Schedule to the Heritage Overlay is amended to include 99 new places. External paint controls apply to 99 places, 12 places are select building interiors with interior controls but none of the other requirements in the schedule will apply.

These documents might be read as indicating that of the 99 places, 12 are interiors and in the latter case no external paint controls apply.

The Notice of Preparation of Amendment puts it more clearly:

Amendment C186 introduces the 99 places and 12 select building interiors into the Heritage Overlay... External paint controls apply for 99 buildings and select internal controls for 12 places, but none of the other requirements will apply.

While the submission did not suggest that anyone would have been misled to the extent that further notice of the Amendment would be necessary, the Panel agrees that it would be appropriate to ensure that if, contrary to our recommendations, the Council proceeds with internal listings, the wording of the final Explanatory Report and List of Changes should be consistent and make it clear that 99 places are proposed to be included in the Heritage Overlay (or the final number as adopted); for 12 of these interior controls are to be applied; and for all 99 external painting controls would apply.

4.2 Other challenges to proposed listings

There were a number of other common matters raised in the written submissions and in presentations at the hearing relating to individual buildings which it is convenient to make general comments about.

(i) The role of a building's past occupancy in determining significance

This Amendment includes a number of buildings which were originally factories and warehouses - those uses having now largely disappeared from the central city. The buildings in most cases show no outward sign of their past occupancy. This is true also of the former Venereal Diseases Clinic in Little Lonsdale Street.

During the hearing, several of the experts presenting evidence in relation to individual buildings suggested that the previous occupancy of a building was of no consequence to its significance unless there was a clear reflection of that previous occupancy in the exterior building fabric. This was a generally a reference to there being no obvious sign that a particular company had occupied the building originally or for a significant period, rather than merely the former land use not being apparent. It was suggested, for example, that a factor reducing the significance of the Sniders and Abrahams tobacco warehouse was its

anonymity. It was even suggested that it would be better understood and hence more significant if it had a large cigar attached to it. Whilst this was clearly a 'tongue in cheek' response, it conveniently sums up the position being put in a number of submissions.

It seems to us that this argument is a variant on the argument presented in *A Heritage Handbook* edited by Graeme Davison and Chris McConville for the Monash Public History Group (Allen and Unwin, North Sydney, 1991). In that book, Professor Davidson is critical of the identification of places as of local heritage significance through their association with local identities – an association that usually was not evident in the built fabric. It might be considered that 'local identity' could be extended to a company or firm - which originally occupied the building.

The following quotation from page 91 of the book perhaps best expresses the criticism of significance given to a building by association:

As Sir John Summerson, the British architectural historian, once remarked, 'the objective fact that a certain man did live in a certain house is of purely subjective value'. The connection becomes more than sentimental only if the historic personage and the building somehow help to interpret each other.

The Panel believes, however, that the approach that the historic personage and the building must help to interpret each other is perhaps an approach that is not so useful at the local level¹⁷ and certainly not relevant when a warehouse or factory building was built for a particular type of business. A lack of labelling of previous occupancies, or identifying features from those occupancies such as names on pediments, in the main does not prevent these buildings being seen as former factories and warehouses. It is the generic land use which in the main which is often the critical factor in significance rather than the particular business.

So far as the former Venereal Diseases (VD) Clinic is concerned, the anonymity of the building is perhaps hardly surprising and should not be regarded as reducing its significance.

Generally each place has been dealt with in terms of its historic and architectural significance, regardless of the existence of labelling or identifying features.

(ii) The role of economic policy considerations

The issue

The issue that was addressed in a number of submissions was whether, in assessing if a building should be included in the Heritage Overlay, consideration should be given to other policies of the planning scheme, in particular those which support economic development in the central city. It was suggested, at least in the case of marginally important buildings, that their inclusion in the overlay - with its attendant presumption of conservation - should be traded off against other planning objectives.

¹⁷ See the discussion of this matter in the Panel report on Boroondara Planning Scheme Amendment C99 page 38.

These matters were addressed in some detail in Ms Brennan's submission for ISPT Pty Ltd as owner of the National Mutual site at 433-455 Collins Street, as well as in Mr Walker's submissions for the Currie and Richards property at 473-481 Elizabeth Street. They were responded to by Mr O'Farrell in his submissions for the Council and in Mr Tobin's submissions for the National Trust.

Ms Brennan's submissions included:

- The Council as planning authority is under a statutory obligation to implement all of the objectives of planning in Victoria not merely those relating to heritage conservation.
- In preparing (and assessing) planning scheme amendments the Council and Panel are obliged to have regard to State and local planning policies, including those for the CBD and must consider economic and social effects if the circumstances appear to so require.
- The decision in *Australian Conservation Foundation v Minister for Planning* (2004) VCAT 2029 establishes that all relevant planning issues, including indirect social and economic effects, must be considered.
- The Panel in considering whether to apply the overlay should allow the city to perform its capital city functions.

Mr Walker's submission in relation to this matter also relied on the *Australian Conservation Foundation* case. In particular, he relied upon its findings concerning indirect effects being a legitimate subject for a submission to a proposed Amendment. He submitted that the effect of the *Australian Conservation Foundation* decision in combination with section 12(2) of the Act is that a planning authority must consider all planning policies which have a sufficient nexus to the amendment – in this case not just heritage policies. He said that as one effect of imposing heritage controls is to constrain development, the policies relating to the primary functions of the city should also be considered.

Mr Walker's submission acknowledged that previous panels had not generally taken this approach in relation to consideration of heritage amendments.

The Council response

In his closing reply for the Council, Mr O'Farrell addressed this matter. He submitted that reference to the *Australian Conservation Foundation* case was misplaced and distinguishable in that there were terms of reference purporting to limit the considerations of the panel (which does not apply here).

He noted that previous panels had consistently taken the view that trade-offs against other objectives and requirements of the planning schemes are to be dealt with at the planning permit stage rather as part of the consideration of the appropriateness of a heritage amendment.

Mr O'Farrell quoted the following passage from the report of the panel in relation to Amendment C99 to the Boroondara Planning Scheme as a convenient summary of the panels' approach:

Panels have generally been consistent in their view that consideration of matters beyond the issue of whether or not an individual site or a precinct has the requisite level of local significance, lie outside the proper scope of the assessment of a proposal to apply a Heritage Overlay.[1] These views have normally been expressed in response to submissions about personal disadvantage to the submitter as a result of the heritage listing such as such as economic consequences for a landowner, costs of repair of a building in poor condition, a desire to demolish and rebuild, and the like.

It is our view, however, that even when the competing issues raised are broader and of a public nature such as urban consolidation, they remain outside the proper scope for consideration in relation to the matter of whether a Heritage Overlay should be applied.

The decision as to whether a planning scheme overlay which signals and regulates particular characteristics of land should apply to any site is not a decision which is normally taken having regard to 'trade-offs' against other competing objectives and controls of a scheme. Places are not excluded from the Environmental Significance Overlay, for example, because the planning authority wishes to see the land developed. The consideration of application of that overlay is based on whether or not the land has significance. Similarly areas are included or not included within flooding overlays purely on the basis of whether flood liability applies. In the same way, when a Heritage Overlay is proposed to be applied to a property or area, the consideration should be whether or not it has local heritage significance.

We would also say that planning scheme overlays with few exceptions do not impose prohibitions on development but require that certain values pertaining to the land are taken into account in any proposal to develop the land. Some development proposals may be judged to be inappropriate having regard to all the factors relevant to the permit decision and refused as a result, but others will be judged as satisfactory. This is true of the Heritage Overlay.

In the present case, the Panel is in effect being requested to make a decision in the context of the Amendment about potential demolitions in the area(s) proposed to be made subject to the Heritage Overlay. In our view, these matters are normally and properly dealt with under planning permits. It is only when a permit application outlining the proposed use and development is before a planning body that the proper trade-offs or balancing of policies can be made.

In this respect we refer to the report of the Panel considering Whitehorse Amendment C140 which includes:

The Panel notes that the management of heritage places is a two stage planning process. Firstly the objective identification of heritage significance (the current stage); and secondly the ongoing management of the place having regard to such matters such as the economics of building, retention and repair, reasonable current day use requirements etc as part of the consideration of an application for development.

This approach to the management of heritage places has been adopted in practice by planning panels and by the Victorian Civil and Administrative Tribunal. The comments by the panel considering the Ballarat Planning Scheme Amendment C58 are often referred to.

At page 53 of their report the Panel said:

Panels have consistently held that whenever there may be competing objectives relating to heritage and other matters, the time to resolve them is not when the Heritage Overlay is applied but when a decision must be made under the Heritage Overlay or some other planning scheme provision. The only issue of relevance in deciding whether to apply the Heritage Overlay is whether the place has heritage significance.

Mr O'Farrell also submitted that at the permit stage the balancing against other policies would necessarily occur as a result of Clause 10.04 of the scheme which directs integration of policies in favour of net community benefit and sustainable development.

Other submissions

Mr Tobin for the National Trust also referred to a number of other panel reports which have taken the same approach to the matters to be considered at the time of a proposed heritage amendment. His submission also pointed out that to do otherwise would be to 'second guess' the future use (or development).

Mr Tobin also pointed out that under the Capital City Zone provisions permission is required for buildings and works and these provisions would invite consideration of broader competing policy objectives.

Panel discussion and views

The *Australian Conservation Foundation* case is one which is concerned with the issue of whether the ambit of considerations by a panel can be constrained by terms of reference. It finds that they cannot and that the decision maker is obliged by section 12 of the Act to entertain submissions on environmental matters and consider the environmental effects of a proposed amendment including its indirect effects.

It appears that it is by analogy that it is argued that we must consider the economic consequences of the present heritage Amendment.

The *Australian Conservation Foundation* decision was considered by the panel considering Amendment C84 to the Brimbank Planning Scheme. As here, it was a heritage amendment proposing individual place Heritage Overlays. Relying on two cases (one being *Australian Conservation Foundation*), it was argued for a submitter that the panel should have assessed the heritage study's recommendations against the State and local planning policy frameworks of the scheme (including economic, environmental and social objectives) prior to preparation of the amendment.

The Panel commented that the two cases relied upon revolved around the question of whether the discretion to consider social and economic effects implied in the wording of section 12(2)(c) should or should not have been exercised. Noting that neither case related

to heritage controls, they found that the cases did not have specific relevance to Amendment C84.

We similarly believe that the findings of the *Australian Conservation Foundation* case are not directly relevant here.

Section 12 of the Act to which it refers sets out the responsibilities and duties of a planning authority. They relate inter alia to the matters which are to be considered when a scheme is being prepared.

Relevant parts of section 12 are:

- 12 (2) *In preparing a planning scheme or amendment, a planning authority-*
- (a) must have regard to the Minister's directions; and*
 - (aa) must have regard to the Victoria Planning Provisions; and*
 - (ab) in the case of an amendment, must have regard to any municipal strategic statement, strategic plan, policy statement, code or guideline which forms part of the scheme; and*
 - (b) must take into account any significant effects which it considers the scheme or amendment might have on the environment or which it considers the environment might have on any use or development envisaged in the scheme or amendment; and*
 - (c) may take into account its social effects and economic effects (our emphasis).*

It appears that there is a mandatory obligation to consider significant environmental matters in the preparation of an amendment (the matter in contention in the *Australian Conservation Foundation* case) but there is discretion as to whether social and economic effects are to be considered.

We are conscious that the apparent difference between the two provisions may not be as great as it first appears.

The second case to which the Brimbank panel was referred was *Glenroy RSL v Moreland City Council* VSC 29; [1997] VICSC 29 (3 July 1997) reported in 19 AATR. The Supreme Court was considering the whether a similarly worded discretion to consider social and economic effects under section 60 of the Act, which relates to the matters to be considered by a responsible authority (and the Tribunal) when considering an application for permit, was indeed discretionary in all circumstances.

That section provides:

- (1A) Before deciding on an application, the responsible authority, if the circumstances appear to so require, may consider-*
- (a) any significant social and economic effects of the use or development for which the application is made...*

The Court held:

If "the circumstances appear to so require" I am of the view that the responsible authority (and thus, on a rehearing, the Tribunal) is then bound to have regard to

whichever of the four specified subject matters bears upon the issue. I do not accept that the expression "may consider" is to be read in s.60(1)(b)¹⁸ as conferring a discretion on the decision-maker but rather, in the words of Jervis CJ in argument in MacDougall v. Paterson [1851] EngR 973; (1851) 11 C.B. 775 at 773; [1851] EngR 970; 138 E.R. 672 at 679 "the word 'may' is merely used to confer the authority; and the authority must be exercised, if the circumstances are such as to call for its exercise" (See Finance Facilities Pty Ltd v. Federal Commissioner of Taxation (1971) 127 C.L.R.106 at 134-135 per Windeyer J; see also Mitchell v The Queen (1996) 184 C.L.R.333 at 345-346). To adopt and adapt the language of Windeyer J in Finance Facilities, the responsible authority (and the Tribunal) are each given power to consider the matters mentioned in sub-s.(1)(b) in forming their decisions but upon proof of the particular case out of which the power arises, that is "if the circumstances appear to so require", the responsible authority, or the Tribunal (as the case may be) is then bound to consider them.

While there is no similar reference to 'if the circumstances so require' in section 12, the *Glenroy* case nevertheless provides some guidance on whether there are obligations to consider other matters beyond heritage when urged to do so by submitters.

In relation to this heritage Amendment we do not think that the circumstances require us to consider matters beyond whether the places which are the subject of the proposed Heritage Overlays have heritage significance – in particular we do not think we are required to consider and trade-off other economic policies of the Planning Scheme. We adopt the reasoning of the panel which considered Boroondara Planning Scheme Amendment C99 as quoted above in making this finding. The Heritage Overlay like most other overlays in the VPPs is a tool with a particular purpose to recognise and manage heritage places. It should be applied to those places where heritage significance is found to apply.

In this respect we note that the VPP Practice Note on Applying the Heritage Overlay, in the section headed 'What places should be included in the heritage overlay?', indicates that, in addition to heritage places not relevant here, the overlay is to be applied to 'places identified in a local heritage study, provided the significance of the place can be shown to justify the application of the overlay'. There is no mention in the Practice Note that other trade-offs are to be made.

We believe that the proper time for economic imperatives and the like to be considered is at the permit application stage when the detail of what is to be done to a place is known and heritage considerations can be fairly weighed against other outcomes. This is an approach consistent separating heritage assessment and management as described in the Burra Charter.

There can be no concern that this later balancing of competing objectives will not occur. As Mr Tobin noted, the Capital City Zone provisions impose the need for permission for buildings and works and demolition, and the multiple permissions under the zone and the

¹⁸ Now section 60(1A)(c)

overlay will ensure that considerations applying at the time of a permit application will not be confined only to heritage matters as they might be if only heritage permission were triggered. The balancing of heritage considerations against other scheme policies and requirements will always occur where works are proposed on the sites of these buildings – allowing the worth of their retention or demolition to be considered when there is a known proposal for buildings and works.

With respect to this issue of whether other competing considerations should apply at the time the Amendment is being considered, we were not referred to any other panel report where a different approach to ours has been taken.

(iii) Permits

The issue

There were a number of matters raised concerning the relationship of the Amendment to extant planning permits and applications, most notably:

- The role that an existing permit for redevelopment of a site plays in considering whether the Heritage Overlay should now be applied and whether there is a need to accommodate it in some way.
- The effect of the incoming heritage controls upon current applications for permits and the need for additional permissions.

These matters were the subject of submissions made on behalf of the owners of the Celtic Club and the National Mutual building in particular. We understand that planning permits exist or permit applications have been also made in relation to the Women's VD Clinic, the Royal Saxon Hotel, the Currie and Richards site, and the Law Institute site.

Some of the key matters raised were:

- Ms Brennan advised that there is a permit to develop the National Mutual site¹⁹, current to 2 December 2015, which allows the demolition of the open plaza forecourt, part of the basement car park and façades of the existing building; together with refurbishment of the existing office tower and the construction of an 11 storey office building to Collins Street with ground floor retail; a two storey icon building for use as a restaurant; and a pedestrian laneway. The earlier written submission for ISPT Pty Ltd suggests that heritage matters had been considered when the permit application was made.

While this permit seems to allow 'contemporising' changes to be made to the cladding of the existing building, it is not clear whether this permission would allow any changes required to deal with the complete replacement of new external panels as a result of the recent problems.

- Mr Bisset advised that his client has an application before the Minister for Planning seeking to demolish part of the building on the site (retaining the facade to which the

¹⁹ Planning Permit No 2006/0419

**BOROONDARA PLANNING SCHEME
AMENDMENT C99**

HAWTHORN HERITAGE PRECINCTS

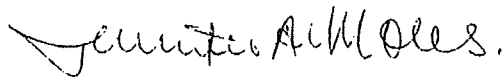
PANEL REPORT

6 FEBRUARY 2012

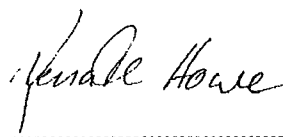
**BOROONDARA PLANNING SCHEME
AMENDMENT C99**

HAWTHORN HERITAGE PRECINCTS

PANEL REPORT



.....
Jennifer A Moles, Chair



.....
Renate Howe, Member

referred to the chapter 'What Makes a Building Historic?' in the Professor Davison book. In particular we were referred to the oft quoted statement:

Even when the association between the building and the great man is more enduring, it may still be quite uninteresting. As Sir John Summerson, the British architectural historian, once remarked, 'the objective fact that a certain man did live in a certain house is of purely subjective value'. The connection becomes more than sentimental only if the historic personage and the building somehow help to interpret each other (at page 71) (Panel emphasis).

We make the comment that this issue of ascribing historic value to a place by association with an individual often presents in a local heritage study context. At a local community level there can sometimes be a strong collective memory of the association of a house with an individual or family. That person (and their association with a place) may well not be known outside of the local community context.

Two questions arise in assessing whether the historic values of a place ascribed by association with an individual are of sufficient significance to warrant heritage listing of the place.

First, the issue of the importance of the individual to the community must be assessed. If the standard is the 'great man theory of history' as suggested in the above quotation, this virtually makes the criteria inapplicable at the local level (as against State or National level assessments).

It is our view that certainly since the time Sir John Summerson was expounding views on this matter, and even since the *Handbook* was published twenty years ago, there has been a change in approach to historical investigations and philosophy. We believe that current historical thinking gives greater recognition to the importance of women's and family history, and to the history of ordinary people. Indeed it appears to us that this wider approach to history has been a factor in the widespread introduction of local heritage studies in Victoria and acceptance of broader definitions of cultural heritage significance. It is sufficient we believe in considering a local historical basis of significance for a place for the individual concerned to be of significance or well known to that community alone.

Context ascribes historical significance to 733 Glenferrie Road on the basis that this house/doctor's surgery was associated with Dr Jacob Jona, a prominent member of the Hawthorn community. Dr Jona purchased the property, which was originally constructed as both a house and medical rooms in 1903-1904, in 1924. He owned the property until his death in 1961.

As well as living at and conducting his local medical practice from 733 Glenferrie Road, Dr Jona was a long time medical officer for the Hawthorn Council, medical officer for the nearby Hawthorn Football Club for thirty years, and served as president of the Hawthorn Football Club from 1932 to 1949. The latter role made him the first Jewish President of an AFL/VFL Football Club.

While most of the evidence presented to the Panel in relation to *Toolangi* related to the architectural significance of the building, Mr Raworth did address the matter of historical significance in some detail. Mr Raworth identified Dr Jona as 'clearly a person of historical importance' to Hawthorn.

We agree with that assessment.

The second issue to be addressed, however, is whether it is necessary for the building to in some way directly reflect the occupancy of Dr Jona and whether in fact it does so.

It was Mr Raworth's view that the built fabric does not help interpret the acknowledged importance of Dr Jona in a meaningful way. He said that there was no strong physical evidence to explain how the place was used by Dr Jona as a medical practice for several decades.

In his evidence at the Hearing, Mr Raworth referred the Panel to a decision by VCAT (52 Fitzroy Street P/L v Port Phillip CC (1999) VCAT 1416) where the heritage value of a house and surgery in Fitzroy Street, St Kilda of a long time local doctor, who was secretary of the St Kilda Cricket Club and an official in Victorian and Australian cricket, had been considered. The Tribunal had found that the historic value was not sufficient to refuse the demolition of the building.

We have given some thought to this issue of linking fabric and historical importance. It is our view that a sufficient link between the place and Dr Jona is offered by the built form of the place – it is very clearly a residence and doctor's surgery.

So far as the VCAT decision is concerned, while there are some parallels to the circumstances of 733 Glenferrie Road, the relevance of this decision to this Panel's consideration is limited. The physical evidence of the use as a doctor's surgery was apparently less clear and the emphasis was on the place as a dwelling rather than a dwelling and surgery. Importantly, however, other planning considerations were balanced against heritage by the Tribunal in determining whether a permit should issue rather than its being an assessment of whether a threshold of significance had been passed.

In that respect it is to be noted that following the conclusion of the Panel Hearing, on 22 December 2011, the VCAT decision concerning the permit application by Virgon Constructions to develop 733 Glenferrie Road with a five storey commercial and residential building, was released. The Tribunal refused permission for the proposed development. When the Panel invited comment on that decision and the Tribunal reasons for it, Mr Cicero for Virgon Constructions was the only party to reply. Relevantly he commented that the VCAT decision had no bearing on the Panel's consideration of Amendment C99 as it is not the role of VCAT to determine the level of cultural heritage significance of a place.

The 'significance' threshold

The above exposition of our views as to the architectural and historical values of the subject property nevertheless begs the question as to whether those values are sufficient to afford a 'significant' grading or only a 'contributory' grading in terms of the precinct contribution of the building.

As we have said, the threshold between these two gradings of significance is not clear and the definitions in the Planning Scheme are unhelpful and in need of review (see the discussion in Section 3.3).

Wherever the threshold between the two gradings lies, we believe that the building warrants a 'significant' grading in the precinct context because of two further factors.

The first is that the typology and form of the building reinforce its role of providing a link between the commercial area of Glenferrie Road and the abutting Grace Park residential precinct. The building's dual function as surgery and residence is clearly apparent. It therefore links in terms of use with the commercial and professional land uses along Glenferrie Road as well as with the residential uses in the hinterland to the centre. The form of the building also makes a transition between the two precincts: it is an upright two storey structure similar to most of the early shop buildings in the centre but it nevertheless has a residential setback, overall character and detailing. It might be said that the building contributes not only to one heritage precinct but to two.

The second factor is that the building presents as 'an anomaly' in the Glenferrie Road streetscape. This characteristic was raised as an argument against the significance of the building. The building does not have the zero setback to Glenferrie Road typical of the adjoining shop buildings nor does it have their form.

The evidence at the Hearing, however, indicated conclusively that the building was present well before the adjoining shops were developed and that there were other early residences in the precinct before more extensive commercial development.

We consider that the very fact that the building appears 'anomalous' in terms of current day surrounds is a valuable heritage characteristic. The building's atypical appearance for the precinct may invite the observer to consider how this incongruity has come about and thus it may provide the catalyst for the observer to learn something of the history of development of the area. The educative role played by places of heritage significance is often cited as a benefit of heritage conservation. This is a case where this benefit may well be directly realized.

Having considered the evidence and submissions, the Panel is of the view that the contribution by *Toolangi* to the values of the Glenferrie Road precinct should be assessed as 'significant'.

We recommend that 733 Glenferrie Road be included in the Glenferrie Road Commercial Precinct as a 'significant' place for its historic and architectural values as set out in the revised statement of significance of 8 November 2011 prepared by Context P/L.

4.4 348 Burwood Road

4.4.1 The issue

The owner of 348 Burwood Road (the property on the south-west corner of the Glenferrie and Burwood Roads intersection), Mr Noel McInnes, objected to the inclusion of the car park adjacent to the shop building being included in the overlay on the basis that the car park has no heritage value. He also raised other general matters which are addressed in Section 3.5 of this Report.

4.4.2 The Council response

The response was that there should be no change in the recommendation. It was said that the subject building is a contributory building in the Heritage Overlay and represents the boom in development along Glenferrie Road in the 1880s. The car park has been included, we were advised, as it is part of the title boundary for 348 Burwood Road and it is normal practice to include all land and development on one title.

4.4.3 Panel discussion and views

The Practice Note 'Applying the Heritage Overlay' refers to Clause 43.01 – Scope, noting that the Heritage Overlay applies to both the listed heritage item and its associated land. More specifically, the Practice Note states that:

It is usually important to include land surrounding a building, structure, tree or feature of importance to ensure that any new development does not adversely affect the setting or context of the significant feature. In most situations the extent of the control will be the whole property.

This allows Councils to regulate the development surrounding the property to ensure it does not impact on the significance of the heritage fabric. Consequently, application of the HO aligns with property boundaries.

The Panel recommends no change in the inclusion of the whole property as no heritage issues were put forward in support of excision of the adjacent car park and it would be inconsistent with the Practice Note. The Panel notes that future sympathetic development on the existing car park will not be excluded.

4.5 2A Bowen Street

4.5.1 The issue

The submitter, Mr Ian Napier, the owner of the property at 2A Bowen Street, has a current planning permit to alter the existing roof and to install shopfront windows and fears the application of the Heritage Overlay may jeopardise this permit. Mr Napier also sought the exclusion of the property because of the small site area.

4.5.2 The Council response

The Council response to this submission was that the property should be included in the Heritage Overlay because it is located at the rear of 784 Glenferrie Road and had, until subdivision, been part of that property. The inclusion of the building at 2A Bowen Street was also influenced by Context's view that it was most likely historically connected to 784 Glenferrie Road and enhanced the heritage value of this contributory building. Further, inclusion of the building enabled the rear lane between Bowen Street and Liddiard Street to form a natural precinct boundary.

In relation to the existing planning permit it was the Council's view that *the proposed HO will not prohibit the owner from acting on any live planning permit -*

providing planning permission as triggered by the HO is obtained under the HO wherever necessary (i.e. for non-exempt works).

4.5.3 Panel discussion and views

The Panel agrees with the submitter that the reason for the inclusion of the place should be stated in the statement of significance.

The Panel notes that although there is no firm evidence regarding the use of the building, it was most likely associated with 784 Glenferrie Road and enhances the heritage value of this complementary building.

The earlier granting of the existing planning permit is not a factor that goes to the question of the heritage significance of the building, but the Panel notes the Council advice about the qualified ability of the owner to act upon any live permit.

The Panel recommends that 2A Bowen Street be included in the Heritage Overlay and that an explanation for its inclusion be provided in the revised statement of significance for the Glenferrie Road precinct.

4.6 673-681 Glenferrie Road

4.6.1 The issue

This objection to inclusion of the property at 673-681 Glenferrie Road in the precinct Heritage Overlay was based on the non-contributory nature of the existing Glen Centre of four shops and an arcade, which the submitter stated included no heritage fabric.

4.6.2 The Council response

The evidence by Context called by of the Council emphasised the important location of this property in the centre of the Glenferrie Road precinct. While no heritage value was ascribed to the property, the Context evidence emphasised that 673-681 should be included in the precinct to ensure that any future development that may occur *directs consideration of the surrounding heritage context*. It was the Council view that inclusion of the Glen Centre was preferable to having the precinct boundary 'skip' 673-681 Glenferrie Road.

It was noted also that non-contributory buildings within precincts are specifically dealt with under Council's local heritage policy at Clause 22.05. The policy provides that non-contributory buildings may be altered or

demolished provided any new development considers the heritage characteristics of the heritage precinct.

4.6.3 Panel discussion and views

The Glen Centre clearly presents as a non-contributory building in the Glenferrie Road precinct. However, although it was said that the buildings and arcade include no heritage fabric, the Panel noted on inspection that use as a former picture theatre is able to be read from the rear car park.

The Panel agrees with the Council submission and the Context evidence that given the central location of the Glen Centre, it is important that future development on this site is sympathetic to the heritage values of the precinct. It would be inappropriate to introduce a gap in the heritage controls at this central part of the precinct. The Panel also accepts Ms Honman's view that it is generally necessary in larger more complex precincts, such as the Glenferrie Road Commercial Precinct, to include a proportion of non-contributory buildings to protect the overall integrity of the precinct.

The Panel recommends that the Glen Centre (673-681 Burwood Road) remain as a non-contributory building within the Heritage Overlay.

4.7 715-731 Glenferrie Road

4.7.1 The issue

This submission by Ms Joan Cameron considered that the proposed amendment would 'stifle' development along Glenferrie Road and that the properties from 715-731 on the western side of Glenferrie Road do not exhibit any heritage value worthy of inclusion in the Heritage Overlay. The issue of 'stifling development' is discussed above in Section 3.1.3.

4.7.2 The Council response

On the issue of heritage significance, the Context evidence called by the Council was that the properties had been correctly graded as contributory buildings in the Heritage Overlay. The shops at 715-725 Glenferrie Road are a consistent row of shops *with good architectural qualities particularly in the architectural expression of the parapets*. It was said that their contributory significance is enhanced when seen in context with the adjoining row of shops at 727-731 Glenferrie Road which are a consistent row of three double storey buildings with simple detailing.

Ms Honman's view was in summary that the shops at 715-731 are contributory buildings that illustrate the key development base of Glenferrie Road in the early decades of the 20th century.

4.7.3 Panel discussion and views

Inspection by the Panel of the shops in this section of Glenferrie Road, confirmed the Council submission that the shops at 715-731 are important contributory buildings and enhance the understanding of the continued development of Glenferrie Road as a shopping precinct at its northern end.

The Panel recommends that 715-731 Glenferrie Road be included in the Heritage Overlay as contributory buildings.

5. Manningtree Road Precinct issue

5.1 The exhibited statement of significance

HO493 Manningtree Road Precinct, Hawthorn

Reference – Hawthorn Heritage Precincts Study (July 2010)

The Manningtree Road Precinct, Hawthorn, is of heritage significance for the following reasons:

- *Manningtree Road provides the best example of the provision of housing for the rising numbers of the middle class in Hawthorn in the late nineteenth century. It predates the influential Grace Park Estate which continued a similar housing standard, though in more fashionable architectural form and a more adventurous town planning layout. In the range of housing provision which Hawthorn provided in the nineteenth century, it sits between the wealthy homes of Hawthorn Grove and the smaller houses of the West Hawthorn Area. Manningtree Road was a stepping stone into a gentleman's residence and clearly shows the major theme in Hawthorn, of the development of the garden suburb ideal which was to become dominant throughout Melbourne in the twentieth century 1 (RNE Criterion A.4).*
- *Manningtree Road displays a high level of cohesiveness of scale, architectural style and period of development. There are a number of houses demonstrating an unusual integration of architectural features, transitional styles and use of unusual ornament styled buildings. These key buildings are located adjacent to many similar although more conservative style (RNE Criteria D.2, E.1).*
- *Manningtree Road has associations with Henry Box who was an influential figure in municipal, political and civic affairs in Hawthorn. His house Manningtree at no 2 (now altered) was an early mansion and lent its name to the street. No 4 Manningtree Road, now called Boonoke, has associations with John Patterson, pastoralist and businessman (RNE Criterion H.1).*

5.2

The issue

The proposed Manningtree Road Heritage Overlay is a single street precinct and includes Nos 3-83 and 2-76. This area of Manningtree Road consists of single storey detached late Victorian houses mostly of Italianate villa design and some Edwardian houses built on medium sized blocks. The precinct represents middle class suburban housing development in Hawthorn during the late 19th century and has a high level of cohesiveness in scale and architecture.

The issue is the whether the delineation of the western end of the precinct adjacent to Power Street has been correctly undertaken.

This issue was raised in two submissions by owners of the properties at 4 and 6-8 Manningtree Road. These submissions disputed the precinct boundary at this more architecturally varied western end and proposed instead that the precinct boundary should commence at No 12.

The written submission on behalf of Mr William Wang, owner of No 4, *Boonoke*, a single storey federation-style bungalow building, argued that his dwelling was of a different period and its well-located site should be available for redevelopment. In its statement of significance, No 4 is described as a good example of a transitional Edwardian bungalow associated with John Patterson, a well known pastoralist and business man who built the house in 1923 and lived there until his death in 1939. This was also disputed in the submission made on behalf of Mr Wang.

A more substantial submission was made at the Panel Hearing by Mr Smyth of SJB Planning on behalf of Mr and Mrs Rickards, owners of No 6 Manningtree Road, a non-contributory contemporary building. It was argued that the extent of the 'proposed Manningtree Road Heritage Precinct (HO493) is not entirely strategically justified' and that Nos 2 and 6-8 should be excluded from the precinct.

No 2 is a large Victorian aged care home that has been extensively altered. The statement of significance identifies it as the former home of Henry Box, a leader in Hawthorn's civic affairs and that it was the original building on the Manningtree estate. It was later subdivided to create the street and is graded as a contributory building.

The SJB submission concluded that *'the western end of the south side of Manningtree Road represents a patchwork of different dwelling types from different periods, with a limited level of integrity, consistency and value'* compared with the remainder of the precinct. Again it was submitted that the precinct boundary should commence at No 12.

5.3 The Council response

Ms Honman in her expert evidence argued that the inclusion of Nos 2-8 was justified. She conceded that No 2, the mansion of the original owner, had been altered, but said that it has sufficient historic value to be included in the precinct as a contributory building. With regard to No 4, Ms Honman submitted that it is a good example of a transitional Edwardian bungalow and complements the aesthetic qualities of the street as it has a similar scale and uses a similar palette of materials (red brick, cement render and terra cotta roof tiles). She said that this justifies its inclusion as a contributory building.

The inclusion of all properties in the precinct at the western end of the street eastward from No 2, including the non-contributory dwelling at No 6, was further justified on the basis that *'the presence of some non-contributory buildings within a precinct is considered to be standard practice in the assessment of heritage precincts.'* It was further said that as the adjacent properties of Nos 2 and 4 are contributory, exclusion of No 6-8 which is non-contributory was undesirable as *'a small, isolated exclusion'*.

5.4 The National Trust view

The National Trust submission also addressed the exhibited boundary delineation for this precinct and the significance of the precinct. Mr Storey's evidence strongly supported the precinct's designation as of local significance noting the surprisingly high degree of homogeneity of the building stock and that this precinct comprised Boom era middle class housing not well represented elsewhere in the municipality except for Lisson Grove.

He was definite in his support for the inclusion of No 2 in the precinct on the basis that it was associated with the original subdivider and was reasonably intact. He was less enthusiastic about the house at No 4 which he described as having a somewhat self-effacing design and as being not a good example of a dwelling from 1929 – its presentation being dominated by its terra cotta roof. He was also not persuaded that the property should be assessed as of significant on the basis of its historical associations.

Mr Storey also suggested a number of changes to the wording of the exhibited statement of significance for this precinct (pages 12-13 of his evidence) designed to strengthen the exposition of its values.

5.5 Panel discussion and views

It is the Panel's view that Nos 2-4 have sufficient historic values to justify their inclusion in the precinct. The Panel agrees with Mr Storey's view that on close inspection the house at No 2 is not as greatly altered as it might first appear and that *'given its historical importance as the house of the original subdivider and as the house is not irretrievably altered it should remain in the precinct.'*

On inspection, it was the Panel's opinion that No 4, although built in the 1920's, contributed to the historic aesthetic/architectural values of the precinct by also being a 'villa' of similar middle class status.

Given we recommend that that Nos 2-4 are not excluded from the precinct, it is appropriate that the adjoining Nos 6-8 also be retained as non-contributory elements of the precinct.

We agree with Mr Storey's suggested changes to the statement of significance for this precinct. Some of these assist in defining the character of the precinct more precisely and others assist in identifying the significant elements.

6. Lisson Grove Precinct issue

6.1 The exhibited statement of significance

HO492 Lisson Grove Precinct, Hawthorn

Reference – Hawthorn Heritage Precincts Study (July 2010)

The Lisson Grove Precinct, Hawthorn, is of heritage significance for the following reasons:

- Lisson Grove is of historic significance as an illustration of the development of middle class suburbs in Hawthorn in the late nineteenth century and early twentieth century. It is significant for its associations with prominent members of Melbourne's business and professional community of the later decades of the nineteenth century (RNE Criteria A.4, D.2).*
- Lisson Grove is of aesthetic significance for its high quality Victorian residences that are set on large allotments. It demonstrates the style of housing built by the upper middle classes in Hawthorn in the late nineteenth and early twentieth century. There are a particularly wide range of Victorian styles represented in Lisson Grove, and whilst these are generally of conservative styling, they represent the upper middle class ideal of a villa or small mansion. The high level of integrity of the individual places is complemented by a low incidence of contemporary development (RNE Criterion D.2).*
- Lisson Grove demonstrates the garden suburb ideal in town planning by maintaining large allotments, frontage setbacks and fences that permit views of gardens. Although many elements of garden and fencing are not in themselves of historic value as they have been replaced, they provide appropriate settings for the houses (RNE Criterion E.1).*

6.2 The issue

The Lisson Grove precinct is a single residential street precinct consisting of the central and eastern portion of the street only - Nos 20-64 and 25-83. This part of the street is developed mainly with single storey, late Victorian houses, most commonly Italianate style villas with asymmetrical form and bay windows, and a few Edwardian homes. The houses are set in gardens on slightly larger lots. Some houses, described in the HHPS as 'small

mansions', are of two storey construction. The evidence given by Ms Honman of Context Pty Ltd, emphasised the consistent nature of the street's housing and therefore the precinct's ability to demonstrate the development through subdivision and building, of a middle class nineteenth century garden suburb. An indication of the heritage importance of this section of the street, which has been home to several prominent people, is the number of individual Heritage Overlays covering properties at numbers 22, 34, 42, 47, 58 and 65 Lisson Grove, while number 83 has interim heritage protection⁶.

A written submission opposing the application of a precinct Heritage Overlay to the street was made by Mr Patrick Moore, owner of 33 - 35 Lisson Grove. It was his view that approvals by Council of new development have meant that *'what was a leafy area with lovely old houses on it has become more of a concrete jungle'*. His submission also included that designating the Lisson Grove precinct was *'ridiculous'*, especially in that only half the street would be designated as an historic precinct, when other similar areas of Hawthorn have been preserved. He further said that as the conveniently located street had lost its integrity, it should be *'open for future development'*, for example as student housing.

6.3 National Trust comments

Mr Roser drew the Panel's attention to places of potential significance in the Lisson Grove study area - in Carson Court, Glenferrie Road and Wattle Road - which had not been included in the precinct Heritage Overlay.

Mr Storey again suggested changes to the wording of the statement of significance for this precinct (pages 16-17 of his written evidence).

6.4 The Council response

The Council submitted that *'in comparison with other precincts in Boroondara, Lisson Grove is particularly consistent in terms of style'* having an extensive run of buildings that are contributory on both sides of the street.

The issue of integrity of the heritage precinct was addressed by Ms Honman in her evidence to the Panel.

She said that the section of Lisson Grove included in the precinct was unusual in having so many houses of a consistent style and era adjacent to each other and of such high integrity. She also noted that this area had been recommended for protection in the Lovell Chen report of 2006. Lisson Grove

⁶ The existence of seven individual Heritage Overlays in the precinct raises the issue of double listing in heritage precincts discussed in Section 3.2 of this Report.

retained evidence of the patterns of subdivision, she said, and included '*a relatively high proportion of places that exhibit the historic themes and exhibit architectural integrity*'.

She further advised that she had recommended excluding areas in surrounding streets, for example in Wattle Road, which had been found in earlier studies (Gould 1993) to have no readily identifiable historic theme or architectural streetscape to justify heritage precinct protection. She advised that the HHPS had assessed properties in cross streets between Lisson Grove and Wattle Road but these had been excluded from the precinct as development was less consistent and buildings were much altered.

6.5 Panel discussion and views

At the hearing, the Council informed the Panel that an agreement had been reached between the Council and the objecting submitter, Mr Patrick Moore, concerning the inclusion of this Lisson Grove precinct in a Heritage Overlay. Minor amendments to the wording of the proposed statement of significance had been agreed, making reference to the role of front gardens rather than gardens, and ensuring that the citation noted that rear gardens are not of contributory value.

The Panel is content to support that agreement.

The Panel has also considered the National Trust submission and Ms Honman's evidence and recommends no change to the boundary of the precinct.

We concur that the Lisson Grove precinct has a high level of architectural integrity that contributes to an understanding of the historic importance of middle class suburban development in Boroondara during the late 19th century. We agree that the tight precinct delineation is appropriate.

Again we generally support Mr Storey's proposed changes to the statement of significance. As revised the Statement would more precisely define the precinct qualities. We recommend that Council should review the content of the Statement in light of his comments.

7. West Hawthorn Village/Morang Road Precincts issue

7.1 The exhibited statements of significance

It is proposed, as for the other three new precincts, to add a new statement of significance to Clause 22.05-5 of the Planning Scheme for the new West Hawthorn Village Precinct (the commercial precinct) as follows:

HO494 West Hawthorn Village Precinct

Reference – Hawthorn Heritage Precincts Study (July 2010)

The West Hawthorn Village Precinct, Hawthorn, is of heritage significance for the following reasons:

- *West Hawthorn village is of historic significance in representing the transformation of Hawthorn from a rural village in the 1850s to a thriving Victorian town by the 1890s. It represents a continuous land use as a commercial centre from the 1850s, and one that predates the construction of the railway in 1861. Whilst the street now largely comprises buildings from the 1880s and 1890s, the former tea warehouse of 1869 at 107 Burwood Road predates other buildings in the precinct (RNE Criterion A.4).*
- *West Hawthorn village is of historic significance as a commercial centre that demonstrates the strategic location of Burwood Road as the earliest river crossing on the Yarra, followed by urban consolidation as a result of the railway, and decline following the railway extension to Glenferrie and the electric tram route into Power Street (RNE Criterion A.4).*
- *West Hawthorn Village is of aesthetic significance as a representative example of a Victorian commercial streetscape containing shops and hotels from the period 1881-1891. The comparatively narrow period that is represented by the present buildings is unusual in the context of Boroondara where a mix of periods and styles is more usually represented in commercial streetscapes. The groups of shop rows are relatively intact and have common elements of siting, scale, fenestration and ornament (RNE Criteria D.2, E.1).*

- *West Hawthorn Village has strong social values as a shopping centre serving the local community since the 1850s (RNE Criterion G.1).*

That new statement of significance relates to a precinct centred on Burwood Road and commercial in nature.

There is already a statement of significance in Clause 22.05-5 of the Planning Scheme for the Morang Road residential precinct which is located immediately to the south of the new West Hawthorn Village Precinct. As noted earlier, part of this Amendment is the extension of the existing Morang Road residential heritage precinct. The only submission made in relation to this area relates to the expanded residential precinct rather than the new commercial heritage precinct.

The statement of significance for that precinct is as follows:

HO156 Morang Road Precinct, Hawthorn

The Morang Road Precinct, Hawthorn, is an area of heritage significance for the following reasons:

- *The place centres on the historically significant Hawthorn Railway Station, developed and in continuous use since 1861 (present building commenced in 1890).*
- *The place comprises a consistent and relatively intact group of later nineteenth century housing, in both terraced and detached form.*

7.2 The issue

The only submission relating to this precinct concerns the property at 8 Evansdale Road. This property forms half of a pair of attached houses at the corner of and facing Rosney Street. The submitters assert that the building has been substantially altered during extensions and renovations extending back to 1987 sufficient to remove any heritage significance for the building. There is a large non-period extension at the rear.

7.3 The Council response

Ms Lane's response for the Council was that the building was initially graded C in the 1993 heritage study and has been assessed as contributory in the HHPS. She said that the extension and renovations were largely not visible from the street and much of the facade appears to be intact. The changes to the building in the Council view are insufficient to down-grade the building's status to non-contributory.

Ms Honman's expert evidence supported this position. She noted that the front of the house had been painted and the fence altered but it was still possible to recognise it as part of a terrace. In her view the rear extension does not detract from the front part of the house. She maintained her view that the building is definitely contributory to the precinct.

7.4 Panel discussion and views

The Panel agrees with the Council position in relation to this building as was informed by our site inspection.

The house is sited prominently at the intersection of Rosney Street and Evansdale Road and forms a key part of the streetscape of the area particularly as viewed from the north. The original form of the building is clearly discernable and the changes to the frontage are not substantial.

We recommend no change to this precinct arising from this submission.

8. Recommendations

For the reasons provided in the earlier chapters of this Report we recommend that:

1. Amendment C99 to the Boroondara Planning Scheme should be adopted as exhibited subject to the following:
 - a) changes should be made to the proposed statements of significance at Clause 22.05-5 for the Glenferrie Road, Manningtree Road and Lisson Grove precincts as set out in this report.
 - b) the northern extent of the Glenferrie Road precinct as shown on the Planning Scheme maps and as referred to in the statement of significance at Clause 22.05-5 should be extended by a 'serial listing' of the outlier properties assessed as significant at Nos 773-783 or this re-delineation should be carried out by a subsequent amendment.
2. The Council should consider the need for further public notice in relation to any extension of the northern boundary of the Glenferrie Road precinct as above. This may be factor which influences the decision on whether or not to proceed with the re-delineation immediately.
3. The matter of 'double listing' of properties in two Heritage Overlays should be discussed with DPCD before the Amendment is adopted; and consideration should be given to reviewing the properties which would be affected this way to ascertain whether some might instead be included only in the precinct overlay albeit identified as 'significant' contributors.
4. The relevant parts of the reference document – the *Hawthorn Heritage Precinct Study* - should be amended or notated in relation to the changes made to the statements of significance for the Glenferrie Road, Manningtree Road and Lisson Grove precincts as a result of this Panel process. The grading of the property at 733 Glenferrie Road should also be amended in that document to 'significant'.
5. The reference document - *Schedule of Gradings in Heritage Precincts 2006* – should be amended to show the grading of the property at 733 Glenferrie Road as 'significant'.
6. The Council should review the definitions of 'contributory' and 'significant' places in Clause 22.05-5 with a view to clarifying those definitions.

**Appendix 1: Revised statement of significance
for Glenferrie Road Precinct
proposed by Rohan Storey**

What is significant?

The Glenferrie Road commercial precinct comprises both sides of Glenferrie Road, Hawthorn from 635-761 and from 628 - 808 and 2A Bowen Street. Both sides of Burwood Road around the intersection with Glenferrie Road (319 - 369 and 324 - 358), including the Town Hall at 358 and the Glenferrie Hotel at 324- 326. There are two late Victorian/Federation houses at 37-39 Lynch Street. This encompasses the core of Glenferrie Road's nineteenth and early twentieth century buildings, the railway and associated buildings, civic buildings, banks and the best examples of rows of two storey shops. Notable buildings of architectural merit include the ANZ and NAB banks at 637 and 689 Glenferrie Road, the former Melbourne Savings Bank at 365 Burwood Road and the prominent former CBA bank of 1889 on the corner of Burwood Road. There are also a number of fine architect-designed retail buildings including the former Don department store of 1910, which is the work of Ward and Carleton. Glenferrie Road (*does this mean the precinct, or should it be Burwood Road?*) is Significant for public buildings including the Hawthorn Town Hall (designed by Leonard Terry in 1861, with extensions by John Beswicke, 1889 (*is this the only public building?*))

How is it significant?

Glenferrie Road is of local historic, aesthetic and social significance to the City of Boroondara.

Why is it significant?

Glenferrie Road (*precinct?*) is of historic significance as the centre of Hawthorn since the establishment of the Town Hall in 1861. It demonstrates the influence firstly of the railway (1882) in encouraging the development of commercial centres around railway stations, and secondly of the tramway (1913) in supporting the growth of the commercial area northwards. The construction of the Don department store indicates the importance of Glenferrie Road as a regional shopping centre. Glenferrie Road is significant as the major shopping centre in Hawthorn and as one of several commercial centres in Boroondara (*this doesn't describe significance*).

Glenferrie Road is of aesthetic significance as a commercial (*and other types*) precinct containing examples of buildings by a number of prominent architects including a number of buildings from 1889 by architect John Beswicke and from 1889 - 1891 by Augustus Fritsch. The key buildings are set in a context of Victorian, Edwardian and Inter-war buildings that contribute to the architectural character of the precinct.

Glenferrie Road Hawthorn is of social significance as a centre for municipal, professional, retail and entertainment functions since the 1860s.

Heritage Issues

Summaries from Panel Reports

Issue 2
March 2018



Contents

1	Introduction	2
2	Use of interim controls	3
3	Notice issues	4
4	Defining precincts	5
5	Preparing Statements of Significance for individual sites and precincts and housing them	9
6	Heritage Overlay mapping and curtilage	10
7	Applying additional controls	13
8	Group v precinct listing	15
9	Proportion of non-contributory/contributory places	16
10	Heritage Overlay mapping of complex sites	18
11	Rigour/strategic basis	19
12	Documenting the background	22
13	Applying the Heritage Overlay on land identified for growth or acquisition	22
14	Social and economic matters (and environmental issues) – community level such as conflict with development policies	24
15	Social and economic matters (and environmental issues) – individual building level such as cost burden to owners, conflicts with ESD works	28
16	Impact on property rights, land values and insurance costs	31
17	Role of existing permits	33
18	Condition vs intactness	34
19	Required level of significance of places in a precinct v individual places	36
20	Gradings of significance	37
21	Public vs privately owned buildings	37
22	Historical associations with individuals and groups	38
23	Humble vs grand and unique v modified	39
24	Interiors	41
25	Heritage policy	42
26	The role of the expert witness	42
27	Use of incorporated plan/documents vs the Heritage Overlay schedule or reference document	44
28	Costs of administering Heritage Overlays	44
29	Other	44
30	Planning Panels Victoria Heritage Reports 2001-2018	50

association with the family, but also made some comments about how applications to change the property might be dealt with in future.

22.2 Boroondara C99 pp. 37-39

The issue was whether the grading of a substantial double-storey Edwardian era house should be graded as significant or contributory to the Glenferrie Road Commercial Precinct. In recommending that the place be graded as significant, the Panel discussed the weight to be given in ascribing historic value to a place by association with an individual in local heritage precincts. The Panel determined that association with an individual can be given weight in considering the heritage listing of a place within precincts. The Panel also commented that the 'great man in history' is perhaps an outdated approach to historic significance.

22.3 Melbourne C186 pp.29-30

Does an historical association necessarily lead to the need for the Heritage Overlay? Historical association with an individual and representation in the building fabric may not be useful approach at local level of significance.

22.4 Boroondara C148 p.15

In requesting change from 'contributory' to 'significant' grading, a local community group referred to the contribution of a building to the early social development of the area.

22.5 Whitehorse C157 pp.79, 83 and 84

Panel recommended Criterion A be deleted from three sites where the only evidence was that the house was one of the first houses built on a particular (large) subdivision.

Panel recommended Criterion H be deleted from a site where there was no evidence of the person's direct association with the site.

22.6 Surf Coast C50 pp.26-27

Historical association with family active in Anglesea found to be insufficient to afford significance and no link between the basis of their importance and the characteristics of the building.

22.7 Southern Grampians C6 pp.26-27

Applying the Heritage Overlay to an Aboriginal burial site and surrounds.

22.8 Southern Grampians C6 pp.38-39

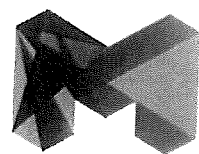
Applying the Heritage Overlay to the degraded waterhole with trees depicted in Louis Buvelot's painting 'Waterpool at Coleraine'.

23 Humble vs grand and unique v modified

23.1 Stonnington C249 (2017)

The Panel heard submissions and evidence as to whether a Victorian residential building was a unique example or a modified version of a common Victorian building. The Panel found that the building was a modified and there were many

HERITAGE STRATEGY 2013



CITY OF MELBOURNE

The City of Melbourne's documentation and protection of the city's heritage, using *Burra Charter* principles, has informed good conservation practice in policies, strategies, design, construction and management. There are Heritage Overlays covering approximately 7000 heritage buildings. Heritage precincts across the inner city suburbs, introduced in the 1980s, have generally stood the test of time.

The Melbourne Planning Scheme provides for statutory heritage protection and development. It includes the Municipal Strategic Statement (MSS) which provides the high-level heritage policy perspective and two local heritage policies - one for land within the Capital City Zone, the other for land outside the Capital City Zone, which provide more detailed provisions.

The City of Melbourne needs to ensure that this statutory policy framework is adequate for the future and responsive to the changing urban development context. The city also needs to ensure that heritage protection is up-to-date and that all the appropriate tools including Statements of Significance are available.

This involves developing policies and guidelines to assist decision-making, management, provision of advisory services and financial assistance. Successful heritage protection requires coordination of the efforts of the City of Melbourne, property owners, and the wider community.

The City of Melbourne's website offers excellent information on

Indigenous heritage and practical guidance on heritage provisions in the Planning Scheme. The City of Melbourne website and library network are important resources for communities. The City of Melbourne will need to update and improve these information resources over time.

Support for community-based history and heritage organisations through small grants or partnership projects is highly valued.

The City of Melbourne employs heritage advisors who are all highly experienced heritage architects. They work with the City of Melbourne's officers to advise on planning applications and provide pre-application services to building owners and managers.

This involves promoting public awareness and appreciation of Melbourne's heritage.

Melbourne's urban environment encompasses a wealth of stories, and their interpretation reveals new meanings and builds new understandings of the city.

As the original major settlement in Victoria, Melbourne is at the centre of many important national and local stories. While the bigger stories are often well known and interpreted, many community stories are less accessible.

There are many opportunities to experience Melbourne's history and heritage. For example, the City of Melbourne actively collaborates with local and Indigenous communities, helping them tell their stories through art, performance, storytelling and other projects. Further development of these initiatives can create connections across the City of Melbourne, linking heritage, history, place, culture and communities.

Thematic histories, heritage studies and the wealth of materials and extensive local history collections in Melbourne's library network are a resource for future interpretation. Opportunities for historic interpretation have also expanded from the traditional modes such as signage, to new technologies, for example podcasts, e-trails and mobile phone/PDA applications.



'This will be the place for a village', publicity poster issued for the Centenary Celebrations, 1934-35, Percy Tromf.

PROTECTING

To protect and value all heritage places and put in place policies to support decision making around heritage conservation.

To sustain and rejuvenate the city's heritage places as part of planned strategic responses to ongoing urban development.

The city will continue to undergo significant growth and change. Understanding, recognising and responding to the factors that drive change is the basis for successful heritage management. Change can be used as an opportunity to conserve and integrate heritage values into the fabric of a contemporary city.

Protecting heritage requires a proactive approach, combining legal protection with clear guidance where change is proposed. Recognition and protection of heritage through the Planning Scheme should mean that proposals for change actively respond to heritage requirements.

The Municipal Strategic Statement (MSS) Growth Area Framework Plan defines the areas of high growth and development as the Hoddle Grid and three urban renewal areas of Southbank, City North and Arden Macaulay.

Reviewing these high-change areas to identify and protect heritage is the highest priority. The next priority is to review those areas in the Mixed Use zones because these areas are subject to a moderate degree of change.

The more stable areas of the city are in the residential zones.

These areas generally already have extensive heritage controls and will undergo very little change. They do not require full scale review but some gaps and inconsistencies in the existing controls need to be addressed.

The prominence of historically significant vistas is protected in the MSS and by built form controls in the Planning Scheme. These controls should be reviewed to ensure there are no gaps or inconsistencies.

In addition to these reviews, the heritage policy outside the Capital City zone needs to be reviewed to update the heritage grading system and strengthen controls with better decision making guidelines.

2.1 Review the scope of heritage place studies and reviews in the municipality to ensure that all relevant places are included and protected. This includes all places on the now defunct register of the National Estate.

2.2 Progressively undertake a review of heritage in the high-growth and urban renewal areas and in the mixed use areas of the city.

2.3 Review the heritage controls in the residential zones of the city, targeting resolution of gaps and inconsistencies in the existing controls.

2.4 Review the Melbourne Planning Scheme controls of heritage vistas in the Capital City Zone and the built form and scale of the context of heritage buildings and precincts.

2.5 Undertake Stage 2 of the Indigenous Heritage Study and Strategy.

2.6 Investigate and document the city's natural heritage to determine cultural and historic significance.

2.7 Scope and commission a broad-scale predictive modelling of the potential for significant archaeological material to survive within the city, and implement the findings. (This has been undertaken for the CBD by Heritage Victoria.)

2.8 Review and update Melbourne Planning Scheme local policies (22.04), Heritage Places Within The Capital City Zone and (22.05) Heritage Places Outside The Capital City Zone. Consider principles for adaptation, re-use and creative interpretation in the review.

2.9 Develop Statements of Significance, drawing from themes in the *Thematic History - A History of the City of Melbourne's Urban Environment 2012*, for all heritage precincts, individually significant buildings and places across the city.

2.10 Undertake a review of the City of Melbourne's heritage places grading system and update in accordance with the Department of Planning and Community Development's "Applying the Heritage Overlay, September 2012" practice note.

2.11 Review and update the existing heritage places guidelines for property owners and for the City of Melbourne when applying planning controls. Include consideration of adopting or adapting the Heritage Victoria guidelines.