

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

IN THE MATTER of Amendment C405 to the Melbourne Planning Scheme

BETWEEN:

MELBOURNE CITY COUNCIL

Planning Authority

-and-

VARIOUS SUBMITTERS

AFFECTED LAND: Properties within Carlton, the Punt Road Oval and a small section of Yarra Park to the southeast of the Punt Road Oval in East Melbourne.

PART C SUBMISSIONS OF THE PLANNING AUTHORITY

I. INTRODUCTION

1. Melbourne City Council (**Council**) is the Planning Authority for Amendment C405 (the **Amendment**) to the Melbourne Planning Scheme (**Scheme**).
2. This Part C submission addresses the submissions made in relation to the substantive content of the Amendment that Council has not yet addressed in the Part A submission circulated on 26 September 2022, the Part B submission circulated on 30 September 2022 and the expert evidence called by Council.
3. Further, this submission seeks to directly respond to specific questions raised by the Panel throughout the course of the hearing.

II. RESPONSE TO QUESTIONS OF THE PANEL

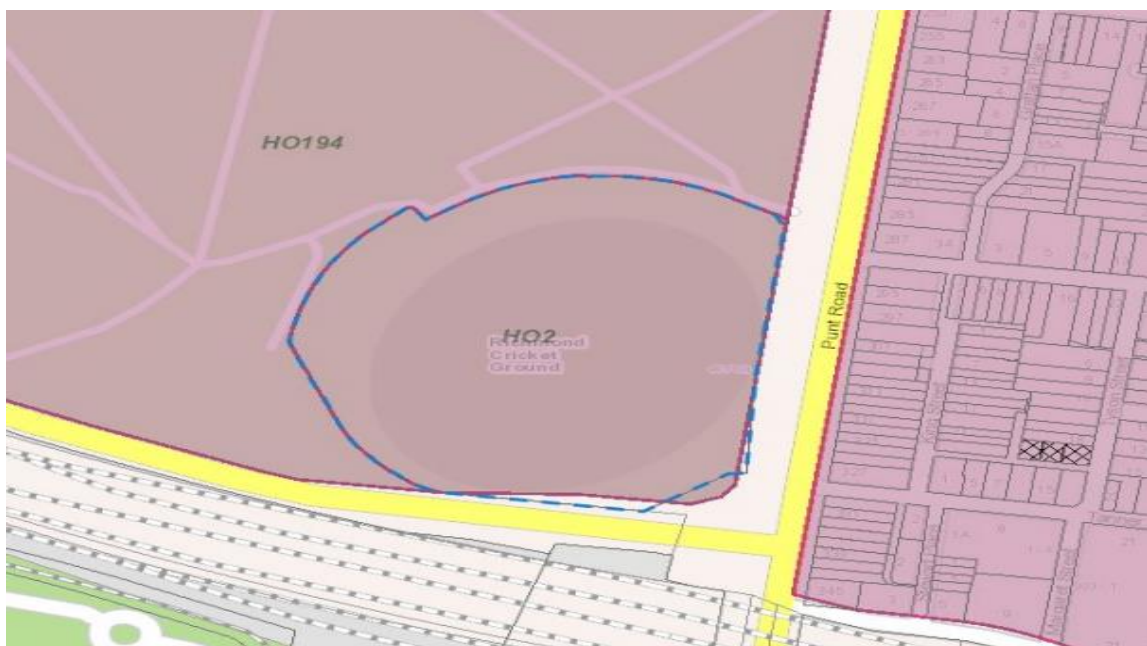
4. The Panel has raised a number of specific matters about which it seeks a response from Council in its Part C submissions.
5. These matters are:

- a) in relation to the Punt Road Oval, that Council confirm its final position in relation to the southern boundary of the proposed Heritage Overlay and whether it should accord with the exhibited version of the Amendment;
- b) whether changes are required to HO2 in response to Punt Road Oval being removed from that overlay, and if so, whether these changes might be properly addressed in the upcoming East Melbourne and Jolimont Heritage Review;
- c) clarification of the proper address to be recorded in the Inventory in relation to RMIT Building 71; and
- d) the recommendation Council is seeking the Panel make in relation to the Earth Sciences Building, and the appropriateness of seeking such a recommendation.

A. THE SOUTHERN BOUNDARY OF THE HO FOR PUNT ROAD OVAL

- 6. On 5 October 2022, Council sought clarification from its GIS team in relation to the boundary shown in dashed blue outline in Figure 3.1 on page 11 of the *Punt Road Oval (Richmond Cricket Ground) Heritage Review, October 2021*. Council's GIS team clarified that this boundary is the "building boundary" that defines the occupation by the Richmond Football Club rather than a property boundary. This information was then provided to Ms Dyson. The building boundary follows the outer fencing line on the southern and eastern sides of Punt Road Oval.

Figure 1: Figure 3.1 from the *Punt Road Oval (Richmond Cricket Ground) Heritage Review, October 2021*



7. On 6 October, Ms Dyson advised that the recommended curtilage for Punt Road Oval (Richmond Cricket Ground) should remain as shown in the Punt Road Oval Heritage Review, however in the Methodology report, the description of the area should be amended to delete reference to the 'Property Boundary' and replace those words with 'Building Boundary'.
8. Council's final position in relation to the southern boundary of the proposed Heritage Overlay is that no change should be made to the curtilage identified in the exhibited Amendment C405.
9. Further, on 6 October, Ms Dyson confirmed with Council that the application of External Paint Controls in the Schedule to Clause 43.01 (Heritage Overlay) of the Melbourne Planning Scheme applies to the Jack Dyer Stand only. This is noted in the Review at Section 3.2.3 and that it is appropriate that the Schedule include this qualification.
10. Council recommends that a change be made to the entry for HO400 in the Schedule to Clause 43.01 (Heritage Overlay) to clarify that external paint controls apply to the Jack Dyer Stand only as follows:

Figure 2: Recommended change to HO400

HO1400	<p><i>Punt Road Oval (Richmond Cricket Ground), Punt Road, East Melbourne</i></p> <p>Statement of Significance:</p> <p>Punt Road Oval (Richmond Cricket Ground) Statement of Significance (Punt Road, East Melbourne), November 2021 October 2022</p>	<p>Yes – Jack Dyer Stand only</p>
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B. ALTERATIONS TO HO2

11. Council confirms no changes are proposed to the Schedule 2 to the Heritage Overlay (HO2) and refers the Panel to [179]-[181] of the Part A submission.
12. In the event the upcoming *East Melbourne and Jolimont Heritage Review* concludes changes to HO2 are warranted in light of the removal of Punt Road Oval from HO2 it could properly recommend those changes at the appropriate time.

C. RMIT BUILDING 71

13. As discussed through the Panel questions of Ms Gray, Council acknowledges that the listing for Building 71 within the exhibited version of the Heritage Places Inventory has the potential to cause some confusion as the building faces Cardigan Street, but is listed under 33-89 Lygon Street, Carlton.
14. Council notes the exhibited version of the Heritage Places Inventory lists Building 71 under the Lygon Street address and then notes the Cardigan Street address under the 'Number' column.

Figure 3: Listing for Building 71 in the exhibited Inventory

Lygon Street	27-31	Contributory Significant	-
Lygon Street	33-89, includes:		
	Building 71 (also known as 42 Cardigan Street)	Significant	=
	Building 56 (also known as 115 Queensberry Street)	Significant	=
	Building 57 (also known as 53 Lygon Street)	Significant	=
Lygon Street	95-97	Contributory	-
Lygon Street	121	Contributory	-

15. The exhibited Citation and Statement of Significance for Building 71 list a street address of 33-89 Lygon Street, Carlton, however the map within the Statement of Significance identifies the street number 42-48 Cardigan Street.

Figure 4: Extract, exhibited citation for Building 71



16. Council's property records indicate that 33-89 Lygon Street is the property address, however records also note the following three alternate addresses that would apply to each of the street frontages of the property: 2-18 Earl Street, Carlton; 85-111 Queensberry Street, Carlton; and 42-48 Cardigan Street, Carlton.
17. RMIT list the street address for Building 71 as 42 Cardigan Street on their website.
18. To ensure consistency with other listings of properties with multiple buildings in the Heritage Places Inventory, the listing for Buildings 71, 56 and 57 should be revised as follows:

Figure 5: Proposed Inventory Listing for 33-89 Lygon Street (tracked)

Lygon Street	33-89 includes:	
	<ul style="list-style-type: none"> 42 Cardigan Building 71 Street (42 Cardigan)Building 71) 	Significant
	<ul style="list-style-type: none"> 115 Queensberry Street Building 56 (115 Queensberry StreetBuilding 56) 	Significant
	<ul style="list-style-type: none"> 53 Lygon Street (Building 57)53 Lygon Street) 	Significant

19. The listing of Building 71 would appear as shown below:

Figure 6: Proposed Inventory Listing for Building 71

Street	Number	Building Grading
Lygon Street	33-89 includes:	
	<ul style="list-style-type: none"> 42-48 Cardigan Street (Building 71) 	Significant
	<ul style="list-style-type: none"> 115 Queensberry Street (Building 56) 	Significant
	<ul style="list-style-type: none"> 53 Lygon Street (Building 57) 	Significant

20. This approach is based on the approach outlined at the panel hearing for Amendment C258melb. A memorandum tabled at the C258 hearing is appended to this Part C submission as **Appendix A**. An extract is provided below, which demonstrates the approach for the listing multiple buildings contained within one property:

Figure 7: Standardised listing for multiple buildings in the Inventory

Table 3: Precinct HO with single site containing multiple buildings

Street	Number	Building Grading	Significant Streetscape
Bourke Street	309-325, 'The Walk' complex, includes:		
	• 313-317 Bourke Street (former Diamond House)	Significant	-
	• 323-325 Bourke Street (former Public Bootery)	Significant	-
	• 288-290 Little Collins Street (former Book Buildings)	Contributory	-
	• 292-296 Little Collins Street (former York House)	Contributory	-
	• 300-302 Little Collins Street (Allans Building, also Sonora House)	Contributory	-

21. It is noted that the above is an example of a precinct Heritage Overlay with a single site containing multiple buildings. In the subject case, two separate Heritage Overlays are proposed on a single property (one serial and one individual), but a similar approach to the listing of multiple buildings on one property should apply.
22. Amendment C396melb finalised the gradings conversion that was introduced through Amendment C258melb. A submission to this amendment raised concern that users of the Heritage Places Inventory may not assume to look under the property address rather than the street address to locate the listing of a building. The submission recommended that references be added to the Heritage Places Inventory under the street addresses as well as the property address.
23. Council's Part A submission to the C396melb Panel noted:
 84. *The Amendment uses a standardised addressing system using Council's property database for listings in the Heritage Places Inventory and the Heritage Overlay schedule. This removes any inconsistency between addresses used in the Heritage Places Inventory and the Heritage Overlay schedule for the properties that are affected by the grading conversion in the Amendment. The Amendment also corrects pre-existing Heritage Overlay mapping errors for the properties that are affected by the grading conversion in the Amendment.*
 85. *The Amendment C258 Panel supported the use of the standardised addressing system in the Heritage Places Inventory. However, it noted that in some cases the address used in Council's property database – which is the basis of the standardised addressing system – is not the street address in everyday use.*
 86. *Council is undertaking a Heritage Data Project to enhance the way heritage data is managed and to ensure it can be effectively maintained as sites are subdivided and consolidated and updated as conventional heritage reviews are undertaken. This is a comprehensive project which includes spatialising the Inventory to allow it to be mapped and to allow it to be cross-referenced to the Heritage Overlay and the Victorian Heritage Register. Council will consider*

the appropriateness of adding street addresses and second addresses for corner properties as 'also known as' addresses as part of the Heritage Data Project.

24. The Panel for [C396](#) considered the submission and Management response and concluded:

The Panel supports any initiatives to improve the accuracy of the Inventory. Although the Panel considers it would be within the scope of the Amendment, it agrees with Council that addressing this issue through the Heritage Data Project would be more appropriate¹.

25. It is therefore Council's submission that the Heritage Inventory should list Building 71 under 33-89 Lygon Street, Carlton, with the alternate building address of 42-48 Elgin Street, Carlton also included as shown above.
26. Council also submits that the Statement of Significance and Citation for Building 71 should include the alternate building address of 42-48 Cardigan Street, Carlton. The proposed changes to the Statement of Significance were circulated to all parties on 6 October 2022.

D. EARTH SCIENCES BUILDING – INCORPORATED DOCUMENT

27. As noted by Mr Barnes during the hearing, the University of Melbourne and Council have been in discussion regarding the preparation and content of the proposed Incorporated Document.
28. Council submits it is appropriate to seek the recommendation of the Panel regarding the proposed Incorporated Document at this stage, and considers the Panel can properly make a recommendation to include the Incorporated Document as part of the Amendment. Council agrees with Ms Barnes submissions to the Panel that the inclusion of an Incorporated Document at this stage in the amendment process is not transformative and would not warrant re-exhibition. Council further notes that the potential heritage value of the place (and all places considered by the Amendment) was the subject of extensive notice, and any person with a potential interest in the heritage listing of the place would properly have viewed the University of Melbourne's submission, the latter of which clearly notes the request for an Incorporated Document.
29. Council further notes circumstances in which panels considering heritage amendments have made recommendations regarding Incorporated Documents that sought to

¹ Melbourne C396melb (PSA) PPV 106 (21 December 2021), [18].

exempt minor buildings and works where the proposed document was not exhibited as part of the process.

30. In Amendment C207melb, which considered the Arden Macaulay Heritage Review, the Panel considered the appropriateness of accepting an incorporated document between Council and George Weston Foods (a landholder in the Arden precinct):

We recommend that this Incorporated Plan can be included within the present Amendment rather than being deferred for further public notice and later processing. In this we acknowledge the submissions by the National Trust concerning the need for exhibition and subsequent processing. However, the Panel is of the view that the concept of an Incorporated Plan was aired at the Hearing and the key interests are represented by the Council and George Weston Foods. The Council could inform itself if it wished by consulting with the National Trust in relation to this matter².

31. In Amendment C258 to the Melbourne Planning Scheme, the Panel was presented with an incorporated document providing for planning permit exemptions for the Melbourne Assessment Prison through the expert evidence of Mr John Glossop, who appeared for the Department of Justice and Regulation. In accepting the incorporated document, and recommending the incorporated plan for the Melbourne Assessment Prison be included in Amendment C258, the Amendment C258 Panel stated:

The Panel agrees that the use of an incorporated document with permit exemptions is an appropriate way to facilitate the operational requirements of the prison while protecting key elements of significance. The Panel accepts that the content of that document is appropriate³.

32. Council considers it appropriate that the Panel make recommendations with regard to the proposed Incorporated Document as part of this Amendment.
33. Following the evidence of Ms Gray and the submission of the University of Melbourne Council has sought Ms Gray's recommendation regarding proposed changes to the Incorporated Document. Council's Part C version of the Incorporated Document is **Appendix B**. The revised content of that document is discussed further in response to the submission of the University of Melbourne below.

III. SPECIFIC PLACES & SUBMITTERS

34. To the extent submitters objected to the inclusion of properties within the Heritage Overlay, Council relies upon the expert evidence of Ms Gray as to both the level of

² Melbourne C207 (PSA)[2014] PPV 10 (21 January 2014), pages 37-38.

³ Melbourne C258 (PSA) 2019] PPV 29 (21 May 2019), page 91.

significance of the heritage place and the appropriateness of its inclusion within the Heritage Overlay.

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

A. RMIT

36. 80-92 Victoria Street (known as *Building 51*), 33-89 Lygon Street (*Building 56* only) and 33-89 Lygon Street (*Building 57* only) are identified as Significant in the Carlton Heritage Review and are proposed for serial listing within the Heritage Overlay on the basis of their historical (Criterion A) and aesthetic (Criterion E) significance.
37. 23-37 Cardigan Street (*Building 94*) is identified as Significant in the Carlton Heritage Review and is recommended for inclusion within the Heritage Overlay on the basis of its aesthetic (Criterion E) significance.
38. The oral submissions made by RMIT commenced with what was described as a number of ‘basic and obvious’ points. These points were:
 - a) that the Panel is being asked to make a decision that the current value of the heritage places (both the serial listing buildings and 23-37 Cardigan Street) outweighs any future value;
 - b) that while theoretically an application can be made for the demolition of heritage fabric, practically it is impossible to get a demolition permit with a heritage overlay in place unless a redevelopment proposal is ‘*in the 1% of proposing a cancer institute*’ or the like;
 - c) a suggestion that the RMIT buildings had been ‘bundled in’ to the Carlton Heritage Review and what appeared to be a suggestion that the buildings ought properly have been the subject of their own heritage review; and
 - d) that simply because the assessment accords with PPN1 doesn’t mean heritage significance is established.

39. Submissions relating to: the allegation that the importance of Buildings 51, 56 and 57 being related to the expansion of Carlton is an entirely new assertion on behalf of Ms Gray, the appropriate threshold for the places to be included on the Heritage Overlay and the heritage significance of the places will be addressed in response to the evidence of Ms Riddett.
40. The first ‘basic and obvious’ proposition was the notion that the Panel is being asked to make a decision that the current value of the heritage places (both the serial listing buildings and 23-37 Cardigan Street) outweighs any future value. In Council’s submission, this is demonstrably incorrect. The Panel has been provided with no evidence whatsoever as to what the future value of the places might relevantly be. No planning or economic impact assessments have been submitted for the consideration of the Panel. No information regarding what RMIT might relevantly seek to do with the buildings, what purpose it would serve that could not be served by retaining the buildings or what retention of the heritage fabric would mean in terms of ongoing operational matters. In those circumstances, the Panel is plainly not being asked to undertake a net community benefit analysis regarding current versus future value – no submissions as to potential future value (let alone evidence) have been provided. Accordingly, even if the Panel were minded to engage with the submissions made, contrary to numerous panel reports⁴ concluding that the proper time to engage with these issues is at the permit stage, in Council’s submission it is entirely prevented from doing so.
41. On that basis, the only assessment the Panel is properly equipped to undertake is related to whether the heritage places reach the threshold for local significance.
42. The next submission made orally was that while theoretically an application can be made for the demolition of heritage fabric, practically it is impossible to attain a demolition permit with a heritage overlay in place unless a redevelopment proposal is *‘in the 1% of proposing a cancer institute’* or the like. Council considers these submissions are also plainly false and inconsistent with numerous panel reports that have considered the issue. Council does not consider that submission to the effect that leaving the net

⁴ Part B submission, [30]-[42].

community benefit assessment to the permit stage will prevent it ever occurring, or would prevent it occurring in any meaningful way are supportable.

43. Further submissions were made to the effect that the RMIT places had been ‘bundled in’ to the Carlton Heritage Review, and what Council would note was an apparent inference that the places ought have been the subject of their own heritage review. Council rejects this submission. As noted within Council’s Part B submission⁵, the Carlton Heritage Review involved a review of all places in the study area, with and without existing Heritage Overlay controls, including Aboriginal heritage and places of shared values; private and public housing; public buildings and infrastructure; commercial, manufacturing, ecclesiastical, educational, artistic, cultural and recreational places; and landscapes including public squares. The RMIT buildings are plainly within the scope of the heritage review. Further, no information was provided as to why the places were inappropriately included within the scope of the study, or factors which might dictate they ought properly be the subject of an individual heritage review. Council considers the scope of the review was appropriate and rejects any submission that the buildings were inappropriately included in the Carlton Heritage Review.
44. The next submission made orally, following the evidence of Ms Riddett was to the effect that simply because the assessment accords with PPN1 doesn’t mean heritage significance is established. Council considers this submission is correct, however more ought be said. Accordance with PPN1 is what is required to establish heritage significance at a local level. When additional concepts are used in an attempt to tease out what it means to be a significant place at a local level care must always be taken that this exercise does not inappropriately raise the threshold of local significance. This is particularly so when the VHR Guidelines are used as they were plainly not developed for the purpose of assessing local significance. This subject was extensively discussed in the Hoddle Grid Heritage Review⁶. As will be detailed further below, Council submits Ms Riddett’s evidence does not demonstrate she has adopted this careful approach.

⁵ Part B, [10].

⁶ Hoddle Grid Heritage Review, Council Part C submission, [104]-[108]; Melbourne C387melb (PSA)[2021] PPV 89 (10 November 2021), pages 51-52.

45. Finally, before moving on to the consideration of the significance of the places, Council considers it important to respond specifically to the language utilised in RMIT's submission to the effect that the strategic work supporting the Amendment hadn't demonstrated intellectual veracity or honesty or that the work done was not comprehensive. Council rejects these submissions. RMIT did not seek to challenge the credentials of Ms Gray during cross-examination. In Council's submission, there would have been no proper basis for them to do so. Ms Gray, and Lovell Chen, are leaders in their field and no submission was made to the effect that – when properly compared with other heritage reviews of similar scope – this review falls short. The very fact that so few submitters have sought to participate in this process, fewer still to seek to cross-examine Ms Gray, is indicative of the quality of the work done. The fact that RMIT disagrees with the findings of the review does not demonstrate a lack of veracity or honesty. Further, simply because Ms Riddett (in being tasked to review the RMIT buildings alone as opposed to all places considered by the review) has identified additional materials does not demonstrate that the Carlton Heritage Review was not sufficiently comprehensive.
46. Council submits the Carlton Heritage Review accords with best practice heritage review and explicitly rejects any submission to the contrary.
47. Council will now provide a response to the evidence of Ms Riddett in relation to each of the heritage places proposed to be included within the Heritage Overlay. Council will first respond to matters relevant to each of the proposed heritage places specifically, then address matters of comparative analysis and the use of the *Victorian Heritage Register Criteria and Threshold Guidelines* (the **VHR Guidelines**). In Council's submission, there are a number of aspects of Ms Riddett's evidence that ought properly give the Panel pause in seeking to place weight on her conclusions that the places do not meet the threshold for inclusion within the Heritage Overlay.

Buildings 51, 56 and 57

48. In relation to Criterion A, Ms Gray's evidence notes the historical significance of the places is primarily related to RMIT's expansion into Carlton, and that this could be made plainer within the Statement of Significance for the place.

49. RMIT's submission asserts the expansion into Carlton signifies an entirely new element of significance that had not been raised within the Carlton Heritage Review. Ms Riddett's evidence⁷ further claims the only information in the Statement of Significance related to why the place is of historical significance is geographical proximity of RMIT to Trades Hall and a long association between the two. This is incorrect. The Statement of Significance plainly references the masterplan and RMIT's expansion into Carlton as an element of historical significance. Further, Council relies upon Ms Riddett's oral evidence in response to questions asked in cross-examination with regard to the expansion into Carlton that "*Those aspects are part of the principal thrust of the whole thing*". The 'whole thing' being the citation and Statement of Significance which were the subject of the question. Per Ms Riddett's evidence and on any fair reading of the citation and Statement of Significance, the significance of the expansion of RMIT into Carlton is not a new basis of historical significance.
50. Further, Council considers the citation appropriately references the masterplan as an historical fact relevant to significance and does not accept Ms Riddett's opinion that the masterplan was not 'a good one' represents a proper heritage assessment. Plainly, the asserted historical significance of the place is related to Buildings 51, 56 and 57 alone and not the masterplan itself. Any assessment of the merit of the masterplan is unrelated to the assessment of local significance of the place.
51. Ms Riddett evidence also asserted a number of facts were implied in the citation and Statement of Significance that, in Council's submission, are not supported by the text of either document. These assertions include that: the historical context implies the Working Men's college was governed by Francis Ormond and the unions only, Ms Riddett agreed in cross-examination that the citation does not say that; and that the citation misleadingly implies Trades Hall and the unions were the only two parties involved with the establishment of the Working Men's College, Ms Riddett further agreed in cross-examination that the citation does not contain any text to that effect.
52. In relation to Criterion E, aesthetic significance, Ms Riddett's evidence in cross-examination accepted that all elements noted in the citation and Statement of Significance are valid, namely:

⁷ Riddett, [60].

- a) substantial footprints and overall massing of the buildings;
 - b) their distinctive and monumental brick service shafts to the rear elevations;
 - c) the fact that they form a largely cohesive group;
 - d) that the buildings are unified in the use of large-scale (monumental) red brick volumes;
 - e) that they utilise huge expanses of plain red brick walling;
 - f) recessed vertical window bays or, alternatively in the earlier building, regular arrangements of concrete window grilles;
 - g) concrete detailing often expressed as a rough pebble-textured finish; and
 - h) the striking service shafts with their corbelled form.
53. Further, Ms Riddett accepted the buildings are “...*significant as large and robust forms, which dominate their context, and draw attention to RMIT’s presence in this area of Carlton*”⁸.
54. Ms Riddett’s evidence contains an analysis of a number of factors that do not dictate the threshold of the local heritage significance of the place and in Council’s submission has inappropriately elevated the threshold of local significance.
55. These factors include:
- a) reference to a lack of primary sources when Ms Riddett conceded in cross-examination that many places are included within the Heritage Overlay without reference to original plans;
 - b) reference to the significance of the masterplan which is not the relevant heritage place and the fact that a place is part of an incomplete masterplan is not an exclusionary criteria for local (or State) heritage significance;
 - c) reference to the fact that the buildings had not received awards, where her evidence was otherwise that awards do not establish significance; and
 - d) evidence to the effect that the buildings are not of interest to the local community⁹ which is plainly not relevant to the consideration of historical

⁸ Riddett, [63].

⁹ Riddett, [65].

significance or aesthetic significance as conceded by Ms Riddett in cross-examination.

Building 94

56. Ms Riddett's evidence in relation to Building 94 should not be accepted for the following reasons:

- a) Ms Riddett inappropriately focused on the reference in the citation and Statement of Significance to the fact that the building has won an award, without appropriately conceding this was not claimed to be an element of significance pursuant to Criterion E, let alone the only aspect of significance.
- b) Ms Riddett's personal views about the objectivity of architectural awards generally were unrelated to the award won by Building 94. Ms Riddett agreed in response to questions asked in cross-examination that critical recognition can be an appropriate indicator of significance.
- c) Ms Riddett agreed in response to questions in cross-examination that the question of whether the building is resolved or unresolved is unrelated to the threshold of local significance pursuant to Criterion E.
- d) Ms Riddett's assertions that Building 94 had not been widely written up or studied were made in the absence of knowledge of a number of instances in which the building had been noted or discussed in relevant publications. Specifically, Building 94 has been recognised in various publications, including ArchitectureAU, Davina Jackson & Chris Johnson, Australian Architecture Now (2000), p 40.; Leon van Schaik (ed), Poetics in Architecture (2002), pp 50-51; Bill McMahon & Anne Finnerty, The Architecture of East Australia (2001), p 183; Leon van Schaik, Design City Melbourne (2006), p 229; Leon van Schaik and Geoffrey London, Procuring Innovative Architecture (2010).

In these, Building 94 has variously been described as "fine"; "architecture that both enthrals and infuriates"; "a collage of brutalist sculptural forms in sensual materials, set up in a tense composition with a cleavage".

- e) Ms Riddett's reference to the 2002 Best Buildings in Victoria has no relevance to the threshold of local significance (or indeed State significance) and is of no assistance in undertaking that task.
- f) Ms Riddett's assertion that 50 years is the minimum effluxion of time for a places to be included in the Heritage Overlay was made without any ability to reference an appropriate source for the time threshold, other than her understanding that it was common practice and was 'based on panel reports'. This time period is contradicted by the VHR Guidelines Ms Riddett herself relied upon which note a time period of 25-30 years¹⁰. Further, Ms Riddett herself noted orally that many places have been included in the heritage overlay in shorter periods of time.

Comparative Analysis

- 57. Ms Riddett's written evidence plainly acknowledged that the Lovell Chen approach to comparative analysis was not an unreasonable approach¹¹. In Council's submission, RMIT's cross-examination of Ms Gray to the effect that the comparative analysis provided ought be regarded deficient because it doesn't rank places best to worst, plainly ought be disregarded. The idea that a comparative analysis must contain a ranking of places is consistent with the evidence Ms Riddett gave to the Panel hearing the Hoddle Grid Heritage Review¹², however in evidence before this Panel she fairly acknowledged a ranking is not always required, and is not always even appropriate.
- 58. With specific regard to Buildings 51, 56 and 57 Ms Riddett's evidence-in-chief in acknowledged '*There's nothing in the study area that looks like these buildings*' and in response to questions in cross-examination that '*I can't see that you can rank these buildings*'.

Use of the VHR Guidelines

- 59. Council submits Ms Riddett's evidence does not demonstrate she had utilised the VHR Guidelines with care so as not to inappropriately raise the threshold of local significance. Further, Council considers Ms Riddett's written and oral evidence

¹⁰ VHR Guidelines, page 3.

¹¹ Riddett, [48].

¹² Melbourne C387melb (PSA)[2021] PPV 89 (10 November 2021), pages 107, 40-41; Council Part C submission, [214].

demonstrates a considerable lack of clarity with regard to where the VHR Guidelines were used and has plainly failed to demonstrate any tempering of their use in the context of the consideration of local significance. For example, several times Ms Riddett's evidence contains words to the effect '*To meet Criterion (x) at a local level the place must...*' before extensively quoting the VHR Guidelines, while simultaneously not making it clear that the VHR Guidelines were being quoted¹³.

60. When asked under cross-examination to locate any text within her evidence that demonstrated tempering of her use of the VHR Guidelines Ms Riddett was unable to do so. In Council's submission this tempering or careful approach is entirely absent from her both her written and oral evidence.

Conclusions regarding the threshold of local significance

61. It is Council's submission regarding both the serial listing and 23-37 Cardigan Street that Ms Riddett's evidence plainly sets the threshold for local significance inappropriately high through both her verbatim use of the VHR Guidelines and her inappropriate consideration of factors irrelevant to the threshold of local significance per the relevant criterion.

62. In these circumstances, Council considers Ms Gray's evidence should be preferred by the Panel.

B. 253-283 ELGIN STREET (EARTH SCIENCES BUILDING)

63. The University of Melbourne's submission noted the unresolved test of the Incorporated Document as between the submitter and Council and additional text sought by the University of Melbourne:

- a) the elevated pedestrian bridge and the Thomas Cherry building be specified 'not significant' in the Statement of Significance;
- b) the finalisation of the drafting of permit exemptions within the Incorporated Document.

64. The submission further noted:

¹³ Riddett, [68], [72]-[73].

- a) Council's Part B submission at [66] which suggested additional alterations to the statement of significance and citation; and
 - b) sought clarification from Council in respect to how minor demolition would be interpreted in the context of the Incorporated Document.
65. In relation to the statement of significance and citation, Council agrees with the University's request to specify the elevated pedestrian bridge and the Thomas Cherry Building as not significant and has made this inclusion in the Statement of Significance circulated. Council has further clarified its position in relation to additional references to be made within the Statement of Significance (paving issue) and does not pursue these additional changes.
66. In relation to the Incorporated Document, Council also agrees with the University there is an opportunity for some refinements particularly to better clarify the location from which visibility ought to be exempt. As noted above, Council's Part C version of the Incorporated Document is provided at **Appendix B**.
67. In summary:
- a) While Council maintains its concern regarding the University's proposed signage exemption, it notes the University's desire for some flexibility with regard to directional signage, and therefore agrees to exempting the construction or display of a direction sign in the Incorporated Document consistent with Clause 52.05-14 Category 4 – Sensitive areas of the Scheme¹⁴.
 - b) Council has introduced a reference point along Elgin Street in relation to the *rooftop solar energy facility; services normal to the building; and rainwater tank exemptions*.
 - c) Council considers it appropriate to remove the additional wording in relation to soft landscaping and paving.
68. As aptly noted by the Panel, the Incorporated Document does not preclude the grant of a planning permit, but provides for an exemption. Having thoroughly considered

¹⁴ Noting that Category 4 applies pursuant to the Schedule 2 to the Public use Zone. A direction sign is defined by the Scheme as 'a sign not exceeding 0.3 square metre that directs vehicles or pedestrians. It does not include a sign that contains commercial information'.

the submissions of the University, Council considers the Part C version of the Incorporated Document strikes the appropriate balance and is worthy of support.

69. We also note the submitter requested clarification from Council in relation to how demolition is interpreted in the context of minor works exempted by the Incorporated Document. The HO trigger applies to the demolition of buildings, not works. Exempted works that include demolition of the heritage building would trigger a demolition permit. Council considers that to be an appropriate outcome.

C. CARLTON RESIDENTS' ASSOCIATION

70. The submission of the Carlton Residents' Association has been largely responded to within Council's Management Response and Part B submission. Council does not seek to repeat those submissions.
71. In specific relation to the suggestion that the Heritage Overlay for the Earth Sciences Building be expanded to include the Clyde Hotel, Council considers this suggestion inappropriate. In circumstances where the two places have no identified shared values Council does not consider a common Statement of Significance could be drafted to appropriate guide the future management of the places as is required. In these circumstances, a common Heritage Overlay is not appropriate.
72. Carlton Residents' Association also noted that the PPN1 provides no definition of Contributory and the Melbourne Planning Scheme contains no state-wide consistent definitions of key heritage terms. Plainly, the content of PPN1 and state-wide definitions are beyond the scope of this Amendment and beyond the ability of Council to dictate.

D. 1-13 ELGIN STREET & 16-18 BARKLY STREET

73. The property at 1-13 Elgin Street contains two buildings. One of which is also known as 16 Barkly Street, Carlton.
74. The exhibited version of Amendment C405 included an error in the listing of 1-13 Elgin Street in the Heritage Places Inventory, as it applied the Contributory building category to the whole of 1-13 Elgin Street. The Contributory building category should only apply to the building at 16 Barkly Street, Carlton. The application of the

Contributory building category in the Heritage Places Inventory for 16 Barkly Street only, has already been made through Amendment C396. Attachment 5 to Council's Part A submission identified the proposed changes to Amendment C405 as of 29 September 2022. This included the removal of the changes that had been proposed for 1-13 Elgin Street, as they had already been made as part of Amendment C396.

75. In their submission to the hearing, Submitter 6 sought clarification in relation to how the Amendment affected their property, and suggested the matter remained unresolved despite the recent gazettal of Amendment C396 to the Scheme.
76. It is Council's submission that Amendment C396 has appropriately addressed the submitter's concern. To this end, there is no further work for Amendment C405 to do in respect to this matter. The change to the Heritage Places Inventory in the exhibited version of C405, which includes the error described above, should be removed from the Amendment, as noted in Attachment 5 of Council's Part A submission.
77. Council notes the current version of the Inventory lists the property as follows:

Figure 7: Current inventory listing for 1-13 Elgin Street and 16 Barkly Street

Elgin Street	1-13, includes:		
	• 16 Barkly Street	Contributory	-
Elgin Street	21	Contributory	-

78. This type of listing is not unique to this property. The format of the entry shown in Figure 7 is used throughout the inventory to designate specific heritage buildings within a property. In this case, the property as identified in Council's property database is 1-13 Elgin Street and the specific heritage building is 16 Barkly Street. It is appropriate to retain the Inventory listing as introduced through Amendment C396 because it uses the standardised format used throughout the Inventory.
79. The format is based on the approach outlined at the panel hearing for Amendment C258melb included as Appendix A, and as detailed above.

E. 148-150 QUEENSBERRY STREET (CHINESE MISSION CHURCH)

Queensberry Street Pty Ltd

80. At the outset, in relation to the Chinese Mission Church, Council considers it important to clarify the work of Amendment C258 in relation to the place. As noted in Queensberry Street Pty Ltd's submissions, the place was recognised in the Carlton, *North Carlton and Princess Hill Conservation Study 1984* as a C Graded building in a Level 3 streetscape. At that time, the City of Melbourne's grading system went from A to F and accordingly the place was relatively highly graded. The place was not included within the Heritage Overlay and was not mapped as part of the Heritage Overlay, in what may have been an error, but was included in the *City of Melbourne Conservation Schedule 1991*, which later became the *Heritage Places Inventory*.
81. It is not clear why the Heritage Overlay did not apply to 148-150 Queensberry Street when the New Format Planning Scheme was introduced in 1999 but this may have been an error. At that time, 148-150 Queensberry Street was included in the *City of Melbourne Conservation Schedule 1991*. The *City of Melbourne Conservation Schedule 1991* was converted into the Heritage Places Inventory through Amendment C19 in the early 2000s. 148-150 Queensberry Street remained in the Heritage Places Inventory until the gazettal of Amendment C258 in July 2020.
82. As explained to the Panel in Council's opening submissions, with the exception of the *West Melbourne Heritage Review*, Amendment C258 was not a heritage review, it was a gradings conversion exercise. Accordingly, apart from West Melbourne, no new places were considered for protection in the Heritage Overlay. Through the Amendment C258 process it was identified that the place was included in the Inventory in error and it was removed. Accordingly, the place was not removed from the Inventory because a heritage assessment was undertaken that concluded the place was not of Heritage Significance, it was an administrative correction. So, while Mr Townsend's submission that its removal from the Inventory was 'intentional' is correct, it was not removed on the basis of an assessment of heritage value.
83. Queensberry Street Pty Ltd's written submissions note no less than five times that the place is not one of architectural distinction. Architectural distinction is occasionally used synonymously with Criterion E (aesthetic significance) or more infrequently Criterion D (representative significance). Neither is claimed. Accordingly, the fact that

the place may not be of architectural significance is not relevant to the consideration of the Panel.

84. It was also asserted that the heritage fabric doesn't or won't have the ability to communicate that the place was used as a church. Council doesn't consider this assertion (made in the absence of heritage evidence as to its veracity) is correct, however even if it were, the built fabric doesn't need to communicate the complete history of the place. Even when considering State level historic significance, the historical association of the place may be evident in physical fabric or may be contained within documentary resources or oral history¹⁵. Criterion A pursuant to PPN1 requires that the place be of importance to the course or pattern of our cultural or natural history – it doesn't require that the full history of the place be immediately apparent from building fabric alone.
85. In relation to Queensberry Street Pty Ltd's other submissions, the submitter noted:
- a) the place was a modest example than other examples;
 - b) the place was not the first of its kind;
 - c) there are other superior examples and accordingly the places fails the comparative analysis with respect to threshold;
 - d) the place does not contain notable features; and
 - e) the place is not valued by the community.
86. Council does not accept that, simply because this place is a more modest example than other places within the Heritage Overlay, the place does not reach the threshold of local Significance. Modest building types can plainly be of heritage value. Further, the fact that the place was not the first of its kind has no relevance to the threshold of local Significance, and would plainly set the threshold too high. With regard to there being other superior examples, a comparative analysis that ranks examples is clearly not required, but if one were to undertake the exercise one place would invariably be at the bottom of the list. Per Queensberry Street Pty Ltd's submissions that place ought not

¹⁵ VHR Guidelines, page 6.

reach the threshold for local Significance because it is not ‘better’ than other places on the Heritage Overlay. So, then, another place would sit at the bottom of the list. And so on.

87. In Council’s submission, it is valuable to consider whether a place is better than other examples within the Heritage Overlay, but what is required is that the place is of comparable significance. And put simply, Queensberry Street Pty Ltd’s submissions with regard to the fact that ‘there are other superior examples’ plainly relate to architectural merit. Architectural merit has no relationship with historical significance.
88. It was further noted that the place has no notable features, per the definition of Significant Heritage Place in the Inventory. No heritage assessment supports this bare assertion, however Council notes the discussion of the Panel in relation to the Hoddle Grid Heritage Review:

The Panel agrees with Council that the definition of ‘Significant heritage place’ in Clause 22.04 does not act as a qualifier for a place to be identified as having local heritage significance. When assessing a new place in the City of Melbourne a place does not have to satisfy or demonstrate all elements of that definition to be considered significant. Indeed, the definition excludes a range of PPN01 criterion that are otherwise relevant and applicable across the state. Its role is for the application of policy to planning permit application decision making not as a threshold for local significance¹⁶.

89. In relation to the ability of the submitter to redevelop the site in the future, Council relies on its submission in its Part B submission, and further the submissions made in relation to RMIT above. Queensberry Street Pty Ltd have provided no evidence by which the Panel could appropriately consider, if they were minded to so do, the development opportunity presented by the site.
90. Finally, in relation to the assertion that the place is of no value to the community, this is demonstrated to be incorrect by the submission of the Chinese Museum to the Future Melbourne Committee. Further, social significance is not claimed.

Australian Churches of Christ Global Missions

91. The submitter noted orally that they adopted the submissions of Queensberry Street Pty Ltd insofar as those submissions relate to social significance or aesthetic or

¹⁶ Melbourne C387melb (PSA)[2021] PPV 89 (10 November 2021), pages 52-53.

architectural value, Council relies on its submissions above, that no significance of this nature is asserted.

92. In relation to the submission that the building doesn't currently have the facilities required including appropriate fire access, the Heritage Overlay would not prevent alterations of this nature.

IV. CONCLUSION

93. The Amendment is underpinned by clear strategic support for heritage protection in the Scheme and a body of rigorous and detailed work that provides a solid and robust foundation for the inclusion of the places and precincts identified within the Heritage Overlay.
94. The Council submits the Amendment has clear strategic justification and respectfully requests that the Panel recommend adoption of the Amendment as exhibited with the recommended changes identified in the Part A and B submission, and in the evidence called by Council.

Carly Robertson

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Instructed by Melbourne City Council
7 October 2022