

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

IN THE MATTER of Amendment C403 to the Melbourne Planning Scheme

BETWEEN:

MELBOURNE CITY COUNCIL

Planning Authority

-and-

VARIOUS SUBMITTERS

PART B SUBMISSIONS OF THE PLANNING AUTHORITY

I. INTRODUCTION

1. Melbourne City Council (**Council**) is the Planning Authority for Amendment C403 (**Amendment**) to the Melbourne Planning Scheme (**Scheme**). This Part B submission is made in accordance with the Panel's Directions dated 4 April 2023 (**Directions**).
2. Direction 12 of the Panel requires this Part B submission address:
 - a) Council's response to the issues raised in submissions grouped by;
 - a. common issues that apply across multiple places or precincts (identify any issue considered to be outside the scope of the Amendment and explain why)
 - b. precinct wide issues
 - c. individual places.
 - b) explain the rationale for removing HO284 and HO953 and deleting the North and West Melbourne Statement of Significance from the Heritage Precincts Statements of Significance February 2020
 - c) explain the rationale for separate Statements of Significance for the 'Wes Lofts and Co Office' (135-141 Abbotsford Street, North Melbourne) and the 'Ss Peter and Paul Cathedral' (35-37 Canning Street, North Melbourne) within the North & West Melbourne Precinct (**HO3**) rather than an individual Heritage Overlay for each place

- d) Council's response to the expert evidence
 - e) Council's final position on the Amendment.
3. As noted in Council's Part A submission, the Amendment implements the findings of the North Melbourne Heritage Review, July 2022 (**Review**).
 4. This Part B submission is to be read in conjunction with Council's Part A submission and the expert heritage evidence of Ms Kate Gray (**Ms Gray**), both circulated on 19 April 2023.
 5. On behalf of Submitters #6 and #20 to the Amendment, expert heritage evidence has been circulated as prepared by Mr Bryce Raworth, Bryce Raworth Conservation and Heritage (**Mr Raworth**) on 19 April 2023.

II. THE AMENDMENT

6. The strategic basis of the Amendment, as well as Council's approach to heritage planning, is thoroughly explained in the Part A submission.
7. We submit that the strategic basis for applying heritage overlays hardly needs repeating; it is well founded in the State policy provisions of the scheme as well as the Planning and Environment Act 1987 which provides the following objective under s 4(1)(d):

...to conserve and enhance those buildings, areas or other places which are
of scientific, aesthetic, architectural or historical interest or otherwise of
special cultural value.
8. Providing a framework for the protection of places of cultural significance will ensure the Council is delivering on its responsibility to protect heritage places and ensure new development integrates, respects and contributes to that heritage.
9. In our submission, Panels are tasked with considering proposals to identify properties within a heritage overlay and to consider whether the explanation of significance is appropriate. Where the Scheme¹ ascribes a particular level of significance to a property such as 'Significant', 'Contributory' or 'Non-contributory', it is also the task of the Panel to consider whether that descriptor is appropriate.
10. Having regard to this Panel's task in the context of the consideration of the submissions, the Panel will need to be persuaded that:
 - (a) the foundations of what is proposed by the Amendment is sound;

¹ See Heritage Places Inventory, March 2022 (**Inventory**)

- (b) whether the research which has been undertaken is appropriate; and
 - (c) whether it has been conducted in accordance with recognised and accepted norms and principles.
11. Ultimately, the key objective is to ensure heritage places with deemed local cultural significance are properly protected and represented in the Scheme. This includes:
- (a) an accurate and appropriate application of the heritage overlay, including by mapping; and
 - (b) explaining by its entry into the Scheme, such as in the schedule to the heritage overlay, in the statement of significance, in the Inventory and in the citation.
12. It is therefore important:
- (a) the heritage overlay is applied accurately; and
 - (b) places of cultural significance at the local level are properly represented in the Scheme.

III. RATIONALE FOR REMOVING HO953 RELATING TO RACECOURSE ROAD/ALFRED STREET, NORTH MELBOURNE (HO953)

13. The Directions include that Council provide the Panel with the rationale for removing HO953 and HO284 being two existing heritage places.
14. On the basis of fieldwork and analysis, the Review's methodology² explains the rationale for removing, HO953 and HO284, and recommending they are incorporated into the HO3.
15. HO953 formed part of the North and West Melbourne conservation area as identified in the 1985 Study.
16. With Council amalgamations in the 1990s, the part of North Melbourne (west of Melrose Street) came under Moonee Valley City Council and a separate precinct (HO29) was introduced under the Moonee Valley Planning Scheme. When the municipal boundaries were realigned in 2008, the precinct once again came under the City of Melbourne, however it was not reintegrated into HO3 and remained a separate precinct (HO953).
17. As part of the Review, Lovell Chen have assessed that the HO953 precinct values are consistent with those of HO3 with no distinct values that would support its retention as a separate precinct. Therefore, Lovell Chen recommended its amalgamation back into HO3.

² Review, p. 19

18. Lovell Chen have assessed that the character of the valued heritage building stock in HO953 was broadly consistent with that of HO3 (as reflected in earlier heritage study assessments) and it is appropriate to amalgamate the two precincts thus returning to the earlier arrangement. The Review had assessed that HO953 contains a number of contiguous “non-contributory” buildings on the south-west side of Flemington Road, and on both sides of Racecourse Road, and it is appropriate to amend the boundary of the heritage overlay to exclude these areas. The heritage overlay is to be retained where there are a number of contiguous “contributory” buildings. The effect of the change, as indicated in the exhibited mapping an extract of which is included at Figure 1, is that the southern portion and a smaller triangular component in the north of the current HO953, are both proposed to be incorporated into HO3.



Figure 1 Exhibited HO3 boundary which replaces the existing HO953

19. In relation to the northern triangular land being physically divorced from the balance of HO3, Lovell Chen advised that this northern portion of HO953 comprises mostly contributory properties of varying levels of intactness, however this condition is long-standing within the current HO953 and is not materially changed by the proposed HO3 precinct boundary changes.
20. By comparison, there are other examples within the municipality of physical separation within a precinct heritage overlay. The figure below is an example from the schedule 1 to the heritage Overlay applying to the Carlton Heritage Precinct (**HO1**).

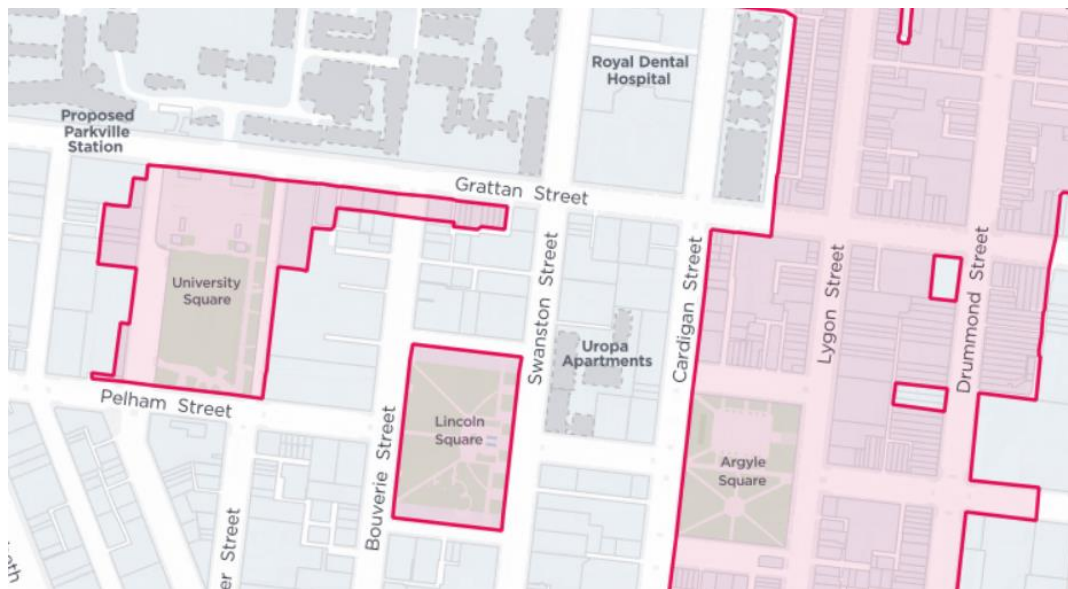


Figure 2: Example of HO1 Carlton Precinct outlined in red

Source: CoM Compass

21. Lovell Chen also advises that the exclusion of the non-contributory properties from HO3 would not impact the balance of the HO3 precinct because the properties are currently not in HO3, however, it would reduce the extent of heritage building stock in this part of the municipality currently covered by the HO control. Acknowledging the mixed quality of graded buildings within the group, the northern section still retains a recognisable heritage character and the buildings are of heritage value.
22. We say more about HO953 in the context of responding to Submitter #20 later in our Part B Submission.

IV. RATIONALE FOR REMOVING HO284 RELATING TO 480-482 ABBOTSFORD STREET, NORTH MELBOURNE

23. HO284 (480-482 Abbotsford Street, North Melbourne) is located at the southern end of Glendalough Terrace, and forms part of an 1891 terrace row at 480-500 Abbotsford Street.



Figure 3: Aerial view of the property HO284 and Glendalough Terrace.

Source: CoM Compass

24. It is listed as a separate HO under the Scheme.
25. All buildings in this terrace row and 480-482 Abbotsford Street are listed in the *Inventory* having a heritage building category of Significant. Lovell Chen could not establish the rationale for the origin for the separate HO284 control. They recommended the individual heritage overlay be removed and it be identified as a Significant property within HO3.
26. In Ms Gray's evidence, she states:³

the nature of the terrace is consistent with the values of HO3, and there is no difference in the HO schedule for HO284 and HO3 (ie no paint or tree controls are indicated). For consistency, it is recommended that the individual HO be removed and 480-482 Abbotsford Street be incorporated into HO3. This accords with the guidance provided in PPN01, which confirms that individual properties within HO precincts should not be scheduled separately unless there is a variation in the scheduling in the HO.

³ At [108] of Ms Gray's Expert evidence statement.



Figure 4: Glendalough Terrace 484-500 Abbotsford Street, North Melbourne, view towards the south.

Source: Streetview December 2022



Figure 5: Glendalough Terrace 480-482 Abbotsford Street, North Melbourne, view towards the north.

Source: Streetview December 2022

27. On closer inspection of the HO284, we note the Scheme⁴ provides for the following requirements for a permit at the schedule to the HO:

⁴ As sourced on 23 April 2023.

PS map ref	Heritage place	External paint controls apply?	Internal alteration controls apply?	Tree controls apply?	Solar energy system controls apply?	Outbuildings or fences not exempt under Clause 43.01-4	Included on the Victorian Heritage Register under the Heritage Act 2017?	Prohibited uses permitted?	Aboriginal heritage place?
HO283	Former Cable Tram Engine House and Cable Tram Track Formation, 187-201 Abbotsford St, North Melbourne	-	-	-	-	-	Yes Ref No H988	Yes	No
HO284	480-482 Abbotsford St, North Melbourne	Yes	No	No	Yes	No	No	Yes	No

Figure 6: Extract of existing schedule 284 to the Heritage Overlay under the Melbourne Planning Scheme.

Source: Melbourne Planning Scheme

28. This compares to the current HO3 which mirrors the HO284 in every requirement other than ‘prohibited uses permitted’:⁵

PS map ref	Heritage place	External paint controls apply?	Internal alteration controls apply?	Tree controls apply?	Solar energy system controls apply?	Outbuildings or fences not exempt under Clause 43.01-4	Included on the Victorian Heritage Register under the Heritage Act 2017?	Prohibited uses permitted?	Aboriginal heritage place?
HO3	North & West Melbourne Precinct Statement of Significance:	Yes	No	No	Yes	No	No	No	No

Figure 7: Extract of schedule 3 to the Heritage Overlay under the Melbourne Planning Scheme.

Source: Melbourne Planning Scheme

29. It has become apparent the rationale for creating the individual HO284 and switching on the prohibited uses permissions dates back to the translation of the City of Melbourne’s Old Format Planning Scheme to the New Format Planning Scheme, where submissions were made to Council in relation to 480-482 Abbotsford Street, North Melbourne at the .
30. The Report of the Panel and Advisory Committee⁶ records:

⁵ Ibid.

⁶ The Report of the Panel and Advisory Committee considering City of Melbourne’s New Format Planning Scheme, April 1998, pages 96 and 97

Submission number 69 Part A

The submission requests a site specific amendment to the Schedule to the Heritage Overlay to permit a prohibited use (Office) in the building located at 480-482 Abbotsford Street, North Melbourne. It is noted that under the exhibited Planning Scheme the site is zoned Residential 1 and is included within the Heritage Overlay (HO 419) pertaining to the North and West Melbourne Precinct. The building on the site is recognised for its B-grade significance in the North and West Melbourne Conservation Study 1983.

Council Recommendation

Amend the schedule to the HO to nominate the subject land as a place where prohibited uses may be permitted.

The building has a long history of non-residential usage and a recently issued planning permit for home occupation on the ground floor. The proposal will resolve an on-going planning anomaly and facilitate the conservation of the building. The proposal is consistent with Aim 4.3.1 in City Plan '97 (page 39) - 'local services in easily accessible locations' Council is willing to consider a prohibited use at ground floor level subject to a permit.

Submission number 69 Part B/

The second submission requests a site-specific amendment to the Schedule to the Heritage Overlay to permit a prohibited use (Office), and requests that the description of the Heritage Place be altered to "Ground floor level, 480-482 Abbotsford Street, North Melbourne".

Council Recommendation

Note change above. This suggestion may imply that only part of the building is of heritage significance.

Panel Comments

This is an old shop building with residence above.

The submitter is seeking to have the property separately listed in Clause 43.01 Heritage Overlay of the Scheme. This would then allow the property to be given planning permission for prohibited uses. The property is zoned Residential 1, and uses such as Office, are prohibited.

To date, only A-grade listed buildings have been separately listed, and are therefore able to gain planning permission for Section 3 uses. No evidence was presented to suggest that Council was about to abandon this position and to separately include all B-grade buildings on the Heritage Overlay.

Whilst the Panel acknowledges that this building has been used for a variety of non-residential activities since it was built, it is now in what is accepted to be a residential area. The land surrounding the property is zoned Residential 1, and there is no evidence to suggest that this zoning is inappropriate. Consequently, unless Council decides to change its policy so that all B-grade properties are separately listed, it is considered inappropriate to allow such a site-specific variation in this instance.

The property has existing use rights in respect of its non-residential use. The Panel can see no reason why a greater level of protection should be afforded to these rights in respect of this property than in respect of existing use rights for any other similar property. The real difficulty would arise should those existing use rights be lost.

The Panel considers that the issue needs to be dealt with strategically rather than on a one-off basis. The Council needs to develop a consistent policy about the way in which it deals with buildings of commercial origin, particularly in residential zones, in terms of encouraging their conservation and being able to use them for prohibited purposes. The Policy should also address the issue of existing use rights in order to introduce a consistency in dealing with them where heritage places are concerned. One suggestion would be for prohibited uses to be permitted in all heritage places and to have a local policy that prohibited purposes would only be encouraged in buildings of commercial origin.

With respect to this particular submission, no change is recommended.

Panel Recommendation

- **Develop a policy that deals with existing uses and new prohibited uses in buildings of commercial origin where these are included in a Heritage Overlay.**

31. Notwithstanding the Panel's recommendation, it would appear the Scheme was translated into its new format with a 'Yes' for HO284 in the 'Prohibited uses permitted' column because of the nature of the use operating from the site.
32. This is a matter that has just come to Council's attention.
33. In the circumstances, Council considers it would be appropriate to retain HO284 because HO3 clearly does not allow 'Prohibited uses permitted'.
34. As such, Council proposes a post-exhibition change to not proceed with the HO3 over the land at 480-482 Abbotsford Street, North Melbourne, rather retain the existing HO284.

V. THE NORTH MELBOURNE PRECINCT STATEMENT OF SIGNIFICANCE

35. The Directions include that Council provide the Panel with the rationale for removing the North Melbourne Precinct Statement of Significance from the Heritage Overlay Precincts Statements of Significance February 2020.

36. Currently, the HO3 North & West Melbourne Precinct Statement of Significance is grouped with a number of other precinct statements into the incorporated document Heritage Precincts Statements of Significance, February 2020.
37. The rationale for this change arises from DELWP (now DTP) feedback, as we have documented at paragraph 85 of Council's Part A submission, to the effect that statements of significance should be listed individually, and not bundled or grouped with other precincts.
38. In accordance with this guidance, Council exhibited the Amendment seeking to remove the North Melbourne Precinct Statement of Significance from the Heritage Overlay Precincts Statements of Significance February 2020.

VI. RATIONALE FOR THE 'WES LOFTS AND CO OFFICE' STATEMENT OF SIGNIFICANCE

AND

RATIONALE FOR THE 'SS PETER AND PAUL UKRANIAN CATHOLIC CATHEDRAL' STATEMENT OF SIGNIFICANCE

39. The Panel has asked for Council to provide the rationale for a separate statement of significance within HO3 for 135-141 Abbotsford Street, North Melbourne, rather than proposing an individual heritage overlay for this place.
40. The Panel has also asked for Council to provide the rationale for not proposing an individual heritage overlay for the Ukrainian Catholic Cathedral at 35-37 Canning Street, North Melbourne.
41. Both sites are proposed to be identified as 'Significant' heritage places within HO3.
42. Lovell Chen's rationale for the approach is explained in the Review's methodology report:⁷

These statements have been prepared to clarify the values of the two sites, on the basis these are outside the main period of significance for HO3. The precinct is significant for its predominantly nineteenth-century built form with overlays of both the Edwardian and interwar periods. In contrast, the above places were constructed in the late post-WWII period, with the Cathedral constructed in 1962-63, and the late twentieth century, with the Wes Lofts & Co Office constructed in 1971-72.

... The intention is that the statements confirm and clarify their significant grading within the HO3 precinct. These places are not proposed for individual HO controls.

43. The approach adopted by Lovell Chen reflects their interpretation of PPN01.
44. In Ms Gray's evidence, she states:⁸

⁷ Review, p.19

⁸ At [132]-[133].

... PPN01 does not support individual properties of significance located within precincts being scheduled and mapped separately unless it is proposed that a different requirement should apply under the HO Schedule.

In these two cases, there are no additional schedule requirements identified that would justify a separate HO control and on this basis, the sites are proposed to remain in HO3. Equally, the values are quite different from those of the precinct and for this reason, individual statements of significance were prepared to properly explain their significance.

45. PPN01 provides:

How are individual buildings, trees or properties of significance located within significant areas treated?

The provisions applying to individual buildings and structures are the same as the provisions applying to areas, so there is no need to separately schedule and map a significant building, feature or property located within a significant area.

The only instance where an individual property within a significant area should be scheduled and mapped is where it is proposed that a different requirement should apply. For example, external painting controls may be justified for an individual building of significance but not over the heritage precinct surrounding the building.

46. As mentioned in our Part A submission⁹, separate statements of significance were prepared by Lovell Chen in the Review, and these statements of significance were initially proposed to comprise incorporated documents under the Scheme. However, the feedback from DTP resulted in the statements for both properties being retained in the Review to be afforded only background status under the Scheme. DTP do not support statements of significance for individual heritage properties within a precinct unless statements are provided for all heritage places. Similar feedback has been provided by DTP in other heritage amendments, including Amendment C405 relating to Carlton.

VII. COUNCIL'S RESPONSE TO SUBMISSIONS

47. As noted within Council's Part A submission, Council received a total of 23 submissions in response to the exhibition of the Amendment.

48. Council has referred all 23 submissions received to the Panel.

49. A number of the submissions support the Amendment. Indeed, it can be said that Submissions #1, #2, #3, #9, #16, #18 and #22 were generally supportive, while Submission #12 is supportive of the Review together with many of its recommendations.

⁹ See [65] and [86]-[87].

50. Acknowledging a detailed response to submissions was provided at Attachment 2 in the report to the Future Melbourne Committee of Council dated 21 February 2023 (**Attachment 2 to 21 February FMC Report**), and Ms Gray's evidence also comprehensively responds to all submissions that relate to her area of expertise, this Part B submission will seek to respond to the issues raised in submissions by reference to the 21 February FMC Report and the evidence, and do so as follows in accordance with the Directions by grouping the issues as following:
- (a) General themes and concerns;
 - (b) Precinct-wide issues;
 - (c) Individual places or property specific issues being the majority of the submissions in the Amendment.

VIII. GENERAL THEMES AND CONCERNS

Adequacy of Amendment notification

What are the issues?

51. Submitter #5 raised concern with the consultation process associated with the Amendment, specifically, it was the first time notice of the Amendment has been provided, the documentation was difficult to understand and the documentation was provided in English only.

Council's response

52. Council submits that the statutory amendment process provides the opportunity for affected parties to raise any concerns, participate in the process and agitate any issues, and Submitter #5's concerns have been considered as part of the Amendment as outlined in Attachment 2 to 21 February FMC Report.
53. By its very nature, Council acknowledges planning scheme amendment material can be complicated, and Council seeks to simplify the messaging and explanation of its amendments to the extent possible, such as by using its Participate Melbourne webpage.
54. Council also notes the lingual point raised, and Council will address this point in future amendments, such as by including interpreter service availability to assist with translation to languages other than English (where possible).
55. No changes are required as a result of this matter.

Adequacy of Amendment documentation

What are the issues?

56. In their comprehensive submission, Submitter #12 raised their concerns with the absence of statements of significance for all the significant buildings that have been the subject of the Review.

57. Submitter #12 also drew Council's attention to a number of suggested changes and provided additional information to improve and inform the Review.

Council's response

58. Individual statements of significance were not prepared for 'Significant' places within HO3 as it was outside the scope of the Review due to the large number of statements which would need to be produced.
59. Further, Council adopts Ms Gray's response which notes as follows:¹⁰

An appreciation of the heritage values of Significant places is supported by the updated citation and statement of significance for HO3. Significant places generally reflect the values for which the precinct is identified and the key attributes as set out in the statement of significance. Note also that PPN01, which is referenced in the submission, requires a statement of significance for each heritage place in the Schedule to the HO, not Significant places within precincts.

60. As to the suggested corrections and other changes for the Review, it is important for the Panel to note these same, or similar comments, were provided by Submitter #12 to Council prior to the exhibition of the Amendment, and at that time were considered for inclusion in the Review. In any event, Council has also provided fulsome responses to all these points in its consideration of submissions at Attachment 2 to 21 February FMC Report.
61. No changes are required as a result of this matter.

Planning Permit triggers

What is the issue?

62. Submitter #4 submits a planning permit ought not be required for
- any house that is being renovated, modernised, or even extended where the façade is not being altered.

Council's response

63. Respectfully, the issue raised by the submitter is beyond the scope of the Amendment as it seeks to modify the nature of the permit triggers under the HO. This is clearly not a matter for this Amendment.
64. No changes are required as a result of this matter.

Planning Scheme definitions of gradings

What are the issues?

¹⁰ At [150].

65. Submitter #4 notes their concern with the Review, as follows:

There should be a cleaner and more definitive statement of the characteristics which cause a particular property to be labelled either Contributory or Significant. The statements on page 17 on Melbourne Heritage Review are very general, and basically motherhood statements without clear guidelines.

66. Submitter #12 raised concern with the change in approach to streetscape gradings.

Council's response

67. Amendment C258, as discussed in our Part A submission:

- (a) replaced the Inventory to reflect the new grading system of 'Significant', 'Contributory', 'Non-contributory';
- (b) updated heritage policy which included implementing into the Scheme the definitions that are utilised in the Review;
- (c) removed streetscape gradings for Level 2 and Level 3 streetscapes with Level 1 streetscapes being designated as 'Significant Streetscapes'.

68. As a consequence of the gazettal of Amendment C409, as referred to in our Part A submission, the definitions of 'Significant', 'Contributory', 'Non-contributory' and 'Significant Streetscapes' are now relocated from clauses 22.04 and clauses 22.05, into the Inventory.¹¹

69. Given that the categories in the Inventory had been a key focus of Amendment C258, no change is proposed to the 'Significant', 'Contributory', 'Non-contributory' and 'Significant Streetscapes' system implemented under Amendment C258. As such, it was not in the scope of the Review of this Amendment to re-visit the definitions now located in the Inventory.

70. No changes are required as a result of matters raised by these submissions.

Redevelopment opportunities

What are the issues?

71. Submitters #6, #14 and #20 raised the implications of the heritage overlay or the re-grading of a heritage place on the redevelopment prospects or opportunities of their land.

Council's response

72. Future redevelopment opportunities of heritage properties are, in Council's submission, immaterial to this stage of the planning process as they are properly considered at the time a planning permit is applied for. It is at the planning permit assessment stage where a proposal is properly assessed against relevant policy considerations.

¹¹ Being an incorporated document pursuant to clause 72.04 of the Scheme.

73. In Amendment C6 to the Southern Grampians Planning Scheme, the Panel commented:¹²

The Panel takes the view that there is a two stage planning process in relation to management of heritage places – the objective identification of heritage significance (current stage); and, second, 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 (consideration of permits for development).

This framework for management of heritage places is not set out in the Act nor in the Practice Note but has been adopted by planning panels and by the Victorian Civil and Administrative Tribunal. The comments by the panel considering the Ballarat Planning Scheme Amendment C58 are instructive in this regard. 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.

This approach is also endorsed in the August 2007 report by the Advisory Committee on the ‘Review of Heritage Provisions in Planning Schemes’.

74. Council considers this approach correctly recognises the importance of prioritising enduring and long term matters such heritage protection and conservation over matters of development potential, building condition, personal economic matters and planning approvals which are, by contrast, short-term in nature.
75. Council acknowledges that the heritage overlay introduces a layer of control for property owners by imposing additional permit triggers and relevant considerations to a future planning permit application. It is a well-recognised and a generally accepted consequence that planning controls will set parameters in relation to the use and development potential of land. All properties in the municipality are subject to zoning controls and most are also subject to overlay controls.
76. In Amendment C305 to the Scheme, the Panel considered the introduction of the Heritage Overlay to 20 individual places, one precinct and two thematic groups in Southbank within the Capital City Zone. In response to evidence that the heritage overlay would potentially undermine legitimate development opportunities in a major and well-established urban renewal precinct and a submission that the amendment might prejudice the strategic redevelopment of a site inconsistent with the overarching vision for part of Southbank, the Amendment C305 Panel said:¹³

¹² **SOUTHERN GRAMPIANS C6 (PSA) [2009] PPV 27 (20 MARCH 2009) (AUSTLII.EDU.AU)** at p. 20.

¹³ **Melbourne C305 (PSA) [2020] PPV 68 (4 September 2020) (austlii.edu.au)**, p. 21-22.

At first glance, there appears to be a tension between planning policies seeking urban renewal and growth in Southbank and those seeking to protect heritage of local significance for present and future generations.

...

Urban renewal policies for Southbank seek to achieve outcomes at a locality scale. Such policies should therefore be considered at that scale. It would be inappropriate to measure the success of these policies on an individual property basis. Not every property is equal, and the extent of additional development depends on many factors including planning policy, other planning provisions including overlays, airspace regulations, and each property's context.

The Amendment seeks to apply the Heritage Overlay to properties with identified heritage significance. Planning Practice Note 1 provides commonly accepted guidance on how to identify such properties as candidates for the Heritage Overlay. The Practice Note's guiding methodology does not refer to disregarding properties with identified heritage significance in an area with policies seeking growth. If that was true, there would be no Heritage Overlay in Melbourne's central city area.

Not applying the Heritage Overlay in favour of urban growth would contradict relevant objectives of the Act and planning policies. The Heritage Overlay should be applied to justified properties so that Council can assess whether the scale and nature of future development will negatively impact the existing heritage fabric. This conversation is relevant during the planning permit application when proposal details are known.

The Panel disagrees with submissions that applying the Heritage Overlay would restrict the ability to achieve policies seeking growth in Southbank. It may affect some individual property owners who may otherwise have had additional yield without the Heritage Overlay. However, the net community benefit of achieving heritage related objectives in the Act and policies in the Planning Scheme (by protecting Southbank properties with local heritage significance for present and future generations) outweighs any private economic disbenefit to some individual property owners.

77. In Amendment C274 to the Boroondara Planning Scheme, the Panel considered whether the application of the heritage overlay restricts the development potential of a property and whether this is a relevant consideration for the Panel. The Panel concluded as follows:¹⁴

The application of the Heritage Overlay may restrict the development potential of a property, but this is not a justification for recommending against the application of the Heritage Overlay.

¹⁴ Boroondara C274 Part 1 (PSA) [2018] PPV 99 (17 October 2018) (austlii.edu.au), p 85.

78. Council also acknowledges that the re-grading of a property, already affected by a heritage overlay, also has implications as it relates to the application of heritage policy in a future assessment for planning permit permission.
79. However, in Council's submission, this is necessary to ensure those places with the requisite level of heritage significance are properly recognised and appropriately managed.

Council position

80. No changes are required to respond to the issues raised regarding implications to redevelopment opportunities.

IX. PRECINCT WIDE ISSUES RELATING TO HO3

What are the issues?

81. Submitter #12 raises concern with not including Eades Place in the HO3.
82. Submitter #23 raises the issue of the HO3 not including the established vegetation on Shiel Street, specifically to:
- (a) include the north-eastern streetscape of Shiel Street in HO3; and
 - (b) recognise the street tree row on the north-western side of Shiel Street.

Council's response

83. In relation to submitter #12, Council adopts the position of Ms Gray:¹⁵

In response to the suggestion made by the submitter, Eades Place is well-separated from the West Melbourne Residential Area, with the school/crisis accommodation block located between the two. Because of this separation, its inclusion within the West Melbourne Residential Area is not recommended. This does not in any sense result in a lesser level of protection or recognition, noting the building and streetscape gradings that apply.

84. No change is required in response to the matter raised by Submitter #12.
85. The issue of protecting established vegetation on the Shiel Street road reservation raised by Submitter #23 resulted in Ms Gray undertaking a further site inspection, and consequently forming the view that the Plane and Elm tree plantings on Shiel Street are relevant to recognition of the HO3 precinct.

Ms Gray's evidence

86. Ms Gray opines:¹⁶

¹⁵ At [167].

¹⁶ At [172] of Ms Gray's Expert Evidence statement.

The plantings on Shiel Street contribute to the aesthetic quality of the adjoining residential streetscape to the north-east, and in this sense are consistent with the value attributed to street tree plantings in the HO3 statement of significance. **It is appropriate to expand the boundaries of the precinct to include Shiel Street to the extent of the street trees on both sides of the roadway.** It is not proposed to include the properties on the south-west side of the street within the HO.

[our emphasis]

87. Ms Gray goes onto say:¹⁷

In considering street trees, it is recognised that Melrose Street also incorporates a consistent planting of Plane trees in the central median. A date for these trees has not been confirmed; they are visible on the 1931 aerial photograph, although they appear to be younger than the adjacent Shiel Street examples. **A consistent approach to the precinct boundary would be to include the width of Melrose Street within HO3; as with Shiel Street the approach would be to continue to exclude the properties to the west of Melrose Street where these are not already included within HO3** (Melrose Street between Alfred Street and Flemington Road is included in the existing extent of HO3).

Extending the precinct boundaries on both streets would include two street tree plantations in a manner consistent with the recognition afforded to the street plantations in the statement of significance. These street plantations are generally intact and contribute to the streetscape character of the adjoining residential blocks included within the precinct. While noting that the plantings on these streets are of early twentieth century origin, the historical provenance of the plantings is not the primary consideration for their inclusion in HO3. The precinct's statement of significance also refers to the Eucalypt plantings found in the centre medians of other streets in the precinct, and these trees are certainly later plantings. The inclusion of street tree plantings in the precinct is not addressed to their historical value, but rather to their contribution to the aesthetic significance and architectural expression of key streetscapes.

Other precinct edge streets have been reviewed and no further changes are proposed.

[our emphasis]

Council position

88. Consistent with the opinion of Ms Gray, Council proposes to:

¹⁷ At [173]-[175] of Ms Gray's Expert Evidence statement.

- (a) amend the boundary of the HO3 to include the road reservations of Shiel Street (between Canning and Dryburgh Streets) and Melrose Street (between Canning and Dryburgh Streets).
 - (b) Amend the map in the HO3 statement of significance and citation.
89. Council's preferred version of the Amendment includes extending HO3 to apply to the Shiel Street and Melrose Street reservations as shown in yellow below in the following mapping:

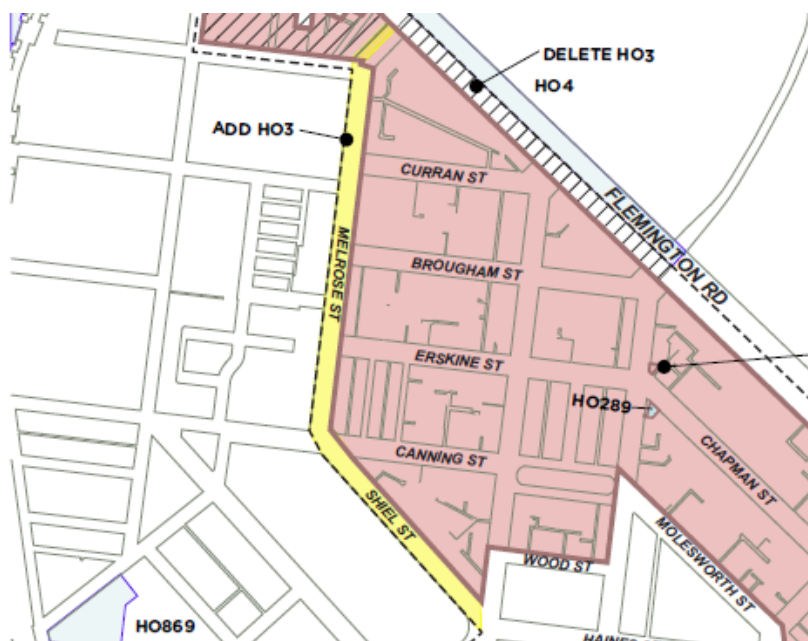


Figure 8: Proposed extension of HO3 mapping, post-exhibition

Statement of Significance – HO3

What are the issues?

90. Submitter #12 raises some specific concern and comments in relation to the drafting of the HO3 as regards to headings, exclusion of two particular Errol Street shop rows and changes to the 'Key Attributes' section of the SOS.¹⁸

Council's response

91. Council adopts the expert evidence of Ms Gray as outlined at paragraph 180 to 188 in relation to all the above issues raised by Submitter #12.

Council position

92. Consequently, no further changes are recommended to the Amendment.

Bluestone Lanes

What are the issues?

¹⁸ See paragraphs [177] to [179] for an expansion of these issues.

93. Submitter #12 queried whether historic street materials, including bluestone lanes and kerbs, are protected by HO3.

Council's response

94. As highlight in the evidence of Ms Gray, the SOS references the traditional street materials and their contribution to HO3.
95. Council agrees and adopts Ms Gray's analysis at paragraph 192 of her Evidence Statement.

Council position

96. Consequently, no further changes are recommended to the Amendment.

X. INDIVIDUAL PLACES OR PROPERTY SPECIFIC ISSUES

97. Given the application of the Existing HO3 over the land considered by the Review, a large number of the submissions received to the Amendment were not about the application of a heritage overlay itself, but rather the proposed re-grading of individual heritage places.
98. It is therefore timely to recall the Review was a not a first principles assessment of all significant, contributory and non-contributory listing in the Inventory. This is because the conversion from the old system (A, B, C, etc) to the new system ('Significant', 'Contributory', 'Non-contributory') had occurred through other recent amendments in Amendment C258 and Amendment C396 to the Scheme.
99. In this regard, Ms Gray confirms the Review's starting point as follows:¹⁹

The grading system and definitions adopted as an outcome of Amendment C258 and now in the Melbourne Planning Scheme were used for the North Melbourne Heritage Review; these are found in the incorporated document Heritage Places Inventory March 2022 (Amended January 2023) and are as follows:

Significant heritage place

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

Contributory heritage place

A contributory heritage place is important for its contribution to a heritage precinct. It is of historic, aesthetic, scientific, social or spiritual significance to the heritage precinct. A

¹⁹ At [79].

contributory heritage place may be valued by the community; a representative example of a place type, period or style; and/or combines with other visually or stylistically related places to demonstrate the historic development of a heritage precinct. Contributory places are typically externally intact, but may have visible changes which do not detract from the contribution to the heritage precinct.

Non-contributory

A non-contributory place does not make a contribution to the heritage significance or historic character of the heritage precinct.

100. The approach then taken is explained in Ms Gray's evidence statement from paragraph 80 and onwards:

The place categories or gradings in the study area were reviewed in the North Melbourne Heritage Review. In the course of the fieldwork for the study, the existing categories/gradings were checked and any apparent anomalies identified for further review. Issues identified in this process included property addressing or other errors, demolitions or major changes to heritage buildings, and, **in some cases, a question over the appropriateness of the existing building category and whether a category change was warranted.**

[our emphasis]

101. At paragraph 83, Ms Gray acknowledges:

While no formal comparative assessment was undertaken (or documented) as part of the gradings review, the review process did involve consideration of the context of other related places, including a consideration of levels of intactness of these.

102. A number of examples of the approach (in documented and illustrative form) are provided at Ms Gray's paragraph 85.

103. Analogous are the circumstances in the Carlton Heritage Review (the subject of the Panel's consideration in Amendment C405 to the Scheme), in that the Carlton Heritage Review was also not a first principles approach to the listings in the Inventory. On the approach adopted in Amendment C405, the C405 Panel had this to say:²⁰

The Carlton Heritage Review identified anomalies and inconsistencies and recommended changes to the categories of a number of heritage places **based on research and appropriate heritage considerations.** While there is always potential to complete more detailed research into some properties, **the Panel accepts the extent of investigations to substantiate the categorisation for each property is satisfactory.**

²⁰Melbourne C405melb (PSA) [2022] PPV 78 (29 November 2022) (austlii.edu.au), p.31.

104. For this Amendment, Ms Gray's evidence summarises all the submissions seeking to advance a position regarding a proposed re-grading in tabular form²¹.

105. Ms Gray then expands in more detail at her Appendix A in relation the following submitters;

- (i) Submitter #5 relating to 680-684 Queensberry Street, North Melbourne;
- (ii) Submitter #7 relating to 8 George Street, North Melbourne;
- (iii) Submitters #8 and #12 relating to 10 Canning Street, North Melbourne;
- (iv) Submitter #11 relating to 6 Ballie Street, North Melbourne;
- (v) Submitter #12²² relating to 586-588 Victoria Street, North Melbourne, 8 Jones Lane, North Melbourne, 38 Curran and 40-42 Curran Street, North Melbourne;
- (vi) Submitter #13 relating to 59-63 Chapman Street, North Melbourne;
- (vii) Submitter #15 relating to 48 Ballie Street, North Melbourne;
- (viii) Submitter #19 regarding 32-34 Erskin Street, North Melbourne.

Council's response to heritage places as document in Ms Gray's Appendix A

106. Council adopts Ms Gray's response for the properties referred to in Appendix A noting Council has also provided fulsome responses to all these submitters in its careful consideration of submissions at Attachment 2 to 21 February FMC Report.

107. Furthermore, Council's position in relation to each of these submitter properties is outlined in Council's Part A submission and remains unchanged.

Other Submitters seeking re-grading or other property specific issues

108. In the body of her evidence, Ms Gray provides a detailed response to the matters raised by the following submitters:

- (i) Submitter #6 in relation to 31-55 Curran Street, North Melbourne (St Aloysius College);
- (ii) Submitters #10 and #21 in relation to the Flemington Bridge Railway station;
- (iii) Submitter #14 in relation to 25-27 Leveson Street, North Melbourne;
- (iv) Submitter #20 regarding the following properties:
 - 210-212 Boundary Road, North Melbourne;
 - 435-437 Flemington Road, North Melbourne;

²¹ At Table 2, p. 56 of Ms Gray's Expert Evidence Statement.

²² Noting Submitter #12 raises multiple properties as part of their submission.

- 439-441 Flemington Road, North Melbourne;
- 443 Flemington Road, North Melbourne;
- 445 Flemington Road, North Melbourne;
- 447 Flemington Road, North Melbourne.

Council’s response to individual heritage places or specific issues as documented in the body of Ms Gray’s Expert Evidence

109. The focus of Council’s submission will now turn to each of the aforementioned properties in order of submission number.

Submitter #6

110. The Amendment proposes the following in relation to the land at 31 Curran Street, North Melbourne (**Submitter 6’s Land**) by way of grading changes:

- The original convent (1891), chapel (1925) and high school building (1903) is to remain ‘Significant’;
- The school building (1940) is to change from ‘Significant’ to ‘Contributory’;
- Other buildings and structures change from ‘Significant’ to ‘Non-contributory’.

111. Extracted from Ms Gray’s evidence, her Figure 25 is reproduced below for ease of reference together with the following explanation as to the location of the school buildings.

Proposed categories St Aloysius complex (original convent building (blue star, 1891), high school building (yellow star, 1903) and Chapel (green star, 1925), all Significant, and 1940 school building (red), Contributory, all other buildings Non-contributory.



Figure 9: St Aloysius complex, Curran Street, North Melbourne

Source: Ms Gray’s Evidence at Figure 25.

112. St Aloysius College was identified within Amendment C258 as ‘Significant’, and this grading currently applies across the entirety of Submitter 6’s Land.

What is the issue?

113. Submitter #6’s only issue is the Amendment proposing to re-grade the 1940s building on Submitter 6’s Land to a ‘Contributory’ grading. See over the page for the northern elevation of the 1940s school building as viewed from Curran Street, as derived from Figure 29 of Ms Gray’s Evidence Statement.²³ Submitter 6 obtained advice from a heritage consultant, Mr David Wixted, which it encloses and relied upon as part of its submission received during exhibition.



Figure 10: 1940s building, Curran Street, North Melbourne

Source: Ms Gray’s Evidence at Figure 29.

Council response

114. Notably, the Amendment seeks to downgrade the 1940s building. Notwithstanding the focus on the 1940s building, it ought be noted that Council and Submitter #6 are in agreeance in respect to the categorisation of all other buildings on the site.
115. Recognising it is an educational complex, the approach to Submitter 6’s Land has been to review individual buildings to identify specific gradings, rather than maintaining a blanket approach to the heritage protection afforded the entirety of the land. The Contributory rating is considered appropriate.

Ms Gray’s evidence

²³ At p. 62.

116. The approach to the reconsideration of the grading of Submitter 6's land is explained in Ms Gray's evidence²⁴ where she comprehensively considers the matters raised by Submission 6²⁵ of her Expert Evidence, and notes:²⁶

- (a) Catholic education is an important historical theme in North Melbourne as identified by HO3;
- (b) the 1940 school building is recognisably an institutional/educational building of the late interwar period which relates to and complements the earlier buildings at St Aloysius, and contributes to the significance of this particular complex as part of HO3;
- (c) it incorporates materiality in the form of the use of red brick and the pitched slate-clad gable roof which are highlighted features in the HO3;
- (d) the 1940s building was a celebrated milestone in the College's history of school expansion and its opening on 31 March 1940 blessed by the Archbishop of Melbourne.

117. She goes on to respond to other points raised in Submission 6, including to confirm the Amendment proposes not to retain the existing 'Significant' grading for the 1940s building, but rather downgrade the heritage category of the 1940s building to 'Contributory'.

118. In maintaining the appropriateness of a 'Contributory' grading for the 1940s building, Ms Gray opines:²⁷

.. the building is recognisably of the interwar period but relates to the earlier (more highly graded) buildings on the site. It combines with these earlier buildings to demonstrate the historical development of the St Aloysius complex, and in doing so, contributes to an understanding of the theme of Catholic education in North Melbourne. Additionally, the interwar period is an important layer and phase of development in HO3.

[our emphasis]

Mr Raworth's evidence

119. Mr Raworth's evidence includes a number of images from various elevations of the 1940s building as visible across the College's three road frontages, being Melrose Street, Curran Street and Brougham Street.

²⁴ At [202]-[203].

²⁵ See [200] –[201] and [204] onwards.

²⁶ At [206].

²⁷ At [210].

120. Having regard to the historic grading of Submitter 6's land, and the proposed HO3, Mr Raworth concedes the 1940s building belongs to the interwar period with characteristics.²⁸

... in common with contributory and significant buildings on the site and within the broader precinct ...

[our emphasis]

121. He opines:²⁹

The North Melbourne Heritage Review fairly identifies that the building should not be seen as being significant and thus comparable to the earlier school buildings, but rather should be identified as of a lesser heritage value (contributory) within a site where there is a mix of 'significant', 'contributory' and 'non-contributory' elements.

It is accepted that the building has elements of fabric that suggest the contributory grading is appropriate, including red brick with clinker brick trims to some windows, pitched roof with slate cladding, timber sash windows, decorative crosses and leadlight windows. Many buildings of contributory or significant status within the precinct have characteristics and/or materials comparable to these, whilst the statement of significance for North Melbourne references materials such as this.

[our emphasis]

122. Conceding that the 1940s building is 'part of the early school building construction programme', Mr Raworth goes on to explain the 1940s buildings is an 'appreciably later heritage building than the earliest elements on the site'.³⁰

123. He also identifies:³¹

The fact that some buildings on the school site which demonstrate different phases of its development are graded non-contributory is demonstrative that not all phases of the evolution of the site are equally important.

124. Mr Raworth goes on to question the appropriateness of the 'Contributory' grading including because of 'heritage policy implications of such a listing'.³²

Council position

125. Recalling its current grading under the Scheme is 'Significant', Council maintains its position that the 1940s building is appropriately categorised as 'Contributory', having regard to the considered

²⁸ At [43] of Mr Raworth's Curran Street Expert Evidence statement.

²⁹ At [32]-[33] of Mr Raworth's Curran Street Expert Evidence statement.

³⁰ At [37] of Mr Raworth's Curran Street Expert Evidence statement.

³¹ At [40] of Mr Raworth's Curran Street Expert Evidence statement.

³² At [34] of Mr Raworth's Curran Street Expert Evidence statement.

approach of Ms Gray in arriving at this grading for the 1940s building and for the gradings for the rest of Submitter 6's land.

126. In response to Mr Raworth's evidence, Council submits as follows:

- (a) the application of the heritage policy for a future permit application is a not a relevant consideration for this Panel for the reasons discussed earlier in Council's Part B Submissions;
- (b) the visibility of the façade from the streetscape is not critical to the grading classification where Mr Raworth's own photographs clearly illustrate the visual presence of the building from three elevations (north, west and south) as viewed from three separate streetscapes Melrose, Curran and Brougham Streets;
- (c) the design and construction at the very end of the interwar period has no relevance when it is the case it is clearly belonging to the interwar period;
- (d) because it is an interwar building, it should not be associated with the 1949 works in the manner Mr Raworth invites, rather standing on its own distinguished from both the earliest buildings, i.e. the convent, chapel and first school (proposed by the Amendment as 'Significant'), and from the post war works (proposed by the Amendment as 'Non-contributory').

127. The 1940s building meets the threshold for a 'Contributory building'. No change is required as a result of Submission #6.

Submitter #10 and #21

128. The Amendment proposes to introduce an individual heritage overlay to a new heritage place at 211 Boundary Road, North Melbourne being the site of the Flemington Bridge Station within the Melbourne City Council jurisdiction. A new statement of significance is proposed and the Inventory would be amended noting a "Significant" category.

What is the issue?

129. Submitters #10 and #21 express support for the inclusion of the Flemington Bridge Station in an individual heritage overlay being Schedule HO1389 Flemington Bridge Railway Station, 211 Boundary Road, North Melbourne (**HO1389**).

130. However, both submitters advance the heritage overlay ought only be applicable to the Flemington Bridge Railway Station building (**Station Building**), and not the platform and pedestrian ramps that afford access to the Station Building.

131. Submitter #10 states:

The access ramps are not original to the railway current railway buildings and of no heritage importance. Both the access ramps and the platform have also been heavily modified over the years to the point that the only evidence to the average passenger that

132. Submitter #21 expresses concern with:

- ### *Council response*

134. Council maintains its view that the Station Building and the platforms are worthy of heritage protection through the proposed individual heritage overlay, as exhibited.

136. Specifically, Council's preferred version of the Amendment seeks the following modifications:³³

³³ See resolution 1.4 of the 21 February 2023 FMC meeting minutes.

overlay itself to take in no more than the 1944-45 weatherboard station building and the platforms.

Ms Gray's evidence

137. Ms Gray's evidence explains the Review's approach to the assessment of the Flemington Bridge Railway Station, including the part of the station within the jurisdiction of Moonee Valley City Council.
138. It is Ms Gray's evidence that the Flemington Bridge Railway Station as a whole is of local historic and representative significance, an opinion not contested by any submitters.
139. The difference of views (specifically between the submitters and the revised Council position) is summarised at paragraph 218 of Ms Gray's evidence:

Submissions have been made that the extent of the proposed HO should be reduced to exclude the ramps and platforms to avoid heritage controls posing an impediment to upgrade works. Submissions 10 and 22 recommend the exclusion of the platforms and ramps, whereas the City of Melbourne's Future Melbourne Committee resolution supports the HO but confined to the buildings and platforms.

140. A complexity that may arise regarding mapping HO1389's curtilage to address Council's preferred position is identified by Ms Gray's evidence:³⁴

... it is difficult to conceive of an approach to the mapping of the place that could remove the ramp structures from the extent, and still achieve the intent of PPN01 in terms of mapping curtilages (whereby land is included as a setting to the heritage place).

141. In acknowledgement of the Council's position, Ms Gray suggests:³⁵

An alternative may be to retain the HO mapping as proposed but address the question of the future upgrade to the ramps (and potentially the platforms) in the statement of significance or via an incorporated document. Of these, the preference would be for an incorporated document that is separate from the statement of significance. This is on the basis it is not common to address management of heritage places in a statement of significance. An incorporated document could function as a means of 'turning off' the permit triggers in the HO for certain actions (modification of the platform and modification/demolition of the ramps) in the event this was required for necessary upgrade works.

³⁴ At [221]

³⁵ Ibid.

142. Ms Gray opines the proposed HO1389 is worthy of heritage protection, notwithstanding the deletion of the ramps in Council’s preferred version of the HO1389, satisfying Criterion A (*historical significance*) and Criterion D (*representativeness*) pursuant to PPN01 considerations.³⁶

Council position

143. First and foremost, Council’s preferred position put to the Panel for the Amendment as it relates to the Flemington Bridge Station is that of its resolution of 21 February 2023.

144. It is Ms Gray’s evidence that the removal of the ramps does not impact the local significance of HO1389 (assessed against PPN01) and therefore this adjustment can be made without impacting adversely on the application of the heritage overlay.

145. Council notes Ms Gray’s observations as to mapping out the ramps³⁷. In the alternative, and in circumstances where the Panel was concerned as to the ability to craft HO1389 mapping to exclude the pedestrian ramp leading to the Station Building, it may be a suitable alternative to utilise the *Inventory* for HO1389 as follows:

Boundary Road	211, includes:		
	• Station	Significant	-
	• Platform	Significant	-

Figure 12: Proposed only, possible entry for 211 Boundary Road in Inventory.

146. Such an approach, provides for the specification of what is significant about HO1389, and by absenteeism what is not significant.

147. As outlined at paragraphs 146 and 149 of Council’s Part A submission, the necessary mapping changes are not straight forward and will need to be prepared carefully.

Submitter #14

148. The Amendment proposes to upgrade Submitter 14’s property from ‘Non-contributory’ to ‘Contributory’.

What is the issue?

149. Submitter #14 opposes the upgrading of the property from ‘Non-contributory’ to ‘Contributory’ proposed by the Amendment. The submission is accompanied by a memorandum prepared by heritage consultant, Peter Barrett (**Barrett memorandum**). The Barrett memorandum queries the ‘Contributory’ grading on the one hand, but then concedes ‘the building has a modest (contributory)

³⁶ At [222].

³⁷ At [221].

level of heritage value to the HO3'. The Barrett memorandum goes on to suggest a 'Contributory' grading ought only be afforded to the Leveson Street façade. It states:

It is recommended that the 'North Melbourne Heritage Review 2022' is amended to note that the Leveson Street façade is, on bulk, the contributory value of this place. It is this facade that conveys in a legible way an understanding of this site forming part of the interwar industrial development of North Melbourne – a period and theme that is identified in the heritage study's Thematic Environmental History.

...

Without clear identification in the heritage study as to what is contributory fabric on this building, there is risk of unnecessary constraints applied to this site in how it is developed in the future, and as a consequence there is potential for fabric of no appreciable heritage value to be made to be retained in any such future development.

In clearly identifying what is important to this building and its inherent values, and in how it contributes to the HO3 North and West Melbourne Precinct, this will provide clear direction to the City of Melbourne, the owner, and to future owners, on the proper management of this heritage place in its maintenance and in the event of future works.

Council response

150. Council maintains its position that the exhibited Amendment ought to be unchanged, and reiterates its position that implications to redevelopment opportunities are not a relevant consideration at the planning scheme amendment stage.
151. The Contributory grading is appropriate for the building for reasons including the building clearly presents as an interwar factory/warehouse, being a factor of significance in HO3.

Ms Gray's evidence

152. Ms Gray explains the rationale for upgrading Submitter 14's property to Contributory at paragraph 228 – 232 of her Expert Evidence Statement. At [230], Ms Gray states:

The building clearly presents as an interwar factory/warehouse which adopts a simple Moderne style in its relatively intact facade. Its original use for industrial purposes is also evident in the large central door opening, multi-paned steel framed windows to its main elevation, and the utilitarian but distinctive brick gable forms expressed along Little Errol Street. While the principal façade to Leveson Street is clearly important, I do not agree that this is the only aspect of the building that expresses its origins as an interwar factory/warehouse.

153. Regarding the submitter's request to afford the Contributory grading to the façade only, Ms Gray notes:³⁸

the Review does not seek to define the extent of significant fabric for Contributory (or Significant) heritage places in the manner suggested.

Council position

154. No change is recommended as a result of Submission #14.

Submitter #20

155. The submission of Submitter #20 relates to the following land:

- 210-212 Boundary Road, North Melbourne (**Boundary Road property**)

- 435-437 Flemington Road, North Melbourne
- 439-441 Flemington Road, North Melbourne
- 443 Flemington Road, North Melbourne
- 445 Flemington Road, North Melbourne
- 447 Flemington Road, North Melbourne.

[collectively **Flemington Road properties**].

156. All abovementioned land is currently affected by **HO953**. The Amendment proposes to include the Boundary Road property and the Flemington Road properties into the HO3. In other words, the Amendment proposes to retain the Boundary Road property and the Flemington Road properties in a heritage overlay but incorporate it into the HO3, rather than the individual overlay (i.e. HO953).

157. In addition, the following gradings are proposed:

Boundary Road property

- (a) Boundary Road property is an existing 'Contributory' heritage place and was exhibited as 'Contributory' in HO3.

Flemington Road properties

- (b) 435-437 Flemington Road is currently 'Non-contributory' in HO953, proposed to be retained in HO3 and upgraded to 'Contributory'.
- (c) 441 Flemington Road is an existing 'Non-contributory' place in HO953 and would remain 'Non-contributory' in HO3.
- (d) 443 Flemington Road is an existing 'Contributory' heritage place and would remain as 'Contributory' in HO3.

³⁸ At [231]

- (e) 445 Flemington Road is an existing ‘Contributory’ heritage place and would remain as ‘Contributory’ in HO3.
- (f) 447 Flemington Road is an existing ‘Contributory’ heritage place and would remain as ‘Contributory’ in HO3.

What is the issue?

158. Submitter 20 queries the application of the HO3 on the Boundary Road property and the Flemington Road properties for reasons including:

- (a) the poor condition and amenity of the properties;
- (b) earlier low heritage gradings of E and D, and ‘Non-contributory’ categorisation;
- (c) detachment from the balance of the HO3.

159. Submitter 20 also queries the level of external intactness regarding the Boundary Road property and the proposed ‘Contributory’ grading to the Boundary Road property and the Flemington Road properties.³⁹

Council response

160. In response to Submission 20, Council adopts its position as per Attachment 2 to 21 February FMC Report.

Ms Gray’s evidence

161. The heritage history of the Boundary Road property and the Flemington Road properties is captured in the Review’s methodology report and summarised in Ms Gray’s evidence.⁴⁰

Boundary Road property

162. Ms Gray agrees with Submitter #20 as it relates to the Boundary Road property.⁴¹

Flemington Road properties

163. In relation to 435-437 Flemington Road, Ms Gray notes:

Though not dominant, the interwar phase of development has been identified in the HO3 statement of significance (Refer to Attachment E to the Review) as important in the precinct and a range of interwar buildings within the study area have been upgraded to Contributory.

[our emphasis]

³⁹ With the exception of 441 Flemington Road, North Melbourne which is proposed as Non-contributory.

⁴⁰ At [240].

⁴¹ It is noted the single-storey residences at 206 and 208 Boundary Road, and the Non-contributory property at 204 Boundary Road, North Melbourne is recommended by Ms Gray for exclusion from the HO3.

164. Noting 441 Flemington is to remain Non-contributory, Ms Gray has recommended the single-storey Victorian brick residence at 443 Flemington Road and the single-storey nineteenth century brick residence at 445 Flemington Road remain Contributory.

165. 447 Flemington Road is an existing Contributory heritage place and would remain as Contributory in HO3. Mr Gray notes:⁴²

It is an interesting building which adopts an unusual form with projecting bays at each end, and the central section set back between these bays. The principal elevation appears to remain relatively intact, with decorative glazing to the bay windows, verandah, parapet and urns, but aerial photography and limited views from the street indicates extensive change behind.

166. In terms of the Flemington Road properties, Ms Gray acknowledges:⁴³

.. it is agreed that this northern portion of HO3 (currently HO953) comprises mostly Contributory properties of varying levels of intactness. It is also recognised that this group would be separated from the main body of the precinct and there is no visual connection between the two. I acknowledge that this separation and the isolated nature of this group makes it difficult to appreciate its relationship to the main body of HO3. I also acknowledge that it is relatively uncommon for precincts to have a smaller mapped portion separated from the main precinct in this manner. This condition is of long-standing within the original precinct and the current HO953, however, and is not materially changed by the proposed HO3 precinct boundary changes.

167. In forming the view as to the appropriateness of the exhibited approach, she opines:⁴⁴

the group still retains a recognisable heritage character (generally as identified in the 1980s study) **that is consistent with the identified values of HO3**. It is on this basis that the retention of the HO control over contributory building stock in this location was recommended in the Review.

[emphasis added]

Mr Raworth's evidence

168. Agreeing with Ms Gray, Mr Raworth considers it is 'essential' that 'these buildings should be seen in the context of HO3'.⁴⁵

⁴² At [252]

⁴³ At [253]

⁴⁴ At [254]

⁴⁵ At [28] of Mr Raworth's Boundary Road Evidence Statement speaking regarding Submitter 20's Land.

169. Mr Raworth acknowledge the Council's post-exhibition position in relation to the Boundary Road property, and concurs with that position.

170. In relation to the Flemington Road properties, Mr Raworth states:

it is apparent that the buildings at 435-437, 443, 445 and 447 Flemington Road **have characteristics that at first view present as being of contributory value**, i.e., they are broadly similar to other buildings that are identified as contributory to the HO3 area.

[emphasis added]

171. Acknowledging the Scheme definition of 'Contributory' in his evidence report, Mr Raworth goes onto highlight the physical and visual separation of the Flemington Road properties from the balance of HO3 as a factors working against meeting the statutory definition under the Scheme, and separately the physical context in which the Flemington Road properties find themselves does not justify a 'Contributory' grading.

172. He goes onto conclude it 'reasonable'⁴⁶ to 'consider'⁴⁷ the removal of the Flemington Road properties 'for similar and additional reasons, as set out above'.⁴⁸

Council position

173. Consistent with the evidence of Ms Gray, Council considers it appropriate to:

- (a) downgrade the Boundary Road property to Non-contributory and remove it from the proposed HO3;
- (b) retain the HO3 and gradings, as exhibited, for the Flemington Road properties.

174. Council's position is reflected in the following extract of the HO4 map at Figure 13 illustrating Council's preferred version of the HO3 as it relates to 204-208 Boundary Road, the Boundary Road property and Flemington Road properties.

⁴⁶ At [40] of Mr Raworth's Boundary Road Evidence Statement.

⁴⁷ Ibid

⁴⁸ Ibid

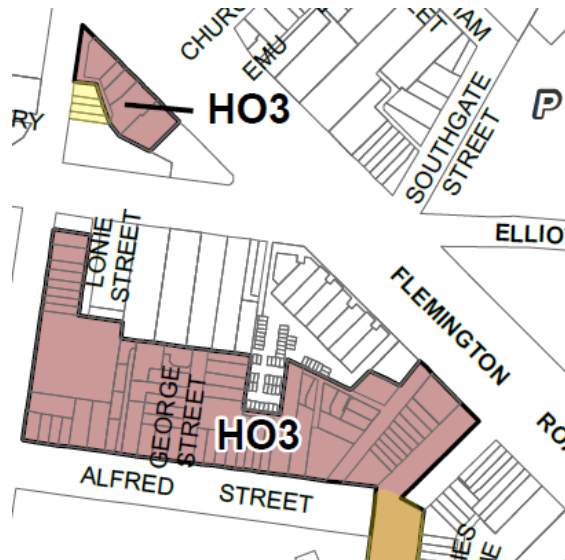


Figure 13. Planning Scheme Map 4HO, post exhibition changes in yellow highlight, part of Amendment documentation for FMC 21 February 2023

XI. COUNCIL'S FINAL POSITION ON THE AMENDMENT

175. Council's final position on the Amendment is as detailed within Council's Part A submission except for the following matter:
- (a) As it relates to the proposed deletion of HO284 from the Amendment, Council proposes to retain HO284 in the Scheme and not incorporate the land at 480-482 Abbotsford Street, North Melbourne into HO3, as exhibited.

XII. CONCLUSION

176. The Council submits that the Amendment is strategically justified and respectfully requests the Panel support the Amendment in the form advanced at this Panel hearing.
177. The Council will address further issues which arise during the Panel hearing and in the form of a Part C submission.
178. This completes the Part B submission for the Council.

Ann-Maree Drakos

Legal Counsel - Planning

Melbourne City Council

24 April 2023