

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 C 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**).
2. This 'Part C' submission:
 - (a) responds to the Panel's outstanding questions;
 - (b) provides Council's final response to all evidence and submissions made after Council's case; and
 - (c) encloses Council's final version of documentation.
3. Council acknowledges all submissions made to the Amendment after Council's submissions. The purpose of this Part C submission is to respond to new issues raised in those submissions. Where a property or submission is not responded to specifically here, it is because Council considers previous responses have addressed the submission.

II. SUMMARY OF THE 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) what responses (if any) were received in relation to the **informal notification** undertaken following the exhibition of the Amendment;
 - (b) in the context of the Department's specific advice or approach in relation to individually significant properties in a precinct, Council's preferred approach regarding individually significant properties in a precinct in the case of the **WS Lofts & Ukrainian Catholic cathedral**;
 - (c) in relation to the **St Aloysius College site**, Council's position on how the Panel ought approach the grading of the 1940s building;
 - (d) that Council confirms its final position in relation to the **triangular land encompassing Flemington Road and Boundary Road** properties;
 - (a) the recommendation Council is seeking the Panel make in relation to the proposed individual heritage overlay for **Flemington Bridge Station**.

II. INFORMAL NOTIFICATION

6. Council advises the following extent of communication occurred with property owners notified informally of post-exhibition proposed changes:
 - (a) In relation to re-categorising 8 Jones Lane, North Melbourne from non-contributory to significant, the owner /occupier was notified by letter, dated 11 November 2022. The owner/occupier contacted Council by telephone on 23 November 2022 and was provided with information by email on two occasions. No submission was received.
 - (b) In relation to re-categorising 588 Victoria Street, North Melbourne from non-contributory to contributory, the owner /occupier was notified by letter, dated 11 November 2022. The owner/occupier contacted Council by telephone on 23 November 2022 and the nature of the planning controls were discussed, and the owner/occupier was advised they could lodge a submission, if sought. No submission was received.

- (c) In relation to removing 204, 206, 208 Boundary Road, North Melbourne from HO3, the owners /occupiers was notified by letter dated 19 January 2023. No response or submission was received.
- (d) In relation to reinstating 10 Canning Street, North Melbourne to non-contributory, the owner /occupier was notified by letter dated 19 January 2023. No response or submission was received.

III. WES LOFTS & UKRAINIAN CATHOLIC CATHEDRAL

- 7. The Panel seeks to understand, having regard to PPN01, Council's preferred approach regarding individually Significant properties in a precinct as identified in the Amendment by the case of the Wes Lofts & Ukrainian Catholic cathedral.
- 8. Council's preferred approach is for separate statements of significance for:
 - (a) Wes Lofts; and
 - (b) the Ukrainian Catholic Cathedralto comprise incorporated documents and for these to form part of the Statement of Significance for the North & West Melbourne Precinct Heritage Overlay for HO3.
- 9. This position has not been advanced in the Amendment as Council understands that DTP do not support statements of significance for individual heritage properties within a precinct unless statements are provided for all heritage properties.
- 10. DTP's advice in relation to individually significant properties in a precinct seeks a single overlay approach be applied, and in circumstances where there are places categorised Significant in heritage precincts, generally speaking, it would be the role of HO3 to identify the places. But, this does not extend to incorporating statements of significance for individual properties within a precinct context.
- 11. The advice as we've understood it, is that there is either one SOS for the heritage place, or SOSs for all Significant heritage properties comprising the heritage place in the one precinct statement of significance. It is not understood what the statutory basis is for this position.
- 12. Post Amendment VC148, clause 43.01-5 Statements of Significance provides:

The schedule to this overlay must specify a statement of significance for each heritage place included in the schedule after the commencement of Amendment VC148. This does not apply to:

- A heritage place included in the schedule to this overlay by an amendment prepared or authorised by the Minister under section 8(1)(b) or section 8A(4) of the Act before or within three months after the commencement of Amendment VC148.
- A registered heritage place included in the Victorian Heritage Register established under Part 3 of the Heritage Act 2017.
- A heritage place included in the schedule to this overlay on an interim basis.

[emphasis added]

13. The term ‘heritage place’ as it appears in clause 43.01-5 above is a reference to the heritage place identified in the schedule to the overlay, which in this case is the precinct overlay HO3. But Clause 43.01-5 does not limit the number to one, it just says “a statement of significance”.
14. It is therefore not clear to us how a reading of the above provision negates the ability to incorporate multiple statements of significance for a heritage place.
15. PPN01 too specifies that documentation for each heritage place needs to include ‘a statement of significance’ that clearly establishes the importance of the place and addresses the heritage criteria. It provides ‘a statement of significance must be incorporated in the planning scheme for each heritage place included in the schedule to the HO after 31 July 2018.’¹
16. In considering the precise question of how to protect through the heritage overlay an individually significant property located within a significant area, PPNO1 provides under the heading:²

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

¹ At page 3 of PPN01.

² At page 5 of PPN01.

apply. For example, external painting controls may be justified for an individual building of significance but not over the heritage precinct surrounding the building.

Alternatively, tree controls may be justified for a specific tree or property within a significant precinct but not over the whole precinct. In such situations the individual property or tree should be both scheduled and mapped.

Significant buildings or structures within a significant precinct can be identified through a local planning policy.

[emphasis added]

17. PPN01 tells us there is no need to separately schedule and map a significant building located within a heritage precinct unless where it is proposed that a different requirement apply and this is why Lovell Chen did not recommended individual Heritage Overlays for the Wes Lofts and Ukrainian Cathedral. This creates a conundrum where properties which may not fully technically ‘fit’ within the broader precinct cannot have an individual Heritage Overlay and cannot have the additional information necessary for decision makers.
18. This accords with advice received from DTP, i.e. an individual property and a precinct ought not be mapped separately other than in circumstances where a separate requirement is sought e.g. tree controls. This has been referred to historically as ‘double listing’ or ‘double mapping’.
19. The issue of ‘double listing’ was mostly recently considered by the Panel in Greater Shepparton C205 [2020] PPV 12 where the Shepparton sought to apply both precinct and individual heritage controls to a number of properties (45 in 6 precincts). In respect of this approach, the Panel remarked:³

As the PPN01 points out the controls are the same, so it is difficult to understand what is to be achieved by this approach. There does not appear to be a different set of controls applying to these individually significant places **and it is unclear as to whether they are to be provided with separate Statements of Significance.** If the more specific information about individual places is to be included in the precinct Statements of Significance, then that should be sufficient to ensure that particular details of the place are protected via the precinct control. There should be some meaningful difference demonstrated between the heritage schedule controls switched on (such as external painting, tree and outbuilding controls) between individually significant building and those that are contributory within a precinct if both forms of listing are proposed.

³ At p. 96-97

Ideally, there should be a consistent approach across the state to avoid confusion.

[emphasis added]

20. The Panel noted:⁴

There may be circumstances where a place may be contributory or significant within a precinct because it displays important attributes of that precinct but also significant in its own right.

The Panel is aware that in the past there have been good practical reasons for avoiding ‘double listing’. In particular, where planning scheme maps associated with a heritage precinct left a ‘hole’ where the individual overlay was proposed. As a consequence, the control emanating from the significance of the precinct would technically not apply to the individually significant place. An online Planning Report produced for such a place would confirm its individual overlay, but not that it formed part of a heritage precinct.

In oral submissions Council confirmed that this problem had been discussed with DELWP which had demonstrated that the technical problem associated with mapping had been overcome and that in future, Planning Reports could identify both individual and precinct overlays applying to a property.

[emphasis added]

21. Each matter will fall on its own facts, and while it would appear from a reading of the Shepparton C205 Panel report that the Panel queried the approach, the C205 Panel also recognised there may be circumstances where a double listing could be justified.
22. As this Panel is well aware, PPN01 is guidance and not binding on a Planning Authority (or a Panel) although it could be said that a sound basis ought to exist for seeking to depart from it.
23. As an alternative to the above (that being an incorporated Statement of Significance for each of Wes Lofts and the Ukrainian Catholic Cathedral in HO3), it could be justifiable to allow a double listing because of the uniqueness of each of the two buildings on their own right and in the context of HO3. It was the evidence of Ms Gray they both clearly have attributes relevant to HO3, but very clearly also are buildings constructed well beyond the dominant period of significance of HO3. Subject to some additional comparative analysis, the evidence of Ms Gray was that both places are of local significance eligible for inclusion in their own individual heritage overlays should that be the Panel’s preference.

⁴ At 96.

24. A further option could be to individually list Wes Lofts and the Ukrainian Catholic Cathedral and remove them from the HO3. As Ms Gray explained in her evidence in chief, the concept of introducing a gap to excise the properties from the heritage place (so HO3) does present a risk as to how an individual assessment for future development would assess the values of HO3.

IV. APPROACH TO GRADING AT ST ALOYSIUS COLLEGE SITE

25. In the context of St Aloysius College, it has been asked whether the Panel ought to be looking at whether the 1940s building should be assessed as contributing to the school complex or the precinct at large.
26. By way of reply, Council's answer is the Panel ought to be considering whether the 1940s building makes a contribution to the heritage place being HO3.
27. And this is the manner in which Ms Gray has embarked on her task as illustrated in Ms Gray's evidence at [205] –[206]:

In response, Catholic education is an important historical theme in North Melbourne. Schools and the Catholic Church are identified in the HO3 Revised Statement of Significance. **My view is that the buildings of heritage value at St Aloysius are important in contributing to an understanding of this theme in the context of the significance of the precinct.**

While not of individual significance, based on the Lovell Chen review and my own site inspection (the latter from the street), **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.**

[emphasis added]

28. And again at [210]:

In response, 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.

[emphasis added]

29. We'll return to make additional remarks in regards to the matters raised on behalf of Submitter #6 later in our Part C Submission.

V. HO3 AND FLEMINGTON ROAD/BOUNDARY ROAD PROPERTIES

30. Council maintains its resolved position that the HO3 is appropriately applied to the following properties:

- (a) 435-437 Flemington Road, North Melbourne;
- (b) 441 Flemington Road, North Melbourne;
- (c) 445 Flemington Road, North Melbourne;
- (d) 447 Flemington Road, North Melbourne;

(collectively Flemington Road properties)

31. Council acknowledges the physical context in which the Flemington Road properties are situated yet does not consider that to be determinative to the question of whether the Flemington Road properties ought to be incorporated into HO3.

32. What is relevant is:

- (a) the Flemington Road properties are recognisable to their period and type and therefore thematically reflected in the characteristics and values that make HO3 significant for the reasons maintained by Ms Gray during cross-examination;⁵
- (b) they satisfy the definition of contribution under the Scheme and this is consistent with how contributory is applied in HO3.

33. During cross examination, Ms Gray stated:

The literal contribution of this little group to the broader precinct is something that you can appreciate on the ground.

34. She went onto accept the setting was a relevant factor:

⁵ And to some degree agreed to by Mr Raworth in cross-examination.

If this pocket was to be sitting in the main body of the precinct – this would be a standard. Here it is certainly a more difficult proposition.

35. Ms Gray fairly acknowledged Submitter #20's land is at some distance from HO3 and that development could occur around the Flemington Road properties to further alter the visual and physical separation.
36. But, as Ms Gray also acknowledged, the existing setting is already altered, is further altered by the removal of the Boundary Road properties, yet notwithstanding, it was Ms Gray's view that it was appropriate to incorporate the Flemington Road properties into HO3 for their contributory role.
37. While Counsel for Submitter #20 put emphasis on the commercial land use zoning of the surrounding land (including the Boundary Road properties), and the re-development implications⁶ of such land as capable of visually altering and increasing the separation with HO3, it must be highlighted the very same land is encumbered by either or both of the following overlays:
 - (a) Schedule 2 to the Public Acquisition Overlay (PAO2)⁷;
 - (b) Schedule 57 to the Design and Development Overlay (DDO57).⁸
38. As can be seen in Figure #1, the PA02 applies to:
 - (a) the entirety of the lots at 204, 206, 208 and 210 Boundary Road; and
 - (b) a sizeable portion of the land at 447 Flemington Road; and
 - (c) approximately half of the land at 18-42 Racecourse Road, North Melbourne.

⁶ To be distinguished from the re-development potential of such land for private economic benefit.

⁷ [SCHEDULE TO CLAUSE 45.01 PUBLIC ACQUISITION OVERLAY Melbourne Planning Scheme - Ordinance](#)

⁸ [SCHEDULE 57 SCHEDULE 57 TO THE DESIGN AND DEVELOPMENT OVERLAY Melbourne Planning Scheme - Ordinance](#)



Figure 1 – The PAO2 as it applies to land at the corner of Racecourse and Flemington Roads, North Melbourne

39. The land encumbered by PAO2 is earmarked for acquisition for road purposes by the ‘Vicroads Corporation’.
40. Figure #2 shows the extent to which both abovementioned overlays affect the Flemington Road properties and Boundary Road properties.



Figure #2 - PAO2 and DDO57 as it applies to land in the vicinity of Racecourse, Boundary and Flemington Roads, North Melbourne

41. It is the case the DDO57 imposes a discretionary height limit of 3 storeys in total and 2 storeys within 5 metres of the rear boundary.
42. The reality is the restrictions imposed by the overlays, particularly the PAO2, provide a more fuller picture of the potential for the surrounding land to facilitate extensive redevelopment putting into question the realistic development potential, particularly for the Boundary Road properties which would create a sense of remoteness or lack of relatedness to HO3, as was advanced on behalf of Submitter #20 at the hearing.
43. The evidence of Ms Gray and Mr Raworth both acknowledged that notwithstanding issues of intactness and modification to the fabric of the Flemington Road properties, this is of itself reflective of a contributory grading under the Scheme.
44. The Panel has the benefit of the evidence of both Ms Gray and Mr Raworth, and through them was provided with details of the complex heritage history of the Flemington Road properties. Indeed, the Panel heard a lot about the background to, and influence of HO953, and it was Ms Gray's evidence that the Flemington Road properties did not in of themselves justify their own individual heritage listing.
45. Council accepts Ms Gray's evidence the Flemington Road properties do not satisfy the threshold for heritage protection in their own right as a standalone heritage precinct.
46. But following numerous questions (some which clearly grappled with the proposition of retaining the Flemington Road properties with heritage protection in the circumstances), it remained Ms Gray's evidence that the balance ought to tip in favour of protecting the Flemington Road properties through HO3.
47. Council supports and concurs with Ms Gray in relation to her evidence on the Flemington Road properties, and respectfully requests the Panel recommend their inclusion in HO3, as exhibited.

VI. FLEMINGTON BRIDGE STATION

48. Council maintains the heritage overlay is justified over the Flemington Bridge Station and this ought to proceed in line with Council's preferred version of the Statement of Significance and mapping of the heritage place which has been included in Council's Part C version of the provisions.
49. In response to questions of the Panel, Council acknowledges Ms Gray's evidence being the threshold for local significance is not met if only half the station is to be protected.

50. However, this is not the case according to the Moonee Valley Heritage Study 2023, Volume One – Report and Recommendations, Heritage Alliance, March 2023 (**Moonee Valley Heritage Study**) which:
- (a) has been prepared and has recently been made available for public comment which:⁹
 - (i) recommends the Flemington Bridge Railway Station for inclusion in the heritage overlay schedule of the Moonee Valley Planning Scheme¹⁰;
 - (ii) includes a proposed statement of significance for the Flemington Bridge Railway Station that identifies and attaches significance to the station building and platform on the Moonee Valley side;¹¹ and
 - (iii) proposes an amended *Permit Exemptions Policy – Moonee Valley Railway Heritage Places, Draft March 2023* (which forms an incorporated plan setting out permit exemptions from the provisions under the heritage overlay in the Moonee Valley Planning Scheme), which seeks to include Flemington Bridge Railway Station in the list of railway heritage places where permit exemptions are to apply.
 - (b) is anticipated to be progressed through a future planning scheme amendment to be prepared and exhibited later in 2023.¹²
51. The Moonee Valley Heritage Study has been undertaken by an entirely separate heritage consultancy team whose analysis and findings land on the Flemington Bridge station in Moonee Valley meeting the threshold for local significance. We think this is both relevant and important.
52. While it would be inappropriate to pre-empt the process associated with the Moonee Valley side of the Flemington Bridge Railway Station, the Moonee Valley Heritage Study's recommendation aligns with the Amendment and the Council's preferred position that proposes an individual heritage overlay on the Melbourne side with the extent of significance aligning by recognition of the station building and platform (but not the ramps).¹³

⁹ [Moonee Valley Heritage Study 2023 | Your Say Moonee Valley City Council \(mvcc.vic.gov.au\)](https://mvcc.vic.gov.au/moonee-valley-heritage-study-2023-your-say)

¹⁰ See Table 5 Individual places recommended for the heritage overlay in the Moonee Valley Heritage Study, p. 19

¹¹ See proposed statement of significance, 'How is it significant' made available for public comment at [Flemington Bridge Station final Mar 20.DOCX \(amazonaws.com\)](#)

¹² According to planning officers at the City of Moonee Valley.

¹³ As it relates to the Moonee Valley side.

53. Given the above, Council is asking the Panel to recommend the proposed individual heritage overlay be applied for the Flemington Bridge Station in the City of Melbourne in accordance with the version appended to Council's Part C submission.¹⁴

VII. RESPONSE TO SUBMITTERS

54. Following:

- (a) the extensive notification of the Amendment;
- (b) the receipt of 23 submissions;
- (c) the appearance by only 3 submitters before the Panel;
- (d) only 2 submitters calling evidence seeking to challenge the Amendment;

it ought be taken as a strong indicator of the community's acceptance of the Amendment in its pursuit of better protecting heritage in North Melbourne.

55. Council officers provided an informed and thorough response to the submissions received during exhibition informed by the expert opinion of Ms Gray, and in doing so resolved as many submissions as possible.
56. Council (via FMC) accepted the advice given by Ms Gray with the only exception relating to one aspect of the protection to be afforded regarding the individual listing for Flemington Bridge Station. For the reasons advanced in Council's Part A and Part B submissions, and having regard to the response provided above to the Panel's question regarding Flemington Bridge Station, Council respectfully requests Council's preferred version be accepted.
57. Council continues to rely upon the expert evidence of Ms Gray as to the level of significance of the heritage place, the appropriateness of inclusions within the heritage overlay and the appropriateness of updating heritage protection as presented in Council's final version of the Amendment.
58. 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.

¹⁴ Noting that additional work will be necessary to ensure the accuracy of the heritage overlay mapping as a consequence of the removal of the pedestrian ramps.

Submitter #6

Heritage merits

59. The issue for Submitter #6 regarding St Aloysius centred on the 1940s building as anticipated.
60. Council acknowledges there will often, at times, be a difference of opinion about whether the qualities of a building justify a particular grading, as is the case for the 1940s building in the context of HO3.
61. While Ms Gray conceded more detail could have been documented in the Review in relation to St Aloysius, this ought not take away from the fact that Lovell Chen did carry out a considered assessment including site visits and research which led to the findings in the Review and the Amendment. The 1940s building was, and continues to be, in Ms Gray's professional opinion a building that satisfies the threshold for a contributory graded building in HO3.
62. Mr Raworth fairly acknowledged there are elements of the 1940s building that go to contributory as per the HO3 precinct, although he ultimately encouraged the Panel to find the 1940s building as not being contributory to the precinct.
63. Ms Gray and Mr Raworth are both undoubtedly experts in heritage and both of their opinions and views on heritage matters ought to carry substantial weight.
64. It ought be said, however, Ms Gray's evidence brings with it consistency in the approach to grading in what is an extensive Review.
65. There is scope to do better next time on the recording front. Indeed, Council acknowledges the point made by Submitter #6 as to the role of, and reliance on, a Review such as this to better understand the rationale for the grading in the development of future documentation to support a planning permit application. We agree the documenting of the rationale isn't there to the extent it could be.
66. However, that in itself ought not be fatal when you consider the issue on its heritage merits, and that is to appreciate the manner in which the 1940s building reflects the themes of HO3 and contributes and is consistent with the definition in the Scheme.
67. The 1940s building will not compete architecturally with the elaborate, adorned earlier buildings, i.e. the convent, chapel and first school (proposed by the Amendment as 'Significant'). The 1940s building is an interwar building. This was not contested, although Mr Raworth sought to put some weight on it being later of that period.

68. While we don't think it necessary as the HO3 statement of significance makes a number of thematic references to education, religion and Catholicism, Council is open to making improvements to HO3 should the Panel consider that necessary or appropriate to address Mr Raworth's observations regarding an absence of institutional or school attributes in the precinct SOS.

Social and economic benefits

69. Raised for the first time through Counsel's submissions to the Panel, Submitter #6 relied on *Dustday Investments Pty Ltd v Minister for Planning* [2015] VSC 101 (**Dustday**) and the Panel's report in Campaspe C101 as authorities for the proposition that the social effects of a community use, like a school, are distinguishable as being effects of a broad community nature rather than of a personal kind.
70. In *Dustday*, the Supreme Court considered the obligation to consider social and economic impacts in the context of a planning scheme amendment to include a site in the Arden Macaulay urban renewal area within a Heritage Overlay.

71. In *Dustday*, Garde J said:¹⁵

The amendment and panel process thereby assume a strategic role in setting the appropriate planning scheme framework around the statutory planning process. Later, when a permit application is made to the responsible authority, the policy framework governing the application is appropriate having regard to the particular characteristics or significance of the land or the building on the land.

72. And later:¹⁶

Only if there is a development proposal can the relative physical, social and economic benefits and disbenefits of restoration as against demolition be assessed. Only if there is a development proposal can "net community benefit" be comprehensively evaluated.

73. In relation to the question of social and economic effects, Justice Garde determined:¹⁷

Where planning authorities are directed to consider conservation or heritage matters, or social and economic effects, consideration must inevitably be given as to the stage

¹⁵ At [36].

¹⁶ At [62]

¹⁷ At [101].

in the planning process that has been reached, and the nature of the consideration that is to be given to these matters or effects at that stage.

74. In Mitchell C92¹⁸, the C92 Panel said:

The Panel considers a number of these principles also apply to the consideration of social and economic effects of this Amendment. That is:

- The Panel should consider section 12(2)(c) of the Act and consider social and economic effects of the Amendment in making recommendations to the planning authority
- The focus on consideration of these affects should be at the broad community, public level, not the individual, private level
- If the individual or private social and economic effects overlap with the public, community level effects, then they may be relevant to the Panel's considerations.

Given these principles, the Panel considers it conceivable that in the right circumstances this overlap could cause an Amendment to fail on social and economic grounds. For example, if a planning control applied at a regional or sub-regional scale to limit development for environmental (or other) reasons was found under closer examination to threaten the viability of a local group of industries, themselves the economic core of the particular community, then the individual positions of these industries and the effect of their loss on the community may carry greater weight in considering the Amendment.

Arguably this potential is greater in regional areas, where the social and economic resilience of communities may be less than in say the metropolitan area. **This, however, is an issue that needs to be considered on a case by case basis with due recognition of the particular circumstances of the Amendment.**

[emphasis added]

75. In Stonnington C282¹⁹, the issue of the social and economic impact of applying a Heritage Overlay to a medical practice arose with an owner asserted the proposed heritage overlay (HO148 in that case) would impact the property value and potentially impact the ability of the site to grow, which would have an impact on the provision of medical services to the community.

¹⁸ [Mitchell C92 \(PSA\) \[2015\] PPV 52 \(21 May 2015\) \(austlii.edu.au\)](#)

¹⁹ Stonnington C282ston [2019] PPV 46

76. The Panel considered it relevant to consider the social and economic impact of the application of the HO148 to the medical facility, stating²⁰:

Without diminishing the contribution made by the existing medical facility which no doubt provides an important service to its clients and has an established relationship with The Avenue Hospital, the MOG submission focused primarily on the potential loss of property value and associated equity issues for their site. The Panel acknowledges that the Amendment may have some economic impact on the land owner, however this is a private economic impact rather than a broader community impact. The Panel does not consider that these private impacts outweigh the broader community benefit of the Amendment.

Social and economic impacts are difficult to quantify and often intangible in the absence of any analysis and evidence. As identified in the *Heritage Listing & Property Valuations in Victoria, Heritage Victoria, March 2001* report, property values are influenced by a complex range of factors.

The Panel considers that the potential impacts, including impacts on future development, on 31-33 The Avenue or any other individual property affected by the Amendment **will be relatively short-term impacts with the broader community benefit of retaining a precinct of cultural heritage significance having a more enduring impact. The Amendment delivers an outcome that is consistent with the objectives of the Act and Planning Policy Framework, Municipal Strategic Statement and Local Planning Policy which aim to conserve heritage places within Melbourne and the Municipality where they ‘make the grade’. Including sites in the Heritage Overlay establishes the need to take heritage values into account rather than precluding development.** The Panel considers that the identification of 31-33 The Avenue as ‘contributory’ rather than ‘significant’ will provide some comfort from the potential impacts on property values and acknowledge the site’s particular circumstances.

The Panel notes that private economic considerations can be further examined in more detail at the permit stage.

[emphasis added]

77. The Panel in Amendment C282 went on to conclude:²¹

²⁰ p13.

²¹ Ibid.

The Amendment may have a negative economic impact on individual land owners however this does not outweigh the broader community benefits of the Amendment.

78. In accordance with the Court's decision in *Dustday*, it is acknowledged that considering economic and/or social effects during the planning amendment stage in the context of a community use, like an educational facility, is a different proposition to that of a purely private interest.
79. But, that in of itself, is not determinative.
80. In the circumstances in this Amendment, it is valid to consider:
- (a) the impact of the Amendment by downgrading the 1940s building to contributory²²;
 - (b) the infant masterplan (yet to be lodged, let alone granted planning approval) can constitute evidence of unalterable expansion plans;
 - (c) the school being a private, non-government school (as distinguished from a government public school).
81. The Panel for Melbourne C387²³ made the following conclusions in relation to social and economic impacts:

In considering whether the Amendment is strategically justified, the Panel observes that there is potentially a tension between the application of heritage polices and those seeking economic activity and development. This is particularly the case for the central city which plays a significant role in Melbourne and Victoria's economy.

Accordingly, this requires the Panel to consider the objectives of the PE Act including the social and economic impacts of the Amendment and balance the various policy considerations in favour of net community benefit and sustainable development for the benefit of present and future generations.

The Panel observes that many of the polices supporting the development and growth of the central city also recognise the role played in shaping its character and appeal by its heritage places, buildings and streetscapes and responding appropriately to it. Clause 21.06 acknowledges this where growth is facilitated while limiting change or scale in

²² Being a building already heritage protected by the HO3 and currently graded 'Significant'.

²³ [2021] PPV 89

some locations to preserve valued characteristics, while Clause 22.04 acknowledges the greater intensity of development will occur in the CCZ relative to other parts of the city. These policies in the Panel's view, acknowledge that heritage outcomes are important in the central city and play an important role in defining its identity and are not a constraint to its growth and development.

...

...

The planning permit process under the Heritage Overlay appropriately provides the opportunity for a range of economic, social and other policy considerations to be weighed up alongside heritage considerations.

The Panel considers that the Amendment will achieve an appropriate balance between protecting places of local heritage significance for future generations and ensuring that the strategic role of the central city can be achieved and enhanced.

[our emphasis]

82. In our submission, it will ultimately be a matter for the Panel to consider what weight should be given to competing considerations of heritage value and social and economic effects when considering this Amendment.
83. However, we submit it is relevant that:
- (a) Submitter #6's land is already affected by a heritage overlay and afforded a significant grading under the Scheme;
 - (b) the masterplan is in its infancy, has no status aside from being published to the school community and certainly has some way to go before it constitutes a formally approved document;
 - (c) the school being a private, non-government school, respectfully, does not have the same capacity to afford broader community benefit when compared to a public, government school.
84. Arguments presented on behalf of Submitter #6 that the masterplan cannot be:
- (i) altered to accommodate the 1940s building; or

- (ii) would pose interpretation challenges as to what constitutes the building's façade when applying heritage policy

should be rejected.

85. We concur with the findings in the C387 Melbourne Panel Report in relation to Hoddle Grid which stated:

The planning permit process under the Heritage Overlay appropriately provides the opportunity for a range of economic, social and other policy considerations to be weighed up alongside heritage considerations.

Submitter #20

86. Much of what Council has to say in response to the submissions and evidence of Submitter #20 has been outlined above in response to the Panel's question on Council's final position in relation to this submitter.

87. There is no benefit in repeating it here.

88. In relation to the submitter's criticism of Ms Gray's independence, of course Ms Gray was involved in the Review, and Council acknowledges she cannot bring the level of impartiality that is afforded an expert who is fresh to the project at hand.

89. However, when considering the weight the Panel affords Ms Gray's evidence, we submit the Panel ought to observe:

- (a) Ms Gray has been open and honest in her evidence statement as to the tasks she personally undertook, as distinguished from those undertaken by her Lovell Chen colleagues;
- (b) Ms Gray considered all submissions received to the Amendment and advised Council officers to make multiple post-exhibition changes which effectively changed the positions she'd formed through the Review;
- (c) Ms Gray made fair and proper concessions in relation to Submitter #20's land during cross-examination;²⁴ and
- (d) that the concessions made by Ms Gray were indeed fairly acknowledged by Counsel for Submitter #20 on multiple occasions across the first two hearing days.

²⁴ As well as doing the same in response to questions put to her in relation to Submitter #6's land.

90. Ms Gray made the requisite declarations in her evidence statement, and without question, Ms Gray's paramount and overriding duty to the Panel has been observed in this hearing.
91. In *SMA Projects Pty Ltd v Yarra CC & Ors (red Dot)* [2013] VCAT 436 (**SMA Projects**), the Tribunal noted:²⁵

The weight that the Tribunal accords to each witness that appears before it, needs to be considered in the context that the Tribunal is an expert Tribunal, the members of which are expected to bring to their task of adjudication those qualities which have qualified them for membership of the Tribunal. It is also an expertise that is valuable in assessing the weight that should be given to the opinions of an expert witness.

In assessing the weight to be given to evidence, the Tribunal not only need to be alert to the extent of the witnesses involvement in the project, but it also needs to be realistic about the extent to which a witness engaged by a party to a proceeding, can ever be completely impartial.

The Tribunal must assume the responsibility of assessing the credibility and reliability of the witness by focusing on the merits of the evidence being presented.

[our emphasis]

92. We submit it is not different at Panels, and we agree with the Tribunal in *SMA Projects*, that on a question of weight the credibility and reliability of Ms Gray having regard to the merits of her evidence are what is critical.
93. In that regard, it will be a matter for the Panel as to the weight to afford Ms Gray's evidence.

VIII. COUNCIL'S FINAL POSITION ON THE AMENDMENT

94. The Panel will be taken to Council's final position as it relates to the Amendment documents forming part of its Part C submission.

IX. CONCLUSION

95. This completes Council's 'Part C' submission and Council's submissions to the Amendment.

Ann-Maree Drakos

Legal Counsel - Planning

Melbourne City Council

1 May 2023

²⁵ At [102] - [103]