

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

IN THE MATTER of Amendment C426melb to the Melbourne Planning Scheme

BETWEEN:

MELBOURNE CITY COUNCIL

Planning Authority

-and-

VARIOUS SUBMITTERS

AFFECTED LAND: Various places within South Yarra

PART B SUBMISSION OF THE PLANNING AUTHORITY

I. OVERVIEW

1. Melbourne City Council (**Council**) is the Planning Authority for Amendment C426melb (**Amendment**) to the Melbourne Planning Scheme (**Scheme**). This Part B submission is made in accordance with the Panel's Directions dated 3 October 2023 and is to be read in conjunction with the Part A submission circulated on 25 October 2023 and the expert evidence called from the following witnesses:
 - (a) Mark Huntersmith (GML Heritage); and
 - (b) Natica Schmeder (Landmark Heritage).
2. In accordance with Panel Direction 11, this Part B submission includes:
 - (a) a summary of Planning Scheme Amendment C376melb and any considerations relating to the Amendment;
 - (b) details of existing planning permits, permit applications and any relevant Victorian Civil and Administrative Tribunal (**Tribunal**) decisions, and any

implications for the Amendment, relating to 93 Park Street, South Yarra and any other property which is the subject of submissions;

- (c) Council's response to the submissions made in response to exhibition and the evidence tabled in the hearing; and
- (d) Council's final position on the Amendment.

3. As noted in Council's Part A submission¹ the Amendment implements the findings of the *South Yarra Heritage Review* (the **Heritage Review**):

- (a) 17 new individual and serial listing places are recommended for inclusion in the Schedule to the Heritage Overlay to the Scheme as new individual or serial listing Heritage Overlays. These include two places (South Yarra Primary School and the former Fawkner Club Hotel) identified as having Aboriginal associations.
- (b) One existing individual Heritage Overlay (HO421 Hoddle Bridge) is recommended to update place documentation and the statement of significance. This Review recommends that the mapping extent of HO421 extends to sufficiently cover the overall fabric of the Hoddle Bridge.
- (c) Two new precincts are recommended for inclusion in the Schedule to the Heritage Overlay to the Scheme as precincts.
- (d) The existing documentation and statement of significance for the HO6 South Yarra Precinct is updated. This Review recommends that the mapping extent of HO6 extends to cover the general area bound by St Kilda Road, Punt Road, Alexandra Avenue and Toorak Road.
- (e) Four places and one street were identified as having potential State significance and are recommended for assessment under the Heritage Act 2017: Domain Park, 191–201 Domain Road, South Yarra; Clerehan House, 90–96 Walsh Street, South Yarra; Melbourne Hebrew Congregation, 2W–8W Toorak Road, South Yarra – Goodrest (Simonds Hall), 120W–126W Toorak Road, South Yarra; and Marne Street (Area 3 in HO6 South Yarra Precinct), South Yarra.

¹ Part A, [41].

II. THEMES ARISING FROM THE HERITAGE REVIEW & SUBMISSIONS

4. A number of specific themes arise from the Heritage Review and from submissions made to Council. Council has identified the following themes:

- (a) the proposed South Yarra Precinct (HO6), including:
 - (i) sub-precinct Areas 1-5;
 - (ii) management of Significant and Contributory places; and
 - (iii) Non-contributory places within precincts.
- (b) the protection of postwar heritage;
- (c) social and economic impacts;
- (d) extant planning permits;
- (e) ESD and the ability to improve the sustainability of heritage places;
- (f) Melbourne Planning Scheme Amendments C258 & C396;
- (g) the use of the Victorian Heritage Register guidelines;
- (h) the identification of social significance; and
- (i) the relevance of expert evidence not provided.

5. As noted above, the Panel has also asked to be specifically addressed in relation to Amendment C376melb and any considerations arising in relation to the Amendment.

6. Each of these matters will be addressed in turn.

A. SOUTH YARRA PRECINCT (HO6)

Sub-precinct Areas 1 to 5

7. The evidence of Mr Huntersmith provides the following description of the revisions undertaken to the South Yarra Precinct (**HO6**):

Review of HO6

58 *The HO6 South Yarra Precinct was recommended for revision. To determine whether the current HO6 afforded adequate protection and supported the management of heritage assets within its boundaries, GML reviewed existing documentation and individual property categories/gradings and controls, and undertook historical research and fieldwork.*

- 59 *This review found that the existing HO6 had undergone various waves of development resulting in varied subdivision patterns and a diverse array of architectural styles. The historically layered and eclectic character of the area is, in itself, a trait that unifies the precinct. In addition, the overall area contains unifying historical and architectural characteristics evident in the precinct's:*
- *connection to historical processes and physical development of land reflected in the varied subdivision patterns;*
 - *proximity to and prospect of open spaces (the Royal Botanic Gardens, Fawkner Park and the Yarra River);*
 - *predominately residential building character;*
 - *diversity of architectural styles unified by a general consistency in building quality, height, setback, form, pattern of fenestration and materiality that harmonises buildings of different historical eras and architectural styles within a cohesive urban setting;*
 - *generally high-quality standard of architecture and prevalence of architect-designed buildings (consistent across different development periods); and*
 - *uniting of public realm elements, which include a mix of wide and finer grade streets that have mature and semi-mature deciduous and evergreen trees, bluestone kerbs and guttering, asphalt footpaths and a network of bluestone lanes.*
- 60 *It was determined that there was justification for maintaining HO6 as a single large precinct with revisions to the precinct boundary, place categories and statement of significance. This Review recommends that HO6 is extended to cover the general area bounded by St Kilda Road, Punt Road, Alexandra Avenue and Toorak Road (currently partially covered by HO6 and individual HOs). The recommendation is supported by the fact that this area displays shared historical, urban and architectural characteristics that underpin the heritage significance of the precinct as a whole.*
- 61 *Notwithstanding this, it was found that five areas within HO6 can be defined in relation to remnant subdivisional patterns stemming from the early residential development of the area and successive land parcel reconfigurations.*
- **Area 1** *covers an area subdivided and developed in 1864–1865. Area 1 is a mixed- era residential and commercial area predominantly characterised by interwar and postwar flats interspersed with Victorian-era building stock.*
 - **Area 2** *is the largest area between Domain Road and Toorak Road in HO6. Area 2 includes the most consistent streetscapes of nineteenth century building stock in the HO6 area, with cohesive streetscapes of Italianate terraces and detached villas. Area 2 is distinguished from the other areas in HO6 because it contains two distinct commercial areas in Domain Road and Millsnyn Street.*
 - **Area 3** *is distinguished for its interwar subdivision which occurred following the demolition of a Victorian mansion 'Maritimo' in the late 1920s. The intact streetscape includes representative examples of almost every interwar architectural style and of the work of some of Melbourne's most prominent architects practicing in the period.*

- *Area 4 is the southeastern end of HO6. Some of the earliest subdivisions in HO6 occurred in Area 4. This early planning is clearly observed today in its street layout. The streetscapes are mixed in terms of built era and scale resulting in a rich combined architectural and streetscape character.*
- *Area 5 covers allotments sold and developed from 1845 as well as land reclaimed by filling in the lagoon in the early 1900s. Area 5 is distinguished from other areas of HO6 by its topography, with land sloping down towards Alexandra Avenue and the Yarra River. Area 5 has a generally mixed streetscape character, with three Victorian-era pockets retaining relatively homogeneous streetscapes.*

62 *Provision of a finer-grained description and historical context for each of the five areas identified within HO6 enables a more nuanced understanding of the heritage values of the area while maintaining a single HO.*

8. The approach adopted by GML Heritage in relation to HO6 of maintaining a larger precinct consisting of five sub-areas provided with greater description and detail, is unusual but not unprecedented.
9. The same approach was adopted by Lovell Chen in relation to the *North Melbourne Heritage Review*. Ms Gray, called to give evidence before the Amendment C403melb panel provided the following description of the sub-areas approach adopted:

Identification of sub-areas

112. *The rationale for this very large precinct were reviewed as part of this study and consideration was given to whether it would be appropriate to divide HO3 into smaller HO precincts.*
113. *Ultimately, based on the work undertaken, and particularly the Thematic Environmental History, it was recommended that HO3 remain as a single large precinct. This is based on the assessment that North Melbourne in particular is a distinctive place that has a cohesive historical and social identity, as described in the updated Statement of Significance and citation.*
114. *Accepting this, it was also observed that there were areas within HO3 with distinct built-form characteristics, including areas that straddle the present-day boundary between North and West Melbourne – and there would be purpose in identifying and describing these smaller areas. Four areas were identified within HO3:*
 - *Hotham Hill Residential Area*
 - *Errol Street Civic and Commercial Area*
 - *Benevolent Asylum Estate Area*
 - *West Melbourne Residential Precinct*
115. *While all are integral to HO3, it was considered that these areas exhibit built-form characteristics that are distinct within the larger precinct and it was appropriate to recognise and describe these in the updated citation and statement of significance. It*

was considered that this would assist in a more nuanced understanding of the built form of the heritage place, while still maintaining a single HO.

116. *This approach is one that has been adopted elsewhere. HO1 (Port Melbourne) in the Port Phillip Planning Scheme is a large and diverse HO which covers most of Port Melbourne. HO1 was subject to a review in 2011 (Lovell Chen, Review of the Heritage Overlay 1, Port Melbourne: Outcomes and Recommendations report, for the City of Port Phillip, (July 1011). This review considered the boundaries of HO1 and the incorporation of additional areas into the precinct. It was also directed in part at considering whether there would be purpose in identifying smaller areas or 'sub-precincts' exhibiting particular characteristics.*
117. *The outcome of the review was that the precinct was retained as a single HO place, even despite its size. This was on the basis that the precinct as a whole was important for its ability to demonstrate themes in the development of a working-class maritime suburb developed from the mid-nineteenth and early twentieth century and for its ability to demonstrate important layout and subdivision patterns including specific topographical and other constraints which shaped its development. The option of breaking HO1 into smaller precincts (to be separately scheduled and mapped) was considered but it was considered this could undermine an understanding and appreciation of Port Melbourne's distinctive history. Instead, a number of smaller 'sub-precincts' were defined within HO1, which document and reflect on particular area characteristics within the larger precinct while still maintaining a sense of the relationship of these sub-precincts to each other and as part of the broader HO1.*
118. *These recommendations are reflected in the documentation for HO1 in the Port Phillip Heritage Review (Version 36, December 2021), an incorporated document in the Port Phillip Planning Scheme. It includes a citation and statement of significance for HO1 which defines a series of sub- precincts, Port Melbourne West, Port Melbourne East, Port Melbourne Railway Reserve and Bay Street Commercial. These are not mapped in the Planning Scheme, where the full extent of HO1 is mapped as a single entity.*
119. *The Port Phillip example varies from the recommendations of the North Melbourne Heritage Review, in that the documentation for HO1 Port Melbourne includes an overarching heritage citation and statement of significance for HO1 as a whole, as well as attached heritage citations and statements of significance for each of the sub-precincts. In contrast, for HO3 North and West Melbourne Precinct, it is proposed that the statement of significance (to be an incorporated document in the Planning Scheme) would address the precinct as a whole but would include - under the heading What is Significant? - a section describing the 'key attributes' of the smaller areas identified within the precinct. No separate statements of significance are proposed for the sub-areas.*
120. *It is otherwise a similar approach, one that recognises and maintains the large precinct as an integrated whole which reflects a range of related themes and developmental patterns.*

10. In relation to the future management of places within HO6, the relevant heritage place remains the integrated whole of HO6, rather than each of the individual sub-areas


identified. Accordingly, when considering the way in which a place that is Contributory contributes to the heritage place, it is its contribution to HO6 that is the relevant consideration.

11. The management of places within HO6 is discussed further below.

The Management of Significant and Contributory places

12. Council notes Mr Helms' evidence in relation to 221-223 Domain Road, South Yarra to the effect that the Heritage Review does not support a change of categorisation of the property from Contributory to Significant within HO6 as:
 - (a) the Amendment does not include a separate Statement of Significance for the site; and
 - (b) the site is not specifically mentioned within the Statement of Significance for HO6.
13. Council submits Mr Helms' proposed approach whereby each Significant place within the precinct must be provided with its own Statement of Significance and/or be separately referred to in the Statement of Significance for HO6 is inappropriate for the following reasons:
 - (a) it is not an approach required by PPN01 or adopted in recent heritage reviews for large precincts in the City of Melbourne;
 - (b) it is an unreasonable expectation having regard to the scale of the precinct and the number of properties that would require a separate Statement of Significance or specific reference;
 - (c) it is inconsistent with advice Council has in the past received from the Department of Environment, Land, Water and Planning, now the Department of Transport and Planning (**Department**).
14. Council acknowledges that the Statement of Significance for HO6 does not include a list of the addresses of all Significant buildings, however the map which forms part of the Statement of Significance identifies each of the sites that contain Significant buildings.

15. The Statement of Significance then identifies streets and eras of development, which provides general direction as to the locations of Significant buildings, rather than naming specific sites.²
16. Moreover, the citation for HO6 include an entry for each Significant building. For example, the citation includes the following detail for 221-223 Domain Road³ in Area 3:

Place	GML image (2021–22)
221–223 Domain Road was built in 1908 to a design by Klingender and Alsop. This substantial two-storey 23-roomed house, which predates the subdivision of the Maritimo Estate, was built for Emily Payne, Thomas Budds Payne's daughter. Featuring rendered walls and a hipped tiled roof with exposed rafter ends, the house displays characteristics of the Arts and Crafts movement and emphasises picturesque massing combined with more traditional detailing found in earlier Italianate houses, such as canted bay windows and vertically proportioned double hung sash windows.	

17. Council submits the approach adopted within the Heritage Review is not unusual, particularly having regard to larger precincts.
18. The Carlton Heritage Review was prepared by Lovell Chen in November 2021 and proceeded through a panel process, Amendment C405, with a panel report released on 29 November 2022. Amendment C405 proposed to apply a Significant building category to an additional five places within HO1.⁴ Individual and serial listings were recommended for other Significant buildings. The HO1 Statement of Significance was revised as part of Amendment C405. The text changes proposed were updates rather than a wholesale rewrite of the Statement of Significance.⁵
19. The proposed Statement of Significance for HO1 included updates to the description of the phases of significant development along with the types of Significant buildings.

² The Statement of Significance does highlight some addresses and some public space elements, but this is the exception to the general approach. For example, within Area 4 of HO6, the Statement of Significance provides “...a number of early houses (such as those at 98–110 Walsh Street and 107–111 and 113–117 Walsh Street and 249 Domain Road and 255 Domain Road) which reinforce the traces of the earliest layer of residential development in this area”.

³ Heritage Review, Volume 4, page 654.

⁴ Excluding the buildings in HO1 that were proposed to have their grading converted through C405 should C396 not proceed.

⁵ The only structural change proposed was the removal of the Carlton Precinct Statement of Significance from the *Heritage Precincts Statement of Significance* incorporated document. As instructed by the Department of Transport and Planning, Council has progressively removed precinct Statements of Significance from this incorporated document and created standalone versions as part of each subsequent Heritage Review.

The significance of the ongoing association of the Traditional Owners and other Aboriginal groups with Carlton was also described.

20. Separate Statements of Significance were prepared for the following four Significant buildings within HO1 as part of the Carlton Heritage Review:

Place/address	Existing grading	New grading
Clyde Hotel, 377-391 Cardigan Street, Carlton, is an interwar hotel which is substantially intact to its 1940 form and detailing.	Contributory	Significant (HO1)
64-68 Drummond Street, 1880s villa with rear 1980s art gallery addition by Nonda Katsalidis; the latter is an additional significant component of the property.	Significant	Significant (HO1)
San Marco Social Club (former 1880s dance hall/Monash House), 149-151 Canning Street, corner of Kay and Canning streets, is a long-standing place of value to the local community, including the Jewish and later the Italian community.	Contributory	Significant (HO1)
Carlton Squares (Argyle Square, Macarthur Square, Murchison Square, Lincoln Square and University Square), provide evidence of early town planning in Carlton, having been conceived as urban spaces in the 1850s and formally gazetted in the 1860s. Carlton Precinct HO1 to be amended to include Lincoln Square in Carlton Precinct HO1	Ungraded	Significant (HO1)

21. These Statements of Significance were not proposed to be included as separate Incorporated Documents. Rather, in accordance with advice received from the Department, these Statements of Significance remained within the relevant Background Document, the Carlton Heritage Review. Council's Part B submission for Amendment C405melb explained:

DELWP has advised Council that Statements of Significance cannot be incorporated for Significant places within precincts unless a statement is provided for every Significant place. As HO1 comprises approximately 580 places it was not within the resources available for the Carlton Heritage Review to undertake this task. These Statements of Significance are intended to provide additional information to the Statement of Significance for HO1, which is an Incorporated Document.

22. At the Amendment C405melb panel hearing, the Carlton Residents Association (the **CRA**) expressed concern that no Statements of Significance were provided for Significant and Contributory places within HO1. The CRA were also concerned that the Statements of Significance for new Significant heritage places within HO1 listed above were not incorporated documents.

23. Council called evidence from Ms Gray of Lovell Chen. Ms Gray's evidence responded to the concern expressed by CRA concern by stating that Statements of Significance were not generally prepared for Significant or Contributory heritage places within the Carlton Precinct (or any other precincts) as this was outside the scope of the study and that the appreciation of the heritage values of Significant and Contributory places within the precinct was properly supported by the relevant updated Statement of Significance for the Carlton Precinct.⁶ Ms Gray's evidence concluded:

The revised Statement of Significance for HO1 identifies key attributes which describe the built form characteristics which support the assessed significance of HO1. While individual heritage places within the precinct are not described/assessed in detail in the statement there is sufficient detail to understand the heritage value of significant and contributory places.

24. The Amendment C405melb panel found that:

...the updated Statement of Significance is appropriate. It is based on the findings of the Carlton Heritage Review and improves the clarity of various parts of the document. The Panel agrees with Ms Gray that the Statement of Significance identifies the key attributes and built form characteristics that support the heritage significance of the place and there is sufficient detail to understand the heritage value of identified significant and contributory places. The Panel accepts the rationale for excising the Carlton Precinct Statement of Significance from the Heritage Precincts Statements of Significance document and supports this approach. A stand-alone Statement of Significance is generally more 'user-friendly' and facilitates any further updates more efficiently. The format of the Statement of Significance is generally acceptable and includes content that is consistent with PPN01. The Panel notes, however, it also includes some content beyond the scope of contemporary practice and PPN01, such as the History and Description.⁷

...

The Panel accepts it is unrealistic to prepare hundreds of separate Statements of Significance for each significant building or place within HO1.

25. The status of the statements of significance prepared for the significant properties in HO1 for the Carlton precinct is equivalent to the status of the citations prepared for the significant properties in HO6 for the South Yarra precinct: namely, background documents in the Scheme.
26. Ms Schmeder has referred to the Amendment C405melb panel report in response to Submitter 42 and Mr Helms' evidence:

⁶ Melbourne C405melb (PSA) [2022] PPV 78 (29 November 2022), pages 24-25.

⁷ Melbourne C405melb (PSA) [2022] PPV 78 (29 November 2022), pages 29-30.

The Carlton Heritage Review (Lovell Chen & Extent Heritage, 2021) also included some recategorisation of properties within the existing HO1 Carlton Heritage Precinct. As with the North Melbourne Heritage Review, brief comments were provided (in Attachment F) to justify the changes. Again, there is often no indication of which Hercon criteria that newly Significant places meet at the local level. There are varying levels of information provided, as shown by the examples are set out below:

Address/ Property ID/HO number	Included in Heritage Places Inventory Part A (February 2020, amended May 2021)	Included in Heritage Places Inventory Part B (February 2020)	Recommend -ed grading / HO	Issue	Recommendation reason
56 Drummond Street 102773 HO1	Yes Contributory	No	Significant HO1	Review grading	Two storey terrace residence. Compares with Victorian terrace residences in Carlton which are significant buildings. Significant
92-94, 96 and 98 Drummond Street (92-94 and 96 Drummond street) 510624, 510625, 510626 HO1	Yes (98) Contributory No (92-94, 96)	No	Significant HO1	Address- ing Review grading	Three addresses for one building. All three property addresses should be listed as significant in the Heritage Places Inventory. This is a c. 1884 school hall, constructed as part of the St Andrews Gaelic Church complex, believed to have been to a design by architect Leonard Terry of Terry & Oakden. The 1850s church was demolished in the c. 1930s. Religion and religious places are an important historical theme in Carlton. 92-94 and 96 Drummond Street were included in Amendment C396. These properties had been incorrectly omitted from Amendment C258 and the Heritage Places Inventory. Significant (all)

*As with the C403melb planning panel, the C405melb Panel reviewing the implementation of the Carlton Heritage Review did not raise any issues in regard to the extent of documentation provided when heritage category changes were recommended.*⁸

27. Ms Schmeder's evidence describes the process that GML have followed to identify and document Significant places within HO6 as *equivalent to or even more detailed* than previous

⁸ Schmeder, [163].

Council Heritage Reviews.⁹ Her evidence states in relation to the Carlton and North Melbourne Heritage Reviews:

...the respective panels found acceptable a lower level of documentation for existing and newly Significant places within large precincts than is provided by the SYHR. They did not call for individual statements of significance, nor indication of which Hercon criterion or criteria each Significant place meets.

*In comparison, the documentation for each Significant place within a heritage precinct in **the SYHR is far more substantive** than for the two previous suburb reviews.*

*While the addition of a clear indication of which Hercon criterion(a) the place meets at the local level would be of value, in my expert opinion, **the current level of documentation provided has been recognised by past planning panels as entirely sufficient.***

28. The panel considering the North Melbourne Heritage Review in Amendment C403melb addressed:

- *Whether there should be separate Statements of Significance for each significant place in the Precinct [the large North & West Melbourne Heritage Precinct HO3]; and*
- *Should [Errol Street properties] be specifically mentioned in the SOS because of their particular importance.¹⁰*

29. The Amendment C403 panel's discussion on page 40 concludes:

It would be unnecessary to prepare a separate Statements of Significance for each significant building or place in the HO3 Precinct. The Panel agrees with Ms Gray [Council's heritage expert] that the HO3 Statement of Significance identifies the key attributes and built form characteristics that support the heritage significance of the place and there is sufficient detail to understand the heritage value of identified significant and contributory places.

The HO3 Statement of Significance does not need to identify every significant place in the Precinct. Rather, a select number of places are used as examples of phases of development, architectural styles or historical themes. The fact that a significant heritage place is not specifically identified does not imply it is less significant than other significant places identified in the documentation. All significant and contributory places are identified in the Heritage Places Inventory. Within this context, it is not necessary to include the shops at 1-13 and 61-67 Errol Street in the Statement of Significance.

30. Accordingly, Statements of Significance were not prepared for Significant buildings within HO1 (Carlton Precinct) or HO3 (North Melbourne Precinct) as this was outside the scope of the relevant heritage review and Lovell Chen, the heritage consultant for both amendments, advised that an appreciation of the heritage values of Significant

⁹ Schmeder, [152]-[156].

¹⁰ Melbourne C403melb (PSA) [2023] PPV 30 (26 May 2023), pages 37-41.

buildings was supported by both the updated citations and Statements of Significance for HO1 and HO3 as Significant buildings generally reflect the values for which the precinct is identified and the key attributes as set out in the Statement of Significance. This evidence was accepted by both panels.

31. Further, the Department has advised that significant places in precincts should not have their own Statement of Significance unless they have different values, in which case they should have a separate Heritage Overlay. The Heritage Review study area has approximately 198 Significant buildings,¹¹ including 155 Significant buildings in HO6 and it was not possible to resource the preparation of a Statement of Significance for every Significant building with the resources available for the Heritage Review.
32. In relation to any assertion that *Planning Practice Note 1: Applying the Heritage Overlay (PPN01)* requires the documentation of the heritage place to include a Statement of Significance, it must always be kept in mind what the relevant 'heritage place' is. A heritage place refers to either an individually Significant heritage place, with its own Heritage Overlay and Statement of Significance, or a heritage precinct. Accordingly, for a Significant building within a precinct – the relevant heritage place is not the Significant building itself, but rather the broader precinct. On that basis, it cannot be said that Council's approach, endorsed by previous panels and in accordance with the advice of the Department is inconsistent with PPN01. Rather it directly responds to the requirement that each heritage place is provided with its own Statement of Significance.
33. The documentation referenced above in relation to the Carlton Heritage Review and the North Melbourne Heritage Review is provided with this Part B submission as **Addendum A**.

Non-contributory places within Precincts

34. Some submitters to the Amendment have expressed the view that, because their property is proposed to be categorised Non-contributory to a precinct, it should be removed from the relevant precinct.
35. Council submits it is appropriate, and consistent with standard heritage practice, that Non-contributory places within precincts are included within boundaries of the

¹¹ Or 233 Significant buildings if VHR listed properties are included.

Heritage Overlay to ensure their future management is cognisant of, and appropriately responds to, the identified heritage values of the precinct. Accordingly, if a Non-contributory building were located along the edge of a precinct, it would likely be appropriate to remove the place from the precinct, on the basis that its ability to affect the heritage values of the precinct is more limited.

36. This approach is consistent with that adopted by Stonnington City Council in relation to the *Toorak, Armadale and Kooyong Heritage Review*. The Amendment C320ston panel included the following discussion of Non-contributory properties:

Submitter 54 objected to the application of the Heritage Overlay to 44 Hampden Road because:

- it includes a contemporary dwelling that does not contribute directly to the significance of the precinct*
- existing planning controls prevent any impact of future development of the property on the Heritage Precinct*
- the addition of another layer of control will add cost, bureaucracy and processing time.*

The submitter said the properties at 44, 46 and 17 Avalon Road were all non-contributory and should be deleted from the Heritage Overlay.

Ms Bashta said that non-contributory properties do not contribute to the heritage value of the wider precinct, however they are included in the precinct to ensure that any future development of the site does not adversely affect the significance of the wider precinct area. She noted Clause 15-03L of the Planning Scheme supports demolition of ungraded (or non-contributory) buildings when the replacement building design is sympathetic to the scale, setback and significance of the heritage place or precinct. Ms Bashta supported the application of HO136 to 44 Hampden Road.

Ms Schmeder agreed with Ms Bashta and noted:

- 44 Hampden Road has been in the HO136 precinct for many years and is currently categorised as ungraded*
- there is no practical difference between an ungraded and non-contributory property*
- it is very common practice to include non-contributory properties in heritage precincts when they stand in the middle of a row of contributory (and significant) properties to ensure that future development does not negatively impact the heritage value of the precinct.*

Council submitted the application of the Heritage Overlay to 44 Hampden Road was appropriate.

(iv) Discussion

The application of the Heritage Overlay to 44 Hampden Road is appropriate. The Panel notes the property is already subject to HO136 and there is no practical implication associated with changing the categorisation from ungraded to non-contributory.¹²

B. PROTECTION OF POSTWAR HERITAGE

¹² Stonnington C320ston (PSA) [2023] PPV 55 (27 September 2023), page 47.

37. As detailed within Council's Part A submission, the first heritage protection introduced in South Yarra was based upon the *South Yarra Conservation Study* in 1985, prepared by Meredith Gould (the **1985 Heritage Study**). The Heritage Review is the first comprehensive review of the heritage places of South Yarra since 1985.
38. It ought be regarded uncontroversial that the appreciation of heritage changes over time. The passage of time since the 1985 Heritage Study is of particular relevance to the assessment of postwar places, as plainly heritage reviews completed in the 1980s (and for that matter the 1990s) were too early to appropriately and effectively identify the heritage values of postwar places. Notably, the 1985 Heritage Study makes no reference to postwar places. Given the passage of time, it is particularly important that these places are now comprehensively assessed.
39. In Amendment C387melb, the panel recorded:

*overtime there is a greater appreciation or understanding of particular themes and eras. For example, many of the postwar buildings in this Amendment are now over 60 years old and there is a greater level of contemporary understanding of the importance of the postwar era to Melbourne's historical development.*¹³

40. The South Yarra Thematic Environmental History (Heritage Review – Volume 3) provides the following introduction:

*The area became associated with 'wealth and privilege' and high society (Goad 1999:268), and this has strongly shaped the physical development of the suburb both overtly and in more subtle ways. This is evident not only in the physical fabric that survives today but also in the layers of residential development. This includes the large estates of the 1840s and 1850s; the villa residences of boom-era Melbourne of the late-nineteenth century; the luxury flats and maisonettes that replaced the grand estates and nineteenth-century villas as the area was transformed in the 1920s, 1930s and 1940s; and, finally, the architect-designed flats and avant-garde homes of the postwar period. Within the Review area, there is a remarkable legacy of fine architecture and landscape design across different periods in the development of the suburb.*¹⁴ Page 21

41. The subsequent discussion of postwar residential development is accompanied by two illustrations, one of Domain Flats and the other of Kumeh townhouses, both within HO6:

Homes in the 1940s and 1950s reflected both retrospection (through the Neo-Georgian styles) and modernity (through the designs of more avant-garde architects). The proportions and simplicity of the Georgian residential style was reinterpreted in oatmeal brick (with updated features such as

¹³ Melbourne C387 (PSA) [2021] PPV 89, page 45.

¹⁴ Thematic Environmental History (Heritage Review – Volume 3), page 21.

garages), retaining the hipped roof and façades flush with the street (without verandahs) common to the original style. The style strictly began in the 1930s rather than the postwar era, but perhaps found greater expression in the latter period.

...

The postwar period, and new prosperity amongst the professional classes and established money, saw a great enthusiasm for modern homes. People had grown tired of the cold, draughty and staid nature of Victorian-era houses and sought designs that were more modern and functional. The qualities of light and efficiency, and provisions such as modern kitchens and family living spaces were attractive features. Outdoor living was also an important part of the package with private swimming pools making an appearance in Melbourne's upmarket residential homes in the 1950s and 1960s.¹⁵

42. The historical context for flats in Melbourne within the Heritage Review explains the rise of self-ownership in the postwar period, replacing the typical practice of rentals associated with interwar flats.¹⁶
43. The area histories and descriptions within the citation for HO6 document the period from 1945 consisting primarily of blocks of walk-up residential flats.¹⁷
44. Further, the existing Statement of Significance for HO6 records (with emphasis added):

*History: The popularity of flat block developments **continued into the post-war period**...*

*Description: Significant and contributory development in the precinct dates from the 1850s to the mid-twentieth century, **including the post-World War II period**... The later blocks, of the 1940s and post-World War II period are stripped of ornamentation, with plain walls and strongly expressed forms. Many of the flat blocks are built close to the street, with limited setbacks. ... Domain Park Towers, on Domain Road, is a noted early high rise apartment development, designed by Robin Boyd and completed in 1962.*

*What is significant: South Yarra Precinct is predominantly residential, where significant and contributory development dates from the 1850s through to the mid-twentieth century, **including the post-World War II period**. ... The following are the identified 'key attributes' of the precinct, which support the assessed significance: ... **Later development, of the 1940s and after**, is generally stripped of ornamentation, with plain walls and limited detailing. ... and flat blocks of two-three storeys, with some taller examples.*

*Why is it significant: The aesthetic/architectural significance of the South Yarra Precinct derives from Victorian development through to **development of the mid-twentieth century and post-World War II period**. Residential development includes ... interwar **and later** flat blocks of which the precinct has many distinguished examples.*

¹⁵ Thematic Environmental History (Heritage Review – Volume 3), pages 73-74.

¹⁶ Heritage Review – Volume 4, pages 4, 84, 305.

¹⁷ Heritage Review – Volume 4, pages 582, 615, 670, 714.

45. The proposed Statement of Significance for HO6 provides *inter alia* (with emphasis added):

*South Yarra Precinct is historically significant for its demonstration of a predominantly residential development pattern that spans from the 1840s **through to the postwar period**. The concentration of high-quality building stock in the precinct demonstrates the significant influence of wealth and privilege in this part of Melbourne.*

...

*The precinct contains a large number of blocks of residential flats from the interwar and **postwar periods**. While those from the interwar period tend to be large luxury flats, **the later postwar flats reflect the changing urban landscape seen in much of inner city Melbourne**. Through its high concentration of refined architect-designed building stock the precinct demonstrates the influence of the many middle and upper-middle class arbiters of taste who chose to live in the area. The postwar buildings themselves sit comfortably side by side with earlier development due to their scale, form and materiality.*

46. It is also important to note that in identifying the significance of postwar places, the approach adopted by GML Heritage has been selective and discriminating. It is not the case that all postwar places of interest have been proposed for heritage protection. Rather, the work undertaken within the Heritage Review has sought to distinguish between those buildings which are of real local importance having regard to their identified heritage significance. Accordingly, the postwar places proposed for heritage protection reflect this selective approach.

47. This selective approach is reflected in the evidence of Mr Huntersmith in relation to Motstone:

133 *During the Review, over 60 postwar examples of flats were identified in the study area. Motstone was one of three examples categorised as a Significant place. Architect- designed, it is one of more refined examples in the area, displaying key characteristics of its typology.*

...

145 *The notion that the façade of the building is ‘unsightly’ is a subjective judgement. In my professional opinion Motstone is an excellent and externally intact example of a postwar modernist block of flats built in 1960. It includes sheer, unadorned walls of cream brick, large expanses of glazing, a flat roof and cantilevered concrete balconies with thin metal balustrades and solid infill panels that project forward, proud of the main building line. While the submitter may not appreciate the postwar modernist architectural style, the flats are an intact example of this style and make an important contribution to the mixed character of the area and understanding of the changing urban landscape seen in much of inner-city Melbourne in the postwar period.*

48. The mapping of postwar buildings in HO6 provided with this submission as **Addendum B** confirms the discerning and judicious approach to postwar places which has been employed in the Amendment.

C. SOCIAL & ECONOMIC IMPACTS

49. Section 12(2)(e) of the *Planning and Environment Act 1987* requires that a planning authority, in preparing a planning scheme amendment must take into account its social effects and economic effects. It is noted that a number of submitters raised social and economic impact in terms related to:

- (a) the personal financial implications of the Heritage Overlay;
- (b) housing affordability; and
- (c) policies supporting housing growth and intensification.

50. The manner in which social and economic effects are properly considered in the context of heritage protection has been addressed by the Supreme Court and reports of Planning Panels Victoria.

51. In *Dustday Investments Pty Ltd v Minister for Planning* [2015] VSC 101, 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.

52. Garde J found:

[99] *Dustday's ground alleged the panel failed to lawfully consider social and economic effects, because it failed to consider a key matter (the condition of the building and likelihood that the building would or could be adapted for reuse if it were included in the HO) arising from the subject matter and thereby acted unreasonably.*

[100] *Senior Counsel for the council highlighted the key findings of the panel where it had regard to the condition of the building. The panel was not persuaded that the nature of the decision-making framework, including the limitations applying to decisions on permits was such that condition should normally be taken into account at the listing stage. This was a response by the panel to the argument by Dustday that if the appeal by Boroondara City Council to the Supreme Court concerning the proposed demolition of the heritage building at 1045 Burke Road, Camberwell were successful, there would be no opportunity for integrated decision-making at the permit stage which balances all relevant planning considerations, and therefore the balancing process must be done at the amendment stage. In the event, the appeal failed, and the Court of Appeal confirmed that integrated decision making and the balancing of considerations were to be applied at the permit stage.*

- [101] *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 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. The nature and level of information available at the rezoning or amendment stage will often be significantly less than that available at the permit stage. ...*
- [102] *Given the stages in the planning process, consideration will often need to be given by panels as to the strategic nature of the assessment to be undertaken at the amendment stage as against the more detailed evaluation undertaken at the permit application stage. Where, as here, no use or development plans are available at the amendment stage, the consideration of conservation and heritage matters by a panel is inevitably more circumscribed than that which is possible at the later stage. Assessment of costs associated with restoration and adaptive reuse of a heritage building in poor condition is crucially informed by an understanding of the overall scheme of development, including the nature of the proposed use, and the likely costs and returns. The economics underlying restoration and redevelopment will often be a pivotal component of decision-making concerning buildings with heritage significance.*
- [104] *When a panel considers that the information before it is inadequate, insufficient, or incomplete as to a subject matter, and that the same subject matter is better or more comprehensively or more fairly addressed at the later permit application stage of the planning process, this does not mean that the panel is failing to take the subject matter into account at all. The reverse is the case namely that the subject matter is being taken into account, and that as a result of being taken into account, it (sic) considered to be better or more comprehensively or more fairly addressed and decided at the later stage.*
- [105] *Far from failing to consider the condition and conversion of the building, the panel gave comprehensive consideration to these matters. ... the position of the panel that there should be serious justification and persuasive evidence before a building with heritage significance is permitted to be demolished at the amendment stage is an opinion that is entirely open to the panel to adopt, as was its recommendation to the planning authority and the Minister.*
- [106] *When the panel in its report enquired whether the social and economic effects advanced by Dustday were 'relevant' to the panel did not mean that social and economic effects were not being considered at all, or had no place in its deliberations, because it is apparent from the panel's reasons as a whole that they were addressed at length. Rather it meant that in its opinion the social and economic effects contended for by Dustday were not entitled to any or any significant weight, or were greatly outweighed by the consideration of heritage... Far from failing to take into account social and economic effects, here the evaluation and discussion of social and economic effects by the panel is extensive.*

53. The principles from this decision have since been applied in a number of panel reports.
54. In Moonee Valley C200moon (PSA)[2021] PPV 7 (16 February 2021), the panel considered an amendment applying the Heritage Overlay to 60 individual heritage places, nine extended heritage precincts, 18 new heritage precincts and one serial listing. A number of submitters sought to raise building condition and economic impact as a relevant consideration in assessing heritage significance.
55. The C200moon panel report records:

Council submitted that costs incurred by individuals as a result of the Heritage Overlay of a personal nature are not relevant at the planning scheme amendment stage. The only relevant consideration is the heritage significance of a heritage place in accordance with the heritage criteria set out in PPN01.

*Council cited the decision of the Victorian Supreme Court in *Dustday Investments Pty Ltd v Minister for Planning*. It referred to subsequent panel reports that have agreed the amendment stage is to objectively identify heritage places; the planning permit stage considers the economics of retaining and repairing a building.*

Council submitted that financial impacts may be considered if they translate into public social and economic effects of a planning scheme amendment, as required by the Act. But it said the social and economic issues raised by submitters are not community wide social or economic impacts.

At the Panel's request Council outlined previous panel decisions that considered whether a heritage amendment would have broader economic and social effects. In summary the panels ruled:

- *there was no evidence that the Heritage Overlay would have demographic impacts such as forcing families to leave the area or wholesale (sic) property devaluation*
- *property value is made up of complicated and interrelated factors*
- *social and economic impacts are difficult to quantify and often intangible without analysis and evidence.*

Council submitted there was no evidence to support the claim that a Heritage Overlay would have a detrimental impact on property values.

Council submitted that landowner requests for changes to land tax valuation, compensation and an exemption from permit application fees are not relevant considerations for the Panel.

Council said it does not have any grants or funding programs for owners of heritage properties and none are planned. The statutory planning department offers advice to owners of land subject to the Heritage Overlay.

(iii) Discussion

The Panel acknowledges submitters' concerns about private financial impacts of the Heritage Overlay and that those concerns have caused them distress. But Planning Practice Note 1 and judicial authority cited by Council make it clear that the key issue for the Panel is the heritage significance of the properties. Private financial issues of a personal or property specific nature are not relevant at the planning amendment stage.

The requirement under the Act for planning authorities to consider social and economic impacts of planning scheme amendments is limited to community wide impacts. No submitter provided information about wider social or economic impacts of the Heritage Overlay even though it applies to a wide area, as shown by the Municipal Heritage Overlay map. The Panel therefore has no basis to assess those impacts.¹⁸

56. In Boroondara C308boro (PSA) [2020] PPV 83 (18 November 2020), the panel found:

¹⁸ Moonee Valley C200moon (PSA)[2021] PPV 7 (16 February 2021), 16-18.

The Panel was not presented with any evidence which demonstrated an individual or community economic effect of the application of the Heritage Overlay. Most of the submissions that raised economic effects had based the conclusion that any restriction on a property would devalue it. These impacts were not quantified or tested and consequently the Panel is unable to form a view as to whether there is an effect, or the severity of that effect.

In addition, the Panel agrees with the view expressed by other panels that, with respect to section 12(2)(c) of the Act, the economic effects considered as part of an Amendment should be of a broader or community nature and not individual circumstances. The Panel acknowledges that the Amendment should deal with the significance of the place or precinct and whether it is suitable for inclusion in the Heritage Overlay. A permit application is the appropriate stage for the consideration of individual issues concerning the conservation, alteration, adaption or demolition of the place, including the economic implications for the individual concerned.

The Panel notes that the Explanatory Report for the Amendment states that Council has considered economic effects and concluded that the “Amendment is not expected to have any adverse environmental or economic effects”.

Conclusion (iv)

The Panel concludes that the property value and financial implications are not relevant when assessing heritage significance or when deciding whether to apply a Heritage Overlay.¹⁹

57. In Melbourne C305 (PSA) [2020] PPV 68 (4 September 2020), 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 panel said:

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

¹⁹ Boroondara C308boro (PSA) [2020] PPV 83 (18 November 2020), 9-10.

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.²⁰

58. In Melbourne C387melb (PSA) [2021] PPV 89 (10 November 2021), the Panel considered the issue of the social and economic impact of heritage controls in the context of Melbourne's Hoddle Grid. The Panel found:

The Panel recognises that in applying the Heritage Overlay which imposes additional controls and decision making considerations, should be soundly based and justified.

The submissions of Sunsuper, Julliard and Phileo were not necessarily suggesting that the Amendment lacked strategic justification per se, but rather that the primacy and strategic significance of the central city should lift the bar for the threshold of heritage significance. The Panel does not agree with this proposition. It considers that the identification of whether a place is of heritage significance is properly assessed against appropriate heritage considerations and threshold criteria alone and in particular the guidance provided by PPN01. The question of then whether a Heritage Overlay should be applied is open to the wider considerations of policy and the objectives of the Act.

In considering whether the Amendment is strategically justified, the Panel observes that there is potentially a tension between the application of heritage policies 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 policies 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 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

²⁰ Melbourne C305 (PSA) [2020] PPV 68 (4 September 2020), pages 21-22.

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.

Council's mapping of existing Heritage Overlays and those proposed by this Amendment provided at the Hearing does not dramatically increase the proportion of the Hoddle Grid subject to heritage controls. Importantly the application of the Heritage Overlay does not prohibit demolition, alterations or redevelopment, but instead introduces a control to assist in managing heritage places. Indeed, there are many examples where heritage buildings have been refurbished or significantly altered to achieve positive built form and development outcomes.

The Panel observes that while Council's information relating to the proportionality of land within the Heritage Overlay is useful in one sense in terms of understanding the balancing between existing policy objectives places, the attribution of heritage significance should not be a numeric exercise.

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.

(iv) Findings

The Panel finds:

- The Amendment is consistent with, and supported by, the Planning Policy Framework.*
- Applying the Heritage Overlay to properties with local heritage significance will not restrict the central city from achieving planning policies seeking economic activity and development.*
- The Amendment will provide a net community benefit by protecting Hoddle Grid properties with local heritage significance for present and future generations.²¹*

59. Most recently, in Stonnington C320ston (PSA) [2023] PPV 55 (27 September 2023), the panel found:

Concerns relating to future redevelopment opportunities are immaterial to this stage of the planning process and more appropriately considered at the planning permit stage. The assessment of the significance of a place should be separated from its conservation, adaptation, alteration or demolition. If a property or precinct displays the requisite levels of significance, then heritage protection should be applied through the Heritage Overlay.

The Heritage Overlay requires specific consideration of the heritage significance of a place in deciding a permit application for development of that place. No other zone or overlay control functions to conserve places of recognised heritage significance or appropriately manage future development by reference to heritage significance.

The Panel considers the Heritage Overlay is the most appropriate control to protect the heritage values of places that have been identified as meeting the threshold of local significance.

²¹ Melbourne C387melb (PSA) [2021] PPV 89 (10 November 2021), pages 24-25.

The zoning of land is not a relevant factor in determining whether to apply the Heritage Overlay. There are many examples throughout Victoria, including in central Melbourne and Major Activity Centres, where the Heritage Overlay exists in conjunction with zones that encourage significant growth.

The Panel does not accept that applying the Heritage Overlay will create an unacceptable burden on the owners of these properties. The Planning Scheme has many provisions that are applied to restrict or enable land use and development based on different circumstances and constraints.

The Heritage Overlay enables a permit application to demolish, construct a new building or alter an existing building. It envisages future development, while providing the ability to assess proposals in response to existing heritage fabric.

(iv) Conclusion

The Panel concludes that development opportunity is not relevant when assessing the heritage significance of an individual place or a precinct.

...

The Panel agrees with Council that private financial issues of a personal or property specific nature are not relevant when considering whether to apply the Heritage Overlay. The key issue for consideration is whether a property is of heritage significance.²²

60. In Council's submission, previous panel reports are consistent in their view that when considering economic impact, the relevant consideration is impact of a broad community nature. Further, consideration of this impact does not mean the Heritage Overlay ought not be applied in areas where growth and urban consolidation is sought, noting that most of the land in this Amendment is in a stable residential area where limited change can occur in any event.²³ Rather, the benefit to the community in protecting heritage assets for present and future generations outweighs private economic impacts that may be experienced by individual property owners.

D. EXTANT PLANNING PERMITS

61. The Panel's Directions require that Council's Part B submission provide details of existing planning permits, permit applications and any relevant Tribunal decisions, and any implications for the Amendment relating to 93 Park Street, South Yarra, or any other property which is the subject of a submission.

²² Stonnington C320ston (PSA) [2023] PPV 55 (27 September 2023), pages 25-26.

²³ Clause 02.03-1 and 02.04.

62. Council has compiled a table of all relevant permits, plans and Tribunal decisions, along with all relevant documentation, provided with this Part B submission as **Addendum C**.
63. In summary, Council has identified relevant permits, plans and Tribunal decisions in relation to:
- (a) 10-16 Mona Place (Submission 1);
 - (b) 172-182 Walsh Street, or *Motstone* (Submissions 4, 19-23 & 34);
 - (c) 519-539 St Kilda Road (Submissions 6 & 10);
 - (d) 543-547 Punt Road (Submission 8);
 - (e) 15-17 Pasley Street (Submission 12);
 - (f) 485-489 St Kilda Road (Submission 16 & 24);
 - (g) 23-25 St Leonards Court (Submission 28);
 - (h) 221-223 Domain Road (Submission 29);
 - (i) 93-103 Park Street (Submission 40);
 - (j) 105-107 Park Street (Submission 41);
 - (k) 55 & 57-59 Marne Street (Submission 42); and
 - (l) 6 & 8-10 Marne Street (Submission 43).
64. The nature of the planning permission sought, approved and/or the subject of relevant Tribunal proceedings is outlined further within the detailed response to submissions, below.
65. In relation to how the Panel ought deal with a property proposed for a Heritage Overlay that has an existing planning permit authorising either partial or full demolition, or additions to heritage fabric, this matter has been extensively discussed by previous planning panels.
66. In Melbourne C387melb (PSA) [2021] PPV 89 (10 November 2021), the panel consider the issue of live planning permits in relation to properties within the Hoddle Grid:

4.1 Extant planning permits

(i) The issue

The issue is whether sites with valid planning permits for demolition or major building alterations should be excluded from the Amendment.

(ii) Evidence and submissions

Many submissions identified that valid planning permits existed for significant building alterations including demolition and redevelopment. Council provided details of planning permits for all places identified in the Amendment. In some instances building approval for demolition was imminent or recently issued but not activated. The permit situation for individual sites is identified in the Panel's Report in Chapters 6, 7 and 8.

Council's position was that the Amendment did not affect live permits for development, identifying:

Given a permit is required for demolition or part demolition within the Capital City Zone, inclusion of these sites within Heritage Overlays does not affect the extent that these permits may be acted on, unless these permits expire. If a permit is acted upon and results in full demolition, the Heritage Overlay can, if appropriate, be amended via future amendment.

In the event a permit was not acted on, Council submitted that any future application would be assessed by reference to its identified heritage values.

(iii) Discussion

In the context of considering the Amendment and whether a place is of local heritage significance, the Panel considers that it is appropriate to only consider whether a place meets the necessary threshold using appropriate assessment considerations and tools such as PPN01.

It is not appropriate to consider existing permits proposing demolition or significant change as a reason to exclude a place from the Heritage Overlay. This is primarily because those permits may not be acted on or completed as approved and the consequences for the integrity of the building or place would remain uncertain.

The Panel has assessed each property based on existing heritage fabric irrespective of whether it has a permit.

The Panel notes that many of the current permits discussed at the Hearing provide for complete demolition or significant building redevelopment and retention of only the façade or portions of the identified building. While it is not appropriate for the Panel to comment on the heritage outcomes for these sites, it is appropriate that such buildings are reassessed if the permits are acted on in the future. In the case of imminent demolition, which appears likely for several identified places, the Panel considers that Council should review the status of those places before adopting the Amendment. Buildings which have been demolished or are in the process of active demolition (that is not just at boarding erection or preparation stage) should be excluded from the Amendment.

(iv) Conclusion and recommendation

The Panel concludes that existing permits proposing demolition or significant change are not a reason to exclude a place from the Heritage Overlay.

The Panel recommends:

Prior to the adoption of the Amendment, review all buildings that are subject to the Amendment which have 'live' planning permits for demolition or substantial demolition. The Amendment

*should not apply to sites where demolition has occurred or where substantial demolition has commenced.*²⁴

67. In Stonnington C320ston (PSA) [2023] PPV 55 (27 September 2023), the panel found:

The Panel agrees with the long-held principle that the heritage significance of a property should be assessed based on existing heritage fabric irrespective of whether there is a planning permit to demolish that fabric. It would be incorrect to assume that the heritage fabric will no longer exist simply because there is a permit, because there may be permits which are never acted upon.

*If a permit is activated and heritage fabric is demolished, then Council should reassess the appropriateness of the heritage controls that apply to the site. This may necessitate a change to the documentation before finalising the Amendment or a separate planning scheme amendment.*²⁵

68. Council submits the C387melb and C320ston panels correctly identify the proper approach for places proposed for the heritage overlay that have a valid permit for demolition or alterations.

E. ESD, SUSTAINABILITY & AMENDMENT C376MELB

69. As noted above, the Panel's Directions include a direction that Council provide a summary of Amendment C376melb and any considerations relating to the Amendment.
70. Amendment C376melb, which affects all land in the municipality, implements sustainability and green infrastructure policy into the Scheme, and introduces new mandatory and discretionary sustainable building design standards and requirements.
71. The Explanatory Report for Amendment C376melb provides:

On 16 July 2019, the City of Melbourne declared a climate and biodiversity emergency, recognising that a temperature rise above 1.5°C would cause major and irreversible damage to the City and its ecosystem. On 18 February 2020, the City of Melbourne endorsed the acceleration of the ten priority actions to respond to the climate and biodiversity emergency including mandating greening and zero emission buildings through the Planning Scheme.

Currently the Melbourne Planning Scheme encourages sustainable development at clause 2.03-4 of the Scheme. While sustainability outcomes are being negotiated through the development application process, the current planning framework requires updating to achieve the baseline needed for Council to reach its target of zero net emissions by 2040, to improve biodiversity, to reduce the urban heat island effect, to manage water effectively, and to reduce the amount of waste going to landfill.

²⁴ Melbourne C387melb (PSA) [2021] PPV 89 (10 November 2021), pages 27-28.

²⁵ Stonnington C320ston (PSA) [2023] PPV 55 (27 September 2023), pages 28-29.

The amendment is required to introduce new sustainable building design standards into the Planning Scheme and will apply to new buildings as well as substantial alterations and additions that meet a specified size threshold. The standards address environmentally sustainable design, energy efficiency and renewables, waste and resource recovery, urban heat island response, urban ecology, integrated water management and for the Central City and Docklands, sustainable transport. The standards draw on established and industry accepted rating tools (Green Star, NatHERS, NABERS and BESS) as well as the Green Factor Tool which has been developed by the City of Melbourne.

The amendment will introduce minimum mandatory requirements for certain standards and preferred requirements. The preferred requirements provide a greater contribution towards Council's sustainability, greening and emissions goals.

Sustainable building design requires current generations to choose how they meet their needs without compromising the ability of future generations to be able to do the same. The City of Melbourne owns and controls less than one third of the municipality's land area, with the majority of the land in private ownership or other government ownership.

In terms of built form, City of Melbourne owns less than 2 per cent of the buildings in the municipality. Private development is therefore a critical contributor to any overarching municipal goals or targets. While the City, in partnership with other public entities, can drive change on public land, the planning system remains a key tool in facilitating changed practices on private land for public benefit.

72. Specifically, Amendment C376melb proposes to, inter alia:

- (a) Amend Clauses 02.03-2 *Environment and landscape values*; 02.03-4 *Built environment and heritage*; 02.03-7 *Transport*; 15.01-2L *Sustainable development* and 19.03-3L *Stormwater management (Water Sensitive Urban Design)*.
- (b) Insert Schedule 73 to Clause 43.02 (Design and Development Overlay – Sustainable Building Design) (**DDO73**) to include provisions for environmentally sustainable design; energy efficiency and renewables; waste and resource recovery; urban heat island response; urban ecology; and integrated water management.
- (c) Amend Schedules 1, 2, 3, 4, 5 and 7 to Clause 37.04 (Capital City Zone) and Schedules 1, 2, 3, 4, 5 and 6 to Clause 37.05 (Docklands Zone) to include provisions for bicycle, motorcycle and car share parking; electric vehicle infrastructure; the design of car parking facilities; and the retention of car parking spaces as common property.

73. Accordingly, Amendment C376melb proposes to use DDO73 as the key planning control to achieve sustainable outcomes and the schedules to the Capital City Zone and Docklands Zone to achieve sustainable transport outcomes.
74. The urban ecology requirements in DDO73 implement the Green Factor Tool. Green Factor is a green infrastructure assessment tool designed and developed by Council to help with designing and constructing new buildings that are environmentally friendly and include green infrastructure.
75. Amendment C376melb has limited implications for buildings and works less than 1000 square metres compared to new buildings and extensions/additions of 1000 sqm or more. Clause 2.2 of the DD073 provides:

Buildings and works for which no permit is required

A permit is not required to construct a building or construct or carry out works, other than:

- *The construction of a new building for the purposes of Accommodation, Retail, Office, Education centre, Research and development centre or Place of assembly.*
- *Buildings and works which result in more than 1000 sqm additional gross floor area for the purposes listed above.*

76. However, all developments requiring a planning permit will be subject to new planning policy. A planning application for any new development – whether an extension to a house or a large new multi-storey office building – will need to consider new planning policies about improving outcomes for Biodiversity and waterways (Clause 02.03); Sustainable development (Clause 02.03 and Clause 15.01); Sustainable transport (Clause 02.03 and Clause 15.01); and Stormwater management - water sensitive urban design (Clause 19.03).
77. The Amendment was on public exhibition from 2 March 2023 to 17 April 2023, and seventy-three submissions have been received. Council is yet to make a decision under Section 23 of the *Planning and Environment 1987* in respect of the submissions received and pre-set Panel hearing dates for November 2023 have been vacated. New Panel dates are yet to be set for 2024.
78. Council notes submissions 20 and 21 (in relation to 172-182 Walsh Street, or *Motstone*) and Submission 28 (related to 23-25 St Leonards Court), variously assert that a heritage

classification will prevent the development of new environmentally sustainable buildings, prevent the works required to ensure that heritage buildings are sustainable or require the retention of materiality that is not sustainable. A number of submissions also specifically reference Amendment C376melb.

79. As noted above, Amendment C376melb has limited implications for buildings and works resulting in additional gross floor area of less than 1,000 square metres; therefore many proposed alterations or works to heritage places will be unaffected by that amendment.
80. Further, Council does not consider it appropriate to regard the objective of heritage protection on one hand and the objective of environmental sustainability on the other as mutually exclusive in such a way that the current Amendment ought be regarded unacceptable. As discussed above, at the current stage of the process where a place is proposed for heritage protection, the primary consideration before the Panel is the heritage significance of the place. At the time of a future planning permit application, integrated decision-making requires that all relevant considerations – including heritage and sustainability – are balanced, such that an acceptable planning outcome is achieved.
81. The requirement to balance objectives, even competing objectives, is not a flaw of the planning system, but rather an integral part – where relevant considerations are balanced and weighed in favour of net community benefit.
82. Council notes Mr Huntersmith's evidence in response to submissions made regarding sustainability and Amendment C376melb:

381 *It is important to note heritage protection does not prevent works to a historical building, including changes to improve the sustainability of a place. Understanding the heritage value and the significant elements of the place would guide the necessary decision- making (ie suitable position of solar panels or improved glazing) for achieving better design and heritage outcomes when such works are proposed or required.*

83. Ms Schmeder's evidence includes:

101. *... In my professional experience, this sort of replacement – particularly with more thermally advanced materials – is considered an important step in preserving post-war buildings while increasing their comfort and efficiency, so long as it is done with care to preserve the original appearance of the building.*

84. In Council's submission, there is no proper basis to conclude the Amendment will frustrate ESD policies within the Scheme generally, or the objectives of Amendment C376melb specifically. Rather, the policies will, at the time of a planning permit application, be balanced in favour of net community benefit, consistent with the analysis of all permit applications that are required to respond to multiple policies within the Scheme.

F. C258 & C396 MELBOURNE

85. As referenced within Council's Part A submission,²⁶ Amendment C258 was the culmination of four significant pieces of work called for by Council's Heritage Strategy:
- (a) the heritage policy review which reviewed clauses 22.04 and 22.05 and introduced definitions of Significant, Contributory and Non-Contributory places;
 - (b) the grading conversion which converted the former A-D letter grading system to the Significant, Contributory and Non-Contributory categorisation system based on the definitions from the policy review;
 - (c) the preparation of statements of significance for the 6 large precincts outside the Capital City Zone in Carlton, East Melbourne and Jolimont, North and West Melbourne, Parkville, South Yarra and Kensington;
 - (d) the implementation of the West Melbourne Heritage Review, which used the Significant and Contributory definitions.
86. Amendment C258 converted the heritage categorisation of 7,000 heritage places. Approximately 400 places were excluded from Amendment C258 on the basis that their former letter gradings had been incorrectly converted to the new classification system. These places included C-graded places in precincts in City North, D-graded places in individual Heritage Overlays and buildings not identified or listed incorrectly in the Amendment C258 Heritage Places Inventory. The conversion of these places was completed as part of Amendment C396.
87. Council's Part A submission includes a list of 16 places²⁷ affected by this Amendment that had their classification converted as part of Amendment C396.

²⁶ Part A, pages 18-20.

²⁷ Part A, [55].

88. Council has prepared a table which outlines the categorisation of places affected by this Amendment through Amendments C258, C396 and C426, both exhibited and proposed. The table also provides a summary of submissions made on behalf of landowners through each amendment process.

89. Council's C258, C396 and C426 table is provided with this submission as **Addendum D**.

G. USE OF THE VICTORIAN HERITAGE REGISTER CRITERIA & THRESHOLD GUIDELINES

90. There are a number of tools typically utilised when ascertaining the appropriate threshold for local significance to determine whether the place meets the threshold. These tools are: the definitions of Significant, Contributory and Non-contributory places contained within the Heritage Places Inventory March 2022 (the **Heritage Places Inventory**), PPN01 and the Victorian Heritage Register Criteria and Threshold Guidelines (the **VHR Guidelines**).

91. The Heritage Places Inventory contains the following definitions:

(a) **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.

(b) **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 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.

- (c) **Non-contributory:** A non-contributory place does not make a contribution to the cultural significance or historic character of the heritage precinct.

92. It is important to note that in relation to the definitions of Significant and Contributory heritage places, the factors included within the definitions are not necessary preconditions, but rather descriptive characteristics that have a bearing on whether a place meets the threshold of local significance. Council notes the discussion of the Panel in relation to the Hoddle Grid Heritage Review:

The Panel agrees with Council that the definition of 'Significant heritage place' in Clause 22.04 does not act as a qualifier for a place to be identified as having local heritage significance. When assessing a new place in the City of Melbourne a place does not have to satisfy or demonstrate all elements of that definition to be considered significant. Indeed, the definition excludes a range of PPN01 criterion that are otherwise relevant and applicable across the state. Its role is for the application of policy to planning permit application decision making not as a threshold for local significance.²⁸

93. PPN01 is not incorporated into the Scheme and does not have the status of a Ministerial Direction and accordingly is not a mandated consideration. However, it contains directions which are universally applied across all heritage amendments at local government level, provides helpful guidance and is a tool utilised by all experts and submitters before the Panel.
94. PPN01 provides a qualitative dimension to each criterion of significance. It further requires that the Statement of Significance for each place establishes the importance of the place to the municipality.
95. With regard to comparative analysis, PPN01 provides:

To apply a threshold, some comparative analysis will be required to substantiate the significance of each place. The comparative analysis should draw on other similar places within the study area, including those previously included in a heritage register or overlay. Places identified to be of potential state significance should undergo analysis on a broader (statewide) comparative basis.

96. Importantly, this is not a prescription. Rather it is a direction to look for similar places in the Heritage Overlay or on the Victorian Heritage Register, and does not exclude

²⁸ Melbourne C387melb (PSA)[2021] PPV 89 (10 November 2021), pages 52-53.

consideration of places not already subject to heritage protection. Further, while it is clear PPN01 is seeking **important** examples to warrant inclusion in the Heritage Overlay, it does not set a threshold of ‘early’ or ‘fine’ or identify that places be ‘the best’, or indeed ‘better than most’.

97. Lastly, the VHR Guidelines were not prepared to assist in ascertaining the threshold for local significance. They were prepared to assess places for inclusion on the Victorian Heritage Register. Accordingly, it is exceedingly important that when utilised at a local level, the role for which they were prepared is kept front of mind. They are deliberately set at a high level to reflect the high level of importance required for places of State significance.
98. Council submits the VHR Guidelines are useful in fleshing out the criteria as defined in the Practice Note and accordingly can assist in heritage assessment at the local level. The evidence of Mr Huntersmith notes that the heritage value of each place within the study area was assessed pursuant to the criteria contained within PPN01 and, where relevant, the VHR Guidelines were considered.²⁹ Ms Schmeder’s evidence utilises the VHR Guidelines in relation to the definition of ‘*common terms applicable to all heritage places*’.³⁰

H. THE IDENTIFICATION OF SOCIAL SIGNIFICANCE

99. PPN01 provides the following definition of Criterion G, or social significance:

Criterion G: *Strong or special association with a particular community or cultural group for social, cultural or spiritual reasons. This includes the significance of a place to Indigenous peoples as part of their continuing and developing cultural traditions (social significance).*

100. The Heritage Review seeks to apply Criterion G to the following heritage places:

- (a) Melbourne Girls Grammar School;
- (b) St Thomas Aquinas Catholic Church;
- (c) South Yarra Primary School;
- (d) South Yarra Presbyterian Church complex;

²⁹ Huntersmith, [79].

³⁰ Schmeder, [26].

- (e) The Christ Church vicarage, and Memorial Hall and school building;
- (f) Wesley College;
- (g) Melbourne Hebrew Congregation Synagogue;
- (h) St Martins Youth Arts Centre complex; and
- (i) Yarra Boathouses Precinct.

101. Most places identified as having social significance have a continued and established use, over a long period of time, that is relevant to a specific community. All places identified as meeting the threshold for local social significance are schools or religious institutions (the two exceptions are the Yarra Boathouses precinct and St Martins Youth Arts Centre complex).

102. Due to the limited scope of the Heritage Review, there was not opportunity to speak to communities directly when seeking to determine whether a place met the threshold for social significance. Rather, social significance was inferred by the ongoing connection with existing communities associated with the place. For example, Wesley College and Melbourne Girls Grammar School have associations and member groups dedicated to the school that indicate an existing active community. Other indicators include evidence of events and active use of the places, such as weddings, christenings and funerals at South Yarra Presbyterian Church complex and Christ Church vicarage, and Memorial Hall and school building. In the case of the Yarra Boathouses Precinct, social significance is evident by the visible number of rowers present on the Yarra, social events held by the clubs and the continued activity such as ongoing memberships and competitions.

I. EXPERT EVIDENCE NOT PROVIDED

103. The Panel will note a number of the submissions made to Council asserted that either the Heritage Overlay should not be applied to a place, or that the classification of a place as contained within the Heritage Review was inappropriate, having regard to:

- (a) heritage advice which was being sought by the submitter;

- (b) heritage advice that had already been provided to the submitter; and/or
- (c) further additional heritage advice which had been sought by the submitter, which would be provided to Council in due course.

104. In a number of cases the advice(s) referenced were never provided to Council.
105. Further, two submitters indicated they would be calling heritage evidence in relation to 485-491 St Kilda Road, South Yarra, also known as *Sheridan Close*, before the Panel in circumstances where they ultimately did not elect to do so.
106. Where a submitter has referenced the fact that expert evidence had been sought, received or would be relied upon in relation to a place and that evidence was ultimately not put before the Panel, Council submits it is appropriate that the Panel infer the evidence was ultimately not called because it would not have assisted a submitter's case to do so.

III. ASSESSMENT OF INDIVIDUAL PROPERTIES

107. The approach and timing of the Heritage Review is detailed within Council's Part A submission, including the extent of the study area, the process by which places for assessment were derived and the totality of the work underpinning the recommendations of the Heritage Review.
108. The methodology adopted by the Heritage Review is detailed within the Part A submission³¹ as comprising: desktop review of previous heritage studies, thematic/typological studies and other key strategic documents to identify places and precincts of potential significance; fieldwork and inspection for each site; research using primary and secondary sources; consultation with Traditional Custodians; participation in community engagement with the local residents' group and with the wider community through the City of Melbourne's 'Participate Melbourne' website and online/in- person information session; preparation of a Thematic Environmental History that examines the history and development of the South Yarra Review area, including its Aboriginal and non-Aboriginal history; and documentation of the

³¹ Part A, [31].

significance of key places, buildings, trees, objects, precincts and landscapes and recommendations of how significant places should be protected.

109. This Part B submission does not address these matters further, but rather identifies and addresses each of the sites in relation to which submissions were received in the context of:

- (a) the findings of the Heritage Review;
- (b) the officer response of Council as contained within the Attachment 2 summary of submissions and officer recommendations to the Council Meeting Agenda of 19 September 2023 (the **Management Response**);
- (c) details of existing planning permits, permit applications and any relevant Tribunal decisions, consistent with Direction 11(b) of the Panel;
- (d) the evidence filed on behalf of Council and submitters; and
- (e) Council's final position in relation to the inclusion of the property within the Heritage Overlay.

IV. SUBMISSIONS RECEIVED IN RELATION TO SPECIFIC PLACES OR PRECINCTS

A. 10-16 MONA PLACE

110. 10-16 Mona Place, South Yarra is currently identified as Contributory within *16-20 Mona Place, South Yarra* (HO427).

111. The property is identified within the Heritage Review as Contributory to HO6 and is located in Area 4. Accordingly, the Amendment does not propose to alter the classification of the property, but rather alters the reference to the relevant precinct. The Amendment categorises the property as Contributory to the South Yarra Precinct (HO6). HO6 is included in the Heritage Overlay for its historical (Criterion A) and aesthetic (Criterion E) significance.

112. The HO6 citation is located within the Heritage Review Volume 4: *Citations* (September 2022) (**Heritage Review Volume 4**) at pages 556-760.

Submission 1

113. Submission 1 asserts the Heritage Review contains inaccurate information and consequently an inaccurate assessment of the place.
114. The submitter notes 10-16 Mona Place is a single story building, but the citation has used this street address when describing and assessing the building at 18 Mona Place, a double storey apartment building located immediately next door. The submitter requests that numbering in the Heritage Review be corrected and the Contributory classification of 10-16 Mona Place be re-assessed.
115. The submitter attached a Heritage Impact Statement (**HIS**) prepared by Bryce Raworth, prepared to support an application for a planning permit, that details the historic numbering issue identified. The HIS identifies that the Building Identification Form (**BIF**) from the Allom Lovell Report on the City of Melbourne Planning Scheme Heritage Review 1999, includes a photo and description of 18 Mona Place, South Yarra under the incorrect address of 16 Mona Place, South Yarra.

Management Response

116. The Management Response, at pages 5-6, provides that Management agrees with GML's assessment that the asserted numbering error in relation to the property has been correctly identified. Accordingly:
- (a) the address should be corrected to 18 Mona Place, which should be retained within the Heritage Review as Contributory to HO6; and
 - (b) 10-16 Mona Place should be re-classified as Non-contributory within HO6.

Permit/Plans/Tribunal decision

117. The Site has a valid planning permit (TP-2020-663) allowing the *Partial demolition and buildings and works to an existing dwelling on a lot greater than 300sqm* issued on 15 December 2021. The permit is set to expire on 15 December 2024. Plans were endorsed by Council on 29 July 2022.
118. There were no Tribunal proceedings related to this permit application.

Evidence of Mr Huntersmith & Ms Schmeder

119. The evidence of Mr Huntersmith at pages 79-82 is that 10-16 Mona Place, South Yarra should be recategorised as a Non-contributory place in HO6.

120. The evidence of Ms Schmeder at pages 123-127 is that the citation for the place should be corrected to refer to 18 Mona Place and that 10-16 Mona Place should be identified as Contributory.

Position of the Council

121. Based on the evidence of Mr Huntersmith, Council recommends 10-16 Mona Place be identified as Non-contributory and that the Amendment documentation be updated to replace the reference to 10-16 Mona Place with 18 Mona Place.

B. 39 & 41 MILLSWYN STREET

122. 39 and 41 Millswyn Street, South Yarra were previously ungraded within HO6.
123. 39 and 41 Millswyn Street are both identified as Contributory to HO6 and are located in Area 2. The Heritage Review concludes 39 and 41 Millswyn Street are Contributory to the South Yarra Precinct (HO6). HO6 is included in the Heritage Overlay for its historical (Criterion A) and aesthetic (Criterion E) significance.
124. The HO6 citation is located within the Heritage Review Volume 4 at pages 556-760.

Submissions 2, 9 & 37

125. Submission 2 asserts the Heritage Review provides insufficient justification for a Contributory classification as both properties were divested of all Victorian attributes with Council approval in 1960 and in 1991 were again altered to incorporate mock Georgian facades. The submission further asserts the front garden wall, fence and gate are all 1990s era and have no heritage significance.
126. Submission 9 objects to the proposed Contributory classification of 39 Millswyn Street on the basis that the original building was not designed by an architect, the building is 'mock Georgian' and the original façade was demolished and replaced in 1960, with further alterations in 1990 and 2010. The submission further notes a pending planning permit application that will partially demolish the building which could alter the proposed heritage classification.
127. Submission 37 objects to the proposed change in categorisation of 41 Millswyn Street from ungraded to Contributory on the basis that the change is not appropriately justified.

Management Response

128. The Management Response, at pages 7-8, 15-16 and 53, states that Management agrees with GML's recommendation that, based upon further research, the loss of Victorian attributes and addition of 1990s mock Georgian facades include the addition of polystyrene (bonded to the masonry) keystones, quoining, rustication, stringcourses and detail to the parapet, replacement to flat roofing of the bay window and resurfaced facades.
129. Management agreed with the GML recommendation that the buildings no longer warrant Contributory classification within HO6 as a result of their lack of integrity, and ought be re-categorised as Non-contributory.

Permit/Plans/Tribunal decision

130. 39 Millswyn Street has a live planning application (TP-2023-136) for *Partial demolition and buildings and works associated with alterations and additions to an existing dwelling*. As the application is live, there are no Tribunal proceedings related to this application.
131. There is no relevant planning permit history related to 41 Millswyn Street.

Evidence of Mr Huntersmith & Ms Schmeder

132. The evidence of Mr Huntersmith at pages 83-86 is that the site at 39 and 41 Millswyn Street should be recategorised as Non-contributory having regard to the work undertaken, including to their façades, and their corresponding lack of integrity.
133. The evidence of Ms Schmeder, at pages 110-111, is that the place does not contribute to HO6 having regard to the extent of alteration, including removal of the two-storey front verandahs and associated wing walls, construction of front parapets to hide the roof forms, replacement of the ground-floor front windows with canted window bays, lowering of the top of the front door and installing a classical entablature above it, replacement of the first floor windows and rendering.

Position of the Council

134. Council agrees that 39 and 41 Millswyn Place should be re-classified as Non-contributory.

C. ST MARTINS YOUTH ARTS CENTRE COMPLEX

135. St Martins Youth Arts Centre Complex is located at 24-32 and 40-46 Martins Lane, 20-36 St Martins Place and 120-122 Millswyn Street, South Yarra. Other than 120-122 Millswyn Street which is currently graded Contributory in HO6, the balance of the properties comprising St Martins Youth Arts Centre Complex are currently ungraded.
136. The place is proposed to be included within the Heritage Overlay as a serial listing as the *St Martins Youth Arts Centre Complex* (HO1417) on the basis of its historical (Criterion A), representative (Criterion D), aesthetic (Criterion E) and associative (Criterion H) significance.
137. The serial listing citation for the complex is located within the Heritage Review Volume 4 at pages 423-457.

Submission 3

138. Submission 3 opposes the heritage classification of the site in relation to the impact upon future development opportunities. The submitter asserts that the proposed categorisation does not allow the flexibility needed for a building with the current theatre use and expresses concern that the proposed heritage category will have a negative impact on the viability of the company operating the site. The submitter further asserts that heritage controls will hinder the opportunity to undertake alterations such as *Disability Discrimination Act 1992 (DDA)* compliance and access upgrades and seeks to work with Council to explore whether the Amendment could be changed to better reflect the heritage value of the place, and allow flexibility to accommodate future works.

Management Response

139. The Management Response, at pages 7-8, provides that Council agrees with the assessment of GML Heritage that:
- (a) the principal consideration in applying the Heritage Overlay is whether the place reaches the threshold for local heritage significance;
 - (b) the impact on individual owners in relation to the future use and development of a property is not relevant in determining the heritage significance of a place;

- (c) while heritage controls would require planning permission for affected places, they do not place restrictions on internal works (unless internal controls are proposed) or on-going maintenance; and
- (d) works to satisfy the DDA and Building Code Australia (BCA) compliance requirements are generally supported for heritage places but should be undertaken with consideration of their heritage values.

140. Accordingly, no changes were recommended to the Amendment in response to the submission received.

Evidence of Mr Huntersmith & Ms Schmeder

141. The evidence of Mr Huntersmith at pages 123-125 provides:

446 *All properties will require ongoing maintenance, whether in the Heritage Overlay or not. Inclusion in the Heritage Overlay does not restrict maintenance from happening but ensures that such work is undertaken with consideration of the heritage values of the place. The introduction of heritage controls does not compel a property owner to maintain the property to a particular standard. As with concerns over the loss of property value and other financial concerns, the ongoing maintenance requirements of a place do not alter the heritage values of that place. They are not relevant when assessing a place for inclusion in the Heritage Overlay.*

447 *While I acknowledge that heritage controls would require planning permission for affected places, they do not place restrictions on internal works (unless internal controls are proposed) or ongoing maintenance. Works to satisfy the Disability Discrimination Act (DDA) and Building Code Australia (BCA) compliance requirements are generally supported for heritage places but would be assessed on a case-by-case basis and should be undertaken with consideration of heritage values.*

448 *Most importantly, St Martins Youth Arts Centre complex is socially significant as an important cultural institution that has a longstanding and continuing presence and influence in Melbourne's theatre industry since 1934. To ensure this significance is retained, its ongoing use as a theatre must be encouraged and supported. Change to the place that fosters this significant use of the place and ensures its viability into the future should be supported.*

142. The evidence of Ms Schmeder at pages 93-94 notes that no questions related to the heritage value of the theatre or wider complex were raised by the submission, however the significance of the theatre building is embodied in part in its use, so good heritage practice would support necessary upgrades to ensure its continued use.

Position of the Council

143. Council submits the identification of the place in a serial listing in the Amendment is appropriate. Separate conservation guidelines or a management plan could be

developed by the owner to support the ongoing use of the site, having regard to its social significance.

D. 172-182 WALSH STREET (MOTSTONE)

- 144. 172-182 Walsh Street, also known as *Motstone*, has not previously been included within the Heritage Overlay.
- 145. Motstone is identified as Significant within the Heritage Review as part of HO6 and is located in Area 5. The Amendment categorises Motstone as Significant to the South Yarra Precinct (HO6). HO6 is included in the Heritage Overlay for its historical (Criterion A) and aesthetic (Criterion E) significance.
- 146. The HO6 citation is located within the Heritage Review Volume 4 at pages 556-760.

Submission 4, 19-23 & 34

- 147. Submissions 4, 19-23 and 34 all relate to Motstone.
- 148. Submission 4 asserts there is insufficient justification for the inclusion of the place within the Heritage Overlay as the building was built in 1974, not 1960 as claimed in the Heritage Review and that the building is of poor integrity and architectural merit and is not worthy of a Significant classification. The submitter further expresses concern that they were not adequately engaged in relation to either the development of the Heritage Review or notification of the Amendment.
- 149. Submission 19 asserts there is insufficient justification for the inclusion of the place as Significant within the Heritage Overlay and expresses concern there are insufficient funds for the property owners/Owners Corporation to maintain the property which is in a current state of disrepair with some areas of the building unsafe. The submission further claims the property is unsightly, the façade is in poor condition, and it fails to complement the streetscape of Walsh Street on the basis that its height and bulk do not align with surrounding buildings. The submission further notes the property has no historic or architectural merit that would warrant the proposed Significant classification.
- 150. Submission 20 includes that the building is not environmentally sustainable which does not align with Council's desire to have more sustainable buildings and proposed Amendment C376 Sustainable Building Design. Submission 20 asserts that there are

insufficient homes for our growing population and the site is therefore an inefficient use of developable land; and that if the building was demolished, a new building could provide improved parking, access and traffic flow outcomes on Walsh Street, and improved pedestrian safety. The submission further asserts that the building is not unique, however, even if it were, it is not sufficiently so to warrant heritage protection. Further, the volcanic rock walls of the building are not unique and are common across Melbourne.

151. Submission 21 asserts the name 'Motstone' shows no cultural relevance; 6-pack building typology has no heritage value according to experts Robin Boyd, Miles Lewis and Townsend and Pert; that the building has reached the end of its life-span and is poorly built; the building exterior has been renovated (especially western facing flats) and some timber windows have been replaced with aluminium; glass curtain walls do not protect from weather or sun and is unsustainable; the Significant classification is not consistent with other properties at 112-120 Walsh Street and 122-126 Walsh Street and will not allow building to be upgraded for disability access, bicycle parking or electric car charging.
152. Submission 22 includes claims that the building has stormwater and flooding issues, and that while there had been interest from developers in the site the proposed Heritage Overlay had caused them to withdraw. Submission 23 also includes that the proposed categorisation would have a negative impact upon development opportunities of the site, dramatically decreasing the value of the building if sold to a developer.
153. In contrast to the other submissions received in relation to Motstone, Submission 34 supports the proposed heritage controls for the site, and comments that the building has an innovative façade, referencing several positive attributes of the building including its stonework decoration and durability, and describing it as an excellent example of durable and affordable housing.

Management Response

154. The Management Response, at pages 9-10, 26-33 and 49 provides that Council agrees with the assessment of GML Heritage that:

- (a) The principal consideration in applying the Heritage Overlay is whether the place reaches the threshold for local heritage significance. The impact on individual owners in relation to the future use and development of a property is not relevant in determining the heritage significance of a place.
- (b) The 1960 date of construction is confirmed by a number of sources. The Melbourne Building Application Index records the application was submitted to Council on 22 September 1959 to erect a block of ‘new flats’ with 14 units on this land. The construction value was £80,000 (MBAI 33619). The Own-Your-Own flats development, named after the residence “Motstone” that formerly occupied the site, was completed by August 1960, when it was first advertised for sale (Age 19 August 1960:19).
- (c) The justification for a proposed category of Significant within HO6 is appropriate.
- (d) During the Review, over 60 examples of flats were identified in the study area with approximately 19 examples from 1957–63. Motstone was one of three examples that were categorised as Significant.
- (e) Motstone is distinguished from the places categorised Contributory with its refined design articulated by the use of full curtain wall, U-shaped plan with a central court, massing of projecting balconies and double-height glazed entry foyer. Motstone has high architectural merit with its refined detailing, intact original built form and roof, minimal alterations to the building (with any changes not visually dominant when viewed from the public domain), original opening patterns, intact original detailing and intact wall and floor surfaces
- (f) The submitters have not provided documentation to suggest that the building has poor integrity. The enclosure of the northeast corner verandah at the rear is noted, however, this alteration is not visible from the front of the building and is not detrimental to the overall integrity and intactness when viewed from the public domain.
- (g) Maintenance requirements are not relevant to establishing whether the building meets the threshold for local significance. Works to satisfy DDA and Building Code Australia (BCA) compliance requirements are generally supported for

heritage places but should be undertaken with consideration of their heritage values. A permit is usually not needed for like-for-like replacements, routine maintenance or internal works (unless stated in Clause 43.01 of the Scheme).

- (h) Whether a place has aesthetic appeal or characteristics can form part of its consideration, but is not a requirement for a place to be assessed as having local heritage significance.
- (i) The overall height and bulk of Motstone is consistent with the assessed character of Area 5 and HO6. Area 5 has a mixed streetscape which is noted in the citation. There are many architect-designed houses and apartment buildings in Area 5 and Motstone is one of the more architecturally refined in the area. Motstone has high architectural merit with its refined detailing, intact original built form and roof, minimal alterations to the building (with any changes not visually dominant when viewed from the public domain), original opening patterns, intact original detailing and intact wall and floor surfaces.
- (j) Heritage protection does not prevent changes to improve the sustainability of a place. Understanding the heritage value and the significant elements of the place would guide the necessary decision making for achieving better design and heritage outcomes when such works are proposed or required. The environmental sustainability of a place is not relevant to establishing whether the building meets the threshold for local heritage significance.
- (k) Whether a place is unique or rare can form part of the consideration but is not a requirement for a place to be assessed as having local heritage significance.
- (l) The effect of the proposed Heritage Overlay on future development outcomes on this site or adjoining sites is not relevant to establishing whether the building meets the threshold for local significance.
- (m) All places in the Review are considered for their individual heritage value and building categories are justified through comparative analysis.
 - (i) 122–126 Walsh Street is a new block of flats built in 2014. The Significant building category formerly assigned to this property related to a single-storey house demolished to make way for the new flat block. The extant

building does not have any heritage value and the Non-contributory category is appropriate.

- (ii) 112–120 Walsh Street is a block of 6 flats with projected balconies, built in 1969. The building demonstrates key characteristics of the ‘six pack’ typology. As is more common amongst later examples, it incorporates stylised features of the Georgian Revival. When compared to other examples from the same period, 112–120 Walsh Street is not as architecturally refined, however it is appropriately categorised as a Contributory place in HO6. 112–120 Walsh Street is not directly comparable to Motstone.

155. The Management Response further noted the Amendment was correctly exhibited in accordance with the requirements of the *Planning & Environment Act 1987*.

156. No changes were recommended to the Amendment in response to the submissions received.

Permit/Plans/Tribunal decision

157. Apartment 14 within Motstone has planning permit TP-2020-342 authorising *Buildings and works associated with the construction of a sunroom over the balcony to the existing dwelling*. The permit was issued and plans were endorsed on 30 October 2020. There were no Tribunal proceedings related to this permit. The permit has been acted upon and the sunroom constructed.

Evidence of Mr Huntersmith & Ms Schmeder

158. The evidence of Mr Huntersmith at pages 29-38 includes that the identification of heritage significance should be determined based on the place’s heritage value, independent of financial or development implications. The heritage controls proposed do not place restrictions on internal works or maintenance and works to satisfy DDA and BCA compliance requirements are generally supported. Further, heritage protection does not prevent changes to improve the sustainability of heritage places.

159. Further:

129 *Built in 1960, Motstone is a highly intact three-storey block of cream brick flats elevated on a pilotis providing car accommodation underneath. It demonstrates key characteristics of*

postwar modernist design including a rectilinear form, flat roof, sheer walls of cream brick and extensive window walls of glass.

...

133 *During the Review, over 60 postwar examples of flats were identified in the study area. Motstone was one of three examples categorised as a Significant place. Architect- designed, it is one of more refined examples in the area, displaying key characteristics of its typology...*

134 *Motstone is distinguished from the places categorised as Contributory places by its refined design articulated by the use of a full curtain wall, U-shaped plan with a central court, massing of projecting balconies and double-height glazed entry foyer.*

135 *Motstone is distinguished from most other examples of postwar flats built in the study area in terms of its architectural refinement; it is better than typical examples such as 174W–176W Toorak Road, 24–34 Arnold Street, 11–21 The Righi and 123–131 Millsnyn Street (all proposed as Contributory places in HO6, see figures below).*

...

139 *Overall, the place has architectural merit as it demonstrates a high degree of intactness and a refined and sophisticated design that incorporates many features of the postwar modernist design ethos. The place retains its original built form and roof, minimal alterations to the building (with any changes not visually dominant when viewed from the public domain), original opening patterns, intact original detailing and intact wall and floor surfaces.*

...

145 *The notion that the façade of the building is ‘unsightly’ is a subjective judgement. In my professional opinion Motstone is an excellent and externally intact example of a postwar modernist block of flats built in 1960. It includes sheer, unadorned walls of cream brick, large expanses of glazing, a flat roof and cantilevered concrete balconies with thin metal balustrades and solid infill panels that project forward, proud of the main building line. While the submitter may not appreciate the postwar modernist architectural style, the flats are an intact example of this style and make an important contribution to the mixed character of the area and understanding of the changing urban landscape seen in much of inner-city Melbourne in the postwar period.*

160. The evidence of Ms Schmeder at pages 15-31 concludes:

- (a) The build-date of 1960 for Motstone as identified in the Heritage Review is correct.
- (b) The existence of another similar block of flats, Domain Heights, in another part of South Yarra does not call in to question the heritage value of Motstone.

- (c) Motstone has very high integrity externally, retaining everything from hard landscaping in the front setbacks to the original front door handle. Any replacement of cladding elements appears to have been with visually identical elements, retaining a high level of external integrity.
- (d) GML Heritage had undertaken a considered and selective approach to the categorisation of postwar flats, with the most basic and altered examples classified Non-contributory.
- (e) Comparative analysis, both within and near the City of Melbourne, provides a very strong basis to categorise Motstone as Significant.
- (f) While post-war heritage has not been valued or protected in the past, State bodies Heritage Victoria and the Heritage Council of Victoria have led the way in this space, and many local councils have followed suit with heritage studies either devoted to post-war heritage or including it in broader gap studies.
- (g) There is no requirement for the architect (Charles J White) to be well-known to judge that a building is a good example of its type, rather it is his design competence, not the name of the architect, that has contributed to the place's significance as an example of International style flats.
- (h) Motstone is important at the local level for its International style design, reflecting the early post-war introduction of the curtain-wall form contrasted against the expressed heavy structure of the brick wing walls between which it is suspended, for its high level of integrity, and the retention of details such as the original entry door hardware and hard landscaping elements.

Evidence of Mr Turnor

161. The evidence of Mr Turnor is that Motstone is not of sufficient historical, architectural or aesthetic significant to warrant inclusion within HO6 as Significant and should be classified Non-contributory, having regard to:

- (a) The fact that the Amendment C258 Statement of Significance for HO6 and the Thematic History: A History of the City of Melbourne's Urban Environment (Context Pty Ltd, for the City of Melbourne 2012) provide limited reference to development in the postwar period and postwar flat development respectively.

- (b) As the Lovell Chen statement was adopted in the relatively recent past, it could reasonably be argued that an appreciation of the historical and aesthetic/architectural value of many postwar buildings has not changed in any meaningful or considerable way.
- (c) The currently proposed Statement of Significance does not make a strong or compelling case for identifying the significance of postwar flats and their contribution to HO6 and the Thematic Environmental History prepared as part of the Amendment is primarily concerned with interwar architect designed flats.
- (d) Postwar flats were not identified as being of significance in the North Melbourne Heritage Review and accordingly a much stronger case would need to be made to explain why they are significant in South Yarra.
- (e) Postwar flat development was intrusive to the valued heritage character of HO6.
- (f) Motstone is not representative of the boom in flat development in Melbourne brought by the introduction of strata title legislation.
- (g) Motstone is not of high architectural merit and is the work of an architect who does not appear to have played an important or influential role in the advancement of modernist design in postwar Melbourne.
- (h) Motstone is not entirely intact to its original form and to suggest it has a ‘full curtain wall’ is inaccurate and suggests architectural sophistication not evident in the design.

162. It is noted that Mr Turnor’s evidence does not address matters of sustainability as raised by submitters in relation to this property.

Position of the Council

163. Council submits the evidence of Mr Turnor should not be accepted as:

- (a) The statement of significance prepared for HO6 pursuant to Amendment C258 was informed by the existing gradings in HO6 which in turn were based on the 1985 Heritage Study. Amendment C258 did not involve any substantive review of the heritage values of buildings and places, but was a grading conversion exercise;

- (b) Nonetheless, there is recognition in the current statement of significance of postwar blocks of flats;
- (c) Walk-up residential flat development in the postwar period is identified in the Heritage Review as the principal form of development;
- (d) There is a much stronger presence and relative importance of postwar flats in South Yarra compared with North Melbourne;
- (e) Mr Turnor's apparent expectation that the building (or its architect) play an "important or influential role in the advancement of modernist design in postwar Melbourne" sets the threshold for local significance inappropriately high;
- (f) Mr Turnor inappropriately downplays the high level of intactness of the building;
- (g) A comparative analysis within South Yarra and surrounding suburbs reveals the greater architectural quality of Motstone than Contributory and Non-contributory postwar flats and its comparable quality to other postwar flats which are categorised as Significant;
- (h) The specific reliance on the Aminya Flats at 29 Coolullah Avenue as a Non-contributory place is irrelevant, in circumstances where the precinct in which it is located is significant for its interwar buildings.

164. Council submits the identification of the place as Significant within HO6 as identified in the Amendment is appropriate. No changes are recommended to the Amendment in response to the submissions received.

E. 158W-166W TOORAK ROAD, SOUTH YARRA

165. 158W-166W Toorak Road, South Yarra, also known as *St Ives*, has not previously been included within the Heritage Overlay.

166. St Ives is identified within the Heritage Review as Contributory to HO6 and is located in Area 4. HO6 is included in the Heritage Overlay for its historical (Criterion A) and aesthetic (Criterion E) significance.

167. The HO6 citation is located within the Heritage Review Volume 4 at pages 556-760.

Submission 5

168. Submission 5 objects to the proposed classification of the site as Contributory as buildings on either side have been identified as Non-contributory and are of the same style and era, and because the heritage classification impacts on private individuals and should be removed.

Management Response

169. The Management Response, at pages 10-11, provides that Council agrees with the assessment of GML Heritage that:
- (a) The buildings on either side of the site are of the same era, being 158W-166W Toorak Road (from 1960) and 12-16 and 18-20 Anderson Street (from 1960s); both are graded Contributory. 168W-172W Toorak Road is of a later era (1982) and is graded Non-contributory.
 - (b) The proposed heritage category of the place is appropriate.
 - (c) This building and the neighbouring Contributory building *Sussex* on the same parcel were designed by prominent architect Mordechai Benshemesh who designed Edgewater Towers (1959-60), renowned as Melbourne's first high-rise apartments. The building was also constructed in 1966. These points should be referenced in amendments to the Review.
 - (d) St Ives represents a new building typology of residential towers that emerged in the key development period of late post-war (late 1960s to early 1970s). These multistorey flats/apartments adopted modernist elements and were characterised by their simplicity of structure and minimal decoration. The earliest high-rise flats in inner-city Melbourne are now gradually gaining heritage recognition.
 - (e) The height of the site distinguishes it from other Contributory examples of the type. It is a good example that displays key elements typical of the post-war flats.
170. Accordingly, the Management Position recommends that the architect and construction date be clarified in the citation. No other changes are proposed.

Evidence of Mr Huntersmith & Ms Schmeder

171. The evidence of Mr Huntersmith at pages 86-90 is that:

308 *St Ives represents the typology of residential towers, a new building type that emerged in the late postwar period (late 1960s to early 1970s), which is an important typology in the City of Melbourne. These multistorey flats/apartments adopted Modernist elements and were characterised by their simplicity of structure and minimal decoration. Built in Melbourne's inner suburbs (ie today's City of Melbourne, City of Port Phillip and City of Stonnington), the heritage value of the earliest high-rise flats is gradually gaining appreciation and recognition. Recent heritage studies and assessments have found that the heritage recognition for the postwar flats of this era is warranted.*

...

311 *The postwar blocks of flats at 158W–166W Toorak Road, South Yarra (Sussex, built in 1960; and St Ives, built in 1966) are good representative examples that display key elements typical of the typology of postwar flats which is important to the historic development of HO6. The height of St Ives further distinguishes it from other contributory examples in the precinct. They are appropriately categorised as a Contributory place.*

172. The evidence of Ms Schmeder at pages 127-128 is that the categorisation of adjoining properties is appropriate and in keeping with the significance of the precinct; the site is externally intact and dates to the postwar period – recognised as a valued period of the precinct; a number of typo errors should be corrected in relation to the place.

Position of the Council

173. The architect and construction date should be clarified in the citation and typographical errors should be corrected. No other changes are proposed.

F. 519-539 & 555-563 ST KILDA ROAD, MELBOURNE

174. 555-563 St Kilda Road, Melbourne is known as the *Royal Institute for the Blind*. 519-539 St Kilda Road, Melbourne is also known as the *former Chevron Hotel*.

175. The Royal Institute for the Blind is proposed to remain individually Significant, *Royal Vic. Institute for the Blind, 555 St Kilda Road, 557 St Kilda Road & Part 23-99 Commercial Road, Melbourne* (HO492). The place is also located on the Victorian Heritage Register. The only change proposed by the Heritage Review is removal of the Significant Streetscape classification.

176. The former Chevron Hotel had not previously been included within the Heritage Overlay. The place is identified within the Heritage Review as individually Significant, and is included in the Amendment as *Former Chevron Hotel* (HO1414) on the basis of its

historical (Criterion A), representative (Criterion D) and aesthetic (Criterion E) significance. The citation for the former Chevron Hotel is located within the Heritage Review Volume 4 at pages 327-350.

Submission 6 & 10

177. Submission 6 objects to the curtilage of the proposed Heritage Overlay in relation to both sites on the basis that both include modern buildings within the curtilage.
178. Submission 10 objects to the proposed curtilage of the former Chevron Hotel.

Management Response

179. The Management Response, at pages 11-12 and 16-17 provides:
 - (a) In relation to the former Chevron Hotel, the proposed curtilage is correct as the majority of the modern apartment block at part of 519-539 St Kilda Road is excluded from the proposed curtilage. A small section of this new development is included in the eastern corner of the proposed HO boundary, however a consistent buffer to the rear of the former hotel building has been created by drawing a straight line in parallel with the southern property boundary. The intention is to protect the three-dimensional views from the north and the northeast and northwest corners (see image). This approach aligns with the guidance provided by PPN01.
 - (b) In relation to the Royal Institute for the Blind, the place is currently located within HO492 and is on the Victorian Heritage Register (VHR H1002). The amendment only proposes to remove the Significant Streetscape that currently applies. On that basis, changes to the curtilage for the extent of the VHR listing was not considered as part of this Review.
180. Accordingly, no changes are recommended to the Amendment in response to the submission received.

Permit/Plans/Tribunal decision

181. This site has an existing planning permit (TP-2022-82) authorising *Buildings and works associated with the construction of a fence*. The permit was issued on 9 January 2023 and

expires 9 January 2025. There are no endorsed plans associated with this planning permit, and no Tribunal proceedings relevant to the permit application.

Evidence of Mr Huntersmith & Ms Schmeder

182. The evidence of Mr Huntersmith at pages 125-128 is that the modern apartment block at part of 519-539 St Kilda Road is excluded from the proposed curtilage of HO1414, though a small section of new development is included in the eastern corner of the HO1414 extent to provide a consistent buffer and enable three-dimensional views of the building.
183. The evidence of Ms Schmeder at pages 90-92 is that the HO polygon is supported as proposed as it will allow the assessment of future planning permits to consider the heritage impacts of new development on the east side of the former Hotel.

Position of the Council

184. The curtilage for the former Chevron Hotel is appropriate. The curtilage for the Royal Institute for the Blind has not been considered as part of the Heritage Review. No changes are recommended in response to the submission.

G. 272 WALSH STREET

185. 272 Walsh Street, South Yarra had not previously been included within the Heritage Overlay.
186. 272 Walsh Street is identified within the Heritage Review as Contributory to HO6 and is located in Area 5. HO6 is included in the Heritage Overlay on the basis of its historical (Criterion A) and aesthetic (Criterion E) significance.
187. The HO6 citation is located within the Heritage Review Volume 4 at pages 556-760.

Submission 7

188. Submission 7 expresses general support for the Amendment and the heritage classification of the Site.

Management Response

189. The Management Response, at page 13, notes receipt of the submission.

Position of the Council

190. No changes are proposed in response to the submission.
- H. 52-54, 56 & 58 PASLEY STREET and 543-547 PUNT ROAD, SOUTH YARRA
191. 52-54 Pasley Street, South Yarra, is currently ungraded within HO6. The Heritage Review identifies the place as Non-contributory to the *Pasley Street & Park Place Precinct* (HO1419).
192. 56 Pasley Street, South Yarra is also currently ungraded within HO6. The Heritage Review identifies the place as Non-contributory to the *Pasley Street & Park Place Precinct* (HO1419).
193. 58 Pasley Street (assumed to refer to the block of flats at 52-54 Pasley Street, South Yarra) is currently ungraded within HO6. The Heritage Review identifies the place as Non-contributory to the *Pasley Street & Park Place Precinct* (HO1419).
194. 543-547 Punt Road, South Yarra is currently identified as Contributory to HO6. The Heritage Review identifies the place as Contributory to the *Pasley Street & Park Place Precinct* (HO1419), therefore the Amendment does not propose a change to the classification of the place within the Heritage Overlay, but rather an alteration to the precinct within which 543 Punt Road is located.
195. The *Pasley Street & Park Place Precinct* (HO1419) is identified as having heritage value on the basis of its historical (Criterion A) and aesthetic (Criterion E) significance. The *Pasley Street & Park Place Precinct* (HO1419) citation is located within the Heritage Review Volume 4 at pages 447-515.

Submission 8

196. Submission objects to the proposed heritage classification of each of the identified sites on the basis that the identified heritage area should be smaller and more targeted and that heritage areas should not include buildings of no heritage significance.

Management Response

197. The Management Response, at pages 13-14, notes Council's agreement with the assessment of GML Heritage that:
- (a) It is a common purpose of heritage overlay precincts to protect largely intact streetscapes that illustrate the early development of the study area. 543–547 Punt

Road is a generally intact c1880 house and is proposed to be retained as a Contributory place within the new proposed precinct.

- (b) The HO1419 precinct boundaries have been purposely drawn to encompass the densest area of intact Victorian to post-war period houses in the area, so that they form the dominant character of a mixed-era precinct.
- (c) It is common practice to include Non-contributory places in a precinct when they form part of an otherwise consistent streetscape that is important to the precinct.

198. Accordingly, no changes are proposed in response to the submission received.

Permit/Plans/Tribunal decision

199. 543-547 Punt Road has Planning Permit TP-2022-73 which authorises *Partial demolition of an existing fence and construction of a fence exceeding 2 metres in the GRZ and HO*. The permit was issued on 10 March 2022 and expires on 10 March 2024. Plans were endorsed on 10 March 2022. There are no Tribunal proceedings related to this planning permit application.

200. 52-54 & 56 Pasley Street have no planning permit history.

Evidence of Mr Huntersmith & Ms Schmeder

201. The evidence of Mr Huntersmith at pages 135-139 is that the boundaries of the precinct have been established to encompass the densest area of intact Victorian to postwar period houses that contribute to the precinct's identified significance. 543-547 Punt Road is a generally intact c1880 house and is proposed to be retained as a Contributory place within the new proposed Pasley Street and Park Place Precinct. It sits in the middle of a row of similar Contributory places which demonstrate the significant values of the precinct. In relation to the inclusion of Non-contributory places in a precinct, it is common practice to include Non-contributory places where they sit mid-way in an otherwise consistent streetscape to allow some level of control to ensure future development does not adversely impact the heritage values of places on either side.

202. The evidence of Ms Schmeder at pages 96-98 is that it is appropriate to include Non-contributory properties within heritage precincts, particularly when they sit within and not at the edges of a precinct so as to allow the consideration of the heritage values of

the larger precinct when works or redevelopment is proposed to the Non-contributory properties. This approach has been supported consistently by planning panels.

Position of the Council

203. No changes are proposed in response to the submission received.

I. 27-31 LEOPOLD STREET, SOUTH YARRA

204. 27-31 Leopold Street, South Yarra is currently identified as ungraded within HO6.

205. 27-31 Leopold Street is identified within the Heritage Review as Contributory to HO6 and is located within Area 2. HO6 is included in the Heritage Overlay on the basis of its historical (Criterion A) and aesthetic (Criterion E) significance.

206. The HO6 citation is located within the Heritage Review Volume 4 at pages 556-760.

Submission 11

207. Submission 11 objected to the proposed heritage classification of the site on the basis that the current owners have plans to demolish the building and the heritage classification would be financially damaging.

208. By email dated 18 October 2023, Submitter 11 advised Council that they wished to withdraw their submission on the basis that they had prepared new development plans which sought to retain the façade of the building.

Permit/Plans/Tribunal decision

209. This site has a live planning permit application (TP-2023-281) seeking planning permission for the demolition of the existing residential building and buildings and works associated with the construction of a new dwelling. As the permit application is live, there are not Tribunal proceedings associated with the application.

Evidence of Mr Huntersmith & Ms Schmeder

210. The evidence of Mr Huntersmith and Ms Schmeder do not address Submission 11 as it has been withdrawn.

Position of the Council

211. Council submits the identification of the property as Contributory to HO6 is appropriate, however it will not be necessary for the Panel to make any recommendation in relation to this property.

J. 15-17 PASLEY STREET, SOUTH YARRA

212. 15-17 Pasley Street, South Yarra is currently identified within the Scheme as ungraded within HO6.

213. The Heritage Review identifies the property as Contributory to the *Pasley Street & Park Place Precinct* (HO1419). HO1419 is identified as being significant on the basis of its historical (Criterion A) and aesthetic (Criterion E) significance.

214. The *Pasley Street & Park Place Precinct* (HO1419) citation is located within the Heritage Review Volume 4 at pages 447-515.

Submission 12

215. Submission 12 objected to the proposed heritage classification of the site on the basis that:

- (a) There is no sound basis for the proposed Contributory category.
- (b) The building is in a state of disrepair and was significantly altered in the 1970s with the construction of a high front fence, substantial alterations to the façade, and the building was bagged and overpainted. Recent changes include the change in roof form, removal of chimney cowl, window replacement.
- (c) The original character has been completely lost due to these extensive changes, and it is presumed this is why it has not been graded in the past.
- (d) The Statement of Significance for the precinct states that 'Post-1961 developments and other extensively altered properties are not significant' which would exclude Contributory classification of site.

Management Response

216. The Management Response, at pages 18-19, provides that Council agrees with the assessment of GML Heritage that the property was categorised Contributory based on its appearance from the public domain, its retention of the overall built form, roof form and single-storey scale, as well as its materiality that is still legible.

217. As the building was altered in the 1970s, the overall impact of the changes diminishes the place's integrity, and it should be re-categorised as a Non-contributory place.

Permit/Plans/Tribunal decision

218. This site has an existing planning permit (TP-2022-657) allowing *Demolition of the existing dwelling and building and works associated with construction of a new dwelling including fence in the Heritage Overlay and Design and Development Overlay*. This permit was granted on 30 May 2023 and expires on 30 May 2025. Plans are yet to be endorsed. There are no Tribunal decisions associated with this planning permit application.

Evidence of Mr Huntersmith & Ms Schmeder

219. The evidence of Mr Huntersmith at pages 139-141 is that:

504 *The 1970s changes clarified in the submission include the removal of some chimneys, introduction of the front fence, removal of a brick porch and addition of a projecting wing, changes to the fenestration and replacement of timber windows, and bagged and overpainted face brickwork. While some of these changes are reversible, and are not unusual for contributory places (ie removal of some chimneys, replacement windows, changes to some openings and overpainting), the overall impact of the compounded alterations diminishes the place's integrity.*

505 *Therefore, it is agreed that the place should be recategorised as a non-contributory place in HO6.*

220. The evidence of Ms Schmeder at pages 94-96 is that while the roof form and right-hand chimneys survive, the front façade has been 'gutted' and the front porch built in. Ms Schmeder further notes that if the house survived in a row of identical or similar houses by a single builder, its contribution to the precinct as part of that grouping may have survived, however the house is too altered to make a meaningful contribution on its own and should be recognised as Non-contributory.

Position of the Council

221. 15-17 Pasley Street should be re-categorised as Non-contributory within HO1419.

K. 92-96 MILLSWYN STREET, SOUTH YARRA

222. 92-96 Millswyn Street, South Yarra (listed as 92-96 Millswyn Street) is currently identified within the Scheme as ungraded within the HO6.

223. The site is identified within the Heritage Review as Contributory to HO6 and is located in Area 2. HO6 is included in the Heritage Overlay on the basis of its historical (Criterion A) and aesthetic (Criterion E) significance.
224. The HO6 citation is located within the Heritage Review Volume 4 at pages 556-760.

Submission 13

225. Submission 13 objects to the proposed Contributory classification of the site, refers to independent advice that the site should not be categorised Contributory, and indicates that further advice has been sought and will be provided to Council.

Management Response

226. The Management Response, at page 19, notes Council's agreement with GML Heritage that the proposed categorisation is appropriate as the building is highly intact to its original design by architect and builder Keith H Storey, with few changes obvious when viewed from the public realm. The original architectural plan evidences the building's high level of integrity and intactness. Further, the place retains key characteristics that relate to interwar and wartime flats.

Evidence of Mr Huntersmith & Ms Schmeder

227. The evidence of Mr Huntersmith at pages 90-92 is:

320 *92–96 Millsmyrn Street retains key characteristics that relate to its wartime build date. It reflects an austerity in its design which was a result of material and labour shortages at the time. The original architectural plan evidences that the building retains a high level of integrity and intactness.*

...

322 *Overall, the building is a highly intact representative example of an interwar/wartime block of flats that contribute to the precinct's urban character. It is appropriately categorised as a Contributory place.*

228. The evidence of Ms Schmeder at pages 112-114 notes no heritage advice was provided to Council as part of the submission. The citation notes the site is a Moderne-influenced block of flats as is evident in the horizontal glazing bars to the windows and simple solid balcony balustrades. Ms Schmeder concludes the site is a highly externally intact example of interwar flats and is appropriately classified Contributory.

Position of the Council

229. No change is proposed to the Amendment in response to the submission.

L. 79 HOPE STREET, SOUTH YARRA

230. 79 Hope Street, South Yarra is currently identified as Contributory to HO6.

231. The site remains identified within the Heritage Review as Contributory to HO6 and is located within Area 2. Therefore, no change is proposed to the classification of the site by the Amendment. Rather, the Amendment proposes to include the site within a Significant Streetscape.

232. The HO6 citation is located within the Heritage Review Volume 4 at pages 556-760.

Submission 14

233. Submission 14 objects to the proposed Significant Streetscape classification on the basis that independent advice had been received to the effect that Hope Street should not be a Significant Streetscape. The submission further notes that additional heritage advice had been sought and would be provided to Council.

Management Response

234. The Management Response, at page 20, noted that Council's agreement with GML Heritage that Hope Street should be categorised as a Significant Streetscape as it retains a highly consistent group of Victorian cottages; the importance of the collection of Victorian housing stock is noted in the Statement of Significance; and Hope Street is notable for its retention of early streetscape and therefore satisfies the definition of a "significant" streetscape provided in the *Heritage Places Inventory*.

Evidence of Mr Huntersmith & Ms Schmeder

235. The evidence of Mr Huntersmith at pages 93-94 is that Hope Street is notable for its retention of its early streetscape and satisfies the definition of a Significant Streetscape as it retains a highly consistent group of Victorian cottages, the importance of which is noted in the Statement of Significance.

236. The evidence of Ms Schmeder at pages 107-109 includes:

418. *I agree that the streetscape is "well preserved" in its overall integrity, which is almost solely Victorian workers' cottages, plus a few Edwardian cottages. The section defined as a Significant Streetscape also has a high overall intactness, with a very high proportion of Contributory places and few Non-contributory properties (four on this part of Hope*

Street). All but one of the Contributory places (No. 35-37) is Victorian or Edwardian...

419. *The intactness and integrity of some of the individual cottages, however, especially at the north end, is only moderate, with enlargement of many windows. Throughout the streetscape nearly every (brick) house has been overpainted or over-rendered, and there are many high and solid front fences. That said, there is very little visual intrusion from large rear additions, preserving the consistent single-storey built form.*

420. *On this basis, I consider the Significant Streetscape designation reasonable for consistency of built form, though with only a moderate level of building intactness and design quality.*

Position of the Council

237. Council acknowledges Significant Streetscapes are unusual, if not unique to the Melbourne Scheme, and in South Yarra date from the 1985 Heritage Study.

238. Significant Streetscapes have implications for the ongoing management of heritage places as they are viewed from the street by virtue of the policy in Clause 15.03-1L which seeks that the valued heritage character of streetscapes be retained and conserved by, inter alia:

- (a) concealment of additions in Significant Streetscapes for Significant and Contributory buildings; and
- (b) that the higher rear parts of a new building be concealed in a Significant Streetscape.

239. Council notes the purpose of protecting Significant Streetscapes applies equally to the preservation of consistent streetscapes of modest dwellings (such as in Hope Street) as well as consistent streetscapes of grand dwellings (such as those in Park Street). On this basis, Council considers the identification of the place within a Significant Streetscape is appropriate.

240. No change is proposed to the Amendment in response to the submission.

M. 8-22 CLOWES STREET, SOUTH YARRA

241. 8-22 Clowes Street, South Yarra is currently identified as individually Significant within the Scheme as Significant within HO6.

242. The Heritage Review identifies the site as Significant within HO6. The site is located within Area 5. Accordingly, the Amendment does not propose to alter the classification of the place as Significant within the Heritage Overlay.

243. The HO6 citation is located within the Heritage Review Volume 4 at pages 556-760.

Submission 15

244. Submission 15 objects to the proposed heritage classification of the site on the basis that independent advice has been received to the effect that the site should not be classified Significant. The submission further notes that additional heritage advice has been sought and will be provided to Council.

Management Response

245. The Management Response, at page 21, Council agrees with GML Heritage that the place is appropriately categorised as Significant as a single-storey clinker brick building with tiled hip and gable roof articulated in the Old English style. It is a sophisticated example of the type and is already classified Significant in the Scheme.

Evidence of Mr Huntersmith & Ms Schmeder

246. The evidence of Mr Huntersmith at pages 95-97 notes no evidence has been provided to Council as part of Submission 15. Mr Huntersmith's evidence concludes:

341 *8–22 Clowes Street is a fine representative example of this typology. It is a clinker brick attic residence with a steeply pitched tiled hip roof with a dominant street facing projecting gable above a recessed porch. The house is finely detailed with prominent rubble stone chimneys, timber strap work to the gable ends with decorative brick infills, diamond patterned leadlight windows and rubble stone gate pillars.*

342 *At the time of initial assessment, 8–22 Clowes Street was highly intact and met the requirements of the definition as a Significant heritage place. However, non-compliant building works have resulted in the demolition of both chimneys above roof height, the loss of the timber strapwork to its gable end, including the decorative brick infill panels, and the replacement of the diamond-patterned leadlight to the attic window. This work has impacted the intactness and integrity of the place. The City of Melbourne has been in correspondence with the owners of the property who have agreed to reconstruct the chimneys and reinstate the gable end details. If this is done to the satisfaction of a suitably qualified heritage expert, the current building category remains appropriate. If the works are not undertaken, the building should be categorised as Contributory.*

247. The evidence of Ms Schmeder at pages 128-132 also notes that no heritage advice was provided with the submission. Ms Schmeder notes that despite the site's long term protection within the Heritage Overlay, a series of negative external alterations have been made to the site, such that Council's Planning Enforcement Officer has been in contact with the owner of the site who have agreed to reinstate heritage fabric that was

inappropriately demolished or obscured. On the basis that the unauthorised changes will be reversed, Ms Schmeder supports the retention of the Significant classification of the site.

Position of the Council

248. By email correspondence dated 7 September 2023 in response to a Breach Notice issued by Council on 19 July 2023, the representative for the owner of 8-22 Clowes Street advised that their client would reinstate the chimneys on the site to their previous condition, reinstate the façade below the attic windows to its previous condition and apply for a planning permit for demolition of the previous fence and construction of a timber paling fence (which would include alterations to the fence to achieve a more sympathetic design). On the basis of that commitment, the representative requested that Council not initiate enforcement proceedings, prosecution, fine or action in relation to the breaches, reiterating that their client had acted swiftly and wished to rectify the situation.
249. Council responded by email on 13 September 2023, advising of a timeline by which reinstatement works must be submitted to Council and a planning application made in relation to the fence. Council further referenced an additional identified breach relating to the removal of leadlight glazing in the attic windows, and advising that the additional breach was also required to be rectified to Council's satisfaction.
250. On the basis that the landowner has acknowledged and committed to rectifying the breaches and reinstating heritage detail removed without planning permission, Council submits that the proposed classification of the place as Significant is appropriate.
251. No change is proposed to the Amendment in response to the submission.
- N. 485-491 ST KILDA ROAD, SOUTH YARRA
252. 485-491 St Kilda Road, South Yarra, also known as *Sheridan Close*, has not previously been included within the Heritage Overlay.
253. The Heritage Review identifies the place as Significant as an individual heritage place on the basis of its historical (Criterion A), representative (Criterion D), aesthetic (Criterion E) and associative (Criterion H) significance.

254. The individual place citation for the site is located within the Heritage Review, Volume 4 at pages 303-326.

Submission 16 & 24

255. Submission 16 objects to the proposed classification of the site having regard to perceived impact upon development opportunities. The submitter further asserts the proposed Statement of Significance overstates the heritage value of the place having regard to its social value; the building as a whole being an exemplar of Bernard Evans; the landscaped setting; and the heritage value of the east, north and south wings. The submitter asserts that if the Heritage Overlay is to be applied it should be limited to the west wing.
256. Submission 24 includes that the proposed Heritage Overlay will have a negative impact on development opportunities, noting the introduction of HO1413 has the potential to significantly undermine the Scheme's directions which encourage and direct intensive redevelopment on sites such as Sheridan Close. The submission further notes the heritage assessment does not provide a balanced appraisal of the significance of the place on the basis that Criterion E is not relevant to the building, except the front façade to St Kilda Road; the heritage value of the internal courtyard and garden setting as assessed in the Statement of Significance is not justified; comparable places in the Review are not relevant; the Statement of Significance is silent as to how Criterion D 'representativeness' has been satisfied; and the relevance of Criterion A and H are not sufficient to warrant individual listing under HO1413.

Management Response

257. The Management Response, at pages 22-23 and 33-34, provides that Council agrees with the assessment of GML Heritage that:
- (a) The principal consideration in applying the Heritage Overlay is whether the place reaches the threshold for local heritage significance. The impact on individual owners in relation to the future use and development of a property is not relevant in determining the heritage significance of a place.
 - (b) In comparison to other residential flats designed by prominent architect Sir Bernard Evans (such as Greyfriars, St Kilda; and Brookwood Flats,

Melbourne), Sheridan Close is an outstanding example of a block of flats with greater open space allocation represented by the central, plaza-like courtyard, which is the focus of the layout of the development.

- (c) The overall design intent articulated through the provision of splayed side wings (north and south), stair wells (east and west) and the landscape setting have been considered. The place's significance does not lie just in its primary elevation, but its refined combination of elements and detailing associated several architectural design styles, as well as in the raising of the north and south sections of the building on pillars to create undercroft car parking areas. The importance of the garden setting is noted in GML's assessment, but it is not relied upon to justify the significance of the place
- (d) The curtilage should not be confined to the west-wing only. The overall layout, juxtaposition and open courtyard are integral to the significance of the place. All of the land including the setbacks at the front and side (which was designated for provision of light and views to each unit) should be retained within the proposed curtilage, which aligns with the guidance provided by PPN01.
- (e) Sheridan Close is assessed to be of local historical, representative, aesthetic and associative significance to the City of Melbourne. Sheridan Close has not been assessed as being of social significance.
- (f) The assessment of aesthetic significance notes the hybridisation of stylistic elements and the layout of the place including side wings and courtyard to justify the application of the criterion.
- (g) The comparative analysis looks at other post-war flat developments in the City of Melbourne as well as Heritage Overlay listed examples designed by Sir Bernard Evans outside the municipality to ensure the assessment is robust as there are not directly comparable examples within the study area or municipality.
- (h) As an early example of an Own-Your-Own (OYO) flat complex in Melbourne (which was a forerunner to strata-title legislation introduced in 1967), Sheridan Close pioneered a new typology of luxury, purpose-built, high-density living.

Therefore, Sheridan Close is believed to have a clear association with a period of development, and the period of development is historically important, having made an influential contribution to Victoria. As an outstanding work of Bernard Evans & Associates, the place has a proven and strong association with the firm.

Permit/Plans/Tribunal decision

258. Sheridan Close has an existing planning permit (TP-2020-732) authorising *Construction of buildings and works associated with new fences*. The permit was granted and plans were endorsed on 14 December 2020. The development is complete.

259. There are no relevant Tribunal decisions related to this planning permit application.

Evidence of Mr Huntersmith & Ms Schmeder

260. The evidence of Mr Huntersmith at pages 68-77 is that:

- (a) Sheridan Close is an outstanding example of its type;
- (b) the significance of the place is not derived solely from its primary elevation, but also in its refined combination of elements and detailing, and it is incorrect that the assessment of aesthetic significance relies only on the qualities of the front façade;
- (c) the courtyard contributes to the significance of the place as an integral part of the original design intent;
- (d) reducing the curtilage to just capture the west wing is contrary to Burra Charter principles and the recommendations of PPN01;
- (e) the comparative analysis is appropriate and in accordance with PPN01;
- (f) minor changes to the Statement of Significance should be made: under *assessment against the criteria* in the citation, Criterion D has been inadvertently ticked and should be un-ticked; remove the 'stepping stones' from the list of contributory elements under 'What is significant?'; remove '*It pioneered a new typology of luxury, purpose-built, high-density living*' from the Criterion A statement; replace '*Sir Bernard Evans who was a key proponent*' to '*Sir Bernard Evans who was an exponent*' from the

Criterion H statement and remove representative significance from the ‘*How is it significant?*’ statement.

261. The evidence of Ms Schmeder at pages 74-82 at [299] is that:

- *Sheridan Close has been previously identified by a number of authoritative sources as an important building in Melbourne. Its individual significance has been confirmed by the GML Heritage citation, including the comparative analysis that demonstrates its unusual and accomplished design approach.*
- *Sheridan Close is of historical significance as it is both an early example of the OYO Flats phenomenon and the largest of them at the time.*
- *Representative significance has not been demonstrated, and should be removed from the statement of significance.*
- *Sheridan Close has been designed in the round, with articulation to all four facades, particularly the curved front façade and the serrated north and south side elevation, and thus the entire building is of aesthetic significance at the local level.*
- *The retention of the original hard landscaping in the courtyard contributes to the significance of this place.*
- *As architect Bernard Evans is particularly recognised for his contribution to the development of the OYO Flats typology (and its later strata title incarnation), and Sheridan Close is a key example of this type, the place is of associative significance as well.*
- *As there is significant physical fabric across the entire cadastral block at 485-489 St Kilda Road, it is appropriate for the entire property to be covered by the Heritage Overlay.*

262. Ms Schmeder recommends two minor corrections to the Statement of Significance relating to the address of the site, and removal of the incorrect reference to representative significance.

Position of the Council

263. Council considers the place has been appropriately identified as Significant as an individual heritage place on the basis of its historical, aesthetic and associative significance and does not consider any proposed reduction to the curtilage of the place should be supported. Further, Council notes the *Survey of Post-War Built Heritage in Victoria: Stage 1* (October 2008) completed by Heritage Alliance, in which the place was identified as being a place of potential State significance as ‘*One of the first large blocks of strata-titled flats to be built in Melbourne, designed by the prolific architect (and one-time Lord Mayor)*

*who largely introduced the typology into Victoria. Described by Philip Goad as “a rare survivor from the single-family house period”.*³²

264. Council accepts all changes recommended by Mr Huntersmith and typographical errors identified by Ms Schmeder.

O. 64 PARK STREET, SOUTH YARRA

265. 64 Park Street, South Yarra, also known as *Cromdale*, is currently ungraded within HO6.

266. The Heritage Review identifies the property as Contributory to HO6 and locates it within Area 2 and within a Significant Streetscape. HO6 is included in the Heritage Overlay for its historical (Criterion A) and aesthetic (Criterion E) significance.

267. The HO6 citation is located within the Heritage Review Volume 4 at pages 556-760.

Submission 17 & 18

268. Submission 17 and 18 both object to the proposed heritage classification of the site and the proposed streetscape categorisation on the basis that independent heritage advice has been received to the effect that the site should not be classified Significant. The submissions further note that additional heritage advice has been sought.

Management Response

269. The Management Response, at pages 23-26, notes Council agrees with GML Heritage’s assessment that the place is appropriately identified as Contributory as:

- (a) It was designed by architect HV Frew in 1933 as an elevated two-storey (above garages) interwar duplex with refined detailing to the façade still extant despite some changes, including overpainting. The place retains key characteristics that relate to the type of interwar multi-unit dwelling.
- (b) Park Street should remain a Significant Streetscape as within HO6, Park Street is notable for its high-quality building stock and high degree of Significant and Contributory buildings; the east side of the street comprises a consistent group of Victorian period buildings, with more mixed layer development represented

³² *Survey of Post-War Built Heritage in Victoria: Stage 1, Volume 1: Contextual Overview, Methodology, Lists & Appendices*, pages 50 & 104.

on the west side; and the consistent built form and scale, and quality of the examples are important streetscape elements.

Evidence of Mr Huntersmith & Ms Schmeder

270. The evidence of Mr Huntersmith at pages 98-101 notes that no heritage advice was provided with the submission to Council. Mr Huntersmith's evidence concludes the place is appropriately categorised as Contributory as it retains key characteristics that relate to the type of interwar multi-unit dwelling designed in the interwar Old English Revival style. Further the building retains a high level of integrity and intactness and the proposed Significant Streetscape classification is appropriate.
271. The evidence of Ms Schmeder at pages 114-116 also notes that no heritage advice was provided with the submission to Council. Ms Schmeder concludes the site sit within the valued period of the precinct and is sufficiently intact to contribute to the precinct. Ms Schmeder considers the streetscape meets the definition of Significant Streetscape.

Position of the Council

272. No change is proposed to the Amendment in response to the submission.

P. LEOPOLD STREET, SOUTH YARRA

273. The Heritage Review identifies properties within Leopold Street as Contributory to, or Significant within HO6. They are included in Area 2. HO6 is included in the Heritage Overlay for its historical (Criterion A) and aesthetic (Criterion E) significance.
274. The HO6 citation is located within the Heritage Review Volume 4 at pages 556-760.

Submission 26

275. Submission 26 expressed general support for the Heritage Review, provided detailed information about the history and heritage of Leopold Street, and asserted that the heritage categorisation of properties should be reviewed in light of the recommendations of the *South Yarra Heritage Review Proposed Heritage Overlay Precincts and Statements of Significance prepared for the Melbourne South Yarra Residents' Group*, Nigel Lewis Architect Pty Ltd, 11 December 2020.
276. The submission further requested the application of a Significant Streetscape classification to 76 to 129 Leopold Street, South Yarra; a category change to Significant

for places at 84, 86, 88, 90, 92, 94, 96, 98, 100, 102 and 33, 35, 93, 121, 123, 127-129 Leopold Street, South Yarra.

277. The submission also expressed concern that Leopold Street was assessed differently to St Leonards Court and Hope Street regarding the conversion from the former 'letter' gradings, which has resulted in inconsistent categorisation of buildings and streetscapes.

Management Response

278. The Management Response, at pages 38-39, records Council's agreement with GML that:

- (a) all places identified within the Nigel Lewis report have been reassessed for their response to submissions, and GML have made recommendations accordingly;
- (b) the category of Significant Streetscape can be additionally applied to 80, 82, 84, 86, 88, 90, 92, 94, 96, 98, 100, 102, 104-106, 108-110 and 81, 83, 85, 87, 89, 91, 93-95, 97, 99, 101, 103, 105, 107, 109- 111, 113, 115, 117, 119, 121, 123 and 127-129 Leopold Street, including five pairs of terraces which is the largest group in HO6, and is comparable to Hope Street which has also been recommended for a Significant Streetscape in terms of intactness and consistency of the built form and age of the buildings;
- (c) the gradings translation process was completed through Amendment C258, and there was no reassessment of places as part of that amendment; and
- (d) the purpose of the Heritage Review was to undertake an updated and comprehensive review of all places and streetscapes within the study area for heritage significance.

Evidence of Mr Huntersmith & Ms Schmeder

279. The evidence of Mr Huntersmith at pages 152-154 agrees that 80-110 and 81-129 Leopold Street should be recategorised as a Significant Streetscape.
280. The evidence of Ms Schmeder at pages 141-143 is that it is appropriate for the north end of Leopold Street to be categorised a Significant Streetscape due to its collection of two-storey Victorian terraces.

Position of the Council

281. Council submits the category of Significant Streetscape should be applied to 80, 82, 84, 86, 88, 90, 92, 94, 96, 98, 100, 102, 104-106, 108-110 and 81, 83, 85, 87, 89, 91, 93-95, 97, 99, 101, 103, 105, 107, 109- 111, 113, 115, 117, 119, 121, 123 and 127-129 Leopold Street.

Q. 20-22 FAIRLIE COURT, SOUTH YARRA

282. 20-22 Fairlie Court, South Yarra is currently included within the Heritage Overlay as Contributory to HO6.
283. The Heritage Review identifies the property as Significant within HO6. The property is located in Area 5. HO6 is included in the Heritage Overlay for its historical (Criterion A) and aesthetic (Criterion E) significance.
284. The HO6 citation is located within the Heritage Review Volume 4 at pages 556-760.

Submission 27

285. Submission 27 asserts the Heritage Review provides insufficient justification to extend HO6 to the sliver of land at the rear of 20 Fairlie Court and no heritage advice supports this change. The submission further expresses concern that the site-specific Heritage Overlay for Melbourne Girls Grammar School (HO1401) will impose on the road that has right of way access to Walsh Street from 20 Fairlie Court, stating that this road reserve should not be included in the Heritage Overlay as it must be retained to provide access to 20 Fairlie Court.
286. The submission then claims that the dwellings do not meet the definition of a Significant heritage place, and are better classified as Contributory, as they are not individually important in their own right and do not make an important contribution to HO6. The submissions refers to substantial external alterations and numerous homes by the architect Marcus Martin in the area, and asserts that the buildings do not display a style that has a special association with the life or works of Marcus Martin.

Management Response

287. The Management Response, at pages 39-41, provides that Council agrees with GML Heritage that:

- (a) The entire parcel of land should be included in the curtilage of the Heritage Overlay, consistent with the guidance provided by PPN01.
- (b) In response to the assertion that the site-specific Heritage Overlay for Melbourne Girls Grammar (HO1401) would impose on a right of way access road from Walsh Street to 20 Fairlie Court and this road should be excluded from HO1401: this is not a formed road or access way and the curtilage of the school included is appropriate; the curtilage covers the property at 62-108 Anderson Road except for the residential buildings fronting Walsh Street which are proposed to be part of HO6; and it is not unusual to include private driveways or road reserves in a Heritage Overlay, which does not prohibit the use of the road reserve.
- (c) With regard to the proposed Significant classification, the building appears extremely externally intact with no documentation provided to substantiate the assertion the place has been extensively altered. Further, layers of change do not always diminish the significance of a place, as the specific layers themselves may represent important phases or patterns of development.
- (d) The mixed era development and involvement of prominent architects, as evidenced by 20-22 Fairlie Court, is one of the defining features of the heritage character of HO6.

Evidence of Mr Huntersmith & Ms Schmeder

288. The evidence of Mr Huntersmith at pages 101-107 is that it is typical to assign a single building category to the entire property including the building and the surrounding land, per the guidance provided by PPN01. He says the sliver of land not currently included in HO6 is included within the fenced boundary of 20 Fairlie Court and is on title, therefore it seems logical and uncomplicated to utilise this existing boundary for the demarcation of the Significant place. While the road reserve to the north of 20 Fairlie Court would be included in the proposed HO1401, it is not unusual to include private driveways or road reserves in the Heritage Overlay. The place is a highly intact example of an architecturally refined interwar Georgian revival duplex designed by a prominent architect and is appropriately categorised Significant.

289. The evidence of Ms Schmeder at pages 132-139 is that as the sliver of land was not an original part of the place, it does not have heritage value in relation to 20 Fairlie Court, however it would be very unusual to leave small parts of a property or defunct roadway out of the Heritage Overlay, thereby creating a hole in the extent of HO6. It is also her opinion that the maisonettes are of sufficient intactness to be appropriately categorised Significant, as an unusual and accomplished design which compares well with others of the era in South Yarra.

Position of the Council

290. No change is proposed in response to the submission received.

R. 23-25 ST LEONARDS COURT, SOUTH YARRA

291. 23-25 St Leonards Court, South Yarra, known as *St Leonards* is currently included within the Heritage Overlay as Contributory to HO6.

292. The Heritage Review identifies the property as Significant within HO6. The property is located within Area 5, and within a Significant Streetscape. HO6 is included in the Heritage Overlay for its historical (Criterion A) and aesthetic (Criterion E) significance.

293. The HO6 citation is located within the Heritage Review Volume 4 at pages 556-760.

Submission 28

294. Submission 28 asserts the proposed grading change for the site is incorrect according to expert heritage advice received, and that the place should properly retain its Contributory classification. In relation to the identification of a Significant Streetscape, the submission claims the streetscape is of a lower architectural standard and is less intact than other streetscapes in South Yarra.

295. The submission further considers another independent Heritage Study should be undertaken by experts with local knowledge.

296. More generally, the submission asserts the application of a Contributory categorisation to almost 100 properties and Significant to several properties is incorrect and does not meet Council's definitional criteria. The submission also claims the application of heritage controls in HO6 is in conflict with other policy in the Scheme, including the purpose of the General Residential Zone which is to encourage a diversity of housing

types and housing growth which negatively impacts housing affordability; the existing heritage policy which is too restrictive to enable adaptive reuse; and Amendment C376melb Sustainable Building Design as poorly built places are proposed for protection.

Management Response

297. The Management Response at pages 41-43 provides that St Leonards has been evaluated as a pivotal example in the small interwar subdivision (1937) situated in St Leonards Court. St Leonards Court survives as a highly intact streetscape with many of its buildings showing influences of the interwar Georgian Revival style and St Leonards is notable as one of the best examples in the immediate surroundings.
298. In response to the assertion that the recommendations of the Heritage Review do not align with previous work that has been done in the area, the concept of heritage evolves over time, and it is reasonable to undertake heritage reviews to identify and protect new places and areas of heritage significance.
299. The high proportion of heritage places in South Yarra reflects that South Yarra is an area with a prevalence of heritage places and strong heritage character, reflected in the HO6 South Yarra Precinct. The proportion of properties protected in the Scheme is not part of the consideration when assessing places for heritage significance and the application of a heritage building category to many of the properties in a precinct does not devalue heritage.
300. The effect of the proposed Heritage Overlay on provisions encouraging growth is not relevant to establishing whether the building meets the threshold for local significance.
301. Accordingly, no changes were recommended to the Amendment in response to the submission received.

Permit/Plans/Tribunal decision

302. A planning permit TP-2023-366 allowing approval for *Partial demolition, building and works for alterations and additions to the existing building for the purpose of a single dwelling, including a new front fence* issued on 31 October 2023. The permit will expire on 21 October 2025. Plans are yet to be endorsed.

303. There is an historic Tribunal proceeding related to this site. In *Hamersfeld v Melbourne CC* [2008] VCAT 628 (10 April 2008), the Tribunal directed that a planning permit be issued in relation to TP-2007-465 authorising *Part demolition and construction of alterations and additions to the existing building comprising dwelling flats in accordance with the endorsed plans*. The application to the Tribunal was made on behalf of objectors seeking review of Council's decision to issue a Notice of Decision to Grant a Permit. The 2008 permit was not acted upon.

Evidence of Mr Huntersmith & Ms Schmeder

304. The evidence of Mr Huntersmith at pages 108-111 is that:

- (a) Heritage protection does not prevent works to a heritage building, including changes to improve sustainability.
- (b) Private financial implications or concerns are not relevant to the application of the Heritage Overlay.
- (c) An analysis of the proportion of properties protected by the Heritage Overlay did not form part of GML Heritage's consideration when assessing significance.
- (d) St Leonards Court survives as a highly intact streetscape with many buildings showing influences of the interwar Georgian Revival style. St Leonards is notable as one of the best examples in this immediate surrounding.

305. The evidence of Ms Schmeder at pages 139-141 notes that no heritage advice was provided with the submission. Ms Schmeder's evidence is that the architectural quality, high level of intactness and fine detailing make the Significant categorisation of the site appropriate and St Leonards Court is appropriately identified as a Significant Streetscape.

Position of the Council

306. No changes were recommended to the Amendment in response to the submission received.

S. 221-223 DOMAIN ROAD, SOUTH YARRA

307. 221-223 Domain Road, South Yarra is currently included within the Heritage Overlay as Contributory to HO6.

308. The Heritage Review identifies the property as Significant within HO6. The property is located in Area 3. HO6 is included in the Heritage Overlay for its historical (Criterion A) and aesthetic (Criterion E) significance.
309. The HO6 citation is located within the Heritage Review Volume 4 at pages 556-760.

Submission 29

310. Submission 29 asserts that the current Contributory grading coupled with the heritage policy will ensure appropriate heritage outcomes and that the proposed reclassification to Significant does not balance other planning objectives and does not reasonably consider the needs of residents, with specific concern expressed that the change will not allow the flexibility to bring the building up to 'modern standards' and continue to meet the needs of the owner.
311. The submission notes the site is not visible from Domain Road due to the solid high fence.
312. The submitter further advised that further heritage advice will be provided to support the submission.

Management Response

313. The Management Response at pages 43-45 notes Council support for the views of GML Heritage that:
- (a) The building has high historical and architectural importance.
 - (b) The effect of the proposed Heritage Overlay on provisions encouraging growth is not relevant to establishing whether the building meets the threshold for local significance. Further, a significant categorisation does not prevent a place from being adapted to suit modern needs or uses. There are no interior controls applied to the property, so internal works do not require a planning permit. In cases where a planning permit application would be required for external works, a Significant grading guides the responsible authority in its assessment, ensuring that any changes respect the significant heritage elements of the place whilst allowing it to be adapted for modern uses.

- (c) Upon further research into the property undertaken in response to this submission, it is recommended that the Area 3 description in the citation for HO6 be amended to note the contribution of architect R B Hamilton to the alterations to the building in 1935.

Permit/Plans/Tribunal decision

314. The site has an existing planning permit (TP-2022-557) authorising *Partial demolition, external alterations, external painting and extension of a dwelling in a Heritage Overlay and Design and Development Overlay*. The permit was directed to issue pursuant to a consent order of the Tribunal dated 26 April 2023. The permit issued on 1 May 2023 and expires on 1 May 2025. Plans were endorsed on 11 May 2023 and works have commenced pursuant to the permit. Further amended plans were endorsed under secondary consent on 18 October 2023.

Evidence of Mr Huntersmith & Ms Schmeder

315. The evidence of Mr Huntersmith at pages 56-60 includes that the house remains largely intact and legible to its original form, including in relation to distinguishing design features as an early Arts and Crafts residence. The Heritage Impact Statement prepared in relation to TP-2022-557 notes the proposed works will have limited impact on the significance of the place, with the primary roof form retained to a depth of 8-10 metres. Further, limited visibility of a place does not typically prevent its inclusion in the Heritage Overlay, though the house is not entirely concealed from the public domain. Architect RB Hamilton supervised minor alterations to the place in 1935, which should be included in the citation.
316. The evidence of Ms Schmeder at pages 59-64 is that: the claim in the submission that the fence is original is incorrect; the house is visibly above the 1983 fence, particularly in winter when trees in the front setback have lost their foliage; the house currently has a good level of intactness to its interwar appearance, and likely its 1908 appearance when viewed from Domain Road; as the conversion of interwar flats is recognised as a historically important theme within the HO6 precinct this does not detract from heritage value; current works will retain the main volume of the house without external changes, with the approved addition not visible; and the classification of the place as Significant is appropriate.

Evidence of Mr Helms

317. The evidence of Mr Helms is that the site should be recategorised Contributory rather than Significant on the basis that:

- (a) The Heritage Review does not include an assessment of significance that supports the proposed change in heritage category.
- (b) The Amendment does not include a Statement of Significance that justifies the application of a Significant heritage categorisation as there is no mention of the site in the proposed HO6 precinct Statement of Significance and there is no individual Statement of Significance for the site included in the Amendment.
- (c) The Amendment C258 assignation of a Contributory classification raises doubt about the relevance of the Allom Lovell & Associates 1999 citation and should not be relied upon as providing justification for a change in category from Contributory to Significant.
- (d) A full heritage assessment was not undertaken for the site and the work that was done does not constitute an adequate or comprehensive assessment to justify the proposed change in heritage classification as there is no evidence the building was inspected apart from a limited view from the public realm and there is no evidence of detailed comparative analysis of the house in the context of similar houses in the precinct or broader municipality and/or as a design of Klingender & Alsop.
- (e) The house has been rendered and therefore does not have high integrity.

Position of the Council

318. Council submits the evidence of Mr Helms should not be accepted as:

- (a) As detailed above in relation to the management of Significant and Contributory places in HO6, Mr Helms' asserted requirement that the site either be provided with a separate Statement of Significance or be specifically mentioned within the Statement of Significance:

- (i) does not properly reflect the scale of the precinct or the scope of the Heritage Review, in terms of the number of properties that would require similar treatment;
 - (ii) does not accord with advice previously provided to Council by the Department to the effect that a Statement of Significance cannot be incorporated for a Significant place in a precinct unless a Statement of Significance is incorporated for every place within the precinct;
 - (iii) does not give appropriate weight to the content of the Heritage Review, including the content and mapping of the citation and Statement of Significance for HO6;
 - (iv) does not reflect standard practice adopted by previous heritage reviews, and accepted by planning panels, including Amendments C405melb and C403melb; and
 - (v) does not properly reflect the requirements of PPN01, having regard to the fact that when considering the requirement that a Statement of Significance be prepared for each heritage place, the relevant 'place' in relation to a precinct is the precinct itself, not any and all Significant places within the precinct.
- (b) Further, Mr Helms' asserted requirements are not reflected in work undertaken by his practice, including in relation to the *Port Phillip Heritage Review Update* (February 2019), by David Helms.
- (c) Mr Helms appears to have proceeded on the mistaken assumption that the existing categorisation as Contributory, based on the conversion of the former C grading of the building has been or should be influential in the assessment of the appropriate category in this Amendment. In this regard, Mr Helms fails to appreciate that the Heritage Review involved a comprehensive reassessment of the heritage values of properties within the study area according to contemporary heritage practice; and the former letter grading of the building (and the conversion methodology employed in Amendment C258) is a matter of background relevance only.

- (d) The integrity of the place properly supports its proposed Significant categorisation.

319. The building should be categorised Significant. The Area 3 description in the citation for HO6 should be amended to note the contribution of architect R B Hamilton to the alterations to the building in 1935.

T. 435 PUNT ROAD, SOUTH YARRA

320. 435 Punt Road, South Yarra, known as the *former Wesleyan Church*, is currently included within the Heritage Overlay as Significant within HO6.

321. The Heritage Review identifies the place as Significant as an individual place (HO1407) on the basis of its historical (Criterion A) and representative (Criterion D) significance.

322. The citation for the place is located within the Heritage Review Volume 4 at pages 156-174.

Submission 30

323. Submission 30 contains no information as to the nature of the submission, but rather requests an extension of time to provide a detailed submission to Council. The submission references a report provided by Green Heritage to Amendment C396.

Management Response

324. The Management Response at page 45 provides that Council agrees with the assessment of GML Heritage that the place is appropriately categorised as Significant. The former Wesleyan (later Methodist) Church at 431–439 Punt Road, South Yarra, was designed by Crouch and Wilson and built in 1864. The building was converted to a six-unit apartment complex in 1994. The former church is externally highly intact, when viewed from the public domain. It satisfies the benchmarking indicators of a Significant place.

325. Accordingly, no changes were recommended to the Amendment in response to the submission received.

Evidence of Mr Huntersmith & Ms Schmeder

326. The evidence of Mr Huntersmith at pages 129-132 is that while the residential conversion of the church has caused some change to the heritage fabric, the additions

are discreet and largely in keeping with the style of the gothic architecture of the church. The building remains clearly legible as a mid-Victorian bluestone church that is externally highly intact when viewed from the public domain. The building has a high level of historical and architectural importance and is appropriately categorised as a Significant place.

327. The evidence of Ms Schmeder at pages 83-86 is that as the place has been assessed as having local significance, it does not have to be one-of-a kind, though it has been assessed as comparable to many other pre-1870 Gothic churches recognised as individually Significant and the conversion undertaken was sympathetically done and successfully preserved both the historical and representative significance of the church.

Position of the Council

328. 431-439 Punt Road was identified as A graded in the 1985 Heritage Study, under the address 451 Punt Road. Pursuant to the conversion methodology adopted within Amendment C258melb, the A grading should have been directly converted to a Significant categorisation, however Lovell Chen was engaged to further assess the property as part of Amendment C396melb due to confusion related to the property address. As part of Amendment C396melb the grading of this place was converted to Significant.

329. No changes are recommended to the Amendment in response to the submission received.

U. 11-21 MARNE STREET, SOUTH YARRA & MELBOURNE OBSERVATORY

330. 11-21 Marne Street, South Yarra, known as *Castle Towers* is currently included within the Heritage Overlay as Significant within HO6. The Heritage Review does not propose any alteration to the classification of the place, or its inclusion within HO6. It is now identified as being located within Area 3.

331. Melbourne Observatory is listed on the Victorian Heritage Register (HO396/H1075). Reviewing the heritage protection of the Melbourne Observatory and other existing VHR places was out of the scope of the Heritage Review.

332. The HO6 citation is located within the Heritage Review Volume 4 at pages 556-760.

Submission 32

333. Submission 32 requests that Melbourne Observatory be included on the map prepared by Council for community engagement and that Council nominate Castle Towers to the Victorian Heritage Register.

334. The submission further advises that:

- (a) information in the Heritage Review stating that some apartments in Castle Towers have individual rooftop gardens is incorrect, and that Castle Towers has an open rooftop that is shared property; and
- (b) the text in the Heritage Review regarding the Melbourne Observatory is incorrect in parts and too brief. Alternative text and information regarding the Observatory and events that took place in the grounds is provided.

Management Response

335. The Management Response at pages 46-47 provides that Council agrees with the assessment of GML Heritage that:

- (a) Melbourne Observatory was included on the community engagement map.
- (b) Nomination of Castle Towers to the Victorian Heritage Register was not a recommendation of the Review and it has not been assessed as having State significance by GML. Further, any member of the community is able to make a nomination for a place to be added to the Victorian Heritage Register if they believe it to be of State significance.
- (c) Minor corrections should be made as per the information provided in the submission including that the rooftop terrace of Castle Towers should be described as a singular roof space, and details about the Melbourne Observatory should be included.

Evidence of Mr Huntersmith

336. The evidence of Mr Huntersmith at pages 111-113 is that minor corrections as detailed above should be made to Volumes 3 and 4 of the Heritage Review.

Position of the Council

337. The Thematic Environmental History (Volume 3 of the Review) and the HO6 South Yarra Precinct citation (Volume 4) should be updated to reflect some minor

corrections identified, in relation to Melbourne Observatory and the rooftop garden at Castle Towers.

V. 641-645 PUNT ROAD, SOUTH YARRA

338. 641-645 Punt Road, South Yarra, also known as the *Astor*, is currently ungraded within HO6.
339. The Heritage Review identifies the place as Significant within the *Pasley Street & Park Place Precinct* (HO1419). The *Pasley Street & Park Place Precinct* (HO1419) is identified as having heritage value on the basis of its historical (Criterion A) and aesthetic (Criterion E) significance.
340. The *Pasley Street & Park Place Precinct* (HO1419) citation is located within the Heritage Review Volume 4 at pages 447-515.

Submission 35

341. Submission 35 objects to the inclusion of the site within the Heritage Overlay on the basis that:
- (a) the building is not a significant or intact example of either the Victorian or interwar periods;
 - (b) the Statement of Significance and citation do not identify conversions of Victorian buildings as part of the significance or key characteristics of HO1419. On that basis, the building is properly regarded as an outlier, being the only example of a converted apartment building in HO1419;
 - (c) there are other purpose-built apartment buildings that better fit the interwar category, particularly buildings in HO6 such as Kia Ora, Park Towers and Marne Close;
 - (d) the Heritage Review incorrectly states that the building is a Victorian residence converted to flats in the 1920s, when it was actually two Victorian residences converted in 1929, so should therefore say late 1920s-early 1930s; and
 - (e) at most, the subject building should be graded Contributory.

Management Response

342. The Management Response, at pages 49-51, provides that Council agrees with the assessment of GML Heritage that:

- (a) important aspects of the interwar period of development include not only the development of new blocks of flats or houses, but also the conversion of earlier housing stock into flats or guesthouses;
- (b) the Astor is of particular note, with both layers of development clearly visible from the public domain (via its renovated façade and intact chimneys and hipped roof forms);
- (c) the Statement of Significance states the ‘high level of integrity to their original design’ is part of the precinct’s significance, however for the Astor, both layers of development contribute to the significance of the place, as explained in Criterion A of the Statement of Significance;
- (d) the Statement of Significance for HO1419 outlines the historical significance of the conversion of this place to the pattern of development in this precinct and South Yarra, with other examples in the precinct demolished or reverted to being residences: Ohio Flats at 637 Punt Road (since demolished); Umala Flats at 62 Pasley Street (since re-converted to a residence); Gower Flats at 80 Pasley Street (since demolished); and Homa Flats at 40–42 Park Place (since re-converted to a pair of residences);
- (e) the limited number of other examples of flat conversions in HO1419 or the study area elevates Astor’s significance as surviving evidence of a pattern of development that was characteristic of South Yarra during the interwar period;
- (f) the citation and Statement of Significance for HO1419 should be amended to reflect that Astor represents the conversion in the late 1920s to 1930s; and
- (g) the Statement of Significance for HO1419 should be amended to add the words ‘or early’ to the reference in the What is Significant? section as follows
“significant” buildings’ high level of integrity to their original or early design”.

Evidence of Mr Huntersmith & Ms Schmeder

343. The evidence of Mr Huntersmith at pages 141-145 is that:

- (a) important aspects of the interwar period include not only the development of new blocks of flats or houses, but also the conversion of earlier housing stock into flats or guesthouses;
- (b) the Astor is of particular note, with both layers of development clearly visible from the public domain;
- (c) the Astor is the only example of this type of converted flats in HO1419, but it is incorrect that no other examples of this building typology were identified in the Heritage Review;
- (d) the demolition of other examples of flat conversions elevates the Astor's significance as an increasingly uncommon surviving example of a pattern of development characteristic of South Yarra during the interwar period with both layers of development contributing to the significance of the place; and
- (e) the Astor is appropriately categorised as a Significant place.

344. The evidence of Ms Schmeder at pages 98-106 is that although the practice of conversion of Victorian houses to interwar flats is mentioned in the citation by reference to Astor, the theme of flats conversion is not explored further or represented by other properties in the precinct; in her view, the flats conversion is not a basis on which to categorise the building as Significant. However, Ms Schmeder considers that Astor contributes to the precinct as it links and represents two valued stages of development within the precinct, being the Victorian and interwar periods. Ms Schmeder concludes that Astor is definitely a Contributory place in the precinct and should be recategorised accordingly.

Position of the Council

345. Council accepts the evidence of Ms Schmeder and agrees that Astor should be recategorised as Contributory.

346. As a Contributory building, the building specific citation for Astor at page 502 of the Heritage Review should be removed and other consequential changes made to the Statement of Significance and citation. It will not be necessary or appropriate to make the changes to the Statement of Significance or citation recommended by Mr Huntersmith, on the basis that Astor will not be categorised as Significant.

W. 603-627 PUNT ROAD, SOUTH YARRA

347. 603-627 Punt Road, South Yarra, known as the *South Yarra Presbyterian Church Complex* is currently identified as Significant within the Heritage Overlay within HO6.
348. The Heritage Review identifies the place as individually Significant as the *South Yarra Presbyterian Church Complex* (HO1409) on the basis of its historical (Criterion A), representative (Criterion D) and associative (Criterion G) significance.
349. The individual place citation for the site is located within the Heritage Review Volume 4 at pages 205-230.

Submission 36

350. Submission 36 asserts the Heritage Review provides insufficient justification for the inclusion of the place within the Heritage Overlay as proposed as:
- (a) the Heritage Review does not recognise the current condition of the former Sunday school, the former Vestry and school wing, as well as the Presbyterian Church which were damaged in a fire on 12 May 2022, particularly the roof of the former Sunday school; and
 - (b) the relative significance of the individual buildings on the site requires further clarification including the caretaker's cottage (c1925) which was constructed decades later and has had a greater degree of change than more substantial buildings on the site.

Management Response

351. The Management Response, at pages 51-52, provides that Council agrees with the assessment of GML Heritage that:
- (a) The fire damage should be recorded in the Statement of Significance and citation, while noting the Sunday school is still integral to the significance of the place. Further, there is enough photographic evidence available to support the restoration of the building.
 - (b) The entire complex has been assessed for heritage significance, and separate elements that contribute to the significance of the place are outlined in the Statement of Significance (under 'What is Significant?').

- (c) The significance of the South Yarra Presbyterian Church complex is enhanced by the retention of a complex of buildings that were and have been associated with the operation of a church. The caretaker's cottage is less substantial and has less architectural detailing, but these characteristics are typical of a caretaker's cottage. The built fabric of the caretaker's cottage is part of the site's key elements that evidence and contribute to understanding the way of life in the past that was once common.
- (d) The Statement of Significance distinguishes that more recent alterations to the caretaker's cottage from the 1992 refurbishment do not contribute to the significance of the place.
- (e) Separate conservation guidelines or a management plan could be developed by the owner to inform the areas that may be tolerable to greater level of changes, if any works are to be proposed for the site.

Evidence of Mr Huntersmith & Ms Schmeder

352. The evidence of Mr Huntersmith at pages 132-134 is that the citation and Statement of Significance should be updated to reflect the removal of the roof from the former vestry and Sunday School building, noting that as the fire occurred following the completion of the assessment of the place these changes have not yet been included.

Further:

- 482 *The entire complex has been assessed for heritage significance as a whole, and separate elements that contribute to the significance of the place are outlined in the statement of significance (under 'what is significant?'). Individual elements of a site are not typically assigned individual building categories (Significant, Contributory or non-contributory), although non-significant elements are typically identified.*
- 483 *The significance of the South Yarra Presbyterian Church complex at 603–627 Punt Road is enhanced by the retention of a complex of buildings that were and have been associated with the operation of a church. As the submission notes, the caretaker's cottage is less substantial and has less architectural detailing, but these characteristics are typical of caretaker's cottages. The built fabric (including the less ornate or substantial architecture) of the caretaker's cottage is part of the site's key elements that evidence and contribute to our understanding a way of life in the past that was once common.*
- 484 *For complex sites such as this, conservation guidelines or a conservation management plan would assist in the management of the heritage values across the place. These documents typically assign relative significance levels across the site which would then inform the tolerance to change for each item.*

353. The evidence of Ms Schmeder at pages 86-90 confirms that the fire damage should be reflected in the citation and Statement of Significance for the place. In relation to the potential to individually classify buildings on the site, Ms Schmeder found:

339. *... In my professional experience, it is good practice to provide a more 'nuanced categorisation' of the elements of large, complex places, particularly in cases where a number of the elements (e.g. buildings) are Non- contributory. This approach assists in the future management of the place, and gives the owner clarity for future planning. I do not consider the categorisation of such elements as crucial for sites like the South Yarra Presbyterian Church, where all elements contribute to the significance of the place as a whole. Saying that, I consider such a process as comparable to the fine-grained assessment that takes place as part of conservation management plan when this detailed understanding can help guide the preservation of all heritage values of the place.*

340. *Considering historical significance of the complex, I agree that its significance is largely related to its 19th-century foundation and built form. The design of the Caretaker's Cottage acknowledges this primacy, in mirroring the colours and forms of the bluestone church.*

341. *While the Caretaker's Cottage seems to be highly intact (apart from the rear elevation), and its design clearly relates to the Gothic Revival character of the complex, if it stood alone in a heritage precinct, in my expert opinion, its architectural quality would likely to warrant a Contributory categorisation.*

342. *On this basis, I conclude that the Caretaker's Cottage contributes to the historical and representative significance of the complex, but it is not Significant in and of itself.*

354. On this basis, Ms Schmeder recommends defining the caretaker's cottage as Contributory, with the church, vestry, Sunday school and manse as Significant.

Position of the Council

355. Council submits the identification of the place as Significant in the Amendment is appropriate, though the citation and Statement of Significance for HO1409 should be updated to reflect the fire damage to the Sunday School and the caretaker's cottage should be categorised as Contributory.

X. 72 CLOWES STREET, SOUTH YARRA

356. 72 Clowes Street, South Yarra is currently identified as individually Significant within the 72 Clowes Street, South Yarra Heritage Overlay (HO410).

357. The Heritage Review identifies the property as Significant within HO6. The property is included in Area 5 of HO6. HO6 is included in the Heritage Overlay for its historical (Criterion A) and aesthetic (Criterion E) significance.

358. The HO6 citation is located within the Heritage Review Volume 4 at pages 556-760.

Submission 39

359. Submission 39 enquires about the heritage status of the property; expresses concern about unauthorised development or alterations to properties in a Heritage Overlay, referring to the demolition of a Federation era property on the corner of Domain Road and Murphy Street, South Yarra; and raises further concern about the level of protection for streetscapes, and old plants and gardens.

Management Response

360. The Management Response at page 55 provides that Council agrees with the assessment of GML Heritage that:
- (a) The proposed alteration from the site being identified as an individually Significant place to one that is Significant within HO6 would not result in any changes to the planning permit requirements.
 - (b) The Heritage Review identifies a number of mature plants that warrant protection in the Scheme. Tree controls have been applied to protect trees that are of intrinsic significance (that is, trees and plants that contribute to the significance of the place or area), in accordance with the guidance for applying tree controls in PPN01.
 - (c) The Heritage Review also proposes additions and changes to the Significant Streetscape categories to help protect streetscapes that are important to South Yarra.
 - (d) The example of demolition referenced by the submitter is located in the City of Stonnington. Enforcement matters for properties in the City of Melbourne are managed by the Planning Enforcement Team and can lead to stop work notices, fines, and reinstatement of original structures depending on the circumstances.
361. Accordingly, no changes were recommended to the Amendment in response to the submission received.

Evidence of Mr Huntersmith

362. The evidence of Mr Huntersmith at pages 117-119 is that the proposed inclusion of 72 Clowes Street as Significant in the Heritage Overlay is appropriate.

Position of the Council

363. No changes are recommended to the Amendment in response to the submission received.

Y. 93-103 PARK STREET, SOUTH YARRA

364. 93-103 Park Street, South Yarra, also known as *St Arnaud*, is currently identified within the Heritage Overlay as Contributory to HO6.

365. The Heritage Review identifies the place as Significant within HO6. It is located within Area 2. HO6 is included in the Heritage Overlay for its historical (Criterion A) and aesthetic (Criterion E) significance.

366. The HO6 citation is located within the Heritage Review Volume 4 at pages 556-760.

Submission 40

367. Submission 40 asserts that the submitter was not notified of the Amendment; the property should remain Contributory in HO6 as the existing category is appropriate and sufficient to protect the heritage significance and appropriate development outcomes for the building; and existing Council policy is sufficient in directing outcomes for Contributory buildings and appropriate works on the subject site.

368. The submission further notes a permit was granted for partial demolition of the building through a Tribunal hearing, however an application to amend the permit is currently with Council and would be affected by a change in classification.

Management Response

369. The Management Response at pages 56-57 provides that Council agrees with the assessment of GML Heritage that:

- (a) The Amendment was correctly exhibited in accordance with the *Planning and Environment Act 1987*.
- (b) The proposed Significant categorisation is appropriate. The guesthouse 'St Arnaud' was managed by Mrs Elizabeth Viccars, who was one of the pioneers of guesthouse operations in Park Street. The purpose-built building is highly externally intact, and is one of the only surviving examples of early guesthouses/boarding house type of buildings in South Yarra. Park Street was

established with a number of guesthouses by the late nineteenth century and the beginning of the twentieth century. 55 Park Street (formerly ‘Allonah’ and later combined with 53 as ‘Dalgety’) and 65–67 Park Street (‘The Oaks’), both categorised as Significant places, were among other guesthouses in Park Street. The historical existence of such operations is part of the important historical layer in Area 2 and broader South Yarra, and retention of tangible examples of historical guesthouses in Park Street evidence that historical narrative. Having operated for almost 100 years (1916 to c2016), St Arnaud was one of the longest running guesthouses in Park Street. With such a high level of intactness and integrity, and for long-standing historical use, it meets the definition for a Significant heritage place.

- (c) The effect of the proposed Heritage Overlay on future development outcomes on this site or adjoining sites is not relevant to establishing whether the building meets the threshold for local significance.

370. Accordingly, no changes were proposed in response to the submission received.

Permit/Plans/Tribunal decision

371. This site has a planning permit (TP-2021-308) authorising *Partial demolition and construction of a multi-storey apartment building above a basement car park*. The permit was issued on 23 December 2021 and expires on 23 December 2024. Plans were endorsed on 8 December 2022. On 30 October 2023, a notice of decision to amend a permit was issued in relation to a section 72 application (TP-2021-309/A) The amended permit will continue to allow for partial demolition and construction of a multi-storey apartment building above a basement car park.

372. The site has been the subject of two Tribunal decisions:

- (a) *93 Park Street Holdings Pty Ltd v Melbourne CC* [2018] VCAT 1525 (3 October 2018): In this case the Tribunal affirmed the decision of Council not to grant a planning permit relating to demolition of most of the existing buildings on the site, apart from the front part of the building known as St Arnaud, with modifications to the retained part of St Arnaud including alterations to the entry of the building.

- (b) *93 Park Street Holdings Pty Ltd v Melbourne CC* [2020] VCAT 1445 (21 December 2020): In this case the Tribunal affirmed the decision of Council not to grant a planning permit relating to restoration of the front section of the Contributory heritage building at 93-99 Park Street (St Arnaud), demolition of the Contributory building at 101-103 Park Street and construction of six apartments.

Evidence of Mr Huntersmith & Ms Schmeder

373. The evidence of Mr Huntersmith at pages 49-52 is that:

- (a) The purpose-built building is highly intact externally and is one of the only surviving examples of early guesthouses/boarding house type buildings in South Yarra.
- (b) Early guesthouses were an integral part of the historical development of HO6, particularly in Area 2, the retention of which provides important evidence of this historical theme.
- (c) Having operated for almost 100 years, St Arnaud was one of the longest running guesthouses in Park Street, and for its long historical use and high level of intactness and integrity the place is appropriately categorised Significant.

374. The evidence of Ms Schmeder at pages 45-53, is that the buildings are highly externally intact and accomplished examples of the Arts and Crafts style. While the endorsed plans for TP-2021-308 propose to demolish and replace the rear parts of the buildings, there will be minimal change when viewed from the public realm, with original roof form and site walls still legible. The remaining heritage fabric will be sufficient to warrant the proposed Significant status of the place.

Evidence of Mr Lovell of Lovell Chen

375. The evidence of Mr Lovell is that the site should be reclassified Contributory (rather than Significant) in a Significant Streetscape, as:

- (a) Both buildings are of historical and architectural interest in evidencing a development theme in the area, but not at a level which warrants their elevation to places of individual Significance.

- (b) While the site is important for its contribution to the precinct, is externally intact and is a representative example of its place type, it is not a building which is of individual significance to the municipality, nor is it highly valued by the community, nor does it display notable features of the place type.

Position of the Council

376. Council submits the evidence of Mr Lovell should not be accepted as:

- (a) It appears to conflate the significance of guesthouses or short-stay accommodation, with that of flats and accordingly fails to attribute appropriate heritage significance to the place as part of this important historical theme, and as one of the only surviving examples of early guesthouse/boarding house buildings in South Yarra.
- (b) He does not attribute appropriate significance to the long-running historical use of the place, having operated for almost 100 years.
- (c) He incorrectly references the Heritage Review as identifying the site as part of a group of pre-1930s flats.
- (d) He has identified as comparators within Table 5 only interwar flats which are different, including architecturally, from guesthouses.
- (e) He does not afford appropriate weight to the place as an accomplished example of the Arts and Crafts style.

377. No changes are recommended to the Amendment in response to the submission received.

Z. 105-107 PARK STREET, SOUTH YARRA

378. 105-107 Park Street, South Yarra, also known as *Kilmeny*, is currently ungraded within HO6.

379. The Heritage Review identifies the place as Significant within HO6. It is located within Area 2. HO6 is included in the Heritage Overlay on the basis of its historical (Criterion A) and aesthetic (Criterion E) significance.

380. The HO6 citation is located within the Heritage Review Volume 4 at pages 556-760.

Submission 41

381. Submission 41 states they were not notified of the Amendment, the property should properly remain ungraded and advises that heritage advice had been sought and would be provided to Council in due course.

Management Response

382. The Management Response at pages 57-58, provides that Council agrees with the assessment of GML Heritage that:
- (a) The Amendment has been correctly exhibited in accordance with the *Planning and Environment Act 1987*.
 - (b) The proposed categorisation of Significant is appropriate as: Built in 1923, Kilmeny was one of the earliest examples of a block of flats in South Yarra. Within the context of metropolitan Melbourne, South Yarra was among the suburbs that saw the earliest development of flats, which has been discussed in the 'Historical context' in the HO6 citation. The small group of surviving 1910s and 1920s blocks of flats are important pioneering examples that signalled the popularity of flat development through to the post war period and present time. With Kilmeny's refined design, high level of intactness and integrity, this place meets the definition of a Significant place.
 - (c) The submitter has not provided evidence to support an alternative categorisation of the place.

383. Accordingly, no changes were proposed in response to the submission received.

Permit/Plans/Tribunal decision

384. This site has an existing planning permit (TP-2022-516) for Flat 6, 107 Park Street allowing *External alterations to the existing building by altering the window of apartment 6 at the rear of the building*. The permit was issued on 14 October 2022 and plans were endorsed on 17 October 2022. There is no Tribunal proceeding related to this planning permit application.

Evidence of Mr Huntersmith & Ms Schmeder

385. The evidence of Mr Huntersmith at pages 52-56 is that early flats form an integral part of HO6, with the small ground of surviving 1910s and 1920s blocks of flats on the

west side of Park Street near Domain Road early examples of this important typology, providing important evidence of this historical theme. Kilmeny is distinguished from most other examples of 1920s flats and is better than typical examples, with a high level of intactness and integrity and is thus appropriately categorised Significant.

386. The evidence of Ms Schmeder at pages 53-59 is that Kilmeny is a highly externally intact interwar apartment building, retaining original elements such as the front fence, diamond-motif glazing, bay windows and balconies with decorative profiles and roughcast rendered walls with exposed brick accents. Ms Schmeder identifies Kilmeny as Significant for its design, substantial size and high level of external intactness, comparing well to other 1920s blocks of flats in South Yarra.

Evidence of Mr Lovell of Lovell Chen

387. The evidence of Mr Lovell is the site should be reclassified Contributory in a Significant Streetscape, as:

- (a) The proposed regrading of the place, based on high integrity and high architectural merit, is unwarranted.
- (b) The building is of local importance as contributing to HO6 (Area 2) as a place of historical and aesthetic value, but not at a level which warrants elevation to a place of individual Significance.
- (c) While the site is a place which is important for its contribution to the precinct, is externally intact and is a representative example of its place type, it is not a building of individual Significance to the municipality, nor is it highly valued by the community, nor does it display notable features associated with the place type.

Position of the Council

388. It is common ground between the witnesses that the building is intact, it is common ground between the witnesses that the streetscape warrants a Significant Streetscape categorisation in this location and it common ground that the building is of sufficient heritage value to be a graded place. The difference between them is whether those values justify a Significant categorisation. Mr Lovell appears to proceed on the basis that a representative building cannot be Significant, and that a building must “stand

out” or “excel” to justify Significance. Having regard to the comparative analysis, Council submits that Kilmeny is a better fit with the other buildings found to have met the Significant threshold.

389. No changes are recommended to the Amendment in response to the submission received.

V. GENERAL SUBMISSIONS

390. A number of submissions have been made in relation to the Amendment or the Heritage Review generally, or in relation to numerous sites. Each of these submissions is discussed further below.

A. MELBOURNE SOUTH YARRA RESIDENTS GROUP

Submission 25

391. Submission 25, on behalf of the Melbourne South Yarra Residents Group (**SYRG**) expresses general support for the Heritage Review, but proposes increased protection for certain places and streetscapes and identifies a number of minor errors and omissions in the Heritage Review. The SYRG expressed support for the identification of five sub-areas within HO6, the new *Pasley Street and Park Place Precinct* and the protection of individual places such as St Martins Youth Arts Centre Complex.
392. The submission recommended the following changes be adopted:
- (a) Heritage categories: The submission states that many two-storey Victorian terraces have been proposed to be categorised Contributory, but that most if not all should be categorised Significant. Further, various places on Walsh Street, Millswyn Street, Airlie Street, the Righi, Marne Street, Leopold Street, Pasley Street, Domain Street that have been proposed to be categorised Contributory in the Review, should be Significant.
 - (b) Streetscapes: The submission states that the definition of Significant Streetscape is too restrictive and not appropriate for diverse communities like South Yarra and asserts significant streetscapes that don't fit the definition should be identified as 'important streetscapes' and listed in the Statement of Significance. The submission also notes there should be additional significant and important

streetscapes in areas including Millswyn Street, Leopold Street, Adams Street, Bromby Street and others.

- (c) Other issues: The submission asserts that the Meredith Gould BIF sheets from 1984 and the Heritage Review should be incorporated documents into the Scheme. The submission also requests the inclusion of South Yarra's commercial history and contribution to Melbourne's theatrical life be included within the Statement of Significance in HO6.

Management Response

393. The Management Response, at page 35-38, notes that Council agrees with the recommendation of GML Heritage that, having regard to further assessment and research undertaken in response to the submission:

- (a) The following six buildings be re-categorised Significant within HO6: 248–250 Domain Road; 72–76 Domain Street; 113 Millswyn Street; 115 Millswyn Street; 23 The Righi; and 25 The Righi.
- (b) The northern side of Leopold Street (80, 82, 84, 86, 88, 90, 92, 94, 96, 98, 100, 102, 104- 106, 108-110 and 81, 83, 85, 87, 89, 91, 93-95, 97, 99, 101, 103, 105, 107, 109-111, 113, 115, 117, 119, 121, 123 and 127-129 Leopold Street) be categorised as a Significant Streetscape.
- (c) The Statement of Significance for HO6 be updated to include discussion of commercial activities and theatrical life in Area 2.

Evidence of Mr Huntersmith & Ms Schmeder

394. The evidence of Mr Huntersmith at pages 146-152 is that a number of changes should be made to the Amendment, as detailed within [392] above.

395. The evidence of Ms Schmeder at pages 141-143 is that she considered places for which GML Heritage supported a change in heritage categorisation and supports the change to Significant for 248–250 Domain Road; 72–76 Domain Street; 113 Millswyn Street; 115 Millswyn Street; 23 The Righi; and 25 The Righi and the identification of 80-110 and 81-129 Leonard Street as a Significant Streetscape. Ms Schmeder also identified that the Ivel flats at 322 Walsh Street have been demolished, and accordingly their categorisation ought be changed to Non-contributory.

Position of the Council

396. In reliance on the evidence of Mr Huntersmith,³³ Council no longer supports a change to the Statement of Significance for HO6 to include commercial activities and theatrical life in Area 2.
397. Council submits the following changes should be adopted to the Amendment documentation:
- (a) 248–250 Domain Road; 72–76 Domain Street; 113 Millswyn Street; 115 Millswyn Street; 23 The Righi; and 25 The Righi be reclassified Significant;
 - (b) the northern side of Leopold Street be categorised as a Significant Streetscape; and
 - (c) the Statement of Significance for HO6 to include the archway at 80-82 Millswyn Street as a significant public space element.

B. SUBMISSION 31

Submission 31

398. Submission 31 expresses general support for the Heritage Review, acknowledging an appreciation for the value of unique heritage places, but comments that density and housing affordability need to be considered when applying new heritage controls.

Management Response

399. The Management Response, at page 45-46, notes receipt of the submission and provides that Council agrees with GML Heritage that the effect of the proposed Heritage Overlay on provisions encouraging growth is not relevant to establishing whether the building meets the threshold for local significance.
400. Accordingly, no changes were recommended to the Amendment in response to the submission received.

Evidence of Mr Huntersmith

401. The evidence of Mr Huntersmith at pages 154-156 is that the Heritage Overlay does not prohibit redevelopment or architectural innovation, but requires that identified

³³ Huntersmith at [538]-[539].

heritage values are considered as part of the planning permit application process. Further, the balance between other planning objectives was not properly part of the scope of the Heritage Review.

Position of the Council

402. Council does not propose any changes to the Amendment in response to Submission 31.

C. SUBMISSION 33

Submission 33

403. Submission 33 objects to the Heritage Review generally and expresses concern that increased heritage protection for the area will decrease the ‘quality’ and ‘standard’ of the area, with many identified heritage properties of little or no heritage value, and many being an eyesore.

404. The submission further notes that another independent Heritage Study should be undertaken by experts with local knowledge, and that increased heritage protection will limit growth and have a negative impact on affordable housing.

Management Response

405. The Management Response at pages 47-49 provides that Council agrees with the assessment of GML Heritage that:

- (a) The proportion of properties protected in the Scheme is not part of the consideration when assessing places for heritage significance and the application of a heritage building category to many of the properties in a precinct does not devalue heritage.
- (b) Whether a place has aesthetic appeal or characteristics can form part of its consideration, but is not a requirement for a place to be assessed as having local heritage significance.
- (c) The effect of the proposed Heritage Overlay on provisions encouraging growth is not relevant to establishing whether the building meets the threshold for local significance.

406. Accordingly, no changes were recommended to the Amendment in response to the submission received.

Evidence of Mr Huntersmith & Ms Schmeder

407. The evidence of Mr Huntersmith at pages 113-117 includes that:

404 An analysis of the proportion of properties protected on the planning scheme or other strategic planning policies does not form part of heritage consideration. The high proportion of heritage places in South Yarra means that South Yarra is an area with a strong presence of heritage places and thus warrants inclusion in the Heritage Overlay as a precinct.

405 The determination of building categories (Significant, Contributory or non-contributory) was informed by the definitions provided in the Heritage Places Inventory and considered the findings of the comparative analysis within the study area.

408. The evidence of Ms Schmeder at pages 117-118 is that no changes are recommended in response to the submission received.

Position of the Council

409. Council does not propose any changes to the Amendment in response to Submission 33.

D. SUBMISSION 38

Submission 38

410. Submission 38 expresses general support for the Amendment, and makes a number of recommendations: historic trees should also be protected; buildings over 30 years old should be assessed for heritage significance; height limits in residential and commercial areas should be preserved and not expanded; parks, trees and open space should be protected; whole areas of old housing such as around Melbourne Grammar should be preserved; legislation should be introduced to prevent the loss of older better quality apartment buildings to huge, poorly populated apartment buildings; Fawkner Park should not be developed, with concern expressed that the recent upgrade is a concrete eyesore in an inappropriate location and should not have taken place; and that community gardens are needed.

Management Response

411. The Management Response, at page 54, notes that trees were considered and investigated in the Review with tree controls recommended in some cases. Important

trees that warrant controls in the Scheme are set out in each relevant Statement of Significance and the recommended changes to the schedule to the Heritage Overlay.

412. GML considered all buildings from the Victorian period to the late twentieth century. Examples of more recent buildings identified and recommended for protection in the Review include c1980s houses designed by architect Wayne Gillespie, and a 1920s brick garage converted to a townhouse in 1989 by architect Graeme Gunn, as well as a number of boathouses in the proposed Yarra Boathouses Precinct.

413. In relation to Fawkner Park, it is noted that this place is listed on the VHR and was not assessed as part of this Review. Provision of community gardens were also not within the scope of the Review.

414. Accordingly, no changes are proposed in response to the submission received.

Position of the Council

415. No changes are proposed in response to the submission received.

VI. LATE SUBMISSIONS

A. 55 & 57-59 MARNE STREET, SOUTH YARRA

416. Within HO6, 55 Marne Street is currently categorised Non-contributory and 57-59 Marne Street is currently categorised Contributory.

417. The Heritage Review identifies both 55 & 57-59 Marne Street as Contributory within HO6. The properties are located within Area 3. HO6 is included in the Heritage Overlay on the basis of its historical (Criterion A) and aesthetic (Criterion E) significance.

418. The HO6 citation is located within the Heritage Review Volume 4 at pages 556-760.

Submission 42

419. Submission 42 notes the Heritage Review proposes to list 55 Marne Street as Contributory, however the MSYRG submission, and accompanying advice from Nigel Lewis recommended the property be classified Significant. Further, the MSYRG submission further suggested that 57-59 Marne Street be classified Significant.

420. The submitter asserts these gradings did not form part of the exhibited Amendment and accordingly should not be considered by Council, absent the preparation and exhibition of a new planning scheme amendment.
421. The submission also included a letter of Heritage Advice prepared by David Helms that concludes both properties ought be classified Contributory.

Management Response

422. The Management Response does not address this late submission.

Permit/Plans/Tribunal decision

423. 55 Marne Street has an existing planning permit (TP-2022-538) allowing *Partial demolition and buildings and works to construct an extension to the existing dwelling*. The permit was issued on 28 February 2023 and expires on 28 February 2025. Plans were endorsed on 13 April 2023. There is no Tribunal decision associated with this planning permit application. To Council's knowledge, no works have commenced pursuant to this permit.

Evidence of Mr Huntersmith & Ms Schmeder

424. The evidence of Mr Huntersmith at pages 45-48 is that:

172 *55 and 57–59 Marne Street are a clinker-brick duplex with a hipped tiled roof demonstrating influences of the interwar Georgian Revival and Old English styles. The pair is a highly intact representative example of its typology, which is a typology that is important to HO6.*

173 *Noting that HO6 contains many fine examples of interwar blocks of flats, particularly in Area 3, comparative analysis across the area shows that while being an excellent intact representative example of their type, 55 and 57–59 Marne Street are not better than most in the area. As an example, 6 Marne Street and 50–56 Marne Street, South Yarra (shown below) are more architecturally refined examples of the typology.*

...

174 *I retain my view that the current categorisation for 55 and 57–59 Marne Street as Contributory is appropriate.*

425. The evidence of Ms Schmeder at pages 39-44 is that the site is a relatively modest, though architecturally intact architectural composition and not one that is close in architectural quality to Significant interwar dwellings in South Yarra or to the most recognisable RB Hamilton works. Contributory status for both parts of the pair remains appropriate.

Position of the Council

426. On 31 October 2023, the representative for Submitter 42 wrote to the Panel noting the submitter position that the properties should be listed as Contributory as proposed by Council. The correspondence further notes that its position is supported by written evidence from David Helms provided to the Council as part of the submission, as well as the evidence of Mr Huntersmith and Ms Schmeder who both agree that the Contributory listing is appropriate.
427. On that basis, the submitter advised they would no longer participate in the hearing process, but asked the Panel to consider the evidence of each of the three experts and recommend the properties be listed Contributory.
428. Council position is that both properties ought properly be listed as Contributory to HO6.

B. 6 & 8-10 MARNE STREET, SOUTH YARRA

429. 6 Marne Street is currently graded Contributory and 8-10 Marne Street is currently ungraded within HO6. Both properties are located within a Significant Streetscape.
430. The Heritage Review identifies 6 Marne Street as Significant within HO6 and 8-10 Marne Street as Contributory within HO6, both within a Significant Streetscape. The properties are located in Area 3 of HO6. HO6 is included in the Heritage Overlay on the basis of its historical (Criterion A) and aesthetic (Criterion E) significance.
431. The HO6 citation is located within the Heritage Review Volume 4 at pages 556-760.

Submission 43

432. Submission 43 comprises a number of documents including an email dated 13 September 2023 which references a Tribunal hearing held on 13-15 June 2023 for which a decision of the Tribunal was (at that time) outstanding. The proposal sought planning approval for a residential development integrating the existing two-storey built forms with a newly proposed three-storey rear addition to create a total of 8 dwellings. The email notes the submitter opposes the proposed heritage gradings of the sites in the context of the current planning permit application being considered by the Tribunal, and an existing planning approval for the redevelopment of 6 Marne

Street, Planning Permit TP-2017-185, which largely aligns with scope of what is now proposed.

433. The submission also included two heritage evidence statements from the Tribunal hearing – one from Bryce Raworth, and one from Carolynne Baker.

Management Response

434. The Management Response does not address this late submission.

Permit/Plans/Tribunal decision

435. This site has an existing planning permit (TP-2021-799) allowing *Demolition or removal of a building and construction of a building or the construction or carrying out of works, the construction of two or more dwellings on a lot and the construction or extension of a front fence within 3 metres of a street greater than 1.5 metres in height*. The permit was issued on 26 September 2023. No plans have yet been endorsed.
436. The permit was issued at the direction of the Tribunal in *Ayshe Properties Pty Ltd v Melbourne CC* [2023] VCAT 1086. The Tribunal imposed conditions requiring greater retention of existing fabric of both buildings.

Evidence of Mr Huntersmith & Ms Schmeder

437. The evidence of Mr Huntersmith at pages 119-122 is that:

- 433 *6 Marne Street satisfies the definition of a Significant place as it is highly intact and exhibits refined architectural detailing that relate to its typology as a block of interwar flats.*
- 434 *In my opinion, 6 Marne Street is appropriately categorised as a Significant place within HO6. Overall, the building is a refined architect-designed example of the interwar flat typology that contributes to the precinct's urban character, particularly Area 3.*
- 435 *The block of flats at 8–10 Marne Street was built in 1936 to a design by prominent architect A McMillan. Designed in a restrained Moderne style, the block demonstrates key characteristics of the typology, including a horizontal emphasis given by the use of horizontal glazing bars and corbelled brick details under the eaves.*
- ...
- 437 *8–10 Marne Street satisfies the definition of a Contributory place as it is an intact, architect-designed representative example of the interwar flat typology that contributes to the precinct's urban character, particularly Area 3.*
- 438 *It is my opinion that 8–10 Marne Street is appropriately graded as a Contributory place.*

438. The evidence of Ms Schmeder at pages 118-123 is that the Heritage Review provided the thorough consideration and justification required to alter the heritage categorisation of 6 Marne Street to Significant as a well-designed and distinctive example of the Mediterranean Revival style that compares well to other substantial buildings of this and the related Spanish Mission style considered Significant in HO6. 8-10 Marne Street is readily identifiable as part of the interwar medium-density development that characterises Marne Street and is of sufficient intactness that a Contributory classification is appropriate.

Position of the Council

439. No changes are recommended to the Amendment in response to the submission received.

C. 31-37 MILLSWYN STREET, SOUTH YARRA

440. 31-37 Millswyn Street, South Yarra is currently ungraded within HO6.

441. The Heritage Review identifies the place as Significant within HO6. The property is located in Area 2 of HO6. HO6 is included in the Heritage Overlay on the basis of its historical (Criterion A) and aesthetic (Criterion E) significance.

442. The HO6 citation is located within the Heritage Review Volume 4 at pages 556-760.

Submission 44

443. Submission 44 seeks leave to oppose the Amendment on the understanding it impacts the site. The submission further notes an intention to present expert evidence in support of its position at the hearing, though it is noted no 'position' is stated within the submission.

Management Response

444. The Management Response does not address this late submission.

Evidence of Mr Huntersmith & Ms Schmeder

445. The evidence of Mr Huntersmith at pages 61-68 is that:

234 *The block of flats at 31–37 Millswyn Street is important as a representative example of the extensive flat building activity that occurred in South Yarra in the postwar period. The distinctive form of the postwar flat typology evolved through the work of several émigré architects who immigrated to Melbourne in the postwar period. Trained in Europe, where*

flat living was the norm, they frequently worked with developers who themselves had emigrated from Europe.

235 *31–37 Millsnyn Street is distinguished from most other examples of postwar blocks of flats in the study area due to its unusual and refined architectural detailing. This is evident when compared to examples such as 174W–176W Toorak Road, 24–34 Arnold Street, 11–21 The Righi and 123–131 Millsnyn Street (all proposed as Contributory places in HO6, see figures below).*

...

240 *Overall, 31–37 Millsnyn Street satisfies the definition of a Significant place as an example of a postwar block of flats distinguished for its refined architectural detailing and high level of intactness. The building is an architecturally refined example of the postwar flat typology that contributes to the precinct's urban character. It is appropriately categorised as a Significant place within HO6.*

446. The evidence of Ms Schmeder at pages 64-73 is that (at [256]):

- *Architect Michael Feldhagen was a German émigré architect who arrived in Melbourne in 1958. His early work, including 31-37 Millsnyn Street, is unusual in Victoria, having a greater level of decorative detail and expressiveness than was typical of post-war buildings. From the late 1960s he became a leading exponent of strata titled apartment development.*
- *The flats at 31-37 Millsnyn Street are an excellent example of his distinctive design approach and they are of equivalent or superior in their design and intactness to other examples of his work recently assessed as locally significant in the cities of Port Phillip and Glen Eira.*
- *Furthermore, the subject flats compare well amongst those in the study area, and on this basis, the Significant category is appropriate for 31-37 Millsnyn Street.*

Evidence of Mr Turnor

447. The evidence of Mr Turnor is that the site is not of sufficient architectural, aesthetic or historical merit to be recategorised Significant rather than Non-contributory on the basis that:

- (a) The Amendment C258 Statement of Significance for HO6 and the *Thematic History: A History of the City of Melbourne's Urban Environment* (Context Pty Ltd, for the City of Melbourne 2012) provide limited reference to development in the postwar period and postwar flat development respectively.
- (b) As the Lovell Chen statement was adopted in the relatively recent past, it could reasonably be argued that an appreciation of the historical and aesthetic/architectural value of many postwar buildings has not changed in any meaningful or considerable way.

- (c) The currently proposed Statement of Significant does not make a strong or compelling case for identifying the significance of postwar flats and their contribution to HO6 and the TEH prepared as part of the Amendment is primarily concerned with interwar architect designed flats.
- (d) Postwar flats were not identified as being of significance in the North Melbourne Heritage Review and accordingly a much stronger case would need to be made to explain why they are significant in South Yarra.
- (e) Postwar flat development was intrusive to the valued heritage character of HO6.
- (f) While there is a growing appreciation for postwar architecture in Melbourne, the proposed Statement of Significance does not provide a strong enough argument that virtually all building stock of this era contribute to the heritage character of the precinct.
- (g) Detail regarding the site in the Heritage Review does not provide a sufficient basis for its reclassification.
- (h) The category of postwar flats does not make an important contribution to HO6 or Melbourne more generally.
- (i) The site does not demonstrate unique or exceptional aesthetic characteristics, and is not a refined architect designed building, or a carefully crafted bespoke design.

Position of the Council

448. Council submits the evidence of Mr Turnor should not be accepted as:

- (a) Mr Turnor's commentary regarding the Amendment C258 Statement of Significance does not properly reflect that Amendment C258 did not include a heritage review of South Yarra or that the Statement of Significance prepared for Amendment C258 reflected existing identified heritage values at that time, including existing gradings derived from the 1985 Heritage Study. Given the postwar period is defined by the Heritage Review as 1945-1975, it is unsurprising that postwar values were not identified as important at that time.

- (b) The relevance of the fact that postwar flats were not identified as being of significance within the North Melbourne Heritage Review is unclear.
- (c) Mr Turnor's assertion that the Amendment treats 'virtually all building stock' of the postwar era as contributing to the heritage character of the precinct does not properly reflect the selective approach taken within the Heritage Review, in which 13 Significant postwar places, 36 Contributory postwar places and 21 Non-contributory postwar places are identified within HO6.
- (d) Mr Turnor's analysis, including setting a threshold for local significance by reference to terms such as unique, exceptional or bespoke sets the bar inappropriately high.

449. No changes are recommended to the Amendment in response to the submission received.

D. 233-235 DOMAIN ROAD, SOUTH YARRA

450. 233-235 Domain Road, South Yarra, known as *Elm Tree House*, is currently categorised Contributory within HO6.

451. The Heritage Review identifies the place as Significant within HO6. The property is located within Area 4 of HO6. HO6 is included in the Heritage Overlay on the basis of its historical (Criterion A) and aesthetic (Criterion E) significance.

452. The HO6 citation is located within the Heritage Review Volume 4 at pages 556-760.

Submission 45

453. Submission 45 notes that, pursuant to advice received from Bryce Raworth Pty Ltd, there is no basis for a Significant classification of the place having regard to its extensive alterations, particularly those undertaken in the 1960s, and that the opinion of the heritage expert is that the Contributory classification remains appropriate.

Management Response

454. The Management Response does not address this late submission.

Evidence of Mr Huntersmith & Ms Schmeder

455. The evidence of Mr Huntersmith at pages 39-44 is that:

- 159 *As a result of reviewing these drawings and the 1896 MMBW plans, the extent of alterations and additions to the original house is far more extensive than initially thought. Alterations and additions appear to have been made to the house in the 1920s prior to the documented plans of 1941 but after the 1896 MMBW plan, and in the 1940s and 1960s. Original fabric appears to include the main transverse gable roof form including its gable ends and projecting single-storey room with gable roof and prominent chimney facing Domain Road.*
- 160 *The South Yarra Precinct is historically significant for its demonstration of a predominantly residential development pattern that spans from the 1840s. As one of the earliest surviving houses in the precinct, 233–235 Domain Road provides important evidence of the earliest layer of residential development in the area. To understand South Yarra's origins into the future, examples of its earliest buildings need to be preserved.*
- 161 *However, it is agreed that the extent of alterations and additions made to 233–235 Domain Road over time has impacted its integrity to a degree that it should not be categorise as a Significant place.*
- 162 *It is my opinion that 233–235 Domain Road, South Yarra should be recategorised as Contributory in HO6.*

456. The evidence of Ms Schmeder at pages 31-39 is that:

141. *In conclusion:*

- *Elm Tree House retains very little or perhaps no built form from the original c1857 structure, as it may have been remodelled or rebuilt c1880-85. The most probable surviving 1850s element is the single-storey volume at the north-east corner of the site, facing Domain Road. On this basis, the place is not of local heritage significance as one of the early houses in South Yarra, and does not satisfy Criterion A to the threshold of local significance. Its retention of some 19th-century built form still contributes to the precinct.*
- *From at least 1896 the front façade of the house faced Walsh Street (west), and this frontage was demolished in 1960 to allow for the L-shaped addition designed by the Office of Guilford Bell. There is no indication that the surviving 19th-century built-form or the 1960 addition are of aesthetic significance at the local level. It does, however, assist in illustrating the post-war stage of development in HO6, and contributes to this aspect of the precinct's significance.*
- *The 1960s works are closely associated with Dame Mabel Brookes, who was a notable Victorian, and who continued her social, charitable and writing work while at Elm Tree House. This association may confer local significance on Elm Tree House, but this would have to be assessed in detail to confirm, and would require another amendment to create a site-specific HO recognising that its reason for significance is not related to the HO6 precinct.*

142. *On this basis, Elm Tree House, 233-235 Domain Road, should remain Contributory to HO6 for its contribution to the historical significance of the precinct, and not be recategorised as Significant.*

Evidence of Mr Turnor

457. The evidence of Mr Turnor is that the site is not of sufficient historical, aesthetic/architectural or social value to warrant a change in categorisation from Contributory to Significant and should properly be reclassified Non-contributory on the basis that:

- (a) Elm Tree House is not externally intact and has no notable features, rather it is an ad-hoc composite which appears to retain some elements from a double storey Victorian building but otherwise has been extensively altered, reading as a later interwar dwelling.
- (b) While the HO6 Statement of Significant notes that post-1980s alterations and additions are not significant, this should refer to post-1961 alterations, consistent with the Pasley Street and Park Place precinct, HO1419.
- (c) While the house is of some historical interest, there is no enduring association of the place with its previous owners and their social engagements and the site does not help to interpret Dame Mabel Brooks' role as a leading society hostess and charity worker, nor does it speak to the troubled legacy of Johnson's Vietnam War era presidency.
- (d) The building does not evidence the area's nineteenth century pattern of development and later additions are of no architectural merit.

458. Mr Turnor further concludes the site should not be identified within a Significant Streetscape.

Position of the Council

459. Council submits the evidence of Mr Turnor that Elm Tree House is Non-contributory should not be accepted as:

- (a) It does not properly reflect the HO6 Statement of Significance which properly identifies that post-1980s (not post-1960s) alterations and additions are not significant.³⁴

³⁴ It should be noted that there is only one Significant postwar place in the Pasley Street and Park Place precinct, being a 1961 block of flats at 40-42 Pasley Street. Accordingly, post 1960s alterations are regarded as not significant in HO1419. By contrast, in HO6, there are many more examples of Significant and Contributory postwar buildings.

- (b) It does not pay proper regard to the significance of the dwelling as an early Victorian building remodelled and extended in the postwar period, or the fact that the 1960s work (undertaken by the office of Guildford Bell, a respected Modernist architect) appears to survive in full with the exception of one alteration to a window.
- (c) Mr Turnor's evidence that the house is of no more than historic interest pays insufficient regard to the historical importance of the place reflected in contemporary press coverage and the extant fabric linking the early years of mid-Victorian residential development to the postwar period.
- (a) His position that the building should be Non-contributory conflicts with the opinion attributed to his firm in the submission.

460. Elm Tree House should remain Contributory and not be recategorised Significant. It should be removed from the Significant Streetscape.

VII. CONCLUSION

461. Council submits the Amendment has strategic justification and respectfully requests that the Panel recommend adoption of the Amendment.
462. The list of changes proposed by Council to the Amendment is provided with this Part B submission as **Addendum E**.
463. Council will address further issues which arise over the course of the Panel hearing in its reply in the form of a Part C submission.

Susan Brennan SC

Carly Robertson

Counsel for the Planning Authority

By direct brief

6 November 2023