

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 C 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**).
2. This Part C 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, the Part B submissions circulated on 6 November 2023 and the expert evidence called from the Mark Huntersmith (GML Heritage) and Natica Schmeder (Landmark Heritage).
3. In accordance with Panel Direction 21, this Part C submission includes:
 - (a) Council's response to matters raised in other parties' submissions and evidence;
and
 - (b) Council's final preferred version of the Amendment documentation, showing proposed changes.

II. MATTERS TO BE ADDRESSED IN THIS PART C SUBMISSION

4. To the extent submitters to the Panel sought to object to the inclusion of properties within the Heritage Overlay, Council relies upon the expert evidence of Mr Huntersmith and Ms Schmeder as to both the level of significance of the heritage place and the appropriateness of its inclusion within the Heritage Overlay.
5. Accordingly, this submission does not seek to reiterate submissions made by Council or evidence called, rather it will address matters raised in submissions and evidence that have yet to be addressed by Council, including:
 - (a) a number of general matters raised over the course of the hearing; and
 - (b) new matters raised in the evidence called and submissions made on behalf of submitters.
6. Council has identified the following general matters that have been raised over the course of the hearing:
 - (a) who should be able to appreciate a heritage place;
 - (b) the appropriate threshold for local heritage significance;
 - (c) the relevance of previous heritage studies;
 - (d) the inferences to be drawn from additional information;
 - (e) intactness and integrity;
 - (f) the role of the definitions of Significant and Contributory places;
 - (g) what it means to be a Significant place within a precinct; and
 - (h) the use of the words *‘including but not limited to’*,
7. Each of these matters will be addressed in turn.

III. GENERAL MATTERS RAISED BY SUBMITTERS

A. WHO SHOULD BE ABLE TO APPRECIATE A HERITAGE PLACE?

8. A number of questions were posed of Council’s witnesses to the effect that there is little point in including places within the heritage overlay if the significance of the place cannot be properly understood by an observer in the street. Or in other words, heritage

significance should not only be appreciable by those who possess heritage or architectural expertise.

9. In relation to Elm Tree House, a number of questions were posed of Mr Huntersmith along the lines of – *There is nothing in the fabric of this building that demonstrates it was owned by a famous socialite? Nothing specific in the fabric demonstrates – in and of itself – that it is a Guildford Bell design? You couldn't look at this gable and necessarily determine it is of a particular era?*
10. The matter of who should be able to understand and appreciate heritage was addressed by the Hoddle Grid Heritage Review Panel:

Care also needs to be taken when determining how well a criterion is demonstrated and observable and understood and who it is understood by. During the Hearing a range of 'observer' tests were applied for both Criterion A and D – the 'person on the Clapham Omnibus', 'the well-educated', 'the curious' or the 'well informed observer' and other permutations. It is the Panel's view that buildings in the main should be able to be readily read and appreciated, although why they are important will not always be evident and sometimes require access to documentation particularly for Criterion G and H.

There seems little point in including places in the Heritage Overlay if the wider community is not able to appreciate them or convey important and tangible information of our history for current and future generations and it becomes an exercise for heritage purists. A level of balance is required so that the reasons for importance are not overly obscure or places merely ordinary. Ultimately the determination of significance lies with experienced or qualified practitioners bringing to bare appropriate tools and professional opinion and objectivity. Even then experts will have different opinions. A level of expertise is important to apply ensure a 'level playing field or benchmark'. This ensures that important places are included on merit and not because they are popular landmark buildings (although this may be a factor in its significance) or clearly understood to be of an era or theme and avoids the application of subjectivity and taste.¹

11. The following principles emerge:
 - (a) Buildings should be readily read and appreciated, though why they are important may not always be evident in the built fabric.
 - (b) Reasons for importance should not be overly obscure, or places merely ordinary.
 - (c) Places should be included in the Heritage Overlay on merit, and not because they are popular, to avoid the application of subjectivity and taste.

¹ Melbourne C387melb (PSA) [2021] PPV 89 (10 November 2021), page 54.

12. In relation to the ability of built fabric to convey the nature of importance it is of assistance to consider Criterion A, Historical Significance. Council submits it will be the exception, rather than the rule, where the heritage fabric of a place is able to comprehensively convey historical significance. These instances would be limited to buildings of particular types; such as religious buildings or a theatre. Importantly, even when considering State level historical significance, historical associations are not required to be evidence in built fabric.² Rather, it is sufficient if the association is evidence in the physical fabric and/or documentary resources or oral history.
13. Council submits that simply because an historical association is not evident in built fabric that does not mean a place is not worthy of heritage protection. Indeed, excluding all places where historic associations were not evident solely in built fabric would result in a severely diminished cultural landscape. Further, while heritage fabric should be appreciable, it cannot be the case that the bar is set so high that any member of the public must be capable of understanding the significance of a place on built fabric alone before it is capable of meeting the threshold of local significance. Most places on the heritage overlay would fail to meet such a test.
14. Examples of places recently included within the Heritage Overlay that rely upon the documentary record to convey the history of a place include:
 - (a) **57-67 Little Collins Street, Melbourne:** Which is included within the Heritage Overlay on a number of bases, including historical significance as the site of the Mayser or ‘atomic clock’ that supplied accurate timekeeping to all master clocks in Australia. No internal controls are applicable, nor is any heritage fabric appreciable from the street related to this historic use.
 - (b) **53-57 Lonsdale Street, Melbourne:** Which is included in the Heritage Overlay for its historical significance related to its links with Melbourne Italian restaurateur families who conducted eating houses in the building from 1901 to 2001 and included the Rinaldis, the Molinas and the Triacas. The buildings were identified as demonstrating the flourishing Italian café society that developed in the first decades of the twentieth century prior to Italian migrants

² See, the *Victorian Heritage Register Criteria and Threshold Guidelines*, Step 1: Basic Test for Satisfying Criterion A requires “The association of the place/ object to the event, phase, etc IS EVIDENT in the physical fabric of the place/ object and/ or in documentary resources or oral history.”

establishing restaurants and pizza cafes in the inner-city area in the 1950s and 1960s and the influence of Italian culture upon Australian culinary traditions that has an enduring presence and value in Melbourne today. No internal controls are applicable, and no heritage fabric remains that would communicate this significance.

15. On that basis, Council endorses the comments of the Hoddle Grid Heritage Panel that while heritage fabric should be appreciable, it cannot be expected that fabric alone will, in all circumstances, be capable of conveying the significance of a place. Further, the hypothetical ordinary and reasonable person – the person on the Clapham omnibus – cannot usefully or properly serve as a relevant test. Members of the public vary in terms of their knowledge and appreciation of heritage places. Heritage protection is afforded for the benefit of future generations – including the most interested and knowledgeable and the least.
16. Council also notes the evidence of Mr Lovell in response to questions of the Panel that the appreciation of heritage requires the viewer to be informed, and that even in relation to aesthetic significance most members of the public do not have sufficient architectural knowledge to understand places absent secondary resources.

B. THE THRESHOLD FOR LOCAL HERITAGE SIGNIFICANCE

17. *Planning Practice Note 1: Applying the Heritage Overlay (PPN01)* requires that a heritage place be of demonstrated importance pursuant to at least one of the recognised heritage criteria. Council acknowledges PPN01 provides limited further guidance as to how a threshold for local significance is properly established, other than by reference to some comparative analysis.
18. Council's Heritage Places Inventory March 2022 (Amended May 2023) provides the following definitions for Significant and Contributory heritage places:

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

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

19. In the Hoddle Grid Heritage Review, Council's Part C submission identified that a number of experts called to give evidence before the Panel utilised their own terms to demonstrate importance, particularly in relation to Criterion D, representative significance. Experts sought to assess whether the building in question: was ugly; was least loved; provided a mannered response; was a landmark; was outstanding; had an architectural dialogue between the podium and the tower; had an architectural dialogue between the front and the back; was well resolved; was better than most; had architectural distinction; was influential; was remarkable; was unusual; was exceptional; was influential; was pivotal; had a refined arrangement of elements; showed a balanced arrangement; displayed characteristics of a higher quality; was exemplary; represented a key evolutionary stage; demonstrated a higher order of importance; had an unusual typology; or was an unusual class of building.³

20. Council's response to the utilisation of these terms identified:

[107] *The most obvious difficulty with importing the terms referenced above into an assessment of representative significance is that they do not appear in the text of Clause 22.04, the Practice Note or the VHR Guidelines. Accordingly, to conclude that a building is not representative at a local level because it is not, for example, pivotal or influential, is to set the threshold for local significance even higher than the threshold for State significance.*

[108] *The second difficulty is that many of the descriptors involve an assessment of stylistic taste and require judgements about the quality of the building that are ... inherently subjective...*⁴

21. This same approach of seeking to introduce terms by which to understand whether a place meets the threshold of local significance has been adopted throughout this hearing.
22. A number of questions were posed of Council's witnesses as to whether or not a place:

³ Hoddle Grid Heritage Review, Part C submissions of Council, [105]-[106].

⁴ Hoddle Grid Heritage Review, Part C submissions of Council, [107]-[108].

- (a) was unique;
- (b) was exceptional;
- (c) was an early example;
- (d) was a pioneer or the earliest example of a new style;
- (e) had appeared in published journals or won awards;.
- (f) was unusual;
- (g) was accomplished.

23. In relation to architects, questions included whether the architect of a building was sufficiently 'high profile', had won awards or was specifically referenced by name in the Thematic Environmental History.
24. The use of qualifiers was also the subject of expert evidence in relation to specific places, discussed further below.
25. Most, if not all, qualifiers adopted during the hearing are entirely absent from PPN01, the policy, the definitions and even the VHR Guidelines. Their adoption risks setting the threshold for local significance too high. Indeed, many places already included within the Heritage Overlay would not reach the threshold of local significance if the relevant test was that a place was the recipient of awards, or the earliest example of such a place, for example.
26. Council submits care should be taken when seeking to tease out what it means to be important at a local level to avoid adoption of qualifiers or alternate terminology which inappropriately elevates the threshold of local heritage significance.

C. THE RELEVANCE OF PREVIOUS HERITAGE STUDIES

27. At least one submitter has sought to rely upon the fact that a place was not identified as meeting the threshold for local significance in a previous heritage study to indicate that the place does not reach the threshold for local significance.
28. As detailed within Council's Part A and B submissions, the last comprehensive heritage review of the South Yarra area was undertaken in 1985. Given the elapse of time, it is both timely and entirely appropriate that the study area be the subject of comprehensive heritage review. This view was supported by Mr Lovell, who identified

that interwar heritage was underrepresented and postwar heritage almost absent from protection at a local level.

29. Given the timing of the last heritage study, it is unsurprising that postwar development is not protected within the Heritage Overlay, and that interwar development is underrepresented. With regard to postwar heritage, the last heritage study was undertaken only 10 years after the identified conclusion of the postwar period, falling well short of the 25-30 year time period principle identified in the VHR Guidelines.
30. On that basis, Council submits the timing and scope of the Heritage Review is apt and appropriate.

D. INFERENCES TO BE DRAWN FROM ADDITIONAL INFORMATION

31. One submitter sought to rely upon the fact that their expert had identified additional information in relation to a place, to imply that the Heritage Review, ought be regarded as insufficiently comprehensive.
32. Council does not accept any such inference is appropriate.
33. Simply because one expert – tasked with reviewing one building, as opposed to all places considered by the Heritage Review – has identified additional materials or information does not demonstrate the Heritage Review was not sufficiently comprehensive. Council's submissions in this regard are supported by the findings of the Amendment C405 panel for Carlton and Mr Lovell's evidence in response to questions asked in cross-examination.
34. The Panel will recall Mr Lovell was taken to the following paragraphs of the Amendment C405 panel report:

Ms Gray's evidence on behalf of Council, was that the Carlton Heritage Review had been prepared using sound methodology consistent with accepted heritage practice and the requirements of PPN01. New places recommended for inclusion within a Heritage Overlay had been assessed against relevant criteria, and the Amendment had been prepared having regard to the existing heritage policy frameworks in the Melbourne Planning Scheme.

This was supported by the Peer Review of five properties within the Carlton Heritage Review that found the citations were generally well researched and well written and provided appropriate justification for heritage significance at the local level.

RMIT submitted that the research supporting the inclusion of the RMIT buildings was not thorough, and in part not accurate, and did not consider that the buildings met the requisite threshold of significance.

Ms Riddett, giving heritage evidence on behalf of RMIT was critical of aspects of the thematic history in relation to RMIT and considered that some examples used in the comparative analysis did not have commonalities with RMIT buildings 51, 56 and 57. This is further discussed in Chapter 6.

...

The Panel is satisfied that the Carlton Heritage Review and the Punt Road Oval (Richmond Cricket Ground) Heritage Review are both consistent with PPN01 and follow the principles of the Burra Charter. There has been appropriate historical research of both primary and secondary sources, comparative analysis and review of previous heritage studies. The writing of the Statements of Significance and the mapping of places have followed the protocols outlined in PPN01.

...

For the reasons set out in the following chapters, the Panel concludes that the Amendment is supported by, and implements, the relevant sections of the PPF, and is consistent with the relevant Ministerial Directions and Practice Notes. The Amendment is well founded and strategically justified, and the Amendment should proceed subject to addressing the more specific issues raised in submissions as discussed in the following chapters.⁵

35. And:

In response to submissions, evidence and the Peer Review, Council submitted:

...

- *although Ms Riddett and the Peer Review identified additional research and information, this does not demonstrate that the Carlton Heritage Review was not sufficiently comprehensive.*

...

The depth of research and analysis in the Carlton Heritage Review is acceptable and it provides a generally sound foundation and strong justification for the application of a Heritage Overlay to the three buildings. Research associated with the Peer Review and the evidence of Ms Riddett showed that further investigations can reveal additional information. Although some of this additional information is of interest, the Panel considers the original research is satisfactory and demonstrates the rigour required to justify heritage significance.⁶

36. Mr Lovell agreed that the discovery of further information is common through heritage amendment processes and does not undermine the adequacy of the original research which underpins the finding of significance.

37. Importantly, no submitter has identified or sought to rely upon an alternate heritage review to establish the Heritage Review fell short of what is properly regarded best heritage practice.

⁵ Melbourne C405melb (PSA) [2022] PPV 78 (29 November 2022), pages 16-17.

⁶ Melbourne C405melb (PSA) [2022] PPV 78 (29 November 2022), pages 53-54.

E. INTACTNESS & INTEGRITY

38. Neither intactness nor integrity should be confused with the condition of a building, which refers to its state of repair rather than whether it is altered or legible. With regard to intactness and integrity, the relevant definitions contained within the VHR Guidelines are:

Intactness: *refers to the degree to which a place or object retains its significant fabric. Note: Intactness should not be confused with condition – a place may be highly intact but the fabric may be in a very fragile condition.*

Integrity: *refers to the degree to which the heritage values of the place or object are still evident and can be understood and appreciated (for example, the degree to which the original design or use of a place or object can still be discerned). If considerable change to a place or object has occurred (through encroaching development, changes to the fabric, physical deterioration of the fabric etc) the significant values may not be readily identifiable and the place or object may have low-level integrity.*

39. Similar principles in the context of local significance are conveyed by the discussion about intactness and integrity contained within Latrobe C14 (PSA) [2010] PPV 53 (19 May 2010):

The question of intactness is frequently discussed in heritage debates – both as a positive (e.g. ‘a very intact example’) or a negative (e.g. ‘no longer intact’). Equally frequently, the term integrity is applied as a synonym for intactness. For the purposes of this consideration, the Panel proposes the view that intactness and integrity refer to different heritage characteristics.

Intactness *relates to the wholeness of (or lack of alteration to) the place. Depending on the grounds for significance, this can relate to a reference point of original construction or may include original construction with progressive accretions or alterations.*

Integrity *in respect to a heritage place is a descriptor of the veracity of the place as a meaningful document of the heritage from which it purports to draw its significance. For example a place proposed as important on account of its special architectural details may be said to lack integrity if those features are destroyed or obliterated. It may be said to have low integrity if some of those features are altered. In the same case but where significance related to, say, an historical association, the place may retain its integrity despite the changes to fabric (Structural integrity is a slightly different matter. It usually describes the basic structural sufficiency of a building).*

Based on this approach it is clear that whilst some heritage places may have low intactness they may still have high integrity – the Parthenon ruins may be a good example. On the other hand,

*a reduction in intactness may threaten a place's integrity to such a degree that it loses its significance.*⁷

40. Intactness relates to the degree to which a place retains significant fabric, and integrity refers to the degree to which the heritage values of a place can be understood and appreciated. Accordingly, intactness and integrity are factors that are appropriately considered in the context of the overarching task of assessing significance. In and of themselves they do not answer the question of whether a place meets the threshold for local heritage significance to be included within the Heritage Overlay.
41. Further, while it is apparent that the greater level of intactness, the greater level of integrity; it is also clear that diminished intactness does not necessarily result in a loss of integrity, depending on the extent to which the heritage values of a place can still be understood and appreciated; this in turn may be influenced by the nature of those heritage values and the extent to which they rely on highly intact fabric. In this regard, intactness is likely to be more important in the case of criterion E than criterion A for example.
42. The Hoddle Grid Heritage Panel provided the following discussion of intactness and integrity:

The Panel considers that the issue of intactness is fundamental to the assessment of whether a place meets the threshold for significance. It agrees with Council's observation that intactness is a relative rather than an absolute term. The degree to which intactness impacts on a building's integrity and is a factor in determining the threshold of significance for different criteria requires the consideration of a number of factors and can be assisted by a comparative analysis of similar places.

The Panel observes that it is generally expected that for individual places intactness is usually higher than for contributory places. However, there might be cases where places have lower intactness but have a high degree of integrity and that intactness does not necessarily impact on significance at the end of the day.

The Panel has not relied on the identification of 'typically externally intact' as a characteristic in the definition of Significant heritage place in Clause 22.04 for its consideration of whether a place reaches an appropriate threshold of significance. The Panel does not consider that the test for whether a place meets the threshold for local heritage significance lies in this definition. Its use is for a different purpose, namely the application of local policy which distinguishes between significant and contributory places. Nor does the Panel accept that 'typically externally intact' can be interpreted as referring to places in the main being 'highly' or 'mostly' intact. The Panel adopts

⁷ Latrobe C14 (PSA) [2010] PPV 53 (19 May 2010), 16-17.

the position observed in Melbourne PSA C305 [2020] PPV that PPN01 “provides the guidance on assessing potential heritage places and there should be no influence beyond this scope”.

The process for determining whether something is intact or not intact or applying qualifiers as to the degree of is not an exact one. It is a contextual term and impacts the way in which a particular place might be read and understood.

As identified above comparative analysis plays a role in understanding the context for intactness. While the Panel acknowledges and most experts accepted that some level of change is normal or commonplace in the CBD, acceptance of this should not be the starting point or the breakeven point for benchmarking. While the benchmarking process applied in the Heritage Review is useful and transparent and provides appropriate context, the Panel considers that the key questions, in each case, should be:

- is there still sufficient fabric in place to assist our understanding and appreciation of the particular place including its original use, era and design?*
- do the extant changes and alterations impact on our understanding and appreciation of the particular place?*
- are we still able to appreciate its significance and why it is significant?*

In some instances, building changes and alterations are ephemeral, such as painting, addition of signs and other simple additions and can be considered reversible. Such changes have minimal impact on a building’s integrity. However, changes that obliterate building elements that are important to the buildings original design or enable it to be read as representing a particular period, style or theme can significantly diminish integrity. This is particularly the case for postwar places where plazas, ground level entries, colonnades and loggias have been greatly altered or removed or important ground floor structural elements have been removed or upper level materials have been overlaid. Such changes are not so easily reversed without significant cost or realistic to expect could be made without further impacting integrity.⁸

43. While of varying degrees of intactness, Council submits all places identified as warranting inclusion within the Heritage Overlay are of sufficient integrity such that identified heritage values are capable of being properly understood and appreciated by remaining heritage fabric. In many cases, including Motstone, Sheridan Close, 31-33 Millswyn Street, Kilmeny and St Arnaud, the places are highly intact. The postwar extensions to Elm Tree House are also highly intact.

F. ‘INCLUDED BUT NOT LIMITED TO’

44. The Panel has queried with Council the appropriateness of the use of the expression ‘including but not limited to’ in listing elements of significance within the Statements of Significance.

⁸ Melbourne C387melb (PSA) [2021] PPV 89 (10 November 2021), pages 38-39.

45. The use of the words ‘including but not limited to’ is not unusual in Statements of Significance generally. The words appear in all Statements of Significance prepared as part of the *Hoddle Grid Heritage Review* and the *Punt Road Oval Heritage Review*.
46. Council further notes Ms Schmeder’s evidence:

Definition of contributory elements

297. *Sub. 24: the exhibited Statement of Significance for Sheridan Close requires review and amendment to ensure that the heritage control is directed only to the built form elements worthy of protection. This is critical to ensure the heritage control does not unreasonably impede redevelopment opportunities. One example is the use of the phrase, ‘Elements that contribute to the significance of the place include (but are not limited to) the...’ It is inappropriate for the Statement of Significance to be ‘open ended’ as to the identified contributory built form elements.*
298. *I agree that the list of contributory elements in What is significant? is left open-ended (“but not limited to”). I assume this has been done to ensure that important elements not seen by GML Heritage during their assessment are not unwittingly destroyed during future works. This same phrasing has been used in many statements of significance in heritage studies and assessments such as:*
- *Hoddle Grid Heritage Review (Context & GJM Heritage, 2020)*
 - *Malvern Heritage Review (GJM Heritage, 2021)*
 - *Macedon Ranges Shire Heritage Study: Woodend, Lancefield, Macedon & Mount Macedon Stage 2 Final Report (GJM Heritage and Frontier Heritage, April 2019)*
 - *City of Yarra, Victoria Parade: Heritage Analysis and Recommendations (GJM Heritage, 2020)*
 - *City of Whitehorse, Heritage Citation: ‘Minamere’, 42-48 Glenburnie Road, Mitcham (Coleman Architects, June 2019)*
 - *City of Kingston, Heritage assessment for 86 Mentone Parade, Mentone (GML Heritage, 2023)*
47. While the words were not included within the Statements of Significance for the Amendment C405, Lovell Chen did not specify what elements contribute to significance in the *What is Significant?* section of the Statement of Significance. Rather, this section was used to broadly provide the name, address and construction date (and if relevant, the architect) of the relevant place. In the case of Carlton, in order to confirm which elements of a place are regarded as significant, a reader needs to consult the citations.

48. Council's preference is to retain the words "but not limited to"; however, if this terminology is removed, the use of the term "includes" will still allow further valued elements which are subsequently discovered on closer scrutiny in the context of a permit application to be considered.

G. WHAT DOES IT MEAN TO BE A SIGNIFICANT PLACE WITHIN A PRECINCT?

49. In Council's submission, whether a Significant place is located within or outside a precinct the same threshold must be met, such that, if the precinct were to fall away – the Significant place that was previously located within a precinct would then be suitable for an individual Heritage Overlay.
50. As part of Amendment C258, the gradings conversion exercise that transitioned the classification of heritage places from the previous letter grading system to the current Significant, Contributory, Non-contributory system was developed by Lovell Chen. As part of the conversion methodology employed, no review was undertaken of properties within an individual Heritage Overlay number, on the basis that such properties were properly regarded as individually significant, having warranted a Heritage Overlay of their own and thereby demonstrating that a threshold of local significance was achieved for the property in its own right. Accordingly, these properties were directly converted to a classification of Significant. Similarly, all A and B graded properties were directly transferred to Significant in recognition of the higher threshold of significance that these grades indicate. This conversion to the Significant designation occurred irrespective of whether a place was in a precinct Heritage Overlay or not.
51. Prior to the adoption of the new classification system, the following definitions of A and B graded places applied:

A: 'A' buildings are of national or state importance, and are irreplaceable parts of Australia's built form heritage. Many will be either already included on, or recommended for inclusion on the Victorian Heritage Register or the Register of the National Estate.

B: 'B' building are of regional or metropolitan significance, and stand as important milestones in the architectural development of the metropolis. Many will be either already included on, or recommended for inclusion on the Register of the National Estate.

52. While it is Council's submission that Significant places located within a precinct meet the same threshold of local significance as Significant places in an individual Heritage Overlay, Significant places that are located within a precinct Heritage Overlay often contribute to and reinforce the identified heritage value of the precinct. Strictly, by reference to the advice of the Department of Transport and Planning (**Department**), if a Significant heritage place does not make a contribution to a precinct in which it is located (because it has different heritage values from the precinct), it ought properly be removed from the precinct and located within its own Heritage Overlay.
53. However, this exercise has not been undertaken in Melbourne and by virtue of the large precincts, there will be instances in which Significant places within precincts have values which may differ or extend beyond those of the precinct itself.

H. THE DEFINITIONS OF SIGNIFICANT & CONTRIBUTORY PLACES

54. Council's Heritage Places Inventory March 2022 (Amended May 2023) provides the following definitions for Significant and Contributory heritage places:

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

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

55. In relation to the identification of the heritage significance of a place for the purposes of the application of the Heritage Overlay, these definitions are relevant but they are

not determinative. When considering whether a place meets the threshold of Significant, it is entirely appropriate to consider whether that place may include the characteristics or qualities identified within the definition; for example, whether a place is highly valued, is typically externally intact or has notable features. If a place can be described by reference to the characteristics or qualities identified, it is very likely to be a place which satisfies the threshold for local significance in its own right. However, these characteristics and qualities are not necessary preconditions to the identification of a Significant place, such that the determination of Significance becomes a tick-the-box exercise against the characteristics or qualities listed in the definition. For instance, a place does not need to demonstrate that it is highly valued by the community to be classified Significant.

56. If a place does not neatly fit within the characteristics or qualities of the definition, this does not mean that the place is not Significant; the critical consideration remains whether the place is of individual importance to the requisite threshold to be identified as Significant.
57. At the planning permit stage, the definitions may have a role to play in informing the application of policy in relation to a number of relevant qualities or characteristics of Significant places that are then relevantly detailed in the citation and Statement of Significance for a place. The definitions also assist users of the Scheme to understand why a category has been applied to a given place and how that category influences the application of policy.

IV. RESPONSE TO THE EVIDENCE AND SUBMISSIONS

58. During the hearing submissions were made and evidence was called on behalf of submitters to panel in relation to the following properties:⁹
 - (a) 172-182 Walsh Street (**Motstone**);
 - (b) 233-235 Domain Road, South Yarra (**Elm Tree House**);
 - (c) 93-103 Park Street (**St Arnaud**);

⁹ Noting, no evidence was called in relation to Sheridan Close.

- (d) 105-107 Park Street (**Kilmeny**);
- (e) 221-223 Domain Road;
- (f) 485-489 St Kilda Road (**Sheridan Close**); and
- (g) 31-37 Millswyn Street.

59. Council will respond to new matters raised in submissions and evidence in relation to these properties below.

60. Council also provides additional comments in relation to 8 Clowes Street in response to questions from the Panel.

A. 172-182 WALSH STREET (MOTSTONE)

61. Submitters in relation to Motstone, and the evidence of Mr Turnor, challenge not just the significance of Motstone as a place relevant to postwar development, but the importance of postwar development itself as a period of importance to South Yarra.

62. The written submissions filed on behalf of Motstone provide:

[27] *Going to the issue of the comparative analysis more broadly, it is respectfully submitted that:*

- a Comparisons with unlisted buildings run the risk of 'bootstrapping' buildings into relevance. If a building is not actually listed, the fact that a similar building is being considered for listing does not tell you whether the subject building is significant. This is so even if the significance of the comparator buildings is not being challenged by an objector. As the proposal to illustrate Elm Tree House as Significant indicates, heritage advisors are not infallible.*
- b The comparisons with the Hoddle Grid are of little assistance. The influence of Modernism on the Hoddle Grid and the form and nature of Modernist buildings in the Hoddle Grid are very substantially different from Motstone. This includes in particular the use of true curtain walls in the CBD.*
- c Comparison with a single set of flats in St Kilda is of limited utility and has the potential to become a self-fulfilling prophecy for the reasons given.*

63. Council notes the submissions made on behalf of 31-33 Millswyn Street adopted these submissions.

64. Council submits that the first point, namely that referring to unlisted buildings as part of the comparative analysis is inappropriate, is mistaken, particularly in circumstances where there is not an established body of listed buildings within the relevant class

against which to undertake a comparative analysis. In the Amendment, this is the case for postwar buildings, which have not been the subject of comprehensive review and accordingly are currently seldom represented within the Heritage Overlay in South Yarra.

65. This was a difficulty directly addressed by the Amendment C387 panel for the Hoddle Grid:

PPN01 confirms the role of the comparative analysis, identifying that 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.

PPN01 does not identify what level of analysis is required, nor does it limit the analysis to just those places within a Heritage Overlay. In the context of postwar buildings in the Hoddle Grid, the Panel is of the view that the approach adopted by the Heritage Review to consider the comparative analysis other places in the study area and in the VHR (in a measured way), is entirely reasonable. This is particularly the case when looking at places that have not been comprehensively covered before. In some instances, it is also reasonable to consider comparators outside the Hoddle Grid but still within the City of Melbourne.

...

During the Hearing several parties and experts referred to the former Scottish Amicable Building (126-146 Queen Street) which is included in the citation comparative analysis of a number of the postwar buildings. The Panel notes that Scottish Amicable Building was the only postwar office building in the Hoddle Grid with an individual Heritage Overlay, therefore providing the only comparator as a place that had officially reached the threshold for significance to warrant inclusion in the Planning Scheme for its heritage values...¹⁰

66. Accordingly, had the Amendment C387 panel confined the comparative analysis to examples within the study area that were already in the Heritage Overlay, this would have left the Hoddle Grid Heritage Review with precisely one appropriate postwar comparator.
67. Importantly, PPN01 is not prescriptive as to either the task of comparative analysis or the use of specific comparators. What is required is that a Heritage Review provide some comparative analysis, drawing on similar places within the study area, including (but not limited to) those already within the Heritage Overlay.

¹⁰ Melbourne C387melb (PSA) [2021] PPV 89 (10 November 2021), pages 41-42.

68. Council agrees with the evidence of Ms Schmeder that the comparative analysis documented within the Heritage Review is at least as good, if not more thorough than any other recent heritage review, is consistent with best practice and is more than adequate to demonstrate which places are Significant or Contributory.
69. It would be absurd if the consequence of the absence of relevant protected comparators meant that no place in a similar class could ever be included in the Heritage Overlay because none had yet been included.
70. The submissions on behalf of Motstone seek amendments to the Statement of Significance to support future prospects of obtaining a permit for ESD-related works; to that end, they want the Statement of Significance to record that the form but not the fabric of Modernist buildings is important. Council does not accept that there is an unreasonable burden in undertaking ESD-related upgrade works to heritage buildings, having regard to the permit exemptions within clause 43.01 and, in the event that a permit is required, the policy provisions of clause 15.03-1L. Depending on the nature and scale of ESD-related works, the requirement to obtain a planning permit by reference to heritage considerations may be entirely appropriate. Further, Council expects that experienced conservation practitioners are developing their skills and expertise in responding to the challenges of conserving and upgrading Modernist buildings.
71. Council also notes the response of Mr Lovell in response to questions from the Panel on this issue; he explained 15 years ago that he was of the view that the fabric of Modernist buildings was less critical to appreciation of them, but that on reflection and having regard to the passage of time, he would temper that response. He said that in 100 years time, the fabric of Modernist building would become rarer and intact buildings would be rarer still, such that while form and program were the critical matters, materiality remained a (slightly) secondary consideration. In light of this evidence, Council is extremely reluctant to accept a blanket position that fabric is of no heritage value in Modernist buildings and should be treated as automatically replaceable without impact.

72. Council is presently planning work for the next Heritage Strategy following the completion of the 15 year time from for the current Heritage Strategy 2013; it expects that matters relating to the interface between heritage protection and environmental sustainability will be at the forefront of the new Strategy, given the strength of Council's commitments to both strategic priorities.
73. Mr Turnor's evidence concluded that neither the theme of postwar flat development within South Yarra nor the aesthetic value of Motstone is of sufficient significance to warrant heritage protection. In Council's submission:
- (a) With regard to the comparative analysis, Mr Turnor appropriately acknowledged the difficulties in undertaking a comparative analysis when contemplating a new typology or era of development.
 - (b) While he theoretically accepted that the relevant comparators for the threshold for local significance could not be set by reference to places of State significance, his analysis proceeded to compare Motstone with Fairlie and Domain Park – both of which have been considered may meet the threshold for State level significance, and in the latter case are proposed for nomination by Council to the Heritage Register.
 - (c) His assertion that “virtually all” postwar flats were proposed for inclusion within the Heritage Overlay is not defensible in light of the significant proportion of postwar flats identified as Non-contributory and the modest number of postwar flats proposed as Significant.
 - (d) Mr Turnor did not give sufficient weight to Motstone as an example of the change in ownership pattern from leased apartments to Own-Your-Own flats – the precursor to strata title. He failed to afford proper weight to the range of design features at Motstone which are hallmarks of Modernist flat design associated with the postwar era.
 - (e) When asked whether it was necessary that a building play an important or influential role in Modernist design to reach the threshold for local significance, he answered that Significant places should do so – absent any acknowledgement

that this is not identified as a relevant threshold in PPN01, or any other relevant document.

74. More will be said about Mr Turnor's evidence in relation to postwar flats in relation to 31-37 Millswyn Street, below.
75. Council considers the theme of postwar flat development and its importance to South Yarra is adequately demonstrated and documented within the Heritage Review including Thematic Environmental History, the citations and the Statements of Significance. During the Review, over 60 postwar examples of flats were identified in the study area. Motstone was one of eight examples categorised as a Significant place in HO6. Council relies upon the evidence of Mr Huntersmith that Motstone displays key characteristics of its typology as a highly intact postwar Modernist design including by virtue of its rectilinear form, flat roof, sheer walls of cream brick, extensive window walls of glass and elevation above ground level.
76. Council submits the place is appropriately identified as Significant within the Heritage Review.

B. 233-235 DOMAIN ROAD, SOUTH YARRA (ELM TREE HOUSE)

77. Council's position, supported by the evidence of Ms Huntersmith and Ms Schmeder, is that the place should be categorised as Contributory rather than Significant and should not be located within a Significant Streetscape.
78. The following matters were accepted in Mr Turnor's evidence about Elm Tree House:
 - (a) Mr Turnor acknowledged the site contains fabric dating from between 1866 and 1876, and possibly earlier, which falls within the first three decades of South Yarra's development. He further acknowledged the place was constructed within 20 years of the earliest extant residential buildings in the precinct.
 - (b) He did not take issue with the fact that the building was owned by the Brookes family, who lived in it for some 20 years over two periods of residence, were properly regarded as wealthy and privileged members of society, and entertained extensively – often at the request of government. He further acknowledged that Dame Mabel Brookes either believed or represented that Elm Tree House was

the earliest house in South Yarra. He accepted that renovations to Elm Tree House were undertaken by the office of Guildford Bell, both a highly respected Modernist architect and a popular ‘society’ architect.

- (c) Mr Turnor agreed that the extant fabric visible in the public realm is a combination of the original form of the place and the 1960s fabric as designed by the office of Guildford Bell.
- (d) He properly acknowledged that historic significance can be established on the documentary record and that it was legitimate and appropriate to refer to plans and press clippings to understand the heritage significance of a place, but he still claimed that ‘the person on the street’ would fail to appreciate the historic significance of the place.

79. In Council’s submission, Mr Turnor’s evidence that Elm Tree House should be Non-contributory should not be accepted by the Panel, for the following reasons:

- (a) His evidence was entirely focused on whether the building satisfied criteria A or E in its own right, but did not properly engage with whether it made a contribution to the precinct and hence should be categorised as Contributory.
- (b) He refused to accept that the building contributes to an understanding of South Yarra as a wealthy and privileged residential precinct dating from the 1840s to the postwar period by virtue of:
 - (i) the extant fabric linking the mid-Victorian period of residential development to the postwar period
 - (ii) the social events hosted by a wealthy and privileged family as recorded in contemporaneous press coverage about Elm Tree House
 - (iii) the intact alterations and additions made to the property by a wealthy and privileged family under the guidance of a prominent postwar architect.
- (c) He failed to disclose the fact that he read and had regard to and discussed with colleagues a memorandum of advice prepared by his office which proceeded on the basis that the building was Contributory.

80. Council submits the place is appropriately identified as remaining Contributory within the Heritage Review.

C. 93-103 PARK STREET (ST ARNAUD)

81. Importantly, the debate between Council and the submitters in relation to St Arnaud does not relate to the identification of the place within a Significant Streetscape. Mr Lovell accepts that such a designation is appropriate.

82. Further, there is no debate about the intactness of the place.

83. Accordingly, the only area of dispute relates to whether the historical merit of the place warrants its classification as Significant within or Contributory to HO6. Council relies upon the evidence of Mr Huntersmith and Ms Schmeder that the site's classification of Significant is appropriate.

84. Council submits Mr Lovell's evidence in relation to St Arnaud should be treated with caution by the Panel in a number of respects:

- (a) He identified that St Arnaud was required to be identified as Significant to the municipality of Melbourne. This requirement is not reflected in PPN01, which requires importance be demonstrated '*to a particular community or locality*'. In relation to the Heritage Review, the relevant community or locality is South Yarra. South Yarra is then relevantly of identified importance to the broader municipality.
- (b) Mr Lovell's concern that the identification of sub-precincts introduced a level of granularity to the consideration of HO6 must be considered in light of his evidence that he did not walk every street of the precinct or consider each property or its assessed significance within the precinct. Further, his evidence in this respect is in contrast with Lovell Chen's approach in the North Melbourne Heritage Review, which similarly adopted a sub-precinct approach.
- (c) While Mr Lovell's evidence before the Panel was to the effect that he did not consider the identified theme of guesthouses or boarding houses as a sufficiently important theme to the historical development of the municipality, this is not reflected in his written evidence. His evidence did not assess the theme of guesthouses, but rather incorrectly identified and assessed the place

pursuant to the historical theme of *'flat development from 1900-1930 to the north end of Park Street'*. Accordingly, Mr Lovell's evidence pursuant to the incorrect historical theme is of no assistance.

- (d) Mr Lovell's comparative analysis was not based on an assessment of all places within the precinct, but rather a handful of select examples and a determination that the place was either worse than or comparable to his selected example. This level of analysis is not analogous to the comparative analysis undertaken by Mr Huntersmith or Ms Schmeder. Further, the selection of a single Significant place and the conclusion that the site is 'worse' does not reveal much about whether or not the site reaches the threshold of being identified Significant. A place may not be 'better' than all of Mr Lovell's Significant examples, or even as good as those examples, but it may nonetheless reach the threshold.
- (e) His evidence that use of the site as a guesthouse and conversion of 101-103 Park Street to a guesthouse is not reflected in the built fabric, is, again, not to the point. There are a limited number of places that 'tell their story' in built fabric alone. Some examples that can do so are churches, pubs and theatres. Other historically significant places (indeed almost all places) tell their story via built fabric ***combined with*** the documentary record – or even via the documentary record alone. Importantly the VHR Guidelines note that even for places of State significance they are not required to demonstrate their history via their built form. Mr Lovell's evidence did not suggest there is an absence of documentary material by which the historical use of the site can be sufficiently understood.
- (f) His reply evidence was of limited assistance. It shows that guesthouses were an important contributor to accommodation available for visitors to Melbourne, but were still only a fraction of overall housing stock in the municipality. St Arnaud was an early example of the building type and a purpose built example of the building type, factors which distinguish it from other guesthouses of the period and contribute to St Arnaud's significance. Mr Lovell's data did not reveal anything about the surviving number of guesthouses, of which St

Arnaud's is one. Nor did the data identify any that operated for 100 years, another factor relevant to St Arnaud's significance.

85. Mr Lovell agreed with the analysis undertaken by Mr Huntersmith as to the history of the place. St Arnaud was purpose built as a guesthouse. The site was managed by Mrs Elizabeth Viccars, one of the pioneers of guesthouse operations in Park Street. Both buildings were converted and incorporated as part of the guesthouse by 1920. It was one of the longest running boarding houses, operating for approximately 100 years. It is one of only a few surviving examples of early guesthouses in South Yarra.
86. Council submits the theme of guesthouses is appropriately reflected in the Thematic Environmental History as well as the citation and Statement of Significance for HO6. Council further notes that the only precinct, other than South Yarra, in which guesthouses are identified as an important historical theme is East Melbourne. East Melbourne is also the only other precinct in which affluence and luxury is similarly identified as an important theme.
87. Council relies upon the evidence of Mr Huntersmith that early guesthouses were an integral part of the historical development of HO6, particularly within Area 2, and the retention of tangible examples of these guesthouses provides important evidence of this historical theme.
88. Council submits the place is properly identified as Significant.
89. Council also considers it appropriate to directly respond to the written submissions filed on behalf of St Arnaud which assert the place has been put forward within the Amendment as Significant having regard to its historic and aesthetic significance. The latter is evidently incorrect. Council submits this error influenced the submissions made and cross-examination of Council witnesses which focused on the aesthetic qualities of the building rather than the historic significant identified by the Heritage Review.
90. As far as the submission notes "*The Panel should be extra cautious in accepting Council's position and evidence in circumstances where there are significant implications*", Council submits the import of these words is entirely unclear.
91. The submissions made further note:

27. *Indeed, in cross examination of Ms Schmeder, she concurred that:*

- *The buildings are characteristic and representative of Arts and Crafts style; and*
- *She has applied Criterion D when assessing the significance of the Subject Site (which is not the relevant criterion referred to in the statement of significance).*

92. Council considers this paragraph incorrectly records the evidence that was given and invites the Panel to rely on its own recollection of Ms Schmeder's evidence on this point. Council considers the evidence of Ms Schmeder was clear that she used the word 'representative' not in relation to Criterion D, or in relation to a conclusion that the place was properly regarded Contributory – but rather to indicate that the buildings compared well to others that share the characteristics of the Arts & Crafts style.
93. Finally, for completeness, Council ought further note that one of Mr Lovell's answers to a question from the Panel was incorrect. Mr Lovell was asked specifically about aspects of the approved development of St Arnaud that would have been potentially refused if the place had been classified Significant rather than Contributory when the application was made. Mr Lovell answered that it related to the visibility of rooftop elements. The identification of the place within a Significant Streetscape removes the distinction between Significant and Contributory places when considering additions. The only remaining differentiation in policy is in relation to demolition.

D. 105-107 PARK STREET (KILMENY)

94. As with St Arnaud, the debate between Council and the submitters in relation to Kilmeny does not relate to the identification of the place within a Significant Streetscape. Mr Lovell accepts that designation. Also as with St Arnaud, there is no debate about the intactness of the place.
95. The only area of dispute relates to whether the place warrants classification as Significant within or Contributory to HO6.
96. The significance of flat development in South Yarra was not a matter contested by Mr Lovell. It is comprehensively reflected in the Thematic Environment History, which specifically identifies Kilmeny as an example of the theme.¹¹ Mr Lovell's evidence identifies Kilmeny as demonstrative of the theme of multi-unit development within the

¹¹ South Yarra Heritage Review – Volume 3: Thematic Environmental History, page 69.

South Yarra precinct.¹² Mr Lovell further accepts that Kilmeny evidences the values which support the assessed significance of the precinct as a whole.¹³

97. Again, Council submits Mr Lovell's evidence ought properly be regarded with caution. A number of points referenced in relation to St Arnaud are equally applicable to his evidence in relation to Kilmeny and will not be repeated but continue to be relied upon by Council. These criticisms include, but are not limited to, the limits of Mr Lovell's comparative analysis.
98. Specifically in relation to Kilmeny, Mr Lovell's evidence exclusively (and incorrectly) assessed Kilmeny pursuant to its architectural merit. As his reply evidence conceded – architectural significance is not claimed. Mr Lovell's written analysis¹⁴ references historic value only twice at [61] and [72]. Neither paragraph contains any actual assessment of historic value. Mr Lovell conceded his evidence in reply also contained no assessment of the place pursuant to historic significance. Accordingly, his oral evidence that the place does not contain historic significance sufficient to be identified as Significant rather than Contributory can only be regarded with caution. Mr Lovell did not do any assessment or analysis to reach that conclusion.
99. Further, Mr Lovell's use of 'qualifiers' raises some concern. His written and oral evidence considered whether a place was one that 'excelled', was 'extraordinary', was 'more interesting' than another or whether it was designed by a recognised architect of the period. These qualifiers, none of which is a required element of a Significant place, suggest Mr Lovell has set the threshold for local Significance too high.
100. Council notes Mr Lovell's error in assessing the place with regard to architectural rather than historic significance is also found in the written submissions circulated to the Panel on behalf of the Submitter; these submissions do not address whether the historic significance of the place is such that it should be regarded Significant or Contributory.
101. With regard to the manner in which the submitter sought to characterise the evidence of Ms Schmeder, again, Council asks the Panel to review its own notes of the evidence

¹² Lovell, page 2.

¹³ Lovell, page 3.

¹⁴ Lovell, pdf 48-60.

that was given. Council considers the submission that Ms Schmeder's evidence was that '*A mere desire to recognise the contribution of interwar flats means that Kilmeny is significant*' is plainly incorrect. Ms Schmeder did not give evidence to the Panel that all interwar flats ought be regarded Significant solely due to the fact that they were interwar flats. Further, the submission is directly contradicted by Mr Huntersmith's supplementary statement of evidence which, in relation to interwar flats, records ten places which have been recognised as Significant and four as Contributory.

102. In relation to the submitter's characterisation of Ms Schmeder's comparative analysis, again, the Panel is asked to rely on its own recollection as to the scope of the exercise undertaken by Ms Schmeder. Council submits any suggestion that her comparative analysis in relation to the place was limited to the comparison of Kilmeny with Ballyngarde Flats alone, is evidently incorrect.
103. Mr Huntersmith identifies Kilmeny as being important as one of the earliest examples of flats in the South Yarra area, that demonstrate early apartment development; and demonstrating the social shift where apartment living became more acceptable, following the conversion of larger mansion houses.
104. Council submits the place is properly identified as Significant.

E. 221-223 DOMAIN ROAD

105. The evidence of Mr Helms, called by Submitter 29, is that the place should properly remain Contributory rather than being reclassified Significant.
106. The evidence of Mr Huntersmith is 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 current development works notes the works will have limited impact on the significance of the place. Further, the limited visibility of a place does not prevent its inclusion in the Heritage Overlay, though the house is not entirely concealed from the public domain in any case.
107. Council notes that the representative appearing on behalf of 221-223 Domain Road indicated that she had been present for the totality of Council's evidence yet did not seek to ask a single question of Council's witnesses to test their evidence in relation to

the site. In those circumstances, the claimed oversights or misapprehensions in the evidence called by Council is unfortunate.

108. In relation to Mr Helms' evidence, Council has already provided an extensive response within its Part B submission which will not be repeated, save to note:

- (a) Mr Helms' opinion as to the requirements of the documentation of a Heritage Review are not reflected in clause 43.01, PPN01, or any other document of the Department. They are plainly not supported as 'requirements' by the Department who placed no conditions on the authorisation of the Amendment related to this issue.
- (b) Mr Helms' requirements are also directly contradicted by the repeated written advice Council has received from the Department, circulated with these Part C submissions. In relation to Mr Helms' asserted requirement for double mapping of Significant places, an email from the Department dated 25 January 2019 provides:

DELWP's position for the areas outside of the central city is that the single layer approach be applied. The single layer approach still identifies places that are of individual heritage significance. In circumstances where there are places of individual heritage significance in heritage precincts, generally speaking, our view is that in these areas the precinct Statement of Significance would identify the places that are of significance on an individual basis. There is no need to map them separately unless you are turning on a separate control e.g. trees, paint. Then you would need a separate HO number and statement. This is as per the Practice Note on the application of the Heritage Overlay and is in line with previous advice we have issued.

A further email on 15 September 2021:

The proposed approach to have multiple statements does not seem consistent with the way significant places within precincts are usually managed. All the relevant information for places within a precinct should be incorporated within the precinct citation and statement. This would also be consistent with previous advice provided by DELWP, see attached.

And 30 May 2022:

The proposed approach to have multiple statements is not consistent with the way significant places within precincts are usually managed. Clause 43.01 provides that only a statement of significance can be listed for a heritage place as outlined above. All of the relevant information should be contained in the precinct statement. A similar issue was raised with council as part of the Carlton Heritage Review.

- (c) Mr Helms' evidence to the effect that the documentation employed by the Heritage Review is insufficient is not accepted. Council submits that, consistent with the evidence of Ms Schmeder, both the process engaged in by GML and its documentation is on par with, or superior to, other heritage reviews including recent heritage reviews completed within the municipality including the Carlton Heritage Review and the North Melbourne Heritage Review.
- (d) While Mr Helms is critical of the assessment undertaken by Mr Huntersmith and Ms Schmeder, he himself did not undertake any assessment of the place pursuant to the definitions in the inventory, PPN01 or a comparative analysis.
- (e) His evidence was contradictory to the Heritage Impact Assessment completed for the approved works to the place in concluding they would lower the assessed significance of the place.

109. Council submits the place is properly identified as Significant within the Heritage Review and that the exhaustive research, analysis and assessment process undertaken by Mr Huntersmith and Ms Schmeder ought be preferred.

F. 485-491 ST KILDA ROAD (SHERIDAN CLOSE)

110. The debate between Council and submitters appearing on behalf of Sheridan Close is not related to the proposed heritage listing of the place, but rather is limited to the content of the Statement of Significance for the place.

111. Council notes the submissions made in relation to Sheridan Close include that submitters would be content that the place be listed within the Heritage Overlay, provided the curtilage of the Heritage Overlay is limited to the façade, and 'a more balanced approach' is taken in respect of the remainder of the site. Council submits this approach, which seeks to negotiate the recognition of heritage significance having regard to other considerations (including, but not limited to, future development opportunities) is not supported by PPN01 or the Burra Charter, and is not consistent with accepted heritage practice. There is a well-established distinction between a planning scheme amendment identifying the significance of a heritage place and a planning permit application managing the significance of a heritage place.

112. Mr Huntersmith's evidence in relation to Sheridan Close is that it is an outstanding example of its type, the significance of which is not limited to its primary façade. Ms Schmeder's evidence is that 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.

113. Council further notes the Memorandum of Heritage Advice (7 June 2023) co-authored by Mr Turnor in relation to 31-33 Millswyn Street, South Yarra. That memo reads:

The South Yarra Heritage Study proposes to list three post war flats as individually significant Heritage Overlay places: Fairlie flats at 54-60 Anderson Street (1961), Sheridan Close, 485-491 St Kilda Road, Melbourne (1950-53) and Domain Park, 191-201 Domain Road, South Yarra (1960-62). It is our opinion that these buildings do warrant an individual heritage control, as proposed. As pictured below, while they are all physically larger examples of post war architecture, in comparison to the subject site, their design, façade articulation and materiality display elements that elevate them to a threshold level suitable for an individual Heritage Overlay.

114. Two submitters in relation to Sheridan Close indicated to the Panel that they would be calling heritage evidence in support of their submission, but ultimately did not elect to do so. Submitters appearing did not seek to test Council's evidence in cross-examination.

115. Council notes some of the submissions for Sheridan Close elevate the threshold of local heritage significance to a point many if not most places already included within the Heritage Overlay would fail to meet. One example is whether the architect of Sheridan Close was an innovator, comparable to Robin Boyd. Many other matters raised properly related to the future management of the place, rather than its identified heritage significance.

116. Council submits the identification of Sheridan Close as Significant is appropriate and should be supported by the Panel.

G. 31-37 MILLSWYN STREET

117. In relation to the evidence of Mr Turnor in relation to this site, the Council submits his evidence ought be regarded as evidently unsatisfactory in a number of respects.

118. These include:

- (a) Mr Turnor's supplementary evidence for the place disclosed yet another memorandum (on this occasion one he had co-authored, rather than just one he was aware of and had discussed with his colleagues) he had elected not to disclose in his original statement of evidence.
- (b) His most recently undisclosed memorandum identified that, as discussed above, he had considered Sheridan Close previously and found it to be Significant, when before the Panel he gave evidence that he had not considered the significance of the place. Council submits his response, to the effect that, he had thought Council was asking about State significance rather than local significance should be regarded insufficient.
- (c) The memorandum adopts the position of an advocate providing advice on how the client might properly achieve their desired outcome in relation to the Amendment. The memorandum does not provide an independent (or dispassionate) opinion as to the heritage significance of the place.
- (d) The opinion as to the relative importance of postwar apartment buildings within South Yarra expressed within his evidence and as compared with other municipalities, was made absent anything more than a general understanding of the numbers of postwar buildings or their percentage of residential development in any municipality. It was also made absent a comprehensive comparative analysis of postwar flats within his own evidence.
- (e) The totality of his evidence evinces a distaste for anything other than the best, most outstanding, postwar examples which sets the threshold for local significance too high. Council notes his use of the qualifiers – critical acclaim, unique, exceptional, carefully crafted bespoke design, to name a few.
- (f) Mr Turnor's criticism of the use of materiality in the site as indicative of a cheap, low-quality build, puts his evidence at odds with other places designed by Michael Feldhagen already included on the Heritage Overlay in Port Phillip for their aesthetic significance for the use of those very materials. Indeed, these were identified by Mr Turnor as 'pedestrian' in his written evidence. In this regard, Mr Turnor's threshold for local significance for postwar apartment building is higher than Mr Reeves, Mr Beeston, the authors of the Robert Peck

von Hartel Trethowan St Kilda 20th century architecture study, Mr Huntersmith and Ms Schmeder. Council notes that when asked by the Panel to clarify which examples he considered pedestrian he appeared to be considering the issue anew, rather than communicating an assessment already made.

119. Council submits the evidence of Mr Huntersmith and Ms Schmeder ought be preferred.
120. Council further notes the submissions made in relation to the site seek to call into question the relevance of émigré architects to aesthetic significance. While émigré architects were noted in the evidence of Ms Schmeder, Mr Huntersmith's evidence was clear that the role of émigré architects was not relied upon in relation to the assessed heritage significance of the place.
121. Council submits the identification of 31-37 Millswyn Street as Significant is appropriate and should be supported by the Panel.

H. 8-22 CLOWES STREET, SOUTH YARRA

122. Council's Part B submission noted the unauthorised removal of heritage fabric from the place and detailed the particulars of the Breach Notice issued by Council.¹⁵ As an update for the benefit of the Panel, Council can advise the landowner continues to proactively engage with Council in relation to the rectification works and has sought and been provided with an extension to submit the drawings detailing the proposed rectification works to Council. The relevant correspondence between the Council and the landowner's representative is circulated with these Part C submissions.
123. Council submits it would be an unfortunate outcome of the Heritage Review process if unauthorised works completed by a landowner resulted in the reclassification (or downgrading) of a heritage place, regardless of whether or not this was the intended outcome. Places proposed for heritage listing are routinely provided with interim heritage protection. If landowners considered unauthorised works would assist in resisting heritage protection, or achieving a lower level of heritage protection, the process would be effectively frustrated.

¹⁵ Part B, [248]-[251].

124. 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 existing and proposed classification of the place as Significant remains appropriate.

VII. CONCLUSION

125. Council submits the Amendment has strategic justification and respectfully requests that the Panel recommend adoption of the Amendment.
126. Council's preferred version of the Amendment, comprising four revised Statements of Significance and updated Inventory is provided with this Part C submission as **Addendum A**.

Susan Brennan SC

Carly Robertson

Counsel for the Planning Authority

By direct brief

17 November 2023