

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

IN THE MATTER of Amendment C258 to the Melbourne Planning Scheme

BETWEEN:

MELBOURNE CITY COUNCIL

Planning Authority

-and-

VARIOUS SUBMITTERS

AFFECTED LAND: All land within the Melbourne municipal area affected by a heritage overlay and particular properties in West Melbourne

PART B SUBMISSIONS OF THE PLANNING AUTHORITY

I. INTRODUCTION

1. The City of Melbourne (**Council**) is the Planning Authority for Amendment C258 (the **Amendment**) to the Melbourne Planning Scheme (the **Scheme**). This Part B submission is made in accordance with the Panel's Directions dated 13 June 2018 and is to be read in conjunction with the Part A submission circulated on 23 July 2018 and the expert evidence called from the following witnesses:

- (a) Anita Brady of Lovell Chen (heritage – gradings conversion, precinct statements of significance and heritage policies);
- (b) Graeme Butler of Graeme Butler and Associates (heritage – West Melbourne Heritage Review);
- (c) David Helms of David Helms Heritage (heritage – gradings conversion review);
- (d) Scott Hartley of Rivor Advisory Pty Ltd (auditing – Heritage Inventory); and
- (e) Sophie Jordan of Sophie Jordan Consulting (planning – heritage policy).

2. This submission deals with key aspects of the Amendment, and responds to issues arising from the various submissions made in response to exhibition and to the evidence tabled.

A. HERITAGE IN THE CITY OF MELBOURNE

3. The City of Melbourne is home to some of the most important heritage buildings and streetscapes in Victoria. These heritage buildings and streetscapes represent every historical period of urban development since approximately 1850.

4. Since 1982, with the introduction of the first heritage controls covering the Central City, Council has been committed to the identification and protection of its heritage assets through controls, guidelines and policy that aim to conserve and protect heritage places, and to manage development opportunities to ensure heritage considerations are accorded appropriate weight.

5. Council's *Heritage Strategy 2013* (the **Heritage Strategy**) specified a plan for identification and protection of heritage within the municipality over the next fifteen years, including a rolling program of heritage reviews. The Heritage Strategy identified the need to build on previous studies, including the lack of statements of significance for many places, and made several recommendations, including to:

- (a) update and review local heritage policies;
- (b) prepare statements of significance for all heritage precincts;
- (c) prepare statements of significance for all individually significant places; and
- (d) review the letter gradings system.

6. The magnitude of the tasks proposed by the Heritage Strategy needs to be understood in light of the fact that two thirds of properties within the City of Melbourne are subject to a Heritage Overlay: the City of Melbourne contains

approximately 13,900 properties,¹ of which about 9,300 are subject to a Heritage Overlay and for which the Heritage Inventory contains some 7,200 entries.²

B. THE SCOPE OF THE AMENDMENT

7. The Amendment seeks to strengthen protection and conservation of heritage places across the municipality. The Amendment applies to all land across the City of Melbourne that is contained within a Heritage Overlay, as well as introducing the Heritage Overlay to a number of properties within West Melbourne.
8. The Amendment seeks to advance the Heritage Strategy by implementing the recommendations of the *Heritage Policies Review 2016* (the **Heritage Review**) and the *West Melbourne Heritage Review 2016* (the **WHMR**). It deals with four discrete but related tasks identified in the Heritage Strategy:
 - (a) it introduces six new Statements of Significance for the largest existing heritage precincts outside the Capital City Zone;
 - (b) it revises the content of the two local heritage policies, Clause 22.04 (Heritage Places within the Capital City Zone) and Clause 22.05 (Heritage Places Outside the Capital City Zone);
 - (c) it replaces the existing A to D grading system with the preferred Significant/Contributory/Non-Contributory system, reflected in a new incorporated document *Melbourne Planning Scheme, Heritage Places Inventory 2017* in place of the existing incorporated document *Heritage Places Inventory June 2016*;³ and
 - (d) it implements the WHMR, by modifying the Schedule to Clause 43.01 to the Heritage Overlay to introduce 20 new heritage places, revising the descriptions

¹ This property data excludes units, utility lots and properties within a strata subdivision, reflecting the total number of 'base properties' only.

² The difference in these two figures reflects the fact that some precincts contain buildings which are Non Contributory (or ungraded) and hence are not included in the Inventory; and that some listings within the Inventory include a number of properties.

³ As explained in the Part A submission, the incorporated Heritage Inventory in the scheme as at 6 August 2018 is the Heritage Inventory March 2018 which differs from the Heritage Inventory June 2016 by deleting 35 Eastwood Street, Kensington. The Heritage Inventory June 2016 was the base document for the grading conversion exercise.

of five existing heritage places in West Melbourne and introducing statements of significance for all heritage places.

9. This substantial body of work has drawn on work undertaken by Council, with the assistance of expert heritage consultants, over the past five years. Council has been progressing heritage reviews of areas within the City by prioritising locations which are subject to development pressure.⁴ The Heritage Review commenced with work on the statements of significance for the large and longstanding precincts, informed by field work, community consultation and research. During the evolution of the statements, and informed by the field work and community consultation associated with them, the review of policies progressed and the gradings conversion exercise commenced. The timing imperative associated with the gradings conversion arises from the consistent message from planning panels that the gradings conversion needs to proceed as a priority and from the Department that further planning scheme amendments concerning heritage will not progressed under the existing letter grading system.⁵
10. The ongoing body of work to implement the Heritage Strategy is essential to ensure that Council's system of heritage identification, protection and management is effective, and accords with contemporary practice. Current deficiencies in Council's heritage system sought to be addressed by the Amendment include the out of date gradings system, policy gaps within the Capital City Zone (**CCZ**), the absence of statements of significance for six large heritage precincts outside the CCZ, and the need for updated heritage protection for the West Melbourne Structure Plan area.

C. STRATEGIC UNDERPINNINGS

11. Principle 1 of Plan Melbourne provides:

Melbourne has an enviable natural environment, important Aboriginal cultural heritage values, a rich inheritance of open space, and landmark buildings and streets created during the population booms of the Gold Rush and post-War period. To ensure Melbourne remains distinctive, its strengths will be protected and heritage preserved while the next generation of growth is planned to complement existing communities and create attractive new neighbourhoods.

⁴ Hence the work in City North, Arden Macaulay, West Melbourne and the forthcoming work in Fishermans Bend, Southbank and the Hoddle Grid.

⁵ See the Departmental authorisation letters for C272 and C258.

12. Outcome 4 of Plan Melbourne is focused on Melbourne as a distinct and liveable city with quality design and amenity. Direction 4.4 is entitled ‘*Respect Melbourne’s heritage as we build for the future*’, and provides:

Heritage will continue to be one of Melbourne’s competitive strengths, contributing to its distinctiveness and liveability and attracting visitors, new residents and investors. Heritage is an important component of Victoria’s tourism industry and benefits the economy.

Aboriginal cultural heritage, including important landscapes and places, must be protected and conserved. Custodianship of country, as well as contemporary Aboriginal cultural heritage values associated with the residents of places, must be respected.

In time, new development will add to Melbourne’s rich legacy of heritage places. The process of building a new legacy is important, just as it is vital that current assets are protected.

Innovative approaches to the creative re-use of heritage places need to be adopted, ensuring good urban design both preserves and renews historic buildings and places.

13. Clause 15 of the Scheme seeks to ensure that, *inter alia*, planning protects places and sites with significant heritage, architectural, aesthetic, scientific and cultural value. Clause 15.03-1S provides specific policy guidance regarding the conservation of places of heritage significance:

Objective

To ensure the conservation of places of heritage significance.

Strategies

Identify, assess and document places of natural and cultural heritage significance as a basis for their inclusion in the planning scheme.

Provide for the protection of natural heritage sites and man-made resources.

Provide for the conservation and enhancement of those places that are of aesthetic, archaeological, architectural, cultural, scientific or social significance.

Encourage appropriate development that respects places with identified heritage values. Retain those elements that contribute to the importance of the heritage place. Encourage the conservation and restoration of contributory elements of a heritage place. Ensure an appropriate setting and context for heritage places is maintained or enhanced. Support adaptive reuse of heritage buildings where their use has become redundant.

14. Within the City of Melbourne, the recognition and conservation of heritage places and streetscapes, including buildings, precincts, boulevards and public open spaces, is fundamental to its identity and to the future shape and form of the city.

15. The Municipal Strategic Statement (the **MSS**) in the Scheme sets out the vision, objectives and strategies for managing land use change in the municipality. Clause 21.06 of the MSS addresses Built Environment and Heritage and provides:

Melbourne's character is defined by its distinctive urban structure, historic street pattern, boulevards and parks, heritage precincts, and individually significant heritage buildings. Heritage buildings, precincts and streetscapes are a large part of Melbourne's attraction and the conservation of identified heritage places from the impact of development is crucial.

16. Clause 21.06-2 identifies the key policy objective relating to heritage “[t]o conserve and enhance places and precincts of identified cultural heritage significance”. The eight strategies provided to advance this policy are:

Strategy 1.1 Conserve, protect and enhance the fabric of identified heritage places and precincts.

Strategy 1.2 Support the restoration of heritage buildings and places.

Strategy 1.3 Maintain the visual prominence of heritage buildings and landmarks.

Strategy 1.4 In heritage precincts protect heritage buildings, subdivision patterns, boulevards and public open space.

Strategy 1.5 Protect the significant landscape and cultural heritage features of the City's parks, gardens, waterways and other open spaces.

Strategy 1.6 Within heritage precincts and from adjoining areas protect buildings, streetscapes and precincts of cultural heritage significance from the visual intrusion of new built form both [sic].

Strategy 1.7 Protect the scale and visual prominence of important heritage buildings, landmarks and heritage places, including the Shrine of Remembrance, Parliament House and the World Heritage Listed Royal Exhibition Building and Carlton Gardens.

Strategy 1.8 Maintain cultural heritage character as a key distinctive feature of the City and ensure new development does not damage this character.

17. *Planning Practice Note 1: Applying the Heritage Overlay 2018* (the **Practice Note**) provides direction about what places should be included within a Heritage Overlay, identifies recognised heritage criteria, explains historical and social significance, and guides the drafting and application of heritage controls.

18. A number of planning panels that have considering planning scheme amendments to the Scheme have commented on Council's heritage practices and policies. As observed in the evidence of Ms Jordan, at paragraph 32:

A number of independent Panels that have heard Amendments to the MPS have commented that whilst the City of Melbourne has shown a dedication to documenting and protecting places of historical significance across the municipality, much of this documentation warrants review and update. In particular it has been highlighted through these reports that the approach to policy and subsequent implementation through controls should keep pace with State wide standards.

19. In terms of the grading conversion, the C186 panel commented in 2012:

The Panel does not believe that the grading system used in the 2011 Review and imposed by the City is at all useful in 2012. It appears to the Panel that continuing an A - E grading system similar to that adopted in the 1980s does not reflect the current approach to heritage conservation in Australia.⁶

20. Before making its recommendation that Council undertake a general review of the grading system as part of developing a standardised approach to building listings in the central city area,⁷ the C186 panel said,

In summary, local protection is what is proposed in this Amendment. The Panel does not believe that applying B or C gradings to places included in the overlay assists in future management decisions about those places. After all, the proposal is that they are of local importance and aside from that, management decisions should be made on the basis of their statements of significance, not some relative value within the overlay.

... We agree with [Ms Sharp's] view that drafting of a new policy to address individual buildings in the central city appears appropriate – though we do not believe this Amendment should be deferred pending that task.

The gradings that have been allocated to the buildings in the 2011 Review will of course remain public knowledge and debates about the level of significance of those buildings and whether the particular gradings allocated in the Review are appropriate, will continue beyond this Panel process.

The Panel believes, however, that this should be avoided for any future amendments.⁸

21. Council agreed with the C186 panel recommendation in relation to the gradings review and responded,⁹

⁶ C186 panel report, 11 July 2012, page 18.

⁷ Ibid, page 23 and 105.

⁸ Ibid, page 23.

⁹ Council officer report, 25 September 2012, page 273.

This recommendation for further work needs to be considered in the context of other heritage priorities and studies. Once Council has an adopted Heritage Strategy, a program of heritage projects can be considered.

22. In 2014, the C207 panel said,¹⁰

Following questions from the Panel the Council indicated that it would be reviewing its grading system early in 2014.

Mr Roser for the National Trust submitted that the current gradings (and their origins given the changes between studies) is 'labyrinthine'.

...

The Panel was pleased to hear that the current system of gradings used by the Council will be reviewed early in 2014. This is consistent with the revised Applying the Heritage Overlay Practice Note of October 2013 which recommends against the use of such gradings. However, this hasn't prevented the Panel being called upon to assess the re-grading of certain places under the present Amendment. An example is the Lost Dogs' Home (Submission 9), where it appears that the re-grading of the Administrative Building from D to C seems to be solely to ensure that this building is seen to be a contributory place in the scheme. Without coming to a conclusion on that issue here, it appears to the Panel that this approach is a direct consequence of the Council's adoption of a hierarchical system of gradings which also involves a streetscape factor rather than the more commonly used and straightforward significant, contributory and non-contributory designations in other schemes. Also the submission made on behalf of Citywide (Submission 2) made the point that applying a streetscape grading to a street which has no obvious streetscape is strange. Therefore the Panel encourages the Council to move forward with its review of the grading system as a matter of priority.¹¹

23. In accepting the C207 panel recommendation in relation to the gradings review, Council recorded:¹²

As required by DTPLI the City Of Melbourne utilises the Heritage Victoria Practice Notes for "Applying a Heritage Overlay" for all heritage reviews and planning scheme amendments. Council's heritage policies are currently being reviewed and once this is complete the existing grading system will be replaced over time to comply with the current approach to heritage management. The heritage consultants for all the recent heritage reviews have provided advice on the conversion of their study to the new system.

24. Later in 2014, the C198 panel reported and commented,

It has been clear for many years the letter grading system (originally of five grades) has created a degree of uncertainty and confusion in the minds of owners, researchers and tribunals.

...

¹⁰ A judicial review of this Panel's recommendations was unsuccessful: *Dustday Investments Pty Ltd v Minister for Planning* [2015] VSC 101.

¹¹ C207 panel report, 21 January 2014, pages 28 and 29.

¹² Future Melbourne Committee report, 6 May 2014, page 95.

A number of panels have drawn attention to the difficulties of the City of Melbourne's grading system. Most recently the Panel for Melbourne Planning Scheme Amendment C186 commented:

The Panel does not believe that the grading system used in the 2011 review and imposed by the City is at all useful in 2012. It appears to the panel that continuing a A-E grading system similar to that adopted in the 1980s does not reflect the current approach to heritage conservation in Australia." ... [and] ..." we have the further concern that the five level grading used in the 2011 review mixes values with gradings.

It is clear that the grading system is not supported by the Practice Note or by common usage in other planning schemes.

...

[G]iven the history of confusion this Panel takes the view that re-writing the definitions and clause 22.5 (preferably to ensure consistency with the Practice Note) is long overdue.

...

The Panel is encouraged that, beyond this Amendment, Council intends to undertake a review of their grading system and the Panel encourages them to apply the significance/contributory model outlined in PN01.¹³

25. In its recommendations, the C198 panel said,

As with numerous Panels before it, this Panel strongly encourages Council to move toward the "individual significance"/ "contributory to the precinct" model consistent with PN01.¹⁴

26. Council adopted C198 and engaged Lovell Chen to conduct the Heritage Review, including the gradings conversion, in early 2015.

27. In terms of Council policies, the Tribunal has commented on the limited guidance provided by heritage policy in the CCZ. For instance, in *FJM Property Pty Ltd v Melbourne CC* [2013] VCAT 1833, the Tribunal commented,

We must apply the planning scheme as we find it. We are not persuaded that the planning scheme prescribes particular responses or design outcomes for heritage places within the Capital City Zone. We are satisfied that policy deliberately provides considerable design discretion.¹⁵

¹³ C198 panel report, 11 July 2014, pages 26-28.

¹⁴ Ibid, page 108.

¹⁵ At [34].

28. In terms of the absence of statements of significance for the heritage precincts, numerous Tribunal decisions record the difficulty of assessing heritage significance in the absence of a relevant statement of significance for the precinct in question. In *Lakobend Pty Ltd v Melbourne CC & Others* [2012] VCAT 1226, the Tribunal discussed the absence of a statement of significance for the South Yarra Precinct (HO6):

108 Turning to the existing heritage values of heritage precinct HO6 in general and Marne Street in particular, we note that neither the scheme nor any reference document provides a formal statement of the heritage significance of either. Limited assistance comes from Urban Conservation Areas – Guidelines for Owners. This document states—

South Yarra is distinctive among Melbourne’s inner suburbs because it contains a wide variety of architecture representing many of the important styles and periods from the last 140 years. ...

109 We need a statement of the street’s significance to establish what effect the demolition would have on the significance of Marne Street and what effect the replacement building would have on the significance of Marne Street and Leopold Street. There is no statement from any relevant heritage study or policy.

29. In *Christie v Melbourne CC & Ors* [2013] VCAT 1025, the Tribunal discussed the absence of a statement of significance for the Carlton Precinct (HO1):

Will the demolition or extensions adversely affect the significance of the heritage place, being Precinct HO1?

5 Ms Merritt submitted that the relocation of the rear window with associated demolition of it surrounds, along with the extension to the rear will adversely affect the significance of the heritage place.

6 The site is located within Heritage Precinct HO1. This precinct covers a broad area of Carlton and from submissions of parties appears not to have a statement of significance that applies to the whole precinct. Rather the precinct’s significance is identified in the grading of buildings as A, B or C within streetscapes graded as level 1, 2 or 3 within the Melbourne Heritage Places Inventory, that forms an incorporated document to the planning scheme.

30. In *Triarico v Melbourne CC* [2013] 2078, the Tribunal also discussed the absence of a statement of significance for HO1:

The Significance of the Heritage Place

This site is within Heritage Overlay Schedule 1 that applies to the Carlton heritage precinct. This heritage precinct has long been established since the early 1980s. As

such, the precinct does not contain a specific statement of significance, which is often contained in heritage studies prepared today.

...

Mr Raworth agreed there is a timber building behind the brick façade and that it may be one of only a few such buildings in Carlton. Nevertheless, he pointed out the consideration in the Heritage Overlay is whether the demolition will adversely affect the significance of the heritage place, being the Carlton heritage precinct. I reiterate that neither expert witness was able to point to any particular aspects of the Carlton conservation study that identify the significance of the area surrounding this site, nor the significance of the Carlton precinct as a whole. As such, I am not persuaded that it is appropriate to rely upon a statement in a pamphlet to find that this site's significance should be elevated beyond what the planning scheme says. If the Council considers the grading of this building should change, then the Council should seek to amend the Incorporated Document in the planning scheme.

31. In terms of urban renewal in West Melbourne, the *West Melbourne Structure Plan* was endorsed by Council in February 2018 and authorisation was sought for Amendment C307 to implement the Structure Plan following Council's meeting in April 2018. Both the Structure Plan and Amendment C307 emphasise the importance of heritage in West Melbourne,¹⁶ thereby reinforcing the importance of a proper foundation for protection of heritage assets in West Melbourne.

II. MATTERS FOR PANEL CONSIDERATION

32. Arising from the scope of the Amendment and the matters raised in submissions and evidence, the key matters for consideration by the Panel include:
- (a) the justification within the WMHR for the new heritage overlays, for the attribution of significance (either Significant or Contributory) and for the contents of the proposed statements of significance;
 - (b) the appropriateness of the conversion methodology employed to transition to the new gradings system;
 - (c) the reliability of the new *Melbourne Planning Scheme, Heritage Places Inventory 2017 (Inventory)* proposed for inclusion as the replacement incorporated document;

¹⁶ See for example, West Melbourne Structure Plan, February 2018, pages 25, 41, 49-50, 135.

- (d) the value of the process of preparing the six new statements of significance, and the content of those statements of significance, proposed to be included in the Scheme via incorporated document *Melbourne Planning Scheme Amendment C258: Heritage Precinct Statements of Significance 2017*; and
 - (e) the suitability of the content of the new local heritage policies.
33. Council submits that it will be appropriate for the Panel to consider and identify, throughout this process, further priority work to be undertaken by Council in the future in furtherance of the Heritage Strategy.

III. THE WEST MELBOURNE HERITAGE REVIEW

A. PROCESS

34. The WMHR was undertaken to assess the heritage significance of places in the West Melbourne Structure Plan area (the **WMHR area**). It included reviewing existing heritage places and identifying additional places needing heritage protection. Places in the Victorian Heritage Register (**VHR**) were not reviewed, but existing statements of significance and place mapping for VHR places were included in the review.¹⁷
35. The WMHR built upon previous heritage reviews and resources, including the *North and West Melbourne Conservation Study (1983)* (the **1983 study**) and the *City of Melbourne Heritage Review 1999* (the **1999 study**).
36. At the time the WMHR was conducted, Council had determined to stop using the letter grading system, but as that decision had yet to be implemented, places reviewed in the WMHR were assessed using both the existing letter grading system and the proposed Significant/Contributory/Non-Contributory system.
37. Mr Butler made his assessment using the definitions in the Yarra Planning Scheme, for which he had undertaken a heritage review in 2007. Consistent with the approach endorsed by the Panel for Amendment C85 to the Yarra Planning Scheme, Mr Butler in the WMHR assessed Significant buildings within a precinct as to whether they were individually Significant, Significant to the precinct, or both. Buildings within

¹⁷ See page 9 of the WMHR.

precincts were also assessed as to whether they were Contributory or Non-Contributory to the precinct.

38. All Significant buildings within a precinct were given a proposed letter grading of A, B or C. Contributory buildings within a precinct were given a proposed letter grading of D. A Non-Contributory building was either ungraded or given a proposed D letter grading.
39. Outside of precincts, buildings assessed as Significant and therefore warranting an individual overlay were given a grading of A to D. However, there are also D graded buildings outside of precincts that were assessed not to be Significant and therefore were not proposed for inclusion in a Heritage Overlay.
40. All places identified as Significant or as Contributory are listed in the proposed Inventory. Each Significant place has a Statement of Significance in the WMHR Statements of Significance Incorporated Document 2016 (the **WMHR Incorporated Document**).
41. The Statement of Significance proposed to be introduced by Amendment C258 for the HO3 heritage precinct for North and West Melbourne was prepared by Lovell Chen, along with the other precinct Statements of Significance being introduced through Amendment C258.
42. A small number of submitters have sought changes as to how a place is listed in the proposed Inventory. Council considers this is best dealt with by taking a uniform and considered approach to listings. It has prepared a Memorandum to this effect setting out a suitable approach to respond to these concerns. Council supports any necessary amendments required for the listing of properties in the Inventory, including those in the WMHR area, to implement this approach.

B. ASSESSMENT OF INDIVIDUAL PROPERTIES IN WMHR

43. Council notes that the Panel did not require Mr Butler to give oral evidence in relation to any sites other than those in relation to which a submitter was appearing at the hearing. Council continues to rely on the totality of the evidence of Mr Butler,

although it was not considered necessary by the Panel for his oral evidence about other sites to be received.

17-37 Abbotsford Street, West Melbourne (Submission 39)

44. This building is identified as Significant in the WMHR and the interim heritage overlay HO1178 introduced through Amendment C273. The submitter objects to the inclusion of the site in a heritage overlay and argues the building lacks architectural and historical significance. For the reasons set out in the WMHR at pages 71-74 and the opinions stated in the evidence of Mr Butler at pages 32-46,¹⁸ Council submits the identification of the place as Significant and the C grading of the building in a level 3 streetscape is appropriate.
45. Although the building has been altered, it is a substantial Interwar factory of aesthetic and historical significance. Its existing ungraded status and the absence of a permanent Heritage Overlay affecting the site is no longer appropriate given the greater recognition of Interwar factories through the WMHR. No changes to the Amendment are appropriate in response to the submission. It is appropriate that HO1178, introduced as an interim control by Amendment C273, is permanent.

2-24 and 28 Batman Street, West Melbourne: St James Old Cathedral complex

Bells of St James Old Cathedral (Submission 102)

46. The submitter requests the statement of significance for the St James Old Cathedral be amended to include recognition of its bells and bell tower.
47. St James Old Cathedral at 419-437 King Street & 2-24 Batman St, West Melbourne is protected under Heritage Overlay HO478 and is included on the VHR (H0011). It is identified in the WMHR and proposed Inventory as Significant, with a building grading of A in a level 2 streetscape.
48. The WMHR did not review VHR places and the statement of significance in the WMHR Incorporated Document is reproduced from the statement of significance in the VHR. Council supports Mr Butler's recommendations at pages 25 and his

¹⁸ See also pages 71-74 of the WMHR.

evidence at pages 47-74.¹⁹ He recommends that Council seek an amendment to the VHR designation to recognise the bells and other matters identified in the statement of significance proposed in Mr Butler’s evidence. That process is to occur separately from the Amendment. Therefore, no change to the WMHR Incorporated Document is required unless and until the Heritage Council determines to amend the statement of significance in the VHR.

28 Batman Street, West Melbourne (Submission 103)

49. This property is owned by the Melbourne Anglican Trust Corporation and is adjacent to St James Old Cathedral but is not recognised as part of VHR (H0011) for that site. It contains two attached buildings described as “Edwardian/interwar” that have not been assessed as Significant and which Council has not sought to protect as contributory to the St James Old Cathedral complex.²⁰ The buildings at 28 Batman Street are separated from the St James Old Cathedral by a multistorey office building.
50. Council agrees with the submitter’s request that 28 Batman Street be deleted from the Inventory. Its current identification as Contributory in the Inventory is not appropriate given the site is not within a Heritage Overlay nor is one proposed.

300 Dudley Street, West Melbourne (Submission 75)

51. Amendment C273 introduced HO1183 on interim basis to Festival Hall.²¹ The place was ungraded prior to the WMHR, which identified it as a C building grading in a level 3 streetscape. Under the new grading system, it was assessed as Significant.²²
52. The place was nominated for registration on the VHR and on 10 May 2018 the Executive Director of Heritage Victoria recommended to the Heritage Council that it be included as a registered place on the VHR under the *Heritage Act 2017*. A Heritage Council hearing has been requested

¹⁹ See also pages 174-177 of the WMHR.

²⁰ 28 Batman Street was assessed in the WMHR at pages 177-178. Given no heritage overlay is proposed for the site, it has not been addressed in the witness statement prepared by Mr Butler.

²¹ With the interim protection extended through Amendment C321.

²² See pages 351-354 of the WMHR.

53. Although the submitter originally contested the inclusion of the site in a Heritage Overlay, the evidence of Mr Lovell, filed on the submitter's behalf, agrees the site is significant. Accordingly, it is now understood the application of the Heritage Overlay is accepted and the issues in dispute concern the form and content of the statement of significance.
54. The evidence before the Panel provides strong confirmation of the heritage significance of the place, with both Mr Butler and Mr Lovell concluding the place meets the criteria for historical and social significance. Mr Lovell is of the view the social significance is at a State but not local level and that the place meets the criteria for representativeness.
55. Council also acknowledges that there is a benefit in aligning the statement of significance with the site's entry in the VHR on the basis that it proceeds to registration, as confirmed by Mr Lovell. Council has proceeded on the basis that the owner accepts the registration of the place in the VHR.
56. Council maintains that the statement of significance should reference the association with the well-known and notable John Wren as part of the historical significance of the place, given the long lasting popularity of boxing and entertainment on the site commenced under his direction; that the place is of social significance at the local level, given the link between the working classes of West Melbourne and the appeal of boxing and low cost popular entertainment to that community; and that the statement of significance should record both the local significance of the place as representative of low cost popular entertainment venue and the historical interest associated with the early use of pre-stressed concrete.
57. In terms of future management under the VHR, it is important that the local values of the place are recorded so that any comparative exercise undertaken at the State level does not lose sight of the local significance of the place and so that its local significance is taken into account in any decision under the Heritage Act.

2 Hawke Street, West Melbourne (Submissions 86)

58. The WHMR identified the place as Significant. Subsequent to that review, the building was demolished with the relevant approvals. The Amendment should be

amended to remove the place from the Inventory. A statement of significance in the WMHR Incorporated Document for the place is no longer required.

43 Hawke Street, West Melbourne (Submission 61)

59. The place is identified in the Amendment as Contributory to the HO3 precinct. The building is currently D graded in a level 2 streetscape and was reviewed through the WMHR as being D graded in a level 1 streetscape and Contributory.
60. The submitter requests the place be upgraded from Contributory to Significant. Whilst Council acknowledges that a degree of restoration work has been undertaken to the building since the WMHR was prepared,²³ the building remains altered to such an extent that protection as a Significant building is not currently considered appropriate.
61. Nearby and adjacent buildings with similar alterations that have been recognised as Significant have formed part of a twin or house row. Given 43 Hawke Street is not part of a twin or house row of the same construction, it is considered Contributory to the HO3 precinct but should not be identified as Significant in the Inventory.²⁴
62. Currently 53 and 55 Hawke Street are not identified in the proposed Inventory as part of the Significant Streetscape. Council supports Mr Butler's evidence in Table 1 and at pages 89-96, that all of 27-55 Hawke Street should be recognised in the proposed Inventory as a Significant Streetscape.

102 Jeffcott Street, West Melbourne (Submission 66)

63. The site is within HO771 (for the Sands and McDougall precinct) and is presently ungraded.²⁵ It is assessed as being a D graded building in a level 2 streetscape and Contributory in the WMHR and proposed Inventory. The submitter objects to it being identified as a Contributory building and places reliance upon Planning Permit No 2012/000444 but provided no additional evidence to support its position.

²³ See survey of 43 Hawke Street at pages 425 of the WMHR. Detail of nearby and adjacent terraces surveyed are at pages 410 to 440 of the WMHR.

²⁴ See the evidence of Mr Butler at pages 89-96. See also page 424 of the WMHR.

²⁵ See WMHR at pages 536-537.

64. The permit that the submitter refers to was granted by the Minister for Planning as the responsible authority on 12 August 2015. It does not allow any use and development of the subject land at 102 Jeffcott Street. It relates to a proposal for a mixed use, multi-storey development at 371 Spencer Street and 83-113 Batman Street. Those properties are separated from 102 Jeffcott Street by MacDougal Lane.
65. Council relies on the evidence of Mr Butler at pages 97-102 that no change to the Amendment is required and that the identification of the place as Contributory to the HO771 precinct is appropriate. The building is of historic importance, as an Edwardian-era industrial building constructed in 1914. It was Building Three of the substantial Sands and McDougall complex to which it is contributory.

609 King Street, West Melbourne (Submission 20)

66. The submitter does not support recognition of the building as Contributory to the precinct. It places emphasis on the extent of alterations to the buildings and the limited Victorian-era fabric as viewed from King Street. The place is currently ungraded and the WMHR concluded it should be recognised as a D graded building in a level 2 streetscape and Contributory.²⁶ Despite the alterations, the building retains recognisable building fabric from the Victorian-era, albeit most noticeably when viewed from the side and rear lanes. The remaining original building fabric, together with the evident Interwar changes, leads to its assessment as Contributory to the HO3 precinct. In particular it represents the key transport theme, illustrating the transition from horse drawn to motorised transport, having housed a farrier, then blacksmith and later a mechanic.
67. Council considers the proposed inclusion of the place in the Inventory as Contributory is appropriate and that no changes to the Amendment are required. It relies upon the evidence of Mr Butler at pages 103-107.

²⁶ See page 620 of the WMHR.

613 King Street, West Melbourne (Submission 21)

68. The site is currently an ungraded site within the HO3. The WMHR recognises it as a D graded building in a level 2 streetscape and assessed it as Contributory to the HO3 precinct.²⁷
69. The submitter contests the heritage significance of the building and has circulated a written report prepared by Mr Gard'ner. When it circulated that evidence, the submitter indicated that he would not be calling Mr Gard'ner and withdrew his request to be heard. Despite this, the submitter has asked the Panel to take into account the written report.
70. On the basis that the submitter was not appearing, the Panel declined to hear oral evidence from Mr Butler about the site. Notwithstanding, Council relies upon the evidence of Mr Butler at pages 108-112. Mr Butler's evidence is that the building has historical value given its role in the manufacturing industry. Manufacturing is recognised as an important theme in the WMHR and the proposed Statement of Significance for the HO3. The building was constructed in 1920 for the purposes of a brick factory. Subsequently, it was occupied by the Cellular Clothing Company Limited. It maintains a distinctive Interwar parapet form despite alterations to the building.
71. Little to no weight should be placed upon the written report prepared by Mr Gard'ner for this property given Mr Gard'ner has not been called or made available for cross-examination in relation to this site. With respect to the ungraded Interwar factories identified in the evidence of Mr Gard'ner typically exhibit a greater degree of unsympathetic alterations, or where they have fewer alterations are of a less substantial architectural form than 613 King Street, with its distinctive parapet form. The further research undertaken by Mr Gard'ner confirms the importance of a manufacturing industry to the site, albeit across a broader range of industries than identified in the WMHR. Council does not support any changes to the Amendment in relation to this place.

²⁷ See pages 621-622 of the WMHR.

456-462 La Trobe Street, West Melbourne (Submission 54)

72. These buildings are presently ungraded and are not within a Heritage Overlay. The building at 456 La Trobe Street and the adjacent building at 460-462 were reviewed as D graded buildings in a level 2 streetscape.²⁸ They were assessed as neither Significant nor Contributory.
73. Council does not support the submitter's request that the buildings be given heritage protection through the Amendment. The submitter, who owns the nearby land at 8 Phoenix Lane, has provided no evidence of the heritage values of the site in support of its request. It has, however, referred to the Heritage Overlays applying at 347-349 King Street and 4-8 Phoenix Lane. It believes heritage protections should be applied because the rear of 456-462 La Trobe Street would be seen from 8 Phoenix Lane. Although the proposed Inventory recognises the Streetscape of 347-349 King Street and 4-8 Phoenix Lane as Significant, Council does not support the identification of 456-462 La Trobe Street as either Significant or Contributory. Council relies upon the evidence of Mr Butler at pages 113-122.

488 La Trobe Street, West Melbourne (Submissions 19, 51 and 84)

74. The Amendment proposes to apply HO1190 and to identify the place as Significant. Submissions were received on that basis. However, in 2018 and after those submissions were received, the buildings were demolished with the relevant approvals.
75. The Amendment should therefore be amended: the Inventory, WMHR Incorporated Document, Heritage Overlay map and the Schedule to clause 43.01 should be modified accordingly. The recommendation in Table 1 of Mr Butler's evidence supports this position.

²⁸ See pages 624-606 of the WMHR.

65 Peel Street, West Melbourne (Submission 90)

76. The site is presently included in the HO3 and the building is C graded in a level 3 streetscape. The WMHR retains the C grading of the building and upgrades the streetscape to level 2 and classifies the site as Contributory.²⁹
77. The submitter requests the regrading of the building from Contributory to Significant. Council and Mr Butler agree with this submission and accordingly recommends the Inventory be amended and the statement of significance prepared by Mr Butler be included in the WMHR Incorporated Document. Council relies upon evidence of Mr Butler at pages 25 and 130-136, which concludes the place meets the threshold for Significance and that its identification as Contributory was in error.

152-160 Miller Street, West Melbourne (Submission 85)

78. Despite the West Melbourne address, this part of Miller Street was not part of the WMHR. It was reviewed as part of the Arden Macaulay Heritage Review and a Statement of Significance introduced through Amendment C207.³⁰ Accordingly, the submitter's concerns that the building should not be identified as Significant in the Inventory are to be assessed in light of Council's submissions regarding the preparation of the proposed Inventory and grading conversion methodology. Mr Butler's evidence to the C207 Panel identified the building as individually significant³¹ and although the C207 panel did not accept its historic significance, it considered that its aesthetic importance and architectural significance warranted application of the Heritage Overlay.³²

²⁹ See pages 734-735 of the WMHR.

³⁰ See page 72 of the C207 Incorporated Document containing the Statements of Significance for the Arden Macaulay Heritage Review.

³¹ Butler, Arden Macaulay Heritage Review 2013, page 24.

³² C207 panel report, 2014, pages 43-45. The panel said "it is a competent and good example of the modern architecture of post WW2 Melbourne and for that reason alone warrants the application of the proposed Heritage Overlay. The statement of significance has been updated to reflect the C207 panel recommendations.

159 Roden Street, West Melbourne (Submission 43)

79. This site is currently within HO683 (159-163 Roden Street) and the building graded D within a level 3 streetscape. The WMHR proposes the building be graded D in a level 2 streetscape. It is identified as Contributory to the precinct and individually Significant, as is the adjacent building at 163 Roden Street.³³ The proposed Inventory lists 159 as Significant and 163 as Significant and Statements of Significance have been prepared for each of these buildings.
80. The submitter has filed evidence by Mr Raworth, who expresses the opinion that the building and streetscape should be given a lower grading and that the Heritage Overlay should be removed or changed to a serial listing, along with other modest dwellings from the first decades of West Melbourne's development. Council's position in relation to serial listings is addressed elsewhere in this submission.
81. Council supports the recognition of the house row at 159-163 as Significant and relies upon the evidence of Mr Butler at pages 143-151. Built around 1867, it is amongst the oldest 10% of surviving house rows in West Melbourne. The evidence of Mr Raworth indicates the house at 163 Roden Street is earlier than previously understood, increasing the significance of the two houses, which present as a row despite having been constructed individually.
82. Whilst Mr Raworth points to the brevity of Thomas Hulse's association with the house, Mr Hulse's recognition as a successful employee of the railways together with the importance of the railways to West Melbourne, justifies the protection of the place. Together with his occupation of the house at 163 Roden Street, these are the only West Melbourne houses that are associated with Hulse. Along with its association with plumber John Dickey it demonstrates the 'housing the population' theme.
83. The protection of the house row as Significant is necessary to ensure the heritage values of HO683 are respected: if either house is demolished, the heritage significance sought to be protected through the Overlay would be destroyed. Council considers this is achieved through the application of the individual HO683.

³³ See pages 804-807 of the WMHR.

84. Mr Butler's evidence at page 148 records

The Heritage Places Inventory 2017 has been amended to reflect this:

- *Roden Street 159 Contributory -*
- *Roden Street 163 Contributory*
- *Roden Street 159-163, Thomas Hulse House Row Precinct -Significant.*

85. That is not how the proposed Inventory currently records the properties, but it is submitted that Mr Butler's proposed identification of 159 and 163 Roden Street as Contributory is appropriate.

86. For consistency of approach, the Inventory entry for each property should include each as Contributory and given their inclusion in an individual Heritage Overlay, there is no need for a Significant listing in the Inventory for the house row. The statements of significance for 159 and 163 Roden Street should be combined into a single statement of significance for the individual Overlay.

164-184 Roden Street, West Melbourne (Submission 38)

87. The site is currently, and is proposed to remain, within HO3. It is a large warehouse complex, associated with Briscoe and Co ironmongers. The western part of the site (172-184 Roden Street) incorporates the 1889 building with later upper storey additions. The eastern part of the site (164-170 Roden Street) comprises Art Deco buildings constructed for the company in 1925 during an expansion phase.

88. The submitter does not support the proposed regrading or the identification of the buildings as Contributory and Significant, although the evidence of Mr Raworth is that a Contributory grading may be appropriate. Mr Butler's evidence is that the warehouse complex is significant historically and aesthetically to West Melbourne. Detailed information as to its significance is included in the statement of significance and supported by the additional research undertaken as part of the WMHR.

89. The buildings are currently D graded in a level 3 streetscape. The WMHR upgraded the assessment of all the buildings to C grade in a level 2 streetscape.³⁴ Mr Butler's assessment for the review recorded:

³⁴ See pages 812-826.

- (a) the entire complex as Significant (identified as 164-184 Roden Street);
 - (b) the Hawke Street wing (135-141 Hawke Street) of the rear building (part 164-170 Roden Street) as Significant;
 - (c) the Roden Street wing of the rear building (part 164-170 Roden Street) as Contributory.
90. This manner of identification gave rise to a degree of confusion. Mr Butler attempted to address this by making suggestions in his evidence at page 159, in emails dated 2 August 2018 and in his powerpoint presentation given with his oral evidence.
91. Consistent with his oral evidence and presentation, Mr Butler acknowledges that how to list the buildings in the Inventory presents a challenge. This, however, is a matter of form not substance.
92. Mr Butler has consistently maintained his opinion throughout the WMHR and his written and oral evidence, that the building at 172-184 Roden Street is Significant and that the complex as a whole (being 164-184 Roden Street) is Significant.
93. To address the potential confusion in the Inventory, Council considers the Inventory should be amended to:
- (a) identify 164-170 Roden Street as Contributory;
 - (b) identify 172-184 Roden Street as Significant;
 - (c) reference the Incorporated Documents for both the Heritage Precincts Statement of Significance 2017 and the West Melbourne Heritage Review 2016: Statements of Significance, reflecting the individual significance of the building at 172-184 Roden Street and the contribution of the building at 164-170 Roden Street to the 164-184 Roden Street complex, and their combined contribution to HO3.
94. As a result of the proposed changes to the Inventory, a single Statement of Significance should be prepared for 164-184 Roden Street, combining the three existing Statements of Significance.

95. Mr Raworth's evidence refers to a recent Tribunal decision for this site. In *Waters v Melbourne CC* [2017] VCAT 1350 the Tribunal refused to grant a permit for demolition, alterations and additions to create an eight storey residential building. At paragraphs 19-20 of its decision, the Tribunal noted its view that full demolition of the building at 164-170 Roden Street was appropriate.
96. That decision, however, was made on the basis of both buildings being assessed as D graded in a level 3 streetscape and that the buildings were not considered to be contributory under local policy. Whilst the gradings proposed in the WMHR Review and the Amendment were considered by the Tribunal, the Amendment was given little weight as it was at the exhibition stage and the proposed Inventory listing was found to be confusing.
97. At paragraph 15, the Tribunal stated:³⁵
- Given this amendment is at the exhibition stage, it is not relied upon by the Council in this case. The Applicant provided evidence of its submission in response to the exhibited amendment, expressing concern about the change in the grading of buildings and that the change is not justified. Given this opposition to the amendment detail and the fact that the amendment is at a reasonably early stage in its processing and consideration, I have decided that it should be given limited weight in reaching my decision on the merits of this proposal. To be clear, I have acknowledged the draft Statement of Significance for the heritage precinct, and my findings on the acceptability of this proposal are based upon the heritage gradings and Heritage local policy that currently exist in the planning scheme.*
98. The only evidence before the Tribunal was that given by Mr Raworth who was called by the permit applicant. By contrast, in oral and written evidence, Mr Butler has set out why the site has been assessed as having greater heritage significance than previously understood. This includes an increased importance being placed upon industrial and warehouse buildings in the area and greater research and acknowledgement of the site's history and previous occupants that supports its historical significance.
99. The Panel is in an entirely different situation to the Tribunal. The Amendment has now been progressed and the confusion arising from the proposed Inventory entries is sought to be resolved. There is detailed expert evidence, including evidence filed

³⁵ At paragraph 15.

by the Council. That evidence, together with the oral evidence, provides a basis for the heritage protection now proposed.

171 Roden Street, West Melbourne (Submission 101)

100. The building at 171 Roden Street was assessed in the WMHR as Contributory and proposed to be graded D in a level 2 streetscape, in place of the existing ungraded status. It is identified in the proposed Inventory as Contributory. A Statement of Significance for 171-179 Roden Street is included in the WMHR Incorporated Document.
101. The submitter contests the heritage significance of the building, noting alterations from the mid 1950s, that there is no prominent chimney and contesting that the roofline is a continuum of neighbouring houses. The site adjoins 173-179 Roden Street, which is currently protected under HO844 (173-179 Roden Street). It is proposed to expand the Heritage Overlay to include this site and to introduce a statement of significance for 171-179 Roden Street.
102. Each of the houses in the row is identified as Contributory in the Inventory. Additionally, the collection of 171-179 Roden Street in its entirety is identified as Significant. The house row of 171-179 Roden Street is properly regarded as of Local Significance as historically representative of the start of a major growth period in West Melbourne. Although 171 Roden Street has been altered, its demolition and redevelopment would undermine the row's symmetry and heritage value.
103. Council relies on the evidence of Mr Butler at 165-170.³⁶ Council supports the minor changes identified by Mr Butler to the proposed statement of significance for 171-179 Roden Street.
104. For consistency of approach, the Inventory entry for each property should include each as Contributory and given their inclusion in an individual Heritage Overlay, there is no need for a Significant listing in the Inventory for the house row.

³⁶ See also pages 818 to 824 and 827 to 829 of the WMHR. The existing grading is D2. The proposed letter grading under the WMHR is C2, with it being recognised as significant individually.

101 Rosslyn Street, West Melbourne (Submission 99)

105. The place is identified in the Inventory as Significant and HO1192 is to be introduced for the site. Council does not agree with the submitter that the demolition of the adjacent building at 109-133 Rosslyn Street has impacted the heritage context of this building to the extent that the proposed heritage controls are not appropriate. Although the demolition of the adjacent building has decreased the heritage value of the streetscape, it increases the importance of protection for 101 Rosslyn Street given both places had been associated with the Felton Grimwade and Duerdins company (the **FGD company**), included Interwar factories and reflected the historic themes of manufacturing and defending the city.
106. Mr Butler's evidence is that the building is historically and aesthetically significant to West Melbourne. In particular, it is an Interwar factory, of a strong Moderne style design and is associated with the important (FGD company) and its increased capacity as part of the war effort of WW2.
107. In accordance with the evidence of Mr Butler at pages 26 and 171-174 of his report,³⁷ Council proposes no changes to the Inventory and supports Mr Butler's recommendation that the statement of significance be revised to reflect the demolition of 109-133 Rosslyn Street.
108. The proposed HO1193 for the site at 109-133, as well as the identification of that site in the Inventory and schedule to clause 43.01 and the statement of significance in the WMHR Incorporated Document should be deleted given the very recent demolition that has occurred there.

317 Spencer Street, West Melbourne (Submission 58)

109. This site houses the Melbourne Assessment Prison (**MAP**). No heritage overlay currently applies and an interim overlay was not applied as part of Amendment C273 because of the works program being undertaken at the time. Under the Amendment

³⁷ See also pages 881 – 882 of the WMHR. It was identified as significant and proposed for inclusion in a new heritage overlay. The site is ungraded and a C grading in a level 2 streetscape was proposed. For the adjacent site at 109-133 Rosslyn Street, the WMHR at pages 883-887 show it was also identified as significant and proposed for inclusion in a new heritage overlay. The existing grading of C and D in a level 3 streetscape was proposed to be upgraded to B in a level 2 streetscape.

it is proposed to introduce HO1195, to identify the site as significant and to include a statement of significance in the WMHR Incorporated Document.

110. The submitter's concerns relate to the potential operational impacts of the proposed heritage controls. Its submission proposed no heritage overlay be applied because of these concerns, however the evidence of Mr Gard'ner records that the submitter no longer objects to the inclusion of the site in a Heritage Overlay.³⁸ Instead, it is proposed that an incorporated plan be prepared. This is supported by Council and is consistent with the recommendations of Mr Butler. Council relies upon the evidence of Butler at pages 26 and 175-182 in support of identification of the place as Significant.³⁹
111. Council agrees with the introduction of the incorporated plan provided with the evidence for the MAP. Subject to minor refinements, Council agrees with the form of the draft incorporated plan circulated by MAP. It has reached an in principle agreement with MAP as to the form of the incorporated plan and anticipates that a final form of the document acceptable to both Council and MAP will be agreed upon prior to the completion of the current panel hearing.
112. The request of the submitter and recommendation of Mr Gard'ner that the names of the three notorious criminals be removed from the statement of significance is accepted.

437-441 Spencer Street, West Melbourne (Submission 88)

113. The submitter contests the proposed change in grading from D to Significant.⁴⁰ Both 437 and 441 Spencer Street are currently protected under HO780 (for 437-441 Spencer Street, West Melbourne). The buildings are presently D graded in a level 3 streetscape and the WMHR recommends the building at 441 Spencer Street be upgraded to a C grading with a level 2 streetscape applying to both sites.

³⁸ See page 28 of the evidence of Mr Gard'ner.

³⁹ See also the WMHR at pages 914-915. The place is currently ungraded and the WMHR applies a B grading in a level 3 streetscape.

⁴⁰ See pages 940-941 of the WMHR.

114. In the WMHR 437 Spencer Street is identified as Contributory and 437-441 Spencer Street as Significant. A statement of significance for 337-441 and for 441 Spencer Street is included in the WMHR Incorporated Document.
115. Council supports the proposed identification of the building at 437 Spencer Street as Contributory and the building at 441 Spencer Street as Significant in the Inventory. Council also supports the proposed changes to the statement of significance for 441 Spencer Street as set out at pages 26, 183-189 of Mr Butler's report.
116. The submitter refers to planning permit TP-2015-432, which allows the demolition of the existing buildings and construction of a multistorey building for dwellings and offices with development to commence by 29 March 2019, along with other recent construction and approvals for multistorey buildings.
117. Mr Butler's evidence notes the existing permit may lapse, and that the site is of greater significance than when assessed through the WMHR as further investigations have uncovered additional heritage information, indicating the corner building at 441 Spencer Street is older than previously thought. It was constructed in 1863 for well-known merchants, serving as a bonded store and later as a tailor, hairdresser and tobacconist. The contributory building at 437 Spencer Street is an altered Victorian era structure that was owned over a long period by a high-ranking employee of the Victorian Railways. The place is of historical value as a Victorian-era commercial streetscape.

210 Stanley Street, West Melbourne (Submission 99)

118. This site is currently within the HO3 overlay. It is also mapped as being subject to HO471, but that is an error as HO471 should apply to 138-140 Stanley Street. The site is currently ungraded. Under the WMHR it is recognised as a D graded building in a level 3 streetscape⁴¹ and assessed as Contributory to the HO3 precinct. For the reasons set out at pages 190-193 of Mr Butler's evidence, that grading is considered appropriate and no changes to the Inventory are proposed.

⁴¹ See page 1121 of the WMHR.

119. The building is an Interwar workshop with a clinker brick and rendered façade and distinctive saw tooth roof. It represents the heritage values sought to be protected through the HO3. Although of a modest form, it is relatively well-preserved and was custom designed by well known architects Purchase & Teague who also designed the Melbourne Wool Exchange and the nearby Briscoe & Co building.⁴²
120. The submitter objects to the proposed D grading and has filed evidence by Mr Raworth. With respect to Mr Raworth’s claim that all D graded buildings were automatically assessed as being Contributory, that is simply not the case. As part of the WMHR, all buildings reviewed for which a “D” grading was proposed were also assessed to determine whether or not the building was individually significant or contributory. The assessment for the WMHR concluded that this previously ungraded building warranted a “D” grade and further assessed that it was Contributory to the HO3 precinct.⁴³
121. In *Stanley Street Holdings Pty Ltd v Melbourne CC* [2018] VCAT 30, the Tribunal determined to refuse a planning permit for the site. With respect to the heritage issues, it considered the demolition of the whole building was not appropriate and that a minimum of the front 10 metres should be retained so that all parts of the roof associated with the first saw tooth were retained.⁴⁴
122. The Tribunal stated at paragraphs 52 to 54:

52 Total demolition would adversely affect the significance of HO3 & HO471. Although its grading as a contributory building under Amendment C258 is not a seriously entertained planning proposal, we are required to consider any applicable heritage study. The heritage review is such a study and the review assesses the building as having contributory significance.

53 The street façade and the south-western elevation facing the at-grade car park on the subject land can now be viewed from Stanley Street and the car park. The saw-tooth roof form is prominent from the car park. These parts of the exterior are in good condition with little subsequent alteration. Neither Ms Gould nor Mr Raworth had the opportunity to inspect the interior of the former industrial building at 210-212 Stanley Street. We have had that opportunity.

⁴² See *Stanley Street Holdings Pty Ltd v Melbourne CC* [2018] VCAT 30 at [48].

⁴³ See page 1121 of the WMHR.

⁴⁴ At paragraph 57.

54 *The building is now used as one dwelling. However, the interior continues to clearly demonstrate the former use. It is a relatively well-preserved example of industrial architecture of the interwar period. We therefore find it has significance. It makes a contribution to the historic character of the 'North & West Melbourne' precinct. This is a relevant consideration under heritage policy.*

123. The evidence of Mr Butler now before the Panel provides further detail as to the heritage significance of the site and why it is Contributory to the HO3 precinct.

387 Victoria Street, West Melbourne (Submission 97)

124. The building is identified as Contributory in the proposed Inventory. It was identified as Contributory in the WHMR with a proposed building grading of D in a level 2 streetscape to replace its existing ungraded status.

125. With respect to the site at 387 Victoria Street, West Melbourne, submission 97 noted the building was not listed in the earlier exhibited inventory, but that it has been correctly identified in the proposed (November 2017) version of the Inventory as Contributory

126. As the listing is now correct, no changes to the Amendment are required as a result of the submission.

127. The house at 387 Victoria Street is within the former Benevolent Asylum Estate area. Mr Butler at pages 197-199 of his evidence recommends that Council consider preparation of a Benevolent Asylum Estate Heritage Overlay, a statement of significance and associated management guidelines and considers this could be done in any future North Melbourne heritage review, with the area falling within parts of both North and West Melbourne.

62 Walsh Street, West Melbourne (Submission 7)

128. This place is identified as Significant in the Inventory and a statement of significance is proposed for the WMHR Incorporated Document. It is currently within HO3. The submitter contests the heritage significance of the site due to the mixed streetscape and changes to the building other than its façade.

129. The building is currently C graded in a level 3 streetscape; this was confirmed by the WMHR, which also assessed the building as being Significant and Contributory to the HO3 precinct.⁴⁵ It is recognised for its historic and aesthetic significance. It is an early Victorian-era dwelling, having been constructed in 1865. It was enlarged in 1871 and again in 1888. It now presents as generally original to the 1888 alterations, with fine and rare details such as the iron railings and balconettes. Historically it has links with occupations typical of West Melbourne, and with Wilmot Oakey who achieved local prominence.
130. No change to the Amendment is proposed for the reasons stated in the evidence of Mr Butler at pages 200-203.

309-311 William Street, West Melbourne – Flagstaff Gardens (Submission 83)

131. With respect to Flagstaff Gardens, the submitter requests the preservation of the view from the original flagstaff location within the gardens. Flagstaff Gardens is protected under Heritage Overlay HO793 and is included on the VHR (number H2041). Council does not propose any changes to the Inventory or the WMHR Incorporated Document. This is consistent with the evidence of Mr Butler at pages 207-210.⁴⁶
132. Statements of significance for the Flagstaff Gardens, as well two discrete statements for places within the gardens, the Caretaker's Residence, and the Tennis Court and Pavilion, are included in the WMHR Incorporated Document. The statement of significance for Flagstaff Gardens is from the VHR Statement of Significance. It recognises the important views over the bay and states "the hill was a natural gathering place in the early years of European settlement because of the views it offered over the Bay." No further changes are considered necessary.
133. Mr Butler's recommends that the precinct Statement of Significance for North and West Melbourne be amended to include a specific acknowledgement of the cultural

⁴⁵ See pages 1291-1292 of the WMHR.

⁴⁶ See pages 1296-1299 of the WMHR.

importance of the adjoining Flagstaff Gardens as a key viewing and meeting point within the area.⁴⁷

Various submissions on WMHR

134. The following submissions, whilst relating to the WMHR generally, did not make submissions as to the assessment of a specific site except in the context of possible errors in the Inventory. Accordingly, they are considered elsewhere in Council's Part B submission:

- (a) Melbourne Heritage Action Group (Submission 60); and
- (b) Hotham History Project (Submission 72)

IV. GRADINGS CONVERSION METHODOLOGY

135. The gradings conversion that has been undertaken as part of the Amendment is for the purpose of phasing out the current alphabetical property gradings (A to D) and replacing it with the new system which utilises Significant, Contributory and Non Contributory gradings. While Non Contributory places are not listed in the Inventory, the term is defined within policy. This is in accordance with the Practice Note which expressly discourages the use of letter gradings.

136. It essential to recognise at the outset that the gradings conversion is, accordingly, *not* a heritage review as such. Nor does it involve an assessment of the heritage significance of all properties. The number of identified heritage properties within the City of Melbourne means that a complete heritage review of all properties for the purposes of the Amendment would be of a scale (and cost and timeframe) that is prohibitive. Accordingly, Council has sought to translate to the new gradings system, and pursue comprehensive heritage reviews on a suburb by suburb basis through an ongoing programme established in the Heritage Strategy. The WMHR is one such

⁴⁷The recommendation is found at page 208 of his evidence, summarised at Table 1 as "Recommend a reference be made to the key role played by the Flagstaff Gardens in any proposed North and West Melbourne Statement of Significance."

review, and forms part of the Amendment. The forthcoming South Carlton and Hoddle Grid reviews are others.⁴⁸

137. It is also important to note that the gradings conversion is an exercise concerning the classification of significance of heritage properties, and not strictly one regarding management of heritage properties, a distinction articulated in the Burra Charter and reinforced in sound heritage practice.⁴⁹ Thus it is not appropriate to assess whether a place satisfies a classification of significance by reference to the implications for its management, although a blurring between these conceptual categories is found throughout Mr Raworth's evidence.
138. A further important preliminary observation relates to nomenclature: the term "cultural heritage significance" is used generally to recognise the heritage value of a place; the Practice Note refers to "significance" as the basis for inclusion in a Heritage Overlay, identifies thresholds of State and Local Significance⁵⁰ and defines "Local Significance" to include "places that are important to a particular community or locality". The terms "outstanding" and "contributory" are also defined in existing clause 22.05 to inform differential management regimes which are more exacting for higher letter grade properties.
139. The terms Significant and Contributory as employed in the gradings conversion delineate between places which are significant in their own right, irrespective of their wider geographic setting, and places which are contributory to a broader precinct. Because a place is Contributory does not mean it lacks cultural heritage significance. The use of Significant and Contributory in the gradings review seeks to enhance the designation of "Local Significance" as that term is used in the Practice Note by recognising that local significance can cover a wide variety of places with a correspondingly wide spectrum of heritage values, both in terms of what kind of significance they have (individual or contributory) and what level of significance they

⁴⁸ For example, the consultant's brief for the South Carlton study demonstrates the scope of the review includes as a minimum, places already included in the HO (either individually significant or forming part of a precinct) and places not yet covered in the Heritage Overlay that have been flagged for further assessment during field surveys (page 8).

⁴⁹ See the discussion in the C207 panel at pages 19-20.

⁵⁰ Places are graded either State or Local through the column in the HO Schedule. If place is on the VHR, it is attributed State significance; if not, it is locally significant.

have (conveyed traditionally by a hierarchical letter grading system). Part of the rationale for departing from the letter grading system is to shift away from a hierarchy of importance towards an appreciation of what, how and why a place is significant as conveyed by a statement of significance.⁵¹

140. Council acknowledges that the terminology used in designating or describing heritage places can create confusion and this confusion is reflected in the submissions received. For example, Submission 17 argued that properties should be graded according to either State significance or Local significance and ‘*avoid altogether the problematic “Contributory” category*’, without an apparent appreciation that all properties the subject of the gradings review are either individually places of Local Significance or parts of precincts which are of Local Significance and that the categories Significant and Contributory have been used to further describe heritage values within the designation “Local Significance”.

A. THE PROCESS FOR THE CONVERSION EXERCISE

141. Council engaged Lovell Chen to recommend a means of undertaking the gradings conversion exercise for the properties in the Heritage Overlay in the City of Melbourne.⁵² Lovell Chen’s review focused on graded properties in Heritage Overlay precincts and groups of properties which shared a single Heritage Overlay number.
142. No review was undertaken of individual properties with an individual Heritage Overlay number, on the basis that such properties are 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. These properties were directly converted to a grading of Significant.
143. Similarly, all A and B properties were directly transferred to Significant in recognition of the higher threshold of significance that these grades indicate.

⁵¹ See the comment of the C186 panel at page 23.

⁵² The gradings conversion exercise intentionally excluded properties in City North, Arden Macaulay and Kensington which had recently been the subject of heritage reviews and included both a letter grading and a designation as Significant or Contributory as part of their methodology. See Part G of this submission for further explanation of this approach.

144. On the basis of sampling exercises, desktop work and field work undertaken by Lovell Chen, all C grade properties (with the exception of Parkville) were determined to require review. In Parkville, all C grade properties were directly converted to Contributory. D grade properties were directly converted to Contributory in all precincts, with the exception of Kensington, North and West Melbourne and Carlton. Ungraded properties were not the subject of review, and were directly converted to grading of Non-Contributory.
145. In addressing the adequacy of the methodology for conversion, the Panel should proceed on the basis that each graded property meets the definition for that grade set out in the policy;⁵³ and on the basis that where a single property or collection of properties, irrespective of grading, has its own Heritage Overlay, it is significant “in its own right” because if it were not, it would not have warranted protection by a Heritage Overlay.⁵⁴

B. A AND B GRADED PROPERTIES

146. As a reflection of their existing highly graded status, all existing A and B graded properties were recommended for direct conversion to Significant.
147. The *Methodology Report – City of Melbourne Heritage Gradings Review* (the **Methodology Report**) provides on page 6:

As noted, all A and B graded properties in all precincts in and outside the CCZ were recommended for a direct transfer to the new significant grading. This reflects their existing highly graded status. The recommended new definition for significant places uses ‘higher level’ language and descriptors to emphasise the importance of these places, while conversely the definition of contributory is more inclusive and wide-ranging and deliberately set below significant.

The definition for significant also places emphasis on the individual importance of a heritage place or property. It provides for a range of place types to be considered significant, and allows for a range of attributes to be taken into consideration when assessing this higher level heritage grading.

⁵³ It is acknowledged that the definitions employed at the time each property was graded differed in subtle or more material respects from the definitions now in use in clause 22.05. Copies of the original definitions have been provided to the Panel.

⁵⁴ This is the only proper inference which can be drawn from the terms and application of the Practice Note.

148. Council submits that places which meet the description “of national or state importance and are irreplaceable parts of Australia’s built form heritage” and “of regional and metropolitan significance [which] stand as important milestones in the architectural development of the metropolis” can properly be presumed to “individually important at state or local level and a heritage place in [their] own right”; that is, places which fall within the existing definition of A and B graded places can be accepted will also fall within the proposed definition of significant places.

C. C AND D GRADED PROPERTIES

149. With regard to properties currently graded C and D, the Methodology Report provides on page 6:

C grade properties required review in all precincts except Parkville, although the great majority remained contributory. At the commencement of the study, the C grading was attributed to a comparatively high number of properties from the early period of 1850-75 (in Carlton, some 425 properties); interwar properties generally (161 properties across all precincts); and the very high proportion of C grade properties relative to other gradings in Carlton and North and West Melbourne.

For the D grade properties, the problematic precincts were Kensington and North and West Melbourne (total of 1824 properties). The very high proportion of D grade properties in these precincts was not matched in the other precincts, and indicated some reconsideration of the grading was warranted. Again, while the majority remained contributory, there were for example highly intact rows or terrace groupings of early dwellings, or intact rows of more distinguished dwellings, which were considered significant as a row or group.

Approximately 660 properties in precincts outside the CCZ, which were previously graded C and D, have been recommended to be categorised as significant. This was most prevalent in Carlton (329) and North/West Melbourne (213).

In the CCZ, some 77 places in precincts which were previously graded C or D have been recommended to be categorised as significant. These included buildings of early construction dates; intact rows of commercial/retail buildings; historic hotels; and developments from the interwar and post-war period. It also included buildings which had previously been identified as ‘Notable Buildings’, and Modernist commercial buildings which are widely recognised for their heritage value.

‘Contributory’ places

This definition places emphasis on a contributory place being part of a larger place or collection of related place types, as typically occurs with a heritage precinct. As noted, the great majority of existing C and D grade properties remained in this category. This reflects their contributory heritage value to the relevant precinct; their being a representative example of a place type, period or style; and their visual or stylistic connection to, or relationship with, similar or like places in the precinct. Contributory places combine to demonstrate the historic development of a precinct.

150. It is evident that a place which “demonstrate[s] the historical or social development of the local area and/or make[s] an important aesthetic or scientific contribution” *could* be a place which is “individually important at state or local level and a heritage place in its own right”; that is, places which fall within the existing definition of C graded places could also fall within the proposed definition of significant places. It is of note that while the current definition for C grade buildings links historical significance to the local area, aesthetic or scientific contribution is not explicitly linked to a local area or precinct.
151. The existing term “contributory” in clause 22.05 is defined exclusively by reference to C, D1 and D2 graded buildings and is not limited to places within precincts. This term only operates in the existing policy in relation to renovation and façade height, but is not otherwise employed to guide demolition, concealment or building height. It is important in this regard not to confuse the new definition of “contributory” which is qualitatively different from the current definition of “contributory”.
152. It is further evident that a place which meets the description “representative of the historical, scientific, architectural or social development of the local area” and may “stand within a group of similar period, style or type or a street which retains much of its original character” where the “collective group” provides a “setting which reinforces the value of the individual buildings” is likely (but not necessarily) to best fit the new definition for Contributory buildings, namely “important for its contribution to a heritage precinct”.
153. In each instance, where a C or D graded property was converted to Significant, a rationale was provided in the Lovell Chen excel spreadsheet. Only a handful of submitters have complained of the conversion of their C or D graded property to Significant under the Lovell Chen methodology.⁵⁵

⁵⁵ See submissions 23, 32, 45, 72, 73. Some additional C or D graded places about which submissions have been received were classified as Significant by Lovell Chen but were also independently judged to be Significant by Mr Butler in the WMHR: see submission 20.

D. INDIVIDUAL HERITAGE OVERLAY TRANSLATION

154. As mentioned above, properties with an individual Heritage Overlay number were not the subject of review and were directly converted to a grading of Significant. The evidence of Mr Raworth was critical of this approach, on the basis that not all properties with individual Heritage Overlays will be of the same heritage value.
155. It is accepted that they may not be of equal value or importance but this is the wrong question. The question is whether or not they meet the threshold of individual significance. As a matter of principle, it is not necessary for a formerly C grade building to be of equal value to a formerly A grade building to meet the description “individually important at state or local level and a heritage place in its own right”. The question can be put another way: does the individual place have sufficient heritage value that its loss or change should be subject to planning scrutiny by reference to heritage principles?⁵⁶
156. Council maintains that the conversion of all properties with an individual Heritage Overlay to Significant is appropriate. While there may be some variation in the value of these properties, the Scheme identifies them as significant, and any further review is not within the scope of the gradings conversion.
157. Nonetheless Ms Brady has identified the need for review of the C and D grade properties in an individual Heritage Overlay which have been converted to Significant and Council accepts that this is appropriate. In the interim, a classification of Significant is the appropriate default position.
158. The example at 322 Walsh Street illustrates the need for proper testing of properties affected in this way. Whilst Mr Raworth considers 322 Walsh St inappropriate for designation as Significant, Mr Helms is adamant that the property has been through a proper process to determine that it meets the relevant threshold and nothing material has changed to warrant a different view.

⁵⁶ This was the import of the question posed by the Advisory Committee in 2007, quoted in the C198 panel report, at page 25.

159. This Panel is not the appropriate forum for adjudication and determination to remove a place from the Heritage Overlay, which would be the only available course if the property were judged to be not Significant.
160. The numbers of C and D properties in individual Heritage Overlays by suburb has been identified by Council. The numbers involved indicate that the exercise of revisiting their significance should not be done on a one off, ad hoc basis but as part of a comprehensive and holistic evaluation which enables a comparative assessment by typology, era and/or area. Mr Raworth has proffered alternative gradings without the extent of comparative or precinct wide consideration which should support a final grading determination.
161. Pending that work, Ms Brady makes the point that the “assessed significance” of the place will be influential in any permit application and that the operation of policy will guide but not dictate the discretion available to the decision maker.

E. SERIAL LISTING

162. It has been suggested in the evidence prepared by Mr Raworth that it may be appropriate for a serial listing approach to be introduced for buildings, including industrial and residential buildings, as an alternative for D (and some C) graded buildings currently individually identified in the Heritage Overlay. This appears to be proposed for places of lower significance so they can form part of a wider category of representative development typologies in lieu of attributing Significant status to a building which is perceived to be of less value than others in that category.
163. This approach was suggested in passing by the C186 panel as a potential alternative to defining small precincts.⁵⁷
164. Group, thematic and serial listings are described in the Practice Note as:

Places that share a common history and/or significance but which do not adjoin each other or form a geographical grouping may be considered for treatment as a single heritage place.

⁵⁷ The C186 panel asked “what is a precinct? Are there a minimum number of places required before a precinct can be said to exist? Can a precinct simply be several associated buildings? Does a sense of place also have to be created? ... We would comment that serial listing – providing a number of separate but related and linked places with the one HO number – may provide an alternative approach in those cases where defining even a small precinct seems inappropriate.”: page 24. The C186 panel noted that the Practice Note did not provide much in the way of guidance.

Each place that forms part of the group might share a common statement of significance; a single entry in the Heritage Overlay Schedule and a single Heritage Overlay number.

This approach has been taken to the listing of Chicory Kilns on Phillip Island in the Bass Coast Planning Scheme. The kilns are dispersed across the island but share a common significance. Group listing of the kilns also draws attention to the fact that the kilns are not just important on an individual basis, but a collectively significant as a group.

The group approach has also been used for the former Rosella Factory Complex in the Yarra Planning Scheme. This important factory complex had become fragmented through replacement development making it hard to justify a precinct listing. The group listing, with a single Heritage Overlay number, has meant that the extent and significance of the complex can still be appreciated.

165. In Moreland Planning Scheme Amendment C149, the Panel considered the appropriateness of two serial listings concerning interwar factories (which were said to date from the 1920s and 30s and were in the eclectic and moderne style) and moderne apartment blocks respectively. The serial listing had been proposed by the planning authority.

166. In its report, the panel found in relation to the proposed serial listing of interwar factories:

The Panel agrees with the expert evidence, called in opposition to the serial listing and the particular properties in it, that the group is not defined by sufficiently particular characteristics to warrant a serial listing. As Mr Lovell argued, the association between the buildings in the group is merely one of their generic use as factories and their sharing a common 10-15 year interwar period of construction. They do not display a common building form nor do they share an association with a particular type of manufacturing (such as textile manufacturing as was initially thought). The Panel agrees that there is nothing to distinguish these factories from many others in the area of Moreland. The Panel notes the similar views about the appropriateness of a proposed serial listing of halls, schools and churches expressed in the panel report on Campaspe Planning Scheme Amendment C50.

We do not, however, agree with Mr Cicero and Mr Lovell that a serial listing should be viewed as a 'fall back' position when individual and precinct listing have failed to be strategically justified. Group or serial listing can be a useful educative or informative management tool revealing associations between places which are not proximate and which have a common basis of heritage significance. In the Panel's view there is no reason to view inclusion in a serial listing as a 'third rate' option – a building included in such a grouping should be seen as contributing to the grouping in a similar way that a building in a precinct makes a contribution to it. However given the buildings in a serial listing are not proximate and do not create a recognisable place in the same way as occurs with a precinct, they must have very well defined characteristics to be able to be recognised as a group. This is lacking in the case of this proposed group.⁵⁸

⁵⁸ C149 panel report, Moreland, 13 May 2014, page 38.

167. With regard to the proposed serial listing of moderne apartment blocks, the C149 panel found:

The Panel has inspected the four properties subject to the serial listing and agrees that they clearly present as having common basis of heritage significance. The Panel supports a serial listing of Moderne apartments in Lygon Street: they are a small group of buildings all with a distinctive design and common building use. They are a relatively rare building type in the area. We consider that 434C and 301 Lygon Street are excellent examples of the genre. In our view this is not a generic listing of the kind proposed for the interwar factories which is discussed and rejected above. The apartments make both an aesthetic and historic contribution to the area.⁵⁹

168. In Amendment C173 to the Yarra Planning Scheme, the panel considered the appropriateness of three new serial listings:

- the Eleazer Lesser Edwardian Duplexes, being a number of geographically dispersed houses constructed by one developer in Richmond;
- Cremorne Industrial Buildings; and
- Richmond Industrial Buildings.

169. With regard to the Eleazer Lesser Edwardian Duplexes, the C173 panel found:

In the case of the Yarra properties, the common features of these buildings is that they were built with funds from local developer Eleazer (Elly) Lesser, they are groups of multiple buildings and some are of the same architectural design.

Melbourne's suburbs are filled with numerous dwellings that were funded by a single developer, however, and often they are of a similar design. For example, many of the terrace houses of inner Melbourne fall into this category, and, whilst many of them would be subject to heritage controls, they would be identified as individual places or as part of precincts. The Panel points to the approach taken in this Amendment in applying a single Heritage Overlay to Wilford Terrace in Cremorne Street, Cremorne (see Section 6(i) above).

The Panel is also concerned that the buildings are sufficiently stylistically different and altered to such variable extends that a common statement of significance would not usefully guide planning decisions where significant fabric and non-significant elements are required to be identified.

The Panel inspected all of these sites and noted that whilst some of them stand alone (as pairs or small groups) others are in larger groups that could be described as small precincts.

⁵⁹ Ibid, page 42.

The Panel does not believe that in this instance the guidance provided by the Practice Note is being appropriately followed. The Panel considers that the Council needs to find an alternate mechanism for identifying the significance of some or all of these places in the Planning Scheme. The Panel suggests that these places should be re-evaluated as individual places or in a precinct context and be provided with statements of significance accordingly.⁶⁰

170. With regard to the Cremorne Industrial Buildings, the Panel found that they were spread across the Cremorne area and had no common architectural forms, histories or ownership, past or present. The Panel also recommended the proposed serial listing for the Richmond Industrial Buildings be reconsidered as they, similarly, had no common architectural forms, histories or ownership, past or present.
171. Council submits that the following principles can be derived from the Moreland C149 and Yarra C173 panel reports:
- (a) the group proposed for serial listing must be defined by a common basis of heritage significance, which may include common architectural forms, histories or association with a particular type of manufacturing or ownership – past or present;
 - (b) these characteristics must be very well defined to be able to be recognised as a group;
 - (c) generic use (eg. factories), period of construction or a common developer are insufficient to identify a group as having a particular characteristic;
 - (d) a common statement of significance must be capable of guiding planning decisions, which may be difficult or impossible where the buildings proposed to be included in a serial listing are stylistically different or altered to varying degrees;
 - (e) serial listing is not a fall-back position where individual and precinct overlays fail to be strategically justified; and
 - (f) a building within a serial listing must contribute to the group in a similar fashion as a building in a precinct overlay contributes to the overall precinct.

⁶⁰ C173 panel report, Yarra, 12 July 2016, page 59.

172. Council submits that, in each instance Mr Raworth has identified that the use of a serial listing is or may be appropriate:
- (a) potential serial listing groups such as ‘industrial buildings in the City North Area’, ‘wool warehouses’, ‘South Yarra contributory buildings’, ‘low significance buildings’, ‘contributory buildings in Carlton/South Carlton’ and ‘lowly graded site-specific Heritage Overlay places’ fail to identify an appropriate common basis for heritage significance, as discussed above;
 - (b) all properties which would be suitable for inclusion in a serial listing have not been clearly identified, and accordingly determination of whether a common statement of significance is capable of guiding planning decisions cannot be made; and
 - (c) no common characteristics have been identified at all.
173. Council does agree with Mr Raworth that buildings protected by individual heritage overlays in the University of Melbourne main campus may appropriately be the subject of a future serial listing, but they would still have to be demonstrably of a strong connecting theme and of a similar style and form to enable them to be managed by a common statement of significance. Evidence demonstrating that University of Melbourne buildings adequately demonstrate these characteristics has not been provided to the Panel.
174. Accordingly, the Council submits that suggesting specific buildings be identified as part of a serial listing is unhelpful in the context of a gradings conversion exercise and cannot be progressed in this Amendment as an appropriate alternative to the translation methodology employed by Lovell Chen.

F. UNGRADED PROPERTIES

175. Ungraded properties have been directly converted to Non-Contributory under the Inventory. Several submissions have criticised this approach on the basis that some properties capable of being identified as having heritage significance have not been the subject of a comprehensive review and are, accordingly, not afforded heritage protection.

176. Mr Helms also takes the view that ungraded properties in East Melbourne and South Yarra warrant priority consideration for protection.
177. While there may be currently ungraded properties that are worthy of heritage protection, as discussed above, it was not within the scope of the gradings conversion exercise to undertake a comprehensive review of all properties in the City of Melbourne to determine conclusively their heritage values. Compendious and exhaustive heritage reviews are being commissioned by Council on a progressive basis; at the time the relevant geographic (or thematic) study is undertaken, one would expect a thorough assessment of all properties, graded and ungraded, to determine their heritage status and adjust the Scheme (and Inventory) accordingly.
178. Some submissions have proposed that these properties be the subject of grading now, and several have recommended appropriate gradings for each identified property.
179. In many instances, it appears that the gradings proposed for ungraded properties identified by submitters seeking heritage protection are based largely on the equivalent of a 'desktop review'. There has been no notice to individual landowners whose properties are presently ungraded and proposed for classification as Non-Contributory as part of the Amendment process.
180. Council submits that it is inappropriate to propose permanent gradings for these properties on an ad hoc basis and in the absence of a full heritage review. A full heritage review would involve review of past work, site specific research and field assessment, thematic consideration, comparative analysis and a suburb or category wide judgment made about what is Significant, Contributory and Non-Contributory, together with proper notice to any affected persons. Arriving at a permanent grading on the basis of desk top work or without notice or by reference to a single site in isolation from its wider context would be wholly inappropriate in Council's submission.
181. Council submits that affording currently ungraded properties Significant or Contributory status under the new three tier system is inappropriate in the absence of full heritage reviews.

G. RECENT HERITAGE REVIEWS

182. Finally, it is necessary to appreciate that the gradings conversion undertaken by Lovell Chen did *not* include properties assessed in recent heritage studies, including:

- (a) the City North Heritage Review, undertaken by RBA Architects in 2013 (Amendment C198);
- (b) the Kensington Heritage Review, undertaken by Graeme Butler in 2013 (Amendment C215);
- (c) the Review of Heritage Buildings in Kensington: Percy Street Area, Graeme Butler 2013 (Amendment C215); and
- (d) the Arden Macaulay Heritage Review, Graeme Butler 2012 (Amendment C207).

183. The City North Heritage Review undertook the task of gradings conversion whereby A, B and C graded places were converted to Significant and D graded places were converted to Contributory. The relationship between letter gradings and Significant/Contributory/Non Contributory is discussed at length in the C198 panel which concluded in relation to the gradings,

In the context of individual places outside heritage precincts, the Panel accepts the Council's approach to apply the Heritage Overlay to places of individual heritage significance (or buildings graded A, B or C using the Council's model) and removing the Heritage Overlay from individual places identified as D grade (representative). In the case of precincts, the Panel has taken the approach that, while the merits of whether a building is a C or D grade is considered, the more pressing question is whether a Precinct is justified in the first place.

With regard to methodology, the Panel agrees with Mr O'Farrell that the principle [sic] consideration in this Amendment is the threshold of significance and whether a Heritage Overlay should be recommended to be applied to a place. However, given the integration of the grading system embedded in the Planning Scheme through Clauses 22.04 and 22.5 and the Heritage Places Inventory, the Panel considers it is confined to consider the grading system used by the City of Melbourne.

... The Panel does not accept that there was a wholesale approach to "upgrading" places however it has looked at individual places on their merits to ascertain whether the Heritage Review has satisfactorily established the threshold of significance.⁶¹

⁶¹ C198 panel report, pages 27-28.

184. The Kensington Heritage Review and Arden Macaulay Heritage Review both classified properties by whether they were individually significant or contributory and provided each property with a letter grading.⁶²
185. In his oral evidence to the Panel, Mr Butler confirmed that the Arden Macaulay and Kensington studies involved both the letter gradings and the Significant/Contributory classification.

V. RELIABILITY OF THE INVENTORY

186. Council submits that the Panel can have confidence that the conversion methodology undertaken has ensured that the Inventory is robust and reliable.
187. Prior to the first exhibition of the Amendment, the Amendment was the subject of community consultation in the form of two community information sessions, as detailed in Council's Part A submission. The Amendment was then exhibited from 30 March 2017 to 12 May 2017. Another community consultation was held during the exhibition period. In response to this exhibition Council received 85 submissions, 29 of which raised a number of potential anomalies in the exhibited version of the Inventory.
188. A number of these submissions were prepared by active resident associations with extensive local knowledge and were accompanied by detailed lists of buildings which appeared to have been inadvertently excluded or misgraded.
189. These submissions prompted an internal Council audit of the exhibited version of the Inventory to determine first whether these represented real or perceived errors, and if real errors were identified, to determine whether these errors represented a true anomaly, or a flaw in the conversion methodology.

⁶² See for example, document 8 Kensington Heritage Review, Appendix 1, page 11 which includes a table which "shows recommendations for inclusion or retention in the schedule of clause 43.01 of the MPS as either locally significant with a MCC place grading of A, B or C or with a MCC place grading of D and contributory only to an existing or proposed heritage overlay area. See also, document 8 Arden Macaulay Heritage Review 2012, Appendix 1 provides brief assessments for contributory places (starting at page 28) and Appendix 2 provides detailed heritage assessments of individually significant places (starting at page 145).

190. The result of this internal audit was the identification of a small percentage of omissions (approximately 2%) and errors (approximately 1%). All anomalies identified at this time were corrected, and the Amendment was re-exhibited from 7 December 2017 to 29 January 2018.

191. Some of the resident groups continue to assert that the Inventory has not correctly captured all the buildings in the 2016 Inventory. Council has prepared a detailed response to each of the lists of contested properties raised by resident groups.

A. REVIEW OF THE C258 HERITAGE INVENTORY BY MR HARTLEY

192. Mr Hartley was engaged by Council for the purpose of conducting an independent audit of the Inventory to provide independent assurance that, as detailed on page 3 of Mr Hartley's expert witness statement:

1. *All properties within a heritage overlay in the City of Melbourne have been subject to reclassification where applicable.*
2. *The relevant reclassification methodology has been accurately applied to all properties within a Heritage Overlay in the City of Melbourne (noting that different reclassification methodologies applied in the areas of the recent Arden Macaulay, City North, Kensington and West Melbourne Heritage Reviews).*
3. *The "Corrected C258 Inventory" list is an accurate and complete record of properties reclassified as Significant, Contributory or Non-Contributory within a "Significant" Streetscape (represented by a "-")*

193. Mr Hartley sampled 369 properties out of a total 9,318 properties included in the Inventory.⁶³

194. Mr Hartley concluded that no anomalies were identified in the sample data tested and, with a confidence level⁶⁴ of 95%, the Inventory is an accurate and complete record of properties that have undergone gradings conversion, and that the conversion methodology has been applied consistently.

195. Council subsequently brought to Mr Hartley's attention a potential discrepancy regarding 13 properties located in Barnett Street, Kensington that had been

⁶³ Further information from Mr Hartley requested by the Panel indicates that the random sample included examples from all the large precincts.

⁶⁴ Being the probability that the sample results represent the attributes of the population.

incorrectly recorded in the Inventory. Mr Hartley performed further analysis and confirmed, with the exception of the identified anomaly, the Inventory was accurate and complete.

B. REVIEW OF THE C258 HERITAGE INVENTORY BY MR HELMS

196. Mr Helms was engaged by Council for the purpose of providing his opinion as to whether the gradings methodology provided a sound basis for the gradings conversion.
197. Mr Helms' statement of evidence records that his review did not identify any systematic errors in the gradings conversion, and that the methodology employed was sound and has resulted in what Mr Helms termed '*a largely correct translation of the existing alphabetic grading system to the new three level system*'. Mr Helms identified several 'minor refinements rather than fundamental changes' regarding places that have not been identified in the Inventory (discussed further below) and several instances where, while the conversion was undertaken correctly, due to problems with addresses the property grading is incorrect.
198. Mr Helms also identified HO2 East Melbourne and HO6 South Yarra as priorities for the subject of future heritage reviews due to identified places, currently correctly converted from ungraded to Non Contributory, that have the potential to be potentially Contributory or Significant.

C. HERITAGE PLACES THAT HAVE BEEN DEMOLISHED

199. As the gradings conversion process did not involve a complete heritage review of all precincts, it has become apparent through submissions received that a number of heritage places identified in the Inventory have been demolished.
200. While future heritage reviews will identify and correct all such anomalies, it is appropriate that any identified at this time are corrected through the Amendment.
201. Eight properties identified in the Inventory have been demolished and should be removed:
 - (a) 106 Jolimont Road, East Melbourne, HO2, graded Contributory.

- (b) 2 Hawke Street, West Melbourne, HO3, graded Significant.
- (c) Squash Courts, Trinity College, Royal Parade, Parkville, HO354, graded Significant.
- (d) 104 Hawke Street, West Melbourne, HO3, graded Contributory.
- (e) 187 Stanley Street, West Melbourne, HO3, graded Significant.
- (f) 16, 18 & 20-22 Orr Street, Carlton, HO70, graded Significant;
- (g) 109-133 Rosslyn Street, West Melbourne, graded Significant.
- (h) 488-494 La Trobe Street, West Melbourne, graded Significant.

D. ADDRESS CHANGE OF HERITAGE PLACES

202. It has also become clear that due to address changes, a small number of heritage places have inadvertently been removed from the Inventory. Again, while it is intended that future heritage reviews will identify and correct all such anomalies, it is appropriate that any identified at this time are corrected through the Amendment.
203. For example, submission 5 identified that 2 and 1-3 Youngs Lane, North Melbourne, three houses currently identified as C graded in the *Heritage Places Inventory June 2016*, are not included in the Inventory.
204. This anomaly arises because the addresses for each of these sites have altered over time and 2 and 1-3 Youngs Lane no longer exist on Council's cadastral maps. These sites are now known as 26 Youngs Lane and 40A and 40B Molesworth Street, respectively.
205. As all three sites have been identified as C graded, consistent with the conversion methodology established as part of the City North Heritage Review implementation through Amendment C198, whereby A, B and C graded places were converted to Significant and D graded places were converted to Contributory, it is appropriate that all three sites are included in the Inventory as Significant. This is consistent with the evidence of Mr Helms, provided to the Panel.

206. Other address issues identified by Mr Helms have been thoroughly checked by Council and a separate document clarifying their status and identifying any necessary corrections has been prepared.

E. CONCLUSION

207. Council submits that, recognising that the gradings conversion is an essential first step in a much larger and ongoing strategic process, and that future heritage reviews will identify and correct the small number of potential anomalies remaining in the Inventory, the process undertaken by Lovell Chen and Council has been reviewed and found to be sufficiently robust such that the Panel should have confidence that the C258 Heritage Inventory is the result of a correct translation of the existing A, B, C and D gradings to the new Significant, Contributory, Non-Contributory system.

VI. LARGE PRECINCT STATEMENTS OF SIGNIFICANCE

208. The Practice Note provides the following guidance regarding the preparation of statements of significance for heritage places:

Writing statements of significance

For every heritage place (that is, a precinct or individual place) a statement of significance should be prepared using the three-part format of 'What is significant?'; 'How is it significant?'; and 'Why is it significant?'.

What is significant? – *This section should be brief, usually no more than one paragraph or a series of dot points. There should be no doubt about the elements of the place that are under discussion. The paragraph should identify features or elements that are significant about the place, for example, house, outbuildings, garden, plantings, ruins, archaeological sites, interiors as a guide to future decision makers. Mention could also be made of elements that are not significant.*

How is it significant? – *A sentence should be included to the effect that the place is important because of its historical significance, its rarity, its research potential, its representativeness, its aesthetic significance, its technical significance and/or its associative significance. These descriptors are shown in brackets at the end of the heritage criteria listed above. The sentence should indicate the threshold for which the place is considered important.*

Why is it significant? – *This should elaborate on the criteria that makes the place significant.*

A separate point or paragraph should be used for each criterion satisfied. The relevant criterion should be inserted in brackets after each point or paragraph. Each point or paragraph may include the threshold for which the place is considered important.

209. Lovell Chen prepared statements of significance for the following heritage precincts outside the CCZ:

- (a) HO2: East Melbourne and Jolimont;
- (b) HO3: North and West Melbourne;
- (c) HO4: Parkville;
- (d) HO6: South Yarra;
- (e) HO9: Kensington.

210. A statement of significance was not prepared for the South Melbourne Precinct (HO5). HO5 is a remnant of a precinct that was much larger originally, and now predominantly incorporates places and roads that are not of heritage value.

211. The statements of significance were prepared for the purpose of:

...enhancing an understanding of the significance of the heritage precincts, providing insight into their heritage characteristics, and through this assisting with their future conservation and management.⁶⁵

212. Each precinct citation contains a chronological thematic history, a description of the precinct area including significant and contributory developments and a statement of significance.

213. The statements accord with the guidance provided in the Practice Note and include detailed histories and descriptions of the precincts. Their preparation benefitted from significant community input, with individuals and groups providing information and research as a result of the community workshops and walks undertaken as part of the work preceding the Amendment. Field work was also undertaken to inform the preparation of each precinct area description.

214. Council accepts that omitted text identified by Ms Brady should be reinstated and that Mr Butler's addition to the North and West Melbourne statement of significance concerning the Flagstaff Gardens should also be made.

⁶⁵ Expert witness statement of Anita Brady, page 7.

VII. POLICY REVIEW

215. Clause 22.04, in its current form, provides statements of significance and key attributes for heritage areas within the Capital City Zone. It provides no specific guidance for development applications regarding matters such as demolition, new built form or works. This has resulted in a situation where the assessment of applications within a Heritage Overlay lacks necessary guidance to ensure both appropriate and consistent outcomes.
216. Clause 22.05, in its current form, contains policy objectives and performance standards for assessing development applications including performance standards for demolition, renovating graded buildings, designing new buildings and works or making additions to existing buildings.
217. Development pressure within the City of Melbourne, both inside and outside the CCZ, including through applications for complete demolition and for additions which build into air space above heritage places, has created an urgent need for improved clarity and guidance to be provided through planning policy.
218. The Heritage Strategy highlighted the need to undertake a detailed review of the relevant policy provisions relating to heritage, Clause 22.04 and Clause 22.05. In July 2014, the Council released a paper entitled “A review of the local heritage planning policies in the Melbourne Planning Scheme”, which identified the need to bring the policies up to date with current practice.
219. The detailed strategic review of the heritage policies undertaken by Council and Lovell Chen was informed by community consultation, various panel reports and VCAT decisions which have identified policy issues and deficiencies of the current heritage policy framework.
 - A. CLAUSE 22.04
220. The revised Clause 22.04 incorporates a structure that will provide clear and effective guidance regarding conservation and development of CCZ land within Heritage Overlay areas.

221. In particular, policies regarding façadism and development into the air rights of heritage places specifically seek to address problematic and undesirable built form outcomes that have been experienced within the CCZ as a result of the current lack of policy guidance.

B. CLAUSE 22.05

222. As Clause 22.05 currently provides guidance in the form of performance criteria regarding the assessment of permit applications, this clause has undergone refinement to respond to the new grading system and identified development pressure, rather than wholesale change. This refinement includes greater detail regarding new buildings, alterations, additions and the accepted level of change for contributory and significant heritage buildings.

C. DEMOLITION

223. Several submissions received have been critical of the proposed policy does not include explicit consideration of whether demolition is in the public interest or is justified in relation to the development of a building.

224. Council submits that it is plainly unnecessary for factors of this kind to be explicit. Demolition applications are always lodged to provide for future development and all benefits and detriments of the proposal are required to be integrated and balanced accordingly.

225. The requirement for integrated decision-making was discussed by the *Supreme Court of Victoria in Boroondara City Council v 1045 Burke Road Pty Ltd & Ors* [2015] VSCA 27:

30 *There cannot be any doubt that Victorian planning law requires integrated strategic decision-making. The Act and its history demonstrate that one of the objectives of planning in Victoria is to facilitate development in accordance with the other objectives, including, but not limited to, conservation of buildings which are of aesthetic, historical or cultural interest. Significantly, one of the objectives of planning under the Act is to enable land use and development planning and policy to be 'easily integrated with environmental, social, economic, conservation and resource management policies at State, regional and municipal levels.' Further, ss 60 and 84B of the Act require consideration of a wide range of matters in a planning permit application, including the environmental effects and social and economic effects of the proposal, where appropriate.*

31 *In addition, integrated decision-making having regard to broad societal needs is expressly required by cl 10.04 of the Scheme. As noted by the trial judge, cl 65 of the Scheme requires that the responsible authority must decide whether a proposal for a planning permit will produce ‘acceptable outcomes’ in terms of the decision guidelines of that clause.*

32 *In Rozen v Macedon Ranges Shire Council, Osborn J described the test for ‘acceptable outcomes’ as follows:*

The test of acceptable outcomes stated in the clause is informed by the notions of net community benefit and sustainable development. An outcome may be acceptable despite some negative characteristics. An outcome may be acceptable because on balance it results in net community benefit despite achieving some only of potentially relevant planning objectives and impeding or running contrary to the achievement of others.

33 *Earlier in time, in Knox City Council v Tulcan Pty Ltd, Osborn J held:*

The concept of net community benefit is not one of ideal outcomes, but of outcomes which result in a net benefit to the community assessed within a policy framework by reference to both their benefits and disbenefits.

34 *So much is clear. Nevertheless, it is important to recognise that the ‘acceptable outcomes’ test is a final hurdle for the grant of a permit, not a substitute for satisfaction that the permit should be granted. As the chapeau to cl 65 states:*

Because a permit can be granted does not imply that a permit should or will be granted. The responsible authority must decide whether the proposal will produce acceptable outcomes in terms of the decision guidelines of this clause.

35 *In my view, it is not open to read the Act in such a way that individual permit requirements may become optional in the context of an overarching, Sweetvale-type permit application. Permit requirements and integrated decision-making are both essential aspects of the legislative scheme envisaged by the Act, and they are compatible with one another. The Sweetvale proposition is valid, but it must be understood in the context of the integrated decision-making required by the Act.*

36 *Whether an overarching permit application is made for an entire proposal or the required permits are applied for separately is a matter of form rather than substance. In either situation, the triggered permit requirements must each be considered by the responsible authority, in the context of the overall proposal. For a cover-all permit to be granted, the responsible authority must be satisfied that in the context of the overall proposal, a permit should be granted in respect of each permit requirement triggered by the proposal, and also that the cover-all permit which is sought should be granted.*

37 *Put another way, the overall proposal is taken into account in the consideration of each permit requirement triggered by the proposal, and also as a final check before the project permit is granted. The individual permit requirements that are triggered are not to be considered in isolation or sequentially; instead each must be considered with regard for the other triggered permit requirements and the overall proposal.*

38 *If the responsible authority would not give every triggered permit requirement a 'tick' in that context, then it would be improper for the responsible authority to grant an overall permit for the proposal. To do so would involve either authorising a use or development of land that the responsible authority is not satisfied should be authorised, or a failure to make a decision regarding the triggered permit requirement at all.*

226. Accordingly, heritage considerations are to be balanced against broader objectives within the Scheme when considering an application to demolish a building that has been afforded heritage protection, irrespective of the terms of specific heritage policy.

227. These principles were recently considered in *Icon Co (Jessamine Avenue) Land Pty Ltd v Stonnington CC (Red Dot)* [2018] VCAT 1134 (30 July 2018). This case concerned an application to demolish two contributory dwellings to facilitate the construction of a 12 dwelling apartment development. The Tribunal considered the principle of integrated decision-making in the context of demolition of the heritage dwellings:

39. *Applying the policy in clause 22.04 to the current application, we consider that it would be contrary to this policy to grant a permit for demolition of the two buildings at 271 and 273 Dandenong Road. They fall within the definition of contributory places and it is policy to retain all contributory heritage places. Their demolition is discouraged unless it can be demonstrated that the demolition will not adversely affect the significance of the heritage precinct. To the contrary, we have found that their demolition will adversely affect the significance of the heritage precinct.*

40. *However, the decision guidelines in clause 43.01-5 of the Heritage Overlay also include the following:*

Before deciding on an application, in addition to the decision guidelines in Clause 65, the responsible authority must consider, as appropriate:

- *The State Planning Policy Framework and the Local Planning Policy Framework, including the Municipal Strategic Statement and local planning policies.*

41. *The Court of Appeal in Boroondara City Council v 1045 Burke Road Pty Ltd⁶¹ held that in deciding whether a permit should be granted to demolish or modify a building under the Heritage Overlay, considerations of a non-heritage nature can be taken into account provided that they are relevant matters under the provisions of the Act or the purposes, objectives or decision guidelines relating to, or incorporated into, the Heritage Overlay.*

42. *In fact, the same proposition applies to each decision under each applicable control, which requires a permit, and then in the overall context of the permit as a whole, having regard to the well-established principle of planning decision-making articulated in Sweetvale Pty Ltd v Victorian Civil and Administrative Tribunal, that if a*

planning proposal requires multiple permissions under different provisions of the planning scheme, permission must be granted under each provision.

43. *The facts in the 1045 Burke Road case related to an application for demolition of a building ('Arden') in a Heritage Overlay and the construction of a multi-unit residential development. The Tribunal determined to grant a permit for demolition of the existing building under the Heritage Overlay; construction of a four storey building above a basement car park for 33 dwellings; alteration of access to a Road in a Road Zone Category 1; and construction of a fence.*
44. *The Tribunal held that, in deciding whether the proposed demolition of Arden was acceptable or justified, it was not limited to considering matters pertaining to heritage conservation policy. It held that the exercise of its discretion in relation to demolition required reference to be made to all relevant considerations, including planning policy for urban consolidation, housing diversity, sustainable development and urban design, which were relevant to assessing the replacement building.*
45. *The responsible authority, Boroondara City Council, appealed against the decision. Essentially, it invoked the National Trust principle and claimed the Tribunal had taken into consideration irrelevant considerations when determining to grant a permit for demolition under the Heritage Overlay.*
46. *The Court of Appeal had this to say about the National Trust principle:*

[121] The National Trust Case stands for the principle that a discretion cannot be exercised for a purpose other than that for which it is granted. This principle continues to have underlying validity. However, identification of the purposes for which the discretion is granted is undertaken by reference to the Act and the Scheme and not by reference to preconception or speculation as to what those purposes must be.

47. *The Court of Appeal then went on to say with respect to the Tribunal's decision to grant a permit for demolition under the Heritage Overlay:*

[137] The purposes of the Heritage Overlay contained in cl 43.01 of the Scheme are mainly heritage purposes. But they also include the implementation of the SPPF and the LPPF including the Municipal Strategic Statement and local planning policies. The SPPF, the LPPF including the Municipal Strategic Statement and local planning policies contain non-heritage as well as heritage purposes. There is nothing in cl 43.01 that says that only heritage purposes may be considered when an application for a permit is received under the Heritage Overlay.

...

[141] In addition to considerations relevant under the Heritage Overlay control and under cl 65, there are also the considerations made relevant by the Act, including the objectives of planning, and of the planning framework under s 4(1) and (2) and the considerations listed in ss 60 and 84B.

[142] *In reaching its decision, the Tribunal did take into account considerations extending beyond strictly heritage considerations. Those considerations included the architecture of the proposed building, neighbourhood character policy, development on main roads, the physical and strategic context, and the interfaces of the site.*

[143] *All of these considerations were relevant considerations in an application under the Heritage Overlay having regard to the provisions of the Act and the Scheme. So too are considerations such as urban consolidation, housing diversity, sustainable development and urban design. The weight to be given to these considerations is fundamentally for the decision-maker and not for the Court to determine.*

[144] *The Tribunal was entitled to have regard to considerations other than heritage considerations provided that the considerations it took into account did not stray beyond those authorised by the Act and the Scheme. Boroondara has not shown that any consideration taken into account by the Tribunal was extraneous to those that the Tribunal was entitled to take into account.*

48. *On the basis of the principle set out in the 1045 Burke Road case, the applicant in this case submitted that the Tribunal should, when balancing competing objectives, have regard to State Planning Policy relating to urban consolidation and the imperative to accommodate massive expected population growth. This is one of the key driving imperatives at the centre of Plan Melbourne and a core element of the overarching strategic policy to which detailed local policies and planning controls are intended to give practical expression. In a case such as this, it is especially important to proceed upon an understanding of how the achievement of urban consolidation depends upon the sum of many individual planning decisions, and the extent to which that imperative must remain at the forefront of individual decisions if the overarching objective is to have any chance of realisation.*

49. *In support of this proposition, Mr Michael Barlow gave evidence on behalf of the applicant about the need for increased housing in metropolitan Melbourne generally and Stonnington specifically having regard to the scale of population growth in Melbourne. In his view, the many attributes of this site for an increase in dwelling density outweigh the need to retain the existing buildings because of their heritage quality. In his view, key locations and sites must be appropriately used to their optimum potential. Mr Barlow submitted:*

I consider the site's inclusion in the Heritage Overlay does not necessarily mean that demolition of the heritage-graded buildings cannot be contemplated or allowed. The existence of heritage control is one of several considerations the planning scheme requires the decision maker to contemplate when determining permit applications and does not automatically lead to a 'default position' requiring the retention of the existing buildings.

A comprehensive evaluation of the proposal also requires an assessment of the key driver of change for metro Melbourne being population growth and the associated demand for housing and the attributes of the site. In other words a balanced assessment is required.

50. *In summary, it was submitted by the applicant that Mr Barlow's evidence shows what the bigger picture is, where Stonnington sits within that bigger picture, where applications like the present sit within the bigger picture, and why applications like this matter to how the bigger picture might turn out. The municipality cannot afford to pass up opportunities for urban consolidation in locations, like the subject site, with superior access to transport and services and few external constraints on its optimal development potential.*
51. *Clause 10.01 of the State Planning Policy Framework (SPPF) in the Stonnington Planning Scheme sets out the principles of integrated decision-making that must apply when making planning decisions.*

10.01 Integrated Decision Making

Society has various needs and expectations such as land for settlement, protection of the environment, economic well-being, various social needs, proper management of resources and infrastructure. Planning aims to meet these by addressing aspects of economic, environmental and social well-being affected by land use and development.

Planning authorities and responsible authorities should endeavour to integrate the range of policies relevant to the issues to be determined and balance conflicting objectives in favour of net community benefit and sustainable development for the benefit of present and future generations. However in bushfire affected areas, planning authorities and responsible authorities must prioritise the protection of human life over all other policy considerations.

...

52. *We are not persuaded that an application of the principles of integrated decision-making found in clause 10.01 and articulated in the 1045 Burke Road case justify demolition of these two heritage buildings for a net increase of 10 dwellings.*
53. *An example of where the principle of integrated decision-making led to the grant of a permit for the demolition of a heritage building was the University of Melbourne v Minister for Planning.*
54. *In the University of Melbourne case, a permit application was made for the use and development of a research and development centre and education centre for establishment of the Peter Doherty Institute on the corner of Grattan and Elizabeth Streets, Melbourne. The proposal also required a permit for demolition of the former Ampol House, a C graded building of local heritage significance, under the Heritage Overlay.*
55. *The Tribunal decided that a permit for demolition should be granted under the Heritage Overlay. It found that establishment of the Peter Doherty Institute in this specialised biomedical precinct was strongly supported by State and local policy. This, together with its public health benefits and the contribution it would make to Melbourne's economic development, would outweigh the loss to Melbourne's heritage of the former Ampol House. The grant of the permit would result in a significant net community benefit to present and future generations not just locally but at a national and international scale.*

56. *The decision in the University of Melbourne case is at one end of the spectrum of cases where non-heritage considerations have been held to outweigh the adverse effect that demolition will have on the significance of the heritage place.*

228. It is neither necessary nor appropriate for Clause 22.04 and Clause 22.05 to specifically state that a decision-maker is required to consider whether demolition is in the public interest, or is justified in relation to the development proposed. These considerations are already relevant by virtue of the Act, the Scheme and case law. Countervailing considerations which may justify demolition but are unrelated to heritage factors should not be articulated in the heritage policy, lest such references be interpreted and applied to allow greater licence in relation to demolition than would otherwise be the case. By analogy, landscape and environment policies rarely make explicit reference to the justification for lopping vegetation or allowing earthworks notwithstanding that such justification may nonetheless be a relevant consideration in the wider balancing exercise of integrated decision making.

D. CONCEALMENT POLICY

229. It has been suggested that the concealment policy has been materially altered.

Council rejects the proposition that the concealment policy has been expanded to govern additional places:

(a) In the current policy, in Level 1 streetscapes, all additions and higher rear parts should be concealed. In other streetscapes, all additions to A and B grade buildings should be concealed and additions to other graded buildings should be partly concealed.

(b) In the proposed policy, in significant streetscapes, it is policy that all additions and higher rear parts are concealed. In other streetscapes, it is policy that additions to Significant buildings are concealed and additions to Contributory buildings should be partly concealed.

230. In Council's submission, the concealment policy has been an important component of heritage policy in conserving Melbourne's heritage assets: for both important buildings and important streetscapes. There is no warrant for weakening or diluting

this policy, no evidence that it has unreasonably constrained development in heritage places and no suggestion that it is unworkable or confusing in its application.

231. The definition of concealment has been revisited to ensure that where the significance of the place is appreciated not only from the main street frontage, consideration can be given to views from other vantage points. Views from proximate parks and streets are often important in the appreciating the heritage values of a place and should be protected. Hence, the expansion in the definition to refer to a street (not a lane, unless significant) or park. Council acknowledges the unintended consequence of capturing all views from all streets and parks no matter how distant, but submits that side elevations, views across parks and views along important lanes should also be taken into consideration. Minor rewording to address the “overreach” issue identified by Ms Jordan and Ms Brady can address this issue without reverting to the previous narrow scope of the existing policy.
232. In another respect however, concealment policy has been relaxed to make specific provision for significant buildings on a corner and allow for visibility of additions provided they are respectful and do not dominate or diminish the prominence of the host or adjoining heritage building.
233. The role of concealing higher rear parts of new buildings in significant streetscapes is to preserve the scale of heritage streetscapes by avoiding visible higher built form. Even where a new building is inserted into a significant streetscape, the policy relating to façade height should result in a consistent scale with adjoining heritage buildings; together with concealment policy for additions, this policy works to protect the visual character of a heritage streetscape.
234. Several submissions have raised concerns regarding the application of policy regarding concealment to industrial buildings on the basis that due to the size and scale of industrial buildings the visibility of additions is not inappropriate (even for Significant buildings).
235. However, where a building is identified as Significant there is a sound basis for preserving its integrity and presentation to the public realm by avoiding visible additions which necessarily diminish to some degree an appreciation of its original

scale and industrial form. This proposition is incontrovertible in heritage terms; whether the heritage principle must give way to other extraneous strategic considerations is another matter, but not one that should be foreshadowed or anticipated by a policy directed to achieving preferred heritage outcomes.

236. Again, it is important to note that the policy does not, and cannot, impose mandatory requirements and must be applied in regard to the context of the application being made and the Scheme as a whole (as discussed above).

237. The Council submits that the policy regarding concealment is appropriately applied to all buildings, including industrial buildings.

E. CITY NORTH

238. The evidence of Mr Barlow and Mr Biacsi addresses, *inter alia*, the fact that the revised Clause 22.05 removes the exemption of Capital City Zone (City North) from policy related to concealment of higher rear parts and façade height and setback. It is said that it is inappropriate to remove these exemptions due to the strategic planning aspirations of the City North Precinct and the conclusions reached by the C196 and C198 panels.

239. Council accepts that it is appropriate for CCZ City North land to be excluded from the concealment provisions together with other land in the CCZ, consistent with current policy. However, it is not appropriate to exclude the operation of the façade height provisions, having regard to the explicit provisions in DDOs applying elsewhere in the CCZ which seek street wall heights which reference those of adjoining heritage buildings. In Council's submission, there is alignment between the DDO controls and heritage policy such that no exemptions to avoid inconsistency is required.

240. The approach for CCZ land is not intended to apply to other urban renewal areas outside the CCZ, such as Arden Macauley. It is also not intended to apply to West Melbourne which is not presently identified by the Scheme as a designated urban renewal area and in proposed amendments to the MSS is explicit that "all new development responds sympathetically to and enhances the valued heritage character

of West Melbourne”.⁶⁶ While Council accepts these areas will be the subject of varying degrees of change, it is appropriate that concealment and façade height policy applies to future development. This may constrain development on some sites such that they cannot achieve the same scale or intensity of development that could be achieved on sites without protected heritage values, but this is the legitimate consequence of the protection of heritage values. The social and economic benefits of heritage conservation derived from the distinctive character, identity and sense of place created by heritage places may outweigh the opportunity to achieve the maximum height limit otherwise permissible on a given site.

F. OTHER SUBSTANTIVE ISSUES ABOUT POLICIES

241. Existing policy in clause 22.4 provides that Melbourne older buildings “should be retained in their three dimensional form, not as two dimensional facades as has sometimes occurred” but otherwise provides no guidance about what is required to avoid this outcome. The Tribunal gave lengthy consideration to the issue of facadism in the context of the redevelopment of the Herald and Weekly Times Building, a registered place on the VHR, in *Staged Developments Australia Pty Ltd v Minister for Planning and Melbourne CC* [2001] VCAT 1447. It referred to the definition of facadism as “an architectural style which involves retaining the façade of an old building while constructing a new building behind it”,⁶⁷ an approach which results in the loss of the actuality and the impression of “the three dimensional form of the original building”.⁶⁸ The Tribunal explained that retaining significant structure behind the façade is something more than facadism. It identified a number of developments throughout the CBD which “retained sufficient of the original building to see its three dimensional form” and concluded that “retention to two bays from the main facades with a return along Sargood Lane is appropriate and retains the substance of the cultural heritage significance of the registered building and does not warrant condemnation as unacceptable facadism.”⁶⁹

⁶⁶ Proposed clause 21.16-6, Amendment C309.

⁶⁷ At [135].

⁶⁸ At [138].

⁶⁹ At [143].

242. Avoiding facadism by retaining sufficient volume of a heritage building so that three dimensions of the building can be seen (in a return) and understood (in terms of depth behind the visible elevation) is a preferred heritage outcome. This outcome can be compromised if the volume of the retained heritage building is nonetheless crowded or overwhelmed by new development which projects over the retained heritage building. The approach of cantilevering new building form over a heritage place is a relatively recent but increasingly common approach in redevelopment of heritage sites. Council has provided examples of cantilvering or building into air space which it regards as suboptimal or unacceptable heritage outcomes.
243. In *Jobs Australia Pty Ltd v Melbourne CC (Corrected)* [2016] VCAT 1915, the Tribunal considered a second application for a tower over the retained former bank building at Haymarket in City North. Notwithstanding Council’s evidence that the proposed building would dominate and overwhelm the bank,⁷⁰ the Tribunal accepted evidence that “the historical value of the building will be maintained insofar as the building remains legible in views from the street”.⁷¹ The Tribunal said “where new buildings encroach on old, and there are many examples in Melbourne of this situation, it is important that the original building can be understood in three dimensions” and found that “by highlighting the three dimensionality of the corner building, the new tower atop it will not prevent an understanding of its heritage significance by a passer by” and “[i]t remains a legible part of the heritage of Elizabeth Street”.⁷²
244. In the absence of explicit policy against which proposals of this kind can be tested, the acceptability of the heritage outcome is left to judgments of various heritage consultants by reference to subjective terminology such as “respectful”, “dominant” or “prominent” and to inadequate tests of “three dimensionality” and “legibility”. While the concept of three dimensionality is important to the questions of demolition and facadism, it is alone an insufficient basis on which to assess the appropriateness of additions or new built form. Equally, legibility which conveys the ability to see and perceive a building is alone an insufficient basis on which to assess the appropriateness of additions or new built form.

⁷⁰ At 41.

⁷¹ At 44.

⁷² At 46 and 48.

245. Council accepts that the policy in relation to reconstruction should encourage partial reconstruction in circumstances where a heritage place is missing original fabric rather than invite dismantling and reassembly of heritage places as has been suggested by others. In any case of reconstruction, a sound evidentiary basis is required to support the solution proposed.
246. Questions in cross examination implied that incorporating private lanes into the definition of “lane” was inappropriate; examples of private lanes in heritage contexts where development has the capacity to adversely effect heritage values illustrate the need for private lanes to be reference in the same way as other lanes and streets.
247. Whilst the definition of “respectful” will be an important tool in the assessment of applications, Council submits that the tests of “not detracting from” assessed significance and “in keeping with” attributes and characteristics of a precinct and character and appearance of nearby heritage buildings, remain important heritage principles referable back to the decision guidelines of the Heritage Overlay and providing a valuable in judging height, mass, form, style, expression, details, materials and orientation of additions and new buildings.
248. Otherwise the proposed adjustments to the revised policies identified by Ms Brady and Ms Jordan in their written statements are generally accepted by Council.

G. FORMAT OF THE POLICIES

249. In her Planning Evidence Statement dated 30 July 2018, Ms Jordan makes a recommendation that it would be appropriate to condense the two heritage policies into one due to the equally applicable performance criteria and policy objectives.
250. Ms Jordan has included a proposed draft of this condensed policy at Appendix B of her expert witness statement.
251. The Council does not oppose the condensing of the two heritage policies into one policy, and will accept the recommendations of the Panel in this regard.

VIII. INVENTORY LISTING APPROACH

252. Submissions received have questioned the method by which larger sites which contain a number of buildings of varying heritage gradings are listed in the inventory.
253. One example is The Walk Arcade (Submission 77). The Walk Arcade comprises multiple buildings on a single cadastral block, 309-325 Bourke Street, and is currently listed in the C258 Heritage Inventory as ‘Significant’.
254. To provide clarity for property owners and decision makers regarding the heritage significance regarding the individual components of larger sites, and consistent with the evidence of David Helms, Council has resolved to provide individual gradings for each discrete part of a larger site within the C258 Heritage Inventory.
255. The Council proposes the following listing for The Walk Arcade in the C258 Heritage Inventory:

Street	Number	Building Grading	Significant Streetscape
Bourke Street	309-325, ‘The Walk’ complex, includes: <ul style="list-style-type: none"> • 313-317 Bourke St (former Diamond House) • 323-325 Bourke St (former Public Bootery) • 288-290 Little Collins Street (former Book Buildings) • 292-296 Little Collins Street (former York House) • 300-302 Little Collins Street (Allans Building, also Sonora House) 	Significant Significant Contributory Contributory Contributory	- - - - -

256. Where there are multiple sites concerned, they will be listed separately. See for example, the proposed approach for the two properties at the Briscoe and Co Ironmongers Warehouse Complex at 164-184 Roden Street:

Street	Number	Building Grading	Significant Streetscape
Roden Street	164-170 Roden Street	Contributory	-
Roden Street	172-184 Roden Street	Significant	-

257. Council considers separate listings for individual buildings within a larger complex will resolve any uncertainty as to the heritage gradings of sites within the Inventory. The relationship between individual buildings within a larger complex or house row can be articulated through the relevant statement/s of significance.
258. Council has prepared a Memorandum setting out appropriate principles for listing graded places in the Inventory, particularly to deal with the circumstances where multiple buildings on a single site or multiple buildings on multiple sites in a single HO are concerned.

IX. IDENTIFICATION OF AND RESPONSE TO ISSUES RAISED IN THE LATE SUBMISSIONS

259. Five late submissions were received after the conclusion of the second round exhibition of exhibition. These late submissions are:

A. SUBMISSION FROM TRACT CONSULTANTS

260. A submission from Tract Consultants, received 21 June 2018, raised the following issues:

- (a) concerns regarding the translation of the heritage grading of the buildings at 4-6 Princes Street, North Melbourne from 'C2' under the current incorporated Heritage Places Inventory to 'Significant' under the Amendment C258 Inventory, and the translation methodology employed by Council's heritage consultant, Lovell Chen; and
- (b) a request that the proposed grading of the heritage place at 4-6 Princes Street, North Melbourne under Amendment C258 be changed from Significant to Contributory.

261. The proposed grading for 4-6 Princes Street was determined by the conversion methodology established as part of the City North Heritage Review (per Amendment C198), whereby A, B and C graded places were converted to Significant and D graded places were converted to Contributory. Council does not recommend any changes to the Inventory in response to this submission.

B. SUBMISSION FROM TOM FLOOD

262. A submission from Tom Flood, received 1 May 2018, raised the following issues:

- (a) concerns regarding the assessed level of heritage significance for the property at 171 Roden Street, West Melbourne and the presence of heritage fabric at this property; and
- (b) a request that the property at 171 Roden Street, West Melbourne not be afforded heritage protection as part of Amendment C258.

263. Mr Flood has advised Council he no longer wishes to pursue his submission.

C. SUBMISSION FROM LAURA GOODIN

264. A submission from Laura Goodin, received on 20 February 2018, made a request that the Council recognise the heritage, artistic, and cultural significance of the bells of St James' Old Cathedral, King Street, West Melbourne to the City of Melbourne and to the State of Victoria, by including a specific description of the bells and bell tower and a brief summary of their history in the St. James Old Cathedral's Statement of Significance.

265. This submission is discussed further in the above section regarding the WMHR.

D. SUBMISSION FROM THE ANGLICAN DIOCESE OF MELBOURNE

266. A submission from the Anglican Diocese of Melbourne, received on 19 July 2018, objected to the proposed regrading of 28 Batman Street, West Melbourne and the inclusion of the land in any future Heritage Overlays.

267. This submission is discussed further in the above section regarding the WMHR.

E. SUBMISSION FROM BERNARD BAUDOIN

268. A submission from Bernard Baudoin, received on Tuesday 21 November 2017, objected to 341-353 Dryburgh Street, North Melbourne being upgraded from Non-Contributory to Contributory.

269. The proposed grading for 341-353 Dryburgh Street was determined by the conversion methodology. Council does not recommend any changes to the Inventory in response to this submission.

X. AMENDMENT VC148

270. On 31 July 2018, the Victorian Government gazetted Amendment VC148, which provides the most substantial review of the Victorian Planning Provisions since their introduction in 1997. The changes proposed by VC148 have been introduced with the aim of modernising and simplifying the Victorian Planning System, including through the introduction of a new Planning Policy Framework (**PPF**), which replaces the State Planning Policy Framework.

271. The most significant change in regard to heritage introduced through VC148 is the amendment of Clause 43.01 (Heritage Overlay) to require the new schedule to the overlay to specify that a statement of significance for each heritage place is included in the schedule:

43.01-5 Statements of significance

The schedule to this overlay must specify a statement for each heritage place included in the schedule after the commencement of Amendment VC148.

This does not apply to a heritage place included in the schedule to this overlay by an amendment prepared or authorised by the Minister under section 8(1)(b) or section 8A(4) of the Act before or within three months after the commencement of Amendment VC148.

272. The Explanatory Report for VC148 provides:

A statement of significance will now be required to be incorporated into the planning scheme for each heritage place included in the schedule to the Heritage Overlay (a three-month transition period applies). The statement of significance for a heritage place is an important document because it justifies the significance of the place as a basis for its inclusion in the Heritage Overlay and is required to be considered when deciding an application. The new requirement will provide greater transparency and assist decision making because the statement will form part of the planning scheme.

273. There are transitional provisions providing an exemption from the requirement to incorporate a statement of significance for each new inclusion to the Heritage

Overlay if a place is introduced within three months of gazettal of Amendment VC148. In this case, the new Heritage Overlays proposed by the WMHR are accompanied by statements of significance proposed for incorporation, so no reliance on the transitional provisions is required.

XI. CONCLUSION

274. The Council has committed to ensure that all heritage places within the City of Melbourne are identified and managed in a clear and consistent manner which accords with contemporary practice.

275. The Council submits that the Amendment has strategic justification and respectfully requests that the Panel recommend adoption of the Amendment.

276. The 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

Carly Robertson

Serena Armstrong

Counsel for the Planning Authority

14 August 2018