

*Planning and Environment Act 1987*

# Panel Report

Melbourne Planning Scheme

Amendment C198

City North Heritage Review

**11 July 2014**



## 4.5 Approach to grading

### (i) The issue

The City North Heritage Review utilised the grading system outlined in Clause 22.05 (Heritage Places Outside the Capital City Zone) which defines four categories:

#### *Grade A*

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

#### *Grade B*

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

#### *Grade C*

C buildings demonstrate the historical or social development of the local area and/or make an important aesthetic or scientific contribution. These buildings comprise a variety of styles and building types. Architecturally they are substantially intact, but where altered, it is reversible. In some instances, buildings of high individual historic, scientific or social significance may have a greater degree of alteration.

#### *Grade D*

D buildings are representative of the historical, scientific, architectural or social development of the local area. They are often reasonably intact representatives of particular periods, styles or building types. In many instances operations will be reversible. They may also be altered examples which stand within a group of a similar period, style or type or a street which retains much of its original character. Where they stand in a row or street, the collective group will provide a setting which reinforces the venue of the individual buildings.

Additionally, streetscapes were to be assessed in the following way:

#### *Level 1*

Level 1 streetscapes are collections of building outstanding either because they are a particularly well preserved group from a similar period or because they are highly significant buildings in their own right.

#### *Level 2*

Level 2 streetscapes are of significance either because they still retain the predominant character and scale of a similar period or style, or because they contain individually significant buildings.

#### *Level 3*

Level 3 streetscapes may contain significant buildings but they will be from diverse periods or styles, and of low individual significance or integrity.

The Amendment seeks to apply an individual grading to buildings which are found within and outside precincts and includes them within the Heritage Place Inventory. For those places outside precincts, the Amendment proposes to apply a Heritage Overlay over buildings of individual heritage significance with a grading of A, B or C and remove the Heritage Overlay from individual buildings graded D. Most places are also assigned a streetscape level grading.

The grading of the building establishes the threshold of the point at which it is recommended that the place is included within the Planning Scheme. However, through the application of policy at Clause 22.05, the grading and streetscape level also determines the extent of change that might be permitted to the building. Of note, the policy at Clause 22.05 defines *'Contributory building'* as *"a 'C' grade building anywhere in the municipality, or a D grade building in a Level 1 or Level 2 streetscape"*.

The majority of submissions objected to the particular grading that individual buildings had been afforded, with much debate concentrating on whether buildings should be graded level C or D.

The issues for the Panel to consider are whether:

- The grading system in Clause 22.05 contradicts the findings in the *City North Heritage Review*. For example, comparing the status of 'contributory buildings' in the Heritage Review and the status of D graded buildings places within Level 3 streetscapes in Clause 22.05.
- As a result of the Study Brief, the findings of the Review have inflated some individual buildings to ensure that they remain in the Heritage Overlay.
- Given the advice of the Planning Practice Note (as described in Chapter 3), whether the Panel should consider the individual sites in the context of significant/contributory or the City of Melbourne grading system.

## **(ii) Evidence and submissions**

The Council's experts advised that their instructions were to use the grading system as it stands; however they noted that a 'conversion system' to accommodate the need to adopt to the standard grading system (included in PN01) "should be kept in mind". In essence this equated:

- A, B, or C with 'significant'
- D with 'contributory'
- Ungraded with 'non-contributory'

Mr Hemmingway in his evidence-in-chief explained that, in accordance with the Study Brief, the study team adopted the principle that only D graded sites within a precinct would be graded. If they were outside the precinct they were regraded A, B or C or would be ungraded. Council directed that any existing individual buildings with a D grade would be removed from the Heritage Overlay. If it was regarded as a C graded building it could stay in the Heritage Overlay.

Upon cross examination, Mr Pitt asked Mr Beeston what would be the consequences of changing a grading to a D outside a precinct. Mr Beeston replied that the consequence would be demolition. However he went on to explain that the principle of the work of the

Heritage Review was to determine the place's heritage value, not determine the policy position.

Mr Beeston confirmed that although he usually undertakes heritage studies using the 'significant' and 'contributory' model, he was instructed to use the grading model that the Council has used for the last 30 years. He confirmed that although the Practice Note advises that the letter grading system should not be used, he was confined by the Study Brief and he "can work with both systems".

Much of the evidence led on behalf of owners was to the effect that proposed gradings were either totally unjustified or too high. Again it was variously submitted that the Council's experts were encouraged to 'upgrade a place from 'D' to 'C' in order to ensure individual protection in the scheme.

Mr Pitt for the University of Melbourne (submission 17) argued:

*The shift from D to C grading cannot be seen in a vacuum. What the City of Melbourne is endeavouring to do is to apply a more onerous policy to the regraded buildings because Clause 22.05 differentiates policy depending on the graded level of buildings.*

Mr Lovell, who presented evidence on behalf of a number of submitters, considered that the Heritage Review was approached from the point of view of elevating gradings. He considered "there is a sense that the D to C gradings is a recalibration" and has not provided adequate justification in all cases.

Mr Lovell further considered that the streetscape gradings are "almost a redundant concept" especially in relation to single individual places and typically they are more appropriately used in the context of lengths of streets.

The National Trust of Australia (Victoria) (submission 25) encouraged the Council to abandon the A-D grading system and move toward an individually significant/contributory to a precinct model.

In his right of reply, Mr O'Farrell argued that some submitters invited the Panel to take into account redevelopment aspirations, building condition, urban renewal aspirations for the area and other matters as part of the Panel's consideration of social and economic impacts and whether a property should be included in the Heritage Overlay. He submitted that the weightiest matter for the Panel is to consider whether the various properties meet the threshold for inclusion within the Heritage Overlay. As stated by the Advisory Committee in 2007 assessing the heritage provisions:

*On the basis that the concept of thresholds is an integral component of assessing heritage significance, the Committee concludes that the threshold for inclusion of a place in the Heritage Overlay in Planning Schemes should be a positive answer to the question 'Is the place of sufficient import that its cultural values should be recognised in the planning scheme and taken into account in decision-making?'*

**(iii) Panel discussion and views**

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.

In *Belvurn Partners & Associates Pty Ltd v Melbourne University et al* (VCAT 2005) it was submitted by counsel for the applicant that the gradings were not simply hierarchical and that there is a typological difference between each category. Thus whilst category A does not elucidate any particular type of heritage significance, category B clearly confines its test to "...*milestones in the architectural (our underlining) development of the metropolis*". On the other hand, category C seems to focus more on historical, social, aesthetic or scientific significance. Category D buildings reintroduce the concept of architectural significance, along with historical, scientific, or social issues.

In determining *Belvurn* the Tribunal held that in that case the gradings should be read as a hierarchy – from most important to least important.

The Panel notes Clause 22.05 states:

*The individual buildings are graded A to D, the streetscapes from Level 1 to 3, both in descending order of significance.*

The Panel however is of the view that a reasonable reading of the definitions could conclude that the scheme describes a hierarchy and noticeably different typological criteria for each grade.

Again, instead of a simple criteria of 'heritage significance' (iterating the types of significance noted in s.4.1 (d) of the *Planning and Environment Act 1987*), categories C and D introduce the concept of 'reversibility'. Once again, this adds another dimension to each grading test that only might (and the Panel suggests might not) be helpful in determining significance. The Panel further examines this particular issue below.

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 an 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. Nonetheless the evidence to this Panel was that Council's consultants were required to use it in preference of current practice and their professional preference.

Whilst discussion of the niceties of the grading system may seem somewhat abstract, the Panel found it to be a confounding matter in this Amendment, where many of the Council's Statements of Significance referred particularly to historic, social, or aesthetic interest but

where much of the strength of evidence led by owners was in the area of architectural, rather than historical, analysis. In addition, many of the Statements of Significance referred to a building as 'representative' whilst affording the building a C grading. This approach contradicts the definitions in the Planning Scheme.

A further demonstration of the counter-productive effect of the Council's grading system is that when considering the grading and streetscape levels and the directions in Clause 22.05, D graded buildings are afforded less protection. In addition D graded buildings in a level 3 streetscape are not considered contributory buildings at all. Much of the Hearing was over whether a particular building in a proposed or existing precinct was a C grade or a D grade.

In the case of a precinct, despite the grading, if a building were to be graded D this would mean that it contributes to the precinct. It is the Panel's view that a precinct consisting entirely of D graded buildings could well be justified as being a precinct and the contributory buildings remain an essential component of the precinct. This is contrary to the aforementioned interpretation of D graded buildings under Clause 22.05.

Many submissions sought to have the grading of their individual building reviewed to a D grade or no grade at all. The policy approach in Clause 22.05 to buildings graded D (even in precincts), clearly affords more opportunity for change and, in particular, demolition. In the case of precincts, it is the Panel's view that Council's grading system facilitates the approach of focussing on individual gradings of buildings rather than focussing on the precinct as a heritage place (the sum of its parts). Perpetuating the grading system in the context of a precinct has the potential to significantly compromise the overall heritage place.

Furthermore, in some cases (discussed in this report) the recommendations of the Heritage Review to protect places graded D3 in precincts did not align with the definition of Contributory building within the Policy, revealing that the Study and the management of the Heritage Places through Clause 22.05 (based on building gradings) are not aligned.

Mr O'Farrell explained that it was principally Council resourcing that had precluded the review and updating of the grading system. However given the history of confusion this Panel takes the view that re-writing the definitions and Clause 22.05 (preferably to ensure consistency with the Practice Note) is long overdue.

Again the Panel refers to the Melbourne C186 Panel who reported:

*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 the 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.*

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 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 22.05 and the Heritage Places Inventory, the Panel considers it is confined to consider the grading system used by the City of Melbourne.

With regard to the question of whether buildings were ‘upgraded’ as a result of the Council’s direction not to include individual buildings graded ‘D’ in the Heritage Overlay, the Panel notes that, as part of the study process, over 40 places were reviewed and recommended not to be included within the Heritage Overlay. 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.

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.

## **4.6 Intactness vs integrity**

### **(i) The issue**

The Council’s grading system makes an important distinction between a place’s intactness and the reversibility of alterations. It refers to a place’s condition as follows:

- Grade C – “...Architecturally they are substantially intact, but where altered, it is reversible. In some instances, Buildings of high individual historic, scientific or social significance may have a greater degree of alteration ...” and
- Grade D – “... They are often reasonably intact representatives of particular periods, styles or building tops. In many instances operations will be reversible....”

A key issue for the Panel was the relevance of establishing a place’s significance in the context of the place’s intactness or the reversibility of alterations.

### **(ii) Evidence and submissions**

The concepts of ‘reversibility’ and ‘substantially intactness’ were raised in a number of submissions. Mr Lovell commented that in the Heritage Review there was no discussion of intactness. He saw this as pivotal for 20<sup>th</sup> century buildings, and queried “*are we grading it as it could be or as it is?*” He suggested that one cannot anticipate that an owner is going to change back the clock, which goes to the issue of reversibility of change. The C and D gradings address this and in this context, Mr Lovell stated there should have been discussion in the Heritage Review similar to its consideration in the 1999 Allom Lovell study.

Mr Lovell presented a checklist of considerations that he used to assess the reversibility of works to a building. Generally, he viewed ‘reversibility’ in two ways: difficulty of physically achieving reinstatement; and the likelihood that works would be undertaken by an owner.