

AMENDMENT C269 YARRA PLANNING SCHEME

REVISED HERITAGE POLICY 15.03-L

PANEL HEARING OCTOBER 2021

HERITAGE EVIDENCE

27 September 2021

1.0 INTRODUCTION

1.1 Instructions and procedures

I have been instructed by David Young, acting on behalf of the Yarra Planning Coalition, to provide evidence regarding this amendment, to support the submissions made by this group concerning this amendment.

I have been the sole author of this statement.

1.2 Name and address

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1.3 Qualifications and experience

I have a Bachelor of Architecture degree (Melbourne 1975), and I am a registered architect and have been director of Nigel Lewis Pty Ltd since 2002, the continuation of a practice established in 1976. In the subsequent period, it operated as Jacobs Lewis Vines, Nigel Lewis and Associates and Nigel Lewis Richard Aitken Pty Ltd. These practices have specialised in the conservation of historic buildings and complexes, historic landscapes and historic urban areas.

I was involved in the original urban conservation studies for many inner suburban areas in the 1970s and 1980s. These included conservation studies for North and South Fitzroy in 1978 and 1979, Carlton, the North Carlton and Princes Hill conservation study and Lygon Street Action Plan, both in 1984. Other conservation studies were for the Melbourne CBD, Parkville, St Kilda, Port Melbourne, Brunswick, Prahran, Malvern, in addition to, Ballarat and Maldon. These studies have contributed to the development of urban conservation implementation and management in this state through policy formulation. They included the development of guidelines for the city of Melbourne that remain in policies for some planning schemes. This pioneering work has played a part in the conservation of many historic buildings, works and complexes, historic landscapes and historic urban areas in Victoria and Tasmania.

I was the first architectural and heritage adviser in Australia, appointed by the then Department of Planning at Maldon in 1978. Since then, I have been engaged in this role for many areas, including the Cities of Prahran, Melbourne, Ballarat, and Shires of Maldon, Mornington Peninsula, Murrindindi and Mount Alexander. Urban design matters have always been an aspect of this work.

Nigel Lewis Pty Ltd has undertaken numerous conservation and adaptive re-use projects and new developments within heritage places and precincts, including working in association with other architects. This has involved the adaptive re-use of the entire former Caloola Training Centre at Sunbury for Victoria University and two primary schools, and restoration of the historic features of Luna Park. More recent projects have included the restoration and upgrading of the former Cathedral Hall for the Australian Catholic University. An ongoing project is the restoration and adaptive re-use of the Abbotsford Convent as a community arts and education precinct.

I have provided expert witness evidence at numerous AAT and VCAT hearings, at panel hearings, and Historic Buildings Council and Heritage Council hearings since the 1970s. I have been retained by municipal councils, project architects, developers and objectors to provide expert evidence at these hearings.

1.4 Area of expertise relevant to this report

I have been involved with the assessment of heritage significance and heritage impact since 1977 as a consultant for various responsible authorities. The undertaking of various urban conservation and heritage studies has informed this work, in particular the development of guidelines. My private architectural and conservation consulting work has had a major focus on the management of change in a heritage context.

1.5 Referral documents

The following documents have been referred to in the preparation of this statement of evidence:

Yarra Planning Scheme *15.03-1L Heritage*

The preferred (8 September 2021) version of *15.03-1L Heritage*

Yarra Planning Scheme *43.01 Heritage Overlay*

City of Yarra Residential Heritage Policy Review, prepared by Context, revised report 31 October 2019

Yarra Industrial Heritage Policy, prepared by GJM Heritage 15 October 2019

Yarra Planning Scheme *22.02 Development guidelines for sites subject to the Heritage Overlay*

Other planning schemes:

Moreland Planning Scheme *15.03-1L Heritage in Moreland*

Melbourne Planning Scheme *22.05 Heritage places outside the Capital City Zone*

Boroondara Planning Scheme *22.03 Heritage Policy*

Australia ICOMOS *Burra Charter* 2013

1.6 Areas covered by this evidence

The Yarra Planning Scheme Clauses 15.03-1L review:

- The preferred (8 September) version of PPF 15.03-1L Heritage
- Comparison with other inner Melbourne heritage policies
- Comments on alternative heritage policies
- Recommendations for a better heritage policy

1.7 Declaration

I have made all the inquiries that I believe are desirable and appropriate and no matters of significance which I regard as relevant have to my knowledge been withheld from the Panel.



NIGEL LEWIS

27 September 2021

2.0 SUMMARY OPINION

The preferred (8 September) version of PPF 15.03-1L – Heritage remains subject to a number of issues that make it unacceptable in its current form. While some of the details are outlined below, what is most of concern is the number of ways that makes this policy inconsistent with other relevant planning schemes, and contrary to accepted conservation practice.

While some are discussed in this evidence, it should be noted that there are other issues that are inconsistent with other planning schemes that have not been addressed in this evidence.

Demolition policies should better cover the retention of significant fabric, especially for fabric on heritage places graded significant when not visible from the public domain.

The building typology approach adopted by Yarra, both in the proposed 15.03-L and also the current scheme, does not achieve acceptable conservation outcomes. 15.03-L retains different policies for residential and non-residential buildings. This has led to many examples facadism on non-residential buildings due to the demolition of significant fabric behind building facades that would not be acceptable for less significant residential buildings, or any significant buildings for other planning schemes including Moreland. Furthermore, the policies for commercial / industrial buildings allow highly visible intrusive rear additions and this remains a major issue with the current proposal.

Notwithstanding this, the two-room setback for residential buildings is not always acceptable for residential buildings in their current form, and sightline objectives should be retained. Scale is also a critical issue that needs to be quantified.

The lack of definitions and reference documents with guidelines are other obvious omissions.

A complete review of these issues is required before this amendment can be considered.

3.0 INTRODUCTION

This policy is intended to replace the existing 22.02 Development guidelines for sites subject to the Heritage Overlay. While the preferred version of this policy has many improvements on the existing, it nevertheless needs a substantial rewrite. The key issues are as follows:

- Objectives are incomplete and the State policy objective (15.03-1S) is not adequate.
- Strategies should begin with strategies for conservation (as it is a heritage policy), and be better structured.
- The building typology approach should be abandoned. Notwithstanding this, the provisions for residential, commercial and industrial heritage places have a number of deficiencies. While consultancies on residential and industrial heritage places were commissioned, and there was no work undertaken on commercial heritage places.
- Demolition policies should be consistent for all building typologies and be based on the degree of significance.
- Definitions are required to guide use (and prevent misuse) of the policy.
- Reference documents are required, including plain-English guidelines to explain the policy.

4.0 DISCUSSION

4.1 Objectives

State policy (15.03-1S Heritage)

The state policy (15.03-1S Heritage) has a single objective, and the state guidance on writing policy (*A Practitioner's Guide to Victorian Planning Schemes*, April 2020) discourages local objectives, saying that they "*should only be included if they expand on a state or regional objective with a particular local emphasis or distinction.*"

However, the state policy objective: *To ensure the conservation of places of heritage significance* is out of date in state terms, and also does not adequately address heritage conservation at the local level. While it may seem overarching, it speaks of an era of heritage places isolated from each other, rather than forming parts of whole areas, as is most often the case at the local level.

Yarra 15.03-L Heritage

Objectives are important statements of what outcomes a policy is required to achieve. Whereas the existing 22.02 has nine objectives, the exhibited policy had none. Following comments during the exhibition period, Yarra copied across three of the nine existing objectives into its preferred version:

To conserve Yarra's natural and cultural heritage.

To preserve the scale and pattern of streetscapes in heritage places.

To ensure the adaptation of heritage places is consistent with the principles of good conservation practices.

The first objective lacks a clear message *to retain* as well as conserve. While it might be argued that *conserve* implies retention, there will always be assertions that demolition of one particular building won't have a big impact on Yarra's heritage which will therefore be conserved.

The second objectives' *preserve the scale and pattern of streetscapes* will be met by retaining and conserving heritage places, provided that new development is respectful of the heritage values of the streetscapes. It should read as:

To retain and preserve the scale and pattern of streetscapes in heritage places, and their original form and fabric.

This identifies streetscapes as an important element of heritage places, and the need to preserve their original form and fabric. However, the second objective doesn't cover views and vistas to heritage places which should be included in the policy objectives.

It is not clear why adaptation of heritage places (the third objective) should be the only process that should be *consistent with the principles of good conservation practice*? All conservation processes (preservation, restoration, reconstruction and adaptation) should involve good practice. This objective should be reworded as a strategy under a heading **Conservation**.

Proposed additional objectives for Yarra heritage policy

In view of the discussion above, the following four additional objectives are proposed for the Yarra policy:

- To retain and conserve all individually significant and contributory heritage places.*
- To conserve heritage places in accordance with the Australia ICOMOS Burra Charter.*
- To retain and preserve the scale and pattern of streetscapes in heritage places, and their original form and fabric.*
- To retain and reveal views and vistas to heritage places and streetscapes.*
- To ensure new development is respectful of the assessed significance of heritage places.*

4.2 Strategies

Strategies spell out **how** the objectives are to be achieved.

This is a heritage policy and it should have strategies about heritage conservation. They should be grouped together and positioned at the beginning of the strategies, and not as part of *New development, alterations or additions*, as is the case in the preferred version. Accordingly, I propose a new heading **Conservation** under which key conservation strategies are grouped. Two of the four points shown below come from the preferred version:

Conservation

Retain and conserve individually significant and contributory places as identified in the incorporated document in schedule to clause 72.04 'City of Yarra Database of Heritage Significant Areas.'

Promote excellence in conservation practice by:

- *Ensuring that conservation is guided by the statement of significance for the place.*
- *Encouraging retention of the three-dimensional form and fabric of a building.*
- *Where appropriate, encouraging the adaptive reuse of heritage places, while ensuring that it is consistent with the principles of good conservation practice.*

Structure – order of clauses

As noted above, the preferred version should begin with strategies about conservation. There are other problems with the present order of clauses and these fall into three groups.

One of the concerns about the current 22.02 has been a lack of clarity about which provisions apply to which type of place, and this has been used (arguably incorrectly) to allow more relaxed controls on commercial and industrial heritage places. The new policy should make clear which provisions apply to all types of heritage places (whether residential, commercial or industrial) and which are specific to particular types. This would mean re-arranging the document to pull all the general provisions forward, to be followed by provisions for particular place types. Unfortunately, Yarra's preferred version retains this poor structure, which will guarantee ongoing disputes about its application.

In addition, strategies that relate to **conservation** – (*Demolition, Reconstruction, Painting and surface treatments, Fences and gates, and Relocation*) should follow immediately after the strategies for *Conservation*. Then *New development* should follow in an order that is more consistent with the overall aim of the policy – **heritage conservation**. The same approach should apply within clauses about particular topics (e.g. *Painting and surface treatments*) with the conservation provisions first, followed by those related to change and new work.

Another issue with both the exhibited policy and the preferred version is the use of a general heading for *Commercial and former industrial heritage places*, followed by further headings for *Commercial heritage places* and *Former industrial heritage places*. It is my opinion that this risks the same lack of clarity that applies to the current 22.02.

Based on my concerns about the inclusion of building typologies (see below), re-ordering of the strategies to improve the overall flow of the document would produce a sequence such as the following:

Objectives

Strategies

- Conservation
- Demolition
- Reconstruction
- Painting and surface treatments
- Fences and gates
- Relocation
- New development, alterations and additions
- Public realm heritage infrastructure
- Trees, landscapes, parks and gardens
- Subdivision
- Services and equipment
- Roof terraces and roof decks
- Archaeological sites

Provisions for Residential alterations or additions, Residential infill, Commercial heritage places, and Industrial heritage places should be covered in guidelines.

4.2.1 Demolition

More clarity is required for this provision:

Avoid the demolition of individually significant or contributory buildings unless ALL of the following can be demonstrated:

'All' must be emphasised

*The building is structurally unsound rather than just in poor condition.
Alternative stabilisation works have been **professionally investigated and found inadequate.***

The replacement building and/or works clearly and positively supports the ongoing heritage significance of the area.

An explanation is required to demonstrate how this could apply.

The same requirement applies to partial demolition:

Avoid the demolition of any part of an individually significant or contributory building unless ALL of the following can be demonstrated: ... etc

Demolition policies should better cover the retention of significant fabric, especially for fabric on heritage places graded individually significant where not visible from the public domain. The Melbourne policy 22.05 *Heritage places outside the Capital City Zone* is quite specific:

Partial demolition in the case of significant buildings, and of significant elements or the front or principal part of contributory buildings will not generally be permitted.

The language is important here, and better than expressions like *avoid*, *encourage* and *discourage*.

The Moreland policy 15.03-L *Heritage in Moreland - Demolition strategies* states:

Support partial demolition of a heritage place, if either:

- *The fabric proposed to be removed does not contribute to the heritage significance of the place.*
- *The removal will **enhance*** the significance of the place or facilitate conservation outcomes in accordance with the provisions of this policy.*
- *The extent of demolition will not result in facadism.*

Discourage total reconstruction of a heritage place as an alternative to retention.

I would make a caveat about the use of “enhance”. It should be replaced with “reveal”, as the significance of a heritage place cannot be enhanced.

This strategy is specifically referenced in Boroondara Planning Scheme 22.03 *Heritage Policy*, 22.03-2 *Objectives*

- *To preserve ‘significant’ heritage places, protecting all significant heritage fabric including elements that cannot be seen from the public realm.*

The use of ‘structurally unsound’ as a ground for demolition needs to be qualified. Building can be structurally unsound, but not beyond rectification. Also, parts could be structurally unsound, but not the whole building.

A final issue is this provision which should be modified as follows:

Encourage ENSURE all applications for demolition to be accompanied by an application for new development.

4.2.2 Restoration and reconstruction

The term ‘*adaptive re-use*’ is open to mis-interpretation, and abuse. ‘*Re-use*’ should be the operative idea – rather than promoting specifically ‘*adaptive re-use*’. ‘*Re-use*’ can also include continuing use.

‘*Adaptive re-use*’ can be misused when intention is actually more to modify or alter the building, rather than adapt the use of the building. Rather than at local planning level, ‘*Adaptive re-use*’ is perhaps more relevant for VHR listed buildings, where some regulation requirements can potentially be adjusted to assist the viability of a building in a continuing or new use, and therefore assist in its preservation.

4.2.3 New development alterations and additions

The following provision should be revised:

*Avoiding highly contrasting, vibrant colours and reflective materials **such as glass balustrades** (not including solar panels).*

The following provision should be revised to better protect individually significant buildings:

Maintain views to the front of an individually significant or contributory building or views to a secondary façade where the building has two street frontages by not:

Building over the front of it.

Extending into the air space above the front of it.

Obscuring views of its principal façade/s.

The use of '*the front*' and '*principal and secondary façade*' in relation to individually significant buildings can allow individually significant buildings to be treated the same as streetscape and contributory value.

4.3 Building typology

The building typology approach adopted by Yarra, both in the proposed 15.03-L and also the current 22.02 heritage policies, does not achieve acceptable conservation outcomes. Cultural heritage values are universal, and are not dependant on being a certain building type or use. Only the Yarra Planning Scheme appears to use typologies to make such major policy distinctions.

There are major issues in determining what is residential and non-residential. For example, the current distinction does not take account of Victorian era shops built as shop/residences. Often the residential floor area is greater floor area than the shop. The same applies to many older hotels. Furthermore, many shops and hotels have been converted to a fully residential use, many since the 1950s, and this represents an important part of the history of these buildings.

The Yarra building typology approach has led to many examples of facadism on non-residential buildings due to the demolition of significant fabric behind building facades that would not be acceptable for less significant residential buildings, or any significant buildings for other planning schemes including Melbourne and Moreland. One example is that the current policy has been used to justify the total demolition of the Royal Hotel in Clifton Hill, other than the two main facades. This is a significant landmark building that dominates its mixed residential and non-residential context.

By contrast, the Moreland 15.03-L policies discourage the demolition of external significant fabric of significant factory buildings such as roofs. In a recent case this has been used to conserve roofs not visible from the public domain where the roof does contribute to the heritage significance of the place.

Furthermore, the existing policies for commercial and industrial buildings allow highly visible intrusive rear additions, with minimal setbacks, that would not be acceptable for residential buildings. The Yarra building typology approach has led to an extremely adverse heritage impact with intrusive additions to old former corner shops in intact residential areas such as North Carton.

Unfortunately, Yarra 15.03-L continues to retain different policies for residential and non-residential buildings, and remains a major issue of concern with the Yarra heritage policies.

This policy is not consistent with policies for other planning schemes, and this distinction for all other building types should be deleted. Notwithstanding this recommendation, there are some deficiencies with this typology system in the proposed Yarra 15.03-L. It is noteworthy that while separate reviews were commissioned of the provisions for residential and industrial buildings, no review of commercial heritage places was undertaken.

Residential alterations and additions, and infill

Yarra commissioned a report on residential heritage places with the aim of informing the new heritage policy, *City of Yarra Residential Heritage Policy Review*, prepared by Context, revised report 31 October 2019. That document recommended many changes to the existing policy (22.02). The preferred policy does not respond adequately to the advice provided in the 2019 report.

The proposed two room setback for residential buildings is not always acceptable for residential buildings in their current form. There should be a minimum depth of 8 metres or two rooms if they are greater than this. Principal roof forms and visible chimneys also need to be retained, as some houses have more than two rooms deep under the principal roof, many significant houses in particular.

The sightline objectives should be retained, as it is in other planning schemes. Scale is also a critical issue, and maximum wall heights should be encouraged. This is one situation where building type is relevant as must reflect minimum BCA requirements. In North Carlton when I was the City of Melbourne heritage adviser, wall heights of rear additions were usually confined to 5.5 – 6.0 metres, and attic style roofs to second storey rear additions to single storey houses were encouraged to facilitate this.

Any height limits for new infill buildings in heritage overlay precincts should also relate to standard floor to floor heights when considering the number of storeys that are acceptable. Additional heights should not be permitted for ground floor levels at 3.5 metres, taken at no more than 0.2 above ground level, and 3.0 metres for all upper levels. Roof top services should be counted as a level, unless less than 0.4 high and setback.

Industrial heritage places

Yarra commissioned a report on industrial heritage places with the aim of informing the new heritage policy, *Yarra industrial heritage policy* GJM Heritage 2019. That document recommended many changes to the existing policy (22.02). The preferred policy does not respond adequately to the advice provided in the 2019 report.

Among the recommendations that should have been included are the following (note that these use the numbering system of the existing policy 22.02):

- 5.2.1 a) Where approval is granted for full demolition of a heritage place, a recording program including, but not limited to, archival photographic recording and/or measured drawings may be required prior to demolition, to the satisfaction of the Responsible Authority.
- 5.2.5 a) Encourage the design of new development and alterations and additions to a heritage place or a contributory element to a heritage place to:
 - (viii) Not employ external column/structural supports through the front or principal part of the building.
 - (xiv) Discourage the use of highly reflective glazing in both historic openings and new built form. Unarticulated curtain glazing should be avoided. (note that the preferred version covers reflectivity and unarticulated curtain glazing, but only in the façades of heritage buildings, not in new built form)
- 5.2.6 d) Encourage the retention of remnant historic signage where it can help interpret the previous uses and history of the place.
- 5.2.6 e) Encourage the interpretation of significant industrial sites and complexes.
- 5.2.6 g) Side elevations visible from the public realm should normally be retained. Where a side elevation has been substantially altered or makes a minor contribution to the significance of the building, the depth of one or more structural bays should normally be retained to ensure the three-dimensional form of the building is retained.

5.2.6 j) Encourage new upper-level development behind one and two-storey industrial facades to be setback a minimum depth of two structural bays*. New built form – as visible from the street – should not generally exceed the same volume of the historic form.

5.2.6 l) Encourage upper-level development to be setback from secondary elevations to ensure the three-dimensional form of the heritage building is retained.

* NL note ADD *or an equivalent setback*. Many other planning schemes have sightline controls for non-residential buildings, and this should be applied to Yarra.

4.4 Definitions and language

The policy should include a list of definitions so that there is clarity about the meaning of terms. Definitions are also needed because the professional use of terms often differs from those in common use. Terms used should be consistent with, but not limited to, those of the Australia ICOMOS Burra Charter, 2013. The existing policy (22.02) has a list of definitions, as do the heritage policies of a majority of inner Melbourne councils.

4.5 Permit application requirements

There is a need to require specific information with permit applications. A good example from another scheme is contained in the City of Melbourne C305 version of *22.05 Heritage places outside the Capital City Zone*:

Permit Application Requirements

The following, where relevant, may be required to be lodged with a permit application.

- *Where major development is proposed to significant heritage places, the preparation of a Conservation Management Plan (CMP), which is accordance with the Heritage Council of Victoria's Conservation Management Plans: Managing Heritage Places A Guide 2010.*
- *The preparation of a Heritage Impact Statement (HIS) which is in accordance with Heritage Victoria's Guidelines for preparing Heritage Impact Statements. In a heritage precinct, the HIS should address impacts on adjoining significant or contributory buildings and the immediate heritage context, in addition to impacts on the subject place.*
- *Further information where there is limited information in an existing citation or council documentation.*
- *An arboricultural report where works will or may affect significant vegetation (as listed in the Schedule to the Heritage Overlay or vegetation of assessed significance). The report should, where relevant, address landscape significance, arboricultural condition, impacts on the vegetation and impacts on the assessed significance of the heritage precinct.*
- *For development in heritage precincts, sight lines, and heights of existing and adjoining buildings, streetscape elevations, photos and 3D model, as necessary to determine the impact of the proposed development.*
- *A comprehensive explanation as to how the proposed development achieves the policy objectives.*

Many other planning schemes have similar requirements. A CMP should always be required for significant buildings. This is required in order to not merely assess the heritage impact, but to

gain a full understanding of the significance and integrity of the significant heritage place. Too often vital information is concealed.

4.6 Reference documents

The reference documents listed in the existing policy (22.02) should be retained.

These should also include a plain-English set of guidelines to support the new policy. The guidelines could be the place to explain approaches to different building types, and for example, incorporate some appropriate sections of the GJM recommendations on industrial places, with illustrations. The guidelines should be aimed at building owners, their advisers, architects, builders and planners, and be well-illustrated, as many will understand visually, where words may confuse. The guidelines should be a background document and should be included in the schedule to Clause 72.08. For example, Port Phillip's proposed heritage policy includes new heritage design guidelines.

5.0 RECOMMENDATIONS FOR YARRA 15.03- L

This proposed policy has a number of basic flaws, including those identified in this witness statement. Much more work is required to address these concerns, in particular as to how this policy is so inconsistent with other planning schemes. These include the provisions for other schemes previously discussed, Melbourne, Moreland, Port Phillip, and Boroondara. However, not all issues that are inconsistent with other relevant planning schemes have been addressed in this evidence.

Basic conservation principals such as contained in the Australia ICOMOS *Burra Charter* 2013 should be observed in this re-write.