

**IN PLANNING PANELS VICTORIA
IN THE MATTER OF AMENDMENT C192 TO THE BAYSIDE PLANNING SCHEME**

BETWEEN

[REDACTED]

Submitters

and

BAYSIDE CITY COUNCIL

Planning Authority

SUBMISSIONS ON BEHALF OF [REDACTED]

1 Introduction

- 1.1 These submissions are made on behalf of [REDACTED] (Owners), the owners of 9 Wolseley Grove, Brighton (Site).
- 1.2 Hall & Wilcox lodged a submission on behalf of the Owners, objecting to the application of the Heritage Overlay to the Site (Submission 14).
- 1.3 The Site was included in the Heritage Overlay in the exhibited Amendment C192bays (Amendment).
- 1.4 The Council has since revised its position on the inclusion of the Site in the Heritage Overlay.¹ The Council's position is now that the Site ought to be deleted from the Amendment. The Council's revised position is informed by Mr Gard'ner's evidence, which is consistent with the evidence of Mr Raworth, who the Owners have engaged as a heritage expert witness.
- 1.5 The Owners have continued to participate in this Panel Hearing primarily because Ms Schmeder's evidence is before the Panel. Ms Schmeder was engaged by the Council to conduct a peer review of Mr Gard'ner's work and in summary, her evidence is that, notwithstanding the extent of alterations to original fabric, the Site ought to permanently be included in the Heritage Overlay.

2 Site history and alterations

- 2.1 The Site contains a single storey dwelling, referred to as Mylius House in the Post-War Modern Residential Heritage Study (July 2022) (dwelling or house).

¹ See paragraph [110], Council Part A Submission.

2.2 A more detailed history of the Site and dwelling is contained within the evidence of Mr Raworth, the key aspects of which are as follows:

- (a) The dwelling was originally constructed in 1967 to a design by architects McGlashan & Everist. It was first constructed in a broad U shape plan with a west facing courtyard. The front facade featured a sheer brick wall.
- (b) A series of changes and alterations to the dwelling and the Site since then.
- (c) In 1972 and 1985, alterations designed by David Godsell were made, including the construction of a hobby room, demolition of the southern wall and expansion of the office/study.
- (d) In 1986, the façade was demolished with new windows and doorways installed, fronting directly to Wolseley Grove. An L shaped brick fence was also constructed at this time to conceal views to the western portion of the façade, given the façade now comprised substantial glazing. The evidence of Mr Raworth is that the works in 1985/86 fundamentally altered the original design intent of the property.
- (e) The Owners purchased the Site in June 2020.
- (f) In November 2022, a building permit was issued,² allowing substantial alterations (**2022 Permit**). The extent of change (with works substantially underway) includes removal of most existing windows and demolition of the former rear hobby room, many internal walls and the existing roof cladding. An addition will extend to the rear of the place, a new garage will replace the previous carport and new roof cladding will be installed to the whole of the place.
- (g) In addition to the changes above, the solid brick fence which was constructed in 1986 was ordered to be demolished by Council under an Emergency Order in August 2022 due to risk of imminent collapse.
- (h) Three large gum trees were also removed with Council approval in 2022 due to them presenting as a safety risk to the house.³

3 Evidence before the Panel

3.1 Mr Gard'ner has considered the extent of alterations that have occurred to the Site since the preparation of the Heritage Study (i.e. those permitted by the 2022 Permit) and formed the view that:⁴

More recently, a substantial program of works to the place has commenced with approval being obtained prior to Amendment C192bays being progressed. As a result, no formal heritage assessment of the potential impacts of the proposed works was required and no heritage related conditions could be applied to manage impacts over the course of the works. The works have included the removal of a substantial portion of the original and early building fabric including all timberwork, all windows and doors, the carport structure, roofing material and the front brick fence (see images above taken during a further inspection of the property from the public realm in November and December 2023).

² See Council Part A Submission at [104]; Building Permit No. CBS-U 68108/7986052958252. The Permit is also **attached** to these submissions.

³ The mature Eucalyptus are specifically mentioned in the Statement of Significance: *Designed by renowned architects McGlashan & Everist with sensitively-designed additions and alterations by David Godsell, the house is characterised by its austere presentation to the street, its emphasis on privacy and retention of remnant vegetation including mature Eucalyptus sp., and its refined detailing.*

⁴ Statement of evidence of Mr Gard'ner at [164]-[166].

While at the completion of the works the property will likely still present as a Modernist-style house, there is little original material now remaining and the integrity has been reduced such that the application of the Heritage Overlay is no longer warranted.

It is therefore my view that the property should be removed from Amendment C192bays.

3.2 Mr Raworth has similarly concluded:⁵

Having regard for all of the above, it is my view that the dwelling at 9 Wolseley Grove, Brighton, is not of sufficient historic, representative (architectural) or aesthetic value to warrant an individual Heritage control as part of Amendment C192bays to the Bayside Planning Scheme.

The proposed listing of the building was questioned and arguably not warranted at the time the building was first put forward in Amendment C192bays. However, with the works that have occurred in the interim, including the removal of walls/high brick fencing to the front, removal of windows, replacement of the roof and associated joinery, removal of several large trees, and other material changes as set out above, the integrity and interest of the place has been reduced such that it should no longer be considered for listing within the Schedule to the Heritage Overlay.

3.3 Ms Schmeder has formed a different view, concluding that:⁶

The submitter has provided a shaded plan indicating the parts of the buildings that are original, altered and 'demolished and replaced with new design'. While most of this reflect the building permit plans from 1966 through 2022, in locations where windows and window-walls are to be replaced by new units (in the same configuration) this is shown as full demolition/replacement of that wall. If the replacement of windows is set aside, this reveals a house that retains much more of its 1960s-80s contributory fabric. The main change is the creation of an addition to the east side – new garage and several rooms.

As shown on the plans, the appearance of the house from the street will not change, apart from the presence of the new garage, which will sit behind a retained portion of the carport. The roofline of the new additions behind the carport is low, so this may be entirely hidden from the street. The house will also retain its original U-shaped plan around the west-facing courtyard, even with the new additions, though the eastern courtyard will be lost.

On the following page drawings of the front (north) elevation of the house are set out to illustrate its evolution over time, as well as the planned impact of the current works.

Overall, the current design is sympathetic to the house, with effort taken to retain the same street presence. On this basis, I consider the current works to be of the type that is often approved for houses in the Heritage Overlay.

As a substantial house of sophisticated original design, in my expert opinion, it will retain its local significance following the works.

3.4 Ms Schmeder has also provided oral evidence to the Panel, to the effect that the Council Planning department sought advice from a heritage consultant, in relation to the 2022 Permit. A letter to Fiona Farrand (Bayside City Council) from David Helms (3 August 2024) was also produced upon request. It is submitted, primarily, that if the witness intended to rely on the document in evidence, it should have been included as part of the evidence statement.

⁵ Statement of evidence of Mr Raworth, at paragraph [55]-[56].

⁶ Statement of evidence of Ms Schmeder at paragraph [318] – [322].

3.5 In any event, it is submitted that no weight can be attributed to this evidence and the document produced, for the following reasons:

- (a) It is a standalone piece of advice, with no formal instructions to Mr Helms produced. It is not possible to understand the specific instructions provided to Mr Helms and the parameters of the advice.
- (b) Mr Helms has not provided evidence in this proceeding and as such, it is not possible to test this evidence.
- (c) Importantly, there was no relevant overlay, or other relevant heritage provisions, which were operative when the relevant application was lodged and the 2022 Permit was issued.
- (d) Mr Gard'ner's oral evidence to the Panel, in this respect, is correct. If the Site had been included in the Overlay at a time when a permit was sought, the works would likely be undertaken under a permit that had considered the heritage values of the place. There would also be appropriate secondary consent conditions, ensuring that the buildings be restored in an authentic and sensitive manner. Indeed, there is no specific mention of heritage protection in the 2022 Permit.
- (e) In any event, the Council has since revised its position on the additions and alterations permitted by the 2022 Permit, so it is submitted that no weight can be attributed to the evidence of Ms Schmeder, nor on the document produced.

4 Submissions

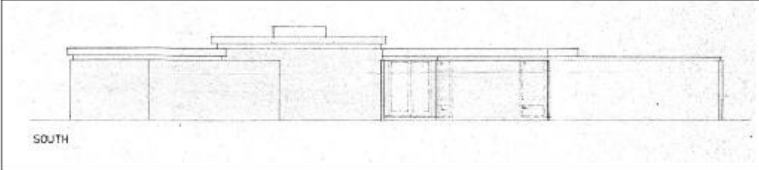
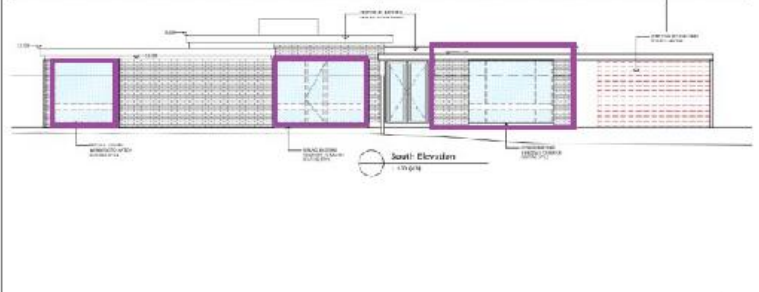
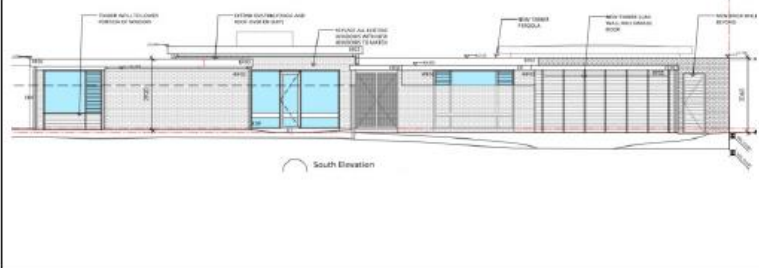
- 4.1 The majority of the evidence before the Panel on 9 Wolseley Gove (provided by Mr Gard'ner and Mr Raworth) is that the significant alterations have detracted from its intactness and integrity to such an extent that it no longer meets the threshold of local heritage significance. On that basis, it is submitted that 9 Wolseley Grove be removed from the Amendment.
- 4.2 With respect, Ms Schmeder has confused the various changes and alterations to the Site, which are submitted to retain the 'mood' of the house, with the actual intactness and integrity of the house. The intactness and integrity of the house is submitted to be integrally linked to the proportion of original building fabric remaining.
- 4.3 As specifically acknowledged by Mr Gard'ner, whilst the property will still likely present as a Modernist-style house, there is very little original material remaining.⁷ The integrity of the building has been reduced, over the years, to such an extent that the application of the Overlay is no longer warranted.
- 4.4 Figures 5 and 6 from Mr Raworth's evidence illustrate the extent of original fabric remaining. Mr Raworth's evidence, in respect of these figures is that:

...only a skeleton of walls remains as original fabric to the exterior of the building, with all joinery and glazing associated with windows, eaves and the roof, along with the roof itself, having been removed and (with the present works underway) substantially replaced, with changes also to the internal layout. In addition, the loss of the front walls and of the trees that have been removed has even further detracted from the integrity and character of the place as it was when Council's citation for the site was prepared.

⁷ Statement of evidence of Mr Gard'ner at [165].

Alterations to the façade

- 4.5 There are submitted to be two particularly relevant aspects to the alterations made to the Site - the alterations to the façade in 1985/86 and the alterations permitted by the 2022 Permit.
- 4.6 As set out above, the dwelling was substantially renovated in 1985/86 with the stark brick façade replaced with windows and glass doorways.

	<p>Original appearance of front elevation, McGlashan & Everist, 1966</p>
	<p>Front elevation after insertion of front windows (1986) and small front addition (left, 1985) by Sean Godsell, outlined in purple (annotated plan from Willow Architecture & Design, 2020)</p>
	<p>Permitted alterations to front elevation: left-hand window sill raise, right-hand window behind new wall, new garage and addition behind truncated carport. (Willow, 2020)</p>

- 4.7 Mr Raworth's evidence is that the 1985/86 renovation fundamentally altered the original design intent of the house, particularly with respect how it presents to the streetscape. Whereas the original design was an open front courtyard with an austere brick façade the street, the 1985/86 renovation completely turned this on its head, replacing the stark brick façade with windows and glass doorways.⁸
- 4.8 The 1986 works also included the construction of a brick fence enclosing a front courtyard, replacing a timber paling fence.⁹
- 4.9 Mr Gard'ner does not agree with Mr Raworth in respect of the 1985/86 works to the façade. Mr Gard'ner's evidence is that these works were undertaken in a highly respectful manner and that they did not detract from the original design intent for the property.¹⁰ However, there is ample evidence before the Panel regarding the typical features, or characteristics of Modernist suburban houses, specifically the fact that their interiors are often concealed from the street, by sheer brick walls or substantial setbacks.
- 4.10 In our submission, it cannot be plausibly argued that the introduction of large windows to what was previously a sheer brick wall is consistent with the design intent of the house, or

⁸ Statement of evidence of Mr Raworth at paragraph [41].

⁹ Attachment to statement of evidence of Mr Raworth, Memorandum of Heritage Advice, Bryce Raworth Pty Ltd, 20 May 2022, page 2.

¹⁰ Statement of evidence of Mr Gard'ner at paragraph [162].

typical features of a Modernist house. In addition, it is submitted to be relevant that these alterations have been made to a façade of the house that is visible from the public realm, therefore having an impact on the way the house is appreciated from the public realm.

- 4.11 In our submission, the alterations are so significant and, so in contrast to the original design intent, that the dwelling cannot be said to be a “*substantially intact*” representative example of a Modernist suburban house”.¹¹

Alterations approved by the 2022 Permit

- 4.12 As set out in Appendix B to Ms Schmeder’s evidence, the changes permitted by the 2022 Permit include:

- (a) Demolition of the Hobby Room (the original carport, enclosed in 1972);
- (b) Demolition of the rear half of the current carport, with a garage replacing the carport, with a wider footprint;
- (c) Bricking up one window opening on east side;
- (d) Demolition of the rear wall of the kitchen area, to allow an extension to it;
- (e) Removal of a large window and small area of wall to rear of master bedroom, to be replaced with a bay window; and
- (f) Replacement of all other windows;
- (g) Bedroom and a lounge to be added to the east side, where the Hobby Room was - together, these additions will extend along the entire east wall of the house.

- 4.13 The extent of these changes was illustrated to the Panel on its site visit.

- 4.14 Again, within this context, it is submitted that the extent of the alterations and changes ought not to be confused with the nature of those changes. Although the alterations retain the ‘mood’ of the house, it is important that this factor is not confused with the degree to which the original fabric of the house has (or has not) been retained.

Application of criteria

- 4.15 As set out in the evidence of Mr Raworth, the recognised criteria for the assessment of heritage values of a heritage place, are as follows:¹²

- (a) Criterion A: Importance to the course or pattern of our cultural or natural history – historical significance.
- (b) Criterion B: Possession of uncommon, rare or endangered aspects of our cultural or natural history - rarity.
- (c) Criterion C: Potential to yield information that will contribute to an understanding of our cultural or natural history - research potential.

¹¹ As set out in the Statement of Significance.

¹² Statement of evidence of Mr Raworth at paragraph [32]; citing Practice Note 1: Applying the Heritage Overlay (first published August 2018, updated June 2023).

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- (d) Criterion D: Importance in demonstrating the principal characteristics of a class of cultural or natural places or environments - representativeness.
- (e) Criterion E: Importance in exhibiting particular aesthetic characteristics - aesthetic significance.
- (f) Criterion F: Importance in demonstrating a high degree of creative or technical achievement at a particular period - technical significance.
- (g) Criterion G: Strong or special association with a particular community or cultural group for social, cultural or spiritual reasons. This includes the significance of a place to Indigenous peoples as part of their continuing and developing cultural traditions - social significance.
- (h) Criterion H: Special association with the life or works of a person, or group of persons, of importance in our history - associative significance.
- 4.16 To be identified as a place of local significance sufficient to warrant application of the Heritage Overlay, a place should meet one or more of the above criteria to a degree that meets a threshold level of local significance.
- 4.17 The Site has been included in the Amendment, initially, on the basis that the dwelling was of local historical, representative (architectural) aesthetic significance (Criteria A, D and E). For ease of reference, the Statement of Significance provides the following text, in relation to the Criteria:
- Built in 1967 to a design by architects McGlashan & Everist, the Mylius House at 9 Wolseley Grove, Brighton is illustrative of post-war suburban development in the City of Bayside, when a large number of architect- designed Modernist houses were constructed across the municipality for those with an appreciation of Modernist architecture, its design principles, and the value of employing an architect. Mylius House at 9 Wolseley Grove makes a strong contribution to this important phase in the development of the City of Bayside (Criterion A).*
- Mylius House at 9 Wolseley Grove, Brighton is notable as a substantially intact representative example of a Modernist suburban house constructed during the post-war period in the City of Bayside. Designed by architects McGlashan & Everist, it displays a range of characteristics that are typical of Post-War Modernist housing from this period in Brighton and across Victoria more broadly, including site-specific orientation, rectangular planning, low box-like forms with horizontal emphasis, stepped flat roofs with shallow eaves and deep timber fascias, an emphasis on privacy with unadorned brick walls and internal courtyards, expansive timber-framed glazing with full-height windows to the north, prominent integrated carport and deeply recessed entry (Criterion D).*
- Mylius House at 9 Wolseley Grove, Brighton is of aesthetic significance as a well-resolved and carefully detailed example of a suburban house constructed in the Modernist style. Designed by renowned architects McGlashan & Everist, the house is characterised by its severe presentation to the street, its emphasis on privacy and retention of remnant vegetation, and its refined detailing. Mylius House demonstrates the key aesthetic qualities of Modernist design in the City of Bayside to a high standard (Criterion E).*
- 4.18 The Applicant relies on the evidence of Mr Raworth on this subject,¹³ and submits that:
- (a) The degree of intactness and integrity of the dwelling relates to the applicability of all three criteria.

¹³ From paragraphs [32]-[47].

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- (b) The dwelling has undergone substantial alterations since it was constructed, with very little of its original design intent and materiality remaining.
 - (c) The alterations made in the 1980s were very significant, in that they changed the facade and the place's presentation to the public realm. The original design intent was an open front courtyard, with a solid brick facade, and the alterations of the 1980s replaced much of this brick with glazing and replaced the timber fence with a solid brick fence.
 - (d) The alterations approved by the 2022 Permit are extensive and, while sympathetic to the mood of the house, will further alter the dwelling.
 - (e) To the extent that the Statement of Significance details remnant mature vegetation (Criterion E), it is submitted to be relevant that the three largest examples of the mature remnant gum trees are understood to have presented a safety risk to the house, and they have recently been removed under a permit issued by the Council.
 - (f) To the extent that the Statement of Significance places emphasis on the fact that the house was originally designed by architects McGlashan and Everist, with additions by architect David Godsell, it is submitted that this house has been so heavily altered since then that it cannot be seen as a key example of their past work.

5 Conclusion

- 5.1 Consistent with the position of the Council, and the evidence of Mr Raworth and Mr Gard'ner, it is submitted that intactness and integrity of 9 Wolseley Grove has been heavily impacted by various alterations and works, to such an extent that it no longer meets the threshold for local heritage significance.
- 5.2 On that basis, it is submitted that it be removed from the Amendment.

27 February 2024

HALL & WILCOX