

# - Submission to Planning Panels Victoria – Bayside Planning Scheme Amendment C192bays: Post War Modern Residential Heritage

## Introduction

It's difficult to avoid the obvious when looking at the many reports, studies and enquires into Heritage. Many eminent people and authoritative bodies acknowledge that the current 'system' presents some intractable problems, but little seems to have changed.

To keep grinding through things the same way expecting a different result is illogical. Good heritage outcomes can be achieved with a transparently objective and fair approach. This should be developed to replace the current system. To fail to take on this challenge fails to understand the importance of history and heritage to a State's identity and its collective memory.

Victorians must now work through a very expensive and time consuming process to obtain satisfactory heritage outcomes. The process favours those with deep pockets and time on their side, something that is not available to young families that have work and mortgage commitments.

Property owners who stand before Planning Panels or Council do so to defend their property, genuinely fearing a HO. They currently have no legal right to reject the Minister's decision to direct or approve an amendment to a planning scheme that will place a **local HO** over their property. There is no mechanism available to them to be offered fair compensation if a capital loss is proven through an independent evaluation. In addition to these things, there is currently no financial support from the City of Bayside, to help owners to address the maintenance and repair issues that may arise, consistent with the extent of a HO.

This submission will address three things, these being:

1. Matters found in the Productivity Commission's Inquiry Report into the Conservation of Australia's Historic Heritage Places<sup>1</sup> (Inquiry Report) and the Heritage Council of Victoria's State of Heritage Review (Review)<sup>2</sup>;
2. Comment on heritage at the local level and,
3. Specific comments on aspects of GJM's Heritage's Study for the City or Bayside, Post-War Modern Residential Heritage Study, Final Report, Volume 3 (the Study) and general observations on some homes, as found in the Study.

## Productivity Commission's Inquiry Report into the Conservation of Australia's Historic Heritage Places

To expand on the brief introductory comments, please consider the key points in the Inquiry Report, these are:

'For privately-owned places, the existing arrangements are often ineffective, inefficient, and unfair. The system is not well structured to ensure that interventions only occur where there is likely to be a **net community benefit**.

Relying primarily on regulation to protect listed heritage places has resulted in **insufficient account being taken of the costs of conserving heritage places when selecting places for listing and insufficient incentives for their active conservation**.

---

<sup>1</sup> Conservation of Australia's Historic Heritage Places, Productivity Commission Inquiry Report, No. 37, 6 April 2006. p.XVIII.

<sup>2</sup> Heritage Council Victoria, State of Heritage Review, Local Heritage, 18 December 2020.

While the regulations impose few, if any, added costs for many owners, for others, there are significant costs that would not otherwise be incurred, especially for the conservation of redundant structures **and where there would otherwise be valuable development options.**

**The most appropriate time to consider the added costs of conservation and to assess net community benefit would be after the assessment of heritage significance and before regulatory control is applied'** (a problem for all Local Government Areas (LGA)).

The Commission considers that negotiated conservation agreements (**these could be s173 agreements under the Planning and Environment Act, 1987 – (P&E Act)**<sup>3</sup> should be used for obtaining extra private conservation where the existing systems would impose unreasonable costs on private owners. This should be achieved by providing owners with an additional right to appeal statutory listing which occurs during their period of ownership **on the grounds of unreasonable costs.**<sup>4</sup>

The Commonwealth Government's response to the Productivity Commission's Recommendation 9.1 is illuminating. Recommendation 9.1 reads in full as follows:

**'Australian, state and territory governments should enable non-government owners to appeal the statutory listing of their property on the additional basis that it imposes "unreasonable costs". This appeal should be available for non-government owners of all newly listed properties. In addition, it should be available for non-government owners of those properties that were acquired before the property was statutorily listed.**

The following factors establish a prima facie case of unreasonable costs:

- The zoning of the land permits higher value land use than that allowed under heritage restrictions; or maintenance, repair or restoration costs required to continue a property's heritage significance impose an unjustifiable hardship on the owner.<sup>5</sup>

In part of its response the Commonwealth agreed 'that private owners should generally not have unreasonable costs imposed upon them by heritage listing (and) that the system needs rigour to ensure that the benefits of historic heritage listing outweigh the costs, **and there is a 'net benefit' to society.**

(Further), the Commonwealth proposes that the risk of 'unreasonable costs' being imposed on an owner of a heritage property be minimised at all levels of government by, improving the nature and extent of data and methodologies that are available about the benefits and costs of heritage listing **and improving transparency about listing decisions, including assessing the benefits and costs of listing.**<sup>6</sup>

That only a few of these things, reported on 18 years ago are evident in the City of Bayside speaks to the fact that securing State and local heritage interests is difficult and expensive. As it stands, the City of Bayside seeks to obtain a net community benefit by apportioning local heritage costs for private properties directly to each property owner.

The price of a good or service is central to the law of supply and demand. All gathered before Planning Panels use price day in and day out, balancing their decisions around the cost of something as to whether to buy, sell, substitute, or do nothing. An assessment of use value (diamonds versus water)

---

<sup>3</sup> Planning and Environment Act 1987, Authorised Version No. 155, No. 45 of 1987, Authorised Version incorporating amendments as at 28 June 2023, s173 – 184G, pp.370-386.

<sup>4</sup> Conservation of Australia's Historic Heritage Places, Productivity Commission Inquiry Report, No. 37, 6 April 2006, p. xviii

<sup>5</sup> Ibid, pp. xxxiv-xxxv.

<sup>6</sup> Retrieved from <https://www.pc.gov.au/inquiries/completed/heritage/government-response>

and risk adds two other considerations to a person's preparedness to pay for something. However, when the cost of any action is greater than its benefit, in both quantitative and qualitative dimensions, it will produce a negative net benefit. In practice, a business will set aside an opportunity if it is not sufficiently beneficial in quantitative and qualitative terms and pursue other options that are less risky and more beneficial.

Integrated decision making is an operational provision provided for in Bayside's Planning Scheme. In part, clause 71.02-3 (VC199) states, 'planning and responsible authorities should endeavour to integrate the range of planning 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.**'<sup>7</sup>

There is no Victoria wide net community benefit methodology nor is there a basis for calculating gross and net benefit. There are no standard set of inputs to enable consistency in any calculation associated with heritage decision making. The absence of this form of objective input immediately introduces a deficiency that should not be set aside, it should be rectified. As things stand, neither Planning Panels or the Bayside City Council can offer the Minister a verifiable, quantitative estimate of the net community benefit derived from heritage listings. This could be changed in the detail of each Citation. The input could be rolled up in aggregate to support the case for an amendment to any planning scheme re heritage.

The foregoing suggestion is supported by SGS Economics and Planning (SGS). SGS acknowledges the use of Cost Benefit Analysis and the application of the Kaldor Hicks rule to determine net community benefit. In essence the use of this rule in an efficiency test seeks to establish whether those who gain from a **policy** initiative — **estimated by their willingness to pay** — could, in theory, compensate those who would suffer a loss and still be 'in front'. The conduct of this exercise in detail will produce a positive or negative 'net community benefit'.<sup>8</sup> Followed to its conclusion, in the absence of a direct cost being applied to specific members of a community, compensating for the loss experienced by others, all members of a community must pay to attain a net community benefit. It is therefore the government and all taxpayers who must pay for a net community benefit to derived from all aspects of heritage.

One of the responses to climate change provides an excellent example of net community benefit. For years the community has accepted the use of public monies to subsidise private property owners to install solar panels, inverters, and battery storage. Next micro grids will be established, i.e., where a group of local property owners agree to share low voltage electricity, generated, and stored by the grid's 'operators' – all homeowners in the grid. Establishing, operating, and maintaining a micro grid will be expensive but it will help the community to step away from coal and gas generators, reducing carbon dioxide emissions and contributing to a reduction in global warming. Given these considerations as well as numerous economic benefits, it's possible to assign qualitative and quantitative values to what is being done. The same could apply to heritage. Instead of private local properties being treated as a free good, owners would be compensated for their contribution to society, delivering a net community benefit. Governments and the community would then pause to think about the cost and benefits of heritage and how much they would be willing to pay for a specific number of heritage properties.

The preceding discussion suggests that the introduction of **a simplified form of cost benefit analysis would be beneficial to support decision making.** The outputs of this activity could be introduced into

---

<sup>7</sup> Retrieved from <https://planning-schemes.app.planning.vic.gov.au/Bayside/ordinance/71.02>

<sup>8</sup> Retrieved from <https://sgsep.com.au/publications/insights/assessing-net-community-benefit-in-the-victorian-planning-system#Divergent%20Views%20About%20The%20Scope%20of%20Impacts>

each Heritage Citation, supported by a fully revamped **grading system** for all properties under consideration and in each heritage study. It is noted that grading (albeit on a narrower approach) seems to have been excluded from Heritage Citations over time.

## State of Heritage Review - Local Heritage

The Review identified four key findings in the current local heritage system that were working well.<sup>9</sup> However, some material in the body of the report suggests that there is still too much unevenness in the conduct of heritage work across all the LGAs **and opposition from homeowners**.

Some of the data provided in the Review is far from innocuous, for example:

- A base-level of heritage protection was (at that time) still to be achieved across the State: '4% (or three) of all (79) councils (were) yet to complete a stage 2 heritage study; nearly 10% (or eight) councils (were) yet to translate any studies into the Heritage Overlay; and nearly 20% (or 16) councils identified geographic gaps in their studies.'<sup>10</sup>

Australians embrace the term a 'fair go' in many contexts. The foregoing statistics illustrate a lack of a 'fair go' between all LGAs, it being left to Councils to work out how much **effort and money** they are willing to expend, considering the wishes of each local community and competing budget priorities.

This situation is effectively allowed to occur even though one of the Objectives of the Planning and Environment Act, 2017 requires each municipal Council as a Planning Authority to abide by **all the Objectives in the Act**. One of these is the requirement 'to **conserve and enhance** those buildings, areas or other places which are of scientific, aesthetic, architectural or historical interest, or otherwise of special cultural value.'<sup>11</sup>

Given that 'a planning scheme **must** seek to further the objectives of planning in Victoria within the area covered by the scheme'<sup>12</sup> and, one of 'the objectives of the planning framework established by (the) Act (is) to ensure sound, **strategic planning and co-ordinated action at State, regional and municipal levels**.<sup>13</sup> What is missing is a uniform, statewide requirement that drives all Councils to develop a local heritage plan, in accordance with a statewide, multi-level (State and local) heritage strategy **and statewide heritage master plan, with Heritage Victoria and all LGAs having to respond to both**. Whilst Bayside City Council has a Heritage Action Plan and the Heritage Council has a strategic plan, where do these documents come together to fit with the State's strategy and master plan? A suite of integrated heritage planning documents could be approved by the Minister, with the department driving **integrated** delivery against State and local level plans, managing centralised reporting on a single database.

Whilst some may argue that the foregoing approach is Orwellian, the current system is not working effectively or efficiently. Some people are very angry, with too much effort and money being spent on local heritage studies that don't look to secure a strategic benefit beyond their 'backyard.' In addition to a multi-level, statewide heritage strategy and statewide heritage master plan, a line item in the State budget is required to provide funds to support heritage activities at the State and local levels.

---

<sup>9</sup> Heritage Council Victoria, State of Heritage Review, Local Heritage, 18 December 2020, pp.1-2.

<sup>10</sup> Ibid, p.2.

<sup>11</sup> Planning and Environment Act 1987, Authorised Version No. 155, No. 45 of 1987, Authorised Version incorporating amendments as at 28 June 2023, s4(1)(d) p.22.

<sup>12</sup> Ibid, s6(1)(a), p.33.

<sup>13</sup> Ibid, s4(2)(a), p. 22.

Most strikingly but also sadly, the Review notes ‘the level of opposition from homeowners stating that, ‘some members of the public view the HO in a negative light, believing it to prevent development or changes to a property, reduce property value and add unnecessary expense, both in applying for a planning permit and increased insurance premiums. This results in opposition from property owners during the planning scheme amendment process, which in turn increases the cost of planning scheme amendments through lengthy PPV (Planning Panels Victoria) hearings for which an expert witness and legal counsel are often required.’<sup>14</sup>

Having watched this exercise from its initiation and considered the studies in the City of Bayside that have preceded it, nothing of substance has changed. Most affected property owners in Bayside are up in arms about the current system and its operation, less those that have voluntarily elected to offer their homes for heritage listing and those that have just given up. However, for those people who don’t want to offer their home voluntarily, they face the prospect of compulsion under a system that seeks to affect their property rights without a mechanism to obtain relief on ‘just terms’.

The issue of just terms has been addressed once, as reported by the Parliament of Australia in the Federal Court and the High Court.<sup>15</sup> Whilst the matter turned on ‘States’ rights’, **one of the objectives of the planning framework established by the P&E Act is ‘to provide for compensation when land is set aside for public purposes and in other circumstances.’<sup>16</sup> The application of a HO is another circumstance.**

What is driving some residents to distraction and is the root cause of their poor mental health is an unfair system and continual uncertainty. **This has arisen over the course of this Study, whether a person’s property has been included for the first time or recycled from an earlier study.** Sitting behind peoples’ concerns is the potential for a real capital loss on their most expensive asset, leading to ‘the greatest single instance of a drop in wealth (a person) will experience in their entire lives.’<sup>17</sup> Add to this the prospect of maintaining their property, at a cost and to a standard beyond their reasonable capacity to do so; all for an unproven net community benefit; no wonder some people are angry.

In relation to costs and by way of a comparison, one of the major challenges that is faced by museums, in addition to the costs of acquisition, cataloguing and inventory management is the ongoing cost associated with all aspects of curatorial effort. Once an item has been added to a museum’s collection, its conservation, exhibition, interpretation, protection, and disposal all cost money. For older delicate artefacts or larger items, e.g., ‘cloth paper’, parchment, old paper, and ink documents; clothing; machinery; aircraft; ships; trucks; plant and equipment; buildings; computing and technical equipment; works of art or pictorial displays, the cost is significant and requires support from governments and the public, the latter through many different forms of fundraising activity.

This foregoing discussion suggests that a figure of ‘35% of all councils (that) offer some sort of financial incentive to owners’<sup>18</sup> falls well below what should be a much higher percentage, that is if heritage management is to be regarded as fair and equitable across Victoria. It also exhibits a failure to

---

<sup>14</sup> Heritage Council Victoria, State of Heritage Review, Local Heritage, 18 December 2020, p.44.

<sup>15</sup> Parliament of Australia, ‘Property’ and acquisition on just terms, retrieved from, [https://www.aph.gov.au/About\\_Parliament/Parliamentary\\_departments/Parliamentary\\_Library/pubs/Briefing\\_Book43p/property](https://www.aph.gov.au/About_Parliament/Parliamentary_departments/Parliamentary_Library/pubs/Briefing_Book43p/property)

<sup>16</sup> Planning and Environment Act 1987, Authorised Version No. 155, No. 45 of 1987, Authorised Version incorporating amendments as at 28 June 2023, s4(2)(l) p.23.

<sup>17</sup> Retrieved from <https://lclawyers.com.au/elibrary/heritage-overlays/>

<sup>18</sup> Heritage Council Victoria, State of Heritage Review, Local Heritage, 18 December 2020, p.2.

understand the costs of conservation. Digging a bit deeper, the level of financial support varies as to its quantum and allowable application, with nothing being offered in some LGAs. Others, like the City of Whitehorse allocated a total of \$40,000 in FY23 to the Whitehorse Heritage Assistance Fund, with funding up to a maximum of \$2000 being available for eligible projects.<sup>19</sup> Whilst this is a nominal amount it evidences an understanding of the problem.

Bayside City Council acknowledges that it 'does not currently have a funding or grant scheme in place to assist owners of heritage properties.'<sup>20</sup> Interestingly, the words heritage and history don't feature in Bayside's FY 23-24 budget, although significant monies are spent on Council's property and facilities, some of which are covered by HOs or Interim HOs.

The Victorian Heritage Restoration Program, administered by the National Trust of Australia (Victoria) provides funds up to \$10,000 for eligible heritage places in the cities of Melbourne, Yarra, Casey, Ballarat City, and the Greater Bendigo City for 2024.<sup>21</sup> The City of Bayside is not a participating Council.

The preceding two sections in this paper raise the following questions:

**What's been done to audit progress on the issues raised in the Inquiry Report and the Review and the many areas identified for improvement in the current State and local heritage systems?**

**How have heritage 'arrangements' been harmonised and coordinated across the State at both the state and local levels so that better heritage outcomes can be obtained more quickly and at a reduced cost?**

**How can things be improved so that the application of a HO is financially fair and equitable for all Victorian property owners, irrespective of where their property is located and whether it falls under State or local heritage arrangements?**

## Heritage at the Local Level

One of the central issues that can face any Victorian is the difference in the law and its application when it comes to the possibility of a HO being placed over a private property and the consequences of this decision.

The P&E Act and the Heritage Act 2017 (Heritage Act) both deal with heritage. However, the Heritage Act only deals with state significant heritage places, amongst several other things. Both Acts can affect the property of a private person but, the Heritage Council through provisions in the Heritage Act can make decisions to pay monies out of the Heritage Fund, providing assistance generally for the conservation and management of any (State) listed place, supporting the conservation of any part of the State's cultural heritage.<sup>22</sup> That said, it is noted that 'the last round of grants (round 7) was awarded in late 2022 (being) due for completion this FY. No evidence could be found in relation to the award of Heritage Council grants after 2022.

It is suggested for reasons of equity that a statewide table of compensatory heritage support entitlements should be developed. Funds, as set out in the proposed table would be made available

---

<sup>19</sup> WHITEHORSE Heritage Assistance Fund, retrieved from <https://www.whitehorse.vic.gov.au/about-council/what-we-do/awards-grants-and-funding/heritage-assistance-fund>

<sup>20</sup> Harwood Andrews, Bayside Planning Scheme Amendment C192bays, Part A Submission on behalf of Bayside City Council, Planning Panels Victoria, 12 February 2023, referring to 82 Reserve Rd, Beaumaris and other properties, page number not available.

<sup>21</sup> Retrieved from [https://www.nationaltrust.org.au/victorian-heritage-restoration-fund/#:~:text=Victoria's%20Heritage%20Restoration%20Fund%20\(VHRF,in%20private%20or%20public%20ownership](https://www.nationaltrust.org.au/victorian-heritage-restoration-fund/#:~:text=Victoria's%20Heritage%20Restoration%20Fund%20(VHRF,in%20private%20or%20public%20ownership).

<sup>22</sup> s236, Heritage Act 2017 No. 7 of 2017 Authorised Version incorporating amendments as at, 1 February 2024, pages 214 & 215.

to be accessed by any property owner whose place is covered by a Heritage Overlay or a contract, formed as an agreement under the provisions of s173 P&E Act.<sup>23</sup> It would be for the State Government to provide Councils with the required funds and for Councils to administer contractual arrangements. The heritage assessment process could be used to determine any entitlement to funds, with this to be a step to inform Council's decision making process, prior to proposing a HO over any privately held property.

As it is, Councils can make a call on public funds to pay for the maintenance and repairs to local heritage listed properties that are owned by Council. However, private property owners must maintain their locally heritage listed property at their expense, in accordance with a HO, as may be directed by Council.

There is no free lunch in owning a home. There should be no free lunch when the State seeks to acquire a net community benefit from a person's private property, without consistent compensatory arrangements that addresses any proven capital loss, and which contribute to all heritage related repair and maintenance costs.

Other observations are these:

- Victoria's Heritage Database (HERMES) is reported as being 'a secure, repository for information on all recorded heritage places in the State, with only Councils and Government agencies who use HERMES to store their own data, or consultants employed on their behalf, being ... able to edit a record that they own.'<sup>24</sup>

It is understandable that HERMES, an operational database is not publicly accessible because 'edit' affords read and write functionality. Whilst some required data for this exercise could be found by going through a LGA's Planning Scheme and the Schedule to the Heritage Overlay, it is an unnecessarily time consuming process. The same comment applies when it comes to finding heritage studies conducted by each LGA, the Victorian Government Library Service aside.

Offering all members of the public a single source of truth through a fully automated system that affords easily accessible, read only access should be a priority. Amongst other things, the system should enable local as well as State heritage comparisons to be conducted in each housing style and across all LGAs.

- In this exercise, it's been possible, albeit with some difficulty to find representations of Post War and Modern homes that have been heritage listed in other LGA's, with some Modern homes being much superior representations to the properties proposed in the Study.

Modern homes have been found in the cities of Port Phillip (very few), Boroondara, Glen Eira, Kingston, Stonnington, Whitehorse, Frankston, and Geelong, as well as further afield.

It is noted that the City of Glen Eira has produced the City of Glen Eira Post-war and Hidden Gems Heritage Review, 2020; Frankston City has produced the Post War Modernist Heritage Study, 2012 and Whitehorse City has produced a Post-1945 Heritage Study, Thematic Environmental History; Citations for Places & Precincts, 2016.

---

<sup>23</sup> Retrieved from <https://www.planning.vic.gov.au/guides-and-resources/guides/guide-to-victorias-planning-system/chapter-8-agreements>

<sup>24</sup> Heritage Advisor's Toolkit, Context Pty Ltd, Heritage Consultants, p.18.

These three studies and others, together with the Study offer a package of like properties that could assist Panels and Bayside City Council in the conduct of a wider comparison of Modern properties of local significance in applicable LGAs. This would enable Panels and Council to make objective comparisons across a larger pool of similar homes, rather than having to confine their considerations to properties found locally in Bayside. Local significance could then be more objectively assessed by Councillors in each LGA, enabling them to look at like homes from each heritage era, **in each applicable** LGA, rather than confining themselves to the narrower comparison between properties in a single LGA. By taking this approach an architect's body of work could be followed with more ease, enabling the best of the best examples of the person's work to be followed at the State and local levels.

- In Bayside City Council's Heritage Action Plan an action is 'improving community awareness of existing federal and state funding opportunities for conservation works and promotional projects.' It is highly unlikely that grant monies or other funds from either source will be made available to help a private property owner to maintain their property unless it is listed at State or National level. It would be helpful if Bayside City Council could provide examples of when and how much money has been made available to local, private property owners from either source, for properties of local heritage significance. If this can't be done, it would be best to remove this statement, lest it becomes a matter of frustration.

- Voluntary listing should be formally re-introduced in the City of Bayside (it's there in a form now) and financially supported across all Victorian LGAs. Since the initial round of voluntary listings in Bayside other private properties have been offered under the aegis of this program. All are covered by Interim Heritage Overlays, awaiting the Minister's decision re proposed amendments to Bayside's Planning Scheme. **Embracing this aspect of heritage protection in each LGA is something that the current Minister for Planning of Victoria** may wish to consider and promote as a matter of Victorian Government policy.

- Bayside City Council knows that there are challenges that exist in relation to heritage, setting out the following in a submission to an inquiry in 2022.

**'the protection of locally significant heritage properties is not without its challenges, and Bayside and its community has had firsthand experience in recent years around some of the issues and shortcomings of the heritage protection processes.**

**Whilst heritage is an issue that the Bayside community feel strongly about, Council has repeatedly raised with the Minister for Planning concerns about the processes and the fairness and transparency for property owners.**

**Some of Bayside's challenges have received significant media coverage across Victoria, which has sparked a robust conversation around the need for heritage protection and also the challenges faced by property owners through the at times lengthy and costly process to protect a property.'**<sup>25</sup>

The Study has been a lengthy and very costly process for all concerned and it's still going on, years after it was started. It has weighed on the health and wellbeing of affected people, particularly more elderly people whose capacity, including financial capacity has diminished over time. It has also managed to set members of Bayside's community against one another which is neither conducive to community cohesion nor good social outcomes.

---

<sup>25</sup> Bayside City Council, Submission to the Parliamentary Inquiry into the protections within the Victorian Planning Framework, Officers Response January 2022



Unfortunately, the Parliamentary Inquiry into the protections within the Victorian Planning Framework did not reach a conclusion and not much has changed, nor will it change until the P&E Act and its subordinate Regulation is made fit for purpose re heritage. An alternative would be to remove local heritage matters from the P&E Act (other than for controls when an overlay is approved) and include all heritage matters in a major redrafting of the Heritage Act.

Considering the need to deal with a significant shortage of developed land and affordable housing, the benefit of a heritage listing versus the opportunity to develop land should be reviewed as a part of the pre-listing process. Here it is noted that the Premier has announced that from December 2023, 'families will no longer require a planning permit to build a small second home on their property.'

**How will dual occupancy and dual entry work on a single or double block that has a Heritage Overlay from boundary to boundary, particularly when it'll be necessary to alter any part of a structure that is often used to 'anchor' the overlay?**

People of course understand the planning permit process but it and the inevitable adversarial contest in VCAT is another sign that our heritage system is not working in balance with planning policy, as should be the case.

### Comments on the Study

- The scope of work undertaken by GJM Heritage (GJM) was determined by Bayside City Council. There are many properties still standing, built between 1945 and 1975 that may be of scientific, aesthetic, architectural or historical interest, or otherwise of special cultural value but these are not included in the Study. That these properties were not included goes to the bias in the scope and funds allocated, restricting GJM to consider residential properties constructed in the Modern architectural style and not other post 1945 properties. GJM has described these as being of 'a more **conventional** austere type'. These are all properties designed and built in the Post War era, being classified as such by Heritage Victoria.
- Post War homes in the **conventional** style and Modern homes were built in their thousands across Melbourne to meet the post war boom in population. Many of both styles are modest homes, constructed quickly to a fixed price. Some homes were constructed using average to poor building materials because of post war shortages whilst some in both classes are absolute standouts. However, to pick out one housing style over another, i.e., Modern over Post War, for what is essentially the same period is to ignore a fact of Melbourne's history and the heritage that can be found in the very best of representations of both housing styles. Not only is this lack of comparative inclusion unfair to those who have bought homes in the Modern style, unfettered by a Heritage Overlay, it is historically deficient and incomplete considering the living history and heritage that can be seen in many of the streets of Bayside and in other LGAs. The colocation of these properties and how they have been developed by their owners over time provides a compact and living history of housing development, as it has happened and in the overlap of time considering the two heritage classifications, i.e., Post War and Modern. This has all been achieved without the need for heritage overlays being placed over most properties.
- The cost of conducting a study of the foregoing scope is understood, albeit using the current approach. However, the question must be asked, if Bayside's property owners are committed to supporting local heritage opportunities, why hasn't Council conducted community wide consultation to address Modern and Post War heritage classes at the same time. This would have allowed all affected people and other members of the community to have their say,

offering a wider sample of what people are willing to support **and pay for** in the name of heritage?

- Two things are missing in the Study that would normally be consider when a person seeks to acquire an interest in a property, these are condition and a grading between the options available.

Condition is straight forward and can be assessed by an architect or a civil engineer or both if necessary; the latter should only be necessary in discrete circumstances.

Grading properties is used all the time by people, consciously applying various measures as to what they seek in a property and in a neighbourhood. Gradings can include objective as well as subjective measures, e.g., the home is sound, or the home is aesthetically beautiful, with great street appeal. Irrespective of the assessable characteristics, if enough people assess a property and offer an opinion on an agreed list of defined points, a greater level of objectivity is achievable.

Hybrid ranking systems are neither new nor revolutionary. Heritage consultants and Council officers would do their work as now at the desk top level. Public engagement could start after a 'long list' of properties is produced.

Non-technical user assessments and public satisfaction surveys are familiar to many people, technology has seen to that. The assessment system could be set up to provide a grading rubric and blind assessments could be applied (no address), not dissimilar to the method employed to bring greater consistency to the marking of exam papers. Allowing members of the public to have their say is also about engagement, inclusion, transparency, and a commitment the result. If heritage evaluators from the public looked at a consistent list of non-technical factors and provided a grading on each, Councillors, Planning Panels, and the Minister would be better supported in their decision making.

Conducting evaluations of this type online takes the loudest voice in the room out of the equation. The identity of registered participants and the extent of their participation can be controlled using normal security protocols, e.g., two factor authentication to log on. Adding the public's input to a calculation of net community benefit is possible and supports the value proposition being sought from the exercise, i.e., properties of genuine historical and heritage significance being retained for the members of the community, the intended beneficiaries.

- Post War and Modern homes are not recognised by Heritage Victoria as one blended type. Heritage Victoria has produced a flip book and a pdf document to help in the identification of homes. There are nine types of homes as well as the years in which they are recognised, as set out in the screen shot provided at Figure 1 on page 11.

GJM Heritage was initially commissioned in December 2020 to undertake the City of Bayside Mid-Century Modern Heritage Study. As set out in Volume 1 of the final Report, 'the name of the study was revised to the Post-War Modern Residential Heritage Study to accurately reflect the scope of the Study.'<sup>26</sup> This is not a satisfactory explanation for the change in the scope of the Study, particularly when Modern homes are recognised by Heritage Victoria as having been built in the period 1940-1970 and Post War homes from 1945-1960. Neither heritage classification includes homes built between 1971-1975.

In general, some of the homes offered for consideration are not able to be recognised as having been designed or built in the style of a Modern home and some lack a provenance or

---

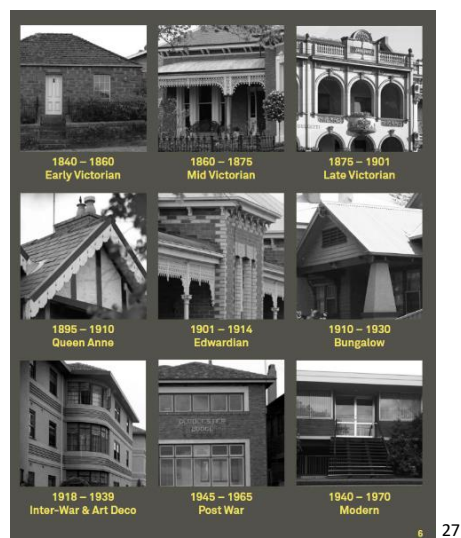
<sup>26</sup> City of Bayside, Post-War Modern Residential Heritage Study, Final Report, Volume 1, p.5.

the basis for what a museum would put on display. An example of the first of these issues is the home built at 1 Reid St Beaumaris. It lacks too many of the basic features of a home that is easily recognised as having been built in the Modern style. An example of a home without provenance is any home that cannot be linked to an architect and a builder of significance or directly to a design, as found in the many Small Homes Services (SHS) designs still available.

As to what caused Bayside City Council to extend the scope of the Study beyond 1970 or start five years after 1940 for Modern homes is a question for Council’s officers to answer.

**It is requested that Planning Panels seek an answer to this question during the public hearing phase.**

*Figure 1 What house is that?*



- The Survey of Post-War Built Heritage in Victoria: Stage One, conducted by heritage ALLIANCE states, ‘Philip Goad has noted an identifiable “belt” of Small Homes Service (SHS) dwellings in the outer eastern and south-eastern suburbs, extending from Balwyn, Bulleen and Doncaster through to Beaumaris and Moorabbin.’<sup>28</sup> However, as noted in the Study, it is difficult to distinguish these SHS houses from other small houses designed by architects and builders, but inspired by the SHS designs.<sup>29</sup>

Irrespective of the difficulties associated with identification and the establishment of a verifiable provenance, this group of Modern homes across multiple LGAs is an excellent example of how collaboration, investigation as to provenance and the selection of the best of the best representations could produce a beneficial outcome. Whilst it is highly unlikely that the best SHS homes would be evenly distributed across all LGAs, that’s not the point. Only those properties with a verifiable provenance, including a proven connection to a SHS design should be selected. They would then be compared with each other across all the LGAs concerned before a HO.

<sup>27</sup> Retrieved from Heritage Council Victoria, WHAT HOUSE IS THAT? [https://issuu.com/statearchivesvictoria/docs/historic\\_home\\_no\\_bleed\\_flipbook\\_v1/1?e=11265066%2F12638683](https://issuu.com/statearchivesvictoria/docs/historic_home_no_bleed_flipbook_v1/1?e=11265066%2F12638683)

<sup>28</sup> Survey of Post-War Built Heritage in Victoria: Stage One, heritage ALLIANCE, p.21.

<sup>29</sup> City of Bayside, Post-War Modern Residential Heritage Study, (Final Report July 2022) Volume 3, p.71.

- The comparative analysis that was undertaken for each place only established its context within Bayside. Places were compared in terms of their level of integrity and other things to similar places. These are places currently protected by the HO in the Bayside Planning Scheme or other similar places that have been retained with sufficient integrity to demonstrate the class of place and reflect their importance in the historical development of the City of Bayside.<sup>30</sup>

Further to the point above, there has been no attempt to compare Modern properties in Bayside to the other LGAs leading to a ‘doubling up’ or worse. Failing to compare Bayside’s selections with similar homes afforded heritage protection or not in other LGAs calls the entire process into question. This is particularly so as some of the properties in Bayside are poor to mediocre examples at best of an architect’s work or SHS builds that in most cases spanned multiple LGAs.

- The condition of a property used to be considered in Heritage Citations, but this is not the case in the Study. In Heritage Issues: Summaries from Recent Panel Reports it is pointed out that ‘several Panel reports distinguish between condition and intactness: a place may be quite run-down but still be substantially intact and retain its heritage values. Being in poor condition does not of itself disqualify a place from being listed on the HO, whereas lack of intactness may do so (depending on the heritage criterion that applies). The Melton Panel recommended that reference to condition should be removed from Statements of Significance, except where acknowledgement of the current condition was necessary to aid future heritage management of the place.’<sup>31</sup>

More recently, as stated in numerous places in the Part A Submission on behalf of Bayside City Council; ‘Regarding the condition of the property, planning panels have consistently deduced that it is not a relevant consideration in the application of the Heritage Overlay, as cited recently in Maribyrnong C172 (2023), Yarra C245 (2020) and Boroondara C386 (2023). The panel report for Maribyrnong C172 concludes that: “The Panel finds issues of building condition, development opportunity, building alterations, maintenance, property value and financial implications are not relevant when assessing the heritage significance of an individual place or a precinct. These matters can be considered at the permit application stage.”<sup>32</sup>

For a museum an artefact may not be intact, and it may be in poor condition, but it is sought after because of its rarity and its direct connection to a person, place, or time, or all three. However, if there are many examples of an artefact, intactness and condition very much come into consideration during acquisition, as does the cost of addressing either or both matters during the life of the artefact. This particularly applies to larger artefacts that will degrade at different rates when there is an observable deficiency in their condition. The purpose of a detailed initial inspection is to secure the best artefacts from those available, avoiding an artefact, including a property that needs to be substantially rebuilt, renovated, refitted, or otherwise refurbished, maintained, or repaired.

With respect, the current condition of a home is highly relevant to securing the best of the best examples of Victoria’s history and heritage. Heritage doesn’t sit in a vacuum of intactness.

---

<sup>30</sup> City of Bayside, Post-War Modern Residential Heritage Study, (Final Report July 2022), Volume 1, p.12.

<sup>31</sup> Planning Panels Victoria, Heritage Issues: Summaries from Recent Panel Reports, 9 June 2015, p. 35.

<sup>32</sup> Harwood Andrews, Bayside Planning Scheme Amendment C192bays, Part A Submission on behalf of Bayside City Council, Planning Panels Victoria, 12 February 2023

When it comes to s4(1)(d) of the P&E Act; conservation and enhancement is to be considered. To conserve something in a museum, a conservator must take an active interest in the condition of an artefact and develop a cost effective plan to stabilise its condition, restoring or maintaining or repairing aspects of an item, to the extent set out in the plan. As any conservator will attest, poor condition is a consideration because it's a cost driver, limiting the useful life of an artefact and adding to the total cost of ownership. It only gets worse if one turns a blind eye to the problem.

Under current approaches, the cost of responding to the requirements set out in a HO is something that the current owner may not be willing **or able to pay**.

To fail to consider the total cost of ownership of any capital asset, including current and future repair and maintenance costs and discount these costs as immaterial at the time of 'acquisition', i.e., the time before the application of a HO, is to fail to consider two basic costs that are normally considered in whole of life costings in a business case. More directly, leaving a consideration of the condition of a property to the permit application stage is too late. If Victoria is serious about reducing the costs of heritage and affording the protection of a HO to the best of the best properties, condition needs to be assessed before a HO is applied, not discovered after the fact.

In discussion, prior to a decision by Bayside City Council's Planning and Amenity Delegated Committee, to grant a Permit in respect of 165-167 Tramway Parade, Beaumaris, it was recognised that the cost to return the property to its build state was prohibitively expensive and a burden on the current owners. It was reasonably determined that the burden was of a magnitude that should not be contemplated in financial and non-financial terms and that the damage to the property was not the fault of the current owners.

If there is a doubt about the condition of the property under consideration, structural and non-structural damage could be objectively explored and reported on by an independent architect or a civil engineer before a HO is applied. If it is found to be substantially deficient, time and cost could be saved by Council deciding to withdraw the property before putting it before Planning Panels. As Council is required to get input from across the full range of relevant departments in relation to a planning permit, it is difficult to see why an independent architect's or engineer's assessment as to condition is not addressed much earlier in the listing process.

**Considering the foregoing discussion, it is requested Bayside City Council and Planning Panels consider ranking properties and require that the condition of each home is to be reintroduced into each Statement of Significance. A recent example of the condition of a home as having been found to be excellent is contained in the peer review conducted by Built Heritage Pty Ltd (Built Heritage), on behalf of the City of Boroondara in 2019.<sup>33</sup> Another example of the condition of a property can be found in the work done by the same company for the City of Whitehorse in 2016, referring to 1 Gracefield Drive, Box Hill North.<sup>34</sup>**

---

<sup>33</sup> Balwyn Heritage Study, Peer Review, Stage 1, Adopted 25 February 2019, referring to Balwyn & Balwyn North Heritage Study: August 2015. p. 1.

<sup>34</sup> City of Whitehorse, Post-1945 Heritage Study, Thematic Environmental History; Citations for Places & Precincts, June 2016. p.119.

- The peer review, referred to in bold above, conducted by Built Heritage, raises another issue that should be relevant to Panels' deliberations, i.e., the ability to see a property from the road.

Whilst Built Heritage was addressing the condition of a property and the ability to determine this from the road, there are properties included in the Study that cannot be easily seen from the road because of vegetation or because of the height of a front fence or the addition of another fence that has been set back on the property.

Intactness and integrity are two issues addressed in each Heritage Citation. In the case of the house at 23 Clonmore St, it is assessed as remaining 'substantially intact and retains the ability to be understood and appreciated as an example of a 1960s Post-War modernist house.'<sup>35</sup>

The house at 23 Clonmore St can't be easily seen from the road, as is illustrated in photos included in the Study and by walking by the property. It is one of many included in the study and some that are not, sitting behind high front walls that would not be permitted in accordance with today's provisions in the Fencing Act, 1968. All this calls into question the ability of members of the public to understand a property like 23 Clonmore St and appreciate it, unless there is an open house.<sup>36</sup> This then begs the question, **what's the point of having a heritage listed home if it cannot be seen as is intended. Also, how does this deficiency impact a calculation to determine net community benefit?**

- The Study seeks to set out the significance of a property because of its link to an architect or a builder or both, with one or both being of some renown and with a body of work to support each claim. Panels and afterwards Council are being invited to consider homes as worthy of consideration when neither the architect or builder are known or, where the architect is known but the person concerned is not significant and has no identifiable or significant body of work. An example of this first observation can be found in the Statement of Significance for 12 Bolton Street, Beaumaris.<sup>37</sup> An example of the second observation can be found in the Statement of Significance for 82 Reserve Rd, Beaumaris where it is stated that 'desktop research could not determine the details of the career or work of architect John Kirk.'

**In the absence of suitable provenance and rarity, it must be asked, why have these two properties been included in the Study and covered with an Interim HO?**

- The Study has identified that it is difficult to distinguish SHS houses from other small houses designed by architects and builders but inspired by the SHS designs. Inspiration can come from many sources but unless it can be proven that the current build state is a copy of one of the 100+ SHS designs and drawings, the property concerned should be removed as it lacks a verifiable provenance. The rubric should be, if in doubt, count it out or Victoria runs the risk of securing properties with a HO that have no provenance, i.e., no connection between the history of the home concerned and its comparative contribution to Bayside's heritage. If a fulsome net benefit exercise was conducted properties with no proven provenance would be regarded as immaterial re benefit, compared to those properties where there is a proven connection between an SHS' design and the build state of the property concerned.

---

<sup>35</sup> City of Bayside, Post-War Modern Residential Heritage Study, (Final Report July 2022) Volume 3, p.104.

<sup>36</sup> Ibid, p.104.

<sup>37</sup> Ibid, p.68.

Given the foregoing, the following questions must be asked.

- 1. Why have some properties been included in the study when the person named as the architect or builder is either not known or not widely known in Bayside and across Victoria, such that the named person's contribution to heritage is of little significance in historical, architectural, or building terms?**
- 2. Why has any property been included when the body of work produced by the named architect cannot be found, or the work done is not able to be recognised as a Modern home, as per Figure 1 on page 11?**
- 3. Why aren't all criteria in PPN 1 considered in relation to each property and ruled out if they are not applicable. Using this approach, rather than remaining silent, a reason or reasons would be offered as to why a criterion is not relevant? For example, Criterion B addresses the possession of uncommon, rare, or endangered aspects of our cultural or natural history – rarity. If something is common and neither rare nor endangered this should be stated so that a balanced decision can be made on all the facts available. Significance could be graded from 1-8 as to whether the property concerned will be of high significance (four or more criteria), or medium significance (two or three criteria) or low significance (one criterion).**
- 4. Why have some properties been picked out that are bland and insignificant representations when more worthy properties can be found in other LGAs and other States and the ACT? The argument that a property is included because of its local significance doesn't stand up. LGAs and their boundaries have changed in number and area over time, particularly between 1945 and 1975. This might happen again with further consolidations or boundary changes. The only thing that doesn't move (in most cases) is the house as a part of a property.**

The foregoing is not an attempt to make a big problem bigger. It is to say however that a desk top review of HERMES data available to Bayside City Council and Planning Panels, covering all LGAs should enable both Panels and Council to make comparative recommendations looking at the whole picture of listed historical homes and studies that cover the period from 1940 – 1970. Planning Panels could then narrow its focus to the task at hand i.e., making recommendations in relation to the 59 proposed individual heritage places and 1 proposed group listing. If Planning Panels embraces this approach its recommendations to Bayside City Council will not be siloed by the permitted physical scope of the Study and properties recommended for heritage protection will be demonstrably the best of the best.

Considering all the foregoing, the following is offered for Planning Panels' consideration:

- 1. Planning Panels recommends to the Minister for Planning of Victoria that an independent review of all aspects of heritage in Victoria should be undertaken, with terms of reference to be finalised after a period of public consultation, with this being widely publicised.**
- 2. Planning Panels recommends to Bayside City Council that any property that has no proven provenance, i.e., a link to a historically significant architect or builder is removed from its future deliberations. This would include any property thought to have been built using the Small Homes Service (SHS) unless the current build state of the property can be positively matched to a SHS design. Whilst the SHS is an historical fact, there were builders who built homes that don't match any of the publicly available SHS designs. To say that they were inspired by SHS designs can't be proven. It's a stretch that doesn't easily satisfy the civil standard of proof of the balance of probabilities, i.e., because the designs are available, and these can be compared to a home that is standing. Both are objective matters of fact and would enable properties to be included, beyond a reasonable doubt.**

3. **Planning Panels recommends that Bayside City Council should use HERMES to look across all LGAs, to make sure that only the best of the best of an architect's or builder's Modern properties in Bayside are offered for the Minister's consideration in C192bays.**
4. **Planning Panels recommends to Bayside City Council and the Minister that any property removed from heritage consideration, after the Minister has determined a position, be barred from being included in any future heritage study and be barred from the application of an interim or permanent heritage overlay. This suggestion is offered so that:**
  - a. **all affected property owners have certainly in what they may seek to do with their property,**
  - b. **that heritage is not used as a shield to block appropriate development and**
  - c. **that properties are not recycled from one study to another, at a cost that has already been incurred, i.e., a cost in financial and non-financial terms.**

**Some brief comments are offered on some of the properties in the Study that have not already been mentioned above.**

**1 Reid St, Beaumaris** - The substantive issue in relation to this property is whether it is a Modern home as publicly recognised by Heritage Victoria or whether it is one like many thousands of project homes built in NSW, ACT, Victoria and overseas.

**166 Tramway Parade, Beaumaris** – The property is identified in the Study as a part of Ray Berg's work. A property located at 51 Panoramic Road, North Balwyn is a far superior example of his work and is supported by a set of photos, taken when the property was sold in May 2009.<sup>38</sup> **Of interest, and for comparative purposes, the property at 51 Panoramic Road has not been afforded any heritage protection by the City of Boroondara.**<sup>39</sup> **This property illustrates a lack of integrated heritage planning across LGA's to ensure that the best of the best homes are supported as opposed to those which by comparison are much lesser representations of an architect's work.**

**78 Scott Street, Beaumaris** – This property could be seen as an example of just locking up land. John & Phyllis Murphy have a good body of work, including work or contributions to other significant work in other LGAs. There are much better examples of this work than 78 Scott St as may be found at the reference cited below.<sup>40</sup>

**40 Sussex Street, Brighton** - The inclusion of this home seems to be a celebration of Neil Clerehan's work. One of his better works, is Simon House at 33 Daveys Bay Road, Mount Eliza.<sup>41</sup> However, a check of Mornington Peninsula Planning Scheme evidenced that 33 Daveys Bay Road is **NOT** protected by a HO. **This home is another example that illustrates a lack of heritage planning across LGA's to ensure that the best of the best homes are being supported as opposed to those which by comparison are much lesser representations of a person's life work.**

**45 Hanby Street, Brighton** – This is another example, like **1 Reid St** of 'places (that) demonstrate a **shift** away from the Modern style of the 1950s and 1960s towards more traditional pitched roof forms and cladding materials. This goes to the core of the Study which, had the scope been set correctly would have included a full review of Post War properties rather than the attempt to add some post war properties built in a different style for which read, exposed beams, high angled ceilings, pitched tile

<sup>38</sup> Retrieved from <https://www.realestate.com.au/sold/property-house-vic-balwyn+north-105702310>

<sup>39</sup> Retrieved from <https://planning-schemes.app.planning.vic.gov.au/Boroondara/ordinance/43.01-s>

<sup>40</sup> As found at [https://en.wikipedia.org/wiki/John\\_and\\_Phyllis\\_Murphy#Notable\\_works](https://en.wikipedia.org/wiki/John_and_Phyllis_Murphy#Notable_works)

<sup>41</sup> Retrieved from [https://en.wikipedia.org/wiki/Neil\\_Clerehan#Notable\\_works](https://en.wikipedia.org/wiki/Neil_Clerehan#Notable_works)



roofs, open carports and maintenance issues because of the timbers used. Design is just not about the look of a property it should include sustainability and durability.

Kenneth H Edelstein is the architect cited in relation to this property and there are at least two better representations of his work, they are just not in Bayside.

See 'The Edelstein Residence at **13 Seymour Road, Elsternwick**' (HO193) and **20 Westminster Street, Balwyn**. **There is no evidence that 20 Westminster Street is covered by either an IHO or HO in Boroondara's Planning Scheme.**<sup>42</sup>

Please see the photographs provided below and those provided at The Design Files for a contemporaneous photographic record of the home at 20 Westminster St and please compare these to 45 Hanby St.<sup>43</sup> **It is this sort of comparison and lack of consistency in the application of protections across LGAs that sadly fails all who wish to see the 'system' improved.**

20 Westminster Street, Balwyn (left, compared to 45 Hanby Street, Brighton)



**6 Norwood Avenue, Brighton** – According to GJM 'No information could be found on the career or work of architect Keith Batchelor.'<sup>44</sup> The inclusion of this home in the amendment devalues local history and heritage. There are more significant properties that illustrate the best of the best in historical and heritage terms, produced by architects whose work is more worthy of recognition, irrespective of the LGA in which the properties may be found.

**7 Roosevelt Court, Brighton East** - There are better examples of McGlashan & Everist's work, see Osborne House, Portsea (1960) (HO474) and Reed House, (9-11 Gladstone Avenue, Aspendale, represented in the photos immediately below.

**9-11 Gladstone Avenue, Aspendale**



<sup>42</sup> Retrieved from <https://planning-schemes.app.planning.vic.gov.au/Boroondara/ordinance/43.01-s>

<sup>43</sup> Retrieved from <https://thedesigntfiles.net/2022/05/on-the-market-20-westminster-street-balwyn>

<sup>44</sup> City of Bayside, Post-War Modern Residential Heritage Study, (Final Report July 2022) Volume 3, p.1018.

See also, John and Sunday Reed House, Bulleen (1963-7); now known as Heide II, part of the Heide Museum, (VHR H1494).

**22 Harold Street, Sandringham** - The inclusion of this property in the Study is an example of a property with no discernible provenance. The property is not historically significant in that it is one of thousands built like it during the post war period. When this is linked to the statement in the Study that, 'Research undertaken during the course of the study could not confirm the details of Leslie Gordon Armstrong's career or work',<sup>45</sup> one must ask the question; Why is it included other than to make up the numbers.

## Conclusion

The foregoing is offered for Planning Panels and Bayside City Council's consideration. Hopefully, the paper will be considered in the spirit in which it has been offered, i.e., it's never of any use to complain about something unless one is willing to offer a viable alternative. It is also hoped that all will learn some valuable lessons from this exercise and consider putting lessons learnt before the Minister as well as matters found in this paper.

The cost of the Study and all that goes with it has been eye watering to date and is still going on. This is money that could have been spend on gaining good heritage outcomes and supporting existing heritage properties. In the interim, affected people wait in limbo and without any right of redress at this time.

We must all do a lot better to restore faith in a system that has reached a low ebb.

  
26<sup>th</sup> February 2024

---

<sup>45</sup> Ibid, p.1301.