

IN THE MATTER OF

AMENDMENT C208 TO THE BOROONDARA PLANNING SCHEME

**OUTLINE OF SUBMISSIONS ON BEHALF OF THE NATIONAL TRUST OF
AUSTRALIA (VICTORIA)**

Introduction

- 1) These submissions are made on behalf of the National Trust of Australia (Victoria) ('National Trust') in relation to the application of the Heritage Overlay to 46 Rowland Street, Kew, also known as 'Ngara', as proposed by Amendment C208 to the Boroondara Planning Scheme ('the Amendment').
- 2) The National Trust is an independent not for profit organisation established in 1956. The mission of the National Trust is to 'inspire the community to appreciate, conserve and celebrate its built, natural and cultural heritage'.
- 3) As the State's premier heritage and conservation organisation, the National Trust has an interest in the preservation of heritage fabric throughout Victoria.
- 4) The National Trust supports the inclusion of Ngara in the Heritage Overlay on the basis that it is of local significance to Kew as the birthplace of Gough Whitlam.
- 5) The Trust takes no position on the application of the Heritage Overlay to any other property included in Amendment.

The Issue

- 6) In relation to Ngara, this hearing is fundamentally about thresholds – how we set them at a local level and how we evaluate a place against them where the basis of significance is historic association.
- 7) The evidence of Ms Schmeder and Ms Gray agrees on a number of points. These are:

- a) That a ‘special association’ with Gough Whitlam could form a proper basis for including a property in the Heritage Overlay at a local level;
 - b) That there is a ‘direct association’ between Ngara and Gough Whitlam; and
 - c) That this direct association is evident in documentary resources.
- 8) The only outstanding issue between the two of them is whether the association between Ngara and Gough Whitlam is sufficiently ‘special’. It is Ms Schmeder’s position that it is and it is Ms Gray’s that it is not.
- 9) It is the National Trust’s submission that the position of Ms Schmeder should be preferred for the reasons which follow.

Thresholds for local significance

- 10) Two key aspects of assessing heritage significance are the identification of criteria and the setting of thresholds.
- 11) The National Trust takes no issue with the use of the Australian Heritage Commission (‘AHC’) criteria in assessing significance at a local level. In fact, the use of those criteria is mandated by the Planning Practice Note *Applying the Heritage Overlay* (‘Practice Note’).
- 12) Once the criteria are identified, it is necessary to set thresholds in order to determine what properties which potentially satisfy the criteria should be preserved.
- 13) These two processes are not necessarily entirely independent, however. In his discussion paper, *Review of Criteria and Thresholds for Inclusion of Places on the Heritage Overlay* (‘Discussion Paper’), Ian Wight observed:

There is wide agreement that if [the AHC criteria] are to be used to establish local lists they must be adapted in some way. This does not seem quite as simple as merely replacing geographic descriptors such as ‘Australia’ or ‘the Nation’ with the name of a municipality, as some criteria seem to imply a level of importance greater than we might apply at the local level.¹

¹ Ian Wight, *Review of Criteria and Thresholds for inclusion of places on the Heritage Overlay* (2007), p. 16.

- 14) Despite this observation, and many others like it, no clear guidelines have been published for the use of the AHC criteria to determine local significance, as opposed to national or State significance.

Local thresholds set locally

- 15) In the absence of specific guidance, the National Trust considers that the best approach to setting thresholds is that recommended by the Advisory Committee on the Review of Heritage Provisions in Planning Schemes ('Advisory Committee'). In its report, the Advisory Committee commented that

... we see the development of thresholds as something which responds to the particular characteristics of the area under investigation and its heritage resources. Nevertheless the types of factors that might be deployed to establish local thresholds can be specified State - wide. They would include rarity in the local context, condition/degree of intactness, age, design quality/aesthetic value, their importance to the development sequence documented in the thematic environmental history.

This process is essentially a comparative one within the local area.²

- 16) This approach is consistent with the approach to comparative analysis taken in the Practice Note and the Discussion Paper, both of which require the geographical scope of comparative analysis to match the geographical scope of the claimed significance:

- a) The Practice Notes states:

In order to apply a threshold, some comparative analysis will be required to substantiate the significance of each place. The comparative analysis should draw on other similar places within the study area, including those that have previously been included a heritage register or overlay. Places identified to be of potential State significance should undergo limited analysis on a broader (Statewide) comparative basis.³

- b) Similarly, the Discussion Paper states:

² Page 2-45.

³ Page 2.

Unsurprisingly, there was support for the idea that comparative analysis should be used to establish significance at the local level, although comparisons needed to be local. Arguing for or against listing of a place in a rural township or regional suburb on the basis of metropolitan examples was not seen as at all helpful.⁴

- 17) This, of course, raises the question of what the relevant local area is. The National Trust submits that the answer is ‘Kew’. As the Discussion Paper notes, local government areas will frequently not be an appropriate area for assessment, post-amalgamation, as they will include a diversity of areas and communities, each with their own individual histories. In those circumstances, treating the municipality as a whole as the relevant unit may discriminate against particular parts of the municipality.
- 18) More than that though, the National Trust submits that the proper comparator, for the purposes of comparative analysis, is places associated with Gough Whitlam in Kew.
- 19) This is because the alternative approach – in particular treating ‘place associated with Australian Prime Ministers’ – has the potential to lead to the absurd situation where the significance of a property relating to one prime minister is evaluated by reference to the significance of properties relating to other prime ministers. Although theoretically open, in practice, no one would suggest that you knock down Ballara because Nareen exists.
- 20) In the case of rare or unique properties – such as birthplaces – it might be argued that taking a local approach to thresholds ‘sets the bar too low’.⁵ So be it. The question is whether the alternative – excluding anything where a better example exists somewhere else in the State or nation – is more likely to produce an outcome more consistent with the objective of the *Planning and Environment Act* of preserving heritage places.

⁴ Page 27.

⁵ This was noted in the Discussion Paper, at page 26, under the heading ‘What does “local” mean?’: ‘Most agreed that the need for a place to be of significance to a whole municipality, to be included in the overlay set [a] geographic threshold that was too high. ... However, concern was expressed that the smaller the geographic area referred to, the easier it was for quite ordinary places to be considered rare or significant, and not all agreed that it appropriate to apply this meaning of ‘local’ in the metropolitan area.’

21) In fact, the Discussion Paper clearly viewed the possibility of setting relatively low thresholds for local as a positive outcome:

Once the geographic area has been established, even if only in general terms, it is then possible to compare any place under consideration with other places within the locality to establish its significance. This has the merit of avoiding comparisons with possibly better examples from elsewhere and allows for the significance of sometimes quite ordinary places to be recognised, where these might be quite rare in the context [of] an area where heritage places are poorly represented.⁶

What is a 'special association' at the local level?

22) In the context of Criterion H, thresholds could be adapted to meet local conditions in at least two ways:

- a) By adapting the required level of importance of the person with whom the place is associated. For example, at a local level, association with a mayor or an local Member of Parliament might be sufficient.
- b) By adapting the required level of association with the person. It might be that, at a local level, a less significant connection might justify inclusion in a heritage overlay.

23) The National Trust submits that, whatever may be the position at higher levels of significance, there is no obvious reason why birth cannot provide a sufficiently 'special' association to justify listing at a local level:

- a) On its face, what Criterion H requires is a 'special' association. As noted in the Australian Heritage Council's *Guidelines for the Assessment of Places for the National Heritage List* ('National Guidelines'), 'special' can be a synonym from strong, but it is more commonly used to mean 'of a distinct or particular character'.
- b) Given that Criterion H refers to a 'strong or special' connection, it is reasonable to assume that the use of 'special' in Criterion H is intended to mean 'particular'.

⁶ Page 28.

In this regard, being born somewhere provides a clear example of an association ‘of a distinct and particular character’ with a place.

- c) We also note that the National Guidelines do acknowledge that a long term connection is not necessarily required under Criterion H. The National Guidelines stated that a ‘particularly important but short term event affecting the person’ can justify the application of Criterion H. Without being entirely facetious, what is birth if not a particularly important but short term event affecting a person?

24) The idea that birth, without more, can give rise to a special association is consistent with a number of examples identified in the evidence of Ms Gray and Ms Schmeder which are listed on the basis of their association with a specific person by birth and little else:⁷

- a) *The HV McKay house*. HV McKay’s birthplace is heritage listed, although the period of his association with that property appears brief. He was born there in 1864 and the family moved away ‘in the mid-1870s’.
- b) *The Lyon house*. Joseph Lyons’ birthplace is on the Tasmanian State Register, despite the fact that his family only lived there ‘for a few years’ after his birth.
- c) *Creswick*. John Curtin’s ostensible birthplace is subject to a Heritage Overlay, despite a lack of certainty that it is his birthplace at all.
- d) *Hawke House*. Bob Hawke’s birthplace in Tatiara is heritage protected, despite the fact that his family moved away from Tatiara when he was five.

25) The National Trust also notes that 2 Fallon Street, Brunswick, is listed as significant for its ‘brief’ association with John Curtin, who resided there between 1912 and 1915. This was a decade prior to his election to Parliament and approximately 30 years before his accession as Prime Minister. As such, it provides an example of a finding of local significance based on a relatively brief connection not directly associated with a person’s ‘works’.

⁷ That these properties may also have been listed for other reasons is neither here nor there. See *Stonnington L47(D)* [2000] PPV 17, at [5.3.7], where the Panel observed ‘where an AHC criteria that is cited as the basis of a building’s heritage importance at the local level, the building should be sufficiently important in relation to that criterion that it alone should merit the building’s preservation. A building’s significance is not justified through its lesser satisfaction of several criteria.’

26) All of these listings are consistent with recognition that the kind of ‘special association’ required to justify local listing may be less than the kind required to support a State or national listing.

The Owner’s Approach

27) By contrast, the National Trust submits that the approach taken by Ms Gray and Professor Davison sets the threshold for local heritage significance too high:

- a) Both Ms Gray and Professor Davison rely on an interstate comparison to show that there are buildings which are more associated with Gough Whitlam than Ngara. The National Trust accepts this is so, but submits that, consistent with the Practice Note and the Discussion Paper, this approach is not appropriate for evaluating local significance. Indeed, the use of interstate comparisons would not be appropriate for evaluating State significance (let alone local significance), as what is required there is proof of State, rather than national significance.
- b) Turning to Ms Gray’s assessment specifically, Ms Gray has applied the ‘basic test’ for satisfying Criterion H of the AHC criteria contained in *The Victorian Heritage Register Criteria and Threshold Guidelines* (‘VHR Guidelines’).
- c) The VHR Guidelines are, expressly, for the purposes of assessing State significance and, to a large extent, appear to have been influenced by the National Guidelines.
- d) In particular, the reference in the ‘basic test’ for Criterion H to an ‘enduring ... interaction’ clearly recalls the language of the National Guidelines for Criterion H which are stated as being intended to identify those places which are significant for their ‘enduring association’ with famous people or groups.⁸
- e) By demanding an ‘enduring or close interaction’, the VHR Guidelines fall into the trap identified by Wight in the Discussion Paper of demanding too much from local heritage. Despite being couched in geographically neutral terms, nothing in the VHR Guidelines makes any allowance for the character of the local area, as recommended by the Advisory Committee.

⁸ Australian Heritage Council, *Guidelines for the Assessment of Places for the National Heritage List* (2009), p. 46.

28) Accordingly, the National Trust submits that the approach of Ms Schmeder should be preferred to that of Ms Gray and Professor Davison.

The consequences of inclusion in the Heritage Overlay

29) Finally, it is important to recognise what inclusion in the Heritage Overlay means.

What it means is two things:

- a) First, it means that the significance of the place is recognised and recorded for posterity; and
- b) Second, it means that, in decision-making, the heritage significance of the place must be considered.

30) What it does not mean is that Ngara cannot be demolished. It will mean that an additional permit needs to be applied for, but if the demolition is an acceptable planning outcome, then it will be authorised.