

# Victorian Parliamentary Inquiry into Protections Within the Victorian Planning Framework

National Trust of Australia (Victoria) Submission

31 January 2022



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# Executive Summary

Victoria has a rich, vibrant heritage represented by places, landscapes, stories, and people that make a vital contribution to our communities. Our heritage places contribute to our identity, creating a sense of place and representing the State's story, its people and its shared connections. Heritage is also a key economic driver for Victoria through development and tourism. From buildings to landscapes, historic routes to historic precincts, trees to shipwrecks—the heritage of Victoria is important, and is valued by communities and visitors.

While Victoria has a mature system of heritage protections through the Victorian planning framework, with increased development pressures, the impacts of climate change, and an increased emphasis on streamlining planning approvals, some major cracks are showing, and must be addressed as a matter of priority to prevent the loss of our cherished heritage places.

At the root of these issues is a lack of understanding of the value of heritage, and lack of leadership at all levels. The major issues confronting the protection and celebration of our heritage are well known and well documented, and have been interrogated through numerous reviews and inquiries. They grace the pages of newspapers across Victoria every day. The core problem is continued inaction, and an ongoing failure by successive state governments to adequately resource the management of Victoria's heritage by government and private owners. Put simply, leadership and resourcing at all levels does not reflect the value of heritage to the community, the value of heritage to the economy and employment, and its capacity to contribute to sustainable development.

This Inquiry presents an opportunity to work towards stronger protections, and better outcomes for government, councils, the owners and managers of heritage places and, most importantly, communities. The recommendations outlined in this submission provide **practical** and **achievable** solutions to strengthen and improve the planning system and support the role of heritage to contribute to vibrant and prosperous communities.

Please note that this submission solely relates to non-First Peoples cultural heritage. In Victoria, First Peoples' cultural heritage is primarily protected under the *Aboriginal Heritage Act 2006*, which is subject to separate processes of review.

In addition to this submission, The National Trust would welcome the opportunity to be heard by the Committee in order to provide greater detail and answer any questions.



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# 1.0 About Us

## 1.1 The National Trust of Australia (Victoria)

The National Trust of Australia (Victoria) is a not-for-profit membership organisation formed in 1956. As Victoria's premier heritage organisation, the National Trust has an interest in ensuring that a wide range of natural, cultural, social and Indigenous heritage values of the State are protected, respected and celebrated, contributing to strong, vibrant and prosperous communities.

We are an independent, non-government and not-for-profit organisation. While independent of government, we work collaboratively with government, local councils, businesses, local communities and individuals to strengthen heritage protection, increase community involvement in heritage conservation, and provide tourism and engagement experiences for diverse audiences.

The National Trust is also Victoria's leading operator of historic properties and heritage attractions, managing over 40 historic properties across Victoria worth more than \$148 million, with 26 open to the public. Our property portfolio is diverse, including historic mansions, a remnant rainforest, a tall ship, a gaol, and a mill, just to name a few. We are the Committee of Management for nine properties owned by the State Government of Victoria, including Old Melbourne Gaol and Tasma Terrace. We also care for and conserve natural areas, gardens and more than 35,000 collection items.

## 1.2 Our Reach and Impact

With over 30,000 members and supporters across Victoria, our 2,000 volunteers provided 104,800 hours of service to assist us in welcoming over 149,000 visitors to our properties (in 2018–2019, pre-COVID 19).

In the 2020-2021 financial year, the National Trust:

- made over 44 submissions advocating to safeguard and protect the built, natural and cultural heritage of Victoria;
- was supported by 12 regional Branches;
- generated community support with more than \$1.45m of donations through trusts, bequests, foundations and individual giving; and
- supported 30 community-owned heritage places with tax-deductible heritage appeals, facilitating \$1.8m in tax deductible donations for the conservation and restoration of these important heritage places.

## 1.3 National Trust and Australia ICOMOS Survey

To inform our submission to this enquiry, the National Trust partnered with Australia ICOMOS on a survey seeking views on heritage protections in Victoria from heritage professionals and the community. The survey was open from 12 to 23 January 2022, and received 250 responses, indicating a high level of interest.

Of the respondents, 122 identified as National Trust members, 29 identified as heritage professionals, 29 identified as allied professionals (eg architects, planners and engineers), with the majority of additional respondents representing community groups and individuals with an interest in heritage.

Participants were asked to respond to a series of questions on the effectiveness of heritage protections in Victoria, effectiveness in decision-making about heritage, resourcing, and incentives and penalties.

This submission broadly captures many of the key themes and sentiments expressed by participants in the survey, as well as key examples raised by participants.

## 2.0 The State of Heritage Protection in Victoria

### 2.1 Heritage Listings in Victoria

Under the *Planning and Environment Act 1987* and the *Heritage Act 2017*, Victoria has a relatively mature system of heritage protections which, in theory, allows for the appropriate identification, protection, and management of heritage places within the context of strategic and statutory planning.

While the state has a strong, multi-tiered system of protections, there is clear room for improvement. In practice, there is a lack of consistency in the application of laws to protect our heritage, and neither state and local government are adequately resourced to meet the objectives of the legislation, or the expectations of communities.

There are numerous heritage lists, all of which have the ultimate goal of preserving the heritage of Victoria.

- 10,000 buildings, landscapes, trees, and gardens on the National Trust Register (non-statutory)
- 2,370 items on the Victorian Heritage Register
- 186,000 properties protected by local Heritage Overlays
- 28 places on the National Heritage List
- 39 places on the Commonwealth Heritage List
- 2 places on the World Heritage List

### 2.2 Role of the Federal Government

The Federal Government plays an important role in the protection of heritage through the administration of the *Environment Protection and Biodiversity Act, 1999*. The EPBC Act provides for the National Heritage List, which includes natural, Indigenous and historic places that are of outstanding heritage value to the nation. The Act also establishes the Commonwealth Heritage List, which includes places on Commonwealth lands and waters, and provides a framework for the management of places on the World Heritage List.

In regard to world and national heritage listed sites, assessments and approvals are largely administered in Victoria by the state government, under a bilateral agreement. While this can streamline approvals, the process and the way it operates is not clear, and creates uncertainty for the community about who is responsible for the protection and management of our most significant heritage places.

The challenges with this system have been demonstrated in recent planning processes relating to developments within the Royal Exhibition Building & Carlton Garden World Heritage Site buffer zone, where it has largely fallen to local Councils and objectors such as the National Trust and community groups to fight inappropriate developments, in the absence of strong leadership from the Commonwealth, and due to inadequate State Government resources to support the involvement of Heritage Victoria in lengthy VCAT appeals. These issues are being examined as part of the current World Heritage Management Plan Review for the site, and we encourage the Inquiry to follow this process and its recommendations closely.

The Commonwealth also has an important role to play in leadership on the protection and celebration of heritage, however the Australian Heritage Council notably suffers from under-resourcing which reduces their ability to process and assess nominations, or be public champions for heritage. Equally, statutory limitations on the AHC's power reduces their ability to effectively influence government and develop policy.

The Victorian State Government should advocate for increased resourcing for heritage at the Commonwealth level to ensure that the Australian Heritage Strategy can be properly implemented and appropriately reviewed; to ensure that more National Heritage List nominations can be assessed and to ensure that the Department can undertake adequate strategic reviews of legislation, policy and practice; and to strengthen the statutory role of the Australian Heritage Council so that it can become a true champion for heritage places. The Victorian government should also seek increased financial support for the management of heritage places on the World and National heritage list.

**Recommendation:**

- **ADVOCATE for increased funding for the protection and celebration of heritage at a Federal level, and increased Federal support for the states for the protection and celebration of World and National heritage places.**

## 2.3 Role of State Government

### 2.3.1 State Government guidance on local heritage protections

Heritage Victoria plays a vital role in the identification and management of the state's most significant heritage places. However, while Heritage Victoria is the primary state government body relating to heritage, their remit is currently constrained by the limitations of the *Heritage Act 2017*, which relates solely to places and objects of state significance.

The Heritage Council's *State of Heritage Review: Local Heritage, 2020*, provides a detailed audit of Heritage Overlay protections, and recommends tangible and practical opportunities for enhancing and improving the way State and local governments work together to recognise, protect and manage local cultural heritage, and anticipate and prepare for future challenges.

The major strategic initiative recommended in the report is revitalisation of the State's role in providing leadership in the protection and management of local heritage. The National Trust strongly supports the

recommendations outlined in the report, and their implementation must be prioritised as a matter of urgency, and funded appropriately.

There is a lack of clear leadership within the State Government with respect to heritage matters which fall outside the Heritage Act, such as state and local heritage policies, and it is unclear whether there are dedicated planning officers within DELWP with heritage experience and qualifications.

As such, opportunities are being missed to ensure that heritage considerations are an integral part of broader discussions about state planning policy, and that state government policy on issues like housing, building construction, and sustainability do not conflict with heritage objectives. There is also a need to provide clear and consistent guidance to inform local heritage studies and the preparation of planning scheme amendments.

An issue which consistently arises in the preparation and implementation of planning scheme amendments is the lack of guidance around thresholds for applying the criteria for significance set out in Planning Practice Note 1: Applying the Heritage Overlay. In the absence of threshold guidelines at a local level, council officers and property owners frequently rely on the Heritage Council's Victorian Heritage Register (VHR) Criteria and Threshold Guidelines, which do not provide adequate guidance for the assessment of places of local significance.

This issue has previously been considered in Planning Panel recommendations, such as Amendment C262morn Part 2 (April 2020) which found that the VHR guidelines can assist in the assessment of significance, but should be used with caution, and not form the basis of assessment. To address this issue, the Heritage Council's State of Heritage review recommended the development of local threshold guidelines, similar to those for State heritage.<sup>1</sup>

Clearer guidance should also be provided on other issues that are frequently raised during the preparation and implementation of planning scheme amendments, many of which are documented in the report *Heritage Issues: Summaries from Panel Reports*, March 2018.<sup>2</sup> For example, Councils should be provided with guidance on how to consider the social and economic effects of a planning scheme amendment in relation to heritage. Panels have consistently held that the individual economic impact on property owners is not relevant to a consideration of whether the Heritage Overlay should be applied, and is a matter for consideration at planning permit stage, yet this issue is frequently contested by property owners.

While a large volume of previous panel decisions provide guidance and precedent on issues including social and economic effects and integrity vs intactness, in reality, the lack of published guidance creates uncertainty for communities and property owners about the process, and contributes to lengthy and costly contested planning panel hearings which require significant resources to be invested by property owners, councils, and communities.

The National Trust advocates for a dedicated heritage planning unit to be established within DELWP, to provide expertise on heritage matters which fall outside Heritage Victoria's remit, including input into State government policy, clear and consistent advice on the preparation and implementation of local

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<sup>1</sup> "Pillar 2: Clear and Consistent Guidance Material", [State of Heritage Review: Local Heritage](#), Heritage Council of Victoria, p47.

<sup>2</sup> [https://www.planning.vic.gov.au/\\_data/assets/pdf\\_file/0018/124137/Heritage-issues-summary-of-Panel-Reports-2018.pdf](https://www.planning.vic.gov.au/_data/assets/pdf_file/0018/124137/Heritage-issues-summary-of-Panel-Reports-2018.pdf)

heritage studies, support for the management of government-owned heritage places (see Section 2.3.2), and advice on issues such as illegal demolition and “demolition by neglect” (see Section 2.5).

**Recommendations:**

- **RESOURCE and IMPLEMENT the recommendations in the Heritage Council’s State of Heritage Review: Local Heritage, 2020.**
- **ESTABLISH a heritage planning unit within DELWP.**
- **Undertake a thorough REVISION of Planning Practice Note 1: Applying the Heritage Overlay, in consultation with the National Trust, Planning Panels Victoria, and other relevant stakeholders.**

## 2.3.2 Management of Government-owned heritage places

The Victorian Government Asset Management Principles state that “State agencies should lead by example by adopting appropriate heritage management strategies, processes and practices. The Victorian Government should set the standard for the community in the management of heritage assets.”<sup>3</sup>

Sadly, however, there are many heritage places on public land which are among the most neglected and poorly managed in the state. Recent high-profile examples include Newport Railway Workshops, Flinders Pier, Central Pier, and Mt Buffalo Chalet.

Issues regarding the management of historic places on public land were comprehensively explored as part of the 2016 VEAC Investigation into Historic Places requested by the State Government. Yet the majority of the recommendations arising from the investigation have not been implemented. The implementation of these recommendations must be prioritised.

One of the key issues is the lack of clear standards of management and coordination across government. The agency with expertise for the management of heritage places on public land, the Historic Places Section, was progressively dismantled in the 2000s. While Heritage Victoria and the Heritage Council have developed guidelines for the management of government heritage assets, such as Asset Management Principles, and a guide to undertaking a heritage audit, it’s not clear that these guidelines are being regularly updated and actively promoted.

Measurable standards for maintenance and conservation works also need to be developed, and government departments and agencies held to account for the responsible custodianship of heritage assets, through the introduction of performance requirements. Government agencies must also be required to meaningfully consult with communities regarding the management of heritage places.

### Case Study: Dartmoor Police Residence

In June 2019, an 1892 police residence in the community of Dartmoor in south-western Victoria was moved to a location more than 100km away without a permit by a Victoria Police-engaged contractor.

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<sup>3</sup>, “[Victorian Government Cultural Heritage Asset Management Principles](#)”, Heritage Victoria and the Heritage Council of Victoria, 2009.



The police residence had been added to the Glenelg Shire Council Heritage Overlay in 2013, following a campaign by local residents and the National Trust to save it from demolition.

Victoria Police submitted a retrospective permit application for the removal of the building, which stated that they were unaware that there was a Heritage Overlay over the property. This is despite the fact that a cursory online property search would have revealed the heritage status of the site. The application also cited the building's poor condition as the reason for the relocation, suggesting that the building had not been adequately maintained, in accordance with state government asset management principles.

Following this incident, the Hon. Lisa Neville advised the National Trust that Victoria Police would take steps to undertake an audit and implement a management plan for Victoria Police-owned heritage places, however it is unclear whether this has occurred. The result was the total loss of this valued heritage building from its context, and we are not aware of any penalties or enforcement action arising as a consequence of these actions.

#### Recommendations:

- **RESOURCE and IMPLEMENT the recommendations of the VEAC Investigation into Historic Places outlined in the Historic Places Investigation Final Report, 2016**
- **PROVIDE practical support to government agencies for the appropriate management of heritage assets.**
- **IMPLEMENT performance standards to hold government agencies to account for the management of heritage assets.**

### 2.3.3 Exemptions to notice and review

Since the introduction of the *Planning and Environment Act* in 1987, the number of exemptions to notice and review requirements under the Heritage Overlay has continued to increase, and these provisions are not being evaluated for either their effectiveness, or whether they are resulting in adverse heritage or planning outcomes.

Exemptions introduced for specific reasons, such as responding to the Global Financial Crisis and bushfire events, are not being reviewed and repealed where appropriate, despite the reason for their introduction having passed.

Examples include:

- Governor in Council exemptions for the Ministers for Planning Health, and Conservation Forest and Land from the provisions of the *Planning and Environment Act 1987*, gazetted in 1988
- Amendment VC194: Fast track of state and local infrastructure projects
- *Major Transport Projects Facilitation Act, 2009*
- Other specific planning scheme amendments for major events and projects such as level crossing removals

The economic impacts of COVID-19 have also resulted in an increasing number of Ministerial amendments and call-ins, as well as the establishment of fast-track planning processes. This has resulted

in a significant increase in the number of developments which are proceeding without public notice or meaningful input from the community.

One such example is the current redevelopment of Caulfield Racecourse, which has commenced following the gazettal of a Ministerial Amendment for a Specific Controls Overlay on Christmas Eve (c229glen). Residents have been distressed to see the [destruction of historic trees and buildings on the site](#), and detailed plans for the redevelopment have not been made public. Following the commencement of demolition works, a community group submitted an application for an Interim Protection Order under the *Heritage Act 2017*, which has been granted by the Heritage Council. This will no doubt be a significant disruption to the planned works, and could have been managed appropriately if a consultative planning process had been undertaken.

Another concerning example is the Ministerial call-in under the *Heritage Act 2017* of a permit application for the [development of a second office tower at No. 1 Spring Street](#) (Shell House) prior to a hearing by the independent Heritage Council of Victoria. This application is yet to be determined by the Minister.

*A review of Ministerial calls-ins is warranted and how their decision making relates to the advice provided by the Heritage Council and others. Some call-ins appear to be foreshadowing a predetermined decision such as the call-in of the 1 Spring Street heritage permit refusal appeal, which appears to be circumventing the established and open appeal process.—Anonymous, National Trust and Australia ICOMOS Survey*

#### **Case study: Governor in Council exemptions for government departments**

In 1988, a direction was gazetted exempting the Ministers for Education and Health from the provisions of the *Planning and Environment Act 1987*. As such, the departments of Education and Health are not required to seek planning permission for the demolition or alteration of places which are protected under a Heritage Overlay.

The State Government's guide to using the Victoria Planning System states that:

*Where they have been exempted from any legal need to comply with planning scheme requirements, as a matter of practice the ministers concerned should consult from an early stage with relevant planning authorities on proposed works. This consultation fosters cooperative involvement of local government in state planning and development matters. Consultation needs to be effective and therefore should be more than the mere circulation of proposals.<sup>4</sup>*

In practice, this does not always occur. Regardless, the lack of a requirement for public notice under the Act is unjustified. This outdated provision should be revoked, and the departments of Education and Health subject to the provisions of the *Planning & Environment Act 1987*, which provides a framework for the balancing of multiple planning objectives, including heritage.

The National Trust is aware of numerous examples of places protected under heritage overlays which have been demolished without a process of public notice, including four properties on Geelong Road demolished for the Footscray Hospital redevelopment in 2020. Most recently, buildings at the former Sunshine Technical School which have Heritage Overlays in the Brimbank Planning Scheme were earmarked for demolition by the Victorian School Building Authority, a process which has only paused due to a community outcry.

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<sup>4</sup> [Using Victoria's Planning System](#), State Government of Victoria, 2015, p5.

### Recommendations:

- **Immediately REPEAL the Governor in Council direction exempting the Ministers for Education and Health from the provisions of the *Planning and Environment Act 1987*.**
- **Appoint an independent panel to undertake an AUDIT of all exemptions to notice and review under the *Planning & Environment Act 1987* to assess their efficacy, with a view to reinstating notice and review for all permit applications affecting heritage places.**

## 2.4 Gaps in Heritage Protections

### 2.4.1 Local protections

Under the *Planning and Environment Act, 1987*, Councils are required to “ensure the conservation of places of heritage significance” (Clause 15.03). The Heritage Council’s State of Heritage Review: Local Heritage included a stocktake of local heritage protections across the state, which revealed that not every Council has undertaken and implemented a heritage study, and that there are both geographical and typological gaps in heritage protections across the state.

Many of these gaps have emerged since the discontinuation of state funding to support protection of local heritage.<sup>5</sup> While modest, these funding streams provided practical support to Councils, as well as a mechanism for the state government to hold Councils to account. A fund of approximately \$300k was made available each year to Councils to support the preparation of heritage studies, with the expectation that they would be translated into planning scheme protection. Another \$300k was made available in matching funds to support the employment of Heritage Advisors. There was also state government oversight of the engagement of Heritage Advisors, which provided consistency and accountability, as well as practical support to Councils.

In some cases, there is also gap between the preparation of heritage studies by Councils, and their implementation through Planning Scheme Amendments, which can result in the delayed application of planning controls, and the loss of significant heritage places. This has been demonstrated in the ongoing battle to achieve heritage protections for significant interwar and postwar places in the City of Bayside (see case study below), where Councillors have abandoned the implementation of heritage studies without regard to proper and responsible planning principles, having been influenced by arguments which do not have a sound basis in planning policy. We accept that due process must be followed and that Councils cannot be deprived of their final exercise of discretion but, in our view, it ought only be exercised on a sound basis with a sustainable justification for their decisions.

An efficient solution to this issue would be for the Minister for Planning to routinely apply Interim Heritage Overlays in circumstances where heritage consultants have carried out extensive heritage studies and determined, by exercising their professional, objective and expert opinion, properties are deserving of protection. This would enable the Planning Scheme Amendment process to proceed while ensuring that significant places are protected. While the Minister currently has the power to apply interim heritage controls, applications for interim protection are not always granted, and can be subject to lengthy delays which leave places at risk.

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<sup>5</sup> *State of Heritage Review: Local Heritage*, Heritage Council of Victoria, 2020, p8.

Another gap in current heritage protections which was raised by the National Trust during the 2015 Heritage Act Review is the inability for Heritage Council to make a direct recommendation to the Minister for Planning for the application of interim controls to places which have been nominated to the Victorian Heritage Register and are found to be of local significance. If, following an assessment by Heritage Victoria (and a possible hearing) the Heritage Council determines that a place is not of state level significance, but should be referred to local government for consideration for an overlay, in many instances the referral is not taken up by local government, leading to the loss of significant heritage places.

There is also no state-wide process for nominating places of local significance to be considered for heritage protection. While in principle the National Trust supports the protection of local heritage through the preparation of strategic heritage reviews, rather than an ad-hoc or reactive approach, the reality is that in many municipalities there are gaps in heritage protection, and these gaps often do not come to light until there is a development threat, prompting a reactive response from the community. While the *Planning and Environment Act 1987* places an onus on local government to initiate heritage protection for significant places, if a council fails to act, there is no recourse for community members to challenge this.

We believe this has led to an increase in nominations of places to the Victorian Heritage Register which ultimately are not found to be of state significance, but which take up a significant amount of Heritage Victoria's resources that could be better spent on proactively enriching the Register or providing support to local councils.

#### **Case Study: Heritage protection in the City of Bayside**

The Bayside area, in particular Black Rock and Beaumaris, has one of the most significant concentrations of modernist homes in the state, with houses designed by leading architects of the period including Robin Boyd, David Godsell, Peter McIntyre, Chancellor & Patrick, Anatol Kagan, and Yuncken Freeman.

In recent years, community advocacy group Beaumaris Modern, championed by high profile patron [Tim Ross](#), has showcased the rich mid-century modern heritage of the area through its Beaumaris OPEN program, and through its publication [Beaumaris Modern: Modernist Homes in Beaumaris](#). The architecture of the period is experiencing a resurgence of interest worldwide, with events like [Canberra Modern](#) and [Modernism Week](#) in Palm Springs, showing that modernism is a huge drawcard for tourism, and an inspiration for contemporary design.

Despite the significance of the area's heritage, heritage protection has been a vexed and highly politicised issue in the City of Bayside for many years, due to opposition by some homeowners. Numerous reports undertaken by independent consultants have documented places of heritage significance in the City of Bayside which remain unprotected. The National Trust is aware of more than 100 individually significant places and two precincts that have previously been assessed and are currently at risk, and numerous significant places have been demolished. For example, in 2020 Breedon House at 34 Ware Street Brighton was nominated to the Victorian Heritage Register, but demolished before it could be assessed by Heritage Victoria. Other examples of the demolition of significant places include Charles Bricknell's [17 Nautilus Street](#) in Beaumaris, and [27 Mariemont Avenue](#) in Beaumaris by Chancellor & Patrick.

Following an intervention by the Minister for Planning in 2020, Council has begun the process of resuming its previously abandoned heritage studies, however progress is slow. This situation highlights the clear need for state leadership and direction on local heritage protection, as well as systems to both support Councils, and hold them to account if they fail to act.

*There is no repercussion for the demolition of a significant home. The Chancellor & Patrick home in Mariemont Avenue Beaumaris is one of the saddest examples that comes to mind—demolished with all its fixtures and fittings in 2018. The empty site sits vacant with weeds as tall as me. Nothing built in its place. Why were the owners allowed to get away with it? Because there was no protection on the house and they can do whatever the heck they like according to council.—Annie Price, Vice President, Beaumaris Modern, National Trust and Australia ICOMOS Survey*

**Recommendations:**

- **RESOURCE and IMPLEMENT** the recommendations in the Heritage Council’s State of Heritage Review: Local Heritage, 2020.
- **REINSTATE** state government funding for local heritage studies and heritage advisors, to be coordinated by a dedicated heritage unit within DELWP.
- **REQUIRE** the Minister for Planning to apply Interim Heritage Overlays to places identified in independent heritage studies.
- **Hold Councils ACCOUNTABLE** for the protection of heritage places as required under the *Planning & Environment Act 1987* to ensure significant places are protected and provide certainty to communities and property owners.

## 2.4.2 Gaps between local and state government protections

Under current arrangements, property owners who wish to develop places of state significance are required to apply for permits under both the *Heritage Act 2017*, and the *Planning & Environment Act 1987*. This is both inefficient, and can result in issues that “fall through the cracks”.

In assessing a permit application, Heritage Victoria is limited to considering the extent to which the application, if approved, would affect the cultural heritage significance of the registered place or object, and is not able to take local heritage issues into account. Similarly, Under Clause 43.01-2, places on the Victorian Heritage Register are subject to the requirements of the Heritage Act and not the planning provisions of the Heritage Overlay.

This means that heritage issues which fall outside the scope of the Registration under the Heritage Act, such as streetscape impacts and local heritage values, are not considered alongside the heritage permit in a holistic way.

There is also no guidance around the staging of heritage permits and planning permits, meaning that applicants are able to apply for planning permits prior to obtaining heritage permits, and vice versa, which means in practice that different authorities can be wedged against each other. The dual process can also result in successive appeals which are time consuming and costly not only for applicants, but Councils and objectors. Ideally, heritage permits under the *Heritage Act* should be obtained prior to planning permit applications being lodged.

These issues are particularly problematic in relation to the management of complex heritage sites, which are subject to a change of use or adaptive reuse, such as institutional sites and industrial sites. The inadequacy of current state and local planning provisions to lead to positive outcomes at such sites can be seen in examples like Hoffmans Brickworks, an internationally significant industrial site, where years of failures to ensure adequate maintenance and require the appropriate conservation of heritage buildings recently led to the total destruction of two of the most significant buildings on the site. We

commend the submission to the Inquiry by community advocacy group Save the Brickworks for an in-depth discussion of this case study.

**Recommendation:**

- **DEVELOP** clear guidance material on best practice for staging heritage and planning approvals.

### 2.4.3 Integrating heritage into planning policy

Heritage protection is only the first hurdle to achieving good outcomes for the protection of heritage. Encouraging good heritage management also requires the objectives of heritage conservation to be integrated into strategic and statutory planning decisions. While the Terms of Reference for this Inquiry suggest the possibility of an alternative model of “separating heritage protection from the planning administration”, this is not supported by the National Trust. Rather, we believe the best outcomes for both planning and heritage can be achieved through the proper integration of heritage within the planning system in a way that recognises the value of heritage, and through adequate resourcing for the implementation of heritage protections.

The tokenistic incorporation of heritage buildings into new developments through practices such as facadism and overdevelopment have poor outcomes for both the heritage place and broader planning objectives. This is exacerbated by state government policies seeking densification in urban areas, and can occur when a local planning scheme does not have clear policies in place to ensure that heritage places are appropriately protected, while also providing for objectives such as the increased provision of housing to be achieved.

For example, while many in the community were outraged by the illegal demolition of the Carlton Inn (Corkman Irish Pub), the reality is that under the planning controls at the time of demolition, a Design and Development Overlay was in place which would have facilitated the development of a 24-metre building covering the whole of the site with a further 16 metres setback 6 metres from the frontage; a total of 40 metres. This would have resulted in a poor heritage outcome which did not retain the strong values held by the community about its significance, including its role within the streetscape, and as a place of gathering, yet would have been perfectly legal.

This issue has also been prevalent in planning for strip shopping centres, and was explored in depth as part of Yarra Planning Scheme Amendment C231, Queens Parade Built Form Review, which sought to control heights and setbacks of new developments on Queens Parade, a significant heritage streetscape. The amendment and subsequent Panel recommendations also highlighted the role of mandatory height controls and setbacks to protect the best examples of heritage streetscapes and provide certainty for property owners.

The issue of ensuring that heritage is holistically integrated into planning is relevant at all levels of the planning system, including appeals process. A common issue raised by respondents to the National Trust and Australia ICOMOS Survey was poor heritage outcomes arising from VCAT decisions, with 60% of respondents stating that VCAT appeals are either ineffective or not very effective at achieving positive heritage outcomes.

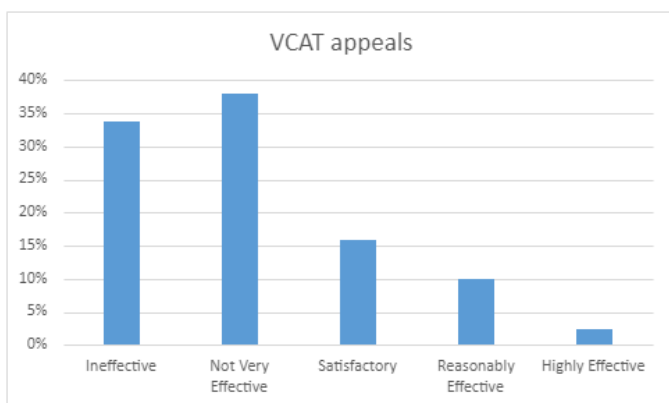


Figure 1: Results from 240 responses to the question “How effective do you believe the VCAT process is [in relation to heritage]?” National Trust and Australia ICOMOS Survey.

While adverse heritage outcomes arising from VCAT decisions can partially be attributed to weak policies related to heritage in local planning schemes, another key issue is a lack of heritage expertise within the pool of Tribunal members. The adversarial system strongly favours developers with the resources to engage the best advocates and expert witnesses. The more expert a panel is however, the more able the tribunal is to ask its own questions of the independent witnesses called to give evidence, and assess the merits of the case.

#### Recommendations

- **SUPPORT Councils to undertake heritage policy reviews to eliminate poor heritage outcomes such as facadism.**
- **ALLOW Councils to apply mandatory height controls to protect the best examples of heritage streetscapes and precincts.**
- **INCREASE the number of VCAT members with heritage expertise.**

## 2.4.4 Ensuring that heritage protections reflect evolving community values and identities

### Gaps in state heritage protections

Identifying and protecting heritage places is fundamental to ensuring that they are appropriately conserved, celebrated and passed on to future generations, however our lists must evolve and adapt as our understanding of what heritage is evolves and adapts. The development of a Victorian Heritage Register that is representative of our most outstanding heritage places has suffered from under-resourcing and no longer reflects a true representation of our state’s heritage.

Due to a lack of resourcing, Heritage Victoria’s approach to recommendations for new registrations is largely reactive, and driven by development threats. Heritage Victoria also has a large back-log of nominations to the Register.

Heritage Victoria’s ongoing program to review early registrations which do not include registered land is welcome, and resulting in better outcomes for some of the state’s most significant places. This program should be accelerated with additional funding.

Thematic studies such as *A History of LGBTIQ+ Victoria in 100 Places and Objects* prepared by the Australian Queer Archives (AQuA) for Heritage Victoria provide opportunities to enrich both state and local heritage protections, however resources must be provided for their implementation.

For example, the Heritage Council's recent funding for a 12-month project to enrich the Victorian Heritage Register is enabling Heritage Victoria to increase representation on the register of themes that are currently under-represented, such as women in architecture and design, migrant heritage, and LGBTIQ+ heritage. This initiative should be provided with recurrent funding, and is a high impact way to broaden the relevance and representativeness of the Register. It could also be broadened to capture places of local heritage significance in under-represented categories.

### **Gaps in local heritage protections**

Significant gaps also remain in the protection of locally significant places under Heritage Overlays, which are largely based on studies undertaken in the 1990s and 2000s, and have not been systematically updated.

This issue is discussed in detail in the State of Heritage Review report, which identifies both geographical and type gaps. The review found that the most common place-type gaps are trees and gardens, post-war residential, and historic landscapes.<sup>6</sup>

Councils should be supported to address these gaps through the implementation of the State of Heritage Review recommendations.

### **Case study: places of social significance**

This typology can include pubs, hotels, theatres and other places of community meeting and congregation. Social significance is often cast as being of “lesser” or “secondary” importance compared to architectural or aesthetic significance, particularly through the re-development/VCAT process.

However, members of the community do not always value heritage places for their architectural or aesthetic “intactness”, but care more about protecting the history, character and identity of where they live. The challenge of our current system of protection is that it is fabric-focused, and cannot protect “intangible” values such as ongoing uses. There are also no guidelines on how social significance should be assessed and managed at the local level.

A prominent example of the loss of a heritage place with social significance was the demolition of the London Hotel in Port Melbourne which operated as a hospitality venue from its establishment in 1861, until its demolition in 2017. Its prominent location near the railway and Station Pier meant that generations of visitors to Melbourne, and those travelling abroad, would have marked their arrival or departure from Melbourne at this important gathering place. Modifications to the building over time, including extensive remodelling in the fashionable Moderne style in the 1930s, demonstrated layers of historical significance reflecting the continued use of the building as a hotel over more than 150 years. However, Council's heritage advisor questioned the value of the building due to its perceived lack of “intactness” to its original form, and Council declined to seek heritage protection for the building. A similar turn of events resulted in the demolition of the Greyhound Hotel in St Kilda in 2017, which also had social significance for its connections with LGBTIQ+ communities. The loss of these buildings continues to be mourned by their local communities.

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<sup>6</sup> *State of Heritage Review: Local Heritage*, Heritage Council of Victoria, 2020, p19.



Alternative mechanisms for protecting places of social significance should be explored, such as a community “right to buy”. In the UK, the *Assets of Community Value (England) Regulations 2012*<sup>7</sup> provide additional protection for places of social significance under the *Localism Act 2011*, which enables communities to nominate places to be included on their local planning authority's register of assets of community value if their main use has recently been or is presently used to further the social wellbeing or social interests of the local community and could do so in the future. This can include places such as pubs, day care centres, schools, open spaces, theatres, civic halls and buildings, heritage sites, football grounds, and markets. If a place on the register comes up for sale, a community right to bid is provided, with a six-month moratorium providing an opportunity to raise funds. The system also includes compulsory purchase rights, allowing a registered building to be purchased by a local council if the asset is under threat of long-term loss to the community.

### Recommendations

- **FUND Heritage Victoria to undertake an ongoing program to “enrich” the Victorian Heritage Register**
- **FUND the development and implementation of gap studies targeting types of heritage at risk: eg post-war heritage places, gardens, and places of social significance.**
- **BROADEN guidance on the protection of state and local heritage to provide greater clarity on how to assess and manage places of social significance.**
- **INVESTIGATE the introduction of a system to regulate the sale and development of “assets of community value” such as the system under the UK *Localism Act 2011*.**

## 2.5 Incentives and Penalties

### 2.5.1 Incentives for heritage conservation

Heritage places are protected through our planning system because they are valued by communities, and contribute to our sense of place and identity. Financial incentives for the care of heritage places provide a tangible demonstration that heritage is valued by communities, and contribute to greater support for heritage protection by property owners. They also have positive economic impacts for communities, creating employment for skilled tradespeople, and contributing to local economies.

Support for increased incentives for the care of heritage places was a strong theme in the National Trust and Australia ICOMOS Survey, where only 1% of respondents believed that current incentives to support the custodianship of heritage places are adequate.

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<sup>7</sup> <https://www.legislation.gov.uk/uksi/2012/2421/contents/made>

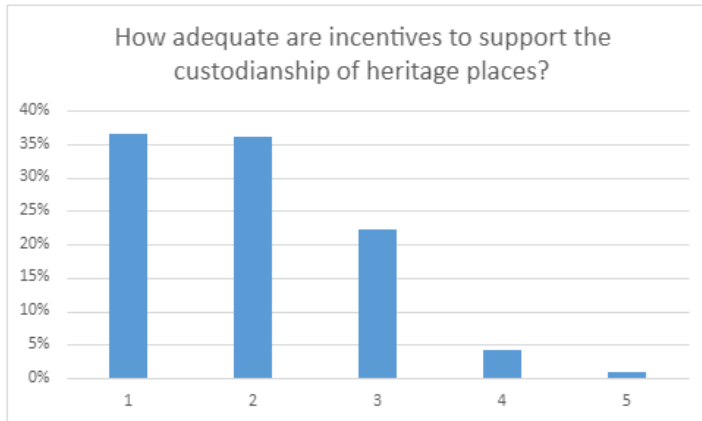


Figure 2: Results from 238 responses to the question “On a scale of 1 (inadequate) to 5 (adequate), how adequate are incentives to support the custodianship of heritage places?” National Trust and Australia ICOMOS Survey.

The State Government funded Living Heritage Grants Program initiated by Heritage Victoria in 2016 has demonstrated how investment in restoration leads to positive heritage, economic, and social outcomes, particularly for places at risk. However, this fund is confined to places included in the Victorian Heritage Register which are open to the public, excluding most privately owned places. At a local level financial incentives to support the conservation of heritage places is an effective but underutilised measure, with only one third of Councils in Victoria providing financial incentives such as grant programs, loans, and rate reduction.<sup>8</sup>

Another major limitation of current funding streams is that they only fund conservation works. The National Trust believes that there should be incentives for the adaptive re-use of heritage places and spaces, such as a funding stream for re-purposing heritage buildings and undertaking access works to make more heritage buildings accessible and viable, for example through creative uses. Artists in residence programs and rentable performance spaces are an excellent way of activating under-utilised heritage places in creative ways and providing ongoing use that protects the place into the future. It is evident however that substantial funding is needed from the outset to ensure these places are fit for purpose.

A more comprehensive program of incentives for the conservation of both state and local heritage places should be developed. This could be funded by a Heritage Lottery such as Lotterywest or the UK Heritage Lottery fund. The establishment of a Heritage Lottery has been raised by advocates for many years, and should be investigated as a matter of priority.

The National Trust has also been calling for funding to establish a “Revolving Fund” to save at-risk heritage properties from destruction. The concept of a Revolving Fund is a simple yet effective strategy available to make a difference to the conservation of heritage places within the real estate and development environment. The Revolving Fund establishes a mechanism to “save” places that would otherwise be sold, demolished, and redeveloped, with heritage places restored and on-sold with protective covenants or heritage agreements to sympathetic buyers, Revolving Funds for heritage places operated by not-for-profits exist in NSW and WA to deal with threatened places that are at risk of demolition, and failing due to market conditions.

<sup>8</sup> *State of Heritage Review: Local Heritage*, Heritage Council of Victoria, 2020, p33.

## Case Study: Victoria's Heritage Restoration Fund

An effective example of a program supporting local heritage restoration is the Victoria's Heritage Restoration Fund (VHRF), established in 2013 as a Committee of Management providing a program of restoration grants to local government Councils for heritage places in private or public ownership. The VHRF was formerly known as the Melbourne Heritage Restoration Fund, which has been successfully operating in Melbourne for over 30 years, and was developed in 1988. The VHRF is administered by the National Trust of Australia (Victoria). The VHRF is one of the few grant-giving bodies providing funding to private property owners focused on increasing social amenity through streetscape improvement.

Over the last three years the VHRF has partnered with four Councils—Melbourne City Council, Yarra City Council, Ballarat City Council and Casey City Council to deliver their grants programs for restoration projects to places included in the Heritage Overlay. A total of \$720,000 in grants funding has been awarded to over 60 projects, contributing to over \$2.5 million worth of conservation works to heritage properties across Victoria.

The eligibility criteria for each of the different Council funds vary slightly, but in general, a place must be located within a Heritage Overlay (either individually significant or contributory to a precinct) and the proposed works must relate to restoration/conservation works that are visible from the public realm and are not maintenance or structural repairs. The types of projects that are funded under the program include reinstatement of missing verandahs; paint removal to previously unpainted facades; decorative feature restoration such as ornate parapets; reinstatement of original windows; and fence reconstruction works.

The centralised management of the fund provides efficiencies and savings for Councils, as well as access to the National Trust's expert heritage conservation staff who administrate the fund. The VHRF Committee transparently and independently assesses applications and oversees the distribution of grants and works undertaken. There would be significant benefits in expanding this program to other councils across the state.

### Recommendations:

- **INCREASE funding for state and local heritage restoration and BROADEN eligibility criteria to support private owners, and works facilitating adaptive reuse and accessibility.**
- **INVESTIGATE the establishment of a Heritage Lottery fund to support an ongoing and sustainable stream of revenue for the conservation of state and local heritage places.**
- **SUPPORT the National Trust to establish a Revolving Fund to save at-risk properties from destruction.**

## 2.5.2 Penalties for the neglect or illegal demolition of heritage places

### Illegal demolition

While the illegal demolition of heritage places is relatively rare, it can be catastrophic, resulting in the total loss of a heritage place to the community. In recent years, penalties for the illegal demolition of heritage places under the *Planning and Environment Act, 1987* and the *Heritage Act 2017* have increased.

In part, this has been a response to the illegal demolition of the Carlton Inn (Corkman Irish Pub) in 2016, which exposed the inadequacy of penalties, as well as the difficulty of enforcing them.

Increased penalties for illegal demolition and the introduction of custodial sentences have been welcomed, along with provisions under the *Planning and Environment Amendment Bill 2021* to regulate the development of land on which a heritage building was unlawfully demolished or fallen into disrepair. The *Planning & Environment Act 1987* now gives local councils the power to enforce protection through the following amendments under section 6B:

*A planning scheme may make provision for the additional matters.... for any of the following purposes—*

- (a) To further the objectives of planning in Victoria within the area covered by the scheme*
- (b) To deter persons from unlawfully demolishing heritage buildings or allowing heritage buildings to fall into disrepair*
- (c) To prevent persons from obtaining a benefit from unlawfully demolishing heritage buildings or allowing heritage buildings to fall into disrepair*

And further;

- (a) To regulate or prohibit the development of land on which there is or was a heritage building that has been unlawfully demolished, in whole or in part, or fallen into disrepair; and*
- (b) To require that a permit must not be granted for the development of land on which there is or was a heritage building that has been unlawfully demolished, in whole or in part, or fallen into disrepair, unless the development is for or includes the reconstruction or reinstatement of the building, in whole or in part; or the repair of the building.*

However, these new provisions are yet to be tested. They also don't take into account the fact that reconstructing or reinstating a heritage building may not always be a viable or positive outcome in terms of good heritage practice, and may not recover the values that made that place significant.

### **Demolition by neglect**

A more common and insidious problem is demolition by neglect, defined as the destruction of a building through abandonment or lack of maintenance.

There are two key types of demolition by neglect. Deliberate neglect is defined as an owner who is deliberately not maintaining a building, or not securing a building, despite having the means to do so, with the aim of gaining a demolition permit. Inadvertent or accidental neglect is defined by an owner who is not intentionally neglecting their property for the purposes of redevelopment, but is failing to undertake regular maintenance, or in the case of vacant buildings, is failing to secure the property, due to financial reasons. This can be caused by absentee owners, elderly or ill owners, estate disputes, or a lack of financial resources.

With support of the Heritage Council of Victoria, in 2014 the National Trust convened an “industry lab” of planners, heritage experts and community advocates at Geelong Town Hall to discuss the issue of “demolition by neglect”, informed by the report “Demolition by Neglect—Report & Policy on places in the Heritage Overlay”<sup>9</sup>, prepared by Renae Muratore, 2013. This report provides sound recommendations for the management of this complex issue, but has not been broadly adopted.

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<sup>9</sup> Renee Muratore, [Demolition by Neglect—Report & Policy on places in the Heritage Overlay](#), prepared for the National Trust of Australia Victoria, 2013.

Demolition by neglect needs to be addressed at both the local level, under the *Planning and Environment Act 1987*, and at the state level, under the *Heritage Act 2017*, by enacting laws to allow the prosecution and penalisation of owners that do not maintain their heritage buildings, particularly when this can be demonstrated as being a deliberate attempt to gain a demolition or development permit.

At a state level, penalties for the neglect and destruction of places in the Victorian Heritage Register have been increased through the *Heritage Act 2017*, and Heritage Victoria has prepared a [compliance and enforcement strategy](#) to outline its approach to managing its compliance responsibilities under heritage legislation.

In Victoria, local Councils can enact Local Amenity Laws relating to derelict or dilapidated buildings. Such local laws have been passed in municipalities including Greater Geelong and Ballarat, to deal with demolition by neglect. Local Planning Schemes should be amended to include the discouragement of demolition through condition or integrity. Councils should undertake regular reviews to ensure the Heritage Overlay is comprehensive and up to date, and to identify properties at risk.

In 2021, new provisions to tackle demolition by neglect were added to section 6B of the *Planning & Environment Act 1987* (see above). In practice however, no guidance has been provided to Councils on how to implement these laws. Since the Act was amended, the National Trust has written to two large Councils regarding urgent issues of demolition by neglect requesting that they act on these new provisions, however both were unclear on how this could be achieved. Guidance must be developed by the State Government to assist local government authorities to address this widespread issue.

#### **Case study: Broadmeadows Shire Hall**

In December 2021, we were contacted by local residents with concerns about the condition of the Former Broadmeadows Shire Hall in Westmeadows, which dates to 1866 and is protected by a local heritage overlay. Earlier in December, VCAT granted a planning permit for the redevelopment of the site, requiring the retention and conservation of the heritage building. However local residents reported that the site was not adequately secured, and that the building had been vandalised. The National Trust wrote to Council expressing concerns about “demolition by neglect”, and they responded on 30 December stating that there were no grounds for enforcement action. Just hours later, the building was engulfed by a fire which is now being investigated by Victoria Police.<sup>10</sup> The National Trust does not suggest that owners of the property are responsible for the fire. However the issue highlights the ongoing challenges of addressing the issue of demolition by neglect.

#### **Recommendations:**

- **SUPPORT Councils to UNDERSTAND and IMPLEMENT recent amendments under 6B of the *Planning and Environment Act 1987*.**
- **EDUCATE property owners on the importance of maintaining heritage buildings in good repair, and the penalties for not doing so.**

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<sup>10</sup> [“Suspicious fire torches 150-year-old home set for hotel development”](#), *The Age*, 8 January 2022.

# 3.0 Heritage, Sustainability and Climate Change

## 3.1 Reuse, Retrofitting, and Restoration

The National Trust strongly supports the State Government's ambitious target to reduce the state's greenhouse gas emissions from 2005 levels by 28–33% by 2025 and 45–50% by 2030. In 2021, the National Trust launched its [inaugural Climate Action Plan](#)<sup>11</sup>, enabling us to contribute tangible and meaningful action to address the climate and biodiversity crisis. We know that the climate crisis is the single biggest and fastest growing threat to people and cultural heritage worldwide. We recognise that if new strategies to mitigate and adapt to these changes are not initiated and actioned immediately, these impacts will have an unprecedented and irreversible effect on our cultural heritage, our connection to place, and our way of life. We also know that utilisation, care and protection of cultural heritage places will play an important role in building climate change resilience.

While the development of strategies to achieve these emissions targets is underway through state government initiatives such as the *Draft Built Environment Climate Adaptation Change Adaptation Plan Plan 2022-26*, there seems to be little engagement with the potential for heritage conservation and adaptive reuse to contribute to climate change mitigation. Discussions about heritage in the context of climate change tend to focus on the risks that climate change pose to our heritage places, however there is also significant potential for heritage conservation and the adaptive-reuse of heritage or historic buildings to mitigate the impacts of climate change.

A ground breaking 2011 study by the US National Trust for Historic Preservation—*The Greenest Building: Quantifying the Value of Building Reuse*<sup>12</sup>—concluded that, when comparing buildings of equivalent size and function, building reuse almost always offers environmental savings over demolition and new construction. The study found that it takes between 10 to 80 years for a new building that is 30% more efficient than an average-performing existing building to overcome, through efficient operations, the negative climate change impacts related to the construction process, and that collectively, building reuse and retrofits substantially reduce climate change impacts. This is further supported by recent research undertaken by Historic England<sup>13</sup>, which found that when a typical historic building is refurbished and retrofitted, it will emit less carbon by 2050 than a new building.

Locally, [research](#) undertaken by architect Ruth Redden<sup>14</sup> explores the nexus between heritage conservation and sustainability in the Australian context, highlighting broad environmental benefits of

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<sup>11</sup> [Climate Action Plan 2021-2023](#), National Trust of Australia (Victoria), 2021.

<sup>12</sup> Preservation Green Lab, National Trust for Historic Preservation, [The Greenest Building: Quantifying the Environmental Value of Building Reuse](#), 2011.

<sup>13</sup> Historic England, [There's No Place Like Old Homes: Re-use and Recycle to Reduce Carbon](#), 2020.

<sup>14</sup> Ruth Redden, [Greening Historic Buildings: A study of Heritage Protection and Environmental Sustainability](#), International Specialised Skills Institute, 2014.

conserving historic buildings, and providing recommendations for the production of guidelines and resources to support the promotion of sustainable preservation.

Despite the potential for reuse, retrofitting, and restoration to provide both positive heritage and environmental outcomes, there are few incentives in place to encourage this. Indeed, the opposite is true—a culture of knock-down/re-build is being fostered by government policies which incentivise new construction, a process which has been accelerated as a result of the COVID-19 pandemic. This may provide short term economic benefits; however, it is unsustainable, and is resulting in long-term environmental impacts, and adding to the destruction of heritage places valued by communities.

Demolition is also encouraged by Federal Government legislation on foreign ownership. According to guidance provided by the Commonwealth Investment Review Board<sup>15</sup>, foreign persons are generally prohibited from purchasing established dwellings in Australia. The stated purpose of this policy is "to channel foreign investment into new dwellings, as opposed to established dwellings, as this creates additional jobs in the construction industry and helps support economic growth." However, in practice, it also results in the needless destruction of built heritage across our towns and suburbs.

A prominent example of the flaws of this policy is the demolition of "Idylwilde" at 16 St George's Road, a 1913 Queen Anne-style residence which had been overlooked for heritage protection by the City of Stonnington. Following their purchase of the property in 2013, the owners applied for a building permit to demolish the house, which proceeded in 2015. Sadly, the site remains vacant, and in 2021 the owners attempted to sell the land for a significant profit.

Another "loophole" which frequently results in the destruction of historic places without providing net positive planning outcomes is the ability for property owners to apply for building permits to demolish existing buildings prior to the lodgement or approval of a planning permit for a replacement building. This can lead to the destruction of significant places prior to the opportunity to introduce heritage controls (eg Idylwilde; Breedon House). State planning policy should be strengthened to ensure that existing buildings cannot be demolished in the absence of a planning permit for a replacement building.

*It should be compulsory for Councils to firstly look at adaptive reuse of buildings when any proposal for demolition is received. More emphasis to be placed on maximizing environmental effects on existing buildings and retention of embodied energy.—Robin Grow, Art Deco & Modernism Society of Australia, National Trust and Australia ICOMOS Survey*

#### Recommendations:

- **DEVELOP and IMPLEMENT policies and programs to incentivise the adaptive re-use, retrofitting, and restoration of heritage buildings and other historic building stock.**
- **INTEGRATE heritage into planning for climate change resilience and mitigation.**
- **ADVOCATE to the Commonwealth for the reform of foreign ownership laws to lift the prohibition on the purchase of established dwellings by foreign persons.**
- **REQUIRE property developers to have a planning permit prior to the issue of a building permit for the demolition of an existing building.**

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<sup>15</sup> [Foreign Investment Review Board Guidance 6: Residential Land, 2020.](#)

## 3.2 Protection of Significant Trees, Vegetation, and Landscapes

*The relationship between built form, landscaping, environmental attributes, trees and open space [must] be assessed and treated holistically. Protecting heritage goes hand in hand with understanding biodiversity and climate change.—Anonymous, National Trust and Australia ICOMOS Survey.*

While the Heritage Council's State of Heritage Review into local heritage was welcome, the scope of the project was limited, and did not provide analysis or recommendations for types of heritage which fall outside the Heritage Overlay control, such as protections for significant trees and landscapes under the Environmental Significance Overlay and Significant Landscape Overlay. Further work should be undertaken as a matter of priority to assess the effectiveness of these controls, the adequacy of guidance around their implementation, the adequacy of penalties for the illegal removal of significant trees and vegetation, and how the application of these controls can contribute to strategic aims such as climate change mitigation. Champions must also be identified within DELWP and other government agencies to support the consistent and effective implementation of these controls.

### 3.2.1 Significant trees and vegetation

Significant trees and vegetation contribute environmentally, socially, and economically across Victoria. It is well known that trees can mitigate the urban heat island effect and provide health benefits to the community, as well as create healthier ecosystems with a greater diversity of species.

No urban tree should be removed unnecessarily as we face the climate crisis. The environmental services that urban trees provide are essential to sustainable, viable and liveable cities, especially in cities that face warmer temperatures and lower rainfall.

The National Trust strongly supports the statutory protection of trees in both the public and private realms, and advocates for the protection of trees through the National Trusts of Australia Register of Significant Trees<sup>16</sup>, which includes over 20,000 trees in 1,200 locations in Victoria. The Register is steered by the Trust's Significant Tree Expert Advisory Committee, chaired by Dr Gregory Moore OAM.

While a number of Councils in Victoria protect significant trees under mechanisms such as local laws and registers of significant trees, there is a lack of consistency across the state in protections.

Planning Practice Note 7, Vegetation Protection in Urban Areas, provides guidance for the assessment and protection of significant vegetation in urban areas, however it has not been updated since 1999. This practice note should be reviewed as a matter of priority, in consultation with local government, experts, and communities. A program of professional development and promotion should also be provided to local government to encourage the implementation of policies for protecting significant vegetation.

Measures should be put in place to prevent development sites from being “moonscaped”, and encourage the retention of trees where possible. Planning policy should also require increases in canopy cover, and tree management policies which take the impacts of climate change into account.

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<sup>16</sup> <https://trusttrees.org.au/>



Councils should also be encouraged to consider significant trees and gardens in the preparation of local heritage studies, which tend to focus on built heritage. As discussed earlier in our submission, the Heritage Council's State of Heritage review found that trees and gardens were major gaps in heritage protection at the local level.<sup>17</sup>

### Impact of major infrastructure projects

In the urban context, one of the greatest threats to significant trees and vegetation is major infrastructure projects. In 2021, *The Age*<sup>18</sup> reported on the cumulative impact of the removal of trees across the city as a result of current infrastructure projects.

Despite proposed tree replacement and offset, the significant loss of trees at this scale, especially trees of 30-50 years, is unacceptable. The expected minimum time for replacement of amenity and heritage value to the community from advanced tree replacement works of this scale would be 20 years, in addition to the significant loss of carbon sequestered by mature trees removed.

The National Trust is also aware of the removal of mature trees to facilitate temporary construction and access. As a general principle, the National Trust opposes the removal of viable mature trees for temporary construction and access. All possible options should be explored to avoid the need for tree removal to be undertaken to facilitate temporary construction and access, noting that it would be many years before replacement plantings will provide the amenity and environmental benefits of mature trees.

State agencies rarely, if ever, put an economic value on the trees that they are about to remove. There are key factors regarding the value of trees to be considered in an urban environment, including amenity and shade provided by these trees, many of which are medium to long term viability trees, already providing such benefits. Our expert Significant Tree Committee advises us that the average amenity provided by urban trees would have an average monetary value of \$2000-\$5000 each, depending on age, size and condition with some worth much more. For a major project, this could equate to the removal of tree assets valued at tens of millions of dollars. This must be taken into account during early planning for projects. All planning and environmental effects assessment processes for infrastructure projects must also require an assessment of the cumulative impact of tree removals for all approved projects, so that the impact of individual projects is not considered in isolation.

#### Recommendations:

- **REVIEW the effectiveness of current vegetation protections to identify gaps and ADDRESS those gaps.**
- **REVIEW Planning Practice Note 7, Vegetation Protection in Urban Areas and EDUCATE Councils about its implementation.**

## 3.2.2 Protection of significant landscapes

Victoria contains some of the most beautiful natural and cultural landscapes in the world, but they are increasingly at risk from inappropriate development. Specific threats include poorly designed

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<sup>17</sup> *State of Heritage Review: Local Heritage*, Heritage Council of Victoria, p 19.

<sup>18</sup> Clay Lucas, "[Anger grows as thousands of trees axed in transport building blitz](#)", *The Age*, 3 January 2021.

infrastructure, intrusive buildings, subdivisions, loss of visually or ecologically significant vegetation, and plantings unsympathetic to heritage and landscape values. The National Trust has been working for more than 30 years to identify and record the important natural and cultural landscapes of the state. Ensuring that a complex range of values can be protected in broadacre landscapes is key, but challenging to achieve, particularly where multiple property owners are involved.

Significant landscapes can include both cultural and environmental features, and can be protected under the *Heritage Act 2017* and under the *Planning and Environment Act 1987* through the Significant Landscape Overlay.

Significant landscape protections are also being pursued through the government's Distinctive Areas and Landscapes program, facilitated by the *Planning and Environment Amendment (Distinctive Areas and Landscapes) Act 2018*.

While many Councils utilise the Significant Landscape Overlay as a planning tool, many overlays have not been updated to reflect changing values, conditions, and best practice for protection, as well as the emerging context of climate change. Further work needs to be undertaken to assess the effectiveness of current landscape protections and the adequacy of guidance material for assessment and management.

*2 Barkers Road, Flinders. Our understanding is that the Shire chose not to purchase this landlocked property because it deemed that it lacked significance. The land was purchased and the landholder insisted on right of access thorough some of the most diversely rich bushland on the Peninsula. An alternative existed but was not supported by DELWP. Result: net loss of significant landscape, flora and habitat on the Peninsula.—Anonymous, National Trust and Australia ICOMOS Survey*

**Recommendation:**

- **REVIEW the effectiveness of current landscape protections to identify gaps and ADDRESS those gaps.**

# Appendix A: Summary of Recommendations

Below is a summary of the National Trust of Australia Victoria's recommendations to the Inquiry, organised by the relevant Terms of Reference.

(2) environmental sustainability and vegetation protection;

- **DEVELOP and IMPLEMENT** policies and programs to incentivise the adaptive re-use, retrofitting, and restoration of heritage buildings and other historic building stock.
- **INTEGRATE** heritage into planning for climate change resilience and mitigation.
- **REQUIRE** property developers to have a planning permit prior to the issue of a building permit for the demolition of an existing building.
- **REVIEW** the effectiveness of current vegetation protections to identify gaps and **ADDRESS** those gaps.
- **REVIEW** Planning Practice Note 7, Vegetation Protection in Urban Areas and **EDUCATE** Councils about its implementation.
- **REVIEW** the effectiveness of current landscape protections to identify gaps and **ADDRESS** those gaps.

(3) delivering certainty and fairness in planning decisions for communities, including but not limited to

(a) mandatory height limits and minimum apartment sizes;

- **ALLOW** Councils to apply mandatory height controls to protect the best examples of heritage streetscapes and precincts.

(c) community concerns about VCAT appeal processes;

- **INCREASE** the number of VCAT members with heritage expertise.

(d) protecting third party appeal rights;

- **Immediately REPEAL** the Governor in Council direction exempting the Ministers for Education and Health from the provisions of the *Planning and Environment Act 1987*.
- **Appoint** an independent panel to undertake an **AUDIT** of all exemptions to notice and review under the *Planning & Environment Act 1987* to assess their efficacy, with a view to reinstating notice and review for all permit applications affecting heritage places.

(4) protecting heritage in Victoria, including but not limited to

(a) the adequacy of current criteria and processes for heritage protection;

- **ESTABLISH** a heritage planning unit within DELWP.

- Undertake a thorough **REVISION** of Planning Practice Note 1: Applying the Heritage Overlay, in consultation with the National Trust, Planning Panels Victoria, and other relevant stakeholders.
- **RESOURCE** and **IMPLEMENT** the recommendations of the VEAC Investigation into Historic Places outlined in the Historic Places Investigation Final Report, 2016.
- **PROVIDE** practical support to government agencies for the appropriate management of heritage assets.
- **IMPLEMENT** performance standards to hold government agencies to account for the management of heritage assets.
- **DEVELOP** clear guidance material on best practice for staging heritage and planning approvals.
- **FUND** Heritage Victoria to undertake an ongoing program to “enrich” the Victorian Heritage Register
- **FUND** the development and implementation of gap studies targeting types of heritage at risk: eg post-war heritage places, gardens, and places of social significance.
- **BROADEN** guidance on the protection of state and local heritage to provide greater clarity on how to assess and manage places of social significance.
- **INVESTIGATE** the introduction of a system to regulate the sale and development of “assets of community value” such as the system under the UK *Localism Act 2011*.
- **INCREASE** funding for state and local heritage restoration and **BROADEN** eligibility criteria to support private owners, and works facilitating adaptive reuse and accessibility.
- **INVESTIGATE** the establishment of a Heritage Lottery fund to support an ongoing and sustainable stream of revenue for the conservation of state and local heritage places.
- **SUPPORT** the National Trust to establish a Revolving Fund to save at-risk properties from destruction.

(b) possible federal involvement in heritage protection;

- **ADVOCATE** for increased funding for the protection and celebration of heritage at a Federal level, and increased Federal support for the states for the protection and celebration of World and National heritage places.
- **ADVOCATE** to the Commonwealth for the reform of foreign ownership laws to lift the prohibition on the purchase of established dwellings by foreign persons.

(c) separating heritage protection from the planning administration;

#### **NOT SUPPORTED**

(d) establishing a heritage tribunal to hear heritage appeals;

#### **NOT SUPPORTED (see 3(c) Community Concerns about VCAT)**

(e) the appointment of independent local and state heritage advisers;

- **REINSTATE** state government funding for local heritage studies and heritage advisors, to be coordinated by a dedicated heritage unit within DELWP.
- (f) the role of Councils in heritage protection;
- **RESOURCE** and **IMPLEMENT** the recommendations in the Heritage Council’s State of Heritage Review: Local Heritage, 2020
  - **REQUIRE** the Minister for Planning to apply Interim Heritage Overlays to places identified in independent heritage studies.
  - Hold Councils **ACCOUNTABLE** for the protection of heritage places as required under the *Planning & Environment Act 1987* to ensure significant places are protected and provide certainty to communities and property owners.
  - (g) penalties for illegal demolitions and tree removals;
  - **SUPPORT** Councils to **UNDERSTAND** and **IMPLEMENT** recent amendments under 6B of the *Planning and Environment Act 1987*.
  - **EDUCATE** property owners on the importance of maintaining heritage buildings in good repair, and the penalties for not doing so.