

**Submission  
No 156**

**INQUIRY INTO THE PROTECTIONS WITHIN THE VICTORIAN  
PLANNING FRAMEWORK**

**Organisation:** Glen Eira Historical Society Inc.

**Date Received:** 31 January 2022

## Parliamentary Inquiry - submission from Glen Eira Historical Society

Glen Eira Historical Society is a volunteer community group covering all the localities in the City of Glen Eira. Our purpose includes the preservation of the history of the municipality of Glen Eira with the built heritage being an invaluable part of that history.

In recent years we have participated in a number of planning-related heritage matters including (approximate dates):

- 2014 – as part of a community campaign, GEHS nominated the 1880s mansion *Frogmore* in Carnegie to Heritage Victoria and gained an interim protection order from Glen Eira Council before ultimately being unsuccessful in saving this heritage property from demolition.
- 2015 – GEHS nominated a set of William Dargie Murals to Heritage Victoria but was unsuccessful in 2018.
- 2016 – GEHS nominated the Caulfield Repatriation Hospital including the Former Red Cross Rest Home to Heritage Victoria. The Former Red Cross Rest Home was successful and added to the Victorian Heritage Register while the nomination for the Hospital was unsuccessful.
- 2020 – Amendment C190glen – Bentleigh and Carnegie Structure Plan areas (Commercial and Residential)
- 2021 – Amendment C214glen Post-war and Hidden Gems
- Currently – 10-16 Selwyn Street Elsternwick due at VCAT May 2022 for second time
- Currently – 430-434 Neerim Road Murrumbeena due at VCAT June 2022 for second time
- Currently – Amendment C204glen Elsternwick, Carnegie, Bentleigh

Our submission draws on our experience and learning as a small 100% volunteer community organisation in relation to the Inquiry's Terms of Reference part (3) and (4) for some but not all sub sections:

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

#### a) MANDATORY HEIGHT LIMITS AND MINIMUM APARTMENT SIZES

##### **Our comments:**

Heritage precincts and buildings are not served well by the lack of mandatory height limits. New developments are encouraged by discretionary height limits to continually push the limits. Developers, Councils and the community are left to operate in a state of uncertainty about outcomes with conflict, disagreement and expense inevitable. The current Minister for Planning has refused to make mandatory height limits for the major activity centres of Elsternwick, Bentleigh and Carnegie even when the community has strongly advocated to Council for these and Council has in turn sought these from the Minister. This situation has led to situations such as the 10-16 Selwyn Street Elsternwick Woolworths development where established heritage precincts and places are having to be repeatedly defended.

We consider that mandatory height limits have a role to play especially in relation to heritage places and precincts.

#### b) No comment

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### c) COMMUNITY CONCERNS ABOUT VCAT APPEAL PROCESSES

#### Our comments:

For lay persons, our experience is that it is a real challenge to become involved and actively participate effectively in VCAT Hearings. One thing we can confidently comment on is comparing the experience of face-to-face hearings to virtual hearings. Overall the virtual hearing is sometimes preferable for a community member. The virtual hearing streamlines the management of the documentation, provides a setting where everyone can hear what is going on regardless of where they are sitting and by simply being in the familiar home environment can make it more conducive to participating in the unfamiliar and testing VCAT Hearing process more efficiently and effectively.

### d) PROTECTING THIRD PARTY APPEAL RIGHTS

#### Our comments:

We most recently have experience regarding Caulfield Racecourse with Amendment C229glen being prepared and approved by the Minister for Planning as the planning authority all in one public gazetted decision. That this was underway at the request of the Melbourne Racing Club was not known to the local community yet it was announced on 24/12/2021 as a fait accompli without any opportunity to make submissions or object. This is regardless of the Racecourse being an important large piece of Crown Land and part of the Glen Eira history and heritage as well as place of employment and social activity since the 1850s. It was also in the face of another Amendment C227glen where the Glen Eira Council has been seeking local heritage protection for Caulfield Racecourse. It is impossible to know what the Minister has taken into account from the documentation available yet demolition of significant heritage elements started within a couple of weeks (heritage trees seen to be coming down on 18/1/2022). The Amendment does not include the detail of the Work Plans so the public has had no insight into what has been approved. In fact, despite the array of documentation on the DELWP website for this Amendment, detailed documentation supporting the decision and then elaborating on the detail of the decision (eg was the actual Conservation Management Plan for the Caulfield Racecourse by Lovell Chen stating it had State significance even considered?) is not available.

[https://www.planning.vic.gov.au/schemes-and-amendments/browse-amendments?query=C229glen&search\\_mode=id#Amendments--C229glen](https://www.planning.vic.gov.au/schemes-and-amendments/browse-amendments?query=C229glen&search_mode=id#Amendments--C229glen)

Our view is that this approach is antithetical to consistent and transparent decision making, overriding any third party appeal rights unfairly. Our example of the Caulfield Racecourse underlines all these concerns starkly.

### e) ROLE OF MINISTERIAL CALL-INS

#### Our comments:

Our experience of a Ministerial call-in relate to 7 Selwyn St Elsternwick, the new site for the Jewish Museum of Australia. This was unexpected and it was not easy to establish what was to happen, who could participate and what would be expected of community participants or if we could, in this instance, join late as a party. We were pleased to be allowed to speak to the Panel but the boundaries of when we could participate by asking questions of expert witnesses were unclear and ended up being difficult for other parties to gauge as well. This DELWP Panel appointed by the Minister to make recommendations to him certainly delivered a shorter process in the Hearing but we found that parties objecting to the development were constrained in their ability to present all submissions which we believe was detrimental to the Panel's recommendations and the ultimate decision by the Minister for Planning.

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Generally, Ministerial call-ins raise issues of consistency and transparency of decision-making plus there is less opportunity for community members to fully participate and be heard.

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

#### a) ADEQUACY OF CURRENT CRITERIA AND PROCESSES FOR HERITAGE PROTECTION

We consider that the current criteria and processes are probably satisfactory although they certainly are complex and voluminous. However, they are now a well-documented and practiced set of arrangements. What we do find enormous challenging to deal with is the uncertainty around Ministerial call-ins, Ministerial interventions contrary to policy and practice, and decisions such as Amendment C229glen where the Minister for Planning both prepares and approves an Amendment. Clearly there are issues of consistency and transparency of decision-making plus less opportunity for community members to fully participate and be heard when those actions are deployed.

#### b) No comment

#### c) SEPARATING HERITAGE PROTECTION FROM PLANNING ADMINISTRATION

##### **Our comments:**

Currently, the setting of heritage protection is via an existing separate process, at least in theory, with planning then needing to take into account all aspects including heritage for a specific development. It would be onerous for all concerned if local heritage were to have its own separate process for approval of a development. (It is workable for State Heritage simply as there are fewer numbers of these given it is dealing with heritage places and precincts of more significance.)

However, with Amendment C204glen and its antecedents C196glen and C202glen for Elsternwick, the Minister for Planning has intervened in the accepted policy and legislative-based approach to determining heritage. This is explained well in the Glen Eira Council's Part A Submission to the Panel Hearing for C204glen (attached) but in essence this quote from that Submission from DELWP at para 26 when authorising the advertising of this Amendment outlines DELWP's / the Minister's approach:

*At this stage it is not considered appropriate to apply the Heritage Overlay more extensively in Elsternwick given that Council has yet to seek authorisation for a planning scheme amendment to implement the Elsternwick Structure Plan. Doing so could by default lead to heritage controls becoming the primary driver for development outcomes within the Elsternwick Activity Centre. Wider application of the Heritage Overlay in Elsternwick needs to be considered in the context of implementation of the Elsternwick Structure Plan. Council may consider seeking further heritage controls in conjunction with a future request for authorisation to prepare and exhibit permanent controls to implement the Structure Plan. In the meantime, Amendments C196 and C202 applies the Heritage Overlay on an interim basis to a more limited number of individually significant places and small precincts experiencing development pressure.*

When Amendment C204glen was considered by the Panel in the report of 10/12/2021, discussion at p6 of 37 addressed this unusual approach in the above authorisation:

*The Amendment does not include all recommendations of the Heritage Study, resulting in subsequential*

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*consequences outlined in Chapter 5.4. The Panel is curious why the authorisation condition excluded properties subject to the Elsternwick Structure Plan area until the Elsternwick Structure Plan process. This is inconsistent with:*

- *DELWP's Planning Practice Note 1 criteria for assessing heritage significance and applying the Heritage Overlay*
- *Planning Practice Notes 58 and 60 which envisage heritage in an activity centre – applying the Heritage Overlay ahead of the structure planning would enable a more informed and transparent process*
- *long held views by Planning Panels and councils that urban consolidation and development opportunities are not relevant when considering whether the Heritage Overlay should be applied*
- *outcomes in Melbourne's Central City and activity centres where significant development and ongoing structure planning have occurred on land with the Heritage Overlay.*

*The Heritage Overlay specifies permit triggers to enable Council to assess the impact of future development. Unlike the Design and Development Overlay, it does not include restrictive building heights, setbacks and other built form restrictions. It is unclear how applying the Heritage Overlay ahead of structure planning could result in "heritage controls becoming the primary driver for development outcomes within the Elsternwick Activity Centre".*

*The PE Act and Planning Scheme seek to balance conflicting objectives in favour of net community benefit and require an assessment of the Amendment's social and economic effects on community. Other than bushfire provisions, the Victoria Planning Provisions do not prioritise certain policy objectives over another. Applying the Heritage Overlay to the Elsternwick Activity Centre would have ensured that identified heritage is considered within the suite of existing provisions and policy relevant to the centre.*

*Like the Bushfire Management and Flood Overlays, the Heritage Overlay is recommended for properties that have been comprehensively researched through a multi-phase forensic methodology. The Heritage Overlay:*

- *should not be 'traded-off' during the planning scheme amendment stage against other policy objectives*
- *should be applied if it is supported through comprehensive research and evidence and found to achieve local heritage significance.*

*Competing policy objectives may be more relevant during the permit application process when a development proposal can be assessed against the full suite of policy objectives, including heritage.*

*The Amendment was exhibited without the Elsternwick South and Elsternwick North precincts, therefore for procedural reasons, they cannot be considered through the Amendment. This has not affected the integrity of Council's approach and process for the properties remaining in the Amendment.*

We ask the Inquiry to consider in its deliberations this intervention by DELWP / the Minister for Planning and its perverse outcomes including:

- 1) the large number of properties and precincts assessed as worthy of local heritage protection via a very credible heritage review process in Elsternwick which are now unprotected by any interim heritage controls with a long way to go for any permanent heritage protection to be achieved
- 2) the recommendation of the Panel regarding 3 properties at risk of demolition (as notified by DELWP in the above authorisation and consequently given interim heritage protection) to be included in the C204 Amendment now likely to be disregarded by Council when it considers adopting the Panel's recommendations in part only at the Glen Eira Council meeting of 1/2/2022, rendering those properties liable to prompt demolition (Council officers have recommended these 3 be excluded from the Amendment.)

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3) a relatively small but important detail in the complicated Amendment C196/C202/C204 process which was to correct a mapping error in the Glen Eira Planning Scheme for HO59 Glenmoore (*all* the grounds and mansion are significant) has been lost along the way and is now at issue and material once again in the second VCAT Hearing for 10-16 Selwyn Street Elsternwick (Woolworths proposal). Please note we have been advised by Glen Eira Council that there is no quick and easy way to remedy such an issue in the Planning Scheme other than inclusion in a Planning Amendment.

d) No comment

e) **APPOINTMENT OF INDEPENDENT LOCAL AND STATE HERITAGE ADVISERS**

### **Our comments:**

We support this being considered in line with the findings and recommendations from the report *State of Heritage Review – Local Heritage 2020* by the Heritage Council of Victoria which examined similar issues (<https://heritagecouncil.vic.gov.au/research-projects/the-state-of-heritage-review-local-heritage/>).

p2 **Executive Summary** – one of the findings:

*There is a need for increased direction from the State Government to better enable councils to both understand and effectively comply with their responsibilities to identify and protect local heritage. In particular, participants noted that:*

- *there is no-one to speak to for consistent direction regarding their obligations for protecting and managing local heritage or for advice on how to best protect and manage their local heritage*
- *existing guidance material to support efficient best-practice local heritage management and protection is often out of date, hard to find and doesn't include information required in today's more complex planning environment*
- *council planners often operate in isolation with no prior background in heritage and struggle to know what best practice is, where to find the right information/guidance and how to assess the quality of the advice they receive from consultants.*

p2 **Executive Summary** – the major recommendation:

*The report recommends one major strategic initiative: revitalisation of the State's role in providing leadership in the protection and management of local heritage. This initiative is supported by three principal pillars:*

- *the establishment of dedicated local heritage roles within DELWP Planning to provide necessary focused leadership and direction*
- *the creation and maintenance of a centralised, up-to-date repository of clear and consistent guidance material*
- *direct support and assistance to ensure base-level heritage studies are completed and translated into the planning scheme.*

*This initiative is outside of the Heritage Council's ability to deliver and will require support from the Minister for Planning and agreement from DELWP Planning to implement. However, the initiative will best ensure long-term solutions to the identified problems and reinforce the strengths of the current system.*

f) **ROLE OF COUNCILS IN HERITAGE PROTECTION**

### **Our comments:**

The *State of Heritage Review – Local Heritage 2020* by the Heritage Council of Victoria is again useful in its findings and recommendations. Please see above plus:

p2 **Executive Summary** – one of the findings:

- *Local heritage is not always a primary consideration or priority within councils, often being seen as something 'extra' to the core components of planning.*

p2 **Executive Summary** – extracted from the eight recommended smaller initiatives/practical improvements:

- *creation of a 'Heritage 101' information pack for councils and the public*

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- *creation of a 'Heritage 101' induction pack for new councillors*
- *expansion of the local government heritage forum*

GEHS considers that Councils must play a key role in heritage protection as they are one of the fundamental democratic institutions and means by which the community at large is able to have a voice. In our experience, people in the community do have strong views about heritage (favourable and unfavourable) and want to have the opportunity to be heard in the decision-making process at all levels of government. While the role undertaken by Councils needs to be in a state of continuous improvement, it is essential that local government and local people continue to be part of the decision-making process for heritage. Again, this is about striving for consistency and transparency of top quality decision-making.

### g) PENALTIES FOR ILLEGAL DEMOLITIONS AND TREE REMOVALS

#### Our comments:

Again, the *State of Heritage Review – Local Heritage 2020* by the Heritage Council of Victoria has included the topic of demolition in its findings and recommendations:

p2 **Executive Summary** – extracted from the eight recommended smaller initiatives/practical improvements:

- *development of a 'demolition by neglect' model local law*
- *facilitation of discussions to clarify demolition application processes*

Our experience with unsuccessfully advocating for heritage protection for the 1880s mansion *Frogmore* in Carnegie back around 2014 showed that when an owner is intent on demolition, it is very simple to leave a property without any safeguards to its physical integrity. We know of at least one other local heritage mansion which currently gives every impression of having been abandoned apart from a locked gate and security signage – it is easy to gain access. In seeking remedies from Council, we have been told that there is nothing they can do. Like others in other municipalities, we consider that this needs urgent action.

We have also found that it is almost impossible for the local community to know when demolition is approved until the demolition work has started – Caulfield Racecourse being the most recent example of this.

Part (5) – no comment

### Part (6) - ANY OTHER MATTER THE COMMITTEE CONSIDERS RELEVANT

#### Our comments:

For your consideration, GEHS has asked Glen Eira Council both directly and indirectly through heritage Planning Panel hearings to take up the relevant broad issues raised by many objectors to many heritage Amendments via examining and acting on the Findings and Recommendations of the *State of Heritage Review – Local Heritage 2020* report. We consider that this also needs to be done by the State Government. The Report recommends that:

p2 **Executive Summary** – second last paragraph:

*These initiatives are to be led by the Heritage Council, in partnership with DELWP, the National Trust, MAV and representatives from local councils.*

There is a clear way forward with key expert organisations, stakeholders and government.

Anne Kilpatrick (Vice President)

Glen Eira Historical Society