

**Submission  
No 177**

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

**Organisation:** Friends of Royal Exhibition Building and Carlton Gardens (FREBCG)

**Date Received:** 31 January 2022

## Submission to Parliamentary Inquiry on the Planning and Environment Act and the Victorian Planning Frameworks, by Environment and Planning Committee, by Friends of Royal Exhibition Building and Carlton Gardens (FREBCG), January 31, 2022

### Executive Summary

The FREBCG are pleased that Parliament is holding the Inquiry. The Inquiry report is to be tabled in Parliament by June 2022. The time frame puts obvious constraints on the Inquiry process and will impose a structure to the report that will necessarily target priorities and recommend future work.

### Scope of submission

Submission is limited to TOR (4) *protecting heritage in Victoria*, and

- as well as heritage, our particular focus is on **World Heritage**; as it is valued, conserved and protected by Victoria's policies, legislation, the administration and decisions of statutory authorities and the consequential outcomes for the future of our heritage.

Victoria has 2 WH sites. Only 4 of Australia's sites are categorised as WH cultural sites and 2 are in Victoria; the Royal Exhibition Building and Carlton Gardens and the Budj Bim Cultural Landscape.

The scope of submission is on the Royal Exhibition Building and Carlton Gardens and the contributing WH Buffer Zone. Examining planning laws for this site should have parallels for Budj Bim.

Four levels of laws apply to World Heritage: the international, federal, state and local. The international, the Charter, triggers the EPBC Act which in turn, **triggers the Victorian state and local laws, strategic and statutory**. There are failings at each level, and many in evidence in Victoria's WH planning frameworks: See 1. *Governance*, pages 7-11 of this submission. Why say that?

- To our knowledge there have been only a handful of referrals to federal Minister, under the EPBC Act for development, in the site or Buffer Zone, in the 17 years since citation. Why?
- Developments in the southern Buffer Zone and adjacent, have built a wall of skyscrapers around the WH site changing the aspects and views to and from the REB. The Shangri La hotel complex being built to 64 storeys, was not referred to the federal Minister. Why?
  - Two recent developments in the Yarra Buffer Zone were referred to Minister after extensive community lobbying and local federal member representations, are included as case examples on pages 11-18.
- Has there been no responsible person, or authority, in Victoria's state or local planning, or at any of the levels of governance, to ensure compliance with the Act's requirements? It has been as if the EPBC Act, the WHMP and the Strategy Plan do not apply.
  - How can that be? Are the wrong people responsible for WH and for planning and heritage?
  - We say the wrong authorities are currently responsible for WH and also heritage and have recommended changes.

### Community Perspective

In 2013, UNESCO adopted its 5<sup>th</sup> Strategic Objective that recognised community at the heart of protecting the futures of WH sites. FREBCG, itself is an informal group of representatives from the community associations, that arose when locals decided our World Heritage needed additional attention. For over 50 years, the community associations, have been advocating for planning and heritage and people's welfare.

There are now extensive community networks across Melbourne, and coalitions for Cities of Yarra and Melbourne. Communities build strength into submissions by sharing expertise and experience.

### Present Context: Reviews on World Heritage

Being World Heritage does not, convey inherent access to conservation and protection that attributions of Outstanding Universal Values might warrant or even require through Charter obligation and our World Heritage related laws. The reality is to the contrary, and in Victoria.

Why? World Heritage, as with local heritage, is ensnared in competition, with public policy economic priorities that are driven through embedded public and private institutions and powerful vested interests that command cohorts of experts and funding. The competition is systemically unequal despite recognition of the economic value of tourism to the economy and that includes the value to the Australian economy. And that is notwithstanding the intrinsic values of cultural heritage that tells the stories and binds its citizens.

Currently, the WH Management Plan is being reviewed, over 2020-2022. It is the first review since the 2004 citation, much needed and long overdue. **The review of the WHEA Strategy Plan (the Buffer Zone) has identified failings and gaps in the WHEA Strategy Plan. These failings in the policy, legislation and statutory controls, degrade the WH values largely by impacts from developments.**

Review is managed by Heritage Victoria and flow chart of review is outlined in page 9.

- The considerable current, expert evidence from the review is readily accessible to the Inquiry and should greatly assist Inquiry applying its own expertise to their recommendations.
- Key expert witnesses would be Executive Director, Heritage Victoria; Heritage Council Chair and Committee for the strategy plan, Hansen Partnerships, who prepared the evidence in the 2020 discussion paper; responsible heritage and planning officers in Cities of Yarra and Melbourne; CEO of Museum Victoria, the custodian of the REB/Reserve; National Trust, Victoria; Chair and Members of the Royal Historical Society, Heritage Committee.
- Witnesses having a federal perspective would of course be helpful.

### Structure of submission

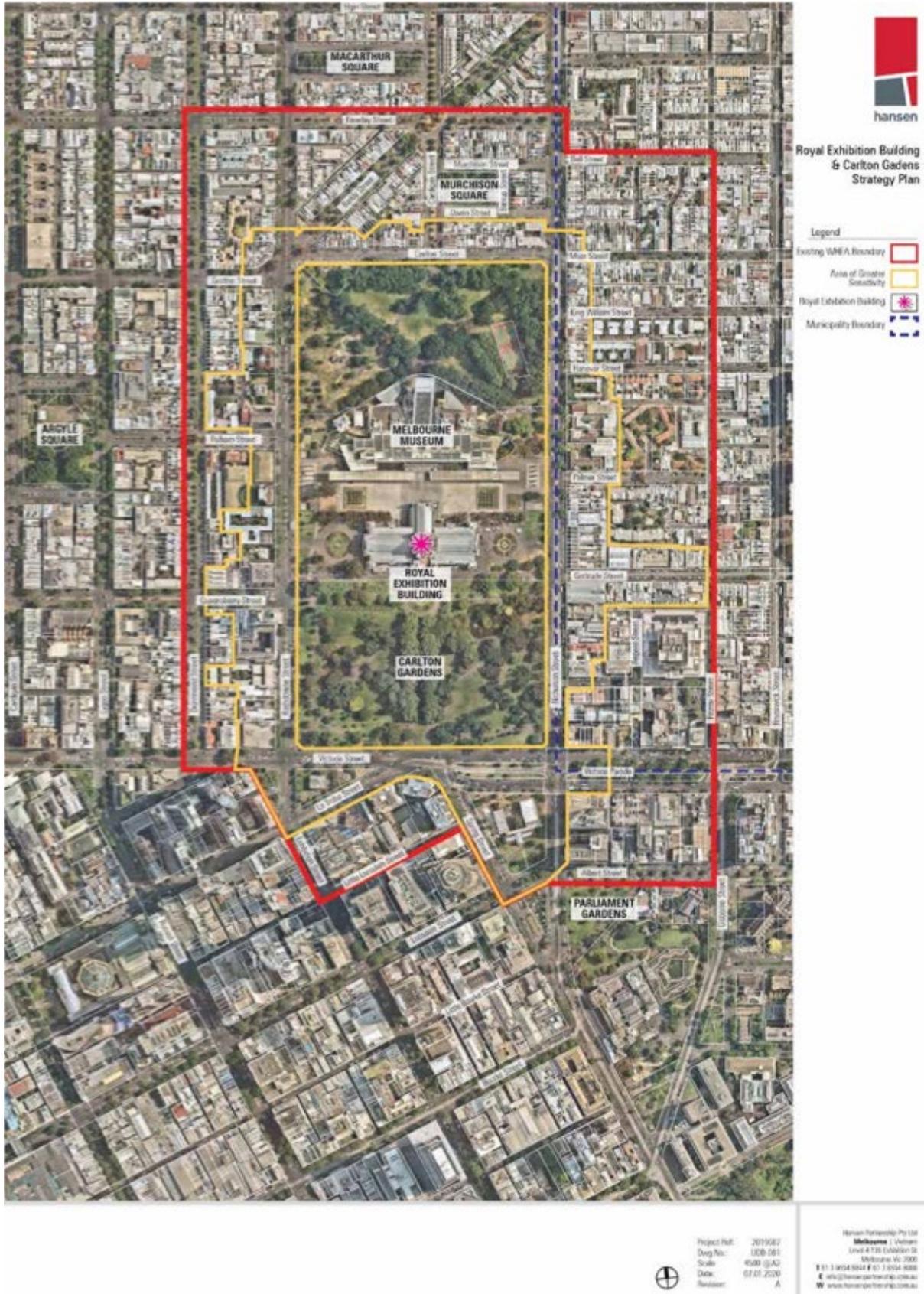
Our aim is to provide the Inquiry evidence-based information to support our position, by largely relying on recent relevant planning actions and decisions made. Our submission will:

- build the case for changes in the governance of the WHMP and that will include,
- evidence of deficiencies in planning, management and reporting, and decisions that threaten WH values of the Site and Buffer Zone.
- By citing case examples on decisions on proposals for developments, demonstrate the ways current laws are being applied. And using those examples,
- also raise the questions of WH being subsumed and devalued, in the same way as, is local heritage, by the dominance of the planning and development culture at both council and state levels.

Make recommendations for changes hoping the outcome will decouple decisions on WH Site and Buffer Zone actions and development from escalating threats of impacts from development. If our WH isn't valued what hope all our other heritage?

The evidence of systemic failings in our present planning and heritage framework, is everywhere across the city and suburbs. Notwithstanding the escalating impacts of climate change and the demand for new directions in the way we live arising from the pandemic, there seems little interest from our political leadership, to change directions in public policy: Perchance, this Inquiry might generate parliament's and the public's interest, that might lead to the prospect of serious action in the next parliament.

**Priority Changes sought from the Inquiry are to separate planning for heritage and the embedded influences of vested interests that effectively dominate the current processes and decision making of statutory authorities and compromise their independence.** WH needs an independent authority: The REB and Gardens had a Trust, by virtue of its cultural heritage significance and iconic status before it was WH. In 1996 the Museum Victoria assumed responsibility. What happened for the REB and Gardens to fall from grace locally but be elevated internationally? And now, it seems, those that should care, don't.



The World Heritage REB and Carlton Gardens and surrounding Buffer Zone - Buffer Zone shown in red and precinct in yellow.

## Submission to Parliamentary Inquiry on the Planning and Environment Act and the Victorian Planning Frameworks, by Environment and Planning Committee, by Friends of Royal Exhibition Building and Carlton Gardens (FREBCG), January 31, 2022

### Preamble

The FREBCG are pleased that Parliament is holding the Inquiry. We know the Inquiry report is to be tabled in Parliament by June 2022. That time frame puts obvious constraints on the Inquiry process and will necessarily shape the structure and recommendations of the report. How will the Committee best use its time? How can submitters best contribute to get maximum productivity from Inquiry and get maximum long-term benefits for our future.

The Inquiry has been long needed. The Terms of reference (TOR) are all laudable. They are so broad as to give the interested public, opportunity to submit on broad range of planning and environment policy and frameworks, the statutory authorities, management and decision-making and outcomes, from a public interest perspective.

However potential to contribute and reality, greatly differ because of resource constraints. The FREBCG have necessarily limited their submission to TOR (4) *protecting heritage in Victoria* and within heritage, to focusing on World Heritage, as it is valued, conserved, and protected by Victoria's policies, legislation, the management and decisions of statutory authorities and the consequential outcomes for the future of our heritage values. Many people in our communities have contributed to the submissions on the WHMP Reviews currently underway, over the past 2 years, some directly others indirectly. The shared knowledge and experiences behind the heritage and planning activism, is itself, history. The advocacy for our local heritage, in this case, World Heritage, reaches back many years. There are people in our community with personal stories of the 1970's and the activism that led to the forming of the Fitzroy and Carlton Resident's Associations and the first Victoria heritage act in 1974 and also Aboriginals Lands Act indigenous in 1970. The World Heritage Convention, itself was adopted by the UNESCO in 1972. In 1974, Australia, led by Barry Jones, then a state and from 1977 federal parliamentarian and Minister, was one of the first member countries. In 2013, UNESCO adopted its 5<sup>th</sup> strategic objective that recognised community at the heart of protecting the futures of WH sites.

The active community knows what it means to learn more of the layers of the history and what it means to inherit the legacy that requires active advocacy to pass on heritage to the future. FREBCG, itself is an informal group of representatives from the community associations that arose when locals decided our World Heritage needed additional attention.

But being World Heritage does not, by itself, convey inherent access to conservation and protection that attributions of Outstanding Universal Values might warrant or even require through Charter obligation and our World Heritage related laws. World Heritage, as with local heritage, is ensnared in competition, with public policy economic priorities that are driven through embedded public and private institutions and powerful vested interests that command cohorts of experts and funding. The competition is systemically unequal despite recognition of the economic value of tourism to the economy and that includes the value to the Australian economy.

The UN World Tourism Organisation estimated the 2019 economic contribution of tourism measured in direct GDP, at US\$3.5 trillion, and post pandemic 2021 at US\$1.9 trillion. Sustainability and sustainable tourism are the UNWTO's priority. Tourism Australia reported 2019 GDP from tourism at A\$62 billion and still A\$32 billion in 2021. However, judgement is out, on whether it was the threat by UNESCO of WH Great Barrier Reef (GBR) being placed on the WH endangered list, or the 2022

election, that caused the Australian Prime Minister's announcement 2 days ago, of \$1 billion over 9 years to the GBR.

And the FREBCG is mindful that our local and low profile WH REB and Carlton Gardens' largest and one-off funding was \$20 million from the federal 2011-12 budget, for the Protection and Promotion Project. Is not that, poor record, another demonstration of low heritage priorities in public policy and planning decision-making, even for WH, where exemplary protections are expected and loss to Outstanding Universal Values are the cost?

World Heritage has 4 levels of laws applying: the international, federal, state and local. The international, the Charter, triggers the EPBC Act which in turn, triggers the Victorian state and local laws, strategic and statutory. Our September submissions dealt with the failings at each level. No level can be ignored because of the consequential impact on the other levels. *1. Governance*, pages 3-7 of this submission raises additional matters. We ask the Inquiry to, itself, review the present functioning, and relationships at each level; to draw its conclusions and make recommendations. If all levels of interconnecting laws are not addressed, failings and gaps will persist because of the systemic weaknesses in Australia's and Victoria's and the local planning and heritage laws.

When considering the WHMP's review assessments and draft Strategy Plan, the Committee will apply its own expertise to its recommendations for change, to the Minister. The FREBCG knows the Inquiry will generate opposing views. The submissions will have good intent, but perhaps some opposition will come from those with current authorities and current responsibility they want to retain. Other opposition will be from private or public organisations with development interests who will also resist losing or a reduction in, their access to development. However, the very purposes of a WH Citation, the Charter and the WH related laws, are to set WH above, to insulate from actions and developments, that will have significant impacts on WH values. WH Policy and Planning decisions should be exemplary. *The music stops with WH.*

The WHEA review and reports have evidence-based assessment of failures and gaps. These must be fixed. The FREBCG look to the Inquiry and the Heritage Council, advising the Minister on the strategy plan, for decisions that will change the laws, the governance and framework to improve the future of our WH Site and Buffer Zone.

## Structure of this Submission

In large part, **this submission parallels that made for the Heritage Council on the WHEA strategy plan.** Council public hearings are in March. Submissions to the Council are public documents. They should be a useful source of information: They include much well research extensive analysis, and evidence-based recommendations for wide ranging improvements

Our aim is to provide the Inquiry with information to support our position and to bring information for Inquiry's 's consideration on recent relevant planning actions and decisions made. Our submission will:

- Add information to build the case for changes in the governance of the WHMP and that will include,
- evidence of deficiencies in planning, management and reporting, and decisions that threaten WH values of the Site and Buffer Zone.
- By citing case examples on decisions on proposals for developments, demonstrate the ways current laws are being applied. And using those examples,
- also raise the questions of WH being subsumed and devalued, in the same way as, is local heritage, by the dominance of the planning and development culture at both council and state levels.
- Make recommendations for additional changes hoping the outcome will decouple decisions on WH Site and Buffer Zone actions and development from escalating threats of impacts from development.

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## 1. Governance - Highest Priority for change

If governance changed to an independent authority, current failings and gaps would be resolved. If the governance is not changed, the WHEA Strategy Plan will continue to fail as it has since the 2004 citation. Fragmented authorities have not worked and will not work. The questions asked as to,

*Why does not our WH REB and CG and Buffer zone have a single central authority as is the norm for Australia's other WH sites?*

have never been answered. Neither is there evidence as to whether that question has been asked.

The consequence has been business as usual for the respective authorities and that includes the Heritage Victoria. And this attitude extended to the application of the EPBC Act responsibilities. As already discussed, referrals for proposed developments in the Buffer Zone were not made until the recent two developments. And referrals for proposals in the WH site were also infrequent.

The Inquiry might ask the responsible authorities, why so few referrals have been made over 17 years. Inquiry can recommend a review of planning records. The EPBC Act states, a referral is required under the federal *Environment and Protection Biodiversity Conservation Act*, Chapter 4, Part 7. Specifically,

- 68 Referral by person proposing to take action
  - (1) A person proposing to take an action that the person thinks may be or is a controlled action refer the proposal to the Minister for the Minister's decision whether or not the action is a controlled action.
  - (2) A person proposing to take an action that the person thinks is not a controlled action may refer the proposal to the Minister for the Minister's decision whether or not the action is a controlled action.
  - (3) In a referral under this section, the person must state whether or not the person thinks the action the person proposes to take is a controlled action.

Moreover, if a state minister or authority know of a development not referred, then the authority might refer the development. To our knowledge such referrals have not occurred. Why?

Mindful of imperative for improvements, FREBCG recommend a two staged process of change. – *To buffer, the Buffer* - The first stage would increase the powers under the Heritage Act. Stage two would arise from recommendations to review and report on best ways to establish a single independent authority for WH REB and CG, including Buffer zone. In stage one,

- Heritage Victoria to be referral authority for World Heritage site and the Buffer Zone and for other proposed actions that might pose a significant impact on World Heritage Values. The referral authority is for all statutory planning actions proposed for properties, public and private.
- Similarly, Heritage Council to have explicit responsibilities for WH policy. That is the Heritage Council advise the Minister on World Heritage matters relating to the Victorian Planning Framework and the Victoria Planning Policy. The chart below of the WHMP review process and responsibilities for different components of the WHMP demonstrate the fragmentation of the authority and fragmentation of the management of the WH site and buffer zone and related views.

IN preparations for and following WH citation, very little changed in practices and decision-making and that included involvement of the federal Minister under the EPBC Act. As far as FREBCG know, interventions by the federal minister under EPBC Act limited to

- referral for the REB in 2016 for the Protection and Promotion Project,
- referral for St Vincent's/Aikenhead development in buffer zone in 2021, and
- referral for 1-9 Gertrude St, Fitzroy development in buffer zone in 2021.

### 1.1 Heritage Victoria as Referral authority

The FREBCG's position is that Heritage Victoria should be a referral authority, for the WH buffer zone, including public works, and that authority should extend to the WH site. This would be the first of a two-step change to an independent statutory authority for the REB and Carlton Gardens World Heritage site and sensibly to include other WH and National Heritage sites in Victoria. The authority would mirror the roles and responsibilities of the federal Environment Protection and Biodiversity Conservation Act (EPBC).

- Heritage Victoria has no more authority for WH than it does for any other heritage in Victoria.
- That means HV only has responsibility for VHR and even there its role is routinely devalued by the processes and decision making under the P and E Act.

Below is chart on the current WHMP review. It will take over 3 years, have 6 different documents prepared by 6 different responsible parties. The disconnections are obvious. Referral authority refs.

[https://www.planning.vic.gov.au/\\_data/assets/pdf\\_file/0021/97311/PPN54-Referral-and-Notice-Provisions\\_June-2015.pdf](https://www.planning.vic.gov.au/_data/assets/pdf_file/0021/97311/PPN54-Referral-and-Notice-Provisions_June-2015.pdf)

### 1.2 Heritage Council with increased Policy role

The justifications and evidence that is presented to support the draft, come from the EPBC Act, and then passed on into the state and local laws, to conserve and protect the Outstanding Universal Values (OUV) of the site by protecting and conserving the contribution of the Buffer zone. Policy Guidelines 1.1 in the EPBC Act.

- Under Heritage Act 11(1) the Heritage Council has powers to adopt and forward to minister Plans and amendments for the WHEA strategy plan.
- If the committee questions its powers to also consider the governance of the WH site, under 11(1) it has 11 (1) (a), 11 (2) and 14 (1) (c).

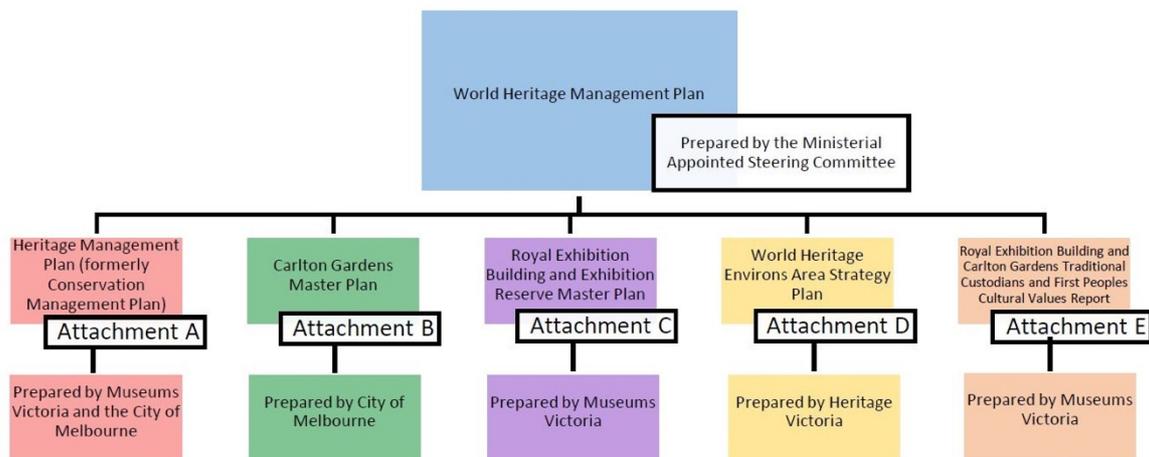
The policies and laws, the statements on heritage significance, and the appropriate uses for the site, are covered in the WH HMP new draft 2020. It follows, the WHEA Strategy Plan draft being considered by the Council Committee, must reference the HMP for the UNESCO obligations and the laws intended to conserve and protect the OUVs. In turn, the research, analysis and recommendations in the draft Strategy Plan must use HMP as reference. In resolving the current failings that are structural, it is impossible to separate the site from the Buffer Zone; the HMP from the WHEA Strategy Plan.

**Conclusion:** Simply stated; the **responsibility for WH policy must rest somewhere**. For most WH sites there is a separate statutory authority. The FREBCG supports such an authority. Presently, for the WH REB and Carlton Gardens, policy is spread over various authorities and open to the vagaries of each of these authorities.

**Recommendation:** As an interim measure, the recommended alternative is the Heritage Council. The HC advise Minister of the need for a review of governance for the strategy plan along the lines of a independent single authority such as a *Trust*. The FREBCG also notes that in 2020, the community wrote to HC Chair, Jenny Moles, on governance matters. Ms Moles recommended the community include the governance matters in HC submissions.

### 1.3 Current World Heritage Management frameworks and accountabilities

The WHMP review will take 3 years. In large part that time is a consequence of the WH site and Buffer Zone being a transfer of planning and management from previous arrangements and with the strategy plan and the amendments following on in 2009, and the WHMP in 2013



For practical purposes the only centralised administrative party is the WH Steering Committee. Below is excerpt from the Heritage Act 2017 covering the Committee’s responsibilities.

**Heritage Act 2017 No. 7 of 2017**  
**Part 9—World Heritage**

**181 Steering Committees for listed places**

1. (1) The Minister must appoint a Steering Committee for each listed place.
2. (2) The Steering Committee for a listed place consists of—
  1. (a) the Executive Director who is the Chairperson; and
  2. (b) if the listed place is Crown land or land vested in a Minister or public authority, any persons who are responsible for the management of the listed place and who are appointed by the Minister; and
  3. (c) in the case of any listed place on other land, any person who is the owner or occupier or is concerned in the management of the listed place and who is appointed by the Minister; and
  4. (d) any other persons that the Minister considers appropriate.
3. (3) A quorum of a Steering Committee is constituted by a majority of its members.
4. (4) Subject to this Part, a Steering Committee may regulate its own proceedings.

• **182 Functions of Steering Committees**

The functions of the Steering Committee for a listed place are—

1. (a) to prepare a World Heritage Management Plan for the listed place; and

2. (b) to assist in the implementation of an Approved World Heritage Management Plan for the listed place; and
3. (c) to report as required by the Minister on the carrying out of its activities.

How effective is the WH Committee? Failing the Steering Committee filling the gap in WH authority or overarching management role, whom, if at all, assumes responsibility for our WH and Buffer zone. There is little public information. Why do we say that? The following information is not in the public domain. Where known, reasons are provided.

- Names of members of the Ministerial appointed Steering Committee.
- Agendas and minutes of meetings and reports?
  - These were previously reported but discontinued because of lack of resources. The Steering Committee can regulate its own proceedings and is not required to report unless directed by the Minister. Committee is not known to have ever reported.
- There is no statutory requirement for WH reporting in the Heritage Act, other than the Steering Committee if directed by the Minister.
  - HV is currently reporting it progress in relation to the overall World Heritage Management Plan review to DELWP – this should appear in DELWP annual reports.
- The DELWP Annual Report includes Heritage Act in long list of Acts administered, but Executive Director, HV, is not on the departmental Executive organisational chart. Nor is ED in Heritage Council organisational chart.
  - HV is only a business unit within the Planning Group of DELWP, so HV's reporting – primarily BPs 3 targets and priority projects/programs - is done as part of DELWP's annual reporting.
  - ED is both Director of HV and has statutory function of Executive Director (Heritage) in the Heritage Act.
  - The HC AR has a report on WH actions including review, but it clearly is HV that has done the work. This was due to
  - HC's statutory function in adopting the World Heritage Strategy Plan as per s172-175 of the Heritage Act. I also can't see reference to ED of HV on the HC organisational Chart.

There is similar paucity of information on Victoria's relationships with federal heritage organisations. Nor is there information on what is happening, - planning, management - between Victoria and the Australian government, in relation to World and National Heritage. There is no public information on,

- Reporting to and representing Australian World Heritage interests to UNESCO,
  - We were advised that HV might be involved in such a process as a regulator, but these things happen rarely and there is no (known) standard process.
- The CEO Museum Victoria, Patrick Greene, used to be representative on the Australian Heritage Advisory Committee and that may still be the case, with the current CEO, Lynley Crosswell.
- The flow chart for the WHMP shows the shared organisation structures for different components of the WH site and Buffer Zone.
  - The WHMP is the umbrella document linking the other documents (attachments) and is referenced in the EPBC Act. It is not an incorporated document.
- Surprisingly, given obligations between Australia and UNESCO there is no information on whether there are regular reports on our WH REB and Carlton Gardens to the federal Minister nor from the federal Minister to, UNESCO.
- There is no information on relationships between the WH Committee and the Australian Heritage Council, although both have World and National Heritage functions.
  - On the federal Department of Agriculture, Water and Environment page of organisations by States, there is no listings for Victoria.
  - Overall, the federal heritage sites are *minimalist* on information.

**Conclusions:** One could not consider the above report card on reporting and accountability, as being even adequate. To what extent is this the result of the individual organisations managing their part of the WH site and Buffer Zone as separate entities?

The reluctance of City of Melbourne to support loss of authority by not agreeing to a single DDO for the entire Buffer Zone, is understandable from a local council's perspective, but it has demonstrably failed from a WH protection perspective.

**Recommendation:** We have asked the Heritage Council to recommend changes to the governance of the WH site and Buffer Zone. The recommendation is for the entire site and buffer zone, because of the intrinsic linkages, between the Site with the Buffer Zone, consequential of the WH citation and UNESCO obligations and federal laws. We ask the Inquiry make similar recommendations.

## 2. Case Examples of planning decisions and better ways to conserve and protect WH values

Why have very few referrals been made under the EPBC Act for the WH site and Buffer Zone in the 17 years since citation? As already stated, it is the community's understanding that few referrals under the EPBC Act have been made to the federal Minister since 2004. It is the FREBCG's view, notwithstanding the breaches in law, that the lack of referrals, for whatever reason, brings with it, lack of familiarity with the Act and its functions and application: not surprisingly, *A chicken and egg syndrome*. If the Council agrees with FREBCG, failings and gaps in WH laws and applications, are huge.

A review of Government's and Yarra and Melbourne Councils' planning records would be illuminating. In this submission, case examples and actual permit decisions, should demonstrate what, why, when, how and by whom, statutory planning decisions are made. Where both the Planning and Environment and the Heritage Acts apply, the Committee can assess the conjoining application of these Acts.

The Inquiry can review the decisions in the case examples against the laws and, we trust, also against their understanding of the policy intent. Inquiry's assessment is also against the federal EPBC laws and the World Heritage citation of Outstanding Universal Values for the REB and Carlton Gardens and Buffer Zone and Australia's UNESCO obligations in the World Heritage.

Failings and gaps in the current laws and their interpretations, deliver bad results for responsible planning and heritage protections. But just as failings and gaps in statutory planning laws deliver bad results for a development proposal, so to do failings in strategic work. For example, both Yarra and Melbourne Councils are required to review and update their planning schemes. The Minister's recent refusal of many of the DDO's in the Yarra Council amendments including those covering the WH Buffer zone, will negatively impact on protections of WH, as well as local and state VHR Heritage properties.

FREBCG know of referral by Museum Victoria for the **REB Protection and Promotion Project, in 2016**.

We know that **Heritage Victoria provides Heritage permits, under the Heritage Act, 2017**, for the annual MIFGS Event in the REB and Carlton Gardens and Reserve. Despite the event having a significant impact on the site and buffer zone **referrals are not made under the EPBC Act for the MIFGS**. The event takes over exclusive use, of REB and south CG, obscures the REB and Gardens and damages the vulnerable natural environment. Should not EPBC Act Policy Guidelines 1.1 apply and referral be required?

We know of only the two recent referrals for proposed developments in the Yarra Council area of the WH buffer Zone. We know of many more developments in the Buffer Zone, in both Yarra and Melbourne where developments have not been referred nor been assessed with any consideration to the EPBC Act requirements. Below are case examples and also reference to other high-profile developments.

Case examples demonstrate the juxtapositions between the Heritage and P and E Acts where VHR and local heritage significant properties are in the milieu with development applications for large powerful developers, and in some cases public institutions: Whatever the *on balance* skewing to favour development, heritage is devalued. It also demonstrates the *room to move* by developers when putting their arguments to local councils or Minister and department, with practised skill manoeuvring between the gaps and vagaries of the two Acts, to the detriment of the Heritage Act. Conflicts of interest, and at least frequently, the perception of conflicts of interest, seem to abound from *multiple hats* worn by some experts. It is as if the common practice makes in acceptable. Why?

**Conclusions:** Communities advocating for protections of heritage, are competing in a system that has become expensive, complex, litigious, dominated by professionals in law, planning and heritage, and administratively institutionalised. This environment is unfair and inequitable and denies the public their rights to participative democracy. This is also contrary to the local Government Act 2020, and to the WH Charter, that lauds community contributions and consultation.

**Recommendations:** The Inquiry Committee, reflect on the submissions applying its rigour and expertise, to recommend improvements to WH laws and the governance of WH site and Buffer Zone. Also, Inquiry seek out the advice of the Heritage Council, including their expert research and discussion papers.

## 2.1 Case examples of statutory planning decisions for development in buffer zone – and failures and gaps in application of the EPBC Act referral requirements.

The most obvious recent examples in the WH buffer zone are St Vincent's/Aikenhead and 1-9 Gertrude St, Fitzroy.

### 2.1.1 PLN 20/0567: 27-41 St Vincent's Aikenhead, 27 - 41 Victoria Parade Fitzroy.

Priorities Committee's report is by link below, and extracts at FREBCG submission pages 10, 11, 12, 13 and 14.

[https://www.planning.vic.gov.au/\\_data/assets/pdf\\_file/0036/549837/Priority-Projects-SAC-Referral-15-Report.pdf](https://www.planning.vic.gov.au/_data/assets/pdf_file/0036/549837/Priority-Projects-SAC-Referral-15-Report.pdf)

- See Priorities Committee's pages 14,15 and 16 – the Committee's report. 3.3, reads as if the map, *figure 2* shown, is of the *WHEA Buffer Zone*. Map is only of the area of greater sensitivity, the precinct. This is a fundamental difference, in that WH laws apply for entire Zone.
- Page 20 (iii) of Committee's report covers *National Significance*. The report includes applicant's opening address which cited excerpts of federal Minister's letter of decision on referral by Lovell Chen of development. Committee then says it *is satisfied that no further action or commentary is required*.
- How can that decision not be questioned? The referral under EPBC Act was split in two. The Minister decided the first referral relating to the smaller section of the development site was not a control action. At this date, the Minister has still not decided on a second Lovell Chen referral

for the larger part, Aikenhead building, published on 6 January 2022. Decision by Minister Ley is due by 3 February.

- Notwithstanding the dismissing of the WH laws, the local planning heritage laws were also disregarded. The site is in the South Fitzroy Heritage Overlay HO334 and *Brenan Hall* now slated to be little more than a façade, is both locally significant and on the National Trust's National Register.

heritage significance to Yarra, but it is not identified in the Planning Scheme as having individual significance in HO334.

Brenan Hall was considered by the Heritage Council for inclusion on the Victorian Heritage Register in 2011, but concluded the place was not of State cultural significance and did not warrant inclusion.

The site is further subject to Design and Development Overlay Schedule 2 (Main Roads and Boulevards); Specific Controls Overlay (Schedule 7); and Development Contributions Plan Overlay (Schedule 1); none of which were discussed or raised as key issues at the Hearing.

The Committee notes a permit is required for demolition, and building and works under the Heritage Overlay and for building and works under the Design and Development Overlay.

The Development Contributions Plan Overlay does not include exemptions for the proposal, and it is noted the permit conditions have a requirement for a development contribution, however the detail of that was not raised as an issue nor was it discussed at the Hearing.

Clause 52.06 relates to car parking, and, given the location of the site on the Principal Public Transport Network Area, Column B rates apply. A total of 348 spaces for parking was calculated by Council for this proposal, but the permit application sought an exemption for all spaces, which Council agreed to. No issues were raised about this at the Hearing.

The proposal is consistent with the use of land for a Public Use Zone being an A1 tertiary hospital located in a designated Health and Education Precinct that provides local, State and national health services.

### (iii) Other planning issues

One of Council's grounds of refusal was that the proposal was not prepared in accordance with a master plan, which it noted, was contrary to the provisions of Clauses 21.04-4 and 21.08-7.

The Applicant advised there is no master plan for the site, and in response to a request for clarification from the Committee, advised one is not intended to be prepared.

Council contended the uncertainty of any outcome for Brenan Hall "*... is a clear example of the impact of the failure to provide a master plan and the impact of this in terms of orderly planning*". Council noted:

Further, the absence of an integrated planned approach to the site adds to the practical merit in allowing the consideration of the amended strategy plan before the approval of this application<sup>7</sup>.

In its submissions, however, Council noted that while the Planning Scheme through policy desires a master plan, there is no Development Plan Overlay or Incorporated Plan Overlay for the site that mandates such a plan be prepared.

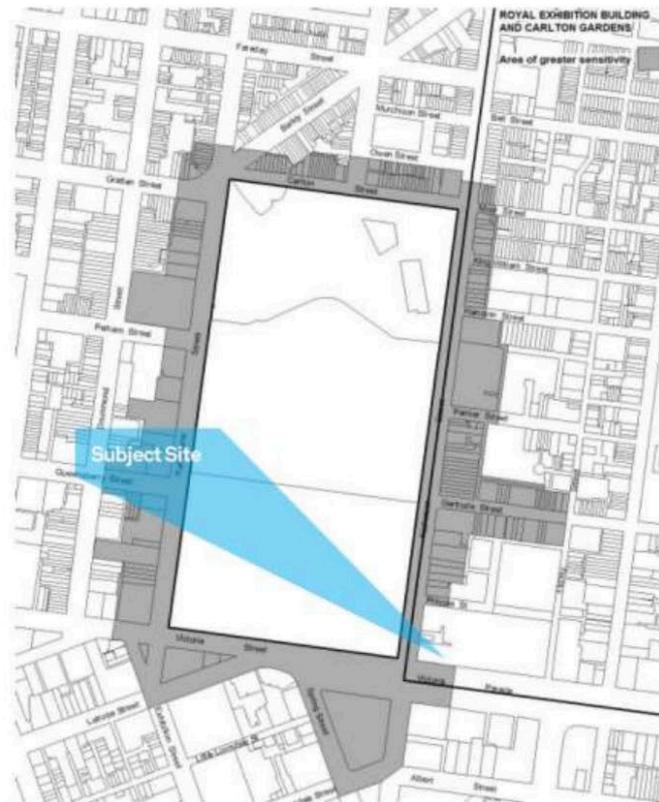
## 3.3 World Heritage Environs Area

The REB and Carlton Gardens located directly opposite the site were listed on the UNESCO World Heritage List on 1 July 2004. The subject site is surrounded by the WHEA to the north, west and south, however the subject land itself (and the entire main St Vincent's Hospital complex) is not

<sup>7</sup> Document 178, para 180

included within the Area of Greater Sensitivity identified in the World Heritage Strategy Plan (WHSP) (see Figure 3). As such, development of the site does not trigger the policy guidance required for the WHEA Area of Greater Sensitivity, but due to its close proximity to the site, issues of heritage and historic character should be considered.

Figure 2 World Heritage Environs Area



Source: Document 14

The WHEA was established as a buffer zone to preserve the historic character, views and vistas of the REB and Carlton Gardens.

As a place included in both the Victorian Heritage Register and the World Heritage list, the REB and Carlton Gardens must have a Strategy Plan in accordance with the *Heritage Act 2017*. A review of the WHSP for the REB and Carlton Gardens went on exhibition on 16 July 2021, due to close on 14 September 2021. Consultation was extended to 24 September 2021 and this is further discussed in Chapter 4.3.

### 3.4 Findings

The Committee finds:

- State policy supports the expansion of hospital and medical facilities in key locations that provide excellent accessibility to a wide range of users.

- While being cognisant of local heritage considerations, local policy supports redevelopment and expansion of hospital facilities.
- The location of the site adjacent to the World Heritage listed the REB and Carlton Gardens is significant and must be considered in the context of its listing and the proposed review of the WHSP.
- There is no planning or heritage reason to preclude the redevelopment of the Aikenhead Building on its existing site.

- Pages 14 and 15 and
-

**(i) Car parking**

The Committee is satisfied that the full reduction of car parking (350 spaces) on site is warranted because:

- it was appropriately justified by the Traffic Impact Assessment by GTA Consultants and supported by Council's traffic engineering and planning review
- the existing Aikenhead Building does not currently provide any on-site car parking spaces
- the site is located at two major arterial roads with two tram routes
- Parliament Station is located about 200 metres to the south
- planning policy promotes reduction of car parking in areas of high public transport accessibility
- there is unlikely to be an increase in vehicle traffic generated by the new building
- the planning permit will require a Green Travel Plan
- bicycle spaces (68) and end of trip facilities will be provided.

**(ii) Sustainability**

The Committee is satisfied that:

- The revised proposal provides for a sustainable built form outcome.

**(iii) Matters of National Environmental Significance**

The letter of referral from the Minister for Planning advised the Applicant was required to finalise its obligations under the EPBC Act and that it had held meetings with the Commonwealth Department of Agriculture, Water and the Environment. The letter of referral advised:

If an action has, will have, or is likely to have, a significant impact on a matter of national environmental significance, the resulting Commonwealth approval from the Minister for the Environment required under the EPBC Act is in addition to any state or local Government approvals such as a planning permit<sup>49</sup>.

Various objectors raised this issue and recommend a referral should be made to the Federal Minister for the Environment as they considered the proposal is likely to have a significant effect on the REB and Carlton Gardens.

This matter was addressed by the Applicant in its opening submission and tabled a letter from the Acting Assistant Secretary, Environment Assessments (Vic, Tas) and Post Approvals Branch that advised:

**As a delegate of the Minister for the Environment, I have decided that the proposed action is not a controlled action. This means the proposed action does not require further assessment and approval under the EPBC Act before it can proceed.** (Author of letter bolding.)

...

This decision does not affect any requirement for separate state and local government environment assessment and approval open space the proposed action<sup>50</sup>.

On this basis, the Committee is satisfied that no further action or commentary is required.

<sup>49</sup> Document 2

<sup>50</sup> Document 189

**2.1.2. PLN 20/0566 : 1-9 Gertrude St Fitzroy.** VCAT report and decision to approve, is below.

- The proposed development is in the Buffer Zone, precinct. VCAT approved the development in November 2021.
- Referral was made under EPBC Act by Lovell Chen for developer but was withdrawn, just days before the Minister was to make her decision on whether impact of development was a controlled action. A second referral has not been made.
- FREBCG and other community bodies made submissions on the referral and have corresponded with Minister Ley and the federal department.

The FREBCG contend that the development is too high and dominant, its materiality too obtrusive for its location within Fitzroy's early Victorian heritage and at the high public profile Gertrude and Nicholson St corner. Approved development is 5 storeys and 20 metres, high, twice as high as adjacent VHR Royal Terrace, and towering over Gertrude St and low form heritage neighbours. It is in the HO334, adjacent to several VHR properties and sharing WH significant views to and from the REB. Again, local heritage was, in our view, devalued in the decision, notwithstanding its WH values.

**2.1.3 PLN 16/1028: 34 - 36 Nicholson St Fitzroy.** VCAT report and decision to approve, is below

No EPBC referral was made. VCAT approved 7 storeys in *one of Melbourne's finest, most intact early 1850's Victoria period residential streets* (Peter Lovell). The property, *Salisbury Place*, is twin two storey 1850's terraces in the Buffer Zone, the precinct; that is, the area of greater sensitivity.

Heritage Council's own position after reading the report and decisions, will be educative. Among other reasons for approval, in addition to the (deciduous) street trees, masking views from the REB platform, were the presence of higher buildings in the St Vincent's complex behind the site. However, the buildings referenced, were well outside the precinct and predated the WH citation. – As a back story, the tree being relied on for camouflage, was cut down by Yarra trams for the new super stop.

FREBCG ask, where is the logic, in amending the laws to comply with the WH citation and obligations, and for authorities to give little recognition to these laws in their decisions?

**2.2 Case example of statutory planning decisions** outside of and adjacent to the WH Buffer Zone.

PLN 16/0925 HV B27681 - St Vincent's Private and *Dodgson House*, Victoria Parade and Brunswick St

The site is part of St Vincent's Private Hospital on the southern corner of Brunswick St and Victoria Parade. The area is highly significant, as one of the earliest parts of Fitzroy, the first suburb opened up in the late 1840's when European Melbourne extended from the city. It comprises multiple individual Victoria period properties that are in the same, South Fitzroy Heritage Overlay, HO334, as the eastern WH Buffer Zone. The HO 344 perimeters are Nicholson St, Victoria Parade, Brunswick St and Johnston St. Brunswick St along with Nicholson St were the start of the arterial access routes from the city to stockage and farms and the gold fields. The site has 2 VHR properties and locally significant properties. If the eastern Buffer Zone was extended as FREBCG recommends, this early 1850's precinct would be in the WH Buffer Zone.

The Heritage Council has a submission from Louise Elliot and Greg Hocking, providing results of their work on documenting the history of Brunswick St and its properties. Their report includes extensive research of original records as well as a collation of other documents to construct the story of one of Melbourne's earliest and most important Victoria commercial, light industrial and residential streets.

**Conclusions:** Brunswick Street's heritage pedigree deserves to be in the buffer zone because of its contribution. All things being equal, when the Heritage Council recommends real improvements to the WHEA Strategy Plan that withstand even the determined developers, Brunswick St will also have those protections.

**Recommendation:** There is extensive evidence to justify the Heritage Council advising Minister that the Buffer Zone be extended from Fitzroy St to include both sides of Brunswick St. Our September submissions covers the full extent of the eastward and city increases to Buffer Zone.

**References for planning applications and permits re 2.1.1, 2.1.2 and 2.2** are on the link below.

<https://spaces.hightail.com/space/c9jQuzQ5p6>

## 2.3 Better ways of protecting Buffer Zone's contribution to WH Site and WH values.

**We ask the Inquiry to ask and answer the questions on the present state of heritage health, or ill-health in Victoria: Under present laws and interpretation, what is the present capacity of heritage and planning authorities to effectively do their jobs to conserve and protect heritage significant heritage and World Heritage.**

*Is Committee satisfied with the decisions as assessed against OUV's and intentions of the current laws?*

*Is Committee satisfied with the process, management of the decision-making authorities?*

*What does the Committee recommend improving the process and administration of the application and the decisions?*

### 2.3.1 Extending the Buffer Zone to keep intact and to protect the significant heritage overlays.

As in our September submission, the FREBCG and other community groups are recommending extension of the footprints of the Buffer Zones on each side of the WH site. On the eastern Fitzroy side, the recommendation is for extension to cover the South Fitzroy Heritage Overlay. From a historical significance perspective, as in the HO334, that extension is eminently sensible; and from perspective as protection from escalating developments, it is logical.

Similar propositions were put for the western Carlton Side and for the southern city side.

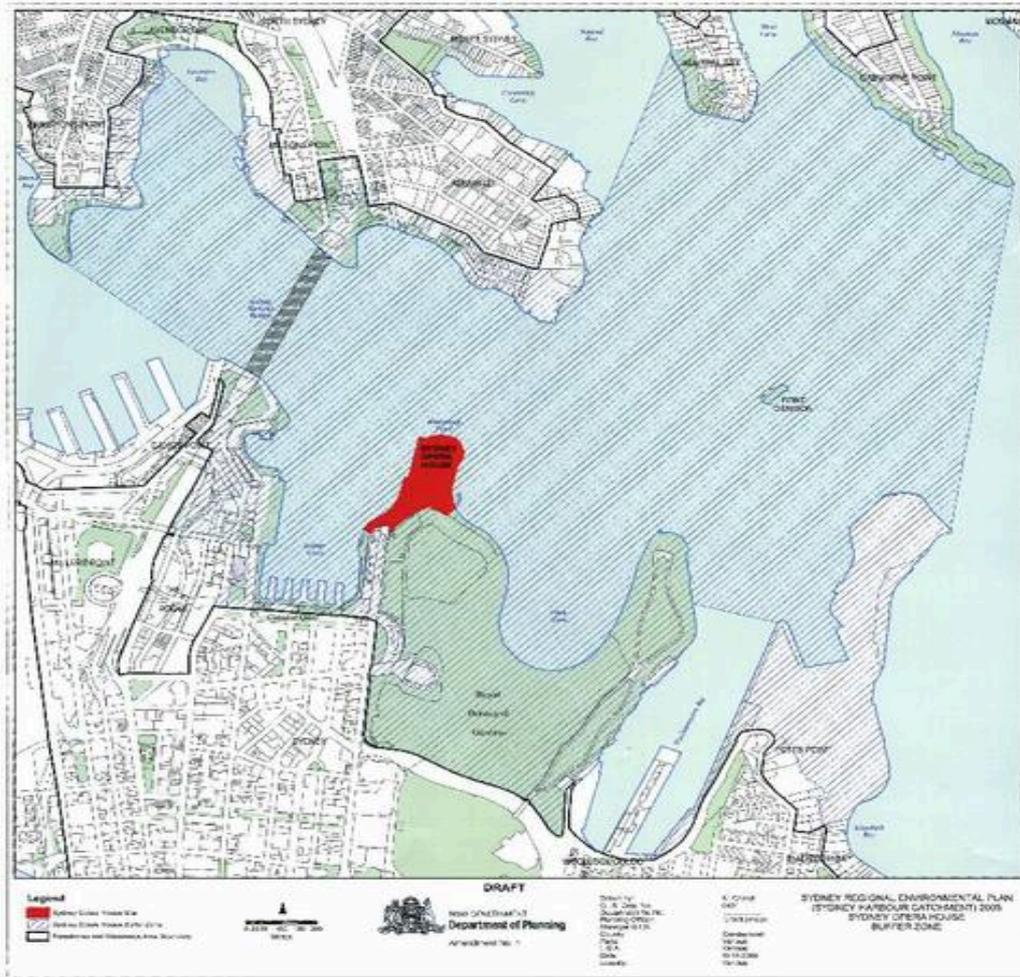
The extension on the eastern side, is also covered in 2.2 page 18.

### 2.3.2 Sydney Opera House and its buffer zone: Comparison with REB and CG and buffer zone

Since its 2008 Conference on Buffer zones, UNESCO has paid much more attention to areas around WH sites and for the obvious reasons; the potential of development to dominate sites also through demolitions of contributory heritage and neglect. - And the WH Committee has recently demonstrated just how serious it is by both removing a WH citation (Liverpool) or putting sites on endangered list (Vienna). We are also very aware that UNESCO is focussing attention on *Great Barrier Reef* for its potential as being *Endangered*, and Blue Mountains, NSW, and Tasmania's Wild Rivers.

World Heritage Sydney Opera House is the most obvious WH site with which to compare the REB and Carlton Gardens: Both have buffer zones and have combinations of buildings and Gardens or open spaces. SOH of course also has extensive expanses of water. REBCG buffer zone and REB views' covers very limited area, and SOH and views, Buffer Zone is over extensive areas.

The WH site is in red and the buffer zone, is diagonal blue lines. *Sydney Regional Environmental plan.*



### Contact details

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Friends of Royal Exhibition Building and Carlton Gardens (FREBCG)

[REDACTED]  
Monday, 31<sup>st</sup> January 2022

[REDACTED]

