

**Submission
No 185**

INQUIRY INTO THE PROTECTIONS WITHIN THE VICTORIAN PLANNING FRAMEWORK

Organisation: Heritage Victoria, Department of Environment, Land, Water and Planning

Date Received: 31 January 2022

Inquiry into the protections within the Victorian Planning Framework

Mr Steven Avery

Organisation Name: Heritage Victoria, Department of Environment, Land, Water and Planning

Your position or role: Executive Director

YOUR SUBMISSION

Submission:

I have uploaded my submission.

FILE ATTACHMENTS

File1: [61f7bcf57fd19-Heritage Victoria Cover Letter - Parliamentary Inquiry into the protections within the Victorian Planning Framework.docx](#)

File2: [61f7bcf580db6-Heritage Victoria Submission - Parliamentary Inquiry into the protections within the Victorian Planning Framework - final .docx](#)

File3:

Signature:

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Parliament of Victoria
Legislative Council, Environment and Planning Committee
Parliament House, Spring Street
EAST MELBOURNE VIC 3002

28/01/2022

Dear Members of Legislative Council, Environment and Planning Committee

HERITAGE VICTORIA SUBMISSION INTO THE PARLIAMENTARY INQUIRY INTO THE PROTECTIONS WITHIN THE VICTORIAN PLANNING FRAMEWORK

Please find enclosed Heritage Victoria's submission in response to the above mentioned inquiry. Heritage Victoria is a business unit within the Victorian Government's Department of Environment, Land, Water and Planning. The business unit supports the work of the Executive Director, a statutory function established under the *Heritage Act 2017* (the Act). Heritage Victoria is resourced to deliver the functions of the Act, including the implementation, administration and enforcement activities required in accordance with the legislation. The submission therefore responds only to the Terms of Reference relevant to the work undertaken in accordance with the *Heritage Act 2017*.

The submission responds to the following Terms of Reference:

- (4) protecting heritage in Victoria, including but not limited to —
 - (a) the adequacy of current criteria and processes for heritage protection;
 - (b) possible federal involvement in heritage protection;
 - (c) separating heritage protection from the planning administration;
 - (d) establishing a heritage tribunal to hear heritage appeals;
 - (e) the appointment of independent local and state heritage advisers;
 - (f) the role of Councils in heritage protection;
 - (g) penalties for illegal demolitions and tree removals;

I thank the Legislative Council, Planning and Environment Committee for the opportunity to provide input into this important Parliamentary Inquiry.

If you require any further information in relation to this matter, please contact Rebecca O'Brien Principal Heritage Policy at Heritage Victoria on telephone [REDACTED] or email [REDACTED]

Yours sincerely

Steven Avery
Executive Director
Heritage Victoria

Submission into the Parliamentary Inquiry into the protections within the Victorian Planning Framework – Heritage Victoria, Department of Environment, Land, Water and Planning.

Summary

Heritage Victoria acknowledges the issues raised in the call to hold the Parliamentary Inquiry into the protections within the Victorian Planning Framework. Heritage Victoria is of the view that the current framework for identifying, protecting and managing places of heritage significance is not in need of major reform. Heritage Victoria recommends that the Planning and Environment Committee closely consider the Heritage Council's *State of Heritage Review: Local Heritage* report and with assistance from the Minister for Planning and the Department of Environment, Land, Water and Planning (DELWP) seek to implement the recommendations of that report. Heritage Victoria also acknowledges the severe resource constraints on local councils, particularly rural and regional local councils and supports moves to assist councils to internally manage their obligations in accordance with the *Planning and Environment Act 1987*.

Introduction

Heritage can be defined as that which is inherited¹, it contributes to our collective identity and sense of place, providing a range of economic, social and environmental benefits². Victoria is home to many recognised heritage places, objects, archaeological sites and landscapes. These include over 2,300 places and objects that are important to the history and development of Victoria and are protected by the State Government through inclusion in the Victorian Heritage Register, and over 180,000 places important to local communities and protected by local councils.

This submission sets out Heritage Victoria's position on the Terms of Reference established by the Planning and Environment Committee tasked with this inquiry. It responds to Heritage Victoria's statutory responsibilities under the *Heritage Act 2017* (the Heritage Act), with the relevant Term of Reference being **4(a)-(g)**. This submission does not respond to identification and assessment of Aboriginal cultural heritage. Aboriginal cultural heritage is protected under the *Aboriginal Heritage Act 2006*, which is implemented by the Victorian Government's First Peoples-State Relations (Department of Premier and Cabinet), Registered Aboriginal Parties and the Victorian Aboriginal Heritage Council.

Heritage Victoria

Heritage Victoria is the Victorian State Government's principal cultural (non-Aboriginal) heritage agency. It has responsibility for implementing the Heritage Act which is administered by the Executive Director and falls within the portfolio of the Minister for Planning. The primary purpose of the Heritage Act is *to provide for the protection and conservation of the cultural heritage of the State*³. To achieve this purpose the Executive Director employs staff to undertake a range of work to identify, manage and protect places, objects and archaeological sites significant to Victoria.

¹ Tonkin, S, *Essay: What is heritage?* 2012, 1

² SGS Economics and Planning, *The Value of Heritage: Summary Report*, 2018, 1

³ *The Heritage Act 2017*, Part 1 – Preliminary, Section 1 Purpose, subsection (a)

Response to Terms of Reference

Omission - Historical Archaeology in Victoria

Recommendation:

Heritage Victoria recommends that the Planning and Environment Committee consider the current framework for the protection and management of historical archaeology in Victoria. Consideration should be given to the existing gap between the Victorian Heritage Inventory and the Planning Scheme and the resourcing necessary for Heritage Victoria to address the issue.

Background:

Victoria has a diverse and significant historical archaeology, its archaeological record includes sites that relate to important historical themes such as the Goldrush, and the settlement and growth of Melbourne and other urban centres. The Victorian Heritage Inventory is a list of known archaeological sites 75 or more years old which provide information on past activity in the State. The Heritage Inventory is established by the Heritage Act which provides protection by requiring that consent must be obtained from Heritage Victoria to authorise the disturbance of historical archaeological sites and artefacts. The Heritage Act also provides 'blanket' protection for all historical archaeological sites in Victoria, including sites that are currently unassessed or are unknown, and are not included in the Heritage Inventory or Heritage Register.

Currently there is no clear link between the planning framework and the Heritage Inventory to ensure local councils actively protect and manage archaeological sites⁴. Unlike places and objects in the Heritage Register, the presence of any archaeological site included in the Heritage Inventory is not a consideration in the Schedule to the Heritage Overlay. Often successful protection of archaeological heritage is dependent on council staff knowledge, resources and expertise.

A recent example reveals that the gap between the Heritage Overlay and the Heritage Inventory can result in progression of unlawful activity. In November 2021 Heritage Victoria was alerted to unlawful activity at a Heritage Inventory site. Investigation revealed that the applicant had undertaken excavation works without consent from Heritage Victoria but had no knowledge that the site was recorded in the Heritage Inventory but had made enquiries to council and reviewed the property title. In this instance the applicant had applied for, and was granted a planning permit for the works, but was not informed by the council that a consent from Heritage Victoria was required before works could be lawfully carried out. The site in question is protected under the Heritage Overlay, but no reference to the Heritage Inventory is made in the Heritage Overlay record. In this example neither the applicant, nor it appears the local council were aware of the Heritage Inventory, leading to risk of detrimental or irreversible action.

Response:

Past studies have made recommendations that attempt to address protection and management issues in relation to historical archaeology. Recommendations include options such as amending the Heritage Overlay and the schedule to the Heritage Overlay to include a section on the Heritage Inventory or creating an entirely new schedule that deals with historical archaeology⁵. An alternative is to consider

⁴ Moles, J et al. *Review of heritage provisions in planning schemes, Advisory Committee Report – The way forward for heritage*, 2007, 117-119

⁵ Moles, J et al. *Review of heritage provisions in planning schemes, Advisory Committee Report – The way forward for heritage*, 2007, 117-119

whether it is possible for Heritage Victoria's mapping layers (which include the location and extent details of Heritage Inventory sites) to be incorporated into the information systems which are referred to by local council officers. Heritage Victoria is of the view that these options are viable, and subject to resourcing, would mitigate the risk of loss or damage to significant archaeological sites.

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

Recommendation:

Heritage Victoria recommends that a set of guidelines modelled on the Heritage Council's *The Victorian Heritage Register Criteria and Threshold Guidelines* be developed to determine local heritage values to assist local councils with consistently applying heritage significance criteria.

Background:

The Heritage Council is an independent statutory body established under the Heritage Act. It makes the final decision on whether or not a place or object is significant to the state, and to be included in the Victorian Heritage Register (Heritage Register). To assist the Heritage Council make its decision, it publishes and updates *The Victorian Heritage Register Criteria and Threshold Guidelines* (the guidelines). The guidelines are intended to provide a robust, consistent approach to applying the nationally endorsed heritage significance criteria and assist practitioners and members of the community when making nominations to the Heritage Register. The guidelines provide the mechanism by which the State-level significance of a nominated place, object or archaeological site is tested.

The assessment of places of potential local heritage significance is the work of local councils. Places that are potentially locally significant are assessed against a set of criteria which are similar to and closely align with the criteria used to assess for state significance. The criteria appear in *Planning Practice Note 1 – Applying the Heritage Overlay* which provides guidance about the operation of the *Planning and Environment Act 1987*. Unlike the process for assessing places and objects for State-level significance, there are no guidelines to assist local councils to apply the criteria. Planning Practice Note 1, while providing some high-level advice does not provide the level of detail required to consistently and thoroughly apply the criteria to places of local heritage significance.

Response:

Heritage Victoria is of the view that the criteria, and the guidelines for applying the criteria to protect places, objects and archaeological sites of State-level significance are working satisfactorily. Since the endorsement of the guidelines Heritage Victoria has seen greater consistency in the application of the criteria, and greater alignment between Executive Director recommendations and Heritage Council decisions. The guidelines have established a robust process so that applying the criteria and testing the threshold for State-level heritage significance is an objective, rigorous and verifiable exercise. Furthermore, the guidelines have been updated twice since their endorsement to ensure they remain up to date and align with new and best practice advice. Heritage Victoria is satisfied that the application of the Heritage Council guidelines and their continual review allows for a thorough, fair and consistent approach to assessing State-level significance, but recognises that there are shortfalls in the application of the criteria at the local level.

The guidance available to assist local councils to apply the criteria is missing a rigorous, threshold test for local heritage significance resulting in inconsistent application. This is demonstrated through the example of the Former Withers House, at 32 Corby Street, Balwyn North in the City of Boroondara. In early 2021, the City of Boroondara commissioned a Stage 3 Heritage Study which recommended the

place be included in the Heritage Overlay under criterion D and E. In April 2021, Boroondara Council received a demolition application for the place, prompting completion of a second heritage assessment at the request of the owner. The second assessment recommended the place for inclusion in the Heritage Overlay, under Criterion E and H. The inconsistent application of the criteria across the two heritage studies was leveraged by objectors to argue their position that the place should not be included under the Heritage Overlay. Heritage Victoria encourages development of a guidance document similar to the Heritage Council's guidelines to assist in the application of the criteria at the local level to provide greater consistency and threshold tests for local significance. Heritage Victoria is not currently resourced to assist with the development and implementation of such a document, but could be well placed to assist should the outcome of the review lead to a resource commitment to achieve this recommendation.

(b) possible federal involvement in heritage protection

Recommendation:

Heritage Victoria recommends that progress of any pathway of staged reform for the *Environment, Protection and Biodiversity Conversation Act 1999* (EPBC Act) is monitored and that heritage bodies including Heritage Victoria are given opportunity to provide input.

Background:

The EPBC Act is the Commonwealth Government's key piece of environmental legislation. It establishes protection for Australia's environment, biodiversity, wildlife and places of natural and cultural heritage significance. Currently, the Commonwealth Government Department of Agriculture, Water and the Environment is responsible for implementation of the EPBC Act. In 2019 an independent statutory review into the EPBC Act commenced. The review looked into the overall operation of the entire EPBC Act and focused on the problems of the legislation with the aim of proposing a pathway of reform.

The EPBC Act establishes the National Heritage List and sets out Australia's obligations regarding World Heritage listing and the management of World Heritage properties. Currently, there are over 100 places included on the National Heritage List, 28 of which are in Victoria. When a place is included on the National Heritage List, and in the Victorian Heritage Register, the statutory obligations of the Heritage Act apply. In some circumstances proposed changes may be referred by the Minister for Planning in Victoria, to the Australian Government Minister for the Environment, for assessment. This process ensures that matters that will have or are likely to have a significant impact on the National heritage values of a place are considered in accordance with the EPBC Act. Heritage Victoria may be required to respond to proposals that have been referred to the Commonwealth Government and has a role to play in the consideration of changes to places included on the National Heritage List and in the Heritage Register in accordance with a bilateral agreement between the State and the Commonwealth.

Response:

The review into the EPBC Act concluded in October 2020, making a number of recommendations to address current gaps and shortfalls. The review identified the EPBC Act as "complex and

cumbersome”⁶, and identified that the “EPBC Act is ineffective”⁷. The review recommends a pathway of staged reform, including substantial legislative change to achieve the recommendations. Heritage Victoria will monitor the EPBC Act reform and will engage with the Commonwealth during the reform where necessary.

(c) separating heritage protection from the planning administration

Recommendation:

Heritage Victoria recommends that heritage protection should not be separated from the planning administration and supports the findings of *State of Heritage Review: Local Heritage* for greater assistance to local councils to ensure local planning departments are equipped to respond to heritage matters. Support may include dedicated local heritage roles within DELWP, heritage information sessions and packs for council staff and councillors and educational and awareness programs.

Background:

Currently, protection of state and locally significant heritage falls within the portfolio of the Minister for Planning, but the administration and much of the decision making is the role of either the Heritage Council or Executive Director for state significant places, or local councils for locally significant places. The Minister for Planning is generally not involved in the administration of decision making of the Heritage Act; most decisions are made by the independent Heritage Council.

Local councils are responsible for identifying what is significant to their local communities by engaging with communities, commissioning heritage studies and then applying the Heritage Overlay through a Planning Scheme Amendment. The Planning Scheme Amendment process involves collaboration between councils and the Minister for Planning. The Minister is responsible for the authorisation of a Planning Scheme Amendment and making the final decision on whether to approve the amendment.

Response:

Heritage Victoria is not of the view that major legislative reform to separate heritage protection from the planning system would address the issues raised in the call for this inquiry. The Heritage Council’s *State of Heritage Review: Local Heritage* report raises that greater state involvement in local heritage protection is required. The report recommends a strategic initiative intended to improve the system of local heritage protection, by calling on the State Government to have a greater role in the leadership of local heritage protection. The Heritage Council’s report recommends that DELWP should have dedicated local heritage roles, to sit within the core planning teams tasked with local heritage oversight and responsibilities under the *Planning and Environment Act 1987*. The roles have many goals, including: “achieving better integration of local heritage into other aspects of planning, e.g. structure planning and urban design”, and “demonstrating how heritage is compatible with urban and regional growth”⁸. These objectives seek to address some of the issues raised in the call for this inquiry by further integrating heritage into the planning system.

⁶ Professor Graeme Samuel AC, *Independent review of the EPBC Act Final Report*, 2020, <https://epbcactreview.environment.gov.au/>

⁷ Professor Graeme Samuel AC, *Independent review of the EPBC Act Final Report*, 2020, <https://epbcactreview.environment.gov.au/>

⁸ The Heritage Council of Victoria, *The State of Heritage Review: Local Heritage*, 2021, 47

(d) establishing a heritage tribunal to hear heritage appeals

Recommendation:

Heritage Victoria recommends the Planning and Environment Committee consider whether the pool of heritage expertise at the Victorian Civil and Administrative Tribunal (VCAT) could be expanded upon or further developed.

Background:

Currently, hearings in relation to heritage matters are either managed and determined by the Heritage Council of Victoria for most Heritage Register matters, VCAT primarily for matters pertaining to local heritage or Planning Panels Victoria (PPV) for public hearings into Planning Scheme Amendments.

The Heritage Council is made up of ten members and ten alternate members who are drawn from a wide range of professional disciplines and organisations including architectural conservation, archaeology, history, engineering, building construction, property management and planning law. The Heritage Council has responsibility for the identification of places, objects and archaeological sites that are important to the state. Under the Heritage Act, the Heritage Council is also empowered to review decisions of the Executive Director. As an independent statutory authority, the Heritage Council provides objective advice and must consider matters relevant to the heritage significance of a place or object, or any matter relevant to the Heritage Act.

VCAT resolves legal disputes and cases in Victoria including matters relevant to the *Planning and Environment Act 1987*. The call for this inquiry questions whether heritage decisions should be made at VCAT, raising that VCAT is 'ill-equipped to deal with complex heritage matters'. VCAT is empowered to hear disputes about a broad range of planning matters, including use, development and subdivision of land, planning permits, objections to planning permits and Planning Scheme matters. VCAT members are appointed for a period of 7 years by the Governor in Council, on the recommendation of the Attorney-General. Membership is sought from suitably qualified persons from diverse backgrounds. Current members include heritage professionals and members with heritage expertise.

Additionally, PPV is a business unit established by DELWP to administer public hearings into Planning Scheme Amendments. Hearings are held by panels appointed by the Minister for Planning under the *Planning and Environment Act 1987* to advise on Planning Scheme Amendments and give expert advice to the local council or the Minister about an amendment and any submissions. Anyone who makes a submission or objection on a Planning Scheme Amendment has the right to participate in a hearing. A panel is made up of one or more members who have expertise in a range of planning matters, including cultural, built form and Aboriginal heritage. In the 2018 – 2019 Financial year 37% of all PPV matters were heritage-related⁹.

Response:

Heritage Victoria is not of the view that establishing a heritage tribunal to hear heritage appeals is a necessary step to improve the heritage protection system. Heritage Victoria considers that the role and function of the independent bodies tasked with public hearings is functioning adequately and that VCAT and PPV are equipped to deal with heritage matters. A beneficial outcome of this review however, would be to consider the current pool of heritage expertise available to be drawn upon for VCAT hearings, and assess whether the resourcing is adequate to hear the wide range of heritage matters. Developing the existing expertise within VCAT, expanding on its resources when dealing with

⁹ The Heritage Council of Victoria, *The State of Heritage Review: Local Heritage*, 2021, 25

heritage matters, and ensuring the 7 year membership always includes a minimum number of heritage experts could assist the improvement of VCAT outcomes, leading to decisions that positively benefit heritage and the wider community.

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

Recommendation:

Heritage Victoria recommends that concerns in relation to the demolition application process be addressed and supports approaches to improve assistance to local councils in their management of reactive heritage assessments during the demolition referral process.

Background:

This inquiry responds to a suite of recent demolitions of places with no heritage protection, asking ‘whether developers should be required to pay for independent heritage advice on any building they propose to demolish but not be permitted to appoint the heritage expert’. The suggestion to require a heritage assessment of any building proposed for demolition is intended to stop the issue of buildings with unknown, or potential heritage significance being irreversibly lost to development. In accordance with the *Building Act 1993*, an application to demolish a building must be reported to the responsible authority for consent if the proposed demolition amounts to demolition of more than half the volume of the building, or the demolition is any part of a façade that faces the street. The requirement for council to consent to certain demolitions is known as the ‘Building Act safety net’, which sometimes results in reactive heritage assessments being undertaken to determine potential local significance of the place. Heritage assessments undertaken in reaction to a demolition application may lead to statutory protection but should not be used in place of strategic work to understand heritage significance within a municipality.

Currently, most heritage assessments or studies are undertaken by qualified heritage consultants. Consultants are guided by various codes of ethics, including the *Burra Charter 1981* and the *International Council on Monuments and Sites (ICOMOS) Ethical Principles* which are intended to provide objective guidance for assessing significance of places and objects. There are additional checks and balances in place to assist the assessment of heritage places, including public notice requirements, third party appeal rights and peer review of heritage assessments.

For places and objects included in the Heritage Register and subject to the provisions of the Heritage Act, Heritage Victoria requires preparation of a Heritage Impact Statement (HIS) to be included with permit applications, to assist in understanding the impact of proposed change. A HIS should be prepared by a heritage expert and must address the information prescribed by Heritage Victoria. The HIS, as well as Heritage Victoria’s *Guiding principles for changes proposed to places in the Victorian Heritage Register* report, is intended to ensure rigour and consistency across the consulting industry which in turn enables better decision making. There may be merit in local councils adopting a similarly rigorous approach when faced with a demolition proposal for a place with potential but as yet unconfirmed heritage values.

Response:

The existing framework for managing local heritage assessments includes checks and balances to ensure objectivity and consistency, but there are improvements that could be made to further assist the identification and protection of places of local significance. The Heritage Council’s *State of Heritage Review: Local Heritage* report found that management of demolition applications is a key concern for local councils, and there is ongoing confusion about how best to manage the process. The

Heritage Council recommends in its report that further State Government support is needed to assist councils manage reactive heritage assessments, which are required as a result of demolition applications. The report also suggests that the Heritage Council and DELWP facilitate discussions with the Heritage Council's Local Government Specialist Committee to address concerns and provide clarity around the demolition application process and how best to manage it.

(f) the role of Councils in heritage protection

Recommendation:

Heritage Victoria recommends that the State Government commit to further support local councils, particularly rural and regional councils to ensure resourcing is adequate to protect local heritage places. Heritage Victoria also recommends that steps are taken to improve local council expertise and knowledge of heritage matters internally.

Background:

Victoria's 79 local councils are responsible for identifying places, structures or landscapes that may have heritage significance, consulting with their communities and preparing and exhibiting Planning Scheme amendments to permanently protect significant places. In the past three years various bodies of work including the Heritage Council's *State of Heritage Review: Local Heritage* report, and the Commissioner for Better Regulation's review into the Planning and Building Approvals process have identified that local councils often fail to provide the internal resources and expertise to effectively implement their obligations under the *Planning and Environment Act 1987*, particularly regional and rural councils.

The Regional Planning Hub program was developed to deliver statutory and strategic planning support to 48 rural and regional councils across Victoria in response to the Planning and Building Approvals Process Review in 2019 by the Commissioner for Better Regulation. The Regional Planning Hub program, delivered by DELWP, provides support and resources for a range of planning matters and has found through engagement with the 48 rural and regional councils, heritage is one of the top five issues in need of support. The Regional Planning Hub is not focused specifically on heritage issues and is not resourced to support all the work needed to ensure effective local heritage protection, in addition to supporting other identified strategic and statutory assistance requests.

The program has received 39 requests for support on a range of planning matters since its launch in July 2021. The Regional Planning Hub program shows that State Government support in strategic planning is important and that it is essential to support rural and regional councils from within. The Heritage Council's *State of Heritage Review: Local Heritage* report similarly found that there is a discrepancy in resourcing between metro and rural councils. The report found that although 73% of all local councils have a Heritage Advisor, just 38% of rural councils have access to this service. The report additionally found that of the 48 rural and regional councils 13 have no Heritage Advisor and no internal heritage staff, and 45 have no internal heritage staff. Heritage Advisory services and internal heritage staff are the most common measure used to support local heritage matters.

The Regional Planning Hub program and the findings of the *Heritage Council's State of Heritage Review: Local Heritage* report reveal that State Government support and funding will be most beneficial if it leads to internal resourcing and access to expertise. Although this is particularly true for regional and rural councils, it is also true of metro councils if they lack internal heritage resourcing.

In a survey used to inform the Heritage Council's *State of Heritage Review: Local Heritage* report an inner metro city council reported that it does not have a consultant Heritage Advisor, internal heritage staff nor a Heritage Advisory Committee and has completed less than 10 heritage studies, which have not all been translated into Statutory protection. Councils that reported that they had translated all heritage studies into statutory protection are those with adequate resources, including consultant Heritage Advisor's, internal heritage staff and a Heritage Advisory Committee. When local councils lack the resourcing, or the expertise to implement completed heritage studies, detrimental and time-consuming processes can ensue.

An example of the challenges that ensue when councils lack resourcing is the Esme Johnston House - an inter-war 'Tudor Revival' style residence, designed and built between 1928 and 1930. In 2011 the house had no Statutory protection, and was purchased by owners with intent to demolish. In 2019 following community concern for the potential loss of this place, Heritage Victoria assessed a nomination of the place, concluding that it did not meet the threshold for State level significance but may be locally significant. The assessment was referred to the Bayside City Council who progressed a Planning Scheme Amendment. In October 2020 the place was granted permanent protection, preventing its demolition. In this instance the council had not completed adequate work to flag the potential significance of the place. The process to protect it relied on community advocacy and the State Government. The local council had undertaken a post and inter-war heritage gap study across the municipality but had only partially completed and translated the study into statutory protection. The incomplete translation of the heritage study failed to address all gaps across the municipality, leaving the Esme Johnstone House unprotected. Adequate resourcing within local councils is essential to ensure heritage studies are undertaken thoroughly, and where necessary translated into statutory protection to provide certainty for owners and avoid the risk of, or demolition of potentially significant heritage places.

Response:

Resourcing for local heritage matters is an issue across all local councils, but particularly rural and regional councils. The Regional Planning Hub program has found that despite rural and regional councils receiving support through the program, local council resourcing constraints make implementation difficult. The Heritage Council's *State of Heritage Review: Local Heritage* report also reveals the lack of resourcing, and the resultant issues. The report recommends a number of practical improvements to the issues of local heritage protection and management. Many of the practical improvements aim to increase understanding, awareness, knowledge and expertise among local and State heritage practitioners through forums, information packs, roadshows and through improvements to the availability of heritage planning subjects at the tertiary level. These practical improvements combined with a State Government commitment to provide greater leadership and support in the protection of local heritage will assist in the mitigation of the detrimental outcomes for owners, and irreversible loss of potentially significant heritage places.

(g) penalties for illegal demolitions and tree removals

Recommendation:

Heritage Victoria supports a commitment to continued research and policy work to mitigate the risk of demolition by neglect, including implementation of a 'demolition by neglect' model local law.

Background:

To protect locally significant place and places and objects with State-level significance, legislated enforcement provisions intend to prevent demolition and provide the means to prosecute if the law is broken. The Heritage Act includes provisions which provide penalties for certain unlawful activities, including demolition without approval¹⁰. The *Planning and Environment Act 1987* also provides for prosecution of unlawful activities which contravene a Planning Scheme, permit or agreement¹¹. In 2021 the *Planning and Environment Act 1987* was amended to strengthen penalties for unlawful activities. The amendments followed the unlawful demolition of the locally significant Corkman Hotel in 2016 and provide that a Planning Scheme may include provisions which regulate or prohibit the development of land on which there is or was a heritage building that has been unlawfully demolished, in whole or part¹². Despite the offence provisions in both the state and local heritage systems, there are ongoing challenges in mitigating and prosecuting unlawful demolition or failure to maintain heritage properties.

Demolition by neglect is a particularly difficult offence to prosecute for, as it requires verification that an enforceable action has taken place, when the nature of neglect is that there is an absence of action. In 2013 the National Trust of Australia (Victoria) released a report and policy recommendations into the issue of demolition by neglect. The report recommended an amendment to the Planning Scheme to ensure council policy could refuse to issue a demolition permit on the basis of poor condition or low integrity of the place to which the application applied¹³. The report recommended the best way to mitigate the risk of demolition by neglect was to 'draft a model local law that could be used as a starting point by all councils throughout Victoria'. The Heritage Council's *State of Heritage Review: Local Heritage* report agrees with the recommendation and includes its own recommendation to assist local councils to develop a model of local law to mitigate the risk of demolition by neglect¹⁴. The 2021 amendments to the *Planning and Environment Act 1987* go some way to address the issue of illegal demolition, but there are existing and future actions that could be taken to further strengthen enforcement provisions to reduce properties lost to illegal demolition.

Response:

Demolition by neglect is an issue facing locally significant places as well as places and objects of State-level significance. Heritage Victoria is currently committing efforts and developing measures that do not require legislative change to mitigate risk of demolition by neglect. In 2020 Heritage Victoria released policy guidance titled *Minimum standards for maintenance and repair of heritage places*. The document sets out Heritage Victoria's expectations for managing places included in the Heritage Register and assists owners to know and understand their legal obligations. Heritage Victoria also implements the Living Heritage Program, which provides grants to eligible owners and managers of publicly accessible properties included in the Heritage Register to carry out conservation works. One of the recommendations in the National Trust's demolition by neglect report is 'incentives for owners'¹⁵. Financial assistance such as that delivered by the Living Heritage Program, and non-financial assistance such as free heritage advice, could assist owners to understand their obligations as well as manage and conserve their heritage properties. Through implementation of the Heritage

¹⁰ *Heritage Act 2017*, Part 5 – Permits, Division 1 – General, sections 87-89

¹¹ *The Planning and Environment Act 1987*, Part 6 – Enforcement and legal proceedings, sections 126(1)-(4)

¹² *The Planning and Environment Act 1987*, Part 2 – Planning Schemes, sections 6B(1) and (2)

¹³ Muratore, R, *Demolition by neglect – Report and Policy on places in the Heritage Overlay*, 2013

¹⁴ The Heritage Council, *State of Heritage Review: Local Heritage*, 2021, 51

¹⁵ Muratore R, *Demolition by neglect – Report and Policy on places in the Heritage Overlay*, 2013

Council's State of Heritage Review: Local Heritage report it is anticipated that councils will receive greater support from the State Government to assist in managing and protecting locally significant heritage assets. Heritage Victoria will continue policy work to mitigate demolition by neglect of places and objects of State-level heritage significance and may consider legislative change to further strengthen enforcement provisions of the Heritage Act in the future.

Concluding statement

Despite some shortfalls in the current framework of identifying, managing and protecting Victoria's heritage at the local level, there are mechanisms to facilitate improvement, which do not require major reform. Heritage Victoria supports the introduction of greater resourcing and guidance to assist local councils in their heritage management obligations. Heritage is an irreplaceable and invaluable asset for Victorians alike and it is imperative that the existing processes for protecting heritage are effective and meet community expectations for government intervention.