

**Submission  
No 196**

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

**Organisation:** Boroondara Heritage Group for Advocacy and Protection

**Date Received:** 1 February 2022

# Submission in relation to Inquiry into Protections within the Victorian Planning Framework Boroondara Heritage Group for Advocacy and Protection (BHGAP)

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## BACKGROUND

Boroondara Heritage Group for Advocacy and Protection (BHGAP) is a local heritage group of members formed in response to the alarming loss of heritage in Boroondara and the inadequate response of local and state government. Our members have expertise in architecture, law, marketing. We have significant experience in preparing community heritage submissions, appearance at VCAT hearings, appearance at Planning Panels, engaging heritage reviews, preparing articles on heritage issues, consultation with experts in the fields of urban planning, architectural history, history, heritage architecture, social history and consultation with specialist heritage groups, and Historical Societies. We have been engaged by and advised local groups on the heritage protection and planning processes. We have been invited to present on Heritage matters at Boroondara Council on a number of occasions.

This submission is prepared by BHGAP and concentrates primarily on Item (4) of the Terms of Reference (TOR) concerning the protection of heritage in Victoria. Comment is made in relation to the other TOR where they have relevance and impact upon the issue of heritage, in which case general submissions are presented.

The **Appendix** that follows, contains Case Studies of actual heritage issues, that illustrate the practical difficulties faced by residents which are -

- Frequently the first notice that a heritage property is under threat is when the bulldozers move in
- Routinely Councils grant a building permit to demolish a building without any consideration of heritage issues
- Current controls are cumbersome inadequate, and ineffective
- They are not understood and used properly by Council
- They are not supported or enforced by VCAT or DWELP or the Minister, as is evidenced by the continuing degradation and demolition of heritage places and gardens across our particular area of focus, the City of Boroondara.
- Exacerbated by the complexity in and inaccessibility of the Planning scheme
- The nature of the HERCON criteria means it is open to subjective interpretation and application.
- The thresholds for Heritage significance as 'best in class' are inappropriate/ not fit for purpose for a municipality rich in heritage properties such as Boroondara.
- The current planning scheme is convoluted and complicated, difficult to access and understand. It is best understood by those who have a vested interest in increased development such as developers, urban planners, property lawyers
- Planning Minister's powers have increased unchecked over the last two years with no community consultation or debate<sup>1</sup> (eg VicSmart and Major Projects powers,) For example

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<sup>1</sup> Cara Waters, *Unrest over Minister's new powers*, The Age, November 20, 2021; Michael

the Suburban Railway Loop legislation<sup>2</sup> gives planning control for all land along the 90 km loop to a non-planning agency within government.<sup>3</sup>

The Minister has used the increased powers to 'call in' five matters under the *Heritage Act* 2017 (Vic) over the last five years, therefore avoiding and overriding heritage concerns and processes in planning applications.

The result is that invariably a developer applies for and is granted a building permit to demolish a dwelling under the *Building Act* 1993(Vic) which does not have to be advertised, the dwelling is immediately razed and the discussion that follows is only about its replacement. There is simply no opportunity to properly consider heritage matters and the aims of both the *Planning and Environment Act* 1987 (Vic) and *Heritage Act* 2017 (Vic) and guidelines are subverted. The community is entirely excluded from the process.

### **Demolition is a problem in the Planning Scheme**

The current application and interpretation of *Environment and Planning Act* 1987 (Vic) and *Building Act* 1993 (Vic) provisions relating to the intersection of planning permits and demolition permit legislation, clearly undermines the purpose and protections of the *Heritage Act* 2017 (Vic).<sup>4</sup>

Five Victorian Houses in Auburn Rd Hawthorn,<sup>5</sup> which had been identified as at least of contributory heritage significance in the Boroondara Council commissioned Hawthorn Gap study in 2018, were none the less granted demolition permits by Boroondara Council. No planning permits had been granted for any of the five properties. 'Currajong' at 337 Auburn Rd is one example, (See APPENDIX Case study 1) for which an amendment has been prepared recommending a heritage overlay of individual significance, due to intense community action to obtain heritage protection.

The Federal Government's Foreign Investment Review Board (FIRB) foreign investment regulations and state property laws are facilitating and encouraging demolition.<sup>6</sup> Temporary residents, foreign residents or short-term visa holders from any country are required to apply to the Foreign Investment Review Board (FIRB) to purchase real estate in Australia. The non- statutory body advises the Commonwealth government on Australia's foreign investment policy and provides guidance on the operation of the regulations. Concerns over the enforcement of these guidelines, have proved well placed. A parliamentary hearing in November 2018 heard that the FIRB had not brought any prosecutions against foreigners who had failed to comply to Australia's laws on foreign investment in real estate.<sup>7</sup>

The Heritage Council Heritage Overlay Guidelines on Demolition<sup>8</sup> repeatedly highlight the threat to heritage places by demolition.

The *Building Act* 1993 (Vic) and *Planning and Environment Act* 1987 (Vic) are being interpreted incorrectly by a number of Councils including Boroondara Council. These Acts need to be clarified in relation to issuing of demolition permits to make absolutely clear that planning approval to build is

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<sup>2</sup> *Suburban Rail Loop Act* 2021 (Vic); *Major Transport Projects Facilitation Act* 2009 (Vic); *Planning and Environment Act* 1987 (Vic).

<sup>3</sup> Buxton, *The assault on our suburbs*, The Age, 20 November 2021.

<sup>4</sup> The *Heritage Act* 2017 (Vic)

<sup>5</sup> At 337, 368, 364, 366 and 360 Auburn Rd Hawthorn.

<sup>6</sup> Practice Note 6: Foreign Investment Review Board, accessed at [https://firb.gov.au/sites/firb.gov.au/files/guidance-notes/GN06\\_Residentialland\\_0.pdf](https://firb.gov.au/sites/firb.gov.au/files/guidance-notes/GN06_Residentialland_0.pdf)

<sup>7</sup> Emma Sorensen, *The facts about foreign buyers*, 2 May 2019 accessed at [realestate.com.au](http://realestate.com.au)

<sup>8</sup> Heritage Victoria, Heritage Council of Victoria, *Guidelines 3 Demolition*, The Victorian Government Department of Sustainability and Environment 2007 accessed at [www.heritage.vic.gov.au](http://www.heritage.vic.gov.au)

required prior to approval for demolition. Laws concerning demolition should be simple and easy to follow for Council officers, planners and community members.

One of the objectives of the *Planning and Environment Act* 1987 (Vic) Section 4(1)(d) is

*to conserve and enhance those buildings, areas or other places which are of scientific, aesthetic, architectural, or historical interest, or otherwise of special cultural value.*

Further examples of issues regarding the demolition process are referred to below in Item 3.

### **Recommendation 1**

**No building permit to Demolish should be granted until and unless a planning permit for what is to be built as a replacement is approved.**

**Amend the *Planning and Environment Act* 1987 and s29A *Building Act* 1993 (Vic) to make this clear and unequivocal.**

## **ITEM 1**

### **THE HIGH COST OF HOUSING**

- i. Recognise that the high cost of housing is in part generated by developers desire to maximise profit.
- ii. ResCode operation is already unsatisfactory in taking into account neighbourhood character policies and heritage aspects. These are policies only and open to subjective interpretation.
- iii. Proposed new ResCode model<sup>9</sup> will further diminish rather than enhance heritage controls and considerations.
- iv. Amenity in new developments under the ResCode is reduced due to inadequate outdoor space and garden and access to light.
- v. Developer push for demolition of low-cost housing to be replaced with luxury housing is occurring at an alarming rate for example Kaydon Flats, Coolangatta Rd, Camberwell, despite community concerns.<sup>10</sup>
- vi. Research on vacant land and housing in Melbourne estimates there are 69,000 empty houses and blocks of land in Melbourne.<sup>11</sup> The number of empty and underutilised properties could house over 185,000 people, potentially reducing the public housing waiting list. In Boroondara, a walk in most residential streets reveals many empty residences with overgrown gardens and empty blocks of land. 2020 research has shown there are thousands of vacant blocks of land and empty houses, particularly in the suburbs of Boroondara.<sup>12</sup> Demolition of heritage houses in the last five years has exacerbated this issue. This waste of housing resources must be fixed.

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<sup>9</sup> *Boroondara Council Submission to Victorian Government*, dated 13 December 2021, Response to DWELP Discussion Paper, *Improving the operation of ResCode: A new model for assessment*, November 2021.

<sup>10</sup> *Help save Kaydon Court Flats*, Change.org petition.

<sup>11</sup> Prosper, *Speculative vacancies 10 : a persistent puzzle, the study of melbourne's vacant land and housing*.2019, accessed at [www.prosper.org.au](http://www.prosper.org.au)

<sup>12</sup> Simon Johanson, *City marked with 'ghost homes'*, The Age, December 2020. Prosper reports accessed at <https://www.prosper.org.au/eports/>

## ITEM 2

### ENVIRONMENTAL SUSTAINABILITY AND VEGETATION PROTECTION

- i. The current model of development is to ‘bulldoze, raze, obliterate’ in which buildings are demolished and the entire block cleared of all trees and vegetation. Many of the demolished houses are over 100 years old and perfectly intact, made of resilient long lasting natural materials, using artistic design and superb local craftsmanship. They were built to last.
- ii. This is needlessly destructive and environmentally disastrous.
- iii. One example, that has been recently demolished, is 49 Mangarra Rd Canterbury,<sup>13</sup> a superb Federation brick mansion with stained glass windows in many rooms, ornately carved mantelpieces, moulded ceilings and large sweeping verandah with tessellated tiles and ornate wrought iron. It was advertised as ‘no heritage overlay’ as the main selling point.
- iv. It is not a sustainable model in which intact heritage houses, often newly renovated are razed to the ground and put into landfill.<sup>14</sup> This occurs due to the current interpretation of the legislation relating to approval of demolition permits by Councils (see Item 4).
- v. There are no notice requirements of the imminent obliteration until it is well underway, and the building is destroyed, making it impossible for residents to object.
- vi. A big hole is dug, all soil removed and the largest building that the ResCode allows is erected.
- vii. ResCode itself is to blame for creating the problem with the lowest permitted levels adopted in terms of outdoor space, garden and apartment size. For example, garden pathways made of concrete and vertical gardens count as garden area as a percentage of site coverage. Undercover balconies are included as outdoor space. Insufficient green space is mandated in new developments, resulting in an increased ‘heat island’ effect, and increasing the power demand for heating and cooling.
- viii. ResCode inadequate natural light requirements, permits many ground floor apartments to have no direct sunlight. This is unacceptable in 2022 in Australia.
- ix. Urban heat island (UHI) effect where the surface air temperatures can rise substantially higher than other areas and stay hotter for longer due to human impact. Griffith University 2020 Vision Victoria research shows that Victoria’s local areas have among the lowest ratings in Australia for a heat vulnerability index, assessed by the extent of green space, the total number of hot days and the ability of the population to remain healthy in the heat.<sup>15</sup> Urban greenings could include more trees on streets but also green roofs, more parks and planting on and around new buildings. Existing healthy trees should not be removed.
- x. Poor planning has a detrimental effect on our wellbeing with higher rates of depression and obesity, linked to suburbs that are not well planned with services infrastructure and transport.<sup>16</sup> It is a lost opportunity not to create liveable housing that will last a century, like

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<sup>13</sup> As viewed at [www.realestate.com.au/sold/property-house-vic-canterbury-135352390](http://www.realestate.com.au/sold/property-house-vic-canterbury-135352390).

<sup>14</sup> Examples are 49 Mangarra Rd Canterbury, 368 Auburn Rd Hawthorn, 364 and 366 Auburn Rd Hawthorn, 81 Charles St Elsternwick, 55 Seymour Rd Elsternwick, 5 Trumper St Camberwell, 34 Armadale Street Armadale.

See, Clay Lucas, *Saving for the past or building for the boom: the wrecking ball debate about heritage homes*, The Age, 22 Oct 2019.

<sup>15</sup> Benedict Brook, *The Australian Suburbs and council areas most vulnerable to extreme heat*, January 5 2019. Accessed at [News.com.au](http://News.com.au)

<sup>16</sup> Duncan Fine, *Urban beauty a public dividend*, The Age, October 14, 2021.

- xi. Escalating loss of vegetation in Boroondara is disproportionately high in relation to other municipalities.<sup>17</sup> Green spaces in Melbourne declined in the decade prior to 2020. Research from the Monash Climate Change research group shows that increasing urban vegetation will become essential for Melbourne to reduce serious heatwave impacts by 2060-2080.<sup>18</sup>
- xii. Simply planting small immature trees or shrubs is a totally inadequate response following the denuding of a site of all vegetation. It is not a replacement for the loss of mature trees which may have been growing for 50 or more years. According to the new Chair of the Heritage Council, Chairman of Melbourne University Architecture Faculty and author of the Encyclopaedia of Australian Architecture professor Philip Goad,

*When 50, 60, 100 year old houses are removed at the drop of a hat...so is their incredibly valuable tree canopy. It's all inter-related. In the time of climate change the trees should be valued for their positive benefits.*<sup>19</sup>
- xiii. Inadequate introduction of vegetation overlays. There is a failure to preserve private trees and gardens, as the city of Boroondara Tree Protection Local Law 2016<sup>20</sup> is inadequate and fines for breach are too low. Nature strip vegetation is often lost during building developments due to non-adherence to tree protection requirements during the building process. Stricter controls through legislation are needed to protect trees from destruction and preserve the benefits of the green canopy.

### ITEM 3

#### CERTAINTY AND FAIRNESS IN PLANNING DECISIONS FOR COMMUNITIES

- i. The state government pressure for urban development and for inner suburb densification is unfair on current residents and reduces their amenity.
- ii. Developers are armed with experts including lawyers, planners, landscapers, urban designers, montage consultations and traffic consultants with knowledge of the complex planning scheme. The planning legislation which is constantly changing (ie. introduction of VIC Smart) by steadily removing residents rights such as the rights to appeal, and by removing the obligation for notification and advertising requirements and obligations of the council as decision maker to take account of resident complaints in making their decision.
- iii. Planning scheme guidelines such as Neighbourhood character statements and Built Environment and Heritage statements<sup>21</sup> are subjective in nature and open to interpretation. These guidelines can be, and frequently are ignored and overruled at VCAT.

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<sup>17</sup> Joe Hurley, Alex Saunders, Alan Both et al, *Urban vegetation cover change in Melbourne 2014 -2018* July 2019, Centre for Urban Research RMIT University Melbourne Australia, School of Human Sciences, University of Western Australia, School of Science, RMIT University, CSIRO Data 6.

<sup>18</sup> Stephanie Zillman, *Australians face a hotter future if our cities don't do more to cool 'heat' island, report finds*, ABC News 11 March 2021.

<sup>19</sup> Jenny Brown, *The heritage shock that came from staying at home during COVID 19*, The Age December 6, 2021.

<sup>20</sup> City of Boroondara, Tree Protection Local Law 2016, accessed at [www.boroondara.gov.vic.au](http://www.boroondara.gov.vic.au)

<sup>21</sup> Boroondara Planning Scheme 21.04 - Built Environment and Heritage  
Boroondara Planning Scheme 22.05- Neighbourhood Character Policy

- iv. The Federal Government Foreign Investment Board (FIRB) regulations and state property laws are facilitating and encouraging demolition and subdivision.<sup>22</sup>
- v. The FIRB laws and rapid approvals of demolition permits has resulted in thousands of unoccupied residential properties and vacant land totalling 12,215 in Hawthorn; 6558 in Burwood and Camberwell.<sup>23</sup> A block of land that previously contained a liveable house, that has been demolished and the land left empty for over 10 years is in direct conflict with the objectives of the *Planning and Environment Act 1987* (Vic) section 4 (1)(a);

*to provide for the fair orderly economic and sustainable use, and development of land.*

- vi. For example, a demolished house on the corner of Callantina Rd and Kooyongkoot Rd, Hawthorn has resulted in vacant land for over 10 years; and a large, renovated Edwardian House in Edward St Kew that was demolished in 2014 remains an empty block.
- vii. Real estate agents advertise buildings as 'land banking opportunities and property investment websites spruik land banking as a legitimate investment strategy. 'No heritage overlay' is a selling point using in real estate selling campaigns, irrespective of the value and quality of the house being advertised, such as 49 Mangarra Rd, Canterbury. This must be stopped.
- viii. Single dwellings are demolished and replaced by single dwellings occupying the entire block, and this is not providing the purported FIRB policy outcome of increasing housing stock.
- ix. Planning controls at state and council level are inadequate to counter the new threats of foreign money laundering.<sup>24</sup>
- x. Local residents and neighbours are not notified of proposed demolition until demolition has commenced.
- xi. Advertising requirements are inadequate. Advertisement and notification of Planning permit applications is inconsistently implemented, with Council officers merely preparing a letter to be sent to only neighbouring properties either side of the application site. The permit advertisement requirement to be displayed on the fence is for two weeks only, and often done during holiday periods when neighbours are away. They are therefore not aware of proposed development in the area. It is an impossible ask for residents to formulate a response to Council without expertise in planning law and assessing complex plans within that timeframe.
- xii. Council's often lack understanding of the tools to protect heritage already at their disposal and can be unclear about the practical application and legal operation of heritage controls. For example, the last two Boroondara Council budgets have set aside very minimal funds for implementation of the Municipal-wide Gap study and ongoing identification of heritage places, that were missed in the Gap studies.
- xiii. Councillors demonstrate variable understanding of the Councils obligations in relation to heritage identification and protection, in particular under the *Heritage Act 2017* (Vic). Yet Councillors are participating in planning decisions on land use in heritage areas, without training or expertise.
- xiv. We have experienced poor communication between residents and Council officers regarding Council's role and legal obligations in relation to heritage issues.

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<sup>22</sup> Practice Note 6: Foreign Investment Review Board, accessed at [https://firb.gov.au/sites/firb.gov.au/files/guidance-notes/GN06\\_Residentialland\\_0.pdf](https://firb.gov.au/sites/firb.gov.au/files/guidance-notes/GN06_Residentialland_0.pdf)

<sup>23</sup> Simon Johanson, *City marked with 'ghost homes'*, The Age, December 2020. Prosper reports accessed at <https://www.prosper.org.au/eports/>

<sup>24</sup> Sarah Dankert, *Gangs 'laundering billions in real estate,' Sydney Morning Herald*, 10 November 2021, accessed at [www.smh.com.au](http://www.smh.com.au).

- xv. A recently formed Boroondara Heritage Advisory Committee, at the request of community members, is an entirely internal body with no community members, and no public reporting as to its functions and activities.
- xvi. Currently complete uncertainty and unfairness for residents, especially owner occupiers, as to what might be permitted to be erected by their neighbours, particularly garages and buildings separate from main dwelling, or plans for subdivision.
- xvii. There is currently no process for community heritage nominations to Council or established forum provided for discussions with Council on specific heritage or general planning issues.
- xviii. There is currently no heritage training provided by the Council for Planners and Building department staff, further reducing their ability to have informative discussions with residents in assisting their understanding of the heritage and planning process and decision making at Council level.

**Recommendation 2.**

**Political donations by property developers be banned at every level of government in Victoria. This will bring Victoria in line with all other states and territories in Australia.**

**ITEM 4  
HERITAGE**

- A. *Adequacy of current criteria and processes for heritage protection.*
  - i. Melbourne has had a reputation for world class heritage houses, streetscapes and shopping strips dating from the 1800s to the 1970s and 1980s.<sup>25</sup> There is a lack of adequate national, state and local recognition and celebration by authorities that Melbourne's older built suburbs have world class architecture and gardens, both public and private. The history of Victoria and its people can be understood through these remarkable buildings and places.
  - ii. Victoria's indigenous heritage places should be viewed as an integral part of the heritage system, with awareness and recognition of their significance by all Victorians.
  - iii. Short term thinking is dominating the scene and a more focussed long-term approach is needed.
  - iv. There is an appearance of policy documents at Council level, sufficient to protect Heritage but they are not well understood or utilised.<sup>26</sup>
  - v. An absence of collaboration and communication between the heritage regulators, in which the National Heritage List is administered by the Australian Heritage Council, the Victorian Heritage Register is administered by the Victorian Heritage Council and Heritage Overlays are administered by Local Government. This perpetuates a fragmented and disjointed system that is ineffective in protecting Victorian heritage, falling short of community expectations.
  - vi. In particular, the City of Boroondara is disproportionately affected due to the age of the area with large parts containing heritage places, buildings and landscapes.<sup>27</sup> Thousands of houses have been demolished recently in the City of Boroondara. Council communication shows that between 2016 and 2021, 4000 demolition permits were approved by Boroondara Council.

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<sup>25</sup> Nigel Lewis, *An incubator of postwar modernism*. National Trust, Victorian News, National Trust of Australia, May 2010.

<sup>26</sup> For example, a Boroondara Heritage Action Plan 2016, is not being fully utilized, and the Neighbourhood Character statement is a Guideline only.

<sup>27</sup> Editorial, The Herald Sun, 20 May 2019.

- vii. In Boroondara, for a variety of reasons, Council has proven unequal to the task of meeting their obligations under the *Heritage Act 2017* (Vic) of Heritage protection.
- viii. For example, a 2015 Boroondara Council heritage study of Balwyn, Balwyn North and Deepdene, identifying many heritage properties, was shelved without consultation before any properties were protected. The Robin Boyd house in Tannock Street, Balwyn had been identified by Council appointed heritage experts as individually significant including its interior, but nothing was done to protect it.
- ix. Recent community pressure on Councillors from a change.org petition signed by thousands within a few days, resulted in reinstatement of the 2015 Gap study, and an interim overlay was requested by Council to the Minister, but was refused with the reason given that the Boyd Tannock Street house was not in danger of demolition.
- x. This is a stark example of the Minister not adhering to recommendations from Heritage experts. The report of a member of the Heritage Council was ignored by the Minister's delegate in the case of Bob Santamaria's house at 1207 Burke Rd Kew (see APPENDIX Case study 2 ).<sup>28</sup>
- xi. In refusing heritage protections the Minister's delegates have not provided clear reasons to community and Council for the refusal, or what was lacking in substantiating the significance of the place (eg Kaydon Court, Coolangatta Rd Camberwell).
- xii. In line with historic places around the world such as most major capital cities in Europe that have protected their significant heritage places, Australia should follow their lead in recognising our unique Australian heritage places. Examples such as Milan, Prague; Chinon, France; Pyramids at Giza; Newport Rhode Island, show protection can provide a drawcard for visitors, and we should adopt and encourage the policy of protecting heritage as custodians for future generations.
- xiii. Successive studies have shown that community demand for heritage protections has not been met by adequate legislation or action by governments and Councils.
- xiv. In 2014, the Heritage Council of Victoria commissioned a literature review of existing research and studies on community perceptions of heritage including international examples.<sup>29</sup> Many of the studies cited are ongoing, however it is not evident how these important studies have informed policy and legislative reform since 2014.
- xv. The community view is that heritage needs to be protected has largely been ignored by all levels of government since the 1970s.<sup>30</sup> Increasing education as recommended by the State Government appointed Heritage Council report *State of Heritage Review; Local Heritage 2020*<sup>31</sup> is futile without adequate enforceable protections in place.
- xvi. The current high cost of heritage reports and amendment preparation unfairly draws on Council's personnel resources and finances.<sup>32</sup> Council costs are met by the current rate paying residents. Little wonder residents feel angry and cheated when more Heritage properties are not protected and demolished in an area known for its history and heritage buildings. In particular, when the heritage of an area has been examined and documented by heritage experts in Gap studies commissioned by Council, but the information has been

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<sup>28</sup> Santamaria House, 1207 Burke Rd, Kew. Amendments C348boro and C352boro. Accessed at <https://www.boroondara.vic.gov.au/media/58236/download?inline=> and 'Bid to protect Santamaria property', Herald Sun, 26 March 2021.

<sup>29</sup> Community Perceptions of heritage, Appendix A- Literature review, 2014. Accessed at [www.heritagecouncil.vic.gov.au](http://www.heritagecouncil.vic.gov.au)

<sup>30</sup> Chris Johnston, *Essay: What are the community expectations for heritage protection*, accessed at <https://www.awe.gov.au/sites/default/files/env/pages/f4d5ba7d-e4eb-4ced-9c0e-104471634fbb/files/essay-expectations-johnston.pdf>

<sup>31</sup> Heritage Council Victoria, *State of Heritage Review: Local heritage*, 2020. Accessed at [www.heritagecouncil.vic.gov.au](http://www.heritagecouncil.vic.gov.au)

<sup>32</sup> Editorial, The Herald Sun, 20 May 2019.

used selectively. Examples are parts of the historic Wattle Rd Hawthorn are not protected despite being cited in previous gap studies as containing houses of both individual significance and contributory significance. Roseberry Street Hawthorn is the only street not included in a precinct surrounding a 19<sup>th</sup> century brickworks, whose industrial history is well documented by Council and expert archaeological and historical reports.

- xvii. Yet, Dirk Spennemann opines that next to no effort is being put into implementing strategies, ranging from capacity building within the administration of local government to education of property owners, wider stakeholders, public residents in local government areas and outside visitors.<sup>33</sup> This was the case in 2006 and remains today. It must be corrected.
- xviii. The adequacy of the current heritage framework in preventing the loss of heritage is clearly inadequate, evidenced by the widespread loss of heritage over recent years.
- xix. Melbourne University researchers advocate for a new approach to heritage, known as ‘*people centred conservation*’ which recognises the strong public interest in heritage particularly local heritage, and places community involvement at the heart of heritage.<sup>34</sup>
- xx. Currently there are no provisions in the *Heritage Act 2017* (Vic) for consultation or involvement of current residents. Spennemann strongly advocates for community involvement which needs to be recognised in applying the current HERCON criteria:

*Community involvement in the process [of cultural heritage protection] has long been recognised as crucial because mid- and long-term protections can only occur if such places are ‘embraced’ or ‘owned’ by the community.*<sup>35</sup>

- xxi. In Boroondara there are precincts of local, metropolitan and state significance.
- xxii. Yet, houses in Boroondara that the community expect to be protected do not meet the threshold for a heritage overlay. There are difficulties protecting heritage buildings that do not meet the current heritage thresholds which are ‘best in class’ in comparison with other properties within the municipality, using the current emphasis on comparative analysis. For example, a house that has been protected in Fitzroy or Carlton under an earlier introduced overlay, would not meet the threshold for protection today in Boroondara.
- xxiii. There is a need for more heritage precincts in older suburbs. Houses can only be protected if they are part of a precinct or are of individual significance. This two-tier grading system is ineffective and is not working to protect heritage places. Many more precincts could be created.
- xxiv. Misconceptions regarding the formation of precincts are a major problem at local level resulting in loss of local heritage. There is no requirement for houses to be sited contiguously to be included in a precinct, and so contributory houses can be attached to nearby precincts, yet this rarely occurs.
- xxv. Property owners apply for subdivision even in a Heritage precinct to build another house in front of a heritage house.
- xxvi. Scrutiny and certainty of what is proposed to be built in a heritage precinct on those blocks not deemed to be part of the Heritage overlay. Permits are approved for buildings that are not sympathetic with the existing streetscape.
- xxvii. Decisions using the HERCON criteria have become disproportionately focussed on the architecture and not on the social, historical and community importance of buildings and gardens where residents live. The obsession with ‘comparative analysis’ and the subjective nature this focus by the person completing the analysis makes it difficult for anyone other

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<sup>33</sup> Dirk Spennemann, ‘*Your solution, their problem - Their solution your problem: the Gordian Knot of Cultural Heritage Planning and management at the Local Government Level in Australia.*’ disP164-1/2006, 30.

<sup>34</sup> James Lesh, Kali Myers ‘*Stuck in the past: why Australian heritage practice falls short of what the public expects.* March 2, 2021. The Conversation, 2 March 2021.

<sup>35</sup> As above n 33, 30.

than an architect to make an assessment and confirm the threshold is met for heritage protection. Currently this is a further impediment to community members involvement in decisions regarding heritage significance.

- xxviii. A submission by the National Trust to the *Heritage Act Review 2015*, emphasised the poor relationship in decision making to local heritage issues and integration to local heritage planning.<sup>36</sup> The Heritage Council currently has no role in practical heritage protection at a local level.
- xxix. There is no provision for the inclusion of a range of qualified experts to provide advice on heritage assessments, including historians and local historical societies, heritage architects, archaeologists to assist in determining heritage protections.
- xxx. Trees should be taken seriously as heritage and protected. Current Boroondara tree register is a guide only and can be overridden by Council or VCAT. The Boroondara Local Law on Trees 2016 makes enforcement of tree controls difficult and is without adequate penalties. Nomination process for trees as significant and criteria for assessment is unclear. The Council appointed author who prepares the Councils Significant Tree Register, John Patrick is not an arborist and works as an 'independent' consultant for developers such as Urbis.<sup>37</sup>
- xxxi. Data on the status of local Heritage is not collected. There is no local data collected or made publicly available on what heritage has been lost what has been protected. Regular publication of data surrounding heritage could inform debate within local government areas and at state level.
- xxxii. Design overlays should be more widely used to protect heritage areas, such as that advocated by the Royal Historical Society of Victoria to protect local shopping strips of heritage buildings.<sup>38</sup>
- xxxiii. International examples; For example the town of Chinon in the Loire Valley, France has a heritage overlay over the entire town. An archaeologist is employed to consult and report on any building excavations or proposed alterations and to work with owners to preserve their heritage building.
- xxxiv. Maldon in central Victoria has its own heritage overlay and provides a shining example of what can be done in our own state to protect and preserve heritage places.
- xxxv. Victoria is the only state in Australia that allows political donations by property developers.
- xix. The Vacancy taxes imposed by State and Federal governments appears not to be enforced in Melbourne.<sup>39</sup> The owners' business model of paying staff to make it appear someone is living in an unoccupied house by shuffling rubbish bins in and out and moving cars in the driveway, is currently very obvious to those walking the streets of Boroondara.
- xx. Case studies as exemplars of the issues follow this discussion in the Appendix.
  - 1. Currajong House
  - 2. B.A Santamaria House

### **Recommendation 3.**

**The heritage criteria should be based on an assumption that every property aged greater than 30 to 40 years old is deemed to be of contributory heritage significance until proven otherwise; and  
Onus is on objector to contest heritage significance to prove not of heritage significance.**

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<sup>36</sup> National Trust of Victoria, Submission to the Heritage Act Review, 28 August 2015.

<sup>37</sup> *Auburn 366 Investments Pty Ltd v Boroondara City Council* [2020] VCAT 1350 (Member Tait). VCAT judgments on 368 and 364-66 Auburn Rd; *APD Capital Pty Ltd v Boroondara City Council* [2020] VCAT 43 (Member Bilston-McGillen).

<sup>38</sup> Royal Historical Society of Victoria Inc., Submission to heritage Council of Victoria Historic Strip Shopping Centres: DDOs and HOs, 29 May 2019.

<sup>39</sup> As above n 12.

**Recommendation 4.**

**Amend the *Heritage Act 2017 (Vic)* to broaden the operation of the Act to include matters concerning local heritage; and to mandate ongoing reviews of heritage.**

**Recommendation 5.**

**To expand the role and powers of the Heritage Council and the purposes of the Heritage Act 2017 (Vic) to include regulation and administration of local heritage matters.**

*B. Separating heritage protection from the planning administration*

- i. Advocacy, community participation and education as advocated by eminent heritage expert Chris Johnston.<sup>40</sup>
- ii. Heritage minister dedicated to leading a department focussed on heritage preservation.
- iii. Heritage department separate from Planning, thus removing the direct conflict of interest posed by a coexisting planning and heritage department in state government.

**Recommendation 6.**

**Heritage Victoria to be separated from DWELP, and to operate as a stand-alone entity under a Minister for Heritage, who cannot be the Minister for Planning.**

*C. Establishing a heritage tribunal to hear heritage appeals*

- i. VCAT is the Tribunal for planning appeals concerning heritage. As we have seen time and again heritage concerns are swept aside once buildings are demolished even if the proposed building is in an existing heritage overlay.<sup>41</sup>
- ii. If there are more certain protections for heritage, then the need for an appeal body would not be so important.

**Recommendation 7.**

**As part of the expansion of the operation of the Heritage Council and the Heritage Act a separate and independent Tribunal to be urgently established under the Act as the *Heritage Review Tribunal*.**

**Recommendation 8.**

**If a heritage issue arises an initial report is to be obtained from a panel of independent heritage experts, and costs to be borne by objector. Any appeals to be determined by the independent *Heritage Review Tribunal*.**

**Recommendation 9.**

**Precinct thresholds changed to reduce the emphasis on comparative analysis requiring 'best in class'. Each house and precinct should be assessed on its historical and heritage merits.**

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<sup>40</sup> Chris Johnston, *Essay: What are the community expectations for heritage protection*, accessed at <https://www.awe.gov.au/sites/default/files/env/pages/f4d5ba7d-e4eb-4ced-9c0e-104471634fbb/files/essay-expectations-johnston.pdf>

<sup>41</sup> *Auburn 366 Investments Pty Ltd v Boroondara City Council* [2020] VCAT 1350 (Member Tait). VCAT judgments on 368 and 364-66 Auburn Rd; *APD Capital Pty Ltd v Boroondara City Council* [2020] VCAT 43 (Member Bilston-McGillen).

**Recommendation 10.**

**The creation of conservation areas that include multiple precincts, reflecting the high grade of preservation in those precincts.**

*D. Penalties for illegal demolitions and tree removals*

- i. A Significant Tree Register and Local Laws are inadequate protections for trees on private land in particular. Such protections are not effective or enforceable. Penalties are inadequate and developers do not have to comply with local laws, they can remove trees as part of their planning permit and the penalties for illegal removal are paltry.<sup>42</sup>
- ii. Tree protection and controls should be part of the Heritage legislation.

**Recommendation 11.**

**Controls on tree protection to prevent loss of established trees and tree canopy must be enshrined in Heritage legislation with appropriate severe penalty provisions. The reverse onus on trees more than 20 years old, providing protection enshrined in legislation and appropriate penalty provisions.**

*E. Possible Federal involvement in heritage protection*

- i. Legislation assisting with clarity and consistency of applying and enforcing heritage controls to give effect to State and local government oversight, including an independent panel.
- ii. International solutions to meeting the cost of maintenance of heritage buildings must be examined. For example, in France the *Patrimoine* program addresses costs of maintenance and repair in recognition that preserving heritage benefits the whole French community. The tourist income flowing from this forward thinking, custodial approach is readily appreciated by anyone visiting France today or in years to come. Why not in Australia?
- iii. The French system, and others such as the UK should be more closely examined for their funding models. Some municipalities have a grants scheme for property owners to assist with costs of repair of heritage buildings but are limited in dollar value and number of grants awarded.<sup>43</sup> Heritage maintenance could be legislated through the use of lotteries or tax incentives at a national level, avoiding the need for cash grants.

*F. The appointment of independent local and state heritage advisers*

**Recommendation 12.**

**Education regarding heritage for architects planners and landscapers at undergraduate level, creating a career path for heritage specialists at local and state level.**

*G. The role of Councils in heritage protection*

- i. Opacity of the planning requirements in a heritage overlay and what can be built there.

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<sup>42</sup> The Heritage Council, *The Heritage Overlay Guidelines 9: Landscapes Gardens and Trees*.

<sup>43</sup> City of Whitehorse Heritage Assistance Scheme, <https://www.whitehorse.vic.gov.au/planning-building/planning-strategies/heritage-whitehorse> accessed 26 January 2022.

- ii. If Councils are to be involved in Heritage decisions they need to be adequately resourced and staffed, with a dedicated heritage department separate from planning. Local knowledge and expertise must be applied, through Historical Societies, residents, historians, heritage architects (with expertise on particular periods and styles), archaeologists. Councils do not currently have heritage advisors or historians on staff.
- iii. Councils do not have a heritage department to oversee heritage matters.
- iv. Councils do not mandate training for council officers on heritage.
- v. Council's failure to make decisions on planning permits within the required time, triggers the ability of an applicant to appeal to VCAT under the *Planning and Environment Act 1987* (Vic). This in turn allows VCAT to become the primary decision maker, something that was never intended by the legislation. It appears none of the planners who sit on VCAT have knowledge or expertise in heritage.
- vi. Residents are not notified if their property is recommended for inclusion in an overlay and then subsequently removed.
- vii. We know of many instances where planners have made recommendations on the heritage value of particular properties, and approved permits to build, for which they have never been to see in person nor to observe the setting in which the building is situated. The curtilage is disregarded in this scenario – yet the Heritage Overlay Guidelines clearly state that the setting is important:

*The majority of the significant parts of the contributory elements to the Heritage Place and their relationship to the setting within the area should be retained.*<sup>44</sup>

- viii. There is a lack of clarity about planning and heritage processes and poor communication with residents on a day to day basis.
- ix. Council is not mandated to consult with residents or take account of objections. Even questions in Council meetings are strictly limited in time and restricted to the particular items on the agenda, limiting the participation of residents.
- x. High turnover of planning staff at Council and who, in many cases do not live in the heritage areas and have limited local knowledge.
- xi. Council could provide education and resources on local history and architecture. Other Councils provide excellent resources on local architectural styles and an advice service offering consultation with a heritage architect for renovating a heritage property.<sup>45</sup>
- xii. Advice and information on local indigenous sites and heritage issues should be available and ongoing local consultation with indigenous groups.
- xiii. Heritage educational references and resources should be made available via library services, and accessible archives from the local historical societies and previous heritage studies should be free and readily accessible to anyone wishing to research.

### **Recommendation 13**

**If Council is to be involved in the Heritage identification and application, then a Heritage department should be mandated, led by a suitably qualified Head of Heritage.**

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<sup>44</sup> Heritage Victoria, Heritage Council of Victoria, *Guidelines 3 Demolition*, The Victorian Government Department of Sustainability and Environment 2007, 1. Accessed at [www.heritage.vic.gov.au](http://www.heritage.vic.gov.au)

<sup>45</sup> City of Whitehorse, *Heritage Advisory Service*, accessed at <https://www.whitehorse.vic.gov.au/planning-building/planning-strategies/heritage-whitehorse> 26 January 2022.

**ITEM 5**

**ENSURING RESIDENTIAL ZONES ARE DELIVERING THE TYPE OF HOUSING THAT COMMUNITIES WANT.**

- i. Single houses are being replaced by single houses, which is not increasing housing stock for affordable housing.
- ii. Where units are built locally, they are mostly luxury, reducing the availability of affordable housing. There is a need to have a range of housing levels in Boroondara to cater for a diverse population.

## APPENDIX

### Case Study 1

#### Currajong House, 337 Auburn Rd, Hawthorn



- Built in 1885 excellent condition, prominent position, unique character, famous architect, notable residents
- Draft Hawthorn East Heritage Gap Study conducted in July-August 2018. Identified Currajong as of contributory heritage significance, in the Longford estate precinct.
- Council granted a Building Permit to Demolish on 25/9/18
- Amendment C299 had been in effect since May 2018, meaning that subsequent approval of heritage overlays would not protect properties in Boroondara from demolition if a permit to demolish had been granted
- The foreign owner removed the tenants and started to prepare the house for demolition in April 2019
- Community objections commenced but both Council and Government refused to act, each blaming the other for the predicament
- Dozens of letters were written to the State Planning Minister, the local State member and the Council trying to preserve the house. All said they were powerless
- Letters were written to DWELP
- Articles appeared in the newspapers, on television and radio trying to save the house prompted by the local community

- Heritage Victoria was approached but refused to act
- An Executive Director from DWELP asked Heritage Victoria to reconsider without success
- A Change.org petition to save the house attracted more than 5,000 signatures in less than a week
- In the week prior to the Federal election the Minister removed the application of C299 from the property to allow for further heritage studies to occur. The effect was that the heritage overlay now protected the property. As the owner had engaged demolishers and disconnected the services it is clear this saved the property from destruction.
- Application was then made to the Planning Panels by Council to determine the properties heritage significance. However, Council failed to update its website or advise interested parties, initially precluding submissions
- When residents found out about the referral (by accident) weeks of work in preparing lengthy submissions followed including obtaining a report from a Heritage Architect, historians, etc all of which was privately funded by residents. The submissions contended the property was of individual heritage significance
- The owner had retained lawyers and a heritage architect but withdrew from the process and did not object to the classification
- A Planning Panel hearing took place in September 2020. The Panel concluded the house was of individual significance but recommended further research.
- Council then engaged its own expert heritage consultant who concluded in February 2021 the property was individually significant
- On 3 May 2021 the Council voted to accept a *contributory* grading for the house despite the above and further submissions from residents that it was individually significant. The Gap Study was submitted for final approval by the Minister
- Council then insisted that the application for individual significance be re-advertised and further objections (if any) and submissions be received
- Further extensive submissions were made in support of individual significance. No contrary submissions were received
- In December 2021 the Council finally agreed to recommend to the Minister that the property should have a heritage grading of individual significance
- The recommendation is currently with the Minister awaiting approval

## Summary

### Case Study 1 - Currajong

This house would immediately be recognised by most as worthy of preservation. Even cursory research confirms that proposition. Instead, Council which had already identified it as at least of contributory heritage significance, granted a demolition permit. The property came within hours of being demolished and was only saved by Ministerial intervention in the week prior to an election following intense media and public pressure. Now almost 4 years after it was first identified as having heritage significance it is still awaiting confirmation of its status by the Minister.

## Case Study 2

### Santamaria House, 1207 Burke Road, Kew



- This house was built in 1914 and was the home of Mr B. A. Santamaria between 1960 and 1983 and remained in the family until February 2019
- Mr Santamaria was a very well-known figure in politics and the Catholic Church, was a prolific author and television presenter
- The house is a good intact example of Federation architecture in a prominent position
- Dr. Helen Doyle of the Heritage Council provided a report recommending the house was of individual heritage significance and should have internal controls
- The Minister rejected the advice and refused the classification giving no reasons for doing so
- The result will be the demolition of this house

## Summary

The Minister rejected or ignored the advice of his own advisors in assessing heritage protection

END OF SUBMISSION