

**Bayside Planning Scheme Amendment C192bays
Post war modern residential heritage**

Panel Report

Planning and Environment Act 1987

15 May 2024

How will this report be used?

This is a brief description of how this report will be used for the benefit of people unfamiliar with the planning system. If you have concerns about a specific issue you should seek independent advice.

The planning authority must consider this report before deciding whether to adopt the Amendment.

[section 27(1) of the *Planning and Environment Act 1987* (the PE Act)]

For the Amendment to proceed, it must be adopted by the planning authority and then sent to the Minister for Planning for approval.

The planning authority is not obliged to follow the recommendations of the Panel, but it must give its reasons if it does not follow the recommendations. [section 31 (1) of the PE Act, and section 9 of the *planning and Environment Regulations 2015*]

If approved by the Minister for Planning a formal change will be made to the planning scheme. Notice of approval of the Amendment will be published in the Government Gazette. [section 37 of the PE Act]

Planning Panels Victoria acknowledges the Wurundjeri Woi Wurrung People as the traditional custodians of the land on which our office is located. We pay our respects to their Elders past and present.

Planning and Environment Act 1987

Panel Report pursuant to section 25 of the PE Act

Bayside Planning Scheme Amendment C192bays

Post war modern residential heritage

15 May 2024



Lester Townsend, Chair



Jonathan Halaliku, Member

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Glossary and abbreviations

Council	Bayside City Council
The Department	Department of Transport and Planning, formally the Department of Environment, Land, Water and Planning
DDO	Design and Development Overlay
PE Act	<i>Planning and Environment Act 1987</i>

Overview

Amendment summary	
The Amendment	Bayside Planning Scheme Amendment C192bays
Common name	Post war modern residential heritage
Brief description	Apply the Heritage Overlay to 59 individual places and 1 group listing located throughout the municipality of Bayside, otherwise referred to as the heritage places
Subject land	The heritage places are situated at various locations across the municipality within the suburbs of Beaumaris, Black Rock, Brighton, Brighton East, Cheltenham, Hampton and Sandringham
Planning Authority	Bayside City Council
Authorisation	Authorised on 24 October 2022 subject to the conditions, all of which were satisfied by before exhibition, as confirmed by the Department of Transport and Planning on 9 August 2023
Exhibition	7 September to 19 October 2023
Submissions	34 submissions (including one late submission): four submissions in support and 30 submissions opposing

Panel process	
The Panel	Lester Townsend (Chair) and Jonathan Halaliku
Directions hearing	17 November 2023 online
Panel hearing	Planning Panels Victoria, 26, 27,28,29 February and 1 March 2024
Site inspections	Accompanied inspection on Monday 5 February 2024 of: <ul style="list-style-type: none"> - 28 Towers Street, Beaumaris - 21 Dudley Street, Brighton - 9 Wolseley Grove, Brighton - 27 Bolton Avenue, Hampton - 78 Scott Street, Beaumaris Unaccompanied inspections of other properties on various other days

Parties to the hearing	<p>Bayside City Council represented by Kim Piskuric of Harwood Andrews Lawyers, with Clare Beames of Bayside Council, called the following expert evidence:</p> <ul style="list-style-type: none"> - Heritage from Jim Gard'ner of GJM Heritage - Heritage from Natica Schmeder of Landmark Heritage <p>Jianchen Yao represented by Michael Dunn of Metropol Planning Solutions</p> <p>National Trust of Australia (Victoria) represented by Samantha Westbrooke</p> <p>James and Andrea Parry</p> <p>Glenn Woodhead</p> <p>James Campbell</p> <p>Pat Mollar represented by Dean Mollar and Lara Blasse, called the following expert evidence:</p> <ul style="list-style-type: none"> - Building condition from Nik Wallis <p>Sokratis Kromidellis</p> <p>Marika Okkas</p> <p>James Goodwin and Leanne Jaensch represented by Sal Lennon of Hall and Wilcox, calling the following expert evidence:</p> <ul style="list-style-type: none"> - Heritage from Bryce Raworth of Bryce Raworth Pty Ltd <p>Robert Gluck and Mary Gluck represented by Robert Forrester of Counsel briefed by Best Hooper Lawyers, called the following expert evidence:</p> <ul style="list-style-type: none"> - Heritage from Bryce Raworth of Bryce Raworth Pty Ltd
Citation	Bayside PSA C192bays [2024] PPV
Date of this report	15 May 2024

Executive summary

Mid-Century Modern architecture is well loved by some members of the Bayside community. There is even an association, Beaumaris Modern with a mission to:

To celebrate, educate and promote public awareness of the importance of preserving the mid-century architecture of Beaumaris

This enthusiasm is not universally shared. Some members of the community are opposed to heritage protection almost in principle, and some to the listing of specific houses.

Bayside Planning Scheme Amendment C192bays (the Amendment) proposes to partly implement the recommendations of the *City of Bayside Post War Modern Residential Heritage Study* (GJM Heritage, July 2022) (Heritage Study) in respect of the heritage places.

At its meeting on 19 July 2022, Bayside City Council (Council) resolved not to apply the Heritage Overlay to 28 properties identified as being of local heritage significance in the Heritage Study. Whether or not the Heritage Overlay should be applied to the excluded properties is beyond the scope of the Panel because they do not form part of the Amendment.

The Amendment, as exhibited, proposes to apply the Heritage Overlay to 59 individual places and 1 group listing in the municipality of Bayside. There was no objection to 40 properties, and objections in respect of 22 properties (some objections did not relate to specific properties, a number of objections related to the same property, and some related to only specific properties in the group listed place).

The Panel notes throughout the Hearing, Mr Gard'ner, the main author of the Heritage Study, continuously reflected on his work in response to submissions, and as new information about a property came to light, he changed his recommendations where warranted. Informed by his evidence, Council submitted that the Amendment ought to proceed subject to the following post-exhibition changes:

- The removal of the following properties from the Amendment:
 - 13 Fifth Street, Black Rock
 - 9 Wolseley Grove, Brighton
 - 9 Bellaire Court, Beaumaris
 - 175-177 Tramway Parade, Beaumaris
 - 27 Bolton Avenue, Hampton
 - 78 Scott Street, Beaumaris.

Amendments to the Statements of Significance and Citations for some properties were also proposed.

The Panel recommends the removal of a further four properties:

- Flats 1-4/16 Gillard Street, Beaumaris because while the units could be said to demonstrate principal characteristics of post-war walk-up units in the most generic sense they are not 'better than typical' or 'above average', and do not warrant protection
- 15 Mariemont Avenue, Beaumaris because alterations undermine the "*authenticity*" and "*truth to material*" principles that underpin Modernist design.
- 82 Reserve Road, Beaumaris because it has been substantially altered.

- 165-167 Tramway Parade, Beaumaris because a planning permit has been issued while a Heritage Overlay applies. The Panel takes this as a clear indication that the proper application of heritage policy allows for demolition of this building.

Table 1 summarises the outcomes of the Amendment.

Table 1 Overview of outcomes

Number of properties	Outcome	Category
40	List	No objection
22	–	Objections
6	Remove	Removal recommended by Council and supported by the Panel
4	Remove	Listing recommended by Council, but removal recommended by the Panel
12	List	Listing recommended by Council and supported by the Panel

Recommendations

Based on the reasons set out in this Report, the Panel recommends that Bayside Planning Scheme Amendment C192bays be adopted as exhibited subject to the following:

- The post exhibition changes proposed by Council in its final position on the Amendment presented in its Part C submission:**
 - The removal of the following properties from the Amendment:**
 - 13 Fifth Street, Black Rock
 - 9 Wolseley Grove, Brighton
 - 9 Bellaire Court, Beaumaris
 - 175-177 Tramway Parade, Beaumaris
 - 27 Bolton Avenue, Hampton
 - 78 Scott Street, Beaumaris
 - Amendments to the Statements of Significance and Citations in respect of the following Heritage Places:**
 - The 'Bellaire Court Estate' group listing, to remove reference to 9 Bellaire Court, Beaumaris
 - 19 Haywood Street, Beaumaris, to include reference to the introduction of stacked stone cladding, and to replace reference to 'Brighton' with 'Beaumaris' in respect of Criterion D
 - 82 Reserve Road, Beaumaris, to delete Hercon Criterion H and to reflect recent alterations to the property
 - 15 Mariemont Avenue, Beaumaris, to reflect recent alterations to the property
 - Flats 1-4/ 16 Gillard Street, Brighton East, to reflect recent alterations to the property
 - 7 Roosevelt Court, Brighton East, to clarify the parts of the fencing that are significant.
- Delete the Heritage Overlay from Flats 1-4/16 Gillard Street, Beaumaris.**
- Delete the Heritage Overlay from 15 Mariemont Avenue, Beaumaris.**

- 4. Delete the Heritage Overlay from 82 Reserve Road, Beaumaris.**
- 5. Delete the Heritage Overlay from 165-167 Tramway Parade, Beaumaris.**
- 6. In respect of 19 Haywood Street, Beaumaris, 'Gooch House':**
 - a) Amend the Heritage Citation to include reference to the introduction of the stacked stone cladding to small sections of the facade**
 - b) Update the Heritage Citation and Statement of Significance in respect of Criterion D to replace the reference to Brighton with Beaumaris.**
- 7. In respect of 21 Dudley Street, Brighton, specify in the statement of significance that the three mature Eucalypts in the front yard and one in the backyard are all significant elements of this place.**
- 8. In respect of 56 Cloris Street, Beaumaris, determine if the front fence was originally of cement bricks as stated in the Citation, or timber as noted in the 1961 building permit plans, and amend the Citation if necessary.**

1 Introduction

1.1 The Amendment

(i) Amendment description

The Amendment proposes to partly implement the recommendations of the *City of Bayside Post War Modern Residential Heritage Study* (GJM Heritage, July 2022) (Heritage Study) in respect of the heritage places.

Specifically, the Amendment, as exhibited, proposes to:

- apply the Heritage Overlay to 59 individual places and 1 group listing in the municipality of Bayside
- change the Bayside Planning Scheme (Planning Scheme) to:
 - amend Clause 15.03-1L (heritage conservation) to include the Heritage Study as a policy document
 - amend the Schedule to Clause 72.04 (Documents Incorporated in this planning scheme) to include the Statements of Significance for the proposed 59 individual heritage places and 1 proposed group listing
 - amend the Schedule to Clause 72.08 (Background Documents) to include the Heritage Study.

(ii) The heritage places

The properties subject to the Amendment are listed in Appendix A. This list has hyperlinks to the Statements of Significance.

The properties are scattered across the suburbs of Beaumaris, Black Rock, Brighton, Brighton East, Cheltenham, Hampton and Sandringham.

All properties are in the Neighbourhood Residential Zone – Schedule 3, except for 19 Olympic Avenue, Cheltenham, which is in the General Residential Zone – Schedule 1.

All properties are affected by the Design and Development Overlay (DDO):

- 17 properties are within DDO1 'Building Height Control – Coastal'
- 1 property is within DDO2 'Building Height Control – Inland Areas'
- the remaining properties are within DDO3 – 'Building Height Control for Non-Residential Buildings in the Inland Minimal Residential Growth Area'.

Five properties are in the Special Building Overlay, which is applied to land liable to flooding, and 39 properties are in the Vegetation Protection Overlay - Schedule 3 (VPO3), which is the Beaumaris and Black Rock Native Vegetation Areas.

(iii) Proposed post exhibition changes to the Amendment

Council submitted that the Amendment ought to proceed subject to the following post-exhibition changes:

- The removal of the following properties from the Amendment:
 - 13 Fifth Street, Black Rock
 - 9 Wolseley Grove, Brighton
 - 9 Bellaire Court, Beaumaris

- 175-177 Tramway Parade, Beaumaris
- 27 Bolton Avenue, Hampton
- 78 Scott Street, Beaumaris.
- Amendments to the Statements of Significance and Citations in respect of the following heritage places:
 - the 'Bellaire Court Estate' group listing, to remove reference to 9 Bellaire Court, Beaumaris
 - 19 Haywood Street, Beaumaris, to include reference to the introduction of stacked stone cladding, and to replace reference to 'Brighton' with 'Beaumaris' in respect of Criterion D
 - 82 Reserve Road, Beaumaris, to delete Hercon (Heritage Convention) Criterion H and to reflect recent alterations to the property
 - 15 Mariemont Avenue, Beaumaris, to reflect recent alterations to the property
 - Flats 1-4/ 16 Gillard Street, Brighton East, to reflect recent alterations to the property
 - 7 Roosevelt Court, Brighton East, to clarify the parts of the fencing that are significant.

Council noted in its Part A (p113) that:

- Ms Schmeder also recommended that 78 Scott Street, Beaumaris be removed from the Amendment, but does not recommend that any other heritage place be removed.
- Some of Ms Schmeder's recommended changes to the Statements of Significance and Citations are consistent with Mr Gard'ner's recommendations, however Ms Schmeder also recommends some additional changes to the Statements of Significance and Citations.

Council invited the Panel (A:114):

... to consider Ms Schmeder's recommendations as part of its consideration of submissions, but does not propose to incorporate Ms Schmeder's recommendations in its post exhibition changes at this point in time.

1.2 Scope of the Panel's consideration

Partial implementation of the Heritage study

The Amendment only implements part of the Heritage Study. The decision to implement part Heritage study was by Council, unsupported by its officer advice. Only the councillors have insight into why certain properties were excluded.

The letter of authorisation from the Minister included the following comments:

It is noted that at its meeting on 19 July 2022 your Council resolved not to apply the Heritage Overlay to 28 properties identified as being of local heritage significance in the Post War Modern Residential Heritage Study 2022. The Department of Environment, Land, Water and Planning (DELWP) acknowledges the significant strategic work undertaken in the preparation of the Post War Modern Residential Heritage Study 2022 and your Council is encouraged to consider undertaking a further planning scheme Amendment in the future to fully implement the study to provide certainty to land owners and ensure the comprehensive protection of heritage places consistent with the objectives of the Planning and Environment Act 1987.

Whether or not excluded properties also warrant inclusion in the Heritage Overlay is beyond the scope of the Panel, apart from a broad question as to whether partial implementation of the heritage study is so unfair that the Amendment should not proceed at all. The Panel does not take this view. Staged implementation of strategic work should always be an option for planning

authorities and the scattered nature of the properties means that staged implementation does not lead to the type of arbitrary outcomes that might arise from, say, only applying a heritage precinct to half the identified properties.

Submissions

In response to exhibiting the Amendment, Council received 34 submissions (including one late submission). Of those submissions, four submissions supported the Amendment and 30 submissions oppose the Amendment (whether on a site-specific or more general basis).

The common issues raised in submissions are:

- the property does not meet the threshold of local heritage significance due to the extent of alterations
- the property does not meet the threshold of local heritage significance due to the lack of intactness and/or state of disrepair
- the relevant Citation and Statement of Significance are poorly researched and fail to establish that the property meets the threshold of local heritage significance
- applying the Heritage Overlay will reduce property value
- applying the Heritage Overlay will lead to financial burden for property owners, including costs associated with planning permit applications, home insurance and repairs and maintenance, and property owners should be compensated for these added costs
- applying the Heritage Overlay impinges upon the rights of property owners
- applying the Heritage Overlay unfairly restricts future development opportunities
- the Amendment process is flawed (unfair, multiple failed attempts to apply the Heritage Overlay, uncertainty; lack of public consultation and engagement)
- other properties identified in the Heritage Study and other similar properties in the neighbourhood have not been nominated for inclusion in the Heritage Overlay
- a voluntary nomination approach is more appropriate.

1.3 The Panel's approach and key recommendations

The Panel has assessed the Amendment against the principles of net community benefit and sustainable development, as set out in Clause 71.02-3 (Integrated decision making) of the planning scheme.

The Panel considered all written submissions made in response to the exhibition of the Amendment, observations from site visits, and submissions, evidence and other material presented to it during the hearing. It has reviewed a large volume of material, and has had to be selective in referring to the more relevant or determinative material in the Report. All submissions and materials have been considered by the Panel in reaching its conclusions, regardless of whether they are specifically mentioned in the Report.

Based on the reasons set out in this Report, the Panel recommends that Bayside Planning Scheme Amendment C192bays be adopted as exhibited subject to the changes recommended in this report.

1. **The post exhibition changes proposed by Council in its final position on the Amendment presented in its Part C submission:**
 - a) **The removal of the following properties from the Amendment:**
 - **13 Fifth Street, Black Rock**

- **9 Wolseley Grove, Brighton**
 - **9 Bellaire Court, Beaumaris**
 - **175-177 Tramway Parade, Beaumaris**
 - **27 Bolton Avenue, Hampton**
 - **78 Scott Street, Beaumaris**
- b) Amendments to the Statements of Significance and Citations in respect of the following Heritage Places:**
- **The 'Bellaire Court Estate' group listing, to remove reference to 9 Bellaire Court, Beaumaris**
 - **19 Haywood Street, Beaumaris, to include reference to the introduction of stacked stone cladding, and to replace reference to 'Brighton' with 'Beaumaris' in respect of Criterion D**
 - **82 Reserve Road, Beaumaris, to delete Hercon Criterion H and to reflect recent alterations to the property**
 - **15 Mariemont Avenue, Beaumaris, to reflect recent alterations to the property**
 - **Flats 1-4/ 16 Gillard Street, Brighton East, to reflect recent alterations to the property**
 - **7 Roosevelt Court, Brighton East, to clarify the parts of the fencing that are significant.**

This Report deals with the issues under the following headings:

- Strategic issues
- General issues
- Places recommended for removal by Council
- Places recommended for removal by the Panel
- Places that should continue to be listed.

2 Strategic issues

This chapter identifies planning context relevant to the Amendment. Appendix A highlights key imperatives of relevant provisions and policies.

2.1 Planning context

There is clear strategic justification for the protection of heritage in Melbourne, notably:

- section 4(1)(d) of the Planning and Environment Act 1987 (PE Act)
- the Municipal Planning Strategy at Clause 02.03–4
- Planning Policy Framework at Clauses 15.01–5S (Neighbourhood character), 15.03–1S (Heritage conservation).

Council submitted that in preparing the Amendment, Council is fulfilling its duties as a planning authority as set out at section 12 of the *Planning and Environment Act 1987* (Vic), namely:

- to implement the objectives of planning in Victoria, relevantly including:
to conserve and enhance those buildings, areas or other places which are of scientific, aesthetic, architectural or historical interest, or otherwise of special cultural value¹
- to provide sound, strategic and co-ordinated planning of the use and development of land in its area
- to review regularly the provisions of the planning scheme for which it is a planning authority
- to prepare amendments to a planning scheme for which it is a planning authority.

The issue is not whether the protection of heritage is appropriate, but rather whether the places identified for protection have been appropriately assessed and meet the local threshold for heritage significance.

The Heritage Overlay is the specific control in the Victoria Planning Provisions for the protection of heritage.

Planning Practice Note 1 (Applying the Heritage Overlay)

Planning Practice Note 1 (PPN01) provides guidance about using the Heritage Overlay. It states that the Heritage Overlay should be applied to, among other places:

Places identified in a local heritage study, provided the significance of the place can be shown to justify the application of the overlay.

PPN01 states that places of local significance are important to a particular community or locality. It specifies that documentation for each heritage place needs to include a Statement of Significance that clearly establishes the importance of the place and addresses the heritage criteria. It recognises the following model criteria (the Hercon criteria) that have been adopted for assessing the value of a heritage place.

¹ Planning and Environment Act 1987 (Vic) s 4(1)(d).

Table 2 Hercon criteria for assessing the value of a heritage place

CRITERION A Historical significance	Importance to the course, or pattern, of Victoria's cultural history.
CRITERION B Rarity	Possession of uncommon, rare or endangered aspects of Victoria's cultural history.
CRITERION C Research potential	Potential to yield information that will contribute to an understanding of Victoria's cultural history.
CRITERION D Representativeness	Importance in demonstrating the principal characteristics of a class of cultural places and objects.
CRITERION E Aesthetic significance	Importance in exhibiting particular aesthetic characteristics.
CRITERION F Technical significance	Importance in demonstrating a high degree of creative or technical achievement at a particular period.
CRITERION G Social significance	Strong or special association with a particular present day community or cultural group for social, cultural or spiritual reasons.
CRITERION H Associative significance	Special association with the life or works of a person, or group of persons, of importance in Victoria's history.

2.2 Heritage in the Bayside Planning Scheme

(i) Municipal Planning Strategy

Clause 02.03-4 of the Planning Scheme provides the following overview of heritage in the City of Bayside:

Bayside has a rich and varied heritage, starting with the Bunurong Aboriginals and later European settlement through to the twenty first century.

Bayside's post-contact heritage reflects progressive phases of development from the time of Henry Dendy's Special Survey in the 1840s through to contemporary infill development. An extensive range of heritage places of national, state and local significance remain to tell the story of Bayside, its people and their aspirations. These places are intrinsically valuable but also make an important contribution to the social, environmental and economic quality of life in Bayside.

Clause 02.03-4 goes on to specify Council's strategic directions for heritage:

The Council recognises that the city's heritage places exist in a dynamic context. In particular, there is constant pressure to adapt and develop heritage places to suit contemporary lifestyles. Therefore Council seeks to:

- Protect and maintain the integrity of heritage places in accordance with the accepted conservation standards of the ICOMOS Burra Charter whilst accommodating the needs of current inhabitants.
- Facilitate uses, that are not detrimental to the area and would otherwise be prohibited where the nature and built form of the heritage place requires a greater range of options.

Clause 15 Built Environment and Heritage

Clause 15.03 – (heritage) which seeks to ensure the conservation of places of heritage significance.

Clause 15.03-1S (heritage conservation). The strategies of this clause include:

Identify, assess and document places of natural and cultural heritage significance as a basis for their inclusion in the planning scheme.

Provide for the protection of natural heritage sites and man-made resources.
Provide for the conservation and enhancement of those places that are of aesthetic, archaeological, architectural, cultural, scientific or social significance.

(ii) Clause 43.01 (Heritage Overlay)

The purposes of the Heritage Overlay are:

- To implement the Municipal Planning Strategy and Planning Policy Framework.
- To conserve and enhance heritage places of natural or cultural significance.
- To conserve and enhance those elements which contribute to the significance of heritage places.
- To ensure that development does not adversely affect the significance of heritage places.
- To conserve specifically identified heritage places by allowing a use that would otherwise be prohibited if this will demonstrably assist with the conservation of the significance of the heritage place.

Clause 43.01–2 sets out the requirements where a heritage place is included in the Victorian Heritage Register stating this is subject to the requirements of the *Heritage Act 2017*.

Clause 43.01–5 (Statements of significance) notes the schedule to the Heritage Overlay must specify a Statement of Significance for each heritage place included in the schedule after the commencement of Amendment VC148.

Clause 43.01–8 sets out the decision guidelines relevant to a responsible authority’s consideration of an application, including any applicable Statement of Significance.

(iii) Incorporated documents

The Statements of Significance are proposed as incorporated documents consistent with PPN01. Citations for significant properties in heritage precincts are presented in the *Heritage Review* which is proposed as a background document.

2.3 Studies, strategies and amendments

Assessing heritage – City of Bayside Inter-War and Post War Heritage Study 2008

Around 2007, Council engaged Heritage Alliance to prepare the *City of Bayside Inter-War and Post War Heritage Study 2008* (2008 Heritage Alliance Study). In summary:

- Volume 1 reviewed the 47 Inter-War properties that were previously identified as being of local heritage significance in *Bayside Heritage Review* (Allom Lovell and Associates, 1999) (1999 Heritage Study), but were yet to be included in the Heritage Overlay on a permanent basis. Of those 47 properties, Heritage Alliance recommended that 29 properties be included in the Heritage Overlay.
- Volume 1 also identified eight new heritage precincts which were recommended for inclusion in the Heritage Overlay.
- Volume 2 contained data sheets and Citations for 69 additional places from the Inter-War, post war and other eras which were recommended for inclusion in the Heritage Overlay.
- Volume 2 also contained a list of 120 additional places which were considered to be of potential local significance.

Incomplete implementation

Council has only implemented the 2008 Heritage Alliance Study in part:

- In December 2007, Council resolved to seek authorisation to prepare a planning scheme Amendment to apply the Heritage Overlay on a permanent basis to the 29 Inter-War properties identified in Volume 1 of the 2008 Heritage Alliance Study.
- In June 2008, Council resolved to seek authorisation to prepare a planning scheme Amendment to apply the Heritage Overlay on a permanent basis to three of the eight new heritage precincts identified in Volume 1 of the 2008 Heritage Alliance Study.
- In September 2010, Amendment C75 (Part 1) was approved and gazetted, applying the Heritage Overlay to 27 of those 29 Inter-War properties, and two of those three heritage precincts.

In June 2008, following a public consultation process in relation to the 2008 Heritage Alliance Study, Council resolved to take no further action in respect of the 69 additional places and remaining heritage precincts recommended for inclusion in the Heritage Overlay in Volumes 1 and 2 the 2008 heritage Alliance Study, and the 120 additional places identified as being of potential local significance in Volume 2 of the 2008 Heritage Alliance Study.

Between 2008 and 2017, Council undertook various strategic planning projects in respect of local heritage, albeit not in relation to the post-war Modern period.

In July 2017, Council adopted the *Heritage Action Plan* (Bayside City Council, 2017). Council also resolved to commence preparation of a Mid-Century Modern Heritage Study with a particular focus on the Beaumaris area, and request that the Minister apply the Heritage Overlay on an interim basis to Mid-Century Modern houses in Beaumaris that were identified in the 2008 Heritage Alliance Study but which Council had previously resolved not to take action on.

Attempted implementation – Amendments C158 and C159

In September 2017, Council submitted Amendments C158 and C159 to the Minister. The amendments sought to apply the Heritage Overlay on an interim basis to 51 Mid-Century Modern residential properties in Beaumaris based on the 2008 Heritage Alliance Study.

However, in April 2018, in response to significant community opposition, Council resolved to:

- not proceed with the preparation of a Mid-Century Modern Heritage Study, and abandon its request that the Minister apply the Heritage Overlay on an interim basis to Mid-Century Modern residential properties in Beaumaris
- seek voluntary nominations from property owners of Mid-Century Modern properties in Beaumaris and Black Rock for investigation to ascertain heritage significance of the property
- develop a process to support the inclusion of suitable Mid-Century Modern properties in a Heritage Overlay through a voluntary nomination process.

Voluntary nominations – Amendment C178bays

In 2019, Council undertook the voluntary nomination process, engaging Context to prepare the Bayside Mid-Century Modern Heritage Study – Residential Places 2020 and Bayside Mid-Century Modern Heritage Study – Council owned Places 2020 (2020 Heritage Studies).

In April 2020, Council requested that the Minister exercise his powers under section 20(4) of the PE Act to prepare, adopt and approve Amendment C178bays, to apply the Heritage Overlay to 19 properties identified in the 2020 Heritage Studies as a result of the voluntary nomination process.

In May 2020, the Minister wrote to Council to express concern in relation to the voluntary nomination process. The Minister noted that as a planning authority, Council has a responsibility under the PE Act to ensure that buildings, areas and other places of scientific, aesthetic, architectural or historical interest are conserved. The Minister advised that the voluntary nomination approach is not appropriate to protect places of heritage significance. The Minister requested that Council:

- review, update and implement the 2008 Heritage Alliance Study
- seek authorisation to prepare a planning scheme Amendment to apply the Heritage Overlay to the properties identified in the above review process
- ensure that the Heritage Study and review is undertaken by a suitably qualified and experienced heritage expert, with expertise in the field of Inter-War and Post-War heritage.²

Heritage action plan

In response to the correspondence from the Minister, Council amended the Heritage Action Plan to remove any reference to a voluntary nomination approach. In June 2020, Council adopted the revised *Heritage Action Plan* (Bayside City Council, 2020) (Heritage Action Plan).

The purpose of the Heritage Action Plan is to:

- identify and assess positive heritage measures already employed by Council
- identify opportunities to improve the protection, management and promotion of the Council's heritage assets (including public and private buildings, parks, gardens, public spaces, objects and other features)
- identify and prioritise Council's future heritage work program over a 15 year period.³

Relevantly, the Heritage Action Plan specifies the following 'high priority actions' (1-5 years):

- Bayside Mid-Century Modern Heritage Study:
Undertake a municipal wide heritage assessment of mid-century modern architecture within Bayside.
- Review of the Inter-War and Post War Heritage Study:
Undertake a review of the Bayside Inter-War and Post War Heritage Study to ensure that properties identified as being of heritage significance are appropriately protected.

The Heritage Study

In December 2020, Council engaged GJM Heritage to undertake the Heritage Study.

The scope of the Heritage Study was to review and assess residential properties constructed within the City of Bayside that were constructed in the Modern architectural style during the post-war period (1945 to 1975), and to determine whether they satisfy the threshold for local significance.

The detailed heritage assessment and community consultation process resulted in:

- Eighty-seven places being assessed as being of local individual significance and warranting inclusion in the Heritage Overlay. This amounted to 159 individual properties (including

² Letter from the Hon Richard Wynne MP, Minister for Planning, 24 May 2020.

³ Heritage Action Plan, page 3.

individual flats and units in a complex) being recommended for inclusion in the Heritage Overlay.

- One group is identified as being of local significance.

Volume 2 of the Heritage Study comprises a detailed contextual history of Post War Modernism in the City of Bayside (summarised in the box below). It builds on the thematic history contained in the *City of Bayside Heritage Review* (Allom Lovell & Associates, 1999) and the *City of Bayside Inter-War and Post War Heritage Study* (Heritage Alliance, 2008).

Summary of the contextual history of Post War Modernism in the City of Bayside

The City of Bayside (formally the municipalities of Brighton and Sandringham) experienced significant change between 1945 and 1975.

In 1945, suburban residential development was concentrated in Brighton and parts of Brighton East in the north, and along the coastal fringe of Port Phillip Bay in Hampton, Sandringham and Black Rock to the west. There was also some limited development along the Nepean Highway and around railway stations to the east. The balance of the land (approximately one third of the total area of the former municipalities of Brighton and Sandringham) was predominantly farm land with golf courses in the central area and a large undeveloped tract of land in Beaumaris to the south.

In 1975, the former municipalities of Brighton and Sandringham were completely urbanised, as a result of the rapid subdivision and development of under-developed parts of suburban Melbourne from the late 1940s onwards. This included a concentration of post war residential development in Beaumaris, as a result of the subdivision of the aforementioned large undeveloped tract of land.

The post war aspiration of suburban home ownership reached its peak in the 1960s in Melbourne's middle ring suburbs, and Beaumaris, Brighton East, Hampton East, Highett and Cheltenham demonstrate this residential growth.⁴

After World War 2, a severe shortage of building materials and labour, government restrictions on home building, and a booming population led to the emergence of two contrasting lower-resource housing types – a conventional, austere type and a Modern type.

Public authorities, private development companies and individuals created residential subdivisions dominated by the conventional, austere type through the 1950s and 1960s in suburbs such as Brighton East, Hampton East, Highett and Cheltenham. It is characterised by an L-shaped plan, tile-clad hipped roof, and brick or timber veneer.

The Modernist house type offered a radical alternative to the conventional post war housing type. It was driven by young architects and designers embracing the Modernist architectural movement, who shunned the conservative house forms and sought to address housing demands in an affordable but contemporary manner, experimenting with lightweight materials and simple construction methods.

The Modernist house type, with its flat or shallow roof, box like forms and generous glazing flourished in the 1950s and 1960s and came to embody the forward-looking optimism of the post war era.⁵

⁴ Heritage Study, Volume 2, Section 2 – The Post-War Bayside Landscape

⁵ Heritage Study, Volume 2, Section 3 – Housing in the Post-War Period.

3 General issues

This chapter refers to issues which apply across more than one individual place or precinct. Where a submission raised only general issues, it is not referred to in subsequent chapters.

3.1 Issues with identifying modernist heritage places

3.1.1 Should modernist buildings be protected?

A number of submitters questioned whether post war modernist residential development ought to be protected at all, and one submitter suggested that it was unnecessary to do so in Bayside because properties from that era have already been protected in other municipalities.

The Panel observes that the protection of post-war modernism is an emerging era in heritage protection. This period is now seen as old enough to warrant heritage consideration and the Panel notes that other municipalities have turned their mind to the protection of places from this era. This does not mean that heritage places from that era do not need to be protected in Bayside.

Previously most heritage protections almost exclusively considered the Victorian and Edwardian era, though since the early 2000s there has been a deeper inquiry into identifying and valuing the Modernist era. Consequently, as the study of the era evolves, so too the studies of the places which exhibit significance. On this basis, the Panel gives little weight to the assertions that properties should be included or excluded as the result of appearing or not appearing in a particular publication.

The Panel is satisfied that the process to applying the Heritage Overlay that Council has followed is in accordance with the PE Act, Planning Practice Note 1: Applying the Heritage Overlay alongside the principles of the ICOMOS (International Council on Monuments and Sites) Burra Charter 'Understanding and assessing cultural significance' Practice Note.

The Panel acknowledges that the Heritage Study follows three previous attempts (2007, 2017, 2018) by Council to conduct studies and planning scheme amendments to identify mid-century modern properties for potential heritage protection and introduce heritage controls (interim and permanent). This is not relevant to the merits of the current Amendment or determinative in the consideration of specific properties. As Bayside and other Council's tackle Modernism protection, knowledge of the era and places will evolve as will the studies and publications that document the places.

3.1.2 Should the application of the Heritage Overlay be voluntary?

Some submissions suggest that the Council should have adopted a voluntary nomination approach when selecting the properties which are proposed to be included in the Heritage Overlay on a permanent basis.

Council advised that the Minister for Planning has expressly stated that it is not appropriate for planning authorities to adopt a voluntary nomination approach when determining whether to apply the Heritage Overlay in order to protect places of local heritage significance.

3.1.3 The approach to the comparative analysis

Some submitters sought to criticise the Heritage Study for not providing details of ‘typical’ places for the purpose of the comparative analysis in the Citations. One submitter lead evidence from Mr Raworth on this issue.

Mr Gard’ner and Ms Schmeder opined that details of ‘typical’ places are not commonly included in a comparative analysis. Rather, the comparative analysis should compare the subject property against other, ‘better than typical’ places.

In preparing the Heritage Study, GJM Heritage undertook a comparative analysis of each place against other comparable places which are:

- already included within the Heritage Overlay, or
- assessed as warranting inclusion in the Heritage Overlay.

Council said these places can be described as ‘better than typical’ examples of the relevant class of place – post war modernist houses in the Bayside.

Council submitted that identifying even one or two of the ‘typical’ examples from the larger group of ‘typical’ examples considered for each place is not something that is required by Planning Practice Note 1 nor common practice and is particularly onerous in a municipal wide study.

Planning Practice Note 1 advises:

To apply a threshold, some comparative analysis will be required to substantiate the significance of each place. The comparative analysis should draw on other similar places within the study area, including those previously included in a heritage register or overlay. Places identified to be of potential state significance should undergo analysis on a broader (statewide) comparative basis. [emphasis added]

The Panel is satisfied that the Council’s heritage consultant has prepared the Heritage Study in accordance with Planning Practice Note 1 alongside the principles of the ICOMOS Burra Charter ‘*Understanding and assessing cultural significance*’ Practice Notes.

It would make no sense to formally include hundreds or thousands of examples of properties that are merely ‘typical’ by way of comparative analysis. Planning is about real places and generally speaking, typical places can be readily observed on the ground – things don’t need to be documented in a planning report as a precondition to relevance.

3.1.4 Visibility from the street

Some submitters raised that their property was not visible from the street.

The Panel observes that, perhaps more relevant than in other eras, Modernist housing exhibits a range of innovative, functional and internal amenity-driven designs that focus on function and optimising orientation.⁶ The Panel was presented with a range of modernist examples that prioritised internal amenity over public realm engagement and visibility. The result of these designs can be that dwellings do not optimise engagement with a street through visibility or surveillance. While not visible from the street, heritage fabric may nevertheless meet the Hercon Criterion for local significance. Indeed this is the nuance of post war modernism protection.

The Panel accepts the evidence put forward by Mr Gard’ner’s in relation to the visibility of heritage fabric from the public realm. It was Mr Gard’ner’s evidence that:

⁶ See further, Characteristics of Post Wate Modernist Housing, Key Characteristics, P. 11, “Contextual History: Post Modernism in the City of Bayside.

it is relatively common for Post war Modernist houses to be substantially concealed from the street and there is a long-standing acceptance by Panels that the protection of significant heritage fabric is not dependent on it being visible from the public realm⁷

The Panel accepts that visibility in itself is not necessarily determinative to applying the Heritage Overlay.

3.1.5 Intactness and integrity

A number of submissions raised issues of intactness and integrity.

Intactness and integrity, are defined in the Victorian Heritage Resister (VHR) Guidelines:

Intactness: refers to the degree to which a place or object retains its significant fabric. ...

Integrity: refers to the degree to which the heritage values of the place or object are still evident and can be understood and appreciated (for example, the degree to which the original design or use of a place or object can still be discerned). If considerable change to a place or object has occurred (through encroaching development, changes to the fabric, physical deterioration of the fabric etc) the significant values may not be readily identifiable and the place or object may have low-level integrity.

Neither intactness nor integrity should be confused with the condition of a building, which refers to its state of repair rather than whether it is altered or legible. A place may be highly intact, but the fabric may be in a very fragile condition.

The Panel considers that intactness is fundamental to assessing whether a property meets the threshold for significance, and whether a building is significant to the values of a precinct.

The process for determining whether something is intact or not intact, or applying qualifiers as to the degree of intactness, is not an exact one. Intactness impacts how a particular place might be read and understood.

The Panel agrees with the Hoddle Grid Heritage Review Panel that the key questions are:

- is there still sufficient fabric in place to assist our understanding and appreciation of the particular place including its original use, era and design?
- do the extant changes and alterations impact on our understanding and appreciation of the particular place?
- are we still able to appreciate its significance and why it is significant?⁸

In some instances, building changes and alterations are ephemeral, such as painting, addition of signs and other simple additions and may be reversible. Such changes have minimal impact on a building's integrity. However, changes that obliterate building elements that are important to the buildings original design or enable it to be read as representing a particular period, style or theme can significantly diminish integrity.

The Panel concludes that all places identified as warranting the Heritage Overlay are of sufficient integrity such that identified heritage values are capable of being properly understood and appreciated, except where specifically noted by the Panel.

⁷ GJM page 63 para195

⁸ Melbourne C387melb (PSA) [2021] PPV 89 (10 November 2021), pages 38–39

3.2 Building condition and maintaining modernist buildings

3.2.1 Condition

Many submissions opposed applying the Heritage Overlay because the building was said to be in a state of disrepair, or because the poor condition of the building detracts from its heritage significance. Detailed submissions were made in respect of 28 Tower Street, Beaumaris.

Council submitted that the condition of a building is only relevant when determining whether a place is of local heritage significance if the structural condition of a building is so poor that demolition is inevitable. Council said this is consistent with the findings of numerous planning Panels. It referred to the Panel in relation to Amendment C320ston stated:

The Panel acknowledges that not all buildings which are subject of the Amendment are in perfect condition, however, the condition of a building does not generally diminish heritage significance.

The Panel does not agree with submitters that the condition of the building is a reason to not apply the Heritage Overlay. The structural condition of a building should not be a Criterion for assessing heritage significance, unless there is evidence demonstrating demolition of a building is inevitable.

Condition is highly relevant at the planning permit stage, when a development proposal can be assessed against the relevant planning policies including heritage.⁹

Ms Schmeder noted:

Generally, the poor condition of a place is not a factor when considering whether to apply the Heritage Overlay, as this is properly considered at the planning permit phase. This position has been expressed by numerous planning Panels (e.g. Southern Grampians C6, Ballarat C58, Boroondara C99, Melbourne C186, Whitehorse C140, Boroondara C333).

The one exception is where poor condition has a major impact on the intactness and ongoing existence of a place. This position has been expressed in Panel reports including Melbourne Amendment C207, which stated:

*... we do acknowledge that condition may sometimes be relevant in extreme cases of dilapidation where demolition is an inevitable outcome. In such circumstances, the case for demolition would have to be irrefutable.*¹⁰

On the matter of condition, both experts agreed that the condition of the house should not be considered during the Amendment stage. Specifically, Mr Gard'ner stated:

General maintenance is important for all properties – regardless of their age or heritage status. The Heritage Overlay does not require a planning permit for maintenance and repair works which replace like for like using the same details, specification and materials. It is my view that repairs can be undertaken in a manner that is respectful of the place and will not compromise its heritage values.¹¹

The Panel agrees with previous panels that the condition of a building should not be a Criterion for assessing heritage significance, unless there is evidence demonstrating demolition of a building is inevitable. Condition is highly relevant at the planning permit stage, when a development proposal can be assessed against the relevant planning policies including heritage.

3.2.2 Will modernist building be more difficult to conserve?

The Panel was concerned that a number of issues might play out differently at a planning permit stage for modernist buildings compared to building from other eras:

⁹ Stonnington C320ston (PSA) [2023] PPV 55 (27 September 2023), page 24.

¹⁰ Expert witness statement of Natica Schmeder, page 32.

¹¹ Expert witness statement of Jim Gard'ner, page 28 para 88,

- building condition
- the feasibility of 'like-for-like' replacement of elements
- the durability and maintenance of design features and detailing
- compliance with contemporary building codes.

The Panel, at the request of Council, allowed Council to submit further evidence from Mr Gard'ner and a closing submission. Mr Gard'ner's evidence was most informative and the body of his evidence included in Appendix D. Mr Gard'ner concluded:

- There is no notable difference between the durability and maintenance of features associated with Modernist buildings – and their compliance with contemporary building codes – compared to buildings from other eras.
- Buildings of all periods – including the postwar period – require periodic maintenance and repair. Maintenance and repair works to Modernist buildings can generally be undertaken with readily available materials without the need for specialist craftspeople.
- Although the novel use of reinforced concrete and curtain glazing systems in some postwar buildings have known systemic failure issues, none of the properties considered by the Panel into C192bays were constructed using these systems.
- The prevalence of flat-roofed construction on Modernist-style postwar housing can exacerbate water ingress. However, it is noted that when roofs are due for replacement, long run steel roofing of a minimum 1 in 30 (2°) pitch can be installed to avoid future ponding issues and will still retain the flat roofed Modernist aesthetic.
- The use of fast-grown softwoods in the place of hardwood for window joinery in the postwar years (rather than hardwood) can reduce the lifespan of these elements especially when not regularly painted and maintained. Replacement with hardwood (when required) will significantly expand the longevity of these elements.
- The creation of at-grade interfaces between interior living spaces and exterior terraces can cause water to sit against timber sills and bottom rails exacerbating timber decay in these locations. It is noted that this can be simply rectified by providing for a drain at the junction between the terrace and the glazing.
- The relative importance of the outward expression of the materiality of building elements is frequently greater than the authenticity of the fabric itself and therefore like-for-like repair can be highly successful in postwar Modernist houses.
- The upgrading of any dwelling built more than 30 years ago to meet current standards of environmental performance can be complex but postwar Modernist houses are not inherently more difficult to retrofit than building from any other era.
- There are numerous examples of successful repair, renovation and upgrading of postwar Modernist houses within the City of Bayside and across Victoria more broadly, with a number of these also being subject to the Victorian Heritage Register or the Heritage Overlay.
- Postwar Modernist houses do not inherently suffer from defects or mechanisms of failure that are unique to this era of construction or architectural style and their repair and upgrading can satisfactorily be addressed through the planning permit process in the same manner as changes to listed buildings of earlier periods. A finding that such buildings are inherently flawed risks the protection of this important building typology in the future.

There was no evidence was put before the Panel to demonstrate that the condition of a heritage place is so poor that demolition is inevitable.

The Panel observes that the Heritage Overlay does not restrict the property owner from making modifications to ensure their home is environmentally friendly, energy efficient, accessible, and safe. General maintenance, repair, and replacement of failed elements (roofing, rainwater goods, windows, doors etc) on a like for like basis do not require a permit. Changes that alter the appearance and fabric of the building will require approval (either a through a planning permit or a

streamlined VicSmart permit). Furthermore, many heritage homes can be retrofitted to be more sustainable and energy efficient and extending their useful life.

The Panel was taken to examples of successful repair, renovation and upgrading of post war modernist houses in Bayside and elsewhere across Australia, including those documented recent survey *The New Modernist House: Mid-Century Homes Renewed for Contemporary Living* by Patricia Callan. These examples demonstrate that the conservation and adaptation of postwar Modernists houses for contemporary standards of living is readily achievable. In fact, the free-flowing, open plan spaces inherent in the design of the modernist houses, which has continued to influence the planning of houses, is frequently more conducive to twenty-first century living than the compartmentalised planning of nineteenth and early twentieth century houses.

The Panel is persuaded by the evidence from Mr Gard'ner that:

like any period of construction or architectural style, postwar Modernist houses display a common set of attributes or characteristics that create particular management issues. However, this is no different to any other period of listed building which will have common issues associated with its design and construction, such as the need for restumping due to timber piles set in earth, rising damp due to the absence of a damp proof course, brick/cracking repair due to low-fired nineteenth century bricks, or the need to periodically repoint soft lime-based mortars. These mechanisms of failure common to nineteenth and early twentieth century buildings have been and continue to be appropriately remediated on thousands of buildings currently on the Heritage Overlay

The Panel accepts that postwar Modernist buildings do not pose any unique or particular repair, management or conservation issues that cannot or should not be dealt with through the usual planning permit process as it applies to listed buildings of the preceding two centuries.

The Panel concludes there is no evidence to support claims that the condition, feasibility for like-for-like replacement, the durability and maintenance of design features and detailing and compliance with contemporary building codes may play out differently at a planning permit stage for Modernist buildings subject to the Amendment.

3.3 Other issues

3.3.1 Extent of the overlay

One submitter who was opposed to the application of the Heritage Overlay submitted that if it were to be applied, the overlay should not be over the entire property boundary as this would include the extension added to the southern side of the dwelling that possesses no historical significance and is less than a decade old. The Heritage Overlay is typically applied to the whole property in suburban situations, as Planning Practice Note 1 explains:

The land surrounding the heritage item is known as a curtilage and will be shown as a polygon on the Heritage Overlay map. In many cases, particularly in urban areas and townships, the extent of the curtilage will be the whole of the property for example, a suburban dwelling and its allotment.

3.3.2 Private financial impacts and property values

Many submitters opposed the application of the Heritage Overlay because they consider that it would have negative financial implications for themselves as property owners. Such impacts include decreased property values, increased maintenance costs, and costs associated with obtaining planning approvals.

Council submitted the financial implications are likely confined general maintenance, repair and replacement of failed elements (roofing, rainwater goods, windows, doors etc) on a like-for-like basis do not require a planning permit.

Council submitted that property values are not a planning matter and are not a relevant consideration under the PE Act or the Planning Scheme. They noted that property value can go up and down for several reasons (including but not limited to):

- quality of the building/dwelling
- location and size of the building/dwelling
- market conditions and seasonal fluctuations
- amenity
- the state of neighbouring properties
- building use
- rental return
- economic conditions.

It is well established by various Planning Panel reports and judicial authority that when determining whether to apply the Heritage Overlay, private financial impacts on a site-by-site basis do not meet the threshold of broader social or economic impacts within the meaning of section 12(2)l of the PE Act and therefore do not amount to a relevant consideration.¹²

The Panel agrees with the Panel for Moonee Valley C164 which responded to the issue as follows:

Concerns from individual property owners around loss of property value and increased maintenance and development costs are recurring issues raised at Panels considering the application of heritage overlays. The Panel acknowledges there may be an increased financial burden on individual property owners, but the application of heritage controls may not necessarily lead to overall negative financial impacts. That said, the Panel must limit its considerations to the consideration of net community benefit or loss, not potential impacts on individual property owners.

Similarly, the Panel for Amendment C320ston found:

...private financial issues of a personal or property specific nature are not relevant when considering whether to apply the Heritage Overlay. The key issue for consideration is whether a property is of heritage significance.¹³

Recently, the Panel for Amendment C426melb stated:

... economic impacts may be considered during the Amendment stage if they translate into broader social or economic effects to the community, but this is different than individual financial impacts to a particular landowner or occupier. While application of the Heritage Overlay on a particular property may reduce the potential yield for future redevelopment or limit the ability to provide for a certain development outcome, there was no evidence that the Amendment would result in unacceptable economic impacts to the community.¹⁴

The Panel agrees with Council that there is no evidence or material before the Panel to demonstrate that applying the Heritage Overlay will give rise to any adverse social or economic impacts at the broader community level within the meaning of section 12(2)l of the PE Act.

The Panel acknowledges that there are potential financial implications that result from changing the Planning Scheme. The changes may vary greatly and mean different things to different

¹² Moreland C129 (PSA) [2013] PPV 11; Southern Grampians C6 (PSA) [2009] PPV 27; Melbourne C207 (PSA) [2014] PPV 10; Dustday Investments Pty Ltd v Minister for Planning [2015] VSC 101; Boroondara C266 (PSA) [2018] PPV 63.

¹³ Stonnington C320ston (PSA) [2023] PPV 55 (27 September 2023), page 26.

¹⁴ Melbourne C426melb (PSA) [2024] PPV 1 (15 January 2024), page 51.

interests. Where potential uplift could experience at a property or place, there could equally exist a potentially negative financial implication to another. Such impacts cannot be standardised or practically equitable. For the reasons outlined by Council (i.e. economic conditions, location, use, quality and condition etc), the planning system cannot contemplate the financial implications (positive or negative) when considering the merits of a strategic planning exercise unless broader social and economics effects arise.

The Panel notes that economic impacts may be considered during the Amendment stage if they translate into broader social or economic effects to the community, but this is different than individual financial impacts to a particular landowner or occupier. While applying the Heritage Overlay on a particular property may change a potential yield for future redevelopment or modify a development outcome, there was no evidence that the Amendment would result in unacceptable economic impacts to the community.

The Panel concludes that that property value and financial implications are not relevant when assessing heritage significance or when deciding whether to apply the Heritage Overlay.

3.3.3 Property rights

Some submissions opposed the application of the Heritage Overlay on the basis that it will deprive property owners of various rights associated with their properties.

Council observed that there are a myriad of legislative provisions and regulations in Victoria that regulate how people may use and develop their land. The Heritage Overlay is just one of those controls.

The Panel agrees with Council that protecting heritage places is not undermining or infringing on human or property rights. It is a practice that is undertaken nationally and internationally to encourage retention and preservation of places that have been identified to exhibit heritage significance.

It has been established by numerous planning Panels that the issue of property rights is irrelevant when determining whether to apply the Heritage Overlay. As the Panel for Yarra Amendment C183 stated:

The Panel has considered the issue of property rights in the context of the planning system that applies to all land in Victoria. Under the Victorian Planning and Environment Act 1987 (the Act), zones and overlays are applied to regulate land use and development. As discussed in Chapter 2, the use of the Heritage Overlay supports and implements Section 4(1)(d) of the Act, which outlines objectives of planning in Victoria including:

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.

There are many pieces of legislation and regulations within Victoria that regulate how landowners/occupiers may use or develop their land, including local laws, building regulations, environmental health, planning and the like. Given the development approvals framework within Victoria, the Panel does not accept the principle of property rights as a reason not to apply the Heritage Overlay. The chief concern is whether such a control is justified.¹⁵

While it may be inconvenient to apply for a planning permit, inconvenience or any perceived intrusion on private property rights is not a relevant consideration when determining whether to

¹⁵ Yarra C183 (PSA) [2016] PPV 68, page 30.

apply the Heritage Overlay. Rather, the relevant enquiry is whether the place meets the threshold of local heritage significance and therefore warrants inclusion in the Heritage Overlay.

3.3.4 Future development opportunities

Several submissions contest the application of the Heritage Overlay because it is perceived as restricting future development opportunities.

In Council's submission, it is well established that concerns in relation to future development opportunities are irrelevant when determining whether to apply the Heritage Overlay. This was confirmed by the Panel in relation to Amendment C320ston, whereby the Panel found that:

Concerns relating to future redevelopment opportunities are immaterial to this stage of the planning process and more appropriately considered at the planning permit stage. The assessment of the significance of a place should be separated from its conservation, adaptation, alteration or demolition. If a property or precinct displays the requisite levels of significance, then heritage protection should be applied through the Heritage Overlay.

The Heritage Overlay requires specific consideration of the heritage significance of a place in deciding a permit application for development of that place. No other zone or overlay control functions to conserve places of recognised heritage significance or appropriately manage future development by reference to heritage significance.

The Panel considers the Heritage Overlay is the most appropriate control to protect the heritage values of places that have been identified as meeting the threshold of local significance.¹⁶[emphasis added]

Council submitted that it is important to note that applying the Heritage Overlay does not preclude or prohibit development. Rather, the Heritage Overlay regulates the circumstances in which development may occur, by requiring an assessment of a development proposal against the objectives and decision guidelines of the Heritage Overlay and relevant policy in the planning scheme. This ensures that the heritage significance of a particular place is considered, and that contributory elements are conserved and enhanced, during the course of redevelopment.

The Panel adopts the view of the Panel for in Amendment C266boro:

The Boroondara planning scheme has many provisions that restrict or enable land use and development in different circumstances. The Heritage Overlay gives Council the ability to assess certain permit applications in response to the heritage place, including applications to demolish or remove a building.

The extent of further development will vary depending on each property's individual characteristics including positioning of the building on the lot, the design and configuration of the significant building, location of buildings abutting the property and the aspirations of each land owner.¹⁷

¹⁶ Stonnington C320ston (PSA) [2023] PPV 55 (27 September 2023), page 25.

¹⁷ Boroondara C266 (PSA) [2018] PPV 63 at page 26.

4 Places recommended for removal by Council

4.1 13 Fifth Street, Black Rock

(i) The issue

The issue is whether:

- The property retains original intactness and warrants inclusion within the Amendment.

(ii) The property

13 Fifth Street, Black Rock is referred to as the “*Mew House*” and is proposed for protection under HO829. The house is a Chancellor and Patrick design and is proposed to be protected as an individual place in the Heritage Overlay. The house is deemed locally significant under Criterion A, D, and E.

(iii) Evidence and submissions

Two submissions object to the application of the Heritage Overlay including:

- Relevance of pre-existing permit for building and works.
- The renovations currently being undertaken.

Council submitted that the property should be removed from the Amendment given the extensive building and works taking place¹⁸ and detailed the extent of works to the Panel. These submissions were supported by Mr Gard’ner’s evidence of the substantial works program.¹⁹ He opined:

there is so little remaining original fabric that the place no longer meets the threshold of local heritage significance, despite the fact that it is likely to present as a Modernist style house.²⁰

Ms Schmeder concluded that the alterations to the dwelling represented a sensitive and respectful design that does not detract from the heritage values. She considered that the property continues to meet the threshold of local heritage significance²¹ and should remain within the Amendment.

(iv) Discussion

At the time of assessment, the Mew House was, among other things, deemed significant as a “*substantially intact representative example of a Modernist suburban house*”.²² Since the completion of the original assessment building and works for a substantial renovation have commenced. In the Panels opinion, the alterations are extensive and to a point the intactness of the original fabric can no longer be appreciated.

¹⁸ In accordance with Planning Permit 5/2022/301/1 issued on 16 June 2022 and Building Permit No. 6387755058889 issued on 18 May 2023.

¹⁹ including the removal of all windows and doors (including timber framing), the removal of the rear half of the principal roof form, demolition of the rear part of the original house, and removal of brickwork wing walls at ground-level delineating the carport

²⁰ Expert Witness Statement of Mr Gard’ner, page 43.

²¹ Expert witness statement of Natica Schmeder, pages 71-73.

²² Statement of Significance. The Mews

The Panel accepts that, as opined by Ms Schmeder, the alterations represent a sensitive and respectful design, however, the Panel understands the importance of authenticity of form and materials in Modernism expression and appreciation. The Panel believes that while sensitive renovations may be on foot, the original intactness of the house has been disrupted and legibility as well as authenticity of the original design intent can no longer be appreciated.

While the renovated dwelling may still present as a Modernist style house, there is so little material now remaining to suggest that the house is a substantially intact representative of a Modernism for which heritage protections should be rendered. To that end, the Panel accepts Mr Gard'ner's evidence and Council's submissions that the property should be removed from the Amendment.

(v) Conclusion

The Panel concludes:

- It is appropriate to remove 13 Fifth Street, Black Rock from the Amendment.

4.2 175–177 Tramway Parade, Beaumaris

(i) The issue

The issue is whether:

- Works undertaken to the dwelling interrupt the intactness and legibility of the heritage fabric to the point where it cannot be considered for the Heritage Overlay.

(ii) The property

175–177 Tramway Parade, Beaumaris otherwise known as "*Deutscher House*" is proposed to be protected under HO824. The Deutscher House exhibits local significance under Criterion A, D and E.

(iii) Evidence and submissions

The owners opposed the application of the Heritage Overlay on a number of general grounds and the specific ground:

- The alterations to the property reducing intactness and therefore heritage qualities.

The owner referred to the bagging of the original cream brickwork, the installation of vertical timber cladding to the upper level and the installation of stone and associated landscaping treatments.

The Council proposed to remove the property from the Amendment. Council adopted Mr Gard'ner's evidence as he noted the extent of alterations that have taken place, including:

- enclosure of the open pergola to the upper level (south-eastern corner)
- replacement of vertical timber cladding to upper levels with new hit and miss cladding
- rendering of all former face brickwork to the principal elevation
- replacement of stone cladding to the principal elevation with face brickwork
- replacement of grey glass Panels in lower portions of full-height windows.

Mr Gard'ner opined:

Having confirmed that changes made informed by the historical plans...the place can no longer be considered to be sufficiently intact to warrant inclusion in the Heritage Overlay²³

Ms Schmeder concluded that despite the works that had taken place, the property continues to meet the threshold of local significance. In place of removing the property from the Amendment, Ms Schmeder proposed refinements to the Statement of Significance and Citation to refer to:

- the topography of the block
- the stacked stone hard landscaping
- the history of the house plan, being one which was derived from the *Australian Women's Weekly* home planning service, customised for the first owners at the Myer Melbourne Home Planning Centre on 29 November 1958.²⁴

(iv) Discussion

The enquiry into the historical plans from 1958 in comparison to what is understood to have been constructed revealed some relevant discrepancies. Importantly and relatively irreversible changes such as rendering, hit and miss cladding and other additions to the facade presentation have interrupted the intactness of the original heritage fabric. The Panel believes that the lack of intactness no longer allows the house to meet the threshold of local significance. While Ms Schmeder's suggestion may offer a pragmatic refinement of the Statement of Significance, the Panel is persuaded by the evidence of Mr Gard'ner and submission of Council. The Panel agrees that the property should be removed from the Amendment given the extent and irreversible changes to original heritage fabric that has taken place.

(v) Conclusion

The Panel concludes:

- It is appropriate to remove 175-177 Tramway Beaumaris, from the Amendment.

4.3 27 Bolton Avenue, Beaumaris

(i) The issue

The issue is whether:

- The extent of alterations to the building warrants exclusion from heritage protection

(ii) The property

27 Bolton Avenue, Beaumaris is referred to as the "*Spedding House*" and is proposed to be protected under HO850. The Spedding House is a Bernard Joyce designed house sought to be protected under Criterion A, D and E.

(iii) Evidence and submissions

The owners objected to the application of the Heritage Overlay to on the basis of alterations to the building and the limited visibility of the building from the public realm. Their submission was supported by a memorandum of advice prepared by Mr Bryce Raworth of Bryce Raworth

²³ Expert Witness Statement of Mr Gard'ner (page 41)

²⁴ Expert witness statement of Natica Schmeder, page 87.

Conservation and Heritage. Mr Raworth's written evidence detailed the extent of alterations, the visibility constraints of the building from the public realm and further questioned the relevance of the architect's (Bernard Joyce) work.

Council submitted that the property should be removed from the Amendment. Council adopted the updated evidence of Mr Gard'ner that followed reinspection of the site after exhibition. Upon reinspection, Mr Gard'ner and Ms Schmeder agreed that the property should be removed from the Amendment. Mr Gard'ner's evidence was that:

while the plan form and much of the detailing of the property remains highly intact, a cementitious render – which varies in thickness and quality from a thicker roughcast to a thin bagged finish – has been applied to the entirety of the exterior of property. This – generally irreversible – finish covers all original brickwork with the exception of a small area visible in the garden shed behind the carport. In light of that, it is my view that the rendering of the property has adversely impacted its significance to the point where inclusion in the Heritage Overlay is no longer warranted.²⁵

Mr Raworth's witness statement acknowledges and supports Council's proposed post-exhibition changes and Mr Gard'ner's revised recommendations. Mr Raworth also expresses the view:

I agree with the observations of GJM that the bagging and painting of the exterior face brickwork has been a very substantial change to the site, but I note that the impact of this change is augmented by the impact of numerous other incremental changes across the site and in particular to the front of the dwelling facing the street and in the first, or southern, courtyard. The intactness and integrity of this place have been heavily impacted as a result of these changes, and this has had an appreciable impact upon the heritage values of the place²⁶.

In light of the fact that Mr Raworth, Mr Gard'ner and Ms Schmeder all agreed that the property should be removed from the Amendment, there was no need to call evidence from Mr Raworth in respect of this property and the submitter withdrew from the hearing.

(iv) Discussion

The Panel accepts that considerable and largely irreversible changes to the original heritage fabric (bagging and painting of exterior of house for example) has taken place and as such fundamentally change the legibility of the building.

While the parties acknowledged that the plan form and much of the detailing remains intact, the Panel accepts the evidence of Mr Gard'ner that the irreversible nature of the cementitious render that covers the original brickwork adversely impacts the significance to the point where inclusion in the Heritage Overlay is no longer warranted.²⁷

(v) Conclusion

The Panel concludes:

- It is appropriate to remove 27 Bolton Avenue, Beaumaris from the Amendment.

²⁵ Expert witness statement of Jim Gard'ner, page 59.

²⁶ Expert witness statement of Bryce Raworth, pages 21-22.

²⁷ GJM page 62 para 91

4.4 78 Scott Street, Beaumaris

(i) The issue

The issue is whether:

- The alterations to the property have detracted from its intactness and integrity.

(ii) The property

78 Scot Street, Beaumaris otherwise known as the “*Andrews House*” is a Murphy and Warmington designed house proposed to be protected under HO817. The property is sought to be protected under Criterion A, D and E.

(iii) Evidence and submissions

A submitter opposed the application of the Heritage Overlay on the basis that:

- due to works to the dwelling circa 1980 intactness can no longer be reasoned under Criterion D and E
- the property has no ‘special cultural value’ with the Dunlop-Perdieu Company subdivision
- the Amendment will have negative financial consequence and there is no compensation being offered to owners of these properties.

Council adopted the evidence of Mr Gard’ner and Ms Schmeder in recommending removal of the property from the Amendment. As a result of Mr Gard’ner’s reinspection of the property in December 2023²⁸ and further consideration of the historical building permit and plans he determined that alterations to the property have resulted in:

only three (3) of the ten (10) original windows remaining intact. Further alterations to the rear apparently undertaken in the early 1990s (following-on from the 1980s work), while set well back from the street and recessive in the context of the street presentation of the property, has effectively enclosed or book-ended the previously open north facing verandah, diminishing the legibility of the original form and architectural intent of the building.²⁹

Ms Schmeder also concluded that:

The house is a “*very modest example of a post war house*”, with no indication that it possesses particular aesthetic characteristics that would allow it to meet the threshold of local significance in relation to Criterion E (Aesthetic Significance).

While the house may have met Criterion D (Representativeness) in its original state, as a result of the extensive alternations, it no longer meets that threshold of local significance.

While the house could have illustrated the important theme of the Dunlop-Perdieu subdivision if it was demonstrably an above average example of post war residential development in this area, its failure to meet other design-related criterions indicates that it is not above average.

Council supported the recommendations of Mr Gard’ner and Ms Schmeder to no longer apply the Heritage Overlay to the property given the extent and impact of alterations that have taken place

²⁸ Public consultation in relation to the draft Heritage Study was undertaken between February and April 2022. As part of that public consultation process, Council sent letters and brochures to affected landowners (including the owner of 78 Scott Street, Beaumaris at that point in time) advising that Council officers and Council’s heritage consultants would welcome the opportunity to conduct an on-site inspection of properties, to assist with finalising the draft Heritage Study. The owner of 78 Scott Street, Beaumaris at that point in time did not respond to this correspondence and therefore an on-site inspection was not conducted as part of the preparation of the Heritage Study. Mr Gard’ner and Ms Schmeder requested an on-site inspection of this submitter’s property in response to their submission to the Amendment and their engagement in the Panel hearing.

²⁹ Expert witness statement of Jim Gard’ner, page 31.

and therefore the lack of intactness and integrity falling short of the threshold for heritage protection.

(iv) Discussion

The Panel conducted an accompanied site inspection and was taken to various sections of the property that displayed numerous examples of non-original building fabric (window and access locations, upper level additions, enclosure of north facing verandah and more). The Panel accepts that the alterations to the property have detracted from its original intactness and integrity and the original modernist elements and composition are no longer legible.

The Panel has formed a view that while the house may have met Criterion D (Representativeness) in its original state, as a result of the extensive alternations, it no longer meets that threshold of local significance.

(v) Conclusion

The Panel concludes:

- It is appropriate to remove 78 Scott Street, Beaumaris from the Amendment.

4.5 9 Bellaire Court, Beaumaris

(i) The issues

The issues are whether:

- the methodology of group listing for the Estate is appropriate
- the house exhibits appropriate integrity and intactness to warrant the Heritage Overlay.

(ii) The property

9 Bellaire Court, Beaumaris forms part of the Bellaire Court Estate Group Listing. The property is one of eight in the Estate. Others being the properties at 2, 4, 8, 10, 15, 18 and 19 Bellaire Court, Beaumaris. The grouping has been identified as: making a strong contribution to the important phase of development with the City of Bayside (Criterion A – historical significance); being a substantially intact representative group of Modernist housing (Criterion E – representativeness) and exhibiting key aesthetic qualities to a high standard (Criterion E - aesthetic significance).

(iii) Evidence and submissions

The owner objected to the application of the Heritage Overlay on a range of matters, including:

- the place not meeting the threshold of significance
- substantial alterations to the property remove heritage significance
- the lack of strategic justification for group-listed properties.
- the 'defacto' way that group listings and the inclusion of properties in the Heritage Overlay.

The submitters tabled expert heritage evidence from Ms Baker of Urbis. While Ms Baker was not called to provide oral evidence, her statement was considered by the Panel. Ms Baker expressed the following views:

- The building at 9 Bellaire Court has been altered and is no longer intact to its original design.

- A number of the characteristics set out in the Statement of Significance for the dwellings in the Bellaire Court Estate Group Listing do not apply to the site at 9 Bellaire Court.
- the proposed group listing is not considered to be consistent with the principles set out by previous Planning Panels, which require a group or serial listing to have very well-defined characteristics to enable it to be recognised as a group.
- Shared characteristics that are too general – such as generic use, period of construction, or a common developer – are considered an insufficient basis on which to justify a serial listing.
- The serial listing has been employed as a means of bypassing the would be precinct's lack of integrity, and this distorts the point at which local level threshold lies.
- The PPN1 criterions are for assessment are not met to substantiate Bellair Court Estate group listing.

Council submitted that the proposed use of a group listing is consistent with the guidance contained in Planning Practice Note 1 and is an approach that is supported by commentary from past Panels and reinforced by the evidence of Mr Gard'ner and Ms Schmeder.

Council referred to Ms Schmeder's explanation in her evidence that:

the concept of group, thematic and serial listings was introduced by the Advisory Committee in its 2007 report entitled 'Review of heritage Provisions in Planning Schemes' whereby the Advisory Committee recommended that:

- Thematically related buildings or sites that do not adjoin each other or form a geographical grouping should, where appropriate, be able to be treated as a single heritage place and share a statement of significance and Heritage Overlay number.³⁰

Ms Schmeder's evidence was that:

Max Sach's eight houses on Bellaire Court "*form a distinctive grouping with their Modernist design, window walls, and irregular plans made possible by the use of flat roofs*" and on that basis the group of houses form a group listing of local significance:

- The houses included in the group listing have very well-defined common characteristics, including their architectural form, history and associations
- Their connection is enhanced by their location around the circular court subdivision created by their designer-builder, Max Sachs
- It is appropriate to recognise and reinforce the shared significance of these properties by the use of a group listing and shared place Citation and Heritage Overlay number.

Council submitted that house was rendered after the completion of the Heritage Study but before the exhibition of the Amendment. As a result of the rendering of the property, Mr Gard'ner reconsidered his assessment and formed the view that:

This revised position has been partly informed by my involvement in other, subsequent, heritage matters including a recent review of the Contemporary Homes Group listing for Maroondah Council (Amendment C148moro) where the rendering of recommended buildings was a key matter considered. The consistent expert opinion (including mine) was that complete rendering of a post war building typically compromised its integrity to the point that it was no longer appropriate to apply the Heritage Overlay. In light of that, it is my view that the rendering of 9 Bellaire Court has adversely impacted its significance and that its inclusion as part of the proposed group listing is no longer warranted.

Council acknowledged that their experts agreed with Ms Baker's conclusions and that the property at 9 Bellaire Court should be removed from the Amendment. Council, however, continued to rely on their expert's evidence in support of retaining the Bellaire Court Estate group listing more

³⁰ Expert witness statement of Natica Schmeder, page 66; Heritage Provisions Review Final Report (AC) [2007] PPV 65 (16 August 2007)

generally. Council submitted that on the basis that no other party sought to challenge the evidence of Mr Gard'ner and Ms Schmeder in respect of the Bellaire Court Estate group listing, their evidence with respect to the group listing should be given great weight by the Panel.

(iv) Discussion

The Panel is satisfied that guidance in respect of group listings in Planning Practice Note 1 has been correctly followed. Relevantly for the Bellaire Estate, places that share a common history and/or significance, but which do not adjoin each other or form a geographical grouping may be considered for treatment as a single heritage place. In this instance each place, including 9 Bellaire Court, forms part of the group that share a common statement of significance that stem from their Martin Sachs design and construction period.

The Panel has formed the view that the threshold matter for including this site in the group listing is one of intactness and fabric integrity and legibility rather than the Council's approach to group listing generally. To that end, the Panel accepts the evidence of Mr Gard'ner that irreversible changes such as rendering has significantly and adversely impacted the legibility of the building. The Panel agrees that the dwelling can no longer be appreciated as a locally significant example of Modernism either independently or as a contributor to a group listing.

(v) Conclusions

The Panel concludes:

- It is appropriate to remove 9 Bellaire Court, Beaumaris from the group listing.
- It is appropriate to remove changes to the Statement of Significance and Citations to exclude 9 Bellaire Court from the group listing.

4.6 9 Wolseley Grove, Brighton

(i) The issue

The issue is whether:

- The house retains sufficient intactness and integrity to warrant protection.

(ii) The property

9 Wolseley Grove, Brighton is proposed to be protected under HO841. Referred to as the "*Mylius House*" it is a McGlashan & Everist designed house constructed in 1967. The local significance is deemed worthy under Criterion A, D, and E.

(iii) Evidence and submissions

Two submitters opposed the Heritage Overlay being applied on the following grounds:

- little significant heritage fabric remains after major alterations over the years
- austere brick front facade walls has been replaced with windows and glass doorways
- the property does not been Criterion D as it is mostly not in original condition
- the place does not meet Criterion E, as the significant aesthetic features have been demolished
- the streetscape view reflects no significant heritage fabric.

Council submitted that the property should be removed from the Amendment. Following Mr Gard'ner's site inspection and rereview of the works currently being undertaken, his evidence was:

Due to substantial works that have recently been undertaken at the place, there is so little original material remaining that its integrity has been reduced such as the place should be removed from the Heritage Overlay.

Mr Raworth and Mr Gard'ner both recommended the property be removed from the Amendment as a result of the impact of the recent alterations to the dwelling.

Ms Schmeder recommended the place be retained in the Heritage Overlay but that the Citation and Statement of Significance be amended to reflect the changes made. She opined:

Overall, the current design is sympathetic to the house, with effort taken to retain the same street presence. On this basis, I consider the current works to be of the type that is often approved for houses in the Heritage Overlay.

As a substantial house of sophisticated original design, in my expert opinion, it will retain its local significance following the works.

Ms Schmeder made reference to heritage advice from David Helms obtained by Council in respect of the proposed development at 9 Wolseley Grove, Brighton³¹ as bearing some weight in the Panels deliberations. Council submitted that while heritage advice was provided by Mr Helms in that matter, it relies of the evidence of Mr Gard'ner.

(iv) Discussion

The Panel was assisted by the accompanied site inspection which help put into perspective the building and works that are currently under way. The Panel observed a sensitive and well considered renovation taking place. Though as sensitive as the works are, they are nevertheless extensive and, in the Panels view, transformative. For example, the Panel observed:

- removal of original eastern courtyard
- removal of three large trees
- garden structure dismantled
- removal of front brick fence
- removal of integrated carport
- removal of dark stained/painted timber fascia's
- replacement of original timber windows and changes to window locations and proportions
- extensive works internally and to the rear of house.

While the current owners are going to detailed and expensive lengths to upgrade, renovate and refurbish with a respected architectural response, the house itself has transitioned to where little original material and siting remain. Therefore, the Panel adopts the evidence of Mr Gard'ner and accepts that original integrity has been reduced to no longer warrant heritage protection.

(v) Conclusion

The Panel concludes:

- It is appropriate to remove 9 Wolseley Grove from the Amendment.

³¹ Council subsequently produced and circulated a copy of this letter dated 3 August 2022.

5 Places recommended for removal by the Panel

5.1 Flats 1-4/16 Gillard Street, Brighton East

(i) The issues

The issues are whether:

- Flats are important to the course or pattern of the cultural history of the City of Bayside.
- Flats are important in demonstrating the principal characteristics of small residential flat buildings constructed during the post war period.
- Whether it is appropriate and justified to apply the Heritage Overlay to Flats 1-4/16 Gillard Street, Brighton East.

(ii) The property

Flats 1-4 at 16 Gillard Street, Brighton East is proposed to be protected under HO845. The David Sapir designed flats are proposed to be included as an individual place within the Heritage Overlay and is deemed locally significance against Criteria A, D and E.

Figure 1 Flats 1-4/16 Gillard Street, Brighton East



(iii) Evidence and submissions

A submitter opposed the application of the Heritage Overlay. Their position was supported by a memorandum of advice from Dr Aron Paul of Trethowan Architecture. Dr Paul suggested that the property does not meet the threshold of local significance. He contended that the Citation has not adequately demonstrated that the property is historically, aesthetically or representatively significant, and that the comparative analysis has not compared the property to other Modernist buildings contained in the schedule to the Heritage Overlay under the Bayside Planning Scheme.

Dr Paul considered that the Citation fails to establish the significance of the architect David Sapir, whom he considers to be “*comparatively obscure*” and more notable for commercial architecture.

The submitters further called expert evidence from Mr Bryce Raworth. He concurred with the findings of Dr Paul in respect to the site not meeting the Criteria A, D, or E. On the matter of historical significance (Criterion A) it was Mr Raworth’s evidence that:

In reality, flats were not built in high enough numbers in the post war period the City of Bayside to constitute an important phase of development – certainly not to an extent that would justify the application of Criterion A to a building as unremarkable as that found on the subject site. This observation is consistent with the scant attention paid to post war flats in previous heritage studies of the area. The *Bayside Thematic History*, completed in 1999, provides limited commentary on the importance of post war architecture within the City of Bayside, only commenting briefly that flat building continued after WWII.³²

In relation to Criterion D, Mr Raworth said:

the criterions in question should be met not just in a simple or generic manner, but to a degree that is better than many or most other examples at a local level, or to a degree that is comparable to other examples that are subject to the Heritage Overlay. The subject building could be said to demonstrate principal characteristics of post war walk-up flats but only in the most generic sense.³³

In relation to Criterion E Mr Raworth said:

The flats do not demonstrate *particular* aesthetic characteristics in the sense that particular can be understood to mean unusual, remarkable or unique. The three vertical timber battens applied to the facade are minor, featurist elements that do not have sense of belonging to a cohesive, integrated design approach. The battens read as an ad-hoc gesture intended to add some visual interest to an otherwise bland street facade.³⁴

Council submitted that the property is of local significance pursuant to Criteria A (Historical Significance), D (Representativeness) and E (Aesthetic Significance) and therefore warrant inclusion in the Heritage Overlay.

The Council submitted that the evidence of Mr Gard’ner and Ms Schmeder ought to be preferred on the basis that they have assessed the property in accordance with Planning Practice Note 1 and best practice, whereas Mr Raworth has assessed the Heritage Study against standards that are neither required by PPN1 nor commonly adopted by heritage practitioners.

It was Mr Gard’ner’s evidence that:

- While the materials and detailing can generally be considered ‘typical’ rather than distinctive for the typology, the place is assessed as being of significance in part for its representativeness of Post War Modernist architecture, and the ‘typical’ materials and detailing used directly reflect this value.
- The Hercon criteria do not require places to be ‘distinctive’ to be included in the Heritage Overlay. Notwithstanding this, the place does demonstrate a level of flamboyance of design within the otherwise constrained and pared-back Modernist aesthetic.
- It is not necessary for a place to demonstrate *all* of the typical characteristics of Post War Modernist residential design for it to meet Criterion D.
- While the place does not demonstrate special siting of the building or integration of landscape, this is not unusual given it is a multi-unit development rather than a single

³² Expert witness statement of Bryce Raworth evidence, para 21 page 10

³³ Expert witness statement of Bryce Raworth evidence, para 31, page 12

³⁴ Expert witness statement of Bryce Raworth evidence, para 35, page 15

dwelling. The place demonstrates the vast majority of other key features of the typology with a high degree of integrity to its original design.

- The assessment does not conclude that the property is significant for its association with architect David Sapir (under Criterion H) and therefore the assessment does not need to establish such significance.
- The property is highly intact.
- The Heritage Study acknowledges that multi-storey flat development was less popular than single-storey unit development in the post war period, but it doesn't follow that the multi-storey typology should not be included in the Heritage Overlay. This typology is reflective of the opportunities taken to increase housing supply in the post war period and it is appropriate that these places are recognised where the building remains highly intact to demonstrate that theme.

Ms Schmeder considered the property to satisfy the threshold of local heritage significance, concluding that:

- The flats are highly intact to their original appearance.
- If the comparative analysis is expanded beyond other examples of flats, it becomes clear that the subject building bears close similarities to the work of Michael Feldhagen and other émigré architects.
- The flats are an excellent example of the ambivalence with which such developments were treated in middle ring suburbs such as Brighton, as it is disguised to look like a single-family home.
- The significance of this place does not rest on its association with architect David Sapir.
- The subject flats demonstrate a side of Modernism often referred to as Featurism, which is also worthy of protection.

In closing, Council acknowledged that there are differences in opinion between Mr Gard'ner, Ms Schmeder and Mr Raworth on how the building at 16 Gillard Street compares to any of the relevant comparators and the Panel will need to determine which opinion it prefers having regard to all relevant considerations and the evidence as presented. Council submitted that the evidence of Mr Gard'ner should be preferred as the author of the Heritage Study, who has undertaken an extensive investigation of post war modernist dwellings in Bayside as part of preparing the Heritage Study and whose work has been carefully and comprehensively reviewed by an independent expert.

(iv) Discussion

The Panel was presented with three differing expert opinions as to the heritage significance of flats within Bayside and specifically, the contribution that the flats at 16 Gillard Street do or don't make to the era. Mr Gard'ner suggested the flats are important in demonstrating the period of development and the flats are significant in their representative value. Ms Schmeder supported protection as the flats demonstrate the fact that multi-storey flats were non-preferred, in that they are 'disguised' as a single dwelling. Whereas Mr Raworth's evidence was that the flats are not demonstrably important to the course or pattern of the cultural history of the City of Bayside. Mr Raworth's opinion was that the building could be said to demonstrate principal characteristics of post war walk-up flats but only in the most generic sense.

The Panel has considered the evidence before it and prefers the evidence of Mr Raworth and submission of Dr Paul. That is, the contextual history³⁵ does not reveal a particular significance to the flat housing type to the evolution of Modernism in the municipality.

The Panel notes that Criterion A requires a place to be of importance to the course or pattern of our cultural and natural history. This Panel adopts the caution of previous Panels in acknowledging the risk, that, if the pattern or theme is too generic any building consistent with it could meet the Criterion. The Panel has formed the view that the theme or pattern (flat development) in itself needs to be important to the municipality of which then it needs to clearly demonstrate its importance to the theme or pattern. This may indeed occur in future contextual works however this demonstration has not occurred in this instance and therefore on the evidence in front of it, the Panel cannot support a Criterion A classification. The Panel accepts that:

- there is no quantification of the ‘number’ of multi-storey residential flats constructed across the municipality, or how this compares with any other typology
- on the contextual information provided, there was no “proliferation” of multi-unit developments in the 1960s and 1970s in the City of Bayside
- there is no quantification that the subdivision of land for and construction of detached dwellings and multi-storey blocks of flats characterised suburban development in the City of Bayside.

Criticisms as to the comparative analysis is relevant to the Panel. The Statement of Significance refers to three representative examples and stated:

there are a small number of fine representative examples of this building type that have been retained with sufficient integrity to demonstrate this class of place and to reflect their importance in the historical development of what is now the City of Bayside. These buildings clearly illustrate the application of Modernist principles to flat design and display a range of the principal characteristics of the style. Examples of these include...³⁶

Of the three examples referred to (1-7/150 Beach Road Sandringham³⁷, Flats 1-15/405 Beach Road, Beaumaris³⁸ and Flats 1-6/16 Clive Street Brighton), two of the comparators were previously removed from the Amendment by a Council resolution. Therefore, the Panel has not been provided with a sufficient comparative analysis to suggest that these flats are a ‘better than typical’ or ‘above average’ place, in the context of the relevant Criteria. The Panel accepts Mr Raworth’s opinion that, for flats:

The comparative analysis has not adequately established a threshold of local significance for this type of building, a multi-storey block of flats, in Bayside. When analysed alongside Modernist buildings on the Heritage Overlay, the flats compare poorly in terms of their Modernist characteristics such as horizontal expression, expansive glazing, and design detail.

The level of intactness and integrity in the comparative analysis plays a key role setting an appropriate benchmark. A representative place should demonstrate most of the principal characteristics of the class in a manner that is clear and as such can be tested against. While it is asserted by the Council that the flats are ‘better than typical’ or ‘above average’, the absence of material to demonstrate the basis means this assertion cannot be made.

³⁵ Volume 2: GJM Heritage

³⁶ Flats 1-4/16 Gillard Street Brighton East: Heritage Citation p 1146

³⁷ Removed from Amendment C192bays by Council Resolution (July 2022)

³⁸ Removed from Amendment C192bays by Council Resolution (July 2022)

The Panel accepts Mr Raworth's evidence that should a comparative analysis be undertaken the subject building could be said to demonstrate principal characteristics of post war walk-up flats but only in the most generic sense.

(v) Recommendation

The Panel recommends:

2. **Delete the Heritage Overlay from Flats 1-4/16 Gillard Street, Beaumaris.**

5.2 15 Mariemont Avenue, Beaumaris

(i) The issues

The issues are whether:

- The property exhibits sufficient intactness to ensure legibility.
- Appropriate methodology has been undertaken in identifying heritage significance

(ii) The property

15 Mariemont Avenue, Beaumaris is proposed to be protected under HO811. The house is John Baird designed and has been identified as demonstrating importance under Criteria A, D and E.

Figure 2 15 Mariemont Avenue, Beaumaris



(iii) Evidence and submissions

A submitter opposed the application of the Heritage Overlay based on:

- Substantial alterations (windows, balcony, stairwell, front door location, volcanic rock retaining wall and driveway).

- Current classification ignoring the 2008 the City of Bayside Inter-War & post war Heritage Study deemed heritage value in the cohesive group of housing rather than the sites individually.³⁹

Council supported the retention of the house within the Amendment and proposed to adopt the post-exhibition changes to the Statement of Significance and Citation in accordance with Mr Gard'ner's evidence:

The alterations to the front facade (comprising insertion of a window into the easternmost bay and replacement of first floor balustrading) were known at the time of the assessment and are noted in the heritage Citation for the place, which concludes that, despite these modifications, the house remains substantially intact to its period of construction and retains the ability to be clearly understood and appreciated as an example of a 1950s house built in the Post War Modernist style.⁴⁰

He further stated that:

It is my view that the property continues to warrant inclusion in the Heritage Overlay of the Bayside Planning Scheme. I recommend that the Statement of Significance for the property be amended to note the later changes as being non-contributory to the place.⁴¹

Ms Schmeder's evidence similarly concluded that the property retains sufficient form and important original features to meet the threshold of local heritage significance and recommends amending the Statement of Significance and Citation to reflect the alterations and to note that the house has a 'relatively' high level of integrity.⁴²

The submitters provided the Panel with a range of photographs that document the evolution of the house. Notably, the submitter demonstrated that the facade visible today and within the study (balcony, doorway, window location, balcony size and materials and staircases) differs considerably to the original design.

(iv) Discussion

It became clear through exploring evidence and submissions that the study and supporting documentation has not entirely accounted for all the alterations that had taken place and for which were perceived to be part of the original design. While this was a fair and reasonable assumption without the benefit of earlier photograph's it became apparent, and is the position of the Panel, that the house has undergone considerable alterations to depart from the original Modernism design and expression.

The Panel acknowledges that, while the house may currently present as a respectful iteration of Modernism, much of the original fabric including proportions and materiality have been irrevocably changed. Differences includes:

- the relocation of the glazed window facade being brought closer to the street
- considerable reduction in the depth of the balcony
- the changes to the balustrade materials to timber
- changes to the facade materials
- relocation of the front door as it sits within the glazed facade

³⁹ The Mariemont Avenue houses are of more interest as a cohesive group, rather than individual specimens. Taken individually, they can mostly be considered as representative examples of the work of their respective architects or styles, rather than particularly outstanding ones..."

⁴⁰ Expert witness statement of Jim Gard'ner' para 79

⁴¹ Expert witness statement of Jim Gard'ner, para 82

⁴² Expert witness statement of Ms Schmeder, page 81

- installation of a window into the southeast wall.

In the mind of the Panel these changes mean that while the house clearly has the style of a modernist house it is not sufficiently similar to the design conceived by the architect. These alterations conflict with the proposed Criteria D and E classification within the Amendment and contravene the “*authenticity*” and “*truth to material*” principles that underpin much of the Modernism significance.

Given the lack of intactness the Panel sees no utility in exploring other assertions.

(v) Recommendations

The Panel recommends:

3. Delete the Heritage Overlay from 15 Mariemont Avenue, Beaumaris.

5.3 82 Reserve Road, Beaumaris

(i) The issues

The issues are whether:

- The architect is of importance to the Municipality and era.
- The property is a significant example of the architect’s work.
- The property is sufficiently intact to warrant applying the Heritage Overlay.

(ii) The property

82 Reserve Road, Beaumaris is proposed to be protected under HO814. Referred to as the “*Kirk House*” is proposed to be included as an individual place within the Heritage Overlay and is deemed locally significant under Criteria A, D, E, and H.

Figure 3 82 Reserve Road, Beaumaris



(iii) Evidence and submissions

A submitter objected to the application of the Heritage Overlay based on:

- The limited details provided on John Kirk raises questions in respect of the property’s historical significance and there is no evidence of him having a meaningful career as an architect.
- Kirk is an unknown, unregistered architect and Beaumaris does not possess any special association with John Krik.

- The description of the property contains inaccuracies, as there is no integrated carport even though this is stated in the Study.
- Key features of the property have been changed, including the enclosure of the carport, rendering face bricks, clearing gardens, demolishing the letterbox and removing the concrete driveway.

Another submitter opposed the Heritage Overlay on the following basis:

- Key features have been changed including enclosing of the carport, rendering face bricks, clearing gardens, demolishing the letterbox and removing the concrete driveway.
- Kirk is an unknown, unregistered architect.
- The property does not meet Criterion A – it *“has been previously assessed and rejected in earlier Bayside City Council heritage Studies”* and Kirk is *“unremarkable and obscure”*.
- The property does not meet Criterion D – the assessment *“does not effectively demonstrate how the home or the designer meet the threshold for local significance...neither the home nor the designer holds any notable importance in relation to Bayside’s natural places or environmental considerations”*.
- The property does not meet Criterion E – *“the house displays ordinary and modest construction with subpar finishes, devoid of refined detailing”*.
- There is no special association with Beaumaris and John Kirk other than he lived in the suburb for a number of years.

Council’s position was that the property is significant and should be permanently included within the Heritage Overlay. Council’s experts continued to support the inclusion of the property in the Amendment but with some qualifications.

On the matter of the architect relevance Mr Gard’ner conceded that:

Having further considered the limited information available on John Kirk’s career – and in light of further guidance provided on the application of Criterion H through the Planning Panel report for Amendment C320ston – I agree that the place does not satisfy Criterion H for its association with owner-designer John Kirk. It is my view that the Statement of Significance and associated heritage Citation should be updated to delete Criterion H.⁴³

Ms Schmeder agreed with this recommendation though suggested that John Kirk’s association with Bayside would be better reflected in Criterion A, rather than Criterion H.

Ms Schmeder and Mr Gard’ner were both of the opinion that the changes made to the building are reversible and that the original design remains legible. Mr Gard’ner stated that:

While the changes are unfortunate, it is my view that they have not fundamentally altered the original design intent or legibility of the house or diminished its intactness to the extent that it no longer should be considered for inclusion in the Heritage Overlay.⁴⁴

(iv) Discussion

On the matter of architect significance, the experts and parties were in agreement that John Kirk was not significant nor important to the History of Bayside. The Panel accepts that therefore the property does not meet the threshold for associative significance under Criterion H.

The Panel heard a range of submissions about the intactness and integrity of the house and as such its suitability for inclusion with the Amendment. All parties agreed that alterations and

⁴³ Expert witness statement of Jim Gard’ner, para 95

⁴⁴ Expert witness statement of Jim Gard’ner, para 98

additions had taken place. It was demonstrated by comparison to the original home design that partial enclosure of the integrated carport with slatted vertical timber battens and horizontally laid corrugated Colorbond has taken place together with the removal of concrete driveway, letterbox and some garden plantings.⁴⁵

The Panel is concerned that the alterations are such that the property no longer presents the original design intent. In its current presentation the Panel does think the property is 'better than typical' against Criteria A, D and E.

The contention was whether such alterations changed the elements of the original design (that enables it to be read as representing Modernism) and whether the alterations are reversible. Previous Panels have found that:

In some instances, building changes and alterations are ephemeral, such as painting, addition of signs and other simple additions and may be reversible. Such changes have minimal impact on a building's integrity. However, changes that obliterate building elements that are important to the building's original design or enable it to be read as representing a particular period, style or theme can significantly diminish integrity.⁴⁶

The Panel is concerned that the belief the changes to the original design can be reversed is overly optimistic. The Panel accepts that it might be possible to reverse these changes (though this is based on some assumptions about the render being on cement sheet and without knowing what is under the cement sheet) if the building were an example of a noted architect and reducing the living space in the dwelling was not an issue. But the Panel does not think that this potential extends beyond the mere theoretical in the context of the dwelling needing to continue to function as a contemporary family home.

(v) Recommendation

The Panel recommends:

- 4. Delete the Heritage Overlay from 82 Reserve Road, Beaumaris.**

5.4 165–167 Tramway Parade, Beaumaris

(i) The issue

The issue is whether:

- a pre-existing (and recent) planning approval should be considered by the Panel.

(ii) The property

165-167 Tramway Parade, Beaumaris is proposed to be protected under HO791. The "Pike House" is proposed to be included as an individual place and is deemed significant under Criteria A, D and E. In March 2023 the Minister approved Amendment C188bays, which extended a current interim heritage control on the house.

⁴⁵ Further, it was acknowledged that two of the properties included in the Comparative Analysis have been removed from the Amendment following a Council resolution.

⁴⁶ Melbourne Planning Scheme Amendment C426melb | Panel Report | 15 January 2024, page 43

Figure 4 165–167 Tramway Parade, Beaumaris**(iii) Evidence and submissions**

The owner opposed the application of the Heritage Overlay given:

- An approved planning permit for demolition of the dwelling and the construction of 4 four new dwellings and associated vegetation removal (PP 5/2022/48/1⁴⁷) was issued under the existing Heritage Overlay . The approval was issued on 14 November 2023 and is awaiting condition 1 endorsement.
- Recent acquisition of the property without the impediment of a Heritage Overlay.
- The house is in an advanced state of disrepair and would attract extensive financial resources to be rejuvenated.

Council submitted that the Heritage Overlay should be applied to the property unless demolition occurs before the Amendment proceeding. Council supported the recommendations of Mr Gard'ner and Ms Schmeder to include the place in the Heritage Overlay as proposed by Amendment C192bays unless demolition occurs before the Amendment is gazetted.

Mr Gard'ner informed the Panel that he was instructed to consider to the heritage merits irrespective of the recent approval for demolition and redevelopment.⁴⁸ It was Mr Gard'ner's evidence that if permit is not acted on, the Heritage Overlay should be applied. He considered the relevant submissions and the structural assessment⁴⁹ and forensic building investigation report,⁵⁰ and found:

⁴⁷ Demolition of the existing heritage building, construction of four (4) dwellings on a lot within a Heritage Overlay and the removal of native vegetation within a Vegetation Protection Overlay Schedule 3.

⁴⁸ GJM hearing presentation page 35

⁴⁹ *Structural Assessment 165-167 Tramway Parade, Beaumaris* (Barrason's Engineers, 2 May 2022) (Barrason's Assessment)

⁵⁰ *Forensic Building Investigation Report* (for Bayside City Council by Structerre Consulting, 2 October 2023) (Structerre Report)

Both reports conclude that the structural issues are not insurmountable and can be addressed but acknowledge the very poor condition of the property due to ongoing neglect and recent vandalism.⁵¹ Having considered the information provided, it is my view that while the condition of the property is very poor, it is not beyond repair and restoration in a manner that maintains its identified heritage values is possible. Based on the structural engineering advice that the place is not structurally compromised and does not require complete demolition, it remains my position that the property should be included in the Heritage Overlay of the Bayside Planning Scheme.⁵²

(iv) Discussion

It is often repeated that issues of condition should be assessed under the permit process. A planning permit has been issued while a Heritage Overlay applies, and there is no reason to suppose that this was not a sound decision.

It is clear to the Panel that the house is currently in an advanced state of disrepair. As outlined within the supporting reports and investigations, the disrepair appears at times to extend beyond aesthetic and replaceable elements to examples of *“structural distress to balconies”*, *“minor differential movement leading to some structural distress on walls”* and *“adverse effects on foundations allowing water ingress”*.

The Panel takes the issue of a permit as a clear indication that the proper application of heritage policy allow demolition of this building. On the specific facts, it would be counterintuitive and indeed counter to the orderly planning objectives of the PE Act to apply the Heritage Overlay to the property.

(v) Recommendation

The Panel recommends:

- 5. Delete the Heritage Overlay from 165-167 Tramway Parade, Beaumaris.**

⁵¹ Expert witness statement of Jim Gardner, page 38 para 128

⁵² Expert witness statement of Jim Gardner, page 39 para 131

6 Places recommended for the Heritage Overlay

6.1 1 Reid Street, Beaumaris

(i) The issues

The issue is whether:

- The house is sufficiently intact to warrant applying the Heritage Overlay.

(ii) The property

1 Reid Street, Beaumaris referred to as the “*Fermanis House*” is a Chandler and Patrick designed house built in 1968 and proposed to be protected under HO813. The house is deemed to be of significance under Criteria A, D and E.

(iii) Evidence and submissions

The owner opposed the application of the Heritage Overlay and submitted that house had undergone considerable alterations including:

- changes to the front facade and vehicle storage (demolition of original and replacement of carport)
- recladding of the roof
- painting of timberwork from original colour
- change to materiality of rear balcony balustrades
- replacement of the front door
- replacement of letter box.

The Council relied on the opinions of Mr Gard’ner and Ms Schmeder in supporting the application of the Heritage Overlay to the property. On the matters of alteration and intactness, it was Mr Gard’ner’s evidence was that:

the change is not considered to adversely affect the overall appearance or architectural intent of the property and has been noted in the ‘Integrity/Intactness’ section of the heritage Citation. The western end of the carport has been reconstructed on a largely like for like basis, with the repair or replacement of timber members and the introduction of a new steel beam set within the carport to provide additional structural strength. This is considered an appropriate repair and structural remediation strategy for the property that has been undertaken in a manner that is consistent with the place’s heritage values. Alterations to the rear balustrade are not considered to have an impact on the assessed significance of the property⁵³

Ms Schmeder found the house and carport to be high integrity to their original form. Her opinion was that the “*works were sensitively designed*” with works having “*matched existing*” where possible. Ms Schmeder’s finding was that:

Following these repairs and partial reconstruction of the carport, it retains its original form, appearance and integrity. From the street there is no discernible difference to its form from the 1968 photo found in the GJM Heritage citation⁵⁴

⁵³ Expert Witness Statement of Mr Gard’ner, pages 24-25.

⁵⁴ Expert witness statement of Jim Schmeder, page 47 para 266

Ms Schmeder's evidence was that the place was assessed in accordance with the guidance contained within Planning Practice Note 1.

(iv) Discussion

On the matter of intactness, the Panel agrees with the expert findings that:

- the dwelling largely exhibits original expression and legibility as initially designed by Chandler and Patrick
- the alterations visible from the streetscape appear to have largely been undertaken on a sensitive replacement or like for like approach
- alterations such as the door replacement, letter box and balustrades are inconsequential to the overall legibility of the house an intact example of Modernism.

In addition, the alterations that have taken place are reasonably reversible.

The matter of condition and the relevance of considering condition in the assignment of heritage protection was raised throughout the hearing by a range of parties. Similarly, it was put to the Panel that with this property, poor condition should exclude the property from the Amendment. However, the Panel has formed the view that the condition of the house is a function of a lack of cyclical maintenance rather than an issue of conditional defect as a result of the design. Relevantly, the deterioration of the balcony, rafters and some external cladding could be replaced in a like for like straight forward without jeopardising structural integrity or the adversely detracting from the heritage fabric.

(v) Conclusion

The Panel concludes:

- No change to the Amendment as it relates to 1 Reid Street, Beaumaris is warranted.

6.2 11 Summerhill Road, Beaumaris

(i) The issues

The issues are whether:

- the property exhibits appropriate intactness of original fabric to warrant Heritage Overlay protection.
- the abandonment of previous studies and reference to the site specifically is relevant when assessing heritage significance.

(ii) The property

11 Summerhill Road, Beaumaris is a Neil Clerehen designed house sought for protection under HO818. Referred as the "*Weate House*", it is deemed locally significant under Criteria A, D and E.

(iii) Evidence and submissions

The owner opposed the application of the Heritage Overlay (HO818) due to:

- the undemocratic and unfairness of the Amendment process
- the fact the prior studies have been abandoned by Council
- the extent of alterations made to the property (roofing and internal designs)
- there are financial impacts that stem from heritage protection

- the property not being representative of the architect's better works⁵⁵
- the design deficiencies in including the roof (replacement due inadequate drainage and major internal design deficiencies).

Council submitted that the Heritage Overlay should be applied to the property because it is significant. Council relied on the evidence on Mr Gard'ner who opined that despite the changes made:

the house remains substantially intact to its period of construction and retains the ability to be clearly understood and appreciated as an example of a 1950s house built in the Post War Modernist style⁵⁶

Mr Gard'ner disputed the lack of reference in particular publications equating to a lack of local level heritage significance. He referred to more recent surveys⁵⁷ which reference 11 Summerhill Road as "*...one of the best and most intact remaining examples of the early residential work of this noted Melbourne architect.*"⁵⁸ Both of Council's experts agreed on the degree of integrity and that the changes do not diminish the heritage significance of place.

(iv) Discussion

The Panel accepts the evidence of Mr Gard'ner and Ms Schmeder that the house retains legibility and intactness despite the alterations that have taken place. The legibility remains through its site-specific orientation, rectangular planning the strong elevated box like form and key elements such the flat roof with flush fascia, projecting pergola-like eave to the north, materials and windows all of which are legible as Modernist architecture.

(v) Conclusion

The Panel concludes:

- No changes to the Amendment in relation to 11 Summerhill Road, Beaumaris is warranted.

6.3 19 Bellaire Court, Beaumaris

The submissions raised no issues that specifically addressed the significance of the property.

The Panel concludes:

- No changes to the Amendment as it relates to 19 Bellaire Court, Beaumaris is warranted.

6.4 19 Haywood Street, Beaumaris

(i) The issues

The issues are whether:

- The alteration to the property should preclude it from the Heritage Overlay.
- The site-specific selection and proposed Heritage Overlay protection is warranted.

⁵⁵ Not included in *The Architecture of Neil Clerehen* by H Edquist and R Black (1981).

⁵⁶ Expert witness statement of Jim Gard'ner, page 33 para 11

⁵⁷ *Survey of Post-War Built Heritage in Victoria* (Built Heritage for Heritage Victoria, 2008)

⁵⁸ Expert witness statement of Jim Gard'ner, page 33 para 13

- Exclusion of other like places is of relevance to the site-specific application of the Heritage Overlay.

(ii) The property

19 Haywood Street, Beaumaris is a Clare Hopkins Clarke designed house proposed for individual place protection under HO806. Referred to as the “*Gooch House*” it has been locally significant under Criteria A,D and E.

(iii) Evidence and submissions

The owner objected to the application of the Heritage Overlay based on:

- the substantial alterations, including the demolition and reconstruction of the rear section of the house and the installation of stacked stone cladding beside the front door and above the master bedroom window
- the absence of places of heritage significance in the surrounding area (site-specific nature of the protection) and properties with similar attributes excluded from the Amendment⁵⁹
- other places designed by the architect Clarke Hopkins Clarke are not currently included in, nor recommended for inclusion in the Heritage Overlay.⁶⁰

Council submitted that the property should remain in the Amendment and the ‘Intactness/Integrity’ section of the Statement of Significance and Citation should be amended to include reference to the introduction of the stacked stone cladding.⁶¹

It was Mr Gard’ner’s evidence that the alterations are confined to the rear of the property and have no impact on the assessed significance of the place. Mr Gard’ner further noted:

- No internal controls are proposed and therefore any internal alterations do not impact the assessed significance of the place.
- The stacked stone cladding is a relatively minor change that does not fundamentally alter the original design intent or legibility of the house or diminish its intactness to the extent that it no longer warrants inclusion in the Heritage Overlay.⁶²
- Other residences designed by Clarke Hopkins Clarke⁶³ have either been demolished and replaced or substantially altered to the extent that their original form is no longer readily discernible and consequently elevates the heritage value of as a remaining, substantially intact example of a Clarke Hopkins Clarke designed residence.⁶⁴

Ms Schmeder’s evidence reached similar conclusions in relation other Clarke Hopkins Clarke residences excluded from the Amendment that have been substantially altered or demolished.⁶⁵ Though her evidence did suggest that it would be useful to explain why the Clarke Hopkins Clarke designed residences at 14 Cavell Court and 2 Ramsay Street have not been recommended for

⁵⁹ 19 and 54 Haldane Street, 1 Hutchinson Street, 9 Coreen Avenue, and 132 Tramway Parade, Beaumaris are similar to the subject property but have been removed from the amendment.

⁶⁰ Referring to other Clarke Hopkins Clarke properties (2 Ballara Court, Brighton; 14 Cavell Court, Beaumaris; 2 Ramsay Street, Brighton; 25 Billson Street, Brighton East) that are not recommended for inclusion in the Heritage Overlay.

⁶¹ 19 Haywood Street, Beaumaris, to include reference to the introduction of stacked stone cladding, and to replace reference to ‘Brighton’ with ‘Beaumaris’ in respect of Criterion D.

⁶² Expert Witness Statement of Mr Gard’ner, page 20.

⁶³ 2 Ballara Court, Brighton, 14 Cavell Court, Beaumaris, 2 Ramsay Street, Brighton and 25 Billson Street, Brighton East.

⁶⁴ Expert Witness Statement of Mr Gard’ner, page 20.

⁶⁵ Referring to at 2 Ballara Court and 25 Billson Street

inclusion in the Heritage Overlay (noting that they appear relatively intact). Nonetheless, it was Ms Schmeder's opinion that the comparative analysis in the Statement of Significance and Citation is sufficient to establish the local significance of the place.⁶⁶

(iv) Discussion

The Panel accepts the alterations that were made to the house were known at the time of the completion of the Statement of Significance assessment and that the works are largely confined to the rear portion of the building. Relevantly, the alterations are not visible from the streetscape and do not impact or impede on the legibility of the heritage fabric.

The Panel acknowledges that some alterations are visible within the facade (i.e. small section of timber fascia to the street elevation and panelling to the side of the front door has been replaced with a stacked stone cladding) though accept the evidence of Mr Gard'ner in this instance. That is, while an alteration to the original fabric of the building, it is a relatively minor change that does not:

- fundamentally alter the original design intent or legibility of the house
- diminish its intactness to the extent that it no longer should be considered for inclusion in the Heritage Overlay.

It may be the case that as suggested by Mr Gard'ner, the exclusion of replaced, altered or demolished like properties from the Amendment elevates the 19 Haywood's heritage value. The Panel accepts the local significance and associated Criteria are satisfied by the comparative analysis and therefore warrants the site's inclusion with the Heritage Overlay.

On the matter of Statement of Significance and Citation referencing, the Panel prefers the evidence of Ms Schmeder. The Panel accepts that, in the interest of accuracy and completeness, the 'Intactness/Integrity' section of the Statement of Significance and Citation should include reference to the introduction of the stacked stone cladding and expand on the comparative analysis to qualify exclusion of other like properties.

(v) Recommendation

The Panel recommends:

- 6. In respect of 19 Haywood Street, Beaumaris, 'Gooch House':**
 - a) Amend the Heritage Citation to include reference to the introduction of the stacked stone cladding to small sections of the facade**
 - b) Update the Heritage Citation and Statement of Significance in respect of Criterion D to replace the reference to Brighton with Beaumaris.**

6.5 19 Olympic Avenue, Beaumaris

(i) The issues

The issue is whether:

- The property is sufficiently intact to warrant the application of the Heritage Overlay.

⁶⁶ Expert witness statement of Natica Schmeder, page 75.

(ii) The property

19 Olympic Avenue, Cheltenham is proposed to be protected under HO849. Referred to as the “Patrick House” the house was designed by Rex Patrick as proposed to be included as an individual place. The house is identified as exhibiting local significance under Criteria A and E, and given the architect both designed and resided within the house attracts importance under Criterion H.

(iii) Evidence and submissions

The owner opposed the application of the Heritage Overlay protection based on general issues and the claim that modifications having altered the exterior of the place.

Ms Schmeder agreed with Mr Gard’ner that the external changes identified do not alter the original design intent or legibility of the house and that the house is intact with minor changes not impacting on its heritage significance.

(iv) Discussion

The Panel accepts the evidence of the experts in relation to the external alterations not altering the original design intent or legibility of the house. The original fabric remains prominent and Modernism design language remains legible. The Panel accepts that general maintenance for all homes is required, and that the works suggested to be required for the house are eligible to be undertaken in a manner that is respectful of the identified heritage values. No evidence was led by any party that suggested the house was in such an advanced state of disrepair that demolition is imminent.

The Panel broadly agrees with Council’s submissions in relation to the focused growth aspirations within Bayside’s Activity Centres and Housing Growth Areas and the role of such areas in delivering housing opportunity and supply.

(v) Conclusion

The Panel concludes:

- No change to the Amendment as it relates to 19 Olympic Avenue, Beaumaris is warranted.

6.6 2 High Street, Beaumaris

Council submitted that the property should be retained within the Amendment. Both of Council’s experts agreed that the matters raised by the submitter are not heritage matters.

The Panel accepts that the matters raised within the late submission are not relevant heritage matters.

The Panel concludes:

- No changes to the Amendment as it relates to 2 High Street, Beaumaris is warranted.

6.7 21 Dudley Street, Brighton**(i) The issue**

The issue is whether:

- The property is representative of the designers work worth preserving.

- It is appropriate and justified to apply the Heritage Overlay to 21 Dudley Street, Brighton.

(ii) The property

21 Dudley Street, Brighton is proposed to be protected under HO833. Referred to as the “*Abrahams House*” is an Alistair Knox design house and is proposed to be included as an individual place within the Heritage Overlay. The house is deemed worthy under Criteria A, D and E.

(iii) Evidence and submissions

The owner opposed the application of the Heritage Overlay on the basis that:

- Planning permit (5/2018/517/1) for the demolition of the dwelling and construction of a new dwelling (expired in January 2024)
- The property and does not meet the Hercon Criteria set out in Planning Practice Note 1.
- The high front boundary wall concealed it from the street.
- The front elevation is dominated by the carport, which projects considerably further forward than the balance of the building.
- The view of the dwelling itself is limited to the building fascia and shadowed windows.
- The building does not exhibit any exemplary elements that would warrant recognition. It is a very ordinary example.
- The dwelling is not identified in Phillip Goad’s *The Modern House in Melbourne, 1945-1975* nor did it receive any other recognition.
- Decisions regarding inclusion of specific properties in the Heritage Overlay should consider the individual merits of the property.
- Alastair Knox is better known for his mudbrick dwellings in the Shire of Nillumbik area. The association with a well-regarded building designer should not tip the scales in favour of its inclusion.

Council submitted that the property is of local significance and adopted the evidence of their experts in relation to each of the Criterion. Both Mr Gard’ner and Ms Schmeder disagreed with the submitter in relation to the quality, intactness and contribution of the property:

I disagree that the property is not a “*high-quality exemplar of Post War Modernist design*”. It is a substantially intact, well-resolved and carefully detailed example of the Modernist residential typology remaining in the municipality.⁶⁷

In Mr Gard’ner’s opinion, the loss of the high brick boundary wall does not substantially diminish the legibility or significance of the remainder of the property, and the house remains highly intact, clearly illustrating the assessed historic, aesthetic and representative values of the place.⁶⁸ Ms Schmeder reached similar conclusions, including:

- The loss of the original high front brick fence has had a minor impact on the heritage significance of the place.
- Apart from the fence, the setting is highly intact, retaining mature trees and volcanic rubble hard landscaping.
- The house is a highly intact and accomplished example of an environmental-Modernist house.

⁶⁷ Expert witness statement of Jim Gard’ner, page 46 para 150

⁶⁸ Expert witness statement of Jim Gard’ner, page 46

- A building does not have to be one of the best known of an architect's oeuvre to be of local significance. It only needs to be a demonstrably above average example of its type in a given locality or municipality.
- Its designer, Alistair Knox, is well known for using natural materials such as mud brick, as well as timber and face brick as seen at the subject house.
- The visibility, or lack thereof, of a heritage place does not impact upon its significance.⁶⁹

In relation to the visibility of the carport Mr Gard'ner opined:

the dominant presence of the carport in the front elevation is consistent with the historical and architectural context of the place, which was constructed at a time when car ownership was rapidly increasing and the provision of vehicle parking onsite was prioritised and incorporated into the overall design.⁷⁰

Ms Schmeder recommended that the Statement of Significance be amended to specify that the three mature Eucalypts in the front yard, and the one mature Eucalypt in the backyard, are significant elements of the place.⁷¹

Mr Gard'ner acknowledged that the property was not identified in Phillip Goad's 1992 publication but noted it was not intended as a complete catalogue of Modernist properties. As per other properties within the Amendment, he qualifies the lack of reference of a particular property in a particular publication does not necessarily equate to a lack of local level heritage significance.

Upon closer inspection of the facts, the Panel was informed:

- The approval of planning permit 5/2018/517/1 allowed for the construction of a roof deck in a Design and Development Overlay Schedule 1 (DDO1).
- This permit did not grant approval for demolition of the existing dwelling, nor was it measured against the Heritage Overlay or any local heritage policy.
- On 11 January 2022 an extension of time was granted in which development must commence no later than 23 January 2023 and be completed no later than 23 January 2025.
- On 18 August 2023, a second extension of time was granted in which development must commence no later than 23 January 2023 and be completed no later than 23 January 2026

(iv) Discussion

The Panel is satisfied the property is a better than typical and refined example of an architect-designed Modernism. The changes outlined by the submitter do not substantially diminish the legibility or significance of the place. The comparative analysis demonstrates the relative significance of the property with the high level of intactness and legibility of the original fabric and form. The siting and orientation and engagement with the tiered landscape and mature trees support the Criterion E classification.

The Panel accepts that Alistair Knox is widely known for his innovative and sustainable mudbrick designs in the northeastern municipalities of Melbourne. However, this does not preclude the relevance of his work and its contribution to the era in other municipalities. The Panel accepts Mr

⁶⁹ Expert witness statement of Natica Schmeder, pages 51-52

⁷⁰ Expert witness statement of Jim Gard'ner, page 46.

⁷¹ The Statement of Significance identifies 'Landscape features including mature Eucalyptus sp and volcanic rock edged garden beds' as elements that contribute to the significance of the place. The exhibited Schedule to the Heritage Overlay provides in respect of the tree controls for this place 'Yes – mature Eucalyptus sp.' It does not specify the number or location of the trees.

Gard'ner's evidence that mudbrick construction was not his sole approach to design and construction and that the house is a substantially intact is well-resolved and carefully detailed example of the Modernist residential typology remaining in the municipality.

As discussed earlier in this report, the Panel is aware that of the attributes of Modernist design include prioritising orientation, function and internal amenity over streetscape engagement. The Panel was taken to a range of examples proposed and included in the Amendment that have minimal engagement with the street – limited or no passive surveillance, concealed entrances, and dominance of carparking structures within facades. 21 Dudley Street is an example of Modernist design that prioritises internal amenity and to an extent, turns its back on the street to the benefit of the function of the house.

The Panel accepts Mr Gard'ner's evidence that the lack of visibility of the house to or from the street and presence of the carport (which is original to the design) does not detract from the heritage significance of the property. To the contrary, the heritage significance for this era lay in the nuance of things such as the carport and vehicle access being prioritised in a time that car ownership in Australia was rapidly increasing.

The Panel was assisted by the accompanied site inspection, particularly in relation to the integration of the dwelling floor plan and orientation with the landscape and garden setting. The large Eucalypts are a prominent and are highly valuable and worth protecting. The Panel accepts Ms Schmeder's recommendation to amend the Statement of Significance to capture the significance of the mature trees.

The Panel acknowledges that Council has issued a planning permit for building and works. The permit predates the Amendment and it was not issued while a heritage Overlay applied.

(v) Recommendation

The Panel recommends:

- 7. In respect of 21 Dudley Street, Brighton, specify in the statement of significance that the three mature Eucalypts in the front yard and one in the backyard are all significant elements of this place.**

6.8 28 Tower Street, Beaumaris

(i) The issues

The issues are whether:

- The condition of the place amounts to imminent demolition
- The cost of building and works as a relevant consideration.

(ii) The property

28 Tower Street, Beaumaris is proposed to be protected under HO820. Referred to as the "*Mollar House*" the house was designed by Borland, Trewenack, & Brooks and is proposed to be included as an individual place within the Heritage Overlay. The house is deemed locally significant under Criteria A, D, and E.

(iii) Evidence and submissions

A submitter objected to the application of the Heritage Overlay including:

- The poor condition, including:
 - rotted timber window frames, facias and awning
 - corroded metal decked roof
 - internal damage to ceilings, walls and skirting due to water ingress
 - foundational subsidence.

The submitter provided an estimated order of cost to repair the property and led evidence from Mr Nick Wallis (registered Master Builder) to substantiate both the potential cost of works to repair and provide an opinion as to the condition of the house.

The Council's position was that the property is significant and should be permanently included within the Heritage Overlay. Council adopted the evidence of Mr Gard'ner:

condition is generally not a matter for consideration in determining whether a property should be included in the Heritage Overlay, unless the poor condition has degraded the intactness of a property to such a degree that its values can no longer be appreciated or rectification will require the introduction of such a degree of new fabric that it will undermine its assessed significance⁷²

Further it was Mr Gard'ner's opinion that while the repair works reflect a considerable undertaking (given the lack of maintenance to the property over many years) they can be undertaken in a manner that is respectful of the identified heritage values of the place without compromise to its significance.

Ms Schmeder acknowledged that while the maintenance works required are substantial, and the condition of the building is not in such disrepair as to make the house structurally unsound.

(iv) Discussion

There was little dispute that the property remains largely intact. Original fabric and the Modernist design are legible. The primary contention is one of the property's condition and whether a reasonable like for like replacement exercise can be undertaken while continuing to respect the significance of the place.

These matters are discussed in Chapter 3.2.

The matter of condition was advanced and discussed extensively in submission and evidence.

There was no evidence led by any party that the building is structurally unsound or in danger of imminent collapse.

(v) Conclusion

The Panel concludes:

- condition and the cost and practicality of repair is a matter to be considered in any future planning permit process.

⁷² Expert witness statement of Jim Gard'ner, page 35 para 118

6.9 4 Bellaire Court, Beaumaris

(i) The issues

The issues are whether:

- The property is adequately intact and significant.
- The Bellaire Court Estate is sufficient cohesive to include the property.

(ii) The property

4 Bellaire Court, Beaumaris is one of the Martin Sachs designed and built houses proposed to be protected within the Bellaire Court Estate. Together with the 7 other identified houses in the area exhibit Modernist attributes such as site-specific aspect and orientation, composition and form, materiality and architectural expression. The proposed protection is advanced under Criteria A, D and E.

(iii) Evidence and submissions

The owner objected to the application of the Heritage Overlay based on:

- The importance of Bellaire Court and Martin Sachs, as not referred to in *Volume 2, Contextual History: Post War Modernism in the City of Bayside*.
- The Estate is a poor example of Criterion E and is not cohesive.

Council submitted that the property is significant so the Heritage Overlay should be applied. They relied on Mr Gard'ner's evidence that:

- The contextual History (Volume 2) of the study is intended to be broad and not a comprehensive history of every builder in Bayside in the relevant period.
- The properties in Bellaire Court form a collection of post war modernist properties.
- The changes noted in the submission have been undertaken in a sensitive manner and the building continues to clearly demonstrate its original form and design intent and is still considered to contribute to the significance of the Bellaire Court Estate group.

(iv) Discussion

The Panel accepts the evidence of Mr Gard'ner that the original form and design intent remain and are legible and that changes that have taken place have been done so in a sensitive manner that does not detract from properties contribution to the Estate significance.

The fact that Bellaire Court and Martin Sachs were not identified in a previous heritage study does not automatically imply that the current Heritage Study is defective or that definitive findings from the Estate's previous exclusion can be established and held.

A more contemporary heritage study may identify some of the later constructed buildings as having heritage significance or reappraise some of the earlier buildings on the basis of new information. Over time on, one might expect that buildings that were relatively new at the time of the study but are now older might be considered for heritage listing and some might be found to be significant.

(v) Conclusion

The Panel concludes:

- No changes to the Amendment as it relates to 4 Bellaire Court, Beaumaris is warranted.

6.10 56 Cloris Avenue, Beaumaris

(i) The issue

The issue is whether the house is sufficiently intact to have heritage significance and justify applying the Heritage Overlay to 56 Cloris Avenue, Beaumaris.

(ii) The property

56 Cloris Avenue, Beaumaris is proposed to be protected under HO799. Referred to as the “Nissen House” it is proposed to be included as an individual place within Heritage Overlay. The house was designed by Bernard J Hanmer and has been locally significant under Criteria A, D, E.

(iii) Evidence and submissions

The owner opposed the application of the Heritage Overlay given the significant alterations the have taken place including a two-storey extension, conversion of the original carport and exterior colour change.

Council submitted that the property should be included in the Amendment. Both Mr Gard’ner and Ms Schmeder noted that the changes that had taken place do not diminish the heritage significance of the place. Mr Gard’ner further qualified his position in relation to the facade the *“the alterations appear to be relatively superficial and easily reversible”*⁷³

Ms Schmeder noted that the changes discussed in the submission have been noted in the Citation and Statement of Significance and do not diminish the heritage significant of the place. She further recommended that the Citation be amended to consider if the front fence was originally of cement bricks as stated in the Citation, or timber as noted in the 1961 building permit plans.

(iv) Discussion

The Panel is satisfied the property is a better than typical and refined example of an architect-designed Modernism. The changes outlined by the submitter do not substantially diminish the legibility or significance of the place. The comparative analysis demonstrates the relative significance of the property with the high level of intactness and legibility of the original fabric and form.

Unlike a render or bagging finish to external walls that fundamentally change the legibility of original fabric in Modernism, the changes to the facade and garage both relatively straightforward to return to original and perhaps as importantly, can be achieved. The Panel therefore accepts Mr Gard’ner’s evidence that the alterations are relatively superficial and easily reversible.

(v) Recommendation

The Panel informally recommends:

- 8. In respect of 56 Cloris Street, Beaumaris, determine if the front fence was originally of cement bricks as stated in the Citation, or timber as noted in the 1961 building permit plans, and amend the Citation if necessary.**

⁷³ Expert witness statement of Jim Gard’ner, page 16 para 59

6.11 56a Dendy Street, Brighton

The Panel agrees with Council's submissions that the matters raised by the submitter are not relevant heritage considerations. Such matters have been discussed in detail previously in this report.

The Panel concludes:

- No changes to the Amendment as it relates to 56a Dendy Street, Brighton is warranted.

6.12 86 Dalgetty Road, Beaumaris

(i) The issue

The issue is whether the house is sufficiently intact to have heritage significance and justify applying the Heritage Overlay to 86 Dalgetty Road, Beaumaris

(ii) The property

86 Dalgetty Road, Beaumaris is proposed to be protected under HO801. Referred to as the "Stegley House" it is Robyn Boyd designed house and is deemed locally significant under Criteria A, D, and E.

(iii) Evidence and submissions

The owner opposed the application of the Heritage Overlay based on:

- Significant renovations to the property.
- No site visit has been undertaken by heritage specialists.

Council's position is that 86 Dalgetty Road, Beaumaris is significant and should be permanently included within the Heritage Overlay. No changes to the Amendment are proposed.

The submitter suggested the extent of changes are considerable and were not known by the at the time of assessment. However, Council submitted that the changes discussed in the submission were known by GJM when including the place into the post war Modern Heritage Study. Council acknowledged that in the 2008 City of Bayside Inter-war & post war Heritage Study, the property formed part of the 'Mariemont Avenue Precinct'. In the intervening period, following consideration of changes to properties, it was GJM's view that the precinct no longer existed.

Council noted that as part of Council's previous engagement undertaken in 2022 on the Study, and in preparation of the Panel hearing, Council made requests to all property owners to undertake site visits where consent was given. Whilst the property owners of 86 Dalgetty Road, Beaumaris have not provided their consent to undertake an onsite inspection, it is common practice to assess the merits of a potentially significant place from the public realm.

(iv) Discussion

The Panel is satisfied that Council's experts had sufficient information, knowledge and visibility of the property to undertake the requisite assessments against the Hercon criteria.

The Panel accepts the evidence of Mr Gardner and Ms Schmeder that, as per the Citation for that:

Despite the addition of a sensitively sited extension to the south, the house remains substantially intact and retains the ability to be understood and appreciated as an example of a 1950s house built in the Post War Modernist style.

(v) Conclusion

The Panel:

- No change to the Amendment as it relates to 86 Dalgetty Road, Beaumaris is warranted.

Appendix A Properties subject to the Amendment

Properties subject to the Amendment:

- Flats 1-4 of 16 Gillard Street, Brighton East
- 15 Mariemont Avenue, Beaumaris
- Flats 1-6 of 16 Clive Street, Brighton East
- 166 Tramway Parade, Beaumaris
- 19 Olympic Avenue, Cheltenham
- 40 Anita Street, Beaumaris
- 50 Gareth Avenue, Beaumaris
- Abrahams House - 21 Dudley Street, Brighton
- Ahern House - 171 Tramway Parade, Beaumaris
- Akins House - 53 Scott Street, Beaumaris
- Andrews House - 78 Scott Street, Beaumaris
- Armstrong House - 22 Harold Street, Sandringham
- Baird House - 15 Hume Street, Beaumaris
- Barry House - 7 Roosevelt Court, Brighton East
- Bellaire Court Estate Group Listing 2, 4, 8, 9, 10, 15, 18 and 19 Bellaire Court, Beaumaris
- Biderman House - 45 Hanby Street, Brighton
- Bridgford House - 242 Beach Road, Black Rock
- Clarke House - 18 Hutchinson Avenue, Beaumaris
- Cohen House - 14 Fairway Avenue, Cheltenham
- Crichton House - 2 Clonmore Street, Beaumaris
- Dearie House - 14 Cromer Road, Beaumaris
- Derham House - 9 Gray Court, Beaumaris
- Deutscher House - 175-177 Tramway Parade, Beaumaris
- Fermanis House - 1 Reid Street, Beaumaris
- Fletcher House - 3 Roslyn Street, Brighton
- Fox House - 6 Norwood Avenue, Brighton
- Gooch House - 19 Haywood Street, Beaumaris
- Hannan House - 11-13 Lang Street, Beaumaris
- Hellier House - 19 Gramatan Avenue, Beaumaris
- Hirsh House - 1 Sara Avenue, Brighton East
- Iggulden House - 50 Wells Road, Beaumaris
- Kirk House - 82 Reserve Road, Beaumaris
- Lamb House - 3 Seaview Crescent, Black Rock
- Lipson House - 3 Exon Street, Brighton
- Manning House - 25 Oak Street, Beaumaris
- Mew House - 13 Fifth Street, Black Rock
- Mollar House - 28 Towers Street, Beaumaris
- Mollard House - 48 Hanby Street, Brighton
- Muckle Flugga - 2 High Street, Beaumaris
- Mylius House - 9 Wolseley Grove, Brighton
- Nissen House - 56 Cloris Avenue, Beaumaris

- Opat House - 25 Chatsworth Avenue, Brighton
- Perkins House - 28 Gladstone Street, Sandringham
- Pike House, 165-167 Tramway Parade, Beaumaris
- Powe House - 12 Bolton Street, Beaumaris
- Pruzanski and Jenkie Houses - 32 Clonaig Street and 1 Meyer Court, Brighton East
- Rottem House - 2 Davey Street, Brighton East
- Roubicek House - 51 Lynch Crescent, Brighton
- Saade House - 344 Beach Road, Black Rock
- Sayle House - 40 Sussex Street, Brighton
- Smith House - 16 Surf Avenue, Beaumaris
- Spedding House - 27 Bolton Avenue, Hampton
- Spencer House - 24 Balcombe Park Lane, Beaumaris
- Stegley House - 86 Dalgetty Road, Beaumaris
- Thorburn House - 21 Vardon Avenue, Beaumaris
- Tutt House - 142 Reserve Road, Beaumaris
- Weate House - 11 Summerhill Road, Beaumaris
- Widawski House - 56A Dendy Street, Brighton

Appendix B Submitters

Submission No	Submitter
1	Andrew Stobart
2	Robert and Mary Gluck
3	Neill Wiffin
4	James and Andrea Parry
5	Meika and Darryl Behrendorff
6	Georgina Overend and Edmund Wittich
7	Fiona Marshall
8	National Trust
9	Marika Okkas
10	Luke and Helena Randall
11	Patrick and Estelle Fountain
12	Giles Gillison and Alice Lam
13	Mary and Ian Larsen
14	Leanne Jaensch and James Goodwin
15	Lara Blasse and Dean Mollar
16	Sokratis and Maria Kromidellis
17	Simon and Jodie Hooker
18	Michael and Linda Vergura
19	Peter Corfield
20	Roberta and David Lederer
21	Shirley and Peter Prager
22	Matthew Marshall
23	Dennis Goldner and Kate Murphy,
24	Steve Joffe
25	Jim Campbell
26	Glenn Woodhead and Carolyn Hindson
27	Claire Grose
28	Katrina and Senko Rastocic
29	Beaumaris Modern Group
30	Brad Rowswell MP
31	Jianchen Yao

Submission No	Submitter
32	Olivia Pizzey
33	Jo Pritchard

Appendix C Document list

	Date	Description	Provided by
1	2 November 2023	Directions Hearing letter	Planning Panels Victoria (PPV)
2	29 November 2023	Panel Directions and Hearing Timetable – Version 1	PPV
3	21 December 2023	Panel Directions and Hearing Timetable – Version 2	PPV
4	12 February 2024	Jim Gardner Expert Evidence	Council
5	12 February 2024	Natica Schmeder Expert Evidence	Council
6	12 February 2024	Council Part A submission	Council
7	19 February 2024	Sokratis Kromidellis submission	Sokratis Kromidellis
8	20 February 2024	Parties Distribution List and Hearing Timetable – Version 3	PPV
9	20 February 2024	Carolynne Baker evidence	Norton Rose Fulbright
10	20 February 2024	Bryce Raworth evidence	Best Hooper
11	20 February 2024	Nik Wallis evidence on building condition.	Dean Mollar
12	20 February 2024	Bryce Raworth evidence	Hall and Wilcox
13	20 March 2024	Bryce Raworth evidence	Best Hooper
14	23 February 2024	Council letter to Panel and parties regarding late submission	Council
15	23 February 2024	Natica Schmeder response to late submission in respect of 7 Roosevelt Court	Council
16	25 February 2024	Jim Gardner further recommendations for 16 Gillard Street and 7 Roosevelt Court	Council
17	25 February 2024	Jim Gardner Supplementary Evidence re late submission in respect of 7 Roosevelt Court	Council
18	23 February 2024	Council Part B submission	Council
19	23 February 2024	Council Amendment documentation - Day 1 version	Council
20	23 February 2024	Jim Gardner presentation	Council
21	23 February 2024	Natica Schmeder presentation	Council
22	23 February 2024	Council letter to Panel and parties regarding expert evidence and response to late submission	Council
23	26 February 2024	Jianchen Yao hearing submission	Micheal Dunn
24	26 February 2024	Jianchen Yao site photo study	Micheal Dunn
25	26 February 2024	National Trust submission	National Trust
26	26 February 2024	James Campbell submission	James Campbell
27	26 February 2024	James Parry submission	James Parry

	Date	Description	Provided by
28	26 February 2024	Mollar Hearing submission	Dean Mollar
29	26 February 2024	Sokratis Kromidellis submission	Sokratis Kromidellis
30	27 February 2024	Parties Distribution List and Hearing Timetable – Version 4	PPV
31	27 February 2024	Letter of advice to Council re 9 Wolseley Court from David Helms	Council
32	27 February 2024	Late submission for 9 Wolseley Court	Council
33	28 February 2024	Marika Okkas submission	Marika Okkas
34	8 March 2024	Goodwin and Jaensch submission	Hall and Willcox
35	28 February 2024	James Parry submission	James Parry
36	29 February 2024	Submission on behalf of Robert Gluck and Mary Gluck	Robert Forrester
37	29 February 2024	Councils closing submission (further information)	Council
38	14 March 2024	Further evidence information from Jim Gard'ner	Council

Appendix D Extract of supplementary evidence of Mr Gard'ner

In response to the Panel indicating a preliminary conclusion, Council provided supplementary evidence from Mr Gard'ner. The evidence drew on Mr Gard'ner's own knowledge as a conservation architect and the following technical and popular publications:

- Arden, S. & Bowman, I. *The New Zealand Period House: A Conservation Guide*, Random House, New Zealand, 2004.
- Austin, F., Reeves, S. and Alexander, A., *Beaumaris Modern*, Melbourne Books, 2018.
- Callan, P. *The New Modernist House: Mid-Century Homes Renewed for Contemporary Living*, Thames & Hudson, Australia, 2023.
- Chitty G. & Baker, D. ed. *Managing Historic Sites and Buildings: Reconciling Presentation and Preservation*, Routledge in association with English Heritage, UK, 1999.
- Department of Environment and Heritage Protection (QLD) *Technical Note: Conserving Roofs*, State of Queensland, 2014.
- Lewi, H. & Goad, P. *Australia Modern: Architecture, landscape & design*, Thames & Hudson, Australia, 2019.
- Macdonald, S. ed. *Modern Matters: Principles & Practice in Conserving Recent Architecture*, Donhead, UK, 1996.
- Macdonald, S. ed. *Preserving Post war Heritage: The Care and Conservation of Mid-Twentieth-Century Architecture*, Donhead, UK, 2001.

The following sections are verbatim extract of the evidence. The Panel includes these extracts because it thinks these issues will arise again in debates in relation to modernist buildings and discussion of the issues would benefit from Mr Gard'ner's expertise.

D:1 The need for maintenance

- [8] The need for maintenance of postwar-era buildings does not differ from that of the Victorian, Edwardian or interwar-era buildings that preceded them. This is articulated in Susan Macdonald's chapter 'Defining an Approach: A methodology for the repair of post war buildings' in *Preserving Post war Heritage: The Care and Conservation of Mid-Twentieth-Century Architecture* (Macdonald S. ed., 2001), which reads:

Maintenance is essential for any building, and the misconception that modern buildings are maintenance-free has resulted in the premature failure of the fabric of many post war buildings ... Maintenance is a cost-effective way of prolonging the life of a building: well-planned and regular maintenance can extend the period between major repair programmes considerably. (p.39)

- [9] Similarly, Catherine Croft and Dr Elaine Harwood in their chapter titled 'Conservation of Twentieth-Century Buildings: New rules for the Modern Movement and After?' in *Managing Historic Sites and Buildings: Reconciling Presentation and Preservation* (Chitty & Baker, 1999) acknowledges the common misconception that Modernist buildings did not require maintenance in the manner of buildings of previous generations:

The belief, widely held in the middle decades of [the twentieth] century, that modern materials would be 'maintenance free' has left our generation with not only a repair bill but a disillusionment with these materials because they could not fulfil such wild expectations. (p.161).

- [10] The introduction of 'wonder materials' in the postwar years including longrun profiled metal roofing, asbestos cement sheeting and reinforced concrete amongst others, led to designers and property owners alike failing to consider the design life of these materials or the need to

maintain them to enhance the building's longevity. This is not generally a function of the materials themselves but rather the lack of maintenance that has led to premature failure – notwithstanding the small number of common issues discussed further below.

D:2 Novel Techniques and New Materials

- [11] The postwar period saw the rapid development of, and growth in the use of, machine-made materials and facade systems. These included precast and off-form reinforced concrete, steel and aluminium framed curtain glazing systems and novel materials such as glass reinforced plastic (GRP). The failure of some of these materials and systems – most notably the carbonation of concrete and subsequent corrosion of reinforcing bars causing spalling (commonly known as 'concrete cancer') are well documented (Chilly & Baker, 1999; Macdonald, 1996; Macdonald, 2001 & Lewi & Goad, 2019). While common in postwar civic, institutional, commercial, social housing and industrial applications these novel materials and building systems are much less typical in domestic architecture and are not found in any of the examples before the Panel considering C192bays.
- [12] Susan Macdonald in 'Reconciling Authenticity and Repair in the Conservation of Modern Architecture' in *Modern Matters: Principles & Practice in Conserving Recent Architecture* (Macdonald, 1996) recognises that the use of novel techniques and new materials such as reinforced concrete and curtain glazing can lead to material failures:
- One of the characteristics of modern architecture is the use of new materials or the use of traditional materials in new ways. Using new materials which did not have a proven performance record or traditional materials used in new ways built problems into the building fabric resulting in premature failure. A lack of understanding of the projected performance of these modern materials and a lack of maintenance inevitably caused failure. Many of the new materials were erroneously believed to be low-maintenance or maintenance free. Concrete, for instance, was thought to last indefinitely. (p.90)*
- [13] In my opinion these issues can easily be overstated in the context of the City of Bayside Postwar Modern Residential Study. While this statement can be applicable to large scale buildings of the postwar period, the examples before Panel almost exclusively utilise tried and tested materials, such as concrete slab foundations, light timber framed construction, brick or timber cladding, painted timber joinery and profiled galvanised steel roofing.
- [14] This is not to say that there was not innovation in the use of materials and building techniques in domestic architecture as evident in the work of internationally renowned innovators such as Frank Lloyd Wright at famous houses such Falling Water, Bear Run, Pennsylvania. Locally Robin Boyd was also known for innovative, and at times experimental, techniques such as the catenary cable-supported roof of the Boyd II House, Walsh Street, South Yarra; however, this degree of experimentation is not found in the vast majority of postwar Modernist houses nor any of the examples before the Panel considering C192bays.
- [15] While recognising that there are some materials associated with the Modernist movement that have systemic repair issues – reinforced concrete or curtain glazing for instance – few of these have widespread application in domestic architect and none are found in those before Panel.

D:3 Characteristics of Modernist design

- [16] While the majority of construction used in the postwar Modernist houses being considered through Amendment C192bays use tried and tested materials and construction techniques, some common design features can – if not maintained – lead to premature failure.
- [17] As Patricia Callan author of *The New Modernist House: Mid-Century Homes Renewed for Contemporary Living* identifies, there are a relatively small number common issues that are inherent in much of postwar Modernist style domestic architecture:
- Modernist domestic architecture is not without its archetypal issues. Flat rooflines built for their sleek visual impact can be a nightmare of chocked box gutters causing terrible leaks, a conspiracy of wear, mediocre engineering and poor materials.*

Glazing of Mid-Century Modern homes, though extensive can be of scant thickness, making for dramatic heat loss and higher energy use. Though common, like all repairs they are readily addressable, not insurmountable. (p. 20)

i) Flat roofs

- [18] Houses built from the mid-1950s to the mid-1970s are now at – or have exceeded – the 50-year design life⁷⁴ of profiled metal roofing systems meaning that replacement is likely to be required if this has not already occurred on postwar Modernist houses.
- [19] The lower pitch of flat roofs – i.e. roofs with a pitch of less than 5° (approx. 1 in 12) are more prone to ponding and leaking as identified in the discussion on Modernist houses in *The New Zealand Period House: A Conservation Guide* (p.25), which goes on to note that “*Steep pitches present fewer issues, as dirt and water run off readily, and for this reason steeper-pitched roofs last longer*” (p.128). This is not to say that a flat roof will inherently fail, however cleaning roofs of leaves and debris and checking fixings and joints becomes more important than might be the case on a steeper pitched roof.
- [20] While the original roofs may not have been installed at the minimum falls now required by the National Construction Code (NCC) – 2° (approx. 1 in 30) for trapezoidal profiles – compliant falls of replacement long run profiled roofing can be accommodated without adversely affecting the flat roofed Modernist aesthetic of these houses.

ii) Windows

- [21] A common feature of postwar Modernist architecture is a more extensive use of glazing than was evident in either previous generations or the more orthodox project housing of this period. Susan Macdonald in ‘Reconciling Authenticity and Repair in the Conservation of Modern Architecture’ in *Modern Matters: Principles & Practice in Conserving Recent Architecture* states:
- One of the characteristics of modern architecture is the volumetric role of the horizontal openings of light, simple frames that provide light to the interior.*
- ...
- Metal ... and timber (often softwood) were used with an emphasis on prefabrication and economy of construction. (p.95)*
- [22] The increased use of less durable softwoods in the postwar period was driven by the shortage of building materials at the time in combination with the rapidly increased emphasis on mechanisation for the creation of building materials. The use of softwood in relatively slender profiles for window joinery – including full height window and door frames in close proximity to paved, lawn or garden – makes these more prone to local timber decay, particularly when not regularly painted or if vegetation is allowed to trap moisture close to them. Having said that, all timberwork will decay over time if not regularly painted or if it is subjected to damp conditions for long periods of time. Timber window frames, weatherboards, fascias and bargeboards on any house of any period – heritage listed or not – will decay, fail and require periodic repair or replacement. These repairs can be readily undertaken without adversely affecting the significance of the property and are technically no more difficult than undertaking a similar repair on a late-nineteenth or early twentieth century house. Arguably, the repair of casement windows commonly found on postwar Modernist houses is less complex than repairing traditional sash windows with their sash boxes, pullies, ropes and weights and decorative elements on timber window surrounds.

iii) Indoor / outdoor transitions

- [23] A closely aligned issue to the failure of timber joinery is the impact of the common architectural and programmatic desire to create a seamless transition between interior and exterior living spaces in Modernist houses. Systems, such as the Stegbar ‘Windowwall’ developed in collaboration with Robin Boyd, enabled these free flowing indoor/outdoor

⁷⁴ https://fielders.com.au/wp-content/uploads/dlm_uploads/Fielders-Roofing-WallingManual.pdf

spaces to be created. As noted by Professor Hannah Lewi, *in the foreword to The New Modernist House: Mid-Century Homes Renewed for Contemporary Living*:

Other common traits include a great attention to the flow from inside to outside and a transparency that frames the gardens and landscapes beyond (p. 7)

- [24] The absence of a traditional threshold or difference in level between the exterior paving or landscaping and the interior can trap moisture at the base of joinery units, exacerbating decay. The issues associated with drainage at thresholds or the trapping of moisture at the base of walls can be readily rectified by the introduction of a discreet drainage channel to capture and direct water away from building fabric and by the management of vegetation in these areas.

iv) Detailing

- [25] The detailing of postwar Modernist architecture celebrated simple forms, clean lines and unadorned details. This can result in designs with minimal or no eaves overhang or the absence of flashings to fascia boards or other elements. However, the absence of eaves is not unique to postwar Modernist buildings with many Victorian and Edwardian-era houses forgoing any eaves overhang. Even today thousands of project homes are constructed cheek-by-jowl with no eaves overhang. The maintenance and environmental performance issues associated with an eaves-less roof design is, in my opinion, in no way unique to this period of construction or style of architecture.
- [26] The addition of flashings to direct water and protect the upper surfaces of timber fascias and other elements can be simply added using folded metal which will substantially increase the life of these elements. Again, this is no different to the addition of flashings that may be required to be installed to stone and render details of earlier building typologies to prolong the life of these elements. In my opinion, a minor change of this type would not adversely affect the significance of the heritage place and would improve weathertightness and prolong the life of heritage fabric. As with other buildings subject to the Heritage Overlay, this can be readily addressed through established approval pathways.

D:4 Design intent and like-for-like replacement

- [27] The honest expression of materiality or 'truth to materials' is an important aspect of the design of many postwar Modernist houses. This is, for instance, evident in the work of Alistair Knox who celebrated fired clay and mud brick and timber, expressing these honestly in his designs. While the physical expression and visibility of the materials are important, the fabric of these is less important. Bricks and glass are generally machine made, the windows were fabricated at the Stegbar or other similar factories, and the timber kiln dried, cut and dressed mechanically.
- [28] Having said that, the permanent or irreversible obscuring of a material that formed an important part of the architectural expression of the house (such as the thick bagging/rendering of the face of the bricks at 27 Bolton Avenue, Hampton for instance – will have an adverse impact on significance even though the original brick wall cladding continues to exist under the applied cement finish.
- [29] In my opinion, for Modernist buildings, it is therefore generally less important whether or not a particular timber board or window frame is authentic original fabric but rather:
1. will the material – face brickwork or stone cladding for instance – remain visible i.e. will it be rendered or otherwise obscured?; and
 2. does the form and profile of the replacement material match the fabric to be replaced?; and
 3. is the design intent of the architect still clearly legible?

In this respect, I consider there is frequently more opportunity for successful like-for-like replacement of early or original fabric in a postwar building than in earlier periods where the handmade joinery or craftsman carved, rubbed or moulded decorative elements are key features of the heritage values of those places.

D:5 Environmental performance

- [30] The insulation of new dwellings did not become a requirement until the 1996 Building Code of Australia (BCA) with minimum energy efficiency standards only being introduced in 2003. The substantial majority of houses built before this time, whether they are of a Modernist or traditional design do not meet the current NCC requirements in relation to energy efficiency. The upgrading of any dwelling built more than 30 years ago to meet current standards of environmental performance can be a complex exercise, regardless of whether it is of a Modernist-style design.
- [31] It is well recognised that large expanses of single glazing exacerbate solar gain and heat loss (Callan, 2023; Macdonald, 1996) however there are slim-profile, sealed double glazed units (of as little as 16mm thick) that can be installed in relatively slender (34mm thick) timber frames⁷⁵ to improve environmental performance without loss of design integrity.
- [32] It is my view that postwar Modernist houses are not inherently more difficult to retrofit in this way than any other residential building typology. In fact, Modernist buildings offer some benefits in environmental performance through their flat roofed form which provides a straightforward, and frequently secluded platform on which photovoltaic arrays can be installed with limited, or no, visual impact from public realm views.

⁷⁵ <https://www.thermawood.com.au>

Appendix E Chronology of events

Date	Event
February 1998	<p>Council engaged Allom Lovell and Associates to prepare the <i>Bayside Heritage Review 1999 (1999 Heritage Study)</i>, comprising:</p> <ul style="list-style-type: none"> - A thematic history of the municipality - A review of heritage structures, precincts and landscapes within the former Cities of Sandringham, Brighton and those parts of the former Cities of Moorabbin and Mordialloc which were then included in the City of Bayside - A review of Andrew Ward's two previous heritage studies - Additional survey work undertaken by Allom Lovell & Associates and John Patrick.
March 1999	<p>The 1999 Heritage Study was completed. The study recommended that 508 individual properties, 27 heritage precincts and 50 landscape elements be included in the Heritage Overlay.</p>
July 2000	<p>Council resolved to prepare Amendment C6 to apply the Heritage Overlay to some properties, precincts and landscape elements identified in the 1999 Heritage Study.</p>
July 2000	<p>Council considered Amendment C6 and resolved not to include 25 individual properties.</p>
December 2000 – February 2001	<p>Amendment C6 was exhibited. As exhibited, Amendment C6 sought to apply the Heritage Overlay to 217 properties, 13 precincts and 50 landscape areas identified in the 1999 Heritage Study.</p>
February 2001	<p>The Minister approved Amendment C13, which applied interim heritage controls to the land affected by Amendment C6.</p>
December 2001	<p>Council abandoned Amendment C6 and requested that the Minister remove the related interim heritage controls.</p> <p>The Minister refused Council's request to remove the interim heritage controls.</p>
2003	<p>Council prepared and exhibited Amendments C37 and C38, which again sought to apply the Heritage Overlay on a permanent basis to those properties, precincts and landscape elements affected by interim heritage controls (Amendment C13).</p> <p>Amendment C37 addressed individual properties, while Amendment C38 addressed heritage precincts. The Amendments also sought to remove a number of individual properties from the Heritage Overlay.</p> <p>Submissions in relation to Amendments C37 and C38 were referred to a Panel. Relevantly, the Panel found that:</p> <ul style="list-style-type: none"> - Amendments C37 and C38 represented the outcome of a long process of heritage studies by the City of Bayside and its predecessors, the Cities of Brighton and Sandringham. Those studies resulted in the Heritage Overlay being applied to various individual properties and precincts on an interim basis. Amendments C37 and C38 were intended to replace the interim heritage controls with permanent heritage controls; - With the exception of a few examples, the Heritage Overlay should not be applied on a permanent basis to 47 individual buildings of the Inter-War period until Council undertook a more comprehensive study of building typologies of that era.

Date	Event
March 2005	<p>Council resolved to:</p> <ul style="list-style-type: none"> - split Amendment C37 into two parts, to create Amendment C37 (Part 2) in relation to the 47 Inter-War buildings; - adopt Amendments C37 (Part 1) and C38 with changes as recommended by the Panel; and - undertake to review the 47 Inter-War buildings the subject of Amendment C37 (Part 2). <p>The 47 Inter-War buildings continued to be affected by interim heritage controls.</p>
Approximately 2007	<p>Council engaged Heritage Alliance to prepare the <i>City of Bayside Inter-War and Post War Heritage Study 2008 (2008 Heritage Alliance Study)</i> to:</p> <ul style="list-style-type: none"> - Identify and assess individual buildings and precincts from the 1920s onwards, to determine whether they are suitable for inclusion in the Heritage Overlay (including the 47 Inter-War properties removed from Amendment C37) - Identify and assess buildings of earlier construction periods not identified in the 1999 Heritage Study, to determine whether they are suitable for inclusion in the Heritage Overlay. <p>Volume 1 of the 2008 Heritage Study reviewed the 47 Inter-War properties that were identified in the 1999 Heritage Study. Of those 47 individual properties, only 29 were recommended for inclusion in the Heritage Overlay.</p> <p>Volume 1 also identified eight new heritage precincts which were recommended for inclusion in the Heritage Overlay.</p> <p>Volume 2 contained data sheets and Citations for 69 additional places from the Inter-War, post war and other eras which were recommended for inclusion in the Heritage Overlay.</p> <p>Volume 3 of the 2008 Heritage Alliance Study was to assess 120 additional places, but it was halted before its completion.</p>
February 2006	Amendment C37 (Part 1) was approved and gazetted.
April 2006	Amendment C38 was approved and gazetted.
July 2006	<p>Council resolved to:</p> <ul style="list-style-type: none"> - Note the draft 2008 Heritage Alliance Study; and - Abandon Amendment C37 (Part 2) on the basis that it be replaced with a new Amendment following the completion of the 2008 Heritage Alliance Study.
December 2007	<p>Council resolved to adopt a draft version of the 2008 Heritage Alliance Study, release the draft for public comment, and seek authorisation to prepare a planning scheme Amendment to:</p> <ul style="list-style-type: none"> - In respect of 29 of the 47 Inter-War properties identified in the 1999 Heritage Study, which were assessed and recommended for inclusion in the Heritage Overlay by the 2008 Heritage Alliance Study, apply the Heritage Overlay on a permanent basis; and - In respect of the remaining 18 individual places, remove the interim heritage controls.
Approximately 2007-2008	Council engaged Bryce Raworth Pty Ltd to prepare the <i>City of Bayside Review of heritage Precincts (March 2008) (2008 Raworth Heritage Study)</i> .

Date	Event
	<p>The study reviewed seven heritage precincts which were originally identified in the 1999 Heritage Study and one additional heritage precinct, and recommended that six of those precincts be included in the Heritage Overlay.</p> <p>The study did not assess post war dwellings but looked predominantly at Victorian and Edwardian era dwellings.</p>
May 2008	<p>The public consultation process in relation to the draft 2008 Heritage Alliance Study was completed. A significant amount of submissions were received, many objecting to the application of the Heritage Overlay.</p>
June 2008	<p>Council resolved to:</p> <ul style="list-style-type: none"> - receive and note the final version of the 2008 Heritage Alliance Study that incorporated changes following the review of public submissions - seek authorisation to prepare a planning scheme Amendment to apply the Heritage Overlay on a permanent basis to three heritage precincts identified in the 2008 Heritage Alliance Study, and to apply interim heritage controls to those precincts in the meantime - take no further action in respect of the 69 individual places, five remaining heritage precincts and 120 additional places identified in the 2008 Heritage Alliance Study - cease the suspension of demolition permits for all properties in the 2008 Heritage Alliance Study with the exception of the three heritage precincts in respect of which permanent heritage controls would be pursued - advise Heritage Alliance that no further work was required in respect of the 120 additional places identified in the study.
September 2008	<p>Council resolved to:</p> <ul style="list-style-type: none"> - Adopt the final version of the 2008 Raworth Heritage Study; - Seek authorisation to prepare an Amendment to apply the Heritage Overlay on a permanent basis to four precincts, and to include one individual property within the existing HO204, in accordance with the recommendations of the 2008 Raworth Heritage Study; and - Request that the Heritage Overlay be applied on an interim basis to the relevant precincts.
March – April 2009	<p>Council prepared and exhibited Amendments C75 and C76. As exhibited:</p> <ul style="list-style-type: none"> - Amendment C75 sought to remove the interim Heritage Overlay and apply the Heritage Overlay on a permanent basis to 29 individual properties and three new heritage precincts, and to remove interim heritage controls from 18 properties, in accordance with select findings and recommendations of the 2008 Heritage Alliance Study - Amendment C76 sought to apply the Heritage Overlay on a permanent basis to five new heritage precincts and one individual property (by including it in the existing HO204) in accordance with select findings and recommendations of the 2008 Raworth Heritage Study.
28 July 2009	<p>Council resolved to:</p> <ul style="list-style-type: none"> - Abandon that part of Amendment C75 that related to 47-49 Victoria Street, Sandringham, 493-497 Balcombe Road, Beaumaris and the Mariemont Avenue Precinct

Date	Event
	<ul style="list-style-type: none"> - Refer the remaining submissions in relation to Amendments C75 and C76 to a Panel. Consequently, Amendment C75 was split into two parts – - Part 1 related to the 29 individual properties with interim heritage controls to be made permanent, the 18 individual properties with interim heritage controls to be removed, and two new heritage precincts - Part 2 related to 47-49 Victoria Street, Sandringham, 493-497 Balcombe Road, Beaumaris and the Mariemont Avenue Precinct.
January 2010	Amendment C75 (Part 2) was abandoned.
February 2010	The Panel recommended that Amendments C75 (Part 1) and C76 be adopted with modifications.
April 2010	Council resolved to adopt Amendments C75 (Part 1) and C76 with all modifications as recommended by the Panel and submit the amendments to the Minister for approval.
September 2010	<p>Amendments C75 (Part 1) and C76 were approved and gazetted:</p> <ul style="list-style-type: none"> - Amendment C75 (Part 1) applied the Heritage Overlay to 27 individual properties and two heritage precincts on a permanent basis, and removed interim heritage controls from 18 properties on the basis that those properties did not warrant inclusion in the Heritage Overlay - Amendment C76 applied the Heritage Overlay on a permanent basis to five precincts and one individual property (by including that property in the existing HO204), and removed interim heritage controls from one property which previously formed part of a heritage precinct on the basis that the property did not warrant inclusion in the Heritage Overlay.
October 2010	<p>Amendment C93 was approved and gazetted. The Amendment removed the interim Heritage Overlay from the following properties and precinct which were the subject of Amendment C75 Part 2 (abandoned):</p> <ul style="list-style-type: none"> - 493\497 Balcombe Road, Beaumaris (HO413) - 47\49 Victoria Street, Sandringham (HO620) - Mariemont Avenue Precinct, Beaumaris (HO758).
February 2013	<p>Amendment C82 was approved and gazetted.</p> <p>The Amendment applied the Heritage Overlay to three heritage precincts and two individual places in Bayside’s commercial centres/activity centres.</p>
March – April 2015	Amendments C135 and C137 were approved and gazetted, applying the Heritage Overlay to 453 New Street, Brighton and 9 Boxshall Street, Brighton respectively.
July 2017	Council resolved to adopt the <i>Bayside Heritage Action Plan</i> , commence preparation of a Mid-Century Modern Heritage Study with a particular focus on the Beaumaris area, and request that the Minister apply the Heritage Overlay on an interim basis to Mid-Century Modern houses in Beaumaris based on the 2008 Heritage Alliance Study (properties identified in the 2008 Heritage Alliance Study that Council had previously resolved not to take action on).
September 2017	Council submitted Amendments C158 and C159 to the Minister. The amendments sought to apply the Heritage Overlay on an interim basis to 51 properties (Mid-Century Modern houses) in Beaumaris based on the 2008 Heritage Alliance Study.

Date	Event
April 2018	<p>In response to significant community opposition, Council resolved to:</p> <ul style="list-style-type: none"> - Not proceed with the preparation of a Mid-Century Modern Heritage Study, and abandon its request that the Minister apply the Heritage Overlay on an interim basis to Mid-Century Modern houses in Beaumaris pursuant to Amendments C158 and C159 - Seek voluntary nominations from property owners of Mid-Century Modern properties in Beaumaris and Black Rock for investigation to ascertain heritage significance of the property - Develop a process to support the inclusion of suitable Mid-Century Modern properties in a Heritage Overlay through a voluntary nomination process.
2019	<p>Council undertook a voluntary nomination process for Mid-Century Modern homes in Beaumaris and Black Rock.</p> <p>As part of that process, Council engaged Context to prepare the Bayside Mid-Century Modern Heritage Study – Residential Places 2020 and Bayside Mid-Century Modern Heritage Study – Council owned Places 2020 (2020 Heritage Studies), which assessed the nominated Council owned and private residential properties.</p> <p>8 individual Council owned properties and 9 individual residential properties were assessed as warranting inclusion in the Heritage Overlay. One residential property was found to have the potential to be of State significance and warrants inclusion in the Victorian Heritage Register.</p>
April 2020	<p>Council submitted Amendment C178bays to the Minister and requested that the Minister authorise, prepare and approve the Amendment. The Amendment sought to apply the Heritage Overlay to 19 properties identified in the 2020 heritage Studies as a result of the voluntary nomination process.</p> <p>Council requested that the Minister use the exemption powers contained in section 20(4) of the Act, because of the voluntary nomination process that had been undertaken.</p>
May 2020	<p>In response to the Council’s request for Amendment C178bays, the Minister wrote to Council to express concern in relation to the voluntary nomination process that Council had undertaken. The Minister’s letter highlighted Council’s responsibilities to ensure that places of scientific, aesthetic, architectural or historical interest are conserved in accordance with the <i>Planning and Environment Act 1987</i> (Vic).</p>
June 2020	<p>Council resolved to adopt the revised <i>Heritage Action Plan 2020</i>, which sets out a holistic approach to assessing and managing heritage, including prioritisation of:</p> <ul style="list-style-type: none"> - The preparation of a Mid-Century Modern Heritage Study; and - A review of the Inter-War and Post War Heritage Study (i.e. the 2008 Heritage Alliance Study) to ensure that properties identified as being of heritage significance are appropriately protected.
Early December 2020	<p>Council engaged GJM Heritage to undertake the Heritage Study. The scope of the Heritage Study was to review and assess (where relevant) residential properties within the City of Bayside that were constructed in the post war period (defined as the period between 1945 and 1975) and constructed in the Modern architectural style.</p>

Date	Event
30 December 2020	<p>The Minister wrote to Council to advise that the Minister has decided to approve Amendment C178bays with changes by applying the Heritage Overlay to the 19 properties on an interim basis until 30 November 2021.</p> <p>The Minister reminded Council of its resolution to prioritise the commencement of the Mid-Century Modern Heritage Study and Inter-War and Post War Heritage Study and to implement this work through a full planning scheme Amendment process.</p> <p>The Minister also stated that any extension of the interim controls to the 19 properties would be reviewed in light of the status of the abovementioned studies and any authorisation requests for permanent heritage controls.</p>
11 February 2021	Amendment C178bays is gazetted.
18 November 2021	Amendment C183bays is approved and gazetted. The Amendment extends interim heritage controls in respect of those 19 properties identified via the voluntary nomination process.
January 2022	GJM Heritage completed the draft City of Bayside\post war Modern Residential Heritage Study (Heritage Study).
February 2022	Council submitted Amendment C188bays to the Minister. The Amendment sought to apply the Heritage Overlay on an interim basis to 165-167 Tramway Parade, Beaumaris, after receiving notice of an application for a permit to demolish the building. The property was identified in the Heritage Study.
February – April 2022	Council undertook a public consultation process in relation to the draft Heritage Study. GJM Heritage made revisions to the draft Heritage Study in response to further information obtained via the public consultation process.
June 2022	Council held Delegated Committee Meetings to hear from property owners and key stakeholders affected by the draft Heritage Study.
July 2022	<p>GJM Heritage finalised the Heritage Study. The Heritage Study made the following findings and recommendations:</p> <ul style="list-style-type: none"> - Eighty-seven (87) places are assessed as being of local individual significance and warrant inclusion in the Heritage Overlay. This amounts to 159 individual properties (including individual flats and units in a complex) being recommended for inclusion in the Heritage Overlay. - One (1) group is identified as being of local significance. The houses at 2, 4, 8, 9, 10, 15, 18 and 19 Bellaire Court, Beaumaris were constructed by builder Martin Sachs between 1962-68. They were all owned by Sachs, who subsequently on-sold them following development, and they exhibit similar aesthetic characteristics to one another. The eight (8) residences are considered to be of local significance as a group. - Forty-five (45) places have been found not to meet the threshold of local individual significance and do not warrant inclusion in the Heritage Overlay. - Two (2) potential precincts were found not to meet the threshold of local significance and do not warrant inclusion in the Heritage Overlay.
19 July 2022	<p>Council resolved to:</p> <ul style="list-style-type: none"> - Note the Heritage Study

Date	Event
	<ul style="list-style-type: none"> - Seek authorisation to prepare amendments to apply the Heritage Overlay (on an interim and permanent basis) to 59 properties and one group listing identified in the GJM Heritage Study (Nominated Properties) among other matters.
12 August 2022	Council wrote to the Minister seeking authorisation to prepare Amendment C192bays.
24 October 2022	The Minister wrote to Council authorising the preparation of Amendment C192bays subject to conditions.
31 October 2022	Council submitted Amendment C193bays to the Minister. The Amendment sought to apply the Heritage Overlay on an interim basis to the Nominated Properties which are the subject of Amendment C192bays.
November 2022	<p>The Minister approved Amendment C193bays, subject to the removal of the following properties:</p> <ul style="list-style-type: none"> - 13 Fifth Street, Black Rock, on the basis that a planning permit was issued in 2022 for substantial alterations and additions to the rear of the building and the application of an interim Heritage Overlay would result in additional planning permit triggers and raise issues of procedural fairness; and - 165-167 Tramway Parade, Beaumaris, on the basis that Amendment C188bays proposes to apply an interim Heritage Overlay to the site and is subject to a separate assessment by the Minister.
30 November 2022	The interim heritage controls which were applied pursuant to Amendment C178bays expired. The Minister declined to extend the interim heritage controls because the properties were voluntarily nominated for inclusion in the Heritage Overlay, and therefore the Minister considers that there is no imminent risk of harm to heritage fabric.
2022-2023	<p>Council engaged GJM Heritage to undertake a peer review of the 2020 heritage Studies.</p> <p>GJM Heritage finalised the peer review of the 2020 heritage Studies, and the peer review is relied upon by Council in its preparation of proposed Amendment C196bays, which has not yet received Ministerial authorisation.</p>
10 January 2023	<p>Council submitted Amendment C196bays to the Minister. The Amendment seeks to apply the Heritage Overlay on a permanent basis to properties identified in the 2020 heritage Studies and subsequently peer reviewed and recommended for inclusion in the Heritage Overlay by GJM Heritage. These properties generally comprise the properties which were affected by Amendment C178bays, being the interim heritage controls which expired on 30 November 2022.</p> <p>Amendment C196bays has not yet been authorised.</p>
11 January 2023	<p>Council submitted Amendment C197bays to the Minister. The Amendment seeks to extend interim heritage controls in respect of those properties the subject of Amendment C196bays (noting that interim heritage controls expired in November 2022).</p> <p>Amendment C197bays has not been authorised.</p>
February – March 2023	The Department of Transport and Planning (DTP) requested further information in relation to Amendments C196bays and C197bays.

Date	Event
13 March 2023	The Minister approved Amendment C188bays, which extended interim heritage controls in respect of 165-167 Tramway Parade, Beaumaris.
May 2023	Council responded to DTP's request for further information in respect of Amendments C196bays and C197bays.
August 2023	DTP confirmed that Council had satisfied the conditions of authorisation to prepare and exhibit Amendment C192bays.
7 September – 19 October 2023	Amendment C192bays was exhibited. 33 submissions were received.
26 September 2023	Council submitted Amendment C200bays to the Minister. The Amendment sought to extend interim heritage controls in relation to the Nominated Properties which are the subject of Amendment C192bays (including 165-167 Tramway Parade, Beaumaris, but excluding 13 Fifth Street, Black Rock).
30 October 2023	Council referred all submissions in relation to Amendment C192bays to a Panel.
31 October 2023	A Panel was appointed to consider submissions in relation to Amendment C192bays.
22 November 2023	Council receives a late submission in relation to Amendment C192bays and refers the submission to the Panel.
23 November 2023	The Minister approved Amendment C200bays, extending interim heritage controls in relation to the Nominated Properties which are the subject of the Amendment (including 165-167 Tramway Parade, Beaumaris, but excluding 13 Fifth Street, Black Rock). The new expiry date is 11 October 2024.