

Submission to Environment and Planning Committee

Inquiry into the Protections within the Victorian Planning Framework

Adam Ford

Founder, **Moonee Valley Heritage Action** and **Heritage Defence Network - Victoria**

Administrator, **The Bloodied Wombat's Demolished Melbourne**

On Twitter - <https://twitter.com/bloodiedwombat>

Facebook -

Pinterest - https://www.pinterest.com.au/thebloodiedwombatblogs/_saved/

Ph: [REDACTED]
[REDACTED]

PREAMBLE

The Victorian Planning Scheme is intended to provide a degree of certainty to all parties in the planning process, yet is in many respects incapable of performing this function in its present form and operational context.

Whilst there are many areas within the enquiry's terms of reference where this is evident, my submission today relates specifically to the operation of heritage protections under the Planning Scheme, where some of the highest levels of community concern concerning contemporary planning issues are in evidence.

The heritage community is routinely derided as being anti-development, but the interests of the heritage and development communities are not fundamentally in conflict. Good development done well, and ideally under standards that enforce it, can enhance the value of a heritage place, and heritage fabric lends contemporary redevelopments an ability to create the sort of fine-grained spaces, which as Melbourne has so ably demonstrated with its laneways, people intrinsically flock to when they are creatively activated.

COMMUNITY CONCERN OVER HERITAGE LOSS

But the loss of residential heritage fabric in particular has raised constant headlines in recent years, and is exemplary of the manner in which development which is done poorly, and which compromises the COMMUNITY'S sense of heritage (the community of course being entirely indifferent to the detail of where local heritage overlays have been applied), then it compromises broader community support for greater densification in the inner city heritage neighbourhoods in particular, and contrary to the broader objectives of Plan Melbourne.

We are not anti-development. All we ask is for development done well. That standards are set at a level capable of delivering a better future Melbourne, that those standards are

agreed to and enforced, and that they are not compromised by fiat except in the most exceptional circumstances. And these are these very same things the development community consistently asks for from the Planning Scheme also.

But the system is currently struggling to deliver outcomes that meet community expectations. In particular, the high profile demolitions of many notable Victorian-era residential buildings in the eastern suburbs, left otherwise unprotected, have driven many a commenter on my social media pages to despair of the pretence of a “system” which seems so routinely incapable of meeting community standards in protecting obviously significant buildings.

HERITAGE IN VICTORIA - STATE ACTORS

Based on my many years of heritage activism engaged with various local councils, I believe that there are several glaring layers of inadequacy in the system, and that most of these relate broadly to the role and operation of critical state bodies within the system, with the vast majority of issues relating specifically to the local councils who have primary administrative responsibility for the system.

I also believe some fundamental questions need to be asked regarding the role and resourcing of Heritage Victoria and the Heritage Council.

But of equal importance is the role of VCAT, as an unelected body which has actually been completely reinterpreting the intent of legislation, removing heritage overlays and permitting demolition of formally protected structures.

We’ve also seen Melbourne City Council, in a move which is completely unprecedented, and which I believe should have been looked at by the VLGA, vote to demolish an entire row of B-Graded heritage in Thierry St in order to facilitate its own development project at Queen Victoria Market.

As a nonmaterially affected party, I have no right to take that to VCAT, but there is absolutely zero precedent for demolishing b graded structures that aren’t threatening to collapse, and that was precisely the sort of “Council not interpreting its own policy correctly” finding that is routinely handed down in DEVELOPERS’ (who are of course always materially affected parties) favour at VCAT.

Accessibility to the appeals system through VCAT is systematically skewed in developers’ favour. The court routinely derides members of the community seeking to represent themselves, and the costs of hiring a lawyer to otherwise participate is too high for all but the most organised of community groups.

So the issues are legion, but mostly relate to the operation of key organisational actors within the system conspiring to dial in a high degree of uncertainty into a system that should otherwise be fit for the opposite purpose.

I have provided the following summary of the present issues in the operation of heritage protections in Victoria as I see them, grouped thematically by state sector, and will then look to address each theme in more detail and provide some recommendations towards a more functional heritage regime for future Victoria.

LOCAL COUNCILS

Councils have responsibility for applying and administering local level heritage overlays, and this inherently creates a striking degree of non-uniformity in heritage practices across geographies under the present regime.

The factors here are many. Heritage represents a much higher burden upon council resources in areas where the inventory is highest, which largely maps to the earliest settled suburbs and cities.

There is a huge diversity in available budgets and therefore resources across local government areas in Victoria. The lowest resourced have annual budgets in the order of \$10-15m, whereas Melbourne City Council's budget is north of \$500m. Rural councils have an average budget of just \$69 million, while metropolitan councils have an average budget of \$201 million available to them.

This raises the issue of shire councils like Ballarat and Bendigo in particular needing to do more with less on the heritage front relative to their capital city counterparts. It is my very strong and unfortunate feeling that the less than spectacular heritage outcomes in both cities in recent years is reflective of this resource disparity.

CULTURAL ISSUES

My experience leads me to believe organisational cultures within Councils are a critical determinant of heritage outcomes, evidenced by the fact we see such a disparate quality of outcome delivered between Councils that are supposedly implementing the same empirical regime.

Items which become a strain on resources, human and otherwise stop being proactively managed within Councils. The better staff aren't put on those teams, and nobody looks to any quality metrics for performance, the only metric being actively managed is the expense, which is of course being minimised.

I believe our regional centres are selling out the future civic identity of both places, which really ought to be so deeply rooted in their history, both being among of the most extraordinary eruptions of civic wealth the planet has ever known, and which otherwise makes both so optimally primed to do the sort of placemaking that regional growth centres usually cry out for.

RESOURCE ISSUES

Resources are the most critical factor in whether councils are proactively moving forward with managing their inventory, or reactively waiting for issues to arise. For Councils where

heritage is not a large part of their activity, there is no organisational imperative for anyone to advance a programmatic plan for conducting new studies.

Moonee Valley Council took three years to adopt its most recent fairly small thematic study, and that on the basis that they have limited budgets they need to work within, and finding professionally qualified assessors who are not fully booked is, I am told difficult. While it is probably beyond the scope of this enquiry to look at hiring/supply issues within the industry, this does seem to be a constraint factor in the pace with which Councils are able to move forward with studies.

By contrast, the City of Melbourne recently completed and gazetted an entire gap study of the CBD and Southbank within a period of about 12 months.

There is little question that after decades of activism focussed on the CBD, that there are few significant buildings within the CBD that are not afforded a degree of protection. The City of Melbourne maintains by far the largest heritage inventory of any council in Victoria.

THE BEST IS STILL INADEQUATE

However, even under the City of Melbourne, we have seen some woeful failures to protect significant structures. The most obvious recent one is the all-but-demolished Palace Theatre, of which we have somehow managed to retain the least significant and least original part of the building.

The City of Melbourne has had responsibility for applying local level heritage overlays since 1984, and every year since then the early 20th century former picture palace sat proudly unprotected at the top end of Bourke Street with its original spectacular interior all in tact. 30 years to c.2014 was the length of time (give or take some caretaker years) the best resourced council with the largest heritage and planning team in the whole of Victoria had to protect one of the city's best known and loved former picture palaces and failed.

Some Melbourne City Council Heritage Failures

- I believe the iconic Southgate complex was clearly of local level protection, now set for destruction, it was never assessed for significance.
- Federation Square, the most obviously instantly significant structure built in this city since Flinders Street Station, was left unprotected and almost critically compromised
- I M Pei's also clearly significant Collins Place, including the Great Space have already been heavily compromised, and have sat unprotected since 1978
- The award-winning postmodern interior to Centreway Arcade has recently been turned into a bland shopping mall, having been left unprotected
- Melbourne Heritage Action created a list of 15 unprotected CBD interiors at risk of destruction in 2014, none of which have received any protection in the 8 years since

- Several significant postmodern buildings including RMIT Building 8 and 1-9 Collins St remain unprotected

Too often local councils have wound up passing the can via the media for the Minister to arbitrarily intervene on occasions when they have suddenly been faced with a development for an obviously significant building that they have left unprotected.

I think the Minister's reticence to intervene in such cases is a legitimate response to the demonstrative pattern of such local failures on behalf of someone who has an interest in the integrity of a system, rather than Ministerial whim to deliver the desired outcome.

All of which begs the question - if do we actually have a SYSTEM here, or do we have an arbitrary jelly wrestle of competing interests with little certainty whatsoever?

STATEWIDE GAPS IN HERITAGE TYPOLOGIES

There are two core issues here.

One is that we actually need a better system for the listing of highly significant buildings relatively contemporaneous with their construction. Eg the new Pride Centre in St Kilda is one such building that you would say is such an important and striking public work, I think that building is clearly heritage from the moment it opened. But realistically it will be 20 years or more before someone finds scope to include that in a study based on present practices, during which time its entirely possible for the owners to make changes to the property that would void its significance, or even in theory demolish it outright.

While that would be an extreme example, no council in Victoria has done a formal postmodern heritage survey, City of Melbourne has yet to do any survey looking at post-1974 buildings. Councillors are seemingly aware of this issue, yet have inexplicably elected to proceed with another interwar study as their next thematic priority.

Centreway Arcade is gone. Southgate is on its way out Collins Place is severely compromised, and Federation Square nearly was. RMIT Building 8 has had ridiculous Ned Kelly heads plastered to the second level balconies. All because the system offers no systemic protection to recent heritage.

This is sadly reflective of the narrow and false definition many hold of "heritage" that it pertains only to "history". It does not. It pertains to things that are of cultural, historical or architectural significance, and only one of those categories precludes the listing of contemporary buildings, yet it rarely happens in practice, and it never happens routinely. I look more at the systemic reasons behind this, and suggest some solutions below.

The other core issue is that for all its resources and best practices, the City of Melbourne has a strange aversion in practice relative to other Councils to scheduling the significant INTERIOR elements of a building within a heritage overlay.

Accepted practice is that generally elements not visible from the street are not subject to protection unless specifically detailed in the schedule to the overlay, and in practice that includes interior elements. Which means that some of our finest corporate buildings that still sit with their original interiors in tact (and the actual lived heritage experience of visiting those spaces versus a heritage facade with a shiny new foyer shows why the extent of preservation is so important if we're to not just be a Victorian-era disney set) are actually at risk today, not of wholesale demolition, but of those elements of the building that people actually cherish the most in their day to day,

In summary the core issues all relate to the wholesale arbitrariness of the quality of the heritage regime between councils, and under the sometimes politicised council decision-making environment, where the practical avenues of appeal to VCAT are so rarely available to community or activist groups in contrast to developers.

A NEW MECHANISM

What I believe is needed is a mechanism which PRESCRIBES to Councils what particular heritage studies need to have been undertaken and in which priority and by when. Ideally this regime should come with accompanying funding under a State Government scheme to bring the State's heritage inventory wholly up to date and fit for purpose to provide certainty for all parties and remove controversy from the planning process in the forthcoming development wave and into the future.

While heritage inventories do need constant updating, the problem of the large and systemic heritage gaps that exist across the State is largely solvable within the current local protection regime, provided a large and systemic effort is made to updating the inventory (once and for all in the case of many periods, if done right).

A PLEA FOR THE FEDERATION

And allow me a brief moment of specificity in plea to all lawmakers to recognise that quite frankly we have now achieved quite thorough protection of all remnant 19th century structures.

It is the FEDERATION style that came after which is presently most under threat, and across a broader range of suburbs than the traditional heritage locales. This is of such tremendous significance because it is arguably the only truly indigenous architectural form Australia will ever have, and we have been quietly losing some of the most significant buildings and streetscapes in a death by a thousand cuts in recent years.

Alongside postmodernism and interiors, I would strongly suggest that any dedicated statewide heritage gap analysis would identify these three themed studies as urgent priorities.

LOCAL PROTECTION REFORM 1 (ADMINISTRATION)

OPTION A

I believe an optimal solution which would not require a wholesale uprooting of the basis of heritage protection would have the following broad features:

- a mechanism which saw a body such as Heritage Victoria prescribing a prioritised list of heritage studies to Councils
- These priorities to be set based on a statewide strategic heritage gap assessment conducted by Heritage Victoria
- sanctioned compliance in the conduct and adoption of those studies
- ideally also funding to undertake any studies identified as a high priority

Issues For Consideration

Some significant amendments to at minimum the Heritage, Planning and Local Government Acts would be required to enable this, and the level of funding that were available to such a scheme would be a critical factor in success, so it would be a significant undertaking for government.

Heritage Victoria's organisational capabilities would need to be significantly expanded to take on what effectively becomes a more proactive and strategic role.

Consideration would also need to be given to the inevitable strain such an effort to update the statewide heritage inventory would place upon human resources within the heritage assessment industry, and indeed whether under such a large scale exercise the methodological requirements for documenting proposed new listings could be streamlined, or (to use the language we use whenever we make the development pipeline run faster), "FAST-TRACKED".

The structure exists within the system already for a precinct based heritage overlay to protect an entire tranche of significant buildings without the need for each to be individually documented, and this could provide some basis for "batching" the required work more effectively, without removing affected property owners' right of appeal to any proposed listing.

The overriding consideration that should be factored in here is the very imperative that drove the formation of the present Inquiry. The level of community concern around heritage issues is extreme, heightened by a sense held by all parties to the planning system that the outcomes of the system are not as certain as they could or should be, and this level of concern is pressing enough to warrant a systemic government response of the scale suggested.

LOCAL PROTECTION REFORM 1 (ADMINISTRATION)

OPTION B

An alternative regime would be to remove responsibility for the CREATION of local heritage overlays from local governments and hand it to a statutory body like Heritage Victoria. This

would have the added benefit of removing the vagaries of Councillor politics from the listings process, and councils could still retain responsibility for administration of the overlay under the regular planning approvals process. This would however likely raise some level of community concern for removing elected representatives from the process, and would be the “maximal change” approach.

But other critical failings exist within the local level protection regime beyond the patchy state of the inventory.

LOCAL PROTECTION REFORM 2 (ENFORCEMENT - DEMOLITION BY NEGLIGENCE)

The most constant and critical of which is the inability of local councils to effectively enforce ANY orders pertaining exclusively to heritage. Council only has the ability to apply heritage standards to a property during an active planning application.

It cannot mandate that a heritage property not be allowed by its owner to fall into disrepair. It cannot mandate that an owner of a property which is subject to a heritage assessment not deliberate undertake works on the property not requiring a planning permit such as removing latticework or repainting it to void its significance in advance of the study.

This has happened repeatedly, most prominently at the Palace Theatre, but we also had a recent such case in Essendon. While such large gaps exist in the heritage inventory, it can be beholden on activists to jump through months of bureaucratic hoops and campaigning merely in order to get an interim overlay applied and approved

The length of time that applications for interim protection appear to take to pass through State Planning also represents an egregious widening of the opportunity for affected property owners to vandalise their properties, and this really ought to be recognised in the priority that is afforded the inexplicable months-long rubber stamping of the necessary paperwork.

SOLUTION

Demolition of a heritage property by neglect has recently become a criminal offence for properties which are on the VHR. The same principle needs to be recognised as applicable to the far more significant number of sites in Victoria that come under local rather than State protection.

Consideration should be given to extending the definition of criminal demolition by neglect under the Heritage Act’s current protections, to include sites subject to a local level heritage overlay, not merely those on the VHR.

Councils currently have the right to enter and inspect a property and apply enforceable orders in relation to health and safety issues, graffiti removal, etc

A change to legislation should be contemplated to explicitly grant Councils similar powers in relation to the enforcement of heritage-related orders. For instance a legislated requirement to make a site subject to a heritage overlay secure from the elements, and the ability for Councils to make enforceable orders to that effect,

LOCAL PROTECTION REFORM 3 (ENFORCEMENT - WILFUL DEMOLITION)

Fortunately one upside of the debacle surrounding the demolition of the Corkman Pub was a stronger set of protections for the intentional demolition of a protected structure. The downside of that decision was VCAT's overruling of the Planning Minister's efforts to mandate site usage on the basis that "the planning system cannot be used punitively."

Setting aside the question of whether VCAT is actually creating policy over the heads of elected officials with this, the expectation of the community at large is where a participant in the system has clearly acted in such demonstrative bad faith as to demolish a building they knew was protected, that the planning system SHOULD be able to be used punitively by our elected representatives.

And if the courts say it cannot, then it is the responsibility of the Parliament to fix this through legislation that specifically says otherwise.

Wilful demolition of a protected heritage place, whether at local or state level significance, whether by neglect or by specific action should be a crime. And because, as we have seen with the Corkman, developers can factor in any financial penalties as the cost of doing business, a custodial term for any but the most minor infractions should be prescribed.

Furthermore, the applicant should lose any planning rights associated with the property for a minimum 10 year period and be mandated to so far as feasible reproduce the demolished structure, in replica only as a last resort if no actual reconstruction is possible. The violated heritage overlay should be updated to reflect the changes and then re-applied to the new structure.

Another problematic aspect of Council responsibilities under the current regime is the tendency of planners towards recommending approval of what are objectively not very good verging on abysmal facadist treatments of remnant heritage fabric Planners themselves can often be hamstrung with local regulations regarding retention in many cases either loosely spelled out, or in some cases not spelled out at all.

UNIFORMITY IN REGULATIONS

If we are looking at adopting a more uniform approach to how councils go about listing buildings it would also seem to be an opportunity to also ask councils to adopt uniform templated best practice local regulations.

I would single out the City of Melbourne here for particular praise, where there recently implemented regulations are arguably the best in Australia and would make an obviously effective basis for such a template.

Bayside Council has recently highlighted the lack of specificity that exists within the planing framework of any mechanism prescribing precisely how heritage studies are conducted by seeking to make the findings of a highly important modernism survey purely voluntary upon property owners.

Although Council relented, this was only upon entreaty from the Minister, and it remains unclear (to the activist sector at least) whether we would actually have any formal systemic process to rely upon, were a similarly recalcitrant council required to be brought into line in future.

Once again, if we are looking at an enhanced codification of practices/studies under Heritage Victoria, this also represents an opportunity to clearly prescribe not merely the prioritised studies to be performed, but also the broad methodology councils must adopt.

COUNCILS ARE POLITICISED BODIES

The other issue as mentioned briefly above is the tendency for decisions around local heritage issues at a local council level to be often made in a highly politicised manner. As a lobbyist of many years, one becomes used to their being at least some councillors on any given council who will approach any given heritage issue from a fixed (positive and negative, it must be said) attitude.

Councillors are naturally wont to bend to the interests of voters in their ward ahead of general lobby groups, which again is not necessarily to the detriment of heritage activists, but it does highlight yet another relatively arbitrary factor in the supposedly certain "system". VCAT of course in theory exists to counter any serious wrongs in this area, but as we will see below, it simply does not perform this function effectively at present.

Rather than suggesting we need less of this "democratic uncertainty" in the system, this submission is geared towards taking the uncertainty out of other aspects of the system's administration, leaving elected representatives with more of a "science" to administer, and ideally therefore winding up with less time and expense spent at VCAT.

Councillors in my experience tend to be deathly fearful of VCAT overturning their decisions to the point where they themselves start implementing policy based on an often wholly uninformed second-guessing of what they feel VCAT is liable to do (and Councillors LOVE prognosticating at length on the topic).

In particular it is established wisdom that they need a very solid basis if they are going to reject their Planning Department's recommendation on any permit application, as this is one of the critical tests that VCAT will apply.

Where is this written in legislation? It of course is not. It has evolved through legal precedent at VCAT. I find this highly illustrative of the way in which what is effectively PLANNING POLICY affecting all Victorians is evolving outside of the political arena, as implemented by unelected lawyers.

The solutions here involve turning next to look at the culture of VCAT as the source of the above negative effects on the planning process at a local level.

VCAT

Allowing the demolition of North Melbourne's very clearly and specifically protected Royal Park Hotel on the basis of accepting the vague assessment of the developer's expert witness that the building was "nothing special", ahead of an actual professional heritage assessment that was already written into the Planning Scheme very clearly demonstrates that VCAT is NOT engaged as a body in ensuring Councils are correctly applying their own policies.

Those sitting on that case instead were engaged in their own exercise in testing the reasonableness of the "nothing special" claim, and absent of any heritage qualifications of their own.

And not merely are the costs of effectively bringing a case to VCAT prohibitive for community groups given the practical requirement for legal representation, but in the event such groups are able to bring an appeal before the court, they routinely find themselves faced with an entrenched bias within the institution (possibly a result of its being comprised of an effective monoculture of generally well remunerated legal and property professionals for whom property-based asset speculation is an existential imperative) towards a de facto right of the property owner to be permitted their application.

To cap it all off, if this hypothetical community group were able to bring a case before VCAT and believed it received a judgement which erred in law or a judgement which did not for instance give proper weight to

VCAT is an unelected shadow government institution that strays at times into pro-actively MAKING POLICY, rather than interpreting it. I fail to see how it is actually philosophically possible that we've sleepwalked into a world where a bunch of entirely unelected lawyers sits as a review body across potentially almost every administrative decision of our elected representatives.

It strikes me as arguably the most critical and deleterious reform to the structure and operation of our democracy (and most particularly as it relates to planning) I have seen in my lifetime.

And for all the "henny-penny about planning" stories the media loves to run, I don't think I've ever read a single feature article in a mainstream publication in this country questioning the role and the function of VCAT in our democracy.

My genuine and sincere prescription for reform of VCAT is its wholesale abolition. And a return to having faith in our elected representatives and the checks and balances they provide within the system (under a strong local government watchdog), given they are up for election every four years.

In the event of that not being the case, and I am realist, legal aid needs to be made available to community groups at VCAT to allow them to participate fully at the appeals level, and VCAT should ideally clarify the regulations around who is able to bring an appeal of a Council decision before VCAT to specify that affected or representative community groups that were party to the original planning application may do so.

HERITAGE VICTORIA/HERITAGE COUNCIL

The role of Heritage Victoria has been discussed already in the context of its mooted reform to provide more strategic direction to guide local government heritage studies.

The body does what most would regard as a generally diligent job at assessing planning applications for VHR properties and prospective VHR listings.

However, the body does have another organisational objective- to proactively administer new listings to the VHR.

It is actually nobody's fault more than Heritage Victoria's that arguable buildings of state level significance like Southgate, Collins Place, Caulfield Racecourse and Federation Square were/are all sitting there completely unprotected and unassessed, because they really are sitting there waiting for Joe Public to perform all the actual nominations for them, which returning to a recurrent theme in this paper is not a system, it's organisational wishful thinking at best, and abrogation at worst.

There are no doubt resource constraints that would be posited as explanation for why Heritage Victoria is not proactively managing VHR listings, but I would argue there are a lot of functions the organisation does seem to be performing at present by way of outreach and policy papers and so on, which while important to a public body must surely be seen as secondary to the responsibility of actively managing the inventory of the State's most important buildings.

So the above proposed reforms represent an obvious opportunity, where Heritage Victoria would be proactively auditing the local heritage inventory anyway to implement new parallel internal processes for a more proactive approach to administration of the State Register in tandem.

STATE GOVERNMENT

I would like to start out by issuing my heartfelt thanks on behalf of all future Melburnians to the outgoing Planning Minister for bequeathing us the magnificent legacy of his central city

planning controls, as a clearly effective mechanism for ensuring central Melbourne retains what remain in marketing terms its most unique selling points - its eclectic built environment with exemplary feature buildings from a variety of key styles and in particular its remnant Victorian-era streetscapes, with wide and spacious streets where unlike Sydney sunlight has still routinely hit the ground for the past 40 years.

These controls allow for positive public heritage outcomes to be effectively “banked” to allow for taller/denser development and lessen the likelihood of negative heritage outcomes particularly for heritage precincts.

A model where towers are generally required to be set back more from boundaries invariably allows remnant heritage buildings and streetscapes to be situated in better context, and I believe we are already seeing the combined benefits of both these controls and City of Melbourne’s newer heritage retention policies in more recent approvals.

MINISTERIAL INTERVENTION/FAST TRACKING

However, the effect of every single ministerial intervention in a heritage project in recent memory has been a negative heritage outcome.

Again, we are not anti-development, and I can appreciate the logic for fast-tracking new developments at present.

But this should not be done at the expense of what would otherwise be critical planning or heritage hurdles that the proposal would not otherwise meet. Our present leaders owe future Melbourne, which has to live with the results in perpetuity long after the economic “boost” has gone, better.

The approvals of the Eliza Tinsley building and Caulfield Racecourse redevelopment under this process exemplify a pattern of impeccably documented heritage studies being thrown out with no community input whatsoever. This is very obviously not scientific, systematic nor professional.

The Eliza Tinsley approval document from the State Planning Department essentially said “yes well it is rampantly noncompliant with Council’s policies, but it is only heritage so it doesn’t matter. Approved.”

This is not remotely a standard of assessment capable of delivering the sort of win-win outcome we should be aiming for, per above. It bespeaks too clearly of a brief to approve as much as possible on whatever basis.

I think it is unfortunate that the opportunity for some smart officials and architects to sit down in a room and quickly nut out compromises that do not result in negative heritage outcomes (and it so rarely is difficult with just a little imagination) has apparently not been seized with those two cases in particular, but the impression created is that the process simply exists to remove the heritage obstacles altogether and how one would go about the clearly necessary cultural change within the Department is beyond the scope of my direct

experience. Suffice to say the impression is that there is no actual heritage specialist on staff at the Department to assist with providing a professional assessment of the heritage component of its projects.

Remedying this would also be an opportunity to introduce someone into the Department who might effect a little of the necessary cultural change, but realistically that would be a lot to expect of the sole likely appointment.

The APM Boiler House in Alphington, like Caulfield Racecourse is another such example of a building documented and assessed well beyond the ordinary standard by professionals as significant at a State level, and to have that process simply set aside by the Minister with no professional justification was viewed as an affront to the entire profession. It is hard to view it in any other light.

ROLE OF THE MINISTER

I believe the Planning Minister should have last resort power of intervention over planning projects. I believe a fast track process ought to be able to easily operate without compromising heritage standards, and indeed in theory should be better capable of delivering good design outcomes than the present overly adversarial planning system, were the people policing it approaching it with that mindset.

This is the portion of my submission where I feel any concrete recommendations would be largely redundant given what we are actually talking about is political cultures unlikely to realistically be codified through legislation.

That however would be one of the more practical suggestions, that we could at least better codify in legislation the circumstances in which a minister may call a project in, that we limit those circumstances to genuinely exceptional ones, and that we specify that any departmental planning assessment must give full weight to compliance with all relevant local government policies.

OTHER STATUTORY & SEMI STATUTORY BODIES

Adding to the uncertainty generated by State Planning's role, several government ministers have blanket exemption from the planning process for works on sites such as schools and hospitals, and in fact as a result of the privatisation of the public transport network, a private company based in Hong Kong (Metro Trains) apparently (never tested in court) has the right to bypass all local planning restrictions for works deemed essential for network safety, and they are permitted to claim commercial in confidence in not releasing any of the information they may be relying on to allege it.

A foreign company can essentially self-authorise its own planning permits in our thriving democracy.

Similarly to the above, the solution to the issue would appear to lie in better codification of the circumstances under which such interventions are permitted

LANEWAY OVERLAYS

One final area where heritage issues stray a little into the domain of general planning and design issues worth discussion is Laneway protections.

Melbourne's laneways have become a unique and iconic element of the city's (re-)branding, but the planning scheme is at present inadequate for protecting many elements of what makes those streetscapes unique.

The streetscapes are often comprised of the rear walls of properties, over which there rarely in practice exists any sort of design or heritage controls, with the case of the Culture Kings store in the former Russell St theatre whose rear abuts the famous Hosier Lane, and whose construction has resulted in a less than positive outcome, which could actually have been far worse given the lack of formal heritage controls.

What is needed is a new form of LANEWAY overlay, which places controls over all interfaces with significant laneways, and ideally extends overshadowing controls to new development affecting the same. Although realistically this would only likely be applied within the City of Melbourne, implementing a new form of overlay would require amendment to the existing Planning Act and should in theory be available to all councils.

RECOMMENDATIONS IN SUMMARY

Institute and fund a new regime for prescribing the conduct of local heritage studies by Councils with a view to a large and immediate plugging of the largest systemic gaps in the state inventory

Reform Heritage Victoria with capabilities to scope and administer such a system and prescribe uniform methodologies (including on degrees of retention and facadism) to councils

Legislate new criminal and planning sanctions for demolition by will or neglect of a protected **local** level heritage structure

Make legal aid available to community groups at VCAT

Clarify who has appeal rights on Council decisions before VCAT

Appoint actual heritage professionals to VCAT panels and Department of Planning

Better codify in legislation the circumstances under which the Minister or other government bodies may intervene or call in a planning process

Institute a new Laneway Overlay typology under the Planning Scheme