

**Greater Geelong Planning Scheme Amendment C422ggee  
12-16 Kinsmead Street, Waurin Ponds**

**Panel Report**

*Planning and Environment Act 1987*

**22 November 2021**

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### 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 or not 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 and Environment Act 1987*

Panel Report pursuant to section 25 of the PE Act

Greater Geelong Planning Scheme Amendment C422ggee

12-16 Kinsmead Street, Waurin Ponds

**22 November 2021**



Jenny Moles

Chair

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## Glossary and abbreviations

Council	Greater Geelong City Council
DELWP	Department of Environment, Land, Water and Planning
Design guidelines	The 'Heritage Management Objectives' at Clause 3 of the Incorporated Plan
Incorporated Plan	'Claremont', 12-16 Kinsmead Street, Waurin Ponds, Design Guidelines Incorporated Plan, January 2021
GRZ1	General Residential Zone (Schedule 1)
HO	Heritage Overlay
National Trust	National Trust of Australia (Victoria) Geelong and Regional Branch
PE Act	<i>Planning and Environment Act 1987</i>
Planning Practice Note	Planning Practice Note 1: Applying the Heritage Overlay, August 2018

## Overview

### Amendment summary

The Amendment	Greater Geelong Planning Scheme Amendment C422ggee
Common name	12-16 Kinsmead Street, Wauron Ponds
Brief description	Apply the Heritage Overlay (Clause 43.01) on a permanent basis; introduce design guidelines, permit exemptions and statement of significance as an Incorporated Document (Clause 72.04); identify the <i>Greater Geelong Outer Areas Heritage Study Stage 2 Review: Claremont Homestead 12-16 Kinsmead Street, Wauron Ponds, June 2020 heritage assessment report</i> as a reference document (Clause 22.09)
Subject land	12-16 Kinsmead Street, Wauron Ponds
The Proponent	Greater Geelong City Council
Planning Authority	Greater Geelong City Council
Authorisation	6 January 2021
Exhibition	11 February – 15 March 2021 (extended to 26 March for the landowners)
Submissions	Number of submissions: 36 in total with 3 opposed. A full list of submitters is included in Appendix A.

### Panel process

The Panel	Jenny Moles
Directions Hearing	24 August 2021 by video conference
Panel Hearing	21 October 2021 by video conference
Site inspection	Unaccompanied, 14 November 2021
Parties to the Hearing	<p>Ms S Williamson, Senior Strategic Planner, for the planning authority</p> <p>Mr D King, Kings Lawyers, for the then prospective and now landowner, Ms Nicole Lock. Mr King called the following expert evidence:</p> <ul style="list-style-type: none"> <li>Ms Robyn Riddett, Anthemion Consultancies, on heritage</li> </ul> <p>Mrs J Bantow for the National Trust of Australia (Victoria) Geelong and Regional Branch (National Trust). Mrs Bantow called the following expert evidence:</p> <ul style="list-style-type: none"> <li>Dr Mary-Jane Walker on urban greening (biophilic design) and arboriculture</li> </ul>
Citation	Greater Geelong PSA C422ggee [2021] PPV
Date of this report	22 November 2021

## Executive summary

Greater Geelong Planning Scheme Amendment C422ggee (the Amendment) seeks to apply a permanent Heritage Overlay to the land at 12-16 Kinsmead Street, Waurn Ponds; to incorporate a document (Incorporated Plan) containing a set of design guidelines for new development on the land (called Heritage Management Objectives), some limited permit exemptions and a statement of significance; and to include a 2020 heritage assessment of the property as a reference document to the Greater Geelong Planning Scheme.

The land, which forms part of a relatively new residential area, is a gently sloping block of 6,157 square metres in area. An 1857 farmhouse known as 'Claremont' sits centrally on the high point of the land and there is one large outbuilding to the south and a smaller one nearby on the boundary. The structures are in poor condition. The farmhouse itself has been the subject of at least three structural assessments. There is a very tall Norfolk Island Pine in the frontage setback which has been recently assessed as in good health. No other vegetation of note remains on site after remnants of an original orchard were recently removed.

A heritage assessment of the property completed in 1998 and reported in 2000 as part of a wider study was revisited in June 2020 in a peer-reviewed assessment of the site. The homestead was affirmed as having a moderate-high level of integrity and its condition as fair. The property was assessed as being of heritage significance at a local level on several bases notably rarity; aesthetic, historical, associative, and technical significance; and representativeness.

Key issues raised in public submissions about the Amendment included:

- opposition to the heritage listing by the then owners based on the poor condition of the homestead
- financial impost for the owners/cost of the overlay
- other means are available to recognise the heritage of the Baum family who were long-time owners (from 1894)
- nearby residents' concerns about the scale and nature of development on the subject site and its implications for traffic, views, privacy, existing services and access to the parkland abutting to the south
- suggested changes to 'tighten' the proposed design guidelines in the Incorporated Plan including restriction of any new development on the land to single storey; reinstatement of some historic features such as the orchard and well; and an increased buffer to the homestead for new development.

Changes to the ownership of the subject site around the time of the Panel Hearing led to an amended approach to the listing by ownership interests.

The former owners continued to oppose the Amendment but were not parties to the Panel Hearing and relied only on their written submissions.

The new owner, who was represented at the Panel Hearing, however, did not oppose the application of the overlay and the heritage witness called by the new owner supported application of the overlay. Instead, a reduced area for the Heritage Overlay to generally correspond with the area of significance as shown in the Incorporated Plan was requested, and allowance for an as of right subdivision to create two lots - one inside and one outside the area of significance. The owner also sought to have exemptions from permission under the Heritage Overlay introduced for repairs and maintenance to the homestead and the pine tree. Other changes sought included allowing the land to be used for prohibited uses (by amending the schedule to Clause 43.01) and including in the Incorporated Plan the discretion to allow demolition of the subject building if it were shown that its conservation would impose an

unreasonable financial burden and provided an appropriate replacement building would be constructed.

Ms Riddett, who provided heritage evidence for the current landowner, also recommended some changes to the design guidelines to better respond to the heritage characteristics of the site.

The Council submissions opposed Ms Riddett's and the land owner's proposed changes to the Amendment, considering them generally premature.

The National Trust supported the application of the overlay to the entire property as exhibited but sought the expansion of the area of significance shown in the Incorporated Plan. Replanting of the orchard was also requested and recording of a higher level of assessed significance for the stables outbuilding. It was further argued that the design guidelines should recommend single storey development only on any new residential lots created and that lot sizes be typical of the neighbourhood. Interior controls for the homestead were also sought. The National Trust called a witness qualified in genetics, agricultural science and fine arts to argue for a wider area of significance to be defined (generally 10 metres out from the buildings) based partly on the value to the community of urban greening.

The Panel, having heard from the parties and having conducted an unaccompanied site inspection, concluded that the Amendment is generally consistent with the policies of the Planning Scheme that support the conservation of significant heritage resources. Also, the proposed inclusion of an Incorporated Plan containing a set of guidelines for new development, permit exemptions and the statement of significance is an approach envisaged in the relevant Planning Practice Note<sup>1</sup> and, in the case of the statement of significance, is required.

The Panel considers that the owner's request for a reduced extent for the Heritage Overlay and allowing a two lot subdivision of the land as of right is premature. The Panel does not consider that the poor condition of the two main buildings preclude their heritage listing. Further, the Panel does not support the landowner's requested changes to the design guidelines which would relax expressed development intents for the land. The Panel has supported some minor changes to the wording of the Incorporated Plan, mainly suggested by the current landowner, to facilitate management of the heritage place.

The Panel does not support design guidelines changes which would further restrict development on the land or require its restoration to a previous state as requested by neighbours and the National Trust. An expanded area of significance in the Incorporated Document is not supported except a minor southwards extension.

The Panel agrees with the Council position that most of the matters raised in submissions by neighbours are in fact not relevant to the consideration of the appropriateness of the Amendment, but are amenity and other planning issues that would be able to be addressed as development proceeds on the land through a planning permit process.

## **Recommendations**

**Based on the reasons set out in this Report, the Panel recommends that Greater Geelong Planning Scheme Amendment C422ggee be adopted as exhibited subject to the following:**

- 1. The Council consider:**
  - a) whether reference should be made in the schedule to Clause 43.01 to the statement of significance for the property separate to the reference to the**

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<sup>1</sup> Planning Practice Note 1: Applying the Heritage Overlay, August 2018

***'Claremont', 12-16 Kinsmead Street, Waurm Ponds, Design Guidelines Incorporated Plan, January 2021***

- b) **adding an additional exemption to Clause 2 of the 'Claremont', 12-16 Kinsmead Street, Waurm Ponds, Design Guidelines Incorporated Plan, January 2021, relating to lopping and pruning of the Norfolk Island Pine to promote tree health, which might be subject to limitations such as frequency and extent of lopping.**
  
2. **Amend the schedule to Clause 43.01 as relates to Claremont by clarifying that the outbuilding referred to as not exempt under Clause 43.01-4 is the outbuilding to the south of the homestead.**
  
3. **Amend the 'Claremont', 12-16 Kinsmead Street, Waurm Ponds, Design Guidelines Incorporated Plan, January 2021 as follows:**
  - a) in Clause 2, replace the reference to Clause 43.01-2 with Clause 43.01-3
  - b) on the plan at page 2, extend the boundary of the area of significance southwards so that all of the homestead building falls within the area of significance
  - c) in Clause 2.1, delete the words *'with (sic) the site'* and replace them with *'on that part of the site beyond the area of significance shown on the plan forming part of this document'*
  - d) in Clause 2.2, delete the words *'and/or the large shed to the south of the homestead'*
  - e) in Clause 3.5, delete reference to allowing attic room additions to the southern elevation of the homestead
  - f) in the statement of significance delete the heading *'How is it significant?'* where second appearing and replace it with *'Why is it significant?'*

# 1 Introduction

## 1.1 The Amendment

The purpose of the Amendment is to apply permanent heritage controls to the land at 12-16 Kinsmead Street, Waurin Ponds.

Specifically, it is proposed to:

- Include the land in the schedule to Clause 43.01, and, as is enabled by the schedule, apply external paint controls to buildings on the land, apply tree controls to the Norfolk Island Pine near the northern boundary, and require notice of proposed changes to the (main) outbuilding on the land thereby enabling third party input to decision making
- Incorporate a document setting out design guidelines for new development on the land (called Heritage Management Objectives), some permit exemptions and a statement of significance (Incorporated Plan<sup>2</sup>) via the schedule to Clause 72.04. Reference to this document would also occur in the schedule to Clause 43.01. This document would, amongst other things, define an area of primary significance around the homestead and significant tree and set separate design guidelines relating to this area and beyond
- Include *The Greater Geelong Outer Areas Heritage Study Stage 2 Review: Claremont Homestead 12-16 Kinsmead Street, Waurin Ponds, June 2020* heritage assessment report (2020 Heritage Study) prepared by Authentic Heritage Services Pty Ltd as a reference document in Clause 22.09.

The land is already subject to an interim Heritage Overlay (HO2022). No change is proposed to the Planning Scheme maps. The provisions in the schedule to Clause 43.01 for this property also already reflect the intended permanent provisions but reference to expiry of the temporary control would be deleted.

### Panel discussion

The Panel notes that the introduction of separate reference in the schedule to the statement of significance for the property, may be required rather than its being merely included in the Incorporated Plan. The Panel is aware that DELWP authorised the Amendment in its current form, but the separate specification of the statement of significance in the schedule to Clause 43.01 would appear to be more consistent with the Planning Practice Note.

Also, at the Panel Hearing, Mr King, who appeared on behalf of the current owner of the land, pointed to a minor typographical error in the Incorporated Plan. There is an incorrect reference in Clause 2, relating to permit exemptions, to Clause 43.01-2 rather than Clause 43.01-3.

### Panel recommendation

**The Panel recommends that should the Amendment proceed:**

- **the Council considers whether reference should be made in the schedule to Clause 43.01 to the statement of significance for the property separate to the reference to the 'Claremont', 12-16 Kinsmead Street, Waurin Ponds, Design Guidelines Incorporated Plan, January 2021**
- **in Clause 2 of the 'Claremont', 12-16 Kinsmead Street, Waurin Ponds, Design Guidelines Incorporated Plan, January 2021 replace the reference to Clause 43.01-2 with Clause 43.01-3.**

<sup>2</sup> The incorporated document is titled: *'Claremont', 12-16 Kinsmead Street, Waurin Ponds, Design Guidelines Incorporated Plan, January 2021*

## 1.2 The subject land

The Amendment applies to the land shown in Figure 1.

The land is formally known as Lot B PS509700 and is contained in Volume 10218 Folio 448 and Volume 10676 Folio 116. The overall area is 6157 square metres.

The land is situated within a residential area largely developed in the last 20 years. Some of the surrounding residential lots were created by earlier subdivisions of the large rural property of perhaps 100 hectares of which the subject site originally comprised part<sup>3</sup>. For the most part houses are single storey in the vicinity of the subject site, but single and double storey development is present in the wider area.

Three roads currently terminate at the boundaries of the subject land and to the south is an urban park.

**Figure 1** Subject land



Source: Council Part A submission

The subject land is developed with a single storey brick and weatherboard farm homestead – ‘Claremont’. The homestead is situated mid-block on the top of a gentle rise from Kinsmead Street. It was first constructed in 1857 from bricks made on the property, and has a rear skillion weatherboard extension, and a number of other modifications including infill to the southern end of the eastern verandah and a mid 20<sup>th</sup> century weatherboard addition at the northwest corner.

There is a large weatherboard outbuilding to the south or rear of the homestead, possibly formerly used as stables and/or for other agricultural purposes, and a small undistinguished tin shed on the eastern boundary. The larger outbuilding was thought by the Council’s heritage consultant to date from the 19<sup>th</sup> century but the heritage witness for the current owner suggested the shed could date from any time between the 1920s to the 1950s. The buildings on the site are in quite poor repair.

The homestead faces northwards and is well set back from Kinsmead Street. There is a single tall Norfolk Island Pine tree between the homestead and the Kinsmead Street frontage. Remnants of

<sup>3</sup> Submission 034 from one of the former owners refers to three subdivisions in the last 30 years

an orchard in the west of the site were cleared just over a year ago. The land otherwise is grassed<sup>4</sup>. Figures 2 – 6 include images of the subject land and its elements.

The land is privately owned. At the time of exhibition of the Amendment, it was owned by descendants of the Baum family who had had ownership of the land from 1894. Members of the Baum family objected to the exhibited Amendment.

The Panel Hearing occurred on the day before settlement of the sale of the subject land to a Ms Lock. Ms Lock lodged a late objecting submission and was represented at the Hearing, though, by this time, her position in relation to the Amendment was somewhat modified.

The land is included in the General Residential Zone Schedule 1 (GRZ1) and no overlays other than an interim Heritage Overlay (HO2022) apply.

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<sup>4</sup> Concerning the extent of vegetation: On its 14 November inspection, the Panel noted that there was considerable weed growth around the homestead. It was also observed that some vegetation removal from the area identified in Figure 2 as the homestead garden had apparently occurred earlier that day or on the day before. The freshly removed vegetation, which was piled up in mounds, included garden plants. The remains of what appeared to be a garden bed with a rock surround, located centrally to the front of the homestead, had been exposed. These observations have not influenced the Panel's consideration of the Amendment

Figure 2 Development on the subject site



Source: Council Part A submission

**Figure 3** Claremont homestead



Source: Council Amendments website

**Figure 4** Large outbuilding to the south of the homestead



Source: Robyn Riddett statement of evidence, Figure 5

**Figure 5** Shed on eastern boundary



Source: Robyn Riddett, statement of evidence, Figure 7

**Figure 6** View from Kinsmead Street

Source: Panel inspection

### 1.3 Background

The subject property was first identified as having regional heritage significance in the 2000 Outer Areas Heritage Study for the Greater Geelong area. Not all aspects of this wider study were translated into statutory controls in the ensuing years, including the recommendations to provide heritage protection to the subject property. The Council's submission noted in response to the National Trust concerns about the study's implementation, that additional resources have now been allocated to implementation of the outstanding parts of the study.

In late 2019 – early 2020, interest by local residents in heritage protection for the subject property developed in response to its possible sale/development. An application was made by a resident of Kinsmead Street to Heritage Victoria to provide interim heritage protection under the *Heritage Act 2017* but this was unsuccessful. Heritage Victoria advised that in its view there was neither an imminent threat to the building nor a prime facie case for State heritage listing.

Authentic Heritage Services Pty Ltd was subsequently engaged by the Council to review and update the 2000 assessment of the property. The consultant reported in June 2020 (the 2020 Heritage Study). The report was peer reviewed by another heritage consultant.

The 2020 Heritage Study affirmed the property as having heritage significance at a local level on several bases notably rarity; aesthetic, historical, associative and technical significance; and representativeness. A statement of significance was prepared to this effect.

The report noted that the condition of the building was fair when viewed from outside the property and its integrity was moderate-high. It was recommended that a permanent Heritage Overlay be applied and design guidelines be developed to manage any subdivision and development in the more sensitive parts of the site.

Application was made to the Council's building department by the property owners around this time under section 29A of the *Building Act 1993* for consent to demolish the building. The consent was granted.

Interim Heritage Overlay controls were subsequently gazetted for the land in September 2020.

Also in September, the Council resolved to seek a Planning Scheme amendment to introduce permanent heritage controls. Authorisation was granted in December 2020 and exhibition followed in February-March 2021.

Council representatives visited the land with the landowners in early March 2021. In late March, the Council commissioned a structural engineering report on the homestead by Block 1 consultants. Block 1 inspected the property and reported that the homestead showed pronounced levels of deterioration with much being unrepairable.

An emergency building order was subsequently placed over the homestead by the Municipal Building Surveyor and it was fenced off to prevent entry.

In July 2021, the Council considered the submissions about the Amendment and resolved to refer them to a Panel.

After the Panel Directions Hearing on 24 August 2021, the Council commissioned a peer review of the Block 1 report by OPS Engineers. OPS Engineers found that the structural problems associated with the homesteads walls were likely caused by in-ground movements of the clay soils on the property and localised reconstruction of parts of the homestead would be required. The report nevertheless found that most sections of external masonry walls and internal walls were performing adequately and went on to recommend remedial works.

Both consulting engineering reports were provided to the Panel.

## 1.4 Statement of significance

The statement of significance for the place as prepared by the Council's heritage consultant and exhibited was:

### **What is significant?**

Claremont Homestead, 12-16 Kinsmead Street, Waurn Ponds, has significance as one of very few surviving intact Victorian dwellings at Waurn Ponds. While the homestead has experience some alterations, it is of the more intact examples of a mid 19th century homestead associated with farm cultivation and wine and fruit growing in the outer parts of Greater Geelong. It was constructed of bricks produced on site in 1857 to a design by local architects, Shaw and Dowden, for Thomas Powell. The property also has more enduring associations with four generations of the Baum family, farmers and orchardists, whose ownership from 1894 has spanned over 116 years. The fabric of significance is the single storey, Victorian Georgian styled dwelling with its hipped roofs clad in slate, brick wall construction and freestone plinths, brick chimneys, extent and concave form of the return verandah, front timber framed doorway and the timber framed double hung twelve paned windows. The setting, including the homestead garden to the front (north) of the dwelling, mature Norfolk Island Pine tree and the remnant orchard to the west also contribute to the significance of the place. The rear gabled timber outbuilding is of interest as an early survivor but its very poor condition has undermined its integrity.

### **Who are the Traditional Owners/Registered Aboriginal Party for this place?**

The place is located on the traditional land of the Wathaurung people (known as Wadawurrung). The Registered Aboriginal Party under the Aboriginal Heritage Act 2006 for this land is the Wathaurung Aboriginal Corporation (Wadawurrung).

### **How is it significant?**

Claremont Homestead has local historic, aesthetic and scientific significance to the City of Greater Geelong.

Criterion A:

Importance to the course of pattern of our cultural or natural history (historical significance).

Criterion B:

Possession of uncommon, rare or endangered aspects of our cultural or natural history (rarity).

**Criterion D:**

Importance in demonstrating the principal characteristics of a class of cultural or natural places or environments (representativeness).

**Criterion E:**

Importance in exhibiting particular aesthetic characteristics (aesthetic significance).

**Criterion F:**

Importance in demonstrating a high degree of creative or technical achievement at a particular period (technical significance).

**Criterion H:**

Special association with the life or works of a person, or group of persons, of importance in our history (associative significance).

**How is it significant?**

Claremont Homestead has historic significance for its associations with crop, vine and fruit growing in the Waurn Ponds and Barrabool Hills areas in the mid 19th century. The area became synonymous for wine growing and cultivated the largest quantity of vines in Victoria, and a significant quantity of fruit, at the time of the building of Claremont Homestead in 1857. Claremont Homestead is a physical embodiment of this previous historic and enduring land use. With its associations with Thomas Powell, original owner, it is also legacy of the British Imperial Government's Free Bounty Immigration Scheme of the late 1830s, which encouraged skilled males to immigrate to Australia. Powell, an Irish carpenter (and later a successful brewer and farmer,) was induced to immigrate in 1839 as part of the Free Bounty Immigration Scheme (Criterion A).

Claremont Homestead is one of very few surviving, intact Victorian dwellings at Waurn Ponds built in the 1850s, and one of a select number of surviving rural, Victorian styled dwellings built in the 1850s in Greater Geelong (Criterion B).

Claremont Homestead is aesthetically significant as a representative and relatively intact example of a verandahed Victorian Georgian styled hipped roofed dwelling type. Of this type, it is one of a select number of surviving examples in the more rural (and previously rural) parts of Greater Geelong, and outer suburban Newtown (Criteria D & E). Like Claremont, most of the comparable examples of experienced some form of alteration.

The mature Norfolk Island pine tree, open front (north) homestead garden and to a lesser degree, the existing orchard are aesthetically significant as remnants of the early rural homestead setting and land use (Criterion E).

The mature Norfolk Island pine tree has scientific (botanical) significance as a remnant of an early rural homestead landscape in Greater Geelong, and a local heritage landmark on the property and immediate residential area (Criterion F).

Claremont Homestead is scientifically significant for its brick construction, the bricks having been made on the site. Together with the dwelling at 35 Lemins Road, it is one of two surviving mid 19th century homesteads at Waurn Ponds constructed of brick, the majority of comparable homesteads in the nearby Barrabool Hills being built of the locally ubiquitous Barrabool stone (Criterion F).

Claremont Homestead has historical significance for its associations with the prolific 19<sup>th</sup> century architect, J.L. Shaw, and the architectural practice of Shaw and Dowden. While numerous examples of the work of Shaw and Shaw and Dowden survive, Claremont Homestead is a rare rural example of its type in Greater Geelong associated with the architects (Criterion H).

Claremont Homestead has historical significance for its associations with the original owner, Thomas Powell, immigrant carpenter who became a successful business as owner of brewery. Prior to his residency at Claremont Homestead, Powell also contributed to community life as a Geelong Town Councillor (Criterion H).

Claremont Homestead has historical significance for its enduring associations with the Baum family, farmers and orchardists at the property from 1894 for over 116 years (Criterion H).

## Panel comment

The Panel notes that 'How is it significant?' appears twice as a heading in the statement of significance. To be consistent with the Planning Practice Note, where second appearing, it should be replaced with 'Why is it significant?'

## Panel recommendation

### The Panel recommends:

- **Amend the statement of significance in the '*Claremont*', 12-16 Kinsmead Street, Waurn Ponds, Design Guidelines Incorporated Plan, January 2021 by deleting 'How is it significant?' where second appearing with 'Why is it significant?'**

## 1.5 Incorporated permit exemptions and design guidelines

In addition to the statement of significance (above) which is included as an appendix to the Incorporated Plan, there are two other key components of the proposed document. Clause 2 sets out the proposed permit exemptions. Clause 3 sets out management objectives with an accompanying plan (see below). The Incorporated Plan is to be read in concert with the provisions of Clause 43.01- 3 and 43.01-5.

Clause 43.01-3 of the Planning Scheme provides amongst other things that no permit is required under the Heritage Overlay for anything done in accordance with an Incorporated Plan specified in a schedule to the overlay. Clause 43.01-5 provides that, with some exceptions<sup>5</sup>, 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 which among other things, made changes to the schedule to the Heritage Overlay.

The Incorporated Plan Clause 2 permit exemptions provide:

Pursuant to Clause 43.01-2, for land in HO2022, a permit is not required to:

- 2.1 Remove, alter or construct driveways, pathways, car parks, and kerbs and channels with the site.
- 2.2 Demolish or alter structures listed as items of nil significance and/or the large shed to the south of the homestead.
- 2.4<sup>6</sup> Construct roof-mounted solar panels provided that the equipment is not situated on the northernmost hip roof form of the homestead, extend beyond roof ridgelines and/or the northern and eastern verandahs.
- 2.5 Construct boundary fencing and internal fencing so long as the fencing is non-reflective.

The Incorporated Clause 3 Heritage Management Objectives seek to:

- 3.1 Retain and conserve the overall appearance of the dwelling as a single storey c19th homestead.
  - Retain the external envelope of the two northernmost hipped roof forms, external walls and verandahs at the northern and eastern sides, free from additions and alterations;
  - Encourage removal or alteration the northwestern skillion addition to complement the original form and character of the building.
- 3.2 Retain and conserve the Victorian Georgian style and materials of the original dwelling over at least the two northernmost hipped roof forms and adjoining verandahs, including:
  - Hipped roof forms clad in slate over internal spaces and concave formed corrugated iron roofing to verandahs;
  - Face brick exterior walling and early-period timber verandah joinery;

<sup>5</sup> Exceptions are not relevant to the Panel's consideration

<sup>6</sup> There is no paragraph 2.3

- Brick chimneys and capping details (external) and fireplaces (internal);
  - External timber joinery including 12 pane double hung windows and timber-framed front doorway on north façade;
  - Consider reinstatement of the earlier verandah timberwork design and details if this can be reasonably ascertained.
- 3.3 Retain the mature Norfolk Island Pine Tree situated north of the dwelling and avoid development or construction disturbance of the root zone within 2 metres of the dripline. Some encroachment within the dripline may be possible subject to a suitably qualified arborist report and a tree protection management plan.
- 3.4 Retain sufficient open space adjoining the principal northern and eastern verandahed facades to allow viewing and interpretation of the original homestead form and style from these sides, comprising at least:
- A broad area between the northern façade and Norfolk Pine;
  - A long narrow area along the eastern side.
- 3.5 Allow changes and upgrades to accommodate contemporary standards of living to provide for a sustainable future use of the heritage building, including:
- Allow external alterations, single storey or single storey with attic room additions to the southern elevation of the homestead.
- 3.6 Allow subdivision and redevelopment of the property outside of the immediate environs of the heritage area as shown on the plan:
- limit built development to single storey or single storey plus attic (if presented with an outward single storey appearance) within 10 metres of the northern, eastern and western sides of the homestead;
  - allow two storey development elsewhere on the site.



## 1.6 Panel procedural issues

The Panel Hearing for this matter took place an unusually long time after the Directions Hearing due to the Panel, in the context of a mooted end to the Coronavirus pandemic lockdown, endeavouring to have an in person rather than video conference Hearing. The Hearing was later further adjourned due to the late supply of the heritage witness report for Ms Lock. After the Directions Hearing, the Panel issued a series of written directions relating to these and other matters. The Hearing ultimately proceeded as a video conference. A list of the documents provided to the Panel at the Hearing is included in Appendix B to this Report.

At the Hearing, Mr King for Ms Lock opposed consideration by the Panel of the witness report for the National Trust on the basis that it amounted to a submission, the witness was not relevantly qualified and the report did not address all of the Planning Panels' Expert Witness Practice Note requirements. The Panel allowed the giving of evidence by Dr Walker on the basis that collectively her qualifications were relevant to the nature of her evidence; the issue of tree health was no longer in contention in any case; and that this was evidence tinged with advocacy was a scenario the Panel was familiar with and would interpret appropriately. The Panel did not consider the Practice Note failures to be substantial.

The Panel was unable to obtain a work permit to travel to Geelong from Melbourne to inspect the site during the lockdown period. It was not until regional travel controls imposed in response to the Coronavirus pandemic were relaxed in November that the Panel was able to undertake the site inspection. The Panel undertook an inspection of the subject land and surrounds, unaccompanied by any of the Hearing parties, on 14 November 2021.

After the Panel Hearing, the National Trust forwarded some uninvited material to the Panel via the Planning Panels Victoria office. This material has not been considered by the Panel in its assessment of the Amendment.

## 1.7 Summary of issues raised in submissions

Key issues raised in responses to public exhibition of the Amendment included:

- opposition to the heritage listing by the then owners based on the poor condition of the homestead
- financial impost for the owners/cost of the overlay
- other means are available to recognise heritage of the Baum family who were long-time owners (from 1894)
- nearby residents' concerns about the scale and nature of development on the subject site and its implications for traffic, views, privacy, existing services and access to the parkland to the south
- suggested changes to 'tighten' the proposed design guidelines including restriction of any new development to single storey, reinstatement of some historic features such as the orchard and well, and an increased buffer to the homestead for new development.

The new owner of the land, Ms Lock, who successfully sought leave to participate in the Panel Hearing, while initially objecting to the Amendment, ultimately did not oppose the application of the Heritage Overlay. She instead sought a reduced area for the Heritage Overlay and/or the area of significance as shown on the plan in the design guidelines, partial exemption from the subdivision and demolition permission requirements of the Heritage Overlay, an ability to use the land for prohibited uses, as well as some other less onerous requirements. She called a heritage witness (Ms Riddett) who supported the significance of the place, and the Amendment subject to some changes.

The Panel has considered all written submissions made in response to the exhibition of the Amendment, and the submissions, evidence and other material presented to it during the Hearing, even though not all material has been specifically mentioned in the Report.

The Panel's assessment of the material has been informed by its site inspection.

## **1.8 Planning context**

The planning policy context for the Amendment was set out in the Explanatory Report for the Amendment and more comprehensively set out in Ms Williamson's submission to the Hearing.

Relevant key planning policy clauses include:

- Clause 15.01-5S Neighbourhood character – which has the objective of protecting neighbourhood character, cultural identity and sense of place
- Clause 15.03-1S Heritage conservation – which has the objective of ensuring the conservation of places of heritage significance
- Clause 21.06-5 Heritage and identity – which again supports conservation of places of significance  
It includes as one strategy – 'ensure the use and development of a heritage place contributes to its heritage significance and longevity.'
- Clause 22.09 which guides decision making on all heritage places.

The Panel considers that the Amendment's intent is consistent with the policies of the Planning Scheme. The Amendment details require some further assessment in response to the submissions. This is the subject of Chapter 2 of this Report.

## 2 Consideration of the issues

The main issues raised in submissions and at the Hearing are discussed in this chapter. Not every minor issue is discussed. Rather the Panel discusses the potentially determinative and relevant issues.

### 2.1 Is a permanent Heritage Overlay warranted?

#### 2.1.1 The issue

The initial issue is whether the place is of sufficient heritage significance to warrant the application of a permanent Heritage Overlay.

#### 2.1.2 Evidence and submissions

The 2000 Outer Areas Heritage Study and the 2020 Heritage Study both found the place to be of heritage significance. In the first study, the place was assessed as of regional rather than merely local significance. That grading is no longer in use, and given the Heritage Victoria view that there was not a prima facie case for State significance, local significance is the appropriate classification.

The previous owners of the property and their relative (Submissions 34-36), while opposing the application of the overlay due to condition and repair costs, did not dispute the significance of the place except that some comment was made in terms of integrity of the homestead about alterations to the homestead verandah in the 1920s. They nevertheless suggested that there were other means to celebrate the contribution of the Baum family to the development of Waurn Ponds, including historical accounts.

The Hearing submissions for Ms Lock, the new owner, explicitly accepted the heritage significance of the place or at least of the defined area of significance in the design guidelines. Ms Riddett similarly supported the application of the overlay to the property which she agreed was significant, though she recommended a reduced area for the protective curtilage around the homestead, and the explicit identification of elements not of heritage significance.

The National Trust also supported the application of the overlay and the property's identified heritage significance. Many resident submitters<sup>7</sup> also referred to the heritage values of the property.

Of note was Submission 17 from the ex-CEO, City Engineer and Director of Planning in the former City of South Barwon. He advised that the City had commissioned a book on the municipality's history in 1985 in which Claremont was included amongst a collection of significant early homesteads. He said that Claremont was the only homestead in that collection still standing.

The Council submissions included that historical accounts of the Baum family did not negate the appropriateness of the Heritage Overlay but were complementary.

#### 2.1.3 Discussion

There was no argument put against the local level heritage significance of this property. No less than three heritage experts have supported the significance of the place based on the statement of significance. Submission 17 adds weight to the assessment of significance based on rarity.

<sup>7</sup> Around eleven of them according to Submitter 35

The Panel agrees with the Council submission that while there are other means of recognising the significance of the Baum family as was asserted by the previous owners, this does not obviate the need for the overlay. The significance of the place is based on multiple grounds, not all of which relate to the Baum family.

While the significance of the place was not challenged, there nevertheless was some disagreement in submissions and evidence about the elements of significance and the approach to be taken to managing them. These matters are discussed below. They include the question of the extent of the Heritage Overlay and the area of significance shown in the design guidelines. The Panel views these issues as not challenging the inherent significance of Claremont but rather are essentially management issues.

#### 2.1.4 Conclusion

The Panel concludes:

- the property is clearly of local heritage significance on the bases set out in the statement of significance.

## 2.2 Building condition and its consequences

### 2.2.1 The issue

The poor condition of the buildings on the property, in particular that of the homestead, was a major issue in this case. Consideration of condition gave rise to a number of related issues.

### 2.2.2 Submissions

Three submissions opposed the listing of the property. These were from the now former owners and a relative who, in response to Panel directions, nevertheless indicated that they wished the Panel to consider their submissions.

Submission 34 included:

Internally, Claremont is in a very poor condition. Rooms are structurally damaged with significant cracks on load bearing walls and chimneys. The skillion room has rotten floor boards and the walls and verandah are significantly compromised. Master Builder – Jay Walker from View Constructions - stated: *There wouldn't be one thing in the house you would keep. It would have to be a total rebuild.*

The submission included a report on the building elements and rooms of the homestead by the builder. It referred to large cracks, rotten flooring, dry rot including in the roof beams, plaster in poor condition, walls dropping at their foundation, windows structurally compromised.

The submitter argued that the complete rebuild required for the homestead would not be conservation but a re-creation.

It was further said that the large outbuilding to the south was *“in extremely poor condition with unsafe flooring, rotting wall linings and roofing which has blown off...”*

Submission 35, from the relative of the owners, refers to *“only the bare essential maintenance”* having been undertaken since the 1970s. It also referred to the requirement for a complete rebuild and the resultant reproduction building.

Submitter 36 provided photos showing the deteriorated condition of elements of the site. He requested that a structural report be carried out by the Council for the property.

Submitter 35 also raised the issue of the financial impost on the owners of the restoration and repairs. The submitter referred to the anticipated total land package value dropping *“by*

*approximately \$500,000 based on Real Estate Agents estimates and offers received by prospective purchasers.”*

The submission went on to say:

The estimated cost to rebuild the homestead and comply with the requirements of the proposed overlay would be many hundreds of thousand dollars. And on top of that there would be development costs and ongoing maintenance.

Much of the remaining land around the proposed Heritage area would be largely unusable for future subdivision due to size restrictions and access problems.

The submitter queried:

Who is to pay for all this?

Submitter 5, while supporting the Amendment, expressed concern about the structural integrity of the homestead having been affected by a recent tornado. Other written submissions noted the poor state of the homestead. One referred to ‘demolition by neglect.’

The submissions for Ms Lock at the Hearing also referred to the issue of condition. It was submitted that the existing state of dilapidation and the extent of repairs required to make the homestead habitable were significant. Mr King quoted from the structural engineering report on that building prepared by Block 1 for the Council:

Please note that the historical significance and 1850s character of the subject site is appreciated. However, this report needs to give a frank assessment of the structural condition of Claremont house, in order for heritage to make a considered opinion as to the heritage value of the building, knowing that major portions of it cannot remain and must be demolished and entirely rebuilt, namely the external masonry walls, most internal walls and the slate roof gutters.

He also referred to the peer review of that report by OPS Engineers, also engaged by the Council. It concluded in relation to the earlier report:

In summary, we tend to agree with the scope of the observed deterioration and the treatment of the timber roof, ceiling, floor and verandah decking elements. Where we differ in our recommendations is the extent of the external and internal masonry walls and chimneys that require demolition and the ways to help ensure the long-term performance of the walls and floor structure. This is partly due to differences in opinion of the composition of the walls, but also in our consideration of ways to resist the impact of seasonal ground movements on the walls and methods to help limit observed cracking to enable maximum retention of the existing fabric while promoting a serviceable structure.

Mr King did not argue that condition was a factor that was relevant to whether the place had significance, however, nor did he say that it should preclude heritage listing.

Rather, while acknowledging there are differences of opinion in the condition reports as to the required works to restore and conserve the homestead, he said that both reports indicated a significant degree of dilapidation and a lack of structural integrity. Accepting that there had been no costing of any such works, he nevertheless suggested that practically and economically the repairs would be likely to be beyond the means of all but a few. Mr King said that this could lead to the building in the Heritage Overlay (the homestead) remaining uninhabitable and fenced off, subject to further deterioration and vandalism. He said that this would be an unacceptable outcome and not in accordance with the heritage policies of the Planning Scheme.

He suggested that therefore incentives needed to be provided to assist in avoiding such an outcome.

One incentive, he said, would be to provide statutory support for allowing demolition of the building if it were found that repair and upkeep would impose an unreasonable financial burden and provided an appropriate replacement building was constructed.

He suggested that a new Clause 3.7 should be included under the Heritage Management Objectives of the Incorporated Plan as follows:

Allow demolition of the Claremont Homestead where it can be shown that conserving and repairing the building would impose an unreasonable financial burden and conditional on a suitable replacement building being constructed.

He also argued that another conservation incentive would be to allow uses of the place which are ordinarily prohibited by the zone as provided for by Clause 43.01-9.

The Council also referred to the Block 1 and OPS Engineers reports.

The Council submission referenced the following extracts of the Block 1 report:

The report by Block 1 Pty Ltd, which has been circulated to all parties, has found that the homestead “shows pronounced levels of deterioration to the slate roof and external masonry walls including two chimneys (that are leaning and present a clear danger to any occupants or visitors.) Most of the masonry walls (external and internal), and the slate roofing, is unrepairable and requires full replacement.” The report paints a clear picture of deterioration of the dwelling and concludes that the “only existing elements of Claremont Homestead that can remain (in part) are the roof framing, and subfloor timber framing, along with the two northern chimneys. It’s possible parts of the verandahs might be salvageable, but only if heritage desired, which nonetheless would require full reworking with probably most of the timbers replaced.

The following comments were made with respect to the OPS Engineers review:

27. The Peer Review of this report by OPS Engineers is comprehensive and paints a reasonable picture of what work will be required to conserve and repair the building.
28. The report states that the structure doesn’t warrant the level of demolition and rebuilding work proposed in the Block 1 Report. As stated at page 17 of their report, OPS Engineers ends their report as follows:

*“In summary, we tend to agree with the scope of the observed deterioration and the treatment of the timber roof, ceiling, floor and verandah decking elements. Where we differ in our recommendations is the extent of the external and internal masonry walls and chimneys that require demolition and the ways to help ensure the long-term performance of the walls and floor structure. This is partly due to differences in opinion of the composition of the walls, but also in our consideration of ways to resist the impact of seasonal ground movements on the walls and methods to help limit observed cracking to enable maximum retention of the existing fabric while promoting a serviceable structure.”*

The Council opposed consideration of condition as a factor in determining the heritage listing of the property. Ms Williamson referred in this respect to a number of Panel reports which generally held that condition is not pertinent to the assessment of significance when an amendment is being considered<sup>8</sup>. Rather, those reports have supported the view that condition could be a pertinent factor in determining a permit application once the overlay was in place. She also referred to the Melbourne C207 Panel report where it was said that condition might become pertinent to listing on rare occasions when renovations and repairs would be so extensive that the true nature of the original building would be lost:

We consider it is possible that condition may become relevant in the circumstances where the necessary renovations of a building, which is being considered for listing/retention, are so extensive that the original fabric of the building is in large measure lost and the form and nature of the heritage place would no longer be able to be appreciated. In that way, the significance of the place would be degraded. Again we expect that the certainty threshold would be a very high one.

The Council submitted that while the homestead was run down and in need of works to restore its utility, it is substantially intact and retains its heritage values. It was said that whilst the Block 1 report has identified some serious problems with the building, the OPS Engineers report has

<sup>8</sup> Such as Moreland C149, Greater Geelong C359

concluded that the situation is not irredeemable. It was said that listing under the Heritage Overlay would allow for restoration possibilities to be explored.

So far as Mr King's arguments about providing incentives which might assist in conserving the homestead are concerned, it was the Council submission that the Incorporated Plan design guidelines had taken a balanced approach to protecting the significant aspects of the homestead and providing opportunities and constraints for subdivision and development.

The Council also noted with respect to the application of Clause 43.01-9 and allowing otherwise prohibited uses that this clause is generally used for large complex sites, which is not the case here, and a place of assembly is a discretionary use in the GRZ1 offering some flexibility of use.

With respect to alternative uses, Submission 35, in reference to the use of the homestead as a new family home, included that *no other use of the property other than development and housing has been offered by prospective purchasers or any other source.*

### 2.2.3 Discussion

The Panel agrees with the findings of previous Panels that condition should not ordinarily play a role in assessing the heritage significance of a place and that it is a factor which can be relevant later in considering a permit for works under the overlay.

The Panel also agrees with the view in Melbourne C207, however, that on rare occasions condition may become relevant where a building or other structure is in such poor condition and the necessary repairs and restoration are so extensive that a true understanding of the place would be lost once repaired and a reproduction building created. The Panel agrees that this would not be consistent with heritage objectives as expressed in policy.

The Panel has considered whether this is just such a case. Certainly, some of the written submissions directly asserted this would be so.

The Panel, however, does not consider the Melbourne C207 maxim applies in the case of Claremont. The Panel has not been persuaded that the only outcome for this building and its extensive repairs is a reproduction homestead as referred to in the Melbourne Panel report.

While the previous owners' submissions asserted there is substantial building deterioration, and all of the engineering reports confirm major structural and other building problems (and they are clear on a site view), the Panel notes that the peer review report by OPS Engineers does offer practical solutions to some of these problems. The report in measured and professional language discusses and recommends repair options rather than simply 'throws up its hands' at the dilapidated condition<sup>9</sup>. The report describes an approach to restoration of the homestead that would include retention of much of the masonry fabric.

While the engineering/building firms were not called to give tested evidence at the Hearing, in the Panel's view, the OPS Engineers report suggests credible reasons for the structural failings of the homestead<sup>10</sup> and offers a considered approach to remedial works. This peer review report also has a more likely finding of double brick construction for the walls of the homestead than the single brick construction suggested in the initial engineering assessment.

<sup>9</sup> The report by Block 1 uses unusually flamboyant language to describe the deterioration and basically offers no real solutions to overcome structural problems

<sup>10</sup> The shrink and swell characteristics of the clay soil on the site

Overall, the Panel does not consider that the situation here is such that condition should influence whether the homestead building should be heritage listed. An almost entirely reproduction building is not an inevitable outcome.

The Panel also agrees with the Council submission that a heritage listing would enable exploration of restoration possibilities for the building.

The Panel also notes that the Melbourne C207 Panel report also discusses the issue of an inevitable complete demolition as a circumstance where condition may play a role in a listing consideration. This discussion appears in a section dealing with the broader economic effects of an amendment. It refers to the public costs which might be incurred by listing of a heritage place and permit processes having to be gone through to reach a complete demolition outcome which is recognisable as inevitable before listing.

In the present case, the principal submissions about costs were about private costs to the owners. These owners have since sold. There is now no clear proposal for complete demolition at the present time: Mr King advised that his client simply wishes to sell off a lot containing the significant heritage elements and proceed to develop the remainder of the land.

The Panel is of the view that, in the same way that consideration of the engineering reports does not lead to the conclusion that a largely reproduction building is an inevitable outcome, they are not persuasive that complete demolition is inevitable.

So far as the suggestion that incentives should be provided which might assist in finding a champion for the building's repair, or at least facilitating that repair, is concerned, the Panel considers that there is merit in this objective, but considers the particular recommendations in this case to be inappropriate.

The Panel considers the additional objectives clause recommended by Mr King, viz:

Allow demolition of the Claremont Homestead where it can be shown that conserving and repairing the building would impose an unreasonable financial burden and conditional on a suitable replacement building being constructed

is not logically consistent with an intent to conserve the building; and does not sit well with the proper approach to consideration of economic impacts in planning.

The Panel cannot accept that to assist the preservation of a building one should include a planning provision that it can be demolished even if only in certain circumstances. The submissions recommending this provision can only be described as oxymoronic.

Secondly, in relation to those circumstances being the imposition of 'an unreasonable financial burden' (presumably on the owner), the Panel notes that private financial consequences are not ordinarily considered in planning permit decisions. The economic matters normally considered in relation to heritage permits will be ones of a public or community nature.<sup>11</sup> At best, whether the cost of repairs to a building are 'economic' in terms of an intended use and development outcome may be relevant in permit decision making.

Nevertheless, the Panel is aware that private economic matters or financial burdens have sometimes been considered in permit decisions by relying on the objectives of planning at section 4(1)(a) of the Act and its reference to fair and orderly development. In this respect the requested clause is unnecessary.

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<sup>11</sup> This is also discussed in the Melbourne C207 Panel Report

So far as the proposal to allow otherwise prohibited uses is concerned, the Panel considers that this would be inappropriate in the context of the relatively quiet immediate residential neighbourhood. The use of land as a place of assembly is discretionary in the GRZ1 and the use covers a wide range of particular uses. There are also a wide range of residential uses allowable or as of right in the GRZ1. It would seem that no alternative non-conforming use has been identified by the current owner in any case<sup>12</sup> and the Panel notes the previous owner's comments about the absence of proposed alternative uses.

#### 2.2.4 Conclusions

The Panel concludes:

- While the homestead (as well as the other buildings on the site) is clearly in poor condition including in terms of structural integrity, the Panel does not consider that either complete demolition or extensive repairs creating a reproduction building are inevitable outcomes. Accordingly, the Panel does not believe that the submissions opposing the Amendment based on building condition should be allowed.
- So far as the more oblique Hearing submissions on condition presented for Ms Lock are concerned, for the reasons discussed above, the Panel does not support either allowing permits to be sought for non-conforming uses (Clause 43.01-9), nor the proposed additional clause in the design guidelines referring to possible demolition of the building intended to be conserved by the controls.

### 2.3 Extent of the Heritage Overlay and as of right two lot subdivision

#### 2.3.1 The issues

The issues are whether:

- it would be appropriate to introduce a permit exemption in the Incorporated Document that would allow a two lot subdivision as of right under the Heritage Overlay to create a central homestead lot (also incorporating the large pine tree) separate from the other parts of the site which might be subject to development
- the extent of the Heritage Overlay should be confined to the homestead lot rather than applying to the whole property.

#### 2.3.2 Evidence and submissions

These issues were raised in submissions and evidence for Ms Lock.

Ms Lock proposed that the two lot subdivision be added as an additional permit exemption clause in the Incorporated Plan as follows:

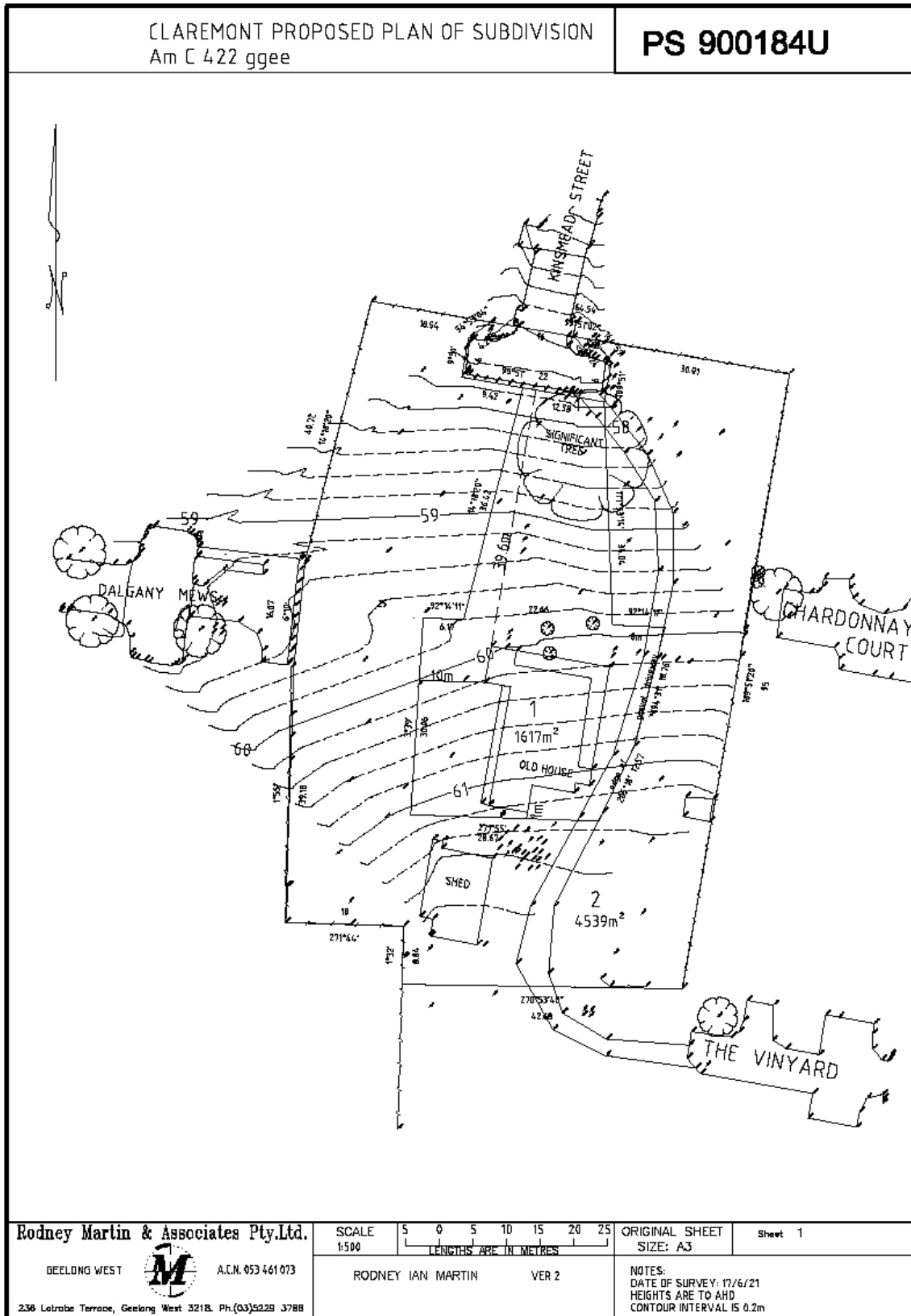
2.6 To subdivide the land into two lots generally in accordance with the plan of subdivision in Appendix 2.

Appendix 2 to the Incorporated Plan would include the subdivision plan included in Figure 7.

Lot 1 of the two proposed lots broadly accords with the area of significance shown on the plan in the exhibited Incorporated Plan, with a key difference being that all of the homestead rather than only its northernmost section under the front two roof bays would be included on Lot 1. The southern boundary of Lot 1 would be located at its closest point one metre to the south of the rear kitchen wing of the homestead.

<sup>12</sup> There was some off-hand suggestion that an office use might be an option

Figure 7 Appendix to Incorporated Plan as proposed by current owner



This proposal would facilitate the two lots being sold separately, thereby facilitating the residential development of Lot 2 that is already anticipated in the design guidelines.

The further submission for Ms Lock was that the boundary of the Heritage Overlay should be amended so that only Lot 1 would be included in the overlay.<sup>13</sup>

This was supported in Ms Riddett's evidence. She said that the wider curtilage beyond the area of significance (or Lot 1) did not add anything meaningful to interpretation of the site now that the orchard remnants have been removed.

The Council opposed these changes as premature. It acknowledged that in future, perhaps after some of the land outside the area of significance was developed, the overlay may be reduced in area, but at this stage it was appropriate to retain it as exhibited so as to allow proper consideration of heritage matters.

So far as the subdivision exemption was concerned, Ms Williamson said that the subdivision had not been properly assessed under the Clause 56 provisions of the Planning Scheme nor had any referrals to servicing authorities and the like been undertaken. The difference between the area of significance and Lot 1 were noted.

### **2.3.3 Discussion**

The Panel agrees with the Council view that the changes proposed here are premature.

The Panel does not agree with Ms Riddett's view that the boundary of the Heritage Overlay should be redrawn on the basis that the grassed area of the site does little to assist the interpretation of the place. Assisting interpretation is only part of the rationale for how a boundary is to be drawn around a heritage place.

The key purpose of the Heritage Overlay is to enable heritage matters to be considered when planning decisions are made. Even though the Amendment envisages that an undeveloped curtilage would be retained around the significant elements on the site, offering them a high level of heritage protection, the Panel considers it appropriate that when development would occur beyond the curtilage, there should be a clear mandate to consider heritage impacts if necessary. For example, the site's east-west dimension is not so great that issues of crowding of the heritage place may not arise, especially to the east of the homestead. The application of the Heritage Overlay to the entire site nevertheless is accompanied by an Incorporated Plan that clearly supports or allows development on the part of the site outside the area of significance.

The Panel considers that inclusion of the grassed area beyond the area of significance within the boundary of the Heritage Overlay as proposed in the Amendment is appropriate.

The Panel also notes, so far as the subdivision exemption is concerned, that permission for subdivision of the land under the GRZ1 would continue to be required and there would be little gain in terms of development facilitation if approval under one part of the Planning Scheme rather than two parts were required.

The Panel agrees that it would be premature to introduce a permit exemption for subdivision even if it was only generally based on the plan in Figure 7. Subsequent requirements on any subdivision approval under the GRZ1 could lead to inconsistencies between allowable plans and a need to amend the Incorporated Plan further.

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<sup>13</sup> It was alternatively suggested for Ms Lock that the HO boundary should be amended so that the area of significance only would be included within the overlay.

### 2.3.4 Conclusion

The Panel concludes:

- It is appropriate that the whole of the site be included in the Heritage Overlay as proposed by the Council and the submitter's proposal for allowing a two lot subdivision as of right under the overlay should not be accepted.

## 2.4 Elements of significant and their management

### 2.4.1 The issues

The issues are whether:

- the elements of significance on the site are correctly identified, namely some or all of the homestead, the Norfolk Island Pine tree, the large and the small outbuildings
- the area of significance is therefore correctly defined in relation to the significant elements; and whether the content of the Incorporated Plan is appropriate to the conservation of the elements of significance in other respects.

### 2.4.2 Evidence and submissions

#### (i) The identity of the elements of significance and the area of significance

The Council's position on the elements of significance on the site is represented by the proposed plan included in the incorporated design guidelines (refer section 1.5).

The plan identifies (in red outline) an area which contains items of primary significance to be retained with minimal change, and their spatial setting (or curtilage) to be retained free of buildings, walls or solid fences. The items included in the defined area are the part of the homestead under the front two roof bays, exclusive of the northwest addition and enclosed eastern verandah; and the Norfolk Island Pine.

The area of the homestead under the rear or third roof bay, rear skillion addition, enclosed eastern verandah and the large storage shed are shown as items of contributory significance (in yellow outline). The plan notation indicates that they should be retained, but may be altered or extended; and indicates that due to its extremely poor condition, the shed can be retained, altered, extended, removed or replaced.

Marked as items of little or no significance (in green) which may be retained, altered, extended, removed or replaced, are the small shed on the eastern boundary and the mid-20<sup>th</sup> century northwest extension to the homestead.

Concerning the pine tree, the only opposition expressed in submissions to its heritage significance and retention is in Submission 35 which asserted that the tree is commonplace and of no significance beyond being a local landmark.

Some resident submitters referred positively to the landmark qualities and heritage values associated with the tree.

Mr King submitted that his client had originally intended to call Mr Galbraith, an arborist, to give evidence about the health and longevity of the tree. This was with a view to opposing heritage tree controls in the schedule to Clause 43.01. He said that, when asked to assess the tree, Mr Galbraith had advised that the tree was healthy and had a safe useful life expectancy of 40 years. Accordingly, Ms Lock did not challenge the significance of the tree which is believed to be of a considerable age nor the application of heritage tree controls.

The small nondescript metal shed on the eastern boundary was not the subject of any supporting submission.

The large storage shed/stables building at the rear of the homestead, which the Council identified as of contributory significance only, was however more controversial.

The National Trust written submission (Submission 19) argued that the significance of the outbuilding should be upgraded as it is important to the agricultural history of the site. It should be shown, the Trust said, as of primary significance like the homestead and included in the defined area of significance.

Submitter 13 included the following about elements of significance:

... the shed at the rear of the property makes it had (sic - hard) for a developer to use that parcel of land for something meaningful. I think the priority is largely the homestead, surrounding gardens and the Norfolk pine at the front of the property. If a concession needs to be granted then I'm not completely against the removal of the shed at the rear of the property to create a land space or family home that opens onto Baum Park, in lots of ways it would be completely fitting.

Submitter 12 opposed reference in the Incorporated Plan to allowing the demolition of the large shed to the south of the homestead. Submitter 28 supported the value of the shed, saying that a structural engineering report should be required to support any works application or demolition proposal.

Ms Riddett's evidence was that in her view consideration should be given to adding the area of the homestead under the third roof bay and the rear kitchen wing as elements of primary significance. While she did not go so far as to recommend interior controls be applied to the homestead, Ms Riddett was somewhat entranced by the originality of the rear kitchen describing it as '*highly intact*' and '*probably unique in Waurm Ponds*'. She was nevertheless unsure of the period of construction of the kitchen wing beyond it appearing to be 19<sup>th</sup> century. She considered the state of dilapidation of this part of the homestead to be rectifiable.

Ms Riddett's evidence also included that the defined area of heritage significance should be extended southwards to include the southern wing of the homestead.

Submitter 19 also supported retention of the third or rear hipped roof of the homestead building.

The National Trust called Dr Walker who is qualified in genetics, agricultural science and fine arts as a witness to argue for a wider area of significance to be defined (generally 10 metres out from the buildings) based partly on the value to the community of urban greening<sup>14</sup>.

## **(ii) Other aspects of the Incorporated Plan**

The issue of the scale of development on the developable part of site was an issue for many submitters. Opposition was expressed to double storey development in a number of the nearby residents' submissions. Clause 3.6 of the design guidelines indicates that double storey development would only not be allowed within 10 metres of the eastern, northern and western sides of the homestead.

Submitter 7, for example, suggested that the total site should be restricted to single storey development. Submitter 12 also supported single storey only development and that said that new dwellings should respect the character of the homestead.

Submitter 19 suggested that sight lines between the homestead and Baum Park should be retained.

<sup>14</sup> Or biophilic design

The National Trust suggested that there should be control over the construction of driveways and carparks on the site so as to retain heritage values rather than an exemption for these works as was exhibited. The National Trust submitted that no alterations to rooflines should be allowed. Interior controls for the homestead were also sought by the National Trust.

The Council opposed application of interior controls and submitted that the exemption for driveways and roadways etc would apply only outside the area of significance.

Ms Riddett was not supportive of Clause 3.5 of the proposed Heritage Objectives in so far as they envisage attic room extensions to the southern elevation. She said that such development would necessitate removal of the kitchen wing and be out of proportion with the retained part of the homestead.

Submitter 12 asked that any solar panels only be allowed on the large shed so as to preserve the slate roofing of the homestead.

It was also Ms Riddett's evidence that it would be clearer in terms of the management of the site if elements not of significance were listed in the statement of significance for the place. She suggested a number of elements which could in her view be demolished without having any adverse effect on the heritage significance of the homestead. They included the 1950s addition to the northwest corner of the house; the existing fabric but not the plan form of the verandah; the addition to the southeast corner of the verandah; all fencing, gates, bollards and the like; the shed against the eastern boundary; and the large shed to the south of the house.

### **2.4.3 Discussion**

In terms of the identity of the elements of significance, the pine tree was virtually not challenged. It is in the Panel's view appropriate to be highlighted as an item of primary significance and located within the area of significance defined on the plan in the Incorporated Document, as proposed in the Amendment.

The small unremarkable tin shed on the eastern boundary of indeterminate age was not said to have any significance. It is appropriate that it be identified as an item of little or no significance as shown, and should not be included within the boundary of the area of significance.

So far as the rear outbuilding is concerned, the Panel believes that it is described appropriately in the Incorporated Plan as a contributory building and its location outside the principal area of significance is also appropriate. The Panel also considers the commentary on the shed included in the plan legend to be satisfactory. There was no conclusive information presented about the development of the shed and what components are significant. In the circumstances of its extreme dilapidation and its lack of utility in relation to residential use of the land, its demolition does appear inevitable.

Nevertheless, the Panel notes that the exhibited schedule to Clause 43.01 indicates that no notice exemption under Clause 43.01-4 applies to the outbuilding on the land. This would appear to be reference to either this building alone, or to it together with the eastern boundary shed. This provision in the schedule, which assumes a permit requirement, is inconsistent with the proposal that, in the legend to the plan in the exhibited Incorporated Plan, the small outbuilding is referred to as of little or no significance and the larger shed as suitable for removal. Further, Clause 2.2 of the Incorporated Plan provides a permit exemption for the removal as well as alteration of both these buildings.

The Panel considers that a permit exemption is appropriate for the small non-descript shed on the eastern boundary but given some interest may lie in the larger shed as a relic of the agricultural use of the land, its alteration and removal should be subject to permit. This would at least allow recording of the structure prior to its likely demolition. The schedule to Clause 43.01 needs to be corrected so that the 'outbuilding' not exempt from notice is clearly identified as the large shed south of the homestead. The permit exemptions at Clause 2.2 of the Incorporated Plan also need to be amended to remove reference to this shed.

Concerning the homestead itself, the Panel considers that the whole of the building should be included within the boundary of the area of significance by extending the boundary further southwards as is supported in evidence and submissions by the current land owner.

The Panel has considered the National Trust submission and evidence requesting a larger area of significance around the homestead and larger outbuilding based on urban greening benefits. The Panel, while it appreciates the values of open space as described by Dr Walker, considers that these are benefits which are merely incidental to the benefits to heritage building conservation of providing an appropriately scaled curtilage. In this case, the Panel considers the defined area of significance adequate subject to a southward extension.

The Panel also considers that the assessed significance of the various parts of the homestead as shown on the exhibited plan is satisfactory and should be retained.

There was no debate that the area of the homestead under the first two roof bays, the verandah footprint and chimneys are significant heritage elements. Nor was there any opposition to the designation of the northwest extension to the homestead as not significant. In fact, the consensus was that it would be beneficial to the presentation of the homestead for it to be removed. It is also appropriate that the extension on the western verandah and the rear wing remain shown as contributory elements only. In the former case, it is an inappropriate alteration to the original verandah. In the latter case, there are some issues around its origins.

So far as submissions on other aspects of the Incorporated Plan are concerned, the Panel considers:

- the proposed objectives for the different height limits on the land are adequate to protect heritage values of the homestead and appropriately respond to the scale of neighbourhood housing
- the exemption from permission for driveways etc at Clause 2.1 of the Incorporated Plan should be retained but it should be qualified to apply only to the developable portion of the land beyond the defined area of significance. It was the Council submission that the Amendment already provided for this but it seems to have been overlooked in the Amendment documentation
- reference to allowing attic room additions to the southern elevation of this quite 'low slung' homestead should not be included in the design guidelines (at Clause 3.5) as recommended by Ms Riddett. This also responds to the National Trust submissions opposing allowable changes to the rooflines of the homestead
- no particular sightlines to the homestead have been identified as significant and it is not critical that the view between the park to the south and the homestead be retained
- the provisions in the Planning Scheme and the Incorporated Document (at Clause 2.4) relating to the siting and visibility of solar panels are adequate to manage any such installation in this heritage place. The Panel also notes the need for roofing repairs to the homestead as mentioned in the engineering reports

- a list of non-contributory elements of site development in the statement of significance is not required given the description of elements of significance in the Heritage Management Objectives and the information provided on the plan in the Incorporated Document
- no adequate justification was provided for the suggested inclusion of interior controls to the homestead. The case for such controls needs to be convincingly made out as noted in other Panel reports.

#### 2.4.4 Conclusion and recommendations

The Panel concludes:

- the content of the Incorporated Plan should be retained as exhibited subject to the minor changes recommended in this report.

The Panel recommends:

- **Amend the 'Claremont', 12-16 Kinsmead Street, Waurin Ponds, Design Guidelines Incorporated Plan, January 2021 to:**
  - extend the boundary of the area of significance southwards so that all of the homestead building falls within the area of significance
  - in Clause 2.1, delete the words 'with (sic) the site' and replace with 'on that part of the site beyond the area of significance shown on the plan forming part of this document'
  - in Clause 2.2 delete the words '*and/or the large shed to the south of the homestead*'
  - in Clause 3.5, delete reference to allowing attic room additions to the southern elevation of the homestead.
- **Amend the schedule to Clause 43.01 as relates to Claremont by clarifying that the outbuilding referred to as not exempt under Clause 43.01-4 is the outbuilding to the south of the homestead.**

## 2.5 Permit exemption for repairs and maintenance

### 2.5.1 The issue

The issue is whether it is necessary or appropriate to provide for permit exemptions under the Heritage Overlay via the Incorporated Plan for minor building repairs and maintenance, as well as maintenance of the Norfolk Island Pine.

### 2.5.2 Submission

This was a suggestion made on behalf of Ms Lock. It was said that it would be inappropriate in terms of delays to have to undergo a permit process for such works. It was recommended that a new Clause 2.7 be added to the Incorporated Plan to allow for repairs and maintenance to occur without a permit. No wording was suggested for the new clause.

This suggestion was not supported by Council.

### 2.5.3 Discussion

The Planning Scheme already contains provisions which relate to repairs and maintenance.

Clause 62.02-1 includes as buildings and works always exempt from planning permission. Relevantly, they include '*gardening*'.

Clause 62.02-2 includes buildings and works exempt from planning permission unless there is a specific requirement for permission elsewhere under the Scheme. Most relevantly, the list includes '*repairs and routine maintenance to an existing building or works*'; and '*domestic services normal to a dwelling*'.

The Heritage Overlay requirements in part set aside the Clause 62.02-2 exemptions. The overlay requires permission for buildings and works including *'domestic services normal to a dwelling if the services are visible from a street (other than a lane) or public park'*; *'carry out works, repairs and routine maintenance which change the appearance of a heritage place or which are not undertaken to the same details, specifications and materials'* (Emphasis added).

Read together the provisions suggest that some repairs to the buildings on the site might be carried out without a planning permit. They would include services works not visible from the public realm and other works that do not change the appearance of the place and are undertaken to the same details as the originals.

Such qualification upon the permit exemptions are appropriate in relation to a heritage place where the primary purpose is to conserve its values. The works to a heritage place, including repairs, need to be done in such a way that heritage values are not undermined. It is appropriate that new works, including repairs, without details matching the original, should be assessed for their impacts on the values of the place.

In the Panel's view it would not be appropriate to provide more extensive exemptions for repair works which did not meet the qualifications above.

If the current owner wishes to minimise delays occasioned by permit applications, the preparation of a conservation management plan could be a means to identify required works which might be applied for as a package.

So far as maintenance of the Norfolk Island Pine is concerned, the Heritage Overlay imposes permission to lop a tree where tree controls are included in the schedule to Clause 43.01 - as is proposed in this case.

It would seem that Clause 43.01-3 offers the opportunity to provide a permit exemption in this regard in the Incorporated Plan as the permit exemptions are not confined to building works.

Mr King did not suggest any wording for the exemption and the Panel considers that even in relation to the tree maintenance some careful wording is required. It is suggested that the exemption might include reference to lopping which is designed to promote tree health but might also impose a frequency limit and an extent of lopping. If more extensive or frequent lopping was desired, an application for permit would be required. Advice from an arborist on the allowable frequency and extent of lopping for inclusion in the exemption would appear to be useful.

#### **2.5.4 Conclusion and recommendation**

The Panel concludes:

- no additional permit exemptions for buildings and works repairs and maintenance should be added to the Incorporated Plan but an exemption in relation to lopping or pruning of the heritage tree to promote its health might be included.

**The Panel recommends:**

- **the Council consider adding an additional exemption to Clause 2 of the 'Claremont', 12-16 Kinsmead Street, Waurin Ponds, Design Guidelines Incorporated Plan, January 2021, relating to lopping and pruning of the Norfolk Island Pine to promote tree health, which might be subject to limitations such as frequency and extent of lopping**

## 2.6 Requiring restoration and reinstatement

### 2.6.1 The issue

The issue is whether it would be possible or desirable to require or encourage reinstatement of various works and structures associated with the historic use of the property.

### 2.6.2 Submissions

A number of submitters expressed a wish that certain built form elements or vegetation associated with the historic use of the property should be reinstated.

Submitter 12, for example, requested that the large shed and the outdoor privy be required to be restored and that a large, elevated water tank such as might have serviced the household before reticulated water supply was introduced should be built. He also requested the reinstatement/repair of the well on the property.

The National Trust suggested in their written submission that the controls should require reinstatement of an apple orchard to the west of the homestead which should include heritage apple varieties. A number of nearby resident submitters also favoured orchard reinstatement.

### 2.6.3 Discussion

There are two ways that reinstatement issues might be statutorily addressed for the property under the present Amendment. They might be specified in the Heritage Management Objectives in the proposed Incorporated Plan<sup>15</sup> or could be specified as permit exemptions. The objectives do not enable mandating such works but they might be expressed as desired outcomes.

The Heritage Management Objectives as currently drafted, however, are about management of those elements of heritage significance that remain on the site, rather than addressing what new improvement or enhancement works are to be undertaken.

In the absence of a conservation management plan for the site, the Panel considers that this approach is appropriate and consistent with the management of land under planning controls.

With respect to including these enhancement works in the permit exemptions section of the Incorporated Plan, it would seem that replanting of an orchard in a defined area, restoration of a well etc might be included. However, the Panel considers that it would be preferable that such works be subject to heritage assessment and therefore subject to permit.

The Panel advises that it considers that these restoration/reinstatement intents are worthy ones, but in reality they cannot be mandated and can only be properly advanced in the context of the broader development of the site as a whole.

The Panel does note that a useful suggestion was made in Submission 19 with respect to orchards. The submitter suggested that, rather than on-site planting, vines and orchard planting might occur on part of Baum Park to the south as a means to refer to the agricultural past for this area. The Panel considers that this would be fitting. These public works are something that the Council may wish to consider.

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<sup>15</sup> They could perhaps be included a later incorporated plan dealing with more detailed management arrangements

## 2.6.4 Conclusion

The Panel concludes:

- it is not appropriate to include additional enhancement or reinstatement works in the Incorporated Plan.

## 2.7 Are there other issues pertinent to consideration of the Amendment?

### 2.7.1 The issue

The issue is whether other matters raised in written submissions are matters which recommend against aspects of the Amendment content or suggest that alteration to the content of the Amendment is appropriate.

### 2.7.2 Submissions

Many of the written supporting submissions from neighbours indicated a desire to retain walkway access through the subject property to the park to the south and to nearby streets as had been informally allowed in the past.

Submission 34 from one of the previous owners, however, included:

Neighbours are used to walking through the property at their will and using it as a short cut from Kinsmead to the Vineyard and from Chardonnay to Baum Park. Ken Baum enjoyed these walk throughs and would stop and have a chat with the walkers. However, with Ken's passing, the property is very vulnerable and even with Keep Out signs people still use it as a thorough fare. Neighbours don't want to lose their access even though the Baum family actively discourage the practice.

Ms Lock expressed no support for continuing access through the property and the site retains the 'keep out' signs.

The Council submitted that the matter of pedestrian access might be a something addressed when subdivision of part of the land proceeded.

A number of submissions from neighbours expressed concerns that some or all of the three now dead end roads terminating at the property might be linked up if the land was to be developed for housing, and the quiet amenity of their neighbourhood would be disturbed.

Submitter 35 included that no consideration had been given in preparing the Amendment to access to the site when developed nor to road planning. It was suggested that the defined area of significance located centrally to the site could make road arrangements difficult.

The Council submitted that like the walkway issue, roading arrangements could, and indeed would, be a matter addressed in any subdivision of the land, including the possible creation of through-roads in the immediate neighbourhood.

Other submissions by neighbours opposed an increase in housing development on the site as a part of the neighbourhood, especially development of additional multi dwellings, arguing that this would have adverse amenity consequences, increased traffic impacts and would affect essential services. One submitter (15) opposed any housing on the subject site. One supporting submitter (26) was concerned that two storey development on the subject site would affect his privacy, light and vista. Submitter 27 suggested that lot sizes should be commensurate with those in the surrounding area – no smaller than 700 square metres in the north and west, and 450 square metres on the east and west (sic – south?).

The three objecting submitters all expressed their displeasure and disapproval of the Council failing to notify them in advance of proceeding with the introduction of heritage protection for the property.

### **2.7.3 Discussion**

The Panel does not consider that any of these issues give rise to changes to the Amendment or would preclude its adoption by the Council.

The issues of walkways and road planning, amenity impacts, development densities and the like, are all matters which routinely receive attention in assessment of development applications under zoning controls, as was submitted for the Council. They are not issues which go to the assessment of the heritage significance of the place or of measures to protect that significance.

The Panel understands that the former owners of the land were aggrieved that the Council did not consult them about heritage controls. It appears that this is an issue in relation to the interim Heritage Overlay as well as the permanent control under the Amendment.

The Panel considers that all too often, the situation arises, in response to a mooted demolition or development, that urgent action is required to introduce controls over an unprotected heritage place which was assessed as of significance years or even decades earlier. Such urgent action often precludes any consultation with owners. It is a regrettable fact, however, that resources are not always available to fully implement heritage studies immediately upon their completion. The Council advised in the case, however, the additional funding has recently been allocated to implement outstanding recommendations of the Outer Areas Heritage Study.

The process around the introduction of proposed permanent heritage controls, however, generally offers the opportunity for owners to have input to the decision, including through Panel hearings. While earlier consultation with owners might shape a different exhibited heritage amendment, changes to an amendment by the planning authority up to the time of adoption (post Panel) are possible.

In this case, the owners who objected to the lack of consultation have sold the property on, their original objection has been considered by the Panel, and late input to the process by the new owner has been allowed.

### **2.7.4 Conclusion**

The Panel concludes:

- None of the matters raised in submissions and discussed in section 2.7 give rise to any change to the Amendment.

## Appendix A Submitters to the Amendment

No.	Submitter	No.	Submitter
1	Anders, Elizabeth	19	McDonald, Kevin Bruce
2	Bamford, Clint	20	Miller, Lawrie and Annette
3	Bamford, Chloe	21	Moro, Tony
4	Benallack, Julie	22	National Trust of Australia Geelong and Region Branch (Jennifer Bantow)
5	Berry, Caroline	23	Nelson, Sarah
6	Blackwell & O'Neill, Wendy and Jon	24	Pattinson, Mark and Louise
7	Campbell, Helen	25	Raynor, Beverley and Donald
8	Chen, Weiqing	26	Robb, Mark
9	Corkin, Christian	27	Robertson, David
10	Ellis, Lachlan	28	Robinson, High
11	Fiscalini, Frank and Freda	29	Rowan, Anthony
12	Grinter, Dennis	30	Sheedy, Denise
13	Hughan, Shane	31	Thornburgh, William
14	Kuhle, Erica	32	Vella, Pat
15	Lawrence, Julie	33	Wadawurrung (Dr David Jones)
16	Leach, John	34	Stavenuiter (Baum), Debra
17	Mawson, Michele	35	Lucas, Russell
18	Mayshak, Richelle	36	Baum, Geoff

## Appendix B Panel Hearing Document list

No.	Date	Description	Provided by
1	21 Oct 21	Council Part A submission	Ms Williamson
2	21 Oct 21	Council Part B submission	Ms Williamson
3	21 Oct 21	Structural Condition Assessment Report by Block 1 Pty Ltd, CV for author and Council instructions	Ms Williamson
4	21 Oct 21	Structural Conditions assessment Report by OPS Engineers, CV for author and Council instructions	Ms Williamson
5	21 Oct 21	Hearing submission for National Trust	Mrs Bantow
6	21 Oct 21	Evidence statement by Dr Mary-Jane Walker	Ms Bantow
7	21 Oct 21	Hearing submission for Nicole Lock	Mr King
8	4 Oct 21	Statement of Grounds for Nicole Lock	Mr King
9	21 Oct 21	Evidence statement by Robyn Riddett	Mr King