

Date: 13 June 2023

**Melton Planning Scheme
Amendment C231melt**

Part B Submission on behalf of Melton City Council

Planning Panels Victoria

INTRODUCTION

1. These submissions are made on behalf of the Melton City Council (**Council**) as the planning authority for Amendment C231melt (**Amendment**) to the Melton Planning Scheme (**Planning Scheme**).
2. This Part B submission is supplemental to Council's Part A submission. In addition, Council relies upon the expert evidence of Mr Mornement.

PANEL DIRECTIONS

3. The Panel Directions dated 18 May 2023 require Council's Part A submission to address:
 - 3.1. Council's response to submissions and evidence;
 - 3.2. Council's final position on the Amendment.
4. The following key issues are apparent from the submissions and evidence filed with the Panel:
 - 4.1. The evidence of Mr Mornement and the position of Prime Equity Group regarding HO139 – Diggers Rest Army Housing Estate;
 - 4.2. The approach to be taken to 115-131 Napier Street; 480-580 Mt Aitken Road; 738 Mt Aitken Road which were not the subject of an opposing submission from G Adams;
 - 4.3. The inclusion of the buildings at 740-794 Mt Aitken Road, Diggers Rest and 796-830 Mt Aitken Road, Diggers Rest that are contested by G Adams, including:
 - a. The appropriateness of the comparative analysis underpinning HO141;
 - b. The relevance of building condition;
 - c. The issues of intactness and integrity;
 - d. Are the two places of local heritage significance when assessed against Criterion A?
 - e. Are the two places of local heritage significance when assessed against Criterion B?
 - f. Are the two places of local heritage significance when assessed against Criterion D?
5. Each of these will be discussed in turn, before outlining Council's final position on the Amendment.

COUNCIL'S RESPONSE TO SUBMISSIONS AND EVIDENCE**HO139 – Diggers Rest Army Housing Estate**

6. It is convenient to first address the submission from Prime Equity Group in respect of HO139.
7. At the time of filing the Part A submission, the final recommendations of Mr Mornement had not been fully considered by Council and the views of Prime Equity Group on some recommendations were unknown.

8. Council has now had the benefit of time to consider the evidence of Mr Mornement and is assisted by discussions with the representatives of Prime Equity Group.
9. Council understands that the submitter does not oppose the imposition of the Heritage Overlay for its exhibited extent, provided that:
 - 9.1. Prohibited uses are permitted as proposed by the Council in the Part A submission;
 - 9.2. The changes to the Diggers Rest Army Housing Estate Heritage Design Guidelines and Permit Exemptions appended to Mr Mornement's witness statement are adopted;
 - 9.3. The supplementary further changes recommended at paragraph 58 of Mr Mornement's witness statement are adopted;
 - 9.4. External paint controls are not imposed in respect of HO139;
10. This position is consistent with Mr Mornement's primary position that:

The Diggers Rest Army Housing Estate (HO139) is of local historical and aesthetic significance (satisfying criteria 'a' and 'd' respectively).¹
11. Council observes there are two issues regarding HO139 unresolved:
 - 11.1. The address of the property;
 - 11.2. The curtilage of the heritage overlay.
12. In respect of Mr Mornement's recommendation to amend 'the mapping for HO139, to exclude land that does not contribute to the cultural heritage values of the Army Housing Estate.' Council has not adopted this recommendation and notes:
 - 12.1. This change is not supported by the landowner submitter;
 - 12.2. Mr Mornement's alignment:
 - a. Results in an unusual, irregular boundary to the overlay.
 - b. Follows the current fence lines that do not reflect any legal or title boundary.
 - c. Is inconsistent with the exhibited Amendment which itself had been reviewed by the department prior to exhibition.
13. The issue of curtilage for a heritage overlay that does not encompass the entirety of a lot is an exercise of judgement. The curtilage upon which the Amendment was exhibited is open.
14. The final matter in respect of the submission from Prime Equity Group is the address of the subject property.
15. As set out in the Part A Submission, Council considers the property address should be 19-115 Diggers Rest-Coimadai Road not 107-207 Plumpton Road, Diggers Rest as was requested by the submission. Council observes that 19-115 Diggers Rest-Coimadai Road is the address used in Councils GIS and rate databases, while the property appears in VicPlan under both addresses.

¹ Witness statement of A Mornement, page 29.

16. Council respectfully requests the Panel recommend the Amendment is approved subject to replacing all references in the Amendment documentation to 117 Diggers Rest-Coimadai Road, Diggers Rest, with 19-115 Diggers Rest-Coimadai Road.

HO141 – Soldier Settlement Housing at 115-131 Napier Street, 480-580, 726-738, 740-794 & 796 830 Mt Aitken Road, Diggers Rest

17. HO141 is a serial listing of 5 soldier settlement dwellings at 115-131 Napier Street, 480-580, 726-738, 740-794 & 796-830 Mt Aitken Road, Diggers Rest.
18. The G Adams' submission relates to only two of these dwellings – being described in the submission as '740-794 Mt Aitken Road, Diggers Rest (**East Lot**) and 796-830 Mt Aitken Road, Diggers Rest (**West Lot**)'.
19. Given only two of these dwellings are being contested, it is useful to first address the buildings that are not being contested by submitters.

115-131 Napier Street; 480-580 Mt Aitken Road; 738 Mt Aitken Road

20. No submission was received by Council in respect of
- 20.1. 115-131 Napier Street;
- 20.2. 480-580 Mt Aitken Road; or
- 20.3. 726-738 Mt Aitken Road.
21. The issues before the Panel therefore relate to the application of the heritage overlay to 740-794 Mt Aitken Road, Diggers Rest and 796-830 Mt Aitken Road, Diggers Rest, and do not raise the issue of whether the heritage overlay should be applied to 115-131 Napier Street, 480-580 Mt Aitken Road; or 726-738 Mt Aitken Road.
22. Notwithstanding this Council observes:
- 22.1. Mr Mornement's primary conclusion in respect of HO141 is that:
- The Mount Aitken Estate Soldier Settlement Housing (HO141) is of local historical and aesthetic significance. The group of five residences satisfy criteria 'a' and 'd' respectively. The grouping also satisfies criterion 'b' (rarity)²*
- 22.2. Mr Raworth, despite being critical of the proposed HO141, concludes that:
- If any heritage listing were to be introduced, I would argue that only 480-580 Mt Aitken Road and 115-131 Napier Street would be worthy of consideration for their historical significance under Criterion A.³*
- 22.3. In respect of the remaining property not owned by G Adams, 726-738 Mt Aitken Road, Mr Raworth opines:
- Of the other three houses in the group, that at 726-738 Mt Aitken Road has also been substantially altered. The citation and Council's expert witness acknowledges the large addition that has been made to the south-east corner of the building, however asserts that 'the original stepped form of the weatherboard residence with its hipped roof and brick chimney remains legible'. I disagree with this assessment. What is not readily apparent in the photograph contained in the citation (see Figure 13) is that the large addition has approximately doubled the original width of the facade,*

² Witness statement of A Mornement, page 29.

³ Witness statement of B Raworth, page 21.

*overwhelming the host structure. The original entry porch arrangement has also been removed and built out, the brick chimney on the west elevation has been truncated and the window to the western bay has been replaced with what appears to be a glazed door or larger window, none of which has been recognised in either the citation or the witness statement.*⁴

- 22.4. Further, Mr Raworth is critical of the HO141 citation through the comment to Figure 13 of his witness statement and the annotation to Figure 9 (both extracted below):



Figure 13 Photograph of 726-738 Mt Aitken Road as contained in the citation. This depicts the west elevation rather than the facade.

⁴ Witness statement of B Raworth, page 9-10.



Figure 9 The facade of 726-738 Mt Aitken Road, with the extent of the addition indicated by the red line.

- 22.5. In contrast to Mr Raworth, Mr Mornement's witness statement acknowledges that 'a large extension has been added to the south-east of 726-738 Mount Aitken Road'⁵ but concludes that 'the original stepped form of the weatherboard residence with its hipped roof and brick chimney remains legible (Figure 12).'⁶
- 22.6. Figure 12 to Mr Mornement's witness statement is consistent with his comment:
- 22.7. In



Figure 12 Aerial view of 726-738 Mount Aitken Road: the large addition is indicated
Source: Nearmap (accessed 26 May 2023)

respect of the difference of opinion between the two heritage witnesses in respect of

⁵ Witness statement of A Mornement, page 26.

⁶ Witness statement of A Mornement, page 26.

726-738 Mount Aitken Road, Council submits that the evidence of Mr Mornement should be preferred.

- 22.8. For reasons further explored later in this submission, the historical significance of the buildings within HO141 is derived in the continued existence of the buildings on the subject site. While expert opinion differs regarding the chimney, the weatherboard, hipped roofed, multi-fronted construction of 726-738 Mount Aitken Road remains readily apparent from both Figure 9 to Mr Raworth's statement and Figure 12 from Mr Mornement's statement. The later additions are sympathetic to the original building, such that the building continues to represent the key characteristics of the post WWII soldier settlement housing.
- 22.9. Council therefore submits that the Amendment should be adopted in respect of 115-131 Napier Street, 480-580 Mt Aitken Road; or 726-738 Mt Aitken Road, irrespective of the Panel's conclusions regarding the contested properties at 740-794 & 796-830 Mt Aitken Road.

740-794 Mt Aitken Road, Diggers Rest and 796-830 Mt Aitken Road, Diggers Rest

23. Turning to issues in dispute before the Panel concerning the G Adam's properties at 740-794 and 796-830 Mt Aitken Road, Diggers Rest, Council's core proposition is that the two G Adam's properties are of local heritage significance and therefore should be included in the heritage overlay.
24. Before turning to points of disagreement, it is useful to observe what (at least on Council's reading of the material filed with the Panel) is not in dispute.
- 24.1. Firstly, the history of the two dwellings does not appear in dispute. While Mr Mornement and Mr Raworth's witness statements place different weight on the historical significance of the two buildings, Mr Raworth expressly acknowledges that '[t]he historical information that is contained in the citation for the place is not disputed.'⁷
- 24.2. Secondly, while the conclusions of the Lovell Chen 'City of Melton Heritage Assessment Project 2020/21' (**Heritage Assessment**) are contested, the study methodology is not contested by the G Adams Submission or the evidence of Mr Raworth.
- 24.3. Third, it is clear the two contested buildings are places where there is something tangible to be managed. The contested issues are whether management is warranted, not whether there is something tangible to manage. This is relevant to the wording of the relevant practice note:
- a. *Planning Practice Note 1 – Applying the Heritage Overlay (August 2018)* (**PPN1**) provides that a place "should" be included in the Heritage Overlay where that place has been identified in a local heritage study, "provided the significance of the place can be shown to justify the application of the overlay" by reference to the recognised heritage criteria (**HERCON criteria**).⁸
 - b. In respect of the purpose of the heritage overlay for places of historical or social significance, PPN1 states:

Planning is about managing the environment and its changes. An appropriate test for a potential heritage place to pass in order to apply the Heritage Overlay is that it has 'something' to be managed. This 'something' is usually tangible but it may, for example, be an absence of

⁷ Witness statement of B Raworth, page 4.

⁸ *Planning Practice Note 1 – Applying the Heritage Overlay (August 2018)*, page 1.

*built form or the presence of some other special characteristic. If such things are present, there will be something to manage and the Heritage Overlay may be applied*⁹

- c. PPN1 also outlines requirements for writing a statement of significance ‘using the format of ‘What is significant?’; ‘How is it significant?’ and ‘Why is it significant?’’.¹⁰

24.4. The statement of Mr Raworth does not dispute that there is something tangible to be managed by the overlay, or that the Amendment complies with the technical requirements of PPN1. Other matters addressed in PPN1, such as the application or non-application of external paint, internal alteration and tree controls or the proposed heritage overlay mapping, are also not criticised by Mr Raworth.

25. The core dispute between the parties is therefore whether the two buildings are significant at the local level when assessed against Criteria A, B and D.

26. The thresholds for establishing local significance has been considered by many planning panels and will be familiar to the Panel. Two relatively recent considerations were the *Melbourne C387melb (PSA) [2021] PPV 89* (10 November 2021) and *Maribyrnong C172mari (PSA) [2023] PPV 10* (7 February 2023) panel reports.

27. In respect of the threshold for establishing local significance, the Melbourne C387 Panel¹¹ stated:

The Panel considers that PPN01 should be the primary tool for considering whether a place is of local heritage significance. It provides an appropriate methodology and is not silent on thresholds, applying in criteria descriptors terms such as ‘importance to’ (Criterion A, D, E and F) and ‘strong and special association’ (Criterion G and H). PPN01 provides for a consistent approach to applying the Heritage Overlay at the local level across the state.

The Panel acknowledges, as did Council and the many heritage experts involved in this matter, that there is limited guidance in PPN01 about the factors that might interrogate or inform different criteria thresholds. The VHRG is therefore widely utilised by heritage practitioners for guidance. They usefully include guidance for the meaning of concepts such as integrity and intactness and what a class of place is. However, they should be applied with caution because they are specifically prepared for potential places of state significance.

The VHRG Step 1 criterion elements can be of assistance when considering how importance or strong association might be considered, but they do not need to be met. Step 2 introduces new concepts or qualifiers including:

- *‘better than most’ (Criterion A)*
- *‘notable example’ (Criterion D)*
- *widely appreciated or valued by the community through ‘critical recognition’ and ‘acknowledgement of exceptional merit’ (Criterion E).*

While Step 2 of Criterion D draws attention to the nuances of what represents a good, typical or fine example, buildings don’t need to achieve this same standard at the local level. Buildings do not need to be ‘better than most’ or ‘notable examples’ (including influential or pivotal) to be of potential local heritage significance.

⁹ PPN1, page 2.

¹⁰ PPN1, page 2.

¹¹ [Melbourne C387melb \(PSA\) \[2021\] PPV 89](#)

...

The thresholds of PPN01 (for at least one criterion) are ultimately what needs to be met for local significance. Whether they do in each case is effectively a matter of judgement and relative contextual merit. The fundamental question is whether a place is sufficiently significant to be recognised in the planning scheme?

The Panel more generally observes, as other panels have, that further guidance to assess local significance is needed. The Panel notes that this need has also been identified by the Heritage Council in its State of Heritage Review. This would assist in reducing the level of dispute regarding thresholds that was evident in this matter.¹²

28. The more recent Maribyrnong C172mari Panel stated:

...

More generally the Panel provides the following consideration.

It is self-evident that all areas have a history. PPN91 states:

While all areas have a history or a heritage, not all areas are historically significant. Heritage significance is determined by recognised criteria set by Commonwealth, state and local agencies, with reference to the Burra Charter.

The statement of significance contains the justification for applying the Heritage Overlay. It describes ‘what is significant?’, ‘how is it significant?’ and ‘why is it significant?’. The link established with the HERCON criteria is provided in ‘why is it significant?’

The drafting of the HERCON criteria is important. In the Amendment the most frequently used criteria are A (historic significance), D (representativeness), E (aesthetic significance) and H (associative significance). The Panel considers there are five main issues:

A level of ‘importance’ must be established, not just an example, as this is the descriptor for each of the criterion (apart from Criteria H which is ‘special association’).

The only real tool PPN01 refers to is a comparative analysis that “should draw on other similar places within the study area, including those previously in a heritage register or overlay.” On this matter the Panel places greater weight on precincts that have met the test already and are in the Heritage Overlay than other precincts which are the subject of this Amendment.

There is no minimum number of criteria to meet the threshold of significance. If the Panel considers a threshold has not been met for one criterion, then the Heritage Overlay may still be justified from other criterion assessments.

A precinct-based approach takes a more generalist approach than site specific considerations of significance. This places greater weight on ensuring what is to be protected is ‘better than average’ as it inevitably includes some properties that are non-contributory, in balancing this general approach.

The six threshold measures developed by Heritage Alliance, while a response to the lack of guidance in PPN01 for local heritage significance, require more scrutiny.

The Panel agrees with Dr Rowley that an assessment for Criteria A must do more than just tell a story of the place’s development; its importance must be established. In other words, it must be better than average; it cannot just be an example of Criteria A, for

¹² [Melbourne C387melb \(PSA\) \[2021\] PPV 89](#) [5.3(iv)]

instance. This applies to assessments of Criterion D and E. The Panel's consideration is restricted to PPN01. The Panel accepts that a Step 1 assessment using the VHR Guidelines does also provide guidance but has not used them in its consideration.

...¹³

29. Key propositions arising from these cases are:
- 29.1. The primary tool for assessing local heritage significance is PPN01;
 - 29.2. The VHR Guidelines 2022 may provide guidance, especially in step 1 and definitions under the VHR Guidelines 2022, but cannot be applied in full as they are adapted to assessment of significance at the state level;
 - 29.3. Comparative analysis is required in assessing the local significance of the place. This should be conducted giving great weight to places already within the Heritage Overlay.
30. These comments provide a framework for the assessment of the issues in dispute.
31. In addition, it is also necessary to address the following issues before turning to the assessment of significance against Criteria A, B and D:
- 31.1. Comparative analysis;
 - 31.2. The relevance of condition to significance;
 - 31.3. Intactness and integrity.

Comparative Analysis

32. Mr Mornement's witnesses statement acknowledges 'that the comparative analysis in the exhibited citation for HO141 is limited' and outlines further analysis undertaken in preparing expert evidence as follows:

66. A number of nineteenth century pastoral estates in the municipality were broken up and sold in the early twentieth century. Many of these estates were administered under the Closer Settlement Acts, and the Soldier Settlement Acts, which were enacted to provide greater access to farming land in Victoria. As noted above, the break-up of these pastoral properties into smaller farms resulted in a 'revival' in farming in Melton.

67. Parts of the Overnewton and Exford Estates were subdivided in the early twentieth century, with similar processes occurring at Melton Park from the 1920s and the Mount Aitken Estate in the 1940s. The Rockbank estate, owned by W J T Clarke, was also subdivided in this period but not through the Closer Settlement Board.

68. These smaller farming allotments were progressively sold through the twentieth century, resulting in population increases in the district, as farmers and ex-servicemen were encouraged to take up land.

69. Five places included in the Schedule to the HO of the Melton Planning Scheme are associated with the Closer Settlement Scheme. These are:

- *HO55: House, 974-1048 Melton Highway, Plumpton: Modest weatherboard cottage, and one of the few remaining houses associated with the historically significant Closer Settlement Board Overnewton Estate subdivision of 1905-06.*

¹³ [Maribyrnong C172mari \(PSA\) \[2023\] PPV 10 \[3.3\(iii\)\]](#)

- *HO58: House, 911-935 Melton Highway, Hillside: modified Federation weatherboard house, and one of the few remaining houses associated with the Closer Settlement Board Overnewton Estate subdivision of 1905-06.*
- *HO73: House, 54-56 Exford Road, Melton South: Weatherboard Edwardian house, one of the few remaining examples in the municipality of a house built as a result of the activities of the Closer Settlement Board's sale of the Exford Estate.*
- *HO102: House, Glengallan, 77-207 Greigs Road East, Mt Cottrell: Late Victorian residence which is a representation of the Exford Closer Settlement Estate, and the historic break-up of Melton's pastoral estates in the early twentieth century.*
- *HO123: 'Dalgook' Farmhouse Complex, Hume Drive, Taylors Hill: Unusual Federation style residence built in c. 1906 as a result of the Closer Settlement Board's subdivision of prominent pastoralist William Taylor's Overnewton Estate.*

70. A number of places included in the HO are related to the twentieth century subdivision of the Rockbank estate, which does not appear to have been administered through the Land Acts and no places in the HO have a direct relationship with Soldier Settlement provisions of the Land Acts.

71. Given that the Closer Settlement Scheme and the Soldier Settlement Schemes are identified as important aspects of Melton's history – the Shire of Melton Heritage Study of 2007 notes that the municipality was 'transformed by the Closer Settlement and Soldier Settlement Acts of the early twentieth century' – this might be regarded as an underrepresentation.

72. The five residences built at the farming allotments that were formed by the Mount Aitken Solider Settlement scheme are extant. Collectively they represent the theme of Soldier Settlement in the municipality and demonstrate the continued importance to the municipality of the break-up of pastoral estates well into the twentieth century¹⁴

33. At paragraph 74 of his statement, Mr Mornement concludes:

'Based on the additional research, referenced above, it is considered that the assessment should be amended as follows (amendments italicised):

There are a number of examples of earlier soldier settlement schemes in Melton, but the Mount Aitken Estate Soldier Settlement Housing is a rare example of a post-World War II soldier settlement estate in the municipality. It demonstrates the continued importance to the municipality of the break-up of pastoral estates well into the twentieth century.' (emphasis original)

34. In contrast, Mr Raworth rejects this assessment on the basis noting that:

42. This amended statement claims that the subject dwellings have rarity value as postwar soldier settlement housing, however it remains unclear whether the Mt Aitken Estate subdivision is the only example of soldier settlement subdivision in the municipality. The witness statement asserts that 'A number of nineteenth century pastoral estates in the municipality were broken up and sold in the early twentieth century. Many of these estates were administered under the Closer Settlement Acts, and the Soldier Settlement Acts' [underline for emphasis]. The 2007 Environmental History writes that 'the Melton Park estate was sold by Harvey Patterson to John Farrell. After the First World War it was sold to the Government for subdivision under the Soldier Settlement scheme, and about 8 new farms came into being along Harkness and Bulmans Roads' and that 'a small part of the Clarke Red Rock estate, located in the very north of the Shire, was sold under the 1946 Soldier Settlement Scheme. Five Second World War soldiers settled on the 350-400 acre blocks...'. This is suggestive of other soldier settlement places in the municipality.

¹⁴ Witness statement of A Mornement, page 23-24.

35. Council makes two observations about this critique.
36. Firstly, Council has reviewed the references to the Clark Red Rock estate from the 2007 Environmental History (being Volume 2 of the 2007 Melton Heritage Study). Having reviewed the relevant parish plan identified in the key footnote to the Environmental History and the municipal boundary, Council understands this reference to be primarily a reference to the sites proposed to be included in HO141. To the extent other soldier settlement properties may have been created from the Red Rock estate, those properties would be located outside the municipal boundary.
37. Secondly, with respect, this is not the test called upon by the practice note and the cases referenced above.
38. PPN1 relevantly provides:
- To apply a threshold, some comparative analysis will be required to substantiate the significance of each place. The comparative analysis should draw on other similar places within the study area, including those previously included in a heritage register or overlay. Places identified to be of potential state significance should undergo analysis on a broader (statewide) comparative basis.¹⁵*
39. Consistent with the direction in PPN1, the 5 properties identified at paragraph 69 of Mr Mornement's statement are all included in the heritage overlay.
40. It is notable that Mr Mornement's research did not identify any post WWII soldier settlement houses within the Heritage Overlay in Melton. This reflects Council's understanding – that there are currently no post WWII soldier settlement houses included in the Heritage Overlay in Melton.
41. This view is borne out by a review of the Victorian Heritage Database.¹⁶
42. A search of the Victorian Heritage Database for 'soldier settlement' within the City of Melton returns 26 results for 'residential buildings (private)'. Of these one 1840's homestead is recorded on the state heritage register, 3 sites are listed on the Victorian Heritage Inventory for their archaeological potential, while the 5 sites identified by Mr Mornement (HO 55, HO58, HO73, HO102, and HO123) are also included in this result.
43. Of the remaining properties, none are post WWII dwellings, and the statements of significance do not record the properties as having been developed for soldier settlement.¹⁷
44. Earlier eras of the breakup of the pastoral estates are, in contrast, represented to some degree in the Heritage Overlay, such as:

¹⁵ PPN1, page 2.

¹⁶ The Victorian Heritage Database records places on the Victorian Heritage Register, the archeological sites listed on the Victorian Heritage Inventory, as well as places listed in other databases such as planning schemes, the Victorian War Heritage Inventory and the National Trust. <https://vhd.heritagecouncil.vic.gov.au/>

¹⁷ For completeness, the statement of significance for two of these properties (HO16 - House, 2-200 Porteous Road, Toolern Vale; HO101 - House, 865 Exford Road, Exford; HO103 - Former Dairy and Trees; HO107 - House, 285 Nerowie Road, Parwan) expressly references the break up of the pastoral estates or the Closer Settlement Act but in respect of earlier built form.

- 44.1. HO73¹⁸, HO102¹⁹, and HO123²⁰ which were associated with the Closer Settlement Act 1904;
- 44.2. HO017 which was subdivided post WWI following a 1920 purchase by the Closer Settlement Board.²¹
- 45. The proposed HO141 therefore would:
 - 45.1. Improve representation of the breakup of the pastoral estates in the Heritage Overlay by extending coverage to a later period;
 - 45.2. Represent post WWII soldier settlement housing for the first time in the Melton Heritage Overlay.
- 46. It is difficult to imagine a site performing more favourably on a comparative analysis than a category of buildings that are currently entirely absent from the Heritage Overlay.

The relevance of condition to significance

- 47. Council understands from the evidence filed and the submissions made at the Directions Hearing held 8 June 2023, that G Adams intends to argue that the building at 796-830 Mt Aiken Road, Diggers Rest:
 - 47.1. Is in such poor condition; and
 - 47.2. Would require so great an extent of works,
 that the building ought not be included in the heritage overlay.
- 48. There is divergent guidance on this issue.
- 49. Numerous panel reports adopt the position that structural condition is not relevant at the planning scheme amendment stage, but may be relevant to the assessment of a future planning permit for demolition of the building.
- 50. For example, the *Darebin C191dare* Panel heard submissions that interwar houses were in need of significant work or renovation, were no longer structurally sound, had safety issues, and had been substantially altered.²² The panel held:

(iii) Discussion

¹⁸ HO73 – House, 54-56 Exford Road, Citation No 195, *Shire of Melton Heritage Study – Volume 4*, https://www.melton.vic.gov.au/files/assets/public/services/building-planning-amp-transport/strategic-planning/studies-strategies-guidelines/heritage-study/volume-4-ho/069-086-heritage-overlays/ho_73_56_exford_rd.pdf

¹⁹ HO102 – House, ‘Glengallan’, Citation No 282, *Shire of Melton Heritage Study – Volume 4*, https://www.melton.vic.gov.au/files/assets/public/services/building-planning-amp-transport/strategic-planning/studies-strategies-guidelines/heritage-study/volume-5-ho/087-105-heritage-overlays/ho_102_glengallan.pdf

²⁰ HO123 – ‘Dalgook’ Farmhouse Complex, Citation No 476, *Shire of Melton Heritage Study – Volume 5*, https://www.melton.vic.gov.au/files/assets/public/services/building-planning-amp-transport/strategic-planning/studies-strategies-guidelines/heritage-study/volume-5-ho/107-124-heritage-overlays/ho_123_dalgook.pdf

²¹ HO17 - Melton Park 691-801 Bulmans Road Toolern Vale, Citation No 008, *Shire of Melton Heritage Study – Volume 3*, https://www.melton.vic.gov.au/files/assets/public/services/building-planning-amp-transport/strategic-planning/studies-strategies-guidelines/heritage-study/volume-3-ho/001-025-heritage-overlays/ho_017_melton_park.pdf

²² [Darebin C191dare \(PSA\) \[2022\] PPV 56](#) [3.3(ii)].

Building condition is not directly relevant to whether a place is of heritage significance or if the Heritage Overlay should be applied. Heritage significance is assessed against the recognised heritage criteria in Planning Practice Note 1. A place may be in poor condition, or it may have been altered, but its heritage values are still legible and understood. Where a submission considers that poor condition impacts the intactness of a heritage place, the Panel has considered whether the precinct still achieves the necessary threshold for heritage significance, as discussed later in this report.

Building condition may be considered during the planning permit application process when the proposal will be assessed against relevant planning policy objectives, including heritage.

(iv) Conclusion

The Panel concludes building condition is not relevant when assessing the heritage significance of a precinct but may be relevant during the planning permit assessment process.²³

51. The Stonnington C316ston Panel took a firmer position, holding:

(iii) Discussion

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

Consistent with Council, the Panel does not agree with submitters that the condition of the building is a reason to not apply the Heritage Overlay. The Panel accepts that structural condition of a building should not be a criterion for assessing heritage significance.

That is not to say that the condition of a building is irrelevant in the planning system. Such factors are highly relevant at the planning permit stage, when a development proposal can be assessed against the relevant planning policies including heritage. The Panel agrees with Council that consideration of building condition at this stage of the Amendment process would undermine the longer term consideration of heritage protection.

(iv) Conclusion

The Panel concludes that building condition is not relevant when assessing the heritage significance of an individual place or a precinct.²⁴

52. A more nuanced discussion, however is found in the Greater Geelong C422ggee panel report. In the context of an 1857 farmhouse and submissions regarding the condition of the property, the Panel stated:

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

²³ *Darebin C191dare (PSA) [2022] PPV 56 [3.3]. See also [Boroondara C333boro \(PSA\) \[2022\] PPV 6 \[3.1\]](#)*

²⁴ *[Stonnington C316ston \(PSA\) \[2022\] PPV 59 \[4.1\]](#)*

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[9]. 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[10] 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.

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.

....

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.²⁵

53. This commentary identifies the relevance of the Melbourne C207 planning panel and the subsequent of appeal in *Dustday Investments Pty Ltd v Minister for Planning* [2015] VSC 101 (**Dustday Investments**). Council understands that G Adams seeks to rely on the decision in *Dustday Investments* on this issue.

54. In Amendment C207 to the Melbourne Planning Scheme, the Panel commented:

‘...we do acknowledge that condition may sometimes be relevant in extreme cases of dilapidation where demolition is an inevitable outcome. In such circumstances, the case for demolition would have to be irrefutable and the community-wide costs and benefits of the demolition versus conservation outcomes would have to be clearly identified.’²⁶

55. The panel’s report in relation to Amendment C207 was the subject of judicial review in *Dustday Investments*, where relevantly Senior Counsel for *Dustday* asserted that *‘...the panel misdirected itself when it concluded that the condition of the building was not relevant to its consideration because demolition was not ‘an inevitable outcome’ or because the case for demolition was not ‘irrefutable’ or ‘unassailable’.*²⁷

56. In relation to this ground, *Dustday* submitted that *‘...the panel’s error was to confine its consideration of the likelihood of demolition by reference to an arbitrary standard finding no foothold in the Act or planning scheme. The panel was not satisfied that demolition was ‘inevitable’, and refused to weigh in the balance the condition of the building.’²⁸*

57. After setting out the duties of a panel under the Act and discussing the often broad nature of submissions before a panel, the Supreme Court found that the panel did not err in its identified and consideration of building conditions, stating:

[86] Parts 3 and 8 of the Act give a panel a wide discretion as to how it approaches its primary duties of considering submissions, conducting a public hearing, reporting its findings and making recommendations. While all referred submissions stand to be considered, and relevant matters addressed, there are no specific tests found in the Act as to how a panel is to evaluate the extensive range of matters likely to arise such as planning, social, economic, environmental, scientific, aesthetic, architectural, historic and cultural matters. There are no legal tests or thresholds contained in the Act which govern the findings that a panel may make. There is no form which a panel is legally required to adopt in its report and recommendations. These are all matters which the legislature has left to the panel. The Act gives a panel the broadest parameters and leaves it to the panel to determine what is required for it to be persuaded to make, or not to make, a particular recommendation. Apart from the

²⁵ [Greater Geelong C422ggee \(PSA\) \[2021\] PPV 94](#)

²⁶ [Melbourne C207 \(PSA\) \[2014\] PPV 10.](#)

²⁷ At [82].

²⁸ At [83].

legislative direction to consider all submissions referred to it, the contents of the report and the recommendations are matters within the domain of the panel.

...

[89] It was open to the panel to give such weight to the competing considerations of heritage, social and economic effects as they affect the building and the land in such manner as it saw fit. Given that the building had heritage significance, it was open to the panel to adopt the position that it would only give weight in its report to the dilapidation of the building 'where demolition was an inevitable outcome', or where the case for demolition was 'irrefutable' or other like findings. It was open to the panel to adopt the position that in such circumstances, the community-wide costs and benefits of the demolition versus conservation outcomes would have to be clearly identified. There is no error of law in so doing.

[90] In relation to a submission by counsel for the council about a theoretical case where 'it might be found that it would be a waste of community resources to go to the permit stage to consider the whether [sic] demolition should be allowed', the panel responded that 'the case for demolition would have to be unassailable'. Even where the necessary renovations of a building, under consideration for listing, are so extensive that the original fabric of the building would be lost, and the form and nature of the heritage place no longer able to be appreciated, the panel considered that the certainty threshold would be a very high one before it would recommend against listing the building on the Heritage Overlay.

[91] The opinions and views of the panel expressed in terms of the objectives of planning in Victoria show the weight the panel gave to the conservation and enhancement of buildings of historical interest as against the development options which would arise if the land were cleared of building. This is plainly a matter for the panel to determine. There is no legal standard in the Act which directs panels as to what they are required to find before making a recommendation, or conversely as to what a submitter opposed to an amendment must prove so that a panel must make an adverse recommendation concerning an amendment. The merits of the panel's opinions and views are not a matter for the Court.

...

97 The panel's requirement of compelling proof before it would entertain a recommendation that the building not be protected within the Heritage Overlay may be disappointing to Dustday. Opinions may vary across the community as to the relative importance of the preservation of buildings with heritage significance as against economic development without heritage constraints. But the weight to be given by the panel in its report to heritage considerations as against other considerations is a matter for it. It is not for the Court to revisit the merits of the panel's deliberations. The issues are quintessentially for the panel, and in turn the council and the Minister.

[footnotes omitted; emphasis added]

58. Dustday also relied on a second ground which is articulated at [99] of the Supreme Court judgment:

'The second ground relied on by Dustday is that the panel failed to lawfully consider social and economic effects, because it failed to consider a key matter arising from the subject matter and thereby acted unreasonably. The key matter was said to be the condition of the building and the likelihood that the building would or could be adapted for reuse if it were included in the Heritage Overlay. It is further said that the panel erred when it said that the condition of the building was not relevant to its consideration because the case for demolition was not irrefutable.'

59. The Court rejected Dustday's argument, concluding that the panel did not err in its consideration of whether the building could be adapted for reuse:

[100] Senior Counsel for the council highlighted the key findings of the panel where it had regard to the condition of the building. The panel was not persuaded that the nature of the decision-making framework, including the limitations applying to decisions on permits was such that condition should normally be taken into account at the listing stage. This was a response by the panel to the argument by Dustday that if the appeal by Boroondara City Council to the Supreme Court concerning the proposed demolition of the heritage building at 1045 Burke Road, Camberwell were successful, there would be no opportunity for integrated decision-making at the permit stage which balances all relevant planning considerations, and therefore the balancing process must be done at the amendment stage. In the event, the appeal failed, and the Court of Appeal confirmed that integrated decision making and the balancing of considerations were to be applied at the permit stage.

[101] Where planning authorities are directed to consider conservation or heritage matters, or social and economic effects, consideration must inevitably be given as to the stage in the planning process that has been reached, and the nature of the consideration that is to be given to these matters or effects at that stage. The nature and level of information available at the rezoning or amendment stage will often be significantly less than that available at the permit stage. By the time of a permit application, much more detail is likely to be available as to the proposed use and development including development plans, building specifications, site information, expert reports and the like. At the permit application stage, the considerations the responsible authority is required to take into account include the matters listed in s 60 of the Act, the decision and comments of referral authorities and the considerations relevant to the application under the operative planning scheme.

[102] Given the stages in the planning process, consideration will often need to be given by panels as to the strategic nature of the assessment to be undertaken at the amendment stage as against the more detailed evaluation undertaken at the permit application stage. Where, as here, no use or development plans are available at the amendment stage, the consideration of conservation and heritage matters by a panel is inevitably more circumscribed than that which is possible at the later stage. Assessment of costs associated with restoration and adaptive reuse of a heritage building in poor condition is crucially informed by an understanding of the overall scheme of development, including the nature of the proposed use, and the likely costs and returns. The economics underlying restoration and redevelopment will often be a pivotal component of decision-making concerning buildings with heritage significance.

[103] The panel gave careful consideration to Dustday's evidence as to condition and conversion. It is fair to say that it found Dustday's evidence to be unimpressive, the broad analysis presented unhelpful, and the evidence to the extent of repair lacking in detail. The evidence as to condition was insufficient to persuade the panel that condition should be given any weight in the panel's ultimate decision. As I have said, the panel considered that the high costs and difficulties of re-use of the building had not been successfully converted into public costs weighing against the public benefits of listing. Dustday's case was incomplete in terms of private costs. The panel was not presented with evidence that the rehabilitation costs when added to other costs, and importantly when offset by returns, were exorbitant or unreasonably high compared with those associated with other rebuild development options for the site. Mr Georgeson's cost estimates were important evidence, but he was not called.

[footnotes omitted; emphasis added]

60. The following propositions may be distilled from the decision in Dustday:

- 60.1. The weight to be given to competing considerations such as conservation/heritage matters or social and economic effects is a matter for the Panel.
- 60.2. Evidence of condition may be relevant to the Panel's task.
- 60.3. It is open for a Panel to conclude that:
- a. Weight should only be given the dilapidated condition of a building where demolition is inevitable or irrefutable, or some other standard.
 - b. There needs to be a high level of certainty that required works are so extensive that the form and nature the building is no longer able to be appreciated.
 - c. Issues of condition, the conservation works that may be required in the future, the costs of restoration and adaptive reuse are better assessed at the permit application stage when the proposed scheme of development will be known.
61. These issues were ventilated recently the context of the former grain silos at Sunshine. In that case the Brimbank C227brim Panel held:

[3.4] (iii) Discussion

The Panel has not relied on previous panel reports to determine whether building condition and adaptive reuse were relevant when deciding whether the subject land had heritage significance or whether to apply the Heritage Overlay . The Panel is not aware of what information was presented to some of the previous panels. For Amendment C227brim, the Panel has considered the comprehensive submissions on these issues with a fresh perspective.

Having regard to these submissions, the Panel notes:

- *the Heritage Overlay enables:*
 - *the buildings and structures to be maintained without the need for a planning permit*
 - *development and demolition, subject to responding sensitively to the heritage fabric*
- *the Industrial 1 Zone prohibits residential development, therefore any notion of residential development on the subject land is hypothetical because it is unknown whether Council or the Minister for Planning will support the land being rezoned*
- *any concept master plan or associated costs are aspirational and cannot be used to accurately measure potential financial impacts or feasibly*
- *there are too many unknown and unmeasurable matters to enable an informed decision.*

Planning Practice Note 1 does not include these matters as criteria when deciding whether a place has sufficient heritage significance or whether to apply the Heritage Overlay .

There was no information to demonstrate that any private financial impact on the owner would extend to a broader community impact. The absence of a permit application with

definitive proposal details makes it difficult to measure or understand any financial impact, whether private or public.

The Panel finds itself with a consistent view to previous panels that, at this stage of the planning process, building condition, maintenance, adaptive reuse and financial impact cannot be considered as deciding factors when assessing whether a place has sufficient heritage significance or whether to apply the Heritage Overlay .

The Panel does not comment on how the owner maintains, monitors or secures the subject land. Mr Boyle did not demonstrate how maintenance and security issues, which can be addressed through non-planning processes, relate to the heritage significance of the subject land.

(iv) Conclusions

The Panel concludes:

- Building condition, adaptive reuse and private financial impact are not relevant when considering if 2 Wright Street, Sunshine has sufficient local heritage significance to justify the Heritage Overlay .*
- Building condition may have been relevant if the structures were so unstable, they would not survive by the time the Amendment was gazetted, however there is no evidence to demonstrate this.²⁹*

62. G Adams has filed the evidence of Mr Leonard in respect of the condition of the building at 796-830 Mt Aitken Road.

63. Mr Leonard's statement contains the following useful summary of the works required to bring the dwelling to a habitable standard:

5.2.9.1 Re-blocking of stumps, excavation of subfloor to provide ground clearance and replacement of all decayed subfloor timbers, this work would also involve demolishing the floor and parts of the internal walls so as access could be provided to excavate the require 400mm subfloor clearance;

5.2.9.2 Removal of all external wall linings and replacement of decayed structural framing materials;

5.2.9.3 Removal and replacement of all dilapidated windows and renew and reflash installation;

5.2.9.4 Removal and replacement of roof material;

5.2.9.5 Removal and replacement of spouting and storm water drainage down pipes (ensuring stormwater drainage is taken to a legal point of discharge away from the Dwelling;

5.2.9.6 Removal of all internal wall and ceiling linings to eliminate mould;

5.2.9.7 Rebuild the northern verandah;

5.2.9.8 Repair the mortar joints in the chimney and stabilize the structure as necessary; and

5.2.9.9 Reinstate electrical and plumbing connections.

²⁹ [Brimbank C227brim \(PSA\) \[2022\] PPV 60](#) [3.4]. A similar conclusion was reached in [Boroondara C337boro \(PSA\) \[2021\] PPV 101](#) [3.1(iii)].

5.2.10 *It is my opinion the extent of the above works is primarily demolition and rebuilding the existing Dwelling, with most of the works requiring new materials.*

5.2.11 *I note the above works are significant and involve structural alterations which would require a building permit to be issued for these works to be carried out.*

64. Mr Leonard's statement concludes:

64.1. Regarding the cost of the required works:

...to reinstate the building to a compliant and occupiable standard (with, I estimate, a minimum 80% in new materials) would be in the order of \$450,000.00. I hold the view that a maximum of 10% - 20% of the existing external and internal lining materials could be salvaged (e.g. floor boards, brick chimneys and maybe some structure)³⁰

64.2. Regarding the ability to repair the building and convert it to a non-residential use:

Any use of the Dwelling, other than a private dwelling or an outbuilding (shed, garage or the like), would require significant alterations to increase the floor loading capacity and the widening of all the internal doors and corridors for compliant accessibility for persons with a disability. The current floor plan does not lend itself to the required minimum doorway sizes, latch-side clearances to doors and turning spaces for wheelchairs set out in Australian Standard AS 1428.1 – Design for access and mobility.

Essentially the building format is only suitable as a dwelling, or a garden shed³¹

65. In respect of Mr Leonard's evidence Council submits:

65.1. The significance of the building does not turn upon the internal layout of the building. Internal modifications (whether to bring doorways to code or otherwise) could be made without diminishing the heritage significance of the building.

65.2. While the extent of original fabric would be reduced, the nature of the required works are essentially outstanding repair and maintenance albeit required at the one time to abate the impact of present management.

65.3. It is useful to consider what advice would be given to the owner of a building of a similar condition that was already in the heritage overlay. The likely advice would be to replace the roof, repair the chimney, restump and fix the weatherboards and replace the windows with original style timber windows and fix porch, like for like.

65.4. Mr Leonard's cost estimates are rudimentary and based only on a generic per m² building cost and a premium for a renovation. It is equally relevant to observe that the median sale price for a 4 bedroom house in Diggers rest is \$699,000 or \$480 per week for a rental.³² There is no expert analysis before the Panel to demonstrate that the costs of repairing the building are incapable of yielding a viable economic outcome, or that the outcome would be any different to the ordinary expense of a home owner maintaining their property.

66. Finally on the question of the cost of conservation works, Council observes that it offers a competitive grant application process under its Heritage Assistance Fund. As set out on Council's website:

³⁰ Witness statement of S Leonard, page 13.

³¹ Witness statement of S Leonard, page 14.

³² <https://www.realestate.com.au/vic/diggers-rest-3427/>

The heritage assistance fund provides financial assistance to landowners, companies or community groups to maintain, repair or conserve a heritage place or for preparation of conservation management plans for a heritage place within the municipality.

By 'place', we mean houses, farm buildings, fences, dry stone walls, gardens, landscapes or archaeological sites which have recognised heritage significance.

The grant is not available for projects that have already commenced.

The fund can provide up to 50% of the cost of works proposed and applicants must match Council's contribution. The fund is competitive and not all applications will be automatically approved.³³

67. While Council is unable to promise a grant to any applicant, and grants are allocated within the annual budget allocation for the fund, the Heritage Assistance Fund delivers on the identified action at clause 21.07 of the Planning Scheme of 'Providing heritage funding and advisory services to assist landowners in the enhancement and protection of places of significance.' It is one available means of assisting land owners.
68. In summary, Council submits that the Panel should follow the Greater Geelong C422ggee and Brimbank C227brim panels in finding that the condition of the building is not determinative in this instance of whether the heritage overlay should be applied.

The issues of intactness and integrity

69. It is also convenient to address the issue of Integrity separately given the issue is relevant to all 3 Criterion.
70. It is Council's primary submission that the contested buildings may have a decreased intactness, and may have degraded structural condition, but nonetheless retain sufficient integrity to be of local significance.
71. Mr Raworth's witness statement places considerable emphasis on the issue of intactness in support of his view that the two properties should not be included in the Heritage Overlay. This discussion is set out at paragraphs 28-33 of his statement, while his discussion on Criterion A, B and D are set out at paragraphs 35-44.
72. In contrast, Mr Mornement's commentary on intactness and integrity is more limited, primarily located in the passage extracted below at paragraph 116.
73. In broad terms, Mr Raworth's witness statement asserts that all 5 dwellings proposed to be brought within HO141 have been modified to such an extent that they no longer sufficiently intact to warrant the application of the heritage overlay. In contrast, Mr Mornement considers that the changes have not affected the 'essential character and form of the buildings'.³⁴
74. Although not expressly explored in the written evidence, the contrasting views of Mr Mornement and Mr Raworth span the concepts of intactness and integrity.
75. The terms 'intactness' and 'integrity' are related but not interchangeable, as apparent from the following definition from the VHR Guidelines 2022 (from which Mr Raworth has drawn some elements):

***Integrity:** Refers to the degree to which the heritage values of the place or object are legible and able to be understood and appreciated. For example, does it include all the elements necessary to express its significance? If considerable change to the intactness of a place or object has occurred (through changes to the fabric or setting, physical deterioration etc) the significant values may not be readily identifiable and the*

³³ <https://www.melton.vic.gov.au/Out-n-About/Arts-culture-heritage/Heritage/Heritage-Assistance-Fund>

³⁴ Witness statement of A Mornement, page 26.

place or object may have low-level integrity. It should be noted that non-original fabric can contribute to the integrity of a place/object.³⁵

76. The distinction between the two terms was also considered by the [Northcote Bowl Advisory Committee](#) which remarked:

The question of 'intactness' is frequently discussed in heritage debates – both as a positive (e.g. “a very intact example”) or a negative (e.g. “no longer intact”). Equally frequently the term 'integrity' is applied as a synonym for intactness. For the purposes of this consideration, the Advisory Committee proposes the view that intactness and integrity refer to different heritage characteristics.

***Intactness** relates to the 'wholeness' of (or lack of alteration to) the place. Depending on the grounds for significance, this can relate to a reference point of original construction or may include original construction with progressive accretions or alterations. Integrity in respect to a heritage place is a descriptor of the 'veracity' of the place as a meaningful document of the heritage from which it purports to draw its significance. For example, a place proposed as important on account of its special architectural details may be said to lack integrity if those features are destroyed or obliterated. It may be said to have low integrity if some of those features are altered. In the same case but where significance related to, say, an historical association the place may retain its integrity despite the changes to fabric. Structural integrity is a slightly different matter. It usually describes the basic structural sufficiency of a building.*

Based on this approach it is clear that whilst some heritage places may have low intactness they may still have high integrity – the Parthenon ruins may be a good example. On the other hand, a reduction in intactness may threaten a place's integrity to such a degree that it loses its significance.³⁶ (emphasis added)

77. More recently the C387melb Panel remarked:

The Panel considers that the issue of intactness is fundamental to the assessment of whether a place meets the threshold for significance. It agrees with Council's observation that intactness is a relative rather than an absolute term. The degree to which intactness impacts on a building's integrity and is a factor in determining the threshold of significance for different criteria requires the consideration of a number of factors and can be assisted by a comparative analysis of similar places.

The Panel observes that it is generally expected that for individual places intactness is usually higher than for contributory places. However, there might be cases where places have lower intactness but have a high degree of integrity and that intactness does not necessarily impact on significance at the end of the day.

As identified above comparative analysis plays a role in understanding the context for intactness. While the Panel acknowledges and most experts accepted that some level of change is normal or commonplace in the CBD, acceptance of this this should not be the starting point or the breakeven point for benchmarking. While the benchmarking process applied in the Heritage Review is useful and transparent and provides appropriate context, the Panel considers that the key questions, in each case, should be:

- *is there still sufficient fabric in place to assist our understanding and appreciation of the particular place including its original use, era and design?*
- *do the extant changes and alterations impact on our understanding and appreciation of the particular place?*

³⁵ VHR Guidelines 2022, page 6.

³⁶ [Northcote Bowl site \(AC\) \[2010\] PPV 39](#) [2.2.2].

- are we still able to appreciate its significance and why it is significant?

...³⁷ (emphasis added)

78. It is also useful to consider prior panel consideration of local significance in Melton.

79. The Melton C71 Panel concluded:

*The Panel has concluded that the primary determinant of whether a place should be listed under the HO is whether it can be shown to possess heritage significance at the local level against the nominated values and criteria. Intactness may influence whether or not the place crosses the threshold for significance. Condition is only likely to be relevant where it has caused the place to lose the heritage values it may otherwise have possessed.*³⁸

80. Similarly, the Melton C100 Panel concluded:

3.3.3 Discussion and conclusions

The Panel notes the opposing views expressed in submissions and evidence about the relevance of condition in assessing the heritage significance of dry stone walls. It considers that the distinction between condition and integrity / intactness is important. If a wall has been removed or substantially altered (either through the addition or removal of material) it is likely have reduced heritage qualities, compared with a wall that is still in situ but may have damaged sections or places where rocks have fallen from the wall onto the adjoining land.

*The Panel concludes that condition in itself is not a determinant of heritage significance. If a place can be shown to be of at least local significance against an established heritage criterion, it may be appropriate for listing under the HO, even if it is not in original or good condition.*³⁹

81. Consistent with these comments, the Heritage Overlay in Melton currently protects several dwellings that might not be significant if viewed in the context of the heritage of another municipality, but are of local significance in Melton. This is the essence of local significance. It would be incorrect to compare the standard and integrity of buildings in another municipality to Melton. For example, Ballarat's heritage buildings reflect the period of development associated with gold rush, the houses protected by Melton's Heritage Overlay reflect the environmental and natural history of the municipality – many of these buildings were houses of poor farmers who worked marginal land in return for small incomes. This is born out through examples such as:

81.1. HO15 - House 'Angus Downs – a building that the statement of significance documents as 'possibly relocated and undergoing renovation' and in 'fair-poor' condition. Despite this, the building retains its integrity by demonstrating 'some original design qualities of Victorian vernacular style'. The building is an example of one that has high integrity but is in very poor condition.⁴⁰

81.2. HO46 - House, 1376-1432 Calder Highway – an uninhabited, relocated, late Victorian and Federation style building, that the statement of significance observes was '[b]uilt in the early twentieth century and moved to the present site around the time of the Second World War, the house shows signs of substantial deterioration in the

³⁷ [Melbourne C387melb \(PSA\) \[2021\] PPV 89](#) [5.1(iii)].

³⁸ [Melton C71 \(PSA\) \[2009\] PPV 9](#) [6.4.5]

³⁹ [Melton C100 \(PSA\) \[2015\] PPV 140](#)

⁴⁰ HO15 – House, 'Angus Downs', Blackhill Road, Citation No 006, *Shire of Melton Heritage Study – Volume 3*, https://www.melton.vic.gov.au/files/assets/public/services/building-planning-amp-transport/strategic-planning/studies-strategies-guidelines/heritage-study/volume-3-ho/001-025-heritage-overlays/ho_015_angus_downs.pdf

weatherboard wall cladding and front verandah in particular. The main roof has been recently reclad in corrugated sheet metal roofing.⁴¹

- 81.3. HO101 - House, 865 Exford Road, Exford – a house that '[a]lthough relocated and altered, the house still demonstrates a rudimentary Edwardian style'.⁴²
82. This selection of properties highlights that property does not have to reach a high level of intactness to retain sufficient integrity to be locally significant in the context of Melton.
83. Returning to the properties proposed to be included in HO141 it is clear the works identified by Mr Raworth have reduced the intactness of the buildings. However, it does not follow that the buildings have lost their integrity just because they have lost certain features such as windows or chimneys or have been extended.
84. Nor does it mean that:
- 84.1. Future sympathetically designed works to the buildings (perhaps assisted by the allowance of prohibited uses) could not reverse losses such as by removing infilled veranda's and returning entrances to their original position;
- 84.2. Future repair and maintenance could not be undertaken in a way that maintained the integrity of the building.
85. This is in the context of buildings that were constructed modestly and remain of modest stature, resting within largely unchanged physical environments to those when the buildings were constructed. The fabric continues to communicate the historical association.
86. In Council's submission, and consistent with Mr Mornement's evidence:
- 86.1. The buildings retain sufficient fabric to assist our understanding and appreciation of the original use, era and design of the soldier settlement housing. Indeed, this is implicit in the expert witnesses being able to clearly read the original built form and articulate the later alterations.
- 86.2. Do not prevent an appreciation of the building's significance, especially significance in terms of Criterion A, B and C that rely on historical associations, rarity and representativeness.
87. Council therefore submits that the building retains sufficient integrity to be of local heritage significance when assessed against Criterion A, B and C. This is further explored in the paragraphs that follow.

Are the two places of local heritage significance when assessed against Criterion A?

88. PPN1 describes Criterion A as follows:

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

89. In respect of Criterion A, the exhibited statement of significance states:

⁴¹ HO46 – House, 1376-1432 Calder Highway, Citation No 073, *Shire of Melton Heritage Study – Volume 3*, https://www.melton.vic.gov.au/files/assets/public/services/building-planning-amp-transport/strategic-planning/studies-strategies-guidelines/heritage-study/volume-3-ho/026-050-heritage-overlays/ho_046_house_calder_hwy.pdf

⁴² HO101 – House, 865 Exford Road, Citation No 276, *Shire of Melton Heritage Study – Volume 5*, https://www.melton.vic.gov.au/files/assets/public/services/building-planning-amp-transport/strategic-planning/studies-strategies-guidelines/heritage-study/volume-5-ho/087-105-heritage-overlays/ho_101_865_exford_rd.pdf

The Mt Aitken Estate Soldier Settlement Housing is of local historical significance demonstrating the break-up of large nineteenth century pastoral estates in the municipality, and the twentieth century shift to small farm holdings. The soldier settlement houses are also of historical significance, illustrating post-war soldier settlement schemes in Melton (Criterion A).

90. The Heritage Assessment supplements these comments in the *Assessment Against Criteria* as follows:

The Mt Aitken Estate Soldier Settlement Housing is of local historical significance demonstrating the local break-up of large pastoral estates in the municipality, and the twentieth century shift to small farm holdings.

The group of early 1950s residences on Mt Aitken Road and Napier Street provide good evidence of the postwar soldier settlement scheme in Melton. This type of settlement scheme, which occurred in the periods after both world wars, took place with varying degrees of success across the municipality. The 1946 scheme, after World War II, was designed to provide additional support to the ex-servicemen farmers. The purchase of the subject allotments in the decades after the establishment of the Mt Aitken soldier settlement estate indicates a level of success of these small farm properties.⁴³

91. Mr Mornement's statement draws on these thematic associations, stating:

61. The Shire of Melton Heritage Study: Stage Two (David Moloney, May 2007) identifies farming and pastoralism as themes that are central to an understanding of the municipality.

62. As related to the 'break-up of pastoral estates' the Heritage Study observes:

The 'break-up' of the pastoral estates and the revival of farming in Australia around the turn of the twentieth century had an especially profound effect on the Shire of Melton. Throughout the nineteenth century many locals had blamed the huge pastoral estates for holding back the development of Melton, and the demise of these estates did indeed prove a boon to local development. It saw the rise of Melton's nationally acclaimed hay and chaff industry, and the construction of new roads, bridges and schools. Most of the estate break-ups were voluntary, but the government's Closer Settlement estates were an historically important expression of a major Australian historical movement that also motivated the earlier Selection Acts and the later Soldier Settlement Acts. Two of the first, largest and most publicized of the Closer Settlement estates – the Overnewton and the Exford estates – were located in Melton Shire.

Historically the break-up of the pastoral estates was a turning point in the Shire's history. In heritage terms, it left a legacy of the single largest type of heritage place in the Shire: a set of predominantly weatherboard early twentieth-century farming dwellings. Most (but not all) of these were small, in keeping with the social origins of the movement, particularly on the Closer Settlement estates. However, many that remain around the Shire today are the larger examples, the poorer ones being more altered or deteriorated, and having been less valued for their heritage qualities.

92. Mr Mornement goes onto conclude that '[t]he Mount Aitken Estate Soldier Settlement Housing (HO141) is of local historical...significance'.⁴⁴

⁴³ Heritage Assessment, page 11.

⁴⁴ Witness statement of A Mornement, page 29.

93. Turning to the VHR Guidelines 2022⁴⁵, Council submits that:
- 93.1. The soldier settlement houses have a clear association with soldier settlement and more particularly post WWII soldier settlement period.
 - 93.2. The historical importance of the soldier settlement houses is established through the Melton Heritage Study.
 - 93.3. The Melton Heritage Study (amongst other statewide heritage materials) evidence the association of dwellings such as these to the historical period, noting that the VHR Guidelines 2022 do not require significance to be obvious from the heritage fabric.⁴⁶

94. Mr Raworth takes a different view, that may be summarised by the following 3 propositions.

94.1. Firstly, Mr Raworth states:

35. The statement of significance identifies the five dwellings as being of historical significance for demonstrating 'the break-up of large nineteenth century pastoral estates'. Given the curtilage that is proposed for the extent of each heritage overlay, restricted to a relatively small area surrounding each of the five houses, the ability of the identified areas to demonstrate the division of the pastoral estates is questionable. While the houses are were constructed as a consequence of the break-up of the larger estates, the fabric of the dwellings is not demonstrative of this.

94.2. Secondly, at paragraphs 36 and 37 Mr Raworth's statement places the initial break-up of the Mt Aitken Estate in 1912, prior to '[t]he construction of the subject houses in c.1951'. The statement also contextualises the post-war soldier settlement schemes in the context of the broader government sponsored settlement schemes of the early 20th century.

36. Additionally, the initial break-up of the Mt Aitken Estate appears to have taken place in 1912, as outlined in the Shire of Melton Heritage Study Environmental History, which states that 'the 3,800 acre Mount Aitken estate was subdivided into small farms (mostly under 200 acres) and sold in 1912.' The construction of the subject houses in c.1951 took place well after this initial break-up of the nineteenth century pastoral estate, as a result of a subsequent subdivision.

⁴⁵ Heritage Council of Victoria, *Assessing the cultural heritage significance of places and objects for possible state heritage listing: The Victorian Heritage Register Criteria and Threshold Guideline*, Endorsed by Heritage Council 6 December 2012 Reviewed and updated 1 December 2022, Page 8.

⁴⁶ See VHR Guidelines 2022, page 4 which provides:

Places and objects do not speak for themselves. In some cases, evidence of the reason(s) for the significance of a place or object will be visible in its physical form. In other cases, the reasons for significance may not be obvious in the fabric of the place or object but can be found in other forms of evidence (including information derived from historical and/or documentary and/or oral sources). For all places, significance will be attached to a geographically defined area. This does not apply to objects, which may not be dependent on association with a place or setting for significance.

*...
(xi) The ability of a place to demonstrate evidence of significance is a consideration that, to varying degrees, applies to all of the criteria. For some the imperative for physical evidence is stronger than others. Criterion A, for instance, prioritises the strength of historical associations, demonstrated through documentary or other evidence, meaning that the need for physical evidence that is expressive of significance may be relatively low. For Criterion D, the need to demonstrate that a place/object is a notable example of a class would typically require physical evidence.*

37. The citation also claims that the dwellings are of historical significance for 'illustrating post-war soldier settlement schemes'. Postwar soldier settlement schemes are a facet of the broader array of government sponsored settlement schemes that occurred in the twentieth century, which it is acknowledged are an important theme in the history of Melton. As the 2007 Study states:

The 'break-up' of the pastoral estates and the revival of farming in Australia around the turn of the twentieth century had an especially profound effect on the Shire of Melton. ... Most of the estate break-ups were voluntary, but the government's Closer Settlement estates were an historically important expression of a major Australian historical movement that also motivated the earlier Selection Acts and the later Soldier Settlement Acts. ...

Historically the break-up of the pastoral estates was a turning point in the Shire's history. In heritage terms, it left a legacy of the single largest type of heritage place in the Shire: a set of predominantly weatherboard early twentieth-century farming dwellings. Most (but not all) of these were small, in keeping with the social origins of the movement, particularly on the Closer Settlement estates...

94.3. Thirdly, and in part qualification of his second proposition, Mr Raworth observes:

38. The differences in the operation of the Soldier Settlement Scheme after the First World War compared with the scheme following the Second World War resulted in architect designed dwellings for the latter period. While this differentiates the second phase of the Soldier Settlement Scheme somewhat, it remains that such houses are a subset of the broader range of dwellings constructed as a result of government sponsored settlement schemes....

As an apparent extension of this proposition, paragraph 39 of Mr Raworth's statement provides:

39. Only the dwellings which continue to demonstrate the architect designed qualities of the postwar Soldier Settlement Scheme should be considered for any overlay. Given the relatively modest nature of these dwellings, lacking ornamentation or decorative detailing, intactness is an essential determining factor. Only the intact dwellings that feature original windows, porches and chimneys, that is 480-580 Mt Aitken Road and 115-131 Napier Street, are worthy of being considered under this criterion.

95. In respect of the first proposition, Council observes that while technically correct, the historical distinction between land and built form that Mr Raworth seeks to draw is somewhat artificial.

96. As Mr Raworth observes⁴⁷, the soldier settlement scheme of after WWII was refined to mitigate the shortcomings of the earlier post WWI scheme. This is reflected in the source identified at Mr Raworth's footnote 2, which provides:

Today, a century after the establishment of the scheme, descendants of soldier settlers are still on the land. The experiences of World War I soldier settlers paved the way for the next generation of servicemen, who returned from World War II. These soldier settlers benefited from the important lessons learnt from the previous scheme. Applicants were carefully selected, given accommodation on their blocks, awarded a basic living wage and given extensive agricultural training. Better support for physical and mental health was also provided. It helped that world prices for agricultural products boomed in the post-war period.⁴⁸

⁴⁷ Witness statement of B Raworth, page 4.

⁴⁸ Ann Wilcox, *On The Land: The Soldier Settlement Scheme*, <https://www.oldtreasurybuilding.org.au/lost-jobs/on-the-land/soldier-settlement-scheme/>

97. In Council's submission, the subdivision pattern and the houses provided on those properties are intrinsically linked. The provision of a dwelling on the soldier settlement lot is tied to the subdivision changes of the post WWII soldier settlement scheme. While the history of a subdivision pattern may be difficult to discern through cadastral boundaries and farm fences, the distribution of buildings on that land itself embodies this phase of the municipalities' history. The buildings as a whole convey this history, not any particular part of the fabric.
98. Regarding the second proposition, Council considers the full context from the 2007 Shire of Melton Heritage Study (**Melton Heritage Study**) is relevant. The quoted at paragraph 36 of the statement is from Volume 2 of the Melton Heritage Study: Environmental History. While paragraph 36 correctly identifies the initial 3,800 acre subdivision, it does not extract the full sentence. The full sentence at page 65 of Volume 2 states:
- ...The 3,800 acre Mount Aitken estate was subdivided into small farms (mostly under 200 acres) and sold in 1912; another five allotments north of Aitkens Road were subdivided and sold under the Soldier Settlement Act 1946. ...*
99. It follows that the historical significance of the break-up of the Mount Aitken estate is not limited to the 1912 subdivision, but had two phases, including the second phase after WWII.
100. Notably, Council understands the reference to the 'five allotments north of Aitkens Road' to be a reference to the 5 properties proposed to be included in HO141.
101. Mr Raworth's observation therefore reinforces, rather than reduces, the heritage significance of these 5 building. If the dwellings are not included in the heritage overlay, the overlay in Melton will continue to omit the post WWII part of this important historical theme.
102. In respect of Mr Raworth's third proposition, Council submits that the proposition at paragraph 38 of the statement again reinforces the significance of the buildings.
103. While it may be that the 5 buildings do form part of a broader architectural history of government sponsored settlement schemes, these buildings:
- 103.1. Are of a latter time period, being post WWII dwellings;
- 103.2. Reflect a common architectural design.
104. Both the time period and the architectural design therefore reinforce the significance of these buildings. While there are other examples of dwellings from government sponsored settlement schemes, they do not reflect the era or design embodied by the buildings proposed to be included in HO141.
105. Finally, Council also disputes the contention that '[g]iven the relatively modest nature of these dwellings, lacking ornamentation or decorative detailing, intactness is an essential determining factor.' This appears a mere assertion, unsupported by PPN1, authority or analysis.
106. For these reasons, Council submits that the buildings are of local historical significance and should be included in the heritage overlay.

Are the two places of local heritage significance when assessed against Criterion B?

107. PPN1 describes Criterion B as follows:

Criterion B: Possession of uncommon, rare or endangered aspects of our cultural or natural history (rarity).⁴⁹

108. In respect of Criterion B, the exhibited statement of significance states:

⁴⁹ PPN1, page 1.

The five soldier settlement houses constructed in the early 1950s on Mt Aitken Road and Napier Street are of local significance for their rarity as one of a small number of remaining examples of post-war soldier settlement in the municipality (Criterion B).

109. The Heritage Assessment supplements these comments in the *Assessment Against Criteria* as follows:

*There are a number of examples of earlier soldier settlement schemes in Melton, but the Mt Aitken Estate Soldier Settlement Housing is one of a small number of examples of post-war soldier settlement in the municipality.*⁵⁰

110. The analysis by Mr Mornement and the review of the Victorian Heritage database (described previously in this submission) both support the view that HO141 is a rare example of post WWII soldier settlement housing. This is especially the case at the end of the assessment process commenced with the 2007 Melton Heritage Study.
111. As discussed in the Part A submission, the Melton Heritage Study identified and assessed places of cultural heritage significance. It also identified properties for further investigation in later studies, such as those conducted in the Melton Dry Stone Walls Study (August 2011) and City of Melton Heritage Assessments Project 2018, and finally the current Heritage Assessment. The history of this assessment process is relevant in that it:
- 111.1. Documents the history of identification and study of places of potential heritage significance in Melton;
 - 111.2. Increases the confidence that the Panel may have in the use of the heritage overlay as a dataset for comparative analysis.
112. By way of conclusion on Criterion B and drawing on the VHR Guidelines 2022⁵¹, Council submits that:
- 112.1. The buildings have a clear association with post-WWII soldier settlement in the municipality, and the broader break-up of the pastoral estates;
 - 112.2. There is evidence of that association, both from the existence of the buildings and in documentary form, such as through the 2007 Heritage Study;
 - 112.3. As set out in the forgoing analysis, there is evidence that the places are rare or uncommon - this is reinforced by there being no post-WWII soldier settlement dwellings currently protected by the Heritage Overlay in Melton.⁵²

Are the two places of local heritage significance when assessed against Criterion D?

113. PPN1 describes Criterion D as follows:

⁵⁰ Heritage Assessment, page 12.

⁵¹ Page 10.

⁵² Noting that the VHR Guidelines 2022 define 'rare' as follows:

Rare: Examples of a class of place/object that are rare may relate to past ways of life, customs, processes, land uses, functions or design that were always few in number, or that are now few in number. Examples may include places/objects associated with uncommon aspects of human occupation and activity; those demonstrating a past human activity or aspects of culture that are now rare, obsolete or no longer practised; or those with uncommon integrity in the Victorian context. It should be noted that all places are 'unique' in one way or another. This does not make them 'rare' as considered under these guidelines. It should also be noted that 'rarity' in the context of these guidelines should not be applied in cases where the place or object is rare by default, for example as the only one in a specialised class (i.e. there is only one Eye and Ear Hospital in Victoria) or where a significant event that was necessarily singular occurred (i.e. the opening of the first Parliament of Australia at the Royal Exhibition Building).

Criterion D: Importance in demonstrating the principal characteristics of a class of cultural or natural places or environments (representativeness).⁵³

114. In respect of Criterion D, the exhibited statement of significance states:

The five soldier settlement houses on Mt Aitken Road and Napier Street are of local representative significance for their demonstration of the key characteristics of standard soldier settlement housing. This includes their modest, single-storey weatherboard construction, often double or triple fronted, and with verandahs and brick chimneys. The designs were provided by the architects Buchan, Laird and Buchan for the Solider Settlement Commission (Criterion D).

115. The Heritage Assessment supplements these comments in the *Assessment Against Criteria* as follows:

The residences appear to be representative of a housing type associated with post-war soldier settlement development. The modest, single-storey, weatherboard construction, stepped or asymmetrical frontage and porch entry are demonstrative of a standard design, part of the provision of support from the Soldier Settlement Commission. The architects Buchan, Laird and Buchan appear to have provided the standard designs for the Mt Aitken Estate.

The Solider Settlement Housing satisfies this criterion at a local level.⁵⁴

Why is it significant?

The Mt Aitken Estate Soldier Settlement Housing is of local historical significance demonstrating the break-up of large nineteenth century pastoral estates in the municipality, and the twentieth century shift to small farm holdings. The soldier settlement houses are also of historical significance, illustrating post-war soldier settlement schemes in Melton (Criterion A).

The five soldier settlement houses constructed in the early 1950s on Mt Aitken Road and Napier Street are of local significance for their rarity as one of a small number of remaining examples of post-war soldier settlement in the municipality (Criterion B).

The five soldier settlement houses on Mt Aitken Road and Napier Street are of local representative significance for their demonstration of the key characteristics of standard soldier settlement housing. This includes their modest, single-storey weatherboard construction, often double or triple fronted, and with verandahs and brick chimneys. The designs were provided by the architects Buchan, Laird and Buchan for the Solider Settlement Commission (Criterion D).

116. In respect of Criterion D, Mr Mornement's statement provides:

85. The five single-storey houses have been assessed as satisfying Criterion D, 'Importance in demonstrating the principal characteristics of a class of cultural or natural places or environments (representativeness)'. They are representative of different models of standardised weatherboard residences that were provided to returned servicemen by the Soldier Settlement Commission in the post-World War II period.

86. The properties at 726-738, 740-794 and 796-830 Mount Aitken Road have a similar triple-fronted design with hipped roofs clad in corrugated sheet metal. No. 480-580 Mount Aitken Road is double fronted with a projecting bay to the east, and 115-131 Napier Street has projecting bay in the centre of the front elevation.

⁵³ PPN1, page 1.

⁵⁴ PPN1, page 1.

87. *The modest nature of the residences contributes to an understanding of the historical context in which they were delivered.*

88. *Each residence, to varying degrees, has been modified. For instance, the original timber framed windows to the houses at 740-794 and 796-830 Mount Aitken Road have generally been replaced with aluminium framed windows within the original openings (see Figure 10 and Figure 11), and the original entry enclosure to the south elevation of the house at 740-794 Mount Aitken Road has been enclosed (compare Figure 10 with Figure 11). However, the essential character and form of the buildings is unaffected.*

89. *Further, as noted in the citation, a large extension has been added to the south-east of 726-738 Mount Aitken Road, but the original stepped form of the weatherboard residence with its hipped roof and brick chimney remains legible (Figure 12).*

117. Mr Raworth, however, disagrees, pointing to the level of intactness and the describing the defining characterises of the buildings as being common to the austerity era 'housing in the late 1940's and early 1950's more broadly'.⁵⁵ This comment, however, ignores the earlier observation of Mr Raworth's statement that the 'architect designed dwellings for the later period ...differentiates the second phase of the Solder Settlement Scheme somewhat.'⁵⁶
118. The common architectural expression and repeated pattern of the 5 dwellings articulated by Mr Mornement embodies this differentiation from the earlier pre-WWII era of closer settlement observed by Mr Raworth. It therefore represents this class of building in Melton.
119. Turning to the VHR Guidelines 2022⁵⁷, Council submits that:
- 119.1. The buildings have a clear association with the post-WWII solder settlement;
 - 119.2. The solder settlements are of historic importance to the municipality as outlined above in reference to the 2007 Heritage Study.
 - 119.3. The association, by virtue of being dwellings from that settlement scheme and utilising a common architectural design language, is evident from the physical fabric of the buildings.
 - 119.4. The physical characteristics remain and continue to be demonstrated by the buildings. Despite the modifications that have occurred, the architectural character remains.
 - 119.5. The association to solder settlement is clearly documented and evidenced.
120. Council therefore submits that the two contested dwellings satisfy Criterion D.

FINAL POSITION ON THE AMENDMENT

121. The Amendment is a result of strategic work that can be traced to the *Shire of Melton Heritage Study (May 2007)*, including the identification of conservation desirables. Since the initial identification of the Heritage Places, Council has undertaken a thorough process to assess the heritage significance of the Heritage Places, the latest of which is the City of Melton Heritage Assessment Project 2020/21.
122. Council submits that the Amendment is well founded and strategically justified having regard to:
- 122.1. The background and supporting documents to the Amendment;

⁵⁵ Witness statement of B Raworth, page 19.

⁵⁶ Witness statement of B Raworth, page 15.

⁵⁷ Page 14

- 122.2. Council's Part A submission, including its response to submissions; and
- 122.3. The evidence of Mr Mornement.
- 123. Council submits that the Amendment should be approved subject to:
 - 123.1. Prohibited uses being permitted as proposed by the Council in the Part A submission in respect of HO139, HO141 and HO142;
 - 123.2. Amending the Diggers Rest Army Housing Estate Heritage Design Guidelines and Permit Exemptions:
 - a. To reflect the tracked changes appended to Mr Mornement's witness statement;
 - b. To incorporate the supplementary further changes recommended at paragraph 58 of Mr Mornement's witness statement;
 - 123.3. Revising the schedule to the Heritage Overlay so that paint controls are not imposed in respect of HO139.
 - 123.4. Retaining the exhibited extent of the overlay for HO139.
 - 123.5. Replacing all references in the Amendment documentation to 117 Diggers Rest-Coimadai Road, Diggers Rest, with 19-115 Diggers Rest-Coimadai Road.
- 124. Council respectfully requests the Panel recommend adoption and approval of the Amendment subject to these revisions.

CONCLUSION

- 125. This concludes Council's Part B submission.

13 June 2023

GREG TOBIN & AARON SHRIMPTON
HARWOOD ANDREWS
on behalf of
MELTON CITY COUNCIL