

## **Heritage Council** Regulatory Committee

### **Exclusion Determination Review Request**

**Nicholson and Elgin Public Housing Towers, 20 Elgin Street and 141 Nicholson Street, Carlton, Melbourne City Council**

**Review requested** – 2 October 2024

**Members** – Mr Simon Molesworth AO KC (Chair), Mr David Helms, Dr Ursula de Jong

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#### **HERITAGE COUNCIL OF VICTORIA EXCLUSION DETERMINATION REVIEW REQUEST**

On 5 September 2024 the Executive Director determined to make an Exclusion Determination in relation to the Nicholson and Elgin Public Housing Towers located at 20 Elgin Street and 141 Nicholson Street, Carlton, Melbourne City. The Heritage Council received a request to review the Executive Director's decision. The Heritage Council has determined that there is not a valid review before the Committee, in that with respect to Habitat 26+ it is not a legal person, and with respect to individual persons, the review request was not made by a person with a real and substantial interest in the Place and, pursuant to section 36E(1) of the *Heritage Act 2017*, that the review is not to proceed.

Mr Simon Molesworth AO KC (Chair)  
Mr David Helms  
Dr Ursula de Jong

**Decision Date** – 12 November 2024

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## ACKNOWLEDGEMENT

As a peak heritage body, we acknowledge the Traditional Owners of the Country that we call Victoria, as the original custodians of Victoria's land and waters, and acknowledge the importance and significance of Aboriginal cultural heritage in Victoria. We honour Elders past and present whose knowledge and wisdom has ensured the continuation of Aboriginal culture and traditional practices.

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## INTERESTED PARTIES

### **EXECUTIVE DIRECTOR, HERITAGE VICTORIA ('THE EXECUTIVE DIRECTOR')**

The Executive Director, Heritage Victoria ('the Executive Director') received an Exclusion Determination application on 26 July 2024. Pursuant to section 36C(1)(a) of the *Heritage Act 2017* ('the Act') the Executive Director made the Exclusion Determination as the Executive Director was satisfied that the place had no reasonable prospect of inclusion in the Victorian Heritage Register. The Executive Director responded to the Committee's request for further information.

### **HOMES VICTORIA ('OWNER / EXCLUSION DETERMINATION APPLICANT')**

Homes Victoria made an application to the Executive Director to have the Place excluded from the Victorian Heritage Register. Homes Victoria engaged Lovell Chen to prepare the application pursuant to section 36A(2) of the Act.

### **HABITAT 26+ / RICHARD CAMERON**

Mr Richard Cameron submitted a request to review the Executive Director's decision to exclude the Place from the Victorian Heritage Register. Mr Cameron made the request on behalf of the Habitat 26+ consortium. Mr Cameron responded to the Committee's requests for further information.

## BACKGROUND

### EXCLUSION DETERMINATION APPLICATION

01. On 26 July 2024 Homes Victoria made an application to the Executive Director, that the Nicholson and Elgin Public Housing Towers ('the Place') be excluded from the Victorian Heritage Register ('the Register') pursuant to section 36C(1)(a) of the Act.
02. The application was submitted by Lovell Chen, who prepared the application pursuant to the prescribed form as set out in the Heritage Regulations. The application included reasons as to why the Place should not be included in the Register based on the Heritage Council's *Victorian Heritage Register Criteria and Threshold Guidelines* ('Criteria for Assessment') (**Attachment 1**).
03. The Exclusion Determination application was made publicly available on the website of Heritage Victoria along with the Executive Director's decision.

### DECISION OF THE EXECUTIVE DIRECTOR

04. On 5 September 2024 the Executive Director determined to make the Exclusion Determination pursuant to section 36C(1)(a) of the Act, after assessing that the Place had no reasonable prospect of inclusion in the Register.
05. The Executive Director assessed the Place against the Criteria for Assessment and found that the place had no reasonable prospect of meeting the State-level tests for any of the Criteria for Assessment.

### THE PLACE

06. The Place is described on page 6 of the Executive Director's assessment report and a brief history of the Place is outlined on pages 12–13 of the report, as follows:

#### **Description**

*The Nicholson and Elgin Street Public Housing Towers consist of two sixteen-storey residential towers located on an irregularly shaped parcel of land bounded by Nicholson, Elgin, Palmerston and Canning streets in Carlton. Each tower has a rectangular form. There are red brick infill panels to the external elevations and aggregate balconies.*

#### **Brief history of the Nicholson and Elgin Street Public Housing Towers**

##### The Palmerston Estate

*The Nicholson and Elgin Street Public Housing Towers (1966-68) were once part of a mixed estate, sometimes referred to as the Palmerston Estate. In 1961 work started on the Canning Street 'walk-ups' (now demolished) on reclaimed land at the corner of Canning and Palmerston Streets. Seven years later the Nicholson Street and Elgin Street Towers were built to the southeast of these walk-ups.*

##### The Nicholson and Elgin Street Towers

*In 1965 the Housing Commission investigated the construction of a 12 storey 'point block' tower (service areas in the central core and flats on the outside) on the Palmerston Street Reclamation Area. It was based on the 'Edmonton' flats inspected by the Commission Chairman on a visit to Britain. This experimental project was developed by Edmonton Borough Council, North London working with the Building Research Station and the Reinforced Concrete Steel Company. The cost-effective design was for a 17-storey block of flats, comprising precast load-bearing floor and wall panels and stair units, and non-load-bearing panels with glazed tiles. The panels were to be cast in vertical batteries using a 'continuous' casting method instead of on horizontal tables. The Palmerston high-rise was to be similarly constructed of battery cast panels.*

*In 1966, the Housing Commission called tenders for a battery cast panel building designed by the Commission's in-house architects, with a 'design and tender' option to retain the layout but capitalise on any economical methods that might be proposed by the industry. In the mid-1960s, the Commission was desirous for 'greater variety on estates' and looked to diversify its designs, while keeping costs down. Builders were invited to submit tenders conforming to set requirements regarding size, flat design and building standards. Some latitude was permitted around design and materials, if the cost was comparable with in-house delivery.*

*In February 1967, the tender of Clements Langford for a concrete frame option was accepted. It had engaged McIntyre, McIntyre and Associates architects, and director Peter McIntyre had developed this option, which promised to be cost effective. By then the Housing Commission had determined the tower would be 16-storeys and there would be a second tower on the site.*

## THE REVIEW REQUEST

### REVIEW APPLICATION

07. On 2 October 2024, pursuant to section 36E(1) of the Act, the Heritage Council received a request to review the Executive Director's decision to make an Exclusion Determination in relation to the Place.
08. The review request was submitted by Mr Richard Cameron, purportedly on behalf of a group called 'Habitat 26+'.
09. Pursuant to section 36E(1) of the Act, only the person or body who made the Exclusion Determination application, or a person with a real and substantial interest in the Place or part of the Place can request the Heritage Council review a determination of the Executive Director.
10. In order to determine matters arising from the material received from Mr Cameron, and pursuant to section 13 of the Act, a Regulatory Committee of the Heritage Council was duly constituted ('the Committee').
11. The Chair invited members of the Committee to consider whether written declarations or otherwise were required to be made in relation to any matters that may potentially give rise to an actual or apprehended conflict of interest. All Members were satisfied that there were no relevant conflicts of interests and made no such declarations.

### CRITERIA FOR ASSESSMENT

12. Mr Cameron disagreed with the Executive Director's assessment of the Place against the Criteria for Assessment, and submitted that the Place could meet the threshold tests for State-level significance for the following Criteria:
  - Criterion A – Importance to the course, or pattern of Victoria's cultural history.
  - Criterion E – Importance in exhibiting particular-aesthetic characteristics.

### FURTHER INFORMATION REQUESTS

13. To inform its consideration, the Committee requested further information from both Mr Cameron and the Executive Director. The Committee requested further information in relation to Mr Cameron's claimed real and substantial interest, and requested that the Executive Director provide further information in relation to his assessment of the Place against Criterion A and Criterion B. Both the requests for further information were to ensure the Committee could meet the 40-day statutory timeframe to determine the review.

14. The first request to Mr Cameron was made on 9 October 2024. The Committee requested the following further information from Mr Cameron in relation to the claimed real and substantial interest:
- a) *A description of the purpose of the Habitat 26+ consortium; and*
  - b) *The names of each member of the Habitat 26+ consortium; and*
  - c) *Whether Habitat 26+, or any other member of the consortium, has ever made a nomination to the Executive Director to include the Place in the Heritage Register; and*
  - d) *A statement outlining whether Habitat 26+ has a real and substantial interest in relation to the Place. This statement should also outline whether or not each and every member of the Habitat 26+ consortium have a real and substantial interest in relation to the Place.*
15. On 14 October 2024 the Committee granted Mr Cameron an extension of time to respond to the further information request, and in addition asked for a response to the below:
- e) *Is Habitat 26+ an incorporated group? If so, please provide the Committee with evidence and a copy of the group's constitution (or other such document).*
  - f) *How do members, supporters or affiliates of Habitat 26+ signify their membership or relationship to the group (regardless of whether Habitat 26+ is incorporated or not)?*
16. Mr Cameron responded to the Committee's requests by 21 October 2024 and advised that Habitat 26+ is 'an unincorporated consortium of approximately 40 construction professionals, covering all aspects of the construction profession including architects, engineers, building surveyors and cost consultants'. Mr Cameron also advised that the group is associated with the 1964 Melbourne University architect alumni, which has approximately 70 retired and practicing consultants.
17. Mr Cameron provided a list of all members of Habitat 26+ and the 1964 Melbourne University architect alumni group. Mr Cameron advised that none of the members indicated that they had ever been involved in a nomination for the Place to be included in the Heritage Register.
18. The legal status of Habitat 26+ and the real and substantial interest claims of Mr Cameron and members of Habitat 26+ are discussed further below.
19. In accordance with section 36E(5) of the Act, the Committee requested the Executive Director provide specified information in relation to the Executive Director's decision. The Committee requested that the Executive Director provide further information as to how the conclusions in relation to Criterion A and Criterion B were reached.
20. The Executive Director provided a response, however the merits of the response as it relates to any exclusion determination review have not been considered by the Committee due to its determination as follows in relation to the standing of Mr Cameron.

## **THE STATUTORY SCHEME IN THE CONTEXT OF THIS MATTER**

21. The Heritage Council of Victoria ('Heritage Council') is a statutory entity. Its sole source of power is the *Heritage Act 2017* and regulations promulgated pursuant to it. The Heritage Council has no discretion or legal power to add to its statutory powers, accordingly it is strictly limited to the powers that are set out in the Act. The Regulatory Committee was appointed by the Heritage Council pursuant to section 13 of the Act, so was thereafter charged to exercise the statutory powers of the Heritage Council, subject to the same jurisdictional limitations.

22. The exclusion determination provisions are found in Division 2A of the Act, being sections 36A to 36F.
23. The statutory prerequisite to the jurisdiction of the Heritage Council to review a decision of the Executive Director is to have a legally valid request for review pursuant to section 36E of the Act. Section 36E(1) mandates that only a person “who has a real and substantial interest in the place or object or part of a place or object ... may request the Heritage Council to review the Executive Director's decision”. The word ‘person’ is required to be interpreted in the legal sense, that is a legal person capable of commencing the review process under section 36E. A standard definition of legal person (human or corporate) is a person who enjoys, and is subject to, rights and duties at law. Accordingly, unless the person requesting the review has the legal capacity to do so then the review process cannot commence. In short, the applicant would fail at the ‘starting blocks’.
24. A legal person includes a corporate entity, such as a company or an incorporated association. In both instances there will be a constitution which sets out the purposes of the corporate entity, and it will include procedures by which people may become members or shareholders of the legal entity, agreeing to abide by the terms of the constitution as they do so. The request for review in this case was lodged on what may be described as letterhead, headed Habitat 26+. This letterhead set out an Australian Business Number (‘ABN’) but provided no other address details, apart from an email address for Mr Cameron. All correspondence received by the Heritage Council from Habitat 26+, was on this letterhead signed by Mr Cameron.
25. However, Mr Cameron’s own status within the organisation was never identified. In the context of the Committee’s uncertainty as to the status of Habitat 26+, it requested Mr Cameron to explain the legal status of Habitat 26+, specifically asking whether the organisation was incorporated, and, if so, to produce its constitution. As explained above, Mr Cameron advised that Habitat 26+ was simply a consortium of people but it was not an incorporated organisation. For completeness, the Committee observes that an ABN does not alter the status of an organisation, it merely relates to the registration of a business name. The Committee also observes that the Habitat 26+ consortium was established in June 2024.
26. In the context of Mr Cameron's clarification of the unincorporated status of Habitat 26+ it became apparent to the committee that the consortium identified as Habitat 26+ could not legally of itself be a legal person for the purposes of section 36E capable of commencing a review of the Executive Director's decision. This legal incapacity remains irrespective of the number of supporters or whatever objectives they might share. Accordingly, it was necessary for the Committee to make additional inquiries which would seek to identify the persons comprising Habitat 26+, and if possible, determine whether they had, individually, a real and substantial interest as required by the legislative regime. In passing, the Committee observes that had Habitat 26+ been an incorporated association then the Committee could have examined its constitution and determined whether it had a set of purposes or objects which might be relevant to the question of whether it as an entity had a real and substantial interest. Such a corporate entity brings with it the assumption that those who have chosen to be members of it have agreed to abide by the constitution, and so with respect to actions commenced by such a corporate entity, the members affectively have agreed to be bound by and support such actions. However, as explained earlier, in this case with the Committee having been advised that Habitat 26+ is not a corporate entity then, irrespective of the reasons the members of the consortium had for joining or supporting its activities, such shared reasons cannot in law elevate the status of Habitat 26+ to some sort of entity that is capable of commencing the subject review of the Executive Director's decision.
27. Although there is a possible threshold question, whether or not the Committee is empowered or entitled to look behind the de facto ‘corporate veil’ of Habitat 26+, given



it was put forward as the review applicant, nevertheless in the interests of endeavouring to pursue procedural fairness, the Committee decided to interrogate Mr Cameron as to the people who comprise members of the consortium, and the manner of their support. It is to be noted that until the Committee interrogated Mr Cameron and his response was obtained, the Committee had no understanding of the identity of any other person who joined with Mr Cameron in supporting or at least sharing his views expressed in his section 36E review.

- 28.** The Committee's inquiries regarding the individuals who constitute the consortium of Habitat 26+ was a critical step required of it to determine whether it had a valid legal review before it, and so whether it had jurisdiction to proceed to review the Executive Director's decision. As the legislation requires any person, for which the Committee reads 'legal person', to have a real and substantial interest, that question is directed towards what is known in law as a 'jurisdictional fact'. A jurisdictional fact must objectively exist before a statutory power can be exercised.
- 29.** Whereas pursuant to section 249 of the Act the Heritage Council is empowered to act with considerable flexibility with respect to hearings, that is it "must act in accordance with general procedure, equity and good conscience" and "is not required to conduct a hearing in a formal manner", and "may inform itself in any other way it sees fit without notice to any person who has made a submission", such procedural flexibility cannot apply to the determination of a jurisdictional fact. In short, the Committee is obliged to seek objective evidence that it has jurisdiction to proceed with the review. Caselaw confirms that the determination of such a jurisdictional fact must be objectively proved and that a decision maker's mere subjective belief or value judgement will be insufficient in determining the question regarding jurisdiction.
- 30.** Accordingly, in examining the status of the identified individuals set out in the table Mr Cameron provided to the Committee on 21 October 2024, in response to its request for further information, it is insufficient by any objective test for Mr Cameron to merely state that the individuals in question supported the application for review. In reviewing the table of persons identified, being 72 in number, no effort was made by Mr Cameron or any of the alleged supporters to identify what their specific real and substantial interest is in the Place that is the subject of the review.
- 31.** Examining the table of persons said to support the Habitat 26+ application, the mere identification of individuals by profession or a position, such as architect, or lawyer or voter or retired engineer or retired rehabilitation nurse, is palpably insufficient. The nexus between a person's status as, say, a retired individual, and the Place the subject of the Habitat 26+ review was devoid of any evidentiary basis to enable the Committee to form an objective assessment on the joinder of the individuals within the consortium.
- 32.** A statement by Mr Cameron that "I declare that I have personally discussed the application with each of the above either by email, telephone call or face to face, and have the contact numbers kept separately for privacy purposes" does nothing to assist resolving the critical question. It remained necessary for the Committee to be satisfied that it had objective evidence that the required jurisdictional fact regarding real and substantial interest-(necessary for it to have the jurisdiction to proceed with the review)-did exist. As caselaw has clearly explained, jurisdictional facts are facts which must objectively exist before a statutory power can be exercised by a decision maker. Jurisdictional facts should not be confused with other discretionary powers given to decision makers where a mere subjective belief or value judgement as to a state of facts is all that is required before a decision can be made.
- 33.** Accordingly, in the circumstances where Mr Cameron's declaration on 21 October 2024, that he had contacted the 72 individuals and that they support the application, fails as having any evidentiary basis, regarding the real and substantial interest requirement, upon which the Committee can proceed. Mr Cameron did not even seek to reinforce the status of his declaration by having it verified via a statutory declaration,

a common and standard practice. How, the Committee rhetorically asks, could it take on trust alone that all 72, or indeed any of them, have actually agreed to participate as Mr Cameron asserts when no original signatures or means of verification were provided in answer to the Committee's inquiries? The Committee could be being entirely misled as to the willingness of all or any of the individuals to participate, or even to understand, the review process under the Act and the ramifications of such a review, let alone understanding their interests in the Place. On the other hand, all that Mr Cameron states may be true, but as far as objective evidence is required, the material before the Committee falls short. As the Committee has indicated earlier, when it is a question of establishing jurisdictional fact, the evidentiary requirement is strict.

34. Lest it be said by Mr Cameron that he did not understand the need to satisfy the statutory prerequisites in order to commence a valid review, (despite the Heritage Council's Secretariat providing Mr Cameron with a link to the relevant Heritage Council Protocol, which sets out the procedure), the Committee noted that Mr Cameron lists, within the table, two 'participating' lawyers, including one described as a "consultant solicitor". This solicitor is known to the Committee as being an experienced practitioner in relevant fields of legal practise. In the context of the real and substantial interest requirement in the statutory scheme, the Committee questions the extent to which Mr Cameron engaged with that consultant solicitor. The Committee can surmise, that properly informed of what was underway by Mr Cameron, that individual would have immediately identified the basic requirements to satisfy the jurisdictional fact necessary for a section 36E review to be validly commenced. With such legitimate queries in mind, the veracity of the assertions of support and knowledge of the review must seriously be questioned. In short, the objective evidence of the jurisdictional facts, required by the statutory scheme within which the Committee must act, is absent.
35. In his covering letter of 21 October 2024, Mr Cameron identified himself, the architect Peter McIntyre of McIntyre, McIntyre and Associates (now McIntyre Partnership Architects), and Robin Langford, the daughter of the director of the contractor Clements Langford, as being three persons with a real and substantial interest. The Committee is grateful that Mr Cameron endeavoured to identify a relevant nexus for these three to satisfy the real and substantial interest requirement, but the failure to elaborate on the nexus in detail with respect to all the rest, obliges the Committee to rule out any others within the group of 72 persons as being able to satisfy the real and substantial interest test. This is not to say that some might have such a status, but the Committee cannot subjectively surmise for, as it has stated earlier, when it is a question of jurisdictional fact, it must have objective evidence before it. Without it, the Committee has no power to proceed to consider the merits of a review.

### **MR RICHARD CAMERON**

36. In summary, Mr Cameron initiated the review request and was the signatory on documentation provided to the Committee. The Committee has therefore also considered any potential real and substantial right or interests of Mr Cameron in isolation of the Habitat 26+ group.
37. Mr Cameron submitted in response to the Committee's request for further information that he had a real and substantial interest in this matter as he was 'part of the production team for the Place as a staff member of McIntyre, McIntyre and Associates.'

### **Committee findings**

38. Mr Cameron's association with the Place appears to arise from his involvement as a staff member of McIntyre, McIntyre and Associates.
39. Based on the material before it, the Committee is not certain what Mr Cameron's specific role in relation the Place may have been. Based on the material before it, the



Committee is unable to determine that Mr Cameron has a real and substantial interest in the Place or in the outcome of any prospective review in relation to the Place.

40. Mr Cameron stated that he was part of the production team for the Place. The Committee fails to understand how being in the production team for a building some 58 years ago, in the course of a long career when an individual architect might be associated with many hundreds if not thousands of buildings, is sufficient to overcome the legal threshold of both 'a real' and 'a substantial' interest in the Place. Would Mr Cameron be able to argue that he has a real and substantial interest in every project he was involved with in the course of his entire career? He might have an identifiable connection in his career-long association with many buildings, which in a sense is a 'real' association with each building, but is such an association objectively 'substantial'?
41. Was it the intention of the Legislature, when inserting the threshold test to be met into section 36E of 'real and substantial interest', to embrace every individual with any association with a place? Would that include every draftsman, every engineer, every bricklayer, every painter, or every resident over the 58 years? The Committee has concluded that more is required, with an applicant for review having the onus to satisfy the Committee why the stated association is both real and substantial, in such an objective material sense that the Committee can be confident that the jurisdictional fact has been established for it to proceed to consider the merits of the review. By Mr Cameron simply saying that he was part of the production team 58 years ago, perhaps as an intern or perhaps as a team leader, the Committee does not know, the prerequisite to demonstrate a real and substantial interest has not been established.
42. The Committee determines, based on the evidence before it, that Mr Cameron does not have a real and substantial interest in the Place or in the prospective outcome of any exclusion determination in relation to the Place, and finds therefore Mr Cameron is not eligible to cause a review of the Executive Director's decision, pursuant to section 36E of the Act.

## OTHER RIGHTS AND INTERESTS IN RELATION TO THE PLACE

### Summary

43. In order to satisfy the Committee that parties other than Mr Cameron should be accorded procedural fairness as the determination of this matter, the Committee would need to conclude that a prospective determination could affect the rights or interests of those parties.
44. A 'right' in the strict sense (i.e. a legal right) is not necessary, so an 'interest' would suffice. The Committee acknowledges that it does not need to be shown that the person's interest will *certainly* be affected. Rather, the Committee's view is that there must be some clear prospective impacts on that interest.
45. Much of the material submitted to the Committee in response to its request for further information focused on the connection of members of Habitat 26+ to the Place. Mr Cameron asserted that, essentially, the connection was due largely to the professional input of members to the design and construction of the Place and of similar places.
46. As outlined in the Executive Director's assessment of the Place against the Criteria for Assessment, Professor Peter McIntyre, director of McIntyre, McIntyre and Associates developed the cost effective, concrete frame option accepted for development of the Place.
47. The Executive Director's assessment acknowledges that McIntyre, McIntyre and Associates was a leader in modernist design during the mid to late-twentieth century and became one of Australia's foremost architectural firms. The Executive Director's assessment also notes, however, that the firm's creative input at the Place was limited, and was expressed through exterior features only.

48. It was also suggested by Mr Cameron that Robyn Langford has a real and substantial interest in the Place as a graduate architect and daughter of the director of the contractor Clements Langford. The Executive Director's assessment outlines that in 1967, Clements Langford's tender of a concrete frame option for the Place was accepted by the Housing Commission and progressed to construction.
49. The Executive Director's assessment notes that the Clements Langford firm constructed many well-known buildings and additions in Melbourne between its establishment in 1886 until the early 1960s.
50. No material was provided to suggest any past, current, or ongoing connection between Robyn Langford and the Place beyond the familial association with the Place.
51. The material provided to the Committee suggested that other members of Habitat 26+ had an academic or professional interest in matters relating to the Place, and a personal, professional, or academic relationship with the architect Peter McIntyre. No further evidence was provided in relation to the suggested connections to the Place.

### Committee findings

52. The Committee finds no evidence in the material before it that Peter McIntyre's involvement in the Place continued beyond his involvement in 1967. Peter McIntyre has an association with a great number of buildings designed by himself or his firm. No evidence was provided to the Committee by Mr Cameron or by Peter McIntyre that would indicate the elevation of any association with the Place above those other associations.
53. The Committee notes that a professional association with a Place is not necessarily the same as a real and substantial interest in the Place. The Committee further notes that there was no evidence provided as to any impacts on any rights or interests that would be caused by any prospective determination in relation to this matter.
54. Based on the evidence before it, the Committee determines that neither Peter Macintyre nor Robyn Langford have a real and substantial interest in the Place or in the prospective outcome of any exclusion determination in relation to the Place, and finds therefore that none of the individuals named by Mr Cameron would be eligible to cause a review of the Executive Director's decision in the terms of section 36E of the Act.

### CONCLUSION

55. After considering all the information before it, the Heritage Council has determined that there is not a valid review before the Committee, in that with respect to Habitat 26+ it is not a legal person, and with respect to individual persons, the review request was not made by a person with a real and substantial interest in the Place and, pursuant to section 36E(1) of the *Heritage Act 2017*, that the review is not to proceed.
56. In view of the determination the Committee has made with respect the requirement to establish jurisdictional facts and the failure of the applicant(s) to do so, the Committee does not have power to consider the merits of the review of the Executive Director's decision. Accordingly, the material addressing the merits of the review, submitted by Mr Cameron on behalf of the Habitat 26+ consortium and himself was unable to be considered by the Committee, save for where it was necessary to determine whether the applicant(s) has a real and substantial interest in the Place.
57. The Committee extends its thanks to Mr Cameron for responding to its requests for further information.

## **ATTACHMENT 1**

### **HERITAGE COUNCIL CRITERIA FOR ASSESSMENT OF PLACES OF CULTURAL HERITAGE SIGNIFICANCE**

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

**These were updated by the Heritage Council at its meeting on 1 December 2022 and replace the previous criteria adopted by the Heritage Council on 3 December 2020.**