



Heritage Council Regulatory Committee

Yarra Bend Park (H2398)

Yarra Bend Road, Fairfield, City of Yarra

Members – Prof Andrew May, Mr Rueben Berg, Ms Maggi Solly

DETERMINATION OF THE HERITAGE COUNCIL

Inclusion in the Victorian Heritage Register – After a consideration of the Executive Director's recommendation and all written submissions and further information received, the Heritage Council has determined, pursuant to section 49(1)(a) of the *Heritage Act 2017*, that Yarra Bend Park located at Yarra Bend Road, Fairfield, is of State-level cultural heritage significance and is to be included as a Registered Place and as a Registered Archaeological Place in the Victorian Heritage Register.

Andrew May (Chair)
Rueben Berg
Maggi Solly

Decision Date – 26 March 2021

ACKNOWLEDGEMENT

As a peak Heritage body, the Heritage Council is proud to acknowledge the Traditional Owners as the original custodians of the land and waters on which we meet, and to 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 culture and traditional practices.

PARTICIPANTS WHO LODGED WRITTEN SUBMISSIONS

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

Written submissions were received from the Executive Director, Heritage Victoria ('the Executive Director').

NORTH EAST LINK PROJECT

Written submissions were received from Clayton Utz on behalf of North East Link Project ('NELP'). NELP provided statements of expert evidence by Mr Jim Gardner of GJM Heritage.

YARRA BEND GOLF CLUB

Written submissions were received from Mr Timothy Bunn, General Manager (Operations) of Yarra Bend Golf Club ('the Golf Club').

DEPARTMENT OF TRANSPORT

Written submissions were received from the Department of Transport.

THE CITY OF YARRA

Written submissions were received from the City of Yarra.

WURUNDJERI WOI-WURRUNG CULTURAL HERITAGE ABORIGINAL CORPORATION ('WURUNDJERI')

Correspondence in support of the inclusion of Yarra Bend Park in the Heritage Register was received from Wurundjeri.

PARKS VICTORIA

Correspondence in support of the hearing process was received from Parks Victoria.

INTRODUCTION/BACKGROUND

THE PLACE

- 01.** On 20 January 2020, the Executive Director made a recommendation ('the Recommendation') to the Heritage Council, pursuant to section 37(1)(a) of the *Heritage Act 2017* ('the Act'), that Yarra Bend Park, located at Yarra Bend Road, Fairfield ('the Place'), should be included in the Victorian Heritage Register ('the Register').
- 02.** The Place is described on page 6 of the Recommendation as follows:

'Yarra Bend Park is characterised by open parkland and recreational areas including a golf course and club house, sporting ovals, picnic areas, playgrounds, Parks Victoria administration buildings, fly fishing ponds, a plant nursery and walking tracks. The place is bounded by Heidelberg Road to the north, the Yarra River to the south, east and west, and the Merri Creek to the west. It is bisected by the Eastern Freeway. Surface remains from the former Yarra Bend Lunatic Asylum and subsequent institutions include a gate pillar and artefact scatters (glass, ceramic and brick). Vegetation growth and landscape undulations indicate the strong likelihood of sub-surface archaeological features relating to the former Merri Creek Protectorate Station (c.1842-1851), Merri Creek Aboriginal School (c.1845-1851), Native Police Corps Headquarters (1842-1843), Yarra Bend Lunatic Asylum (c.1848-1927), Fairhaven Venereal Disease Clinic (c.1926-1951) and Fairlea Women's Prison (c.1954-1996).'
- 03.** The following historical summary is taken from page 6 of the Recommendation:

'In the late 1830s, land including Yarra Bend Park was made a government reserve. This area became the location for several government institutions in the 1840s, beginning at the confluence of Merri Creek and the Yarra River with the former Merri Creek Protectorate Station, the Native Police Corps Headquarters and the Merri Creek Aboriginal School. From 1848, the government reserve was also occupied by the Yarra Bend Lunatic Asylum and associated grounds, with the original complex of buildings established in the western loop of the Yarra River. The complex had expanded into the present-day Fairlea Reserve by the mid-1880s and remained in operation until its closure in 1924. In 1927, several buildings of the now-decommissioned Asylum were adapted for use by the Fairhaven Venereal Disease Clinic while others were demolished in preparation for the use of the place as a park and a golf course. The Fairhaven Venereal Disease Clinic closed in 1951 and from 1954, was reused as the Fairlea Women's Prison. The construction of the Eastern Freeway (c.1973) resulted in the bisection of Yarra Bend Park and the removal of surviving Asylum infrastructure within the road corridor. The confluence of the Yarra River and Merri Creek was also altered, possibly resulting in the destruction of elements associated with the Aboriginal institutions, and of the burial site of Billibellary, Ngurungaeta (leader) of the Woi wurrung. Improvements to the Prison's facilities in the mid-1980s resulted in further demolition and removal of all remaining historical structures except one gate pillar. In 1996, the Prison was closed. All remaining buildings and structures were demolished and the area was landscaped and incorporated into the surrounding parkland. The place is now primarily open parkland with infrastructure associated with active and passive recreational activities.'

04. The above description and history summary have been taken from the Recommendation and are provided for information purposes only.

NOMINATION

05. On 19 September 2019, the Executive Director accepted a nomination to include the Place in the Register.

RECOMMENDATION OF THE EXECUTIVE DIRECTOR

06. On 20 January 2020 the Executive Director, pursuant to section 37(1)(a) of the Act, recommended the Place be included in the Register.

PROCESS FOLLOWING THE RECOMMENDATION OF THE EXECUTIVE DIRECTOR

07. After the Recommendation notice was published on 20 January 2020, pursuant to section 41 of the Act, for a period of 60 days.
08. Two submissions were received, pursuant to section 44 of the Act. One (1) submission supported the Recommendation and one (1) submission requested amendments to the recommended extent of registration and requested that a hearing be conducted if those requested amendments were not considered apt. Given the 'conditional' nature of the latter submission, and pursuant to section 46(2)(a) of the Act, a registration hearing was scheduled. A Heritage Council Regulatory Committee ('the Committee') was duly constituted to consider the Recommendation and submissions received in response to it, and to make a determination.

IMPACT OF THE NOVEL CORONAVIRUS 2019 ('COVID-19') ON THE HEARING

09. During March and April 2020 all interested parties and prospective hearing participants were advised that, in light of Victorian Government public health advice in relation to COVID-19, an 'in-person' registration hearing in relation to the Place would not be able to be scheduled until further notice.

SCHEDULING OF THE HEARING

010. On 25 June 2020 all prospective hearing participants were advised that a registration hearing in relation to the Place had been scheduled for 7 September 2020, to be conducted by way of videoconference using *Microsoft Teams* ('the Hearing'). Written hearing submissions were invited and further information was provided about the Hearing.

PRELIMINARY, PROCEDURAL AND OTHER MATTERS

WITHDRAWAL OF REQUEST FOR A HEARING AND HEARING 'ON THE PAPERS'

011. On 2 September 2020, the Committee received correspondence from NELP to advise that NELP and the Executive Director's submissions agreed substantially in relation to a prospective extent of registration and in relation to prospective exemptions for the need for a permit for certain categories of works and activities. Both NELP and the Executive Director submitted in writing at this time that they no longer requested to be heard and agreed that the Hearing could be determined 'on the papers'.
012. The Committee, in consultation with Hearing Participants and in accordance with clause 2.9.3 of *Heritage Council Protocol 1 – Registration Hearings*, ruled to determine the matter 'on the papers', after a consideration of any written

submissions received. The Hearing, that had been scheduled for 7 September 2020, was cancelled. The cancellation of the Hearing was communicated to interested parties and prospective participants via correspondence on 3 September 2020.

SITE INSPECTION

- 013.** During September and October 2020, pursuant to State Government advice at the time in relation to the Novel Coronavirus (COVID-19), individual members of the Committee undertook individual and unaccompanied site inspections of the Place.

CONFLICTS OF INTEREST

- 014.** The Chair invited Committee members to make declarations, written or otherwise, in relation to any matters that may potentially give rise to an actual, potential or perceived conflict of interest. The Committee members were satisfied that there were no relevant conflicts of interests and made no such declarations.

FUTURE USE, MANAGEMENT AND DEVELOPMENT OF THE PLACE

- 015.** It is not the role of the Committee to consider future development proposals or to pre-empt the consideration of potential future permit applications under the Act. Pursuant to section 49(1) of the Act, the role of the Committee is to determine whether or not the Place, or part of it, is of State-level cultural heritage significance and whether or not the Place, or part of it, is to be included in the Register.
- 016.** The Committee notes that some submissions occasionally referred to the future use, management or development of the Place, including in the context of *Planning and Environment Act 1987* considerations. According to its obligations pursuant to section 44(4) and section 49 of the Act, the Committee has not considered these matters in reaching its determination.

HERITAGE COUNCIL DETERMINATION IN RELATION TO THE EASTERN FREEWAY, STAGES ONE, TWO AND THREE.

- 017.** Some submissions and evidence referred to a separate but parallel registration hearing process that was being conducted by the Heritage Council in relation to the Eastern Freeway (part of which had been recommended to be included in the Register) at the time of the scheduling of the Hearing. Submissions received in relation to the Place included reference to the prospective Eastern Freeway extent of registration, prospective overlapping areas of registration and prospective permit exemptions. The Heritage Council ultimately determined, on 21 September 2020, that the Eastern Freeway was not of cultural heritage significance to the State of Victoria and would not be included in the Register.
- 018.** The Committee has only considered submissions and evidence relating to the Eastern Freeway matter insofar as that material might inform the Committee in relation to its consideration of the State-level cultural heritage significance of the Place, relevant exemptions from the need for a permit and an appropriate extent of registration.

ISSUES

- 019.** The following section is not intended to be a complete record of submissions that were made to the Committee. It is a summary of what the Committee considers

to be the key issues, followed by an explanation of the position that the Committee takes on each key issue.

- 020.** Any reference to Criteria or to a particular Criterion refers to the Heritage Council Criteria for Assessment of Places of Cultural Heritage Significance (as adopted by the Heritage Council on 4 April 2019) (see **Attachment 1**).
- 021.** The Committee has referred to the assessment framework in The Victorian Heritage Register Criteria and Threshold Guidelines ('the Guidelines', as adopted by the Heritage Council on 4 April 2019) in considering the issues before it. Any reference to steps 1, 2 or 3 refers to the assessment steps contained in the Guidelines.

SUMMARY OF ISSUES

- 022.** The Executive Director recommended that the Place be included in the Register as satisfying the state-level threshold in relation to Criteria A, B and C. At the time of NELP's withdrawal of a request for a hearing, the Executive Director submitted that he agreed with some of NELP's submissions in relation to extent of registration, exemptions from the need for a permit and additional mapping to reflect permit exemptions. In response to a request for further information in relation to a prospective increased extent of registration and in relation to Criterion H in particular, the Executive Director submitted that his views about the Place were essentially represented by the Recommendation.
- 023.** NELP's section 44 submission requested careful consideration by the Heritage Council of the recommended extent of registration and requested consideration of additional mapping in relation to the operation of specific permit exemption zones in the Recommendation. NELP's hearing submissions proposed changes to the extent of registration based on a prospective Eastern Freeway registration.
- 024.** The Department of Transport made submissions in relation to a request for further information that invited its consent to the addition of additional land to the Register.
- 025.** Mr Timothy Bunn of the Golf Club lodged a section 44 submission generally in support of the Recommendation featuring comments in relation to certain permit exemptions.
- 026.** Yarra City Council made a brief submission to note its interest in the matter and its support for the Recommendation.

THE CULTURAL HERITAGE SIGNIFICANCE OF THE PLACE, REQUESTS FOR FURTHER INFORMATION AND FURTHER SUBMISSIONS RECEIVED

Summary of submissions and evidence

- 027.** On 6 October 2020, the Committee requested further information from the Executive Director in relation to the following matters ('the 6 October correspondence):
- Whether or not additional land outside of the recommended extent of registration, including land outside of the 'archaeological hotspots' and 'Zones 1 and 2' identified in the Recommendation, could be considered to satisfy the State-level cultural heritage significance threshold in relation to Criteria B and/or Criterion C in relation to Yarra Bend Park.
 - Whether or not 'archaeological hotspots' referred to in the Recommendation may be considered to continue either underneath the

current Eastern Freeway, or indeed in other areas to the east and south of the nominated or recommended extent of registration.

- Whether or not any additional land outside of the recommended extent of registration could be considered to satisfy the State-level cultural heritage significance threshold in relation to Criterion A or could be considered to enhance the coherence and legibility of the values of the Place (The Committee noted that the Place was 'currently conceived of as two halves, but connected by pedestrian access, walking and cycling tracks').
- Whether or not any land below adjacent bridges, or the bridges themselves, might be considered to be part of the Place, and whether or not any permit exemptions should be considered, pursuant to section 49(3) of the Act, to allow for the day-to-day management and operational activities of the Eastern Freeway.
- In relation to the State-level cultural heritage significance of Yarra Bend Park for its associations with Billibellary, Ngurungaeta (leader) of the Woi wurrung, who is referred to in the recommended Statement of Significance as being buried near the confluence of the Yarra River and Merri Creek in 1846, whether or not the Place should be included in the Register as satisfying the State-level threshold for Criterion H for this association.

028. A response in relation to the request for further information was received from the Executive Director on 15 October 2020. The Executive Director made the following submissions in relation to the issues raised:

- That land below the Eastern Freeway (including below bridges or overpasses) does not have sufficient historical association with Yarra Bend Park to be included in the extent of registration and that there is an extremely low likelihood that any part of the Eastern Freeway contains archaeological features or any other physical attributes which contribute to the cultural heritage significance of Yarra Bend Park.
- That land outside of the recommended extent of registration — including land outside of the 'archaeological hotspots' and 'Zones 1 and 2' — is not considered to satisfy the State-level cultural heritage significance threshold in relation to Criteria B and/or C; that works related to the Eastern Freeway will potentially have compromised archaeological potential; and that the archaeological provisions of the Act would apply to any future Eastern Freeway corridor works even if the land were not included in the VHR.
- That the 'archaeological hotspots' in some cases extend nominally into the Eastern Freeway road reserve but do not continue underneath the Eastern Freeway, nor extend into the Yarra River, and archaeological evidence is unlikely to survive.
- That the land included in the recommended extent of registration demonstrates the cultural heritage significance of the place in relation to Criterion A as well as Criteria B and C and that it is unnecessary to include the land and pathways below the Eastern Freeway, bridges across the Eastern Freeway or bridges across the Yarra River to better understand or enhance the coherence and legibility of the values of the Place.

- That Step 2 of Criterion H has a very high threshold and was found by the Executive Director not to be satisfied as it is now 'difficult to appreciate the association between individuals identified in Step 1 and Yarra Bend Park at the place itself'. The Executive Director submitted the 'Place has changed substantially since the individuals were present at the Place' and that the 'association is now better understood through documentary resources.' In relation to Billibellary in particular, the Executive Director agreed he is an individual who made a strong contribution to Victoria's history and noted that during the assessment process, Heritage Victoria contacted the Victorian Aboriginal Heritage Council (VAHC), Wurundjeri Woi Wurrung Cultural Heritage Aboriginal Corporation (WWWCHAC), Bunurong Land Council Aboriginal Corporation (BLCAC) and Birrarung Council, and noted that WWWCHAC and BLCAC advised they supported the recommendation.
- 029.** The Committee circulated the 6 October correspondence and the Executive Director's response of 15 October 2020 to other participants and invited further comment in relation to the same issues.
- 030.** In its additional submissions in response to the issues above, NELP submitted that the opportunity for the Heritage Council to consider and assess the potential cultural heritage significance of the land forming part of the Eastern Freeway (including land below the freeway, land below the bridges and any potential archaeological features) concluded when it determined on 21 September 2020 that no part of the Eastern Freeway is to be included in the Register. NELP further submitted, relying on the evidence of Mr Gardner, that the works to construct the Eastern Freeway and form the cuttings and embankments would have destroyed much, if not all, of the archaeological deposits in this area.
- 031.** The Wurundjeri Woi-wurrung Cultural Heritage Aboriginal Corporation ('Wurundjeri') provided comments in support of the inclusion of the Place in the Register for its association with Billibellary and in support of the wording of the recommended Statement of Cultural Heritage Significance. Wurundjeri did not make specific comment in relation to the Criterion H question.
- 032.** Through correspondence dated 18 November 2020, the Committee also requested further information from the Department of Transport, noting that the Committee had formed a view that the inclusion of land ancillary to the Place, pursuant to section 49(4) of the Act, namely ground-level pedestrian pathways abutting the Yarra River directly under the Eastern Freeway, contiguous with the western and eastern ends of the recommended extent ('the ancillary land'), would provide for the appropriate protection and management of the cultural heritage values of the Place. The Committee sought a written response from the Department of Transport, the landowner and coordinating road authority under the *Road Management Act 2004*, as to whether or not the Department of Transport would consent to the inclusion in the Register of the ancillary land. The Department of Transport provided a response on 23 December 2020. The Department of Transport did not consent to the inclusion of the ancillary land and its response is discussed below.

Discussion and conclusion

- 033.** The Committee agrees substantially with the Recommendation and with the Executive Director's submissions that the Place should be included in the Register. The Committee notes that no submissions received contested the

recommended inclusion of the Place in the Register as satisfying Criteria A, B and C at the state level.

- 034.** The Committee recognises that Billibellary, Ngurungaeta (leader) of the Woi Wurrung, is an exceedingly important figure in the history of Melbourne and Victoria. The Committee notes the Executive Director's submission that it is difficult to appreciate the association between the Billibellary and Yarra Bend Park at the Place and accepts that the association between the Place and areas surrounding the Place is better understood through documentary resources. The Committee also notes that Wurundjeri did not make specific comment in their correspondence in relation to the application of Criterion H but were supportive of the wording of the Recommendation as it relates to Criterion A.
- 035.** The Committee determines that the Place meets the State-level threshold for inclusion in the Register in relation to Criteria A, B and C and that the Place is of cultural heritage significance to the State of Victoria. The Committee determines that the Place is to be included in the Register as a Registered Place and Registered Archaeological Place, for reasons generally in accordance with the reasons given in the Recommendation.
- 036.** The Committee records submissions and its determination in relation to other matters, namely the extent of registration and exemptions from the need for a permit, in the paragraphs below.

EXTENT OF REGISTRATION

Summary of submissions and evidence

- 037.** The Recommendation included the Executive Director's rationale for the recommended extent of registration of the Place, stating that it:
- *'Is naturally bounded by the Yarra River (south, east and west), Merri Creek (west) and Heidelberg Road (north), and includes the land historically reserved for government/public use.*
 - *Encompasses areas of post-contact Aboriginal and non-Aboriginal significance, including the Merri Creek Protectorate Station, Merri Creek Aboriginal School and the Native Police Corps Headquarters (1842-1852). Encompasses all the area historically documented as the grounds of the former Yarra Bend Lunatic Asylum, including areas adapted by the asylum, and/or later re-used by subsequent government institutions and for associated recreational activities.*
 - *Excludes areas reserved by the Fairfield Hospital (VHR1878) (c.1901) and Fairfield Park (c.1912), which co-existed with, but demonstrated a clear physical and thematic separation from the Yarra Bend Asylum during the years of its operation (c.1848-1927).'*
- 038.** The Executive Director submitted in response to the 6 October 2020 request for further information that land below the Eastern Freeway does not have sufficient historical association with Yarra Bend Park to be included in the extent of registration and that there is an 'extremely low likelihood' that any part of the Eastern Freeway – Stage One, including land subject to significant ground disturbance (including below bridges or overpasses), contains archaeological features or any other physical attributes which contribute to the cultural heritage significance of Yarra Bend Park. The Executive Director submitted generally that the land included in the recommended extent of registration demonstrates the cultural heritage significance of the Place in relation to Criterion A as well as

Criteria B and C and that no additional land is required to demonstrate the cultural heritage significance of the Place.

- 039.** NELP submitted, relying on the evidence of Mr Gard'ner and generally agreeing with the Executive Director, that it is not open to the Heritage Council to include any part of the Eastern Freeway that is outside of the recommended extent of registration for the Place shown hatched in Diagram 2398 of the Recommendation. NELP's submission was also that the different legal character and different ownership of land associated with the Eastern Freeway means that for the purposes of the Recommendation the Eastern Freeway it is not additional land of the owner for the purposes of section 49(4) and that it would be inappropriate for the Heritage Council to seek to utilise section 49(4) to include the Eastern Freeway (or any part of it) in the VHR, and submitted that such an approach would be contrary to the nomination and registration processes under the Act and risk undermining transparency and public confidence in the administration of the Act.
- 040.** Mr Gardner's evidence in relation to the issues raised in the 6 October correspondence was that the Executive Director's response was appropriate and well founded, that the Heritage Council does not have the power to include the ancillary land as identified and that it cannot be considered to be 'ancillary' in terms of supporting the heritage significance or function of the Place.
- 041.** The Department of Transport advised on 23 December 2020 that it had determined to refuse to provide consent for the purposes of section 49(4) of the Act and submitted that the ancillary land is not considered to be part of the Place, does not have sufficient historical association with Yarra Bend Park to be included in the extent of the registration, that its inclusion would create an administrative burden for the future management of the Eastern Freeway and that the ancillary land is not required to protect and manage the State-level cultural heritage values associated with Yarra Bend Park.

Discussion and conclusion

- 042.** The Committee considered all submissions received in relation to areas of land outside of the recommended extent of registration.
- 043.** The Committee accepts the views of both the Executive Director and Mr Gard'ner that there is a very low likelihood that archaeological features or any other physical attributes which contribute to the cultural heritage significance of Yarra Bend Park are discoverable outside of the recommended extent of registration, in that the works to construct the Eastern Freeway and form the cuttings and embankments will have destroyed much, if not all, of the archaeological deposits in this area.
- 044.** Submissions were made by the Executive Director and NELP in relation to areas overlapping with the Eastern Freeway, chiefly concerned with avoiding the overlapping of small areas relating to the recommended Eastern Freeway extent of registration with the recommended extent of registration for the Place. NELP and the Executive Director predicated their submissions in this respect on the prospect of the Eastern Freeway being included in the Register. As the Heritage Council has now determined *not* to include the Eastern Freeway in the Register, the Committee considers that the recommended extent of registration is appropriate for the protection and conservation of the cultural heritage of the Place and has determined to include the Place in the Register with the extent of registration originally recommended by the Executive Director.

- 045.** Although the Committee would have preferred that the ancillary land were included in the Register to enhance the coherence and legibility of the Place in relation to the cultural heritage values relating to Criterion A, the Department of Transport does not consent to its inclusion, and the Committee considers that it cannot be included in the Register as part of the current process.
- 046.** In this instance, the Committee does not consider it necessary to make any finding or ruling in relation to whether or not it would have had the power to include the ancillary land in the circumstances canvassed by the 16 October correspondence, should the Department of Transport have consented to that inclusion. Nor does the Committee consider it necessary to resolve in this determination whether or not the ancillary land qualifies as land ancillary to the Place for the purposes of section 49(4) of the Act.

CATEGORIES OF WORKS AND ACTIVITIES THAT MAY BE CARRIED OUT IN RELATION TO THE PLACE WITHOUT THE NEED FOR A PERMIT UNDER THE ACT

Summary of submissions and evidence

- 047.** The Recommendation included specific categories of works and activities that may be carried out in relation to the Place without the need for a permit under the Act ('permit exemptions'), prepared on the basis of the following zones:
- Zone 1 - sites of the Yarra Bend Lunatic Asylum cemetery and former Merri Creek Protectorate Station/Merri Creek Aboriginal School/Native Police Corps;
 - Zone 2 - site of primary Yarra Bend Lunatic Asylum infrastructure, excluding the areas within the Yarra Bend Golf course; and,
 - Zone 3 - all other areas.
- 048.** In relation to exemptions from the need for a permit, NELP submitted that the zones shown on the permit zones map do not align with the boundaries of the recommended extent of registration for the Place and submitted that the permit zones map should be amended to clearly show the zones as they relate to the extent of registration and in order to provide clarity and certainty for the administration of the heritage registration.
- 049.** The Recommendation sets out the Executive Director's general view that there is a very high potential for archaeological evidence of former asylum buildings, structures, features and associated artefacts to survive within the extent of registration. At the time of submissions in reply, the Executive Director expressed openness to amendments to the permit zones mapping to assist with the protection of the cultural heritage significance of the Place.
- 050.** The Golf Club made submissions in relation to the permit exemptions, including that the paragraph regarding 'Specific Exemptions' is inaccurate and should be amended to provide more realistic guidance for future expectations of the potential for sub surface archaeological deposits, and also provided some background in relation to these issues.
- 051.** The Executive Director, in relation to the Golf Club's submissions, acknowledged that the condition of archaeological remains is likely to be variable across the Place, but did not find the Golf Club's material as to disturbances to be conclusive and submitted that it had not identified the exact locations in which the stated activities (such as blasting, ploughing, filling) occurred. The Executive Director submitted openness to some changes to the paragraphs relating to

specific exemptions as recommended and proposed some additional changes to specific permit exemptions in response to the Golf Club's submissions.

Discussion and conclusion

- 052.** The Committee recognises that the Executive Director and NELP agreed in relation to the assistance that may be provided by an amended permit zones map, designed to assist with determining whether or not a permit is required for certain classes of work in particular areas, but notes that any permit zones map would not form part of the gazetted information relating to the Place.
- 053.** Whereas the Executive Director and NELP agreed in their submissions that permit zones mapping could be amended, the Committee notes many of those submissions were made on the basis that the Eastern Freeway would be included in the Register, and also understands that such mapping is indicative only, to assist in the day-to-day management of the Place. Nevertheless, and for information purposes only, the Committee appends the same permit zones map that featured in the Recommendation, at **Attachment 4**.
- 054.** The Committee agrees with the amendments suggested in relation to the permit exemptions by the Executive Director in response to the Golf Club's submissions.
- 055.** The Committee has considered all submissions relating to exemptions from the need for a permit. The conditions adopted by the Committee at Attachment 3 accord with its findings.

STATEMENT OF CULTURAL HERITAGE SIGNIFICANCE

Summary of submissions and evidence

- 056.** There were no extensive submissions made in relation to the recommended Statement of Cultural Heritage Significance for the Place.

Discussion and conclusion

- 057.** Whereas the Recommendation includes a Statement of Cultural Heritage Significance for the Place, the Committee is of the view that it is neither necessary nor appropriate for it to either endorse or amend the Statement of Cultural Heritage Significance for the Place. The Committee's reasons for not approving or amending the Statement of Cultural Heritage Significance are in concert with those expressed in the Heritage Council decision concerning the registration of Federation Square, Melbourne, in particular paragraphs 0195 to 0209 of that decision.

CONCLUSION

- 058.** After a consideration of the Executive Director's recommendation and all written submissions and further information received, the Heritage Council has determined, pursuant to section 49(1)(a) of the *Heritage Act 2017*, that Yarra Bend Park located at Yarra Bend Road, Fairfield, City of Yarra, is of State-level cultural heritage significance and is to be included as a Registered Place and as a Registered Archaeological Place in the Victorian Heritage Register.

ATTACHMENT 1

HERITAGE COUNCIL CRITERIA FOR ASSESSMENT OF PLACES OF CULTURAL HERITAGE SIGNIFICANCE

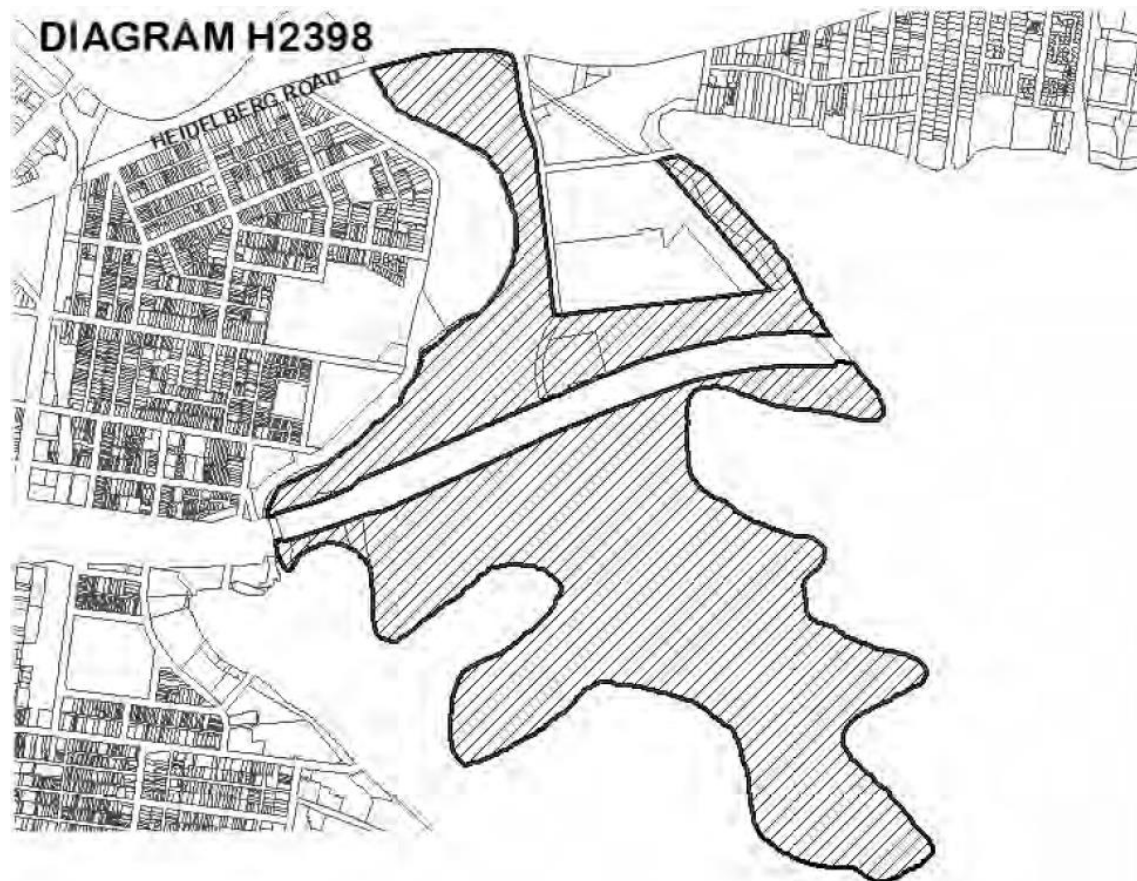
CRITERION A	Importance to the course, or pattern, of Victoria's cultural history
CRITERION B	Possession of uncommon, rare or endangered aspects of Victoria's cultural history.
CRITERION C	Potential to yield information that will contribute to an understanding of Victoria's cultural history.
CRITERION D	Importance in demonstrating the principal characteristics of a class of cultural places or environments.
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 4 April 2019, and replace the previous criteria adopted by the Heritage Council on 6 December 2012.

ATTACHMENT 2

EXTENT OF REGISTRATION

All of the place shown hatched in Diagram 2398 encompassing all of Crown Allotments 113F, 113J, 113L, 113M, 113N, 113P, 113Q Parish of Jika Jika and part of Crown Allotment 113E Parish of Jika Jika.



The recommended extent of registration of Yarra Bend Park in the Victorian Heritage Register affects the whole place shown on Diagram 2398 including the land, archaeological features, buildings and structures, roads, trees, landscape elements and other features. This contains areas of known and likely archaeological deposits and sufficient land to reflect the history and protect the cultural heritage significance of the place.

AERIAL PHOTO OF THE PLACE SHOWING THE EXTENT OF REGISTRATION



ATTACHMENT 3

PERMIT EXEMPTIONS (PURSUANT TO SECTION 49(3) OF THE HERITAGE ACT 2017)

It should be noted that Permit Exemptions can be granted at the time of registration (under section 38 of the Heritage Act 2017). Permit Exemptions can also be applied for and granted after registration (under s.92 of the Heritage Act 2017). Under section 38 of the Heritage Act 2017 the Executive Director may include in his recommendation categories of works or activities which may be carried out in relation to the place or object without the need for a permit under Part 5 of that act. The Executive Director must not make a recommendation for any categories of works or activities to be permit exempt if he considers that the works or activities may harm the cultural heritage significance of the place or object. The following permit exemptions are not considered to cause harm to the cultural heritage significance of Yarra Bend Park.

General conditions

General Condition 1

All exempted alterations are to be planned and carried out in a manner which prevents damage to the fabric of the registered place or object.

General Condition 2

Should it become apparent during further inspection or the carrying out of works that original or previously hidden or inaccessible details of the place or object are revealed which relate to the significance of the place or object, then the exemption covering such works shall cease and Heritage Victoria shall be notified as soon as possible. This place is likely to contain archaeological features, deposits and/or artefacts including glass and ceramic fragments, brick/bluestone foundations related to the construction, use, abandonment and demolition of government institutions.

Note: All archaeological places have the potential to contain significant sub-surface artefacts and other remains. In most cases it will be necessary to obtain approval from the Executive Director, Heritage Victoria before the undertaking any works that have a significant sub-surface component.

General Condition 3

All works should ideally be informed by Conservation Management Plans prepared for the place. The Executive Director is not bound by any Conservation Management Plan, and permits still must be obtained for works suggested in any Conservation Management Plan.

General Condition 4

Nothing in this determination prevents the Heritage Council and/or the Executive Director, Heritage Victoria from amending or rescinding all or any of the permit exemptions.

General Condition 5

Nothing in this determination exempts owners or their agents from the responsibility to seek relevant planning or building permits from the relevant responsible authority, where applicable.

Specific exemptions

Note: Yarra Bend Park and the golf course in particular is located on the site of the former Yarra Bend Lunatic Asylum. All above-ground structures including buildings and features associated with the Asylum and its subsequent use by other institutions have been demolished. A single gate pillar survives from the Asylum, although not in its original location. There is high potential that State level archaeological remains of variable preservation survive across the site. During the construction of the Yarra Bend Golf Course, excavation, blasting and the introduction of fill materials occurred. It is probable that some of these works impacted the archaeological evidence at Yarra Bend Park. Introduced fill would have preserved the condition of the archaeological remains while excavation and blasting may have disturbed or destroyed some of the archaeological remains.

The following works do not require a permit as they do not harm the cultural heritage significance of the place (inclusive of archaeological features, deposits and/or artefacts). However, if any archaeological remains are found during any works (including those exempted below), works must cease and Heritage Victoria is to be contacted immediately. All contractors involved in ground disturbance activities are to be made aware of this requirement.

Buildings

Club house building

General

- Minor patching, repair and maintenance which replaces like with like without large-scale removal of or damage to the existing fabric or the large-scale introduction of new materials. Repairs must maximise protection and retention of fabric and include the conservation of existing details or elements. Any new materials used for repair must not exacerbate the decay of existing fabric due to chemical incompatibility, obscure existing fabric or limit access to existing fabric for future maintenance.
- Repair to or removal of items such as external lighting, air conditioners, pipework, ducting, flues, wiring, antennae, aerials and flyscreens and making good.
- Maintenance and replacement of existing external electrical and fire services in the same location and of the same size.

Exterior

- Painting of existing plain painted external surfaces in the same colour, finish and type provided that preparation or painting does not remove all evidence of earlier paint finishes or other decorative schemes.

Interior

- Repair to or removal of items such as air conditioners, pipe work, ducting, wiring, antennae, aerials and making good.
- Painting of previously plain painted internal surfaces in the same colour, finish and type provided that preparation or painting does not remove all evidence of earlier paint finishes or other decorative schemes.
- Works to the parts of the building which have undergone recent changes providing such work do not alter the original fabric of the building.

All other buildings and structures including buildings and structures associated with the Golf Club (Pro shop, Driving Range, Pavilion, Pump House, Yarra Bend Adventure Golf, Maintenance Facility), as well as all other buildings and structures at the place.

All of the above and:

Interior

- All works within the internal footprint of the buildings which do not exceed the depth of existing foundations.

Exterior

- All maintenance works which do not exceed the depth of existing foundations.
- Repainting in the same colour, type and finish.
- Demolition to the surface of the existing ground level (to grade).

Fire suppression activities

Fire suppression activities provided the works do not involve the removal or destruction of any significant above-ground features or sub-surface archaeological features, deposits and/or artefacts.

Note: Fire management authorities should be aware of the location, extent and significance of historical and archaeological places/sites when developing fire suppression and firefighting strategies. The importance of places in the VHR must be considered when strategies for fire suppression and management are being developed.

Safety and security

- Works or activities, including emergency stabilisation, necessary to secure safety in an emergency where a structure or part of a structure has been irreparably damaged or destabilised and poses a safety risk to its users or the public. Every attempt must be made to conserve and retain as much significant fabric as possible. The Executive Director, Heritage Victoria, must be notified within seven days of the commencement of these works or activities.
- The erection of temporary security fencing, scaffolding, hoardings or surveillance systems to prevent unauthorised access or secure public safety.

Events

- The erection of temporary infrastructure associated with temporary events up to seven days in duration that will not alter or disturb the club house building or archaeological features, deposits and/or artefacts, trees, garden beds or pathways.

Landscape

Zone One (sites of the Yarra Bend Lunatic Asylum cemetery and former Merri Creek Protectorate Station /Merri Creek Aboriginal School/Native Police Corps)

- The process of gardening including mowing, disease, weed and invasive species control.
- Management and maintenance of trees including formative and remedial pruning, removal of deadwood, pest and disease control and above-ground tree cabling.
- The removal or pruning of dead or dangerous tree to maintain safety.

- Maintenance, repair and replacement of existing park and/or interpretative signage and surveyor markers in the same location and of the same size provided no new supports are required.
- Maintenance, repair and replacement (of the same size, in the same location, and using the same depth of footings) of all existing hard landscape elements including walls, roads, shared user paths, pedestrian footpaths/pathways, fencing/gates, safety barriers, lighting and fire hydrants.

Zone Two – (site of primary Yarra Bend Lunatic Asylum infrastructure, excluding the areas within the Yarra Bend Golf Course)

All permit exemptions for Zone One, as well as:

- Maintenance to care for existing plants and replacement with similar species (like with like) where the works do not include sub-surface disturbance to a depth greater than 300 mm from the existing ground surface.

Zone Three (all other areas)

General

- All permit exemptions for Zones One and Two.

Maintenance

- Works associated with the repair and maintenance of existing sporting facilities where the works do not include sub-surface disturbance to a depth greater than 300 mm. This includes repair and maintenance of the surfaces of all sporting courts, fields and pitches, including line marking and returfing and resurfacing with like materials and installation of netting.
- Works associated with the installation and removal of seasonal sporting infrastructure, including soccer and AFL goal posts.
- Maintenance, repairs or replacement of existing external electrical and fire services of the same size and in the same location.
- All works associated with the maintenance, repair and replacement of existing services (including irrigation, power, drainage and sewage) where the works do not include sub-surface disturbance to a depth or width which exceeds that of existing service trenches.
- Repair and maintenance of existing playground equipment and playground area surfaces.
- The construction of new playground equipment and playground area surfaces in existing playground areas which does not exceed the depth of existing equipment.
- Maintenance Standards works as per the lease agreement between Parks Victoria and Yarra Bend Golf Holdings. (please refer to Attachment A as retained by the Executive Director). All works should be consistent with (as relevant): Lease Maintenance Standards

Road and carpark infrastructure

- All works to maintain road safety and the existing road infrastructure. This includes: Maintenance and repair of road pavement, speed humps, carparks, shoulder, median, pedestrian refuges/splitter islands, kerb and channels and similar supportive works. Maintenance, repair and replacement of safety-critical infrastructure including barriers of all types.
- Maintenance, repair and replacement (like with like) of existing carpark and road signs, including directional, speed and their supporting structures.

- Installation of new road safety signage where the works do not include sub-surface disturbance to a depth greater than 300 mm.
- Maintenance and repair of existing light masts where the works do not include sub-surface disturbance to a depth or width which exceeds that of existing service trenches.

Signage

- Removal, repair and maintenance of existing signage using existing supports or new supports which do not include sub-surface disturbance to a depth greater than 300 mm.

Golf Course

- All works associated with the repair and maintenance of the Golf Course, Driving Range, Yarra Bend Adventure Mini Golf, Event spaces and open areas utilised for golfing purposes.
- Top-dressing of mulch and soils where there is no sub-surface disturbance.
- Soil maintenance practices including aeration by top layer penetration (verti draining and coring) and rotary hoe turning over of soil.
- Maintenance works to the Yarra Bend golf course as per the lease agreement between Parks Victoria and Yarra Bend Golf Holdings (please refer Attachment A as retained by the Executive Director).

Other

- The installation of standard park furniture and pedestrian facilities (to Parks Victoria specification). This includes rubbish and recycling bins, park seating and shelters, picnic tables, drinking fountains and associated infrastructure outside tree protection zones.

ATTACHMENT 4

DIAGRAM - PERMIT ZONES 1, 2 & 3

The diagram below is designed to assist with determining whether or not a permit is required for certain classes of work in particular areas of Yarra Bend Park, and does not form part of the gazetted information for the Place.

