

## 5.0 MANAGEMENT PLAN

### 5.1 Introduction

This chapter of the CMP includes an overview of the statutory heritage framework and controls; addresses the obligations and requirements of the Victorian Heritage Register and *Heritage Act* 2017, including the steps and processes to go through for works and development approvals; reviews the current permit policy and exemptions, and make recommendations on how these might be improved and expanded. The chapter also addresses the Heritage Overlay; compliance; implementation of the CMP, including adoption and review; and concludes with an overview of Aboriginal heritage values.

### 5.2 Heritage controls & listings

#### 5.2.1 Victorian Heritage Register

The City Baths is included in the Victorian Heritage Register (VHR 466), for its architectural and historical significance. The site is one of the first 500 heritage places added to the register in Victoria and as such there is no map or plan illustrating the extent of registration however the following description is included (see also VHR citation reproduced at Appendix C):

Historic Building No. 466 - City Baths, Swanston Street, Melbourne (excluding the residence at the rear). [*Victoria Government Gazette* No. 22 - 26 March 1980 p.932]

The interiors of the buildings and complex are understood to be covered by the VHR heritage controls.

The *Victorian Heritage Register* is maintained by the Victorian Heritage Council, as per the statutory provisions of the *Victorian Heritage Act* 2017.

#### 5.2.2 Statement of significance

The VHR statement of significance for the City Baths is recommended to be updated to reflect the significance assessment undertaken for this report, as outlined in Chapter 4.

#### 5.2.3 Works to the place

Permits are generally required from Heritage Victoria for a range of works, including changes to the site for adaptation purposes, and new buildings and development. This applies to all building components, including the 1980s works, and the land area. The exception is those works which are permit exempt (see below).

'Works' requiring a permit from Heritage Victoria are identified as follows:

- Building extensions, new construction, interior works, demolition, changes of colour schemes and signage
- Construction of outdoor structures such as fences or decks, and changes of materials
- Excavations
- Works to registered objects.

Where a permit is required, an application is made to the Executive Director of Heritage Victoria which includes an application form, application fee, property title, heritage impact statement, architectural drawings and any other relevant information which will assist in the assessment of the application.

The following matters to be considered in determining applications are identified at Section 101 of the *Heritage Act 2017*:

- (2) In determining whether to approve an application for a permit, the Executive Director must consider the following—
- (a) the extent to which the application, if approved, would affect the cultural heritage significance of the registered place or registered object;
  - (b) the extent to which the application, if refused, would affect the reasonable or economic use of the registered place or registered object;
  - (c) any submissions made under section 95 [*s. 95 refers to written submissions received during public notice of an application*] or 100 [*s. 100 refers to submissions received as part of the referral process to responsible authorities and municipal councils*];
  - (d) if the applicant is a public authority, the extent to which the application, if refused, would unreasonably detrimentally affect the ability of the public authority to perform a statutory duty specified in the application;
  - (e) if the application relates to a listed place or to a registered place or registered object in a World Heritage Environs Area, the extent to which the application, if approved, would affect—
    - › the world heritage values of the listed place; or
    - › any relevant Approved World Heritage Strategy Plan;
  - (f) any matters relating to the protection and conservation of the registered place or registered object that the Executive Director considers relevant.
- (3) In determining whether to approve an application for a permit, the Executive Director may consider—
- (a) the extent to which the application, if approved, would affect the cultural heritage significance of any adjacent or neighbouring property that is—
    - › included in the Heritage Register; or
    - › subject to a heritage requirement or control in the relevant planning scheme; or
  - (b) any other relevant matter.<sup>125</sup>

The Executive Director has a statutory timeframe of 60 days in which a permit application must be processed, however, an additional 60 days can be granted by the Heritage Council. An extension of time typically occurs for complex applications. The initial 60-day timeframe may be extended if additional information is requested, at which time the 'clock' stops until that information is provided. If the proposed works could have a detrimental impact on the significance of the place, the permit application may be advertised in a local newspaper and by way of signs at the subject site. The application is advertised for a duration of (a minimum of) 14 days and interested parties are invited to provide submissions in relation to the proposal. The 'clock' is also stopped during the advertising period.

The permit application is also be referred to the Responsible Authority (generally the local council) for comment. The *Heritage Act 2017* formalises arrangements for referral of permit applications to relevant councils or responsible authorities and requires the Executive Director, Heritage Victoria, to consider any submission in relation to these referrals in determining permit applications.

Following advertising and comments from the Responsible Authority, the Executive Director assesses the application, and if the proposal is appropriate a permit is issued. If a permit application is refused or an applicant does not agree with the conditions imposed on the permit, there is an avenue of appeal to the Heritage Council of Victoria. The appeal must be lodged within 60 days of the Executive Director's determination.

If the proposed works are minor in nature and/or do not affect areas of heritage significance, it may be possible to apply for a permit exemption under Section 92(3) of the *Heritage Act 2017* (see below). In this instance a formalised permit application process is not required, however detailed correspondence and documentation is still lodged with Heritage Victoria to enable the proposal to be assessed.

#### 5.2.4 Permit policy & exemptions

Section 49(3) of the *Heritage Act 2017* provides for certain 'categories' of works or activities to be specified as exempt from the need for a permit from Heritage Victoria (i.e. permit exempt), where such works would not 'harm' the significance of the heritage place. There is also an opportunity under the *Heritage Act* to introduce a permit policy. The latter provides guidance on what Heritage Victoria regards as important components of the site, and how these would be considered and treated in the event of a works or development proposal and permit application. This is an important consideration, as works which are generally compliant with the stated policy are more likely to gain the support of Heritage Victoria.

It is also possible to apply for one-off permit exemptions, at any time, under Section 92 of the Act. Such exemptions would generally be for minor works which do not impact on elements of heritage significance.

The existing VHR documentation for the City Baths includes permit exemptions but not a permit policy (see Appendix C). The suite of exemptions is more in the way of general exemptions, or 'General Conditions'. These are reproduced below:

General Conditions: 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 Conditions: 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. 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 Conditions: 3. If there is a conservation policy and plan all works shall be in accordance with it. Note: A Conservation Management Plan or a Heritage Action Plan provides guidance for the management of the heritage values associated with the site. It may not be necessary to obtain a heritage permit for certain works specified in the management plan.

General Conditions: 4. Nothing in this determination prevents the Executive Director from amending or rescinding all or any of the permit exemptions.

General Conditions: 5. Nothing in this determination exempts owners or their agents from the responsibility to seek relevant planning or building permits from the responsible authorities where applicable.

Minor Works: Note: Any Minor Works that in the opinion of the Executive Director will not adversely affect the heritage significance of the place may be exempt from the permit requirements of the Heritage Act. A person proposing to undertake minor works must submit a proposal to the Executive Director. If the Executive Director is satisfied that the proposed works will not adversely affect the heritage values of the site, the applicant may be exempted from the requirement to obtain a heritage permit. If an applicant is uncertain whether a heritage permit is required, it is recommended that the permits co-ordinator be contacted.

In relation to the existing exemptions, it is noted that General Condition 3 refers to a CMP and that 'all works shall be in accordance with it'. Further, 'it may not be necessary to obtain a heritage permit for certain works specified in the management plan'. On that basis it is recommended that Heritage Victoria is provided with a copy of this CMP. At the very least, a copy should be provided at the time an application is made for works, including a permit exemption request or a full permit application.



### Recommended permit exemptions

It is recommended that additional ongoing permit exemptions be sought from Heritage Victoria. The exemptions can be requested on the basis that they involve areas, elements and fabric of little or no significance and accordingly no impacts would arise from the works, and no 'harm' would be done to the significance of the heritage place.

The exemptions can address the following:

- Internal works to the 1980s additions at the east end of the site, where such works would have no external visibility (a permit exemption would not be granted for external works in this area, as such works would be visible and have the potential to impact on the heritage place)
- Internal works to the area of little or no significance in the basement (on the basis that this is not a public area)
- Replacement of non-original toilet and changing room fittings and fixtures throughout (as identified in this CMP), but only where the replacement is an update on the existing fitting in the existing location

### Recommended permit policy

Regarding a permit policy, as noted above this is a useful component of VHR documentation and it is recommended that a request be made to Heritage Victoria to put such a policy in place. The permit policy should preferably clarify that it is not the intention of the registration to prevent or preclude change within the City Baths site, but that such change should be sensitive to the heritage significance and constraints and should support the ongoing viability of the baths as a municipal bathing and swimming facility. The policy should also reference this CMP, as a guide to what might be acceptable at the baths in terms of future works.

On the basis of the analysis and assessment undertaken for this report, such a policy is recommended to include and address the following:

- Recognition that the City Baths retains its major original internal components which help demonstrate aspects of the historic internal layout and function, including gender and class segregation; and that future works should not diminish an understanding of this historical layout.
- Recognition that the City Baths in meeting its operational requirements and sustaining its ongoing viability will inevitably drive the need for change to reflect community expectations, statutory compliance and enhancement of facilities.
- Recognition that the 1980s additions on the east of the site provide an opportunity for future works and development.
- Recognition that the exterior of the 1904 development is more intact than the interior, and that the latter provides greater opportunity and flexibility for further albeit sensitive change.

### 5.2.5 National Trust of Australia (Victoria)

The City Baths was classified by the National Trust of Australia (Victoria) as a building of state significance on 6 July 1979 (File No. B4508). There are no statutory requirements as a consequence of this classification.

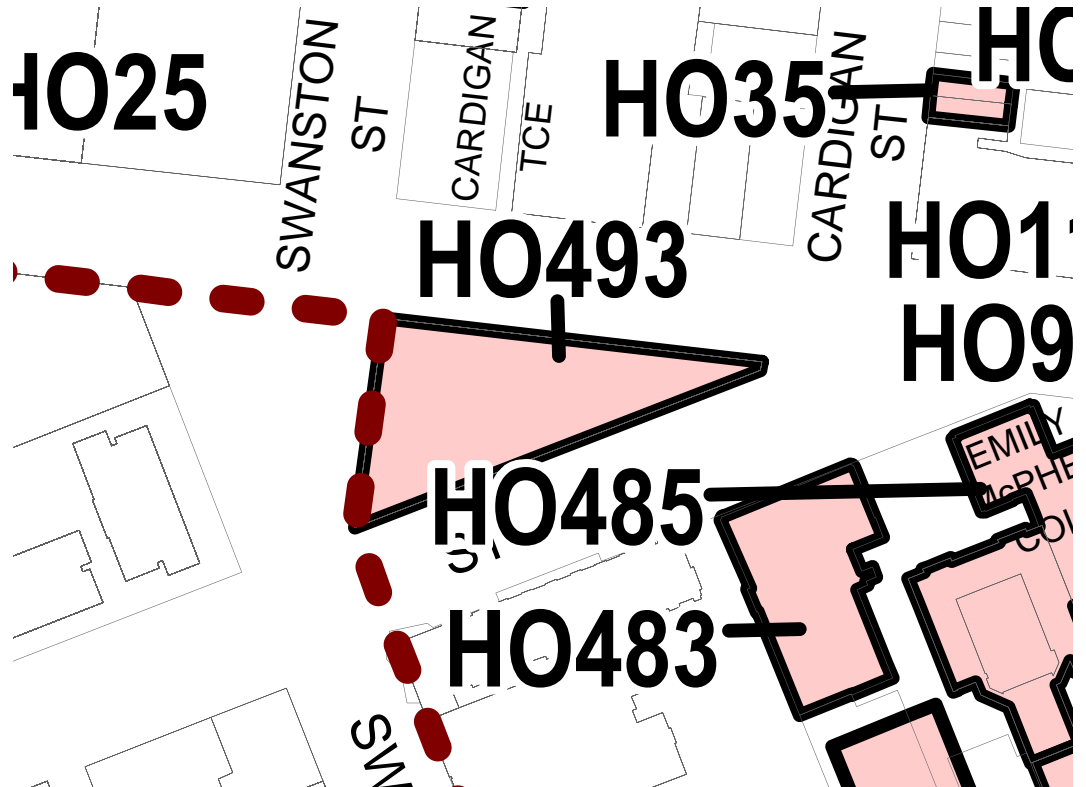
### 5.2.6 Planning and Environment Act 1987

#### Heritage Overlay

The City Baths is identified as HO493 in the Heritage Overlay Schedule to the City of Melbourne. As per Clause 43.01 Heritage Overlay, a place included in the VHR is subject to the requirements of the *Victorian Heritage Act* and not the *Planning and Environment Act* for heritage-related approvals. However, a permit is required under the Heritage Overlay to subdivide a heritage place which is included in the VHR.

Figure 104 Heritage Overlay Map showing HO493

Source Melbourne Planning Scheme



## 5.3 Compliance

Chapter 6 addresses compliance with standards in several sections, in relation to how building components might be treated and modified. However, as a more general consideration, the following is noted.

### 5.3.1 National Construction Code (Building Code of Australia)

The National Construction Code addresses all building compliance requirements as related to specified classes of buildings. In Victoria the NCC operates in conjunction with the *Victorian Building Regulations 2018* and under the provisions of the *Building Act 1993*. In its formulation and reference to relevant construction standards the NCC has necessarily been developed for new construction. In this regard the application, wholesale to the refurbishment or redevelopment of a heritage place has the potential to have significant impacts, particularly if a ‘full compliance’ with the code is triggered.

Addressing this issue, the *Victorian Building Regulations 2018*, provide for some flexibility where alterations are proposed to existing buildings, under Part 16, Regulation 233.

This regulation states as follows:

#### 233 Alteration to existing building

- 1 Building work to alter an existing building must comply with these Regulations.
- 2 Subject to regulations 234 and 236, if the proposed alterations to an existing building, together with any other alterations completed or permitted within the previous 3 years, relate to more than half the original volume of the building, the entire building must be brought into conformity with these Regulations.
- 3 Despite subregulations (1) and (2) and subject to subregulation (6), the relevant building surveyor may consent to partial compliance of building work or an existing building with subregulation (1) or (2).
- 4 In determining whether to consent to partial compliance with subregulation (1) or (2) in respect of any alteration to a building, the relevant building surveyor must take into account—
  - (a) the structural adequacy of the building; and
  - (b) the requirements necessary to make reasonable provision for—
    - (i) the amenity of the building and the safety and health of people using the building; and
    - (ii) avoiding the spread of fire to or from any adjoining building.
- 5 Any consent to partial compliance under subregulation (3) must be in the form of Form 18.

- 6 If any part of the alteration is an extension to an existing building, the relevant building surveyor may only consent to partial compliance in respect of the extension if the floor area of the extension is not greater than the lesser of—
  - (a) 25% of the floor area of the existing building; and
  - (b) 1 000 m<sup>2</sup>.

In addition, the *Building Act* 1993 provides for further consideration of dispensation to compliance requirements in the case of buildings included in the VHR, as per the City Baths. The relevant section states:

**28 Historic buildings and special buildings**

- 1 Despite section 24, the relevant building surveyor may issue a building permit for the carrying out of building work that does not comply with the building regulations if the work is to be carried out on, or in connection with—
  - (a) a building included on the Heritage Register established under the Heritage Act 2017.
- 2 The building permit may be issued to enable the carrying out of work appropriate to the style, manner of construction and materials of the building.
- 3 In deciding an application for a building permit in respect of a building to which subsection (1) applies, the relevant building surveyor must take into account—
  - (a) the structural adequacy of the building; and
  - (b) the requirements necessary to make reasonable provision for the amenity of the building and the safety and health of people using the building.
- 4 The consent and report of the Executive Director under the Heritage Act 2017 must be obtained to an application to demolish or alter a building which is on a register established under that Act.

In formulating a response to building regulatory requirements a third factor to consider is that of the opportunity to develop 'Performance Solutions' to the NCC 'Performance Requirement' as opposed to applying 'Deemed-to-Satisfy' solutions. In adopting such an approach there may be scope to demonstrate that traditional construction practice as supported by relevant expert advice can meet the performance requirements of the NCC, albeit not compliant with current new construction standards.

Having regards to the above considerations in developing a design response to new works careful consideration needs to be given to the actions which might trigger full code compliance obligations and if this is the case, the nature of dispensations which might be sought. Activities and compliance requirements which have the potential to have the greatest impact on the significant fabric of the baths include:

<b>Issue</b>	<b>Potential Impact</b>
Hazardous materials removal	Loss of evidence of original and early decorative finishes. Destruction of significant fabric.
Seismic compliance	Introduction of new structure requiring significant intervention into original fabric.
Energy performance (NCC Section J) compliance	Replacement of original materials (glass) and introduction of insulating material.
Fire protection and separation	Introduction of fire services and new fabric to provide fire separation.

### 5.3.2 Disability Discrimination Act, 1992

Access for people with a disability as relevant to future works to the City Baths are addressed under the *Disability Discrimination Act* (DDA) 1992, and also under the NCC and the Australian Human Rights Commission 'Premises Standards'. While the DDA sets out compliance requirements it is a document which also provisions for complaints where these requirements are not met. In the case of the NCC, the requirements under Part D3 are express requirements which must be met under the Deemed to Satisfy provisions or by way of a Performance Solution. Additionally, the Premises Standards provide guidance on both new works and works to existing buildings to meet access requirements.

Having regard to these documents, bringing heritage buildings into compliance typically requires a carefully resolved design response which frequently requires a balancing of access and heritage outcomes. Again, this is addressed in Chapter 6.

## 5.4 Implementation of the CMP

This CMP should be adopted and implemented by the City of Melbourne in its planning and management of the City Baths. Staff and management of the public facility should also be encouraged to familiarise themselves with the report, and its recommendations and policies. Such implementation of the report will ensure that future works and development will not undermine the conservation of the heritage values, nor have unacceptable impacts on the significant elements.

The CMP should be subject to review and updating, including where the circumstances affecting the City Baths alter in any significant way. It is normally recommended that this occur every five years. The undertaking of new works and development are changes which could potentially justify review of the conservation policy and its effectiveness.

## 5.5 Aboriginal values

As noted in Chapter 1, at the outset of this project and in agreement with Council, it was considered that the baths may possess Aboriginal cultural heritage significance, relating to the site's pre-Contact history or historic use. Accordingly, and in line with City of Melbourne policy, the Aboriginal heritage values as relate to tangible fabric or intangible attributes, were reviewed and considered in the preparation of this CMP. The following conclusions regarding Aboriginal cultural heritage, together with an outline of the relevant heritage management policy framework and recommendations on further work, have been prepared by Extent Heritage.<sup>126</sup>

### 5.5.1 Conclusions

The documentary evidence that is available tends to indicate that the potential for the presence of substantial pre-Contact Aboriginal archaeological remains within the study area is low. This is due to two main reasons:

- Mapping of the pre-Contact natural environment indicates that the study area is not in close proximity to any landforms that are thought to have been favoured for past Aboriginal occupation. The closest water, Williams Creek, was at a distance of approximately 250m, and the study area does not appear to have been located on a rise.
- Historical development has involved deep excavation across much of the study area, which is likely to have removed most, although not all, of the upper soil profile, within which archaeological deposits would be contained.

However, the possible survival of discrete areas of natural topsoil, in conjunction with the results of previous archaeological investigations in the CBD, means that the potential for the presence of pre-Contact Aboriginal archaeological remains cannot be entirely dismissed.

Mapping of places with post-Contact Aboriginal heritage value places the study area in the context of the former Melbourne Gaol, to the south-east, and the former Aboriginal Burial Ground, to the west. The importance of these two locations in early post-Contact Aboriginal history has recently been recognised in the Tunnerminnerwait and Maulboyheenner Memorial, on the opposite corner of Flinders and Victoria Streets. The available documentary evidence does not indicate that historical occupation of the study area was connected in any way with these locations. No evidence has been found to suggest specific Aboriginal historical associations with the study area. However, in general, Aboriginal history tends to be under-represented in documentary sources; in many cases, oral history research is an approach that is better suited to investigation of these potential associations.

### 5.5.2 Existing Aboriginal heritage management framework

Aboriginal heritage is provided with statutory protection in Victoria by the:

- Aboriginal Heritage Act 2006.
- Aboriginal Heritage Regulations 2007.

The Act and Regulations are administered by Aboriginal Victoria, and the relevant Registered Aboriginal Party (RAP) for an area if a RAP has been appointed. There is presently no RAP for the Melbourne Local Government Area (LGA), and consultation in relation to heritage management is therefore undertaken with:

- Wurundjeri Tribe Land and Compensation Cultural Heritage Council
- Boon Wurrung Foundation
- Bunurong Land Council Aboriginal Corporation

Under the Regulations, a Cultural Heritage Management Plan (CHMP) is required prior to development, if the development is considered to be a high impact activity and to be located within an area of cultural heritage sensitivity that has not been subject to prior significant ground disturbance.

The study area is not within an area of cultural heritage sensitivity, as defined in the Regulations. However, the results of previous investigations indicate that areas of sensitivity, as defined in the Regulations, are unlikely to capture all pre-contact Aboriginal archaeological evidence within the LGA. In the case of the study area specifically, there is therefore some potential for the presence of Aboriginal objects in association with any discrete areas where the upper soil profile has not been entirely removed.

Council has developed internal guidelines for the management of Aboriginal heritage within the LGA, within the:

- City of Melbourne Heritage Action Plan 2015-18.
- The 'Conservation' theme of the Plan includes the following relevant measures:
  - 1.2.1. Voluntary CHMPs undertaken on all 'high impact' CoM [City of Melbourne] building development projects, as defined by the *Aboriginal Heritage Regulations 2007*.
  - 1.2.4. Different Aboriginal cultural heritage types recorded (e.g. oral, archaeological, historical, social, political, contemporary) from other sources.

### 5.5.3 Recommendations

The following recommendations are made to assist with future identification and assessment of Aboriginal heritage values that may be associated with Melbourne City Baths, and management of these values in accordance with the relevant legislation and guidelines.

- Consultation should be undertaken with the relevant Aboriginal stakeholder groups to develop a methodology for the investigation of potential Aboriginal heritage values associated with the study area.
- If any such values are identified, the CMP should be updated to incorporate appropriate measures to manage them.
- A CHMP should be undertaken prior to development, in the event that any 'high impact' activities are proposed for the study area.

