



Heritage Council Registration Hearing

Eastern Freeway – Stages One, Two and Three

Stage One, Hoddle Street/Alexandra Parade to Bulleen Road (City of Yarra, City of Boroondara); and Stages Two and Three, Bulleen Road to Springvale Road, including Koonung Creek Linear Parklands east of Bulleen Road and associated roadside verges (City of Boroondara, City of Manningham, City of Whitehorse).

Hearing – 28 August 2020

Members – Ms Jennifer Moles (Chair), Prof. Andrew May, Mr Patrick Doyle

DETERMINATION OF THE HERITAGE COUNCIL

That the place is not to be included in the Heritage Register – After considering the Executive Director’s recommendation and all submissions received, and after conducting a hearing into the matter, the Heritage Council has determined, pursuant to section 49(1)(b) of the *Heritage Act 2017*, that the Eastern Freeway – Stages One, Two and Three, Hoddle Street/Alexandra Parade to Springvale Road, is not of State-level cultural heritage significance and is not to be included in the Victorian Heritage Register.

Jennifer Moles (Chair)

Andrew May

Patrick Doyle

Decision Date – 21 September 2020

Decision summary

*The Heritage Council provides a decision summary if the relevant Heritage Council Regulatory Committee is of the view that there are points of interest in the decision which should be identified. The summary does not form part of the decision or reasons for decision.**

The Eastern Freeway was developed in three stages: Stage One (Hoddle Street/Alexandra Parade to Bulleen Road) dates from the 1970s and Stages Two and Three (Bulleen Road to Springvale Road) from the 1980s and 1990s.

On 11 December 2019, the Executive Director of Heritage Victoria made a recommendation to the Heritage Council that Stage One should be included in the Victorian Heritage Register ('the Register') as a place of cultural heritage significance to Victoria and that Stages Two and Three should not be included. The Executive Director's view was that Stage One was of State-level significance for historical reasons and as being an excellent and illustrative example of the class of freeways.

Public notice of the recommendations attracted almost 400 written submissions principally objecting to the registration of Stage One. The Heritage Council subsequently conducted a hearing on 28 August 2020 where a small number of presentations were made and expert evidence was called. The hearing participants included the Executive Director, the State Department of Transport (who had nominated Stage One for registration), the North East Link Project and Boroondara City Council. The written submissions received in response to public notice and the nomination material were also considered.

The arguments and evidence concerning historical significance related to whether Stage One was significant to the State as an early metropolitan freeway associated with the growth of the eastern suburbs of Melbourne; as a forerunner of a new approach to freeway design; and as the focus of anti-freeway community protests.

The material relating to the excellence of design of the freeway, and its representation of the class of freeways, included support for some excellent design characteristics of Stage One, notably a well-designed suite of overpasses and the use of striking needle-like light poles. Some submissions supported other features such as the landscape quality, the attractive cuttings and rock work, and the wide central median of that stage. Stage Three was supported by a second nominator (in writing only) for its design qualities, particularly its response to the natural environment of that area.

The Heritage Council has determined that none of the three stages of the Eastern Freeway are of cultural heritage significance to the State of Victoria and has determined that no stage of the freeway be included in the Register.

The arguments concerning the particular historical significance of this freeway are rejected on the basis that it does not derive significance from being an early Melbourne freeway; its relationship with urban growth is not special; the key freeway evolutionary phase with which it was said to be associated is only loosely defined and its alleged role as a good design forerunner was not borne out; and registration based on public unpopularity and protest at the time of its planning and construction is viewed as illogical.

So far as being of State significance as a fine example of a freeway illustrating features of freeways in general or freeways of its time, the Heritage Council considers that Stage One (and the subsequent stages) does not allow the design and development of freeways to be understood better than other freeways in Victoria with the same historical associations. It is found that the design of the Place should be merely considered to be one part a continuum of freeway design and development that continues to evolve.

The Heritage Council found that none of the assessment Criteria for heritage significance were met at State level.

**The 'Decision Summary' was amended on 22 September 2020 to correct a typographical error.*

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.

PERSONS WHO LODGED WRITTEN HEARING SUBMISSIONS AND APPEARED AND MADE VERBAL SUBMISSIONS AT THE HEARING

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

Written submissions were received from the Executive Director. Ms Nicola Stairmand, Acting Principal - Assessments, assisted by Mr Geoff Austin, Manager – Heritage Register, appeared and made verbal submissions at the Hearing on behalf of the Executive Director.

BOROONDARA CITY COUNCIL ['BOROONDARA']

Written submissions were received from Boroondara. Ms Kierra Parker, Lawyer, Maddocks, appeared at the Hearing and made verbal submissions on Boroondara's behalf.

NORTH EAST LINK PROJECT ['NELP']

Written submissions were received from NELP, a Division of the Major Transport Authority, which is an administrative office of the Department of Transport. Mr Barnaby Chessell of Counsel appeared at the Hearing, instructed by Clayton Utz, and made verbal submissions on NELP's behalf.

NELP provided a statement of evidence from Mr Jim Gard'ner of GJM Heritage. Mr Gard'ner presented his evidence to the Committee and was available for cross-examination.

DEPARTMENT OF TRANSPORT ['DoT']

Written submissions were received from DoT. Ms Kristen Hughes, Lawyer, DoT, appeared at the Hearing and made verbal submissions on DoT's behalf.

MR CHRIS GOODMAN

Written submissions were received from Mr Goodman, President of The 3068 Group Inc., a residents' group from Clifton Hill and North Fitzroy. Mr Goodman appeared and made verbal submissions at the Hearing.

MR DAVID IAN (IAN) SOUTHWELL

Written submissions were received from Mr Southwell, a resident of Croydon and regular user of the freeway, who appeared and made verbal submissions at the Hearing.

INTRODUCTION/BACKGROUND

THE PLACE

01. On 11 December 2019, the Executive Director made a recommendation to the Heritage Council, pursuant to section 37(1)(a) of the *Heritage Act 2017* ('the Act'), that the Eastern Freeway - Stage One, Hoddle Street/Alexandra Parade to Bulleen Road ('Stage One') should be included in the Victorian Heritage Register ('the Register'). Also on 11 December 2019, the Executive Director made a recommendation to the Heritage Council, pursuant to section 37(1)(b) of the Act, that the Eastern Freeway - Stages Two and Three, Bulleen Road to Springvale Road, including Koonung Creek Linear Parklands east of Bulleen Road and associated roadside verges ('Stages Two and Three'), should not be included in the Register.
02. The two 11 December 2019 recommendations to the Heritage Council are jointly referred to in this document as 'the Recommendations'. The recommendation to include Stage One is referred to in this document as either the 'recommendation to include' or the 'recommendation to include Stage One'. Stages One, Two and Three of the Eastern Freeway, when referred to collectively in this document, are referred to as 'the Place'.
03. The following description of Stage One is given on page 4 of the Recommendations:

'WHAT IS AT THE PLACE?'

The Eastern Freeway - Stage One runs from Hoddle Street to Bulleen Road. Its boundaries are defined by cuttings through natural rock escarpments and framed by plantings of native vegetation. A wide grassed central median is defined by a series of elongated needle-like light poles. There are nine individually designed bridges (seven road overpasses and two twin bridges over the Yarra River and Merri Creek), as well as a pedestrian overpass, railway bridge and Hoddle Street overpass. The roadway comprises two carriageways, each of five lanes plus an emergency lane between Hoddle Street and the Chandler Highway, which then reduces in width to four lanes plus an emergency lane, through to Bulleen Road.

WHAT IS THE HISTORY OF THE PLACE?

The Eastern Freeway was one of several urban commuter freeway projects announced around the date of the launch of the Melbourne Transport Committee Transportation Plan in December 1969. It was intended to link the eastern suburbs of Melbourne, and in particular the suburbs of Kew, Balwyn, Bulleen, Doncaster and Templestowe, with the city. Design of the freeway commenced in 1970, with Stage One from Hoddle Street/Alexandra Parade to Bulleen Road, commencing construction in 1972 and opening at the end of 1977. The freeway bisected the Yarra Bend National Park and required the reconfiguration of the course of the Yarra River and modified its confluence with the Merri Creek. The project was controversial with significant and prolonged community opposition when it became apparent the freeway was to link with Alexandra Parade beneath Hoddle Street, pushing city and west-bound traffic through the inner suburbs...

WHO ARE THE TRADITIONAL OWNERS/REGISTERED ABORIGINAL PARTY FOR THIS PLACE?

This site is part of the traditional land of the Woi Wurrung (Wurundjeri) peoples of the Kulin Nation. The Registered Aboriginal Party (RAP) under the Aboriginal Heritage Act 2006 is the Wurundjeri Woi Wurrung Cultural Heritage Aboriginal Corporation.'

- 04.** Mr Gard'ner's witness report for NELP contained the following summarised description of Stages Two and Three of the freeway drawn from information in the Recommendations:

[39] The Eastern Freeway has been extended in two stages. Stage Two opened in 1982 and extended the freeway to Doncaster Road. Stage Three opened in 1997 and extended the freeway to Springvale Road, where the road becomes the Eastlink Toll Road (M3).

[40] East of Bulleen Road the Eastern Freeway is generally three lanes in width plus an emergency lane in each direction. East of Tram Road the freeway widens to four lanes in each direction before narrowing again to three lanes in each direction east of Blackburn Road. The tall light poles in the centre of the median transition to standard freeway 'T' lights set within the Jersey-type concrete dividing barriers. These lights are supplemented by invert 'L' profile lights on the grassed verges.

[41] A large proportion of the Stage Two and Three freeway is at grade. Commencing at Bulleen Road, the overbridges from west to east are:

- the pedestrian overpass connecting the Koonung Creek Trail (north of the freeway) to the Koonung Creek Reserve (south of the freeway);*
- Doncaster Road overbridge; Heyington Avenue/Koonung Creek Trail pedestrian overpass (mast and suspension bridge);*
- Elgar Road overbridge; Tram Road overbridge;*
- Koonung Creek Trail pedestrian overpass (of similar design to Stage One bridges);*
- Middleborough Road overbridge;*
- Koonung Creek Trail pedestrian overpass (suspension arch bridge);*
- Blackburn Road overbridge; Koonung Creek Trail pedestrian overpass (concrete arch bridge);and*
- Springvale Road overbridge at the start of the Eastlink Toll Road.*

[42] These overpasses and bridges are generally of more utilitarian design than those produced under the guidance of Day [at the Country Roads Board, for Stage One], although the Koonung Creek Trail pedestrian overpass and the Middleborough Road and Blackburn Road overbridges reference Day's earlier designs. The Koonung Creek Trail pedestrian overpass between Doncaster and Elgar Roads is suspended from an angled cantilever mast, the pedestrian overpass between Middleborough and Blackburn roads comprises a steel structure suspended from a concrete arch and the pedestrian overpass between Blackburn and Springvale roads is a

concrete arched structure. These bridges do not form a cohesive group in the same manner as those within Stage One.

[43] The Stage Two and Three freeway is separated from surrounding parkland and residential areas by embankments and a number of variously coloured and textured curved concrete noise walls. A curved glazed noise wall is located on the western carriageway between Doncaster and Elgar Roads. The extensive noise walls reflect both the topography of the land and the existing suburbs through which Stages Two and Three traverse. The residential amenity of these existing areas was therefore a significant consideration in the design of the later phases of the Eastern Freeway.

[44] The Koonung Creek Trail shared user path and linear park follows the majority of the length of Stages Two and Three of the Eastern Freeway. Like Stage One, the embankments are planted with Australian native species.

- 05.** The above material is not endorsed by the Heritage Council. It is provided for information purposes only.

NOMINATIONS ONE AND TWO

- 06.** On 2 August 2019, the Executive Director accepted a nomination ('Nomination One') to include Stage One in the Register. The extent of Nomination One was described as 'the section of the Eastern Freeway from the Hoddle Street road bridge at Clifton Hill/Collingwood to the Bulleen Road bridge, Balwyn North/Bulleen, constructed between 1972 and 1977'. Nomination One was submitted by DoT.¹
- 07.** On 29 August 2019, the Executive Director accepted a second nomination ('Nomination Two') to include Stages One, Two and Three in the Register. The extent of Nomination Two was described as 'all land and features noted between Hoddle Street and Springvale Road including Koonung Creek Linear Parklands east of Bulleen Road and associated roadside verges.' Nomination Two was submitted by Mr Christopher Lee.

RECOMMENDATIONS OF THE EXECUTIVE DIRECTOR

- 08.** On 11 December 2019 the Executive Director, pursuant to section 37(1)(a) of the Act, recommended that Stage One be included in the Register.
- 09.** On 11 December 2019 the Executive Director, pursuant to section 37(1)(b) of the Act, recommended that Stages Two and Three not be included in the Register.

PROCESS FOLLOWING THE RECOMMENDATIONS OF THE EXECUTIVE DIRECTOR

- 010.** Public notice of the Recommendations pursuant to section 41 of the Act commenced on 16 December 2019 and continued for a period of 60 days.
- 011.** Three hundred and ninety-three (393) written submissions were received, pursuant to section 44 of the Act ('section 44 submissions'). Three hundred and eighty-five (385) of the section 44 submissions lodged objected to the recommendation to include Stage One in the Register. The vast majority of the objecting section 44 submissions used similar wording and reasons for objecting. While some provided reasons relating to the assessed cultural heritage significance of Stage One, most provided reasons relating to the operation of the

¹ As referenced in the accompanying report of Mr Lovell.

road, the motivation for Nomination One, or the effect of registration on future road projects.

- 012.** In accordance with section 46(2)(a) of the Act, a Hearing was required to be held. A Heritage Council Registrations and Reviews Committee ('the Committee') was duly constituted to consider the Recommendations and submissions received in response to them including the written submissions where the submitter did not request to participate in the Hearing, to conduct a Hearing and to make a determination. Prospective Hearing participants were then notified that a Registration Hearing would be conducted and that a Directions Hearing was scheduled to take place on 8 May 2020, in order to consider and rule on matters of a preliminary or procedural nature (including the timing of the Registration Hearing).
- 013.** The Committee, in notifying prospective Hearing participants of the hearing process, requested that all persons who wished to participate in the hearing process lodge a completed *Form B – Registration Hearing Participation Form*. Nine (9) persons responded that they wished to participate in the hearing process. Three later withdrew their requests to participate. The National Trust was one of those and specifically requested that its written submission supporting the Recommendations be considered.

ADJOURNMENT OF THE DIRECTIONS HEARING DUE TO THE NOVEL CORONAVIRUS ('COVID-19') AND SUBSEQUENT RESCHEDULED HEARING AND DIRECTIONS HEARING DATES

- 014.** On 9 April 2020, all persons who had requested to participate in the 8 May 2020 Directions Hearing were advised by correspondence that, due to State Government advice in relation to COVID-19, the 8 May 2020 Directions Hearing would be adjourned until further notice. The correspondence also advised that the Registration Hearing in relation to the Place would not be scheduled until further notice.
- 015.** On 24 June 2020, all Hearing participants were advised by correspondence that the Directions Hearing would be held on 9 July 2020 and that the Registration Hearing in relation to the Place would be held on 28 August 2020 ('the Hearing'). The correspondence also advised that the Microsoft Teams™ online platform would be used to conduct both the Directions Hearing and the Registration Hearing by videoconference. Further specific technical guidance on how the hearings would be conducted was provided.

PRELIMINARY, PROCEDURAL AND OTHER MATTERS

CIRCULATION OF HEARING-RELATED CORRESPONDENCE TO HEARING PARTICIPANTS FROM NELP AND THE MINISTER FOR PLANNING

- 016.** On 30 July 2020, all Hearing participants were forwarded a letter from the Minister for Planning to the Chair of the Heritage Council and of this Committee, received on 29 July 2020, and earlier correspondence received on 10 June 2020 to the Heritage Council from NELP. Both letters related to the conduct of the Hearing and each noted that it was proposed to be conducted by videoconference.
- 017.** The Committee directed that Hearing participants could provide any written elaboration of or responses to the implications of the correspondence for the conduct of the Hearing. It was requested that NELP in particular advise whether or not it doubted or questioned the Committee's power to conduct the Hearing remotely, and, if so, whether it would consent to the matter being determined on the papers.

- 018.** Responses were received from the Executive Director, DoT and NELP. None expressed any concerns in relation to the conduct of the Hearing by videoconference. NELP noted that it was supportive of the Hearing process and permitting any person interested in observing the Hearing to do so remotely.

SITE INSPECTIONS

- 019.** Prior to the Hearing, members of the Committee separately inspected parts or all of the Place. Due to State Government directions in relation to COVID-19, however, the Committee was not able to jointly conduct a site inspection in the weeks prior to the Hearing as it typically would. Hearing participants were advised of this practical limitation at the Hearing.
- 020.** A joint inspection of the Place has not been undertaken prior to this decision.

CONFLICTS OF INTEREST

- 021.** At the Directions Hearing, the Chair invited Committee members to make declarations in relation to any matters that may potentially give rise to an actual or a perceived conflict of interest.
- 022.** The Chair, Ms Moles, noted her involvement in the early 1970s in drafting State planning policy relating to integrated highway and land use planning and improved road design², contemporaneously with the planning and design of Stage One.
- 023.** Mr Doyle declared that he had recently been engaged by the Department of Environment, Land, Water and Planning (DELWP), to provide legal services as part of a short-term, part-time secondment. DELWP includes the office of Heritage Victoria. Mr Doyle outlined some details of the nature of this secondment.
- 024.** All Hearing participants were invited to comment or raise any concerns in relation to the above matters and none were raised at either the Directions Hearing or the Hearing.

FUTURE USE, MANAGEMENT AND DEVELOPMENT OF THE PLACE

- 025.** The Committee notes that it is not its role to consider future development proposals nor 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.
- 026.** The Committee notes that some submissions did refer to the future use, management or development of the Place, including in the context of major transport infrastructure proposals. According to the effect of section 44(4) and section 49 of the Act, the Committee has not considered these matters in reaching its determination.
- 027.** In this respect, the submissions for NELP included extensive discussion of the impending development of the North East Link and its strategic transport importance, and described that project in considerable detail. The proposed road would intersect with the Place in the vicinity of Bulleen Road and would require works to the Place. The Committee records that the fact of the proposed North East Link has not affected the Committee's consideration of the primary question,

² Town and Country Planning Board: Statement of Planning Policy No.5 (Highway Areas), ratified by the Hamer government in 1973 (referred to in the Executive Director's Recommendations at page 23).

namely the cultural heritage significance of the Place. The Committee understands that NELP's submissions in relation to the North East Link were not intended to divert the Committee from that primary question. Rather, these aspects of NELP's submission would have assisted the Committee's consideration of appropriate permit exemptions as well as the precise delineation of the extent of registration, both in the event that the Committee had determined to include the Place or any part of it in the Register.

BOROONDARA'S SECTION 44 SUBMISSION

- 028.** On 14 February 2020, the Director of Environment and Infrastructure of Boroondara lodged a section 44 submission in support of the recommendation to include Stage One in the Register, describing it as a 'Council officer only position' and noting that 'this position has not yet been considered or formally endorsed by Council', and foreshadowing a process of finalising and formalising Boroondara's position. The section 44 submission appended a recent heritage report prepared by Mr Gary Vines of Biosis concerning Stage One.
- 029.** On 11 March 2020, Boroondara lodged a further submission with the Heritage Council seeking to withdraw its section 44 submission and accompanying report and stating that Boroondara's formal position adopted at the Council meeting of 24 February 2020 was that it objected to the recommendation to include Stage One in the Register.
- 030.** Section 46 provides that the Heritage Council must consider any section 44 submissions made to it. The Committee has therefore considered the section 44 submission that was lodged by Boroondara within the relevant statutory timeframe. However, the Committee has also considered Boroondara's submission subsequently lodged on 11 March 2020 and Ms Parker's associated presentation at the Hearing. The Committee understands that the section 44 submission does not reflect the corporate position of Boroondara, and that the later submissions do. References to Boroondara's position, in the discussion which follows, refer to Boroondara's final, corporate position, rather than the position advanced in the earlier section 44 submission.
- 031.** The Committee also records that an earlier report by Mr Vines on the heritage significance of the bridges of Stage One of the freeway, which also makes broader observations on the heritage significance of Stage One, was appended to the National Trust's written submission. It has very similar content to the Vines report attached to Boroondara's section 44 submission. Both have been considered by the Committee as giving another expert view on the significance of the Place, albeit not a tested one.

LATE WRITTEN MATERIAL

- 032.** Both Mr Goodman and Mr Southwell sought to introduce some new written material in the week prior to the Hearing, after the specified submission lodgment dates.
- 033.** The Committee, having considered the nature of that material - which amounted to speaking notes - and having received no objections in relation to the material's receipt, ruled to accept it.
- 034.** In addition, just before the Hearing, NELP supplied a plan illustrating its proposed revised area for registration. It too was accepted by the Committee on the basis that it was a visual representation of the extent advocated for in NELP's written submissions.
- 035.** The Committee records its preference, however, that participants should ordinarily lodge submissions and supporting documents within the specified

timeframes in order to afford all parties the same opportunity to review the written material relied on by others in advance of verbal submissions at the Hearing.

ISSUES

- 036.** 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 them.
- 037.** 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). Please refer to **Attachment 1**.
- 038.** The Committee has referred to the assessment framework in *The Victorian Heritage Register Criteria and Threshold Guidelines* as adopted by the Heritage Council on 4 April 2019 ('the Guidelines') 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

- 039.** The Executive Director recommended that Stage One be included in the Register, having concluded that it satisfied the State-level threshold for both Criterion A and Criterion D. In relation to Criterion A, the Executive Director assessed Stage One as historically significant for its association with the early development of freeways in Victoria and its demonstration of important shifts in the approach to freeway design during the 1960s and 1970s including consideration of the motorist's experience and in landscape, overpass, carriageway and bridge design. The Executive Director also concluded that Stage One is historically significant for its association with the community protests that met its announcement, construction and opening. In relation to Criterion D, the Executive Director concluded that Stage One is significant as a notable, fine, intact, influential and pivotal example of a freeway responding to changing attitudes towards freeway design, including the consideration of aesthetics as well as safety, utility and economy. The Executive Director assessed Stage One as representing a key evolutionary stage in the development of freeway design. The Executive Director concluded at the same time that Stages Two and Three are not of cultural heritage significance at a State-level in relation to any of the Criteria and should not be included in the Register. The Executive Director also recommended certain categories of works and activities should be able to be carried out in relation to Stage One without the need for a permit under the Act.
- 040.** Boroondara objected to the recommendation to include Stage One and submitted that it should not be included in the Register on the basis that it does not satisfy any of the Criteria at a State level.
- 041.** NELP submitted that it had adopted a neutral or agnostic position as to whether Stage One should be included in the Register. NELP submitted that neither Stage Two nor Three is of State-level cultural heritage significance and that neither should be included in the Register. NELP, referring to the evidence of Mr Gard'ner, 'accepted' that the Heritage Council was likely to be satisfied that Stage One is a place of State-level heritage significance, having regard to Criteria A and D. However NELP submitted that not all of the features included in the recommended extent of registration contribute to the cultural heritage significance of Stage One. Relying on the evidence of Mr Gard'ner, NELP submitted that, if the Heritage Council were to determine to include any part of the Place in the Register, it should be a substantially smaller and fragmented extent of Stage One. It was submitted that the registration should be limited to bridges and

overpasses and the 'needle-like' light poles located in the median of Stage One. A small curtilage was recommended for each of these elements. NELP also recommended changes to permit exemptions and the proposed Statement of Cultural Heritage Significance.

- 042.** DoT supported the Recommendations but submitted that it agreed with both NELP's alternative Stage One extent of registration and also, generally, the revised permit exemptions for Stage One that had been agreed upon by NELP, DoT and the Executive Director in discussions prior to the Hearing.
- 043.** Mr Goodman made submissions in support of the recommendation to include Stage One, but submitted that the prospective registration of Stage One should also consider the social significance of local associations' participation in urban planning processes, the impact of Stage One on the natural landscape and the Aboriginal cultural heritage significance of the area, including the significance of the area around the confluence of the Yarra River and the Merri Creek.
- 044.** Mr Southwell objected to the recommendation to include Stage One on the basis of his experiences with metropolitan transport facilities and the need for their continuous improvement. He believed that registration would preclude or make more difficult any required upgrades. He referred to transport infrastructure in other cities.

THE COMMITTEE'S APPROACH

- 045.** As noted, the Executive Director assessed the significance of Stage One as satisfying the State-level thresholds only in relation to Criteria A and D. Subsequent submissions focused largely on the question of whether or not the State-level thresholds for Criteria A and D were satisfied. The Committee's report has therefore focused on these Criteria.
- 046.** Some other material before the Committee suggested that the Place might satisfy the State-level test for additional Criteria, principally Criterion E relating to aesthetic significance. This was the view expressed in the expert report by Mr Peter Lovell of Lovell Chen consultants (July 2019) accompanying Nomination One. The Nomination Two documentation for registration of all three stages also supported registration on the basis that Criterion E was met at least for Stage Three. Mr Vines' report also supported the significance of Stage One based on Criterion E and further suggested that Criterion F, relating to technical achievement, and Criterion G, social significance relating to association with a present-day community group, may also be met. The Committee has therefore also considered whether those other Criteria are satisfied in relation to the Place.
- 047.** The Committee notes that the vast majority of the written submissions related exclusively to the recommendation to include Stage One in the Register. The presentations at the Hearing were similarly focused on Stage One. Only very few written submissions included discussion of Stages Two and Three and no Hearing participant supported the inclusion of Stages Two and Three in the Register. The Committee's report, while it includes an assessment of all three stages, includes more extensive discussion in relation to Stage One.
- 048.** Before turning to discussion of how the Place relates to the assessment Criteria, the Committee provides comment on two matters not directly relevant or central to the assessment.
- 049.** The first matter is that some of the section 44 submissions expressed their author's incredulity that a roadway - especially a modern freeway - was a place that might be considered for inclusion in the Register. In a related vein, Boroondara's submissions at the Hearing included that it was important that the Committee consider whether a modern commuter freeway should be regarded as

a class of cultural place or object that is associated with a phase or way of life that is of historical importance.

- 050.** Concerning this issue, the Committee agrees with the comment in the Vines material, that freeways are a component of the urban environment, which, like some other infrastructure items, industrial places, and buildings constructed in post-war decades, have until recently been overlooked as potentially of heritage value. Indeed, the inclusion of any type of roadway as a place in the Register is not common and is relatively recent, as is discussed in the Lovell Chen nomination report. The roadways currently included in the Register are Royal Parade, St Kilda Road and the Great Ocean Road. The Committee agrees with the experts that what is understood and appreciated as heritage is constantly changing and a modern freeway might be considered to be part of it.
- 051.** Related to this issue is the somewhat unusual circumstances of this matter, where all recognised expert opinion was in favour of registration,³ whereas the weight of public opinion, including one of the relevant local government authorities, was against registration.
- 052.** In the Committee's view, there is no broad principal that should preclude a freeway being assessed for its cultural heritage significance, and from being included in the Register if it meets one or more of the Criteria for registration at State-level.
- 053.** Nor does the Committee start from the presumption that the Register should necessarily include a freeway (or freeways). It may be fair to say that every freeway is likely to be of some historical interest and some heritage significance, if only having regard to the scale of public investment and the physical scale of works that a freeway represents. Also, every freeway is necessarily unique, if only by virtue of its geography. It does not follow that every freeway, nor that any given freeway, will meet the Act's threshold of State-level cultural heritage significance. Ultimately it will come down to a matter of applying the Criteria in the usual way. However, in the case of large infrastructure items, such as freeways, the consideration of relevant comparators is perhaps more complicated than usual.
- 054.** The second matter relates to the concerns in some written submissions that there was an ulterior motive (or motives) for the nomination of Stage One. This main motive alleged was an intention to prevent the development of the East-West Link, a freeway connection that was particularly advanced between 2013 and 2014.
- 055.** As is usual practice, the Committee has not considered the issue of the motivation of the nominators in assessing the significance of the Place.

CRITERION A – IMPORTANCE TO THE COURSE, OR PATTERN OF VICTORIA'S CULTURAL HISTORY

Summary of submissions and evidence: Stage One

- 056.** The Executive Director assessed and recommended Stage One of the Place for inclusion in the Register as satisfying Criterion A at a State level.
- 057.** The Executive Director's view was that Stage One has a clear association with the mid-twentieth century phase of transport planning that involved the early planning and construction of freeways. It was said that this phase of road building allowed increased connections between the central city and the rapidly

³ Namely the independent heritage assessments of Mr Vines, Mr Lovell and Mr Gard'ner, as well as the statutory decision-making expert, the Executive Director.

developing suburbs and surrounding regional areas. The Executive Director submitted that Stage One is one of the most intact freeways constructed in its period and allows this phase of the history of transport planning and the construction of freeways to be better understood than most other places in Victoria with substantially the same association.

- 058.** It was also said that Stage One demonstrates an important shift in the approach to freeway design that occurred in the 1960s-early 1970s, to include consideration of the visual enjoyment of the user as well as the safety of the motoring experience and the economy of the design. This new approach, it was submitted, has endured and remains a component of freeway design today. The features of Stage One that were said to be illustrative of this approach included its landscape design and extensive planting works completed ahead of the freeway's opening, careful treatment of exposed rock cuttings and retaining walls, bespoke concrete bridges and overpasses designed as a series, and broad carriageways divided by a wide grassed median with central tall 'needle-like' light poles. The designed curvature in vertical and horizontal alignment were also said to intentionally add interest to the journey and support driver safety.
- 059.** Nomination One had also identified these same bases of historical significance for Stage One.
- 060.** Nomination Two, referring to all stages of the freeway, claimed it was of historical importance as one of the most intact remaining freeways stemming from the 1969 Melbourne Transport Plan, and arguably the most ambitious of the freeway projects given the proposed integration of the Doncaster Rail Line and the realignment of the Yarra River.
- 061.** The Executive Director also submitted that opposition to, and protests against, the construction of Stage One and its proposed extension along Alexandra Parade through to Carlton and beyond, particularly by residents of the inner suburbs abutting Alexandra Parade, affords Stage One historical significance. The protests led to the freeway being terminated at Hoddle Street. It was submitted that Stage One, particularly its termination at Hoddle Street/Alexandra Parade, allows the historical event of freeway protests to be understood better than most places with substantially the same association. The Executive Director argued that the 'mothballing' of other contemporaneous freeway projects resulted in the planned construction of the Eastern Freeway becoming the focus of resistance against the construction of freeways in general at that time.
- 062.** Mr Goodman's submission also supported listing of Stage One on the basis of the historical anti-freeway protests. He was concerned, however, that the draft Statement of Cultural Heritage Significance cast the protests in too negative a light and downplayed their significance.
- 063.** Nomination Two also referenced the public protests against Stage One as well as Stage Three.
- 064.** Boroondara submitted that Stage One does not satisfy the State-level threshold in relation to Criterion A because it is not able to be understood better than most other similar places associated with the relevant phase of transport planning. Boroondara argued that there is nothing of historical significance at a State level that occurred as a result of the design and development of Stage One as opposed to other freeways from this time. In relation to the historical significance of opposition to Stage One, Boroondara submitted that community opposition is a feature of many roadway developments and the opposition to the planned construction of Stage One was not unique. Boroondara noted by way of example that Stage Three was also controversial and was subject to opposition in its local area.

- 065.** NELP accepted that the Heritage Council was likely to find Criterion A satisfied at a State level for the association of Stage One with the opposition to its construction and with developments in transport planning, as assessed by the Executive Director. NELP submitted, relying on the evidence of Mr Gard'ner, however, that only the elements of Stage One that are of cultural heritage significance at a State level should be included in the Register. It was argued that the relevant heritage values of Stage One would be adequately protected by a lesser extent of registration, confined to the needle-like light poles, the bridges and overpasses and an appropriate curtilage around each of those features.
- 066.** Mr Gard'ner agreed generally with the Executive Director in relation to the significance afforded to Stage One by the relevant protest movement and association with developments in transport planning and policy. Mr Gard'ner also agreed with the Executive Director that Stage One retained a high level of intactness and concurred that it was likely that Criterion A was satisfied at the State level.
- 067.** In contrast to the Executive Director's recommended extent of registration, however, Mr Gard'ner's evidence was that an alternative, much-reduced extent of registration for Stage One could be justifiably considered, as in paragraph 041 above. He noted also that the wide median feature of Stage One was a result of the planned corridor for the Doncaster Railway Line rather than any conscious decision to improve aesthetic or motoring experiences. Similarly, he considered the escarpment-like cuttings and use of natural stone were an unremarkable response to the geological and topographic conditions of the freeway route. Mr Gard'ner noted that the broad grassed median strip was not continued in Stages Two and Three as the railway line was not proposed as a future component of those later stages.

Summary of submissions and evidence: Stages Two and Three

- 068.** The Executive Director was of the view that Stages Two and Three, which were constructed in the 1980s and 1990s respectively, do not have the same association with the historically significant early development of major road infrastructure and suburban development in Victoria. It was said that by this time the outer eastern suburbs were already developed and the subsequent stages were more focused on traffic management and extending the reach of the freeway. It was also said that Stages Two and Three did not meet with the protracted resistance to freeways that Stage One had, though some objection to Stage Three on environmental grounds was acknowledged.
- 069.** Mr Gard'ner agreed that Stages Two and Three do not share the same association with the immediate post-World War Two phase of freeway development. He said that while there were protests about later stages of the freeway, they had a more local character.
- 070.** As noted earlier, there was no support for and little discussion of the registration of Stages Two and Three at the Hearing. The principal support for Stage Three is found in Nomination Two and Mr Lee's written submission. These support Stage Three on the basis that it shows the evolution of freeway design to include 'fully landscape architect designed award winning noise barriers which won several awards and became a basis and standard for all future [freeway] planning'. He said it also illustrates the process of 'freeway making' whereby the Stage Three route was originally designated as for an arterial road and the community traded off acceptance of the freeway for rehabilitation of Koonung Creek. He also referred to the high-quality landscape design elements of Stage Three and said that it is an example of integrated freeway planning for its having an integrated park landscape and a rehabilitated and reconstructed waterway.

Discussion and conclusion

- 071.** The Committee has not found the arguments about the historical importance of the Place (or Stages One and Three) persuasive.
- 072.** Criterion A is fundamentally about historic significance. Stage One was not the first freeway constructed in Victoria, nor in metropolitan Melbourne. It was preceded by the Maltby Bypass, the South-Eastern Freeway, the Westgate Freeway, the Tullamarine Freeway and the Mulgrave Freeway. Many freeways have been developed subsequently. Many freeways have also been modified to some extent, after their initial construction. The Committee's starting point is to ask what is it about Stage One, or the Place more broadly, that distinguishes it from other freeways constructed in Victoria, both before or after, in terms of its place in history.
- 073.** In describing the historical significance of Stage One, the Executive Director's assessment contrasted the role of Stage One in the development of Melbourne's eastern suburbs with Stages Two and Three which came after those suburbs were already developed. It was said that Stage One contributed to the expansion of the eastern suburbs in the 1970s and provided a convenient link from them and from regional areas further east into the central city, and thus the freeway was historically important in shaping Melbourne.
- 074.** The Committee considers that this is not something unique to Stage One of the freeway. Freeways, major roadways and rail lines have all been important in shaping the expansion of the urban area. The synergistic relationship of transport facilities and land use development is part of the ongoing process of city development and there is no reason to identify the 1970s suburban expansion and the transport facilities developed to service them as being of especial or indeed State-level historical significance. The Committee was not persuaded by the attempt to elevate the significance of Stage One above that of Stages Two and Three on this basis.
- 075.** A second related basis of historical significance claimed is that Stage One is illustrative of a new design phase of freeways which emerged in the 1960s-1970s whereby greater consideration was given to driver enjoyment and safety, and aesthetics, than had previously been the case.
- 076.** The Committee recognises that the timing of Stage One design and development coincided with a period when the State Government was actively developing policy encouraging improved design and driver experiences on major roadways (including freeways), and better integrated planning of highways and land use. Engineers and others involved in road design were focusing on improved design for driver safety and enjoyment. Aspects of the design of Stage One may well have been influenced by this changed approach and may therefore demonstrate these shifts in contemporaneous ideas about road-based planning.
- 077.** The Committee considers that the designing of a suite of bridges and the tall light poles perhaps has greatest potential to illustrate this new more aesthetics-based design approach. The Committee agrees with the submissions by NELP, and Mr Gard'ner's evidence, that other 'quality' design features of Stage One are a merely a fortuitous and usual response to topography, river valley alignment and geology, and to the legacy of setting aside land central to the freeway for a railway that was never developed.
- 078.** The Committee nevertheless finds this 1960s-1970s period of new design to be very loosely described and has difficulty accepting that there was such a paradigm shift from what went before, or indeed what came after. The Committee is not convinced that the historical phase or period is a discernable one in the continuum of developing thought on freeway design. Nor is the Committee

convinced that the 1970s freeway design and construction period referred to by submitters and experts is necessarily a phase of historical importance to the State, in the terms of the Guidelines. The Committee notes that Stage One is distinct in a design sense from other comparator freeways of the 1970s but these other freeways had the very same historical context.

- 079.** Further, to be important historically at State level, Stage One would have had to be a forerunner of a new approach to freeway design that was followed in all or most subsequent freeway developments. While there are extant examples of freeways with art and lighting installations, spectacular footbridges, attractive retaining walls and interesting rock work, the evidence indicates that the improved design approach adopted for Stage One was not universally applied later. Very many freeways or parts of them continued and continue to have only a pedestrian design quality. The new improved design of Stage One, to the extent it was a design choice rather than fortuitous response to setting, was not adopted even in Stage Two, nor for most of the length of Stage Three.
- 080.** The Committee's view is that Stage One, and indeed the Place as a whole, is located within a continuum of developing road engineering and design ideologies that continue to evolve. Each new freeway represents a new development in freeway design and is a response to its particular setting and planning context. Boroondara's submissions were persuasive in this respect. The Committee also agrees with Boroondara's submissions that there are not sufficient features of Stage One that allow the relevant association to be understood better than most other places with the same historical association with transport planning in Victoria.
- 081.** So far as Stages Two and Three are concerned, the Committee similarly does not consider that they are associated with any clearly discernible design phase relating to the history of freeway development.
- 082.** Concerning the third basis on which historical significance is claimed for Stage One - its association with anti-freeway protests in the 1970s - the Committee does not consider that something should be ascribed cultural heritage significance simply because there was opposition to its construction.⁴
- 083.** The Committee also views as somewhat paradoxical the argument that the fabric of Stage One is historically significant because the protests against it resulted in Stage One *not* including fabric/land west of Hoddle Street that it might have otherwise. The Committee considers this is a somewhat perverse approach to attaching significance.
- 084.** The Act concerns the protection and conservation of Victoria's valued cultural heritage. To register a freeway that was opposed by some Victorians, simply by virtue of the fact of that opposition, would arguably be a surprising outcome. Related to this, the Committee notes that nobody involved in those protests has submitted that Stage One should be registered as a monument to opposition against it. Even if termination of Stage One at Hoddle Street was said to illustrate the success of the anti-freeway protests, the Committee does not consider that purported significance can be appreciated or demonstrated in the fabric of Stage One, whether at or near Hoddle Street or elsewhere.
- 085.** Concerning Stage Three and public opposition, the material presented suggests that this was more local in character and less sustained. In the Committee's view it does not afford particular historical significance to Stage Three even given the bargained outcome referred to by Mr Lee. Rather this protest is illustrative of the point made by Boroondara and others that demonstrations against or objections

⁴ This is consistent with the approach taken by the Heritage Council in the decision of 13 June 2017 in relation to 1 Spring Street, Melbourne (paragraphs 14-18).

to major transport and other infrastructure are commonplace and are not a basis for ascribing State-level historical significance.

- 086.** The Committee determines that the Place does not satisfy the State-level threshold in relation to Criterion A and is not of historical significance to the State of Victoria.

CRITERION D – IMPORTANCE IN DEMONSTRATING THE PRINCIPAL CHARACTERISTICS OF A CLASS OF CULTURAL PLACES AND OBJECTS

Summary of submissions and evidence: Stage One

- 087.** The Executive Director's Recommendations included that Stage One was considered to satisfy Criterion D at a State level for its demonstration of the principal characteristics of the class of freeways and as a notable example. It was said that it is a fine and highly intact example of a freeway demonstrating principal characteristics that are of a higher quality and historical relevance than are typical of places in this class. The Executive Director's assessment was that Stage One encapsulates a key evolutionary stage in the development of freeway design and is influential as the precursor to the present day architectural and aesthetic approach to freeway design. The Executive Director referred in this context to the dramatic width of its road alignment; the attention paid to the development of a landscaped setting; the panoramic views available to the motorist of the (then) Yarra Bend National Park and Yarra River valley; the incorporation of a series of distinctive bridges and concrete overpasses designed under the supervision of H Bruce Day of the Country Roads Board; the use of the rock escarpments formed through cuttings; the series of elongated, needle-like light poles which occupy the median; the absence of advertising hoardings or promotional signage applied to the overpasses; and the scenic transition from urban to natural settings.
- 088.** Boroondara submitted that Stage One is not of cultural heritage significance at a State level in relation to Criterion D. Boroondara submitted that, in terms of design principles, construction techniques and the motoring experience, developments continue to be made to freeways across the State, and that Stage One does not include notable features as compared with other freeways constructed since that time.
- 089.** NELP relied on the evidence of Mr Gard'ner, who agreed with the Executive Director that it was likely that Criterion D was satisfied at the State level in relation to Stage One. Mr Gard'ner gave evidence that the tall needle-like light poles located within the central median strip of Stage One are fine examples of this type of freeway infrastructure. Mr Gard'ner's evidence was that the light poles are the dominant visual element of Stage One of the Eastern Freeway and are unique to Stage One. Mr Gard'ner's evidence was that Stage One was the first freeway in Victoria to comprehensively apply considerations of aesthetic and motoring experiences in its design and is a pivotal example of this class of place.
- 090.** Both the submission of Mr Goodman and Nomination Two were somewhat equivocal about whether Stage One was a fine example of the class of freeways. There was support for this stage on the basis that its internal design, including the bridges and the user experience, was generally of a high standard, but they were critical of how the freeway disrupted the river valley, required the relocation of the junction of the Yarra and Merri Creek, required the removal of native vegetation and 'bulldozed through' the Yarra Bend National Park. Mr Goodman's submission included that in this respect the Eastern Freeway is no different from the Tullamarine and South Eastern Freeway.

- 091.** The material supporting Nomination Two also was critical of the landscaping in Stage One as not being designed by a professional landscaper and expressed the view that landscape concepts were ‘totally ignored’ in Stage One.

Summary of submissions and evidence: Stages Two and Three

- 092.** The Executive Director submitted that Stages Two and Three are not notable examples of freeway design in the same way as Stage One. These stages were said to demonstrate the principal characteristics typical of the class of freeways but they were not notable or fine examples of this and lacked State significance on this basis.
- 093.** The Recommendations refer to the use of standard freeway elements in Stage Two. These include concrete median crash barriers mounted with T-shaped light poles. The Recommendations, while they acknowledge the conversion of the Koonung Creek Valley into a linear park and the integrated design of plantings and noise barriers for Stage Three, suggest that a consideration of aesthetics alongside safety, utility and economy was simply an expected element of freeway design by the time Stage Three was constructed.
- 094.** As noted, the principal support for the whole Place is to be found in Nomination Two and Mr Lee’s submission. These documents effectively give support only for registration of Stages One and Three. So far as Stage Three is concerned, this material relies heavily on what is considered to be the excellent design of the parkland along the freeway and the treatment of Koonung Creek.

Discussion and conclusion

- 095.** The Committee has considered the evidence and submissions concerning Criterion D. The Committee considers that Stage One is a well-designed and pleasant freeway in terms of the user experience. The ensemble of bridges and the light poles make a particularly valuable contribution. The quality of the freeway experience benefits from the natural undulating open space setting through which Stage One passes.
- 096.** Nevertheless, it is the Committee’s view that there were insufficient comparisons with other freeways and inadequate detail about their designs to allow a proper assessment of this issue and to properly identify Stage One as ‘notable’ in the terms of Criterion D within its class as a freeway. The Committee expects that other extant freeways are likely to be notable in other ways, and is not satisfied that Stage One is necessarily more notable, or a better exemplar, as compared with other freeways falling within the proposed ‘class’. As indicated above, in relation to the complexities of considering the inclusion of freeways in the Register, Stage One is certainly different to others within the ‘class’, but we expect that every freeway will be unique in some way, if one is to look closely enough.
- 097.** The Committee has considered the matter raised of the adverse external environmental effects of Stage One for parkland, Aboriginal heritage, and the environment generally, and how this might impact on the assessment of Stage One as a fine or notable example of a freeway (of its time). While it can only be agreed that these are negative effects of Stage One, the Committee does not consider that these factors necessarily detract from the ‘notability’ of Stage One. Such impacts are, as was submitted by Mr Goodman, so commonly associated with freeway developments that the Committee considers that it might only be in the case of a freeway which avoided or mitigated such adverse effects, that these factors would be a relevant consideration in relation to Criterion D (in a positive manner). Little evidence was provided on this count in any case.

- 098.** In terms of the aesthetics of the motoring experience, there was also no evidence presented of the views of members of the community in that respect. On the contrary, there is a marked absence in the section 44 written submissions of any recognition of these values by the wider community. It would seem that there was no notable acclaim of the design quality of Stage One when it opened, nor during subsequent years, nor prompted by the Recommendations. The Committee also notes the absence of design awards for Stage One with the exception of one relating to the use of concrete in the bridges.
- 099.** So far as Stages Two and Three are concerned, there was simply no support in the material presented to the Committee for Stage Two as being notable on any basis. So far as Stage Three is concerned, while there has been professional recognition of the design excellence of some of its elements, such as the sound walls and landscaping, the Executive Director submitted that the recognition has not extended to the whole of Stage Three. With the exception of Mr Lee's material, there was again no community support for the design quality of Stage Three in the written submissions. The Committee does not consider that Stage Three meets the State level test for Criterion D.
- 0100.** Overall, the Committee is not satisfied that there are not other carefully-designed, fine, and influential highways, freeways and roadways in the State that might compare favourably to this freeway and Stage One in particular. The Committee was not presented with the evidence that would allow it to conclude that Stage One is a notable, fine or exceptional example of a freeway, and better illustrates the characteristics of freeways than others - even those of its time of construction.
- 0101.** The Committee determines that the Place does not satisfy Criterion D at a State level.

CRITERION E – IMPORTANCE IN EXHIBITING PARTICULAR AESTHETIC CHARACTERISTICS

Discussion and conclusion

- 0102.** In Nomination Two, written submissions and untested expert material there was support for the view that the Place or part of it might be considered to be of aesthetic cultural heritage significance at a State level as meeting Criterion E.
- 0103.** These suggestions are found for example in the Nomination Two material which makes positive references to the H Bruce Day bridges in Stage One, high mast lighting and wide central median, as well as the integrated park landscape and rehabilitated waterway in Stage Three, together with its extensive planned landscaping, architect-designed sound barriers and textured faux rock walls. The Nomination Two material supported the value of the Stage Three design given its environmental responsiveness.
- 0104.** Mr Lovell's report supporting Nomination One argued for registration of Stage One based on Criterion E, as did Mr Vines' report. The latter report, in suggesting consideration of this as a possible basis for registration, drew heavily upon the design quality of the suite of bridges designed under the supervision of H Bruce Day in Stage One, together with other well-designed features of the freeway.
- 0105.** Mr Gardner's evidence at the Hearing also referred to the design of features of Stage Three: the Wood Marsh curved sound barrier which received two architectural awards in 1998, and the Tract designed landscaping and textured sound wall which received a landscape award. He said, however, that the bridges, noise walls and curved and glazed sound walls of Stages Two and Three, while being distinctive and in some cases award-winning, are not in his view pivotal or influential examples of the typology. The bridges in the latter

stages do not, he said, share the cohesiveness of the bridges in Stage One. He was of the view that Stages Two and Three exhibit (only) typical aesthetic characteristics of the freeway in the late-twentieth century. Overall it was his view that Criterion E was not met at State level as the critical more significant recognition or acknowledgement of exceptional design merit was absent.

- 0106.** Assessment against Criterion E was not otherwise a key issue addressed by Hearing participants. The Executive Director's response to this matter was that the design and aesthetic characteristics of the freeway are appropriately considered in assessing Stage One against Criterion D.
- 0107.** The Committee considers that there is perhaps a higher design threshold for Criterion E compared to Criterion D. Our conclusion has already been in relation to Criterion D that an argument for design excellence was not made out. As already commented in relation to Criterion D, there is no evidence that the aesthetic characteristics of the Place were or are appreciated or valued by the community. Some components of different stages of the freeway, notably the sound walls and the landscaping in the last stage and one of the bridges in Stage One, have received awards, but they are fragmented components. Acknowledging the suggestion by Mr Vines and others that recognition of the design quality of Stage One may have been side-tracked by the public protests at the time, the freeway as a whole has nevertheless never been widely recognised as being of high aesthetic quality which is one of the tests used for assessing a Place against Criterion E.
- 0108.** The Committee determines that the Place does not satisfy the State-level threshold for cultural heritage significance in relation to Criterion E.

OTHER CRITERIA

Summary of submissions and evidence

- 0109.** In some written submissions and expert reports there was limited support for registration based on other Criteria.
- 0110.** Mr Vines' report, for example, as well as supporting registration based on Criteria A and D, suggested that the thresholds for Criteria E (as above), F relating to technical achievement, G relating to present day social significance and, potentially, H relating to association with an individual of historical importance, were satisfied in relation to Stage One.
- 0111.** One submitter, a Mr Geoff Spring, who had worked on the construction of Stage One, asserted that Criterion B, relating to possession of uncommon or rare aspects of the State's cultural history is satisfied. Features said to support this are the provision for the heavy rail line, the particular pavement drainage design, and sound barriers/noise walls.
- 0112.** Mr Gardner's evidence and the Recommendations dismissed the relevance of all but Criteria A and D on common grounds.

Discussion and conclusion

- 0113.** The Committee has reviewed all the material in relation to these other Criteria and considers that it does not support an argument that the Place satisfies any of these Criteria at a State level. The Committee accepts the Executive Director's views on the assessment against these Criteria. Notably we consider that the technical achievements were not exceptional; the bridge designer, while competent, was not a particularly important person in historical terms; the freeway does not possess rare or unusual characteristics; and social significance

is not supported given the present day absence of expressions of community support for registration.

- 0114.** The Committee concludes that the Place does not satisfy any of Criteria B, C, F, G or H at a State level in addition to Criteria A, D and E as discussed earlier.

EXTENT OF REGISTRATION, PERMIT EXEMPTIONS AND STATEMENT OF SIGNIFICANCE

Discussion and conclusion

- 0115.** As noted earlier, NELP and Mr Gard'ner suggested that if Stage One was assessed as warranting registration, a reduced area should be included in the Register. This was opposed by the Executive Director.
- 0116.** As also noted earlier, the recommendation to include Stage One included a list of categories of works and activities that, in the Executive Director's view, could be carried out without the need for a permit under the Act ('permit exemptions').
- 0117.** Some section 44 submissions and the Hearing submissions of DoT and NELP, addressed the recommended permit exemptions. Maintenance and operational concerns were expressed. At the Hearing, however, Ms Stairmand indicated that, before the Hearing, the Executive Director, NELP and DoT had reached substantial agreement on a revised set of permit exemptions.
- 0118.** In light of the Committee's view that no stage of the freeway is of State level cultural significance and no stage should be included in the Register, it is not necessary to address these matters.
- 0119.** Similarly, while the Committee received and heard submissions on matters relating to the Statement of Cultural Heritage Significance and Permit Policy for Stage One of the Place, it is not necessary to consider these matters nor the desirability and appropriateness of doing so.⁵
- 0120.** The Committee notes the concerns expressed by both Mr Chessell and Mr Gard'ner that, in the absence of a Statement of Significance approved by the Committee, there may not be adequate guidance as to the nature or basis of the heritage significance of the Place, in the event of registration. In the event that the Committee had determined to include the Place, or any part of the Place, in the Register, this written decision would have provided the Committee's findings as to the basis and nature of the heritage significance of the Place, as is the usual practice of the Heritage Council. This practice aims to leave no room for doubt as to the basis or nature of the heritage significance of any place or object that is included in the Register.

CONCLUSION

- 0121.** The Committee finds that the Place does not satisfy the State-level threshold for inclusion in the Register in relation to any of the assessment Criteria.
- 0122.** After considering the Executive Director's Recommendations and all written submissions received, and after conducting a Hearing in relation to the submissions, the Heritage Council has determined, pursuant to section 49(1)(b) of the *Heritage Act 2017*, that the Eastern Freeway – Stages One, Two and Three, Hoddle Street/Alexandra Parade to Springvale Road - is not of cultural heritage significance to the State of Victoria and is not to be included in the Victorian Heritage Register.

⁵ See the Heritage Council decision in relation to Federation Square [2019] VHERCL 11 at paras 0177 to 0209

ATTACHMENT 1

HERITAGE COUNCIL ASSESSMENT CRITERIA FOR INCLUSION 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.