



Demolition by Neglect - Report & Policy on places in the Heritage Overlay

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1.0 Introduction

This report has been commissioned by the National Trust of Australia (Victoria) to explore the issue of Demolition by Neglect and policy on places in the heritage overlay. The report aims to produce a model methodology and policies for local governments to deal with locally significant properties threatened by neglect. It stems from the work undertaken for the Master of Architecture thesis *Demolition by Neglect – The Case of Victoria* in 2012. The brief is included as an appendix to this report.

The study is an empirical analysis of the issue of Demolition by Neglect. It is a report that utilises primary and secondary sources of information. Primary sources include interviews and telephone conversations with experts in the heritage field and site visits for case studies. Secondary sources include government department and professional consultant reports, Victorian government and local government legislation, journal and newspaper articles and websites.

2.0 Acknowledgements

I would like to thank everyone who gave his or her time to speak to me about this issue. In particular, thank you to Natica Schmeder, Greg Tobin and Jennifer Bantow for their input and feedback on the report.

3.0 The Definitions of Demolition by Neglect

This report adopts the definitions formulated by the 2012 thesis,

Demolition by Neglect – The Case of Victoria:

Demolition by Neglect at its most basic and general level can be defined as:

The destruction of a building through abandonment or lack of maintenance.¹

This definition from the Connecticut Trust for Historic Preservation defines the issue very broadly. For the purpose of this study, the following criteria have been established to qualify a property that can potentially fall under Demolition by Neglect:

- The property is heritage listed at the local level, or is identified as significant or contributory (in areas where studies have not been enacted).
- The property is not already in a dilapidated or dangerous state **prior to listing**.
- A demolition permit has been applied for and rejected or is being continually applied for.
- That upon the acquisition of a demolition permit, the owner intends to redevelop the site.

This definition and criteria offer a base for the following types of Demolition by Neglect, further to the basic type defined above.

Deliberate or Intentional Neglect

Deliberate Neglect is defined as *an owner who is deliberately not maintaining a building, or not securing a building, despite having the means to do so, with the aim of gaining a demolition permit.*

At this point in the discussion it is prudent to note that at a local level, there are two separate yet equally problematic types of deliberate neglect. It is important to differentiate between developers, land banking and maintaining their properties in the minimum condition allowable whilst seeking redevelopment permits, and home owners neglecting their property with the hope of getting demolished. See 5.0 Key Issues at the Local Level.

Inadvertent or Accidental Neglect

Inadvertent Neglect is defined by *an owner who is not intentionally neglecting their property for the purpose of redevelopment, but is failing to undertake regular maintenance or, in the case of vacant*

¹ <http://www.cttrust.org/index.cgi/1050>. Accessed 29 July 2012.

buildings, is failing to secure the property due to financial reasons. Whilst the neglect is not deliberate, the property still falls into a dilapidated and generally neglected state. This type of neglect could be caused by absentee owners, elderly or ill owners or estate disputes in which the owner is not aware of the condition of their property.² Other bodies that may also be incapable of maintaining their properties include institutions, churches and not-for-profit groups. This is generally due to different spending priorities within their organizations. Finally, it also takes into account owners who have a general lack of knowledge about heritage and heritage properties in general.

Benign Neglect

Benign neglect relates mostly to rural properties. It is defined as *neglect of regular maintenance on a building, effectively enabling it to be managed as a ruinous structure*. This type of neglect is considered irrelevant to this report, and is mentioned for the sake of completeness.

² Weiss, J. 'Protecting Landmarks from Demolition by Neglect', *The Widener Law Review*, Vol 18:390, p316.

4.0 Summary of Recommendations

The following is a summary of the recommendations for municipalities to combat Demolition by Neglect. Full details and explanations are available in Section 6.0 of this report.

1. Local Amenity Laws – Enact & Strengthen across all municipalities to govern maintenance of derelict or dilapidated buildings, including maintenance criteria. Combine with greater enforcement powers and sufficient penalties to provide a disincentive.
2. Amendment of the Planning Scheme to include the discouragement of demolition through condition or integrity.
3. Heritage Overlay – Regular reviews and condition audits to ensure the overlay is comprehensive and up to date, and properties that are at risk are identified.
4. Section 29A of the Building Act – The creation of a Procedure for Interim Controls to be enacted across all Municipalities.
5. Streamline the planning process to include fast tracking of applications, waived fees for minor works and free heritage advice for owners.
6. Increase community activism through the strengthening of local law enforcement capabilities. Introduce 'Snap, Send, Solve' across all Councils. See Section 7.0 Recommendations.
7. Provide avenues for community participation and consultation in community adaptive reuse projects. Increasing awareness of adaptive reuse projects increases chances for success.
8. Initiate community education programs to increase awareness of heritage properties and the opportunities they offer.
9. Introduce Differential Rates for Vacant/Derelict properties
10. Introduce revolving funds, in which a fund is established for a certain purpose (such as loans) with the repayments to the fund used anew for the same purpose. A loan scheme on this model should be implemented for heritage properties.
11. Ensure all municipalities have a heritage grant scheme in place. Increase awareness of grant schemes for heritage properties by increasing funding, easing the application process and project criteria and increase the advertisement of successful projects. This will help to encourage developments that adaptively reuse, rather than seek the demolition of heritage places.
12. Instigate reverse mortgages as a loan option for owners of heritage properties. The scheme should be interest free to increase popularity and success.

13. Increase planning incentives for adaptive reuse projects including concessions of floor space ratios, permitted uses, etc. for owners willing to conserve their property.

5.0 Key Issues at the Local Level

Prevalence of the issue

The Case of Victoria focused on the issue at a state level. From 2005 in NSW, it is believed that the number of cases of Demolition by Neglect is on the rise at a local level only.³ This, in combination with the sheer number of properties under the heritage overlay, necessitates the discussion of the issue at a local level. Discussions with heritage advisors and National Trust members give a mixed indication of the issue at a local level in Victoria. Lorraine Huddle, Heritage Advisor for the Mornington Peninsula Shire, believes that the issue has lessened since the implementation of the heritage studies in Mornington and that generally, the issue wasn't large in country shires to begin with. Gordon Stokes (National Trust President of Portland) indicates that within the general Portland area, the issue isn't deliberate neglect, but falls under the definition of 'inadvertent neglect'. People aren't deliberately neglecting their buildings; they just generally are unable to do anything about it for a variety of reasons. Jennifer Bantow (National Trust President of Geelong) indicated that the issue is quite prevalent in Geelong, with a number of properties in the area falling into Demolition by Neglect status.⁴

Use

Perhaps one of the biggest issues affecting heritage in Victoria, and a key issue within the debate of Demolition by Neglect, is the lack of use or redundant use of a building.

Buildings that lack a permanent use, and are therefore vacant, are subject to much greater maintenance costs over time. Small issues, for example blocked gutters, are not costly to rectify if cleaned on a regular basis and monitored. Yet, if not noticed and rectified early, the ensuing damage can lead to a significant increase in costs. For example, when the gutter fails, damage to significant fabric can occur and lead to higher restoration costs. Furthermore, a building lacking a permanent use is providing no income for ongoing maintenance. For many owners, it can be costly to sustain periodic maintenance on a vacant building. Therefore, finding a temporary or permanent use for a building can help to negate this issue.

³ Productivity Commission 2005, *Inquiry into the Conservation of the Historic Built Environment*, Newcastle City Council, Newcastle, p1.

⁴ Interviews and/or phone conversations undertaken in June and July 2013.

One issue noted in the Productivity Commission Inquiry (The City of Newcastle) was that there are a number of significant assets owned by council that fulfil community uses (such as libraries) but fall sort of generating income to fulfil their maintenance requirements.⁵ This is a problem and can lead to buildings falling into a dilapidated state, with councils not having adequate finances to maintain their buildings. As in Victoria, councils must balance their priorities and control spending requirements, which are generally guided by community principles.⁶

Within Australia, there needs to be a cultural change surrounding heritage buildings and finding ways to facilitate adaptive reuse. A building does not need to be pristine and immaculate to be of use to the community. Attitude changes to these types of buildings and the way they operate can help to promote their use within communities and further the potential for successful adaptive reuse projects on a temporary or permanent basis.⁷

Development opportunities

Deliberate neglect becomes an issue when there is a small or run down heritage building on a site that otherwise would potentially be able to sustain a much higher level of development.⁸ Thus, owners and developers seek to remove the obstacle and maximise the development opportunities on the site. Similarly, the problem is seen when developers land bank their properties. Land banking, where a developer holds onto a piece of land or property for sale or development in the future, becomes a greater problem when there is a locally significant property on the site. The developer, doing only minimal maintenance on the property, pursues redevelopment plans. The property, in the meantime, falls into disrepair.

This differs somewhat from the homeowner who allows their building to fall into disrepair with the intention of getting it demolished. Generally, the owners are not undertaking any maintenance works to their property and the condition deteriorates rapidly, facilitating demolition opportunities.

⁵ Productivity Commission 2005, *Inquiry into the Conservation of the Historic Built Environment*, Newcastle City Council, Newcastle, p1

⁶ Productivity Commission 2005, *Inquiry into the Conservation of the Historic Built Environment*, Newcastle City Council, Newcastle, p2.

⁷ Interview with Ray Tonkin, 14 September 2012.

⁸ Interview with Jim Gard'ner, former Executive Director, Heritage Victoria, 11 September 2012.

Permit extensions

One reoccurring theme that is present in the cases studied has been the ability of developers to get permit extensions in the face of derelict buildings. At the Ritz Hotel Geelong, five years have passed since the permit for development was originally issued. Over this period, the building has been allowed to fall into a further state of disrepair, and permit extensions have continued to be issued every two years despite the buildings worsening condition. Whilst the council would have been looking to see the development go ahead as soon as possible, the continual renewal of the planning permit without any conditions placed on it in relation to the buildings condition is an opportunity missed for conserving the heritage place or improving its condition. Unfortunately, this issue isn't easily solved, and the link between permit extensions and building condition is tenuous at best. An owner is not obliged to act on a permit and this issue is beyond the control of the planning scheme. Under the current system, there is no way to require works to be undertaken to a property. The permit, and any associated conditions, only come into action when the development starts and proactive actions are not possible. In these cases, keeping a photographic record of the building over time could be useful to track the condition of the building throughout the permit process. If the permit is not renewed however, the building is not necessarily protected – is it not more likely to be developed where there is a permit than where there is not – perhaps the loss of a permit reduces the value of the site 'freeing it up' for a future purchaser, and potentially, a longer delay in works to the Heritage Place?

Gaps in the heritage overlay

Whilst most of the Councils in Victoria have a comprehensive system of heritage overlays in place, there are gaps in the system. Case studies such as Ostlers House, 1131 Toorak Rd and 42 Barkly St, Mornington highlight the potential problems that can arise when studies are not implemented, or significant places are missed from studies.

The place may have been identified, but if the study isn't enacted, there is no protection for the heritage place. At 42 Barkly St Mornington, the owner who purchased the non-heritage property with the intent to demolish, was then faced by a change in status. The property was locally significant, and the plans to demolish could not go ahead without a considerable fight. A change in status can create poor owner-agency relations, leading to hostility between the owner and

heritage bodies. By being denied the ability to carry out their original intent, owners can deliberately neglect the building, until it falls under Demolition by Neglect status, a demolition permit is granted and they are able to continue their development as intended. This was seen in the case of Barkly St, Mornington.

Finance & the cost of restoration

The idea of 'undue financial hardship' is a key argument used by owners attempting to gain demolition permits. Prior to the building becoming dilapidated, and during the period of neglect, cost is one of the biggest factors in the debate. The cost of specialist trade skills, heritage advice and permits for works can be prohibitive to financially challenged owners, thus leading to the neglect of periodic maintenance. Whilst there are grant and loan schemes in place, the cost of security for loans or the added interest costs can be a disincentive for owners.

When a prohibitive state has been reached by neglect, owners then cite the cost to repair as too expensive, and that would inflict undue financial hardship upon them to repair the building.⁹ It is important to note that financial hardship refers to the property and not the individual owner, meaning that the cost of maintenance must not exceed the market value of the property.¹⁰

The economic argument is only going to become more prevalent under the changes to S12(2)(c) and S60 of the Planning & Environment Act. Under the amendment, the wording of the Section 12 has changed to say that planning authorities 'must' take into account social and economic effects when preparing an amendment to a planning scheme. This means that panels considering heritage amendments will need to consider the economic impact on the owner when assessing the amendment. Further to this The Amended Act also requires the Responsible Authority to consider the 'significant environmental, social and economic effects before deciding on a permit application'. Under this amendment, The Responsible Authority may arguably need to take into account the economic effect of restoring/retaining the heritage place as opposed to demolishing it as part of a proposal.¹¹

However, these arguments are somewhat weakened when compared to owners maintaining properties of a similar size, scale design and/or

⁹ Department of Development & Infrastructure 2010, *Preserving our Heritage Discussion Paper*, Ballarat p1.

¹⁰ Pollard, O. 'Counteracting Demolition by Neglect', *The Alliance Review*, Winter 1990, p3.

¹¹ *A Guide to the Planning & Environment Amendment (General) Act*, DPCD, p30.

significance. An owner who is carefully maintaining and restoring their property, at a significant cost, would not be able to demolish the property, so why should an owner, who has saved costs through neglect, be allowed to? Why should an owner of a similar building be able to benefit through neglect?

The Role of Municipal Building Surveyors & The Building Act (1993).

Discussion with Joesph Genco, Building Surveyor for Melbourne City Council indicates that the role building surveyors play in the issue of Demolition by Neglect is small, and most likely varies between Councils. At Melbourne City Council, there is continual communication between the Building Surveyor, Heritage Victoria and the Councils Heritage Advisor. Mr Genco stated that they try to keep heritage informed about sites that are experiencing problems. Further, he stated that as the Emergency Orders and Building Orders override heritage controls, he is very aware of the power under the Act, especially when a building has some form of heritage control. Overall, they don't issue orders unless the concerns about the site are purely related to public safety.¹²

Currently, The Building Act doesn't contain any provisions for dealing with Demolition by Neglect, nor does it have much potential for addressing the issue. The Building Act is primarily concerned with public safety. All orders under the Act, and all works carried out under these orders can only be done to make the building or site safe for use. There is no power under the act to stop people deliberately neglecting their buildings, and only comes into the debate when the building endangers public safety. Unfortunately, the powers under the Building Act are reactionary and cannot be used to prevent the issues present in Demolition by Neglect.

¹² Interview with Joesph Genco, Building Surveyor for Melbourne City Council, 15 July 2013.

6.0 Case Studies

RITZ HOTEL, GEELONG

Address

Corner of Corio and Bellerine Streets, Geelong



Status

Development permit extended, building must start before December 2014.

Background to Case

1984 – First permit application for the site under owner Tim Truong, application rejected.
1988 – Another permit application rejected. Building left vacant, with no maintenance undertaken.
1999-2000 – x3 fires on the property in 1999, one in 2000 lit by squatters.
2003, 2004 and 2006 – Further plans drawn up for the site, rejected by Council or withdrawn by the owner.
2006-2007 – Campaign by the Geelong Advertiser for site to be developed.
2006 – Owner threatened with compulsory acquisition by then Mayor, Peter McMullin. The threat was dropped when development plans were submitted to the council. Planning permit issued for a five storey residential development with heritage facades retained
2008 – Development not started, and Planning permit extended.
2010 – No works to the building have been undertaken, and condition remains poor.
2010 – Condition of site worsens, no development has taken place and the first permit extension expired in October 2010. Permit extended again.
2012 – Permit expired in December 2012, and was extended again; development must take place before December 2014. Condition of site has not improved; no maintenance has taken place on site despite these continual permit extensions.
April 2013 – Emergency Order issued to owner to provide engineers report due to severe cracking evident on the hotel wall.

01 May 2013 – Second Emergency Order issued (owner failed to meet first one in April 2013) to fence off site.

Community and trade groups believe the government should reinstate the compulsory acquisition order and acquire the building.

04 May 2013 – Owner's independent engineer recommends demolition of cracked wall (which belongs to the Carver House next door, owned by the same owner).

Key Issues

- Continual extensions of planning permit without any monitoring of the buildings condition. Allowed to deteriorate as the development was delayed.
- Owner ignored first Emergency Order – where was enforcement? Penalty?
- Lack of penalty for the buildings condition over a twenty-year period. Potential application of differential rates/clean up orders, etc. to attempt to limit the deterioration of the building.

Potential Solutions

- Utilise Geelong Amenity Law to ensure building is maintained in good repair. Why has this not already been enforced?
- Explore the option to charge higher or differential rates on derelict or vacant properties.
- Go through with compulsory acquisition order and acquire the building.

Information taken from the Geelong Advertiser 2010-2013. For full list of articles see section 9.0 Bibliography.

THE ORIENTAL HOTEL, WILLIAMSTOWN

Address

57 Nelson Place,
Williamstown



Status

Currently at VCAT, directions hearing was 12 June 2013.

Background to Case

2009 – First Plans submitted to develop the site, including the demolition of the pub. Application refused by Hobsons Bay City Council.

2009-2011 – Building is left vacant, and begins to deteriorate as the developers revise the scheme.

2011 – Second planning permit, as part of the broader Woollen Mills Site, is submitted to Council. Demolition was rejected by the Council, with a number of issues with the development of the site.

2011-2012 – Building still vacant, another permit is applied for.

February 2013 – A further demolition permit was rejected. Developer (NPV) to take the case to VCAT.

April 2013 – Owner fenced off the site, claims the building is a threat to public safety (knee jerk reaction to Swanston St wall collapse). The Developer, in combination with Aurecon stated that the building is a public hazard and should be pulled down (deemed unsalvageable). The developers have attempted to utilise public fear of what happened in Swanston St as an excuse for demolition.

June 2013 – Developers applied for an Emergency Order. Application for an Emergency Order went to building appeals board. Hobsons Bay requested the building be propped.

Key Issues

- Long process of planning applications and rejections, building condition deteriorated over time. Lack of consultation with council over proposed plans? Lack of understanding about Heritage overlay? There are broader concerns about the development of this site. Heritage is considered a minor issue.¹³
- Use of 'PUBLIC SAFETY' aspect to speed up process, and potentially allow demolition on grounds of condition/public

¹³ www.savewilliamstown.com.au, accessed 25th June 2013.

hazard.

Potential Solutions

- Nil currently.
- Explore the option to charge higher or differential rates on derelict or vacant properties.

Information taken from various sources. See section 9.0 Bibliography.

STUART MCKAY HOUSE, ALBION

Address

22 Talmage St



Status

VCAT case backed out of by Sunshine City Club. Currently, nothing is happening on site.

Background to Case

1981 – House purchased by Sunshine City Club (SCC). The house was refurbished for residential use in 1998, and became vacant in 2003.

2000 – The Stuart McKay House was identified as locally significant by the Brimbank City Council Cultural Heritage Study and recommended for protection under the overlay.

2006 – SCC object to the inclusion of the house on the heritage overlay citing the Club's five-year plan, and a Building Inspection Report. The five-year plan includes a proposal to demolish the house. The Building Report notes its poor condition, and the major works required to salvage it.

2007 – Building left vacant and unsecured. The Planning Panel for Amendment C84 inspected the building and was 'disappointed' with the condition of the place, as despite requests from the Council, the owners had not secured the building adequately.

2008 – Two fires lit in April, damaging the north-west corner of the house and part of the rear wing.

The SCC commissioned an Engineers Report to ascertain the condition of the house after the fires. The report concluded that the building could not be salvaged.

November 2008 – A planning application to demolish the building was submitted to council, and subsequently refused. The heritage advisor concluded that most of the damage to the property had been caused by vandalism, and not by the fires. Overall it was thought that the owners do not accept the benefits and significance of protecting heritage buildings and do not wish to actively work towards the retention of the building.

2009 – Council inspected the property, noting that the tarpaulins covering the holes were not secured, and were not providing protection to the house. This was not rectified in either of the two subsequent visits to the site (2009 and early 2010).

An engineers report was commissioned by the Council to determine the feasibility and estimated cost of restoration. It was deemed feasible.

The owners were appealing the rejection of the permit at VCAT, but pulled out of the case.

February 2012 – Second application to demolish the building, rejected.

August 2012 – x3 deliberately lit fires in the unsecured building.

Emergency order issued to remove the roof after the fires. Report indicated that if the roof was to be repaired, it would significantly reduce the load on the structure and lessen the likelihood of collapse.

2013 – current status; nothing is currently happening with the site.

Key Issues

- Building left vacant and unsecure combined after the rejection of the demolition permit.

Potential Solutions

- Emergency Order to repair should have been utilised earlier.
- No other recourse (currently).

Information from Brimbank City Council files, kindly provided by Natica Schmeder.

42 BARKLY ST, MORNINGTON**Address**

42 Barkly St, Mornington

**Status**

Demolished

Background to Case

c.2007 – Owner purchased property with intention to demolish, property was not heritage listed. Property vacant from March 2007.

2008 – Interim heritage control placed on the building (Amendment C113) as a result of an application to demolish and redevelop by the new owners.

2008-2009 – First suspiciously lit fire occurs, resulting in severe damage to the interior and roof. Judy Walsh, President of the Mornington Peninsula Branch of the National Trust, indicated that the building was inhabited by squatters.

2010 – Permanent Heritage Overlay applied to site. Second fire on the property.

November 2011 – The exact timing of the case is unknown, but it appears that the chimney stack gave way in the building, and caused a demolition order to be issued. The application for demolition was voted against by the full council and a VCAT Mediation session was held over demolition of the property.

December 2011 – Emergency Order to demolish the chimney after engineering report that it was in danger of collapse. Demolition permit granted and building demolished.

Key Issues

- Heritage overlay after the property was purchased. The lack of a heritage overlay, despite identification by the Heritage Studies, meant the building was not protected. Owners bought the property with the expectation to demolish, and the listing post settlement precluded this.
- Building not secured, and therefore was subject to vandalism and unauthorised entry

Potential Solutions

- Consultation with the owners prior to listing the building.
- Potentially; more work with the owners/offers of incentives to adaptively reuse the existing house.

Information taken from various sources, see section 9.0 Bibliography.

FORMER STATE BANK (FAÇADE)

Address

851 Burke Rd,
Camberwell



Status

Awaiting development, construction started? Unconfirmed.

Background to Case

1998 – Granted a demolition permit for the interior of building (façade to be retained). By this stage, most of the buildings interior was already gutted.

2002-2009 – Nine permit applications and appeals to develop the site.

2009 – VCAT approves construction of seven storey hotel.

2011 – Unknown status.

Key Issues

- Delays in development. Only façade remains, not really demolition by neglect.

Potential Solutions

- Ensure façade is structurally adequate and protected to retain what heritage value remains.

Information taken from various sources, see section 9.0 Bibliography.

THE MANOR HOUSE

Address

441 Maroondah
Highway, Lilydale



Status

Building is still being neglected; currently no permit is in planning for the site.

Background to Case

September 2000 – Proposal for multi unit development supported care complex.

2001 – Scheme revised, permit issued (PA 2000/1652).

2001-2010 – Permit continually renewed over this period. Protective fence placed around the site, but failure to maintain in, fence left open in a number of places. Radical deterioration over the period

February 2011 – Building notice issued by private building surveyor, intention to issue a Minor Works Order, current works are in breach of the 2009 building permit.

September 2012 – Application to Building Appeals Board against the Minor Works Order by the Shires Building Surveyor, rejected.

Current – Awaiting another permit application. Potentially for sale by the current owner.

Key Issues

- Continual renewal of permit despite deteriorating condition of building.
- Didn't apply building order, etc. strongly enough to prevent the wilful demolition of the site before it got the current state. Currently, Yarra Ranges Shire doesn't have any local amenity laws governing the condition of buildings.

Potential Solutions

- Enactment of Amenity Laws to stop the deterioration of buildings in the Shire.
- Stop the continual issue of permits without placing conditions on the maintenance of the building.

Information taken from various sources, see section 9.0 Bibliography.

1311 TOORAK RD, CAMBERWELL**Address**

1311 Toorak Rd,
Camberwell

**Status**

Demolished in 2012.

Background to Case

2010 – House purchased, not included in Heritage Overlay. Owner purchased with plans to demolish and build ten townhouses.

Feb 2011 – Amendment C114 placed the property under interim heritage protection (IPO). The map in the amendment showed the wrong house, but the correct address.

September 2011 – Amendment C159 corrected the map.

VCAT inspected the property, but by this time the historic grotto had been demolished, the house had lost all ornament and was severely damaged. Council had fixed the issue with the interim protection order too late to prevent the demolition or destruction of significant items. The owner acted in a brief window (legally or not) between the issue of the incorrect IPO and its correction.

2012 – Demolition permit was granted on the grounds that the significant elements had been lost, and the house demolished.

Key Issues

- House was missed in the HO, owner bought the property with the intention to demolish it.
- House was left vacant and unsecured to hasten its destruction.
- Amendment error opened a very small gap for advantageous demolition to take place.

Potential Solutions

- Potentially a case for enacting semi-regular reviews to Heritage Overlays. These would ensure buildings that are covered are still relevant, and buildings have not been missed off the overlay. Also possible to consider conducting condition (or security in the case of vacant buildings) audits to heighten awareness of property's condition at the time of the review. This would be similar to what is undertaken for the State of Environment reports, but obviously on a smaller scale.

Information taken from various sources, see section 9.0 Bibliography.

OSTLERS HOUSE, TRARALGON**Address**

171 Franklin St,
Traralgon

**Status**

Awaiting a VCAT hearing date

Background to Case

August 2012 – Application to demolish the property is submitted. Report by the Building Surveyor or Engineer indicates the building is damaged beyond repair. Heritage Study 2007 indicated the building was in good condition.

November 2012 – Planning mediation meeting is held with key stakeholders in the project prior to decision by full council meeting.

January 2013 – Council refuse to grant demolition permit

February 2013 – Councillors accept recommendation from council not to demolish the building.

Permit refused by the council.

June 2013 – Owners to contest the decision at VCAT, awaiting a hearing date.

Key Issues

- Property isn't individually heritage listed despite being recognised by the Heritage Study 2007.
- The owners claim they do not have the money to repair the property.

Potential Solutions

- Attempt to secure local council or government funding to help the owners restore the building.

Information taken from various sources, see section 9.0 Bibliography.

VCAT CASES**MOLONEY vs CITY OF GEELONG WEST****18 Candover St, Geelong. Decision 1993.**

- Appeal against the decision to grant a permit for demolition of the building, and the erection of four units.
- The owners' arguments regarded the building as being of local value only, in a poor state of repair and had reached the end of its economic life.
- The Tribunal ruled that the building had been neglected over a long period of time and was a victim of open door demolition.
- The Tribunal posed the following question; should the owners of the land be able to benefit from the neglect of the site? The example was given of two owners, one whom cares and preserves the building, the other who neglects the building, leaving it open to vandals. The owners in the first example would not be granted a demolition permit, why should the second ones benefit from their neglect?
- Appeal was denied by the Tribunal.

LODDON MALLEE HOUSING SERVICES LTD vs BALLARAT CITY COUNCIL**405 Ascot St, Ballarat. Decision 2011.**

- Appeal against Council's refusal to allow demolition of building.
- Refusal issued 2011. Owners contended that the building was in poor structural condition.
- The Tribunal ruled that while it would take effort to rehabilitate it, the heritage significance would be well worth the cost and effort. The member ruled that the building was in disrepair; but it was not so dilapidated that it would be unfeasible to rehabilitate it.
- Appeal was denied by the Tribunal.

PROETTO vs MARIBYNONG CITY COUNCIL**64 Geelong Rd, Footscray. Decision 2011.**

- 1st permit refusal at VCAT in 2006, it was deemed that redevelopment that involved the retained fabric was possible. Demolition rejected by the Tribunal.
- Second permit application, also rejected, in 2010.
- Appeal to the Tribunal on the grounds that the significance had been compromised, firstly by changes to fabric pre 2003 and by the fire that destroyed most of the building in 2003.
- Demolition permit was granted by the Tribunal.

Information taken from <http://www.austlii.edu.au/au/cases/vic/VCAT/>.

7.0 Recommendations

The following Recommendations provide a suite of options for councils to combat Demolition by Neglect. Many of them will be strongest when implemented as a series of controls, as opposed to individual Recommendations.

Local Council Laws, Planning Schemes and Regulations

Amendment procedure under The Local Government Act 1989.

Under the Local Government Act 1989, changes to any Local Laws or Planning Schemes have to go through a legislated public notification process. The steps are as follows:

1. The Local Law is written, as is the general purport of the proposed law.
2. The Law is gazetted, and public notice is given.
3. The Law and explanatory documents are displayed to the public.
4. Public submissions invited for a specified period of time.
5. Law is gazetted and public notice (generally 4 weeks duration) after the law is made
6. A copy is sent to the Minister.
7. The Law is enacted.

The process, as explained by the Guidelines for Local Laws Manual is as follows¹⁴:

Section		Outcome
5.1	Starting communication	<ul style="list-style-type: none"> • Council needs to start communication and consultation on its proposed Local Law well before the statutory section 223 process. • Council needs to take responses into account and needs to be prepared to make changes to its draft as a result of consultation.
5.2	Identifying and communicating with affected parties	<ul style="list-style-type: none"> • To communicate effectively, Council needs to identify and make contact with affected parties.
5.3	Consultation meetings	<ul style="list-style-type: none"> • It is suggested Council convene one or more consultation meetings prior to the section 223

¹⁴ Local Government Victoria, *Guidelines for Local Laws Manual*, February 2010, pp 77-78.

		process being commenced.
5.4	Public notice	<ul style="list-style-type: none"> • Council must give public notice of its intention to make a Local Law. • The notice must include the 'purpose and general purport' of the Local Law.
5.5	Considering submissions	<ul style="list-style-type: none"> • Council is obliged to consider all submissions made. • Council is not obliged to adopt the submissions but genuine consideration should be given and demonstrated. • Council should adopt a two-stage process to avoid considering submissions at the same meeting at which it is proposed to adopt the Local Law.
5.6	Making amendments	<ul style="list-style-type: none"> • If Council makes substantial amendments to the proposed Local Law after public notice is given, Council will need to consider whether public notice needs to be given again.

Discussion with Herb Horell (Brimbank City Council) and Natica Schmeder indicate that the process involved in amending Local Laws and Planning Schemes is quite complex, and is not easily achieved. Councils generally only refresh their local laws every ten years unless there is a compelling reason to do otherwise. This will have to be taken into consideration with any proposed changes to Local Laws and/or Planning Schemes.

1. Local Amenity Laws – Enact & Strengthen across all municipalities to govern maintenance of derelict or dilapidated buildings, including maintenance criteria. Combine with greater enforcement powers and sufficient penalties to provide a disincentive.

Background

Amenity laws governing building maintenance should be enacted or strengthened across all municipal Councils of Victoria to combat the lack of maintenance and security, and therefore deterioration of significant properties. This has been discussed in the Review of Heritage Provisions in Planning Schemes (2007). Currently, only a small number of

councils have amenity laws that cover derelict or dilapidated buildings. These amenity laws are not limited to properties covered by the Heritage Overlay and should be common to all properties, to ensure equity between owners of properties in the heritage overlay and regular properties. These laws would be possible under the Local Government Act (1989) as they ‘...promote the social, economic and environmental viability and sustainability of the municipal district’.¹⁵ Having a local law specifically targeted at building maintenance will help to send a clear message to the community that the Council is serious about dealing with deliberate neglect in the wider community. The process of developing and implementing stronger amenity laws would require community consultation (as discussed above) and would therefore assist in clarifying issues and ensuring owners of heritage properties are clear about the consequences of deliberate neglect. This would hopefully deal with any public concerns relating to victimization or unfairness relating to the application of these laws. Finally, by including Repair Order/Clean Up Notices, grounded within heritage conservation requirements, the new law would be consistent with the approach taken by the Heritage Act (1995). Within the law, there would need to be provision for appeal, as there is under the Heritage Act.

The law would perhaps be most beneficial to Local Councils if it were produced as a model law through the Municipal Association of Victoria (MAV) or through State legislation. The complexity of the latter is such that it is not discussed here, but could be considered if the local approach was not effective. The benefit of statewide legislation, through the MAV is that it would bring the properties under a heritage overlay into a protected system, similar to the current protection afforded by the Heritage Act (1995).

If implemented through the Municipal Association of Victoria as a model law, the proposed amenity law would ensure equity across all councils and municipalities in Victoria. The model law could set the required condition and minimum maintenance standards required for the properties in question. This should include a set of guidelines to

¹⁵ Local Government Act 1989, Section 3C.

ensure enforcement by local councils is equal across the state. This would avoid any discrepancies in the conditions required across different councils, ensure consistency among the councils and hopefully limit the plea of ignorance by owners. Local councils would then have a base for their local law, from which they could add policies or any other information deemed relevant to the specific area. This would also allow councils to enact the laws when their laws were scheduled for review, or at any other time.

The viability of the local law as implemented through the MAV would require more in-depth research, most likely by the Municipal Association of Victoria.

Existing Laws & Potential Criteria

Some of laws that currently exist, such as the Melbourne City Council Local Law, contain some small maintenance criteria (e.g. the maintenance of architectural features), or like the City of Greater Geelong, a required level of repair.

Local laws would benefit from having, or adding the following criteria:

- Maintaining properties in 'good repair'.¹⁶ This provision is currently used in the City of Greater Geelong, but can really only be applied to buildings that are occupied.
- Weatherproofing the structure (roof, doors and windows) to ensure that the building is watertight and unlikely to suffer damage or deterioration due to weather.
- Securing the property, inclusive of door and window security, fencing and surveillance measures, to prevent vandalism, fires, and unauthorized access.
- Maintenance and repair of architectural features (make safe works or maintaining the property in good repair).
- Structural maintenance works. Ensure the structure remains in good repair and maintains structural integrity to avoid the creation of unsafe conditions or serious or irreparable damage or deterioration.

¹⁶ The legal definition of Good Repair:

A state of repair that will satisfy a respectable occupant using the premises for ordinary uses, but not necessarily a state of repair desired by the tenant...The standard of repair depends on the age and class of building, the duration of the lease, the type of property and other considerations'
<http://definitions.uslegal.com/g/good-repair/> accessed 15 September 2012.

- Stipulating the different circumstances in which a building may find itself (occupied or vacant residential land or occupied or vacant business premises) to help with the required maintenance level.
- Including a series of show cause notices, clean up orders and/or repair orders under the law to require an owner to undertake works.

Using this style of criteria to address local buildings would ensure that the buildings are not just cosmetically cared for, but their integrity and structure remain sound. The provisions could be used for all buildings, not just properties within heritage overlay areas. These criteria would address securing the property, which is crucial to ensure buildings that are vacant do not fall into further disrepair. Vandalism, squatters and the potential for fire is obviously heightened within a vacant and unsecured building. Ensuring the building is secure against such threats will not only benefit the neighbourhood in terms of safety and amenity, but it would also ensure that vacant properties are kept in good repair. There would have to be a system in place for financially disabled owners, the elderly or people who are unable to care for their properties to the aforementioned standard. A system of grants or reverse mortgages should be implemented with any changes to Amenity Laws.

Enforcement, Penalties & Changes Required

For the laws to be successful, there would need to be both stronger enforcement and tougher penalties in place. Enforcement would perhaps require a council officer who is responsible for issuing the notices and orders under the Law, as well as being aware of properties within the municipality that are falling into disrepair. This would be a change from the current system, which relies on public reporting cases of disrepair to the council.¹⁷ The use of show cause notices, repair orders and clean up orders facilitates a 'paper trail' for council, enabling prosecution of owners not responding to the orders.

¹⁷ Phone Conversation, Greg Talbot, Coordinator Local Law Services, City of Boroondara, 17 September 2012.

The current penalties under the Amenity Laws vary between councils (Boroondara, 5 penalty units at \$144.36/unit, Geelong 10 penalty units at \$122.40/unit¹⁸) and are generally acceptable. In councils where the issue is more prevalent, consideration could be given to increasing the number of penalty units, using an initial fine and then a per day penalty rate, increasing the number of penalty units for repeat offenders or considering the use of a Non-Development Order on a property (in extreme cases only).

Fines generated from these offences could be used to help fund a heritage restoration scheme within the municipality.

Finally, the implementation of this Law would rely on an increase of communication between departments at Council. With a multi-departmental issue like Demolition by Neglect, it would be vital that the all departments (strategic planning, local laws and enforcement) were aware of the powers available to combat the issue. Effective communication, clear guidelines and clearly set out procedures would be key in making the Law effective.

Potential Issues

Discussion with Joseph Genco, the City of Melbourne Building Surveyor, indicates that the Local Law could potentially have some issues.

Currently, the Law does not override Heritage Controls, and any works required would be subject to standard planning approvals. Adopting a fast-track planning system would be one way to combat this, see Recommendation 6.

A further issue identified in discussions with Heritage Advisors and Building Surveyors is firstly, who is responsible for making the decision about maintenance works, and secondly, the level of assessment required. It has been indicated that the provisions set out by this law contain skills that are outside the current skill set of planners and building surveyors. Provision would have to be made for skill development within both the planning sector (strategic planning and enforcement) and within the Local Law division of Council. Ensuring clarity in the minimum standard and maintenance works required would be key for the law to be successful. The Review of Heritage

¹⁸ <http://www.baycitylegal.com.au/news/section-55-changes/> accessed 24 September 2012.

Provisions in Planning Schemes (2007) notes these issue, and indicates that it may be preferable to deal with the issue with a suite of controls that include incentives for owners to maintain their properties.¹⁹

Sample Law

The following is a sample of a model amenity law, based on the existing City of Moreland Local Law²⁰, featuring maintenance criteria. Additions are highlighted in red.

Premise

This Local Law applies to all land in LOCAL COUNCIL AREA.

An **OWNER** of any **premises** identified by the Premise must maintain the property to the minimum standard required.

The **MINIMUM STANDARD** is defined by the following;

- (1) The **owner** or **occupier** of **premises** must not cause, allow or suffer a **building** located on the **premises** to become dilapidated or further **dilapidated to the point where its conservation is threatened**.

Penalty: **Maximum penalty, maximum penalty for everyday in violation**.
- (2) For the purposes of clause 18(1), circumstances in which a **building** on **premises** becomes dilapidated or further dilapidated include any of the following:
 - (a) the exterior of any **building** is in a state of disrepair and has been damaged or defaced so as to:
 - (i) affect the visual amenity of the **premises**; or
 - (ii) cause the **building** to be out of conformity with the general standard of appearance of other **buildings** in the vicinity of the **premises**;
 - (b) architectural features of the **building** are not properly maintained;

¹⁹ Review of Heritage Provisions in Planning Schemes (2007), p165.

²⁰ Moreland City Council, *General Local Law*, 2007, pp.18-20.

- (c) the condition of the **building** contravenes any relevant **Council policy**.
- (d) The **building** or **site** is not secure against trespass by unauthorized persons, **including securing of doors and windows**.
- (e) The **building** is not weatherproof, **including roof, doors and windows**.
- (f) The **structure** is not maintained in *good repair* and **does not maintain its structural integrity**.

If an **Authorised Officer** serves a **notice to comply**, **show cause notice**, **repair order** or **clean up order** in relation to a contravention of clause 19(1), the **works required** to correct the contravention may include any of the following:

- (a) removal of any substance, material or equipment;
- (b) erection of a suitable fence, barrier or other enclosure;
- (c) erection of suitable warning signs;
- (d) securing or filling in a hole or excavation;
- (e) securing any dilapidated **building**.
- (f) Weatherproofing of any **element** of the **building** to ensure that the building is watertight and unlikely to suffer damage or deterioration due to inclement weather or water ingress.
- (g) Repair of any dilapidated **features**
- (h) Maintenance of the **building** or **structure**

Penalty: **Maximum** penalty, **maximum** penalty for everyday in violation.

[If the owner of the place on whom notice a notice to comply, notice to show cause or clean up order is served fails to show cause in respect of all or any one or more of the works specified in that notice, the Authorised Officer may order that those works be carried out within a period specified in the order.]

[If the owner of the place fails to undertake the works within the specified period of time, or fails to undertake the works despite the penalties applied the land shall not be developed, or used, or shall be neither developed nor used,

or shall be developed or used only in accordance with conditions specified in the order, during such period not exceeding 10 years as is specified in the order.]

2. Amendment of the Planning Scheme to include the discouragement of demolition through condition or integrity.

This recommendation is perhaps strongest when implemented with the strengthened amenity laws as discussed above. One of the shortfalls of policies in the Planning Scheme is that they are only relevant in circumstances where a discretion is being exercised – that is when a permit is applied for. Further the nature of a policy is that it is discretionary only and a policy will not operate to permit intervention where demolition by neglect is occurring. By combining this with the Amenity Law, and its associated processes, Councils will possess a suite of tools to combat Demolition by Neglect in a number of different circumstances.

Hobsons Bay City Council contains the following provision under Clause 22.01-1 General Heritage Policy:

- *Discouraging the demolition of heritage places unless it can be demonstrated to the satisfaction of the Responsible Authority that the structural integrity of the heritage place has been lost;*
- *Generally not accepting the poor condition or low integrity of a heritage place as justification for its demolition, particularly if in the opinion of the Responsible Authority the condition of the heritage place has deliberately been allowed to deteriorate;*

Within this, there is potential to develop this clause, specifically to address demolition by neglect at a policy level.

Discussion with Hobsons Bay City Council indicate that this policy was in place from the implementation of the planning scheme to attempt to eliminate demolition by neglect scenarios. The Council indicates that it is not a particularly strong statement, and has yet to be effectively tested. Yet Natica Schmeder believes that this policy can be utilized as a defence in VCAT cases. Specifically, the Council would be able to cite that the neglect of the property, its condition, integrity, and finally the demolition of it are against council policy. The integrity of the property is a particularly pertinent argument, as just because the

building is in poor condition, doesn't mean its integrity has been lost and this can be argued under this policy. Ensuring all Councils have a strong Heritage Policy would help in the defence of Demolition by Neglect cases that go to VCAT.

The policy above should be enacted across all municipal Councils in the state of Victoria, with further policies as addressed below. It effectively addresses the issue of Deliberate Neglect by highlighting the condition of the property, and its inability to be used as justification for demolition. It would serve to make owners of heritage properties and architects/professionals dealing with them aware that demolition of heritage properties is unsupported, even if in poor condition. The policy could be implemented under Clause 43, Heritage Overlay of the local planning policy. This State level clause would ensure there was equity across all Municipalities, and any requirements (e.g. for an structural engineering report) would be common to all applications for demolition.

Under this clause, the Responsible Authority (i.e. the council) has to have sufficient evidence to form an opinion on whether the neglect was deliberate or not. Generally, this is done through a process that an owner has to respond to, for example the steps required to issue a Repair Order (RO) under the Heritage Act. The proposed Amenity Law discussed above should therefore contain processes to facilitate the proof for deliberate neglect. For example, under the Heritage Act, there are a number of steps to be taken prior to issuing the RO, which, if not responded to, provides the evidence for deliberate neglect. An owner is issued with a number of different letters and/or orders, which contain required works or actions. If they continually fail to undertake the works, it is deemed that they are deliberately neglecting their property. For the Clause to be truly effective, it would need to be combined with the Amenity law as proposed above. This law could provide the steps and processes required to create a paper trail to prove deliberate neglect.

The following provisions under either under the municipalities General Heritage Policies, or at a State level through the General Heritage Overlay, should be enacted across all Municipalities in Victoria. Additions are highlighted in red.

- *Discouraging the demolition of heritage places unless it can be demonstrated to the satisfaction of the Responsible Authority that the structural integrity of the heritage place has been lost. **An application to demolish should be accompanied by an engineers report carried out by a structural engineer with an in-depth knowledge of heritage buildings. The report should provide a schedule of works, and a cost breakdown, of the works required to enable the building to be re-used as well as a schedule of the associated costs.***
- *Generally not accepting the poor condition or low integrity of a heritage place as justification for its demolition, particularly if in the opinion of the Responsible Authority the condition of the heritage place has deliberately been allowed to deteriorate;*

3. Heritage Overlay – Regular reviews and condition audits to ensure the overlay is comprehensive and up to date, and properties that are at risk are identified.

As discussed above, deliberate neglect of buildings can be heightened when there are issues with the heritage overlays (either missing properties within the overlay or overlays that have not been enacted). There is a case for enacting regular reviews of Heritage Overlays. The review of the heritage fabric in each municipality could be undertaken as part of the regular review of Planning Schemes as required under Section 12(1)(c) of the Planning & Environment Act 1987.²¹ These would ensure buildings that are covered are still existing, relevant, and buildings of significance are not missing from the overlay. As part of this review, it would be possible to conduct conservation, safety or security audits of the properties as required. This could highlight places within municipalities that are under threat, and provide a comparison of property condition over time. This would be similar to what is undertaken for the State of Environment reports, but obviously on a smaller scale.

²¹ Interview with Greg Tobin, Hardwood Andrews Lawyers, 05 August 2013.

4. Section 29A of the Building Act – The creation of a Procedure for Interim Controls to be enacted across all Municipalities.

Section 29A of the Building Act (1993) states:

- (1) If an application is made to the relevant building surveyor under this Act for a building permit for the demolition of a building on land and—
- (a) the demolition and all other demolitions completed or permitted in respect of the building within the period of 3 years immediately preceding the date of the application would together amount to the demolition of more than one half of the volume of the building as it existed at the date of the first building permit to be issued within that period for the demolition of any part of the building; or
 - (b) the demolition is of any part of the facade of a building—
- then the report and consent of the responsible authority under the **Planning and Environment Act 1987** for the planning scheme relating to that land must be obtained to that application.

Under the Act, the responsible authority has 15 working days to assess the property (against heritage overlays, studies, etc.) and give a response to the application. Due to the restricted timeline available to gain an Interim Heritage Overlay in the event of a significant property, it is proposed that all councils adopt a streamlined process for assessing and dealing with applications. This is especially pertinent where Heritage Studies have not been enacted. The following procedures, from the Yarra Ranges Shire, should be adopted across all municipalities. The procedure is as follows:²²

1. Applicant seeks a building permit to demolish to relevant Building Surveyor
2. The building Surveyor applies to Council for a report and consent in relation to the demolition of the building.
3. All section 29A consents are referred to Strategic Planning to check the heritage status of the property and this is ultimately signed off by the Municipal Building Surveyor.
4. Strategic Planning assess the property against:
 - a. The Heritage Overlay and VHR

²² Current Section 29A Procedures and possible interim heritage control process, Yarra Ranges Shire, 2008.

- b. Existing Heritage studies for the municipality
 - c. The National Trust
 - d. Community Nominations (council would need to ensure an updated list is kept)
- 5. If the property is either not listed, or of no significance, consent is recommended
- 6. If the property is in a Heritage Overlay, it is ensured a planning permit has been issued for the demolition.
- 7. If the property is identified by any of the various heritage lists above, further assessment occurs. This includes a site visit, and background assessment of the property.
- 8. If the site appears to be of significance, Council may request the Minister for Planning to approve an Interim Heritage Overlay (IHO).
- 9. The letter begins the process for the IHO, and allows the Council time to undertake professional assessment of the site.
- 10. Upon completion of the assessment the information is forwarded to the Minister and an IHO is applied.
- 11. The site is then included in a Heritage Amendment process with full consultation (public exhibition, submissions and possible planning panel). It is either included in an existing amendment request or a new amendment is created to place the site in a Heritage Overlay.

5. Streamline the planning process to include fast tracking of applications, waived fees for minor works and free heritage advice for owners.

To enable minimum maintenance regulations and other planning scheme amendments to be successful both on properties of significance or not, the current planning process would need to be streamlined. Overhauling the permit system to allow for the following measures could be successful in ensuring minimum maintenance provisions other planning scheme amendments were effective in dealing with Demolition by Neglect in significant properties:

- Fast tracking both planning and building permit applications for minor works (such as make good, required repairs, etc.) to a 7-14 day turnaround.²³

²³ Department of Development & Infrastructure 2010, *Preserving our Heritage Discussion Paper*, Ballarat, p13.

- Consider waiving the permit fee for minor heritage works, or works required under the amenity laws. The waiver could be for works up to a predetermined dollar value. This could be beneficial as an incentive for people undertaking works as a result of the heritage listing on their property.
- Provide free heritage advice for owners of heritage properties for minor works and for developments that contain adaptive reuse.

The provision of free heritage advice from a local council would be beneficial in avoiding Demolition by Neglect. Firstly, by ensuring that people were aware of the significance of their property prior to purchase, the local council could encourage the purchase of properties with full heritage information available to the owner.²⁴ For conservation works required, free advice would be of financial benefit to the owners, especially if the works are required as a result of local council laws. The provision for free advice would also be beneficial when owners are considering adaptive reuse projects. In Victoria, pre-application meetings between councils and owners are generally held in an attempt to ensure there will be no outright refusal of adaptive reuse projects on heritage grounds. Free advice prior to this meeting would help owners/architects/developers to establish what areas are of significance, areas that require retention and generally how owners might go about developing a property for adaptive reuse.

6. Increase community activism through the strengthening of local law enforcement capabilities. Introduce 'Snap, Send, Solve' across all Councils.

As has been discussed above, many local Councils rely on the public to bring to their attention buildings or places that are falling into disrepair. By strengthening local laws with better enforcement capabilities, the community ceases to have such a vital role in reporting places in poor condition, and can therefore take a more active role in consultation with the council, engage with places under consideration for adaptive reuse, and in activism to save buildings under threat. For Councils that still wish to involve the public in reporting cases of derelict buildings, the use of the application **Snap, Send, Solve** could be used.

²⁴ Phone conversation, Susan Fayad, Heritage Coordinator, City of Ballarat, 17 September 2012.

Snap, send, solve is an application that has been developed for Local Council use. Smartphone users are able to submit reports or complaints in their municipality direct to the council. Within the application, it is possible to take photographs as well as comment on the issue at hand.

Attempts to contact Snap, Send and Solve were unsuccessful, and it is unknown how many local councils are currently utilizing it.

In relation to Demolition by Neglect, the app could be effectively used as a reporting tool for places that violate the strengthened amenity laws in the municipality. As discussed above, a key issue for Councils is the enforcement of the laws, and many rely on the public bringing threatened places to their attention. This app could provide an easy way for the public to report offending places, and strengthen the application and success of the Amenity Laws.

7. Provide avenues for community participation and consultation in community adaptive reuse projects. Increasing awareness of adaptive reuse projects increases chances for success.

Community support and involvement in adaptive reuse projects can activate new interest in the building, and lead to successful reuse projects within communities. By consulting with the community and proposed users of reuse projects and involving them in the decision making process, the potential for the success of these projects within the community is increased.

8. Initiate community education programs to increase awareness of heritage properties and the opportunities they offer.

To enable greater community participation and knowledge of heritage, an increase in heritage education programs needs to be implemented at a local level as well as a larger number of successful reuse projects at a local council level.

Incentives for Owners

Incentives to help owners of heritage properties manage, conserve and potentially reuse their assets come in two main types:

- i. Direct financial assistance through grants, loans, etc.

- ii. Non-financial assistance with the provision of heritage advice and help through the planning system.

The combination of these incentives would be beneficial to any owner of a heritage property. This is seen in the Melbourne Heritage Restoration Fund (MHRF) through the City of Melbourne. The MHRF provides financial assistance through loans and grants (for conservation or restoration works, professional services and the development of Conservation Management Plans) but also provides non-financial assistance through advice to owners.²⁵

Overall, greater use of incentives is one of the crucial ways to prevent Demolition by Neglect. Ensuring the community and property owners are aware of various incentives offered is also critical in guaranteeing the success of incentive programs.

Financial Incentives

9. Introduce Differential Rates for Vacant/Derelict properties

There should be application of differential rates for vacant land and unoccupied land. Vacant land is defined as '*any land on which no building is erected*' and unoccupied land is defined as '*any land on which a building is erected but not occupied*'. The purpose of this is to further encourage the proper management of land and buildings within the municipality. The rates would be targeted directly at owners who are allowing their sites to deteriorate through unsecured and vacant properties.

On properties with differential rates, there is potential to implement a rate rebate scheme for owners who undertake works to improve the condition or security of the place. Appendix 2 includes Moreland City Councils 'Vacant and Unoccupied Land Management Rebate Policy'. This policy contains a series of performance criteria for the property owners to satisfy in order to qualify for a rebate.

All municipal Councils in Victoria should implement a differential rates scheme, with rebate policies similar to Moreland City Council. Additions to the existing Performance Criteria from the Moreland City Council²⁶ to deal with demolition by neglect are highlighted in red:

²⁵ <http://www.melbourne.vic.gov.au/BuildingandPlanning/Planning/heritageplanning/Pages/MHRF.aspx> accessed 17 October 2012.

²⁶ City of Moreland, *Vacant and Unoccupied Land and Building Management Rebate Policy*, June 2012.

Performance Criteria - Section 169 (1B) (b) of the Local Government Act 1989

All land must be kept in a manner that ensures there is no detrimental impact on the amenity of the neighbourhood, including ensuring it is free from:

- Excessive vegetation growth; and
- Accumulated rubbish and other extraneous material; and
- Unused or waste materials; and
- Unused machinery or vehicles; and
- Disused excavations.

All land must be kept free of any material, which by its nature, composition, condition or location constitutes or may constitute a danger to life or property from the threat of fire.

In the case of unoccupied land:

- All matters outlined above for all land; and
- The land must be securely fenced or hoarded to prevent unauthorized entry; and
- The building must be secured including all doors and windows to prevent unauthorized entry; and
- The buildings must be kept free of excessive levels of graffiti; and
- Building works performed under the cover of a building permit must maintain a reasonable level of progress within a 120 day period; and
- The building must not fall into a state of disrepair that would deem the building unsuitable for occupation, would compromise the structural integrity of the property or threaten its conservation; and
- The building is kept free of vermin, environmental and fire hazards.

10. Introduce revolving funds, in which a fund is established for a certain purpose (such as loans) with the repayments to the fund used anew for

the same purpose.²⁷ A loan scheme on this model should be implemented for heritage properties.

11. Ensure all municipalities have a heritage grant scheme in place. Increase awareness of grant schemes for heritage properties by increasing funding, easing the application process and project criteria and increase the advertisement of successful projects. This will help to encourage developments that adaptively reuse, rather than seek the demolition of heritage places.

Heritage grant schemes are beneficial as they provide owners with one-off grants to undertake conservation works to their property. The City of Ballarat utilizes a grant scheme that is 50/50 divided with the costs to the owner (eg. If the owner puts forward \$8000, the council will contribute \$8000 in the form of a grant).²⁸ The projects must meet certain criteria to be open to the grant program. For example, projects must:

- Retain the cultural heritage of the place
- Have positive environmental benefits
- Must benefit the community through a sense of identity, place, pride, community wellbeing etc.
- Where possible, encourage a diversity of trade skills.²⁹

There is a belief in the City of Ballarat that the grant program helps to foster the desire to conserve buildings, and successful projects encourage others in the community to undertake similar works. The projects facilitate community awareness of heritage, foster a diversity of trade skills and are generally based on a diverse range of projects.³⁰ To help alleviate Demolition by Neglect, an increase in the grants available to the community and ease of application and criteria of these loans would be desirable. Furthermore, exhibitions or awards for successful projects could be a way to increase awareness and popularity of the schemes within communities.

12. Instigate reverse mortgages as a loan option for owners of heritage properties. The scheme should be interest free to increase popularity and success.

²⁷ <http://www.thefreedictionary.com/Revolving+Funds> accessed 24 September 2012.

²⁸ Phone conversation, Susan Fayad, Heritage Coordinator, City of Ballarat, 17 September 2012.

²⁹ Department of Development & Infrastructure 2010, *Preserving our Heritage Discussion Paper*, Ballarat, pp16-17.

³⁰ Phone conversation, Susan Fayad, Heritage Coordinator, City of Ballarat, 17 September 2012.

Those who are unable to afford loans to undertake repair work could assign the loan to their estate. This style of reverse mortgage has been used in non-historic buildings, and could easily be transferred to enable the property to act as an asset for repair works. If this was to be a viable option, there would need to be some further incentive, such as ensuring it was interest-free, for people to make best use of the scheme.³¹

Non Financial Incentives

13. Increase planning incentives for adaptive reuse projects including concessions of floor space ratios, permitted uses, etc. for owners willing to conserve their property.

In New South Wales, provisions within local councils encourage sympathetic extensions and reuse projects through the use of planning concessions and incentives. These include concessions on permitted uses, floor space ratios, permitted parking increases, etc. in order to encourage conservation works.³² A similar provision could be developed within Victoria, to encourage reluctant owners to adaptively reuse or extend their buildings.

³¹ Interview with Ray Tonkin, 14 September 2012.

³² Department of Development & Infrastructure 2010, *Preserving our Heritage Discussion Paper*, Ballarat, p13.

8.0 Conclusions

Research into the issue of Demolition by Neglect has shown that it is a complex issue that lacks a single universal solution. The recommendations proposed are guidelines only, and need to be tested in reality. As issues of sustainability, embodied energy and the life cycle of buildings become more important, finding positive outcomes for heritage properties may become easier. Changes within community opinion may contribute to easing change and implementing recommendations.

All of the recommendations proposed contain a certain amount of risk. Within all heritage properties there is a large financial risk, with the potential for the cost of conservation works and adaptive reuse to outweigh the income generation ability of the property. But, as discussed above, why should owners of heritage properties be able to benefit through their neglect? By allowing a building to remain in a state of accelerated decay, the building is at risk of becoming a severe danger to the public or becoming subject to increasing costs for future owners.

Overall, the above sections attempt to strengthen and utilise planning and local law processes to address the issue of Demolition by Neglect. However, previous research into the subject and discussion with heritage professionals indicate that this is only part of the solution. To truly be effective, the strengthened processes (sticks) would need to be combined with incentives focused on prevention of the issue and assistance/education to owners (carrots). In implementing the above recommendations councils will hopefully possess strong enough tools to stop the issue beginning and to prosecute owners who are not caring for their properties, but will also possess a series of incentives to help all owners of heritage properties.

The success of these measures will require a greater change of attitude within the local communities and culture of everyday Victoria. According to Ray Tonkin, the prevailing attitude to property and heritage centres on the notion that it is 'my property' and therefore the

owner is allowed to neglect or deface it as they see fit.³³ This is an attitude that needs to be shifted within the community for measures against Demolition by Neglect to be successful.

³³ Interview with Ray Tonkin, 14 September 2012.

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Request to Renee Muratore for expression of interest: demolition by neglect report and policy on places in the heritage overlay

The National Trust of Australia (Vic) is committed to devising a model methodology and policies for local government for dealing with locally significant heritage places that are threatened by neglect.

We seek an expression of interest for applying the baseline research undertaken by you in *Demolition by Neglect – the Case of Victoria* and an examination of case studies of places protected by the heritage overlay that are threatened or have been demolished as a consequence of deliberate neglect.

The role of licensed Building Surveyors issuing emergency repair orders for apparently unnecessary demolition has also emerged as a related issue.

We anticipate that further development of the work detailed in *Case of Victoria* on the options available under the *Planning & Environment Act*, *Building Act* and Local Laws can create model recommendations that can be given to local government as a tool box of suggested provisions.

We note the extensive work undertaken by some local governments including City of Ballarat and Moyne Shire. The *Moyne Shire Council report* (January 2007) contains some particularly useful provisions.

Recommendations 3 and 4 in *The Case of Victoria* are particularly pertinent and should be expanded and written up as model sections which can be included as a tool kit for adding or amending local laws and local planning schemes.

Amending the Local Law requires a public consultation process as stipulated by the Local Government Act 1989. Detailing the practical steps a Council has to go through to affect these amendments would be valuable.

The final document should include:

- definitions drawn from *the Case of Victoria*
- approximately a dozen case studies of local government (non-VHR) cases
- location and examination of relevant VCAT decisions where demolition permit sought on grounds of condition e.g. 1993/024690 18 Candover Street, Geelong West
- examples where prohibited use has been permitted for a heritage overlay place
- consultation with selected heritage advisers – e.g. Natica Schmeder (Brimbank), Deborah Kemp (Indigo and Shepparton), Lorraine Huddle (Morrington Peninsula Shire and others), Justin Francis (formerly Campaspe Shire), John Briggs (City of Melbourne) and David Rowe (City of Greater Geelong).

- Consultation with selected Trust Branch Presidents – Judy Walsh (Mornington Peninsula), Jennifer Bantow (Greater Geelong and Region), Dianne Gow (Ballarat), Gordon Stokes (Portland), Michael Gellert (Wimmera) and Enid Hookey (Inner West Melbourne).

Legal opinion should also be obtained on implementing changes to local laws and planning scheme. We have access to planning lawyers who will be able to assist.

Some known examples of demolition by neglect –

Ritz Hotel, Geelong
Oriental Hotel, Williamstown
Stewart McKay House, Brimbank
42 Barkly Street, Mornington
Old Mooroduc Church, Mooroduc Highway
851 Burke Road, Camberwell
1311 Toorak Road, Camberwell (Boroondara C119)

Some examples of over-exuberant building surveyors condemning heritage listed structures:

Various Jeparit buildings
Co-op Bakery, Wonthaggi

Please respond to paul.roser@nattrust.com.au



Moreland City Council

VACANT AND UNOCCUPIED LAND AND BUILDING MANAGEMENT REBATE POLICY

Date Resolved By Council:	13 June 2012
Commencement Date:	13 June 2012
Review Date:	June 2014
Responsible Department:	Corporate Services

This policy has been authorised and is included on Council's Website.

Peter Brown
Chief Executive Officer

13 June 2012

VACANT AND UNOCCUPIED LAND AND BUILDING MANAGEMENT REBATE POLICY

1. PURPOSE

The policy provides the guidelines for the granting of the land management rebate for those properties levied a differential rate in respect to vacant land and unoccupied land.

2. OBJECTIVE

The objectives of the policy through the application of a rebate are:

- To encourage property owners to responsibly manage and develop land with the characteristics of vacant land and unoccupied land; and
- To provide an incentive to property owners to reduce the rate levied for land with the characteristics of vacant and unoccupied land; and
- To establish performance criteria for the granting of the land management rebate.

3. BACKGROUND

Council at its meeting of 12 April 2006 resolved to include provision for the declaration of a differential rate for vacant land and unoccupied land in the proposed budget for the 2006/2007 financial year.

Council has resolved to include provision for the declaration of a rebate in respect to vacant land and unoccupied land in its subsequent budgets each financial year since 2006/2007. Section 169 of the Local Government Act 1989 allows Council to grant such a rebate in relation to any rate or charge.

The purpose of the rebate is to encourage property owners levied the differential rate, an incentive to reduce the amount of rates payable through the proper management and development of their property, including any unoccupied and uninhabitable buildings. The granting of the rebate would be subject to the property owner agreeing to and satisfying set performance criteria in the management of the land.

4. DETAILS

Benefit to Community – Section 169 (1A) of the Local Government Act 1989

The rebate is to be granted to assist the proper development of the municipal district, and more specifically:

- To provide incentives designed to promote the responsible management of land with the characteristics of vacant land and unoccupied land; and
- To ensure that such land (or land including buildings) does not pose a risk to public safety or adversely affect public amenity.

VACANT AND UNOCCUPIED LAND AND BUILDING MANAGEMENT REBATE POLICY

Performance Criteria - Section 169 (1B) (b) of the Local Government Act 1989

All land must be kept in a manner that ensures there is no detrimental impact on the amenity of the neighbourhood, including ensuring it is free from:

- Excessive vegetation growth; and
- Accumulated rubbish and other extraneous material; and
- Unused or waste materials; and
- Unused machinery or vehicles; and
- Disused excavations.

All land must be kept free of any material, which by its nature, composition, condition or location constitutes or may constitute a danger to life or property from the threat of fire.

In the case of unoccupied land:

- All matters outlined above for all land; and
- The land must be securely fenced or hoarded to prevent unauthorized entry; and
- The buildings must be kept free of excessive levels of graffiti; and
- Building works performed under the cover of a building permit must maintain a reasonable level of progress within a 120 day period; and
- The building must not fall into a state of disrepair that would deem the building unsuitable for occupation; and
- The building is kept free of vermin, environmental and fire hazards.

A property owner who, in the opinion of a member of Council's staff who has been authorised for the purpose of this policy, satisfies the performance criteria will be eligible to receive a rebate.

The rebate in respect to the differential rate for vacant land and unoccupied land will be 62.5% of the rate levied.

Properties levied the differential rate that have a current building permit and are developing the land may be eligible for a rebate of 75% of the rate levied.

5. REBATE APPLICATION

Rebate applications are required to be received by the 30 September each year following the issue of the annual rate notice.

The rebate application upon approval will only apply to the current rating period.

Any property that attracts the differential rate for vacant land or unoccupied land as a result of a supplementary valuation during the course of the current rating period shall be permitted to lodge a rebate application within one month of the issue date of the supplementary rate notice.

VACANT AND UNOCCUPIED LAND AND BUILDING MANAGEMENT REBATE POLICY

Where the property is sold and transferred within the current rating period and no previous rebate application has been received the purchaser of the property will have the opportunity to lodge an application within one month of the transfer date.

6. PROPERTY INSPECTION

Property inspections will be conducted by authorized officers of the Council upon receipt of a rebate application to ensure that satisfactory works have been undertaken to satisfy the performance criteria.

Council will also conduct random inspections throughout the rating year and especially during the Fire Danger season over the warmer summer months. Properties that have not taken steps to maintain their properties will be issued with written advice that the rebate has been withdrawn and the differential rate reinstated from the date of inspection.