

Permit Appeal Number P20704

**Barwon, VHR H0825, P19787**

**38 Cromwell Road, South Yarra**

**Heritage Council Permits Committee**

**Hearing – 14 February 2014**

**Members – Helen Martin (Chair), Jon Hickman, Ursula de Jong**

**Decision of the Heritage Council**

After considering the appeal and conducting a hearing, pursuant to Section 76(4)(a) of the *Heritage Act 1995* the Heritage Council determines to grant the permit with conditions*.*

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| **Helen Martin (Chair)** |  | **Jon Hickman**  |  | **Ursula de Jong** |

**Decision Date: 8 April 2014**

**Appearances**

**Executive Director, Heritage Victoria**

Ms Renae Jarman Manager – Operations, Heritage Victoria represented the Executive Director. Ms Emily Edwards – Permits Officer, Heritage Victoria was available to take questions.

**Appellant**

The owner, Ms Madeleine West, lodged the appeal. Ms West was represented by Mr Paul Chiappi of Counsel. Mr Chiappi called Mr Peter Lovell of Lovell Chen as an expert witness.

**Written submissions**

A written submission was received from the City of Stonnington on 20 December 2013. The submission indicated that subject to the imposition of certain conditions, the City of Stonnington did not oppose the granting of a permit based on the revised plans and would not seek to be a party to the hearing.

**Introduction/BACKGROUND**

**The Place**

1. The Property known as ‘Barwon’ is a substantial two storey, ten roomed, rendered brick residence in a simple ‘Georgian’ style. It has a decorative cast-iron verandah on its front facade, low-pitched hip roof, prominent chimneys and projecting bay window to the north. It was built in 1881 for the architect Edmund G. Ovey; who is also believed to be the designer. Barwon was included on the Victorian Heritage Register (Register) on 10 October 1990 for its architectural and historical significance. A copy of the Statement of Significance for the Place is included at Attachment 1.

**Permit Applicant**

1. The current owner, Ms Madeleine West, lodged an application for a permit for the construction of a double garage and studio (the Garage), paving of existing driveway and the repair of damaged verandah on 6 May 2013 (the Original Plans). The permit application was advertised in June 2013. No submissions were received. The relevant local authority, the City of Stonnington (Stonnington) was notified in accordance with s71 Heritage Act 1995 (Heritage Act). The submission from Stonnington objected to the proposal because it would ‘diminish an understanding of the building as a handsome dwelling in a garden setting reducing the potential to read the building as a symbol of wealth, status and taste’. The Applicant was given an opportunity to respond to the concerns of Stonnington and in a submission lodged in June 2013, noted that the proposal will not have any physical impact upon the house and that the front setback is currently devoted to vehicle parking in any event.
2. The Executive Director requested further information relating to the application in July and August 2013. Specifically, the Executive Director sought clarification as to whether the studio element of the development was necessary and if the Garage could be moved or re-configured. A formal response to the Executive Director’s questions was provided in September 2013, but no revisions to the Original Plans were proposed.

**Determination of the Executive Director**

1. A notice of refusal in relation to the Original Plans was issued on 12 September 2013. On 31 October 2013, the Executive Director was contacted by Ms Anita Brady of Lovell Chen. Ms Brady advised that she had been engaged by the Applicant and provided amended plans to the Executive Director for review (Amended Plans). The Amended Plans proposed a number of changes to the proposal, including a reduction in the height of the proposed Garage, the removal of the northern crossover and the extension of the existing fence. No formal permit application for the Amended Plans was lodged with the Executive Director; however, the Executive Director indicated to the Applicant that the Amended Plans would not be supported.
2. An appeal against the decision of the Executive Director in relation to the Original Plans was lodged on 8 November 2013. On 28 November 2013, the Applicant sought leave from the Permit Committee to substitute the Original Plans with the Amended Plans. In accordance with the Heritage Council’s Protocol 4 ‘Lodging Amended Plans’, the Applicant was advised to seek consent to the lodgement of the Amended Plans from other parties to the hearing. No objections were received and the Committee determined to allow the Applicant to lodge the Amended Plans. As a result, the Original Plans were not considered at the hearing. Parties were informed of the Committee’s decision on 11 December 2013.

**Site Inspection**

1. The members of the Committee and the Manager – Heritage Council Secretariat conducted a site inspection of the Place on 13 February 2014. The Committee was shown through the gardens and also provided with access to the house by the owner – Ms West. No submissions were sought or received during the site inspection.

**Preliminary Matters**

1. At the request of the Committee, on 14 February 2014, following the hearing, the Manager – Heritage Council Secretariat wrote to the Executive Director requesting that the Executive Director provide a copy of the conditions that would have been imposed upon the permit had it been issued. The permit conditions were received on 23 February 2014. And a copy was provided to Lovell Chen (as the Applicant’s representative) for comment. Comments from Lovell Chen were received on 6 March 2014. The proposed conditions and comments received are dealt with in detail below.

**ISSUES**

**Summary of issues**

1. The Applicant’s submission related to the proposal to construct a garage and studio (the Garage) to the front of the property and complete some additional works, including the removal of the northernmost of two crossovers from Cromwell Road. The proposed Garage is approximately 2.7 metres high and is set approximately 9.5m beyond the front facade of the villa. The Garage will partly screen views of the northern bay window when viewed front-on from Cromwell Road and obscure part of the Place’s substantial form when approaching the property from the north.
2. The Executive Director considered that the construction of the Garage would have an unacceptable impact upon the cultural heritage significance of the property and should be refused.
3. The Applicant argued that the Garage was necessary to accommodate her and her family and that the refusal of the permit would have an unacceptable impact upon the reasonable use of the Place.

Mandatory considerations

The considerations that the Heritage Council must and may consider in reaching its decisions are outlined below. A full copy of the provisions of s73 Heritage Act are included at Attachment 2.

**s.73(1)(a) the extent to which the application, if approved, would affect the cultural heritage significance of the registered place or registered object**

1. The Executive Director asserted that the proposed Garage would have an unacceptable impact on the cultural heritage significance of the Place. The Applicant acknowledged that the proposed works would have some impact on the cultural heritage significance of the Place, but argued that the impact was very limited.

*Submissions and evidence*

1. The Executive Director expressed concern that the Garage will obscure views to the building and noted that the original proposal would not have been supported if considered under the provisions of the Heritage Overlay and the City of Stonnington’s Heritage Policy. The Executive Director also expressed concern about the screening proposed by the Applicant, noting that: ‘vegetation has a limited life expectancy and a requirement to maintain vegetative screening of the garage would need to be enforced through a heritage covenant’.
2. Submissions lodged by Lovell Chen on behalf of the Applicant argued that the impact of the proposed works would be limited. In their Submission in Reply, received on 7 February 2014, Lovell Chen noted that previous developments in the street have limited views to the Place in any case. The submission concluded that while the proposal will introduce an additional element in these views, the generous front and side setbacks to the dwelling allow sufficient space for the Garage without it being constructed directly in front of the dwelling. Lovell Chen also noted that the proposal does not involve any physical intervention into the existing dwelling.
3. The submissions of Lovell Chen noted the concerns of the Executive Director in relation to screening and advised that the Applicant was willing to enter into a covenant requiring the planting and maintenance of screening vegetation.
4. The City of Stonnington was notified of the Applicant’s appeal and provided with a copy of the Amended Plans. On 20 December 2013, the Heritage Council received a letter from Mr Phillip Gull – Statutory Planning Coordinator advising that ‘the amended design has addressed many of the issues raised by Council in its letter addressed to Heritage Victoria dated 27 May 2013’ and that as a result, Council would not seek to be represented at the hearing provided that two conditions were satisfied:
* ‘Plantings to the street frontage are to be mature specimens selected, planted and maintained by a suitably qualified arborist until the plantings are well established’
* ‘Prior to the occupation of the building, the existing vehicle crossover to the northern section of the site boundary must be broken out and re-instated as standard footpath and kerb and channel at the permit holder’s cost’.

*Discussion and conclusion*

1. The Committee notes that the garden and the setting of the house are not mentioned specifically in the Statement of Significance as contributing to the significance of the Place. The significance resides in the house and its external and internal decorative features.
2. The Committee accepts that views to the house will be compromised to some degree when approaching the house from the north along Cromwell Road, but notes that the fence of the adjoining block already obscures most of this view until directly in front of the property. However, views of the house from the south and views from the opposite side of the street will be preserved. The Garage will be an intrusive element; however the block is wide – when compared to others in the street – and the house is set quite high above the front garden. The reduction in the Garage’s height in the Amended Plans has reduced its impact. This impact can be further reduced by requiring the Applicant to enter into a covenant with the Heritage Council to require the planting and maintenance of appropriate screening. In the Committee’s view the same covenant should also mandate the character of other plantings in the front garden to ensure that views to the house from Cromwell Road are also preserved. In particular, trees canopies when mature should be spaced to allow clear views between them and the ‘hedge’ shown on the Amended Plans should be restricted to a low decorative element (a maximum of one metre in height) rather than having the capacity to grow into a full height screen.
3. The Committee also notes that the Amended Plans include the removal of the northern crossover and the extension of the existing fence. In the Committee’s view the removal of the northern crossover and the extension of the fencing will have a positive impact upon the cultural heritage values of the Place and goes some way to offsetting the impact of the Garage’s construction.

**s.73(1)(b) the extent to which the application, if refused, would affect the reasonable or economic use of the registered place or registered object, or cause undue financial hardship to the owner in relation to that place or object**

1. The Applicant argued that the refusal of the permit compromised the reasonable use of the Place. The Executive Director maintained that the refusal did not compromise the reasonable use of the Place and that there were other ways in which the applicant could construct a garage that would not have such a significant impact upon the cultural heritage significance of the Place.

*Submissions and evidence*

1. In written and verbal submissions the Applicant argued that there was nowhere for her and her partner to park their vehicles under shelter and that she and her children were forced to enter and exit the vehicles in the rain. The Applicant noted that as both she and her partner have a media profile, the family was regularly photographed when in the front garden, getting in or out of vehicles. The Applicant argued that, as a result, the refusal of the permit compromised the reasonable use of the Place.
2. The Executive Director argued that there was already a garage to the south of the property which could be used. The Executive Director also suggested that a carport (or smaller garage) could be constructed closer to the house on the northern boundary, or that an underground carpark could be constructed.
3. The Applicant questioned the practicality of the alternative proposals put forward by the Executive Director. In particular, the Applicant noted that the existing garage was too narrow to accommodate an average family car; that the small carport or garage proposed was inadequate for the family’s needs and would itself compromise the cultural heritage values of the Place to some degree and that the cost of constructing an underground carpark would be prohibitive.

*Discussion and conclusion*

1. S73(1)(b) Heritage Act effectively requires the Executive Director to balance the impact that the proposal will have upon the cultural heritage significance of the place (determined under s73(1)(a)) with other factors, including the impact that the refusal of a permit for the proposal would have upon the ‘reasonable’ or ‘economic’ use of the place.
2. The Committee is of the view that the refusal has had an impact upon the reasonable use of the property. The Committee notes the various alternatives proposed by the Executive Director, but finds them to be either impractical or likely to have an equal or greater impact on the heritage values of the Place. The Committee concurs that the existing garage to the south of the property is too narrow to accommodate a family sized vehicle. It considers that the proposal to construct a small carport or garage on the northern boundary closer to the house is also inadequate for the Applicant’s needs and may compromise an understanding of the form of the house. The Committee accepts that the construction of an underground garage is the outcome least likely to impact upon the cultural heritage significance of the Place. However, while technically feasible, the Committee accepts the Applicant’s arguments that it would be prohibitively expensive.

**s.73(1)(c) any submissions made under s.69**

*What is the issue?*

1. A submission from Andrea Pagliaro – Statutory Planning Coordinator on behalf of the City of Stonnington was received in relation to the Original Plans application on 27 March 2013.

*Submissions and evidence*

1. The submission objected to the proposal on the basis that it would ‘diminish views to the building from the north and west and obscure an unusual bay to the northern elevation of the building’. The submission went on to note that ‘It would have the effect of converting the entire front setback into a vehicle parking area. This would diminish an understanding of the building as a handsome dwelling in a garden setting reducing the potential to read the building as a symbol of wealth, status and taste.’

*Discussion and conclusion*

1. As the City of Stonnington’s submission related to the Original Plans and the Heritage Council has since been advised that the City of Stonnington conditionally supports the Amended Plans, the Committee does not believe that it is necessary to address the Council’s submission in further detail. The conditions proposed by Stonnington in their submission of 20 December 2013 in relation to the Amended Plans are discussed later.

Conclusion

1. S73(1) of the Heritage Act requires the Committee to consider whether the proposed works will have an impact upon the cultural heritage significance of the Place. If the works would have an impact then the Committee is required to consider a number of further things, including under s73(1)(b) whether the refusal of a permit would affect the reasonable or economic use of the place.
2. The Committee notes that the proposed works do not involve any change to the significant physical fabric of the Place. However, they will limit views to the Place from the north when approaching along Cromwell Road. Despite this, good views to the Place will be maintained from the south and from opposite the house. The Committee notes that prior to 2009, much of the house was screened by large trees, and that the removal of those trees has made the house much more visible. The Committee has also taken into account that the loss of views to the house from the northern approach is offset by the removal of the northern crossover and the extension of the fence, which will have a positive impact upon the cultural heritage values of the Place.
3. The Committee is satisfied that the refusal of the permit has compromised the reasonable use of the Place. While there are other ways that car parking could be accommodated on the site, the Committee believes that, for the reasons outlined above, none of the options presented by the Executive Director is a satisfactory alternative.
4. The Committee believes that the impact of the proposed works can further be reduced by screening. The Committee also believes that a planting schedule would allow key views to the house to be maintained. The Committee is of the view that the Applicant should be required to enter into a covenant with the Heritage Council to ensure that appropriate vegetation is planted and maintained. This requirement should be included as a condition of the permit.

Permit Conditions

1. Draft permit conditions were provided to the Committee by the Executive Director on 23 February 2014. Comments in relation to the proposed conditions were received from Lovell Chen (on behalf of the Applicants) on 6 March 2014. The conditions are discussed in detail below.

**Condition 1**

1. ‘A landscape and planting plan identifying the species to be planted at the front of the heritage place (including garden beds and vertical plantings) and the materials and finishes of hard landscaping is to be approved in writing by the Executive Director, Heritage Victoria, prior to the commencement of works.’

*Submissions and evidence*

1. Lovell Chen indicated that the Applicant consented to the condition.

*Discussion and conclusion*

1. The Committee believes that the condition is reasonable and necessary to preserve the cultural heritage significance of the Place.

**Condition 2**

1. ‘The maintenance of the vertical plantings screening the garage and studio (as provided for in Condition 1) is to be legally binding upon the owner and future owners of the registered place. This shall be achieved though the owner entering into a Covenant pursuant to section 85 of the Heritage Act 1995. All costs relating to the preparation and lodgement of the Covenant are to be met by the owner.’

*Submissions and evidence*

1. Lovell Chen responded that ‘the owners understand and accept the intent of [the condition] but believe that in the long term a covenant might be a very unwieldy mechanism to implement. They assert it would be preferable for the intent to be implemented through a Section 173 Agreement with the Council [Stonnington] who at least are more likely to monitor compliance. The establishment of such an agreement could be a condition of [the] permit.

*Discussion and conclusion*

1. A s173 Agreement (Agreement) would usually be entered into under the *Planning and Environment Act 1987* between theLocal Government Authority (City of Stonnington) and the owner, and would be registered on the title to the property. Other bodies, such as the Heritage Council, could be parties to the Agreement. This course of action would require the City of Stonnington to agree to take on the responsibility for enforcement of the Agreement. However, in this case the proposed condition seeks to maintain values identified under the Heritage Act, rather than the Planning and Environment Act. Therefore, the Committee believes that the appropriate mechanism to ensure that the cultural heritage values of the property are conserved is a covenant entered into between the Heritage Council and the owner, as provided for in the Heritage Act. As is the case with an Agreement, a covenant would be registered on the title of the property, but enforcement would remain the responsibility of the Executive Director (under delegation from the Heritage Council), rather than the City of Stonnington.
2. The Committee also considers that draft Condition 2 should be varied to include reference to the retention of views to the front façade of the house.

**Condition 3**

1. ‘The Covenant is to be registered against the title of the registered place within four (4) months of the Executive Director approving Condition 1 of this permit. A copy of the title, with confirmation of registration of the Covenant, is to be provided to the Executive Director within one (1) month of the Covenant being registered.’

*Submissions and evidence*

1. For the reasons identified above in relation to Condition 2, the Applicant objected to the condition.

*Discussion and conclusion*

1. For the reasons discussed in relation to Condition 2, the Committee believes that the condition is reasonable and necessary to preserve the cultural heritage significance of the Place.

**Condition 4**

1. ‘An elevation drawing showing the materials and colour schedule of the new front fence to match existing is to be approved in writing by the Executive Director, Heritage Victoria prior to the commencement of works.’

*Submissions and evidence*

1. Lovell Chen indicated that the Applicant consented to the condition.

*Discussion and conclusion*

1. The Committee believes that the condition is reasonable and necessary to preserve the cultural heritage significance of the Place.

**Condition 5**

1. ‘Materials and finishes to be used in the repair of the verandah are to be like with like.’

*Submissions and evidence*

1. Lovell Chen indicated that the Applicant consented to the condition.

*Discussion and conclusion*

1. The Committee believes that the condition is reasonable and necessary to preserve the cultural heritage significance of the Place.

**Condition 6**

1. ‘This permit shall expire if the permitted works have not commenced within two (2) years of the date of issue of this permit, or are not completed within four (4) years of the date of issue of this permit unless otherwise agreed in writing by the Executive Director, Heritage Victoria.’

*Submissions and evidence*

1. Lovell Chen indicated that the Applicant consented to the condition.

*Discussion and conclusion*

1. The Committee believes that the condition is reasonable and necessary to preserve the cultural heritage significance of the Place.

**Condition 7**

1. ‘The Executive Director is to be given five working days notice of the intention to commence the approved works.’

*Submissions and evidence*

1. Lovell Chen indicated that the Applicant consented to the condition.

*Discussion and conclusion*

1. The Committee believes that the condition is reasonable and necessary to preserve the cultural heritage significance of the Place.

**Condition 8**

1. ‘Approved works or activities are to be planned and carried out in a manner which prevents damage to the registered place / object. However, if other previously hidden original or inaccessible details of the object or place are uncovered, any works that may affect such items shall immediately cease. The Executive Director shall be notified of the details immediately to enable Heritage Victoria representatives to inspect and record the items, and for discussion to take place on the possible retention of the items, or the issue of a modified approval.’

*Submissions and evidence*

1. Lovell Chen indicated that the Applicant consented to the condition.

*Discussion and conclusion*

1. The Committee believes that the condition is reasonable and necessary to preserve the cultural heritage significance of the Place.

**Condition 9**

1. ‘All works must cease and this office be contacted if historical archaeological artefacts or deposits are discovered during any excavation or subsurface works. Should any munitions or other potentially explosive artefacts be discovered, Victoria Police is to be immediately alerted whilst the site is cleared of all personnel.’

*Submissions and evidence*

1. Lovell Chen indicated that the Applicant consented to the condition.

*Discussion and conclusion*

1. The Committee believes that the condition is reasonable and necessary to preserve the cultural heritage significance of the Place.

**Condition 10**

1. ‘The Executive Director is to be informed when the approved works have been completed.’

*Submissions and evidence*

1. Lovell Chen indicated that the Applicant consented to the condition.

*Discussion and conclusion*

1. The Committee believes that the condition is reasonable and necessary to preserve the cultural heritage significance of the Place.

**Condition 11**

1. ‘The development approved by this permit is to be carried out in accordance with the endorsed drawings, unless otherwise agreed in writing by the Executive Director, Heritage Victoria.’

*Submissions and evidence*

1. Lovell Chen indicated that the Applicant consented to the condition.

*Discussion and conclusion*

1. The Committee believes that the condition is reasonable and necessary to preserve the cultural heritage significance of the Place.

**Conditions Requested by the City of Stonnington**

1. The Committee notes that the City of Stonnington requested that two conditions be included in the permit.
* ‘Plantings to the street frontage are to be mature specimens selected, planted and maintained by a suitably qualified arborist until the plantings are well established’.
* ‘Prior to the occupation of the building, the existing vehicle crossover to the northern section of the site boundary must be broken out and re-instated as standard footpath and kerb and channel at the permit holder’s cost’.
1. The Committee is satisfied that the requirement that the Applicant enter into a covenant under the Heritage Act will provide an appropriate mechanism to ensure that appropriate vegetation is planted and maintained.
2. The Committee notes that the Amended Plans include the removal of the existing crossover to the northern section of the site.
3. As a result, the Committee is satisfied that no further amendment to the permit conditions is required.

**Conclusion**

1. After considering the matter, the Committee has determined to grant the permit with the conditions indicated at Attachment 3.
2. While it falls beyond the scope of this decision. The Committee is concerned that a large portion of the verandah that once stretched across the northern side of the place has been removed, together with part of the rear verandah. Some of the decoration to the interior has also been damaged or removed. Both the verandahs and the decoration are identified as significant in the Statement of Significance for the Place. The Executive Director has advised that, in both cases, the work appears to have been undertaken by a previous owner without the necessary approval. The removal of the balcony and interior decoration has had a significant impact upon the Place and, if it occurred without the necessary approval is a breach of the Heritage Act.
3. The Committee strongly urges the Executive Director to investigate whether it is possible and practical to prosecute the previous owner for these apparent breaches of the Heritage Act.



**ATTACHMENT 1**

*What is significant?*
Barwon is a substantial two storey rendered brick residence in a simple somewhat Georgian style with a low-pitched hip roof and prominent chimneys. It was built in 1881 for the architect Edmund G. Ovey, who is believed to be its designer.

*How is it significant?*
Barwon is of architectural and historical significance to the State of Victoria.

*Why is it significant?*
Barwon is of architectural significance for its internal decorative treatment. It contains extant painted decoration of a very high quality. Of particular note is the drawing room with ceiling and walls that are considered a quite exceptional and rare treatment for houses after the mid-1880s. The front hall contains compositional painting in the scenic panels painted in the frieze, as distinct from stencilling, a very unusual feature in Australia. These painted interiors provide a remarkable example of high quality late-19th century interior decoration.

Barwon is of architectural significance for its three cast-iron verandahs, providing one of the best examples of a distinctive feature of Melbourne houses from this period.

Barwon is of architectural significance for its associations with Edmund Ovey. Ovey designed many buildings in Melbourne and its suburbs in the period from the 1870s to the early 1890s, including timber and brick residences, some hotels and a few church buildings. His contribution to the profession was recognised in 1892 when he was made a fellow of the Royal Victorian Institute of Architects. The house is particularly interesting as the architect?s own residence.

Barwon is of historical significance as a fine example of a substantial suburban house which demonstrates the growth of the more privileged areas of Melbourne, and the successful living able to be obtained by architects in the burgeoning colony.

**ATTACHMENT 2**

**73. Matters to be considered in determining applications**

(1) In determining an application for a permit, the [Executive Director](http://www.austlii.edu.au/au/legis/vic/consol_act/ha199586/s3.html#executive_director) must

consider-

(a) the extent to which the application, if approved, would affect the [cultural heritage significance](http://www.austlii.edu.au/au/legis/vic/consol_act/ha199586/s3.html#cultural_heritage_significance) of the [registered place](http://www.austlii.edu.au/au/legis/vic/consol_act/ha199586/s3.html#registered_place) or [registered object](http://www.austlii.edu.au/au/legis/vic/consol_act/ha199586/s3.html#registered_object); and

(ab) if the application relates to a [listed place](http://www.austlii.edu.au/au/legis/vic/consol_act/ha199586/s3.html#listed_place) or to a [registered place](http://www.austlii.edu.au/au/legis/vic/consol_act/ha199586/s3.html#registered_place) or [registered object](http://www.austlii.edu.au/au/legis/vic/consol_act/ha199586/s3.html#registered_object) in a [World Heritage Environs Area](http://www.austlii.edu.au/au/legis/vic/consol_act/ha199586/s3.html#world_heritage_environs_area), the extent to which the application, if approved, would affect -

(i) the [world heritage values](http://www.austlii.edu.au/au/legis/vic/consol_act/ha199586/s3.html#world_heritage_values) of the [listed place](http://www.austlii.edu.au/au/legis/vic/consol_act/ha199586/s3.html#listed_place); or

(ii) any relevant [Approved World Heritage Strategy Plan](http://www.austlii.edu.au/au/legis/vic/consol_act/ha199586/s3.html#approved_world_heritage_strategy_plan); and

(b) the extent to which the application, if refused, would affect the reasonable or economic use of the [registered place](http://www.austlii.edu.au/au/legis/vic/consol_act/ha199586/s3.html#registered_place) or [registered object](http://www.austlii.edu.au/au/legis/vic/consol_act/ha199586/s3.html#registered_object), or cause undue financial hardship to the [owner](http://www.austlii.edu.au/au/legis/vic/consol_act/ha199586/s3.html#owner) in relation to that [place](http://www.austlii.edu.au/au/legis/vic/consol_act/ha199586/s3.html#place) or [object](http://www.austlii.edu.au/au/legis/vic/consol_act/ha199586/s3.html#object); and

(c) any submissions made under section 69; and

(d) any decision of the [Heritage Council](http://www.austlii.edu.au/au/legis/vic/consol_act/ha199586/s3.html#heritage_council) under section 72 which has been

 received; and

(e) if the applicant is a [public authority](http://www.austlii.edu.au/au/legis/vic/consol_act/ha199586/s3.html#public_authority), the extent to which the application, if refused, would unreasonably detrimentally affect the ability of the [public authority](http://www.austlii.edu.au/au/legis/vic/consol_act/ha199586/s3.html#public_authority) to carry out a statutory duty specified in the application; and

(f) any matters relating to the protection and [conservation](http://www.austlii.edu.au/au/legis/vic/consol_act/ha199586/s3.html#conservation) of the [place](http://www.austlii.edu.au/au/legis/vic/consol_act/ha199586/s3.html#place) or [object](http://www.austlii.edu.au/au/legis/vic/consol_act/ha199586/s3.html#object) that the [Executive Director](http://www.austlii.edu.au/au/legis/vic/consol_act/ha199586/s3.html#executive_director) considers relevant.

(1A) In determining an application for a permit, the [Executive Director](http://www.austlii.edu.au/au/legis/vic/consol_act/ha199586/s3.html#executive_director) may consider-

(a) the extent to which the application, if approved, would affect the [cultural heritage significance](http://www.austlii.edu.au/au/legis/vic/consol_act/ha199586/s3.html#cultural_heritage_significance) of any adjacent or neighbouring property that is -

(i) subject to a heritage requirement or control in the relevant planning scheme; or

(ii) included in the [Heritage Register](http://www.austlii.edu.au/au/legis/vic/consol_act/ha199586/s3.html#heritage_register); and

 (b) any other relevant matter.



**ATTACHMENT 3**

**Conditions**

1. A landscape and planting plan identifying the species to be planted at the front of the heritage place (including garden beds and vertical plantings) and the materials and finishes of hard landscaping is to be approved in writing by the Executive Director, Heritage Victoria, prior to the commencement of works.
2. The maintenance of the vertical plantings screening the garage and studio and the retention of views to the front façade of the house (as provided for in Condition 1) is to be legally binding upon the owner and future owners of the registered place. This shall be achieved though the owner entering into a Covenant pursuant to section 85 of the Heritage Act 1995. All costs relating to the preparation and lodgement of the Covenant are to be met by the owner
3. The Covenant is to be registered against the title of the registered place within four (4) months of the Executive Director approving Condition 1 of this permit. A copy of the title, with confirmation of registration of the Covenant, is to be provided to the Executive Director within one (1) month of the Covenant being registered.
4. An elevation drawing showing the materials and colour schedule of the new front fence to match existing is to be approved in writing by the Executive Director, Heritage Victoria prior to the commencement of works.
5. Materials and finishes to be used in the repair of the verandah are to be like with like.
6. This permit shall expire if the permitted works have not commenced within two (2) years of the date of issue of this permit, or are not completed within four (4) years of the date of issue of this permit unless otherwise agreed in writing by the Executive Director, Heritage Victoria.
7. The Executive Director is to be given five working days notice of the intention to commence the approved works.
8. Approved works or activities are to be planned and carried out in a manner which prevents damage to the registered place / object. However, if other previously hidden original or inaccessible details of the object or place are uncovered, any works that may affect such items shall immediately cease. The Executive Director shall be notified of the details immediately to enable Heritage Victoria representatives to inspect and record the items, and for discussion to take place on the possible retention of the items, or the issue of a modified approval.
9. All works must cease and this office be contacted if historical archaeological artefacts or deposits are discovered during any excavation or subsurface works. Should any munitions or other potentially explosive artefacts be discovered, Victoria Police is to be immediately alerted whilst the site is cleared of all personnel.
10. The Executive Director is to be informed when the approved works have been completed.
11. The development approved by this permit is to be carried out in accordance with the endorsed drawings, unless otherwise agreed in writing by the Executive Director, Heritage Victoria.