

Permit Appeal Number P20647

**Willis Flour Mill, (H2186) Permit Application P20060**

**20 Piper Street, Kyneton**

**Heritage Council Permits Committee**

**Hearing – 7 February 2014**

**Members – Helen Lardner (Chair), Jim Norris, Donald Kerr**

**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 has determined to grant the permit with conditions.

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| **Helen Lardner**  **(Chair)** |  | **Jim Norris** |  | **Donald Kerr** |

**Decision Date – 19 February 2014**

**Appearances**

**Executive Director, Heritage Victoria**

Renae Jarman, Manager – Operations at Heritage Victoria, appeared on behalf of the Executive Director. Janet Beeston, the Heritage Victoria officer responsible for assessing the permit application was also available to take questions from the Committee.

**Appellant and Owner**

The owner of the property — Mr Richard Beniac lodged an appeal against the Executive Director’s decision to refuse to issue a permit for a proposed subdivision. Mr Beniac was represented by Mr Colin Nankervis (Building Surveyor) at the hearing.

**Written submissions**

Written submissions were received from both Mr Beniac and the Executive Director.

**Introduction/BACKGROUND**

**The Place**

1. The Place is located at 20 Piper Street, Kyneton. It consists of a former Mill Building, House and Stables dating from 1862, together with a more recent Factory that is currently used for manufacturing food products. The Place is currently divided into three lots. Lot 1 includes the House and Stables, Lot 2 includes the former Mill and Lot 3 includes the Factory. Together the three lots are referred to as the Former Willis Flour Mill (H2186).

**Permit Applicant**

1. This appeal deals with a proposal to subdivide Lot 1 into two parts, one which would contain the House and the other which would contain the Stables. A request for a permit was lodged with the Executive Director on 3 April 2013.

**Determination of the Executive Director**

1. A notice of refusal to grant a permit was issued by the Executive Director on 20 September 2013. The Executive Director refused to issue the permit because:
2. the heritage place had previously been subdivided into three lots and further fragmentation of the whole site will detrimentally impact on the significance of the place,
3. the amenity that exists on the two individual sites will be low and therefore it is likely to necessitate further alterations and/or additions which will further compromise the understanding of the place as a whole; and
4. the isolation of the stables on the individual site will negatively impact on the understanding of the original function and the context of the structure on the whole site.
5. An appeal against the Executive Director’s decision was lodged by the Applicant on 28 October 2013.

**Site Inspection**

1. The Committee conducted a site inspection of the Place on 31 January 2014. The Committee was accompanied by Leo Martin, the Manager – Heritage Council Secretariat. Mr Beniac provided access to the Committee, but no submissions were received.

**Preliminary Matters**

1. There is some ambiguity about whether the original application lodged by Mr Beniac was simply for the subdivision or for the subdivision and the construction of an associated crossover. While the permit application refers only to the ‘division of the two buildings’, the plans attached to the Heritage Impact Statement accompanying the application also include the crossover. The Committee notes, however, the application fee paid related only to a subdivision. Had the Applicant wished to lodge an application for a subdivision and associated works a higher fee would have been payable. On this basis the Committee has concluded that the application relates purely to the subdivision and, as a result, this decision relates only to the refusal of the permit for the proposed subdivision. The Committee notes that a crossover could be the subject of a future permit application.
2. The Committee has considered all mandatory considerations under s73 of the Heritage Act 1995 (Attachment 1). Only those that are relevant have been addressed in this decision.

**ISSUES**

**Summary of issues**

1. At issue is the impact of the proposed works upon the cultural heritage significance of the place. The Executive Director has argued that the subdivision will lead to a further fragmentation of the Place, may lead to/necessitate further works and will impact upon the understanding of the Place.
2. The Appellant’s argument can be summarised in four related parts:
3. Subdivision will not change the streetscape or neighbourhood character of the area; the two buildings on the site are distinctly separate and subdivision of the land will not change the amenity of the locality.
4. Further external alterations or extension to the existing buildings will not be required because the residential building facing Piper Street is substantially self-contained and the Stables building fronting Ebden Street is of sufficient size in floor area to allow the building to be fitted out with kitchen, bathroom, bedroom and laundry facilities.
5. The substantial character of the Stables building means it will always be capable of being interpreted as a Stables building regardless of the land subdivision.
6. The subdivision of the land will make it possible for two separate owners to hold the properties and therefore the economic requirements to maintain heritage buildings will be shared.

Mandatory considerations

**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 Appellant argued that the proposed subdivision will ‘not change the streetscape or neighbourhood character of the area’. The Executive Director argued that ‘the further subdivision of Former Willis Flour Mill would detrimentally affect its cultural heritage significance’.

*Submissions and evidence*

1. The Appellant argued that the ‘physical impact’ of the proposed subdivision is limited, that the house and the stables are already ‘distinctly separate’, that only a small amount of additional works will be required and that these are likely to require additional consents from Heritage Victoria.
2. The Executive Director submitted that (while the current application does not permit the construction of additional structures at the Place) issuing the permit would create ‘an expectation that further approvals be granted to, in effect, implement the subdivision “on the ground” and that these future works would have a detrimental impact upon the cultural heritage values of the Place. The Executive Director argued that ‘it is not appropriate to approve a subdivision ... where any further changes required as a result of the subdivision may not receive approval due to their impact on cultural heritage significance’.

*Discussion and conclusion*

1. The appeal before the Committee deals solely with the issue of subdivision. The subdivision itself will not, in the Committee’s view have a significant impact upon the cultural heritage significance of the Place, because the subdivision does not require any works to be undertaken.
2. The Committee acknowledges that if the permit for subdivision is granted the Appellant may seek to undertake additional works; however, as was conceded by the Executive Director during the hearing, most works would still require approval from Heritage Victoria. The Committee does not believe it is appropriate for the Executive Director to refuse to grant a permit for subdivision on the basis that the Appellant (or any future owner of the Place) may at some future date seek approval for as yet unspecified works.

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

1. No arguments regarding reasonable or economic use were made by the Appellant.
2. The Appellant did draw the Committee’s attention to the costs of work already undertaken to the Place, but did not provide sufficient material for the Committee to consider whether the refusal of the permit would cause him undue financial hardship.

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

1. One submission, from Mr Michael Keough, was received by the Executive Director under s69 *Heritage Act 1995*. That submission supported the proposed subdivision, describing it as ‘one way to achieve further sympathetic improvements to the property’, and noting the importance of Kyneton having a ‘greater variety of housing options’. Mr Keough questioned whether the proposed shed indicated on Lot 2 was part of this permit application. The Committee notes that the shed has already been approved by the Executive Director under Permit No: P19591, dated 22 April 2013, and is not part of this appeal.

*Submissions and evidence*

1. Neither party specifically addressed Mr Keough’s submission.

*Discussion and conclusion*

1. As the submission does not address the impact of the proposed subdivision upon the cultural heritage significance of the Place, it has not been considered by the Committee in reaching its decision.

**s.73(1)(f) any matters relating to the protection and conservation of the Place or object**

1. No additional matters were identified as being of relevance.

Conditions

Following the hearing on 7 February 2014, the Committee wrote to the Executive Director and request a copy of the conditions that would have been included on a permit had one been issued. A copy of these conditions was received by the Committee on 11 February 2014. The conditions are detailed below.

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.
2. Prior to lodgement of the certified plan of subdivision with the Titles Office, the owner shall provide a copy of the certified plan of subdivision to the Executive Director for endorsement. Once endorsed, the certified plan forms part of this permit.
3. Prior to lodgement of the certified plan of subdivision with the Titles Office, the owner shall develop a Heritage Audit Management Plan (HAMP). The HAMP must identify all heritage fabric at the registered place and articulate strategies for its long term management, maintenance and conservation. The HAMP is to be to the written satisfaction of the Executive Director.
4. The obligations of the HAMP (provided for above) are to be legally binding upon the owner and future owners of the registered place. This shall be achieved through 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.
5. The Covenant is to be registered against the title of each lot within the registered place upon registration of the plan of subdivision. A copy of the new titles, with confirmation of registration of the Covenant, is to be provided to the Executive Director within 14 days of registration of the plan of subdivision.
6. Approved works or activities are to be planned and carried out in a manner which prevents damage to the registered place. However, if other previously hidden original or inaccessible details of the 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.
7. 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.
8. The Executive Director is to be informed when the approved works have been completed.
9. 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.
10. The Committee has reviewed the permit conditions proposed by the Executive Director. It is the Committee’s view that the conditions are reasonable and necessary to protect the cultural heritage significance of the Place.

**Conclusion**

1. The Committee has determined to grant the permit sought with the conditions outlined in Attachment 2.
2. The Committee notes that the permit only allows for the subdivision of the property. Any future development of the site (including the construction of a crossover, fence etc) to facilitate the subdivision is likely to require the permission of the Executive Director and the owner of the Place should contact the Executive Director prior to commencing any works.



**ATTACHMENT 1**

**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 2**

**Conditions**

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.
2. Prior to lodgement of the certified plan of subdivision with the Titles Office, the owner shall provide a copy of the certified plan of subdivision to the Executive Director for endorsement. Once endorsed, the certified plan forms part of this permit.
3. Prior to lodgement of the certified plan of subdivision with the Titles Office, the owner shall develop a Heritage Audit Management Plan (HAMP). The HAMP must identify all heritage fabric at the registered place and articulate strategies for its long term management, maintenance and conservation. The HAMP is to be to the written satisfaction of the Executive Director.
4. The obligations of the HAMP (provided for by Condition 3) are to be legally binding upon the owner and future owners of the registered place. This shall be achieved through 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.
5. The Covenant is to be registered against the title of each lot within the registered place upon registration of the plan of subdivision. A copy of the new titles, with confirmation of registration of the Covenant, is to be provided to the Executive Director within 14 days of registration of the plan of subdivision.
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7. 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.
8. The Executive Director is to be informed when the approved works have been completed.
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