

Permit Appeal Number P24319

**Camperdown Botanic Gardens and Arboretum (H2256), Permit Application P23732**

**220 Park Road, Camperdown**

**Heritage Council Permits Committee**

**Hearing – Monday 6 July and Tuesday 7 July, 2016**

# Decision of the Heritage Council

After considering the permit appeal, all submissions received in relation to it and after conducting a hearing, pursuant to Section 76(4)(a) of the *Heritage Act 1995*, the Heritage Council has determined to issue permit P23732 in part, that is for the two (2) southernmost cabins as described herein, at the Camperdown Botanic Gardens and Arboretum. At the same time, pursuant to Section 76(4)(b) of the *Heritage Act 1995*, the Heritage Council has determined to confirm the decision of the Executive Director in relation to the remainder of the proposed works, that is, for the remaining four (4) proposed cabins, the jumping pillow and the swimming pool.

Heritage Council Permits Committee:

**Lucinda Peterson (Chair)**

**Leigh Mackay**

**Andrew May**

Date of Decision: 4 August 2016

**APPEARANCES / SUBMISSIONS**

**Executive Director, Heritage Victoria (‘the Executive Director’)**

Ms Janet Sullivan, Principal - Permits, Heritage Victoria, and Mr Geoff Austin, Manager – Permits and Assessments, appeared and made verbal submissions representing the Executive Director.

**Mr Anthony Meechan of the Lakes and Craters Holiday Park (‘the Appellant’)**

The appeal was lodged by the tenant of part of the Place, Mr Anthony Meechan of the Lakes and Craters Holiday Park. Mr Meechan was represented by Ms Shelley Fanning of Mann Legal. The Appellant’s written submissions included statements of expert evidence from Mr Jim Gard’ner, Director of GJM Heritage. Ms Fanning appeared, made verbal submissions and called on Mr Gard’ner to give expert witness testimony.

**Corangamite Shire Council (‘Corangamite’)**

Corangamite Shire Council (‘Corangamite’), the public land manager of the Crown Land reserve, was represented by Mr David Vorcheimer of HWL Ebsworth. Corangamite’s written submissions included statements of expert evidence from the following persons:

* Mr Rob Galbraith of Galbraith and Associates
* Mr Peter Lovell of Lovell Chen
* Mr John Patrick of John Patrick Pty Ltd.

Mr Vorcheimer appeared, made verbal submissions and called on Mr Lovell and Mr Galbraith to give expert witness testimony. Mr Patrick did not attend the hearing.

**National Trust of Australia (Victoria)** (‘the National Trust’)

A written submission was received from the National Trust. Ms Rosalind Mearns appeared and made verbal submissions on behalf of the National Trust.

**Camperdown Botanic Gardens and Arboretum Trust Inc. (‘CBGAT’)**

A written submission was received from the CBGAT. CBGAT was represented by Professor Simon R Molesworth AO QC who appeared and made verbal submissions. Ms O’Hehir, the President of CBGAT, also appeared, was available to take questions and made verbal submissions.

**The Australian Garden History Society (‘the Society’)**

A written submission was received from Ms Lisa Tuck, Chair of the Victorian branch of the Society. The Society did not seek to attend the hearing.

# **Introduction/background**

## **The Place**

1. The Camperdown Botanic Gardens and Arboretum (‘the Place’) was included in the Victorian Heritage Register (‘the Register’) on 9 June 2011.
2. The Place is situated high on a hill approximately 6 kilometres west of the township of Camperdown at the end of Park Road, with commanding views from many vantage points over the twin volcanic crater lakes of Gnotuk and Bullen Merri. The 1.2 hectare site of the Botanic Gardens (‘the Botanic Gardens’) and the original 6.9 hectare Arboretum (‘the Arboretum’) are both part of the 118 hectare allotment which was initially reserved in July 1869 as the Camperdown Public Park. The Botanic Gardens are located in an elevated part of the Place and are enclosed by fencing. Corangamite Shire Council is the public land manager of the Place which is a Crown Land reserve.
3. The Place is included in the Register as a heritage place of historic, aesthetic and scientific [botanical] significance to the State of Victoria. The following is taken from the Statement of Significance for the Place:

***Why is it significant?***

*The Camperdown Botanic Gardens and Arboretum are of historic significance for their association with William Guilfoyle with the gardenesque design being one of the last known examples of his public work before his death in 1912. Guilfoyle is regarded as one of Australia's greatest garden designers and his rare, extant plan and accompanying notes completed in c1889 are held in the collection at the Camperdown Historical Society.*

*The Camperdown Botanic Gardens and Arboretum are of aesthetic significance as one of the largest public park reserves in Victoria enhanced by the dramatic site location on a hill rising between the picturesque twin volcanic crater lakes of Gnotuk and Bullen Merri. The location provides outstanding views from within the gardens over the lakes and the basalt plains of the western district. The only other hilltop botanic garden is at Daylesford, while Ballarat Botanic Gardens and Colac Botanic Gardens sit beside large lakes.*

*The Camperdown Botanic Gardens and Arboretum are of scientific (botanical) significance as the mature gardens include two rare specimens of Quercus leucotrichophora (Himalayan Oak), an Elaeodendron croceum (African Holly) which is an endangered species and an avenue of nine Lindens (Tilia x europaea) which is the only known occurrence of the species used in this way. Other important trees in the Arboretum include the Quercus pubescens (Downy Oak), Quercus petraea (Sessile Oak), Acer opalus subsp. obtusatum (Italian Maple) as well as other uncommon species of deciduous trees and conifers which survive from the 1870s plantings.*

1. The Place is zoned Public Park and Recreation Zone and is covered by an Environmental Significance Overlay and a Significant Landscape Overlay, in the Corangamite Planning Scheme.
2. Today access to the Botanic Gardens is through a caravan park, established in 1960, which occupies part of the land within the Arboretum. That part of the land within the Arboretum is today called the Lakes and Craters Caravan Park (‘the Caravan Park’). The Appellant is the current tenant of the Caravan Park and operates and leases that part of the Place from Corangamite (‘the Caravan Park area’).

## **Permit Application**

1. On 21 September 2015 the Appellant applied to the Executive Director, Heritage Victoria for a permit to approve the following proposed works (‘the Application’):

* Demolition of an existing amenities block and installation of two new amenities blocks and associated sewerage works
* Construction of six new cabins
* Installation of a jumping pillow
* Construction of a swimming pool

Existing and proposed site plans were submitted with the Application along with a copy of a masterplan (‘the 2014 Masterplan’) prepared by the operators of the Caravan Park for the Caravan Park. The demolition of the existing amenities block was not identified specifically but was contemplated as part of the works at the location of two of the six new cabins (‘the two southernmost cabins’). The proposed works are part of the implementation of the 2014 Masterplan.

1. The Application was advertised on the 16 October 2015 in accordance with s68 of the *Heritage Act 1995* (‘the Act’). A total of 14 submissions were received in accordance with s69 of the Act, all of which objected to the application to construct six cabins, a jumping pillow and a swimming pool. Some but not all of the submissions objected to other works not relevant to this permit appeal.

## **Determination of the Executive Director**

1. On 25 January 2016 the Executive Director determined to issue a permit, with conditions, for the demolition of the existing amenities block and the construction of two new amenities blocks and associated septic sewerage system. At the same time, the Executive Director determined to refuse to issue a permit for the construction of six cabins, a swimming pool and a jumping pillow (‘the permit refusal’).
2. The grounds given by the Executive Director for the permit refusal were that:

1) The proposed development would have a significant impact on the cultural heritage values of the Place, and that the proposed development was not mitigated by the removal of some caravan and camping sites.

2) The proposed development had a detrimental impact on the Arboretum due to the lost opportunity for using the land for tree planting and landscaping.

3) The proposed development will not result in any net benefit to the heritage values of the Place.

**The appeal against the permit refusal**

1. An appeal against the permit refusal was lodged with the Heritage Council by the Appellant on 5 February 2016. Parties were subsequently notified and a hearing was scheduled. The Appellant appealed against the refusal to issue a permit for the construction and installation of six cabins, a jumping pillow and a swimming pool (‘the proposed works’). The Appellant also appealed against conditions 5 and 6 of the permit which required, respectively, that eight new trees be planted and that two new information signs be installed. The appeal against conditions 5 and 6 was later withdrawn.

**Site Inspection**

1. Members of the Heritage Council Permit Appeals Committee (“the Committee”) conducted an unaccompanied site inspection of the Place on Monday 6 June 2016, prior to the commencement of the hearing. The Heritage Council Hearings Coordinator also attended the site inspection. No submissions were sought or received at the time of the inspection.

**Preliminary matters**

*Request for an adjournment*

1. The hearing was originally scheduled for the week of 11-14 April, 2016 and all parties were notified. The Appellant requested an adjournment in writing that was received on 10 March 2016. The Committee sought the views of parties before granting the adjournment request and adjourning the hearing until 5 and 6 June 2016.

*Application to lodge amended plans*

1. On 6 April 2016 the Appellant applied to lodge amended plans. The Committee sought and considered submissions received from parties in relation to the application to lodge amended plans, and determined to accept the application. The amended plans lodged, dated 17 March 2016, relate to the same area of the Place and generally to the same scope of proposed works as in the Application (‘the amended plans’). The amended plans supersede those provided with the Application.

*Addition of a party to the hearing*

1. A request in writing was received from CBGAT requesting to be added as a party to the hearing and requesting to be heard in relation to this appeal. After considering the request from CBGAT, the Committee determined that CBGAT had a real and substantial interest in the Place, being an incorporated association directly involved in the management of the Place, and agreed that CGBAT should be invited to make written submissions and be heard at the hearing. Other parties were notified of this, were provided with CGBAT’s timely written submission and were able to reply in writing to it and make verbal submissions accordingly.

*Late written submission*

1. The Committee received a written submission from the Society (which did not request to be heard in relation to the appeal), which was circulated to all parties prior to the hearing but later than other submissions. The Committee determined to admit the Society’s written submission in order to consider all information and views available in relation to the issues before the Committee. The Committee notes that parties were given the opportunity to comment on the material in their verbal submissions.

*Circulation of Draft Conservation Management Plan Report*

1. CBGAT provided a copy of a Draft Conservation Management Plan Report dated 12 May 2016 (‘the draft CMP Report’) with its submissions in reply. As it formed part of CBGAT’s submission in reply, as per normal practice it was circulated by the Committee to other parties. Corangamite and the Appellant objected to the consideration of the draft CMP Report by the Committee on the basis that it was an incomplete draft document.
2. The Committee notes that the draft CMP Report was commissioned by Corangamite and is yet to be completed. In order to inform itself, the Committee has afforded the draft CMP Report weight commensurate with its status as an incomplete draft in progress rather than an endorsed plan.

*Mandatory considerations under s73 of the Act*

1. The Committee has considered all mandatory considerations under s73 of the Act (Attachment 1). Only those matters that are relevant have been addressed in this decision. The Committee also notes that while the proposed works relate to the Caravan Park area only, in determining this appeal it must turn its mind to the whole area of the Place.

**ISSUES**

1. The following sections are not intended to be a complete record of submissions that were made to the Committee. It is a summary of what the Committee considers to be the key issues before it, followed by an explanation of the position the Committee has taken on each issue.

**Summary of Issues**

1. The principal issues before the Committee are: the extent to which the proposed works, if approved, would affect the cultural heritage significance of the Place; and, the extent to which a refusal to issue a permit for the proposed works would affect the reasonable or economic use of the registered Place, or cause undue financial hardship to the owner of the Place. The parties disagreed on these two central issues and on additional matters raised relating to the protection and conservation of the Place.
2. The Executive Director submitted that the proposed works would detract from and detrimentally impact on the cultural heritage values of the Place. The Executive Director further submitted that the refusal would not detrimentally affect the Appellant’s reasonable or economic use of the Place and that insufficient evidence had been provided as to the extent of any effect on use or of any financial hardship. The Executive Director also submitted that it is desirable that a Conservation Management Plan (CMP) be produced to guide the management of the Place.
3. Corangamite submitted that, contrary to the grounds given in the permit refusal, the proposed works would not adversely or detrimentally affect the cultural heritage significance of the Place nor have a detrimental effect on the Arboretum, as the proposed structures could be considered as temporary in nature and that therefore the changes to the Place are reversible. Corangamite further submitted that the proposed works are critical to the sustainable operation of the Caravan Park and would affect the economic viability of the Place. In making their submissions, Corangamite adopted and relied upon the statements of evidence of Mr Lovell, Mr Galbraith and Mr Patrick.
4. The National Trust agreed with the Executive Director and submitted that the proposed works are not compatible with the historic use of the Place, the heritage values inherent in the Place, or its protection and conservation.
5. CBGAT submitted that the proposed works would have a detrimental effect on the cultural heritage significance of the Place and on the conservation of its cultural heritage values, that the proposed works are not compatible with a botanic garden or arboretum, and that all future works proposed should be guided by a CMP for the Place.
6. The Society supported the permit refusal and submitted that the historic, aesthetic and scientific values of the Place would be degraded by the proposed works. The Society submitted that all works at the Place should be informed by a CMP.
7. The Appellant, relying on and adopting the evidence of Mr Gard’ner, submitted that the proposed works do not adversely impact on the cultural heritage values of the Place and that the proposed works are reasonable, sympathetic and acceptable in terms of the heritage values of the Place. The appellant further submitted that the proposed works are fully reversible.

Mandatory Considerations

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

*Submissions and evidence*

1. The Executive Director submitted that the proposed works represent an unacceptable level of intensification of use that would have a negative impact on the cultural heritage significance of the Place. The Executive Director submitted that there can be a discernable point, a ‘threshold’, beyond which the impact of built infrastructure on the cultural heritage significance of the Place becomes detrimental. The Executive Director submitted that the proposed works would go beyond that point. The Executive Director argued that the proposed works are not appropriate considering the values of the Place and would detrimentally impact the aesthetic values of the Place. The Executive Director further submitted that the presence of the Caravan Park does limit the general public’s use of the Place and appreciation of its trees in the Arboretum, and that it was preferable for the benefit of the Place that the level of development and infrastructure at the Caravan Park not be increased. Furthermore, the Executive Director submitted that ‘the intensification of new built structures [in addition to those approved under previous permits] will inhibit the ability for additional tree planting within the Arboretum’ and, although the total land reserved for the Arboretum and Botanic Gardens is large compared with the area taken up by the Caravan Park, the importance of the entry into the Arboretum and Botanic Garden cannot be understated. In written and verbal submissions the Executive Director disputed the reversibility of the proposed works, as submitted by Corangamite and the Appellant. The Executive Director submitted that the proposed works have differing degrees of reversibility and that the swimming pool in particular is not an element that can be easily removed. The Executive Director submitted that, in addition to the proposed infrastructure, ancillary works such as shade structures and the like would inevitably be required and would add to the ‘visual clutter’ within the Place.
2. Corangamite submitted that the proposed works are reversible, would not detrimentally impact on the cultural heritage values of the Place and would ‘enable the continuation and enjoyment of the [Place] and enhancement of its landscape and heritage values’. Corangamite further submitted that the proposed works relate to an appropriate use of the area of the Place occupied by the Caravan Park and are part of a plan to ‘de-intensify the use of the subject land’ by reducing the number of long term and annual lease sites. In its submission in reply, Corangamite submitted that upgrading Caravan Park facilities would not cause any new or additional detrimental effects on the Place and the addition of the jumping pillow and swimming pool would not intensify or change the use of the Caravan Park.
3. In his statement of evidence, Mr Lovell stated that ‘the proposed works are of a modest nature and [in my assessment] will have no adverse impact on the heritage place.’ Mr Lovell stated that, as far as any effect on the cultural heritage significance of the Place, the six cabins can ‘be introduced without an adverse impact’ and that their installation is ‘readily reversible’. Mr Lovell set out in his written statement some different considerations that apply to the three pairs of cabins proposed. In relation to the two southernmost cabins, Mr Lovell stated that because of the pre-existing amenities block and the qualities of the existing cabins neighbouring it, and because the southernmost cabins would not impact on existing trees or prevent strategic replanting, their installation would have no adverse impact. In relation to the two cabins proposed for the east central area of the Caravan Park, Mr Lovell stated that ‘with regard to aesthetic impacts, the cabins will be more exposed than those located on the south side of the park’, but stated that their installation would have ‘no adverse impact on the aesthetic significance of the Place’. In relation to the two cabins proposed in the northernmost part of the Caravan Park, Mr Lovell stated that ‘of the three locations for cabins this is the more sensitive [location] in that the cabins will be visible from within the open Arboretum area’, that it is desirable to maintain the legibility of the open Arboretum extending across this area, and expressed his view that the proposed cabins ‘are an acceptable insertion, but that ideally no further permanent building should occur along this boundary’. Mr Lovell stated his view that ‘the pool construction is a process which will not result in any adverse physical impact on the Place and is entirely reversible’, and that the pool and enclosure will not ‘adversely impact on the significance of the Place albeit that their cultural fit is to the more contemporary use of this part of the Place than with the broader botanical and scientific values for which the Place is formally recognised’. Mr Lovell further stated that the jumping pillow ‘is not an installation which in any sense will present prominently’ and that it would not have an adverse impact on the cultural heritage significance of the Place. In cross examination Mr Lovell noted that ‘I don’t think anyone would identify [the site] as an arboretum. It is lacking active interpretation’.
4. In his statement of evidence, Mr Galbraith explained the considerations, in relation to the Place, relating to Tree Protection Zones (‘TPZ’), which are ‘the principal means of protecting trees on development sites’. Mr Galbraith stated that ‘all the proposed buildings and the swimming pool are now outside the TPZs’, and that the location of the jumping pillow represents a ‘very minor and acceptable encroachment into the TPZ area’. Mr Galbraith further stated that the proposed works would not have a detrimental impact on the Arboretum and/or individual trees at the Place.
5. In his statement of evidence, Mr Patrick stated that the proposed works in his opinion would be ‘of modest extent and impact’, and if permitted would not have ‘any direct negative impact upon the fabric of the heritage place’. Mr Patrick further submitted that the proposed works are reversible and that the Place could be ‘reinstated to its current condition, should that be required at a later date’.
6. The National Trust stated that it had concerns about the impact of the proposed works on the Arboretum and submitted that the proposed works would impact negatively on outward and inward views and vistas. The National Trust also stated that it ‘retained serious concerns about the reversibility of the fabric that is proposed’.
7. CGBAT submitted that the proposed works represent an ‘intensification of use’ of the Place and would ‘have a detrimental impact on [the Place], the integrity of Guilfoyle’s design intent, the purpose and function of the botanic gardens and the arboretum, and the conservation of heritage values’. In relation to the proposed works, CGBAT stated that there would be a detrimental visual and aesthetic impact, an impact on trees at the Place, a negative impact on the availability of open space and on visitation to the Botanic Gardens, submitting that ‘the vegetation and treed ambience should be the primary consideration’. In verbal submissions Prof Molesworth submitted that the swimming pool and the jumping pillow represented the ‘incremental addition of other activities’ at the Place and that the proposed uses would affect the aesthetic significance of the Place and its ‘heritage ambience’. Prof Molesworth submitted that the proposed works would be the ‘entrenchment of an activity’ that would ‘undermine the values of the botanic gardens and arboretum that we are seeking to protect’ and would be a ‘tipping point’ in terms of detrimental impact.
8. In written and verbal submissions, the Appellant relied on the evidence of Mr Gard’ner in stating that the proposed works are acceptable in terms of the cultural heritage values of the Place. The Appellant submitted that no significant trees are negatively impacted, that the proposed works are reversible and that there is a ‘positive interface’ between the Caravan Park and the remainder of Place. Ms Fanning explained that the operators of the Caravan Park had prepared the 2014 Masterplan to help them manage their business and improve the Caravan Park. Ms Fanning disputed the grounds of refusal, in that there is already limited opportunity for tree planting, the Caravan Park is clearly a historical use of the site and the proposed installation of the additional cabins, swimming pool and jumping pillow will assist their business. Ms Fanning submitted that the operators of the Caravan Park had improved the image and operation of the Caravan Park by reducing the number of on-site long term caravans and leases and improving the presentation of the cabins. Ms Fanning, in verbal submissions for the Appellant, noted that no expert witnesses provided contrary views at the hearing.
9. Mr Gard’ner stated in his expert witness evidence that none of the proposed works as defined in the amended plans adversely impact on the ‘identified heritage values’ of the Place and submitted that in addition all of the proposed works are ‘fully reversible’. Mr Gard’ner submitted that, if the proposed works were permitted, the Arboretum ‘provides considerable opportunity for tree planting and landscaping’ but that the area of the Caravan Park ‘is - and will remain – open grassland’. Mr Gard’ner provided his view that it is arguable that the lightly treed state of the Caravan Park area is ‘close to what was envisaged by Guilfoyle’ and that the proposed works do not have any adverse impact on the cultural heritage significance of the Place. Mr Gard’ner further submitted that the use of the Caravan Park for camping and caravanning is a historic use of the Place and a reasonable one.

*Discussion*

1. In relation to the Appellant’s submission as to the lack of expert witnesses to counter submissions made by the Appellant and Corangamite, the Committee gives no weight to this fact and recognises, generally speaking, that there are a variety of reasons why parties to a hearing may either not be able or not be willing to arrange for expert witness evidence to be provided.
2. The Committee accepts that the use of part of the Place as a camping ground, from the 1940s, and a caravan park, from the 1960s, is a historic and current use which is likely to continue into the future. But it is of the view that the presence of the Caravan Park as a feature of social or historical significance has not been established and does not form part of the cultural heritage significance of the Place as identified in the Statement of Significance. The Committee is of the view, rather, that the Caravan Park is an incidental use of part of the Place and that some existing elements within the Caravan Park area do detract from the aesthetic values of the Place as listed in the Statement of Significance, which is focussed on the design and historic use of the Place as Botanic Gardens and as an Arboretum, respectively.
3. The Committee notes that the Arboretum area, in which the Caravan Park is located, was designed by Guilfoyle to be an open area of mature trees that, according to the evidence of Mr Gard’ner, was intended to remain in a lightly treed state.
4. The Committee is of the view that the majority of the proposed works would have a negative effect on the aesthetic significance of the Place, on the experience of visitors to its ‘dramatic site location’, and on the views from within the Place. The Committee disagrees with some suggestions made that the proposed works would have the effect of enhancing cultural heritage values of the Place.
5. The Committee is of the opinion that the proposed works would detract from the ability of the visitor to ‘read’, understand and enjoy those aesthetic qualities and would increase the visual clutter of this part of the Arboretum, thereby detracting from its aesthetic values and compromising its central role in the Place.
6. The Committee notes that submissions differed greatly on the question of the ‘intensification’ or ‘entrenchment’ of the use of the area of the Arboretum occupied by the Caravan Park. The Committee on this point prefers the submissions made by CBGAT, who submitted that the proposed works would create an amenity that would entrench an intensified use of the Place as a ‘Holiday Park’. Although under the planning scheme the use of the land as ‘Camping and Caravan Park’ technically remains the same, with or without the additional structures, the Committee is of the view that the proposed works do represent an entrenchment of an intensified use, and in the case of the jumping pillow and swimming pool are incongruous to the use of the Arboretum, and would result in a detrimental impact on the cultural heritage significance of the Botanic Gardens and Arboretum.
7. On the issue of reversibility, any works comprising the installation of new fabric in open space may be considered, in theory, ‘reversible’. What varies in each case however, is the purpose of any proposed works and the circumstance of each case. The Committee, noting the new 21 year lease relating to the Caravan Park area and the submissions of Corangamite and the Appellant as to their commitment to its ongoing use as a Caravan Park, is of the view that the proposed works are not, in practical terms, temporary or reversible. In addition, the Committee considers that, although the swimming pool and jumping pillow may have a seasonal use, it would be expected that when they are not in use the swimming pool would be drained or covered over during the winter time and the jumping pillow would be deflated, with the actual structures remaining year round, and presenting over the off-season as redundant seasonal structures. The impact of the proposed works on the cultural heritage values of the Place must therefore be taken into account on that basis.
8. With regard to the cabins, the Committee notes the evidence of both Mr Gard’ner and Mr Lovell, who distinguished the level of impact on the Place of the differently located pairs of cabins. The Committee is of the view that, having regard to the condition and location of the existing amenities block (for which there is an existing permit to demolish), and the proposed appearance and location of the two southernmost cabins, the construction of the two southernmost cabins would not have a detrimental impact on the cultural heritage values of the Place. The Committee forms this view with reference to views from within the Place and with regard to the following: the likely improved views from within the Caravan Park area to trees to the south and to the lake below; the consistency of the proposed form with the other, extant cabins in this part of the Place; the demolition of the existing yellow brick amenities block; and with reference to the improved location and profile of the two southernmost cabins as compared with the existing amenities block. The Committee further notes that the treed slope to the south of the southernmost cabins presents a vastly different backdrop to views seen north of them, as compared with the backdrop to views that exist to the north of the remainder of the proposed works into the balance of the Arboretum.
9. The Committee notes the evidence of Mr Lovell, who in verbal submissions agreed that in theory there would exist a point beyond which the construction of further infrastructure at the Place would result in a detrimental impact on the cultural heritage significance of the Place, but who stated that in his opinion the proposed works do not represent that point. The Committee is of the view, however, that the balance of the proposed works (beyond the two southernmost cabins) does go beyond that point, and that the proposed works would have a detrimental impact on the cultural heritage significance of the Place. The Committee, in forming this view, refers to the aesthetic significance of the Place, Guilfoyle’s design of the Botanic Gardens and Arboretum, and the use and contrast of treed and open areas to create an aesthetic experience in the Place’s dramatic hilltop location.
10. The Committee is of the view that the aesthetic significance of the Place and the experience of all visitors to it, enhanced by its dramatic hilltop location, outstanding views from within the Botanical Gardens and the open treed area of the Arboretum, would be negatively impacted by the sum of all the proposed works.
11. The Committee agrees with the Executive Director that a permit for the proposed works should be refused, with the exception of the two southernmost cabins, as described above.

**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. The Parties disagreed on what was a reasonable use of the Place, whether or not any economic impact would result from a refusal, and whether undue financial hardship would be caused to the owner.

*Submissions and evidence*

1. The Executive Director advised that, although the Appellant is not the owner of the Place, the Appellant was invited to provide information about the economic and reasonable use of the Place. The Executive Director submitted that inadequate evidence had been provided to as to the extent to which a permit refusal would have an effect on the Appellant’s reasonable or economic use of the Place, or as to the extent to which Corangamite would be caused undue financial hardship. The Executive Director further submitted that no information had been provided to demonstrate that there was a demand for the proposed works.
2. Corangamite submitted that the use of the Caravan Park area is a reasonable use of that part of the Place, that the proposed works are reasonably expected at a caravan park in 2016 and that this upgrade of facilities will enable the continued use of the Caravan Park area for that reasonable use. Corangamite submitted in reply, by way of clarification, that as the public land manager it is responsible for the maintenance of the Caravan Park. Mr Lovell in his evidence at the hearing stated that the use of the Caravan Park area is an historic use and a reasonable use of that part of the Place. In response to a question put to him by CBGAT Mr Lovell stated that the proposed works represent an evolution of this use.
3. In verbal submissions, Prof Molesworth for CBGAT stated that CBGAT rejects the argument that the owner would suffer financial hardship and submitted that this would not be an issue as the Appellant is the lessee not the owner. Prof Molesworth further submitted that the question of whether or not a permit is issued in relation to the Place does not change the owner’s crown land responsibilities in relation to the Place.
4. The Appellant submitted that it has, as part of its planning, a goal of upgrading the site and that the proposed works meet a threshold of what is reasonable for the Caravan Park in the terms of the policy guideline: *Matters to be considered in determining a permit application under section 73(1)(b) of the Heritage Act 1995* (as adopted by the Heritage Council 1 May 2012).

*Discussion*

1. The Committee accepts that the use of part of the Place as a camping ground and later as a caravan park is an historic and ongoing use that is reasonable in the current circumstances of the Place. The Committee is of the view, evidenced by the new 21 year lease, that the current use of the Caravan Park area may be expected to continue unaffected by a refusal to issue a permit for the proposed works.
2. The Committee notes that it must consider s73(1)(b) in relation to the whole Place, and that the reasonable or economic use of the majority of the Place is not directly related to the reasonable or economic use of the Caravan Park area. The Committee further notes that the Caravan Park is subject to different practical and financial considerations to the remainder of the Place, and that Corangamite have Crown land management responsibilities for the whole of the Place. The Committee recognises, however, that a proportion of the revenue from the Caravan Park contributes to the protection and management of the whole Place, and therefore to its ongoing use and management.
3. Turning to the economic use of the Place, the Committee notes that no evidence was provided to satisfy it that the future reasonable or economic use of the Place would be affected by a refusal to issue a permit for the proposed works, and that no economic or financial arguments in relation to the proposed works were effectively made by either the Appellant or Corangamite.
4. The Committee determines, pursuant to the Act, that the owner is Corangamite and that a refusal to issue a permit for the proposed works would not affect the reasonable or economic use of the Place, or cause undue financial hardship to the owner in relation to the Place.

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

1. All parties made submissions that, broadly, gave views on the protection and conservation of the Place.
2. Several parties made submissions relating to the use of documents to guide the protection, conservation and management of the Place, including the 2014 Masterplan.
3. Several parties also made submissions as to the desirability for the completion of documents to guide works to the Place, such as a CMP.

*Submissions and evidence*

1. The Executive Director, in reply to Corangamite’s written submission that the 2014 Masterplan provided guidance for the management of the Place, submitted that the 2014 Masterplan ‘makes no reference to the proposed swimming pool; the jumping pillow; the location of significant trees and does not address vehicle parking within the grounds of the caravan park’. The Executive Director confirmed that the 2014 Masterplan had not been prepared with input or feedback from Heritage Victoria. The Executive Director submitted that the introduction of new infrastructure would limit the opportunity to undertake conservation work in the form of tree management and planting. In a submission in reply the Executive Director agreed with the majority of parties that the preparation of a CMP is ‘a critical action and one which is overdue’ to direct the future conservation and management of the Place. The Executive Director submitted, however, that a CMP should not form part of conditions of any permit issued, due to the potential for any works permitted running counter to conclusions and recommendations that may result from a CMP.
2. Corangamite submitted that conditions should be included in a permit for the proposed works requiring the preparation of: a CMP; a Landscape or Landscape Architecture Plan consistent with any recommendations of the CMP; and the preparation and implementation of a Tree Management Plan by a suitably qualified and experienced arborist. Corangamite submitted that a permit should be granted in order to ensure the ‘sustainable use of the land’ and further submitted that the lack of a CMP ‘should not be an impediment to decision making on an individual permit application’.
3. In cross examination, both Mr Lovell and Mr Gard’ner considered that while having a CMP would be advantageous, the fact that one is not in place should not prevent the consideration of buildings and works through the permit process.
4. Mr Galbraith stated that a Tree Management Plan should be developed, to be ‘conditional with the issue of any permit’, which would include ‘the mulching of all the TPZs within the confines of the [Caravan Park], and the addition of stormwater retention and reticulation systems for the new buildings’.
5. Mr Patrick stated that a Tree Management Plan should be prepared to ‘be implemented during the works program and that ‘future planting should conform to the recommendations of the [draft CMP Report]’.
6. The National Trust submitted that it wished ‘to see a landscaping plan prepared that considers the heritage of the Arboretum and the landscape aesthetic to be conserved’ and that the landscaping plan should consider a tree replacement program for the Arboretum.
7. CGBAT submitted that planning for the area of the Arboretum occupied by the Caravan Park must be undertaken in conjunction with planning for the whole Place, and that planning for the conservation and management of the site should be informed by a CMP and a Tree Management Plan.

*Discussion*

1. The Committee recognises that both the Appellant and Corangamite have undertaken some works that have improved amenities for visitors to the Place and have improved the ability of visitors to interpret the cultural heritage values of the Place, including removing fabric that, in the Committee’s view, is out of keeping with the open treed nature of the Arboretum and the aesthetic values of the Place.
2. Beyond the Caravan Park, the Committee observes that cattle grazing and some resultant damage to trees has recently occurred in the Arboretum and in addition some significant trees have been apparently inexpertly pruned in its northern section.
3. The Committee agrees with the submissions made by the Executive Director, Corangamite and the expert witnesses it called, the National Trust, CGBAT, the Society and Mr Gard’ner as to the desirability of the preparation of a CMP to guide the protection, conservation and management of the Place and notes that the need for a CMP was identified in the original decision in 2011 to register the Place on the Victorian Heritage Register.
4. The Committee has formed the view that a CMP, and subsequent related documents arising from the findings or recommendations of a CMP, should direct the future use, protection, conservation and management of the Place.
5. The Committee strongly encourages Corangamite, as the land manager, to complete a CMP, in consultation with Heritage Victoria, the leasee and other groups with an interest in the Place, to guide future decisions for the Place.

**CONCLUSION**

1. The Committee determines, pursuant to s76(4)(a) of the Act, to issue a permit for some of the proposed works, that is, the construction of the two (2) southernmost cabins (between the existing cabins 5 and 6, as described in the allowed amended plans), with conditions as outlined in Attachment 2.
2. The Committee determines, pursuant to s76(4)(b), to confirm the decision of the Executive Director in relation to the remainder of the proposed works, that is, the refusal to issue a permit in relation to: the two (2) northernmost cabins; the two (2) cabins located in the east central area of the Caravan Park; the jumping pillow; and, the swimming pool and related infrastructure.
3. The Committee determines that a Landscape Management Plan is to be prepared, and that a final copy be given to the Executive Director for written approval, before the commencement of any works approved by this permit (see Condition 2).
4. The Committee determines that a Tree Management Plan is to be prepared and that a final copy be given to the Executive Director for written approval, before the commencement of any works approved by this permit (see Condition 3).



**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 to in writing by the Executive Director, Heritage Victoria.

1. Prior to commencement of the works, the Owner shall provide a completed Landscape Management Plan, prepared by an independent and suitably qualified landscape architect or landscape heritage/landscape management expert, which must show the following:
   1. surface treatments, steps, decking and paths
   2. new tree planting that responds to the statement of significance for the Registered Place
   3. provision for mulching and /or small planting underneath the Tree Protection Zone (TPZ) as identified with the Tree Management Plan.

The Landscape Management Plan must be submitted to the Executive Director for written approval. Once the Landscape Management Plan has been approved in writing by the Executive Director, as a document to guide the conservation and management of the landscape at the Place, the permitted works may commence.

1. Prior to commencement of the works, the Owner shall provide a completed Tree Management Plan, prepared by an independent and suitably qualified and experienced arborist. The Tree Management Plan must show the following:
2. location of all Tree Protection Zones (TPZ)
3. any excavation works or activities to be located outside the TPZ unless the works are undertaken by a non root destructive means under arboricultural supervision
4. installation of stormwater tanks
5. provision for the management of car parking on the land
6. provision for the maintenance of any mulching and/or small planting underneath the TPZ
7. appropriate mitigation measures during the construction phase, including appropriate temporary fencing around TPZs.

The Tree Management Plan must be submitted to the Executive Director for written approval. Once the Tree Management Plan has been approved in writing by the Executive Director, as a document to guide the conservation and management of the landscape at the Place, the permitted works may commence.

1. The works approved by this permit 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.
2. 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.
3. The works approved by this permit are to be carried out in accordance with the amended plans so far as they describe the permitted works, unless otherwise agreed in writing by the Executive Director, Heritage Victoria.