

Permit appeal number P16736

**Part of Former Foy and Gibson Complex (H0755)**

**68-158 Oxford Street, 103-115 Oxford Street, 107-131 Cambridge Street and 7 Stanley Street, Collingwood.**

**Heritage Council Permits Committee**

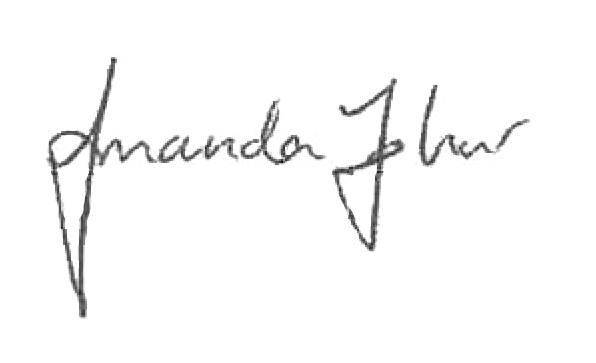
**Hearing – Friday 29 August 2011**

**Members – Ms Amanda Johns (Chair), Mr Ken MacLeod, Ms Emma Russell**

**Decision of the Heritage Council**

After considering the appeal and conducting a hearing, pursuant to Section 76(4)(c) of the *Heritage Act 1995* the Heritage Council determines to vary Permit P15668 as follows:

* Delete condition 1(a), condition 1(b) and condition 1(c).
* Vary condition 4 to read: *The applicant shall appoint an interpretation consultant to prepare an interpretation program for the part of the registered place to be developed in accordance with this permit. Details of the proposed interpretation program are to be submitted to the Executive Director for approval. The approved interpretation program is to be implemented by the applicant as part of the approved works.*
* The Committee finds that condition 5 should be retained.

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| **Ms Amanda Johns (Chair)** |  | **Mr Ken MacLeod** |  | **Ms Emma Russell** |

**Decision Date – 28 November 2011**

**Appearances**

**Executive Director, Heritage Victoria**

Ms Robyn Mullens appeared for the Executive Director. Ms Mullens was assisted by Ms Aleksandra Janesic, Principal Lawyer, Legal and Freedom of Information Branch, Department of Planning and Community Development.

**Appellant**

Ms Susan Brennan appeared on behalf of Heatland Pty Ltd. Ms Brennan called Mr Bryce Raworth (Heritage Consultant) and Mr Matt Ainsaar (Property Valuer) as witnesses.

**Mr Simon Tan and Ors**

Mr Dominic Scally of Best Hooper Solicitors appeared on behalf of Mr Simon Tan and other objectors, being occupiers of 68 Oxford Street, Collingwood. Mr Scally called Ms Robyn Riddett (Heritage Consultant) as an expert witness.

**City of Yarra**

Mr Matt Cohen and Ms Ally Huynh appeared on behalf of the City of Yarra.

**Other Objectors**

Mr Andrew Endall and Ms Jennifer Gibb of 109 Cambridge Street, Collingwood.

**Introduction**

**The Registered Place**

1. The registered place is part of the former Foy and Gibson factory complex. The registered portion of the complex stretches over three blocks on Collingwood Hill. The blocks are bounded by Wellington Street to the east, Little Oxford Street to the west, Stanley Street to the north and Peel Street to the south. The portion of the complex on the register is included in three parts – H0755 (68-158 Oxford Street, 103-115 Oxford Street, 107-131 Cambridge Street and 7 Stanley Street), H0896 (79-93 Oxford Street) and H0897 (95-101 Oxford Street). This application relates to land affected by registration H0755.
2. The Subject Site (at 107 Cambridge Street) is only part of H0755. The southern and central part of the Site is occupied by a modern warehouse building. The title for the Site also takes in the southern portion of the Engineering and Machine Workshop, a two storey building designed by William Pitt and erected in 1900. The façade of the workshop remains largely intact, although the interior has been extensively altered.

**Why is the Foy and Gibson Complex Significant?**

1. The Statement of Significance (Attachment 1) provides that the Foy and Gibson complex is of historical and architectural significance to the state of Victoria. In relation to the historical significance of the complex, the statement details that:

*The Former Foy and Gibson complex is of historical significance as both a magnificent 19th and early 20th century industrial complex and as an example of the development of early department store retailing, demonstrating the articulations between retail and manufacturing functions that typified the organisation of consumption in the 19th and early 20th century city. As such the complex provides extremely important information about the economic, industrial and social organisation of the period. The Foy and Gibson company was a pioneer in the history of retailing in Melbourne. Its department store chain, Melbourne's earliest, was modelled on the trading principles of the ‘Bon Marche’ of Paris and other European and American stores. The Foy and Gibson factories and warehouses, which were responsible for the production and delivery of goods to the department stores, were remarkable for the range of goods that they produced, including soft furnishings, manchester goods, clothing, hats, hardware, leather goods, furniture and a range of foods. Such production, wholesaling and retailing arrangements, which were an indication of the largely local focus of producer, supplier and retailer networks, are rare in contemporary retail establishments which source their products from all over the world.*

*The Former Foy and Gibson complex is of historical significance as a rare surviving major industrial establishment of the late 19th and early 20th century. As early as 1906 it was described as ‘undoubtedly the largest factory in the Southern hemisphere’. The complex employed 2000 people and was considered technologically advanced, employing steam and electric power from an early date. Today, however, the equipment and shafting have been removed and the boiler house stacks form the only extant evidence of Foy and Gibson's technological achievements.*

1. In relation to the architectural significance of the complex, the Statement of Significance provides that:

*The Former Foy and Gibson complex is of architectural significance as an imposing and substantially intact example of late 19th century industrial architecture and for its associations with the eminent Melbourne architect, William Pitt (1855-1918), who retained Foy and Gibson as a client for most of his professional life. Visually, the complex is remarkably cohesive, the formula for the design, once established, being repeated with little change in the selection of materials and decorative motifs. Although a few of the buildings have been gutted, the exterior fabric remains substantially intact. The principal facade elements consist of rusticated pilasters between windows above a lower cornice line and capped by a similar cornice and parapet. The street level and first floor facades have chamfered pilasters whilst the cornices and lintels (in later work) are stuccoed. The street environments are rare in Melbourne for their uniformity and are complemented by the bluestone pitchered drains and crossings and the remarkable weighbridge in Oxford Street.*

*William Pitt was a respected architect, with a great talent for distinctive industrial buildings. As well as the vast Collingwood factory complex, Pitt was responsible for the retail store design for the 1911 Smith Street Diamond Cut Lingerie building in Fitzroy. The factory complex can be compared with Pitt’s early sections of the Victoria Brewery complex, the facade of which formed the prototype for many later additions, and with his Bryant and May complex in Church Street, Richmond.*

**Permit Application**

1. A permit application (dated 24 March 2010) was received by the Executive Director on 7 April 2010. The application sought a permit to:

*Redevelop the subject site including partial demolition of the existing building, for the purposes of a six (6) storey building, comprising 92 residential apartments (81 one bedroom apartments, 10 two bedroom apartments and 1 three bedroom apartment), 92 car spaces and 28 bicycle spaces.*

*The existing ‘Modern’ Building on the site is to be demolished, with the portion of the existing Foy & Gibson building’s façade to be retained, adjacent to the boundary with 109 Cambridge Street*.

1. Plans dated 17 February 2010 for the development were submitted with the permit application.
2. Pursuant to s68 of the *Heritage Act* *1995* (**the Act**) the Executive Director decided to advertise the permit application. The application was advertised on the site, on the Heritage Victoria website and in the *Age* newspaper on 12 May 2010. During the 14 day submission period, over 30 objections were received and an interested parties meeting was held on 28 June 2010.

**Determination of the Executive Director**

1. On 15 December 2010, the Executive Director issued a Permit (P15688) for the demolition of the modern warehouse building at 107 Cambridge Street and the re-development of the site with an apartment building. The Permit (Attachment 2) included 14 conditions.

**Permit Appeal**

1. On 11 January 2011 the Heritage Council received an appeal by the Applicant against several of these permit conditions. Specifically, the Applicant sought to have conditions 1(a), 1(b), 1(c) and 4 deleted and to amend condition 5.

**Site Inspection**

1. The Committee conducted an unaccompanied inspection of the exterior of the Subject Site and the broader Foy and Gibson complex on 23 August 2011.

**Preliminary Matters**

Submissions from persons not a party to the proceedings

1. The Heritage Council determined that it would consider the contents of submissions made during public notification of the permit application. Following the lodging of the appeal, a number of persons also sought leave to be heard by the Heritage Council. These included Mr Simon Tan and others, of 68 Oxford Street (represented by Dominic Scally of Best Hooper) and Mr Andrew Endall and Ms Jennifer Gibb of 109 Cambridge Street.
2. The Council is not required by the Act to consider submissions made by other parties, but under s11(d) of the Act has the discretion to have regard to any information it considers relevant in carrying out its functions.
3. The Committee has determined that the submissions are relevant and granted those who made them, the right to be heard at the hearing

68 Oxford Street

1. A number of submissions dealt with the way in which the proposed works would impact on a specific building in the complex. The building was variously referred to as 68 or 70 Oxford Street. The Committee notes that the Register simply refers to the portion of the complex on the eastern side of Oxford Street as 68-158 Oxford Street, while the Land Data website contains reference to a 68 Oxford Street, but no reference to a 70 Oxford Street. Despite these discrepencies, it was common ground that the parties were discussing the 4-5 storey structure that formed the southern part of the Foy and Gibson complex near to Peel Street. For the purpose of its decision, the Committee has identified this building as 68 Oxford Street.

The height of the proposed building

1. In submissions made to the Council, the proposed structure is variously described as being five and six storeys tall. The inconsistency seems to be the result of the original planning application which describes the erection of a ‘six storey building’[[1]](#footnote-1) but elsewhere omits mention of the sixth storey. The plans submitted with the original permit application illustrate a five storey structure and condition 1(a) of permit P15668 refers to the deletion of the upper (Level 5) of the apartment building.

The Registered Place

1. In terms of this proposal the registered place is H0755 described in the Register as 68-158 Oxford Street, 103-115 Oxford Street, 107-131 Cambridge Street and 7 Stanley Street, Collingwood.
2. The Committee, in considering the impact on the registered place must consider the impact on this particular registered place. It has, however, also given consideration to the broader registered place, being the Foy and Gibson factory complex as the Statement of Significance relates to the three registered places that form the registered complex.

**ISSUES**

**Summary of Issues**

1. In considering the original permit application, the Executive Director was pursuant to s73(1)(a) of the Act, required to consider ‘the extent to which the application, if approved, would affect the cultural heritage significance of the registered place’.
2. In an appeal against the conditions, the Committee is required to look at the difference between the proposal as approved by the Executive Director and the proposal as originally submitted. The Committee is required to consider whether the conditions imposed are necessary to protect or conserve the cultural heritage significance of the place and are necessary and reasonable in the circumstances.
3. In this instance, the Committee is required to consider whether permit conditions 1(a), (b) and (c) are necessary to conserve and protect the cultural heritage significance of the place in terms of its historical and architectural significance.
4. The Committee is also required to consider whether conditions 4 and 5 are necessary and reasonable.
5. The Committee has considered each of the conditions appealed in turn.

**Conditions 1(a) and (b)** – **Reduction in Height and Bulk**

1. Condition 1(a) requires that:

*Prior to the commencement of works and/or activities, the following revisions shall be made to the drawings (including the plans elevations and section):*

*Delete the upper level (Level 5) of the apartment building.*

1. Condition 1(b) requires that:

*Prior to the commencement of works and/or activities, the following revisions shall be made to the drawings (including the plans elevations and section):*

*Delete apartments 3.08 and 3.09 and apartments 4.08 and 4.09 of Levels 3 and 4 of the apartment building to increase views through to 70 Oxford Street from Cambridge Street*

1. As both conditions are, according to the Executive Director, intended to reduce the visual bulk of the proposed building and allow views through to 68 Oxford Street, they have been considered together.

*Submissions and evidence*

The Executive Director

1. The Executive Director imposed the conditions reducing the height and increasing the setbacks as he considered them necessary to protect and conserve the heritage significance of the place. In particular he sought to protect the heritage significance of 68 Oxford Street and views to that building. The Executive Director argued that the building at 68 Oxford Street was designed ‘in the round’ and that, as a result, views to the building were a significant aspect of the cultural heritage significance of the place.
2. In his view, the works, as originally proposed, would have *‘*had a major impact on internal views across the site and views from within internal laneways – a significant part of any industrial nineteenth and early twentieth century development complex.’[[2]](#footnote-2)
3. The Executive Director argued that conditions 1 (a) and (b) were each intended to mitigate this impact by

*Provid*[ing] *for a reduction in height to reduce the scale of the building and address the Executive Director’s concerns about view lines and the adverse heritage impact on cultural heritage significance*.[[3]](#footnote-3)

1. The Executive Director asserted that condition 1(a) was aimed at ‘mitigating the adverse heritage outcomes of the current proposal’[[4]](#footnote-4) and would ‘reduce the visual impact on the registered Foy and Gibson complex…and set the new building more clearly below the significant east elevation of 70 Oxford Street – being set below the significant parapet and upper floor level windows.’[[5]](#footnote-5)
2. In a similar vein, in the view of the Executive Director, the imposition of condition 1 (b) will:

*Provide a further visual separation between 70 Oxford Street and the new building – reducing the foot print of the upper level of the new building so that it is not greater than the footprint of 70 Oxford Street at levels 3 and 4. The deletion of these apartments also provides for some views from across Cambridge Street to 70 Oxford Street and the expression of the southeast corner of 70 Oxford Street*.[[6]](#footnote-6)

The Applicant

1. The Applicant contended that the conditions were not necessary to protect and conserve the cultural heritage significance of the place. It argued that such significance would not be adversely affected by its proposal; in particular the height and mass of the proposed building would not impact adversely on 68 Oxford Street.
2. The Applicant submitted that the proposed development was appropriate given the scale of the Foy and Gibson complex.

*The statement of significance records its importance as an industrial complex which communicates the scale, organisation and link between retailing, manufacturing and consumption in the late 19th and early 20th centuries. Having regard to the nature of its significance, the extent of change which has been permitted within this complex and in other comparable industrial complexes, it is submitted that the proposed development without modifications required by the contested conditions achieves an acceptable and appropriate heritage outcome.[[7]](#footnote-7)*

1. Submissions took issue with the Executive Director’s assessment that the building was designed ‘in the round’.

*There is no evidence to support a claim that the building at 70 Oxford Street…was designed ‘in the round’ or as the principal building in the complex. In the owner’s submission, the eastern elevation of 70 Oxford Street is the rear and a secondary façade of the building.[[8]](#footnote-8)*

1. Ms Brennan submitted that, even if the Committee was of the view that the complex was designed ‘in the round’, the works would not detract from the significance of the place or assist in the interpretation of 70 Oxford Street and that conditions 1(a) and (b) should be deleted.

*The significance of the complex is not unacceptably diminished by the introduction of a new building form into views of the complex from the public domain. Nor is it unacceptably diminished by reducing views to one façade of a heritage building within the complex. The complex will continue to read as a large industrial site which incorporated multiple manufacturing functions associated with the Foy and Gibson Retail Empire.*[[9]](#footnote-9)

1. Mr Bryce Raworth supported the deletion of the conditions considering that their removal would not adversely affect the cultural heritage significance of the place.

Simon Tan & others

1. Mr Scally supported the Executive Director’s finding that the complex was designed ‘in the round’ and submitted that all views to it were significant. In this regard he noted that the addition of three levels above the parapet level of the Engineering Machine Workshop ‘will completely obscure visibility of the east façade and signage of No.68 from views in Cambridge Street and oblique views of Peel Street’ and, as a result, the proposed works will impact upon the heritage significance of the place.[[10]](#footnote-10) Mr Scally concluded that 68 Oxford Street was unique within the Foy and Gibson complex as:

*The only building … which is able to be viewed expansively in the round at least at the upper floor levels and as such is a clear indicator and advertisement for Foy & Gibson and something of a flagship in the Complex*

1. In her expert evidence, Ms Riddett also highlighted the prominence of 68 Oxford Street which she described as a ‘historical fact’ and noted that the ‘same architectural detailing on all facades and display of business identification’ was proof that it was intended to be viewed from all angles.[[11]](#footnote-11)
2. Ms Riddett was of the opinion that the view of the eastern façade and signage at 68 Oxford Street was significant and that conditions 1(a) and (b) were justified because they successfully preserved significant elements of this view.

Mr Endall and Ms Gibb

1. In written and oral submissions to the Committee, Mr Endall and Ms Gibb expressed concern about the scale of the development and argued that ‘a development of the proposed current scale and form without significant changes would dominate this section of the Engineering Workshop’.[[12]](#footnote-12) They supported the reduction in the height of the proposed building as a result of the imposition of conditions.

Collingwood Historical Society

1. The Collingwood Historical Society made written submissions. It supported the imposition of conditions 1(a) and (b) and expressed concerns similar to Mr Endall and Ms Gibb in that the development as originally proposed would:

* *introduce a large modern building that will dominate a significant Victorian/Edwardian industrial site*
* *obstruct view lines to the significant Foy and Gibson buildings, in particular 68 Oxford Street; and*
* *not comply appropriately with a number of aspects of the Yarra Planning Scheme including the Heritage and Urban Design Guidelines.*

Other Submissions

1. In addition to considering the submissions detailed above, the Committee has also considered submissions lodged with the Executive Director during the public notification of the permit application. Three key areas of concern were identified in these submissions. The first related to the scale of the proposal[[13]](#footnote-13), the second to its capacity to obscure views to 68 Oxford Street[[14]](#footnote-14) and the third to its detrimental impact upon the heritage character of the Foy and Gibson precinct.[[15]](#footnote-15)

*Discussion and Conclusion*

Are conditions 1(a) and (b) necessary to conserve and protect the historical significance of the Foy and Gibson Complex?

1. The Committee finds that conditions 1(a) and (b) are not necessary to preserve the historical significance of the subject registered place or the Foy and Gibson complex as a whole.
2. The historical significance of the place, as identified in the Statement of Significance, is connected to the importance and scale of the operations of the firm of Foy and Gibson. The proposed works will have limited impact upon the physical fabric of the remaining parts of the registered place, or the complex.
3. The Committee does not consider that by concealing part of the façade and in particular the signage to the eastern side of 68 Oxford Street, the development will detract from the historical significance of the place. The works approved pursuant to the Permit already obscure the majority of the façade. The proposal submitted by the Applicant will only result in the loss of the view from one area towards one portion of the signage on one façade of one building within the registered place.
4. The Committee does not believe that the partial obstruction of the vista towards 68 Oxford Street will unacceptably detract from the heritage significance of the registered place, or distort the visitor’s appreciation of the heritage values of the place.
5. The Committee considers that the retention of Level 5 and apartments 3.08, 3.09, 4.08 and 4.09 will not adversely affect the historical significance of the place.

Are conditions 1(a) and (b) necessary to conserve and protect the architectural significance of the Foy and Gibson Complex?

The Committee finds that conditions 1(a) and (b) are not necessary to preserve the architectural significance of the Foy and Gibson complex.

1. The demolition proposal mainly involves the removal of a modern building not forming part of the heritage fabric. The façade of the adjoining Engineering and Machine Workshop building will be largely retained. As a result, the Committee does not consider that the proposal impacts on the architectural significance of the registered place and is of the view that there is no need for conditions 1(a) and (b) to be included on the permit. The greater part of the architecture of the complex is retained and the fact that parts of 68 Oxford Sreet are obscured does not adversely impact on the architectural significance of the place or the complex.
2. The Committee considers that this proposal including level 5 and apartments 3.08, 3.09, 4.08 and 4.09 will not affect the architectural significance of the place.

**Condition 1(c)** – **The Parapet Wall and the Return Walls**

1. Condition 1(c) requires that

*Prior to the commencement of works and/or activities, the following revisions shall be made to the drawings (including the plans elevations and section):*

*Amend the apartments immediately behind the Engineering Workshop parapet to retain the parapet and return wall to enable this section of the building to better relate to the historic building at 109 Cambridge Street*

*Submissions and evidence*

The Executive Director

1. The Executive Director noted that: ‘The original proposal was to have simply retained the façade of the southern part of the Engineering Workshop along Cambridge Street.’ The imposition of condition 1(c):

*Attempts to address the adverse heritage impact of the proposal on the Engineering Workshop on Cambridge Street…*[and] *aims to retain the parapet and return walls for the* [portion of the Engineering Workshop on the Subject Site] *to better relate to the remainder of the Engineering Workshop* [at 109 Cambridge Street].[[16]](#footnote-16)

1. The Executive Director argued that the condition was important because ‘it will provide a better design and heritage outcome and avoid the two parts of the Engineering Workshop parapet being treated differently.’[[17]](#footnote-17)

The Applicant

1. The Applicant maintained that the removal of the condition would not detract significantly from the cultural heritage significance of the place. Mr Raworth, noted that the retention of the parapet and return walls was simply a form of facadism and that the imposition of the permit condition did little to protect the significance of the place. The Applicant’s evidence was that they would be retained in any case as shown on the plans.

Mr Endall and Ms Gibb

1. Mr Endall and Ms Gibb made submissions relating to the proposed scale of the development and in particular its impact upon the Engineering Workshop. Their submissions maintained that condition 1(c) was ‘open to interpretation’ on the basis that it did not ‘stipulate specific changes to the scale or design of the development in the vicinity of the Engineering Workshop parapet and return wall’.[[18]](#footnote-18)
2. They argued that the only way to properly protect the heritage fabric was for the parapet and return walls to both ‘remain as prominent visual features’ and that this was best achieved by ‘ensuring that the development is not integrated into this part of the Engineering Workshop’s original fabric and is appropriately set back from these features’. They requested that the permit be amended to achieve this.

*Discussion and conclusion*

1. The Committee has reviewed the plans endorsed by the Executive Director on 15 December 2010. The plans show the retention of the full length of both the parapet wall and the return wall.
2. As such, in the Committee’s view the imposition of condition 1(c) is of little effect, because the retention of the parapet and return walls was already detailed in the endorsed plans which formed part of the approved permit.
3. As the removal of the condition will not alter the applicant’s obligation to retain both the return wall and the parapet wall, the Committee considers the point to be moot. As no additional obligation is placed upon the Applicant by the permit condition, the Committee agrees to its removal.

# Condition 4 – Interpretation

1. Condition 4 of the permit required that the Applicant:

*Shall appoint an interpretation consultant to prepare an interpretation program for the registered place. Preparation of an interpretative brochure of the Foy and Gibson complex and a walking tour would be acceptable components of the interpretative program. Details of the proposed interpretation program are to be submitted to the Executive Director for approval. The approved interpretation program is to be implemented by the applicant as part of the approved works.*

*Submissions and evidence*

1. The Applicant appealed the condition on the basis that ‘the requirement for an interpretation program is inappropriate and impractical’, particularly given that the proposed development only relates to a small portion of the registered place. In oral submissions, Ms Brennan noted that the Applicant had no objection to providing interpretation for the portion of the site that it seeks to develop.
2. The Executive Director argued that the interpretation condition ‘is a fairly standard permit requirement for heritage permits issued for a major development at a heritage place’.[[19]](#footnote-19) The Executive Director provided other examples of interpretative works that had been completed and noted that ‘these conditions have not generally been appealed’.[[20]](#footnote-20)
3. Neither the Executive Director nor other submitters made detailed submissions in relation to this point.

*Discussion and conclusion*

1. The Committee accepts that as the Executive Director has noted, the requirement for an interpretation program is a relatively common condition, particularly in the case of larger developments. The Committee also recognises the importance of interpretation in providing information about significant heritage places.
2. The Committee is, however, of the view that it is only reasonable to expect the Applicant to provide interpretation for the portion of the registered place that it owns and seeks to develop. On this basis the Committee accepts the oral submission of Ms Brennan and amends Condition 4 to read:

*The applicant shall appoint an interpretation consultant to prepare an interpretation program for the portion of the registered place to be developed in accordance with this permit. Details of the proposed interpretation program are to be submitted to the Executive Director for approval. The approved interpretation program is to be implemented by the applicant as part of the approved works.*

# Condition 5 - Bank Guarantee

1. Condition 5 of the permit requires that:

*Prior to the commencement of the permitted work and, in accordance with s74(4) of the Heritage Act 1995, an unconditional bank guarantee, to the total value of $100,000 or other amount as agreed by the Executive Director, will be lodged with the Executive Director, Heritage Victoria, to ensure the satisfactory completion of the conservation works and the interpretation program. The bank guarantee will be made out to the Heritage Council and be released on written application to the Executive Director, subject to satisfactory progress and/or completion of the conservation works and interpretation program.*

*The bank guarantee will be forfeit if construction works and interpretation program are not completed to the satisfaction of the Executive Director by 31 December 2012.*

*Submissions and evidence*

1. The Applicant submitted that the ‘scope of the conservation works does not warrant a bank guarantee’ and that in the circumstances, the requirement was unreasonable.
2. The Executive Director argued that:

*The requirement for a bank guarantee is also a standard requirement for a major development such as these proposed works. The bank guarantee usually requires sufficient amount to provide security for the completion of any conservation works to provide security that conservation works are completed.* [Sic] *In addition, the bank guarantee usually also includes a reference to the interpretation program which otherwise tend*[s] *to be overlooked at the completion of the physical works.*

*Whilst $100,000 is a nominal amount the condition includes the wording ‘or other amount as agreed by the Executive Director’, which enables the amount of the bank guarantee to be fine tuned to the final estimates for conservation works and interpretation program.*[[21]](#footnote-21)

*Discussion and conclusion*

1. The Committee accepts that a bank guarantee is a common way of providing security for heritage assets in the event of a major re-development. The amount of the guarantee is negotiable, and the Applicant is free to request a reduction in the amount of the guarantee if the cost of the conservation and interpretation works is less than the amount of the guarantee. The Committee does not believe that the current condition is unreasonable and declines to remove or vary it.

**Other Considerations**

1. Section 73(1)(b) of the Act requires the Committee to consider:

*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. As was noted in *Staged Developments*, this is a ground for granting a permit when it would otherwise have been declined.[[22]](#footnote-22)

*Submissions and evidence*

1. The Applicant submitted that while a permit had been granted, the consideration of whether the refusal of a permit would impact upon the ‘reasonable and economic use of the place’ was a relevant consideration if the conditions rendered the proposal unviable, and therefore adversely affected the economic use of the registered place. Evidence from Mr Matt Ainsaar was presented which detailed the economic impact of the Permit conditions.
2. Mr Scally submitted that s73(1)(b) of the Act was only relevant in circumstances where a permit had been refused and that, as a permit had not been refused in this instance, it was not a relevant consideration. Further, Mr Scally submitted that the Act referred to the impact upon the ‘registered place’. In this instance, the registered place is the entire portion of the Foy and Gibson complex contained within H0755, so even if the Committee believed that it was relevant, any impact on economic use had to be viewed in terms of the registered place. He submitted that in any case the conditions did not render the place unviable.
3. Neither the Executive Director nor other submitters made detailed submissions in relation to this point.

*Discussion and conclusion*

1. The Committee finds that this consideration is not relevant to its decision, as it has decided in favour of the applicant in relation to conditions 1(a) and 1(b) and therefore the applicant is permitted to build the development it proposes.

**Conclusion**

1. The Committee is of the view that conditions 1(a), 1(b) and 1(c) of permit P15668 should be deleted as requested by the Applicant.
2. Further, the Committee finds that condition 4 of P15668 should be amended to read:

*The applicant shall appoint an interpretation consultant to prepare an interpretation program for the portion of the registered place to be developed in accordance with this permit. Details of the proposed interpretation program are to be submitted to the Executive Director for approval. The approved interpretation program is to be implemented by the applicant as part of the approved works.*

1. The Committee finds that condition 5 should be retained.



**ATTACHMENT 1**

Statement of Significance

*What is significant?*

The Former Foy and Gibson complex of warehouses, factories and showrooms was constructed to the design of the notable architect William Pitt over a long period beginning c.1887. The extant buildings in the portion now owned by Roxbury Holdings Pty Ltd, which contains almost two-thirds of the complex, date from 1895 until the second decade of the 20th century. This portion covers almost the whole block bounded by Cambridge, Oxford, Stanley and Peel Streets.

*How is it significant?*

The Former Foy and Gibson complex is of historical and architectural significance to the State of Victoria.

*Why is it Significant?*

The Former Foy and Gibson complex is of historical significance as both a magnificent 19th and early 20th century industrial complex and as an example of the development of early department store retailing, demonstrating the articulations between retail and manufacturing functions that typified the organisation of consumption in the 19th and early 20th century city. As such the complex provides extremely important information about the economic, industrial and social organisation of the period. The Foy and Gibson company was a pioneer in the history of retailing in Melbourne. Its department store chain, Melbourne's earliest, was modelled on the trading principles of the "Bon Marche" of Paris and other European and American stores. The Foy and Gibson factories and warehouses, which were responsible for the production and delivery of goods to the department stores, were remarkable for the range of goods that they produced, including soft furnishings, manchester goods, clothing, hats, hardware, leather goods, furniture and a range of foods. Such production, wholesaling and retailing arrangements, which were an indication of the largely local focus of producer, supplier and retailer networks, are rare in contemporary retail establishments which source their products from all over the world.

The Former Foy and Gibson complex is of historical significance as a rare surviving major industrial establishment of the late 19th and early 20th century. As early as 1906 it was described as "undoubtedly the largest factory in the Southern hemisphere". The complex employed 2000 people and was considered technologically advanced, employing steam and electric power from an early date. Today, however, the equipment and shafting have been removed and the boiler house stacks form the only extant evidence of Foy and Gibson's technological achievements.

The Former Foy and Gibson complex is of architectural significance as an imposing and substantially intact example of late 19th century industrial architecture and for its associations with the eminent Melbourne architect, William Pitt (1855-1918), who retained Foy and Gibson as a client for most of his professional life. Visually, the complex is remarkably cohesive, the formula for the design, once established, being repeated with little change in the selection of materials and decorative motifs. Although a few of the buildings have been gutted, the exterior fabric remains substantially intact. The principal facade elements consist of rusticated pilasters between windows above a lower cornice line and capped by a similar cornice and parapet. The street level and first floor facades have chamfered pilasters whilst the cornices and lintels (in later work) are stuccoed. The street environments are rare in Melbourne for their uniformity and are complemented by the bluestone pitchered drains and crossings and the remarkable weighbridge in Oxford Street.

William Pitt was a respected architect, with a great talent for distinctive industrial buildings. As well as the vast Collingwood factory complex, Pitt was responsible for the retail store design for the 1911 Smith Street Diamond Cut Lingerie building in Fitzroy. The factory complex can be compared with Pitt?s early sections of the Victoria Brewery complex, the facade of which formed the prototype for many later additions, and with his Bryant and May complex in Church Street, Richmond.



**ATTACHMENT 2**

**Permit issued by Executive Director**

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**ATTACHMENT 3**

Section 73 matters to be considered in determining applications

(1) In determining an application for a permit, the Executive Director must consider—

(a) the extent to which the application, if approved, would affect the cultural heritage significance of the registered place or registered object; and

(ab) if the application relates to a listed place or to a registered place or registered object in a World Heritage Environs Area, the extent to which the application, if approved, would affect—

(i) the world heritage values of the listed place; or

(ii) any relevant 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 or registered object, or cause undue financial hardship to the owner in relation to that place or object; and

(c) any submissions made under section 69; and

(d) any decision of the Heritage Council under section 72 which has been received; and

(e) if the Appellant is a public authority, the extent to which the application, if refused, would unreasonably detrimentally affect the ability of the public authority to carry out a statutory duty specified in the application; and

(f) any matters relating to the protection and conservation of the place or object that the Executive Director considers relevant.

(1A) In determining an application for a permit, the Executive Director may consider—

(a) the extent to which the application, if approved, would affect the 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; and

1. any other relevant matter.

1. SJB Planning Pty Ltd, 29 March 2010, p7. [↑](#footnote-ref-1)
2. Executive Director, 29 July 2011, p.8. [↑](#footnote-ref-2)
3. Executive Director, 29 July 2011, p.12. [↑](#footnote-ref-3)
4. Executive Director, 29 July 2011, p.8. [↑](#footnote-ref-4)
5. Executive Director, 29 July 2011, p.12. [↑](#footnote-ref-5)
6. Executive Director, 29 July 2011, p.12. [↑](#footnote-ref-6)
7. Susan Brennan, 1 August 2011, p.3. [↑](#footnote-ref-7)
8. Susan Brennan, 1 August 2011, p.3. [↑](#footnote-ref-8)
9. Susan Brennan, 1 August 2011, p.3. [↑](#footnote-ref-9)
10. Best Hooper, 28 July 2011, p. 3 [↑](#footnote-ref-10)
11. Best Hooper, 28 July 2011, p. 3 [↑](#footnote-ref-11)
12. Andrew Endall and Jennifer Gibb, 31 March 2011, p.4. [↑](#footnote-ref-12)
13. See, for example, Dennis Floyd, 18 September 2010. [↑](#footnote-ref-13)
14. See, for example, Edward Commons, 17 September 2010. [↑](#footnote-ref-14)
15. See, for example, Jurgen Dros, 17 September 2010. [↑](#footnote-ref-15)
16. Executive Director, 29 July 2011, p.12. [↑](#footnote-ref-16)
17. Executive Director, 29 July 2011, p.12. [↑](#footnote-ref-17)
18. Mr Endall and Ms Gibb, 31 March 2011, p.2. [↑](#footnote-ref-18)
19. Executive Director, 29 July 2011, p.13. [↑](#footnote-ref-19)
20. Executive Director, 29 July 2011, p.13. [↑](#footnote-ref-20)
21. Executive Director, 26 August 2011, p.14. [↑](#footnote-ref-21)
22. Staged Developments, at 119 & 122 [↑](#footnote-ref-22)