

Permit Appeal Number P24644

**GENERAL POST OFFICE (H0903), Permit Application P23303**

**CORNER BOURKE AND ELIZABETH STREETS, MELBOURNE**

**Heritage Council Permits Committee**

**Hearing – 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(2)(b) of the *Heritage Act 1995*, the Heritage Council has determined to issue a permit in part for proposed works associated with permit application P23303, that is for the installation of two balustrades to the Bourke Street colonnade, at the General Post Office. At the same time, pursuant to Section 76(2)(b) of the *Heritage Act 1995*, the Heritage Council has determined to confirm the decision of the Executive Director and refuse to issue a permit in relation to the remainder of the proposed works.

Heritage Council Permits Committee:

**Patrick Doyle (Chair)**

**Lucinda Peterson**

**Paul Coffey**

Decision Date: 9 September 2016

**APPEARANCES / SUBMISSIONS**

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

Ms Janet Sullivan, Principal Officer – Permits, Heritage Victoria, appeared and made verbal submissions representing the Executive Director, accompanied by Mr Martin Zweep.

**ISPT Pty Ltd (‘the Appellant’)**

The appeal was lodged by the tenant, ISPT Pty Ltd. ISPT Pty Ltd was represented by Mr Joseph Monaghan of Holding Redlich. The Appellant’s written submissions included statements of expert evidence from Ms Katherine White of Lovell Chen and Dr Michael Barbour of Greencap Risk and Safety. Mr Monaghan appeared, made verbal submissions and called on Ms White and Dr Barbour to give expert evidence.

**The City of Melbourne**

A written submission was received from the City of Melbourne. The City of Melbourne was represented by Mr Adam Birch, Planning Officer. The City of Melbourne’s written submission included a statement from Mr John Briggs, Heritage Advisor to the City of Melbourne. Mr Birch appeared, made verbal submissions and called on Mr Briggs to give expert evidence.

# **Introduction/background**

## **The Place**

1. The General Post Office Melbourne (‘the Place’) was included in the Victorian Heritage Register (‘the Register’) on 21 January 1992, having been transferred from the Government Building Register. The Place is situated on the corner of Bourke and Elizabeth Streets in the centre of Melbourne and is one of Melbourne’s most familiar landmarks.
2. The Place is included in the Register for its historical, architectural and social significance to the State of Victoria. The following is taken from the Statement of Significance for the Place:

*Why is it significant?*

*The General Post Office is historically significant as one of the most important public*

*buildings in Victoria. It represents the vital role played by postal communications in the early development of the colony by maintaining links with Britain and Europe, and forming the focus of a network of postal services throughout the dispersed population of Victoria. It also reflects the continuing importance of postal services in the state since 1841. The building is closely associated with the growth of Melbourne and Victoria as a colony and a State. The phases of development and expansion reflect the changing fortunes of the State.*

*The General Post Office is architecturally significant for its vast scale, unprecedented even in Britain. This is enhanced by the architectural grandeur and location of the building at the heart of Melbourne’s business district. The unified system of the trabeated architectural orders of Doric, Ionic and Corinthian columns and pilasters placed over an arcuated structure belies the buildings construction in several stages over a period of many years. The building's development is associated with several well known and individually recognised architects including Crouch and Wilson, Arthur Ebden Johnson, William Wardell, Walter Burley Griffin and John Smith Murdoch. Despite its incomplete state, the building retains a strong sense of unity and few buildings of the period retain internal spaces of such scale and grandeur in Victoria. The successful redesign of the ground floor, converting it from the original mail room to public space was one of American architect Walter Burley Griffin’s first Australian projects after his successful entry in the Canberra design competition.*

*The General Post Office is socially significant as a familiar public landmark. The approach stairs and clock tower are city landmarks and have provided the focus in Bourke Street for public meetings, demonstrations, Armistice Day celebrations and New Year's Eve revelries. The building is the point from which distances from Melbourne to other Victorian centres are measured.*

1. The Place is also included in the Victorian Heritage Inventory (H7822-1484), the Commonwealth Heritage List (ID 105516), and is subject to the Heritage Overlay under the Melbourne Planning Scheme, both as an individual site (HO544) and as part of the broader Post Office Precinct (HO509).

## **Permit Application**

1. In September 2015 the Appellant applied to the Executive Director, Heritage Victoria for a permit (‘the Application’) for the following works:
* Removal of existing handrails to the external colonnade steps.
* Installation of handrails to some of the stepped entries to the colonnade on both Elizabeth Street and Bourke Street frontages (for a total of 15 pairs of handrails: 11 pairs to Elizabeth Street and four pairs to Bourke Street).
* Installation of a balustrade panel to each of the colonnade arches that was not proposed to feature new handrails.
* Installation of tactile ‘buttons’ to the top stair tread, excepting where balustrades are proposed.
* Installation of tactile nosing strips to all step nosings.
* Conservation works to the steps generally.
1. The permit application was advertised on 30 September 2015 in accordance with s68 of the *Heritage Act 1995* (‘the Act’). No submissions were received in relation to the public advertisement.
2. Notice was also given to the City of Melbourne (‘Council’) pursuant to s71 of the Act. Council objected by letter dated 7 October 2015, attaching a statement entitled ‘Heritage Advice’, prepared by Mr John Briggs and dated 23 September 2015.

## **Determination of the Executive Director**

1. On 11 February 2016 the Executive Director determined to issue a permit for conservation works to the steps, the installation of tactile buttons, the installation of step nosings, the replacement of the existing handrails with handrails compliant with the Building Code of Australia and the installation of all of the new handrails that were proposed along both the Bourke Street steps and some of the handrails that were proposed along the Elizabeth Street steps (‘the permitted works’). In total the permit allowed for handrails to be installed at four of the six arches along the Bourke Street steps and at five of the 16 arches along the Elizabeth Street steps.
2. Also on 11 February 2016, the Executive Director refused to issue a permit for the remaining works the subject of the Application. These comprised the installation of six pairs of handrails on the Elizabeth Street steps, balustrade panels at four of the arched openings to the Elizabeth Street colonnade, and balustrade panels at two of the arched openings to the Bourke Street colonnade (‘the proposed works’).
3. The grounds given by the Executive Director for not permitting the proposed works were that:
* The balustrade panels and additional handrails will be visually intrusive. The stairs are particularly noted within the statement of significance as being a city landmark and the installation of fifteen sets of handrails and the closing of seven openings with balustrades will significantly alter the visual appreciation of the stairs and building.
* The balustrade panels will have the effect of enclosing the colonnade which historically has been an open walkway.
* Existing handrails already exist on the Elizabeth Street steps and the approval has been provided for these to be altered to comply with the Building Code of Australia.

**The appeal against the refusal to issue a permit for the proposed works**

1. An appeal against the refusal to issue a permit for the proposed works was lodged with the Heritage Council by the Appellant on 6 April 2016, pursuant to s75(2)(b) of the Act (‘the permit appeal’). Parties were notified and a hearing was scheduled for 7 July 2016.

**Site Inspection**

1. The members of the Heritage Council Permit Appeals Committee (‘the Committee’) conducted an unaccompanied site inspection of the Place on the morning of Thursday 7 July 2016, prior to the commencement of the hearing. The Committee was accompanied by the Heritage Council Hearings Coordinator and no submissions were sought or received at the time of the inspection.

**Preliminary matters**

*Late written submission*

1. The Committee received a written submission from the Appellant, which was circulated to all parties prior to the hearing but later than other submissions. The Committee determined to admit the Appellant’s written submission. The Committee notes in admitting the late submission that material relating to the Application, including the relevant officer’s reports, was circulated late to the Appellant, close to the submission due date, and that this justified an extension of time for the Appellant to prepare its submission. The Committee was satisfied that this extension of time did not cause any prejudice to the other parties.

*Status of the statement of Mr Briggs of 23 September 2015*

1. Mr Monaghan for the Appellant objected to Mr Briggs’ statement being accepted and treated as expert evidence. This was on the basis that the Appellant was unaware that Mr Briggs was to attend the hearing as an expert witness and was unprepared to conduct cross-examination, and therefore disadvantaged.
2. The Appellant did not oppose Mr Briggs being heard as a submitter; rather it opposed him being heard as an expert witness.
3. The Committee heard submissions from all parties on the question and after a consideration of those submissions determined to allow Mr Briggs to be treated as an expert witness. That was on the basis that Mr Briggs is recognised as an expert in the field of heritage architecture, that his written material had been circulated to all parties, and that Council had informed the Heritage Council of its intention to call Mr Briggs as an expert witness in the usual way.
4. The Committee accepted that the Appellant had been taken by surprise, through no fault of its own, and accepted that this was unfortunate. However the Committee did not find it appropriate or necessary to exclude Mr Briggs’ evidence on this basis.
5. The Committee noted its discretion to inform itself as it sees fit. In relation to the possible disadvantage to the Appellant, the Committee notes that the relevant report of Mr Briggs was not unduly technical or lengthy, and that there was only a modest volume of material before the parties in relation to this appeal. To deny Mr Briggs the opportunity to give expert evidence would have caused greater prejudice to Council than allowing him to give expert evidence would have caused to the Appellant.

*Legal submissions relating to the lawfulness of the Executive Director’s partial refusal of the Application*

1. These legal submissions arose from the unusual circumstances of two conflicting officer’s reports having been prepared in relation to the Application. The first had recommended approval of all of the works the subject of the Application, whereas a subsequent ‘addendum’ recommended against the approval of much of the works.
2. The Appellant had taken the position that the initial officer’s report either constituted or mandated approval on behalf of the Executive Director, and that a permit for all of the proposed works must follow, as a matter of course. The Committee notes that both of the officer’s reports are expressed as recommendations – neither purports to determine the Application in any sense.
3. In reply, the Executive Director noted, amongst other things, that the officer who wrote the first report is not an officer with delegated power to determine permit applications under the Act.
4. Ultimately, the Appellant did not press this line of submission, accepting that the Committee does not have judicial powers, and has no relevant jurisdiction aside from its power to determine the appeal against partial refusal of the Application, pursuant to s76 of the Act. Accordingly there was no need for a ruling in relation to this matter.

*Mandatory considerations under s73 of the Act*

1. The Committee has considered all mandatory and some discretionary considerations in accordance with s73 of the Act (Attachment 1). Only those matters that are pertinent to the ultimate decision have been addressed in this decision.

**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, 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, with a particular focus on the adequacy of the ‘public safety’ rationale for the proposed works.

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 would detract from, and detrimentally impact on, elements of primary cultural heritage significance, being the steps and colonnade, and that those elements are central to the significance of the Place.
2. The Executive Director submitted that the additional handrails would add ‘visual clutter’ and detrimentally impact on the views of and appearance of the steps. In relation to the proposed balustrades, it was submitted that they would effectively enclose nearly one third of the arches of the historically and architecturally significant open colonnade, and that this change would have a substantial visual and physical impact on the ability to enjoy and appreciate it as an open walkway.
3. The Executive Director submitted that a cautious approach should be taken in relation to changes to the presentation of the exterior of the Place and its colonnade and that the Appellant has not demonstrated an adequate rationale for the proposed works that would outweigh considerations of an adverse impact on the cultural heritage values of the Place. The Executive Director submitted that the right balance between safe access and appreciation of the values of the Place was achieved by the permitted works. The Executive Director further suggested that, in the absence of a more clear rationale for the balustrades, a hidden motive may be at play, such as facilitating the use of the colonnade for additional commercial purposes.
4. Similarly, the City of Melbourne submitted that the proposed works would have an adverse impact on the cultural heritage significance of the Place and would impact adversely on a significant place for public congregation within the Bourke Street Mall. City of Melbourne submitted that the proposed works would be detrimental to the ‘appreciation, enjoyment and liveliness’ of the Place and its streetscape, and that the proposed works would have a detrimental impact on the cultural heritage significance of the Place by impacting on the steps, an area of public congregation, and the colonnade.
5. The City of Melbourne relied on the evidence of Mr Briggs who gave evidence that the proposed works would have an adverse effect on the cultural heritage significance of the Place by virtue of their visual and physical intrusion, and that it would be inappropriate to permit the proposed works without a clear justification for the intervention to one of the ‘most prominent and significant buildings in the State’. Mr Briggs’ evidence was that the introduction of the handrails and the balustrades would be ‘disruptive to the appreciation of the open and freely accessible nature’ of the stairs and colonnade.
6. The Appellant submitted that the proposed works do not adversely impact on the identified heritage values of the Place and that the proposed works would be sympathetic to the cultural heritage values of the Place.
7. Relying on the evidence of Ms White, the Appellant submitted that the proposed enclosure of the colonnade, to a certain extent, by the balustrades, represents an appropriate response to the heritage significance of the Place, and that the colonnade would continue to be an open and accessible walkway. The Appellant further submitted that the proposed handrails to the steps would not obscure, conceal or interrupt important or significant views of the Place.
8. In her evidence, Ms White stated that the proposed works may be characterised as minor additions, appropriate from a heritage perspective, and that they would not detract from the presentation of the steps or the colonnade.

*Discussion*

1. The Committee notes that the Statement of Significance for the Place records the historical significance of the Place as one of Victoria’s most important public buildings. This is on the basis of the architectural significance and grandeur of the Place and the social significance of its ‘approach stairs’ and status as a familiar landmark.
2. The Committee further notes that the steps and the colonnade at the Place are identified as elements of ‘primary significance’ in the Conservation Management Plan for the Place prepared by Allom Lovell and Associates in March 2005.
3. The Committee is of the view that, having regard to the high level of architectural and social significance of the Place, the proposed installation of additional handrails and new balustrades would have a detrimental impact on the cultural heritage significance of the Place. This is due to the likelihood of visual intrusion and, albeit to a lesser extent, changes to the ways in which pedestrians may use the colonnades and stairs.
4. In relation to the proposed handrails, particular concerns arise for the Committee in relation to oblique views across the frontage of the site from the eastern footpath of Elizabeth Street (whether looking north or south), given that these lines of sight would effectively cause the handrails to visually converge.
5. However the Committee agrees with the evidence of Ms White that handrails within the ‘Central Steps’ portion of the Elizabeth Street frontage, as shown at figure 9 of her report, would be significantly less visible that other handrails that are proposed, and that handrails in these locations would therefore have a lesser impact on the heritage significance of the Place.
6. In relation to the proposed balustrades, the Committee is of the view that they would create a new sense of enclosure within the colonnade, and that also they would be modern elements visible from Elizabeth Street and Bourke Street, thereby changing the historic presentation of the Place to its surrounds.
7. The Committee notes that parties to the hearing did not express concerns about the design of the proposed balustrades themselves (as opposed to the appropriateness of their placement and installation), and accepts that their design is reasonably sympathetic to the extant fabric of the Place. No particular concern was expressed in relation to the possibility of the balustrades being mistaken for heritage fabric.

**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 as to the extent to which the refusal to issue a permit for the proposed works would affect the reasonable or economic use of the Place.

*Submissions and evidence*

1. The Executive Director submitted that inadequate evidence had been provided as to the need for the proposed works and therefore as to the extent to which a permit refusal would have an effect on the Appellant’s reasonable or economic use of the Place. The Executive Director submitted that inadequate information had been submitted to demonstrate that there was either a business or safety need for the proposed works.
2. The City of Melbourne submitted that the proposed works go beyond the statutory requirements for access to the Place and that the proposed works had not been justified by any analysis or reporting.
3. Both the Executive Director and the City of Melbourne noted that the Application had been originally submitted on the basis of an asserted need to bring the steps into compliance with the *Disability Discrimination Act 1992* (Cth), as well as passing reference to the Building Code of Australia. By the time of the hearing it had become apparent that the Appellant could not demonstrate non-compliance with either piece of legislation. Accordingly the Appellant abandoned its reliance on that legislation, and reported a new rationale, namely the need to comply with the *Occupational Health and Safety Act 2014* (the OHS Act).
4. Mr Briggs stated that if a compelling safety or compliance justification for the proposed works had been provided the proposed works may be acceptable, but that no adequate analysis or reporting as to the safety and compliance needs had been provided.
5. The Appellant submitted that the incidence of falls and injuries has increased since the occupation of the Place by clothing retailer H&M and that measures to reduce the risk of pedestrian injuries need to be taken for the reasonable and economic use of the Place. The Appellant submitted that it ‘must attempt to reduce the incidence of pedestrian injuries’ and that the proposed works attempt to address that need.
6. In his written evidence, Dr Barbour provided the Committee with some information as to instances of injuries sustained on the stairs over the period since 2014. Dr Barbour also gave evidence as to the legal and policy context for works intended to improve public safety, such as those proposed. Dr Barbour outlined the duty of the Appellant to take steps that are ‘reasonably practicable’ with regard to the Place and the hazards, pursuant to theOHS Act. Dr Barbour concluded that, since 2014, there had been eight reported instances of persons sustaining injury on the steps, and that the proposed works would be expected to assist in reducing the likelihood of persons sustaining injuries in this location. In responding to questions, Dr Barbour stated that there had been no legal proceedings arising from injuries at the Place that he was aware of, that eight injuries was ‘low with respect to the daily number of visitors’ to the Place, that the installation of balustrades was but one option that a ‘duty holder’ might consider to reduce the risk of walking up the steps, and that there were no known injuries that had occurred on the Elizabeth Street steps.

*Discussion*

1. The Committee agrees with the Appellant that safe access to the Place by the public is related to the reasonable, and indeed, economic use of the Place, and that the refusal of a permit for works could in theory affect that reasonable and economic use of the Place.
2. The Committee is of the view, however, that a more thorough, sophisticated and site specific analysis would be required in order to justify all of the proposed works.
3. There were some useful elements of Dr Barbour’s evidence, including the incident reports (in relation to accidents and injuries at the Place) and his explanation of the operation of the OHS Act, in broad terms. Having said that, the Committee found the usefulness of Dr Barbour’s evidence to be limited in a number of ways. Firstly, although Dr Barbour gave evidence that the number of injuries recorded on the steps was relatively low, there was no attempt to compare either the rate of injuries or severity of injuries with any comparable or other sites, so the Committee had no expert guidance in relation to whether this rate or nature of injuries was high or low. Secondly, Dr Barbour’s evidence did not examine the inherent safety considerations arising from the steps themselves, in terms of their design, construction, and surrounds. Thirdly, Dr Barbour’s evidence did not really engage with the extent to which the proposed works were likely to achieve public safety benefits. Fourthly, Dr Barbour did not make any attempt to distinguish between different components of the proposed works, for example by comparing observations in relation to the Elizabeth Street frontage of the Place with the Bourke Street frontage (having regard to the interactions between the Place (and its users) and the relevant immediate surrounds). This fourth aspect was surprising, given that that none of the injuries could be confirmed to have occurred on the Elizabeth Street steps – whereas seven had occurred on the Bourke Street steps and the location of the eighth was unknown (and the Committee was not informed of any attempt to identify that location).
4. Further, the shifting rationale for the proposed works, and the lack of any relevant legal proceedings resulting from accidents or falls on the steps, causes a degree of doubt as to the real motivation for the Application.
5. Works comprising the installation of new fabric to patently visible parts of a highly significant public building must be considered cautiously. The impact of proposed works on the cultural heritage values of a place as highly significant as the Place must be taken into account by considering any evidence as to the reasonable or economic use of it.
6. Much of Dr Barbour’s evidence was directed towards the principles of OHS Act compliance, and in particular the onus of a ‘duty holder’ to take steps that they consider to be ‘reasonably practicable’. The Committee does not dispute that this approach is necessary for the purpose of OHS Act compliance, but it does not greatly assist the Committee to determine the extent to which heritage impacts may be justified in the interests of public safety (or, perhaps, OHS Act compliance).
7. As Mr Briggs made clear, this case, like many heritage cases, calls for an assessment of apples versus oranges. Ultimately a value judgment must be made, weighing the risk to heritage significance as against the risk to public safety.
8. In relation to the handrails that form part of the proposed works, the Committee was not persuaded of any compelling safety rationale. The Committee notes that these handrails are all on the Elizabeth Street frontage, and that there was no evidence of any falls or injuries across this whole expanse of steps (either since 2014, or at any earlier time). The Committee, by its own observations, considers that the Elizabeth Street steps are, on average, inherently safer than the Bourke Street steps, due to the more complex environment for pedestrians on the Bourke Street steps. Also, due to the southerly fall down Elizabeth Street, the overall height of the flights of steps at the northern part of the Elizabeth Street frontage (where many of the handrails are proposed) is considerably less than the height of the Bourke Street steps, presumably reducing risk of falls at the northern part of the Elizabeth Street frontage.
9. In this context, it is noted that condition 3 of permit number P23303 purports to allow ‘one or two sets of hand rails on Elizabeth Street’ subject to the Executive Director’s approval of a plan. Possible locations for these two ‘approved’ handrails are shown at Figure 8 of Ms White’s expert witness statement. The Committee is conscious that the possible approval of handrails pursuant to condition 3 of permit P23303 is not a matter before us for consideration or determination. However, given the lesser impact that would be associated with new handrails within the ‘Central Steps’ area, the Appellant and Executive Director may wish to consider pursuing the ‘condition 3’ handrails in one or two of those ‘Central Steps’ openings, rather than in the locations shown at Figure 8 of Ms White’s report, where they would be more visible.
10. In relation to the balustrades that are proposed for the arched openings fronting Elizabeth Street, again the Committee was not persuaded of any compelling safety rationale, for similar reasons as in relation to the handrails. The Committee therefore determines to refuse to grant a permit for the balustrades to the Elizabeth Street archways.
11. The Committee has arrived at a different conclusion in relation to the balustrades proposed for two arched openings facing Bourke Street. As with the balustrades for Elizabeth Street, the appearance of these features will have some negative impact on the cultural heritage value of the Place. However the Committee has concluded that the likely extent of impact is reasonable, having regard to the evidence of accidents and injuries sustained at the Bourke Street stairs since 2014, and given that the balustrades, together with the handrails to Bourke Street, are likely to result in a more ‘orderly’ system for people using those steps (whether for scaling the steps, or congregating and sitting on them).
12. In this context, the Committee notes that the pedestrian environment at the Bourke Street frontage is far more complex than the situation at the Elizabeth Street frontage. Bourke Street Mall is a very busy pedestrian area; Elizabeth Street far less so. There is a tram stop directly across from the Bourke Street steps, whereas there is no means of direct pedestrian access between the Elizabeth Street steps and the Elizabeth Street tram stop (since a ‘superstop’ is barricaded off from the roadway along the whole length of the city block). Buskers frequently attract a crowd at Bourke Street, including people frequently sitting or congregating on the steps; this is far less common on Elizabeth Street, where there is less pavement available for buskers. Further, H&M, like the historic GPO before it, ‘addresses’ Bourke Street rather than Elizabeth Street, so we expect this will continue to be the most popular pedestrian entry to the Place.
13. Despite some reservations about the evidence of Dr Barbour, the Committee is satisfied that there is merit in the proposed changes to the Bourke Street steps, including alternating between openings with handrails and openings with balustrades (but no handrails). The Committee is satisfied that there would be public safety benefits in a location where there is a record of accident and injury, given the factors referred to above.
14. Also, quite apart from safety, there are other benefits in re-configuring the use of the Bourke Street steps in this way, in that the ‘blocked off’ parts of the stairs will effectively preserve the ability of people to sit and congregate on the steps (while at the same time persuading the ‘sitters’ to leave the ‘handrail’ openings free for shoppers coming and going via the stairs). The GPO steps have long been known and recognised as a popular central meeting point for Melburnians, and this function of the steps persists, despite the Place no longer serving its original civic function. The Committee accepts that this design solution represents common sense, that it is a positive response to the tendency of people to sit on these steps, and that this aspect of the proposed works is consistent with the reasonable and economic use of the Place. In the unusual circumstances of the way these steps have historically been used, the Committee considers that there is merit in the demarcation between ‘transit’ zones and ‘congregation’ zones, as proposed by the Appellant’s scheme for the Bourke Street steps.

**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 installation of balustrades to two of the arched openings to the Bourke Street colonnade, subject to conditions (see Attachment 2).
1. The Committee determines, pursuant to s76(4)(b) of the Act to confirm the decision of the Executive Director in relation to the remainder of the proposed works, that is, the Committee refuses to issue a permit in relation to:
* the installation of balustrades to the arched openings of the Elizabeth Street colonnade (beyond what has been approved by permit number P23303).
* the installation of handrails to the Elizabeth Street colonnade (again, beyond what has been approved by permit number P23303).



**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. The fabricated frame for the permitted balustrades must be fitted around the existing stone piers, and the stone must not be penetrated or subjected to any insertions or adhesion. Prior to commencement of the works, the Owner shall provide completed technical design drawings of the proposed Bourke Street balustrades, prepared by a suitably qualified architect, to the Executive Director for written approval. Once the design drawings have been approved in writing by the Executive Director, as a document to guide the installation of the Bourke Street balustrades, the permitted works in relation to those balustrades may commence.
2. 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.
3. The works approved by this permit are to be carried out in accordance with the plans considered by this Committee, in so far as they describe the works, unless otherwise agreed in writing by the Executive Director, Heritage Victoria.