

Permit Appeal Number P24224

**Richmond Maltings (H2050), Permit Application P23231**

**2 Gough Street, Cremorne, Victoria**

**Heritage Council Permits Committee**

**Hearing – Thursday 23 June, Friday 24 June and Monday 4 July, 2016**

# Decision of the Heritage Council

After considering all submissions received in relation to the permit appeal, and after conducting a hearing, pursuant to Section 76(4)(b) of the *Heritage Act 1995*, the Heritage Council has determined to confirm the decision of the Executive Director and determines to refuse to issue a permit in relation to the proposed works.

Heritage Council Permits Committee:

**Jenny Moles (Chair)**

**Louise Honman**

**Lindsay Merritt**

**Decision Date:** 26 August 2016

**APPEARANCES / SUBMISSIONS**

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

Mr Ian Munt of counsel appeared and made verbal submissions representing the Executive Director. Mr Munt was instructed by Ms Katerina Axiarlis of the Department of Environment, Land, Water and Planning. Ms Janet Sullivan, Principal - Heritage Permits, and Mr Geoff Austin, Manager - Heritage Register and Permits, both of Heritage Victoria, were present and available to answer questions.

**The owner of the Place, Caydon Cremorne Developments Pty Ltd (‘the Appellant’)**

The Appellant was represented by Mr John Cicero of Best Hooper Lawyers. The Appellant’s written submissions included statements of evidence from the following persons:

 - Mr Peter Lovell of Lovell Chen

 - Mr Bryce Raworth of Bryce Raworth Pty Ltd

 - Mr David Sutherland of Fender Katsalidis Architects

 - Mr Chris Goss of Orbit Solutions Pty Ltd

 - Ms Georgia Willis of the Appellant.

Mr Cicero appeared, made verbal submissions and called Mr Lovell, Mr Raworth and Mr Sutherland to give expert evidence. Ms Willis gave evidence concerning expenditure by the Appellant in relation to the purchase and professional services relating to the proposed development of the land. Ms Carol Daicic, of Best Hooper Lawyers, was also present.

**Yarra City Council (‘Yarra’)**

Yarra was represented by Mr Terry Montebello of Maddocks Lawyers. Yarra’s written submissions included a statement of expert evidence from Mr Bruce Trethowan of Trethowan Architecture. Mr Montebello appeared, made verbal submissions and called Mr Trethowan to give expert evidence.

**Mr Michael Coffey, Chair, ERA Apartments Owners’ Corporation**

A written submission was received from Mr Michael Coffey. Mr Coffey appeared and made verbal submissions. He was assisted by Mr Barry Nathan and Mr John Saunderson.

# **Introduction/background**

## **The Place**

1. The Barrett Bursting Richmond Maltings site is located at 2 and 15 Gough Street, Cremorne. Part of the land at 2 Gough Street is the subject of this appeal.
2. The land at 2 Gough Street is an irregularly shaped parcel of 11,025 square metres in area with an abuttal to the southern side of Gough Street of 161 metres and a 68.7 metre abuttal to the western side of Cremorne Street. It is bounded on the south by Harcourt Parade and the Monash Freeway, both of which run beside the Yarra River immediately further south. The land is situated immediately east of Punt Road. It forms part of an area formerly used for industry and warehousing and associated workers’ housing but now increasingly used for residential and office purposes. Opposite the land on the eastern side of Cremorne Street is a recently constructed 10 storey building with upper level apartments (‘the ERA Apartments’) and offices in a three storey podium.
3. The Barrett Burston Richmond Maltings site was initially developed as a brewing and malting site in the 1850s-60s. By 1879 the site was exclusively used for malting, being the artificial germination and kilning of grain used in the fermentation process. Malting continued and evolved on the site up until the present day. Malt houses, stores, silos (including some from the 1960s supporting the illuminated Nylex sky sign and clock) and offices remain on the land at 2 Gough Street today. The land is currently used for a variety of purposes, including as a grain store, as office space and for the display of advertising signs.
4. The site at 2 and 15 Gough Street (‘the Place’) was included in the Victorian Heritage Register (‘the Register’) on 25 March 2004 (H2050).
5. The Place is included in the Register as a heritage place of historic, aesthetic, social, archaeological and scientific (technical) significance to the State of Victoria. The following is taken from the Statement of Cultural Heritage Significance (‘Statement of Significance’) for the Place:

*Why is it significant?*

*The Barrett Burston Richmond Maltings site is historically significant as the oldest surviving independent sale (as opposed to brewing) maltster site in Australia. It has been continuously associated with the brewing and malting industry since 1852. It is the earliest and most intact of the four remaining nineteenth century sale maltster sites still operating in Victoria, the others being the former James Hood & Co site, Islington Street, Collingwood (1878), the Barrett Burston Gibdon Street site, Burnley (1892), and Joe White Maltings, Gregory Street site, Ballarat (1898).*

*The site is historically important for its strong associations with significant malting companies such as Smith, Mitchell & Co, which developed and operated the site between 1912 and 1972, and Barrett Burston, one of the largest malting companies in Australia. The site is of historical interest for its association with Charles Smith, who was involved in the site until his death in 1903. Smith, one of the earliest sale maltsters in Victoria, was Mayor of Richmond 1873-74 and Lord Mayor for Melbourne 1883-84, and was a member of the Legislative Assembly.*

*The Barrett Burston Richmond Maltings site is scientifically (technologically) significant for its pivotal role in understanding the industrial production of malt both by the pneumatic and the floor processes. The 1880 malt house is the only nineteenth century pneumatic malt house surviving in Australia, and is of outstanding technological significance as one of the earliest pneumatic malt houses in the world. While the building was substantially re-modelled following fires in 1950 and again in 1965, the existing mechanised Saladin box process with two parallel germinating boxes and perforated floors is very similar to the original Galland box process described in the opening of the malt house in 1880.*

*The 1920 malt house, with its low floor to ceiling height of 9 feet, a large open concrete floor, with open storeroom above, and timber louvred windows set opposite each other in the side walls to control air flow, is scientifically (technologically) important for its demonstration of many of the essential characteristics of a traditional floor maltings. While once relatively common in Victoria, with many having been demolished and others adapted to pneumatic malting systems from the 1930s onwards, or adapted to alternative uses, it now represents a very rare surviving example of its type.*

*The 1952 pneumatic drum malting building, originally built with six drums imported from the United Kingdom, later replaced by drums constructed in Victoria by Vickers Ruwolt Pty Ltd, demonstrates the earliest use of this malting technology on a sale maltster site in Victoria. The 1939-40 building for storing barley was supplemented in 1952 by 11 concreted silos, which represent an early surviving example of this form of barley storage system on a sale maltster site in Victoria with only the 1937 silos in Abinger Street Richmond (now converted to residential use) being older.*

*The Barrett Burston Richmond Maltings site is aesthetically and socially significant as a substantial Melbourne landmark. This collection of four brick malt houses dating from 1880, 1920, late 1939s and 1942 together with the 1952 and 1960s concrete silos present a distinctive industrial aesthetic, which has formed a significant part of the townscape of Richmond, the adjoining River Yarra and South Yarra, for many years. Three of the malt houses retain distinctive external evidence of malt kilns, a feature found on only two other remaining malt houses in Victoria. The 1952 and 1960s concrete silos by reason of their height scale and bulk visually dominate the immediate townscape, and are also viewed over a wide distance in eastern Melbourne. Together with the Nylex sign, which sits atop the silos, they have become a significant cultural iconic feature in the Melbourne landscape and psyche and even feature in the song Leaps and Bounds by musician Paul Kelly.*

*The Barrett Burston Richmond Maltings site is archaeologically significant not only for its visible remnants of the malt houses constructed in 1903 and 1928 but also for the potential archaeological remains of the brewing buildings of the 1852 Cremorne Brewery and 1860s malt house.*

1. A separately registered heritage place (H2049) is located within the registered extent of the Place, being a sign located atop the 1960s concrete silos (referred to as building B9). It is comprised of electric lights, a large digital clock display and features the words ‘Nylex Plastics’ (‘the Nylex Sign’). The following is taken from the Statement of Significance for the Nylex Sign:

*Why is it significant?*

*The Nylex sky-sign is of historical significance as one of a collection of signs marking Victoria's industrial heritage in Richmond. Richmond has the greatest concentration of surviving sky-signs in the state. Of all the signs, which include the Skipping Girl, Victoria Bitter, Slade Knitwear and the Pelaco signs, the Nylex sign is the most prominent. These large sky-signs which used to be a prominent feature of the Melbourne skyline are increasing in rarity with the demolition of such notable signs such as Allen's at Southbank and Atlantic Ethyl and Shell Petroleum's rolling dice at St Kilda Junction. The Nylex sign is of further rarity as it the only major sky sign in Melbourne that uses such a range of lighting media. These signs have strong associations with the industrial base of the former City of Richmond, important in the economy of Melbourne but which also contributed to the wellbeing of the national economy. Nylex, the largest plastics manufacturer in Australia, and the first to be established (1927), grew from premises below the sign in Cremorne Street.*

*The Nylex sign is of social significance for its landmark qualities. The sign dominates the view along the major thoroughfares of Punt Road and Hoddle Streets and because of its location at the entrance to the South Eastern Freeway the Nylex sign is considered the unofficial gateway into Melbourne. The clock and temperature display is a constant point of reference for residents and motorists. This recognition factor has entered the sign as a part of popular culture and has given the sign an iconic quality. Its mention in the Paul Kelly song Leaps and Bounds has given the sign an identity that extends beyond Melbourne.*

1. The Place is also subject to a Heritage Overlay in the Yarra Planning Scheme, HO350, which applies to the Nylex Sign specifically and to the Place generally. No permit is required under the Heritage Overlay as the Place as a whole and the sign are included in the Register.

## **Permit Application**

1. On 4 June 2015 the Appellant applied to the Executive Director, Heritage Victoria for a permit for the following works in the eastern part of the Place (‘the Application’):
* The partial demolition of existing buildings and elements of the Place, in particular most of the boundary walls along the eastern part of the Gough Street abuttal and along the Cremorne Street abuttal (referred to as buildings B1 and B2); all but the facade of a 1922 and later office building (building B3); and the rear part of a late 1930s malt house (building B4).
* The construction of new buildings of three, 14 and 18 storeys above ground level.
1. The Application was advertised in accordance with s68 of the *Heritage Act 1995* (‘the Act’) and submissions were received and considered by the Executive Director in accordance with s69 of the Act. In objecting to the Application, some but not all of the submissions objected to works not relevant to this permit appeal.
2. Material submitted by the Appellant identifies the proposed works as ‘Stage 1’ of a larger plan of proposed works across the Place, which are intended to take place in two further stages, and this decision document at times refers to the proposed works as the ‘Stage 1 works’.

## **Determination of the Executive Director**

1. On 8 January 2016 the Executive Director determined to refuse to issue a permit for the proposed works (‘the permit refusal’).
2. The grounds given by the Executive Director for the permit refusal were:

*1.* *The application is for a high yield new development with very little positive heritage outcomes. There are only minor conservation works proposed to the remnants of walls (B1 and B2 being retained) on the subject site.*

*2. The proposed development scale, form and massing will dominate visually in contrast to the industrial heritage presentation of the significant place generally.*

*3. The proposed development is considered to be contrary to the Burra Charter Article 8 – Setting objectives. The overall height and form of the tower is considered to adversely affect the low scale industrial setting.*

*4. The proposed development will have negative impacts on some significant views to the individually heritage listed Nylex sign.*

**The appeal against the permit refusal**

1. An appeal against the permit refusal was lodged with the Heritage Council by the Appellant on 19 January 2016 (‘the appeal’). Parties were notified that a hearing was to be conducted and a hearing was scheduled for 18 March 2016.

**Site Inspections**

1. Members of the Heritage Council Permit Appeals Committee (“the Committee”) conducted a site inspection of the Place on the morning of Friday 17 June 2016. The Committee was accompanied by representatives of all parties to the hearing and by the Heritage Council Hearings Coordinator. The accompanied site inspection was arranged by the Appellant, as requested by the Committee, and was led by the Appellant’s expert witness Mr Peter Lovell. No submissions were sought or received at the time of the site inspection.
2. The Committee also made an unaccompanied inspection of the general locality on Monday 11 July 2016 to assist in an understanding of the evidence and submissions concerning effects on views.

**Planning and heritage proceedings relating to the land at 2 Gough Street**

1. The Committee is aware that prior to, concurrent with and subsequent to this hearing process, there have been, are and will be applications and proceedings relating to the Place in other forums.
2. These proceedings and applications, including procedural steps preceding this appeal, include those summarised in the table below:

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| --- | --- | --- |
| **Proceeding/Application/Decision/Order** | **Responsible Authority** | **Date** |
| Heritage Permits P11806 and P18839 granted, allowing the demolition of the B4 south outbuilding and the partial demolition of B3 | Executive Director, Heritage Victoria | 29 June 2007, and 24 September 2012, respectively |
| Stage 1 works Planning Permit Application lodged | Yarra City Council | 22 April 2015 |
| Stage 1 works Heritage Permit Application lodged | Executive Director, Heritage Victoria | 4 June 2015 |
| Stage 1 works Heritage Permit Application advertised | Executive Director, Heritage Victoria | 8 July 2015 |
| Lodgment of Application against Yarra City Council failure to make a decision on the 22 April 2015 Planning Permit Application | Victorian Civil and Administrative Tribunal | September 2015 |
| Consideration of Stage 1 works proposal | Yarra City Council | 27 October 2015 |
| Stage 2 works Planning Permit Application lodged | Yarra City Council | 25 November 2015 |
| Decision - Refusal to issue Heritage Permit for Stage 1 works | Executive Director, Heritage Victoria | 8 January 2016 |
| Appeal against refusal to issue Heritage Permit for Stage 1 lodged (this appeal) | Heritage Council of Victoria | 19 January 2016 |
| Hearing in relation to Stage 1 works Planning Permit Application | Victorian Civil and Administrative Tribunal | 11-15, 18-22 January and 4 February 2016 |
| Interim Order – Stage 1 Planning Permit Application | Victorian Civil and Administrative Tribunal | 18 March 2016 |
| Application to Amend the Register received (amendment: permit exemptions) | Executive Director, Heritage Victoria | 26 May 2016 |
| Recommendation to Amend the Register advertised (amendment: permit exemptions) | Executive Director, Heritage Victoria | 10 June 2016 |
| Decision – Refusal of Stage 2 works Planning Permit Application | Yarra City Council | 14 June 2016 |
| Stage 2 works Heritage Permit Application lodged | Executive Director, Heritage Victoria | 22 June 2016 |
| Order – Planning Permit granted for Stage 1 works proposal | Victorian Civil and Administrative Tribunal | 15 July 2016 |

1. Since the Heritage Council hearing, as noted above, advice has been received that the Victorian Civil and Administrative Tribunal (‘VCAT’), on 15 July 2016, determined to grant Planning Permit No. PLN/15/0355 for the use and development of the land which the Committee understands to include works broadly similar rather than identical to the proposed works before this Committee (VCAT Reference No. P1969/2015). The decision in relation to that application for review, made in the context of the *Planning and Environment Act 1987* and the Yarra Planning Scheme, was explicitly made without consideration of heritage matters (see paragraphs 32 and 45 of the VCAT interim order dated 18 March 2016). The granting of a planning permit has not been a factor influencing this decision.

**Procedural matters**

*Request for an adjournment*

1. As noted above the Committee hearing was originally scheduled for 18 March, 2016 and all parties were notified of this date. The Appellant subsequently requested an adjournment in writing. The Committee sought the views of all parties in writing before granting the adjournment request and adjourning the hearing to 23 and 24 June 2016. A third day of the hearing took place on 4 July 2016.

*Lodgment of amended plans*

1. On 22 April 2016 the Appellant applied to lodge amended plans, dated 17 March 2016, in relation to the hearing. The amended plans proposed additional works to other buildings at the Place, including B5 and B7 to the west of the Stage 1 area of the Place, which were not earlier the subject of the Application. The Committee sought, received and considered submissions from parties in relation to the application to lodge amended plans, and determined to allow the amendment of the plans under consideration, but only in so far as the amended plans related to the same general area of works proposed in the Application.
2. The Committee also requested that the Appellant provide a second set of amended plans relating only to the same general area of works as initially proposed by the Application. These plans were lodged by the Appellant on 20 May 2016 (‘the amended plans’).
3. The amended plans were provided to all parties to the hearing. They are identified as *Heritage Stage 1 Allowed Amended Plans dated May 2016* prepared by Fender Katsalidis Architects, and include the following:
* TP001 (title page/site plan)
* TP002 (demolition plan)
* TP98-99 (basement plans)
* TP100-TP114 (ground floor to roof plans)
* TP200-TP205 (elevations)
* TP300-TP301 (sections)
* Demolition plan + overview
* B3 demolition north + south
* B3 demolition east + west
* B1 + B2 demolition
* B4 demolition north + south
* B4 demolition east
* Materials palette
* Examples
1. The amended plans also include an amended plan of the proposed south elevations of buildings B3 and B4, prepared by Lovell Chen, and a series of photomontages prepared by Orbit Solutions, both dated May 2016. The Orbit Solutions photomontages illustrate the before and after conditions, including views of the Nylex Sign.
2. The amended plans for the Committee’s consideration include the following works in the Stage 1 area (‘the proposed works’):
* Construction of a new 13 storey building in the north-east of the Place, adjacent to the south-west corner of Gough Street and Cremorne Street.
* Construction of a new 16 storey building in the south-east of the Place, projecting westwards to the southern side of building B4. It has a broadly elliptical shaped tower above level three, but at the western end of the floors between ground level to level 3 the shape of the building footprint has been modified.
* Construction of a three storey building generally to the east of the retained facade of building B3 with direct access to Gough Street. It would be separated from the eastern wall of B4 by a new internal north-south pedestrian laneway leading from the facade of B3.
* Construction of a three storey building to the east of B4 at its southern end, connecting to the taller building further to its south.
* Demolition of all of B1 and B2 - the brick walls to Gough and Cremorne Streets.
* Demolition of most of B3, except for the front wall to Gough Street.
* Demolition of the southern gabled (office) bay of B4 and removal of service elements from the building’s exterior, including its eastern elevation.
* Removal of various elements from the eastern end of the Place including modern piping, plant, minor structures/additions and other extraneous elements.
* Landscape works to the open spaces and laneways of the Stage 1 works area.
1. For the purposes of the Committee’s consideration of the appeal, the amended plans have superseded those provided with the Application. Where reference is made to ‘the proposed works’ later in this decision document, it is a reference to the proposed works shown on the amended plans as described above.

*Addition of a party to the hearing*

1. A request in writing was received from Mr Michael Coffey requesting to be added as a party to the hearing as a representative of the neighbouring ERA apartments owners’ corporation, and requesting to be heard in relation to this appeal. After considering the request from Mr Coffey, the Committee determined that Mr Coffey had a real and substantial interest in the Place, and agreed that Mr Coffey should be invited to make written submissions and be heard at the hearing. Other parties were notified of this, were provided with Mr Coffey’s written submissions and were able to reply in writing and make verbal submissions accordingly.

*Decision making context*

1. The Committee has made this decision within the context of the mandatory and discretionary considerations set out in s73 of the Act (see attachment).
2. With respect to the mandatory considerations under s73(1)(a), the Committee records that all parties agreed that, in considering the effect of the proposed works, the Committee should consider their impact on the cultural heritage significance of Place as a whole not merely that part of the Place directly affected by the proposed Stage 1 works.
3. It was also explicitly accepted by the Appellant that even though works to buildings B1, B2 and B3 (including demolition) were listed as permit exempt in the registration for the Place, the Committee could take into account the effects of the proposed demolition of those elements of the Place in its consideration of the permit appeal under s73(1)(a).
4. With respect to other considerations under s73(1)(f) and also s73(1A)(b), some submissions and evidence referred to local planning scheme provisions and related documents in making arguments for and against the proposed works. The Committee has not found it necessary to refer to local planning considerations in making its determination.
5. As noted earlier, there are a number of other decision making processes affecting this Place. They include a Stage 2 works proposal to remove the 1960s silos which support the Nylex Sign, and which are currently exempt from a heritage permit for demolition; and the hearing of an application to amend the registration of the Place so as to remove that same permit exemption. Yarra made submissions to the Committee that the uncertainty of outcomes in relation to those other proceedings and their relationship to this permit appeal hearing were such that the Committee should decline to consider the permit appeal (or refuse it). This uncertainty, while it was not a ground for refusal, was also referred to in the officer report to the Executive Director on the Application. The Appellant, however, sought to have the appeal determined independently of the other processes and in the context of the site as it is today.
6. The Committee considers that it can make its decision independent of the other processes relating to the Place and has adopted the course urged by the Appellant. The Committee notes that the material it has considered in making its determination relates only to Permit Appeal P24224.

**ISSUES**

1. The following issues sections are not intended to be a complete record of submissions that were made to the Committee. A summary of the position taken by parties in relation to key issues is included followed by a discussion and the conclusions reached by the Committee on each issue.

**Summary of submissions by parties**

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. The parties also disagreed on the question of the extent to which the proposed works, if approved, would affect the cultural heritage significance of the adjoining heritage place (the Nylex Sign), and on additional matters relating to the protection and conservation of the Place.
2. The Executive Director submitted that a permit for the proposed works should be refused as the proposed works would adversely impact on the historical, aesthetic and social significance of the Place; and that the mass, scale and form of the proposed works would adversely affect the social significance of the Nylex Sign. The Executive Director 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 reasonable or economic use or of any financial hardship to the Appellant as owner of the Place.
3. Yarra similarly submitted that the proposed works, if approved, would have an unacceptable impact on the cultural heritage significance of the Place; and also submitted that the proposed works would have an unacceptable impact on the cultural heritage significance of the Nylex Sign. Yarra further submitted that insufficient evidence had been provided concerning any financial hardship that would be caused to the Appellant as owner of the Place.
4. Mr Coffey submitted that the proposed works, if approved, would have a detrimental impact on the cultural heritage significance of the Place and the Nylex Sign.
5. The Appellant submitted that the Executive Director erred in his consideration of the Application; and that a permit should be issued for the proposed works, as the scale, form and massing of the proposed works would not adversely affect the cultural heritage significance of the Place nor have a detrimental effect on the cultural heritage significance of the Nylex Sign. The Appellant further submitted that a refusal to issue a permit would cause it undue financial hardship as the owner of the Place.

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 have a detrimental impact on the cultural heritage significance of the Place and submitted that the proposed works are not appropriate considering the iconic qualities of the Place. Mr Munt submitted that, in essence, the Executive Director’s concerns were that the significance of the Place and the Nylex Sign would be adversely affected by the height of the two proposed towers and their massing and relationship to heritage building B4 and the remainder of the Place; by the mass and position of the proposed development in relation to the Place, and in particular of the two proposed towers; and, by the absence of conservation or adaptation works for heritage buildings within the Place.
2. Yarra submitted that the height and massing of the proposed works would have an unacceptable impact on the landmark qualities of the Place and its distinctive industrial aesthetic. Yarra further submitted that the loss of fabric (B1, B2, B3, B4) would have an unacceptable impact on the cultural heritage significance of the Place. It was submitted that consideration should be given to cumulative impacts and the effects on each basis of significance.
3. In his statement of evidence, Mr Trethowan expressed the view that the height, size and massing of the proposed works would have an unacceptable impact on the cultural heritage values of the Place, would directly compete with the 1960s silos and could adversely impact on the ability of the values of the Place to be appreciated from within the Place and from without. He was particularly critical of the rounded east-west tower shape as being not respectful of the form of the silos (which are the most prominent of the visual elements of the Place when viewed from outside the Place) and described this building design as ‘featuristic’.
4. Mr Coffey submitted that the proposed works would have a negative impact on the cultural heritage values of the Place.
5. The Appellant’s submissions questioned the legality of the first ground of refusal by the Executive Director as well as the merits of all grounds of refusal. It was said that the first ground was misconstrued as it was not necessary that positive conservation works need form part of any application for a permit or its consideration, the Act contemplating that permit applications can be sought for total demolition of buildings on a site and might be allowed. Mr Cicero also submitted that scale, form and massing of the proposed works would not detrimentally affect the cultural heritage values of the Place and that the removal of much of the existing fabric was an acceptable outcome that was contemplated by the existing permit exemptions for the Place. The Appellant relied on the evidence of its expert witnesses in stating that the proposed works are acceptable in terms of the impact on the cultural heritage values of the Place. The Appellant further submitted that the proposed works would not compromise the industrial aesthetic of the Place. Mr Cicero also submitted that the scale of new works were not dissimilar to major new works allowed at other former industrial sites.
6. Mr Lovell stated in his evidence that although the proposed works would result in a ‘contrast in scale’ at the Place and alter the setting of the buildings within the Place, the works would not have an unacceptable impact on the cultural heritage significance of the Place nor diminish or alter the ability to understand its industrial context. Mr Lovell stated that the proposed works to existing buildings include works that are minor in nature or permit exempt and, although the new buildings that were part of the proposed works were not of a form or scale that had been previously permitted, the proposed works could be accommodated at the Place, could be supported in heritage terms and would not impact on its significance.
7. Mr Raworth stated in his evidence that the proposed works would not result in inappropriate adverse impacts on the cultural heritage significance of the Place, and that the Stage 1 works represent a reasonable proposal. Mr Raworth acknowledged that the proposed works would result in change to the Place, but stated that the change would be acceptable as compared with other comparable industrial places and that the change was contemplated by the existing permit exemptions for the Place.
8. Both Mr Lovell and Mr Raworth gave evidence about the relative importance of the various views to the Place from outside, describing some as already interrupted and others as of local significance only.
9. Mr Sutherland provided evidence largely relating to the design of the proposed new works, and stated that the proposed new buildings continue the interrelationship between new and old at the Place, responding to and highlighting heritage elements at the Place. He supported the curvilinear form of the tower above the podium of the southern building as appropriate.

*Discussion*

1. So far as the Appellant’s submissions about the legality of the first ground of refusal by the Executive Director are concerned, the Committee acknowledges that such legal arguments potentially may influence the weight to be given to the Executive Director’s position at an appeal hearing and may be also relevant to the nature of a decision to be made by the Heritage Council itself on appeal, given that the consideration by the Heritage Council is a *de novo* merits consideration of proposed works (that is the Heritage Council ‘stands in the shoes’ of the Executive Director in exercising its powers under s76(4) of the Act).
2. The Committee accepts the Appellant’s argument that the Act contemplates that applications can be made and determined for proposals involving the total removal of all heritage fabric from a site (though that is not the case here). In such circumstances there would generally be no weighing of negative and positive effects upon the cultural heritage significance of a Place. Rather s73(1)(b) would become a key consideration to be considered along with the necessarily adverse effect upon cultural heritage significance. In cases where total demolition is not proposed, however, the Committee considers that the effects of proposed works - both positive and negative - upon the remaining fabric and the cultural heritage significance of a site can be considered.
3. In the present case, the Committee is of the view that, pursuant to s73(1)(a), it is potentially able to consider both the positive and negative effects of the proposal on the Place in making its determination. Indeed, in this respect, the Appellant pointed to the beneficial effects of the removal of most of building B3 in terms of exposing a view to the side wall of building B4. However, the weight given to positive conservation measures or benefits has necessarily been only slight in the Committee’s consideration of the proposed works.
4. The Committee is of the view that, notwithstanding the permit exemption policy for the Place, the differences between levels of significance ascribed to site elements in the Conservation Management Plan, and the varying manner in which specific parts of the Place are described in the Register, the assessment to be made under s73 must be holistic and take into account the entire registered extent of the Place. While parts of the Place are subject to permit exemptions, in this case they form part of the significance of the Place and make a contribution to the cultural heritage significance of the Place.
5. Also, in considering the impacts upon the cultural heritage significance of the Place, the Committee considers that it is important to recognise that the Place, based on its rarity, intactness, its historical and scientific significance as described in submissions made to this hearing, is of national, and perhaps even international, importance, for its historical and scientific (technical) values as an extensive and iconic former industrial site of its type. It is not unusual for a heritage place to be recognised as having one or two or perhaps three bases of significance. The subject Place has five bases of significance, those being historical, scientific (technological), aesthetic, social and archaeological.
6. The Committee did not consider comparisons made by the Appellant with other former industrial sites in the Register useful in considering the impacts on cultural heritage of the proposed works. Other industrial sites in Melbourne, such as Kinnears Ropeworks, Victoria Brewery and Yorkshire Brewery, while of clear significance, do not compare with the landmark and iconic status of the Place nor its very high level of scientific (technological) significance.
7. The Committee considers it useful to separately consider the demolition works and the new works.
8. So far as demolition is concerned, the Committee is of the view that the loss of B1, B2, all but the facade of B3 and the rear section of B4 would have a negative impact on the cultural heritage significance of the Place and its landmark industrial landscape. All of this fabric is associated with maltings activity at the Place.
9. The B1 wall is a remnant of a 1928 malt house and the B2 wall is a remnant of a 1903 malt house. Those maltings buildings formerly occupied at least some of the area of the now car park. While they are graded as of secondary significance in the Conservation Management Plan for the Place prepared by Lovell Chen consultants in 2005, in the Committee’s view these brick walls importantly serve to clearly illustrate the full extent of the industrial site. This is enabled by their construction of the same or similar red brickwork as many of the other industrial buildings within the Place. Building B3 is an office building constructed in 1922 for the maltings use. Building B4 is a late 1930s malt house.
10. The Committee nevertheless acknowledges that the Appellant indicated a willingness to instead retain most of the fabric of B1, B2 and B3 if the Committee thought it would be appropriate. Specifically it was said that B1 and B2 might be retained in part or in whole and more or most of B3 might be retained behind its facade. The Committee agrees that this would go some way to alleviating concern about adverse impacts upon cultural heritage significance by the removal of original fabric, and loss of appreciation of the extent of the industrial site.
11. This leaves the proposed removal of the rear section of building B4. This is a matter of greater concern. This late 1930s malt house is acknowledged in the Conservation Management Plan and in evidence as one of the most significant at the Place. The rear section to be demolished is identified as part of the original building. The removal of the rear portion of B4 is also for the principal purpose of providing space for the construction of the proposed new southern building – which the Committee regards as over-scaled and unacceptable in terms of its effect on significance as outlined below. The Committee also does not consider that the resultant separation of the old and new buildings is adequate in any case as also discussed below.
12. The Committee considers that the proposed new buildings would have the most substantial of the adverse impacts on the cultural heritage significance of the Place. In particular, the Committee considers that the proposed new buildings would have the effect of visually overwhelming the extant buildings of the Place. This is both as viewed from within and from outside the Place. We consider that the iconic, landmark social and aesthetic values of the Place and its industrial aesthetic would be adversely affected by the proposed works.
13. The Committee appreciates that this large site overlooking the Yarra River to the south and with city views to the north, is an attractive one for residential development. The proposal to develop the Place with a multi-level building at its southern end with a long east-west axis is responsive to the availability of these views out of the Place. The proposed works in this sense could be viewed as site-responsive. The Committee, however, does not consider the proposed works to be site-responsive in terms of the heritage values of the Place and is of the view that the new works do not respond appropriately to the views into and within the Place and would affect the aesthetic significance of the Place.
14. The location of the Place alongside the river and its proximity to the intersection of major roadways and open space areas has the consequence that it is in a relatively open area. The Place is really only built around to the north and east. This openness of the surrounds of the Place affords the site a particular visual prominence especially when viewed from mid-range points to the west, south and south-east. These site characteristics make the placement and design of large new buildings generally difficult.
15. This difficulty is compounded by the prominence or landmark quality of the Place being recognised as an element of its aesthetic significance. The silos make a major, though not the sole, contribution to this. As noted in the statement of significance for the Place, the 1960s silos have become a significant cultural iconic feature in the Melbourne landscape and psyche. The Place has been ascribed social significance on this basis.
16. Contrary to the emphasis of the Appellant on the significance of only certain views to the Place from the west and north-west of the Place, the Committee considers that the views to the Place from the south and the south-east are especially significant and are to be considered in making its determination. These broader views across the river are not ‘interrupted’ by vegetation in any significant way (as was claimed to the contrary by the Appellant’s witnesses), nor by the freeway infrastructure. The presence of the Place in views of the river and from South Yarra are mentioned in the Statement of Significance.
17. In these views, the Committee considers that the extant heritage fabric would be dwarfed by the proposed new buildings and hence the landmark qualities and aesthetic significance of the Place would be adversely affected. The proposed new buildings - in particular the new southern building closest to the river - would present as greatly over-scaled when compared to the silos – which are currently the largest and most prominent feature of the Place – as well as other buildings on the Place. The adverse effect is not solely the result of the height of the new buildings but also the east-west extent of the southern building (being approximately 52 metres by scaling). This dominating effect is perhaps best illustrated in the photomontage figure 9.2 dated 15 June 2016 and prepared by Orbit Solutions for the Appellant. It can be contrasted with the visual effects of the existing ERA apartments at 163 Cremorne Street to the east. They are of a lesser scale and further from the most prominent elements on the nearby Place – the silos. They therefore do not challenge the prominence of the historic elements of the Place in the same manner when viewed from the south and south-east.
18. Further, the Committee considers that the new southern residential building would be such a dominant feature in those views to the Place that it would detract from the ability to appreciate the Place as a site having significance for its former industrial use and fabric. At the present time, subject to some clearing at the eastern end of the Place, the Place is very much a legible industrial landscape. The overwhelming scale of the new buildings would be such that the Place would instead ‘read’ as a residential site rather than one which is of significance to the State of Victoria in terms of its industrial heritage.
19. The Committee also considers that the presence of the new buildings as a backdrop to the silos in the views to the Place from the west, including from bridges along the river, would detract from their prominence and hence landmark quality.
20. As noted earlier, the Appellant’s submissions and evidence pointed to new large developments on other prominent former industrial sites in Melbourne included in the Register, including Kinnears Ropeworks, the Victoria Brewery and the Yorkshire Brewery, which were said to be comparable to the present proposal. While we agree that the other sites and works are quite large and visually prominent, we do not consider that those sites have the same level of landmark and iconic status as the Place. We also consider that the new works at the southern end of the Yorkshire Brewery are well integrated with the heritage fabric, and we consider the additions to the Victoria Brewery site, to which we were also referred, to complement rather than challenge the presentation of the site as having a former industrial use.
21. The Place can also be well understood as an industrial landscape when viewed from closer locations on the northern side of the river. We do not consider that such views are irrelevant local views as asserted by Mr Raworth. There is no hierarchy of views nominated in the Statement of Significance and indeed it makes reference to the townscape of Richmond as well as the views from South Yarra and the river. The Committee considers that in the views from nearby places such as Cremorne Street and Balmain Street, the industrial nature of the lower rise as well as taller buildings on the Place can perhaps be better appreciated than from more distant locations across or along the river.
22. The Place’s particular industrial aesthetic associated with the malting process is very apparent in these close views. The Place presents as a collection of connected and closely situated buildings which adopt a variety of specialised industrial forms including silo structures and malt houses with distinct roof types. The building styles also reflect changing industrial processes over the years. In addition, these closer views enable an appreciation of the relationship of this industrial complex to former workers’ housing in surrounding streets in Richmond. The presentation of the Place to these nearby streets, while it is not as dramatic as to the west, south and south-east, is nevertheless part of the landmark qualities of the Place. The Committee also finds that the proposed works would detrimentally impact on the ability of residents and of visitors to nearby streets to appreciate the landmark industrial qualities of the Place.
23. The Committee is further of the view that the aesthetic experience of the industrial landscape from within the Place itself would be negatively impacted by the proposed new works, and especially by the new southern building as a result of its excessive height and footprint proximity to the heritage elements. While built form density and closeness between buildings is an historic characteristic of the industrial complex at the Place, the new southern building not only necessitates the removal of part of building B4, but would also intrude unacceptably on the setting for the remaining part of B4 and building B5. In relation to the impact of the new southern building on the setting of B4 we agree with Mr Trethowan’s view that the new southern building inappropriately extends across the rear of existing building B4. The amended plans show that, after demolition, the new building would be situated only 3.7 metres, in plan view, from the south-east corner of the remaining part of building B4 at its closest point. This is where level 3 overhangs the floors beneath. In the Committee’s view, the new building would unacceptably crowd building B4 and overwhelm it in terms of scale and mass, and this would be accentuated by the overhang. It would also similarly affect the adjoining low rise industrial buildings and their setting.
24. The Committee records that it has not formed a view as to the architectural or design merits of the proposed new works, nor has the Committee come to a specific view as to what would be the appropriate height, form, scale or massing of a proposal for development at the Place. Rather the Committee has formed the view that the works as currently proposed would have a detrimental impact on the cultural heritage significance of the Place as a whole.
25. It is also acknowledged that some parts of the fabric at the Place are in a deteriorated condition, but the Committee is of the view that the iconic industrial qualities of the Place are not diminished by the current state of extant fabric.
26. The Committee accordingly finds that the proposed works would have a detrimental impact on the cultural heritage significance of the Place.
27. The Committee concurs with the view of the Executive Director and determines that a permit for the proposed works should be refused on the basis that the proposed works would unacceptably, adversely and detrimentally affect the cultural heritage significance of the Place.

**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 Appellant as the owner of the Place.

*Submissions and evidence*

1. The Executive Director submitted that inadequate evidence had been provided as to the extent to which a permit refusal would have an effect on the reasonable or economic use of the Place, and in relation to the extent to which the Appellant as owner would be caused undue financial hardship if a permit was refused.
2. Yarra submitted that evidence that had been provided by the Appellant as to financial hardship related to the period prior to the permit refusal and was irrelevant, and that the evidence disclosed no financial hardship but merely a cost associated with development.
3. The Appellant submitted that significant financial and economic consequences would be caused to it if a permit for the proposed works was refused.
4. Ms Georgia Willis, the Appellant’s Senior Development Manager - Acquisitions, gave evidence as to economic use of the Place and stated that the refusal to issue a permit for the proposed works would result in undue financial hardship to the owner. In response to questions put to her, Ms Willis indicated that only a proportion of the total costs set out in her affidavit related to the Stage 1 area and proposed works.

*Discussion*

1. The Committee accepts that the use of the Place for residential development is a reasonable use of the Place.
2. The Committee is of the view that the limited evidence presented concerning the financial impacts of a refusal in the main related to works and expenditures not related to the proposed works. The financial outlays referred to appeared to relate in large part to holding and other property costs for the total site that should be anticipated as part of normal property development processes and would not be the result of any permit refusal.
3. In relation to the reasonable or economic use of the Place, the Committee notes that no evidence was provided to satisfy it that the long-term economic use of the Place would be affected by a refusal to issue a permit for the proposed works.
4. The Committee is not satisfied that the refusal to issue a permit for the proposed works would affect the reasonable or economic use of the Place, or cause undue financial hardship to the Appellant as owner of the Place.

Discretionary considerations

**s.73 (1A) (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**

1. The Parties disagreed on the question of whether or not the proposed works would affect the cultural heritage significance of the Nylex Sign, which is located within the extent of registration of the Place but is individually included in the Register as its own heritage place (H2049).

*Submissions and evidence*

1. All parties agreed that it is within the Committee’s discretion to consider the effect of the proposed works on the Nylex Sign as an adjoining heritage place.
2. The Executive Director submitted that the proposed works would undermine the prominence and iconic, landmark qualities of the Nylex Sign, obscure the sightlines to the Nylex Sign from certain viewpoints and have a detrimental impact on its cultural heritage significance.
3. Yarra submitted that the height and massing of the proposed new buildings would detract from and have an unacceptable impact on the visual prominence of and views to the Nylex Sign.
4. Mr Trethowan stated that the proposed works would reduce the visual prominence of the Nylex Sign due to the prominence of the new building and would detrimentally affect its landmark quality.
5. The Appellant submitted that the proposed works would not have an unacceptable impact on the cultural heritage significance of the Nylex Sign, would not have a negative impact on views from the north-west, west and south-west and that the proposed works would not impact on ‘its legible profile’ when viewed from these directions.
6. Mr Lovell in his evidence stated that it is his assessment the cultural heritage significance of the Nylex Sign would not be diminished by the proposed works and that the most important views of it would not be impacted by the proposed works.
7. Mr Raworth in his evidence stated that in terms of key views there would not be any adverse impact on the Nylex Sign and that the landmark status of the Nylex Sign would not be diminished in views from the local surrounding area.
8. Mr Sutherland stated in his evidence that the distance and separation between the new buildings included in the proposed works and the Nylex Sign would allow the new buildings and the Nylex Sign to be regarded as separate and that the relationship between the proposed works and the Nylex Sign is a comfortable one.

*Discussion*

1. The Committee notes that the Statement of Significance for the Nylex Sign includes that there is a cluster of large ‘sky signs’ in the Richmond area and that of all significant signs marking Victoria’s industrial heritage in Richmond, the Nylex Sign is the most prominent. It also notes that large sky signs are increasing in rarity in Melbourne.
2. The Statement of Significance also refers to the Nylex Sign’s prominent, landmark qualities, which have allowed it to become a constant point of reference for Melbournians and have afforded it an iconic status.
3. The Committee is of the view that the Nylex Sign is of a very high level of social significance to the State of Victoria.
4. Although the Committee recognises that the Nylex Sign is not directly connected to the industrial history and use of the Place as a maltings, and is registered as a separate heritage place, the Nylex company was associated with premises in Cremorne Street and the sign is now popularly identified with the 1960s Richmond Maltings silos. In this way the Nylex Sign is now connected to the history and significance of the Place.
5. The Committee is of the view that the proposed works, specifically the two new residential towers, would diminish the prominence of the Nylex Sign by introducing new large elements in the viewscape. The amended plans show that the higher of the two proposed towers reaches approximately the same height as the top of the main part of the sign which features the words ‘Nylex Plastics’, and that the lower of the two proposed towers reaches approximately to the top of the lower third of the visible depth of the sign’s supporting structural framework. The Committee considers that this would detract from the sign’s landmark quality and presentation as a sky sign and compromise its function as a reference point. In addition, although the Committee acknowledges that not all views to the sign would be directly interrupted, it is expected that some near views to the sign would be obscured by the new buildings. As a result of these effects upon the views to the sign the Committee considers that the new works would impact to an unacceptable degree on the social significance of the Nylex Sign.
6. The Committee is of the view that the prominence, landmark and iconic qualities and hence the cultural heritage significance of the Nylex Sign would be detrimentally affected by the proposed works.

**CONCLUSION**

1. The Committee determines, pursuant to s76(4)(b) of the *Heritage Act 1995*, to confirm the decision of the Executive Director, that is, the Committee determines to refuse to issue a permit in relation to the proposed works, as described in the amended plans.



**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.