



Heritage Council Registrations and Reviews Committee

Her Majesty's Prison Pentridge, 1 Champ Street, Coburg

Part of Lot S6 on Plan of Subdivision PS 501198H, 1 Champ Street, Coburg, Moreland City Council

Hearing – 1 April 2019

Members – Mr Patrick Doyle (Chair), Ms Natica Schmeder, Ms Maggi Solly

DETERMINATION OF THE HERITAGE COUNCIL

After considering all submissions received in relation to the permit review, and after conducting a hearing, the Heritage Council has determined pursuant to section 108(7)(a) of the *Heritage Act 2017* to affirm the determination under review.

Patrick Doyle (Chair)
Natica Schmeder
Maggi Solly

Decision Date – 19 June 2019

APPEARANCES/SUBMISSIONS

EXECUTIVE DIRECTOR, HERITAGE VICTORIA ('THE EXECUTIVE DIRECTOR')

The Executive Director was represented by Ms Janet Sullivan, Principal Heritage Permits, of Heritage Victoria.

PROFESSOR MICHAEL HAMEL-GREEN

Professor Michael Hamel-Green appeared on behalf of the Pentridge Community Action Group ('the PCAG'). Professor Hamel-Green made written and oral submissions in support of the Executive Director's decision.

SHAYHER PROPERTIES PTY LTD ('THE PERMIT APPLICANT')

The Permit Applicant owns the land comprising 1 Champ Street, Coburg and is the applicant for Permit No. P28470. The Permit Applicant was represented by Mr Barnaby Chessell, Barrister, instructed by Mr Bradley Montag of Norton Rose Fulbright.

The Permit Applicant's submissions were supported by statements of evidence from Mr Bryce Raworth of Bryce Raworth Pty Ltd, Mr Craig Gillette of Ratio Consultants Pty Ltd, and Mr Anthony Dimasi of Dimasi and Co. Mr Raworth, Mr Gillette and Mr Dimasi were called to give expert evidence.

OTHER WRITTEN SUBMISSIONS

Moreland City Council made a written submission but was not represented at the hearing.

INTRODUCTION/BACKGROUND

THE PLACE

- 01.** The northern portion of the former Her Majesty's Prison Pentridge ('the Place') is approximately 6.7 hectares in area and generally bounded by Murray Road to the north, Champ Street to the west, Pentridge Boulevard to the south and existing residential development to the east. Historic prison structures in this portion include the Main Gate and Administration Building, the former Chief Warders and Overseer of Works Residences, the former hospital, A Division, B Division, G Division, H Division and the former Mustering Yard/Parade Ground ('Mustering Yard').
- 02.** The Mustering Yard is bounded by B Division to the south, a bluestone wall known as K Wall to the west, the former hospital to the north, and a bluestone pathway to the east. The part of the Place subject of this review is the south-eastern corner of the Mustering Yard, in front of the northern façade of the eastern wing of B Division ('the Subject Site').
- 03.** The Permit Applicant owns most of the land in the northern portion of the Place, including the Subject Site.
- 04.** The significant heritage buildings and features that surround the Mustering Yard are described on page 7 of the Urban Design Expert Evidence prepared by Ratio Consultants Pty Ltd for the Permit Applicant, dated 1 March 2019:
 - *The former hospital, or E Division, which has a symmetrical rock-faced bluestone façade with round-headed windows to the ground and entrance. Square-headed windows at regular [intervals] articulate the first-floor level.*
 - *The former Warden's Quarters to the west of E Division is also a two-storey bluestone structure of a slightly lesser height than E Division. While presenting as a single building it consists of two terrace dwellings under a single roof form with a unifying timber verandah structure across the front façade.*
 - *The Main Gates off Champs Street (sic) within the façade of the two storey Administration building do not physically frame the Yards; however, the tower form of the administration building is visible from the eastern side of the Yard.*
 - *Court Yard C (sic) and the associated bluestone walls K and L define the western edge of the yard. The height of the walls is approximately equivalent to the first-floor level of the cell wings of B Division.*
 - *B Division to the south consists of a (sic) bluestone bilateral wings to the east and west punctuated by uniformly distributed small-scale window openings to individual cells at ground and first floor levels. The ridge line of the roof to these wings align with the eaves line of the roof to the north-south oriented wings. The north wing projects into the Yard, presenting a more articulated façade of bluestone, including pilasters framing three recessed rectangular bays, elongated arched windows to the ground and upper floors. An arched entrance with contrasting door reveal.*
- 05.** In July 2014, the *Pentridge Coburg Design Guidelines and Masterplan* ('the Masterplan') were incorporated into the Moreland Planning Scheme. The Mustering Yard is referred to as the 'Central Piazza' in the Masterplan.

- 06.** The Place is undergoing redevelopment for residential, retail and commercial purposes. Developments that have been constructed, approved or are under construction within the vicinity of the Subject Site include:
- a) a four-storey shopping centre on land abutting the north-eastern corner of the Mustering Yard (referred to as Building 9);
 - b) a five-storey residential building located east of the Subject Site (referred to as the QM building); and
 - c) an 18-storey residential hotel south of the western wing of B Division.¹

THE CULTURAL HERITAGE SIGNIFICANCE OF THE PLACE

- 07.** The Place is included in the Victorian Heritage Register as a place of cultural heritage significance to the State of Victoria ('VHR H1551').
- 08.** The extent of registration of VHR H1551 is shown in Diagram 1551 on page 2 of the Executive Director's written hearing submission, dated 4 March 2019.

Statement of Significance

- 09.** The Statement of Significance for the Place includes the following summary of what is significant:

The former HM Pentridge Prison (sic) was established in December 1850. The structures remaining from the prison consist of A Division, B Division, B Division Annexe (former kitchen), D Division including the exercise yards, the former hospital (Former E Division), F Division, G Division (Jika Reformatory for Girls), H Division, the main gate, Administration Building, the former Chief Warders and Overseer of Works Residences, the Industries Buildings, the laundry, the south gate to the Women's Prison, and remaining bluestone walls, gates and lookout towers.

The first stage of the prison was the 1850 to 1857 Pentridge Stockade Complex, a relatively ad-hoc group of structures built by prison labour using predominantly local materials. None of these structures survive, although the boundary of the prison was established at this stage. The second phase undertaken in the late 1850s and early 1860s was the construction of Inspector General William Champ's model prison complex, based on the British Pentonville model and incorporating a relatively sophisticated system of prisoner classification and penal reform. These were all constructed of locally sourced bluestone. The prison was gradually expanded and developed in stages, reflecting both developments in design as well as broader Government policies relating to the operation of the prison system. Following the Stawell Royal Commission of 1870, an extensive work program for prisoners was introduced at Pentridge and a complex known as the 'Industries' was constructed. These included a timber yard, a woollen mill, carpenters and blacksmiths workshops completed in 1879, and tailors and bootmakers workshops completed in 1886.

A women's prison was constructed on the site between 1860 and 1865, now known as A Division. This was superseded when a new female prison was constructed on the site between 1887 and 1894, in order to provide completely separate accommodation for women. This section is now known as D Division.

¹ Identified as Building 16 on the Masterplan.

Pentridge remained the main female prison in Victoria until it was replaced by the new women's prison, HM Prison Fairlea in 1956.

From the 1870s Pentridge was also the location of reformatories for girls and boys, established following the findings of the Stawell Royal Commission of 1870. The Jika Reformatory for Boys was accommodated in an existing building (F Division), between 1875 and 1879, while a purpose built reformatory was constructed for Protestant Girls (G Division), operating between 1875 and 1893.

In 1900 labour yards for A Division were completed. During the 1950s these yards were later converted to a high security block which became known as H Division. In 1924 Pentridge replaced the Melbourne Gaol as the main remand and reception prison for the metropolitan area. The bodies of approximately thirty-six prisoners executed at the Melbourne Gaol were exhumed and relocated to Pentridge, where they were reburied. Pentridge also became the venue for ten prisoner hangings, until the last Victorian prisoner to suffer the death penalty, Ronald Ryan, was executed in D Division in 1967. In 1960 during a term spent in Pentridge, the Aboriginal artist Ronald Bull painted a mural depicting a traditional tribal scene. The mural survives and is located at the east end of F Division. In April 1995 the Office of Corrections ordered that the six main towers at Pentridge be closed, since most of the high security prisoners from the goal had been relocated to Barwon as part of the downgrading of Pentridge to a medium security prison. The prison was finally closed in 1997 and the land and buildings subsequently sold.

This site is on the traditional land of the Kulin Nation.

- 010.** The Statement of Significance includes the following explanation for why the Place is of historical, architectural, archaeological, scientific and aesthetic significance to the State of Victoria:

The former HM Prison Pentridge is of historical significance as the largest prison complex constructed in Victoria in the nineteenth century.

The former HM Prison Pentridge is of architectural and historical significance as a nineteenth century complex of buildings that demonstrates a number of phases in the development of the penal reform system. Most of these structures still survive, largely intact. The range of cell blocks, workshops and other buildings, the relatively dispersed layout of the buildings and the large scale of the site as a whole demonstrate the unique character of Pentridge as the principal establishment for long-term prisoners. The planning of A, B and D Divisions are representative examples of the overwhelming influence and continuing development of British planning models, from the 1830s until the end of the nineteenth century. F Division is a rare surviving example of early nineteenth century prison buildings. The former prison is of architectural significance due to its monumental size and the austere and classical style of the nineteenth century prison buildings. The complex of buildings and walls are important for their expression of the requirements of containment and order.

The former HM Prison Pentridge is of historical significance in the history of child welfare in Victoria. It was the location of reformatories for both girls and boys, established following the findings of the Stawell Royal Commission of 1870. The prison complex includes the purpose-built Jika Reformatory for Protestant Girls (G Division), which operated between 1875 and 1893.

The former HM Prison Pentridge is of archaeological significance for its archaeological features, deposits and relics that relate to the construction and

use of the site. The burial area and industry refuse site adjacent to the east wall of the F Division includes the burial sites of all executed prisoners relocated from the Old Melbourne Gaol between 1929 and 1937, and the burials of nine prisoners executed at Pentridge between 1928 and 1951. The area adjacent to the east wall of D Division is significant as the former burial site of Ronald Ryan, and as the site where executed prisoner burial remains were reinterred in 2011.

The former HM Prison Pentridge is of scientific (technological) significance for its original ventilation systems in A, B and D Divisions, and the surviving original cisterns and other elements of the water supply system in B Division. The apparently intact thermo-ventilation system in B Division is of particular importance.

The former HM Prison Pentridge is of aesthetic significance due to its grim and imposing bluestone walls and towers which are important landmark features.

Pentridge Conservation Management Plan 1996

011. In 1996, Allom Lovell and Associates Pty Ltd prepared the *Pentridge Conservation Management Plan* ('the 1996 CMP'). This plan was prepared before the Prison closed in 1997 and the land and buildings were subsequently sold.

012. The 1996 CMP specifically identifies B Division as being of primary cultural heritage significance:²

Of primary significance. B Division is among the initial group of buildings constructed for the new 'model prison' in 1858-9, and was the first of the cell blocks constructed at Pentridge to embody the planning principles of the separate system. It forms an integral part of the group of buildings which face the main parade ground. The thermo-ventilation system and the water supply cisterns and other elements of the water supply system are relatively rare examples of such systems among Victorian prisons and are of technological significance.

013. The 1996 CMP also identifies the Mustering Yard as being of primary cultural heritage significance³ but does not examine its significance in detail.

014. In describing the historical significance of the Place as a nineteenth century prison, the 1996 CMP states that:⁴

Pentridge is one of several relatively intact nineteenth century prison complexes in Victoria. By far the largest of these prisons, it retains most elements of the complex as it existed from the late 1850s to the 1890s. The main demolished elements that existed during this period are C Division, the radial exercise yards in A and B divisions, the Inspector General's and Governor's residences and the early 1850s gatehouse building north of F Division. The surviving elements, including A, B, D, F and G Divisions, the other buildings facing the Pentridge parade ground and the workshop buildings, together clearly demonstrate the planning and functioning of the

² Allom Lovell and Associates Pty Ltd, *Pentridge Conservation Management Plan* (August 1996) p 110 ('1996 CMP').

³ 1996 CMP p iv.

⁴ 1996 CMP p 277.

nineteenth century complex and the main functional elements of the separate system.

- 015.** In relation to the architectural significance of the nineteenth century prison buildings (including B Division), the 1996 CMP states that:⁵

The aesthetic significance of the nineteenth century prison buildings at Pentridge relates in a general sense to their monumental qualities which are expressive of the requirements of containment and order. The majority of the bluestone cell buildings are designed in an austere Classical style typical of the other prison buildings constructed in Victoria in the 1850s and '60s, which itself derives from the eighteenth and early nineteenth century military barracks and prison architecture in Britain. The virtually unadorned rock-faced elevations of the cell wings of A, B and D Divisions contrast with the architecturally more elaborate entrance and chapel wings on A and B Divisions and the entrance wing and end elevations of D Division. The unfashionably primitive design of the pedimented chapel wing of B Division relates closely to that of early nineteenth century non-conformist chapels in Britain as well as more directly to military buildings and earlier prison buildings in Australia...

Former Pentridge Prison Conservation Management Plan 2016

- 016.** In 2016, the Permit Applicant commissioned the preparation of the *Former Pentridge Prison Conservation Management Plan 2016* ('the 2016 CMP') to update the 1996 CMP.⁶ Both the Executive Director and the Permit Applicant referred to the 2016 CMP in describing the significance of B Division and the Mustering Yard. The Permit Applicant submitted that the 2016 CMP should be given significant weight.
- 017.** The 2016 CMP identifies B Division as being of primary significance (see page 51). Among other things, it states that B Division "formed the centerpiece (sic) of the new prison"⁷ and is largely intact to its original form.⁸
- 018.** The history and layout of the Mustering Yard are described in the following extracts from the 2016 CMP:⁹

The 1858-9 buildings face onto a large rectangular parade ground known, at least by the late nineteenth century, as Pentridge Square. The main road through the Square ran on (sic) axis from the main entrance and the inner gate beyond towards the workshops area and the gate in the east boundary wall. In front of B and C Divisions, on each side of the road, were paved pathways used for mustering prisoners. The remainder of the square was divided into rectangular grassed areas with paths leading to the Hospital and other buildings...

The formality of the layout at Pentridge was more typical of nineteenth century military barracks planning than of prison planning in Australia. The principal function of the parade ground appears to have been for the mustering of prisoner work parties before and after their transfer to the workshops, quarries and other work sites. Its size and centrality emphasise the importance of

⁵ 1996 CMP p 278-9.

⁶ The 2016 CMP only focuses on the portion of the Place owned by the Permit Applicant.

⁷ 2016 CMP p 40.

⁸ 2016 CMP p 50.

⁹ 2016 CMP p 80-1.

prisoner labour at Pentridge relative to other gaols used for remand and short-term sentences.

- 019.** In discussing the significance of the Place, the 2016 CMP states that:
- the exteriors of the nineteenth century prison buildings are of primary significance;¹⁰
 - the open vista across the Mustering Yard is of primary significance;¹¹ and
 - the significance of the Mustering Yard “derives from the way the open space enables an appreciation of the relationship between the built elements that face onto the [Mustering Yard]”.¹²

- 020.** The 2016 CMP includes the following conservation policies for future development:¹³

Future works should not obscure or damage original fabric, and should not obscure the legibility or appearance of the significant prison buildings and the way in which many of them address the Parade Ground. New external structures should be readily distinguishable and physically independent from the significant fabric. Where possible, future works to the significant buildings and structures should recover aspects of the form, detailing, and materials from the periods of key significance (ie. up until the late nineteenth century).

and

Significant views to the site and views within the site should be conserved or re-instated.

- 021.** The 2016 CMP suggests that there is scope for pavilions to be introduced into the Mustering Yard to help activate its future use as a piazza, provided the pavilions are small in scale and do not undermine the relationship between the key historic buildings surrounding the Mustering Yard.¹⁴

THE PERMIT APPLICATION

- 022.** On 13 August 2018, the Permit Applicant made an application to the Executive Director pursuant to section 93 of the *Heritage Act 2017* (‘the Act’) for a permit (Permit No. P 28470) to construct a new freestanding building on the Subject Site. This building is in the location identified as Building 18 on the Masterplan.
- 023.** The proposed building is a single-storey, trapezoid-shaped building with the following orientation and dimensions:
- The eastern façade is 21.8 metres long and runs north-south, parallel to a bluestone pathway. A bluestone pathway and landscaped area is located between the eastern façade and the QM building.
 - The southern façade is 17 metres long and angled to follow a north-west alignment. The setback of this façade from the northern wall of B Division ranges from 8.2 metres (at the eastern end) to 12.8 metres (at the western end).
 - The western façade runs parallel with the eastern façade and is 17.4 metres long.

¹⁰ 2016 CMP p 134.

¹¹ 2016 CMP p 134.

¹² 2016 CMP p 83.

¹³ 2016 CMP p 151.

¹⁴ 2016 CMP p 165.

- d) The northern façade is 17 metres long and runs east-west, parallel to Sentry Lane.
 - e) The proposed building has an overall ground floor area of approximately 280 square metres and has a wall height of 5.2 metres.
- 024.** The proposed building is bisected by two large corridors that are at right angles and set at 45 degrees to the corners of the building. The south-east/north-west corridor is four metres wide. The north-east/south-west corridor is three metres wide at its widest point. The corridors allow pedestrian movement through the building and views through the building to the Mustering Yard and surrounding buildings.
- 025.** The proposed building includes a 54 square metre café (facing Sentry Lane), a 26 square metre presentation room, a 25 square metre multi-media room, toilet facilities, bin storage facilities and a 7.4 metre-wide switchboard.
- 026.** The Committee observes that the building, by virtue of its design and proposed uses, may be regarded as akin to a tourist information centre, although the Committee is not aware of it having been referred to in those terms.
- 027.** The proposed building is contemporary in design. The two internal corridors are proposed to be clad in bluestone and paved with bluestone pavers. The exterior walls are to be clad by a white metal screen designed to resemble ‘prison bars’. Floor to ceiling transparent glazing is proposed to sit behind the white screens on the building’s eastern, western and northern facades.

DETERMINATION OF THE EXECUTIVE DIRECTOR

- 028.** On 15 November 2018, the Executive Director determined to refuse to issue a permit in respect of the Application (‘the Determination’) on the following basis:

The construction of a building within the former Mustering Yard will have an unacceptably detrimental impact on its setting and on views of B Division.

THE PERMIT REVIEW

- 029.** On 8 January 2019, the Heritage Council received correspondence from the Permit Applicant requesting a review of the Determination and a hearing into the review. The Permit Applicant provided six reasons for review:
- a) *The proposed development is in accordance with the [Masterplan]. The Masterplan is the latest document in an iterative process that has been developed with input from Heritage Victoria, and has always contemplated a single-storey building of a similar footprint in this location.*
 - b) *The proposed development does not have an unacceptable impact on:*
 - i) *the heritage place, including the former Mustering Yard and its setting;*
 - and
 - ii) *views of B Division.*
 - c) *The proposal seeks to facilitate the adaptive reuse of the former Coburg Prisons Complex in a manner that does not require alteration or demolition of any heritage fabric.*
 - d) *The proposal is necessary to allow the reasonable and economic use of the registered place, in order to transform the registered place into a living and working environment that is economically sustainable into the future.*

- e) *The proposal has been informed by a detailed understanding of the cultural heritage significance of the registered place, and designed to minimize detrimental impacts on its cultural heritage significance.*
- f) *The Executive Director has failed to consider all relevant matters set out in s. 101(2) of the [Act] in reaching his decision, and specifically has failed to consider the extent to which the application, if refused, would affect the reasonable or economic use of the registered place.*

030. In accordance with section 108(4)(a) of the Act, the Heritage Council must conduct a review hearing ('the Hearing') if requested by the applicant. A Registrations and Reviews Committee of the Heritage Council ('the Committee') was constituted to consider and determine the matter and a hearing was held on 1 April 2019.

PRELIMINARY, PROCEDURAL AND OTHER MATTERS

SITE INSPECTION

031. On 27 March 2019, the Committee undertook a site inspection of the Place accompanied by the Heritage Council Hearings Coordinator and Project Officer. Access to the site was provided by Mr Martin Ryan, the Sites Facilities Manager. No submissions were sought, made or received at the time of the site inspection.

LATE SUBMISSION

- 032.** On 6 March 2019, the Committee received a written submission and request to participate in the hearing from Professor Hamel-Green on behalf of the PCAG. The Committee agreed to circulate the submission to all hearing participants and determine whether to accept it as a preliminary matter at the hearing.
- 033.** At the commencement of the hearing, the Committee sought the views of other hearing participants on whether the submission should be considered and whether Professor Hamel-Green should be permitted to participate in the hearing. The Executive Director did not object to either. The Permit Applicant also did not object, save that it objected to the Committee allowing Professor Hamel-Green to cross-examine the Permit Applicant's expert witnesses.
- 034.** The Committee determined to accept the written submission and allow Professor Hamel-Green to fully participate in the hearing (including participating in cross-examination in the normal way).

DRAFT 'WITHOUT PREJUDICE' PERMIT CONDITIONS

- 035.** At the hearing, the Committee requested that the Executive Director provide draft 'without prejudice' permit conditions within seven days after the hearing. Those draft conditions were received on 3 April 2019 and circulated to all parties for comment.
- 036.** On 23 April 2019, the Permit Applicant provided comments on the draft conditions. The Permit Applicant opposed three of the nine conditions.

ISSUES

- 037.** The following section is 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 that the Committee takes on each key issue.

SUMMARY OF ISSUES

038. Two key issues emerged in this review:

- a) The impact of the proposal on the cultural heritage significance of the Place. In particular, the impact of the proposed building on the open setting of the Mustering Yard and on views of the northern façade of B Division.
- b) The impact of a refusal of the permit on the reasonable and economic use of the Place.

THE IMPACT ON THE CULTURAL HERITAGE SIGNIFICANCE OF THE PLACE

039. In the Executive Director's view, the proposal would have an unacceptable impact on the cultural heritage significance of the Place because:

- a) it would have an unacceptable impact on the setting of the Mustering Yard;
- b) it would significantly obscure views of the northern façade of B Division; and
- c) it would be a stark and intrusive structure in a setting dominated by nineteenth century bluestone structures.

040. The Permit Applicant disagrees with this assessment and says that the proposal would make a positive contribution to the cultural heritage significance of the Place.

041. Professor Hamel-Green concurs with the Executive Director's assessment.

Does the building have an unacceptable impact on the setting of the Mustering Yard?

Submissions and evidence

042. The Executive Director submitted that the significance of the Mustering Yard derives from its openness and relationship to the surrounding bluestone buildings. The Executive Director relied on the Heritage Impact Statement prepared by Mr Raworth for the Permit Applicant, dated 3 August 2018, which states that "[this] open space enables an appreciation of the relationship between the built elements that face onto the [Mustering Yard]" (see page 12).

043. The Executive Director and Professor Hamel-Green relied on Article 8 of *The Burra Charter: The Australia ICOMOS Charter for Places of Cultural Heritage Significance* ('the Burra Charter'), which provides that conservation requires the retention of an appropriate setting. They both consider that the proposed building would seriously hamper a person's ability to appreciate the relationship between the Mustering Yard and surrounding buildings and understand its previous use as a central assembly place for prisoners.

044. The Permit Applicant submitted that the significance of the Mustering Yard is informed by the 2016 CMP and Masterplan, noting that it is not identified in the Statement of Significance. The Permit Applicant submitted that the CMP deals with the Mustering Yard in terms of its relationship with surrounding built form, rather than its openness *per se*. While the proposed building would remove some of the open space of the Mustering Yard, it will not detract from the open space between the bluestone buildings.

- 045.** Mr Raworth expressed the opinion that the proposed building is deferential to the surrounding buildings and is of a height and scale that allows the significant heritage fabric to remain dominant.
- 046.** Mr Gillette acknowledged that the proposed building would reduce the overall area of the Mustering Yard. However, in his view this will not significantly affect a person's ability to appreciate the scale, function and use of the area as a former penal environment. Mr Gillette also gave evidence that there are negative effects associated with a civic area of the scale of the Mustering Yard as it stands, and urban design benefits associated with reducing that area (for example, via the construction of the proposed building), and providing uses on the Subject Site that, by their nature, are likely to attract people to the area.
- 047.** Mr Gillette noted that while the western end of the Mustering Yard is framed by nineteenth century structures, the eastern end of the Yard is open and poorly defined. In his view, the proposed building would reinstate the formality and sense of enclosure of the Mustering Yard (particularly as the western edge of the proposed building aligns with the western edge of Building 9).

Discussion and conclusion

- 048.** The Committee considers the Mustering Yard to be a key feature that contributes to the cultural heritage significance of the Place and notes that this was common ground among the parties. The Mustering Yard contributes in a fundamental way to understanding the historical significance of the Place as a nineteenth-century prison complex and the role of prisoner labour. It is also significant because of its relationship with the surrounding bluestone structures, particularly B Division, the former hospital, K Wall and the Administration Building. The centrality and openness of the Mustering Yard enables the architectural significance of these buildings, which are highly intact, to be appreciated.
- 049.** The Executive Director's position was that the proposed building – and indeed any new building within the Mustering Yard – would significantly change the openness of the Mustering Yard, its relationship with the surrounding bluestone buildings, and the public's understanding of how the Yard was once used. The thrust of the Executive Director's submissions was that *no* new buildings of any substance should be permitted within the Mustering Yard.
- 050.** The Committee does not agree that *any* new building – regardless of its size, siting and design – will have an unacceptable impact on the cultural heritage significance of the Mustering Yard. The Mustering Yard is large and commensurate in scale with the surrounding heritage buildings, and it can be viewed and accessed from many points. While its western end is enclosed by intact bluestone buildings, its eastern end is relatively 'open' and framed by substantial new developments (most notably, the QM Building and Building 9).
- 051.** As a general proposition, the Committee considers that there is scope to accommodate a small-scale building at the eastern end of the Mustering Yard, provided that it is well-designed and deferential to its setting, and that it positively contributes to the use of the Mustering Yard as an open space.
- 052.** In relation to the particular proposal at hand, the Committee is satisfied that it would not significantly alter the open character of the Mustering Yard or a person's appreciation of its use as an assembly point for prisoners because:
- a) The building has been sited to leave a generously proportioned rectangular-shaped open space area between the northern and western wings of B Division, K Wall and the former hospital. In the Committee's view, this is the most critical portion of the Mustering Yard as it is framed on three sides by

bluestone structures and is directly accessible from the Main Gate and Administration Building (which are key entry points to the Place).

- b) Open vistas across the western portion of the Mustering Yard (particularly from the west and north) will remain largely unimpeded.
- c) The building is a free-standing structure and readily distinguishable from nearby heritage structures, including the upper level and roof of B Division. Therefore, even though the building would be viewed in the foreground, an observer within the western portion of the Mustering Yard would be able to appreciate the dimensions of the Mustering Yard and the relationship between B Division and the other heritage buildings that face the Yard.

053. In reaching this conclusion, the Committee has been influenced, to a degree, by the nature of the Place as an urban renewal site, with substantial redevelopment clearly well underway (and with quite robust physical interventions already having been approved pursuant to the Act). The Committee recognises the benefits of adaptive re-use as a mechanism to enable elements of historic fabric to be retained, while ‘re-purposing’ a place in a more useful and economic way. In general terms, it stands to reason that a heritage place which is in the process of being ‘adapted’ in this way is likely to be more amenable to change than other heritage places.

Does the building have an unacceptable impact on views of B Division?

Submissions and evidence

- 054.** In the Executive Director’s view, the proposed building is located too close to B Division and will significantly obscure views of its northern façade, particularly when viewed from the north and east of the proposed building. Moreover, a person standing in any other location within the Mustering Yard will not be able to view B Division without being aware of the presence of the proposed building. Because the two buildings will always be viewed in concert, the viewer’s ability to appreciate the monumental scale and appearance of B Division will be reduced.
- 055.** The Executive Director acknowledged that the internal paved corridors within the proposed building would allow some views to the Mustering Yard and B Division but submitted that those views do not compensate for the loss of views of B Division more generally.
- 056.** Professor Hamel-Green submitted that, because of the proposed construction of an 18-storey residential hotel south-west of B Division,¹⁵ the proposed building at the Subject Site will interrupt the only views from which a person can continue to appreciate B Division as it looked in the nineteenth century.
- 057.** The Permit Applicant submitted that the proposal respects the principal views of surrounding historic buildings, including B Division. The Permit Applicant relied on the evidence of Mr Raworth and Mr Gillette in this regard.
- 058.** According to Mr Raworth, although the proposed building would be visible from most views within the Mustering Yard – that being one of its objectives – its size and scale are such that any impact on views of B Division will be minor. In his opinion, most of the key viewpoints within the Mustering Yard – including from the Main Gate, B Division and B Annexe – will take in unimpeded views of the surrounding bluestone buildings and walls. Further, the visual relationships of buildings surrounding the Mustering Yard, and the open character of the space, will be maintained.

¹⁵ Identified as Building 16 on the Masterplan.

- 059.** Mr Raworth also gave evidence that the orientation of the ‘cruciform’ corridors within the proposed building will provide framed views to the former hospital (when approached from the south), and to B Division (when approached from the east).
- 060.** Mr Gillette was also satisfied that the proposed building would not result in the loss of any significant views of B Division. In his opinion, the building will permit views of the northern façade of B Division from the primary pedestrian pathway via the Main Gate and Administration Building. Further, it will allow most of the eastern wing of B Division to be viewed from the front of the former hospital.
- 061.** Mr Gillette suggested that the historic context in which something is viewed is just as important as what is viewed. Having regard to this, he considered that the most significant views of B Division and its setting are all contained west of the proposed building.

Discussion and conclusion

- 062.** The Committee’s main concern in relation to the proposal is the extent to which the building impedes views of B Division and, ultimately, is the reason why the Committee has determined to refuse the application.
- 063.** The Committee considers B Division to be a key building of cultural heritage significance in the Place. As noted in the Statement of Significance, it is of historical significance because it forms part of a complex of nineteenth century buildings that demonstrate the influence and continuing development of British prison models. B Division, together with the other bluestone buildings and walls that face the Mustering Yard, express the requirements of containment and order in nineteenth-century prison planning. B Division is also of architectural significance due to its austere and classical style and monumental scale.
- 064.** Article 22.1 of the Burra Charter states that new work may be acceptable “where it respects and does not distort or obscure the cultural significance of the place, or detract from its interpretation and appreciation”. The 2016 CMP provides that new development should not obscure the legibility or appearance of significant prison buildings or impede principal views to the significant buildings on the site.¹⁶
- 065.** In the Committee’s view, the northern façade of the north, east and west wings of B Division is a significant and highly intact principal façade that should remain visible from key viewpoints within and beyond the Mustering Yard. New work should not obscure or detract from the interpretation and appreciation of this façade from these viewpoints, in the absence of any compelling justification.
- 066.** The Committee finds that the proposed location of the building directly in front of, and close to, the eastern wing of B Division, would significantly obscure views of the lower portion of that wing and adversely affect views of B Division overall. It would be difficult to gain an unobstructed view (and therefore full appreciation) of the monumental scale and appearance of B Division because the proposed building would physically intervene in front of that façade, when viewed from any practical perspective.
- 067.** The 1996 CMP notes that the unadorned elevations of the cell wings of B Division contrast with the architecturally more elaborate entrance and chapel wing of B Division.¹⁷ It also notes that the towering nature of the bluestone cell blocks and walls impart a distinct quality and character to the Place.¹⁸

¹⁶ 2016 CMP p 151.

¹⁷ 1996 CMP p 278-9.

¹⁸ 1996 CMP p xii.

- 068.** The Committee considers that providing relatively unobstructed views of the principal façade of B Division from key viewpoints is important to enable these architectural qualities to be properly appreciated.
- 069.** In reaching this conclusion, the Committee has particularly considered the views of B Division from the *western* and *northern* sides of the Mustering Yard, which the Committee regards as the most critical. Mr Gillette concluded that the most significant views of the B Division façade are all contained west of the proposed building. The Committee generally concurs with this and acknowledges that some (but not all) of the eastern wing of B Division will be visible when viewed from the west (near the Main Gate entry). However, the Committee also considers that views of B Division from the north side of the Mustering Yard (including when viewed from Sentry Lane/Road D between Building 9 and Division E) are also significant. A significant portion of the eastern wing façade would be obscured when viewed from this point. In relation to views of the Mustering Yard from the east, the Committee regards these views as less critical.
- 070.** The Committee considers that the adverse impact on views of B Division from the west and north could be mitigated in various ways. One way may involve reorienting the building, and siting it somewhat further east, to provide an uninterrupted view of B Division from the point where Sentry Lane and Road D intersect ('Viewline'). The approximate location of this Viewline is shown on **Attachment 1** and extends from the south-eastern corner of Building 9 to the north-eastern corner of the eastern wing of B Division.
- 071.** In identifying this Viewline, the Committee wishes to explain that it is relatively unconcerned about built form on the eastern side of that Viewline, and relatively cautious in relation to any built form on its western side. Of course, any redesign or relocation of the building would need to factor in a range of considerations, and the Committee does not presume to anticipate all those matters. Clearly, a fresh permit application would need to be formulated and assessed in the usual way.
- 072.** In this context, and with a view to possible future proposals, the Committee wishes to make it clear that the Viewline is not intended to be treated as a mandatory setback, beyond which no building would be acceptable for heritage purposes. Rather, the Committee has identified the Viewline as a way of demonstrating how the Committee's concerns in relation to *this proposed building* could be resolved. The Committee's objective is to encourage a clear view of the northern façade of B Division from the northern and western perimeters of the Mustering Yard (west of Building 9) so that the height, scale and appearance of the façade can be fully appreciated.
- 073.** The Committee is conscious that an entirely different design may be proposed and considered for this general location. It would depend on the nature of that design (and the usual range of other relevant considerations that may apply at the time) as to whether it warranted approval. The Committee does not intend to preclude the possibility of any part of such a proposal extending west of the Viewline (for example, a cantilevered roof) in a way that both meets the above objective and produces an otherwise acceptable outcome, for the purposes of the Act.
- 074.** In relation to the height, scale and dimensions of the proposed building, the Committee agrees with the Permit Applicant that these are deferential to the surrounding bluestone buildings and, save for the impact on views to B Division, would otherwise have no unacceptable impact on the cultural heritage significance of the Place.

Is the architectural design of the building acceptable for its setting?

Submissions and evidence

- 075.** The Executive Director considers the design and appearance of the proposed building to be at odds with its setting. The Executive Director conceded that the design of the building incorporates references to the surrounding nineteenth century buildings (for example, by using bluestone in the corridors and the ‘prison bar’ design of the external metal screen). However, the Executive Director maintains that the building would have an unacceptable impact on B Division and its setting.
- 076.** Mr Raworth’s view was that the building is a contemporary, legible structure that is respectful of the surrounding significant heritage fabric. He noted that the design draws inspiration from B Division by adopting a cruciform layout, incorporating corridors that resemble barrel vaults, and using white steel screens that re-interpret the steel bars throughout the Place. However, Mr Raworth also said that the proposed building is a visually lighter and more permeable structure than the dark, solid bluestone buildings surrounding it.
- 077.** Moreland City Council’s written submission suggested that the proposed building should be more muted in colour so as not to detract from B Division and that it should be reduced in height.

Discussion and conclusion

- 078.** The 2016 CMP states in relation to the design of any new built form within the Place:¹⁹
- ...it is important that any new built form on the place be designed with appropriate regard for the character, appearance and significance of the place, while nonetheless being expressive of its own time, i.e. good contemporary design. Wherever possible, new external structures should be kept separate from the historic fabric. Any buildings erected on the site should not impede principal views to the significant buildings on the site.*
- 079.** Article 22.2 of the Burra Charter states that new work should be readily identifiable as such “but must respect and have minimal impact on the cultural heritage significance of the place”.
- 080.** The Committee notes that the building is not surrounded solely by heritage buildings. It is located directly opposite Building 9, which will be a large and very contemporary building, and against a backdrop of contemporary residential development to the east.
- 081.** Having regard to the above and Mr Raworth’s evidence, the Committee considers that the architectural design of the proposed building is respectful of the cultural heritage significance of the Place and would have a minimal impact on it. The Committee notes that some of the submissions on behalf of the Executive Director made some fair concessions in this regard. The proposal quite carefully references its historic context, while avoiding any potential to be mistaken for historic fabric. In the Committee’s view, while the proposed building would look very different to the surrounding bluestone buildings, it allows the architectural features and form of those buildings to dominate.
- 082.** Given the intended uses of the proposed building, including its use as a meeting site for visitors unfamiliar with the Place, the Committee regards it as beneficial that the building is easily identifiable. In particular, the building benefits from its

¹⁹ 2016 CMP p 151.

'stand alone' location and a suite of materials which would be distinctive in the context.

- 083.** Condition 3 of the Executive Director's draft permit conditions required the white external metal screening of the proposed building to be changed to black or dark grey, to make it less obtrusive. Moreland City Council also suggested that the proposed building should be dark in colour. The Committee does not agree with these submissions. In the Committee's view, a lighter colour that contrasts with the surrounding dark grey bluestone walls is preferable (and therefore acceptable).

Does the building make a positive contribution to the cultural heritage significance of the Place?

Submissions and evidence

- 084.** The Permit Applicant submitted that the proposed building would positively contribute to the cultural heritage significance of the Place. It would do so by providing a hub and essential amenities for visitors (which will encourage pedestrian movement through the Place, and by avoiding the need to alter existing heritage fabric). This argument was premised on the proposition that visitor groups to the Place (who would make use of the building) would inevitably be visiting the Place because of its historic use, rather than for any other reason. The Permit Applicant relied on the evidence of Mr Raworth that providing these facilities within the surrounding bluestone buildings would require significant alterations to those buildings. In Mr Raworth's opinion, it is important to minimise alterations to significant heritage fabric in this general location, particularly fabric fronting the Mustering Yard.
- 085.** In oral submissions, the Permit Applicant referred the Committee to the definition of 'conservation' in the Act,²⁰ which includes "sustainable use of a place or object", contending that adaptive re-use of a place is consistent with good conservation principles.
- 086.** The Executive Director refuted these submissions, suggesting that the uses proposed for the proposed building could be accommodated within the Former Chief Warders and Overseer of Works' residences or in the former hospital. Professor Hamel-Green also submitted that the new shopping centre in Building 9 will offer café and toilet facilities for visitors.

Discussion and conclusion

- 087.** The Committee accepts the position of the Permit Applicant that the uses and amenities proposed for this building would positively contribute to an appreciation of the cultural heritage significance of the Place, by providing a focal point for people, particularly visitors, to access and enjoy the Place and by encouraging pedestrian movement through the Place.
- 088.** Moreover, the Committee accepts that facilitating organised group visits to the Place is likely to better enable a promulgation of the history of the Place – a considerable benefit having regard to the objectives of the Act. There is a certain irony that such a building is pursued by a commercial property developer but opposed by the Executive Director. That is not intended as a criticism because the Executive Director has clearly endeavoured to assess the proposal on its merits, in the manner required. In addition, the ED has expressed that they had envisioned this function to be served by one of the existing buildings. Rather, the

²⁰ Act s 3.

observation perhaps reflects some of the difficulties inherent in decision-making under the Act.

- 089.** As discussed in paragraphs 0106 to 0112 below, and subject to the resolution of impacts on views to B Division to the north, it would be reasonable for a new building to be introduced in this general location, particularly given its intended purpose in fostering and promoting understanding and inquiry in relation to the history of the Place.
- 090.** In the event that a permit was to issue, the Committee would have made that permit subject to conditions in relation to the use of the building, to ensure that the building is used for the purposes that have been put forward and relied upon by the Permit Applicant.

IMPACT ON THE REASONABLE OR ECONOMIC USE OF THE PLACE

- 091.** Section 101(2)(b) of the Act provides that, in determining whether to approve an application for a permit, the Executive Director must consider (emphasis added):
- the extent to which the application, if refused, would affect the reasonable or economic use of the registered place or object.*
- 092.** This obligation carries through to the Committee on review.²¹
- 093.** The Permit Applicant directed the Committee to relevant passages of the decision of VCAT in *Staged Developments Pty Ltd v Executive Director of Heritage Victoria*.²²

Relevance of the Masterplan in considering reasonable and economic use

- 094.** The Masterplan is intended to serve as a high-level planning, heritage and urban design framework to guide the future development of the Place over an eight to ten-year period.²³ It is approved as part of the Moreland Planning Scheme, which operates pursuant to the *Planning and Environment Act 1987*. It is not approved under, and has no particular status for the purposes of, the *Heritage Act 2017*. All of this was common ground between the parties.
- 095.** The ‘vision’ in the Masterplan includes creating a vibrant and sustainable urban renewal hub where contemporary buildings are carefully placed adjacent to historically significant buildings.²⁴ Among other things, the Masterplan sets out heritage and built form principles to guide the location and design of new buildings within the Place.²⁵
- 096.** Within the context of the Masterplan, the proposed building equates to Building 18. Building 18 is shown as a single-storey building, located within the ‘Piazza Precinct’, within essentially the same footprint as the subject proposal. The ‘Piazza Precinct’ is identified as the arrival point for visitors to the Place, a major civic space and focus for new retail/commercial development.²⁶ Building 18 itself is identified in the Masterplan as a possible retail or community building.²⁷
- 097.** The Executive Director and Professor Hamel-Green submitted that the Masterplan is of little or no relevance for the purposes of this review proceeding, and not a

²¹ Act s 108(8).

²² [2001] VCAT 1447.

²³ The portion owned by the Permit Applicant.

²⁴ *Pentridge Coburg Design Guidelines and Masterplan* (February 2014) p 2 (‘Masterplan’).

²⁵ Masterplan p 21-39.

²⁶ Masterplan p 2 and 53.

²⁷ Masterplan p 46.

matter that the Executive Director or the Committee is required to consider under the Act. The Executive Director also stated that he has never endorsed the Masterplan or given the concept of Building 18 any 'in principle' support.

- 098.** The Permit Applicant submitted that the Masterplan and 2016 CMP should be given significant weight because they provide a policy for managing the Place based on sound considerations of the heritage fabric and use of the Place. The Permit Applicant noted that both documents were prepared by and with the involvement of heritage expertise and in consultation with Heritage Victoria. In its written hearing submission, the Permit Applicant referred to previous Heritage Council decisions where Committees have noted the benefits of plans like the Masterplan and 2016 CMP.²⁸

Discussion and conclusion

- 099.** Section 101(2) of the Act sets out the matters that the Executive Director, and the Committee on review,²⁹ must consider in determining whether to approve an application for a permit (see **Attachment 2**). Section 101(3) of the Act sets out additional matters that the Executive Director may consider, one of which is “any other relevant matter”.³⁰ Section 14(1)(d) of the Act also provides that a Committee, in performing its functions or duties or exercising its powers under the Act, may “have regard to any information it considers relevant”.
- 0100.** In the Committee’s view, it is entitled to consider matters that may be considered by the Executive Director under section 101(3) of the Act. The Committee may also have regard to any information it considers relevant, pursuant to section 14(1)(d) of the Act.
- 0101.** While the Committee accepts that the Masterplan is not a mandatory consideration, the Committee nonetheless regards the Masterplan, and in particular its plan for ‘Building 18’ as potentially relevant to this review.³¹ The Masterplan was prepared as a result of relatively extensive consultation and specifically addresses matters relating to the future use and development of the Place and the Subject Site in particular, which are relevant in considering the reasonable or economic use of the Place. The Masterplan forms an important part of the regulatory framework governing the use and development of the Place, and therefore adds to an understanding of the context of the proposal at hand.
- 0102.** While the Executive Director cannot be held to any detailed provisions of the Masterplan, for the purpose of making decisions under the Act, it is apparent that the Masterplan was developed with the intention of guiding the use and development of the Place in an overall sense. It is also apparent that the Executive Director (and others) had the opportunity to participate in that process and elected to participate up to a point. The Executive Director made it clear that he did not actually endorse or approve the Masterplan as a whole, nor any particular parts of it. Even though that may be the case, it does not mean that the Committee should not have regard to the Masterplan.

²⁸ *State Library of Victoria P13956* [2009] VHerCI 2; *Camperdown Botanic Gardens and Arboretum P24319* [2016] VHerCI 6.

²⁹ Act s 108(8).

³⁰ Act s 101(3)(b).

³¹ Section 101(3) of the Act provides that in determining whether to approve a permit application, the Executive Director may consider “any other relevant matter”.

Reasonable use

Submissions and evidence

- 0103.** The Executive Director acknowledged that the reasonable use of the Place is for residential and commercial purposes but submitted that there is no compelling evidence to show that the proposed building is required to facilitate that overall use. In the Executive Director's view, the uses envisaged for the proposed building can be accommodated within the surrounding buildings (including historic buildings).
- 0104.** In contrast, the Permit Applicant submitted that the reasonable use of the Place is for the residential, commercial and visitors' uses identified in the Masterplan, and that the proposed building is required to facilitate that reasonable use. The Permit Applicant placed considerable reliance on the fact that the proposal accords with Building 18 in the Masterplan.
- 0105.** In Mr Gillette's view, the proposed building would provide a point of gathering and orientation for residents and tourists, and would act as an anchor for future public events that may occur within the Mustering Yard (or future Piazza). He regarded the proposal as necessary to provide an active edge to that area and to ensure it fulfils its intended purpose as a civic space (as identified in the Masterplan). While Mr Gillette conceded that this proposal is not the only way to activate the Mustering Yard, he suggested that other options would be costlier and less successful.

Discussion and conclusion

- 0106.** The Masterplan, the 1996 CMP and the updated 2016 CMP all clearly identify that the Place is an area that will undergo significant redevelopment for a range of residential, commercial, civic and entertainment uses. Much of this redevelopment has occurred or is underway and has already been approved pursuant to the Act (as well as in other ways).
- 0107.** The Committee is satisfied that an understanding of the reasonable use of the Place may legitimately derive some degree of guidance from the Masterplan. Having said that, the nub of the 'reasonable use' argument is somewhat elusive in this context, given that the Executive Director seems to accept much of the propositions put by the Permit Applicant in this regard. At this stage of the approvals and development process, it is difficult to dispute that the reasonable use of the Place can accommodate this kind of adaptive re-use as it is already well underway. The 'reasonable use' of the Place *as a whole* is clearly common ground.
- 0108.** However, the more pertinent question for the Committee is not the reasonable use of the Place overall, but rather the reasonable use of a focused area of the Place. This is a more specific inquiry than the precise terms of section 101(2)(b) of the Act, but it is a question that is nonetheless necessary to consider, in the Committee's opinion, in the consideration of this permit review. This question cannot easily be answered by resort to general principles – rather the answer depends on a detailed examination of the nature of the particular proposal, its location, and its relevant impacts for the purposes of the Act.
- 0109.** Having regard to this, the Committee is satisfied that a reasonable use of the Mustering Yard includes use as a civic open space area that will serve as a focal point for the commercial, residential and other uses surrounding it. The Committee accepts the evidence of Mr Gillette that the proposed uses within the proposed building may potentially function as a destination for visitors to the

Mustering Yard and that its design will help to activate that substantial space – resulting in significant benefits, from an urban design perspective.

- 0110.** The Committee is also satisfied that a reasonable use of the Subject Site (within the Mustering Yard) includes a modest building, as contemplated by the Masterplan. The Committee gives some weight to the proposal's general accordance with Building 18 in the Masterplan. Although the Committee accepts that the Executive Director should not be bound to the provisions of a Masterplan approved under a different Act, the Masterplan nonetheless remains a relevant and useful part of the context in terms of the existing and projected development and use of the Place. It therefore has some bearing on the question of the 'reasonable use' of the Place, for the purpose of the Act.
- 0111.** In this context, it would of course have been more relevant, and more helpful to the Committee, if there had been a 'masterplan' type document in force pursuant to the Act, potentially via a covenant. Such a mechanism has obvious utility in the context of large and complex heritage places earmarked for substantial redevelopment in stages, over time. Similar observations have been made by a different Heritage Council Committee.³² In the absence of such a mechanism, permit applications must be dealt with on an ad hoc basis, one discreet component at a time, rather than being understood as part of an overall vision for the registered place.
- 0112.** For all of those reasons, the Committee accepts that the concept of 'reasonable use' of the Place lends weight in support of the approval of the proposed building. However, in the Committee's assessment, this factor does not outweigh the negative heritage impacts that has been identified, namely in relation to views to B Division.

Economic use

Submissions and evidence

- 0113.** In the Executive Director's view, there is insufficient evidence to show that the proposed building is required for the economic use of the Place, particularly having regard to the substantial areas of retail, commercial and residential floorspace provided for in the Masterplan. The Executive Director disputed the Permit Applicant's contentions that the refusal of a permit would have a significant and unreasonable economic cost on the delivery of the Masterplan. The Executive Director considers that the retail and community uses proposed for the building can be accommodated within existing buildings in the Place.
- 0114.** The Permit Applicant contends that the economic use of the Place must be assessed having regard to all development proposed in the Masterplan. It submitted that the proposed building is fundamental to the redevelopment of the Place, particularly the successful activation of the Piazza Precinct. The Permit Applicant relied on the evidence of Mr Dimasi in this regard.
- 0115.** Mr Dimasi gave evidence to the effect that the refusal of a permit would result in the imposition of additional development costs and/or the reduction of estimated revenue flow, which would significantly affect the feasibility of the Masterplan. According to Mr Dimasi, while the proposed building delivers only 200 square metres of floor space, it is important to the successful activation of the retail and commercial precinct, particularly in the sense of attracting visitors – and their disposable income – from well beyond the Place itself. The success of that

³² *Former Kew Cottages P28100 [2018] VHerCI 12.*

precinct will in turn affect future investment by the Permit Applicant in other buildings proposed in the Masterplan.

- 0116.** In Mr Dimasi's opinion, tourist visitation will also be important to the successful activation of the Piazza Precinct, and this requires an attractive and comfortable visitor hub that can accommodate groups. According to Mr Dimasi, the proposed building is specifically designed and located to meet this need.
- 0117.** Mr Dimasi also gave evidence that the Permit Applicant would incur significant additional cost to provide the amenities and services proposed for the building elsewhere within the Place. This is due not only to the additional cost of relocating certain services (for example, the switchboard), but also because it would reduce income from other potential income sources (such as the loss of rental income if the uses and facilities intended for the proposed building were to be located in the shopping centre (Building 9) instead).

Discussion and conclusion

- 0118.** The Committee accepts that the proposed building may provide a range of amenities suited to tourists or visitors and may assist in activating the use of the Mustering Yard. While it was not presented with detailed information about the likely nature or extent of tourist visitation to the Place, the Committee also accepts that the proposed building appears well suited as a meeting point for newly-arrived visitors to the Place.
- 0119.** However, the Committee is not persuaded by the evidence of Mr Dimasi that the building is fundamental to the economic success or viability of the Piazza Precinct, nor to the economic success of the Masterplan overall. In reaching this conclusion, the Committee has considered not only the overall floor area of the building, but also the size and configuration of the individual spaces within the building and the mix of proposed uses.
- 0120.** Mr Dimasi was frank in acknowledging the difficulty in ensuring the economic success of the Piazza Precinct, and the difficulty in linking the approval of this permit to any substantively better economic use of the Piazza Precinct (or the Place more generally). The Committee regards the economic benefits associated with the proposal to be speculative and tenuous. The realisation of those economic benefits represents a 'best case' scenario, which cannot be assured via the development proposed by the permit application. The Committee finds itself unable to rely upon any postulated economic benefits in support of the grant of the permit sought.
- 0121.** The Committee is also not persuaded by the evidence of Mr Dimasi that the additional cost of relocating the facilities proposed for the building would be so substantial as to significantly affect the economic use of the Place. The Committee notes that the details of those costs, and their rationale, were matters outside the scope of Mr Dimasi's evidence.

CONCLUSION

- 0122.** Having regard to the above reasons, the Committee considers that:
- a) the location of the proposed building within the Mustering Yard will have an unacceptable impact on the cultural heritage significance of the Place due to the impact on existing views to B Division; and
 - b) although other factors weigh in favour of the grant of the permit sought, including the heritage 'benefits' associated with the proposal, the architectural merit of the design, and the concept of 'reasonable use' of the

Place, those factors are not sufficient to overcome the detrimental impact of the proposed building on views to B Division.

0123. It follows that the refusal of the permit application will stand.

DETERMINATION

0124. After considering all submissions received in relation to the permit review, and after conducting a hearing, the Heritage Council has determined pursuant to section 108(7)(a) of the *Heritage Act 2017* to affirm the determination under review.

ATTACHMENT 1

MAP SHOWING APPROXIMATE LOCATION OF VIEWLINE



ATTACHMENT 2

SECTION 101 OF THE HERITAGE ACT 2017

101 Determination of permit applications

- (1) After considering an application the Executive Director may—
 - (a) approve the application and—
 - (i) issue the permit for the proposed works or activities; or
 - (ii) issue the permit for some of the proposed works or activities specified in the application; or
 - (b) refuse the application.
- (2) In determining whether to approve an application for a permit, the Executive Director must consider the following—
 - (a) the extent to which the application, if approved, would affect the cultural heritage significance of the registered place or registered object;
 - (b) the extent to which the application, if refused, would affect the reasonable or economic use of the registered place or registered object;
 - (c) any submissions made under section 95 or 100;
 - (d) if the applicant is a public authority, the extent to which the application, if refused, would unreasonably detrimentally affect the ability of the public authority to perform a statutory duty specified in the application;
 - (e) if the application relates to a listed place or to a registered place or registered object in a World Heritage Environs Area, the extent to which the application, if approved, would affect—
 - (i) the world heritage values of the listed place; or
 - (ii) any relevant Approved World Heritage Strategy Plan;
 - (f) any matters relating to the protection and conservation of the registered place or registered object that the Executive Director considers relevant.
- (3) In determining whether to approve an application for a permit, the Executive Director may consider—
 - (a) the extent to which the application, if approved, would affect the cultural heritage significance of any adjacent or neighbouring property that is—
 - (i) included in the Heritage Register; or
 - (ii) subject to a heritage requirement or control in the relevant planning scheme; or
 - (b) any other relevant matter.