

# **Heritage Council** Registrations and Reviews Committee

## **Residence, 11 Brunswick Street, Fitzroy (H0149)**

**Hearing** – 1 May 2019

**Members** – Ms Louise Honman (Chair), Mr Patrick Doyle, Mr Jeffrey Robinson

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### **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)(c) of the *Heritage Act 2017* to set aside the determination under review and make another determination in substitution for it, by issuing Permit No. P26809 with conditions.

**Louise Honman (Chair)**  
**Patrick Doyle**  
**Jeffrey Robinson**

**Decision Date** – 28 June 2019

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## **APPEARANCES/SUBMISSIONS**

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

The Executive Director was represented by Mr Peter Brooks, Senior Heritage Officer. Ms Janet Sullivan, Permit Principal, was also present and available to answer questions.

### **MS LOUISE ELLIOT**

Ms Elliot made written and oral submissions in support of the Executive Director's determination.

### **MRS MARGARET O'BRIEN**

Mrs O'Brien made written and oral submissions in support of the Executive Director's determination.

### **MS BEVERLY WALDEGRAVE-KNIGHT ('THE PERMIT APPLICANT')**

Submissions were received from Ms Beverly Waldegrave-Knight, the applicant for Permit No. P26809 and requestor of the review ('the Permit Applicant'). Ms Emily Porter, Barrister, appeared on behalf of the Permit Applicant, 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 and Ms Kate Gray of Lovell Chen Pty Ltd. Mr Raworth and Ms Gray were called to give expert evidence.

## **WRITTEN SUBMISSIONS**

Written submissions in support of the Executive Director's determination were also received from the following:

- Mr Michael Glynatsis
- Ms Jenny Morrison on behalf of the South Fitzroy Protection Group Inc.
- Ms Margaret Portelli
- Yarra City Council ('Yarra').

These submitters did not appear at the hearing.

## INTRODUCTION/BACKGROUND

### THE REVIEW

01. This proceeding is a review of a determination by the Executive Director to refuse Permit Application No. P26809 in respect of the residence at 11 Brunswick Street, Fitzroy ('the Review').

### THE PLACE

02. 11 Brunswick Street, Fitzroy is a rectangular-shaped allotment located on the western side of Brunswick Street, between Victoria Parade to the south and Gertrude Street to the north ('the Subject Site'). Its western boundary abuts a rear lane which connects with Fitzroy Street to the west.
03. The built form on the Subject Site consists of three main components:
  - a) A three-storey rendered masonry Victorian terrace named 'Arbirlot' that fronts Brunswick Street ('the Main House'). The Main House has a full height arcaded façade on its Brunswick Street frontage and is highly intact. Modifications have been made to the rear western façade and interiors of the Main House.
  - b) A two-storey wing attached to the rear of the Main House, abutting the northern boundary of the Subject Site ('the Rear Wing'). This wing has been modified internally and externally.
  - c) A two-storey concrete block building ('the Addition') that abuts the Rear Wing and extends to the southern, northern and western boundaries of the Subject Site. The Addition is single-storey for the entire length of the southern elevation of the Rear Wing, with the roof forming a terrace that is accessible from the first floor of the Main House. The Addition is two-storey where it abuts the western wall of the Rear Wing.
04. The original dwelling (comprising the Main House and Rear Wing) was constructed in 1891. The Addition was constructed in approximately 2000.
05. The ground floor of the Main House is presently used as a gallery with associated offices. The first and second floors of the Main House and Rear Wing are used as a residence.
06. The expert witness statement of Mr Raworth, dated 4 April 2019, includes the following excerpts describing the surrounding context of the Subject Site:<sup>1</sup>

*The west side of Brunswick Street, to either side of the subject site, is characterized by a series of architecturally elaborate, multi-storey Victorian and Edwardian heritage buildings. These include a large, freestanding double storey Italianate villa at 7 Brunswick Street [VHR H1706], and elaborately decorated double-story (sic) commercial buildings at 13 Brunswick Street [VHR H0150] and 15 and 17 Brunswick Street. The adjacent site to the south at 9 Brunswick Street contains a discreetly designed modern double storey infill building at a setback. Opposite the site, to the east, is St Mary of the Cross Square, which includes an Australian Catholic University building of at least nine storeys on its eastern side. The three storey Victorian commercial building with a rendered façade at 22 Brunswick Street (Cathedral Hall) is the nearest heritage building on the east side of the street.*

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<sup>1</sup> Statement of Evidence of Mr Bryce Raworth, dated 4 April 2019, p 22.

*Across the adjacent laneway to the west and south west is substantial built form associated with St Vincent's Hospital, including a highrise car park and larger modern hospital building. This forms a prominent backdrop to the subject site...*

## **CULTURAL HERITAGE SIGNIFICANCE OF THE PLACE**

- 07.** The original 1891 building on the Subject Site is included in the Victorian Heritage Register ('the Register') as a place of cultural heritage significance to the State of Victoria ('the Place'), being registered place H0149.<sup>2</sup>
- 08.** The extent of registration of the Place is identified on page 2 of the Executive Director's first written hearing submission, dated 5 April 2019. Importantly, it only comprises the building footprint of the original Main House and Rear Wing and does not include any land associated with that building footprint or the balance of the Subject Site.
- 09.** The extent of registration, and its implications for the Review, are discussed in more detail in paragraphs 041 to 051 below.
- 010.** The Statement of Significance describes the Place as follows:

*The Residence at 11 Brunswick Street, Fitzroy is a three storey brick building, built in 1891 as a residence for Alexander Sturrock, a salesman. The four-bay rendered façade supports an attached three-pier arcade.*

*The Residence at 11 Brunswick Street is of architectural and historical significance to the State of Victoria.*

*The Residence at 11 Brunswick Street is of architectural significance as an interesting example of boom style terrace house architecture. The superimposed arcade is a typical element used in domestic buildings of this period. This particular example is of unusual width and the different application of mouldings and other decorative features on each floor is notable.*

*The Residence at 11 Brunswick Street is of historical significance as an example of the character of inner Melbourne development in the late 19<sup>th</sup> century, and as an integral element of the Brunswick Street/Gertrude Street precinct. The grand proportions and ornate finish of the building are evidence of the flow of wealth into Melbourne as a result of the gold rushes in previous decades, although this building is also notable for being built just after the onset of the 1890s depression. Together with the other elements of the Brunswick Street/Gertrude Street precinct, including neighbouring Dodgshun House, the house demonstrates the substantial character of this part of Fitzroy at the end of the 19<sup>th</sup> century.*

## **YARRA PLANNING SCHEME AND THE PLANNING PERMIT**

- 011.** The Subject Site is individually identified as HO151 in the Schedule to Clause 43.01 – Heritage Overlay (HO) of the Yarra Planning Scheme ('the Scheme'). That Schedule identifies that the Place is included in the Register. Relevantly, even though the extent of registration of the Place is limited to the building footprint of the Main House and Rear Wing, the mapped extent of HO151 goes beyond the building footprint to include the *whole* of the Subject Site.

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<sup>2</sup> The extent of registration is described in the Register as 'No. 149. Building, 11 Brunswick Street, Fitzroy'.

- 012.** Under Clause 43.01-3 of the Scheme, a permit is not required under the HO to develop a heritage place which is included in the Register (other than an application for subdivision).
- 013.** In 2017, the Permit Applicant applied to Yarra for a planning permit to partially demolish the Rear Wing and construct an eight-storey apartment building at the rear of the Subject Site. Yarra assessed the application on the basis that the permit exemption in Clause 43.01-3 in the Scheme applied to the whole of the Subject Site and therefore matters relating to heritage were not addressed in the assessment.
- 014.** On 1 June 2018, Yarra issued a planning permit for the development, subject to changes, including that the proposed apartment building be reduced in height by one storey.

### THE PERMIT APPLICATION

- 015.** On 22 August 2017, the Permit Applicant made an application to the Executive Director pursuant to section 67 of the *Heritage Act 1995* ('the 1995 Act') for a permit to undertake demolition works and construct an eight-storey apartment building at the rear of the Subject Site ('the Application').
- 016.** The Permit Applicant now seeks a permit to construct a seven-storey apartment building, in accordance with the planning permission granted by Yarra. Revised plans based on this planning permission were submitted to the Executive Director on 10 August 2018.

#### *Proposed demolition works*

- 017.** The Permit Applicant proposes to demolish the western end of the Rear Wing, which comprises approximately half its length, including the roof and one of its two existing chimneys. The northern boundary wall of the Rear Wing, and the ground floor and first floor west-facing chimney breasts within the Rear Wing, are to be retained.
- 018.** The demolition works also include removing existing internal partitioning within the Rear Wing and ground floor of the Main House, and demolition of the Addition.

#### *Proposed new works*

- 019.** New works to the Main House include the construction of new internal partitioning, refurbishment of the ground floor and widening of the existing ground-level opening in its western elevation to provide access to the proposed apartment building lobby.
- 020.** New works to the retained portion of the Rear Wing include a new opening on the north side of the ground floor fireplace (to connect to a path leading to the rear laneway), a new opening on the south side of the first floor fireplace (to connect to a new first floor terrace), and partitioning and other internal works to the ground floor level to create bicycle and bin storage areas.
- 021.** The most significant new works relate to the construction of the proposed apartment building, which is described in Mr Raworth's expert witness statement as follows:<sup>3</sup>

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<sup>3</sup> Expert Witness Statement of Mr Bryce Raworth, dated 4 April 2019, p 26.

*The new addition or apartment development will be seven storeys in scale. In plan, it will span the site at ground floor behind the retained dwelling, abutting each property boundary. A garage adjacent to the laneway will provide parking for 8 cars by means of a car stacker. A secondary pedestrian entrance from the lane will run along the north side of the rear part of the site, providing access to a new internal lobby space, lift, stair and storage spaces in the retained eastern portion of the rear wing.*

*The area occupied by the demolished west end of the rear wing will contain an outdoor terrace on its north side at Level 1, and the stairwell to the new multi-storey addition building envelope on its south side. Levels 1 to 6 of the new multi-storey envelope on the west side of the site will each contain a two bedroom apartment. On each floor a balcony will partially project over the new terrace at Level 1 in the location of the demolished rear wing.*

*The new addition will not directly abut the retained portion of the rear wing at Level 1 – the new building volume will set back from the west end of the retained portion of the rear wing of Arbirloot. At the north west corner of the site, the addition will be indented to accommodate a small balcony overlooking the lane. Levels 2-5 will essentially be the same, including an additional indented balcony in both north west and north east corners of each level. The roof will have a sawtooth profile.*

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*The east elevation facing Brunswick Street will be externally clad with a vertical batten screen on its southern side, with the recessed north side finished with white sheet cladding and glazed balustrading. The north and south elevations will each be largely clad with light grey horizontal textured concrete, with smaller section dark toned sheet cladding along the top level, and timber batten screens on the east side. The rear west elevation to the adjacent laneway is predominantly clad with a full height vertical timber batten screen, with glazing and white cladding along the northern side. At street level it will include a large timber garage door and pedestrian entry.*

## **DETERMINATION OF THE EXECUTIVE DIRECTOR**

- 022.** On 12 October 2018, the Executive Director determined pursuant to section 74(1)(c) of the 1995 Act to refuse to issue a permit in respect of the Application ('the Determination') on the following basis:

*The loss of significant built fabric and the impact on the setting of the place are not considered justifiable when assessed against the criteria which the Executive Director must consider when determining a permit application.*

## **THE PERMIT REVIEW**

- 023.** On 10 December 2018, the Heritage Council received a request from the Permit Applicant for a review of the Determination and a hearing into the review.
- 024.** On 12 March 2019, the Permit Applicant advised that it wished to amend its reasons for review to be as follows:
- 1. The proposal is appropriate within the setting of the place and will not have an adverse impact on the cultural heritage significance of the place;*
  - 2. The loss of significant built fabric is justifiable in the circumstances;*

3. *The Executive Director failed to correctly apply s 73(1)(b) of the [1995 Act] by, in effect, requiring evidence of “reasonable or economic use” to justify the loss of heritage fabric;*
4. *The Executive Director failed to correctly apply s 73(1)(a) of the [1995 Act] by requiring the applicant to provide an alternative development proposal as part of its permit application to be considered by the Executive Director; and*
5. *In all the circumstances the proposal is worthy of approval.*

**025.** A Registrations and Reviews Committee of the Heritage Council (‘the Committee’) was constituted to consider and determine the matter.

## **PRELIMINARY, PROCEDURAL AND OTHER MATTERS**

### **SITE INSPECTION**

**026.** On 29 April 2019, the Committee undertook a site inspection of the Subject Site accompanied by the Heritage Council Hearings Coordinator. Access to the site was provided by the Permit Applicant. No submissions were sought, made or received at the time of the site inspection.

### **SUBMISSIONS ON THE EXTENT OF REGISTRATION**

- 027.** On 1 April 2019, the Committee wrote to all parties regarding the extent of registration of the Place as compared to the extent of land included in HO151 of the Scheme. The Committee:
- a) requested that the Executive Director and Permit Applicant include a plan or diagram in their written hearing submissions that clearly identified the part or parts of the proposed development to be located within the extent of registration; and
  - b) invited all parties to the hearing to include in their written submissions any contentions in relation to the extent to which the Committee can or should have regard in respect of the proposed development that may be located outside of the extent of registration.
- 028.** All submissions received in respect of these matters were circulated to Yarra and parties participating in the Review.

### **DRAFT ‘WITHOUT PREJUDICE’ PERMIT CONDITIONS**

- 029.** At the hearing, the Committee requested that the Executive Director provide draft ‘without prejudice’ permit conditions within seven days after the hearing. The draft conditions were received on 7 May 2019 and circulated to all parties for comment.
- 030.** On 15 May 2019, the Permit Applicant provided comments on the draft conditions. The Permit Applicant accepted all of the conditions as drafted other than a condition relating to the reconstruction of the decorative pediment on the front façade of the Main House. Ms Elliot also provided comments on a number of draft permit conditions.
- 031.** Issues in relation to conditions are discussed in paragraphs 0108 to 0115 below.

### **RULINGS ON PRELIMINARY MATTERS**

**032.** At the commencement of the hearing, the Committee determined to make rulings in respect of two preliminary matters:

- a) whether the Committee is required to determine the Review under section 76 of the 1995 Act or section 108 of the *Heritage Act 2017* ('the 2017 Act'); and
- b) the extent of registration of the Place, and relevant implications for the purpose of the Committee's consideration and determination in respect of the Application.

**033.** The Committee invited the parties to make oral submissions on these matters and those submissions, together with the relevant written submissions, were considered before the rulings were made.

*Determination of the Review under the 1995 Act or 2017 Act*

**034.** After the Application was made but before it was determined by the Executive Director, the 1995 Act was repealed and the 2017 Act enacted. The relevant dates are as follows:

- a) on 22 August 2017, the Executive Director received the Application;
- b) on 1 November 2017, the 1995 Act was repealed and the 2017 Act commenced operation ('the Commencement Day');
- c) on 12 October 2018, the Executive Director made the Determination; and
- d) on 10 December 2018, the Permit Applicant requested a review of the Determination.

**035.** On the Commencement Day, the appeal provisions in sections 75 and 76 of the 1995 Act were repealed (subject to the transitional arrangements described below), and new review provisions in sections 106 to 108 of the 2017 Act commenced operation.

**036.** Section 270 of the 2017 Act contains transitional provisions for the continued application of the 1995 Act in relation to a certain class of permit applications.

**037.** Section 272 of the 2017 Act contains transitional provisions for the continued application of the 1995 Act in relation to a certain class of appeals, namely those that had been lodged under section 75 of the 1995 Act but had not been determined by the Heritage Council before the Commencement Day.

**038.** Notably, there are no transitional provisions in the 2017 Act for the continued application of the appeal provisions in the 1995 Act to permit applications determined by the Executive Director *after* the Commencement Day. It would only be if s 270 was intended to apply to a permit application even after it had been determined that the present circumstances would be subject to the transitional provisions of the 2017 Act.

**039.** Having regard to the above, the Committee ruled that none of the transitional provisions apply, and that the Review is to be determined under section 108 of the 2017 Act. This ruling was supported by the following reasons:

- a) The Application fell within the scope of section 270(1) of the 2017 Act, and section 270(2) had the effect of requiring the Executive Director to determine the Application in accordance with the 1995 Act (and the Executive Director duly did so). However it is not apparent that the 270(1) and (2) were intended to continue to apply to a relevant permit application after its determination by the Executive Director.
- b) Section 270(3) of the 2017 Act, which might be expected to have resolved that question, is confusing. It is difficult to apply or interpret.



- c) The transitional arrangements in section 272 of the 2017 Act apply only to appeals that had been lodged under section 75 of the 1995 Act *before* the Commencement Day. As the Permit Applicant requested a review of the Determination *after* the Commencement Day, these transitional arrangements do not apply.
- d) There are no other express transitional provisions in the 2017 Act that provide for the continued application of the appeal provisions in the 1995 Act to determinations made by the Executive Director after the Commencement Day.
- e) Because section 75 of the 1995 Act was no longer in force after the Executive Director's refusal of the Application, the only avenue available to the Permit Applicant to request a review of that Determination was by making a request under section 106 of the 2017 Act (which the Permit Applicant duly did).
- f) Given that the Review was brought pursuant to a provision the 2017 Act, it would be surprising for that Review to be deemed to be subject to the provisions of the 1995 Act, and there is no transitional provision which clearly seeks that effect.
- g) If the Parliament had intended the Review to be subject to the 1995 Act, section 272 of the New Act could have made this clear. Instead, section 272 was drafted to distinguish appeals lodged under the 1995 Act from reviews lodged under the 2017 Act.

**040.** It follows that, under section 108(8) of the 2017 Act, the Committee must consider the matters set out in section 101(2) of the 2017 Act (see **Attachment 1**). The Committee has considered these matters in determining this Review.

#### *The Extent of Registration*

**041.** The Executive Director submitted that the Place was included in the Register of Historic Buildings under the *Historic Buildings Act 1974* ('the 1974 Act') when only buildings (and no land) could be registered. The entry included in the Register of Historic Buildings was as follows:<sup>4</sup>

*No. 149. Building, 11 Brunswick Street, Fitzroy.*

**042.** The Executive Director submitted that the extent of registration of the Place is delineated by the building footprint of the Main House and Rear Wing and does not include any land on the Subject Site.

**043.** The Permit Applicant agreed with the Executive Director's submission as to the extent of registration. The Permit Applicant submitted that no permission is required under the 1995 Act or 2017 Act to carry out works or activities on the balance of the Subject Site and therefore development on that portion can occur 'as of right'. However, the Permit Applicant contended that the 'as of right' works are relevant to the permission to be granted for works to the Place because of section 101(3) of the 2017 Act.

**044.** Section 101(3) provides that the Executive Director may consider:

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<sup>4</sup> *Victoria Government Gazette* No. 100 (9 October 1974) p 3648.

- a) the extent to which the Application, if approved, would affect the cultural heritage significance of any adjacent or neighbouring property that is subject to a heritage control in the relevant planning scheme;<sup>5</sup> and
- b) any other relevant matter.

**045.** Ms Elliot referred to the definitions of ‘building’ in the 1974 Act and *Historic Buildings Act 1981*, both of which include ‘appurtenances’ to a building. Ms Elliot submitted that because appurtenances may include fences, outbuildings, walls and other similar structures, the term ‘building’ impliedly includes land associated with the building. Ms Elliot contended that the definitions of ‘place’ in the 1995 Act and 2017 Act,<sup>6</sup> which expressly include “building” and “land”, merely clarified the intention of these earlier Acts in relation to land associated with registered buildings.

#### *Discussion and ruling*

- 046.** The Committee accepted the position put forward by the Executive Director and Permit Applicant that the extent of registration of the Place is confined to the building footprint of the Main House and Rear Wing and does not include any land within the Subject Site, or at least no land beyond the extent of that footprint.
- 047.** The Committee considered Ms Elliot’s detailed and well-researched submissions in this regard but was ultimately not persuaded that the definition of ‘building’ in the 1974 Act or subsequent Acts should be construed as impliedly including land associated with a building. Although those previous Acts may well have enabled ‘appurtenances’ to a building to be included in a registration, there was not sufficient evidence that any particular appurtenances were intended to be the subject of the registration in this case (much less the whole of the Subject Site).
- 048.** Having regard to the purpose of the 2017 Act and its relevant predecessors, and the legal consequences that have flowed from registration under those Acts, it has always been necessary and desirable that there be certainty about what is and is not included within any given registration. It would be contrary to the intended functioning of those legislative regimes for the instrument of registration for the Registered Place to be open to such wide interpretation, in the sense of including appurtenances (including land) that are not clearly identified by that instrument.
- 049.** Accordingly, the Committee ruled that:
- a) a permit is required under the 2017 Act to partially demolish the Rear Wing;
  - b) a permit is required under the 2017 Act to carry out works or activities within the building footprint of the Main House and Rear Wing; and
  - c) no permit is required under the 2017 Act to carry out works or activities on the portion of the Subject Site that is outside the building footprint of either the Main House or Rear Wing.
- 050.** Consistent with this ruling, in reviewing the Determination, the Committee has confined its assessment to the proposed works or activities that require a permit under the 2017 Act, namely:
- a) The demolition of the western portion of the Rear Wing.

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<sup>5</sup> 2017 Act s 101(3)(a).

<sup>6</sup> The definition of ‘place’ in section 3 of the 1995 Act and section 3 of the 2017 Act both state that a place includes “a building” and “land associated with any thing specified [in the definition of place]”.

- b) The new works to the Main House and eastern half of the Rear Wing, as generally described in paragraphs 019 and 020 above.
- c) The new works for the apartment building that are located within the building footprint of the Rear Wing, generally as indicated by the area shown in red in Figures 26 and 27 of Mr Raworth's written statement of evidence, dated 4 April 2019 (see page 25). Those works include:
  - (i) Ground Level – the construction of a pedestrian entrance that provides access to the bicycle/bin storage area within the retained portion of the Rear Wing, and storage areas and part of the stairwell within the apartment building;
  - (ii) Level 1 – the construction of outdoor terrace areas to service Apartment 1 and the residence within the Main House, and part of the stairwell within the apartment building;
  - (iii) Levels 2 to 6 – the construction of a balcony for each floor of the apartment building that partially projects over the new outdoor terrace on Level 1, including a northern 'wing wall' for each balcony. The balconies are setback 10.9 metres from the external west wall of the Main House;
  - (iv) A relatively small vertical 'sliver' of built form, immediately to the south and south east of those balconies, enclosing part of the stairwell, at levels 1 to 6 inclusive.
  - (v) A relatively small portion of the terrace on Level 7.

**051.** In respect of section 101(3)(a) of the 2017 Act, and particularly in response to the submissions made on behalf of the Permit Applicant, the Committee concluded that it is not necessary to consider the effect of the Application to the extent that the Application (as formulated and submitted) depicted certain works that do not require a permit under the 2017 Act. In considering the effect of the Application on any adjacent or neighbouring property, this extends only to considering the effect of works and activities that require a permit under the 2017 Act. The Application only validly seeks permission for those components that require a permit under the 2017 Act, not for any additional components of the proposal that are 'as of right' – despite the fact that those 'as of right' components have been consistently shown on the application plans.

## ISSUES

- 052.** 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.
- 053.** From the submissions received, two key issues emerged:
- a) the impact of the demolition of the western portion of the Rear Wing on the cultural heritage significance of the Place; and
  - b) the impact of the proposed new works on the cultural heritage significance of the Place and neighbouring heritage properties.

## IMPACT OF DEMOLITION ON THE CULTURAL HERITAGE SIGNIFICANCE OF THE PLACE

### *Summary of submissions and evidence*

- 054.** The Executive Director submitted that the partial demolition of the Rear Wing would have a detrimental impact on the cultural heritage significance of the Place by substantially altering the form, extent and legibility of the Rear Wing. In the Executive Director's view, the proposed demolition would significantly reduce a person's ability to read and understand the historical use of the Rear Wing as a service wing, its functional relationship to the Main House, and the overall form and scale of the Place.
- 055.** The Executive Director acknowledged that the Place has been altered internally and externally. However, the Executive Director contended that it remains capable of conveying important information about social history and historical building practice, and that many of the alterations could be easily reversed.
- 056.** The Officer Report prepared by Heritage Victoria for the Application<sup>7</sup> suggests that the Rear Wing may have accommodated a laundry, kitchen, scullery and servants' sitting room at ground level, and servant bedrooms on the first floor. The Executive Director provided some documentary evidence in relation to the original layout of the Rear Wing but did not identify any physical evidence of historic service provision that remains within the building.
- 057.** Ms Elliot and several other submitters agreed with the Executive Director's assessment and made submissions to the effect that the proposed demolition would significantly alter the overall form, scale and footprint of the Place and result in the loss of significant original fabric.
- 058.** Yarra and other submitters expressed the view that the historical significance of the Place is not confined to its façade or front rooms but includes the entire building as its design exemplifies the cultural significance of how houses of the wealthy provided more constrained accommodation at the rear for household staff.
- 059.** The Permit Applicant submitted that the extent of demolition must be assessed based on the facts and circumstances of the case. Relying on the expert evidence of Mr Raworth and Ms Gray, the Permit Applicant submitted that the cultural heritage significance of the Place would not be adversely affected by the demolition works because:
- a) the Statement of Significance does not identify the Rear Wing as a significant element;
  - b) the integrity of the Rear Wing is highly diminished and compromised due to extensive internal and external alterations; and
  - c) the Rear Wing is plain and generic in character compared to the Main House.
- 060.** Mr Raworth's opinion was that the Rear Wing is of low integrity and low heritage value, as it has been substantially modified such that there is little remaining internal fabric or evidence of its original external character.

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<sup>7</sup>'Report and Recommendation to Executive Director on Application for a Permit', prepared by Mr Peter Brooks of Heritage Victoria, dated 11 October 2018, p 5.

- 061.** Mr Raworth's evidence included detailed descriptions of the current condition of the Rear Wing. Among other things, Mr Raworth noted that:
- a) the internal layout of the ground floor level has been substantially modified such that there is little remaining original internal fabric;
  - b) while the original internal layout of the first floor level is evident, the rooms have been refurbished and new fabric introduced;
  - c) the ground floor level is largely concealed from external view due to the construction of a ground floor addition on the south side of the Rear Wing;
  - d) the external south elevation of the Rear Wing at first floor level is substantially intact;
  - e) the western elevation is enclosed and concealed from view from the rear laneway due to the construction of the Addition;
  - f) the only elements of the Rear Wing that are visible from the rear laneway are the western end of its northern wall and the top portions of its two chimneys; and
  - g) there is no physical evidence of historic service uses such as an original kitchen or laundry.
- 062.** Mr Raworth disagreed with the Executive Director's assessment that the Rear Wing can be readily understood as a service wing, noting that it contains no physical evidence of historic service provision nor any secondary or servant stair. Mr Raworth also disagreed with the Executive Director's contention that it is necessary to keep the Rear Wing in its entirety in order to understand the scale and form of the Rear Wing, or the proportions of the Place overall.
- 063.** Ms Gray expressed similar views to those of Mr Raworth. In Ms Gray's opinion, the significance of the Place relates primarily to its architectural treatment (as related to its façade design) and to its imposing scale as a boom-era Victorian terrace house. According to Ms Gray, the significance of the Place does not rely on its completeness or intactness as a nineteenth century house.
- 064.** Ms Gray observed that Victorian terrace houses typically included service wings and accommodation for servants and the significance of these wings to a heritage building or precinct can vary. She did not consider the Rear Wing to be a strong contributory element to the significance of the Place as it has been extensively altered and is at the rear of the Subject Site.
- 065.** Ms Gray was satisfied that the retention of the eastern half of the Rear Wing would enable the three-dimensional form and relationship of the Rear Wing as a service wing to the Main House to be understood. In her view, the demolition of the western half of the Rear Wing would be an acceptable heritage outcome.

#### *Discussion and conclusion*

- 066.** In the Committee's view, the heritage impact of the proposed demolition works must be assessed having regard to the current condition of the Place, including the alterations and additions that have occurred over the last two decades.
- 067.** After considering all submissions and inspecting the Subject Site, the Committee agrees with the position of the Permit Applicant, as informed by its expert witnesses, that the demolition of the western portion of the Rear Wing will not have an unacceptable impact on the cultural heritage significance of the Place.

- 068.** The Committee agrees with the evidence of Mr Raworth that the Rear Wing has been significantly altered internally and externally. Externally, its western elevation is concealed from view and its southern elevation at ground floor level has been substantially modified and subsumed into an internal building space. Internally, the Rear Wing at ground floor level has been substantially modified and refurbished such that there is little original fabric remaining. In the Committee's view, the Addition and other alterations to the Place have so significantly altered the setting, external appearance and internal layout of the Rear Wing that it is difficult to appreciate its original form, scale and appearance. Indeed, when inspecting the interior of the Rear Wing at the ground floor level, the Committee found it difficult to discern whether some rooms were located within the Rear Wing or Main House.
- 069.** The Committee also agrees with the evidence of Mr Raworth and Ms Gray that the Rear Wing is not a notable or intact example of a rear service wing. There is no physical evidence within the Rear Wing that demonstrates its historic use for service provision (such as a kitchen, laundry or scullery) and much of it has been altered internally and externally.
- 070.** The Committee accepts the evidence of Ms Gray that the significance of the Place relates primarily to the architectural and historical significance of the Main House as an example of nineteenth century boom style terrace housing in inner Melbourne, and not for its intactness or completeness as a Victorian-era house.
- 071.** It follows that the Committee was not persuaded by submissions from the Executive Director and other parties that the proposed demolition would substantially alter the legibility of the Rear Wing as a service wing, or the overall form, scale and extent of the Place. In the Committee's view, those submissions significantly understate the effect that recent building alterations have had on the Rear Wing and the western end of the Subject Site generally.
- 072.** The Committee does not accept the Executive Director's contention that the current condition of the Rear Wing can be easily reversed. Indeed, the Committee considers that this would likely involve significant work and expense, and seems generally improbable and theoretical. In any event, the Application must be assessed based on the current condition of the Place, and not as it was before the Addition or other alterations were made.
- 073.** The Committee was also not convinced by arguments that the full retention of the Rear Wing is necessary to properly appreciate its original form and scale. Those arguments might have had force if the Rear Wing was a substantially intact service wing and not enclosed by built form to the south and west. However, that is not the current situation. In the Committee's view, the retention of the eastern half of the Rear Wing will enable the three-dimensional form and use of the Rear Wing as a service wing to continue to be understood and appreciated.

## **IMPACT OF NEW WORKS ON THE CULTURAL HERITAGE SIGNIFICANCE OF THE PLACE**

### **Proposed Apartment Building**

#### *Summary of submissions and evidence*

- 074.** The Executive Director submitted that the proposed apartment building would detrimentally affect the cultural heritage significance of the Place because it is much taller than the Main House and would be more visually intrusive than existing built form surrounding the Subject Site.

- 075.** The Executive Director conceded that the Place is already viewed against a backdrop of existing tall buildings, most notably the eight-storey carpark immediately to the west of the Subject Site. The Executive Director also conceded that the apartment building and carpark are similar in height.<sup>8</sup> However, the Executive Director submitted that the apartment building would be more visually intrusive than the carpark because it is located within the rear yard of the Subject Site (in front of the carpark) and spans the full width of the Subject Site. The Executive Director also submitted that because the carpark has a uniform façade of solid and void horizontal spaces, it has a more subdued appearance than the proposed apartment building façade (which is contemporary in appearance and incorporates multiple building materials).
- 076.** For the same reasons, the Executive Director submitted that the proposal would detrimentally affect the cultural heritage significance of Dodgson House at 9 Brunswick Street and the residence at 13 Brunswick Street, both of which are in the Register (being H1706 and H0150, respectively).
- 077.** Yarra expressed the view that the proposed apartment building is a major intrusion into a largely intact local precinct, changing its appearance and character, and that the loss of significant built fabric is not justifiable.
- 078.** Other submitters also expressed concern about the impact of the height of the proposed apartment building on the cultural heritage significance of the Place, neighbouring properties and the South Fitzroy heritage precinct. Key concerns raised included that:
- a) the apartment building would visually dominate the Main House, particularly when viewed from Brunswick Street and from the upper levels of surrounding tall buildings;
  - b) the apartment building would be a significant visual intrusion when viewed from the rear yards of neighbouring properties or from the rear laneway;
  - c) because the apartment building is considerably taller than the Main House and predominantly two-storey Victorian-era buildings on the western side of Brunswick Street, it would unacceptably alter the character and appearance of the Place and its setting;
  - d) the apartment building would set an undesirable precedent for similarly tall structures to be built in the rear yards of other heritage places within the South Fitzroy heritage precinct; and
  - e) the apartment building is disproportionate in height and scale when compared to the Rear Wing.
- 079.** Relying on the evidence of its expert witnesses, the Permit Applicant submitted that the proposed apartment building would not have a detrimental impact on the cultural heritage significance of the Place.
- 080.** Mr Raworth gave evidence that the apartment building would not result in a substantial change to the visual setting of the Place because the Main House is already viewed against a backdrop of substantial built form, including the eight-storey carpark to the west. In oral evidence, Mr Raworth also noted that the Place is located within a section of Brunswick Street that has changed significantly over

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<sup>8</sup> The North Elevation Architectural Plan prepared by Clarke Hopkins Clarke, dated 30 July 2018 (Drawing No. 16025/TP14) shows the apartment building having a maximum height of RL 69.98, compared to the height of the carpark which is RL 68.51.

time and includes a mixture of older smaller-scale buildings near large new buildings.

- 081.** Mr Raworth acknowledged that the apartment building would be closer to the Place than the carpark to the west. However, he was satisfied that the Main House would read as a separate building because it would be physically separated from the upper levels of the apartment building.
- 082.** In relation to views, Mr Raworth acknowledged that the apartment building would be partially visible from Brunswick Street in oblique views along Brunswick Street from the north-east and south-east, but not from directly in front of the Subject Site. In his opinion, while the apartment building would result in a change to the setting of the Place, this change would not be detrimental given the context within which the Place is presently viewed. As to existing views of the Place from the rear laneway, Mr Raworth considered these to be minor views because they do not allow the observer to appreciate the key elements that contribute to the architectural and historical significance of the Place (namely the architectural details and grand proportions of the Main House).
- 083.** Ms Gray also gave evidence about the visual impact of the apartment building on the Place and surrounding heritage buildings. Ms Gray accepted that the western side of Brunswick Street has a strong heritage character and sensitivity deriving from its nineteenth century building stock. In her view, retaining the primacy and cohesiveness of the Place and neighbouring heritage buildings within Brunswick Street is the key heritage issue to be considered.
- 084.** In relation to views of the Place from Brunswick Street, it was Ms Gray's opinion that:
- a) the visual impact of the apartment building would be negligible when viewed directly from the east;
  - b) the visual impact of the apartment building would be acceptable when viewed in Brunswick Street from the north-east because it would be viewed against a backdrop of existing tall built form; and
  - c) the most sensitive views are south-east of the Subject Site (opposite Dodgshun House), where there are distinct gaps in the streetscape. At these points, the differences in height and massing between the apartment building and Main House would be clearly visible from Brunswick Street.
- 085.** Ms Gray identified St. Vincent's Private Hospital tower and the eight-storey car park as two buildings of substantial height and scale that would have a significant bearing on the way in which the apartment building would be viewed. Ms Gray also noted that substantial development is planned for St. Vincent's Hospital that will further alter the visual backdrop of the Place. She referred specifically to recent permits issued by the Executive Director for the redevelopment of St. Vincent's Hospital, which allow the construction of an 11-storey building to the south-east of the Subject Site.
- 086.** While Ms Gray acknowledged that the apartment building would be closer to the Place than these existing and proposed buildings, she was satisfied that it would appear as a backdrop element (particularly when viewed from the east and north-east) and that the strong heritage character of this section of Brunswick Street would be retained.
- 087.** However, to address the more sensitive south-east views, Ms Gray recommended that the height of the apartment building be lowered to six storeys. In her view, this would reduce the scale change between the apartment building



and Main House when viewed from the gap between the Place and Dodgshun House immediately to the south.

#### *Discussion and conclusion*

- 088.** Many of the concerns raised by the Executive Director and other submitters related to the heritage impacts of the proposal *as a whole*. Frequently, submitters referred to the overall height, scale, bulk and appearance of the apartment building in describing their concerns. The expert witnesses for the Permit Applicant also provided evidence based on their assessment of the heritage impacts of the entire proposal.
- 089.** However, as explained in paragraphs 046 to 051 above, the task of the Committee is to determine whether or not a permit should be issued for the works and activities that fall within the building footprint of the Main House and Rear Wing. This requires the Committee to focus on the heritage impacts of the apartment works as described in paragraph 050 above.
- 090.** The Committee appreciates that this approach may frustrate submitters who are concerned about the impacts of the overall proposal. However, it is necessary because of the limits imposed by the extent of registration on the Committee's jurisdiction in this matter.
- 091.** Before the Committee addresses the specific apartment works, something must be said about the submissions made by Yarra and its decision to grant a planning permit for the proposal.
- 092.** Having left all heritage considerations to Heritage Victoria for consideration under the 2017 Act, Yarra concluded that it was appropriate to grant a planning permit for a seven-storey building. However, for the purposes of this Review, Yarra supported the Executive Director's decision to refuse the Application.
- 093.** While appreciating that the extent of registration is at the heart of the issue, the Committee found it difficult to reconcile Yarra's different views.
- 094.** The Committee notes that the unfortunate result was that the heritage impacts of that part of the proposed apartment building outside of the building footprint of the Main House and Rear Wing, but within the boundaries of HO151, were not assessed by Yarra in the context of the planning permit, and are not able to be assessed by the Committee in the context of this Review.
- 095.** Turning now to the specific apartment works, the Committee accepts the evidence of Ms Gray and Mr Raworth that the architectural and historical significance of the Place is primarily related to the Main House, particularly its presentation to Brunswick Street. The Statement of Significance highlights the grand proportions and decorative arcaded façade of the Main House, and the Committee agrees that these elements are critical to an understanding and appreciation of the cultural heritage significance of the Place.
- 096.** The Committee also accepts that the Place is significant because of its location within a relatively intact streetscape of predominantly two to three-storey Victorian-era buildings in Brunswick Street. As noted in the Statement of Significance, the Place and neighbouring heritage buildings demonstrate the historic character of this part of Fitzroy at the end of the nineteenth century.
- 097.** The Committee considers that the existing visual setting of the Place is highly relevant in assessing the heritage impacts of the new works on the Place and its setting.

- 098.** As noted by Mr Raworth and Ms Gray, the Main House is already viewed against a backdrop of substantial built form. The eight-storey carpark to the west of the Subject Site extends from 7 Brunswick Street to the south to 13 Brunswick Street to the north and is clearly visible behind the Main House when viewed along Brunswick Street. Substantial built form also exists to the south-east of the Subject Site, along Victoria Parade, and more substantial re-development is planned for St. Vincent's Hospital, generally to the south of the Subject Site. Considered in this urban context, and given that the new works for the apartment building and the carpark are similar in height and are in such close proximity to each other, the Committee considers that the apartment works will not substantially alter the existing visual setting of the Place or the surrounding heritage buildings.
- 099.** The Committee also considers that because the apartment works are separated visually from the Main House above the ground-floor level, a person viewing the Place from Brunswick Street will be able to read the Main House as a separate building and appreciate the key elements that contribute to its architectural and historical significance, in much the same way as is possible at present.
- 0100.** In relation to the heritage character of Brunswick Street, the Committee is also satisfied that the new works will not distort or obscure the significance of the Place and neighbouring heritage properties in demonstrating the historic character of this part of Fitzroy at the end of the nineteenth century. Although the apartment works will be visible from certain vantage points along Brunswick Street, the Place and surrounding heritage buildings will still present as a cohesive and relatively intact Victorian-era streetscape.
- 0101.** The Committee also makes the point that the portion of new works for the apartment building that require a permit under the Act is relatively small compared to the floor area and building footprint for the overall apartment building. Most of the apartment building is located outside of the extent of registration and does not need a permit under the Act. Having regard to this, the Committee is not persuaded that it is necessary to reduce the height of the apartment building to six-storeys, as suggested by Ms Gray. Confining the consideration to the works that actually require a permit under the Act, as the Committee considers necessary, the Committee considers that the heritage impacts of the apartment works are not substantially different whether the apartment building is reduced to six storeys, or whether it is to be seven storeys as proposed.

## **New internal works to the Main House and eastern half of the Rear Wing**

### *Summary of submissions and evidence*

- 0102.** Mr Raworth and Ms Gray addressed the heritage impacts of new internal works to the eastern half of the Rear Wing and the Main House. Both noted that the works are focused on the ground floor level which has been extensively modified to accommodate the existing gallery and associated offices.
- 0103.** Mr Raworth expressed the view that the internal works to the front portion of the Main House will be an improvement on its current integrity, noting that the works include replacing the existing partition wall in the front entry hall with a glass panel to reinstate a visual link between the front entry hall and original main staircase. Mr Raworth also considered the internal works to the eastern half of the Rear Wing to be reasonable, having regard to the already altered character of this space.

- 0104.** Ms Gray similarly expressed the view that the proposed new internal works will not have a significant impact on the cultural heritage significance of the Place.
- 0105.** The Executive Director and other submitters did not make specific submissions about the heritage impacts of the new internal works to the eastern half of the Rear Wing or Main House.

*Discussion and conclusion*

- 0106.** Having regard to the current integrity of the ground floor level of the Rear Wing and Main House, the Committee accepts the evidence of Mr Raworth and Ms Gray that the proposed new internal works are reasonable and will not have a detrimental impact on the cultural heritage significance of the Place.

**Conclusion**

- 0107.** Having regard to the above reasons, the Committee has determined that a permit should be granted in respect of the Application subject to conditions.

**PERMIT CONDITIONS**

- 0108.** The Executive Director proposed nine 'without prejudice' draft permit conditions. Draft conditions 1, 2, 3, 9, 10 and 11 are standard in nature and were accepted by the Permit Applicant. The Committee does not intend to deal with these conditions in detail.
- 0109.** Draft condition 4 requires the preparation of plans for endorsement by the Executive Director that are generally in accordance with the architectural plans prepared for the Permit Applicant showing the proposed apartment building with seven storeys. The Committee agrees that this condition is required and has included it as Condition 1 of the permit, as shown in **Attachment 2**.
- 0110.** Draft conditions 5 and 6 relate to the reinstatement of the existing central decorative pediment on the front façade of the Main House. Draft condition 5 requires the reconstruction of the central pediment, flanking dwarf balustrade with balusters, and four decorative urns based on available photographic and other documentary evidence of their original appearance. Draft condition 6 requires the appointment of an experienced conservation architect to document and supervise the reconstruction works for the decorative pediment.
- 0111.** The Permit Applicant supported draft condition 5 in principle but with some revised wording to address the scenario where no photographic or documentary evidence of the original appearance of the decorative pediment is available. The Committee agrees with the proposed revised wording, as shown in Condition 3 in **Attachment 2**.
- 0112.** Draft conditions 7 and 8 require the Permit Applicant to provide a financial security in the favour of the Heritage Council, in the amount of \$50,000, for the completion of works approved by the permit. The Permit Applicant accepts these conditions. The Committee considers these conditions to be appropriate given that the proposal involves the partial demolition of the Rear Wing.
- 0113.** The demolition works will expose the retained internal dividing wall in the Rear Wing and will expose the west-facing chimney breasts and fire places in that wall. To ensure that the wall and fireplaces are appropriately treated and finished, the Committee has included two conditions on the permit that require details of their treatment and finishes to be submitted to the Executive Director for endorsement. These are Conditions 5 and 6 in **Attachment 2**.

- 0114.** Ms Elliot proposed the inclusion of several conditions on the permit. The Committee intends to deal only with two of those proposed conditions in detail. The first condition relates to the southern wall of the Rear Wing. Ms Elliot suggested that the original door and original window openings in the southern wall at ground level should be reinstated (even if they remain inoperative), and that the original window openings in the southern wall at the first floor level should be restored. The Committee supports this suggestion and has included a condition to that effect (see Condition 7 in **Attachment 2**).
- 0115.** The second condition proposed by Ms Elliot relates to an archaeological investigation of the Subject Site. Given that the Place has not been identified as being of archaeological significance in the Statement of Significance and the Subject Site is not included in the Heritage Inventory established under the 2017 Act, the Committee considers that the general condition proposed by the Executive Director in respect of the discovery of any historical archaeological artefacts or deposits on the site is adequate (see Condition 13 in **Attachment 2**).

## CONCLUSION

- 0116.** 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)(c) of the *Heritage Act 2017* to set aside the determination under review and make another determination in substitution for it, by issuing Permit No. P26809 with conditions (**Attachment 2**).

## ATTACHMENT 1

### 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.

## ATTACHMENT 2

### PERMIT NO. P26809

**THE PERMIT ALLOWS:** Demolition works, building alterations and additions, and the construction of a seven-storey apartment building on Lot 1 on Title Plan 872274G, 11 Brunswick Street, Fitzroy, in accordance with the endorsed plans.

### THE FOLLOWING CONDITIONS APPLY TO THIS PERMIT:

#### Plans for endorsement

1. Prior to the commencement of any works approved by this permit, a set of the drawing sheets to be endorsed by the Building Surveyor appointed for the project under the *Building Act 1993* must be submitted (in electronic format) to and endorsed by the Executive Director, Heritage Victoria. These drawing sheets are to be in accordance with the 34 sheets and drawings prepared by Clarke Hopkins Clarke Architects dated July 2018 showing a seven-storey apartment building.

#### Construction management plan

2. Prior to the commencement of any works approved by this permit, a Construction Management Plan (the CMP) must be submitted to and endorsed by the Executive Director and once endorsed becomes part of the permit. The CMP must include a sequencing program for the approved works, details of any temporary infrastructure and services required, protection methods for the heritage place during the undertaking of the works and a worksite layout plan. The CMP must also include a dilapidation report (including photo-images) for those parts of the heritage building to be affected by the approved works to record its condition prior to the commencement of those works.

#### Reconstruction of the existing pediment

3. The existing central decorative pediment on the front façade of the original three-storey residence must be reconstructed to reinstate the following features based on available photographic and other documentary evidence of their original appearance (if any):
  - (a) the central pediment;
  - (b) flanking dwarf balustrade with balusters; and
  - (c) four decorative urns.
4. An experienced conservation architect must be engaged to document and supervise the reconstruction of the decorative pediment referred to in Condition 3. The selected conservation architect's name must be submitted to and approved in writing by the Executive Director, Heritage Victoria prior to being engaged to provide these services.

#### Finishes and treatment of the rear wall to the service wing

5. Prior to the commencement of any works approved by this permit, details of the finishes and treatment to the fireplaces in the west-facing wall of the service wing that is exposed through demolition must be submitted for endorsement by the Executive Director, Heritage Victoria.
6. Prior to the commencement of any works approved by this permit, details of the waterproofing of the west-facing wall and fireplace on the first floor of the service wing that are exposed through demolition, must be submitted to

and endorsed by the Executive Director, Heritage Victoria. Works to this wall must be carried out in a manner that conserves and protects the brickwork.

#### **Treatment of doors and windows to the service wing**

7. The original door and window openings in the southern wall of the two-storey service wing must be retained, and the window and door joinery must be either conserved or restored to match existing details, all to the satisfaction of the Executive Director, Heritage Victoria.

#### **Financial security**

8. Prior to the commencement of any works approved by this permit and in accordance with section 103 of the *Heritage Act 2017*, a financial security in the form of an unconditional Bank Guarantee must be lodged with the Executive Director. The Bank Guarantee must be issued in favour of the Heritage Council of Victoria (ABN 87 967 501 33) in the amount of \$50,000 (fifty-thousand-dollars). It must be unconditional with regard to expiry date and must be returned at the request of the permit holder on the completion of the approved works and any additional works required within the conditions of this permit, to the satisfaction of the Executive Director.
9. The financial security referred to in Condition 5 above must be forfeited to the beneficiary, being the Heritage Council of Victoria, if the works for which it is lodged have not been completed within the validity period of this permit to the satisfaction of the Executive Director, Heritage Victoria.

#### **General conditions**

10. This permit shall expire if the permitted works have not commenced within two (2) years of the date of issue of this permit, and are not completed within four (4) years of the date of issue of this permit unless otherwise agreed in writing by the Executive Director, Heritage Victoria.
11. The Executive Director, Heritage Victoria is to be given five working days' notice of the intention to commence the approved works.
12. Approved works or activities are to be planned and carried out in a manner which prevents damage to the registered place. However, if other previously hidden original or inaccessible details of the place are uncovered, any works that may affect such items must immediately cease. The Executive Director, Heritage Victoria must be notified of the details immediately to enable Heritage Victoria representatives to inspect and record the items, and for discussion to take place on the possible retention of the items, for the issue of a modified approval.
13. All works must cease and Heritage Victoria must be contacted if historical archaeological artefacts or deposits are discovered during any excavation or subsurface works. Should any munitions or other potentially explosive artefacts be discovered, Victoria Police is to be immediately alerted and the site is to be immediately cleared of all personnel.
14. The Executive Director, Heritage Victoria must be informed when the approved works have been completed in order to arrange for a final inspection to be carried out.