

## **Heritage Council** Registrations and Reviews Committee

### **ANZ Bank, 376-392 Collins Street, Melbourne (H0034)**

**Hearing** – 22 July 2019

**Members** – Ms Jennifer Moles (Chair), Ms Natica Schmeder, Dr Karen Murphy

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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)(b) of the *Heritage Act 2017* to vary the determination under review and amend a condition (Condition 2) of Permit No. P29660.

**Jenny Moles (Chair)**  
**Natica Schmeder**  
**Karen Murphy**

**Decision Date** – 2 September 2019

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## ACKNOWLEDGEMENT

As a peak heritage body, the Heritage Council is proud to acknowledge the Traditional Owners as the original custodians of the land on which we met and deliberated, and to acknowledge the importance and significance of Aboriginal cultural heritage in Victoria. We honour Elders past and present whose knowledge and wisdom has ensured the continuation of culture and traditional practices.

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## HEARING PARTICIPANTS

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

The Executive Director of Heritage Victoria was represented by Ms Emily McLean, Manager – Statutory Approvals. She was assisted by Mr Michael Galimany, Senior Heritage Officer.

### **GPT GROUP ('THE PERMIT APPLICANT')**

Submissions were received from GPT Funds Management Ltd (GPT Group), the land owner and applicant for Permit No. P29660 and requestor of the review ('the Permit Applicant'). Messrs. Stuart Morris QC and Rupert Watters of Counsel, instructed by Minter Ellison Lawyers, appeared and made submissions on behalf of the Permit Applicant.

The Permit Applicant's written submissions were accompanied by expert statements of evidence by Mr Peter Lovell of Lovell Chen Pty Ltd and Ms Amanda Roberts of SJB Urban Pty Ltd, on heritage and urban design respectively. Both were called by Mr Morris to give evidence at the hearing.

Mr Morris also called Mr Grant Dixon of Kerstin Thompson Architects to describe the proposed works which are the subject of the Permit Application.

### **MELBOURNE HERITAGE ACTION ('MHA')**

Mr Rohan Storey of MHA forwarded a written submission generally in support of the Executive Director's determination.

## INTRODUCTION/BACKGROUND

### THE REVIEW

01. This proceeding is a review under section 106(2) of the Heritage Act 2017 ('the Act') seeking change to Condition 2 of Permit No. P29660 issued by the Executive Director on 15 March 2019 in relation to Registered Place VHR H0034 ('The Place').

### THE PLACE

02. The Place comprises a complex of properties at 376-392 Collins Street and 74-110 Queen Street Melbourne. The extent of the registration includes all of the exterior of the ANZ Bank building, comprising the 'Gothic Bank', at 388 Collins Street (on the north-eastern corner of the Collins and Queen Street intersection) and the former Stock Exchange building abutting to the east with frontage to Collins Street (380 Collins Street). The internal registered area is specified as the banking chamber, the vaults and the former residence on the first and second floors of the Gothic Bank; the Cathedral Room on the ground floor of the former Stock Exchange building; and the entrance way (from Collins Street) into the now combined building area.
03. The extent of registration is also specified as including all of the land in Land Title Volume 10026 Folio 319. As well as the heritage buildings just described, this includes the site of the former ANZ Bank Tower at 100 Queen Street and the former Melbourne Safe Deposit Building at 90 Queen Street. The latter is separately registered as VHR H0451.
04. The following is a description of the content and significance of the Place as registered<sup>1</sup>:

#### *What is significant?*

*The ANZ Bank building at 376-392 Collins Street Melbourne, is an amalgamation of two buildings: the former ES&A 'Gothic' Bank, on the corner site, and the former Melbourne Stock Exchange, fronting Collins Street. While both these designs are specifically Gothic in style, their appearance is a demonstration of the two vastly contrasting Gothic revival developments in Melbourne during the 1880s and 1890s. The Gothic Bank was the first building to be constructed and is an example of the first Gothic style. It was designed by William Wardell, to fairly detailed specifications laid out by the General Manager, Sir George Verdon. The style is restrained externally, and internally graceful and ornate. It is secular Gothic, although Wardell had previously made a name for himself through church architecture. Goss & Mason were the contractors and Alexander Todd was appointed as Clerk of Works. The works began in 1883 and the building was opened in May 1887, a year late. The final cost was over £77,000, almost twice the budget. The entire ground floor was established as the banking chamber, and the first and second floors as a residence for the General Manager. Sir George Verdon moved into the residence in 1888 and remained there until his retirement. In 1934 the Lyceum Club leased these rooms and used them until 1957.*

*The former Stock Exchange was designed by the Melbourne architect William Pitt and was constructed in 1887. The style has been labelled Free Gothic and is far less restrained than the earlier building. The facade is extremely ornate and each level has been designed differently. Pitt was one of the best known executors of this new Gothic style in Melbourne, who at the time received criticism from more conservative designers. The total cost of the building, including the land, was*

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<sup>1</sup> Peter Lovell's expert evidence of June 2019 for the review hearing notes that this statement of significance is notated as last updated in 1999.

£254,000. Overall the land purchase and building construction were a poor investment and in 1921 the Stock Exchange, due to financial difficulties, was forced to sell its property back to the ES&A Bank for only £136,500. **The main trading floor for the Stock Exchange was on the ground level in a large vaulted chamber, known as the Cathedral Room. This room was designed with the reverence and grace of a church, an impression emphasised by the vaulted roof and the stained glass windows. In 1923 the bank renovated the site to combine the two buildings, thus enlarging the Banking Chamber, leasing the offices and running the Safe Deposit.**

*How is it significant?*

*The ANZ Bank at 376 - 392 Collins Street Melbourne is of architectural, historical and social significance to the State of Victoria.*

*Why is it significant?*

*The ANZ Bank is architecturally significant as the first ES&A Bank to be designed in the Gothic style that was to become a trademark for the banking corporation. It is also significant for the scale and ornate grandeur of both the interior and exterior, resulting in it being considered one of the finest buildings in Melbourne at the time of its construction. The Gothic Bank and former Stock Exchange are of architectural significance through their association with the prominent Melbourne architects William Wardell and William Pitt. The Verdon chambers within the Gothic Bank are architecturally significant for their extensive size and grandeur. The 1921 alterations to the bank are significant as they represent an interesting solution at the time in inner city expansion; that being renovation and interior redesign rather than rebuilding. **The Cathedral Room within the Former Stock Exchange is architecturally significant as a largely original, and very ornate, example of a public business arena.***

*The ANZ Bank is historically significant as the banking headquarters of the ES&A Bank, positioned on a corner site within the centre of the banking precinct in Melbourne, which was the most important business centre at the time in Australia. This building is also significant for what it illustrates of the banking boom during the 1880s and the subsequent depression of the 1890s. The former stock exchange was built far beyond its means and was never able to recoup the financial outlay of the enormously expensive building. The former residence of the General Manager of the ES&A Bank, on the first and second floors of the Gothic Bank, is significant as the only intact example of an inner city banking residence from the 1880s in Melbourne.*

*The Gothic bank is socially significant as the site of the Lyceum Club rooms for 32 years. The Lyceum Club was established in 1912 for women who had demonstrated their ability or commitment to the areas of philanthropy, arts, community service, education, medicine or science, writing or music.*

*(Heritage Council Registrations and Reviews Committee emphases)*

- 05.** The submission by the Executive Director to the Committee hearing concerning this review included that the information noted above about the original function of the Cathedral Room as the Stock Exchange trading room is now recognised as incorrect. The trading or call room of the Stock Exchange was in fact located on the second floor of the building and the Cathedral Room was a meeting hall for those attending the Stock Exchange situated above.
- 06.** The Place has been the subject of a number of alterations, most notably:
  - In the early 1920s when the ground floors of the Stock Exchange and Gothic Bank buildings were amalgamated. The banking chamber was enlarged to

extend into part of the original Stock Exchange building, resulting in the entry corridor being relocated further to the east. Lift shafts were also installed in the corridor at this time. In the Cathedral Room, two small rooms either side of the central entry door in the southern wall were removed and the southern wall was reconfigured. Works above the Cathedral Room<sup>2</sup> also resulted in its skylight being lost and the three blind arches in the northern wall converted to windows to compensate for the loss of light. Additional light for the room was also introduced by alterations to the window in the western wall. In addition, an original door at the northern end of the western wall was closed up.

- In the early 1990s following the granting of Permit No. P0438 in October 1989. The works included the development of the ANZ World Headquarters at 100 Queen Street. At this time, conservation and restoration works were undertaken to the Banking Chamber and interpretive Gothic Revival form and fit out to the entrance hall of the Stock Exchange building. In the Cathedral Room, works undertaken in the 1920s were reversed. The works to the Cathedral Room included removal of an introduced stair in the north-east corner; and removal of partitioning and office fit out. The glazing was removed from the three arches in the northern wall and they were restored to being blind windows. A new tessellated tile floor (in a colour scheme similar to the original but with a different pattern) was laid in the Cathedral Room and re-creation of most of the marble dado of the room occurred at this time. Contemporaneously, an agreement was made under section 173 of the *Planning and Environment Act 1987* between the owner and the Minister ensuring public access to and through the heritage buildings.

## THE PERMIT APPLICATION

- 07.** On 5 September 2018, the Permit Applicant made an application to the Executive Director pursuant to section 93 of the Act for a permit to undertake works at the Place. The application was later amended on 21 December 2018 ('the Application'). The works proposed included partial refurbishment of the buildings forming the Place and the adjacent outdoor spaces around and between them. Relevant to this review, the works included the installation of new lifts and egress stairs for the former Stock Exchange building, refurbishment of the access corridor from Collins Street, provision for universal access to the Cathedral Room and levels above, and the installation of a new food and beverage tenancy in the Cathedral Room.
- 08.** Most pertinently for this review, the Application included the following description of works proposed to the northern wall of the Cathedral Room:
  - *Create a new entry and new fenestration to the northern end of the Cathedral Room.*

## DETERMINATION OF THE EXECUTIVE DIRECTOR

- 09.** On 15 March 2019, the Executive Director determined, pursuant to section 101(1)(ii) of the Act, to issue Permit No. P29660. The works allowed by the permit were generally consistent with those comprising the Application. The permit contained a number of conditions principally relating to heritage management.
- 010.** Condition 2 which is the subject of the review was the only condition requiring a change to the works proposed by the Application. It provides:

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<sup>2</sup> Also those above the entry corridor and Exchange Hall were closed off at this time.

*Prior to the commencement of any works approved by the permit, a revised tender ready set of drawings and design drawings including any materials specifications is to be submitted to the Executive Director for written approval. The drawings must be revised to show the deletion of the new entry and new fenestration to the northern end of the Cathedral Room.*

## THE REVIEW REQUEST

**011.** On 9 May 2019, the Heritage Council received a request from the Permit Applicant for a review hearing relating to the Executive Director's Determination, specifically in relation to Condition 2. The Permit Applicant sought a review of the wording of Condition 2 in order to allow a proposed new entry to the Cathedral Room ('the proposed works') and submitted that Condition 2 should be amended as follows:

*Prior to the commencement of any works approved by the permit, a revised tender ready set of drawings and design drawings including any materials specifications is to be submitted to the Executive Director for written approval. The drawings must be revised to show the deletion of the ~~new entry and~~ new fenestration to the northern end of the Cathedral Room either side of the new entry.*

**012.** The Permit Applicant provided the following reasons for the request for the review:

1. *The proposed new entry to the Cathedral Room will not cause an unreasonable adverse impact to the cultural heritage significance of the place.*
2. *The proposed new entry to the Cathedral Room will promote public access and enjoyment of a significant heritage space.*
3. *Condition 2 affects the reasonable and economic use of the registered place.*
4. *Condition 2 affects the commercial viability of the overall development proposal.*
5. *Condition 2 will reduce the quality of the urban design outcome achieved by the overall development proposal.*
6. *Condition 2 will impact on the efficiency of egress as it will remove an egress point which is an important component of the overall development proposal.*

**013.** A Registrations and Reviews Committee of the Heritage Council ('the Committee') was duly constituted to consider and determine the matter and relevant parties were notified of the review hearing, which was scheduled for 11 and 15 July 2019.

## PRELIMINARY, PROCEDURAL AND OTHER MATTERS

### ADJOURNMENT

**014.** The review hearing, which had been scheduled for 11 and 15 July 2019, was later adjourned to 22 July 2019. All parties were notified of the adjournment and consulted in relation to the new date.

### SITE INSPECTION

**015.** On 16 July 2019, the Committee undertook an accompanied site inspection of the Place. The Committee was accompanied by the Heritage Council's Executive Officer; Messrs. Stuart Morris, Rupert Watters, Peter Lovell, and Jarryd Gray of Minter Ellison representing the Permit Applicant; and Ms Emily McLean and Mr Michael Galimany representing the Executive Director. Access to the site was provided by the Permit Applicant. No submissions were sought, made or received at the time of the site inspection except that the existing and proposed layout of the site were described by the representatives of the Permit Applicant.

## DECLARATIONS OF NO CONFLICTS OF INTEREST

- 016.** The Committee chair and members advised the hearing participants before the hearing that they had no actual conflicts of interest in undertaking the review. Ms Schmeder noted that, although she had been employed by Context, who were currently engaged by the City of Melbourne in relation to another heritage matter, she had not been involved in that project which, in any case, did not involve any work in relation to the Place. No hearing participant objected to the constitution of the Committee.

## OBJECTION TO COMMITTEE RECEIPT OF MHA WRITTEN SUBMISSION

- 017.** The Permit Applicant made a response to the submission forwarded by Melbourne Heritage Action ('MHA') in which it objected to the Committee receiving the MHA submission. MHA had made a submission in response to public notice of the Application under section 95 of the Act. The organisation did not seek to be heard but had forwarded expanded written material objecting to the Permit Application.
- 018.** The Permit Applicant relied on written submissions concerning this matter and did not expand on the issue at the hearing.
- 019.** The Permit Applicant's written submission included that each of the Divisions 2,4 and 5 of Part 5 of the Act relating to permits articulates the rights conferred on third parties in relation to each of those steps in permit processing. Division 5, which relates to reviews of Executive Director permit determinations, does not confer on members of the public a right to make submissions. This was contrasted with section 95 of Division 2 relating to permit applications which does confer third party participation rights.
- 020.** The Permit Applicant further submitted that there is nothing in the Act which would support the proposition that MHA having made a submission under section 95 is entitled to participate in the permit review. The Permit Applicant's submission included:

*Sections 106 and 108 set out who must be notified of a review application and who is entitled to participate. Had Parliament intended that any person who lodged a submission should be able to participate in a review proceeding, it could easily have provided for that in these sections. It did not do so.*

- 021.** The submission also noted the contrasting special arrangements made in section 108(6) for the National Trust to participate in the review hearing if they had earlier lodged a submission with the Executive Director. It was submitted that if Parliament had intended that such an arrangement apply to all third parties, it might have easily included such a provision.
- 022.** The Permit Applicant's submission went on to say that, if, contrary to its submissions, MHA's submission was received, it should not be received in full because it went beyond the scope of the review. It was argued, based on the approach adopted by VCAT to planning permit conditions reviews, that the submission should be confined to the issue of Condition 2 and not be permitted to challenge the application or propose other permit conditions.
- 023.** The Executive Director made no submission concerning this matter of the receipt of the MHA material.
- 024.** The Committee has considered this issue and notes that the specified functions and powers of the Heritage Council at section 11 of the Act include the conduct of reviews such as the present one (section 11(j)). The Committee also notes the general powers set out in section 14 which so far as are relevant include:

(1) *In performing its functions or duties or exercising its powers under the Act, the Heritage Council or a committee may do any of the following-*

- (a) *consult with any person or body;*
- (b) *perform any investigations it considers appropriate*
- (d) *have regard to any information it considers relevant.*

**025.** The Committee also notes that Part 12 of the Act includes general powers relating to the conduct of hearings. Relevant provisions include section 254 which states that:

*The Heritage Council may regulate its own proceedings.*

**026.** The Committee is aware that it has been the practice of permit review committees to invite third parties who have made section 95 submissions to participate in review hearings. The Committee expects that so far as the present Act is concerned this relies on the general powers available under section 14 and section 254.

**027.** The Committee, however, does not find it necessary to determine the correctness of this approach here, as the Committee agrees with the Permit Applicant's submission that the scope of matters in a conditions review should generally be confined to those relating to the disputed condition(s) and considers that the MHA submission goes well beyond such limits. Further, the Committee considers that the MHA submission so far as it does relate to Condition 2 is contradictory and not helpful. While their original submission in regard to the permit application, dated 24 January 2019, stated that they did not object to the permit application, in later review submissions from June 2019 they objected to the introduction of the new doors. No weight has been given to the submission.

## CONSIDERATION OF THE ISSUES

**028.** The following sections are not intended to be a complete record of submissions that were made to the Committee at the hearing. They present a summary of submissions made in relation to what the Committee considers to be the key issues. The Committee addresses each issue and presents its conclusions.

**029.** The Committee and the hearing participants found general assistance in relation to matters to be considered in the context of a conditions review in the provisions of section 101(2) of the Act which is set out in **Attachment 1**.

**030.** The Committee considers that two key issues are required to be addressed:

- a) the extent to which the proposed works which Condition 2 seeks to preclude would affect the cultural heritage significance of the Place; and
- b) if the works that are the subject of Condition 2 were not allowed (by the condition being upheld), the extent to which this would affect the reasonable and economic use of the Place.

In dealing with this matter, the Committee has confined its consideration to the installation of the doorway in the central blind window of the group of three in the northern wall of the Cathedral Room. The Permit Applicant's request for review accepts the retention of the two other blind windows in the group.

## THE EXTENT TO WHICH THE PROPOSED WORKS WOULD AFFECT THE CULTURAL HERITAGE SIGNIFICANCE OF THE PLACE

### *Summary of submissions and evidence*

- 031.** The Executive Director submitted that Condition 2 is appropriate and should be upheld because the creation of an opening in the northern wall of the Cathedral Room would adversely alter the presentation of the Cathedral Room as an 'historic, enclosed and reverent space', would require the removal of original as well as reconstructed heritage fabric to an unacceptable extent, and would negatively impact on the way the Cathedral Room is experienced, cumulatively resulting in an unreasonable and detrimental impact on the Place as a whole.
- 032.** The Executive Director acknowledged that the Cathedral Room has been altered internally and that some of the internal fabric is not original. However, the Executive Director contended that the proposed works would modify the aesthetic value of the Cathedral Room and result in the loss of its 'contained and enclosed volume' which would have an unreasonable and detrimental impact on the cultural heritage significance of the Place, given that the Cathedral Room is identified as a key interior element of the Place. The Executive Director argued that the 'reverent' or 'ecclesiastical' atmosphere of the Cathedral Room which was said to be an important characteristic of the Place would be detrimentally affected by the proposed works to an unacceptable degree.
- 033.** The Permit Applicant submitted, relying on the evidence of Mr Lovell, that the proposed works would have only a modest impact on the cultural heritage significance of the Place, that the most ornate elements of the Cathedral Room would be 'wholly unaffected' by the proposed works and that neither the evidence available nor the Statement of Cultural Heritage Significance supports the contention that there is a 'reverent' or 'ecclesiastical' atmosphere of importance to the Cathedral Room that would be materially altered by the proposed works.
- 034.** The Permit Applicant further submitted that the impacts of the proposed works must be assessed based on a consideration of the cultural heritage significance of the whole of the Place, rather than a consideration of impacts on the Cathedral Room alone. To that extent, and again relying on the expert evidence of Mr Lovell, the Permit Applicant submitted that the cultural heritage significance of the wider Place would not be adversely affected by the proposed works.

### *Discussion and conclusion*

- 035.** In the Committee's view, the heritage impact of the proposed works must be assessed having regard to the current condition of the Cathedral Room, including alterations and additions that have occurred over time, and having regard to the impact of the proposed works on the cultural heritage significance of the whole of the Place.
- 036.** The Committee notes that some original fabric would be impacted by the proposed doorway but agrees with the evidence of Mr Lovell that there would be only minimal impact in this regard. The Cathedral Room has been quite substantially modified over the years including by the reintroduced dado and tiled flooring and the infilling of the blind windows in question, such that there is little extant original fabric that would be affected by a doorway in the location proposed. The affected original fabric would comprise the lower half of the limestone colonnettes and sill of the blind window and some brickwork below.
- 037.** The Committee also agrees with the evidence of Mr Lovell, that the key consideration is the extent to which the proposed works would detrimentally affect the Gothic architectural expression of the room and the Place generally. On this point the

Committee agrees with his view that any minor impacts on the architecture of the northern wall of the Cathedral Room that would be caused by the doorway replacing part of a single blind window are of little consequence when considered in the context of the broader works proposed and permitted to this part of the Place and the Place as a whole. The Committee also agrees that the Gothic architectural expression of the room as a whole and its ornate architectural details including the stained glass window in the western wall, the marble pillars with carved capitals, the vaulted ceiling and the tracery at the top of the blind windows would remain undisturbed.

- 038.** The Committee does acknowledge that the insertion of a doorway in the north wall will disrupt the integrity of one of two walls in the room (along with the east wall) that was designed as purely ornamental, without a utilitarian purpose, and could be appreciated purely for its aesthetic character. This contrasts with the south and west walls which, although also ornamented in the Gothic style, originally had multiple doorways and served a circulation function. The north wall and its “pure” architectural expression is also considered more significant than the east wall in this regard as it is situated directly across from the main (south) entrance, so shapes perceptions of this space far more than the east wall. In this respect, the works are considered to have some impact on the heritage significance of the Cathedral Room and the Place as a whole.
- 039.** The Committee also agrees with the Permit Applicant that there is little support, either in the Statement of Cultural Heritage Significance or the historical evidence available, for the notion that a reverent or ecclesiastical atmosphere was intended to be created in the room and is therefore an element of the cultural heritage significance of the Cathedral Room. The Committee does not accept the Executive Director’s contention that the ‘ecclesiastical atmosphere’ of the Cathedral Room is a key element of its significance or a reason to uphold Condition 2.
- 040.** In this respect, the Committee accepts the evidence presented by Mr Lovell that the Gothic style of architecture was not unusual in commercial buildings as well as in churches of the period. The adoption of Gothic arches and the like in a commercial building, do not necessarily afford a commercial space a church-like ‘atmosphere’. Further, while the atmosphere at present in the largely disused Cathedral Room might be described as quiet and church-like, this would not have been the atmosphere found in this part of the Place originally when the room was a meeting place for people attending the Stock Exchange trading room above and/or the banking chamber next door. In this respect the Committee notes the contemporary newspaper article referred to by Mr Lovell which refers to the mass of business done in the room and the mad rush of people to enter it. The Committee considers that church-like quiet is not an element of the significance of the Place.
- 041.** Moreover, the Committee considers that the submission by the Executive Director concerning the need to retain the reverent and peaceful atmosphere is somewhat inconsistent with the acceptance by the Executive Director of a substantial restaurant as a reasonable use of the room, which will bring its own noisy incursions into the space.
- 042.** The Committee does acknowledge that, albeit there have always been doors from the Cathedral Room to adjoining interior spaces in the building, the creation of a doorway in the northern wall giving direct access to the exterior of the building will alter the sense of enclosure of the Cathedral Room and bring about a direct relationship with the outdoors. This would bring about some change to the way the space is perceived and perhaps was designed to be experienced. This characteristic of the room is nevertheless not identified in the Statement of Significance and no compelling evidence was presented to convince the Committee that it is part of the State level significance of the Place.

- 043.** After considering all submissions and inspecting the Place, the Committee agrees with the position of the Permit Applicant, as informed by its expert witnesses, that the proposed works would have a modest impact on the cultural heritage significance of the Place.
- 044.** The Committee now turns to the extent to which prohibition of the new doorway would impact on the reasonable and economic use of the Place and how this should be balanced against the impact on cultural heritage significance.

### **THE EXTENT TO WHICH THE CONDITION, IF UPHELD, WOULD AFFECT THE REASONABLE AND ECONOMIC USE OF THE PLACE**

#### *Summary of submissions and evidence*

- 045.** The Executive Director submitted that the absence of the proposed (fourth) door to the room would not render the Cathedral Room inaccessible or reduce scope for emergency egress; that the additional light afforded to the room would not be substantial and reliance on artificial lighting in the room would need to occur with or without the proposed door; and there is no evidence for the Permit Applicant's assertion that the doorway to the exterior would allow 'passing trade' to be attracted to the restaurant or that tenancy of the external Cathedral Court to be created north of the Cathedral Room would be unviable. Thus, it was said that any alleged benefit of the proposed doorway in terms of activating the Cathedral Room use and that of the adjoining outdoor spaces to the north could not be said to outweigh the detrimental impacts on the cultural heritage significance of the Place. It was submitted that the reliance placed by the Permit Applicant on urban design intents for the Place were not appropriate matters for consideration under section 108(8) and in turn section 101(2). It was further said that Condition 2 would not impair the ability to use the Place for its currently permitted, reasonable and commercially viable use.
- 046.** The Permit Applicant submitted that, if Condition 2 were to be upheld and the proposed door not permitted, it would significantly impact on the reasonable use of the Place. Relying on the evidence of Ms Roberts, it was submitted that the proposed doorway was a reasonable intervention to 'activate' the spaces in and around the Cathedral Room and proposed Cathedral Court to its north as part of the proposed and permitted reasonable use, that of a food and beverage business. Ms Roberts gave evidence that she considered that the doorway was critical to engendering a sense of safety to the Cathedral Court area, encouraging people down Briscoe Lane, and would thereby support the economic viability of the small retail tenancy on the northern side of that court by encouraging usage of the outdoor space via Briscoe Lane. It was further submitted that the Executive Director had erroneously focused on whether the proposed use of the Place would be made impossible or economically unviable rather than considering the extent to which the refusal of the doorway would affect the reasonable use. It was also submitted that the Executive Director was incorrect in submitting that urban design and planning considerations were not relevant to the consideration of this matter as, at the least, they influence the concept of reasonable use.

#### *Discussion and conclusion*

- 047.** In relation to its consideration of the reasonable and economic use of the Place, the Committee notes that the relevant question for the review is the extent to which the refusal of the northern doorway would affect the reasonable or economic use of the Place as a whole. The focus in the submissions and evidence was on the effect on the reasonable use rather than any detailed economic impact analysis. The Committee regards this as adequate in this case.

- 048.** In considering the reasonable use of the Place, the Committee turned its mind to the extent of the Place that was pertinent to this consideration. While the Executive Director's submission focused on the impacts to the building fabric recognised as significant in the Extent of Registration, the extent also includes 'All the land marked L1 on Diagram 601914' (this being the entire ANZ complex bounded by Collins, Queen and Little Collins Street and including the 1990s tower). The Committee considered this broader area to be the correct extent of the Place in its deliberations.
- 049.** The Committee records that it found the urban design evidence called by the Permit Applicant pertinent to its consideration of the reasonable use of the Place. The Committee found Ms Roberts' evidence informative about the proposed movement arrangements through the Place and persuasive as to the considerable impact that refusal of the doorway would have on the activation of the proposed network of spaces and accessways. The Committee was persuaded that the doorway would result in an improved sense of personal security and an improved pedestrian experience in the exterior spaces north of the Cathedral Room leading from Briscoe Lane. The Committee was also persuaded that this depends in part on having some area of glazing in the new doors, to allow for 'light spill' into Cathedral Court signalling the nearby presence of other people. This together with the extension of a system of linked lighting along Briscoe Lane leading to Little Collins Street should assist in attracting movement through the Place. This in turn has benefits in terms of public exposure of the special heritage qualities of the Cathedral Room and other parts of the Place.
- 050.** The Committee is also of the view that the northern wall is the only wall of the room where the doorway could feasibly be sited. This view derives from the evidence given by Mr Dixon about the workings of the kitchen area for the restaurant and the location of exhaust fans and fresh air intake, as well as its being the only wall allowing the light spill to Cathedral Court necessary to engender a sense of personal safety.
- 051.** The Committee accepts that the proposed doorway would have some but not substantial benefits in terms of light to the Cathedral Room. The Committee also considers that there would be minor improvement to fire egress arrangements.
- 052.** The Committee determines that the extent to which the cultural heritage significance of the Place would be negatively affected by the proposed doorway is outweighed by the extent of the negative impact on the proposed reasonable use of the broader Place bounded by Collins, Queen and Little Collins Streets.
- 053.** There was some discussion at the hearing about the appropriate design of the doorway. The Permit Applicant put up a number of options. The Committee considers that the doorway when viewed from inside the Cathedral Room should be complementary to the doorway in the southern wall but with simplified moulding. The Committee considers that timber is the preferred framing material and the glazing should occur above the height of the top of the existing dado to echo the original division between the dark, visually solid marble dado and the light limestone wall above it. The exterior presentation of the doorway should be complementary to both the heritage building and the urban design of the exterior space. The Committee considers it appropriate that the final design of the doorway should be to the satisfaction of the Executive Director.
- 054.** The Committee concludes that Condition 2 should be amended generally as proposed by the Permit Applicant to allow the proposed doorway and to also require the preparation of plans for endorsement by the Executive Director. The Committee has included an amended Condition 2 to be inserted in to Permit No. P29660, as shown in **Attachment 2**.

## CONCLUSION

- 055.** 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)(b) of the *Heritage Act 2017* to vary the determination under review, by amending Condition 2 of Permit No. P29660 as attached (**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.

## ATTACHMENT 2

**PERMIT NO. P29660**

**THE FOLLOWING CONDITIONS APPLY TO THIS PERMIT:**

### **Documentation**

2. Prior to the commencement of any works approved by the permit, a revised tender ready set of drawings and design drawings, including any materials specifications, is to be submitted to the Executive Director for written approval. The drawings must be revised to show:

- a) the deletion of the new fenestration to the northern end of the Cathedral Room either side of the new entry;
- b) the new entry doors in the northern wall of the Cathedral Room to be timber framed with glazed panels and:
  - when viewed from within the Cathedral Room to be of a design complementary to the wooden and glass doors at the southern end of that room but with a simplified timber moulding profile; and
  - when viewed from the exterior of the building, complementary to both the heritage building and the urban design of the exterior space

to the satisfaction of the Executive Director.