



## **Heritage Council** Regulatory Committee

### **Osborne House (H0101)**

454–458 Victoria Street, North Melbourne, Melbourne City

**Members** – Prof Andrew May (Chair), Ms Margaret Baird, Ms Natica Schmeder

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#### **DETERMINATION OF THE HERITAGE COUNCIL**

**Amendment of the Victorian Heritage Register** – After considering the Executive Director’s recommendation, all submissions received, and conducting an ‘on the papers’ hearing into the matter, the Heritage Council has determined, pursuant to sections 49 and 62 of the *Heritage Act 2017*, to amend the entry in the Victorian Heritage Register for Osborne House (H0101) located at 454–458 Victoria Street, North Melbourne.

**Andrew May (Chair)**  
**Margaret Baird**  
**Natica Schmeder**

**Decision Date** – 22 December 2020

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## ACKNOWLEDGEMENT

As a peak heritage body, the Heritage Council is proud to acknowledge Traditional Owners, the Kulin Nation, as the original custodians of the land and waters on which we meet, 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')**

Submissions were received from the Executive Director, Heritage Victoria ('the Executive Director').

### **MS ANGELA CUMING ('THE OWNER')**

Submissions were received from Planning & Property Partners – Lawyers and Consultants ('Planning & Property Partners') on behalf of Ms Angela Cuming, the owner of Osborne House ('the Owner').

## INTRODUCTION/BACKGROUND

### THE PLACE

01. On 16 March 2020, the Executive Director made a recommendation ('the Recommendation') to the Heritage Council pursuant to sections 32 and 62 of the *Heritage Act 2017* ('the Act') that Osborne House, located at 454–458 Victoria Street, North Melbourne ('the Place') should be amended in the Victorian Heritage Register ('the Register').
02. The Statement of Significance for the Place, provided on page 8 of the Recommendation, states:

#### What is significant?

*Osborne House, at 456 Victoria Street, North Melbourne, was erected in 1854 for George Ward Cole. In 1871 he sold the property to Miss S. Hales, who with her sister ran a ladies' college from the premises, called Osborne House, until at least 1895, when it appears to have reverted back to residential use. The two storey house with attic was constructed of cut timber shiplap boards and lined with 200mm boards. These materials were probably imported. A triple arched porch punctuates the main entrance. Shaped timber architraves surround the upper windows, each with six-pane sashes, whilst the lower windows are set in bays with tile-clad hipped roofs. The house originally consisted of five rooms and an attic, but was extended to a fourteen room house, including four attic rooms, by 1865.*

#### How is it significant?

*Osborne House is of architectural and historical significance to the State of Victoria.*

#### Why is it significant?

*Osborne House is of architectural significance as one of the few surviving examples in Melbourne of pre-cut imported timber construction. The importation of portable houses to Australia reflected the shortage of materials and workers in gold rush Victoria. The fact that the timbers appear to be of American origin provides evidence of the extent to which the Australian colonies were very early on linked to world-wide trade: other pre-fabricated houses in Melbourne are of British and Southeast Asian origin. While a large number of pre-fabricated dwellings were imported to Victoria during the gold rushes to cope with Melbourne's rapidly growing population, very few now remain here, or, indeed, in the world.*

*Osborne House is of historical significance as one of the oldest houses in North Melbourne, its simple style and composition reflecting the austerity of Melbourne's early years, and for its associations with George Ward Cole. Cole (1793-1879) was a prosperous ship owner and merchant who arrived in Melbourne in 1840. In the new colony he set up as a merchant and established Coles Wharf in 1842. His main residence was St Ninians in Brighton where he entertained Melbourne society. He was elected to the Legislative Council as the member for Gippsland in 1853, resigning in 1855 to return to England. Upon*

*his return to Melbourne in 1857 he was elected MLC for Central Province, being re-elected in 1860 and 1870. Cole was active in a number of important debates at the time, including ones over unemployment, defence, flooding of the Yarra, the development of the Harbour Trust, the Railways and the Constitution. As both Coles Wharf and St Ninians have been demolished, Osborne House is perhaps the only extant building associated with Cole.*

- 03.** The above information, taken from the Recommendation, is provided for information purposes only.

### **APPLICATION TO ADD LAND**

- 04.** On 3 February 2020, the Executive Director made and accepted an application to amend the Place in the Register.

### **RECOMMENDATION OF THE EXECUTIVE DIRECTOR**

- 05.** On 16 March 2020, the Executive Director recommended to the Heritage Council that the Place be amended in the Register pursuant to sections 32 and 62 of the Act.
- 06.** The Executive Director's recommendation was to amend the registration for the Place by adding land and adding categories of works or activities which may be carried out in relation to the Place without the need for a Permit ('permit exemptions').
- 07.** The following reasons for the amendment were provided in the Recommendation:
- 'The Executive Director recommends that the Heritage Council amend this registration in accordance with s.62 of the Heritage Act 2017 because under s.32(1) of the Act he considers that—*
- a) the State-level cultural heritage significance of the place would be substantially less if the land or any part of the proposed land for inclusion in the Register was developed;*
- b) the proposed land for inclusion in the Register is important to the protection or conservation of the place or contributes to the understanding of the place.'*

### **PROCESS FOLLOWING THE RECOMMENDATION OF THE EXECUTIVE DIRECTOR**

- 08.** After the Recommendation, notice was published by the Heritage Council on 20 March 2020 for a period of 60 days in accordance with section 41 of the Act.
- 09.** One (1) submission was received by the Heritage Council, pursuant to section 44 of the Act, from the Owner. The submission objected to the Recommendation and requested a hearing into the matter.
- 010.** In accordance with section 46(2)(a) of the Act, a hearing was required to be held.
- 011.** A Heritage Council Regulatory Committee ('the Committee') was duly constituted to consider the Recommendation and submission received in response to it, and to make a determination. The Committee invited further written submissions and a hearing was scheduled for 17 November 2020 ('the Hearing').

## PRELIMINARY, PROCEDURAL AND OTHER MATTERS

### ADJOURNMENT OF THE HEARING

**012.** On 16 October 2020, the Committee received a request from the Executive Director to adjourn the Hearing to allow discussions between Hearing Participants to continue. After seeking the views of all other interested parties, the Committee ruled that the matter should be adjourned. The Hearing was adjourned and rescheduled for 4 December 2020.

### HEARING 'ON THE PAPERS'

**013.** On 24 November 2020, having received no requests to make verbal submissions at the Hearing, the Committee, in consultation with Hearing Participants, ruled to determine the matter 'on the papers', relying on written submissions received. Subsequently, the hearing scheduled for 4 December was cancelled.

**014.** On 3 December 2020, the Committee met to determine the matter.

### CONFLICTS OF INTEREST

**015.** The Chair invited Committee members to make declarations, written or otherwise, in relation to any matters that may potentially give rise to an actual, potential or perceived conflict of interest. The Committee members were satisfied that there were no relevant conflicts of interests and made no such declarations.

### FUTURE USE, MAINTENANCE AND DEVELOPMENT OF THE PLACE

**016.** It is not the role of the Committee to consider future proposals or to pre-empt any consideration of any potential future permit applications under the Act. Pursuant to sections 49(1) and 62 of the Act, the role of the Committee is to determine whether or not the Place is to be amended in the Register.

### ISSUES

**017.** The following section is not intended to be a complete record of submissions that were made to the Committee. It is a summary of what the Committee considers to be the key issues, followed by an explanation of the position that the Committee takes on each key issue.

### SUMMARY OF ISSUES

**018.** The Executive Director recommended that the Place be amended in the Register by adding land and permit exemptions to the registration for the Place.

**019.** The Owner objected to the recommended extent of registration and permit exemptions for the Place.

**020.** Submissions received from the ED and the Owner, following consultation about, and revisions to, the proposed amendment of the registration for the Place, confirmed their agreed position in relation to a revised set of permit exemptions for the Place.

## EXTENT OF REGISTRATION

### *Summary of submissions*

**021.** The Executive Director recommended that the amended extent of registration for the Place include all of Lot 1 on Title Plan 100605U and affect the whole of the Place including the land, the residence (exteriors and interiors), all fixtures attached to the residence at the time of registration, trees, landscape elements and other features.

**022.** The section 44 submission received from the Owner detailed that the additional land recommended for inclusion in the Register, particularly the land to the north of the residence, was significantly altered in the mid-late 1980s. It was the position of the Owner that:

*‘the land surrounding the house is neither significant in its own right nor significant to the protection of the cultural heritage significance of the building – or to its protection or conservation, nor does it contribute to its understanding.’<sup>1</sup>*

**023.** No additional submissions were made or received throughout the course of the Hearing in relation to the recommended extent of registration for the Place.

### *Discussion and conclusion*

**024.** The Committee notes the Executive Director’s recommended extent of registration for the Place and the position of the Owner in relation to the extent of registration, as stated in the section 44 submission.

**025.** The Committee also notes that no additional submissions were received throughout the course of the Hearing in relation to the extent of registration for the Place, either to confirm an agreed position between Hearing Participants or to progress the issue as a matter of disagreement.

**026.** The Committee agrees with the extent of registration recommended by the Executive Director, being of the view, in accordance with section 32(1)(a) and (b) of the Act, that:

- the State-level cultural heritage significance of the Place would be substantially less if any of the land recommended for inclusion in the Register was developed; and
- all the land recommended for inclusion in the Register is important to the protection and conservation of the Place and contributes to the understanding of the Place.

**027.** The Committee appends the registered extent of registration for the Place to this document as **Attachment 1**.

## PERMIT EXEMPTIONS

### *Summary of submissions*

**028.** In recommending the Place be amended in the Register, the Executive Director recommended a range of permit exemptions for inclusion with the registration of the Place. The Executive Director’s recommended permit exemptions included

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<sup>1</sup> Section 44 submission received from the Owner, pg 2.

several 'general' conditions and specific exemptions for repair, maintenance and cleaning, landscape/outdoor areas and the interiors of the residence.

- 029.** The section 44 submission received from the Owner objected to the recommended permit exemptions, submitting, broadly, that greater detail was required from the Executive Director in relation to the location of the original and significant fabric of the residence, particularly that which is 'hidden or inaccessible'. It was the position of the Owner that almost all internal fabric of significance in relation to the Place is 'entirely hidden'.
- 030.** In response to the section 44 submission of the Owner, the Executive Director submitted a revised copy of the proposed permit exemptions for the Place which, broadly, included minor wording changes and additional exemptions for the maintenance, repair and replacement of non-original plasterboard walls, painting of previously painted internal and external surfaces, repair and maintenance of existing fittings, fixtures and features and 'works to maintain or upgrade the existing bathrooms, kitchen and laundry'.
- 031.** Planning & Property Partners, on behalf of the Owner, submitted that they supported the Executive Director's revised permit exemptions for the Place and confirmed that an agreed position had been reached between Hearing Participants.

#### *Discussion and conclusion*

- 032.** The Committee agrees with the revised permit exemptions submitted by the Executive Director and agreed to by the Owner.
- 033.** The Committee determines, pursuant to section 49(3) of the Act, to include categories of works or activities which may be carried out in relation to the Place for which a Permit under the Act is not required, as detailed in **Attachment 2**.

#### **STATEMENT OF CULTURAL HERITAGE SIGNIFICANCE AND 'INTRODUCTION TO PERMIT EXEMPTIONS'**

#### *Discussion and conclusion*

- 034.** In responding to the Recommendation, the Owner made submissions in relation to the Statement of Cultural Heritage Significance for the Place. Submissions were also received from both the Executive Director and the Owner in relation to the 'Introduction to Permit Exemptions'. The Committee notes the agreed position of Hearing Participants in relation to these elements of the registration.
- 035.** The Committee is of the view that it is neither necessary nor desirable for it to either approve or amend the Statement of Cultural Heritage Significance or the 'Introduction to Permit Exemptions' for the Place.<sup>2</sup> The reasons given above by the Committee above for its determinations in relation to the extent of registration and permit exemptions in respect of the Place may nevertheless be of some assistance to the Executive Director in terms of the final form of the Statement of Cultural Heritage Significance and the 'Introduction to Permit Exemptions' for the Place.

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<sup>2</sup> See the Heritage Council decision in relation to Federation Square [2019] VHERCL 11 at paras 0177 to 0209.

## CONCLUSION

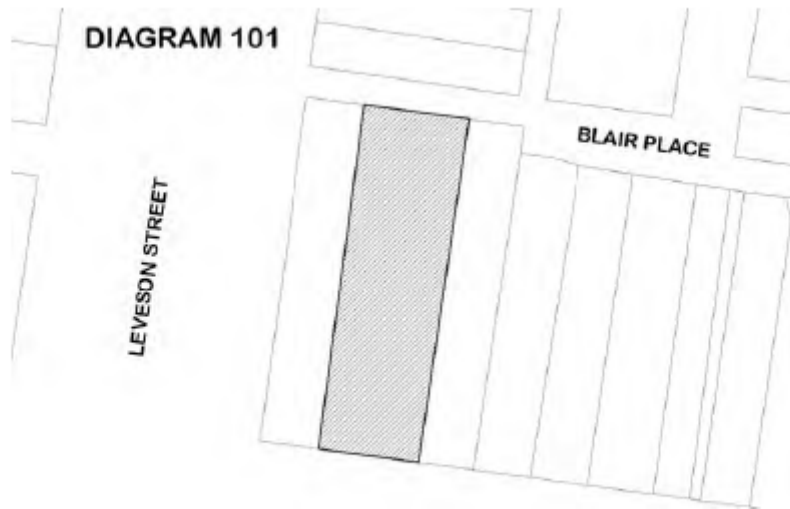
- 036.** After considering the Executive Director's Recommendation and all submissions received, and after conducting an 'on the papers' Hearing, the Heritage Council has determined, pursuant to sections 49 and 62 of the *Heritage Act 2017*, to amend the entry in the Victorian Heritage Register for Osborne House (H0101) located at 454–458 Victoria Street, North Melbourne.
- 037.** The Committee acknowledges the work of participants in reaching an agreed position in relation to amending the registration for the Place.



## ATTACHMENT 1

### EXTENT OF REGISTRATION

All of the place shown hatched on Diagram 101 encompassing all of Lot 1 on Title Plan 100605U.



The extent of registration of Osborne House in the Victorian Heritage Register affects the whole place shown on Diagram 101 including the land, the residence Osborne House (including the exteriors and interiors), all fixtures attached to the residence at the time of registration, trees, landscape elements and other features.

## **ATTACHMENT 2**

### **PERMIT EXEMPTIONS (PURSUANT TO SECTION 49(3) OF THE HERITAGE ACT 2017)**

#### ***General Conditions***

All exempted alterations are to be planned and carried out in a manner which prevents damage to the original fabric of Osborne House.

Should it become apparent during further inspection or the carrying out of works that original or previously hidden or inaccessible details of Osborne House are revealed which relate to the significance of Osborne House, then the exemption covering such works shall cease and Heritage Victoria shall be notified as soon as possible.

All works should ideally be informed by a Conservation Management Plan prepared for the place. The Executive Director is not bound by any Conservation Management Plan and permits still must be obtained for works suggested in any Conservation Management Plan.

Nothing in this determination prevents the Heritage Council from amending or rescinding all or any of the permit exemptions.

Nothing in this determination exempts owners or their agents from the responsibility to seek relevant planning or building permits from the relevant responsible authority, where applicable.

#### ***Categories of works or activities that may be carried out in relation to the Place without the need for a permit under the Act***

##### **General**

Minor repairs and maintenance which replaces like with like. Repairs and maintenance must maximise protection and retention of significant fabric and include the conservation of existing original details or elements. Any repairs and maintenance must not exacerbate the decay of fabric due to chemical incompatibility of new materials, obscure visible original fabric or limit access where access currently exists to such original fabric for future maintenance.

Maintenance, repair and replacement of existing external services such as plumbing, electrical cabling, surveillance systems, pipes or fire services.

Repair to or removal of items such as air conditioners, pipe work, ducting, wiring, antennae and aerials.

Works or activities, including emergency stabilisation, necessary to secure safety in an emergency where a structure or part of a structure has been irreparably damaged or destabilised and poses a safety risk to its users or the public. Note: The Executive Director, Heritage Victoria, must be notified within seven days of the commencement of these works or activities.

Painting of previously painted external surfaces in the same colour, finish and product type provided that preparation or painting does not remove all evidence of earlier paint finishes or schemes.

Painting of previously painted internal surfaces in the same finish and product type provided that preparation or painting does not remove all evidence of earlier paint finishes or schemes. Note: This exemption does not apply to areas where there is stenciling, or to unpainted, oiled or varnished surfaces.

Repair and maintenance of the existing external north facing ground floor french doors, skylight, decking, fencing and gates.

Cleaning, including the removal of surface deposits, by the use of low-pressure water (less than 100 psi at the surface being cleaned) and neutral detergents and mild brushing and scrubbing.

### **Landscape/ outdoor areas**

The processes of gardening including mowing, pruning, mulching, fertilising, removal of dead or diseased plants, replanting, disease and weed control and maintenance to care for existing plants.

Subsurface works involving the installation, removal or replacement of existing watering and drainage systems or other services.

Repair and maintenance of existing hard landscaping including fencing, gates, carparking areas, paving, decking, footpaths and driveways.

installation of physical barriers or traps to enable vegetation protection and management of vermin such as rats, mice and possums.

Removal of tree seedlings and suckers.

Works within the envelope of the shed to the north-east of the residence.

### **Interiors**

Works to maintain or upgrade the existing bathrooms, kitchen and laundry, including installing new appliances, re-tiling and the like.

Installation, removal or replacement of carpets and/or flexible floor coverings, window furnishings, and devices for mounting wall hung artworks.

Maintenance, repair and replacement of light switches, power outlets, light fixtures, tracks and the like.

Maintenance, repair and replacement of non-original plasterboard in existing locations.

Installation, removal or replacement of existing electrical wiring. If wiring is currently exposed, it should remain exposed. If it is fully concealed it should remain fully concealed.

Removal or replacement of smoke and fire detectors, alarms and the like.

Repair, removal or replacement of existing ducted, hydronic or concealed radiant type heating provided that the central plant is concealed, and that the work is done in a manner which does not alter original building fabric.

Installation of plant within the roof space, providing that it does not impact on the external appearance of the building or involve structural changes.

Installation, removal or replacement of bulk insulation in the roof space.