

Heritage Council Regulatory Committee

Templer Church Hall, 3 Wadi Street, Boronia, Knox City Council (H1992)

Hearing – 9 June 2023

Members – Dr Ursula de Jong (Chair), Dr Janine Major, Mr Justin Naylor

DETERMINATION OF THE HERITAGE COUNCIL

After considering all submissions received in relation to the permit review, and after conducting a hearing, the Heritage Council has determined, pursuant to section 108(7)(a) of the *Heritage Act 2017*, to affirm the determination of the Executive Director under review in relation to the Templer Church Hall and refuse to issue Permit No.P35324.

Dr Ursula de Jong (Chair)
Dr Janine Major
Mr Justin Naylor

Decision Date – 29 August 2023

APPEARANCES AND SUBMISSIONS

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

Submissions were received from the Executive Director. Ms Janet Sullivan (Principal, Heritage Permits) appeared and made verbal submissions on behalf of the Executive Director. Jessica Hood (Senior Heritage Officer, Permits) was also in attendance.

MEREDITH TINNING–HURDLE ('THE APPLICANT')

Written submissions and statements of expert evidence were received from Ms Meredith Tinning–Hurdle, the owner of Templer Church Hall and the permit applicant in this matter ('the Applicant'). The Applicant was represented by Mr Abdul Torabi of Pointon Partners. Pointon Partners instructed Mr David Deller of Counsel to appear and make verbal submissions at the Hearing on behalf of the Applicant. The following persons who had lodged statements of evidence with the Heritage Council were called to give expert witness evidence and were available to take questions from the Committee during the Hearing:

- Mr Hayden Long, Principal at Farrar D Pty Ltd, Structural and Civil Engineering;
- Dr Aron Paul of Trethowan Architecture; and
- Mr David Stewart of ArbKing.

INTRODUCTION / BACKGROUND

THE PERMIT REVIEW

01. This proceeding is a review of a determination by the Executive Director to refuse, pursuant to section 102(2) of the *Heritage Act 2017* ('the Act'), Permit Application No.P35324 ('the Review'), in respect of replacement of the front fence, front path and driveway and landscaping works at the Templer Church Hall (registered Place H1992) at 3 Wadi Street, Boronia ('the Place').

THE PLACE

02. The (former) Templer Church Hall is a single-storey building constructed between February 1956 and September 1957. The front elevation of the building faces Wadi Street with the eastern, western and southern elevations bound by adjoining properties. The building is constructed of rendered concrete blocks. The Place is included in the Victorian Heritage Register ('the Register') as a place of cultural heritage significance to the State of Victoria.
03. Places included in the Register meet a high threshold of significance, and it is demonstrable that they are important to the State of Victoria. Owners of Places on the Register are considered to be the custodians of Victoria's most significant heritage properties. Owners of Places in the Register have legal obligations to be aware of, including the requirement to seek approval to undertake works and activities at Registered Places.
04. The Statement of Significance for the Place is extracted below:

“What is significant?”

The Templer Church Hall, Boronia was constructed by members of the Temple Society of Australia in 1956-57. The walls of the simple building are built of concrete blocks manufactured by the society members and the gable roof is of corrugated asbestos cement sheets. The building has a bell tower, originally containing a bell presented by a sister community in Germany in the early 1960s, and small attached schoolroom-cum-clubroom. The bell has since been removed to Temple Society's Bayswater site. A long skillion roofed structure housing a nine-pin skittle alley has been added at the rear of the building.

The Temple Society of Australia is an independent Protestant Christian Society formed in 1950. It derives from the first Temple Society founded by Christoph Hoffmann in south-west Germany in 1861. During the second half of the nineteenth century the German Templers settled in the Holy Land. They were interned in Palestine at the outbreak of the Second World War, and in 1941 over 500 German Templers were transported to Australia where internment continued in north west Victoria until the end of the war. The Templers' worship is congregationally, rather than pastor led, and their church buildings are also used for social events as well as worship -hence the name Church Hall.

How is it significant?

The Templer Church Hall is of historical, architectural and social importance to the state of Victoria.

Why is it significant?

The Templer Church Hall is historically important for its connection with the Templer Society, one of the smaller religious groups in Australia. It demonstrates the way of life of one of the many refugee ethnic communities established throughout Victoria following the Second World War, and illustrates the role that diverse cultural communities played in the post war growth of the state and the development of a unified multi-cultural society.

The Templer Church Hall is architecturally important as a local interpretation of the simple architectural style adopted by the farming communes of Palestine from whence the builders/congregation came. It is the first of the small number of buildings built by the Templer Society in Australia, and is a fine example of a post-war building built by the immigrant congregation itself.

The Templer Church Hall is socially important as an early focus of one of the very small religious groups in Australia. Since its construction the building has been an important religious and social centre for the thriving German community in Melbourne's south-eastern suburbs. The European skittle alley is a rare example of a recreational and social facility attached to a religious building, and reflects the ethnic background of the Templers.”

- 05.** The extent of registration for the Place is shown in Diagram Number 1992 held by the Executive Director (**Attachment 1**) and forms the subject land for this matter ('the Subject Land').

BACKGROUND TO PERMIT APPLICATION

- 06.** In December 2020, Heritage Victoria was alerted to unauthorised works at the Place. On 23 March 2021, a 'stop-order' was served to Mr Colin Hurdle, the husband of the Applicant, to cease all construction works not covered by an existing heritage permit.
- 07.** The identified unauthorised works as submitted by the Executive Director include:
- removal of the existing low brick fence at the front;
 - construction of a new 1800mm brick front fence and timber slat fence;
 - construction of stone retaining walls and stone paths;
 - installation of two front gates;
 - removal of a mature Linden tree; and
 - other associated landscape works.
- 08.** During its site inspection of the Place (see paragraph 021 below), the Regulatory Committee of the Heritage Council ('the Committee') observed that the following unauthorised works appeared to have taken place, in addition to those listed above by the Executive Director:
- construction of a side wall;
 - excavation of new driveway; and
 - construction of a new timber boundary retaining wall and fence.
- 09.** On 14 July 2021, Heritage Victoria officers met with the applicant and Lovell Chen Heritage Consultants. Advice was provided by Heritage Victoria to the Applicant that there should be either no fence or a low reconstructed fence to

match the original; that there should be no central path; that the Linden tree should be reinstated to its original position; and that an arborist should be engaged to provide guidance to ensure the other remaining tree is appropriately managed as part of any landscaping works. It was also advised that the new partially constructed brick side wall was not supported.

THE PERMIT APPLICATION

- 010.** On 6 December 2021, the Applicant applied to the Executive Director for a permit to undertake works to the Place ('the Application').
- 011.** The proposal included:
- *“Construction of the front fence - 1200mm high rendered brick fence (coloured to match the existing render colour of the Church Hall) with wrought iron palisade panels painted black incorporating a new pedestrian gate (1200m wide), and a bi-fold gate*
 - *Construction of driveway/parking area*
 - *Construction of side paling fences*
 - *Landscaping, including pathways, decking, planters and garden beds*
 - *New plantings”¹*
- 012.** Pursuant to section 100 of the Act, on 17 December 2021 the Executive Director provided a copy of the Application to Knox City Council as the responsible authority for the area in which the Place is situated and invited written submissions.
- 013.** Knox City Council did not oppose the proposed works but requested that any approval include a requirement that works be undertaken in accordance with the Arbttec Arboricultural report dated 21 September 2021.
- 014.** The Executive Director requested further information from the Applicant on 10 January 2022, which included a request for detailed drawings, an arborist report and detailed information regarding section 101(2)(b) of the Act, which relate to reasonable and economic use considerations.
- 015.** The Applicant submitted a revised proposal to the Executive Director in April 2022. The revised proposal reinstated the diagonal concrete path from Wadi Street to the front porch and incorporated a lawn area to the front setback, west of the reinstated diagonal concrete pathway. The revised proposal is the subject of this review.
- 016.** Pursuant to section 94 of the Act the Executive Director caused notice that the Application was to be publicly displayed between 3 August 2022 and 16 August 2022. No submissions were received pursuant to section 95 of Act.

DETERMINATION OF THE EXECUTIVE DIRECTOR

- 017.** On 9 September 2022 the Executive Director determined to refuse Permit Application No. P35324 ('the Refusal') citing the following reasons:

“REASONS FOR REFUSAL

The construction of a new fence and changes to landscaping to the front of the Templer Church Hall would have an unacceptable detrimental impact on the cultural heritage significance of the Place, more

¹ Templer Church Hall Heritage Victoria First Submission, 11 May 2023, p3.

specifically on the historic setting and landscape. The proposal involves a change from open landscape to a more intensive contemporary design with additional hard surfacing and an increased fence height that would cause visual impacts to the detriment of the heritage values of the place.

Substantial change has already been approved to allow an adaptive reuse of this Place for residential use and changes proposed by this application would further impact the setting and presentation of the Place to an unacceptable level.

Refusal for the construction of the fence and changes to landscaping would not prevent the reasonable or economic use of the registered place. It has not been demonstrated that another owner could not utilise the place without the proposed changes.’²

THE PERMIT REVIEW REQUEST

- 018.** On 3 November 2022, the Heritage Council received a request from the Applicant, pursuant to section 106(1) of the Act, for a review of the Executive Director’s refusal (‘Review Request’).
- 019.** The Applicant gave the following reasons for the Review Request, and requested that a hearing be held in relation to the Executive Director’s refusal:
- 1. “The building’s identified historical associations and architectural style, and social values related to the previous occupation of the building by the Templar [sic] Society and to the rare example of the skittle alley, will be maintained and will not be impacted by the proposed landscape works, including the construction of a new front fence.*
 - 2. The significance of the Templer Church Hall, as identified in the statement of significance published by Heritage Victoria, relates to the historical, architectural and social value of the building. Within the heritage registration, the Permit Exemption Policy reiterates that the significance of the place ‘lies in the intact and unaltered form and detailing of the Church Hall, its belltower, attached front school/club room, and the later skittle alley added to the rear.’*
 - 3. The significance of the place is addressed to the building itself and does not rely on the landscape elements and broader setting or context of the place being maintained unchanged. The statement of significance does not identify the landscape or setting of the building as being of significance or as contributing to the significance of the heritage place.*
 - 4. The Permit Exemption Policy indicates that ‘the registered land provides a context for the buildings,’ and it is acknowledged that generally speaking, the setting of a property provides a context for buildings within it. However, the setting of the Templer Hall at 3 Wadi Street historically comprised elements which were added to the property and changed over time, including elements and areas which no longer form a part of the place.*
 - 5. Were existing elements of the front landscaping found to have a heritage value, the changes posed by the proposed new works and fence would not be detrimental to these elements and to the assessed significance of the place.*

² Extracted from Executive Director’s refusal for P35324 dated 9 September 2022.

6. *Historical features of the building's front setting, including the existing tree, generally open presentation to the north-east, garden bed to the base of the bell tower and concrete paths surrounding the building will be maintained within the proposed landscaping. A diagonal concrete pathway from the front crossover would be reinstated, and a Linden tree replanted.*
7. *The front fence was not part of the architectural significance of the place and was not identified in the statement of significance. The replacement of the fence in an altered form will not have a detrimental impact to the significance of the place.*
8. *The previous front fence was of a general form and exposed brick material shared with neighbouring properties on Wadi Street. It did not present as being of a suite with the architectural values expressed in the Templer Church Hall, and appears to have been constructed somewhat later than the building itself.*
9. *The proposed landscaping works and new fence will not impact the significance of the place, and cannot be seen to 'further impact' the place to an unacceptable level.*
10. *The previously approved additions to the Templer Church Hall do not form part of the currently proposed works, and are understood to have been granted a heritage permit in accordance with the provisions of the Heritage Act.³*

020. The Committee was constituted to consider and determine the matter. A Permit Review Hearing was initially scheduled for 15 and 16 March 2023 but was subsequently adjourned and relisted for one day on 9 June 2023 ('the Hearing').

PRELIMINARY AND PROCEDURAL MATTERS

SITE INSPECTION

021. On 8 June 2023, the Committee conducted a site inspection of the Place. The Hearings Manager of the Heritage Council Secretariat accompanied the Committee. Access to the Place was facilitated by Mr Abdul Torabi of Pointon Partners. No submissions were sought or received at the time of the site inspection.

HEARING

022. The Hearing was conducted on 9 June 2023 online via Microsoft Teams. The Executive Director was represented by Ms Janet Sullivan (Principal, Heritage Permits) who appeared and made verbal submissions. Mr David Deller of Counsel was instructed by Mr Abdul Torabi to appear and make verbal submissions on behalf of the Applicant. Mr Deller called evidence from Dr Aron Paul, Mr Hayden Long and Mr David Stewart who had submitted written expert evidence and statements.

REQUEST FOR ADDITIONAL INFORMATION

023. Following the Hearing, on 20 June 2023, the Committee made a request for additional information pursuant to section 108(2) of the *Heritage Act 2017* ('the Act').

³ Extracted from the Applicant's Request for a Review, dated 3 November 2022.

024. From the Executive Director, the Committee requested:

- a) clarification of the Executive Director's submission that: 'permits cannot be retrospectively applied, so the application was for the completion of the unauthorised works'; and
- b) explanation of practical ramifications if the above interpretation were adopted; and
- c) confirmation of the height of a fence which would be acceptable in the Executive Director's view; and
- d) further information about the submission relating to setting and previous heritage permits issued.

025. From the Applicant, the Committee requested:

- a) a response to the Executive Director's statement that 'permits cannot be retrospectively applied'; and
- b) an explanation of practical ramifications if the above interpretation were adopted; and
- c) clarification of the height of the original red brick fence; and
- d) drainage plans for the Place.

026. On 4 July 2023, the Executive Director responded to this request. In summary, the Executive Director submitted that:

- a) "the longstanding view taken by Heritage Victoria, supported by advice from the Victorian Government Solicitor's Office sought in 2001, is that works carried out at heritage places without a permit cannot be retrospectively validated". This view is based predominantly on the wording of the Act and in particular sections 87(4) and 101;
- b) while Heritage Victoria advised that it "would not undertake any enforcement action that was contradictory to the position of the Heritage Council";
- c) the appropriate height for any reconstructed fence as one which approximates the original 600mm high one; and
- d) in relation to the consideration of 'setting' in past permits issued, that:

"whilst there was a consideration of the impact of the works, including on the setting, with each of these permit applications, there was also a requirement for the Executive Director to consider reasonable and economic use, noting particularly that these permits were issued early in the building's life as a residence when change was most required. With the passing of time and the approval of additional works, it is considered that cumulative change should be factored into the consideration of impacts posed by a permit application for a heritage place. As approvals to facilitate the use of the place as a residence has now occurred, the weighting of impacts against reasonable use should change."

027. On 10 July 2023, the Applicant filed submissions in response to the Committee's request. In summary, the Applicant submitted that:

- a) sections 93,101,106, and 107 of the Act do not require or suggest that retrospective works are not able to be sanctioned by the issue of a permit, and that:

“on a proper interpretation of the Heritage Act 2017, the HC can issue a permit for works which are already partly complete.”

- 028.** The Applicant’s submissions also provided a number of examples of cases where retrospective permits were granted by the Victorian Civil and Administrative Tribunal’s planning jurisdiction.

CONTEXT OF DETERMINATION

- 029.** The Committee notes that, in determining this matter in accordance with sections 108(7) and 108(8) of the Act, it must consider the matters set out in section 101(2) (**Attachment 2**). This includes, among other things, the extent to which the Application, if approved, would affect the cultural heritage significance of the Place⁴ and the extent to which the Application, if refused, would affect the reasonable and economic use of the Place⁵.

- 030.** The Committee has given full consideration to the matters set out in section 108(2) of the Act in making its determination.

ISSUES

- 031.** 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 the Committee takes on each key issue.

- 032.** Pursuant to section 101(2) of the Act, and following a consideration of all submissions received, the Committee notes that the key issues it has considered in making its determination are, broadly, as follows:

- the extent to which the proposal would affect the cultural heritage significance of the Place;
- the extent to which the permit application, if refused, would affect the reasonable or economic use of the Place; and
- other matters relevant to the protection and conservation of the Place.

- 033.** From the submissions, several further issues emerged including:

- whether or not a retrospective approval for the works already undertaken without a permit can be granted;
- whether the setting of the Place would be detrimentally affected by the proposed hard and soft landscape works including the rendered red-brick fence, concrete pathways and apron, cobbled bluestone driveway, retaining walls and new plantings;
- the extent to which the landscaping works are required in order to address drainage; and
- whether the proposed works are required to allow reasonable use of the Place.

⁴ section 101(2)(a) of the *Heritage Act 2017*.

⁵ section 101(2)(b) the *Heritage Act 2017*.

034. The key issues are discussed in greater detail below.

SUMMARY OF SUBMISSIONS AND EVIDENCE

035. The Executive Director submitted that its position to refuse the Permit had not changed and confirmed its view that the proposal, which involves a change from the existing open landscape to a contemporary design, would cause visual impact to the detriment of the heritage building. The Executive Director further submitted that the setting of the Place would be unacceptably and detrimentally impacted by the proposed works through the introduction of fencing and landscape elements which, in their view, is counter to the simple pared back architectural style associated with the Templer Society. The Executive Director further submitted that historical evidence shows that in the years following construction of the Place, the front of the property had soft, informal, and limited landscaping and that therefore on balance, the extent of change proposed is unacceptable from a heritage perspective, specifically with respect to: the height and design of the fence and the formality, materials and scale of hard landscaping. The Executive Director submitted that it has not been sufficiently demonstrated that there is any requirement for the works in order to reasonably use the Place as a residence. The Executive Director's submissions are discussed further later in this determination.

036. The Applicant agreed that the heritage significance of the Place was not in dispute, however disputed the reasons upon which the Executive Director had relied on in refusing to issue the permit. The Applicant submitted that the significance of the Place is addressed to the building itself and does not rely on the landscape elements and broader setting or context of the Place being maintained or unchanged. Relying on the expert evidence of Mr Hayden Long, the Applicant further submitted that landscaping works provided for in the proposal are principally required to manage stormwater drainage at the Place, and the proposed drainage works to the perimeter of the building would be critical to the life expectancy of the building. In relation to the proposed fence, the Applicant relied on the expert evidence of Dr Aron Paul and submitted that the low red-brick (now removed) fence is not significant, and that construction of a low, simple and visually permeable fence is acceptable. In summary, the Applicant's position was that the significance of the registered place largely rests in the overall form of the Church Hall and principally in its external fabric; the primary cultural heritage significance of the registered place relates to the exterior architectural expression of the Church Hall; and the (now removed) red-brick front fence and the landscaping are not significant, protected or integral to the cultural heritage significance of the Place. The Applicant's submissions are discussed further later in this determination.

PRELIMINARY MATTERS RAISED IN SUBMISSIONS

Discussion on submissions in relation to retrospective permits

037. The Executive Director advised the Owner on 8 June 2021 that "retrospective approval for the partially constructed fence was not possible under the Act and that; and that; even had an application been lodged, the fence would not have been approved based on concerns about its height and design."⁶

038. At the outset of their submissions during the Hearing, the Applicant stated that Heritage Victoria's position that retrospective approval could not be granted was incorrect, and that there is no prohibition in the Act (preventing retrospective approval and that permits issued in Victoria under the *Planning and Environment*

⁶ Templer Church Hall Heritage Victoria First Submission, 11 May 2023, p2.

Act 1987 ('PE Act') are issued of permits for works that have already commenced without a permit (retrospective approval).

- 039.** Following the Hearing, the Committee requested from the Applicant and Executive Director additional information in relation to the Applicant's submissions at the Hearing on this matter (see paragraphs 022 to 024 above).
- 040.** In response, the Applicant submitted examples where retrospective permits had been granted by Victorian Civil and Administrative Tribunal (VCAT) upon review, pursuant to sections 77–80 of the PE Act. The Applicant included one example in relation to a retrospective permit matter pursuant to the former *Heritage Act 1995*, however the Committee notes that paragraph 7(b) of the Applicant's response incorrectly quotes the Heritage Council's determination and that in-fact the Executive Director submitted that the retrospective permit *should* be refused.
- 041.** In response, the Executive Director submitted that upon receipt of legal advice provided in 2001, Heritage Victoria have maintained the view that works carried out at heritage places without a permit cannot be retrospectively validated by the granting of a permit. The Executive Director submitted that section 101(a)(i)-(ii) refers to the issuing of a permit for '*proposed works or activities*' (emphasis added). The Executive Director also submitted that their position in relation to retrospective approval did not prevent the 'ability to grant a permit for continuation of works which build upon the unauthorised works' (identified in paragraphs 07 and 08 above).

Discussion and conclusion

- 042.** The Committee notes the submissions made by both parties to the review in relation to matters of retrospective consent but does not consider that it is necessary to make a determination on these matters for the purposes of this decision. The Committee notes that in determining the review it has had regard to the matters set out in section 101(2) of the Act and has based its decision only on the works proposed in the Permit Application, as distinct from the unauthorised works.

Unauthorised works

- 043.** The Committee notes that the Application was initiated after Heritage Victoria was alerted to unauthorised works at the Place and a 'stop-order' was served on the owner pursuant to section 165 of the Act.
- 044.** The Committee understands that the unauthorised works (identified in paragraphs 07 and 08 above) do not form part of the Application to which the Review relates, and the Committee have therefore not made the determination in relation to the unauthorised works. Nonetheless, the Committee wishes to record its disappointment upon observing the extent of the unauthorised works and note that it is the responsibility of owners as custodians of the State's heritage to have regard to their legal obligations before carrying out works and activities to registered places.
- 045.** The Committee notes that the Applicant was given advice by the Executive Director as to what works would be likely to be approved, but the advice does not appear to have been followed, especially in relation to the height, scale and materiality of the front fence and extensive landscaping works.

EXTENT TO WHICH THE APPLICATION WOULD AFFECT THE CULTURAL HERITAGE SIGNIFICANCE OF THE PLACE OR OBJECT

- 046.** In determining a permit review, the Heritage Council must consider the matters set out in s101(2) of the Act, provided at **Attachment 2**. The following section discusses matters relevant to the consideration of s101(2)(a), the extent to which the application if approved would affect the cultural heritage significance of the registered place or registered object.

SIGNIFICANCE OF THE SETTING OF THE PLACE

Summary of submissions and evidence

- 047.** The Extent of the Place is shown in **Attachment 1**. While it is noted that the heritage significance of the Place is not in dispute, the elements that form the Registration and the Extent were questioned by the Applicant and responded to in the Executive Director's written submission prior to the Hearing.
- 048.** In relation to the setting of the Place, the Applicant submitted that the significance of the Place lies in the built fabric alone, and that its significance did not rely on the landscape elements and broader setting or context of the Place being maintained unchanged. The Applicant also submitted that the setting of the Place historically comprised elements which were added to the property and changed over time, including elements and areas which no longer form part of the Place. The Applicant also submitted that the 'Statement of Significance does not identify the landscape or setting of the building as being of significance or as contributing to the significance of the heritage place'.
- 049.** The Applicant further submitted that the Permit Exemption Policy reiterates that the significance of the place 'lies in the intact and unaltered form and detailing of the Church Hall, its belltower, attached front school/club room, and the later skittle alley added to the rear'. The Applicant also submitted that 'other parts of 3 Wadi St (such as the old front fence and the landscaping) are of only marginal (if any) relevance'.
- 050.** In response, the Executive Director submitted that the Permit Exemption policy goes beyond that quoted by the Applicant to say:

"The registered land provides a context for the buildings. Although the landscape elements (eg. front fence, signage, trees and paths) have not been itemised in detail in the extent, they are considered to be included in the registration as part of the registered land. Permit applications will be required for alterations to any of these elements, apart from a range of maintenance works covered by the exemptions".⁷

- 051.** The Executive Director also submitted that when considering a permit application regard is given to the Australia ICOMOS Charter for Places of Cultural Significance ('Burra Charter') which was adopted by Heritage Victoria in 2010 as a guiding document for decision making. The Executive Director submitted that according to Article 8 of the Burra Charter:

"Conservation requires the retention of an appropriate setting. This includes retention of the visual and sensory setting, as well as the retention of spiritual and other cultural relationships that contribute to the cultural significance of the place. New construction, demolition, intrusions

⁷ Templer Church Hall – Permit Exemption Policy, Victorian Heritage Database: <https://vhd.heritagecouncil.vic.gov.au/places/12297>

or other changes which would adversely affect the setting or relationships are not appropriate".⁸

- 052.** Relying on the expert evidence of Dr Aron Paul, the Applicant submitted that the "landscape and fence are not significant elements of the site...and that the church hall and views to it are the elements to be protected albeit in an appropriate setting". Dr Paul also submitted that as the permit application retains the Pin Oak Tree, reinstates the diagonal path to the building, and retains a section of lawn to the front of the Subject Land, it is not the case that the proposed works "remove the last remaining evidence of the historic setting" as outlined in the Permit Officer's report. Dr Paul also submitted that "it is reasonable for a domestic setting and materiality to be elements of the landscape design given that the church is now a residence, providing that they do not dominate or detract from the essential element of the place – the church hall".
- 053.** During the Hearing, the Executive Director submitted that Dr Paul's evidence misunderstands the Statement of Significance, which according to the Executive Director is not intended to cover every aspect of what is significant, rather it is a starting point for understanding significant values. The Executive Director submitted that the *Burra Charter Practice Note Understanding and Assessing Cultural Significance* states that a Statement of Significance "provides a concise and distilled summary of the cultural significance of the place."⁹
- 054.** In verbal submissions during the Hearing, Dr Paul submitted that if the original fence was significant, then the extent should have been drawn around the perimeter of the fence, and that the Burra Charter has broad principles that apply to places in order to protect what is significant about that place, rather than preventing all change to a place. Dr Paul also submitted that the landscape was not subject to a design at any time, and no landscape designers have been associated with the Place, stating that the landscape "developed in a simple setting that was developed in an ad hoc manner according to affordability and opportunity rather than being deliberately designed as such."¹⁰
- 055.** The Executive Director disagreed with this view, submitting that a landscape or setting does not have to be specifically designed to be of historic significance.

Discussion and conclusion

- 056.** Much of the discussion in relation to the setting of the Place focused on the Statement of Significance, and the specific elements included or not included in the Statement of Significance.
- 057.** The Committee notes however that its task is to determine whether the permit if approved would affect the cultural heritage significance of the place, and that the Extent of the Place as included in the Register includes all of the land as shown in **Attachment 1**. Despite the (now removed) low red-brick front fence, and other elements of the landscape such as the Pin Oak Tree and front fence not being explicitly included in the Statement of Significance, the Committee is of the view that this does not mean that the setting and landscape elements are of no significance, and that this is evidenced in the Permit Policy associated with the Place.

⁸ Templer Church Hall Heritage Victoria First Submission, 11 May 2023, p5.

⁹ Australia ICOMOS Burra Charter Practice Note, V1 November 2013, p5: https://australia.icomos.org/wp-content/uploads/Practice-Note_Understanding-and-assessing-cultural-significance.pdf

¹⁰ Expert Evidence of Dr Aron Paul in the Applicant's Hearing Submission, 15 May 2023, p48.

- 058.** Additionally, the Committee notes that Permit Exemptions can only be applied to a place included in the Register if the works or activities will not harm the cultural heritage significance of the place, and that in relation to the setting and landscape only a small number of permit exempt maintenance works apply.
- 059.** The Committee is of the view that despite the ad-hoc nature of its development over time, the original landscape and setting of the Place contribute to its overall significance. The Committee further view that the landscape and setting are reflective of the simple pared back architectural style associated with the Templer Society.
- 060.** The Committee refer to the Statement of Significance, and the reasons for the inclusion of the Place in the Register, specifically that ‘The Templer Church Hall is architecturally important as a local interpretation of the simple architectural style adopted by the farming communes of Palestine from whence the builders/congregation came’.
- 061.** The Committee is of the view that if approved the proposal will dominate and overwhelm the simple architectural style of the building which can still be read in the fabric of the building despite additions and alterations over time, and that the setting allows for appreciation of the historic and architectural significance of the Place.
- 062.** The Committee is not persuaded that the landscape setting of the Place is of no significance and that change on the scale proposed will have no impact on its cultural heritage significance.
- 063.** The Committee accepts the submissions of the Executive Director and agrees with the position that if approved, the proposal would cause visual impact to the detriment of the heritage values.

IMPACT OF THE PROPOSED FRONT FENCE

Summary of submissions and evidence

- 064.** In relation to the proposed replacement of the (now removed) low red-brick front fence, with a 1200mm rendered brick fence, the Executive Director submitted that the proposed fence would detract from an experience of the historic landscape.
- 065.** In verbal submissions at the Hearing, the Executive Director submitted that in refusing the permit the Executive Director was conscious of the need to manage “the look” of the front fence, and that if approved the fence will obscure views and add a decorative element to the Place which is at odds with the simple setting and architectural style of the Place.
- 066.** The Executive Director also submitted that the proposed height of 1200mm for the front fence was too high and could not be supported, and that additionally the contemporary design of the proposed fencing is unsympathetic to the simple historic architectural style of the Church Hall.
- 067.** Following the Hearing, in response to a request for further information from the Committee (see paragraph 026 above) the Executive Director submitted that an appropriate height for any reconstructed fence would be ‘one which approximates the original, which was 600mm high’.
- 068.** The Applicant’s position in relation to the proposed fence was predicated on the view that the low red-brick front fence was not significant. In Dr Paul’s expert evidence, he noted that if the fence is significant, it follows that the question ‘what kind of fence would be appropriate for the place’ should be asked. Dr Paul

submitted that the important consideration is a fence that does not obstruct views to the Church Hall.

- 069.** Dr Paul agreed with the Executive Director that the piers making up the fence that was partially constructed without a permit are too high but submitted that a fence of 1200mm high as proposed in the application would be appropriate.
- 070.** During cross examination at the Hearing, the Executive Director asked why a tall, decorative fence was required to reasonably use the property. Dr Paul disagreed that the fence was decorative and reiterated that it was an appropriate height and design, that allowed views from Wadi Street to the Place to be maintained.
- 071.** In response to a request for further information from the Committee, the Applicant submitted that based on the front boundary fence of 1 Wadi Street it is estimated that the low red-brick fence was 900–950mm tall.

Discussion and conclusion

- 072.** The Committee is of the view that the height, design and materiality of the proposed fence is an inappropriate addition to the Place which would detrimentally affect the ability of the historic and architectural significance of the Place to be read from the street.
- 073.** Further, the Committee is of the view that the height, design and materiality of the proposed fence is at odds with the simple architectural style and post-war design of the Place.
- 074.** The Committee wishes to note that it has not been made clear to it why the low red-brick fence was demolished in the first place, and agrees with the Executive Director's position that had a permit been applied for to demolish and replace the original red-brick fence with the proposed 1200mm fence, it would not have been supported.
- 075.** It is noted that the Heritage Victoria Permit Officer's report sets out that the proposed 1400mm timber paling/picket fence to enclose the western side of the building, and the proposed timber picket fence and gate to enclose the eastern side and the new addition would be appropriate. However, the Committee also notes that in relation to the front fence, on 14 July 2021, Heritage Victoria officers provided advice to the owners, that there should be either no fence or a low reconstructed fence to match the original.
- 076.** It is unclear to the Committee why this advice does not appear to have been taken on board, and the Committee does not support the height, design and materiality of the front fence proposed in the application, or partially constructed on site.

DRAINAGE

Summary of submissions and evidence

- 077.** The Executive Director agreed in-principle with the Applicant that it is desirable to address drainage issues at the Place. The Officer's Report for Permit No. P35324 states that 'Heritage Victoria would have been supportive of new drainage works incorporated into areas of lawn or the graveled driveway but can only approve works that have not already been carried out.'¹¹
- 078.** In a reply submission, the Executive Director submitted that some regrading of levels and construction of a concrete apron in the area on the east side of the building would be acceptable to address the drainage issues. The Executive

¹¹ Heritage Victoria Officer's Report, 21 August 2022, page 22

Director also submitted that a boundary paling fence and retaining wall immediately adjacent to the east boundary paling fence would be acceptable.

- 079.** However, the Executive Director also submitted that other than those works listed at paragraph 077 above, most of the works in the Application are not required to address drainage issues at the Place. The Executive Director disagreed that construction of a new front and side fence, gates and retaining walls and construction of garden beds in place of lawn are the most appropriate means to address drainage issues.
- 080.** Relying on the expert evidence of Mr Hayden Long, the Applicant submitted that the proposed “landscaping works are principally required to manage stormwater drainage across the 3 Wadi Street property”. Mr Long’s expert evidence further submitted that the proposed works “rectify the drainage issues through the installation of appropriate surface drains, grading of the pavements surrounding the building, and directing water away from the building”. Mr Long also submitted that the “fence plinth, retaining structures on boundary are important components in controlling runoff from adjoining properties”.
- 081.** The Executive Director disagreed with Mr Long’s assessment, stating in verbal submissions during the Hearing that Mr Long’s expert evidence was submitted after much of the drainage works had been completed without a permit, and that alternative options had not been considered. It is noted that the works completed without a permit to purportedly rectify drainage issues include removal of the gravel driveway, major excavation for new driveway, installation of retaining wall and fence on the east-boundary, removal and replacement of concrete apron, construction of low stone retaining wall around concrete apron and running north-south in front of the building, and other regrading works and that those works do not form part of the Application.
- 082.** In verbal submissions, Mr Long spoke to the efficacy of a spoon drain, which the Executive Director had submitted would be a logical solution to address drainage issues and would be less impactful to the setting of the Place than the works in the Application.
- 083.** Mr Long submitted that a spoon drain could assist the drainage issues at the Place but submitted that grading to allow the concrete apron to slope towards the front of the site (rather than east-west as is currently the case) would be required. Mr Long submitted that the fall required at the southern end of the Place towards the new addition would be too high to be workable.
- 084.** Mr Long submitted that introducing an overland flow path out of the site would rely on inground drainage, and that this type of drainage measure was best for smaller, more frequent storm events. Mr Long submitted that the drainage works proposed will cater for large storm events, which currently cause water to enter the subfloor vents of the Place causing structural damage.
- 085.** During cross examination, the Executive Director questioned whether oversized pipes could be used as a solution to address the drainage issues. Mr Long submitted that as the capacity of the connecting drain was not known, oversized pipes had not been considered. Mr Long submitted that the connecting pits that drain to the Local Council system are designed for a one in five-year storm event.
- 086.** Upon questioning from the Committee Mr Long submitted that an existing drainage plan for the property had not been sought or viewed nor submitted as material as part of the Review.

Discussion and conclusion

- 087.** The Committee notes that some of the drainage mitigation work commenced prior to the Heritage Victoria ‘stop-order’ and prior to the Application. The below comments therefore relate only to the works that are proposed in the Application and not to removal of the gravel driveway, installation of retaining wall on the east-boundary, removal and replacement of concrete apron and other regrading works.
- 088.** The Committee accepts that water ingress and pooling at the site are of concern and will (and are already) having a detrimental impact on the integrity of the building structure. During the site inspection on 8 June 2023 water pooling was noticed by the Committee in the excavation area for the new driveway and at various locations around the building. Cracking of the building which may be due to drainage issues was also observed (as outlined in Mr Long’s expert evidence, paragraph 15, p.117 of Applicant’s Hearing Submission).
- 089.** The Committee agree with Mr Long that drainage mitigation at the site must cater for large storm events but disagree that the landscaping works proposed in the Application are required to manage drainage issues at the site.
- 090.** The Committee notes the view of the Executive Director, that regrading of levels and construction of a concrete apron in the area on the east side of the building would be acceptable to address the drainage issues but note that the works completed to-date appear to have exacerbated the drainage issues by increasing the coverage percentage of hard surfaces and removing the gravel driveway (based on visual observations during the site inspection).
- 091.** The Committee does not find that the proposed drainage works are acceptable interventions to address the drainage issues, and had the unauthorised works not taken Place the Committee is of the view that a less intrusive drainage mitigation plan could have been prepared, such as drainage incorporated into the lawn and (former) gravel driveway, or investigation of use of a spoon drain.
- 092.** The Committee is concerned that a drainage plan has not been sought or viewed or utilised in the preparation of the Application and seemingly not in the drainage mitigation works completed without a permit. A 2013 ‘Paving and Drainage Design’ approval report from Knox City Council was submitted following the Committee’s request for further information, however the Committee notes that the report is approval for paving and drainage works at the Place, not a current drainage plan.
- 093.** The Committee reiterates that no drainage plan was submitted as part of this Application and that Mr Long agreed that he had not viewed an approved or as-built drainage plan for the Place in preparation of his expert evidence.
- 094.** The Committee finds that it has not been adequately demonstrated that the works proposed in the Application are the only, or correct, solution to address the drainage issues at the site. The Committee does not accept the position of the Applicant that the landscaping works are principally required to manage stormwater drainage at the Place.
- 095.** Based on the information before it, the Committee finds that the Applicant has not demonstrated that the extent of landscaping works proposed are essential to mitigate drainage issues.
- 096.** The Committee notes that during the site inspection of the Place it was not clear to it that the unauthorised landscape works had been undertaken solely for the purpose of drainage mitigation. The Committee observed the impact the unauthorised works have had on the Place, including significant pooling of water

on site, further water egress to the underside/foundations of the building, and cracking of the structure which may be caused and exacerbated by water inundation. The Committee is not convinced by the evidence submitted to it that the proposed landscaping works would rectify the drainage issues observed, and finds that the proposed works would have a detrimental impact on the cultural heritage significance of the Place.

OTHER LANDSCAPE ELEMENTS (PIN OAK TREE AND DRIVEWAY)

- 097.** During the course of the Hearing other elements included in the Application were discussed, including the proposed cobbled bluestone driveway and the impact it would have on the Pin Oak Tree, which is over 50 years old. Submissions were also made in relation to the appropriateness of the proposed cobbled bluestone driveway on the significance of the Place.
- 098.** The above elements are related to discussions about the setting of the Place and the drainage mitigation, but the Committee felt it important to discuss these matters separately.

Summary of submissions and evidence

- 099.** In verbal submissions during the Hearing, the Executive Director submitted that laying a cobbled bluestone driveway is not historically appropriate, and that a gravel driveway would be more appropriate.
- 0100.** Relying on the expert evidence of Mr David Stewart the Applicant submitted that bluestone is porous so would allow water to seep down to the roots of the Pin Oak Tree. Further, Mr Stewart submitted that a sand compound would be required in between the cobbled bluestone to enhance the ability of water to reach the Pin Oak Tree roots.
- 0101.** During cross examination, Mr Stewart was asked whether bluestone or gravel would allow more water to penetrate the earth, and replied that possibly gravel would, although no definitive answer was given.
- 0102.** During cross examination Mr Stewart was also asked whether mulch around the tree would be required regardless of the material used (either bluestone or gravel). Mr Stewart replied that the material used would make no difference to the health of the tree, however in written submissions that responded to the proposal to lay cobbled bluestone Mr Stewart had stated that “keeping mulch up to the tree will be a determining factor for tree health”.
- 0103.** The Committee notes that submissions set out that the proposed works reduce the percentage of driveway covering the Tree Protection Zone (T.P.Z) from 25 to 15.

Discussion and conclusion

- 0104.** The Committee does not find that the submissions of Mr Stewart provide evidence to definitively conclude that cobbled bluestone would have no impact on the health of the tree, and finds that cobbled bluestone may exacerbate the drainage issues at the Place.
- 0105.** Although Mr Stewart submitted that bluestone is a porous material, he also submitted that the sand filled gaps in between the stones would be required to enhance drainage. Mr Stewart additionally submitted that a bluestone driveway would have the effect of sheeting water off the stone causing runoff to various drainage points.
- 0106.** While it is accepted that sand in between the bluestone pavers would assist water to permeate, it is not accepted that bluestone is an appropriate material to

use at this Place. No submissions expressed that cobbled bluestone was the preferred material to use at the Place in relation to the health of the tree or drainage issues, the proposal to use cobbled bluestone appears to be for aesthetic reasons only.

- 0107.** Considering the bluestone offers no improvement to the health of the tree compared with gravel (irrespective of the location of the driveway allowing for reduced coverage of the T.P.Z), the Committee is not convinced that bluestone will not be detrimental to the cultural heritage significance of the Place.
- 0108.** The Committee finds that the aesthetic of cobbled bluestone is incongruous with the simple, pared back architectural style of the Place, and incongruous to the post-war era of construction of the Place.
- 0109.** The Committee finds that the cobbled bluestone driveway would add to the cumulative effect of change at the Place, and impact on the ability for the historic and architectural significance of the Place to be read.

EXTENT TO WHICH THE APPLICATION WOULD AFFECT THE REASONABLE OR ECONOMIC USE OF THE REGISTERED PLACE OR OBJECT

- 0110.** In making its determination, the Committee has had regard to section 101(2)(b) of the Act. The following section discusses matters relevant to the consideration of s101(2)(b), the extent to which the application if refused, would affect the reasonable or economic use of the registered place or registered object.

Summary of submissions and evidence

- 0111.** In verbal submissions at the Hearing, the Executive Director submitted that over time, many changes at the Place have been undertaken which allow it to function today as a sizeable residence. The Executive Director further submitted that refusal of the Application will not impede use of the Place as a residence.
- 0112.** The Executive Director conceded that refusal would affect the particular parking and driveway preference of the owner but submitted that the Applicant had not demonstrated that another owner could not reasonably use the Place without the proposed works.
- 0113.** The Executive Director submitted that the Place has been successfully adapted for use and was functioning as a residence with a low fence and gravel driveway prior to the unauthorised works taking place.
- 0114.** Relying on the expert evidence of Dr Paul, the Applicant submitted that ‘the Church Hall’s appearance has been maintained, so it is reasonable that a garden landscape should be sought by the residents for their quiet enjoyment of the place as a residence, providing that the views to the church are maintained’.¹²
- 0115.** During cross examination, the Executive Director noted that Dr Paul had used the expression during his verbal submissions, that heritage practitioners can’t deny all change to a place on the Register, or a heritage place in general. The Executive Director asked Dr Paul whether he was aware of the previous Heritage Victoria permits that had been issued to allow an additional three bedrooms and bathrooms, and other internal works to take place. Dr Paul submitted that he was aware of the previous permits issued for the Place and agreed that the Place was highly adapted as a residence.

¹² Expert evidence of Dr Aron Paul in Applicant’s Hearing submission, 15 May 2023, p106.

- 0116.** However, Dr Paul also expressed his view that the proposal was a reasonable use of the Place as a residence, and that property owners can reasonably expect to be able to park their cars at their property.
- 0117.** The Executive Director submitted that it was not opposed to the ability to park cars at the Place or have a nice front setting but that a taller, decorative fence was not needed to reasonably use the property.
- 0118.** The Executive Director also submitted that when considering reasonable use, an objective assessment is undertaken as opposed to an assessment that considers the subjective needs of individual property owners.

Discussion and conclusion

- 0119.** The Committee accepts the position of the Executive Director that the proposed works are not necessary for the reasonable use of the Place.
- 0120.** While the Committee notes that the Applicant wishes to have a front fence and gate that provides more security, the Committee does not find that the Application presents a solution that would not harm the cultural heritage significance of the Place. The Committee note that alternative security solutions that may have no detrimental impact on the cultural heritage significance of the Place do not seem to have been considered in this instance (for example alarms).
- 0121.** The Committee agrees that it is reasonable that the owner of the Place should be able to park their cars at the property, a use that has historically been enabled at the site.
- 0122.** However, the Committee does not find that the intervention proposed in the Application is required for the owners to reasonably park their cars at the property, and finds that the Application, if approved, would have a detrimental impact on the cultural heritage significance of the Place.

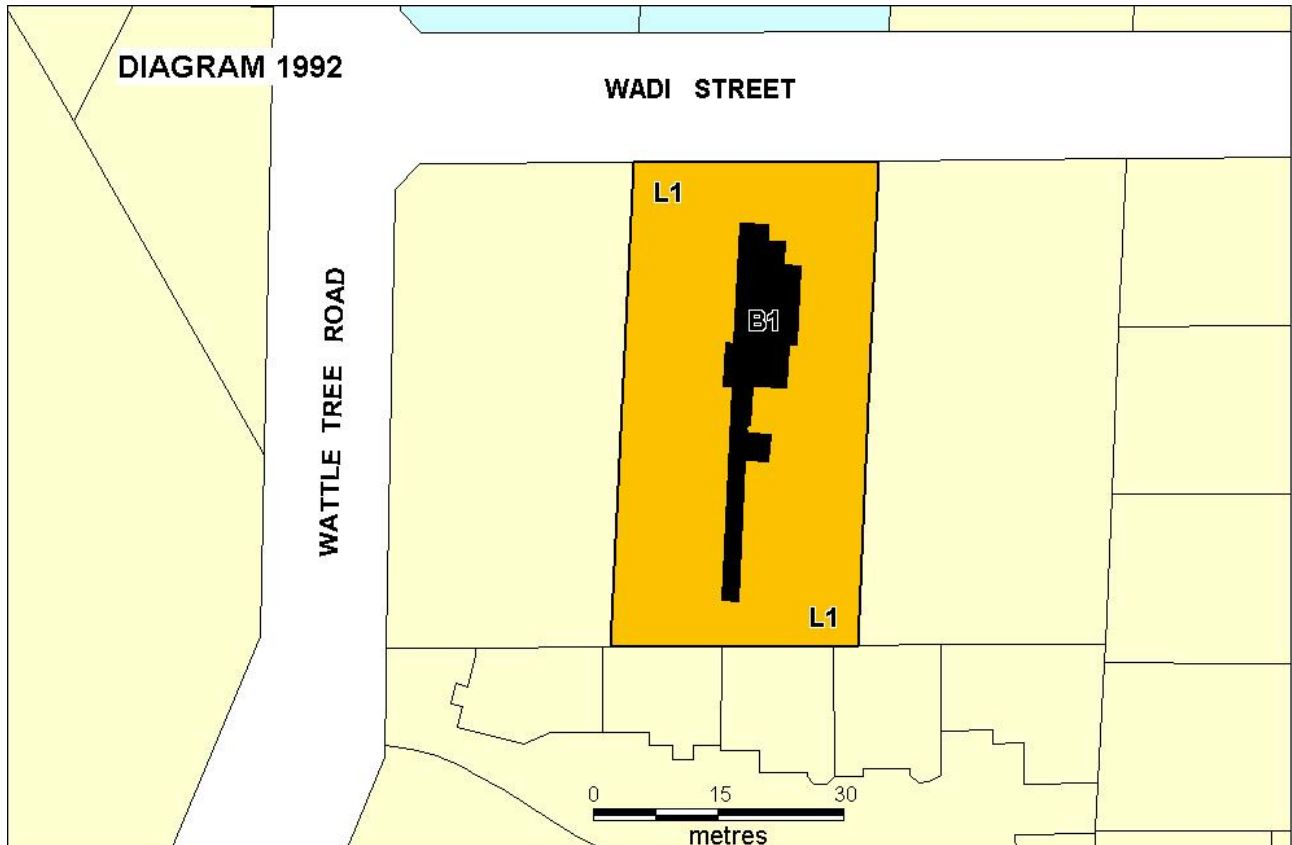
CONCLUSION

- 0123.** After considering all submissions received in relation to the Review, and after conducting a hearing, the Heritage Council has determined, pursuant to section 108(7)(a) of the *Heritage Act 2017*, to affirm the determination under review and refuse to issue Permit No. P35324 for the Templer Church Hall.

ATTACHMENT 1

The extent of registration for VHR H1992 is:

1. All of the building known as the Templer Church Hall, including the skittle alley, marked B1 on Diagram 1992 held by the Executive Director.
2. All of the land marked L1 on Diagram 1992 held by the Executive Director, being all of the land described in Certificate of Title Volume10654 Folio 638.
3. All of the object described as the bell and its associated support and operating mechanism.



ATTACHMENT 2

Section 101 of the *Heritage Act 2017*

101 Determination of permit applications

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