



Heritage Council Regulatory Committee

Former Wesleyan Chapel (H2010)

147 Woodhouse Grove, Box Hill, Whitehorse City

Hearing – 22 August 2022

Members – Professor Andrew May (Chair), Ms Joanne Guard and Mr Mark Burgess

DETERMINATION OF THE HERITAGE COUNCIL

After considering all submissions received in relation to the permit review, and after conducting a hearing, the Heritage Council has determined, pursuant to section 108(7)(a) of the *Heritage Act 2017*, to affirm the determination under review in relation to the conditions of Permit No. P33482 for the Former Wesleyan Church located at 147 Woodhouse Grove, Box Hill, Whitehorse City.

Andrew May (Chair)

Joanne Guard

Mark Burgess

Decision Date – 9 November 2022

APPEARANCES AND SUBMISSIONS

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

Submissions were received from the Executive Director, Heritage Victoria ('the Executive Director'). Ms Nicola Stairmand appeared and made verbal submissions on behalf of the Executive Director.

UNITING CHURCH IN AUSTRALIA PROPERTY TRUST (VICTORIA) ('THE APPLICANT')

Submissions were received from Mr Alex Gelber of HWL Ebsworth Lawyers on behalf of Mr Russell Craig-Brown (The Uniting Church in Australia Property Trust (Victoria)), the applicant for the permit and requestor of the review ('the Applicant'). Mr Alex Gelber of HWL Ebsworth Lawyers appeared and made verbal submissions on behalf of the Applicant.

The Applicant's submissions included statements of evidence from Mr Bryce Raworth (Heritage Expert) of Bryce Raworth Conservation and Heritage, and Mr Nick Morris (Accessibility and *Disability discrimination Act 1992* (Cth) expert) of Morris Goding Access Consulting. Mr Bryce Raworth and Mr Nick Morris were called to give expert evidence and were available to take questions from other parties.

MR ANDREW LORD

Written submissions in support of the decision of the Executive Director were received from Mr Andrew Lord.

INTRODUCTION/BACKGROUND

THE REVIEW

01. This proceeding is a review of conditions imposed by the Executive Director on Permit No. P33482 ('the Review') pursuant to section 102(2) of the *Heritage Act 2017* ('the Act'), in respect of the Former Wesleyan Church at 147 Woodhouse Grove, Box Hill, Whitehorse City ('the Place').

THE PLACE

02. The Place is located at 147 Woodhouse Grove, Box Hill, Whitehorse City, and is included in the Victorian Heritage Register ('the Register') as a place of cultural heritage significance to the State of Victoria [registered place H2010].
03. The Statement of Significance for the Place is outlined below:

“What is significant?”

The former Woodhouse Grove Wesleyan Chapel was constructed in 1855-56. It was one of the first church buildings to be built in the Box Hill area, and the oldest surviving church building in the municipality. It has been in continuous use as a church since its construction and is now known as The Grove Uniting Church. The Woodhouse Grove Chapel is a small rectangular building of coursed freestone with stone quoining at the corners. It has round-arched timber framed windows with cream brick surrounds and keystones. It is a simple single roomed building with a porch to the Woodhouse Grove elevation.

How is it significant?

The Woodhouse Grove Chapel is of historical, aesthetic and architectural significance to the State of Victoria.

Why is it significant?

The Woodhouse Grove Chapel is of historical importance as an early intact building within the broader context of Victoria and in particular in the Whitehorse area. The Woodhouse Grove Chapel is important as it demonstrates the early establishment of individual towns around Melbourne that later became part of and were enveloped by greater Melbourne. The chapel is a remnant of the original small, once rural towns that grew up around Melbourne in the nineteenth century.

The Woodhouse Grove Chapel is of architectural and aesthetic significance as an unusual example of a Georgian detailed Wesleyan chapel. The chapel demonstrates an early use of cream brick and a rare use of the local Koonung Creek stone. The chapel is important as a substantially intact 1850s building which has undergone little alteration on the exterior or interior.”

04. The extent of registration for the Place is shown in Diagram Number 2010 held by the Executive Director (**Attachment 1**), and forms the subject land for this matter ('the Subject Land').

THE PERMIT APPLICATION

05. On 30 October 2020, the Applicant applied to the Executive Director for a permit to undertake works to the Place ('the Application').
06. The proposal included:

“Construction of a facilities annex building approximately 5.5m x 2.5m linked to the Chapel by a fully glazed link connecting to the Chapel through a door constructed largely within an existing window opening, includes new signage and landscape works as described in the drawings TP00-TP09 as prepared by FPPV Architecture.”

On 9 April 2021, a revised proposal was submitted as follows:

“To construct a small brick annex building approximately 5.6m x 2.5m linked to the Chapel by a timber deck with stainless handrails connecting to the Chapel through a new steel door/frame constructed largely within an existing window opening [in the eastern elevation]. Removal of the lower and part of upper window frame and freestone stone below is required. Works include:

- *Closure of the existing front entry, landscaping/concrete block garden bed, signage and a walkway connecting deck to footpath.*
- *New steel awning over proposed doorway.*
- *Electrical switchboard is to be relocated*
- *The annex will be set back about 9 Metres from the Chapel frontage.*
- *Landscaping is to be provided to the North and South [street side] of the annex.*
- *A sign is proposed to the front of the site which will include interpretive signage relating to the heritage significance of the chapel and the site.”*

- 07.** Pursuant to section 94 of the Act the Executive Director caused notice of the Application to be publicly displayed between 23 June and 6 July 2021, and twelve submissions (from thirteen submitters) were received pursuant to section 95 of Act.
- 08.** Of the twelve section 95 submissions received, ten fully supported the Application, with many submitters focusing on the need to provide modern, accessible facilities to ensure the ongoing use of the Place as a chapel. One submission, from Mr Andrew Lord, supported the erection of a new amenities building if sensitively sited, but submitted that the Application impacted the Place structurally and aesthetically to an unacceptable degree. One submission, from Ms Elaine Brogan, objected to the Application, opposing the proposed impacts to original windows and closure of the original entrance.
- 09.** Pursuant to section 100 of the Act, Mr Ian Coleman, Heritage Advisor to the City of Whitehorse, made a submission to the Executive Director objecting to parts of the Application. It was the view of Mr Coleman that the creation of a new doorway in the eastern elevation of the Chapel “would significantly alter both the original fabric of the building and the traditional access to the building, particularly if the existing porch entry is discontinued.” Additionally, it was the view of Mr Coleman that it was possible to achieve compliance with Australian Standard AS1428.1 (*Design for access and mobility general requirements for access – new building work*) by making certain modifications to the existing porch entrance. It was therefore Mr Coleman’s submission that the works to the eastern elevation should be “strongly discouraged”. Mr Coleman did not, however, object to the construction of new, freestanding amenities, on the condition that the structure did not impact upon the stonework of the Chapel.

DETERMINATION OF THE EXECUTIVE DIRECTOR

- 010.** On 22 February 2022, the Executive Director determined to approve the Application in part, and issued Permit No. P33482 ('the Permit') subject to the imposition of fourteen conditions.
- 011.** Conditions 3–6 of the Permit relate to the need to undertake conservation works at the Place, and are included below:

*“**Condition 3.** Prior to the commencement of any of the works approved by this permit, a suitably experienced conservation architect, to be approved in writing by the Executive Director, shall prepare a repair schedule for external conservation works including stone and timber repairs, required to original building fabric. This costed repair schedule is to be approved by the Executive Director prior to commencement of any works approved by this permit. Once endorsed, the conservation works identified in the schedule become part of the permit and must be carried out within the period of validity of the permit.*

*“**Condition 4.** Prior to the commencement of any of the works approved by this permit and as provided for under s.103 of the Heritage Act 2017, a financial security in the form of an unconditional Bank Guarantee in favour of the Heritage Council of Victoria (ABN 87 967 501 331) is to be lodged with the Executive Director. The Bank Guarantee is to ensure the satisfactory completion of all of the works required by condition 3 and endorsed as part of this permit. The amount guaranteed shall be equivalent to the cost shown in the endorsed conservation schedule plus a 20% contingency sum and the period of validity of the Bank Guarantee is to be unspecified.*

*“**Condition 5.** The Bank Guarantee referred to in condition 4 above shall be released to its provider following receipt by the Executive Director of a written request by the principal, subject to the completion of all of the conservation works referred to in condition 3 above to the satisfaction of the Executive Director. The Bank Guarantee shall be forfeited to the Heritage Council of Victoria in the event that all of the relevant works referred to in condition 3 above are not completed prior to the expiry date of this permit.*

*“**Condition 6.** The nominated conservation architect is to be engaged to provide expert advice and ongoing guidance to the principal to assist with the fulfillment of the conditions of this permit. At the conclusion of the conservation works the approved architect shall submit to the Executive Director a brief written report on the extent to which the completed conservation works conformed to good practice in his/her professional judgement.”*

- 012.** Condition 7 of the Place relates to the requirement to revise architectural and engineering drawings, showing the deletion of the proposed new side entry in the eastern elevation of Chapel. Condition 7 is included below:

*“**Condition 7.** Prior to the commencement of any of the works approved by this permit, a coordinated set of construction-ready architectural and engineering drawings must be provided for endorsement by the Executive Director, Heritage Victoria and once endorsed becomes part of the permit. The drawings must clearly show the scope of all proposed works including a schedule of construction materials, colours and finishes and appropriate resolution of details to minimize visual and*

physical impacts. The drawings must be revised to show the deletion of the new side entry and the new walkway is to be in-line with concrete block garden bed. The conservation approach to the entrance porch shall be the subject of further discussion with the Executive Director before the works are approved.”

THE PERMIT REVIEW

- 013.** On 21 April 2022, the Applicant requested a review of the above conditions and requested a hearing into the review. In accordance with section 108(4) of the Act, the Heritage Council must conduct a hearing into the review if a hearing is requested by the permit applicant.
- 014.** A Regulatory Committee of the Heritage Council ('the Committee') was constituted to consider and determine the matter and a Permit Review Hearing was scheduled to be held on 22 August 2022 ('the hearing').

PRELIMINARY AND PROCEDURAL MATTERS

SITE INSPECTION

- 015.** On 15 August 2022, the Committee conducted a site inspection of the Place. The Hearings Manager and Business Support Officer of the Heritage Council Secretariat accompanied the Committee. Access to the Place was facilitated by HWL Ebsworth Lawyers. No submissions were sought or received at the time of the site inspection.

LATE MATERIAL

- 016.** Prior to the hearing, the Committee received a late request to add an existing expert, Mr Morris, to the hearing schedule. Mr Morris' evidence had already been lodged by the Applicant, but they were not included in the Applicant's Request to Participate form. Given Mr Morris was an existing expert, the Committee circulated the amended form and an amended hearing schedule for parties' information which included Mr Morris and allowed time for him to present. Comments were sought from parties, and the Executive Director agreed that Mr Morris could be added to the hearing schedule.

REQUEST FOR FURTHER INFORMATION

- 017.** At the conclusion to the hearing, and pursuant to section 108(2) of the Act, the Committee asked the Applicant to prepare a response to the following questions:
- a. *“Two budget opinions costing the “Provision of Facilities Annex for Former Wesleyan Chapel” and prepared by FPPV Architecture were presented to the committee. Could you please specify who is responsible for bearing the costs of these proposed new works at the Place? Could you also outline the relative responsibilities for fundraising or the additional conservation/maintenance costs between the Former Wesleyan Church congregation and the Uniting Church Property Trust (Victoria)? Your answer might also include an estimate of the number of persons who make up the congregation, in order to better understand the relative financial burden the proposed works may represent for the congregation; and*
 - b. *Recognising the desirability of accessibility at all public places, could you nevertheless explain what you deem to be the regulatory triggers for*

the construction of a [Disability Discrimination Act 1992 (Cth) ('DDA')]-compliant entrance at the Place, noting that the south porch is an exit/entry point to the chapel and not currently connected to any ancillary structure? The Committee's understanding is that the Place is currently compliant with the relevant regulations. Any answer might include an explanation as to how either a building surveyor or Whitehorse 2 City Council might have come to the conclusion that the Chapel itself (as opposed to the newly constructed toilet facilities) requires changes to provide DDA-compliant access."

- 018.** The Applicant submitted its response to the above request for further information on 30 August 2022, which was circulated to the Executive Director on 5 September 2022. This material has been considered by the Committee in making its determination.

CONTEXT OF DETERMINATION

- 019.** 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 Place [section 101(2)(a)] and the extent to which the Application, if refused, would affect the reasonable and economic use of the Place [section 101(2)(b)].
- 020.** The Committee has given full consideration to the matters set out in section 101(2) in making its determination.

ISSUES

- 021.** 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. All references to permit conditions are based on the numbering used in the Permit issued by the Executive Director on 22 February 2022, unless specified otherwise.
- 022.** From the written and oral submissions received, the following key issues emerged which are considered in turn in this determination:
- a) the impact of the Application on the cultural heritage significance of the Place, and, in particular, the Place's intactness, design and orientation, and continued usage as a place of worship; and
 - b) whether the requirements of Conditions 3–7 are proportionate and appropriate, with the HWL submission identifying that Condition 7 formed the main focus of the dispute in that it would adversely affect the reasonable and economic use of the Chapel; questions of compliant accessibility of the Place pursuant to disability and discrimination accessibility requirements, and the construction options by which accessibility is provided, are also pertinent.

THE CULTURAL HERITAGE SIGNIFICANCE OF THE PLACE AND THE EXTENT TO WHICH THE APPLICATION, IF APPROVED, WOULD AFFECT THE CULTURAL HERITAGE SIGNIFICANCE OF THE REGISTERED PLACE OR REGISTERED OBJECT

Statement of Significance

- 023.** According to the Statement of Significance, the Place is of historical, aesthetic and architectural significance to the State of Victoria.
- 024.** The Statement of Significance notes the intactness of the Place, referring to its “historical importance as an early intact building within the broader context of Victoria” and its architectural and aesthetic significance as a “substantially intact 1850s building which has undergone little alteration on the exterior or interior.”
- 025.** Additionally, the Statement of Significance refers to the Place’s significance as an “unusual example of a Georgian detailed Wesleyan chapel” which “demonstrates an early use of cream brick and a rare use of the local Koonung Creek stone.” Individual design elements of the Place are also referred to in the Statement of Significance, including its “round-arched timber windows with cream brick surrounds and keystones.” Its small size is also referred to, stating that the Chapel “is a remnant of the original small, once rural towns that grew up around Melbourne in the nineteenth century.”
- 026.** The Place’s significant enduring use as a place of worship is also referred to in the Statement of Significance, noting it to be “the oldest surviving church building in the municipality” and noting its “continuous use as a church since its construction.”

Submissions from the Executive Director

- 027.** In submissions in reply, the Executive Director submitted that Condition 7 was appropriate and proportionate with due consideration to the cultural heritage significance of the Place for the following reasons:
- “The fabric required to be removed to allow for the new doorway is substantial when considered in proportion to the size of this very small stone building. Other than the early addition of the front porch the Chapel is very intact and an unusual example of the 1850s Georgian detailed Wesleyan chapel. The Chapel has undergone little alteration to the exterior or interior. The ED [Executive Director] is of the view that while other options are yet to be further investigated for access solutions, the alteration is not acceptable.”*
- 028.** The Executive Director further submitted that the chapel is particularly rare in its intactness, noting that many other churches have been altered. It was the submission of the Executive Director that the “intactness of the Chapel should discourage changes to the fabric, particularly when it is unnecessary to do so.” The Executive Director cited the guiding principles of the Australia ICOMOS Charter for Places of Cultural Significance (known colloquially as the ‘Burra Charter’) in support of this approach.
- 029.** The Executive Director rejected the submissions of the Applicant that Condition 7 contravenes the Place’s ability to continue its ongoing and historical use as a place of worship, submitting the view that moving the current and original entrance to the eastern side of the Chapel would in fact adversely impact the way in which the Place is accessed, understood and appreciated. It was the view of the Executive Director that the Chapel has been accessed via the current main access for approximately 165 years, and that relocating the main entrance to the eastern elevation would mean that the altar (currently opposite the main entrance) would no longer be the focal point upon entering. The Executive Director additionally noted that this proposal would mean the removal of at least

two, of only nine, pews, resulting in loss of seating for parishioners. It was the conclusion of the Executive Director that closure of the main entrance, as proposed by the Application, would fundamentally and permanently alter the orientation of the building.

- 030.** The Executive Director further rejected the expert evidence by Mr Raworth on behalf of the Applicant providing comparable examples of similar interventions at other registered places. In putting forward this position, the Executive Director noted the Place's distinct scale and design principles, such as the symmetry associated with its Georgian design, when compared to the examples provided by Mr Raworth. Additionally, the Executive Director noted that such interventions were undertaken in accordance with permits issued several years ago, and submitted that it would not be guaranteed that such alterations would be approved by the Executive Director today.
- 031.** The Executive Director further rejected the view put forward by Mr Raworth in evidence that the proposal to create a new entrance in the eastern wall of the Chapel should be considered "reversible." It was the view of the Executive Director that, given that the Statement of Significance cites the rare use of Koonung Creek stone, any demolition of such materials would need to be carefully documented, with the removed stones carefully numbered and stored onsite for future use. The Executive Director also noted the impact the proposed works would have on the interior timber dado wall cladding. While the Executive Director acknowledged that the proposed works may demonstrate the potential for reversal, it was the view of the Executive Director that any future reversal was unlikely to occur. Therefore, the Executive Director submitted that the proposal to create a new doorway in the eastern wall of the Chapel should be considered as a permanent intervention.

Submissions of the Applicant

- 032.** It was the submission of the Applicant that the proposal would not adversely affect the cultural heritage significance of the Place.
- 033.** The Applicant relied upon and adopted the evidence of Mr Raworth in relation to matters of cultural heritage significance.
- 034.** In expert evidence, Mr Raworth expressed the view that he supported the Application, including the creation of a new doorway in the eastern wall of the Chapel, as it will not have an unacceptable impact on the cultural heritage significance of the Place.
- 035.** It was the view of Mr Raworth that while the partial demolition of one window is proposed to introduce a new door, this is required for the provision of disabled access. He considered that similar window-to-door conversions have been approved at other registered places and that the associated impact upon the character, appearance and significance of the Place is deemed to be low and of a kind that may reasonably be contemplated in the upgrading of this old church to provide amenity for its congregation.
- 036.** Mr Raworth put forward the position that the primary view of the Place is from the south west, and that there is only a limited opportunity to view the east wall of the Chapel, where the proposed new doorway would be sited.
- 037.** Mr Raworth acknowledged the aesthetic and architectural cultural heritage significance associated with the Place's Georgian detailing, early use of cream brick and rare use of local stone. Mr Raworth further acknowledged that the partial removal of one window and associated wall fabric below for the creation of

a doorway will have a physical impact on what is otherwise a structure with a good level of intactness. However, it was ultimately the view of Mr Raworth that the impact of the Application is not unacceptable, as it is a relatively modest alteration in the context of the whole structure and its ongoing use.

- 038.** In terms of the Application’s projected impacts on the architectural design of the Place, Mr Raworth expressed the view that the rhythm of the Chapel’s east elevation will be maintained as the new door will be inserted within the existing window aperture. The retention of the top arched section of the joinery will ensure that the modern change and original appearance is readily interpreted. If the door conversion is carefully undertaken, it is a change that could be reversed in the future if required.
- 039.** In support of this position, Mr Raworth referenced similar window-to-door conversions approved by the Executive Director at other places included in the Register, such as St Jude’s Anglican Church [VHR H0014], Pentridge Prison A Division [VHR H1551] and the Former Wertheim Piano Factory (GTV 9 Studios) [VHR H2165].
- 040.** The Applicant submitted that the historical cultural heritage significance of the Place directly related to its ongoing and continued use as a place of worship since its construction, and that refusal of the Application, including the creation of a new doorway in the eastern wall of the Chapel, was required to ensure this ongoing historical use.
- 041.** Mr Raworth supported this view in evidence, expressing the view that the provision of compliant and convenient access by means of a new doorway will enable the ongoing use of the building as a place of worship, continuing its unbroken history and ensuring its viability into the future.

Discussion and conclusion

- 042.** The Committee notes all submissions and expert evidence received in relation to the impact of the Application on the cultural heritage significance of the Place, including submissions made by Mr Ian Coleman on behalf of Whitehorse City Council pursuant to section 100 of the Act, the response to the committee’s questions arising at the hearing, and submissions made in accordance with section 95 of the Act.
- 043.** The Committee notes the Statement of Significance for the Place, particularly the importance of the Place’s intactness, architectural design in the Georgian style, and use of rare materials in establishing the Place’s State-level cultural heritage significance.
- 044.** With due consideration to all submissions received, the Committee finds that the impact of the Application on the cultural heritage significance of the Place is likely to be considerable, in particular the creation of a new doorway in the eastern wall of the Chapel.
- 045.** The Committee notes that Mr Coleman and Mr Morris both acknowledged that the existing porch entry could be made compliant to AS 1428.1, and notes that Mr Morris’ evidence indicated that this would be a higher cost option than a new entry in the eastern wall.
- 046.** The Committee does not accept the position of Mr Raworth put forward on behalf of the Applicant that the impact of the Application can be considered as a “moderate alteration in the context of the whole structure and its ongoing use.” In reaching this conclusion, the Committee accepts the position of the Executive Director that key elements of the Place’s cultural heritage significance – namely

its intactness, construction from rare materials, and Georgian design principles (particularly its symmetry) – would be unacceptably impacted by the creation of a new doorway in the eastern wall of the Chapel. The Committee notes that, when considered in a different context, a window-to-door conversion may appear to be a “modest” intervention. However, when considered within the context of a uniquely small and symmetrical building, with only eight windows in total, and requiring the removal of two (of only nine) pews, the Committee considers the impact on the Place’s intactness, design and original (and rare) fabric to be significant.

- 047.** The Committee accepts the position of the Applicant that the Place’s continued use as a place of worship is key to its cultural heritage significance, particularly its historical significance. It is for this reason, however, that the Committee does not accept that the disuse of the Chapel’s main entrance and the reorientation of lines of movement within the interior space can be considered to be a “modest” impact. The Committee notes the Executive Director’s submission that for 165 years the Chapel has been entered via the main entrance, and that this entrance has allowed for an appreciation of the Place’s symmetrical design, and for the altar to form the key focal point of the interior space. The Committee accepts the position of the Executive Director that decommissioning the current main entry point and replacing it with a new doorway in the eastern wall of the Chapel, would fundamentally and permanently compromise the way in which the Place is accessed, understood and appreciated. The importance of this original entrance was reinforced by Mr Gelber’s verbal evidence at the hearing, where he advised that the main entrance into the nave would not be permanently closed, but still accessed for weddings and other events.
- 048.** While the Committee notes other examples of registered places that have undergone window-to-door conversions as supplied by Mr Raworth, the Committee is not satisfied that such examples provide a reliable precedent when considered in the context of this matter. The Committee accepts the position of the Executive Director that the buildings included in the comparable examples outlined in paragraph 39 differ considerably to the Place in scale and design principles demonstrated. For the reasons outlined in paragraph 46, the Committee finds that the impact of such works at the Place must be considered to be greater than at larger, non-symmetrical buildings and complexes, such as Pentridge Prison and the Former Wertheim Piano Factory (GTV 9 Studios), that were provided as a comparison.
- 049.** The Committee acknowledges the submissions of the Applicant which relate to the balance of the impact of the Application on the Place’s cultural heritage significance with what it considers to be the reasonable and economic use of the Place. The Committee’s response to these arguments is discussed further below.
- 050.** In considering the extent to which the Application, if approved, would affect the cultural heritage significance of the Place in accordance with section 101(2)(a) of the Act, the Committee finds that the proposal to convert one of eight original windows into a new main doorway entrance in the eastern wall of the Chapel would have a significant, and unacceptable, impact on the cultural heritage significance of the Place.

CONDITIONS 3–6 OF THE PERMIT

- 051.** Conditions 3–6 of the Permit require the Applicant to undertake certain conservation works in relation to the Place, and to provide financial security in the form of a Bank Guarantee to the Heritage Council of Victoria, to be released to the Applicant once required conservation works are satisfactorily completed.

- 052.** In submitting Heritage Council Form C – Request for a Permit Review, the Applicant indicated that it objected to the Conditions 3–7 of the Permit.
- 053.** While Condition 7 formed the focus of the Applicant’s submissions in relation to this matter, submissions and issues relating to Conditions 3–6, particularly the requirement that certain conservation works are undertaken at the Place, are discussed below.

Submissions of the Executive Director

- 054.** In written submissions, the Executive Director stated that it is not uncommon for a requirement for the completion of certain conservation works to be included in approved permits. The Executive Director submitted that requirements such as those outlined in Conditions 3–6 are designed to mitigate some of the harm caused by new works, and to ensure the Place is adequately maintained.
- 055.** The Executive Director submitted that the Place is in need of conservation works, and noted that in accordance with section 152 of the Act, the owner of a registered place or registered object must not allow that place or object to fall into disrepair.
- 056.** The Executive Director noted that evidence provided by Mr Raworth on behalf of the Applicant supports conservation works at the Place. The Executive Director submitted that the required conservation works identified by Mr Raworth should be expanded to include a survey of the condition of the stonework and a timeframe for its maintenance and repair.

Submissions of the Applicant

- 057.** The Applicant, in lodging *Heritage Council Form C – Request for a Permit Review* submitted that “while the undertaking of maintenance works to the building fabric is supported, the Conditions impose and bind significant project risk and financial impost on the owner organization that render the project unviable and ignore the basis of the reasonable use argument.”
- 058.** In relation to Condition 3, which requires that “a suitably experienced conservation architect... prepare a schedule for external conservation works including stone and timber repairs, required to original building fabric”, Mr Raworth provided in his evidence the below list of conservation works proposed to be undertaken at the Place:
- *“Like for like replacement and/or repair of damaged sections of the timber window joinery*
 - *Replacement of damaged glass window panes*
 - *Repainting of window frames and other timber elements*
 - *Repair of cracked render to the porch and parapet*
 - *Installation of ogee profile gutters*
 - *Removal of intrusive external conduit and lighting*
 - *General clean and weed removal.”*
- 059.** Mr Raworth further submitted that:
- “There is concern within the church community that the requirement for stone repair as noted in condition 3 might anticipate works that are onerous and beyond the financial resources of the congregation given its small size. As such, it is suggested that extensive stone repair and repointing is not proposed*

as part of the suite of conservation works, and that it be accepted that the stone conservation works will be of a limited extent. Given that the condition of the stone and mortar generally appears to be acceptable and not in imminent danger of failure, this approach is supported.”

- 060.** The Applicant, in response to a direction from the Committee at the hearing, submitted material confirming that the congregation would be responsible for funding any conservation works to the Place as required by the Permit.
- 061.** In deferring to and adopting the evidence of Mr Raworth, the Applicant ultimately submitted that Conditions 3–6 should be amended to reduce the scope of required stone conservation works, as per the recommendations of Mr Raworth in his statement of evidence.

Submissions of Mr Lord

- 062.** Mr Lord made written submissions in relation to the previous and ongoing conservation and maintenance of the Place.
- 063.** Mr Lord noted several elements of the Place requiring conservation, submitting that it was not clear whether any funds had been allocated to conservation and maintenance at the Place.
- 064.** Mr Lord expressed the view that the conditions of the Permit are “not only reasonable, but very necessary and restoration [is] urgent to save the Chapel from destruction through neglect.”

Discussion and conclusion

- 065.** The Committee notes information provided by the Applicant following the hearing, as requested by the Committee, confirming the congregation’s responsibility for funding conservation and maintenance works to the Place.
- 066.** In the Committee’s view, a requirement for conservation works to be undertaken is not unreasonable, particularly given the extent of new works proposed by the Application.
- 067.** As stated in the Executive Director’s submission, the Committee notes that in accordance with section 152 of the Act, an owner or manager must not allow a place to fall into a state of disrepair.
- 068.** The Committee accepts that the Place is in need of conservation works, and accepts the assessment of Mr Raworth that the Place is in a “somewhat decrepit state at the moment” and his support for conservation works to be undertaken. The Committee further accepts that it is common practice for conservation works to be required in accordance with the conditions of a permit issued by the Executive Director.
- 069.** The Act does not provide for exemptions from section 152 of the Act based on financial hardship.
- 070.** The Committee does not consider itself able to reduce demonstrably needed conservation works, as required in a permit determined by the Executive Director, on this basis. The works have been demonstrated to be proportionate, given the scale of new works proposed, and appropriate, given the condition of the Place as assessed by a suitably qualified conservation architect.
- 071.** The Committee notes the Executive Director’s submission commenting on recommendations in Mr Raworth’s submission regarding expanding the recommended works to include a survey. It also notes, however, that the Permit

as issued allows for the Executive Director to have oversight of this process. However, this Committee will not alter the requirements of Conditions 3–6 as a result of this submission.

- 072.** Accordingly, the Committee determines that Conditions 3–6 are appropriate and proportionate for ensuring that the conservation of the Place is not threatened by new works as permitted by the Permit, and to prevent further any further deterioration to fabric.

CONDITION 7 OF THE PERMIT

- 073.** Condition 7 of the Permit requires new drawings to be submitted to the Executive Director, omitting the proposal to create a new doorway in the eastern wall of the Chapel, prior to the approved works commencing.
- 074.** In submitting Heritage Council Form C – Request for a Permit Review, the Applicant objected to the imposition of Condition 7, stating that its requirement “to delete the new side entry is entirely dismissive of the Application and demonstrated unsuitability of the existing entry porch”, and that additional requirement “that the Conservation approach to the entrance porch be subject to further discussion does not give any permit, or reasonable expectation of permit, for the project to succeed.”
- 075.** The Committee notes that submissions made in relation to Condition 7 significantly overlap with the consideration of the extent to which the Application, if refused, would affect the reasonable or economic use of the Place. The following section focuses specifically on whether or not it can be considered feasible within the scope of the Application to remove the proposal to create with a new doorway in the eastern wall of the Chapel and retain the existing entrance. Considerations as to the reasonable and economic implications of this prospect, in accordance with section 101(2)(b) of the Act, are discussed further below.

Submissions of the Executive Director

- 076.** The Executive Director submitted that it is “fully supportive of DDA-compliant access at all heritage places”, and put forward the position that it was “not refusing, preventing, or objecting to safe and equitable access to the Chapel, but is objecting to the creation of a new doorway in the east wall [of the Chapel] to achieve this.”
- 077.** The Executive Director submitted that Condition 7 was imposed on the Permit because:
- *“The creation of a new entrance in the east wall will detrimentally impact the cultural heritage significance of the Place; and*
 - *Based on the evidence of both the Applicant’s expert witness Morris Goding Access Consulting and the City of Whitehorse’s Heritage Advisor, DDA Compliant Access can be achieved through the main (existing) Chapel entrance. This option will be more complex to resolve, but those complexities are not insurmountable.”*
- 078.** The Executive Director noted the support for its determination from the City of Whitehorse in its section 100 submission, noting the view of Mr Coleman that it would be possible to modify the main entrance to ensure compliance with *Australian Standard AS1428.1 – Design for access and mobility*, using the Continuous Path of Travel assessment, or the Circulation of Doorways assessment.

- 079.** The Executive Director rejected the submissions of the Applicant as to the degree of complexity required to make the main existing porch entrance compliant with such standards and legislation as the DDA and *Australian Standard AS1428.1 – Design for access and mobility*.
- 080.** The Executive Director particularly disagreed with the Applicant on the following points:
- The degree of works required to address variation of floor levels at the Place. It was the view of the Executive Director that the installation of a shallow ramp would satisfactorily address issues of floor level variation, rather than a full replacement of the Chapel floor as submitted by the Applicant.
 - Whether or not the main porch entry allowed for sufficient turning space in order to be considered compliant with relevant standards and legislation. The Executive Director adopted the view of Mr Coleman, as outlined in paragraph 78 above.
 - Trip hazards surrounding the existing porch entrance. The Executive Director submitted potential hazards posed by the condition of the bluestone pavers and porch step could be rectified by the conservation works required by Conditions 3–6 of the Permit. The Executive Director further submitted that the City of Whitehorse had indicated that it would be open to regrading the footpath upon which the entrance is sited, if required.
 - The suitability of existing porch gates and entrance doors. The Executive Director acknowledged that the existing gates and doors are currently not compliant with relevant standards and legislation, and supported modifications to these elements to ensure compliance.
- 081.** The Executive Director noted the expert evidence of Mr Morris submitted on behalf of the Applicant, and the fact that the evidence supported the proposal to create a new entry in the eastern wall of the Chapel as the “preferred”, but not the only available method through which to achieve compliance. The Executive Director further submitted that Mr Morris’s expert opinion ought to have been confined to whether or not it is possible to reach compliance via the main existing entrance, and not based on considerations relating to cost or engineering requirements.

Submissions of the Applicant

- 082.** The Applicant submitted that the proposition of modifying the existing porch entrance to achieve acceptable disabled access was “not viable”, as a result of drainage challenges, variations in floor level, the non-compliance of the existing doors, and the condition of the existing surface flagstones.
- 083.** It was the submission of the Applicant that the works required to rectify the above issues “would be so extensive that...they may have the potential to alter the setting of the heritage place.”
- 084.** Mr Morris, in expert evidence submitted on behalf of the Applicant, expressed the view that the proposal to create a new entrance in the eastern wall of the Chapel was “significantly preferred”, and that retaining the existing entrance “would require significant works to the existing entrance to provide compliant internal and external doorways, external crossfalls, thresholds, surfaces, lighting and weatherproofing.”

085. Mr Morris' evidence explored two options to upgrade the amenity at the Chapel; works to provide compliant access at the existing entrance, and creation of a new compliant entry in the eastern wall. While Mr Morris ruled out solutions proposed by Heritage Victoria (flagstone screed and lowering footpath), his evidence noted that "providing compliant internal and external doorways, external crossfalls, thresholds, surfaces, lighting and weatherproofing" would require significant works to the existing entrance. The Committee notes that Mr Morris' evidence identified a preference for a new eastern entrance "over expending a great deal of money and engineering to try to elevate the front existing entrance to a safe, compliant and future orientated structure", but did not identify either option as unviable.

Discussion and conclusion

086. The Committee notes all submissions in relation to the feasibility of the Application, including the expert evidence of Mr Morris and the submissions of Mr Coleman on behalf of the City of Whitehorse, in accordance with section 100 of the Act.

087. The Committee accepts that the option of modifying the existing porch entrance in order to achieve compliance with relevant equitable access standards and legislation is a more complex proposition than what is proposed in the Application. The Committee is, however, of the view that it has not been demonstrated by the Applicant, or in evidence provided by its expert witnesses, that the implementation of Condition 7 is not viable.

088. Based on the information before it, the Committee considers that insufficient investigation has been undertaken to date into the feasibility of meeting access requirements by modifying the existing porch entrance. The Committee accepts the submissions of the Executive Director as to the availability of methods by which compliance might be achieved using the existing entrance, which appear to demonstrate a lower impact and smaller scope than that put forward by the Applicant. The Committee considers that other interventions – including those proposed by the Executive Director, such as the installation of a low-grade ramp, and the removal and replacement of the existing doors – have not been adequately considered by the Application as viable alternatives.

089. The Committee notes the expert evidence of Mr Morris (which understandably gives primacy to DDA considerations, rather than having a heritage focus, or balancing the requirements of the Act), particularly his assessment that compliance via the existing porch entry cannot be guaranteed. The Committee finds that while Mr Morris's expert evidence puts forward a strong recommendation as to a preferred option, it does not categorically establish that it is "unviable" to retain the porch entrance.

090. The Committee finds that it has not been adequately demonstrated that modifying the existing porch entrance is unfeasible or technically unviable, nor that the works required in order to achieve compliance are such that they would unduly affect the setting of the Place.

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

091. Considerations as to the reasonable and economic use of the Place, and the impact of the issued Permit upon these considerations, formed the key focus of

the Applicant's reasons for requesting the Permit Review and subsequent hearing submissions.

- 092.** While chiefly relating to Condition 7 of the Permit, submissions relating to the issue of reasonable and economic use of the Place were also made by the Applicant in relation to Conditions 3–6 of the Permit. The relevant submissions are discussed below.

Submissions of the Executive Director

- 093.** It was the submission of the Executive Director that the Permit and its conditions are appropriate and proportionate as “on balance, the detrimental impacts on the cultural heritage significance [s.101(2)(a)] of the [Place] outweighs the reasonable and economic use arguments [s.101(2)(b)].”
- 094.** In supporting this position, the Executive Director further submitted that the reasonable and economic use argument for the need to create a new door in the eastern wall of the Chapel, as put forward by the Applicant, was particularly unsupported, expressing the view that it is “unnecessary” and access compliant with relevant legislation and standards “can be achieved via the main entrance.”
- 095.** The Executive Director noted the costings provided in the Application, relating to Option A (the proposed new wall in the eastern wall of the Chapel) and Option B (modifying the existing porch entrance to achieve DDA-compliance). The Executive Director put forward the view that the costings did not, in practice, accurately reflect the difference in costs between the two options. It was the submission of the Executive Director that some large-scale works included in Option B, such as the releveling of the Chapel's entire internal floor, were not required or justified, and that options of lower cost and impact were available which had not been considered by the Applicant. The Executive Director further submitted that some works included in Option B should also have been included in Option A.
- 096.** The Executive Director ultimately rejected the submission of the Applicant that Option A was required to ensure the reasonable and economic use of the Place. The Executive Director submitted that it did not accept the Applicant's submissions that Option A was required to ensure direct and seamless access to amenities, or to maintain the dignity of visitors to the Place, given that Option A increased proximity to amenities by less than eight metres when compared with Option B.

Submissions of the Applicant

- 097.** In lodging *Heritage Council Form C – Request for a Permit Review*, the Applicant submitted that the issuing of the Permit with Conditions 3–7, in particular Condition 7, “[imposes and binds] significant project risk and financial impost on the owner organisation that [renders] the project unviable and [ignores] the basis of the reasonable use argument.” The Applicant further expressed the view that “the Conditions forming part of the granted [Permit] do not enable any prospect of a tenable solution for the works to proceed and the building may fall into disuse.”
- 098.** In hearing submissions, the Applicant further submitted that the maintenance of Condition 7 “would adversely affect the reasonable and economic use of the Place.”
- 099.** The Applicant cited *Heritage Victoria's Policy Guideline on Reasonable and Economic Use* in supporting its submission that “reasonable use of a heritage place includes updating the place to achieve compliance with contemporary

standards and expectations.” The Applicant noted that the Permit allowed for the construction of a new amenities building at the Place, but submitted “it is not reasonable for persons with limited mobility to negotiate the [existing] front entrance in order to use the bathroom facilities”, describing it as “critical that a direct path is provided to ensure basic dignity.”

- 0100.** The Applicant submitted the view that the modifications required to achieve DDA-compliance using the existing porch entrance “would be onerous and unreasonable” and that the proposal to create a new doorway in the eastern wall of the Chapel “balances the need to protect the heritage significance of the Chapel with the need to ensure the ongoing reasonable and economic use of the building.”
- 0101.** The Applicant relied on the evidence of Mr Morris in forming this position, a summary of which is outlined above in paragraphs 84-85 above.
- 0102.** The Applicant made verbal submissions relating to the economic implications of the Permit and Conditions 3–7, including that the difference in costs between Options A and B (as relevant to Condition 7 and outlined above), submitted by the Applicant to be approximately \$90,000, is a significant implication for the small congregation, as would be the acquittal of all conservation works as required by Conditions 3–6.
- 0103.** In verbal submissions, the Applicant put forward the view that the Executive Director had ascribed undue weight to considerations relating to the effect of the Application on the cultural heritage significance of the Place due to its level of intactness, submitting that section 101(2) of the Act does not expressly provide for the consideration of intactness. It was the concluding submission of the Applicant that considerations relating to the reasonable and economic use of the Place had not been adequately balanced by the Executive Director in issuing the Permit and its Conditions.

Discussion and conclusion

- 0104.** The Committee notes all submissions and expert evidence put forward in relation to the reasonable and economic use of the Place in the context of the issued Permit and Conditions.
- 0105.** The Committee notes the *Heritage Victoria Policy Guideline on Reasonable and Economic Use*, including the following position:
- “When determining a permit application, the Executive Director balances the consideration of the extent to which approval would affect cultural heritage significance (s101(2)(a)) against the consideration of the extent to which refusal would affect reasonable or economic use (s101(2)(b)), in addition to other mandatory and discretionary considerations. The Executive Director attributes weight to each consideration according to the particular application and registered place or object, and their obligations under the Act.”*
- 0106.** Based on the information before it, the Committee is satisfied that the issued Permit and its Conditions demonstrate an appropriate balance of the considerations of section 101(2)(a) and section 101(2)(b) within the context of the Application.
- 0107.** The Committee accepts the position of the Applicant that the option of modifying the existing porch entry to achieve compliance with regulations and legislation relating to safe and equitable access may present increased complexity when compared to the proposal to create a new doorway in the eastern wall of the

Chapel. The Committee does not, however, accept that this proposal adequately balances considerations as to the impact of cultural heritage significance of the Place with those relating to its reasonable and economic use. As outlined above, the Committee finds that the impact on heritage fabric would be significant should Condition 7 be removed. Appropriate retention of fabric is essential to conserve the heritage values of the Place.

- 0108.** The Committee notes information received by the Applicant following the hearing, submitting that the congregation would be responsible for funding the works and activities permitted and required by the Permit.
- 0109.** The Committee does not accept the submissions of the Applicant that section 101(2) does not allow for consideration to be given to the intactness of the Place in making its determination. As discussed above in paragraphs 24, 43 and 46, the Statement of Significance for the Place establishes the Place's intactness as a key element of its cultural heritage significance to the State of Victoria. As such, the Committee finds it is appropriate to give due weight to the implications of the Application on the intactness of the Place in its required consideration of the extent to which the application, if approved, would affect the cultural heritage significance of the Place in accordance with section 101(2)(a) of the Act.
- 0110.** The Committee accepts the view of the Executive Director that the Applicant's position as to the reasonable and economic use implications of the Permit as issued cannot be accepted without further consideration of alternatives, or other low cost, low impact options to achieve DDA-compliance. As such, the Committee considers that Conditions 3–7 of the Permit are appropriate and proportionate to the Application.
- 0111.** The Committee finds that the Permit as issued adequately balances required considerations as set out by section 101(2) of the Act, including the extent to which, if refused, the application would affect the reasonable and economic use of the Place.
- 0112.** The Committee observes that a detailed repair schedule for external conservation works remains to be finalised under Condition 3 of the permit, noting that owners are obliged under sections 152 and 153 of the Act to maintain a registered place and not allow it to fall into disrepair, irrespective of its current use.

CONCLUSION

- 0113.** 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 in relation to the conditions of Permit No. P33482 for the Former Wesleyan Church.

ATTACHMENT 1

The extent of registration for VHR H2010 is:

1. The building marked B1 on Diagram Number 2010 held by the Executive Director.
2. The land marked L1 on Diagram Number 2010 held by the Executive Director.



Section 101(2) of the *Heritage Act 2017*

101 Determination of permit applications

...

- (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.