

Heritage Council Regulatory Committee

Richmond Rifles Volunteer Orderly Room (H1362)

24–28 Gipps Street, Richmond, Yarra City Council

Hearing – 21 November 2024

Members – Ms Margaret Baird (Chair), Dr Steven Cooke, Dr Karen Murphy

DETERMINATION OF THE HERITAGE COUNCIL

Vary the determination under review – After considering all submissions received in relation to the permit review and after conducting a Hearing, the Heritage Council has determined, pursuant to section 108(7)(b) of the *Heritage Act 2017*, to vary the determination under review by varying Condition 4 in permit P39035.

Ms Margaret Baird (Chair)

Dr Steven Cooke

Dr Karen Murphy

Decision Date – 20 December 2024

ACKNOWLEDGEMENT

As a peak heritage body, we acknowledge the Traditional Owners of the Country that we call Victoria, as the original custodians of Victoria's land and waters, and acknowledge the importance and significance of Aboriginal cultural heritage in Victoria. We honour Elders past and present whose knowledge and wisdom has ensured the continuation of Aboriginal culture and traditional practices.

PARTIES TO THE PROCEEDING

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

The Executive Director was represented at the Directions Hearing and Hearing by Ms Jessica Antolino, Senior Heritage Officer, Permits, with Dr Jessica Hood, Principal, Heritage Permits also attending.

REVIEW APPLICANT

The applicant in this proceeding is Mr Andrew Lawson, an owner of the property at numbers 24–28 Gipps Street, Richmond. Mr Lawson appeared at the Directions Hearing and Hearing. Mr Danny Wilson, another owner of the property the subject of the permit, also attended.

INTRODUCTION/BACKGROUND

THE PERMIT REVIEW

- 01.** This proceeding is a review of a determination by the Executive Director to issue, subject to conditions, a permit in relation to application number P39035 ('the Permit').
- 02.** The Executive Director's determination was made pursuant to section 101(1)(a) of the *Heritage Act 2017* ('the Act'). On 7 August 2024, the permit was issued pursuant to section 102 of the Act. The permit allows:
Installation of solar panels.
- 03.** Permit P39035 contains eight conditions.
- 04.** On 21 August 2024 the permit applicant requested a review of Condition 4 on the Permit pursuant to section 106(2) of the Act.¹ Condition 4 states:
Prior to the commencement of any of the works approved by this permit construction ready (marked as such) drawings based on the Drawings prepared by Atcliffe Walder Atelier, drawing nos. HV.2, HV.7-9, HV.15-20, revised to show:
 - *Removal of the lower four rows of panels to the north-facing slope of the roof; must be submitted to the Executive Director, Heritage Victoria for approval. Once approved, the drawings will be endorsed and will then form part of the permit.*
- 05.** The review asks for the condition to be varied, so as to read:
Prior to the commencement of any of the works approved by this permit construction ready (marked as such) drawings based on the Drawings prepared by Atcliffe Walder Atelier, drawing nos. HV.2, HV.7-9, HV.15-20 must be submitted to the Executive Director, Heritage Victoria for approval. Once approved, the drawings will be endorsed and will then form part of the permit.
- 06.** The amendment would allow retention of the lower four rows of panels to the north-facing slope of the roof. The reasons for the review were cited in the permit review request as:
The owners provided the following reasons for the request for the review: 1. The proposed retention of the bottom 4 rows of panels will not cause an unreasonable adverse impact to the cultural heritage significance of the place. 2. The installation of removable panels will have zero impact on the building's heritage fabric or structure. 3. Condition 4 affects the reasonable and economic use of the registered place. 4. The proposed retention of the bottom 4 rows of panels has negligible visual impact to the place. 5. Condition 4 affects the registered places ability to reduce the buildings carbon footprint. [sic]
- 07.** The grounds for the review were supplemented by documents which (among a range of matters) refer to the economic impacts and physical constraints associated with the Place and its operations, the relevance of climate change considerations and of community support, examples involving other heritage listed properties, and guidelines relating to the installation of solar panels in other jurisdictions.
- 08.** The applicant requested that the Heritage Council conduct a hearing.

¹ The Committee was advised that Mr Lawson is one of the three registered owners of the Place all of whom consented to the permit application being made.

THE REGULATORY COMMITTEE

09. Following receipt of the request to review the Permit, a Regulatory Committee ('the Committee') of the Heritage Council was constituted pursuant to section 13 of the Act, to consider the application and conduct a hearing ('the Hearing').

THE PLACE

10. The Richmond Rifles Volunteer Orderly Room ('the Place'), at numbers 24–28 Gipps Street, is bounded by Gipps Street, Dickman Street and Docker Street, in Richmond as shown in **Figure 1** below.



Figure 1. Aerial photograph of the Place, indicatively outlined in blue.

Source: Nearmap image

11. The registered Place is described by the Executive Director as follows:

The registered place comprises a long weatherboard building, utilitarian in design, extending the entire length of Gipps Street between Docker and Dickman streets, with a broadly gabled roof of corrugated iron. Detailing typical of the Victorian era is present, including decorative barge boards, collar ties and finials.

12. Images reproduced in **Figure 2** below show the exterior of the Place. The parties agree that alterations have occurred to the Place over time, notably when adapted for residential use in 1997–98. There are three residences, a basement and a recently installed lift.



Figure 2. Photographs showing the Place from Gipps Street – viewed from the north-east and west.

Source: extract from Ms Vines' witness statement, page 9.

13. The extent of registration is shown in **Figure 3** and comprises the following:
- All the building known as the Richmond Rifles Volunteer Orderly Room marked B1 on Diagram 606927 held by the Executive Director.*
- All the land marked L1 on Diagram 606927 held by the Executive Director being all the land in Crown Portion 21A Parish of Jika Jika more particularly described in Certificate of Title Vol. 6665 Folio 849.*
14. The extent of registration for the Place is shown in Diagram 606927 held by the Executive Director:

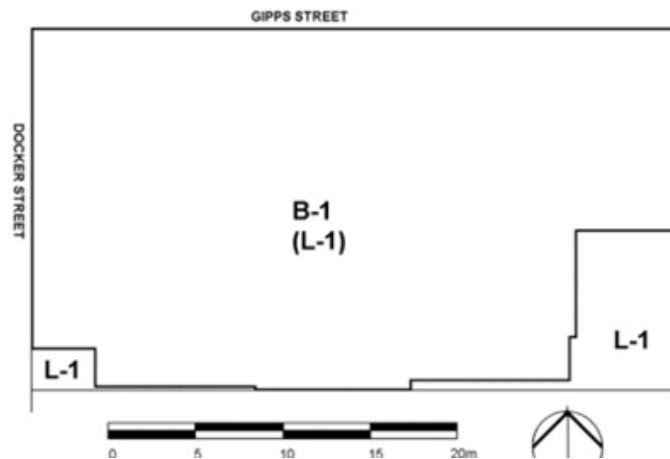


Figure 3. Diagram 606927, Extent of Registration of the Place
Source: Officer's report, 7 August 2024, page 4.

CULTURAL HERITAGE SIGNIFICANCE OF THE PLACE

15. The Statement of Cultural Heritage Significance for the Place is as follows:

The Richmond Rifles Volunteer Orderly Room was constructed in timber in 1867 with donations from members of the Richmond company of the Volunteer Rifle Corps. With the disbandment of the volunteer system in 1884 the Richmond building was one of the few orderly rooms substantial enough to be taken over by the new Victorian Department of Defence. The building was altered and extended in 1891 mainly by the addition of offices along the Gipps Street frontage and an attached Sergeant Major's residence on the Dickmann Street frontage to the design of Public Works Department Architect Samuel Bindley thereby giving the orderly room a superficial resemblance to other timber orderly rooms of the 1880s. The building was transferred to Commonwealth ownership after Federation in 1901 and was used for various Militia, Citizens Military Forces or Army Reserve units until the late 1980s.

*The Richmond Rifles Volunteer Orderly Room is **historically important** to the State of Victoria.*

*The Richmond Rifles Volunteer Orderly Room is **historically important** as one of only two surviving timber orderly rooms from the volunteer era of Victorian colonial defences, the other being the Collingwood Rifles orderly room in Powlett Street East Melbourne. Its continual use for defence training purposes over 120 years adds to its significance. The place is also historically significant for its associations with the volunteer movement in Victoria, particularly the Richmond Rifles. The 1891 additions are an important manifestation of the defence reforms of the 1880s.*

(Committee emphasis added)

THE PERMIT APPLICATION

16. The Heritage Victoria officer's report (dated 7 August 2024) sets out the background and history relating to works to the Place dating from March 2022. Works were divided into separate applications and approvals, such as the installation of a lift (which has now been completed). The proposed installation of solar panels was considered in its own permit application (P39035).
17. In 2022, the permit applicant obtained a design for solar panels comprising 206 panels. The applicant has explained the process and steps leading to revisions to that design. Changes are summarised in an image reproduced in **Attachment 1**.
18. A permit application was made in May 2024 seeking approval for 94 solar panels.² The Committee does not recite all of the details of the specifications and installation. Eight solar panels are on the southern face of the building (shown in the plan extract in **Figure 4** below, circled in red) and not in dispute. Of the remaining 86 solar panels, the 47 panels in issue through Condition 4 are notionally marked by the Committee in blue. Removal of the 47 solar panels would retain 39 panels in the upper portion of the northern hip of the building.



Figure 4. Roof plan and elevation showing solar panels in dispute, outlined in blue. Solar panels outlined in red, on the southern roof face, are not in dispute.

Source: Officer's report, 7 August 2024, at page 6.

² Different figures were referred to in submissions and evidence. The correct figures were discussed and agreed at the Hearing.

SUBMISSIONS BY OTHER PERSONS

19. Pursuant to section 94 of the Act, the Executive Director gave public notice of the permit application. One late submission was received pursuant to section 95 of the Act. The officer's report refers to the matters raised being addressed in that report.
20. The City of Yarra is the responsible authority for the area in which the Place is situated. Pursuant to section 100 of the Act, the Executive Director provided a copy of the permit application to the City of Yarra and invited a written submission.
21. The officer's report states no referral response was received from the City of Yarra in response to this application.
22. The officer's report also notes that:

in response to the previous permit application P36282, which initially proposed 120 solar panels along with the installation of a passenger lift to 26 Gipps Street, Council suggested removal of the lowest two rows of solar panels on the northern plane of the roof and all solar panels on the north-eastern corner and western planes of the roof.
23. The City of Yarra did not provide any correspondence to the Heritage Council after this proceeding was lodged and notice of the review request was given under section 106(5) of the Act. The applicant's submission and associated documents state the proposal was changed to align with the changes suggested by the City of Yarra (correspondence from 2022).

EXECUTIVE DIRECTOR'S DETERMINATION

24. On 7 August 2024, the Executive Director determined to issue the Permit for the following reasons:
 - *Approval of a reduced scheme reduces the visual impact of the solar panels by limiting the installation of panels to the upper part of the roof where other intrusions have already occurred, and reducing the overall number of panels.*
 - *Approval of a reduced scheme would not adversely affect the reasonable or economic use of the place, as it could continue to be used as a residence.*
25. The Executive Director recommended that the Permit be issued subject to eight conditions.
26. Condition 4, as set out earlier, is the only condition in review. It is agreed between parties that the condition would reduce the number of solar panels on the northern face of the Place to 39, with eight on the southern face not changed.

DIRECTIONS HEARING

27. The Committee conducted a Directions Hearing on 10 October 2024 via videoconference using the Microsoft Teams platform.
28. The following people participated in the Directions Hearing:
 - Mr Lawson, as the applicant for the review, with Ms Elizabeth Vines.
 - Dr Jessica Hood, Principal Heritage Permits with Ms Jessica Antolino, Senior Heritage Officer, Permits (representing the Executive Director).
 - Mr Danny Wilson, who lodged a response to the Heritage Council (Form D) after notice of the review request was given under section 106(5) of the Act.

- 29.** During the Directions Hearing, the Committee made several declarations including with respect to two members' professional relationship with the late Jeffrey Robinson, a former Heritage Council member. The documents show Mr Robinson provided a letter of advice to the Applicant, dated 1 November 2023. That letter included a recommendation in support of the proposal that at that time appeared to comprise a total of 99 panels (30+30+39 across the three dwellings based on the letter).
- 30.** No questions or issues were raised by parties or representatives with respect to any of the declared matters.
- 31.** The Directions Hearing addressed a range of matters including the following:
- whether parties would be receptive to meeting prior to any hearing
 - the date for a Hearing
 - clarifying participants' and expert witnesses' roles
 - clarifying the permit review process and documents to assist participants; and
 - confirming a site inspection would take place.
- 32.** Specifically, the Committee clarified that:
- Mr Wilson, who had filed a Form D to the Heritage Council, did not seek to participate.³
 - Ms Vines (who also filed her own Form D, authored a Heritage Impact Assessment (December 2023) and is a heritage expert who Mr Lawson stated he intended to call as an expert witness) would not present her own submission.
- 33.** The Committee advised those present at the Directions Hearing that it would be assisted by parties making submissions addressing the weight and relevance of guidelines about solar panels provided in the application material, such as from New South Wales.
- 34.** Following the Directions Hearing, the Committee sent directions to all parties and confirmed the Hearing date, for 21 November 2024. The Owner requested that the Hearing be held in-person and the Executive Director agreed.

COMMITTEE'S SITE VISIT

- 35.** An unaccompanied site visit was undertaken by the full Committee on the morning of 20 November 2024. The Committee was accompanied by the Acting Hearings Manager from the Heritage Council's Secretariat, Ms Hannah Fairbridge.
- 36.** The Committee viewed the Place from the public realm. It did not seek, or receive, any submissions from any person when on its inspection.
- 37.** The Committee has not considered a further inspection from within the existing dwellings in the Place is necessary to reach a decision. The Committee has been provided with various photographs and descriptions of the interior through the submissions and evidence.

³ Noting he attended the Hearing, with his stated role being to assist Mr Lawson.

HEARING

38. The Hearing was conducted on 21 November 2024, in-person.
39. In accordance with the Committee's directions, prior to the Hearing:
 - submissions by parties and a statement of expert evidence (by Ms Vines) were filed
 - submissions in reply by both parties were filed as well as an addendum to the statement of expert evidence
 - PowerPoint presentations were filed.
40. The Hearing provided the parties the opportunity to present their cases, and for the Committee to ask questions to clarify and seek information, such as with respect to specific facts, matters in submissions and the arguments being relied on.
41. Ms Vines was cross-examined and was able to respond to the Committee's questions.
42. Several observers attended the Hearing. None were permitted to make submissions.

EXECUTIVE DIRECTOR'S RESPONSE TO NEW MATERIAL

43. During the Hearing, Ms Vines shared a photograph and provided information that was not included in the applicant's submission, nor in Ms Vines' previously filed expert evidence. The material was considered to be new to the proceeding.
44. The material included a photograph of the Hickson Road Wharf Theatre (within the Walsh Bay Wharves Precinct), Sydney Harbour, and information pertaining to the number of solar panels on that building and the visual impact of those. Ms Vines' evidence suggested that this was a comparable example to the Place in question.
45. As the material was new, the Committee afforded the Executive Director the opportunity to respond after the Hearing in writing.
46. On 26 November 2024 the Executive Director provided a response, setting out his view that the Walsh Bay Wharves Precinct is not comparable to the proposed solar panel installation of the Place.
47. In summary, the Executive Director stated the number of solar panels is reasonable given the size and scale of the Walsh Bay Wharves precinct. The scale of the Wharves Precinct and the Place are vastly different, and the spread of solar panels across multiple buildings at the Wharves Precinct reduces their visual impact. Furthermore, while the solar panels at the Wharves Precinct are visible at pedestrian level, they do not dominate the entire roof surface. The example is not comparable with the Place, which is a single building with its roof much more visually dominant and more directly observed from the public realm.
48. The Committee has given due consideration to the Executive Director's response.

OVERVIEW OF SUBMISSIONS AND EVIDENCE

49. All of the material presented and relied on by parties is not repeated here. All material has been considered by the Committee.

Executive Director

50. Broadly, the Executive Director submits that Condition 4 is reasonable and necessary for the protection and conservation of the cultural heritage significance of the Place.
51. The Executive Director has explained the preference for no solar panels on the northern face of the roof, submitting:

As the Applicant has been advised on a number of occasions, the ED has never had a level of comfort with the installation of solar panels on the northern street-facing roof.

The matter for consideration is not why or how many solar panels have been removed from the proposal since 2022, but whether any solar panels should be installed in this location at all. It is the ED's view that no solar panels should be installed on the northern street-facing roof. However, given the altered state of the uppermost section of the northern roof through various interventions, the ED considered it acceptable – although not ideal – to allow the installation of some solar panels in this area. The ED would be satisfied with an outcome that resulted in no solar panels on the northern street-facing roof.

- 52.** At the Hearing, the Executive Director stated the Committee could make a determination that no panels are appropriate on the north-facing roof.
- 53.** The Executive Director submits that the Place is characterised by a distinctive broadly gabled roof form, that is particularly dominant in views to the Gipps Street frontage. The architectural value of the building cannot be discounted. The cultural heritage significance of the Place is embodied in this built form, and the number of solar panels proposed in the permit application is of concern in terms of their visual impact.
- 54.** The Executive Director submits the visual impact of the full 94 solar panels proposed in the application will be considerable if approved. The full proposal represents a substantial visual intervention to the roof's distinctive broad gabled form and the building's principal façade. In the Executive Director's view, the removal of 47 panels required at Condition 4 of permit P39035 reduces the visual impact on the Place.
- 55.** The Executive Director submits that existing street trees abutting the Place in Gipps Street, and which partially conceal the current northern roof of the Place should not be relied on as a factor in assessing the visual impact.
- 56.** The Executive Director submits that the full solar panel proposal would have a high visual impact and would not align with Heritage Victoria's *Solar Panel Guidelines, A guideline for permit applications lodged under the Heritage Act 2017* ('Solar Panel Guidelines').⁴
- 57.** In the Executive Director's view, the full scheme, comprising the installation of 94 solar panels to the roof of the Place is not considered an appropriate outcome for a place of State-level cultural heritage significance. Considering this, approval of a reduced scheme as allowed for in Permit P39035 is appropriate, limiting the installation of panels to the upper part of the roof where other intrusions have already occurred, and reducing the overall number of panels. While this reduced scheme exceeds what the Solar Panel Guidelines advises, it aims to strike a practical balance between the applicant's reasonable use of the Place and the impacts on the cultural heritage significance of the Place.
- 58.** The Executive Director accepts that the installation of the solar panels is technically reversible, and heritage fabric will not be damaged. However, the Executive Director states that it is unlikely that solar panels will be removed, or if they were removed, other panels would be sought in their place. Consequently, the outcome is effectively considered to be a permanent change or intervention to the Place.
- 59.** With respect to the extent to which the application, if refused, would affect the reasonable or economic use of the registered place or registered object, the Executive Director submits that the use of the Place as a residential property is reasonable given its historical use as an orderly room is obsolete. The Place could continue to be used

⁴ Made and published under section 19(1)(f) of the Act, 10 October 2022.

as a residential property with a reduced number of solar panels, or with no solar panels. The economic use of the Place is as a residential property.

60. In the application, the applicant has focused on the increased energy costs of the Place for the owners, rather than whether the Place can sustainably function as a residence into the future without the proposed works. While insufficient evidence was provided in the application, the Executive Director submits that the absence of solar panels is not likely to significantly impact the economic use of the registered place, as the Place could continue to be used as a residence.
61. The Executive Director submits that reducing the building's carbon footprint is not a primary heritage consideration for the protection and conservation of the place under the Act. While reducing the Place's carbon footprint is an important consideration, this must be balanced with the need to respect the heritage significance of the Place. The building's form and in particular its dominant gabled roof is expressive of the building's historical use as an orderly room, and the proposed installation of 94 solar panels does not represent an appropriate heritage outcome.

Applicant

62. The applicant submits that the proposed full scheme of solar panels is necessary to improve the comfort and energy efficiency of the three residences within the Place, and expressly to reduce energy costs and the carbon footprint. The removal of 47 solar panels renders the proposal unviable, has a dramatic impact on energy production, and affects the Place's ability to reduce the building's carbon footprint.
63. Retention of the lower four rows of panels will not, the applicant submits, cause an unreasonable adverse impact to the cultural heritage significance of the Place. The installation of removable panels 'will have zero impact on the building's heritage fabric or structure'.
64. The applicant submits that the visual impact difference between the application plans and the proposed reduction of four rows of panels is negligible when considering the perspectives provided to the Committee. The perspectives compare the proposal as applied for in the permit application with the outcome of Condition 4. The applicant submits that the form of the building will remain, as people appreciate it today. The applicant also places weight on the wide extent of support from the community, other persons and organisations. Copies of letters of support have been supplied to the Committee.
65. The applicant submits that the street trees are expected to outlast the solar panels. The panels may have a life of potentially 10–15 years, when new technology and other advances will likely have occurred. The applicant cited examples of solar panels in other heritage places (including in Victoria, Sydney and at UNESCO sites), together with guidelines addressing solar panels from other jurisdictions, and also various government climate change/solar panel policies.⁵
66. The applicant submits removal of the lower four rows of solar panels affects the reasonable and economic use of the Place. Condition 4 affects the Place's ability to reduce the building's carbon footprint. Removing the lower four rows has a significant economic impact; over and above the extent to which solar panels have been reduced from the original solar design layout (from 2022).

⁵ *Heritage Council Climate Action Plan 2024*; City of Sydney Development Application exception for solar panels in heritage conservation areas – Guideline; Renewable energy policies of the City of Yarra; and various climate change and energy policies of the Federal and State Governments.

- 67.** The applicant states that removal of the four rows of panels (47 panels) will affect the reasonable and economic use of the Place as it results in an overall total reduction of 159 panels from the original solar design of 206 panels making solar electricity installation unviable. The contested condition results in the proposed number of panels being 22.8% of those originally proposed in the optimal 2022 solar design.
- 68.** The applicant has provided extensive detail with respect to the specifications for the solar panels, their installation process, calculated energy use and carbon offsets. Detailed calculations and reports have been provided with comparative costings, information about the loss of energy production, and with respect to consequences for carbon emissions. None of this material has been challenged by the Executive Director.
- 69.** The applicant also relies on Ms Vines' evidence. She summarises her opinion as follows:
- *The proposed retention of the bottom four rows of panels will not cause an unreasonable adverse impact to the cultural heritage significance of the place.*
 - *The installation of removable panels will have no negative impact on the building's heritage fabric or structure and the installation is reversible into the future.*
 - *The visual impact difference between the submitted permit plans and the required reduction of 4 rows of panels (47 panels) is negligible.*
 - *The economic impact of the condition to remove the lower 4 levels is significant to the owners and is out of step with current and urgent climate change mitigation measures supported by Government policies.*
- 70.** Ms Vines does not consider the rudimentary architecture of the orderly building would meet State-level thresholds for the Place to also be regarded as being of architectural significance. She opines that the statement of significance might be old, but has deliberately not included architectural significance. Ms Vines therefore does not agree with the weight attributed by the Executive Director to the architectural design, but she does accept that the roof form is relevant to how the building is understood and appreciated.
- 71.** Ms Vines refers to the logic of the solar panel design whereby panel rows terminate at the change in the roof line or hip. This coincides with the original part of the building (1864). The shallower roof plane is part of the 1891 additions. The full complement of panels is therefore confined to the upper level associated with the roof of the original 1864 portion of the building. Ms Vines indicates that the proposed 94 panels will not materially or unacceptably change appreciation of the orderly room; and that the roof form will remain legible.
- 72.** The applicant and Ms Vines emphasise that solar panels are increasingly seen and accepted as necessary infrastructure. Heritage professionals and other people in the community now consider development through a climate change lens.
- 73.** Further, Ms Vines' evidence includes the following opinions and comments:
- The residential conversion undertaken 20 years ago is an excellent early example of adaptive reuse, now requiring updating to address current issues, including the need for access renewable energy supply to 'adequately address the impact of climate change'.
 - The rigid approach to this application of the Solar Panel Guidelines is out of step with current heritage practice for adaptive reuse of heritage places, where a place needs to be made fit for current use and occupation in response to the need for providing comfortable internal temperatures for users, reducing running costs to affordable levels, and reducing greenhouse gas emissions.

- Rejection of this application which incorporates practical and economic sustainable energy supply solutions via the use of renewable energy (solar panels) is considered out of step with broader environment objectives and climate change policies supported by Local, State and Federal government agencies.
 - The proposal aligns with the Heritage Council's commitment, through its recent 2024 *Climate Action Plan*, to key areas including:
 - 1. *Raising awareness of climate change impacts on the state's cultural heritage ...*
 - 2. *Review Heritage Council processes and procedures to embed climate awareness in our business operations.*
 - 3. *Celebrating industry innovation and best practice adaptation responses that mitigate the impacts of climate change on Victoria's cultural heritage places.*
 - The owners have fully explored all alternative options for renewable energy supply, as set out in the material provided to the Committee.
 - Condition 4 would result in 'only 18, 17 and 12 panels per residence which will not provide sufficient power for minimal residential requirements, and the installation and infrastructure costs (scaffolding for installation etc) make this an unreasonable request'.
 - The proposal will allow for the ongoing viable and economic use of the building and will be unviable if not allowed to improve heating and cooling.
- 74.** The Executive Director questions the independence of the expert witness saying submissions are 'consistent and somewhat replicate those of the Applicant'. Further, that 'Ms Vines appears to act as an advocate for the Applicant's position and the advice does not appear to be unbiased or impartial. Ms Vines also appears to provide views outside her areas of expertise. This is not in accordance with HC Protocol 6 – Expert evidence.'
- 75.** Ms Vines responded to this submission, explaining her involvement with the site over three decades, her professional qualifications and experience.

BASIS OF THE COMMITTEE'S CONSIDERATION

Heritage Act 2017

- 76.** The Committee's assessment and decision have been undertaken in accordance with the Act. Relevant requirements of the Act include the following sections.
- 77.** Section 108:
- (7) *The Heritage Council may make a determination on the review to—*
 - (a) *affirm the determination under review; or*
 - (b) *vary the determination under review; or*
 - (c) *set aside the determination under review and make another determination in substitution for it.*
 - (8) *In determining a review, the Heritage Council must consider the matters set out in section 101(2) and may consider the matters set out in section 101(3).*

78. Section 101(2) includes:⁶

- (2) *In making a determination under subsection (1), 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;*
 - (f) *any matters relating to the protection and conservation of the registered place or registered object that the Executive Director considers relevant.*

79. Section 101(3) states:

In making a determination under subsection (1), 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.*

Guidelines and policies

Heritage Victoria's Solar Panel Guidelines

80. The Executive Director has relied on the Solar Panel Guidelines made and published by Heritage Victoria under section 19(1)(f) of the Act, 10 October 2022.

81. This is a relevant matter and document.

82. The objectives in the Solar Panel Guidelines are to:

- *Ensure the installation of solar panels at places included in the Victorian Heritage Register in a manner which does not impact upon the cultural heritage significance of the place.*
- *Allow owners to address matters of environmental performance of their property whilst also minimising impacts on the cultural heritage significance.*
- *Ensure that installation of solar panels does not damage original fabric or the setting of a heritage place.*

83. The Solar Panel Guidelines state 'Solar panel installations provide the opportunity to save on electricity bills and reduce carbon footprint. However, the location of these installations can have a detrimental impact on the heritage values of a place'. They also state the following:

⁶ Not including reference to sub-section 102(e) to the World Heritage Environs Area, which does not apply here.

Protecting the cultural heritage significance of a place

The roofscapes of most heritage buildings are very important to their character. The requirements of this guideline ensure that renewable energy installations will not substantially disrupt the form and character of roofs and other significant features or detrimentally impact the setting of the heritage place.

- 84.** Matters to consider in the Solar Panel Guidelines include the following:
- a) *Locate solar devices to avoid visual impacts resulting from their location, scale, form, colours and reflectivity. Devices should not intrude on the principal views of a place. Heritage Victoria typically does not support systems visible from the street, key public views or primary elevations.*
 - b) *Do not unnecessarily disturb or destroy the historic fabric of a building in line with minimum intervention and reversibility principles.*
 - c) *Install or locate free-standing collectors in locations which will not impact the heritage values of the place, for example, where not visible from the street, principal views or primary elevations of a place. Alternatively, locate these devices on structures of lesser cultural heritage significance, such as garages, carports or pergolas.*
 - d) *Avoid the use of stands to fix solar collectors or solar hot water systems onto roofs of heritage buildings.*
 - e) *Ensure that the weight of new devices can be borne by the supporting structure (eg: roof rafters or ceiling joists), or that the structure is appropriately strengthened to accommodate the additional weight...*
 - f) *Ensure that new metal components in contact with metal roof cladding are chemically compatible or insulated to avoid corrosion.*
 - g) *Ensure solar panels, tanks and other infrastructure do not display any form of private advertising or branding.*
 - h) *Select less bulky systems installed flush with the roof line where possible*
 - i) *Ensure that the system is installed by a qualified professional.*
- 85.** The Committee notes the Executive Director’s submission that in developing the Solar Panel Guidelines document, relevant guidance from other Australian jurisdictions was reviewed and considered. The submission states that the Solar Panel Guidelines advise against locating solar panels in a highly visible location that will detract from or disrupt the roof form and ‘Similarly, City of Yarra’s solar panel guidance encourages locating solar panels sensitively, concealing them from street view where possible’.
- 86.** Ms Vines also referred to the Heritage Victoria document ‘Principles for Considering Changes to Places in the Victorian Heritage Register’ which states ‘change may be required to ensure that a place ... can adequately address the impact of climate change’.

Other guidelines under the Act

- 87.** The Committee notes the ‘Reasonable or economic use’ policy by Heritage Victoria which is made and published under section 19(1) of the Act.

Guidelines from the City of Yarra and from New South Wales

- 88.** The applicant references the City of Sydney’s Development Application Exception for Solar Panels in Heritage Conservation Areas – Guideline (2020) throughout the application and relies on its principles to justify the proposal. This guideline highlights

that, as a general principle, solar panel installations are preferred on rear roofs, but installations on front roofs are allowed if there are no feasible alternatives for placing the panels on the rear of the building.

89. The Executive Director explains this guide is for local heritage places and precincts, as the guideline applies to 'heritage conservation areas', which are the equivalent of 'local heritage precincts' in Victoria. Moreover, this guidance does not appear to apply to places of state heritage significance. The Executive Director submits that the Committee should have primary regard to the Solar Panel Guidelines as that document is made and published under the Act to guide permit applications and is relevant to places of state heritage significance in Victoria. Consequently, the Committee should place no weight on the City of Sydney document nor guidelines from other jurisdictions.
90. Ms Vines has explained why she considers the Sydney guidelines to be helpful, but did not suggest that they override Victorian legislation and guidance. Her written evidence states:
- I consider the City of Sydney guidelines (page 11) **are** relevant as they include an example of a very sensible clause namely "installation on front roofs are allowed **if there are no feasible alternatives for placing the panels on the rear of the building**" (my emphasis). It is agreed that they are in a different jurisdiction and it is also agreed that they relate to heritage conservation areas and locally significant places. However surely to meet the objectives of the most current HV policy Victorian Heritage Councils Climate Action Plan this would be a suitable approach once all other options have been exhausted - as they have in this application.*
91. The Committee is of the view that it is of interest to understand what is occurring in other jurisdictions, but it is not appropriate to give influential weight in its determination to guidelines designed for other places, and which are crafted for specific purposes and circumstances. The examples of the City of Yarra, Sydney and overseas are noted.

Local, State and Federal policies regarding climate change; and the Heritage Council's Climate Action Plan 2024

92. The Committee does not repeat all of the government policies relating to climate change cited in the applicant's submission and in the expert evidence. The applicant submits, and Ms Vines' agrees, the Heritage Council's Climate Action Plan which calls for 'Reviewing Heritage Council processes and procedures to embed climate awareness in our business operations' is very relevant to the permit application. This includes the current review proceeding, even though 'sustainability' and 'climate change' are not expressly cited in the Act. These considerations are, however, reflected in Heritage Victoria's Solar Panel Guidelines.
93. Climate change is a broad and relevant contextual factor, as expressed through multiple government policies and through the Climate Action Plan, with respect to the impact of global warming and climate change.
94. The Heritage Council's Climate Action Plan includes the following action:⁷
- To contribute to the reduction of carbon emissions and climate change mitigation, Victoria's cultural heritage places must be equipped with innovative and sustainable design solutions.*

⁷ Action 03, page 07, of the *Heritage Council Climate Action Plan, 2024*.

95. The Executive Director does not suggest climate change is not relevant in the Committee's assessment. Rather, the Executive Director submits that a balance is struck by Condition 4.

Submissions and letters expressing community views

96. The applicant emphasises wide-ranging community support for the proposal based on material supplied with the application for review, while the Executive Director has also acknowledged one objection was received when public notice was given.
97. The matters raised in these documents are before the Committee. The number of letters, people and organisations are noted, but not of influential weight per se.

COMMITTEE FINDINGS AND DETERMINATION

Scope of this review of Condition 4

98. The proceeding addresses one permit condition and specifically whether the proposal as applied for should be approved or whether solar panels must be removed as directed by Condition 4.
99. The design and layout of the solar panels prepared in 2022 is understood as background in the evolution of the installation proposal, but it is not the subject of the permit application made to the Executive Director in May 2024 (application number P39035).
100. At the hearing, the Executive Director's representative submitted that the Committee could find that no panels are appropriate. This was on the basis that the Executive Director's preferred position is that no solar panels be located on the northern street-facing roof. The Committee considers that it is not fairly the scope of this proceeding to determine that no panels should be permitted on the northern face of the roof. The Committee observes that the Executive Director could have refused the permit application but instead sought modifications to achieve a balanced outcome.

Material presented

101. The Committee has proceeded on the facts, the application/decision plans, the documentation and material presented by the parties, as well as the expert evidence. That evidence has been tested through cross-examination. The Committee has considered the opinions expressed by the expert witness within the scope of the witness' expertise and professional experience, which Ms Vines described in some detail in cross-examination.
102. The Committee observes that decisions in circumstances such as occur here require a judgment to be made, and that there can be legitimate differences in professional opinions.
103. The perspectives or photomontages are noted as part of the material available to the Committee. They have not been presented through any expert evidence or with any documentation as to their preparation. The Committee was advised that they were prepared by an architect. The Committee observes that the perspectives show one situation and that there are many variables in how solar panels will be seen once installed. One variable relates to lighting conditions (that are affected by the time of day and weather conditions, as examples). Further, the images may be proportionally correct but, at the scale prepared, do not represent what the eye would see. When comparing the images with what is seen in person on-site there is an evident distinction, such as with respect to the visible size of buildings. The Committee understands how they have been used in submissions to illustrate arguments presented by the applicant.

- 104.** Examples relied on from other places where there are solar panels such as the Drill Hall in Victoria Street/Therry Street, Melbourne, Brunswick Street Oval Grandstand, Fitzroy, and Richmond Town Hall are noted. They assist to illustrate points being made in submissions. However, they must be understood on their own facts and in their own contexts.

Agreed matters

- 105.** Points of agreement between the parties include the following:
- That the statement of significance records the Place as being of historical importance without any express reference to the Place being of architectural significance or value at the State-level.
 - That the proposal (whether 47 or 94 panels) has no impact in terms of the historical importance ascribed to the Place through the statement of significance.
 - That alterations and additions have been made to the Place, including the roof that is not original fabric.
 - That the proposal will not obscure damage, destroy or change historic fabric (such as chimneys), as the original roof was replaced in the 1960s and partially again in the 1990s, and the panels can be removed.
 - That material and information presented by the applicant is not in dispute with respect to:
 - panel installation and materials;
 - comparisons between the proposal and changes required to it through Condition 4 such as with respect to projected energy needs; costings and energy production; and calculated carbon offsets.
- 106.** It has not been argued by the Executive Director that the requested 94 panels would offend or not satisfy points (b) to (i) of the Solar Panel Guidelines that we have recited in paragraph 84. For this reason, we take the acceptability of the proposal's response to these matters as not being in dispute between the parties.

Significance of the Place

- 107.** The statement of significance cites the historical values of the Place.
- 108.** Architectural value is not expressly part of the statement, although the Committee has also taken account of the following which is included in the statement:
- The 1891 additions are an important manifestation of the defence reforms of the 1880s.*
- 109.** The Executive Director states that the architectural value of the Place cannot be discounted—the building is characterised by a distinctive broadly gabled roof form, particularly dominant in views to the Gipps Street frontage. The Committee accepts this is an apt description, but the Committee has not been persuaded that the form meets a State-level threshold such as to place great weight on the impact on architectural values.
- 110.** The form of the Place is a relevant factor, and the Committee is mindful that the site is visible around its three street frontages. The long side of the building faces Gipps Street. It is, however, a side façade, with the front being to the east. The Committee does not accept the Executive Director's position that all three faces of the Place can be said to be the 'principal frontage' for the purpose of considering the proposal's response to the Solar Panel Guidelines. Having said that, it is self-evident that the

longest side presentation to the orderly room, facing Gipps Street, is the most visually prominent because of its length and the extent to which it is viewed from multiple locations in the public realm. It is also the most utilitarian of the three street interfaces architecturally.

Effect on the cultural heritage significance of the registered place

- 111.** The Committee must consider whether the proposal affects the cultural heritage significance of the registered place such that a reduction in the number of solar panels is necessary.
- 112.** 'Affects' might be in a positive, neutral or negative way. In this case, the arguments focus on negative effects, which might be rephrased as the extent to which the visibility and visual impact of the proposed 86 solar panels on the northern roof face would detract from and be detrimental to the Place.
- 113.** The proposed solar panels will be visible when viewed from surrounding streets, most notably Gipps Street and over the intersections with Docker and Dickman Streets. That will bring a change, which although reversible, may result in an ongoing change if solar panels are sought to be replaced with other technology in the future.
- 114.** The Committee does not give influential weight to the presence of the street trees along the north side of the Place on Gipps Street. They will have a mitigating effect because they affect visibility of the proposed panels from multiple places and angles. However, this vegetation is outside the Place. The trees can be pruned or otherwise removed by the Local Council (City of Yarra) and are beyond the control of the owner.
- 115.** The Committee considers that the solar panels, with either 47 or 94 panels ('either scenario'), would be visible is not automatically an unacceptable visual impact on the Place.
- 116.** Broadly, visibility does not automatically equate to visual impact or detriment. It is understood that the proposal in either form does not enjoy policy support from Heritage Victoria's Solar Panel Guidelines whereby 'Heritage Victoria typically does not support systems visible from the street, key public views or primary elevations'. However, that guidance is not mandatory – the guidelines cannot preclude or effectively prohibit other outcomes. This is evident in the document itself by the use of the word 'typically'. The specific circumstances of a place, its context and setting, and the facts associated with a proposal are among the individual considerations to be assessed.
- 117.** The Solar Panel Guidelines refer to locating 'solar devices to avoid visual impacts resulting from their location, scale, form, colours and reflectivity. Devices should not intrude on the principal views of a place.'
- 118.** The Committee considers there is a difference between the 'principal frontage to', 'primary elevation' and 'principal views of' a place, which are all phrases that have been referred to in submissions.
- 119.** The northern face of the building is doubtfully the principal frontage but it is an important view. The Committee considers this to be the case because the principal frontage is the frontage associated with the heritage place as designed. From the original Dickman Street entry to the building, the front of the Place would not be visually impacted because the proposed panels (in either scenario) are set back some distance from the entry with gabled elements limiting visibility in a view from this entry. The same principle applies when the Place is viewed from the west in Docker Street (which was also a former entry to the building). It should be noted that

panels proposed for the southern roof may be seen, but it is common ground between parties that the southern panels are not an issue.

- 120.** The view to the proposed solar panels on the roof facing Gipps Street opens up moving toward and into Gipps Street from either Docker and Dickman Streets (moving toward Gipps Street from the north or south), and along Gipps Street (from the east and west). This is where there is visibility of the solar panels that differs between the two scenarios.
- 121.** It is relevant to the Committee's assessment that:
- The proposed solar panels, in either scenario with either 47 or 94 panels, would be positioned in a location on the roof of the Place where there are existing visible non-original interventions and works in the roof including skylights and a lift overrun.
 - The proposed solar panels would be located within the original, upper roof portion of the building, and would not traverse the lower hip where a change in angle would occur.
 - The solar panels do not project above the roof line and respond to the scale of the roof form.
 - The roof form would remain legible given the solar panels are to be flush with it, so that the form of the roof and building would be unchanged, and the expanse and scale will remain intact and be readily appreciated.
 - The placement of solar panels on the roof would not substantially disrupt the form and character of the roof and any other identified significant features of the Place.
 - The chimneys would sit forward of the solar panels, not surrounded by panels based on the application plans; therefore the original chimneys would also remain as a legible element of the Place.
 - While noticeable, the proposed 86 north-facing panels would not be dominant given the scale of the Place and its roof. They would therefore not distract or confuse an understanding and appreciation of the values of the Place in terms of its historical significance or to the form of the Place – the design is unaffected.
 - There are no arguments that colours and reflectivity associated with the solar panels are inappropriate.
- 122.** Solar panels are utilitarian, and have a level of community acceptance. The Committee agrees with the applicant and Ms Vines that solar panels are increasingly present and understood. The solar panels' purpose is understood as a contemporary response to provide energy to a place and are part of current building practice including at State-listed places.
- 123.** The Committee appreciates that the proposed 86 panels would cover a larger surface area and would be more visible than would occur with the retention of 39 panels. This does not mean that the removal of four rows of panels is warranted, however. Rather, the Committee finds the proposal with 94 panels (86 to the north-facing roof) is not excessive or over-dominant in scale or form taking into account the specific characteristics and significance of the Place.
- 124.** The Executive Director accepts that a balance is required having regard to visual impact and the reasonable proposition that alternative renewable energy supply be available to this Place. The proposal, as put forward in the permit application,

satisfactorily balances access to alternative energy through the solar roof panels, while ensuring the cultural heritage values are respected and continue to present the Place's distinctive visual presence and form. Historical importance at the State-level is not impacted.

- 125.** In conclusion, the Committee finds that the proposal does not affect the cultural heritage significance of the registered place such that a reduction in the number of solar panels is necessary as required by Condition 4.

Reasonable or economic use of the registered place

- 126.** This consideration as stated in the Act is 'the extent to which the application, if refused, would affect the reasonable or economic use of the registered place or registered object'. In this case, a permit has been granted. The 'refusal' appears to have been approached by parties with respect to the refusal of the solar panel scheme as a whole by requiring removal of four rows of solar panels through Condition 4.
- 127.** The Committee must consider whether the reduction in the number of solar panels required by Condition 4 affects the 'reasonable or economic use of the registered place'.
- 128.** It seems that there is not a common understanding of what 'reasonable or economic use' means in this case. The words have been variously referred to in some material for the applicant, such as 'reasonable economic use' or economic impact. It is said that the 'economic impact' of the condition to remove the lower four rows is significant to the property owners. In addition to a range of economic arguments associated with the viability and costs of the solar panel design with 39 vs 86 panels presented by the applicant, the expert witness expresses a view that the Place may not be viable as a residence if unable to be adapted to suit contemporary liveability standards and needs.
- 129.** The Executive Director does not agree that matters such as personal costs, economic viability of the proposal, and property values are relevant. The Place can and will remain useable for accommodation without solar panels.
- 130.** The Committee accepts there are economic considerations associated with the proposal and that there are negative economic consequences if the proposal is reduced to 39 panels on the northern roof face. It accepts there is a strong economic reason (and also a strong sustainability reason) to add solar panels for energy production, reduced costs, liveability and reduced carbon emissions. However, when considering section 101(2)(b), the Committee is not persuaded by submissions about economic circumstances and outcomes that contend the viability of the property for use as dwellings, *per se*, is jeopardised by the modifications required by Condition 4.
- 131.** Having said that, the Committee considers works to provide for renewable energy are relevant to the reasonable use of the Place as dwellings, including having regard to the lack of alternatives for solar energy (referred to below). This view is not inconsistent with Heritage Victoria's 'reasonable or economic use' policy. However, the Committee doubts it would have been an overriding consideration had the Committee found that the impact or effect on the cultural heritage significance of the registered place of installation of 86 panels would require a reduction in the number of solar panels.

Consideration of submissions and letters of support

- 132.** The Committee has considered submissions as it is required to under section 101(2)(c) of the Act. Not all of the content in that material is relevant to the scope of this review proceeding. None of the material submitted raises relevant matters that are not already before the Committee, and they are not framed in the context of applicable sections of the Act.
- 133.** No further comments are required.

Other matters – alternatives and options

- 134.** The applicant has explained and demonstrated alternatives that have been explored over an extended period of time.
- 135.** The Committee accepts that there are limitations associated with installing solar panels on other parts of the Place and that options have been assessed. For example, the applicant has explained that the opportunity for more panels on the southern side of the orderly room is constrained because of the position of skylights and courtyard spaces. Installation on the east and west roof faces is not possible due to gable end configuration – and high visibility should panels be installed on the small sections of available roof.
- 136.** The Committee accepts the proposal, as presented in the permit application, will make a positive contribution in reduced carbon emissions and enhance the liveability of the three dwellings. This would be materially reduced by reducing the number of solar panels to 47.

CONCLUSION

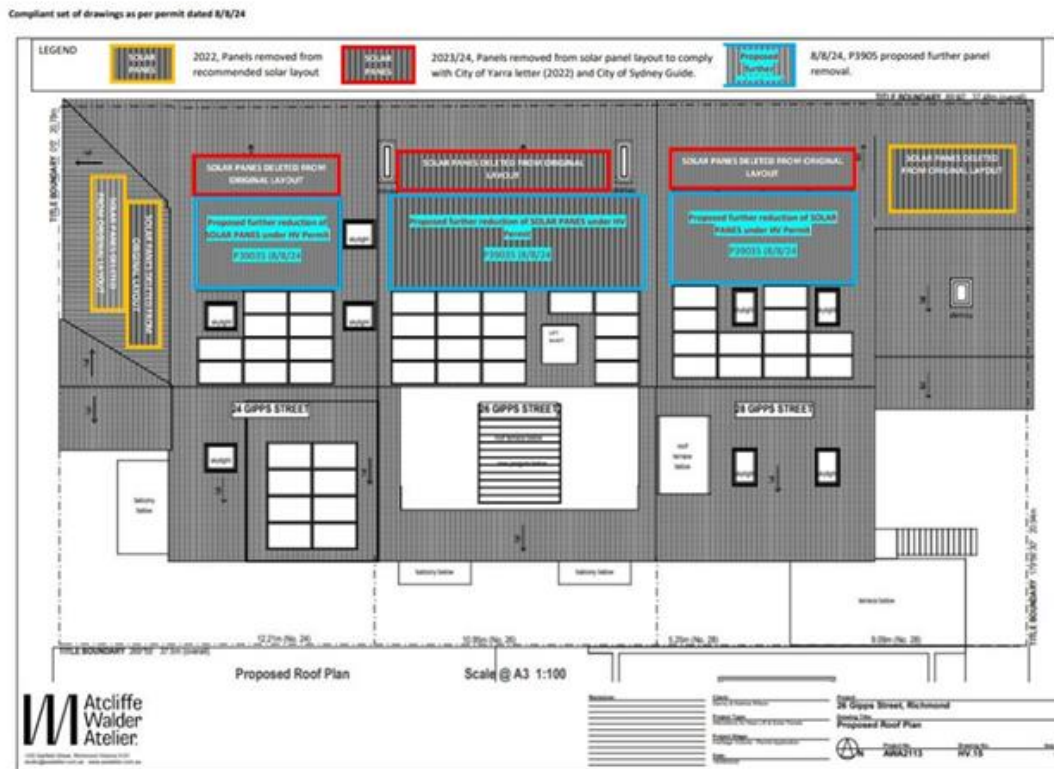
- 137.** After considering all submissions received in relation to the permit review and after conducting a Hearing, the Heritage Council has determined, pursuant to section 108(7)(b) of the *Heritage Act 2017*, to vary the determination under review by varying Condition 4 in permit P39035, so as to read:

Prior to the commencement of any of the works approved by this permit construction ready (marked as such) drawings based on the Drawings prepared by Atcliffe Walder Atelier, drawing nos. HV.2, HV.7-9, HV.15-20 must be submitted to the Executive Director, Heritage Victoria for approval. Once approved, the drawings will be endorsed and will then form part of the permit.

Attachment 1




Evolution of the solar panel design 2022–2024

Aerial plan showing SUMMARY AND PROGRESSIVE REDUCTION IN PANELS, 2022 – 2024.



Gipps Street Elevation Plan showing progressive reductions in panels, 2022 – 2024.

Key

	Solar Panel (2022 ORIGINAL OPTIMAL Solar Design) [206 Panels] 80 panels were removed for the original Atcliffe Walder Permit 2022 submission.
	Atcliffe Walder Permit 2022 (2022 reduction) [206 to 126 Panels] 2024 (126 panels reduced to 106 panels for May 2024 submission)
	P39035 2024 Permit (59 Panel reduction by HV officers, August 2024) [leaving 47 Panels]

Source: Applicant's request for review, dated 7 August 2024, at page 4 of 13. Note the figures relating to the numbers of panels (e.g. 106) were corrected at the hearing.