

Heritage Council Regulatory Committee

Fawkner Park, 24-88 Commercial Road, South Yarra (H2361)

Hearing – 2 & 5 October 2020

Members – Ms Louise Honman (Chair), Ms Margaret Baird, Mr Rueben Berg

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)(c) of the *Heritage Act 2017* to set aside the determination under review and make another determination in substitution for it, by issuing Permit No. P29324 with conditions.

Louise Honman (Chair)

Margaret Baird

Rueben Berg

Decision Date – 8 December 2020

APPEARANCES/SUBMISSIONS

The following persons lodged written submissions and appeared and made verbal submissions at the Hearing:

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

The Executive Director was represented by Ms Emily McLean (Manager, Statutory Approvals) and by Ms Erin Williams (Manager, Major Projects and Statutory Support), who appeared and made verbal submissions at the Hearing.

NATIONAL TRUST OF AUSTRALIA (VICTORIA) ['THE TRUST']

The Trust was represented by Ms Eloise Dowd (Environmental Heritage Advocate), who appeared and made verbal submissions at the Hearing.

THE HON. DAVID DAVIS MP, MEMBER FOR SOUTHERN METROPOLITAN REGION

Written submissions were received from the Hon. David Davis MP, who appeared and made verbal submissions at the Hearing.

MRS MARY DROST OAM, (REPRESENTING PLANNING BACKLASH INC.)

Written submissions were received from Mrs Drost OAM, who appeared and made verbal submissions at the Hearing.

MS ANNE O'SHEA

Written submissions were received from Ms O'Shea, who appeared and made verbal submissions at the Hearing.

MS BEA MCNICHOLAS

Written submissions were received from Ms McNicholas, who appeared and made verbal submissions at the Hearing.

MS JENNIFER MCDONALD

Written submissions were received from Ms McDonald, who appeared and made verbal submissions at the Hearing.

DR ANNA HURLIMANN (REPRESENTING SOUTH YARRA PRIMARY SCHOOL COUNCIL)

Written submissions were received from Dr Hurlimann, who appeared and made verbal submissions at the Hearing.

MS JILL QUIRK ('PROTECTORS OF PUBLIC LANDS')

Written submissions were received from Ms Quirk, who appeared and made verbal submissions at the Hearing.

THE CITY OF MELBOURNE ('THE APPLICANT')

Written submissions and statements of expert evidence were received from the City of Melbourne, the Permit Applicant in this matter ('the Applicant'). The Applicant was represented by Ms Marita Foley SC of counsel, instructed by Melbourne City Council Legal (Ms Brigid Ryan and ors). Ms Foley appeared and made verbal submissions at the Hearing on behalf of the Applicant and called the following persons to give expert witness evidence:

- Ms Kate Gray, Heritage Architect and Principal of Lovell Chen
- Mr Bryce Raworth, Heritage Architect and Principal of Bryce Raworth Pty Ltd
- Mr Marc Noyce, Civil Engineer of Biofilta
- Mr Crosbie Lorimer, Landscape Architect of Clouston Associates.

WRITTEN SUBMISSIONS ONLY

The following persons lodged detailed written submissions but did not appear or make verbal submissions at the Hearing:

MR KENNETH WIDDOWSON

MR PAUL MCSWEENEY

MS ROBYN ROBINS (CHAIR, VICTORIAN BRANCH, AUSTRALIAN GARDEN HISTORY SOCIETY ['AGHS'])

MRS LIZ BIRD

MR MICHAEL BUTCHER (PRESIDENT, MELBOURNE STH YARRA RES GROUP [MSYRG'])

MS JAN ARMSTRONG-CONN (CONVENOR, PASLEY STREET RES GROUP)

MR ROGER GIBBONS

MR HUGH PAGE TAYLOR

MR CLIFFORD HAYES MLC (SUSTAINABLE AUSTRALIA MEMBER FOR SOUTHERN METROPOLITAN)

DR CHRISTINA DRUMMOND AM

MS FIONA BELL

MS MERCEDES GARAY

MR CHARLES SOWERWINE (CHAIR, HERITAGE COMMITTEE, ROYAL HISTORICAL SOCIETY OF VICTORIA)

DR PATRICE MARRIOTT

INTRODUCTION/BACKGROUND

THE REVIEW

01. This proceeding is a review of a determination by the Executive Director to refuse Permit Application No. P29324 in respect of proposed works at Fawkner Park, 24-88 Commercial Road, South Yarra ('the Review').

THE PLACE

02. Fawkner Park is a large public park of approximately 41 hectares featuring straight, tree-lined pathways, lawn areas of varying sizes, playing fields and buildings and structures such as sporting pavilions, shelters, tennis courts, playgrounds and other built form elements ('the Place'). The Place is included in the Victorian Heritage Register ('the Register') as H2361.
03. The following paragraphs are taken from the 'Statement of Cultural Heritage Significance' for the Place:

'WHAT IS SIGNIFICANT?'

Fawkner Park is a trapezoidal shaped public park of 41 hectares (101 acres) established in the southern part of the City of Melbourne. It contains a wide range of landscape design elements and features including lawns, tree plantings, pathways, playing fields, structures, such as a circular seat, as well as a number of buildings such as the Caretaker's Cottage and Fence (1885), Substation (1925), Southern Pavilion (1936), Southern Toilet Block now store (1937), Northern Pavilion (1937), Tennis Club and Community Centre (interwar), shelter and playgrounds.

History Summary

In 1862 Fawkner Park was temporarily reserved and named after the co-founder of Melbourne, John Pascoe Fawkner, although it was not developed until 1875 when formal pathways, avenues (many based on the 'desire line' pathways of original pedestrians) and lawns were established. Fawkner Park is one of Melbourne's 'outer ring' parks and was integral to the vision of Charles La Trobe (Superintendent of the Port Phillip District and later Lieutenant-Governor of Victoria) from the mid-1840s, to develop Melbourne as a city surrounded by extensive public parklands. It demonstrates the Government's desire to provide outdoor recreational spaces for passive and active recreation and to beautify the city. Fawkner Park has a long history as the location of sporting activities, such as cricket, football and tennis, back to the late 1850s. During World War II an area of Fawkner Park was compulsorily acquired by the Defence Department. The 33 Australian Womens Army Service (AWAS) Barracks and the Land Headquarters (LHQ) of the Australian Corps of Signals were constructed on the area which is now the Cordner Oval and its immediate surrounds. Between 1947 and 1955, the huts at the camp were converted to a transit camp for British migrants and also used for emergency accommodation for families. In 1955 Fawkner Park was restored to parkland and since then has been used for passive recreational and sporting activities. A childcare centre opened on the eastern side in 1989. Today Fawkner Park remains relatively unchanged from its original design and is a popular place for sport, leisure, picnics and fitness activities.

Description Summary

Fawkner Park is characterised by straight, tree-lined pathways many of which link pedestrian entry points. The pathway system divides the park into a number of larger lawn areas that contain playing fields for a variety of sports, and smaller lawn areas that feature plantings of specimen trees. There are a

number of buildings and structures ranging from sporting pavilions, shelters, tennis courts and playgrounds. The earliest structure remaining on site is the nineteenth century Caretaker's Cottage, located to the western boundary of Fawkner Park on Slater Street. The dominant vegetative element of Fawkner Park are the established treed avenues that criss-cross the site along the primary path system, most notable amongst these being mature avenues of Elm and Moreton Bay Fig. Formal boundary plantations are also located on the northern (Canary Island Palm and Pin Oak), eastern (Canary Island Palm, English Oak, Himalayan Cedar) and southern boundaries (Elm avenue), with a mixed plantation of exotic and Australian native trees to the western boundary. Specimen trees, often grouped into stands or circle plantings, are located in lawn areas between the avenues. A number of the main avenues have been replanted with new species since 2010, including Willow-leaved Oak and Gingko, replacing Golden Poplar avenues, and rejuvenation of the Pin Oak avenue, all located in the north of the park. Due to the lack of ground disturbance since 1955, Fawkner Park has the potential to contain subsurface archaeological material related to the occupation and use as an AWAS and LHQ Signals camp, specifically within the area of Cordner Oval.

This site is part of the traditional land of the Kulin nation.'

- 04.** The paragraphs above are included for information purposes only and do not form part of the reasons for this Heritage Council determination.

CULTURAL HERITAGE SIGNIFICANCE OF THE PLACE

- 05.** The Statement of Cultural Heritage Significance for the Place is as follows:

'HOW IS IT SIGNIFICANT?'

Fawkner Park is of historical, archaeological aesthetic significance to the State of Victoria. It satisfies the following criterion for inclusion in the Victorian Heritage Register:

Criterion A

Importance to the course, or pattern, of Victoria's cultural history.

Criterion C

Potential to yield information that will contribute to an understanding of Victoria's cultural history.

Criterion E

Importance in exhibiting particular aesthetic characteristics.

Why is it significant?

Fawkner Park is significant at the State level for the following reasons:

Fawkner Park is historically significant as part of the vision of Charles La Trobe (Superintendent of the Port Phillip District and later Lieutenant-Governor of Victoria) from the mid-1840s, to develop Melbourne as a city surrounded by extensive public parklands. Fawkner Park was permanently reserved in 1862 and became one of Melbourne's 'outer ring' parks, along with Yarra Park (VHR H2251) and Royal Park (VHR H2337). Formally developed from 1875 by curator Nicholas Bickford, Fawkner Park is a fine example of an 'outer ring' park. While the 'inner ring' of parks reflect more formal planting and symmetrical pathway arrangements, the 'outer ring' of parks and reserves were typically developed for recreation and organised sporting activity. Fawkner Park largely retains its early form, diagonal pathway plantings (established on the 'desire lines' of early pedestrians), impressive avenues, plantings, lawns and playing fields in conjunction with pavilion, caretakers and amenities buildings. Fawkner

Park is also of historical significance for its use as an accommodation base for the Australian Women's Army Service (AWAS) and as a camp for British migrants between 1947 and 1955. [Criterion A]

Fawkner Park is archaeologically significant at the State level for its high likelihood to contain subsurface artefacts and deposits related to the Australian Women's Army Service (AWAS) and the Australian Corps of Signals Land Headquarters, located in the southern portion of the park from 1941 to 1947. There is a high potential for Fawkner Park to contain physical evidence relating to the mobilisation of women in the Australian Women's Army Service (AWAS) during WWII and the experiences of post-WWII British migrants in Victoria's transit camps, that is not currently visible or understood. The knowledge that might be obtained through archaeological investigation of Fawkner Park is likely to meaningfully contribute to an understanding of Victoria's cultural history. The particular information likely to be yielded from the archaeology of the place is not already well documented nor readily available from other sources. [Criterion C].

Fawkner Park is aesthetically significant as an outstanding example of a metropolitan park in Victoria. It is particularly notable for fine, mature avenues of English and Dutch Elm, White Poplar, English Oak and Moreton Bay Fig that criss-cross the site, forming over-arching canopies above the pathway system, that afford enclosed, focused views of considerable visual appeal. Other aesthetically impressive plantings include individual specimen trees and stands of Canary Island Pine, Pin Oaks, Hoop Pine, Bunya Pine, Lemon-scented Gum, Sugar Gum, Lilly Pilly, Monterey Pine and Stone Pine. The number of avenues within the park and individual scale of many of the original row plantings is incomparable to any of Melbourne's 'inner ring' or 'outer ring' parks established in the nineteenth century. The treed avenues have matured to form the dominant landscape component of the site, providing over-arching, umbrageous walks counterpointed with expanses of lawn between the avenue alignments. [Criterion E]

- 06.** The above paragraphs are included for information purposes only and do not form part of the reasons for this Heritage Council determination.

THE PERMIT APPLICATION

- 07.** On 18 December 2018, the City of Melbourne ('the CoM') made a permit application to the Executive Director pursuant to section 93 of the *Heritage Act 2017* ('the Act') for a permit to undertake works on land in the east of the Place, generally close to the Pasley Street North entrance ('the Permit Application').

- 08.** The Permit Application described the following works:

'Improvement works to the Pasley Street entry zone including the removal of the existing basketball court, the construction of a new sports court further to the west of the existing facility, landscaping works, drainage improvement works, selected tree removals and new tree planting works and the construction of two new pathways providing access to the new sports court facility' ('the Proposed Works').

DETERMINATION OF THE EXECUTIVE DIRECTOR

- 09.** On 31 July 2019, the Executive Director determined pursuant to section 101(1)(b) of the Act to refuse to issue a permit in respect of the Application ('the Permit Refusal').

- 010.** The Executive Director gave the following reasons for the Permit Refusal:

'REASONS FOR REFUSAL:

That a permit not be issued as:

- *If the application were approved, and the sports court constructed in the proposed location, it would result in an unacceptable detrimental impact on the cultural heritage significance of Fawkner Park.*

- *The construction of the sports court in this location would result in physical and visual impacts on the landscape character of Fawkner Park as:*

- o it represents an incursion of hard surfacing into a part of the park which is currently grassed and eliminates an area of the lawn which remains the majority surface to this sector of the park;*

- o the location of the sports court away from its historical location at the perimeter of the park requires a network of new paths that run counter to the overall materiality, alignment and width of the asphalt linear avenues which contribute to the aesthetic significance of Fawkner Park;*

- o the scope of works goes beyond the relocation of the existing facility as it will be larger than the existing facility and, in tandem with its additional pathways, will have a larger overall footprint;*

and

- o its placement adjacent to Avenue G, will alter the presentation of an avenue recorded in the Conservation Analysis of 2002 as being of high heritage significance.*

- *Refusal of the permit application will prevent the works as proposed from being realised. Heritage Victoria accepts that the continuation of a sports court in Fawkner Park, although constructed in a new form, is a reasonable use. However, the Applicant has not sufficiently demonstrated that an alternative more suitable location for the sports court could not be found.*

- *While Heritage Victoria is generally supportive of the necessary landscape and drainage improvement works and the associated entrance improvements at Pasley Street proposed, it is understood that these works cannot be extracted from the proposal as whole.'*

THE PERMIT REVIEW REQUEST

011. On 26 September 2019, the Heritage Council received a request from the Applicant, pursuant to section 106(1), for a review of the Permit Refusal and a hearing into the review ('the Review Request').

012. The Applicant gave the following reasons for the Review Request:

'A. The proposed works will not result in an unacceptable detrimental impact on the cultural heritage significance of Fawkner Park:

- i. Having regard to the historical and social values of Fawkner Park, the proposed works are appropriate to Fawkner Park and the specific location within the park is appropriate for the proposed works.*

- ii. The construction of the works in the proposed location will not result in any unacceptable physical or visual impact or impact on the landscape character and aesthetic values of Fawkner Park.*

- iii. The proposed works have been sited to avoid any physical impact on any significant elements identified in the VHR statement of significance and the Conservation Analysis. In particular the works have been designed to avoid direct impacts on significant trees and significant path systems, avenues and row plantings.*

- iv. The works have been designed in a manner that is respectful of, and responsive to, the aesthetic qualities of the place. The relocation of the basketball court and establishment of limited new paving areas will not*

adversely affect the presentation, significance or the aesthetic qualities of the primary framework elements of the place, namely the significant path system, avenues and row plantings.

B. Failure to undertake the proposed works is likely to result in impaired landscape conservation in this part of Fawkner Park to the long term detriment of the cultural heritage significance of the place:

- i. Relocation of the existing basketball court is necessary to resolve the drainage and circulation issues at the Pasley Street North entrance.*
- ii. The works are necessary to address ongoing issues with soil compaction, disturbance and poor drainage in the area, all of which may impact on the health and longevity of significant trees within Fawkner Park.*
- iii. The improvements to pedestrian circulation and paths in the area of the Pasley Street entrance are a key measure to improve the longevity of existing mature trees which are of aesthetic significance for their association with avenue plantings.*
- iv. Pedestrian traffic management in particular, is necessary to ensure other soil amelioration measures can be undertaken with a reasonable prospect of improving the current condition of this part of the park.*

C. The multi-use court and the associated paths do not represent an encroachment on a significant lawn area.

- i. The affected area of lawn is not notable as an existing clear space within the framework of the park, nor has it been notable historically.*
- ii. To the extent that existing lawn area will be used, the proposed works will allow for the return of the existing basketball court location to lawn.*

D. The refusal to grant a permit for the proposed works would have an adverse impact on the reasonable use and ongoing management of the heritage place.

In relation to the reasonable use of the heritage place:

- i. The improvement of a degraded entry (consistent with the 2006 Master Plan), proactive management of use and access to improve landscape health including that of existing mature trees, and measures to address drainage problems and the provision of an improved court facility, should be considered reasonable use of the heritage place.*
- ii. No new uses are proposed to be introduced as part of the works. The continuation of an existing use (use for public parkland including recreational purposes) constitutes a reasonable use.*
- iii. The works are required to provide alternative cycle path options so that safety concerns related to the potential for pedestrian and cyclist conflict in this section of the park can be addressed.*
- iv. The provision of children's playground facilities is a long-standing tradition within Fawkner Park and the upgrade of these facilities, which includes the basketball court, is important for the reasonable and continued use of Fawner Park by children. In particular, the provision of these facilities is important to students of South Yarra Primary School which does not have a playground on its campus for its students.*
- v. Relocation of the existing basketball court is necessary to resolve the drainage and circulation issues at the Pasley Street North entrance. The works are necessary to address ongoing issues with soil compaction, pedestrian traffic management, landscape disturbance and poor drainage in the area, all of which may impact on the health and longevity of significant trees within Fawkner Park.*
- vi. Failure to undertake the proposed works is likely to result in impaired landscape conservation in this part of Fawkner Park.*

E. If the application were refused this will detrimentally affect the ability of the Council, as the Committee of Management under the Crown Land (Reserves) Act 1978 and guided by the Melbourne Parks and Gardens (Joint Trustee Reserves) Regulations (1994) in its duty to maintain and improve the landscape, and manage uses in Fawkner Park.

- 013.** Pursuant to section 101(4) of the Act, a permit review hearing was required to be held. A Heritage Council Regulatory Committee ('the Committee') was duly constituted to determine the matter.

NOTIFICATION AND SUBSEQUENT ADJOURNMENT OF THE PERMIT REVIEW HEARING

- 014.** In October 2019 the Permit Applicant, the Executive Director and prospective participants were notified that a permit review hearing would be conducted in relation to the Place, scheduled to be held on 9 December 2019.
- 015.** On 14 October 2019, following notification by the Committee of the Review Request, the Applicant lodged a request for an adjournment of the permit review hearing by way of *Heritage Council Form F – Request for Adjournment*. After considering the adjournment request, and after considering the responses received in relation to it (all of which consented to the adjournment), the Committee determined to adjourn the permit review hearing, initially to 19 and 20 March 2020.
- 016.** All prospective hearing participants were then subsequently notified that the Committee had rescheduled the permit review hearing to be held on 18 and 19 March 2020.

REQUEST TO AMEND PLANS

- 017.** On 14 October 2019, following notification by the Committee of the Review Request, the Applicant lodged a request to amend a Tree Protection Plan, by way of *Heritage Council Form F – Request to Amend Plans*, which was circulated to hearing participants. After considering the request to amend plans, and after considering all responses received in relation it, the Committee notified participants that it had determined to allow the lodgment of the amended plans. The Committee circulated the amended plans, titled 'Tree Protection Plan by Tree Dimensions (dated 16 October 2019)' to all hearing participants.

ADVICE IN RELATION TO THE NOVEL CORONAVIRUS 2019 ('COVID-19')

- 018.** On 13 March 2020 all hearing participants were advised of the potential impacts of the then evolving COVID-19 outbreak and related State Government advice on the ability of the Heritage Council to schedule and conduct hearings.
- 019.** On 16 March 2020 all hearing participants were advised that, due to State Government advice and public health considerations in relation to COVID-19, the Committee had determined to adjourn the permit review hearing until further notice.

SCHEDULING OF THE HEARING

- 020.** On 20 August 2020 all hearing participants were advised that, in light of Victorian Government public health advice in relation to COVID-19, the permit review hearing had been scheduled to be conducted by videoconference on Friday 2 and Monday 5 October 2020, using the *Microsoft Teams* online platform ('the Hearing'). Further specific technical guidance on how the Hearing would be conducted was provided.

PRELIMINARY, PROCEDURAL AND OTHER MATTERS

SITE INSPECTION

021. Prior to the Hearing, individual members of the Committee had the opportunity to visit and inspect the Place. On 15 October 2020, the Committee also undertook a joint site inspection of the Place, including the prospective location of the proposed works, accompanied only by the Heritage Council Hearings Manager. In the context of State Government COVID-19 restrictions in relation to gatherings and travel, written permission was obtained prior to the site inspection from the Department of Environment, Land, Water and Planning. No submissions were sought, made or received at the time of the site inspection.

DECLARATIONS OF INTERESTS

- 022.** At the Hearing, the Chair invited Committee members to make any declarations in relation to any matters that may potentially give rise to an actual, potential or perceived conflict of interest.
- 023.** Ms Honman noted that she had previously worked as a heritage consultant with Context Pty Ltd for the City of Melbourne on the Hoddle Grid Heritage Review during 2017-2018. She also noted a personal connection with one submitter who did not present at the hearing.
- 024.** Mr Berg noted that he has been on the Advisory Board for the Melbourne Sustainable Society Institute since 2014 which Cr Arron Wood Chairs. He has worked with Cr Cathy Oke in her role with the Clean Air and Urban Landscapes Hub. He has also undertaken consulting work for the City of Melbourne since 2014, in particular delivering their Aboriginal Cultural Awareness Workshops. In addition, he worked for the National Trust of Australia (Victoria) in 2014 where he worked alongside Emily Mclean.
- 025.** Ms Baird noted that a signatory to a document submitted by the Australian Garden History Society is the wife of a work colleague and is known to Ms Baird in that capacity.
- 026.** All Hearing participants were invited to raise any concerns in relation to the above matters, and none were raised.

DRAFT 'WITHOUT PREJUDICE' PERMIT CONDITIONS

- 027.** At the hearing, the Committee requested that the Executive Director provide draft 'without prejudice' permit conditions within seven days after the hearing. The draft conditions were received on 5 October 2020 and circulated to the Applicant for comment.
- 028.** On 8 October 2020, the Applicant provided comments on the draft conditions.
- 029.** Permit conditions relating to the Place are discussed in paragraphs 100 to 101 below.

RULINGS ON CERTAIN PROCEDURAL MATTERS

- 030.** During the course of the hearing process, the Committee determined to confirm its rulings in respect of certain procedural matters, some of which are summarised in the following paragraphs.
- 031.** In the months prior to the Hearing and prior to lodgment dates for submissions the Committee advised all interested parties by correspondence of its ruling that persons who had made a submission to the Executive Director in response to the Permit Application, pursuant to section 95 of the Act, would be afforded the opportunity to make verbal submissions at the Hearing. At the same time, the

Committee advised all interested parties of its ruling that persons other than the Applicant, the Executive Director, the Trust and persons who had made written submissions pursuant to section 95 of the Act, would be afforded the opportunity to lodge written submissions only, but would not be afforded the opportunity to appear and make verbal submissions at the Hearing. The Committee notes that in making its determination it has read and considered all written submissions lodged prior to the Hearing.

- 032.** The Committee confirmed at the outset of the Hearing that the plan of the proposed works to be relied upon by the Applicant was the Concept Plan dated 5 July 2019. At the same time, the Committee confirmed with the Applicant that lighting was not proposed specifically to light the proposed multi-purpose sports court, and that the court would essentially be unlit by night.
- 033.** At the outset of the Hearing the Committee noted that late material (received after the Submissions in Reply lodgment date but before the Hearing) had been received from Ms McNicholas and by Clousten Associates, but that the Committee proposed to allow the late material. No party objected to the material being allowed.

ISSUES

- 034.** The following sections are not intended to be a complete record of submissions that were made in relation to the Place to the Committee. It is a summary of what the Committee considers to be the key issues followed by an explanation, where relevant, of the position that the Committee takes on each key issue.
- 035.** Pursuant to section 101(2) of the Act, and following a consideration of all submissions received, the Committee notes that the key issues it has considered in making its determination are as follows:
- the extent to which the proposed works would affect the cultural heritage significance of the Place;
 - the extent to which the permit application, if refused, would affect the reasonable or economic use of the Place; and
 - other matters relevant to the protection and conservation of the Place.

SUMMARY OF ISSUES

Summary of submissions and evidence

- 036.** The Executive Director, while supportive of some elements of the proposed works, submitted that construction of the proposed multipurpose sports court would have an unacceptable and detrimental impact on the cultural heritage significance of the Place due to the proposed incursion of hard surface area and built form (including the related construction of new pathways) in a lawn area historically used for passive recreation. In the Executive Director's view, the replacement court proposed would have an unacceptable impact on the cultural heritage significance of the Place, is ill-sited and the scope of works proposed go beyond a simple relocation of an existing facility, given the larger overall footprint that will result. The Executive Director submitted that the extent of change proposed is too great for the Place and that there are other worthy sites for a replacement court. Further detail in relation to the Executive Director's submissions are referred to later in this determination.
- 037.** The Trust submitted that it agrees with the Executive Director, arguing that the current sporting facilities sit at the edges of the Place and do not substantially impact on lawned areas. The Trust questioned whether drainage issues could be

remedied in situ and agreed with the Executive Director that the Applicant has not demonstrated that alternatives could not resolve those issues.

- 038.** Mr Davis MP submitted that he supports the Executive Director's determination not to issue the permit. He submitted that it was important to recognise changes in the population density of nearby communities and the related demand for open public parkland. Mr Davis' submission was that the proposed works include an overly intrusive structure and that the Place's walkways, trees and lawn areas ought not be compromised. Mr Davis acknowledged the need for sporting facilities in the inner city but referred to Melbourne's garden heritage and its sweeping lawns and gardens in stating that the encroachment represented by the proposed works is not justified.
- 039.** Mrs Drost OAM submitted generally that local residents and users of the Place need more parkland not less and that she agreed with the Executive Director's decision.
- 040.** Ms O'Shea agreed generally with the Executive Director and submitted that the proposed works' hard surface would negatively intrude on the lawned surface of the Place and that there appears to be no justification for it, noting the existence of similar facilities in nearby suburbs.
- 041.** Ms McNicholas agreed generally with the Executive Director and gave her view that the community has a responsibility to protect the Place for posterity and submitted the proposed works should not be permitted. Ms McNicholas called Dr Barry Clark. Dr Clark presented detailed evidence in expressing his opinion that any additional lighting that might feature with the proposed works should be governed by stringent standards to avoid impacts on the Place's native animal habitat and other impacts set out in his statement of evidence.
- 042.** Ms McDonald agreed generally with the Executive Director and submitted that there was no community need for the proposed court and that the Place's sporting activities would normally take place in 'highly distinguished landscape' enclosed by the trees. Ms McDonald submitted that the expanse of the lawns is important to the character of the Place and that the lawn in question is notable for its enclosed, green and soft nature for much of the year. Ms McDonald submitted that the drainage issues central to the removal of court can be addressed in other ways.
- 043.** Dr Hurlimann disagreed with the Executive Director's Permit Refusal and supported the Applicant's position, submitting that the proposed works would facilitate the future use and enjoyment of the Place and that children and play are part of the Place's history and its significance. Dr Hurlimann submitted that the safe and reasonable use of the Place by schools would preferably require the relocation of the sports court away from danger and submitted that the proposed works would not have a detrimental impact on the Place. Dr Hurlimann submitted that a refusal would result in a less optimal outcome for the Place.
- 044.** Ms Quirk agreed generally with the Executive Director and submitted that the introduction of the sports court surface was contrary to the community's need for open space and that the subject site should be retained as lawn.
- 045.** The Applicant, relying principally on the evidence of Ms Gray and Mr Raworth, submitted that the cultural heritage significance of the Place would not be adversely affected by the proposed works, referring in particular to the Executive Director's support for the landscaping and drainage elements of the proposed works and submitting that the new low-rise built forms of the proposed sports court would not result in detrimental impact to the Place. The Applicant submitted that the proposed relocation of the sports court is for an ongoing, current and reasonable recreational use of the Place. The Applicant further submitted, in response to the Executive Director, that an alternative location for the new sports

court would not be countenanced and would not be suitable. The Applicant relied on the evidence of Mr Lorimer and Mr Noyce in submitting that the proposed improvements of the Pasley Street North entrance and the proposed drainage and landscape remediation works should be characterised as works which are necessary to continue the historic and reasonable use of the Place. Further detail in relation to the Applicant's submissions is referred to later in this determination.

- 046.** Mr Widdowson agreed generally with the Executive Director's position and submitted generally that the proposed works would be detrimental to and contrary to the character of the Place.
- 047.** In his written submission, Mr McSweeney generally supported the position of the Executive Director and of the Trust.
- 048.** Ms Robins agreed generally with the Executive Director and submitted that the proposal's highly intrusive design would result in further loss of public open space. Ms Robins submitted that a new sports court should be located on the current footprint of the existing basketball court to *'deliver a more sensitive outcome which respects the significant cultural heritage of Fawkner Park'*.
- 049.** Mrs Bird's submission agreed generally with the Executive Director and argued that there are already enough sports facilities at the Place for the various sports played there, and that no more facilities should be considered in order to preserve the character of the Place.
- 050.** Mr Butcher submitted that MSYRG supports the Applicant's proposal on the basis that the proposed new Pasley Street North entryway would enhance that part of the Place, that the proposed court would be compatible with the heritage values of the Place. Mr Butcher submitted that the proposal generally resolves a number of existing problems with drainage and the amenity of the Place for nearby residents. Mr Butcher noted in particular that MSYRG support for the proposed court was somewhat conditional on the Applicant's assurances that it would not feature nighttime lighting.
- 051.** Ms Armstrong-Conn of the Pasley Street Residents Group generally agreed with MSYRG and submitted her support for the proposed works, including on the basis that the current site of the asphalt court was unsightly and congested.
- 052.** Mr Gibbons' submission supported the Executive Director's position and submitted that the proposed works are intrusive, unnecessary, and detrimental to the aesthetics of the Place, Mr Gibbons also suggested that the approval of the proposed works may result in other interventions and fabric of a greater scale.
- 053.** Mr Page Taylor submitted his support for the Executive Director's position on the basis that the proposal would reduce green open space and compromise the aesthetics and cultural heritage of the Place, submitting that there is no need for, and better alternate locations to the multipurpose court than the proposed location.
- 054.** Mr Hayes MLC's submission generally supported the Executive Director's position and submitted that the proposal to add additional paths and a new court would add further pressure to the demands on the Place by users and that the loss of vegetation and green space would have a detrimental impact on the Place.
- 055.** Dr Drummond, Ms Bell and Ms Garay each submitted their general support for the Executive Director's position. They submitted generally that the lawn and treed areas of the Place must be preserved as green open spaces rather than being subject to hard surface intrusions as proposed by the Applicant.
- 056.** Mr Sowerwine submitted that all four of the Executive Director's grounds for refusal were valid and that any one of the grounds should have led to the refusal

of the permit application. Mr Sowerwine supported generally the position taken by the Trust, particularly in relation to the form of the proposed paths.

- 057.** Dr Marriott's submission generally argued against any impacts on the aesthetic values and the amenity of the Place, expressing shock that the values of the Place would be compromised by an '*industrial style*' development.

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

Summary of submissions and evidence

- 058.** The Executive Director submitted that the impacts caused by the size, form and appearance of the sports court have been under-represented by the applicant and submitted that another location should have been (and should be) considered. The Executive Director submitted that the Applicant's submissions and the evidence relied upon place undue emphasis on views from within the avenues of the Place across the lawns. The Executive Director submitted that the character, topography and sense of openness from within the lawns themselves contribute to the significance of the Place at a State level, and submitted that gradually breaking up areas of lawn through works such as those proposed starts to diminish the significance of the setting of lawn spaces. The Executive Director argued that it is the sum total of the effect of the rings, seats, skateable bank, grass mounds and the combination of increased intensity in the proposed location which is not acceptable. The Executive Director argued that heritage was not meaningfully considered in proposing the replacement of an extended area of interior lawn with hard landscaping and that the sports court should be retained at the perimeter of the Place, consistent with other hard surfacing within the Place. On the question of the reversibility of the proposed works, the Executive Director submitted that contrary to the Applicant's position it would not be practical to reverse the construction of such a surface and return the lawn to its original state.
- 059.** The Applicant submitted, relying on the expert evidence of Mr Raworth and Ms Gray in particular, that the proposed sports court would not detrimentally affect the cultural heritage significance of the Place. The Applicant rejected the Executive Director's suggestion in submissions that there should be a reduction in the size of the sports court and referred to Ms Kiss's evidence on the importance of physical spaces for children's play.
- 060.** The Applicant relied on the evidence of Mr Lorimer in submitting that the current fabric (that would be prospectively subject to the proposed works) is aesthetically underwhelming and functionally compromised, and that the current experience of a visitor to the Place is a poor one. Mr Lorimer's evidence was that the dominant views across lawns from north of the subject site are not focused on the sports court and that the highest impacts on the lawn views are confined to the immediate vicinity. Mr Lorimer's evidence noted the lack of significant proposed vertical elements and the improved aesthetics of the proposed new entrance. The Applicant also relied upon the evidence of Mr Callow that poor soil conditions may affect tree health.
- 061.** Mr Noyce's evidence was that the current drainage situation at the Pasley Street North entrance is inadequate and problematic. Mr Noyce's evidence was that, if the proposed works go ahead, surface water including runoff during smaller flooding events would naturally drain to the west, reducing the flooding impact on the area of the existing basketball court and playground, and allowing current upstream catchment to flow around this area.
- 062.** In her evidence, Ms Gray stated that not all lawns at the Place make an equal contribution to the significance of the Place and in distant views the changes

represented by the proposed works would not be very obvious. Ms Gray's evidence was that the primary views are those from within the avenues as enclosed views, with secondary views from within lawns or across lawns. Ms Gray acknowledged that from the north and at closer range the works would be visible. Ms Gray's evidence included that the Place has a character whereby the visitor expects to see sporting infrastructure of various sorts and that the sports court would be of relatively low impact. Noting her view that the proposed works would also represent a large improvement to the entrance, Ms Gray's evidence was that the proposed works contemplate relocating a non-lawn area to a new location. Her evidence was that the proposal is a localised, balanced change that is consistent with the identified State-level heritage values of the Place.

- 063.** Mr Raworth gave evidence that the proposed works do not represent an adverse impact on the cultural heritage significance of the Place and that, even if the proposed works were perceived to have an adverse impact, the secondary step to take into account would be the reasonable and economic use together with the extent of heritage impact. Mr Raworth asked the Committee to consider that if it forms the view there is some form of negative impact, to also consider the reasonable and economic use question. Mr Raworth's evidence was that the proposed use is 'very' reasonable. Mr Raworth described the proposed sports court as visible but low key, and stated that effectively an area of hardstand is being relocated from one area to another. The proposed site is, in his view, less prominent as it is away from the entrance and within a lawn area that is in the same localised part of the Place. Mr Raworth concludes that in his view the heritage impact is neutral at worst and that the proposed change is modest and a represents a reasonable balance.

Discussion and conclusion

- 064.** In the Committee's view, the extent of impact on cultural heritage significance of the proposed works must be assessed having regard to the subject area as well as the whole of the Place. The Committee has had regard to the submissions of the Executive Director in support of elements of the proposal, namely the drainage and entrance improvement works, the removal of the existing asphalt court, installation of garden and rock mulch beds, paving and paths and new landscape design elements at the Pasley Street North entrance.
- 065.** The historic values embodied in the Place include its historic place as an 'outer ring' park with playing fields, sporting and other amenities in addition to parkland. The Committee notes the evidence provided by Mr Raworth and Ms Gray on the historic and contemporary uses of the Place derived from these uses. On the evidence provided by both the Executive Director and the Applicant, the Committee agrees that, given the history of the Place for passive and active recreation and play, a continuation of these uses is compatible with the Place's historic values and is supported in various documents and plans provided to the Committee.
- 066.** Many submitters opposed to the Proposal referred to encroachments on areas identified for 'passive recreation', whereas the Committee notes that areas specifically designated in the Masterplan for 'passive recreation' at the Place would not be encroached upon by the Proposal.
- 067.** Social value is attributed to the Place in the Conservation Analysis (Raworth), although it does not form part of the Statement of Significance. The Committee notes that while social value may be a relevant criteria in assessing the reasons for the Place's significance, it has not been assessed at a State level, and has not been determinative.

- 068.** The aesthetic values of the Place are embodied in both the park layout and the mature avenues of exotic trees of different species that divide the Place into lawns. The Committee considers that the aesthetic values of the Place are embodied in both the landscape character (axes, views, open space) and the physical fabric (lawns, trees, paths) and the impact of the proposed works should be assessed against both the character and fabric.
- 069.** In respect of trees the Committee accepts the evidence of Mr Callow that some mature trees in the vicinity of South Yarra Primary School are currently under stress from soil compaction and that the works proposed to the Pasley Street North entry are designed to mitigate this risk. The Committee also notes that the trees proposed to be removed in the location of the proposed court do not have high heritage value owing to their relatively young age. In respect of the paths, the Committee has considered that physical changes to some surfaces are proposed for paths H & N and new paths proposed that intersect with existing paths G, H & N.
- 070.** The Committee accepts evidence provided by Ms Gray and Mr Raworth on the evolution of landscape character in this area, and the analysis of views provided by Mr Lorimer. Many submissions refer to this highly valued landscape character. The proposed works envisage changes to landscape character in a localised area of the Place. While recognising that the open lawns are an integral part of the landscape character of the Place, the Committee also observed that previous interventions in this area include the playground adjacent to South Yarra Primary School.
- 071.** Central to the Committee's considerations are whether there are unacceptable impacts proposed by the works on the locality and on the Place as a whole. The Committee's view is that there is localised impact which will change the landscape character in terms of some near and some longer views as discussed by Mr Lorimer and Ms Gray. These changes appear to be in the same order of magnitude that the playground has changed landscape character. While acknowledging localised impact, the Committee's view is that the works do not have a high impact on the Place as a whole.
- 072.** The Committee notes the views of the Executive Director and the Applicant, as well as submissions that support the removal of hardstanding and the basketball court at the Pasley Street North entry and the reinstatement of lawn and trees. The Committee agrees that this represents a better outcome for the park entrance, however it does not enter into considerations of balancing outcomes of adverse and positive impacts as proposed by Mr Raworth. The primary concern is of impact on heritage values, whether or not these are 'balanced'.
- 073.** The Committee considered the location of sporting facilities and other amenities at the perimeter of the Place, as noted in the reasons for refusal by the Executive Director. The Committee accepts that this is generally true, but it also finds there are exceptions in the form of several amenities buildings throughout the Place and a contemporary toddler playground in a central location. The argument that the relocation of the basketball court should be to an area close to the periphery did not, in the Committee's view, have a strong heritage basis.
- 074.** The Committee noted the evidence of Mr Raworth that any consideration of impact on the Place should take into account that the Proposal is to essentially relocate an existing area of non lawn to another area within lawn 14 and that there are 24 lawn areas across the park.
- 075.** The Committee has carefully assessed the impact on cultural heritage by the introduction of new paths that interrupt the legibility of the formal path layout. This layout is an attribute of both historic and aesthetic value. The Committee has formed the view that any interventions to existing paths and new paths have the

potential for heritage impact, and that the primacy of the original path layout ought to be maintained. The Committee has had regard to the evidence of Ms Gray in providing mitigating solutions to path width, number and materials.

- 076.** Many submissions are concerned with the visual impact of the proposed new basketball court. The Committee has been assisted by the visual impact analysis in Mr Lorimer's evidence, the visualisations provided by the Applicant and the analysis of views provided by Ms Gray. The Committee agrees that certain views will be impacted by the proposed basketball court but has formed the view that the nature of that impact is localised, adjacent to the adjoining playground and low in scale.
- 077.** The issue of the scope of works for the proposed new court being greater than that of the existing basketball court is addressed in the grounds for refusal by the Executive Director. The Committee agrees with the Applicant that the increased scope of works and area is minor rather than significant.
- 078.** The issue of placement of the new basketball court adjacent to Avenue G, a significant element of the Place, is also a factor in the Executive Director's grounds for refusal. New paths are planned to intersect with Avenue G between the juvenile elm trees. The Committee agrees with the arguments of visibility of the court from various points along this avenue. In particular the committee agrees with Ms Gray's evidence that long views along the avenue are minimally impacted while acknowledging that impact is greater for shorter views. Physical impact with Avenue G is restricted to the path intersections where the Committee notes that primacy of the historic path network should be maintained.
- 079.** With respect to the argument about alternative locations that might have been considered, it is not the Committee's role to assess a suite of hypothetical proposed works in a location that is not subject to the permit application, or review of the refusal. The Committee is not able to make a determination in relation to the suitability, or not, of works at a prospective different location.
- 080.** The Committee was not persuaded by arguments made by the Executive Director, essentially, that the retention of all remaining subject lawn area is necessary to preserve the cultural heritage significance of the Place. Those arguments may have had more force if the northern and eastern lawns at the Place were all substantially intact and did not feature built form of one type or another in different locations. However, that is not the current situation. In the Committee's view, the proposed works will have a minimal adverse impact on the cultural heritage significance of the whole Place, including its lawns and open areas. In this respect, the Committee was persuaded by the evidence of Mr Lorimer and Ms Gray. The Committee agrees with the Applicant and the Executive Director that the works around the Pasley Street North entrance are not considered to have any adverse heritage impact on the Place.
- 081.** In the Committee's view, the location and proposed surface of the sports court would not lead to unacceptable impacts on the lawn areas or sense of open space in the surrounding Place. In the Committee's view, the impact on the aesthetic values of the Place of the sports court and its surrounds will be comparable to the impact of the adjacent built form of the playground, notwithstanding the cumulative impact of change in this location.
- 082.** The Committee's view is that the height of the surrounds of the proposed sports court is similar to the walls of the existing contemporary toddler playground.
- 083.** The Committee does not accept the Executive Director's contention that the proposed works are not easily reversible. Indeed, the Committee notes the Executive Director's support for the proposed removal of the existing basketball court is evidence of this very reversibility – i.e it is more than theoretical in this case and at this particular part of the Place. In any event, the proposed works

must be assessed based on the current condition of the Place. The concept of reversibility does not form a strong argument either for or against the consideration of heritage impact.

- 084.** After considering all submissions and inspecting the Subject Site, the Committee agrees with the position of the Permit Applicant, as informed by its expert witnesses, that the proposed works would not have a detrimental or unacceptable impact on the cultural heritage significance of the Place.

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

Summary of submissions and evidence

- 085.** The Executive Director accepted that sports and recreation are reasonable pursuits or uses of the Place, including basketball. The Executive Director submitted, however, that the siting, appearance, multiple uses and location of the sports court make it an unreasonable proposal in terms of the impact on significance. The Executive Director submitted that the proposed 'intensified' use in a location where much change would be required to facilitate the new sports court is an unreasonable one. The Executive Director submitted that alternative options have not been properly explored and that the Applicant should discharge its responsibility to maintain and preserve the Place, especially given the exemptions from the need for a permit that facilitate management of the Place. The Executive Director submitted that the requirements of the *Crown Land (Reserves) Act 1978* do not conflict with the provisions of the Act in this respect and that the refusal of the application would not unreasonably impact on the Applicant's responsibilities.
- 086.** The Applicant submitted that if the Committee came to the view that the proposed works would have an adverse or detrimental impact on the cultural heritage significance of the Place, the considerations relating to the importance of playground and recreational spaces as reasonable uses of the Place should still support the case for the proposed works.
- 087.** The Applicant countered a number of submissions lodged that refer to 'skaters' and 'a skate park'. It submitted that skateboarding and other forms of recreation are already localised uses within the park. The Applicant asked the Committee to consider the current active use of the space – by children, during school hours and that the proposed works would not be introducing a new 'foreign' use as very active sports are played in that location. The Applicant argued that the area is identified for play, next to a school, next to a playground and submitted that it is an important, reasonable and legitimate use that needs to be preserved and enhanced.
- 088.** The Applicant recognised that the subject site is a grassed area and used by the wider community but submitted that the current space is very actively used by children. Ms Kiss' evidence was that the highest use in this part of the park is by children for play space and active use is a legitimate use and an important historical element of the significance of the Place.

Discussion and conclusion

- 089.** Many of the concerns raised by the Executive Director and other submitters related to the reasonable use of the Place as a whole, rather than the reasonable use of the subject site. Many submitters expressed concerns about the change from passive or unstructured active use to structured active use. The Committee considers that these concerns are legitimate ones for a park, irrespective of its heritage value, and may carry more weight when combined with heritage

considerations. It is the Committee's view that the Place will continue to provide many areas for passive recreation and unstructured activities within its 41 hectares. The Committee has formed the view that proposed changes to the subject site are reasonable.

- 090.** The Committee notes that the Executive Director was supportive of the majority of the improvement, drainage and landscape works that were part of the proposed works. The Committee also notes that the Executive Director was supportive of the relocation of the sports court, including to a lawn area, but not the subject lawn area. The Committee does not share the Executive Director's concern with the proposed location of the new sports court, for reasons already given.
- 091.** The Committee agrees with the Applicant that the refusal of the Application would affect the reasonable use of the subject site for recreation and, by extension, the reasonable use and management of the Place as a public park. The Committee finds the written evidence of Mr Callow and Ms Kiss persuasive. The Committee agrees that the use of the area of the proposed works for sports, play and recreation is an important, reasonable and legitimate one that needs to be preserved and enhanced through proactive management, such as that represented by the proposed works.

OTHER MATTERS RELEVANT TO THE PROTECTION AND CONSERVATION OF THE PLACE

Summary of submissions and evidence

- 092.** The Executive Director was supportive of elements other than the relocation of the sports court, including the drainage improvement works and improvements to the Pasley Street North entrance, and agreed that the location of the proposed works needs renewal and careful management.
- 093.** The Applicant submitted that a failure to undertake the proposed works would result in an impaired Place and that the proposed works aid the protection of the Place and improvement of the Pasley Street entrance. The Applicant submitted that this entrance, unlike other entrances in the Place, is anything but attractive. The Applicant relied on the evidence of Mr Noyce and Mr Callow in submitting that the cultural heritage significance of the Place, and its protection and conservation, would be enhanced by the proposed improvement works. The Applicant submitted the proposed works would result in improved outcomes for the Place. It relied on Mr Noyce's evidence that there is a fundamental issue with water flow in this area, that the current basketball court is causing an obstruction to flow, and that the removal of the existing court and improvement of drainage with the use of a swale system would be a beneficial outcome for the Place.

Discussion and conclusion

- 094.** Having regard to the evidence of Mr Noyce and Mr Callow, the Committee agrees with the Applicant that the proposed works, including the relocation of the sports court, would result in improved outcomes for the Place. The Committee considers the evidence is clear that the sports court is acting as a barrier at a low point in the topography and that the resultant issues are not consistent with the objective of conserving the Place. The Committee notes the Executive Director is also supportive of the removal of the current basketball court and its return to lawn.
- 095.** The Committee is of the view that the relocation of the basketball court and the removal of hardstanding will improve the presentation and aesthetic appeal of the Pasley Street North entrance and contribute to the protection and conservation of the Place.

- 096.** In relation to the drainage works, the Committee accepts Mr Noyce's evidence in relation to the proposed depressed stormwater retention area and the preference for a swale system to more efficiently take water flow to an effective collection point. His recommendations to simplify the layout are accepted. The Committee has had regard to this issue accordingly in respect of the Permit Conditions.
- 097.** In relation to issues of pedestrian safety and cyclists adjacent to South Yarra Primary School the Committee notes the importance of managing these aspects through landscape interventions that have minimal impact on heritage values and fabric. In this regard the provision of bluestone cobbled rumble strips is considered to be acceptable.
- 098.** The Committee considers that the new garden beds 'crossing over' the paths are undesirable as they tend to conceal rather than reveal the formal path layout which is an attribute of aesthetic significance. The Committee has had regard to this issue in respect of the Permit Conditions.

DETERMINATION PURSUANT TO SECTION 108(7) OF THE ACT

- 099.** Having regard to the above reasons, the Committee has determined that a permit should be granted in respect of the Permit Application, subject to conditions.

PERMIT CONDITIONS

- 0100.** The Executive Director proposed 'without prejudice' draft permit conditions. The Applicant provided its comments including opposing multiple conditions on the basis that the proposal does not require modifications.
- 0101.** For reasons set out in this decision multiple changes to the plans sought by the Executive Director are not required. For example, it is unnecessary to remove the skateable edges, running track or netball circle. The conditions adopted by the Committee accord with its findings. Of note are:
- The need to confirm the removal of the path from the Pasley Street entrance to Avenue G via the southern side of the new court – the path is not shown on the Landscape Plan but is included in the civil plans.
 - Changes to reflect the recommendations of Mr Noyce, that the Committee accepts, based on Figure 11 of his evidence. This includes removal of the garden beds across pathways.
 - A lighting plan that confirms the basis of the proposal put to the Committee, that conduits for future court lighting are to be removed.

CONCLUSION

- 0102.** 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)(c) of the *Heritage Act 2017* to set aside the determination under review and make another determination in substitution for it, by issuing Permit No. P29324 with conditions (**Attachment 2**).

ATTACHMENT 1

SECTION 101 OF THE HERITAGE ACT 2017

101 Determination of permit applications

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

ATTACHMENT 2

PERMIT NO. P29324

THE PERMIT ALLOWS:

- Improvement works to the Pasley Street entry zone at Fawkner Park including the removal of the existing basketball court, the construction of a new sports court further to the west of the existing facility, landscaping works, drainage improvement works, selected tree removals and new tree planting works and the construction of a new pathway providing access to the new sports court facility.

THE FOLLOWING CONDITIONS APPLY TO THIS PERMIT:

Fawkner Park Court Relocation, Drainage and Associated Works

PERMIT CONDITIONS

- 1) Prior to the commencement of any works approved by this permit the following must be submitted to, and approved in writing by the Executive Director, Heritage Victoria (Executive Director). The plans must be generally in accordance with the civil works plans CI-1000 to CI-1072 Version T1 dated 31/10/2018 and landscape plan L105 RevA: Landscape Materials Plan Option B, but modified to show:
 - a) Revisions to the drainage concept plan consistent with the recommendations made by Mr M Noyce in his expert evidence dated 19/2/20 depicted in Figure 11 including:
 - i) removal of the depressed stormwater detention area between Path N and Path H;
 - ii) the use of shallow box culverts instead of pipes for drainage;
 - iii) the use of shallow infiltration trenches.
 - b) Removal of the path from the Pasley Street entrance to Avenue G via the southern side of the new court;
 - c) A Lighting Plan for all new lighting that removes reference to conduits for future court lighting;
 - d) A Tree Protection Management Plan prepared by an arborist that sets out measures for tree protection for all trees located near or otherwise potentially affected by the approved works;
 - e) A Construction Management Plan that includes a sequencing program for the approved works including installation of temporary infrastructure, all services, work site layout and protection methods for existing trees, pathways and grassed areas;
 - f) Revised Drainage Design, including Stormwater Drainage and Irrigation Plan to include the amendments to the plans required by conditions 1a) and b);
 - g) A Ground Treatment Inventory detailing materials and colours for all proposed permanent elements such as paving, retaining wall/seating, garden beds and plantings.

- 2) Prior to installation of any signage and associated signage infrastructure which is not already identified on the plans approved under condition 1, or is otherwise exempt, a Signage Plan must be approved in writing by the Executive Director.
- 3) Prior to installation of any lighting, and BBQ supply, approved in writing by the Executive Director.
- 4) This permit shall expire if the permitted works have not commenced within two (2) years of the date of issue of this permit and are not completed within four (4) years of the date of issue of this permit unless otherwise agreed in writing by the Executive Director.
- 5) The Executive Director is to be given five working days' notice of the intention to commence the approved works.
- 6) The Executive Director must be informed when the approved works have been completed.

--End Conditions--