

Heritage Council Regulatory Committee

St Andrews Church Precinct, 15 St Andrews Street, Brighton Vic (H0124)

Hearing – 22 October and 6 November 2020

Members – Prof Andrew May (Chair), Mr Adrian Finanzio, Dr Karen Murphy

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. P31439 with conditions.

Andrew May (Chair)

Adrian Finanzio SC

Karen Murphy

Decision Date – 14 May 2021

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), who lodged written submissions and appeared and made verbal submissions at the Hearing.

BRIGHTON GRAMMAR SCHOOL ('THE APPLICANT')

Written submissions and statements of expert evidence were received from Brighton Grammar School, the permit applicant in this matter ('the Applicant'), represented by Mr Stuart Morris QC and Ms Emily Porter, each of Counsel, who were instructed by Norton Rose Fulbright Australia (Mr Bradley Montag and Ms Sally Macindoe). Mr Morris and Ms Porter appeared and made verbal submissions at the Hearing on behalf of the Applicant and called the following persons, who had lodged statements of evidence with the Heritage Council, to give expert witness evidence:

- Ms Kate Gray, Heritage Architect and Principal - Lovell Chen
- Mr Bryce Raworth, Heritage Architect and Principal - Bryce Raworth Pty Ltd

Mr Morris and Ms Porter also called the following persons, who had lodged statements with the Heritage Council, to give lay evidence:

- Mr Ross Featherston, Headmaster - Brighton Grammar School
- The Reverend Ian Morrison, Vicar – St Andrews Church, Brighton

A written submission in relation to new photomontage material was also received, following the Hearing, from each of Ms Gray and Mr Raworth and from the following person:

- Mr John Sprunt, Principal - Architectus Australia Pty Ltd

INTRODUCTION/BACKGROUND

THE PERMIT REVIEW

01. This proceeding is a review of a determination by the Executive Director to refuse Permit Application No. P31439 in respect of a three-storey development, comprising a two-storey building with rooftop tennis court, in the location of the tennis courts ('the proposal' or 'the proposed building') within the St Andrews Church Precinct (H0124) located at 15 St Andrews Street, Brighton Vic.

THE PLACE

02. St Andrews Church Precinct is bounded by St Andrews Street (south-east), New Street (west) and Church Street (south-west). Buildings located on the site range in age from 1857 through to 1925; the site also features a graveyard (1843). The Old School House building is a symmetrical building of random coursed, locally quarried ironstone with a slate roof, designed in the Gothic Revival style ('the School House'). The church comprises an 1857 bluestone church in the Early English Gothic style and a later design by Louis Williams in 1961 following a fire, re-orienting the church ('the Church'). The parish hall was built to the east of the School House in 1925 and is an arts and crafts-influenced clinker brick building with a symmetrical front façade and broad central gable roof ('the Parish Hall'). The vicarage is located on the site of a prior 1850 church and is a rustic timber structure with hipped terracotta tiled roof. Tennis courts are located on St Andrews Street between the Parish Hall and Brighton Grammar School. The Church buildings are in sound condition and the four main buildings (School House, Church, Parish Hall and Vicarage) and tennis courts are presented in a relatively open, landscaped setting ('the Place'). The Place is included in the Victorian Heritage Register ('the Register') as H0124.
03. The following paragraphs are taken from the 'Statement of Cultural Heritage Significance' for the Place as recorded in the Register:

'What is Significant?'

The St Andrew's Church of England Precinct, Brighton is of historical significance as an extensive and highly intact church complex which has associations with the early history of the Anglican Church in Victoria. It contains a graveyard, school house, church, parish hall, lych gate and vicarage which are all significant and intact contributory elements from the nineteenth and twentieth centuries. Together they demonstrate the development of a significant Anglican church site, which was destined to be the cathedral centre of the proposed Mornington Diocese if the anticipated division of the Melbourne diocese had occurred.

The graveyard at St Andrew's, Church of England, Brighton is of historical significance as an extremely early, pre- gold rush parish church graveyard and as a rare surviving example in suburban Melbourne. Other examples were established later and include Scots Presbyterian Church graveyard, Cambellfield (VHR H0127, 1855) and St Helena Church Cemetery, Greensborough, 1856.

The graveyard at St Andrew's, Church of England, Brighton is of historical significance for the tombstones of early Victorian pioneers and prominent citizens, and their families, contained within it. These include Jonathan B. Were, leading merchant and agent and founder of J. B. Were and Son (d. 1885); Henry B. Foot, surveyor and planner of the Brighton township (d. 1857); William A. Brodribb, pastoralist and politician (d. 1886) and Thomas Higinbotham, chief engineer of the Victorian Railways (d.1880). The retention of a wooden memorial headstone (date unknown) is of significance.

The school house at St Andrew's, Church of England, Brighton is of historical significance as a rare surviving example of a substantial early denominational school building.

The school house at St Andrew's, Church of England, Brighton is of architectural significance as one of the few surviving examples of Charles Webb's distinctive institutional buildings and as a rare example of a building constructed of local ironstone.

The church at St Andrew's, Church of England, Brighton is of architectural significance for the section of building which survives from 1857. This is a fine example of the distinctive ecclesiastical work of prolific Melbourne architect, Charles Webb, who was a parishioner of the church and designed such buildings as the Royal Arcade (1869, VHRH0023) and the Windsor Hotel (1884, H0764) and many churches in Victoria.

The church at St Andrew's, Church of England, Brighton is of architectural significance for the highly intact section built in 1962 and designed by the parishioner and highly prolific church architect, Louis Williams. Williams, who was Victoria's, and possibly Australia's, major ecclesiastical architect of the Arts and Crafts tradition from the 1920s to the 1970s, designed more than 130 churches, including cathedrals, for every diocese in Victoria as well as every State of Australia. As one of his later works in which he designed and supervised every aspect of the job, St Andrew's is considered as amongst his greatest achievements. It has significance as an example of a modern/traditional building, which exhibits both the lightness of modern architecture and the clear expression of its purpose as a church.

The parish hall at St Andrew's, Church of England, Brighton is of architectural significance as an intact and early example of the work of Louis Williams in an Arts and Crafts manner. It presents a particularly fine interior with exposed brick (painted over then sandblasted) and extraordinarily oversized hammer beam trusses which create a highly distinctive character. The lych gate is also a fine example of a structure designed in the Arts and Crafts style.

The church at St Andrew's, Church of England, Brighton is of aesthetic significance for the furniture and fittings throughout the church which were designed by Louis Williams and manufactured by the established firm of Fallshaw and Sons. This extensive and intact assemblage of meticulously detailed, modern timber church furniture is highly significant.

The blue 'polylite' lectern and pulpit panels, aluminium sanctuary uprights, the font, the war memorial organ and echo organ are also of note.

The church at St Andrew's, Church of England, Brighton is of aesthetic significance for the mural created by important artist, Napier Waller and the later bronze sculpture by artist, Guy Boyd of the well known Melbourne Boyd family.'

- 04.** On the evidence before the Committee, the current Statement of Cultural Heritage Significance is an appropriate explanation of the nature and extent of the significance of the precinct and its component parts, and provides a proper and accurate justification for the inclusion of the precinct on the Register, based upon the current state of knowledge as to the history of the precinct and its buildings. Indeed, the terms of the Statement of Cultural Heritage Significance itself were not in dispute, even if there were differences in the emphasis.
- 05.** Accordingly, the Committee considers the Statement of Cultural Heritage Significance as a relevant tool in its consideration of the merits of the application, and gives it appropriate weight.

THE PERMIT APPLICATION

- 06.** On 24 September 2019 the Applicant made a permit application to the Executive Director pursuant to section 93(1) of the *Heritage Act 2017* ('the Act') for a permit to undertake works including the construction of a three-storey building within the extent of registration of the Place, in its north-east, in the location of the tennis courts ('the Permit Application').
- 07.** The Permit Application was for the following works:
- demolition of the existing tennis court pavilion, three tennis courts and associated fences and lights;
 - removal of 11 trees in the courtyard between the tennis courts and the Church; and,
 - construction of part of a two-storey building with rooftop tennis courts including fencing and lighting, and a three-level basement and associated landscaping.
- 08.** The proposal would in fact straddle the north-east part of the Place and an adjacent locally significant heritage place (HO323) which is outside of the Place and owned by Brighton Grammar School.

DETERMINATION OF THE EXECUTIVE DIRECTOR

- 09.** On 6 May 2020, 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:

- *If the application were approved, and the tennis courts replaced with the proposed building, it would result in unacceptable and irreversible detrimental impact on the cultural heritage significance of St Andrews Church Precinct.*
- *The construction of a two-storey building with rooftop tennis courts and a three-level basement and associated landscaping in the proposed location would adversely affect the cultural heritage significance of St Andrews Church Precinct and its setting as it:*
 - *is visually dominant in relation to the existing buildings and precinct as a whole, due to its scale, bulk and materiality;*
 - *adopts an architectural design that is at odds with the visual setting of the adjacent Parish Hall, Church and precinct as a whole;*
 - *erases the legibility of the north-east boundary of the precinct by constructing a singular building form across both the school site and tennis court site;*
 - *physically divides the precinct through the insertion of an external canopy linking the Church, Parish Hall and proposed new development;*
 - *provides limited offset from the Parish Hall and an unsympathetic edge treatment, being the entry to the underground carpark; and*
 - *diminishes the views to the Church and legibility of the precinct from St Andrews Street.*
- *Refusal of the permit application will prevent the works as proposed from being realised. Heritage Victoria accepts that new development to provide for the contemporary needs and revenue required by the Church may be*

appropriate. However, it has not been sufficiently demonstrated that the requirements of the Church could not be met without having such a significant impact on the registered place.

- *The negative impacts of the proposal are not outweighed by the benefits, including the economic benefits.'*

THE PERMIT REVIEW REQUEST

- 011.** On 24 June 2020, the Heritage Council received a request from the Applicant, pursuant to section 106(1) of the Act, 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:
- 1. The proposal is appropriate within the setting of the place and will not have an adverse impact on the cultural heritage significance of the place;*
 - 2. The Executive Director failed to correctly apply s. 101(2)(b) of the Heritage Act 2017 by not giving proper consideration to "reasonable or economic use" matters raised by the permit applicant including the use of the precinct by St Andrews Church, the school and the tennis club and their respective needs;*
 - 3. The proposal will not result in an unacceptable impact on the views to or the legibility of the place;*
 - 4. The scale, materiality and design of the proposed development is appropriate within the setting of the place and has been designed to respond to the heritage character of the place; and*
 - 5. In all the circumstances the proposal is worthy of approval.'*
- 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.

NOTIFICATIONS IN RELATION TO THE PERMIT REVIEW HEARING AND ADVICE IN RELATION TO THE NOVEL CORONAVIRUS 2019 ('COVID-19')

- 014.** On 14 July 2020 the Permit Applicant, the Executive Director and prospective participants were notified that a permit review hearing in relation to the Place was scheduled to be held in October 2020. In August and September 2020 subsequent correspondence advised of rescheduled permit review hearing dates and the permit review hearing was ultimately confirmed for 22 October and 6 November 2020 ('the Hearing').
- 015.** Hearing participants were advised of the impacts of COVID-19 on the conduct of Heritage Council hearings and advised that, in light of Victorian Government public health advice in relation to COVID-19, the Hearing would be conducted by videoconference using the *Microsoft Teams* online platform. Further specific technical guidance on how the Hearing would be conducted was provided.

PRELIMINARY, PROCEDURAL AND OTHER MATTERS

DECLARATIONS OF INTERESTS

- 016.** 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.
- 017.** Mr Finanzio SC declared that, as a result of his ongoing legal practice that he enjoyed professional associations and connections with the barristers appearing in the case, Morris QC and Porter, and also the professional witnesses Mr

Raworth and Ms Gray. Mr Finanzio SC informed the parties that he conducted contested litigation with and against the barristers, and had both called as witnesses and cross-examined the contested witnesses. Finally Mr Finanzio SC informed the parties that, in all likelihood, during the deliberations on this matter he would come into professional contact with one or other or all of the participants.

- 018.** Dr Murphy declared that, as a result of her ongoing archaeology and cultural heritage practice, she has a professional association with Ms Gray and occasionally undertakes cultural heritage work with her, but that she was not engaged in such work with Ms Gray at the time of the Hearing.
- 019.** All Hearing participants were invited to raise any concerns in relation to the above matters, and none were raised.

DRAFT 'WITHOUT PREJUDICE' PERMIT CONDITIONS

- 020.** At the Hearing, the Committee requested that the Executive Director provide draft 'without prejudice' permit conditions. Those draft permit conditions were received and circulated to the Applicant for comment and the Applicant provided comments and suggested amendments in relation to those draft permit conditions.
- 021.** Permit conditions relating to the Place are discussed in paragraphs below.

SITE INSPECTION

- 022.** Following the Hearing and pursuant to State Government COVID-19 advice in relation to gatherings and travel, the Committee had the opportunity to visit and inspect the Place, accompanied only by the Heritage Council Hearings Manager. No submissions were sought, made or received at the time of the site inspection.
- 023.** In the course of the site inspection the Committee made observations. In particular, the Committee observed that, on its inspection, there appeared to be a discrepancy between the way in which the plans depicted the relationship between constituent buildings forming part of the precinct, and the manner in which that relationship had been recorded in the architectural plans, and in particular in the site line drawings. By correspondence dated 26 November 2020 these observations were raised with the parties. The Applicant was invited to consider the position set out in the letter. On 17 December 2020 the Applicant, in accordance with orders made by the Committee, advised that the plans were, in fact, inaccurate. The Committee made further procedural orders, which, in substance, invited the Applicant to circulate plans correctly depicting the spatial relationship between the buildings, and to provide further evidence which addresses the consequence of this difference. All other parties were then provided with an opportunity to resume the hearing, cross-examine the witnesses on the new matter and to make further submissions. No party took up that invitation. This process is set out in more detail below.
- 024.** In cases where the visual appearance of proposed development is to be viewed in a physical context, the accuracy of images depicting the future state is or can be critical.
- 025.** As a general observation, during the course of the hearing this Committee was presented with architectural renderings in the form of photo montages of the proposed development. In questioning from the Committee, Senior Counsel for the school accepted that the renderings of the proposed development were not prepared in accordance with the methodology described in *Austcorp Group v Monash CC (Red Dot)* [2006] VCAT 692. This raised concerns about their reliability, particularly following the discovery of inaccuracies in the architectural drawings themselves. Proponents should take great care to ensure the accuracy

of the visual representations of proposed development, and unless there is a good reason not to do so, the methodology described in the *Austcorp Case* is one that should be followed. In the end the Applicant produced photomontages which meet the criteria set out in *Austcorp*, and in doing so provided a much more reliable basis upon which this Committee could assess the application.

- 026.** These reasons proceed upon the basis of the corrected plans and the photomontages prepared and in accordance with the *Austcorp* decision. The reasons also address in more detail the procedural aspects in the context of the Committee's merits assessment.

SUBMISSIONS ON WHAT THE HERITAGE COUNCIL IS TO CONSIDER IN THE CONTEXT OF A PERMIT REVIEW HEARING

- 027.** An issue arose during the course of the cross examination of Mr Raworth by the Executive Director's representative, as to the proper interpretation of section 108 of the Act. It was said in oral submissions (and later in a written submission furnished on behalf of the Executive Director) that this Committee was not permitted to have regard to the fact that the Bayside Council had directed the grant of a permit for the proposed development to the extent that the Bayside Council was empowered to under the planning scheme. The permit issued by the Bayside Council related to adjacent land in the heritage overlay under the local planning scheme.
- 028.** The Executive Director, in his decision, did not take the grant of the planning permit by the Bayside Council into account as he might have, under section 101(3). On the review before us, the Executive Director contended that his decision not to do so precluded this Committee from any consideration of the matters set out in section 103(a)(ii) to ignore the effect of the proposed development on the cultural heritage significance of adjacent land subject to a heritage control under the planning scheme.
- 029.** It is important to put the issue in context. The proposed redevelopment of the school site does include land on the Register and adjacent land which is subject to a local planning control HO 323. At [39] and [40] of his evidence, Mr Raworth said:

'Under the Act, consideration must also be given to (a) the Heritage Overlay provisions of the local planning policy and (b) the impact of the proposed development on any neighbouring heritage place (in the present case being Brighton Grammar School). The proposal gives rise to no adverse heritage impact on the adjacent Heritage Overlay place and has been prepared with appropriate regard for the purposes and design guidelines of the Heritage Overlay, as set out in Clause 43.01 of the Bayside Planning Scheme and with the associated local heritage policy established in Clause 22.05

Further to this, Bayside City Council determined that the proposed development would have no appreciable impact on the Heritage Overlay and have issued a notice of decision to grant a permit (Application No. 5/2019/515/1). Council's heritage advisor was of the opinion that the proposal does not adversely impact on any important aspect of the heritage place in accordance with the decision guidelines of the Heritage Overlay.'

- 030.** In substance, the Executive Director contended that these matters were not raised on this review, because he had not considered them to be relevant to his decision. In other words, though the Executive Director was empowered to have regard to these matters under section 101(3)(a)(ii), he did not. It was said that

section 108(8) operates to limit what this Committee can consider to the matters set out in section 101(2), and that any matter which was not considered by the Executive Director as contributing to his decision that might otherwise have arisen under section 101(3) was outside the scope of this review. In substance, it was put that the decision not to consider matters under section 101(3) was not reviewable.

- 031.** The right to review is conferred by section 106. Nothing in the language of that section suggests anything other than that the whole of the determination of the Executive Director is amenable to review. The Executive Director's powers to make a decision is made under section 102. It is the whole of that decision which is amenable to merits review.
- 032.** It is important to put that approach in context. If in the course of his consideration the Executive Director wrongly fails to have regard to something that is patently relevant to the exercise of his discretion he would be making a legal error that could be cured in proceedings seeking Judicial Review in the Supreme Court. This includes a wrong decision to ignore a factor arising under s101(3).
- 033.** The effect of the submission of the Executive Director before us is that where the Executive Director wrongly chooses not to have regard to the matters set out in section 101(3), the only way to cure the defect is in Judicial Review. This alone gives us reason to doubt the correctness of the submission.
- 034.** Although this argument was raised in a context where the adjacent land is protected merely by a heritage overlay under the planning scheme, the Executive Director's approach would, if correct and applied consistently, prevent consideration by the Heritage Council on any review of the effect of development on adjacent land, where that land was also on the Heritage Register. This limitation would arise, on the Executive Director's submission, on the sole basis that he did not consider it to be relevant.
- 035.** The better view is that in conferring a power of review in relation to the whole of the determination of the Executive Director, the legislature clearly intends that the merits of the Executive Director's decision, taken as a whole, will be the subject of administrative review.
- 036.** The structure of section 101, and the interaction between s101(2) and (3) is important. Section 101(2) prescribes the matters that the Executive Director must take into account in considering an application. Section 101(2)(f) provides that the Executive Director must have regard to any matters relating to protection or conservation. It is a general invitation to take into account matters "related to" the conservation or protection of the place which is the subject of the application. In heritage conservation terms the physical context of the place can be very important. The impact of development on registered land the subject of an application for permit on the significance of adjoining places of cultural heritage significance can affect the overall significance of the individual place the subject of the application. In many cases, the interrelationships of significance between registered land the subject of an application for permit and adjacent land are often symbiotic.
- 037.** Properly construed, the purpose of section 101(3) is to expressly empower the Executive Director to have regard to those symbiotic interrelationships. That is to say, section 101(3) is intended to overcome any argument that considering the effect of the development on the cultural significance of land in the adjacent physical context of the subject land is not permitted. In our view, such a consideration is permitted by section 101(2)(f) because the consideration "relates to" the conservation or protection of place the subject of the application. Section 101(3) does no more than overcome any argument to the contrary by expressly empowering such a consideration.

038. All that said, as these reasons reveal, though relied upon by Mr Raworth in his evidence, the effect of the proposed development on the cultural heritage significance of the adjacent properties is not in any way determinative in our consideration of this application. We have addressed the matter here because it was raised in argument and because it goes to a question of general importance as to the conduct of these reviews.

ISSUES

039. 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.

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

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

SUMMARY OF ISSUES

Summary of submissions and evidence

041. The Executive Director submitted that the permit refusal was appropriate and should be upheld. The Executive Director submitted that, while the subject site would be an appropriate location for a building, the current proposal would have an unacceptable and detrimental impact on the cultural heritage significance of the Place due to its height, its three-storey form with minimal offset, the proposed increased intensity of use and because of the loss of the currently visually permeable views from the east, in particular, to the centre of the Place. The Executive Director considered the impacts of the proposal on the Place as a whole in coming to a view about the impact of the scale and siting of the proposal and submitted that the result of the proposal on the relationship between the buildings of the Place would be inappropriate. Further detail in relation to the Executive Director's submissions is provided later in this determination.

042. The Applicant, relying on the expert evidence of Ms Gray and Mr Raworth and the lay evidence of Mr Ross Featherston and Reverend Ian Morrison, submitted that the cultural heritage significance of the Place would not be adversely affected by the proposal and would not result in detrimental impacts on the Place. The Applicant's submission was that any adverse impact of the proposal on the cultural heritage significance of the Place is either non-existent or modest but also that in the case detrimental impacts were found to exist by the Committee, it should consider countervailing factors relating to reasonable use of the Place and prospective severe impacts on the ability of each of the school, Church and tennis club to provide for the community. The Applicant submitted that the proposal contemplates a reasonable and ongoing use of the Place by the affected owners, occupants and land users. Further detail in relation to the Applicant's submissions is provided later in this determination.

CORRESPONDENCE AND FURTHER INFORMATION AND SUBMISSIONS IN RELATION TO A NEW PHOTOMONTAGE AND VISUAL AMENITY STATEMENT

Summary of correspondence, submissions and further material provided

- 043.** Following the Hearing and its site inspection, the Committee noted some inconsistencies between the views that were apparent to its members from Church Street and the photomontages that had been relied upon by the Applicant at the Hearing. On 26 November 2020 the Committee requested that the Applicant provide a rendered perspective or photomontage showing a view to the subject site from the perspective of a pedestrian standing on the Church Street footpath, opposite and across the road from the School House.
- 044.** On 17 December 2020 the Applicant provided a new photomontage and revised sightline diagram prepared by Scharp and Architectus, respectively ('the new photomontage material'), confirming their compliance with the principles set out in *Austcorp Group v Monash CC (Red Dot)* [2006] VCAT 692.
- 045.** The Committee circulated the new photomontage material on 23 December 2020 and in doing so stated its initial view in correspondence that:
- section drawings considered at the Hearing may not have been accurate;
 - more of the elements of the proposed structure than had been countenanced (specifically the top of the tennis court perimeter fencing, lights and a greater height of mesh) may in fact be visible from Church Street;
 - the new photomontage material may raise inconsistencies between it and documents considered at the Hearing and raises the possibility that more infrastructure associated with the tennis courts would be visible above the parapet of the School House and roofline of the Parish Hall.
- 046.** Given that Hearing participants did not initially indicate that these elements would be visible from Church Street, the Executive Director and the Applicant were each invited on 23 December to lodge additional written submissions in relation to the new photomontage material, along with any additional evidence, and were also invited to indicate whether or not they wished any witnesses to be recalled to give evidence and be cross-examined.
- 047.** On 5 February 2021 the Applicant provided additional information and material from Ms Gray, Mr Raworth and Mr Sprunt. Mr Sprunt, for Architectus, provided a written statement as follows:

Description

The error in the drawing relates to the misinterpretation of the ridge height to the School House building.

The original survey identified two points along the roof line, RL-A and RL-B, but did not identify what those points related to. As such, the ridge height was originally modelled as the true "top of turret" height (RL-A), being the highest point, instead of "ridge height" (RL-B). The turret sits atop the ridge as a vertical extension to the bluestone gable - as demonstrated in the photograph attached.

As such, there is a discrepancy between the "top of turret" height and "ridge height" of approx. 1700mm. This means that the ridge height should be modelled 1700mm lower for the purpose of establishing a sight line from Church Street to the proposed development.

Revised drawing

Please review the amended drawing “Section through Church Street” which shows the comparison between the incorrectly modelled School House and the correct model (shown in red). The revised drawing is consistent with the photomontage prepared by Scharp.

Additionally, key levels from the adjacent Parish Hall have been highlighted in the original survey excerpt and sectional drawing for your information. We have reviewed the Parish Hall modelling compared to survey data and confirm that it has been modelled and scaled correctly.

We do not believe there have been any other mis-interpretations or errors of recording of survey material used to develop the drawing set. We also confirm that the proposed development has been accurately depicted and scaled in all drawings.’

- 048.** In responding to the issues raised by the new photomontage material, the Applicant relied on a statement of Ms Gray who stated that her evidence in relation to the impacts of the proposal would not be altered by the new photomontage material, and reiterated her view that the visibility of the proposed new building in this view would not pose a significant impact to the heritage values of the School House (historical and architectural) or the Place as a whole, based on the limited extent of fabric that would be viewed in the backdrop, the visually lightweight nature of that fabric and the distance between it and the School House roof ridge.
- 049.** The Applicant also relied on a statement of Mr Raworth who stated that the impact is incidental and minor rather than major and that the visibility of the fencing above the School House roofline would not be visually dominant or overwhelming in impact. Mr Raworth stated that particular emphasis was not, and should not be, placed upon the particular viewpoint from Church Street, that important and proximate views within and around the Place will not be impacted in any unforeseen or inappropriate manner and that the new photomontage material does not lead him to change his evidence as to the appropriateness of the proposal in part or whole.
- 050.** The Executive Director’s representative responded stating that the Executive Director did not wish to make a submission in relation to the new photomontage material.

Discussion and conclusion

- 051.** The Committee was surprised that the Executive Director did not wish to make a submission in response to the new photomontage material and related issues. The new photomontage material raised new matters not explored at the hearing that were potentially important to a consideration of the matter, in particular the issue of the impacts of the proposal on the Place. Having given the Executive Director the opportunity to address these matters, the Committee proceeds on the basis that nothing arising out of the new material changed the Executive Director’s position.
- 052.** In relation to the inconsistencies in the photomontage material noted by the Committee following the Hearing, the Committee’s view is that the visual material that had been relied upon risked the potential underestimation of the visual impacts on the Place of the proposal, in particular impacts of the tennis court fencing, from the Church Street view. The Committee does not accept Mr Raworth’s diminution of the potential impacts on that aspect.
- 053.** The Committee was satisfied, however, following the circulation of the additional material, further statements of evidence of Ms Gray and Mr Raworth and the statement of Mr Sprunt, and following the Executive Director’s response that he would make no submissions in relation to the matter, that it was not necessary to

recall witnesses to give expert evidence or make them available for cross examination.

- 054.** The Committee reiterates the critical importance of the provision of accurate drawings, graphics, photomontages and other visual material in matters such as this, and recommends that such material be prepared by Heritage Council hearing participants in accordance with the principles set out in *Austcorp Group v Monash CC (Red Dot) [2006] VCAT 692* to avoid any future potential for error.
- 055.** The Committee makes further comment and gives its conclusion in relation to the visual and other impacts of the proposal in the paragraphs below.

THE EXTENT TO WHICH THE PROPOSAL WOULD AFFECT THE CULTURAL HERITAGE SIGNIFICANCE OF THE PLACE

Summary of submissions and evidence

- 056.** The Executive Director submitted that the proposal is an ill-sited development of an inappropriate scale, design and materiality that would have an unacceptable and detrimental impact on the cultural heritage significance of the whole of the Place. The Executive Director's submission was that the cultural heritage significance of the Place would be unacceptably impacted by the height of the three-storey form with its minimal offset, by the increased intensity of use that will result and by the loss of currently visually permeable views to the centre of the Place and resultant impacts on the legibility of the Place. In reply to the Applicant's submissions as to the extent of impact, the Executive Director submitted that the Applicant had a too narrow view of the elements that contribute to the cultural heritage significance of the Place that limited the Applicant's assessment of the impacts of the proposal.
- 057.** The Applicant submitted that any adverse effects of the proposal on the cultural heritage significance of the Place are minimal, that the proposal is part of the next steps in the evolution of the Place, that the proposal adopts the footprint of the existing built form and that it is sympathetic to the Parish Hall and other built form that will remain to the rear of the proposed building. The Applicant accepted that views through the Place from St Andrews Street would be negatively impacted, but submitted that any adverse impacts from other views would be minimised by the tennis court netting being the only part of the proposal projecting above the height of the Parish Hall, that this netting would be largely covered by vegetation and by the fact that the primary views of the Place from primary viewpoints, in particular of the Church, are largely unaffected.
- 058.** The Applicant disagreed with the approach taken by the Executive Director in respect of the consideration of the Statement of Cultural Heritage Significance as the 'starting point' and the consideration of the impacts on the whole of the Place rather than impacts on the subject site and adjoining buildings. The Applicant submitted that the starting point should be the extent of registration, including the question of the land within the Place that would be primarily affected by the proposal. The Applicant submitted that the Committee's key consideration must be the effect of the proposal on the registered buildings of the Place, in particular any adverse impacts on the Church and the Parish Hall. The Applicant argued the Parish Hall would be primarily affected by the proposal. The Applicant submitted that the difference between a proposed building of one, two or three storeys in the subject location is 'marginal at best', that views to and through the subject location would be shielded by vegetation, shade cloth and fencing and that any adverse impacts presented by the proposal would not be much greater than what is already there.

- 059.** In relation to the Parish Hall, the Applicant noted the proposal would result in more landscaping, less carparking and tennis courts replaced by a modern building that interpreted and respected existing cultural heritage values. The Applicant accepted that the impact of the proposal on the Place would be greater than what is currently present but submitted that, relying on the evidence of Ms Gray and Mr Raworth, the relative significance of the Parish Hall in the context of the Place is less than that of the Church and the impact of the proposal is therefore relatively low on the Place as a whole.
- 060.** Ms Gray's evidence was that the proposal was acceptable and would not detract from an appreciation of the cultural heritage values of the Place or the relationship between its buildings, that the existing tennis courts and pavilion are neutral rather than significant elements of the Place, and that retention of open space at the subject site is not critical to the significance of the Place. In relation to the Executive Director's grounds as to visual dominance, Ms Gray agreed the proposed new building would be a substantial addition but noted that a large section of the new building would be located outside of the extent of the Place. Ms Gray's evidence in relation to impacts on the Parish Hall was that the proposed building would either be largely concealed or well set back, would have a relatively limited presence in primary views (including from Church Street) and would not block significant views to the Parish Hall from St Andrews Street or from within the Place.
- 061.** From within the Place, Ms Gray's evidence was that the scale of the proposed new building and its relationship with the Church is acceptable and that there would be no sense the new building would overwhelm the Church. Ms Gray's opinion was also that that the visual impact of the canopy structure on the Place would be minimal. Ms Gray's evidence was that the proposal reflects the evolution of the Place. Ms Gray agreed with the Executive Director that the proposed building would block some existing views to the west elevation of the Church through and over the existing tennis courts, but her evidence was that those distant and partial views are considered secondary to the views from Church and New Streets. Ms Gray acknowledged that the proposed new building would block or limit some views to the spire from St Andrews Street and Black Street, but her evidence was that any new building on the tennis court site of two levels or more would do the same and that the spire would still remain visible from many other points through the immediate area. In response to the Executive Director's submission that the tennis courts and pavilion contribute to the significance of the Place, due to being a low intensity development allowing for important views and interpretation, Ms Gray noted that the Place's Statement of Cultural Heritage Significance makes no reference to the subject site's contribution in this way.
- 062.** Mr Raworth gave evidence that, although the proposal would result in visual impacts on the buildings of the Place, the proposal is acceptable and does not represent an adverse impact on the cultural heritage significance of the Place. Mr Raworth's evidence was that, even if the proposal were perceived to have an adverse impact, the impacts of a refusal on the reasonable and economic use of the Place would override those concerns. Mr Raworth's evidence was that the proposed development would have an 'appreciable positive impact' on the Place and the subject site, aligning with and supporting the historic and social use of the Place over time. In relation to the extent of registration for the Place and the demarcation between the school and Church, Mr Raworth's view was that the boundary is not historically significant, and therefore the proposal would not be an 'inherently inappropriate outcome'. Rather, Mr Raworth's position in any case was that the proposal would 'enhance' the connection between the Church and school and its siting would not impair the legibility of the Place as a complex of interrelated buildings. Mr Raworth's evidence was that the boundary between the

tennis courts and school 'is of no particular importance', while the extent of registration for the Place in the Register reflects a statutory boundary rather than the original and historic extent of the Church reserve.

- 063.** In relation to the design of the proposed new development, Mr Raworth's evidence was that the scale and bulk of the proposed building would allow it to be read as a two-storey building and that the proposed façade, broken up into series of elements, would result in the impression of the scale and bulk of the proposed building being reduced by the articulated frame elements. Mr Raworth's evidence was that the proposal has an 'ecclesiastic and institutional' quality and is an appropriate response to the subject site in terms of its interface to the street. Mr Raworth stated that 'the cloistered character of the Church precinct' had been interpreted in a contemporary manner with a carefully considered and contextually responsive design and, in relation to the scale of the proposal, Mr Raworth's evidence was that it reflects the existing built forms and character of the Place, being comparable in height to the Parish Hall, with only the 'visually lightweight' elements associated with the tennis courts above that height. In relation to the proposed location, Mr Raworth's evidence was that the subject site is an area of 'mixed character' and 'relatively low sensitivity' and that the proposal would have minimal impact on the fabric of other buildings of the Place. As far as any impacts the proposal might have on views to the Parish Hall, Mr Raworth stated they would be mitigated by the use of set backs to the side and rear, while key views to the west and south of the Church would remain unaltered. Mr Raworth's evidence was that, while sightlines to the Church from St Andrews Street would be closed off, these views are of an 'incidental nature'.
- 064.** In response to the Executive Director's grounds of visual dominance, Mr Raworth's evidence was that the proposal's materiality does not contribute to a visually dominant outcome and that the use of a subdued palette of materials and finishes and concrete materiality aligns with the Church's rendered elements and 'is no less appropriate than face brick or stone'. Mr Raworth discussed the proposal in the context of other 'modern institutional buildings of scale' at other places in the Register, including at the Melbourne Grammar School (VHR H19) and Mandeville Hall mansion (VHR H676). Mr Raworth in his evidence assessed these developments as having comparable heritage impacts to the proposal, insofar as they do not require the removal of an existing heritage building, or obstruct a row of uniform heritage buildings. Mr Raworth also gave evidence as to a high degree of diversity in the age, materiality and architectural style of buildings at the Place, assessing that the proposed development would not prevent the Place from being understood as the collection of interrelated buildings from different eras that it is. It was also the evidence of Mr Raworth that the architectural style of the proposed development was influenced by that of the Parish Hall, including features that were 'interpreted in a contemporary manner'.
- 065.** Mr Raworth's evidence was that a positive impact of the proposal would be the all-weather access between the Church and the hall, describing the canopy link as 'visually and physically permeable' and providing a sense of connectivity between the Church and the hall, rather than preventing access to other sections of the site or dividing the site. Mr Raworth also gave evidence that the setback of the proposed development would ensure that the Parish Hall retains 'primacy', although Mr Raworth assessed the Parish Hall as subservient to the Church in terms of historical significance. Mr Raworth's evidence was that the significant views to the Church from New Street and Church Street were a key consideration of the development proposal, but that in views from St Andrew's Street, the Church does not have a strong presence.

Discussion and conclusion

- 066.** The Place is a large site featuring a variety of built fabric dating to various periods, a variety of landscaping and much open space. The subject site cannot be viewed from all points from within or immediately outside of the extent of the Place. In the Committee's view, therefore, it must assess what the impact of the proposal would be, having regard in particular to parts of the Place that are primarily affected, including the subject site and registered buildings immediately adjacent, as well as any other impacts on the cultural heritage significance of the whole of the Place. The Committee agrees broadly with the Applicant in this respect. The Committee considers that the values of the Place are embodied in both the landscape (including pathways, views, open space) and the physical fabric (especially the Church, School House and Parish Hall) and that the impact of the proposal should be assessed against both the character of the Place and its fabric.
- 067.** Many submissions concerned the visual impact of the proposed third storey tennis court fences. The Committee was assisted by the new photomontage material and finds that, aside from the impacts on the views from St Andrews Street, views from Church Street will also be impacted by the proposal. The Committee has also formed the view, however, that the impacts of the proposal on views to the whole Place from St Andrews Street and Black Street are minimal in nature. Moreover, the focus of attention on this aspect was something of a distraction from what ultimately came to be the key issue in the Hearing, being the apparent inaccuracy of visual material and the extent to which the proposed netting or other structural elements might be visible above the ridge line of the School House from Church Street (and the extent to which they could compromise the ability to read that building within the precinct as was intended). The Committee was surprised, indeed, that this did not become the focus of Heritage Victoria's argument.
- 068.** The Committee notes that, subsequent to the Hearing, Mr Raworth contested any notion that the view from Church Street should be emphasised, asserting that it is 'not critical or even especially helpful', maintaining that there are other more important views of elements of the Place, including from within the grounds. However, Mr Raworth had initially given written evidence that:
- 'The principal and most significant sightlines are from New Street looking east towards the original 1850s nave, from the entry forecourt at the southern end of the 1962 church and from Church Street looking north/north-east towards the 1962 church. It has been a key consideration of the development proposal to minimise impacts on these significant vistas'.*
- 069.** The Committee agrees with Mr Raworth's earlier evidence that the views from Church Street to the Place are some of the principal and most significant sightlines. The School House presents to Church Street, and the view from the opposite side of Church Street is one which gives the largest opportunity to visually survey these buildings in particular and to appreciate the broader sweep and extent of the precinct of the Place in general. The Committee also considered that, relying on the evidence of Mr Raworth and Ms Gray, the Applicant's efforts to minimise the importance of views of the proposal from St Andrews Street implicitly maximised the importance of views from these other vantage points, whatever side of the street they may be. In any case, the Committee is satisfied that the visual impact of the proposal, as appreciated from Church Street, on the School House and the broader Place would be relatively minor, partly because as one moves around the Place, any impact of the fencing above the roofline becomes invisible or diminished in visibility. The Committee also notes it is not considering the visual impacts of a 'modern institutional

building of scale', as per Mr Raworth's terminology, on the Church Street view and for that reason considers the impact as relatively minor.

- 070.** The Committee has also had regard to the submissions of the Executive Director in support of elements of the proposal, specifically the location (in and of itself) of a proposed new building. That the location of a new building at the subject site would be palatable, in principle, to the Executive Director has influenced the Committee's view. The Committee agrees in part with the Executive Director in this respect, that the location of the proposal (as opposed to other locations within the Place) reduced the likelihood of any unacceptable adverse impacts on the Place as a whole.
- 071.** The Committee turns to the question of the massing and form of the proposed building. The Committee notes that the Executive Director's submissions tended to accept that a new building (albeit of two storeys) at the subject site could be supported on cultural heritage grounds. The Committee considers that the Executive Director's in principle support for a building at the subject site does not accord with concerns also expressed about the impact of the proposal on views through the Place from St Andrews Street. The Committee has carefully assessed the impacts on cultural heritage significance of the introduction of new built fabric which does interrupt views to and through the existing open spaces (for example from St Andrews Street through the Place). The Committee accepts that the proposal would affect the relationship between existing buildings at the Place to a degree. While the Committee acknowledges a more localised impact on the view, particularly immediately from the east of the subject site, the Committee's view is that the works do not have an unacceptable impact on the Place as a whole or as a precinct.
- 072.** The Committee observes that there often exists a misunderstanding that the presence of a building within an extent boundary would necessarily equate to the cultural heritage significance of that element at a State level. It is the Committee's view that the purpose of including a collection of highly significant buildings in a precinct, such as at the Place, is to ensure that what happens on land not occupied by significant buildings does not compromise the significant buildings that remain. The critical issue, therefore, was to understand the relationship between the highly significant buildings within the precinct, rather than any relationship between non-significant buildings outside the precinct and the buildings of the Place, or between buildings of lower-level significance within the Place and the proposed building. The critical point for the Committee, therefore, is the question of the relationship between the School House and the proposed building and related views. The Committee is of the view that on the basis of the limited and lightweight nature of material that would be seen above the roof line from some vantage points, the impact of any visibility of the new building would be relatively minor and would not significantly impact the cultural heritage values of the School House. The determination of the Committee is made on the basis that any detrimental visual impacts on the Place would be minimal. The Committee agrees with the evidence of Ms Gray that, despite the change to the Place and to the relationship between the buildings that the proposal represents, the location of the proposal is acceptable and the proposal itself would not diminish the overall appreciation of the cultural heritage values of the broader Place.
- 073.** The Committee notes that arguments were made by the Applicant as to some beneficial impacts, principally in relation to benefits that would result from improved landscaping and reduced carparking at the subject site. The Committee determines that no case was established as to benefit or positive impacts on the cultural heritage significance of the Place that would result from the proposal, and that there was no evidence to suggest that any contribution made by the school

in this particular regard, goes in any way to preserving or protecting buildings that are of state-level cultural heritage significance.

- 074.** After considering all submissions and inspecting the Place, the Committee agrees with the position of the Applicant, as informed by its expert witnesses, that the proposal 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

- 075.** The Executive Director accepted that the uses of the Place are reasonable uses of the Place and that updates to school and Church facilities may be required, but submitted that the evidence of the Applicant in relation to economic use did not advance its case. The Executive Director submitted further that the proposed intensified use of the Place represented by the proposal would lead to an unacceptable degree of impact on the Place. The Executive Director noted the evidence of Mr Featherstone, which included that a less expensive option than the proposal could resolve the requirements of the school, and submitted that any changes to the Place should be directed by the cultural heritage significance of the Place and informed by a Conservation Management Plan. The Executive Director submitted to the Committee that it should adopt a conservative approach in relation to the building proposed and approve a reduced proposal at the subject site.
- 076.** In relation to the consideration of the reasonable or economic use of the Place, the Applicant submitted that the Committee should consider that, if the proposal were not allowed, the permit refusal would radically impact both the Church and the school. The Applicant's submission was that the land at the Place is valuable and important to both the school and the Church. Further, the Applicant submitted that the evidence it led demonstrated that no modification of the proposal was necessary and that any modification (particularly in terms of height) would constrain an ability to provide three tennis courts. The Applicant's submission was that the permit should be granted subject to conditions and that, even if the Committee were to come to the view that the proposal would have an adverse or detrimental impact on the cultural heritage significance of the Place, the considerations relating to the reasonable and economic uses of the Place should still support the case for the proposal.
- 077.** Mr Featherston outlined the history of the school and its relationship to the Place, and provided information in relation to ongoing land holdings, land lease arrangements and a Memorandum of Understanding (MOU) between the school and the Church, through which the school provides the Church with a range of services, including cleaning, landscaping, bookkeeping and administrative support, financial auditing and IT services. Mr Featherston gave evidence of a 99-year lease for Church land including the subject site and expressed his view that while the school 'has purchased privately held land in the past, the nature of the [locale] is such that large land parcels suitable for school campus developments are extremely limited, if non-existent, and prohibitive in cost.' Mr Featherston described the proposal as a 'unique opportunity' for the School to increase its teaching space, including art, science, drama and community engagement spaces to replace current spaces in 'poor condition'. Mr Featherston's evidence was that, if approved, the proposal would consolidate the economic relationship between the Church and the school, increase that connection, enhance the school's profile and provide a greater number and broader range of teaching spaces.

- 078.** Reverend Morrison’s evidence detailed the relationship between the Church and the school, noting that the school ‘is vital to [the Church’s] ongoing ability to continue to serve the community.’ In relation to the financial position of the Church, including the Church’s Audited Financial Statement to 30 September 2019 and income and expenditure report to 31 August 2020, Mr Morrison stated the Church is in a ‘poor financial position’ and that it was currently unable to undertake significant upgrades to buildings or new developments on its land. In relation to the proposal, Mr Morrison’s evidence was that, if approved, the proposal would deliver significant economic, social, functional and financial benefits to the Church, including by providing a function space for hire, and that the creation of a new Parish Hall would financially benefit the Church and mitigate recent losses in patronage by improving the Church’s ability to raise funds. Mr Morrison’s evidence was that the proposal, if approved, would likely generate approximately \$49,000 in funds annually for the Church but also that other benefits, including the ability to provide a welcoming space for parishioners, outweighed the potential financial benefits.

Discussion and conclusion

- 079.** The State-level historical values embodied in the Place include its history principally as a place of worship and as a place of education. The Committee notes the evidence provided by Ms Gray and Mr Raworth on the historic and contemporary uses of the Place derived from these uses. The Committee accepts that, given the history of the Place, a continuation of these uses is reasonable and compatible with the Place’s historic values. The Committee notes the Executive Director’s submissions that a building (albeit of two storeys) at the subject site would be acceptable and also recognises that, effectively, the proposal would allow a continuation of the three key uses currently enjoyed by users of the site by churchgoers, students and tennis players.
- 080.** In this case the dispute was not so much over the development of the land *per se* but rather over the extent or scale of development. The difference between the parties was one additional level. The question was whether the refusal (or modification of the proposal by the reduction of a level) would affect the reasonable or economic use of the Place.
- 081.** The Committee has concluded that the proposed development would be acceptable in its own right, and notes that the Applicant does not need to succeed on this ground for the permit to be granted. That said, had this been the sole or primary basis for consideration, the Committee was not persuaded on the evidence that the extent of the proposed development was a justified factor relevant to the economic use or the place.
- 082.** The statutory test under section 101(2)(b) depends upon an assumption that a refusal of the proposed development would affect the economic use of the place. The language implies that the “effect” with which we are to be concerned is a negative one. The evidence did not establish that a refusal of the proposal would affect the economic use of the place in a way which would independently militate in favour of approval.
- 083.** The Applicant made arguments as to the various benefits of the proposal to the Church and to the school, respectively. The Committee finds itself unable to place significant weight upon the benefits that are said to flow to the Church arising from the development. Those benefits do not appear to the Committee to be especially generous, or important in the overall maintenance of the Church or its continued use. Equally, the Committee was not convinced that a refusal of this particular proposal would have a significant effect upon the economic use of the registered land. The proposal here is intended to augment the school. The school is largely located outside the Place. The use of land within the Place would no

doubt preserve the school land for other uses, but s101(2)(b) is not concerned with the economic use of land outside the Place.

- 084.** In a similar way, the Committee accepts that, in broad terms, the proposed development supports an existing use which is partially located on the Place. In that sense the use is reasonable. That said, section 101(2)(b) requires consideration of whether the proposed use embodied by the development for which permission is sought is reasonable. In this case, given the position of the parties, the question is whether the reasonableness of the tennis court use and upper level, by itself, justifies the proposal. Had we not been convinced that the visual impact of the proposed development was acceptable, we would not have approved the proposed development on the basis that the reasonableness of the tennis court facility alone justified approval under section 101(2)(b).

DETERMINATION PURSUANT TO SECTION 108(7) OF THE ACT

- 085.** 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

- 086.** Following the Hearing, the Executive Director supplied a set of 'without prejudice' draft permit conditions in relation to the proposal, and the Applicant provided its comments and preferences in the form of a 'tracked changes' version of same. The Committee considers the majority of the Applicant's suggestions in relation to permit conditions to be reasonable.
- 087.** The Committee has considered all submissions made in relation to permit conditions for the Place. The permit conditions determined by the Committee are attached at **Attachment 2** and accord with its findings.

CONCLUSION

- 088.** 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. P31439 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 proposal or activities; or
 - (ii) issue the permit for some of the proposal 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. P31439

THE PERMIT ALLOWS:

- Demolition of existing tennis court pavilion and three (3) tennis courts and associated fences and lights and removal of eleven (11) trees and construction of a two-story building with rooftop tennis courts (including fencing and lighting) and a three-level basement and associated landscaping.

THE FOLLOWING CONDITIONS APPLY TO THIS PERMIT:

PERMIT CONDITIONS

1. Prior to the commencement of any of the works approved by this permit, detailed design drawings must be submitted to the Executive Director, Heritage Victoria, for written approval and once endorsed becomes part of the permit. The drawings must:
 - a. include details of the method of attachment of the undercover link between the Parish Hall (B3) and Church (B2); and
 - b. include a final materials and colour schedule for the new development.

Any changes to the endorsed plans must be approved in writing by the Executive Director.

2. Prior to the commencement of any works approved by this permit, a Construction Management Plan (the Plan) must be submitted to the Executive Director, Heritage Victoria, for written approval and once endorsed becomes part of the permit. The Plan must:
 - a. include a sequencing program for the approved works;
 - b. detail any temporary infrastructure and services required;
 - c. detail the advice of a suitably qualified and experienced structural engineer on appropriate protection methods for the Place, including the Church, graveyard and Parish Hall, before and during the undertaking of the works;
 - d. detail the advice of a suitably qualified and experienced heritage consultant as to the current condition of the Church and Parish Hall including any existing damage and the state of any particular aspects of those buildings that are likely to be affected by the permitted works, and appropriate protection measures to protect those buildings;
 - e. include a work site layout plan and a tree/vegetation management and protection plan prepared in accordance with AS4970 Protection of Trees on Development Sites.
3. Prior to the commencement of any works approved by this permit, the name of the heritage consultant, with demonstrated built heritage conservation experience, engaged to fulfil the requirements of conditions 2, 8 and 9 of this permit, must be submitted for approval in writing by the Executive Director, Heritage Victoria.

4. Prior to the commencement of any works approved by this permit, a Tree Protection Management Plan for all trees located near or otherwise potentially affected by the approved works, including landscape works (such as hard paving and fencing), must be submitted for approval in writing by the Executive Director, Heritage Victoria.
5. This permit shall expire if the permitted works have not commenced within two years of the date of issue of this permit, or are not completed within four years of the date of issue of this permit unless otherwise agreed in writing by the Executive Director, Heritage Victoria.
6. The Executive Director, Heritage Victoria is to be given five working days' notice of the intention to commence the approved works. Details of the head contractor, registered building surveyor and project manager must be provided.
7. Approved works or activities are to be planned and carried out in a manner which prevents damage to the registered place / object. However, if other previously hidden original or inaccessible details of the object or place are uncovered, any works that may affect such items must immediately cease. The Executive Director, Heritage Victoria must be notified of the details immediately to enable Heritage Victoria representatives to inspect and record the items, and for discussion to take place on the possible retention of the items, or the issue of a modified approval.
8. At the completion of all works approved by this permit (including works required by the conditions of the permit) and before the expiration of the permit, the following must be approved in writing by the Executive Director Heritage Victoria:
 - a. a final dilapidation report for the Parish Hall and Church that compares the condition of the buildings pre-work and post-work and includes recommendations for any repair works required to rectify any damage that might have occurred because of the adjacent development;
 - b. when approved by the Executive Director, Heritage Victoria, the report will be endorsed as part of this permit and all recommendations must be implemented within the permit validity period.
9. At the completion of works approved by this permit (including works required by the conditions of the permit), and before the expiration of the permit, a final project report must be submitted to the satisfaction of the Executive Director, Heritage Victoria. The final project report must include:
 - a. a summary of how and when each of the conditions of the permit was satisfied;
 - b. a full documentation of the changes which have occurred at the Place, including documentation of any significant material which has been removed, altered, revealed, or excavated from the Place.

The Executive Director, Heritage Victoria must be informed when the approved works have been completed.

---End Conditions---