



Heritage Council Registrations and Reviews Committee

Christ Church Complex

14 Acland Street and 1 St Leonards Avenue, St Kilda (H0996)

Permit Review Hearing – 16, 17 & 28 May 2019

Members – Ms Jennifer Moles (Chair), Ms Louise Honman and Mr Rueben Berg

DETERMINATION OF THE HERITAGE COUNCIL

Affirm determination under review – After considering all submissions received in relation to the permit review, and after conducting a hearing pursuant to Section 108 of the *Heritage Act 2017*, the Heritage Council has determined, pursuant to Section 108(7)(a), to affirm the determination under review and refuse to issue Permit No. P28298, in respect of the Christ Church Complex located at 14 Acland Street and 1 St Leonards Avenue, St Kilda.

Jennifer Moles (Chair)
Louise Honman
Rueben Berg

Decision Date – 5 August 2019

APPEARANCES/SUBMISSIONS

EXECUTIVE DIRECTOR, HERITAGE VICTORIA

Submissions were received from the Executive Director, Heritage Victoria ('the Executive Director'). Ms Emily McLean, Manager Statutory Approvals – Heritage Victoria, appeared on behalf of the Executive Director. Ms McLean was assisted by Ms Sheree Morrison, Senior Heritage Officer.

ELAN CORP PTY LTD

Submissions were received from Elan Corp Pty Ltd, the applicant for the permit and requestor of the review ('the Permit Applicant'). The Permit Applicant was represented by Mr Jeremy Gobbo QC and Ms Emily Porter barristers, instructed by Rigby Cooke Lawyers.

The Permit Applicant provided statements of expert evidence from Mr Jim Gard'ner of GJM Heritage Pty Ltd and Mr Peter Lovell of Lovell Chen Pty Ltd and lay evidence from Mr Kenneth Spackman, Chief Executive Officer of the Melbourne Anglican Diocesan Corporation ('MADC'). Mr Spackman's evidence was provided on behalf of the Melbourne Anglican Trust Corporation ('MATC') the owner of the property. Mr Gard'ner, Mr Lovell and Mr Spackman all were called to give evidence and were made available for questioning by other participants in the hearing.

PORT PHILLIP CITY COUNCIL

Submissions were received from Port Phillip City Council ('Port Phillip'). Mr Damian Dewar, Manager Strategy and Design, appeared on behalf of Port Phillip, assisted by Mr David Helms, Heritage Advisor.

ADDITIONAL HEARING PARTICIPANTS

Submissions were received from the following persons who also appeared at the hearing:

- Mr Daniel Bray;
- Mrs Elizabeth Cooper;
- Ms Evelyn Konstantinidis represented by Mr Peter Craig and Mr Robert Buckingham;
- Ms Catie Maher; and
- Mr Peter Treble represented by Dr Catriona Sinclair.

Mr Treble provided supporting statements of expert evidence from Mr Nigel Lewis of Nigel Lewis Pty Ltd and Dr Paul Fox. Mr Lewis and Dr Fox were called to give expert evidence and were made available for questioning by other participants in the hearing.

ADDITIONAL WRITTEN SUBMISSIONS RECEIVED

Written submissions were received from the following persons who did not appear at the hearing:

- Mr Geoffrey Court on behalf of the Anglican Parish of Christ Church St Kilda;
- Mrs Elisabeth Newman;
- The Committee of the Body Corporate for 11 Eildon Road, St Kilda;

- Mr Peter McEwan;
- Mrs Mette Salom; and
- Ms Maggie McDonald.

INTRODUCTION

THE REVIEW

- 01.** This proceeding is a review of the Executive Director's determination to refuse to issue Permit No. P28298 pursuant to section 102(2) of the *Heritage Act 2017* ('the Act'), in respect of land at 14 Acland Street and 1 St Leonards Avenue, St Kilda ('the Review').

THE PLACE

- 02.** The Christ Church Complex, St Kilda is an urban square of approximately half a hectare in area developed with an ensemble of ecclesiastical buildings. It is bounded by Church Square to the northeast, St Leonards Avenue to the southeast, Acland Street to the southwest and Eildon Road to the northwest ('the Place').
- 03.** The Place contains four notable mid to late 19th and early 20th century buildings as well as some more recent buildings in use for church or related purposes. The Application proposes to convert one of the buildings, known as the Former Bishop's Residence, located at the eastern end of the Place with frontage to St Leonards Avenue, to a childcare centre. This building dates from the mid 1850s with extensions from the early 1870s.
- 04.** The Christ Church Community Centre permitted in 2002 ('the Community Centre') is located to the south of the Former Bishop's Residence and further south the current vicarage (dating from 1884) and parish hall (dating from 1914) front Acland Street. The Christ Church building is located in the southwest of the Place with frontage to Acland Street. The church itself dates to 1854-57. To its rear is a large area of open space formerly used as a tennis court in the early 20th century and later as a children's playground.
- 05.** The earliest plans for the Place from 1873 show it divided into three lots. The Church building is sited on a lot occupying approximately the northwestern half of the square, and the former Bishop's Residence occupies a lot comprising the northeastern quadrant of the square. A former school building occupied a lot comprising the southeastern quadrant. This lot is now occupied by the current vicarage and parish hall.

THE CULTURAL HERITAGE SIGNIFICANCE OF THE PLACE

- 06.** The land of the Christ Church Complex was granted to the Church of England in 1855 and named Church Square. The entire square is included in the Victorian Heritage Register ('the Register') as a place of cultural heritage significance to the State of Victoria, being registered place H0996. The extent of registration is shown in the diagram on page 2 of the written submission prepared by the Executive Director, dated 17 April 2019 ('Diagram 0996').
- 07.** The Statement of Significance for the Place includes the following summary of its history:

The Christ Church complex, St Kilda comprises four main buildings: the church, bishop's residence, vicarage and parish hall. Christ church was constructed in 1854-57 to the designs of Purchas & Swyer and enlarged in 1874 and 1881 to the designs of Sydney W Smith. The bishop's residence was built in the 1850s as the original vicarage. In 1884 the present vicarage was constructed and the original building was used for church related activities until becoming

the Bishop's residence in 1987. The parish hall, designed by Richardson and Wood Architects, was built by FJ Fair in 1914...

... Church Square [is] a rare and significant square in the history of town planning in Victoria which demonstrates the importance of the church to the community.

All the buildings on the square are integral and important components of an ecclesiastical group which demonstrates a changing sequence of architectural styles from the early 1850s to the second decade of the twentieth century.

Christ Church demonstrates outstanding craftsmanship in its triangular rose window, said to have been modelled on Lichfield Cathedral; its lofty chancel with richly coloured wall stencilling; its timber trussed ceiling; and its fine and varied collection of stained glass which includes examples of the work of leading stained glass firms and artists in Victoria in the nineteenth and early twentieth century: Ferguson & Urie, William Montgomery and Brooks Robinson.

The material used in the construction of the church is noteworthy as rarely used undressed random coursed sandstone from Point King, Sorrento.

The western rose window is of particular note for its unusual shape. The only other similar example known in Victoria is at St Georges Presbyterian Church, East St Kilda, designed by Purchas in 1877.

The organ is an important element of the church. Built in 1859 by the noted organ builder William Hill of London and enlarged in 1916 by Meadway and Slatterie, it is the earliest documented Hill organ to be exported to an Australian church.

- 08.** The Statement of Significance describes the Place as being of aesthetic, architectural, historical and social significance to the State of Victoria.
- 09.** The above buildings, features and objects are shown on Diagram 2220 (**Attachment 2**). The Former Bishop's Residence is identified as 'B4' on that diagram.

THE PERMIT APPLICATION

- 010.** On 7 February 2018, the Permit Applicant applied to the Executive Director to repurpose the Former Bishop's Residence as a 118-place childcare facility. This would involve internal and external changes to the building and the construction of new buildings, including three pavilions located adjacent to the Former Bishop's Residence, and new fencing to create secure play areas. There would be internal reconfiguration of rooms, and demolition of two non-contributory structures (a late 1980s garage and outbuilding).
- 011.** A 25 space at-grade car park is also proposed immediately to the north or rear of the Church. The car park, which is proposed to be fenced on all sides, would have one-way vehicular access from Church Square and exit to Eildon Road. Direct pedestrian access is proposed to the new centre from the car park. At its closest point the car park fence is proposed to be 2.5m from the Church.
- 012.** The proposed buildings and works require the removal of a number of trees on the land. They include four Cypresses at the Church Square frontage to the Place and two large Peppercorn trees to the south-west of the Former Bishop's Residence.

DETERMINATION OF THE EXECUTIVE DIRECTOR

- 013.** On 1 October 2018, the Executive Director refused to issue Permit Application No. P28298. The following reasons were provided by the Executive Director for the refusal:
1. It has been determined that approval of the application would be of unacceptable detriment to the cultural heritage significance of the Christ Church Complex. Specifically, the proposed internal changes to the Former Bishop's Residence, removal of cypress pines and open space at the rear of the Church, construction of a car park, fencing and the introduction of new pavilions within close proximity to the Church, will negatively impact the integrity and setting of the Former Bishop's Residence and Christ Church Complex.
 2. It has been determined that a less intrusive proposal could provide an appropriate use for the Former Bishop's Residence, and a revenue for conservation works to the Church without the unacceptable detriment outlined in (1) above.

THE PERMIT REVIEW

- 014.** On 27 November 2018, the Permit Applicant requested a review of the Executive Director's refusal to issue Permit Application P28298 and a review hearing. In accordance with section 108(4) of the Act, the Heritage Council must conduct a hearing into the review if a hearing is requested.
- 015.** A Registrations and Reviews Committee of the Heritage Council ('the Committee') was constituted to consider and determine the matter and a hearing was held over three days on 16, 17 and 28 May 2019.

PRELIMINARY AND PROCEDURAL MATTERS

SITE INSPECTION

- 016.** On 15 May 2019, the Committee conducted a site inspection of the Place and surrounds. The Heritage Council Project Officer accompanied the Committee. Access to the Former Bishop's Residence was provided by Mr Lynton Speck of Elan Corp Pty Ltd. No submissions were sought or received at the time of the site inspection.
- 017.** Following the conclusion of the public hearing, the Committee conducted a second site inspection on 4 June 2019, accompanied by the Executive Officer of the Heritage Council.

PLANS UNDER REVIEW

- 018.** Following the circulation of hearing submissions on 18 April 2019, correspondence was received from the Executive Director seeking clarification of the status of the amended plans provided with the expert evidence of Mr Lovell on behalf of the Permit Applicant. The amended plans included a greater setback of the car park to the rear of the Church building with intervening landscaping and different internal and external changes to the Former Bishop's Residence.
- 019.** In response to a request from the Committee, the Permit Applicant stated that while it did not formally seek to amend the plans under review, it accepted the advice of its independent expert and, if the permit were to be issued, it could

include a condition requiring the proposal to be amended to include Mr Lovell's changes.

- 020.** The plans under review therefore remained those lodged with the original Permit Application (plans dated 31 January 2017 and 27 February 2018) and received by the Heritage Council on 7 December 2018.

DRAFT 'WITHOUT PREJUDICE' PERMIT CONDITIONS

- 021.** In accordance with the Heritage Council Hearing Protocol, the Executive Director provided draft 'without prejudice' permit conditions. A revised version of these were provided on 31 May 2019. The draft conditions were made available for comment by other parties and the Permit Applicant within seven and fourteen days respectively.
- 022.** Responses were received from the Permit Applicant, Dr Sinclair and Port Phillip. Dr Sinclair's response included matters beyond the conditions and these have not been considered by the Committee. Port Phillip indicated that they had no comment.
- 023.** The Permit Applicant's comments were received on 13 June 2019. Especially pertinent to the issues to be considered by the Committee, the Permit Applicant resisted a number of conditions including those which would modify aspects of the layout of the development. They included:
- An even greater setback of the car parking from the rear of the Church building (of 10 metres) than proposed by Mr Lovell, use of the setback as open space and removal of the fencing between the car park and the Church building (draft condition 1(e)).
 - A reduction in the footprint of the new pavilions, linking structures and covered terraces so as to improve the view lines between St Leonards Avenue and the Church, and Acland Street and Church Square, and reduce encroachment across original allotment boundaries as depicted on the historical plans of the site (draft condition 1(f)).

SUBMISSIONS

- 024.** A number of submitters indicated concern with the state of disrepair of the Church and Former Bishop's Residence. The Act includes provisions for the maintenance of places on the Register and the Executive Director has powers under the Act to address the issue of owners failing to maintain their properties. It is not the place of this Committee to comment on the history of maintenance at the Place, but rather to consider the impact of the proposed works on the Place as it stands currently.
- 025.** Many submissions from residents and owners in the general neighbourhood expressed concern about the proposed use and works causing additional traffic generation on surrounding roads, and loss of the previous availability of the open space area to the rear of the church building as a children's play area and a place for dog walking and other informal activities by the community. The Committee notes the strong community attachment to the Place and the concern about these effects of the proposed changes. These issues are in the nature of planning considerations, however, and do not relate to the impact on cultural heritage significance. Also, the land is in the private ownership of the church and there is no public entitlement to use the land. Accordingly, these matters are not discussed further in this decision.

- 026.** Some concerns were expressed about the ability of the proponent to run a child care facility, the alleged corporatisation of the Church and the potential use of some of the funds generated by the new use for purposes other than conservation. These are also matters beyond the remit of this Committee and have not been taken into consideration.

SUMMARY OF ISSUES

- 027.** The following section is not intended to be a complete record of submissions that were made to the Committee. It is a summary of what the Committee considers to be the key issues.

- 028.** The key issues for this review were identified as:

- The cultural heritage significance of the Place.
- The extent to which the proposal would affect the cultural heritage significance of the Place, including by changes to the Former Bishop's Residence, loss of trees and the inclusion of car parking and new pavilions on the land. The impact of these works on the appreciation of the layout of the buildings on the square and the effect on views to, through and within the site are also elements of this issue.
- The extent to which the application, if refused, would affect the reasonable and economic use of the Place.

CULTURAL HERITAGE SIGNIFICANCE OF THE PLACE

- 029.** Preparatory to considering the extent to which the proposed works and accompanying use would impact upon the cultural heritage significance of the Place, it is necessary to first clearly understand the basis and nature of the significance of the place.

- 030.** Various documents and evidence relate.

Statement of Significance

- 031.** As noted in paragraph 07 above the Statement of Significance, written in 1997 for the Registration of the Place, refers to its being of historical importance as:

A rare and significant square in the history of town planning in Victoria which demonstrates the importance of the church to the community.

The Statement of Significance also refers to the architectural significance of the Place as a collection of church buildings that:

...demonstrates a changing sequence of architectural styles from the early 1850s to the second decade of the twentieth century.

- 032.** The Statement of Significance does not refer to the significance of the landscape setting of the Place.

Conservation Management Plan

- 033.** In October 1997, a Conservation Analysis and Management Plan for the Place, entitled 'Conservation Analysis & Management Plan, Christ Church Complex St Kilda' ('the CMP') was prepared by Helen Lardner Conservation and Design.
- 034.** The CMP makes observations about the outstanding State-level cultural heritage significance of the Place. It includes:

The land, surrounded on all four sides by streets and named Church Square, is a rare and significant square in the history of town planning in Victoria. It demonstrates the importance of the Church in the 1850s and, as the only known surviving example, demonstrates continuing importance to the community.¹

- 035.** The CMP describes the history of the Former Bishop's Residence as follows (citations omitted):

...in 1852 the sum of 360 pounds had already been raised for a "Parsonage-house" and, by February 1853 this had "reached upwards of 1000 pounds" – a very good sum in those days. Some six years later, in 1859, tenders were called for additions to St Kilda Parsonage. In 1864, Albert Purchas called tenders for further additions and repairs to the Parsonage...

Although a small timber parsonage is shown behind the church on the 1850s Kearney map, there is no evidence that this was ever built. However, the parsonage shown on the 1873 Vardy plans appears to include most of the present building.

On 24 July 1872 Purchas inspected the Parsonage for necessary repairs and prepared drawings and specifications. However, a new architect carried out this work. It was reported that in December 1872 and July 1873 Thomas Watts (Snr), who was in partnership with Sydney W. Smith, supervised repairs and additions to the Christ Church Parsonage. On 30 December 1872 it was noted that 200 pounds had already been raised by the Parsonage Repair Fund. Receipts have survived for work costing about 350 pounds carried out between February and July 1873 by the builder, R.S. Ekins supervised by Watts...

After a new Parsonage was built in 1884 from the designs of the architect Sydney W Smith, the old parsonage was leased to private owners for the next 50 years. For some years it was known as "Lauriston" and fenced off from the other buildings in Church Square. It is shown on the 1980s MMBW Drainage Plan as a substantial residence in a garden setting with extensions on the east side, including a large trellis fernery. There is a curving carriage drive to the St. Leonard's Street entrance.

According to some accounts, the Parsonage lease was transferred back to the church in the early 1920s and, in the 1930s, became a boarding house for the school with a corrugated iron dwelling at the rear (now gone). A 1943 MMBW Drainage

¹ Helen Lardner Conservation & Design Pty Ltd, *Conservation Analysis & Management Plan, Christ Church Complex St Kilda* (October 1997) pg 44 ('CMP').

Plan shows the old parsonage of similar shape and dimensions as in the 1980s plan.

In the 1970s the first parsonage was refurbished and became a Community Health Centre. Since 1987 it has been a Bishop's Residence.²

- 036.** The CMP describes the cultural heritage significance of the Former Bishop's Residence and concludes:

The Bishop's Residence was built in the mid 1850s as the original Parsonage and extended in 1859 and 1864 by Purchas & Swyer. In 1872-73, architect Thomas Watts of Smith & Watts, supervised additions and repairs. It is important as one of the earliest surviving two storey domestic buildings in the Gothic Revival style in Victoria. In 1884 the present Vicarage was constructed, and the original building was leased to private owners for 50 years and then used for church and community related activities until becoming the Bishop's Residence in 1987.³

- 037.** Of the setting of the Former Bishop's Residence, the CMP notes:

The Bishop's Residence is fenced off from the rest of the complex and has a low picket fence to the front on St Leonard's Avenue. It wraps around the corner onto Church Square and then becomes a higher picket fence. A simple wire fence separates it from the courtyard.⁴

- 038.** The CMP recommends the following conservation strategy for the Former Bishop's Residence:

It is important as one of the earliest surviving two storey domestic building in the Gothic Revival style in Victoria. Its form, mass, floor plan and detailing which contribute to the style should be retained. Important features which should be retained include the steeply pitched roofs, boxed bay windows, decorative barge boards, finials, tiled verandah, skirtings, cornice, ceiling roses, raked ceilings, and staircase.

Historically, the residence was used for church and community related activities until becoming the Bishop's Residence in 1987. It is desirable that it be retained as a residence.

Further alterations, if absolutely necessary, should be confined to areas of the most recent changes. These are the kitchen and bathroom areas.⁵

- 039.** Relevant to the present application, the CMP also makes a number of comments and recommendations concerning the setting of the Place as a whole. It includes:

Today the main entry onto the site is from Acland Street through a simple recent gate with brick piers at either side. It provides access to a driveway separating the Vicarage from the Church. The Acland Street boundary of the Vicarage is enclosed by metal tube rail and cyclone fence.

² CMP pg 23-24

³ CMP pg 4

⁴ CMP pg 29

⁵ CMP pg 52

The Acland Street frontage of the Church and the west boundary of the site is not enclosed but marked by the planting of shrubbery. A gravel path leads up to the western façade entry of the Church. At the rear of the site in the western corner play equipment has been located.⁶

- 040.** The CMP in discussing a General Conservation Policy for the Place, includes the following comments on setting:

Street views of the Christ Church complex and its landscape setting and layout should be protected. It is essential that the buildings be seen in a landscape setting. The views to and from the site contribute substantially to the qualities of the Place...

The vistas from all roads surrounding the complex should be maintained.⁷

- 041.** The CMP also includes commentary on the siting of new structures on the Place:

Limited development of new structures⁸ is permitted on this site as shown on the accompanying plan provided that:

- *new structures are of diminutive scale compared to existing buildings;*
- *sited in a location clearly removed from the historic fabric of the existing buildings;*
- *sited so as to retain significant vistas onto Church Square and between the buildings; and*
- *screen planted to reduce their visual impact.*

Additions to existing buildings should be sited to replace recent additions and to have minimal impact on the existing historic fabric and views into the site⁹.

- 042.** In relation to car parking, the CMP indicates that it should generally not be allowed except for individual residences, it should be shielded by screen planting, not hard paved and not be located around the perimeter of the Church building¹⁰.
- 043.** The CMP includes a plan¹¹ identifying a location on the site for future development (including parking) between the Former Bishop's Residence and the Church Hall. This area is generally within the southeastern quadrant of the land to the rear or north of the current vicarage and church hall. The Community Centre has been developed on part of this area.

Submissions and evidence

- 044.** The Executive Director referred to the Statement of Significance in describing the significance of the Place and submitted that while this document assists with the understanding of the significance, it is not considered to be a comprehensive statement of the heritage values associated with the Place. The Executive

⁶ CMP pg 29

⁷ CMP pg 7

⁸ The Community Centre was not yet constructed

⁹ CMP pg6

¹⁰ CMP pg 49

¹¹ CMP following pg12

Director submitted that, rather, the CMP is comprehensive and authoritative and should be relied on in determining the Permit Application.

- 045.** The Executive Director submitted that the proposal conflicted with the Conservation Policy of the CMP, particularly in relation to new development, use, setting, parking, desirable actions and the specific policies relating to the Former Bishop's Residence.
- 046.** The Permit Applicant submitted that while the CMP is relevant and useful, it cannot dictate the acceptability of the current proposal, being some two decades old.
- 047.** Mr Gard'ner's evidence for the Permit Applicant was also that the CMP is outdated and fails to take into account the current layout, condition and conservation requirements of the Church. He further commented that the CMP is not a statutory document and therefore cannot be relied upon for decision making under the Act.
- 048.** Mr Lovell's evidence on behalf of the Permit Applicant, was that while it should be recognised that the CMP is now 20 years old and in need of updating, the broad intent of the Conservation Policy is still relevant.
- 049.** Mr Treble supported consideration of the CMP, submitting that while the current proposal acknowledges the CMP and has made some effort to minimise impacts on the cultural heritage significance of the Place, there was a clear disconnect between the policies of the CMP and the outcomes of the proposal.
- 050.** It was Mr Lewis's evidence for Mr Treble that the proposal would impose an extremely adverse heritage impact on the significance and understanding of the original church allotment at the Place. The assessment of Mr Lewis aligned with the evidence given by Dr Fox who provided the Committee with his updated Statement of Significance for the Place and concluded that a holistic approach is required to safeguard the cultural heritage significance of the entire Place not just individual spaces, an approach that the Permit Applicant, in Dr Fox's opinion, had failed to take.
- 051.** Mrs Cooper submitted that the Permit Applicant had relied heavily, and often selectively, on both the Statement of Significance and the CMP in developing the current proposal and as such, both documents should be given weight in the determination of the Application.

Discussion

- 052.** The Committee recognises that neither Statements of Significance nor CMPs are documents which are mentioned in the current Act and thus arguably carry no statutory weight as was asserted. Nevertheless, the Committee appreciates that these documents have played fundamental roles in conservation management practice for decades and that they provide the key bases for understanding the significance of places and their conservation.
- 053.** In this respect the Committee notes that the participants in this hearing all placed some reliance upon those documents or aspects of them.
- 054.** The Committee considers that they are documents which potentially can assist in exercising the discretion required under section 101(2)(a) of the Act.
- 055.** The Committee accepts that both the Statement of Significance and the CMP for this Place are of some considerable age and that development has occurred on the site since they were prepared. Economic circumstances and expectations may have also changed. This does place some restriction on their usefulness in

helping understand how the application would affect the cultural heritage values of the Place in some respects. The Committee has nevertheless found components of them, the CMP in particular, to usefully contribute to our understanding of the Place and making our assessment of the Application.

- 056.** The Committee notes the updated Statement of Significance for the Place provided in the evidence of Dr Fox. The current matter however is a Permit Review conducted pursuant to Section 108 of the Act, not a Registration Hearing under Section 46 of the Act. While Dr Fox's evidence was useful in adding to an understanding of the significance of the Place, it largely did not address the impacts of the particular proposal under review.
- 057.** Where relevant, the CMP and Statement of Significance are considered in the following section.

THE IMPACT ON THE CULTURAL HERITAGE SIGNIFICANCE OF THE PLACE

- 058.** This section sets out the Committee's considerations under s.101(2)(a) of the Act.
- 059.** The Executive Director submitted that in reaching a determination on the Permit Application, it was concluded that the changes required to facilitate the proposal would result in irreversible and unacceptable detriment to the cultural heritage significance of the Place as a whole.
- 060.** A number of other submissions suggested that the changes proposed by the Permit Application would be permanent and irreversible, and subsequently, the cultural heritage significance of the Place would be lost or damaged.
- 061.** The Permit Applicant, however, opposed these submissions. The case was put in the alternative. It was firstly said that the impacts on heritage significance are not such that a permit should be refused. The second alternative put was that if this was not to be accepted by the Committee, then the impacts on the Place can be justified having regard to the benefits that would flow from permitting the proposal.
- 062.** These submissions by the other hearing participants relied upon a range of impacts either individually or collectively. The Committee considers these impacts below.

Impact of works to the Former Bishop's Residence

- 063.** There was general agreement that the Former Bishop's Residence is a picturesque gothic revival building of primary significance to the cultural heritage of the Place.
- 064.** The descriptions below of the development proposal are taken from the Heritage Impact Statement ('HIS') prepared by GJM Heritage Pty Ltd on behalf of the Permit Applicant.¹²

Works and alterations to the Former Bishop's Residence

- 065.** The Permit Application proposes the following works and alterations to the Former Bishop's Residence and associated outbuildings:

¹² GJM Heritage Pty Ltd, *Heritage Impact Statement: Former Bishop's Residence, Christ Church Complex (H0996)*, (2 February 2018) pg 11-13 ('HIS').

Demolition

The works involve the demolition of the following structures:

- *Non-significant single-storey red brick detached garage facing Church Square*
- *Non-significant small outbuilding north of the original service wing*
- *Later timber porch on the north elevation.*

Exterior alterations

The proposed alterations to the exterior of the Former Bishop's Residence include:

- *Removal of a non-original door and the enlarging of an existing opening in the ground floor of the north elevation.*
- *Reinstatement of two door openings on the east elevation (one of which is blocked up and one that has been converted to a window).*
- *The partial blocking up of an original sash window on the west elevation and its conversion to a doorway.*
- *Installation of split system air-conditioning units in the southeast corner of the ground floor and on the flat roof between the east and west wings.*

Interior alterations

Works to the ground floor to provide four classroom/teaching spaces, lavatory and other amenities include:

- *Demolition of the later internal partition walls*
- *Creation of five (5) new openings in original walls to facilitate new use*
- *Installation of new glazed partitions*
- *Removal of doors and door frames where walls have been removed*
- *Removal of later joinery, bathroom and kitchen fittings.*
- *Installation of painted V joint tongue & groove pine lining board up to 2.4m high to all ground floor walls*
- *Installation of Ontera Colourweave print tile - replacing later floor finishes*
- *Installation of timber doors within new openings*
- *Installation of new cupboards, benches and other built in joinery*
- *Installation of new plumbing and lavatory fittings*
- *Removal of later gas heaters etc where applicable and restoration of existing fireplaces*

- *Repair of existing plaster ceilings*
- *Redecoration of the existing painted interior surfaces in Dulux Stowe White.*

Works to the first floor to provide an office, staff room, store, lockers and four classroom/teaching spaces, lavatory and other amenities include:

- *Removal of later bathroom fittings*
- *Installation of Ontera Colourweave print tile-replacing later floor finishes and Forbo Marmoleum Real in wet areas*
- *Installation of staff lockers and other built in joinery*
- *Installation of new plumbing and bathroom fittings*
- *Removal of later gas heaters etc where applicable and restoration of existing fireplaces*
- *Repair of existing plaster wall surfaces*
- *Repair of existing plaster ceilings*
- *Redecoration of the existing painted interior surfaces in Dulux Stowe White.*¹³

066. A number of conservation works are also proposed for the Former Bishop's Residence as part of the conversion of the building into a childcare facility including:

- *Repair of the exterior rendered walls of the Former Bishop's Residence and redecoration to match existing colour (buff/sandstone).*
- *Repointing of exterior brickwork where mortar is eroded and redecoration to match existing colour (buff/sandstone).*
- *Repair to the existing corrugated galvanized steel roof, flashings and rainwater goods and replacement on a like-for-like basis as required.*
- *Rectification of drainage related issues*
- *Repair of existing exterior timber joinery and redecoration to match existing colour (dark green).*
- *Repair of the existing (non-original) timber picket boundary fence and repainting in Dulux 'Ficus'*
- *Repair of tessellated tiled verandah floor*
- *Local replacement of decorative mouldings where required.*¹⁴

067. The Conservation Policy for the Former Bishop's Residence is detailed above in paragraph 038.

¹³ HIS pg 11-12

¹⁴ HIS pg 13

Submissions and evidence

- 068.** The Executive Director submitted that the internal changes to the Former Bishop's Residence are extensive, involving the loss of a significant amount of original fabric, as well as the addition of inappropriate interventions and changes to the original floor plan in order for the building to function as a childcare facility. It was the view of the Executive Director that such changes would significantly reduce the integrity of the building and detract from appreciation of its original use as a residence.
- 069.** The Permit Applicant submitted that internal and external alterations to the Former Bishop's Residence have been minimised with the current proposal and are only marginally greater than the scope of changes that would be required to bring the building up to contemporary standards for use as a residence.
- 070.** As described in paragraphs 018-020, Mr Lovell presented amended plans as part of his evidence. These increased the extent of demolition to the exterior of the residence but made alterations to the proposed internal changes to the building which, in Mr Lovell's opinion, would better hold and retain the ground floor room configuration. It was the view of Mr Lovell that the proposed works to the interior and exterior of the Former Bishop's Residence would allow the evolved form of the building to be understood and the arrangement of spaces to be retained.
- 071.** It was his general view, however, that the proposal is physically and visually well resolved and responds appropriately to the heritage constraints of the Place, without unacceptable adverse impact on its significance.
- 072.** In response to the amendments proposed by Mr Lovell, the Executive Director submitted that the changes were an improvement to the Application. However, the Executive Director did not agree with Mr Lovell or the Permit Applicant that the proposed interventions were only slightly greater than what would be required for the use of the building as a residence, reasserting that the proposed alterations to the building were largely contrary to the policies of the CMP and as such, are an unacceptable outcome for the Place.
- 073.** Further to the evidence provided by Mr Lovell, Mr Gard'ner recommended that the proposed demolition of the garage, outbuilding and timber porch would not remove any fabric of state-level significance and subsequently would not impact on the significance of the Former Bishop's Residence, or the Place more broadly. Mr Gard'ner gave evidence that he supported the additional amendments proposed by Mr Lovell, concluding that they would result in an improved heritage outcome.
- 074.** Port Phillip submitted that the proposed alterations and additions to the Former Bishop's Residence had been carefully considered, sensitively designed and would not result in adverse heritage impacts on the Place.
- 075.** Evidence provided by Mr Lewis on behalf of Mr Treble was that internal alterations to the main circulation spaces of the Former Bishop's Residence would have unacceptable impacts on the cultural heritage significance of the Place, as would the demolition of the 1870s section of the former 'closet' and associated wall. It was the view of Mr Lewis, however, that the removal of the garage and the later addition to the original closet would have no heritage impact.
- 076.** A number of hearing participants including Mrs Newman and Mrs Cooper submitted that the extent of internal and external modifications to the Former Bishop's Residence were concerning, illustrating, in their view, the unsuitability of the conversion of the building to a childcare facility. Additionally, Mrs Cooper

submitted that the proposed alterations to the Former Bishop's Residence appeared insufficient to meet the regulatory requirements for a childcare facility.

Discussion and conclusion

- 077.** The Committee agrees that the Former Bishop's Residence is a significant building and is a primary component of the cultural heritage significance of the Place.
- 078.** In considering the proposed works to the building, the Committee accepts that internal and external works would be required whether for conversion of the building to a new use or to continue the original use as a dwelling but with improved facilities. While it was argued that the proposed changes to the Former Bishop's Residence go beyond what is acceptable, the Committee does not agree. It is the Committee's view that, when considering adaptive reuse of a heritage building, a greater tolerance needs to be given to the scope of works as compared to proposals for mere refurbishment for an existing use.
- 079.** The Committee agrees with the submissions of the Permit Applicant and evidence provided by Mr Lovell and Mr Gard'ner, that the proposed changes to the building itself, specifically incorporating the amendments of Mr Lovell, would not have an unacceptable impact on the cultural heritage significance of the Place more broadly. The Former Bishop's Residence is a large and modified building which could accommodate some degree of change to allow for a reasonable use while still retaining its cultural heritage significance.
- 080.** It is considered that the amended proposal presented by Mr Lovell reduces the impacts of the proposed works on the cultural heritage significance of the Place through retention of the principal original hallway and reduced removal of doorways. The Committee supports his proposed retention of nibs of walls as a means to express the former layout of the interior of the building.
- 081.** Mrs Cooper and a number of other submitters argued that the proposed alterations to the Former Bishop's Residence appear insufficient to meet the regulatory requirements of a childcare facility. Consideration of the ability of the works - as proposed in the Permit Application - to meet the requirements of childcare regulations is not within the remit of this Committee. It is the Permit Applicant's responsibility to seek all required approvals for a development proposal and to ensure that the works approved meet statutory requirements.
- 082.** The Permit Applicant nevertheless acknowledged that, if the works were approved, there may be more changes to the Place required as a result of meeting statutory requirements for childcare. The Committee notes that it would be preferable, and seemingly more efficient, if the plans submitted as part of a permit application also met the requirements of other legislation, thus avoiding the need for subsequent changes to any heritage permit.
- 083.** The Committee also agrees with the evidence provided by Mr Gard'ner that the views to the rear of the building are not critical as areas of public viewing and that if additional work is to be undertaken to the external areas this is an acceptable location.
- 084.** The Committee accepts that the loss of the closet and partial wall adjoining it may be necessary to allow reuse of the site and note that while this would have some impact on the cultural heritage significance of the Place, it is not viewed as being unreasonable in the context of a redevelopment proposal. The removal of the garage, being a more modern incursion, is of no concern.

- 085.** The Committee notes that the impact of the proposal on the cultural heritage significance of the Place as a whole must be considered. The discussions in this section have focused on the Bishops Residence given the limited impact of the works inside the building on the rest of the Place.

Impact of the proposed building and pavilions

- 086.** The Permit Application proposes the addition of classroom/teaching spaces, an entry/foyer, an office, a kitchen and laundry, lavatory and other amenities to the building. Most significantly, the proposal involves the construction of three separate single-storey pavilions with pitched roofs centered around the existing courtyard to the north of the Subject Site with flat-roofed linking elements.¹⁵
- 087.** The Permit Application also includes two timber trellis pergolas, one immediately to the southeast of the Former Bishop's Residence and one between the Community Centre and the western pavilion (room 3).¹⁶

Submissions and evidence

- 088.** The Executive Director submitted that the concept of the addition of a series of pavilion structures adjoining the rear and west elevations of the Former Bishop's Residence was reasonable. However, in the opinion of the Executive Director, the siting of additional structures to the northwest of the Former Bishop's Residence, particularly where they obstruct views of the Church from St Leonards Avenue and extend beyond the northwest elevation of the Community Centre, is unacceptable. The Executive Director submitted that the additional buildings and pavilions would result in the overdevelopment of the area around the Former Bishop's Residence, particularly where Pavilions 2 and 3 would encroach upon the open space to the rear of the Church and disrupt the significant view between Acland Street and Church Square.
- 089.** The Executive Director further submitted that the proximity of the proposed pavilions to the Church itself was unacceptable, altering the original layout of the Place and not respecting the layout of the original allotments of the complex.
- 090.** Reference was made to the CMP recommendations for new development at the Place (which have been set out earlier in paragraph 041). They support limited development of new structures if they are of diminutive scale, removed from the historic fabric of buildings, screened by planting and sited so as to retain the views into the Place and between buildings.
- 091.** The Permit Applicant argued that the siting and massing of the proposed pavilions was designed to minimise impact on the Former Bishop's Residence and the Place generally. The Permit Applicant stated that the scale and form of the proposed additions were deliberately designed to ensure these structures were subservient to all existing buildings of cultural heritage significance at the Place.
- 092.** Mr Lovell's evidence included an assessment of the effects of the proposed new buildings, which concluded that the proposal had been developed to deliver a respectful response to the heritage considerations of the Place. Mr Lovell acknowledged that the proximity of the new pavilions to the Church was "tight", but said that with the point in question being between two low-profile structures

¹⁵ HIS pg 12

¹⁶ HIS pg 12

and located well within the site itself, this mitigates any adverse impact the development might have in relation to the crowding of the Church.

- 093.** Mr Gard'ner acknowledged that the addition of any new built form at the Place would potentially have an adverse impact on its visual setting and aesthetic significance, though he stressed that the current development proposal treats the design and siting of the new structures with care.
- 094.** Mr Gard'ner in response to questions, nevertheless said that, in his view, the impacts of the proposed works on the cultural heritage significance of the Place were not insubstantial. He indicated that his greatest concern in terms of impacts upon cultural heritage significance was the proposed construction of the pavilion buildings surrounding the Former Bishop's Residence. He said that effects should not preclude a permit being granted, however, as the impact of the works on the cultural heritage significance was outweighed by the effect of a refusal of a permit upon the proposed reasonable use for the land.
- 095.** Port Phillip submitted that the additional buildings proposed had been sensitively designed and would not adversely impact the cultural heritage significance of the Place.
- 096.** Mr Lewis assessed the footprint of the proposed additions as being unacceptable and inconsistent with the CMP, particularly where they extended into the 1850s church allotment.

Discussion and conclusion

- 097.** The Committee broadly agrees with the submissions of the Executive Director in relation to the construction of additional buildings adjacent to the Former Bishop's Residence.
- 098.** The Committee accepts that the proposed pavilions to the rear and west elevations of the Former Bishop's Residence are more acceptable in terms of location, scale and footprint.
- 099.** The Committee considers that the development to the southwest of the Former Bishop's Residence, however, would have unacceptable impacts upon the significance of the Place, particularly where the pavilions extend towards the Church. It is the Committee's view that the proposed development overcrowds this portion of the Place, encroaching too far towards the eastern corner of the Church.
- 0100.** The Committee also considers that the development in this portion of the site would significantly impact on important view lines through the site from Church Square to Acland Street. The value of view lines is recognised in the CMP.
- 0101.** The Committee comments that view lines into and through the site affirm that the Place is a square bounded by roads with facing development. This is a key element of the significance of the Place referred to in the Statement of Significance. It is identified as '*a rare and significant **square** in the history of town planning in Victoria which demonstrates the importance of the church to the community*' (*Our emphasis*). This is not simply a mid-block site in a street or even a corner lot with church buildings but is a church square bounded by roads which is viewable from all four sides. The view lines through the site reinforce and respect the Place as a square.
- 0102.** While Mr Lovell submitted that the 'Church square' element of the Place was an afterthought, the Committee considers that, regardless of whether it was planned or accidental, the Church square is clearly recognised as a main feature of the

cultural heritage significance of the Place. While the original Place was split into three allotments, it now stands as a unified area with a common history and connection through the construction of structures related to the development of the Anglican Church in Victoria. Regardless of whether the roads around the 'Church square' were deliberately planned or evolved early in the history of the site, the Committee is of the view that the setting of the buildings within a 'Church square' is an integral part of the significance of the place and this sets it apart from other Churches on the Register, being one of only two in Victoria.

- 0103.** The Committee notes that the survey plans provided with the Permit Application incorrectly depicted the southeast elevation of the Church, understating the proximity of the pavilions to the Church and their impact on view lines across the site. Revised plans later provided by the Permit Applicant to show the surveyed edge of the Church provided a clearer picture of the impact of the pavilions in this area.
- 0104.** The Committee agrees with the Conservation Policy of the CMP, which recommends that new development at the Place should be diminutive in scale, removed from the historic fabric of existing buildings and generally located towards the centre of the site.

Other impacts of the proposal on the setting of the Place, including landscaping and trees

- 0105.** Other aspects of the setting of the site beyond its general layout were the subject of submissions and evidence.
- 0106.** The Permit Application proposes the removal of the two peppercorn trees to the west of the Former Bishop's Residence to allow for the new works, and four cypresses at the frontage to Church Square. All other existing trees are proposed to be retained.
- 0107.** The below elements are also proposed in association with outdoor play areas for the childcare facility:
- *A 1.5m tall fence constructed of black painted galvanized steel tubing to the outdoor play area set back behind the existing low timber picket fence and garden beds to St Leonards Avenue and Church Square boundaries.*
 - *A 2.1m tall timber picket fence (painted Dulux 'Ficus') to the bin storage area on Church Square and between the new northern pavilion (Room 2) and the existing Community Centre.*
 - *A 1.5m tall screen constructed of painted perforated steel in front of the air conditioning unit in the southeast corner of the ground floor*
 - *Brick paving laid on concrete with details as shown on the Schedule of Conservation works.*
 - *Outdoor 'Softplay' surface and sand-play area to be associated with non-fixed play equipment.*

- *New planting and pedestrian pathways of gravel and concrete.*¹⁷

Submissions and evidence

- 0108.** The Executive Director submitted that a key feature of the significance of the Place is the positioning of buildings in an open setting with large mature trees. Reference was made to the provisions of the CMP quoted earlier and its recommendation that *Plantings should reinforce the garden setting...*¹⁸
- 0109.** The Executive Director submitted that the loss of boundary trees that visually define the original extent of Church Square, the loss of two significant Peppercorn trees, the introduction of fencing within the garden areas of the Former Bishop's Residence, and the introduction of outdoor play areas, goes against the Conservation Policy of the CMP. The Executive Director also submitted that these proposed landscape elements would significantly impact on the cultural heritage significance of the Place, detracting from views to the Former Bishop's Residence and fragmenting the its landscaped garden setting.
- 0110.** The Permit Applicant submitted that the landscape elements of the Permit Application had been designed to minimize impact on the landscape setting of the Place, retaining the vast majority of trees on site. Further, it was said that the reduction of space around the building would not be inconsistent with the history of the Place and would not detract from the values of the Place.
- 0111.** Both Mr Lovell and Mr Gard'ner commented that neither the Statement of Significance nor the CMP for the Place make specific mention of the significance of any of the trees located at the Place and assessed the Cypress trees on the boundary as dating to a period of development at the site which has not been identified as of significance. Both concluded that the removal of the four Cypress trees would not have any impact on the significance of the Place. Under questioning, Mr Gard'ner did note that the Moreton Bay Fig and Jacaranda were distinct in terms of heritage value, as noted in the CMP.
- 0112.** In relation to the removal of the two Peppercorn trees, Mr Gard'ner stated at the hearing that while early iterations of the proposal attempted to retain the two trees, their loss was conceded to enable setting new built form further back from the historic entrance to the Former Bishop's Residence. He assessed that the loss of the Peppercorn trees would not have a significant impact on the cultural heritage significance of the Place.
- 0113.** Mr Lovell gave evidence that he considered that the introduction of fencing in and around the childcare centre and car park would have no negative impact on the integrity and setting of the Place. Mr Gard'ner provided evidence relating to the fencing that had been employed across the site, concluding that, historically, all three lots comprising the square had had different fencing approaches.
- 0114.** Mr Lewis stated that the Peppercorn trees should be assessed as being highly significant, suggesting that two pairs of Peppercorn trees may have been planted in association with the development of the Former Bishop's Residence. Mr Lewis concluded that the removal of the two trees to the southwest of the building would be a significant loss to the cultural heritage significance of the landscape setting of the Place.

¹⁷ HIS pg 12-13

¹⁸ CMP pg 49

- 0115.** Mr Lewis also assessed the zig zag fencing and play areas for the childcare facility to be incompatible with the cultural heritage significance of the place having adverse aesthetic impacts on views to the Former Bishop's Residence.
- 0116.** It was Mr Lewis's opinion that the proposed works, including the car park, would have an adverse impact on the understanding of the Church allotment and are incompatible with the gardenesque landscape of the Place.
- 0117.** Dr Sinclair, in representing Mr Treble, argued that the fencing off of the landscape of the Former Bishop's Residence would impact on a policy of welcome and openness that had been an integral part of the Parish mission for many years.
- 0118.** In giving expert evidence on behalf of Mr Treble, Dr Fox argued that the plantings are an essential part of the boundary of the Church Square and would have been envisaged as such. In his opinion the land behind the Church was kept vacant to allow an important view of the Church 'in the round' and the proposed changes would create a barrier or blockage to this view.
- 0119.** Mrs Newman submitted that, as the current gardener for the Place, she was opposed to the removal of the two Peppercorn trees and four Cypress trees, stressing their importance to the historic and current landscape of the Place. Mrs Newman, with support from Dr Sinclair, further detailed the significant time and effort she has taken in caring for the gardens and landscape settings across the entire site.
- 0120.** A number of additional submissions from community members including Ms Maher, Mrs Cooper, Ms Konstantinidis and Ms Macdonald expressed the view that the proposed removal of trees and the inclusion of commercial fencing and signage demonstrated the Permit Applicant's misunderstanding of the cultural heritage values of the Place and its importance to the community.

Discussion and conclusion

- 0121.** Extensive and diverse arguments were presented as to the significance of the characteristics and elements of the landscape of the Place including trees. It was submitted that the landscape of the Place was a significant and specific aspect of the cultural heritage significance of the Place. It was put to the Committee that this significance had been overlooked in the Statement of Significance and CMP and that the landscape itself, and the buildings set within it, formed a 'garden landscape'.
- 0122.** The Committee accepts Mr Lovell's evidence, however, that to date no party has been able to determine the form of the 19th century landscape on the site. The Committee were not convinced by the evidence that existing plantings can be definitively dated to the time of construction nor that they are remnants of a specifically planned landscape. It is agreed that in constructing the different buildings within the Place, however, the setting of these within a garden landscape would have been design choice albeit the particular planned landscapes are not now apparent.
- 0123.** The Committee does not view individual plantings – with the exception of the Moreton Bay Fig and Jacaranda as noted in the CMP – or the overall landscape to be of State-level cultural heritage significance. Rather, the Committee is of the view that the landscape is a contributory element to the significance of the Place. The more important elements of the landscape or setting are the siting and relationship of the buildings to each other and their original lots, together with the

availability of views to and through the buildings on the Place as discussed in the previous section of this report.

- 0124.** The Committee disagrees with Mr Fox's statement that every single element of the landscape is significant and do not believe that it must remain unchanged.
- 0125.** The Committee agrees with the assessment of Mr Lovell and Mr Gard'ner that the removal of the four Cypress trees would not impact on the cultural heritage significance of the Place. No evidence was provided that definitively dated the trees to the time of the original construction of the Church and, while adding to the setting of the Place, their removal is not considered a reason for refusal and could be mitigated in other ways to allow for the retention of a garden setting.
- 0126.** The removal of the Peppercorn trees, however, was of greater concern to the Committee. While the evidence as to their origins and cultural heritage significance was not conclusive, they do offer screening to development at the rear of the Former Bishop's Residence where it approaches the Church building and are large attractive specimens.
- 0127.** The Committee agrees with the submissions of the Permit Applicant that the proposed fencing and play areas for the establishment of the childcare facility are generally sympathetic to the cultural heritage significance of the landscape of the Former Bishop's Residence. The Committee notes the evidence of Mr Gard'ner that there have been various styles of fencing across the site and the Place has historically been fenced, with various sections being closed to public access. The proposed fencing would have some impact on views to the Former Bishop's Residence but this is considered acceptable in light of the need to ensure adequate safety for child play areas.
- 0128.** In relation to the external fencing the Committee is satisfied that this would not have a major impact on the significance of the Place and view it as a reasonable new element for the site. Given that the fencing is acceptable from a cultural heritage perspective, the arguments put forward as to the impact on public access are irrelevant, as the property owner the Church has the right to manage public access in the way they see fit.
- 0129.** In conclusion the Committee considers that the proposed changes to the landscape of the Place, particularly the introduction of fencing around the Former Bishop's Residence and the removal of the four Cypresses, would not result in adverse impacts to the cultural heritage significance of the Place.

Impact of the proposed new carpark

- 0130.** New off-street parking for 25 vehicles is proposed at the rear of the Church. The car parking area is proposed to be finished in 'Trihex' permeable pavers and grass pavers. A 1.5m high perimeter fence constructed of black painted galvanized steel tubing with hardwood posts and two sliding vehicle gates for entry to the car park is also proposed.
- 0131.** Fencing is also proposed between the car park and the rear of the Church.

Submissions and evidence

- 0132.** The Executive Director submitted that the location of the proposed car park with perimeter fencing on historically open space and in close proximity to the Church would have a detrimental impact on the historic relationship between the Former Bishop's Residence and the Church and is in direct opposition to the recommendations of the CMP.

0133. In relation to car parking on site, the CMP recommends:

Parking, except for individual residences, should not generally be permitted on site. If parking is established as absolutely necessary for the functioning of the site for church purposes, a designated parking area...should be used. The visual impact of car parking should be reduced by screen planting and a surface which is not permanently hard paved. Parking should not be around the perimeter of the Church.¹⁹

0134. The Executive Director submitted that some car parking might be appropriate at the Place but it should not occur around the perimeter of the Church and should not include fencing. It is the Executive Director's view that the impacts of the car parking are not minimised by the planting or paving and that the pavers should still be considered as a hard surface.

0135. The Executive Director submitted that while some works are argued to be reversible, it is important to take into consideration the likelihood of them being reversed. The car parking, as proposed, is not seen to be a highly reversible approach.

0136. As with the landscaping elements of the proposal, the Permit Applicant submitted that the design of the car park was intended to minimize impacts on the setting of the Place and protect the vast majority of trees on site.

0137. Mr Gard'ner assessed the proposed design of the car park and associated fencing to be acceptable, noting that while the fencing would have some impact on the visual appearance of, and views to, the Church and the Former Bishop's Residence, perimeter fencing has historically been in place around the site.

0138. Mr Gard'ner provided a number of comparative examples of car parking located within church complexes that are included in the Register. Mr Gard'ner noted that the surface of the car parks at the other church complexes was either asphalt or similar hard paving and often located within close proximity to the front or side setback of the church building. Mr Gard'ner assessed the location of the proposed car park at the Place, and the use of permeable and grass pavers, as complementing the cultural heritage values of the Place.

0139. In response to the comparative examples of car parking at churches of state-level significance throughout Victoria, the Executive Director submitted that the examples provided are not relevant, with the current proposal needing to be assessed against the values and policies of the Place, particularly its significance as a rare and intact church square.

0140. As previously discussed, Mr Lovell did not support the original Permit Application's proposal in relation to the car park. His amended plans increased the setback of the parking spaces from the wall of the Church to 3.0m. reducing the number of car parks spaces to 21. Mr Lovell also proposed the use of a timber picket fence rather than a modern steel palisade, assessing this proposal as visually enhancing the presentation of the site.

0141. In response to Mr Lovell's amended plans for the car park, the Executive Director submitted that they did not go far enough to mitigate the detrimental impacts that the car park and associated landscaping would have on the cultural heritage significance of the Place.

¹⁹ CMP pg 49.

- 0142.** Port Phillip submitted that their concerns in relation to the Permit Application were primarily with the proposed car park and the detrimental impact it would have on the Place. Port Phillip appreciated that the design of the car park aimed to reduce impacts to the Place, however, submitted that the division of a significant portion of the site and the loss of semi-public shared space could not be overlooked.
- 0143.** Port Phillip further submitted that the fencing, signage and constant presence of cars at the Place would contribute to a sense of visual clutter, detracting from the setting of the Church.
- 0144.** Mr Lewis assessed the car park as completely inconsistent with the historic landscape character of the Place, suggesting that the proposed materials for the fencing and car park surface were incompatible with the heritage values of the Place.
- 0145.** A high number of submissions from members of the Parish and local community objecting to the Permit Application commented on the importance of the open space to the rear of the Church to the local community. Mr Treble, who described the space to the rear of the Church as a place of “respite and avocation”, submitted that the Permit Applicant had failed to take the social significance of the space into consideration.
- 0146.** In response to the concerns of the community about the loss of this space, the Permit Applicant, supported by the Anglican Parish of Christ Church St Kilda, submitted that the land to the rear of the Church is currently often used for ad hoc car parking and has historically been fenced in a number of ways. It had also supported a WWI Memorial and two tennis courts were located on the space until the late 1970s. The Permit Applicant further stressed that the space is currently owned by the MATC and is not, in fact, public land.

Discussion and conclusion

- 0147.** The Committee broadly agrees with the submissions of the Executive Director in relation to the proposed car park. The Committee agrees that while Mr Lovell’s amendments to the original plans for the car park were an improvement, the car park and associated fencing would result in too great an impact on the cultural heritage significance of the Place, in relation to the aesthetic significance, setting, and view lines into the Place and to the Church in particular.
- 0148.** The fencing and introduction of cars on the site, albeit transitory, cuts off views to the Church which currently can be appreciated from all angles. The fencing fragments the original Church allotment and disrupts the setting of the Place.
- 0149.** Despite the improved setback of the carpark – from 2.5m to 3.0m – as proposed by Mr Lovell, the Committee agrees with the submissions of the Executive Director and Mr Lewis that the fencing between the car park and the Church, both as in the original proposal and the amendments of Mr Lovell, would result in an unacceptable division of the original church allotment.
- 0150.** The Committee notes that other cited examples of car parks associated with church complexes in the Register were not necessarily comparable to this Place. The church premises were not church squares – this Place is one of only two such remaining church squares in Victoria. Nor does the Committee view the parking arrangements on other sites as necessarily offering positive heritage outcomes. The Committee does not see these examples as justification for the current proposal.
- 0151.** The Committee acknowledges the submissions of the Permit Applicant that the open space to the rear of the Church was historically used for a variety of

purposes including ad hoc car parking, and agrees that the space, being owned by MATC, should not be considered public open space.

- 0152.** The Committee is not averse to the use of pavers and landscaping techniques to mitigate the impact of the car parking. It is the construction of the car park when considered in conjunction with the bulk of the new pavilions that is assessed as being too great an incursion into the curtilage of the Church within the Place, which the Committee considers is already compromised by the construction of the Community Centre.
- 0153.** The formally laid out car park and its associated fencing are considered as approaching the rear of the Church too closely and would result in the appearance of the Church being crowded by development. This, in conjunction with the loss of a significant portion of the landscape setting, would compound negative impacts on the cultural heritage significance of the Place.

REASONABLE AND ECONOMIC USE

- 0154.** Section 101(2)(b) of the Act states that, in determining whether to approve an application for a permit, the Executive Director, and under review, the Heritage Council, must consider the extent to which the Permit Application, if refused, would affect the reasonable or economic use of the Place.

Reasonable Use

Submissions and evidence

- 0155.** When lodging the Permit Application with the Executive Director, the Permit Applicant stated that a childcare facility was a reasonable use of the Former Bishop's Residence, with the building previously having been used from time to time for child-minding services.
- 0156.** The Permit Applicant also argued that the ongoing use of the Place is as a place of worship and for pastoral care, and submitted that a refusal to issue the permit would affect the ability to continue this use by preventing new funds being available for restoration and continuation of the ministry.
- 0157.** In determining to refuse to issue the Permit Application, the Executive Director stated that a less intrusive proposal could provide a more appropriate use for the Former Bishop's Residence. In verbal submissions at the hearing, the Executive Director clarified that they did not submit that a childcare was not a reasonable use for the Former Bishop's Residence, but that changes to the current proposal would be required for it to be acceptable pursuant to s.101 of the Act more broadly.
- 0158.** Mrs Elizabeth Cooper submitted that no evidence has been provided showing that the Former Bishop's Residence has previously ever had a commercial childcare use, with the child minding service that operated at the Place prior to 1976 having been run out of the former school building, not the Former Bishop's Residence. She submitted that the current proposal to establish a childcare centre within the Former Bishop's Residence is not a reasonable use for the building, being inconsistent with its previous use.
- 0159.** Ms Evelyn Konstantinidis submitted that the Former Bishop's Residence should be maintained as a domestic house.
- 0160.** Mr Gard'ner's evidence was that it is not a matter of whether the proposed use is the only, or best use, but rather whether it is a reasonable use.

Discussion and conclusion

- 0161.** The Committee's concerns about the impacts of the proposed works upon the cultural heritage significance of the Place have been set out above. They are concerns of some significance and suggest that the Permit Application should be refused.
- 0162.** As required by the Act, the Committee has also considered the extent to which a refusal of the Permit Application would impact on the reasonable and economic use of the Place.
- 0163.** The Committee records that it is satisfied that a childcare centre would be a reasonable use of the Former Bishop's Residence. The Committee does not consider it relevant whether childcare was provided in the Former Bishop's Residence historically: the use of the Former Bishop's Residence for childcare is in keeping with the mandate of the Church and is consistent with the other uses of the Place. Further, it is not in dispute that the current use of the Place as a place of worship and for ministry work is reasonable.
- 0164.** The Committee acknowledges that the reasonable use of the Place will be impacted by a refusal of the Permit, both in terms of not enabling childcare in the manner proposed and continuing the strain on the ability of the parish to continue its mission. The extent of the impact of a refusal on the use of the Place as a place of worship - in terms of limiting potential funds for the work of the ministry and allowing repair of the buildings – is not insignificant.
- 0165.** However, it is the Committee's view that the extent of these impacts does not outweigh the negative heritage impacts of the proposal, specifically the cumulative effect of multiple large-scale changes to the Place.

Economic Use

Submissions and evidence

- 0166.** In relation to Section 101(2) of the Act, the Executive Director submitted that the reasonable and economic use of the Place cannot be considered in isolation from all other mandatory considerations that must be made when determining a permit application, and no one consideration should be given greater weight than another.
- 0167.** The Executive Director submitted that the evidence provided by Mr Gardner and Mr Spackman was insufficient to allow the proper evaluation of economic use. It was his view that the evidence provided by heritage professionals on economic use is limited and should not be weighted as expert evidence in this area. In addition, the evidence of Mr Spackman was general in nature, did not provide an analysis of options and considered the economic use of the Former Bishop's Residence in isolation from the Place in its entirety.
- 0168.** In the Executive Director's view, there is insufficient evidence to show that revenue for conservation works to the Church could not be raised by a proposal without unacceptable detriment to the Place. It was also submitted that the return being sought here from the Application was particularly high.
- 0169.** The Permit Applicant submitted that repurposing the Former Bishop's Residence as a childcare facility is determined to be the most economically viable option for the Place, generating a regular income for the Parish to meet the maintenance and conservation needs of the Place.

- 0170.** Mr Gard'ner's evidence was that *'a refusal of the permit would negatively affect the economic functioning of the heritage place in terms of limiting its ability to generate income to fund future conservation and maintenance works.'* He also said that there is precedent for heritage experts assessing economic use. The inclusion of evidence from economic experts, while useful in larger cases, is not always necessary depending on the scale of the proposal.
- 0171.** In verbal evidence, Mr Spackman stated that there needs to be a balance between preservation and the ability of the Place to contribute funds for restoration. In his opinion, the parish and MATC are seeking to undertake development at the Former Bishop's Residence to allow for conservation of the Church and other buildings at the Place.
- 0172.** Mr Lovell submitted that his support of the proposal did not rely on the delivery of an economic outcome, it is his opinion that the Permit Application represents a reasonable adaptation and reuse of a heritage place, with the added benefit of providing funds for the conservation of the Church.
- 0173.** In verbal submissions, Mr Craig for Ms Konstantinidis argued that the Committee should not consider the ability of the parish to fund the required maintenance of the Place but rather the ability of the MATC, as the owner of the Place. He argued that the MATC has sufficient funds available to conserve the Place without needing additional commercial activation. Further, Mr Craig agreed with the position of the Executive Director that the financial statements were incomplete, he submitted that they should have included funds from heritage grants, an Airbnb lease and the financial statements of the MATC as the owner of the asset.

Discussion and conclusion

- 0174.** The Committee has considered the extent to which the economic use of the Place would be affected by a refusal to issue the permit.
- 0175.** The Committee agrees with the submissions of Mr Gard'ner that in considering economic use it is not necessary for the Committee to take into account the holdings of the MATC. Rather the Committee should consider the impact of a refusal on the economic use of the Place itself.
- 0176.** The Committee accepts that the proposed childcare would provide an economic use for the building and would assist in providing funds for the conservation of the Former Bishop's Residence and the Church. It is also agreed that a refusal would impact on the economic use of the Place by reducing the ability of the Place to generate funds for conservation works and future ministry activity.
- 0177.** However, the Committee considers that a refusal limits one avenue of income generation, not all. Further, the Committee considers that the extent of the impact on the economic use of the Place is not so great as to outweigh the negative aspects of the proposal.
- 0178.** The Committee is conscious of the considerable benefits of this proposal for the ongoing conservation of the buildings and the ability of the Place to continue as a place of worship and ministry. However, these benefits need to be balanced carefully against the cultural heritage impacts of the proposal. It is the Committee's view that the benefits do not justify approving a Permit Application for works which – as outlined in this decision - would have major negative impacts on the cultural heritage significance of the Place.
- 0179.** A number of submitters argued that they have doubts around the proposed use of the funds to be received from this development, the viability and need for a

childcare centre, and the way in which MATC funds parishes. The Committee notes those submissions but was not able to interrogate them further and accepts that the rationale for the need to provide income was established through the submissions in relation to the standing policies of MATC.

- 0180.** There were concerns presented that if funds were not provided for the buildings then they would fall into disrepair. The Committee has not considered this as a reason to approve the application. As stated in s.152 and s.153 of the Act owners must not allow a place to fall into disrepair or fail to maintain the place to the extent that its conservation is threatened.

CONCLUSION

- 0181.** The Committee accepts that the Permit Applicant and the parish are seeking to balance commercial activation with conservation and restoration of the Place. It is acknowledged that the conservation and management of places of worship are difficult issues within heritage more broadly given aging assets and decreasing parishioner numbers.
- 0182.** In considering this matter the Committee notes that both the economic benefits of the proposal and the impacts on cultural heritage significance are large, neither is a minor issue.
- 0183.** The Committee notes that neither Mr Gard'ner nor Mr Lovell provided their support for the original Permit Application in its entirety: Mr Gard'ner stated that he would not support the proposal if not for the considerations under s.101(2)(b) of the Act, and Mr Lovell proposed a number amendments to the plans under review in order to give his support to the Application.
- 0184.** The Committee disagrees with the evidence of Mr Gard'ner and Mr Lovell that the current proposal strikes an acceptable balance between impacts on the cultural heritage significance of the Place and its future use and conservation.
- 0185.** The Committee notes that Mr Gobbo for the Applicant agreed to the proposition that consideration of scale can be part of assessing the reasonableness of a proposal. While it was submitted for the Applicant that the scale of the works and associated use in the Permit Application are appropriate, the Committee disagrees. The Committee was instead convinced by the argument of the Executive Director that the current proposal for a sizable childcare facility, if allowed, would result in cumulative detrimental impacts to the State-level cultural heritage significance of the Place that would be both irreversible and unacceptable.
- 0186.** It is not the view of the Committee that no development can occur at the Place but rather that the proposed scale and nature of the development impacts the significance of the Place to such a degree as to make it unreasonable. There were a number of changes proposed to the Place which, individually, the Committee feels are not necessarily unacceptable. However, when all the changes are considered together, the cumulative impact on the significance of the site is not supportable even having regard to the matters in s.101(2)(b).

DETERMINATION

- 0187.** After considering all submissions received in relation to the permit review, and after conducting a hearing pursuant to s.108 of the *Heritage Act 2017*, the Heritage Council has determined, pursuant to s.108(7)(a), to affirm the determination under review and refuse to issue Permit No. P28298, in respect of land at 14 Acland Street and 1 St Leonards Avenue, St Kilda.

ATTACHMENT 1

SECTION 101 OF THE *HERITAGE ACT 2017* (VIC)

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

