



Heritage Council Regulatory Committee

Craig's Royal Hotel (H0111)

10-16 Lydiard Street South, Ballarat Central, Ballarat City

Hearing – 21 December 2021

Members – Ms Louise Honman (Chair), Ms Megan Goulding, Mr Justin Naylor

DETERMINATION OF THE HERITAGE COUNCIL

Amendment of the Victorian Heritage Register – After considering the Executive Director's recommendation, all submissions received, and conducting an 'on the papers' consideration of the matter, the Heritage Council has determined, pursuant to section 62 of the *Heritage Act 2017*, to amend the entry in the Victorian Heritage Register for Craig's Royal Hotel (H0111) located at 10-16 Lydiard Street South, Ballarat Central, Ballarat City.

Louise Honman (Chair)
Megan Goulding
Justin Naylor

Decision Date – 11 March 2022

ACKNOWLEDGEMENT

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

SUBMISSIONS RECEIVED

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

Submissions were received from the Executive Director, Heritage Victoria ('the Executive Director').

BALLARAT PTY LTD ('THE OWNER')

Submissions were received from Zervos Lawyers on behalf of Ballarat Pty Ltd, the owner of Craig's Royal Hotel ('the Owner').

INTRODUCTION/BACKGROUND

THE PLACE

1. On 19 July 2021, the Executive Director made a recommendation ('the Recommendation') to the Heritage Council pursuant to section 62 of the *Heritage Act 2017* ('the Act') that Craig's Royal Hotel, located at 10-16 Lydiard Street South, Ballarat Central, Ballarat City ('the Place') should be amended in the Victorian Heritage Register ('the Register').
2. Under the *Aboriginal Heritage Act 2006*, the Registered Aboriginal Party for this land is the Wadawurrung Traditional Owners Aboriginal Corporation.
3. The Revised Statement of Significance for the Place, provided on page 7 of the Recommendation, states:

What is significant?

Craig's Royal Hotel, Ballarat a nineteenth-century hotel constructed in two main stages featuring banded rustication to the ground level, a cast iron portico and gas lamps at street level. The building comprises an Italianate style three-storey south wing with loggias and two towers constructed in 1862 to designs of C D Cuthbert. A three and four-storey Boom style wing to the north was constructed 1889-90 to designs of James and Piper and features an octagonal tower with a pointed roof, widow's walk and two-storey stables.

How is it significant?

Craig's Royal Hotel is of historical and architectural significance to the State of Victoria. It satisfies the following criterion for inclusion in the Victorian Heritage Register:

Criterion A

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

Criterion D

Importance in demonstrating the principal characteristics of a class of cultural places and objects

Why is it significant?

Craig's Royal Hotel is historically significant for its association with Ballarat's early phase of development following the 1850s gold rush. Constructed in two primary stages in 1862 and 1889-90, it reflects the prosperity and growth of Victoria's regional centres during the mid to late nineteenth century. [Criterion A]

Craig's Royal Hotel is a fine example of an Italianate style building reflected in its double storey loggias, towers and detailing. It is also notable for its gas lamps and imposing north wing, which was sympathetically added yet is distinctively late Boom style. [Criterion D]

4. The above information, taken from the Recommendation, is provided for information purposes only.

APPLICATION TO ADD LAND

5. On 7 June 2021, the Executive Director made and accepted an application to amend the Place in the Register.

RECOMMENDATION OF THE EXECUTIVE DIRECTOR

6. On 19 July 2021, the Executive Director recommended to the Heritage Council that the Place be amended in the Register pursuant to section 62 of the Act.
7. The Executive Director's recommendation was to amend the registration for the Place by including additional land and including categories of works or activities which may be carried out in relation to the Place without the need for a Permit ('permit exemptions').
8. The following reasons for the amendment were provided in the Recommendation:

'The Executive Director recommends that the Heritage Council amend this registration in accordance with s.62 of the Heritage Act 2017 because under s.32(1) of the Act he considers that—

 - a) the State-level cultural heritage significance of the place would be substantially less if the land or any part of the proposed land for inclusion in the Register was developed; and*
 - b) land surrounding the place is important to the protection or conservation of the place or contributes to the understanding of the place.'*

PROCESS FOLLOWING THE RECOMMENDATION OF THE EXECUTIVE DIRECTOR

9. After the Recommendation, notice was published by the Heritage Council on 23 July 2021 for a period of 60 days in accordance with section 41 of the Act.
10. One (1) submission was received by the Heritage Council, pursuant to section 44 of the Act, from the Owner. The submission objected to the Recommendation and requested that a hearing be conducted.
11. In accordance with section 46(2)(a) of the Act, a hearing was required to be held.
12. A Heritage Council Regulatory Committee ('the Committee') was duly constituted to consider the Recommendation and one submission received in response pursuant to section 44, to conduct a hearing and to make a determination as to whether or not the Place should be amended in the Register. Parties were notified that a registration hearing would be conducted, and a registration hearing was subsequently scheduled for 21 December 2021 ('the Hearing').

PRELIMINARY, PROCEDURAL AND OTHER MATTERS

HEARING 'ON THE PAPERS'

13. A request to participate in the Hearing was received from the Executive Director but the Owner subsequently advised they did not wish to make a verbal submission.
14. On 15 November 2021, having received no requests to make verbal submissions at the Hearing, the Committee, in consultation with Hearing Participants, ruled that the Hearing would be conducted 'on the papers', i.e. by reference to written material only.

15. On 6 December 2021, a Hearing Submission was received from the Executive Director. On 20 December 2021, a Submission in Reply was received from the Owner.
16. The Committee met on 21 December 2021 to determine the matter.

CONFLICTS OF INTEREST

17. The Chair invited Committee members to make declarations, written or otherwise, in relation to any matters that may potentially give rise to an actual, potential or perceived conflict of interest. The Committee members were satisfied that there were no relevant conflicts of interest and made no such declarations.

FUTURE USE, MAINTENANCE AND DEVELOPMENT OF THE PLACE

18. It is not the role of the Committee to consider future proposals or to pre-empt any consideration of any potential future permit applications under the Act. Pursuant to sections 49(1) and 62 of the Act, the role of the Committee is to determine whether or not the Place is to be amended in the Register.

ISSUES

19. The following section is not intended to be a complete record of submissions that were made to the Committee. It is a summary of what the Committee considers to be the key issues, followed by an explanation of the position that the Committee takes on each key issue.

SUMMARY OF ISSUES

20. The Executive Director recommended that the Place be amended in the Register by including additional land and permit exemptions.
21. The Owner objected to the recommended extent of registration, on the basis that the recommended additional land was not of the requisite level of significance and would not help to protect the Place.

EXTENT OF REGISTRATION

Summary of submissions

22. The Executive Director recommended that the extent of registration for the Place should include all of Lots 1, 2 and 3 on Title Plan 863467 and apply to the whole of the Place including the land, all buildings (including exteriors and interiors), an at-grade rear car park ('the carpark'), rear courtyard and part of the road reserves of Bath Lane and Lydiard Street south, to the extent of the land forming the width of the footpaths that includes the hotel portico and gas lamps on the street.
23. The section 44 submission received from the Owner objected to the recommended extent of registration, specifically that part of the land which they own. No submission was made in relation to the road reserve areas. It was the position of the Owner that:
 - *'No material to support a finding that development, substantial or otherwise, of that part of the land currently not covered by State controls, would lessen, much less substantially lessen, the State-level cultural heritage significance of the place.'*
 - *'It cannot in this instance be said that the car park is of heritage significance in its own right.'*

- *'Neither is it necessary as a buffer to protect the heritage fabric.'*
- 24.** The Owner made frequent reference to Planning Practice Note 1 (*PPN1 – Applying the Heritage Overlay – Department of Environment, Land, Water and Planning, August 2018*), Clause 43.01 of the Planning Scheme and the *Planning and Environment Act 1987* in support of their submission.
- 25.** The Executive Director, in his Hearing submission, noted that:
- *'It is standard practice for the curtilage of urban heritage places to comprise the whole of the cadastre.'*
 - *Since 2013, Heritage Victoria has conducted a systematic program to review all early VHR registrations without land to formally 'add land'. Since 2013, the ED has made 125 recommendations to add land.*
 - *Since October 2020, the Heritage Council has determined to add land in accordance with the ED's recommendation to the following ten VHR places in Lydiard Street, Ballarat:*
 - *The Alexandria Tea Rooms, 26-34 Lydiard Street North (VHR H0115)*
 - *The Former Bank of New South Wales, 13 Lydiard Street North (VHR H0112)*
 - *The Old Colonists Association, 16-24 Lydiard Street North (VHR H0116)*
 - *Former Reid's Coffee Palace, 124-128 Lydiard Street North (VHR H0469)*
 - *Former Police Station (Huyghue House), 15 Camp Street (VHR H1544)*
 - *Former Mining Exchange, 8-14 Lydiard Street North (VHR H0391)*
 - *The George Hotel, 25 Lydiard Street North (VHR H0113)*
 - *The Provincial Hotel, 121 Lydiard Street North (VHR H0432)*
 - *The Former ANZ Bank, 9 Lydiard Street North (VHR H0110)*
 - *The Fine Art Gallery, 38-48 Lydiard Street North (VHR H0680)*
 - *Land recommended for addition does not need to be of State-level significance in its own right.*
 - *Planning Practice Note 1 does not apply to considerations under the Heritage Act 2017. The ED further notes that this hearing relates solely to matters under the Heritage Act, and that the relevant tests for the inclusion of land are laid out in s.32 and s.49(1)(d) of the Heritage Act rather than in planning practice notes.'*
- 26.** In reply, the Owner reiterated their view that there is no material to support a finding that development would lessen or substantially lessen the State-level significance of the Place and submitted that the car park is a 'poor or lesser cousin to the original land' and of lesser significance to it, if significant at all.

Discussion and conclusion

27. The Committee notes the Executive Director's recommended extent of registration for the Place and the position of the Owner in relation to the extent of registration, as stated in the section 44 submission, noting that no additional submissions were received throughout the course of the Hearing in relation to the extent of registration for the Place.
28. The Committee notes the established program in place to add land to early VHR registrations and specifically to places in Lydiard Street, Ballarat. The Committee considers the program to be a valid and accepted part of the process of reviewing the registration of places in the Register.
29. The Committee considers that the open space around a building in the Register has an important function in relation to the conservation of the building, even if that curtilage is not in itself, significant. The Committee considers the lack of development of the car park land represents a vulnerability in relation to future development that may have negative impacts on the significance of the building, its future accessibility, and its resilience to changes in local conditions. Inclusion of the land in the Register appropriately mitigates this vulnerability and provides an opportunity to manage any future development via the relevant permit provisions in the Act.
30. The Committee agrees with the extent of registration recommended by the Executive Director, being of the view, in accordance with section 32(1)(a) and (b) of the Act, that:
 - the State-level cultural heritage significance of the Place would be substantially less if any of the land recommended for inclusion in the Register was developed; and
 - all the land recommended for inclusion in the Register is important to the protection and conservation of the Place and contributes to the understanding of the Place.
31. The Committee appends the registered extent of registration for the Place to this document as **Attachment 1**.

PERMIT EXEMPTIONS

Summary of submissions

32. In recommending the Place be amended in the Register, the Executive Director recommended a range of permit exemptions be included in the registration of the Place. The Executive Director's recommended permit exemptions included several 'general' conditions and specific exemptions for repair, maintenance and cleaning, outdoor areas and the interiors of the hotel.
33. The section 44 submission received from the Owner made no comment on the recommended permit exemptions.

Discussion and conclusion

34. The Committee agrees with the recommended permit exemptions submitted by the Executive Director.
35. The Committee determines, pursuant to section 49(3) of the Act, to include categories of works or activities which may be carried out in relation to the Place for which a Permit under the Act is not required, as detailed in **Attachment 2**.

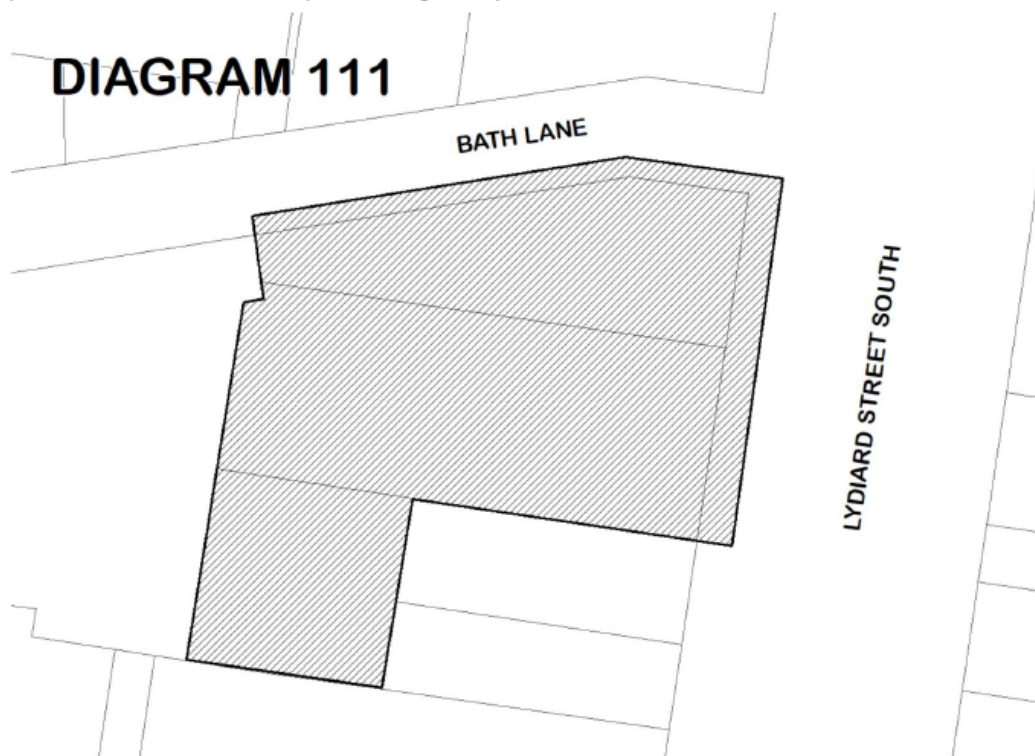
CONCLUSION

- 36.** After considering the Executive Director's Recommendation and all submissions received, and after conducting an 'on the papers' Hearing, the Heritage Council has determined, pursuant to section 62 of the *Heritage Act 2017*, to amend the entry in the Victorian Heritage Register for Craig's Royal Hotel (H0111) located at 10-16 Lydiard Street South, Ballarat Central, Ballarat City.
- 37.** The Committee commends the Executive Director's rigorous assessment in relation to the recommended amendment of the registration for the Place.

ATTACHMENT 1

EXTENT OF REGISTRATION

All of the place shown hatched on Diagram 111 encompassing all of Lots 1, 2, and 3 on Title Plan 863467, and part of the road reserves of Bath Lane and Lydiard Street South to the extent of the land forming the width of the footpaths which includes the hotel portico and gas lamps on the street.



The extent of registration of Craig's Royal Hotel in the VHR affects the whole place shown on Diagram 111 including the land, all buildings (including the exteriors and interiors), and features including the hotel portico and gas lamps on the street.

ATTACHMENT 2

PERMIT EXEMPTIONS (PURSUANT TO SECTION 49(3) OF THE *HERITAGE ACT 2017*)

Introduction

The purpose of this information is to assist owners and other interested parties when considering or making decisions regarding works to a registered place. It is recommended that any proposed works be discussed with an officer of Heritage Victoria prior to making a permit application. Discussing proposed works will assist in answering questions the owner may have and aid any decisions regarding works to the place.

It is acknowledged that alterations and other works may be required to keep places and objects in good repair and adapt them for use into the future. However, under the Act a person must not knowingly, recklessly or negligently remove, relocate or demolish, damage or despoil, develop or alter or excavate all or any part of any part of a registered place without approval. It should be noted that the definition of 'develop' in the Act includes any works on, over or under the place.

If a person wishes to undertake works or activities in relation to a registered place or registered object, they must apply to the Executive Director for a permit. The purpose of a permit is to enable appropriate change to a place and to effectively manage adverse impacts on the cultural heritage significance of a place as a consequence of change. If an owner is uncertain whether a heritage permit is required, it is recommended that Heritage Victoria be contacted.

Permits are required for anything which alters the place or object, unless a permit exemption is granted. Permit exemptions usually cover routine maintenance and upkeep issues faced by owners as well as minor works or works to the elements of the place or object that are not significant. They may include appropriate works that are specified in a conservation management plan. Permit exemptions can be granted at the time of registration (under section 38 of the Act) or after registration (under section 92 of the Act). It should be noted that the addition of new buildings to the registered place, as well as alterations to the interior and exterior of existing buildings requires a permit, unless a specific permit exemption is granted.

Disrepair of registered place or registered object

Under section 152 of the Act, the owner of a registered place or registered object must not allow that place or object to fall into disrepair.

Failure to maintain registered place or registered object

Under section 153 of the Act, the owner of a registered place or registered object must not fail to maintain that place or object to the extent that its conservation is threatened.

Conservation management plans

A Conservation Management Plan was completed for Craig's Royal Hotel by Meredith Gould Architects in 1990. It is recommended that all works are guided by this Conservation Management Plan. It is also recommended that an updated Conservation Management Plan is completed in the near future.

Archaeology

There is no identified archaeology of State level significance at the place. However, any works that may affect historical archaeological features, deposits or artefacts at the place is likely to require a permit, permit exemption or consent. Advice should be sought from the Archaeology Team at Heritage Victoria.

Aboriginal cultural heritage

To establish whether this place is registered under the *Aboriginal Heritage Act 2006* please contact Aboriginal Victoria. The *Heritage Act 2017* and the *Aboriginal Heritage Act 2006* are separate pieces of legislation. Please be aware that both Acts are required to be satisfied and satisfying the requirements of one Act may not satisfy the requirements of the other.

If any Aboriginal cultural heritage is discovered or exposed at any time it is necessary to immediately contact First Peoples – State Relations to ascertain requirements under the *Aboriginal Heritage Act 2006*. If works are proposed which have the potential to disturb or have an impact on Aboriginal cultural heritage it is necessary to contact First Peoples – State Relations to ascertain any requirements under the *Aboriginal Heritage Act 2006*.

Other approvals

Please be aware that approval from other authorities (such as local government) may be required to undertake works.

Notes

- All works should ideally be informed by a Conservation Management Plan prepared for the place. The Executive Director is not bound by any Conservation Management Plan, and permits must still be obtained for works suggested in any Conservation Management Plan.
- Nothing in this determination prevents the Heritage Council from amending or rescinding all or any of the permit exemptions.
- Nothing in this determination exempts owners or their agents from the responsibility to seek relevant planning or building permits where applicable.

General Conditions

- All exempted alterations are to be planned and carried out in a manner which prevents damage to the fabric of the registered place.
- Should it become apparent during further inspection or the carrying out of works that original or previously hidden or inaccessible details of the place are revealed which relate to the significance of the place, then the exemption covering such works must cease and Heritage Victoria must be notified as soon as possible.

Permit Exemptions

The following permit exemptions are not considered to cause harm to the cultural heritage significance of Craig's Royal Hotel.

General

- Minor repairs and maintenance which replaces like with like. Repairs and maintenance must maximise protection and retention of fabric and include the conservation of existing details or elements. Any repairs and maintenance must not exacerbate the decay of fabric due to chemical incompatibility of new materials, obscure fabric or limit access to such fabric for future maintenance.
- Repair to or removal of items such as air conditioners, pipe work, ducting, wiring, antennae and aerials.
- Works or activities, including emergency stabilisation, necessary to secure safety in an emergency where a structure or part of a structure has been irreparably damaged or destabilised and poses a safety risk to its users or the public. Note: The Executive Director must be notified within seven days of the commencement of these works or activities.
- Painting of previously painted surfaces in the same colour, finish and product type provided that preparation or painting does not remove all evidence of earlier paint finishes or schemes. Note: This exemption does not apply to areas where there are specialist paint techniques such as graining, marbling, stencilling, hand-painting, murals or signwriting, or to wallpapered surfaces, or to unpainted, oiled or varnished surfaces.
- Cleaning including the removal of surface deposits or graffiti by the use of low-pressure water (less than 300 psi at the surface being cleaned) and neutral detergents and mild brushing and scrubbing with plastic (not wire) brushes.

Outdoor areas

- Subsurface works involving the installation, removal or replacement of existing drainage systems or other services provided there are no visible above ground elements.
- Repair and maintenance of existing hard surfaced areas including paving, footpaths and car parks where fabric, design, scale, form and method of fixing is repaired or replaced like for like.

Interiors

- Works to maintain or refurbish fit-outs in existing bathrooms, kitchens and laundries, including installing new appliances, tiling and the like.
- Removal or replacement of window furnishings, 1990s carpets and/or flexible floor coverings, light fixtures and devices for hanging wall mounted artwork.
- Installation, removal or replacement of existing electrical wiring. If wiring is currently exposed, it should remain exposed. If it is fully concealed it should remain fully concealed. Removal or replacement of post-1990s light switches or power outlets.
- Repair and maintenance of existing lifts including mechanisms and associated elements.
- Removal or replacement of smoke and fire detectors, alarms and the like, of the same size and in existing locations.

- Repair, removal or replacement of existing ducted, hydronic or concealed radiant type heating provided that the central plant is concealed, and that the work is done in a manner which does not alter building fabric.
- Installation of plant within the roof space, providing that it does not impact on the external appearance of the building or involve structural changes.
- Installation, removal or replacement of bulk insulation in the roof space.
- Removal or replacement of external directional signage provided the size, location and material remains the same. Works to maintain or upgrade the existing bathrooms, kitchen and laundry, including installing new appliances, re-tiling and the like.