

Heritage Council Regulatory Committee

Zetland (H0477)

16 Yarra Street, Hawthorn, Boroondara City Council

Hearing – 26 October 2023

Members – Dr Ursula de Jong (Chair), Mr Adrian Finanzio SC, Mr David Hogg

DETERMINATION OF THE HERITAGE COUNCIL

Amendment in the Victorian Heritage Register – After considering the Executive Director’s recommendation and all submissions received, and after conducting a hearing, the Heritage Council has determined, pursuant to section 49(1)(d)(i)–(ii), section 49(3) and section 62 of the *Heritage Act 2017*, that the entry for Zetland (H0477) located at 16 Yarra Street, Hawthorn is to be amended in the Victorian Heritage Register, by including additional land and by including categories of works or activities for which a permit under the *Heritage Act 2017* is not required.

Ursula de Jong (Chair)
Adrian Finanzio SC
David Hogg

Decision Date – 24 January 2024

ACKNOWLEDGEMENT

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

APPEARANCES/HEARING SUBMISSIONS

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

The Executive Director recommended to the Heritage Council, that the registration for Zetland (H0477) be amended in the Victorian Heritage Register. Mr Geoff Austin, Manager, Heritage Register, and Ms Clare Chandler, Senior Heritage Officer (Assessments) represented the Executive Director at the Hearing.

MR AMON CARSON, OWNER, ZETLAND, 16 YARRA STREET HAWTHORN ('THE OWNER')

The Owner made a submission to the Heritage Council pursuant to section 44 of the *Heritage Act 2017*, objecting to elements of the Executive Director's Recommendation, including the 'Extent of Registration' and 'Permit Policy/Permit Exemptions'. The Owner requested that a hearing be held. The Owner's original submission pursuant to section 44 of the *Heritage Act 2017* was made by Ms Carolynne Baker, Principal, Urbis. The Owner was represented during the hearing by Mr Barnaby Chessell SC, of Counsel.

INTRODUCTION/BACKGROUND

THE PLACE

01. On 14 November 2022, the Executive Director made a recommendation ('the Recommendation') to the Heritage Council pursuant to Part 3, Division 3 of the *Heritage Act 2017* ('the Act') that the existing registration of Zetland (H0477) at 16 Yarra Street Hawthorn ('the Place') be amended in the Victorian Heritage Register ('the Register').
02. The Statement of Significance (as unamended) is provided on page 16 of the Recommendation, as follows:

What is significant?

By the late 1830s, settlers were pushing out from Melbourne in all directions in search of new pastures for their sheep and cattle. While an 1837 survey of the area now known as Hawthorn showed only the station of overlander John Gardiner, the area had attracted interest from other pastoralists, agriculturalists and also timber cutters who were drawn to the large stands of Red Gums and Stringy Bark trees in the area. In the early 1840s, Dr James Palmer [later Sir James and first president of the Legislative Council], himself an owner of a flourishing timber business, established a punt across the Yarra River at Hawthorn near his property on the Richmond side of the river. A bridge replaced Palmer's punt in 1851. With the increased communication between the eastern side of the Yarra and Melbourne, the village of Hawthorn expanded rapidly to serve the outlying agricultural, timber cutting and brick making activities. By the mid 1860s, the suburb of Hawthorn was well established. The first town hall had been built, the churches of the numerous denominations had been constructed, and leading Melbourne citizens had chosen Hawthorn as their home.

The house Zetland at 16 Yarra Street Hawthorn stands on St James Park, a subdivision of Burwood [later Invergowrie], the new mansion which James Palmer had constructed on his large landholding on the Hawthorn side of river near the newly-completed bridge. Palmer apparently organized the subdivision of his large estate himself, but no sales of subdivided lots were made until shortly after his death in 1871. Rate books for 1872 record vacant allotments in the ownership of theatre entrepreneur George Coppin in the newly-formed Yarra Street on the former Palmer estate. Two adjoining allotments passed into the ownership of Charles Black. Zetland was constructed in 1873-74, and by 1876, Black had constructed similar houses on both lots. The houses were designed by William Ellis, the architect responsible for the design of the prominent Fitzroy Town Hall at about the same time. By 1876, Charles Black had died and both properties were offered for sale. Accountant John Robertson bought 16 Yarra St and the house name Zetland is first recorded during his ownership. John Robertson occupied the house until 1887 but the house remained in the ownership of the Robertson family until at least the 1901.

How is it significant?

Zetland is of architectural and historical significance to the State of Victoria.

Why is it significant?

Zetland is of architectural significance for its association with its designer, the important architect William Ellis, and its aesthetic characteristics, particularly its rare seven-arched ornamental ironwork verandah and balustrading.

Zetland is of historical significance as a prominent house within the prestigious St James Park subdivision of the grounds of Sir James Palmer's estate which is characterized by its hilltop location, wide allotments and the uniform quality of its housing. Zetland, through its scale and architectural refinement, typifies the class of house sought after by members of Melbourne's prosperous middle-class of the 1870s."

03. The above Statement of Significance has been taken verbatim from the Recommendation.

RECOMMENDATION OF THE EXECUTIVE DIRECTOR

04. On 28 August 2022 the Executive Director initiated a nomination to include land as part of the existing registration of the Place, pursuant to section 32(1) of the Act. The nomination was accepted and a Recommendation to amend the registration pursuant to section 62 of the Act was made to the Heritage Council on 14 November 2022.
05. The Executive Director recommended to the Heritage Council that the Place be amended in the Register by:
- including additional land (and including the interior of the dwelling); and
 - determining categories of works or activities which may be carried out in relation to the Place for which a permit is not required (permit exemptions).

PROCESS FOLLOWING THE RECOMMENDATION OF THE EXECUTIVE DIRECTOR

06. After the Recommendation, notice was published on Friday 18 November 2022 in accordance with section 41 of the Act for a period of 60 days. During the public advertisement period one (1) submission was received from Ms Carolynne Baker on behalf of the Owner of the Place. The submission objected to elements of the Recommendation and requested that a hearing be held.
07. Pursuant to section 13(1) of the Act a Regulatory Committee of the Heritage Council ('the Committee') was duly constituted to consider the Recommendation and all submissions received and to conduct a hearing into the matter.

COMMITTEE SITE INSPECTION

08. On 9 May 2023 the Committee undertook an unaccompanied site inspection of the Place, including the interior and exterior of the building, stables, the garden and the laneway to the rear of the Place.
09. The Secretariat Hearings Manager and the Secretariat Project Officer were in attendance, and the Owner facilitated access to the property. No submissions were sought, made or received during the site inspection.

REQUESTS FOR FURTHER INFORMATION

10. Through the course of this proceeding, the Committee made three requests for further information from the Owner and Executive Director to assist its consideration of this matter.
11. The first request followed the Committee's site inspection of the Place. On 10 May 2023 the Committee requested from the Owner a track-changed version of the Executive Director's proposed permit exemptions, included on pages 9–12 of the Recommendation. The Owner complied with the Committee's request on 24 May 2023.
12. The second request followed receipt of the track-changed version of the proposed permit exemptions. On 7 June 2023 the Committee requested that the Executive Director and Owner confer and prepare a statement setting out the matters agreed and disagreed, if any.
13. The Executive Director and Owner met on 13 July 2023 and provided a statement of the matters in dispute to the Committee on 17 July 2023.
14. Following receipt of the statement the Committee scheduled a hearing to be held on 26 October 2023 to set out the matters in dispute ('the Hearing').

15. The third request for information followed the Hearing. The Committee requested from the Owner and Executive Director confirmation as to their positions in relation to one of the permit exemptions included in the Recommendation. The permit exemption related to the interior of the stables, which the Executive Director had recommended be subject to a permit exemption, but subsequently requested in their written hearing submission, that the Committee consider further whether or not the exemption was appropriate. Neither the Executive Director nor the Owner expressed a further view about this exemption during the Hearing.
16. The Owner and Executive Director complied with the request by 28 November 2023.

PRELIMINARY, PROCEDURAL AND OTHER MATTERS

FUTURE USE, MAINTENANCE AND DEVELOPMENT

17. It is not the role of the Committee to consider future proposals or to pre-empt any decisions regarding future permits under the Act. Pursuant to sections 49(1)(d)(i)–(ii), 49(3) and 62 of the Act. The role of the Committee is to determine whether or not the existing registration of the Place should be amended in the Heritage Register by including additional land and including categories of works which may be carried out without a permit (permit exemptions).

CONFLICTS OF INTEREST

18. The Chair invited Committee members to consider whether written declarations or otherwise were required to be made in relation to any matters that may potentially give rise to an actual or apprehended conflict of interest. All members were satisfied that there were no relevant conflicts of interest and made no such declarations.

REASONS FOR AMENDMENT

19. The Executive Director Recommended that the Heritage Council amend the registration of the Place in the Heritage Register pursuant to section 49 of the Act, and determine pursuant to section 49(1)(d)(i) and (ii) that:
 - the State-level cultural heritage significance of the place would be substantially less if the land or any part of the land which is or has been used in conjunction with the place were developed [s.49(1)(d)(i)]; and
 - land surrounding the place is important to the protection or conservation of the place or contributes to the understanding of the place [s.49(1)(d)(ii)].
20. The Executive Director's Recommendation set out the reasons for including additional land in the Register pursuant to section 49(1)(d)(i), stating that there was potential for any development at the Place to impact upon its cultural heritage values, notably 'the setting of the building, the seven-arched ornamental ironwork verandah, the front property boundary fence and the historic stables (constructed by 1901)'.¹
21. The Executive Director's Recommendation also set out the reasons for inclusion of additional land pursuant to section 49(1)(d)(ii), stating that because the existing registration of the Place did not include the interior of the residence, this '...may cause management issues in the future'. For that reason alone the Executive Director Recommended that the 'whole of the residence ... with the interior' be included in the Heritage Register.

ISSUES

22. 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

¹ Executive Director Recommendation, Zetland VHR H077, p4.

issues, followed by an explanation of the position that the Committee takes on each key issue. Any reference to the Criteria or to a particular Criterion refers to the Heritage Council Criteria for Assessment of Places of Cultural Heritage Significance (updated by the Heritage Council on 1 December 2022) [‘Criteria for Assessment’]. Please refer to **Attachment 1**.

SUMMARY OF ISSUES

- 23.** The Executive Director Recommended that the registration of the Place be amended to include ‘the land, all buildings (including the exteriors and interiors), landscape elements and other features’.² The land surrounding the place including the outbuildings, the landscape elements and the interior of the building were not included in the Heritage Register when the residence was originally registered in 1980. The Executive Director also recommended categories of works or activities which may be carried out in relation to the Place for which a permit under Section 5 of the Act is not required (‘permit exemptions’).
- 24.** The Owner submitted an objection to the recommended ‘Extent of Registration’ and to the ‘Permit Policy/Exemptions’, submitting –
- “...that the interiors are not of State-level cultural heritage significance, and therefore do not warrant inclusion in the revised extent of registration. They are no longer intact to their original form, having largely been stripped of original fabric. This fact has been recognised by a number of different heritage professionals.”*
- 25.** Through the course of the proceeding some key points of dispute between the Executive Director and the Owner arose and they are as follows:
- whether registration of the interior of the whole Place is necessary for the protection and conservation of its State-level significance;
 - alternatively, whether the proposed permit exemptions should be amended to allow all structural works to the rear of the residence, and allow all non-structural works to the front four rooms and front main hallway;
 - whether the interiors of the stables to the rear of the Place should be subject to a permit exemption;
 - whether the Statement of Significance accurately reflects the elements of the Place which are and are not significant, and whether it is necessary and desirable to include elements which are not significant within the Statement of Significance;
 - the Criterion under which the State-level significance of the Place is recognised.
- 26.** Matters of agreement between the Executive Director and the Owner were confirmed during the course of the proceeding. The matters that are not in dispute are set out below. The Committee does not propose to deal at length with them beyond acknowledging the agreement of the parties. The parties agree that:
- inclusion of the additional land surrounding the Place in the Heritage Register to the extent of the setting of the building, the seven-arched ornamental ironwork verandah, the front property boundary fence and the exterior of the historic stables should occur.
 - the majority of the proposed permit exemptions are appropriate, with the exception of amendments to the general permit exemption for painting, permit exemptions to the interior of the building, and the permit exemption to the interior of the stables.

² Executive Director Recommendation, Zetland VHR H077, p6.

LEGISLATIVE FRAMEWORK

27. Before setting out its findings in relation to the matters disagreed, the Committee wishes to set out the relevant legislative context of this matter and to summarise the positions of each party in relation to the legislation that gives rise to amendments to the Heritage Register.

Executive Director's position

28. The Executive Director's Recommendation sets out the reasons for recommending that the existing registration of the Place be amended in the Heritage Register, in accordance with section 32 of the Act, which provides that additional land may be nominated for inclusion in the Register if –
- (a) the State-level cultural heritage significance of the place would be substantially less if the land or any part of the land which is or has been used in conjunction with the place were developed; or
 - (b) land surrounding the place is important to the protection or conservation of the place or contributes to the understanding of the place.
29. The Executive Director also provided the following reasons for the amendment –
- *“The inclusion of additional land will ensure that all change is managed through a permit approvals process which is consistent across the entirety of this place and will provide certainty for all parties”*; and
 - *“The current extent of registration does not include the interior of the Zetland residence, which may cause management issues in the future. Including the whole of the residence in the VHR with the interior will lead to greater clarity for all parties.”*
30. The Executive Director nominated, and subsequently recommended that the registration be amended using the powers encompassed by sections 62(1) and 62(2) of the Act.

Owner's position

31. In setting out his position, the Owner drew the Committee's attention to section 62(2) of the Act which provides that ‘...Divisions 2 to 6 and this Division [Division 7] apply to an amendment or removal in the same way as those Divisions apply to a registration’.
32. The Owner submitted that section 62(2) of the Act provides that the process of amending or removing an item in the Heritage Register follows the same process as that to include an item in the Heritage Register.
33. The Owner submitted that the legislation therefore requires the Executive Director to have regard to Division 3, section 40 of the Act – ‘Statement of Recommendation’ – which provides that a Statement of Recommendation must contain ‘the reasons for the recommendation, including an assessment of the State-level cultural heritage significance of the place or object’ [section 40(3)(c)].
34. The Owner accepted that the setting of the Place met the criteria for the inclusion of additional land in the Heritage Register, pursuant to section 49(1)(d)(i)–(ii) and did not object to inclusion of the additional land to the extent that it comprised of the land surrounding the property, the ornamental ironwork verandah, landscape elements and the historic stables.
35. The Owner was right to point out that the Statement of Recommendation set out reasons for inclusion of the land in the Register, but pointed out that the sole reason for the inclusion of the internal parts of the dwelling was not, on any view directed to whether or not the internal parts of the building were of State-level significance.
36. The Owner objected to inclusion of the interior of the residence, submitting that inclusion of the interior was in-fact an expansion of the definition of the Place, rather than an amendment of the registration by adding additional land.

37. The Owner submitted that by including new elements beyond those which could be defined as additional land or objects integral to the significance of the place, the Executive Director must have regard to section 40(3)(c) of the Act, and that it was clear that the Executive Director had failed to do so. It was said that the Executive Director had not provided an assessment of the State-level significance of the interior of the building, and that the reason provided in the Recommendation, namely that excluding the interior 'may cause management issues in the future' and 'including the whole of the residence in the VHR with the interior will lead to greater clarity for all parties' was not adequate justification for the inclusion of the interior component of the residence in the Heritage Register.
38. The Owner further submitted that the Act emphasises the need for reasons to be given as to why the Place or the part of the place is of State-level cultural heritage significance, and that in this case the Executive Director had not provided reasons as to why the interior of the Place (being 'part' of the Place) is of State-level significance.
39. The Owner accepted that the failure of the Executive Director to give adequate reasons for the inclusion of the interiors of the place did not prohibit this Committee from considering the matter.
40. The Owner properly acknowledged that, on the evidence a number of possible outcomes were available to the Committee, as follows:
1. Agree to amend the registration without including the interiors of the residence;
 2. Agree to amend the registration by including the entirety of the Place, excluding the rear of the residence from the need to obtain a permit for structural works;
 3. Develop a permit policy that articulates what is and is not significant at the Place, to guide future works and management of the significant values.

Committee discussion and conclusion

41. In the present case, the Executive Director gave notice of his recommendation to amend the Heritage Register in two respects:
- First by the inclusion of additional land; and
 - Second, by including the interiors of the existing dwelling.
42. Section 62 of the Act permits the amendment of the Heritage Register, including by amending or removing an item in the Register.
43. In the Committee's view the Owner is right to say that the reasons given by the Executive Director to amend the Register by including the internal parts of the dwelling were not an adequate basis upon which to make the recommendation because they were not directed to the question of whether the interiors satisfied the criteria for protection at the State-level.
44. That said, the failure of the Executive Director to provide a proper justification for the proposed amendment to include the interior of the dwelling does not prevent this Committee from examining the matter afresh.
45. Whether or not the interiors should be included in the Register depends first and foremost on whether or not it can be said that interiors are of significance at the State-level. The parties at the Hearing addressed the Committee on this question.
46. The Committee agrees with the Owner that the alternatives set out are available to the Committee depending upon the conclusion it reaches as to the level of significance of the interiors.

DISCUSSION OF MATTERS DISAGREED

Extent of registration

Summary of submissions and evidence

47. The existing extent of registration of Zetland as included in the Heritage Register reads –
“16 Yarra Street, Hawthorn (to the extent of the external fabric of the house and the front fence but excluding the stables).”
48. The Executive Director recommended that the existing registration of the Place be amended to read –
*“the extent of registration of Zetland in the VHR affects the whole place shown on Diagram 477 including the land, all buildings (including the exteriors and interiors), landscape elements and other features”.*³
49. The Executive Director submitted that the proposed amendment to Zetland was instigated as part of the Executive Director’s program of adding land to places that were originally registered with no surrounding land, and that this amendment was consistent with the approach to that program of work.
50. The Committee finds that while the language of the Executive Director was not always clear in the Recommendation, the intention to amend the Register under section 62 of the Act by both adding land and including the interiors is clear.
51. It is also clear that the intention of the Executive Director was to add the interiors for reasons unrelated to the power to amend the Register. Objects integral or additional land cannot be included in the Register merely to improve administrative functions. The Act requires that anything included or added to the Register must be of significance at the State-level, or must meet the reasons for which additional land or objects integral can be included in the Register pursuant to sections 31 and 32 of the Act.
52. At the hearing the Executive Director submitted that to exclude the interiors of the Place from the extent of registration would be highly unusual, and that for several decades the Heritage Council has listed the interiors of places regardless of the significance of the interiors. The Executive Director cited the decision of the Heritage Council in the Secull House (Registered Place H2406) determination in support of his position.
53. In response to questions from the Committee, the Executive Director acknowledged that the circumstances in the Secull House Case were different but maintained that Secull House remained relevant. The Executive Director submitted that in that case it was submitted by the owner that because the interiors had been substantially altered from their original form, and were no longer intact, they could not be viewed as significant. The Executive Director pointed out that the owner’s argument had been rejected by the Heritage Council in the Secull House determination, and that Zetland was sufficiently similar to warrant the same outcome. The Executive Director pointed out in part that the alterations of Secull House (like those at Zetland) had been introduced sympathetically to the era of the place, and that it would be detrimental if those alterations were undone in the future.
54. The Executive Director further submitted that the exclusion of the interiors of a Place from the registration has led to poor heritage outcomes in the past. The Executive Director relied on real estate photos of Zetland from 2019 which show that material, including skirting boards, ceilings, decorative plaster, cornices and architraves, have been removed from the interior of the residence. The Executive Director re-iterated that these elements had since been sympathetically restored by the current Owner.
55. In responding to the Executive Director’s Recommendation, the Owner relied upon the heritage assessment undertaken in 1978 by Professor Miles Lewis, which was attached as Appendix B to the Owner’s section 44 submission.

³ Executive Director Recommendation, Zetland VHR H077, p6.

56. The Owner drew the Committee's attention to the section of Lewis' assessment which states that –
- “Internally, alterations have been made on a number of occasions, but the four original rooms and the dining room can still be saved ... the rest of the house, consisting of kitchen, laundry, bathroom, maid's room and lounge, has been (tastefully) 'modernised' and has really lost its historic relevance.”*
57. The Owner submitted that a considered decision appears to have been made by the Historic Buildings Council not to include the interiors of the building at that time.
58. Upon questioning from the Committee as to the statement made in the 1978 assessment report that 'serious consideration should also be given to the inclusion of the interiors of the four front rooms and the dining room on the north side'⁴ the Owner submitted that one can only assume that serious consideration was given, and the Historic Buildings Council of 1978 determined not to include the interiors of those rooms. The Owner also submitted that a heritage assessment undertaken in December 2022 by Ms Carolynne Baker is consistent with the findings of the 1978 report, pointing out that Ms Baker is of the view that to include any of the interiors would be to imply that they are of State-level significance, which, the Owner submits is not the case.

Committee discussion and conclusion

59. The Committee finds that the Executive Director's Recommendation and submissions present a clear case for inclusion of the additional land surrounding the place, including the stables and landscape elements.
60. The Committee also agrees that the extent of registration should be amended to include the whole place shown on Diagram 477 including the land, all buildings (including the exteriors and interiors), landscape elements and other features (see **Attachment 2**).
61. The Committee acknowledges that the Place has been subject to many alterations in the past, including recent sympathetic and well-executed changes made by the Owner, including to the front four rooms of the Place.
62. The Committee notes that the rooms beyond the first four rooms are particularly altered in form and structure, and that the rear portion of the residence was built following initial construction of the four front rooms. The Committee acknowledges that the addition of the rear of the residence followed soon after the first four rooms, appearing on plans in the late 1890s. The significance of the whole of the Place, regardless of the year of construction of the various rooms is evident in the existing and revised Statement of Significance.
63. In determining whether to include the interiors of the place in the Register the Committee is guided by the overarching purpose of the Act – which is to provide for the protection and conservation of the cultural heritage of the State.
64. The Committee has determined that the front four rooms and front main hallway contribute to the significance of the Place at the State-level, and that notwithstanding the removal of the cosmetic and decorative elements, the remaining structural configuration of the dwelling in those front four rooms contributes to an understanding of the dwelling and its cultural heritage significance.
65. Had the Committee come to the conclusion that no aspect of the of the interior of the building was sufficiently significant at the State-level it might have been inclined to adopt the Owner's first suggestion and conclude that no part of the interior should be included in the Register and that in this respect the Register remain unaltered. Having concluded however that the structural configuration of the front four rooms is worthy of protection at State-level, it follows that the most sensible management of the Place is to include the

⁴ Classifications Sub-Committee Meeting no.217, 3 November 1978, p.6

whole of the interior in the Register, but to delineate the areas of significance by clearly articulated permit exemptions.

Permit exemptions (interior of residence)

Summary of submissions and evidence

- 66.** The Executive Director included a suite of works or activities which can be carried out at the Place without a permit ('permit exemptions'), in the Recommendation pursuant to section 38 of the Act.
- 67.** The Executive Director submitted that with the exception of the general exemptions, most of the proposed permit exemptions had been tailored specifically to the context of the Place, and that a 'light-touch' to the exemptions relevant to the front four rooms of the Place was proposed, with the exemptions becoming progressively more flexible towards the rear of the building.
- 68.** The Owner objected to the proposed permit exemptions, particularly as they relate to the interior of the Place.
- 69.** Prior to scheduling the Hearing, the Committee requested from the Owner a track-changed version of the permit exemptions to further its understanding of the Owner's objection.
- 70.** The Owner supplied a track-changed version including all the changes that, in their view, should be made to the permit exemptions should the interior of the building be included in the Register. The changes the owner sought are underlined in the below table:

Reference (for the purpose of this document only)	Wording proposed in the Recommendation	Wording proposed by the Owner (changes underlined)
(a)	[General exemption] Painting of previously painted external 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.	[General exemption] Painting of previously painted <u>internal and</u> external 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.
(b)	All non-structural internal works beyond the first four rooms and main hallway.	All <u>structural and</u> non-structural internal works beyond the first four rooms and <u>associated</u> main hallway.
(c)	[new exemption proposed by the Owner]	All <u>non-structural internal works to the first four rooms and associated main hallway.</u>

- 71.** The Executive Director disagreed with all proposed changes to the permit exemptions. In relation to permit exemption (a), the Executive Director submitted that to add the word 'internal' to this general exemption, would be to impose greater restrictions on internal painting than is proposed in the tailored exemption. The Owner agreed with this position, and the Committee finds therefore that this exemption is not the subject of dispute, and the exemption as proposed in the Executive Director's Recommendation is to be included with the registration of the Place.
- 72.** Exemptions (b) and (c) remained in dispute at the outset of the Hearing.
- 73.** The Owner submitted that expanded and additional permit exemptions were sought after consideration of the outcomes of the 1978 Lewis and 2022 Baker heritage assessments, which both suggested that the rear of the residence had lost historic relevance due to alterations over time.

74. In relation to exemption (b), it was the Owner's view that the heritage assessments undertaken by Lewis and Baker correctly identified that the interior of the rear of the residence is not significant in form or structure, and that therefore structural and non-structural changes to that part of the Place should be permitted.
75. In response to exemption (b), the Executive Director submitted that structural works to significant buildings are rarely provided for in permit exemptions. The Executive Director further submitted that structural change is best dealt with via a one-off Heritage Victoria approvals process, that would enable consideration of the impact of works, the form and materiality of replacement works, and include processes such as recording, prior to demolition.
76. In relation to exemption (c) the Owner submitted that the interiors of the front four rooms are almost entirely new, and that the significance of those front four rooms rests in their configuration rather than in the non-structural components of those rooms.
77. Upon questioning from the Committee as to the scenario presented by the Executive Director, that the sympathetic and well-executed changes made by the Owner could be undone by any future owner, the Owner responded that change to the non-structural components of the building does not impact the ability of the significance of the Place to be read. The Owner further submitted that what is significant now about those four rooms is their configuration, not the cosmetic components.
78. In response to the Owner's submissions in relation to the permit exemptions, the Executive Director submitted that the permit policy provided in the hearing submission acknowledges that there have been alterations to the property, and allows for flexibility to the rear of the residence where extensive alterations have occurred over the years. The permit policy proposed by the Executive Director also suggests that there is greater potential for change in the rear area of the building, but that the front four rooms should be more tightly controlled through the permit process to maintain the original layout and the sensitive alterations already carried out.
79. Lastly, the Executive Director submitted that a recommendation cannot include permit exemptions that may harm the cultural heritage significance of a place, and that the Heritage Act requires a cautious approach to be taken to permit exemptions.

Committee discussion and conclusion

80. The Committee notes that the permit exemptions cannot be divorced from the extent of registration presently under consideration. As stated above, the whole of the Place (including the interior and exterior) should be included in the Heritage Register.
81. It follows therefore, that appropriate permit exemptions should be included with the registered Place.
82. It is however, appropriate to deal with the front four rooms and the rest of the dwelling separately.
83. There is insufficient evidence to confirm with any certainty the original form of the rear part of the dwelling. That said, it is obvious from an inspection of the building that there have been a number of building campaigns over time which have had the effect of significantly altering what could reasonably be considered the likely original fabric. The changes have been extensive and have likely altered structural and non-structural original elements of the building.
84. Given the cumulative impact of change that has occurred to the rear of the residence over time it is impossible to attribute any significance at a State-level to the internal configuration of that part of the dwelling.
85. For that reason the Committee is of the view that exemptions should apply to works related to structural and non-structural changes to the interior of the rear part of the residence beyond the front four rooms and hallway, because such changes will not impact on the cultural heritage significance of the Place.

86. The significance of the Place rests primarily in its associations with architect William Ellis (Criterion A), and the significant architectural features including ornamental verandah, wide allotment, hilltop location and set-back from the main road (Criterion D), which will not be impacted by structural works to the interior of the rear of the residence.
87. The Committee notes that the exemption proposed in relation to structural elements is confined to the internal areas only. Any proposed structural change which would warrant an alteration to the external parts of the of the building would not be captured by the exemption. For example, the removal or alteration of rafters which necessitate partial removal of the roof to carry out the works would not be captured by the exemption.
88. The Committee agrees with the parties that there should be no exemption for structural works to the first four rooms and front main hallway.
89. The Committee agrees with the Owner that non-structural works to the interior of the front four rooms will not impact the cultural heritage significance of the Place. Whatever significance remains in these rooms lies in their structural configuration owing to the fact that the original internal features of this part of the dwelling have long since disappeared. The Committee acknowledge the sympathetic work undertaken by the Owner but does not find that retention of non-original works, regardless of their quality, is sufficient justification to require that all future non-structural work be subject to the permit process under the Act.
90. **Figure 1** below is a visual representation of the Committee's position in relation to the permit exemptions. The Committee finds that all structural, and non-structural works to the interior of the residence are exempt from the need to obtain a permit for the rear portion of the Place, as shown in green. The Committee also finds that all non-structural works to the front four rooms and front main hallway of the Place are exempt from the need to obtain a permit, as shown in blue.

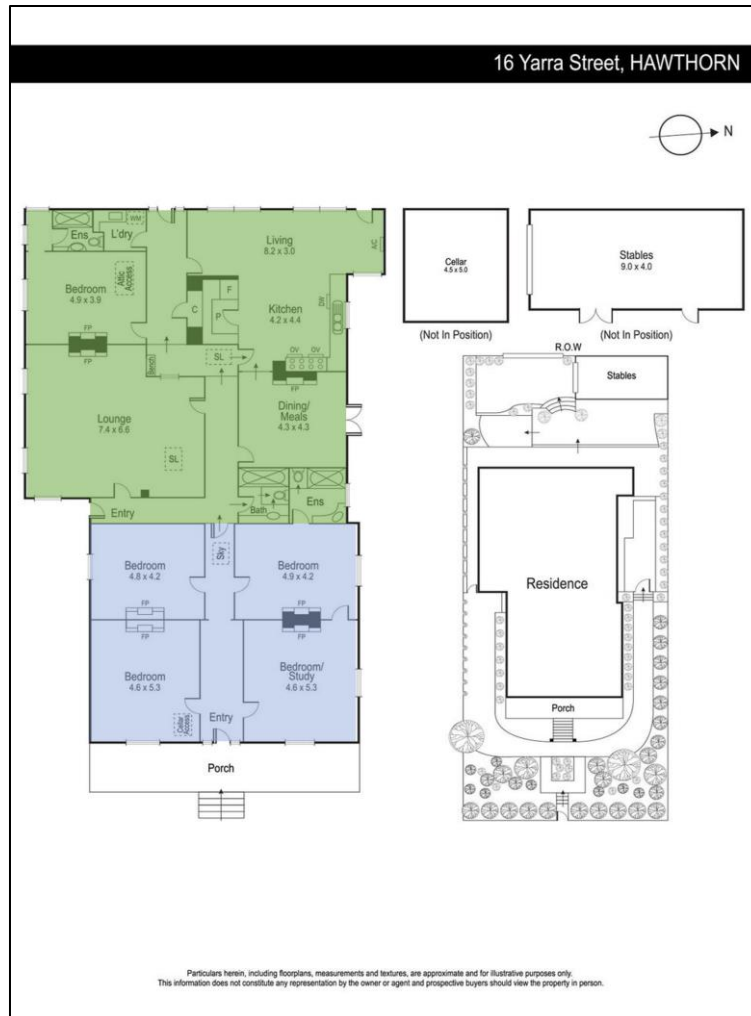


Figure 1. Floor plan of the Place with coloured shading to delineate the two permit exemptions relevant to the interior of the residence. Green indicates a permit exemption for all structural and non-structural internal works, blue indicates a permit exemption for all non-structural internal works. Image reproduced with permission from Kay and Burton, Hawthorn, available at <https://www.realestate.com.au/sold/property-house-vic-hawthorn-130958986>

- 91.** In summary, the Committee accepts the addition of permit exemption (b) and (c) as proposed by the Owner with the exception of the word ‘associated main hallway’ which has been changed to ‘front main hallway’ for clarity.

Permit exemptions (interior of stables)

92. The Executive Director's Recommendation proposed that inclusion of the stables to the rear of the Place in the Heritage Register, should be accompanied by a permit exemption allowing 'all works to the interior of the stables'.⁵
93. Following the Committee's site inspection and circulation of photographs taken of the Place, including of the interior of the stables, the Executive Director's Hearing Submission made reference to the Committee's photographs, and suggested that the Committee should give consideration to the appropriateness of the originally proposed permit exemption.
94. During the Hearing, neither the Owner nor the Executive Director made submissions in relation to the permit exemption for the interior of the stables. Accordingly, following the Hearing the Committee requested from both the Owner and Executive Director confirmation as to the parties' position in relation to the particular exemption.
95. Both parties provided responses to the Committee. The parties disagreed as to whether or not the interior of the stables should be exempt, but agreed that no further submissions were necessary beyond the positions stated in writing and that it was not necessary to reconvene the Hearing in relation to the discrete matter of the interior of the stables.
96. The Executive Director submitted that the photographs supplied by the Heritage Council following its site inspection show the interior of the stables, including roof structure, ceiling boards and roof lantern which appear to be early or original fabric.
97. The Executive Director further submitted that it would be unusual to include a permit exemption that allows for the removal of early or original fabric.
98. The Executive Director concluded the submission stating that in his view the permit exemption should be amended so that it does not enable alteration or removal of early or original fabric.
99. The Owner disagreed with the Executive Director's submission, stating that the original permit exemption as proposed in the Recommendation was appropriate, as the interior of the stables are not of State-level significance.

Committee discussion and conclusion

100. The Committee notes that the interior fabric of the stables, particularly the roof structure, ceiling boards and roof lantern appears, in the Executive Director's view to be early or original, but in the absence of evidence to this effect the Executive Director's assertion cannot be confirmed.
101. The Committee also notes that the stables building was recommended for inclusion in the Heritage Register as part of the setting of the Place, pursuant to section 49(1)(d)(i)–(ii), and although the stables are mentioned in the Statement of Significance for their contribution to the understanding of the lifestyle of the house's residents in the early twentieth century, the Committee finds that this understanding can be adequately read through the presence and exterior fabric of the stables.
102. The Committee finds that the interior of the stables do not readily contribute to an understanding of the lifestyle of the residents in the early twentieth century, and that the interior cannot be well understood as a stable, due to alterations that have already occurred.
103. The Committee therefore concludes that the permit exemption for the interior of the stables, as originally proposed by the Executive Director is appropriate in this circumstance and that the protection of the exterior of the stables ensures that its ability to contribute to the understanding of the lifestyle of the residents in the twentieth century is maintained.

⁵ Executive Director's Recommendation 18 November 2022, p.12

Statement of significance/Criteria for inclusion

- 104.** The Executive Director recommended a revised Statement of Significance which references the Heritage Council Criteria, which were adopted at least 30 years after the original registration of the Place and therefore not included in the original Statement of Significance. The revised Statement of Significance is as follows –

“What is significant?”

Zetland, a single-storey brick residence designed by William Ellis and constructed in 1873-74 in the Free Classical style, with an ornamental ironwork verandah. It also includes an iron palisade front fence on a stone plinth, and polychromatic brickwork stables.

How is it significant?

Zetland 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?

Zetland is historically significant as a prominent house within the prestigious St James Park subdivision of the former grounds of Sir James Palmer’s estate. The stables support an understanding of the lifestyle of the house’s residents in the early twentieth century. It is also historically significant for its associations with its designer, the important architect William Ellis. [Criterion A]

Zetland is architecturally significant as a representative example of the houses built within the St James Park Estate, which were sought after by members of Melbourne’s prosperous middle-class of the 1870s. Zetland is characterised by its ornamental verandah, wide allotment, distinct hilltop location and set back position from the main road. [Criterion D].”

- 105.** When providing the track-changed version of the permit exemptions, the Owner additionally commented on the revised Statement of Significance, suggesting additions under the heading ‘What is Significant’ to reflect the alterations that have occurred to the Place over time. The Owner also queried whether Criterion D is relevant.
- 106.** While the Executive Director generally disagreed with the Owner’s suggestions, the Executive Director suggested that instead of including the elements that are not significant in the Statement of Significance, a permit policy could be prepared which outlines the changes to the place and its impact on significance. The Owner agreed with this approach and the proposed wording to the permit policy.
- 107.** The Executive Director objected to the Owners submission that Criterion D is not the appropriate Criterion to recognise the architectural significance of the Place. The Executive Director submitted that ‘at the state level, historical significance is recognised under Criterion A and architectural significance is generally recognised via Criterion D’.
- 108.** The Executive Director also acknowledged that ‘this approach at the state level differs to the use of Criterion E at the local level where places of architectural significance are often assessed for their aesthetic value using Criterion E’.
- 109.** The Owner submitted that Criterion D might not be appropriate for this Place, as it is not clear what the ‘class’ of place is, and also that the aesthetic characteristics did not warrant inclusion under Criterion D.

110. The Owner further submitted that the property to the north of the Place was built by the same architect but was not in the Heritage Register, submitting ultimately that the Place was no more 'prominent' than other properties in the area and that the word 'prominent' should not feature in the Statement of Significance.
111. In response, the Executive Director submitted that the Place is considered within the 'class' of late 19th Century Victorian villa, and that class is what is considered notable under Criterion D. The Executive Director acknowledged the Owner's submissions comparing the Place to other properties in the area designed by William Ellis, but noted that these properties had never been nominated or assessed for State-level significance so were not appropriate comparators.
112. The Executive Director conceded that other adjectives could be considered in place of the word 'prominent'.

Committee discussion and conclusion

113. The Committee notes that Statements of Significance are produced as part of the Executive Director's Recommendation, and although the style and layout of these has changed over time, they have consistently been used to identify what, how and why a Place or Object on the Heritage Register is significant.
114. In that way, Statements of Significance are a useful tool, because they record an assessment of significance at a point in time. In the first instance, they represent the views of the Executive Director as to what, at the time of the consideration, is regarded as the basis for a finding of cultural heritage significance at the State-level. On any review the Statement of Significance prepared by the Executive Director is often used as a basis from which to frame arguments about significance, which must be considered by the Heritage Council.
115. That said, the Statement of Significance is not a statutory document in that it does not form part of the Heritage Register. As such it is not a document which the Heritage Council ultimately approves or amends.
116. The role of the Heritage Council is to consider evidence as to significance as and when the need arises. The Heritage Council is not bound by the content of Statements of Significance if the evidence before it in a particular case leads to different conclusions.
117. If the findings of the Heritage Council depart from the Statement of Significance prepared by the Executive Director or prefer the expression of significance contained in statements prepared by expert witnesses, those findings are recorded in the determination of the Heritage Council. Though the Heritage Council has no power to "amend" a Statement of Significance, it would be reasonable to expect that any Statement of Significance retained by the Executive Director after a hearing of the Heritage Council would be consistent with the findings contained in the Heritage Council's determination.
118. In that context, the Committee considers that in broad terms the Statement of Significance provided in the Recommendation properly captures the significance said to exist at the State-level.
119. In relation to the State-level significance of the Place and the Criterion under which it is included in the Heritage Register, the Committee agree with the Executive Director's assessment against the Criteria, and determines that the Place should be included in the Heritage Register under Criterion A and Criterion D.
120. Because this case is not concerned with the nomination of the place in the first instance, or the possible removal of the place from the Register, there is no real debate before this Committee as to the level of significance and there is little merit in this Committee attempting to resolve the minutiae of precise language used in the Statement of Significance. That said, the Committee agrees with the Owner that the use of the word 'prominent' seems to overstate the relative significance of the place in a street where

buildings designed by the same architect of a similar design are present but not on the Register.

- 121.** The Committee considers that the content of Statements of Significance and the format are really a matter for the Executive Director. In this case, permit exemptions reflect the relative significance of parts of the building. This could be recorded in the Statement of Significance, or in a policy in relation to permits. Ultimately, this determination also contains findings as to what has been considered significant for the purposes of determining the permit exemptions, as follows:
- the exterior of the entire building, including its configuration, roofline, external chimneys, and materiality;
 - the configuration and layout of the front four rooms and front main hallway;
 - the stables, to the extent of the exterior of the building including its configuration, roofline with external lantern, and materiality.

CONCLUSION

- 122.** After considering the Executive Director's recommendation and all submissions received, and after conducting a hearing, the Heritage Council has determined, pursuant to section 49(1)(d)(i)–(ii), section 49(3) and section 62 of the *Heritage Act 2017*, that the entry for Zetland (H0477) located at 16 Yarra Street, Hawthorn is to be amended in the Victorian Heritage Register, by including additional land and interiors, and by including categories of works or activities for which a permit under the *Heritage Act 2017* is not required as set out in **Attachment 3**.

ATTACHMENT 1

HERITAGE COUNCIL CRITERIA FOR ASSESSMENT OF PLACES OF CULTURAL HERITAGE SIGNIFICANCE

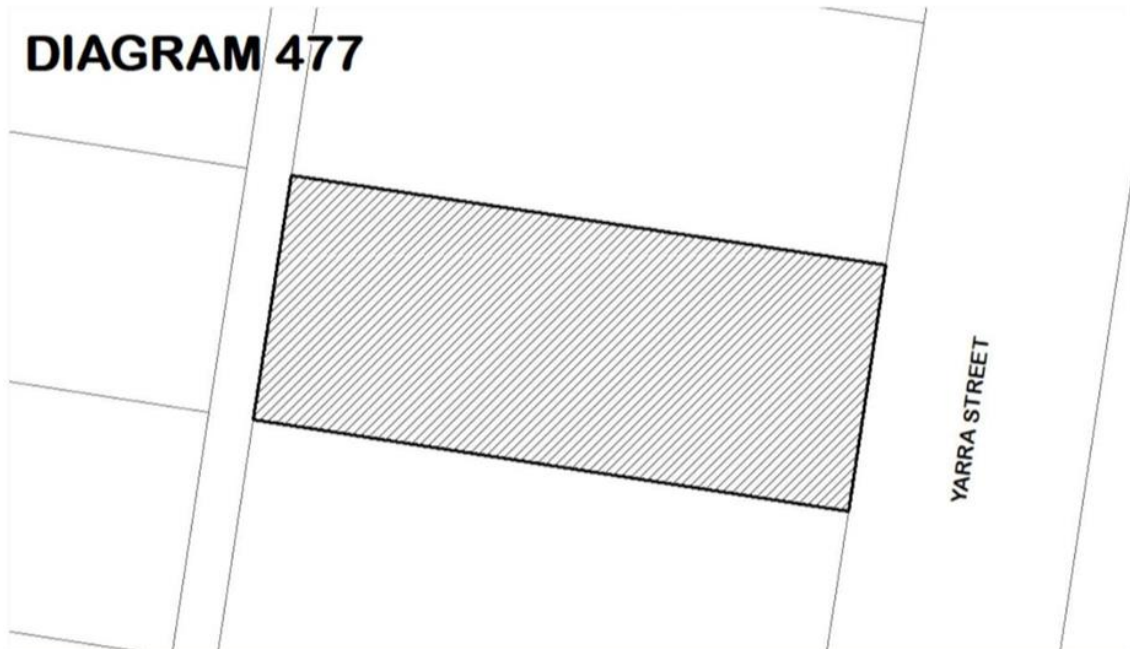
CRITERION A	Importance to the course, or pattern, of Victoria's cultural history.
CRITERION B	Possession of uncommon, rare or endangered aspects of Victoria's cultural history.
CRITERION C	Potential to yield information that will contribute to an understanding of Victoria's cultural history.
CRITERION D	Importance in demonstrating the principal characteristics of a class of cultural places and objects.
CRITERION E	Importance in exhibiting particular aesthetic characteristics.
CRITERION F	Importance in demonstrating a high degree of creative or technical achievement at a particular period.
CRITERION G	Strong or special association with a particular present-day community or cultural group for social, cultural or spiritual reasons.
CRITERION H	Special association with the life or works of a person, or group of persons, of importance in Victoria's history.

These were updated by the Heritage Council at its meeting on 1 December 2022, and replace the previous criteria adopted by the Heritage Council on 6 December 2012.

ATTACHMENT 2

EXTENT OF REGISTRATION

All of the place shown hatched on Diagram 477 encompassing all of Lot 1 on Title Plan 601087.



The extent of registration of Zetland in the VHR affects the whole place shown on Diagram 477 including the land, all buildings (including the exteriors and interiors), landscape elements and other features.

ATTACHMENT 3

CATEGORIES OF WORKS OR ACTIVITIES (PERMIT EXEMPTIONS) RECOMMENDED UNDER SECTION 38 (SECTION 40(4)(b))

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 still must 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 object.
- Should it become apparent during further inspection or the carrying out of works that original or previously hidden or inaccessible details of the object are revealed which relate to the significance of the object, 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 Zetland. Owner(s) do not need to apply to Heritage Victoria for a permit or permit exemption for the below works.

General

- Minor repairs and maintenance which replaces like with like. Repairs and maintenance must maximise protection and retention of significant 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.
- Maintenance, repair and replacement of existing external services such as plumbing, electrical cabling, surveillance systems, pipes or fire services which does not involve changes in location or scale.
- Repair to, or removal of items such as antennae; aerials; and air conditioners and associated pipe work, ducting and wiring.
- 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. The Executive Director must be notified within seven days of the commencement of these works or activities.
- Painting of previously painted external 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.
- Cleaning including the removal of surface deposits by the use of low-pressure water (to maximum of 300 psi at the surface being cleaned) and neutral detergents and mild brushing and scrubbing with plastic (not wire) brushes.

Interiors

- All works to maintain or upgrade existing bathrooms, kitchens and laundries, including installing new appliances, re-tiling and the like.
- Painting of internal surfaces.
- Installation of new flooring.

- Installation, removal or replacement of carpets and/or flexible floor coverings, window furnishings, and devices for mounting wall hung artworks.
- Installation, removal or replacement of existing electrical wiring, light fittings, light switches and outlets. If wiring is currently exposed, it should remain exposed. If it is fully concealed it should remain fully concealed.
- Removal or replacement of smoke and fire detectors, alarms and the like.
- 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.
- All structural and non-structural internal works beyond the first four rooms and front main hallway.
- All non-structural internal works to the first four rooms and front main hallway.

Outdoor areas

- Subsurface works to existing watering and drainage systems.
- All works to existing hard and soft landscaping elements (excluding the iron palisade front fence) including, but not limited to:
 - Repair and maintenance of paving, footpaths and driveways.
 - Installation of physical barriers or traps to enable vegetation protection and management of vermin such as rats, mice and possums.
 - All gardening works.

Stables

- All works to the interior of the stables.